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Specters of Indigeneity in British-Indian Migration, 1914

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Colonial legal histories of indigeneity and British-Indian migration have not often been placed in conversation with one another. This article pursues such a project by tracing indigeneity as a spectral presence that emerged with uneven regularity in juridico-political conflicts over British-Indian migration. Specifically, I focus on the 1914 journey of the *Komagata Maru*, a Japanese steamship carrying 376 Punjabi migrants that sailed from Hong Kong to Shanghai, Moji to Yokohama, and across the Pacific, eventually arriving in Vancouver, Canada. Crisscrossing continents and approaching law in its broadest sense, I explore three struggles over the ship and its passengers: a satirical cartoon published in the *Hindi Punch* (Bombay), a legal test case heard by the British Columbia Court of Appeal (Vancouver), and a public debate on the racial meanings of Imperial subjecthood that ensued among Indian middle-class supporters of the ship and unfolded in English newspapers in various Indian cities. In each moment of struggle, I examine the changing conceptions of indigeneity that were strategically appropriated, never by indigenous peoples themselves or on their own terms, but by the Dominion of Canada and by British Indians, each deploying indigeneity to its own advantage and to achieve particular effects. Ultimately, this article considers the political and legal work that the spectral figure of indigeneity performed, the conceptions of time that underwrote its recurrence, and the temporalities that it sustained and called into question.

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On May 23, 1914, the SS *Komagata Maru*, a Japanese steamship carrying 376 passengers, mostly adult men from Punjab, was prohibited from landing in Vancouver, Canada. The ship, which sailed from Hong Kong to Shanghai, Moji to Yokohama, and across the Pacific to Vancouver, was denied entry under a series of newly passed orders-in-council. Among other onerous changes, these amendments to Canada's Immigration Act (1910) required that all migrants arrive via "continuous journey" and thus were aimed at curtailing and eventually prohibiting migration from India.[1] The *Komagata Maru*'s journey was a formative moment in British colonial history in that it connected Britain, India, Hong Kong, and Canada within a circuitous, albeit uneven, movement of peoples, and within a global regime of law, legality, and violence. While anchored in Vancouver Harbor, the passengers were forcibly detained aboard the ship for two arduous months, during which they endured deplorable living conditions and were subjected to attack by government authorities and local police (Johnston 1979; Kazimi 2004). Upon the ship's return to Calcutta, British officials anticipating its arrival alleged that those returning from their failed journey—including Gurdit Singh, the entrepreneur who had chartered the ship and supposedly planned its journey as a challenge to Imperial and Dominion sovereignty—had involved themselves in seditious activities while abroad and were now undesirables and even criminals who would incite anticolonial sentiments and revolutionary activities in India. The ship's arrival in Calcutta was met with a violent attack, known as the Budge Budge Massacre, initiated and executed by British authorities and Bengal police, that left at least 26 people dead and many more injured.[2]

To date, histories of the *Komagata Maru* have focused almost exclusively on the related themes of British-Indian migration to settler colonies and on the racial exclusions of Canadian immigration law (Dua 2007; Jensen 1988; Johnston 1979; Mongia 1999). Like other colonial legal histories charting late-19th- and early-20th-century migration from India across the British Empire, these accounts have neither addressed nor engaged with questions of indigeneity. Although Indians traveled to colonial

[1] In 1908, shortly after the Dominion of Canada issued the first "continuous journey provision," the Dominion discontinued its Canadian Pacific shipping line from Calcutta to Vancouver. The British government also discouraged shipping lines from pursuing a direct route. By 1914, it was impossible to travel from India to Vancouver without stopping in another port such as Hong Kong, Singapore, Shanghai, or Yokohama (see Johnston 1979: 4–5).

[2] *Report of the Komagata Maru Committee of Inquiry*. Volume I (Calcutta, Superintendent Government Printing, 1914). Rare Books and Special Collections and University of British Columbia Archives [hereinafter UBCA]. Gurdit Singh escaped from Calcutta and went into hiding for seven years until Gandhi encouraged him to surrender to Indian authorities.

geographies including settlement colonies that were long inhabited by indigenous peoples, colonial legal histories of indigeneity and British-Indian migration continue to be written as if they occurred in distinct and successive spatiotemporalities: *first* the indigenous, *then* the British-Indian.[3] More recently, there has been a concerted effort among critical theorists to rethink colonialism through its densely knotted histories and discrepant temporalities (Lowe 2006; Povinelli 2011a, 2011b). One strand in this larger endeavor has been to consider the heterogeneous, competing, and incommensurable demands of European expansion as materialized in the interconnections across seemingly distinct colonial projects: the ways in which colonial capitalism, for example, drew Africans, indigenous peoples, and European and non-European migrants into close physical and figurative proximities, producing new terrains of power-knowledge as evidenced in emergent and changing racial taxonomies and hierarchies, and formative of novel legal structures and modes of colonial governance (Lowe 2006; Mawani 2009).

In "The Intimacy of Four Continents," Lisa Lowe (2006) offers a brief but insightful account of the connections among Chinese indenture, plantation slavery, and native peoples in the Caribbean. Focusing on the racial politics of labor and its attendant regimes of violence, she points to the intersecting politics of sugar production and the abolition of slavery and notes how capitalist demands and humanitarian concerns joined the formerly enslaved and newly indentured, while drawing Asia, Africa, Europe, and North America into a shared global history. Here, Lowe's (2006: 192) focus is on the fleeting presence of the "transatlantic Chinese 'coolie,'" a figure that, she maintains, surfaces intermittently in colonial papers but is "relatively absent in the historiography of the early Americas" and rarely figures in 18th- and 19th-century liberal political philosophy. Her objective is not merely to recuperate this lost figure but to ask what its recuperation might reveal as to what we know and have yet to learn about the emergence of the "new world" (Lowe 2006: 206). Taking direction from Lowe's (2006) "transatlantic Chinese 'coolie,' " I trace the spectral figures of indigeneity to foreground the interconnections between processes of dispossession aimed at indigenous peoples, the migration of British Indians, and the conflicting and seemingly incommensurable conceptions of time that underwrote them. In struggles over the *Komagata Maru*, as I suggest below, indigeneity emerged as a powerful and recurrent force, one that shaped discussions and

[3] For a classic discussion of time and the colonial encounter in anthropology, see Fabian (2002).

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informed legal and political responses to the exigencies of Indian migration in the present and future.[4]

In this article, I approach the recurring figure of indigeneity as a specter that haunts and resurfaces intermittently, and not always in the same form, in legal struggles over the *Komagata Maru* and over British-Indian migration. Crisscrossing continents and approaching law in its broadest sense, I focus on three relatively autonomous moments of conflict over the ship and its passengers. These include a satirical representation of legality and sovereignty appearing in the *Hindi Punch*, a Bombay periodical; a legal test case heard by the British Columbia Court of Appeal in Vancouver; and public debates over racial regimes of Imperial citizenship and mobility that provoked lively debate among the Indian middle classes through Indian-English newspapers circulating in various Indian cities. In each of these moments of contestation, I explore how competing conceptions of indigeneity were mobilized rhetorically, never by indigenous peoples themselves, but by colonial authorities and British-Indian subjects, each deploying indigeneity to its own advantage and to achieve particular effects. While the former evoked indigeneity as a "temporal before" (Povinelli 2011a: 17), as a way to legitimize and reinforce Dominion sovereignty, thus erasing the ongoing dispossession of indigenous peoples and effectuating the exclusion of British-Indians, the latter deployed indigeneity through the figure of the "native African," as a means of making claims to their own racial superiority and their readiness to join the Imperial polity. Read together, these three episodes highlight the ways in which colonial-racial governance was initiated and worked through indigeneity as a spectral force that gained currency through a set of fugitive and fleeting figures while continually effacing the material existence and presence of indigenous peoples.[5]

Before proceeding, a conceptual and methodological point is in order. This article traces the recurrence and return of indigeneity in conflicts over the *Komagata Maru*, an event that was deeply embedded in and drew its meanings from imperial contestations over racial inclusion/exclusion. Throughout, I conceptualize race

[4] My conceptualization of temporality is influenced by Elizabeth Povinelli's (2011a, 2011b) formulations on the "governance of the prior." She approaches the prior as both a logic of governance and a temporality emergent in settler colonialism and persisting through late liberalism. Povinelli (2011b: 36) explains the governing structure of temporality as follows: The "relationship between settler and Native/Indigenous was transformed from a mutual implication in the problem of prior occupation to a hierarchical relationship between two modes of prior occupation, one oriented to the future [via the settler], the other to the past [through the indigenous]." I build upon and elaborate this dynamic in the context of British-Indian migration, where I argue that a third temporalized subject is introduced: the "migrant."

[5] For an interesting discussion of indigeneity as a specter that haunts the Australian archives see Birrell (2010).

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not as corporeality or ideology but as a modern regime of power that instituted an entire range of differences (historical, linguistic, corporeal, cultural, climatic, and moral) between Europeans and non-Europeans, as evidenced in scientific, social scientific, humanistic, and commonsense knowledge, and as materialized in attendant regimes of violence (Hesse 2004, 2007; da Silva 2007). Placed in this context, I conceive of indigeneity as a dynamic legal and political configuration arising from this modern apparatus of racial differentiation, and produced through changing and contested regimes of power/knowledge (re)emergent in different spatiotemporal contexts, and with varied juridico-political effects.[6] Indigeneity as a product and effect of power gains its currency through its historical and contemporary relation to the colonial state through prior dispossession and in ongoing processes of colonialism that obscure this continued violence and its effects (Povinelli 2002: 49). These conditions place impossible demands upon indigenous communities by requiring them to fulfill specific obligations and responsibilities in order to *exist* and to make territorial and legal claims before the law (Buchanan & Darian-Smith 2011: 117; Kehaulani 2008; Povinelli 2002).

To be clear, my formulation of the *indigenous as specter* is not to erase the intensities of violence and coercion such categorizations have effectuated upon aboriginal communities in North America and globally. Nor is my conceptualization of indigeneity intended to evade its juridical significance and its strategic deployments by aboriginal communities struggling for land, natural resources, and self-determination. Rather, the figures of indigeneity that I chart below, I hope, will point to the productive, heterogeneous, and temporal logics of colonial legal governance that inform racial struggles over indigeneity and British-Indian migration and that inaccurately render them as distinct and unrelated colonial formations. My objective is to question and unsettle the presumed linearity of colonial time implicit in the configuration of indigenous and nonindigenous subjectivities and in colonial legal historiographies that depict encounters among indigenous peoples, Europeans, and non-European migrants in successive spatiotemporal terms. Specters, as apparitions, phantoms, ghosts, Derrida (1994: 39) contends, are always of time and its interruption. The specter, he elaborates,

[6] Throughout, I use the terms *native* and *aboriginal* as more specific expressions of indigeneity. In so doing, I fully recognize that these terms carry particular historical, geographical, and juridico-political meanings that cannot easily be generalized and are often distinguished. In his discussion of the African context, Achille Mbembe (2001: 28) distinguishes the native and indigene as follows. The native, he writes, is one born in the country, while the indigene is of the soil and not someone who has settled as a result of conquest or immigration. Throughout his book, however, these differentiations are as clear as he sets them out here. In colonial correspondence, as I discuss below, the term native is often used to reference indigenous peoples in Africa and North America.

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"is the future, it is always to come, it presents itself only as that which could come or come back." The specters of indigeneity, as I trace them below, continually shift across past, present, and future. To be sure, the *ongoing persistence* of indigeneity (Goldberg-Hiller 2011), its recurrent return in struggles over British-Indian migration, did perform a temporal interruption, one that shaped political and legal contests over Imperial subjecthood and effectuated a contentious politics of inclusion/exclusion.

I: "No Open Door for the Indian!"

On May 3, 1914, while the *Komagata Maru* was at still at sea and nearly three weeks before its arrival in Canadian waters, a cartoon appeared in the *Hindi Punch* (see Figure 1). The *Hindi Punch*, a Bombay version of the famous English *Punch*, was published weekly in Gujarati and English and was among the more popular and well-circulated Punch magazines in India.[7] The editors of the metropolitan version believed their style of satire and humor would find a flourishing market among the reading elite on the subcontinent. And it did. As Partha Mitter (1994: 138) explains, "[N]o single humorous publication made a deeper impression in colonial India than the English magazine, *Punch*." But as Urdu, Hindi, Gujarati, and other local varieties soon appeared on the scene, Indian readers lost interest in the metropolitan version and expressed growing enthusiasm for its vernacular doubles (Khanduri 2009: 461). Founded by N. D. Apyakhtiar and originally named the *Parsee Punch*, the *Hindi Punch* was later acquired by Apyakhtiar's nephew, Barjorjee Nowroji, a prominent figure in colonial Bombay who changed the magazine's name, increased its circulation, and widened its readership.[8] With a weekly distribution of 800 copies and a hardcover edition featuring annual highlights, the *Hindi Punch* enjoyed a prominent place among literate and elite audiences in the city (Khanduri 2009: 470; Mitter 1994: 155).

Over its long career (1878–1930), the *Hindi Punch* came to be known by English and Indian newspapers as a temperate version of other vernacular Punches (Mitter 1994: 155). Through its satirical cartoons and its liberal commentary on local and national politics,

[7] Gujarati is an Indo-Aryan language derived from Sanskrit and a language most commonly spoken in Gujarat, a state in the northwestern region of India. It is also a language spoken by Parsis, a Zoroastrian community in India who have become well known in Bombay as prominent businesspeople.

[8] On this familial relation see "In Memoriam: Mr. Bajirao Raghoba Yadheva, the Artist of *Parsee Punch* and *Hindi Punch* for Fifty Years," *Hindi Punch*, 2 September 1917, p. 13. This obituary also provides some brief but useful biographical details about the artist who likely drew the sketch in Figure 1.

Figure 1. "No Open Door for the Indian!" *Hindi Punch*, 3 May 1914, p. 16 Courtesy of University of Wisconsin-Madison, Library.

global events, and political and legal developments across the expanding Indian diaspora, the magazine established an important name and gained a solid reputation. It was lauded both within and outside India as opening a powerful but moderate forum for critical

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commentary on Indian and colonial politics. But as the Indian colonial government became increasingly concerned with anti-colonial rhetoric and revolutionary activities, vernacular Punches, including the *Hindi Punch*, came under suspicion (Khanduri 2009: 478). By routinely hiring English-educated Indians as translators and informants, the Indian colonial government enfolded vernacular magazines and local readers into wider regimes of colonial surveillance. "For the colonial state," writes Ritu Khanduri (2009: 478), "comic papers were particularly contentious because political cartoons and caricature blurred the distinction between factual reporting and clever play of meanings, thus posing a challenge to the interpretation of local news and editorial content." This particular cartoon, which anticipated the *Komagata Maru*'s arrival in Vancouver, with its excerpts from Canadian newspapers and its ironic display of indigeneity, did blur the boundaries between fact and fantasy, possibility and impossibility.

The measured tone and stylistic features that became signatures of the *Hindi Punch* are evident in Figure 1. Here, the image points to Canada's restrictive immigration policies, the undesirability of British Indians, and their outright exclusion from the Dominion in novel and unconventional ways. The double standard of mobility that became a point of vigorous debate in the late 19th and early 20th centuries, as "free" migration from India increased only to become a source of contention in Natal, Australia, Canada, and elsewhere, is also lucid. British Indians, unlike their white counterparts, the *Hindi Punch* suggests, were restricted and even barred from entering white settler colonies while holding no comparable jurisdiction over India (Huttenback 1973; Jensen 1988; Mongia 1999). Despite its provocative illustration, the magazine does not offer an explicit critique of the Dominion or Imperial governments, or of their respective policies. Through the fictive encounter between two Indians, the image suggests that the political and legal status of British subjecthood was premised on a variegated hierarchy and an uneven racial terrain configured through European supremacy but also encompassing and gaining traction through conceptions of indigeneity.

Appearing below the *Hindi Punch* image is the following excerpt, printed first in English and on the following page in Gujarati, and reproduced from Victoria and Ottawa newspapers:

> It is reported that the *Komagata Maru* has sailed from Shanghai for Victoria with 400 Hindus on board, seeking entry into British Columbia. All will be refused landing under the Order in Council excluding Asiatic artisans and labourers. The vessel is said to be under charter to a wealthy East Indian named Gurdit Singh. Ottawa, April 17—In the House of Commons yesterday Mr.

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> Stevens, Member for Vancouver interrogated the Government on the subject of the press dispatch stating that 400 Hindus had left Shanghai for Vancouver. Mr. [Roche], Minister of the Interior, replied that instructions had been sent to the immigration officers to prevent the landing of the Hindus.[9]

Some of the details presented here are not entirely correct. The ship sailed from Hong Kong and stopped only briefly in Shanghai, and it was carrying 376 passengers, not 400. Under orders from Ottawa, immigration officers were sent out to meet the ship and to prevent its passengers from disembarking. The excerpt, like much of the discussion that ensued in Vancouver and Ottawa as authorities awaited the *Komagata Maru*'s arrival, centers on questions of Dominion sovereignty. Canada, Dominion authorities and local politicians insisted, enjoyed control over its territorial borders, was well within its jurisdiction to deny entry to British Indians, and held sole prerogative to protect its identity as a white settler colony (Johnston 1979; Kazimi 2004; Ward 2002).

Outside Canada, most notably in London and India, critics questioned and challenged the legality of these claims. Was Canada, as a British Dominion, authorized to govern its territorial boundaries and to restrict the entry of aliens *and* British subjects? Was the Dominion not bound by certain obligations to the Crown that afforded British Indians the same rights to mobility and residence as their white counterparts? Were Indians free to travel as they wished across the empire, as Gurdit Singh and his supporters insisted? Were all "colored" subjects in the British Empire considered equal? The legal proceedings resulting from the ship's arrival and detention in Vancouver Harbor, as I discuss in the following section, were intended to address these questions. Framed as legal challenges, they were aimed at testing the constitutionality of the Dominion's Immigration Act and disputing its claims to territorial sovereignty through the exclusion of British subjects.

It is now well known that as British-Indian migration to Canada began in earnest in the early 20th century, Canadian politicians and nativists increasingly viewed the arrival of Indian migrants to be a "Hindu Invasion" (Jensen 1988; Johnston 1979; Walker 1997; Ward 2002: 246–262). The *Pacific Monthly* summarized the "workingman's view of the subject" accordingly: "British Columbia is a white man's country. The coming of hordes of Asiatic laborers will keep wages down and crowd the white man to the wall."[10] The arrival of British Indians along the Pacific Northwest was thought to jeopardize not only the livelihood of working-class whites

[9] *Hindi Punch*, 3 May 1913, p. 16.

[10] Fred Lockley (circa 1906) "The Hindu Invasion," *The Pacific Monthly*, 590. UBCA.

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but also the "political and national" welfare of the Dominion more generally.[11] Yet in the *Hindi Punch*, Canada is represented not as an imperiled white colonist or settler as one might expect. Nor is the Dominion symbolized as a white female figure, as is often the case in advertisements and newspapers of the period (see Anderson 1991; Backhouse 1999: 143). Rather, Canada is signified through an exaggerated, inauthentic, and even implausible indigenous figure abstracted from the histories and lived experiences of aboriginal peoples and their ongoing struggles against the colonial regime. Here, the Dominion is represented as a youthful and European-looking character, visibly male but bearing the Imperial name "Miss Columbia." Notably, the figure is adorned with various and mismatched cultural signifiers: a Plains/Prairie headdress, a Prairie/Subarctic hide robe with fur cuffs, and a parodied wampum belt. Thus, Miss Columbia is a paradox, a culmination of aboriginal and Canadian sovereignty in which the former is engulfed by the latter. Standing before a door displaying what appears to be the Dominion's crest and pointing to a sign that reads NOTICE: NO INDIANS ADMITTED, Miss Columbia is newly invented as Canada's guardian. Her youthfulness and European features could be read as a temporal claim made by white settler colonies that asserted themselves as young colonial formations absent of *real* indigenous peoples but inheritors and beneficiaries of their land and "ancient" cultures. The belt, imprinted with CANADA, is especially revealing in its reterritorialization of indigenous legalities and sovereignty, as I discuss below, and on the questions it generates on the past and future of aboriginal peoples. As a spectral figure, indigeneity, as it is represented here, both authorizes and haunts Dominion authority. Through its brilliant satire, the *Hindi Punch* draws critical attention to the absence of indigeneity in wider discussions about the *Komagata Maru*'s arrival, an absence that becomes momentarily present in deliberations over British-Indian migration and in ways that affords force, albeit ambivalently, to Dominion authority.[12]

As a result of prior occupation and the subsequent and ongoing dispossession of aboriginal peoples by European colonizing powers, the relationship between indigenous peoples and the colonial state has always existed in temporalized form. Aboriginal peoples, customary laws, and cultural traditions refer to social and cultural formations that predate the arrival of Europeans and the emergence of the settler state (Povinelli 2002: 48). Aboriginal law and sovereignty, as many scholars have argued, existed long before European contact and (re)settlement and thus comprise the oldest sources of

[11] W. L Mackenzie King (1908) *Immigration to Canada from the Orient and Immigration from India in Particular*. Ottawa, 7. UBCA.

[12] For a classic and compelling discussion of colonial ambivalence, see Bhabha (1994).

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constitutional law in what is now Canada (Asch 1993; Borrows 2002). Although it is well known that colonists and jurists regarded aboriginal peoples to be "lawless" (Anghie 1999; Fitzpatrick 2001: 125), a lack that confirmed their presumed racial inferiority and legitimized European appropriation of indigenous lands, all indigenous communities and colonized populations lived in accordance with multiple forms of legality, albeit ones that were not often formally recognized by colonial authorities and/or states. Lauren Benton (2002) and others have argued that colonial powers were confronted by, and in many cases forced to recognize, the legal authority of multiple religious and cultural sources (see also Chanock 1998; Merry 1999). Canada was no exception. John Borrows (1997), an Anishinabe legal scholar, describes aboriginal peoples as the earliest practitioners of law in North America. Their conceptions of law, he points out, have been symbolized, narrated, and conveyed to subsequent generations through a multiplicity of sources and in a variety of formats, including stories, totems, and wampum belts.

Borrows (1997) describes the wampum as one of the founding constitutional documents in what is now Canada. Following the Royal Proclamation of 1763, aboriginal leaders, he explains, were invited to attend a summer peace conference that was to occur the following year in Niagara. In the preceding winter, people of the Algonquin and Nippissing nations had met with Sir William Johnson, superintendent of Indian affairs at Oswegatchie, where he had persuaded them to invite members of other aboriginal communities to attend the gathering. Subsequently, representatives from these nations traveled across the region with a written copy of the Royal Proclamation of 1763 and several wampum strings. The result was extraordinary. Approximately 24 nations and 2,000 chiefs were present to witness and solidify the treaty (Borrows 1997: 162). A two-row wampum belt, originally used as a diplomatic agreement between the Iroquois and Europeans, was exchanged at Niagara to reflect indigenous understandings of the proclamation and to affirm the treaty (Borrows 1997: 165–166). This was an agreement based on peace, friendship, and respect, Borrows (1997: 166) maintains—an understanding that "discredits the claims of the crown to exercise sovereignty over First Nations." For aboriginal peoples, the events at Niagara recognized the plurality of indigenous law and its coexistence with British common law, and the agreement was therefore between two sovereign powers. Yet, in the *Hindi Punch*, the inscription of CANADA across the belt offers a very different account of indigenous legality and sovereignty. Here, indigeneity is depicted not through a self-governing figure engaged in diplomatic partnerships and on equal terms with the British Crown but through a representative subsumed by and firmly under Dominion control.

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The dialogue between the two Indians suggestively points to the vicissitudes and asymmetries of racial belonging in the British Empire. Although the European/Other binary has become a common and persistent analytic frame in colonial historiographies and legal histories, the racial designations ascribed to British subjects, indigenous and nonindigenous alike, were determined through comparative, relational, and shifting regimes of power-knowledge that materialized conceptions of racial superiority and inferiority beyond colonizer/colonized (Mawani 2009: 10–16). "Colonial law," Mahmood Mamdani (2001: 654) argues, "made a fundamental distinction between two types of persons: those indigenous and those not indigenous," between "natives and nonnatives."[13] Differentiations between natives and nonnatives, as the *Hindi Punch* makes clear were premised on variations of Imperial subjecthood that not only distinguished Briton from non-Briton. Rather, racial differentiations were generated and mobilized *across* these divides; they taxonomized and ordered subaltern and indigenous populations, produced shifting orders of racial superiority/inferiority, and innovated respective rights and responsibilities in the process. Passengers aboard the *Komagata Maru* and their middle-class supporters in India and elsewhere were well aware of these hierarchies and strategically made demands for inclusion by flattening some racial distinctions and emphasizing others. Claiming to be "Imperial citizens," they drew comparisons between themselves and white Britons, thus demanding the same rights of mobility and residence across the empire (Banerjee 2010). The *Hindi Punch* illuminates a different comparative logic at work. Here, Miss Columbia, newly figured as a symbol of Canada, is positioned against the Hindustani, who remains nameless, out of place, and unfree. "No Open Door for the Indian!" reads the text. "Miss Columbia—Begone, sir! Don't you see this notice? There's no place for such as you here! Indian—Ha! Suppose I put up a similar notice on the doorsteps of my Indian home against you? Miss Columbia—I know you can't, you daren't!"

Upon the *Komagata Maru*'s arrival in Vancouver Harbor, Gurdit Singh and his supporters in London and India repeatedly warned British and Canadian authorities that denying the ship entry would hold serious global consequences. Writing to the Colonial Office from London, C. A. Latif, of the All India Moslem League, echoed Singh's warning: "The hostile and illiberal attitude of the Colonies, which is hardly consistent with the advance of civilization and the progress of ideas in the modern world, will probably lead to an insistence on the part of the Indians for the adoption of retaliatory

[13] In the United States, these distinctions were also premised on divisions between "free" and "unfree." See Haney-Lopez (1997).

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measures."[14] Responding to Latif with austerity, the Colonial Office clarified that at the Imperial Conference of 1911, the Marquees of Crewe denied that "every subject of the King, whoever he may be or where ever he may live, has a national right of travel, or still more to settle, in any part of the Empire." It is "the right of the self-governing Dominions," the Colonial Office continued, "to decide for themselves in each case who are to be admitted as citizens of the respective Dominions."[15] Although the Dominion's response to British-Indian migration was informed by the nativist claims of white politicians, what is compelling in the *Hindi Punch* version is that Canadian sovereignty is symbolized, however implausibly, through the spectral figure of indigeneity. Engulfing indigeneity as "the priority of the prior" (Povinelli 2011a: 19), and thus as the legitimate temporal foundation of Dominion sovereignty, Canada's authority in the *now* is represented through the past *before*. Here, Canada's refusal to allow entry to British Indians is inscribed on the corporeality of the parodied indigenous body. Reclaimed and reterritorialized by the Dominion not as an equal but as a dependent, Miss Columbia is symbolized as the arbiter of Canadian immigration policy.

Distinguishing the specter from Hegel's spirit, Derrida (1994: 157) insists that "[f]or there to be a ghost, there must be a return to the body, but to a body that is more abstract than ever." The figure of indigeneity depicted in the *Hindi Punch* could be read as an abstraction on several registers. First, the figure is a pastiche of various cultural and legal signifiers drawn from aboriginal communities in the Canadian Prairies and Arctic regions, displaced to the west coast, and thus extracted from any territorial meanings and/or significance. The visibly male figure, named Miss Columbia, does not render the *real* and makes reference not to *actual* aboriginal peoples, but to an exaggerated and fantastic indigeneity. Second, Miss Columbia is depicted as an implausible feminized protector of the Dominion. In Canada, indigenous peoples were long predicted to be a "vanishing race" that would either die off or be successfully eliminated through legal regimes including the Indian Act (1876) (Francis 1992; Mawani 2009). Under this legislation, aboriginal peoples were subjected to coercive, violent, and highly gendered segregation and assimilation policies through which they were denied entry into the Canadian polity. The loss of Indian status for women who married outside of their communities was especially central to this project of elimination as assimilation; it diminished

[14] C. A. Latif, the London All India Moslem League, 18 June 1914. Cited in Waraich and Sidhu (2005: 46), my emphasis.

[15] Colonial Office to the Vice President, All India Moslem League (draft reply) June 1914. Cited in Waraich and Sidhu (2005: 47).

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populations that could legitimately make juridico-political claims to belonging and thus figured prominently in the erasure of the "Indian" as a juridical concept (Lawrence 2003; Monture-Angus 1995). In the *Hindi Punch*, the figure of indigeneity is deeply entangled with the exigencies of British-Indian migration. By disallowing entry to British Indians, the specter of indigeneity as a temporalized figure haunts and authorizes Dominion sovereignty. It offers a potent reminder of colonial force and expansion, including the violent effects of racial and gendered orders of governance, of which Canada's Immigration Act was only the most recent. The figurative encounter between the two Indians points to the productive aspects of colonial power. It highlights, on one hand, the heterogeneous mobilities and contacts effectuated by British colonialism, and the ways in which colonial power/knowledge fomented the "native" and "migrant" as interconnected juridico-political and racial categorizations that facilitated uneven, distinct, but deeply connected regimes of colonial governance.

II: Not Asiatics, Aryans, or "Native Indians"

One month after the *Komagata Maru* arrived and was anchored in Vancouver Harbor, and as passengers continued to be detained on the ship and were faced with deteriorating conditions including shortages of food and water, tensions between local authorities and Vancouver's Punjabi residents continued to escalate. Facing pressure from both the Imperial government and the ship's supporters in London and India, and with no clear resolution in sight, the Dominion of Canada conceded that one passenger could come ashore to act as a legal test case in assessing the constitutionality of the Dominion's Immigration Act. These legal proceedings were to determine, once and for all, the fate and future of the ship and its passengers: could they stay in Canada, or were they to be sent back to Hong Kong, India, or some other British jurisdiction? Of central import were three newly enacted orders-in-council: the first disallowing the entry of unskilled laborers and/or artisans, the second requiring each "Asian" entrant to be in possession of $200 upon arrival, and the third necessitating that passengers make a "continuous journey" from their place of origin to Canada.[16]

Gurdit Singh insisted that his decision to charter the ship was largely to assist his fellow Indians stranded in Hong Kong and

[16] The first order-in-council was passed in 1908 but was deemed ultra vires and struck down. There were two preceding legal cases that addressed these restrictions: *Re Rahim* (1911) 16 B.C.R., 276 and *Re Thirty Nine Hindus* (1913) 15 D.L.R., 189. The constitutionality of the most recent orders-in-council were determined in *Re Munshi Singh* (1914) 20 B.C.R., 243. For a discussion of the statutory and jurisprudential developments, see Macklin (2010).

endeavoring to reach Canada. However, the journey, as he made clear from the outset, was also intended as a legal challenge to Dominion sovereignty and to the racial exclusions through which British subjecthood was established. "We are British citizens and we consider we have a right to visit any part of the Empire," Singh declared to the superintendent of immigration upon arrival in Canadian waters. "We are determined to make this a test case and if we are refused entrance into your country, the matter will not end here. . . . What is done with this shipload of my people will determine whether we shall have peace in all parts of the Empire" (cited in Johnston 1979: 37–38). The immigration hearing and subsequent legal proceedings were to address the following issues: Was Canada legally authorized to deny entry to British-Indian subjects, or was the Dominion bound by other legal and political obligations determined by the British Crown? Were the orders-in-council, which demanded passengers make a continuous journey and which singled out members of the "Asiatic race," discriminatory? And finally, were those aboard the *Komagata Maru* to be regarded as members of the "Asiatic race," or were they "Aryans" with filial ties to Europeans?

J. Edward Bird and K. C. Cassidy, two local lawyers who had previously represented members of Vancouver's Punjabi community in recent immigration matters, were recruited by Hussain Rahim, whom Canadian authorities described as an anticolonial agitator and a political dissident, and by what came to be known as the local "shore committee."[17] After agreeing to take the case, Bird and Cassidy identified Munshi Singh, a 26-year-old farmer from the village of Gulupore in the Hoshiarpur District of Punjab, as the most suitable litigant. When the case was heard initially by a board of inquiry on June 25, 1914, it was immediately decided that Munshi Singh was not a Canadian citizen but belonged to "one of the prohibited classes enumerated in section 3 of the [Immigration] Act." In rendering its decision, the board unanimously agreed that Singh contravened all three orders-in-council. First, he had only $20, not the requisite $200, in his possession at the time of his arrival in Vancouver. Second, although claiming to be a farmer in Punjab, in Canada, the board explained, he would likely be an unskilled laborer, as were many of his Indian counterparts. And finally, because the ship left Hong Kong and made numerous stops on its way to Vancouver, Munshi Singh, they concluded, "had not come to Canada by continuous journey."[18] He and his fellow passengers, the board opined, were to be disallowed entry and deported as soon as possible.

[17] Bird was also the lawyer in *Re Thirty Nine Hindus*.

[18] *Re Munshi Singh*: 248.

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Upon receiving the board's decision, Bird and Cassidy immediately filed a writ of habeas corpus claiming that Munshi Singh "was refused permission to land," was "ordered to be deported in the said vessel," and was "being detained against his will as a prisoner on the said ship."[19] But the writ was denied. Bird and Cassidy subsequently appealed to the British Columbia Court of Appeal. Here, their strategy was to question the Dominion's sovereignty by placing the Immigration Act within a wider Imperial context. Canadian parliament, Bird and Cassidy alleged, had the right to exclude aliens but could not rightfully "authorize the detention and deportation of a British subject who presents himself at a port in Canada claiming the right to enter Canada as an immigrant."[20] On July 6, 1914, after deliberating for only two days, the five appellate court judges reached a unanimous decision. They rejected Munshi Singh's appeal on the grounds that the Immigration Act was neither unconstitutional nor discriminatory; the three orders-in-council were well within the Dominion's jurisdiction, and Canada could rightfully exclude Asiatics. The British North America Act (1867), opined Justice Macdonald, awarded the "Parliament of Canada sovereign power over immigration."[21] The Dominion, Justice Irving added, "has a right also to make laws for the exclusion and expulsion from Canada of British subjects whether of Asiatic race or of European race, irrespective of whether they come from Calcutta or London."[22] Although the *Royal* Proclamation of 1763 and the Treaty of Niagara never emerged in deliberations over Imperial and Dominion sovereignty, the specter of indigeneity surfaced on several occasions and in different registers to inform the deliberations in *Munshi Singh*. Here, once again, indigeneity was appropriated by authorities, in this instance an appellate court judge, and was deployed to augment Dominion authority and to legitimate the exclusion of the *Komagata Maru* and its passengers.

In mounting their appeal, Bird and Cassidy strategically questioned the applicability of the three orders-in-council to the case at hand. First, they claimed that the continuous journey provisions were irrelevant and inapplicable, as British Indians, it was well known, regarded themselves to be part of a wider Imperial

[19] A slightly longer and more detailed version of the *Munshi Singh* decision than the one published in the *British Columbia Reports* is filed in the City of Vancouver Archives [hereinafter referenced as *Munshi Singh* CVA], 509-D-7, File 3, 453. For an interesting and contrasting discussion of habeas corpus as a "fungible device" in colonial India, see Hussain (2003), chapter 3. For a revisionist history of habeas corpus that is much more expansive and views this doctrine as a writ of power as opposed to a writ of liberty, see Halliday (2010).

[20] *Re Munshi Singh*: 249.

[21] *Munshi Singh*, CVA: 450.

[22] *Munshi Singh*, CVA: 451.

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fraternity that exceeded existing geographical boundaries. In its investigation into the circumstances surrounding the ship's failed journey, the Komagata Maru Committee of Inquiry (1914), commissioned in Calcutta, explains that the "average Indian makes no distinction between the Government of the United Kingdom, that of Canada, and that of British India or that of any colony." To him, these authorities are "all one and the same."[23] In framing their legal argument, Bird and Cassidy followed a similar logic, claiming that Munshi Singh and his fellow passengers identified not as residents of India but as *Imperial citizens*. They did not differentiate between colonial geographies and thus imagined themselves as belonging to the wider Imperial polity with the capacity to move freely within and across it. Munshi Singh, Bird and Cassidy explained to the court, "came direct from Hong Kong, and is a British subject." As "*a citizen of the Empire* and therefore a native of the whole of it, [he] is [also] a native of Hong Kong," which is a part of the British Empire, the claimed.[24] Therefore, "his journey from that place to this was a 'continuous journey from the country of which he is a native' and his ticket 'a through ticket' therefrom."[25] As a "citizen of the Empire," where distinctions among India, Hong Kong, and Canada were immaterial, Munshi Singh arrived by way of continuous journey.

The idiom of Imperial citizenship that entered into circulation during the early 20th century, as Sukanya Banerjee (2010) has recently argued, held ambiguous and even contradictory meanings. It brought "to light formulations of citizenship before the inception of the nation-state," she explains, while pointing to "the ways in which the British Empire itself provided the ground for claiming citizenship even as the thrust of these claims implicitly critiqued British colonial practices" (Banerjee 2010: 4; Gorman 2006). In *Munshi Singh*, these grammars were mobilized as the basis for claims to citizenship and inclusion within the Imperial family, as well as an unequivocal condemnation of Dominion sovereignty. Since Munshi Singh was a citizen of the empire who did not differentiate among colonial jurisdictions, the continuous journey provisions, Bird and Cassidy insisted, were inapplicable and even irrelevant. However, the British Columbia Court of Appeal rejected their argument. Notwithstanding Munshi Singh's understandings of the empire as a contiguous horizon, Justice Martin clarified that "the expression 'country of which he is a native' is used in a geographical and not racial or national sense, and therefore, does not assist the

[23] *Report of the Komagata Maru Committee* (1914: 4). UBCA.

[24] *Re Munshi Singh*: 267, my emphasis.

[25] *Re Munshi Singh*: 267.

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applicant."[26] The appellant, the judges concluded, was a resident of India and not of Hong Kong, or of the empire, and thus did not come to Canada via continuous journey as legally required.

As part of their strategy, Bird and Cassidy also challenged the meanings and relevance of the order-in-council stating that "no immigrant of any Asiatic race shall be permitted to land in Canada unless such immigrant possessed $200."[27] The term *Asiatic*, they claimed, was "ethnologically incorrect and too indefinite to be capable of application."[28] Munshi Singh, Bird and Cassidy insisted, "is not of the Asiatic race" but of the Aryan one, and thus, the order-in-council that excluded Asiatics did not apply to him.[29] "It was asserted by counsel for the appellant," wrote Justice McPhillips, "that the Hindus are of the Caucasian race, akin to the English."[30] As with the continuous journey provision, the court rejected this claim. While Justice Martin described *Asiatic* to be a "common sense" term comparable to *European* and *Latin-American* and used in everyday conversations with shared consensus, Justice McPhillips introduced a series of expert knowledges, all drawn from British-European sources, to make a similar point.[31] McPhillips explained that belonging to the "Asiatic" race was "in no way crucial" to the case at hand, as the Dominion had "the right to deport under the provisions of the Immigration Act and the orders in council irrespective of race," and "irrespective of nationality," he provided an abbreviated account of the term's British-European history.[32] When "the words 'Asiatic race' are used in the order in council, PC 24, the words are, in their meaning, comprehensive and precise enough to cover the Hindu race, of which the appellant is one," Justice McPhillips stated. "It is somewhat interesting to know that as early as 1784," he continued, "an association was formed and named the Asiatic Society in Calcutta to extend knowledge of the Sanskrit language and literature." According to "the *History of India*," edited by "A.W. Williams, Professor of Indo-Iranian languages in Columbia University," we "read of the 'Asiatic races' including therein the people of India."[33]

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[26] *Re Munshi Singh*: 267.

[27] *Re Munshi Singh*: 245.

[28] *Re Munshi Singh*: 272.

[29] Because racial classifications were followed with serious material consequences with respect to citizenship, exclusion, dispossession, violence, and even death, their contestation was a common legal strategy in Canadian and U.S. jurisprudence. On this point, see Gomez (2007), Gross (2008), Kauanui (2008), and Mawani (2009), especially chapter 5.

[30] *Re Munshi Singh*: 289–290.

[31] For a very useful discussion of commonsense knowledge in law, see Valverde (2003).

[32] *Munshi Singh*, CVA: 488.

[33] *Munshi Singh*, CVA: 488.

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But Justice McPhillips did not stop there. In claiming that "Asiatics" included Indians, he turned to the *Encyclopedia Britannica* (1910) as the authorizing voice on racial distinctions and definitions:

> The Aryans of India are probably the most settled and civilized of all Asiatic Races. . . . *Asiatics stand on a higher level than the natives of Africa or America*, but do not possess the special material civilization of Western Europe. . . . *Asiatics have not the same sentiment of independence and freedom as Europeans*. Individuals are thought as members of a family, state or religion, rather than as entities with a destiny and rights of their own. This leads to autocracy in politics, fatalism in religion, and conservativism in both.[34]

The order-in-council, wrote Justice McPhillips, was purposefully directed at the "Asiatic race," which, based on the expert sources he consulted, included British Indians. Not commenting on the putative superiority of "Asiatics" over indigenous peoples, McPhillips explained that the Dominion's refusal to allow entry to British Indians was premised on questions of desirability, suitability, and assimilability. Canada, he maintained, was authorized by the British North America Act (1867) to pass laws in the interests of peace, order, and good government.[35] The orders-in-council, including the one that disallowed "immigrants of any Asiatic race," were thus enacted in this spirit.

In making his judgments on the relevance of the term *Asiatic*, Justice McPhillips ruminated on the racial variations and inequalities of Imperial subjecthood. The "Hindu race, as well as the Asiatic race in general," he maintained, are "in their conception of life and ideas of society, fundamentally different to the Anglo-Saxon and Celtic races, and European races in general."[36] British Indians who left the subcontinent and migrated elsewhere, he opined, might be superior to other races in the empire including "natives of Africa or America," but they remained unsuited in their customs, habits, and political-legal understandings to reside as equals among whites. "Further acquaintance with the subject shews that the better classes of the Asiatic races are not given to leave their own countries—they are non-immigrant classes, greatly attached to their homes," McPhillips explained. The ones "who become immigrants are, without disparagement to them, undesirables in Canada, where a very different civilization exists. The laws of this country are unsuited to

[34] *Munshi Singh*, CVA: 488. The first emphasis is mine; the second is in the original.

[35] *Re Munshi Singh*: 286. On the powers of peace, order, and good government in Canada, see Valverde (2006).

[36] *Re Munshi Singh*: 290.

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them, and their ways and ideas may well be a menace to the well-being of the Canadian people."[37]

Unlike earlier objections to Indian migration, which centered on the unsuitability of climate (Mongia 1999: 527), Justice McPhillips emphasizes the dispositions, beliefs, and customs of British Indians, especially the "very different character of their family life, rules of society and law."[38] It was their historical, cultural, and religious beliefs and practices that rendered British Indians racially undesirable, unsuitable, and incompatible to Canadian ways. Thus, it remained in their best interests to stay "within the confines of their respective countries in the continent of Asia," he advised, as "their customs are not in vogue" in Canada "and their adhesion to them" only results in "disturbances destructive to the well-being of society and against the maintenance of peace, order and good government."[39] It was the personal law system of India, Justice McPhillips claimed, that was most objectionable and even antithetical to Canadian life.[40] He reiterated his position by citing the opinion of Lord Watson in *Abd-ul-Messih v. Chukri Farra* (1888), a case heard by the Privy Council, the British Empire's highest court. According to the laws of India, Watson explains, "certain castes and creeds are . . . governed by their own peculiar rules and customs." As such, "an Indian domicile of succession may involve the application of Hindu or Mohommedan [sic] law; but these rules and customs are an integral part of the municipal law administered by the territorial tribunals."[41] These personal laws, McPhillips cautioned, "will not conform with national ideals in Canada," and "to introduce any such laws . . . or give them the effect of law as applied to people domiciled in Canada" would produce much discontent. Accordingly, he recommended that, "peoples of non-assimilative—and by nature properly non-assimilative—race should not come to Canada" but should instead "remain of residence in their country of origin and there do their share, as they have in the past, in the preservation and development of the Empire."[42]

The five appellate judges agreed, albeit for different reasons, that Canada's Immigration Act was neither unfairly discriminatory nor ultra vires. While Justice Irving claimed that the orders-in-council were equally applicable to everyone, irrespective of race and nationality, and only added to an already long list of exclusions under the existing Immigration Act, including "persons mentally

[37] *Re Munshi Singh*: 290.

[38] *Re Munshi Singh*: 290.

[39] *Re Munshi Singh*: 291.

[40] For a recent volume on the Indian personal law system, see Kolsky (2010).

[41] Cited in *Re Munshi Singh*: 291.

[42] *Re Munshi Singh*: 291–292.

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and physically defective; diseased persons, criminals, beggars and vagrants; [and] charity immigrants," Justice Martin observes that "the exercise of Federal jurisdiction necessarily often affects civil rights, including, primarily, personal liberty, the most striking illustration of which occurs in connection with quarantine."[43] But for Justice Martin, charges of racial in/equality, such as the ones brought forward by Bird and Cassidy, glossed an important point: British subjects did not enjoy the same political or legal status, nor were they entitled to receive equal treatment. In reaching their decision, several judges made this point in competing ways. Justice McPhillips cited the *Encyclopedia Britannica* (1910), which described Asiatics from India to be more civilized than indigenous peoples from North America and Africa. Justice McDonald recognized that the order in council "could not be, and was not intended to have been made operative without discrimination in favor of some races whose legal *status* to be admitted to Canada was already fixed by statute or treaty."[44] Like his counterparts, Justice Martin made a similar claim by also highlighting the racial unevenness of Imperial belonging and by drawing comparisons between British and Canadian Indians. "Much was said about discrimination between the citizens and races of the Empire," he explained. It "was suggested [by Cassidy and Bird] that Canada had not the right to exclude British subjects coming from other parts of the Empire."[45] Discrimination, Justice Martin clarified, "was not a ground of attack upon an Act of Parliament within its jurisdiction." The enactment and enforcement of legislation, he elaborates, "constantly and necessarily *involves the different treatment of various classes, even of the Crown's own subjects*."[46]

While recognizing that racial inequalities were central to the efficiency and success of British rule and administration, Justice Martin did not regard the order-in-council that excluded "[l]abourers, skilled or unskilled" from British Columbia to be discriminatory. Not only was it enforceable against "British subjects residing in other parts of the Empire," but it also could be applied against individuals and populations living "in Canada itself."[47] In making this point, Justice Martin drew the court's attention to Canada's aboriginal populace. No one "has ventured to suggest any reason why a native East Indian British subject and labourer from Punjab should be allowed *the special privilege* of entering the Province of British Columbia," he admonished, when "even a *native*

[43] *Re Munshi Singh*: 259–260, 266.

[44] *Re Munshi Singh*: 256–257, emphasis in original.

[45] *Re Munshi Singh*: 275.

[46] *Re Munshi Singh*: 275, my emphasis.

[47] *Re Munshi Singh*: 275.

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Canadian Indian, a British subject and labourer from, say, the adjoining sister Province of Alberta, who attempted to cross the boundary into this Province and work in a salmon cannery or a logging camp would be turned back."[48] The order-in-council that was aimed at unskilled laborers and artisans and that amended the Immigration Act, he claimed, could thus be used against aboriginal peoples to restrict their entry into British Columbia. To allow admission to unskilled laborers from India, Justice Martin continued, would result in an injustice against Canada's indigenous peoples. Allowing entry to Indians from India would produce "a strange conception and perversion of British citizenship," he opined, that "would give to others [not resident in the country] greater rights and privileges in Canada than are therein possessed and enjoyed by Canadians themselves."[49] Although it was highly unlikely that authorities could successfully govern the movements between Alberta and British Columbia, given the rugged terrain and their ongoing difficulties in prohibiting aboriginal peoples from crossing the Canada-U.S. border (Raibmon 2005), Justice Martin's comparison between "native Canadian Indians" and British Indians placed them in another asymmetrical and relational frame. His comparative logic rested on conceptions of racial superiority/inferiority through which questions of duty and obligation were refracted. Gesturing to the variegated burdens of empire, Justice Martin rejected Munshi Singh's claims to Imperial citizenship. All colonial jurisdictions, he intimated, were first responsible to those who resided within their geographical domain. Accordingly, the Dominion of Canada, he maintained, was directly accountable only to Canadians, including "native Canadian Indians," and not to British Indians.

In 1914, indigenous peoples were not "Canadians" as Justice Martin suggests. Displaced from their land and denied their claims sovereignty and self-determination, they were government wards placed on reserves, governed by the Indian Act, disallowed from voting, and pushed beyond any collective imaginary. Yet, in his references to "native Canadian Indians," Justice Martin, like several of his counterparts, drew attention to and authorizes the differentiated topography of Imperial subjecthood. Indigenous peoples who resided in Canada, he suggested, were to be afforded rights that could not be extended to British Indians. Not only did the latter manifest idiosyncratic habits and strange conceptions of law that rendered them too foreign to abide by Euro-Canadian ways, but to allow them entry into the Dominion, he impressed, would

[48] *Re Munshi Singh*: 275, my emphasis.

[49] *Re Munshi Singh*: 276.

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create a "strange conception and perversion of citizenship."[50] In *Munshi Singh*, indigeneity was a specter extracted from the lives of aboriginal people and their ongoing struggles against the settler state. It was mobilized by the British Columbia Court of Appeal in a competing manner that called into question but ultimately reinforced temporalized understandings of Imperial subjecthood and racial belonging. Their deployment of indigeneity brought "native Canadian Indians" from the past momentarily into the current moment, only to ensure that British-Indian migration would remain beyond Canada's present and future. Drawing on the *before* of indigeneity, and newly reconfiguring it within the domain of Canada, the court reestablished Imperial jurisdictions and Dominion sovereignty, thus effectuating the deportation of the *Komagata Maru* and reaffirming the disparate and unequal terrains upon which colonial rule operated.

III: "[N]ot the Only Colored Subjects of the British Crown": British Indians/"African Natives"

As the *Komagata Maru* awaited its deportation, and as Canadian officials began deliberations with the Imperial government and with authorities in Hong Kong, Japan, and India as to where the ship should be sent, Indian-English newspapers published regular and in some cases even daily updates on the ship's fate. News of the *Komagata Maru*'s journey—its arrival, detention, and anticipated departure from Vancouver—was frequently reported and vigorously debated among the Indian middle-class in colonial English and vernacular newspapers alike. In Indian-English papers, published in Amritsar, Allahabad, Lahore, and Calcutta, the *Komagata Maru* became a politically charged site of debate, drawing together broader and related issues including the legality of restrictive legislation in settler colonies (especially Natal, Canada, and Australia), the British Imperial government's responsibilities to its Indian constituencies, and the authority and reach of Dominion sovereignty. Here, another specter of indigeneity emerged. In these public debates, the figure of the "native" South African was evoked with some regularity by British Indians in ways that informed and shaped discourses on migration, mobility, and settlement. In this context, middle-class Indians positioning themselves against native Africans mobilized indigeneity as evidence of their own racial superiority and as a grammar of anticolonial critique. Importantly, each of these moves was embedded in long and tangled racial histories and situated in variegated intensities of colonial racism.

[50] *Re Munshi Singh*, 276.

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Race, as I have suggested earlier, cannot be conceptualized solely as difference through naturally occurring traits, existing histories, linguistic differentiations, and/or disparate geographies. Rather, it must be viewed as a modern strategy of power that produced, instituted, and gave meaning to somatic, psychic, historical, and cultural differentiations, often through coercion and violent effect (Hesse 2007; da Silva 2007). What counted as racial difference in the late 19th and early 20th centuries, as my discussion thus far suggests, was a generative and highly politicized site of debate. In determining whether the *Komagata Maru*'s passengers were "Asiatics," for instance, Justice McPhilips proceeded by consulting various ethnological, anthropological, and commonsense knowledges, all produced and sanctioned by British-European experts. These discussions of racial designation and Imperial belonging were politically and legally fraught precisely because they carried high stakes. Racial differentiations between white Britons and "colored" British subjects were not solely aimed at marking out and excluding bodies and populations but were embedded in and productive of shifting regimes of inclusion *and* exclusion of superiority *and* inferiority that assigned rights and privileges accordingly (Mawani 2009; Stoler 2002). The recent formulations that view race as an expression and effect of modern power have drawn varying degrees of inspiration from Foucault's (1979, 1980) conceptualizations of power. Among his most prescient insights is the critical point that power is not solely a centralized, repressive, or external force imposed upon individuals and populations by sovereign command. To be effective and politically economical, power must also be internalized so that subjects in their singular and aggregate might eventually learn to govern themselves (Foucault 1979: 201).

That British Indians would be embedded within, and would knowingly and strategically exploit, colonial-racial taxonomies is more fully explicable—beyond the familiar and insufficient narrative of personal prejudice—when race is framed as an organizing power and power as a dynamic force that penetrates and works through its subjects. This argument is not intended to detract attention from the violence of European colonialism or the forces of white superiority upon which colonial rule flourished. Attending to the production and complexities of colonial-racial knowledges is one way to redirect analytic concerns away from the *intent* of colonial actors to the multiple, contradictory, and indeterminate *effects* of colonial power relations (Foucault 1990: 94–95). It also highlights a critical point. The racial as a modern regime of power operates not only through exclusion and repression alone but equally through productive forces that subsume and enfold colonial subjects into wider regimes of power/knowledge and

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governmentality.[51] Efforts to differentiate the Indian self from the African Other were deeply embedded in and were potent effects of colonial-racial power, including its expressions of white superiority. Claims of Indian supremacy and African inferiority were prevalent in Indian-English newspapers that covered the *Komagata Maru's* journey and were situated within wider exigencies and debates on Indian migration. In making these connections between Indians and Africans, the Indian middle classes debating in Indian-English newspapers drew upon much longer histories of racial antagonism and antinomy that exceeded the ship and its failed journey. These histories were never explicitly articulated in the *Komagata Maru* deliberations but remained a forceful and haunting presence throughout.

There is now a voluminous literature on Indian migration to South Africa. The indentured labor system in Natal, Gandhi's life-changing experiences with colonialism beyond India, the development of Satyagraha as an anticolonial movement, and the role of Indians in antiapartheid struggles have become vital and vibrant aspects of Indian diasporic history (Bhana 1991; Devji & Birla 2011; Mongia 2006; Swanson 1983). Despite these rich accounts, much of this work has centered largely on European-Indian relations. As such, discussions of racism in Indian migrant and diasporic histories have been firmly cast "along a brown-white axis" (Burton 2011b: 214; Burton 2012). Historians and others have seemed reticent to trace contacts and encounters between Indians and Africans and especially reluctant to question the racial struggles that organized, mediated, and were generated through their quotidian and everyday encounters (Burton 2012). Like colonial legal historiographies in Canada and other settler colonies, Indian migration to South Africa has been disconnected from wider and longer colonial histories that center on questions of indigeneity.[52] Even as colonial historiographies of the Indian Ocean and of East and South Africa point to the mobility and movements of British Indians, these accounts are narrated as though Indians traveled to and settled geographies already long inhabited by native Africans, yet never to come into contact with

[51] On race as governance, see Hesse (2007). For an intervention that emphasizes the problems with conceptualizing race as an exclusionary as opposed to a productive form of power, see da Silva (2007).

[52] This works the other way as well. Scholars writing about native Africans have not often discussed Indian migration. For example, even the rich and deeply influential work of Jean and John Comaroff does not address the place of Indians in South Africa. This is most visibly absent from John Comaroff's (1998) discussion of the colonial state in South Africa.

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one another.[53] Despite these historiographical erasures, the political and legal identities of native, migrant, and settler, which remain deeply politicized in the present, were instrumental in bringing racial and juridical order to the heterogeneous and entangled lived experiences of colonial life worlds (Mamdani 2001). Colonial taxonomies were intended to classify but also to divide and separate. And this they did. Cross-racial solidarities, friendships, and intimacies were often forged between Africans and Indians, as Jon Soske (2009: 60) observes for a later period in South Africa, but were marked by the effects of divisive colonial strategies.

The "history of Indians in South Africa," Antoinette Burton (2011a: 63) argues, "turns on several racialized axes at once." Here, Burton examines literary and fictional narratives to capture what cannot be easily read or detected from the colonial archive: those relations and intimacies across racial divides that escape and evade documentation. Reading Ansuyah Singh's *Behold the Earth Mourns*, Burton (2011a: 63) insightfully traces the ways in which the "consolidation of a common 'settler' identity derived from racially discriminatory treatment under both the colonial and the apartheid state was always already shaped by anxieties about, proximity to, and dependence on, 'native' Africans." Foregrounding the centrality of African characters and their intimacies and interactions with Indians, she maintains, illuminates the economic, political, and symbolic significance of "the African" in the cultivation of a self-conscious Indian identity. As Indians imagined themselves through the disavowal of blackness, they revealed a set of deeply connected and conjoined histories that continue to be suppressed and even denied in South Asian historiography (Burton 2012). The tensions between British Indians and Africans and the role of the African in the constitution of Indian subjectivities, as evidenced in discussions about the *Komagata Maru* in Indian-English papers, point to the far reaches of the British Empire, its extensive geographical and juridical force, the contemporaneity and connectivity of colonial histories that it facilitated, and the productive and seemingly inconsistent constellations of racial power that it innovated and upon which it relied.

In South Africa, authorities mobilized and effectuated a regime of colonial power that both generated and was dependent upon an uneven racial topography. State initiatives aimed at affirming and maintaining white superiority assembled a legally sanctioned racial hierarchy that placed Indians and native Africans on profoundly

[53] See, for example, Bose (2006) and Metcalf (2008). Although both of these books examine Indian migration across the Indian Ocean, neither explores the contacts and encounters between Indians and Africans.

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unequal terms. These sometimes tense and hostile relations were further exacerbated by the implementation of colonial laws, policies, and state practices (Soske 2009: 60). Importantly, claims to racial superiority and assertions of racial inferiority were not the sole purview of whites alone. Indians and Africans were also incorporated into configurations of colonial power and were active participants in the production of racial antagonisms and knowledges and in struggles over colonial inclusion. While Africans described Indians as despotic and exploitative and expressed their preference for white employers, Indian migrants asserted and exploited racial hierarchies to their own advantage (Soske 2009: 56). As targets of colonial racism themselves, British Indians were not outside of or immune to the persistence and perpetuation of racial power but were produced by and enfolded into it. During his time in South Africa, Gandhi gestured repeatedly and strategically to the putative racial superiority of Indians over Africans. An Indian's elevated moral status, he argued, was especially manifest in his investments in labor and in his virtuous qualities of hard work, self-discipline, and cleanliness (Banerjee 2010: 100–101). "Gandhi's touting of Indian industriousness," Sukanya Banerjee (2010: 107) contends, was established through and "capitalized on colonial perceptions of 'native laziness' overlooking the visible exploitation of native labor."

Discussions of racism, coercion, and violence experienced by African natives rarely emerge in Indian-English newspapers documenting the *Komagata Maru*'s journey and/or Dominion and Imperial policies. On the contrary, the papers often reminded the Indian middle-class reading public of the severe hostilities that were produced by British colonialism and that confronted their "countrymen in South Africa."[54] Many British Indians regarded these conditions to be trials and tribulations that needed to be overcome in order "to maintain the good name of this country," explained Mr. Nanak Chand, a lawyer speaking at a meeting on Indian migration and on the *Komagata Maru* in Lahore.[55] Amid extreme adversity, Indians were to "establish that they were as good British subjects as those in various parts of the world," their point of comparison being white Britons and not the colored races of the empire.[56] The "Indian community of Africa," argued the *Khalsa Advocate*, has "for years past, been the victims of grave wrongs and

[54] Excerpt from a speech by Mr. Nanak Chand at a meeting in Lahore: *The Khalsa Advocate*, Vol. XII, Amritsar, 11 July 1914, no. 27, p. 4. Nehru Memorial Museum and Library, Teen Murti Bhavan, Delhi [hereinafter NMML]

[55] *The Khalsa Advocate*, Vol. XII, Amritsar, 11 July 1914, no. 27, p. 4.NMML.

[56] *The Khalsa Advocate*, Vol. XII, Amritsar, 11 July 1914, no. 27, p. 4. NMML.

injustices."[57] The injustices to which the paper refers were those that whites authorized against Indians and not ones that Indians inflicted upon Africans. The rhetoric of Imperial citizenship that became prevalent in deliberations over the *Komagata Maru* in London, Vancouver, and India was a discourse already familiar to Indians in South Africa. It was precisely this language of citizenship, legality, and rights that intensified inequalities and produced "the greatest distance between Indian and African interests" (Banerjee 2010: 106). Thus, by imagining themselves as citizens of the British Empire, the ship's passengers and supporters effaced some racial divides and emphasized others. Indians, many *Komagata Maru* supporters claimed, shared closer ties and affinities to white British subjects than they did to native Africans. Given this putative proximity, they were now ready to join the Imperial fraternity.

On June 17, 1914, as the *Komagata Maru* was anchored in Vancouver Harbor and awaiting its fate with the board of immigration and subsequently the British Columbia Court of Appeal, the *Civil and Military Gazette*, an English daily in Lahore, published a provocative article. Angered by the events in Canada, especially the Dominion's refusal to allow passengers entry, the article raised a series of difficult questions that incited a contentious and protracted discussion foreshadowing many of the issues that would eventually emerge in *Munshi Singh*. Indian-English papers, such as the *Civil and Military Gazette*, also emphasized the racial inequities through which Imperial subjecthood was comprised. "Indians have claimed that the rights which they enjoy in India and England should also be extended to them in the colonies," wrote the *Gazette*. The "colonial governments, they say are making naught of the promise Queen Victoria gave to India, and as the King of England is King also of each colony, his promise ought to hold good in every unit of the Empire." Pointing briefly to the events in Vancouver, the *Gazette* asked its readers, "How can the King both affirm and deny. How can he as Emperor of India grant rights which he confirms as King of England, while as King of South Africa or King of Canada he denies those rights."[58] The difficult answers to these questions, the *Gazette* advised, were dependent upon prevailing distinctions that differentiated Europeans from the Indian populace. As such, resolution of these matters necessitated a wider discussion of racial difference and whether British Indians were the same as or comparable to whites. In short, the *Gazette* encouraged its readers to consider where Indians might be placed in broader Imperial hierarchies of race. Were Indians, like other "colored races," in need of

[57] *The Khalsa Advocate*, Vol. XII, Amritsar, 11 July 1914, no. 27, p. 4. NMML.

[58] *The Civil and Military Gazette*, Lahore, Wednesday 17 June 1914, XXXVIII, p. 10. NMML.

further moral instruction and guidance from their British custodians, or had they now reached a higher stage of civilization and development, thus opening the possibility of unrestricted mobility and self-determination?[59]

Reprinting an article that originally appeared in the *Pioneer*, another English daily with which the *Civil and Military Gazette* was affiliated, the paper repeated and emphasized questions of racial belonging. To begin, the *Gazette* highlighted the racial taxonomies through which British rule operated and in which Indians themselves had invested. Second, it outlines the foundational paradoxes and instabilities of Imperial promises. Although "the King is the same everywhere the crown is in each case but part of a constitution and a Government," the paper explained. Contrary to the beliefs of many British Indians, the "Governments of the United Kingdom, of India, of South Africa and of Canada *are not identical*."[60] The *Gazette* elaborated this point accordingly:

> Many imperialists are deeply distressed that the feelings of Indians should be thus wounded and are themselves hurt by the charge that the Empire demands loyalty without giving a proper equivalent. But it should be remembered that there are dangers in the theory that all British subjects have equal rights wherever the Union Jack flies, and that in the future, Indians themselves might [be harmed] from the universal acceptance of such a principle. Indians are not the only colored subjects of the British crown. The Empire contains Chinese, Malays, Polynesians, Red Indians, and Negroes *in various stages of civilization or barbarism*. *Indians themselves would not maintain that a "Hubshi" ought to have the same rights as an Englishman. Indians are fully aware of the inferiority of the African natives both to themselves and to the Europeans*. And once an exception (an exception which applies to millions of souls) is granted, the whole theory of the equal rights of all British citizens falls to the ground.[61]

Clearly, the paper recognized that British colonial expansion rationalized its global reach in racial terms. However, in an empire demarcated and divided geographically and historically, these terms did not carry the same meanings everywhere. Indian subjects, as the *Gazette* pointed out, were firmly embedded in existing hierarchies claiming their superiority over others, especially African natives. But for British Indians to demand equality with *all*

[59] For a masterful account of British liberal thought, see Mehta (1999).

[60] *The Civil and Military Gazette*, Lahore, Wednesday 17 June 1914, XXXVIII, p. 10, my emphasis. NMML.

[61] *The Civil and Military Gazette*, Lahore, Wednesday 17 June 1914, XXXVIII, p. 10, my emphasis. NMML.

British subjects, the *Gazette* cautioned, could open comparisons of various kinds. Thus, Indians could potentially be contrasted with "hubshis" rather than with Europeans, with whom they sought affinity.[62] Such comparisons, the *Gazette* warned, might undermine their status on the Imperial map of subjecthood and unravel their claims to racial supremacy over *anyone*.

Questions of racial equality, hierarchy, and taxonomy that were spawned, in part, by the *Komagata Maru*, initiated by the *Pioneer*, and reprinted in the *Civil and Military Gazette* generated discussions in other Indian-English newspapers. "A curious question has been asked by the *Pioneer* whether the people of India would have no objections if the black races of South-Africa were allowed to settle in India," wrote the *Tribune*. In "the first place we deny the attempted analogy that we are to the people of Canada what the Negroes are to Indians." And second, the *Tribune* continued, "*if we had as extensive and unoccupied tracts of land as Canada and Australia, we would certainly welcome any people on earth to fill them up on equal terms with other British subjects and we would never raise such absurd objections*."[63] Here, the *Tribune* makes two contradictory assertions that closely paralleled British liberal thought: universal claims to liberty and equality, on the one hand, and a deep and continued investment in regimes of racial superiority/inferiority, on the other (see Mehta 1999).

Conceiving Canada and Australia to be "unoccupied tracts of land," the *Tribune*, like the Imperial and Dominion authorities, also effaced the presence of indigenous peoples in settlement colonies. Despite making claims about the presumed racial differences between native Africans and Indians, the *Tribune* did not elaborate on what these were. Rather, it implied that British-Indian subjects, unlike their native African counterparts, had now sufficiently benefited from British colonial rule. They enjoyed a new appreciation for legality and equality and were thus ready to migrate to settler colonies and to live as equals among whites. In *Munshi Singh*, Bird and Cassidy advanced the argument, albeit unsuccessfully, that British Indians were Aryans and thus enjoyed an intimate and even familial relationship with Britons. In Indian-English papers, the *Komagata Maru*'s supporters crafted a different racial claim. Also contingent upon prevailing colonial-racial orders, they argued that the presumed superiority of Indians over native Africans was further evidence of Indian maturity and readiness to join the Imperial polity. These uneven regimes of Imperial subjecthood, in which British Indians were so firmly embedded, demonstrate the politics

[62] *Hubhsi* is a disparaging term derived from the Arabic word *Habshi*, used to describe Indians of African origin who are also known as Siddis. See Prashad (2001: 8).

[63] "Rights of British Indian Subjects," *The Tribune*, Lahore, Thursday, 18 June 1914, Vol. XXXV, no. 133, p. 2, my emphasis. NMML.

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of the racial subject, its subjection, and its subjectification. Importantly, the production of British Indians as ready colonial subjects was contingent not only on conceptions of racial superiority and inferiority but also on competing temporalities that brought them into the *present* of South Africa, allowing them to imagine themselves as closer to white settlers than to native Africans. The "temporality of social belonging that emerged with democracy, colonialism, and capitalism," Elizabeth Povinelli (2011a: 23) contends, "emerged not merely as dialectic but also division." Thus, the claims to sovereignty and racial superiority advanced by British Indians, and based on labor and industriousness in Gandhi's view, could gain currency only against native Africans, who, they implied, were confined to the past and to history.

Spectral Governance

In *Specters of Marx*, Derrida (1994) begins his meditations on Marx with a famous epigraph from Hamlet: "The time is out of joint." The arrival of the specter and its ongoing return, he claims, places prevailing conceptions of temporality into question. For Derrida (1994: 11, emphasis in original), the "specter is always *revenant*"; one "cannot control its comings and goings because *it begins by coming back*." Before one can know whether a differentiation "between the specter of the past and the specter of the future, of the past present and future present," is even possible, "one must perhaps ask oneself whether the *spectrality effect* does not consist in undoing this opposition, or even this dialectic between actual, effective presence and its other" (Derrida 1994: 48, emphasis in original). The shifting specters of indigeneity that I follow in these three moments of satirical cartoon, legal deliberation, and public debate over the *Komagata Maru* are intended to question how the revenant figure of indigeneity is mobilized as a racial logic of governance that, when read critically, reveals and punctures the successive linearity of colonial time. The persistence of indigeneity in struggles over British-Indian migration, its repeated return and recurrence, I suggest throughout, invites a rethinking of colonial temporalities and their governing logics on multiple registers. While the discrepant temporalities of the indigenous and the British-Indian migrant as *before* and *after*, respectively, were deployed by the settler state as a determining and authorizing force, the return of indigeneity in its changing and multiple forms draws attention to these competing and irreconcilable temporal logics that gave currency to colonial power.

By the early 20th century, in settler colonies including Canada, the state subsumed and incorporated indigeneity to assert its own

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sovereignty. The settler state, as Povinelli (2011: 19, emphasis in original) writes of the Australian context, "projected the previous inhabitants as spatially, socially and temporally *before* it as the ultimate horizon of its own legitimacy." In the case of the *Komagata Maru*, it was not *actual* indigenous peoples but their *indigeneity* that Dominion authorities and the appellate court judges claimed and reterritorialized. This significance of the *before*, as my discussion above suggests, operated as a *spectral figure* rather than a *real* body. Povinelli (2011: 21) contends that the priorness of indigeneity remains "even when no actual person claims to be the present manifestation of the surviving prior . . . even if the prior person is no more than an entry in a historical record." As "historical citation" the indigenous "is constantly called upon to do all sorts of cultural, social and legal work" (Povinelli 2011: 21). In struggles over the *Komagata Maru*, the spectral presence of indigeneity as *before* was mobilized by colonial authorities in their efforts to reassert Dominion sovereignty and by middle-class British-Indian subjects, speaking on behalf of the ship's passengers and vis-à-vis African natives, to augment their claims to juridical, political, and racial belonging in the Imperial polity. The political and legal work performed by indigeneity, as well as its deployment as a temporal logic and as a form of spectral governance, becomes palpable and visible only when it is allowed to (re)emerge and return as a persistent presence that can interrupt colonial legal histories of subalternity. Ultimately, its return points to the entanglements of imperial histories and to the uneven regimes of colonial-racial power in which colonial subjects were produced and deeply invested.

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Periodicals and Newspapers

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Hindi Punch
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Pioneer
Tribune

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