Legal Selves in Question:
Defining African Personhood from Colonial Times to the Present

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Introduction

It is a truism that apartheid functioned in part because it was a system that revered the law even while it broke it. Whether it was detentions without trial or the 1936 removal of Africans from the voters’ roll, segregation and apartheid legislation was constantly being tested in the courts. When thinking about “constitutionalism” therefore it is tempting to merely think about the period 1948-1994 as representing the “low” point of South African constitutionalism and that therefore the end apartheid also marked the beginning of the “high” point of South African constitutionalism. Although there is probably an extensive literature on what a constitution is and what constitutionalism consists of, it may be useful to cite two dictionary definitions that will function as a foundation for this paper’s arguments. The first definition comes from The Oxford International Encyclopedia of Legal History and the second comes from the Dictionary of the Social Sciences:

The term “constitution” derives from the Latin word constitutio, as it was used in medieval European jurisprudence and politics since the reception of Roman law, beginning in the eleventh century, and in the Aristotelian philosophy of state (twelfth century), as well as the imperial laws. It indicates the order of the community as it is given to man. The German equivalent Verfassung, which first appears in the fourteenth century, initially described an agreed-upon method of solving disputes and the written summary thereof. Its meaning was later extended to describe written laws and the given circumstances themselves, and eventually it was used to denote the overall political and social constitution of a territory, by analogy to the idea of bodily constitution in medicine. The traditional political order, which was held to be legitimate, was not at the disposition of the ruling or the ruled. Inasmuch as the Golden Bull (1356) or the Eternal Public Peace (Ewiger Landfriede) of 1495 are referred to under the rubric of medieval constitutionalism, the selective nature of these acts, which only regulated the extent of the ruler’s power, goes without question. (Pauly and Nieschlag 2009)

“...constitutions are only as strong as the constitutionalism—the collective faith in the priority of constitutional law—that underlies them. The conditions under which constitutions are legitimately instituted, broken, amended, or temporarily suspended have been a persistent concern for political theory, beginning with the social contract tradition of Thomas Hobbes and John Locke (see social-contract theory). As the Abbé Sieyès noted in his contribution to the drafting of the first (short-lived) Revolutionary French constitution, the creation of a constitution is itself almost always “unconstitutional.” Sieyès called the creation of a new constitution the “constituent power” (pouvoir constituant), an exceptional political moment in which the people act directly, whereas the government created by that function was the “constituted power” (pouvoir constitué), which acts within the realm of ordinary politics. Although new constitutions are still being written, several new democracies, including Poland and South Africa, have succeeded in reinventing the political order by amending the rules of the old constitution, thereby avoiding any break in the rule of law.” (constitution and constitutionalism 2002)

Although lengthy, the main purposes of quoting these definitions in full is that they highlight two important aspects of the history of constitutionalism in South Africa: firstly, that “territory” and “constitution” are contiguous terminology, that is, a constitution can only be drafted if there is a territory to govern and constitute; secondly, it is that South Africa has experienced several “exceptional political moment[s]” where “constituent power” in whichburghers, settlers, citizens drafted and debated a constitution. Whether it was the granting of representative and
responsible government to colonies or the creation of a unitary state in 1910 or the drafting of the current constitution of 1996, South Africa has not lacked constitutions. However, this paper is not concerned with these constitutive moments. Rather, it is concerned with the phrase, contained in the first definition, that constitutions are defined by “analogy to the idea of bodily constitution in medicine”. This paper is part of a larger project titled “The Night Watchman: A History of Portraits” in which I hope to write about photographs of “Zulu” policemen from the late nineteenth and early twentieth centuries. These photographs record, I wish to argue, a fascination with the bodies of “Zulu” men while also being a genre constituted mostly by photographers who took what I estimate to be hundreds of photographs of African men in uniform and labelled most of the subjects as “Zulu”. Part of what is at stake in the creation of the Zulu Policeman as a photographic subject is the uniform itself. Thus, photography, clothing, violence, policing and Zuluness are simultaneously embodied in the figure of the Zulu policeman and the objective of the research is to show how the confluence of these elements involved in part debates about the “body”. To this end, this paper will present moments in the constitution of the “Zulu” body and show how the law was implicated in the interpellation of Zulu subjects, especially men, as photographic subjects.

The first thing to know about the “Zulu Policeman” is that his designation exists almost solely in the photographic archive. The second thing to know about the “Zulu Native Policeman” is that he is preceded in history by a rabble of levies, regiments and mercenaries. This latter history is most emblematically represented in a painting by Thomas Baines – South Africa’s father of landscape painting. Baines (1820–1875) was born in on November 27, 1820, in King’s Lynn, Norfolk, England. In 1842, he traveled steerage to Cape Town where he began to practice his art commercially. In 1848, he joined an ox trek north to the Orange River and gained his first experience of travel into the interior, sketching and painting. In 1851 he enlisted as an artist with the British army in the “Kaffir War” (Cape Frontier War) of 1850–1853, before returning to England. The painting is titled “The Loyal Fingo” and it depicts African levies in motion. There are many things to be noted about this depiction but first, it is important to briefly describe who the “Fingoes” (colonial name) or amaMfengu were. The identity of the amaMfengu is linked to the controversy over the meaning of the “mfecane” (the social and political upheaval caused by the rise of Shaka Zulu). Like many other ethnic identities in southern Africa, the amaMfengu enter the scene of colonial conflict and encroachment as “refugees from Shaka’s wars”. In 1835 they supposedly signed an alliance treaty with Britain and in exchange for land and Christian education and evangelization, they agreed to be the allies of the British against the Xhosa as the former extended the Cape Colony into the eastern Cape. Baines’s painting depicts a Mfengu levy with a rifle slung over the shoulder and multiple objects of adornment and practical use on his person. For our purposes it’s not the details that matter but the very arbitrary and meddled quality of his attire. Without the rifle, there is nothing particularly militaristic about his attire – the feathers in the hat, the genet tail and horn hanging from his waist etc. all suggest sartorial choice rather than military regulation. This painting is pleasing to the eye because of its irregular combination of rugged practicality and spectacular dandyism. From the perspective of postcolonial theory and the general criticism of colonial representation, this painting is not real. It has
become the accepted position to read such paintings as fantastical, that is, they are partly based on reality but are mostly the products of the imagination of the painter who is often depicted as eager to “exoticize” his subjects while presenting the landscape as an idyll ready to be conquered and subjugated to Western industry and cultivation. Baines fits into this stereotype of the colonial “amateur” ethnographer because not only did he paint and sketch scenes from his expeditions but in 1854 via his contacts in the Royal Geographical Society (RGS) he joined an expedition to Northern Australia as artist and storekeeper. He returned once again to the Cape in 1868, this time as “exploring superintendent and geographer” for the South African Goldfields Exploration Company, with prospecting sights on Matabeleland (Stone 2007). “The Loyal Fingo” can therefore not be read as a reflection of the “liberty” enjoyed by African levies and mercenaries. Yet, for our purposes it is a starting point for a different kind of enquiry. If we accept the argument that these kinds of paintings are not an accurate depiction of reality then the question that logically follows is, what happens when the camera is introduced and colonial armies and police units are captured through the lens? This transition is at the core of the argument of this paper since as James Ryan argues in Picturing Empire, then and now photographs are treated as the “eye of history”. He goes on to state that the assumed “exactitude of the camera” could not have emerged “without the pictorial conventions of perspectival realism that it inherited via landscape painting” (1997, 16-17). In the case of the Zulu Policeman, the point is not to only demonstrate this shift from painting to photography, but also to enumerate the pictorial conventions that have created this archive of photographs and allow us now to reconstruct elements of the “collective colonial memory” (1997, 12) that continues to animate these representations.
Figure 1. Thomas Baines. “The Loyal Fingo”. In Thomas Baines. Eastern Cape sketches, 1848–1852.
“Strict Observers of Truth”: Colonial Imagination and the Disciplining of the Frontier

They are not strict observers of truth, and, though not pilferers, they are addicted to cattle lifting. According to their ideas, stealing cattle is not a crime; it is a civil offence, and a thief when detected is compelled to make ample restitution; but no disgrace attaches to it, and they have no religious scruples concerning it. (Theal 1886, 28)

In a few choice descriptions, ethnography becomes criminology in George McCall Theal’s introductory chapter to the book *Kaffir Folklore: A Selection from the Traditional Tales Current Among the People Living on the Eastern Border of the Cape Colony with Copious Explanatory Notes*. The entire introductory chapter to Theal’s monograph is dedicated to describing the Xhosa, as a cultural and linguistic group (referred to as the “Kafirs”); the description of their morality, or lack thereof, as a cultural norm becomes a venture into colonial criminology. In asserting that the Xhosa have no moral objection to stock theft, Theal suggests that not only do they have no moral conscience but also that stock theft is a cultural practice and not a sociological or even colonial anomaly. The relevance of Theal’s assertions is also that he was writing in the context of a still open frontier. By definition an open frontier is characterised by a lack of an effective and organised justice and penal system (or set categories of criminality) and in the case of South Africa the late nineteenth century was still characterised by an incomplete incorporation of Africans into colonial society. The condition of an open frontier therefore presents the opportunity to investigate how concepts of law and order emerge and merge. With reference to the aims of his article, Chanock (1995, 912) posits that “framing” criminal law and criminology with each other has the advantage of illustrating the ways in which “scientific and practical areas of knowledge and activities depend on a structured imagination of selves and others.” It is these practices of imagining within authoritative contexts and disciplines that is subsumed under the terminology of the “colonial imagination”. This section will analyse the emergence of colonial criminology and concepts of law and order in terms of two contrasting modes of imagining or discourses, namely “civilisation” and “customary law”. Spatially, the focus is on the Cape Colony, the locale of most of the texts under investigation. Also, Seymour (1970, 1) argues that it is only after the annexation of the Transkei to the Cape that one may begin to trace the history of the administration of civil law “as applied to the Bantu” and that in the legal history of Cape Colony “is found the sequence of events and legislation leading up to the system of administration uniformly applicable throughout the Republic.” The present discussion will attempt to demonstrate how a shift from the discourse of civilisation to the discipline of customary law affected and supported changes in criminology especially as it concerned stock theft. Writing, by colonial ethnographers and historians like Theal, represents this discourse of civilisation. However, instead of investigating Theal, this section will concentrate on John Montagu as a predecessor and “author” of the discourse of civilisation as it pertained to criminology and penology. More importantly, John Montagu introduced to the Cape notions and practices of disciplinary power, that is, the “art of correct training” (Foucault 1977, 170) which
had hitherto not existed. From his biography, it seems that the main influence on Montagu was his military rather than scholarly acquaintance with disciplinary practices. At the age of seventeen Montagu “was appointed to an ensigncy without purchase...and was present at the battle of Waterloo in 1815” (Newman 1855, 9) and we are told that he “possessed all the qualities requisite for a soldier. Of strict discipline, cool intrepidity, steady perseverance and great physical energy, a path of glory lay open before him” (Newman 1885, 11). This however should not detract from the fact that the reforms that Montagu introduced to the Cape mirrored changes in European criminology and penology. In the use of convict labour especially, Montagu introduced the notion that convict labour could not only be economically viable but that it could also assist in the reform of the criminal. Thus, Newman eulogises that Montagu brought amongst other things, a “scheme of discipline” to the noble task:

To devise and institute for our prisons, penitentaries and penal settlements, such restrictive management, such firm but merciful discipline, such hard but useful labor, as shall uphold the dignity and justice of Government, and yet aim at reclaiming the criminal, and bring good out of evil by turning punishment to the public welfare and the general good. (1855, 108)

The use of convict labour is thus justified not only in terms of its punitive efficacy, but also as an economic and utilitarian contribution to the “dignity and justice of Government”. As shall be demonstrated, the dignity of Government was still construed within the discourse of civilisation so that even the efficacy of the penal system was articulated in terms of its ability to “civilise” the criminal. This discourse was to be replaced in the latter part of the nineteenth century with the incorporation of “customary law” into the disciplinary power of the colonial state. In this regard, the 1886 Native Territories Penal Code becomes an example of how stock theft emerged as a category of the colonial criminological imagination. The Code is important because it defined the terms of “Spoor Laws”, by giving authority to the notion that in the case of stock theft, African homesteads would be collectively responsible for the value of the stolen cattle. This category of criminality thus supported a view of crime that is not based on individual but rather collective guilt, with the burden of proof and discipline falling onto the “kraalhead”, who was himself a creation of colonial customary law, and not the colonial police and administrators. This “imaginative” aspect of collective responsibility becomes particularly vivid if contrasted with the other category of theft that emerged in the late nineteenth and early twentieth centuries, namely diamond theft, which was dealt with as an individual and criminal offence. The chapter will however not pursue this contrast, instead the shift towards customary law will be positioned within the “disciplines” by investigating how the emergence of customary law as a colonial disciplinary mechanism also produced at least two types of authoritative texts: the legal interpretation of “Bantu Law” as represented by S.M. Seymour’s book Bantu Law in South Africa and the psychoanalytic exposition on stock theft in B.J.F. Laubscher’s Sex, Custom and Psychopathology.

As can be discerned from the disparate nature of the texts selected, this section is a textual rather than historical analysis of the crime of stock theft. Rather than attempt to understand stock theft as a set of historical events, a study of the different texts will attempt to demonstrate that authoritative texts occupy an important position
as exempla of the colonial imagination. The departure of this type of analysis is based on Gayatri Spivak’s elucidation of the Subaltern Studies’ views on “elite documentation” in her essay “Subaltern Studies: Deconstructing Historiography”. Spivak suggests that writing by the colonial officials hints at the existence of subaltern groups because “the metaphysics of consciousness in these texts is provided by the reiterated fact that it is only the texts of counterinsurgency or elite documentation that give us the news of the consciousness of the subaltern” (1996, 212). The suggestion that the subaltern does not directly write about its own consciousness and that their textual and “actual” existence depends on the reportage of the colonial administrators provides an important definition to an analysis of the colonial penal system. Without overburdening the definition of the subaltern, as the “demographic difference between the total Indian population and those whom we have described as the ‘elite’” (1996, 201), the notion of a demographic difference can also be applied to prison and other marginal populations who posed historically defined threats to the stability of the elite imagination. As Chanock (1995, 920) argues, in the post-1910 united state of South Africa, law enforcement was preoccupied with the possibility of rebellion: “[r]umours of unrest, war, strikes, and rebellion were all believed to have extremely dangerous destabilizing effects on the ‘native mind,’” even though Africans were not party to the political struggles involved. Even within the Foucauldian study of discipline, the aim of disciplinary power is to organise particular populations, schoolchildren, soldiers, patients and prisoners, according to particular principles of spatial distribution. Thus, with the plague-stricken town Foucault argues that behind the disciplinary mechanisms imposed by officials lies “the haunting memory of ‘contagions’, of the plague, of rebellions, crimes, vagabondage, desertsions, people who appear and disappear, live and die in disorder” (1977, 198). The colonial administrative system of the early nineteenth century can be described in exactly these terms, because not only was it faced with an open frontier in which people did “live and die in disorder”, but the penal system also had to pre-empt possible rebellion and desertion of prisoners of all kinds. In this way the prison population of the colonial penal system forms the residual portion of the population, separated from the outside world by the writing and reports of the various officials charged with supervising their restitution to society. However, as shall be demonstrated the treatment of this residual population of convicts underwent two transformations: Montagu’s penological reforms abolished (as in other Western countries) the public spectacle of punishment under the broad theme of civilisation, and that at the turn of the century “civilisation” was replaced by “customary law” as an alternative disciplinary mechanism.

The Textuality of the Colonial Imagination

If one begins with the notion that the character, nature or even potential of the colonial prison population could only be discerned from the writings of the elite then it becomes important to briefly outline the possible interpretation and import of these texts. Understood within the framework of the instruments of disciplinary power, writing occupies a pivotal role to the “examination”, since it places individuals within a “network of writing” (Foucault 1977, 189). The practice of recording in writing, in the name of the examination, opened up two further possibilities. It placed the individual under “the gaze of a permanent corpus of knowledge” since he was now a describable and analysable object; secondly, the collection of written records allowed
a comparative system in which facts, about phenomena, groups, gaps between individuals and their distribution in a given “population”, could be collected (Foucault 1977, 190). The individual therefore was constituted as “effect and object of power, as effect and object of knowledge” (Foucault 1977, 192). The idea that texts and textual authority support an individual “subject-effect” is also emphasised in Spivak’s essay. This subject-effect is described thus: “that which seems to operate as a subject may be part of an immense discontinuous network (“text” in the general sense) of strands that may be termed politics, ideology, economics, history, sexuality, language, and so on” (1996, 213). The import of this observation can be extended to the case of the colonial penal system in which both the writer and the observed are caught in this network of subject-effect descriptions and texts. This extension of the meaning of the subject-effect is supported by Spivak’s (1996, 222) assertion that within post-structuralist theories of consciousness and language, “all possibility of expression, spoken or written, shares a common distancing from a self so that meaning can arise – not only meaning for others but also the meaning of the self to the self…These theories [post-structuralist] suggest further that the “self” is itself always production rather than ground.” Thus, when one reads texts produced by colonial “authorities” of all sorts, one should not overlook this production of selves, especially since the authors of these texts often present themselves as objectively distant from the texts and subjects which they are producing.

John Montagu’s biography and biographer present an interesting example of this production of selves in the colonial text. From the Foucauldian perspective, Montagu’s biography is itself a relevant contrast to the practice of writing he authored within the Cape Colony’s penal system. As a colonial official he is bestowed with the privilege of being written about and this contrasts his contribution to the “power of writing,” as described in Foucault (1977, 189), within the colonial context. Newman, the biographer, writes of Montagu as a “unity” of consciousness in which his contribution to the colony was always latent in his personality as a soldier. Newman (1855, 12) writes that Montagu chose public service over the “parade which occupies the young officer during a lengthened peace”, because:

He may have seen that colonial life had incitements for his adventurous spirit; that the formation of new societies and new centres of civilization opened out opportunities for those public improvements, and for the development of those powers of taming the savage waste, and of turning rugged mountain-passes into highroads of commerce which were stirring within him.

As a soldier therefore Montagu was also always, in the words of his biographer, a colonial administrator since he understood the nature of the colonial condition, namely that it concerned “taming the savage waste”. It is this unity of personality and purpose that one has to interrogate in order to understand Montagu as a textual subject-effect. This task is simplified by the fact that in writing the biography, Newman presents full texts of some of Montagu’s letters, reports and other correspondence and writings about Montagu. It is as if Newman wants to assure the reader that the texts, like Montagu’s career, speak for themselves and therefore are united by a transcendent consciousness of an illustrious colonial personality. However, this lack of interpretation on the part of Newman is itself part of the colonial discourse because in the preface certain statements reveal that part of the non-selectivity was a calculated attempt to salvage Montagu’s reputation with the
colonists. Newman excuses the copious inclusion of colonial texts, and the act of writing the biography by describing the controversial nature of Montagu’s career thus:

Difficulties of another character also arose – a fair record of Mr. Montagu’s opinions must bear more or less on political and party questions; in some cases the long sleeping emotions of old rivalry might be aroused; in others the smothered embers of an expiring antagonism be stirred anew. Surrounded with these perplexities, I felt, again and again, that I must tread with cautious steps…I have scrupulously endeavored to avoid any reflection, or insinuation, or criticism, which I imagined could give pain and offence. (Newman 1855, v).

This disclaimer on the part of Newman is already a hint that Montagu’s career was not as illustrious as Newman’s biography may lead us to believe. However, instead of focusing on the controversies around his career, the section on John Montagu will focus on the texts themselves and what they reveal about his contributions to “taming the savage waste”.

The second document that will be analysed is the 1886 Native Territories Penal Code. Laws, as much as the documentation of colonial officials, form part of the study of colonial texts. In this regard, Spivak cites Ranajit Guha’s assertion that:

It is therefore true that the reports, despatches, minutes, judgements, laws, letters, etc. in which policemen, soldiers, bureaucrats, landlords, usurers and others hostile to insurgency register their sentiments, amount to a representation of their will. But these documents do not get their content from that will alone, for the latter is predicated on another will – that of the insurgent. It should be possible therefore to read the presence of a rebel consciousness as a necessary and pervasive element within that body of evidence. (quoted in Spivak 1996, 214)

Thus, both public and private instances of documentation and textual description and prescription count as the body of evidence of the colonial imagination concerning the potential rebellion of the subaltern populations. As described by Guha, the texts hint at the presence of both the wills of the observer and the observed. In this way, a law like the 1886 Native Territories Penal Code, becomes an instance of this will of the colonial government. Also, by definition, laws perform at least two functions within the colonial imagination: firstly, they become a source of colonial authority and vocabulary and secondly, they extend the rationale for documentation with the emergence of various personnel and authorities charged with implementing the law.

In the case of the 1886 Code, the law gave force to the frontier practice of finding stock by tracing its *spoor* (tracks), and as shall be argued, supported the emergence of “expertise” on customary law. While the law, as a network of writing, presents itself as a unified and authoritative voice of the government, Chanock (1995, 914-915) defines thought and writing about crime as a form of ethnography, he posits that where the state is white, and most of the ruled and criminal are black “the description and construction of criminal otherness is subsumed within a larger discourse about the otherness of the subjects.” Even in the case of the law, the self also forms part of this network of writing because just as the law is a form of thought about otherness, it is also “the rulers’ thinking about and description of self...The image of legalism, its justice, discernment, and restraint is a counterpoint to and component of the opposing image of savagery, impulse, and transgression.” (Chanock, 1995: 934). As if to support the conclusions of Subaltern revisionism, Chanock (1995: 939) also places the law within the realm of the imagination by arguing that in view of the conflation of law and criminology, one has to expand views about the “law” to include “understandings revolving around morality, rules, social control, practical mechanism, economy, ideology, symbolism, or simply hypocrisy.” When applied to
the 1886 Code these observations, on the nature of colonial law making, support the conclusion that colonial civil as well as customary law were conditioned by the contingencies of an imagined crisis of morality, social control, economy etc. The Code followed the 1879 annexation of the Transkei, itself a result of a colonial territorial and legal crisis, but as Seymour (1970, 3) demonstrates, the Code was not the first instance in which the Cape government had deviated from Roman-Dutch law to give effect to “customary” law. In 1864, the Colonial government had passed the Bantu Succession Act, which dealt with cases of intestate succession among Africans living within the colony. As a code of law governing Africans, it is interesting how Seymour interprets its enactment as deriving from specific colonial conditions. He posits that,

Because its was apparent that these people were not sufficiently advanced to conform with the higher standards set by the European population (particularly in regard to marriage) and to prevent chaos in their social and property system, the legislature passed the Bantu Succession Act, No. 8 of 1864. (1970, 3)

In this simple interpretation of the colonial condition of the “failed” attempt to govern all, under Roman-Dutch law, the letter of the law itself becomes not just a set of regulations but also a standard by which one can measure “society”. Marriage is itself described as a juridico-contractual relationship whose obligations have to be understood not only by the parties concerned but also by the state. Moreover, we are told that this was to “prevent chaos in their social and property system”, and we are thus meant to suppose not only that the colonial government had now “discovered” that the Xhosa had a property system but also that it was the duty of the state to prevent this system from falling apart. Customary law, and specifically the 1886 Code, thus reflect an articulated and specified “failure” of the discourse of civilisation and both Seymour and the Native Territories Penal Code therefore represent the shift towards customary law as an alternative to the civil law notions of crime and punishment.

At the level of legal hermeneutics, customary law became part and parcel of the task of colonial administration. However, there was also a separate development, which entrenched the notion that in the case of stock theft, customary law could become a panopticon of discipline. This development involved the incorporation of academic disciplines into the justification and understandings of what was “customary”, what should be preserved and what should or could not be preserved by the powers of the colonial state. Laubscher’s *Sex, Custom and Psychopathology* is an example of this discourse since it highlights some of the aspects of early-twentieth century South African criminology, which was itself conditioned by the mineral and economic revolution of the late nineteenth century. Besides changing the economy of South Africa, the mineral revolution of the late nineteenth century also marked a shift in the use of convict labour. From the public works utility of the Montagu years, the industrial revolution was accompanied by the use of convict labour in the mining industry. In 1885, De Beers Diamond Mining Company became, with the aid of the State, the first private entity to employ convicts on a regular basis (van Zyl Smit 1992, 15). De Beers also created its own company prison, and the creation of this prison was paralleled by the development of the institution of the closed compound (van Zyl Smit 1992, 15). The relevance of these institutionalised modes of labour organisation is in that as mechanisms of discipline they were aimed not only at extracting maximum
productivity at low cost, but also to contain the supposed theft of diamonds by black miners. As intimated, diamond theft unlike stock theft was kept as a civil offence punishable by incarceration, and thus without any recourse to notions of a “customary” form of discipline. Thus, although stock theft did not disappear as a focus of the colonial imagination, as demonstrated by Laubscher’s book, a new kind of economic subversion and delinquency was invented; for diamonds the focus shifted from the rural to the urban. The process of state formation, culminating in the 1910 Act of Union, also facilitated the emergence of this modern criminology. The post-1910 criminology and penal system is characterised by a uniform and central system of data collection and the issuing of directives. Under the auspices of Jacob de Villiers Roos, Director of Prisons in the Transvaal from 1908, and then after 1910, of the Union, indeterminate sentences for recidivist offenders were introduced (van Zyl Smit 1992, 20). The reforms that Roos introduced were in line with international trends, as he himself observed in his report on the 1910 International Prisons Congress held in Washington. In summarising the principles of the “modern reformatory system”, as discussed at the Congress, Roos emphasises not only that prison should be reformative but that a long period of incarceration, is more beneficial than repeated short terms (van Zyl Smit 1992, 23). B.J. F. Laubscher is an interesting contrast because in the aftermath of all this “modernisation”, he incorporated the supposed efficacy of customary discipline into a modernisation discourse. Concurrent with Roos’ reforms, the rapid urbanisation of the African population began to present new challenges to the colonial criminological imagination. As Chanock (1995, 921) argues, the “criminalized state of the urbanized blacks was often contrasted with an image of a crime-free tribal state”. It is this trope of a tribal or customary disciplinary mechanism that is particularly evident in Laubscher’s analysis of stock theft. However, Laubscher couches this discourse within the modern dilemmas of state formation and social control when he states that:

My object in formulating these suggestions is to train the native in the prevention of crime and the recognition of the social responsibility for crime, and to shape his social organization in such a manner as to make him feel that he is assisting in the ideals of social government. (1937, 315-316)

In particular, the argument in favour of customary discipline was now propagated within the context of an interaction between the disciplines and the penal system. Anthropology, argues Chanock (1995, 915), complemented the criminology of early twentieth century Europe and North America because while criminological writing dealt with “elements of the subject population within”, anthropology “dealt with the subjects without”. Also, other theoretical work within the disciplines can serve to support the “moral orthopaedics” of a penal system because when punishment is concealed by the presence of psychologists and minor civil servants, then justice is relieved of the “demeaning task of punishing.” (Foucault 1977, 10). In the case of stock theft, the criminological and penological gaze of the Montagu years was limited by the openness of the frontier so that criminality tended to equal the lack of civilisation and not necessary moral or psychological defect. However, with industrialisation and urbanisation the professional gaze was granted a wider purview within criminology as the types of crimes and character of criminals intensified. And yet, even with these conditions, stock theft remains a separate category of theft, and this is evident in Laubscher’s support for a rural or customary solution. In summary, colonial writing about crime should not only be regarded as a discursive and imaginative practice but it should also be regarded as a suspicious unity of selves,
consciousness and ethnography. From this perspective, one can begin to understand not only the suspect objectivity of colonial bureaucracy and legislation, but also decipher the “subaltern” consciousness contained in the colonial network of writing.

“In those stations the savage nature is restrained by wholesome discipline...” – Convict Labour as a Metaphor for Civilisation

“Civilisation” as a descriptive term about the self and others has a complex history especially in its colonial usage. As a set of assumptions and images, about the colonial condition, the notion of “civilisation” was imported into South Africa. Within Western political thought, the trope of “civilisation” has had protean and shifting meanings, but by the nineteenth century, it had acquired a new meaning in terms of “being a state outside the cultural space created by European imperial expansion.” (Rich 1993, 169). To support this view of imperialism, “Western civilisation” was inserted into a broad historical process inherent in the trajectory of earlier civilisations of the Middle Ages and Greco-Roman periods (Rich 1993, 169-70). As Rich (1993, 170) demonstrates the conception of South Africa as a “civilisation”, while being challenged by the radicalisation of racial policies, remained an important image of the fragility of white power in southern Africa. Thus, Newman’s conception of colonialism, as the taming of a savage nature, represents these notions of European expansion as a civilising endeavour whose justification is inherent in the very history of Western society. In the specific case of a colonial penal system, using the imagery of “civilisation” has specific consequences for the colonial understandings of the effects of discipline. Historically, the conflation of the assumptions of civilisation with penology and criminology is a recent addition to the discourse of civilisation. In line with European developments, the idea that punishment by incarceration was not just a punitive but also a reformative measure was new to South Africa. Evidence suggests that under the Dutch East India Company, punishment focused on the body, and although convict labour was used, the practice was largely ad hoc (Zyl Smit 1992, 7-8). Thus, as van Zyl Smit (1992, 10) concludes, prior to the 1840s neither the “rhetoric of rehabilitation nor attempts at its practice had become particularly prominent.” The content of this rhetoric was brought to the Cape Colony by John Montagu.

No doubt, Montagu’s biography provides many opportunities to investigate the administrative impact of his reforms on the Cape Colony, and the extent to which they were framed within a discourse of civilisation. However, with respect to his introduction of penal reforms, this section will limit itself to two aspects of the relationship between Montagu and his biographer, the emergence of a rhetoric of rehabilitation and the discourse of civilisation. The first aspect concerns how both Montagu and Newman assessed the condition of colonial criminology and penology as it related to the potential for the Cape’s civilisation. Secondly, as part of the discourse of rehabilitative incarceration, the commentary by Montagu as a penal authority introduces to the study of the criminal descriptions that presuppose certain notions of the subjectivity of the criminal/convict. This vocabulary of criminality will be the second aspect of Montagu’s career that will be investigated.
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Newman begins the chapter on “Roads and Convict Labour” by making an explicit comparison between British Imperialism and the Roman Empire:

\[\text{The high road of commerce is commonly the highway of civilization; and the Romans, who proved themselves the most efficient colonizers, made roads and bridges and means of easy intercourse throughout each country where they planted a colony, one of their undertakings. (1855, 103)}\]

By describing the marks of civilisation, such as roads, as predating British imperialism, Newman creates the impression that the British administration of the Cape Colony is part of the greater historical trajectory of spreading commerce and civilisation. However, this comparison at first leads to a judgement of the lack of initiative of the Dutch “colonisers” and the impact this has had on promoting Boer “primitivism”. Thus, Newman (1855, 104-105) states that:

\[\text{The mode of living in remote parts of the Colony was primitive and patriarchal; probably there was no less, there may have been more, domestic happiness in this primeval simplicity, than in more laborious toil and competition, and in the hurry and excitement of traffic at distant ports; but in this case, and under such an isolated state of being as prevailed through all places only a few miles removed from towns, a colony must unavoidably remain stationary...and its own population must necessarily grow up with narrowed prejudices...}\]

Therefore, the lack of commerce and business is linked with ideas of “stagnation” and Newman is still notably discussing the colonial condition and not the state of the penal system. In contrast, Montagu’s own assessment of the colony focuses more strictly on the state of the penal system. In his 1844 report on Robben Island, which Newman reproduces \textit{verbatim}, Montagu expounds the kind of concerns with discipline as outlined in Foucault, because he focuses on the lack of systematic modes of discipline and rehabilitation. There does not seem to be a concern with the level of civilisation attained by the Boers or the indigenous population. In this first report he describes the characteristics of the convicts on Robben Island thus: “there were 183 convicts of whom were 116 coloured and eight white natives of the Colony, and fifty-nine Europeans, of which latter thirty-seven were soldiers.” (1855, 110). Using Foucault’s distinction of the instruments of disciplinary power, Montagu’s observations can be located within the European developments in penology and criminology. The simple instruments of disciplinary power include hierarchical observation, normalising judgement and the examination (Foucault 1977, 177). On hierarchical observation, that is the “mechanism that coerces by means of observation” (Foucault 1977, 170), Montagu notes the absence of supervision of convicts:

\[\text{There are no free overseers over the men at work. There are but two free overseers on the establishment: Mr. Wolhuter, who is the senior, has such numerous duties...that it quite precludes him from looking after the convicts at work; they are entirely under the charge of convict overseers during the whole day. (1855, 112)}\]

On normalising judgement, defined as a “small penal mechanism” (Foucault 1977, 177), Montagu emphasises the lack a graded penal system within the island prison: I am of the opinion that it would be most beneficial to the discipline of the island to establish a scale of indulgences, in proportion to the sentences, to well-conducted convicts, by enabling them, in the first instance, to be removed to a road station, with the promise of a pardon at a period to be specified, for continued good conduct at the road station...At present there is no rule whatever by which a convict can be guided for looking forward to a mitigation of his sentence; all is doubt and uncertainty on this [sic] head. (1855, 116-117)
The importance of the examination to the colonial penal reforms was already hinted at in the discussion of the textuality of colonial imagination. In the case of John Montagu, there are various concerns about the lack of documentation concerning the convicts as well as the finances and “economy” of convict labour. He, for example, alludes to the ignorance of the Commandant “with respect to the revenue derived from convict labor,” (1855, 1140-115), but the greater concern is with the absence of regulations that govern both the duties of prison officials and the obligations and punishment of convicts. He writes,

There is no code of regulations for the station, and the Commandant has no instructions sufficiently defined for his guidance; no other record is kept of offences or punishments, except for corporal punishments, for putting men in irons, or the black hole. I would recommend that a stricter record should be kept of every offence, &c., according to the accompanying form. (1855, 112)

Also, included among the concerns are assessments of the level of hygiene; the provision of food and clothing; the want of a proper hospital and the “idleness” of the medical officer; the state of nakedness of the convicts and the absence of moral instruction. This list, describing a deficient penal system, accords with Foucault’s (1977, 178) observation that contained within every disciplinary institution is a set of extra-judicial regulations of the human body and time, thus:

The workshop, the school, the army were subject to a whole micro-penalty of time (lateness, absences, interruptions of tasks), of activity (inattention, negligence, lack of zeal), of behaviour (impoliteness, disobedience), of speech (idle chatter, insolence), of the body (‘incorrect’ attitudes, irregular gestures, lack of cleanliness), of sexuality (impurity, indecency).

The full extent of Montagu’s intended reforms, adapted to the colonial condition, only become apparent in his report of the 27th of July 1849. In this report, the colonial convict emerges as a subject not just of disciplinary power but also of colonial power. In his definition of “discipline”, Montagu includes “indolence” and “uncontrolled passions” as “crimes” to be punished within the penitentiary. He states:

With regard to discipline, that is, the systematic restraint and subordination of the prisoners, their perfect isolation, not only from society, but from all friends and former associates, the cutting off of all luxuries and indulgencies [sic], the suppression of all habits of slothful indolence, and the prompt and effective punishment of vicious practices, or the outbursts of uncontrolled passions, I feel assured there will be found in the code of rules under which the system is conducted, ample provision (consistent with humanity) for this important part of the punishment of criminals. (1855, 133)

In the Foucauldian analysis, this type of extension of the definition of crime and criminality shifts the focus of judgement from the crime as a juridical object to judgements of “passions, instincts, anomalies, infirmities, maladjustments, effects of environment or heredity,” (1977, 17). Unlike in his first report, in this 1849 treatise, the convicts become more differentiated not just according to their deviance and conformity, but also according to “racial” passions and infirmities. Thus, in accounting for the causes of the prevalent crimes in the colony, namely assault, house, store, mill and cellar breaking and stock theft, Montagu asserts that:

…more than one-half of the criminals convicted of the offences of this kind belong to that portion of our population denominated Hottentots, Bushmen, and free Blacks, who are generally found the most tractable and docile, under a system of convict discipline, which, though rigid, neither induces irritation, nor easily gives cause to any violent
outbreak of any angry passions, a failing to which this class of men appear to be constitutionally liable, though, under kind and considerate treatment, proverbially mild and docile. (1855, 131)

Not only does a “demographic difference”, as defined by Spivak, emerge but Montagu notes further that there is a class of criminals who belong to the “border tribes” who though less pliable and “less accessible to moral influences” pose little threat to the colony because at the end of their sentences they return to their “native country” (1855, 131). In even more explicit terms, Montagu locates the root cause of crime within the colony in the colonial condition of an open frontier and the “indolence” of the indigenes:

…we are struck with the great preponderance of crime among those classes of men alluded to in the preceding paragraph. The cause is easily accounted for in the character of the country; the great variety of its spontaneous productions capable of supporting life; the love of a wandering life, and of indolence common to all men before the comforts and wants of civilized life have been felt, and also the love of exploit as well as plunder that characterizes the Kafir in his marauding expeditions against herds and flocks of our frontier farmers. (1855: 131-132)

Stock theft thus becomes the defining characteristic of the “native” subject because it is associated with the liberalty of the open frontier and the lack of civilisation there. When praising the efficacy of the convict station, Newman (1855, 109) uses the same characterisation. He observes that:

…you may behold indolence learning industry, and the idle and thieving Bosjesman, and the cattle-lifting Kafir, making a high-road for commerce and civilization, in which the spoor of theft shall give place to the rut of the farmer's wain. In those stations the savage nature is restrained by wholesome discipline, and yet the same savage by his penal toil turns the wild mountain-pass to a road of usefulness, and the frowning tracks of barrenness into scenes of grandeur, cultivated beauty, and fertility.

As much as these characterisations and binary oppositions, of civilised/uncivilised, labour/idleness etc., set up a vocabulary of speaking about the criminality of the indigenous population, they did not yet imply segregated imprisonment. The division of prisoners between the chain gang and road party, as introduced by Montagu, was not according to race (van Zyl Smit 1992, 12). The racial segregation of prisoners followed an 1887 inquiry into the penal system. The Committee of Inquiry justified the separation of “Europeans from Natives” on the grounds that:

…the association of the Native with the European, [in prison] not only crushes out of the European what little moral feeling there may be left in him, by the sense of degradation, but lowers the whole race in the eyes of the Native, destroying that respect for us without which we can never hope to succeed either as their rulers or as their preceptors, leading them by counsel and example into the higher life of civilization. (quoted in van Zyl Smit 1992, 17)

These statements separating the European from indigenous penal subject can be interpreted as two opposed versions of the discourse of civilisation: the Montagu/Newman version which emphasised the reformation of both the European and “Native” prisoner seems to slightly contradict the above assertions about the authority of the European. However, both discourses shared the idea that the criminality of the European was different: Newman for example describes the European prisoner as “the should-be-civilised…the culprit who has disgraced his Christian name…” (1855, 108). Therefore, even as a prisoner, the European was regarded as a representative of civilisation betrayed, and not the crime committed. This observation should however not detract from the fact that these texts also reveal a preoccupation with the possibility of rebellion since the failure of the authority of
the European could lead to the subjective rejection of the disciplinary power of incarceration and the general authority of Western civilisation. Montagu summarises this dilemma thus:

It is proper here to remark, that two convicts have been shot, and two wounded, in attempting to escape, and resisting their pursuers. All four were Kafirs, who of all offenders are the most impatient of restraint, and the most expert and daring in their attempts to regain their freedom. (1855, 146)

The Emergence of Customary Law as a Disciplinary Mechanism

When Montagu and Newman referred to the supposed “cattle-lifting” dispositions of the indigenous population, they at the same time depicted the colonial penal system, of punishment by incarceration and hard labour, as the corrective and “civilising” measure. This type of punishment was also supposedly responsible for disciplining other aspects of the indigenous lifestyle such as “idleness”, defined as the lack of commerce, regular labour and dependence on natural resources. The fact that colonial administration was depicted as the appropriate authority to discipline this deviance on the open frontier corresponds to the principles of the discourse of civilisation as described by Newman’s analogy of British and Roman imperialism. However, by the late nineteenth century this notion of the “European” as civiliser had been challenged and somewhat modified. Many factors can be cited to account for this conceptual shift, but the impact of these factors seems to be summarised by Seymour’s (1970, 3) observation that Africans did not “conform with the higher standards set by the European population”. This nonconformity, it should be noted, was beyond the reach of the penal system because it was related to “personal” practices of marriage and such. However, this notion of nonconformity can also be applied to the fact that indigenous population “resisted” the incorporation of European categories of criminality into their social organisation. Thus, when Theal (1886, 28) posits that “they have no religious scruples concerning it [stock theft]”, he passes judgement on the “moral economy” (Anderson 1986, 399) of African culture and society. What is of interest is that colonial power then transferred the responsibility of policing stock theft from the colonial police system to the African communities by usurping and reinventing the principle of “collective responsibility”, which was part of the supposedly defective “moral economy” of African society. This development was not limited to South Africa, Anderson (1986) describes the same ideological shift in colonial Kenya because even there, the judgement that within African groups stock theft was not regarded as a crime, led to the invoking of collective responsibility as a policing and punishing mechanism.

In investigating this shift, in not only the colonial disciplinary mechanism but also in the discourse of civilisation, it is important to note that accusations of stock theft were part of the colonial condition and crisis of law and order. This section aims to annotate the basic features of the incorporation of stock theft into “customary” and colonial law and how this would be retrospectively justified in the writing of “experts” such as Laubscher and Seymour. The terms of this incorporation are amply defined in the 1886 Native Territories Penal Code. As already indicated, this was not the first law to distinguish the “customary” from the colonial regulations, but is relevant because it defined and entrenched the colonial practice of policing stock theft.
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by presenting the *spoor* as evidence that a particular homestead was responsible for the theft. In its section on the “Interpretation of Terms”, the Code presents the two key elements of evidence concerning a “Spoor Law”. Firstly, the existence of a patriarch, *umninimzi* had to be ensured:

The word ‘kraal’ denotes any hut, house, or enclosure occupied by any single family, or member of a family, or any aboriginal tribe, or any collection of huts, houses, or enclosures, occupied by several families of any aboriginal tribes, with a recognised head known as *umninimzi*. (Statutes Native Territories Penal Code. [No. 24 –1886] 1889, para. 5(k))

A relationship was thus construed between *umninimzi*, the kraal and the “aboriginal tribe”. Secondly, the *spoor* as a piece of evidence was defined thus:

The word ‘spoor’ denotes any mark or impression on, or disturbance of, the surface of any ground, or any mark or impression on or disturbance of any grass, herbage, or wood on such ground, or any matter or substance left or found upon such ground, grass, herbage, or wood, indicating that any person or persons or any cattle have passed along in any particular direction. (Statutes 1889, para. 5(l))

These specified definitions of the kraal and the *spoor* excluded the possibility that firstly, the stock thieves may, in their act of stealing stock, be defying the authority of the “kraalhead” or African society itself and secondly, that the stock thieves concerned may not be part of an “aboriginal tribe”. However, by the same Code the colonial government still retained the jurisdiction to punish stock thieves and this is evident in the clause entitled “Punishments for Cattle Thefts”, which states that:

Whoever steals anything from the person of another, or from any dwelling-house, or steals any horse, ass, mule, sheep, horned cattle, goat, or domesticated ostrich, or the feathers thereof, or who wilfully kills any such animal, with intent to steal the carcase [sic], or any part thereof may, upon conviction, be punished with imprisonment, with or without hard labour, for a term which may extend to five years, or fine, or both; and in the case of subsequent conviction, with imprisonment, with or without hard labour, for a term which may extend to seven years, or flogging or whipping, or fine, or any two of such punishments. (Statutes 1889, para. 198)

The fact that the colonial government, while relying on tribal collective responsibility, still reserved the right to punish, may suggest that the use of customary law was merely part of the extension of the “disciplinary society”. In Foucault’s discussion, the shift from the disciplinary institution towards the disciplinary mechanism of the panopticon, is a shift from a schema of exceptional discipline to a generalised surveillance of the whole social body which then supports the formation of the “disciplinary society” (1977, 209). In the case of customary law, the “disciplining” of the indigenous population was achieved by reference to traditional notions of discipline as patriarchal or parental control. Thus, Seymour (1970, 11-12) follows this understanding of indigenous social organisation when he states that:

Subject to the spirit of communal interest and responsibility which pervaded Bantu thought, life and action, and which in matters of the state was expressed by the influence possessed by the headmen of the tribe, the counsellors of the chief, who assisted and advised him in all his political, administrative and judicial deliberation, the chief was the ruler of his tribe and the father of his people; each and every member of the tribe was his subject under his protection, and ‘belonged’ to him. Each married male member of the tribe was what is called a kraalhead, i.e. his status was similar to what is known in common law as a major; his family were under his tutelage and ‘belonged’ to him. Women were under perpetual tutelage.

Within this legal-social organisation, criminal law dealt with wrongs against the chief in his capacity as “father” of the tribe (covering killing, bodily injury, rape and
slander) and civil law recognised “the rights of individuals inter se” and covered status, marriage, succession, property etc. (Seymour 1970, 12). When customary law was transposed to the colonial legal order, criminal law was reserved as the function of the state whereas “Bantu civil law” is what Seymour documents in his book (Seymour, 1970: 13). Despite the reality of rapid urbanisation, this capricious split between rural and customary as versus urban and criminal law continued to exercise an effect on the criminological imagination even into the twentieth century. Thus, as late as the 1930s the Native Economic Commission (1930-1932) cited Bryant’s 1929 book *Olden Times in Zululand and Natal* to bolster the image of “tribal absolutism” as the check on waywardness of the young and women (Chanock, 1995: 921-923).

Over and above the image of African society as a patriarchal disciplinary mechanism, Laubscher presents a psychoanalytic analysis of the moral economy of African culture. From his study of the social customs of the Thembu, Laubscher (1937, 302) argues that there are two important “traits” of the “native”, namely, “[h]is love for cattle and live stock in general” and “[h]is oral traits”. These “traits” extend to the entire culture thus:

> If we appreciate the two needs in this culture, namely sex and food, we begin to understand that cattle and horses are complementary to the fulfilment of sexual needs, so that we may say that there is an instinctive disposition which can only attain its goal in an approved manner via the possession of such animals...His desire for possession does not really imply a love for animals but rather a love for their value...The theft of cattle and horses, therefore, is determined or influenced by emotional needs and becomes the main acquisitive urge in the native's mind. (1937, 302)

Criminality, as a psychological pathology, is therefore attributed not just to the specific deviant but to the whole social and economic organisation of African culture. From this application of psychoanalysis, it follows that attitudes to the crime of stock theft are communal and not individual. Thus, after enumerating the factors “in this culture conducive to the crime of stock theft”, Laubscher (1937, 305) posits that there is a “clan attitude to crime” which permits stock theft. In assessing the efficacy of the punishments meted out to stock thieves, Laubscher emphasises his reliance on “native informants”, that is, chiefs and their councillors, who according to him “maintain that the only successful measure is corporal punishment, but consider that the institution of the traditional native law of compensation is still superior” (1937, 312). To extend this potential of customary law, Laubscher enumerates the main principles of “native law” on property: firstly, customary law is said to be based on precedents of generations and housed in the memories of councillors and elders; secondly, it is based on the principle of collective responsibility and thirdly, punishment is in the form of a fine or compensation (1937, 313). These observations on the principles of customary law depend however on Laubscher’s definition of discipline. He argues that although corporal punishment can function as a deterrent,

> ...it is not constructively educational, since the aim of corrective measures should be that which will stimulate and develop feelings of loyalty for our national institutions. In teaching the native to become law-abiding according to our standards of social morality, it is essential that we incorporate in this process of education all those values which are of importance to him and which enjoy not only his interest but also his traditional approval. (1937, 313)

It is noteworthy that this definition of the function of punitive measures, as the instilling of loyalty, radically differs from Montagu’s definition of discipline as
isolation from society and luxury. This redefinition of the disciplinary powers and function of colonial government serves to justify notions of collective responsibility as an inherent aspect of African culture and the psychological constitution of the “native” mind. Thus, before quoting the “Spoor Law” of 1898, Laubscher (1937, 313) justifies its existence thus:

The principle of collective responsibility is, of course, still evident in this culture. Each kraal holds itself responsible or answerable for each of its members under the rule of the head of the kraal and the elders. When the early Colonial Government found how difficult it was to recover property, or live stock stolen from the colonists by the natives, they introduced the “Spoor Law” based on this principle of collective responsibility in native custom.

Again, Laubscher demonstrates that the core assumption of “Spoor Laws” was that the “native” stole from the “colonist”, and never the other way round. Based on these and other observations about the psychopathology of his subjects, Laubscher (1937, 315) presents his recommendation of a “native” probation system. As a conclusion to his chapter, he summarises the efficacy of extending the application of the principles of customary law, by stating that:

…my arguments are in favour of a modified form of native probation, as a means of seeking his co-operation, showing him that the white man places confidence in him, training him to consider the law courts of our land as institutions working for his benefit, making him aware of prevention and not only punishment after the event, relieving his suspicions and mistrust and integrating him with our national communal ideals.

Failure there will be, for the native is but a child amidst the complexities of Western civilization. Nevertheless, it is not immediate results we seek, but the psychological effect of conditioning him to our problems as his problems, for on his co-operation depends the security of the future generations in this country of ours. (1937, 319)

The import of this conclusion seems to be in the fact that Laubscher revisits the discourse of civilisation by not only describing the “native” as a child, but also by positioning the South African “European” as the leader and exemplar of Western civilisation. Notwithstanding, these assertions should also be read as signs of the underlying nonconformity and resistance of African societies to these very disciplinary institutions of colonial and penal power. By repeating his concern for the education of the African in the morality and loyalty implied by institutional government, Laubscher also reveals the unease at the possibility that the African will not “self-regulate” in the sense defined by Foucault (1977: 201) as “a state of conscious and permanent visibility that assures the automatic functioning of power.” Instead of this individual self-regulation, experts of the customary thus propose a regulation of selves (in the plural) based not on the individual but on the notion of a patriarchal “self-regulating” network of subject-effects.

The transition from the institutional penal system, of reforming the criminal regardless of race, to the entrenchment of collective responsibility as an alternative form of discipline was is no way a chronological development. Between the 1886 Native Territories Penal Code and Laubscher’s 1937 book, many conceptual, structural and real changes to the nature of colonial government affected the extent and “success” of the disciplinary colonial society. This section has however attempted to compare the two examples of colonial writing as linked by the crime of stock theft. While the Code defines the obligations of the “native” within the “Spoor Law”; Laubscher gives this colonial legalism academic authority. While the Code entrenches the idealisation of African society as patriarchal and stable, Laubscher uses
psychoanalysis to account for the “pathologies” of patriarchy while also still justifying its existence. These texts are linked precisely by their images of African societies that remain stable despite socio-economic rupture. They articulate the ideal that colonial and disciplinary power could insert its own demands on this stability, and thereby extend its own power.

That the colonial imagination depends on the broader theme of ‘civilisation’ is undeniable. Colonial writing acts as an important starting point and sign of this mythology. Because it assumed that it was objective, purposeful and valid, colonial writing also acts as an important indicator of the nature of modern bureaucracy. However, in the case of the Cape, a commitment to bureaucracy and modernity, symbolised by commerce and ‘roads’, was a late development inaugurated by the arrival of the British in 1795. Thus, by the time John Montagu arrived as Colonial Secretary, the Cape had had its share of administrative reform. His contribution to the modern Cape Colony was in penal reform. By introducing the ‘humane’ and individualistic ethos into the colonial penal system, Montagu brought some aspects of Europe’s modern penology and criminology into South Africa. However, unlike in the European situation, the colonial order faced the problem that many parts of the country were still ‘savage’ and ‘untamed’ both naturally and in terms of the populace. A demographic difference, in the Spivakian sense, therefore existed between those living within and without the boundaries of the Colony. Thus, colonial criminology and penology could become, in the stricter sense of the word, an ethnography because it had to account for not only the criminality of its subjects but also that of the ‘others’ living on the margins of colonial society. This was the implication of the discourse of civilisation. As a body of knowledge, the discourse was mostly constructed in the absence rather than abundance of expert and trained opinion and the demographic differences it purported were based on an incomplete rather than a disciplined hold on the population. As a representative of this discourse, Montagu, was first and foremost a soldier, and secondly a secretary before he took charge of the Cape’s penal system. This observation should serve to reinforce the notion of a subject-effect: Montagu was as much a product of the colonial, rather than intellectual, condition of the Cape as the ‘convicts’ he attempted to reform. The multiplicity of selves that emerges from colonial writing should therefore warn against an oversimplified sociology of colonial knowledge.

The production of writing, about the colonial dilemma concerning the incomplete incorporation of the indigenous population, continued well into the twentieth century. Other crises intervened in the trajectory of this body of knowledge. Geographical expansion of the Cape Colony created territorial and imaginative space for the extension of colonial power. Yet, as Seymour notes it became evident that the indigenes continued to practice their customs despite the ‘example’ set and demanded by European presence. The promise of the customary principles, that were variously included into colonial law, was therefore that while they allowed Africans to continue with their practices, their intransigence to the modes of civilisation offered by colonial tutelage would be reduce. As is evident in the letter of the 1886 Native Territories Penal Code, colonial lawmakers were willing to support the continuation of African patriarchy, or even ‘absolutism’, if the principle of collective responsibility could police the crime of stock theft. This image of a self-contained system of collective supervision and criminality continued despite the reality of substantial disruption
caused by urbanisation and the fragmenting of the rural lifestyle. The essay has attempted to demonstrate that the continued attraction of this image was not only a sign of the crisis of the discourse of civilisation but was also continually reinforced by the academic credibility it received. Laubscher’s book *Sex, Custom and Psychopathology* is just one example of how the disciplines re-imagined and re-invented some of their functions within the colonial context. Notably, Laubscher is not an aberration of the modern discipline of psychoanalysis but is an exempla of how the discourse of civilisation still had an effect on the colonial imagination even as the ‘customary’ was being invented as an alternative to the insufficient power of the state. Stock theft thus remained a ‘cultural’ problem, since it was observed that the moral economy of African society did not train the conscience against the practice. However, the very deficiency of the moral economy of African society became a potential disciplinary mechanism. By emphasising compensation and collective responsibility, the traditional manner of dealing with stock theft became a potential complement to the penal discipline of incarceration and corporal punishment. Thus, rather than being an antagonist to the colonial order, African culture could now be presented as complicit with the aims of the colonial and penal economy of power.
When John William wrote about the “official record”, he meant a report titled *The Kafir Revolt in Natal in the Year 1873: Being an Account of the Revolt of the Amahlubi Tribe Under the Chief Langalibalele and the Measures Taken to Vindicate the Authority of the Government: Together with the Official Record of the Trial of the Chief and Some of His Sons and Indunas* (1874). It is the contents of this report that prompt him to pen his own counter report – a minority report, to be sure. His first line of attack is that the imprimatur and status accorded the “official record” are premature and self-serving. He issues the first salvo against the colonial officials by stating that although the *Kafir Revolt in Natal*, especially the “Introduction”, is purported to have been written and published independently by the publishers Keith and Co., “[i]t is thought to exhibit in many places strong signs of an official pen” (1875, iii). From the beginning therefore, Colenso announces that what he is about to perform is a textual and forensic analysis of the way in which the “official pen” has sought to *vindicate the authority of government* by unfairly trying and banishing Langalibalele. In Colenso’s prose, vindication becomes vindictiveness since he adopts a pro and contra narrative in which excerpts from the official record are juxtaposed and contradicted by his own investigations and re-interpretation of the facts and judgements. The “Preface” of his *Remarks* explains not just his scepticism towards the official report but lays forth his motivations for speaking on behalf of the deposed chief.

The wry observations and acerbic comments directed at the colonial officials are to be expected from a missionary bishop who was becoming less of a representative of the Anglican Church in South Africa and more of an advocate for African autonomy and sovereignty. Yet, from his own perspective Colenso writes this substantive defence of Langalibalele because he is a minister of religion. He understands his own actions to be motivated by his Christian beliefs and his notions of what constitutes British justice. In reply to a *Natal Witness* statement that it “did not lie in my path of duty” to interfere in the trial (1875, iv), Colenso retorts by affirming his humanitarian impulse:

*I saw that my fellow-man was being unfairly treated and unjustly condemned, in a tumult of popular excitement and frenzy; and I believe that it did “lie in my path of duty,” at all costs as an Englishman, no less than as a minister of religion and a missionary, to raise my voice as strongly as I could against it.* (Colenso 1875, iv)

Although it may be expected that the contents of the *Remarks* continue on this humanitarian tone since Colenso was writing in the main to appeal to the humanitarian lobby in England as represented by the Aborigines Protection Society. On close reading, however, Colenso does not use the language of supplication and deference. Instead, he adopts a forensic and incisive voice that cuts through the shrouds created by colonial officials to conceal their role in the debacle. His bold “remarks” are not as dispassionate as the title suggests; they function as a refutation of the facts and evidence that Natal’s colonial government had published and stated as reasons for deposing Langalibalele and destroying his “tribe”. Although there are
obvious devices that he resorts to – the innuendo about official interference in the writing of the report being one – the dominant discourse that Colenso deploys is one of reversals: in an erudite and multi-vocal manner Colenso demonstrates the fact that where the colonial state is obsessed to the point of mania with the workings and application of “Kafir Law”, the Africans in the story of Langalibelele’s deposition act in accordance with modern and contemporary understandings of colonial and common law. In other words, Colenso argues that it is the colonial state which is stuck in “benighted ignorance” and that it is the Africans who act according to the precepts of modern citizenship. Where the colonial state marshals hearsay, presupposition and conjecture, it is the African subjects who read and re-read the statutes, ordinances and summonses that govern them and who act according to their comprehension and apprehension of what is expected of them. Colenso himself “throws the book” at the colonial officials and their report by systematically citing and referring to imperial and colonial laws that were violated in the name of vindicating the government. Another way of reading the text is as a subaltern text in that Colenos adds layers and depth to the voices of the Africans who appear as characters or even extras in the story told by the colonial state. By privileging these Africans, Colenso was undermining the notion that the case was a simple and shut instance of rebellion by a “native” chief.

Minority Reports / Hidden Transcripts

As a colonial incident, the supposed rebellion of Langalibalele, and his “tribe” the amaHlubi, is insignificant detail. And yet, when understood within the longer trajectory of the imposition of colonial rule in Natal; the conflict between Natal and the independent or protectorate polities on its boundaries (including Zululand); the destruction of the Zulu kingdom and the formalisation of “customary” law, the ostensible rebellion offers a microcosmic glimpse into the evolution and everyday functioning of “indirect rule”. At the time of the rebellion, in 1873, “customary” law was nothing more than a set of guidelines and thus, “indirect rule” was itself only nominal and therefore pliable. In the judicial process of the trial, attempts were made to concretise and rigidify certain notions of not only the customary but also of chiefly or kingly sovereignty; the supposedly patriarchal nature of African social organisation; the definition of the boundaries of the colony; notions of rebellion and acquiescence and other indigenous cultural practices. By defying the gun registration requirements and evading the summons issued by the Secretary for Native Affairs (S.N.A.), Langalibalele and his subjects, became a symbol and stood in for all sorts of perceived deficiencies and threats of not only African society but also of Shepstone’s native policy.

As an instance of colonial imposition of punitive measures, the rebellion and its aftermath are inextricably linked to the career of Theophilus Shepstone. In this regard, two important contributions to the historiography have elucidated the role that Shepstone played in precipitating the crisis and also for resolving it to his best advantage. In Storey’s Guns, Race, and Power in Colonial South Africa (2008), a whole chapter is dedicated to the “Langalibalele Affair” and it covers events from the gun laws that were enacted to limit African ownership to the trial and banishment of the deposed chief. By placing emphasis on the gun laws, Storey depicts Shepstone as essentially an official who, when he found himself caught between competing legal
codes, deliberately chose ambiguity to evade the fundamentally ethical and political dilemmas of the case.

These two approaches maybe termed the paternal versus the bureaucratic

James C. Scott’s *Domination and the Arts of Resistance* (1990) offers an interpretive tool for reading the subaltern voices embedded in Colenso’s report. Because of the inherently unequal standing of the dominant and the dominated, Scott posits that both these parties have, in varying degrees, to pose and pretend in accordance with their “station” and the perceived expectations of their audience. For each group there is therefore both a public and a private discourse, or what Scott terms the “public” and the “hidden” transcript. The former term is a ‘shorthand’ way of describing the open interaction between the dominant and the dominated (Scott 1990, 2). The hidden transcript is the discourse that occurs “offstage” beyond the surveillance and watchful eye of the powerful (Scott 1990: 4). Scott summarises the main insights of this approach thus:

> Every subordinate group creates, out of its ordeal, a “hidden transcript” that represents a critique of power spoken behind the back of the dominant. The powerful, for their part, also develop a hidden transcript representing the practices and claims of their rule that cannot be openly avowed. A comparison of the hidden transcript of the weak with that of the powerful and of both hidden transcripts to the public transcript of power relations offers a substantially new way of understanding resistance to domination. (Scott 1990, xii)

By focusing on the divergence between what is said in public and what is said “offstage”, Scott offers a useful interpretation of discourse as and when it occurs in a context of asymmetrical power relations. However, the challenge, especially in the case under examination, namely the Langalibalele rebellion, is to interpret these transcripts as they are enacted in a context where the dominant and the dominated are also separated by their differing attitudes to speech and writing, custom and civility and all the crises of colonial rule that have been subsumed under the rubric terminologies of “tradition” and “modernity”.

If we adopt Scott’s notion of “offstage” discourses, then it is possible to also define the trial as a staged play. Like all court-room dramas, the Langalibalele case consists of an interesting list of *dramatis personae*. First is Langalibalele himself. He was born in Zululand in 1818 and as son of chief Mthimkhulu of the amaHlubi he succeeded his father as chief. Although the Hlubi had been scattered by the Mfecane conflict, a small section were incorporated into the Zulu kingdom, but in 1848, fearing an attack and his execution by the Zulu king, Mpande, Langalibalele and the Hlubi fled to Natal and requested refuge. At first, they were settled on the Zulu border, but Shepstone moved the seven thousand refugees to a location at the foot of the Drakensberg mountains (Guy 1983, 197). Langalibalele was also a reputed rainmaker and doctor (Colenso 1875, 58 & 83). The second main character is John William Colenso, the Bishop of Natal. Colenso arrived in Natal, for an exploratory visit, in 1854. His initial experiences were recorded in his *Ten Weeks in Natal. A Journal of a first tour of visitation among the colonists and Zulu Kafirs of Natal*. He returned, with a mission party, in 1855 (see Guy 1983, 46-53). By the time of the Langalibalele debacle, Colenso had acquired the notoriety of having been accused of
heresy and being excommunicated from the Church of England, for his writings challenging the literal truth of the Pentateuch (the first five books of the Bible). Jeff Guy’s biography of Colenso, *The Heretic: A Study of the Life of John William Colenso, 1814-1883* provides the most thorough details and examination of Colenso’s life and his involvement, subsequent to the Langalibalele affair, in the defence of the Zulu king Cetshwayo. Theophilus Shepstone, the Secretary of Native Affairs, needs no introduction to the student of Natal colonialism. As the father of Natal’s native policy, Shepstone’s image looms large over the entire nineteenth-century history of southern Africa. Brought up in the Cape, and fluent in the Xhosa and Zulu languages, Shepstone came to Natal in 1845, first as Diplomatic Agent to the Native Tribes and then was appointed as Secretary for Native Affairs (S.N.A.) (Guy 1983, 40, Davenport and Saunders 2000, 116-118). When Colenso first came to Natal in 1854, it was Shepstone who took him around the colony to visit the various chiefdoms. In this initial visit to Natal and the Zulu kingdom in 1854, Colenso was audience to and took seriously Shepstone’s plan to migrate, with thousands of Africans to an area south of Natal, and to establish, under his rule, a “Black Kingdom”, in which he would be the secular and patriarchal leader and Colenso the spiritual supplement (Guy 1983: 49 & 84-86). As late as his 1859 visit to the aging Zulu king Mpande, Colenso still thought such an idea viable, despite the fact that it had been vetoed by Shepstone’s superiors. The Langalibalele affair, by exposing the differences in Colenso and Shepstone’s attitudes to African people, destroyed the two’s shared paternalistic views. Although there are many other minor characters, these three will appear time and again in the narrative and their backgrounds, are significant to understanding the positions they took and the events that precipitated the ‘rebellion’.

Although the historical chronicle of the events around the rebellion can be effortlessly narrated, the focus of this analysis is on the version of the events and trial as examined by Colenso in his *Langalibalele and the amaHlubi Tribe: Being Remarks upon the Official Record of the Trials of the Chief, his Sons and Induna, and Other Members of the amaHlubi Tribe*. If Scott’s concepts of the public and the hidden transcripts are of any value then Colenso’s remarks on the affair form the hidden transcript of the public transcript as reported in the official record of the trial. Colenso, by his involvement in the affair, unwittingly became an investigator, legal counsel to the deposed Hlubi chiefs and Langalibalele, and a translator, for the English public, of some of the local and indigenous idioms that were being contested in the conflict between Langalibalele, the “Supreme Chief” and the office of the S.N.A.. Although in the eyes of most of colonial Natal, Colenso no longer represented his “spiritual” calling as a Bishop, to many of the Zulus who observed the proceedings, he lived up to his Zulu name, *Sobantu* (the Father of the People). This is not to say that he was not prejudiced or “colonial”; the relevance of Colenso’s role in the affair is that afterwards both Natal’s and Zululand’s Africans and their sovereigns turned to him for guidance and counsel. More, importantly, his involvement in this instance was a precursor to his later defence of Cetshwayo, in the aftermath of the 1879 war. Colenso’s document, as already stated, is premised on the assumption that the “official record” has been tempered with and edited in such a way as to present Langalibele’s guilt as a foregone conclusion. In questioning the validity of the official narrative, Colenso equates the unfairness of the trial with the peremptory statements made by the author of the “Introduction”:

…”I feel bound to protest against the whole proceeding as exceedingly unfair and unjust; and, in order to discuss thoroughly the evidence produced against the Chief in the three
Trials, I shall here draw attention to some of the most salient portions of this "Introduction," by which the reader will be able to judge of its general character for truthfulness and honesty in those parts which bear against the prisoner. It does certainly seem somewhat strange that "Messrs. Keith and Co." [the publishers] should have taken such a deep interest in Langalibalele’s affairs, and should be acquainted with so many facts which are not mentioned at all in the evidence, and some of which, one might imagine, could only have been known by official persons. (1875, iii)

By suggesting that there are discrepancies between the official record, the "Introduction" and his own observations and investigations Colenso thus alerts the reader to the presence of Scott’s “hidden” transcript. Moreover, since Langalibalele was denied counsel, Colenso’s remarks are the only “cross-examination” of the evidence presented against Langalibalele. Although it has been described as a “pamphlet” (McClendon 2010, 116), Colenso defence is not merely polemic but offers substantive explorations of ideas and concepts of colonial and imperial rule that could be said to foreshadow some of the concerns of postcolonial studies. To begin with, definitions of patriarchy and paternalism were central to the image and self-presentation of both the “Supreme Chief”, Sir Benjamin Pine, and of the S.N.A., Theophilus Shepstone. Secondly, underlying the presumption of Langalibale’s guilt was the supposed act of rebellion, which the “official record” attempts to define. From Colenso’s remarks it is evident that this definition developed cumulatively as the events of the rebellion unfolded and as the trial proceeded. Tied to the notion of rebellion, were the events and crises that preceded Langalibalele’s actions and which Colenso used as mitigating circumstances but which also function to underscore the fact that Langalibalele, and by extension most of the African characters involved in the story, understood that this event was an instance of colonial déjà vu since this was not the first time that the Shepstones (Theophilus, his brother and sons) were responsible for the destruction of an African leader and his people. Some of these preceding events include the “Matshana affair”; Natal’s so-called “refugee” crisis; the imbrication of labour and guns; and, the Hlubi “spirit of independence”. Finally, the contest between the “customary”/“tradition” and the “colonial”/“modernity” underpins Colenso’s evaluation of the reversals which he observed taking place as the colonial state attempted to present itself as acting in accordance with custom and tradition in prosecuting a rebellious subject.

To give historical content to these themes it is perhaps useful to give a brief chronicle of the “rebellious” acts Langalibalele is supposed to have planned and committed. Langalibalele’s decision to flee with members of his “tribe”, the Amahlubi, was precipitated by a series of decisions and miscalculations on both his and the colonial administration’s part. At issue was an 1872 law which required that all Africans have their guns registered with their local magistrate. The picture was however complicated by the fact that for the Hlubi owning guns was directly related to the function which they had been assigned, when moved to the Drakensberg, namely to act as buffer between the colony and “Bushmen” cattle-raiders. Moreover, it seems that Hlubi young men were also valued as servants and workers, especially on the diamond fields: Shepstone’s sons, who worked on the diamond fields often paid Africans, including some Hlubi, in guns (Herd 1976, n14, Colenso 1875, 6).

When instructed by the Resident Magistrate, John Macfarlane, to register, according to the new law, all the guns in the possession of his subjects, Langalibalele is said to
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have asked how one can “count the maggots in a piece of beef?” (Herd 1976, 10; Guy 1983, 199). This was not the first time that Langalibalele had dared to defy the logic and authority of colonial administration. As early as 1859, Macfarlane had reported that the chief made him uneasy because while he never refused to obey instructions he “more frequently sullenly acquiesced than cheerfully obeyed” (Quoted in Guy 1983, 198). Thus, when Langalibalele procrastinated in his response to these orders, he was summoned to Pietermaritzburg to appear before Shepstone as the S.N.A.. Despite his promise to appear before the S.N.A., Langalibalele did not go to Pietermaritzburg. Also, at this time, Shepstone was preoccupied with preparations for the inauguration of Cetshwayo in KwaZulu and so the tensions were left to brew until his return in November. Meanwhile, on 30 October 1873, after Langalibalele had received a second summons and warning, a colonial corps of volunteers, regular British troops and African levies moved towards the Hlubi location. Alarmed, Hlubi men began to move towards the Drakensberg with their cattle, while the women, children and the elderly sought shelter in caves and hideouts. However, for Shepstone, the real turning point was the report he received from his messengers: Mahoyiza, the chief messenger, told the S.N.A. that he had been stripped, insulted, threatened with death and told by Langalibalele that he would rather flee than submit to Shepstone. On 2 November 1873, Shepstone issued a proclamation giving the Hlubi twenty-four hours to surrender to the Natal force or face the consequences of rebellion. The plan was to prevent the Hlubi from crossing over to “Basutoland” (Lesotho) and the Natal volunteer forces were sent to block their passage over the Drakensberg. Disaster followed disaster, and on 4 November the Natal Carbineers came face to face with the fleeing Hlubi and in the panic the Hlubi opened fire killing three colonists and one Mosotho. Meanwhile, in the Hlubi location, martial law was declared, Langalibalele deposed and the Hlubi were to be “broken up”. It is here that the sanguinary and rapacious acts of the colonists, African levies and regular soldiers were most in evidence. Not only were women, children and elderly “smoked out” of their hideouts and killed, it was proposed that survivors be sold-off to colonists as “apprentices”; property and cattle were seized or destroyed, and the Hlubi’s neighbours, the AmaNgwe, were devastated despite their non-participation in the rebellion.

The “Matshana Affair” and Natal’s “Refugee” Crisis

Of all the evidence given during Langalibalele’s trial, the contest over two fragments of such evidence is particularly important if one wants to understand the language that framed the accusation of rebellion. First, is the role of the “Matshana affair” in shaping Langalibalele’s decision to flee the colony. Second, is the evidence of Shepstone’s messenger, Mahoyiza, on how he was treated by Langalibalele and the Hlubi. The factual events of the “Matshana affair” demonstrate the ironic twist that whereas the Natal view was that Africans fled Zululand to escape the despotism of the Zulu kings, they could also flee in the opposite direction to escape the tyranny of the Shepstonian system. Moreover, it was the fact that the Hlubi themselves had participated in the Matshana affair, and therefore knew the potential treachery involved in being summoned, that gave the affair its poignancy. In 1858, some of Langalibalele’s men had participated in an attempt to seize an unyielding chief, Matshana kaMondise. In what was meant to be a peaceful meeting, John Shepstone – Theophilus Shepstone’s brother – produced a concealed gun; in the ensuing fracas Matshana escaped while thirty of his men were killed. He summarily returned to Zululand (Brookes and Webb 1965, 114, Guy 1983, 197).
As an example of Natal’s policy towards refugees and their chiefs, the “Matshana affair” exposes the contradictions and precariousness of the Shepstonian practice of creating and appointing chiefs in return for their loyalty. Despite the fact that John Shepstone’s role in the affair was never fully made public, the near-assassination of Matshana reveals not only the omnipresence of the Shepstone name, but the fact that it became something of an urban legend and oracle. As a piece of evidence the “Matshana affair” was a disputed explanation of Mahoyiza’s supposed stripping and Langalibalele’s flight. It is this contest that is of particular interest. In the first instance, Colenso brought to Shepstone’s attention the relevance to the trial of John Shepstone’s concealed weapon, only after hearing the version of this and the Mahoyiza story from his printer, Magema Fuze and the Hlubi residing at his mission, Bishopstowe. The trial had already started when Colenso heard the Matshana story and at first, he agreed with Shepstone that the evidence should be tested, and on 27 January 1874, both Colenso’s Hlubi witnesses and the messenger, Mahoyiza were interviewed and cross-examined, at the offices of the S.N.A. Although it was demonstrated that Mahoyiza’s account of being stripped was highly suspect, the evidence never made into the court room.

If the inconsistencies of the Matshana story had been publicly revealed in court, then the effect would have been to undermine at least two of the cornerstones of Shepstone’s policy towards Africans living in Natal. First, is the perception that these refugees were fleeing from the tyranny of their Zulu rulers into the arms of the benevolent colonial government of Natal. Second, were the assumptions that while flight from Zululand was a political and economic choice, flight away from the colony was ‘rebellion’. It is the latter set of assumptions that Colenso’s account challenges. The publisher’s “Introduction” cites Mahoyiza as having stated that in his refusal to respond to the summons, Langalibalele threatened that he would ‘turn Bushman and go into the caves…’ (Colenso 1875, 1). Colenso challenges the colonial idea that, since Langalibalele had been offered refuge in Natal, he had no right to flee. Interestingly, this right, according to Colenso, falls within the terrain of “Kafir Law.” Thus, in responding to the allegations, that were presented in court and repeated in the official record of the trial, that Langalibalele had communicated with Basotho chiefs requesting that they should receive his cattle when he flees, Colenso writes:

I repeat, if he had notified beforehand to Molappo, Letsea, or any other of the Basuto Chiefs, his purpose of coming to him with his people and cattle, and putting himself under his protection, because he did not intend to obey an order of the S.C. [Supreme Chief] of Natal, there would have been nothing at all extraordinary in this under Kafir Law, though he would have been liable to have had his cattle confiscated, if his project had been discovered before he left the Colony...

And the very fact that our Government receives refugees even now from Zululand, and protects their persons while it sends back their cattle, shows plainly that it recognises this Kafir custom as still in force in Natal, as in the days when Langalibalele himself was received, though flying to us with his cattle and arms, after fighting with the forces of the Zulu king (4). How, after this, could he suppose that he was doing anything “wickedly, seditiously, and traitorously,” in flying once more, with his arms and cattle, from the Supreme Chief of Natal? (1875, 26)

In this way, Colenso links the false reports of Shepstone’s messengers with the “refugee” crisis that had circumscribed Natal’s perceptions of the colony’s relations with the Zulu kingdom and therefore the Zulu chiefs it set up in Natal. By
demonstrating that in fact, the Natal colony, by following the precedence of “Kafir custom” was tacitly in support of desertion of one’s chief, Colenso tried to demonstrate that such an act was not a crime. And, the fact that Matshana had, in 1858 successfully fled, and was not recovered, as Langalibalele was, should have been proof of the inconsistent foundations on which the case was based.

In this way, Colenso revealed one of the main paradoxes of the Shepstonian system, namely that while it was supposedly based on “Kafir law”, in practice the so-called refugee crisis predominated and determined the incorporation of fleeing chieftainships and populations into Natal’s colonial society. Moreover, by not being expected to retain their right to flee, that is, the same right that brought them to Natal in the first place, Natal’s African chiefs should have considered themselves bound to Natal as vassals of the Shepstonian system and not as independent chiefs. The implications of Colenso’s citing of “Kafir law” is that in the context of an uncodified customary law, Natal’s native policy was challenged from the inside, by the chiefs themselves, first Matshana then Langalibalele. The latter, by referring to the fate of the former, asserted both his independence and his understanding of the duplicity and fear factor inherent in the Shepstonian system. His rebellion, was therefore, fostered by the contradictory assertion of the independence of the refugee and the fear emanating from his experience of the S.N.A’s reaction to recalcitrant chiefs.

Labour, Guns and the Hlubi “spirit of independence”

Related to the above issue of whether Langalibalele had the right, in accordance with “Kafir” custom, to flee the colony of Natal, is the view, expressed in the “Introduction” that the conditions under which the Hlubi had been incorporated as refugees had fostered a “spirit of independence”, which then fostered their ambitious rebellion. In his remarks, Colenso connects the question of guns and the Hlubi’s supposed spirit of independence by again arguing that they were entitled to both. The accusation that Langalibalele exhibited a “spirit of independence” and that this was the cause of his rebelling, is contained in the “Introduction” to the official record:

“The fact is, no doubt, that Langalibalele “ever manifested an independent spirit,” and, by those who regard the Natives as dogs, who should only cringe and fawn before a white man, such a spirit will be condemned, though perhaps in reality more worthy of respect than the servile obsequiousness of some others of the Chiefs and Indunas in the Colony. (1875, 4)

However, since this independence was seen to have supported Langalibalele’s refusal to declare and register the guns held by his subjects, it is important to briefly return to this issue in order to understand how the accusation of an independent spirit was
connected to the general condition of the Hlubi. As stated, many of the Hlubi, and other members of other “tribes”, obtained their guns from the diamond fields. Seeing that the Hlubi had been placed at the foot of the Drakensberg to protect the colony from “Bushmen” raiders, some witnesses and Colenso posited that, to execute this function, the Hlubi needed these guns. Colenso, sums up the gun issue thus:

Perhaps, if this service had not been so well performed – if the Weenen Farmers had not altogether ceased for some years past to suffer from the inroads of Bushmen – they would not have been so ready, as some of them were, to excite the popular feeling against this tribe, by publishing groundless fears and suspicions, and the merest canards implying that the Hlubi Tribe were on the eve of breaking out into a desperate rebellion...

But surely these services of twenty-five years deserved some consideration, before the Chief was doomed to a sentence exceeding in severity, in the opinion of Natives (Natal Mercury, Feb. 14, 1874), even death itself. And, if it was convenient to post them so as to protect Weenen County from the Bushmen, they might claim to have some indulgence shown them in the matter of guns, as having to deal with the poisoned arrows of their crafty and daring, though diminutive, foes. As the old Induna, Mhlaba, said, p. 58:

“I don’t know when it was that the young men first began to acquire so many guns. I did not notice. I thought they were getting these guns to do what they had been ordered to do – protect the country from the Bushmen.” (1875: 6)

The Hlubi were therefore not merely hapless refugees fleeing Zululand. Their rapid incorporation into the nascent mineral revolution and their function as a colonial police was evidently to their disadvantage. Yet, the fact that their supposed independent spirit manifested itself in both economic and munitions prosperity offers a different view of so-called traditional societies’ struggle against labour incorporation. Although their success was also their downfall, as evident in the official record, Colenso’s argument demonstrates that, at least for a while, this success and the independence they enjoyed was a credible counterpoise to the obsequiousness expected from Africans.

The Customary and the Colonial in the Definition of Rebellion

When the trial began, Sir Benjamin Pine, as Supreme Chief, auspiciously declared, in his opening address, that Langalibalele should consider the trial an act of mercy. “We are assembled here today”, he said, to try a person, Langalibalele, formerly a chief, for the greatest crime that a human being can commit against society, –We are to try him for high treason – for rebellion against the authority of Her Majesty the Queen, as represented by her Representative in this Colony. Rebellion is the greatest crime that can be committed, because it involves all other crimes – murder, robbery, and every other possible crime are committed under the cloak of rebellion. Langalibalele and the chiefs are perfectly aware that, under their own law, if strictly administered, the prisoner would not be alive now. (Quoted in Guy 1983, 206-07).

In this way, Langalibalele’s guilt was presented as a foregone conclusion in terms of customary law; the trial was therefore an act of mercy compared to the strict application of such indigenous law. The fact that Langalibalele’s authority was itself a colonial rather customary creation and that he had actually fled the colony, leaving both the colony and its version of customary law behind, is not mentioned by Pine. As demonstrated, Colenso challenged the official reading of “Kafir law” by suggesting
that in fact under this law, fleeing one’s present sovereign in favour of the protection of another was not a rebellion and was therefore not punished. Colenso’s report however exposes at least two other contradictions in the official definition of rebellion: first, he demonstrates how at this time, Natal’s customary law was actually a transplant from the Cape Colony and secondly, that the position of the Supreme Chief was not only a “legal fiction” but that if its functions were carried to their logical conclusion then it would undermine and nullify the very foundations of the trial.

Throughout his citations of “Kafir Law” Colenso refers to Kafir Laws and Customs of the Cape Colony rather than to any law enacted in Natal. This suggests that Natal did not actually possess a codified or statutory set of “Kafir” laws. The Natal Native Code of 1891 can therefore possibly be understood as a reaction to this apparent contradiction and an attempt to codify, in the face of resistance and defiance, the limits of the customary. Colenso’s understanding of “Native law” centres on juxtaposing the Cape Colony’s Kafir Laws and Customs and the stereotypical Shakan notion of law and order. He argues:

According to the Kafir Law of the Cape Frontier (73), they were perfectly at liberty to quit the Colony, and carry off their cattle if they could; and to such Law the tribe was subject, not to the savage system of Zululand. For Natal was once a “portion” of the Cape Colony, and for nearly three years – from May 31, 1844, to March 2, 1847 – received all her laws from the Cape – the Roman-Dutch Law for Europeans and the Kafir Law for the Natives. Not, of course, that the “Kafir Laws and Customs” of the Cape Colony were formally established by Law in this District, as the Roman-Dutch Law was for white inhabitants. But, when Natal came under British Sovereignty, as a “part or portion of the Settlement of the Cape of Good Hope,” it fell under civilized government, and the savage system of Chaka, being a mere innovation on the Native practices as previously existing was at once abrogated. (1875: 44)

In this way Colenso challenges the colonial view that Zulu rule was despotic and that therefore it justified the presumption that Langalibalele had no right to desert the colony and that once caught, it was mere kindness not to kill him instantaneously. The suggestion that the official definition of Langalibalele’s crime was based on a Shakan interpretation of Zulu tradition depicts this definition as being in itself despotic.

That Colenso’s defence of Langalibalele was based on exploiting this legal ambiguity over the authority of Shakan “Native law” is evident in the petition, dated 1 March 1874 and signed by Magema Fuze, William Ngidi, and two Hlubi elders, Ngwadla and Mnyengeza. In the petition, the two elders appeal to Sir Benjamin Pine as Supreme Chief, for a retrial of Langalibalele on the grounds,

That their late Chief, Langalibalele, has been tried under Kafir Law, by a Court presided over by Your Excellency, and convicted of certain crimes, and sentenced to banishment for life from the Colony of Natal...

That the tribe having been broken-up, and their late Chief being in prison, Your Petitioners are unable to obtain the assent of the Indunas and other headmen of the tribe, and of the prisoner himself, to this Petition, and they therefore pray Your Excellency to regard them as representing the tribe and the prisoner.

That your Petitioners pray that Your Excellency will be pleased to allow to their said Chief the right of appeal to which he is entitled under the Ordinance No.3 of 1849, and to permit free access for Counsel to the prisoner for the purpose of preparing his appeal, and conducting it before the Court of appeal. (Colenso, 1874: 284-285).

Colenso then cites the entire Ordinance to demonstrate how the colonial version of “Native law”, and the definition of the “Supreme Chief” in the Ordinance, permits an appeal to the Lieutenant-Governor in his capacity as Supreme Chief. Since the
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colonial version of customary law permitted appeals, this has the effect of contradicting Pine’s statement, in his opening address at the trial, that Langalibalele would already have been executed if customary law was strictly applied. Admitting this discrepancy, would involve the recapitulation of the entire foundation of the trial. Also, the petition lays bare the other incongruity in the official definition of “Native” law, namely that Langalibalele’s trial and the breaking up of the Hlubi evidently destroyed the foundations of colonial customary law, namely the “chief” and the “tribe”. The Hlubi were now in effect *persona non grata*, with neither Zulu nor colonial citizenship or, by implication, could not be treated as the subjects of colonial Natal.

Thus, although rebellion was inadmissible within the Shakan system, Colenso again demonstrated that this could not be the foundation of the official understanding, and therefore that Langalibalele had merely asserted his right according to the “Native law” tradition preceding the Shaka “innovation”.

**A “Paternal Government”: Shepstonian Policy and a Paternalistic Notion of Rebellion**

When the trial of Langalibalele began on 16 January 1874, Bishop Colenso proclaimed that it would be based on the “basic principles of English justice” (Guy 1983, 205). He thus objected, in a newspaper article, to some of the colonists’ conclusion that Langalibalele’s guilt was a *fait accompli*. But he was also anxious to understand the role of his friend, Theophilus Shepstone in the suppression of the rebellion. Contrary to Colenso’s expectations, the whole trial was a travesty of the English justice he espoused: the trial was constituted as both a judicial trial and a court of inquiry. Two of the sixteen assessors were the Lieutenant-Governor Sir Benjamin Pine, sitting as Supreme Chief and the S.N.A, Theophilus Shepstone. Langalibalele was made to plead, but not allowed counsel, and all the witnesses were selected by the prosecution and not cross-examined (Guy 1983, 206-207). In effect the whole constitution of the trial is a reflection of Shepstone’s characterization of paternalism, as both an administrator and as a personification of the African patriarch. There are therefore at least two ways to explain how, during the Langalibalele affair, paternalism was used to define rebellion: first, is Shepstone’s own personification of paternalistic behaviour and second, is the way in which the writer of the “Introduction” depicts the repressive actions of the colonial government as paternalistic.

Shepstone embodied, in his reliance on the oral rather than the written word, what he believed to be the cardinal values of a paternal government. Although there are many instances in Colenso’s remarks in which Shepstone is shown to be the dominant factor in the official condemnation of Langalibalele, the discussion here will focus on his attachment and use of oral rhetoric to confound those who dared to defend Langalibalele. As already intimated, Shepstone was fluent in both Xhosa and Zulu and the interactions described below, took place in Zulu and were translated by Colenso.

When Colenso presented the Hlubi elders’ petition to the S.N.A., he set the oral and literate worlds on a collision course. Shepstone’s immediate response was to dispute the validity of this petition. He summoned the petitioners, Ngwadla and Mnyengeza, on 4 March 1874 and interrogated them about the petition. In his attack,
Shepstone exploited the two elderly men’s illiteracy by re-interpreting the spirit of the petition and presenting the two elders as upstarts, falsely claiming to represent the Hlubi. Thus, Magema Fuze reports that Shepstone questioned Ngwadla “severely” saying that he had requested the appeal because “forsooth, you are such a great man, you surpass all the rest of the amaHlubi tribe! Is it so?” Even when Ngwadla protested saying “there is no such word in the paper as that…” Shepstone insisted that, “It is written here in the paper. It is not we who say so, it is your paper.” (Colenso 1874, 286). However, as it becomes evident in William Ngidi and Magema Fuze’s testimonies on the same petition, Shepstone was not merely testing the integrity of the two men’s petition or exploiting their illiteracy, he was also attempting to present the petition as an affront to his own authority. As Secretary for Native Affairs, Shepstone undeniably understood his own authority in terms of indigenous rituals of government. His actions reinforced the allure of indigenous power and authority and had the effect of creating the impression of personal rule. Hamilton (1994, 4) especially stresses the fact that Shepstone appealed to Shakan ideals of social order, and set the precedence for their incorporation into Natal’s colonial discourse and practice, especially the practices of the Natal Native Administration. As a fluent Xhosa and Zulu speaker, Shepstone also preferred to exercise his power using the gestures of the oral world:

…speaking in Zulu, using the verbal message, the public meeting, the indaba, where the rituals of oral communication and debate were followed, and where no written record was kept which might attract the legalistic mind of the colonial official or the meticulous calculations of the accountant. (Guy 1994b, 21)

Consequently, Shepstone appears in the oral record, not so much as a manipulative colonial official but as the sovereign-patriarch “Somtsewu kaSonzica”, whose “desire [was] to speak with all people” (quoted in Guy 1997, 5). Ngwadla and Mnyengeza’s petition was therefore a challenge to this oralisation of factual and legal evidence and to Shepstone’s own duplicitous interpretation of the written word. In Magema Fuze and William Ngidi’s testimonies on this petition, Shepstone’s attempt to confuse the oral and the written is clearly visible. Magema reports that not only were the two elders told that the paper said they surpassed the others in importance but that, as Ngwadla says “I have gone to law with the Supreme Chief and Somtseu (Shepstone), and that I shall be put in prison” (Colenso, 1874: 287). Thus, emerges the distinction introduced by Shepstone, and repeated by the Resident Magistrate, John Bird, between “going to law” (ukumangala) and “making a plaint” (ukukhala). On being asked what the petition meant, Magema responded,

M. [Magema] The old men were lamenting themselves very much about the ruin of their House, and bewailing their Chief.

Mr. B. [John Bird]. Did they go to the Bishop himself to make a plaint (kala) about that?

...M. Sir, the old men also desired that the cause of their Chief should be heard again, making a plaint with their hearts.

Mr. B. Don’t you mean that they complained (mangala, go to law) to the Bishop?

M. No, Sir, I don’t know that they complained.

Mr. B. Don’t fence with me, Magema, tell me the truth. Do you say that they made a plaint only? (Colenso, 1874: 287-288)

William Ngidi brings this legal fencing to its climatic contradiction, when in his testimony he poses the question,
By pointing out that justice for colonial Africans came at the price of 5s., William exposes the duplicity inherent in the supposed distinction between *ukukhala* and *ukumangala*. For William Ngidi both concepts belong to the colonial order and not to some traditional notion of justice. The irony in his observation is exactly that in terms of colonial customary law one had to pay 5s before they could ‘go to law’, but in this situation this contradicts the political and didactic purpose the trial of Langalibalele was meant to serve. From Bird’s questioning of the two, it is as if the right of appeal, because it involved ‘going to law’, was a novelty, whereas in fact, as pointed out by Colenso, it was a right entrenched in Ordinance No.3 of 1849.

From the perspective of the writer of the “Introduction”, the paternal nature of the government was symbolised by its treatment of the recaptured Hlubi women and children. With the dispersal of the tribe, many women and children, especially those of the so-called rebels were left destitute and the Natal government issued a notice that these women and children were to be distributed amongst the colony’s farmers. It seems that this proposal was thwarted by the protests of the colony’s ‘philanthropists’, as described by the writer:

“...The more the subject is considered, and the way in which these women would have been treated under the strict surveillance of a paternal Government (!), the fewer do the objections which a mistaken philanthropist can urge become. Sentiment in this case prevailed over economy, expediency, and common sense.” (Quoted in Colenso, 1875: 67)

Colenso picks up this refrain about a “paternal government” by pointing out that such arguments have been used “in defence of the system of slavery” and that there was neither expedient nor economic intention in the proposed forced apprenticeship of the Hlubi women (1875: 67). However it is in his assessment of the writer’s suggestion that Langalibalele had no right to appeal his sentence and conviction that Colenso inverts the logic of paternal government. Colenso writes:

But the writer argues as if this were in the nature of an ordinary appeal from a judgment pronounced by a lower Court between two disputing parties, where, of course, only the evidence produced at the trial by both sides can be considered by the Court of Appeal. The present is a very different case: it is that of a “Paternal Government” dealing with what it deems unruly children. And, as a father, to be worthy of the name, who might have severely chastised his child for some supposed offence, in a fit of passion or under a mistake, would only be too thankful to have it shown to him, by evidence of a trustworthy character – however painful and mortifying to himself the discovery might be of his own hastiness or want of judgment – that his child had not been so faulty as he had supposed, and he himself had been unjust in the severity of the chastisement inflicted, so surely a really “Paternal Government” would desire to know the whole truth as far as possible, and would not refuse to hear any trustworthy additional evidence which went to disprove altogether or even to extenuate the convict’s guilt, even though it had not been produced in Court. Though the writer “believes no sensible person thinks the sentence too severe,” it may be well to await the judgment on this point of Englishmen, here and at home, when fully informed. (1875: 81)

Using the metaphor of the paternal father, Colenso thus demonstrates that the logic of paternalism, when combined with the “legal fiction that the Supreme Chief was the Chief Native in the Colony” (1875, 81), implies that Langalibalele should not have been refused an appeal nor the government objected and frustrated his attempts to
introduce new evidence to prove his innocence. Again, by referring to the definition of the Supreme Chief contained in Ordinance No. 3 of 1849, Colenso demonstrates that it is the function of the Supreme Chief, if “Native Law” is followed to receive appeals.

Although he continues to assume that justice, in this case British justice, will triumph over the travesty of the legal fiction of a paternal government, Colenso’s analysis exposes the shortcomings of this paternalism. Shepstone is shown to be essentially averse to the procedural and substantive premises of legal deliberation since he tries to mislead and confuse the witnesses. Colonial sentiment concerning the forced apprenticeship, in the name of paternalism, of the survivors of the rebellion is described as nothing short of a justification for slavery. And, Colenso, in the face of a legalistic attempt to block his appeal on behalf of Langalibalele, challenges the very foundation of a paternal government by suggesting that such attempts are contrary to the function of a paternal government.

The Limits of a ‘Paternal Government’: A Thematic Summary

The victory that Colenso eventually won on behalf of Langalibalele was bitter for the Hlubi, but for the British government it was a pragmatic way to save face. Langalibalele was released from Robben Island, where he had been banished by the “Native Court” that tried him, but he was not allowed to return to Natal. The pragmatic compromise was that a location would be found for him in the Cape, and the Hlubi people would be allowed to join him there. The irony is that whereas Colenso was compensated with £120 for his expenses and received a private message from the Queen expressing her approval for his actions, Shepstone, following a promise by the British Secretary of State, Lord Carnarvon, was knighted (see Guy, 1983: 228-232).

The above reading of Colenso’s Langalibalele and the amaHlubi Tribe has attempted to suggest a method and approach for discussing the everyday functioning of the “paternal government” of colonial Natal. Although there are numerous other themes that were not discussed, it should be evident that as a record of the “hidden transcript” of the supposed rebellion and trial, Colenso’s document offers a glimpse into the kind of legalistic and duplicitous practices that were subsumed under the notion of paternalism. Colenso himself was not free from the colonial taint of paternalistic idealism, yet his willingness to oppose his friend Shepstone, offer, even in the face of the colonists’ obvious resentment, a humanitarian alternative to unrestrained chauvinism and his discerning engagement with “Native” opinion further augments the possibility of recovering an African hidden transcript concerning the supposed rebellion of the Hlubi.

As a historical account of Langalibalele and the Hlubi’s relations with the colonial government, Colenso’s remarks reveal the multiple terrains on which power between Natal’s chiefs and the colonial state were contested. Although the colonists and the official record depicted the Hlubi as a desperate community of refugees, Colenso presents the alternative view that it was their prosperity and their success in the policing function assigned to them by Shepstone, which turned them into the bête noire of Natal’s colonial society. On the gun issue, Colenso demonstrates that the incorporation of Africans into the labour force of the diamond fields, rather than the Hlubi’s rebellious intentions, were responsible for the proliferation of guns. Moreover, he demonstrates that for the Hlubi ownership of guns was not separate from the services expected of them by the colonial government and colony’s farmers.
The trial itself becomes another site on which the rebellious intent of Langalibalele is disputed. By constituting the trial as a “Native Court”, the colonial government had possibly hoped to impress its indigenous and paternal character on its African audience. However, Colenso challenged this as being both a legal fiction and a travesty of the very “Kafir Law” on which it was supposedly based. Shepstone’s attempts to exert his influence over the proceedings and witnesses were also exposed as duplicitous in the same way.

Thus, although Scott’s notion of the divergence between a public and hidden transcript does not fully capture the complex composition of the South African colonial conditions, it nonetheless offers insights into how the official record of trials like the Langalibalele one can be read and used to illuminate the larger political, social, cultural and linguistic implications of the subjugation of Africans, in the name of paternal governance.
PHOTOGRAPHS OF CETEWAYO. – We have received from Messrs. Marion and Co. three photographs of Cetewayo and his wives taken on board the s.s. “Natal” by Messrs. Crewes and Van Laun, of Capetown. Comparing these undoubtedly authentic portraits of the unfortunate monarch with those which have previously appeared in the illustrated papers, we have a striking instance of the superiority of the camera over the pencil in securing accurate delineations of feature and characteristic expression. We must say that poor Cetewayo has just cause for complaint against the artists who have endeavoured to pourtray [sic] him in our illustrated serials. The British Journal of Photography, No. 1017, Vol. XXVI, October 31, 1879, p. 526

The pictures of Cetshwayo taken on the British steamer the SS Natal are iconic. They have appeared in several accounts of his reign. Specifically, they are used to illustrate the end of the Zulu kingdom and the 1879 exile of Cetshwayo to Cape Town (see for example Guy 1994a, 88f.). As a moment of photographic capture, Cetshwayo’s image also fits into the continental and regional story of the photographing of captured monarchs and rulers. In her book Photography and Africa, Haney dedicates several pages to what she terms “Majestic Prerogative” (Haney 2010, 71-76). As she perceptively notes, “Sending African rulers into exile was part of colonial expansion particularly well-suited to spectacle and these events were often ceremoniously photographed for posterity” (Haney 2010, 74-76). The exile of Cetshwayo to the Cape was just such a spectacle. By being photographed on the ship on his way into exile, the photographs of the king represent several aspects of the history of British imperialism in South Africa. For one they depict the perceived emasculation of a southern African monarch after his defeat by the British and secondly, they represent Cetshwayo, as the king of the Zulus. Although these photographs have been used and reproduced several times, they have never been subjected to a close reading. Since he was not the first African ruler to be sent to exile, the image of Cetshwayo as a prisoner of the British fits into the common story of exile as it repeated itself across the continent. As images, these photographs have been mislabelled or misread and this chapter will focus on how the assumption that Cetshwayo was a silent and passive photographic subject is destabilized once we read two accounts by photographers who recounted how they “photographed” the king. Although conceptually and ideologically problematic, Cetshwayo’s experiences with the camera will be interpreted in this chapter as informative of how other “Zulus” may have experienced being photographed. As a member of the Zulu elite and one who was the centre of unprecedented attention, Cetshwayo’s dialogue with his photographers is the exception rather than the rule. Yet, his emphatic statements to those who asked him to pose hint at some of the other possible attitudes that other Zulus who were photographed may have adopted. Thus, although imperfect as an expression of the “consciousness of being seen”, Cetshwayo’s indirect and reported speech opens up the possibility of a more nuanced interpretation of not just his photographs but those of countless other Zulu “commoners” who stood in front of the camera.

The two photographers published their stories about photographing Cetshwayo in newspapers and this indicates that they were both aware of the popular fascination with the Zulu king. What is notable about the accounts is that they are
written almost three decades apart: the first article by the photographic duo “Messrs. Crewes and Van Laun” was published in the same year that Cetshwayo went into exile, 1879. The second account by Thomas Ross was printed in July of 1910. The gap in years is significant: whereas Crewes and Van Laun were writing at the time when the Anglo-Zulu War had just concluded and Cetshwayo was in the news, Ross wrote his account as South Africa formalised its identity as a unified nation state with the Act of Union of 1910. Yet, despite this gap in years, it is the latter account which contains the most details about the verbal, cultural, visual and human encounter between Cetshwayo and his photographers. This paper will attempt to offer an explanation for the very distinct and divergent ways in which two photographers could interact with the same subject.

“Cetywayo Photographed”

The title of Messrs. Crewes and Van Laun’s article already suggests passivity. By simply stating “Cetywayo Photographed” (1879), the authors were signalling the fact that the event was already in the past tense and yet, their language is distant and indirect and already suggests that they were not as captivated by the Zulu monarch as others may have been. It is also telling that the same edition of the newspaper carried an advertisement announcing the sale and price of Cetshwayo and his wives’ pictures. Before the photographers could even talk or see Cetshwayo, it becomes apparent that they had to first deal with his state-appointed guardian and interpreter. Captain J. Ruscombe Poole was appointed his guardian soon after the king was captured on August 28, 1876. The interpreter, W. K. Longcast, had served during the Anglo-Zulu War as an interpreter to the British military staff and was now the interpreter for the exiled king and his entourage (de B. Webb and Wright 1987, xxiv). Most of this detail is not contained in the article and the guardian simply becomes “Capt. Poole” and Longcast the “interpreter”.

After detailing their 7:30am start and the wet weather, Crewes and Van Laun, introduce us to the SS Natal and to Captain Poole. The fact that Cetshwayo is about to be photographed on a British ship while awaiting arrival and disembarkation in Cape Town, is in itself a sign of the British power and progress that his captors were probably trying to impress upon him. Through the assistance of Poole, the photographers arrived on Friday and secured an “appointment” with the king for Saturday morning. However, when they arrived, Cetshwayo was not willing to come out and be photographed; he claimed that he was going to sleep and did not wish to be disturbed. Undeterred, the photographers turned to Captain Poole who offered a hint of how to approach the king and they describe this conversation in the following way:

He did not seem inclined to appear and Capt. Poole thought it best to give him some inducement to do so, which was accomplished by catching a fish. This made him come out at once, and after some palaver the king was persuaded to seat himself near the compass, with his back against the rudder wheel. He appeared to be very nervous, and requested that it might be done at once in order to have it over. He seemed to dread the camera, and did not like the look of the lens. Crewes and Laun (1879, n.p.)

The trifling act of catching a fish was used to perhaps appeal to the king’s supposed “childlike” imagination, however it is the use of the word “palaver” that better reveals
the attitude of the photographers to their subject. As the *Oxford Dictionary of Word Origins* states, the word belongs to the history of conversations between Africans and Europeans:

> When early Portuguese traders in West Africa had disputes or misunderstandings with the locals they used the Portuguese word *palavra*, literally ‘word, speech’, to mean ‘a talk between local people and traders’. The Africans picked up the term from them, and in time passed it on to English sailors. In English palaver first meant a prolonged and tedious discussion, then in the late 19th century a fuss, commotion, or rigmarole. The Portuguese *palavra* developed from Latin *parabola* ‘parable’.

Although they may not have intended to insinuate that Cetshwayo perceived having his photograph taken as an economic or trade transaction, the use of the word “palaver” does serve to make the king’s reluctance to have his photograph taken seem like an unnecessary and inconvenient hindrance to the photographers. Once the king’s consent is secured, the photographers choose the compass and rudder wheel as the backdrop of the photograph. Once again, this may be interpreted as a juxtaposition that is meant to highlight the fact that Cetshwayo has been captured and is now the prisoner of Britain, the world’s naval power. His request that the operation be done quickly so that he might have it over, is interpreted as a sign of nervousness rather than impatience.

By contrast, when the photographers turned towards the king’s wives they were met with a different reaction. When they attempt to take a third double negative, Cetshwayo refuses and they then accept his refusal. His wives on the other hand, did not, according to “Messrs. Crewes and Van Laun” shy away from the camera. They write,

> After that came the king’s wives; they appeared eager to be photographed, and after they had been placed in position, we requested the king to sit in the centre of the group, which he declined to do, saying that he had to undergo it alone, and they would have to do the same. Upon his being told that we wished to have him in the middle, he answered that we could cut the photos, and then place him wherever we liked. He would not sit again, so we contented ourselves with taking two more double negatives of his wives while he was smoking his cigarette, and this finished our day’s work, leaving the king on deck, trying his hand at fish-catching. Our ultimate success is strictly due to Captain Poole (who knows how to humour the king), as well as to our operator, Mr. Sutton, who was watching for the best moments. Crewes and Van Laun (1879, n.p.)

In their vision of what it meant to photograph the Zulu king and his wives, the photographers seem to have assumed that they could present the king as a *paterfamilias* surrounded by his wives. His refusal to participate in this image-making reveals that he did not see himself as such. However, what is more noticeable is that in refusing to play the part of the “family man”, Cetshwayo may have been frustrating the photographers’ desire to create an “archetype”. In describing the photographic project begun by August Sander in 1911, Susan Sontag describes Sander’s “archetype pictures” as photographing each individual as a “sign of a certain trade, class, or profession. All his subjects are representative, equally representative, of a given social reality – their own” (Sontag 2002, 59). The “social reality” that the photographers were trying to capture was that of an autocratic, polygamous African king. In refusing their request, Cetshwayo was denying them this archetype of African kingship. Moreover, his suggestion that they create a montage, by cutting up his picture and placing it wherever they wished in relation to the image of his wives, suggests that
Cetshwayo understood the malleability of a photograph and was keenly aware that he had no control over the fantastical montages that would be created from his image. The fact that he becomes a spectator in his wives’ photographing, shows that Cetshwayo does not leave the scene of the photographic encounter but continues to be part of it. His actions of “fish-catching” and smoking a cigarette also hint at the fact that Cetshwayo was not the traditionalist the photographers may have desired. However, no matter how much he fails to conform to their expectations, Crewes and Van Laun still leave the steamer with the impression that the king is a truculent dictator who only responds to flattery in the form of “inducements” and humour.

The documentary or reportage quality of “Cetywayo Photographed” does not gel with the advert that appears in the same edition of the paper. Although Crewes and Van Laun presented themselves as dispassionate photographers whose only interest was acquiring a photograph of the king and his wives, the advert exposes a different set of motives.

The veracity of the photographs is certified by the use of the phrase “from life” and Cetshwayo is obviously presented as the main attraction since he is the headline and his wives are a supplement described as “a group of his wives”. The fact that the account of photographing Cetshwayo and the advert appear in the same edition implies that even before the photographs were developed, the photographers had already placed a value of 2s. on each. This advert thus functions to indicate the monetary value that was attached to the image of the Zulu king who is variously described as “late” or “ex-” to remind the readers that his defeat and exile have eliminated him as a threat to the British empire.
How I Photographed Cetewayo

Whereas Crewes and Van Laun dispassionately described their pursuit of Cetshwayo’s “likeness”. Thomas Ross begins his 1910 account with a history lesson encompassing all the wars that the British had fought in South Africa up to that point while also providing a history of the Zulu people. By beginning on this tone, Ross was reinforcing the fact that he was writing his account of photographing Cetshwayo many years after the fact. Moreover, he is addressing himself to the newspaper’s “young readers” and is therefore writing as a colonial “old hand” and as a nostalgic photographer who remembers his encounter with the Zulu king. The details and humour in this article are a sharp contrast to the Crewes and Van Laun one. Again, this may be due to the passing of time and the fact that Ross is now writing in the “new” South Africa that had been forged through unification. He is therefore no longer as concerned with the imperial imperatives that Crewes and Van Laun may have been concerned with.

Although his history lesson to the readers is a notable prologue to his account, it is his definition of the Zulus as a “worthy foe” of the British that frames the vision of Cetshwayo he wants to transmit to the readers. As with the Crewes and Van Laun account, the emphasis is on the Zulu king as a dictator who in this case was also the commander of a ferocious and savage army. However, Ross does not only emphasise the “savagery” of the Zulu army, he depicts it as a worthy “foeman” and thus he offers the reader an untenable admission of equality even while placing the Zulus on a lower rung on the scale of civilisation. He describes the “Zulu warriors” thus,

> When it is remembered that Cetewayo’s army of warriors numbered, as I already said, between thirty and forty thousand trained savages who, under pain of death, dare not turn back or retreat in the face of an enemy, some idea may be formed of the formidable foe our troops had to contend with. As was said at the time, our British Army found “a foeman worthy of their steel,” the Zulus being the most powerful and warlike of all the native tribes in South Africa. (Ross 1910, 12)

This kind of historicizing is not unusual, but in this case it powerfully points to the fact that the photographer was not just interested in Cetshwayo as a photographic subject but that he was interested in his emblematic role as the “foeman” who dared to challenge British power.

The photographic moment does not occur for several paragraphs in the story since Ross soon finds out that he is the second man to request a photograph. Judging by the sequence of events, he is in fact second to “Messrs. Crewes and Van Laun”. As his account makes clear, Cetshwayo was counting. Ross writes,

> There is an old saying that “the early bird catches the worm,” which was fully borne out in my case, and I am sure your kind readers will understand my feelings when I tell them that another photographer had been before us, and secured the much-coveted photo of Cetewayo. This man did a smart thing by going down to Simon’s Town the night before, and got on board next morning early before we arrived. No amount of persuasion would induce Cetewayo to sit again; his answer was “that if we wanted his photograph, why not get one from the other man?” Having explained, through the interpreter, that, we did not want the other man’s photo as we wanted a negative to make photographs for ourselves – Cetewayo evidently understood something about photography as he seemed to understand the case, and at last consented to sit again…(Ross 1910, 12)
The drama that takes place and causes Cetshwayo to reverse his willingness to be photographed concerned one of his wives. One of the soldiers on board the ship was so taken by her physical beauty, which Ross describes as “a perfect model of a Juno in bronze”, that he grabbed and felt her arm. This caused Cetshwayo to storm off and thereby terminated the photographic session. Besides revealing just how many other people may have been on board as “spectators” and guards, Ross’s account of this impropriety on behalf of the British soldier illustrates the fact that Cetshwayo’s wives were not passively participating in the act of being photographed but were actively also observing and learning about what it meant to be photographed. Moreover, the fact that the soldier was fascinated by the physical beauty of one of the wives, undermines the attempt by Lady Frere (presumably the wife of Sir Bartle Frere, British High Commissioner, 1877-1880) – who had given the wives calico cloth to wrap around their bodies – to cover up their “exotic” bodies. The incident squarely focuses attention on the wives as the “exotics” who could also be potentially photographed even though in the case of Ross, he did not seem to be eager to photograph them.

Ross’s relationship with Cetshwayo changes once the king is disembarked from the steamer and lodged in the Castle in Cape Town. As with “Messrs. Crewes and Van Laun”, Ross – and his employer – realised that they would have to “induce” Cetshwayo to sit for another photograph. The dialogue and choices that take place reveal several aspects of Cetshwayo’s appreciation of Western clothing and accessories. Ross sets up the conversation by showing that the gaudy gift of a dressing gown failed to induce the required consent from the king:

Cetewayo, with his wives and four councillors, were shortly afterwards removed to Cape Town and lodged for safe-keeping in the old Castle, under the charge of Captain Poole and his military guard.

My employer then made another attempt to get a sitting by presenting his sable Majesty with a gorgeous dressing gown, with cord and tassels, and Captain Poole did all in his power to induce Cetshwayo to face the camera once more, but all efforts, I am sorry to say, were in vain. As matters were looking serious, I requested my employer to let me try what I could do. Permission was freely granted, with carte blanche, to invest in anything which might require for the purpose. My investment was not very costly, as my plan was to get at Cetewayo through the wives, so I bought four strings of beads and a German concertina, price 4s. 6d. (Ross 1910, 12)

As he later explains in his account, the gift of the concertina worked because the wives – as he was told by the interpreter – played the concertina all night and almost through sheer irritation and corrosion worked on Cetshwayo’s nerves. The finale of the story is about how Cetshwayo ultimately posed for a photo. For Ross it was a triumph for one reason only:

When Cetewayo saw that I was ready he at once went inside and divested himself of all European clothing and shortly appeared as the savage Zulu chief he was, with the usual dress and ornaments worn by his people when in Zululand.

I was certainly pleased, as I should not have cared to photograph him in European dress.

This is a crucial moment if we are to understand who Cetshwayo was in 1879 when he was sent to exile. Even though Ross begins with the image of the Zulus as a
warlike, savage people, based on the account of “Messrs. Crewes and Van Laun” and Ross, Cetshwayo was anything but the image of the savage. As Ross so aptly puts it, Cetshwayo had to “divest” himself of his European clothing in order for him to become the “savage Zulu chief” he and other photographers desired. Although this would be an appropriate conclusion to his account since it would be an exposé of the fact that by the time he went into exile, Cetshwayo was no longer a “genuine” savage but had become an English gentleman who smoked cigarettes and wore tweed jackets, Ross takes the story further by supplying even more detail about this gentlemanly Cetshwayo. He tells the readers that once he had completed taking the king’s photograph, Cetshwayo then complained about the photographer who had taken his photograph on the steamer:

> After taking the photographs I was informed that Cetewayo was very indignant at the very shabby way he had been treated by the man who took his photo on board the steamer... (Ross 1910, 12)

In order to prove that he was not as “shabby” as “Messrs. Crewes and Van Laun”, Ross takes prints of his photographs and presents them to Cetshwayo at the Castle. On this visit, Ross is also holding a stick in his hand and Cetshwayo is drawn to it:

> On this occasion I had in my hand a light walking-stick with a dog’s head with beads for eyes on the handle. Cetewayo took quite a fancy to this stick, so I made him a present of it, which pleased him very much, and the funny way he pointed the dog’s head at his wives, pretending to bite them, making a growl as he did so, made us all laugh. To show how much he thought of this new toy, I was amused when another photographer managed to get a sitting afterwards; he was taken in his tweed suit, sitting on a chair, and between his knees he held the stick, with the dog’s head pointing in the direction of the camera, so that he might have a photograph of the dog’s head as well as himself. (Ross 1910, 12)

By ending his narrative with the image of Cetshwayo playfully animating the walking stick and making it his own, Ross effectively undercuts the prologue that he opened his account with. If Cetshwayo could be so comfortable with styling himself in a European fashion, then he is possibly not the king of the warrior-like race that had captivated the imagination of the photographers. The fact that the two sets of photographers who came into contact with Cetshwayo, insisted on photographing him in his savage dress despite his obvious preference to be seen and conversed with while wearing Western clothing, reveals how staged the photographs were while also giving us a glimpse into how Cetshwayo saw himself and attempted to control his public image.
Figure 3  Cetshwayo kaMpende, Photographer unknown. Image shows the walking-stick Thomas Ross gave to Cetshwayo. The image was copied from a web forum called “rorkesdriftvc.com - Discussions related to the Anglo-Zulu War of 1879”.
Figure 4 Cetshwayo kaMpande by Alexander Bassano contact print, 1882. Copyright National Portrait Gallery, London.
The Two Images of Cetshwayo

By extensively quoting from the accounts of “Messrs. Crewes and Van Laun” and Thomas Ross, the aim was to show the tactile, theatrical and performative conditions under which Cetshwayo’s photographs were taken. Moreover, by highlighting Cetshwayo as an articulate sitter who was able to resist and frustrate the desires of the photographers, the preceding discussion functions as a supplement to some of the ways in which Cetshwayo’s words have been recorded and printed in the past. Specifically, it could be argued that there are two images of Cetshwayo that need to be considered if we are to conceptually grasp what his encounter with photography meant. There is therefore the political image of Cetshwayo which is volubly captured in Webb and Wright’s book *A Zulu King Speaks: Statements Made by Cetshwayo kaMpande on the History and Customs of his people* (1987). Although this book contains the photographs mentioned so far, it is nonetheless a compendium of Cetshwayo’s political thoughts and thereby reflects his encounter with the bureaucratic and administrative implications of his exile. The other image – that of the sartorial king – is absent in Webb and Wright’s compilation and we therefore have to turn elsewhere for a fuller account of how the latter image was constructed. As Jeff Guy observes, “From the start Cetshwayo objected to being regarded as a curiosity. Once in Cape Town he insisted on wearing European clothes and being treated with the deference due to a head of state” (1994a, 125). In the months and years after his 1879 exile, Cetshwayo was engaged in a trans-regional and trans-national advocacy in which he pleaded his case for restoration. This is the advocacy that is amplified and archived in the Webb and Wright compendium. For the other image of Cetshwayo, namely that, of the Victorian gentleman, a different kind of reconstruction is necessary. The period between September 1879 and July of 1882, when Cetshwayo travelled to England for his audience with Queen Victoria, could therefore be said to be the realisation and culmination of the sartorial kingship he had begun constructing while on board the *SS Natal*.

As the first southern African monarch to converse with the “Great White Queen”, Cetshwayo was unprepared for the public attention and hysteria that his visit would cause. While he was negotiating his image in Cape Town and posing for the kinds of photographs described by the photographer Thomas Ross, he could not have known that he was preparing for an intensification of this publicity. The moniker “Great White Queen” is borrowed from Neil Parsons’s title *King Khama, Emperor Joe, and the Great White Queen: Victorian Britain through African Eyes*. In this book, Parsons traces the 1895 journey of three Batswana chiefs who travelled to England to meet with the Queen for purposes similar to Cetshwayo’s. Unlike him, they were not there to recover lost sovereignty, but were there to prevent the then Bechuanaland Protectorate from being annexed to South Africa and the then Rhodesia. As yet, no similar account of Cetshwayo’s 1882 visit exists. Thus, to reconstruct the sartorial kingship that Cetshwayo worked so painstakingly to bring to fruition, another approach is necessary. This involves inserting Cetshwayo into the history of Victorian England. As Parsons states, Cetshwayo arrived in England at the very moment that “a new British imperialism was being let loose, one week after a British army had set sail to conquer Egypt” (Parsons 2003, 113). This Victorian
environment meant that Cetshwayo was representing not just himself and the Zulu people, but that he would be read as a symbol of all African delegations that would yet visit the Queen. However, as Parsons warns, the pressure on these envoys to "perform" while in England did not overwhelm their explicitly political goal of "diplomacy and the need to maintain integrity and dignity in the face of the surprising and the unknown" (2003, 111).

The most recent attempt to understand how Cetshwayo looked through Victorian eyes emphasises the role of cartoonists, newspaper serials and illustrated newspapers. Once he was deposed, the overarching question for many Victorians is summarised in a *Punch* article titled “What Will Be Done With Him?” (Anderson 2008a, 304-305); and, as Anderson illustrates many of the speculative answers were satirical. In her other article on how the Zulus were imagined as representing a competing and complementary manliness to that of the British, Anderson mentions that to the Victorians Cetshwayo represented a notion of “divine nobility” and that,

Contemporary descriptions of Cetshwayo [sic] suggest that he came to symbolise traditional notions of royalty, embodying ‘natural’ qualities of a leader such as intellect and authority. As the officer responsible for his capture after the war’s conclusion proclaimed, Cetshwayo [sic] was “the King” all over in appearance and bearing’. (Anderson 2008b, 24)

The main advantage of Anderson’s analysis is that she marshals a variety of sources and compares Cetshwayo to how many other indigenous personalities from across the globe were perceived and treated by Victorians. However, to return to the two articles by “Messrs. Crewes and Van Laun” and Thomas Ross, the image of Cetshwayo as a political threat to British power is not the same as his image as a sartorial challenge to preconceived notions of what a Zulu should look like. The comment offered by the *British Journal of Photography* that photographs of Cetshwayo demonstrated “a striking instance of the superiority of the camera over the pencil in securing accurate delineations of feature and characteristic expression”, implies that Cetshwayo was a transitional figure in the history of the representation of Zulus. Whereas, before 1879, the Victorian public would have seen Cetshwayo and other Zulus depicted as “illustrations”, the camera allowed the viewer to see for themselves the “delineations of feature”. This assertion of verisimilitude is what connects Cetshwayo, the noble king, with the ordinary Zulus who would pose for the camera. As with the paintings of the Mfengu discussed in an earlier chapter, photography emerged into a field of representation already littered with images of peoples from southern Africa. The superiority of the camera was therefore that it gave the illusion of realism and allowed Victorians to read “character” into the images they were presented with. Cetshwayo’s dialogues with his photographers show that he was aware of this power of the camera to project impressions of character and that his struggle as an exile was how to harness this power to aid his restoration to kingship.

*Kings and Commoners*

As one of a few treaties of its kind, Christraud Geary’s *Images from Bamum: German Colonial Photography at the Court of King Njoya, Cameroon, West Africa, 1902-1915* (1988) provides an unparalleled study into the way in which the camera interacted with African royalty and nobility to create a testament of its grandeur and
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regret at its demise. The photographs of King Njoya, his court, his family, and his relatives can function as a barometer for what was lost to the historical record because Cetshwayo was not photographed with as much consistency and attention while he was still king. Specifically, what could be described as the domestication of the camera in the Bamum oeuvre, highlights its instrumentality and bluntness where the Zulu king is concerned. Beyond this comparative perspective there is also the issue of framing, that is, the possibility that the camera did not treat elites and commoners alike. In southern African studies there exists innumerable photographs of chiefs and yet so far, with the exception of King Khama, there has been little attention paid to royal portraiture. Thus, although the German photographer Gustav Fritsch shot Sandile, Sarhili, Maqoma their wives etc. this has hardly been used to write about these photographs as examples of court life. Similarly, with Khama the “discovery” of his royal portraits has been fortuitous and serendipitous rather than a product of a systematic account of his images and appropriations by mission societies and English society alike (refer for example to the opening paragraphs of Tamar Garb’s essay “Encountering the African Archive: The Interwoven Temporalities of Distance and Desire” (2013)). This lack of a literature on royal portraiture may represent what Jeff Guy has called “a paralysis of perspective” since it is due in part to the fact that by the end of the nineteenth century, British colonial governors and administrators were only interested in indigenous or chiefly authority if it could fulfill the double role of representing savagery and subordination. As Guy describes it, “the chiefs had to be presented [in text and images] not only as savages, but also as subjects; untamed and uncivilised but also controlled and malleable” (2007, 342). Another possible explanation for this absence is that as the nineteenth century progressed, the camera became increasingly used as an anthropological and ethnographic record rather than an artistic instrument. If we return to the notice about Cetshwayo’s portraits in the British Journal of Photography, it is clear that in 1879 at least, this leading journal of photographic practice was still concerned with the tension between the camera and the pencil and their respective abilities to capture the personality of the king. This tension has had practical implications because many portraits of African kings and chiefs exist as illustrations rather than as photographs and would therefore not be studied as photographs. The fact that this journal didn’t treat Cetshwayo as a purely ethnographic specimen is therefore evidence of its own artistic conceit. Coincidentally, in the very same volume of the journal in which the notice about the Zulu king’s photograph appeared, there was a lengthy report about a court case involving Zulu photographs. The events surrounding the prosecution of a bookseller and newsagent for the display of “Zulu Photographs” are detailed and numerous and the British Journal of Photography is not impartial in its reporting of the legal and ethical issues that were involved. This case opens up the possibility of writing and thinking about the photographing of “commoners” since at issue is not only photographs that were offered for sale but also there are no photographs included with the report so the photographs themselves are absent. This kind of anonymity means that we can focus solely on the discursive narratives that were used to debate the supposed “obscenity” of the images. However, before launching into this convoluted court case, it is worth pausing and thinking about the designation of “non-elite” photographic subjects. The juxtaposition kings versus commoners works well if one begins from the assumption that such a line can be drawn between royalty and its
“subjects”. However, it is also equally possible to use the vocabulary suggested by Michael Mahoney in his book *The Other Zulus* (2012) by describing the “non-elite” Africans who were captured by the camera as the “other Zulus” since many were not photographed in the Zulu kingdom but in Natal. The story of these images of Zulus begins with painting, specifically the work of George Angas. The often cited “Zulu warrior, Utimuni, nephew of Chaka the late Zulu king” from his book *The Kafirs Illustrated* (1974) has become a touchstone for discussions about the emergence of the “Zulu warrior” as a pictorial trope. For Mahoney, the “other Zulus” are not just Natal Africans who had not previously identified with the Zulu nationalism propagated by the elites of the Zulu kingdom. Rather, the “other Zulus” are exactly those Zulus for whom the idea of belonging to this collective identity was a novelty (Mahoney 2012, 9). This could be the reason why they also made the perfect photographic subjects since they were still “fashioning” a Zulu identity. Thus, these “others” can function as useful contrasts to the ways in which the image of the Zulu king Cetshwayo was advertised and sold. The account of the trial contained in the *British Journal of Photography* provides us with a glimpse of how the notion of “Zuluness” was constructed by photographers.

The case brought against Mr. Phillpott by the Lord Mayor of London was spurious. At least that is the opinion of the editorial writer of the *British Journal of Photography*. From the report it is clear that the editors of the journal had a very low estimation of the Lord Mayor and they made sure to report not just on the proceedings of the case but on the applause and uproar expressed by the court room audience whenever the defence lawyers made a pointed observation or comment about the merits of the case. As further evidence of this disdain for the Lord Mayor, the court room is reported as having filled with members of the photographic fraternity who where keen not only to hear whether in future they would be prosecuted for printing or displaying photographs of “savages in their native costume” but also to support one of their own, the proprietor of the London Stereoscopic Company, Mr. Alderman Nottage, whose name and reputation was indirectly maligned by the Lord Mayor’s assertion that the printers, not just sellers of these photographs should also be prosecuted for indecency. The *British Journal of Photography* was therefore reporting the story from a partisan perspective. However, even with this partisanship, the journal article provides enough material, and imaginative detail and colour, to enable the reader to imagine the kinds of photographs being debated. The fact that the photographs are absent both from the historical court case but also from our contemporary vantage point means that it is possible to talk about the figures in the photographs as representing a discourse about Zulus rather than as just a spectacle. What this means is that the fact that this case was being adjudicated in the absence of the offending pictures means that our own interpretation of the proceedings is occurring in absentia of the images. The emptying out of this category of “photograph” or “image” thus implies a certain amount of anonymity and vagueness about what might have caused offence. More importantly, this absence allows us to open up the discussion of “other Zulus” by generalizing this unique event and assuming that what was being said about these photographs would probably be said about most photographs of “Zulus” as taken during this wartime period. More importantly, the unavailability of the photographs deprives us not just of a comparative standpoint from which to evaluate the issues being debated but it also makes gazing impossible. Simply put, these are not photographs that will ever be looked at; they can only be conjured into existence.
From the beginning of the proceedings it is clear that the matter of the photographs is being rushed by the Lord Mayor who seems to have already made the decision that Mr Phillpott’s action of displaying the photos was intended to corrupt the morals of an unsuspecting London public. The summary of the case as provided by the journal is succinct:

SELLING ZULU PHOTOGRAPHS. – At the Mansion House, on Thursday, the 23rd instant, Mr. J. T. Phillpott, a bookseller and news agent at 54A; Gracechurch-street, City, attended before the Lord Mayor, upon a summons, at the instance of the City police, charging him with wilfully exposing, or causing to be exposed in his shop window, to the public view, certain photographs of Zulus in a semi-nude condition, and alleged to be obscene. – Mr. Robertson, solicitor, who appeared for the defendant, said that Mr. Phillpott had only just returned from his holidays, and had received the summons on Wednesday. There had thus been little or no time to prepare an answer to the charge. Mr. Phillpott had, however, given voluntarily to the police copies of the Zulu photographs in his possession, but he did not happen to have any of the photographs on which the present charge was founded. He had purchased his whole supply from three eminent firms of photographers…(Editorial 1879c, 521)

However, contrary to the Lord Mayor’s supposition that the public was the victim, the defence presents several arguments to show that the public actually demanded photographs of Zulus. The 1879 Anglo-Zulu War is thus cited, rather obliquely, as the reason why photographs of Zulus even exist:

Mr. Robertson said ever since the Zulu war had commenced English people had been anxious to see with what foes they were contending, and hence the production of the photographs, which only depicted the native Zulus in their ordinary attire. He admitted that if they were English people the photographs would be indecent, but they were really not worse than the sketches appearing weekly in such high-class papers as the Illustrated London News, The Graphic, and The Pictorial World. He handed up a copy of the latter journal giving illustrations of Zulu life and character. (Editorial 1879c, 521)

What is notable about the above assertion is that the image itself that is being debated was not a “martial” image, that is, it was not a photograph that was taken on the field of war. Paradoxically, as the following discussion will show, the images being contested were about what Zulus were like in the domestic sphere. In other words, the English public was looking at pictures of “wedded couples” and inferring from these the character of Zulus as warriors. As some of the comments of the defence lawyer on the first day of the proceedings make clear, this curiosity was not unusual, newsagents and booksellers such as Phillpott routinely sold images of the exotic subjects of empire. The Zulus were therefore just another instance of exotica being added to an already long list of other such photographic subjects. More pointedly, the defence repeatedly expressed the idea that these photographs were commonplace; and the evidence marshalled for this was that buyers purchased these photographs for their albums.

What were the facts? They had had a war with the brave natives of Zululand, and, therefore, there had been a great desire to know all about them. Colonial photographers
had sent over such photographs for general sale to put in people’s albums. It was an outrage on good sense to say that photographs of nude savages in their ordinary costume were obscene. These photographs, for which 4s. 6d. had been paid, were purchased of the London Stereoscopic Company. The defendant bought them from respectable photographers, and he had no idea that he was putting in his shop window anything that was indecent or obscene. (Editorial 1879c, 522)

He went on to say that these photographs had been sold by hundreds—perhaps by thousands—all over the country, and for the first time the exhibition was charged against the defendant. Mr. Philpott, as an offence against the Vagrancy Act…The persons in the photographs walked about in that state, and they would look very strange indeed if they were represented in civilised attire. (Editorial 1879c, 522)

However, beyond this public demand for images of a contentious foe, the Zulu photographs that Philpott was charged with selling also represented other anxieties and fears of empire. For the Lord Mayor the first act in the commission of indecency was the fact that the photographs were actually mislabelled. Court time was taken up with the question of who had labelled the photographs and what their intention might have been. The assertion by Philpott that it was his manager who labelled the photographs as “A Newly-married Couple” does not satisfy the Lord Mayor who wants to read malice and vicious intent in this mistake. However, as the defence then attempts to show, it was not even a mistake, the incorrect labelling was not just a consequence of the manager’s ignorance of what was depicted in the images, the mistake was an ethnographic one because the manager failed to realize that “Zulu physique” is a domain of knowledge in which there were very many experts who could be consulted. On the second day of the proceedings, these experts give evidence. The first expert is a journalist who had reported on the 1879 war and who asserts not only his knowledge of what “Zulus” look like in their native costumes, but he is specifically conversant on the gender differences in Zulu society.

Mr. Frederick examined by Mr. Mathews for the defence, said:-- I live at 54, Hunter-street, Brunswick-square, and am a journalist. I was employed as special correspondent for the Standard in the late Zulu war, and saw a great many Zulus, male and female, in Zululand and Natal. The unmarried females wear nothing but two fillets of embroidered beads, one round the waist the other round the hips, while the married are at once invested in a cow-skin petticoat as their mark of distinction. Witness was here handed photographs, and asked which sex the figures represented. In reply he said one represented an unmarried and the other a married woman. No physiologist could doubt for a moment that the nude figure was that of a girl. A Zulu boy of that size would have every muscle standing out like whipcord. These photographs were common all over the colony. It was the ordinary dress of the women, and he was quite assured that it was a natural position which they had themselves assumed against one of their own kraals before a camera. (Editorial 1879c, 522)

The second expert is an illustrator, whose main expertise is that he knows how to copy and interpret photographs for the illustrated papers they are printed in.

Mr. Melton Prior, a special artist for the Illustrated London News, said that this was the ordinary dress of women in Zululand. He had frequently sketched them in that position and dress. The figures in the photographs were certainly those of women. (Editorial 1879c, 522)

Almost as a side issue, but an important aspect of the defence, it is pointed out that there is no complainant in the case since the Society for the Suppression of Vice had
not submitted a letter of complaint to the Lord Mayor. It becomes apparent that the Lord Mayor had been in correspondence with the Society. However, the chair of the Society is not comfortable with the idea of this correspondence being read in the courtroom, and a debate ensues between the two.

The Lord Mayor: I do not consider they are private letters, being written by you as representing the Society for the Suppression of Vice. (Applause.)

Mr. Poland remarked that this was not a society for the suppression of Zulus.

Mr. Collette said that when he wrote the letters he had never seen the photographs which had been the subject of the discussion. (Editorial 1879c, 522)

Again here, the main point seems to be that none of the actors involved in the case had actually seen the photographs and there was therefore no actual visual material to judge the decency and indecency of the images. The actual hearing ends in disarray as Mr. Nottage demands to be heard by the Lord Mayor who refuses him the chance to speak. The British Journal of Photography provides an interesting addendum to the case by reporting on the fact that Mr. Nottage is suing the Lord Mayor for allegedly abusing his office and power to prosecute a personal grievance. In full, the editorial reads,

THE LORD MAYOR AND MR. ALDERMAN NOTTAGE.–My Lord Mayor has not heard the last of Alderman Nottage and the Zulu photographs. That mysterious business has yet to be explained. So far as appears there was no prosecutor of the unfortunate stationer who tried to instruct Londoners by picturesque examples in the habits of our worthy foes the Zulu. The city police invited to prosecute, declined. The Society for the Suppression of Vice would not take any action. Sir Charles Whetham not being able to find a real pursuer, as the Scotch say, granted a summons to some anonymous defender of morals, and used the occasion to denounce a brother alderman with whom he was at feud. The alderman believes that his lordship has used a public position to gratify a personal spite, and that being both complainant and judge he has broken the law. The result is a claim in the Westminster courts for no less a sum than £5000.—London Correspondence in the Liverpool Mercury. (Editorial 1879a)

Although there are many gaps in the case, such as for example the role of the Society for the Suppression of Vice in censoring the publication of photographs, the above summations provide us with ample evidence for how photographers and the owners of printing companies, newspapers and even artists and illustrators reacted to the possibility that their differing professions and occupations were responsible for the corruption of morals. What is of interest to our examination of photographs of “other Zulus” is that these debates reveal the ambiguities of the gaze from the imperial centre which has often been assumed to be singularly focussed on the “Zulu warrior”. The report in the British Journal of Photography demonstrates the fact that photographs could elicit a unique set of anxieties about gender and nudity which in sum do not add up to a single discourse but fragment into various debates about what occurs when photographs are converted into images for the education of the “English public”.
Conclusion

The singularity of Cetshwayo’s photographs taken on the SS Natal was explored as an instance of the “honorific” photography that may be compared to other examples of exiled kings on the African continent. However, as the discussion showed, the photographers wanted and demanded Cetshwayo the “savage” king rather than the sartorial king that he had in fact become. This means that unlike some of his other counterparts in southern Africa, Cetshwayo could not fully control the image-making power of the camera. However, his interactions with the photographers show that it was they who misunderstood the power of the camera and not the king. When given the opportunity, Cetshwayo did and could pose for the camera as a composed and Anglicized subject. This nobility of the Zulu king was used to introduce the “other Zulus” and the different manner in which the camera and photographers dealt with ordinary Zulus. The 1879 London trial functioned as an unexpected commentary and transcript of the confusion that photographs of Zulus caused within an English society that was keen to comprehend the Zulus as foes. The fact that the photograph being debated turned out to be two women rather than a married couple was established in part through the expertise of those who had experience in dealing with the “Zulu body”. The voices of these experts reveal the contours of photography as a practice that, to reiterate the words of the editors of the British Journal of Photography, attempts to secure the “accurate delineations of feature and characteristic expression”. The misidentification of the gender of the subjects in the offending photograph thus undermines the camera’s claim to factuality and objectivity.
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Theal, George McCall. 1886. Kaffir folk-lore: a selection from the traditional tales current among the people living on the eastern border of the Cape Colony: S. Sonnenschein, Le Bas & Lowrey.


1 “Louis Althusser’s term for the process by which persons are “hailed” within an ideologically structured field, and thereby positioned in appropriate social roles. Althusser’s classic example is that of being addressed by a policeman—a situation in which recognition on the part of the person hailed positions that person as a subject of legal discourses, penal institutions, and state power more generally. Interpellation, for Althusser, is the work of ideological and repressive state apparatuses. These include schools, the mass media, unions, the police, social services, and other institutions that produce certain forms of conformance and ultimately identity. The concept is elaborated in Althusser’s influential essay “Ideology and Ideological State Apparatuses” (1971)” (interpellation 2002).

2 George McCall Theal was a Canadian immigrant who came to South Africa in 1861. He is best known for producing copious amounts of historical writing on South Africa’s colonies and republics. His contribution to South African history includes, Compendium of South African History and Geography (1873), Basutoland Records (1883), the History of the Boers in South Africa (1887) and 36 volumes of the Records of the Cape Colony (1897 – 1905). In 1891 he was given the honorary title of ‘Colonial Historiographer’ (Saunders, 1988: 18). What is less highlighted in Theal’s corpus is his 1886 Kaffir Folk-Lore: A Selection From The Traditional Tales Current Among The People Living On The Eastern Cape Of The Colony With Copious
Explanatory Notes for which Saunders (1988: 11) describes Theal as a ‘local pioneer in the collection of oral history’.

3 The lack of colonial stability is demonstrated by the fact that there were still instances of African rebellion. Theal for example narrates how the publication of his book had to be delayed. He states that ‘the first sheet was already printed, when the disturbances of 1877 took place’ (Theal 1886, ix). The ‘disturbances’ referred to were none other than the events around the outbreak of the last frontier war between the Cape and the Xhosa in 1877.

4 According to the title of his autobiography, John Montagu was the Cape’s Colonial Secretary from 1843 to 1853.

5 In his foreword to the first edition (1953), F.B. Burchell compares S. M. Seymour to his father Wilfred Massingham Seymour who had also written a book on “Native” law and customs circa 1913 and he describes Seymour senior’s book as a *vade mecum* of “Native” law and that the present book appeals to all those interested “in the concepts and principles underlying Bantu civilisation” (Seymour 1970, v).

6 On the title page of his book Laubscher’s brief *curriculum vitae* reads: “Senior Psychiatrist, Union Mental Services; Formerly, Clinical Lecturer in Psychiatry, University of Cape Town, and Psychiatrist to the Juvenile, Criminal and Supreme Courts, Cape Town.”

7 In fact, Montagu and other members of the British civil service were at the centre of the anti-convict agitation of circa 1849-1851. The imperial government had intended to convert the Cape into a penal colony, and while Montagu seems to have supported the scheme, the colonists opposed and were successful in preventing the landing of the convict ship *Neptune* (2012).

8 See Turrell’s (see Van Zyl Smit 1992, 14, Keegan 1996, 226-230) Chapter 8, on the closed compound system.

9 See for example Chapter 4 ‘The politics and morality of frontier conflict 1780-1870’, in Du Toit & Giliomee (1983).

10 Atkins’ *The Moon is Dead* (1993) provides a thorough exposition of how the Natal colonial government attempted to stem the flow of Zulu refugees by imposing apprenticeships and labour requirements on the refugees. The argument being made here is that the refugee crisis was also political in the sense that while the flow of people was both ways, the official discourse of Natal’s administration was that it was only in one direction, i.e. towards Natal.

11 The OED defines a *mauvais sujet* as: “A worthless person, a bad lot” (OED).

12 I would like to thank Brendan Wattenberg, Curator and Assistant Director at the Walther Collection, for giving me copies of the two newspaper articles discussed in this chapter.

13 Since there are no first names used in the article, I will use “Messrs. Crewes and Van Laun” or “Crewes and Van Laun” to name the “authors” of this article.

14 Although Anderson’s article was published in 2008, she inexplicably uses the colonial spelling of Cetshwayo’s name.