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Nationality, Citizenship Law, and Questions of Scale

Colonial and Postcolonial Considerations*

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In his important work *The Production of Space*, Henri Lefebvre articulates a wide-ranging and persuasive argument for the social production of space. Space, for Lefebvre, is both a constitutive dimension of social relations, even as it is constituted through such relations that are embodied in an array of institutions, practices, and ideologies. The modern world is composed of multiple social spaces and multiple scales that are inherently historical and processual. Diverging from notions that think of space in terms of nested, concentric circles, where "local" space is contained within and subsumed by "higher" level space, such as regional, national, and global, for Lefebvre "*[s]ocial spaces interpenetrate one another and/or superimpose themselves upon one another*."[1] Any given spatial scale is, in important ways, produced through the relations that characterize such interpenetrations and superimpositions and no spatial scale has an identity independent of such relations. While each scale and spatial arrangement has unique, historically variant qualities, each is, in a sense, simultaneously also multiscalar, intertwined with other spatial scales. Moreover, any given spatial scale is not a smooth and homogeneous formation, but "hypercomplex" and contradictory, shot through with unevenness.[2] Thus, Lefebvre's approach, as Manu Goswami writes, works "[a]gainst conceptions of space as a pregiven container, a physical-geographical location, a neutral backdrop of social relations,

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[1] Lefebvre, *Production of Space*, p. 86, emphasis in original.

[2] Ibid., p. 88.

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an ontological horizon, and a discursive effect."[3] Instead, his work urges us to attend to the multiform modalities – including the institutions, practices, representations, and ideologies – through which social space is produced. However, spatial analysis, Mariana Valverde warns, can often adopt a static perspective, lacking, or certainly muting, a temporal dimension.[4] Unlike such static conceptions, Lefebvre's approach is resolutely historical, concerned not only with multiple social spaces but also with the coexistence and coimbrication of multiple temporalities. In other words, Lefebvre's insights invite us to temporalize social space and historicize scale-making projects.

Questions of scale and of social space are of increasing interest to scholars of migration, ranging from calls for multiscalar analysis to the "local turn" in understanding migration governance leading to greater attention to the urban as an important site of political activity and scale of analysis.[5] One trajectory of this work shows how certain scales – such as the local and the urban – while always important, have been neglected in migration studies; another trajectory shows how these scales are currently emerging as significant to migration governance and to understanding the everyday reality of migrant lives. Contributing to this conversation on scale in migration studies, in this chapter I attend to space–time formations by focusing on the scale-making capacity of law, both historically and in the present, by pursuing two interrelated explorations. First, I seek to historicize the very production *and* disappearance of certain scales. In particular, through an analysis of the legal regulation of colonial Indian migration in the nineteenth and early twentieth centuries, I show how, in the early twentieth century, an imperial sociolegal scale was gradually rendered unintelligible, even as a national sociolegal scale gained ascendance. Addressing legal debates that circulated between India, England, Canada, and South Africa – all part of the unwieldy, legally differentiated, and racially stratified British empire – I show how migration law and regulation in the early twentieth century were an important aspect of the wider, uneven, and fraught historical transformation from

[3] Goswami, *Producing India*, p. 34.

[4] Valverde, "Jurisdiction and Scale."

[5] On multiscalar analysis, see Çağlar and Glick Schiller, *Migrants and City-Making*; on the "local turn" in migration governance, see Zapata-Barrero et al., "Theorizing the 'Local Turn' in a Multi-level Governance Framework of Analysis"; on the shift toward the urban as a scale of analysis and political activity, see Darling and Bauder, *Sanctuary Cities and Urban Struggles*.

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an imperial scale to a national scale, from empire-states to nation-states. To be sure, the varied national liberation movements were the primary agents of this transformation. However, these movements did not, by themselves, dictate the precise contours and "contents" of national space and national scale. To gain an appreciation for the specificities of any scale – for instance, the imperial, the national, or the urban – we must attend to the processes, practices, and institutional forms through which it is produced and constituted. I show how contingent historical events positioned migration law and governance as significant for the production of national scale and of national identity by analyzing two distinct processes of nationalization with respect to Indian migration to South Africa and to Canada.

The domain of migration law and governance, as well as the proximate and overlapping issue of citizenship, are increasingly vital aspects of simultaneously reproducing and redefining national space. Thus, whereas the first set of explorations I pursue outline how the national scale becomes significant with respect to migration in the early twentieth century, I next turn to an analysis of the reworking of national scale in our current moment. I share Neil Brenner's view that no scale preexists the practices and institutional forms through which it is constituted. As such, Brenner suggests that explorations of scale and rescaling are best approached as explorations of processes, where scales are in constant in flux and are constantly being remade.[6] As one instance of such a reconstitution of the national scale, I examine the complex dynamics of the changing migration and citizenship regime in postcolonial India. Since the mid-1980s, the documentation and acquisition of citizenship in India have undergone several radical shifts, steadily moving away from a broad *jus soli* definition to a narrow *jus sanguinis* conception. While the central government maintains sole jurisdiction over the legal definition of citizenship – and thus the definitions of the "foreigner," the "migrant," and the "illegal migrant" – these changes have been markedly shaped by demands emanating from the northeastern state of Assam that has seen a large number of Bangladeshi migrants. I provide a sketch of these demands to analyze how subnational or regional forces are embedded in the processes through which national space and national scale are reproduced and transformed. Though the empirical situations I study here are separated by a century and more, both focus

[6] See Brenner, "The Urban Question and the Scale Question" and "A Thousand Leaves."

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on the centrality of migration and citizenship law to the making and recalibration of (national) scale.

Such issues might seem some distance from theorizing local migration law and governance, the concern of this volume; however, they participate in the conversation assembled here in two ways: First, and most obviously, like other contributions to the volume, this chapter is concerned with describing and analyzing the interpenetration and transformation of scales. However, where several other chapters foreground the local scale – where "local authority," "local government," and "local administration" are "used synonymously to designate the lowest tier of government in any national legal setting"[7] – to consider the forms of local migration law and governance, including how they are shaped by and reshape national and supranational scales, the "local" in my examination is not the "lowest tier of government," but either a sub-imperial polity within empire or the state/province within a national setting. Put otherwise, I mobilize a different understanding of the "local." Second, in charting how the regulation of colonial migrations was articulated to the emergence of national space, national scale, and, indeed, national identity, I seek to complicate and enrich the usual critiques of methodological nationalism. In general, the critique, particularly with reference to scholarship on migration, outlines how the adoption of an unreflexive national framework obstructs our ability to apprehend practices and processes that transcend and exceed the boundaries of the nation-state.[8] Interrogating the national frame has led to an important body of scholarship described as transnationalism. However, the transnational approach does not adequately address the historical *emergence* of the national and the place of migration – especially colonial migration – in constituting national space and scale.[9] Likewise, a robust historical dimension is sometimes lacking in the more recent literature on the "local turn," which also often forgoes its necessary imbrication with other scales. Thus, the kind of historicizing effort I undertake enables us to concretely grasp the social production of space, to clarify the scale-making capacity of the law, and to reflect on the perils and possibilities of emergent legal forms (such as changes in citizenship regimes).

[7] See Baumgärtel and Miellet, introduction to this volume.
[8] For an influential early statement, see Glick Schiller et al., "From Immigrant to Transmigrant."
[9] For a further development of these arguments, see Mongia, "Interrogating Critiques of Methodological Nationalism."

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1 Colonial Considerations of Rescaling: From Imperial Space to National Space

1.1 Migration Governance and/in Imperial Scale: The Nineteenth-Century Genesis

Systematic state regulation of colonial Indian migration saw its genesis with the 1834 British abolition of slavery in slave plantation colonies. Abolition caused plantation owners in Mauritius and the Caribbean to recruit labor from India, which was then becoming more extensively and more tightly incorporated into the British empire. In its early stages, the migration was not subject to any state oversight; this, however, was short-lived. Stringent criticism of the practice was soon voiced by the British and Foreign Anti-Slavery Society and other parties, who saw the movement of Indian labor as "a new system of slavery."[10] To enable the continuation of Indian migration, the Court of Directors of the East India Company (in charge, at the time, of British administration in India)[11] sought to institute a system of state oversight to address these criticisms. However, as such intervention "had no foundation in any existing law,"[12] it led to an extended debate, beginning in 1835 and not resolved till 1842, between state, quasi-state, and nonstate participants that moved between England, India, Mauritius, and the Caribbean.[13] The orienting frame, spatial scale, and economic imperatives of these debates were imperial and not (proto)national. The final resolution, that required potential emigrants to consent to a state-authored and state-authorized labor contract, produced a lasting paradox: The state regulated "free" migration precisely in order to ensure that it was "free."

Significantly, state oversight largely covered only the migration of Indian labor to former slave colonies of the British, French, and Dutch empires, what historians refer to as "indentured migration." The law did not encompass other migration flows, including the far larger movement of people operating under the *kangani* and *maistry* systems – informal,

[10] For details on the objections of the British and Foreign Anti-Slavery Society, see Tinker, *A New System of Slavery* and Kale, *Fragments of Empire*.

[11] For an account of the sovereign and other powers vested in (and divested from) the East India Company, see Stern, *The Company-State*.

[12] Secretary of State for the Colonies to Law Commissioners, India, May 25, 1836, quoted in Edward Lawford, Solicitor to the East India Company, to David Hill, June 12, 1838, *Papers Respecting the East India Labourers' Bill*, p. 2, India Office Library and Records.

[13] For an extended analysis of the debates and the cessation of Indian migration before it was resumed under state authorization, see Mongia, *Indian Migration and Empire*, chap. 1.

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self-organized local recruitment networks – that oversaw migration streams to Ceylon (Sri Lanka) and to various locales in South-East Asia.[14] Thus, the imperial scale that the regulations worked within and helped produce was not a smooth, homogeneous, and frictionless legal space. Rather, to use Lauren Benton's term, it was "lumpy,"[15] allowing for a multiplicity of legal forms, ranging from practices governed by state law to those that came under the purview of what we can call forms of customary law. Despite its lumpy formation, however, for close to a century, the indenture system generated an ever-expanding and minute set of laws and rules, that took shape through dense and complex webs of intracountry and transcontinental correspondence and debate between a host of metropoles, colonies, dominions, territories, and villages that were part of the British, Dutch, and French empires.[16] This was emblematic of what Tony Ballantyne has called the "web-like" character of imperial space, which took shape through connections, circulations, and interdependencies between the metropole and a given colony and *also* placed various colonies in relation to each other.[17] It was not only legal forms – on migration and other aspects of life – that helped produce imperial space. The subjective experience of migration and of quotidian life were also, in time, variously shaped by and embedded in notions of an imperial subjectivity, concretely embodied in the formal, legal category of the "British subject."

In other words, the regulation of Indian indentured migration took shape within and helped produce imperial space and scale. Lumpy and fractured, the jurisdiction of imperial *em*igration regulation to destinations outside India related only to a certain form of labor, namely, indentured laborers who agreed to contracts prior to departing, and who, initially, moved only to former slave planation economies.[18] In fact, Act

[14] For details on the quantitative scale of these movements and an important corrective to the conventional wisdom that grossly underestimates Asian migration in the nineteenth and early twentieth centuries, see McKeown, "Global Migration, 1846–1940" and McKeown, *Melancholy Order*, pp. 43–65. For a more recent overview, see Lucassen and Lucassen, eds., *Globalising Migration History*. For details on the distinction between the indenture system, which organized migration to the plantation economies, and the *kangani* and *maistry* systems of migration from India to a variety of locales in South-East Asia, Burma (Myanmar), and Ceylon (Sri Lanka), see Sandhu, *Indians in Malaya*; Jain, *Racial Discrimination against Overseas Indians*; Amrith, *Crossing the Bay of Bengal*.

[15] Benton, *Search for Sovereignty*.

[16] For an analysis of the morphology of this expansive universe of laws and rules and the mammoth bureaucracy it engendered, see Mongia, *Indian Migration and Empire*, chap. 2.

[17] Ballantyne, "Rereading the Archive."

[18] In the later nineteenth century, the system of indentured Indian labor was extended to sites, such as Fiji and Uganda, that had not seen chattel slavery. In addition, after about

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XXI of 1883, the definitive Indian emigration legislation till 1917, offered thoroughly circumscribed definitions of "emigrant," "emigrate," and "emigration." According to the Act, "'Emigrate' and 'Emigration' denote the departure by sea out of British India of a native of India under an agreement to labour for hire in some country beyond the limits of India other than the island of Ceylon [Sri Lanka] or the Straits Settlements [that included present-day Malaysia and Singapore]."[19] By thus legislatively excluding those who moved to Ceylon, the Straits Settlements, or a host of other destinations from the very definitions of "emigrate" and "emigration," the bulk of Indian labor migrations, as also the migration of merchant communities and others, occurred *outside* the purview of state authority.[20] (As we will see later, this Act would pose considerable constraints on regulating "free" migration in the twentieth century.) Likewise, at the destination sites or the locales of *im*migration – be they of indentured labor or of merchants – there were minimal governmental regulations. Moreover, those that existed did not privilege notions of national origin and national identity that, at the time, were barely operative categories in the way we apprehend them today. Though race and colonial/civilizational thinking structured the regulations, these were not "nationalized."[21]

Indeed, viewed from the vantage point of our contemporary moment, a striking feature of the regulation of Indian migration is the near absence of notions of nationhood, nationalism, nationness, and, consequently, of national citizenship framing discussion and action till the late nineteenth

1860, the "internal" migration to tea estates in the northeastern Indian region of Assam was also regulated, often using the indenture contracts and regulations as a template.

[19] Question whether the term *emigrant* applies to soldiers recruited in India under agreement with the Colonial Secretary for service in Africa, Home Department (Sanitary/Plague), February 1899, Proceedings No. 114–117, National Archives of India (henceforth, NAI). This definition, in fact, had been adopted in Act XIII of 1864, under the guidance of Henry Maine, then a member of the Law Commission in India. See *Report by Mr. Geoghegan on Coolie Emigration from India*, Parliamentary Papers (House of Commons) 47, no. 314 (1874), p. 39.

[20] On the migration of Indian merchant communities, see Markovits, *The Global World of Indian Merchants, 1750–1947*.

[21] Étienne Balibar's discussion of processes of "nationalization" is useful here: Arguing against teleological histories of the nation-state, in which a range of "qualitatively distinct events spread out over time, none of which implies any subsequent event" are interpellated and arranged as specifically prenational, Balibar suggests that we attend to how "*non-national* state apparatuses aiming at quite other (for example, dynastic) objectives have progressively produced the elements of the nation-state or … have been involuntarily 'nationalized' and have begun to nationalize society." See Balibar, "The Nation Form," p. 88.

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and, more especially, the early twentieth centuries. This absence is striking for two reasons: First, because concerns coalescing around gender, sexuality, and sexual morality, articulated precisely to anticolonial Indian *nationalism*, became a crucial lever in accomplishing the end of indentured migration in the twentieth century.[22] Second, because, in the late nineteenth and early twentieth centuries, a new and novel idiom that produced a tight confluence between nation, race, state, and territory would come to decisively shape migration law and policy across a range of locales. Race-based thinking, legislation, and policies, as I noted earlier, were not new; what was new was the specific articulation and institutional forms generated by the convergence of race, nationness, and territory. This raises several questions that demand analysis: for example, through what processes was migration nationalized in diverse locales? How and with what consequences was it federalized? How has control over migration become a *sine qua non* of national space? Many scholars have detailed the race-based logic of migration control across several jurisdictions in the late nineteenth and early twentieth centuries, though typically they have not foregrounded how migration law and regulations were, simultaneously, produced by and implicated in a profound restructuring of space.[23] I briefly analyze here some elements of this restructuring and the scale-making capacity of the law with reference to colonial Indian migration to South Africa and to Canada. To emphasize the contingency of the national scale (indeed, any and every scale is a contingent formation), I recount below the very different trajectories the process of nationalization took in South Africa and in Canada. These disparate trajectories, however, had the common consequence of rendering the pan-imperial category of "British subject" available for division and differentiation by recourse to nationality that, I argue, served as an alibi for race.

While the processes leading to the nationalization of migration law in South Africa and in Canada followed different trajectories, they also shared important similarities: First, motivating the efforts to prohibit Indian migration at both sites was a renovated and muscular racial

[22] For elaborations of this argument, see Tinker, *A New System of Slavery*, especially, chap. 9; Reddock, *Women, Labor and Politics in Trinidad and Tobago*; Reddock, "Freedom Denied"; Kelly, *A Politics of Virtue*, especially, chap. 2; Niranjana, *Mobilizing India*, especially, chap. 2; Nijhawan, "Fallen Through the Nationalist and Feminist Grids of Analysis"; Gupta, "'Innocent' Victims/'Guilty' Migrants."

[23] See, for instance, Lake and Reynolds, *Drawing the Global Color Line*; McKeown, *Melancholy Order*; Young, *Alien Nation*.

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thinking. Second, thwarting the efforts at each site were the legal limitations posed by common membership in empire that, in theory, posited the legal equality of British subjects across the world. Given this liberal premise of the British empire-state, the conundrum that needed resolution was how, in law, to distinguish between and discriminate against (certain) British subjects, without calling the entire edifice of empire into question. Though, in both South Africa and in Canada, racial thinking impelled changes in migration regulation and, in both, racial thinking was recoded as national thinking, the precise trajectory of events indicates the *contingency* of the nationalization of migration regimes. In other words, resolving the race-based issue of migration regulation via recourse to nationality was not an obvious avenue that readily presented itself to lawmakers, bureaucrats, lay people, or budding nationalists at the time.

1.2 Migration Governance and the Making of National Scale: South African Trajectories

Let us turn first to the processes of nationalization in southern Africa. The Union of South Africa came into existence in 1910, following British victory in the South African (or Anglo-Boer) war of 1899–1902. The Union brought together four colonies in southern Africa – Natal, Transvaal, the Cape, and the Orange Free State – that comprised the provinces of the new state. Indian traders and merchant communities were resident in all the four colonies/provinces and, between 1860 and 1911, the British colony of Natal had arranged for indentured Indian labor. Over the years, descendants of indentured laborers had moved to the other colonies, especially the Transvaal (an Afrikaner republic, but under the ultimate suzerainty of Britain). Toward the end of the nineteenth century, prior to the formation of the Union, each colony – particularly the Transvaal and the Orange Free State – had deployed a variety of techniques to curtail, if not prohibit, "Asiatic" (thus including Indian) migration and settlement. These techniques ranged from limitations on trader licenses, to rules regarding hygiene and sanitation, to literacy tests for immigrants seeking entry.[24] Each technique bespoke the imperative of disguising race-based discrimination in terms that could be construed in nonracialized terms. The British had cited remedying the

[24] On this last, see Marilyn Lake's illuminating essay, "From Mississippi to Melbourne via Natal."

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condition of Indians in the Afrikaner colonies as one of the reasons for the South African war; however, after the war and the formation of the Union, such discriminatory legislation was exacerbated, rather than ameliorated.

In 1910, the newly formed Union of South Africa maintained strict provincial boundaries between the four erstwhile colonies as it sought to federalize migration law and formulate Union-wide immigration legislation and policy. These changes were of a piece with the wider trajectory, in the twentieth century, of shifting the regulation of migration from the domain of local authorities to the domain to centralized, federal authority.[25] The so-called "Indian Question" would constitute one of the most persistent, troublesome, and significant issues in framing such legislation in South Africa. For, within the framework of "indirect rule,"[26] that organized legal regimes in Africa, people were distinguished as belonging to either a "tribe," if they were "natives," or a "race," if they were deemed "non-natives."[27] Those deemed to belong to a tribe, in keeping with the logic of indirect rule, were governed via their so-called customary law. Mahmood Mamdani elaborates how those deemed to belong to a race, on the other hand, were governed by a common, yet hierarchically organized, civil law.[28] Indians, as members of a "race" and conceived of as "non-native," were thus governed by ordinary civil law. Due to this two-pronged legal regime, Indians "could not, like Africans, be relegated to a different legal regime, but had to be discriminated against within and by the ordinary law."[29] According to Martin Chanock, they thus "posed

[25] For an analysis of how the regulation of migration moved from the domain of local authorities into the domain of centralized, federal authority in the twentieth century, see McKeown, *Melancholy Order*. Recent scholarship on the "local turn" in migration governance would benefit from tracing the similarities and distinctions of current formations with such historical precedents.

[26] Rather than introduce or impose new legal regimes, that characterized "direct rule" colonialism, "indirect rule" colonialism purportedly sought to maintain so-called cultural traditions and to utilize prevailing legal regimes, often called "customary law," to achieve its ends. For a discussion of indirect rule, see Mantena, *Alibis of Empire*.

[27] For a discussion of distinguishing "tribes" from "races" within the framework of indirect rule, see Mamdani, *Define and Rule*, especially chap. 2.

[28] Ibid.

[29] Chanock, *The Making of South African Legal Culture*, p. 19. "Indians" in "Africa" posed a specific and difficult legal conundrum. The issues are complex, and strain accepted ways of thinking about legal jurisdiction, particularly since the different laws did not follow any logical consistency. For a fine analysis of issues of jurisdiction and the portability of personal law, in general, and with regard to how such issues framed debates over Muslim personal law in relation to Indian migrants in Fiji, more specifically, see Koya, "The Campaign for Islamic Law in Fiji."

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many of the most difficult problems to South Africa's lawyers" and discussion on the immigration legislation opened acute questions regarding the legal definitions of residence, domicile, citizenship, and marriage.[30]

Marriage would emerge as the locus of regulation pursued in South Africa in the early twentieth century. With respect to Indian indentured migration to Natal, marriage was seen as an index of good health and sound morality and, for these reasons, largely served as a mechanism facilitating migration. However, with respect to nonindentured migration to the southern African colonies – for instance, of traders and merchants – marriage was activated as a central institution demarcating the difference between various religiously defined communities and came to function as a mechanism constraining mobility.[31] Ignoring the indubitable presence of a majority Black population, the newly formed South African state positioned itself as the representative of a coherent, racially and religiously defined white Christian community, and migration regulations with regard to Indians would increasingly demand that the kinship relations of migrants, as also of Indians long-resident in South Africa, replicate the Christian nuclear family. Beginning with legal events in the Transvaal, a series of court cases denied the wives of Indian male residents entry into South Africa by declaring *all* Hindu and Muslim marriages invalid – *even when monogamous in practice* – since, in a doctrinal understanding, the religions *permitted* multiple unions, or polygamy. (While polygamy was practiced by several African "tribes," it was cordoned off into the domain of "customary law," via the logic of indirect rule.)

This provoked a massive controversy, not only because wives were denied entry into South Africa but also because the decisions implied that *all* married Hindu and Muslim women in South Africa were "concubines."[32] By 1913, the Indian "marriage question" became tied to the celebrated *satyagraha* (passive resistance) movement spearheaded by Gandhi, who then lived in South Africa.[33] The specific nature of the

[30] Chanock, *The Making of South African Legal Culture*, p. 19.

[31] Unfortunately, due to the constraints of space, I cannot address how successful Indian traders and merchants thoroughly scrambled the racial understandings of class, that is critical here.

[32] See Gandhi, "New Bill" and "The Marriage Question."

[33] Gandhi arrived in South Africa in 1893 and lived there for more than two decades, till 1914, when he returned to India, following the dénouement of the events crudely summarized here. For a more in-depth analysis of these events and the linkage between the "marriage question" and satyagraha, see Mongia, "Gender and the Historiography" and Mongia, *Indian Migration and Empire,* chap. 3.

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articulation between the "marriage question" and satyagraha introduced into the calculus a densely gendered dynamic of Indian *nationalism* with enormous consequences for the terms of the resolution achieved. In essence, the South African state adopted the discourse of nationalism, with religious and racial difference recoded as *national* difference. Acute and complex questions about the fundamental liberal principles of tolerance and a respect for difference, the separation of church and state, and the demarcation of private and public spheres were resolved by recourse to new definitions of state sovereignty articulated to novel understandings of national security.[34] This linkage enabled vastly expanded notions of security that posited varied kinship relations as a threat to the social fabric of settler societies, thus requiring concerted defenses in the form of migration regulations. With officials in both England and India also embroiled in the debate, it was not only the South African state that adopted this position. Asked to weigh in on the matter, Sir Syed Ali Imam, a Muslim member in the Viceroy's Council in India, voiced a similar position, that also disregarded the native Black population as well as other negatively racialized communities and conceived South Africa as a (white) Christian country. His contribution is worth quoting at length:

> [While different] incidents of minor importance attach to the contract of marriage in different centres of Christendom … [there is] no manner of doubt that any marriage that has not monogamy as its basic principle can ever be held to be valid … in any part of Christendom. The law has its origin in the Christian faith and Ecclesiastical authority, but it affects … [the] validity [of] marriages contracted by non-Christians if such validity is sought in a Court in Christendom … It follows, therefore, that the South African Government has considerable justification for standing by a principle that it must bow to as a Christian administration. It will be a feeble argument to advance to say that South Africa is not a Christian country … To all intents and purposes it is a Christian country … It is obvious then, that to ask the South African Government to give up this principle is to ask it to dissociate itself from the rest of Christendom on a point affecting in the highest degree the moral and social conception of Christian nations. This must be regarded as wholly impracticable and outside the range of a reasonable solution of a difficult problem.[35]

[34] My position is not to defend either polygamous or monogamous heterosexual marriage. It is to show how one form of patriarchal relations is normalized and then often defended as less or nonpatriarchal.

[35] "Note" from Sir Syed Ali Imam to Lord Hardinge, Viceroy of India, February 3, 1914, Validation of Indian Marriages in South Africa, Department of Commerce and Industry (Emigration Proceedings–A), April 1914, Proceedings No. 4–8 (confidential), NAI.

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By way of this contribution to the discussion, Sir Syed Ali Imam would help cede South Africa to Christian and white supremacy.

Indentured Indian migration to Natal was summarily suspended in 1911. This opened a path, in 1914, as these debates were underway, to devise new mechanisms to not only restrict nonindentured migration from India but to also work as a mechanism to pressure resident Indians to leave South Africa. The 1914 Indian Relief Bill, offered as the resolution to the "Indian Question," would explicitly code the state as Christian. Men were free to have multiple marriages; the state, however, would recognize only one marriage and only the children of this marriage would be deemed legitimate. Moreover, to be recognized, the marriage would have to be officially registered with the state. This resolution expressed a novel understanding of the liberal principle of tolerance and the relationship between "ordinary civil law" and "customary law," simultaneously recognizing *and* delegitimizing the latter.[36] In this way, the regulation of marriage, certainly insofar as it related to Indian migrants and residents in South Africa, was wrested out of the control of religious authority and moved into the control of state authority. Now, for the purposes of participating in legal migration on the basis of marital alliances, it became mandatory for Indian migrants to corroborate a marriage as documented and verified by the state through a series of stringent regulations.[37] This was in stark contrast to the approach that had governed the marriage and sexual arrangements of the more than 150,000 indentured migrants who had arrived in Natal in the half-century preceding the formation of the Union and prior to the cessation of indentured migration.[38] It is important to note here that while some Indians had polygamous marriages, it was not widely practiced within the Indian community. Indeed, in 1914, with a total "free" Indian population of over 80,000, there were *forty* cases of polygamous marriages.[39]

Feminist scholarship has shown that familial narratives, tropes of kinship, and dense articulations of gender are central, perhaps indispensable,

[36] For a related analysis of marriage arrangements in Fiji, see Kelly, "Fear of Culture."

[37] The complex and contentious debates over the precise form of such documentation and verification are properly the subject of a separate account. While, beginning in the 1860s, the colonial state in India had attempted to institute a system for the voluntary registration of births, deaths, and marriages, this met with limited success. See Singha, "Colonial Law and Infrastructural Power."

[38] On these regulations, see Sheik, "Colonial Rites" and Havaldar, "'Civilizing' Marriage."

[39] Examination of Sir Benjamin Robertson, January 29, 1914, Nos. 712A, 723A, 726A, Indian Enquiry Commission, Department of Commerce and Industry (Emigration

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to nationalist discourse; that national identity seems unable to express itself without resorting to idioms of gender and sexuality.[40] Simultaneously, particularly since the nineteenth century, state regulation of marriage, kinship, and filiations has become an increasingly important realm with regard to producing and policing the limits of modern notions of nationality through procedures of *identification*.[41] The twin forces, of sociocultural formations of identity and politicolegal procedures of identification, that subtend the notion of nationality and operate on distinct, yet interrelated, scales are premised upon and call forth a demand for endogamy. Moreover, the mingling of family genealogy with the definition of national community, as Étienne Balibar notes, "is a crucial structural mode of production of historical racism … [which] is also true when the national becomes a multinational community."[42] Thus, immanent to all invocations of nationality are relations of gender, sexuality, and kinship.[43] In South Africa, over time, the implementation of antimiscegenation laws would demand endogamy within the internally differentiated tribes and the racially classified population. However, the endogamy principle also animates the notion of nationality in general – a point to which I will return.

The 1914 South African Indian Relief Bill explicitly identified "Indians" as a *national* category in migration regulations. Earlier, the category used had been "Asiatic" (including, among others, Indians and Chinese). In fact, as Karen Harris notes, legislation that specifically targeted and isolated Indians as a *national* group emerged only after the formation of the Union of South Africa.[44] Such transformations in the classification of people, from "Asiatic" to "Indian," from a regional category to a

Proceedings–A), April 1914, File No. 24, NAI. It is difficult to ascertain if Robertson refers to forty women or forty men who were in polygamous marriages. But, by his account, there were about forty "such cases."

[40] See, for instance, the important early essays in Yuval Davis and Anthias, eds., *Woman/Nation/State*; Yuval-Davis, *Gender and Nation*; Kaplan, Alarcon, and Moellem, eds., *Between Woman and Nation*.

[41] See Noriel, *The French Melting Pot*; Balibar, "The Nation Form"; Balibar, *We, the People of Europe?*.

[42] Balibar, *We, the People of Europe?*, p. 123.

[43] For an analysis of recent debates and legal responses to "forced marriages" of Muslim immigrants and their place within the production of "white Europe," focused particularly on Norway, see Razack, *Casting Out*, chap. 4. There are several resonances between these issues and recent debates and contestations, at numerous sites, regarding same-sex marriage and concerns about their validity across state jurisdictions.

[44] Harris, "Gandhi, the Chinese and Passive Resistance."

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category understood precisely as a nationality, speak to the microscopic, almost surreptitious, global transformations of the empire-state into the nation-state. In other words, the identification (in affective and legal registers) of Indians as a *national* group by *both* the Indian community and the state fed into processes of nationalization that enabled a recoding of a logic of racialization into a logic of nationality. While Indians, and aspects of migration law, were "nationalized" before the emergence and consolidation of a specifically "South African" national/racial identity, these events nonetheless invested the state with a national character by generating nationality as a viable state (and social) category.[45] Thus, with respect to migration, "nationality," was an unforeseen and contingent outcome of these events.

1.3 Migration Governance and the Making of National Scale: Canadian Trajectories

Another way we can discern the contingency of the nationalization of migration is to assess the very different route it took in Canada. For, as "Asiatics" were being transformed into new kinds of nationality-bearing "Indians" and "Chinese" in South Africa, the category of "British subject" was also undergoing a thorough redefinition. If the salience of this category and its redefinition were tacit in the events that unfolded in South Africa, they were at the heart of the controversy, occurring almost contemporaneously, half a world away, in Canada. Unlike South Africa, Canada was not a destination site for Indian migrants under the state-regulated indenture system. Indians who arrived in Canada in the first decade of the twentieth century journeyed there of their own accord from myriad locations, including India, Hong Kong, and the Straits Settlements. By 1906,

[45] Many studies of nationalism in South Africa have focused, with good reason, on the development of a white Afrikaner nationalism following the formation of the Union and its confrontation, over the course of the twentieth century, with a pan-South African Black nationalism, both of which were directed toward "capturing" the state. We can understand the activities of the Indian population engaged in the satyagraha struggles as a "subordinate" nationalism that, while unable to "fill" or "capture" the state, nonetheless did not leave it "empty." For discussions of important aspects of South African nationalism, see Marks and Trapido, eds., *The Politics of Race, Class and Nationalism in Twentieth-Century South Africa*; Hofmeyr, "Building a Nation from Words"; McClintok, *Imperial Leather*. For the entanglements between Indians and Africans and the trajectories of mid-twentieth-century nationalism in Natal, see Soske, *Wash Me Black Again*.

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when there were about 6,000 Indians in Canada, their presence caused widespread anxiety, premised on racial fear.

Hence, in 1907, in an effort to curtail the migration, Canadian Prime Minister Wilfred Laurier suggested that the Government of (British) India require that Indians emigrating to Canada should have passports and that only a limited number be issued for travel to Canada.[46] While sympathetic to the racist concerns animating Laurier's request, the Government of India found it had no legislative authority to implement his proposal and restrict nonindentured migration from India. For they were constrained by Act XXI of 1883 that, as I detailed earlier, had exceedingly narrow definitions of the terms "emigrant" and "emigration" and applied *only* to indentured migration. Other forms of migration, such as Indians migrating to Canada, did not come under the purview of state authority and state regulation. As the viceroy of India would write in a telegram:

> we recognize peculiar difficulties of Canadian Government and appreciate the conciliatory attitude with which it has approached this difficult question, but after very careful consideration, regret we are unable to agree to any proposal [such as a system of passports] for placing in India restrictions such as are suggested on emigration of free Indians or to suggest any further action on our part to check it. Any such measure would be opposed to our accepted policy: and it is not permissible under Indian Emigration Act XXI of 1883 … In present state of public feeling in India [i.e., the rising anticolonial sentiment] we consider legislation of this kind to be particularly inadvisable.[47]

While rejecting the passport proposal, the viceroy suggested that Canada instead pursue suitably disguised methods of racial discrimination to curtail the migration. For instance, it could "require certain qualifications such as physical fitness … and the possession of a certain amount of money."[48]

[46] Telegram from Governor General of Canada to Secretary of State for the Colonies, received in the Colonial Office, November 11, 1907, Department of Commerce and Industry (Emigration Proceedings–A), February 1908, Proceedings No. 18–33, NAI. In terms of current understandings, the system Laurier proposed is more of a quota system for visas and less of a passport system. The eligibility of (almost) all for access to a passport is a separate history that would take us to the latter part of the twentieth century.

[47] Telegram from Viceroy of India, Calcutta, to Secretary of State for India, London, January 22, 1908, Department of Commerce and Industry (Emigration Proceedings–A), February 1908, Proceedings No. 18–23, Serial No. 16 (confidential), NAI.

[48] Telegram from Viceroy of India, Calcutta, to Secretary of State for India, London, January 22, 1908, Department of Commerce and Industry (Emigration Proceedings–A), February 1908, Proceedings No. 28, Serial No. 16 (confidential), NAI.

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Thus, Laurier's attempt to conduct Canadian *im*migration policy by "remote control," by outsourcing and externalizing it as *em*igration policy in India through a restrictive passport system, was unsuccessful.[49] Like South Africa, the Canadian government thus resorted to diverse methods to disguise its race-based immigration exclusions, even as it continued to press for the adoption of a restrictive passport system. I have analyzed elsewhere the multiple dimensions of these methods and detailed the sequence of events and protracted debates that ensued over the next decade.[50] Here, I briefly recount one such technique that would provoke a radical transformation in the organization of migration regimes, *globally*. In 1908, Canada instituted the Continuous Journey Regulation that stipulated that "immigrants *shall* be prohibited landing [in Canada], unless they come from [their] country of birth or citizenship by continuous journey, and on through tickets purchased before starting."[51] Though the regulation made no mention of race or of nationality (and was quickly reworded to state "immigrants *may* be prohibited landing" to enable bureaucratic discretion in its implementation),[52] it effectively prevented both re-immigrant Indians and immigrants coming directly from India to enter Canada: the former, since they did not come from what was deemed their "country of birth or citizenship"; the latter, due to the successful pressure exerted by the Canadian and imperial governments on shipping companies to cease selling "through tickets" to Indians. (In time, companies terminated direct voyages due to government pressure and financial unviability.) The Regulation was hotly contested, with Indians mounting a challenge premised on the legal equality of "British subjects." For instance, in one petition, Indians demanded their "rights as British subjects with all the emphasis it can command"; protested their differential treatment vis-a-vis other British subjects; and argued that "as long as we are British subjects any British territory is the land of our citizenship."[53]

[49] I borrow the term "remote control" from Aristide Zolberg, *Nation by Design*. There is now a sizable scholarship on the "externalization" of immigration control.

[50] Mongia, *Indian Migration and Empire*; Mongia, "The *Komagata Maru* as Event."

[51] Telegram from Governor General of Canada to Secretary of State for the Colonies, London, January 15, 1908, Department of Commerce and Industry (Emigration Proceedings–A), May 1908, Proceedings No. 6, Serial No. 22, Enclosure No. 3, Annex 1, NAI (emphasis added).

[52] For the circumstances leading to this change, see Mongia, "Race, Nationality, Mobility: A History of the Passport."

[53] British Indian Subjects in Canada to Colonial Office, London, April 24, 1910, Department of Commerce and Industry (Emigration Proceedings–A), October 1910, Proceedings No. 47, Serial No. 8, Enclosure No. 1, Annex 1, NAI.

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This last was not an idiosyncratic or tendentious claim. Rather, the notion of imperial citizenship, that foregrounded an imperial world and posited the equality of British subjects, was at the heart of the difficulties with devising restrictive migration policies.

In this charged context, where the legality – and thus the efficacy – of the Continuous Journey Regulation was under immense pressure, the Canadian government continued to press for a passport system and worried about the reintroduction of direct voyages, particularly by private parties. Concurrently, the Indian government dismissed Canadian worries of direct voyages as purely "hypothetical"; declined to cooperate on the passport proposal; and firmly held to the principle of the "complete freedom for all British subjects to transfer themselves from one part of His Majesty's dominions to another."[54] In a world where empire constituted the horizon of legal and subjective experience (even if these were hierarchically organized), the governments of both Canada and India were unable to conceive of other ideas for how to restrict the migration. It is important that we note this limitation on the imagination and on practical politics. For, as we will see, necessity is, indeed, the mother of invention.

This situation would change in 1914, when Gurdit Singh, an Indian merchant, hired the *Komagata Maru* to make a voyage from Hong Kong (then a British colony) to Vancouver and explicitly challenge the Continuous Journey Regulation. The *Komagata Maru* arrived on the shores of British Columbia on May 23, 1914, with 376 Indian passengers and was refused permission to dock in the Vancouver Harbor.[55] The Indian passengers (except a few who could demonstrate Canadian domicile) were prohibited from reaching shore, as an extraordinary series of legal and extralegal machinations unfolded that would have an enduring impact on migration regimes. Before I turn to these transformations, here is a crude summation of the fate of the passengers: The legal challenge they mounted was unsuccessful and, on July 23, 1914, some two months after the ship had arrived in Canadian waters, it was escorted out of the Vancouver Harbor and sailed to India. On their return to India, the colonial police confronted the

[54] Comments of S.H. Slater, September 19, 1913, Department of Commerce and Industry (Emigration Proceedings–A), October 1913, Proceedings No. 29–30 (confidential, original consultation), NAI.

[55] There is now a substantial body of scholarship on the *Komagata Maru*. See Johnston, *The Voyage of the Komagata Maru*; Kazimi, *Undesirables*; Mawani, *Across Oceans of Law*; Dhamoon et al., eds., *Unmooring the Komagata Maru*; Chattopadhyay, *Voices of Komagata Maru*.

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passengers as seditionists; nineteen were killed and twenty-three wounded in the fracas that followed. Most were imprisoned, and the police closely watched those released. Twenty-nine, including Gurdit Singh, escaped and were fugitives. In 1921, Gurdit Singh turned himself in to the police and spent five years in prison on charges of sedition.[56]

The *Komagata Maru* event is often only understood as an exemplary instance of racist Canadian immigration policy. While this is certainly true, to my mind the event is more significant for the radical and rapid transformations it provoked in the rationales and the institutional scale of migration regimes.[57] First, the event catalyzed a profound transformation in the very premise of migration regulation. We will recall that for almost a decade, the overarching principle of free movement had served as the basis for the Government of India's refusal to acquiesce to Canadian demands. In the wake of the *Komagata Maru* event, there emerged new rationales, that decisively broke with a century of law on free migration and embraced the principle of restrictive and prohibitive measures. In so doing – and this is the second transformation precipitated by the *Komagata Maru* – the new framework fissured the category of the "British subject," thus exposing the myth of the legal equality of imperial citizenship. To contain the dangers this exposure posed to sustaining empire, the justification offered was a conception of the world as composed not of a *hierarchy* of races, but of different, *formally equivalent* "nationalities." Officials recognized the dangers of instituting race-based restrictions on migration in a world where anticolonial nationalisms were ascendent. What was required was a mechanism that would "secure some kind of reciprocity"[58] and "which [would] above all things … have the *appearance* of giving equal treatment to British subjects residing in all parts of the Empire."[59] Nationality, operating as an alibi for race, would prove to be this mechanism. Though it had essentially evaded all parties up to this point, in the wake of the *Komagata Maru*, we see the introduction of "nationality" as a crucial conduit and category in migration law. The

[56] For details on these events, see Johnston, *The Voyage of the Komagata Maru*; Mongia, "The *Komagata Maru* as Event."

[57] For a fuller discussion of this argument, see Mongia, "The *Komagata Maru* as Event."

[58] Comments of R.W. Gillian, June 23, 1914, Department of Commerce and Industry (Emigration Proceedings–A), September 1914, Proceedings No. 18–20 (confidential, original consultation), NAI.

[59] Ibid. (Emphasis added.)

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category of nationality, as an alibi for race, could serve, simultaneously, as a mechanism of discrimination and could, in law, be construed as non-discriminatory. This new thinking, part of what Mrinalini Sinha has called the "imperial-nationalizing" conjuncture, sought to reconfigure and remake empire as composed of different nationalities.[60] (The incorporation of seemingly nonracial "national quotas" in the migration regimes of diverse states is a direct legacy of this racial thinking). A third and important related outcome of the *Komagata Maru* event, combined with the context of the onset of World War I, was a new and novel understanding of state sovereignty and security also made on *national* grounds. To avoid seeing the emergence of the national as a foregone teleology and to grasp its contingency in terms of migration regulation, it is important that we keep these conjunctural elements in view.

The legal splitting of the category of the "British subject" into a host of nationalities came to embodied (in this case, as in others) in the passport as expressing a *national identity*. The passport is one of the institutionalized forms that produces and constitutes the national scale as, specifically, an element in an international order with regard to migration, since this particular document is addressed not to the issuing state but to other states. Moreover, though other kinds of identity documents are often issued by local or state/provincial authorities, the passport now carries the imprimatur of federal authority, *everywhere*, and helps constitute the federal or national scale as the normative scale of migration control. Given a technology such as the passport – the emblematic artifact of modern migration law – the very act and regulation of modern migration *produces* national identity, in legal and affective registers.

The different trajectories that unfolded in South Africa and Canada (and, indeed, elsewhere), emphasize the contingency and fitful historical emergence of the national scale and national identity with regard to migration regulation in the early twentieth century. While some sites, such as the United States, had a more nationalized regime, this was an anomaly at the time. (Moreover, rather than being content as a nation, the United States was also an aspiring imperial power, as is amply evident in its annexations of sites such as the Philippines, Hawaii, and Puerto Rico after the Spanish-American War of 1898.) To further apprehend the novelty of the national, it is useful to note that in the early twentieth century, both Canada and South Africa lacked the robust dimensions of what one

[60] Sinha, "Premonitions of the Past," p. 825.

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could call a "national identity." In Canada, while British imperial identity was strong, white racial identity was stronger, leading to a fracturing of, but not a severance from, the category of "British subject." (Ironically, the legal category of the "Canadian citizen" would only emerge in 1947 the same year as Indian independence that, also shedding the nomenclature of "British subject," inaugurated the "Indian citizen.") In South Africa, on the other hand, British imperial identity was unsteady and imperiled, under attack from a white Afrikaner identity. But, here too, white racial identity would triumph over imperial identity, finding its institutionalized apotheosis in apartheid by 1948. Moreover, in both Canada and South Africa – as in several other sites, particularly other white-settler colonies like Australia or the United States – white racial identity would form the basis for producing national identity, marginalizing both the indigenous populations and minoritized migrants of color. Simultaneously, in sites such as India, the situation of Indian emigrants fed into a burgeoning anticolonial nationalism and played a part in a shift of nationalist aims from seeking *swaraj,* or self-rule within empire, with Dominion status akin to that of Canada and South Africa, to demands for *purna swaraj*, or complete independence. Over time, the processes put in motion by events such as the ones I have related here would not only situate national identity, largely working as a proxy for race, as a crucial conduit for inter*national* migration control; the "national" would also become the normative site and scale of such control. While it would take a several decades longer for an imperial scale and an imperial space to dissipate and disappear, the framing of migration law *in terms of* nationality was certainly one factor that helped introduce and consolidate in the world a national scale and a national space.

However, the national scale or, indeed, any scale, is not a fixed formation. Scales, as Brenner reminds us, "are no more than the temporarily stabilized effects of diverse sociospatial processes, which must be theorized and investigated on their own terms."[61] Thus, it is "*processes* of scaling and rescaling, rather than scales themselves, that must be the main analytical focus for approaches to the scale question."[62] In exploring the contours of local migration law and governance, many chapters in this collection are concerned, explicitly or implicitly, with how transformations at diverse sites might be indicative of and interwoven with rescaling

[61] Brenner, "The Urban Question and the Scale Question," p. 31.
[62] Ibid. (Emphasis added).

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projects. Focusing particularly on the local and urban scale, these essays demonstrate the necessity for multiscalar approaches to migration analysis. Keeping in mind Lefebvre's insight that different scales interpenetrate each other and are produced in and through their relations with other scales, it becomes important to ask if, how, when, why, and where the national scale is recalibrated. Addressing such questions, among others, will ensure that we do not operate with congealed, invariant understandings of scales, in general, and of the national scale, in particular. To demonstrate the recalibration of the national scale, I now turn to a profound rescaling project currently underway in India. Within a context shaped by a majoritarian Hindu nationalism, this rescaling project is remaking the contours of national space, scale, and identity through the dual processes of changes in the citizenship law, on the one hand, and new practices of identification, on the other. In what follows, I consider these dual processes to provide the rough lineaments of how modalities of detention and expulsion are becoming key characteristics of national scale in India.

2 The Postcolonial Nationalizing Project in India: Producing Statelessness

The basic principles that structure Indian citizenship, outlined in Articles 5–11 of the Indian constitution, include a union-wide, pan-Indian notion of citizenship with Parliament as the body responsible for enacting laws on citizenship. Niraja Gopal Jayal notes that after independence in 1947, there were impassioned debates in the Constituent Assembly, tasked with drafting the Indian constitution, on how to define and delimit the category of citizenship.[63] Ultimately, the Assembly decided to premise citizenship on a broad-based *jus soli* principle, to address the extraordinary circumstances of Partition that attended Indian independence and to explicitly reject the "racial" principle animating *jus sanguinis* conceptions that, in the Assembly's view, had shaped citizenship in South Africa.[64] Later, the Citizenship Act of 1955 incorporated a combination of *jus soli* and *jus sanguinis* conceptions of citizenship, as is the case in many jurisdictions around the world. The Citizenship Act of 1955 would remain largely unaltered till the mid-1980s. At that time, changes to it were forced due to vigorous contestations and agitations concerning

[63] Jayal, *Citizenship and Its Discontents* and "Citizenship." See also, Roy, *Mapping Citizenship in India*.

[64] Jayal, "Citizenship," p. 165.

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migrants in the northeastern state of Assam, that borders Bangladesh (formerly, East Pakistan).

What is known as the "Assam Movement" emerged in full force in the late 1970s, when it became evident that recent migrants from neighboring Bangladesh were on the voter rolls in the state. Led by the All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP), the Assam Movement was an anti-immigrant agitation with two main concerns: The first regarding the political implications of purported and real noncitizens on the voter rolls; the second regarding the cultural implications of the threat Bengali-speaking migrants were seen to pose to the vitality of Assamese language and culture. Religion was complexly interwoven into the culture- and language-based agitation that had a complicated support base, drawing from, among others, Assamese Hindus and Muslims and Indigenous tribal groups.[65] In 1983, as state assembly elections were underway – ignoring a boycott issued by AASU and AAGSP on the grounds that the voter rolls were inaccurate and the election illegitimate – the state witnessed a brutal massacre of 4,000 (purported) Bengali/Bangladeshi immigrants and their descendants in several villages. The central government had believed that the anti-immigrant sentiment was restricted to urban centers; the horrific massacre showed that it also had strong support in rural areas, among the Indigenous peoples as well as the Assamese. In other words, the anti-immigrant sentiment was alive across communities and across both urban and rural scales.

Anupama Roy and Ujjwal Singh show that the Assam Movement relied on "the figure of the 'migrant alien' as disruptive of both the Assamese ethno-space and the national political space."[66] They argue that it triggered a process that sought to construct a subnational identity and a notion of nationality/citizenship that was both "distinct from and consistent, coexistent, and concurrent with an Indian nationality."[67] In this wider context, where the Movement sought both distinction and similarity, the central government made two legislative changes to address its demands: First, in 1983, to address the claim of the distinctiveness of the situation in Assam, it enacted the Illegal Migrants Determination by Tribunals Act that outlined a complex set of procedures to identify "illegal" migrants in the state

[65] For an overview of the complex alliances that characterized the movement, see Weiner, "The Political Demography."

[66] Roy and Singh, "The Ambivalence of Citizenship," p. 39.

[67] Ibid.

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of Assam. (As the Act was restricted to Assam, and as it was largely symbolic, not yielding a mass identification of "illegal" migrants as those in the Assam Movement had hoped, it was legally challenged and struck down as unconstitutional by the Supreme Court in 2005.)[68] Second, the central government reached a settlement with the Assam Movement and, in 1986, it passed an amendment to the Indian Citizenship Act. The amendment stipulated that to qualify as a citizen by birth in India at least one parent of a child had to be an Indian citizen at the time of the birth. Though the motivation for this sea-change – from a *jus soli* to a *jus sanguinis* conception of citizenship – came from the specific conditions and the agitation in Assam, the act was effective nationally and spoke to the dimension of similarity and co-extensiveness of Indian citizenship. We see here, with exceptional clarity, the interweaving and reciprocal determination of scales, where agitations animated by subnational, relatively "local" concerns have wider, national reverberations and consequences.

These reverberations and consequences were – and are – not contained within a politicolegal sphere; rather, as with earlier events in South Africa and Canada, politicolegal and sociocultural spheres are mutually conditioned. Indeed, in the intervening years since the 1986 amendment, the figure of the "illegal migrant" has become an increasingly potent weapon for the Hindu nationalist agenda of the Bharatiya Janata Party (BJP) and allied right-wing organizations, that have sought to mobilize anti-immigrant sentiment more broadly – for instance, in seeking electoral gains in West Bengal (another state that shares a border with Bangladesh). The figure of the internal migrant and the (international) "illegal migrant" also found resonance in the west of the country, where it fed into the anti-immigrant project of the Shiv Sena (another right-wing party) in the western state of Maharashtra, particularly Mumbai.[69] With the BJP and its allies often using the term "infiltrators" to refer to "illegal migrants," especially if they are Muslim, the issue of migrant interlopers now has national resonance in a sociocultural register. Simultaneously, in legal terms, since 1986, the trend toward a *jus sanguinis* conception of Indian citizenship has intensified.[70] Thus, in 2003, another amendment to the Citizenship Act further restricted eligibility by birth to only those with at least one parent who was

[68] For an extended analysis of the Act, see ibid.

[69] For a discussion of the anti-immigrant and anti-Muslim project of the BJP, particularly in West Bengal, see Gillan, "Refugees or Infiltrators?".

[70] For instance, Jayal, "Citizenship"; Jayal, "Reconfiguring Citizenship in Contemporary India"; Roy and Singh, "The Ambivalence of Citizenship."

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an Indian citizen and the other not an "illegal migrant" at the time of the birth. In addition, the 2003 amendment stipulated that the government compile a National Register of Citizens (NRC), verifying the citizenship – or lack thereof – of every person in India. In Assam, to count as a citizen of India, people must provide documentation that they, or their ancestors, have been resident in India prior to March 25, 1971 (when, after a civil war, East Pakistan seceded from Pakistan and became Bangladesh).

For a good decade, the government took no steps to implement the NRC. It was finally initiated in Assam in 2014 (under the supervision of the Supreme Court), with plans to expand it pan-nationally soon thereafter. The results of the NRC exercise in Assam have produced disastrous consequences: The final NRC, released in August 2019, excludes 1.9 million people who have been deemed "illegal migrants" due to insufficient documentation.[71] However, insufficient documentation might not be an indication of a lack of legal status but, more so, an indication of socioeconomic marginalization, disproportionally affecting certain groups, such as those who are poor or illiterate, particularly Muslims and Dalits; or members of transgender communities, who have fled natal homes; or women who might have married young and have no access to the relevant documents. In addition, the converse is also true: Possessing documents is not the verification of a preexisting legal status but might be the result of what Kamal Sadiq calls "documentary citizenship," whereby people are able, through various means, to assemble a dossier of documents that qualify them as citizens.[72]

The results of the NRC exercise have been met with disappointment and alarm by different factions for different reasons. Some, such as the AASU and its allies, object to the NRC on the grounds that it did not identify sufficient numbers of noncitizens;[73] others, such as the right-wing, fascist, Hindu nationalist BJP, that currently holds an absolute majority in Parliament, are disappointed that a large number of those identified as noncitizens are (Bengali) Hindus;[74] yet others, such as liberal and left forces and international organizations, like the UN Human Rights Council, are deeply concerned about the implications of rendering

[71] Joint Forum Against NRC, "Exclusion of 19 Lakh [1.9 million] People."
[72] Sadiq, *Paper Citizens*. Sadiq's work asks us to rethink what we might mean by the category of "undocumented migrants" and suggests that, in sites such as India, noncitizens are more likely to have documents of citizenship.
[73] "Assam NRC Final List."
[74] Dutta, "Assam NRC"; Indo-Asian News Service, "Unhappy BJP to Move Supreme Court."

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people as noncitizens/illegal migrants.[75] For, while the NRC deems people noncitizens or "illegal migrants," presumably from Bangladesh, such a determination is not equivalent to their being legally acknowledged as Bangladeshi citizens. As Talha Rahman observes, the finding – accurate or otherwise – that a person is not a citizen of India does not imply that India can accord the person a different citizenship.[76] India has repeatedly assured Bangladesh that the NRC is an "internal" exercise; Bangladesh, for its part, has maintained that those deemed noncitizens in India are not Bangladeshi nationals. Those excluded from the NRC are thus rendered stateless and potentially confront lives in "perpetual detention," with deportation not an option.[77] (The term, "stateless" is, of course, a misnomer, since "statelessness" is willfully produced, precisely, by states and is a status oversaturated by the gaze of the state.) Meanwhile, detention centers are under construction in Assam and in other states.[78]

The already dire situation produced by identification procedures has been exacerbated further by yet another amendment, via the Citizenship Amendment Act (CAA), passed in December 2019. The Act outlines the criteria by which people of six non-Muslim faiths (Hindu, Sikh, Buddhist, Jain, Parsi/Zoroastrian, and Christian) from three neighboring countries of Pakistan, Bangladesh, and Afghanistan can be eligible for Indian citizenship. Specifically, those resident in India prior to December 31, 2014 can apply for citizenship on the grounds of religious persecution in these three neighboring, Muslim-majority countries. The Act is silent on other countries that neighbor India, such as Myanmar, Sri Lanka, or China. The CAA has been critiqued and opposed on several grounds – most vigorously by citizens' protests, often led by women.[79] However, different sets of protestors had very different rationales for their opposition to the Act. Some, particularly in the northeastern border states such as Assam, Mizoram, or Tripura, protested on the grounds that the Act opens the

[75] *Deccan Herald*, "Harsh Mander's Full Report"; Office of the High Commissioner, United Nations Human Rights Council, "UN Experts: Risk of Statelessness and Instability in Assam, India"; Bhat and Yadav, "The NRC in Assam Doesn't Just Violate Human Rights of Millions."

[76] Rahman, "Identifying the 'Outsider'."

[77] Ibid., p. 118.

[78] There are currently six detention centers, often appended to jails, in use in Assam; the construction of several more detention centers is planned for Assam and other states. See Gettleman and Kumar, "India Plans Big Detention Camps for Migrants."

[79] For an excellent analysis of some these protests, see Rao, "Nationalisms By, Against and Beyond the Indian State." One of the protestors, an 80-year-old woman named Bilkis, was named one of *Time Magazine*'s "Most Influential People of 2020." See Ayyub, "Bilkis."

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floodgates to refugees and threatens the cultural and linguistic balance in these states.[80] Others, in sites such as Delhi, most famously Shaheen Bagh, protested on the grounds that by introducing religion as a basis for citizenship, the Act undermines the secular underpinnings of the Indian constitution and is, in fact, unconstitutional. Such objectors identify several flaws with the legislation.[81] For instance, that some religious minorities (e.g., the Muslim Ahmadiyya in Pakistan or the Hazara in Afghanistan) are also persecuted minorities in the three neighboring countries specified but are not offered protection in the Act; that religious persecution is alive and well in other neighboring countries (e.g., the Rohingya in Myanmar or Hindu Tamils in Sri Lanka) that are not included in the Act; that the 2014 "cut-off" date is arbitrary, mysteriously assuming no persecution beyond that date; that rather than advancing a piecemeal refugee policy, India might be better served with acceding to the Refugee Convention (to which it is not a signatory, often making refugees – ranging from Tibetans to Sri Lankan Tamils – vulnerable to the whims of the ruling dispensation).[82] But all manner of protests came to a halt with the "lockdown" imposed in March 2020, due to the COVID-19 pandemic. Under cover of the pandemic, when widespread public protest became impossible and momentum was lost, we have seen draconian criminal charges brought against protestors, particularly those voicing critiques on constitutional grounds.[83]

The Act has profound potential consequences for the everyday life of the Muslim population, including Muslim citizens, in India, since executing such legislation is, of course, dependent on bureaucratic measures. As such, the CAA must be understood in conjunction with the deeply flawed NRC exercise conducted in Assam that, as I noted earlier, potentially renders almost two million people stateless. When we place the CAA alongside this bureaucratic exercise, new causes for concern come to the fore. Bureaucratic discretion, harassment, and corruption have been

[80] Ratnadip Choudhury, "'Want Peace, Not Migrants': Thousands of Women Protest Citizenship Act Across Assam."

[81] Though some 140 petitions on the Act have been filed with the Supreme Court, it has not addressed them. See Mandhani, "CAA Case."

[82] As a small sampling of these different critiques, see Mander, "If Parliament Passes the Citizenship Amendment Bill"; Kesavan, "Border of Unreason"; Kapila, "These Are Some of the Refugees"; Angshuman Choudhury, "No, the Shameful Attack on Sikhs in Kabul Still Doesn't Justify the CAA."

[83] The Polis Project, "Manufacturing Evidence."

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widely documented in the NRC exercise.[84] The perils for those identifying as – or bureaucratically identified as – Muslim are grave, since the CAA does not offer a path to citizenship for Muslim refugees.[85] Though the CAA is one instance of what Nicholas de Genova calls "the legal production of illegality,"[86] its implementation will largely depend on the bureaucratic production of il/legality. Thus, even those Muslims long-resident in and citizens of India, could be rendered stateless and "illegal" by bureaucratic fiat, working in conjunction with a religiously defined, majoritarian nationalism.

For, it is not only legal transformations that have narrowed the scope of citizenship and expanded the category of "illegal migrant" in India, as it has elsewhere. Equally, a discourse of "illegal migrants" has proliferated well beyond Assam and has become a part of the national political conversation in India in a sociocultural register at the spatio-temporal scale of the everyday. The figure of the "illegal migrant" – or "infiltrators," to use the language of the Hindu Right – now serves multiple functions: It is raised as a bogey to instill fear; it helps to shore up Hindu majoritarianism; it can be deployed as a handy scapegoat to explain away all manner of depredations that people confront; and, lastly, the terminology of "infiltrators" does critical work in yoking migration to national security, positioning Muslims as terrorists, and thus "deserving" of expulsion. This discourse, that simultaneously draws on and contributes to a more global language and hysteria of "illegal migrants," has perniciously seeped into the social fabric of the polity, well beyond legal definitions, to become a part of the new (or renewed) common sense.

In India, at the hands of what Arjun Appadurai describes as "predatory majoritarianism"[87] the issue of a minority population within the nation is in the process of being converted into a problem of "illegal migrants," the "imposter within,"[88] who should be expelled, or at least detained. However, the rise of predatory majoritarianisms, generated by what Appadurai calls a "fear of small numbers" (i.e., of minorities), is not unique to the Indian context. While Appadurai identifies the Nazi expulsion and extermination of Jews and others and the more recent genocide

[84] Mathur, "The NRC is a Bureaucratic Paper-Monster"; Field et al., "Bureaucratic Failings in the National Register of Citizens."
[85] Kesavan, "An Evil Hour."
[86] De Genova, "Migrant 'Illegality' and Deportability in Everyday Life." See also, de Genova and Roy, "Practices of Illegalisation."
[87] Appadurai, *Fear of Small Numbers*.
[88] Ghosh, "Everything Must Match."

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in Rwanda as paradigmatic instances of predatory majoritarianism, the tendency toward deportation, expulsion, and detention as the appropriate response to the notion of "illegal migrants" is now more widespread and is daily gaining ground. With the criteria that define national membership/citizenship made more stringent, statelessness is exacerbated, globally, as are deportations, expulsions, and detentions. This new formation of the national scale is not content with merely policing and producing the putative border, as was the largely the case in the early twentieth century; forms of violent expulsion are now part and parcel of an acceptable, even necessary, response.

3 Conclusion

The overarching argument of this chapter is that scales shift, change, and can appear and disappear. Keeping in view Valverde's caution that discussions of space and scale can often elide a temporal dimension, this chapter has sought to historicize scale- and space-making projects over the *longue durée* focusing on migration governance as a constituent part of scale-making processes. I have shown how, in the nineteenth century, state control of Indian indentured migration was driven by the anxieties of freedom, generated by British slavery abolition, and led to the regulation of certain migration streams in and across imperial space. In the early twentieth century, wider control of migration was driven by a hierarchical racialized logic and, while taking shape across an imperial scale, led to the harnessing of migration control at the national scale, on a par with such other, temporally scattered, national scale- and space-making projects such as national currencies or national armies (the latter effectively only emerging after World War II).[89] By my account, racial thinking subtended the emergence of the national as a critical node in the regulation of migration in the early twentieth century. The aim of such practices of bordering was to prohibit the entry of negatively racialized migrants (while facilitating the entry of those positively racialized) and helped to delineate and constitute the geopolitical "external" contours, the "territorial outside" of the national, with decisions on the admission of people into state space often made at literal sea and ocean ports.

A century later, we are witnessing very different kinds of scale-making techniques where new procedures of identification join with new

[89] See, for instance, Barkawi, *Soldiers of Empire*.

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understandings of citizenship – including those that vitiate *jus soli* principles and strengthen *jus sanguinis* principles – to not only proliferate the border into everyday life but also to generate national states that are engaged in the forcible expulsion and detention of people. Scholars have shown how the border and practices of bordering can be discerned and have proliferated well beyond the twin imperatives of geopolitical/territorial and demographic closure.[90] In fact, practices of bordering have now become especially intense *within* national-state space with new forms of governmentality, that resort to detentions, deportations, and expulsions – alongside the production of statelessness – increasingly common. A part of what Matthew Gibney calls the "deportation turn,"[91] such endeavors can be identified in various state spaces.

The recent legal and sociopolitical events in India that I have detailed above are, simultaneously, part of and help to consolidate this wider tendency. Embodied in such changes is an alarming rise of new forms of ethnonationalism. These new forms of ethnonationalism have largely forsaken the reservations evinced by the Indian Constituent Assembly in 1950, when it rejected the "racial principle" that animated a *jus sanguinis* basis for citizenship and opted, instead, to articulate a *jus soli* premise for Indian citizenship. Now, in India, as elsewhere, we see a reconfigured and renewed "racial principle" that, like South Africa in the early twentieth century, mobilizes a highly restrictive endogamy, or *jus sanguinis* principle, as the basis for membership in the sociopolitical community. While the numerical scale of the operation of ethnonationalism in sites such as India – with almost two million people potentially stateless – is daunting and cause for grave concern, the overarching tendencies toward ethnonationalism are more widely evident in our historical present. Two legal processes characterize these tendencies: First, the twentieth-century logic of exclusion (that subtends prohibiting migration) is now supplemented by a logic of expulsion and detention. Second, in order to expel and detain people, they must first be rendered "migrants" and, preferably, "illegal migrants." This can require complex legal and bureaucratic strategies, like those presently taking shape in India. Such transformations in India are indicative of a recalibration of scales. Formed through a multitude of processes, ranging from law to sociocultural reconfigurations, we

[90] For two especially provocative meditations on the border and practices of bordering, see Balibar, "What is a Border?" and Mezzadra and Neilson, *Border as Method, or, The Multiplication of Labor*.

[91] Gibney, "Asylum and the Expansion of Deportation in the United Kingdom."

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see an interpenetration and superimposition of subnational and national scales wherein each is reworked. Thus, as scholarship in migration studies engages with questions of scale, it will be important to keep in view the more general tendencies; the complex lineaments (e.g., colonial and post-colonial; legal and sociocultural) that constitute their specific iterations; and the reciprocal traffic between the two.

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