

IMMIGRATION INTO THE UNION 1910 - 1948:

POLICIES AND ATTITUDES

VOL. 1

by

EDNA BRADLOW

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IMMIGRATION INTO THE UNION 1910 - 1948:  
POLICIES AND ATTITUDES

A thesis submitted for the Degree of

Doctor of Philosophy

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by

Edna Bradlow

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1 *The Last of England* by Ford Madox Brown, 1855

"The fateful report of the decision of the Cape Council in 1717 to stop European immigration to South Africa and to resort to slavery.... probably shaped the whole of the history of this distressful country".

John X. Merriman to Basil Williams, 7.4.1920.

"Owing to our native labouring population this colony was sealed against European immigration."

John X. Merriman in the Cape Legislative Assembly, 29.6.1876.

"The fundamental issue is whether we want the economic and cultural benefits which immigration conferred on the U.S.A. and on England, or whether we want South Africa to remain in the backwater of its present undeveloped resources. That decision requires unselfishness, idealism, vision and freedom from racial prejudice."

The Forum, 6.2.1943

"The National Party is not opposed nor has it ever been opposed to immigration as such provided the immigration takes place at the right time, provided that the immigrant is of the right type, and provided there is a proper control of immigration and of numbers who come in."

Eric Louw in parliament, 6.5.1946.

"A stream of immigrants trooping off a ship.... is not in itself an inspiring sight; it could be just that, if a picture of those same immigrants 25 years ahead were at the same time called to mind."

A. Chester, South African Business Efficiency.

"Open wide the doors.... If you can expand industry, if you can expand activity and production and employment on a large scale, nobody will profit more from it than the citizens of the Union. We shall be calling in reinforcements that we need very badly, with our small numbers fighting a great battle of civilisation at this end of the continent. With our small numbers we need reinforcements.... We must go forward on all lines. Build the houses, cultivate the land, produce the food, educate the children; move forward in this country along all lines of advance and I say the greatest of all these is new blood."

Field Marshal Smuts, 1946.

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## PREFACE

In analysing the immigration policies adopted, and the legislation subsequently enacted in South Africa after Union, one finds certain consistent, basic premises underlying the actions of successive governments. The subject has been tackled thematically; and three main motifs emerge. The first post-Union immigration legislation was dictated by the determination (already agreed upon in the individual colonies) to exclude further Asiatic, and more specifically Indian, immigration; this determination soon developed as its corollary, the intention of persuading Indians already domiciled in South Africa to leave its shores permanently.

The second theme concerns the reduction in numbers, though not the total elimination, of immigrant groups regarded as likely to "change the character" of the white South African population. While aimed ostensibly at reducing all immigration from Central and South Eastern Europe, legislation indicative of this theme was directed particularly against Eastern European Jews. Small wonder that in 1933 the then Minister of the Interior, J.H. Hofmeyr, said that "ordinarily when there is mention of an immigration bill, apprehensions tend to be aroused".<sup>1</sup>

Thus the policy adumbrated in the first two sections of this study was primarily racially determined. The third major theme is the purported encouragement of white immigration from countries (Britain, Holland, Germany and the Scandinavian lands), specifically regarded, for historic and ethnic reasons, as providing suitable additions to the existing

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1. San. Debs. 1933, 13.6.1933, Col. 54.

population admixture. Here economic, and to a lesser extent political factors were predominant. Virtually every South African Government after 1910 found itself faced with the same dilemma; the wish to augment the white population while controlling the entry of unskilled immigrants who would not be allowed to compete originally with cheap, black labour and later with unskilled whites. The 1911 Mines and Works Act and the subsequent Colour Bar legislation; the "white labour policy";<sup>2</sup> and the education and financial restrictions imposed in the 1913 Immigrants Regulation Act, can all consequently be seen as measures designed to maintain the labour status quo, and cushion what Johnstone terms the "structural insecurity" of white workers. There is a certain agony in the paradox that while an "ultra-exploitable" black labour supply made everyday life agreeable for a great number of whites, it prevented the country from developing its full potential through the addition of that class of immigrants which made the United States populous, and powerful in its diversity.

In vain the South African Party, which held office from Union until 1924, dreamed of the coming of a yeoman farmer or employer class, who would bring even a modest amount of capital to the country. The reality of the situation was that neither group felt drawn to the Union. Irrigated land in South Africa was dearer than arable land in Great Britain for example; and industry was in its infancy.

Afrikaner Nationalism's first nine years in power added to the

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2. Johnstone, F.A., Class, Race and Gold p. 57 ff, deals with the internal "protective measures" taken by the state to ward off non-white competition,

economic determinant noted above, a political dimension absent in immigration policy during the previous decade. "The definition of South African nationality and the achievement of a distinctive national flag"<sup>3</sup> were the positive indications of the Union's autonomy; a noticeable lack of enthusiasm towards immigration (which was overwhelmingly British-orientated) negatively ensured that such autonomy would not be threatened.

Europe was the powerhouse of emigration in the period covered by this study - and preceding it. During the 100 years after 1820, in the belief that there was something better to be gained elsewhere, 55 million people left the Old World,<sup>4</sup> (seven and a half million between 1909 and 1913 alone),<sup>5</sup> the bulk of whom went to America, Australasia and Siberia. A combination of demographic and economic factors was the primary cause of this European exodus. In the case of British emigrants the disruption was as much the result of unemployment in industry as in agriculture. In the case of Germany (which had a great emigration in the 1850s), and later of Italy and the Slav countries, rural dislocation was the mainspring. Emigration then, in the late 19th and early 20th centuries was primarily an extension to the international field, of the internal migrations which had previously occurred within the industrialized European countries.

There were of course reasons other than economic ones, for these

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3. Davenport, T.R.H., South Africa. A Modern History, p. 201-2.
  4. "Colonialism", Encycloaedia Britannica, Macropaedia, Vol. 4.
  5. Die Burger, 24.6.1926, report of International Labour Unions Conference.

great population movements. There was the search for personal and political liberty by a suppressed nation, like the Irish, or racial minorities such as Eastern European Jews. After World War I there was a new phenomenon, the refugee, who had no choice but to leave his homeland, yet who came to be regarded in many receiving countries as a "menace", to be excluded. Unfortunately the need to keep this study within manageable proportions has made it impossible to examine in more depth the fascinating adjunct to a survey of South African immigration; namely the conditions which "pushed" individuals out of Europe, and their reasons for choosing South Africa as their new homeland. In the latter case we know that some factor, insignificant in terms of the total immigration picture, had incommensurate results. The fact that Sammy Marks, for example, "made good" in the Transvaal is said to have been responsible for virtually the whole Jewish population of his Lithuanian birthplace emigrating to South Africa. Similarly one letter from a well-established German Jew in Cape Town led to the Union becoming the home of many refugees from Hitler's Germany.

These millions who left Europe right until the fourth decade of the 20th century were primarily people whose capital comprised the muscle of their arms and a determination to build a better life in countries with natural resources but lacking the labour to develop them. Inevitably their children graduated from the unskilled labour class, again leaving a gap in that class which was filled by a similar "siphoning off" of Europe's excess population.

The presence of an existing and apparently inexhaustible cheap labour supply both in the Union and on its borders; the attitude, sanctified over the centuries, that a white man, unless he were declassé,

supervised, but did not perform, unskilled work; the fear of the rural Afrikaner, reinforced from its inception by the National Party, that large-scale immigration would be British-dominated and would deprive South Africans of their birthright; and finally the evolution, reaching its zenith in the 1920s, of the phenomenon known as "the poor white problem" - together these circumstances and attitudes exacerbated the tendency (world-wide in the decade following World War I) to react against the laissez faire migration policies of the 19th and early 20th centuries.

Smuts's 1947 immigration scheme was the first reversal of traditional policy. Its abridgement, as a result of the Nationalists' 1948 election victory, delayed the full implementation for a further eleven years of a positive immigration policy, during which time Europe passed its emigration peak.

Though Nationalist Government spokesmen continued to claim that a careful choice of individuals and nationalities would be necessary if immigrants were to be a useful addition, it was admitted in 1959 that a large-scale immigration campaign was the only way whites could "maintain themselves" against the non-whites. In the event the doors were opened far wider than at first proposed; thus between 1960 and 1964 while there were 8 003 German immigrants and 3 058 Dutch (the two nationalities traditionally regarded by Nationalist Governments as the most desirable settlers), 32 530 still came from the United Kingdom, and even Portugal and Greece sent 2 033 and 4 588 emigrants respectively.

This study, then, will examine the working out of its three main themes against a background of the domestic and external events and problems which helped shape immigration policy. To some extent a

chronological framework is possible. The Indian issue came first. Once it had been settled, within the realms of possibility if not to the satisfaction of all, the question of Jewish immigration took precedence. The problem of balancing the desire for skilled or self-supporting white immigrants against an inherent xenophobia, determined both by race and class, will be dealt with as a separate and final theme, though in fact it was an issue (albeit not as acute as the other two) in the whole period under review.

African immigration has not been considered, primarily because the entry of blacks as permanent residents (except for those from the Protectorates) was illegal under the principal immigration act. Moreover the regulations enforced under the Statistics Act in January 1918, excluded the enumeration of Africans, and therefore account only for the movements of Europeans, Asiatics and coloureds. South West Africa (Namibia) has also not been considered, because of its peculiar international status.

This work claims to be no more than a seminal study, both because of its range, and the difficulties in obtaining official archival material, particularly for Parts II and III. Key files from the Governor-General's correspondence relating to the open period in Part I were missing, but may have been included in the British Command papers used. The 1925-30 records in the Central Archives, Pretoria, were opened after the first two sections containing discussions on the Cape Town Agreement and the Immigration Quota Act respectively, had been completed. Material on both was, however, obtained elsewhere, so that it is doubtful whether either section will be much affected by the opening of the 1925-30 block. It should be noted moreover,

that important private collections, such as the D.F. Malan and J.B.M. Hertzog papers, which may shed light on disputed interpretations of events, are also at present not open to use by researchers. The files of the 1820 Memorial, Settlers' Association could not be located either in Cape Town or Johannesburg, but sufficient material was available in the Crewe Papers and in secondary sources, to construct a coherent account.

Regretfully then, it has been found possible to take the story only to the inception and implementation of Smuts's scheme, for which sources other than official South African ones also had to be used. Valuable information was obtained from the Dominion Office files in the Public Record Office. Vital material in file 114/107, "Migration 1945-51, further correspondence and papers", is unfortunately unavailable until 1981, in accordance with the British 30-year block system.

The Verwoerd scheme, with its wide policy ramifications - not least being its modification of National Party orthodoxy - must perforce be the subject of a separate study. It has only been touched on, primarily to emphasise the importance of Smuts's plans.

The writer is aware of the great debate which is going on in South African historiography between the pragmatists who purvey the "conventional wisdom" with its pluralistic approach, and the Marxists (and neo-Marxists) who view history from within the conceptual framework provided by the class conflict and its starting point, the determination of class according to the individual's relationship to the means of production. The latter interpretation is not rejected out of hand; but in the present state of historical knowledge the verdict still appears to be "not proven". Until more research has been done, say on

the Pact period, the neo-Marxists' belief that any particular phase in history illuminates the struggle for hegemony between the various categories of capital; or their attempts theoretically to identify the "hegemonic fraction which unifies the power alliance under its leadership",<sup>6</sup> can throw little light on an analysis of immigration policy under the Pact Government. Consequently the starting point of this work has been Sir Isaiah Berlin's assumption that since "history is not a deductive science", the historian's concern "is with empirical matters - the actual lives of human beings in the space and time of normal experience".<sup>7</sup>

Finally the author asks forgiveness, on the grounds of human frailty, for all sins of commission. As for those of omission, one can but excuse them using Henry Ford's dictum that "what doesn't go in, can't go wrong".

Edna Bradlow

Cape Town,

June, 1978.

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6. Poulantzas, N., "On Social Classes", New Left Review No 78, p. 44.

7. "Historical Inevitability", Four Essays on Liberty, pp. 72-3.

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Finally I should like to pay a special thanks to Mrs E.M. Cotty, and to Mrs B. Hablutzel who typed this manuscript so conscientiously and without uttering a murmur at the author's frequent alterations.

## ABBREVIATIONS

An.	Annexure
A.R.	Annual Report of the Agent-General for India in the Union of South Africa
Dept.	Department
1/C (etc) and A.G.	First Annual Report of the Controller and Auditor-General to accompany Finance Statements
C.I.A.	Commissioner for Immigration and Asiatic Affairs
Col.	Column
Exec.	Executive
Gov-Gen.	Governor-General
Govt.	Government
H. of A. Debs.	House of Assembly Debates
Jhb.	Johannesburg
Memo.	Memorandum
Min.	Minister
P.M.	Prime Minister
<u>Press Reps.</u>	Press Cutting Service of S.A.J.B.O.D.
P.R.O.	Public Record Office
Sen. Debs.	Senate Debates
S.A.F.C.I.	South African Federated Chamber of Industries
S.A.J.B.O.D.	South African Jewish Board of Deputies
S.A. Pol. Arch.	South African Political Archives, University of the O.F.S.
T.U.C.S.A.	Trade Union Council of South Africa

**PART I**

**THE EXCLUSION OF INDIANS**

## CHAPTER I

### COLONIAL POLICIES

#### IN THE PRE-UNION PERIOD

Prior to 1910 immigration policy in the four colonies which formed the geographical entity known as South Africa, mirrored a pre-industrial society in which whites were the ruling caste. Just prior to Union each colony consolidated its policy into immigration legislation designed primarily to keep out "undesirables" by defining the term "prohibited immigrant"; to establish governmental departments for the regulation of immigration; and to lay down penalties for transgressions of the law. The immediate pre-Union period then, marks the end of unrestricted entry into South Africa.

In the Cape the principal act was the Immigration Act, No. 30 of 1906, "to amend the law placing restrictions on Immigration and providing for the removal from the Colony of prohibited immigrants".<sup>1</sup> In Section 3(a) a "prohibited immigrant" was defined (on the lines of the 1897 Natal legislation) as "any person, who when asked to do so by any duly authorised officer, shall be unable through deficient education to himself write out and sign in the characters of any European language an application to the satisfaction of the Minister". As an extension of the Immigration Act 1902, which it now repealed, the 1906 Act, for the purposes of this sub-section, specified that Yiddish was to be accepted as a European language. In Section 3(b) a "prohibited immigrant"

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1. Statutes of the Cape of Good Hope, Vol. 5.

was further defined as "any person who is not in possession of visible means of support [stipulated as £20 by the Department of the Interior] or is likely to become a public charge". Clauses 3(c) (d) (e) and (f) provided additional grounds for exclusion. The categories mentioned were: persons convicted of certain offences such as rape, theft, murder and etc; lunatics as defined in Section 2 of the Lunacy Act 1897; those living on the proceeds of prostitution; and anyone, who on account of information received through a foreign country, was deemed by the Minister to be undesirable. "But," the Act added, "in the case of an immigrant who proves that he is seeking admission to this Colony solely to avoid persecution or punishment on religious or political grounds, or for an offence of a political character, or persecution, involving danger of imprisonment, or danger to life or limb on account of religious belief, leave to land shall not be refused on the ground merely of want of visible means of support, or the probability of his becoming a public charge provided that such immigrant shall only be permitted to land on receiving a licence under the hand of the Minister."

Section 4 listed further exemptions to exclusion under the previous section. These included persons born in South Africa and Europeans domiciled here; Asiatics lawfully resident in the Cape who had permits authorising temporary absence; and European agricultural or domestic servants or skilled artisans, immigrating under a scheme approved by the Government "upon being satisfied that there is no sufficient supply available of the class of labour required". These last had to possess a certificate signed by the Cape Agent-General in Britain certifying that the person "has been engaged to serve, immediately on arrival in the Colony, an employer therein of repute at an adequate remuneration

and for a reasonable period of time".

Finally the Act defined the means of removing prohibited immigrants; the liability of ships' masters for landing them; and the penalties for assisting them; and authorised the issue of regulations by Governor's proclamation for the implementation of the provisions of the Act.

As far as Europeans were concerned, the "Immigration Act 1906" reflected both the pre-industrial, agricultural character of a colony losing its leading position in South Africa, and the South Africa-wide economic depression during which the law had been framed. There were complaints that the strong, penniless man of good character was being kept out, while a man with £20 and "a poor physique" was coming in.<sup>2</sup> But the act simply projected the reality of a situation in which there was only a sporadic demand for immigrants in specific trades. In some years there was such an excess of white skilled and unskilled labour, that relief was only achieved by a large-scale exodus of British immigrants - primarily to Australia.<sup>3</sup> Thus the migration figures at Cape ports for 1906-1908 showed a net loss to the colony of the 3348 persons declared prohibited immigrants between 1903 and 1908, over a half on the grounds of insufficient means; in 1903 alone 962 arrivals were refused admission. It was not until 1909 that a gain of 1645 immigrants was registered, when economic conditions improved and intending immigrants did not have to be discouraged. In that year 7069 immigrants (defined as persons entering the Cape for the first time) landed at the Cape ports, of whom 4970 were British nationals. 192 people were

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2. The Cape Times, 26.5.1910.

3. G.4 - 1910, Report of the Chief Immigration Officer for 1909.

excluded, 137 on the grounds of illiteracy and 46 because of inadequate means.

The effect of allowing Yiddish to be regarded as a European language can be seen from the fact that there were 1 151 Russian Jews (629 males and 502 females) among the arrivals.<sup>4</sup> While the Chief Immigration Officer claimed in his report that the reduction in prohibited immigrant numbers reflected the increased caution of the shipping companies (who were held responsible for bringing potential prohibited immigrants), the figures may equally indicate that improved conditions enabled officials to use their discretion in administering the provisions of the act more flexibly.

The immigration legislation of the other three colonies broadly resembled the Cape legislation in the matters of exclusion and administration. Natal's legislation was primarily concerned with the control of Indian immigration. Natal Act 30 of 1903 "to place closer restrictions on Immigration" amended the Immigration Act of 1897.<sup>5</sup> Section 5 defined a prohibited immigrant in similar terms to those in the Cape act, but included sufferers "from a loathsome or dangerous contagious disease". It went further than the Cape measure in dealing with the apprehension, punishment and detention of the prohibited immigrant. Section 4, defining exemptions from Section 5, included persons who could prove former domicile and this right was extended in Section 32 to anyone who could prove residence, which meant a stay of at least three consecutive years providing the applicant had not come in under indenture.

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4. Reports of Chief Immigration Officer, 1906 (-6146); 1907 (-6886), 1908 (-5860). Of the 7069 who came in 1909, 1482 males and 501 females were described as "leisured, professional or business".

The number of permanent settlers is not indicated.

5. Statutes of Natal, 1900 - 1904.

The Transit Immigrants Act, No 7 of 1904,<sup>6</sup> adjusted the 1903 Act to allow for the transit of Chinese indentured labourers through Natal to the Transvaal, on their introduction into that colony under the Labour Ordinance of February 1904. Natal Act No 3 of 1906<sup>7</sup> was intended to stop up a loophole in the definition of "domicile" afforded by the 1903 Immigration Restriction Act. This loophole was being used by many Indians to claim domicile and therefore legal entry into Natal. Under Section 1, reference to domicile in Sections 4(f) and 32 (a) of the 1903 Act "shall apply only to domicile acquired by residence in Natal on the part of the person seeking to enter the colony and not to domicile acquired in any other manner". Section 2 required proof from the person applying for domicile, that he was not excluded under the 1897 or 1903 legislation. To prevent an influx of unattached Indian females and minor children, Section 3 required proof of identity before a woman or child could gain entry as the family of a bona fide immigrant.

O.F.S. legislation, in accordance with that state's motto, had encouraged immigration of whites. Oranje Vrystaat Wet No. 18 of 1899 allowed entry to all foreigners (save coloureds) who possessed valid passports or travel documents, indicating that the holder could support himself. Immigrants were prohibited on similar grounds to those in the Cape and Natal Acts, with the additional proviso that foreigners who verbally or in writing disturbed the peace, were liable to expulsion, as

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6. Ibid. Section 8 allowed a Chinese or member of any other race being brought in as a transit immigrant, who was however himself not such an immigrant, but lawfully resident in Natal, to obtain a certificate of residence from the local magistrate.

7. Statutes of Natal, 1905 - 1910.

was anyone who had not yet acquired burgher rights but who had committed "eene grove misdaad elders".<sup>8</sup>

The Orange River Indemnity and Peace Preservation Ordinance 25 of November 1902,<sup>9</sup> was a post-war measure of temporary duration. Part II, comprising "special provisions for public safety" listed persons who were allowed entry into the Colony without the special permit required in terms of this ordinance. These included persons resident in the O.R.C. or Transvaal on May 31, 1902 and since then not expelled from either; any person who since May 31, 1902 or before the date of this ordinance had received official authorization to enter the two former Republics; and persons coming within the provisions of Article 2 of the Terms of Surrender of May 31, 1902 which provided for the return to their homes of burghers in the field or in prisoner of war camps who declared their acceptance of their position as subjects of Edward VII. No permit was to be granted to Republic burghers who had not taken the oath of allegiance to the British King, and the Lt-Governor of the O.R.C. was granted the right to expel within 14 days, any person suspected on reasonable grounds, of being dangerous to peace, order and good government.

Transvaal immigration legislation centred on three Acts: Act No 2 of 1907, the Asiatic Law Amendment Act (which will be dealt with later, as it concerned Indians specifically); the Immigrants Restriction Act, No 15 of 1907; and the Immigrants Restriction Amendment Act No 38 of 1908. Act No 15 listed its intentions as being "to place restrictions on Immigration into this colony, to provide for the removal therefrom

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8. O.V.S. Wetboek, 1892 - 1899.

9. Ordinances of the Orange River Colony, 1902.

of prohibited immigrants and other persons, and to establish and maintain an Immigration Department".<sup>10</sup> To the usual definition as to who constituted a prohibited immigrant (listed in Section 2 (3-7)) was added any person whom "the Minister thought could be dangerous to order and good government". Among those exempted from being regarded as prohibited immigrants were members of H.M.'s forces, Europeans who had proof of immediate employment in the Transvaal, Asiatics who had obtained or were eligible for registration certificates under the Asiatic Law Amendment Act of 1907, and descendants of the aboriginal races in Africa south of the equator who did not come within the scope of Section 2 (3-8). The uncontrolled entry of Africans into the Transvaal was limited however, under the Immigrants Restriction Amendment Act No 38 of 1908.<sup>11</sup>

On balance one can infer from the above legislation that in the period just before Union there was little desire on the part of any of the colonial governments to encourage large-scale immigration. This reflected both a certain economic stagnation (for economic development is an important factor determining a country's capacity to absorb settlers) and the political insecurity inherent in the South African racial situation. Four Rhodesian delegates, but none of the Agents-General from the South African colonies, attended the opening of the Emigration Conference in London on May 19, 1910 to discuss co-operation between the Home and Colonial Governments in the form of State loans,

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10. Statutes of the Transvaal, 1907.

11. Statutes of the Transvaal, 1908. Section 1 substituted a new section 2 (h) in Act No 15 of 1907, which exempted from declaration as prohibited immigrants, Africans who came in on contract as unskilled workers.

co-ordination of the work of various voluntary societies encouraging emigration and the establishment of a central bureau.<sup>12</sup>

The converse of South African disinterest was the lack of a major incentive in the stanlande of Europe after the turn of the century to stimulate large-scale emigration to South Africa.

It is difficult to assess in more than a general way, the exact South African immigration pattern in these pre-Union years. While Canada and Australia kept careful statistics of controlled or assisted immigration, in South Africa neither of the inland colonies kept immigration records, and in the two coastal colonies no attempt was made to distinguish between temporary passengers and permanent immigrants. Even in Great Britain, it was only after April 1912 that the Board of Trade began to make such a distinction.<sup>13</sup>

Nevertheless some picture does emerge from these inadequate statistics. The census of 1911 showed that the greatest number of immigrants into South Africa came between May 1901 and April 1906, and at a net annual rate of about 14 000 between 1901 and 1903 (a number it should be added roughly equivalent to America's weekly gain). The 1921 and 1926 censuses confirmed that this group was still the largest; that is, up to 1926 "the volume of immigration between 1896 and 1906 had not been exceeded during any subsequent period".<sup>14</sup>

It is difficult to decide whether the post-1906 decline in numbers was primarily the result of the restrictive immigration legislation

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12. The Cape Times, 1.6.1910.

13. Cd 8462, Final Report of the Royal Commission on Natural Resources, Trade etc.

14. U.G. 4-1931, Fourth Union Census 1926, p. 114.

outlined above, or whether it sprang from a lack of opportunity in South Africa or a lack of momentum in Europe. Undoubtedly all three factors operated simultaneously to a varying degree.

## CHAPTER II

### PRE-UNION COLONIAL POLICIES AND INDIANS

While pre-Union colonial legislation reflected a negative attitude to European immigration other than an expression of preference for an entrepreneurial or yeoman farmer class, it reflected a far more important determination positively to limit, if not totally exclude Asiatic entry, the culmination of a growing xenophobia whose origins lie outside the scope of this study.<sup>1</sup> Consequently legislation devised after Union for the administration of policy was obliged to incorporate these disparate conditions, with the emphasis on Indian exclusion. This was a requirement not easily implemented, when taken in conjunction with the fact that the Imperial Government (which had the right to reserve immigration legislation), though sympathetic to the aspirations of self-governing dominions, would not sanction statutory discrimination.

This study then opens with the operation on Asiatics of the colonial legislation outlined in the previous chapter. At one end of the spectrum was the Orange River Colony, which from its days as the independent Orange Free State, had stringently prohibited Asiatic immigration under Chapter XXXIII of the O.F.S. law book. In 1897 this stricture was modified and Indians were allowed to live in the country, but under conditions still so circumscribed (not to farm, trade or own fixed property) that even at the time of the 1921 Census there were

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1. New Zealand had a similar restriction since 1881. See Morrell, New Zealand, pp. 353-4.

only 242 Asiatic males and 153 females living in that province.<sup>2</sup>

(At the Cape, Section 2(a) of Act 47 of 1902 declared as a prohibited immigrant any person who failed to write and sign his entry application in the characters of a European language; Section 3(f) stated however, that the Act was not applicable to persons domiciled in South Africa - which would include Indians who were free to return to the Cape after several years' absence. This loophole was stopped up by the 1906 legislation repealing the 1902 Act. Only persons born in South Africa (and this included Indians) or certain Europeans domiciled in South Africa, were freed from the provisions of the education test. The strict administration of the test (including a refusal to allow any Indian language to be used), had the desired effect of excluding Indians without mentioning them eo nomine; nevertheless the Indian community expressed satisfaction with the Act's administration.<sup>3</sup> Whereas in 1903 the number of Asiatic arrivals at Cape ports was 1646 (comprising both returning residents and newcomers), the number fell to 449 in 1904 and thereafter until 1909 fluctuated between 279 and 705 annually. After 1905 the number of departures exceeded arrivals, the only substantial influx being the minor sons of domiciled Indians.<sup>4</sup>)

Chinese immigration into the Cape after 1904 was regulated separately under the Chinese Exclusion Act, No 37 of 1904, which totally prohibited the further admission of adult Chinese males, and was introduced to prevent Chinese indentured labourers from entering the Cape after the inception of the 1904 Transvaal Labour Ordinance. Though

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2. Union Yearbook No 5 - 1922, p. 140. Indians had to sign a declaration at the border that they would not engage in trade; Cd 7111, Correspondence relating to the Immigrants Regulation Act... quoting Transvaal Leader, 19.9.1913.

3. A.16-08, Report of the Select Committee on Asiatic Grievances.

4. G.4 - 1910.

the last Chinese labourer left the Transvaal in 1910, and although the number of Cape Chinese adult males dropped from 1321 in 1904 to 655 in 1919,<sup>5</sup> the Act continued to be strictly applied until 1933, when under Section 2 of the Immigration (Amendment) Act, the Chinese Exclusion Act and its amending legislation (Cape Act No 15 of 1906) were repealed.<sup>6</sup>

In the Transvaal and Natal the whole Indian issue (including its immigration aspect) was a highly contentious one. Indians, primarily Hindus, had originally been introduced into Natal in 1860 as indentured labourers for the canefields, whose contracts permitted them to settle permanently after 10 years, as "free" Indians, which many did.<sup>7</sup> These labourers were followed some years later, by "passenger" Indians, primarily Moslem traders, who settled in both Natal and the Transvaal and against whom the antagonism of Europeans was directed.

[[After 1891, Natal began to take steps, through inequitable legislation, to prevent any Indians from becoming settlers. In the first place this legislation was directed against Indians already in the country. Act 17 of 1895, for example, imposed an annual £3 licence on labourers remaining in Natal who failed to re-indenture yet would not

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5. U.G.4-21, Report of the Asiatic Inquiry Commission.

6. Central Archives, Dept. of the Interior, 55/74, Vol. 1.

7. See Pachai, B., The International Aspects of the South African Indian Question; Pachai, B., The History of the Indian Opinion 1903 - 1914; Palmer, M., The History of the Indians in Natal; Thompson, L.M., Indian Immigration into Natal (1860 - 1892).

return to India. This tax was retained after Union.<sup>8</sup> A second type of legislation aimed at preventing the further entry of passenger Indians, resulted in the tightening up of the immigration laws. Act 1 of 1897, the Immigration Restriction Act (later amended by the 1903 Act) was the first immigration legislation in the Empire to apply an education test to prospective immigrants -- a device allowing for administrative exclusion of Indians rather than the statutory discrimination which the British Government was so anxious to avoid. Like legislation everywhere, the Natal immigration laws simply reflected the attitude of the electorate. The 1909 Natal Commission appointed to investigate the employment of British Indians,<sup>9</sup> reported that public opinion was almost unanimous in its conviction that the Indian was acceptable only as a labourer; the Commission recommended therefore, that steps should be taken to prevent the increase of free Indians.

It was in the Transvaal, however, that Indian dissatisfaction was most acutely felt.<sup>10</sup> Indians had first entered the South African Republic from Natal, as traders in about 1881. Opposition to their presence was soon expressed but because of Article 14 of the London

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8. Bradlow, E., "Indentured Indians in Natal and the £3 Tax", S.A. Historical Journal, Vol. 2.
  9. The Cape Times, 7.1.1911 gives a summary of its report.
  10. For resumés of the Indian arrival and subsequent history in the Transvaal see Gandhi, M.K., Satyagraha in South Africa; Pachai, B., The History of Indian Opinion and The International Aspects of the South African Indian Question; Duncan, P., "The Asiatic Question in the Transvaal"; The State, Vol. 1 No 2, Feb. 1909.

Convention their entry could not be legally prohibited. The Republic did however, pass restrictive legislation such as Law 3 of 1885, "Wet omtrent Koelies, Arabieren en andere Aziaten" by which Indians were excluded from the franchise and their rights of land ownership limited. The intention was to discourage further immigration by making life increasingly difficult for those already resident in the Transvaal, an attitude which governed South African-Indian relations well into the period after Union.

A large number of Indians had left the Transvaal just prior to the South African War; in the years 1900 - 1902 a few were permitted to return on permits issued by the military authorities. From 1903 there was an influx of Asiatics into the Colony, and difficulties arose for the authorities as to how to distinguish between bona fide returning refugees and illegal new entrants. The Crown Colony Government's solution was to limit Asiatic immigration to those who had been previously settled there;<sup>11</sup> consequently an Asiatic Department was established. Indians were issued with permits to return under the 1903 Peace Preservation Ordinance, originally intended to keep out all undesirables, which had fallen into desuetude against Europeans but was retained for use against Asiatics. Identification difficulties soon obstructed the effective operation of the permit system, so that in 1906 the Legislative Council drafted the Asiatic Law Amendment Ordinance in which use was made of fingerprinting for identification. All Asiatics over 16 who had been in the Transvaal at the end of the war or possessed permits to enter, lawfully acquired, were to be granted registration certificates permitting them to remain. New arrivals were obliged to apply for

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11. Round Table No 14.

registration certificates within 8 days of entering the Transvaal. The ordinance, after being disallowed by the British Government was enacted in identical terms the following year in the first month of Responsible Government as the Asiatic Law Amendment Act, the so-called Black Act.<sup>12</sup> Primarily because of the fingerprinting the Act aroused fierce Indian resistance which led by M.K. Gandhi, an Indian lawyer in Johannesburg, manifested itself in the famous Satyagraha campaign. Inevitably because the two were linked, the campaign was soon extended to include opposition to the Immigrants Restriction Act No 15 of 1907. The latter in effect restricted all further Asiatic immigration into the Transvaal, because it was designed to exclude Indians who passed the education test but were ineligible for registration under the Black Act. These two acts represented the twin bastions of Transvaal Asiatic policy, namely to secure a register of every Asiatic lawfully in the country and to close the doors to future immigration.

An attempt by Gandhi and J.C. Smuts, the Transvaal Colonial Secretary, to find a compromise failed because of subsequent misunderstanding.<sup>13</sup> Gandhi believed Smuts had promised the repeal of the Black Act if Indians registered voluntarily.<sup>14</sup> Smuts denied this was so though he had at one time contemplated replacing it by amending the Immigration Act.<sup>15</sup> The Black Act was left on the statute book to deal with Indians who refused to register voluntarily. Additional legislation was passed however on August 16, the Asiatic Registration Amendment Act, No 36 of 1908, providing for voluntary registration and issuing new

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12. Act No 2 of 1907.

13. Hancock, W.K., Smuts, Vol. 1. The Sanguine Years, pp. 333-338.

14. Gandhi, M.K., Satyagraha.

15. Duncan, P., "The Asiatic Question", The State Feb. 1909.

registration certificates (as a result of which the 1907 Act in fact fell into disuse). Under Section 7 of the 1908 Act, an Asiatic who failed on demand to produce his registration certificate could be deported on a magistrate's orders. Insofar as immigration was concerned, new arrivals were to make application for registration before their entry, which in turn was contingent upon their possession of a registration certificate.<sup>16</sup>

As an inevitable result the Satyagraha campaign flared up on August 16, 1908 with renewed intensity, the Indians recognising that conditions of entrance and conditions of residence were indivisible. The focus of objection to the Registration Act now shifted from Indians already resident in the Transvaal to its use against Indians seeking entry, and Satyagrahis from Natal entered the Transvaal illegally to challenge the immigration legislation. Gandhi's objective was the repeal of the Registration Act so as to allow educated Indians to enter on the same terms as Europeans, namely on the outcome of an education test and without having to comply with the registration requirements. This meant ultimately the achievement in immigration matters of statutory equality for Asiatics and Europeans, but coupled with administrative differentiation.<sup>17</sup>

While Smuts believed that the inclusion in the Satyagraha campaign of opposition to Act 15 opened an entirely new question, what it had in fact done was to expose the real issue - Indian objection to discrimination in law. European public opinion prevented Smuts from dropping this; if equality were conceded in principle, the whites could argue, practice must soon follow. In any event Smuts himself rejected

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16. Cd 5363, Correspondence relating to Asiatic legislation in the Transvaal, Smuts to Lord Crewe, Sec. of State for Colonies, 26.8.1909.

17. Ibid. British Indian Association to Governor's Private Secretary, 29.3.1909.

differential treatment administratively implemented as "dodges which savour strongly of dishonesty and immorality".<sup>18</sup> He and the Secretary of State, Lord Crewe, were however, anxious to evolve a satisfactory agreement before Union. The statutory equality issue, should therefore, Smuts felt, be dropped; and the questions of repealing Act 2 of 1907 and the admission of a fixed number of approved, educated Indians without the registration requirement, should form the basis for a final settlement.

Consequently when Smuts was in London in July 1909 as a member of the National Convention delegation, he offered concessions which even Gandhi, (then also in London to bring Transvaal Indian grievances before the British Government) regarded as an advance: the repeal of the Black Act; and the admission of six educated Indians annually.

Several months elapsed while Gandhi shifted his ground. In January 1910 he agreed that the repeal of the 1907 Act and the amendment of the Immigration Act to allow a limited number of educated Indians to enter on equal terms with Europeans, would close the struggle; that is he conceded administrative differentiation so that the colour bar would not be entrenched by statute.<sup>19</sup>

The Transvaal cabinet however decided that fresh Asiatic legislation should be left to the Union parliament.<sup>20</sup> Under the South Africa Act matters affecting Asiatics were reserved for the Union Government. The task of the new government therefore, was to bridge the gap between the maximum it could concede without precipitating an influx of Indians,

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18. Cd. 5363, Smuts to Crewe 26.8.1909, p. 34.

19. The Cape Times, 21.11.1910.

20. Cd. 5363, Lord Selborne, the High Commissioner to Crewe, 11.1.1910.

and the irreducible minimum the Indians would accept, which would be consonant with their self-respect.

In the four colonies, white feelings concerning Asiatic immigration after the South African War hinged basically on two socio-economic factors. <sup>NS</sup>In the post-1904 depression the small Indian trader was viewed as a formidable competitor;<sup>21</sup> while the war's exacerbation of the poor white problem led to a growing fear that these already déclassé people would be further depressed. To these two fears was added a racial prejudice which defies rational explanation.

The issue had much wider implications however, which further complicated both attitudes and policy. The moment when the Indians organised resistance to the Black Act marked an important stage not only in their relationship with white South Africa and its government but with India, its government and the Indian nationalist movement. "It definitely connected the agitation of Indians here with that which [was] making itself felt in India for fuller political rights".<sup>22</sup> By providing the sole issue on which nationalist moderates and extremists were united, it brought in the Imperial Government as a concerned party.

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21. See for example Cape Hansard 1908, p. 488, J.W. Sauer; The Cape Times 20.8.1906, Report of Legislative Council, on reasons for the Cape General Dealers Act (already preceded by Natal legislation).
22. Round Table No 14, p. 357; see The Cape Times, 17.1.1913 for the Indian Nationalists' viewpoint when G.K. Gokhale linked their struggle with the rôle they should play in the South African struggle.

Thus it can be said without exaggeration, that the whole Imperial concept, indeed Britain's justification for ruling India, was in jeopardy because of white South Africa's treatment of Indians.

## CHAPTER III

### INDIAN IMMIGRATION 1911 - 1912

#### a) Legislation and Negotiation

The immigration question was one aspect of a two-pronged issue which the Union Government had inherited, the other aspect being the treatment of Indians already legally resident in South Africa. By 1910 local Indian leaders and the Indian Government all realised that the pressure of public opinion (as shown by the 1910 election campaign, when both South African Party and Unionists campaigned for restriction to a varying degree),<sup>1</sup> made insistence on an "open door" immigration policy unrealistic.<sup>2</sup> The avoidance of statutory discrimination against Asiatic immigrants and the amelioration of conditions for the existing Indian community were consequently their first priorities.

While the government therefore sought to draft legislation which would satisfy the frequently contradictory demands of the white electorate and the Imperial Government acting in loco parentis to the Indian Government, local Indian "strategy" in the period 1910 - 1914 was marked by an apparent acceptance of the policy underlying the legislation, accompanied by continued attempts to mitigate its harsher features. The gravity with which the British Government viewed these attempts can be gauged from the correspondence between the Governor-General and the Union's Prime Minister, referring to the position of Indians.

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1. The Cape Times, 18.6.1910; Thompson, L., Unification p. 465.
  2. House of Assembly Debates (H. of A. Debs.) 1910-1911, 19.3.1911, Second Reading, 1911 Immigrants Restriction Bill, Smuts.

The 1911 Census revealed that the total Indian population of the Union was 147 791, of whom the great mass (133 031) were resident in Natal, with some 10 000 in the Transvaal, 6 606 in the Cape and 106 in the O.F.S.<sup>3</sup> Further statistics give some idea of the anatomy of this community. It was primarily a proletarian society, comprising some 36 238 agricultural labourers (35 677 of whom were in Natal), 31 339 domestic workers and 21 861 in industry (mainly coalmining). Commercial occupations (including both ownership and employment in shops etc.) absorbed a further 10 307.<sup>4</sup> 127 416 were under 40, from which one can extrapolate that the numbers of South African-born Indians were steadily increasing; this inference is in fact confirmed by the 1921 Census, which indicated that out of a total of 161 252 Indians, 102 323 were born in the Union.<sup>5</sup>

By the first decade of the 20th century, increased European disquiet over the number of Indians in their midst, was being expressed at two levels. There were those like Patrick Duncan, a leading Unionist, who had come to the Transvaal as a member of Lord Milner's "Kindergarten" and was a member of the first Union parliament, who sought to give exclusion a moral foundation, consistent with his efforts to acquire a large white immigrant population. Duncan argued that if South Africa did not want to become a West-Indian type settlement with a small, white aristocracy, it must encourage vigorous settlement.<sup>6</sup> Such a policy

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3. U.G. 32-1912, General Report on the Census 1911.

4. Official Yearbook of the Union No 6 1922.

5. U.G. 40-24, Third Union Census 1921, Part 8. Non-European races.

6. "The Asiatic Question", The State, Feb. 1909.

would justify the exclusion of Asiatics who competed with whites at a higher level than Africans, but were incapable of being absorbed. "Instinct and history told us that if we were going to work for the maintenance of European civilisation in South Africa we must not allow immigration in large numbers of a race which could not mix with the European race and whose social ideas and methods of living were dissimilar."<sup>7</sup> If a predominantly European population were not the ideal, if white settlers were being excluded because of xenophobia or political expediency, the Asiatic exclusion was unjustified because it was motivated by colour prejudice or trade jealousy.

These last substantially accounted for the attitude of an articulate anti-Indian lobby which found support primarily (but not solely) in Transvaal Reef towns and among certain sugar planters (whose backing flowed from the fact that the campaign was directed against the trader class and not the indentured worker). (On August 15, 1910, the Cape Chamber of Commerce adopted a resolution which coupled a request for curbs on Asiatic immigration with the adoption of legislation prohibiting the further issue of Indian trading licences.<sup>8</sup> J.A. Neser, M.P. for Potchefstroom presenting a number of country-wide petitions making similar requests, expressed the pious hope that Asiatic frugality would not be copied by Europeans.<sup>9</sup> D.H.W. Wessels (Bechuanaland) R.G. Nicholson (Waterberg) and P.G. Grobler (Rustenburg) warned of the adverse effect Indian traders and farmers would have on the country. Occasionally however there was more candidness. When Morris Alexander, a Cape Town

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7. H. of A. Debs. 28.2.1918, (The Cape Times report).

8. The Indian Opinion, 28.8.1910.

9. H. of A. Debs. 1910 - 1911, Vol. 1, 28.2.1911; Col. 1455.

member, suggested that the granting of trade licences should be in the hands of magistrates and not the local authorities, A. Fawcus (Umlazi) revealed that competition from Indian traders was very keen, and suggested that for the House to weaken the white traders' position was tantamount to betraying its own race.<sup>10</sup>

The government's attitude was that the only effective answer to a most troublesome problem was to prohibit Asiatic immigration;<sup>11</sup> the Imperial Government however presented a major obstacle to the unrestrained implementation of this policy. A series of controversies with various self-governing colonies, including the Transvaal, had resulted in a modification of traditional British policy allowing unrestricted immigration within the Empire, and acknowledgement of the realisation that the time had come for such colonies themselves to decide what elements they wished included in their population.<sup>12</sup> Consequently the Imperial Government began to accept immigration acts, for example in Natal, and later in Australia and New Zealand, which restricted "in fact, if not in name, Asiatic immigration at the expense of the European".<sup>13</sup>

Nevertheless as custodian of its Indian subjects' rights, H.M.'s Government felt that Colonial immigration policy should not cause embarrassment to the administration of India, by openly injuring the self-respect of Indians. The Transvaal Immigration Act's insistence on registration of all Asiatics (including temporary visitors) irrespective

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10. Ibid. 1912 Vol. 2, 14.5.1912.

11. Ibid. 1910 - 1911 Vol. 1, 13.12.1910. Vote for Immigration and Asiatic Affairs, Smuts; also 28.2.1911.

12. R. Hyam, Elgin and Churchill at the Colonial Office.

13. Duncan, "The Asiatic Question".

of status or educational qualifications was a case in point. The kind of "vexatious catechism from petty officials" associated with this act,<sup>14</sup> aroused a resentment felt irrefragably by all shades of Indian political opinion, thereby providing a dangerous focus of disaffection in India which seriously discomforted the British Government.

Thus when the Union Government began to frame uniform immigration legislation, the Colonial Office asked for details.<sup>15</sup> Did the Ministers intend to deal with immigration as a whole on the lines of the Cape and Natal Acts (which would be better for the Imperial Government's relationship with India)? Or were existing provincial boundaries to be maintained for immigration purposes, so that movement for example from Natal to the Transvaal would be restricted? A suitable model was furnished by Australian precedent which did not oppose the entrance of coloured people as such, but effectively checked it through the discretion allowed to immigration officials.

Lord Crewe channelled these general suggestions into two requests which would win the approval of the educated Indian whose support the British Government needed as India slowly progressed towards self-government. He hoped that temporary travel documents would be issued to "persons of position" and a limited number of educated people would be allowed entry as conceded in principle by Smuts on August 26, 1909. Secondly, if fresh provisions for Asiatic domicile in the Transvaal were made, identity should be established by methods other than fingerprinting for persons literate in a European language.<sup>16</sup>

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14. Cd 5746-1, p. 277.

15. U.7-1911, 1910-1911, Vol. 2, Correspondence on Draft Immigrants' Restriction Bill, 1911, Sec. of State to Gov-Gen, 7.10.1910.

16. U.7-11, Botha Minute 902A, 20.12.1910, claimed that in the administration of the 1908 Act, fingerprinting was used only for uneducated Indians.

In their reply the Minister advised Crewe that they proposed as soon as possible to repeal Act 2 of 1907 and introduce a dictation test on the Australian model, similarly administered. Up to 12 educated Indians would be admitted annually with permanent resident rights in any South African province, each case to be decided on its merits. Transvaal Act 36 of 1908 would continue to be administered in the previous "liberal" spirit; as for Natal it was hoped that the administration of the existing law would ensure just treatment to all enjoying vested rights.<sup>17</sup> Aware of the strength of provincial separatism, the government felt however that existing provincial boundaries should be retained in the administration of Asiatics and Immigration Acts. The fact that this issue of free inter-provincial movement had not been raised by the Indians themselves appeared the best reason for retaining the status quo.

In reply Crewe expressed himself well satisfied but added a further stricture. "Reference to the Asiatics or Indians eo nomine will I presume be avoided in regulations, Government reserving to itself some power to exempt from the operation of the law, a certain number of persons, or the Executive without making express provision, exercising discrimination in a certain number of cases."<sup>18</sup>

The Botha Government realised that it would have to make concessions as much in deference to local Asiatic susceptibilities as in the cause of Imperial solidarity. Though the cabinet was anxious to reach

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17. U.7-11, Telegram from Gov-Gen. Lord Gladstone, 12.11.1910 enclosing Ministers' Minute 15/63; Also Gov-Gen. to Sec. of State, 16.1.1911 enclosing Minute 902A.

18. Cd 5579, p. 4, Crewe to Gov-Gen, 7.11.1910.

finality, its main concern however was that the arrangements should not "as has so often happened in this vexed Indian question in the past, become a fresh starting point for new demands in the future".<sup>19</sup> This seemed possible as the Satyagraha campaign which had grumbled on since 1908 experienced an acceleration in October 1910 with Gandhi's arrival and the return to the Transvaal of a number of Indians deported two years earlier, who now claimed domiciliary rights.<sup>20</sup> The campaign was receiving publicity abroad; Leo Tolstoy, the Russian novelist whose creed of tolstovstvo was based on the concept of non-resistance, in a letter written on September 7, just before his death, paid tribute to the Transvaal resistance. It was, he believed "the most essential work, the most important of all the work now being done in the world. ... However insignificant is the number of your people who are passive resisters, and in Russia of those who refuse to serve in the army, these and the others can boldly say that God is with them".<sup>21</sup>

The recurring circle of deportation and illegal return had to be broken. Thus on December 20, 1910 the Union Government accepted the British proposals, and during the 1910 - 11 recess an immigration bill was drafted whose primary objective was to end the struggle in the Transvaal, by meeting Indian demands for the removal of statutory

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19. Cd. 5579, Correspondence respecting a bill to regulate immigration, p. 8.
20. The Cape Times, 15.12.1910, Letter from H.S.L. Polak, a leading white Satyagraha, denying Smuts's assertion in parliament (H. of A. Debs, Vol. 1, 13.12.1910, Col. 772) that Asiatics were deliberately obstructing the immigration laws by introducing Indians not entitled to enter the country.
21. The Cape Times, 18.11.1910.

discrimination.<sup>22</sup> At the same time in deference to white public opinion which in its most extreme form demanded total exclusion of Asiatics, future immigration and inter-provincial movement were to be restricted.

The bill's salient features were conveyed to the new Secretary of State, Lewis Harcourt on January 16, 1911.<sup>23</sup> Certain features which the Colonial Office queried were revised, and publication of the bill was postponed until February 18, 1911.

On February 15, Harcourt cabled his comments on the revised bill together with the India Office's objections to the extension to the Union as a whole, of the Transvaal policy of "practically complete exclusion". This latter would prejudice the position of Natal and Cape Indians who could enter under the existing Colonial laws provided they passed the education test.<sup>24</sup> The Prime Minister's replies indicated the difficulties inherent in simultaneously framing a uniform policy and retaining existing differences. The bill, Louis Botha explained, in answer to the Secretary of State's main objection, was not intended to apply to persons domiciled or legally resident, whose vested rights (in the case of Asiatics) were regulated by other laws. In drafting the measure, however, it had been found impossible to exempt such persons except in differential terms; consequently Australian precedent

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22. H. of A. Debs. 1910-11, Vol. 1, Debate of 2nd Reading Immigrants Restriction Bill, 13.3.1911, Smuts.

23. Cd. 6283, Further Correspondence re Immigration Bill, Botha to Gov-Gen. 25.4.1911.

24. U.7 -11, L. Harcourt to Gov-Gen. No 10, 15.2.1911; No 11, 15.2.1911, p. 10.

was followed, and residence and domicile omitted.<sup>25</sup>

The Immigrants Restriction Bill was read a first time on March 2, 1911;<sup>26</sup> its primary aim<sup>27</sup> was to end the Asiatic struggle particularly in the Transvaal. To remove the objections of Transvaal Asiatics to statutory discrimination, while at the same time barring further immigration, Smuts (who as Minister of the Interior introduced the bill) accepted the principle of exclusion by the Immigration Department through a differentially applied education test as had been done in the Australian Commonwealth Immigration Act of 1901, amended in 1905.

In the light of his attitude (noted above) Smuts must have found this an objectionable subterfuge. But the British Government was exerting pressure, particularly as the Indian assurance that there would be no objection to administrative differentiation, however rigidly applied - as long as a limited number of doctors and ministers were admitted - seemed to offer the possibility of a final settlement. The Union Government was anxious to pass the Bill in the 1911 session,<sup>28</sup> and faute de mieux the arrangement was accepted.

In its preliminary the Bill provided for the establishment of an Immigration Department under the control of the Minister of the Interior,

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25. Ibid. Minutes 185 and 186, 21.2.1911.

26. A.B.11-11, Bill to Consolidate and Amend Immigration Legislation.

27. Cd. 6283, L. Botha to Gov-Gen. 25.4.1911. On the same date when Smuts withdrew the bill he claimed the achievement of uniform immigration legislation was a concomitant aim.

28. H. of A. Debs. 1910-11, Vol. 1, 2.3.1911, Smuts stated it was regarded as "essential" to pass the bill that session.

maintained by moneys voted by parliament. Chapter I, Section 4 dealt with prohibited immigration. Under sub-section (a) entry was forbidden to "any person who when an immigration officer dictates to him not less than fifty words in the language selected by such an officer, fails to write out those words in that language to the satisfaction of that officer". Sections 4 (b) to (g) listed prohibition on further grounds - economic, criminal, health and moral. Section 5 listed those who were not to be prohibited, including Africans from Portuguese territories coming to work on the mines, whose entry was safeguarded under existing Conventions. Section 6 stipulated penalties for, and arrangements to remove prohibited immigrants who entered illegally. The provisions of Section 6 were to apply mutatis mutandis to persons domiciled in one province who unlawfully entered another from which they were excluded according to the provisions of the law in force at that time. Section 8 restrained a prohibited immigrant from obtaining a trading licence, or freehold and leasehold interest in land. Section 9 (i) allowed for a suspected prohibited immigrant to be arrested without a warrant by an immigration or police officer and brought as soon as possible before a magisgrate.

Chapter II dealt with special powers for preventing entry and for dealing with prohibited immigrants at ports of entry. Chapter III covered procedure to be followed when an immigrant who was not prohibited entered the Union. Section 22 provided for the removal of aliens convicted of offences such as illicit gold or diamond buying. Section 25 (2) dealt with the issue by the Minister of permits to return, to persons with residence rights who had been temporarily absent; and Section 27 listed penalties for contravention of the bill's provisions.

Schedule I listed the colonial legislation which was repealed under this measure. As this duplicates the legislation repealed by Schedule II of the 1913 bill which became law, these colonial acts will be detailed below. The bill's second schedule listed the laws of the various provinces under which offenders could be removed from the Union or a particular province.

Circumstances had resulted in the over-hasty framing of a weak and unsatisfactory measure which tried, as Smuts admitted, to solve two different problems - white and coloured immigration - using one solution.<sup>29</sup> Patrick Duncan, with his usual percipience, noted its main danger; if the legislation were designed to exclude Asiatics differentially then it could "not be too particular as to the amount of power it gave to the Immigration Officer".<sup>30</sup> Several members expressed the fear that the differential education test might be used against Europeans; while F.P. Creswell, a leading Labourite, raised the possibility of the Act being used by the Unionist Opposition if it became the government, to import cheap contract labour instead of a "good class" of immigrant.

Conversely the bill was criticised by some members for its failure to deal firmly enough with Indian immigration. The O.F.S. members all deprecated the fact that the entry of educated Asiatics into their province constituted an interference with the solemn agreement made at Union that the O.F.S. immigration law would be left intact. Several Transvaal members felt the Imperial Government should be informed that no Asiatics at all were wanted. And Sir Henry Juta made a nice point

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29. H. of A. Debs. 1910-11, Vol. 1, 13.3.1911, Second Reading debate.

30. Ibid. Col. 1764.

he asserted that as the British Government had at Union allowed colour discrimination over political rights, the South African ministry were now entitled to differentiate on immigration.

But as the bill extended the Transvaal law of exclusion to the whole of South Africa, the greatest opposition came from the Indians themselves.<sup>31</sup> Towards the end of March Gandhi, who was directing the Indian campaign, arrived in Cape Town to protest before the bill became law, in accordance with his belief that "once a law is enacted many difficulties must be encountered before it can be reversed. It is only when public opinion is highly educated that the laws in force in a country can be repealed".<sup>32</sup> A number of petitions were presented to parliament by Indian organisations. The British Indian Association of the Transvaal requested that the bill be amended, so as to leave no uncertainty concerning the rights of educated Indians who had passed the education test, to enter and remain in the Transvaal and other provinces, without being subjected to the registration laws of the different provinces.<sup>33</sup> The Natal Indian Congress and the Colonial-born Indian Association of Durban asked for an amendment to afford greater facilities for movement of Asiatics.<sup>34</sup> The Cape British Indian Union which comprised a number of local Asiatic societies that had

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31. Central Archives, P.M. 1/1/201, 93/4, 5.4.1911, acknowledging receipt of Gov-Gen. Minute 15/134 of 4.4.1911.

32. Satyagraha, p. 88.

33. H. of A. Debs. 1910-11, Vol. 1, 16.3.1911, Col. 1814 presented by P. Duncan M.P. for Fordsburg which had a large Asiatic population.

34. Ibid. Col. 1892 presented by Sir D. Hunter representing Durban Central.

joined together when the draft bill was published, to protect their "political" and "civic" rights,<sup>35</sup> added to the Transvaal petition the request "that the protection for the families as now exists under the Transvaal laws may be embodied in the bill".<sup>36</sup> This point was amplified in a petition sent by the Natal Indian Congress to the Secretary of State;<sup>37</sup> whereas existing Natal immigration legislation defined the length of residence in Natal constituting domicile, the 1911 bill had no definite provision. A further complaint was that the number of educated Indians (about twelve per annum) who would be allowed entry would be wholly inadequate for the needs of the total Indian population.

Indian dissatisfaction combined with Orange Free State intransigence buried the bill. The firm opposition, expressed in parliament, to any Indians entering that province was repeated in the Provincial Council which passed a strong resolution rejecting a modification of any O.F.S. law against Asiatics.<sup>38</sup> Consequently the Indian community declared its intention of continuing its agitation "in order to secure that all educated Asiatics admitted in terms thereof should enjoy the same freedom in the Orange Free State as was contemplated that they should enjoy in all other provinces of the Union".<sup>39</sup>

J.B.M. Hertzog was proving a potential focus of the disaffection which was felt in the Free State towards an S.A.P. Government, and Botha could not afford to offend that province's susceptibilities; further the possibility of renewed Indian agitation defeated the whole object of the

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35. The Cape Times, 10.3.1911.

36. H. of A. Debs. 1910-11, Vol. 1, 16.3.1911, J.W. Jagger presenting their petition.

37. Cd. 6283, 28.4.1911.

38. Ibid. Botha to Gov-Gen. 25.4.1911.

39. Ibid. p. 2.

Bill. An attempt was therefore made to introduce an alternative bill applicable only to the Transvaal; but this had to be dropped because of constitutional difficulties.

The Imperial implications of the Asiatic question were to be discussed at the Imperial Conference in May 1911 which Botha was due to attend. He had to go freed from the incubus of an unremitting Satyagraha campaign, and with some promise in his pocket of meeting Indian grievances. Consequently, and in spite of the severe strain placed on government unity,<sup>40</sup> it was decided to draft new and more "durable" legislation during the recess; but this was made contingent upon the suspension of the Satyagraha campaign.<sup>41</sup>

The ensuing negotiations between Smuts and Gandhi were designed to find a compromise between the Indian irreducible minimum and the government's determined maximum. On April 22 Gandhi outlined the proposed future legislation which Indians would require to suspend the campaign.<sup>42</sup> On the same day Smuts accepted the Indian proposals. He promised at the following session to repeal Act 2 of 1907 subject to the reservation of the rights of minor children in terms of a judgment given in the Chotabhai case.<sup>43</sup> In devising new legislation, Asiatic immigration was to have statutory equality with European, subject to differential administrative treatment, and the vested provincial rights

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40. Merriman Papers, G.G. Munnik to J.X. Merriman 29.10.1912. Only party loyalty, he claimed, prevented an "outbreak" when Smuts "gave way to pressure from England".

41. Cd. 6283, Copies of letters in Transvaal Leader 27.4.1911; Smuts's private secretary, E.F. Lane to Gandhi 21.4.1911.

42. Ibid. p. 4.

43. Cd. 6283, Lane to Gandhi 22.4.1911; Cd. 6087, Correspondence relating to the Position of British Indians.

of British Indians were to be maintained. Thus the colour bar of the O.F.S. and Transvaal immigration legislation would not be written into the new legislation but the administrative disability would remain. Domiciled Asiatics would be allowed to travel unrestricted in those provinces of the Union which allowed this, but would not be permitted to enter or trade in the O.F.S. Power would be taken in the new law to register Satyagrahis, who were entitled to registration but had failed to do so because of the passive resistance campaign. Power would also be taken to regularise the issue of temporary certificates to the five or six educated Satyagrahis presently in the Transvaal but not registerable under existing Asiatic legislation. The certificates would allow them to remain in the Transvaal pending legislation, and be deemed the Asiatic immigrants allowed entry for the current year. Finally Smuts was prepared to recommend the discharge of the resisters still in gaol if Gandhi promised the suspension of the movement. The object was to inform the Imperial Government "that the leaders of the Indian community intended to co-operate with the government with a view to arriving at a definite solution of the question".<sup>44</sup>

Theoretically the negotiations meant all things to both sides. Practically Smuts had the edge on Gandhi. He had retained the power to exclude Asiatics though without the statutory legitimation he would have preferred but which he had already conceded in the extinct 1911 bill. In return he had made concessions which mattered more to the Indians than the government. Conversely, in Gandhi's view, de jure equality smoothed the possibility of a de facto one later.

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44. Cd. 6283, p. 4, Lane to Gandhi 22.4.1911.

On April 27 some 500 Indians met at the Hamedia Hall, Johannesburg, to discuss the correspondence and decide whether the Satyagraha campaign should be suspended. The meeting, which lasted about four hours, was marked by some acrimonious discussion.<sup>45</sup> It was finally resolved that "the proposal and acceptance embodied in the correspondence between General Smuts and Mr Gandhi, and published in the press, be accepted as a provisional settlement conditionally upon the pledges embodied in Gen<sup>l</sup> [sic] Smuts's letter of April 22, 1911 being carried into effect". A one-year political truce was therefore agreed on. The Chinese too, accepted the provisional settlement but with reservations arising out of their own special difficulties.

The provisional settlement did not touch on grievances concerning the rights of domiciled Indians, particularly those in the Transvaal. The restriction in Law 3 of 1885 on Asiatic landholding outside the locations and bazaars had for some years been evaded by creating trusts in which Europeans took transfer that was paid by Asiatics. This loophole could however be closed at any time by the strict enforcement of the Gold Law and Townships Act of 1908 which prohibited Indian trading within mining areas. The petitions of diverse Chambers of Commerce praying for more stringent restrictions in the granting of licences to Indians hung like the sword of Damocles over these traders. And every Indian in his daily life was subjected to some form of humiliation and personal indignity.

Consequently the provisional settlement was assented to by the

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45. Cd. 6283, The Rand Daily Mail report, 28.4.1911.

majority of Indians in the belief that acceptance of a near-total prohibition on immigration would ensure the maintenance of the existing community's vested rights and a steady amelioration in the Indian's situation as a permanent element in the South African nation.<sup>46</sup> Doubt as to the validity of this expectation caused a rift between Gandhi's supporters (the Natal Indian Congress and the British Indian Association) and the Colonial-born Indian Association which wanted to ensure freedom of inter-provincial movement for locally born Indians.<sup>47</sup> Even Gandhi's supporters had their misgivings. The Natal Indian Congress, fearing a possible diminution of their rights under the next Immigration Bill, asked the Imperial Government to watch such legislation closely with a view to preserving such rights, especially those of the wives and minor children of domiciled Indians; and recommended that the new legislation clearly define domicile.<sup>48</sup> [The Cape British Indian Union,<sup>49</sup> <sup>all</sup> asked that the arrival of the Union delegates at the Imperial Conference be used to discuss issues the Cape Indians wanted settled. Like the Natal Indians, they feared that the future admission only of highly

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46. Cd. 7111, Correspondence relating to the Immigrants Regulation Act and other matters affecting Asiatics in South Africa, A.M. Cachalia, Chairman of British Indian Association, Jhb. to Sec. of Interior, 12.9.1913.
47. Pachai, The History of the "Indian Opinion".
48. Cd. 6283, Petition of the Natal Indian Congress to Secretary of State, 28.4.1911.
49. Ibid. 3.5.1911.

educated persons might impinge on their existing right to bring in a limited number of clerks with a knowledge of Indian languages and English. They asked for the extension of the period allowed under the Cape Immigration Act for domiciled Indians to be absent without losing return rights; and suggested the appointment of an Immigration Board to deal with individuals who should be allowed appeal to a competent court and not simply subjected to ministerial discretion.]

b) The end of Indian indentured immigration

The events outlined above concerned the relationship between white South Africa and the Indian commercial community primarily; initially indentured Indians were relevant as far as immigration was concerned, only where they had achieved the status of "free" Indians with domiciliary rights.

These were increasingly acquired with the effluxion of time. As Merriman pointed out, while objections were being expressed to Indian immigration in one part of the Union thousands were being imported in another.<sup>50</sup> There is no doubt that the Natal planters simply wanted a reliable labour force and had never intended that indentured Indians should become colonists. But as noted before, because the provisions of the original indentures had allowed for their return to India or their settlement in Natal under the existing colonial laws after one period of re-indenture,<sup>51</sup> inevitably most became settlers.

The government of India had long regarded the treatment of both indentured labourers and the "passenger" Indians as components of its

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50. H. of A. Debs. 1910-11, Vol. 1, 28.2.1911.

51. Bradlow, E., "Indentured Indians in Natal", S.A.H.J. 2.

indivisible obligation to protect a politically impotent group in South Africa. (No single issue aroused such emotion in India as the differential treatment of Indians in the Union, and no issue was as embarrassing to the Imperial Government in its encounters with increasingly militant Indian nationalism.) Consequently when G.K. Gokhale, representing the unofficial members of the Bombay Legislature on the Viceroy's Council, moved in the Council on February 25, 1910<sup>52</sup> that the Viceroy be empowered to prohibit the recruitment of indentured workers as a riposte to the treatment of Indian traders in Natal, he was supported by the Indian members of the Council, as well as the official and unofficial English members.<sup>53</sup>

The passing of Natal Act 22 of 1909 allowing Indian traders the right of appeal to the Supreme Court over the refusal of trading licences, obtained an extension of the indenture system for a further year. On January 3, 1911 however it was announced at the first meeting of the Indian Legislative Council that in April the government of India would issue a notice prohibiting indentured immigration into Natal from July 1. This was the direct result of the growing general divergence between the European and Indian viewpoints in South Africa, and more specifically of the refusal to give indentured Indians a guarantee that they would be acceptable as permanent citizens after the expiry of their indentures.<sup>54</sup>

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52. The Cape Times, 18.3.1910.

53. One of Gokhale's most articulate supporters was Valentine Chirol, foreign editor of The Times.

54. Central Archives, P.M. 1/1/61, 12.1.1911, Botha to C.O'G. Gubbins, Minister without Portfolio, 14.1.1911.

While the decision had the approval of the Imperial Government, it was received with mixed feelings in South Africa. One school of thought believed the indenture system was doomed anyway now that South Africa was united, and that the Indian Government's action relieved Botha of taking a decision to prohibit indentured immigration, which might have antagonised Natal.<sup>55</sup> In Natal, where public opinion was just as keen as in the rest of South Africa to get rid of Asiatics, consternation nevertheless prevailed among those who depended on this form of labour.<sup>56</sup> The prohibition came at a singularly bad time from the planters' viewpoint, for good crops in India were militating against the recruitment of the 16 000 Indians required that year in Natal.<sup>57</sup> Moreover there was a last-minute breakdown in recruiting in the Calcutta district and the Indian Government refused to grant an extension of time;<sup>58</sup> the crowning blow came when 475 Calcutta coolies intended for Natal were diverted to Fiji.<sup>59</sup> On July 21, 1911 the last batch of indentured labourers arrived, comprising 462 persons. In spite of the planters having used every expedient to stimulate recruitment, less than 2500 workers came for the current season.

The drain of African labour to the gold mines meant there was no alternative, indigenous labour supply for Natal industries, especially sugar and coal, which employed large numbers of indentured workers.

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55. See The Times 5.1.1911, report of their correspondent in South Africa.
56. The Cape Times, 5.1.1911.
57. H. of A. Debs. 1910-11, Vol. 1, 6.4.1911, Col. 2360, Minister of the Interior.
58. The Cape Times, 27.6.1911.
59. Central Archives, P.M. 1/1/61, 12.1.1911, Sec. of State to Gov-Gen. 30.6.1911.

Over 11 000 were employed in the sugar industry; 3000 in the collieries where they comprised 40% of the coloured labour force;<sup>60</sup> and 2398 on the Natal Railways.<sup>61</sup> On January 10, a private gathering of coastal planters asked the Ministry urgently to request the Indian Government to extend the time limit,<sup>62</sup> and a Natal delegation was sent to India to ask for reconsideration of the step taken.<sup>63</sup> The Indian Government however adamantly refused to be moved. On June 27, 1911 a deputation from the Indian Immigration Trust Board (whose main task was the recruitment of indentured labour) met Smuts, who promised that an alternative African labour force would be found.<sup>64</sup> The following week it was reported from Durban that Africans from Nyasaland (present day Malawi) and neighbouring territories would be brought in as a substitute for Indians.<sup>65</sup> The Union Government however was in a difficult position for it did not want increased African immigration;<sup>66</sup> in any event the Imperial Government was opposed to the importation of Nyasa labour which it believed should be used to develop its own country.<sup>67</sup>

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60. The Cape Times, 12.1.1911.
61. H. of A. Debs. 1912, Vol. 2, 26.3.1912, figure supplied by Minister of Railways.
62. Central Archives, P.M. 1/1/61, Indian Immigration Trust Board to C.O.'G Gubbins, 12.1.1911.
63. Central Archives, P.M. 1/1/61, petition from Natal sugar planters, 6.2.1911; The Cape Times, 27.11.1913.
64. Pachai, History of the "Indian Opinion".
65. The Cape Times, 6.7.1911.
66. Ibid. 5.9.1911.
67. Ibid. 23.8.1911.

To investigate the effect on the labour situation of the Indian stoppage Henry Burton, Minister of Native Affairs, (who believed firmly in the advantages of white unskilled labour) went on a tour of Natal towards the end of August. His meeting on August 22 with employers of indentured labour was acrimonious. His assertion that "we are a community of planters with all their excellencies and I am bound to say their limitations. This reliance on native labour for everything is holding us back",<sup>68</sup> was met with the counter accusation that the government's attitude was "care nothing" and "do nothing".<sup>69</sup> Nor did the employers react favourably to his suggestion, that with sugar selling £19 a ton, the industry could afford to pay a living wage to white labour. An opportunity to increase the white population carried less weight with them than the fact that this would make their product uncompetitive against other sugar producers who also used cheap coloured labour.

There were in Natal at the end of 1912, 114 272 Indians who had entered under indenture or were children of such workers.<sup>70</sup> The labour scarcity following the Indian stoppage led to a rise in wages, sure sign of the employers' eagerness to retain their existing labour force. This accounted for the large increase in the number of Indians who remained in Natal, many as free labour. Numbers returning to India fell from 35.37% of the total who completed their indentures in 1908 to 7% in 1912; the percentage of reindentureds rose from 47% in 1906 to 95% in 1912.<sup>71</sup> These figures were reflected in the Estimates of

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68. Ibid. 23.8.1911.

69. Ibid. 24.8.1911 quoting The Natal Mercury.

70. U.G. 34-1914, Report of the Tuberculosis Commission; also Bradlow, "Indentured Indians".

71. Bradlow, "Indentured Indians".

the Department of the Interior. For the year 1912 -1913 the usual annual figure of £1000 voted for the repatriation of free and destitute Indians was halved.<sup>72</sup> While there was a continual reduction in the number of indentureds, cases of reindenture continued until, under Section 7 of Act No 15 of 1931, no further reindentures were permitted.<sup>73</sup>

The long-term effect of the Indian Government's prohibition was to end large scale immigration into South Africa and stabilise the existing population of indentured workers and their children into a group of permanent Indian settlers with domiciliary rights, whose numbers increased by natural growth.

c) The 1912 Immigrants Restriction Bill

During the recess a second attempt was made by Smuts to frame a blanket immigration law,<sup>74</sup> which would be effective in restricting free Indian immigration without embarrassing the British Government and which would not be subject to the charge that it kept out suitable white settlers.

At the 1911 Imperial Conference an attempt had been made to lessen

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72. U.G. 1 and 46-1912, Estimates of the Expenditure for 1913.

73. U.G. 29-32, 22/C and A.G. 1931-32.

74. Central Archives, P.M. 1/1/203, 93/10/11, 17.10.1911 referred to Gov-Gen. Min. 15/197 of 14.10.1911 re the draft bill. Thereafter the Gov-Gen. despatched several minutes (15/218 of 21.11.1911, 15/221 of 22.11.1911, 15/234 of 18.12.1911, 15/235 of 20.12.1911) on the same topic.

the divergence between the Dominion and British Governments' viewpoints. Whereas the latter's difficulties arose wholly out of the political situation in India, those of the Dominions concerned issues (particularly the question of coloured immigration) which were of importance on their own soil. This gave rise to a tendency on the part of the Home Government, freely admitted by the new Secretary of State for India, Lord Crewe, to underrate the Dominion problem, because Britain at that time had little coloured immigration. Indian immigration it must be repeated was opposed by all the Dominion Governments on two grounds, both of which offended Indian susceptibilities. Firstly it had flooded their labour markets with a labour force, which because of its lower living standards and easy availability, was paid a lower wage (a reversal of the traditional economic theory that wages and value of work performed were closely related). The second basis for exclusion was the less palatable but equally definite fact of a crude prejudice against Indians per se.

(For the British Government the problem was the equation of two indisputable but contradictory theories. It recognised the right of all the King's subjects to travel and settle in the Empire; yet simultaneously it recognised the right of the self-governing Dominions to decide who should be admitted as citizens.<sup>75</sup> Thus what had for some years been implicitly accepted was done so overtly at the 1911 Conference; "that the Dominions shall not admit as permanent residents people whose mode of life is inconsistent with their own political and social ideals."<sup>76</sup>

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75. Cd. 5745, Imperial Conference 1911, Crewe 19.6.1911.

76. Cd. 5745-1, Imperial Conference 1911, p. 277.

By 1911 the leaders of the swaraj movement were exploiting this basic weakness of the Pax Britannica by querying the value of the British connection if it could not alleviate Indian sufferings in other parts of the Empire. Faced with this impasse the Imperial Government was forced to act as arbiter in quarrels between the Dominions and an India moving towards self-government; this accounts for the subterfuges adopted as policy. Unable to prohibit self-governing Dominions from passing restrictive legislation and equally unable to sanction such legislation the British Government could only adjure the Dominions to implement severe laws sympathetically in the hope of eliminating friction points.

In South Africa, because of the existing cheap labour force, the question as F.S. Malan admitted to the Conference was primarily a racial one.<sup>77</sup> The European population including its leaders, regarded its survival as a separate entity as essential for the future well-being of the whole population. Asiatic immigration added a further ingredient to the colour "problem" endangering this survival; its restriction was therefore a matter of self preservation, a premise which defied rational argument.

Smuts's second Immigrants Restriction Bill introduced on January 30, 1912, was designed to allay these white fears of submergence under a tidal wave of Asiatic immigration.<sup>78</sup> Like the 1911 bill which it amended, the new measure was intended to exclude Asiatics administratively, so as to avoid the anomaly the Imperial Government would not

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77. Cd. 5745, 19.6.1911.

78. Introduced as A.B. 2-12.

sanction, of one Dominion expressly forbidding the entry of other British subjects by statutory measures.

The government therefore again tried to frame a blanket bill which purported to foster white immigration whereas its main intention was to exclude Asiatics.<sup>79</sup> To meet the criticism levelled against the 1911 bill, that in attempting to achieve this the Minister had surrendered control to the Immigration Department, Section 3 (3) empowered the Governor-General to appoint immigration boards at any port to advise the Minister. These were in no way appeal bodies. Definitions of "prohibited immigrants" in Section 4 were similar to those in the 1911 bill including the Australian-type education test. Stated baldly this meant that if the immigrant were thought suitable the test would be put in a language he knew and there would be no difficulty in his entering the country. The Tuberculosis Commission, which met in June 1912 while the bill was being debated in parliament and was asked to report on the effect immigration might have on the spread of the disease, recommended that a new sub-clause be added to Section 4. In it tuberculosis in the infectious stage was to be specifically mentioned as grounds for exclusion in most cases.<sup>80</sup>

Section 7 dealt with inter-provincial movement and was intended specifically to keep out, by the differential application of an education test, Asiatics seeking to enter the O.F.S. Section 5, however, defining those who were not prohibited immigrants, appeared either to offer the

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79. H. of A. Debs. 30.5.1912, Col. 3093, Smuts.

80. U.G. 42-1912, Tuberculosis Commission. First Report; also U.G. 34-1914, Report of the Tuberculosis Commission.

possibility of applying the education test to Europeans or of introducing the statutory discrimination against Asiatics, which had been avoided in the previous section. Thus under various sub-clauses in Section 5, anyone born in South Africa, or domiciled and entitled to reside in the Union - and his wife and minor children - was deemed not to be a prohibited immigrant either into the country as a whole or a particular province; but this provision was made subject to Section 7. Section 28 (1) comprised the promise to Gandhi. A person admitted into the Union after passing the dictation test in Section 4 (a) of the present bill, was not to be subject to Transvaal Act 36 of 1908. O.F.S. misgivings were met by Section 28 (2). Any person, subject to exclusion under Chapter XXXIII of the O.F.S. law book, who had entered the Union by passing the education test and was entitled to move from one province to another would still be subject to the provisions of the O.F.S. law.

Thus the bill would permit entry to a small number of educated Asiatics but an unwanted influx would not be possible. As for inter-provincial movement, this limited number of Asiatic immigrants would be allowed to settle anywhere, including the O.F.S. subject to restrictions in that province of their trading, farming and landholding rights. An abrogation of an existing right however, was the prohibition on entry into the Free State of Asiatics already domiciled in the Union.

Criticism of the measure by local Indian organisations followed swiftly, based on similar arguments to those used against the previous bill.<sup>81</sup> Gandhi soon queried whether the measure implemented

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81. Central Archives, P.M. 1/1/101, 20/8/12, resolution, Natal Indian Congress 4.2.1912; petition to parliament from Cape British Indian Union 5.2.1912; Pachai, History of the "Indian Opinion", p. 57.

the provisional agreement and raised the spectre of a renewed passive resistance campaign. "So long as the Transvaal persists in treating Asiatics as prohibited immigrants because they are Asiatic", he maintained, "so long will the struggle continue." Once this bar was removed, the Satyagrahis would be satisfied.<sup>82</sup>

The dangers implicit in the situation, the Governor-General noted, placed "a burden on the Indian Government and the British Government out of all proportion to what after all [is] a limited area of difficulty here". "I most sincerely hope therefore," he added in this communication to the Prime Minister, "that you will this session put an end to this protracted and irritating embarrassment."<sup>83</sup> Like the Indian leaders in South Africa, the British Government was particularly apprehensive of the unlimited powers still granted to immigration officers over questions affecting the vested rights of Indians already established in South Africa, and felt such decisions should be open to judicial review.<sup>84</sup> Three months later, while the bill was being debated in the Assembly, the Colonial Office was informed that the Minister intended to insert a clause permitting domiciled individuals to appeal to a superior court "against any decision or action of the Minister or of an immigration officer under this Act".<sup>85</sup>

Though the Second Reading had been announced for February 8, it

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82. The Cape Times, 2.4.1912.

83. Central Archives, P.M. 1/1/101, P.M. 20/8/12, handwritten note, 29.5.1912.

84. Cd. 6283, Harcourt to Gov-Gen. 13.3.1912.

85. Ibid. Gov-Gen. to Sec. of State, 12.6.1912.

did not start (ostensibly because the government was awaiting the Tuberculosis Commission's Report)<sup>86</sup> until May 30, when "the House was utterly jaded by over 100 sittings and the prospect of passing so contentious a measure was quite hopeless".<sup>87</sup> The government, on its own admission, met with "hot opposition" and could make no progress.<sup>88</sup> As in 1911, opposition came from two contradictory quarters. There were those, led by the O.F.S. members who felt the legislation did not go far enough against Asiatics; there were those like the Labour members and Morris Alexander (the latter primed by various Jewish organisations in Cape Town)<sup>89</sup> who objected primarily to the effect the bill would have on white immigration.

Though Alexander, spearheading the attack, admitted this was a better measure than the 1911 one, he denounced it as "the negation of all law and the deification of bureaucracy and the government", in which the immigration officer appeared as judge, prosecutor and deporting officer.<sup>90</sup> The Advisory Boards were useless. The immigration official, not the Minister, would decide the language of the test, which would not necessarily be a European one as stipulated in the Australian model; this could jeopardise for example the position of Yiddish-

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86. H. of A. Debs. 30.5.1912, Smuts.

87. The Cape Times, 19.6.1912; H. of A. Debs. 1912, Vol. 2, 30.5.1912.

J.X. Merriman, W.B. Berry, H. Juta and W.B. Madeley complained over the bill's timing.

88. Cd. 6283, Gov-Gen. to Sec., of State, 24.6.1912.

89. Central Archives, P.M. 1/1/101, 20/6/12. encl. B. Schwartz (later Bertha Solomon, M.P.) to Prime Minister, 15.2.1912.

90. H. of A. Debs. 1912, Vol. 2, 30.5.1912, Col. 3098.

speaking immigrants, specifically provided for in the Cape and Transvaal legislation. Unlike Australia, where a man once admitted could move freely from state to state, in South Africa he would only be able to move from one province to another with the immigration officer's permission. Section 7 tried to do the impossible by embodying administrative diversity and legislative uniformity. Finally as the nub of his opposition to the bill, Alexander rightly noted that with the end of indentured immigration, Asiatic immigration as a whole would all but disappear. Consequently it was more important to consolidate existing colonial legislation into a law which would protect European immigrants.

The Labour Party attack, led by H.W. Sampson and W.B. Madeley, two Reef members, concentrated on Labour's traditional opposition to the contract labour system. This was perpetuated in Section 5 (g) of the bill which incorporated Section 4 of the 1906 Cape Act and permitted the entry of white workers on contract, for "adequate" wages and a "reasonable" time, neither of which had ever been defined in South Africa. The system was regarded as more of a threat than the immigration of Asiatic traders, on the grounds that it imported blackleg labour designed to undercut local wages.<sup>91</sup> While Labour was just as keen to exclude Asiatics as anyone else, the only effective measure Sampson claimed, would be to deal with the Asiatic question separately, while simultaneously and in accordance with contemporary socialist doctrine, bringing in more "free, white, healthy immigrants".

The O.F.S. opposed this bill with more vigour than the 1911 one, although Abraham Fischer, the new Minister of the Interior in Botha's

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91. H. of A. Debs. 1912, Vol. 2, 30.5.1912, Col. 3148.

reshuffled cabinet, was a Free Stater. Their "campaign" was an interesting variant of J.B.M. Hertzog's "South Africa first" credo. At the same time it reflected the extent of anti-Asiatic prejudice in the Free State, and the determination to fight the granting even to educated Asiatics, of domiciliary rights in their province, and to make water-tight, the exclusion of Indians already domiciled in other parts of South Africa. On February 19 C.G. Fichardt, the Ladybrand member presented 13 petitions opposing the repeal of O.F.S. laws restricting and prohibiting Asiatic entry. At the Second Reading E.N. Grobler representing Edenburg, stated the bill opened the door to Asiatic immigration into the O.F.S. too wide; previous policy which had prevented passive resistance and arrests was obviously the most suitable. J.G. Keyter maintained that to let Asiatics into the O.F.S. was to defy the people's will. Fichardt extended the demands of exclusion from the O.F.S. to the whole of South Africa, on the grounds that increased coloured immigration would exacerbate existing colour prejudice. The whole country should therefore take over the Free State exclusion policy, explicitly stated, so that all Asiatics, educated or not should be kept out; and if the Imperial Government objected it should be clearly informed that this was what South Africa wanted.

While the Indian community again protested with mass meetings, it was Alexander and the Free Staters who together killed this bill.<sup>92</sup> The government admitted that the dictation test was a major obstacle which

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92. Merriman Papers, R. Solomon (South African High Commissioner in London) to Merriman, 29.11.1912; H. of A. Debs. 1913, Vol. 3, 8.5.1913, R.G. Nicholson (Waterberg) made the same assertion.

would have to be modified when fresh legislation was framed.<sup>93</sup> Consequently, it was agreed that an amended bill would be introduced at the earliest date in the following session;<sup>94</sup> the Home Government expressed its "regret and disappointment"<sup>95</sup> and offered assistance in finding an acceptable solution.<sup>96</sup>

Seen against the totality of political manoeuvring in 1912, it is doubtful whether the government was as earnest as it claimed in wishing to push on with the legislation. Alexander it is true, had presented a redoubtable case on the dangers inherent in framing legislation which might in the future be used to exclude white immigrants. But the strong opposition within the government's own ranks made it impossible to press on with the bill.<sup>97</sup> During 1912 the unity of the South African National Party was already being severely shaken by Hertzog's divergence from Botha's conciliation policy. Other stress points existed. It was obvious that the South African Party's Free State parliamentarians believed its Asiatic policy was inconsistent and lacked principle as far as O.F.S. interests were concerned. Hertzog himself was to articulate this belief in his own constituency, describing the government's attitude towards his province as "weak" and "deplorable".<sup>98</sup>

Thus Botha could not further test Free State loyalty at this stage by pushing through unpopular immigration legislation; this partially accounts for the postponement of the Second Reading on the order paper. The bill was not referred to a Select Committee, "the usual resort when in

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93. Cd. 6283, Min. No 575, Ministers to Gov-Gen. 26.6.1912.

94. Ibid. Gov-Gen. to Sec. of State, 17.7.1912.

95. Ibid. Sec. of State to Gov-Gen., 9.7.1912.

96. Ibid. Sec. of State to Gov-Gen., 25.7.1912.

97. H. of A. Debs. 1913, Vol. 3, 8.4.1913, F.D.P. Chaplin.

98. The Cape Times, 13.1.1913, Hertzog's speech at Smithfield 11.1.1913.

difficulties with any bill which they nevertheless were anxious to pass".<sup>99</sup> Nor did the cabinet make much attempt to meet the Governor-General's suggestion, possibly prompted by the "strong feeling" in London over the bill's lack of progress,<sup>100</sup> of a special session in November to settle the matter.<sup>101</sup>

The government's equivocation, however, was prompted by more than a wish "to supply the Governor-General with some eyewash for use at Westminster in case of necessity".<sup>102</sup> It was faced with the very real and abiding difficulty of framing one measure which would exclude new Indian arrivals, affirm the vested rights of those already domiciled in the Union, leave the existing O.F.S. legislation intact and not be construed as a deterrent to desirable European immigrants.

(d) G.K. Gokhale's Visit. October-November 1912

From the Imperial Government's viewpoint it was imperative that a general settlement of the South African Indian question (including its immigration aspect) be effected as soon as possible lest it upset the delicate balance of the situation in India, where nationalist fervour had cooled somewhat after the implementation of the Morley - Minto reforms and the Coronation Durbar. Consequently, with Lewis Harcourt's and Lord Crewe's encouragement,<sup>103</sup> G.K. Gokhale arranged a private

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99. The Cape Times, 19.7.1912.

100. Merriman Papers, R. Solomon to Merriman, 29.11.1912.

101. Cd. 6283, Gov-Gen. to Sec. of State, 17.7.1912.

102. The Cape Times, 19.7.1912.

103. Ibid. 2.12.1913, Crewe at meeting 1.12.1913 with the London branch of the All India Muslim League, part of the Indian nationalist movement; Central Archives, P.M. 1/1/61, 12/4/1912, enclosing Times of India, 12.12.1912, Gokhale in Bombay.

Supplement to INDIAN OPINION,  
28th January, 1911.

HON. PROF. G. K. GOKHALE, C.I.E., M.A.,  
Member of the Imperial Legislative Council of India,



To whom is mainly due the recent action of the Government of India, prohibiting the further recruitment of Indians, under indenture, for South Africa, after June 30 next.

ઓન. પ્રોફે. જી. કે. ગોખલે સી. આઈ. ઇ., એમ. એ.

હિંદનો ધારાસભાના મેમ્બર

જેમને લીધે ખાસ કરીને, તા. ૩૦ મી જુન પછી દક્ષિણ આફ્રિકા માટે ગીરમીટમાં મજુરો આપવાનું અંધ કરવાનું  
હોદ્દી સરકારનું પગલું લેવાયું છે.

visit to South Africa to see conditions for himself (the first Indian leader to visit any place settled by Indian emigrants). Gandhi who was an ardent admirer of Gokhale's, was asked to arrange his tour and acted as his secretary during his stay;<sup>104</sup> Gokhale's opinions and suggestions may therefore be considered as reflecting those of Gandhi.

An ardent nationalist, fiercely critical of British rule but opposed to violent solutions, Gokhale was an able, Western-educated, high caste Brahmin. As president of the Indian National Congress and a man much respected for his moderation by Liberal politicians such as Lord Morley, former Secretary of State for India,<sup>105</sup> he wielded great influence on the political scene both in India and Britain.

Gokhale, it will be recalled, had been responsible for setting in motion the termination of indentured Indian labour importation. Consequently his impending visit aroused a certain apprehension locally. Merriman tried to prevent his coming, by asking Sir W. Hely-Hutchinson, former Cape governor, to warn Harcourt of the possible harm that might result from the intervention of "that worthy and inconvenient Brahmin." The South African Government were uncertain whether he intended "to use his opportunity for purposes of agitation", and how the Indian community would react.<sup>106</sup> On the other hand he had firm support from a number of influential people in England, including Richard Solomon, the South

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104. Satyagraha.

105. Merriman Papers, Lady Courtney, wife of a noted Liberal parliamentarian, to J.X. Merriman 21.8.1912.

106. Merriman Papers, Smuts to Merriman 21.10.1912.

African High Commissioner,<sup>107</sup> Lionel Curtis,<sup>108</sup> and Lewis Harcourt himself,<sup>109</sup> whose private secretary, Lionel Earle, indicated the Colonial Office's attitude in a rather minatory letter to Sir Walter Hely-Hutchinson.<sup>110</sup> "Gokhale," he wrote, "is a very sensible and moderate man and the S. African Govt [sic] have not behaved well over their proposed immigration bill. They will see to his receiving proper treatment and I believe good on both sides may result. ... Gokhale has a mission and I know nothing will stop him." Two days later Harcourt reiterated this expectation that the Union Government would protect Gokhale from insult as "a very undesirable effect would be produced in India by any such incident".<sup>111</sup>

Thus the South African Government was anxious to avoid any "incidents",<sup>112</sup> and the manner of his reception in South Africa was a matter of importance, not without a certain irony that under the existing laws he was "a statutory undesirable in the Transvaal ... there by an act of grace ... and is liable to be removed from the province without trial by an administrative order".<sup>113</sup> Gokhale landed in Cape Town on October 22, 1912 and for the following month toured the country meeting the Indian community and leading Europeans, so as to understand the viewpoints and

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107. Merriman Papers, R. Solomon to Merriman 29.11.1912.  
108. Schreiner Papers, L. Curtis to W.P. Schreiner 26.7.1912.  
109. Merriman Papers, L. Harcourt to W. Hely-Hutchinson 20.9.1912.  
110. Ibid. 18.9.1912.  
111. Merriman Papers, L. Harcourt to W. Hely-Hutchinson 20.9.1912.  
112. Central Archives, P.M. 1/1/61, L. Botha to J. Rose-Innes 26.8.1912.  
113. The Cape Times, 5.11.1912, H.S.L. Polak.

grievances of both sides. <sup>114</sup>

The tour throughout South Africa (excluding the O.F.S.) apart from its physical exactions was an emotional ordeal for Gokhale, balancing as he had to between the "excessive jubilation" of the Indians and the two schools of European thought - pro- and anti-Indian - which for different reasons feared the consideration shown to him by the government. <sup>115</sup> [In Cape Town he shared a public platform with Gandhi, W.P. Schreiner and the Chief Immigration Officer. A petition presented to him the same day is a useful summary of Indian objections to the immigration legislation both existing and proposed. <sup>116</sup> The certificates permitting a temporary absence to domiciled Indians should be granted without a stipulated time limit, it claimed; burden of proof to enter and remain should be placed on the Immigration Officer and not on the Indian, as envisaged in the 1912 bill. The community felt strongly over the purported wives and children of domiciled Indians having to give satisfactory proof of their relationship before being admitted. The accusation in the petition however, that Indian marriages were not

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114. Satyagraha; The Cape Times, 22.10.1912 - 15.11.1912 passim.

115. The Cape Times, 17.1.1913. The anti-Indians were resentful over his apparent interference (see The Cape Times, 12.11.1912, Major Silburn, M.L.A. told him to tell both Indian and Imperial Governments that "no interference would be brooked"); the others "were nervous as to whether undue advantage might not be taken of the position to put a false interpretation on what had been done".

116. Ibid. 24.10.1912.

recognised in South Africa was not wholly accurate; an Indian marriage solemnised by a recognised marriage officer, had legal validity.<sup>117</sup>

At a banquet in Johannesburg's largest hotel on October 3, Gokhale tentatively voiced some impressions which were later to be formulated into a more authoritative judgment. Both Indians and Europeans had a case he believed. The Indians had been brought in to benefit the white population and had in turn been promised a chance to prosper; an imposition like the £3 tax represented a change of heart and aroused indignation in India. The Europeans on the other hand had two fears; swamping by Asiatics if their country were thrown open for immigration (a fear shared even by well-disposed Europeans), and commercial competition from Indians. Gokhale therefore rejected the "open door" Indian immigration policy in the belief that the removal of European fears of swamping, however ill-founded,<sup>118</sup> was the only way to achieve an amelioration of conditions for Indians already established in South Africa<sup>119</sup> - a gradualist approach which was

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117. Ibid, 21.3.1913, the Searle judgment whose implications are dealt with more fully below.

118. U.G. 50 - 1917, Annual Report of the Dept. of the Interior for 1916 gives the following totals for Indians arriving in Natal :-  
1912 - 790, 1913 - 708, 1914 - 509, 1915 - 709. Of the last 566 were returning Indian residents.

119. Cd. 6863, Report on the Selfgoverning Dominions.

attacked both in South Africa<sup>120</sup> and India.<sup>121</sup>

On November 14 Gokhale had a two-hour interview with Smuts and Fischer, at which he presented the main Indian grievances including the unequalities in granting trading licences, the £3 tax on ex-indentured Indians and the harsh administration of the immigration legislation especially as it affected interprovincial movement and the entry of Indian women.<sup>122</sup> "Subsequent events indicate that Gokhale and the Ministers misunderstood what had been asked and what promised."<sup>123</sup> On December 19, Gokhale announced in Bombay<sup>124</sup> that he believed the provisional settlement of 1911 would be carried out in the new year. The administration of the immigration laws would be milder; "that outrageous impost" the £3 tax would go during the year; and there would be an improvement in educational facilities and in the administration of legislation such as the Gold Law and Townships Act. The granting of trading licences however he envisaged as a permanently contentious issue.

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120. Pachai, History of the "Indian Opinion", p. 58.

121. The Cape Times, 17.1.1913; The Cape Times, 1.2.1926, letter from Rev. C.F. Andrews.

122. Central Archives, P.M. 1/1/101, 20/8/12, Howard Pim's notes on discussions with Gandhi and Gokhale, 30.10.1912.

123. Bradlow, "Indentured Indians" S.A.H.J. 2, p. 47.

124. The Cape Times, 17.1.1913; Central Archives, P.M. 1/1/51, 12/4/1912 containing Gokhale's speech in The Times of India, 21.12.1912.

The South African Government's actions contradicted his prognosis. Prodded by the British Government it agreed to consider the various points he had raised. The question of the £3 tax,<sup>125</sup> whose removal prior to this had not been considered,<sup>126</sup> was announced in the Assembly.<sup>127</sup> On May 23 the Minister of Finance informed the House that Natal opinion was to be consulted on the abolition of the tax which had originally been imposed more as a matter of "policy" than to raise revenue. In the ensuing desultory consultation a small majority of Natal members opted for retention of the tax on males and on July 23 the Governor-General was informed that the tax would remain.<sup>128</sup> The news aroused much anger among Durban Indians who held a meeting on June 12 at which they threatened to resume the Satyagraha campaign.<sup>129</sup>

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125. Cd, 6940, Bill to regulate immigration, Gov-Gen. to Secretary of State, 10.2.1913.
126. Central Archives, P.M. 1/1/203, 34/22805. Sec. for the Interior to Prime Minister, 13.12.1911 indicates the government "had not been prepared to introduce any amending legislation in the direction of removing the tax in question".
127. H. of A. Debs. 1913, Vol. 3, 11.2.1913. Minister of the Interior.
128. Cd. 7111, Minute 738.
129. The Cape Times, 14.6.1913.

## CHAPTER IV

### THE 1913 IMMIGRATION LEGISLATION

The introduction of a third immigration bill in the 1913 session, following soon after Gokhale's visit, was to bring together in one concerted effort of resistance, the animosities and humiliations which the Indians had felt for several years over both the "external" and "internal" aspects of their presence in South Africa.

The new Immigrants Restriction Bill which was read for the first time on April 14, 1913, followed its predecessor with certain important changes.<sup>1</sup> As it finally emerged as the principal immigration act in South Africa, it will be dealt with in some detail.

Section 2 established Immigration Boards, which unlike the Advisory Boards of the 1912 bill, were, on Canadian lines, to hear appeals from detained or restricted immigrants. By Section 2(5) the withholding of leave to enter had to be put in writing by an immigration or police officer; Section 2(7) stipulated that notice of appeal had to be given to an immigration officer within 72 hours of refusal.

Clause 3 followed the Canadian precedent of limiting the jurisdiction of the courts in immigration cases. Appeal against an immigration officer's decision was limited to appeal to the statutory boards, except on matters involving domicile.

Chapter II, dealing with prohibited immigration, instituted the first major departure from previous practice. In Section 4(1) the

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1. Cd. 6940, Minute 242, Ministers to Gov-Gen. 11.3.1913. The bill was listed as A.B. 30 of 1913.

Canadian model was followed, as far as practicable in South Africa, (with a different wording so as not to offend Asiatics), of excluding undesirable immigrants from the Union or a province on economic grounds, or on the basis of different living standards and habits. The government felt this method of prescribing who should be designated a prohibited immigrant without actually referring to certain races eo nomine was preferable to the Australian method incorporated in the previous two draft bills. The original intention of providing for the issue of a proclamation specifically excluding certain races, had been opposed by the Governor-General and therefore abandoned. As re-framed, the bill would empower the Minister to issue standing instructions deeming Asiatics to be restricted immigrants on the above grounds. Special cases (i.e. educated Asiatics) were to be exempted under arrangements with the Asiatic leaders, the power to make such exemptions being granted under clause 25. It was presumed that such persons would not seek entry before prior notification; and that immigration officers would therefore be instructed to pass individuals whose names and descriptions were on a list of exempted persons to be drawn up annually with the assistance, it was hoped, of the Indian Government.<sup>2</sup>

Section 4(1) was to be used solely to restrict Asiatics and other coloureds regarded as an undesirable group. Individually undesirable Europeans were to be excluded under Section 4(2) on the basis of an education test similar to the one in the 1912 bill. In the belief that a large number of prohibited immigrants came through Mozambique because the Portuguese could not distinguish between those who had and those who had no legal entry to the Union, it was decided to limit the ports

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2. Cd. 6940, Minute 430, Ministers to Gov-Gen. 2.5.1913.

through which Asiatics might enter South Africa. Indians could naturally not be mentioned by name. Hence it was decided that the government would take powers in the bill, to declare that persons belonging to the same race or class as those deemed prohibited immigrants under Section 4(1) but who had domicile in the Union or a province, might only return or enter at specific ports.

Clause 5 of the 1912 bill (dealing with non-prohibited immigrants) was amplified in the new measure by two provisos. The first was Section 7 of the previous bill, which as noted above had appeared to derogate from the South African-born Indian's right to enter the Cape under the 1906 legislation. The second stipulated that if a person legally resident in a province absented himself longer than 3 years, he would be subject to the requirements of Section 4 on return, which was "tantamount to a declaration that a loss of domicile follows after 3 years' absence".<sup>3</sup>

The new clause 7, replacing Section 28(2) of the 1912 bill was inserted to meet O.F.S. demands which again threatened to jeopardise legislation.<sup>4</sup> Though differently (and more innocuously) worded, it was intended to secure the same objective as in the 1912 bill, namely to debar any Asiatic, though lawfully resident in the Union, from trading, farming or holding fixed property in the O.F.S. One can sympathise with Sir Richard Solomon's outburst to W.P. Schreiner. "Why a ridiculous law in the O.F.S. should be re-enacted in Section 7, or why the privileges of a person born in South Africa should be cut down as a word

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3. Cd. 6940, p. 4.

4. Cd. 6940, Minute 242, Ministers to Gov-Gen. 11.3.1913.

illegible] at Asiatics, I don't know".<sup>5</sup> The truth, however is that immigration from India was no longer regarded as the main threat. Both the O.F.S. and the Transvaal viewed inter-provincial movement from Natal as a greater danger and opposed the relaxation of laws confining Indians to that province. It was to take several more years before the Union was firmly enough established for the other three provinces to regard Natal's Indian question as theirs too; meanwhile the government did not intend to tamper too drastically with existing arrangements by imposing uniform legislation.<sup>6</sup>

The only other major amendment of the 1912 bill was Clause 22 which applied to aliens and other persons not born in South Africa and dealt with the cases of individuals convicted of offences such as illicit gold and diamond buying, or illegal sale of liquor to coloureds. The government regarded as essential its arrogation of powers to remove these classes of criminals. Their operations carried on primarily among Africans at mining centres were so profitable, that the only effective deterrent was the threat of expulsion from the country after the sentence had been served.

Laws totally repealed under the second schedule of the bill were the 1906 Cape Immigration Act and the Natal Immigration Acts of 1903, 1904 and 1906; the Transvaal Act 15 of 1907 and its amending Act, No 38 of 1908; and O.F.S. Law 18 of 1899. The hated Transvaal Act 2 of 1907 was totally repealed except as applied to minors lawfully resident

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5. Schreiner Papers, 1.8.1913.

6. H. of A. Debs. 1913, Vol. 3, 12.5.1913.

in the Transvaal and entitled to register there.

Indian reaction to the bill was swift and violent; they threatened a renewal of the Satyagraha campaign,<sup>7</sup> on the grounds that the bill represented a deterioration in the Indian position. Far from embodying the provisional agreement it denied Indians long standing rights such as appeal to the courts, except on the domicile issue which was in itself a confused question. Natal had a statutory definition which laid down that a conditional right of residence such as the years of indenture, could not be counted for purposes of domicile, whereas the years after indenture when the £3 tax had been paid could be so counted.<sup>8</sup> As for the O.F.S. exclusion, though it would not be tested in practice, the Indians objected to their theoretical right of entry being proscribed.<sup>9</sup>

The greatest opposition, however, centred on the validity of Indian marriages, in view of Clause 5 of the bill, which admitted entry to the proven wife or minor children of any person lawfully domiciled in any province. The point in dispute was: who was a "wife"? A judgment handed down in the Cape Supreme Court by Mr Justice Searle on March 14<sup>10</sup> in the case of a woman seeking entry under the 1906 Cape Immigration Act as the wife of a domiciled Indian hinged on this question and threatened

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7. The Cape Times, 11.4.1913, H.S. Polak; Cd. 6940, Natal Indian Congress to Gov-Gen. 22.4.1913, Chairman's speech Jhb. British Indian Assoc. 27.4.1913, Kimberley British Indians 7.5.1913.
  8. Cd. 7111, The Transvaal Leader, 19.9.1913.
  9. The Cape Times, 29.4.1913, Gandhi's opinion.
  10. Cd. 6940; also The Cape Times, 21.3.1913.

the exemption allowed in Section 5 of the new bill. Though the Natal courts recognised Moslem marriages, the Cape courts had since the passing of Act 16 of 1860, opposed the legality of such unions unless validated by a recognised marriage officer. Judge Searle maintained, and the majority of the Transvaal bench had opined similarly in a previous case, that without such validation "the very elements and essentials of a legal union of marriage are by admission wanting".<sup>11</sup> The object in allowing an immigrant's wife to land with him arose from the ultimate legal relationship between a man and his wife. If, however, a woman admitted one day as a "wife" could be renounced the following, the object of the exemption in favour of the wife under the 1906 Act was not being carried out.]

The judgment aroused grave misgivings among local Indians, many of whom had contracted unions recognised as legal in India if not in South Africa; if the wife had no legal status, the children were illegitimate. Their concern was shared by the government of India. To it, the Minister of the Interior gave the assurance, through the Governor-General, that the government would "still admit one wife per man as before so long as she is really his wife, whether she has been married by a custom which recognises polygamous marriages or not".<sup>12</sup> This was followed by a subsequent declaration to the Imperial Government that the new bill actually improved the position of women who claimed to be the wives of domiciled Indians, because it gave them the right

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11. Cd. 6940, p. 17.

12. Cd. 7111, p. 5, A. Fischer to Lord Gladstone 24.4.1913.

of appeal from an Immigration Officer's decision to the Immigration Board.<sup>13</sup> Appeal was not however to be allowed to the Courts, unless it could be proved that the immigration officer had restricted an applicant arbitrarily and without a genuine exercise of the discretion vested in him.

Meanwhile the U.K. Government was basing its response on a preliminary confidential draft of the bill. The fundamental point of British policy was that instructions to immigration officers, if published, should contain "no intention of differentiating formally between different races".<sup>14</sup> This proviso had already been conceded by the Minister of the Interior by the beginning of April, when he agreed that instructions to the Appeal Boards under Section 4(1) would be confidentially communicated.<sup>15</sup>

The Home Government was fully aware of local Indian dissatisfaction with the bill and its effect on the relationship with India. Although The Times claimed that Lord Gladstone did nothing to attract the Colonial Office's attention to Indian protests,<sup>16</sup> this was untrue. Complaints did reach the Imperial Government either directly, or through the columns of the Indian Opinion.<sup>17</sup>

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13. Cd. 6940, Minute 430, Ministers to Gov-Gen. 2.5.1913.
  14. Central Archives, P.M. 1/1/105, 20/18/1913, 15/459, Gov-Gen. to Prime Minister, 6.9.1913 referring to telegram from Sec. of State, 26.4.1913.
  15. Central Archives, P.M. 1/1/237, 110/4/13, Botha to Gladstone 21.8.1913 enclosing Sec. of State to Gov-Gen. 13.8.1913.
  16. 31.7.1913.
  17. Cd. 6940, Speech of Chairman, British Indian Association (A.M. Cachalia) 27.4.1913 which he sent to Gov-Gen. with the request to forward it to the Colonial and India Offices, 7.5.1913. Resolution Kimberley British Indians etc.

The Union Government however had gone as far as public opinion would let it go; the D.F.S. would rather have wrecked any settlement than give up its laws excluding Indians. Faced with a choice between its obligation to protect Indians domiciled in a self-governing Dominion and that Dominion's right to manage its own domestic affairs, the Imperial Government came down ineluctably if guiltily in favour of the latter. Crewe's reply to the later attack in the House of Lords by Lord Amthill, former Governor of Madras, is ample proof of his government's uneasiness over its abrogation of the arbiter's rôle.<sup>18</sup> He admitted for example that Clause 7, the interprovincial differentiation "was a distinct blot on the bill", disliked by the U.K. Government and in conflict with the sentiments expressed in his despatch of October 7, 1910, written when he had believed Union would obliterate provincial boundaries.

The Second Reading debate on the bill began in the Union parliament on April 30.<sup>19</sup> Introducing the bill - like its predecessors, a poorly drafted portmanteau measure - in a sparse House and well past the half-way mark of the session (as was the custom with these thorny immigration matters) Fischer explained the government's dilemma in fulfilling its obligations as a member of the British Empire while simultaneously wishing to be master in its own house. His sentiments echoed those of F.S. Malan at the 1911 Imperial Conference. The future of "white civilisation" necessitated, it was believed, the exclusion of Asiatics;

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18. The Times, 31.7.1913.

19. H. of A. Debs. 1913, Vol. 3, 30.4. - 12.5.1913.

Imperial responsibilities however prevented their being specifically named. The question of allowing a limited number of educated Indians into the Transvaal especially, had occasioned great difficulty; it was finally agreed as in 1911 that about 12 should be admitted for the whole Union, of whom 6 would be allowed into the Transvaal. The government had refused the Indian request to increase the Union total to 50 or in any way extend the privileges already possessed by the Indians. In discussing inter-provincial movement Fischer clearly revealed the rationalizations which made amelioration of the Indians' position as envisaged by Crewe, an unlikely expectation. Union policy aimed at preventing the dispersion of the ex-indentureds from Natal because they were different from Indians in other provinces, and to allow them free entry would be unfair to the white and coloured populations of these provinces. Yet at the same time he admitted it was Natal policy also to reduce the number of traders by refusing licences - a move that could be explained in no other terms but white prejudice.

The ensuing debate has elements of a déjà vu, for the arguments of 1911 and 1912 were to a great extent resuscitated. Nevertheless it is important to co-ordinate these arguments for they provide a useful insight into the weltanschauung of South Africa's ruling cadre. A high degree of consensus existed as noted before, both on the need for Asiatic restriction and the exclusion of European undesirables. On the whole it was agreed that this should be achieved through two separate bills, which the government however was patently unable to do if Imperial sanction were to be obtained.

What one can - with reservations - term the "liberal" view, that future Asiatic exclusion should be linked with protection for the vested rights of the existing Indian population, was postulated by F.D.P. Chaplin who spearheaded the attack of the Unionist opposition. Its gravamen was directed against the autocratic powers which would be granted to the government simply to effect a settlement of the Indian question. Like Sir W.B. Berry, the Queenstown member who spoke later, Chaplin pointed out that the Canadian precedent had not been wholly followed although the government had to a great extent based its measure on that model. Under Canadian law the Governor-General could by proclamation prohibit the landing of any class of immigrant, due notice of which was given to the transportation companies; whereas in this bill the Minister could issue instructions, neither published or proclaimed, to Immigration officers and Appeal Boards. This deviation from the Canadian system resulted in fact from the Governor-General pointing out to the cabinet that publication of Asiatic exclusion was equivalent to an eo nomine mention in the legislation and should be abandoned in favour of "less formal" exclusion based on the use of Section 4(1)(a).<sup>20</sup>

Enlarging upon the bill's autocratic potential both Alexander and Duncan pointed out that the limitations on the court's normal jurisdiction placed the government (through the Minister and his staff) above the law, thereby infringing the individual's rights.

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20. Central Archives, P.M. 1/1/237, 110/4/13, Botha to Gladstone, 21.8.1913 quoting Gov-Gen's. letter 29.1.1913.

Duncan believed the government could have found ways of keeping out Asiatics without having recourse to such drastic powers in arresting prohibited immigrants. Similarly he urged a less stringent application of the laws governing the lives of the existing Indian population so as to reduce the antagonism in India.

W.D. Baxter, Unionist member for the Gardens also argued that had the Minister separated the issues of Asiatic and European immigration, there would have been no need to introduce such a draconian measure. An additional danger was that it could in the future be used against Europeans by someone like Hertzog who, when still a minister, had damned immigration in general as an economic curse on South Africa.

Clio plays her tricks even on the most rational of humans. Duncan like Chaplin and Alexander wanted the Minister to give an assurance that Section 4(a) would not be used against Europeans and suggested this be incorporated in the bill. He was not to know then, that within 10 years when he was Minister of the Interior, he would use this same clause administratively against white immigrants.

The Opposition tended to disagree on the question of retaining provincial differences. Alexander criticised the bill for doing so. H.M. Meyler the Weenen M.P. and W. Rockey representing Langlaagte urged that Transvaal Act 2 of 1907 which was obnoxious to the Indians and hence constituted the fons et origo of their antagonism should be separately repealed; but that the existing colonial legislation be retained in the successor provinces in place of the present bill "based on narrow exclusiveness and hostility not only to the Indians but

British and alien Jews".<sup>21</sup> Baxter supported this view with his claim that the old Cape legislation had successfully "stabilised" Asiatic immigration since 1906 and that it should be retained since there was no further "danger" of a huge influx, while the O.F.S. and Transvaal situations could be dealt with by separate legislation.

While Chaplin felt that parliament's endorsement of a "bad" piece of legislation should be made contingent solely upon its acceptance by "responsible" Asiatics as a solution of the Indian issue, the most articulate proponent of the opposite viewpoint that the bill did not go far enough against Asiatics was again C.G. Fichardt, the Ladybrand representative. He was one of a handful of members who had followed Hertzog in his revolt against Botha's leadership early in 1913, and who consequently felt no qualms about embarrassing the Imperial Government. Why, Fichardt asked, draft a "double-barrelled" bill to assuage outside sentiment when all South Africans unanimously opposed Asiatic immigration? This being so, members should pressurize the Prime Minister into drafting the bill South Africa wanted. Not only should immigration be stopped but the government should gradually begin to deport Indians already living in the Union. As the O.F.S. Republican legislation had been effective he moved that the Second Reading be discharged and its subject matter referred to a Select Committee empowered to draft an amending bill which must include provisions "similar to those contained in Law 33 (Orange Free State)".<sup>22</sup>

As in the two previous sessions the Labour Party with its basis of

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21. H. of A. Debs. 1913, Vol. 3, 8.5.1913, col. 2233.

22. Ibid. col. 2237-8.

trade union support was less concerned with the anti-Indian aspect of the measure than with the possibly harmful effect on "the industrial classes" of its contract labour clause. Remote from the responsibilities of office they could postulate, as H.W. Sampson did, socialist ideals far in advance of their time. Land freed by a land tax for white immigration; the guarantee of a living wage; security for the aged; and above all, the exclusion of all contract immigrants.<sup>23</sup>

By the time Fischer replied to the debate on May 12, the British Government (following the India Office's receipt of apparently satisfactory replies to certain outstanding questions such as the entry of educated persons)<sup>24</sup> had signalled its approval, which facilitated the bill's passage through the Union parliament. "His Majesty's Government," the cable of May 8 stated, "consider it of Imperial importance that legislation should be passed without further postponement which will alter the present extremely unsatisfactory position of Indians by abolishing differentiation before the law, and that while Indian opinion cannot be expected to be wholly satisfied by the present Bill, His Majesty's Government having regard to all the circumstances, are prepared to accept it as a settlement of the Indian immigration question".<sup>25</sup> Finding it impossible to force on the governing white race a policy which it hated, both the Imperial and Indian Governments had decided then, that the improvements in the bill made it advisable to accept the

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23. Ibid. 2.5.1913, Col. 2091ff.

24. Cd. 6940, Union Ministers' Minute 430 to Gov-Gen. 2.5.1913.

25. Central Archives, P.M. 1/1/105, 151/459, Gov-Gen. to Prime Minister 6.9.1913 enclosing telegram Sec. of State. 8.5.1913; also Cd. 6940, p. 17.

measure. It was not however seen as a final settlement; Crewe piously, and in the event ineffectively, pinned his hopes on patience and moderation eventually evolving a better solution.<sup>26</sup>

Fischer now asked for parliament's assent on the dubious grounds that the danger from Asiatic immigration was so great that members had to trust the Minister fairly to administer towards other immigrants, the wide powers granted him. The government was in favour of "decent" immigrants and would encourage them, without failing to effect the other purposes of the measure.

In his reply Sir Thomas Smartt, leader of the Unionist Opposition, made it clear that his party was supporting the Second Reading only because it offered some solution to the Indian issue from the Imperial viewpoint. This stage was therefore passed without division on the understanding that the government would consider members' objections in the committee stage.

The committee stage which lasted from May 19 to 22 was a dour struggle however between the Minister and Opposition members, with Alexander at one stage suggesting, not unjustly, that Fischer treated with contempt amendments which he himself had not put on the order paper.<sup>27</sup> Though no important changes were made in its details the Act was an improvement on the bill, due to this determined opposition.

On May 22, the Minister agreed, under the urgings of Emile Nathan and Alexander who were concerned with protecting Jewish immigrants,

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26. The Times, 31.7.1913, House of Lords, Crewe to Ampthill.

27. The amendments dealt with here refer only to the most contentious issues.

that Section 2(1) be amended to indicate clearly that aliens were included among the "persons" with the right of appeal to the Boards; a totally new Clause 3 clarified the latter's jurisdiction. Section 3(2) gave the Boards the right to refer to a superior court any question of law (but not fact) arising out of appeals to them;<sup>28</sup> in the following sub-section "question of law" was confirmed as including the matter of domicile. Apart from this issue of jurisdiction, the new legislation - as far as white immigration went - followed the Cape, Natal and Transvaal precedents.<sup>29</sup> The introduction by the Minister of the Interior of a new sub-section to Clause 4, was intended to solve Imperial opposition to the use of statutory discrimination against Asiatics and to ensure there was no abrogation of existing Indian rights.<sup>30</sup>

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28. H. of A. Debs. 19.5.1913, Col. 2564; The Cape Times, 23.4.1923 reported a case in which J. Rose-Innes, the Chief Justice, delivered a judgment of the full Appellate bench, confirming that the courts could only pronounce on questions of law and not fact.
29. Central Archives, P.M. 1/1/105, 20/18/1913, Report of Law Adviser on Immigrants Regulation Act. 1.8.1913.
30. H. of A. Debs. 20.5.1913, Col. 2610. "Nothing in sub-section (1)(a) containing shall be construed a) as enabling a person to be deemed a prohibited immigrant in the Cape of Good Hope or Natal if, being at the commencement of this Act lawfully entitled to reside in any province he shows or has shown that he is able to comply with the requirements described in Sec. 3(a) of Act No 30 of 1906 of the Cape of Good Hope, or of Sec. 5(a) of Act No 30 of 1903 of Natal; or b) as abrogating or affecting any right conferred by Act No 36 of 1908 of the Transvaal upon the lawful holder of a certificate of registration issued under that Act."

An amendment to Section 5(d) excluded Africans living north of latitude 22°S from entering the Union, mainly as mineworkers. The Labour Party saw this as a "faltering" but praiseworthy attempt towards restricting the importation of indentured black labour from all tropical areas, which was desirable from the humanitarian viewpoint and might give greater employment opportunities to whites.

On May 21, two key sections were discussed; Section 5(f), the definition of provincial domicile and Section 5(g) which hinged on that most contentious of issues, the validity of Moslem marriages. In deference to Indian demands the Minister agreed to insert in Section 5(f) a definition on Canadian lines which asserted three years domicile after lawful entry of an alien, and not simple residence, as the qualification. As a further concession to Indian opinion, both local and in India, Section 5(g) excluded from the prohibited list, "the wife or child of a lawful and monogamous marriage", thus confirming the assurance given to Lord Gladstone on April 24.<sup>31</sup>

On May 22 the Minister moved in an amendment to Clause 30 that domicile be given a specific definition for the purpose of this legislation, which differed from its definition in common law, and therefore deserves to be set out in full. It was defined as "the place in which a person has his present home or in which he resides and to which he returns as his place of present permanent abode and not for a mere special or temporary purpose, and a person shall not be deemed to have a domicile within the Union or any other province (as the case may be) for the purpose(s) of this Act unless he has resided therein for at

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31. See above p. 64.

least 3 years otherwise than as a person under detention in a prison, gaol, reformatory or lunatic asylum, and a person shall be deemed .... to have lost his domicile within the Union or any province (as the case may be) if he voluntarily go and reside outside the Union or any province (except for a special or temporary purpose) with the intention of making his home outside the Union or that province".<sup>32</sup>

For the government the worst seemed over. On the same day the Governor-General was able to telegraph the Secretary of State that the new bill, with its short title amended - because it gave a better impression, to "Immigrants Regulation Act" - had passed the committee stage.<sup>33</sup>

The only major change in the Report Stage was a "cosmetic" amendment to Section 5(g) moved by Alexander to allay lingering ill feeling among the Indians. In a burst of tolerance the Assembly agreed (Gandhi having assured Patrick Duncan that Indians were not asking for a recognition of polygamous marriages) that immigrants allowed entry should "include the wife or the child of a lawful and monogamous marriage duly celebrated according to the rites of any religious faith outside the Union and duly registered at the place of celebration and having all the legal consequences of a lawful marriage duly celebrated within the Union".<sup>34</sup>

Having been read a third time in the Assembly on May 26, 1913, the bill went to the Senate where three main amendments (not germane to this study) were passed in the Committee Stage on June 10. More relevant

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32. H. of A. Debs. 1913, Vol. 3, Col. 2662.

33. Cd. 6940.

34. H. of A. Debs. 1913, Vol. 3, 26.5.1913. Col. 2745.

however was the addition of a new sub-section (e) to the list in Clause 5 of those not regarded as prohibited immigrants: "any person born before the commencement of this Act in any part of South Africa included in the Union whose parents were lawfully resident therein, and were not at that time restricted to temporary or conditional residence by any law then in force; and any person born in any place after the commencement of this Act whose parents were at the time of his birth domiciled in any part of South Africa included in the Union".<sup>35</sup> The potentially restrictive use of this sub-section can only be appreciated if the clause is seen in its negative form. South African (and particularly Natal) Indians born of parents domiciled in South Africa were not prohibited immigrants into the Cape provided they could pass the education test; whereas South African Indians born of parents indentured after Natal Act 17 of 1895, whose legal residence in Natal was conditional on the payment of the £3 tax, were apparently denied such entry.

On June 11 the Senate went through the Report Stage and Third Reading, and two days later its amendments were considered in the Assembly with no further changes. Three days after - just prior to the prorogation of parliament - the Governor-General assented to the bill.

Inevitably and almost immediately the implementation of the crucial Clause 4(i)(a) aroused misunderstanding between the British and Union Governments. The day - August 1, 1913 - that the Act came into force, the Minister of the Interior empowered under this clause to do so issued instructions to Immigration Officers deeming all coloureds, including every Asiatic, "unsuited on economic grounds 1) to

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35. Cd. 6940, p. 29, Gov-Gen. to Sec. of State, 11.6.1913.

the requirements of the Union and 2) to the requirements of every province of the Union a) in which such person is not domiciled or b) in which such person is not under terms of any statute of such province entitled to reside".<sup>36</sup>

This decision was publicised some 12 days later by the magistrate presiding over the newly established Appeal Board in Durban.<sup>37</sup> To the Home Government this was tantamount to an eo nomine exclusion and a repudiation of Fischer's April promise. Practice however was already mitigating theory. The Union Government refused to subscribe to the British expectation that private instructions dealing with Asiatic exclusion should be issued to officials,<sup>38</sup> on the grounds that this would negate the "objectives which the act was intended to secure".<sup>39</sup> "We might as well tear up the Act," Botha complained to the Governor-General.<sup>40</sup>

The British Government appears to have accepted Botha's view that the Asiatic leaders had asked only that the law itself be free of racial discrimination and that Gandhi and the Secretary of State for India had agreed to differentiation by instructions.<sup>41</sup> Thus after

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36. Central Archives, P.M. 1/1/105, Report Law Adviser on Immigrants Regulation Act 1.8.1913; The Cape Times, 1.3.1923; H. of A. Debs. 4.3.1931, D.F. Malan.

37. Central Archives, P.M. 1/1/237, 110/4/13, Botha to Gladstone 21.8.1913 enclosing Sec. of State to Gov-Gen. 13.8.1913.

38. Ibid. Lord Gladstone to L. Botha. 18.8.1913.

39. Ibid. L. Botha to Lord Gladstone. 21.8.1913.

40. Ibid. P.M. 1/1/105, 20/18/1913, L. Botha to Gov-Gen. 20.9.1913.

41. Central Archives, P.M. 1/1/237, 110/4/13, Botha to Gov-Gen. 21.8.1913.

August 1913, all immigrants into South Africa, theoretically had to be "of undoubted European descent. Coloured persons of whatever nationality [were] not admitted in any circumstances".<sup>42</sup> In practice, while all Asiatics were prohibited immigrants, under Clause 7, the Minister could issue temporary permits for such persons to remain. As for other coloured people, exceptions could be made under Clause 25, which was done, for instance, in the case of St Helena residents who were allowed entry in spite of the general deeming order;<sup>43</sup> but the Act was stringently enforced in 1916, against the increasing number of coloured Mauritians seeking entry.<sup>44</sup>

On the question of interprovincial movement, Act 22 was not, as D.F. Malan later claimed, an expression of the existing principle of "localising" the Indian "problem".<sup>45</sup> It was, more correctly, an extension to the whole Union of a principle which had existed in the two Northern republics. Whereas previously under Section 4(f) of the 1906 Act the Cape had been open to all South African-born Indians, the new law hedged this right with the addition of an education test, simple enough but nevertheless constituting a diminution of an existing right.

There remained the stringent conditions of entry into the two

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42. Central Archives, Interior 139/74, Sec. for Interior to Sec. to High Commissioner, Iraq, 28.9.1924.

43. H. of A. Debs. 4.3.1931; Central Archives, C.I.A. M.42 (V2) Dept. of Interior to Principal Immigration Officer, 9.3.1915 and 16.9.1920.

44. U.G. 50-17, Annual Report of the Department of the Interior.

45. H. of A. Debs. 11.3.1927.

Northern provinces for Asiatics domiciled in other parts of the Union. No Asiatic could enter the O.F.S. unless he had been specially exempted under the provisions of Chapter 33 of the O.F.S. laws or had been issued with a pass under Section 10 of this chapter (which enabled him to remain for a period not exceeding two months).

Entry into the Transvaal was restricted to lawful holders of certificates of registration issued under Act 2 of 1907 or Act 36 of 1908; holders of temporary permits issued under Section 25(1) of Act 22 of 1913; and wives and minor children of domiciled Indians, whose status was finally to be clarified the following year in Section 3 of the Indians Relief Act.<sup>46</sup>

Administrative machinery to enforce the prohibitory aspects of the legislation was immediately set in motion. The first priority was to block the purported seepage of prohibited Indian immigrants over the Portuguese border by deporting them through Komatipoort.<sup>47</sup> Other prohibited Indian immigrants were to be deported via Durban and if possible on boats going direct to India.<sup>48</sup>

Thereafter the administrative structure for the full implementation of the Act came into being. An Immigration Department was established

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46. Central Archives, C.I.A. M. 39. Vol. 2, Principal Immigration Officer to Under-Sec. for the Interior. 29.7.1914.
47. Central Archives, Dept. of the Interior, 19/74, Sec. for Interior to Union Govt. Agent, Lourenco Marques, 11.7.1913; 1/1/322, 27/74, Union Agent, L.M. 10.12.1913.
48. Ibid. Acting Under-Sec. for the Interior to Principal Immigration Officer, 22.8.1916.

under the control of the Minister of the Interior whose department met the deportation costs. The Union was divided into three areas, administered by the three principal immigration officers stationed at Cape Town, Durban and Pretoria respectively,<sup>49</sup> to whom "very full powers" of restriction, arrest and detention, and the granting of permits, were entrusted. The Principal Immigration Officer at Cape Town was responsible for the administration of the Cape Chinese Exclusion Acts; and that at Pretoria for the registration of Asiatics entitled to reside in the Transvaal under the 1907 and 1908 legislation.

The Governor-General in Council, under powers vested in him by Act 22 appointed three Appeal Boards.<sup>50</sup> The Boards were to sit in the same centres as the three Principal Immigration Officers and control similar areas of jurisdiction. The Cape area comprised the whole province excluding certain districts in the Northern Cape and Transkei. The former came under the Pretoria board which initially had jurisdiction over the Free State and Transvaal. Until 1917, when they were transferred to Cape jurisdiction, the Transkeian areas came under the Durban Immigration Officer and Board. The latter's jurisdiction extended over Natal, and after October 1917 also included the Orange Free State. The Principal Immigration Officer in each centre was to be a member of the Board in order to see how the Act was working and to give the Board the benefit of his experience. While Smuts, then Acting Minister of the

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49. U.G. 24-1914, Department of the Interior, Annual Report 1913; Official Yearbook of the Union No 5-1922.

50. Cd. 7111, p. 19; U.G. 24-1914.

Interior, foresaw no difficulties arising from this situation,<sup>51</sup> it did in fact produce the unsatisfactory effect of the prosecutor also being the judge. Consequently the first boards were appointed for six months only to try them out.

During its term of office the first Cape Town Board met 42 times, the Durban one 23 and the Pretoria Board 13 times. An analysis of the appeals shows that arbitrary behaviour by the immigration officials was being fairly reasonably checked although the boards had no power to ensure their decisions were enforced. In Cape Town 28 appeals were heard of which 26 were dismissed; in Durban however 22 out of 42 appeals were found in the appellants' favour, 5 were withdrawn by the applicant and 5 by the Department, 4 were dismissed and 6 undecided by December 31, 1913. In Pretoria 19 appeals were disposed of, 6 of which were in favour of the appellant, 6 dismissed and 7 outstanding by December.<sup>52</sup>

The work of the immigration officers (who were allowed separate discretion under Clause 19 of the Act) consisted to a great extent in supervising ships' crews, to prevent their remaining ashore. The cost of this supervision was borne by the shipping companies which were unreasonably harassed by some of the immigration officers.

In 1913 355 people were prohibited entry of whom 186 were Indians, 51 Russians (that is Jews) from Eastern Europe and only 6 Chinese.<sup>53</sup>

The Act then was strictly enforced against Asiatics. Even the

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51. Central Archives, P.M. 1/1/237, 110/3/13, Botha to Lord Gladstone 28.7.1913.

52. U.G. 24-1914.

53. Ibid.

Aga Khan had to request permission to enter the Cape, though the Prime Minister replied that the "regulations etc. would never be applied in case of distinguished visitors".<sup>54</sup>

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54. Central Archives, P.M. 1/1/61, Telegram 14.8.1914.

## CHAPTER V

### THE STRUGGLE RENEWED

#### a) Satyagraha and the Indians Relief Act

While the government claimed that Act 22 and its regulations were being administered in "a proper and reasonable manner",<sup>1</sup> the South African Indians soon most forcefully damned the perfidy of the Union Government and the "incredible weakness" of the British.<sup>2</sup> The Natal Indian Congress,<sup>3</sup> and British Indian Association<sup>4</sup> expressed their disapproval; while in England the possibility of a renewal of the Satyagraha campaign began to be expressed. Lord Amthill, former governor of Madras, criticised the Act "because it fails to perform specific promises made to the British Indian community and because it does not fulfil those conditions which His Majesty's Government have repeatedly and explicitly declared to be essential".<sup>5</sup>

In India the marriage issue continued to arouse the strongest reaction. This ranged from the emotionalism of the vernacular press which claimed a slur had been cast on Indian civilisation,<sup>6</sup> to the government's sober concern with the finally amended Section 5(g) exempting from the list of prohibited immigrants "the wife or child of

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1. Cd. 7111, Minute 906, Ministers to Gov-Gen. 25.9.1913.
  2. Schreiner Papers, H.S.L. Polak to W.P. Schreiner, 27.6.1913.
  3. Cd. 7111, Gov-Gen. to Sec. of State, 18.7.1913.
  4. Cd. 6940, A.M. Cachalia to Lord Gladstone, 16.6.1913.
  5. The Empire Review and Magazine Vol. 26, No 152, Sept. 1913, p. 103.
  6. The Round Table, No 15, June 1914.

a lawful and monogamous marriage".<sup>7</sup> It doubted whether any Hindu or Moslem marriage could correctly be described as monogamous even if a man were married to only one wife. This aroused Colonial Office fears that Fischer's April 24 assurance was valueless, and that Section 5(g) might impose a fresh check on the entry of families of domiciled Indians.<sup>8</sup> On September 22 therefore, the Governor-General cabled the Secretary of State that his government was fully prepared to carry out Fischer's promise - which had been repeated to the House in Committee - provided the Satyagraha campaign were not re-opened.<sup>9</sup>

By the time this communication was despatched, dissatisfaction and unrest in the Indian community had become widespread,<sup>10</sup> and a revival

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7. Cd. 7111, Gov-Gen. to Prime Minister, 15/463, 10.9.1913.

This exemption also involved the wives and children of domiciled Chinese, but as it was a "rare occurrence" for them to apply for entry, they have been omitted from this study; see Central Archives, Dept. of the Interior, 139/74, 13/74 AA, Principal Immigration Officer, Cape Town to Sec. for Int. 22.8.1916, Principal Immigr. Officer, Pretoria 14.10.1918, 22.10.1918, Acting Principal Immigration Officer and Registrar of Asiatics 5.6.1920.

8. Central Archives, P.M. 1/1/61, 12.8.13, Sec. of State to Gov-Gen. 14.8.1913.

9. Cd. 7111.

10. Cd. 7111, Gov-Gen. to Sec. of State 24.9.1913; Central Archives, P.M. 1/1/105, 20/18/1913 contains references to a number of the Gov-Gen's minutes 15/474, 15/477, 15/478, 15/581, 15/483, 15/487 dated 25.9.1913 - 11.10.1913 indicating the extent of Indian dissatisfaction and unrest.

of passive resistance agreed upon. Their objections stemmed from the assertion that the 1911 settlement, agreeing to the maintenance of existing rights and the avoidance of statutory racial discrimination, was negated by Act 22 which abrogated rights such as appeal to the Supreme Courts and Cape entry for colonial-born Indians; and that it perpetuated the colour bar through the G.F.S. clause which required a differential declaration from Indians entering the province in transit.

It was Gandhi however, who again carried Indian opposition into the government's camp, with a relentless determination to get whatever concessions he could, which was matched only by the cabinet's equally relentless determination not to yield one whit on the restriction of Asiatic immigration. A final settlement, Gandhi declared, depended on passing amending legislation on several points: the O.F.S. declaration; the domiciliary rights carried by indentured Indians who had arrived after the 1895 Natal Act and who had lived in Natal for three years without indenture; their children's right to enter the Cape; the recognition of marriages contracted in India and the continued right of entry for one wife irrespective of the number left in India together with the admission or re-admission of plural wives already married in polygamous unions.<sup>11</sup>

In his reply the Secretary for the Interior claimed the Cape entry of children of indentured Indians was a new point, never previously raised.<sup>12</sup> The Union Government's attitude had from the start been to deny uneducated Natal-born Indians free entry into the Cape, and in a

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11. Cd. 7111, Gandhi to Private Sec., Minister of the Interior, 30.6.1913.

12. Cd. 7111, 19.8.1913.

previous session Cape M.P.s had shown their approval of this.<sup>13</sup> In practice most colonial-born Indians, as Gandhi himself admitted, would anyway pass the education test of the earlier colonial legislation, which was now secured in the new Act so that the position was in reality unchanged and inter-provincial boundaries were maintained. As for the O.F.S. issue, the Minister agreed it would be advantageous to notify all educated Indians admitted into the Union of the disabilities they were liable to suffer if they wished to enter that province. On the marriage issue steps would be taken when the Union marriage laws were consolidated, to provide for special marriage officers for denominations other than Mohammedanism. Meanwhile the existing practice of admitting one wife even if married in a religion allowing polygamy, would be continued, but plural wives of Indians already resident in South Africa could not be admitted, as the government felt this would be an implicit recognition of polygamy.<sup>14</sup>

Gandhi's following communications and Smuts's reply<sup>15</sup> indicate the absence of a common area of understanding; Gandhi was concerned with form, the government with substance. Thus the former's fight for the Cape entry was for a sentiment not for a frequently used right; for a belief in fact "that the liberal and reasonable view taken by the old

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13. Cd. 5579, Ministers' Minute, 902A, 20.12.1910.

14. The Cape Times, 7.11.1913, interview with Fischer.

15. Cd. 7111, p. 52, Gandhi to E.M. Gorges, Sec. for the Interior, 24.8.1913; telegram Smuts (Acting Minister of the Interior) to Gandhi 9.9.1913; Gandhi to Gorges, 22.9.1913.

Cape Legislature should be left untouched"; whereas the government's concern was with practical policy, statutorily enforced as far as Imperial obligations made this possible. Analysing the Smuts-Gandhi exchange in August - September, the historian is inclined further to conclude that the Satyagraha concept of the minimum also being the maximum was beyond European comprehension. Thus in official eyes Gandhi widened - considerably and often unjustifiably - the extent of every concession wrung from the government so that the correspondence is one long process of misunderstanding and repudiation.

As this exchange ground indecisively to a halt, a judgment was given in the Natal Supreme Court which was to prove crucial from a political viewpoint confirming as it did the hated Searle judgment. On August 18, 1913 the Durban Appeal Board had heard an appeal from Kulsum Bibi whose husband Mahboob Khan, domiciled in Natal, had married her in India and subsequently, the Immigration Department claimed, married another wife in South Africa. Under Section 3(2) of Act 22 the Board referred the matter to the Supreme Court for an authoritative ruling on the meaning of "monogamous". In his judgement on October 1, 1913 Dove Wilson stated that Kulsum Bibi's marriage was not monogamous, on the grounds that the essence of such a marriage was that it meant a union which recognised the exclusion of all others; a monogamous marriage could therefore not exist in a religion which permitted polygamy. 90% of Indian marriages in South Africa were contracted in religions which permitted polygamy,<sup>16</sup> although only 1% of the unions themselves were polygamous.<sup>17</sup> Indian opinion maintained that as a result of

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16. The Cape Times, 4.10.1913.

17. Cd. 7111, Transvaal Leader, 7.10.1913.

this judgment, Section 5(g) far from protecting such marriages, would in future act as a total bar to even the limited family immigration still permitted.<sup>18</sup>

Legally immigration officials might now send back a woman polygamously married; in practice the government had instructed them to allow entrance to women whose husbands had no other wife in South Africa. This was not always known; whereas the Wilson and Searle judgments were, and the political effect was highly damaging. It appeared to confirm Indian suspicions that the status of their wives was equivocal, so that a new and potent force - the Indian woman - was brought into the Satyagraha campaign which was renewed on September 15 and which represented the final breakdown of negotiations. To the original four demands stated in Gandhi's letter of June 30, the purported promise to Gokhale on the £3 tax<sup>19</sup> was added first by A.M. Cachalia, Chairman of the Transvaal British Indian Association in a letter to the Secretary for the Interior on September 12, and then in one from Gandhi himself.<sup>20</sup>

These demands on broad principles were accompanied by allegations of the harsh administration of the Immigration Act. People with Natal domicile certificates, it was said, were subjected to unnecessary delays and half of those already domiciled were declared prohibited immigrants.<sup>21</sup>

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18. Cd. 7111, Resolution of Anjuman Islam, Durban, 2.10.1913.

19. The Times, 19.11.1913; Satyagraha p. 270; The Cape Times, 11.10.1913, official statement of Indian demands communicated to S.A. Press Assoc.; see also Cd. 7111, grievances of British Indian Assoc., 6.10.1913, P.E. British Indian Assoc., 2.10.1913. Cape British Indian Union etc.

20. Cd. 7111, 28.9.1913.

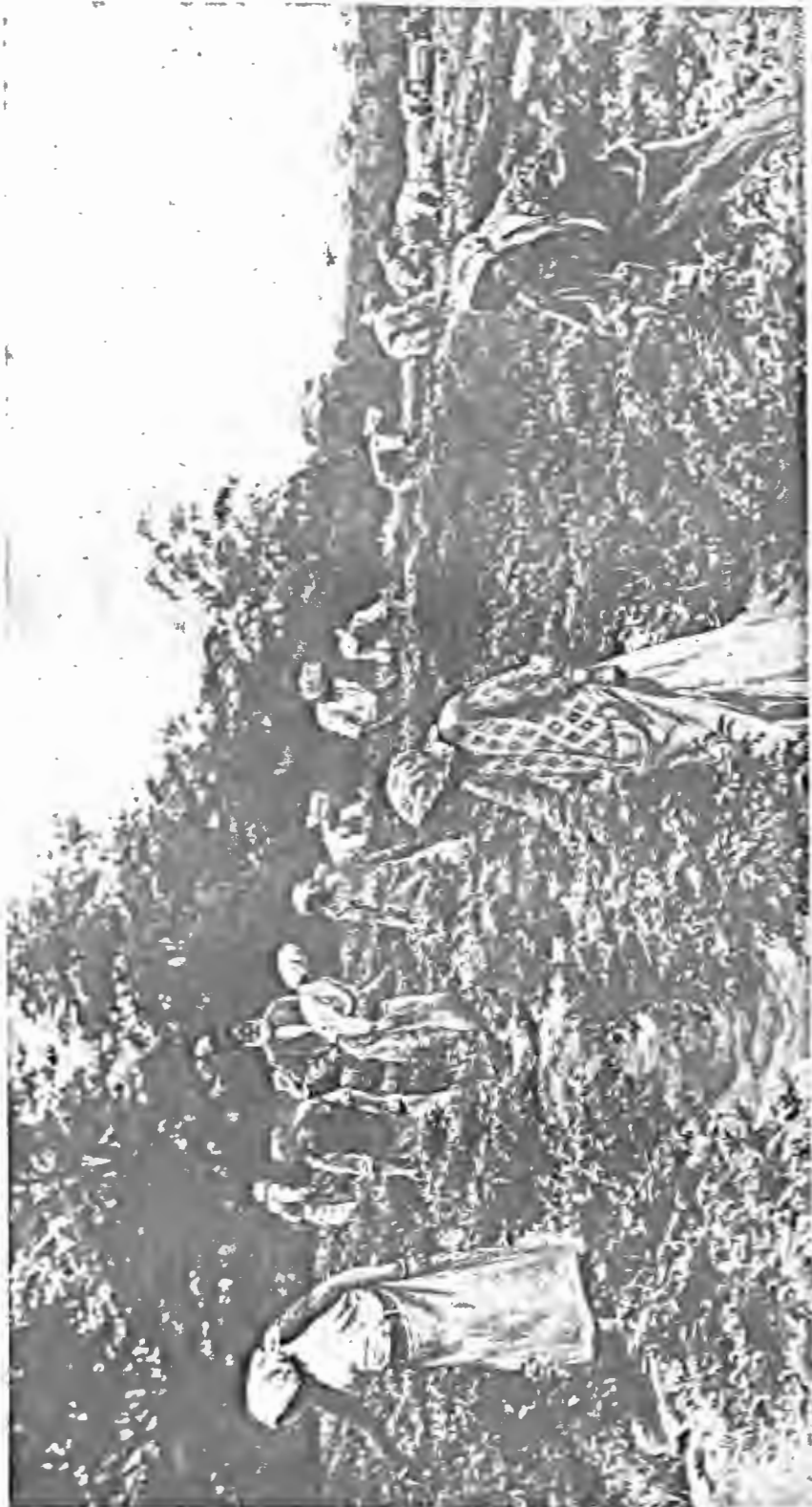
21. Ibid. Resolution of Natal Indian Congress 7.9.1913.

The government's attitude in turn was that Indians were using every means to evade the Act.<sup>22</sup> Undoubtedly both sets of allegations were true; for as Edmund Gosse observed "truth has two forms, each of them indisputable, yet each antagonistic to the other".

Meanwhile the Satyagraha campaign which had begun with the illegal entry into the Transvaal of 16 men and women, was spreading more rapidly than had the two previous campaigns.<sup>23</sup> The resisters' actions involved breaches of the civil law rather than the moral code; and so as not to alienate public opinion they made no attempt to enter the O.F.S. An auxiliary phase in the campaign was inaugurated by Gandhi on October 17 when he visited the Natal coalfields and induced those who would become liable to payment of the £3 licence to strike until the tax was repealed. By mid-November the strike had spread throughout Natal, disturbances resulted and force was used to restore order.<sup>24</sup>

While the government avoided arresting Satyagrahis in the Transvaal as far as possible,<sup>25</sup> it was jealously mindful of its authority, refusing to administer Act 22 more leniently or pass amending legis-

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22. Ibid. Minute 906, Ministers to Gov-Gen. 25.9.1913.
23. Central Archives, P.M. 1/1/61, 12.8.1913 refers to several Gov-Gen. minutes (15/545, 15/538, 15/520, 15/542, 15/555, 15/567, 15/586, 15/605, 15/616 from 27.11.1913 to 6.1.1914) dealing with the unrest; Cd. 7111; Satyagraha; The Cape Times 11.10.1913.
24. Bradlow, "Indentured Indians", S.A.H.J. 2; Pachai, Indian Opinion. The strikes split the Natal Indian community.
25. Cd. 7111, Gov-Gen. to Sec. of State, 25.9.1913.



Indians on a tea plantation in Natal.

Illustrated London News 6.12.1913.

lation on marriages and the £3 tax while the defiance continued.<sup>26</sup>

Though this won the approval of Natal farmers,<sup>27</sup> aid was nevertheless sought from the Imperial and Indian Governments.<sup>28</sup> However strong the racial prejudice of their mass white support, neither Botha nor Smuts was insensitive to that section of public opinion in South Africa which, while opposed to Indian violence, felt this patently underprivileged group had been badly used over the £3 tax.<sup>29</sup> A strong lobby in England apportioned part of the blame to the Imperial Government for its haste in assenting to the Immigration Act,<sup>30</sup> a charge over which that government was very sensitive.<sup>31</sup> Thus when the Viceroy, Lord Hardinge, called on November 24, for a commission of inquiry<sup>32</sup> he was supported by Lord Crewe;<sup>33</sup> and the South African Government was more than contented to take this way out of its difficulties with a minimal loss of dignity and authority.

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26. Ibid. Colonial Office to All India Moslem League. 29.11.1913.
  27. Central Archives, P.M. 1/1/61, Farmers Club, Mid-Illovo to Prime Minister 17.12.1913.
  28. Cd. 7111, Gov-Gen. to Sec. of State, 18.11.1913.
  29. Merriman Papers, Merriman to MacKarness, 25.11.1913; The Cape Times 30.10.1913; The Times, 19.11.1913.
  30. The Times, 28.11.1913; 26.12.1913.
  31. The Indian Opinion Vol. 11, No 51, 31.12.1913. Crewe expressed "deep concern".
  32. The Cape Times, 27.11.1913.
  33. The Times, 3.12.1913.

On December 10, 1913 a Commission of Inquiry into Indian grievances was appointed under the chairmanship of Sir William Solomon and assisted by Sir Benjamin Robertson a representative of the government of India.<sup>34</sup> Included in its terms of reference was an investigation into the causes of the strike. The Commission felt this gave it a mandate to pronounce, if not on Indian grievances in general, at least on specific issues - the £3 tax, the marriage question, Cape entry, the O.F.S. declaration and the administration of existing laws, which had precipitated the Satyagraha campaign and the strike.<sup>35</sup>

On Gandhi's advice, and in spite of the Viceroy's and Gokhale's urgings to the contrary, the Indian leaders expressed dissatisfaction with the composition of the Commission. Consequently no Indians gave evidence on the charges of ill-treatment while in custody as a result of the strike,<sup>36</sup> and Gandhi threatened to renew the Satyagraha campaign.<sup>37</sup>

Possibly it was Emily Hobhouse's offer to intervene which was accepted and relieved the tension;<sup>38</sup> or perhaps Smuts appreciated

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34. The Cape Times 10.12.1913. Its other members were Ewald Esselen, former State Attorney in the S.A.R. and Col. J.S. Wylie a former member of the Natal Legislature and an opponent of Indian immigration. Robertson got a K.C.M.G. for his rôle.
35. U.G. 16-1914, Report of the Indian Enquiry Commission; see also Cd. 7265; The Cape Times, 23.1.1914, Gandhi to Sec. for the Interior E.M. Gorges, 21.1.1914.
36. The Cape Times, 22.12.1913; Satyagraha; U.G. 16-1914.
37. Satyagraha, p. 322.
38. Hancock and Van der Poel (eds) Selections from the Smuts Papers, Vol. 3, E. Hobhouse to Smuts, 29.12.1913.

Gandhi's gesture of goodwill in suspending plans for a march into the Transvaal when the government was confronted by trouble on another front in the form of striking European railwaymen. Whatever the reason Gandhi agreed not to hamper the Commission's work<sup>39</sup> - which to the government's relief meant that its deliberations were shortened and its recommendations could be submitted to parliament during the 1914 session.

The Solomon Commission sat in Durban from January 26 to February 7, 1914; and in Cape Town between February 23 and 27, presenting its report on March 7. Fourteen recommendations were made. It condemned the £3 tax as "most unequal in its incidence .... most uncertain in its operation",<sup>40</sup> serving no effective purpose on the statute book; and recommended that Section 6 of the 1895 Act (which had initiated the tax) should be repealed.

The O.F.S. entry grievance was, correctly, dismissed on the grounds that the Minister had already agreed in his letter of August 19, 1913 to an alteration in the manner of giving the declaration.

The Commission's conclusions on the Cape entry question, while they dealt with the wider issue of the maintenance of existing rights, are more important in view of its almost obiter dicta on what those rights actually were. Prior to Act 22, the Commission stated, Indians born in South Africa had free entry to the Cape under Section 4(f) of the 1906 Act, without an education test; whereas under Section 4(1)(a) of the new Act Cape entry for a South African Indian was subject to

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39. The Cape Times, 23.1.1914, Gandhi to Gorges, 21.1.1914.

40. U.G. 16-1914, p. 27.

his ability to pass the education requirements of the 1906 Act.

The Commission however was primarily concerned with eliciting the causes of the 1913 unrest. Gandhi, it maintained, had envisaged the restrictions on the Cape entry as a breach of the 1911 Agreement only after a friend had pointed this out. He himself had admitted he was fighting for a sentiment, the old Cape liberal view. Practically however, cognizance had to be taken of the effect of European prejudice on this liberalism; consequently the Commission was being realistic when it negatived an amendment of the 1913 Act to remove the simple education test.

The marriage issue was infinitely more perplexing, raising as it did several different points. On the question of the right of entry for one wife and minor children of a domiciled Indian, Section 5(g)'s intention, judging from the parliamentary debates and the Secretary of the Interior's August 19 letter to Gandhi, was to admit one wife even if there were several others in India. The Kulsum Bibi judgment, however, defeated this intention. The Commission therefore felt the law (which was confusing because of bad drafting) should be amended to bring it in line with administrative practice.

Turning to the admission of plural wives, the Commission had learnt from the Natal Chief Immigration Officer that up to about 7 years before, they had been admitted and allowed free movement in and out of Natal. The Commission recommended therefore that the plural wives of men of long residence (a total of about 40-50 in Natal) should be allowed freely to travel to and from South Africa as long as the husbands remained in the Union.

On the celebration of marriage rites, the Commissioners approved

the appointment of marriage officers as agreed to in the August 19 letter, which in practice would mean the celebration of monogamous marriages, this being the law in South Africa.

The elucidation of this most difficult issue by Sir Benjamin Robertson was to mitigate the emotion aroused in India by the Searle judgment, on the status of their women. The Commission recommended the legalisation of de facto monogamous marriages through their registration before a marriage officer. A man could still contract another union through his own religious rites but it would have no legal validity.

The chief grievances against the administration of the Immigration Act centred on its implementation in the Cape. The Commission accepted the Indian view that identification certificates issued under Section 25(2) of the Act should be valid for three years instead of one. While it admitted there was unnecessary delay in their issue, this it claimed, frequently resulted from the Indians trying to deceive the immigration department. The Commissioners recommended that an interpreter should be appointed at the Cape Town immigration office; and that clerks should personally help applicants for permits as was done in Durban, thereby preventing delays and obviating the employment of Indian immigration agents.

A number of suggestions followed dealing with matters of small importance to the Immigration Officers, but emotionally significant for Indians. Fingerprinting for identification, other than of the thumb, should be discontinued; resident magistrates should have the right to issue documents for inter-provincial travel, and unnecessary

delays in identification and re-identification should be avoided; domicile certificates issued in Natal under Act 30 of 1903 should be regarded as conclusive proof of the holder's right to enter the Union under the present Act; and identification certificates for wives and children, issued in India, should be accepted as valid in South Africa.

The Commission's recommendations were accepted by the Indian Government and the local community.<sup>41</sup> Of its 15 proposals, only five necessitated statutory amendment, the remainder simply requiring administrative instructions or the amendment of regulations for their implementation. The five recommendations were therefore incorporated into a bill, the Indians Relief Bill, introduced on June 2, 1914.

Despite the usual manifestations of O.F.S. xenophobia and a determination on the part of Natal members to shift the burden of their guilt, the measure passed through both Houses without amendment other than a redraft of Clause 7. On behalf of the Indian community Gandhi examined the bill before its introduction and expressed himself entirely satisfied with its provisions. It was read a second time on June 8 and received the Governor-General's assent on July 1.<sup>42</sup>

Section 1 empowered the Minister of the Interior to appoint as marriage officers, Indian priests of denominations other than Moslem who were already provided for by Cape Act 16 of 1860 and Natal Law 19 Of 1881.

Section 2 implemented the Commission's recommendations on the contraction in the future of polygamous unions; and the registration

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41. The Indian Opinion, 3.6.1914.

42. Cd. 7644, Correspondence relating to the Indians Relief Act 1914.

of existing, de facto monogamous marriages to give them legal validity, as a pis aller short of legalising polygamy.

Section 3 amended Section 5(g) of Act 22 to bring the law in line with Immigration Department practice of admitting only one wife and her minor children.

Section 7 implemented the recommendation that if an Indian produced a Natal domicile certificate bearing the thumb print of the holder which was identical with his own, this should be accepted as conclusive evidence of his right to enter the Union. Section 8 repealed the provisions of laws relating to yearly passes or licences of ex-indentured Indians without in any other way altering the status of Indians in Natal, except that indentured or ex-indentured Indians now had definite domiciliary rights.<sup>43</sup>

Section 6 proposed a remedy for the Indian "problem" on lines in one way differing radically from, yet in some respects a continuation of, the oppressive treatment many South Africans considered to be suitable treatment for Indians. The Minister was empowered to grant out of moneys appropriated by parliament for the purpose, free passages from any Union port to any Indian port for all Indians other than ex-indentureds permitted a free passage under Natal Law 25 of 1891. This

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43. H. of A. Debs. 1914, Vol. 4, 8.6.1914; Central Archives, Dept. of the Interior 46/74. Vol. 1, E.M. Gorges to Gandhi, 22.6.1914; see Bradlow S.A.H.J. 2 for provisions of the legislation here repealed which comprised Natal Act 17 of 1895 (Sec. 6), the whole of Act 2 of 1903, (except Secs. 1 and 4), Act 39 of 1905 (to amend Act 17 of 1895) Secs. 1 and 3 of Act 19 of 1910 (to amend the Indian Immigration Act 17 of 1895 and Act 2 of 1903).

grant was subject to the Indian signing a statement indicating conclusively that he abandoned for himself, his wife and minor children, both domiciliary and entry rights in South Africa. This step was a tentative one only; the government felt it was better not to "overload" the measure with more specifically enunciated repatriation clauses which might hold up the bill's progress.<sup>44</sup>

In India the Act was regarded by the government and nationalist leaders as satisfactorily closing the immigration issues.<sup>45</sup> Conversely it was expected that domiciled Indians would finally enjoy sympathetic treatment. The Imperial Government expressed its indebtedness to both South African Government and parliament, and praised the legislation as "a generous and sincere attempt to remove the disabilities of the Indian population of the Union which had kept alive a sense of grievance and discontent not only in South Africa but in India".<sup>46</sup>

In reality, the legislation as both the repatriation clause and Botha's contribution to the debate indicate, had been wrung from the government as the only possible measure which might finally satisfy the Imperial and Indian Governments without compromising the wishes of the South African electorate.<sup>47</sup> Like the vast majority of that electorate Botha did not view the Indian presence in the Union "with complacency", and hoped in the future to get rid of it; nevertheless

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44. H. of A. Debs. 1914, Vol. 4, 8.6.1914, Col. 3215, Smuts.

45. Merriman Papers, Sir B. Robertson to Merriman, 14.7.1914;  
Smuts Correspondence, Vol. 3, Robertson to Smuts, 14.7.1914.

46. Cd. 7644, p. 6.

47. H. of A. Debs. 1914, Vol. 4, 8.6.1914.

some regard had to be shown for the rights of people while they were still living in South Africa.

Gandhi prepared to leave - "I sincerely hope for ever" Smuts confided to Sir Benjamin Robertson.<sup>48</sup> Prior to this, however, and just before the bill became law, he and Smuts had two final meetings. At the first Gandhi expressed satisfaction with the new act as a definite settlement of points requiring legislative action; at the second meeting he submitted other matters requiring administrative attention which the Department of the Interior disposed of in a letter to him on June 30.<sup>49</sup>

It was agreed that in future the Protector of Indian Immigrants would issue to Indians subject to Act 17 of 1895, who had completed their indentures or re-indentureds, certificates of discharge similar to those issued under Law 25 of 1891, thus equalising the status of all ex-indentureds in Natal. Existing plural wives and their minor children, would be allowed to join their husbands in South Africa if the number were limited, which was a departure from Clause 3 of Act 22 of 1914.<sup>50</sup> In the years 1915-19, 778 wives and children came in

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48. Hancock, W.K., Smuts, Vol. 1, p. 345.

49. Central Archives, Dept. of the Interior, 46/74, Vol. 1, Gorges to Gandhi, 30.6.1914. The department allowed Gandhi to publish the correspondence the day after parliament was prorogued on 7.7.1914.

50. Ibid. Dept. of Interior 15/34461, J.R. Hartshorne, Registrar of Asiatics and Principal Immigration Officer, Pretoria, to H.J. Stanley (Sec. to the Gov-Gen.) 8.7.1914. A certificate confirming the relationship between a man and his purported wife and children was to be issued in India, for presentation in the Union.

under this concession.<sup>51</sup>

The existing practice concerning the entry of South African-born Indians into the Cape was to be maintained, the government reserving the right to apply the provisions of Section 4(1) of the Immigrants Regulation Act as soon as the numbers increased. Declarations by "specially exempted educated entrants" would no longer be required at provincial borders. A document was now to be issued by immigration officers identifying such persons; while the general declaration made at the port of entry under Section 19 of the Act, would in future have printed on its reverse side the disabilities an Indian was subject to in the different provinces, and be regarded as sufficient.<sup>52</sup> The O.F.S. issue had finally been laid to rest. Indians who had been admitted into the Cape and Natal in the previous three years under legislation in force before Act 22, but who had temporarily left these provinces, would be treated on their return as if the term "domicile" as used in Act 22 applied to them; that is, they would not be regarded as prohibited immigrants. Gandhi would submit to Smuts the names of bona fide Satyagrahis so that convictions for this offence would not be invoked against them in the future application of immigration legislation.<sup>53</sup>

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51. U.G. 4-1921, Report of Asiatic Inquiry Commission.

52. Central Archives, C.I.A. M39, Vol. 1, Under-Sec. for the Interior to Principal Immigration Officer, Pretoria, 6.7.1914.

53. Central Archives, Dept. of the Interior, 46/74, Vol. 1, Smuts to Minister of Justice, N.J. de Wet, 4.8.1914.

Finally all the recommendations of the Solomon Commission at the conclusion of its report, over and above the points enumerated in the Indians Relief Act, would be adopted by the government, thus ensuring that existing laws would continue to be administered in a just manner and with due regard to vested rights.

The exhausting contest was drawing to a close. Smuts made it quite plain and Gandhi accepted, that the assurances in the Gorges letter taken in conjunction with the Indians Relief Act constituted "a complete and final settlement of the controversy which has unfortunately existed for so long and will be unreservedly accepted as such by the Indian community".<sup>54</sup> Yet at the same time Gandhi indicated that from the latter's viewpoint the end of this chapter was the starting point of another. Complete satisfaction, he warned depended on the granting of full civic rights which Indians were entitled to demand now that immigration had virtually ceased. "I shall hope" he wrote in a perfect example of that circular logic which Smuts had found so perplexing, "when the Europeans of South Africa fully appreciate the fact that now the importation of indentured labour from India is prohibited and the Immigrants Regulation Act of last year has in practice all but stopped further free Indian immigration, and that my countrymen do not entertain any political ambition, they, the Europeans, will see the justice and indeed the necessity of my countrymen being granted the rights I have just referred to."<sup>55</sup>

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54. Ibid. Gorges to Gandhi 30.6.1914; Documents relating to the New Asiatic Bill, collected by C.F. Andrews.

55. Satyagraha, pp. 336-7.

b) The administration of the law.

"Sympathetic administration" as the Secretary for the Interior noted, was the keynote.<sup>56</sup> To ensure these precise instructions would have to be issued to immigration officers to act according to both the letter and spirit of the settlement; meanwhile he drafted preliminary instructions as to how each of the points in the June communication were to be implemented.

All this was in the realm of theory. In practice the regulations were interpreted by many officials in a far less sympathetic manner than the Minister had envisaged - as Alexander, Duncan and others foresaw; and corruption was not unknown.<sup>57</sup>

Consequently certain of the intentions which had been so explicitly outlined in 1914 were soon modified. In April 1915 C.W. Cousins, the autocratic Chief Immigration Officer in Cape Town (a man so well disliked by Jewish and Indian immigrants that several of the latter had once physically assaulted him)<sup>58</sup> indicated he was putting a different gloss on Interior policy. He did not interpret the paragraph on Cape entry in Gorges' June 30 letter as an intention by the government to relax any provisions of the Cape Act before its repeal by Act 22 of

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56. Central Archives, Dept. of the Interior, 46/74, Vol. 1, to H.B. Shawe, Under-Sec. for the Interior, 30.6.1914; see also Duncan Papers II, 41 (a and b), Minister of the Interior to Duncan, 20.10.1916.
57. The Cape Times, 12.2.1916. During the trial of Van Oudtschoorn, chief clerk in the Cape immigration department, on fraud charges, he admitted Indian agents were allowed free access to files and were "swindling the Indians".
58. The Cape Times, 10.11.1913.

1913, which would certainly be the case if educated Indians were allowed entry without passing the education test. "I have simply taken it to be that the government temporarily at any rate and conditionally as indicated by Mr Gorges, wish to amend the operation of the present Union Act at least to the extent of keeping alive for South African-born Indians the possibility of entering this province by virtue of their ability to meet the education test in the repealed law - but nothing further".<sup>59</sup>

This was not so. Gorges' letter had not mentioned the education test; it was distinctly an affirmation of the right, under the old Cape law, of South African-born Indians (like all other born South Africans) to enter the Cape without the test. The Department's reply indicates however that the 1914 agreement was already suffering a sea-change in spirit as well as letter.<sup>60</sup> The policy now to be followed was stated in pages 14-16 of the Solomon Report; namely that an Indian must write out and sign his application in the characters of any European language to the satisfaction of the Minister, at the port of entry and at the time of entry.

Following this Cousins sent his subordinates "definite instructions" on the procedure to be followed in the case of Indian entry which can best be described as "rigorous" rather than "sympathetic" administration.<sup>61</sup> Before being permitted to enter the Cape the immigrant had to prove he

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59. Central Archives, Dept. of the Interior, 46/74, Vol. 2, Chief Immigration Officer, Cape Town to Sec. for the Interior, 2.4.1914.

60. Ibid. Acting Under-Sec. for the Interior, 6.5.1915.

61. Ibid. 12.5.1915.

was lawfully resident in one of the provinces according to the battery of acts, definitions and registration certificates regulating his residence.<sup>62</sup> After satisfying the immigration officer on this score, he had to fill in the application form without assistance, according to requirements which the immigration officer enumerated to him. These included details of birthplace, nationality, qualifications for entering the province, means of subsistence, intended occupation and the assurance that the applicant was mentally and physically sound and of good character.

Only if the immigrant failed to do this, was the immigration officer to dictate a similar application, varying it from time to time so that it should not become stereotyped and thus defeat its purpose. Thereafter the applicant could remain on a temporary permit while the immigration officer sent off the result of the test and a report to the Principal Immigration Officer.

Cousins's instructions simply confirmed the practical procedure followed originally by the Cape and later by the Union immigration departments;<sup>63</sup> that is, policy was administered as though the exemption from the education test did not exist. In these early years

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62. To recap: in the Transvaal by his holding a registration certificate. In Natal those who had entered before Act 1 of 1897 and those who had entered thereafter under that act or the 1903 and 1906 Acts, as well as ex-indentured Indians liable to the £3 tax, who had maintained domicile; and in the O.F.S. the few allowed entry under Chapter 33.

63. Central Archives, Dept. of the Interior, 46/74, Vol. 2, H.S.L. Polek to Acting Sec. for the Interior, 17.5.1915.

after Union however, comparatively few colonial-born Indians wished to enter the Cape or would have failed to do so because of the education test, so that the issue remained one of sentimental attachment to a vested but seldom exercised right. Consequently, and in spite of his protests that he would be swamped by an influx of Asiatics entering illegally over the land borders, Cousins was instructed to allow the free entry into the Cape of South African-born Indians in terms of the Smuts-Gandhi agreement, until an appreciable increase in their numbers necessitated a reconsideration of policy.<sup>64</sup>

After the war an increased demand for waiters in hotels and restaurants resulted in such a growth in numbers.<sup>65</sup> The government however did not wish to reopen the question at that particular time being more concerned with preventing new admissions than opposing interprovincial movement. In addition it could hardly harass a small number of Indians on an obscure administrative quibble once South Africa had subscribed to the Reciprocity of Treatment resolution passed unanimously at the 1917 Imperial Conference and repeated at the 1918 War Conference. On that occasion Burton, South African Minister of Railways, had declared that Indians living in South Africa "are good, law-abiding, quiet citizens and it is our duty to see ... that they are treated as human beings with feelings like our own, and in a proper manner".<sup>66</sup>

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64. Central Archives, Dept. of the Interior, 46/74, Vol. 2, Acting Under-Sec. for the Interior to Principal Immigration Officer, Cape Town, 25.5.1915.

65. Ibid. 46/74, Vol. 3, Principal Immigration Officer, Cape Town to Sec. for the Interior, 11.12.1919.

66. Cd. 9177, Extracts from Minutes of Proceedings ... Conference 1918, discussion on resolution, 24.7.1918.

The question of Cape entry rested until after the promulgation in July 1927 of Act 37 of 1927, The Immigration and Indian Relief (Further Provision) Act, when the number of Natal-born Indians entering the Cape increased considerably. In 1929 the Minister of the Interior, D.F. Malan, therefore ruled that those who had come in after the passing of the Act should be ordered to return to Natal;<sup>67</sup> the decision signalled the demise of this part of the 1914 agreement.

Similarly the right of admission of plural wives and children (in the years 1915-1919 amounting to a total of 778 people)<sup>68</sup> was gradually whittled away, disappearing altogether soon after the accession to power in 1924 of the Pact Government. This development reflected the belief of the white electorate (confirmed it was felt by figures in the 1921 census which showed a vast preponderance of single Indian males all entitled under the Indians Relief Act to introduce one wife from India) that only the exclusion of female immigrants would prevent the ultimate "swamping" of whites by the inexorable increase in Indian numbers. Two years after the 1914 agreement the Minister of the Interior decided to deal with this "outstanding matter" as "an earnest that government is very desirous of meeting in the most sympathetic manner possible all the matters dealt with at that settlement".<sup>69</sup>

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67. Central Archives, Dept. of the Interior, 46/74, Under-Sec. for the Interior to Commissioner for Indian and Asiatic Affairs, 21.6.1929.
68. U.G. 4-21, Report of the Asiatic Inquiry (Lange) Commission.
69. Central Archives, Dept. of the Interior, 46/74, Vol. 2, H.B. Shawa to Principal Immigration Officer, Pretoria 4.7.1916, enclosing handwritten minute "R.H." to Acting Under-Secretary.

This was translated into practice on the lines however, that as the settlement had concerned the Transvaal alone, admission of plural wives and children of men holding a registration certificate in that province only, needed consideration. Names of plural wives were therefore called for. It was emphasised that the concession only applied to Asiatics in possession of registration certificates and was contingent upon knowing the exact number of persons concerned.<sup>70</sup>

The Indian community reacted apathetically to this invitation both as a result of a caution born of being the recipients over long years of bureaucratic inquisitiveness, and because they were more concerned with bringing in the children of such marriages than the wives.

In 1923 in considering a specific case concerning the entry of a child of a plural marriage, the Department of the Interior pronounced (and Lansdown the Law Adviser agreed) that though Clause 2 of the agreement limited the concession to existing plural wives it was intended also to permit entry to children born after as well as before 1914.<sup>71</sup> Subsequently the Department of the Interior, with small regard for the laws of reproduction, decided that with this interpretation the admissions under the agreement would "become of endless duration".<sup>72</sup> Immigration officers at the main ports were therefore informed that Clause 2 of the

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70. Ibid. H.B. Shawe to Principal Immigration Officer, Pretoria, 4.7.1916.

71. Ibid. Vol. 3, Minute 28.8.1923, signature illegible; also handwritten note with Lansdown's opinion.

72. Central Archives, Dept. of the Interior 46/74, Vol. 3, memo, 24.2.1925.

agreement was to be "modified".<sup>73</sup> In fact the clause was wholly abrogated, and the entry of wives and children of polygamous marriages was thereafter strictly regulated in accordance with Clause 3 of the Indians Relief Act admitting only one wife and her children.<sup>74</sup>

Complaints over the inequitable administration of the immigration laws continued sporadically to be raised by the Indian community, frequently causing schism within the community itself. Where a harsh law depended for its mitigation on individual attitudes unjust actions were inevitable. Indian immigration into South Africa became a kind of contest between Indians and the immigration department. This contest was dominated by the attitude of the department that the laws existed for the benefit of Europeans and that its duty was to protect white interests by preventing frauds;<sup>75</sup> while the Indians believed that only by continual vigilance could the Smuts-Gandhi agreement be fully honoured.<sup>76</sup>

No matter how sympathetically the Minister received deputations, it was the behaviour of the official on the spot which was material.<sup>77</sup>

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73. Ibid. Sec. for the Interior to Principal Immigration Officers, Cape Town, Durban, Pretoria 9.5.1925.
74. Central Archives, C.I.A. M. 313, Dept. of Interior to Principal Immigration Office's, 9.3.1925
75. Ibid. M. 39, Vol. 1, points raised by A.M. Cachalia and Immigration Officer's replies; also C.I.D. Johannesburg to District Commissioner C.I.D. Johannesburg 10.1.1916.
76. The Cape Times, 30.1.1919, Cape British Indian Association listing the full grievances of Indians.
77. Ibid. 3.2.1919.

"Officially," J.R. Hartshorne, the Registrar of Asiatics and Principal Immigration Officer of the Transvaal revealed, "we never rely on anything an Indian says".<sup>78</sup> In spite of the claim by the Union Agent in Lourenco Marques (Maputo) of an extensive traffic in illicit Indian immigrants,<sup>79</sup> it is doubtful whether this was done on a large scale. Nevertheless after early 1916, the Department used the informer system regularly. The police (who supervised all immigrants once admitted) paid "kraal natives",<sup>80</sup> and later "game reserve boys and customs boys" on the Portuguese East Africa border, £1 for every illegal Indian immigrant brought in.<sup>81</sup> Subsequently, after 1922 a number of Indian informers were employed in the Union at £5 "a head".<sup>82</sup> Though there was no organisation bringing in large numbers of immigrants, undoubtedly individual Indians continued to be smuggled into the Transvaal where they could earn most, and as a

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78. S.C. 9-1926, Report of the Select Committee on Areas Reservation Bill, p. 202.
79. Central Archives, Dept. of the Interior, 109/74, 9/109/74, 2.1.1918.
80. Ibid. Acting Under-Sec. for the Interior to Commissioner, S.A. Police 5.5.1916.
81. Ibid. Finance Minute 734/15, 9.6.1916; 4/M/168 Acting Principal Immigration Officer, Pretoria 15.7.1918 extended this to all borders of the Transvaal; while 12/109/74 Acting Under-Sec. for Interior to Union Agent, Lourenco Marques, 13.2.1918 indicates the use of African "secret agents ... to apprehend" Indians.
82. Central Archives, Dept. of the Interior, 109/74, Vol. 2, provides several cases.

result the Department continued to use preventive measures such as fingerprinting which was regarded by Indians as the greatest humiliation.<sup>83</sup>

"Fraud and deceit and intrigue" over nominations was the reason given by the Immigration Department for the suspension in 1921 of the fourth point in the Smuts-Gandhi Agreement which had permitted the annual entry of 10 "educated, exempted entrants", six nominated by the British Indian Association and four by the Department of the Interior.<sup>84</sup> These ten were permitted entry as teachers and priests; but some of them engaged in other occupations (possibly because the Indian trading community needed trained personnel). This led initially to "conditions and provisions" being inserted into their documents in spite of Indian protests;<sup>85</sup> and finally to the discontinuation of the system which was replaced by the issue to such entrants of temporary permits renewable at executive pleasure - an affirmation in Indian eyes, of the total restriction on immigration.

The belief continued to gain currency (and was not without a basis in fact as the later condonation scheme was to show) that Indians were unremittingly evading the immigration laws, particularly in Natal and the Transvaal. In addition far from the 1914 Agreement having ensured the Indian Government's objective of achieving amelioration in the conditions of domiciled Indians, the envisaged respect for their vested

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83. A.R. (1938). In 1938 Indian visitors "of a superior type" were exempted from finger printing and women were allowed to present photos for identification.
84. S.C. 9-1926, Hartshorne.
85. The Indian Opinion, 1.4.1932.

rights, as Hancock notes, was subjected to "niggling and restrictive interpretations".<sup>86</sup>

European antagonism was canalised into two demands; segregation and repatriation. This latter term was used interchangeably with the semantically more correct "emigration", for the 1921 Census was to show that some two-thirds of the total Indian population of 161 339 was South African-born.<sup>87</sup> This second "final solution" (the term used by the Governor-General)<sup>88</sup> has relevance for this study; it complements the immigration policy discussed thus far. Restrictive measures dealing with "internal matters" such as the Asiatics Land and Trading Amendment Act, will only be touched on insofar as they reflected the intention of successive governments to make life so uncomfortable for Indians "attempting to live a South African life" that they would prefer to leave, thus diminishing their numbers "as near as possible to the irreducible minimum".<sup>89</sup>

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86. Hancock, W.K., Survey of British Commonwealth Affairs 1918-1939, Vol. 1, p. 203; for details see Pachai, B. The International Aspects of the South African Indian Question 1860-1971.
87. S.C. 9-1926, Dr J.E. Holloway, Director of Census, p. 174 ff.
88. The Cape Times, 22.2.1926, Gov-Gen. to Viceroy 24.9.1925.
89. Ibid. 15.6.1925. The use of a favourite Indian phrase may be unconscious irony.

## CHAPTER VI

### INDIAN REPATRIATION AND EMIGRATION

a) From the Indians Relief Act to the  
Lange Commission. 1914-1921.

At the Imperial War Conference of 1917 the Indian Government officially accepted the principle already openly endorsed by the British Government in 1911 that the Dominions had the right to decide what elements they wished to include in their population and to effect their decisions by restriction of immigration. This right was extended to India and included in a Reciprocity of Treatment agreement in 1918.<sup>1</sup> The Indian Government was prepared to waive its request that Indians be given the right of free movement within the Empire, and concentrate on the issues which this study has shown were regarded as first priority; the promise of just treatment for Indians domiciled within the Empire (including the right to bring in wives and minor children) and a grant to educated persons of the freedom to travel, visit and study in the Dominions.<sup>2</sup>

Australia gave her Indian subjects full citizen rights on the basis of the 1918 Agreement and allowed entry to three classes of Indians - tourists, students and wholesale merchants - for these purposes only.<sup>3</sup>

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1. Cd. 8566, Extracts from Minutes of proceedings and papers laid before the Conference 1917 - 1918, India Office memo. 22.3.1917.
  2. Ibid. Sec. of State for India, A. Chamberlain; Cd. 9177, p. 8. Resolution XXI of 1918 Imperial War Conference; The Cape Times, 1.2.1926, letter from Rev. C.F. Andrews, a strong fighter for Indian rights in the Union.
  3. The Cape Times, 4.2.1920, Rev. C.F. Andrews.

This was not difficult, for the Australian Asiatic total numbered only some 3 000.<sup>4</sup> Meanwhile at the 1917 Conference Smuts had expressed his belief that once whites in South Africa were freed from the fear of flooding by immigrants of another non-white group, "other problems" would be dealt with as "subsidiary" and "the minor administrative matters" occurring from time to time would be adjusted.<sup>5</sup>

When the issue of Indian treatment in the Union arose again in 1918, Sir S.P. Sinha, the Indian Government's representative, handed the conference a memorandum in which he pointed out that by far the largest number of Indians in any one Dominion were in South Africa, and listed the numerous disabilities under which they (consequently) suffered, such as restriction of land ownership in the Transvaal, problems in acquiring trading licences and railway segregation.<sup>6</sup> Henry Burton, the South African representative was sympathetic, as we have seen, agreeing that his government must ensure Indians in South Africa would be "treated as human beings, with feelings like our own, and in a proper manner".<sup>7</sup>

Reason and goodwill might prevail in the quiet corridors of Whitehall; the feeling in South Africa was more accurately reflected by Sir Thomas Watt, former ministerialist. "To those who say that England cannot be a party to a great act of injustice, I reply that this matter is to us in South Africa such a vital fundamental matter that no ethical considerations such as

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4. Walker, E., A History of Southern Africa, p. 582, n.2.

5. Cd. 8566.

6. Cd. 9177.

7. Cd. 9177, 24.7.1918, Discussion XXI.

the rights of man and equal opportunities for all non-Europeans would be allowed to stand in the way."<sup>8</sup>

Thus while public opinion at the time of Union had insisted upon the cessation of Indian immigration to give security, in the next two decades it demanded, particularly in the Transvaal not only an arrest of the tide, but the reversal of its flow; and no political party could resist these demands. When the Governor-General in 1925 informed the Viceroy of India that the public attitudes on the "political, economic and racial status of Indians bears a direct relation to and is almost entirely dependent upon the effectiveness or otherwise of repatriation",<sup>9</sup> he was reflecting attitudes that had prevailed for many years. This was the reality with which Smuts had to contend at home, and which made his passage at successive Imperial Conferences so formidable and uncertain.

As noted Section 6 of the Indians Relief Act had empowered the Minister, under certain conditions, to give Indians free passages to India; bonuses were not mentioned at this stage and the government took no special steps to publicise the offer.<sup>10</sup> The numerous applications for passages indicate however that the Indian community was fully cognizant of the Act's provisions.

Between 1914 and 1919 the number of Indians in Natal taking advantage of these facilities "more than counterbalanced the natural increase of the Indian population".<sup>11</sup> Their total was swollen by those ex-indent-

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8. The Cape Times, 31.3.1926.

9. Ibid. 22.2.1926, letter dd. 15.6.1925.

10. H. of A. Debs. 7.3.1918, Minister of the Interior.

11. U.G. 39-41, Report of the Indian Penetration Commission, p. 5.

ureds, who exercised their rights under Natal Law 25 of 1891 to a free passage home, "in great numbers".<sup>12</sup> The fact that the overwhelming majority came from Natal (in 1917 only 4 persons from other provinces took free passages) can be regarded as meaning that those being repatriated mainly comprised indentured or ex-indentured Indians and not the traders whose competition was so feared. Inevitably colonial-born Indians (unless they were the children of returning Indian-born parents) did not go voluntarily.<sup>13</sup> Like children of any immigrants they had loosened many of the traditional cultural ties with the homeland; a good number had risen in the economic scale and saw no reason to exchange their existing positions for the problematic benefits of peasant life in India.

In the years immediately after the passing of the Indians Relief Act about 17 806 Indians, of whom 5 780 were children under 16, were repatriated or emigrated under the various relief schemes.<sup>14</sup> Breaking down these figures into annual numbers one finds the following: 1914 - 3662; 1915 - 2844; 1916 (the year the last indentures ended) - 5585; 1917 - 2197; 1918 - 1827; 1919 - 1691.

The cost of voluntary repatriation under Act 22 of 1914 was borne by the Department of the Interior; and that of repatriating ex-indentured Indians under Natal Law 25 of 1891 by the Natal Indian Immigration Trust Board (I.I.T.B.) until 1920, when as we shall see its powers and functions were transferred to the government. In 1914 expenditure on repatriation

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12. The Indian Opinion, 22.5.1931.

13. S.C. 9-1926, De Norman, Sec. Colonial-born Indians Assoc, Cape.

14. U.G. 42-34, Statistics of Migration 1933; U.G. 4-21, Report of the Lange Commission; U.G. 50-17, Annual Report of the Dept. of the Interior 1916.

under the Indians Relief Act amounted to £1 614. 17s 8d; <sup>15</sup> in 1915, it rose to £7 122; <sup>16</sup> and in 1916 with the increased repatriations to £10 212, <sup>17</sup> falling to £8 400 in 1917 <sup>18</sup> and to £8 066 in 1918, <sup>19</sup> when fear of submarines, shipping delays and restrictions on taking earnings out of the Union in the form of gold and jewellery, meant fewer Indians availed themselves of the facilities offered. The amount expended in 1919 fell further to £4 685 <sup>20</sup> indicating that the peak for repatriation had been reached, unless new inducements were offered.

Simultaneously between 1911 and 1921 Indians entering South Africa numbered about 12 000, mostly wives and children of domiciled Indians. <sup>21</sup> The Indian Government would not give passports to anyone who did not have legal domicile abroad; further in 1922 it passed an act forbidding emigration for labour purposes without the express consent of the Legislature.

With this migration pattern and with the European population increasing annually by 1.76% compared to the Indian rate of .86%, <sup>22</sup> it

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15. U.G. 27-15, 5/C and A.G., Vote 7, Interior.
  16. U.G. 36-16, 6/C and A.G., Vote 8, Interior.
  17. U.G. 41-17, 7/C and A.G., Vote 25, Interior.
  18. U.G. 42-18, 8/C and A.G., Vote 24, Interior.
  19. U.G. 49-19, 9/C and A.G., Vote 23, Interior.
  20. U.G. 59-20, 10/C and A.G., Vote 24, Interior.
  21. S.C. 9-1926. G.S. Bajpai.
  22. Ibid. p. 174 ff. Evidence of Dr. Holloway, Director of Census on the basis of the 1921 Census. The huge disparity between male and female figures was responsible for this feature.

is evident that the "swamping" fear was largely insubstantial. Cool reason however, has no dialogue with racial prejudice, least of all when it is reinforced by fears of economic competition. Though the Asiatic "invasion" had been repelled, by 1921 78% of Indians in the Union were not agricultural workers.<sup>23</sup> Buried then, under European protestations of concern for white civilisation was the basic reason for hatred of this group; a belief that the Asiatic trader by his lower living standards was able to undercut his white competitors.<sup>24</sup> This feeling was not new; commercial rivalry, though it had assumed a number of protean forms, had for several decades been the point d'appui of anti-Asiatic prejudice.<sup>25</sup>

What was new was the intensity of the segregation and repatriation demands,<sup>26</sup> stoked by the start towards the end of 1920 of the post-war depression which greatly affected the commercial community. The demands presented an insuperable dilemma. Natal industry wanted its

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23. S.C. 9-1926, p. 174. Evidence of Dr Holloway, Director of Census, based on 1921 Census.

24. H. of A. Debs. 17.4.1923, T.G. Strachan (Labour M.P. for Pietermaritzburg North); Ibid. 19.8.1924, J.S. Marwick saw him attacking "the economic stability of the white man in Natal".

25. Apart from the better-known legislation in the former Republics and Natal, see for example the "liberal" Cape's Act 35 of 1906, the Dealers Licences Act.

26. H. of A. Debs. 9.7.1920, Vote 20, Interior, Immigration and Asiatic Affairs. A.S. van Hees (Christiana), J.S. Marwick, I. Purcell (Woodstock), C.T.M. Wilcocks (Winburg). The last spoke of the "detrimental effect" Indians had on the "native mind".

cheap Indian labour; but it was the worker, not the shopkeeper, "the man in the long shirt", who used the free passage offer.

The government was faced with the threat of the National Party, that when it came to power it would repatriate the "coolies" "bag and baggage" - but with "just compensation";<sup>27</sup> in 1920 this intention was included in the Transvaal National Party programme of action.<sup>28</sup> It echoed the clamour of the fiercely anti-Indian "South Africa League" and "Young South Africa". The tide of anti-Asiatic sentiment proved irresistible, and despite the soothing statements the government had made at the 1917 and 1918 Imperial Conferences, Act 37 of 1919, the Asiatics Land and Trading Amendment Act was passed with the object of enforcing the old Republican legislation, by preventing Indians from owning fixed property in the Transvaal outside specific areas. The feeling aroused among them by this act - which for the first time in the legislation of the Union disqualified a particular section of the population by name - was equalled only by that of the anti-Asiatic faction. On February 3, 1920 therefore, the government appointed the Asiatic Inquiry Commission under the chairmanship of Justice Lange and assisted by the ubiquitous Sir Benjamin Robertson, to enquire into Asiatic land claims and trading rights, as well as into trading conditions generally.

In its interim report dated May 12, 1920 the Commission stated that various factors, including optimum employment conditions in India, made it imperative for the government to encourage voluntary repatriation of all classes of Indians (present writer's italics). In the past, the report

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27. The Cape Times, 16.10.1919, Rev. van der Horst at Georgetown.

5.9. 1919; The Cape Times, 16.10.1919; Ibid. 19.11.1919.

28. Ibid. 8.12.1920.

noted, certain factors had tended to reduce emigration numbers. Shipping delays in Durban led to Indians seeking re-employment; while the prohibition on their taking out gold and jewellery was another serious deterrent. The Commission therefore recommended that adequate shipping be provided; that the gold restrictions be relaxed; that provision be made for returning Indians to reach their homes in India after arrival; and that an official be appointed "well acquainted with the Indian mind and their methods to act in a sympathetic manner and to lay before the Indians the advantages of immediately returning to India".<sup>29</sup>

The final report of March 3, 1921, reiterated this carrot strategy for encouraging voluntary emigration,<sup>30</sup> while rejecting compulsory repatriation as impracticable. In addition it suggested the appointment of a single official to handle the government's Asiatic policy, and advised against the relaxation of the immigration laws, coupling this with the institution of more active steps against prohibited immigrants who had evaded these laws.

The government gave immediate effect to the interim report's suggestions. The I.I.T.B., because it represented the employers and therefore implemented a policy contrary to the government's repatriation one, was metamorphosed into an Indian Immigration Advisory Board, controlled by the Union Government and financed out of general funds.<sup>31</sup> An

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29. U.G. 37-20, Interim Report of the Asiatic Inquiry Commission, p.3.

30. U.G. 4-21, Report of the Lange Commission.

31. Govt. Gazette Extraordinary, 1063, 15.6.1920; Govt. Gazette, 1169, 8.7.1921, p. 48, Govt. Notices, 1016, 1017, 1018.

Indian Repatriation Commissioner (H.C. Wynne-Cole) was appointed.<sup>32</sup> Emigrants were allowed to take out gold and jewellery up to £25 in value.<sup>33</sup> To the free journey already allowed from the Indian's home in Natal to his destination in India was added the inducement of a bonus of £5 per head with a maximum payment of £20 per family. Some Indians who asked for repatriation were in rags, and were provided with clothing at an approximate cost of 16/- per man, 6/- per woman and 3/- per child; in 1923-4 £3 8s 2d was spent on this.<sup>34</sup>

In accepting the bonus emigrants were giving an undertaking not to return. A father was obliged to take back with him all his minor children (and for this purpose minority was fixed at 21 whereas for immigration purposes it was 16). The Rev. C.F. Andrews found conclusive evidence of recruiting to induce Indians to take the bonus which deprived the scheme of its voluntary character and soon aroused Indian resistance to the whole repatriation concept.<sup>35</sup>

The immediate effect however of the bonus system was to stimulate repatriation/emigration figures which rose from 1 805 in 1920 to 3 199 in 1921. In spite of a slight decline to 2 699 in 1922 the government

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32. H. of A. Debs. 1949, Vol. 66, 10.3.1949, Col. 1945 et seq. The Bureau was divided into two under Act 31 of 1949. Health services went to the province of Natal, immigration matters to the Union Government.

33. The Cape Times, 30.7.1920.

34. U.G. 39-24, 14/C and A.G., 31.3.1924.

35. The Indian Opinion, 22.5.1931, reprint of article by C.F. Andrews.

decided to renew the scheme for a further year.<sup>36</sup> A little over half those returning were men and about 23% of the total were beyond working age, which meant that India was receiving non-productive immigrants who would further tax her overstrained resources.<sup>37</sup>

Inevitably reactions to the voluntary repatriation policy reflected a wide spectrum of disagreement. The South Africa League, whose objective was the vigorous enforcement of the immigration laws and the ultimate elimination of Asiatics from Natal (but in a manner calculated not to disturb existing industries), decried the whole Lange Report as "pro-Asiatic" and an insult to the intelligence of South Africa.<sup>38</sup> A similar attitude was expressed by Sir Abe Bailey, member of parliament for Krugersdorp, which had a large number of Asiatic traders. The Natal planters, faced with the chimera of a labour shortage, emphasised the government's responsibility for finding an alternative labour supply before the scheme was implemented.<sup>39</sup> Once the local Indian community became suspicious of the scheme's voluntary character, the Natal Indian Congress embarked on a campaign to dissuade people from accepting it.<sup>40</sup> The Viceroy, who had not been consulted, doubted both the scheme's efficacy and its basic premise, namely the fears of "swamping", which he believed had been "sedulously fostered" by propagandists and were

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36. The Cape Times, 27.12.1922, quoting Natal Mercury, 26.12.1922.

37. The Cape Times, 11.12.1922.

38. The Cape Times, 14.7.1920.

39. The Cape Times, 14.7.1920.

40. H. of A. Debs. 20.6.1922, House in Committee of Supply, Interior Vote.

hitherto unsubstantiated.<sup>41</sup>

The views of Sir Benjamin Robertson and the Rev. C.F. Andrews, a doughty fighter for Indian rights, directly contradicted those of the Viceroy. Both believed the Indian in South Africa could never advance and would therefore do better to leave.<sup>42</sup> Andrews noted that the Natal sugar labourers had never shaken off the disability of having come in under indenture, for the sugar companies offered no inducements to their labour supply to improve itself. He favoured the bonus system taken in conjunction with the organisation of definite employment at the other end as a means of encouraging voluntary repatriation. With the consequent reduction of the Natal population there might then be a chance to improve the position of those ultimately remaining. These arguments were a return to the Gokhale amelioration concept, and the 1918 Imperial Conference resolution, links in a long chain of unfulfilled intentions. As earlier drastic immigration restrictions had failed to result in an improvement of the Indian's lot, it was unlikely that the cry for drastic reduction of numbers would fare much better.

During the 1921 parliamentary session the government found itself facing increased demands, particularly from its own members, for a decision as to who would be "dominant" in Natal, and for legislation to prevent the alleged residential and commercial encroachment of Indians in Natal, and to limit the increasing social contact between whites and Indians.<sup>43</sup>

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41. The Cape Times, 26.8.1920, opening of Legislative Council, Simla, 22.8.1920.

42. The Cape Times, 6.4.1920, C.F. Andrews; 15.7.1920, Sir B. Robertson.

43. H. of A. Debs. 3.5.1921, H.G. MacKeurtan (S.A.P. member for Umbilo); see also Hancock Smuts, Vol. 2, p. 143.

The Labour party recommended "repatriation", vigorously encouraged, as the only "fair, effective and practical method" of protecting Western standards and white workers against Asiatic competition.<sup>44</sup> But what of the South African-born Indian? As these could not be compulsorily "repatriated" some members claimed that the only way to get round this difficulty was compulsorily to segregate them. The Nationalists, starting from the premise that an alien race like the Indians could never be South Africans, found no inconsistency in their reiterated call for repatriation with just compensation. C.G. Ficherdt went further, claiming that the future of the white race demanded that even locally-born Indians be "repatriated"; no obligations should be placed on South Africa in the interests of other countries.

Here Fichardt had touched the nub of the matter. For while the government admitted to the seriousness of the position in Natal, Imperial complications again prevented it from drafting remedial legislation.<sup>45</sup> Duncan, now Minister of the Interior promised however to investigate, and if possible introduce legislation to restrict residential integration, which most white South Africans regarded as harmful to both Europeans and Asiatics. No such legislation appeared in 1921 or 1922. Though the Prime Minister advised that the best policy was to continue reducing the Asiatic population by emigration and to encourage white immigration,<sup>46</sup> he did little on either score.

The 1921 Imperial Conference clearly exposed the growing incompati-

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44. H. of A. Debs. 3.5.1921, T. Boydell (Greyville).

45. H. of A. Debs. 3.5.1921, P. Duncan.

46. The Cape Times, 21.12.1921.

bility between Smuts's liberal interpretation of India's Imperial rôle, and the treatment meted out to Indians in his own country. For India the question had a specific and immediate connotation which Smuts understood; her absolute equality with the Dominions was an essential condition of her willing membership of the Empire. In the South African context, however, for him to speak vaguely and loftily of looking at the Asiatic problem "in the larger human sense and from that point of view they must endeavour to make different races, energies and peoples work together on human principles",<sup>47</sup> was meaningless to the point of downright hypocrisy. Pressures from the Fichardts, MacKeurtans and Boydells made it impossible for him to accept the resolution outlining India's expectations which was adopted by the other Prime Ministers.

"The Conference, while reaffirming the resolution of the Imperial War Conference of 1918 that each community of the British Commonwealth shall enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities, recognises that there is an incongruity between the position of India as an equal member of the British Empire and the existence of disabilities upon British Indians lawfully domiciled in some other parts of the Empire. The Conference is accordingly of the opinion that in the interests of solidarity of the British Commonwealth it is desirable that the rights of such Indians to citizenship should be recognised."

The Indian representatives added to this affirmation their "profound concern at the position of Indians in South Africa and their hope that by negotiation between the governments of India and of South Africa,

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47. Ibid. 27.7.1921.

some way can be found, as soon as may be, to reach a more satisfactory position".<sup>48</sup>

b) The Class Areas Bill of 1924

In the interval between the 1921 and 1923 Imperial Conferences, the internal pressures on Smuts to take action on what he had termed "that difficult and embarrassing question, the Asiatic problem" mounted irresistibly. While repatriation was still urged by extremists of all political opinions, the emphasis shifted primarily to compulsory segregation.<sup>49</sup>

An important reason for this was the publication of the 1921 Census figures which revealed two significant and related features.<sup>50</sup> Restricted immigration, and to a lesser extent, the repatriation policy were having a definite effect on the Indian demographic pattern; and the proportion of South African-born Indians had increased to about 65% of the total. The significance of the latter figure meant that under both Union and international law such Indians could not be deported, nor would they emigrate voluntarily; and secondly that the importation of wives from India would become less frequent.

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48. Cmd 1474, Conference of Prime Ministers, 1921, p. 8.

49. H. of A. Debs. 9.5.1922, MacKeurtan, Sir Abe Bailey, Brig-Gen. Byron (S.A.P., Border), P.W. le R van Niekerk (N.P.); The Cape Times, 8.1.1923 stating that 2 years before over 86 000 people had petitioned the government to act against the trader.

50. U.G. 15-23, Third Census, Part I, Population; U.G. 40-24, Third Census, Part VIII, Non-European Races.

The Indian population it will be recalled, now numbered 161 339 (or 2.4% of the total population). Overwhelmingly Natal based, 102 323 were Union-born; of those born abroad, 22 211 had been in South Africa longer than 20 years. Adult males were effectively being kept out by the immigration laws; between 1913 and 1924 the total number of Indian immigrants was 7 361, comprising the wives and minor children of domiciled men.. The children brought in however were predominately male, the intention being to acquire domicile for them so that they could join the family businesses.

Respect for the vested rights of the domiciled population was the quid pro quo which had enabled the government drastically to reduce Indian immigration. Consequently early in 1923 Sir Abe Bailey was told that there was no intention of introducing differential legislation during that session.<sup>51</sup> Nevertheless MacKeurtan the Umbilo member, who spearheaded the anti-Indian agitation, moved for the third year in succession (and was seconded by another S.A.P. Natal member J.S. Marwick) that the government legislate for separate areas in which Asiatic interests could be developed.<sup>52</sup> This was regarded as the just and practicable middle course between the Indian Government's continued efforts on behalf of local Indians deprived, except in the Cape, of all political rights, and the repatriation demands.

The latter, though manifestly impracticable as a long-term solution, continued to be expressed, particularly in Natal. In its report, dated

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51. H. of A. Debs. 24.1.1923.

52. The Cape Times, 10.8.1923, MacKeurtan was the chief speaker at a mass meeting in Durban Town Hall 9.8.1923.

March 18, 1924, the Sub-Committee appointed by the Durban Corporation to review the Class Areas Bill<sup>53</sup> uttered a cri de coeur for a return to repatriation as the only complete - but hitherto not seriously examined - solution. "Its chief merit lies in the fact that if practical, its adoption and application would close and seal the book - and the troubles - the eternal troubles - which confront the Europeans and the Indians in this country, would in course of time be eliminated. One difficulty is that of the South African born Indian. Again repatriation without compensation would be a flagrant injustice. Would the cost be prohibitive? While no answer can be given without a full enquiry, yet parliament by the adoption of such a policy as we have suggested, carried out gradually over a period of years, would in our opinion secure to the country in return for the expenditure, full value in the properties and businesses acquired."<sup>54</sup>

Repatriation not only of the wealthier class but also of the labourer was the target of the Natal Provincial Council. In 1924 it passed, without division, a resolution affirming that the Asiatic problem was a "serious menace" to the Union and suggesting inter alia an increase in the bonus (which would persuade the unskilled worker to leave) and the payment of "fair and reasonable" compensation to property owners.<sup>55</sup>

The intensity of feeling displayed both within and outside parliament by a great many of its own supporters, coupled with the continued erosion of its slender parliamentary majority, forced the government to

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53. H. of A. Debs. 19.8.1924, G. Reyburn.

54. S.C. 9-1926, p. 287.

55. Ibid. p. 372, 13.5.1924 resolution.

change course and agree to the possibility of future legislation. After the earlier disclaimer Duncan announced in April that while nationwide segregation and reservation of trades was impossible, a measure of residential and trading separation could and should be enforced where local authorities wanted it and where the government was satisfied as to its necessity.<sup>56</sup>

Prior to his departure for the 1923 Imperial Conference Smuts affirmed his intention of maintaining the existing (discriminatory) policy towards Indians for the sake of both the black and white races in South Africa.<sup>57</sup> "We have to be very careful," he said, "that policies are not embarked on which will strike at the roots of the great civilisation we are building up on this continent." Consequently at the S.A.P. Congress in Natal in July he enunciated, more clearly, the segregationist legislation at which Duncan had hinted, and which ran quite contrary to the voluntary segregation recommendations of the 1921 Asiatic Commission.<sup>58</sup>

Thus it was inevitable that Smuts would clash again with one of India's representatives at the 1923 Conference, as he was to do years later at the United Nations when next he was Prime Minister. When Sir Tej Bahadur Sapru, his redoubtable Indian opponent appealed to him as an humanitarian and an Imperial statesman, to improve the lot of South African Indians; and because the Union had not been party to the

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56. H. of A. Debs. 17.4.1923.

57. Sen. Debs. 23.6.1923.

58. The Cape Times, 25.7.1923, quoting report in The Natal Witness, 24.7.1923.

1921 resolution to accept an Indian agent to protect Indian "nationals" in South Africa, Smuts rejected the proposals. The question he explained, was not one of colour prejudice; "thinking men" did not believe the Indian was inferior. The matter was tied up with economic competition and the continuance of white civilisation. He could not therefore hold out any hope for the further extension of political rights to Indians.<sup>59</sup>

In his summing up the Secretary of State for India, Lord Peel, accepted Smuts's explanation, which indeed confirmed the basic reason for white hatred of Indians noted above. Where he was simplifying a complex issue however, was to dismiss entirely the existence of racial prejudice which originated in the commercial rivalry. The most hasty perusal of material on the anti-Asiatic agitation indicates that the latter was frequently expressed in wholly racist terms. The extent to which this antagonism had shifted Smuts from the high ideals expressed two years before can be gauged from his subsequent memorandum suggesting that the 1921 resolution be scrapped and replaced by one affirming the right of each Dominion "to regulate citizenship as well as immigration as domestic questions for its own handling".<sup>60</sup>

As a direct result of European pressure on Indians in Natal and the Transvaal, and possibly as an indirect result of an Indian Government measure to do unto whites coming to India what they were doing to

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59. Cmd. 1987, Imperial Conference 1923.

60. Cmd. 1988, Imperial Conference 1923, Appendices, p. 140.

Indians,<sup>61</sup> the first legislative attempt in Union history to deal with Indian "encroachment" was made the following parliamentary session when Patrick Duncan introduced his Class Areas Bill. He castigated those (presumably his Natal colleagues) who spoke most about the Asiatic menace yet wanted to retain the Indian labouring class as a prerequisite for South Africa's development. "That is based on a fallacy which has done a lot of harm to us in South Africa, that you can use the labour of a man and insist that he and his descendants shall always stay in that class where they can give that particular sort of labour."<sup>62</sup> In a free society, as Duncan realised, work gave a man social mobility, so that parliament could not "attempt to draw the line" between different classes of Indians.

Duncan did, however, admit that friction points existed, so that the bill's object was to institute some form of residential and trading separation. The government did not view the measure as a breach of the Smuts-Gandhi Agreement, which Duncan claimed was applicable only to the maintenance of the vested rights of specific traders under particular laws such as the Transvaal gold laws. This view contradicted the Indian interpretation of the agreement's fifth clause, which it saw as a far more general one prohibiting the introduction of any new laws imposing fresh restrictions.

The Class Areas Bill did not go far. It was dropped with Smuts's announcement that he intended to go to the country on June 19. Its brief appearance may however, further have harmed the voluntary emigration scheme. Already by 1924 "segregation" and "repatriation" were words with a pejorative connotation. Both the Indian Government and the local

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61. The Cape Times, 13.5.1924. The measure was passed in February 1924 and empowered the government to retaliate against persons coming from a Dominion discriminating against Indians.

62. H. of A. Debs. 2.4.1924.

Indian community were highly sensitive to legislation which might affect the existing vested rights; and this sensitivity in turn affected repatriation statistics.

Moreover the Indian Government's retaliatory measure of February 1924 created further uncertainty as to how long it would continue to help the South African Government by welcoming the latter's surplus Indian population, particularly those born in the Union. The local population's suspicions, aroused by the bill, were further stimulated during 1924 by the visit of Mrs Sarojini Naidu, a highly articulate member of the Indian National Congress who together with Dr A. Abdurahman of the African People's Organisation advised the Indians not to repatriate.<sup>63</sup>

Certainly the voluntary repatriation figures fell - from 2 716 in 1923 to 1 063 in 1924.<sup>64</sup> But the overriding consideration is the fact that by 1924, with the South African-born Indians comprising such a high percentage of the total Indian population, saturation point for returns had practically been reached.<sup>65</sup> Even after the new government intensified repatriation efforts by increasing the bonus in September 1924 to £10 for every adult with a maximum of £50 per family and by extending the scheme to Cape and Transvaal Indians; and even though it took positive steps (such as the distribution of leaflets and the appoint-

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63. The Cape Times, 3.4.1924.

64. S.C. 9-1926, 13.5.1924.

65. H. of A. Debs. 19.8.1924, Dr D.F. Malan, Min. of the Interior.

ment of an official to recruit Indians for repatriation), to publicise the scheme, there was only a slight increase in numbers.<sup>66</sup> 1 400 left in 1925<sup>67</sup> and 2 100 in 1926; in the following two years the figures declined.<sup>68</sup>

Between 1914 and 1925 19 609 Indians surrendered domicile under the voluntary scheme. Taken in conjunction with the 12 116 ex-indentureds who had returned to India under the free passage scheme, they constituted a total of 31 725 people (or 16.43% of the Indian population) who left the shores of South Africa.

c) Policy in the early days of the Pact Government 1924 - 26.

The accession to power of the Pact Government in June 1924 held promise for those who favoured the implementation of a vigorous anti-Asiatic policy untrammelled by the Imperial considerations which had stayed the Smuts Government's hand particularly after its absorption of the Unionists. The National and (to a lesser extent) Labour Parties had for many years hammered into the electorate the belief that only by whittling down the Indian population drastically could a satisfactory "solution" be obtained for those Indians remaining in the Union. The Labour Party's programme included a clause stipulating "the protection of Western standards against inroads by Asiatic competition and liberal financial provision for the encouragement of Asiatic emigration".<sup>69</sup>

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66. Ibid. Vol. 4, 11.5.1925, Committee of Supply, Vote 20, Interior; 26.5.1925, Col. 3637, Min. of the Interior.

67. Ibid. Vol. 6, 25.2.1926, Committee of Supply, Vote 20, Interior.

68. U.G. 23-24, Report of the Indian Colonization Enquiry Committee for 1933-1934.

69. The Cape Times, 4.1.1924.

The utterances of leading Nationalist spokesmen revealed rather more ruthlessness. P.G.W. Grobler, a member of the Anti-Asiatic League (and later Minister of Lands) had in 1919 urged the government to appoint an arbitration board to expropriate on a basis of just compensation, "all interests whatsoever of Asiatics in the Union of South Africa and representing all the Asiatics holding trading licences in the Union".<sup>70</sup> In the 1924 election campaign J.C.G. Kemp (later Minister of Agriculture) used blunter language. "Put us into power and we will take the Asiatic by the scruff of the neck and put him out of the country".<sup>71</sup> Tielman Roos (Minister of Justice in the Pact Ministry) maintained that all Indians not born in South Africa must sooner or later be repatriated and their rights statutorily limited.<sup>72</sup> While General Hertzog's tone was more moderate his words could have brought small comfort, for example, to the Indian delegation he met in Durban.<sup>73</sup> Segregation, he felt, should be applied to Asiatics as well as Africans; while repatriation could be implemented in a way which would not cause difficulties with the British Government. In 1924 when he expressed his disapproval, to a deputation from the Transvaal British Indian Association, of Smuts's policy of "continued pinprick against the Asiatic instead of .... adopting a bold policy of expatriating the Asiatic from the country" he added that the alternative (which no Nationalist could entertain) was allowing "the lawfully resident Indians to remain in the country and granting them the

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70. H. of A. Debs. 1927, Vol. 8, 14.3.1927, Col. 1403.

71. Ibid. Col. Collins quoting Kemp at Wolmaransstad.

72. The Cape Times, 1.10.1925 in Durban 30.9.1925; 25.11.1926.

73. Ibid. 24.10.1923.

elementary rights of humanity".<sup>74</sup>

The outlook for South African Indians was indeed bleak. The new Minister of the Interior soon made it clear that unlike its predecessor the Hertzog Government regarded the Indian issue as one of national importance, and that it was not prepared to leave the initiative to local authorities. At the same time it was obvious that political reality would be an effective brake on the implementation of the Pact's wilder election promises. Indians could not be summarily ejected; the government would therefore, in the recess be forced to study "the various phases of the Asiatic problem in the Union".<sup>75</sup> Meanwhile the financial incentive to persuade Indians to emigrate was, as we have seen, immediately doubled.

Nevertheless whatever support the Pact had obtained in Natal had been given on the understanding that the Nationalists alone could do what public sentiment demanded.<sup>76</sup> Consequently it was logical that after June 1924 the expectations of the anti-Asiatic lobby should be raised and that it should press a sympathetic government into passing some kind of legislation to deal with the Asiatic "menace".

In the new parliament's first session J.S. Marwick asked for draconian legislation to protect white civilisation in the Union.<sup>77</sup> In addition to the now familiar enforcement of residential and trading segregation, he urged the prohibition of an Indian employing white women, the

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74. S.C. 7-1930, Report of the Select Committee on Asiatics in the Transvaal, p. 241.

75. H. of A. Debs. 5.8.1924, Dr D.F. Malan; also Vol. 6, Col. 1003-4.

76. Ibid. 19.8.1924, T.G. Strachan, Labour member, Pietermaritzburg North.

77. Ibid. 19.8.1924.

prohibition under severe penalty of Asiatics holding superior posts to whites, and gross limits on the issue and transfer of trading licences in Natal and the Transvaal. W.A. Deane, also a Natal member, declared that compulsory segregation would considerably help the acceleration of "voluntary repatriation".<sup>78</sup> G. Reyburn, Labour member for Umbilo, extended the traditional antagonism towards competition from traders to include what he regarded as the far greater dangers of Indian infiltration into skilled trades. His nostrum was a composite one, including a minimum wage bill, segregation, and adequate financial provisions to induce Indians to emigrate.

In the following year O.R. Nel (S.A.P. member for Newcastle) and W. Cox (Labour M.P.C. for Pietermaritzburg) addressed a meeting arranged by the Newcastle Chamber of Commerce, one of several Chambers in Natal and the Transvaal to hold such meetings.<sup>79</sup> It unanimously expressed its appreciation of the government's action in increasing the repatriation bonus, and for its assent to the Natal Boroughs Ordinance (which prevented more Indians from acquiring the municipal franchise); and requested legislation restricting land purchase and the grant of trade licences. In parliament on May 15, Nel proclaimed that Indians were not South Africans. "The whole of the means they make here they send to Asia .... the sooner we get rid of them out of South Africa the better."<sup>80</sup> On March 18 anti-Asiatic meetings were held in Johannesburg at Norwood and

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78. Ibid.; see also 11.8.1924, H.E.K. Anderson (Klip River).

79. The Cape Times, 23.1.1925.

80. H. of A. Dabs. 1925, Vol. 4, 15.5.1925, Col. 3333.

Turffontein. At the former the main speaker urged South Africa to follow the United States, Australia and Canada in closing its doors to Asiatics.<sup>81</sup>

The report of the Select Committee on the Areas Reservation Bill provides an interesting commentary on the intensity of the dislike aroused in white breasts by this most mute section of the population. H.H. Kemp, a Durban town councillor who found the bill "repressive", nevertheless opined that there was no sounder or more "prudent" solution "except on the basis of 'OUT'".<sup>82</sup> The tone of J.S. Young, Mayor of Port Elizabeth was even more peremptory. "Clear them out, the sooner the better."<sup>83</sup> "I don't think", he added, "you will ever bring them to the European standard - not in a thousand years."<sup>84</sup> The egregious Cox claimed that Indian merchants brought in illegal immigrants and paid them practically nothing. W.H. Pitcher, the Estcourt Town Clerk, dismissed absorption as "inconceivable"; repatriation was "the great outcry in Natal".<sup>85</sup>

Thus the views of the government mirrored and reinforced not only the convictions of the more articulate opinion-makers but of a wide segment of the public especially in Natal and the rural Transvaal. The

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81. The Cape Times, 20.3.1925.

82. S.C. 9-1926, p. 276, minority opinion in report of Durban Town Council, 20.3.1925.

83. Ibid. p. 357.

84. Ibid. p. 362.

85. Ibid. p. 437.

legislation introduced by Dr Malan well into the 1925 session, based as it was on the proposition that the Indian was an alien element whose numbers must be reduced, was to a great degree "the crystallisation of the determination of the whole European population to rid this country once and for all of a political, social and economic curse".<sup>86</sup> It combined two complementary methods of coercion; by hedging in an Indians life with an inordinate number of restrictions, he would finally succumb to the pressures and depart "voluntarily".

The main provisions of the 1925 Areas Reservation and Immigration and Registration (Further Provision) Bill comprised a segregation clause identical to that in the Class Areas Bill; a restriction on land acquisition outside the 30 mile-deep Natal coastal area; and immigration provisions whose consequences are of interest to this study. Clause 16(c) might restrict Asiatics lawfully resident in the Union from entering Natal or the Cape. Clause 17(11) put a five year limit after August 1, 1925 on the entry of wives and children of domiciled Indians, which was consonant neither with the 1914 agreement nor paragraph 3 of the Reciprocity resolution carried unanimously at the 1918 Imperial Conference. Clause 17 (e), substituted for Section 5(e) of Act 22 of 1913, empowered the Minister to withdraw from Asiatics born of parents legally resident in the Union, domiciliary rights they had already acquired or might acquire in another province.

Again the vociferous reactions to the proposed legislation emphasised either its inadequacies or its excessive harshness. The Durban Corporation

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86. Corbett, J.E., A Study of the Cape Town Agreement p. 51, quoting The Natal Mercury, 19.2.1926.

with an unenviable display of confused thinking reflecting the conflicting pressures to which it was subject, declared that only repatriation with adequate compensation offered a satisfactory solution;<sup>87</sup> yet it approved of the bill's segregation provisions as offering some improvements and finally recommended a conference to arrive at an ultimate solution which would satisfy Imperial considerations. The Rev. C.F. Andrews condemned the bill for demolishing the work of successive Imperial Conferences which had resulted in India curtailing her immigration rights in the various Dominions in return for a promise of justice for domiciled Indians.<sup>88</sup>

The view of the bill as an infringement of previous agreements and the Lange Report's opposition to compulsory segregation or repatriation, was the line taken by other clerics like the Bishop of Natal,<sup>89</sup> and Bishop Talbot of Pretoria.<sup>90</sup> The bill, the latter wrote, formulated an oppression based on colour prejudice; its aim was simply "to drive down and out the Indian community in South Africa".

While Indians in India regarded Malan's bill as unnecessarily harsh, local Indians reacted less vigorously. Nevertheless they labelled the measure as a breach of the trust shown in the 1914 agreement and the Imperial Conference resolutions, (which hinged on the interpretation placed on the phrase "vested rights") and claimed that the restrictions

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87. H. of A. Debs. 1948, Vol. 62, Col. 1227, C. Neate.

88. The Cape Times, 13.1.1926.

89. Ibid. 8.2.1926.

90. Ibid. 12.1.1926.

on land ownership in Natal contravened the pledges under which indentured Indians had originally been introduced in that colony.<sup>91</sup> The Colonial-born Indians Association of the Cape objected to the elimination of dual domicile and the limitations placed on the inter-provincial movement of Colonial-born Indians, who, it maintained, should be treated on the same footing as the Cape Malays - with whom the Cape Moslem Indians were inextricably mingled by that stage.)

The South African Indian Congress which professed officially to represent Indian opinion sent a deputation to Malan on November 16, 1925.<sup>92</sup> While he was prepared to modify details, he refused to deviate one jot from the principle of the bill. His intransigence was partially the result of negotiations he had begun, as we shall see, with the Indian Government; but it was undoubtedly strengthened by the fact that the S.A.I.C. had sent a deputation to India, led by Dr Abdurahman, to lay its case before Congress and the Viceroy. The latter, while expressing great sympathy and a desire to help, made it clear that his government could not interfere with the Union Government's right to implement its own policy, an attitude much criticised by Gandhi and Congress.

Nevertheless as it had been a party to indentured labourers coming to Natal, and until South African Indians had some way of effectively making their opposition felt in South Africa, the Government of India could not "divest itself of a certain feeling of responsibility for them".<sup>93</sup> Already since April 8, 1925 it had been trying to arrange a

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91. S.C. 9-1926; The Cape Times, 28.1.1926; Die Burger, 12.11.1925.

92. The Cape Times, 17.11.1925.

93. S.C. 7-1930, p. 347, J.D. Tyson, Acting Agent, Government of India; Die Burger, 21.12.1925; see also Tinker, H., Separate and Unequal p. 83 ff.

conference (suggested in 1924 by J.H. Thomas, the Secretary of State for Colonies) to effect some compromise between the divergent viewpoints of the two countries. There followed several months of jockeying for position. The Indian Government under nationalist pressure, had to emphasise its concern with Indian rights in South Africa; the South African Government under pressure from its nationalists, had to emphasise its insistence that there be no interference in the Union's domestic affairs. Consequently the Governor-General made it clear that the holding of a conference and a subsequent improvement in the domiciled Indian's status was contingent upon the maintenance of immigration restrictions and the grant, by the Indian Government, of a suitable concession to white public opinion in the form of effective co-operation in a repatriation policy.<sup>94</sup> The Viceroy in reply put his finger on the shortcomings in the South African argument; because of the high proportion of South African born-Indians, repatriation alone could not be expected to solve the question of economic competition which underlay the tension.<sup>95</sup>

There the matter of a conference rested temporarily. Then on September 24 the South African Government attempted to strike a bargain. If the Indian Government would assist in arranging a land settlement scheme to add weight to the existing inducements, thereby possibly persuading greater numbers of locally-born Indians to emigrate, a conference might be held at which other matters affecting Indians could be discussed.

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94. The Cape Times, 22.2.1926, Gov.-Gen. to Viceroy, 15.6.1925.

95. The Cape Times, 22.2.1926; 14.7.1925.

The resentful Indian nationalist reaction to the terms of the South African bill had left no doubt that the Indian Government could not compromise over concepts as emotion-charged as "segregation" and "repatriation".<sup>96</sup> Consequently the Viceroy refused to commit himself in advance by promising co-operation in finding a more effective method of reducing the local Indian population.<sup>97</sup> The most he would offer was an investigation into the reasons for the ineffectiveness of the present scheme. To do this he therefore suggested a delegation be allowed into South Africa to examine local conditions.

In spite of its insistence that repatriation was the only way to satisfy public opinion and therefore improve the Indian position, the Union Government agreed to receive a fact-finding deputation whose terms of reference authorised it to investigate alternative solutions. It comprised C.F. Paddison a senior British official in the Indian Civil Service, two prominent Indian unofficials, the Hon. S.R. Ali and Sir D.P. Sarvadhikary K.C., a secretary C.S. Bajpai and an assistant C.S. Ricketts.<sup>98</sup>

The deputation left India on November 25, 1925, to examine the general condition of Indians in South Africa;<sup>99</sup> meanwhile a new bill was to be introduced early in the 1926 session. In its interim report

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96. The Cape Times 28.12.1925, Report of Indian National Congress 40th session at Cawnpore, 26.12.1925.

97. Ibid. 22.2.1926, Viceroy to Gov-Gen. 9.10.1925.

98. Ibid. 22.2.1926, Viceroy to Gov-Gen. 28.11.1925.

99. Ibid. 22.2.1926, Viceroy to Gov-Gen. 26.11.1925.

the deputation found no justification for European fear of increased Indian competition except in the tailoring and furniture trades in Durban, and consequently requested a fresh inquiry to verify the facts on which agitation for the bill had been based.<sup>100</sup> The Indian Government therefore asked for the appointment of a Commission on the lines of the 1921 one, before which the deputation and local Indians could give evidence. In its refusal the Union Government stated its belief that the situation had not changed materially since 1921 and that it could no longer delay legislation for which pressure was mounting.<sup>101</sup>

Nevertheless the South African Government was not indifferent to the charge that it was not providing a real opportunity for the Indian case to be heard. Moreover the unofficials in the Indian Legislative Assembly, having conferred with Dr Abdurahman, were threatening to request the Imperial Government to withhold assent from Malan's bill if a Round Table conference were refused.<sup>102</sup> Finally the Governor-General, Lord Athlone intervened directly, realising the bill's potentially harmful effect on Imperial solidarity. Consequently the Union Government was prepared to take the unusual step of referring the legislation to a Select Committee before the Second Reading which would permit discussion of the bill's principle. The offer was made contingent on the Paddison deputation only, giving evidence, and also on the Committee reporting within sufficient time to enable parliament to legislate during the 1926 session.<sup>103</sup>

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100. Ibid. 22.2.1926, Viceroy to Gov-Gen. 10.1.1926; see also S.C. 9-1926, Paddison deputation's conclusions 25.3.1926.

101. The Cape Times 22.2.1926, Gov-Gen. to Viceroy 5.2.1926.

102. Ibid. 26.1.1926.

103. Ibid. 22.5.1926, Gov-Gen. to Viceroy 5.2.1926; H. of A. Debs. 1926, Vol. 6, 17.2.1926, Min. of the Interior.

The government was riding two horses simultaneously, for Malan introduced a revised and more stringent version of the 1925 bill on February 8, 1926.<sup>104</sup> The "reservation of residential and trading areas in urban areas for certain persons having racial characteristics in common" was now to be applied in the whole Union and not simply the Natal coastal strip. In addition the bill proposed to consolidate immigration legislation by amending the Immigrants Regulation Act, the Indians Relief Act, the Transvaal Asiatic Registration Amendment Act 36 of 1908, and by repealing the Chinese Exclusion Act, Cape Act 37 of 1904, and Natal Act 28 of 1897.

The Viceroy's acceptance of the February 5 offer and his intention of instructing the deputation to oppose both the principle and details of the measure were sent on February 9; this was followed on February 12 by the South African Government agreeing to allow the local Indian community to give evidence through its representatives.<sup>105</sup>

On February 17 Malan outlined to the House the negotiations with India, thereafter moving as an unopposed motion that the Second Reading of the Areas Reservation Bill be discharged, the subject to be referred to a Select Committee which would report on or before April 1, (later extended to April 23).<sup>106</sup> Soon after the correspondence on the

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104. Ibid. Col. 329ff.

105. The Cape Times, 22.2.1926.

106. H. of A. Debs. 1926, Vol. 6, 19.2.1926. It comprised the Min. of the Interior and Messrs Alexander, Coulter, Lennox, M.L. Malan, J.S. Marwick, E. Oppenheimer, Pearce, Reyburn, Rood, van Hees, Vermooten, Duncan, Fordham and Rev. Hattingh.

negotiations up to this point appeared in the press.

While the committee heard evidence the two governments resumed negotiations to adjust their attitudes, particularly towards the repatriation scheme, in such a way that a conference could follow. Stated crisply, the fundamental issue was whether such a conference was "to be held with the idea of considering the best method of repatriating the Indians here or is it to be held with the idea of improving conditions of the Indians as permanent residents in South Africa"?<sup>107</sup>

As Lord Reading was leaving the viceregal office on April 3 and the South African parliament was due to rise on April 1, speed in finalising arrangements was essential. The Viceroy could not commit himself solely to an investigation of schemes to reduce the Indian population. The South African Government could not hold up the proposed legislation unless parliament and the public could be assured of "definite and substantially prospective results to be anticipated from the proposed conference".<sup>108</sup>

Final agreement was reached on April 17.<sup>109</sup> The Indian Government accepted the South African Government's formula that public opinion would not favour a settlement which did not hold out the reasonable prospect of "safeguarding the maintenance of western standards of life by just and legitimate means".<sup>110</sup> In return, the South African Govern-

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107. S.C. 9-1926, p. 489.

108. The Cape Times, 24.4.1926, Gov-Gen. to Viceroy, 20.2.1926.

109. Ibid. 24.4.1926.

110. H. of A. Debs. 1926, Vol. 7, 23.4.1926, Min. of the Interior.

ment accepted the Indian Government's suggestion that the bill be further held up while the conference discussed an alternative solution.

On the basis of this innocuous consensus which committed neither side to a prior or definite policy, the way was cleared for a conference optimistically directed towards finding the mean between the one view that Indians be totally excluded and the other that they should acquire all the rights enjoyed by Europeans.

The suspension of the bill was an obvious move. Under the menace of its conditions no co-operation could be expected either from India or from local Indians who saw it as the final insult to Indian "izzat" ("self respect" or "sentiment"), the culmination of a series of harsh, oppressive measures pre-dating Union and the final negation of innumerable promises, agreements and resolutions.

## CHAPTER VII

### THE CAPE TOWN AGREEMENT 1927:

#### REPATRIATION

The Round Table Conference met in Cape Town between December 17, 1926 and January 11, 1927. The Indian deputation was led by Sir M. Habibullah, a Moslem member of the Viceroy's Council and included Sir G. Paddison and the Hon. Srinavasa Sastri, the eminent statesman and politician. The Pact Government's representatives were the Prime Minister and the Ministers of the Interior; Mines and Industries (F.W. Beyers who had led a factfinding delegation to India in September 1926); Labour (T. Boydell); and Defence (F.H.P. Creswell).

The agreement, which was released simultaneously by both governments on February 21 was not a formal treaty but "an honourable understanding between the two governments to give the solution of the Indian problem along the lines of mutual co-operation a fair and reasonable trial, and to consult each other with respect to any improvement in the carrying out of that solution".<sup>1</sup> Two conditions had to be fulfilled. From the South African viewpoint it was essential that the provisions actually or apparently embody the popularly held belief that only a reduction in Indian numbers could produce a solution to the "question". The adverse effect on Indian goodwill of restrictive measures such as the Class Areas Bill had been demonstrated; it was necessary therefore

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1. H. of A. Debs. 1927, Vol. 8, 8.4.1927, Col. 2403, Min. of the Interior.

to introduce a scheme which would have the co-operation of the local Indian population. Conversely such a scheme must not compromise the Indian Government's rôle as protector of South African Indians. Thus the cornerstone of the agreement was a more vigorously implemented "assisted emigration" scheme, presented in such a way as to show it was purged of the taint of racial inferiority which had wrecked earlier schemes. Ancillary to this was the so-called "upliftment clause". Under it the South African Government officially recognised for the first time that a considerable number of Indians would remain in the country as part of the existing population, but as a part with no political rights. It agreed - though with the stipulation that it could not advance too far ahead of public opinion - to institute certain improvements in housing, higher education and an adherence to the "equal pay for equal work" clause of the Industrial Conciliation Act 27 of 1925. An indefinite promise was held out of an amelioration in the Indian trader's position "when the time for the revision of the existing trade licensing laws arrives". Finally the Union Government asked for the appointment of an agent of the Indian Government in South Africa to ensure continuous co-operation between the two countries and Srinavasa Sastri, a member of the Privy Council, took up the position on May 28, 1927.

While Gandhi did not give the agreement his unequivocal approval, the Indian Government thankfully accepted it as signalling "a change of heart in South Africa".<sup>2</sup> In the Union, while Indian opinion was

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2. The Cape Times, 24.2.1927, Habibullah speaking in Delhi, 23.2.1927.

divided, Europeans of all political shades showed a high consensus of dissatisfaction. The Natal S.A.P. members, not averse to using the occasion for political gain, maintained that the government had failed to fulfil its promises to deal drastically with Indians, and claimed that the upliftment clause would defeat the emigration policy; several advocated a return to the 1926 Areas Reservation Bill.<sup>3</sup> Comments of National Party Members of Parliament and newspapers<sup>4</sup> indicate that at grass roots level there was similar discontent and that the party leaders only achieved acceptance of the proposals on the grounds that while imperfect, the agreement was the best available. From the start there was a groundswell of feeling (which the government could hardly condone publicly) that it would not be the emigration scheme, but trade boycotts and the difficulties created by local authorities in granting licences, that would finally squeeze out the class which the articulate opposition in Natal and the Transvaal feared most.<sup>5</sup>

The agreement was, in fact, a deception - less a compromise than a capitulation by the manifestly weaker party. India - and Sastri and Sir Kurma Reddi's actions as Indian Agents substantiate this - justified her acquiescence by placing reliance on the upliftment clause. But the Union Government was inevitably thinking primarily in terms of reducing numbers as Dr Malan's letter to the Potchefstroom Chamber of Commerce

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3. H. of A. Debs. 1927, J. Henderson, O.R. Nel.

4. See for example Die Afrikaner, a Natal N.P. paper 25.2.1927.

5. See for example H. of A. Debs. 1927, Vol. 8, 14.3.1927, H.D. van Broekhuizen.

indicates.<sup>6</sup> "The whole object of the agreement", he wrote, "is to get as many Indians repatriated as possible and the energies of the conference were bent in that direction namely to draw up a satisfactory scheme with the help of the government of India. All other points were subordinate to this .... what has been reached is a new friendly basis to give the new repatriation scheme a fair chance."

Even before 1921 Union policy had been based on voluntary repatriation and segregation. In 1927 the government did not surrender its right to deal legislatively with the Indian problem "whenever and however it felt this to be necessary and just"; in other words, it did not renounce the introduction of alternative measures should the repatriation scheme not work.<sup>7</sup> Nor did it remotely relax its intention of preventing outside interference in the Union's domestic affairs. Consequently the agreement was achieved with the minimum sacrifice on the Union Government's part, for the main points of friction were left untouched. The restrictions on inter-provincial movement remained (to the dissatisfaction of Natal whites who hoped the other provinces would syphon off some of their unwanted Indians) as did the deprivation for Indians of the franchise. As noted before, the restrictions on the entry of wives and

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6. Webb, Maurice, "The Indian in South Africa: towards a solution of Conflict", Race Relations, Vol. 11, No 1, 1944, p. 4 quoting The Star 12.4.1927; see also H. of A. Debs. 1939, Vol. 34, Col. 4218 et seq.

7. H. of A. Debs. 1927, Vol. 9, 16.6.1927. The Minister of Lands stated that if the agreement were unsatisfactory it could be abandoned at any time and something different announced.

children were tightened, which had the practical effect of stopping all immigration. Conversely the upliftment clause was couched too vaguely and unspecifically to be of real value. On balance, the South African Government gave away nothing. All the Indians got was a postponement of further oppressive legislation, until such time as the agreement lost its validity when the emigration scheme began to dry up and there was no further chance of balancing emigration against natural increase - which occurred within five years.<sup>8</sup> In spite of the Union Government's recognition of the Indian's right to be regarded as a permanent part of the population, his continued presence particularly as a trader and semi-skilled artisan revived the decades-old cry that he was undermining the white man. The threat of boycotts was renewed and followed by the legal harassment of domiciled Indians.

As the most important clause in the agreement, the assisted emigration proposal (to India or other countries where Western standards were not required) requires closer examination.<sup>9</sup> Any Indian of 16 or over could avail himself of the offer; as with the earlier Smuts Government scheme a father using it had to take his wife and minor children. For those over 16 the bonus was £20; minor children received £10 each with no maximum being fixed for a family. The bonus was paid on arrival at the destination. "Decrepit" adults - those too infirm or old to earn a living - might, at the Union authorities discretion, receive a pension in lieu of, or in addition to the bonus. The grant of

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8. H. of A. Debs. 1943, Vol. 46, 14.4.1943, Col. 5434, D.F. Malan.

9. U.G. 39-41, Report of the Indian Penetration Commission, p. 7.

a free passage included the rail fares to and from the ports of embarkation and disembarkation respectively, the latter being limited to Bombay and Madras. Stricter supervision of conditions and facilities on ships and more frequent sailings, were to be instituted to make the scheme more efficient and obviate delays which always deterred would-be emigrants. At least one month in advance detailed information concerning the occupations and finances of the individuals in each batch of emigrants was to be sent to the Indian authorities, who were to protect the arriving emigrant from squandering his money, and help him settle in the occupation for which he was best qualified.

While the pill of departure was thus exceedingly sweetened, conditions of return were stringent. The emigrant would be allowed to come back within 3 years - but not before one year, so as to prevent abuse of the scheme - provided he refunded before he left India, the bonus and the cost of the passage. Pro rata reductions were allowed for family members who had died or for daughters who had married in India and remained there. No passport was to be issued by the Indian Government unless all the money had been refunded. These were strong deterrents. Thus Smuts's accusation that thousand of Indians were making "joy rides" to India was flippant in the extreme when it is remembered that the great majority of emigrating Indians were poverty-stricken labourers.<sup>10</sup> By August 31, 1933 when the scheme was virtually defunct,

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10. H. of A. Debs. 1929, Vol. 12, 11.2.1929, Min. of the Interior; The Cape Times, 1.1.1929, Sastri stated that since August 1928 only two people had taken the chance to return.

only 291 people had returned to South Africa.<sup>11</sup>

After three year's continuous absence from the date of departure Union domicile was forfeit in accordance with a proposed revision of the law on domicile which was to have general application. The Habibullah delegation had asked that the previous policy of making emigrants sign a document on the day of departure renouncing domicile or the right of return, be altered particularly so as not to affront the South African-born Indian. This request was granted, not, Malan made plain as a concession to the Indian Government, but so as not to affect emigration adversely.<sup>12</sup>

For re-entry within the time limit the unity of the family would be recognised, though the Minister might in cases of hardship allow one or more members to remain behind. A son who went as a minor, attained his majority, married and had issue would be allowed re-entry with his wife and children on condition he came in with the rest of his family. A daughter marrying outside the Union acquired the husband's domicile and would not be re-admitted unless the husband were domiciled in the Union. Thus the letter of the law was strictly adhered to, but compassion and humanity were totally absent.

The necessary statutory authority to implement the financial aspect of the revised emigration scheme was provided by Section 11 of Act 37 of 1927, the Immigration and Indian Relief (Further Provision) Act. The new arrangements came into operation on August 15, 1927 though the

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11. U.G. 26-33, 23/C and A.G. 1932-33.

12. H. of A. Debs. 1927, Vol. 9, 9.5.1927.

bonuses had already been raised in February. Statistics culled from different sources are highly idiosyncratic. Nevertheless it is obvious that the immediate effect was an upsurge in numbers exceeding even the best figures under the 1921 scheme, which aroused an agreeable, if premature euphoria in government breasts. Between the date of inception and the end of December 1927 1 677 Indians left, 50% of the adult males being agricultural labourers;<sup>13</sup> in 1928 this figure rose to 3 489.<sup>14</sup> Whereas between 1921 and 1926 the average monthly emigration figure had been 161, between August 1927 and March 1928, the figure rose to 342,<sup>15</sup> reaching a peak of 453 in December 1928.<sup>16</sup> Between January and December 1929, there was a big drop, only 1 336 leaving under the scheme.<sup>17</sup> In 1930 the number fell to 1 314 and to 1 011 in 1931.<sup>18</sup> In that year, however, as will become apparent, other arrangements were made for Natal emigration so that these figures reveal only part of the picture. By the middle of 1929, according to the Minister of the Interior's statistics, only 170 Indians had emigrated from the Transvaal, indicating that the trading class was remaining in South Africa.

The total cost of repatriation except for the last couple of years, was borne by the Department of the Interior. The difficulties of gauging the extent to which Indians would use the scheme resulted in

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13. A.R. 1927.
  14. H. of A. Debs. 1930, Vol. 14, 14.4.1930, Min. of the Interior.
  15. The Cape Times, 24.9.1928, J.B.M. Hertzog.
  16. H. of A. Debs. 1929, Vol. 13, 9.8.1929, Min. of the Interior.
  17. Ibid. 1930, Vol. 14, 24.1.1930, Min. of the Interior.
  18. U.G. 23-24, Report of the Indian Colonization Enquiry Committee for 1933-1934.

varying discrepancies between the amount voted for expenditure and the amount actually spent. The expense figures are valuable however, for providing more accurate statistics as to the scheme's efficacy. The estimate for expenses for the year ending March 31, 1927 was £30 000;<sup>19</sup> the Auditor-General's report for 1926-7<sup>20</sup> indicates that £41 677 was spent. In the following year £80 000 was voted and £83 825 spent because as noted above Indians volunteered more freely than expected.<sup>21</sup> The estimates for 1928-9<sup>22</sup> were therefore raised to £85 000 of which however only £70 098 was used because the Indians did not emigrate as anticipated.<sup>23</sup> The amount voted for 1929-30 was £70 000 of which however a mere £28 473 was used.<sup>24</sup> In 1930-1 £55 000 was voted and £27 122 spent of which £17 603 was paid out in bonuses.<sup>25</sup> In 1931-2 the vote was reduced drastically to £7 500 because the cost of the Natal emigration after April 1, 1931 was borne by the Indian Immigration Board under Section 18 of Act 45 of 1931 which amended the principal act.<sup>26</sup>

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19. U.G. 1-26, Estimates of the Expenditure to be defrayed from Revenue Funds during the year ending 31.3.1927.
  20. U.G. 39-27, 17/C and A.G. 1926-7.
  21. U.G. 41-28, 18/C and A.G. 1927-8; see also Die Burger 2.3.1928.
  22. U.G. 1-29, Estimates ... during the year ending 31.3.1930.
  23. U.G. 44-29, 19/C and A.G. 1928-9.
  24. U.G. 36-30, 20/C and A.G. 1929-30.
  25. U.G. 27-31, 21/C and A.G. 1930-31.
  26. The funds of the I.I.T.B., originally used to cover all expenses of indentured Indians, comprised about £120 000, lying idle after indentured labour ceased. The S.A. Indian Congress felt this money should have been used to implement the upliftment clause.

In that financial year 1 890 Natal Indians including 14 ex-indentureds left at a cost of £46 702.<sup>27</sup> In 1932-3 £6 500 was voted and £8 279 spent on sending away 315 Indians other than those from Natal;<sup>28</sup> the Indian Immigration Board repatriated 2 363 at a cost of £55 617 of which £34 257 was bonus money. In 1933-4 when the charges for Natal Indians again reverted to the Department of the Interior £60 000 was voted of which £39 347 was spent on assisting 1 582 persons to emigrate.<sup>29</sup> During 1934-5, 1 239 left at a cost of £22 478.<sup>30</sup> By 1935-6 the scheme was barely operating, only 491 going at a cost of £16 943 including £11 515 on bonuses and the financial provisions for 1936-7 were consequently further reduced.

Up to the first quarter of 1932 some 10 000 Indians had left and about 200 had returned.<sup>31</sup> This was nothing like the number the government had hoped would go, but it consoled itself that "more Indians left this country for good than in any other similar period in the whole history of the Asiatic question".<sup>32</sup> By December 1940 on the eve of

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27. U.G. 29-32, 22/C and A.G. 1931-32.

28. U.G. 26-33, 23/C and A.G. 1932-33.

29. U.G. 41-34, 24/C and A.G. 1933-34.

30. U.G. 39-35, 25/C and A.G. 1934-35.

31. H. of A. Debs. 1932, Vol. 19, 21.4.1932, Col. 3522, Malan;  
Ibid. 1944, Vol. 47, 11.2.1944 gives a figure of 16, 328 repatriations between 1.1.1926 and 31.12.1933.

32. Ibid. 1932, Vol. 19, 26.5.1932, Col. 5404-5, D.F. Malan.

the scheme's suspension, a total of 17 542 had emigrated comprising some 10% of the total Indian population. Most were Natal residents except for 1 229 from the Transvaal and about 458 from the Cape.<sup>33</sup>

What factors affected emigration? This is not an easy question to answer as so many contradictory forces operated and few, if any emigrants articulated their thoughts publicly. Economic conditions and the ignorance of the emigrants seem to have predominated. The early rush in 1927 was probably triggered off by the granting of the increased bonus which allowed the really indigent to pay off small debts and still retain a little capital on arrival in India.<sup>34</sup> The governments use of pamphlets and agents to publicise the scheme,<sup>35</sup> combined with the fact that the Indian leaders were not yet vigorously opposing it also contributed towards the raising of numbers. Sentiment was possibly a factor in influencing the traders, few of whom, even in the depression years found it necessary for economic reasons to sell up and take the bonus. Economic pressure seems however to have affected the Natal labourer's departure materially. This pressure stemmed from two causes; the world depression which affected the prices of the primary products produced by Indian labour; and the white labour policy of the Pact Ministry. During 1931 the growing unemployment caused among Indians by the complementary and cumulative action of

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33. U.G. 39-41, Indian Penetration Commission.

34. A.R. 1932.

35. The Indian Opinion, 27.11.1931, quoting S. Rustomjee, President of the Natal Indian Congress.

these two forces led to an increase in emigration, especially as Indians received no unemployment benefits. The figures for sugar workers and coal miners were high because of the slump; those for municipal and railway workers rose because they were being replaced by poor whites.<sup>36</sup> Yet even this explanation cannot be unequivocally offered; for already in 1928 over 50% of the adult emigrants came from occupations such as sugar and wattle planting, where there was still a heavy demand for labour and an improvement in conditions.<sup>37</sup>

Rumours - that bonuses were to be stopped after the following conference, that conditions were to be made intolerable for Indians - occasionally augmented numbers, as in November 1931 when figures were already high for the reasons given above.<sup>38</sup> Localised incidents directly involving Indians, such as the Dannhauser mine disaster of 1926, accounted for an increase in the number of coalminers leaving in 1927.<sup>39</sup>

Similarly apparently extraneous events tended to reduce emigrant numbers. In the month (January 1929) that the charismatic Sastri left South Africa there was a tremendous drop with the spread of a rumour that the increased bonus scheme which had begun with his arrival was to be terminated. There were seasonal reductions; emigrants disliked leaving during the monsoon season or at cane-cutting, when they were offered tempting wages.<sup>40</sup>

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36. A.R. 1932.

37. A.R. 1928.

38. The Indian Opinion, 21.11.1931; A.R. 1931.

39. A.R. 1927.

40. S.C. 7-1930, J.D. Tyson, Acting Agent of the Government of India.

To a large extent the efficacy of the scheme depended on the emigrant's reception in India, and his adjustment to a new society. Though it is difficult to assess with accuracy what conditions were like because of the divergence between official and unofficial accounts, it can be assumed that many found grave difficulty in fitting into the world of India's poor.<sup>41</sup> Though lowly by white South African standards, the existence of a Union Indian labourer was still more comfortable than that of his counterpart in India, and the skilled emigrant found the wages in India too low for the needs to which he had grown accustomed. The quality of life differed and the caste restrictions weighed heavily on the products of South African inter-caste unions.<sup>42</sup>

While the Indian Government's reception of the emigrants appears to have been capricious (and was frequently criticised),<sup>43</sup> which had a deleterious effect on the scheme, external factors were often responsible for maladministration. The sensible intention of supplying the Indian authorities with information a month in advance was dropped for various reasons, and the prior notification was reduced to two weeks.<sup>44</sup> Many of the labourers refused to state the kind of work they wanted in the belief that they would become indentured labourers in India.<sup>45</sup> Together,

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41. The Indian Opinion, 2.12.1932, reports from vernacular press in India.

42. Pachai, The International Aspects, p. 131, citing a report of a South African-born Indian B.D. Sannyasi in 1929.

43. The Indian Opinion, 2.12.1932; H. of A. Debs. 1945, Vol. 53, Col. 6053, Speight, W.L., "Indians in South Africa" The Nineteenth Century, Feb. 1930.

44. A.R. 1927.

45. Ibid.

these made the placing of emigrants increasingly difficult. With a sophistry Gandhi would have envied, Sastri informed the S.A. Indian Congress on January 3, 1928 that the Indian Government had not undertaken to find work for the immigrants but to ensure that they got work similar to that which they had done in the Union.<sup>46</sup> A special official was however appointed at Madras to place the settlers with big labour employers such as railways and government hospitals, and to examine the title deeds if they bought land with their bonus money.

In 1927 the Union Government consequent on its determination to institute a successful repatriation scheme, sent H.N. Venn, newly appointed first Commissioner for Immigration and Asiatic Affairs, to India to discuss with the government improved measures for the absorption of the emigrants.<sup>47</sup> Two years later in 1930, when the scheme's limitations were becoming apparent, the Government of India decided to review its arrangements for the reception and care of new arrivals. G.A. Natesan, a member of the Council of State and J. Gray, Commissioner of Labour, were appointed to institute an enquiry in the Madras Presidency, which was the ancestral home of many South African Indians and hence where the majority had settled.<sup>48</sup> In their report they expressed their satisfaction with the co-operation between the big employers and the special officer, and with the way the latter was protecting and administering the emigrants' money.<sup>49</sup> It is obvious

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46. The Cape Times, 4.1.1928.

47. A.R. 1928; H. of A. Debs. 1928, Vol. 11, 9.5.1928, Committee of Supply, Vote 20, Interior, Min. of the Interior.

48. The Indian Opinion, 30.5.1930.

49. The Indian Opinion, 20.3.1931.

however that the Indian Government was not unduly extending its resources to receive the newcomers; later G.H. Nicholls was to claim that "obstacles against the carrying out of the repatriation scheme were everywhere created".<sup>50</sup>

It was the opposition of the local leaders however, and the resultant adverse propaganda they disseminated among the Indian labourers which ultimately killed a policy that in the final reckoning depended on their co-operation. Initially in spite of misgivings they had accepted the scheme under pressure from the Indian Government's representatives, on the understanding that it was purely voluntary and that no compulsion should be exercised.<sup>51</sup> In 1927 the S.A. Indian Congress had been persuaded that emigration was a legitimate means of helping the floating Indian population find a more comfortable home in India, and that the agents sent among the Indians were simply explaining the provisions of Act 37. By 1929 however the local leadership was convinced that pressure was being used to get rid of all Indians.<sup>52</sup> This feeling was an inevitable reaction to discriminatory legislation like the Transvaal Asiatic Land Tenure Bill and to white South Africa's

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50. H. of A. Debs. 1939, Vol. 34, 8.5.1939, Col. 4220; see also Die Burger, 26.1.1929.

51. A.R. 1927; Die Burger, 4.1.1928; The Indian Opinion, 9.10.1931.

52. The Indian Opinion, 27.11.1931, mass meeting, Durban 21.11.1931 at which S. Rustomjee, President of the Natal Indian Congress explained the attitude of the S.A.I.C.

constantly repeated public declarations that Indians were an alien element fit only for expulsion or segregation. Thus by 1929 the Indian leaders realised that security was not to be found in bartering away the rights of one section of the community for a problematic promise that the remainder might live more comfortably.

Conversely by 1932, the worst year of the depression, the mood of the white electorate demanded something more effective, from its viewpoint, than a voluntary emigration scheme. At its Central Congress on December 11, 1930 the S.A. Party had accepted a motion of the Natal Executive that the whole position be reviewed.<sup>53</sup> The S.A.P. Natal members' accusations that the government lacked vision and strength, and their demands for a return to the Natal segregation solution as the only way to deal with the "menace" of the Asiatic trading class,<sup>54</sup> gives some idea of the political effectiveness of anti-Indian prejudice. Yet the Nationalists, now segregating Africans on a "moral" basis, balked at the idea of compulsion which was the only way such an openly racist policy could be implemented. A last attempt was made therefore to introduce a land settlement scheme outside India. Between January 12 and February 4, 1932, a Second Round Table Conference was held in Cape Town with the object of "harmonising" the interests of the two countries "in respect of the Indians resident in this country", and considering how far the 1927 agreement had

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53. The Cape Times, 12.12.1930.

54. H. of A. Debs. 1932, Vol. 19, 5.4.1932 - 4.5.1932, J.S. Marwick, J. Henderson and F. Acutt were the main speakers.

"succeeded in that end and to see what other steps are necessary for its attainment".<sup>55</sup> The Indian delegation which represented opinion in the sub-continent from the Viceroy's Council to the commercial community, (thereby indicating the close link between India's leadership and her irredenta), included V.S. Sastri, the hot-headed Mrs Naidu, and the Agent Sir Kurma Reddi. Three Ministers - D.F. Malan, O. Pirow and E.G. Jansen, Patrick Duncan, and G. Heaton Nicholls, comprised the Union delegation.

On April 5, 1932 Malan made an announcement on the outcome of the conference which reveals the dead-end emigration had reached. "Some drafting," as Duncan noted, "was required to produce a statement which should have enough meaning and not too much."<sup>56</sup> "The possibilities of the Union's scheme of assisted emigration are now practically exhausted," Malan told the House, "owing to the economic and climatic conditions of India, as well as the fact that 80% of the Indian population are now South African born. As a consequence the possibilities of land settlement outside India, as already contemplated in paragraph 3 of the agreement have been further considered. The government of India will co-operate with the government of the Union in exploring the possibilities of a colonisation scheme for settling Indians both from India and South Africa, in other countries. In this investigation which should take place during the course of the present year, a representative of the Indian community in South Africa, will if they so desire, be

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55. The Cape Times, 13.1.1932.

56. Duncan Papers, I.D. 5 (x) Duncan to Lady Selborne, 4.2.1932.

associated. As soon as the investigation has been completed, the two governments will consider the results of the enquiry. No other modification of the agreement is for the present considered necessary."<sup>57</sup> The upliftment clause, as meaningless as the emigration clause of the 1927 agreement was thus retained; at the same time the Asiatic Land Tenure Bill, held over from 1931, was "informally" discussed with the Indian delegation and thereafter proceeded with.

The reaction of the English press to the idea of a joint colonisation scheme, summarised in the Agent's Report indicates how firmly whites clung to the belief (with its pleasant moral safeguard) that "the solution of the Asiatic problem was to be found in getting Asiatics to leave South Africa".<sup>58</sup> The Cape Times and Cape Argus expressed satisfaction that the Cape Town agreement was to continue. The Star thought the new policy would result in an improvement in the condition of those Indians who remained. The Natal Advertiser advised Indians to accept it on the ground that they could hope for no better treatment in South Africa and should seek it elsewhere. Inevitably the greatest coverage on the conference came from the Natal Mercury which reflected most accurately the intransigence of that province. If the new scheme failed "South Africa will inevitably be obliged to proceed with her own measures to deal with the Asiatic problem".

The Indian community's immediate reaction was hostile and the passing of the Transvaal Asiatic Land Tenure Act did nothing to assuage

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57. H. of A. Debs. 1932, Vol. 19, Col. 2725.

58. A.R. 1932, p. 4.

this antagonism. The Indian Opinion, organ of the S.A. Indian Congress, castigated the "weak-kneed government of India" for co-operating with the Union government, and urged its readers not to participate in a scheme, the "object of which is to drive out Indians born and domiciled in this country".<sup>59</sup> The Indian delegation worked hard however to persuade the local leaders that the appointment of the joint commission was only an interim investigatory measure in which they could participate.<sup>60</sup> Consequently R. Pather, Secretary of the S.A. Indian Congress issued a cautiously phrased statement in which his organisation offered its support provided Indians could be settled under economic and climatic conditions as favourable as those they were leaving.<sup>61</sup>

The S.A. Indian Congress conference in Johannesburg on August 27 was sharply divided on the colonisation scheme. The radical majority, mainly from the Transvaal, expressed the view that the intention, as in the assisted emigration scheme was to reduce the Indian population; that is, the scheme's sole intention was repressive and lacked a protective side. The minority, including Rustomjee, argued that more importance should be attached to the words - "explore possibilities" - in Malan's communique.<sup>62</sup> The line taken by the Agent for the Indian Government was that Congress should not squander the first opportunity offered to the Indian community to co-operate on equal terms with the representatives of the Union Government. More compelling, however was his argument

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59. 8.4.1932.

60. The Indian Opinion, 6.5.1932, article by V.S. Sastri.

61. Ibid. 15.4.1932.

62. Ibid. 2.9.1932; A.R. 1932.

that co-operation did not involve acceptance; even if the scheme were agreed on, there would be no compulsion to use it. Congress finally agreed to help, insuring its action with the qualification "that such co-operation ... is taken as inspired by patriotic [sic] motives and to ascertain whether there exists any good opportunity for South African Indians in the countries explored, and not on the score of Indians being deemed undesirable in the Union or that the Indian population is to be reduced; provided also that the Assisted Emigration Scheme which formed part of the last agreement is eliminated and Congress will be free as a part of its policy to oppose it".<sup>63</sup>

On this basis it approved the colonisation scheme primarily as one to deal with India's surplus population, in which South African Indians would participate; and the Union Government's representatives accepted it as a substitute for assisted emigration to India. The S.A. Indian Congress thereupon further hedged its bet, by reserving the right to withdraw its co-operation should any points in the agreement on other subjects dealt with by the Round Table conference, not meet with its approval.<sup>64</sup>

For various reasons (not least of which was the unreality of the whole project) the joint enquiry into colonisation was never held. An Indian Colonization Enquiry Committee was appointed by J.H. Hofmeyr, Minister of the Interior in the Coalition ministry in July 1933, which

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63. A.R. 1932.

64. The Indian Opinion, 2.9.1932.

reported in 1934. It concluded that the colonisation aimed at was "the foundation and establishment in some undeveloped or but little developed territory, under proper control and with adequate financial support, of a purely Indian colony".<sup>65</sup> A joint commission, it recommended, should consider North Borneo, British Guiana and British New Guinea as possible sites for the proposed colonies. The report was coolly received by both India and South Africa.<sup>66</sup> The latter was not surprising, given the fact that young Indians were increasingly moving into skilled and semi-skilled work, for which the agriculturally orientated colonisation scheme would have no place. More interesting however is the Committee's observation that the Indians preferred to stay and fight the restrictions on them than to "seek better opportunities elsewhere".<sup>67</sup>

The Commission was therefore never appointed and the scheme lapsed. It did however result in a splinter group leaving the S.A.I.C. on the grounds that the appointment of the South African Committee had proved the plan was not a genuinely combined effort.

By 1936, 82% of Indians living in the Union were South African born.<sup>68</sup> They could no more be effortlessly "repatriated" to the homeland of their forefathers, than could the other immigrants who had peopled South Africa.

Meanwhile as a result of the Cape Town Agreement's acceptance of

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65. U.G. 23-34, Report of the Indian Colonization Enquiry, p. 6.  
66. Nicholls, G. Heaton, South African in my Time, p. 307.  
67. U.G. 23-34.  
68. Corbett, J.E., A Study of the Cape Town Agreement, p. 85.

Indians as a permanent part of the population some re-organisation was necessary to rationalise the governments dealings with the community. A Commissioner for Asiatic Affairs was appointed in May 1927,<sup>69</sup> in a delayed implementation of the Lange Commission's recommendation in 1921 that such an office be created.<sup>70</sup> His mandate was to carry out the Agreement and generally occupy himself with Asiatic affairs.

In his letter of appointment the first commissioner was instructed then to deal with "all Asiatic matters including immigration and give decisions, provided there was no departure from fixed policy and when a policy had not been definitely adopted, no new policy was involved".<sup>71</sup> His official duties were "a) act as the officer entrusted with the duty of keeping the register of Asiatics under Acts No 2 of 1907 and No 36 of 1908 (Transvaal) and b) in terms of the provisions of Section 29 of the Chinese Exclusion Act No 37 of 1904 (Cape) ... be the officer for the administration of the said ... act and the regulations promulgated thereunder".<sup>72</sup> Thus in 1927 all valid pre-Union laws referring to immigration and Asiatic affairs were being

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69. Govt. Gazette 1634, 3.6.1927, p. 403, Govt. Notice No 904.

Later in the year his title was changed to Commissioner for Immigration and Asiatic Affairs; Govt. Gazette 1668. 11.11.1927, p. 243, Govt. Notice No 1964.

70. H. of A. Debs. 1927, Vol. 9, 24.6.1927, Min. of the Interior.

71. Central Archives, C.I.A. M. 1026, May 1927.

72. Govt. Gazette 1668, 11.11.1927, p. 243.

administered by the Commissioner except in Natal, where a Protector of Indian Immigrants was still appointed and the Indian Immigration Bureau continued to function. This was the situation until 1942 when the Natal position was brought under the Commissioner's office;<sup>73</sup> and in 1948 the Indian Immigration Bureau was also included.<sup>74</sup>

By this date, as the official channel of communication between the government and the Asiatic community, the Commissioner was responsible for the administration of some 15 acts and municipal ordinances including the principal Union immigration legislation and the Transvaal laws of 1885, 1907 and 1908. Briefly his functions, based on Section 1(2) of Act 22 of 1913 included the registration of male Asiatic minors born in the Transvaal and admitted to that province in accordance with the provisions of Act 22 as amended; the administration of the Aliens Act of 1937 and the Aliens Registration Act of 1939 (see below) which involved the issue of registration certificates and the maintenance of a central aliens index; "internal" issues concerning Asiatics such as the acquisition and occupation of land in the Transvaal and Natal under a wide range of acts; the control of Asiatic bazaars in the Transvaal under the Municipal Amending Ordinance No 17 of 1905; and the administration of sundry matters such as registration of births and deaths of Indian immigrants in Natal, and certain social welfare projects. Finally he controlled entry into the Union on all borders and by sea.

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73. Govt. Gazette 3070, 3.7.1942, p. 24, Govt. Notice No 1284.

74. Central Archives, C.I.A. Vol. 43, M. 1026, Memo on the functions of the department 1947-8.

If as one Minister claimed, the Department of the Interior was the "wastepaper basket" of the government, then its wastepaper basket seems to have been the Commissioner.

## CHAPTER VIII

### THE CAPE TOWN AGREEMENT:

#### ENTRY OF WIVES AND MINOR CHILDREN; DOMICILE;

#### CONDONATION

The implementation of Clause 2 of the Agreement through Act 37 of 1927, taken in conjunction with the general tightening up of restrictions on domiciliary rights, was intended to block the last legal door open to Indian immigration - the entry under the Smuts-Gandhi arrangement (and its subsequent confirmation in Paragraph 3 of the 1918 Reciprocity Resolution) of wives and minor children of domiciled Indians.

As noted earlier, Indians domiciled in South Africa were frequently more interested, for business reasons, in bringing in their minor sons than their wives. About 600 boys came in annually under this concession and retained the right of entry no matter how long they stayed away.<sup>1</sup> Seen purely in terms of the government's immigration policy this was an anomaly, which had to be removed. Admitting young boys without their mothers, ran the argument based on "humanitarian" grounds, upheld neither the 1914 agreement nor the 1918 resolution, designed to give Indians an opportunity to live a happy family life in the country in which they were domiciled.

Under the Cape Town Agreement, therefore, it was decided that minor children would not be permitted entry unless accompanied by their

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1. H. of A. Debs. 1927, Vol. 8, 16.3.1927; 9.5.1927, D.F. Malan.

mother (if alive) provided she were not already resident in South Africa;<sup>2</sup> the Minister would only in special cases allow the entry of unaccompanied children.<sup>3</sup> Thus no children could enter South Africa unless the family were domiciled in the country (under the immigration interpretation of domicile), thereby upholding the intention of the 1918 resolution. At the same time this would, according to both the Habibullah deputation and officials of the Department of the Interior, practically stop the introduction of unaccompanied minors who comprised about 85% of Indian immigrants.<sup>4</sup>

It was agreed that the definition of "wife and children" as laid down in Act 22 of 1914 would remain in force. The government of India would certify that every individual for whom the right of entry was claimed was the lawful wife or child of the person who made the claim. In the event of a divorce no other wife would be permitted to enter the Union unless proof of divorce to the Minister's satisfaction were submitted.<sup>5</sup>

This part of the Agreement took effect in law from July 5, 1927. To obviate hardship however, the Minister allowed minor children who had sailed from India on or before July 20 to enter the Union under the old regulations. Indian fears that children already domiciled might be refused entry under the new arrangements were allayed by

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2. Ibid. 16.3.1927, Malan.
  3. A.R. 1927; The Cape Times, 28.10.1927; Sastri Speaks.
  4. H. of A. Debs. 1927, Vol. 8, 9.5.1927; 16.3.1927, Malan.
  5. U.G. 39-41, Report of the Indian Penetration (Broome) Commission.

permitting them to return unaccompanied by the mother if they had not been absent for more than three years. Once he stayed away longer the child lost his domicile and could be brought in only under the terms of the Agreement. The same conditions applied to children born in India and domiciled in the Cape or Natal where no registration certificates were issued.<sup>6</sup>

The immediate though temporary effect of the change was an inevitable increase in the number of women coming in, which Malan pronounced to be a beneficial consequence that would make for a more settled home life, and the eventual discontinuance of the connection between the Indian community and India. Between January and December 1927, 170 women arrived. Conversely in the same period the number of boys was much reduced, 335 boys (and 64 girls) entering.<sup>7</sup> The effect can be seen when comparing the 1928 immigration figures with those for the immediately preceding period. Between 1924 and 1927 the average annual number of male immigrants was 450 and of females 225. In 1928 the male figures fell to 297, whereas the female rose to 472, which would be accounted for by the final influx of wives.<sup>8</sup>

The entry of wives and children was contingent upon the more important issue of the definition of domicile under Act 37 of 1927. It will be recalled that prior to this Act, under the Transvaal Asiatic

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6. The Cape Times, 28.10.1927.

7. H. of A. Debs. 1928, Vol. 11, 9.5.1928, Committee of Supply, Vote 20, Interior, Min. of the Interior.

8. U.G. 19-30. Statistics of Migration 1928.

Registration Act of 1908, holders of Transvaal registration certificates (that is, all males over 16) could enter and leave the Transvaal freely while retaining their domicile indefinitely. Clause 10 of the Immigration and Indian Relief (Further Provision) Act amended the 1908 Act and also the conditions contingent on the possession of a Natal domicile certificate. A limit of three years was placed on the Indian's absence (which the minister could extend to 10 years) after which domiciliary rights were lost. In addition, Indians leaving the Transvaal even temporarily had to surrender their registration certificates so that they could not be used by another Indian.<sup>9</sup>

The final date of entry without loss of domicile was fixed at July 5, 1930. The three-year period was not made retrospective under Clause 10; Indians therefore believed that as long as they entered South Africa before that date, their domiciliary rights would be preserved for them.<sup>10</sup>

The Rashid Amod case altered this interpretation.<sup>11</sup> The Transvaal Supreme Court ruled that because he had stayed away longer than three years, possession of the registration certificate only gave him right of entry not right of domicile, for which he had to remain in the Union continuously for a further three years. Consequent to this judgment immigration officers refused entry to wives and children of such persons until they had re-earned their domicile.

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9. H. of A. Debs. 1927, Vol. 9, 9.5.1927, Min. of the Interior.
  10. The Indian Opinion, 14.11.1930.
  11. Ibid. 22.4.1932.

Inevitably the Indian community reacted adversely, and on November 7, 1930 a deputation waited on Malan. It asked him for an assurance that all holders of registration certificates who had entered before July 5, 1930 should be regarded as not having forfeited their Transvaal domicile irrespective of the length of their absence.<sup>12</sup> They feared that minor children who turned 16 during the three-year interval while the father re-earned his domicile would lose the right to rejoin their parents. Malan refused to alter the administration of the law insisting that this provision was not a manifestation of racial prejudice against Indians but applied equally to Europeans and that the right to bring in wives and children must remain contingent upon three years continuous residence. This answer did not satisfy the Indians. At the S.A. Indian Congress conference in Cape Town between December 29 and 31, 1930 the question of a definition of domicile received priority. Both Congress and the Agent-General were concerned with the hardship resulting to the families of those whose absence had been condoned under Clause 10, but who now had to re-earn domicile.<sup>13</sup>

The Rashid Amod judgment was as disturbing for the government as the Indian community; "no one in this House or in the department thought that such a judgment was possible".<sup>14</sup> Consequently legislation had to be introduced to vitiate its effects. The Immigration (Amendment)

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12. Ibid. 14.11.1930.

13. Ibid. 9.1.1931.

14. H. of A. Debs. 1931, Vol. 16, 2.3.1931, Col. 998, Malan.

Bill was read a first time on February 2, 1931. The sections (Clause 2 (f) (g) (h) and Clause 5) applicable to Indians only, were intended to stop up the loophole revealed by the Transvaal judgment which had made a distinction between domicile and right of entry and residence, a distinction never previously hit upon even by the Indians themselves. The intention of the legislation was to make loss of domicile after an absence of over three years, equivalent to loss of the right to re-enter. Under Section 2 (h) the possession of a registration or domicile certificate would no longer automatically entitle the holder to enter or reside as previously allowed under the 1908 Act, reaffirmed in Section 4 (2) (b) of the Immigrants Regulation Act and left untouched by Act 37 of 1927. Section 2 (g) of the new bill repealed this provision in the immigration act; Clause 5 repealed both Section 2 and 11 of the 1908 Transvaal Act, which had regularised the position of Asiatics who had entered the Transvaal surreptitiously and then registered voluntarily.

Though few voices were raised in parliament to defend Indian rights, the latter did find two unexpected but closely involved champions. Smuts and Duncan attacked Section 2 (h) as a breach of faith, a diminution of the Indian's rights of entry and residence, for it entirely expunged the principle of the registration certificate as a whole and not simply in the case of Indians who lost domicile under the 1927 law.<sup>15</sup> Malen denied that this section would render the certificates

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15. Ibid. 2.3.1931; 5.3.1931.

totally valueless. A registration certificate, he claimed, retained its value as long as its holder retained his domicile which was protected for three years under Section 5 (f) of the principal immigration act.<sup>16</sup> If the bill were not passed, he believed, Europeans from quota countries<sup>17</sup> who left the Union for more than three years would be in a less favourable position than Indians who held registration certificates but had lost domicile.

For the Indians the measure was yet another loss of a definite right, in this case one with strong emotional significance, for it had been acquired in the passive resistance struggle.<sup>18</sup> The S.A. Indian Congress therefore fought the bill from its traditional standpoint that the closed door immigration policy instituted in 1913 and reinforced by Act 37 of 1927 had been accepted on the understanding that existing Indian rights would be maintained. The government was thus regarded as having committed itself to not altering the existing laws without prior consultation, which could take place when the Cape Town Agreement was revised.<sup>19</sup>

The practical effect of the measure was firstly to stop registration certificate holders from staying away longer than three years, which put them on the same footing as Cape and Natal Indians; and secondly to destroy the chance of return for Transvaal Indians who

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16. Ibid. 4.3.1931, a roughly equivalent analogy say, to the statement that a car may go as long as one does not drive it.

17. See below, Part II on the Quota Act.

18. A.R. 1931.

19. The Indian Opinion 20.2.1931, Statement by S.A.I.C.

relying on their existing rights under Act 36 of 1908, had failed to come in before July 5, 1930 after more than three years absence.

At no stage was the Government of India consulted about the bill. The Agent was only aware of its existence after its introduction in parliament, and he immediately attempted to have its harsher provisions mitigated.<sup>20</sup> The Union Government refused however to modify the registration certificate or extend the time limit before the measure's implementation which would have benefitted the limited number of Indians whom the act was specifically meant to exclude. On the new bar to inter-provincial movement the Agent was more successful. Clause 2 (f) in its original form had limited Cape and Natal entry to Indians who had retained domicile in the Union since the passing of the 1913 Act. The Agent achieved the alteration of this clause into its final form in the 1931 act, which retained the Cape and Natal entry for anyone entitled to reside in any province at the time the principal act was passed.<sup>21</sup>

The condonation scheme of 1928 represented a further important modification of immigration legislation based on the belief that "fraud, deceit and intrigue" governed the actions of most Asiatics. Clause 5 of the 1927 Act had been an attempt to close another loophole in the law exposed by a judicial decision. In the Salajee case in 1924, the Transvaal court ruled that where a person (for example a minor), held a registration certificate obtained by fraud, if he himself were innocent of the fraud the certificate would not be cancelled by the

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20. Ibid. 29.5.1931, Report from Delhi 9.4.1931.

21. A.R. 1931.

Court. Clause 5 obliterated the distinction established by this case between guilty and innocent holders of fraudulent certificates, and gave the Principal Immigration Officer (subject to the minister's approval) or the Appeal Board, the power of cancellation in both cases.<sup>22</sup>

The S.A. Indian Congress's request for an amendment in favour of Indians who had fraudulently entered years before and raised families was supported in Parliament by Duncan. While Malan refused to ventilate the matter there on the grounds that it would arouse ill-feelings, he struck a bargain with the Indian leaders both because of the variety of provincial laws and their idiosyncratic implementation in the past, and "as an act of grace" to mark V.S. Sastri's appointment as the first Agent of the Indian Government. If the Indian community carried out the Cape Town Agreement and undertook not to connive or countenance future illicit entry, the government would, as a quid pro quo not use clause 5 retrospectively; but this condonation would be effected administratively under the existing laws.<sup>23</sup>

The S.A. Indian Congress's failure to achieve statutory condonation of illegal entry, resulted in a breakaway by the Transvaal British Indian Association in May 1927. Their re-affiliation to the parent body was essential in order to provide a united front which could

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22. A.R. 1927; A.R. 1928.

23. H. of A. Dsbs. 1927, Vol. 9, 24.6.1927, Minister of the Interior; The Cape Times, 14.10.1927, Sastri in Johannesburg, 13.10.1927; A.R. 1927.

## CHAPTER IX

### THE FATE OF AN "ALIEN ELEMENT"

The assisted emigration scheme continued to operate slackly, while Indian immigration was, as noted, limited to the families of domiciled Indians.<sup>1</sup> Axiomatically the proportion of South African-born Indians continued to increase, so that migration statistics after about 1930, apart from the initial entry of wives and children mentioned above, primarily refer to the movements of domiciled Indians visiting India and returning within the prescribed three-year period (except when the vicissitudes of the Second World War forced the government to extend this).

In spite of the early promises the immigration laws operated harshly for these migrants. Proof of domicile, proof of the relationship between a man and his family and restrictions on inter-provincial movements, were all administered in the spirit that every Indian was a potential illegal entrant, and in a manner guaranteed to affront Indian susceptibilities.<sup>2</sup>

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1. H. of A. Debs. 1946, Vol. 57, Col. 5617, figures by Min. of Interior. Between 1936 and 1945 just over 4 000 arrived; H. of A. Debs. 1948, Vol. 62, Col. 816, 1 007 wives and children got entry in 1947.
  2. Lawrence Papers, Natal Indian Organization memo. to Minister of the Interior, 23.3.1948 indicates, for example, that the children of Natal Indians living in the Cape who did not have domicile, had to return to Natal at the age of 16.

In the 1948 election both the main political parties (and of course the Dominionites) subscribed to a prohibition on Asiatic immigration, the Nationalists with more resolution than the United Party. Thus Malan, in his 1948 press statement on the National Party's apartheid policy described the Indian - pace the Cape Town Agreement - as "n vreemde en uitheemse element ... wat nie assimileerbaar is nie. Hulle kon nooit eie aan ons land word nie en moet dus as n immigrante-gemeenskap behandel word".<sup>3</sup> In its election manifesto the party stated that it would try to repatriate [sic] as many Indians as possible, or move them elsewhere in co-operation with India and/or other countries. Further the existing prohibitions on Indian immigration and inter-provincial movement would - in the event of a Nationalist victory - be retained and more strictly enforced.<sup>4</sup>

This promise was fulfilled. Thus in 1953, the Immigration Regulation Act amended the 1913 legislation. It provided that no woman born abroad who contracted a marriage oversea with a South African Asian (the term now used to describe Indians) after February 10, 1953, or their minor children, would be permitted to enter the country without special permission. Wives already married, and minor children born before February 10, 1954 would not be debarred until February 10, 1956.

The Immigration Amendment Act 8 of 1960 gave the Minister of the Interior the power to authorise new residence rights for an Asian who

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3. Die Burger, 29.3.1948; The U.P. in its election manifesto simply reaffirmed and maintained the principles of the Asiatic Land Tenure Act.
  4. Die Burger, 21.4.1948.

moved from one province to another; he lost his domiciliary rights however - and all that flowed from such rights - in the original province.

In the following year the Indian community was recognised, for the second time, as forming an integral part of the South African population and "repatriation" was finally laid to rest. Some 14 years were to elapse however, before the Minister of Indian Affairs announced on June 12, 1975<sup>5</sup> that all South African-born Indians would be allowed free inter-provincial movement (except into the O.F.S.).

On balance the fierce anti-Indian sentiment which was a legacy from pre-Union days, expressed itself, after the passing of the 1913 act, primarily in restrictive legislation and administrative curbs on "internal" matters. Key issues were land ownership and occupation, and the acquisition of trading licences, - matters beyond the scope of this study.

In 1914 the prevailing Indian opinion whether in South Africa or India had believed that protection of the existing population's welfare was an adequate compensation for the loss of the "open door" immigration policy. Experience was to prove too late that all the rights of a minority are indivisible - whether they be those of the wealthy Transvaal trader or the Madrassi wife joining her husband who had earned domicile in Natal after completion of his indenture.

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5. Die Burger, 13.6.1975.

negotiate with the government, so as to prevent large-scale deportations of Indians with fraudulently acquired certificates. Sastri effected a partial reconciliation in December 1927,<sup>24</sup> and at its Kimberley conference in January 1928, Congress (but not the newly formed S.A. Indian Federation) accepted Malan's terms.<sup>25</sup>

The condonation scheme was an extension of a similar scheme instituted during the war, and was applied to the whole Union except the O.F.S.<sup>26</sup> While it was a genuine attempt to give legality to the illegal entrant's position,<sup>27</sup> the Indian leaders were used as hostages in effecting this. Every Indian who had entered illicitly prior to July 5, 1924 was to apply before October 1, 1928 either to the Commissioner for Immigration and Asiatic Affairs in Pretoria or to the Principal Immigration Officers in the Cape and Natal for a "protection certificate" or authorisation to retain his existing documents. This the minister would grant if he were satisfied the applicant came within the terms of the concession. These documents ensured for the holder the preservation of all rights enjoyed by him prior to July 5, 1927 (the commencement date of Act 37); he would be regarded as having entered the province legally in terms of Section 25 of the Immigrants Regulation Act.

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24. A.R. 1928; S.C. 7-30, Report of the Select Committee on Asiatics in the Transvaal; Pachai, The International Aspects of the Indian Question.
25. The Cape Times, 4.1.1928.
26. H. of A. Debs. 8.5.1917, Min. of the Interior; U.G. 4-21. Report of the Asiatic Inquiry Commission.
27. H. of A. Debs. 1928, Vol. 11, 17.4.1928, Min. of the Interior.

While Indians absent in India were given up to six month's extension of the closing date, inevitably as in all legislation affecting Indian immigration the concession was hedged in with several conditions. If a man's wife and minor children had not already been brought in by the time his permit was issued, they would not be admitted later. Illegal entrants not in possession of "protection certificates" or the other necessary documents by November 1, 1928 would be prosecuted irrespective of their date of entry, and only those who had reported before October 1 would be condoned.<sup>28</sup> Yet paradoxically the Minister agreed to "take into consideration" all illicit entries found after that date.<sup>29</sup>

Legally the "protection certificate" was only a temporary permit, intended to provide a way of restricting the perpetual entry of wives and children. In practice the Minister's undertaking not to cancel the permit, unless the holder had subsequently to July 5, 1924, been convicted of a deportable offence, made it permanent. The condonees were to be treated as though they had come in legally and their children, if already in the Union, were to be entitled to the rights of domiciled Indians.

The scheme was gazetted on July 29, 1928, and a committee of Congress set up to advise the Department of the Interior.<sup>30</sup> By

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28. H. of A. Debs. 1928, Vol. 11, 17.4.1928, Min. of the Interior.

29. H. of A. Debs. 1928, Vol. 11, 9.5.1928, Committee of Supply, Vote 20, Interior, Min. of the Interior.

30. A.R. 1928.

September 20 as a result both of Indian misgivings and administrative snags there were only 600 applicants; but by the end of September the number had risen, in a last minute rush, to 1 616. 1 333 "protection certificates" were issued under the scheme; at the end of 1928 110 had been refused or not claimed (including 85 Chinese) and 173 were "awaiting disposal".<sup>31</sup> It is difficult to determine what proportion of those covered by the scheme actually took advantage of it; the Transvaal Indian Congress surmised at the time that the vast majority of those who had done so, were influenced by Sastri's efforts.<sup>32</sup> What is interesting in a study of Indian immigration is the proof the scheme supplied of the extent of illegal Indian entry into South Africa, despite the wide use of the state's preventative machinery. "Fraud, deceit and intrigue" were apparently not an Asiatic monopoly.

Even when final figures were available, the question of the wives and children still in India, remained unsolved. This restriction on their post facto entry stemmed from the government's attitude that while it was spending thousands on getting Indians out of South Africa, it could not allow illegal entrants to bring in dependants who would become potential parents and traders.<sup>33</sup> The S.A. Indian Congress gave the Minister the assurance that there would be no great influx,<sup>34</sup> and continued to importune him to show a magnanimity which would also be a reaffirmation of the 1918 Resolution.<sup>35</sup> Thus among the points

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31. A.R. 1928; Pachai The International Aspect, p. 129; H. of A. Debs. 1929, Vol. 12, 15.2.1929, Min. of the Interior gave the slightly lower figure of 1 545 for the total number of applications.

32. The Cape Times, 31.8.1928.

33. A.R. 1928.

34. The Indian Opinion, 27.11.1931.

35. Ibid. 8.1.1932.

raised at Congress's 1932 Conference for submission to the Indian delegation as representing the grievances of South African Indians, were requests for the removal of differential treatment meted out to condonees on immigration matters and for entry to be allowed to wives and children of Indians who had acquired "protection certificates".<sup>36</sup>

In August 1932, however, the minister was still adamant.<sup>37</sup> Two years later J.H. Hofmeyr, Minister of the Interior in the Fusion Government, while refusing to allow in the families of all condonees, agreed to consider more limited proposals. Congress explained the difficulty of devising a method of differentiation other than a simply arbitrary one. It suggested instead that a fresh calculation of the possible number of entrants would show a reduction in the estimate of 2 012 drawn up in 1928. The minister rejected the suggestion as impracticable; but as a sop he agreed in future sympathetically and personally to consider the cases of Indians legally in the Union who had failed to apply for condonation in 1928 and were thus liable to deportation.<sup>38</sup>

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36. The Indian Opinion, 4.1.1932.

37. Ibid. 2.9.1932.

38. A.R. 1935.

PART II

THE RESTRICTION OF JEWISH IMMIGRATION

## CHAPTER X

### ADMISSION AND REJECTION

#### a) Jewish Immigration in the pre-1910 period

The second theme in a study of immigration into South Africa concerns the entry of Jews. By the mid-19th century there were small Jewish communities in the Cape Colony, of predominantly Western European origin.<sup>1</sup> After the 1880's however, the South African Jewish community changed dramatically in size and composition with the arrival of considerable numbers of Eastern Europeans. Their coming was part of the general völkewanderung which characterized late 19th century Europe; but the "pull" of the South African mineral discoveries was a strong force attracting them as it did other Europeans.

There were also special circumstances which motivated Jewish migration. In Russia the 1881 pogroms and the increasingly repressive legislation following Alexander II's assassination, exacerbated the miseries of a community living for the most part under the disabilities of the Pale of Settlement. Most of the three million Jews who consequently left Eastern Europe after 1881 settled in North America, but some 40 000 - mainly Lithuanians - came to South Africa between 1880 and 1913. The 1911 Census indicated that there were 46 919 Jews in the Union, with males (27 820) predominating over females (19 099). It remained the custom for the men to come out first and later send for

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1. Saron, G. and Hotz, L. (eds), The Jews in South Africa adequately covers this pre-Union immigration.

their wives and children,<sup>2</sup> often with the help of the local landsmanschaften or societies of people from the same towns in Russia. Their names indicate the origins of the community: "The Kurland and Riga Society"; "The United Hebrew Polish Society"; "The Kovno (or Krakinower, Schawier or Ponevas) Sick Benefit Society".<sup>3</sup>

Whole villages frequently emigrated.<sup>4</sup> They embarked for South Africa via English ports, which they reached through Baltic and German intermediary stages. Little industrialization took place in Lithuania between 1881 and 1910, and the immigrants who arrived in these pre-Union days were unskilled, except for the odd shoemaker or tailor. Physically they reflected the grinding poverty of their "shtetl" (village) background, and it is consequently not surprising that they frequently made an adverse impression on the immigration officials. Burman, a 38 year old tailor who arrived in September 1911, was a typical physical type. He was 5 feet tall, weighed 105 lbs, was bald and anaemic, and missing 12 teeth.<sup>5</sup> The authorities, using Lombroso's theories that physical characteristics were an indication of criminality, debarred him.<sup>6</sup>

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2. Ibid. Gershater, C., "From Lithuania to South Africa"; Saron "Jewish Immigration 1880 - 1913"; Sachs, B., Mist of Memory.
  3. The Zionist Record, Vol. 16, No 177, 7.9.1923, p. 51.
  4. Ibid. 28.3.1930, Gottlieb, I.
  5. Alexander Papers, B.O.D.I.; see also Correspondence File 62, Notebook marked "Immigration" commencing 9.3.1911 giving details re the number of arrivals refused entry; 6.4-1910, Report of the Chief Immigration Officer 1909.
  6. The Cape Times, H. of A. Debs. 15.2.1912, Smuts.

Nevertheless these pre-Union arrivals, while not positively welcomed were, by comparison with later policy, allowed reasonably easy entry into the four colonies. In the Cape immigration was unrestricted prior to 1902 when as noted above, the first Immigration Act was passed, containing a literacy test similar to that in the 1897 Natal Act and similarly designed to exclude Asiatics. The prospective immigrant was required to write out and sign his application in "the characters of a European language". Some doubt arose over the validity of Yiddish, the language of the Eastern European Jews which was a German variant written in Hebrew characters. As an interim measure the Cape Government agreed to accept Yiddish and this was given statutory force in Section 3a of Act 30 of 1906. "For the purpose of this Act," it stated, "Yiddish shall be accepted as a European language."

In November 1909 the Cape Legislative Council adopted a Select Committee report recommending the tightening of the immigration laws, inter alia through the scrapping of the existing £20 financial guarantee, a more stringent education test, more searching enquiries into the prospective immigrant's character, and a poll tax on all alien immigrants. Such legislation would have militated against Jewish immigrants; but in the event the problem was left to the Union parliament.<sup>7</sup>

In Natal the Cape example of administrative recognition of Yiddish was followed, after several Jewish applicants had been refused entry as prohibited immigrants. Similarly, at the request of the newly created Jewish Board of Deputies, the Transvaal Immigrants Restriction Act of 1907 recognised Yiddish as a European language so as to obtain uniformity

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7. Alexander Papers, Letterbook F. 1905 - 1910, Alexander probably to Editor, London Jewish Chronicle, 21.12.1909.

with the law of the Cape at whose ports most Transvaal immigrants entered and were examined by Cape officials. In the Orange River Colony immigration was regulated by the Oranje Vrystaat Wet 18 of 1899 (mentioned above) and the Indemnity and Peace Preservation Ordinance No 25 of 1902. Immediately after the South African War, immigration of aliens was controlled by the governor himself through a permit system in which each nationality was allowed in, in numbers proportional to the number of applicants from each group.

b) The immediate post-Union period.

In the immediate post-Union period, when, as we have seen, several attempts were made to consolidate individual colonial policies into uniform Union legislation which would exclude Indians, Jewish immigration was of small importance. Government pronouncements, though infrequently made, expressed a sympathetic attitude. Botha, opening a Jewish National Fund fête in Johannesburg, claimed that South Africa offered a home to Jews;<sup>8</sup> the Minister of the Interior refuted Morris Alexander's charge that the Department of Immigration's policy was directed against Jewish immigrants;<sup>9</sup> and Smuts maintained that the Interior Department had always assisted prohibited immigrants in upholding their dietary laws.<sup>10</sup>

In practice however, those who administered the legislation provided a cooler welcome for Eastern European immigrants. Towards the end of 1910 the Immigration Department began to insist that when the relatives

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8. The Indian Opinion, 20.8.1910.

9. H. of A. Debs. 1912, Vol. 2, 5.6.1912.

10. H. of A. Debs. 1914, Vol. 4, 24.2.1914.

of an immigrant requested he be allowed to land without the £20 guarantee, he should not only be free from disease (which was a reasonable restriction), but that he possess a passport provided in his country of origin. For Russian Jews this could pose an insurmountable difficulty. Passports were refused in Russia for a host of reasons ranging from opposition to the regime to being related to someone who had evaded military service. No passport to leave Russia was granted without payment of some 35 roubles. In addition the intending emigrant could only buy his ticket when he already possessed the Department of Immigration's permit to travel to South Africa.<sup>11</sup>

In March 1911, the government proposed its first immigration bill, designed, as noted above, to keep out Asiatics by administrative differentiation. At the Second Reading, Alexander, Emile Nathan and William Baxter expressed their disquiet at the wide discretionary powers which were to be given to immigration officers by regulations under the Act, in an effort to find one solution for the two different problems of Indian and white immigration. Under the proposed bill, an immigration officer could dictate the literacy test in any language he chose. Alexander's amendment was designed to bring back "the existing law viz. that it is sufficient if an immigrant write in any European language (including Yiddish) that he (the immigrant) pleases".<sup>12</sup>

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11. Alexander Papers, Board of Deputies (hereafter B.O.D.) 1, B.S. Herach to Alexander, 18.11.1910. There was good reason therefore, for the establishment of the Board of Deputies in Johannesburg in 1903, and Cape Town in 1904, to deal inter alia with immigration matters.

12. Ibid. Letterbook E. 1910 - 1911, Alexander to "Morris", 1.4.1911.

The bill having been shelved at the end of the 1911 session, a new Immigrants Restriction Bill was introduced in January 1912, designed again to exclude Asiatics administratively while "fostering" white immigration. Again the nub of the bill was the dictation test, which was intended to be applied in such a way that suitable white immigrants would not be denied entry. In addition the appointment of advisory boards was intended to restrict bureaucratic omnipotence.

Alexander, as we know, led the attack on the bill in the House, his primary concern being the adverse effect on Jewish immigration of a literacy test again dictated in a language of the immigration officer's choice. His views coincided with those of a committee set up by the Transvaal Board of Deputies to comment on the bill. Its report objected to the composition of the immigration boards; postulated the immigrant's right to select the language for the education test and to have a doctor of his own choice for his medical examination, and suggested the embodiment of a clause, similar to the one in the English Aliens Act of 1905, providing refuge for fugitives from political or religious persecution.<sup>13</sup>

These and other resolutions - which outlined the disabilities to which Jewish immigrants were subject - were more firmly stated at a mass meeting in Johannesburg called by Jewish organisations in February 1912.<sup>14</sup> The meeting asked for a more satisfactory method of testing the immigrant's educational qualifications; the appointment of an official, conversant with the language and customs of Jewish immigrants, to meet them on

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13. Alexander Papers, B.D.D. 1, S.A.J.B.C.D. Jhb, to Alexander 3.2.1912.

14. Schreiner Papers, undated note.

arrival; the establishment of a receiving depot in which they could be housed at a reasonable charge while awaiting the authorities' decision; the revival of the former custom of granting provisional permits in the case of immigrants who wished to communicate with friends or have their claims investigated; the appointment of a board of appeal for rejected immigrants; and finally, that every alien be entitled to prove his qualifications in the same way that a British subject could.

Defeated by a combination of Alexander (whom Smuts regarded as the House's authority on immigration), the Free State M.P.'s and the dictation test, the government decided to introduce an amended bill in the following session.<sup>15</sup> Consequently the 1913 draft was similar to the previous year's bill with certain important exceptions. To meet the charge of bureaucratic despotism levelled against the 1912 bill, the boards established in Section 2(i) were to be appeal, and not simply advisory boards. More important from the viewpoint of Jewish immigration, was the fact that while Section 4(i)(a) was intended only for the exclusion of Asiatics, the education test was reintroduced in 4(2) to keep out undesirable Europeans. In it the use of any European language including Yiddish was retained.

While the Jewish community's deeper fears were considerably allayed, misgivings were still felt, both over certain specific points in the bill and over its administration by the Immigration Department. Consequently a deputation including all the Jewish M.L.A.s met Abraham Fischer to suggest possible ways in which these misgivings could be removed.<sup>16</sup> It

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15. See above in discussion on Indian immigration.

16. S.A.J.B.O.D., Report of the Executive Council, 1912-1914.

was this mild pressure from the Jewish community which resulted in Fischer's minor concession that an alien had the right to appeal to the boards, but not to the courts. The Minister promised the most sympathetic administration of the law. But no Jew was appointed to the appeal boards as the deputation had suggested; whereas the Chief Immigration Officer in each port was appointed, which was tantamount to his filling both judge's and prosecutor's rôles.

A confidential communication from the Principal Immigration Officer to the Union Agent at Lourenco Marques dated August 12, 1913 indicates more accurately than the Minister's assurances, the Immigration Department's attitude towards Eastern European immigrants.<sup>17</sup> European immigrants who seemed suitable were to be passed without the education test and whether or not they had money, except for "Peruvian Jews".<sup>18</sup> The same strictures it should be noted, were applied simultaneously to "Levantine". Within a few years it was government policy to exclude Syrians "as a class", admitting individuals only under "the strictest supervision".<sup>19</sup>

In June, when the House was in Committee of Supply on the Interior vote, Alexander moved a reduction in the salary of the Chief Immigration Officer, C.W. Cousins, whose administration of the law was as noted

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17. Central Archives, C.I.A. M. 42 (Vol. 2).

18. "Peruvian" was the term applied to Eastern European Jews; its etymology is obscure.

19. Central Archives, Dept. of the Interior, 139/74, Sec. for the Interior to Sec. to the High Commissioner for Iraq, 28.9.1924; also Principal Immigration Officer, Natal to Sec. for the Interior 26.5.1920.

before, less kind than the Minister had promised.<sup>20</sup> Alexander used the occasion to bring the Minister's attention back to the requests made by the recent deputation concerning the grant of government facilities for an official, appointed and paid by the Board of Deputies, to meet Jewish immigrants; improvement in the conditions at the Detention Depot; the grant of temporary permits; and most important from a practical viewpoint, the examination of immigrants at a port of embarkation in Europe as had been done by the Cape Agent-General prior to Union.<sup>21</sup>

It was clear however, that an improvement in the immigrant's lot lay not with the Immigration Department but with the Jewish community itself. Following the passing of the 1913 Act, the Board of Deputies circulated in Europe copies of those regulations which affected Jewish immigrants. A noticeable improvement was effected in December 1913 when the Board appointed Benzion Hersch as its immigration officer in Cape Town. Hersch who spoke Yiddish and understood the immigrant's background, was given a special pass to board ships before the public. An intelligent and tactful man, he was able both to facilitate the administrative work of the immigration department and mitigate the hardships the new arrivals frequently suffered.<sup>22</sup>

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20. The Cape Times, 24.12.1912.

21. H. of A. Debs. 9.6.1913; see also Alexander Papers, Letterbook A, Alexander to Sec., S.A.J.B.O.D., 5.1.1913.

22. The Cape Times, 4.12.1913; H. of A. Debs. 1914, Vol. 4, 25.6.1914, Min. of Finance.

Litauischer Staat.

*Lithuania*

den 16 April 1920

# Auslands-Paß Nr. 4148

Familienname: *Usman*

Vorname: *Pille*

Staatsangehörigkeit: *Lithuanen*

Stand oder Beruf: -

Ständiger Wohnort: *Taurage*

Geboren am: *24/IV - 1898*

Alter: *22* Jahre

Geburtsort: *Taurage*

Zweck der Reise: *Familien Angelegenheiten*

Es wird hiermit bescheinigt, daß der Inhaber die durch umstehende Photographie dargestellte Person ist und sich ins Ausland begibt, und zwar nach:

*durch Deutschland nach Afrika*

Zu Urkund dessen und zur ungehinderten Reise ist dieser Paß vom Ministerium des Aeußern unter Beidruck des Staatssiegels ausgefertigt worden.

Gültig bis zum *16. VII. 1921*

*R. R. R.*  
Paß-Abteilung.



Lithuanian passport

The office remained in existence until May 1915 when a shortage of funds taken in conjunction with a temporary falling off in Jewish immigration as a result of the war, halted its work.<sup>23</sup> Whereas 1 804 Jewish immigrants had come in 1913 alone, the figure for the years 1914 - 1917 was 1 228.<sup>24</sup>

c) Post World War I.

The Peace Conference in 1919, with its guarantee of rights under League protection to the racial, religious and linguistic minorities in the new states of Eastern Europe, seemed to herald an era of undreamt-of security and material progress. From the viewpoint of some five million Jews in Hungary, Latvia, Lithuania, Poland, Czechoslovakia and Roumania, the millennium appeared at hand.<sup>25</sup>

Their euphoria was of short duration. Poland soon began to harass and discriminate against them in various ways, ranging from the nationalisation of industries in which Jews had been prominent to the imposition of a numerus clausus in institutions of higher learning. When the small states created by the post-war treaties began to quarrel among themselves over the treaties' territorial dispensations, the Jewish inhabitants often found themselves unwanted by their new rulers. The Jews of Memel, for example, had no nationality; in Danzig alone there were thousands of stateless Jews.<sup>26</sup>

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23. S.A.J.B.O.D., Report of the Executive Council, 1914 - 1919.

24. Saron and Hotz op. cit., p. 377. In 1914, 872 immigrants came, in 1915, 193, 122 in 1916, 41 in 1917.

25. Eban, A., My People. The Story of the Jews, p. 349 ff.

26. Alexander Papers, B.O.D. 2, Report of H. Lourie, B.O.D.'s delegate to the plenary session of the Committee of Jewish delegations.

Consequently almost immediately after the peace there was an upsurge in Jewish emigration from Eastern Europe. Under existing Union legislation no immigrant could be excluded, as long as he conformed to the provisions of Act 22 and possessed a valid passport from his country of origin.

This restriction would keep out the Memel and Danzig Jews; but hundreds came from Lithuania and Russia including in 1921 about 170 orphans mostly from the Ukraine, where their parents had been killed in pogroms during the Civil War.<sup>27</sup> The new wave, most of whom headed for Johannesburg, differed somewhat from the earlier arrivals primarily because they were a more urbanised group with varying degrees of city experience. Thus, though there was still a high percentage of storekeepers and general dealers among them, there were more artisans - particularly carpenters, tailors, shoemakers and bakers.<sup>28</sup> Like their predecessors they joined the landsmanschaften, which eased their difficult transition into the mores of a new culture.

Initially then, after the war, the "Russian" Jews (as all Eastern European Jews were commonly called) with valid passports were allowed entry by the Immigration Department, and the government did not envisage a policy of large scale prohibition.<sup>29</sup> Nevertheless already in 1919 the Deputy Commissioner of the C.I.D. was asking for details concerning the arrival of these immigrants in the previous twelve months and

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27. The Cape Times 20.9.1921.

28. Alexander Papers, B.O.D. 1, list of immigrants prohibited under Section 4 (1) (a)

29. Central Archives, C.I.A. M.212, Sec. for the Interior to Principal Immigration Officer 12.5.1919.

IMPORTANT.—This form to be carefully and fully completed and signed IN INK, and personally handed to the Immigration Officer on arrival at a Union Port.

UNION OF SOUTH AFRICA.

IMMIGRATION DEPARTMENT.

IMMIGRANTS REGULATION ACT, 1913.

Declaration by Passenger or Other Person.

Declaration to be completed and signed by every passenger bound for a Union port, and by every person seeking to enter the Union, except a wife accompanying her husband, and a child under sixteen years accompanying a parent or guardian.

Name of Ship: Norman Name Class travelled: THIRD

NOTE: (a) The information required hereunder must be given in English or Dutch. (b) If the reply to any of these questions is in the negative it must be clearly stated. (c) A member of His Majesty's Regular Naval or Military Forces, or a Foreign Consul duly accredited to the Union, is not required to answer questions 12, 13, 14, and 15.

WARNING.—Any person knowingly giving false information, or making a false declaration, is liable to penalties of fine and imprisonment.

Name in full (Surname first) ... (1) **ABOUD JOSEPH**

Port of (a) Embarkation, (b) intended Destination. (2) (a) **Port Said** (b) **Delagoa Bay**

(a) Sex and (b) Condition (single, married, widowed, or divorced). (3) (a) **male** (b) **single**

(a) Age next birthday, (b) Birth-place. (4) (a) **33** (b) **Nahr-el-Nahr, near Bejrout, Syria**

(a) Nationality (British, French, Indian, etc.), (b) Race (European, Hebrew, Arabic, or African). (5) (a) **Hebrew (Syrian)** (b) **European**

(6) Name	Sex	Age next Birthday	Birth-place	Whether previously in Union
Wife				
<b>travelling unaccompanied</b>				

Particulars of Passport. No. **22762**

Place of Issue: **Bejrout (Syria)**

Date of Issue: **Oct. 30<sup>th</sup> 1924**

(This column is reserved for the remarks of the Immigration Officer.)

7. Last home address in full (Stating length of residence.) (7) **Nahr-el-Nahr, near Bejrout, Syria.**

8. Why have you come to South Africa? (8) **business purposes**

9. Period (if any) of previous residence in any part of South Africa now included in the Union, and whether such residence was of a "permanent" or "temporary" nature. (9) /

10. Proposed place of abode in or outside the Union. (Address in full. If proceeding to a destination outside the Union state "In transit for ...") (10) **travelling to Delagoa Bay in transit for**

11. Occupation (11) **merchant**

12. What means can you produce as your own bona fide property? (Explain briefly what each you possess, or what documentary evidence you have of deposits, employment, or support, promised to you in the Union, and what references you can give from persons in the Union.) (12) **One hundred & twenty pounds**

13. What European languages can you write? (13) **Spanish & little French**

14. (a) Have you ever been restricted or refused permission to enter, or (b) have you been deported from or ordered to leave, any part of South Africa which is now included in the Union? (14) (a) / (b) /

15. Have you ever been convicted of any crime in any country? (If yes, give particulars.) (15) **No.**

16. Are you and those accompanying you suffering from tuberculosis (consumption) or any other infectious or communicable diseases? If yes, give particulars. (Immigrants suffering from infectious or contagious diseases, such as plague, typhoid, cholera, etc., are not permitted to enter the Union, and any person who is in possession of a permit to enter the Union is not upon conditions prescribed by regulation.) (16) **No.**

Landed at

On the

Declared before me at South Africa, this day of 19

I hereby declare that I understand the above questions, and have answered them truly. Signature (or Mark) of Passenger: [Signature] Immigration Officer.

expressing disquiet at "the large number of undesirable aliens ... the majority of whom are low class Russian Jews".<sup>30</sup>

The uneasiness was undoubtedly the product of racial prejudice. It was however, also to a great extent the result of the fear, prompted by the Russian Revolution, that Bolshevik agents might enter the Union in the ranks of the Eastern European Jews. This was the reasoning behind the instruction issued to immigration officers to scrutinise passports and carefully examine all foreigners.<sup>31</sup> By June 1922, form D.I. 10, the passenger's declaration, included question 5(b), "Race (European, Hebrew, Asiatic or African)", so that Jewish immigrants were readily identifiable. On the other hand clause 4 of the Public Welfare Act Amendment Bill, providing for the registration of aliens to refute accusations that the country was being "overrun", was dropped ostensibly because it offended South African Jews.<sup>32</sup>

During 1921 South African immigration policy changed materially, and was given an acceptable rationale by economic conditions. By that year the Union was experiencing the wash of Europe's post-war depression. There was a drop in the world price of primary products (of which South Africa was a large producer); the market for diamonds collapsed and

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30. Ibid. C.I.A. M. 215, Deputy Commissioner C.I.D. to Principal Immigration Officer, 7.6.1919.

31. Ibid. C.I.A. M. 212, Sec. for the Interior to Principal Immigration Officer, 12.5.1919; The Cape Times, 13.12.1919. The S.A.P. Congress in Bloemfontein discussed this question of Bolshevism and the immigration of "undesirables".

32. H. of A. Debs. 11.6.1919, Minister of Justice.

credit facilities were shortened. Inevitably a noticeable retrenchment of workers began to be instituted; and at the same time the start of a three-year drought cycle drove small farmers off the land to seek work in towns.

External political policies were also to impinge on the South African situation. In the United States there had been a huge increase in the number of immigrants from Eastern and Southern Europe between 1911 and 1915, and the consolidating Immigration Act of 1917 had proved ineffective in slowing down the tide. Consequently in 1921, against a background of increasing "nativist" fervour, an Emergency Quota Act was passed with effect from June 2 of that year. It was a temporary measure designed to limit the number of aliens of any nationality who could be admitted in any one year "to 3 per centum of the foreign born persons of such nationality resident in the United States as determined by the United States census of 1910".<sup>33</sup>

The Act was intended to reduce total immigration; but it was also a subjective measure designed to reduce the proportion of immigrants from Southern and Eastern Europe. In practice -- because of evasion of the law -- immigration figures ultimately increased. But the immediate effect was to deflect many would-be immigrants from America to South Africa, thus swelling an already distended number. During 1921, approximately 1 416 immigrants (primarily Jews) came to South Africa from Russia.<sup>34</sup> In the following year 737 Lithuanians and Russians

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33. Encyclopedia Britannica, (1951) Vol. 15, p. 467.

34. H. of A. Debs. 1930, Vol. 14, 12.2.1930, L. Blackwell.

were admitted out of a total of 7 566 immigrants.<sup>35</sup>

In South Africa, as elsewhere, the post-war depression and a strongly xenophobic nativism led to a reappraisal of the whole question of unrestricted white immigration. English-speaking public opinion on which the government depended began to focus on the growing alien presence in its midst. The United States' legislation prompted the Cape Times to note editorially that experience would probably soon likewise dictate a tightening of the South African immigration laws, which in recent years had allowed in a large flow of similar "unassimilable" people. The burden of this paper's refrain was to be repeated interminably for almost a decade. While the government was frightening away "undesirable" (i.e. British) settlers who would build up industry, develop natural resources and "assimilate themselves readily into our South African nationhood", less desirable immigrants were entering from countries where democratic ideals were unknown and "Western concepts of morality are quite unappreciated".<sup>36</sup>

The articulation of these sentiments opened up a flood of correspondence which revolved around the "exclusiveness" of the Jews; their increasing numbers in relation to the total population; their propensity to exploit their new homeland; and the threat their low living standards posed to born South Africans.<sup>37</sup> It had all been said before - about

+ some very  
 odd  
 things

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35. H. of A. Debs. 27.2.1923, answer to G.F. Brink's question; Alexander Papers, B.O.D. 1, Chief Immigration Officer, Cape Town gave a figure of 1 030 Jews. As no separate tabulation of "in transit" passengers was made until 1924, all statistics are suspect.
36. The Cape Times, 16.8.1921.
37. The Cape Times, 9.9.1921; 13.9.1921; 21.9.1921. It is interesting to note that De Burger in the same period had no such editorials or correspondence.

Indians. What was now exposed was the depth of the racism felt by many English-speaking South Africans towards other Europeans.

In January 1922 the strike of Transvaal coalminers set in motion the sequence of events which was to culminate in revolt on the Rand, organised by a small group of Bolshevik activists. Inevitably the presence of so many obviously poor, obviously alien "Russians" in Johannesburg was coupled with the bloody happenings of those 10 days in March. "Public opinion of the sort that is behind the government policy," Patrick Duncan, Minister of the Interior wrote to Lady Selborne, "believes in a Bolshevik plot being at the root of the trouble and is clamouring loudly for the exclusion of all Russian Jews ... There is of course a small Bolshevik element in this country and in it a few Russian Jews but the men who lead it are almost all of our own kind."<sup>38</sup> Throughout the country the revolt was labelled a "Bolshevik and Jew Revolution" and the government was urged to adopt reactionary measures.<sup>39</sup>

Editorial policy on several English language newspapers mirrored these feelings which canalised into a plangent and outspoken demand for restriction on immigration from Eastern Europe.<sup>40</sup> The Sunday Times reflected the prevalent opinion that most of the aliens were active Bolsheviks or sympathisers, anarchists lacking respect for constitutional government, against whom the government must "guard the gateway more closely in future".<sup>41</sup> The Star claimed that "the terrible

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38. Duncan Papers, I.D. 5 (p), 23.3.1922.

39. H. of A. Debs. 19.4.1922, Morris Alexander.

40. See The Zionist Record, Vol. 16, No 177, 7.9.1923 for press excerpts.

41. Alexander Papers, B.O.D. 1, 19.3.1922.

happenings on the Rand arising out of destructive doctrines originating in Russia do justify a much more searching investigation of the loose immigration laws as applied to undesirables from Europe",<sup>42</sup> The Cape Times, which spearheaded and most accurately reflected local nativist thinking, weighed in with a heavy attack on the weaknesses in the immigration laws which allowed "a stream of undesirables" to enter.<sup>43</sup> The gravamen of its charge rested on two "apparently innocent provisions" of the law: Section 4(2) with its specific mention of Yiddish as a European language in which the education test could be done; and the ministerial prerogative of overriding the decisions of immigration officers and appeal boards. The remedies it proposed hardly reflected the "democratic ideals" this paper purported to follow. The education test should be made more stringent except in the case of those races "readily assimilable in South Africa"; immigration officers should get wider discriminatory powers of selection and ministerial discretion reduced. Finally the list of deportable offences should be extended and the state should cancel the naturalisation certificates or the permits to reside, of people who within a stipulated period indicated they were unsuited to South African "civilisation".

On March 23 the Cape Times argued that South Africans must put aside their differences and control immigration before the country was swamped and ruined. On April 25 the same paper shifted its attack against Jewish immigration back to a discussion of the type of immigrant South Africa needed, which to a great extent reflected the views of the

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42. Alexander Papers, Folder 8, 20.3.1922.

43. 18.3.1922.

virulently anti-Semitic South African National Union.<sup>44</sup> The real test of citizenship for any alien was not race or religion but "fitness to be absorbed easily in the general social and economic life of the country". In South Africa the application of this test was simpler than elsewhere. The white population living around a larger black one to whom it had grave responsibilities "needs reinforcement above all by men and women of a high standard of civilisation". In a third editorial on May 1 the attack was mounted against Jewish immigrants eo nomine. Jews already in the Union it maintained, lent immigrants the £20 guarantee required by law;<sup>45</sup> further when a Jew was refused admission pressure was used on the authorities "with ruthless, continual and unscrupulous persistence". A system which allowed such tactics was faulty. Consequently as a means of controlling European and Asiatic immigration, the Cape Times recommended a quota system which would do away with the abuses of the existing system by fixing the annual number of immigrants permitted from all countries save Great Britain, Holland and the Dominions.

Simultaneously the cry for amendment of the immigration laws was taken up by the policy makers of the S.A. Party. In the Senate Jacobus Graaff linked the Rand Revolt with his request to the Minister of the Interior to amend the law so as to exclude the large number of undesirable aliens then entering the country.<sup>46</sup> Delegates to the S.A.P. Cape

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44. Secretary, S.A. National Union, Jhb. to The Cape Times, 10.4.1922.

45. This was however not done by Jewish organisations. See The Zionist Record Vol. 15, No 165, 19.9.1922, p. 23.

46. The Cape Times, 28.3.1922.

Provincial Congress in April agreed that "undesirable immigrants" should not be admitted but that details as to what constituted "undesirable" should be left to parliament.<sup>47</sup>

It was obvious that for many the "undesirable" immigrant was synonymous with a "Jewish" one. Consequently many Jewish readers were drawn into the controversy with a general defence outlining the Jewish contribution to South African prosperity and culture, combined with a specific denial of significant Jewish participation in the recent disturbances.<sup>48</sup> In addition Jewish communal leaders denied that any organisation had ever used pressure to bring in Jews who would otherwise have been excluded under the provisions of the Immigration Act.<sup>49</sup>

Soon after, in August, Smuts refused to consider the relaxation of the country's immigration legislation so as to allow the admission of considerable numbers of Jewish immigrants into either the Union or South West Africa.<sup>50</sup> The most he would promise was full government support against anti-Jewish excesses in Eastern Europe on the grounds that if this source of anxiety were removed, the emigration flood would cease.<sup>51</sup>

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47. The Cape Times, 8.4.1922.

48. The Cape Times, 25.3.1922; 28.3.1922.

49. Ibid. 3.5.1922, Alexander, Rev. A.P. Bender, Rabbi M.C. Mirvish.

50. Smuts Papers, Vol. 24, No 334, Joint Committee of the Jewish B.O.D. and the Anglo-Jewish Association to Smuts, 4.7.1921.

51. The Cape Times, 31.8.1923, report of S.A.J.B.O.D. 1.8.1921 - 31.5.1923.

Meanwhile the public was unaware that since early 1922,<sup>52</sup> the government had been using Section 4 (1) (a) of the Immigrants Regulation Act (intended solely for excluding Asiatics) primarily to restrict immigration from Eastern Europe.<sup>53</sup> "It amused me," Duncan wrote to Lady Selborne in April 1922, "to get your advice about keeping out the Peruvians as I have just been making a small effort in that direction since the United States closed the door to a large extent against the immigrant from Eastern Europe. We are getting him here in growing numbers and I have been putting in force a clause in the Immigration Act which enables the Minister to bar anyone whom he deems unsuitable on economic grounds or from standards or habits of life. The victims are of course all Jews ... I am very doubtful if much can really be done to stop the stream in these circumstances, but they are really coming in much faster than we can assimilate them and the present Bolshavik scare - which is nothing but a scare - gives a good opportunity for trying a little restriction."<sup>54</sup>

Duncan's letter proves that the measure was initially prompted by the cabinet's aversion to large-scale Eastern Europe Jewish immigration disproportionate to Western European numbers.<sup>55</sup> The 1921 Census showed

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52. Ibid. 2.5.1924, statement issued by Dept. of the Interior 1.5.1924 gave the date incorrectly as "early 1921".

53. Duncan Papers, III 2(a), Duncan stated this was cabinet policy, which as Min. of the Interior he had to implement. The 1935 letter below suggests he shared the cabinet view.

54. Ibid. I. 5 D(p), 20.4.1922.

55. The Cape Times, 24.4.1922, Duncan to A. Barlow, 19.4.1922.

Lietuvos Valstybė

1. Situacija.

Vina 13709

Tink. Varianin (1) Jankart-  
Val. 1920

is Vainas

de Vainas, Vainas

pro 1920

en

Mission Militaire Française  
en LITHUANIE.

VISA n° 423

Prisne aux autorités POLONAISES de bien  
vouloir laisser passer le porteur du  
présent passeport qui se rend en  
ANGLETERRE via Allemagne.  
Keuno le 17 avril 1920.

9/04 Capitaine Commandant P/I.

pour le terme de  
thi 16 jours  
jusqu'en  
Lithuanie



Visa No. 109.

Seen at the British Consulate, ...  
Lithuania. Good for the journey to  
the UNITED KINGDOM, en route to  
SOUTH AFRICA.

Lt. Col.,  
British Consul.

19th April, 1920.

BRITISH COMMISSION  
FOR THE  
BALTIC PROVINCES



LIETUVOS BRITANIJOS  
KOMISIJA  
BALTIJOS PROVINCIJOMS

Mark Gebühren ...  
Sicht ...

10 Tage vom 18 April 1920  
den 17 April 1920



Handwritten signatures and dates: 18 April 1920, 17 April 1920.

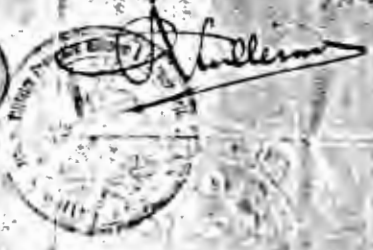


Stamp: 26/4 1920

Kontrola dokumena

Handwritten notes and signatures in French.

Use for ...  
Angletone ...  
France ...  
Requies ...



Vertical text: Inhaber ist verpflichtet ...

Reverse of Lithuanian passport on page 195 indicating the route taken to South Africa

that between 1911 and 1921 there had been a decline in the number of German-born inhabitants while Dutch numbers remained stationary; meanwhile Eastern European numbers had risen from 24 839 to 27 793.<sup>56</sup> Smuts's policy then, was to kill two birds simultaneously. Later we shall examine more fully repeated governmental statements on the type of immigrant South Africa wanted - a small, independent yeoman farmer or a wealthy entrepreneur of British, Dutch or German extraction. It is sufficient to notice here the immigrant who was not wanted. "I am not anti-semitic," Duncan explained years later, "I have many Jewish friends whom I like and admire. But something in me revolts against our country being peopled by the squat-bodied, furtive eyed, loud voiced race ... In a big population they would be lost and negligible. But we have too many of them."<sup>57</sup>

This is a suitable point at which to consider the procedure required of an intending immigrant during the period that Section 4(1)(a) was used against Europeans. Application was made by someone already in the Union to the Secretary of the Interior for a permit allowing a relation to travel to South Africa.<sup>58</sup> A certified copy of this permit, if sanctioned, was sent to the relative oversea, together with an affidavit acknowledging that he would be supported by the applicant in South Africa. On production of these two documents, the British consul in the Polish,

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56. U.G. 42-23. Third Census, Part V, Birthplaces (Europeans).

57. Duncan Papers, I.D.5(aa), to Lady Selborne, 10.1.1935.

58. This arrangement followed the interview with Duncan noted below. See The Zionist Record, Vol. 15, No 169, 31.1.1923; H. Venn to Sec., S.A.J.B.O.D., 30.12.1922.

Lithuanian or other Eastern European town nearest to the intending immigrant's home, visaed the passport granted him by the local authorities. The completion of these formalities only enabled the immigrant to travel; it was not a guarantee of permission to land.

The cost of a passage from Latvia to Cape Town was about £38. In addition the immigrant had to deposit £35 with the shipping company as a guarantee should he be refused entry and have to return. On arrival he was subject to the Act's health and education tests. Most important however, was the question of his future employment in view of the use to which Section 4(1)(a) was being put; but having been permitted to come this far, his chances of entering were reasonably good.<sup>59</sup> After May 1, 1924 when 4(1)(a) was no longer used against Europeans, the previous arrangement was reverted to, under which a sworn affidavit by a relation, friend or prospective employer in South Africa was sent to an immigrant and this was accepted as proof of definite employment in South Africa.<sup>60</sup>

From the inception of this policy of more careful selection Duncan made a genuine effort to mitigate the autocratic potential of its administration, by reversing the act's restriction on the Appeal Board's powers to upset the minister's orders under Section 4(1)(a). "I have given instructions that any immigrant who is prohibited by the Immigration Officer under this section is to have an opportunity of appearing before the Board of Appeal, which will see him personally and hear any evidence which he may desire to put forward, and he will not be excluded

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59. Alexander Papers, Folder 11, P. Jochelson to B. Borman (?), 2.7.1923.

60. Alexander Papers, B.O.D.2, Sec., S.A.J.B.O.D. to Alexander, 30.7.1924.

unless the Board confirms the opinion of the immigration officer that he is an undesirable immigrant for the reasons set out in Section 4(1)(a)."<sup>61</sup>

The re-appointment of an immigration officer in Cape Town by the Board of Deputies in June 1923, and the establishment of a similar but voluntary post in Durban, were attempts to help individual immigrants cope with the complicated entry procedure which sought to exclude them. The officer was instructed only to take an interest in prohibited (as against undesirable) immigrants and to keep a register with details of every case, for perusal by the Board of Deputies. Like his predecessor, this official was recognised by the authorities; his chief attribute was his fluency in written and spoken Yiddish. His work entailed interviewing and making applications for people who wanted to bring relations to South Africa; boarding ships and giving immigrants information about trains etc; appearing on the immigrant's behalf before the Appeal Board when it sat in an advisory capacity; and clearing up any other problems between immigrant and authorities.<sup>62</sup>

Duncan continually denied (and continued to do so even after the government fell) that the powers taken under the Immigration Act were more than "a temporary policy to meet the conditions as regards unemployment".<sup>63</sup> By the end of 1922, however, the Jewish communal leaders who

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61. The Cape Times, 24.4.1922, letter to A. Barlow.

62. Alexander Papers, Folder 11, H.B. Shawe to Sec. S.A.J.B.O.D., 5.6.1923; Letterbook 1911-1925, Alexander to Sec. Jhb. B.O.D. 4.10.1923; Folder 11, Sec. S.A.J.B.O.D. to P. Jochelson (first immigration official) 28.5.1923; B.O.D. 1, Duncan to Buchanan, 25.9.1922.

63. H. of A. Debs. 20.6.1924, Duncan.

were constantly under pressure from people unsuccessfully trying to bring in relations, were convinced the Jewish immigrant was receiving "differential treatment".<sup>64</sup> Consequently in December 1922 a deputation from the Board of Deputies laid its case before the Minister. The burden of their complaint was that Section 4(1)(a) should not, and was not intended to, apply to Europeans; the arbitrary application of this section to all Jewish immigrants was derogatory to the community. In addition they maintained that a general prohibition of immigration was unjustified and prejudicial to the Union's interests.<sup>65</sup>

In his reply Duncan again refuted the imputation that the notorious section was being specifically applied to Jewish immigrants.<sup>66</sup> This section was "the only provision which can be used to restrict immigration on general grounds, arising from the condition of the country and it is for that reason and for that reason alone that it is being applied to European immigrants". The need to control unemployment was then the main reason for the use of 4(1)(a) against Europeans. A contingent second, he went on to explain, was the restriction of Eastern Europeans before their presence gave the opposition a political weapon powerful enough to force the government into adopting a course it balked at taking. "If immigrants from Russia and Central Europe were to come here

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64. Alexander Papers, Letterbook 1911-1925, Alexander to Sec., S.A.J.B.O.D., 18.10.1922; The Zionist Record Vol. 15, No 166, 30.11.1922, p. 3.
65. Alexander Papers, B.O.D. 1, Report of deputation, 1.12.1922.
66. Ibid. B.O.D. 1, 12.12.1922.

in large numbers as they would undoubtedly do, I am certain there would be a popular outcry for legislation possibly on lines similar to that adopted by the United States of America which would impose definite restrictions without leaving any discretion to the Minister as Clause 4(1)(a) does."

By the end of 1922 the government could legitimately cite the employment situation as the main reason for the use of this section against Europeans. Unemployment was severe enough for the Labour Party to recommend government assistance to workers wishing to emigrate to Australia. Consequently in a further interview Duncan indicated that the government would consider alternative proposals to meet the problem of the existing "economic stringency". The Board of Deputies' reply provided not an alternative, but the entire suspension of the use of Section 4(1)(a).<sup>67</sup>

The government was well aware of the dangers inherent in the use of bureaucratic discretion; the only alternative was the infinitely harsher quota system of the United States which in Duncan's view could hardly be regarded as an improvement on the existing situation as far as the Jews were concerned. The S.A.P. had considerable Jewish support in 1922 which it would have lost by instituting more stringent legislation. Further, the government did not comprise a group of zealots burning with a sense of mission. Had its members been thus characterised, its beliefs and actions might at least have had the merit of unambiguity, which lightens the historian's task. Conversely its indoctrinaire

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67. Ibid. File 11, Private Sec., Minister of the Interior, 7.5.1923.

attitude gave this government's approach a flexibility and humanity which was noticeably lacking in the later quota policy of Hertzog's Government, as the Jewish leaders subsequently admitted.<sup>68</sup> The experience of Jews in Imperial Russia however, had made them suspicious of any "temporary measures" which they tended to identify with legislation such as the notorious "May Laws" establishing the Pale of Settlement.

This exchange between the Jewish community and the Minister took place as the government's immigration policy came up in parliament for discussion during the Interior vote. The Opposition, with an eye to embarrassing the government whatever its actions, emerged as the protagonist of an open door policy. It supported the Jewish community in its resentment over the use against Europeans of legislation intended to exclude Asiatics.<sup>69</sup> P.G.W. Grobler protested as strongly as did Alexander over the way in which immigration of "the Jewish race" was being dealt with, and claimed the Minister was inspired by anti-semitism.<sup>70</sup> This was an accusation at which even Alexander, the most doughty fighter for Jewish rights, demurred. Whatever his private opinions, in parliament the gravamen of his charge was that Jews though not specifically singled out, were unjustly treated and hardest hit.<sup>71</sup>

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68. S.A.J.B.O.D., Report of Mass Meeting on Immigration Quota Bill; 6.2.1930.

69. H. of A. Debs. 28.5.1923, J.S.F. Pretorius, N.P. member for Fordsburg.

70. Ibid. 29.5.1923. Grobler quoted from a pamphlet circulating in South Africa urging people to boycott Russian and Polish Jews, but did not mention where it had originated.

71. H. of A. Debs. 29.5.1923.

In August at the Deputies conference in Pretoria, four resolutions on immigration were passed.<sup>72</sup> The protest against the use being made of Section 4(1)(a) was reiterated; but the Jewish community affirmed its determination to help the government keep out the undesirables under the other sections of Clause 4. In the event of alternative legislation being introduced, the incoming executive was instructed "to urge that such legislation should not leave any prohibition to land to the arbitrary decision of any individual authority and should give every prohibited immigrant the full right of appeal provided for in the existing act" - which as Duncan claimed, was already being done. Finally the executive was to use all means to have precluded from the provisions of such legislation wives and minor children of bona fide residents joining their husbands and fathers - which according to Duncan, was also being done "without question".<sup>73</sup>

After the 1923 conference a deputation from the Board of Deputies again called on the minister with the suggestion that the application of Section 4(1)(a) to Europeans be suspended for six months. Duncan did nothing however until February 18, 1924 when he informed the Board that the cabinet was against this move.<sup>74</sup> The Board was about to reopen the issue when on May 1, 1924 the Department of the Interior issued a statement announcing the suspension for a trial period of six months of the offensive section's application to Europeans.<sup>75</sup> The

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72. The Zionist Record, Vol. 16, No 177, 7.9.1923, p. 51.

73. The Cape Times, 8.8.1923.

74. S.A.J.B.O.D. Biennial Report of the Executive Council 1923-1925.

75. The Cape Times, 2.5.1924.

combined dangers of unemployment and large scale Eastern European immigration having been ostensibly weathered, the government had acquiesced in the viewpoint that the application of this section to Europeans was no longer justified. Duncan however again refused a request from the Board of Deputies that Section 4(1)(a) either be expunged from the immigration legislation or be specified as inapplicable to Europeans. Quite correctly he offered as justification for its retention, the special circumstances in which this clause had been originally passed; but rather curiously, he added the rider that the practical administration of the section must be the measure of the good faith with which parliament's intentions were carried out.<sup>76</sup>

Alexander claimed that the government's action was simply an "electioneering stunt" and that unemployment was still as rife in 1924 as it had been in 1922.<sup>77</sup> Certainly 1924 brought but a slight improvement in the slump and drought conditions of the three previous years. The S.A. Party's political fortunes, which had declined simultaneously, reached their nadir early in April 1924 with the Wakkerstroom by-election defeat; and Smuts called a general election for June 17.

Hancock states that he "never had a chance of winning", leading a dispirited party and faced by a vigorous Nationalist-Labour opposition.<sup>78</sup> Probably the May suspension of Section 4(1)(a)'s use against Europeans was a belated attempt by the government to win Jewish support which had been dissipated since 1922. The Nationalists on the contrary had been

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76. S.A.J.B.O.D. Biennial Report 1923-1925.

77. H. of A. Debs. 7.8.1924.

78. Smuts, Vol. 2, p. 161; C.E.M. O'Dowd "The General Election of 1924", S.A. Historical Journal, No 2, Nov. 1970.

wooing the Jewish community since that time.<sup>79</sup> During the election Tielman Roos, "the stalking horse of the Nationalist party in regard to the Jews" spread the gospel of S.A.P. anti-semitism throughout the country;<sup>80</sup> and the Opposition made great play of Smuts's use of 4(1)(a), promising that in future it would never be used against Europeans.

It is doubtful whether the feelings of the Jewish population who comprised some 4.28% of the total population,<sup>81</sup> contributed materially to the election results. In Duncan's constituency, Yeoville, however - which contained a large Jewish electorate - the National Party Jewish candidate, H.J. Schlosberg, fought the election on the basis of the exclusion of Jewish immigrants under Section 4(1)(a).<sup>82</sup> Consequently Duncan personally "had a narrow escape at the hands of the Jews".<sup>83</sup>

One question remains. How effective was the use of 4(1)(a) in restricting Jewish numbers? Duncan claimed that the number excluded by administrative action primarily under this section was comparatively small in proportion to the total number of arrivals. It is difficult to confirm or deny this assertion. The 1918-24 records are incomplete; there are no official figures for those who gained entry or those who

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79. Alexander Papers, B.O.D. 1; De Burger, editorial, 10.7.1922 complaining of the government's discrimination against Jewish immigrants; Blackwell African Occasions, p. 168.

80. H. of A. Debs. 1930, Vol. 14, 12.2.1930, Col. 1687, L. Blackwell; also Die Burger, 28.4.1924.

81. U.G. 35-29, 1926 Census, Part VI.

82. Sen. Debs. 1937, 28.1.1937, Col. 70, Sen. Hartog.

83. Duncan Papers, I.D. 14(a), H.A. Wyndham to Duncan 8.7.1924.

applied in Europe and were refused permission to travel to South Africa.

Even the inadequate and contradictory official figures do not support Alexander's contention however that government policy effectively stopped Jewish immigration.<sup>84</sup> From December 1, 1921 to November 30, 1922, 1 030 "Hebrews" arrived for the first time of whom 139 were excluded.<sup>85</sup> Between January 1, 1923 and April 30, 1924, just prior to the suspension of the use of 4(1)(a) against Europeans, there were 1 134 Jewish applicants of whom 1 000 were approved.<sup>86</sup>

Certainly Jewish immigration was curtailed. But the fact that a considerable total of 638 immigrants was refused between 1920 and February 1923, of whom 315 were British, and 142 "Russians",<sup>87</sup> indicates that though the legislation was stringently used against Eastern European Jews, it was not applied to them solely throughout the total period of its use.<sup>88</sup>

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84. Alexander Papers, Letterbook 1911-25, to an unidentified correspondent, date obscured, probably 1923.
85. Ibid. B.O.D. 1, Cape Town Principal Immigration Officer's figure.
86. H. of A. Debs. 28.5.1924.
87. Ibid. 8.2.1923, Minister of the Interior. This latter figure conflicts with the Immigration Officer's figure above.
88. See Files of H. of A. An 140/1924 which confirms that many British immigrants were excluded; also The Cape Times, 24.4.1922; 30.5.1923.

## CHAPTER XI

### THE QUOTA ACT

Soon after the election Dr D.F. Malan, the new Minister of the Interior, assured Alexander that Section 4(1)(a) had never been intended for use against Europeans and that the government would not follow the example of its predecessor. "I willingly give the assurance that in using the other provisions of the Act for the purpose of keeping out undesirables, no discrimination will be made against any particular European race or nationality."<sup>1</sup> Thereafter naturalisation fees were considerably reduced.<sup>2</sup> Jewish immigration, it would seem, had ceased to be a political issue.

Almost simultaneously, on July 1 the Johnson Act came into force in the U.S.A., establishing the "national origins" system as the basis for immigration. The measure's objective was stated as being the "preservation" of the population's "homogeneity" and the reduction of the annual immigration intake so as to increase assimilability. In any fiscal year, not more than 2% of the number of foreign-born individuals of any nationality resident in the U.S.A. in 1890 were to be admitted. This constituted a country's quota; the minimum was to be 100 immigrants. Under this legislation the total Eastern and Southern European immigration was reduced to less than 1/5th of that from

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1. Alexander Papers, Folder 13, 10.7.1924.
  2. The Rand Daily Mail, 21.12.1931, interview between Malan and S.A.J.B.O.D. deputation.

Northern and Western Europe. The Russian figure for example dropped dramatically from the 24 405 permitted by the 1921 legislation, to 2 248. After July 1, 1927 the total number of immigrants in one year was to be reduced to 150 000, the quota of each nation being fixed as a percentage of 150 000 determined by the ratio between the number of inhabitants having that national origin and the total population of the U.S.A. in 1920. Certain classes were exempted from the quota, such as dependents of previous immigrants and other "desirable" individuals; but aliens who were ineligible for naturalization under U.S.A. laws were to be excluded. In short, America turned her back on Europe's huddled masses yearning to breathe free, in the belief that they constituted a real danger to the state.

The joint effect of the U.S.A. and the Pact Government's new immigration policies and the tightening of Australian regulations, taken in conjunction with the marked deterioration in the condition of the Lithuanian Jews during the 1920's, stepped up Jewish immigration into South Africa.<sup>3</sup> In the "Statistics of migration" for 1927 the Department of Census and Statistics (which since the previous year had separately begun to record "Hebrew" arrivals),<sup>4</sup> noted that the most striking feature of the years 1924-7 was the increase in Eastern, and to a lesser

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3. Rev. Levy, E.M., "The Lithuanian Jew in South Africa", The Cape Times, 14.12.1929. Jews in Lithuania, he claimed, lived in the most abject poverty he had ever seen. A large number lived in Vilna, possession of which was disputed by Poland and Lithuania.

4. Files of H. of A., An. 195/1927-8.

extent, Southern European immigration, the latter being predominantly Catholic and therefore also unwanted. In those years 3 378 Lithuanians, 393 Latvians, 585 Poles and 388 Russians entered in a steady stream; most were Jews joining relatives already settled in South Africa, and included, according to the statistics, a high proportion of "non-productive" males.<sup>5</sup> In 1928 Jewish immigrants formed 32% (or 2 293) of the total and in 1929 36% (2 788);<sup>6</sup> by contrast between 1924 and 1928 there was a loss of nearly 2 000 British or South African-born persons.<sup>7</sup> In the words of the Census Department's report "the only section of the Union European population which is gaining to any marked extent by immigration is the Jewish section".<sup>8</sup>

The monthly immigration reports of the Board of Deputies show that Johannesburg, and to a lesser extent Cape Town, were the centres towards which about half the immigrants gravitated. The remainder landed up in a host of small towns and villages particularly in the Transvaal and O.F.S. where they were less likely to be "lost" in their surroundings. Consequently this new wave of Eastern European immigration revived the fears and prejudices of 1920 and 1921. A paler version of American nativism appeared in South Africa, and Jewish immigration revived as a political issue. In 1925 an anti-semitic organisation,

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5. U.G. 38-29, Statistics of Migration 1927, Table 36; also S.A.J.B.O.D., Monthly Immigration Reports 1924-1926, 1927, 1929. Statistics of occupations indicate a large number of salesmen, but also a number of tailors, carpenters, shoemakers, etc.
6. U.G. 42-34, Statistics of Migration 1933; H. of A. Debs. 1937, Vol. 28, 13.1.1937, Col. 70, J.H. Hofmeyr.
7. The Cape Times, 20.8.1929.
8. U.G. 38-29 p.v.; Saron and Hetz op. cit. p. 371. In 1911 Jews numbered 3.7% of the white population and in 1926 4.28%.

the "Gentile League" was formed, probably as a result of the immigration statistics, to force parliament to prohibit undesirable immigrants.<sup>9</sup> The old questions began to be rephrased. Was South African immigration policy "soundly based"? Would the South African nation not suffer a subtle but definite change in its character if things were allowed to proceed?<sup>10</sup> It was futile to repatriate the Asiatic when the type of immigrant coming in was "questionably superior" and hardly classifiable "as of European stock at all".<sup>11</sup> The opinion was expressed that "we are admitting to the Union immigrants from those countries which figure at the bottom of the intelligence quotient according to the tests taken of European countries".<sup>12</sup> A stock, manifesting entirely distinct characteristics of "dubious quality" was "replacing the dominant Nordic stock" of Europeans in South Africa.<sup>13</sup>

In parliament J.S. Marwick, an S.A.P. Natal member closely associated with the 1820 Memorial, Settlers Association spearheaded the attack on the dangers of unrestricted immigration from Eastern and Southern Europe, an attack which was to continue from 1924 until the passing of the Quota Act in 1930. The burden of his charge was that South Africa was acquiring people who had no skills and who had no proper knowledge of the relations that should exist between Europeans and non-whites.<sup>14</sup>

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9. The Cape Times, 1.12.1925; Die Burger, 1.12.1925.
  10. The Cape Times, 11.9.1925.
  11. Ibid. 4.3.1926.
  12. Ibid. 16.1.1930, F. Storey at Sons of England luncheon.
  13. Ibid. 21.10.1929.
  14. H. of A. Debs. 1925, Vol. 3, 11.5.1925, Col. 3095-6.

The country should not allow in the same type of people as "the unfortunate poor white population of this country".<sup>15</sup> In the early days, he maintained, South Africa had acquired immigrants on an economic basis i.e., to develop the country. The minister should now consider a "biological or eugenic" basis; South Africa was admitting too many unassimilable people "who do not belong to the right family stocks".<sup>16</sup>

Two Jewish M.P.s - Morris Alexander and Morris Kentridge - continually attempted to demonstrate that Marwick's attack was motivated purely by anti-semitism.<sup>17</sup> Alexander refuted Marwick's resuscitation of the accusation that there was a local Jewish organisation which provided the financial guarantee for immigrants. Aliens coming to settle in South Africa, this M.P. reminded his colleagues, had to pass the most stringent conditions before admission; consequently they could not be excluded as undesirable purely because of their race.<sup>18</sup>

Marwick was hitting the Jewish community harder than he realised and on a very tender spot. For humanitarian reasons it had to find refuge for its Lithuanian kinsmen; but it was fully aware that public disquiet could not be ignored particularly while so many recent immigrants (including technicians and artisans) were unemployable.<sup>19</sup> Thus when Alexander noted that "it would be tragic if immigration to South Africa

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15. Ibid. 26.5.1925, Col. 5643.

16. Ibid. 1927, Vol. 9, 23.6.1927, Col. 5658.

17. Ibid. 1924, Vol. 2, 21.8.1924; Vol. 3, 11.5.1925; 26.5.1925.

18. Ibid. 1926, Vol. 6, 8.3.1926.

19. Alexander Papers, B.O.D. 2, S. Raphael to Chairman, Jewish Emigration and Employment Agency, 30.8.1928.

would be directly encouraged" he was paradoxically articulating the nub of the problem.

Consequently the Board of Deputies itself took steps to regulate the steady inflow of Jewish immigrants. Its executive used its influence to stop further immigration till every employable Jew in South Africa was working.<sup>20</sup> Positive attempts were made to resolve the dilemma. An information bureau on employment was set up in Johannesburg in 1927. In the same year a committee examined ways of diverting Jewish immigration into "channels of productive occupations and thereby increasing the absorbent capacity of South Africa for a larger Jewish immigration, in which European Jewry is vitally interested".<sup>21</sup> Working along the suggestions in this committee's report, the following year the Board appointed a sub-committee to investigate the establishment in South Africa of a scheme on the lines of the Jewish Land Settlement Trust in Victoria, Australia, to settle Jews on the land by the grant of easily repayable loans at low interest rates. The new immigrants, as noted, were however primarily an urbanized group who continued to make for the towns,<sup>22</sup> and as a result the scheme made little headway, although about three to four hundred men were placed on farms by the following year.<sup>23</sup>

Meanwhile the number of immigrants continued to increase after 1924 and the government was powerless to halt the flow. Armed with his

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20. Ibid. B.O.D. 2, Undated memo (possibly  $\pm$  January 1928).

21. Alexander Papers, Folder 19, Abridged Report, 1927.

22. U.G. 4-31, Fourth Census, p. 104.

23. Alexander Papers, B.O.D. 2; Die Burger, 30.3.1929.

visaed passport and the affidavit affirming employment, any immigrant fulfilling the law's health and education requirements was entitled to admission. In mid-1925 the Department of the Interior tightened up its powers to prevent the immigrant becoming a charge on the country. No immigrant could land before a guarantee (form D1.12) had been filed with the immigration authorities; this was designed to throw onto his "employer" or "guardian" the cost for possible maintenance charges or repatriation expenses during the first two years after his arrival.<sup>24</sup> Whereas the previously demanded affidavits had proved ineffective in recovering maintenance and repatriation costs, D1.12 could be enforced by the courts. This guarantee however, was as much in the immigrant's interests as the government's, and was demanded impartially if stringently from all immigrants.

A liberal immigration programme of this nature ran contrary however to world trends. The effect of the Johnson Act was to provoke demands for similar legislation in the Union therefore, which became more urgent and widespread as the decade ended with further restrictive U.S. legislation. Opposition interest indicates how largely the issue began to bulk in South African public opinion from 1926 onwards and the high degree of unity manifested. In March the Cape Times urged the government to consider a quota system to regulate the flow of immigration in proportion to the "existing racial characteristics of the people".<sup>25</sup> In

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24. Alexander Papers, B.O.D. 2, H.R.P. Cochran (Immigration Officer) to J. Carasov (B.O.D. Immigration Official) 11.6.1925.

25. 4.3.1926. As in 1922, this newspaper led the demand for the revision of legislation but other English language papers such as The Rand Daily Mail, The Star and The Friend expressed similar sentiments.

the following month Marwick, in the House, expressed the hope that South Africa would follow the U.S. quota system, allowing in immigrants only in proportion to their numbers in the Union in 1890, thus reducing the numbers of those who by American criteria were not the most desirable and suitable, while getting a preponderance of North Western Europeans.<sup>26</sup> The 1926 Cape National Party Congress passed a motion requesting stricter control of undesirable immigrants;<sup>27</sup> while the Natal Congress actually asked for the adoption of the quota system.<sup>28</sup>

In 1927 the Cape Times phrased its request for a quota in a slightly different way by claiming that when the proportion of immigrants of alien stock rose above a certain point there was a risk of "endangering the principles" upon which the well-being of the Europeans depended.<sup>29</sup> In 1928 Marwick again advised the minister to consider a policy of quotas for immigrants based on the various strains in the population at that time. To identify them better, changes of name should be actively discouraged because this obscured racial origins.<sup>30</sup> By 1929 the Cape Times was urging the government to institute a careful enquiry into immigration policy, and to collect data for determining a basis on which a quota system could be applied.<sup>31</sup>

The government hesitated for some time. In September 1925 the Secretary for the Interior A.G.E. Pienaar, had submitted to Malen a

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26. H. of A. Debs. 1926, Vol. 7, 3.5.1926.

27. Die Burger, 8.10.1926.

28. The Cape Times, 29.10.1926.

29. 29.10.1927.

30. H. of A. Debs. 1928, Vol. 11, 9.5.1928.

31. 28.8.1929.

memorandum, warning him that immigration was becoming a serious problem and recommending the restriction of Eastern and Southern European immigration using "the Australian system amplified by a definite percentage basis of admission". The Interior Department's warning was repeated in August 1926.<sup>32</sup> Nevertheless when the Immigration and Indian Relief Act was passed in the following year, though the legislation excluding "undesirables" was tightened, the government declined to introduce as contentious an issue as the quota system.<sup>33</sup>

The immigration statistics for the period 1924-7 cited above were issued in September 1929, just when the economy was starting to feel the effect of dropping prices for primary products; almost simultaneously the further restrictions on the United States intake became operative. Together these circumstances aroused the fear that the Union would be flooded with immigrants for whom no employment would be available. Consequently in October 1929, the general election having reinforced the ruling party's strength, it was resolved at the National Party's O.F.S. Congress "that the time has arrived to fix a quota of immigration on the basis operating in the United States".<sup>34</sup> The government also appears now to have been thinking on these lines, judging from the

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32. H. of A. Debs. 1937, Vol. 28, 18.1.1937, Cols. 297-8, J.H. Hofmeyr, who later found these memoranda in the departmental files. A search undertaken on the writer's behalf by the Central Archives staff (26.9.1977) has failed to trace the memoranda in the Depts. of the Interior, Prime Minister, Governor-General or Commissioner for Immigration and Asiatic Affairs archives.

33. H. of A. Debs. 1927, Vol. 9, 23.6.1927.

34. The Cape Times, 21.10.1929.

remarks made in public by Oswald Pirow, Minister of Justice, that "sooner or later it may be necessary to have a quota system".<sup>35</sup>

A definite decision may have been delayed during the by-election campaign in January 1930 at Bethal, where there was a fairly considerable Jewish farming community which had strongly supported Tielman Roos in the general election. On January 17 Pirow assured the Bethal Jews, who had presumably expressed anxiety on this score, that Roos's departure from politics did not indicate that the party had become anti-Jewish and would oppose Jewish immigration. "The policy of the Nationalists on that subject would be the same as that which had frequently been expatiated upon by Mr Tielman Roos .... the only immigrant who had not become a burden upon the state for assistance was the Jewish immigrant."<sup>36</sup>

Years later Arthur Barlow claimed that there were several Transvaal and O.F.S. seats which the Nationalists held in the 1920s because of Jewish votes and that this restrained them from introducing a quota sooner.<sup>37</sup> The Jewish community was, as noted before, too small to affect any election materially. Nevertheless the Nationalists had wooed them assiduously throughout the 1920's, and the loss of Bethal to the S.A.P. may have precipitated the introduction of the quota legislation.

The bill was not mentioned in the speech from the throne and the first reading on January 29 came "as a complete bombshell" to the Jewish

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35. S.A.J.B.O.D. "The Quota Act, 1930. Some notes prepared by G. Saron".

36. H. of A. Debs. 1930, Vol. 14, 10.2.1930, Col. 579, Kentridge.

37. H. of A. Debs. 1944, Vol. 48, 10.4.1944, Col. 477.

community,<sup>38</sup> which was engaged in an active campaign to raise funds for Palestine. At the Board of Deputies Congress in Cape Town on January 5 and 6 there was "nothing sensational on the agenda, no 'burning' questions as would immediately strike the public eye".<sup>39</sup> In 1936 Malan admitted the bill was thus hastily introduced to avoid a last minute influx of immigrants.<sup>40</sup>

The measure<sup>41</sup> was designed to circumscribe the government's powers statutorily, thus falling between the undifferentiated American legislation and the arbitrarily implemented Australian system.<sup>42</sup> Under its terms the countries of the world were to be divided into two groups: one (the non-scheduled) from which immigration was to be restricted; the other (scheduled countries) whose emigrants were to be allowed unrestricted access into South Africa. The first group comprised Greece, Latvia, Lithuania, Poland, Russia and Palestine (alone among the mandates to be specifically named). The second included the British Commonwealth without its mandates, the U.S.A. and Western European countries. Under Section 2(1) which was the crux of the bill, immigration restrictions were to be implemented by means of an annual quota of 50 immigrants from each restricted country. The immigrant fell under

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38. Alexander Papers, Letterbook 1925-32, Alexander to "Marcia", 6.10.1930.
39. The Zionist Record, 17.1.1930, p. 4.
40. Die Burger, 21.10.1936.
41. Statutes of the Union 1930. It became Act 8 of 1930.
42. In the latter the Gov-Gen. could prohibit or restrict by proclamation immigration from any country or of any race or occupation.

the quota of the country of his birth and not of his nationality. Another new concept was introduced in the form of an "unallotted" annual quota of 1 000 for all non-scheduled countries, to be disposed of by a board established under the bill's provisions. The object of this unallotted quota was primarily to prevent the exclusion of any "desirable" British or Western European subject born in a restricted country who was required in a newly established industry. The board was to comprise senior officials such as the Director of Census and the chairman of the Board of Trade and Industries, and was to report annually to parliament on its activities.

The dissension within the ruling party over the measure can be gauged from Ons Vaderland's admission that there were "thoughtful" Nationalists who felt the step was a mistake. But "other" Nationalists - and these presumably were in the majority - believed that as the Jewish voters apparently did not support the government their sensibilities needed no special consideration.<sup>43</sup>

The Opposition's attitude, given the wide range of opinions it represented, was inevitably equivocal. "The South African Party is in favour of all immigration but this is not to say that all immigrants are good enough for our country."<sup>44</sup> The complaint in an electioneering pamphlet, "Immigrasie. Hoe die Blanke Bevolking te Versterk", that the government was encouraging "bloedmengsel" by allowing in such a high percentage of Southern and Eastern Europeans, and the S.A.P.'s

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43. The Cape Times, 3.2.1930, quoting Ons Vaderland, 1.2.1930.

44. The Cape Times, 4.2.1930, quoting Die Volkstem, organ of the S.A.P. in the Transvaal.

failure to suppress Marwick's thinly veiled attacks on Jewish immigration indicate that it endorsed the idea of a curb -- but preferably one other than a quota system -- on such immigration.

Indeed it would seem that Senator F. Ginsberg (himself a Jew, which adds weight to his opinion) was right when he admitted that "the overwhelming majority of the [white] people of South Africa favoured the bill".<sup>45</sup> Nor did it cater only for endemic nativism. What Ginsberg called "its close connection with the present economic situation," was proved by the support it received from the trade unions (some of whose leaders were Jews). This support came primarily from trades where competitions for jobs was keen, particularly as Eastern European immigrants were known to be "not particular about conditions under which they work".<sup>46</sup>

The public galleries were "crowded to suffocation" when Malan lengthily and with "intense conviction" moved the bill at the Second Reading.<sup>47</sup> He listed the ideological factors which had caused the government to act, and which can be designated either nativist or economic in origin. Firstly, because of the strong desire to leave Eastern Europe there was an increased flow from this area which was accompanied by an emigration from South Africa comprising descendants of the original "stocks" of the country. Net migration from Northern and Western Europe had only shown a gain as economic conditions began

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45. Sen. Debs. 1930, 4.3.1930, Col. 298.

46. Ibid. Cd. 317, Sen. Briggs who had a trade union mandate to support the bill; C.F. Jones, Maldwyn A., Destination America p. 227 for a similar reaction by the American Federation of Labor.

47. The Zionist Record 14.2.1930, p. 6.

to improve after 1926. The total gain from immigration between 1924 and 1929 had been 12 662; but there was a net gain of only 800 from the original race stocks, until 1929 when a large Dutch influx occurred.

Many of the new arrivals from Eastern Europe were "non-producers" whose occupations were not required because of economic conditions in South Africa; of the immigrants who were not dependents only 3% were agriculturists. Other countries were limiting the entry of these immigrants who then came to the Union. Consequently if South Africa did not pick its immigrants, he warned, it would become the receptacle of other lands' unwanted population.

Every nation, Malan continued, had the right to control its destiny by controlling its composition. In addition, by controlling immigration, South Africa was simply following the trend of the world's historical development in this respect. Whereas previously new countries had got the best and the most courageous settlers, today those who came to new countries were the ones unable to compete successfully in their own countries. Consequently all over the world control of immigration was an important part of national policy.

The provisions of the bill, he explained, were based on three principles. Nations, like individuals, he repeated, wished to maintain their own identity; consequently a nation wanted to develop on the basis of its original composition. Out of this arose the principle of unassimilability. Nations like individuals, preferred homogeneity because every nation had a soul and every nation wanted an "undivided soul". Finally every nation wanted to maintain its own type of civilisation. Everyone agreed that Eastern and Western Europeans civilisations differed; South Africa was called on to maintain the standards

of Western civilisation and should not complicate a difficult task by allowing uncontrolled immigration.<sup>48</sup>

The speech repeated nativist arguments heard all over the world. For the historian the most noteworthy feature of the Quota Bill was that it gave immigration legislation an inflexible cast hitherto absent, by introducing a wholly new principle as the basis for immigration. Previously an individual had come in on his own merits. Now an arbitrary principle of selection according to country of origin and its corollary, the question of "assimilability", were to be rigidly applied. We shall later note the difficulty the government had in 1930 in defining this word without proclaiming the specifically anti-Jewish nature of this legislation. But in the late 1930s, the rise of Nazism and the parallel growth of the "shirt" movements in South Africa, enabled the Nationalists to express the real intentions of the Quota Bill. In January 1937 Malan made it clear that the word "assimilability" had a precise meaning, designed absolutely to exclude all Jews except dependents.<sup>49</sup> The 1930 legislation however, did not need to mention Jews specifically by name, for the great majority came from specific countries, thus making it easy to place restrictions on a country rather than a race.<sup>50</sup> The syllogism was then completed by Malan's assertion that his Quota Act did not rest on racial discrimination, but on discrimination between countries.

The measure's introduction immediately released a flood

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48. H. of A. Debs. 1930, Vol. 14, 10.2.1930; also Sen. Debs. 1930, 4.3.1930, Col. 287 ff.
49. H. of A. Debs. 1937, Vol. 28, 13.1.1937, Col. 116. Compare the National Party in present day Britain which wishes to exclude "racially incompatible" immigrants.
50. H. of A. Debs. Col. 41; An 195/1927-8, Tables 19 and 14(a).

of overt anti-semitism.<sup>51</sup> The Cape Times, at its xenophobic zenith, recommended that parliament get the bill through as quickly as possible and advance its date of operation so as to prevent a flood of "undesirable immigration". The hope was expressed that Malan would not be deflected from his course by "the protests of small minorities whose rights will in nowise be affected by the bill". The annual "infiltration" of 2 000 "Lithuanian type" persons and the corresponding loss of South Africans of British, Dutch, German or Huguenot origin "must necessarily have a profound effect upon the general fibre of the people".<sup>52</sup> In a subsequent editorial which perhaps more than any other reflects the zeitgeist it maintained there was no difference in kind between preventing Asiatic entry and preventing European entry of those below the standard of life accepted as European in South Africa. The small proportion of these immigrants who made good should not be a justification for "the general attrition of such immigrants on the conditions of life of the white South African". Malan's bill was supported because it recognised the tendency of these immigrants to "drive out" white South Africans.<sup>53</sup>

Following the Board of Deputies' decision to institute a protest campaign, communities throughout the country held meetings,<sup>54</sup> opposing

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51. The Cape Times, 7.2.1930 at seq; correspondence columns; The Zionist Record, 7.2.1930 published excerpts from editorials in The Rand Daily, The Star, The Sunday Times, The Friend.
52. The Cape Times, 30.1.1930.
53. 3.2.1930.
54. S.A.J.B.O.D. Minutes of Executive Council, Meeting at office of vice-president 31.1.1930.

the bill on the grounds that it was "based on unjust and illiberal principles and would in its incidence discriminate against Jews", and urging that admission of immigrants be, as in the past, solely "based upon their individual qualifications".<sup>55</sup> At a meeting in the Zionist Hall in Cape Town, Alexander, then out of parliament, attacked the bill's anti-semitism, "naked and unashamed, publicly proclaimed as a new political virtue in South Africa".<sup>56</sup>

A mass meeting in Johannesburg on February 6 approved the sending of a deputation to the Prime Minister and the Minister of the Interior to obtain a fortnight's postponement of the bill so that it could be discussed.<sup>57</sup> Both Hertzog and Malan initially refused to meet the deputation. Malan's attitude - frequently reiterated thereafter - was that the bill was in the interests of the whole population not least the local Jewish community who could achieve the equality it wanted only if its numbers were not increased. South Africa could still appreciate what the Jews had done for the country; but the stream of immigration had to stop because of the "nervousness" it was causing which could develop into an open hostility that would be detrimental to the existing community.<sup>58</sup>

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55. Ibid. meeting at office of president, 6.2.1930; Enid Alexander, Morris Alexander, p. 151.

56. The Cape Times, 6.2.1930, also Die Burger, 31.1.1930, interview with Alexander.

57. Alexander Papers, Letterbook 1925-32, Alexander to Malan 7.2.1930.

58. H. of A. Debs. 1930, Vol. 14, 10.2.1930.

Malan's use of this argument is proof positive that the legislation was directed against Jewish immigration. It was an argument which always has its measure of appeal for immigrants who have already gained entry. It was to be used far more effectively however in 1937 when the Aliens Act was passed by the United Party against a background of assertive anti-semitism in the country.

On February 11 Alexander again asked Malan to give the Jewish community the opportunity of proposing "alternative methods of controlling immigration which would involve no stigma on our community"; a quota based on occupation, for example, would be preferable.<sup>59</sup> Like the Indians before them the Jews were fearful of statutory racial discrimination which would close the immigration door totally and permanently. Indeed this chapter of South African immigration policy has a painful similarity to the Indian story which had preceded it.

The following day Malan met a hastily assembled deputation and promised to discuss with the Prime Minister the proposal to send the bill to a Select Committee before the second reading.<sup>60</sup> The request, if delivered, must have been summarily refused. Thereafter the Minister of the Interior showed the government's determination to put through the bill quickly in its existing form, by refusing the Select Committee as a time-wasting device.

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59. Alexander Papers, Letterbook, 1925-32, Alexander to Malan .  
11.2.1930; H. of A. Debs. 1930, Vol. 14, 17.2.1930, M. Kentridge.
60. Alexander Papers, Alexander to Siegfried Raphaely (President,  
S.A.J.B.O.D.), 12.2.1930.

The Jewish community then, on the whole opposed the measure. But one must turn to the parliamentary scene, where the bill had an altogether different reception. The Nationalists, guided by a purposeful Malan, unanimously supported the principle and were only prepared to consider practical proposals if they effectively limited "unbalanced" immigration.<sup>61</sup> Their palpable silence during the debate may not have been a response to instructions, as Heaton Nicholls suggested but certainly indicates a disciplined acquiescence.<sup>62</sup>

Smuts was away when the debate opened, (which was an important reason for government haste) and the absence of his firm hand was apparent. Opposition equivocation over means and ends, revealed itself in open disharmony,<sup>63</sup> so that the historian finds difficulty in defining the S.A.P. standpoint. This ambivalence resulted initially from a co-operative response to Malan's appeal to treat this as a non-party issue; i.e. the South African Party accepted the principle that immigration from Eastern Europe (which was overwhelmingly Jewish) must be controlled. The Opposition however could not bring itself to accept the statutory implementation of this fact which was what the quota did, falling just short of mentioning Jews eo nomine.

J.H. Hofmeyr, the new member for Johannesburg North, made a maiden speech in which he "hedged rather feebly",<sup>64</sup> clearly demonstrating the party's equivocation.<sup>65</sup> The Opposition, he agreed, accepted the

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61. H. of A. Debs. 1930, Vol. 14, 12.2.1930, N.J. van der Merwe.

62. Ibid. 10.2.1930.

63. Die Burger, 5.2.1930 confirmed this division "from reliable sources".

64. B.K. Long Papers, Long to Geoffrey Dawson, 20.3.1930.

65. H. of A. Debs. 1930, Vol. 14, 10.2.1930; Die Burger, 11.2.1930.

principle that every nation had the right to decide its own composition; failure to preserve that principle would modify the prevailing national characteristics and arouse hostility. But at the same time South Africa should not adopt a policy which offended the self respect of others. Despite the minister's assertions, the bill was regarded by Jews and non-Jews alike as a restriction on Jewish immigration; yet the Jews from Eastern Europe had shown they were not "unassimilable", and could and did shake off the spirit of the ghetto.

At this stage Hofmeyr's argument faltered and he was forced to articulate the very sentiments which he had deplored in those who had welcomed the bill. The Opposition saw no danger in Jewish immigration as long as it was balanced by the immigration of the original stocks; but "at the present moment there is a lack of proportion and a lack of balance". If the tendency towards anti-semitism were to increase, he continued, and if the present immigration pattern were not checked, there was a possibility of growing disharmony. On this basis he supported the principle of the bill, appealing to the Jews to look at the issue from the viewpoint of their future position in South Africa, and accept the need for some restriction on immigration. The Opposition therefore had a duty to vote for the bill; "but we also wish to remove the stigma". The stigma was clearly indicated in the lack of an adequate principle of discrimination between scheduled and unscheduled countries, and in the fixing of an unadjustable quota for each non-scheduled country. But this stigma could be removed if non-Nordic immigration were allowed to increase as Nordic did.

Hofmeyr was pleading both for restriction and non-restriction. It

is small wonder that Malan later remarked "he comes to the same result as leads us to introduce the bill".<sup>66</sup> Duncan's speech was a more lucid version of what Hofmeyr had been trying to say, possibly because to some extent he was defining his own earlier actions. South Africans wished to restrict the immigration of depressed peoples from Eastern Europe who happened to be Jews; they should however, not be labelled as anti-semites. His own policy had been motivated not by anti-semitism but because the circumstances of the country had demanded it. Similarly control over present immigration was sound policy and he therefore supported this bill's principle.

At this stage this highly rational man was prevaricating somewhat, for even he, as we know was not immune to cultural racialism. In spite of what Jews had done for South Africa in the past, the number coming now was too large he claimed, and must be restricted. He denied there was a stigma in the bill and appealed to the Jews not to make this a racial issue. And then, like Hofmeyr, he tried to assuage his own misgivings by urging that as immigration increased - and it had to, he emphasised, if the white population were to uphold "civilisation" - those who were now being limited must be given a fair share.

Leslie Blackwell, adopting a similar stance to the Hofmeyr-Duncan one, asked how the bill could be altered to attain what most of the House wanted [writer's italics] without doing, in form or substance, anything which was anti-semitic?<sup>67</sup> He suggested two alternatives to

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66. H. of A. Debs. 1930, v 14, 12.2.1930, Col. 706.

67. H. of A. Debs. 1930, Vol. 14, 10.2.1930.

the arbitrary criterion of "assimilability". The first was a national quota on the U.S.A. basis, possibly using the 1911 census. The second possibility was to allow in freely people from the country's original stock, other races coming in on a quota, (which according to the Opposition's Jewish members would remove much objection to the bill).

C.W. Coulter, like several other former Unionists in the South African Party, viewed this legislation as part of the government's policy to reduce all immigration to a minimum. While supporting the principle of a country's inalienable right to decide its own racial composition, as the member for the largely Jewish Cape Town Gardens constituency,<sup>68</sup> he opposed the Bill for its use of an irrational yardstick such as "unassimilability", and the power it placed in official hands.

Hofmeyr, Duncan, Blackwell and Coulter represented the moderate centre, agonising between innate decency and the realisation that public demand for a limitation on Eastern European (and hence, Jewish) immigration, could only be ignored at the Opposition's political peril. Here was the Indian issue, infinitely exacerbated; for Jews, unlike Indians, were not a voteless minority.

On one side of the moderate majority in the Opposition, stood rightwingers like G. Heaton Nicholls, A.J. MacCallum and R.H. Struben, who wholly favoured the bill. On the other were the Jewish members and National Council Labourites under W. Madeley's leadership, fighting the measure as overtly anti-semitic.<sup>69</sup> Kentridge the Troyeville

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68. Ironically he had defeated Alexander in the 1929 election.

69. Ibid. Kentridge correctly noted that Malan, by saying the bill was in the interests of the Jews, proved it was aimed at Jewish immigrants.

member, maintained that the Jews coming from Eastern Europe were no worse than earlier immigrants of whom the Prime Minister had said in July 1929; "The Jew has played a rôle in South Africa second to none, to any other section. He has left his mark on the country through his industry, capacity and loyalty."<sup>70</sup> His remarks fell on stony ground, as did C.P. Robinson's appeal to humanitarianism and to the cumulatively dangerous potentialities of such legislation. Under Malan's guidance particularly, the Nationalists were increasingly strengthening that xenophobic thread which runs through all nationalist movements.

General acquiescence in the measure was reflected in the Second Reading, which was passed with almost unanimous Opposition support, something that had not happened with any important legislation for several years.<sup>71</sup> Having approved the principle of the bill, the S.A. Party now attempted to restore its "liberal" image, by pleading for moderation in implementation.<sup>72</sup> This was the object of the amendment which Blackwell consequent upon his earlier suggestion, introduced on February 17, before the Assembly went into committee. It proposed that the House "have leave to consider the expediency of amending the bill so as to provide for a system of limitation of entry into the Union of immigrants based on a percentage of the foreign born population of the

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70. Ibid. Col. 586; see also Morris Kentridge, I recall, p. 163; S.A.J.B.O.D., Report of mass meeting, Quota Immigration Bill, Kentridge's speech.

71. The Cape Times, 17.2.1930. There were only 7 dissentients.

72. H. of A. Debs. 1930, Vol. 14, 17.2.1930, Duncan.

Union as revealed by the census of the Union of the year 1926".<sup>73</sup> In other words, instead of the arbitrary division into scheduled and unscheduled countries based on the nebulous "assimilability" criterion, South Africa should follow the U.S.A.'s mechanical formula and allow a number equal to 5% of the foreign born population to come in.<sup>74</sup>

Malan correctly described Blackwell's as a Second Reading speech, suggesting a radical change in the bill by proposing to discard two of its main principles, namely assimilability and the maintenance of a certain type of civilisation. To adopt this amendment, he pointed out, would be to abandon the bill's whole intention which was that "every intended immigrant coming into the country must be classed or must fall under the quota of the country of his birth".<sup>75</sup> Writer's italics. Under the present bill the four Eastern European countries would be allowed 200 immigrants annually; under Blackwell's amendment he estimated 967 could come, i.e. about 70% of the total number of immigrants would be Eastern European Jews - which nullified the whole measure.

This alteration in the South African Party's attitude was wholly the result of Smuts's return from England and his entry into the House only a few hours after landing. "Detesting" the measure, he had already,

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73. Ibid. Col. 828; see also Blackwell African Occasions, p. 168.

74. Thus as in 1926 there were 26 598 Russian-born persons in the Union, 1 330 immigrants would be allowed in from Russia on the 5% basis.

75. H. of A. Debs. 1930, Vol. 14, Col. 833.

while at sea, cabled his objections to his party's over-hasty Second Reading support,<sup>76</sup> and was determined to oppose both the bill's principle and detail, even at this late stage.<sup>77</sup> Consequently he made more of a Second Reading speech than had Blackwell in his amendment, producing further confusion in his already disordered ranks, to the Nationalist's great delight and Hertzog's fury.<sup>78</sup> The U.S.A. legislation, he contended inaccurately, had been a measure designed to deal with a temporary problem of over-population. In South Africa under-population was the problem. If the bill's policy were followed there would be little chance of a "homogeneous or a white or a westernised South Africa". The House had indeed accepted the necessity for some form of restriction; but the method laid down in this bill was unacceptable. Let there be limitation but "by methods ... which we can justify at the bar of the world". No other country had so illiberal a bill, a bill which undoubtedly aimed at a "certain type" of immigration and it ill became a young country which had preached "the doctrine of equality and friendship" to single out one ingredient of the population.<sup>79</sup>

Hertzog's rancorous reply to Smuts which was a variation of his usual "South Africa first" theme, indicated clearly why the government was determined to pass the bill, irrespective of the changed S.A. Party

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76. Blackwell, African Occasions, p. 169.

77. Smuts Papers, Vol. 46, No 47, Smuts to H. Kroomer, 20.3.1930.

78. The Cape Times, 18.2.1930, "Notes in the House"; Die Burger 18.2.1930 in an editorial claimed that he got his whole party except MacCallum and the four members who had previously opposed the Second Reading "to make fools of themselves".

79. H. of A.Debs. 1930, Vol. 14, 17.2.1930, Cols. 836-839.

viewpoint. His admission that the government did not wish to add a fifth element to the existing four in South Africa confirmed the belief that the bill was aimed at the Jews, whom the National Party envisaged as a separate - and undesirable - racial element.

The Jewish communal leadership had, meanwhile, been subject to internal dissension not unlike that of the S.A. Party. The negotiations with the government had been entrusted, as we have noted, primarily to Alexander and the Cape committee of the Board of Deputies, who were anxious to avoid publicity lest anti-Jewish pressure force the government to push the bill through even more harshly.<sup>80</sup> The Board's executive in Johannesburg interpreted these tactics as saving the Minister's face, rather than benefitting the community.<sup>81</sup> Consequently Alexander was tartly telegraphed to record "between government and your committee that your negotiations are intended solely to ameliorate severity of clauses in bill and that so long as bill in principle discriminates between countries outside British Empire no compromise is possible of acceptance by South African Jewry".<sup>82</sup>

This was the line adopted too by the Jewish members of the Opposition, supported by its leading moderates, who in the Committee stage, fought to mitigate some of the measure's administrative severity. The Nationalists, by comparison, again virtually boycotted the debate. Swart's

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80. Alexander Papers, Letterbook 1925-32, Alexander to S. Raphaely, 19.2.1930.

81. S.A.J.B.O.D. Minutes of Executive Council, meeting at president's office, 17.2.1930.

82. Alexander Papers, B.O.D. 3, Telegram from S. Raphaely, 18.2.1930.

amendment to Clause 1, advancing the implementation date from July 1 to May 1, so as to prevent a last minute influx,<sup>83</sup> evoked a long and bitter wrangle, revolving around the arbitrary powers the bill gave the Minister to prescribe regulations under which an immigrant from an unscheduled country could enter. Deneys Reitz went so far as to say that this right to make regulations was all the Minister needed, and that quota and unscheduled countries were an unnecessary farce.<sup>84</sup>

Under Clause 1 a would-be immigrant had to make a written application on a prescribed form to a South African or British consul who could make comments on the application form. This would then be sent to the Department of the Interior which would select the number allowed in for that particular country. Armed with his passport and visa (issued by the consul as long as the quota was unfilled) and with a written permit from the department, the immigrant could now travel to South Africa secure in the knowledge that his country's quota was still open. Malan however, failed to answer Coulter's key question as to whether this individual would inevitably be admitted once he reached the Union.

The rôle of the Immigration Board and the criteria it would use to dispose of the unallotted quota as laid down in clause 3 was another hotly contested point.<sup>85</sup> Malan insisted initially that the wives and children of men already domiciled in South Africa come in either under

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83. Ibid. Alexander to Sec., SA.J.B.O.D. 18.2.1930; The Rand Daily Mail, 21.12.1931.

84. H. of A. Debs. 1930, Vol. 14, 17.2.1930.

85. H. of A. Debs. 1930, Vol.14, 20.2.1930.

the quota or the unallotted quota; to allow their free entry, he claimed, would nullify the point of the bill, as the U.S.A had found in the case of the Japanese. Madeley's reminder of the Golden Rule may have softened him somewhat, for he promised to consider Blackwell's suggestion that there be a three-year period of grace during which families of men already domiciled could enter freely. In the event the most Malan would later concede was an amendment of Clause 3 to allow the annual entry under the unallotted quota of up to 750 individuals, being the immediate families of men permanently resident in the Union on May 1.<sup>86</sup> These families would have an absolute right to come in as a priority over all other applicants; the remaining 250 places were to be filled by the Board.

The Opposition remained dissatisfied with the draft of Malan's amendment.<sup>87</sup> Consequently during the Report stage it again urged that these families come in over and above the unallotted quota, and as a matter of right (as was done in other countries with restricted immigration) and not at the discretion of the Board.<sup>88</sup> But Malan was adamant, on the grounds that to do so would materially reduce the bill's effectiveness.

The measure was assented to on March 11, commencing the following day.<sup>89</sup> Who then was finally allowed entry and how? By regulations issued under Section 7 of the act, quota permits were authorised by

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86. Ibid. 24.2.1930, Col. 1091-2.

87. Ibid. 27.2.1930, Col. 1261.

88. Ibid. 27.2.1930.

89. Govt. Gazette Extraordinary No 1854, 12.3.1930.

the prescribing officer (the Secretary for the Interior) on a preferentially fixed basis.<sup>90</sup> Families (including aged parents and fiancées) of lawfully and permanently domiciled residents of the Union were granted priority. They were followed by persons skilled in agriculture or industry and their children; persons not likely to pursue a calling already adequately pursued in the Union; and persons likely, in the opinion of the prescribing officer, to be readily assimilable in the population of the Union. The Opposition had at no time been able to pin the Minister down to an explicit definition of the word "assimilable".

A similar "hierarchy" was formulated for people entering under unallotted quota permits. Prior to obtaining either type of permit, however, applicants had to send to the prescribing officer an application form (as set out in the first annexure to the regulations) together with four photos, copies of his birth and marriage certificates, medical and police certificates, character testimonials and proof of his professional skill.

The holder of a permit was admitted into the Union only at the port of entry specified in the permit, and only on production of this permit plus his signed application and an identity card issued by the prescribing officer, and on payment of a £1 fee. The permit was valid for six months only. False declarations could result in its cancellation and the declaration of the person as a prohibited immigrant, subject to appeal under the principal act. Finally the regulations laid down

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90. Govt. Gazette Jan-March 1930, Notice No 545, 17.3.1930.

stringent conditions under which a person from an unscheduled country might come in on a temporary residence permit.

After 1930 a camel could have gone through the eye of a needle more easily than a poor Lithuanian immigrant could have entered South Africa for the first time. The Board of Deputies made one last effort to get in the immigrants who were already on their way before the act became operative. Under regulations enforced just before the act was passed, the guarantee, accepted from banks, firms or private individuals, and valid for two years to ensure that an immigrant would not become a public burden, had been fixed at £100;<sup>91</sup> those unable to find this amount would immediately be sent back. The Board had always opposed involving itself in the raising of financial guarantees, feeling this was best left to individuals and not the community.<sup>92</sup> In April 1930 there was an inevitable eleventh hour spurt of immigration from unscheduled countries.<sup>93</sup> The Jewish Colonization Association (J.C.A.)<sup>94</sup> which ran a "shelter" in London, provided the guarantee

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91. Hofmeyr Papers, Dh. File "Immigration and anti-semitism", P.F. Kincaid, Commissioner for Immigration to Sec. for the Interior, 7.4.1936.

92. Alexander Papers, Letterbook 1925-32, Alexander to Sec., S.A.J.B.O.D. Johannesburg, 11.4.1930

93. The Cape Times, 22.4.1930. On 21.4.1930 a ship arrived with 524 passengers, of whom some 350 came from restricted countries.

94. See The Universal Jewish Encyclopedia, Vol. 5, pp. 356-7. In 1927 the I.C.A., the Hebrew Sheltering and Immigrant Aid Society (HIAS) and Emigdirect had combined to form a single body HICEM, "primarily a consultative agency for Jewish migration".

for impecunious immigrants who had already left Europe without knowing that a cash or bank guarantee was demanded on disembarking. The Board of Deputies rôle was to make the arrangements with the immigration authorities for the entry of individuals, and then notify the J.C.A.<sup>95</sup>

The prompt effect of the Quota Act is discernible in the 1930 statistics. Of the 1 987 immigrants born in restricted countries who entered in 1930, 1 910 arrived between January 1 and April 30, only 77 being admitted in the following eight months.<sup>96</sup> In 1931, 935 immigrants had been born in restricted countries; in 1932, 723; in 1933, 539; in 1934, 697; in 1935, 710; and 1936, 920.<sup>97</sup> The yearly maximum permitted from non-scheduled countries under combined quotas and unallotted quotas was therefore never reached in the years immediately following the implementation of the act. Between 1931 and 1933 however, immigration from unrestricted countries also decreased because of the world depression, and only began to pick up in 1934 when restricted immigration as can be seen also increased slightly.

The statistics show that the Quota Act drastically reduced Jewish immigration from Eastern European restricted countries, which was where the majority of Jewish immigrants had been born. Up to 1929

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95. Alexander Papers, Letterbook 1925-1932, Alexander to Sec. S.A.J.B.O.D. 1.4.1930; Alexander to President, J.C.A. 11.4.1930; 22.4.1930; 23.5.1930.

96. U.G. 29-31, Statistics of Migration 1930.

97. U.G. 42-34; U.G. 42-35; U.G. 38-36; U.G. 45-37, Statistics of Migration 1934-1936. Later figures will be dealt with under the Aliens Act.

Jews formed 35.31% of the immigration total; in 1935 the percentage was 16.58.<sup>98</sup> The absolute numbers of Jewish immigrants native to quota countries can be ascertained from the following table:<sup>99</sup>

1926 -	1 311	( 1 479)
1927 -	1 581	( 1 752)
1928 -	2 076	( 2 293)
1929 -	2 394	( 2 788)
1930 -	1 698	( 1 881)
1931 -	780	( 885)
1932 -	608	( 676)
1933 -	445	( 745)
1934 -	579	

In 1935, 498 natives of restricted countries entered and in 1936, 538.<sup>100</sup> The bulk of these immigrants came from Lithuania, followed by Poland, Latvia and Russia in more or less unvarying order. Most, as was to be expected were relatives of men already domiciled, while religious teachers formed a high proportion of the remainder.<sup>101</sup> Thus the measure effectively stopped "the rush of Jews from Eastern Europe" without obstructing immigrants from countries regarded as having a "Western European civilisation".<sup>102</sup>

Until 1930 the number of male immigrants had exceeded female. In the years immediately following the number of women was higher, while

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98. H. of A. Debs. 1936, Vol. 27, 16.6.1936, Col. 6276 ff, Alexander.

99. The Immigration of the Jews .... 1926-1935. The figures in brackets are those supplied in U.G. 42-34.

100. Saron, G., Epilogue 1910-1953"; Saron and Hotz, The Jews in South Africa, pp. 378-9.

101. Files of H. of A. Ans. 31/1931; 140/1931-2; 46/1933; 17/1934; 48/1935.

102. H. of A. Debs. 1939, Vol. 33, 17.3.1939, Col. 1963.

the 16-39 age group total fell dramatically, being only slightly higher in the years 1931-3 than the 0-15 years group which it had previously far exceeded.<sup>103</sup>

The fact that the Quota Act changed Eastern European Jewish migration patterns so extensively indicates it was a discriminatory measure, however much the government denied that this was its intention. Consequently it immediately soured the relationship between the Jewish community and the National Party. In the Transvaal Provincial Council elections in March 1930, a "Jewish vote" was undoubtedly recorded against the government.<sup>104</sup> This antagonism hardened to such an extent that in the following year Malan accused the Jewish community of "wishing to take revenge on the Nationalists for the Quota Act" and threatened to "hit back" if the opposition persisted,<sup>105</sup> a statement which aroused both fear (in the O.F.S.) and indignation.<sup>106</sup>

The community had for some time been disturbed by government actions such as an increase in naturalisation costs, and the deportation of Jews for offences under the Insolvency Act (though Roos, when Minister of Justice had declared Act 29 of 1926 was not intended for use against Europeans). Consequently a deputation met Malan on November 9; in the interview subsequently published the Minister

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103. U.G. 42-34, Table 22.

104. Die Burger, 29.3.1930, quoting P.G.W. Grobler, Minister of Lands, leader of the Transvaal National Party. Kentridge had foreseen this, speaking at the February mass meeting in Johannesburg.

105. Die Burger, 2.11.1931.

106. S.A.J.B.O.D. Minutes of Executive Council, Nov. 1931, pp. 218-220.

appears to have made something of an amende, labelling his warning as "that of a friend".<sup>107</sup>

However misguided the means used, it is only fair to add that Malan introduced the Quota Act convinced it was positively for the benefit of his people (which as an Afrikaner Nationalist was his guiding principle). "Party oordeel sal dit ons nie bring nie, en vir die res van my dae sal ek vir die kindere Israëls wees soos die Kananiet en die Filistyne, maar daar is ten minste iets vir die volk gedoen waarvan sy lewe afhang en dis vir my heeltemal genoeg."<sup>108</sup>

There was an interesting sequel to the Quota Act, which, though unconnected with Jewish immigration, indicates how the lofty intentions behind its rigorous strictures could be adapted to changing circumstances.

By the minister's deeming order under Act 22 of 1913, Japanese - as Asiatics - had been declared prohibited immigrants. In 1921, under an arrangement between the Union and Japanese Governments, the Department of the Interior issued 3-year temporary permits to individual Japanese, who were however, not allowed to obtain trading licences.

By 1930 the Pact was keen to extend South African trade with Japan, as part of its general policy of finding trading partners outside the British Empire. An "arrangement" - not subject to parliament's approval - was therefore made between the two governments, soon after

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107. The Rand Daily Mail, 21.12.1931.

108. South African Political Archives, University of O.F.S., E.H. Louw Versameling, Vol. 2, D.F. Malan to E. Louw 10.6.1930.

The writer is indebted to Dr H. Saker for bringing this letter to her notice.

the passing of the Quota Act, in which Japan had not been designated a scheduled country.

Individual Japanese, including wholesalers or exporters of South African produce were, on the recommendation of the Japanese consul, to be allowed into the Union on one-year permits and allowed to take out wholesale trading licences; i.e. the double prohibition against Japanese immigration in the 1913 and Quota Acts, was waived.<sup>109</sup>

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109. H. of A. Debs. 1931, Vol. 16, Second Reading, Immigration (Amendment) Bill, 2.3.1931; 4.3.1931; Third Reading 26.3.1931.

Bescheinigung.

Der Schutzhaftgefangene Benno Loebenberg aus Köln ist vom 20.9. - 22.9.1933 aus dem Lager Breitenau zur Begehung des jüdischen Neujahrfestes beurlaubt worden.

Kassel, den 20. 9. 1933

Der Polizeipräsident.

Im Auftrage:



*Sant*  
Polizeiobersekretär  
und Lagervorsteher.

Police pass permitting a German political prisoner  
two days' leave for the Jewish New Year

## CHAPTER XII

### THE GERMAN IMMIGRATION

The Quota Act, then, had the intended effect of limiting Jewish immigration from certain countries, which did not, however, include Germany. Here the Nazi accession to power in 1933 accompanied almost immediately by measures against German Jewish citizens, resulted in an exodus from the Reich, first to neighbouring countries and then further afield; and the number of Europeans whom no one wanted rose steadily.

By the end of 1936 some 100 000 of Germany's half million Jews had emigrated, about one third going to South America, one third to Palestine, and the remainder to diverse countries including South Africa. The Hilfsverein der Deutschen Juden founded in 1901 by German Jews to help East European refugees, in 1933 turned its energies to helping the German community's own young people emigrate. After 1936 it was assisted by organisations such as the British Council for German Jewry and HICEM.

Immigration to the Union from Germany was free of the Quota Act's restraints, provided the would-be settler had been born in an unrestricted country. There were however, many domiciled Germans, whose birthplace was in territory, once part of the Wilhelmine Reich, but since 1918 incorporated into non-scheduled countries. Consequently these people could only enter the Union on permits issued under the Quota Act.

Initially a limited number of German Jews came to South Africa. In 1933 the official total of Jewish immigrants was 745; in 1934 it rose

to 1 123; and in 1935 it was 1 059.<sup>1</sup> Of these, 204 were, in 1933, German; 452 in 1934 and about 388 in 1935; that is, in the first three years of the Nazi regime a total of 1 044 German Jews came to South Africa to seek permanent residence, hardly "n groot deel" of Germany's Jews, as Malan claimed. In 1933 they comprised 31.78% of the steadily increasing German immigration total; 44.05% in 1934 and 38.96% in 1935.<sup>2</sup>

This increase in the German Jewish numbers was not extraordinary when compared with the growing numbers from other non-restricted countries, so that up to 1936 the government did not contemplate taking steps to deal specifically with Germany.<sup>3</sup> Nevertheless there were some vague expressions of disquiet as early as 1934, (when the totalitarian ideologies began to seep into the Union) from sources as widely divergent as Sir Abe Bailey and the parliamentary caucus of the Nationalist party.<sup>4</sup> Even Morris Alexander viewed with concern "the large number of German Jewish immigrants who are here looking for jobs".<sup>5</sup>

Early in 1936 however, a deterioration of the Jewish position in

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1. H. of A. Debs. 1936, Vol. 27, 16.6.1936, Min. of Interior. The minutes of the Cape Committee of the B.O.D. (Immigration Report) give a slightly lower total.
  2. The Immigration of Jews into the Union.
  3. H. of A. Debs. 1936, Vol. 27, 17.6.1936, Col. 2593, Min. of Interior.
  4. S.A.J.B.O.D. Minutes of Cape Committee 1934, interview between Sir A. Bailey and M. Alexander 26.2.1934; reference to discussion in Nationalist caucus 11.3.1934.
  5. Alexander Papers, Letterbook 1932-4, Alexander to Hertz, 23.1.1934.

Germany, in conjunction with Arab opposition in Palestine which forced the British to tighten up entry into the mandate, led to intensified German Jewish immigration into Southern Africa.

The worst anti-Jewish excesses of the Nazi Government had not yet occurred. Consequently the German newcomers were not at first unequivocally welcomed by the local Jewish community, whose roots as noted, lay predominantly in Eastern Europe, and who had traditionally felt an antagonism towards the German Jews. The latter, in turn reciprocated this antagonism. They were critical of South Africa and its dearth of cultural and social amenities of the kind to which they had been accustomed in Western Europe. They tended to look down somewhat on the South African Jew's Lithuanian antecedents. Nevertheless the existing community (and particularly those of German origin) immediately came to the help of the refugees.

"We are going to be faced with immigration problems before long," Patrick Duncan, then Minister of Mines, warned Lady Selborne in August 1936.<sup>6</sup> "The Jewish immigration is the most serious - the only really serious one. They are coming at present at the rate of 2 000 a year .... The Jews have done much for South Africa but we are getting too many of them in comparison with the non-Jewish immigration."

This was the 1920's again, but with an additional and acute problem for the United Party Government. The growth of Nazism in Germany had found its echo in South Africa where a number of imitative movements developed, such as the Suid Afrikaanse Christelike Nasionaal-Sosialistiese Beweging, and its "bodyguard" the Greyshirts, which purveyed among other

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6. Duncan Papers, I.D. 5(bb), 26.8.1936.

totalitarian political commodities the Nazi brand of racism. The Nazis channelled through South West Africa in particular, a continual stream of anti-semitic material, which together with its other uses, provided the rationale for explicit demands for the limitation of Jewish immigration.

In December 1933, H.J. Wessels' South African National Democratic Movement adopted the principle of "strict prevention of all unwanted immigration especially that of Semitics [sic] or Asiatics, [and] the cancellation of the existing citizenship of the Jew".<sup>7</sup> Point 9 in the programme of principles of Die Suid Afrikaanse Christelike Nasionaal-Sosialistiese Beweging demanded "definite immigration laws to exclude all alien races who are unable by reason of their character to be assimilated by the white races of South Africa". Further it stated that South African nationality should not be granted to any such aliens who had arrived after November 1, 1918, and should such nationality already have been granted it should be declared "null and void".<sup>8</sup> The Greyshirt constitution contained a similar provision for "the treatment of all Jews merely as temporary guests in accordance with the provisions of an Alien Statute" in addition to other restrictions on Jews already in South Africa.<sup>9</sup>

From 1933 therefore, the South African population was subjected to a widespread and continual anti-semitic propaganda campaign on crude

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7. Alexander Papers, B.O.D. 3, meeting held 6.12.1933.

8. Ibid. Folder 26, Die Waarheid, 23.2.1934.

9. The Anti-Jewish Movement in South Africa.

racist lines, which also emphasised the danger of the increased German Jewish immigration.<sup>10</sup>

Jewish communal leaders attempted to get the government to make it illegal to provoke race hatred between Europeans, on the lines of the Riotous Assemblies (Amendment) Act. But the government, supported by its Jewish M.P.s, was loathe to introduce such legislation.<sup>11</sup> "It views with apprehension a discussion in the house of the whole Jewish question again."<sup>12</sup>

The reason was obvious. The "shirt" movements were making such a powerful and successful bid for the soul of political Afrikanerdom, exposing what Smuts called "a wide current of anti-semitism" particularly in the platteland and smaller towns, that Malan's National Party was forced to adopt anti-semitism as an effective weapon for making a counter bid. From about April 1936, after a two-year flirtation with the idea, a campaign was launched against Jewish immigration, during which the semantic subterfuges of 1930 were abandoned. They were replaced - even in parliament - by language both reflecting and influencing the beliefs of the simplest white voter - as the results of the provincial council elections, particularly in the Cape, were to show later in the year.

At Lichtenburg, Malan affirmed he was not a Greyshirt but claimed

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10. S.A.J.B.O.D. Press Reports, 1936-48 (hereafter Press Reps), Die Burger, 19.8.1936, J. Weichardt the Greyshirt leader warned that they were learning in "Jewish" shops "how to cheat the Afrikaner".
  11. S.G. Millin Papers, C.1, Smuts to S.G. Millin, 5.2.1934.
  12. Alexander Papers, Letterbook 1932-4, Alexander to Goodman 5.2.1934.

he went along with them as far as German-Jewish immigration was concerned.<sup>13</sup> At Parow a Nationalist meeting resolved that the government be urged to take strict measures against "undesirable immigrants such as Jews".<sup>14</sup> Malan claimed that immigration to South Africa was fostered by organised "Jewish money power" and that the government did nothing to remedy the position.<sup>15</sup> Die Burger extrapolated from this that organised German Jewish immigration would inevitably create general anti-Jewish feeling in South Africa.<sup>16</sup> This was a line Malan followed up at the Transvaal Nationalist Congress (as did Karl Bremer in parliament), with the claim that South Africa had passed its maximum absorptive capacity of Jews and a further increase would lead to anti-semitism. From this point the Nationalists gradually adopted the position (adumbrated by Malan in his 1930 letter to Louw) that was to become their most cogent argument. Their anti-semitism was not racially and therefore, negatively motivated they maintained; rather it was a positive question of the Afrikaner's economic self preservation and consequently a matter of national importance.<sup>17</sup> Nevertheless there were Nationalists like Senator T.C. Visser who continued to purvey the old, crude racist arguments; not only were there already too many Jews but because their

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13. Die Burger, 21.8.1936.

14. Die Burger, 15.8.1936.

15. Press Reps., Die Volksblad 23.9.1936.

16. 21.9.1936.

17. Press Reps., Die Volksblad 30.11.1936, N.J. van der Merwe. This was the line adopted by Verwoerd and other intellectuals.

ethics differed from those of Christians, it would be dangerous to admit more.<sup>18</sup>

This pressure from the Opposition was compounded by pressure from the government's own officials, including its ministers abroad, to restrict German Jewish immigration. During February-March 1936, Eric Louw, H.J. Van Broekhuizen, G.M.A. Heymans, Charles to Water and S.F.N. Gie, the Union's representatives in Washington, the Hague, Rome, London and Berlin respectively sent the Prime Minister a memorandum - the so-called Te Water Memorandum - setting out "at this critical juncture and in view of the exceptional circumstances attending it" their views on the refugee situation in Europe.<sup>19</sup> It should be noted that of the five, four were former Hertzog Nationalists.

At the outset they claimed that the German Jewish refugee problem was only one aspect of "the potentially much greater movement" with which they were fully conversant from the European end. Nevertheless as the bulk of the memorandum proceeded to discuss the mass exodus of Jews one can assume that their recommendations for controlling immigration into South Africa were designed to meet this "threat".

Between April 1935 and the end of the year over 2 000 Jews had applied for information concerning South Africa, which the memorandum continued, was regarded as "a Jewish country". Could South Africa then,

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18. Sen. Debs. 1937, 28.1.1937; see also H. of A. Debs. 1936, Vol. 27, 17.6.1936, Col. 6296, F.C. Erasmus.

19. Hofmeyr Papers, Dh. File "Immigration and anti-semitism"; H. of A. Debs. 1936, Vol. 27, 29.5.1936, Col. 4586 ff, Prime Minister refused to divulge the contents to parliament.

the signatories asked, "without detriment and even danger to its national interests continue to allow its commercial and related vocations, to be fed by recruits of this type from overseas"? Other Commonwealth countries (notably Canada and Australia) had restricted such immigration. In view of all these considerations it was felt that immigrants who "no longer tend to strengthen our national social and economic structure but to disturb or weaken it" should be totally prohibited and only those with "adequate means to support themselves" allowed entry. Louw's influence is patently obvious in the assertion that there were sufficient "small traders" of "foreign origin" in the Union and that immigrants allowed entry should not be allowed to go into commerce.

Amending legislation was regarded as the best way of effecting these recommendations. Quotas should be extended to all countries and the government should be empowered to discriminate between immigrants with means and those without, and to debar immigrants from seeking employment except under permit from the Department of Labour. As an adjunct to these powers, deportation regulations and penalties should be strengthened.

These recommendations did little more than suggest the stricter implementation of existing immigration legislation. Government officials were therefore consulted as to how this could be done. On April 7 P.F. Kincaid, Commissioner for Immigration and Asiatic Affairs communicated to the Secretary for the Interior his view that only Section 4(1)(a) of Act 22 could be effectively used to exclude undesirable immigrants.<sup>20</sup> The government, should in consultation with the Depart-

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20. Hofmeyr Papers, Dh File.

ments of Labour and Commerce and Industry draw up a list of occupations for which there were sufficient numbers of people in the Union, and the minister should thereafter issue confidential instructions for the exclusion of all persons following such occupations. The alternative method of excluding an entrant into South Africa by refusing a visa, could not be applied to Germans, as no German passport - whether single or return - required a visa for the Union.

This then was the background to the introduction on May 22, 1936 by J.H. Hofmeyr, Minister of the Interior, of the Immigration Amendment Bill.<sup>21</sup> Its main objectives according to Hofmeyr were to amend Act 22 where it dealt with the question of tropical Africans, and also "to fill up certain omissions in the Immigration Act".<sup>22</sup> The latter was in fact the primary purpose of the bill, involving an amendment of Section 6 of the Quota Act which dealt with travel documents. This legislation will be dealt with more fully at a later stage. It is sufficient to note here that the amendment was designed "to so regulate immigration into South Africa that those immigrants who did not have a passport enabling them to return to the country from which they came should be prohibited immigrants".<sup>23</sup>

As the departmental papers dealing with this decision fall within the archival "closed period" one does not know exactly how Hofmeyr arrived at this attempt to resolve the German Jewish immigration issue. It was based however, as the inter-departmental report quoted below shows, on an idea circulating in the Department of External Affairs, which

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21. A.B. 51-36.

22. H. of A. Debs. 1937, Vol. 28, Col. 66.

23. Ibid. 1936, Vol. 27, 17.6.1936, Col. 630, Colonel Stallard.

may have been derived from (or alternatively stimulated) Nationalist demands that people whose travel documents did not allow them to return to their home country, should not be allowed to enter South Africa. Apart from Eastern Europeans who had become stateless after World War I, this patently referred to the German Jews. For under the Reich's Citizen Act of September 15, 1935, a section of the notorious Nuremberg Race Laws (later confirmed in the Reichsgesetzblatt on November 26, 1941), all non-Aryans had been deprived of their German nationality, which included the cancellation of their German passports and the issue of new passports indicating that they had no status in Germany.<sup>24</sup>

The Board of Deputies immediately expressed its fear that the effect of the proposed amendment would be to exclude people on the very grounds - racial and religious - that had occasioned their disabilities in their homeland, and asked Hofmeyr to consider the effect this amendment would have on the anti-semitic movement in South Africa.<sup>25</sup> Soon after a "deputation of six government members" pointed out to the Minister the political harm the measure could do to the party.<sup>26</sup>

Meanwhile early in June the Te Water memorandum was reported on by an inter-departmental committee consisting of H.D.J. Bodenstein, the Secretary for External Affairs as chairman and including Kincaid, the Secretaries for the Interior and Justice, and the law advisers to

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24. Alexander Papers, B.O.D. 6, Alexander to Dwolatzky 20.6.1945; Alexander to Hofmeyr 21.2.1936; Correspondence File 56, Alexander to Sen. C.F. Clarkson 26.11.1945.
25. Ibid. B.O.D. 3, S.A.J.B.O.D. to Hofmeyr 2.6.1936.
26. Die Burger, 11.6.1936.

the Departments of Justice and External Affairs. Hofmeyr as responsible minister was not consulted;<sup>27</sup> this is hardly surprising given the liberal image he had forged for himself with his April speech rejecting Hertzog's Representation of Natives Bill.

The report of the inter-departmental committee which was circulated to the cabinet, was a rambling document reflecting the thinking of Bodenstein, a man whose concept of "assimilability" plumbed the mystical depths of "geestelike gesteldheid of n lewenshouding", involving religious, moral, cultural and spiritual values.<sup>28</sup> Two classes of undesirable aliens, who came to propagate ideas contrary to the political and economic structure of the country, were distinguished. There were the Communists, who sought to upset the traditional relationship between black and white; and the Nazis and Jews who believed it was legitimate "to subordinate the interests of the Union to those of the group to which they belong". As a corollary the committee drew attention to "disquieting attempts at corruption of public officials in recent years"; in a large majority of these bribery cases the accused had been "members of an unassimilable and alien group who appear to have introduced into our community certain ideas of an accessible and venal officialdom which may or may not have flourished in their countries of origin but which would certainly be disastrous in the Union".

Prior selection oversea by the Union's representatives, together with machinery for consultation between the Immigration Department and

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27. Hofmeyr Papers, Dh. File "Immigration and anti-semitism", 8.6.1936.

28. Ibid. Memo. from H. Bodenstein, 25.5.1936.

the appropriate state departments, on the Union's economic circumstances, were seen as the way to achieve a policy which would admit persons of good health and character, readily assimilable to the Union's inhabitants, who would become good citizens "within a reasonable period" and would not be harmful to the economic welfare of the Union.

The committee recommended that the financial guarantees should be abolished and the immigrant's possession of means should be insisted upon. Section 6 of the Quota Act could effectively restrict unsuitable immigration. In addition it urged the tightening of Sections 4(1)(b) - the education test - and (c) - the maintenance proviso - of the 1913 law. The fullest use should be made of 4(1)(a) to debar those who belonged to an unassimilable group "judged by the normal type which we would like to attract"; or individuals who "take the bread out of the mouths of our own people" or "propagate doctrines subversive to the very foundation of our economic life". Kincaid's earlier suggestion of a confidential list was accepted, applying however not only to those with supernumerary occupations but also to anyone "whose habits of life" made him unassimilable. The problem of excluding those who did not need a visa was to be met by warning such immigrants that they could be debarred on arrival in South Africa.

Inevitably Hofmeyr was incensed by the basic premise of the Bodenstein report. "I am driven to conclude," he noted, "that the committee is not really serious in its proposals as far as the exclusion of German Nazis or Communists is concerned. What it is concerned about is the exclusion of Jews. It should have been better if it had said so

frankly at the outset".<sup>29</sup> He dismissed the recommendation for the use of 4(1)(a) against Europeans (and more specifically Jews) as something not contemplated by parliament at the time of the act's passing "and on that ground alone I would find it almost impossible as the minister concerned to defend such a course of action as is now proposed". In view of the contribution made to South African affairs by people such as the Jutas and the Solomons would South Africa's representatives be enjoined to exclude all Jews as unassimilable? Or would each representative make such a decision subjectively? If the minister were to deem as undesirable all persons rejected by the Union's representatives, then authority invested by parliament in the minister would be effectively transferred from him to the representatives. "That a committee of officials should propose to sidetrack a minister in this way is to me inexplicable."

Nevertheless Hofmeyr concurred with the principle of restriction. This is evident from his acceptance of the committee's suggestion that the standard of the education test be raised, and the guarantee system be scrapped and replaced by the immigration department's insistence on the immigrant himself showing he possessed sufficient means.<sup>30</sup> Meanwhile the Immigration Bill was dropped; one can only hazard a guess why. Possibly it was felt the statutory exclusion of one-way passport holders was too rigid a method of control; possibly opposition within the governing party was responsible.

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29. Ibid. Memo. from Minister of the Interior, undated.

30. Ibid.

The effect was to cause Malan to raise again, on June 16 during the Appropriation debate, the dangers to South Africa of German Jewish immigration. Hofmeyr now admitted that the government was considering tightening up the hitherto "opendoor" [sic] policy on the lines suggested in his memorandum. Though he quoted statistics to show how exaggerated the Nationalist case was, this "reconsideration" of policy confirmed the political effectiveness of that case.

Malan was quick to attack Hofmeyr's proposals.<sup>31</sup> The German Jews, unlike the earlier Lithuanians, were a sophisticated, secularly educated group, who could not be excluded by a stiffer education test. The only effective measure, he believed, would be an amendment of the Quota Act to fit the new circumstances arising from changed German conditions. Thus the legislation he was proposing was, in Alexander's words, "of a purely racial character".<sup>32</sup>

The cabinet discussed immigration on August 24.<sup>33</sup> The following month on September 23, Hofmeyr introduced interim regulations which rejected the Bodenstein Committee's more extreme recommendations, but replaced - with effect from November 1 - the regulations of 1930.<sup>34</sup> No important changes were made as to the qualifications or order of preference of applicants. The main change lay in the appointment of a departmental committee of not less than three members, appointed by the

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31. H. of A. Debs. 1936, Vol. 27, 16.6.1936, Col.6247-9; 17.6.1936, Col. 6284 ff.

32. H. of A. Debs. 1937, Vol. 27, 17.6.1936, Col. 6300.

33. Hofmeyr Papers, Dh. Files "Immigration", Prime Minister's Private Secretary to Private Secretary, Minister of the Interior, 18.8.1936.

34. Govt. Gazette July-Sept. 1936, Notice No 1456 of 23.9.1936.

Minister, and including the Secretary for the Interior as chairman, to consider applications under the quota - formerly the sole preserve of the latter. In accordance with Hofmeyr's wishes the educational and financial requirements were stiffened; and attempts to use influence to secure the admission of a particular person were to be regarded as enough to cause that person's exclusion.

These measures were the result not only of the bribery accusations but also of governmental belief that "there are Jewish organisations which give any guarantee that may be asked for, which of course gives them [i.e. Jewish immigrants] great advantage over other immigrants".<sup>35</sup> The potentiality for abuse implicit in this state of affairs, had dictated Hofmeyr's recommendations on the financial demands, which were implemented after October 31. "Adequate money" in cash could now be demanded by the immigration officer, the amount in each case being individually stipulated.<sup>36</sup> In passing it should be noted that the German Government ensured Jewish emigrants left with little money.

The Opposition stamped the new regulations as "particularly weak patchwork" and only a half-hearted attempt to halt the German Jewish flow.<sup>37</sup> Though strictly enforced, their immediate effect, as the Nationalists had prophesied, was to cause immigration numbers to rise

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35. Duncan Papers, I.D. 5 (bb), Duncan to Lady Salborne 7.10.1936.

36. The Cape Times, 3.9.1936.

37. Die Burger, 4.9.1936. They were probably right. One group of Dutch immigrants, for example, passed £100 from hand to hand as each came before the immigration official. (Information given to the author by a member of this group).

dramatically, especially in October 1936, when a peak figure of 948 Jewish immigrants came in.<sup>38</sup>

The Board of Deputies admitted that the regulations were not an effective preventive measure.<sup>39</sup> Duncan noted that "unless it [immigration] slacks off a bit, there will be anti-semitic trouble here. It is growing very fast in the country as it is and it could easily get quite out of hand".<sup>40</sup>

The fulfilment of Duncan's prophecy seemed imminent at the end of October with the arrival of the Stuttgart carrying some 570 German Jewish immigrants who had embarked at Bremen on October 8, a cold North German day. Shortage of shipping caused by the Empire Exhibition in Johannesburg and the immigrants' determination to come in before November 1, led to the Stuttgart being chartered on behalf of the immigrants by the Hilfsverein and the Reichsvertretung der Deutschen Juden (the mouthpiece of the German Jewish communities). The immigrants had been carefully selected with suitability for South African requirements as the criterion. The majority were young artisans aged from 19 to 30; many (but not all) had employment awaiting them in South Africa. About 300 of the passengers were en route to Johannesburg and 70 to the coastal towns, excluding Cape Town where the rest would remain.<sup>41</sup> Money for their reception came from the Fund for German Jewry established in

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38. S.A.J.B.O.D., "The Immigration of Jews".

39. Ibid., Minutes of Cape Committee, 1.12.1936.

40. Duncan Papers, I.D. 5(bb), Duncan to Lady Selborne 7.10.1936.

41. The Cape Times, 28.10.1936; Sichel, F., From Refugee to Citizen gives the immigrant number as 537.

Cape Town and Johannesburg, a fact used by their opponents as evidence of Jewish financial power.

The Stuttgart's passengers were not the advance guard of a large scale "invasion" but "the last pitiful stragglers of an immigration movement which never numbered more than at most a few thousand".<sup>42</sup> Nor were they "the refuse from another country", but a group of educated Europeans bringing skills which South Africa needed and establishing industries which would employ South Africans. To all intents then they were the perfect answer to Smuts's call for "new blood", with imaginative, new ideas. "We must strengthen the basis of our European society in South Africa. A policy of immigration is integral in the future welfare of this country... Of course we want the best. You know as well as I do that it is only good Europeans that are wanted."<sup>43</sup>

Many South Africans did not, however, view the German Jews in this light. The news of the Stuttgart's pending arrival led to a spate of mainly hostile letters in the local newspapers.<sup>44</sup> Despite end-of-the-year examinations, excitement ran high at Stellenbosch University, where Professors H.F. Verwoerd and C.G.W. Schumann were actively organising agitation against the Stuttgart's arrival.

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42. The Cape Times, 24.10.1936 quoting S.A. Jewish Chronicle; also Alexander Papers, B.O.D. (miscellaneous), B.O.D. statement 14.12.1936 described the October 1936 figures as a "last minute rush".
43. The Cape Times, 25.1.1937, "Burns Nicht" dinner 23.1.1937; also The 1820, Vol. 7, No 6, Dec. 1935 address to 1820 Memorial Settlers Association.
44. Die Burger, 17.10.1936 et seq.; The Cape Argus, 17.10.1936; Press Reps., The Star, 19.10.1936.

On October 26, the day before the Stuttgart was due to dock, the Greyshirts organised a protest meeting at the Koffiehuis in Cape Town, to urge the government to introduce preventive legislation. At about 11 p.m. a crowd of over a thousand went to the docks mistakenly believing that the ship had already arrived.<sup>45</sup> The demonstration planned for the following morning was washed out by a typical Cape storm. The Stuttgart came in at about 6.45. a.m. in pouring rain, flying the swastika, and landed her passengers.<sup>46</sup>

Protest meetings followed throughout the country, all demanding legislative action against Jewish immigration; the crowds which attended, testify to the popularity of these demands. About 1 500 people who were addressed by Dr. T.E. Dönges and Prof. Schumann at a public meeting organised by the Afrikaanse Nasionale Studentebond, at Stellenbosch on October 27, protested "in the interests of the older South African inhabitants" against unrestricted and unwanted Jewish "mass" immigration.<sup>47</sup> At Potchefstroom on October 28 a second group of professors participated prominently at a student meeting, at which Jews were declared to be undesirable immigrants because of their religion and culture. At Paarl on November 4 the speakers at a National Party meeting included Dönges and Verwoerd. The meeting protested against Jewish immigration, not on racial grounds but "1) because it encroaches on the interests of the older South African population and 2) it is an

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45. The Cape Times, 27.10.1936; Die Burger, 27.10.1936.

46. The Cape Times, 28.10.1936; Duncan Papers, I.D. 5(bb), Duncan to Lady Selborne 28.10.1936.

47. Die Burger, 28.10.1936; The Zionist Record, 30.10.1936.

historical fact that the Jewish nation does not assimilate with other nations".<sup>48</sup> The year drew to a close with both the Transvaal and O.F.S. National Party congresses passing resolutions demanding restrictive legislation.

The subject of German Jewish immigration continued to feature prominently in the Nationalist newspapers. While purely racist undertones persisted, fear of economic competition predominated as the leitmotiv of Afrikaner anti-semitism, and the educated Afrikaner was in the vanguard of the movement.<sup>49</sup> To counteract Nationalist agitation, on December 16, following a period of inertia induced by fear, the Board of Deputies issued a statement on immigration which was given much publicity by the country's leading newspapers and applauded by several Jewish publications.<sup>50</sup> It reaffirmed the Jewish community's acceptance of immigration legislation which prescribed qualifications "relating to the personal character, economic position, occupation and cultural standing of intending individual immigrants". At the same

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48. Die Burger, 15.11.1936.

49. S.A.J.B.O.D. Jhb, Minutes of monthly deputies' meeting 31.1.1937; see also The Cape Times, 24.11.1936, Malan at Riversdale 21.11.1936; Moodie Collection, Die Wapenskou (Afrikaanse Nasionale Studentebond organ) Nov. 1936, Die Transvaler, 1.10.1937, Verwoerd, Die Volksblad, 13.10.1937, Die Oosterlig, 19.11.1937. All repeated the theme that Jewish business and professional men posed a threat to the Afrikaner's economic development.

50. S.A. Jewish Times, 26.12.1936; S.A. Jewish Chronicle, 25.12.1936.

time it opposed the adoption of "racial or religious discrimination" against such immigrants. The "unassimilability" accusation against Jews was denied on the grounds that they identified with South African life at all levels and that their children were entirely absorbed into the "South African national character". Finally the statement refuted the charge that there was any special organisation in South Africa to promote or subsidise German immigration, and claimed that the Board of Deputies had "taken active steps to discourage indiscriminate immigration".<sup>51</sup>

This was correct. Already in July the Board had informed the Chairman of the Hilfsverein of the difficulties involved in absorbing many of the German immigrants.<sup>52</sup> Patently aware of the political capital which could be made out of the arrival of large bodies of Jewish immigrants, the Board had, in September 1936, when the Stuttgart emigration was being organised, cabled the Council for German Jewry in London, that it strongly disapproved of the project which would seriously endanger the future position. On November 2, as a result of the agitation in the Union, the Hilfsverein was requested to diminish immigration drastically. "The present tide must be reduced to a trickle and best of all be dried up completely for many months ahead."<sup>53</sup> "The Jews in South Africa," J.H. Hofmeyr wrote to Sarah Gertrude Millin, "begged and warned them not to come - from early in December members

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51. The Cape Times, 17.12.1936.

52. S.A.J.B.O.D. Minutes of Cape Committee, 16.7.1936, Report on visit of Dr. Wischnitzer, Chairman, Hilfsverein; also Sichel From Refugee to Citizen.

53. H. of A. Debs. 1937, Vol. 28, 12.1.1937, Col. 90, Alexander.

of the government have been foreshadowing legislation."<sup>54</sup>

The South African Jewish community was faced with an agonizing dilemma. By 1936 the position of Jews who remained in Germany was becoming increasingly dangerous. In South Africa Greyshirt anti-semitic propaganda had proved so successful that South African Jews faced the very real fear of being put in the same position. The government was their shield; and it too was faced with a tremendous dilemma.

The Nationalist-Greyshirt anti-semitic campaign had affected not only the floating vote but also United Party supporters. The 1936 Cape Provincial election a few days before the Stuttgart's arrival had shown how effective a vote-winner anti-semitism was,<sup>55</sup> particularly when directed against Jewish immigration. At the Transvaal U.P. Congress in October, the chairman, Gen. Pienaar had promised stricter control. Thus although the German Jews were ideal immigrants, and although the government refused openly to discriminate against them, it would not continue to allow them unlimited entry and so jeopardise the United Party's political position. Between them the government and the Jewish community had to "create a formula which would not be based on racial lines".<sup>56</sup>

There was undoubtedly a good deal of truth in N.J. van der Merwe's claim at the Nationalist Congress in Bloemfontein in November, that the cabinet was split over immigration.<sup>57</sup> Smuts's opposition to the Quota

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54. Hofmeyr Papers, A. 539. C.1, undated † Jan-Feb. 1937.

55. Moodie Collection, Die Republikein, 30.10.1936.

56. S.A.J.B.O.D. Mins. of Cape Committee, 1.12.1936.

57. Press Reprs., Nov. 1936.

Act and the present anti-semitic movement, and Hofmeyr's growing liberalism could certainly not accord with the opinions of some of their more reactionary colleagues; indeed, Malan frequently referred to these two as the protectors of Jewish immigration. In March 1937 Alexander reported to the Board of Deputies that P.G. Grobler too was opposed to the idea of legislation.<sup>58</sup>

It was therefore as much to discomfort the government as to wean his right-wing adherents from the Grayshirts, that Malan promised the O.F.S. National Party Congress he would introduce a bill (and mapped out its chief provisions) if the government did not take steps to settle the immigration problem.

The government however, was already taking such steps; a draft bill was drawn up and discussed by the cabinet in the last week of November.<sup>59</sup> On December 5, four days after a similar announcement by Smuts at Standerton, Hertzog announced at Smithfield that legislation would be introduced in the following session. Richard Stuttaford had just replaced Hofmeyr as Minister of the Interior in the cabinet reshuffle following Duncan's translation to the Governor-Generalship. The immigration legislation had however, already been drafted during Hofmeyr's occupancy of the Interior portfolio, but certain provisions were now redrafted.<sup>60</sup> "As nobody can be an asset," Hertzog explained,

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58. S.A.J.B.O.D. Minutes of Cape Committee, 23.3.1937.

59. Smuts Papers, Vol. 124, No 13, Private Sec., Minister of the Interior to Private Sec., Minister of Justice 24.11.1936.

60. H. of A. Debs. 1937, Vol. 28, 13.1.1937, Col. 70; also The Star, 9.12.1936.

"unless he has the disposition and desire to associate himself with the new community in a spirit of national unity... legislation in connection with immigration... will have to provide that the future immigrant fulfils all the demands of modern society, also as regards the spiritual values set up by it. He who will not accommodate himself has no right to claim participation in a society in which he cannot or with which he does not propose to associate himself. This is a precept which applies and must apply to the Jew no less than to any other person, race or sect who would wish to come and settle here. A measure of this character, moreover, is no less necessary for the protection of the South African Jew and his interests than it is necessary in the interests of the rest of the community."<sup>61</sup>

Malan however, was determined to pre-empt any political advantage the government might gain from Hertzog's promise. On December 28, 1936 he published in the Government Gazette Extraordinary his private bill which embodied the restrictive programme drawn up at the party's national congress, directed not only against Jewish immigrants but against those Jews already resident in South Africa. In Section 2 the test of "assimilability" was added to the other grounds on which an immigrant could be excluded under Section 4(1)(a) of Act 22. The definition of an "assimilable" person was not left to the discretion of the minister but was defined in Malan's bill as someone capable of being "absorbed by the inhabitants of the Union, with due consideration given to the racial, sociological and cultural bases of such inhabitants".

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61. Press Repts., December 1936.

Yiddish was no longer to be classed as a European language; and quota certificates would only be issued in the country of origin and in exceptional cases. The intention was to have all Jews declared unassimilable as a race.

Further, Malan's bill proposed to amend the naturalization laws. Section 3 stated that aliens who had entered after May 1, 1930 and were still not naturalized, must satisfy the minister they were "assimilable" before they could be naturalized. Section 5 provided for the Governor-General to proclaim any "trade, profession, calling or occupation" prohibited to aliens. Under Section 6 aliens who had entered since June 30, 1936 could be employed only under ministerial permit. Section 7 prohibited aliens from acquiring land or immovable property except under a special licence. Section 8 forbade any person who had entered South Africa after May 1, 1930 to change his name except in special circumstances. Further, commercial enterprises conducting business under names which did not reveal the directors' "true" surnames were to be registered, and all letters, trade catalogues etc. were to indicate such names. The change of name issue had been irking the Nationalists for some years. Thus in 1935 Senator D.J.J. Malan had drawn Hofmeyr's attention to the number of people adopting "such Afrikaner family names as Garlick and Malherbe".<sup>62</sup>

The Cape Times described the bill as an attempt to "outmanoeuvre the government on the question of the control of alien immigration and to pander to the unashamed anti-semitism of the more unthinking sections

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62. Sen. Debs. 1935, 1.4.1935, Col. 427.

of the South African community".<sup>63</sup> Certainly by the turn of the year it looked as though the anonymous compiler of the Board of Deputies Press Reports was right in his view that "the Nationalist party has now gone over completely to anti-semitism";<sup>64</sup> but the government too had been "stampeded by an unreasonable clamour",<sup>65</sup> not least among many of its own supporters.<sup>66</sup>

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63. 12.1.1937.

64. Press Repts. 1937; see also The Cape Argus, 16.4.1937.

65. H. of A. Debs. 1937, Vol. 28, 12.1.1937, Col. 74, C.W.A. Coulter.

66. Press Repts. 1937, The Daily Dispatch, 8.1.1937 stated the U.P. itself had "a big anti-semitic section".

## CHAPTER XIII

### LIMITATIONS ON GERMAN JEWISH IMMIGRATION

a) The Aliens Act.

The legislation which Hertzog had promised at Smithfield was so hastily introduced at the start of the 1937 session that it had not been printed by the First Reading on Monday, January 11. It took precedence over Malan's private bill which under normal procedure would have come up on the following day. The most important measure of the 1937 session (A.B. 1 of 1937 which became Act 1 of 1937), it was correctly described by the Labourite J. Christie and Col. Stallard, Dominion Party leader, and several newspapers such as the Daily Dispatch and the Sunday Times as an attempt by the government to retain the large anti-Jewish vote on the platteland by forestalling the Nationalists.<sup>1</sup> At the same time it sought to avoid antagonizing the party's liberal and Jewish supporters by claiming to restrict all alien immigration and not Jewish immigration in particular.

As in 1913 the government had to frame umbrella legislation which would not deter "desirable" immigrants but would restrict the "undesirables" without mentioning them by name. As in 1913 too, the ensuing legislation had the shortcomings inherent in the accommodation of a number of incompatible requirements. This ambiguity is evident in the speeches in both Houses of leading United Party members, particularly

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1. Press Repts. January 1937.

R. Stuttaford, who when he moved the bill in the Senate spoke "without enthusiasm and conviction".<sup>2</sup>

Unable to introduce a second bill on immigration, on January 12 Malan moved a motion of no-confidence, incorporating and explaining the provisions of his aborted private bill, and censuring the government for its delay in dealing with the German Jewish "threat". A good deal of his speech was devoted to explaining the reasons for a bill directed against "unassimilable" people such as Jews, or those who could not produce valid travel documents. It proposed the abolition of Yiddish for immigration purposes because this was an invitation for Jews to come to South Africa. Its designation of "prohibited" and "restricted" occupations was intended to protect the country's permanent inhabitants against aliens; the stringent change of name procedure would prevent "non-assimilability" from acquiring "all the advantages of assimilation".<sup>3</sup> Consequently he urged that all Jewish immigrants, non-Aryan Germans and stateless persons be prohibited, which could be done without naming them, under Section 4(1)(a) of the principal act.

These proposals, Malan claimed, had nothing to do with Hitler or any local organisation which subscribed to Nazism, but were a sequel to his 1930 act. He admitted to propounding discriminatory measures against Jews, because South Africa had a Jewish problem as was shown by the proliferation of anti-semitism since the German Jewish arrival. The Afrikaner was suffering, because it was in commerce where the displaced plattelander had to be accommodated, that the Jewish minority

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2. Sen. Debs. 1937, 28.1.1937, Col. 56, Senator Hofmeyr (N.P.).

3. H. of A. Debs. 1937, Vol. 28, 12.1.1937, Col. 37.

was increasingly gaining control. The Jew had to be specified because he was unassimilable, and identified more with international organisations than with the population of South Africa. He had to be specified because Jewish organisations "backed" the Jewish immigrant, whereas local school-leavers could not get jobs because they had no technical training.

This call to the blood, cloaked as a motion of censure fell away on January 13. On that day the Second Reading debate on the government's bill opened with Stuttaford's maiden speech as Minister of the Interior, which was both a justification and an explanation. The 1913 act had been based on the "liberal principles" governing pre-war immigration; any alien was welcome subject to minor restrictions. The Quota Act had discriminated against certain countries but was no longer effective. The object of the present legislation was to adopt the "selective principle" so as to prevent South Africa from being submerged under a tide of people being expelled from certain European countries, many of whom had standards different "from the standards that we wish to live up to in South Africa".<sup>4</sup> "It is only right and fair," he told the Senate, "that we should see to it that every man with a white skin who comes into this country is of a type to do honour to his skin."<sup>5</sup> The legislation was not directed against Jews but against any wave of immigration whose numbers were in excess of the Union's absorptive capacity.

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4. Ibid. 11.1.1937, Col. 106. Dr. C.C. Saunders has pointed out to the author the interesting analogy between Stuttaford's statement and the Tory reaction to West Indian entry into Britain in the 1960s.

5. Sen. Debs. 1937, 28.1.1937, Col. 40.

The bill therefore continued to allow untrammelled entry to all British-born subjects qualifying under the 1913 act. As far as aliens were concerned, it affirmed according to Stuttaford South Africa's right to select people who would strengthen the nation and assimilate within a reasonable time. To achieve this, legislative precedents in other countries had been studied, e.g. in Canada where the Governor-General in Council could proclaim the restricted immigration of a particular class, race or nation on the basis of customs, habits or economic conditions.<sup>6</sup>

To implement the "selective principle", Clause 3 created an Immigrants Selection Board of not more than five members to select immigrants from those applying for entry. The Secretary for the Interior was to be the chairman of the Board whose other members were to include the Secretary for Labour and Social Welfare, the Commissioner for Immigration and the Secretary for Commerce. Applications, which had to be made abroad to South Africa's own consular officials, would be considered by the Board at its absolute discretion, from which no appeal was permitted. Purportedly free of political or ministerial control the Board was to be guided in its choice by certain stipulated principles. These were evidence of the good character of the applicant; his assimilability with the European inhabitants; his ability to become a good citizen within a reasonable time; and the fact that he was not harmful to the economic and industrial welfare of the country and would not pursue a vocation in which, according to the Board, sufficient

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6. As noted before Australia, since 1925, had similar restrictions; New Zealand after 1920 used the permit system.

numbers were already engaged. The Board could also admit wives and minor children of men already resident in South Africa.

Thus the Board's powers of discretion were enormously wide, and its criteria unspecific and subjective. It could, for example exclude an applicant on the grounds that he had a passport valid only for forward journeys (such as that of the German Jews, deprived of their nationality under the Nuremberg Laws).

Two other central clauses of the bill were Clause 9 which, echoing Malan, laid down that no one could change his name after January 1937 without leave from the government in conformity with special regulations being drafted; and Clause 13 repealing the Quota Act, except its clauses 6, and 8 which were still required. Under the former all persons over 16 seeking entry into South Africa had to possess travel documents recognised by the Union Government; while Clause 8 defined "domicile" for immigration purposes.

The government, Arthur Barlow noted in the Sunday Express, had no reason to be proud of its bill.<sup>7</sup> Some of its provisions (particularly the Board's powers) were positively dangerous in the Rand Daily Mail's opinion.<sup>8</sup> The name change clause, it advised, should be dropped if the bill were not to appear to be an anti-semitic measure. The Daily Dispatch however stamped it as anti-Jewish without having the courage to name them.<sup>9</sup>

The Opposition clearly wanted legislation which would specially exclude Jews on the now familiar economic, cultural and moral grounds;

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7. Press Repts. 1937, 17.1.1937.

8. 14.1.1937.

9. Press Repts. 1937, 18.1.1937.

speech after speech reiterated the adverse effects of Jewish settlement on the country in general and the Afrikaners in particular. Paul Sauer believed they should be excluded because they strained South Africa's "absorptive capacity", and because every nation had the right to decide on the future composition of its population.<sup>10</sup> J.H.H. de Waal, a prominent Greyshirt, claimed that the new bill would not keep out one Jew, while the preference given to the Nordic races under the Quota Act would lapse.<sup>11</sup> J.H. Strijdom maintained that the Nationalists were interpreting popular opinion; that there were too many Jews who had an economic stranglehold and made it impossible for any respectable Christian to compete with their business methods.<sup>12</sup>

Malan drew together these diverse protests into one main objection; there were already too many Jews here for the country's good or that of the Jews themselves. Consequently he attacked both details and principle of the bill for failing to deal satisfactorily with the only immigration problem, which was a specific, Jewish one. The definition of an alien as anyone not British-born or a Union citizen, would allow in a Jew born in the British Empire, but exclude naturalized

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10. H. of A. Debs. 1937, Vol. 28, Cols. 135-141.

11. Ibid. 14.1.1937, Col. 146 ff.

12. Ibid. 18.1.1937; see Sen. Debs. 1937, for similar sentiments, e.g. 28.1.1937 Col. 45 ff. Vermeulen said one should admit the legislation was aimed at the Jews so as to prevent a dangerous reaction against those already in South Africa; Col. 56, Hofmeyr who opposed "the mass movement of Jews in this country", etc.

British subjects even if they were of "related" stock to the original white inhabitants of South Africa. As in the Quota Act, applicants would be admitted on the grounds of "assimilability". But whereas the earlier act had been administered to keep out Jews, in the present legislation there was no clear meaning for the term. This, together with the repeal of his 1930 legislation, meant that the stream of Eastern European Jews coming to South Africa could be renewed. He therefore moved, that the Second Reading be discharged and the bill referred to a Select Committee in order to establish that the measure was intended primarily to restrict Jewish entry.

Smuts came into the debate the following day in his familiar rôle of government apologist, by giving the bill an impeccable rationale. Religious and racial persecution, and economic distress in Europe, coupled with the changed policy of other countries meant that South Africa was becoming a desirable destination for immigrants. Under these changed conditions, the Union had to adopt the "selective principle" as other Commonwealth countries had done. A British subject was still governed by the old law; but an alien could enter only if he complied with certain conditions. He denied the bill was intended to restrict Jews only; it was meant for undesirables whatever their race.

Smuts was at pains to emphasise that the government's attitude towards immigration in general remained unchanged. "We welcome desirable immigrants into this country and the policy of this bill will not be to lessen the flow of immigrants but to sort out, to see that we are

not left with the undesirables, with the unwanted." <sup>13</sup> To limit general immigration would be suicidal both because of the adverse black/white ratio and because some foreign country might one day regard South Africa as an "empty" country. He therefore proposed an "active deliberate policy of immigration into this country". <sup>14</sup>

Despite the protestations of various government speakers, the theme of the debate, as the Cape Times rightly noted was that "this bill is not aimed at Jewish immigrants but it cannot fail to hit them". <sup>15</sup>

Denying that the bill was meant specifically for the Jews, H.A. Fagan claimed that by repealing the Quota Act the new legislation applied the same regulations to all immigrants and "gives us adequate protection in connection with immigration without making it a question of anti-semitism and giving it the colour of persecution of the Jews". <sup>16</sup> In J.H. Hofmeyr's opinion the new act took over the selective principle of the Quota Act, applying it equally to all countries, something which was necessary considering that South Africa was poised on the brink of great economic development.

The United Party might have succeeded in presenting a unified, if somewhat tarnished facade, had Hertzog not entered the debate near its conclusion. His rambling speech, which was in direct contradiction to

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13. H. of A. Debs. 1937, Vol. 28, 14.1.1937, Col. 151-2; see Sen. Debs. 1937, for repetitions of these arguments e.g. 28.1.1937, Col. 52, Sen. F.S. Malan.

14. H. of A. Debs. 14.1.1937, Col. 153.

15. The Cape Times, 19.1.1937. This paper had abandoned its anti-Jewish stance of the 1920s.

16. H. of A. Debs. 1937, Vol. 28, 18.1.1937, Col. 285. He and Hertzog were apparently the only ex-Nationalists to speak on the measure.

that of Smuts, is the clearest indication of the government's intentions. Like Hofmeyr, he denied that the bill was anti-Jewish, even though Jewish immigration would be most affected in the immediate future. Then he went on to refute his denial. The principal reason for the bill was the influx of Jews taken in conjunction with the increased bitterness against them. There was a danger that South Africa would be flooded with all kinds of "undesirable" immigrants, and that consequently strict supervision was necessary. The measure was required because the number of Jews in South Africa had reached a figure causing non-Jewish unrest which could lead to violence. The bill was therefore "calculated inter alia also to curtail Jewish immigration into South Africa according to the requirements and interests of South Africa and of our South African population, both of Jews and non-Jews".<sup>17</sup> It was, he concluded in a remarkable volte face, protecting the national interests and was not intended to "bear the stamp of a desire for persecution".<sup>18</sup>

Smuts, Strijdom claimed, "turned scarlet" when the Prime Minister spoke, for his speech was a clear negation of Smuts's assurance that the bill was not intended to keep out Jews primarily. Small wonder that Die Burger asked against whom, if not the Jews, the measure was aimed.

What was the position of Alexander, Kentridge and Robinson, the Jewish members of the United Party? "They naturally disliked the bill.

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17. Ibid. 18.1.1937, Col. 263.

18. Ibid. 18.1.1937, Col. 264.

19. Ibid. Col. 265.

They disliked the reasons which had brought it into being."<sup>20</sup> According to the United Party paper Die Suidersstem they supported the bill for two reasons. Firstly its principle did not discriminate between whites on the grounds of race or religion. This was the line taken by Alexander who argued that the intended legislation was not anti-semitic in its "actual terms" and referred to an individual on his merits, and not as a member of a race. The government he claimed "has given us the assurance that they do not look upon our present problem as being a Jewish problem. The problem is one of aliens coming to this country and the government is going to apply this bill, so we are assured, equally and fairly to all aliens".<sup>21</sup>

The second reason for support, offered by Die Suidersstem is the far more coherent and plausible one, suggested before in this study; the South African Jews themselves did not desire a large-scale German Jewish influx lest the Nationalists used it to intensify their propaganda against the existing community.<sup>22</sup> This certainly was the approach taken by Kentridge in his claim that the measure sprang from "the

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20. Alexander, E., Morris Alexander, p. 192.

21. H. of A. Debs. 1937, Vol. 28, 27.1.1937, Col. 733.

22. Press Reps. 1937, Die Suidersstem 28.1.1937; see also Alexander Papers, B.O.D. 5, draft by S.A.J.B.O.D. Executive in Jhb. in 1944 to refute Louw's claims that the B.O.D. had brought in refugees; S.A.J.B.O.D. Jhb., Minutes of the monthly meeting of deputies, 31.1.1937, M. Franks "the government had to introduce some measure in order to check the Malanite agitation".

venomous agitation and propaganda spread by the Greyshirts". Consequently he supported the bill because in the circumstances it was the best way, not only to secure the country's interests but also those of the Jewish community.<sup>23</sup>

The Jewish M.P.s' acceptance of the bill however gave their opponents an opportunity to claim that this signified acceptance by all South African Jews and to look for some sinister reason.<sup>24</sup> The government, Malan later guessed, offered them a quid pro quo "to retain the unity of the party... to keep the support of the Jewish population".<sup>25</sup> They were to be rewarded, he claimed, by the grant of unrestricted immigration from Eastern Europe, a charge which Alexander correctly refuted.<sup>26</sup>

Malan's conclusions were based on his belief in the strength of Jewish influence on the government. The answer to this enigma of Jewish parliamentary support is however a far simpler, twofold one. After consultation with the Cape leaders of the Board of Deputies,<sup>27</sup> the three members had decided to support the Second Reading of a measure which "presents no undesirable features",<sup>28</sup> so that Malan's potentially dangerous no-confidence motion would go no further. In addition it was

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23. H. of A. Debs. 1937, Vol. 28, 27.1.1937, Col. 726.

24. H. of A. Debs. 1937, Vol. 28, 18.1.1937, Col. 719, Burnside; Sen. Debs. 1937; Press Reps. 1937, Die Volksblad, 29.1.1937.

25. H. of A. Debs. 1937, Vol. 28, 18.1.1937, Col. 713. Vermeulen the Nationalist leader in the senate made a similar statement.

26. Ibid. 27.1.1937.

27. S.A.J.B.O.D. Minutes of Cape Committee, 11.1.1937.

28. S.A.J.B.O.D. Jhb., Minutes of monthly deputies' meeting, 31.1.1937, President S.A.J.B.O.D.

decided that the government should be fully supported providing certain naturalization difficulties could be overcome.<sup>29</sup> This then was the quid pro quo; to obtain an easing of the position of the Jews within South Africa, at the expense of the stranger who had not yet arrived.

Jewish support was not, however, unequivocal. In Johannesburg among the rank and file of the Board of Deputies there was confusion as to why "the Quota Act should have been fought whilst the present act should be supported".<sup>30</sup> The Prime Minister's speech, with its interpretation of assimilable as synonymous with the country's ability to absorb more Jews, particularly aroused antagonism as a meeting of the Executive Council on the evening following his speech's delivery indicates.<sup>31</sup> Consequently on January 19 the Executive wrote to the Minister expressing its disquiet over the possibility of Clause 4(3)(b) - the assimilability test - being used for future discrimination against Jews as a group.<sup>32</sup>

Meanwhile a deputation from the Board's Cape Committee had met Stuttaford on the 18th to discuss the assimilability definition, as well as the inclusion of some form of appeal from the Selection Board's decision and a reconsideration of the change of name and occupation clauses. Stuttaford however refused to consider any drastic alteration of the bill on the grounds that all points raised by the deputation had

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29. S.A.J.B.O.D. Minutes of Cape Executive, 11.1.1937.

30. S.A.J.B.O.D. Jhb., Minutes of monthly deputies' meeting,  
31.1.1937, I.J. Hersch.

31. S.A.J.B.O.D. Jhb., Executive Council Minutes, 18.1.1937.

32. S.A.J.B.O.D. Jhb., 19.1.1937.

been considered by the cabinet and rejected as laying the way open for a more violent attack by the Malanites.<sup>33</sup>

The Jewish community was faced with an unpleasant situation which had to be accepted; rejection of the government's bill might ultimately result in a far more severe measure. Nevertheless the Johannesburg Jewish public's disquiet over the Jewish M.P.s' acquiescence provoked a brief conflict between the Executive Council and the Cape Committee. Hertzog's speech served to confirm the suspicion of many Jews that basically the Opposition and the government agreed in their attitude towards Jewish immigration, and that the Jewish community should therefore dissociate itself from the legislation.

For the bill was patently discriminatory in its intention - to stop up a loophole not covered by the Quota Act. Kentridge was not honest when he maintained that the resounding defeat of Malan's racist bill indicated that the present measure "must be interpreted as having no relation to racialism".<sup>34</sup> The arrival of the German Jews had been used by the Nationalists and the Grayshirts as a heaven-sent political opportunity. South Africa, as Senator T. Boydell noted, was in danger, not from the size of its alien population, but because of the agitation against them.<sup>35</sup> This was racialism, of which the government had to take cognizance, on Kentridge's own admission; and it had reacted with legislation which provided a racial solution (however otherwise

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33. S.A.J.B.O.D. Minutes of Cape Committee, 15.1.1937, 18.1.1937.

34. Ibid. Col. 726; see also The Star, 18.1.1937, interview with Kentridge.

35. Sen. Debs. 1937, 28.1.1937, Col. 99.

it was presented). Just as Act 22 of 1913 had not discriminated against Indians statutorily but contained Clause 4(1)(a) which was designed to do so administratively, so Clause 4(3)(b) of the Aliens Bill was intended to reduce the numbers of German Jewish immigrants who could not be excluded under existing immigration legislation.

The Nationalists knew this.<sup>36</sup> The Jewish M.P.s knew this, and could do nothing but project their dislike of the bill on to the Opposition.<sup>37</sup> Thus they were grasping at straws when Malan was assailed for claiming, incorrectly, that 95% of German immigrants in 1935 were Jewish; and for having denied in 1930 that the Quota Act was anti-semitic and now admitting that it was. On balance, one can understand the line taken by Alexander and Kentridge; but silence would have earned more respect. In their case tout comprendre ce n'est pas tout pardonner.

Whereas the government was obviously confused over its own legislation, the Labour and Dominion parties were as unequivocal as the Nationalists. The former concentrated particularly on the lack of cohesion in the government's ranks caused by the number of conflicting interests it was trying to reconcile, denouncing the bill as expedient and a degradation of South Africa. The Dominionites (true to their Unionist ancestry) opposed it because they believed the country's development required a policy of vigorous, unobstructed white immigration, regardless of race or religion. Both believed the legislation was not honestly intended to control immigration but to forestall the

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36. Sen. Debs. 1937, 29.1.1937, Col. 122, Vermaulen.

37. H. of A. Debs. Col. 416, J.H. Van den Berg.

Nationalists particularly on the platteland.

This was the line taken by Duncan Burnside who, attacking the bill's principle noted the link between the immigration issue and the growth of the Greyshirt movement, of which Nazi-style anti-semitism was an important ingredient.<sup>38</sup> Walter Madeley, in his forthright manner, advised the government to "cut the cackle" and "state openly as did the opposition, that they are anxious to prevent Jewish immigration".<sup>39</sup> Labour, he made clear, was opposed, not to selective immigration, but to a policy which militated against a whole race. A bill such as this, Burnside believed, could only be passed in conjunction with legislation which provided for a government-aided or controlled immigration policy; without this the government's claim that it encouraged suitable, selective immigration was dishonest.<sup>40</sup>

Turning to the details of the bill, Madeley asked for a definition of "readily assimilable" and "become a desirable inhabitant". Further he demanded that regulations under the act, the form of the permit and the application form, be laid on the table of the House and included in the schedule, to prevent subsequent abuse.

The Dominionites adopted an even more humanitarian attitude than Labour had done. Rejecting the Minister of the Interior's promise that he did not intend to strike at Jews as such, C.W. Coulter criticised the fact that during Malan's censure motion neither he nor the government speakers had expressed one word of sympathy for Jews living in Germany.<sup>41</sup>

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38. Ibid. 14.1.1937, Col. 177; see also Sen. Debs. 1937, 28.1.1937, T. Bcydell.

39. H. of A. Debs. 18.1.1937, Col. 300.

40. H. of A. Debs. 27.1.1937, Col. 723.

41. Ibid. 12.1.1937.

It was Stallard however who probed the bill at its very root.<sup>42</sup> New legislation was necessary only if mass undesirable immigration had occurred. The government admitted this was not so, and in addition claimed it wanted an increase in white immigration. Why the urgency then, he asked, to extend the three criteria on which immigrants had previously been judged? The Quota Act's restriction by country was now being changed to the use of the selective principle, implemented by a Board whose composition would reflect the feelings of the government of the day, and whose powers would be arbitrary and absolute. All this Stallard found hard to reconcile with the assurances that the bill was not directed against Jews. His dislike for the Board was equalled only by his dislike for the change of name clause. If changing a name were a sign of assimilation then why should the Jews not do this? Stallard's reasoning makes sense to the historian. The Aliens Act makes sense only if it is viewed as the solution to a problem which went far beyond the question of immigration.

Thus the debate on the bill's principle continued, with endless repetition by both sides and the government determined to pass its "flexible" measure as hastily and as intact as possible.<sup>43</sup> On January 18, Malan's motion to refer the bill to a Select Committee having been defeated by 91 to 18 (only the Nationalists voting in its favour), the Second Reading was passed by 84 to 28, with Labour joining the Nationalists in the vote.

When both Houses reached the Committee Stage (in which the details

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42. Ibid. 14.1.1937.

43. See Gen. Debs. 28.1.1937; 29.1.1937, Stuttaford.

of a bill are hammered out), the main points of difference again centred on a definition of the words "assimilability" and "alien"; on the composition and functions of the Board; the change of name clause; and the repeal of the Quota Act. Malan, continuing to spearhead the Opposition attack offered the specific definition of "assimilability" incorporated in his private bill. "Assimilability," he said, "means being absorbed by the European inhabitants of the Union, with due consideration given to the racial, sociological and cultural bases of such inhabitants, and 'European inhabitants of the Union' means the original Afrikaans- and English-speaking elements comprised in the population of the Union."<sup>44</sup> He rejected the minister's definition of assimilability as purely a matter of civilisation and culture. "When you speak of assimilability you really have the race actually in your mind, the sociological character and certainly also the cultural vision of the life of a person."<sup>45</sup>

Madeley supported Malan's demand for a definition, but for the contrary reason; he was afraid that the bill would be used solely against the Jews. The members of the Board were officials who would get their instructions from the minister; how, he asked, were they to decide unless the word were defined more clearly? In the absence of a definition, the bill was "conceived in a spirit of anti-semitism".<sup>46</sup> The whole "success or failure, the justice or injustice, turns upon

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44. H. of A. Debs. 20.1.1937, Col. 392.

45. Ibid. 20.1.1937, Cols. 393-4; also Sen. Debs. 1937, 28-29.1.1937, Senators Vermeulen, Hofmeyr and Visser.

46. H. of A. Debs. 20.1.1937, Col. 420.

the interpretation of the word assimilable".<sup>47</sup>

This was now the attitude of the Jewish communal leadership who felt that failing definition the whole clause must be expunged.<sup>48</sup> Consequently Alexander pressed the minister to reiterate and put in the bill his previous statement that an assimilable person was one "who can take his place worthily along with the other citizens of the country".<sup>49</sup> He therefore moved that Clause 4 be amended to read: "A person shall be considered as likely to become readily assimilated with the European inhabitants of the Union and to become a desirable inhabitant of the Union if he can in respect of his standard of education, culture and similar qualifications take his place worthily alongside the other citizens of the country."<sup>50</sup>

The Minister however, now expressed in public his determination, previously conveyed privately to the Jewish deputation, to leave the word undefined as Malan had done in the Quota Act. The furthest he would go was to give Alexander an assurance that he stood by his definition, but would not write it in the act, because there were "other factors" (such as a "flood" from any country) which "the government

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47. Ibid. 20.1.1937, Col. 423.

48. S.A.J.B.O.D. Jhb. Board to Min. of the Interior 19.1.1937; S.A.J.B.O.D. Biennial Reports of Executive Council, May 1935 - May 1937; H. of A. Debs. 1937, Vol. 28, 20.1.1937, Col. 458 Madeley quoting The Zionist Record.

49. H. of A. Debs. 21.1.1937, Col. 442.

50. Ibid. 21.1.1937, Col. 443.

might have every right to take action on ".<sup>51</sup> The Jewish leadership made a tactical mistake in pressing for this definition; the term was more likely to be flexibly interpreted in 1937 than in 1930.

When the consideration of the term "alien" arose, Malan with ruthless logic probed the United Party's weakness at its focal point (as he was to do throughout the debate), using the Prime Minister's speech as a means of again forcing the government into admitting the bill's anti-Jewish rationale. Hertzog he said had made this clear, but the House had refused to amend Section 4(1)(a) of Act 22 so as to allow the minister to declare Jews unassimilable. The term "alien" should therefore be defined to include the word "Jew", so that even Jews born in the British Empire could be excluded. Consequently he moved that the clause be amended to read: "Alien means a person who is not a natural-born British subject or a Union national, but shall include a person who is a member of the Jewish race."<sup>52</sup> His refrain was taken up by J.H.H. de Waal who found it intolerable, "a blot on our descent", that under the existing law any English-born Jew could freely enter the Union whereas this privilege "is denied the Afrikaner Christian kinsmen in Germany, Holland and France".<sup>53</sup>

While Malan was dissatisfied that the bill's definition of alien would allow in British-born Jews, Madeley, supported by Alexander and Kentridge, was dissatisfied because the definition was not in accordance with the arrangements, made in 1926 when Malan was Minister of the

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51. Ibid. 20.1.1937, Col. 454, Alexander.

52. Ibid. 20.1.1937, Col. 394.

53. Ibid. Col. 402.

Interior, reciprocally to recognise Commonwealth naturalization. Under Clauses 6 and 9 of the British Nationality Act No 18 of 1926, naturalized British subjects from the U.K. or the Dominions were recognised as having the same rights as British-born subjects.

The minister, however rejected Madeley's amendment that the words "natural-born" be omitted,<sup>54</sup> on the correct, but somewhat irrelevant grounds that natural-born British subjects were already not necessarily accepted, as the policy regarding Indians indicated. Thus under the 1937 legislation, for immigration purposes only, and in spite of the 1926 Nationality Act, an alien was defined as anyone who was not a natural-born British subject or a Union national. After 1937 while as in the past most natural-born British subjects would simply be required to comply with the regulations of the 1913 Act, a naturalized British subject, who came to settle in South Africa, would be liable to examination by the Selection Board and be registered as an alien for two years, after which he became a Union national.

The composition of the Selection Board and the way it would operate, were the teeth of the measure's administration. Malan felt that the period of office for its members should be short - a year - particularly as the government was giving them no fixed operational guidelines. In Madeley's opinion, the vagueness over the Board's instructions suggested that the government intended to control it effectively. He therefore recommended it be a "strong" Board, presided over by a judge and including two magistrates, immune from political influence or control. The minister however, refused to accept that the exact composition of the Board be specified statutorily. Similarly he rejected Malan's

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54. Ibid. 25.1.1937, Report Stage.

amendment, moved on January 20, that the Board annually report on its work to parliament, so that the lawmakers (and the electorate) should not lose all knowledge and control of what it was doing.

At the Third Reading on January 27, the opposition parties again probed the bill's anomalies and shortfalls. Madeley deplored the enormous powers given to the Board in Clause 4(3)(b) and its right to interpret these as it wished, particularly when taken in conjunction with the Prime Minister's speech.<sup>55</sup> J. Christie believed that the Board, though consisting of able officials, would give effect to the views of the government of the day on "assimilability", so that the word's application to different groups of immigrants would become a political issue. Malan insisted that to make 1937 the starting date for the operation of the name changing clause, was to avoid the issue. People did not change their name to indicate their wish to assimilate as Stallard had suggested; they did so for financial benefit. Consequently they should be deprived of an advantage to which they were not entitled and the law should be made retrospective to May 1, 1930.<sup>56</sup> Malan's amendment was dropped after Stuttaford had pointed out that the English law on which the Opposition leader had based his case, was applicable only to aliens, whereas the present measure went further and would apply to everyone including Union nationals.

Alexander's motion that Clause 11 provide for the publication in the Government Gazette of occupations regarded by the Board as adequate

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55. Ibid. 27.1.1937, Col. 703 ff.

56. Ibid. 21.1.1937, Col. 468 ff.

ly filled, provoked Madeley again to demand that members know what regulations were to be framed before they continued discussing this clause.<sup>57</sup> C.P. Robinson supported the Labour view that the House be given some idea as to whether the regulations had already been framed and whether they would go beyond those of the Quota Act. The minister's reply is further evidence of the government's haste to get the bill through. The regulations were being prepared he claimed, but it was impossible to delay the bill.

Finally Malan led the attack on Clause 13, the repeal of his Quota Act,<sup>58</sup> on the grounds that as all countries were to be treated on their merits there would be an increase in applications from the erstwhile restricted countries. Further the Quota Act had effectively stopped the "filling up" of families whose breadwinner had preceded them to South Africa before May 1, 1930 - a brake on immigration which the present bill took away. The effect, according to Malan and subsequent Nationalist speakers, would be to release an Eastern European "flood" because of the inefficacy of the assimilation test. Stuttaford however, claimed in his reply that the present measure would be more selective than the Quota Act, because under it selection started with the first immigrant, whereas under the Quota Act it had begun with the 51st from non-scheduled countries.

The Aliens Act came into force on February 1. What conclusions can one draw from the United Party's curious performance? As Hertzog's speech indicates there was a strong feeling in one wing of the party

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57. Ibid. 21.1.1937, Col. 477.

58. Ibid. 21.1.1937, Col. 482 ff.

that Jewish numbers within South Africa must be pegged. Thus the measure was an attempt by the government to stave off the Greyshirt attack, by accommodating U.P. supporters who were being seduced by Nazi racist theories, as the Provincial Council elections had conclusively proved. Simultaneously the speeches of Smuts, Stuttaford, Hofmeyr, Fagan and the Jewish M.P.s were intended to reassure another part of the electorate that the measure was not specifically anti-Jewish, but a move to stop undesirable immigration in general. Not unnaturally, the confusion of explanations favours suspicion of the worst motivations; like the lady, the United Party protested too much.

The result for the German Jews who never gained entry into the Union (or anywhere else) was catastrophic. From South Africa's standpoint, the Aliens Act was a setback, for the country lost the opportunity to strengthen its population with the educated, sophisticated, skilled additions its leaders claimed to want. By the time a more favourable attitude towards immigration developed, in 1945, there were few Jews left in Germany to bring their skills to these shores.

b) The Immigration Amendment Bill.

As a postscript to the Aliens Act it is necessary to consider briefly certain clauses in the Immigration Amendment Bill, which was introduced by J.H. Hofmeyr, then Acting Minister of the Interior on March 15, 1937.<sup>59</sup>

This was the bill, which had been "crowded out" in the previous

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59. A.B. 56-37. It became Act No 27 of 1937, first published in the Govt. Gazette Extraordinary No 2437, 8.5.1937.

session and which was enacted in an amended form.<sup>60</sup> While its primary purpose was to facilitate the recruitment and importation for mine labour, of tropical Africans hitherto prohibited, Clause 3 finally disposed of the key question of one-way passports which were still legally valid in South Africa.

The retained Clause 6 of the Quota Act, required an immigrant to produce an unexpired passport or some other identity document on entering the Union. Under the new legislation the acceptance of such documents was to be made subject to ministerial recognition. "The minister," Hofmeyr explained, "will then be able to refuse to recognise a document of identity which does not entitle the holder to return to the country which issued that document."<sup>61</sup> Such people could obviously not be deported; this was therefore the easiest way for the Union to refuse them entry.

As German Jews could now be dealt with under the Aliens Act, the only immigrants whom the South African Government thus wished to exclude were the relatively small number of holders of "Nansen" and "McDonald" passports. After World War I, as a result of the territorial adjustments made under the subsequent Peace Treaties, many people who had been citizens of one country, found themselves domiciled in another. Those who did not wish to adopt the nationality of their new country and were therefore stateless, were issued by the League of Nations with Nansen passports.<sup>62</sup> With the accession to power of the Nazis, many

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60. H. of A. Dabs. 1937, Vol. 29, 22.3.1937, J.H. Hofmeyr.

61. Ibid. 22.3.1937, Col. 3592.

62. Ibid. 22.3.1937, Col. 4320, Kentridge.

Germans, including non-Jews, who had been deprived of their nationality, acquired these Nansen passports which did not permit their return to Germany. There were in addition, many Germans who had migrated temporarily to surrounding countries, which issued them with a McDonald passport, valid for return to the temporary homeland for one year.<sup>63</sup> These latter were not, as Malan claimed, overwhelmingly Jewish; most were "Aryans" from all sections of the population.<sup>64</sup> Throughout 1936 the Nationalists had demanded that holders of such one-way passport (which were recognised as valid travel documents by the Union Government) be declared prohibited immigrants and Malan had incorporated this demand into his private bill. Conversely Alexander had tried to persuade the government to abandon the legislation.<sup>65</sup> The government was therefore surrendering now to Nationalist pressure while attempting simultaneously to mitigate its apparent ruthlessness, by allowing ministerial discretion.

Malan naturally was not satisfied.<sup>66</sup> The present measure, he

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63. Files of H. of A., An. 223/1937, "League of Nations No 7845, 6.7.1936". J.G. McDonald was the League of Nations High Commissioner for Refugees, a post established in 1933 to co-ordinate the work of relief agencies and negotiate with governments. He tried in vain to obtain European realisation that the refugee issue was a political one and could not be solved only by relief measures.
64. H. of A. Debs. 1937, Vol. 29, 22.3.1937, Col. 4321.
65. S.A.J.B.O.D. Minutes of Cape Committee 9.2.1937.
66. H. of A. Debs. 22.3.1937, Col. 3600 ff.

claimed, was a weakening of the 1936 aborted bill, which had proposed statutorily to exclude holders of one-way passports. Administrative implementation would simply open the gates to a "certain section" which would sell its support to the government at election time in return for these concessions. He therefore demanded that admissions be limited only to those with a passport carrying the right of unrestricted return to the country that had issued it.<sup>67</sup>

Replying to Malan, Hofmeyr explained that the 1936 bill had contained a double provision which the government law adviser now regarded as unnecessary. It had required the immigrant to hold a passport of a category acknowledged by the minister; and it had further provided that the passport be valid for return. The government had now decided that the best way to draft the legislation was to require a document whose validity depended solely on the minister's recognition. No document would however be accepted "unless it is legally valid as regards the return of the person to the country that issued it".<sup>68</sup>

Unlike Malan, both Kentridge and Alexander protested against what they regarded as the additional harshness inherent in Clause 3. Alexander rightly pointed out that by insisting the document be acknowledged by the minister, it went even further than the point made in the Quota Act that a man merely have recognised identity documents.<sup>69</sup>

The protest was in vain. And any expectations of lenient administration were dampened soon after the passing of the Immigration Amendment

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67. Ibid. Col. 4318.

68. Ibid. Col. 4319.

69. Ibid. 6.4.1937, Cols. 4321-2, Alexander; Cols. 4320-1, Kentridge.

Act when Hofmeyr stated his intention of legalising his earlier declaration that one-way passports would henceforth belong to a category not recognised by the minister.<sup>70</sup>

c) The Administration of restrictive legislation.

While there was a desire from Jewish quarters to see the immigration issue die down, the Nationalist party and its press, though denying they were anti-semitic, continued to propagate the viewpoint "that the Aliens Act will not effectively keep down the number of Jewish immigrants and that this act represents a 'bargain' between the government and Jews".<sup>71</sup> Die Volksblad described the legislation, including its scrapping of the Quota Act as "a great victory for the Jews".<sup>72</sup> Die Burger claimed that the people were demanding complete stoppage, not merely the control, of Jewish immigration, something which the government could not concede because it had to satisfy Smuts, Hofmeyr and the Jewish M.P.s.<sup>73</sup> This maintenance of Nationalist pressure was strategically effective, for it could only force the government into more rigorous use of its powers.

Immediately after the passing of the Act, regulations were published under it.<sup>74</sup> The Immigrants Selection Board was established whose

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70. S.A.J.B.O.D. Report of Executive Council, 21.5.1935 - 31.5.1937.
71. Alexander Papers; List IV, 7-14 (384); S.A.J.B.O.D. Report, Cape Committee 14.3.1937.
72. Press Repts. 1937, 29.1.1937.
73. Ibid. 28.1.1937; see also Die Burger, 22.1.1937.
74. Govt. Gazette Extraordinary 2409, 30.1.1937.

members were to hold office for two years and be eligible for re-election. The first Board comprised the secretaries for Labour, Commerce and Industry, and the Interior, together with an Immigration Officer.<sup>75</sup> The government made a point of emphasising that this board was a statutory, and therefore independent body which could not be influenced by any cabinet minister.<sup>76</sup> The Department of the Interior, it was continually, and probably on the whole correctly claimed, did not know the reasons for the Board's rejection of an application, nor could it reverse such a decision.<sup>77</sup> A later Minister of the Interior, C. Clarkson described the members as "a law unto themselves... not even the Prime Minister or any other minister [could] interfere with their discretion".<sup>78</sup>

The first annexure to the regulations laid down that applications by aliens for temporary or permanent residence were now to be made in duplicate to the Secretary for the Interior. Until December 31, however, the Board was permitted to consider applications made on the form prescribed under the Quota Act, and its regulations (which included, as noted above, a record of the applicant's "race" i.e. Asiatic, Hebrew etc., as well as his nationality).

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75. The Zionist Record, 29.1.1937; The Cape Argus, 1.2.1937.

76. Alexander Papers, Correspondence File 57, Sen. C. Clarkson to Alexander 15.1.1946; B.O.D. 5, Report of interview between Minister of the Interior and Department officials, and B.O.D. 10.9.1943.

77. Alexander Papers, Ibid.

78. Sen. Debs. 1946, 2.5.1946, Col. 1365, implementation of policy (see below).

The permanent application had to be accompanied by innumerable other documents. As under the Quota Act they included birth, marriage, medical, police record and education certificates. These had to be accompanied by a trade competency diploma from every employer of the previous five years; a testimonial of character from the applicant's present employer or a minister of religion, bank official or judicial officer able to give such a certificate; and documentary proof of his financial circumstances as stated in his application.

Applications had to be made to a Union representative or a British consul in the country in which the intending immigrant resided. If he had already been admitted to South Africa or South West Africa on a temporary permit his application went directly to the Secretary for the Interior.

Having satisfied the Board, the applicant was then issued with a permanent residence permit and an identity card, which he had to produce at the port of entry together with one copy of his initial application duly signed by an authorised officer. Then on payment of £1 he was allowed to enter.

The regulations were thus as stringent as those under the Quota Act and were strictly applied almost immediately after their promulgation. Though "some measure of sympathy [was] felt departmentally for those applicants who would in case of refusal, have to return to Germany... inquiries at the Interior today show that many applications have been declined of persons both here and abroad".<sup>79</sup> Thus any hopes (or Nationalist prognostications),<sup>80</sup> that the earlier vagueness over

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79. S.A.J.B.O.D., Jhb., File 352, unnamed correspondent to M. Kentridge, 17.6.1937.

80. S.A. Pol. Arch. Pamphlet Collection, P9.6, reprint of article by H.F. Verwoerd in Die Transvaler, 5.4.1938.

the "assimilability" definition and the refusal statutorily to fix the form and functions of the Board, presaged a flexibility in the act's administration, were killed. Certainly no bargain on this score had been struck between "the government and the Jews". On February 19 the Cape Guardian ascribed this "merciless stringency... to specific government instructions to the Department of the Interior to see that the limiting penalties of the new regulations be carried out to the maximum and that exceptions be cut down to the least possible minimum".<sup>81</sup>

Subsequently some newspapers made an attempt to mitigate the harshness of the law's administration. The Rand Daily Mail instituted a campaign criticising the Immigration Department; while the Zionist Record urged the government to deal generously with immigrants who had left Europe without prior knowledge of the new law.<sup>82</sup>

While the government refused to accept such differentiation, the Board did not implement wholesale exclusion. Aliens subject to the Quota Act, who had arrived prior to February 1, 1937 and been admitted under Section 5 of that act, on temporary permits following prohibition as immigrants, were allowed to apply to the Selection Board for permanent residence; aliens not subject to the Quota legislation but restricted under Section 4(1) of the principal act, could if a temporary permit had been granted, apply for permanent residence to the immigration

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81. Alexander Papers, Correspondence File 28.

82. Press Repts. 1937, 25.6.1937.

department.<sup>83</sup> No extensions of temporary permits beyond six months' duration were however granted, while the permanent applications were being considered. In a subsequent interview Stuttford, announcing this granting of relief to "certain deserving cases" pending the final decision on permanent residence, carefully emphasised he was in no way interfering with the Board's discretion.<sup>84</sup>

The case of aliens "who had declared on arrival that they had come to the Union merely for temporary residence" in the hope of gaining permanent residence was however dealt with more severely. After the end of March 1937 they were compelled to leave the Union on expiry of their permits and then make fresh application for permanent entry.<sup>85</sup> Cases began to be reported of marriages of convenience, to make Union nationals of foreign women who might otherwise be deported as prohibited immigrants.

By August 1937 the Star could claim that the new immigration policy was effecting a drastic fall in alien immigration numbers, and this was compounded by temporarily adverse economic circumstances in the Union. The numbers from Britain now began to exceed non-British admissions; while of the latter, Dutch immigrants were displacing the Germans,

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83. S.A.J.B.O.D., Jhb., File 352, J.H. Hofmeyr to M. Alexander 10.5.1937; Alexander Papers List IV, 7-14 (384); S.A.J.B.O.D., Report, Cape Committee 14.3.1937.
84. Press Repts. 1937, No 52, Die Volksblad 21.7.1937; Die Burger, 21.7.1937.
85. S.A.J.B.O.D. Jhb. File 352, Hofmeyr to Alexander 10.5.1937; Press Repts., The Sunday Times, 11.4.1937, quoting Commissioner for Immigration and Asiatic Affairs, 31.3.1937.

Lithuanians and Poles as the principal strain.<sup>86</sup> Stuttaford at the Transvaal United Party congress in Pretoria claimed that the government had "entirely changed the class of our immigrant". Whereas between April and July 1936, 1 120 British subjects had entered as against 2 307 aliens, in the same period for 1937 the number had risen slightly to 1 487, while alien figures had greatly decreased to 842.<sup>87</sup>

In 1938 Die Suiderstem stated that of 3 000 applications considered under the Aliens Act, less than 1 000 had been granted of whom over half were non-Jews.<sup>88</sup> A minute from the Commissioner for Immigration and Asiatic Affairs to the Secretary for the Interior written a couple of years later, does suggest that Jewish immigrants were being carefully scrutinised. "I need hardly point out," he wrote, "that if we give facilities for these two persons [immigrants named Moise and Sylvia Cohen] to attend the Witwatersrand University, we shall have the greatest difficulty in refusing other cases of the same racial category, of which I anticipate there will be a number."<sup>89</sup> On the other hand the Minister of the Interior's office claimed that "comparatively large numbers" of additional Jewish rabbis and teachers continued to be admitted after the passing of the Aliens' Act.<sup>90</sup>

In the main the government probably allowed in only two classes of Jewish immigrants: those with capital; and those who already had

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86. Press Repts. 1937, No 54, 7.8.1937.

87. The Cape Argus, 9.9.1937.

88. Press Repts. 1938, No 95, 17.6.1938.

89. Central Archives, C.I.A. M. 215, 22.8.1941.

90. Alexander Papers, Correspondence File 47, Office of Min. of Interior to Alexander 4.11.1943.

relatives in the country. Most of this latter class were elderly German refugees - generally the parents of people already admitted to South Africa - who were not permitted to take up any occupation.<sup>91</sup> Immigration statistics show that as far as Jewish immigration was concerned, the Immigrants Selection Board did its work effectively. Between February 1, 1937 and December 31, 1938 permits for permanent residence were granted as follows to "aliens of Hebrew origin": 712 wives and minor children of lawfully permanent residents; 681 destitute or aged parents and grandparents; and 353 "others".<sup>92</sup> Between January 1 and December 31, 1939, 164 wives and minor children came; 825 aged parents and grandparents and 105 "others"; almost all were Germans.<sup>93</sup> From January 1 to March 31, 1940, 234 Jews entered on temporary permits, of whom 104 were not subject to the Aliens Act; and 78 entered for permanent residence, of whom 26 were not subject to the Aliens Act. Of the remainder 6 were wives and children and 37 aged parents.<sup>94</sup> By the end of 1940 Jewish immigration was negligible. In 1941, 43 Jews entered; in 1942 - 33; in 1943 - 19; and in 1944 - 24.<sup>95</sup> With the end of the war, the number admitted rose in 1945 to 75 and in 1946 to 303.<sup>96</sup>

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91. Die Burger, 24.8.1939, quoting D.T. Viljoen M.P. for Victoria West.
92. S.A.J.B.O.D. Biennial Reports of Executive Council 1937-1940, figures provided by Immigration Selection Board.
93. S.A.J.B.O.D., Biennial Reports of the Executive Council 1937-1940, figures provided by Min. of the Interior.
94. Press Reps., No 187, Die Volksblad, 20.4.1940 quoting Min. of the Interior.
95. S.A.J.B.O.D., Biennial Reports of the Executive Council 1942-1945, p. 14.
96. Ibid., July 1945 - July 1947.

## CHAPTER XIV

### "NO MORE JEWS SHOULD ENTER THE COUNTRY"

The effect of the Aliens Act compounded by the war, to a large extent provided an answer to Opposition propaganda. Jewish immigration continued, however, to furnish the Nationalist-Greyshirt combination with one of its most effective vote-catching devices. In June 1937, the Nationalists fought the Fordsburg Provincial Council by-election on the basis of a general immigration quota; the need to stop "all Jewish immigration"; and the exclusion from naturalization of "individuals belonging to a class which is regarded as not being able to be assimilated by the South African nation, for instance the Jewish race".<sup>1</sup> At Uitenhage, in August, the Cape Nationalist Congress adopted a resolution that all Jewish immigration be prohibited "in order that the nation might be protected economically".<sup>2</sup> In October at the Transvaal Nationalist Congress J.H. Strijdom declared that Afrikaners, though wishing to be fair to all, did not want to introduce a third nationality into South Africa.<sup>3</sup> Meanwhile Malan, on tour in Namaqualand in September-October 1937, revealed more fully than even he realised, the origin and depth of Nationalist anti-semitism. It was obvious he had expected acceptance by South African Jews of his explanation that the Quota Act had been

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1. Press Repts. 1937.

2. Press Repts. 1937, No 56, 19.8.1937.

3. The Star, 6.10.1937.

passed because the Jewish community was becoming too large for its own or the country's good. The Jewish community however, clung to its original belief that the Act had been the reflection, and not the remedy, for an anti-semitism which was endemic among Afrikaner Nationalists. Nothing the Nationalists had said or done during the 1930's dispelled this belief which was reinforced when anti-Jewish sentiment reached epidemic proportions. They withdrew their support from the Nationalists and were accused by Malan of wishing to wreck him and his party.<sup>4</sup>

Die Transvaler beat its anti-semitic drum throughout 1938. "We wish," its columnist, Sylvia Moerdyk declared, "to keep our people composed as it is and the policy of the Nationalist party aims to create a quota system that would perpetuate this composition. The party wishes to stop Jewish immigration because Jews are unassimilable.... History has shown that the Jews form an indigestible entity on their own wherever they settle.. The percentage of Jews at present resident in the Union is already too high to form a healthy proportion of the population. It is thus the duty of the government to see to it that no more Jews should enter the country until a proper equilibrium be restored. The present government has been found wanting in introducing these urgent measures and camouflages its laxity by means of laws such as the Aliens Act."<sup>5</sup>

The cry, that there were enough Jews in South Africa was repeated several times by "hatchet man" Eric Louw in the campaign preceding the election of May 1938.<sup>6</sup> The question of Jewish immigration, either on

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4. Press Repts. 1937, No 59.

5. Ibid. 1937, No 63, Die Transvaler, 24.10.1937.

6. Ibid. 1938, The Friend, 7.3.1938; The Star, 10.3.1938; The Cape Times, 28.3.1938.

its own or coupled with the future of the existing Jewish community, was one of the main topics of most Nationalist electioneering speeches.<sup>7</sup>

During this election, anti-semitism was, for the first time in South Africa, explicitly included in a political party's election campaign. In 1936 the party had confined its definition of undesirable immigrants as being those who reduced "die stoflike lewenstandaard of die sedelike peil van die blanke bevolking". The Nationalist pre-election manifesto of March, 1938, contained the following pronouncement of the party's Federale Raad, under the heading "Immigration and the Jewish question".<sup>8</sup>

"While the party welcomes in general the immigration of suitable and assimilable European elements, it will, with an eye to South Africa's specific problems, take steps to put a stop to any further immigration of Jews, to combat the practice of changing names, to exercise stricter control over naturalization, and to institute a professional permit system for unnaturalised foreigners along the lines existing in England, France and other countries."

Throughout 1938 the Nationalists continued to emphasise the standpoint they had taken in the campaign, that the Aliens Act was useless because it did not entirely prohibit, but only slowed down Jewish immigration. On November 11, at its national congress in Bloemfontein, the decision on Jewish immigration published in the election pamphlet

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7. Press Repts. No 83, e.g. Malan, who claimed that because of the anschluss Jews were streaming into South Africa; Alexander Papers, Folder 29, A.J. Werth at Caledon 28.3.1938 blamed the Jews for the drop in the price of wool.
8. The Cape Times, 5.4.1938; S.A.J.B.O.D. Report of the Executive Council 1937-40, p. 20.

was unanimously adopted as party policy.<sup>9</sup>

As the position of Jews in Germany and Austria continued to deteriorate, efforts to save as many as possible were renewed in both Europe and South Africa. In June 1938, an inter-governmental conference was called by Pres. Roosevelt at Evian, to consider setting up a refugee rehabilitation programme, which would, however, commit no nation to a definite course of action.<sup>10</sup> It established a permanent committee to continue Nansen's work of issuing temporary identity documents until those who were stateless acquired domiciliary and naturalisation rights elsewhere. South Africa was not represented at the conference so that Stuttaford was able in all honesty to give Eric Louw the assurance that the Union would not act on the Evian proposals and would not relax her immigration policy with a view to accomodating Jewish immigrants.<sup>11</sup>

News of Germany's "Crystal Night" on November 9/10 1938 was received in South Africa with horror and sympathy for the victims of this Nazi-inspired hooliganism. The Cape Times of November 23 recommended a revival of the Evian Conference so that each country could do its share to help the refugees. The Society of Jews and Christians and several Reef members of parliament including J.H. Hofmeyr, urged the government to help the entry into the Union of relatives of German immigrants already here. The Minister of the Interior indicated his sympathy,<sup>12</sup> and this seems (judging from the statistics cited above)

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9. Press Repts. 1938, No 114, The Star 11.11.1938.

10. Sichel, From Refugee, pp. 11-12.

11. Press Repts. 1938, No 103, quoting The Star 27.7.1938.

12. Ibid. 1938, No 116; H. of A. Debs. 1939, Vol. 33, 7.2.1939, Col. 23.

to have taken practical form in the easing of the regulations allowing for increased admission during 1939 of aged relatives of permanent Union residents.<sup>13</sup> But in the main he refused to interfere with the workings of the Immigration Selection Board, not least because the Opposition questioned him closely as every boatload carrying refugees arrived.

The Nationalists were obdurats. However much pity was felt for the Jews, Die Burger maintained, South Africa had no room for them. "Our doors which are still far too wide open should be closed."<sup>14</sup> Die Transvaler adopted a minatory tone. Agitation and government aid would cause counter-agitation; those who wanted internal peace must in their own interests stop all further Jewish immigration.<sup>15</sup>

The increasing acuteness of the refugee situation in Europe, taken in conjunction with the spreading adherence among Afrikaners particularly, to the anti-British, pro-German "Shirt" and O.B. movements, provided the basis for Louw's private bill on immigration which was published in January 1939.<sup>16</sup> The amalgamation of Weichardt's Greyshirt movement with the Gesuiwerdes early in 1939 was an indication of the growing Nazification of the Opposition; and Weichardt gave as one of his reasons for joining the Nationalists the fact that they stood for the limitation of Jewish immigration.<sup>17</sup>

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13. S.A.J.B.O.D., Report of Executive Council 1937-1940.

14. Die Burger, 25.11.1938.

15. Press Reps., Die Transvaler 26.11.1938.

16. A.B. 9-39. The First Reading was on 7.2.1939.

17. See Roberts, M. and Trollip, A., The South African Opposition 1939-45 for a discussion on the relationship between Nationalists and Greyshirts.

Hofmeyr described the bill as "anti-semitism pure and unadulterated.. Nazism at its crudest...to prepare the ground for the substitution of dictatorship for democracy".<sup>18</sup> It was a measure compounded of many elements. The speeches of A.J. Werth and Dr Malan in the Second Reading debate indicate clearly the extent to which Nazi "blood thinking" (or genetic racialism) had penetrated Nationalist dogma. The immigration issue continued to be an excellent vote-catcher, as the Pearl by-election indicates; but in seeking a rationale for the bill, one cannot ignore the element of xenophobia and revenge which was an essential part of Nationalist policy towards the Jews. Since the Quota Act, as we have noted before, Jews had stopped effectively supporting the Nationalists. Consequently, as Madeley put it bluntly, in that party's view they were neither assimilable or absorbable.<sup>19</sup>

This revenge motivation is apparent in Die Transvaler's explanation that the aim of the measure was to stop foreigners on temporary permits from settling permanently, so as to prevent commerce and the professions from falling into foreign hands.<sup>20</sup> There was another important economic reason for the bill. Boycotts of German goods, maintained largely by Jews, provoked the fear that German wool buyers would in turn boycott the South African wool clip. unless a lively opposition to the original boycott was shown to exist. Finally Nationalist insistence that Jews were unassimilable by both English-and Afrikaans-South Africans leads one to suspect that this propaganda was directed, and appealed, to a limited number of English-South Africans.

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18. Press Reps. 1939, No 126 The Sunday Tribune 5.2.1939.

19. H. of A. Debs. 1939, Vol. 34, 14.4.1939.

20. Press Reps. 1939, 10.1.1939.

While the Nationalist press published letters and reports of meetings in support of the bill, the non-Nationalist newspapers roundly attacked it. On February 24, at the start of the Second Reading in a full House, Louw castigated these latter as being motivated by an international Jewish conspiracy which was also stirring up hatred towards Germany. He claimed not to be activated by fascism or racialism but by a feeling for South Africa and because he was worried by the rise of a new race problem about which the government apparently refused to concern itself. A race, unassimilable to English and Afrikaans South Africans was taking over control of business, industry and the professions. His bill he claimed, admitted to the existence of a Jewish problem, faced up to it and was even in the interests of the Jews themselves. If this problem were not faced, South Africa would have a repetition of what had happened in some European countries.<sup>21</sup>

Louw then went on to explain for nearly two hours the provisions of the measure which was a more drastic version of Malan's 1936 bill. As in the latter an "assimilated person" was defined as one "being absorbed by and identifying himself with due consideration of the ethnological, racial, sociological and cultural bases"<sup>22</sup> of the country's inhabitants.

Section 4(b) embodied the main feature of the bill, "definitely naming the Jewish race as a race not suitable for immigration into South Africa".<sup>23</sup> Under this section no applicant of Jewish parentage "shall

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21. H. of A. Debs. 1939, Vol. 33, 24.2.1939; S.A.J.B.O.D. Report of Executive Council presented to monthly deputies' meeting, 26.3.1939.

22. H. of A. Debs. 1939, Vol. 33, Col. 827.

23. Ibid. Col. 832.

be deemed to be readily assimilable".<sup>24</sup> Jewish parentage was defined on the Nazi model as meaning those whose parents were partly or wholly Jewish whether or not professing the religion, a clear proof of the bill's origins. Further clauses stringently circumscribed the activities of aliens already settled in South Africa, including retrospective cancellation of permits.

At its Second Reading on April 14, the bill was defeated by 81 votes to 17; that is, the minority vote was wholly Nationalist but did not include all the party's members. In spite of this defeat the Opposition continued their campaign against Jews as a "nationally foreign element", themselves responsible for the spread of anti-semitism through their failure to recognise its existence. Louw's rambling Second Reading speech was printed as a pamphlet and circulated by "certain public servants in Pretoria", members of a Hitler Youth-type movement.<sup>25</sup> Later in the year there was an attempt by the Jewish community to counter-balance this propaganda by publishing excerpts from parliamentary speeches refuting Louw.<sup>26</sup>

During the Interior vote Louw returned to the attack with the usual arguments.<sup>27</sup> The Jewish population of South Africa was too

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24. H. of A. Debs. Col. 828. The object of Section 4(b) was to instruct the Selection Board by legislation to exclude Jews whose racial characteristics such as their "internationality" made them "unassimilable". Section 4(2) instructed the Board to exclude Communists which killed two birds with one stone as Louw believed the Communist movement was Jewish-directed.

25. Press Repts. 1939, The Rand Daily Mail 6.5.1939.

26. S.A. Pol. Arch. Pamphlet Collection, P4/100, "Die Ander Kant".

27. H. of A. Debs. 1939, Vol. 35, 16.5.1939.

large (a point which Smuts himself had virtually conceded);<sup>28</sup> Jewish immigration figures were too high. The minister must therefore consider the demands of the volkswil (shown during the recent Nationalist by-election victory at Paarl) and exclude Jews as unassimilable.

In November 1939 the Cape Nationalist Party congress at Paarl reaffirmed the 1938 principle in a resolution stating that "the Jewish race is not assimilable with the European population of the Union and that all further immigration to South Africa must be stopped".<sup>29</sup> This was coupled with a demand for legislation incorporating a numerus clausus in businesses and professions.

By this time, following the neutrality vote in September, Hertzog and his followers had abandoned the United Party. Hereniging was however only approved in all four provinces by both sets of participants early in 1940, and the Herenigde Nasionale Party's principles were adopted by the four provincial congresses at the end of that year.

A statement on the "Jewish question" formed an addendum to the programme of principles and draft constitution which had been drawn up for submission to the party congresses. This programme was adopted by the Federale Raad in 1941 and contained the following recommendations

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28. Press Reps. 1939, No 133 quoting Pretoria News 28.3.1939.

Smuts at the Gardens branch of the U.P. had said the proportion between the Jews and the rest of the population was higher than in many other countries and only limited Jewish immigration could be allowed.

29. Press Reps. 1939, No 164.

under the heading "Immigration and the Jewish Question". It should be noted that although the limitation on Jewish immigration was retained, the decision of the Paarl Congress to introduce an occupational quota against Jews specifically was rejected.

- "a) The repatriation of all illegal and undesirable immigrants.
- "b) The party favours in general the immigration of suitable assimilable white European population elements.
- "c) In view of South Africa's specific problems, the party recommends the immediate cessation of all further immigration of Jews and further of all elements which cannot be assimilated by the South African nation or which are a hindrance or dangerous to society.
- "d) It further has in view:
  - (i) exercise of stronger control over naturalizations
  - (ii) introduction of a vocational permit system for unnaturalised foreigners, as exists in many other countries
- "e) The party wishes to take all possible steps to fit South Africa's own original white population elements for earning a living in every sphere and to protect them against unfair competition." <sup>30</sup>

This statement was retained as Section 2(2) in the Federal Council's 1944 Programme of Action, and remained the keystone of Nationalist policy until 1948.<sup>31</sup> It met to a great extent, the demands of the more extremist movements such as Die Nuwe Orde and the O.B., while assuaging the disquiet, particularly of former Hertzogites, over discriminating against Jews already settled in the Union.

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30. Quoted in S.A.J.B.O.D. Reports of Executive Council, July 1940 - July 1942, pp. 7-8.

31. H. of A. Debs. 1947, Vol. 60, 25.2.1947, Col. 67-68, Louw; also S.A.J.B.O.D. Reports of Executive Council, June 1945.

Consequently throughout the war the Herenigde Party's anti-semitism tended to concentrate on Jewish immigration, which as noted, had in fact dwindled to negligible proportions.<sup>32</sup> The fall of Holland in May 1940, led Die Transvaler, guided by H.F. Verwoerd's editorial hand, to suggest that non-Jewish Hollanders be given temporary permits to stay and permanent ones to settle if they could be absorbed into South Africa's economic life. German or Dutch Jews, however, should not be given even temporary sanctuary lest the danger of future "racial" clashes be introduced into South Africa. "The government should not hope that feeling for Holland will prevent strong opposition to such Jewish immigration."<sup>33</sup>

A variation of this theme was produced in April 1941 when P.J. van Nierop asked the Minister of the Interior for an assurance that he would apply the immigration laws so as not to aggravate further feelings against Jews in South Africa. It was this same member who in 1946 asked the government to ensure that it would not include Jewish children in its orphan immigration scheme.

Smuts's call in 1943 for the Union to open her doors to immigration indicated, according to Die Burger, that he intended to strengthen the white population by Eastern European immigration. His statement in the Assembly that the condition of Jews in Europe required the attention of all Allied governments, taken in conjunction with Die Burger's belief that Britain would not be able to send emigrants for some time, formed

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32. See above p. 307.

33. Press Repts. 1940, No 189, Die Transvaler, 28.5.1940.

the basis for this assertion.<sup>34</sup>

In the same month T.E. Dönges speaking at an election meeting demanded that Jews and other refugees who had come in since 1936 should not be given equal rights. "Since there are too many Jews in our land.... the Herenigde Party will take steps when it comes into power."<sup>35</sup> As part of its election contribution Die Burger drew attention to the difference in treatment meted out to illegal Jewish immigrants and Afrikaans citizens who had been interned without trial - for subversive activities, it should be noted.<sup>36</sup>

As the prospect of peace, and therefore of increased immigration, emerged during 1944, the Nationalists continued to hammer the point that Jewish "saturation" within the country had already occurred, and that any further increase by immigration was not only "incompatible with harmonious race relations",<sup>37</sup> but was positively dangerous. This attitude, they continued to claim, was not a reflection of anti-semitism, but a desire to prevent it!<sup>38</sup> Nevertheless one can interpret as a form of persecution (and a more reactionary gloss on the 1941 stance) the continual recommendations of Louw, the party's chief spokesman on Jewish affairs, that Jewish immigration be wholly prohibited and a quota system be implemented in the trades, professions and industries.<sup>39</sup>

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34. Die Burger, 8.6.1943.

35. Press Repts. No 347, Die Volksblad, 18.6.1943.

36. Die Burger, 23.6.1943.

37. S.A.J.B.O.D. Report of Executive Council August 1942 - May 1945.

38. Die Kruithoring, 15.3.1944.

39. The Cape Times, 10.4.1944, quoting Louw in the Interior debate 9.4.1944.

Nor can the Herenigde Party's amendment to F.H. Acutt's 1944 appeal for increased European immigration be regarded as less than persecution. This amendment which was in line with the 1944 declaration, contained the usual demand that permits for permanent residence be restricted to persons considered suitable additions to the two main population elements, who would not compete with Union nationals in professions etc. and who were not Jewish. It also added the now familiar Nationalist proviso concerning the occupational prohibition on all aliens who had not got a government permit.<sup>40</sup>

These statements on immigration and naturalization policy were one facet of proposed policy for that Afrikaner republic after which the Herenigde Party had striven since Fusion. Though unrealisable at that time, they must be considered in conjunction with other intentions which were already capable of realisation - such as the establishment of the Reddingsdaadbond - to bolster the Afrikaner's economic position. There was thus little the Jewish community could hope for in the way of a relaxation of avowed immigration policy, should the National Party come to power. This fact was emphasised when Malan declared in October 1947 that his party, not wishing to add another problem to existing ones, would maintain its traditional standpoint and stop further immigration of Jews except on humanitarian grounds and to fill cultural or religious needs.<sup>41</sup>

The Herenigde Party's attitude ensured that Jewish immigration remained a sensitive subject for the government. Soon after the outbreak

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40. H. of A. Debs. 1944, Vol. 47, 29.2.1944, Col. 2169 ff.

41. S.A.J.B.O.D. Report of Executive Council August 1947 - May 1949, Malan on H.N.P. policy 30.10.1947.

of war Harry Lawrence, Minister of the Interior, defined the government's wartime immigration policy which on the whole was a continuation of previous policy. Immigration would remain subject to the provisions of the 1913 and 1937 legislation. There would however, be no immigration from enemy states, including Austria and Czechoslovakia, except in the case of aged parents or minor children of persons who had entered before the war; and even then, their entry would rest entirely on the decision of the Immigration Selection Board.<sup>42</sup>

An interview later between departmental officials and the Minister and a Board of Deputies deputation, indicates that the immigration legislation was still stringently administered insofar as Jews were concerned.<sup>43</sup> The department re-affirmed that it would not influence or gainsay the Immigration Board's decisions, including those dealing with applications from rabbis or teachers. These on the whole received favourable individual treatment but the Board refused to grant a blanket permit for 20 teachers to enter annually.<sup>44</sup> "Stateless" people however, continued to be absolutely barred, because of the same problem of getting rid of them which had prompted Clause 3 of the Immigration Amendment Act. Nor were refugees who had found a temporary haven in other territories, admitted to the Union. Even transit visas were generally refused to people en route to the United States because shipping short-

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42. Press Repts. 1939 No 169, quoting The Star, 20.11.1939.

43. Alexander Papers, B.O.D. 5, Report of interview, 10.9.1943.

44. Ibid. C. Clarkson (Minister of the Interior) to Alexander 29.4.1944; Department of the Interior to Commissioner for Immigration and Asiatic Affairs 11.5.1944.

ages made it likely they would remain indefinitely in the Union.

The elements of a duel are present in the relationship between the Board of Deputies, determined to get in as many immigrants as was legally possible, and the Department of the Interior, equally determined to employ the law to its fullest extent to limit the number of embarrassing arrivals, without succumbing entirely to H.N.P. pressure to prohibit all Jewish immigration. The government's attitude may perhaps best be summed up in Smuts's words that "whilst it would certainly be a generous thing to bring in Jews here, it would be a very unwise thing for the sake of the Jews in South Africa, and for the sake of us all".<sup>45</sup>

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45. Alexander Papers, B.O.D. 5, interview between Smuts and S.A.J.B.O.D. 8.9.1943.

## CHAPTER XV

### WARTIME NATURALIZATION POLICY:

#### THE ALIENS REGISTRATION ACT

The "after-control" of immigrants, that is the treatment of aliens in South Africa in the period being discussed, forms a separate but related part of the general immigration picture (particularly the Jewish aspect), and therefore requires some examination. By the start of 1939 there were reported to be in South Africa some 35 000 unregistered aliens, many of whom had been smuggled in from Lourenco Marques,<sup>1</sup> or who had entered originally on temporary permits as tourists and were therefore not allowed legally to take up any remunerative occupation. These illegal immigrants were not, in fact, as numerous as the Nationalists believed. Nor were the aliens uniformly government supporters; many especially in South West Africa were Nazi sympathisers or agents.

Already in June 1936 the interdepartmental committee mentioned above had recommended the introduction of legislation compelling all aliens to register, but nothing had been done. The position of aliens provided the Herenigde Party with constant material for attack, particularly on Jewish immigrants. Consequently the Aliens Registration Bill was read a first time on March 22, 1939.<sup>2</sup> R.B. Stuttaford, the minister concerned, denied that the bill was a temporary measure, introduced

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1. Press Repts. 1939, No 121, The Sunday Times, 8.1.1939.
  2. A.B. 35-39, which became Act No 26 of 1939 (later amended by Act No 1 of 1949).

because of the unsettled conditions in Europe, or as an answer to Louw's immigration bill.<sup>3</sup> The provisions of the bill, taken in conjunction with the Minister's refusal to accept amendments proposed by the S.A. Jewish Board of Deputies,<sup>4</sup> and the Opposition's satisfaction at its introduction indicate however, that these were the two main contributory reasons for the measure's introduction. The Garment Worker, official organ of the Garment Workers' Union claimed the bill was not meant to protect democracy but to "terrorise and persecute" refugees, and accused the government of embracing "the Nazi flunkey Eric Louw and his philosophy, the philosophy of cruelty, racial hatred and oppression".<sup>5</sup>

The bill's stated purpose was "to provide for the registration and control of aliens and for matters incidental thereto and for the punishment, detention and deportation of aliens who have contravened certain laws relating to aliens". An alien was defined, on the lines of the 1937 Act, as anyone who was not a natural-born British subject. This definition, it will be recalled, excluded Union nationals, but included naturalized British subjects who could however earn Union nationality by domicile.

Under Clause 4 every alien was obliged, within 60 days after the

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3. H. of A. Debs. 1939, Vol. 34, 3.5.1939, Col. 3980.
  4. S.A.J.B.O.D. Minutes of Executive Committee, No 1414, No 1423 (undated), letter from M. Alexander, 8.5.1939, No 1434.
  5. Alexander Papers, Correspondence File 30, No 11, June 1939.

bill became law, to apply for a registration certificate which would be valid for five years and could be renewed on re-application. Other clauses provided the means (using information provided by hotelkeepers and employers) for checking on the movements of aliens within the country; and empowered the Minister to grant exemptions under the Aliens Act.

An important issue arose as a result of Clause 18 - dealing with the deportation of aliens convicted for offences (illegal entry, failure to produce a valid registration certificate) under Clause 16 of the bill. Existing legislation authorised deportation after a conviction for crime had been obtained. During the Committee stage the minister asked the House to consider granting him (with the concurrence of the Minister of Justice) the right to deport, without trial, and within two years of arrival in South Africa, anyone (including British-born subjects) whose presence was regarded as harmful to the state. This proposal was much favoured by the Opposition, who cited similar Australian and New Zealand law as precedents. Section 7 of the Australian Amending Act of 1925 provided for the deportation of a prohibited immigrant (including anyone who failed to pass an education test when required), within five years of entry.<sup>6</sup> New Zealand had similar legislation allowing for the deportation of anyone regarded as a danger to good government etc., provided such person had been resident in the country for less than 12 months.

Parliament's acceptance (after an all-night sitting) of the minister's proposal introduced a new principle into South African law.

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6. H. of A. Debs. 1939, Vol. 35, 23.5.1939, Col. 5157, E.A. Rooth.

Its harshness was mitigated to an extent by the provision that the undesirable person could only be deported on the recommendation of the Immigrants Selection Board after it had made "due inquiry", and after the individual concerned had been allowed to appear personally before it.

During the Report stage in the Assembly the minister, much to the Herenigde Party's displeasure, dropped this sub-section of Clause 18 on the grounds that the deportation procedure was unworkable and would be introduced the following year in a separate bill.<sup>7</sup> In truth, he abandoned the deportation proviso because he was being attacked within his own party for the arbitrary powers he would thus assume, and because of the agitation over British-born subjects becoming liable to the same arbitrary deportation as aliens.

The bill was read a third time on May 31. Though it received the Governor-General's assent on June 14, for administrative reasons it only came into force on September 11, a week after South Africa opted for war with Germany.<sup>8</sup> After that date all aliens had 60 days for registration, which was done by nationalities, starting with the Germans. Soon after its implementation an amendment to the act was promulgated, as a means of checking the information demanded from the employer under Clause 11.

When registration got under way, it was discovered that the number of aliens who registered on the Rand, for example, was lower than the government estimate; possibly there were indeed fewer aliens than at first believed, or alternatively, as with the Indian condonation scheme,

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7. H. of A. Debs. 31.5.1939.

8. Govt. Gazette No 2680. 15.9.1939, Notice No 1425, regulations issued under the act.

prohibited immigrants were waiting on events before they registered.<sup>9</sup> Almost immediately the Department of the Interior, through the Commissioner for Immigration and Asiatic Affairs who administered the legislation, was forced to grant an extension of the registration time to German immigrants whose entry into South Africa had been authorised by the Immigration Board but who would not have arrived by November 16, the final registration day.<sup>10</sup> Two days after this date, Die Transvaler reported that the department was granting exemptions to certain aliens, for example, those who had been resident for 15 years or more, irrespective of how they had entered. The Herenigde Party immediately began to exert pressure on the government to state its policy on illegal immigrants. Harry Lawrence, Minister of the Interior in Smuts's first wartime cabinet, refused to do this precipitately, apparently being determined to treat each case on its merits. Nevertheless during the 1940 parliamentary session he announced that condonation by the minister personally might be allowed in the case of an immigrant who had entered illegally 15 years before, but had since been a law-abiding citizen.<sup>11</sup>

The Opposition press continued to assail the government for its so-called indecision, which viewed from another angle could be described as a liberal policy. Both Die Transvaler and Die Burger compared the well-being of the illegal immigrants with the position of South African "boys and girls", to the detriment of the latter.<sup>12</sup> Die Burger warned

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9. Press Repts. 1939, No 165, The Sunday Times, 12.11.1939.

10. The Rand Daily Mail, 9.9.1939.

11. H. of A. Debs. 1940, Vol. 37, 13.5.1940, Col. 7483 ff, Min. of Interior.

12. Press Repts. 1939, No 168, Die Transvaler, 14.12.1939; Die Burger, 15.12.1939.

that this liberal treatment of prohibited immigrants would not be in the Union's best interests and would conflict with the volkswil. When the Nationalists took over, it promised, they would deprive illegal immigrants of all the rights they had obtained from the present government. Lawrence's subsequent statement that it was impossible for the government to prosecute all illegal immigrants, was represented by Die Burger as encouragement by the authorities for "still more Jews to try and evade our immigration laws". Under no circumstances, it insisted, should illegal immigrants be allowed to settle permanently or become Union citizens.

In the face of this pressure applied at a time when a large section of the population was subversive, the government was forced to tighten its control of all aliens under the Aliens Registration Act.<sup>13</sup> In February 1940 the Minister of the Interior revealed in the Assembly that up to December 1939, 4 431 aliens had registered and 1 249 had been exempted, including 209 Jews. No illegal immigrants had thus far been deported; they were placed on temporary permits, subject to the payment of a fee, until the final policy was formulated. This however, could not be done until the aliens register was completed. Meanwhile each case was still to be dealt with on its individual merits; that is the right to remain permanently would be decided by the Immigration Board and naturalisation of illegal immigrants as general policy would

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13. Press Repts. No 175, The Star, 21.1.1940; H. of A. Debs. 1940, Vol. 37, 27.2.1940, Col. 2323 ff, Min. of the Interior.

not be considered until final policy was decided.<sup>14</sup>

The government was patently using delaying tactics to counter its dilemma. To define its policy would have meant either arousing the potentially subversive elements or consigning to some indescribable limbo those law-abiding citizens who had found illegal refuge in South Africa up to 15 years before; worse it might send back to certain death in Europe, many who thought they had found refuge here.

Early in May Die Burger reiterated its demands for a definite policy coupled with figures showing the number of illegal immigrants who had registered.<sup>15</sup> In the Assembly Eric Louw denounced the temporary permit system as a means by which aliens escaped police surveillance and a departure from Stuttaford's assurances that exemptions from the Aliens Registration Act would only be granted in cases of hardship. In his opinion the whole question had to be considered in the light of the South African Jewish problem.<sup>16</sup> The minister however, refused to use the act illegally to harry resident aliens who constituted no danger to the state. By 1945 Senator Clarkson, then Minister of the Interior, was able to inform the Transvaal Provincial Congress of the United Party that there were 45 000 aliens permanently and legally resident in South Africa, 1 500 refugee or "partial" refugees and in the Witwatersrand area only some 50 aliens for whom the police were

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14. H. of A. Debs. 1940, Vol. 37, 27.2.1940, Min. of Interior. The bulk of the exemptions were nuns and missionaries, as well as a large number of Portuguese Africans working on the mines; also H. of A. Debs. 1946, Vol. 57, Col. 5613, Min. of Interior.

15. Die Burger, 6.5.1940.

16. Press Repts. No 190, The Rand Daily Mail, 14.5.1940.

still searching.<sup>17</sup>

During the second half of 1940 South Africa's involvement in a war which was going adversely for the Allies, resulted in an increased recruitment drive. Meanwhile on the outbreak of war, a German Jewish organisation, the Central Committee for German Refugees had drawn up a register of aliens who wished to enlist. Initially there was a good deal of confusion over the acceptance of aliens in the armed forces. This was an important question from the aliens' viewpoint both because of its effect on their naturalization proceedings, and in the case of German Jews, because of the chance it gave them to fight Nazi Germany.

In July 1940 the military authorities decided immediately to discharge all enemy aliens, which in practice meant German Jews who had joined up at the outbreak of war.<sup>18</sup> In the following month however it was agreed to accept for full time service and exempt from the provisions of the Aliens Registration Act, all legally resident aliens, including enemy aliens once their bona fides had been established beyond doubt.<sup>19</sup> Aliens on temporary permits (which would include those who had entered illegally) were under no circumstances to be accepted for service.<sup>20</sup>

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17. Alexander Papers, Correspondence File 56, Clarkson to Alexander, 29.11.1945.
18. Ibid. Folder 34. Sec. for the Interior to Organising Sec. U.P. 8.7.1940.
19. Ibid. B.O.D. 5, Alexander to Clarkson 18.8.1943 indicates the government relied on reports of the S.A.J.B.O.D. concerning "the bona fides and loyalty of Jewish aliens".
20. Ibid. Correspondence File 34, Deputy Adjutant-General to all Recruiting Officers, Inspectors of Labour, Magistrates, J.Ps, circular D.A.G. 68/82, 28.8.1940.

This prohibition was lifted in September 1941. At a meeting between the Prime Minister, the Minister of the Interior, the Secretary for the Interior and the Commissioner for Immigration and Asiatic Affairs it was decided to allow aliens resident in the Union under temporary permits to enlist, subject to the approval of the Commissioner for Immigration.<sup>21</sup>

Consequently during the following two years, aliens registered under temporary permits, continued to be recruited, but on a different basis from those possessing an Alien Registration certificate, which indicated that the owner was permanently resident in South Africa. The latter could immediately be accepted for service subject to the restrictions on the enlistment of nationals from certain countries. The holder of a temporary permit, who was medically fit and prepared to join a combatant unit had however first to be cleared by the Director of Recruiting in consultation with the Commissioner for Immigration.<sup>22</sup>

The indecision governing the acceptance of aliens for military service was reflected in the naturalization policy with which it was closely connected. South Africa was the only Commonwealth country which naturalized aliens during the war. In the early days of hostilities persons who tried to join up and were rejected on medical grounds could still be naturalized.<sup>23</sup> By June 1941 the Department of the Interior had suspended the naturalization of German subjects;<sup>24</sup> and during the

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21. Alexander Papers, Correspondence File 36, DC 1456/1-11.

Dept. of Defence to Mayor of Cape Town, 2.9.1941.

22. Ibid., Correspondence File 46, Minute, Director of Recruiting, 20.9.1943.

23. Ibid. Folder 51, Alexander to J. Silberberg 18.12.1944.

24. Ibid. Folder 35, Sec. for the Interior to A. Fraenkel 2.6.1941.

following year this ruling was applied to all aliens under 50.<sup>25</sup> Exceptions were made however, in the case of enemy aliens on full-time service or discharged as medically unfit. In the case of non-enemy aliens, those over 50 were entitled, as in the past, to apply for naturalization. Providing their home governments did not object applicants under 50 were considered if they were on military service or had been declared unfit for, or discharged as unfit for service.<sup>26</sup>

Though Lawrence was personally in favour of granting naturalization to men on active service, the usual provisions required by law could not be totally disregarded.<sup>27</sup> Thus in the period 1940-June 1941, 346 out of 1 945 applications for naturalization were refused on educational grounds.<sup>28</sup> In all cases the residence qualifications of the existing naturalization legislation (5 years' residence in South Africa or another Dominion, with one year's residence in the Union immediately before application) were insisted upon.

With the end of the war in 1945, and pending the signing of a peace treaty with Germany, the Department of the Interior prepared to review its policy of refusing applications for permanent residence to enemy aliens. In a tightening of policy it was agreed that, contrary to Australian practice, in the administration of naturalization and immigration laws there should be no distinction between aliens who were refugees and those who were not. Further the conversion of temporary

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25. Alexander Papers, Correspondence File 43, Sec. for the Interior to Alexander 13.11.1942.
26. Govt. Gazette, Notice 1900, 12.9.1942.
27. Alexander Papers, B.O.D. 5, H.G. Lawrence to Alexander 12.8.1942.
28. Press Repts. 1941, No 250, statement by Dept. of the Interior.

into permanent residence permits remained as a matter wholly for the Immigrants Selection Board to decide in terms of the 1937 Act.<sup>29</sup>

In addition the government, as part of a vaguely contemplated, large-scale state-sponsored immigration plan, announced its intention of introducing legislation to amend the Aliens Registration Act so as to get rid of unregistered aliens.<sup>30</sup> A bill to effect this was introduced, but dropped from the order paper in the following session.

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29. Alexander Papers, B.O.D. 6, Prime Minister's Sec. to Sec. Refugees Representation Fund, Johannesburg, 9.11.1945; H. of A. Debs. 1946, Vol. 57, Col. 6926.
30. Alexander Papers, B.O.D. 6, quoting Natal Mercury 21.12.1945.

## CHAPTER XVI

### EPILOGUE: POST-WAR JEWISH IMMIGRATION

The publicisation of the plight of Eastern and Central European Jewry at a time when Smuts was setting in motion his arrangements for attracting a considerable number of European immigrants to South Africa, revived the issue of large-scale Jewish immigration for the last time.<sup>1</sup>

In July 1946 the U.K. Government, following discussions with the United States, approached the Dominions with an earnest request to absorb as soon as possible, a specified number of displaced persons (D.P.s) "of all classes" and including Jews.<sup>2</sup> The request was linked with a British move to counter Arab opposition towards the immigration of European Jews into Palestine. It was hoped the Arabs would be persuaded to view this immigration as part of a general Anglo-American scheme to provide asylum outside Europe (through the agency of UNRRA and the Intergovernmental Committee on Refugees) for refugees and displaced persons who could not be resettled in their pre-war homes.

The Dominions' response was lukewarm. All supported the principle of an international agency to handle the refugee issue but none was prepared to commit itself to accepting a definite quota. Australia had absorbed 7 000 refugees between the 1938 Evian Conference and the

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1. H. of A. Debs. 1947, Vol. 60, 3.3.1947, Col. 304 et seq. for a typical anti-Jewish diatribe; Die Burger, 15.8.1946; Die Kruthoring No 106, 4.9.1946 etc.
  2. P.R.O., DO 35/1591, W.F. 303/101, Telegram Z.56, Dominions Office to all Dominion High Commissioners, 25.7.1946.

outbreak of war. Since the end of hostilities it had granted thousands of landing permits to European relatives of refugees (mainly Jews), already in the Commonwealth, and was continuing to do so.<sup>3</sup> The Australian Government therefore believed that proportionate to its population, the Commonwealth was already making a substantial contribution to the Anglo-American resettlement scheme, and could do no more in view of the need to rehabilitate its own ex-servicemen.

Similarly Canada rejected the "specific number" solution on the grounds "that in Canadian conditions at least, such offers only led to difficulty and embarrassment and were not the best form of approach". This Dominion had therefore adopted the "less spectacular method" of flexibly administering immigration regulations so as to allow the admission of relatives of refugees (again mainly Jews) already in Canada. As in Australia, this was regarded as Canada's contribution to the refugee problem.<sup>4</sup>

Existing Union policy resembled - for similar reasons - that of Canada in the use of administrative machinery to admit, as noted above, a limited number of dependents. Consequently Smuts equivocated over the British proposals.<sup>5</sup> Initially he "foresaw legal obstacles" to the

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3. P.R.O., DO 35/1591. Top Secret, W.F. 303/101, Palestine Affairs, M 349/3/5, J.B. Chifley, Australian Prime Minister to E. Williams, High Commissioner for U.K. in Australia 7.8.1946.
  4. P.R.O., DO 35/1591, W.F. 303/101, Telegrams No 1189 and 1275 (undated) Canadian High Commissioner to Dominions Office.
  5. P.R.O., DO 35/1591, W.F. 303/101, Telegram No 385, S.A. High Commissioner to Dominions Office 29.7.1946. "I have discussed question at length with General Smuts".

acceptance of Eastern European D.P.s on the grounds of the Quota Act, which in terms of the Aliens Act was in fact no longer operative. When the South African High Commissioner suggested that the Union Government should, like that of the United States, "limit their declaration to a statement that approval would be sought from parliament", Smuts countered with two further objections which he regarded as "special" to South Africa. "1. The proportion of Jews is already very great and there are ominous signs of growing anti-semitic feeling. 2. He intends shortly to develop a vigorous immigration policy. To succeed with this policy it will be necessary to break down much prejudice. Chances of success will be endangered if, just before campaign to encourage immigration from Western and Northern European countries is launched, public opinion is alienated by the reception of immigrants and particularly Jewish immigrants from Eastern Europe."

For obvious reasons the High Commissioner "strongly urged him not to return a negative answer"; consequently, Smuts deftly avoided committing himself. Following discussions with his cabinet, he informed the Dominions Office that while his government was "conscious of the immense burden the U.K. is carrying in this connection", "under its special circumstances" South Africa's efforts must be channelled through his own proposed immigration scheme. This might "have [an] important bearing on such classes of displaced persons as may be considered suitable for immigrants [sic] to South Africa. Programme will entail large scale expenditure, and, while dealing with immigration, will incidentally also be Union's contribution to solution of relevant aspects of the problem

of displaced persons".<sup>6</sup> 5 000 D.P.s were therefore included in the scheme's first year target.<sup>7</sup>

They were not to be Jews, but handpicked Protestant Balts and specified Poles. Nevertheless in the following year Smuts publicly capitulated to Nationalist taunts that he intended creating an "alternative" Jewish home here. South Africa, he told parliament, would not provide the solution to the Jewish problem, which he believed lay in the founding of a Jewish national home in Palestine. If this country, he added, were "overloaded" with Jews, an anti-semitic movement would result.<sup>8</sup>

With the Prime Minister echoing Herenigde Party sentiments, it is not surprising that the Opposition greeted Smuts's statement with considerable schadenfreude.<sup>9</sup> The South African Jewish press however, deprecated his sentiments particularly as they were expressed at a time when Britain was trying to limit Jewish immigration to Palestine.<sup>10</sup>

Subsequently - perhaps both to avoid losing Jewish support and partly to fulfil the promise of the previous year - the government modified its attitude somewhat. As a matter of "elementary humanity", relatives in occupied Germany, of people settled in South Africa, would be admitted on temporary permits and "then the matter of permanent

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6. P.R.O., DO 35/1591, W.F. 303/101, Telegram No 393 (undated).
  7. P.R.O., DO 35. M 822/349, W.G. Head, 7.10.1946.
  8. H. of A. Debs. 1947, Vol. 60, 14.4.1947, Col. 2676.
  9. Press Repts., Die Transvaler 17.4.1947; H. of A. Debs. 1948, Vol. 63, 5.3.1948, Col. 2778, Swart.
  10. Press Repts. 1947, No 537, The S.A. Jewish Times, 30.5.1947; The Zionist Record, 30.5.1947.

residence can be adjusted in the future".<sup>11</sup> Later Die Burger reported that Smuts had promised to consider bringing in Jewish D.P.s - presumably people who did not qualify for entry on a kinship basis.<sup>12</sup> In 1946, of 7 517 alien entries, 166 had been Jews. Under the 1947 dispensation a few hundred in all were involved.

Smuts was trying to retain a balance between two opposing attitudes held within the United Party. The Nationalists had no such conflicting demands. Consequently their post-war intentions were consistent with those of the pre-war period; immigrants should be selected on the basis of assimilability to South Africa's existing white races. The Jews were not "readily assimilable"; therefore they were ineligible for acceptance as immigrants of "the right type".<sup>13</sup> Even Jewish orphans should be excluded from government proposals to import child immigrants.

As the time for a general election began to draw nearer, Malan, in an interview with Die Burger defined post-war Herenigde Party policy on Jewish immigration.<sup>14</sup> This amounted to a demand for limitation, if not total prohibition; failure to achieve this would result in sanctions against the existing community. "If the flocking in of Jews were not put a stop to in good time, it would not be possible to withstand the demand for internal protective measures."

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11. Sen. Debs. 1947, 21.5.1947, Col. 2011, Lawrence; H. of A. Debs. 28.1.1947, Col. 11396.

12. 3.9.1947.

13. H. of A. Debs. 1945, Vol. 53, 24.4.1945, Col. 5989, Louw; Vol. 56, 21.3.1946, Col. 4006, S.P. Le Roux; Vol. 59, 20.1.1947, Col. 10833, Dönges; Vol. 60, 3.3.1947, Brink etc.

14. Die Burger, 30.10.1947; Press Repts. 1947, No 557, Die Transvaler, 30.10.1947.

The existing immigration laws, Malan maintained, were unsatisfactory, "because they leave the entry or non-entry of Jews in any numbers completely to the whim of the government of the day in spite of their self-appointed immigration board... a weak government like we have today is always giving in like a soft football to pressure exerted upon it from any side".

The Nationalists, it was apparent, would if returned to power, administer the law strictly according to its letter; there were no Nationalist Jewish M.P.s and few Jewish supporters to mitigate its severity. Ministerial authority to make exemption on humanitarian or cultural grounds would however be retained. This last - the entry of rabbis, teachers and near relatives - was to become an article of faith with various H.N.P. spokesmen, the rejoinder to those who saw Nationalist policy as anti-semitism on the Nazi model, pure and simple. But lest some supporters feared the purity of Herenigde Party dogma was thereby being diluted, there was the voice of Eric Louw, who as late as October 1947 branded the Jew as anti-nationalist and pro-Communist and reiterated Section 2 of the party's programme of action with its demand for the immediate termination of all further Jewish immigration, stricter control of naturalization and a professional quota system to be used against unnaturalized aliens.<sup>15</sup>

By the time the Nationalists achieved power in 1948 however the problem of Jewish immigration no longer bulked large on the South African

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15. Press Repts. 1947, No 555; also H. of A. Debs. 1947, Vol. 60, 25.2.1947.

scene. The establishment, in May 1948, of an independent state in Israel, with its policy of unrestricted Jewish immigration, meant that the remnant of the Jewish exodus from Europe was turned in that direction. In South Africa, as promised, the strict application of the Aliens Act, especially Sections 2(a) and 4 governed policy. In conformity with its policy of reversing Smuts's 1947 state-sponsored immigration scheme and instituting "strict selectivity in terms of certain specific economic needs of the country" the new government admitted a number of qualified Jewish technicians.<sup>16</sup> To these were added a few aged parents, and as promised a small number of teachers and ministers who came in on immigration permits to meet the educational and cultural needs of the community. Under an arrangement made with the Department of the Interior in 1952 a maximum of 25 Hebrew teachers was permitted to enter on contract with temporary residence permits, having first been screened.<sup>17</sup> By 1955 this quota was not being fully used and the need for overseas teachers cumulatively decreased as students graduated locally.<sup>18</sup>

Figures for 1947-52 show the post-war Jewish immigration picture more graphically than words. In 1947 there were 688 Jews out of a total of 28 841 immigrants; 658 out of 35 631 in 1948; 233 out of 14 780 in 1949; 176 out of 12 803 in 1950; 223 out of 15 243 in 1951 and 201 out of 18 473 in 1952.<sup>19</sup>

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16. S.A.J.B.O.D. Report of Executive Council 1949-51, p. 13.

17. S.A.J.B.O.D. Report of Proceedings, meeting of Cape deputies, 27.3.1977.

18. S.A.J.B.O.D. Report of Executive Council 1953-55.

19. Saron and Hotz, The Jews in South Africa, p. 381.

One last word must be added. The great majority of Jewish immigrants (or their children) became South African nationals; wartime horrors ensured that the Eastern European countries whence they came could no longer be regarded as home. In this they proved more assimilable than many post-war immigrants from Western and Southern Europe, some half million of whom have not taken out South African citizenship, yet are permanently resident in the Republic.