
THE AGREEMENT AND THE GIRMITIYA

“What I want to say in this letter,” wrote the exasperated Viceroy of India in a telegram to the London-based Secretary of State for India, “is that the time for palliatives is past, . . . and that, if public opinion — and this won’t remain a purely Indian question — is to be satisfied, recruiting must stop.”¹ Weeks later, on March 10, 1917, the British Empire caved to mass agitation and abolished the indenture trade more than eighty years after the first indentured Indians were recruited to work overseas.²

A century later, the trade casts a long shadow.³ Indenture was a system of contract labor under which individuals were recruited in their home countries to serve as migrant workers abroad, usually for a term of three to five years.⁴ Though these contracts often provided for return journeys after a decade of plantation labor, a significant proportion of those indentured never returned to their home countries.⁵ Between 1834, when the first thirty-nine Indians were brought to Mauritius, and 1917, when recruitment was halted, indenture resettled more than 1.3 million Indians, as well as hundreds of thousands of East Asians, Africans, and Pacific Islanders, on British colonies the world over.⁶ Most of these workers were bound to sugarcane plantations, where they were used at first as replacements for formerly enslaved Africans.⁷

¹ Karen A. Ray, *The Abolition of Indentured Emigration and the Politics of Indian Nationalism, 1894–1917*, at 365 (July 1980) (Ph.D. dissertation, McGill University) (on file with the Harvard Law School Library); *see also id.* at 294.

² *See id.* at 8, 367–68.

³ After several generations, descendants of indentured laborers continue to find meaning in the struggles of their ancestors. *See generally, e.g.*, GAIUTRA BAHADUR, *COOLIE WOMAN: THE ODYSSEY OF INDENTURE* (2014); *40 Ships*, MOHINI CHANDRA, <http://www.mohinichandra.com/new-gallery-4> [<https://perma.cc/Z58L-NNVA>]; Quishile Charan & Esha Pillay, *BAD FIJI GYALS*, <https://badfijigyals.com> [<https://perma.cc/G9EZ-8KKN>]; Rajiv Mohabir, *Coolitude: Poetics of the Indian Labor Diaspora*, RAJIV MOHABIR, <http://www.rajivmohabir.com/coolitude-project> [<https://perma.cc/9YNZ-5SK3>]; Pooja Pallavi, *IDENTITY - FIJIANA*, YOUTUBE (June 29, 2019), <https://youtu.be/RaznSURpwW8> [<https://perma.cc/Q4YJ-D86V>].

⁴ *See, e.g.*, WALTON LOOK LAI, *INDENTURED LABOR, CARIBBEAN SUGAR 317–18* (1993). *See generally* MADHAVI KALE, *FRAGMENTS OF EMPIRE: CAPITAL, SLAVERY, & INDIAN INDENTURED LABOR MIGRATION IN THE BRITISH CARIBBEAN* (1998); RADHIKA MONGIA, *INDIAN MIGRATION AND EMPIRE* (2018).

⁵ This was particularly true for indentured Indians in the Caribbean, Hawaii, and Mauritius. *See* DAVID NORTHRUP, *INDENTURED LABOR IN THE AGE OF IMPERIALISM, 1834–1922*, at 132 tbl.5.3 (1995).

⁶ *See* MONGIA, *supra* note 4, at 2; *see also* DIRK HOERDER, *CULTURES IN CONTACT: WORLD MIGRATIONS IN THE SECOND MILLENNIUM 366–405* (2002); Brinsley Samaroo, *Global Capitalism and Cheap Labor: The Case of Indenture*, in *THE PALGRAVE HANDBOOK OF ETHNICITY* 1, 2 (Steven Ratuva ed., 2019).

⁷ *See* MONGIA, *supra* note 4, at 2. Capturing this attitude, one British consul wrote: “[P]lanters . . . found in the meek Hindu a ready substitution for the negro slave he had lost.” P.C. Emmer, *The Meek Hindu; The Recruitment of Indian Indentured Labourers for Service Overseas*,

Because of this relationship to enslaved labor, its deceptive recruitment practices, and its oppressive labor conditions, indentures was scandalized by British abolitionists as a veiled attempt to reintroduce slavery under a new legal form.⁸

Despite these early scandals, indenture carried on for decades before it was abolished. Past scholarship on this subject has therefore examined closely how the British Empire managed dissent, protest, and resistance in the knowledge regime of indenture. This literature has explored the role of inquiry commissions,⁹ which colonial officials organized to study charges of abuse, as well as shifts in public opinion, labor protests, and diasporic resistance.¹⁰ The picture that emerges is that indenture grew more and more legitimate until it was finally abolished.¹¹

This Note makes two contributions to that scholarship. First, it adds the *process of legislating* to the catalog of tools used by the Empire to digest dissent and legitimize indenture. Second, this Note argues that when indenture ultimately ended, that abolition occurred in part because its critics directed their dissent not to the colonial bureaucracy, which could capture and use that dissent to further propagate indenture, but instead to the masses in India, creating in effect a counter-regime of knowledge about the institution.¹²

1870–1916, in COLONIALISM AND MIGRATION: INDENTURED LABOUR BEFORE AND AFTER SLAVERY 187, 187 (P.C. Emmer ed., 1986).

⁸ See, e.g., SHELDON AMOS, THE EXISTING LAWS OF DEMERARA FOR THE REGULATION OF COOLIE IMMIGRATION 3, 16–17 (London, Head, Hole & Co. 1871); *The Slave-Trade Revived*, BRIT. EMANCIPATOR, Jan. 31, 1838, at 3 (referring to indenture as “a legal shelter, under which may be imported and destroyed, as many slaves as they please”). There is a long-standing debate in indenture scholarship over whether nineteenth-century indenture should be considered slave labor or free labor. This Note does not enter that debate but instead joins the company of recent scholarship scrutinizing how such debates were deployed. See, e.g., KALE, *supra* note 4, at 8 (arguing that “‘free labor’ was a plastic ideology based on emergent and historically contingent, gender-, class-, and race-inflected assumptions about the nature of freedom and labor alike, however deeply it has been frozen in historical practice”); MONGIA, *supra* note 4, at 38; Jonathan Connolly, *Indentured Labour Migration and the Meaning of Emancipation: Free Trade, Race, and Labour in British Public Debate, 1838–1860*, 238 PAST & PRESENT 85, 86–88 (2018).

⁹ See Radhika V. Mongia, *Impartial Regimes of Truth: Indentured Indian Labour and the Status of the Inquiry*, 18 CULTURAL STUD. 749, 754 (2004).

¹⁰ See generally Connolly, *supra* note 8; Robert E. Nicole, *Disturbing History: Aspects of Resistance in Early Colonial Fiji, 1874–1914* (2006) (Ph.D. thesis, University of Canterbury) (on file with the Harvard Law School Library); Ray, *supra* note 1.

¹¹ See MONGIA, *supra* note 4, at 58 (explaining how inquiries led to reforms and counter-inquiries, spawning a global bureaucracy of surveillance); Connolly, *supra* note 8, at 114–16 (demonstrating that indenture gained credibility in elite circles as a *progressive* force, with many believing indenture was what kept slavery from resurfacing in the liberal Empire).

¹² To be sure, scholars beyond the field of indenture history have also paid careful attention to those interested in moving outside the traditional channels of dissent to reach the masses. See, e.g., Lani Guinier, *The Supreme Court, 2007 Term — Foreword: Demosprudence Through Dissent*, 122 HARV. L. REV. 4, 12, 16 (2008) (characterizing certain dissents from the bench as moves “in the

Both arguments take their root in the colony of Fiji, a small island in the South Pacific that played an outsized role in the system's abolition. Fiji was a relative latecomer to Indian indenture. Enacted in 1878, Fiji's Indian indenture law was, in the eyes of contemporary colonial officials and several historians, an uneventful improvement on laws enacted in other colonies.¹³ This Note offers an alternative account. In so doing, it revisits the letters exchanged between colonial officials to show that the imperial bureaucracy was producing important legislative changes late in the arc of indenture. This account demonstrates that the law was in fact *more* repressive.

Along the way, we will encounter a secret memo, Confederate veterans in Fiji, what may be the first foreign chapter of the Ku Klux Klan, experiments in human survival on famine rations, and early twentieth-century viral media. To start, Part I provides a brief primer on nineteenth-century indenture and the colony of Fiji. Part II then turns to Fiji's Ordinance No. VI of 1878¹⁴ as a case study in how colonial bureaucrats digested dissent to produce a repressive but politically legitimate law. Part III concludes by outlining how the movement to abolish indenture responded by directing its dissent not to empire, but to the masses.

I. FROM ABOLITION TO INDENTURE

This Part begins with a primer on indenture, paying special attention to the relationship between enslaved African labor and indenture, as well as the important role played by inquiry commissions. Then, the focus turns to the conditions that paved the way for indenture in the Fiji Islands.

A. *The Beginnings of Indenture*

Nineteenth-century indenture had a rocky start. Alarmed by the Haitian Revolution, during which enslaved Africans emancipated themselves from French rule, the British Colonial Office in 1803 sent a secret

direction of greater democratic accountability," *id.* at 12, that have the potential to "expand the audience for judicial decisionmaking," *id.* at 16).

¹³ See, e.g., REPORT OF THE COMMITTEE ON EMIGRATION FROM INDIA TO THE CROWN COLONIES AND PROTECTORATES ¶ 352 (1910) [hereinafter SANDERSON COMMITTEE REPORT]; I.M. Cumpston, *Sir Arthur Gordon and the Introduction of Indians into the Pacific: The West Indian System in Fiji*, 25 PAC. HIST. REV. 369, 376–79 (1956); Sara H. Sohmer, *Idealism and Pragmatism in Colonial Fiji: Sir Arthur Gordon's Native Rule Policy and the Introduction of Indian Contract Labor*, 18 HAW. J. HIST. 140, 149–50 (1984); K.L. Gillion, *A History of Indian Immigration and Settlement in Fiji* 48 (March 1958) (Ph.D. dissertation, Australian National University) (on file with the Harvard Law School Library); see also BRIJ V. LAL, CHALO JAHAJI: ON A JOURNEY THROUGH INDENTURE IN FIJI 71–72 (2012).

¹⁴ Colony of Fiji, Ordinance No. VI with Regard to Indian Immigration (1878) [hereinafter Ordinance No. VI].

memo from Trinidad to the East India Trading Company.¹⁵ The office worried that the colony's own enslaved Africans would likewise revolt, so the memo proposed a solution: "[N]o measure would so effectually tend to provide a security against this danger, as that of introducing a free race of cultivators into our islands, who, from habits and feelings would be kept distinct from the Negroes, and who from interest would be inseparably attached to the European proprietors."¹⁶ The office had in mind Chinese indentured laborers, almost 200 of whom were ultimately obtained from Macao, Malaya, and India in 1806.¹⁷ This scheme, however, largely failed when, within three years, all but twenty-two of the recruits had departed on British ships.¹⁸ The experiment in indentured labor would lie mostly dormant until 1834, but the seed was planted.

Just as emancipated Haitians troubled British Trinidad in 1803, so too did emancipation give planters in British Mauritius anxiety three decades later. They worried that following abolition, emancipated Africans would either stop working on their plantations or demand a higher wage.¹⁹ In addition to exploiting the apprenticeship system,²⁰ planters in Mauritius arranged for thirty-nine indentured Indians to be delivered on August 1, 1834, or the day the British Slavery Abolition Act took effect.²¹ Within the next five years, the colony would go on to import over 20,000 indentured Indians.²² As with the Chinese workers in Trinidad, Indians were used as a racial buffer to lower wages and model docile employment.²³ To support this experiment, the colony of Mauritius introduced to nineteenth-century indenture an innovation:

¹⁵ See Secret Memorandum from the Colonial Off. to the Chairman of the Ct. of Dirs. of the East India Co. (Feb. 18, 1803), in WALTON LOOK LAI, *THE CHINESE IN THE WEST INDIES 1806–1995: A DOCUMENTARY HISTORY* 27, 27–29 (1998).

¹⁶ *Id.* at 27.

¹⁷ *Id.* at 9, 23, 28–29.

¹⁸ David Glover, *The Long Conjecture*, 87 *NEW FORMATIONS* 141, 148 (2016) (reviewing JAMES EPSTEIN, *SCANDAL OF COLONIAL RULE: POWER AND SUBVERSION IN THE BRITISH ATLANTIC DURING THE AGE OF REVOLUTION* (2012) and LISA LOWE, *THE INTIMACIES OF FOUR CONTINENTS* (2015)).

¹⁹ See MONGIA, *supra* note 4, at 24–25; see also KALE, *supra* note 4, at 43–44.

²⁰ Notwithstanding its name, the British Slavery Abolition Act did not fully emancipate enslaved Africans in the British Empire, at least not at first. Rather, the Act transformed those enslaved into *apprentices*, marking a legal shift from the slave as property (or chattel) to the apprentice as half-property and half-person. See KALE, *supra* note 4, at 43. What this meant was that the 800,000 nominally emancipated Africans were required to work without wage for their planters until 1838. *Id.* Meanwhile, the British Empire paid 40,000 planters today's equivalent of roughly \$20 billion. See Peter James Hudson, *The Racist Dawn of Capitalism: Unearthing the Economy of Bondage*, *BOS. REV.* (Mar. 14, 2016), <http://bostonreview.net/books-ideas/peter-james-hudson-slavery-capitalism> [<https://perma.cc/28KL-YSL6>]. No reparations were paid to emancipated Africans. *Id.*

²¹ See MONGIA, *supra* note 4, at 25.

²² *Id.*

²³ See KALE, *supra* note 4, at 144–46, 160; see also Emmer, *supra* note 7, at 187.

state regulation.²⁴ No longer would indenture be organized only by private contracts.²⁵

With the ordinances, Mauritius introduced two kinds of indenture regulation. The first kind, justified in its preamble by an appeal to the “maintenance of good order” following the abolition of slavery, aimed to control workers in a variety of ways, including a vagrancy clause that penalized unemployment with forced labor or imprisonment, a clause that automatically renewed indenture contracts, and a clause that punished labor organizing with six months of hard labor.²⁶ The second kind regulated the introduction of indentured labor, requiring the state to control recruitment in India, the allotment of laborers to plantations, and their labor conditions.²⁷ The dual regulations likely represented a trade — the state would supervise the indenture trade to protect the Indian laborer so that the system wouldn’t devolve into slavery, and in return, the planters got labor regulations that tightly controlled the Indian laborer through state law enforcement.

The Mauritius experiment and a privately organized copycat project in British Guiana led by John Gladstone soon came under scrutiny in London.²⁸ In response, imperial officials temporarily halted indenture and ordered several inquiries, each intended to study indenture and recommend a corrective course of action.²⁹ An India inquiry was called to study allegations of fraud and deceit in the recruitment of indentured

²⁴ The Caribbean historian of indenture Walton Look Lai describes state supervision over indenture as its defining innovation. See LAI, *supra* note 4, at 51.

²⁵ Prior to the nineteenth century, indenture was organized by private, one-off contracts. See NORTHRUP, *supra* note 5, at 4. The most notable example of that type of indenture is the founding of America as a settler colony. From the arrival of the *Mayflower* (carrying several indentured servants) in 1620 to the American Revolution, over half of European immigrants paid their passage to the colonies by indenturing themselves. See *id.* This practice ended when the enslavement of Africans replaced indenture as the dominant mode of bound labor in America, a development that coincided with a shift in European policy toward white settlement. Rather than require whites to seek indenture for the cost of travel in the nineteenth century, governments largely subsidized white immigration on the logic of racial coordination. See *id.* at 8–9. Imperial administrators, for example, believed that whites, unlike nonwhites, did not need debt to motivate their labor. *Id.* at 9. Moreover, the British needed to “whiten” certain areas so as to portray them as civilized. *Id.* Imperial administrators also wanted to protect temperate zones with higher wages for whites. *Id.* Where the Empire channeled whites, the first Asian exclusion laws soon barred nonwhites. *Id.* For a history of how the first Chinese exclusion laws in America emerged out of earlier regulations over indenture immigration, see Moon-Ho Jung, *Outlawing “Coolies”: Race, Nation, and Empire in the Age of Emancipation*, 57 AM. Q. 677 (2005).

²⁶ See Despatch from Lord Glenelg, Sec’y of State for the Colonies, to Governor Sir William Nicolay, C.B. (May 25, 1836), in PAPERS RESPECTING THE EAST-INDIA LABOURERS’ BILL 63, 64–65, 68 (London, J.L. Cox & Sons 1838).

²⁷ *Id.* at 69–70.

²⁸ See Mongia, *supra* note 9, at 753.

²⁹ *Id.* at 753–54.

workers; another set of inquiries in Mauritius and British Guiana began studying their labor conditions.³⁰

Professor Radhika Mongia's analysis of these inquiries calls for close attention to their form and substance. Understood this way, the inquiries fashioned not just a knowledge regime on indenture — that which was understood to be true at the time about this practice — but also a set of methods for producing that knowledge as impartial or objective, thus making inquiries and their recommendations all the more credible.³¹ So, when these and later inquiries inevitably found indenture to be fit to continue (with reforms), those conclusions were to be trusted.³²

Inquiries demonstrated how colonial officials should arrive at those conclusions by determining what evidence should be used. For example, even though inquiries were organized to investigate abuses against Indians, those same Indians were not considered reliable informants because they were deemed ignorant, exaggerating, and deceitful.³³ The exception was that colonial officials could trust indentured Indians who were asked about their labor conditions in the presence of their plantation overseers.³⁴ In those instances, inquiry officials determined that indentured Indians were unlike the recently enslaved African apprentices, who might sugarcoat their accounts to please an oppressive employer.³⁵ Crucial to this determination was the expertise that the inquiry officials claimed to bring to their survey subject.

Managing dissent was a core part of the inquiry practice. These early inquiries concluded, in one case, with an even split between three committee members wanting to continue indenture and three members calling for its end, and in another case, with a scathing critique by one of the members over the information-gathering practices of the committee.³⁶ But rather than crippling these inquiries, this dissent was channeled back into the process to make its conclusions appear even more credible.³⁷ So, these early inquiry commissions were not less credible because of their dissenting opinions, but instead more credible because they had considered those dissents, and because the dissenters largely shared the same assumptions as their majority counterparts.³⁸ As a result, the exchange of claims and counterclaims allowed imperial bureaucrats to fashion what Mongia calls an “arithmetic median” of objective

³⁰ *Id.* at 753.

³¹ *See id.* at 750.

³² *See id.* at 762–63.

³³ *Id.* at 755, 760.

³⁴ *Id.* at 758–59.

³⁵ *Id.* at 759.

³⁶ *See id.* at 754, 758.

³⁷ *Id.* at 757–58.

³⁸ *See id.*

truth.³⁹ Likewise, several other inquiries would be ordered and conducted in the following decades, and, in each case, the initial scandals and criticisms that gave rise to indenture would be incorporated into the bureaucratic process, considered, and ultimately regurgitated into a report that allowed indenture to continue, refreshed by an impartial and objective evaluation.⁴⁰

Shortly after the Mauritius inquiry reported its findings, the Empire restarted indenture by executive order in 1842.⁴¹ By 1844, this permission extended to British Guiana, Trinidad, and Jamaica.⁴² Over time, such authorizations would stretch across four continents and more than twenty colonies.⁴³ Who ultimately left India for indenture turned on several factors, such as recruitment practices, intercontinental migration, colonial policy, economic hardship, and plantation prejudices.⁴⁴ In general, approximately two-thirds of indenture recruits came from North India, while the majority of the remaining one-third came from South India.⁴⁵

B. *The Indenture Colony that Almost Wasn't*

Even as Fiji would play an outsized role in the abolition of indenture, it was not at first a likely candidate for extending indenture, nor was it even intended to be a British colony. As it turned out, the specter of slavery would justify both annexation and indenture. In this way, even as a late participant in indenture, Fiji marks a continuity in how colonial officials justified indenture by reference to racial management.

Fiji is an archipelago of 332 islands in the South Pacific, together totaling a square footage roughly the size of New Jersey.⁴⁶ While archaeological evidence from the island group shows human settlement and the development of an indigenous population reaching back to around 1500 BC, it wasn't until the late eighteenth century that a British explorer, Captain James Cook, saw Fiji.⁴⁷ Then, between the early and mid-1800s, European settlers began setting up missionary activities and trading posts.⁴⁸

³⁹ *Id.* at 758.

⁴⁰ *See id.* at 763.

⁴¹ *Id.* at 761–62.

⁴² MONGIA, *supra* note 4, at 58.

⁴³ *Id.* at 54.

⁴⁴ *See* Brij Lal, *Leaves of the Banyan Tree: Origins and Background of Fiji's North Indian Indentured Migrants, 1879–1916*, at 111 (Nov. 1980) (Ph.D. dissertation, Australian National University) (on file with the Harvard Law School Library).

⁴⁵ *Id.* at 111 & tbl.1.

⁴⁶ *See The World Factbook: Explore All Countries — Fiji*, CIA, <https://www.cia.gov/the-world-factbook/countries/fiji> [<https://perma.cc/U77Q-RLDF>].

⁴⁷ *See Fiji*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Fiji-republic-Pacific-Ocean/History> [<https://perma.cc/V28A-3ZLZ>].

⁴⁸ *Id.*

Though King Cakobau, whom outsiders had recognized as the indigenous ruler of Fiji, had attempted to cede his kingdom to Britain following American aggressions in 1858, it wasn't until 1874 that Britain took up the offer.⁴⁹ In those last years, Londoners read accounts of native South Sea islanders being kidnapped and enslaved for Anglo-American settlers' cotton plantations, a practice known as blackbirding.⁵⁰ In 1871, one planter recounted with fondness robbing and killing native Fijians.⁵¹ Two years later, the settler-run *Fiji Times* printed the following:

[Cakobau] feels the power of the white race, and must bow to it. Already the Anglo-Saxon has firmly planted his foot here, and so certainly must he remain. The whites can do without the natives, but Fiji can never again be free of the white man. Her destiny is sealed, and as sure as the American Indians, the New Zealanders, and Australians have had to give way to the superior race, so surely must the Fijian. . . . Fiji must now become the home of a white race, its original inhabitants are no doubt doomed.⁵²

Indeed, many white settlers refused to be governed by Cakobau.⁵³ Those settlers organized a mutual protection society that would intervene to protect white men threatened by arrest at the hands of the native government.⁵⁴ One name given to the settlers' mutual protection society was the Ku Klux Klan⁵⁵—a group whose original chapter was founded just seven years prior, more than 7,000 miles away in Tennessee.⁵⁶ In what might explain this choice of branding, one of the more notable members of the Fiji KKK was Confederate veteran James Toutant Proctor,⁵⁷ nephew of the noted Confederate General Pierre Gustave Toutant Beauregard.⁵⁸

⁴⁹ See Ethel Drus, *The Colonial Office and the Annexation of Fiji*, 32 *TRANSACTIONS ROYAL HIST. SOC'Y* 87, 87, 109 (1950).

⁵⁰ See *id.* at 91, 96; see also GERALD HORNE, *THE WHITE PACIFIC* 72 (2007).

⁵¹ See HORNE, *supra* note 50, at 77.

⁵² MARTIN J. WIENER, *AN EMPIRE ON TRIAL: RACE, MURDER, AND JUSTICE UNDER BRITISH RULE, 1870–1935*, at 75–76 (2009) (alteration and omission in original).

⁵³ See Drus, *supra* note 49, at 96–97.

⁵⁴ HORNE, *supra* note 50, at 78; 1 DERYCK SCARR, *THE MAJESTY OF COLOUR: A LIFE OF SIR JOHN BATES THURSTON* 163–64 (1973).

⁵⁵ HORNE, *supra* note 50, at 78.

⁵⁶ See *Ku Klux Klan*, *ENCYCLOPEDIA BRITANNICA*, <https://www.britannica.com/topic/Ku-Klux-Klan> [<https://perma.cc/SQ8W-JKWV>].

⁵⁷ See HORNE, *supra* note 50, at 77, 86. In all likelihood, Proctor arrived in Fiji to find a community of other members of the Confederate Diaspora, or a group of veterans that left the United States following the American Civil War. See generally Phil Leigh, Opinion, *The Confederate Diaspora*, *N.Y. TIMES* (May 14, 2015, 7:00 AM), <https://nyti.ms/2mz1811> [<https://perma.cc/GE2Q-MT2U>] (describing the general contours and motivations of this group).

⁵⁸ Christopher Legge & Jennifer Terrell, *James Toutant Proctor*, 5 *J. PAC. HIST.* 65, 66 (1970). So famous is General P.G.T. Beauregard that he is still used as a namesake for Confederate nostalgia. Former Senator and Attorney General Jefferson Beauregard Sessions, for example, is named after both Jefferson Davis and P.G.T. Beauregard. See ALLEN TULLOS, *ALABAMA GATEWAY: THE POLITICAL IMAGINARY AND THE HEART OF DIXIE* 290 n.156 (2011).

One reason why Proctor found a welcoming home in the planter community was that Confederate propaganda and American racial ideology had already taken hold on the island. The *Fiji Times* frequently ran stories on Reconstruction America to discredit native Fijians' fitness for governance.⁵⁹ In a thinly veiled analogy to the native Fijian government recognized by Britain, the paper decried the ascendance of Black Americans to Congress.⁶⁰ One historian describes a *Fiji Times* report from 1873 — a detailed story on a KKK attack in South Carolina — “as if it were an instruction manual and/or device to bolster morale in the South Seas.”⁶¹ A British official in Fiji would later reflect on this context that he “had learnt by experience how many Europeans hold in practice to the principle announced in the celebrated Dred Scott decision of the Supreme Court of the United States that the coloured man ‘has no rights that the white man is bound to respect.’”⁶² With Fiji home to many like Proctor and the KKK, Britain's leadership reluctantly came to see their choice as between annexation and permitting slavery or outright genocide.

Indenture followed a similar path. Because colonies in the Caribbean and Mauritius constituted the center of gravity for British indenture, Fiji was an unlikely choice for extending the indenture system.⁶³ Indeed, private individuals and consular officials in Fiji were denied indentured Indians three times before the British Empire annexed the island in 1874.⁶⁴ Although Fiji would not gain approval to import indentured Indians until 1878, its Governor General Arthur Gordon put into motion plans to solicit Indian labor at least as early as January 1875, when he used meetings in London with the India Office to test the waters for imperial sanction.⁶⁵

Gordon was intimately familiar with the workings of Indian indenture. Prior to his station in Fiji, he served as the Governor General of

⁵⁹ See HORNE, *supra* note 50, at 80.

⁶⁰ *Id.* at 80–81.

⁶¹ *Id.* at 81.

⁶² WIENER, *supra* note 52, at 79 (quoting 1 G.W. DES VOEUX, MY COLONIAL SERVICE 367 (1903)).

⁶³ See NORTHRUP, *supra* note 5, at 107 fig.5.1.

⁶⁴ The first recorded suggestion of bringing indentured Indians was made in 1861 by Commodore Seymour, who wrote that it would be “out of the question to expect native labour, and consequently we must look to the same source that supplies [British Guiana].” Lal, *supra* note 44, at 39. In 1867, the German traders Frederic and William Hennings asked the consular government in Levuka whether they could make such a request. See Gillion, *supra* note 13, at 18. They were denied, as was the planter Nathaniel Chalmers in 1870. *Id.* Two years later, Chalmers would convince John Bates Thurston, the Minister of Foreign Relations for King Cakobau, to send a request to the government of India. *Id.* To Thurston's request, an official of the government of India wrote that the government of Cakobau was “too recent and too strange” for India to permit emigration. *Id.* at 19. Where one official denied Fiji's request “at present,” another in London's India Office crossed out the words and wrote “ever.” *Id.*

⁶⁵ See Cumpston, *supra* note 13, at 375.

two indenture colonies, Trinidad and Mauritius.⁶⁶ While Gordon would observe that indenture in Mauritius was broken beyond reform, Fiji appealed to him as an opportunity to build a system from the ground up, a chance to make his mark.⁶⁷ But Gordon could not immediately request Indian labor. Another system of labor, a quasi-indenture scheme transporting local Pacific Islanders to and from Fiji, predated his arrival.⁶⁸ Within a few years, however, that indenture scheme fell apart due to colonial mismanagement by planters and Gordon's government.⁶⁹

By 1877, Gordon was asking if the colony could supplement its labor, perhaps even replace it wholesale, by introducing indentured laborers from the "superabundant population of India."⁷⁰ Knowing fully that London might object to another extension of Indian indenture, and the most distant such installation of it to date, he presented Indian indenture as the lesser of two evils. "I must confess," Gordon wrote, that "it will be very difficult long to withstand the pressure . . . to consent to measures intended to coerce the native population of this Colony into an involuntary servitude, or at all events to wink at practices not consistent with fair dealing."⁷¹ The message was clear: allow Indian indenture or risk slavery reemerging in Fiji under the watchful eye of the British Empire. So, even though the Empire had thrice denied such a request, this time it was asked to reckon, once more, with the chance of native enslavement or extinction. Gordon's request was approved.⁷²

II. ORDINANCE NO. VI OF 1878

When London gave Gordon the green light, the next step was for Fiji to secure approval from the government of India. This Part will first describe that approval process. Then, it will catalog the main points of negotiation between the governments of India and Fiji over Ordinance No. VI of 1878, the law that first authorized Indian indenture to Fiji. The final section of this Part explores the consequences of this law.

⁶⁶ Laurence Brown, *Inter-colonial Migration and the Refashioning of Indentured Labour: Arthur Gordon in Trinidad, Mauritius and Fiji (1866-1880)*, in *COLONIAL LIVES ACROSS THE BRITISH EMPIRE: IMPERIAL CAREERING IN THE LONG NINETEENTH CENTURY* 204, 206 (David Lambert & Alan Lester eds., 2006).

⁶⁷ See *id.* at 219. This goal, however, served only to facilitate Gordon's primary ambition in Fiji — "civilizing" native Fijians through indirect rule. See Cumpston, *supra* note 13, at 373-74.

⁶⁸ See Owen W. Parnaby, *The Regulation of Indentured Labour to Fiji, 1864-1888*, 65 *J. POLYNESIAN SOC'Y* 55, 56-62 (1956).

⁶⁹ See *id.* at 64.

⁷⁰ Letter from Governor the Hon. Sir A.H. Gordon, K.C.M.G., to the Earl of Carnarvon (Aug. 9, 1877), in *COLONIAL OFFICE, POLYNESIAN LABOURERS*, 1878, HC, at 44, 45 (UK).

⁷¹ *Id.*

⁷² Letter from the Earl of Carnarvon to Governor the Hon. Sir A.H. Gordon, K.C.M.G. (Nov. 14, 1877), in *COLONIAL OFFICE, supra* note 70, at 51, 51.

A. Section 24 Notification

Bringing indentured Indians to a new colony required navigating an interimperial bureaucracy of global proportions. To start, the Governor General of an interested British colony would send a request to the London-based Colonial Office, as Arthur Gordon did. At this point, the Colonial Office could veto the request and end the process there, as the Office did several times prior to Gordon's bid. But if the Office approved the request, the colony would next have to negotiate with the government of India. In that negotiation, the colony would share its proposed indenture ordinance and seek input.

The prize for successfully negotiating with the government of India was receiving its section 24 notification. Codified in the Indian Emigration Act of 1871,⁷³ which framed the subcontinent's indenture policy, section 24 allowed the government of India to authorize indenture immigration to a new colony upon certification that the colony had "made such laws and other provisions . . . sufficient for the protection of Natives of India emigrating to such place."⁷⁴ In other words, if the government of India was satisfied with the colony's proposed indenture ordinance and labor conditions, it would signal to the Colonial Office that indenture could proceed there.

The requirement for this sort of approval can be traced back to the earliest attempt at Indian indenture regulation in Mauritius. Before lifting the ban on indenture there in 1842, the government of India first required reforms to the colony's indenture ordinances.⁷⁵ The notification requirement appeared in legislation in an 1855 law passed by the government of India that provided for indenture immigration to St. Lucia and Grenada.⁷⁶ Later, this language was incorporated into Act XIII of 1864, within which the government of India consolidated prior indenture laws and practices.⁷⁷ When Act XIII of 1864 was updated in 1871, this clause was renumbered to section 24.⁷⁸

That the government of India could even authorize migration to another colony was itself a legal innovation that predates the modern conception of immigration regulation. Where modern laws restrict free movement between nations, section 24 notification imposed conditions on what was otherwise free movement within the empire.⁷⁹ To rebut charges that such regulations therefore lacked legal validity, indenture

⁷³ The Indian Emigration Act, 1871.

⁷⁴ *Id.* § 24.

⁷⁵ See NANCY GARDNER CASSELS, *SOCIAL LEGISLATION OF THE EAST INDIA COMPANY* 219 (2010).

⁷⁶ INDIA OFFICE, *EAST INDIA (COOLIE EMIGRATION)*, 1874, HC, at 19 (UK).

⁷⁷ See *id.* at 37, 39.

⁷⁸ See The Indian Emigration Act, 1871, § 24.

⁷⁹ See MONGIA, *supra* note 4, at 54–55.

bureaucrats argued in the early nineteenth century that regulations were necessary to protect Indians from their own ignorance or deception by recruiters.⁸⁰

But section 24 notification was not a total grant of power. The government of England and the Colonial Office still exercised authority over the government of India. Indeed, at several points in the arc of indenture, the British Empire preempted indenture or strongly encouraged the government of India to resume or allow indenture.⁸¹ And contrary to the language of section 24, the government of India did not in practice walk away from indenture negotiations if it was dissatisfied with the colony's proposed law. Rather, the government of India consistently made concessions to the colonies.⁸²

Where the section 24 process did not effectively operate to prevent or address indenture abuses, it did play an important role in maintaining the legitimacy of the indenture system in a liberal empire. In this way, the section 24 process resembled the inquiry commission. Several themes from that analysis reemerge here. First, the multistep approval of indenture in new colonies represented another arithmetic median of colonial bureaucracy. Indeed, section 24 was designed so that each government represented a different interest: India was to withhold approval unless it believed the indenture scheme would be sufficient for Indians;⁸³ the colony usually advocated on behalf of planters; and the Colonial Office was supposed to balance the interests of the Empire. Section 24 approval also digested conflicting priorities, dissent, and disagreement so that the resulting decision would appear impartial and considered in the model of liberal governance. In addition, the process was filled with claims to expertise by colonial bureaucrats working to persuade one another. Each theme appeared in the negotiation between the colony of Fiji and the government of India.

⁸⁰ *Id.* at 54. This rationale was knowingly raced to allay concerns that “natives of Great Britain” would face similar regulations. *See id.* at 27, 29–30. Note that the same paternalistic rationale would reappear in early twentieth-century America, when the U.S. Supreme Court at the peak of freedom of contract nevertheless upheld special classes of labor regulation, distinguishing women in *Muller v. Oregon*, 208 U.S. 412 (1908), as well as African Americans in the *Peonage Cases*, *see United States v. Reynolds*, 235 U.S. 133 (1914); *Bailey v. Alabama*, 219 U.S. 219 (1911), from the white male bakers of *Lochner* on the basis that “dependent” populations relied on the state to help them form proper contracts. *See* Risa L. Goluboff, *The Thirteenth Amendment and the Lost Origins of Civil Rights*, 50 DUKE L.J. 1609, 1649–50 (2001).

⁸¹ *See, e.g.*, CASSELS, *supra* note 75, at 220, 229, 242.

⁸² *See, e.g., id.* at 230.

⁸³ As with the inquiry commissions themselves, the arithmetic median of constituencies here was a fiction, since the government of India did not really act with the best interests of Indians in mind. *See, e.g., infra* pp. 1843–44 (describing famine policies of the government of India). Moreover, Mongia observes that supposedly disparate ideological representatives shared the same assumptions. *See* Mongia, *supra* note 9, at 755.

B. The Negotiation

The negotiations over Ordinance No. VI largely took place between Charles Mitchell, Fiji's Agent General for Immigration, and George Henry Maxwell Batten, the Officiating Secretary to the government of India. Each bureaucrat came to occupy positions of relative importance in the imperial civil service by way of patronage. Mitchell was picked to oversee reforms in Trinidad as a stipendiary magistrate in 1867, served on an inquiry commission in British Guiana in 1871, and, before arriving to Fiji, served as an unofficial member of the Mauritius inquiry commission.⁸⁴ Each time, he was appointed or recommended by Arthur Gordon, who happened to be the Governor General under scrutiny in Trinidad and Mauritius.⁸⁵ Likewise, Batten seemingly catapulted to Private Secretary to the Viceroy of India from his role as Secretary to the Department of Revenue and Agriculture.⁸⁶

I. Illusory Improvements. — In an attempt to curry favor with Batten, Mitchell led with both his expertise in indenture and the claim that Fiji's proposed law would be an improvement on the norm. These points came in response to Batten's request that Fiji just "adopt generally the provisions of the British Guiana Immigration Ordinance of 1873."⁸⁷ That Caribbean colony had not only administered indenture for decades but also was the target of a recent inquiry commission.⁸⁸ With the understanding that British Guiana had just recently scrutinized and reformed its indenture scheme, Batten asked Mitchell to copy what was likely considered to be the standard bearer of progressive indenture policy.⁸⁹ Mitchell no doubt knew this — he was one of the three members of that very inquiry.⁹⁰

So Mitchell recounted his seven years as an official in Trinidad and his more recent service on the British Guiana inquiry, adding, "on whose

⁸⁴ See Brown, *supra* note 66, at 212, 218.

⁸⁵ *Id.* at 208, 218.

⁸⁶ See DIANA SOUHAMI, *THE TRIALS OF RADCLYFFE HALL* 38–40 (1999). Contemporaries suspected that Viceroy Lord Lytton elevated Batten to get closer to his wife, the well-known Mabel Batten. *Id.* at 40.

⁸⁷ Letter from G.H.M. Batten, Esq., Officiating Sec'y to the Gov't of India, to C. Mitchell, Esq., Agent-Gen. of Immigr. in Fiji (Nov. 6, 1877), <https://nla.gov.au/nla.obj-2117482120/view> [<https://perma.cc/6GU8-L8R3>].

⁸⁸ 1 W.D. IHELL, *PLANTERS' COMMITTEE, BRITISH GUIANA: THE COMMISSION OF INQUIRY INTO THE TREATMENT OF IMMIGRANTS* (1870) [hereinafter *BRITISH GUIANA COMMISSION*].

⁸⁹ In a later part of this exchange, Batten would say of the 1873 law that "since its passing [it] has been generally held, both by the Colonial Office and the Government of India, to embody the most satisfactory system on which immigration should, in any colony to which it may from time to time extend, proceed." Letter from G.H.M. Batten, Esq., Officiating Sec'y to the Gov't of India, to Agent-Gen. of Immigr. for Fiji (Feb. 15, 1878) [hereinafter Feb. 15, 1878 Letter], <https://nla.gov.au/nla.obj-2117467717/view> [<https://perma.cc/9DEN-82VD>].

⁹⁰ See *BRITISH GUIANA COMMISSION*, *supra* note 88, at 1.

report the Immigration Ordinance of 1873 was based.⁹¹ Where the law differed, Mitchell presented those departures as *improvements* on the West Indian model. He therefore proposed to depart from the livret policy used by British Guiana, a system where each worker maintained a personal record book accounting for wages accumulated during indenture.⁹² Mitchell critiqued the system as an impracticable method for preventing unfair extensions of the indenture term.⁹³ Instead, the draft ordinance would require magistrates to approve extensions, like they did in Trinidad.⁹⁴ Next, the government of Fiji would dispense with the vagrancy clauses abused in British Guiana, Trinidad, and Mauritius.⁹⁵ It instead proposed that employers had to be sure of an immigrant's identity before arresting her, and it would prohibit arrests by police who lacked a warrant.⁹⁶ Last, Mitchell proposed to consider in the future a scheme by which immigrants could renounce their right to a free return passage in exchange for a land grant or cash bounty.⁹⁷

But improvements these were not. The livret had not been used primarily to prevent unfair extensions of indenture but rather to prevent wage theft by planters.⁹⁸ And contrary to Mitchell's representation, both the draft ordinance and the final ordinance allowed police officers to arrest immigrants without a warrant — the law was in fact identical to the system abused in the West Indies.⁹⁹ Last, the return passages promise could not offer land grants to Indian tenants, as the Fiji government by then had severely restricted the alienation of land held by native Fijians.¹⁰⁰ Whether India spotted these inconsistencies is unclear. Regardless, India went along with Mitchell's characterizations.¹⁰¹

⁹¹ Letter from C. Mitchell, Esq., Agent-Gen. of Immigr. of the Colony of Fiji, to Officiating Sec'y to the Gov't of India (Nov. 13, 1877) [hereinafter Nov. 13, 1877 Letter], <https://nla.gov.au/nla.obj-2117482120/view> [<https://perma.cc/6GU8-L8R3>]; cf. Brown, *supra* note 66, at 204–05, 227 (observing the role of transitory colonial officials like Arthur Gordon in fashioning and refashioning indenture based on their experiences, policies, and connections in other colonies).

⁹² See Thomas N. Tyson & Shanta S.K. Davie, *The Livret System: The Interface of Accounting and Indentured Labor in British Guiana*, 14 ACCT. HIST. 145, 151 (2009).

⁹³ See Nov. 13, 1877 Letter, *supra* note 91.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See Tyson & Davie, *supra* note 92, at 151–52.

⁹⁹ See Nishant Batsha, *The Currents of Restless Toil: Colonial Rule and Indian Indentured Labor in Trinidad and Fiji 175–76* (2017) (Ph.D. dissertation, Columbia University) (on file with the Harvard Law School Library).

¹⁰⁰ See MICHAEL MOYNAGH, *BROWN OR WHITE? A HISTORY OF THE FIJI SUGAR INDUSTRY, 1873–1973*, at 73–76 (1981).

¹⁰¹ Letter from G.H.M. Batten, Officiating Sec'y to the Gov't of India, to Agent-Gen. of Immigr. for Fiji (Dec. 4, 1877) [hereinafter Dec. 4, 1877 Letter], <https://nla.gov.au/nla.obj-2117480114/view> [<https://perma.cc/L5KC-CJND>].

2. *Punishments.* — Even if Batten declined to scrutinize carefully the draft's illusory improvements, he did attempt to take Mitchell to task on the law's austere disciplinary regime. Batten first singled out the draft's system of double punishments. In the ordinance, an immigrant's term of indenture could be extended not just for length of desertion, *but also* for the time spent in prison to punish that desertion.¹⁰² For example, if an Indian was convicted of deserting her plantation for two weeks, and for that violation was required to serve a two-week prison term, her indenture could be extended for four weeks. Compare this to British Guiana's 1873 ordinance, under which indenture could be extended only for the period of time an immigrant deserted her plantation, *or* for the period she spent in prison as punishment for a crime that was *not* a violation of the indenture law.¹⁰³ Using the same example, only a two-week extension would be allowed. Where British Guiana prior to 1873 permitted an extension scheme of the kind Mitchell proposed, Batten explained that the inquiry commissioners denounced that provision as excessive punishment.¹⁰⁴

Realizing that Batten was again invoking the British Guiana inquiry to corner him, Mitchell wrote: “[I]t may appear strange that . . . I have not strictly adhered to the recommendation of the Commissioners.”¹⁰⁵ He explained his change of heart — it would be unfair to planters to lose labor as their “incorrigible” laborer served time in prison.¹⁰⁶ “Discipline must be maintained,” he continued, “and an example must now and again be made of some constant offender even on the best regulated plantations.”¹⁰⁷ To tailor the law for these repeat offenders, Mitchell revised the draft by adding a provision granting the magistrate discretion to determine the punishment for desertion.¹⁰⁸ So too did he alter the extension clause, cabining double-punishment extensions to only desertions¹⁰⁹ and the catchall labor penalty, which allowed the planter to punish his laborer for failing “to show ordinary diligence” on the job.¹¹⁰ Batten persisted to argue that employers just as often abused

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Letter from Agent-Gen. of Immigr. for Fiji to Officiating Sec'y to the Gov't of India (Dec. 27, 1877) [hereinafter Dec. 27, 1877 Letter], <https://nla.gov.au/nla.obj-2117478740/view> [<https://perma.cc/B35N-DFAA>].

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ An Ordinance with Regard to Immigration, 1877, § 68 <https://nla.gov.au/nla.obj-2117472331/view> [<https://perma.cc/UVA3-5267>].

the law as they turned to it for proper recourse,¹¹¹ but he ultimately dropped the matter.¹¹²

In addition to the double-punishment system, Batten demonstrated that several of the proposed penalties and fines for labor violations far exceeded those used in British Guiana.¹¹³ One of these fines, the cost of replacing a certificate attesting that an immigrant had completed her term of indenture (without which she could not leave the plantation) was greater than what she could earn for forty days of work.¹¹⁴ In British Guiana, the equivalent fine charged one day's wages.¹¹⁵ By effectively frustrating a post-indenture immigrant's effort to move about the country, the government of India said, Fiji's proposed fine "savours of the repressive legislation against so-called 'vagrancy' till recently in force in Mauritius."¹¹⁶

Answering Batten's disapproval, Mitchell first attempted to defer the matter, replying that the colony would have several years to set a policy on this issue, as it would operate only when the first batch of future laborers would complete their five-year term of indenture.¹¹⁷ Following up a few days later, Mitchell added that Fiji had already proposed to do away with vagrancy laws, so planters needed some kind of assurance that their investment in a system of bound labor would be secure.¹¹⁸ Batten again relented and allowed Fiji to keep the high charge for duplicate certificates, but only if Fiji included an exception in the case of immigrants who could offer bona fide proof that their certificates were without fault lost or destroyed, in which case the cost of replacement would be reduced to one shilling in conformity with British Guiana's fine.¹¹⁹ Although Fiji promised to amend the law shortly after ratification, it would take the colony thirteen years to address the issue.¹²⁰

¹¹¹ See Feb. 15, 1878 Letter, *supra* note 89.

¹¹² See *id.*

¹¹³ Dec. 4, 1877 Letter, *supra* note 101.

¹¹⁴ See *id.* The fine was set at forty-two shillings, whereas the fixed wage was one shilling per day. See *id.*

¹¹⁵ See *id.*

¹¹⁶ *Id.*

¹¹⁷ Letter from Agent Gen. of Immigrants for Fiji to Officiating Sec'y to the Gov't of India (Feb. 20, 1878) [hereinafter Feb. 20, 1878 Letter], <https://nla.gov.au/nla.obj-2117467112/view> [<https://perma.cc/6G8B-V6C9>].

¹¹⁸ Letter from C. Mitchell, Esq., Agent-Gen. of Immigr. for Fiji, to Officiating Sec'y to the Gov't of India (Feb. 24, 1878), <https://nla.gov.au/nla.obj-2117466463/view> [<https://perma.cc/T7YY-W3Z9>].

¹¹⁹ Letter from G.H.M. Batten, Esq., Officiating Sec'y to the Gov't of India, to Agent-Gen. of Immigr. for Fiji (Mar. 2, 1878), <https://nla.gov.au/nla.obj-2117465805/view> [<https://perma.cc/BP62-88TB>].

¹²⁰ See An Ordinance to Amend and Consolidate the Law Relating to Indian Immigration (1891) [hereinafter Ordinance to Amend], in ORDINANCES OF THE COLONY OF FIJI, 1875-1905, at 751.

Beyond the surcharge on duplicate certificates, Batten cited three other clauses containing comparatively harsh punishments for indentured laborers. The first punished indentured laborers for the nuisance of keeping an unseemly dwelling space; the second, for disorderly behavior in a hospital; and the third, for desertion.¹²¹ In general, Fiji's draft and final ordinances imposed lower fines but higher prison sentences compared to those in the 1873 ordinance in British Guiana.¹²² And compared to the earlier Polynesian indenture ordinance in Fiji, both fines and prison sentences for Indians were far higher in these later ordinances, with the exception of the second desertion offense under the Polynesian ordinance.¹²³ Of the higher prison sentences, Mitchell again explained that the penalties were designed "to leave a fair margin" to the magistrate setting punishments for repeat offenders, as some would require the full penalty.¹²⁴ Of the lower fines, Mitchell said that the object was to "encourage the immigrant to pay the fine instead of going to prison."¹²⁵ And to repeat offenders in particular, the fine would not be too low, as this class represented "the least respectable or least industrious class of labourers, and will not, in general, be overburdened with their savings."¹²⁶ Batten did not protest the lower fines, and by the end of the exchange dropped his recommendations regarding the higher prison sentences.¹²⁷

3. *Plantation Rations.* — The last major topic of discussion was a pair of disagreements over plantation rations. The first disagreement concerned ration indebtedness. By this point in the practice of indenture, plantations by law provided to their workers shelter and food, among other necessities, in exchange for a portion of their wages. In the draft ordinance that Mitchell sent to Batten, planters were permitted to issue rolling debts.¹²⁸ This departed from the practice of British Guiana, where planters could deduct from their laborers' weekly wages only the cost of rations supplied in that same week.¹²⁹ By closing the ration account weekly, the immigrant was protected from falling into debt that carried over week to week. In contrast, and as Batten noted, a rolling debt system could quickly produce a "very serious" evil.¹³⁰

¹²¹ See Dec. 4, 1877 Letter, *supra* note 101 (comparing penalties in a draft ordinance of Fiji to an analogous indenture law from British Guiana); see also A.M. ABBOTT, BRITISH GUIANA LAW OF SUMMARY CONVICTIONS COMPRISING ORDINANCES FROM THE YEAR 1837 TO 1883, at 175, 184–85 (Glasgow, Macrone & Co. 1884) (describing the corresponding offenses in British Guiana's law).

¹²² See Dec. 4, 1877 Letter, *supra* note 101.

¹²³ See COLONIAL OFFICE, *supra* note 70, at 26–27.

¹²⁴ Dec. 27, 1877 Letter, *supra* note 105.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See Feb. 15, 1878 Letter, *supra* note 89.

¹²⁸ Dec. 4, 1877 Letter, *supra* note 101.

¹²⁹ *Id.*

¹³⁰ *Id.*

Mitchell did not relent. To him, closing accounts weekly would serve only to harm the “industrious” immigrant.¹³¹ His skepticism, he explained, arose from his experience in Trinidad, which had no provision analogous to the one suggested by Batten.¹³² Batten responded by attacking this explanation as logically unsound and empirically false.¹³³ He parried Mitchell’s description of Trinidad with his own description of the Caribbean island of Nevis, where the average laborer was in debt to the tune of many months’ wages due to the ration debt system Mitchell was proposing.¹³⁴ While Mitchell would continue to defend his position on the ration debt scheme, he agreed to change the law in the final exchange, subject to the wishes of the Governor of Fiji.¹³⁵ The Council never approved the amendment. In the end, the ration debt system that Mitchell proposed was final.

The second disagreement concerned the volume of rations provided. Compared to the draft ordinance Mitchell sent, Batten noticed that British Guiana’s ordinance provided more rations to immigrants.¹³⁶ Mitchell did not want to increase the rice and dal (lentil) ration and offered two justifications for this disparity. First, again, his experience in Trinidad suggested that the lower ration was workable.¹³⁷ The second rationale came from the government of India itself. Mitchell referenced published colonial correspondence from that year between two Indian bureaucrats, one explaining to the other that the Viceroy was “convinced” by a one-pound rice ration supplemented by dal and foodstuffs.¹³⁸ Compared to this ration, which provided to Indians in Mysore one pound of rice, one ounce of dal, one-sixth ounce of tamarind, and one-sixth ounce of chili, plus foodstuffs and oil, Fiji would be somewhat *more* generous.¹³⁹

This comparison was curious. The Indian ration Mitchell referenced was known as the “Temple wage,” named after Sir Richard Temple, who devised the ration to feed relief workers in famine-stricken Mysore in 1877.¹⁴⁰ In Temple’s words, the famine rations were “subordinated . . . to the financial consideration of disbursing the smallest sum of money consistent with the preservation of human life.”¹⁴¹ To reach

¹³¹ Dec. 27, 1877 Letter, *supra* note 105.

¹³² *Id.*

¹³³ Feb. 15, 1878 Letter, *supra* note 89.

¹³⁴ *Id.*

¹³⁵ Feb. 20, 1878 Letter, *supra* note 117.

¹³⁶ Dec. 4, 1877 Letter, *supra* note 101.

¹³⁷ Dec. 27, 1877 Letter, *supra* note 105.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See MIKE DAVIS, LATE VICTORIAN HOLOCAUSTS: EL NIÑO FAMINES AND THE MAKING OF THE THIRD WORLD 33–38 (2002).

¹⁴¹ *Id.* at 39 (omission in original).

this goal, the rations provided 1,627 calories per day to those completing hard labor in the relief camps.¹⁴² Compare this amount to the 1,750 calories provided each day to Nazi concentration camp prisoners in Buchenwald in 1944, or the ration of 3,900 calories for hard labor recommended by modern standards.¹⁴³ The consequence of the Temple ration was a ninety-four percent annual mortality rate in the Mysore relief camps.¹⁴⁴ So bad were conditions there that famished Indians committed felonies for the purpose of being imprisoned, during which they would receive more food.¹⁴⁵ By the final round of letters exchanged, Batten dropped the point, and Fiji moved forward with the Temple ration.¹⁴⁶

C. *The Aftermath*

That Batten was unable to gain many meaningful concessions from Mitchell did not hamper Fiji's chances of gaining section 24 approval. Indeed, even though Batten's superiors were displeased with the government of Fiji's stubbornness regarding ration debts and duplicate certificates, neither was so big a problem as to deny the colony indentured laborers. Besides, they reasoned that the colony could be persuaded to amend its laws to conform with India's expectations.¹⁴⁷ So, on August 30, 1878, about a year after Mitchell and Batten were first acquainted, the government of India "duly certified that the Government of Fiji has made such laws and other provisions as the Governor General in Council thinks sufficient for the protection of Natives of India emigrating to that Colony."¹⁴⁸ Fiji gained its section 24 notification.

Let's pause to consider what changed. Batten asked Mitchell to eliminate double-punishment extensions, to substantially lessen prison sentences, to increase rations amounts, to revise a system of ration debt, and to reduce the cost of duplicate certificates for free Indians. Only one prison sentence was reduced, and it could be accompanied by double-punishment extensions — a system which, for all practical purposes, remained the same. Rations changed on the margins but largely remained at famine levels. And where the government of Fiji promised to consider amendments to its ration debt scheme and duplicate certificates, it would avoid that task for thirteen years. Recall too that several

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 40.

¹⁴⁵ *Id.*

¹⁴⁶ See Feb. 15, 1878 Letter, *supra* note 89.

¹⁴⁷ Even though Fiji agreed to make these amendments, it would take the colony thirteen years to make good on that promise. See Ordinance to Amend, *supra* note 120, at 728, 751 (incorporating a weekly ration account in section 96, as well as a provision for duplicate certificates in section 197).

¹⁴⁸ Notification by the Gov't of India, Dep't of Revenue, Agric. & Com. (Aug. 30, 1878), <https://nla.gov.au/nla.obj-2117433716/view> [<https://perma.cc/N77R-CX47>].

of the law's positive features were illusions. The government of Fiji allowed police officers to make warrantless arrests, and no livret system would be in place to check wage theft.

With Fiji's system of indenture now authorized, the British Empire moved forward with recruiting the Indians over whom this regime would govern. In total, the British Empire commissioned eighty-seven voyages trafficking 60,965 Indians to Fiji between 1879 and 1916.¹⁴⁹ The geographic and caste makeup of this group is roughly similar to that of the broader indenture population, with South Indians accounting for 23.8% of indenture recruits.¹⁵⁰ And as with the sugar colonies in the Caribbean and Mauritius, a majority of Indians indentured in Fiji came from Uttar Pradesh.¹⁵¹ Moreover, data gathered from indentured North Indians' emigration passes show that no one caste or social group accounted for more than 13.4% of the recruited population in Fiji.¹⁵² Overall, indentured immigrants from North India represented 265 castes and subcastes.¹⁵³ Beyond indentured Hindus, 15.1% of Fiji's North Indian recruits were Muslim, and 0.05%, Christian.¹⁵⁴

The consequences of the section 24 negotiations were inscribed on the lives and livelihoods of the indentured Indians trafficked to Fiji. Planters and their overseers deployed these and other policies in Ordinance No. VI to control their workers and maximize their profits. For example, planters prosecuted workers who failed to complete their daily set of tasks, the content of which was left ambiguous in the law but for the requirement in section LXV that Indians complete five-and-a-half tasks weekly.¹⁵⁵ Because tasks were measured at the rate of the most productive workers, the average worker struggled to meet the

¹⁴⁹ Gillion, *supra* note 13, at 138.

¹⁵⁰ See Lal, *supra* note 44, at 116 tbl.II.

¹⁵¹ *Id.* at 131.

¹⁵² See LAL, *supra* note 13, at 107 tbl.3.

¹⁵³ *Id.* at 106. To some scholars, the breadth of Fiji's Indian origins is taken to mean that caste was not as relevant to Indo-Fijians, or that religious or regional differences were smoothed over by the journey to Fiji. See, e.g., Gillion, *supra* note 13, at 348–50. However, the lived experience of social hierarchy and oppression was likely *complicated*, not ameliorated, by the absence of traditional social structures that more easily facilitated exclusion and subordination across gender, class, caste, religion, region, and so on. See ESHA PILLAY & QUISHILE CHARAN, UNDOING HISTORY'S SPELL ON BAD WOMEN: COUNTER-COLONIAL NARRATIVES OF THE FEMALE GIRMIT ROLE IN THE 1920 LABOUR STRIKE 12 (2019). For example, indentured South Indians in Fiji often faced prejudice, exclusion, and harassment from North Indians on the basis of their customs and language, as well as their darker skin tone. See LAL, *supra* note 13, at 232. This subordination likely contributed to the much higher suicide rate among indentured South Indians in Fiji. See *id.* at 229–32.

¹⁵⁴ Lal, *supra* note 44, at 208–09.

¹⁵⁵ See Ordinance No. VI, *supra* note 14, § LXV.

standard.¹⁵⁶ Then, when indentured Indians failed to complete tasks, planters would bring actions against them under section LXVIII of the ordinance, which penalized indentured Indians who “fail[ed] to show ordinary diligence in the performance of any work assigned to [them]” with a fine amounting up to three days’ wages or seven days’ imprisonment.¹⁵⁷

Using this and other laws,¹⁵⁸ planters prosecuted more than seventy percent of indentured Indian men, and nearly thirty percent of indentured Indian women, between 1897 and 1907.¹⁵⁹ On some parts of the island, like Labasa in 1895, planters charged ninety-six percent of indentured workers with labor violations.¹⁶⁰ And where the conviction rate for such prosecutions hovered around forty percent in other colonies like British Guiana, in Fiji the rate started at nearly eighty percent between 1885–1890 and eventually reached ninety percent between 1906–1909.¹⁶¹ In short, the vast majority of indentured Indians could expect to be punished under the law.

Planters who did not wish to bring legal action before a special magistrate could instead dock a laborer’s wages under a theory of contract breach. Even though the text of Ordinance No. VI did not at first permit this deprivation, a legal opinion issued by the Attorney General of Fiji soon ratified the planters’ practice.¹⁶² In the Attorney General’s view, the penalty could be harsh:

It may be stated as a general legal proposition that if a person engages to perform a given task or a piece of work for a given wage and fails to perform such a task he forfeits *all claim to the wage*: for the performance of the task is the condition precedent to the payment of the wage.¹⁶³

Ultimately, the combination of wage fixing, overwork, and legal action deprived Indians of a large part of their pay. By 1897, nearly eighty percent of men earned eight pence, or one-third of the daily minimum wage, while more than sixty percent of women earned five pence.¹⁶⁴ Those off the ration system found it difficult to afford the cost of food

¹⁵⁶ See Brij V. Lal, *Labouring Men and Nothing More: Some Problems of Indian Indenture in Fiji*, in *INDENTURED LABOUR IN THE BRITISH EMPIRE*, 1834–1920, at 126, 127–28, 133 (Kay Saunders ed., 2018).

¹⁵⁷ Ordinance No. VI, *supra* note 14, § LXVIII; see also Lal, *supra* note 156, at 133.

¹⁵⁸ See, e.g., Lal, *supra* note 156, at 145–46 (describing the harsh legislation enacted in 1886 in response to indenture resistance).

¹⁵⁹ See LAL, *supra* note 13, at 185 tbl.3.

¹⁶⁰ *Id.* at 184.

¹⁶¹ Lal, *supra* note 156, at 135.

¹⁶² *Id.* at 136.

¹⁶³ *Id.* (emphasis added).

¹⁶⁴ *Id.* at 136–37. Note that planters deducted an additional five pence from daily wages for rations, so it’s possible that many men earned three pence daily and women, nothing. See Ordinance No. VI, *supra* note 14, § XLV.

too, and, without proper nutrition, they were more likely to grow sick and take absences, which further limited their ability to earn a wage.¹⁶⁵

The effects of this regime were apparent in public health outcomes, which far eclipsed conditions for indentured Indians elsewhere. The suicide rate, for example, reached 80 per 100,000 Indo-Fijians in the early 1900s.¹⁶⁶ To compare, this figure was eight times higher than Indian suicides recorded in British Guiana, twice as high as those recorded in Trinidad and Jamaica, and sixteen times as high as those recorded in Madras and the United Provinces.¹⁶⁷

These figures contrast sharply with the praise given to Ordinance No. VI by contemporary colonial officials, as well as later historians. When the Colonial Office reviewed the legislation for final approval, for example, it believed the law to be mostly the same as the ones in force in British Guiana and Trinidad; where Fiji departed, the Office believed Fiji to do so to the benefit of the worker.¹⁶⁸ Decades later, an inquiry commission organized to study indenture conditions reported that because Fiji came relatively late to indenture, it could “profit by the experience of other colonies” and “avoid the abuses connected with the earlier attempts to introduce indentured labour from India.”¹⁶⁹ A prominent history of indenture in Fiji recounted:

No objections were raised by the Government of India to the extension of the system of indentured labour to Fiji now that it had become a British Colony. Mitchell submitted a draft Ordinance which was modelled on those of Trinidad and British Guiana. The changes were generally in favour of the immigrant rather than the employer; the few outstanding differences of opinion concerned minor matters only.¹⁷⁰

Later historians have repeated this conclusion.¹⁷¹

There are a few explanations for the apparent discrepancy. One is that neither colonial officials nor historians sufficiently scrutinized the claims being advanced by Fiji, and so let Mitchell’s puffery become the account of the law. This explanation would fit with some trends in the contemporary reception and historiography of indenture. Professor

¹⁶⁵ Lal, *supra* note 156, at 137.

¹⁶⁶ Brij V. Lal, *Veil of Dishonour: Sexual Jealousy and Suicide on Fiji Plantations*, 20 J. PAC. HIST. 135, 135 (1985) (noting the rise in suicide among Fiji’s Indian population from 78 suicides per 100,000 people in 1900 to 83.1 per 100,000 in 1910).

¹⁶⁷ *Id.* Compare the contemporary suicide rate in Madras and Uttar Pradesh, the two regions from which most of Fiji’s Indian indentured recruits came, which stood between 4.6 and 5.4 per 100,000 people. *Id.* During this time, the rate among Indian immigrants in Trinidad and Jamaica was, on average, 40 per 100,000 and in British Guiana, 10 per 100,000. *Id.* The global rate in 2016 stood at 10.6 per 100,000. WORLD HEALTH ORG., WORLD HEALTH STATISTICS 2019: MONITORING HEALTH FOR THE SUSTAINABLE DEVELOPMENT GOALS 32 (2019).

¹⁶⁸ Cumpston, *supra* note 13, at 377 n.31.

¹⁶⁹ SANDERSON COMMITTEE REPORT, *supra* note 13, ¶ 352.

¹⁷⁰ Gillion, *supra* note 13, at 48 (footnote omitted).

¹⁷¹ See, e.g., LAL, *supra* note 13, at 71–72; Sohmer, *supra* note 13, at 149–50.

Madhavi Kale has demonstrated how both served as agents of empire by failing to question the fraudulent rationales offered by early proponents of indenture.¹⁷² Another explanation is that section 24 approval was easy to obtain, and indeed the government of India itself may not have believed that it had much leeway to withhold that approval from colonies already given permission from London.¹⁷³

The explanation advanced by the foregoing analysis, though, is that the section 24 process, like inquiry commissions, served an important role in digesting dissent and disagreement into an impartial, considered, and, above all, legitimate law. In other words, even though Batten failed to win meaningful changes for the benefit of Indians, what mattered was that he participated in the approval process and that his concerns had been considered.

III. FROM INDENTURE TO ABOLITION

With dissent so effectively managed, the movement to abolish indenture faced tall obstacles. This Part narrates that struggle. After first reviewing why traditional channels of dissent were often ineffective, the latter two sections describe how locally rooted resistance to indenture ignited a mass movement that bypassed the traditional channels for dissent.

A. *The Limits of Traditional Dissent*

Options were few for those struggling to abolish indenture between the final decades of the nineteenth century and the first decade of the twentieth century. For the most part, dissent was either digested by well-worn processes like inquiries or legislation or rendered irrelevant by those in power. The knowledge regime of indenture held a monopoly on criticism.

The Sanderson Committee, an inquiry that Britain commissioned in 1910 to determine whether India should extend indenture to additional colonies,¹⁷⁴ demonstrates that inquiries late in the arc of indenture successfully quashed indenture criticism. In determining that indenture should be extended to additional colonies,¹⁷⁵ the Committee relied on

¹⁷² See KALE, *supra* note 4, at 4–5, 56–65.

¹⁷³ Batten himself wrote to Mitchell that “[t]he policy of the government of India has not hitherto been to criticise minutely the terms offered to Indians emigrating to the various fields of labour; . . . the Government is content to leave the success of the emigration to the ordinary laws of supply and demand.” Dec. 4, 1877 Letter, *supra* note 101.

¹⁷⁴ KALE, *supra* note 4, at 83.

¹⁷⁵ See SANDERSON COMMITTEE REPORT, *supra* note 13, ¶ 102 (“[T]he system of indentured immigration as actually worked is not open to serious objection in the interests of the immigrant labourer . . . [It] is the only practicable form of emigration to distant colonies on any considerable scale.”).

interviews with eighty-three witnesses,¹⁷⁶ only three of whom were non-European, and of whom none had ever been indentured.¹⁷⁷ One of the non-European witnesses, Alfred Richards, the Afro-Caribbean head of the Trinidad Workingmen's Association, did actually object to the extension of Indian indenture because it depressed free market wages, cost colonies too much in outlays, and led to the abuse of indentured Indians on plantations.¹⁷⁸ Upon hearing these critiques, the committee of interviewers harassed Richards for wasting their time and funds and dismissed his comments as inconsistent.¹⁷⁹

Richards's experience lends context to how the Sanderson Committee Report massaged its observations and reached its conclusions. Conceding that the rate of labor prosecutions in Fiji was "considerably higher than it should be," the report nonetheless concluded that "persons prosecuted are as a rule unsatisfactory workmen, unaccustomed or disinclined to regular agricultural labour."¹⁸⁰ So, allowing for some "room for improvement," the report found "no reason to doubt that the indentured labourers are, as a whole, fairly and justly treated in all material respects."¹⁸¹ Even though the report itself was an inquiry into the colony's indenture conditions, it called for yet another inquiry to grapple with the issue of prosecutions.¹⁸²

Nor could those interested in reform or abolition place much hope in Britain's antislavery societies. True, these societies helped champion the emancipation of enslaved Africans a century prior and raised alarm about indenture when it first began in the 1830s.¹⁸³ Over time, though, groups like the British and Foreign Anti-Slavery Society and the Aborigines' Protection Society lost their hold over British public sentiment. While such groups continued to publish pamphlets railing against the horrors of indenture, by the mid-nineteenth century their advocacy went unheeded by the British public.¹⁸⁴

Elite Indians also failed to be a powerful voice of dissent, at least on their own. Several prominent members of the Indian National

¹⁷⁶ *Id.* ¶ 2.

¹⁷⁷ See KALE, *supra* note 4, at 84.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 84–85.

¹⁸⁰ SANDERSON COMMITTEE REPORT, *supra* note 13, ¶ 15.

¹⁸¹ *Id.* ¶ 361.

¹⁸² *Id.*

¹⁸³ See KALE, *supra* note 4, at 31.

¹⁸⁴ See Connolly, *supra* note 8, at 98. Professor Jonathan Connolly explains this shift by way of four causes: (1) transformations in social science on trade and labor displaced antislavery concepts in public debates; (2) a public consensus emerged in Britain that emancipation was a social and economic failure; (3) the economic profitability of indenture colonies helped rally public support; and (4) indenture advocates successfully appropriated abolitionist language to claim that indenture was key to combatting slavery. See *id.* at 118–19.

Congress, for example, *supported* Indian indenture late into the nineteenth century, characterizing it as a path of economic advancement for Indians.¹⁸⁵ It wasn't until the Congress's 1902 and 1903 sessions that indenture was condemned for the first time, and even then the focus of those meetings was on free Indians in indenture colonies.¹⁸⁶ When the Congress in 1905 finally passed a resolution asking the government of India and the British Empire to end the indenture trade, its request fell on deaf ears.¹⁸⁷ And while rising figures like Mahatma Gandhi would build their reputations on the issue of indenture, several historians have carefully documented that mass mobilizations to end indenture were not started by Gandhi but actually predated his campaigns.¹⁸⁸

Among the problems dissenters faced in inquiries, legislative processes, British antislavery societies, and elite Indian political mobilizations was the fact that these channels were attempting to speak *for* oppressed third parties.¹⁸⁹ In this sense, what was innovative about the turning point that led to indenture's abolition was that it joined local resistance in the colonies to mass resistance among those still at risk of dispossession back in India. To reach that turning point, we return to Fiji.

B. *The Girmitiya & Local Resistance*

Indentured Indians resisted their labor and living conditions almost as soon as they reached the island.¹⁹⁰ A key part of this resistance was

¹⁸⁵ Batsha, *supra* note 99, at 264–65.

¹⁸⁶ Ray, *supra* note 1, at 31.

¹⁸⁷ *Id.* at 31–32.

¹⁸⁸ *See id.* at 295–96. Going further, some accounts argue that it was mass politics of indenture abolition that actually radicalized Gandhi, who was at the time more committed to purely legal and local reform. *See id.*; *see also* Mrinalini Sinha, *Premonitions of the Past*, 74 J. ASIAN STUD. 821, 828–29 (2015).

¹⁸⁹ This problem has been deconstructed by postcolonial feminists, Black feminists, and others. For the seminal text, see Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, in COLONIAL DISCOURSE AND POST-COLONIAL THEORY: A READER 66 (Patrick Williams & Laura Chrisman eds., 1994). Professor Gayatri Chakravorty Spivak demonstrates that those in the West who attempt to act as a mouthpiece for the oppressed end up participating in and propagating the colonial hegemony that makes possible the conditions for oppression in the first place. *Id.* at 66. bell hooks characterizes Spivak's point like this:

No need to hear your [native] voice when I can talk about you better than you can speak about yourself. No need to hear your voice. Only tell me about your pain. I want to know your story. And then I will tell it back to you in a new way. Tell it back to you in such a way that it has become mine, my own. Re-writing you I write myself anew. I am still author, authority. I am still [the] colonizer, the speaking subject and you are now at the center of my talk.

bell hooks, *Marginality as a Site of Resistance*, in OUT THERE: MARGINALIZATION AND CONTEMPORARY CULTURES 341, 343 (Russell Ferguson, Martha Gever, Trinh T. Minh-ha & Cornel West eds., 1990) (italics omitted).

¹⁹⁰ Their resistance took many forms, including formal complaints, labor strikes, violence, substance use, mutual aid, civil disobedience, religious ceremony, and protest art. For fuller discussions of such resistance, see Nicole, *supra* note 10. A recent work on this subject by descendants of

fashioning an identity. In the first decade of resisting indenture in Fiji, indentured Indians began calling themselves *girmitiyas*, a term vernacularized from the English word for the indenture contract; the “agreement” became the “girmit,” and its subject, the *girmitiya*.¹⁹¹ Thus, to call themselves *girmitiyas* was literally to say that they were people of the agreement, or people of the indenture contract.

In this way, the term helped indentured Indians fashion a counter-authority on the nature of indenture. Since the inquiry and its related bureaucratic forms, like the section 24 approval process, were powerful because they could speak authoritatively for the state of indenture, and indeed, *on behalf of* the indentured worker, it was no small feat that the *girmitiya* identity connected the indenture agreement directly to the lived experience of indentured workers.¹⁹² Prior to this innovation, that connection was more remote. In other words, it was the sum total of colonial bureaucracy, plantation management, and the large volume of official records and reports that constituted the meaning of indenture. In the colonial production of truth, then, the Indian’s experience was filtered through people and processes, digested much like dissent. To step into an identity directly connected to indenture forged a tighter connection between the laborer’s lived experience and their status in empire. The act of calling oneself a *girmitiya* was an effort to speak for oneself.

In addition to reasserting the authority to describe one’s own conditions under indenture, the *girmitiya* identity helped facilitate group consciousness, or solidarity.¹⁹³ To be clear, the fact that indenture recruits all came from India was not, in itself, a reason to band together. Not only was India (as it is today) a site of rich diversity across religion, gender, language, custom, caste, geography, color, wealth, and more, but also planters attempted to alienate and dominate indentured Indians on the basis of these differences.¹⁹⁴ A term that identified both a common

girmitiyas revisits Professor Robert Nicole’s and others’ work to reinterpret the role of women in resistance efforts from a counter-colonial perspective. See PILLAY & CHARAN, *supra* note 153.

¹⁹¹ See Brij V. Lal, *Girmit*, 40 S. ASIA: J.S. ASIAN STUD. 313, 313–15 (2017); see also Sudesh Mishra, *Time and Girmit*, 23 SOC. TEXT 15, 15–16 (2005). The choice to develop this identification is significant given that other terms were already in existence, including the more commonly used “coolie,” as well as the term “jahaji.” For discussions of these terms and their role in self-identification and solidarity, see BAHADUR, *supra* note 3, at xix–xx; MARINA CARTER & KHAL TORABULLY, *COOLITUDE: AN ANTHOLOGY OF THE INDIAN LABOUR DIASPORA* 143–44 (2002); and LAL, *supra* note 13, at xvi–xvii.

¹⁹² To appreciate the import of this move, consider that the late anthropologist David Graeber observed that bureaucracies often inflict literal violence by imposing simple schemas on complex situations and then punishing those who defy the state’s need to “define the situation” with alternative frameworks of understanding. David Graeber, *Dead Zones of the Imagination: On Violence, Bureaucracy, and Interpretive Labor*, 2 HAU: J. ETHNOGRAPHIC THEORY 105, 120 (2012).

¹⁹³ See Mishra, *supra* note 191, at 15.

¹⁹⁴ See MOYNAGH, *supra* note 100, at 21.

struggle and a common enemy was thus strategically useful as a predicate to organizing collective resistance.

And organize resistance they did. After worker unrest in 1881, a strike in 1882, and an attack on a plantation overseer in 1885, tensions reached a flash point in 1886, by which point 8,853 labor indictments were brought against a population of 5,237 indentured immigrants.¹⁹⁵ In protest of the overtasking that preceded these charges and the lack of sufficient rations to feed them, 300 girmitiyas on the Navuso and Koronivia plantations went on strike.¹⁹⁶ In 1887 a group of 130 girmitiyas led a protest to the home of the colony's Agent General for Immigration, the official charged with protecting immigrant workers.¹⁹⁷ The Agent General, upon showing support to the girmitiyas, was swiftly relieved of his office.¹⁹⁸ Smaller protests continued, eventually reaching Fiji's other big island, Vanua Levu, where in 1895 forty girmitiyas armed with knives and hoes protested their task assignments.¹⁹⁹

When the high conviction rate for indentured laborers resulted in heavy fines, girmitiyas organized a mutual aid fund, or a pool that workers paid into so that their fines would be covered when they were inevitably indicted by their employers.²⁰⁰ Girmitiyas who completed their five-year indenture term even organized a kind of underground railroad that harbored deserting indentured workers in Suva.²⁰¹

The girmitiya identity also facilitated interreligious solidarity. First-person accounts of indentured Indians describe Muslims attending Hindu kathas, Hindus celebrating Eid with Muslim peers, Muslims at Diwali festivals, Hindus at Tazia, and so on.²⁰² One reading of a combined Holi-Tazia festival suggests that Hindus and Muslims deployed religious symbolism to critique plantation abuse.²⁰³

Girmitiya women, who protested the same plantation abuses as men, also resisted additional forms of sexual violence and sex-based subordination.²⁰⁴ This resistance challenged their repression not just on the

¹⁹⁵ See Nicole, *supra* note 10, at 190–91, 194, 196.

¹⁹⁶ *Id.* at 194.

¹⁹⁷ *Id.* at 202.

¹⁹⁸ *Id.* at 202–03.

¹⁹⁹ *Id.* at 211.

²⁰⁰ *Id.* at 213.

²⁰¹ See Lal, *supra* note 156, at 145. The government responded to these tactics with Ordinance No. 14 of 1886, which imposed penalties so harsh that the Colonial Office in London described the law as “Draconian.” *Id.* at 146. The law increased penalties on work absences and noncompletion, and added to the penalty extensions to the term of indenture. *Id.* It also increased the punishment for desertion; prohibited groups of six or more immigrants from assembling outside plantations; and required that fines be paid within forty-eight hours, a period too short to withdraw funds from the mutual aid pool. *Id.*

²⁰² See Nicole, *supra* note 10, at 306–07.

²⁰³ *Id.* at 308.

²⁰⁴ PILLAY & CHARAN, *supra* note 153, at 8–10; see also Nicole, *supra* note 10, at 347–48.

plantation from overseers, but also in their homes, where they often faced violence and bore a heavier burden of domestic labor.²⁰⁵ In several instances, women protected each other by intervening in gangs when a plantation overseer threatened to rape an indentured woman.²⁰⁶ By 1920, women would lead a major labor strike in Fiji, protesting that Indians could not obtain enough food to survive.²⁰⁷

While large-scale protests were not frequent, the history of Fiji between 1881 and 1920 was marked by an unrelenting series of agitations on and off plantations. When girmityas resorted to violence against their overseers, the attacks were often in broad daylight, and in a manner that maimed overseers to prevent them from inflicting further harm on the workers.²⁰⁸ More common were efforts to withhold labor through absenteeism and desertion.²⁰⁹ Some girmityas also sabotaged planters by trampling cane crop, throwing farming equipment into the river, setting fire to property, damaging plantation machinery, or dropping iron onto train tracks during the night.²¹⁰

But building a gimit counternarrative and mounting local resistance were not enough to abolish indenture in Fiji, to say nothing of the global system. Even though indentured laborers in Fiji outnumbered their employers and the government, it was difficult for indentured laborers to build power because colonial officials in Fiji responded aggressively to resistance, using Ordinance No. VI to squelch organized protest.²¹¹ However, even if local resistance could not reasonably be expected to end indenture, it did play an important role in drawing attention to immediate problems. And it played a role in fueling a mass politics of abolition.

C. *From Local Resistance to Mass Politics*

A remarkable indicator of the power of the indenture abolition movement can be seen in the difference between two inquiry commissions: the Sanderson Committee Report of 1910 and the McNeill-Lal Report of 1915. Commissioned by the government of India in 1912, the latter task force traveled to several indenture colonies for the purpose of producing a report and a set of recommended reforms that would once

²⁰⁵ See Nicole, *supra* note 10, at 347–48.

²⁰⁶ *Id.* at 359–61. One example involved a group of women throwing a plantation overseer who attempted rape into a sewer pit. *Id.* at 360.

²⁰⁷ See PILLAY & CHARAN, *supra* note 153, at 34–39.

²⁰⁸ See Nicole, *supra* note 10, at 280.

²⁰⁹ See *id.* at 286.

²¹⁰ *Id.* at 293.

²¹¹ For two examples, underground railroads were neutralized by harsher punishments for desertion, and the mutual aid funds were frustrated by amendments that required fines to be paid almost immediately, thus leaving no time for reaching out to such funds. See Lal, *supra* note 156, at 145–46.

again redeem Indian indenture from charges of abuse.²¹² Following past practices of designing inquiry commissions to embody an arithmetic median, the government of India sought an Englishman and an Indian to cochair the commission, though in private officials described the latter as an “Indian companion or junior.”²¹³ The commission found its co-chairs in the Irishman James McNeill and Lala Chimman Lal, the nephew of a wealthy Indian lobbyist.²¹⁴

The task force followed the playbook of the Sanderson Committee and other inquiries. McNeill and Lal started by contacting each colonial government and its immigration department, gathering from them statistical data and arranging tours.²¹⁵ Before McNeill and Lal arrived, the selected plantations received advance notice, which allowed them to prepare their overseers and workers for the commission’s interviews.²¹⁶ Thus, where these reports did acknowledge worker abuse, it is likely that such observations were the sanitized version of true conditions. Ultimately, and, like the Sanderson Committee, which also reported damning statistics on suicide, the McNeill-Lal Report concluded that indenture’s “advantages have far outweighed its disadvantages.”²¹⁷

Readers in India had none of it. Indian National Congress member Srinavasa Shastri characterized the McNeill-Lal findings this way in 1915: “[L]ike most reports it contains a certain proportion of facts . . . [and] some statistics but the greatest ingredient you will observe in its composition is that commodity known as ‘white-wash.’”²¹⁸ He urged the Congress that it could not “believe in this report or in its conclusions.”²¹⁹ The Anglo-Indian press likewise trashed the report, with one reader defying “anyone to read this report without a sense of bewilderment.”²²⁰ Its poor reception was soon translated into local newspapers, angering the masses and their local officials.²²¹

The transformation from the Sanderson Committee Report and the McNeill-Lal Report was not overnight. The mass politics of anti-

²¹² See Ray, *supra* note 1, at 179–83.

²¹³ *Id.* at 180 (quoting Letter from Robert Offley Ashburton Crewe-Milnes, Sec’y of State for India, to Charles Hardinge, Viceroy of India (Mar. 29, 1912)).

²¹⁴ *Id.* at 179–83.

²¹⁵ *Id.* at 183–84.

²¹⁶ See *id.*

²¹⁷ *Id.* at 185 (quoting JAMES MCNEILL & CHIMMAN LAL, REPORT TO THE GOVERNMENT OF INDIA ON THE CONDITIONS OF INDIAN IMMIGRANTS IN FOUR BRITISH COLONIES AND SURINAM 322 (1915)).

²¹⁸ *Id.* at 190 (quoting INDIAN NAT’L CONG., REPORT OF THE THIRTIETH INDIAN NATIONAL CONGRESS, 1915, BOMBAY 83 (1915)); see also *id.* at 189–90.

²¹⁹ *Id.* at 190 (quoting INDIAN NAT’L CONG., REPORT OF THE THIRTIETH INDIAN NATIONAL CONGRESS, 1915, BOMBAY 83 (1915)).

²²⁰ *Id.* at 192 (quoting Sir Henry Cotton, *Indentured Labour in our Colonies*, NEW INDIA, June 21, 1915).

²²¹ See *id.* at 193.

indenture leagues throughout India was carefully cultivated with what might be recognized today as viral media.²²² Among the first of these was a sensationalized story from 1913 about an Indo-Fijian girmitiya woman named Kunti, who evaded rape by a European overseer by throwing herself off a cliff.²²³ Other stories were adapted into plays. For example, a northern India newspaper adapted accounts of indenture abuses from South African protests into two plays, one titled *Death Not Dishonour*, and the other, *A Bleeding Heart*.²²⁴ In fashioning descriptions of oppression into stories that could be transmuted through traveling performances, the plays were designed to draw the masses in villages into the anti-indenture movement.

The most famous of these plays was the *Kuli-Pratha*, or *The Practice of Recruiting Coolies*, written by an Indian nationalist and later banned in 1917 under the 1910 Press Act.²²⁵ The play was based on the popular autobiography and speaking tour of Totaram Sanadhya, a girmitiya who returned to India after twenty-one years in Fiji.²²⁶ Influenced by the solidarity and collective resistance around him, Sanadhya makes frequent reference in the text of the book to the girmitiya identity.²²⁷ The book also reflected his social location. Sanadhya, himself a high-caste Hindu, exploited conservative Hindu politics to indict the indenture system as an indignity to the religious orthodoxy and heteropatriarchy of high-caste Hindus, and, in particular, the sexual purity of Hindu women.²²⁸

Kuli-Pratha begins with a prayer seeking the return of honor to Hindus by right of their religious heritage.²²⁹ In the next scene, the audience is introduced to the villain of the play, an Indian emigration agent named Brij Lal, who is shown to be a close associate of the British government.²³⁰ Recruiters then come onto the stage and describe to Lal their methods of deceiving villagers into signing indenture contracts.²³¹

²²² For a nuanced discussion of populist power, tensions, and progressive and regressive forces in the early twentieth-century growth of the Indian vernacular press, see CHARU GUPTA, *THE GENDER OF CASTE: REPRESENTING DALITS IN PRINT* (2016).

²²³ See Brij V. Lal, *Kunti's Cry: Indentured Women on Fiji Plantations*, in *WOMEN IN COLONIAL INDIA: ESSAYS ON SURVIVAL, WORK AND THE STATE* 163, 163–79 (J. Krishnamurty ed., 1989). For a critique deconstructing the caste and gender dimensions of this sensationalism, see GUPTA, *supra* note 222, at 243–47.

²²⁴ Ray, *supra* note 1, at 175.

²²⁵ See Ashutosh Kumar, *Indians Against the Indenture System* 24–25 (Glob. Conf. on Indian Diaspora Stud., Working Paper No. 9, 2017).

²²⁶ *Id.* at 23–24.

²²⁷ See generally TOTARAM SANADHYA, *FIJIDWIP MEN MERE IKKIS VARSH* (4th ed. 1973), translated in *MY TWENTY-ONE YEARS IN THE FIJI ISLANDS & THE STORY OF THE HAUNTED LINE* (Ultra Kumari Singh & John Dunham Kelly eds. & trans., 2003).

²²⁸ See Ray, *supra* note 1, at 214–19.

²²⁹ See *id.* at 221.

²³⁰ *Id.* at 221–22.

²³¹ *Id.* at 222.

The protagonists of the play include two villagers tricked into indenture, a woman by the name of Kunti, and a man, Bhola.²³² The symbolism is laid on thick, as the recruiters persuade Kunti and Bhola to immigrate to Fiji for the purpose of building a temple to the light-skinned god Gaurang.²³³ Then, in a nod to interreligious solidarity, one of the play's other heroes is the Muslim Abbas, who, with Kunti and Bhola, braves a series of trials before Bhola is beaten to death and the child of Kunti and Bhola is killed by a planter's dog.²³⁴ The play ends with Kunti and Abbas returning to India as friends.²³⁵

In addition to developing the laborer plotline, the play satirizes the government of India in a clear allusion to the McNeill-Lal Commission. The government is shown sending a commission to study the abuses of indenture, one member of which is an Indian who is frequently disrespected — in one scene the Indian commissioner must stand because a dog has taken his seat.²³⁶ While the commissioners (and the audience) observe on stage the many abuses of indenture, the Indian and British stand-ins for McNeill and Lal conclude that indenture is fair and just.²³⁷ Likewise criticized are moderate Indian politicians, who are seen as accomplices to the British abuses.²³⁸

Like the term *girmitya* and the local resistance it facilitated, works like Sanadhya's autobiography and *Kuli-Pratha* rebutted the colonial account of indenture and deflated the authority of colonial bureaucrats. In both cases, the audience was led, scene by scene, to understand how indenture purported to work as a system of free labor, the mechanics of its legal architecture in India and in the indenture colonies, and how it was propped up by colonial bureaucrats' justifications. The moral of these stories was clear: audience members must take it upon themselves to end indenture.²³⁹

The works communicated this message by turning against itself the design of indenture, which rested on the contract law principle of mutual assent. Moved by these plays, Indians organized anti-indenture leagues and "cooly-protection societies," which demanded that recruiting depots release those who had been signed to indenture contracts on the basis that they had been misinformed about the contract.²⁴⁰ Other agitators sought to get themselves recruited so that they could lead an uprising

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.* at 222–23.

²³⁵ *Id.* at 223.

²³⁶ *Id.* at 225.

²³⁷ *See id.*

²³⁸ *Id.* at 224.

²³⁹ *See id.* at 226.

²⁴⁰ *Id.* at 206; *see also id.* at 205–08.

inside the depots with other recruits.²⁴¹ They printed pamphlets to explain the conditions of indenture to those most likely to be recruited, so that they would be dissuaded before recruiters could induce them.²⁴² One of these pamphlets, titled “ESCAPE FROM DECEIVERS,” made clear what conditions were like under the indenture contract: “It is not service. It is woe. Do not fall into their snare. They will ruin you. . . . [The indenture colonies] are not islands; they are Hell.”²⁴³ At every juncture, then, a mass movement combined with elite agitation to frustrate the machinery of indenture.²⁴⁴ By 1917, indenture recruitment was banned in India,²⁴⁵ and by 1920, no existing indenture contracts were valid.²⁴⁶ Indenture had been abolished.

In the span of a few years, Kunti’s narrative, *Kuli-Pratha*, and the actions of cooly-protection societies subordinated the dominant truth discourse of the imperial indenture bureaucracy. They did so by joining local resistance and stories of local resistance to the virality of the growing vernacular press in India, which printed news and media for the consumption of the masses. Thus, what changed between the Sanderson Committee Report and the McNeill-Lal Report was the audience and the way it consumed content about indenture. Where colonial officials and some exasperated British abolitionists made up the primary audience for indenture inquiry commissions prior to 1915, after this period the reports were scrutinized by Indian nationalists, Indians across the subcontinent, and indentured laborers themselves, who were at the same time producing and distributing en masse a counternarrative on the lived realities of indenture in places like Fiji. In short, a medium designed for an elite European audience ran headlong into a mass politics.

CONCLUSION

Writing of British Guiana in 1871, an Englishman observed that “the Coolie is *nil*; he has no voice, nor the shadow of a voice.”²⁴⁷ This characterization was apt — for most of the arc of indenture, the laborer’s (and her advocates’) options for effective dissent were slim to none. Whether it was one of the many inquiry commissions or section 24 approvals for introducing indentured workers, the colonial bureaucracy

²⁴¹ See *id.* at 206–08.

²⁴² See *id.* at 208.

²⁴³ *Id.* (quoting *ESCAPE FROM DECEIVERS* (Muzaffarpur, India, Narayan Press)).

²⁴⁴ *Id.* For more comprehensive accounts of abolition, see Kumar, *supra* note 225; and Ray, *supra* note 1. To be sure, elites also played a role in abolition, as evidenced by Gandhi’s agitations in South Africa and the later involvement of the Indian National Congress. See Ray, *supra* note 1, at 21–22.

²⁴⁵ See Ray, *supra* note 1, at 364.

²⁴⁶ See Batsha, *supra* note 99, at 285.

²⁴⁷ JOHN EDWARD JENKINS, *THE COOLIE: HIS RIGHTS AND WRONGS* 155 (New York, George Routledge & Sons 1871) (emphasis in original).

controlled the legitimacy of the system, transforming dissent and resistance into markers of impartial, objective policymaking. As a result, the abolition of this system might have seemed unthinkable throughout the latter half of the nineteenth century.

Visioning the unthinkable, then, required agitating outside the formal channels of dissent. Rather than take a seat at the table where their protests might be digested into institutional credibility, indentured laborers and a mass movement left the proverbial room where it happens to write their own counternarrative on the realities of indenture. For a people that lacked a shadow of a voice, it made all the difference to speak for themselves, and for others to listen.