DAUGHTERS OF THE DANAIDES

an orature on women and the operation of UK immigration control.

by

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ABSTRACT

This thesis investigates the operation of the United Kingdom immigration rules, taking as a focus their effect upon women. The manner in which the immigration rules prescribe, deter and forbid movement is highlighted.

The institutional culture of the Immigration Service is posed as a twentieth century counterpart to British overseas administration of earlier centuries. This parallel illustrates how British government practice of dealing with other cultures takes a form which, both under imperial rule and current immigration legislation, consistently marginalises lived realities.

Immigration control is seen as part of a continuum of a tradition of administration in which racial discrimination is an integral quality of working practice. The mystification of working practices nonetheless ensures denial of discrimination. The embodiment of universal categories and an independent appeal system within immigration control stand as ostensible safeguards against departure from an ideal of non-partisan operation, yet the opposite is pervasive.

The categories of passenger inscribed within the immigration rules are identified as a core element of control. These demand fulfilment of particular constructs of identities which are culturally and gender role specific. The inclusion of examples of women who are subject to the immigration rules illustrates the implications of the dichotomy between self-knowledge which is a lived reality (of for example mother or wife), and the categorisation of those identities within rules and practice. Administrative categorisation is revealed as manufacturing identities which serve specific ideological, political or economic ends. The constructed identities become received knowledge of those categorised, and of different cultures, which has socio-political consequences. Not least of these consequences is generation of a self-fulfilling prophecy of those legislated against standing as justification for immigration control.

Daughters of the Danaides

It is noteworthy that the first foreigners to emerge at the dawn of our civilisation are foreign women – the Danaides... the Danaides can be traced back to a prestigious ancestor – Io, the priestess of Hera in Argos.

Io wandered from Europe to Asia, finally reaching Egypt....the mark of violence and anguish would be felt by her descendants.

Julia Kristeva, 'The first foreigners: foreign women (from Io to the Danaides)', Strangers to Ourselves, Harvester Wheatsheaf, London, 1991, p42–49.

Orature

Many Black artists work in various media simultaneously, forging creative links, collaborations and alliances. This state of consciousness, a reflection of African and Asian attitudes to creativity, is called orature.

Kwesi Owusu (ed), Storms of the Heart, Camden Press, London, 1988, p2.

It is the conception and reality of a total view of life. It is a capsule of feeling, thinking, imagination, taste and hearing....It is a weapon against the encroaching atomisation of life, it is the beginning come full circle on a higher plane.

Ptika Ntuli, Storms of the Heart, (ed) **Kwesi Owusu**, Camden Press, London, 1988, p2.

One has only to pick at the scab of memory, and the cries, words and gestures of the past make the whole body of power bleed again.

Raoul Vaneigem, 'Basic Banalities (II)', French Situationist International Journals 1963, Situationist International Anthology, Bureau of Public Secrets, Berkeley, California, 1981, (118–133), p119.

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Deborah Cheney, 1994.

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CONTENTS

The titles of each chapter are extracted from The Tempest by **William Shakespeare**. This choice is premised in the ideas advanced by **Eric Cheyfitz** and the film director **Peter Greenaway**[1] that the island on which Prospero is stranded becomes a library transformed into a state where the scholar/translator rules his subjects through his books. This is a parallel world to the world of immigration control.

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[1] See **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonization from the Tempest to Tarzan, Oxford University Press, Oxford, 1991, p170; Prospero's Books, Allarts/Cinea/Camera One, Producer **Kees Kasander**, Director **Peter Greenaway**, screenplay adapted from 'The Tempest' by **William Shakespeare**, starring: Sir John Gielgud, Isabel Pascoe, Mark Rylance, Tom Bell, Kenneth Cranham.

PREFACE

His father perhaps was a tally-clerk
on thirty rupees a week;
Or a Government babu, crouched and ill
with smallpox-pitted cheek;
His mother, maybe, in the dripping heat
attended a Bombay loom,
Who slept at night with their sibling brood
in a tenement, eight to a room.

I wondered whether they'd wept a while
in the glare at Santa Cruz;
When he stood for a final moment
in his suit and new cardboard shoes;
I felt the wrench of the heart and the pride
as the plane roared out to the sea;
And I thought of the desperate toil and swot
that had got him to South West 3.[1]

No-one who enters or leaves the United Kingdom does so without being part, even for a fraction of a moment, of a decision-making process. Whatever passport or travel document is held, wherever the destination, there will be a moment when the identity of the traveller becomes crucial. That moment of standing testimony to who you are is the subject of this thesis, namely the identity qualification for entry to the United Kingdom under the immigration rules.

To the vast majority of international travellers the experience of standing testimony to who they are passes unnoticed as they present passports for cursory examination and then proceed on their way. The possibility of needing

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[1] **Jerry Speer**, 'Thoughts in Another Land', Sahibs and Sadhus, **Jerry Speer** & **Wilfrid Russell**, The Fortune Press, London, 1975, p45.

to establish identity on-the-spot; account for movements; prove the relationship of accompanying family members; justify the presence of letters and papers that are the standard litter of hand luggage, is never an issue. This thesis poses questions in relation to the minority as to whether particular consequences follow from nationality. Are there identifiable 'constructs' of identities to be fulfilled embodied within particular categories of passenger and are those categories characteristically embraced by particular nationalities? If so, do these 'constructs' or mechanisms for the construction of identity facilitate entry or do they impose a punitive stereotype of negative difference upon particular nationalities.

The significance of gender role assumptions embodied in the categories of passenger within the immigration rules, and how culturally specific such characterisations are, are investigated through those categories under which women must qualify. It is suggested that these 'characterisations' and 'constructs' are part of a colonial perspective of other cultures. This 'absentee colonialism'[2] picks upon emblematic elements of other cultures which in themselves (and by virtue of the manner in which persons must qualify under them) render those cultures fixed in their difference. The result is that the immigration rules and their mode of operation provide a vehicle where, in **Barthes** terms: 'signs with concrete meanings in their historical and social context are borrowed, emptied of their specifity and refilled by ideological

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[2] A term used by **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p8. I embrace the same definition of 'colonial discourse' as **Niranjana**, stated as: 'the body of knowledge, modes of representation, strategies of power, law, discipline and so on, that are employed in the construction and domination of "colonial subjects"', p7.

connotations, which they then masquerade as a kind of truth because they are dressed in the "naturalism" of the borrowed denotional signs'.[3]

This thesis does not take a comprehensive account of every gendered category of passenger embodied within the immigration rules. Discussion of the categories fiancee, wife and mother stand as representative argument to support suggestion that culturally specific characteristics are imported into the legislation both at the level of drafting and operation. These categories have been highlighted because they embrace roles central to what women are 'seen as', and through which women are most significantly characterised and judged. Taking as a focus categories which embrace identifiable 'roles' associated with women illustrates the significance of the interpretation placed on these categories within the rules, and the culturally specific departures of such interpretation. Other categories are encompassed through argument that assumptions made about women in these key areas then affects how they are seen and categorised for other purposes such as student, widow, dependent parent or sister, and visitor. These latter categories accordingly form part of subsidiary debate within the focused chapters.

A summary of each chapter follows which relates its content to the overall argument of the thesis, stated in brief in the abstract.

The **Introductory Chapter** outlines the epistemology and methodology of the thesis, providing argument for the inclusion of the range of material called upon in support of later debate. A range of diverse material has been used in

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[3] **Griselda Pollock**, utilising **Roland Barthes** semiological reading of the operation of bourgeois mythologies 'Myth Today', Mythologies 1957, Trans. Annette Lavers, Paladin Books, London, 1972 in her work Avant-Garde Gambits 1888-1893: gender and the colour of art history, Thames & Hudson, London, 1992, Footnote 71, p78.

order to emphasise the central focus within the thesis upon construction of identities of applicants. Personal experience of working within the immigration field has been included as a 'different voice' upon operatives formed by institutional culture. It is argued that this and the 'different voicing' of the experience of applicants which is included in Chapter Six conveys the complexity of the immigration moment which is in practice denied. Highlighting the complexity provides a route to criticism of the 'knowledge' which is settled upon in the decision-making process of control.

In a similar way to how the experience of control is voiced in different ways, the material of control (the explanatory statements) and the machinery of control (the appeal courts) are 'read' in different ways within the thesis. Contributing to this reading is an historical perspective and also the perspective of those critical of the material produced by ethnographers. These tools are directed toward revealing the multi-layered power of control to fix the identity of applicants. Each of these perspectives is valuable in itself. The historical focus situates such elements as the appeal context within a tradition of administration. The ethnographic focus provides a different 'reading' of the texts produced by the mechanisms of control. However they also provide an additional message when taken together. Parallels are drawn between the consequences of the combination of ethnography and administration in the heyday of British imperialism, and the socio-political effects of the textualisation applicants are subjected to under the current immigration rules.

Chapter One takes as subject matter the institutional culture of the Immigration Service within which the operation of control is rooted. Personal experience as part of that institutional culture provides contextual illustration of the points made. Looking at how my own identity was constructed by the parameters of the institutional culture foregrounds the issue of construction of

identity to fit a socio-political role. The issue of construction of identity to fulfil such a role forms part of later debate in respect of those who fall to be legislated against by the immigration rules. Both parties to the immigration moment are moulded by their position within the structures of control and the parameters afforded by the words of the law. However it is made clear that this moulding is one which inherently disadvantages applicants.

This chapter focuses upon the operatives of control and how training forms perceptions which work in tandem with the words of the law themselves, to interpret those who stand subject to control. That interpretation limits the options of applicants and closes off their knowledge. The prefigured identity of applicants is demonstrated in later debate to be one which accords with popular myths of 'immigrants'. It is thus an identity which feeds into, and is fed by, imperatives other than those which immigration control claims as its raison d'etre. These arguments lay the foundation for Chapter Two which elaborates upon the 'layers' of control which applicants face.

The historical focus of the chapter situates the issue of translation of the identity of applicants into a tradition of administration which has root in the British overseas administration of the colonial era. Drawing upon this tradition enables emphasis to be placed upon the extent of the disadvantaged position in which applicants come to the immigration rules. It also provides contextualisation of the wider debate of which the in-group perceptions of immigration operatives are a part.

Chapter Two builds upon argument in Chapter One by elaborating upon the layers of meaning and layers of control which are embodied in the legislation itself. The selective interpretation of the language in which control takes form in the immigration rules serves the imperatives of the institutional culture

discussed in Chapter One. The importance of looking at the form of the legislation itself is premised in the fact that the reality of those applying is in large part 'translated' by the very necessity for applicants to become the identities which are embodied in the categories of the rules. Whilst these categories are worded 'innocently', the perceptions which are encouraged during the training of operatives (as outlined in chapter one) form the sub-text of the vocabulary.

Whilst the vocabulary of 'immigration-speak' recalls ideals of justice and equality, it is suggested that there is nonetheless a discriminatory process at work even in the moment of drafting the legislation. The embodiment of socio-political ends within the legislation is identified, the achievement of these ends being seen to be a prerequisite of exclusion of passengers from particular parts of the globe. The choice of who falls within the gaze of control as 'a problem' to be excluded, is revealed as being based on the earlier identified assumptions. The categories of the rules are thus seen to be less the sum of their face value than a thesis in themselves of fears and stereotypes of those toward whom they are in effect directed. An historical focus following upon that of Chapter One suggests these fears and stereotypes are integrally bound up with a discriminatory tradition of administrative practices.

Chapter Three details the appeal mechanisms confronting applicants who challenge decisions. A focus is taken on the manner in which facts and events are placed before the immigration appeal court for judgement, to elaborate upon how the process of translation identified in earlier chapters continues throughout this stage. The institutional culture and administrative procedures criticised in previous debate finds parallel here in examination of the parameters of debate in the courtroom and the approach of adjudicators themselves.

The background to the setting in place of an immigration appeal system is included to demonstrate how in practice these courts have fallen short of the ideals they embodied at the theoretical stage of their development. Argument within the previous chapter is mirrored, in that the 'public image' of the immigration rules and the ideals they embody of non–partisan operation does not stand up to scrutiny. The falling short of ideals in the case of the appeal courts is seen to be, to a large part, the result of the courts becoming unwittingly an effective extension of the institutional culture of the immigration service and a tool of control which operates on the basis of exclusion.

The examination to which the text of the immigration rules has been subjected in Chapter Two is recalled in this chapter by subjecting appeal statements to a critique as if they were material produced by ethnographers. This critique foregrounds how courts have become ostensible tools of control in that the parameters within which and through which cases are presented and decisions challenged, marginalises and silences the 'knowledge' of applicants themselves. The unfairness is deserving of particular censure in that this takes place in the very theatre in which applicants are appearing to state their challenge to decisions. The transcription of the words of applicants is seen to be culpable in this process of marginalisation and silencing. As in Chapter Two, the power of the written word in the hands of the immigration authorities, empowered further by both prescribed format and direction to the rules and their own prescribed interpretation, is seen as a barrier to fair hearing of those who come before them.

Chapters Four and Five take as their central focus categories within the legislation under which women fall to be considered and to qualify. Chapter

Four deals with fiancees and wives, Chapter Five with mothers. These categories have been chosen in order to demonstrate through example the translatory power of the immigration rules which has been elaborated upon theoretically in earlier debate. Using women as a focus enables the whole issue of 'roles' passengers are expected to fulfil to be elaborated upon. Stereotypical assumptions of what women are seen as, and what a wife and mother is, are drawn upon here to make distinct how the immigration rules exercise control differentially between minority ethnic groups. That this differential treatment has its source in historically rooted presumptions about the nature of women of other cultures, is demonstrated by calling upon historical material related to how women were seen and legislated against during the era of British overseas expansion. This draws in a secondary strand of debate in these chapters upon the role which practices of institutional culture play in advancing particular qualities of womanhood which are in turn not only disadvantageous for applicants, but force their acceptance of a fixed identity which feeds into popular myth. Those myths then, in their own turn, serve as clarion call to uphold the principles of control.

Within these chapters immigration appeal tribunal cases provide illustrations of applicants whose cases have been brought before the courts for judgement. The surrounding debate draws upon material from these cases and historical evidence, to make links with earlier discussion of institutional culture and demonstrate how the images women are called upon to fulfil have culturally specific connotations. These images are in turn interpreted as disadvantageous to applicants both in themselves and in as much as they echo popular myths of how applicants are seen on entry. This latter discourse forms part of the tapestry of control mechanisms referred to in earlier discussion and which is elaborated upon in Chapter Six.

In **Chapter Six** earlier argument upon the constellation of texts that form the entity which is immigration control is balanced by a 'reading' of events from other perspectives. Earlier chapters have consolidated how the layers of control work in tandem to suggest a knowledge about applicants, a fixed identity of those applying, both of which then operate to justify the mechanisms of control being in place. It has been argued in criticism of this that the knowledge of applicants, the reality of their identities, is marginalised and silenced. Chapters Four and Five have demonstrated how this takes place in practice in specific cases, through the translatory process of both the words and the machinery of the law. This chapter consolidates the argument of the selectivity of the control mechanisms when dealing with applicants, by looking at events from the perspectives of those subject to control. As a 'plimsoll line' of the tenor of control which fixes applicants so simplistically the chapter includes media reportage of immigration, an area which in earlier debate has been demonstrated to parallel the assumptions made in control itself.

Poetry, prose and material from the art world is used to 'voice' the words of those subject to control. This focus has been adopted in order to take their stories out of the domain of 'immigration–speak texts', which have been criticised in earlier chapters for the parameters which deny the voices of applicants. Using other forms of 'texts' serves other purposes. It is a use which reinforces the call for a 're–reading' and thereby re–interpretation of the experiences which have formed part of earlier chapters. Furthermore, this focus in itself foregrounds the shortcomings of the instruments of control, such as the appeal statement, and thus lays the foundation for the debate of the final chapter upon what remedies can be looked to for the injustices applicants face.

The thesis argument has concentrated throughout upon how the immigration rules and the panoply of control mechanisms which are at their service demand

applicants fulfil identities which deny their own reality, and which fix their identity as a timeless given. This fixity serves to legitimate not only control itself but argument that this control be directed toward specific populations of the globe. It has been suggested that a 'translation' is demanded if applicants are to succeed for their own part, and Chapter Six has demonstrated the extent of the translation and sacrifice demanded of them. But by so doing, by succeeding for their own part, they become complicit in reinforcing the foundations of control which remain in place to frustrate and thwart others.

Chapter Seven is the concluding chapter of the thesis and discusses issues raised in earlier debate in the context of suggesting possible remedies to the injustices embedded within the 'Spirits to enforce, Arts to enchant'[4] that is the operation of immigration control.

Preceding argument has highlighted how institutional culture is the bedrock of control and demonstrated how this directs a 'manner' of operation which is culpable in disadvantaging applicants. Earlier chapters have advanced a 're-reading' of the texts of immigration which demonstrate that there is valid knowledge of applicants which is necessarily (for the system) marginalised and disregarded by the working practices adopted by immigration operatives. It has been demonstrated how the mode of operation through 'categories' (such as wife and mother) is ostensibly elevated as a levelling mechanism between applicants to ensure fairness of dealing. However what has been advanced as argument throughout is that the mechanisms which 'support' these categories by advancing the tenor of their interpretation (the training of operatives and the appeal court) are far from being non-partisan. This chapter thus suggests a

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[4] **William Shakespeare**, The Tempest, Prospero's Epilogue, Line 14, The Illustrated Stratford Shakespeare, Chancellor Press, London, 1982, p29.

different methodology is called for in the field of operation of control. That methodology is one which does not demand a translation of the reality of applicants, given that translation serves the overall ethos of a control which is itself based upon assumptions about those seeking entry.

INTRODUCTION

'TIS TIME I SHOULD INFORM THEE FARTHER.

We watch her go through
The gate for Embarking Passengers Only
fearful and unutterably lonely,
Finger our own documents,
Shuffle forward in the queue.[1]

The wish of **Shakespeare's** Moor, Othello, on departing this world was a demanding one, that account of him be complete: 'Speak of me as I am; nothing extenuate, Nor set down aught in malice'.[2] As **Okri** claims in this context: 'to face the complexity of others, their history, the bounds of their raw humanity – that takes courage, and is rare'.[3] Yet it is important to recognise the individuality of others and by so doing elucidate the plurality of identities which are a condition of human existence. How and by whom these identities are formed and articulated and the contexts of their negotiation, are crucial factors in determining the consequences of embracing an identity at a given point. Not least, such elaborations make distinct the differences between people which structure their lives.

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[1] **A.L.Hendricks**, 'The Migrant', News for Babylon: The Chatto Book of West Indian–British Poetry, (ed) **James Berry**, Chatto & Windus, London, 1990, (152–153), p153.

[2] **William Shakespeare**, Othello, Act 5, Scene 2, Lines 344–345, The Illustrated Stratford Shakespeare, Chancellor Press, London, p893.

[3] **Ben Okri**, 'Leaping out of Shakespeare's terror – five meditations on Othello', Storms of the Heart, (ed) **Kwesi Owusu**, Camden Press, London, 1988, (9–18), p17.

In that the immigration rules demand the embracing of an identity within a very particular context, such issues are a central consideration in this thesis. Debate will elaborate upon the threat posed to the identity of those who face control, both in how others are forced to question their self-knowledge and the necessity of presenting a particular identity. Complexity will be seen to be denied within a practice of control which 'fixes' applicants in a limited identity which serves the overall ethos of control, that of exclusion. How identities are accordingly undermined, re-created and 'called up' by the parties to control will be seen to be an essential imperative for justification of immigration control itself.

In order to convey the complexity of 'translation' which applicants face, this thesis draws upon a range of material. That range is detailed in this introductory chapter, and the reasons for their choice given, within a statement of the epistemology of the thesis which elaborates upon the preface.

EPISTEMOLOGY

A crude initial standpoint toward the translation of identity which I pose is faced by applicants before immigration control would be to imagine that the 'justifications and proofs' which are the required evidence for some at entry, were of personal relevance. The majority of us walk around daily, confident in who we are and what we do, where we are going and why, who we know and why we know them; we have hopes and ambitions, expectations we wish and expect to fulfil. Imagine being questioned on these basic matters and having to account for every detail of your life, even down to why you carried with you a letter from a friend. Imagine if you were stopped and had to justify any one of these things. Imagine this and you will begin to approximate a small part of

what it feels like to be subject to the United Kingdom immigration rules, having both an identity that you were secure in, and your own knowledge, invalidated. The experience I describe is no isolated occurrence, thousands of travellers to the United Kingdom undergo this nightmare daily. Invariably the procedures described are exacerbated by language barriers, travel fatigue, disorientation and often, by detention in a cell.

The sole aim of this thesis is not merely to describe the experience of those subject to immigration control. That focus would only superficially touch upon the complexity of experiences and the socio–political importance of why they demand recounting. It would not question why the experience to be investigated in these pages is one which is part of the lives of only a proportion of humanity. This proportion of humanity is characterised by 'foreignness' to the United Kingdom: they are 'the stranger, the alien, the other' of popular myth. They are almost invariably of a different skin colour, culture and creed, and they or their ancestors herald from parts of the world which were once part of a far flung European Empire. They were controlled during the 'Empire days' and remain controlled in the rays from the setting sun of that Empire. In that control they were, and are, disempowered and silenced.

A recognition and understanding of the nature of the imperative which seeks that silencing is important in order that we might recognise the reality which is immigration control. The nature of the regime of subjugation seeks that silencing of others in order to give a privileged few a 'voice' of 'knowledge', which becomes a tool to secure control over those who have been gagged. Without an appreciation of this regime there will be no imperative to explore the tragic lunacy of how an incident of as short a duration as 80 seconds can have such enormous implications for peoples lives: how persons live; where

they live; who they live with and even if they live.[4] With this understanding there is the hope at least of remedy for this state of affairs. To recognise it but ignore it is to be morally culpable in the manner in which **Lamming** gives voice: 'to live comfortably with the enemy within you is the most criminal of all betrayals'.[5]

This thesis then attempts to explore the shortcomings in the operation of immigration laws from the perspective of those subject to them. The method adopted is inspired by that taken by **Griselda Pollock**: 'to confront *both* the gender *and* the colour of art history and see their historical overlapping'.[6] In her work **Pollock** employs the strategy of combining dis-identification, re-identification, and theoretical revision.[7] To utilise her terms and apply them to immigration law, this thesis will take the commonplace experiences of immigration control, including the appeal statements and interviews, and suggest a critical reading through the historical context of both immigration control and colonial administrative practices (dis-identification). A feminist perspective will be woven into the thesis by a specifically gendered focus of the enquiry upon the manner in which women fare as 'objects of representation'

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[4] Home Office figures of the average time spent on examining an individual passenger at a busy port have been stated as 6 seconds for UK nationals; 20 seconds for EC nationals; 80 seconds for others. **Commission for Racial Equality**, Immigration Control procedures: Report of a Formal Investigation, CRE, London, 1985, para. 6.9.4, p78.

[5] **George Lamming**, The Emigrants, M.Joseph, London, 1954, p101.

[6] **Griselda Pollock**, Avant-Garde Gambits 1888-1893: gender and the colour of art history, Thames & Hudson, London, 1992, p9.

[7] '*dis-identification*, a Brechtian process of making the familiar stories strange through a critical reading of one paradigmatic painting and the historical context of its production; *re-identification*, as a feminist scholar with the historical Tahitian woman, a subject of her own history, who appears only as the object of representation in a Western art history; *theoretical revision* of these relations of historian and text, historical femininities and masculinities, through the matrix of the Tourist, the paradigmatic mode of modernity in the age of high colonialism'. **G.Pollock**, Avant-Garde Gambits 1888-1893: gender and the colour of art history, Thames & Hudson, London, 1992, p10.

under the immigration rules (re-identification). Theoretical revision of the relations arising from these perspectives will be analysed through extensive personal experience of the operation of immigration control. This is a matrix which links feminist scholar with the 'role' of an administrator trained in practices grounded in the remnants of high colonialism.

In adopting this course a debt is acknowledged to the methodology of **Pollock**: 'turning the focus on my own position, using the mediating distance of feminist analysis to explore the possibilities of critical understanding of the structures within which I [as a white art historian] have been formed, in order to produce a writing [of art history] which tries to find ways to achieve recognition of the historical subjectivity of a woman of colour. A critical reading of her situation, rather than a new mastery produced by telling her story in my words'.[8] Presuming an understanding of others is a fruitless exercise. It is a critique of one's own place with which exploration must begin and end.

In an area characterised by the silencing and marginalising of the situations of others by an 'epistemic violence'[9] there is latent but tragic potential. This leads to a situation wherein, to quote **Okri** again: 'When you reduce the reality of the

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[8] **Griselda Pollock**, Avant-Garde Gambits 1888-1893: gender and the colour of art history, Thames & Hudson, London, 1992, p11-12.

[9] A term used by **Gayatri Spivak** in 'The Rani of Sirmur', History and Theory 8, 1985, p247-272. **Pollock** employs this in her thesis, describing it as meaning: 'a violence done to a people or culture when they are drawn into another, dominating cultures' system of knowledge. Known only through a colonising discourse, they are subjected to a violation as effective as a physical subordination'. See **Griselda Pollock**, Avant-Garde Gambits 1888-1893: gender and the colour of art history, Thames & Hudson, London, 1992, Footnote 72, p78.

other there is the dubious benefit of not having to face the fullness of their being, their contradictions, their agonies'.[10]

It will be suggested that non-acknowledgement of the complexity of others, the oversimplification of identification processes, is less a failure of the operation of United Kingdom immigration laws than a quality integral to their very working practice. In other words, that discrimination is not a product of an existing difference, but is produced by discrimination inherent in the content and operation of the immigration rules. These rules provide a basis for: 'a process that establishes the superiority of the typicality or the universality of some in terms of the inferior or atypicality or particularity of others'.[11] Lack of recognition of the status of others is made possible by (and itself makes possible) a 'construct' of others which forms part of the working definitions of the institutional culture of immigration control. The forms taken by the 'texts' of immigration control, comprising the rules and the explanatory and appeal statements, encourage and perpetuate such constructs of identity.

These 'texts' will be compared with ethnographic description in anthropological work and suggested to be lacking in 'ethnographic authority'. This approach has been chosen, premised in the fact that immigration control shares with this area 'texts' and 'sites' where the translatory power of language enables 'constructs' to be established. The overseas interview crucial to applications made by those who seek entry to the United Kingdom is paralleled by anthropology. Particularly when the 'village visit' is adopted by entry clearance officers, there is engagement with a similar style and approach to the anthropological

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[10] **Ben Okri**, 'Leaping out of Shakespeare's terror – five meditations on Othello', Storms of the Heart, (ed) **Kwesi Owusu**, Camden Press, London, 1988, (9–18), p14.

[11] **Joan W. Scott**, 'Multiculturalism and the Politics of Identity', October 61, Summer 1992, p14–15.

discipline. The outcome of enquiries provides a textually conveyed experience and identity that assumes a reality greater than the individual's own experience. The exercise of meeting a pre-defined and pre-supposed image fundamentally affects the outcome of an application. The identity of the applicant is constructed, assembled from the ingredients which the criteria of the categories demand, to become a description which 'speaks for' the applicant to the exclusion of other considerations.

The process of making an application involves the subsumption of actual to textual identity. To succeed, is to have that which is identified on your behalf 'become' your identity. The authority to represent which the immigration operative wields, involves ethnographic description whereby: 'Ethnography renders the others identity to ourselves and, via the conditions in which it is executed, back to the other. By speaking of him, or for him, we ultimately force him to speak through our categories'.[12] In immigration applications, those who succeed participate in a process of re-identification which reinforces the mechanisms and foci of control.

The self-legitimation carried by the texts is their spell. All texts legitimise themselves since: 'There is no reading that does not bring to bear a certain context, interpret from a certain angle or set of interests, and thus throw one set of questions into relief while leaving others unasked'.[13] Yet in the magic circle of immigration control an inherent conflict exists between the value-laden

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[12] **Jonathan Friedman**, 'Narcissism, roots and postmodernity: the constitution of selfhood in the global crisis' in Modernity and Identity, (eds) **Scott Lash** and **Jonathan Friedman**, Blackwell, Oxford, 1992, p332.

[13] **Gerald Graff**, 'The future of theory in the teaching of literature', quoted in Zakia Pathak, 'A Pedagogy for Postcolonial Feminists' in Feminists Theorize the Political, (eds) **Judith Butler** and **Joan W. Scott**, Routledge, New York, 1992, p426.

techniques of identity construction and the official discourse of claimed neutrality. Thus there is an appearance of people speaking for themselves in 'direct record' of the words of the interviewee with the interpretative comments of the interviewer interspersed making the latter complicit in collaborating to create new meaning. This becomes an important advantage for the Home Office when disputes are taken to appeal. Edited summaries of what has been uttered by the applicant inevitably bear the stamp of the investigatory interpretation with choices of phraseology directing reader's receptivity to what is to follow i.e. 'the decision on the facts'. Thus a statement that a child applicant 'appears older' is an invitation not to believe the applicants knowledge of his or her own age, and to believe the impression the interviewer has of it. Equally, the omission of detail enables impressions to be given which appear self-evidently beyond question.

Invisibly imprinted are the two universalities against which the application is judged: an ideal Western norm and the pre-supposed norm of the non-western arena of which the applicant is part. Failure of application denotes alieness to both. What is clear is that both universalities are products of the West and seek to supplant the self-knowledge of the applicant. **Friedman** provides a striking parallel of the arrogance of speaking for others in his anecdotal reference to an academic congress on the Middle East at which an eminent scholar spoke authoritatively on tradition and identity in Iran. His words were rebutted by a Muslim 'seated in traditional attire' who was 'clearly well vèrsed in his own culture but from a very different interpretative standpoint'.[14] The total silence which was the reaction to his rebuttal is the incredulity of Western scholarship in expecting others to represent themselves in the image of a conceptually

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[14] **Jonathan Friedman**, 'Narcissism, roots and postmodernity: the constitution of selfhood in the global crisis' in Modernity and Identity, (eds) **Scott Lash** and **Jonathan Friedman**, Blackwell, Oxford, 1992, p364.

inappropriate culture projected onto them. Similarly, the immigration rules demand applicants to choose between making an unsuccessful statement of their own authenticity, or succeeding by embracing a 're-interpreted' authenticity.

The 'texts' and 'sites' of immigration control will be analysed to explore the power of language in enabling identity 'constructs' to be established. Within discussion of the institutional framework of immigration control the appeal and interview situations will be evaluated as integral parts of a semiotic system with its own vocabulary and rules which define who can speak and how. The immigration rules as a semiotic system reinforce and are reinforced by this wider framework in structuring the objects of knowledge via categories which re-define ('name') what a 'mother' is, what a 'widow' is etc in terms which re-inscribe and superimpose the social reality of others. By enforcing identification through an effective 'culture-as-sign', a right to signify is assumed by those empowered to operate control and: 'The rule of language as signifying system - the possibility of speaking at all - becomes the misrule of discourse: the right for only some to speak diachromatically and differentially and for "others" - women, migrants, Third World peoples, Jews, Palestinians, for instance - to speak only symptomatically or marginally'.[15] This form of translation is itself a strategy of containment alluded to by **Bhabha** as 'the right for only some to speak diachromatically and differentially and for others' and is a right which reinforces hegenomic versions of the colonised. The translation is one which endorses a hierarchical model of civilisations. Within this those 'who speak only symptomatically or marginally' do so as fixed, static and unchanging subjects. The translation 'functions as a transparent presentation of

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[15] **Homi K.Bhabha**, 'Freedom's Basis in the Indeterminate', October 61, Summer 1992, (46-57), p49.

something that already exists, although the "original" is actually brought into being through translation'.[16]

The 'construct' of identity which takes place in immigration control must be considered within a wider institutional and political context in renewing and perpetuating a form of colonial domination. The immigration rules preclude any self-identification that conflicts with the imposed mechanism for identification devised by the legislators of those subjects of the rules: 'already living "in translation"; imagined and re-imagined by colonial ways of seeing'.[17] To allow self-identification would be to undermine and challenge the socio-political ends of immigration legislation. Any mutability of subjecthood remains within the gift of legislators with modification of legislated categories of identity being inextricably linked to economic and political demands of the United Kingdom. Thus the identity of who qualifies as a 'worker' for example, shifts over time. Amidst the struggling British economy of the 1940's, the arrival of the 'Empire Windrush' carrying labour from the West Indies was welcomed by press headlines such as 'Five Hundred Pairs of Willing Hands'.[18] By 1960 this same population were 'feared as competitive intruders'[19] and politicians were calling for limitations. In 1962, the Commonwealth Immigrants Act became law. The translatory power of the immigration rules operates: 'in a context where it has been used since the

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[16] **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p3.
[17] **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p6.
[18] Daily Worker No.5226, 23 June 1948, p3. Quoted in **P.Fryer**, Staying Power: The History of Black People in Britain, Pluto, London, 1984, p372.
[19] **R.Glass** and **H.Pollins**, Newcomers: The West Indians in London, 1960, p120. Quoted in **P.Fryer**, Staying Power: The History of Black People in Britain, Pluto, London, 1984, p375.

European Enlightenment to underwrite practices of subjectification, especially for colonized peoples'.[20]

GENDERED PERSPECTIVE.

Chapters Four and Five of the thesis focus upon categories within the immigration rules under which women fall to be considered. This focus has been taken in order to elaborate within a wider socio-political context upon the extent of the translation which takes place to construct applicants. Each of the categories chosen – wife, fiance, mother – embody as 'roles' gendered assumptions. Within the immigration context these assumptions receive a further layer of interpretation by virtue of the cross-cultural nature of the applicants who seek to fulfil those categories.

As a focus it is not without its problems. Firstly, such an emphasis could conceivably be construed as minimising a core element of both the legislation and its processes, namely differential treatment on the grounds of race, in preference to highlighting sexually discriminatory issues.[21] However this thesis will demonstrate that these two elements draw strength from each other, making the specifity of these 'separate' experiences particular for non-white

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[20] **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p6.

[21] In her work upon sex discrimination and the law within a United States context, **Rhode** identifies issues which lend themselves to this debate by identifying a link between the cultural construction of gender and law as a social text. **Rhode** queries the outcome of achieving equality within legal constructs as the aim of focusing upon gender difference and questions whether equality is a sufficient social objective. This thesis echoes those concerns, in part because the focus upon differences between men and women within the immigration context carries the potential to obscure differences and inequalities in terms of race. **Deborah L.Rhode**, Justice and Gender. Sex Discrimination and the Law, Harvard University Press, London, 1989.

women.[22] Secondly, there is the threat of identifying problems only to invite reactionary responses such as that which followed the European Court's ruling that the marriage rules of the United Kingdom were discriminatory against men and the subsequent extension of equally restrictive laws to women.[23] However failure to give voice to areas of concern amounts to complicity in a silencing and disempowering of those affected.[24]

These reservations notwithstanding, such a focus provides valuable insights into the impact of gender in 'roles' within society at large. By extension it develops debate around the match and mis-match of the person called to account for embracing the identity such roles espouse.[25] Thus the 'success or failure' of a woman as a 'mother' for example, is bound inextricably with a biologically determined perspective upon women and societal expectations of the identity of 'mother'. Being a mother shares with other socially constructed

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[22] This is to say that the racism encountered by women is of a different character, though no less damaging, to that encountered by male counterparts. Similarly, the sexism faced by women is not only of a different nature to that of white women, but by virtue of the 'feeding in' of racism it becomes a sexism wherein white women are complicit in male oppression.

[23] Abdulaziz, Cabales and Balkandali v. UK (1985) 7 EHRR 471.

[24] It is also the case that this thesis is less a catalogue of distinct measures requiring change, than an exploration of a particular ethos which pervades the 'totality of control'. This totality encompasses not only the rules themselves but the process of their operation and the higher norms upon which they draw for legitimation.

[25] This general point is relevant to other areas. In the specific field of criminal law, research findings suggest differentiation in the treatment and qualitative experience of men and women with regard to the reporting of crime and their cautioning and sentencing. One ground for the differentiation is particularly relevant to the thesis debate, the suggestion that women who engage in inappropriate sex-role behaviour outside conventions of femininity are more likely to face severity in punitive sentencing. For examples of these arguments see: **Steve Box**, Power, Crime and Mystification, Tavistock, London, 1983; **Pat Carlen** et al Criminal Women, Polity, London, 1985; **Pat Carlen** and **A.Worrall** (eds), Gender, Crime and Justice, Open University Press, Milton Keynes, 1987; **Francis Heidensohn**, Women and Crime, Macmillan, London, 1985.

roles the quality of being specific to the society of which it is a construct and encompasses in the 'identity requirements' core values endorsed by that society. This being so, there is reason to explore the repercussions of this where such roles and the qualities which are their make-up are legislated for. That is the arena of immigration control where women must stand to account for such matters as establishing they are 'mother', both in the biological sense and in meeting the behavioral 'qualities' that are stipulated to constitute motherhood. Given that such matters are specified cross-culturally, original assessments are manipulated by a complex amalgam of culturally specific assumptions about women and the roles they embrace within their own society. Accordingly, the operation of the immigration rules demonstrates differentiation of treatment between women, and the wording and framework of rules and procedures involved make this a racially specific differential treatment.[26]

A related but contrasting issue raised by the gender focus is the veracity of the proclaimed classic liberal tenets of the immigration rules themselves. These rules claim no bias with regard to the elements of 'race, colour or religion' and conspicuously omit reference to gender. This omission prompts the unstated assumption of non-differentiation along gender lines. This is to imply implicit legitimation by reference to a 'societal norm' against gender discrimination. Yet in certain instances societal and immigration practices demonstrably do not

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[26] The criminological research referred to earlier with regard to gender bias is worth recalling here in respect of findings of the greater likelihood of arrest, remand, detention and severe sentencing for non-white suspects/defendants. See also: **Deborah Rhode**, Justice and Gender. Sex Discrimination and the Law, Harvard University Press, London, 1989; **Jeanne Gregory**, Sex,Race and the Law, Sage, London, 1987; **Loraine Gelsthorpe**, Sexism and the Female Offender, Gower, Aldershot, 1989; **Susan Edwards**, Gender, Sex and the Law, Croom Helm, Beckenham, 1985; **Michael Day, Trevor Hall** and **Courtney Griffiths**, Black People and the Criminal Justice System, Howard League for Penal Reform, May 1989; **Silvia Casale**, Women Inside, The Civil Liberties Trust, London, 1989.

ignore the gender of persons at issue. Clear evidence, to be discussed, indicates substantive gender differences in the operation of the rules and procedures despite the formality of impartiality. The omission of gender as a category of the immigration rules is integrally bound up with the 'mythology of law' itself and the impartial qualities that it is projected to embrace. By contrast, Human Rights rhetoric recognises gender as a category[27], with the ironic paradox that the 'natural laws' upon which such rights are founded require the qualification of equality, whereas the law which is product of a patriarchal society does not.

Immigration control provides a graphic focus for demonstration of the interlocking 'realities' of sexism and racism. Exploration of these issues and interrelationships, particularly in Chapters Four, Five and Six, enables it to be seen, as **Spelman** articulates: 'ways in which what sexism means and how it works is motivated by racism, and ways in which what racism means is modulated by sexism'.[28] Equally, the area facilitates an analysis wherein 'woman' both stands and does not stand, as a universal iconograph. That is to say diversity is assumed between women in terms of an underlying 'necessity to assume difference' between white and non-white women within the ethos of the legislation. By contrast, restricted diversity is assumed between women of colour. There is in **Rushdie's** terms an 'homogenisation' of identity of all immigrants by whites.[29]

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[27] Article 16 of the Universal Declaration states that: 'Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family'. Source **A.Dummett** and **A.Nicol**, Subjects, Citizens, Aliens and others, Weidenfeld & Nicolson, London, 1990, p264.

[28] **E.V.Spelman**, Inessential Woman: Problems of exclusion in feminist thought, The Women's Press, London, 1990, p131.

[29] Salman Rushdie, quoted by **Rukmini Bhaya Nair** and **Rimli Bhattacharya**, 'Salman Rushdie - The Migrant in the Metropolis', Third Text, No.11, Summer 1990, p17-30.

Analysis of this will emerge as the product of specific experiences of women subject to the rules and allowing theory to be generated out of these. Such will be the case in Chapters Four and Five. An outcome is 'the paradox of a collective search for singular identities'.[30] This perspective is chosen in preference to the converse process of prioritizing theory of 'women's lives' and thereby pre-selecting experiences as illustrative of the 'given' perspective.[31]

PERSONAL PERSPECTIVE.

One perspective from which arguments will arise and take shape will be that of my work in the field of immigration control. The origin of many of the arguments to be presented is that of personal experience. This is recognised to have limitations in terms of selectivity, subjectivity and confirmability, but nevertheless provides an insight into the operation of the law which is unrivalled by published sources and second-hand accounts.

Holding posts as both operative of and challenger to the immigration rules provides insight into role which are qualitatively different. Exploration of them raises issues about the construction of identity and the role of institutional culture in control practices. The points raised by elaboration of a personal involvement serve as a springboard for issues to be raised about how those subject to the immigration rules are fixed into identities necessary for the system of operation to function along the lines of an exclusory imperative. In

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[30] **Rosi Braidotti**, Patterns of Dissonance, Polity Press, Cambridge, 1991, p151.

[31] This is an important methodological consideration in the shadow of accusations of Western ethnocentrism levelled at feminist research. It is a matter which will form part of debate in the concluding chapter, Chapter Seven, looking at possible routes to remedies for injustices passengers face.

looking at how identities are translated for the immigration moment in this way, attendant issues are raised such as: the unreliability of racist stereotyping; the difficulties of human interaction; the limitations of justice and human judgement; the tragic potential attendant upon human judgement and perception.[32] Questioning these is to challenge existing relations of domination and subordination which exist in the immigration process, a challenge returned to in debate upon remedies in Chapter Seven.

A further perspective arising from the inclusion of personal experience is pertinent to the wider debate of the thesis: how people speak with 'different voices'. The necessity to acknowledge 'different voices' of the immigration moment in order to re-read that moment in its fullest sense is a core of later debate, particularly in posing remedies. Chapters Four and Five provide examples of cases where the 'different voices' of applicants were marginalised by the weight of knowledge accorded operatives. In Chapter Six questions are raised about the validity of this knowledge through drawing upon other perspectives. Relevant to the debate upon remedies is the foregrounding the perspective affords to the nature of the institutional culture that sanctions the legitimation of one voice, one knowledge, one truth. It also enables exploration of what effect such an act of accreditation has upon those other voices. It will be suggested the effect serves as a tool to perpetuate a hegemonic structure of voices, and that such 'structuring' is done sotto voce.

The different voices of personal experience traverse the categories operative of, and challenger to, the legislation as both civil servant and employee of a

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32 These concerns have been suggested to be at the core of **Shakespeare's** work Othello. This is a pertinent parallel given the pivot of the play around the misunderstandings and lack of communication arguably born out of racist stereotyping. See **Martin Orkin**, 'Othello and the "plain face" of Racism', Shakespeare Quarterly, Vol.38, No.1, 1987, p166-188.

registered charity. With each role perspective altered, prompting sensitivity to levels of discourse which varied with the role. In sum, sensitivity to the 'different voices' of others fluctuated and was effectively guided by the relationship to the person with whom I dealt. By recalling this 'ancestral spectrum' of identity in the re-activation of my own different voices, I seek to explore the different voices of others. To do so is to be authentic in the terms of **Foucault**, using the voices that have come out of a moment, place, time and experience in the manner of putting the voices back there, to hear the history of those moments.[33]

My own voice joins the voices of others as an avenue through which to seek answers and establish the political nature of control embodied in how that control directs personal experience by constructing the identities of those involved. To borrow the characterisations of **Mama**, I seek a position of: 'examining, explaining and understanding something about subjectivity and the processes by which subjects are constituted, changed and re-affirmed'.[34] This is a more useful focus than one of adopting a purely theoretical stance in order to attempt an understanding of Black women's lives. As **Aptheker**[35] suggests, a foci of concerns which is generated primarily by priorities of theory is impoverished in that these might be attributed to women, rather than concerns attendant upon and immediate to women's actual lives. Given my foregrounding upon subsidiary issues of immigration control, attending upon how women's lives are conceptualised by the immigration ethos, this is a relevant consideration. Criticising her own work Woman's Legacy, **Aptheker** asserts a necessity to ground work in experience to include diversity within and

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33 **M.Foucault**, The Archaeology of Knowledge, Routledge, London, 1989.
34 **Amina Mama**, Race and Subjectivity: a study of black women, PhD, University of London, 1987, p175.
35 **Bettina Aptheker**, Tapestries of Life, University of Massachusetts Press, Amherst, 1989.

between experiences as a move away from a white-centred conception of a universal iconography of 'woman'. **Aptheker's** stance is perhaps best encapsulated by **Parker** who writes: 'The first thing you do is to forget i'm Black. Second, you must never forget that i'm Black'.[36] This is to say there must be a concomitant denial and recognition of difference. This stance forces acknowledgement of two perceptions which must be simultaneously engaged with and forces knowledge of the possibility (at least) of qualitatively different experiences in which both parties effectively face split perception.

Inclusion of a personal perspective provides material for debate on this issue of 'split perception' with regard to the role played in control both by institutional culture and the parameters afforded applicants to voice their case. Of the latter, issues will be raised which will inform discussion of the culpability of the context of the operation of immigration appeals in marginalising and silencing the words and the knowledge of those challenging decisions.[37] The issue of the 'reading' of applicants from written statements and how this presentation of them disadvantages their giving 'full voice', even at appeal, is contributed to by the personal perspective included. A spectrum of roles will be called upon, each qualitatively different in their characterisation through facets of participation, incident and feeling. Inclusion of them will broaden the debate upon the role of institutional culture.

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[36] **Pat Parker**, quoted in **Elizabeth V. Spelman**, Inessential Woman: Problems of exclusion in feminist thought, The Women's Press, London, 1990, p125.

[37] At a desk in the Home Office I processed applications from both overseas and within the UK. Decisions upon the success or failure of applications were made on the basis of letters from Consular staff abroad or correspondence with the parties concerned. As an immigration officer at ports of entry, 'paper became flesh'. Individuals were assessed as they appeared before me and a decision upon refusal and removal taken accordingly. In immigration appeal courts working for a charitable advice body the majority of those I represented were unseen clients overseas. Their presence was necessarily abstracted into the person of myself and witnesses.

Interaction with people differs with roles. Identity, at a given moment within this spectrum is born of and contributes to the specific experience as a contingent category reconstituted in a continuous process. Inclusion of personal history within this thesis is thus premised in a project of the 're-invented visibility' of experience acting to facilitate analysis within thesis debate of the workings of the ideological system of which it formed part. This re-invented visibility is what is demanded in later debate on the part of applicants themselves when remedies are suggested in Chapter Seven. Re-inventing their invisibility, what I call a 'transcreation'[38] of their experience, will then stand as argument laying bare the ideological systems attending upon their fate. These systems both position one within an experience and produce identity. Matters which are pre-constructed theoretically are part of the experience and as such are equally relevant to the fate of the applicants. Not least of these matters is the immigration rhetoric that pervades popular myth. Accordingly, the personal 'text' to be analyzed and understood is a constellation of distinct identities, different power relationships and specific perceptions. The 'text' which applicants become during the immigration moment renders their identity distinct and invariably different. Disadvantaging them even further in the power relationships they must engage with is the fact that they enter them 'textualised'.

Questions raised by these perspectives relate particularly to whether the identities and experiences are unique to the situations, in order to explore the role of institutional culture and context. Historical material will be drawn upon

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[38] The term 'transcreation' is borrowed from the work of **Sitikant Mahapatra** in The Empty Distance Carries, A Writers Workshop Saffronbird Book, P.Lal, Calcutta, 1972. Discussion of the term forms part of Chapter Seven of this thesis.

to explore whether identities are 'constructed' by their contextualisation within a specific tradition of administration. Examining the relation they then bear to the race and gender constructs which come before that of the immigration experience, located in a theoretical sense 'in the world', will widen the debate to demonstrate how multi-layered is the control that passengers face. As an integral part of a particular institutional culture, the identities described will then be seen to perpetuate a tradition of administration and to thus be, in effect, a built-in mechanism of the overall control the system metes out. The inescapability for applicants of the mechanisms of exclusory control will be demonstrated as extending even to the moment of appeal when the role of counsel to those falling subject to the rules does not escape the ethos of that culture. There too, context constructs equally the experience of clients in their relationship with counsel and constructs counsel's perception of the client's experience. Raising these issues enables exploration as to what possible end for control such practices are directed and to what socio-political consequences they point.

The question remains how, if at all, did I hear the experience of others through the constructs of an immigration process which reinforces those constructs. Describing the experience of others is by nature problematic, further problematised by the cross-cultural nature of the present field of discussion. There is a sense, however, in which this methodological difficulty can be instructive. Whilst it is difficult to share the 'experiences' of immigration control of black passengers, the fact that there are differences suggests a body of distinctive 'knowledge' based upon these experiences. An attempt must be made to give voice to common features of this knowledge and the experiences upon which it is founded. By concentrating on the threat posed to the identity of those who face control, both in the questioning by others of their self-knowledge and the necessity of representing identity in a particular format,

there will be a demonstration of how identities are undermined, re-interpreted and utilised in the decision-making process. In particular this focus provides material for debate in the conclusion of the thesis, upon potential remedies.

HISTORICAL PERSPECTIVE.

This thesis will draw upon historical material as a means to explore the multi-layered power of the immigration rules. The focus will look at British overseas administration during the imperial age, at how 'subject' peoples were legislated against. It will also draw into debate reactions to the presence of black people in Britain, in order to elaborate upon the socio-political context in which they find and have found themselves, and which informs the way they are seen on entry.

This 'knowledge of the foreigner' which continues to have a significant effect upon the lives of those who seek entry has long established roots. The historical background is essential to an understanding of a central argument within this thesis that the identity of applicants under the immigration rules is pre-determined. Historical contextualisation is found in a number of texts which detail how the emotionally partisan colour 'black' became the raw material from which early voyagers conceptualised the difference between those whom they encountered and their white counterparts.[39] The influence of

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[39] Representative of these are: **Paul Edwards** and **James Walvin**, Black Personalities in the era of the slave trade, Louisiana State University Press, 1983; **Anthony J. Barker**, The African Link. British attitudes to the Negro in the Era of the Atlantic Slave Trade 1550-1807, Frank Cass, 1978; **Angela Davis**, 'Reflections on the Black women's role in the community of slaves', Black Scholar, December 1971, p3-15; **Dorothy Sterling** (ed), We are your sisters. Black women in the 19th century, Norton and Co., New York, 1984; **Peter Fryer**, Staying Power: The History of Black People in Britain, Pluto

early travellers upon British culture was immense and early accounts were provided by a plethora of 19th century travel writing. Whilst some accounts are available by women travellers, the main tracts constituting the early literature were written by men. These authors polarised womanhood and **Walvin**[40], **Edwards** and **Walvin**[41], **Husband**[42] and **Fryer**[43] all record how authors such as Raleigh and Hakluyt accomplished this. Racial and sexual difference was vividly signified in these writings: 'the "native woman" becomes the primary object of interest of the tropical guest, because she combines the "otherness" of both race and sex'.[44] As **Pollock** has demonstrated, this sex/race matrix informed anthropological works, international colonial exhibitions and travel writing and was a colonial perception and projection of difference which came to inform aesthetic differences in the art world.[45]

Such a perspective reveals that the claimed universalism of the content of the immigration rules is denied by the assumptions which lie dormant in categories. These categories rely on essentialist constructions instilled with a permanence reaffirmed by historical legitimation. The historical 'fixity' is

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Press, London, 1984; **Colin Holmes**, John Bull's Island: Immigration and British Society 1871-1971, Macmillan Education Ltd., Basingstoke, 1988; **James Walvin**, 'Recurring Themes: white images of black life during and after slavery', Slavery & Abolition, Vol.5, No.2, September 1984, p118-140; **Ann Dummett** and **Andrew Nicol**, Subjects, Citizens, Aliens & Others: Nationality and Immigration Law, Weidenfeld & Nicolson, London, 1990.

[40] **James Walvin**, Black and white. The Negro and English Society 1555-1945, Penguin Press, London, 1973.

[41] **Paul Edwards** and **James Walvin**, Black Personalities in the era of the slave trade, Louisiana State University Press, 1983.

[42] **Charles Husband** (ed), Race in Britain. Continuity and change, Hutchinson University Library, London, 1982.

[43] **Peter Fryer**, Staying Power: The History of Black People in Britain, Pluto Press, London 1984.

[44] **Cleo McNelly**, 'Nature, Women and Claude Levi-Strauss', Massachusetts Review 16, 1975, p9.

[45] **Griselda Pollock**, Avant-Garde Gambits 1888-1893: gender and the colour of art history, Thames & Hudson, London, 1992.

rooted less in fact than in the political imperative of an imperialist age. The essentialist standpoints embodied in the categories of immigration rules fix identity in a manner which reimpose oppressive practices of the past.

Of equal significance in an historical focus, is the way in which 'naming' substantiates identity over time as a fixed political and ideological entity. In this way the language of the immigration rules performs a function in the representation of race per se. The alienisation function of reporting in the field of immigration, both historically and currently, reinforces this view in the conceptualisations required by immigration rule categories. The status of the categories is such that submission of identity is required of persons who apply for membership of the named category. It will be suggested that this abandonment of past identity is a contemporary counterpart of demands upon the colonized at the height of imperial colonisation.

It is **Rhode's** stance that not only is there revelatory potential in calling for a perspective to be taken upon historical, social and economic foundations of problems, but that deconstruction is called for in terms of acknowledging both the partiality of understandings and their underlying values and the characteristic of law as organisational tool. In this sense legal analysis is advocated reflecting upon the way data is 'constructed' rather than 'collected' and upon blurred boundaries between knower and known.[46] Using this insight the view is propounded that the nature and exercise of power distribution, and the psychological and financial barriers the legal process imposes, will be revealed. What is essential to this end however is a need to know about the effect of legal strategies on daily life. As **Said** claims collectively for feminism,

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[46] **Deborah L.Rhode,** Justice and Gender. Sex Discrimination and the Law, Harvard University Press, London, 1989, p320.

women's studies and ethnic studies, the point of departure should be: 'the right of formerly un/misrepresented human groups to speak for and represent selves in domains defined, politically and intellectually, as normally excluding them, usurping their signifying and representing functions, overriding their historical reality'.[47]

Chapter One will contextualise a tradition of administration historically, as a means to situate an institutional culture within particular veins of discourse. It is important to see the cross-cultural dilemma within feminism in a similar context. Criticism that mainstream feminism is 'white and western' and thereby operates with a racist bias, is a claim to which historical investigation lends credence. For example the privileged status of white women is in large part 'constructed' from a long-standing negative construct accorded their non-white sisters. As a continued re-articulation of an imperialist racist discourse, elaboration of this historical perspective enriches debate of issues central to the thesis. As Chapter Six emphasises, the debate raises questions surrounding: the manner in which the creation of stereotypes serves socio-political ends; the gender and race hegemony of a research relationship; the position of academic feminism as an 'official text' polarising marginalised voices in a comparable way to which voices are marginalised in the immigration arena. Chapter Seven will draw these issues together in argument related to remedies to the injustices of immigration control. With such questions in mind, the institutional framework of immigration control can be charted as a context of power which directs both the position from which people speak and their credibility as a speaker.

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[47] **Edward W.Said**, 'Orientalism Reconsidered', Europe and It's Others, (eds) **Francis Barker** et al, University of Essex, Colchester, 1985, Vol.1, p14-27.

ANTHROPOLOGICAL PERSPECTIVE

Methods of ethnographic critique that have diminished the authority of anthropological work will be used when dealing with texts of immigration control. This critique includes questioning notions of text, author, and meaning; claiming that 'representation' of other cultures is in fact 'invention'; looking at how the prescribed literary processes of recording actually influences both writing and reading. It is a critique which suggests the 'production' rather than 'reflection' of an "original" within an authoritative inscription which compels reader acceptance.

The function of persuasive contextualisation of the form of inscription of applicants is demonstrated to greatest effect in the immigration appeal courts and will be examined in Chapter Three. In that chapter the words of applicants (transcribed into appeal statements) will be seen to become displaced. The means by which their words are recorded (through a proscribed entry clearance officer interview), nonetheless presents them as subjective accounts. This prescribed form joins with the established authority and privileged position of the interviewer to lend invisible weight to what is in effect a translation and misdescription of reality.

In the field of anthropological investigation, the methodological norm of fieldwork legitimates and presents the words of those 'studied' as a true, fair and objective account. In the immigration field the accounts of applicants produced by operatives of control stand unchallenged as embodiment of equal characteristics. In both fields the authority of traditional paradigms renders invisible what is in effect not only a translation of the words of those investigated, but a translation which comes to serve particular ends. As

Clifford states: 'In classical ethnographic writing, the individual anthropologist makes "an unquestioned claim to appear as the purveyor of truth in the text", reducing to a coherent little world an "overdetermined, cross-cultural encounter shot through with power relations". The privileging of "observation" stressed immediacy of experience at the cost of the materiality of text, language, and culture. It was assumed "that the experience of the researcher can serve as a unifying source of authority in the fields". The dialogic aspects of fieldwork, the relations of power determining the nature of the anthropologist's interaction with his/her subjects, disappear from the text into which field notes are translated'.[48]

Chapters Three, Four and Five of this thesis will apply this critique to the field of immigration control and immigration appeals specifically. Identification that translation takes place, that conventions exclude or diminish significant factors, will be a means to problematize the representation of applicants upon which their applications are judged. It will be suggested that the historically rooted dialectical power relationship between the West and Third World and "immigration representation" stands effectively as: 'European understanding of non-European humanity'.[49] It is this relationship which directs the theoretical approach of immigration control and the modes of perception and objectification of other societies.

Many of the elements of the taken-for-granted categories of anthropological description have been criticised in relation to the issue of translation in the

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[48] **James Clifford**, 'On Ethnographic Authority', Representations 1, No.2 (1983), p120, quoted by **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p82.

[49] **Talal Asad**, Anthropology and the Colonial Encounter, Ithaca Press, London, 1973, p19.

writing and social context of representing the subjects of the material study. With regard to anthropology, the question is posed: 'Does it not depend for its "knowledge" on notions of translation, representation and reality that in turn shows its complicity with the vocabulary of liberal humanism or empiricist idealism? And do not these notions and this vocabulary ultimately serve the idiom of domination that is colonial discourse?'.[50] Comparable criticism in the form of a challenge to their 'ethnographic authority' can be levelled at the anthropological tropes embodied within immigration control.

The lack of criticism of such tropes in the field of immigration says much for the legitimating status of 'law' and institutional context within which ambit they appear. Both law and anthropology take shape within a power structure which claims to be an objective and disinterested framework within which 'facts' are discovered. The claim made for anthropologists is that they are professionally trained: 'to collect certain kinds of information as "participant observers" which will enable them, whatever may be their personal views, to present as objectively as the current level of their discipline's development permits, a coherent picture'.[51] The same claims are made on behalf of immigration operatives as disinterested, objective and value-free decision makers. In the event, the 'facts' of nineteenth century anthropology were employed by colonial policymakers (as subsequent chapters will illustrate). In the climate of twentieth century immigration control, it will be illustrated that they serve a similar purpose, not least a legitimizing of immigration control itself.

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[50] **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p65.
[51] **Victor Turner**, introduction to Volume 3 of Colonialism in Africa 1870-1960, Cambridge, 1971. Quoted by **Talal Asad** (ed), Anthropology and the Colonial Encounter, Ithaca Press, London, 1973, p15.

The perspectives outlined in this introduction will be drawn toward demonstrating how for those who face immigration control, identity is questioned. There is crucial relevance in the words of **Parker** quoted earlier, that:

'The first thing you do is to forget i'm Black
Second, you must never forget that i'm Black'[52]

Their relevance lies in their message with regard to identity. Self–image and sense of identity are inextricably linked. Where identity is questioned, through denial of one's conception of reality, there is a negation of identity. Where such negation is compounded by the emplacement of a different reality as the 'true' account, as it is in immigration 'categories', there are only two recourses. These lie in accepting that 'truth' and thereby constructing self to meet it, or rejecting it in its entirety. To do the latter is to become forever target of the rejection Othello faced as: 'such a thing as thou'.[53] Both eventualities silence and disempower and, as **Mirikitana** states:

'The strongest prisons are built
with walls of silence'[54]

Through the perspectives which will be brought to bear on the immigration arena it will be shown that there exist contexts and processes of operation that not only negate accounts, but which impose a single route to legitimation and success through an imposed and pre–determined 'construct'. Meeting such

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[52] **Pat Parker**, quoted in **Elizabeth V.Spelman**, Inessential Woman. Problems of exclusion in feminist thought, The Women's Press, London, 1990, p125.
[53] **William Shakespeare**, Othello, the Moor of Venice, Act I, Scene 2, Line 71, The Illustrated Stratford Shakespeare, Chancellor Press, London, 1982, p865.
[54] **Janice Mirikitana**, 'Prisons of Silence', Making face, Making soul, (ed) **Gloria Anzaldua**, Aunt Lute Foundation Books, San Francisco, 1990, (199–202), p199.

constructs enables the re-assertion of categories by which persons can be 'classified' and provides a self-fulfilling substantiation of those very classifications.

The exploration of the routes individuals have taken through such contexts and processes, via their testimonies, clearly reveals this 'construction process'. Without this testimony there can be no account of self-image against which to test the claims of mediated knowledge which are the 'official line'. Chapter Six seeks to provide the perspectives of others using diverse sources which provide a broad empirical base. Such testimony standing outside the questionable discourses as an alternative knowledge source, they become accounts with which to question 'accepted knowledge' not only by virtue of their difference, but in spite of it. The mere fact they are alternative accounts, questions the institutional context. To give an example here, artwork by **Burman** entitled Convenience Not Love which forms part of later debate in Chapter Six is less an expression of an experience of the United Kingdom immigration laws on marriage than it is an expression that such immigration rules exist. As such, it is the status of the canvas as comment upon an institutional context and the 'normalised' experience within this context, that affords the canvas evidential status.

The 'otherness' on which marginalisation is founded is a political category wherein the immigration laws and processes are implicated as culpable 'constructors' of that categorisation. The remedy to such categorisation is recognition that, as **Foucault** suggests in his exploration of madness, there is not one voice; that there is a necessity to lend weight to disparate voices within groups whilst at the same time supporting the interests of groups as a whole:

simultaneous recognition of difference and identity.[55] This perspective corresponds with the earlier stated view of **Parker** and finds an important supplementary echo in the words of **Derrida** assessing the stance of **Nelson Mandela**: 'Mandela is saying that to be Black is not to be essentially different; but that Black is forced to be different'.[56]

The mechanisms which direct this (en)forced difference flourish within immigration law and its operation. The diverse perspectives outlined in this chapter are necessary to meet the diversity of control. That control is embodied within a multi-layered field having seeds within an historically rooted institutional culture and nurtured by a wider and more pervasive socio-political framework.

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[55] See **Roy Boyne**, Foucault and Derrida: the other side of reason, Unwin Hyman, London, 1990, p132-133.
[56] Quoted in **Roy Boyne**, Foucault and Derrida: the other side of reason, Unwin Hyman, London, 1990, p133.

CHAPTER ONE

SPIRITS TO ENFORCE.

a bunch of official cats
ready to scratch
looking limbo dancer up and down
scrutinising passport with a frown[1]

INTRODUCTION: INSTITUTIONAL CULTURE.

The introductory chapter provided a brief summary of the different roles of those within the immigration control arena. In this chapter those roles are foregrounded.

Explored in detail, the roles will elaborate upon what have been identified as 'different voices' within a divided identity and the hegenomic structures behind this. As **Foucault** has identified, voices come out of a moment, a place and time, and the only way to be authentic is to put those voices back into their context and listen to that moment.[2] Recollecting speech and hearing provides insight into the experiences of others.

Role theory, in-group perceptions and the power dynamics of particular elements of control are relevant to this enquiry. Seeking entry to the United

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[1] **John Agard**, 'Limbo Dancer at Immigration', Ranters, Ravers and Rhymers, compiled by **Farrukh Dhondy**, Collins, London, (16-19), p16.
[2] **M.Foucault**, The Archaeology of Knowledge, Routledge, London, 1989.

Kingdom involves individuals facing each other in an interview process as two constructed entities. One is product and producer of an institutional culture, a public servant legitimated by a disclaimer from the immigration rules to the effect that: 'Immigration Officers will carry out their duties without regard to the race, colour and religion of people seeking to enter the UK'.[3] This chapter explores the manner in which the immigration officer who makes this declaration: 'accepts into his discourse the premises of ethnocentrism at the very moment when he denounces them. The necessity is irreducible'.[4] The other individual in the equation, the applicant, is forced to construct an identity in the image that a foreign culture demands to qualify under a category within the rules.

The privileged status of immigration officers, their socio-political functions[5], and strategies of prejudiced thought and information processing[6], are crucial features in the operation of the immigration control process. The dynamics of formal and informal interaction will be drawn upon in this chapter to explore qualitative differences of experiences and suggest conclusions in respect of the repercussions of the stance taken. In sum I will be examining the institutional culture of immigration control and the legitimation and institutionalisation of assumptions.[7]

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[3] 'Statement of Changes in the Immigration Rules', HC251.

[4] **Jacques Derrida**, Writing and Difference, trans. Alan Bass, Chicago, University of Chicago Press, 1978, p282. Derrida is here talking about the ethnologist. For the parallel drawn with the concerns of this thesis, see the elaboration on anthropological material in the Introduction.

[5] The issue of the socio-political functions of privileged group meanings is discussed, in the context of legal professionalism, by **Peter Goodrich**, Legal Discourse, Macmillan Press, Basingstoke, 1987.

[6] See **Teun A. van Dijk**, Communicating Racism: ethnic prejudice in thought and talk, Sage Publications, California, 1987.

[7] For relevant argument see **P.L.Berger** and **T.Luckman**, The Social Construction of Reality, Penguin, Harmondsworth, 1966.

As a post-holder in any institution, there is a requirement to fulfil the status of the office held. This carries with it the inherent responsibility, as a representative of a parent organisation, to adhere to an overall ethos. Thus evaluation of the role of individuals, must inevitably reflect upon the parent organisation. How does the loyalty of individuals to an organisation restrict and structure operation of discretion exercised by immigration officers? As front-line actors formally under the command of others, are officers directed towards a task-oriented approach which has little concern for the process by which their tasks are undertaken? Such questions have particular importance given the lack of accountability of immigration officers[8] whose behaviour, as forthcoming chapters will demonstrate, has been severely criticised. The institutional culture of which they are a part has been suggested to be at fault in the manner in which applicants are treated. As one observer suggests: 'I do not believe that officials behave in that way without it being sanctioned from above. Ordinary people in the immigration service, both here and abroad, do not treat people like that without it having been clearly intimated to them that it is okay to do so and that it is required. They have been given clearance from their bosses'.[9]

Methods and processes of operation are of importance in terms not only of what is regarded as 'knowledge' within the testimony given by those seeking to qualify, but also in the questions posed, language used, and interpretations made to elicit this knowledge. Methods used to extract this knowledge embrace a paradigm of traditional interviewing practice which prioritizes value-free objectivity and detachment, establishing a subject-object hierarchy between

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[8] Discussed in more detail in Chapter Three.

[9] **Mr Robert Ainsworth** advancing argument on the treatment of relatives of constituents during debate upon the Asylum and Immigration Appeals Bill. Hansard, Issue No.1598, 2 November 1992, Col.74.

interviewer and interviewee. Whether it be undertaken at a port of entry or an overseas post the 'professionally correct' interview is regarded as a one-way instrument of data collection in which the interviewer is assumed to posses detachment from the person being investigated. Transcribed into an 'explanatory statement' which may become the basis of any appeal against refusal, the words of interviewees become downgraded by objectification, their actual experiences given neither validity nor integrity in their own right. Revolving around a power relationship, with dichotomies of 'official and supplicant' and 'passive and active' participants, the system functions to enable imposition of one person's version of reality upon another.

That there is an interaction affecting both parties and that wider socio-political issues feed into the interaction is rarely, if ever, acknowledged. Any such suggestion is countered by the exoneration within the rules of those involved in the interviewing and decision-making process. Yet such subtleties do colour the quality of the interaction, acting as an effective sub-text of control. Relationships entered into in the interview are structured equally by elements which exist within underlying social relations outside that situation, and which therefore affect the discourse itself. In an arena characterised by cross-cultural communication, the dominant power relations of race in society itself are reproduced. The difficulties inherent in an interview engagement are thus problematised, acting to disadvantage applicants.

Compounding this is the fact that the territory of immigration control itself is one in which the interviewers claim to an 'innocent objectivity' is blurred by socio-historical factors in which control is grounded. The objectivity of the interviewer is of a particular kind, in essence facilitating an 'objectification of subjectivities', a claim to objectivity wherein what has been objectified is a mythologised image of the applicant born of ethnocentric and androcentric

assumptions, stereotypes and expectations. This gives rise to a double jeopardy for those applying, both in the inherent unequal power relationship of the legislator and legislated against and in the need to create themselves in the image in which they are seen. There can be no escape from the latter without failure of the application in that, with a eurocentric model assumed, the evidence selected is governed by this. In effect, what is eventually 'proven' as a reality will be already pre-supposed. It is a pre-supposed reality determined by rules which carry no inherent requirement to be non-discriminatory; only the operatives are required to act in a non-discriminatory manner. The innocence of the rules is pre-supposed as a characteristic of law itself. The innocence of the practices is a subject of this chapter and discussion of the operation of immigration appeals will be considered in Chapter Three.

Focus within the thesis is upon immigration control as an interrelation between the written word of control and the spoken word and action; the public and the private faces of operation, and an acknowledgement of an operation of power that is a 'process'. Whilst the primary legislation is contained in general terms in the Immigration Act 1971, the fleshing out of these terms and the practise to be followed in their administration are embodied in the 'Statement of Changes in Immigration Rules'[10] enacted under section 3 (2) of the Immigration Act 1971. The transmutation of the primary legislation through the alchemy of the non-statutory immigration rules renders 'the word of the law' which is immigration law, a combination of legal rules and administrative practise.

As Chapter Two will suggest, the Hydra which is immigration law, like the monster of Greek myth, turns a number of faces toward those who come before it. To explore a field of control operated by what has been described as a

[10] Currently HC251, as amended at May 31, 1992.

'multi-limbed monster'[11], is to unravel the tentacles with which it grips. The character of the whole is invariably tinged with ambiguity. Immigration law is less an entity in itself that can be fixed and read, than a shifting array of expressions which serve to confuse and disorientate. This characteristic of being able to turn a gaze fixedly upon one group and then another as socio-political forces demand, rests to a large degree upon the training and direction of operatives toward the task at hand. Those invested with administrative duties are themselves variously empowered. The immigration officers who must apply the rules have a status recognised by the Immigration Act 1971. Entry clearance officers who issue or refuse applications abroad on the basis of the rules controlling entry are not mentioned in the primary legislation. Both immigration officers and entry clearance officers are persons 'lawfully acting in execution of the Act'[12] and act in accordance with the immigration rules and specific instructions issued to them by the Secretary of State.

The public document which is the immigration rules is a small part of a body of 'texts' which determine the 'categories of passenger' described therein. Additional 'knowledge' relating to the criteria of categories described takes the form of Home Office unpublished instructions to operatives; training instructions given to operatives; published and unpublished appeal precedent cases; official reports on nationalities and categories of passenger. Thus the 'meanings' and 'knowledge' which are at the heart of control are product of an institutional literature concealed in part from public view. Immigration officers are privileged by their possession of a body of discourse to which only those who administer the rules are privy.

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11 **Steve Cohen**, A Hard Act to Follow: the Immigration Act 1988, South Manchester Law Centre and Viraj Mendis Defence Campaign, Manchester, 1988, p10.

12 For the purposes of section 26(1)(c) of the Immigration Act 1971.

The 'realism' of the published immigration rules is as much a product of a surrounding discourse of 'immigration' as it is a contribution to that discourse. The realism that the rules appear to embody conceals authorship and disguises the production process of the text where, again, a task-oriented approach takes precedence. This disguises how the reality of the ways of life of others are in fact the re-interpreted authenticity necessary for the operation of an exclusory control.[13] It is an authenticity which changes shape and form as a solution to a social predicament of the moment. Those who are objectified invariably have an authenticity and existence largely at odds with the interpretation which recreates and redefines them for public evaluation. The reification of a fiction as a fact thus becomes a strategy which influences case outcomes where self-determining facts are the pre-determined end product.

The experiences, outlook and behaviour of operatives (that feed into the written criteria, and thereby the decision-making process) are an integral part of the procedures of control. Pre and post-entry experience will be seen to form, in a number of ways, a significant part of the immigration process at the point of seeking entry. Integral elements of control will be identified in areas such as medical and social welfare agencies which, being outside the Immigration Department, are not immediately recognisable as mechanisms forming part of the process of application of the immigration rules. Issues such as airline policies, the concerns of the Immigration Service Union and procedures of other state departments, will be referred to as pivotal in the enforcement of control. The manner in which people are treated within the United Kingdom,

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[13] **Juss** suggests: 'In the UK...we have never had an immigration policy, properly so-called...what we have had over the past two decades is more of an exclusion policy'. **Satvinder Singh Juss**, Administration of Immigration Control in the UK, PhD Wolfsen College, Cambridge, 1985, xiii.

and the way in which they are seen or 'constructed' by these and other bodies, is itself a discourse which feeds into the mechanism by which original entry is determined. Equally, it will be demonstrated within this thesis that, as **Paliwala** suggests: 'immigration control is as much about constructing, through a culture of control, the (black) immigrant community within the country as about preventing the outsiders from getting in'.[14] Such issues affect the way in which an immigration operative receives a particular national and thus upon how stereotypes are created within a tradition of administration.

HISTORICAL

> *I knew any metaphor I chose*
> *To resist the stream of history*
> *That flows around their loss*
> *Could never dignify the story*
> *of their hate and bewilderment*[15]

Parliament and the rationale of government is at the core of the 'monster' which is immigration control. As **Foucault** has defined it, 'government' is a form of activity producing a 'code of conduct' aiming to shape, guide, and affect conduct.[16] Harnessed toward the ends of observation, monitoring, shaping and controlling behaviour are 'techniques of power and knowledge'.[17] Analysis of 'regimes of practices' makes apparent programmes which have prescriptive

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[14] **A.Paliwala**, 'The Black Numbers Game? Some Issues in Contemporary United Kingdom Immigration Law and Policy', National and European Law on the Threshold to the Single Market, (ed) **Gunter Weick**, Sonderdruck, Peter Lang, 1993, (105-157), p149.
[15] **Derek Walcott**, 'Testament of Poverty', BIM 13 (12), June 1950, p292-294.
[16] **G.Burchell, C.Gordon,** and **P.Miller**, The Foucault Effect: studies in governmentality, Harvester Wheatsheaf, Herts, 1991.
[17] **Paul Gordon**, Policing Immigration, Pluto Press, London, 1991, p1-4.

effect thus: 'making visible not its arbitrariness, but its complex interconnection with a multiplicity of historical processes'.[18]

The historical perspective is an essential element in examining immigration procedures. The rules apply to cultures which were part of an imperial past of the Western world. This was a past in which specific power relationships existed and distinct views were held of colonised peoples. It was a past in which geographers became strategists and intelligence gatherers, mapping information exploitable as control measures by colonial powers.[19] Colonised peoples came to be 'constructed' by way of an ideological invention for incorporation within the imperative of incorporation of the 'West'. Echoing this constructed persona is the 'immigrant' subject to control today, continuing to fulfil an ideological purpose for the white Western world.

The 'historical spoor' trailing toward present day immigration control is considered in a number of comprehensive texts. In their attention to innumerable facets that have fed into current attitudes and legislation, they attest to a number of strands of this thesis. Dealing with the development of immigration legislation specifically are such works as those by **Bevan**[20]; **Dummett**[21]; **Holmes**[22]; **Dummett** and **Nicol**[23]. Each detail how the socio-economic climate, public opinion and parliamentary attitudes were fuel not

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18 **Paul Gordon**, Policing Immigration, Pluto Press, London, 1991, p75
19 A point raised by **Foucault** in Power and Knowledge, Harvester Press, Brighton, Sussex, 1980.
20 **Vaughan Bevan**, The Development of British Immigration Law, Croom Helm, Kent, 1986.
21 **Ann Dummett**, Towards a Just Immigration Policy, Cobden Trust, London, 1986.
22 **Colin Holmes**, John Bull's Island: Immigration and British Society 1871-1971, Macmillan Education, Basingstoke, 1988.
23 **Ann Dummett** and **Andrew Nicol**, Subjects, Citizens, Aliens and Others, Weidenfeld and Nicolson, London, 1990.

only to the institution of control but also to the processes of control. Precedent allowing the 'monster' to become progressively engorged is long established. A point made by **Dummett** and **Nicol** in reference to the 1905 Aliens Act is that: 'Administratively, it [the Act] was a milestone, because it established a mechanism of control which was capable of enlargement'.[24] Within a relatively short period it became clear that such growth and momentum was unstoppable and inescapable. As the vivid metaphor by **Cohen** suggests: ' if you hack it away it will grab you with another tentacle and if you manage to hack them all away it will inject you with poison from its fangs'.[25]

Racism as a factor influencing controls is a factor some identify, pointing towards institutionalised racism within the United Kingdom. **Anne** and **Michael Dummett** have taken an historical overview to indicate links between racist public attitudes and their appeasement by successive governments in immigration policies.[26] Echoing these views are works by **Ben-Touim** and **Gabriel**[27]; **Parmar**[28]; **Bhavnani**[29] and **Marrington**.[30] Each highlight a

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[24] **Ann Dummett** and **Andrew Nicol**, Subjects, Citizens, Aliens and Others, Weidenfeld & Nicolson, London, 1990, p104.
[25] **Steve Cohen**, A Hard Act to follow: the Immigration Act 1988, South Manchester Law Centre and Viraj Mendis Defence Campaign, Manchester, 1988, p11.
[26] **Michael** and **Ann Dummett**, 'The Role of government in Britain's racial crisis', Race in Britain: continuity and change, (ed) **Charles Husband**, Hutchinson University Library, London, 1982, p97-127.
[27] **Gideon Ben-Touim** and **John Gabriel**, 'The politics of race in Britain 1962-1979: a review of the major trends and recent debates', Race in Britain: continuity and change, (ed) **Charles Husband**, Hutchinson University Library, 1982, p145-171.
[28] **Pratibha Parmar**, 'Gender, Race and Class: Asian women in resistance', The Empire Strikes Back, (ed) **Centre for Contemporary Cultural Studies**, Hutchinson, London, 1982, p236-275.
[29] **Kum Kum Bhavnani**, 'Racist Acts', Spare Rib, No.115, p49-52; No.116, p25-27; No.117, p24-27, 1982.
[30] **Dave Marrington**, 'From primary right to secondary privilege: an essay in British Immigration Law', New Community, Vol.XIV, No.1/2, Autumn 1987, p76-82.

self-perpetuating cycle of racist ideologies affecting state policies, and popular racism encouraged by state practices. The monumental works by **Fryer**[31] and **Ramdin**[32] contribute an immense amount of detail to these debates in laying before the reader the history of a black presence in Britain and attitudes toward that presence. Their works are valuable in revealing both the historical grounding of racist ideologies and their persistence to the present day.

Guru links the historical context of racism to concerns of this thesis by describing the impact of state racism and its mediation through gender and class divisions.[33] Her thesis makes paramount the recognition **Parmar** has voiced of: 'the specifity of black women's experiences of racism, which have been structured by racially constructed gender roles'.[34] Analysis of colonial discourse by a number of authors, focusing on a range of texts of both fact and fiction, provide material for this discussion. **Hulme** considers a range of works wherein parts of the non-European world and their inhabitants were 'produced' for Europe: the diary entries of Columbus; Shakespeare's Tempest; the tale of Pocohantas. It is suggested that colonial discourse has: 'function within a broader set of socio-economic and political practices: it must be read, that is to say, as an ideology'.[35] **McBratney**[36] identifies two parallel discourses in the work of Kipling, one masculinist and the other orientalist, combining to create

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31 **Peter Fryer**, Staying Power: The History of Black people in Britain, Pluto Press, London, 1984.
32 **Ron Ramdin**, The making of the Black working class in Britain, Wildwood House, Aldershot, 1987.
33 **Surinder Guru**, Struggle and resistance: Punjabi women in Birmingham, PhD, 1987.
34 **Pratibha Parmar**, 'Gender, Race and Class: Asian women in resistance', The Empire Strikes Back, (ed) **Centre for Contemporary Cultural Studies**, Hutchinson, London, 1982, p237.
35 **Peter Hulme**, Colonial Encounters: Europe and the native Caribbean 1492-1797, Methuen, London, 1986, p5.
36 **John McBratney**, 'Images of Indian women in Rudyard Kipling: A case of Doubling Discourse', Inscriptions, No's 3 & 4, 1988, p47-57.

a 'doubly other' in respect of images of Indian women. This gendered identification is important and is a thread that runs through other works. **Hulme**[37] points to the vocabulary of 'woman' appropriated for describing 'discovered' areas of the world and this is a perspective which **Said**[38] develops at length. The interrelationship of colonialist, racist and sexist discourse is suggested by **Carr**[39] to have acted continually to reinforce, naturalise and legitimise each of those singular elements during the process of European colonisation. In her view the market of male–female power relationships became the model for the European relationship to New World inhabitants by an effective transfer of woman's unknowable otherness to the non–European. This served to legitimise the imperial characteristics of desire and possession.

These early characteristics were to pervade assessments of colonised peoples two centuries later. Anthropological and geographical explorations, ostensibly conducted as scientific information gathering, did little to dislodge them. Indeed the initial assumptions played a major part in determining the evidence sought in these explorations and its interpretation. The resultant findings of 'evidence' was then used to provide a circular justification for those very initial assumptions.

Echoes of this circularity are found in current immigration procedures. The ostensibly impartial and objective colonial anthropology established a currency of assigned stereotypes. Thus the publication of The People of India

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37 **Peter Hulme**, 'Polytropic Man: Tropes of Sexuality and mobility in early colonial discourse', Europe and its others, (ed) **Francis Barker** et al, University of Essex, Colchester, Vol.2, 1985, p17–32.
38 **Edward W. Said**, Orientalism, Routledge and Kegan Paul, London, 1978.
39 **Helen Carr**, 'Woman/Indian: "The American" and his others', Europe and its others, (ed) **Francis Barker** et al, University of Essex, Colchester, Vol.2, 1985, p46–60.

purportedly a scientific discourse, characterised whole communities as 'lawless'[40], an outlook reaffirmed today in approaches by immigration operatives towards passengers deemed potentially untruthful by virtue of sharing regional or national traits. In the late nineteenth century the anthropological stereotyping of certain caste groups as characterised by 'lawlessness' found expression within official thinking in The Criminal Tribes Act 1871.[41] In the twentieth century **Rogers**[42] is one writer who has identified comparable appraisals being given legislative effect. He reports on a view held by immigration operatives of Bangladeshi's as liars and cheats, and resulting assessment of documents produced by them as forged. The investigation into immigration control procedures carried out by the **Commission for Racial Equality** in 1985[43] substantiates numerous assumptions along the same lines being part of the decision-making process. It was just such 'colonial thinking' that was the spur behind the officially circulated report relating to the 'Sylhet Tax Pattern'[44] which served as a blueprint for all Sylheti's at the point of applications being made.

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[40] This was a publication of eight volumes between 1868 and 1875. See **C.A. Bayley** (ed), The Raj: India and the British 1600-1947, National Portrait Gallery Publications, London, 1990, p254.

[41] See reference in **C.A.Bayley** (ed), The Raj: India and the British 1600-1947, National Portrait Gallery Publications, London, 1990, p254.

[42] **Douglas Rogers**, 'The East End Bangladeshi's: a community under seige', Tribune, 30 October 1987, p6-7.

[43] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985.

[44] This report cast a shadow of suspicion upon the claimed relationships of any Sylheti males in the UK who wished their families to join them. It reported upon the practice within that area of single Sylheti males travelling to the UK in the early years of immigration and 'inventing' a wife and children for the purposes of benefitting from state allowances. When subsequent trips home led to marriage and childbirth, and the wish for families to join them here, problems arose. This necessitated 'matching' evidence presented previously to the Inland Revenue with documentation submitted in support of the application. 'Bogus' wives and children had to be accounted for, invariably leading to discrepancies between applicants and sponsor regarding claimed

A centrally important focus in this Chapter is the identification of such patterns of thought in a system of beliefs that there are those who have to be administered and directed. Consequently some ethnically identified groups of persons recognise obedience to law and some do not. In the climate of the 'Sylhet Tax Pattern' each and every Sylheti applicant fell under suspicion and the liberal axiom of 'innocence before the law' was not afforded them. On ethnic grounds alone they had ostensibly proven they did not deserve it. The stereotyping of persons before the law pivots upon racist dogma which it is institutionally problematic to dislodge. Similarly, pathological categories and racially aligned gender roles have their root in being attributed to cultural background and tradition.[45] Such dogmatic pathologising has widespread repercussions in immigration policy and associated areas where instances of stereotypes of Asian and Caribbean women have been argued as leading to medical misdiagnoses and the advocated 'therapy' of repatriation.[46] Another instance is found in the infamous 1978 vaginal examinations carried out on

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deaths and ages of children and the production of forged marriage, death and birth certificates.

[45] For debate upon pathological categories, see debate in Chapters Four and Five and: **Mirjana Morokvasic**, 'Women in Migration: beyond the reductionist outlook', One Way Ticket: Migration and female labour, (ed) **A.Phizacklea**, Routledge & Kegan Paul, London, 1983, p13–31; **Sheila Allen**, 'Perhaps a seventh person?', Race in Britain: continuity and change, (ed) **Charles Husband**, Hutchinson University Library, London, 1982, p128–144; **Pratibha Parmar**, 'Gender, Race and Class: Asian women in resistance', The Empire Strikes Back, (ed) **Centre for Contemporary Cultural Studies**, Hutchinson, London, 1982, p236–275; **Sallie Westwood** and **Parminder Bachu**, 'Images and Realities', New Society, 6 May 1988, p20–22.

[46] See **Black Health Workers and Patients Group**, 'Psychiatry and the corporate state', Race and Class, Vol.25, No.2, Autumn 1983, p49–64; **Roland Littlewood** and **Maurice Lipsedge**, Aliens and Alienists: ethnic minorities and psychiatry, Unwin Hyman, London, 1989; **Rosemarie Cope**, 'The compulsory detention of Afro–Caribbeans under the Mental Health Act', New Community, 15(3), April 1989, p343–356; **Bernard Ineichen**, 'Compulsory admission to psychiatric hospital under the 1959 Mental Health Act: the experience of ethnic minorities', New Community, 13(1), Spring–Summer 1986, p86–93.

Asian women which is discussed in Chapter Four. These are important instances to consider in examining the power relationships of everyday immigration practices and procedures. The conjunction of the administrative and the administered can be seen to lead to a situation wherein what is legislated against is a fictitious construct rather than a factual phenomena. It is equally important to situate the contemporary practice in the context of imperial history. Chapter Four will elaborate upon this in discussing the colonial administration of sati in the context of marriages in the sub-continent under twentieth century immigration legislation. It is sufficient to note here that knowledge of sati produced within official discourse in nineteenth century Bengal became the material for colonial officers to justify their interference in the practice of an indigenous tradition on the grounds of protection of women.

These examples exemplify further and fixed assumptions in a self-fulfilling cycle. This self-fulfilling cycle is as much part of twentieth century legislation in this field as it was the pivot of imperial administration. The overt humanitarian ethos which ostensibly legitimated nineteenth century colonial administration finds its counterpart in justification of twentieth century legislation. Pertinently, a ban on the entry of male fiances was presented as a benign act by the Government to "protect" young Asian women.[47] These echoes of the past paternalistic justification amply demonstrate the potential of racial and sexual stereotyping to provide an ostensible, if unsubstantiated justification of social control.

[47] Discussed in detail in Chapter Four.

THE ROLES.

I arrive to doubtful connections,
to questionable paths,
to faces with obscure
disclosures, with reticent
voices, not clear why
my area is inaccessible,
my officials are not my promoters[48]

The Civil Service is an 'institution' the nature of which is synonymous with the systems of control it operates. It exercises authority over individuals by pre-defined patterns of conduct and knowledge.[49] Pivotal in the transmission of the meanings of the institution[50], is the need that they be impressed 'powerfully and unforgettably on the consciousness of the individual'.[51]

For executive officers and immigration officers, it is standard procedure to sign the Official Secrets Act.[52] This may be done numerous times during the course of an individual's employment and finally on resignation. Standard practices, particularly repetitive ones, rarely give cause for thought but this is a symbolic action empowered by emotive language. In effect it achieves a particular end as affirming a particular status, loyalty and responsibility toward the role embraced. It is a symbolic reminder of service to an unseen authority, one which demands a certain pledged submission of self to control speech and

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[48] **James Berry**, 'New World Colonial Child', News For Babylon, (ed) **James Berry**, Chatto and Windus, London, 1984, (186-190), p186.
[49] **P.L.Berger** and **T.Luckman**, The Social Construction of Reality, Penguin, Harmondsworth, 1966.
[50] Of which **Berger** and **Luckman** see both the establishment of these patterns, and this knowledge, as a part.
[51] **P.L.Berger** and **T.Luckman**, The Social Construction of Reality, Penguin, Harmondsworth, 1966, p87.
[52] Official Secrets Act 1911 and 1920.

action. It is cipher for the solidarity of a communal identity, as the body and limbs of the Immigration Service, this embodiment in turn standing as a visual rhetoric of authority.

The act of signing the Official Secrets Act is the entry to this 'officialdom', the embracing of a particular ethos in which, in **Berger** and **Luckman's**[53] terms, the meaning of an institution becomes conceived of as 'knowledge'. An individual becomes ostensibly, less an 'ordinary mortal' than one privy to 'secrets' and thereby holding a key to 'knowledge' that is integral to national security and thereby nationhood. With one stroke of a pen the signatory becomes different, a part of a long tradition of administration characterised by attestations of duty and loyalty. To put it colloquially, it is made clear 'what side you are on' and thereby, that there are 'sides' and a conflict in progress.

Formal training reaffirms the transmission of 'formulae' for behaviour within a context of consistent legitimation of the necessity for control. This context is the belief that there is a 'problem' to which the engaged officers are the 'solution'. The process of training is contextualisation within which, as one ex-immigration officer states: 'immigration officers see themselves as the front-line against the coloured hordes, who are hell-bent on trying to enter Britain, and who must be repelled with equal determination'.[54] Compare this 'self-conceived poor bloody infantry'[55] with the assessment of the Assistant Chief Inspector in charge of personnel who, speaking to the Commission for Racial Equality in 1985 said: 'that it was necessary for candidates to accept the need

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[53] **P.L.Berger** and **T.Luckman**, The Social Construction of Reality, Penguin, Harmondsworth, 1966.
[54] **Jolyon Jenkins**, 'Keeping Britain Insular', New Statesman and Society, Vol.108, No.2797, 26 October 1984, p12.
[55] **Jolyon Jenkins**, 'Keeping Britain Insular', New Statesman and Society, Vol.108, No.2797, 26 October 1984, p12

for immigration control, but to have a balanced view. A candidate opposed to immigration control would not be an effective Officer, nor would one with extreme views the other way. Although it was unlikely that extreme views would be openly expressed or elicited in the normal twenty–minute interview, they would, he said, be picked up fairly quickly during the probationary period'.[56]

Jenkins would not agree with the proposition that a 'balanced view' is paramount and 'extreme views' are weeded out. **Jenkins** holds that: 'they [Immigration Officers] develop intolerant attitudes because that is what is expected of them, and that they are as much victims as villains'.[57] The words of the personnel representative quoted above appear dubious in the light of early advertisements for immigration officers that appeared in the media. As one of these read: 'Britain, like the best hotels, clubs and restaurants, can't afford to allow everyone through its doors'.[58] In order to explore these contrasting views, it is necessary to enlarge upon details of the training periods which formed the foundation of my career as both executive officer and immigration officer.

The immigration rules which empower immigration officers to act provide the skeleton upon which the flesh of other conceptual frameworks are layered. These conceptual frameworks pervade both thought and deed. Officers are

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[56] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, para 9.3.6., p109.
[57] **Jolyon Jenkins**, 'Keeping Britain Insular', New Statesman and Society, Vol.108, No.2797, 26 October 1984, p12.
[58] Quoted by **Mr George Cunningham** in a written question to the Minister for the Civil Service. Mr Kenneth Baker, the Parliamentary Secretary to the Civil Service Department, assured Mr Cunningham that these words would not be used in future advertisements. Parliamentary Debates, 28 June 1972, Vol.839, Col.1434.

instructed as to the manner in which questions are to be posed; files are to be minuted; how landing cards are to be completed and explanatory statements detailing interviews are to be written.[59] Training is given to 'accessorize' with Warrant Card and Building Pass; confidential 'Suspect Indices' and unpublished 'General Instructions'; rubber stamps and precious keys to their safekeeping in a case. As **Goodrich** claims in the context of Law School training, such socialisation into techniques and languages 'encodes the message of the legitimacy of the whole system into the smallest details of personal style, daily routine, gesture, tone, expression'.[60] In the 'props' and the 'role play' within training there grows the realisation of: 'the unwritten libretto of a drama' the realisation of which depends upon 'the reiterated performances of its prescribed roles by living actors'.[61]

The qualities required to be brought to the role, and toward which one might expect training to be directed, are recorded in a Civil Service Commission circular as: 'They must not be credulous, should possess qualities of patience, tact, and courtesy and have sufficient perception to form accurate assessments of people after short interviews. Their strength of character should be sufficient to enable them to enforce the restrictive decisions essential for effective immigration control'.[62] **Jenkins** is not alone in recording an experience at odds with this criteria. His own observations upon a six-week training course catalogue 'crude racial characterisations and saloon-bar anthropology' such as

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[59] The techniques of presentation are relevant in terms of how applicants are 'presented' and is an issue which is discussed in detail in Chapter Three, within the context of immigration appeals.

[60] **Peter Goodrich**, Legal Discourse, Macmillan Press, Basingstoke, 1987, p172.

[61] **P.L.Berger** and **T.Luckman**, The Social Construction of Reality, Penguin, Harmondsworth, 1966, p92.

[62] Circular E/638, quoted in **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, para 9.3.4., p109.

generalisations upon how 'Nigerians were "lazy", "violent", "dishonest", and "incapable of logical thought"...Pakistanis are prone to forgery..Never trust an Arab..Indians are always touchy'.[63] When questioned upon such matters by a Home Affairs Committee in 1985, a Chief Inspector of the Immigration Service offered the justification that: 'we do see it as important to attempt to pass on, on training courses, particular attributes from particular parts of the world'.[64]

When asked by the same committee to comment upon the training in race relations which formed part of courses a spokesman for the Immigration Service attested to the inclusion of outside speakers with expertise in the field, such as members of the United Kingdom Immigrants Advisory Service. He suggested that: 'staff have benefitted from people outside with a different perception of immigration control'.[65] An addendum to this remark comes some seven years hence in this author's interview with **Jenkins**. At the time **Jenkins** joined the Immigration Service and entered training, I had resigned and was employed as an Immigration Counsellor with the United Kingdom Immigrants Advisory Service. **Jenkins** recalled I had been one of the outside speakers on his training course. It was a particular memory of his that my appearance had been preceded by the remarks that I was 'alright' in that I had been an immigration officer.[66]

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63 **Jolyon Jenkins**, 'Keeping Britain Insular', New Statesman and Society, Vol.108, No.2797, 26 October 1984, p11.
64 **Mr Tompkins**, 'Sixth Report from the Home Affairs Committee, Session 1984–1985: Immigration and Nationality Department of the Home Office', HC277, para 161, p94.
65 'Sixth Report from the Home Affairs Committee, Session 1984–1985: Immigration and Nationality Department of the Home Office', HC277, Para 160, p94.
66 Interview between **Jenkins** and the author, 8 November 1991.

This reaction suggests two things. Firstly confidence in the success of the institutional ethos in that the sediment of previous training and employ would be impressed indelibly, powerfully and unforgettably on the consciousness. Secondly, a dismissal of subsequent role and thereby, the 'knowledge' attained in that role. Whilst there to 'inform' from the vantage point of experience as a counsellor of those afflicted by the rules, previous membership of the 'in-group' perceptions remained paramount. The 'knowledge' of those on whose behalf I was speaking was thus effectively marginalised.

How other speakers were contextualised on this and other training courses is not known, but there is a valid point to be made that if similar marginalisation takes place then what remains is a group of trainees receptive only to a vein of 'knowledge'. This vein is that of speakers from the 'in-group', within the immigration and foreign office services, who speak from 'experience' in-post. Supplementing these accounts are circulated 'unofficial' reports by members of staff who are willing to share their knowledge and experience, which feed into the system as findings of professional weight despite their shortcomings as research material. Examples of this can be cited in the 'Moroccan Survey' and 'Senior Immigration Officer's Paper' which the **Commission for Racial Equality** report elaborated upon and condemned[67]; the earlier mentioned report on the 'Sylhet Tax Pattern'; the report on a visit made to the Indian Sub-Continent by two immigration appeal adjudicators.[68] The resultant 'regime of rationality' of this knowledge is characterised by the elements of: 'on the one hand, that of codification and prescription (how it forms a body of rules, procedures, means to an end etc), and on the other, that of the true or false

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[67] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, paras 6.15.6. and 6.15.7, p85-6 and para 9.12.2, p113.

[68] This report is discussed in more detail in Chapter Three, with reference to its particular relevance to arguments regarding perceptions of adjudicators.

formulation (how it determines a domain of objects about which it is possible to articulate true or false propositions'.[69]

As **van Dijk** has demonstrated in his work on the communication of ethnic prejudices within a dominant white in-group, the manner in which attitudes are represented and strategically used affect intergroup perceptions, evaluations and interactions. The cognitive dimension is linked by discourse and communication to the social.[70] This is illustrated by the findings of the **Commission for Racial Equality** whose interviews with immigration officers for a 1985 report revealed: 'There was general agreement...that Officers were more on their guard with passengers from some countries than from others'.[71] In particular 'the fact that a person came from a pressure-to-emigrate country was acknowledged by many Officers interviewed as a factor which would influence the examination of passengers at some stage'.[72] As **Jenkins** has remarked: 'During an officer's training there are constant exhortations to beware of nationals of those countries where (it is held) there is "pressure to emigrate"'.[73] Chapters Three, Four and Five elaborate upon these 'categorisations' of persons, situating them within a tradition of administration. Foucaultian focus is taken upon 'connections between ways in which individuals are politically objectified and political techniques for integrating

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[69] **Michel Foucault**, Questions of Method, in **G.Burchell, C.Gordon** and **P.Miller**, The Foucault Effect: studies in governmentality, Harvester Wheatsheaf, Herts, 1991, p79.
[70] **Teun A.van Dijk**, Communicating Racism: ethnic prejudice in thought and talk, Sage Publications, California, 1987.
[71] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, para 6.10.15, p81.
[72] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, para 6.15.1, p85.
[73] **Jolyon Jenkins**, 'Keeping Britain Insular', New Statesman and Society, Vol.108, No.2797, 26 October 1984, p12.

concrete aspects of their lives and activities into the pursuit of the state's objectives'.[74]

In essence then immigration officers are taught to record experiences in a particular form, from a particular standpoint in a structured but implicit power relationship. This relationship gives rise to a dual construction through which, as **Blakey** states: 'The subject accedes to Being only through the mechanism of being for an other'.[75] The power relationship places officers on a higher plane by attributing a greater credence to their veracity, 'knowledge' and 'reason'. It is a domain: 'in which the practice of true and false can be made at once ordered and pertinent'.[76] The officer's record of events becomes be the record of events.

The power relationship in which immigration officers meet those subject to the rules fuels these identities: wielding pen and rubber stamp, and initiating questions, applicants are powerless in the hierarchy. What operatives believe is the intention of applicants is what counts in the scheme of things. Their evaluations are not only premised within specific in-group perceptions but integrally bound to safeguarding the 'panopticonian imperatives' of surveillance, observation, security and knowledge.[77] That is to say that, as the General Instructions issued to immigration staff puts it: 'The function of immigration control is broadly to ensure that people who wish to come to the United Kingdom from abroad are admitted only in such numbers and for such

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[74] **G.Burchell**, in **G.Burchell, C.Gordon** and **P.Miller**, The Foucault Effect: studies in governmentality, Harvester Wheatsheaf, Herts, 1991, p122-3.
[75] **Richard Blakey**, 'Marie-Jo Lafontaine', Third Text, No.12, Autumn 1990, p48.
[76] **Michel Foucault**, Questions of Method, in **G.Burchell, C.Gordon** and **P.Miller**, The Foucault Effect: studies in governmentality, Harvester Wheatsheaf, Herts, 1991, p79.
[77] **Michel Foucault**, Discipline and Punish, Penguin Books, London, 1979.

purposes as are consistent with the national interest. In detail the objectives of the control are to prevent the entry of people who are personally unacceptable, for example because of a criminal record, to protect the resident labour force and to keep the rate of immigration within limits at which it will not give rise to serious social problems'.[78]

This working brief is one which the **Commission for Racial Equality** have identified as laying emphasis upon restriction and control. In this context 'knowledge' equates with what is to be regarded as knowledge, as valid evidence, or relevant, given a pre–determined set of criteria or circumstance. In a comparable way to **Foucault's** identification of the 'construction' of the delinquent establishing the existence of the 'criminal' before/outside of the crime[79], the 'knowledge' of others imbibed during training encourages a thought pattern of classification which fosters an element of pre–judgement. Indeed a similar attention to psychology, social position and upbringing attends upon both what **Foucault** outlines as the investigative strands in an approach to the delinquent, and the racial generalisations of training lectures recalled by **Jenkins**. As the **Commission for Racial Equality** findings make clear: 'training and guidance material contained much about countries and categories of people they should regard with particular suspicion....There is a clear risk that trainees will gather in fact only a smattering of information which is more likely to create or reinforce stereotypes than it is to correct them'.[80]

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[78] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, para 3.2, p13.
[79] **Michel Foucault**, Discipline and Punish, Penguin Books, London 1979, Part Four, Chapter Two.
[80] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, para 9.11.6, p113.

These points may be well illustrated by example. Consider a person seeking entry to the United Kingdom as a visitor. The immigration rules outline the criteria for entry in this capacity as satisfying an immigration officer or entry clearance officer that only a visit is intended; that it will be of the stated duration; that there is an intention to leave the United Kingdom and that adequate funds are available.[81] These 'public' criteria are not however the full story, there are other texts and discourses which feed into the requirements to be met. These include points which are of specific relevance to roles and in–group perceptions.

A useful starting point is the earlier identified 'working attitude' of the operatives, that of restriction and control. This distils a disposition towards certain categories of passenger and the visitor is no exception to this. Thus the task characterised by the immigration service in relation to visitors is premised upon an assumption that this is a category improperly utilised by those whose objectives are other than a temporary stay. Written evidence from the Immigration Service to the Commission for Racial Equality in 1985 makes clear that this premise renders the role of dealing with such categories of passenger consciously one of being alert to attempted evasion. The result of such an outlook is a 'fleshing out' of the skeleton criteria within the published rules : 'He [the officer] must not only be satisfied that they [visitors] have sufficient money to support themselves (which in any case might have been borrowed) and a return ticket (which could have been bought by someone else, or on credit terms, or be redeemable for cash), but must also consider whether

81 'Statement of Changes in the Immigration Rules', HC251, para.22.

the expenditure on the projected visit bears some reasonable relationship to their financial means and family, social and economic background'.[82]

Making a determination of what is 'reasonable', however liberal and just the terminology might appear, has not escaped criticism. It is difficult to envisage how a 'reasonable' assessment can be reached in the light of the prevailing modes of thought encouraged in training of operatives. Officers will balance the incentive to stay against the incentive to leave, yet the Commission for Racial Equality have described how the unpublished General Instructions to immigration officers warn them to be on guard particularly in respect of countries from which there is 'pressure to emigrate'. Such direction orchestrates instances of the kind which **Jenkins** describes: 'one of the first questions an officer will ask a 'pressure to emigrate' visitor is "Do you have any friends or relatives in Britain who you might stay with?" The passenger says no. The officer then searches the passenger's bags in the hope of discovering an address book or a scrap of paper with an address in Britain written down. He then has evidence that the passenger has lied, and can 'get him on credibility' the reasoning being that once the passenger has lied there is no reason to believe anything he says'.[83]

The irony of the stress operatives place on 'reasonable' argument lies in the inequitable share of the burden of promised reasonableness upon applicants. As one critic suggested of entry clearance officers, they: 'ask totally unreasonable questions. They ask applicants how many cows they have in the village or how many cows the family has. They want to know the colour of the bricks or the

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[82] **Commission for Racial Equality,** Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, para 6.10.1, p79. My emphasis added.

[83] **Jolyon Jenkins**, 'Keeping Britain Insular', New Statesman and Society, Vol.108, No.2797, 26 October 1984, p12.

direction that the main door of the house faces. Those are unreasonable questions. In effect, the entry clearance officers have already decided that they will reject such applications'.[84]

The shortcomings in 'reasoned judgement' have also been highlighted by **Drabu** and **Bowen** in their report on those countries subject to a mandatory visa requirement. As they point out: 'Entry Clearance Officers are applying an unsatisfactory test of reasonableness; namely, "Would I do that?"....motives for making a visit are all too often dismissed as unreasonable simply because they do not fit in with the white, British ECO's idea of what constitutes a sufficient reason'.[85] Their report details numerous cases of applicants who have faced such assessment, often in tandem with an assessment based on a 'gut reaction'. This prompts the researchers to comment: 'We were very concerned to find that both ECO's and Second Secretaries placed a great deal of store in the ECO's "intuition", which we were told allowed them to spot the bogus applicants. We were surprised that ECO's were actually encouraged to develop this sixth sense by their managers, who appeared to applaud the fact that decisions were frequently made on this basis'.[86] A link can be made here to preceding discussion of the 'unofficial professional research' which feeds into the decision-making process, in that **Drabu** and **Bowen** record how operatives: 'felt that they had developed a local knowledge which was a great benefit to them in assessing the credibility of the applicants; this ranged from the likely yield of a certain acreage of land to the various residential localities and what

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[84] **Mr Piara S. Khabra**, during debate on the Asylum and Immigration Appeal Bill. Hansard, Issue No.1598, 2 November 1992, Col.80.
[85] **Khurshid Drabu** and **Stephen Bowen**, Mandatory Visas: visiting the UK from Bangladesh, India, Pakistan, Ghana and Nigeria, Commission for Racial Equality, London, 1989, p39-40.
[86] **Khurshid Drabu** and **Stephen Bowen**, Mandatory Visas: visiting the UK from Bangladesh, India, Pakistan, Ghana and Nigeria, Commission for Racial Equality, London, 1989, p58.

constituted a "good address"'.[87] The issue of local knowledge will be returned to in more detail in Chapter Three.

This use of 'knowledge', as to for example what constitutes a "good address", is mirrored in the 'pressure to emigrate' argument as to what constitutes a 'safe bet' country in terms of landing nationals as visitors. It is a particularly virulent strain of thought permeating the visitor category, and was at root of the introduction by the Government in 1986 of mandatory visit visas for the citizens of Bangladesh, Ghana, India, Nigeria and Pakistan. Both **Jenkins**[88] and the **Greater Manchester Immigration Aid Unit**[89] have reported that the Immigration Service Union were a major lobby for the institution of the visa requirements. Hence a trade union organisation effectively joined others in the extension of immigration control into a growing number of 'unofficial' hands. Pertinent to the current argument is the role played by immigration staff in the institution of this requirement. This is demonstrable of the power of assumptions to transcend a role within an institutional structure and to become part of a wider socio-political end, calling into question the impartial 'reasoned judgement' heralded as characteristic of day-to-day decision-making processes. The Immigration Service Union 1988/89 pay claim is reported as having been based upon a call for 'rates for refusal'. The claim was couched in surrounding argument critical of the low refusal rate of 'obsolete Lunar House bureaucracy' in the face of 'effectiveness' in the area from the immigration service both at ports and overseas. As an argument this raises even further

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[87] **Khurshid Drabu** and **Stephen Bowen**, Mandatory Visas: visiting the UK from Bangladesh, India, Pakistan, Ghana and Nigeria, Commission for Racial Equality, London, 1989, p34.
[88] **Jolyon Jenkins**, '"Fortress White" mentality', New Statesman and Society, Vol.112, No.2898, 10 October 1986, p16-19.
[89] **Greater Manchester Immigration Aid Unit**, For a World without frontiers, GMIAU, Manchester, 1990.

cause for concern.[90] With such issues as these supplementing the published criteria of the rules, it is not unreasonable to attribute a motive other than coincidence to reports that some nationalities are more likely to be held up for further examination than others[91], and to the identification of an alarming rise in refusal rates of West Indian visitors.[92] The **Caribbean Refusals Action Group** have suggested a link between the growing rate of refusals and the policy influencing potential of the Immigration Service Union. The group have interpreted the current state of affairs as a precursor to the institution of a mandatory visa requirement, following a blueprint established in the 1986 requirements aforementioned.[93]

This excursus into elements feeding into the manner in which visitors are appraised on their arrival illustrates a number of the points raised in discussion. It will be recalled that specific criteria determine the categories which appear in the immigration rules and that these will be drawn upon in formal notice of 'reason' for refusal. The 'pressure to emigrate' argument is inextricably linked to the establishment of an incentive or intention to return which is so crucial to visitor cases. As **Goodrich** has pointed out, legal vocabulary such as 'intention' carries latent meaning born of a: 'field of systematic associations which will frequently belie, in part or whole, the specific definition of the term itself...it offers its authorised users the greatest possible scope or power of judgement'.[94]

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[90] **Greater Manchester Immigration Aid Unit**, For a world without frontiers, GMIAU, Manchester, 1990, p9.
[91] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, paras 6.9.4, 6.9.5 and 6.9.6, p78–79.
[92] See the figures quoted in **Claude Moraes**, 'A black mark against Britain', Independent, 29.12.1993. Chapter Six includes discussion of this issue in greater detail.
[93] **Caribbean Refusals Action Group**, 'Caribbean Visitor', Information sheet, CERAG, Birmingham, 1991.
[94] **Peter Goodrich**, Legal Discourse, Macmillan Press, Basingstoke, 1987, p179–80.

This has been illustrated in the approach of the immigration service to visitors, who are distrusted not only in 'what' they do but 'how' they do things. Operatives act less in the independent manner suggested by the 'perception to form accurate assessments'[95] than they do upon 'perceptions' born of a particular ethos of administration pre-defining why they are there and who they are facing in the decision-making process; by 'using laws themselves as tactics'.[96]

The focus within this Chapter upon the operatives of control and their institutional culture has illustrated how perceptions of applicants under the immigration rules are formed and play a part in how they are dealt with. It has been suggested that operatives do not face those who come before them with a neutral stance.

This is arguably a far remove from the 'identity and attitude' that is attributed to immigration officers by the immigration rules. As stated earlier, these rules carry the declaration: 'Immigration Officers will carry out their duties without regard to the race, colour and religion of people seeking to enter the UK'.[97] The liberal discourse 'without regard to' imports the notion of being able to stand in an independent position and evaluate others; to exclude some things and accept others for good reason. It is an omnipotent stance with dual effect: the legitimation of operatives in the eyes of the world; the possession by operatives of a choice born of power. The confidence with which this power

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[95] Civil Service Commission Circular E/638, **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, para 9.3.4, p109.
[96] **Michel Foucault**, Governmentality in **G.Burchell, C.Gordon** and **P.Miller**, The Foucault Effect: studies in governmentality, Harvester Wheatsheaf, 1991, p95.
[97] 'Statement of Changes in the Immigration Rules', HC251, para.6.

imbues operatives ensures the litany is construed less as a perpetual reminder of how to act, than an 'insurance policy' legitimating whatever they do in a comprehensive cloak of exoneration. This begs questions as to what is being legitimated and why.

Chapter Two will take as a focus the immigration rules themselves to illustrate the layers of meaning which lie within the categories. An interrelationship will be identified between these categories and the vein of training which has been identified within this chapter as one which foregrounds 'predefining' of applicants.

CHAPTER TWO

ARTS TO ENCHANT.

"They don't have to show us Catch 22...the law says they don't have to"
"What law says they don't have to?"
"Catch 22"[1]

INTRODUCTION: WORDS OF THE LAW.

The immigration rules are the bridge under which all must pass and be validated: passenger; institutional culture; political necessity; socio–economic demands; the national spirit of control. The reality with which the rules engage is not simply transcribed during this passage, but organised to meet the validation of these diverse calls upon them. The hierarchy of these demands is significant.

Chapter One has argued that the diverse ideological, political and economic demands of immigration control are not embodied solely within the immigration rules. The entity which is immigration control is multi–limbed, the tools of control encompassing formal and informal mechanisms. As **Bevan**[2] suggests, these include queues for applications; the effective denial of adequate redress procedures in the criteria of appeal from abroad; the tenor of secrecy which makes possible unpublished instructions. In **Bevan's** view the

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1 **Joseph Heller**, Catch 22, Corgi Books, Ealing, London, 1970, p431.
2 **Vaughan Bevan**, The Development of British Immigration Law, Croom Helm, Kent, 1986.

'fears' which lie at the root of objection to immigration itself direct not only the designation of categories to be included within legislation, but also the criteria within those designations. For example, economic fear guides both the criteria imposed in respect of employment in the United Kingdom and the husband and fiance rules. Equally, criteria which censures reliance upon public funds is underwritten by concern that the weight of numbers entering the United Kingdom will have repercussions in social conditions such as housing and state benefits, whilst ideals of public order are interrelated with the category of 'non-conducive to the public good'.[3] This chapter will explore how these and other mechanisms are reinforced by the very vocabulary and designations which are the wording of the rules. These arguments will support debate in other chapters that underlying assumptions lead to areas of the rules imposing themselves more harshly upon certain nationalities. A second but related argument will suggest that the vocabulary of the immigration rules and the rhetoric that surrounds them calls-up the ideals of justice embodied in the principles of United Kingdom law to legitimise what is a discriminatory process. The element of 'discretion' is chief amongst the weaponry applied to this end, pervading the categories of the rules in such terms as 'may be' and 'should'. However the suggestion will be made that this ostensible discretion is nonetheless weighted toward that which is pre-determined as 'worthy' of the exercise of this prerogative.

Examination of texts within this chapter will be a literary 'Kirlian photograph'.[4] The words of control will be subjected to a frequency of investigation not

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[3] **Vaughan Bevan**, The Development of British Immigration Law, Croom Helm, Kent, 1986.

[4] Kirlian photography uses high-frequency electrical current and claims to record directly on photographic film the field radiation of electricity emitted by an object. This takes the form of a 'halo' of light, recorded on the photographic plate as radiating from the object photographed. Some claim this halo to be the

demanded in their normal reading, in order to reveal the imprint of the unseen essence of the legislation. A necessary part of this project is the deconstruction of the phraseology of the rules to indicate the values imported into the legislation, looking at what appearance is fashioned by their importation. It is this appearance which is the mythic status of immigration control, that which forms part of the rhetoric of justice and fairness, of nation and security. This rhetoric is central, the tenor of legislation being directed as much, if not primarily, by the demands of a 'public image'.

WRITTEN AUTHORITY

> *I making de Queen's English accessory*
> *to my offence*[5]

The institutional culture of the Immigration Service is the frame within which immigration control operates. This culture has established a network of 'written authorities', which ensure that there is both delegated legislation and administrative pronouncements. **Bevan** has highlighted this binary characteristic in suggesting how the legal characteristics of control serve the ends of allowing the government a dual chance of success. **Bevan** illustrates that the complicated and thereby opaque nature of primary legislation in which residual rights are submerged, and the hybrid nature of secondary legislation, are culpable in disadvantaging applicants. The hybrid nature of the secondary

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aura surrounding the human body or an astral body reflecting the mental and physical state of an individual. My claim to the appropriateness of this term in this context is the claim to essentially make visible that which is there, but not seen.

[5] **John Agard**, 'Listen Mr Oxford don', Mangoes and Bullets, Serpents Tail, London, 1990, p44.

legislation renders the immigration rules binding upon appellate authorities but merely 'rules of practice and guidelines' in ordinary courts. These elusive characteristics combine to impenetrable effect with what are effectively subsidiary 'rules' against which there is no redress, the internal instructions and guidance described in Chapter One.[6] Thus: 'Theory and practice, word and deed are seen as belonging to the same field, as successive points on an unproblematic continuum'.[7] That which constitutes the unproblematic continuum is inextricably linked to a 'public image'. That public image is the unquestioning acceptance of an imperative not only for immigration control but control of particular nationalities which seek entry.

The imperative for immigration control is amply demonstrated in parliamentary debates which have surrounded the introduction of immigration legislation in respect of the: Commonwealth Immigrants Bill[8]; Immigration Bill[9]; Asylum and Immigration Appeals Bill.[10] During the debate upon the Immigration Bill, one member of the House stated: 'an important fact which has to be grasped is that the argument is not only statistical but psychological, that it is a question of immigration not only being effectively checked but being seen to be effectively checked....important not so much for the net reduction in numbers which will result as for the reassurance which the

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[6] **Bevan** adds to the recorded characteristics the elements of discretion, secrecy, and fragmentation of responsibility through a variety of departments. These matters are dealt with in more detail within discussion of institutional culture in Chapter One, and adjudication/appeals in Chapter Three.

[7] **C.Douzinas** and **R.Warrington**, '"A well-founded fear of justice": Law and ethics in postmodernity', Law and Critique, Vol.2, No.2, 1991, (115-147), p117.

[8] Order for the Second Reading, Parliamentary Debates, House of Commons, Vol.649, 16 November 1961, Col.687-812.

[9] Order for Second Reading, Parliamentary Debates, House of Commons, Vol.813, 8 March 1971, Col.42-164.

[10] Order for Second Reading, Hansard, 2 November 1992, Issue No.1598, Col.21-113.

measures will bring to those, particularly in our large cities, who feel themselves in danger of being swamped and overwhelmed'.[11]

As Chapter Six will demonstrate, statements such as these are the material which forms the immigration incantation of media reportage. The terminology itself stands as innuendo of numbers which has a dual effect: creating a barrier to public awareness of the reality of numbers entering (and thereby deflecting any challenge to there being a need for control) whilst also feeding public fears and reinforcing those as being justifiably rooted in matters of national survival. Suffice to say here that much of that incantation centres upon 'the threat of stability and civilisation that is posed by the notion of "swamping"'[12] with 'black and migrant communities being blamed for the economic failures of the countries in which they happen to be living'.[13] As Chapter Six will bear out, language itself carries the full weight of the historical associations underlying the stereotypical assumptions, a fact demonstrable in this brief exchange:

"The truth is that migrants have made little or no contribution to the current problems. At one stage, however, I wondered whether the Government would try to blame migrants and refugees for catastrophes such as collapse of the pound and the closure of the pits"
"They called it Black Wednesday"
"They did indeed – and I think that we should take stock of the language that we use to describe the catastrophes into which the Government lead us".[14]

The emotive power of language is strong indeed. The legitimacy for the usage of the terminology in such as the above example is historically rooted.

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[11] **Mr John Hunt**, Parliamentary Debates, 8 March 1971, Vol.813, Col.92–93.
[12] **Mr Alan Simpson**, debate upon the Asylum and Immigration Appeals Bill. Hansard, 2 November 1992, Issue No.1598, Col.101.
[13] **Mr Alan Simpson**, debate upon the Asylum and Immigration Appeals Bill. Hansard, 2 November 1992, Issue No.1598, Col.100.
[14] Exchange between **Mr Alan Simpson** and **Mr Bernie Grant** during the Asylum and Immigration Appeals Bill debate, Hansard, 2 November 1992, Issue No.1598, Col.100.

Chapters Four and Five demonstrate this by drawing parallels between applicants under the immigration rules and the imperialist discourse which urged abolition of 'savage customs' in the name of civilization.[15] The official and academic worlds of the imperial age are drawn upon as contributors to the climate of discourse, demonstrating how the ideological functions of colonialist fiction were equally powerful in their effect upon both Western culture and politics. Chapter Six illustrates the legacy of such work in today's media reportage. As **JanMohamed**[16] suggests, such colonialist fiction fixated upon and fertilised the public imagination to receive an image of the 'non-western other' as irrevocably uncivilised and, by the same token, the West as cloaked in moral superiority. In his terms, calling upon Foucault, the author function in such texts was: 'tied to the legal and institutional systems that circumscribe, determine and articulate the realm of discourses'[17], unconcerned with the truth-value of representations. The native subject becomes 'commodified' within this process, a stereotypical object that can be used as a resource by virtue of having both individuality and subjectivity negated, perceived with others as beings all thinking and looking alike.

Chapter Six elaborates upon the legacy of this circumscription, exploring the extent of it by 're-reading' the words of applicants under the immigration rules. Fictional and artistic texts have been chosen to advance 'another voice' and to

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[15] **P.Bratlinger** suggests how accounts of African exploration exerted incalculable influence on British culture, the rationalisation for the domination of 'inferior peoples' being inevitably racist – an example of the Foucauldian concept of discourse as 'a violence that we do to things'. **P.Bratlinger**, 'Victorians and Africans: The Genealogy of the Myth of the Dark Continent', Critical Inquiry, Vol.12, No.1, Autumn 1985, p166-201.

[16] **Abdul R.JanMohamed**, 'The Economy of Manichean Allegory: The function of Racial Difference in Colonialist literature', Critical Inquiry, Autumn 1985, Vol.12, No.1, p59-87.

[17] **Abdul R.JanMohamed**, 'The Economy of Manichean Allegory: The function of Racial Difference in Colonialist literature', Critical Inquiry, Autumn 1985, Vol.12, No.1, (59-87), p63.

stand as parallel to texts which are the 'other voice' of the official institution. This 'underside' of official discourse fed, and continues to feed, a climate which continues today to disadvantage particular applicants under the immigration rules. It does so by including and excluding, by giving voice and silencing.

In Chapter Three the 'author function' identified by **JanMohamed** will be identified as persisting today in explanatory statements at appeal, applicants becoming a resource within an appeal machinery that stands as an ideological tool to legitimate control. For the purposes of the current debate it is sufficient to reiterate that this literature affirms its own ethnocentric assumptions and thereby codifies and preserves the mental images embraced.
The immigration rules similarly embody a codification of applicants and stand as an upholder (and celebrator) of the values of Empire. They effectively trumpet the glory of the nation in the same vein as the prose and poetry of years before. The rhetoric of parliamentary debates included in this chapter illustrates how the rules are contextualised within ideals of justice seen as synonymous with the national image. In 1900 that same contextualisation stood as introduction to a collection of prose and verse in The Imperial Reciter, claiming: 'The rapid and solid growth of the British Empire has been due largely to two characteristics of its rule – the integrity of its justice and the soundness of its finance', of the former it was stated 'Native races everywhere appeal with confidence to the justice of our courts'.[18] These sentiments persist

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[18] **Alfred H.Miles,** The Imperial Reciter, S.H.Bousfield & Co. Ltd., London, October 1 1900, Prefaratory comment. In his preface **Miles** distinguishes between 'true and false' imperialism, the former of the 'vulgar braggart' and the latter which 'does not seek empire, but will not shrink from the responsibilities of its growth, and in all matters of international dispute believes with Solomon, that "He that is slow to wrath is of great understanding", and in all matters of international relationship that "Righteousness exalteth a nation"'. Despite such 'understanding' The Imperial Reciter collection includes work which advances characteristics of duplicity and cunning on behalf of both Dutch and Chinese nationals. **Charles F.Adams** in 'A Dutchman's Mistake' (p176) incorporates

as part of twentieth century immigration control. As one member of the House of Commons suggested of the Immigration Appeals Bill: 'It is very important that we have a system of appeal, and that justice is seen to be done, because of our status as a nation...our prestige as a nation that believes in the rule of law and justice for all its citizens is still unchallenged throughout the world'.[19] In the same debate it was suggested that: 'Largely, what the Bill will do is produce a facade to make everyone feel slightly more comfortable in his conscience and that is all. It will bring no more justice to those who feel themselves victimised than they get at present'.[20]

The very language of control, the terminology within which the criteria of categories are couched, joins with the element of discretion to become a tool of operation which legitimates the imperative for control. The categories included in the immigration rules serve equally the demands of advancing a particular tenor of control, and a particular identity and approach of operatives. These elements guide what the rules 'are perceived to be'. This perception has the power both to deflect criticism on the intent of the legislation and mask what might otherwise be seen as derogatory generalisations or assumptions which disadvantage applicants. This chapter looks closely at the material matter of the rules to illustrate the underlying assumptions being made of those subject to control.

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this with crude caricature: 'he say I vas sooch an honest Deutscher, und tidn't dry und sheat der gofermants'; **Mary Mapes Dodge**, 'Miss Maloney on the Chinese Question' (p161-163) and **Bret Harte**, 'The Heathen Chinee' (p163-164), both advance derogatory physical and mental characteristics.

[19] **Mr Gordon Oakes**, Parliamentary Debates, House of Commons, Fifth Series, 22 January 1969, Vol. 776, Col.509. The notion of 'justice being seen to be done' is enhanced by the element of assistance which is proffered through the United Kingdom Immigrants Advisory Service. Chapter Three deals with the Wilson Committee recommendations in this respect.

[20] **Sir Douglas Glover**, Parliamentary Debates, House of Commons, Fifth Series, 22 January 1969, Vol.776, Col.535. The merits of this argument by Sir Douglas Glover will form part of the wider debate of Chapter Three.

Certain terminology is inherently problematic, as reference to parliamentary debates will attest. It will be seen that this very in-built problem relating to terminology acts as an enabling factor toward particular interpretation in specific areas of control which disadvantages applicants. In short, the chapter gives voice to a sub-text. Evaluation of this sub-text illustrates that the law is not, as the liberal view would have it, 'innocent'. Rather that it is the case that immigration law: 'in policing the borders and marking the property and propriety of the inside repeats endlessly the violence of exclusion and silencing. And if the law needs this exclusion in order to present and demarcate its own territory and subjects, the principle of exclusion stands in and before the law'.[21] The power of the legal neutrality which is advanced, is in itself a political stance.

Demystification of the immigration rules in this way reveals that: 'the language of the law is a prominent indicator of the social and historical genesis and motivation of the legal text as instrument of social regulation and discipline'.[22] In the instance of immigration law it is the very particularised regulation and disciplining of those constructed as 'foreign others'. This regulation is a continuity of the articulation of eighteenth and nineteenth century colonial discourse, an issue which will be considered further in the categories of passenger looked at in some detail in Chapters Four and Five.

The residue of concepts embraced in legitimation of colonial legislation, including the findings of social anthropology, leaves its trace in the

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[21] **C.Douzinas** and **R.Warrington**, '"A well-founded fear of Justice": Law and ethics in postmodernity', Law and Critique, Vol.2, No.2, 1991, (115-147), p138.

[22] **P.Goodrich**, Legal Discourse, Macmillan Press, Basingstoke, 1987, ix.

institutional culture which is the bedrock of twentieth century immigration control. This is far from surprising given that: 'The value of social anthropology to administration has been generally recognised from the beginning of the century and both the Colonial Office and colonial governments have shown an increasing interest in anthropological teaching and research. For a good number of years past colonial cadets, before taking up their appointments, have received, among other courses of instruction, instruction in social anthropology at Oxford and Cambridge, and more recently in London'.[23] Those in the field of immigration who draft the rules and who write the statements and appeal determinations today, can be regarded in a similar light to these scholars in the heyday of imperialism. Their usefulness lay in constructing conceptual frameworks within which colonial ideology could be defended and extended and they helped select problems for investigation which highlighted beneficial effects of colonial rule.[24] Not least: 'The administrators by combining their general knowledge with the anthropologists special knowledge of specific peoples were able to develop their policy over time'.[25]

It is not the intent of this chapter to state that beneath the surface of immigration discourse there is a core to be uncovered as the hidden truth of the immigration moment. The immigration rules are merely one nodal point in the fusion of a number of discourses, even at the moment they themselves

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[23] **Sir Edward Evans-Pritchard**, quoted by **Abdel Ghaffar M.Ahmed** in 'Some Remarks from the Third World on Anthropology and Colonialism: The Sudan', Anthropology and the Colonial Encounter, (ed) **Talal Asad,** Ithaca Press, London, 1973, (259-270), p110.

[24] See **G.G.Joseph, V.Reddy** and **M.Searle-Chatterjee**, 'Eurocentrism in the Social Sciences', Race and Class, Vol.31, #4, 1990, p1-26.

[25] **Ahmed Ghaffar M.Ahmed**, 'Some Remarks from the Third World on Anthropology and Colonialism: The Sudan', Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (259-270), p264.

constitute their own discourse. They must be read in the context in which they are written and in relation to discourses inherited, and read in relation to discourses they reproduce and with which they engage. As stars that collide, each burn brightest in their moment of fusion.

What is posed is that, in **Foucault's** terms, what is to be discovered beneath the primary interpretation is yet more interpretation.[26] Beneath their surface is the raw material for more questions to be raised out of the quagmire which makes up the mode of existence of the immigration rules, the raison d'etre for their appearance and the re-articulations they invite. Raising these questions extends our understanding of the relationship between knowledge and power. More importantly perhaps, it opens up a space to suggest a theory of resistance is possible within the ideological sphere. It is not enough to merely condemn the immigration rules as 'racist', this closes off conceptualisation of elements which articulate in different practices to buttress that facet of their operation. Thus: 'no smooth history emerges, but rather a series of fragments which, read speculatively, hint at a story that can never be fully recovered'.[27]

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[26] **M.Foucault**, The Archaeology of Knowledge, Routledge, London, 1989, p119.

[27] **P.Hulme**, Colonial Encounters: Europe and the Native Caribbean 1492-1797, Methuen, London, 1986, p12.

THE TERMINOLOGY.

Labels are wonderful things
They let us all know where we
stand or fall[28]

Qualification for entry under the immigration rules requires identification with one of the 'categories' which appear in the legislation by meeting the criteria which attends upon that category. **Douzinas** and **Warrington** suggest that these categories and concepts constitute a self–enclosed and auto–referential normative grammar.[29] In so doing they echo the argument of **Berger** and **Luckman**[30] that language is capable of constructing highly abstracted 'symbols' which lay the foundation for zones of meaning. These meanings in their turn becoming part of a body of 'knowledge' which channels and controls what will be seen as objective 'truth'. In **Foucault's** terms, the operation of the immigration rules can be regarded as one of a number of practices 'that systematically form the objects of which they speak'.[31] In so doing the rules echo colonial administrative practices: 'interposing a "conscious model" of its own creation between the social reality and the "home–made" or "conscious" model of that reality of a subject people'.[32] By way of example, archival

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[28] **Zhana**, 'Labels', Black Women Talk Poetry, (ed) **Black Womantalk**, Black Womantalk Ltd., London, (100–101), p101.
[29] **C.Douzinas** and **R.Warrington**, '"A well–founded fear of Justice": Law and ethics in postmodernity', Law and Critique, Vol.2, No.2, 1991 (115–147), p136.
[30] **P.L.Berger** and **T.Luckman**, The Social Construction of Reality, Penguin, Harmondsworth, 1966.
[31] **M.Foucault**, The Archaeology of Knowledge, Routledge, London, 1989, p49.
[32] **John Clammer**, 'Colonialism and the perception of tradition in Fiji' in Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199–220), p199.

material substantiates that both the military and administrators of the East India Company were culpable in constructing the object of representations that became the reality of India.[33]

To illustrate the mode of operation of colonial administrative practices which remains as a sediment in current immigration control, a parallel can be drawn with the model of Fijian social structure created by the late nineteenth century colonial government. Toward an end of codifying and controlling claims to land rights in Fiji, a model of the 'traditional social structure' was produced by British administrators to clarify relations and thereby the status of claims.[34] Failure to comply with requirements by fitting into one of the designated social groups attracted the fate of being registered landless.[35] The initial reaction of local natives to the news of codification had been the catalyst to such threatened censure. A favourite tactic of resistance was to meet the requirements by claiming membership of a social unit which did not in fact exist, other than in the "official mind" and policy. Whole villages organised themselves on the basis of the ideal structure the system outlined.[36] An added

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[33] **G.C.Spivak**, 'The Rani of Sirmur', Europe and It's Others, (eds) **Francis Barker** et al, University of Essex, Colchester, 1985, Vol.1, p128–151.

[34] The codified model was produced in 1912 by G.V.Maxwell, the Native Lands Commissioner in Fiji. Upon presentation to the Fijian Legislative Council, his simple hierarchical system: 'was enshrined as the "official" doctrine of native social structure'. See **John Clammer**, 'Colonialism and the perception of tradition in Fiji' in Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199–220), p202.

[35] In 1914 Sir Bickham Sweet–Escott, Governor of Fiji, issued a restatement of the Maxwellian official policy along these lines. See **John Clammer**, 'Colonialism and the perception of tradition in Fiji' in Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199–220), p203.

[36] Clammer suggests that in fact: 'Fijian group organisation is in essence (and terminologically) not rigidly structured, but highly relativistic'. **John Clammer**, 'Colonialism and the perception of tradition in Fiji' in Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199–220), p215.

advantage of this tactic was despatching quickly the inquisitorial commissioners who were making their village visits to codify the inhabitants. When the authorities became aware of these practices, censure was directed toward those who presented such 'evidence' to the Native Land Commission. **Clammer** points out the fact that the censure was premised in a focus on the suspect nature of the evidence presented, there was no acknowledgement of the inadequacy of the ill-conceived model which applicants were being forced to meet.

Parallels can be drawn with the operation of twentieth century immigration control. Not least of these is the prescription of a model to be met and the enforced necessity of applicants to accord with the pre-conceptions of that model. Another common denominator is the arrogance of a system which, by imposing 'its own ill thought-out ideology or image of that society'[37] not only dominates physically and mentally but confuses what is authentic. The premise which is taken by the immigration rules, where those claiming for example to be "mother" are deemed not so, recalls the words of the architect of the Fijian system that: 'the people are absolutely incapable of classifying themselves without assistance'.[38]

The end result for both nineteenth century Fijian society and those who fall victim to immigration control is one wherein: 'from the initial imposition of a system based upon, but alien to, the original traditional system, the dogma of "traditionalism" has become itself tradition' – what is in effect a colonial

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[37] **John Clammer**, 'Colonialism and the perception of tradition in Fiji' in Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199-220), p220.

[38] G.V.Maxwell, quoted by **John Clammer**, 'Colonialism and the perception of tradition in Fiji', Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199-220), p203.

systematisation is perceived as 'immutable and immemorial tradition'.[39] As Chapters Four and Five will illustrate, applicants before immigration control must meet images of themselves which are deemed immutable; they too must supply 'evidence' which in effect exists only in the mind of those at an official level.

It is a small step from the Fijian situation to the dilemma faced by the applicant of today. In the former: 'Great difficulty was often experienced in discovering the name of the *vu* [ancestor] of a descent group, but discovered it had to be, because the authorities had pronounced that every group had one'.[40] In the latter case there is the applicant forced to produce paper certification within a society where such recording is rare, producing what is demanded by resorting to "forgery"[41] and consequently facing refusal. It is a small step from the invidious position of the Fijians of whom ancestral details were demanded in a form in which they did not exist, to that of the applicant today asked to provide a family tree. The dilemma faced by the former was that: 'genealogies are generally shallow in depth, subject to changes that new historical and political conditions dictate, and often merge with mythical tales'. In the face of this: 'The insistence on the discovery and existence of ancestor figures was thus ill–

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[39] **John Clammer**, 'Colonialism and the perception of tradition in Fiji' in Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199–220), p219.

[40] **John Clammer**, 'Colonialism and the perception of tradition in Fiji', Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199–220), p218.

[41] The term 'forgery' is used reservedly. Many applicants produce paper certification of events which have indeed taken place some years before (such as a marriage or a birth) the event true, the document a later classification. Immigration operatives not only demand such certification, thus effectively inviting applicants to damage their credibility, but take a dim generalised view of all certification from the area concerned as a result of it.

conceived, yet because it was required, passed into orthodoxy'.[42] For both parties, failure is at the end of either route open to them. In not meeting the qualifying imposed terminological distinctions, and in meeting them and thereby perpetuating the confusion with the 'authentic' which enables continued physical and mental domination.

It is clear from this example that in seeking to analyse the written word of the rules it is important to concentrate both upon the nature of the categories of passenger included and also the language in which the criteria of each category is expressed; the terminological distinctions. There is significance in where terminology is broad, where prescriptive and in what categories aggrandised criteria increases opacity and complexity. There is significance in noting what criteria is mandatory and what discretionary, where discretion is unequivocally stated and to what extent this is a positive or negative inclusion for the applicant. Taking such a focus enables exploration of what norm is being applied; who are given 'identities' through these classifications; what is being subsumed under or sacrificed to a universalising concept, and whether the demand to qualify under an abstraction ensure an impoverished narrative from the applicant.

The categories of the rules stand not only as pre-existing knowledge of those who fall under them, but also 'relevant knowledge'. By merely standing as categories within an ostensibly 'protective' legal document they determine what and who needs legislating against. This knowledge in turn becomes not only social currency, received knowledge of those who apply, but 'relevant' social currency. That relevance is to the pragmatic interests of the nation on whose

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[42] **John Clammer** 'Colonialism and the perception of tradition in Fiji', Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199-220), p218.

behalf the rules are ostensibly in place. The disabilities placed on the entry of those admitted become the fears held by the community in whose interests the rules are legitimated. Those fears in turn legitimise the exclusory nature of the legislation. As **Berger** and **Luckman**[43] would pose, the categories which are highly abstracted from everyday experience are re-presented as objectively real elements of everyday life. If investigation is then taken a step further, to determine if there are particular categories of person or nationalities who face disabling criteria, links may be made to specific socio-political undercurrents within the legislation.

Parliamentary debates are texts which are revealing in terms of such issues as those raised in the former paragraph. The advocacy of the 'protective' nature of immigration laws and their link to public fears upon which such 'protection' is justified, together with the selective focus for such fears, are all issues exemplified in parliamentary rhetoric. When the Secretary of State for the Home Department moved for a second reading of the Commonwealth Immigrants Bill, he claimed that: 'The justification for control...is that a sizeable part of the entire population of the earth is at present legally entitled to come and stay in this already densely populated country....Most people, I think, would agree that eventually an influx on the present scale would have to be controlled'.[44] He immediately went on to state that: 'There are fewer countries more densely populated than our own....Immigration is becoming an increasingly important factor in this problem....Taking the immigration figures, there are immigrants from Canada, Australia and New Zealand...but many of

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[43] **P.L.Berger** and **T.Luckman**, The Social Construction of Reality, Penguin, Harmondsworth, 1966.

[44] **Mr R.A.Butler**, Secretary of State for the Home Department, Parliamentary Debates, Vol.649, 16 November 1961, Col.687.

these are not immigrants'.[45] Within an opening flourish, what is presented is an emotive picture of an already crowded island threatened (in the terms of apocalyptic vocabulary of 'a sizeable part of the entire population of the earth') with an influx of people who are carefully distinguished from the white commonwealth. In the face of this it is assumed any 'reasonable person' would support control. Throughout a debate lasting six hours these abstract threats posed by 'an influx' were given social reality in terms of the issues of housing, employment, health and community relations. All of these are basic areas of life where instability heralds impoverishment of the quality of life for the indigenous population. Responsibility for this impoverishment is laid squarely at the door of 'coloured immigrants'[46] and, as one member put it: 'the fact is that the Bill's whole impact falls upon the coloured immigrants from the Asian and West Indian countries of the Commonwealth.[47] The die was cast.

When it came to debate surrounding the Immigration Bill ten years later little had changed. The then Secretary of State for the Home Department introduced the necessity for comprehensive and permanent legislation with the words: 'It is right to say that many people are concerned about the possibility under the existing system of substantial numbers of people from abroad coming here, very substantial with their families, to take up jobs here and carrying with them the automatic right to remain here once they have arrived. This is what the main provisions of the Bill, the new system of control of entry, are about'.[48] The selective apportioning of control was dealt with in a different, but

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[45] **Mr R.A.Butler**, Secretary of State for the Home Dept., Parliamentary Debates, Vol.649, 16 November 1961, Col.688.
[46] Term used throughout the debate.
[47] **Mr Nigel Fisher**, Parliamentary Debates, 16 November 1961, Vol.649, Col.779.
[48] **Mr Reginald Maudling**, Secretary of State for the Home Department, Parliamentary Debates, Vol.813, 8 March 1971, Col.44.

nevertheless equivalent manner (this time by 'naming') in that the Bill introduced the term 'patrial'.[49] Responding to calls that patriality was a racial concept, the Secretary of State for the Home Department countered: 'It is said that most of the people with patrial status will be white. Most of us are white, and it is completely turning racial discrimination on its head to say that it is wrong for any country to accord those with a family relationship to it a special position in the law of that country'.[50] Yet as one member stated later in debate, 'naming' is but a means to translate a reality: 'whether we use the words "New Commonwealth", "tropical" or "non-patrial", what we mean is those born with black or brown faces'.[51]

By 1992, with the introduction of the Asylum and Immigration Appeals Bill, this formula of rhetoric had been well established. When the Secretary of State for the Home Department introduced this Bill for second reading his stress on a 'long and honourable tradition' of control could as easily have been reference to a proven line of rhetoric. Given the targeted focus of the Bill, distinction between passengers from different parts of the globe took on a different perspective, laying much stress on the UK being 'a country that is open to *bona-fide* visitors'.[52] In these terms, justification for control thus focused on 'civilised values', the Secretary of State asserting: 'I believe that it is necessary for the maintenance of these civilised values that we now strengthen our

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[49] The term to denote those with a 'right of abode' in the United Kingdom and thereby a right to come and go free of control: Citizens of UK and Colonies whose parents and grandparents were born here; Citizens of the UK and Colonies who. at any time, have been settled here for five years; any commonwealth citizen who had a father or mother or grandparent born in the UK. See **Mr Reginald Maudling**, Parliamentary Debates, Vol.813, 8th March 1971, Col.45.

[50] **Mr Reginald Maudling**, Parliamentary Debates, 8 March 1971, Vol.813, Col.46.

[51] **Mr John Hunt**, Parliamentary Debates, 8 March 1971, Vol.813, Col.91.

[52] **Mr Kenneth Clark**, Secretary of State for the Home Dept, Hansard, 2 November 1992, Issue No.1598, Col.21. My emphasis added.

system of immigration control'.[53] The implication of the words is that to advocate otherwise would clearly be to adhere to uncivilised values. Present also is the familiar litany of those areas of life which, with 'open entry', would otherwise be threatened, these encompassing: community relations, together with 'terrible pressures on our employment, on our housing, on our social services, on our health service and on our education service'.[54] Seeming unchallengeable logic similarly litters the rhetoric again: 'Every person of good will and common sense knows that there is a strict limit on the number of people who can be allowed....Common sense has to tell us, sadly, that we cannot allow people to stay here simply because....Common sense should tell us'.[55] In the face of such comment, to disagree is to be lacking not only in common sense but flying in the face of goodwill toward fellow citizens, within the knowledge that: 'our host population feels comfortable with a system that restricts to manageable numbers the influx of people from overseas'.[56]

The introduction of the word 'patrial' lends itself to debate upon the whole issue of terminology itself. As later discussion will suggest, the colonising process of imperialist naming which was 'the right to signify everything to be a noun'[57], was a powerful controlling tool. Employing the naming process within the context of immigration control is to embrace a legitimacy which presents the illusion of it being appropriate and indeed, meaningful. The term 'patrial' is an

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[53] **Mr Kenneth Clark**, Secretary of State for the Home Dept. Hansard, 2 November 1992, Issue No.1598, Col.21.
[54] **Mr Kenneth Clark**, Secretary of State for the Home Dept. Hansard, 2 November 1992, Issue No.1598, Col.22.
[55] **Mr Kenneth Clark**, Secretary of State for the Home Dept. Hansard, 2 November 1992, Issue No.1598, Col.21 and Col.22.
[56] **Mr Kenneth Clark**, Secretary of State for the Home Dept. Hansard, 2 November 1992, Issue No.1598, Col.21.
[57] **Homi K.Bhabha**, 'Freedom's Basis in the indeterminate', October 1961: The Identity in Question. A Special Issue, MIT Press, Camb., Massachusetts, Summer 1992, (46–57), p51.

instance of this. Criticism in debate within the House included comment that: 'The literal definition of "patrial" is "a native of one's own country". How one can stretch that to mean a relationship with a grandchild I do not know'.[58] Another member went further to state that: 'This Bill does not restrict numbers at all, but by means of the so-called patrial clause – a particularly nasty word to describe a pretty nasty concept – it greatly extends the number in theory by at least 20 million who have a right to come here, but it does so on a highly discriminatory basis'.[59]

Surrounding debate raised further questions in respect of terminology, in particular that of 'non-conducive to the public good'. This phrase joins others which stand lacking as absolute terms and which accordingly import an element of flexibility at very specific points. Companion terms include: 'serious and compelling'; 'normally' and 'may'. Perhaps the most 'weighted' phrase in this grouping is that of 'account to be taken of all the relevant facts'. As **Juss** points out, this gives the strong impression that executive discretion will always be on hand as the protector and saviour of rights which are otherwise not framed in absolute terms.[60] The disadvantages posed for applicants are voiced by **Legomsky** who suggests that when statutory language is inconclusive, court decisions on natural justice and fairness reflect a balancing of competing individual and public interests. In immigration cases the magnitude of individual interest is routinely ignored.[61] Thus what is ostensibly a 'balance' is weighted against applicants in immigration cases. That weight is

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[58] **Mr Sydney Bidwell**, Parliamentary Debates, 8 March 1971, Vol.813, Col.97.
[59] **Mr Roy Jenkins**, Parliamentary Debates, 8 March 1971, Vol.813, Col.147.
[60] **Satwinder Singh Juss**, The Administration of Immigration Control in the UK, PhD, Wolfsen College, Cambridge, 1985, p182.
[61] **Stephen H.Legomsky**, Immigration and the Judiciary, Clarendon Press, Oxford, 1987, p49.

the product (in part) of the rhetoric surrounding immigration, examples of which stand in extracts from parliamentary debate in this chapter and in discussion of media reportage in Chapter Six.

During the debate under discussion 'conducive to the public good' was the grounds upon which the Home Secretary reserved discretion and a factor in respect of refusing appeal rights. As one member put it, this stood as: 'one of the most absurd phrases ever dredged up'. This member concluded that: 'This ludicrous language "not conducive to the public good", whatever it means, should be made less subjective'.[62] Others identified the same scope for subjectivity, one member pointing out 'the vagueness and sweeping nature of this provision. It gives the widest possible definition'.[63] Another member posed a metaphor which indicated the scope and possible dangers of such subjectivity in suggesting: 'I suppose that it means that he can give the thumbs down, as the emperors of ancient Rome did, to anyone he does not like and get rid of him. The colour of a man's politics might decide whether the right hon. Gentleman thinks his presence is conducive to public good. It might be because he indulges in trade union activity; takes a certain stance on certain issues which are important to the immigrant community or to the indigenous population, or just does not like the colour of the man's eyes: any reason would do'.[64]

That the non-conducive category in fact 'serves many masters' and lends itself to call upon the most base of public mythology is seen in the campaign launched to exclude the US Civil Rights preacher Reverend Al Sharpton from

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[62] **Mr Hugh Fraser**, Parliamentary Debates, 8 March 1971, Vol.813, Col.140 and Col.141.
[63] **Mr Roy Jenkins**, Parliamentary Debates, 8 March 1971, Vol.813, Col.151.
[64] **Mrs Renee Short**, Parliamentary Debates, 8 March 1971, Vol.813, Col.138 and Col.139.

the United Kingdom[65] and in the part it played during the Gulf War.[66] The flexibility of terminology raises questions of whether it is a question of fact, law, degree or discretion.[67] This lack of specifity is itself a valuable weapon in the armoury of the government.[68] What makes it a dangerous weapon is not the fact that the power to exercise discretion is in itself in one parties hands. Overriding this is the danger which is embodied in the assumptions which underlie both the questions asked and considerations taken into account, in reaching a decision as to whether discretion should be exercised. This gives

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[65] Conservative MP's **Harry Greenway** and **Terry Dicks** sought to persuade the government to exclude the Reverend Al Sharpton at the time of his impending visit in April 1991. They did not succeed. Media reaction focused on depicting him as a fanatic anti-white crusader: 'Keep this race hate preacher out of Brixton - say MP's', Evening Standard April 19, 1991; 'MP's seek bar to black firebrand preacher', Observer, April 21, 1991; 'Kick black power leader out of Britain', Sunday Express, April 28, 1991 are a few of the press reactions. See 'Britain on Black Alert', The Black Parliamentarian Magazine, Vol.1, Issue 4, September to December 1991, p16.

[66] Two days after Operation Desert Storm there was introduction of a bar on all Iraqis seeking entry to, or permission to stay in the United Kingdom. The Home Office justification lay in the claim it was necessary 'to advertise we're in a war situation'. The blanket ban, described as 'without parallel anywhere else in the world and without precedent in Britain', led to visitors, students and other applicants alike having applications refused on the grounds 'you are an Iraqui national' with recourse to a right of appeal that in the circumstances was worthless. As one lawyer stated: 'It is quite frightening that you can have rules like this without emergency legislation and without anybody bothering about it. They are playing God. They have complete control with nobody to question them'. See **Julie Flint**, 'Quiet changes in the rules bar Iraqis from Britain', Observer, March 3, 1991, p17.

[67] **Stephen H.Legomsky**, Immigration and the Judiciary, Clarendon Press, Oxford, 1987, p13, posing these alternatives for the phrase "conducive to the public good".

[68] **Legomsky** suggests that the broader the discretion: the more likely the court will be to regard the decision as one of policy, to which the natural justice rules are inappropriate; the less likely the court will be to view the decision as the application of pre-existing rules or the resolution of disputed facts, to which the natural justice rules might seem more appropriate. **Stephen H.Legomsky**, Immigration and the Judiciary, Clarendon Press, Oxford, 1987, p29.

rise to a situation where: 'The violence of injustice begins when the judge and the judged do not share a language or idiom'.[69]

Entering into the thinking behind such decisions are not only policy considerations but discourses which 'read' people in a particular way. The tenor of these readings is suggested by an analysis presented by **Fitzpatrick**[70] who offers that the palpable national connections of law and its transcendent universalist claims renders the law an expression of national superiority. When that superiority incorporates racism, as other chapters within this thesis suggest[71], the law is captured as an expression of it. Ethnocentric elevations of law are the result and it is these which attend upon how people who come before the law are 'read'. If these conceptions transform and re-align the identities of those who seek discretion in the immigration arena then the mere promise of the opportunity to benefit from discretion is itself illusory.

Categories within the rules function as 'terminology' which 'names'. A brief excursion is offered here into examples of how categories can become vehicles of discrimination. Chapters Four and Five will take discussion further in detailing the 'roles' embraced by categories of passenger and the manner in which these translate the singularity of applicants. Through these categories:

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[69] **C.Douzinas** and **R.Warrington**, '"A well-founded fear of justice": Law and ethics in postmodernity', Law and Critique, Vol.2, No.2, 1991, (115-147), p130.

[70] **P.Fitzpatrick**, 'Racism and the Innocence of Law', Journal of Law and Society, Vol.14, No.1, Spring 1987, p119-132.

[71] The political and intellectual superiority of Europe has been maintained over time by a eurocentric bias in the production, dissemination and evaluation of knowledge. Academia has been amongst those sectors of society engendering categories and approaches which have maintained a differentiated image of others not in the West. Not least amongst them have been anthropologists, of which category discussion is found within the thesis text. For discussion see **G.G.Joseph, V.Reddy** and **M.Searle-Chatterjee**, 'Eurocentrism in the Social Sciences', Race and Class, Vol.31, #4, 1990, p1-26.

'Concrete individuals are turned into legal subjects, unique and changeable characteristics are subsumed under (ideal?) types and roles, singular and contingent events are metamorphosed into model 'facts' and scenes in impoverished narratives constructed according to the limited imagination of evidence and procedure. And as the law ascribes fixed and repeatable identities, and transparent and calculable intentions to those brought before it, it necessarily negates the singularity of the other'.[72] Thus the conceptual framework of what a 'family' is or what a 'parent' is, might be said to ignore or serve as a stumbling block to an unmarried mother. This tenor in its turn can be identified as disadvantaging members of particular cultures where extra-marital relationships are not uncommon.

In such instances, can the criteria of this category be seen to be incorporating a deliberate omission in order to operate a very specifically targeted exclusory policy? Equally, does the resident status offered to only specific categories of passenger after a statutory period encourage a very particular kind of economically useful applicant? Both of these examples figure in more depth in later discussion. The point I wish to make here is if it can be demonstrated that the law ascribes calculable identities and intentions upon those who come before it, who is transcribed and to what end? The language of the immigration rules demands 'identification' on the part of applicants both in terms of the categorisation itself and the manner in which categories are addressed. Yet to whom the addresses is focused is decentred. As an example, the fiance(e) and marriage rules, by incorporating a criteria that the parties must have met, implicitly targets those who engage in arranged marriage practices without there being an explicit statement to this effect. The definitional element of

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[72] **C.Douzinas** and **R.Warrington**, '"A well-founded fear of justice": Law and ethics in postmodernity', Law and Critique, Vol.2, No.2, 1991, (115-147), p137.

'meeting' is incorporated as a 'natural and essential' expectation of marriage ritual and thereby identifies what the 'norm' of such ritual is seen as, and what the 'alien' is identified by. This decentres what is in fact a hurdle for a particular group. The site of power in which all this takes place, the wider continuum of immigration control, both supplements identification by and through language but is not reducible to it.

The sites of interaction of immigration control, interviews at consular offices abroad and at ports of entry, or examination in appeal courts, have their own systems of rules, vocabulary and spaces to speak. These define who can speak and how. The interviewer produces texts for an hypothesised reader which is the appeal court, and thus takes into account expectations of that reader along the lines of the institutional culture of which they are a part. The expectations of the reader and of the institutional culture are both an integral part of the textual construction which is the final appeal statement. The Immigration Appeals Bill[73] will form part of a more detailed reading in Chapter Three as the subject matter of adjudication and appeals. In that chapter the written 'texts' which are the explanatory statements produced for appeal and written determinations of adjudicators and Tribunals will be examined in more detail. Judgements by immigration appeal courts stand as a plimsoll line of inclusion and exclusion legitimated by the very context of utterance. Consideration will therefore be given to which cases become reported and thereby part of the 'public' domain, in order to explore if there is a tenor of interpretation that is consistently exalted and in order to explore what, if any, interpretations are consistently denied public voice.

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73 Parliamentary Debates, House of Commons, 5th Series, Vol.776, 22 January 1969, Col.489–568.

The terminology and categories of the rules themselves operate their own 'divination process' of who goes forth to appeal sites. This is to say that the system of the sites is reinforced by the rules themselves as a system. As example, what a mother is or what a widow is structures the object of knowledge for the system in such a way that they become simply what 'is'. Thus the various conditions which attend upon widowed parents and grandparents being admitted for settlement, that they be: 'wholly or mainly dependent'; 'without close relatives to turn to'; 'living alone'; 'in the most exceptional compassionate circumstances'[74], have been held to be 'plainly humanitarian'.[75] Qualifications of the criteria embraced in precedent such as '*necessary* dependence' and 'without close relatives...to turn to *in case of need*', lie within the wider continuum of immigration control which operates through the ostensibly neutral language of law.

Like **Carroll's** Alice those who seek entry must step into a different world, one which is 'law' and yet not 'law' and in which universal categories are embraced through semiotics. Rules such as those governing parents and grandparents are validated as being above challenge by a humanitarian tenor which ostensibly embraces all, universally. What the rules do not say embodies patterns of inclusion and exclusion created by the challenge a particular application represents to that which the immigration rules are in place to protect. The 'divided reality' which identity already is becomes diversified further. The system underplays the extent to which processes actually enunciate essential unity of identity and actually assert that what is being applied are universal categories which by definition cannot be discriminatory. In truth the identity to which passengers are bound by nodal points within immigration law in their

74 'Statement of Changes in the Immigration Rules', HC251, Para 56.
75 IAT v Swaran Singh and others [1987] Imm AR 563.

quest for entry, is narrow and xenophobic. There is a repetition of the Enlightenment notion of 'naming' becoming crucial identification in which the 'mother' defined by the rules becomes a racial formation. An historical focus upon the position of women in society provides an expository parallel. When economic conditions required the reversal of the behaviour and site of behaviour posed by the 'normal' ideology of 'womanhood', there needed to be a re-alignment of fixed political and ideological identities. Women's 'difference' within another sphere became the new universal, joining an assumed essential difference in the 'name' of woman. What was marginalised was the fact that this assumed (new) difference and its salience was produced by the discrimination they faced within their adopted horizons. Within the ambit of the immigration rules subjects are constituted in language and to succeed must acquiesce to being so constituted. In so doing they effectively become a citation or cipher.

This 'right to signify' which the immigration rules adopts is a right which the British have adopted in other centuries and contexts. The consequence for the twentieth century passenger is their 'reduction to playing the role in someone else's image of the past'.[76] The Fijian example called upon earlier exemplifies this stance in the communal system which stood as an account of traditional Fijian social structure. This system named social units and defined their relationship and was instituted precisely because the British administration believed it to be traditional.[77] As a result, varied authentic terminological distinctions were eclipsed by the officially sanctioned model. As **Clammer**

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[76] **J.Friedman**, 'Narcissism, roots and postmodernity: the constitution of selfhood in the global crisis', Modernity and Identity, (eds) **Scott Lash** and **Jonathan Friedman**, Blackwell, Oxford, 1992, (331-366), p348.
[77] **John Clammer**, 'Colonialism and the perception of tradition in Fiji', Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199-220), p215.

suggests of these repercussions of colonialism: 'many anthropologists have fallen into the trap of accepting the new image as the old, and confusing both with the authentic'.[78]

When **Walcott** writes in Names[79] he is speaking of just such colonisation in the Caribbean, through the possession of a space by means of the power of naming: 'culture as the noun for naming the social imaginary, and culture as the act for grafting the voices of the indentured, the displaced, the nameless, onto an agency of utterance'.[80] The colonising process of imperialist naming or 'the right to signify everything to be a noun'[81], as in the Fijian instance, directs how people signify, in what space they signify and with what power of access. As **Bhabha** suggests: 'According to this ideology, language is always a form of visual epistemology, the mining of a pre-given reality; knowing is implicated in the confrontational polarity of subject and object, Self and Other'.[82] The

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[78] **John Clammer**, 'Colonialism and the perception of tradition in Fiji', Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (199-220), p220.

[79] **Derek Walcott**, 'Names', Collected Poems 1948-1984, The Noonday Press, Farrar, Straus & Giroux, New York, 1990, p305-308.

[80] As suggested by **Homi K.Bhabha** in 'Freedom's Basis in the indeterminate', October 61: The Identity in Question. A Special Issue, MIT Press, Camb., Massachusetts, Summer 1992, (46-57), p51.

[81] **H.K.Bhabha**, 'Freedom's Basis in the indeterminate', October 61, Summer 1992, 51. This relates to the words of **Derek Walcott** in his poem 'Names', where he writes of the pedagogical process of imperialist naming and African acquiescence:

> Being men, they could not live
> except they first presumed
> the right of every thing to be a noun.
> The African acquiesced,
> repeated, and changed them.

Derek Walcott, 'Names', Collected Poems 1948-1984, The Noonday Press, Farrar, Straus & Giroux, New York, 1990, (305-308), p307.

[82] **H.K.Bhabha**, 'Freedom's Basis in the Indeterminate', October 61: The Identity in Question. A Special Issue, MIT Press, Camb., Massachusetts, Summer 1992, (46-67), p53.

institutional culture of the immigration rules embraces ethnographic authority to represent and identify who is other. This culture: 'also, ultimately, through colonial and post-colonial apparatuses, returns that identity to the other so that it becomes, by hook or crook, the latter's own identity'.[83] Passengers face the dilemma of practising their own authenticity or the 're-interpreted authenticity' the rules demand. The latter is the only route to (potential) success, if they do not get it right they are lying and stand as unauthentic, as did the Fijians. The operatives are the law, the law in turn the "State's Emissary" whose function is: 'to transform "a matrix of real historical experience" into a "matrix of abstract legality"'[84] which stands as official truth.

The rhetorical structure which channels applicants to this route is ostensibly objective and value-free, apolitical and neutral. Such is the status implicit in law. Yet the immigration rules are secondary legislation, and their hybrid nature ensures a 'flexibility' in content. An example is found in the chosen vocabulary and subsidiary internal guidelines and instructions, all of which belies the cloak of legitimation the rules vicariously enjoy. The tropes and structures of such texts as adjudicator's determinations and entry clearance officer's explanatory statements bear the hallmark of the needs of production and reception. They assert 'truths' without qualification through a superficial readability standing as access to the law. In the same way, the immigration rules proscribe the presentation of their subjects.[85]

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[83] **Jonathan Friedman**, 'Narcissism, roots and postmodernity: the constitution of selfhood in the global crisis', Modernity and Identity, (eds) **Scott Lash** and **Jonathan Friedman**, Blackwell, Oxford, 1992, (331-366), p332.

[84] **Upendra Baxi**, '"The State's Emissary". The Place of Law in Subaltern Studies', Subaltern Studies VIII, (eds) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, Oxford, 1992 (247-264), p249.

[85] For these qualities addressed in travel writing and literary texts, for the revelatory potential of their being essentially an instrument within colonial expansion, see: **Sara Mills**, Discourses of Difference: an analysis of women's travel writing and colonialism, Routledge, London, 1991.

Explanatory statements are a product of a configuration of discursive structures with which the author engages within an institutional culture. The immigration rules negotiate the gap between the institutional culture and socio-political culture of the world immigration control 'protects'.[86] Chapter Three discusses in more detail the persuasive power of the explanatory statements of operatives which are designated distinctly as: 'a written statement of facts'.[87] Suffice to include in debate here that each statement becomes the single interpretation required by the ideological system underlying control. The substantiation of the reliability of the narrator of that interpretation is achieved through an appeal to the 'authorities' of professionalism and institutional culture. However, as Chapter Four and Five suggests, what constitutes the 'experience' of the interview for the applicant is invariably very different from what the narrator sees the experience as being. The inclusion within each statement of the caveat that applicants were 'not fatigued, nervous or unwell' will be seen to exemplify this.

The format of appeal proceedings which challenge such decisions acts as a foil to a textual construction which has been written for a hypothesized complicit reader. A range of textual conventions makes the interviewing subject invisible. The fact that the very application is itself at the instigation of the applicant positions the interviewer as "invited" to investigate, and reinforces journalistic conventions which suggest the applicants 'speaking for themselves'. The statement is contextualised as the experience of the applicant and thereby carries with it connotations of a focus upon them, yet the very fact that the

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[86] Discussion of media presentation in Chapter Six and reference to parliamentary debate earlier in this chapter, both make clear the protectionist cloak within which control is shrouded and which stands as its armour against criticism.

[87] Immigration (Procedure) Rules v.8

system legitimises the absence of and lack of challenge to the narrator, is an indirect message to identify not with the subject under investigation but the investigating subject. The appeal is to that which is the ultimate gauge of validity of what is claimed and how it is claimed.

CHAPTER THREE

THIS SWIFT BUSINESS I MUST UNEASY MAKE, LEST TOO LIGHT WINNING MAKE THE PRIZE LIGHT.

Because authority, though it err like others,
Hath yet a kind of medicine in itself
That skins the vice o'th'top[1]

INTRODUCTION: IMMIGRATION APPEALS ADJUDICATION

It will be suggested in this chapter that the immigration appeal system disadvantages applicants by giving weight to a very particular type of 'knowledge', and thereby evidence. One effect of this inbuilt disadvantage for applicants is manifested in the manner in which the re-interpretation of facts by the appellant's representative is rendered ineffectual by the very parameters of debate in the immigration appeal court.

Central to the orchestration of this disadvantaging of applicants is the explanatory statement, the statement of facts upon which the applicant is judged. Argument within this chapter re-appraises the premise of taking the refusing officers statement as an unproblematic 'given' in the cycle of seeking justice. If this statement is laid open to question in the manner in which the appellant's statements are, a whole additional area of challenge to the refusal itself is opened up. A different tune is effectively afforded the appellants voice.

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[1] **William Shakespeare**, Measure for Measure, Act 2, Scene 2, lines 134-136, Penguin Books, Harmondsworth, 1987, p84.

Not least of these different tunes is the recovery of a different kind of 'knowledge' relevant to the experience of the interview the appellant has undergone (matters which form part of wider debate in Chapter Six).

The placing of the explanatory statement on a different footing, as a document equally open to question, supplants the system which dictates 'knowledge' on a 'need to know' basis and which thereby marginalises certain 'truths' and silences others. It will be suggested that this dictating extends even unto the appellants representative, through prescribed 'role'. This role requires the appropriation and subsuming of the experience of the appellant at the interview, rather than a re-presentation of it as an equally valid 'truth'.

Another strand of debate in this chapter is that the manner of 'translation' which takes place in the appeal courtroom disadvantages a very specific section of those applicants seeking entry. That selectivity is best demonstrated by a remark of one member of the House of Commons during the second reading of the Immigration Appeals Bill. Claiming to speak for a large percentage of the population, he suggested: 'if there is to be no further coloured immigration, then it follows as a corollary that there is no need for an appeal'.[2]

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[2] **Sir Gerald Nabarro**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.540.

OFFICIAL AND REPRESENTATIVE

you will greet yourself arriving
at your own door, in your own mirror[3]

Each of the propositions within this chapter have their root within personal experience. Each role held within this experience presented a different insight into one field which generated an effective 'double-think. The question which arises from this and upon which argument in this chapter develops, is: Was my experience qualitatively different once I stepped out of the ambit of civil service role into that of representative of appellants as an immigration counsellor?

Distinct accountability and frameworks of operation characterised the roles I held. As an immigration officer forming part of the institutional culture identified in Chapter One, identity and attitude was presented for me to the public via the tool of my trade, the immigration rules. This was done in the words: 'Immigration Officers will carry out their duties without regard to the race, colour and religion of people seeking to enter the UK'.[4] This litany is the twentieth century equivalent of the earlier Spanish 'Requerimiento', the legitimating tool which was required to be read to the Indians of the New World before hostilities could commence. It shares the same hollow rings as the Requerimiento whose delivery has been characterised thus: 'read to trees and empty huts when no Indians were to be found. Captains muttered its theological phrases into their beards on the edge of sleeping Indian settlements, or even a league away before starting the formal attack...ship captains would

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[3] **Derek Walcott**, 'Love after Love', Collected Poems 1948–1984, The Noonday Press, Farrar, Straus & Groux, New York, 1990, p328.
[4] 'Statement of Changes in the Immigration Rules', HC251, para 6.

sometimes have the document read from the deck as they approached an island'.[5]

The litany incorporated at the outset of the public document which is the immigration rules accrues the same legitimation value for what is to follow in the operation of the complete document. It cloaks 'hostilities' in a rhetoric which promises more than it delivers. That it forms part of a public document as an opening declaration, and is not something operatives are forced to put their signature to or intone at the point of assuming the mantle of responsibilities of office, is significant. It reinforces the assumption of a 'role' that is required, the stepping into a persona of an institutional culture. The liberal discourse 'without regard to' imports the notion of being able to stand in a position and evaluate others, to exclude some things and accept others. This omnipotent stance has dual effect. The wording of the liberal tenet functions to legitimate operatives as objective decision–makers in the eyes of the public, whilst extending to those operatives the element of choice born of power. The confidence that is born of this is less a perpetual reminder of their responsibility to act in a particular way than an effective 'insurance policy' which they can be confident will legitimate whatever they do.

Training procedures and unpublished instructions to operatives suggest that the public denial that certain named elements will have negative effect (the essence of 'without regard to') is in fact a rather optimistic claim. As Chapter One has illustrated, in the normal course of duty culturally specific stereotypes are applied to direct the attention of operatives to candidates likely to have cavalier

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[5] **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonisation from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, p104–105.

attitudes to the rules. Such direction renders the operative a tool of the socio–political functions they serve and in turn legitimate.

Being 'outside' the administration of the rules as a representative of the appellant and in a perpetual position of challenge to the rules, clearly generates a distinctly different work ethos. Nonetheless it falls within a facet of the administrative framework in that the role of representative has been constituted under specific legislation, that of the immigration appeal system. The process of administration not only makes such provision for the system to be challenged, but directly funds an organisation to adopt the stance of accountability to the appellant. However that accountability and role as representative is mediated by the nature in which the process facilitates challenges to it. This process inherently directs the nature and quality of those challenges. The 'invitation to challenge' which is the right to appeal, has a liberal tenor in itself which clearly further legitimates the system. However it is important to assess whether the mechanics of this invitation actually render challenges diminished in strength or negated within the immigration appeal court context.

Employed within an independent body functioning on behalf of those refused entry, refused variation and clearance abroad, representatives remain nonetheless part of the immigration appeal machinery. The independence has limits. As suggested by the Home Secretary in the parliamentary debate which surrounded the introduction of a voluntary body to assist applicants: 'I accept that the organisation should be recognisably independent of government control but, at the same time, the voluntary bodies concerned in setting up the new organisation will recognise that, in so far as it is financed from public funds, there must be adequate safeguards to ensure that this public money is spent for the objects that Parliament intended...where large sums of public

money are involved it is unreasonable to demand that there should be no accountability at all'.[6] These words suggest the envisaged role was originally both legislated by[7] and defined by the terms of that machinery. As such, identity within that role is best described as deriving from 'modes and relations of inclusion and exclusion, of fusion yet separation'.[8]

The vast proportion of the work of an immigration counsellor entails representing those abroad who have been refused clearance to travel. These applicants remain unseen clients, their channel of communication being through correspondence presented as evidence at appeal perhaps supplemented by the verbal evidence of relatives and friends in the United Kingdom appearing as witnesses. Yet even this 'knowing of them' is mediated, mapped-out and boundaried by the fact that the appeal takes as a focus one central document, the explanatory statement. This 'statement of facts' by either entry clearance officer or immigration officer is made available to all parties to the appeal in advance of the hearing. Thus letters to those appealing from abroad which are directed toward preparation of a case have, as a necessity, to take this statement as a premise. Enquiries of the applicant are directed by the contents of the explanatory statement, asking them to explain why something was said, why something was produced. This approach entails a validation of that very statement as 'knowledge' from which to proceed. As such the appellant's representative is made immediately complicit in constructing a criteria of

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[6] **Mr James Callaghan**, Parliamentary Debates, Official Report, Series Five, House of Commons, 22 January 1969, Vol.776, Col.499.

[7] The Report of the Wilson Committee of Enquiry, Cmnd.3387, made proposal both for an Immigration Appeals system and the establishment of an organisation independent of government control to represent appellants.

[8] **P.Fitzpatrick** in **R.Matthews** (ed), Informal Justice?, Sage, London, 1988, p188.

hierarchy of probability in 'accepting definitions of reality projected by persons in authority, over those subordinate'.[9]

The role of appellant's representative demands a particular manner of procedure, and demands production of what is regarded as valid 'evidence'[10] and 'credible' witnesses. Argument must be directed to both the immigration rules at the root of the particular refusal and the precedent cases attending upon the relevant category of passenger. The latter, decisions by the immigration appeal tribunal which stand as accepted interpretation and elaboration, constitute an additional film covering the rules themselves.

In cases where the appeal relates to a decision taken abroad or at a port of entry, the absence of the appellant means that it is necessary to 'construct' the character and person of the appellant in argument before the court. This becomes the only means for the adjudicator to have 'knowledge' of them. That construct itself is not only by its very character inadequate but has to take a particular form in being boundaried by the explanatory statement contents. Thus not only does the absence of face-to-face interaction deny any immediate presence of the expressivity and subjectivity of the appellant, it is also always less a 'character' that is portrayed than a facet of that character. This facet is their status as a category, for example as a visitor, a fiancee or widowed mother. This is a profound translation of the applicant and upon which the applicant is to be judged. It serves a particular purpose. To quote **Cheyfitz** on the matter of translation: 'to sever the literal from the figurative absolutely is to naturalise it, in that such severance desires or represses the figurative basis of the literal – its constitution as an ideological or culturally specific formation. It

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[9] **Jeanne Gregory**, Sex, Race and the Law, Sage, London, 1987, p83.
[10] Section 18 of the Civil Evidence Act 1968 shows that its provisions do not apply to proceedings before immigration appellate authorities.

is worth remembering here that among the oldest Western definition of translation is – "to use in a metaphorical or transferred sense" – that insists on an indissoluble and complex relationship between the literal and the figurative. In this naturalisation of the literal, which attempts to defend certain "places" from the process of translation by attempting to control it...these romances of identity seek to erase the cultural or ideological basis of racial and class identity'.[11]

Such marginalisation of the identity of applicants is commonplace and is extended equally to their social reality. An example of this extension is found in the grounds upon which the government proposed removal of appeal rights from certain categories of visitors and students in 1992. Introduced via being 'tucked into the middle of an asylum Bill'[12] the Home Secretary suggested that in the context of an overloaded appeal system[13]: 'the issue in the case of visitors does not justify the full panoply of judicial consideration and publicly funded representation...these are not matters of life and death'.[14] The logic of the Home Secretary was reiterated as merely: 'removing rights of appeal against decisions which do not have a fundamental impact on the lives of the individuals concerned'.[15]

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[11] **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonization from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, p14.
[12] **Mr Mike Gapes**, Hansard, 2 November 1992, Issue No.1598, Col.97.
[13] Marginalised within the complaint of an 'overloaded system' was the fact that the system created the problem, only to then penalise the very victims of it by positing them as the authors of their own fate. As stated by **Mr Roy Hattersley**: 'the reasons why there are so many appeals against refusal to allow a visitor entry were largely documented in the Government's evidence to the Select Committee on Home Affairs: the introduction of visa for people from India and Pakistan and the limitation on visits to six months'. Hansard, 2 November 1992, Issue No.1598, Col.50.
[14] **Mr Kenneth Clarke**, Secretary of State for the Home Department, Hansard, 2 November 1992, Issue No.1598, Col.33.
[15] **Mr Wardle**, Hansard, 2 November 1992, Issue No.1598, Col.112.

Through these words, a translation takes place wherein weight is given to what the perception of visitors is not (life or death) rather than to what it is. As one member put it, referring to the focus of the Home Secretary: 'He says that it is not a matter of life and death. How would he feel if a relative of his who was living abroad were refused entry to attend a wedding, a funeral or just to visit?....To say that it is not a matter of any huge significance is nonsense: it is a matter of enormous significance'.[16] The disallowing of the importance of such events for applicants, described by one member as an approach which 'shows ignorance of ethnic minorities'[17], effectively becomes the legitimating factor in: 'a novel, bizarre and misguided principle of the legal system that if the exercise of legal rights is causing administrative inconvenience, the solution is to remove the right'.[18]

Raising a distinction between cases within the context of discussion of 'life and death issues' of asylum applicants, the crux of the Home Secretary's words, the diminishing of rights available to visitors, are given additional force: 'we recognise that a proper appeal opportunity is essential to confidence in the fairness of decisions...but big issues are not necessarily at stake in all immigration cases'.[19] During the course of debate preceding the second reading of the Asylum and Immigration Appeals Bill a number of members of the House of Commons reiterated examples of constituents which countered the claim made by the Home Secretary that such refusals counted as naught in the scheme of things and stood as mere 'disappointment'.[20] Such members

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[16] **Mr Tony Blair**, Hansard, 2 November 1992, Issue No.1598, Col.44.
[17] **Mr Roy Hattersley**, Hansard, 2 November 1992, Issue No.1598, Col.50.
[18] **Mr Tony Blair**, Hansard, 2 November 1992, Issue No.1598, Col.43.
[19] **Mr Kenneth Clarke**, Hansard, 2 November 1992, Issue No.1598, Col.32.
[20] **Mr Kenneth Clarke**, Hansard, 2 November 1992, Issue No.1598, Col.33 and Col.44.

pointed to instances which stretched the credulity of using the word 'disappointment' when: parents are heartbroken when their daughters, sons or granddaughters were refused permission for a brief visit[21]; when 'a refusal for a family member is a life sentence'[22] in that 'people may be separated forever from their relatives...if they have a refusal on their passports'.[23] Summing up the words of many was the argument that: 'The Home Secretary said that we do not need an elaborate appeal system for visitors because visits are not a question of life or death. However, people often come to visit a terminally ill relative. They may be grandparents coming for the birth of a grandchild. They may be coming to a daughter's wedding. These may not be the matters of life or death of which we think when we debate asylum, but they are matters of life for the community and they are an essential part of the community's life'.[24]

To succeed in an appeal it is necessary to effectively 'reconstruct' the person introduced in the explanatory statement. It is invariably impossible to place before the court a straightforward account of why they sought entry merely through correspondence or through relatives as witnesses. Rather it becomes the 'explanation' of the statements of the person who was before the refusing officer at the time of refusal which has to be presented at the appeal. Presentation in this way, whilst taking as a premise the refusing officer's account, means that any re-creation in the appeal setting has to be a creation in someone else's image. As Chapter Five suggests, being a 'mother' in ones own image is one thing, but being so in the terms of another is quite different. Equally, as preceding debate concerning visitors has demonstrated, there is a comparable sense of matters being seen in different terms, through different

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21 **Mr David Winnick**, Hansard, 2 November 1992, Issue No.1598, Col.43.
22 **Ms Clare Short**, Hansard, 2 November 1992, Issue No.1598, Col.44
23 **Mr Tony Blair**, Hansard, 2 November 1992, Issue No.1598, Col.44.
24 **Mr John Austin-Walker**, Hansard, 2 November 1992, Issue No.1598, Col.95.

eyes. The words of one MP demonstrates this, recalling the example of a woman of 60 refused entry to attend a family wedding. In that application the Home Office considered: 'that it was unreasonable for the payment for her visit to be made from such a small income and felt that there must be some ulterior motive'.[25] What was marginalised was the fact: 'the mores of that community mean that they spend money on attending a family wedding'.[26] The world of immigration encompasses the 'proper' and the 'figurative', yet it is one in which precedent directs the applicant can only exist in the latter, in translation. The moment of the immigration appeal is an intensified moment of this process, one in which: 'Figurative language, of which metaphor or translation is the model, is the driving force of interpretation, that is of language itself. For this language within language that is the force of the language opens up a space between signified and signifier, a rupture of identity, where the conflictive play of dialogue takes place that constitutes the speakers (writers/readers) for and significantly through each other'.[27]

Working within the unquestioned parameters of the refusing officers statement of events necessitates a virtual 're-reading' in another voice of the same facts that were interpreted as material for refusal. The subjectivity of the 'refusing voice' is substituted by the subjectivity of the appellant's representative. The latter is based on a knowledge of the appellant which has been filtered through conversations with relatives or friends and through correspondence with the appellant post-refusal. However the system dictates these two subjectivities cannot be accorded the same weight. The 'knowledge' with which the subjective appraisal of the appellant's representative speaks is born of instances

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[25] **Mr Roy Hattersley**, Hansard, 2 November 1992, Issue No.1598, Col.51.
[26] **Mr Roy Hattersley**, Hansard, 2 November 1992, Issue No.1598, Col.51.
[27] **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonisation from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, p38.

of collection where the specific motivation is toward what is needed as a challenge to the facts before the court. It becomes 'tainted' thereby and falls lower in the hierarchy of knowledge before the court upon which a decision has to be taken. Yet the fact that the originator of the refusal equally premises knowledge within an imperative, one directed quite specifically by the institutional culture described in Chapter One, is never grounds for questioning what might be assumptions underlying both what was collected as evidence for refusal and how it was collected.

The debate at appeal becomes one of polarities in which the equivocality between the two poles is repressed and 'the literal and figurative aspects of language become hierarchised into absolute and oppositional entities, with the masters occupying the territory of the literal and consigning the slaves to that of the figurative'.[28] On one side is the words, action, and behaviour of the appellant which have been invited by questioning, interpreted and transcribed by a refusing officer and in turn re-interpreted and described in court by a Home Office Presenting Officer whose job it is to uphold refusal. This process of translation is a political act where one party determines what is 'proper speech' within a language: 'whose emphasis is on monologue rather than dialogue, on semantics rather than syntax (on identity rather than relation). Doubt or equivocality is a wilderness to this language, the terms of which strive to drive doubt out and clear places in the name of the proper. The terms of this language are fences against the encroachment of other terms'.[29] On the other side are the words, action and behaviour of the appellant at the time of refusal re-interpreted by the appellant's representative with evidence. This

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[28] **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonisation from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, p39.
[29] **Eric Cheyfitz**, The Poetics of Translation: translation and colonisation from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, p156.

evidence takes the form of explanations by the appellant replying to queries and, in some cases, the form of witnesses such as United Kingdom sponsors. Given what has been identified as a dichotomy in the weight given the two interpretative accounts, success rarely rests upon re-interpretation alone. Rather it falls in tandem with the production of additional evidence which was in existence at the time of refusal but not available to the refusing officer. Such a stance ensures that even in appellant success it is less a matter of finding the refusing officer at fault than a matter of standing testimony to the correctness of the original documented refusal and re-asserting the reliability of the refusing officer by claiming if he had been privy to the evidence he would have authorised entry. The appellant remains culpable even in success in having failed to supply the criteria of 'satisfying' the officer at the moment he or she was required to do so. The appellant remains the architect of his or her own misfortunes.

As an immigration counsellor acting for persons refused my perspective was informed by previous role held within the institutional culture of the Immigration Service. In preparing clients for court appearance or submitting applications on their behalf, I adopted the stance of officials they had met in order to challenge the decision of those very officials. In order to take issue with the conclusions which led to refusal I retraced my own training in assessing interviews recorded in explanatory statements, using personal experience to determine what the operative had assumed and why. In so doing I was less re-presenting my clients experience as an alternative and equally acceptable knowledge, than seeking to challenge an official knowledge in and of itself. The recognition of assumptions made by refusing officers enabled preparation of a case against refusal by directing me to seek evidence and statements which would challenge what I knew from experience to be 'learned assumptions' or stereotypical notations. Yet this had to remain a covert sub-

text of the evidence in which the challenge was grounded in that the system provides no room for direct accusation of assumptions made and how these might direct questioning and the transcription of replies in an explanatory statement.[30]

The appeal process does less to enable the recounting of the appellants voice than to validate the experiences of others in terms of their 'role' within immigration control procedures, these are the operatives and appeal court which constitute the decision-making body. Supporting this argument is the role of 'belligerent prosecutors' adopted by Home Office Presenting Officers, even in indefensible cases.[31] In order to develop argument around this issue this chapter examines the formal and informal properties of appeal courts; roles within the courtroom; qualities of the bilingual courtroom; the public and private nature of reported and unreported precedents and the process of the appeal machinery.

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[30] Claiming this emphasis in my work is not to say that the understanding of and empathy with a client's experience was as absent as my previous official role dictated it to be. As an immigration counsellor I was in a relationship with clients as a result of their choice. The nature of our interaction was thus more multi-faceted. I spent longer in discussion with them; walked into court on their behalf; joined them in places of detention; met friends and relatives; shared a range of emotions with them. In short, I appeared 'on their side' officially, emotionally, physically and politically.

[31] Sixth Report from the Home Office Affairs Committee, Session 1984-1985: Immigration and Nationality Department of the Home Office, HC277, para 5.8, page 8.

THE HEARINGS

> *the debris of the soul, broken memories, sloughed-off selves, severed mother-tongues, violated privacies, untranslatable jokes, extinguished futures, lost loves, the forgotten meaning of hollow booming words, land, belonging, home.*[32]

In 1967 the Report of the Wilson Committee of Enquiry[33] recommended the establishment of an immigration appeals system, following upon their having visited both the USA and Canada where appeals procedures were in operation. As pointed out by **Dummett** and **Nicol**, the appeal system: 'had clearly been envisaged by the Wilson Committee as a co-operative, non-adversarial procedure for sorting out cases of family settlement and of disputes over entry where language difficulties and cultural differences had created problems which could be benevolently resolved'.[34] However, parliamentary debates that surrounded the introduction of the Bill suggest that concern for the welfare of those seeking entry was less than a primary concern. A particular focus of comment was the national image. As the Secretary of State for the Home Department suggested in debate: 'I think the Bill will enhance the reputation of the country for justice and fair dealing'.[35] His sentiments were echoed by another participant when speaking of the United Kingdom as a place arrivants: 'have been taught to regard as the mother of freedom and justice'.[36]

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[32] **Salman Rushdie**, Satanic Verses, Viking/Penguin, Harmondsworth, 1988, p4.
[33] Report of the Home Office Committee on Immigration Appeals, Cmnd.3387.
[34] **A.Dummett** and **A.Nicol**, Subjects, Citizens, Aliens and Others, Weidenfeld & Nicolson, London, 1990, p208.
[35] **James Callaghan**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.501.
[36] **Gordon Oakes**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.509.

Indeed national pride in affording the right of appeal is evident in the government boast within the booklet "Guidance to Members of Parliament", that: 'Britain is the only nation in the world to offer a statutory right of appeal over refusal of entry from abroad'.[37] This belief in the prestige of the nation lends itself to the assumption of there being a duty to legislate on behalf of others, an assumption which pre-supposes a 'reading' of those legislated against. This echoes the imperial mission which assumed a pivotal role in the solution to problems in India: 'That function is ours....we have both education and discretion, and are aware of the ill and the cure....Of all the conquests India has suffered through its troubled history, the coming of the British has wrought most good for the peoples....Like Christ we submitted to contumely and stoning; but, undaunted, we wrought our miracles'.[38]

A major thrust of the Wilson committee recommendations was the establishment of: 'an organisation, recognisably independent of government control, the functions of which would include that of advising Commonwealth citizens and aliens who are in difficulties with immigration control, where necessary assisting them in presenting their cases to the Home Office and the appellate authorities'.[39] This was to become the UK Immigrants Advisory Service.

In one wide embrace then was set in motion a system which was to be characterised by the qualities of informality and benevolence, and having at its core a 'co-operative, non-adversarial procedure'. Parliamentary debate which

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[37] **Ms Glenda Jackson**, Hansard, 2 November 1992, Issue No.1598, *Col.90.*
[38] **R.J.Minney**, Siva or the Future of India, Kegan Paul, Trench, Trubner & Co. Ltd., London, 1929, p41-42.
[39] **A.Dummett** and **A.Nicol**, Subjects, Citizens, Aliens and Others, Weidenfeld & Nicolson, London, 1990, p208

surrounded introduction of the Immigration Appeal Bill records how: 'The Wilson Committee has thought that this new provision would give a new sense of security and protection to the individual'.[40] These facets echo the ideology of informal justice, the characteristics of which include naturalness, universality, increased access and participation, and deprofessionalisation. These characteristics contribute to the appearance of informal justice as de-politicized. Yet the subcutaneous layer that lies beneath this tissue grafting is in fact a regenerated para-professionalism and network of precedent which increases the opacity of the law and succeeds in 'formalizing the informal'.[41] Such is the product of, as one member of parliament put it: 'plainly trying to put an administrative function by the immigration service, under the Home Office, and – to an even greater extent – political functions by ourselves into a judicial framework'.[42]

Initial objections to elements of the proposed appeal system focused upon the issue of inappropriateness. There was questioning of whether: 'by creating these separate courts...administering a private law of their own, without adequate supervision from above, we are improving the general state of the law under which we live at present'.[43] The proponent of this particular view voiced a number of concerns, not least that the proposals 'blur the vital distinction between disputed questions of fact and law, which are proper for appeal...and questions of policy'. It was his view that what was being proposed was the superimposition upon the 'legislative jungle' of immigration law of a court

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[40] **James Callaghan**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.490.
[41] **R.Matthews**, (ed) Informal Justice?, Sage, London, 1988.
[42] **Mr W.F.Deedes**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.515.
[43] **Mr Quintin Hogg**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.503.

which he doubted could 'explore its way through the jungle by any system of rational or judicial determination'.[44]

Fitzpatrick has identified issues which bear close parallel to the procedural dictates of immigration appeal hearings in his examination of the adjudication of charges of discrimination under the Race Relations Act. Paramount amongst parallels which can be drawn is that of a system which succeeds in 'formalising the informal'. In both contexts the burden of proof lies with the complainant and evidence is assessed 'on the balance of probability' and not 'beyond reasonable doubt'. In the context of charges of discrimination within the employment context **Fitzpatrick** identifies affirmation of the impermeability of an employers power and the elevation of it to a determinant. This is founded in Tribunal acceptance of employer assessment of situations and the terms in which they are made[45], echoing the status accorded the explanatory statement in the context of immigration appeals.

A significant element in the latter area is the denial of adequate recourse to redress which is inherent in appeal from abroad. The enforced absence of appellants from their appeal dictates a necessary reliance upon a third party to advance a case to challenge refusal. The operation of the appeal system acts as an informal mechanism of control in itself through the frequent delays between refusal and hearing of appeal. Such delays often render the appeal a pointless 'drama', particularly in the case of visa refusals where, even following appeal

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[44] **Mr Quintin Hogg**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.502 and Col.505.
[45] **P.Fitzpatrick**, 'Racism and the Innocence of Law', Journal of Law and Society, Vol.14, No.1, Spring 1987, p119-132.

success, there is no guarantee of issue.[46] The appellate system consequently appears inherently flawed in a disjunction weighted against the applicant. A factor contributing to this disjunction has been the time-limit imposed upon the appellant's submission of an appeal, compared to no such stricture on preparation of the explanatory statement without which hearing cannot proceed.[47] Only recently has this double-standard been remedied, despite having been previously identified by a House of Commons Select Committee as 'undesirable that the Home Office should appear to be so involved in the administration of the appeal system'.[48] Delays in the listing of hearings has been offered no such immediate remedy and this state of affairs continues to provide potential for appeals to become an 'academic exercise' when the motive for application, perhaps a celebration in the United Kingdom or a time-tabled course of study, may no longer be extant.

The procedural process can thus be seen to be innocently culpable in basic elements of its character, including the actual listing of appeal hearings. There are however also elements within those hearings themselves which give rise to questions about the weighting of cases. One basic element within the court context is the 'reversal of roles' demanded by the procedural process. The appellant, taking the case to appeal, is seeking effective reparation in the form of reversal of a refusal wherein self, family members or friends have suffered in consequence of the actions of another. The Home Office operatives who are

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[46] **K.Drabu** and **S.Bowen**, Mandatory Visas: Visiting the UK from Bangladesh, India, Pakistan, Ghana and Nigeria, Commission for Racial Equality, London, 1989.

[47] **K.Drabu** and **S.Bowen**, Mandatory Visas: Visiting the UK from Bangladesh, India, Pakistan, Ghana and Nigeria, Commission for Racial Equality, London, 1989.

[48] Sixth Report from the Home Office Affairs Committee 1984-1985: Immigration and Nationality Department of the Home Office, HC277, para 60, xxi.

source of the refusal are not challenged, questioned or queried other than in the sense of this being implicit in the case being brought to court. It was the proposal of the Wilson Committee in 1967 that the refusing officer be relieved of any necessity to attend hearing of an appeal against the decision taken. They remarked that: 'In order to avoid disrupting the ordinary work of immigration control, the Immigration Service would normally be represented before the adjudicator by an officer specially assigned to this duty'.[49] The position of Home Office Presenting Officer thus came into being. Whilst the Wilson Committee remarked: 'the immigration officers concerned would be required to give oral evidence only if the adjudicator decided that such evidence was essential to resolve a material and genuinely disputed question of fact', such instances are rare.

The written documentation of the case before the court is entailed in the explanatory statement of events drawn up by or on behalf of an immigration officer, entry clearance officer or Home Office executive officer. The credibility of operatives stands unquestioned, if not overtly asserted by this. The implicit 'fait accompli' of the explanatory statement lies in its status as a 'Delphic document' from which assessment of all events proceeds. This factor is reinforced in the manner of the proceedings themselves wherein the author of the original refusal is not called as a witness to offer either verbal justification of refusal or comment upon events.

The explanatory statement is invariably not of first-hand preparation and nor is it prepared by the Home Office Presenting Officer officiating at the appeal hearing. It is written by a member of the appeals section trained in this pursuit,

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[49] Report of the Home Office Committee on Immigration Appeals, Cmnd. 3387, para 113, p37.

compiled from the raw material of notes detailing the interview leading to refusal. These notes may themselves not emanate specifically from the refusing officer as the rate of staff turn-around often results in the interviewing officer having moved elsewhere, leaving his colleagues to interpret and transcribe original notes. The writing of the statement in itself becomes a technology that is political. The translation that takes place is of the vein of which **Cheyfitz** writes: 'Our imperialism historically has functioned (and continues to function) by substituting for the difficult politics of translation another politics of translation that represses these difficulties'.[50] Translation of the applicant takes place on a number of levels, not least through an interpreter (an issue dealt with in more detail later in this chapter). Significant for the present debate is the fact that the translation takes place in the transcription of the words of the applicant. This occurs both through the recording of replies and the 'filter' of assumptions with which the interviewing officer is armed, and the subsequent translation of the identity of the applicant through the words and categories of the law. There is an interplay between the (opposing) politics of translation. As in the field of anthropology: 'the models of intercultural communication that anthropology produces influence the actual contact between cultures, which is only to acknowledge that the models are political productions that produce politics. The politics of these models is, therefore, crucial and cannot be separated from the necessity of recognising them as models, as figures of the other, not fact'.[51]

Given the factors highlighted thus far, it is perhaps not surprising that explanatory statements have been characterised by the ingredients of fact, assertion, law, heresay, conclusion and inference. Re-asserting these claims is

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[50] **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonisation from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, xvi.
[51] **Eric Cheyfitz**, The Poetics of Imperialism, Oxford University Press, Oxford, 1991, xix.

the fact that they are not tested by cross-examination of the refusing officer.[52] It is the party who has hitherto suffered in refusal who becomes the 'offending party' in terms of having a challenge levelled against them to defend self, relatives and friends, or actions and statements which appear in the written record before the court. The role of appellants representative must become that of validating, justifying and defending such issues as client credibility and behaviour, in order to establish even the foundation of a viable challenge to the original decision. Emphasis falls less on engaging in a direct attack against the above elements in behaviour of operatives, than establishing witnesses and evidence in such a light as to validate a counter argument. In essence then, what should be an accountability to a clients right to be heard is forced into the position of becoming an accountability to procedural dictates. The final model becomes one in which, in the words of **Cheyfitz**, the representatives of Western civilisation (an appropriate analogy for those who defend the borders of the United Kingdom, given the rhetoric which permeates parliamentary debate): 'practice the politics of translation that repress translation as a dialogue in order to constitute it, under the guise of dialogue, as monologue'.[53]

Each explanatory statement carries a stock inclusion of the applicant being asked whether they were 'tired, nervous, confused, unwell' and whether they understood the interpreter. The weight which can be given to this affirmation becomes questionable in he light of findings by **Juss**. **Juss**[54] includes in his thesis that a United Kingdom Immigrants Advisory Service survey of 100 'split family' cases revealed that no-one was recorded as stating they were fatigued,

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[52] **C.Blake**, 'Immigration Appeals – The Need for Reform', Towards a Just Immigration Policy, (ed) **A.Dummett**, Cobden Trust, London, 1986.
[53] **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonisation from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, xix.
[54] **Satwinder Singh Juss**, The Administration of Immigration Control in the UK, PhD Wolfsen College, Cambridge, 1985.

nervous or unwell. It was the conclusion of the United Kingdom Immigrants Advisory Service that fear of postponement was a consideration in the reply. However the stress of the interview situation is given no weight at all within the appeal hearing context. The aforementioned 'disclaimer' within the explanatory statement is pointed toward in any assertion on behalf of a client that they might have been confused by events. Yet the **Commission for Racial Equality** have made quite clear that this is a relevant consideration, suggesting: 'the ignorance or lies of the bogus applicant must be distinguished from the mistakes that tired, anxious and confused interviewees may make anyway and the confusion that can arise from questions which are ambiguous or unclear from the interviewee's point of view'.[55]

The approach of interviewing officers (discussed in earlier chapters) is of sufficient importance to reiterate again here as an element which is not merely marginalised but entirely dismissed by the appeal process as relevant to the interview situation. Not least of the causes of the marginalisation is the fact of there being no call upon these officers to account for their own behaviour during interviews (as applicants indeed must do). Yet concerns are nonetheless widespread enough to have been raised during debate preceding the second reading of the Asylum and Immigration Appeals Bill.[56] In that context such concerns were drawn attention to as part of the criticism of proposals to remove rights of appeal, such rights being inextricably linked with issues of accountability. As one member put it: 'When a right of appeal is removed, what is removed is valuable and necessary constraint on those who exercise original jurisdiction....The Immigration Officer who knows that his decision may be subject to appeal is likely to be a good deal more circumspect, careful and

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[55] **Commission for Racial Equality**, Immigration Control Procedures: A Report of a Formal Investigation, CRE, London, 1985, para 4.12.1, p37.
[56] Hansard, Issue No.1598, 2 November 1992, Col.22-144.

even-handed than the officer who knows that his power of decision is absolute. That is simply, I fear, a matter of human nature, quite apart from anything else'.[57]

The appeal process effectively stands as the only check upon officers in that there is no authority comparable to that of the Police Complaints Authority encompassed within the immigration milieu. Yet the very format of procedure in an immigration appeal court diminishes even this. Any accountability to the court is less directed toward the behaviour of the interviewing officer than toward their actual misdirection under immigration law. They become professionally culpable whilst the subjectivity and attitudes which colour that professionalism remains unchallenged, despite numerous examples of attitudes impinging upon interaction at interview. Even during debate upon the Asylum and Immigration Appeals Bill, recorded instances suggest the pervasiveness of the less than courteous approach. As one member put it: 'if officials at overseas posts know that an applicant has no right of appeal, it will make their attitudes harsher. In 1985, the Commission for Racial Equality, investigating the sub-continent, found widespread racism and contemptuous attitudes to applicants in overseas posts'.[58] In the words of another member was the suggestion: 'I would not want the debate to pass by without trying to convey....what it means to people whose family members overseas - brothers, aunties, grandmothers and children - save the equivalent of a lifetimes' salary to come here for Christmas, a wedding or to see a new grandchild only to receive the sort of treatment that is regularly dished out at Heathrow....understand what it means to come across from rural Jamaica or Trinidad - to have saved and come across in one's best suit - only to be treated by immigration officers as some sort of criminal. I

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[57] **Mr Tony Blair,** Hansard, Issue No.1598, 2 November 1992, Col.43.
[58] **Mrs Mildred Gordon,** Hansard, Issue No.1598, 2 November 1992, Col.76.

have no doubt that the clause on visitor's appeal rights will make the situation worse. Immigration Officers are bad enough as it stands, but if they know that people have no right of appeal they will be even more arbitrary, unpleasant and unfair'.[59]

I suggest an inequitable interview dynamic and a degree of anxiety within the interview context must be expected. This is particularly so amongst women applicants who find themselves in a situation where pressure of interview is compounded by awareness of being architect of the family fortunes. They approach the interview in the knowledge that the culmination of a possible 2/3 year wait, rests upon one day. That day often necessitates travel for days overland with children to attend interview, and possible gynaecological and X-ray examinations to determine age or motherhood status. To these elements is added the necessity of discussing intimate family details with the unknown quantities of entry clearance officer and interpreter. The significance of these factors counts for naught in the immigration scheme of things despite the fact that the applicant may be from a culture which finds: 'the notion of telling the whole of any one individual's life or taking merely personal experiences as of particular significance...foreign to them, if not also repugnant'.[60] If this is the

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[59] **Ms Diane Abbot,** Hansard, Issue No.1598, 2 November 1992, Col.102.

[60] **Jimmie Durham** 'Those Dead Guys for a Hundred years' in I Tell you Now: Autobiographical Essays by Native American Writers, (eds) **Brian Swann** and **Arnold Krupat,** Lincoln, University of Nebraska Press, 1987, ix. The need for sensitivity to this issue is great, the hiatus between symbolism and social communication is demonstrated when **Elwin** states: 'when emissaries go on the delicate business of arranging a girl's betrothal they do not state their purpose directly, but say they have come for merchandise, or to quench their thirst for water, or seek a gourd in which to put their seed. Similarly the whole intricate absorbing business of daily love is carried on with symbols. Women by the well ask each other, "Did you have your supper last night?" "Are you weary from yesterday's rice-husking?" Men speak of digging up their fields, getting water from the well, entering a house. Not only the solicitations of the seducer but the domestic arrangements of wife and husband cannot be decently conducted without a verbal stratagem'. **Verrier Elwin,** Folk-Songs of the

case then entry clearance officer expectations of the memory recall of applicants, and their censorial reaction to matters not recounted or included in descriptions of events is grossly unfair. The particular problems of interpreting itself which compound the situation will be dealt with in more depth in the court context, at which time parallels will be drawn with interpreting during interviews.

Legomsky suggests that judicial departures from established general legal norms are 'dramatic' in the field of immigration law. As mentioned earlier in this chapter, not least there is departure from normal rules of evidence.[61] At the core of the appeal process is a court deciding whether to invalidate a government decision. There is thus a necessity for that court to make a judgement upon the degree of deference to accord that decision.[62] The pivotal pairing upon which appeal success or failure rests is effectively the 'interaction' of the adjudicator and explanatory statement. This is the 'plimsoll line' upon which the measure of what is to be accounted for, rests. Whilst the adjudicator must have regard to the rules and precedent cases deemed relevant to the category of case, it is the explanatory statement which directs judgement upon the issue of determining in what measure the applicant has fallen short of the legislative criteria. Equally it is the statement which ostensibly provides a considered assessment already made on the facts. In the light of this the role of the adjudicator becomes one of assessing whether the refusing officer was correct in reaching the decision on the facts available at the time. The interviewing officer has already made judgements in such areas as what the

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Maikal Hills quoted by **Sitakanta Mahapatra** in The Empty Distance Carries, A Writers Workshop Saffronbird Book, P.Lal, Calcutta, 1972, xvi–xvii.

[61] Section 18 of the Civil Evidence Act 1968 does not apply to immigration appeals.

[62] **Stephen H.Legomsky**, Immigration and the Judiciary, Clarendon Press, Oxford, 1987, p8.

facts are and what the evidence is, and a decision has also been taken upon how the applicant's words are to be transcribed. In that transcription lies an interpretation. In that transcription there is also an assumption of readership in that the statement is authoritatively constituted at the time of preparation as an address to a specific readership, the adjudicator. The statement writing procedures referred to in Chapter One lend themselves to this assessment. In the circumstances, there is relevance in taking into account here the self-perceptions and expectations of the adjudicators and Tribunal members.

THE ADJUDICATORS AND TRIBUNAL MEMBERS

> *Commissioners came.*
> *Capital spectacles in British frames*
> *Consulting managers about costs of immigration*[63]

It was the recommendation of the Wilson Committee that there be established a two-tier machinery for the hearing of appeals, a central Immigration Appeals Tribunal and 'subordinate judicial officers' to be known as adjudicators. Their report made quite clear that 'they would be quite independent of the Immigration Service'.[64] Even the choice of title 'adjudicator' itself was premised in the view of the committee that: 'To underline their independence we favour a title which does not include the word "officer"'.[65]

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[63] **Mahadai Das**, 'They came in ships', Creation Fire, (ed) **Ramabai Espinet**, Sister Vision Ontario, Canada and CAFRA, Trinidad and Tobago, 1990, (187-189), p189.
[64] Report of the Home Office Committee on Immigration Appeals, Cmnd.3387, para 110, p36.
[65] Report of the Home Office Committee on Immigration Appeals, Cmnd.3387, para 110, p6.

Over the years this independence has not been accepted unquestioningly. Not least of the criticisms have rested in the fact that from the outset appointments for the post of adjudicator were placed in the hands of the Home Secretary. When a House of Commons Select Committee reported upon the Immigration and Nationality Department of the Home Office in 1984–5[66], they heard evidence from a number of quarters casting doubt upon the independence of the appellate authorities. That committee itself reported that: 'we do regard it as anomalous that the Home Office appoints Adjudicators who are to hear appeals against itself'.[67] Parliamentary debate at the time of the second reading of the Immigration Appeal Bill heard opinion on this issue. As one member stated: 'The adjudicators will be in the privileged position, that we normally accord only to very senior judges, of being able to decide whether the appellant has the right to appeal against his decision to the Tribunal. That is a very privileged position for anyone, and it is a purely judicial position. Having regard to all those factors, I ask the Under Secretary to deal with this question carefully and to think deeply about the type of qualifications he will be requiring for these people...constituting a court in himself in the vast majority of cases. Because it is a judicial office, the first question I ask is whether it is right that the appointment of the adjudicators should be by the Home Secretary. I would much prefer that the Lord Chancellor appointed'.[68] This specific criticism has now been silenced by the appointment of Adjudicators being placed in the hands of the Lord Chancellor's office, and they can only be removed from office by a House of Commons resolution. Yet the question remains whether

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66 Sixth Report from the Home Affairs Committee 1984–1985: Immigration and Nationality Department of the Home Office, HC 277.

67 Sixth Report from the Home Office Affairs Committee 1984–1985: Immigration and Nationality Department of the Home Office, HC 277, para 58, xx.

68 **Gordon Oakes,** Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.512.

such practical measures alone are the 'seal' upon independence. Is there a case to suggest that the very role of an adjudicator is itself boundaried by procedures and a working ethos within which independent judgement is less enabled than hampered?

The procedure for appealing was instituted by the Immigration Appeals Act 1969, a system which continues under the Immigration Appeals Act 1971. When the Wilson Committee were investigating the desirability of introducing a system of appeals they acknowledged that the majority of cases were 'fairly and properly decided, having regard to the sometimes very great difficulty of establishing the true facts or a person's real intentions'.[69] Nonetheless they expressed the view: 'that cases do from time to time occur in which the decision would have been different if it had been made by an appellate authority after a dispassionate review of the relevant evidence' and accordingly felt 'That consideration alone would go far to justify the setting up of an appeal system'.[70]

This was not however to be the crucial factor in their argument in support of an appeal system. The committee went further to consider a view with some currency which held that 'however well administered the present control may be, it is fundamentally wrong and inconsistent with the rule of law that power to take decisions affecting a man's whole future should be vested in officers of the executive, from whose findings there is no appeal'.[71] It was this argument that, in their words, 'reached the heart of the matter.' Yet in their consideration

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[69] Report of the Home Office Committee on Immigration Appeals, Cmnd. 3387, para 83, p27.
[70] Report of the Home Office Committee on Immigration Appeals, Cmnd.3387, para 83, p27.
[71] Report of the Home Office Committee on Immigration Appeals, Cmnd.3387, para 83, p27.

of this they achieved a transformation of the basic principle which had been expressed. Whilst expanding on the theme that it was understandable that a newly arrived immigrant might lack confidence in the fairness of executive officers entrusted with the power of decision–making they, in effect, turned this argument around. It was their view that: 'If a Commonwealth citizen or alien claims afterwards that "they didn't give me any reason for the decision" or "they wouldn't listen to what I said", he may only be trying to save face, but we believe that such complaints quite often express the feeling that the person concerned never had a chance to confront his interrogators on equal terms. Allegations of this kind are hard to counter when the whole process has taken place in private. They reflect unfairly on the officials concerned, and cumulatively they give rise to a general disquiet in the public mind. The evidence we have received strongly suggests that among the communities of Commonwealth Immigrants in this country, and among people specially concerned with their welfare, there is a widespread belief that the Immigration Service deals with the claims of Commonwealth citizens seeking admission in an arbitrary and prejudiced way. We doubt whether it will be possible to dispel this belief so long as there is no ready way of having decisions in such cases subjected to an impartial review'.[72]

This explanation raises a number of issues. In respect of the nature of the system envisaged it proposes one with a focus of an 'impartial review' within which the aggrieved party is able 'to confront his interrogators on equal terms'. In respect of the matters giving rise for cause for concern their argument concentrates upon unfair reflections of allegations against officials and the cumulative disquiet this gives rise to in the public mind. In respect of the aims

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[72] Report of the Home Office Committee on Immigration Appeals, Cmnd.3387, para 84, p28.

of the appeal system they look to a vehicle to 'counter allegations' and 'dispel' unfair beliefs. These were the basic values and concerns encapsulated at the root of a system they envisaged would fulfil the role 'not only to check any possible abuse of executive power but also to give a private individual a sense of protection against oppression and injustice, and of confidence in his dealings with the administration, which are in themselves of great value'.[73] In sum, the value of the system appeared to offer more potential benefits to legitimation of executive officers than it did ground a concern for justice to be afforded the immigrant. Whether this has remained a continuing characteristic of the appeal system is a question for debate in this thesis.

The Immigration Appeals (Procedure) Rules 1984 make provision for a first appeal challenging refusal to take place before an adjudicator. Hearings proceed to a Tribunal of three members (of whom one is always a lawyer) only when leave to appeal has been granted against a decision taken by an adjudicator[74] with the exception of appeals direct to the Tribunal in specified categories of deportation cases. Application for leave to appeal against an adjudicator's decision is open to both the Secretary of State and the appellant, in the instances of appeals being respectively allowed or dismissed. Grounds of appeal to the Tribunal, other than in cases of an entry clearance holder refused entry at a port or a deportee challenging removal destination, must rest upon an 'arguable point of law' in that the matter of concern is whether the adjudicator was guilty of misdirection.[75] There is thus no 'safeguard' provided against an adjudicator making adverse findings in respect of credibility. In immigration cases there is often a fine line separating a 'question of fact' from a 'question of

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[73] Report of the Home Office Committee on Immigration Appeals, Cmnd.3387, para 85, p28.
[74] Immigration Appeals Procedure Rules 1984, 14(1)
[75] Immigration Appeals Procedure Rules 1984, 14(2) (a).

law'.[76] Equally, as **Macdonald** and **Blake** have pointed out: 'In fact very few appeals strictly 'turn upon' an arguable point of law' and there are equal difficulties raised by the criteria for refusing leave to appeal to the Tribunal if it is considered the adjudicator 'could' properly have made the determination.[77] In the circumstances, it is far from easy for appellants to achieve success in pursuing leave to appeal, although it has been suggested that: 'The very high rate of success achieved by the Secretary of State as an appellant to the Immigration Appeal Tribunal and the regularity with which the Secretary of State is granted leave to appeal, shows implication that the appellate authorities are thereby shown to be biased in favour of the official side'.[78]

That the Wilson Committee originally envisaged appeal hearings would be characterised by informality is suggested by their proposal that in those appointed as adjudicators: 'Legal qualifications would be an advantage but are not essential'.[79] However this did not preclude members of the House suggesting in parliamentary debate that: 'If one is to give a man such judicial powers, he should be a qualified barrister or solicitor...a qualified lawyer is used to dealing with questions of natural justice, with the rules of evidence, and applying his mind fairly to both sides of the case'.[80] In debate upon the issue during the second reading of the Immigration Appeals Bill members gave voice to a central point that: 'It will be on the quality of the adjudicators that

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[76] **Stephen H.Legomsky**, Immigration and the Judiciary, Clarendon Press, Oxford, 1987, p13.
[77] **I.A.Macdonald** and **N.Blake,** Immigration Law and Practice in the UK, Butterworths, London, 1991, p473.
[78] Sixth Report from the Home Office Affairs Committee 1984–1985: Immigration and Nationality Department of the Home Office, HC 277, para 57, xx.
[79] Report of the Home Office Committee on Immigration Appeals, Cmnd.3387, Summary of Recommendations, para 5, p64.
[80] **Gordon Oakes**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.513.

this law will stand or fall. It will be on their ability and quality that it will rest. If we get the right men, the Bill can be a tremendous help and success. If we get the wrong men, we will end up in a muddle which will harm Parliament, the law, the immigrant and our country. These adjudicators are judicial officers, not administrators, not executive officers'.[81] It was felt by the member who voiced this particular opinion that: 'They are dealing with highly technical, legal rules and regulations. They are sitting alone as a court. They have to hear both sides and apply the rules of natural justice...all these are strictly judicial functions. These adjudicators have the right to grant bail. We are very careful to whom we give the power to restrict that liberty. These adjudicators will have that power, which is again a judicial power'.[82]

Parliamentary debate suggests there was less clarity on who would be suitable as candidates than there was on who should not, the latter being immigration and ex-immigration officers. The Wilson Committee suggested: 'In order that the adjudicators should be seen to be independent of the Home Office, we think it advisable that all those appointed on the first establishment of the appeal system should be drawn from outside the public service'.[83] In the event, those originally appointed were drawn not from a judiciary but largely from the ranks of those whose experience lay in colonial administration. They had served in such diverse roles as Chief Commissioners of police, Governors or Air-Vice Marshals. What a number of them shared was title or honours. They also shared something else. By 1985, after 15 years of the appeal system, there was only one adjudicator in the United Kingdom who came from an ethnic minority

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[81] **Gordon Oakes**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.512.
[82] **Gordon Oakes**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.512.
[83] Quoted by **Dame Joan Vickers**, Parliamentary Debates, Official Report, House of Commons, Fifth Series, 22 January 1969, Vol.776, Col.529.

background, a state of affairs that prompted Select Committee comment that: 'It is essential that all Adjudicators have good background knowledge of the peoples and cultures from which Britain's ethnic minorities have come, particularly the peoples and cultures of the Indian Sub-Continent, and a larger number of Adjudicators from ethnic minorities would contribute toward this'[84].

This elevation of 'background knowledge' has proven in itself to be a double-edged sword in other areas of immigration control. A parallel to what the Select Committee envisaged as a beneficial attribute in adjudicators is the accreditation given to the 'local knowledge' of entry clearance officers in their assessment of applicant credibility.[85] According great weight to experience of operatives generally is a constant in the arena of control. However I suggest this accreditation remains as questionable a premise of 'knowledge' today as it did during the imperial administration when, as one commentator puts it: 'In the earlier days of the British occupation of India, before it was considered advisable for white women to brave the rigours of climate, white men took themselves black women as concubines and sometimes as wives. This contact with the peoples, deplorable though it seems, resulted in a far greater understanding of native mentality'.[86]

Speaking of immigration officers during the second reading of the Immigration Appeals Bill, one member of the House of Commons suggested: 'Most of them

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[84] Sixth Report from the Home Office Affairs Committee 1984-1985: Immigration and Nationality Department of the Home Office, HC277, para 59, xxi.

[85] **K.Drabu** and **S.Bowen**, Mandatory Visas: Visiting the UK from Bangladesh, India, Pakistan, Ghana and Nigeria, CRE, London, 1989, p33.

[86] **R.J.Minney**, Siva or the Future of India, Kegan Paul, Trench, Trubner & Co. Ltd., London, 1929, p67.

have had long experience and their decisions are based principally on experience and not knowledge of the law'.[87] It is often the case that the behaviour and stated intentions of applicants are called into question as a deviation from the norm by what entry clearance officers consider, and assert in an authoritative fashion, to be the relevance of their local experience. On such assessments can hinge credibility and thereby, the success or failure of an application. Yet as the **Commission for Racial Equality** have pointed out: 'the fact that the work can depend on knowledge of the local culture also means that the standards and criteria used must take account of the inevitable limitations there will be on that understanding'.[88]

There is in fact a double-standard in operation. Whilst 'local knowledge' is hailed as both pertinent and of some weight when voiced on the part of both refusing officers and adjudicators, the 'knowledge' of their own culture by locals themselves is regarded as secondary. As **Macdonald** and **Blake** have recorded regarding appeal hearings 'where live witnesses are tendered before the authority, too many Adjudicators permit roving investigations and attacks on such witnesses in the name of credibility. At least one judge has doubted the benefit of cross examination where one is dealing with a witness who would have to give evidence in a foreign language, about local matters'.[89]

This state of affairs begs a number of questions regarding the significance of a particular source determining the type of 'knowledge' accorded relevance and credibility. Where some 'knowledge' is silenced or dismissed, there is relevance

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[87] **Mr F.W.Deedes**, Parliamentary Debates, Official Report, House of Commons, Fifth Series, 22 January 1969, Vol.776, Col.520.
[88] **Commission for Racial Equality**, Immigration Control Procedures: A Report of a Formal Investigation, CRE, London, 1985, para 4.33.3, p53-54.
[89] **I.A.Macdonald** and **N.Blake**, Immigration Law and Practice in the UK, Butterworths, London, 1991, p434 quoting Ex p Patel (1986) Imm AR 208.

in the fact that the institutional culture of which executive staff are a part in itself elevates their assessments to the only legitimate knowledge in cases where a dispute arises between accounts. As this issue can weigh heavily against applicants, it is not inappropriate to consider what knowledge of other cultures is likely to arise from the aforementioned previous careers of adjudicators. In posing a trend of what he terms 'conservative outcomes' across a wide spectrum of immigration cases (that is to say findings against the appellant in favour of government refusal) **Legomsky** suggests that factors which do not typically appear in court opinion contribute heavily to the results. He points towards both general doctrinal theories and external influences, not least of these being the personal background and attitudes of those judging. In his identification of immigration policy questions such as those which: 'frequently implicate values to which political conservatives and political liberals attach different weights', **Legomsky** lists core issues such as stability, state interests over interests of the individual, effective law enforcement and property rights.[90]

Before turning to look at the self-perceptions of Adjudicators regarding their role, it is important to contextualise these perceptions in debate. It is the case that the ideas and attitudes of these post-holders 'feed back' into actual interpretation of the legislation and this in turn contributes to accepted 'knowledge' of individual nationalities. The same is true of the Immigration Service Union and Immigration Service. As Chapter One has discussed within the context of institutional culture, circulated internal reports such as the 'Moroccan Survey' and the 'Sylhet Tax pattern' have contributed in this manner to these very areas of 'knowledge'.

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[90] **Stephen H.Legomsky**, Immigration and the Judiciary, Clarendon Press, Oxford, 1987, p232.

To demonstrate a parallel 'construction of knowledge' within the working ethos of adjudicators, supporting argument can be found in a particular example. Between the 24th January and 19th February 1984 two Adjudicators were sent on a 'fact finding visit' to Sri Lanka, Bangladesh, Pakistan and India. The tour was arranged by the Home office in pursuance of a Parliamentary Select Committee proposal.[91] In the final report the broad objects of the visit were stated to have been:

1. For the Adjudicators to familiarise themselves with the conditions in the principal areas in the Sub-Continent of emigration to the U.K.
2. To see the manner in which applications for entry clearances are processed.
3. To obtain information on the problems facing political activists if returned to their respective countries from the U.K.[92]

Matters relevant to the debate at hand are raised by this report when it is compared with findings of another contemporaneous investigation, that of the Commission for Racial Equality formal investigation into Immigration Control Procedures.[93] The two reports appeared within a month of each other in 1985. The report of the Commission for Racial Equality was a published public document, that of the Adjudicators was circulated as a confidential document to interested parties.

The findings concentrated upon within the adjudicators report centred around the dedication of staff at overseas posts, the excellent standards of interpreting

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91 Cmnd. 8725, para 25.
92 Report on Visit to Indian Sub-Continent by **Sir John Pestell KCVO** and **M.Patey MBE.**
93 **Commission for Racial Equality,** Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985.

and the high incidence of fraud and deceit in applicants. In discussing separately the particular problems of individual posts there was particular concentration on the latter of these, as the following extracts suggest:

Dhaka: 'Confessions of tax or other fraud were said to be commonplace, particularly in "re-applications" but these were generally made by the sponsor in the UK and very rarely by the woman applicant who, when asked about discrepancies in the statements, would frequently remain silent or merely say that she would have to consult her husband'.[94]

Islamabad: 'We were interested to note a letter from a professor published in the Pakistan Times of 26 January 1984...the letter alleged, every third person had a duplicate identity card with bogus or vague entries. This allegation as to the reliability of identity cards was supported by staff at the Embassy'.[95]

New Delhi: 'The problem of "reluctant brides" raised by the First Secretary is discussed in a separate annexure'.[96]

Under a section entitled 'Cause of the Delay in Processing Applications', lengthy excursion is made into what are highlighted as two distinct categories of deception: 'consequential deceptions arising out of previous false statements particularly in regard to fraudulent tax claims' and 'attempts by a sponsor to

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94 Report on Visit to Indian Sub-Continent by **Sir John Pestell KCVO** and **M.Patey MBE**, p14-15

95 Report on Visit to Indian Sub-Continent by **Sir John Pestell KCVO** and **M.Patey MBE**, p15-16

96 Report on Visit to Indian Sub-Continent by **Sir John Pestell KCVO** and **M.Patey MBE**, p16.

include a nephew or other male relation in an application for his family to enter the UK'.[97]

Under the section detailing 'Village Visits' the report makes clear that: 'The enquiries made are mainly in relation to Entry Clearance applications, but also include enquiries from the Home Office or from the UK Police Forces, for example "Had a suspect murderer wanted in the Midlands returned from the UK to his village in the Mirpur District?"'.[98] When reporting upon their trip to this latter district, Mirpur, the report writers comment 'We found the village people more cagey than in Bangladesh, and on one enquiry we were clearly given the "run-around"'. They suggest that it was 'only a young girls inability to control her inquisitiveness which eventually gave the lead to put us in the right direction'.[99]

Thus despite the earlier stated broad objects of the visit the content of the report focuses quite significantly upon what is identified, and stressed through reiteration, to be a web of intrigue and deceit characterising applicants from the areas visited. Of this strand of thought in particular the **Commission for Racial Equality** report of the same year made a finding from their own enquiries that: 'we believe that the emphasis on the detection of the fraudulent has gone much further than is justified by evidence of evasion, and that the procedures used impose unacceptable delays on applicants and result in an unacceptably high risk of genuine applicants being wrongly refused'.[100]

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97 Report on Visit to Indian Sub-Continent by **Sir John Pestell KCVO** and **M.Patey MBE**, p17-18.
98 Report on Visit to Indian Sub-Continent by **Sir John Pestell KCVO** and **M.Patey MBE**, p19.
99 Report on Visit to Indian Sub-Continent by **Sir John Pestell KCVO** and **M.Patey MBE**, p20.
100 **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London 1985, para 2.5.8, p11.

Of equal polarised thinking between the reports are findings related to interpreting. The stated conclusion within the adjudicators report was that: 'The standards of interpretation appeared to be excellent and we do not share the view expressed in some quarters that misunderstandings in the interview process were either general or almost inevitable'.[101] It was the view of the **Commission for Racial Equality** that: 'ECO's started interviews by asking, amongst other things, whether the interviewee understood the interpreter, though we doubt whether such a question, put at the beginning of the interview before the interviewee had much opportunity to hear or talk to the interpreter, and put through the interpreter, is an effective check'.[102]

The issue of interpretation generally is indeed a significant one, and it stood as one of the elements of control focused upon by members of the House of Commons during the second reading of the Immigration Appeals Bill. As one member stated: 'interpreters will be key figures at all the appeals. On how they translate will often depend the impression which the arbitrator gets of the bona fides of an appellant. A great deal may hang on an honest translation'.[103] Research by the **Nuffield Foundation** 24 years after this statement was made[104], which investigated interpreting practices of the police and

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[101] Report on Visit to Indian Sub-Continent by **Sir John Pestell KCVO** and **M.Patey MBE**, p2

[102] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, para 4.10.1, p37.

[103] **Mr W.F.Deedes**, Parliamentary Debates, Official Report, Fifth Series, House of Commons, 22 January 1969, Vol.776, Col.519.

[104] From 1983 to 1990 the **Nuffield Foundation** grant-aided the Community Interpreter Project (now known as the Nuffield Interpreter project) to develop a system of training and accreditation of interpreters for the legal, health and social sectors of the public service. In 1991 further grant aid was provided to survey requirements for interpreters within specific sectors of the legal services which included commissioning a survey of interpreter use in courts in England and Wales and a parallel survey of all police constabularies. Specific objectives

magistrates courts, not only recalls to mind such concerns as those expressed in this view but also suggests the statement within the adjudicators report quoted above is, at best, naive.[105] The **Nuffield Foundation** findings substantiate the view that: 'In any language...words are not merely sounds, they are also signs'[106] and there is thus the potential within simplistic and ad-hoc translation to do the speaker an injustice.[107] The statutes and precedents that have guided the approach to the use of interpreters in the legal services[108] of

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of the Court enquiry were to look at the use and availability of court interpreter services, the range of languages used and methods of access to interpreters; to survey the opinions of court officials on the quality of services and their suggestions for improvement.

[105] Significant work has been done in the area of interpreting which echoes concerns raised in this thesis. See **Susan Berk-Seligson**, The Bilingual Courtroom, University of Chicago Press, Chicago, 1990. The Berk-Seligson research highlights how little credence is given within a court context to how interpreters control the flow of testimony and manipulate impressions given of witnesses, which in *turn impact upon those judging them.*

[106] **Sitakanta Mahapatra**, The Empty Distance Carries, A Writers Workshop Saffronbird book, P.Lal, Calcutta, 1972, xix. **Mahapatra** goes on to quote the words of Jean-Paul Satre in What is Literature? when, speaking 'for the poet' (but equally relevant to this debate), he suggests: 'language is the structure of the external world. The speaker is in a situation in language; he is invested with words. They are prolongations of his meanings, his pincers, his antennae, his eye-glasses', xix.

[107] A vivid example of such injustices existing is found within the criminal justice system in the case of Iqbal Begum, sentenced to life imprisonment following her plea of guilty to murder. Only after she had been in prison for some years did it become clear that she had not adequately understood the proceedings. See Court of Appeal (Criminal Division) *April 22, 1985, Appeal* No.6187: 8/84. For a discussion of the case in the context of this issue generally see: **Kenneth Polack** and **Ann Corsellis**, 'Non-English speakers and the criminal justice system', New Law Journal, November 23, 1990, p1634-1677.

[108] **Order 47, Rule 33A, County Court Rules 1936** set out that discretion in civil cases rests with the court as to payment of interpreters' fees. The provision does not extend to the civil jurisdiction of courts of summary jurisdiction, who have no facility for appointing and paying for an interpreter. **Administration of Justice Act 1973** provides in section 17 for the appointment of interpreters in criminal proceedings. **Race Relations Act 1976** makes provisions for complaints of discrimination against public bodies which fail to provide an interpreter when the principle of equity is an issue. **Police and Criminal Evidence Act 1984** lays down police procedures for provision of an interpreter

the United Kingdom are reasonably clear on when an interpreter is needed but give little, if any, guidance on what counts as competent interpreting. Article 6 of the European Convention on Human Rights, concerned with the notion of fair trial, provides for protection of rights only for those charged with a criminal offence, in the terms that they have a right to be: 'informed properly, in a language which he understands and in detail, of the nature and cause of the accusation against him'.[109] This is precious little comfort for the applicant facing the processes of immigration control. Equally impoverished comfort for this group is found in the Kamasinski Case which went before the European Court of Human Rights on grounds of a breach of Article 6.[110] Yet the situation encountered by those facing control at consulate posts abroad and at ports of entry demands equal need for monitoring. They are faced with barrages of questions and documentation (without a legal representative present) and the final transcribed account of their words is the material upon which they will be judged (in their absence) at an immigration appeal.

The House of Commons debate upon the Asylum and Immigration Appeals Bill gave voice to concern in the matter of interpretation, particularly on behalf of refugees and asylum seekers (in terms which I would argue are relevant to all applicants, of whatever nature). One member, taking issue with the requirements of legislation to make 'a prompt and full disclosure of his or her

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where a person has difficulty in understanding English; the interviewing officer cannot speak the person's language; the person wishes an interpreter to be present.

109 Para 3(a), Article 6 of the European Convention on Human Rights.

110 Kamasinski Case 9/1938/153/207, December 1989. A United States Citizen imprisoned in Austria claimed breaches of Article 6, para 3(e). The judgement related specifically to the provision of court interpreting services and stressed that the individual right to interpreting extends beyond the courtroom and verbal interaction to written documents. The judgement also held that provision of interpreting services alone were not sufficient, that those providing the service were also subsequently responsible for the standard and competence of service provision.

claim for asylum', pointed to the view of Amnesty International that: 'Asylum seekers can hardly be expected to know what "all material" facts are especially if the person speaks little English and is deeply traumatised by his/her escape and journey. It is normal for refugees to fear officialdom and a person in such a situation cannot be expected to make a full disclosure of his experiences at his first encounter with officials. This is particularly true of those who have been tortured'.[111] The importance of adequate interpreting facilities in the face of such onerous rules was accordingly stressed, particularly: 'drastically improving the way in which translators operate and controlling who they are, how they are chosen and how they are trained'.[112]

These are not idle words given that the immigration service are deserving of the same criticism levelled against courtrooms by the **Nuffield Foundation**. That criticism is, to be: 'still not concerned with the need for competent interpretation, but seemed to be prepared to accept unqualified interpreters'.[113] Given that the Nuffield survey found that there was no system of quality control of interpreting services in courts and they were able to record graphic comments of the damage that can be done by an interpreter, it remains a feat of questionable status that every explanatory statement of the immigration service can confidently assert that applicants 'understood' everything that transpired. The research of **Berk-Seligson**[114] into courtroom interpretation has relevance to this debate in terms of complaints made against interpreters both in the context of entry clearance officer interviews and immigration appeal courts.

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111 **Mr Graham Allen**, Hansard, Issue No.1598, 2 November 1992, Col.105.
112 **Mr Bernie Grant**, Hansard, Issue No.1598, 2 November 1992, Col.105.
113 **Nuffield Interpreter Project**, 'Interpreters in Court', Access to Justice: non-English speakers in the legal system, Nuffield Interpreter project, London, 1993.
114 **Susan Berk-Seligson**, The Bilingual Courtroom, University of Chicago Press, Chicago, 1990, p200-202.

Her work records how in the event of appeals or accusations on the grounds of interpreting error or inaccuracy, appellants are disadvantaged by being unable to provide concrete evidence of poor quality interpreter performance. This is a result of the fact proceedings are transcribed in english alone, as if they were monolingually conducted in english. As foreign language testimony is not entered into the record in source language, there is no way errors of interpretation can be directly verified. **Berk-Seligson** states interpretation is normally upheld on the grounds of relative comprehensibility as interpreted into English. As this thesis shows, there is reason to be wary of exactly that: an 'interpretation' which is 'comprehensible' in the terms invited by operatives holding pre-conceived assumptions. It should perhaps thus be of concern that this apparent dismissal of another's reality is less a calculated course of action than a marginalisation which is both facilitated by, and demanded by, the system itself. A translation of reality is that upon which the system itself operates.

There is indeed a lack of appreciation of the reality of the situation in which applicants find themselves. As one MP put it during debate upon the Asylum and Immigration Appeal Bill: 'It is not a matter of stepping off the plane at Castle Donington airport in the east midlands, having arrived back from a Thompson's package holiday. The psychology is completely different and the rules that are to be imposed on asylum seekers are ignorant of that possibility'.[115] This right to signify which the marginalisation facilitates, and which I would argue is common to approaches to all applicants, is explored in debate in Chapter Two and is relevant to the issue of what 'knowledge' is afforded weight.

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115 **Mr Graham Allen**, Hansard, Issue No.1598, 2 November 1992, Col.105.

I suggest that the findings of the adjudicators report in respect of interpreting and other issues are of a comparable order to those found to have been given currency within the Immigration Service, discussed in terms of training and in-service reports in Chapter One. What is significant in this chapter is if and how such findings inform not only adjudicators perceptions of appellants, but their perceptions of their role within the appeal system.

The concentration which the adjudicators report places upon areas such as deception is given particular significance in the face of criticisms of appeal hearings which take such form as: 'in the adjudications or the immigration trials, the sponsor and appellants are accused persons and the adjudicator's determination is a judgement, not on the factual truth of the matter, but on the sponsor's and applicant's 'morality', which alone determines their legal position'.[116]

Is there then a case to suggest the input of Adjudicator's values and attitudes to a significant degree? Returning to the work of **Fitzpatrick** upon Industrial Tribunals, he identifies how the values of adjudicators influence their decisions in the sense of constituting a perspective upon standards which in itself includes some and excludes others. He suggests these standards draw upon a wide net of rationalities extending beyond the law itself.[117] In their study of a possible relationship between role orientations and on-bench behaviour of state appellate judges in Florida, **Scheb, Ungs** and **Hayes** make a number of findings which bear parallel to these considerations. In particular they conclude

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116 **Sushma Lal** and **Amrit Wilson**, But My Cows Aren't Going to England, Manchester Law Centre, Manchester, 1985, p55.
117 **P.Fitzpatrick,** 'Racism and the Innocence of Law', Journal of Law and Society, Vol.14, No.1, Spring 1987, p119-132.

that: 'judicial role orientations are related to behaviour indirectly, as filters between policy preferences and decisions'.[118]

The focus taken upon explanatory statements within the appeal context demonstrates that there is deference to fact-finding by the immigration authorities in a situation where the court is being asked to make a decision about what deference to accord the challenged decision. Mindful of these factors **Matthews** suggests that judicial perceptions of their roles (i.e. the normative expectations concerning functions, duties and powers of the court) are a 'central factor influencing judicial decision-making'.[119] In looking at how the higher courts deal with the findings of the immigration appeal system he points out that in natural justice cases the 'courts commonly articulate a duty to act fairly, only to interpret the substantive content of that duty so narrowly, in the immigration context, as to render it almost devoid of practical utility'.[120] Given that a favourable decision for the immigrant demands reversal of the immigration appeal tribunal, he poses whether 'courts narrow their role out of reluctance to set aside a decision of a statutory Tribunal...that has accumulated expertise in immigration law and practice' and asks whether the existence of adjudicators and immigration appeal tribunals are a factor influencing the courts perception of their role.[121] I suggest the same question could be asked of adjudicators and tribunals themselves. Do they defer to what is posed as the expertise of those empowered to refuse applications under the immigration rules? If they do, this deference is less to questions of 'fact' than to what has been legitimated as fact by an institutional culture with which they empathise.

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118 **J.M.Scheb, T.D.Ungs** and **A.L.Hayes**, 'Judicial Role Orientations, attitudes and decision-making: A Research Note', The Western Political Quarterly, September 1989, (427-435), p434.
119 **R.Matthews**, (ed) Informal Justice, Sage, London, 1987, p235
120 **R.Matthews**, (ed) Informal Justice, Sage, London, 1987, p258
121 **R.Matthews**, (ed) Informal Justice, Sage, London, 1987, p258

It is clear from the adjudicators report that there was high regard for the integrity of those facing applicants, less with that of the applicants themselves. Their 'knowledge' accorded with that of the staff of missions abroad whom they met in that they: 'found that the majority had acquired a remarkably good understanding of local customs particularly where those officers had had the opportunity to participate in village visits on a regular basis'.[122] Whilst there is a danger in assuming the 'certainty' of such knowledge, assumed it is. The **Commission for Racial Equality** detail findings that much weight is given to the local knowledge of entry clearance officers despite their own recommendation that: 'the training of entry clearance officers should be improved, particularly to provide more systematic familiarisation with local cultures and understanding of the lines of enquiry and analysis which are appropriate'.[123]

One of the dangers of embracing an assumed certainty of knowledge is explored by **Douzinas** and **Warrington** in their consideration of how refugees fare under the immigration appeal procedure. They point to how a claim to 'well founded fear of persecution' is invariably determined by regard to facts unknown to the applicant in order to assess whether 'subjective fear was objectively justified'.[124] That is to say they illustrate how the government apply an 'objective knowledge' of the home situation of the applicants from their own knowledge base of that situation and their own theory of what

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122 Report of a Visit to Indian Sub-Continent by **Sir John Pestell KCVO** and **M.Patey MBE**, 1985, p2.

123 **Commission for Racial Equality**, Immigration Control procedures: Report of a Formal Investigation, CRE, London, 1985, Recommendation 32, xi.

124 **C.Douzinas** and **R.Warrington**, '"A well-founded fear of Justice": Law and ethics in postmodernity', Law and Critique, Vol.2, No.2, 1991, (115-147), p126.

constitutes knowledge, to challenge that upon which applicants base their 'well-founded fear'. This is of particular relevance in the light of one of the stated aims of the adjudicator's report: 'To obtain information on the problems facing political activists if returned to their respective countries from the UK'.[125] As **Douzinas** and **Warrington** point out, such 'knowledge' is a far remove from the requirement of the UN High Commission for Refugees that: 'Where the result of a flawed decision may imperil life or liberty a special responsibility lies on the court in the examination of the decision-making process'.[126]

What is posed by the instances raised in this chapter is what **Goodrich**[127] terms 'Interdiscourse'. This is to say that the stance of adjudicator's utterances are effectively predetermined by processes external to the very law which they seek to see enforced fairly. What is an appearance of independence of action on their part is in effect guided by a number of factors. Not least of these factors is perception of their role and the weight they give to an appearance of subjectivity in the explanatory statements which 'justify' a decision. This is a stance taken which builds upon the fact that the very statement of the entry clearance officer or immigration officer has itself been subjectivity organised, ordered, directed and instructed in a particular manner. They collectively become part of what **Foucault** has described as society's 'regime of truth': 'the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded

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125 Report on a Visit to Indian Sub-Continent by **Sir John Pestell KCVO** and **M.Patey MBE**, 1985.
126 UNHCR Handbook 2:956, quoted by **C.Douzinas** and **R.Warrington**, '"A well-founded fear of Justice": Law and ethics in postmodernity', Law and Critique, Vol.2, No.2, 1991, (115-147), p133.
127 **P.Goodrich**, Legal Discourse, Macmillan Press, Basingstoke, 1987.

value in the acquisition of truth; the status of those who are charged with saying what counts as true'.[128]

Chapters Four and Five will foreground decisions made by adjudicators dealing with the specific categories of wives, fiancees and mothers as prescribed by the immigration rules. The assumed certainty of a pre-determined 'knowledge' of applicants, discussed in this chapter, will be seen to operate through the decisions made.

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[128] **M.Foucault**, Power and Knowledge, Harvester Press, Brighton, Sussex, 1980, p131.

CHAPTER FOUR

MY TRIALS OF THY LOVE.

quite a quantity of wives who had been grilled
by reasonable, doing-their-job officials about
the length of and distinguishing marks upon
their husbands' genitalia, a sufficiency of
children upon whose legitimacy the British
Government had cast its ever-reasonable doubts[1]

INTRODUCTION: FIANCEES AND WIVES.

As earlier chapters make clear, argument for thesis debate has grown out of personal experience of different roles within the area of immigration control. Each 'classification' of role was controlled and constrained by limitations within a wider socio-political system and within a national and global system. Equally constraining was the institution within which I worked, and through which I attained legitimation of role, attendant actions and speech.

These issues are relevant in respect of women 'categorised' by the hierarchical structuring of the immigration rules. Their identities too are subsumed under indexes for determining identity.[2] A major part of how immigrant women are constituted as a visible social entity is this categorisation, and thereby

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[1] **Salman Rushdie**, The Satanic Verses, Viking/Penguin, Harmondsworth, 1988, p4.

[2] **NG** applies this conception to the effect of Canadian immigration policy in producing immigrant women as a distinctive kind of labour within the labour market. See **Roxana NG**, Immigrant Women and the State: a study on the social organisation of knowledge, PhD, University of Toronto, Canada, 1984.

'construction', of them in such roles as dependants and fiancees. These are categories which are rooted in an 'ethnic absolutism' which regards them as part of a culture frozen in time.[3]

Such fixed conceptualisation makes plain the division between public and private, between action and effect. As an example, there is the categorisation of 'widow' with its attendant criteria within the immigration rules, and there is the researched reality of widowhood in India.[4] Between the two lies a yawning chasm within which subjectivity and identity are at stake. The categories within the immigration rules stand as translations. As such they echo the eighteenth and nineteenth century translations of the laws of other nations produced for European eyes. These provided: 'interpellated colonial subjects, legitimizing or authorizing certain versions of the Oriental, versions that then come to acquire the status of "truths" even in the countries in which the "original" works were produced'.[5] Both these translations of earlier centuries and the twentieth century immigration rules, stand as a 'textualised idea' of other parts of the globe.

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[3] The term 'ethnic absolutism' is used by **Kobena Mercer** for the assumption that culture is a fixed and final property of different 'racial' groups. Mercer's debate focuses on the problem of Black visual artists not being taken seriously, the constraints and limitations placed upon them having the effect of marginalising their work and thus inhibiting the expression of differences. The authorial policing by the art world is identified by Mercer as having the effect of preventing the: 'destruction of the myth on which ideologies of racism crucially depend, that the "black community" is a homogenous, monolithic, self-identical and undifferentiated entity essentially defined by race (and nothing but race)' (p71). These issues bear direct parallel with the treatment of ethnic minorities under immigration control which suggests that the 'ethnic absolutism' of which Mercer speaks in the art world is equally appropriate to the immigration milieu. See **Kobena Mercer**, 'Black Art and the Burden of Representation', Third Text, No.10, Spring 1990, p61-78.

[4] See **Gurmeet Singh** and **Sukhdeep Gill**, 'Problems of Widowhood', Indian Journal of Social Work, Vol.XLVII, No.1, April 1986, p67-71.

[5] **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p33.

In the field of twentieth century immigration, the only 'truth' becomes the truth of the moment of legislating. The narrative of immigration control becomes the experience of that moment of controlling. Any other 'truth' becomes a commodity in a particular context. Thus the entry clearance officer's explanatory statement becomes less the rationale of events which it's significant title proscribes, than an appeal 'instrument'. As Chapter Three has suggested, this instrument must meet a specific format which turns 'voices' into 'grammar', lives into case studies, people into nationalities and women into widows, mothers, daughters, sisters, wives, fiancees. By this process word, deed and gender each become a 'role', within which there is no acknowledgement of a multiplicity of selves.

THE ROLES

Sliding back and forth
between the fringes of both worlds
by smiling
by masking the discomfort
of being pre-judged
Bi-laterally[6]

Argument within this chapter suggests that how women are seen within the immigration arena is a cyclic process which takes momentum from a universalising of women, women of colour specifically. The categories of the immigration rules are synonymous with 'roles' in which women are seen, and underlying assumptions which direct the expectations and characteristics of the rules which govern these roles are both racially and gender specific. As a

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[6] **Pat Mora**, 'Legal Alien', Making Face, Making Soul, (ed) **Gloria Anzaldua**, Aunt Lute Foundation Books, San Francisco, 1990, p376.

representation, the roles imply the notion of a fixed original that needs to be re-presented, despite the fact that the original is itself dispersed and with an undecidable identity. The result is that, within the immigration rules: 'A representation thus does not re-present an "original"; rather it re-presents that which is already represented'.[7] In the imposition and simplification of these categories and roles lies the power of the rules to distort. The very 'original' they assume and demand is but itself a construction, a representation which applicants, despite their multiple identities, must nonetheless meet.

In its turn, the construct of roles which takes place reconstructs the person of the woman. This not only means that the 'constructed image' fertilizes the birth of legislation directed to a 'construct' of a particular 'womanhood', further it leads to a situation where in order to qualify under such legislation women must 'be' that construct. In the terms of **Berger** and **Luckman**, what must take place is an internalisation of another's objectification of self.[8] There is an essential arrogance in the stance of this premise of immigration law which echoes the colonial approach. That is to say that the law presupposes the complicity and participation of other nations in it's endeavours. If applicants participate by meeting the categories, those subject to the immigration rules are made accomplices both in their own subjectification and in the maintenance of relations which are characteristic of colonialism. Not only does the end result legitimate legislation, by generating a self-fulfilling prophecy, it also presumes what **Foucault** has stated to be the: 'indignity of speaking for others'.[9] This

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[7] **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p9-10.
[8] **P.L.Berger** and **T.Luckman**, The Social Construction of Reality, Penguin, Harmondsworth, 1966.
[9] **Lawrence D.Kritzman** (ed), Michel Foucault. Politics, Philosophy and Culture: Interviews and other writings 1977-1984, Transl. Alan Sheridan and others, Routledge, London, 1988, xviii.

speaking for others silences and disempowers the women who become grist to this prophecy–mill which stands as the imperative for immigration control.

The categories within the immigration rules stand as a practice of subjectification which renders people fixed in what is apparently a 'natural' and thereby inevitable and unchanging role. In **Bhabha's** terms: 'The stereotype is not a simplification because it is a false representation of a given reality. It is a simplification because it is an arrested, fixated form of representation'.[10] A parallel which illuminates this translatory power of immigration law, particularly in respect of operation directed toward women, is found in the field of art history. As the introduction to this thesis suggests, this field is one in which sexual and racial difference has historically informed aesthetic difference and in which a genre such as Orientalism depicted cultures frozen in immobile traditional practices.

The explanatory example I will focus upon here to elaborate current debate is one adopted by **Griselda Pollock.** It is the 1892 canvas *Manao Tupapau* by Paul Gauguin, a canvas which illuminates the historical, sexual and racial matrix which is the gaze and operation of immigration law.[11] The canvas depicts the reclining form of Teha'amana whom Gauguin married in Tahiti when she was thirteen years of age[12] yet, as **Pollock** points out: 'as this

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[10] **Homi Bhabha**, 'The Other Question', Screen 24, No.6, November–December 1983, p27.

[11] For **Pollock's** thesis on this canvas, see: Avant–Garde Gambits 1888–1893: gender and the colour of art history, Thames & Hudson, London, 1992.

[12] This marriage in itself supports a related thesis. Gauguin had a wife and family in Europe and the imperative for his marriage to Teha'amana was, as **Pollock** suggests, his need for a housekeeper, sexual partner and model. The latter was a particularly strong imperative within a society whose artistic culture had no proletariat of female models. He needed a model if his trip to Tahiti was to bear the fruit he wanted, namely staking a claim in the European art world through a time–honoured tradition of art, the nude. As **Pollock** suggests of Gauguin's actions: 'The possibility for such abuse involves both the

painting of her was appraised in its Parisian artistic setting, it was not possible to read this thirteen year old woman of colour as a "wife"'.[13] She was to European eyes, a prostitute.[14] Gauguin's letters to his wife and a notebook kept for his daughter make clear both his assumption that this would be the reading of his work, and the efforts he made toward supplying a necessary supplementary meaning to a canvas which he too read as a depiction of the sexual mores of a native. That supplementary meaning (his marketing strategy) was one focusing on 'native mentality': that this was a depiction of a simple, superstitious Tahitian woman afraid of the traditional spirits of the dead, the 'tupapaus' demon. To **Pollock** this suggests that: 'Under the colonialists gaze, Tahitis' cultural and historical specifity was frozen. It became a mise-en-siene for a fantasy, so that it can only signify difference – temporal, sexual, cultural, racial'.[15]

Similar assumptions about the sexual mores of other cultures underwrite both the immigration rules and the cultural and anthropological tradition within which they arguably gain their 'marketing strategy'.[16] The sexualities and

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gender power of men of all cultures to exchange women and the racist structures which empowered some men to enter and dishonour the kinship system of other men whom they cast as racially and hence socially inferior'. **Griselda Pollock**, Avant-Garde Gambits 1888-1893: gender and the colour of art history, Thames & Hudson, London, 1992, p36-37.

[13] **Griselda Pollock**, Avant-Garde Gambits 1888-1893: gender and the colour of art history, Thames & Hudson, London, 1992, p37.

[14] As Chapter Six of this thesis suggests during discussion of media reporting upon customary practices, such associations remain currency today. To quote **Pollock**: 'Prostitution is part of what it means for non-European women to encounter European men, as Vietnamese and Thai women know to their cost today', Avant-Garde Gambits 1888-1893: gender and the colour of art history, Thames & Hudson, London, 1992, p35-36.

[15] **Griselda Pollock**, Avant-Garde Gambits 1888-1893: gender and the colour of art history, Thames & Hudson, London, 1992, p40.

[16] I use the term 'marketing strategy' quite deliberately. Sex and race have been historically at the heart of the capitalist imperial process, as numerous examples within this thesis suggest. This is seen literally in the conjunction of these elements upon the canvas by Gauguin, itself an artefact for sale within a

practices of these cultures are painted by immigration control in indelible colours which take the form of 'roles' overburdened by, and frozen in, 'native mentalities'. In terms of their socialisation within a local culture, women who present themselves to immigration control operatives are wives, mothers, fiancees, young and old, yet they are read as not being so by the European gaze which the rules direct toward them. Confronted by the practices and sexualities of other cultures, historically having their matrix in women, women bear the brunt of the strategies which are born out of the confusion the confrontation engenders. As both this and the following chapter point out, traditions are various and adapt over time and individuals are complex, yet the categories which 'freeze in time' render it such that applicants can only be 'different'. They must become the self they are 'permitted' to be, and none other.

Historical parallels will be drawn to elaborate upon the 'categories' within the rules and to illustrate how the 'construct' of a role can be seen to reconstruct the person of the woman. British Imperial administration abroad not infrequently put forward concern for the position of women in colonised communities as justificatory grounds, and thereby legitimation, of interference in cultural, traditional, religious practices. Controversy over sati in India is one instance of this and this will be cited at length later in this chapter. Suffice to record here that the arguments for the abolition of the burning of widows on the funeral pyres of their husbands was situated within debates on the reform of the status

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then competitive art milieu. Borrowing this metaphor, in abstract terms the 'canvas' that is the immigration rules is itself an artefact where sex and race are elements relevant to a body of legislation which is designed to function within a capitalist system where the balance of the combined protection and control of the labour force is crucial. Sex and race remain elements combining with the categories of the immigration rules to provide a 'means test' which denotes who and to what benefit to the UK itself, people enter the kingdom. The socio-political forces of capitalism are the barometer in both instances.

of women in British India. Equally, **Jayaweera**[17] has written of the Western gender role assumptions and stereotypes held in respect of marriage and divorce which formed the impetus to make changes in and impose legislation upon colonial territories.

Such examples are characteristic of how administrators constructed the object of representations that became the 'reality' of imperial India and thereby consolidated the 'reality' that was Europe. The two stood, and arguably stand today, in antithesis as primitive and civilised. A perspective which runs alongside this issue is a theme taken up by **Papastergiadis**[18] that early colonial writings attest to how: 'minority cultures are read as Western replicas of what you perceive in the non-west'. This tendency had implications for legal administration in the superimposing of 'normative behaviour' patterns on indigenous societies.

The history of British colonial administration is rife with examples of this superimposition of normative behaviour. One instance is how the British version of Hindu tradition became that which Hindus had to follow in India. An exponent in this field was William Jones, who arrived in India in 1783 to join the bench of the Supreme Court of India. As a translator and scholar he translated Hindu works which were studied by others in Europe. Niranjana suggests that he contributed: 'to a historicist, teleological model of civilisation that, coupled with a notion of translation presupposing transparency of representation, helps construct a powerful version of the "Hindu" that later writers of different philosophical and political persuasions incorporated into

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[17] **Swarna Jayaweera**, 'European women educators under the British colonial administration in Sri Lanka', Women's Studies International Forum, Vol.13, No.4, 1990, p323-331.

[18] **Nikos Papastergiadis**, 'Ashis Nandy - Dialogue and Diaspora', Third Text, No.11, Summer 1990, p90-108.

their texts in an almost seamless fashion'.[19] The immigration rules themselves have incorporated into their text such powerful versions of ex-colonial subjects which are, in turn, incorporated into such as the media as 'givens'.

The received knowledge that such 'givens' become feeds back into how travellers are treated on arrival to Britain. Such historical roots thus have important implications for twentieth century legislative procedures, both in general and in the field of immigration. As **JanMohamed**[20] suggests, the colonial realm was configured as a confrontation based on differences in race, language, social customs, cultural values and modes of production. It was thus a confrontation comparable with that upon which the current immigration rules are premised. In the manner of their operation, immigration categories and criteria enshrined within legislation build upon a construct of the 'racial other' and codify and preserve the structures constructed over time from ethnocentric assumptions. They become 'knowledge' of those falling within and commodified by their ambit. This 'knowledge' is born less of truth-value than of a legitimated persistence over time which is reinforced by, and reinforces, the negation of individuality and subjectivity of those subject to them. This denial of subjectivity and individuality is a negation which serves to defuse and silence any legitimate challenge to the knowledge, by rendering it inarticulate. In the same way that nineteenth century administrators and recorders such as William Jones regarded native laws as that which 'had first to be taken away from them and "translated" before they could benefit from them'[21] so too does immigration law take the identity of the applicant and demand they meet a

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[19] **Tejaswini Niranjana**, Siting Translation: History, Post Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p13.
[20] **Abdul R.JanMohamed**, 'The Economy of Manichean Allegory: the function of Racial Difference in Colonialist literature', Critical Inquiry, Autumn 1985, Vol.12, No.1, p59-87.
[21] **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p16.

translated version. As Chapters Two and Three make clear, the very fact that the translation is embodied within the discourse of law renders invisible the extent of the violation it entails. Standing as categories within law, what are in effect translations become instead a reliable interpretation of an 'original text' and an interpretation which is inherently endorsed by a legal climate.

The institutional context of the production and operation of the rules (elaborated upon in Chapter One) affords the 'knowledge' they embody a weighty evidential status. Chapters Four and Five, devoted to how women fare under the rules, elaborate upon this issue by drawing upon the procedural dealings with the categories. What will be identified is what **Lal** and **Wilson** suggest are thriving elements of 'blatant colonial attitudes' amongst immigration officials abroad. In a report focusing upon Bangladeshi families and the difficulties they face in obtaining entry clearances for the United Kingdom, **Lal** and **Wilson** remark critically of entry clearance officer village visit procedures. It is their view such procedures are characterised by: 'assumption that the Colonial past qualifies them to pass judgement both on individuals, who are seen as liars, and upon a country which is seen as dishonest'.[22] These arguments build upon the assumptions identified in Chapter Three in relation to the institutional culture of adjudicators.

Such procedures mirror both the colonial ethos of pathological categorisation and the indexical evidence of nineteenth century anthropological investigation. The latter, with its photographic categorisation by 'type', has echoes in the objectifying categorisations with which the immigration rules are imbued and which denies individuality. This denial is not far removed from the publications which were the product of the colonial ethos. Examples of these

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[22] **Sushma Lal** and **Amrit Wilson**, But My Cows Aren't Going to England, Manchester Law Centre, Manchester, 1985, p39.

include The People of India, a 'scientific' contribution characterising whole communities as 'lawless'.[23] In the work of William Jones referred to earlier, we find the characterisation of Hindus: 'as a submissive, indolent nation unable to appreciate the fruits of freedom, desirous of being ruled by an absolute power, and sunk deeply in the mythology of an ancient religion'.[24] These words not only attack native laws and deride superstition, but subtly imply how much happier these peoples would be under British rule. Other findings by Jones include the assessment of Hindus as deceitful, insincere and unreliable. Such assessments remain part of the twentieth century brief of immigration operatives in assessing the credibility of those seeking entry from the Indian sub-continent. **Minney**, in his work Siva or the Future of India, postulates in lengthy terms upon the sexual mores of the population.[25] Comparison is drawn between a West who 'partake of these pleasures more sparingly, so that we may stretch them elegantly (if we can) across the allotted span of three score years and ten', and an India which is suffering: 'as a result of this ceaseless stimulation of the libido'.[26] Custom is identified by **Minney** as culpable in sanctifying behaviour which stands as a barometer to national characteristics: 'The men become inactive and drowsy in their early youth; the women, worn by early and constant child-bearing, have their vitality still further drained by

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[23] See **C.A.Bayly** (ed), The Raj: India and the British 1600-1947, National Portrait Gallery Publications, London, 1990, p254.

[24] **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p13.

[25] **Minney** asserts: 'India has even greater sexual shortcomings than were noted by the Author of Mother India. I have myself, with the aid and guidance of the local police, in a tour of discovery through some of the cities of India, found more iniquitous indulgence than is set forth in the most purple passages of Miss Katherine Mayo's book'. **R.J.Minney**, Shiva or the Future of India, Kegan Paul, Trench, Trubner & Co. Ltd., London, 1929, p16-17.

[26] **R.J.Minney**, Shiva or the Future of India, Kegan Paul, Trench, Trubner & Co. Ltd., London, 1929, p18-19.

the incessant care of the children and the almost incessant sexual demands of their husbands. And Religion casts a glow of sanctity over all this'.[27]

Such assessment of behaviour as morally culpable in the eyes of a white 'civilising' norm contributes to a perception of peoples at opposite poles of physical and societal acceptability with corrupt social values. This is the grist to the mill of twentieth century media representations. Village visit procedures are concomitant with the earlier mentioned legitimation of exploitative and oppressive administrative practices through a basic assertion of their being a humanitarian and liberal gesture. As **Lal** and **Wilson** describe and contextualise in some detail, the practise of instituting village visits as part of entry clearance procedure was originally seen as a 'liberal imperative', a testimony to fair and just processing of applications. In the event, as they put it, this: 'ended up not only part of a racist set–up but seeming to heighten racism'.[28] These and other procedures of information gathering in the processing of applications are dealt with in this chapter as part of debate surrounding the categories of application in which women face difficulty.

In addition to criticism of the characteristics of categories as 'untrue', it is important to consider the complicity of them as representations within a wider context of racism and within the hierarchies of power of that context. In a similar manner to which colonial 'reality' was produced by those who colonized, the 'reality' of the lives of those who apply under the immigration rules is a production of those roles. Both serve(d) a suppressive end. Both produce(d) a 'reality' of discriminatory identities for those ruled (by the

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[27] **R.J.Minney**, Shiva or the Future of India, Kegan Paul, Trench, Trubner & Co. Ltd., 1929, p19.
[28] **Sushma Lal** and **Amrit Wilson**, But My Cows Aren't Going to England, Manchester Law Centre, Manchester, 1985, p39.

colonial authority and by immigration administration) which inherently assert a 'purer' identity for the respective authoritative rulers. As **Paliwala** suggests of the 'primary purpose rules' discussed in this chapter, they: 'have an impact on the cultural perception of Asian women in Britain as being a submissive oppressed group'.[29]

A power relation is a necessary part of 'translation' as an act, yet the very nature of 'translation' makes this invisible by virtue of also suggesting a 'quintessentially humanistic enterprise'. This humanistic enterprise is characterised as a bridging of a gap between people, a provision of a body of knowledge about 'unknown' people and a translation of one culture into terms intelligible to another.[30] What is forgotten in the humanistic enterprise is the question of in whose terms, and to what end, the translation takes place. The rendering 'intelligible' is in essence an intelligibility in particular terms that serve specific socio–political ends, both with the colonial process and that of today's immigration control. This imperative embedded in the very life–force of the immigration legislation must not be lost sight of.

To demand fidelity to an 'original' that is itself an assumed 'translation', is to demand others fit into a role which is integral to maintaining power relations. The law itself has a translatory power, translating social problems into legal concepts and by so doing marginalising relevant issues. This power in turn becomes a vehicle for translating the very identity of others to an identity which serves the ends of immigration control. These ends are to curb, to

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[29] **A.Paliwala**, 'The Black Numbers Game? Some Issues in Contemporary United Kingdom Immigration Law and Policy', National and European Law on the Threshold to the Single Market, (ed) **Gunter Weick**, Sonderdruck, Peter Lang, Frankfurt, 1993, (105–157), p110.

[30] For this argument see **Tejaswini Niranjana**, Siting Translation: History, Post–Structuralism and the Colonial Context, University of California Press, Oxford, 1992, p59.

prohibit and to suppress. To ignore this reality is to serve the interests of those ends. Yet the reality is often ignored, as demonstrated by the case of a visitor quoted by one MP during the course of the Asylum and Immigration Appeals Bill debate: 'friends who represent constituencies similar to mine have fought for the man who wants to come here because his father or mother is terminally ill. We have faced appeals and arguments with Ministers, hoping that they would be won before the parent died. We all know of people who desperately need to be here to solve family problems and are prevented from coming. They are not simple holidaymakers, although a family has a right to be reunited for a holiday when it is spread across two continents'.[31]

This is the reality of immigration control, yet it does not serve the interest of these ends to present the 'original'. The original is a diversity within a category, a hybridity. That hybridity is transfixed by the gaze of power which fixes a recognisable identity which in turn becomes the source of the authority, the imperialist vision, that is exercised through immigration control.

CATEGORIES

> *Love in the Third World can be just as powerful/complicated/*
> *multilevered/varied/long-standing*
> *as in the First or Second Worlds - maybe more so*[32]

The theme of 'nation' is at the core of legislation and an integral part of that theme of nation which underpins immigration control is 'family'.[33] Categories

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[31] **Mr Roy Hattersley**, Hansard, Issue No.1598, 2 November 1992, Col.50.
[32] **Michelle Cliff**, 'Love in the Third World', Creation Fire, (ed) **R.Espinet**, Sister Vision Ontario, Canada and CAFRA, Trinidad and Tobago, 1990, (146-147), p146.

under which persons must qualify for entry entail hurdles for those whose family patterns deviate from the androcentric and eurocentric 'ideal'. The immigration rules relating to marriage and to children joining a single parent are a case in point. This chapter will focus on the rules governing wives and fiancees whilst Chapter Five will concentrate on women as mothers. Other categories in which women seek to qualify for entry will be the supplementary material of debate, linked to arguments raised within these core categories.

These specific categories have been chosen as representative of areas where relevant factors are the basic human right to family unity and fears of 'economic migrants'. Each of these legislated categories have criteria whose sub-text embodies a culturally determinist stance upon applicants. This stance embodies particular assumptions about women in that in these areas what 'kind of woman' someone is becomes interlocked with cultural heritage. The manner in which applicants are dealt with under these categories entails perceptions which lead to a blurring of focus. The culturally determinist stance becomes a received knowledge through which the ethnic minority population within the United Kingdom are rendered an effective 'outsider within' by virtue of association with those who apply. Amongst such repercussions is the pathologising of West Indian and Asian family lifestyles which has serious implications for how they are viewed both under the Mental Health Act[34] and

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[33] See **S.Cohen**, A Hard Act to Follow, Manchester Law Centre and Viraj Mendis Defence Campaign, Manchester, 1988.

[34] Relevant references include: **Paul Gordon**, 'Medicine, Racism and immigration control', Critical Social Policy 7, Summer 1983, p6-20; 'Mental Health and Racism', Race and Immigration 158, August 1983, p6-11; **Black Health Workers and Patients Group**, 'Psychiatry and the corporate state', Race and Class, Vol.25, No.2, Autumn 1983, p49-64; **R.Littlewood** and **M.Lipsedge**, Aliens and Alienists: ethnic minorities and psychiatry, Unwin Hyman, London, 1989; **Rosemarie Cope**, 'The compulsory detention of Afro-Caribbeans under the Mental Health Act', New Community 15(3), April 1989, p343-356.

within the Criminal Justice system.[35] Within the latter areas categorisations such as 'the over-aggressive hysterical African woman' and 'withdrawn Asian wife'[36] echo the tenor of thought underpinning the categorisation of 'slave' and 'negro' centuries before. They are the equivalent of the entry in the 1810 Encyclopedia Britannica which stated the characteristics of the 'negro' as: 'idleness, treachery, revenge, cruelty, impudence, stealing, lying, profanity, debauchery, nastiness, and intemperance'.[37]

Such perspectives fed into public opinion then and do so now. In 1841 The Quarterly Review published an analysis of British public opinion upon India and recorded the concerns to be: 'a large uniform land occupied by a feeble and unwarlike people, tyrannized by the Brahmins, living in a rigid caste system, darkened with superstitions and offending religious practices, characterised by the worst vices of slaves - baseness, cruelty, falseness, cowardice'.[38] Chapter One has elaborated upon how the training of immigration operatives bears the trace of such pathologising of nationalities. That such perceptions remain a part of an institutional ethos was a finding of the author during the course of researching the plight of foreign prisoners within the United Kingdom prison system. A survey of Medical Officers within the prison system revealed the opinion of one officer that a large percentage of Afro-Caribbean people were mentally ill because of 'inter-breeding and the over-use of cannabis'. Another

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[35] Relevant publications include: **Home Office**, Race and the Criminal Justice System, Home Office, London, 1992; **NACRO**, Race Policies into action, NACRO, London, 1992; **Michael Day, Trevor Hall** and **Courtnay Griffiths**, Black people and the criminal justice system, Howard League, London, 1989; 'Race equality and criminal justice', The Runnymede Bulletin, No.258, September 1992, p4-5.

[36] **Black Health Workers and Patients Group**, 'Psychiatry and the corporate state', Race and Class, Vol.25, No.2, Autumn 1983, p49-64.

[37] Encyclopedia Britannica, 1810, Vol.XIV, p750.

[38] **David Bate**, 'Train up a Child in the Way He Should Go', Third Text, No.10, Spring 1990, (53-59), p58.

presented a 'nationality profile' amongst which were: 'Arabs: scheming; Africans: very noisy, easily turned to tears even when not depressed; Nigeria: Surly, quiet and scheming; Ghana: happy, joyful; Algeria: shy, demanding, scheming; Asians: close-knit, easily agitated, quick to raise voices'.[39]

Examining the areas of primary purpose and sole responsibility illustrates the differences within the black experience of immigration control. In both cases, the basic differences in conceptualising what women are seen as is revealed to rest in very particular assumptions rooted in perceptions of culturally specific practices. Afro-Caribbean women are mothers, not wives, the 'breeders' whose family is pathologised. The criticism of the matricentral family as matriarchal, which is implicit in the immigration rules, rests on confusion between 'household' and 'family'.[40] Their families are regarded at an even further remove from the 'nuclear ideal' than Asian families, and by default more dysfunctional.[41] The disparity between what has been the construction of ideologies of black and white domesticity and motherhood have led to a situation where the role of black women as mothers often goes unrecognised.[42] On the other hand Asian women are premised less as mothers than wives. They are the 'passive' objects whose actions and behaviour are directed by and ruled by their menfolk and whose motherhood is regarded less at the forefront of

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[39] **Deborah Cheney**, Into the Dark Tunnel: foreign prisoners in the British prison system, Prison Reform Trust, London, 1993, p46.
[40] See **R.Littlewood** and **M.Lipsedge**, Aliens and Alienists: ethnic minorities and psychiatry, Unwin Hyman, London, 1989, p149.
[41] For criticism of the evaluation of the 'black family' against an image and ideology of a universal norm premised in a 'progressive' white nuclear family, see: **H.V.Carby**, 'White woman listen! Black feminism and the boundaries of sisterhood', The Empire Strikes Back, (ed) **Centre for Contemporary Cultural Studies**, Hutchinson, London, 1982, p212-235; **Black Health Workers and Patients Group**, 'Psychiatry and the corporate state', Race and Class, Vol.25, No.2, 1983, (49-64), p49.
[42] See **M.Kline**, 'Race, Racism and feminist legal theory', 12, Harvard Women's Law Journal, 1989, (115-150), p115.

their identity than 'assigned as a duty'. The immigration rules which women in both groups face embody a series of ideas and engagements with traditional images, which stand as 'law'. Elements of how both groups of women are seen in this regard is the product of the 'naturalisation' of myth. These myths are the legacy of colonial slavery and imperialist administration overseas, standing as an historically situated 'legislated identity'.

Personal experiences become extrinsic and unauthorised in the face of immigration rule categories. Tribunal precedents dictate the expected materiality of the claimed status takes the form of acceptable evidence through which the reality of the appellant is re-defined by official knowledge. As such legally relevant facts and issues take precedence over the social reality of relationships. Such privileged meanings extend throughout the immigration rule categories to stand as what is a mother, a wife, or a widow. Appeal argument becomes less a debate of polarised truth and falsehood than a clash of dual realities or dual meanings. This shift follows from the context of application. In the interview situation official and applicant 'collide' and the imperative of control becomes identification of the 'truth' of what is being conveyed by the question and answer. In the appeal court there is already a 'translation' of the event which (as Chapter Three suggests) embodies within its very textuality an interpreted reality of the event of the interview and the words of the applicant. The imperative within the courtroom is often 're-interpreting' what the applicant said in order to impart alternative meaning.

Discussion of individual categories demonstrates that particular nationalities are disadvantaged by what is a flagrant disregard for 'roles' within other cultures. Examples of this include the non-acknowledgement or dismissal of the importance of religious or traditional observances. Such marginalisation renders a religious duty to care for an aged dependant insufficient, in itself, to

warrant admission as a dependant. By the same token couples must meet before marriage regardless of traditional observance and the criteria of 'necessary dependence' is assessed on Western standards of 'necessity' rather than religious or traditional obligation. For women in particular there is a double jeopardy in there being, beneath the categories and the 'knowledge' attendant upon them, assumptions above and beyond 'ethnic absolutism' which are gender specific.

FIANCEES

The rubber stamps you rubber man and wife.
Those whom the immigration law has kept apart
Let no one join together[43]

A strict list of criteria must be met by applicants who seek entry to the United Kingdom as fiance(e)s. It is required of Fiances and Fiancees, that:

(a) it is not the primary purpose of the intended marriage to obtain admission to the United Kingdom

(b) there is an intention that the parties to the marriage should live together permanently as husband and wife

(c) the parties to the proposed marriage have met

(d) adequate maintenance and accommodation without recourse to public funds will be available for the applicant until the date of the marriage

(e) (i) there will thereafter be adequate accommodation for the parties and their dependants without recourse to public funds in accommodation of their own or which they occupy themselves

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[43] **Debjani Chatterjee**, 'Primary Purpose', I was that woman, Hippopotamus Press, Frome, Somerset, 1989, (21–22) p22.

(ii) the parties will thereafter be able to maintain themselves and their dependants adequately without recourse to public funds.[44]

It is required of Spouses, that:

(a) the marriage was not entered into primarily to obtain admission to the United Kingdom

(b) each of the parties has the intention of living permanently with the other as his or her spouse

(c) the parties of the marriage have met

(d) there will be adequate accommodation for the parties and their dependants without recourse to public funds in accommodation of their own or which they occupy themselves

(e) that the parties will be able to maintain themselves and their dependants adequately without recourse to public funds.[45]

As with so many of the categories within the immigration rules, these two areas make their impact quite unequivocally upon applicants from specific areas of the world.

The 'primary purpose' clause figuring in the legislation has become contentious, indeed infamous, for inflicting upon Asian applicants the burden of proof to prove a negative.[46] Since 1985 this criteria has applied to both

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[44] 'Statement of Changes in the Immigration Rules', HC 251, para 47.
[45] 'Statement of Changes in the Immigration Rules', HC 251, para 50.
[46] It is worthy of note that the term 'primary purpose', can be the pivot of questions asked of applicants where reply is crucial to the application. Yet recorded questions such as: "Is the primary purpose of this intended marriage to obtain your admission here?", bear difficulty in translation. One case records 'there has apparently been considerable discussion in the past about how these words can best be translated into Punjabi, the outcome of that discussion being that the nearest one can get is "the real reason"' (See Mohammed Saftar v Secretary of State for the Home Department, [1992] Imm AR 1). Given the

sexes whose spouse or fiance(e) seeks entry to the United Kingdom.[47] It was extended to cover women who wish their overseas partners to join them following argument before the European Court that the rules were sexually discriminatory.[48] Ostensibly the extended coverage in the rules in itself carried with it a perception of a move toward equality, by departing from a stereotypical stance of women "following" husbands to establish a family. However the assumption of this traditional pattern is nonetheless maintained by virtue of the change in the rules rendering the perspective upon marriages being less corrected than merely refracted through a culturally determinist stance. That is to say operatives of the immigration rules take a dim view of departure from what is the perceived custom of Asian women joining the households of their husbands when male fiances or spouses seek to join partners in the United Kingdom. Equally, suspicion has been aroused as to the 'genuiness' of a match where there exists disparity in the ages of parties, or women are divorced or entering late in life to marriage.

Such approaches and suspicions are riven with stereotypical assumptions of 'knowledge' of Asian women. They join a tenor of thought counterpoint to that which led to the notorious virginity testing of Asian women at Heathrow: 'based on the racist and sexist assumption that Asian women from the subcontinent are always virgins before they get married. This kind of absurd

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intricacies of legal debate that have been devoted to deconstructing, defining and applying this term in innumerable appeals at all levels, the disadvantage inherent in communication of the essence of the message to applicants is not an inconsiderable consideration.

[47] For an account of the history of the primary purpose rule, see: **A.Paliwala**, 'The Black Numbers Game? Some Issues in Contemporary United Kingdom Immigration Law and Policy', National and European Law on the Threshold to the Single Market, (ed) **Gunter Weick**, Sonderdruck, Peter Lang, Frankfurt, 1993, (105-157), p114-120.

[48] See Adulaziz Cabales and Balkandali v UK (1985) 7 EHRR 471. The new immigration rules which established equal treatment to men and women who marry an overseas spouse were enacted in HC503 on 26 August 1985.

generalisation is based on the same stereotype of the submissive, meek and tradition–bound Asian woman'.[49] Whilst such invidious practice rightly became subject of debate, censure and prohibition between 1979 and 1981 there has been suggestion such testing did not cease immediately.[50] The stereotype which is at the root itself persists still, standing alongside assumptions of male role perceptions which in themselves direct the perceptions of male husbands and fiances as primary immigrants.

An historical legacy underpins how Asian women fare under these categories. Within the spectrum which assesses marriage motivation they are regarded as virtually bound hand and foot by traditional practice and ritual in the face of which they are 'passive victim'. The press interest in such issues as Asian marriages reflects this focus, premised as it is in concentration upon a perspective of 'strange and alien custom' of dowry and caste. This in turn serves to add credence to what was the official legitimation of the introduction of a now infamous immigration rule. The effective ban on male fiances which was the consequence of the 'primary purpose' clause was presented as a benign act by the government. Yet it might be said of the reality of this introduction that: 'For all the perfumed phrases about humanitarianism, it is the whiff of racism which lingers'.[51] Parliamentary debate in 1979 upon the issue records the Minister was challenged that 'the Government are not the right people to

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[49] **Pratibha Parmar**, 'Gender, Race and Class: Asian women in resistance' in The Empire Strikes Back, (ed) **Centre for Contemporary Cultural Studies**, Hutchinson, London, 1982, p245.

[50] **Satvinder Singh Juss** points to unreported immigration appeal cases of 1976, 1979 and 1983 where it is clear that virginity tests and gynealogical examinations had taken place. See Administration of Immigration Control in the UK, PhD, Wolfsen College, Cambridge, June 1985, p339. For the debate, see: House of Commons Official Report (5th Series) Volume 963, 19 February 1979, Columns 213–224 and the Yellowlees Report, Home Affairs Committee, Race Relations and Immigration Sub–Committee (1980–1981).

[51] **Graham Allen**, debate on the Asylum and Immigration Appeals Bill, Hansard, Issue No.1598, 2 November 1992, Col.104.

choose whom a girl should marry, and that it is a matter for the girl alone'. In response, the Minister suggested: 'Many Asian girls in this country would wish to make their own choice. Indeed that may well happen after the change in the rules rather than at the present'.[52] In effect then, what was advanced was an action designed to "protect" young Asian women from the "horrors" of the arranged marriage system'.[53]

This 'protective' gesture stands as an echo of the imperial intervention in the practice of sati on behalf of women who were 'content to go on as fate has decreed and along the lines that tradition traced' until 'The burning of a live woman touched the hearts of a white bureaucracy'.[54] In a climate of press reports which are voiced in terms of 'Blood Money'[55], 'Caste Out'[56] and 'Star-crossed lovers hanged by fathers'[57], this becomes a self-fulfilling prophecy feeding back to legitimate the legislation. However structural irony remains. The demands of the immigration rules are an ostensible encouragement of Asian women to defy the tradition of allowing parental choice of overseas partners yet this stands alongside censure of any departure from tradition when asked why they do not join their chosen partner abroad as tradition dictates. In

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52 Exchange between **Mr Grenville Janner** and **Mr William Whitelaw**, Hansard, Volume 973, No.66, 14 November 1979, Col.1340.

53 **P.Trivedi**, 'To Deny Our Fulness: Asian Women in the Making of History', Feminist Review 17, Autumn 1984, (37-50), p46.

54 **R.J.Minney**, Siva or the Future of India, Kegan Paul, Trench, Trubner & Co. Ltd., London, 1929, p28.

55 **Ruth Pitchford**, 'Blood Money', Guardian, 7 August 1991. A report which relates to 11,000 young Indian wives having committed suicide or been murdered in the past three years because of illegal dowry demands.

56 **Stephen Cook**, 'Caste Out', Guardian 11-12 May 1991. A report which suggests: 'India's racial system is being more strictly enforced in Britain...young couples are being harassed and beaten up by their own families.'

57 **Ajoy Bose**, 'Star-crossed lovers hanged by fathers', Guardian, 2 April 1991. Story from New Delhi of two lower caste youths and upper caste girl hanged by fathers goaded by a mob, for defying a ban on inter-caste marriages.

both instances conception becomes the 'official knowledge' which shapes 'official discourse'. In the twentieth century this discourse is the matter of the immigration rules: the questions directed to applicants and appellants that address these rules; the interpretation of the responses of those who seek to qualify under them.

During the nineteenth century women in colonial enclaves were seen as the embodiment of tradition, Asian women perceived as a site of an amorphous mass of religion, caste and tradition. As such they were a site for attack and control of values and practices at the core of Indian society. In the same way today cultural traditions are seen as a site of untenable practices by legislators. In the nineteenth century the British adminstration in India directed attention to practices such as infanticide, sati and child marriage. Of infanticide it was believed: 'Before Britain set its emphatic hand against this practice barren women used to kill children sacrificially and smear themselves with the blood in order to effect a cure for sterility'.[58] The assumption was that the imperative of their duty to become mothers was so strong that they would engage in infanticide. As the same author said of the instances of child marriage: 'In the Punjab – in all of India, no native woman, unless she be blind or deformed and even then a paternal dowry can effect a solution, need emerge from her 'teens unmarried'.[59] The 'doubly victim' stance that official interpretation forced upon Indian women in respect of sati remains evident today. Official discourse of the Empire regarded the women who sacrificed themselves as widows on the funeral pyres of their husbands either as victim of tradition–bound 'ignorance' (if deemed acting out of choice) or stereotypical passive victim (if deemed

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[58] **R.J.Minney**, Shiva or the Future of India, Kegan Paul, Trench, Trubner & Co. Ltd., London, 1929, p33.
[59] **R.J.Minney**, Shiva or the Future of India, Kegan Paul, Trench, Trubner & Co. Ltd., London, 1929, p24.

being forced).[60] As **Minney** put it: 'It was the custom once for the Hindu to insist on a widow joining her husband on his death. She was expected to cast herself upon his funeral pyre, and so great was the terror imposed upon her by the parents that she never failed to perform this sacrifice'.[61] The polarised polemic of earlier debate is vividly expressed in the art of the time which accorded sati the status of either heroic gesture epitomising classical virtue or barbaric custom subjecting women to coercion into involuntary immolation.[62]

This stance, with its underlying assumptions of Indian society, stood as pronounced opinion of sati. Its counterpoint equation stands yet, as pronounced opinion of the system of arranged marriages. It was and is a stance which acquires a fixity of meaning as 'knowledge' from which grows authorised strategy for practices to be redefined as taking 'legal' and 'illegal' forms.[63]

In colonial India the imaginative construct of sati was legislated against, rather than the factual phenomena. Recorded debate in the area reveals women themselves were not asked their motives. **Mani** in her extensive research is led to comment upon the process by which knowledge of sati was produced: 'the construct of sati that was legally enforced was specifically "colonial"'.[64] She records how the evidence of women on the matter, as subjects of their own,

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[60] The thesis of **Lata Mani** is invaluable to this debate. See 'Contentious Traditions': The debate on SATI in Colonial India', Cultural Critique 7, Fall 1987, p119-156.

[61] **R.J.Minney**, Shiva or the Future of India, Kegan Paul, Trench, Trubner & Co. Ltd., London, 1929, p26. **Minney** ignores the fact that this was not universal practise nor predominant, being limited mainly to ruling castes and even then sporadic.

[62] For the former see **Johann Zoffany**, Sacrifice of an Hindoo Widow upon the Funeral Pile of her Husband, circa 1780; for the latter see **Thomas Rowlandson**, The Burning System, 1815.

[63] **L.Mani**, 'Contentious Traditions: The debate on sati in Colonial India', Cultural Critique 7, Fall 1987, (119-156), p123.

[64] **L.Mani**, 'Contentious Traditions: The debate on sati in Colonial India', Cultural Critique 7, Fall 1987, (119-156), p123.

was totally disregarded, they were consistently seen as either passively and naively subject to the dictates of religion, should they go willingly to death, or victims of Hindu male barbarity if they resisted. As **Mani** puts it, the widow was nowhere allowed to be a 'full subject' and the view of her as helpless was reinforced further by: 'infantalising...referring to her as a "tender child" whilst the majority were above 40 years old'.[65] The twentieth century counterpart is found in the marginalising and silencing of the voices of applicants, the: 'infantalising of the alien...speechless and by this process infantalised – made proto–subjects only'.[66] They live then as narratives and: 'The other, reduced to stereotype, is a resolute and dependable alien'.[67] The dependable alien is that to which **Mani's** hypothesis suggests textualisation of discourse leads. Through fixation of meaning, it is narratives of a 'phenomenon' rather than a specific incident which survives, an 'imaginative construct' rather than a particular event.

The perceptions and assumptions of the nineteenth century legislators became constraints which defined what 'truth' and 'knowledge' were, fixed as standards to be adhered to in the legislative process. In a similar fashion there has been a conflation between 'arranged marriages' and 'marriages of convenience' in the drafting of twentieth century legislation. This is borne out by the implicit direction of the required criteria for arranged marriages within the immigration rules. The perceived loophole for abuse of the legislation is safeguarded against within the criteria itself and directed specifically toward applicants from the sub–continent. This was recognised by Mr Alex Lyon and given voice to by

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[65] **L.Mani**, 'Contentious Traditions: The debate on sati in Colonial India', Cultural Critique 7, Fall 1987, (119–156), p117.
[66] **Richard Blakey**, 'Marie–Jo La Fontaine', Third Text, No.12, Autumn 1990, (41–58), p51.
[67] **Richard Blakey**, 'Marie–Jo La Fontaine', Third Text, No.12, Autumn 1990, (41–58), p49.

him in the terms that, introducing a rule which prevented marriages where parties had not met was: 'not intended to hit a marriage of convenience...it is intended to hit the genuine arranged marriage of Asian girls'.[68]

The dangers of this conflation of arranged marriages with marriages of convenience have been widely manifest, not least in the serious misdirection on the part of some immigration appeal adjudicators, identified by the Court of Appeal. One such instance stands as testimony to many in expression of the view that: 'Under the Indian arranged marriage system, an ulterior primary reason for entering into a marriage can exist alongside an intention to make a lasting marriage; this is because such marriages are arranged by the parties respective families, before the parties to the marriage themselves have had a chance to develop any, or any substantial, knowledge of or affection for each other. One such ulterior primary reason could be to gain admission to the UK'.[69] The Home Secretary confidently asserted a comparable view in debate in 1979, in stating: 'Since the rules were changed in 1974, marriages have been contracted with the primary aim of enabling men to come here to work and settle. There can be no doubt about that'.[70] Such a perspective stands as repetition of the colonial silencing of voices who 'lived' the reality of what was being legislated against. As one MP put it: 'I cannot accept the suggestion that

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[68] **Alexander W.Lyon**, Hansard, 14 November 1979, Vol.973, No.66, Col.1336.

[69] The adjudicator, quoted in the case of R v IAT ex parte Arun Kumar [1986] Imm AR 446. Dealing with this finding, **Sir John Donaldson MR** stated: 'I am also disturbed at the adjudicator's reference to the Indian arranged marriage system...where the applicant belongs to a community in which arranged marriages are the norm, the fact that the marriage concerned is an arranged marriage is of itself without significance. All that an entry clearance officer can legitimately bear in mind is that it is less difficult to achieve an "immigration" marriage under this system than under the Western System, since the personal feelings of the parties to the marriage, and in particular the wife who already has a right of entry, can more easily be set aside or by-passed'.

[70] **Mr William Whitelaw**, Secretary of State for the Home Department, Parliamentary Debates, 4 December 1979, Vol.975, No.80, Col.254.

arranged marriages constitute an abuse. Many immigrant groups have told me...if the Government believe that they do represent an abuse...it might be a good idea for the Government to talk to them to see what can be done'.[71]

The legacy of the nineteenth century legislative approach remains today. The evidence of women as subjects of their own on the matter of sati was disregarded by a government embracing the approach of omnipotent judgement. In the same way that this created an hegemony of knowledges, the strategies of immigration control today operate within a structure which recognises an hegemony of knowledges of husband/wife relationships in primary purpose cases and of the mother/child relationship in sole responsibility cases (dealt with in Chapter Five).

In operating in such a manner the immigration rules dispose of custom unthinkingly. The focus taken in 'primary purpose' cases sees 'nothing strange at all in the requirement that the parties to the marriage should have met'[72]; ignores the undermining of parental responsibility within another culture[73]; marginalises the family dishonour which results from refusal of applications.[74] Nonetheless custom can be called upon as an 'authority' at will to question the credibility of applicants. This creates a 'double jeopardy' for applicants, a Catch 22 situation operating within the rules at a number of levels. In the approach taken to custom in primary purpose cases, whilst criteria demands the parties have met (which for many applicants involves flying in the face of tradition), *it*

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[71] **Mr Merlyn Rees**, Hansard, Vol.975, No.80, December 4, 1979, Col.274.
[72] **Mr William Whitelaw**, Hansard, Vol. 975, No.80, Column 255, December 4, 1979.
[73] See **Surinder Guru**, Struggle and Resistance: Punjabi women in Birmingham, PhD, 1985, where argument is developed on how the immigration rules undermine the role of Asian fathers in encroaching upon traditional rights to marry daughters to whomsoever they please.
[74] See **Amrit Wilson**, Asian women in Britain, Virago, London, 1978.

is not uncommon for suspicion to be created in the mind of the Home Office where there is any departure from traditional practice on the part of the applicant. This is particularly so where a woman resident in the United Kingdom calls her husband or fiance abroad to join her. It is not uncommon in such cases for entry clearance officers to draw adverse conclusions from a perceived departure from Islamic or Pakistani custom and thereby suggest the 'primary purpose' motivation is settlement in the UK. To quote from one case which stands as characteristic of many: 'The entry clearance officer was apparently satisfied that this was a genuine traditional arranged marriage. However, he drew attention, as he was entitled to do, to the unusual feature that here the applicant was going to take up residence with his wife and not vica versa. Concerning the applicants' preparedness to do this, the entry clearance officer made the point that it was not because the parties were parties that were especially close, or knew each other especially well, nor was the applicant so iconoclastic that he would defy all tradition; indeed his denial of the existence of the tradition damaged his credibility'.[75] There is little evidence that within the field of immigration control, Asian women are seen other than: 'struggling with an oppressive cultural system' within an ethnic group which has a fixed rather than a fluid structure.[76] They remain for the most part boundaried by immigration rule categories which are premised in the assumption that ethnicity has fixed components which are the primary agent in controlling and generating identities.

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[75] **Henry J**, R v Immigration Appeal Tribunal ex parte Mohammed Khatab, Queen's Bench Division, 2 December 1988, [1989] Imm AR, p317.

[76] **Parminder Bhachu** challenges these stereotypes in respect of Sikh women and highlights assumptions made of homogenous, fixed cultural values controlling and generating the identities of Asians. **Parminder Bhachu**, 'Culture, ethnicity and class among Punjabi Sikh women in 1990's Britain', New Community, 17 (3), p401-412.

The courts have legitimised such thought patterns in finding tradition and instances of departure from it a proper matter for consideration in that, as one case states: 'It was simply a matter by which the adjudicator was able to test the veracity and consistency of the account given by the appellant. If he himself regarded the tradition as one that would normally bind him, he being respectful of such traditions, the question as to why he was departing from it was clearly a relevant one, simply as a way of testing his motives for adopting a course which involved his coming to this sponsor in England'.[77] Dealing with factual and evidential issues in this way ensures there is limited scope for examining the extent to which interpretation of the rules has imposed an additional burden of disadvantage upon particular ethnic groups.[78]

Despite ostensible claims within the immigration rules to the neutrality of the role of operatives, the decision-making process in the immigration arena is nonetheless encroached upon by a number of assumptions which are internalised as received knowledge. It is not merely a wild assertion that entry clearance officers have made use of an eclectic range of material in assessing credibility of applicants applying under the primary purpose rule. In 1991 a Runnymede Trust article drew attention to the fact that the subject matter of a book entitled Muslims in Britain was 'frequently being misused by entry clearance officers'. Claims made within this publication were being applied as supportive evidence for refusal of entry clearance applications. In particular the applications which departed from custom were deemed questionable in the

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[77] **Taylor LJ**, Naushad Kandiya v Immigration Appeal Tribunal and Aurangzeb Khan v Immigration Appeal Tribunal, Court of Appeal, 20 March 1990, [1990] Imm AR, p387.

[78] Focus upon a similar factual and evidential issue having the same effect, that is the issue of dependants being 'not related as claimed', is discussed by **Charles Blake** in 'Immigration Appeals - The Need for Reform', Towards a Just Immigration Policy, (ed) **Ann Dummett**, Cobden Trust, London, 1986, p176-189.

light of the finding within the book that old customs and traditions of Islam were being more strictly observed as the community in Britain had grown increasingly devout. As the **Runnymede Trust** article stated, these points were linked: 'with arguments as to where a married couple should live after the marriage ceremony. The tradition is that a woman should go to live in the man's house but in many applications before entry clearance officers the man is applying to join his wife'.[79] A case in point where suspicion was aroused in the mind of the entry clearance officer by the fact that the applicant proposed to take up residence with his wife (notwithstanding it was accepted that this was a genuine traditional arranged marriage) raised comment from an adjudicator at appeal that: 'for a Pakistani man of twenty-six to abide by the whims of a girl of seventeen with regard to the important matter of where they would live, even in the context of an arranged marriage can mean only one thing, that it was the appellants' earnest intention to use marriage to the sponsor as a way of entering the United Kingdom'.[80]

Of those women who make application to join husbands in the United Kingdom, Asian women in particular have faced extraordinary hardship. Not least of the considerations in such cases is the pains taken to establish that applicant and sponsor are 'related as claimed'. Feeding into the assessment of this are a number of assumptions about the personal and sexual behaviour of women.

In 1985 the Commission for Racial Equality investigation into immigration procedures highlighted how the normal procedure in such cases was to 'match' dates from the husband's passport which indicated trips home, to the likely

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79 'Runnymede News', Race and Immigration, Runnymede Trust Bulletin No.247, July/August 1991, p19-20.
80 See R v IAT ex parte Mohammed Khatab [1989] Imm AR 313.

conception dates of claimed children. They had even encountered an instance where: 'it was suggested by an entry clearance officer in a letter to the Home Office that the sponsor should be asked to explain why his visits home over a period had not resulted in children'.[81] Non-coincidence of dates would prompt the assumption the sponsor could not be the father. Equally, 'on the presumption that adultery was out of the question in a Moslem society, that the child could not be his wife's'. The possibilities remaining and relied upon are thus that the child is someone elses posing as a dependant or the child is the applicant's and she is married to someone else. In a case illustrating the vagaries of such instances the writers of the report point out that whilst the mores of Moslem society were called upon to legitimise assumptions on refusal, there was no calling upon those mores and values of a Moslem society which 'would make it almost inconceivable that a woman would claim to be the wife of a man to whom she was not married'.[82]

There is a bizarre irony in the stance which the legislation permits and indeed facilitates being taken by entry clearance officers and adjudicators. In the case referred to previously concerning the 26 year old male and his 17 year old wife, evidence in support of the genuiness of the arranged marriage rested in part upon 'the sponsors very positive views'. The Queen's Bench Division pointed towards how: 'the fact of this apparent contradiction in itself raises the question of irrationality in context of this decision...if in one context the suggested insubstantial nature of the sponsor's view is being used against him, and in the very next paragraph the accepted strength of those views is apparently also being used against him, he is by that apparent contradiction denied of the right

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[81] **Commission for Racial Equality**, Immigration Control Procedures: Report of a formal investigation, CRE, London, 1985, 4.29.5, p50.
[82] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, 4.29.5, p50.

of knowing the reason why he lost the case; was it the strength or the weakness of the sponsor's refusal to live in Pakistan?'.[83]

Such double jeopardy, that is evidence arbitrarily rendered applicable to positive or negative assertions on the part of the operatives of the rules, is a characteristic evident not only in specific instances such as these but in general terms. Thus evident censure for breach of custom (in the doubting of credibility of those who depart from it) must be seen in the context of those same censuring officers demanding a break from custom in applying rules which stipulate the parties to a marriage must have met. The double bind extends to other areas, as seen in the case of one woman who applied to come and visit her son and daughter-in-law in the United Kingdom whilst their second child was born. Having given a reason for coming that 'it was her duty, that it was tradition', the interviewing officer retorted with the question 'Why on earth didn't you invoke tradition when you allowed your son to go and live in the UK?'.[84]

The courts facilitate this bewildering choice placed before applicants by having held stridently that it must be left to entry clearance officers to decide how they do their work, whilst equally asserting: 'Any attempt to achieve a delicate and detailed analysis of the motives for the marriage is more likely to obfuscate than enlighten. The motives will often, and perhaps usually, be complex and defy such analysis. Detailed analysis also introduces a 'Catch 22' element'.[85]

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[83] **Henry J**, R v Immigration Appeal Tribunal ex parte Mohammed Khatab, Queen's Bench Division, 2 December 1988, [1989] Imm AR.
[84] **Mr Robert Ainsworth**, commenting upon the experience of a constituent. Hansard, Issue No.1598, 2 November 1992, Col.74.
[85] See Court of Appeal judgement in R v IAT ex parte Arun Kumar, [1986] Imm AR 446.

The immigration rules governing the entry of fiance(e)s takes as a primary focus from within a list of criteria, that: 'the parties to the marriage must have met'.[86] This is clearly overtly directed toward the sub-continent system of arranged marriages. In that the rules both encapsulate western expectations of arranged marriages, and re-direct that marriage towards Western norms of marital expectation, they deny their validity.[87] Great pains are taken to establish parties will live together 'permanently', thus establishing an attack grounded in the assumption there will be an absence of 'love' in the equation. In Western terms 'love' is the 'natural' factor that precedes, precipitates and grounds marriage, standing as the 'assay mark' of genuiness. Such heterophobia, denigrating the norms of others as bizarre, pathological and uncivilised, is blinkered to such as the gradually diminishing lack of evidence of harmonious longevity in Western marriages, and the fact that marrying for love in the Western world is an 'ideal' rather than accurate description of a reality.

The dichotomy between the understanding of love and marriage within different societies was given voice to by **Nirad Chaudhuri** a guest of the BBC in 1959, invited by them to write a series of talks for their overseas service. His five weeks in England prompted him to draw his thoughts together in a work entitled A Passage to England[88], one chapter of which he devoted to the subject of 'Love's Philosophy'. Writing of the different attitudes in England and Bengal, he states: 'In Europe the idealization of relations of the sexes was the work of the man; in India or, to be more accurate, in Hindu society, it was that of the woman. If anybody tells you that the Hindu ideal of wifely devotion is

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86 'Statement of Changes in the Immigration Rules', HC251, Para 47(c).
87 **S.M.Poulter**, English Law and Ethnic Minority Customs, Butterworth & Co., London, 1986.
88 **Nirad C. Chaudhuri**, A Passage to England, Macmillan & Co., London, 1959.

an imposition by a patriarchal society, a tyranny prompted by male jealousy, do not believe a word of it. It simply is not true....We are often told by our Western friends that they just cannot understand our system of marriage. Most of us do not understand theirs either'.[89] The failure to understand is made more poignant by the fact that whilst in the West motivation toward marriage stems from diverse reasons which include economic, education and family status motives, these same motives, when subscribed to by the 'foreigner', are seen as questionable and warranting intervention and regulation.

In a comparable way to how the colonial view on sati privileged a particular form of 'knowledge' and thereby privileged a particular debate which produced, in **Mani's** terms, 'consequences of domination'[90], so the debate on arranged marriages has led to assumptions about what these are. That these assumptions are then taken as the root of legislation directed toward marriage, ensures those seeking entry under it's auspices must meet stereotypical categorisation. In effect, the applicant might seem to have the choice of categories under which to pursue a claim, and thereby hold the power of self-definition; in truth this power to define rests elsewhere. Indeed it is more than the usurpation of the power to self-define, it is the power to reconstruct social reality.

In the same way that constructed 'knowledge' could be seen to direct social control in the earlier mentioned fiance ban and virginity tests, the enforcement of the statutory criteria has potential for alarming consequences. Some writers have pointed toward women being hit harder than men by the one year probationary period imposed on those admitted for marriage. Not only does the

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[89] **Nirad C. Chaudhuri**, A Passage to England, Macmillan & Co., London, 1959, p119-120.
[90] **Lata Mani**, 'Contentious Traditions: The Debate on Sati in Colonial India', Cultural Critique 7, Fall 1987, (119-156), p122.

criteria impose an artificial strain on the marriage, it imposes on some women the burden of remaining within a violent relationship with men who use the marriage laws to subjugate brides by threat of deportation.[91] **Alibhai** highlights the particular disadvantages the focus of the immigration rules thrusts upon Asian and Filipino brides. Her argument is that the effect is a 'gross subjugation and prostitution of women to "behave"', the law demanding much more of the 'foreigner' in the first year of a marriage than would normally be expected.[92] Other writers point to the wider repercussions within the family of the manner in which applications are dealt with. **Guru** acknowledges the undermining of parental responsibility within another culture[93]; **Wilson** and **Alibhai** point to the issue of family dishonour and ostracism of some brides resultant upon fiance refusals[94]; **Blake** argues families are prevented from organising their affairs in a way convenient to the whole family.[95]

'Knowledge' about arranged marriages is a production of a number of strands of discourse from which cannot be divorced what is seen as the cultural identities of white Western women and Asian women. Such identity is fuelled by the

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91 See for example: **Yasmin Alibhai**, 'For better or for worse', New Statesman and Society, 6 January 1989, p22-3; **Amina Mama**, The Hidden Struggle: statutory and voluntary sector responses to violence against black women in the home, LRHRU, London, 1989; **J.Bhabha, F.Klug** and **S.Shutter** (eds), Worlds Apart: women under the Immigration and Nationality Law, Pluto, London, 1985; **Don Redding**, 'The not so tender trap', The Guardian, 9 January 1991.

92 **Yasmin Alibhai**, 'For better or worse', New Statesman and Society, 6 January 1989, p22-23.

93 **Surinder Guru**, Struggle and Resistance: Punjabi Women in Birmingham, PhD, 1987.

94 **Amrit Wilson**, Finding a Voice: Asian Women in Britain, Virago, London, 1978; **Yasmin Alibhai**, 'For better or worse', New Statesman and Society, 6 January 1989, p22-23.

95 **Charles Blake**, 'Immigration Appeals - The Need for Reform', Towards a Just Immigration Policy, (ed) **Ann Dummett**, Cobden Trust, London, 1986, p176-189.

media (as Chapter Six explores) and Asian women are consistently portrayed as 'tradition bound' not only to cultural practices but to highlighted practices which lend themselves (in the view of some of the press) to be seen as primitive and deviant. The 'standard' against which such 'degeneracy' is measured is a white Western norm of womanhood, which is regarded implicitly as a moral, superior and civilised alternative. Thus in concentrating on overtly 'alien' practices such as arranged marriages, a 'barbaric' counterpart of freedom of choice can be pilloried. Those involved directly with such cultural practices are within the proportion of the population who are disempowered, who are silenced through absence and marginalisation from both mainstream debate and vehicles of positive image-making.

The danger in this climate for nurturing an unchallenged 'construct' lies in its potential to precipitate the acceptance of that construct as 'social reality' and therefrom, 'knowledge'. It is 'knowledge', in turn, which the powerful use as both grounding and justification for social control. Under the guise of the claimed intent to 'protect' Asian women is a strong echo of that colonial concern for sati practices and, as was the case with the nineteenth century widows, these women are rarely seen as what **Mani** has described as 'full subjects'.[96] Instead they are both silenced and their voices mediated through particular texts, formats and people, particularly in the procedural elements of interview and appeal which are at the core of immigration control procedures. The frustrations of this 'no win' situation in effectively being displaced from ones identity, are explored in the 'other voices' of Chapter Six. It is a displacement of which it might be said:

'Over my mask

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[96] **Lata Mani**, 'Contentious Traditions: The Debate on sati in Colonial India', Cultural Critique 7, Fall 1987, (119-156), p117.

is your mask
of me
an Asian woman
grateful
gentle
in the pupils of your eyes'[97]

Such potentially powerful privileged meanings as those pertaining to fiancees extend throughout the categories of the immigration rules and their assumptions affect even how women are seen as visitors. Circumstances surrounding the refusal of one young woman wishing to visit her sister in the United Kingdom were that: 'the 19 year old applicant has not seen her sister Mrs K, since she was very young and does not really remember her. She is a single woman, not engaged, and there was no evidence of any family income. On these grounds, the ECO considered that she was not classified as a genuine visitor'.[98] The fact that this young Asian woman was not only single, but not engaged, had clearly 'alerted' the entry clearance officer to possible unstated motives behind the proposed visit.

The self-definition of applicants is challenged by a 'knowledge' born not only of rule criteria but appeal court precedents, unpublished instructions to operatives and a practice born of specific training. Reality is re-defined. Chapter Five will explore how a similar fate befalls those women who seek to be reunited with their children in the United Kingdom. **Blake** suggests that the rules governing both wives and children are interpreted and applied in a manner which imposes a higher burden on certain ethnic groups. The manner of interpretation demonstrated in Chapters Four and Five work in tandem with

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[97] **Mitsuye Yamada**, 'Masks of woman', Making Face, Making Soul, (ed) **Gloria Anzaldua**, Aunt Lute Foundation Books, San Francisco, 1990, (114-116), p114.

[98] **Mr Max Madden** quoting from a Foreign and Commonwealth Office letter received in response to his representations on behalf of a constituent. Hansard, Issue No.1598, 2 November 1992, Col.60.

administrative procedures referred to earlier. Thus the suspicion of documentary evidence in the Sub-Continent leads to lengthy interviews; an emphasis on subjective assessment of credibility leads to inconsistency in decision-making.[99] As in this chapter, the operation of the immigration rules will be contextualised by an historical focus, a past that signifies what is going on in the present.[100] This is a necessary contextualisation if in the final event we are to examine both the categorizations that are made and how or where we set our boundaries.[101]

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[99] **Charles Blake**, 'Immigration Appeals - The Need For Reform', Towards a Just Immigration Policy, (ed) **Ann Dummett**, Cobden Trust, London, 1986, 176-189.

[100] **Patricia Williams** suggests 'a refusal to talk about the past disguises a refusal to talk about the present. If prejudice is whats going on in the present, then aren't we, the makers and interpreters of laws, engaged in the purest form of denial? Or, if prejudice is a word that signified only what existed "back" in the past, don't we need a new word to signify what is going on in the present? Amnesia, perhaps?'. See **Patricia Williams**, 'The Obliging Shell' in The Alchemy of Race and Rights, Harvard University Press, London, 1991, p103.

[101] **Patricia Williams** argues: 'Categorizing is not the sin; the problem is the lack of desire to examine the categorizations that are made....The problem is the failure to assume responsibility for examining how or where we set our boundaries'. See **Patricia Williams**, 'The Obliging Shell' in The Alchemy of Race and Rights, Harvard University Press, London, 1991, p102.

CHAPTER FIVE

THY MOTHER WAS A PIECE OF VIRTUE.

I was very sad leaving my kids behind, very sad. But y'know since I had that plan to send for them, I knew it wouldn't be too long before I see them again[1]

INTRODUCTION: MOTHERS

Chapter Four concentrated upon the category of fiancees and wives in considering how culturally specific assumptions of women in roles underlie how women are dealt with by immigration legislation. This chapter looks at how women are dealt with in their role as mothers and grounds specific cases within an historical framework. In so doing the precedent cases drawn upon to illustrate the plight of mothers and children divided by the immigration rules, stand as accounts of how people are seen and families conceptualised. The tenor of reports prepared for appeal against refusal of application will be seen to be less objective accounts of two sides within a legally boundaried reasoned debate than testimony to emotionally complex human beings trapped and manipulated within the pressures of a wider socio-political framework. The stereotypical characterisations the immigration rules thrust upon wives and mothers take no account of disjunctions between cultural norms and actual

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[1] **E.Dodgson**, Motherlands, Heinemann Educational Books, Oxford, 1984, p17.

practice, other than to fix upon any disjuncture as 'evidence' of an application not being 'genuine'.[2]

How the immigration appeals are read in this chapter is in itself part of the message of this thesis. Drawing upon a range of different areas before approaching the textuality of the cases is to truly 'read' them in hearing the voices of those who are their subject. Drawing upon diverse materials to supplement the 'word' of the law within which parties are embroiled becomes a means to render visible issues of gender and race which are otherwise marginalised. In the day-to-day operation of the immigration laws there is little acknowledgement either that valid argument can advance from other than strictly delineated areas, or that considerations outside the parameters of the drafters and operatives of the rules can be deemed pertinent 'knowledge'. Such a reading thus acknowledges the complexity of the law, seeing it not as an entity 'out there' pristine and inviolate in the face of such considerations as racial and sexual stereotypes or categorisations, but as informed by and informing these very issues.

In the case of a child refused permission to join a mother here that mother is told what she thinks and believes her motherhood to be, is. Where evidence is inadequate to meet the criteria for reunion between mother and child, their relationship is effectively denied. This is analogous with saying what she believes to be reality is not reality, that her very 'self' must be defined for her. The Catch 22 situation outlined in the previous chapter in respect of fiancees makes the process of defining self even more elusive. For example it will be

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[2] For a discussion of the stereotypical characterisations within a close study of everyday lives, which points to disjunctures between cultural norms and actual practice, see: **Sheila Allen**, 'Perhaps a Seventh Person', Race in Britain: continuity and change, (ed) **Charles Husband**, Hutchinson University Library, London, 1982, p128-144.

demonstrated how the occasional contact with a parent in-country by children in sole responsibility cases can be sufficient to devalue, or cancel out, a sponsoring mothers claimed responsibility. Nonetheless, a comparable intermittent contact between United Kingdom sponsor and child (inevitable due to the very physical distance itself) invariably detracts from the claim by the sponsoring parent to both responsibility taken and affection held.

SOLE RESPONSIBILITY

if i have a daughter what will i tell her about belonging?
where will i show her that is her home?[3]

The rules governing the admission of unmarried children under 18 joining a mother in the United Kingdom establishes the criteria for successful application as one which focuses in particular upon the crucial question of 'sole responsibility'. Choice of this particular focus for discussion in this chapter is many faceted. It allows examination of how women settled in the UK, whilst themselves not the applicant, are equally vulnerable to 'judgement' being made upon them in the terms I have outlined. Further, it is a focus which highlights how the androcentric and ethnocentric practices central to the practical operation of control are mirrored in the word of the law itself, in the assumptions which underlie the 'categories' into which mother and child must fit. Not least, who is considered to be a 'suitable parent' is relevant to debate. Step-parents are 'acceptable' only if the natural parent is dead, and then not by re-marriage; adoptive parents must meet the criteria of 'transfer of parental

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[3] **Adjoa Andoh**, 'I'd Also Like To Say..', Black Women Talk Poetry, (ed) **Da Choong, Olivette Cole Wilson, Bernardine Evaristo** and **Gabriela Pearse**, Black Womantalk, London, 1987, (30-32), p30.

responsibility'[4] seen in terms other than a sharing of custody which might nonetheless be the cultural practise. The focus also clearly demonstrated the wider socio-political factors which feed into the operation of the rules, there being a demonstrable tension between the facilitation of family unity and a desire to curb secondary immigration.

The criteria for a child joining a parent in the UK authorises entry:
If one parent is settled in the UK or is on the same occasion admitted for settlement and has had sole responsibility for the child's upbringing;
or
if one parent or a relative other than a parent is settled or accepted for settlement in the United Kingdom and there are serious and compelling family or other considerations which make exclusion undesirable – for example, where the other parent is physically or mentally incapable of looking after the child – and suitable arrangements have been made for the child's care.[5]

The 'sole responsibility' criteria was introduced into the immigration rules in 1969 as a measure of exclusion. It was designed to stem the arrival of Pakistani boys from joining their fathers in the United Kingdom, whilst their mothers remained in Pakistan.[6] It continues to operate as a measure of exclusion under the cloak of an apparent philosophy of enabling 'family unity', directing itself particularly toward family and migration patterns of the West Indies. Claimed in 1974 to be 'a monstrous injustice, a rule which apparently applies British

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[4] 'Statement of Changes in the Immigration Rules', HC251, para 53.
[5] 'Statement of Changes in the Immigration Rules', HC 251, para 53.
[6] **J.Bhabha, F.Klug** and **S.Shutter** (eds), Worlds Apart: Women under immigration and nationality law, Pluto Press, London, 1985, p100.

standards of morality to a West Indian society which is totally different'.[7] The rule remains today.

In that applicants in these cases are children seeking to join a parent in the United Kingdom who has invariably travelled here some number of years before, there is an impossibility of meeting the strictest literal interpretation of 'sole responsibility' (a status quite distinct from legal custody). As such the criteria involves proving fine distinctions: whether a mother has delegated or abdicated responsibility for children; whether she has been source of financial support; whether there is demonstrable emotional commitment in the mothers interest in, and affection for, the child applicants. A very high standard of proof is required for a relationship in which 'The natural concern of a caring parent for his or her child falls short of the exercise of the "sole responsibility for the child's upbringing" required by the rule'.[8]

In 1985 the Commission for Racial Equality, reporting upon immigration control procedures, quoted guidance given to entry clearance officers upon circumstances to be taken into account in reaching decisions in such cases. These included the length of separation; arrangements made for the child's care prior to the separation, and who decided these; source and proportion of maintenance; source of important decisions in the child's upbringing; part played by the parent in the United Kingdom; relationship of the parent in the United Kingdom to the child.[9] The same report expressed concern at the lack

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[7] A report by Immigration Appeals Adjudicators following a visit to the Caribbean, quoted in **J.Bhabha, F.Klug** and **S.Shutter** (eds), Worlds Apart: Women under immigration and nationality law, Pluto Press, London, 1985, p111.

[8] **Roch J.**, R v Immigration Appeal Tribunal ex parte Sajid Mahmood [1988], Imm AR 121, Queen's Bench Division, p26.

[9] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, 5.5.1, p57–58.

of consistency in criteria adopted by entry clearance officers determining these cases.[10]

The women who seek reunion with their children are thus asked to be 'doubly mother' given their transgression from the norm by their initial separation. The lack of consistency in criteria adopted by entry clearance officers determining such cases[11] demonstrates the subjectivity of those exacting standards and the assumptions that underlie the categories into which mother and child must fit. Assumptions about family life lead to a pathologising of the 'normal' Jamaican family wherein we see echoes of the assumptions examine in Chapter Four. For example: 'it is assumed that a man applying to join his wife in Britain has married her primarily to enable his emigration from Jamaica, because it is believed that Jamaicans do not usually consider marriage to have any particular value'.[12] The stance taken here can be compared with that which Chapter Four demonstrates operates in the context of Asian arranged marriages. What becomes clear again is the ease with which 'culture' is called upon or dismissed at will by operatives to exclude applicants. Equally, in the same way that as Chapter Four points out, pronounced opinion on arranged marriages has its roots in assumptions which operated through British Imperial administration in India, assumptions about West Indian families have long-established roots. Such perceived 'lack of value' attributed to relationships echoes the common currency of pro-slavery writings in the eighteenth and nineteenth centuries.[13]

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[10] **Commission for Racial Equality**, Immigration Control Procedures: a Report of a Formal Investigation, CRE, London, 1985, 5.6.5, p60.

[11] See reference to this in **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, 5.6.5, p60.

[12] 'Caribbean families divided', CARF, No.5, November/December 1991, p14.

[13] For a particularly invidious example see Edward Long's History of Jamaica, 1774. The ideas within this became common currency throughout subsequent centuries, as demonstrated by **P.Fryer**, Staying Power: The History of Black people in Britain, Pluto Press, London, 1984, Chapter 7.

The negation of the reality of others pointed to in Chapter Four is evident too in how practices such as customary delegation of responsibility and wide kinship groups where a sharing of responsibility is the norm, have themselves been stumbling blocks for West Indian applicants. In one such instance an adjudicator dismissing an appeal interpreted what the appellants representative termed 'the customary delegation of responsibility by mother to grandmother which is part of the accepted way of life in the West Indies' as an 'abdication', rather than a delegation of responsibility.[14] In cases where issue has been taken with such a perspective, additional 'qualifications' are brought to bear to undermine applicants. In one case an adjudicator recorded at appeal against refusal of an application in Jamaica that he believed of the father's claim to sole responsibility for his childs upbringing that: 'It is quite clear to me that he genuinely believes he has had and continues to have such a responsibility. But such a subjective belief is not sufficient to show a compliance with the rule. There must be some objective evidence of it'.[15] Chosen by the adjudicator as testimony to such evidence was correspondence between the parent and the maternal grandmother with whom the child resided, assessing this in the terms that: 'there is no reason for the maternal grandmother to have maintained this kind of correspondence with Mr Pusey unless she was answerable to him. I regard the correspondence as evidence of a state of affairs in which the grandmother is Mr Pusey's delegate and no more in the upbringing of his daughter'.[16] When the Secretary of State appealed against the decision of the adjudicator to allow the appeal, the Tribunal reversed the adjudicators decision and the refusal was allowed to stand.

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[14] See the adjudicator's interpretation quoted by the Immigration Appeal Tribunal in the case of Emmanuel [1972] Imm AR 69.
[15] Secretary of State v Pusey [1972] Imm AR 240, p241–242.
[16] Secretary of State v Pusey [1972] Imm AR 240, p242.

When decisions are taken in such cases there are a number of assumptions in operation: what a mother is; what a mother/child relationship is characterised by; what stand as 'important decisions' in a child's upbringing. These issues are premised in what a 'family' is seen as, in accordance with the earlier identified theme of 'nation' which underpins immigration control, and accounts for the hurdles within the rules that must be faced by families 'deviant' in the eyes of a considered universal, and preferred, norm. The 'sole responsibility' rule is but one of these hurdles and directs itself particularly toward the family and migration patterns of the West Indies.

That the 'difference' of these families is posed as a 'problem to be dealt with' by being legislated against is seen in what has been and continues to be, a pathologising of the West Indian family. References have been made earlier to the **Littlewood** and **Lipsedge**[17] critique of the tendency for West Indian families to be regarded at a further remove from the 'nuclear' ideal than Asian families, and thereby more dysfunctional; to how **Phoenix**[18], **Carby**[19] and the **Black Health Workers and Patients Group**[20] point towards the evaluation of the 'black family' against an image and ideology of a universal norm premised in a 'progressive' white nuclear family. These are issues forged into a chain by **Kline**[21] the links of which are both historical and proactive. It is **Kline's** view that the disparity between what has been the construction of ideologies of

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[17] **R.Littlewood** and **M. Lipsedge**, Aliens and Alienists: ethnic minorities and psychiatry, Unwin Hyman, London, 1989, p149.
[18] **Ann Phoenix**, 'The Afro-Caribbean Myth', New Society, 4.3.1988, p10-13.
[19] **H.V.Carby**, 'White woman listen! Black feminism and the boundaries of sisterhood', The Empire Strikes Back, (eds) **Centre for Contemporary Cultural Studies**, Hutchinson, London, 1982, p212-235.
[20] **Black Health Workers and Patients Group**, 'Psychiatry and the corporate state', Race and Class, Vol.25, No.2, Autumn 1983, (49-64), p49.
[21] **M.Kline**, 'Race, Racism and Feminist legal theory' in Harvard Women's Law Journal, 12, 1989, p115.

Black and White domesticity and motherhood have led to a situation where the role of the former as mothers often goes unrecognised. It is a situation attested to by the difficulty these women face when they wish their children to join them in the United Kingdom.[22]

The image of black domesticity and motherhood renders applicants from the West Indies subject to injustice, not least the injustice of circumscribing their identity through a dual oppression of sexism and racism. The roots of this very particular image lie within the era of the slave trade, a construction born of plantocratic dogma and anti-slavery literature; of their passivity and their resistance; of the physical characteristics of slavery itself and tribal traditions supplanted and transformed. It was product of and contributor to a construction of white women, each in their turn serving a particular construction of 'man' both black and white.

Well researched material stands as informative comment upon this 'construct'.[23] A chasm exists between on the one hand how women represented themselves in early slave narratives[24], and on the other the conceptualisation of black women in such works as that of Edward Long referred to earlier. Not least of the ideas perpetrated by Long which are relevant to the debate at hand,

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[22] **M.Kline**, 'Race, Racism and feminist legal theory', Harvard Women's Law Journal, 12, 1989, p131.

[23] See **P.Fryer**, Staying Power: The History of Black people in Britain, Pluto Press, London, 1989; **H.Beckles**, Afro-Caribbean Women and Resistance to Slavery in Barbados, Karnak House, London, 1988 and Natural Rebels: a social history of enslaved black women in Barbados, Zed Books, London, 1989; **A.Davis**, 'Reflections on the Black Woman's role in the community of slaves', The Black Scholar 3, 1971, p3-15.

[24] **Carby** points to how even feminist investigations of 19th Century women writers ignores non-white women, thereby reproducing a racist hierarchy. **Hazel V.Carby**, 'On the Threshold of Woman's Era: Lynching, Empire and Sexuality in Black Feminist Theory', Critical Inquiry, Vol.12, No.1, Autumn 1985, p262-277.

was the interpretation of wide kinship groups as characteristic of disintegrating families and indifferent parentage. This was a myth underscored by how views of black women as sexually voracious and prone to practices of abortion and infanticide (regarded as undertaken merely to facilitate periods of prostitution) itself underlay how they were seen as wives and mothers. The matrifocal legislative approach of the plantocracy which rendered children 'of their mother's status' at birth, made their maternity inseparable from slavery and thus denied them the respectability of conventional motherhood. Black women were 'breeders', not 'mothers'. But even in their mode of motherhood, when understandably transmitting survivalist behaviour to children, they were regarded as harsh. This contributed to claims such as the late eighteenth century account from Barbadian planters of 'a severity toward them...even at the expense of the parental affections'.[25]

In sum, slavery provided a catalytic arena in which the elements of exploitation, degradation, judgement and contempt could combine to present a fundamental image of black women.[26] Their denigration, through the exploitation of existing currency of myth, was a pragmatic direction for the plantocracy to take in order to meet the axiom of slavery itself. This axiom was the exploitation of the greatest labour potential of their workforce. Only through the 'annulment' of female slaves as 'women' could the plantocracy justify equality of enforced labour and equality of punishment with male slaves. As one Barbadian plantocratic defence of flogging women put it in 1823, the presence of an 'Amazonian cast of character' rather than 'femininity'

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[25] **M.Craton** et al, Slavery, Abolition and Emancipation, Longman, London, 1976, p95.

[26] For a view on the subject of slavery as a structure of denial, see **Patricia Williams**, 'The Pains of Word Bondage' in The Alchemy of Race and Rights, Harvard University Press, London, 1991, p146-165.

was justification enough.[27] Yet the crucial point is that these women were consistently denied the opportunity to be seen in other than the terms in which their masters had cast them. The system which 'legislated' their existence denied them the opportunity. As **Williams** puts it, drawing an analogy with a King Lear who 'ultimately lost everything including a sense of self': 'The black slave experience was that of lost languages, cultures, tribal ties, kinship bonds, even to procreate in the image of oneself and not that of an alien master'.[28]

These historical perspectives raise valuable insights to bring to the debate at hand in terms of parallel to be drawn with the 'categories' that constitute immigration legislation, not least the position of the mother seeking to be reunited with her child. The strategies of immigration control operate within a structure which recognises an hegemony of knowledges of the mother/child relationship, yet places the evidence of the mother below that of the knowledge held by officialdom. There is little room within this for acknowledgement of what is a high social value placed on mothering in the Caribbean, rather a concentration upon an image of a strong, independent and dominant Caribbean woman being used to subtly discriminate.[29] The mother's claimed lived experience of having had 'sole responsibility' for her child is rendered mere rhetoric in the face of an official version of what 'sole responsibility' is. The latter has been fixed in no small part by the courts, in their processing of appeals against refusal of such applications.

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[27] **H.Beckles**, Afro-Caribbean Women and Resistance to Slavery in Barbados, Karnak House, London, 1988, Appendix 5.
[28] **Patricia Williams**, 'The Pains of Word Bondage', The Alchemy of Race and Rights, Harvard University Press, London, 1991, p153.
[29] **Pat Ellis**, Women of the Caribbean, Zed Books, London, 1986.

THE APPEALS

Steel ourselves into fortitude
or accept an image of ourselves
numb with resigned acceptance[30]

Twenty years ago determination in the case of McGillivary[31] focused upon argument that the term "responsibility" within the word of the law meant more than legal responsibility.[32] The adjudicator's determination was held by the Tribunal to embody a comparable survey of the relevant factors later established in two cases which have subsequently served as pivotal precedents: Emmanuel and Martin.[33] It was held in McGillivary that the term embraced this wider meaning virtually by default, in that if it did not:

> It would follow that all illegitimate children would, prima facie, be able to join their mothers in the UK, and if this were to be the effect of para 39 one would expect the Secretary of State to say so instead of speaking about "responsibility".[34]

Determining precision of meaning was quite another matter, leading to very particular attention being paid in this case to what the Secretary of State actually said in the published rules. The adjudicator's finding unearthed an interesting conundrum in that detailed attention to vocabulary suggested:

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[30] **Dennis Brutus**, 'Cold', Ranters, Ravers and Rhymers, complied by **Farrukh Dhondy**, Collins, London, 1990, (124-125), p124.
[31] [1972] Imm AR 63.
[32] The relevant legislation at that time was Cmnd 4298, para 39.
[33] [1972] Imm AR 69.
[34] McGillivary v Secretary of State for the Home Department [1972] Imm AR 63, p65.

that there is and has been one person responsible for the child. If the phrase were "some responsibility" or (as in earlier Instructions) simple "sole responsibility", this could be interpreted as meaning responsibility at some time or another, in other words, one of several responsibilities by several people for the same child. The definite article "the" indicates 'one thing only' and excludes the possibility of one, or some, of many.[35]

However establishing this clearly posed less a clarification than an unavoidable paradox, namely that children for whom the rule was clearly designated (those left in the care of relatives and called subsequently to join a parent in the United Kingdom) could not by the very definition of their circumstances hope to be able to demonstrate this strictly construed meaning of the term. The adjudicator nonetheless sought a logic in the rule, believing:

this conclusion must be avoided, for I assume that the Secretary of State does nothing in vain and has not issued Instructions which are of no effect from the outset. Obviously we have to look for a broader interpretation of "the sole responsibility" or perhaps avoid interpreting it in detail.[36]

Guidance was sought through comparison of the term with a phrase embodied in the Adoption Act 1958, "continuously in the care and possession". Admitting the more stringent tenor of the latter requirement it was felt that given potential successful qualification under that rule by a child in temporary custody of another, it was reasonable to hold that a child left in the care of a relative abroad was safe from immediate disqualification for consideration within the "sole responsibility" category. In effect, this positioned the definition of "sole responsibility" upon a subjective pivot, the finding being:

that to attempt a precise definition of the phrase in question would be unwise. As soon as one draws up a list of precise requirements to be fulfilled before the parent can be said to have sole responsibility, one has to begin making

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35 McGillivary v Secretary of State for the Home Department [1972] Imm AR 63, p65.
36 McGillivary v Secretary of State for the Home Department [1972] Imm AR 63, p65–66.

exceptions to the general rules in order to accommodate individual cases....Each case must be decided separately, and although this may mean that one adjudicator would decide a particular case differently from another adjudicator because they have no precise definition to guide them, I think that this is the preferable alternative.[37]

How then did Mrs Green fare in this case in her attempt to be reunited with her 15 year old daughter Rita McGillivary? She had left Rita in the care of her own step-mother some 10 years earlier, and seen her daughter once since that time during a trip to Grenada in 1969. The adjudicator dismissed the appeal against refusal of entry clearance. In sum, he felt he would have been prepared to accept sole responsibility as demonstrated had there been evidence Mrs Green had made every possible effort to bring the child to the United Kingdom as soon as possible, finding: 'The longer the separation between mother and daughter, the more difficult it becomes to justify such separation in terms of economic necessity'. Mrs Green had offered an explanation for the length of separation in stating her accommodation was initially insecure and later amounted to an inadequate one room. The adjudicator countered this claim by reference to her husband's employment, initially with London Transport and later with the Post Office in holding that:

Neither of these organisations pay such low wages that it is entirely necessary to live in one room....Furthermore, Mrs Green was able to afford the round trip from the United Kingdom to the West Indies and back in 1969 and had she wished to bring Rita to the United Kingdom she could presumably have paid Rita's single fare instead of going to Grenada.[38]

A number of points are raised by this case. Clearly there are a number of assumptions made regarding the intent of the Secretary of State in the drafting

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37 McGillivary v Secretary of State for the Home Department [1972] Imm AR 63, p66-67.
38 McGillivary v Secretary of State for the Home Department [1972] Imm AR 63, p68.

of the immigration rules. Yet why was the wording of the rule changed from terms which had held implicit (in the adjudicator's assessment) 'responsibility at some time or another....one of several responsibilities' to a term, 'the sole responsibility', where the strict definition could not possibly be fulfilled by those it applied to? Does the resultant elusive criteria of such cases act effectively to place sponsors in a position where facts of the case can be interchangeable in working both 'for and against' as the situation desires? Certainly the visit Mrs Green made to her child was not only discounted in terms of demonstrable contact but in fact counted against her, yet without it the lack of evidence of maintaining contact would surely have been matter for comment.

The adjudicator made a finding that 'Whether sole responsibility has been retained is a question of fact to be decided in each case', but is this in effect the nature of the appeal beast or rather a carte blanche authorization of potentially dangerous subjectivity of judgement? In the case under discussion the adjudicator assumed 'knowledge' of the personal finances and budget of the sponsor, of her ability to secure accommodation, and implied a lack of effort upon her part in the latter respect. This rendered the sponsor's claim that one room living made earlier application impossible, a lie. Finally, is it in fact an acceptable price to pay in the pursuit of family unity, a 'preferable alternative' as this adjudicator suggested, that one adjudicator may decide cases differently to another?

In the case of Emmanuel[39] the principle which the adjudicator raised in McGillivary regarding the scope of the term 'sole responsibility' was consolidated. The Tribunal acknowledged the inevitable presence of some

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39 [1972] Imm AR 69.

responsibility on the part of the relative with whom a child lived, such as that pertaining to ensuring school attendance, feeding and clothing the child, and held: 'We do not therefore think that literal or absolute responsibility of the parent in the United Kingdom could ever be established'. In so doing they overturned a decision by an adjudicator who, in dismissing an appeal, had interpreted what the appellant's representative termed 'the customary delegation of responsibility by mother to grandmother which is part of the accepted way of life in the West Indies' as an 'abdication', rather than a 'delegation', of responsibility. It was a decision taken notwithstanding acknowledgement within the determination of the mother's 'close interest in, and affection for, her daughter'.

Given the shifting sands of the elements that make up 'sole responsibility', providing 'evidence' of this latter area of consideration has proven crucial to the success of many cases. The case of Sloley[40] fulfilled this in submission of 16 letters between the mother of the overseas appellant and her mother in Jamaica, to whom she had entrusted the care of her child on travelling to the United Kingdom. The Tribunal finding, again overturning an adjudicators decision to dismiss the appeal, considered:

> These letters present a picture of Mrs Taylor continuously consulting and seeking the advice and approval of Mrs Buchanan regarding the appellant's upbringing and activities....demonstrated a continuing and positive concern on the part of the sponsor in the welfare and upbringing of the appellant.[41]

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40 [1973] Imm AR 54.

41 Sloley v Entry Clearance Officer, Kingston, Jamaica [1973] Imm AR 54, p57.

Yet such letters are not in themselves a key to success, as the cases of Ramos,[42] Pusey[43] and Martin[44] demonstrate. Fine distinctions are to be made in respect of such evidence.

The case of Ramos took the form of an appeal against a decision in the Divisional Court to refuse judicial review of a decision by the Tribunal. The Tribunal had dismissed an appeal against an adjudicators decision to dismiss an appeal against a refusal by the Home Office of Sugara Ramos's application to join her mother in the United Kingdom. Sugara was born in 1969 and her application for entry clearance was refused in 1984, subsequent appeals against this decision before adjudicators, tribunals and in application for judicial review, proceeding to the Court of Appeal in 1988. Concentrating for the purposes of this debate upon the matter of letters submitted in evidence, 9 personal letters were submitted as evidence before an adjudicator at the initial hearing, 31 letters submitted at the time of referral of the case by the tribunal to a different adjudicator (with reference to additional letters available untranslated). In the final dismissal of the appeal by the Court of Appeal in 1988, their lordships took account of a number of factors which weighed against a decision in favour of the appellant:

> despite the obvious continuous financial support being provided by this mother and despite also her obvious continuing concern as to her child's welfare and upbringing and the equally obvious genuine interest and affection which she has displayed towards her.[45]

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[42] [1989] Imm AR 148.
[43] [1972] Imm AR 240
[44] [1978] Imm AR 100
[45] Sugara Ramos v Immigration Appeal Tribunal, Court of Appeal [1989] Imm AR 148, p154.

The appellant in the Pusey case sought to join his father in the United Kingdom. The adjudicator recorded the sponsor impressed him as a 'truthful and reliable witness' and in attending to whether he had demonstrated 'sole responsibility', stated:

It is quite clear to me that he genuinely believes he has had and continues to have such a responsibility. But such a subjective belief is not sufficient to show a compliance with the rule. There must be some objective evidence of it.[46]

He turned for this to correspondence submitted as evidence, remarking:

This in my view confirms in fact and independently Mr Pusey's feeling and belief that he has had sole responsibility for the appellant....there is no reason for the maternal grandmother to have maintained this kind of correspondence with Mr Pusey unless she was answerable to him. I regard the correspondence as evidence of a state of affairs in which the grandmother is Mr Pusey's delegate and no more in the upbringing of his daughter.[47]

The Secretary of State appealed to the Tribunal against the decision of the adjudicator allowing this appeal, at which time the contact between the child and her mother residing in Jamaica overrode the weight the adjudicator gave to the letters in evidence. In allowing the Secretary of State's appeal and thereby overturning the decision of the adjudicator, the decision was taken that:

It may well be that as between the father and the grandmother the father has shouldered the main responsibility for the respondent but in our view the position of the mother must be taken into consideration..there has been a sharing of responsibility.[48]

The case was deemed distinct from Emmanuel where a principle of the inevitability of a shared responsibility was established, in that in Emmanuel the

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[46] Secretary of State v Pusey [1972] Imm AR 240, p241-242
[47] Secretary of State v Pusey [1972] Imm AR 240, p242.
[48] Secretary of State v Pusey [1972] Imm AR 240, p244-245.

in-country parent (the father) had taken no interest in his daughter. Considering in tandem with this the case of Martin enables consideration of how, in the same tenor that presence of a parent within the ambit of the applicant's world can be detrimental to an application, so too can the presence of siblings of that applicant. Martin revolved around a 17 year old girl in Jamaica seeking to join her mother in the United Kingdom. Left in the care of relatives for 12 years Sybil shared accommodation with (amongst others) her siblings. The adjudicator at the initial appeal considered that 'The correspondence annexed to the Entry Clearance Officer's statement shows the mother exercising guidance at a distance' and this, together with other factors, led him to allow the appeal against refusal. Before the Tribunal, upon the appeal of the Entry Clearance Officer against this decision, the case was rendered distinct from that of Sloley wherein letters had stood as evidence of continuous consultation between guardian and sponsor. Instead the Tribunal made the distinction that:

> though of course Mrs White was always interested in Sybil's academic progress and general welfare, but she also was as regards Daisy to whom she wrote, and her other children.[49]

In effect, demonstration through letters of interest and affection, the giving of advice and approval to all her children, diminished the claim to 'sole responsibility' made in respect of one.

The cases of Sloley, Pusey, Martin and Emmanuel, regarded in the light of weight given in each to correspondence and both parental and sibling contact, raise a number of problematic issues. Not least of these is consideration of how documentary evidence, in this case personal letters, fluctuates in value as

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49 Entry Clearance Officer, Kingston, Jamaica v Martin (S.S.) [1978] Imm AR 100, p102-103.

'evidence' between cases. Equally there is a paradoxical state of affairs in regarding occasional contact with a parent in-country as sufficient to demonstrate a responsibility which can devalue or cancel out a sponsor's claimed responsibility, when the comparable intermittent contact between sponsor and child (occasioned by distance) invariably detracts from the claim by the sponsoring parent to both responsibility taken and affection held. The very claims which avow the justice of treating each case individually, function in practice to render the criteria to be met all the more difficult to pin down in its complexity. They thereby render justice more elusive.

How the Tribunal regard the proper approach to the construction of the immigration rules is encapsulated in the case of Sajid Mahmood.[50] This case was one of judicial review, sought before the Queen's Bench Division. It followed a determination of the Tribunal allowing the appeal of the visa officer Islamabad against the determination of an adjudicator. The adjudicator had allowed the appeal of the parent of Sajid Mahmood, finding he had demonstrated sole responsibility for the child's upbringing.

The determination of the Tribunal records that the:

Home Office representative accepted the proper approach to the construction of the Immigration Rules is that laid down in R v Immigration Appeals Tribunal ex parte Alexander [1982] 1 WLR 1076, where, at page 1080, Lord Roskill said: "These rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument. They must be construed sensibly according to the natural meaning of the language which is employed. The rules give guidance to the various officers concerned and contain statements of general policy regarding the operation of the relevant immigration legislation".[51]

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[50] [1988] Imm AR 121.

[51] **Roch J.**, R v Immigration Appeal Tribunal ex parte Sajid Mahmood [1988] Imm AR 121. Queen's Bench Division. p125.

Are the rules then construed 'sensibly according to the natural meaning of the language which is employed'? In the case of Sajid Mahmood Roch J. held that in dealing with such cases:

> The natural concern of a caring parent for his or her child falls short of the exercise of the "sole responsibility for the child's upbringing" required by the rule.[52]

In the same case the Home Office representative made reference to how the very inclusion within a sub-heading of para 50 HC169 (the rules then in force) of a provision for admission where there are 'serious or compelling family or other considerations' which make exclusion undesirable, allowed a stricter interpretation of the sole responsibility criteria than if the reference had not been included. Clearly a very high standard of proof is required under a rule which not only gives no pointers toward criteria, but which under adjudication compounds the already elusive criteria. On the one hand it has been held unhelpful:

> to make a check-list of particular aspects which have to be considered in the decisions on the other cases and then, as it were, allocate so many points to the applicant against each item that has been put on the check-list.[53]

On the other hand instructions are issued to entry clearance officers giving guidance on how the rule is to be interpreted and, in the findings of the **Commission for Racial Equality**:

> A great deal of discretion was available to entry clearance officers in how they arrived at their judgements and conclusions on such matters, and the criteria they used tended to vary.[54]

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[52] **Roch J.**, R v Immigration Appeal Tribunal ex parte Sajid Mahmood [1988] Imm AR 121. Queen's Bench Division, p126.
[53] Suzara Ramos v Immigration Appeal Tribunal. Court of Appeal [1988] Imm AR 148, p152.

In sum, given that the individual opinion and attitudes of issuing officers is relied upon to such a great degree, qualifying under the rule is in effect a lottery. That it is a lottery for only a section of applicants has been identified by the **Commission for Racial Equality,** pointing out:

> we see no good reason in principle why the rules should discriminate as they do between children joining two parents and children joining one parent as far as previous support and responsibility are concerned. As we have pointed out, the present rule has had its major impact on women from the West Indies who have found themselves unable to secure admission for their children not because of inability or lack of intention to care for them in the future but because they had not exercised sole responsibility, as interpreted by immigration officials, in the past.[55]

Together with the examples included in Chapter Four, the applicants whose histories are recounted in this chapter attest to the translatory power of the immigration rules. The roles which passengers are directed to fulfil to qualify under the legislation, privilege a western conception of those roles. The lived reality of the applicants within the categories of wife and mother are both marginalised and in many instances called upon even to disqualify them by discrediting their genuiness as applicants.

Assumptions about women of other cultures have been seen to secure a differential focus between minority ethnic groups, thus maximising the exclusory imperative of the immigration rules. In being excluded, applicants are both disadvantaged and forced toward a fixed identity which both feeds

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[54] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation CRE, London, 1985, 5.6.1, p59.
[55] **Commission for Racial Equality**, Immigration Control Procedures: Report of a Formal Investigation, CRE, London, 1985, 5.6.4, p60.

popular myth and provides a fundamental legitimacy to immigration control. The very categorisation becomes a process which allows racism to persist.

Chapter Six elaborates upon the assumptions identified within this chapter and the previous chapter to be underlying the criteria of the immigration rules. These assumptions are identified within the popular myths surrounding minority ethnic groups which, when presented in the media, suggest a 'knowledge' of applicants and serve as both a supplementary layer of immigration control and a mechanism to justify that control.

CHAPTER SIX

YOU TAUGHT ME LANGUAGE;
AND MY PROFIT ON'T IS I KNOW HOW TO CURSE.

It is that act of speech, of 'talking back'
that is no mere gesture of empty words, that
is the expression of moving from object to
subject, that is the liberated voice[1]

INTRODUCTION: THE WORDS OF OTHERS.

The preceding chapters have made clear the defining role which the law and institutional culture play in the immigration process. The experience that is 'immigration' is accentuated in a very particular way by the texts which are the official public documents of immigration control: explanatory statements; appeal precedents; the rules themselves. Each of these are products of different sources, the operatives, the judiciary and the legislator and their multi-faceted quality is their strength. Whilst each of these texts and sources ostensibly direct interpretation to the different ends of their different roles, and engage in distinct practices, they complement. The process that is immigration control is one of a constellation of texts which work in tandem to consolidate a 'knowledge' about those who fall subject to control, and which serves to justify the mechanism of control itself.

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[1] **Bell Hooks**, 'Talking Back', Discourse: Journal for Theoretical Studies in Media and Culture, (ed) **Trinh T.Minh-ha**, No.8, 1986-1987.

The interaction of the participants in the theatre of immigration effectively neutralises their otherwise distinct responsibilities. It is an interaction which reveals their obligations are less to the applicant than to a trope that is immigration control. Given that the experiences these parties record form the discourse that is the immigration field, their definitional public pronouncements become a discourse fed back into how the original entry of applicants is dealt with. Chapter Three has dealt with an instance of this in the proposals to remove appeal rights from visitors under the Asylum and Immigration Appeals Bill.[2] Advanced within a context of 'life and death issues' which are implicitly seen as the sole province of asylum seekers, the motivation of visitors accordingly becomes a seeming inconsequent irrelevance which is easily (and ostensibly justifiably) marginalised. It is a dismissal of rights legitimised further by virtue of the threatening 'numbers debate' within which the wider arguments are encompassed.

This thesis has so far explored decisions through the recorded immigration discourse itself, the records of interviews, the explanatory statements and adjudicator and Tribunal pronouncements. The 'unsaid' within these is arguably equally competent to stand as that which is the experience of immigration control, and equally revealing of practices. This chapter examines the recorded experiences that do not form part of the official public immigration discourse and asks not only what these reveal but, what the nature of the arena in which they appear tells us about the credibility assigned to such accounts. Consideration will be given to how such works are both the expression of an experience and the expression of conditions of production. In the latter case, the 'how and why' of their production is an integral part of content. Part of the conditions of their production is the nature of the official public immigration

[2] For the debate see Hansard, Issue No.1598, 2 November 1992, Col.22-144.

discourse itself. The 'how and why' thus become relevant in terms of parallels to be drawn with how documented experiences are understood in the administrative context of immigration processes. The art of **Chila Kumari Burman** which is included in this chapter stands as example of this. Dealing with such issues as the representations of Asian women, her work stands as: 'a metaphor for the different realities which exist side by side yet are sharply divided'.[3]

These unofficial 'texts' are found in oral accounts and accounts written in poetry, in prose and letters; they are painted on canvases and the subject of photographs. They form part of personal communications, public expression and community-led projects formed to support individuals and political action. They are joined by a projection of immigration control that straddles the two areas, depiction in the media.

JUSTIFYING THE 'UNOFFICIAL'.

> *Your words raise spectral songs to haunt me*
> *I have subverted your vocabulary*
> *and mined rebellious corridors of sound*
> *I have tilled the frozen soil of your grammar*
> *I will reap the romance of your promises*[4]

The case for the inclusion within this thesis of the mediums of poetry, prose, painting, even personal letters, is their standing as valid testimony to

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[3] **Pratibha Parmar**, 'Emergence 2', Storms of the Heart (ed) **K.Owusu**, Camden Press, London, 1988, (47-54), p50.
[4] **Debjani Chatterjee**, 'To the English Language', Barbed Lines (ed) **Debjani Chatterjee** and **Rashida Islam**, Bengali Women's Support Group, Sheffield and Yorkshire Art Circus, Castleford, 1991, (90-91), p91.

'knowledge' of events. As **Bald** states: 'This world view, though presented through fictitious characters and events is rooted in the social reality in which the writer is an important actor. Thus fiction becomes a valuable source of information about what is considered important or unimportant in a particular era by presenting a vivid account of the writer's socio-political environment'.[5] A line of identification and explanation is given rise to by these different mediums, to provide a perspective otherwise absent from the official texts of Chapters Four and Five.

In poetry, prose and painting the 'telling of a story' can become both generalised and personalised in being both allegorical and metaphorical. For some it can be the only route to crossing a private/public divide to tell that story, a divide which, as **Parmar** puts it, is one of: 'unjust and alienating structures that work to exclude us and our experiences'.[6] This is particularly the case where the voice is marginalised elsewhere by 'official' accounts.

Earlier chapters have suggested that this marginalisation impinges directly upon the identity of applicants, fixing that identity in moulds pre-defined and indeed pre-disposed to reinforce control. The harshness and incongruity of this effective 'translation' is attested to in this chapter by what would be seen through the eyes of immigration discourse as unorthodox and invalid commentary. Yet, such commentary is, to draw upon **Bhabha's** justification for the inclusion of poems and fictional work in his own writing upon identity: 'work that comes from a certain perspective of gender as it interacts with

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[5] **Suresht Renjen Bald**, 'Images of South Asian Migrants in literature: differing perspectives', New Community 17(3), April 1991, (413-431), p414.
[6] **Pratibha Parmar**, 'Emergence 2', Storms of the Heart, (ed) **K.Owusu**, Camden Press, London, 1988, (47-54), p47.

history and language'.[7] In that the world of immigration control has hitherto in this thesis been revealed as a point of intersection of gender/history/language, the texts called upon in this chapter provide a valid and important perspective. They are texts which, as **Parmar** states, are concerned with 'creating images of ourselves which are authentic and textured, devoid of racial or sexual stereotypes'.[8] The decision to include them embraces an element of the imperative of the editors of Charting the Journey. This publication is a collection of stories, essays, interviews, and poems which the Preface states: 'is about an idea. An idea of "Blackness" in Contemporary Britain'[9], in particular 'a contribution to the documentation of Black womanhood at a specific moment in this place called Britain'.[10] Acknowledging the problems of conveying the collective and the individual, the editors justify the varied mediums by the claim that: 'different idioms lend themselves more readily to the reflection of different facets of reality'.[11]

As earlier chapters have pointed out, the art world has over the centuries itself functioned as a 'colonial discourse'. The depiction on canvas of 'the oriental' and 'the black' in the mainstream art which found favour in European academies, has consistently been one which fashions their cultures as frozen

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[7] **Bhabha** is here justifying the inclusion of poems and fictional work by such as Derek Walcott and Toni Morrison. See **Homi K Bhabha**, discussion in October 61: The Identity in Question. A Special Issue, MIT Press, Camb., Massachusetts, Summer 1992, p120.

[8] **Pratibha Parmar**, 'Emergence 2', Storms of the Heart, (ed) **K.Owusu**, Camden Press, London, 1988, (47–54), p49.

[9] **S.Grewal, J.Kay, L.Landor, G.Lewis** and **P.Parmar** (eds), Charting the Journey: Writings by Black Women and Third World Women, Sheba Feminist Publishers, London, 1988, p1.

[10] **S.Grewal, J.Kay, L.Landor, G.Lewis** and **P.Parmar** (eds), Charting the Journey: Writings by Black Women and Third World Women, Sheba Feminist Publishers, London, 1988, p4.

[11] **S.Grewal, J.Kay, L.Landor, G.Lewis** and **P.Parmar** (eds), Charting the Journey: Writings by Black Women and Third World Women, Sheba Feminist Publishers, London, 1988, p4.

and their mentalities as supplicant and lesser.[12] As Chapter Four demonstrated with the example of **Gauguin's** Manao Tupapau, the depiction of Teha'amana was read according to ideological frameworks which were both aesthetic and colonial. Teha'amana herself became erased from the depiction, she become a sign devoid of her own complexity which made sense within a European gaze. The categories of the immigration rules provide an equivalent 'Salon of Orientalist canvases', equally fixing the applicant as different and distorting their configurations. In the same way that Teha'amana became an object and image of representations of a colonial discourse, so too do the real women who submit to application under the immigration rules become an object and image of a continuing colonial discourse. This chapter will refer to canvases which provide in themselves 'the other story' of those women and, in their marginalised status, also an echo of the marginalised accounts within immigration control.

The canvases which stand as these 'accounts' do have something to say, they do speak to us as 'the other story' both in themselves and inasmuch as they ride in tandem with mainstream depictions. As **Brett** suggests of art as a means to express experiences: 'for those outside such events they give the inside view, they give insight into the events and into the feelings and desires of those

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[12] For detailed discussion of this area see: **David Dabydeen**, 'Blacks in 18th Century Art and Society', Storms of the Heart, (ed) **K.Owusu**, Camden Press, London, 1988, p19–30; **Alain Locke** (ed), The Negro in Art, Hacker Art Books, New York, 1979; **Zoe Munby**, 'Representations of women and race in the Lancashire Cotton Trade', A View from the Interior: feminism, women and design, (ed) **Judy Attfield** and **Pat Kirkham**, The Women's Press, London, 1989, p20–28; **Royal Academy of Arts**, The Orientalists: Delacroix to Matisse, Royal Academy, London, 1984; **H.Honour**, The Image of the Black in Western Art. Vol.4, Parts 1–2: from the American Revolution to World War One, Harvard University Press, 1989.

involved which are available in no other way'.[13] The reading of the canvases both as entities in themselves and alongside the reading of the works they challenge, present different perspectives. These perspectives, ever running parallel to each other by virtue of a paradigm which is in the hands of the powerful and within which all are judged, echo the polarised position of operative and applicant within the immigration field.

Inclusion of unorthodox 'texts' makes evident the space that exists between official discourse and 'lived realities'. In standing as direct parallel to the official accounts of Chapters Four and Five, they realise the gap that exists between official perceptions of those who are applicants and the social reality of the lives of applicants. In that the former guides the legislator the necessary translation which applicants must undergo, discussed in earlier chapters, is demonstrated. As **Bald** states as a premise to his comparison of literary images of South Asian Migrants: 'the wider the gap between the images and perceptions of the Anglo and South Asian Britons the more difficult it is for the policy maker, who is generally Anglo, to understand correctly the challenges to British society posed by the presence of the South Asian Britons'.[14] **Bald's** comparison offers a stance from which to 'speculate on the political and social implications of their differing perceptions'. This chapter seeks to illustrate the implications in the immigration theatre, for legislative drafting and the lives of applicants, of this 'misfit' of perceptions. As **Brett** states: 'On one level art...becomes a means of communication in which facts are not separated from feelings....Art also becomes the means to retain one's humanity when that

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[13] **Guy Brett**, Through our own eyes: popular art and modern history, GMP Ltd., London, 1987, p7.
[14] **Suresht Renjen Bald**, 'Images of South Asian Migrants in literature: differing perspectives', New Community, 17(3), April, 1991, (413-431), p414.

humanity is threatened'.[15] Thus the inclusion of accounts other than the official immigration rhetoric could be said to offer the material with which: 'to revolt against the tyranny of definition-machines and insist on your right to name what your senses well know'.[16]

THE MEDIA

The Western press never took kindly
to limbo dancer gyrations[17]

The rhetoric surrounding immigration is as much part of immigration control in the United Kingdom as the inscribed legislation. There is cause to suggest that prejudices and stereotypes advanced within public debate 'feed into' how people are seen at the moment of seeking entry, thereby affecting how they are dealt with. That these popular stereotypes of the 'foreigner' are premised within a focus of colour is not without significant effect.[18] Not least it is an effect that directs scrutiny to one section of travellers, those who are not white. Given

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[15] **Guy Brett**, Through our own eyes: popular art and modern history, GMP Ltd., London, 1987, p11.
[16] **Patricia Williams**, 'The Obliging Shell', The Alchemy of Race and Rights, Harvard University Press, London, 1991, p108.
[17] **John Agard**, 'Limbo Dancer and the Press', Mangoes and Bullets, Serpents Tail, London, 1990, p28.
[18] The equation of 'foreigner = colour' in the popular imagination was established to a significant effect by this author during a research project investigating the plight of foreign prisoners within the British prison system. Questionnaires sent to Prison Service staff included the question 'How many foreign prisoners do you have?' and elicited responses such as: 'Total non-white prisoners = 240' and 'We wouldn't normally consider a German as a foreign prisoner'. See Into the dark tunnel: Foreign prisoners in the British prison system, **Deborah Cheney**, Prison Reform Trust, London, 1993.

these considerations, included within this chapter is the media presentation of immigration control and immigration matters.

What may effectively be described as a 'numbers game' has been played in the public space of the United Kingdom for centuries. Vocabulary employed in reporting upon immigration issues is indicative of numbers even if actual numbers themselves are not specified. The collective term for immigrants is consistently in the order of: 'swamp', 'mass', 'wave', 'deluge, 'flood' 'tide' or 'hordes'. The limited becomes the infinite and so 'problematizes by conjuring mythic dangers'.[19] The watery metaphors both pre-date and post-date the infamous 'rivers of blood' Powell speech of 1968. That such language is an emotive 'call to arms' is not without precedent. The 'Enemy within' speech given by Powell on the eve of the 1970 general election can be regarded as a decisive factor in the shift of public opinion which returned the Conservative government to power. Within a year their government had legislated a new Immigration Act which incorporated the proposals for repatriation which Powell had dramatised so vividly in his rhetoric.[20] By 1979 Dr Shirley Summerskill was drawing attention to the vocabulary of immigration-speak, remarking of the Prime Minister: 'She successfully fanned the flames of racism and gave the word "swamped" a new meaning in the English language'.[21]

Of recent date similar language has been employed with equally non-neutral effect. The terminology of 'menacing demographic force patterns'[22] has had

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[19] **Patricia Williams**, 'The Obliging Shell', The Alchemy of Race and Rights, Harvard University Press, London, 1991, p105.
[20] **Kobena Mercer**, Powellism: Race, Politics and Discourse, PhD, Goldsmiths College, University of London, 1991, p5.
[21] **Dr Shirley Summerskill**, Hansard, Volume 975, No.80, 4 December 1979, Col.353.
[22] **Paul Johnson**, 'Raising the grim spectre of fascism in Fortress Europe', Daily Telegraph 3.12.1991, quoted in CARF No.6, Jan/Feb 1992, p10.

very specific effect in respect of the treatment of refugees by the United Kingdom. Comments such as those of one Minister remarking: 'We Can't have all of Africa and Asia coming to London'[23], have surrounded the introduction of the Asylum and Immigration Appeals Bill in 1992. In this latter debate it is the very 'maintenance of those civilised values'[24] which are claimed to characterise the humanity of the United Kingdom which is posed as having actually contributed to the numbers. The philanthropy of the country is seen by many as having been taken advantage of, in that: 'the growth in asylum applications is in part linked to the fact that anyone who asks for asylum is allowed past the normal immigration controls at our ports...the possibility of getting past the ordinary immigration controls becomes a prize that has drawn increasing numbers'.[25] Those who advanced the Asylum and Immigration Appeals Bill in debate took this line to the logical conclusion of all 'numbers debates' by stressing: 'we are often reminded of how crowded our country is...we are entitled, however to maintain the way of life which people already living in this country want and to provide the social and welfare services for which they have paid and which they expect to receive. We should be failing in our duty if we allowed an overload of new people to destroy that way of life'.[26]

Fears surrounding economic and social conditions are at the heart of the press 'numbers debate', with the personification of all those arriving as 'luxury immigrants' who are a drain on public resources. Stances of this kind lend themselves readily to a case both for discreditation, on the grounds of arrivants

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[23] **Peter Lloyd**, commenting on the Asylum Bill measures in BBC 'World Tonight' 1.11.1991, quoted in CARE, No.6, Jan/Feb 1992, p7.
[24] **Mr Kenneth Clarke**, Secretary of State for the Home Department, Hansard, 2 November 1992, Issue No.1598, Col.21.
[25] **Mr Kenneth Clarke**, Hansard, 2 November 1992, Issue No.1598, Col.26.
[26] **Mr John Ward**, Hansard, 2 November 1992, Issue No.1598, Col.45.

being both 'threat' and 'problem', and a call for tighter controls.[27] The tenor of presentation of the matter of immigration and global migration in terms of notions of 'curbing' and 'restricting', (which have long been part of both immigration rhetoric and practice) in turn lends itself to a negative inflection within this debate.

There has been little movement from the terminology of earlier centuries, such as that in a letter which appeared in the London Chronicle of 1764, commenting on the then fashionable practise of importing black servants. This stated: 'As they fill the places of so many of our own people....It is...high time that some remedy be applied...by totally prohibiting the importation of any more of them'.[28] By 1772 the son-in-law of the governor of Barbados was petitioning a Member of Parliament for a law designed to exclude black people which would, in turn 'preserve the race of Britons from stain and contamination'.[29] Both of these approaches have been more recently manifested. A headline 'House that for Cheek' accompanied a report of a family of Asians who, allegedly 'knowing just one English word – HOUSE...repeated it parrot-style as they wandered the streets' until they were given local authority housing.[30] The same paper suggested that their own coverage of how immigrants are entitled to a 'bagful' of benefits 'highlighted just how easy it is

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[27] See debate by **Teun A. Van Dijk**, Racism and the Press, Routledge, London, 1991, p96. For an account of how widespread such beliefs are, see also: **Glyn Ford MEP**, 'EC fascists blame immigrants for social ills', Searchlight, No.222, December 1993, p17.

[28] London Chronicle 1764, quoted in **P. Fryer**, Staying Power: The History of Black People in Britain, Pluto Press, London, 1984, p155.

[29] **Samuel Estwick**, 'Considerations on the Negroe Cause Commonly so called, addressed to the Right Honourable Lord Mansfield...By a West Indian', quoted in **P. Fryer**, Staying Power: The History of Black People in Britain, Pluto Press, London, 1984, p156.

[30] Daily Star 24.4.1991, 'Press Watch', **Runnymede Trust**, Race and Immigration, No.246, June 1991, p3.

for foreigners to fly here and sponge off the state, living rent-free in council houses and grabbing every penny they can in benefits'.[31]

The 'stain and contamination' perspective has progressed over the centuries through the rhetoric of eugenics, to fears such as those expressed by one MP in the House of Commons in 1979 that: 'Either there are far more here than is admitted, or they are multiplying at double the rate of everyone else. When one localises these figures, one comes up with the astonishing result that about one-quarter of the births in the whole of greater London are coloured...something like that in a period of only 20 years certainly matters'. Taken to task on why he chose to consider this change in British society in terms of the vocabulary of 'magnitude' and 'cataclysmic', this MP retorted 'there is something genetically different about them. One gets one's genes from one's parents, not ones place of birth'.[32]

All of the above perspectives distort facts, are divorced from the truth, and taint attitudes. In particular the stress on a clamour for British benefits can have disastrous consequences for refugees fleeing for their lives to a safe haven, rendering them 'economic migrants'. However the supreme irony of such claims lies in the fact that benefit offices themselves have the potential to operate as a form of immigration control. Matters of sponsorship and maintenance, of ability to accommodate, of tax allowances and benefits, all of which are central criteria to the issue of family members seeking to join relatives in the United Kingdom, provide the links in a chain which bind offices of the State to immigration control and its procedures.[33] Yet there is a

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31 'Star treatment for racism', Searchlight No.192, June 1991, p4.
32 **Mr Ronald Bell**, Hansard, Volume 975, No.80, 4 December 1979, Col.301-302.
33 For a discussion of immigration control through education, health, housing and social security, see **Paul Gordon**, Policing Immigration, Pluto Press,

virtual absence of reporting giving voice to this perspective, thereby a silencing of the complaints of those who fall victim to the extended tentacles of immigration control.

The status thrust upon the minority ethnic community resident in the United Kingdom is itself characterised by control. As **Paliwala** suggests: 'The meanings derived from external immigration control policies and practices reinforce and are reinforced by daily practices and policies in areas such as employment, housing and schools'.[34] Control both of the movements of the resident minority ethnic community and how they live their lives is embodied in the effective prescription of how, even if, they use health and benefit services when the appearance of an applicant for such services can prompt arbitrary checks upon immigration status. Such alienating treatment, discouraging people rightfully entitled to such benefits, is promoted by a press who report 'tides' of overseas visitors taking advantage of the 'liberal' system of the United Kingdom. As one MP remarked in the matter of health authority care: 'The immigrant community in this country may be forgiven for regarding this as yet another extension of internal immigration controls'.[35]

As the United Europe proposals for an integrated system of immigration control spread their shadow across a number of countries, there will be more players in the 'numbers game', more voices in the debate. The latter will be

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London, 1985 and 'Medicine, Racism and Immigration Control', Critical Social Policy, No.7, Summer 1983, p6–20.

[34] **A.Paliwala**, 'The Black Numbers Game? Some Issues in Contemporary United Kingdom Immigration Law and Policy', National and European Law on the Threshold to the Single Market, (ed) **Gunter Weick**, Sonderdruck, Peter Lang, 1993, (105–157), p110.

[35] **Dr Gwyneth Dunwoody**, House of Commons, July 6 1982, reported in From Ill treatment to no treatment, Manchester Law Centre Immigration Handbook, No.6, Manchester, 1982, p12.

constituted of the rhetoric of other countries, a public rhetoric which has in recent years shown itself to be increasingly characterised by racist and xenophobic word and deed.[36] Those voices already marginalised in the public rhetoric of the United Kingdom will be silenced even further. Vilified and accused already, 'spoken for' by others and 'given' a public persona, what they face is a total exclusion. What is foreshadowed thus demands that attention be directed toward the character of our immigration laws, not merely their content and operation but the mechanisms which both feed and legitimate their quality. One of these mechanisms is the media.

Significantly, where the newspapers and the experience of travellers does accord is in the concurrence of reported 'public opinion' and a change of legislation in line with this. In April 1986 the Home Office introduced measures to restrict representations made by MP's on behalf of passengers refused leave to enter the United Kingdom.[37] In the following months there was a noticeable increase in the numbers of refusals at Heathrow airport of passengers from the Indian sub-continent, Ghana and Nigeria. By July of that year Daily Express headlines were heralding an 'exclusive': 'Express dossier on the illegal arrivals who find a back door into Britain', in which Immigration

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[36] 'Fortress Europe' visa proposals have given rise to claims that the way in which control will operate 'is likely to be capricious - discriminating particularly against those from Asia, the Indian sub-continent and Africa'. For a report on the "negative list" of 128 countries whose nationals may require visas before crossing Europe's borders, see **Heather Mills**, 'Fortress Europe fears over new proposals', Independent, 21 December 1993. For a report on the rise of hostility to refugees and immigrants in Western Europe, see **Nicholas Bell**, 'Rise of the Hideous Beast', New Statesman and Society, 29 March 1985; **Karen Alder**, 'European Inquiry into Racism and Xenophobia Publishes Report', Patterns of Prejudice, Vol.24, No.1, 1990, p47-51.

[37] For a discussion of the changing scope and nature of MP's in immigration cases, see: **Cosme Morgado**, 'The Role of Members of Parliament in Immigration Cases', Policy Paper in Ethnic Relations, No.14, Centre for Research in Ethnic Relations, University of Warwick, 1989.

Service Union staff claimed a crisis warranting ballot of members 'about moves that would bring Heathrow to a shuddering halt'.[38] The ballot was scheduled for 2 September. On 1 September 1986 the Home Office announced the introduction of compulsory visas for passengers from Nigeria, Ghana and the Sub-continent. The increased passenger numbers which was the subsequent understandable reaction to this announcement, drew a particular tenor of reporting. A Daily Express front page article announced 'Heathrow airport was under siege...after a mass invasion of illegal immigrants'.[39] Other newspapers produced headlines such as 'Thousands of Immigrants Rush to Gatwick and Heathrow Airports'; 'Heathrow packed by thousands of immigrants from Bangladesh and Pakistan, India'.[40] An April 1991 poll of Daily Star readers recorded 98 per cent in favour of the paper's stance on tougher measures on immigration[41], a climate of opinion echoed by The Sun newspaper in October under the headline 'You call for new laws on migrant cheats'. This claimed 60 per cent of readers supported tougher controls for asylum seekers, 62 per cent believing immigration controls in general should be tightened.[42] In the same month the then Home Secretary Kenneth Baker announced proposals for an Asylum Bill.

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[38] Daily Express July 18, 1986, quoted in 'The Immigration Union - A Scab Union', For a World Without Frontiers, **Greater Manchester Immigration Aid Unit**, GMIAU, Manchester, 1990, p8-9.

[39] Daily Express October 15, 1986, quoted in 'The Immigration Union - A Scab Union', For a World Without Frontiers, **Greater Manchester Immigration Aid Unit**, GMIAU, Manchester, 1990, p8-9.

[40] The Sun, Mail and Express highlighted by Alf Dubs in his speech 'Civil Liberties, Human Rights and the Press' at the Conference on Black People and Human Rights, Autumn 1988. See Black People, Human Rights and the Media, **Black Rights (UK)**, and **Commission for Racial Equality**, London, 1988.

[41] Daily Star April 27, 1991. Report upon a phone poll, 'Press Watch', **Runnymede Trust**, Race and Immigration, No.246, June 1991, p4.

[42] The Sun October 10, 1991, 'Press Watch', **Runnymede Trust**, Race and Immigration, No.250, November 1991, p6.

These examples lend weight to the suggestion that media rhetoric not only shapes the laws themselves in terms of content and direction, but acts as a tool which legitimates legislation both in stated support and in a tenor of reportage which renders the way the rules operate a self-fulfilling prophecy. The power of immigration rhetoric in this sense is perhaps best demonstrated through the findings of a Race Issues Opinion Survey[43] which, in 1991, recorded findings that of a polled white sample of 766: 29 per cent estimated the combined Afro-Caribbean and Asian population of Britain to be more than 10 million; 52 per cent provided an estimate of 5 million. Close to the actual figure of 2.63 million[44] were only 7 per cent of those polled. Provided with a list of groups of potential immigrants, 42 per cent of the sample thought the law should be changed to make it harder for all those listed to come to Britain.

Apparent bias against non-white applicants goes largely unreported within the mainstream press. This is not surprising given that same press fuels notions that all those purposefully seeking entry to the United Kingdom are non-white anyway, thus establishing the self-fulfilling prophecy equation again. Whilst there is passing reference to the fact that 'Heathrow has a bad reputation for its accusatory tactics with black visitors to London'[45], this in no way reflects the enormity of a problem which encompasses such issues as inexplicable rises in refusals of Caribbean visitors[46] or the fact that under the 'primary purpose'

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43 National Opinion Polls, for the Independent on Sunday in association with the Runnymede Trust. Survey carried out between 23 and 25 June 1991, the sample consisting of 572 Afro-Caribbean people, 479 South Asia, 766 white - a total of 1817. **Runnymede Trust**, Race Issues: Opinion Survey 1991, preliminary findings, Runnymede Trust, London, 1991.

44 Office of Population and Censuses Surveys, 1991.

45 **Jeremy Campbell**, Evening Standard, July 6, 1992, p7.

46 See for example the brief report by **Martin Wainwright**, 'Immigration experts inquire into "ban" on West Indians', Guardian, October 31, 1989. Significantly it is a report premised in implicit 'official concern' in the face of the fact 'The Home Office acknowledges the rise but denies any changes in procedures'. In 1979 one in 729 Jamaicans was refused entry, by 1986 one in

legislation discussed in Chapters Four and Five: 'we still have to hear of an American, Australian or New Zealander who has failed the primary purpose test'.[47] Home Office statistics show that in 1993 1 in 67 Jamaicans are refused entry, compared with 1 in 1,677 Australians or 1 in 2,014 Americans.[48] The extent of attention focused upon Afro-Caribbean visitors is clearly demonstrated by incidents such as the case of the detention of 190 Jamaican nationals among 323 passengers on one flight.[49]

Such matters are of particular concern when the discriminatory operating procedure extends even to the appeal process through which possible redress might be expected. Parliamentary debate surrounding the proposals for an Asylum and Immigration Appeals Bill[50] highlighted removal of rights of appeal which in itself: 'in the main will adversely affect one part of our community only, and which is irrational and explicable in no terms other than it is meant predominantly to affect it adversely'.[51] Which part of the community was made clear in that the legislation: 'will not apply, for example, to American citizens living in the UK who have visa restrictions. It will apply

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233, in 1987 one in 117 and by 1989 the Joint Council for the Welfare of Migrants were announcing that one in every 40 Jamaicans was refused entry to the UK. In 1992 one in 4 passengers from Bangladesh and Ghana arriving in the UK were refused entry compared to one in 3,012 US citizens. See **Claude Moraes**, 'A black mark against Britain', Independent, December 29, 1993.

[47] **Ian A. Macdonald** and **Nicholas Blake**, Immigration Law and Practice, Butterworths, London, 1991, p260. By comparison, in 1990 the numbers refused at New Delhi, Bombay, Dhaka and Islamabad as husbands, wives, fiances and fiancees, on the grounds of failing to pass the primary purpose test, totalled 1280.

[48] Editorial, 'Welcome to Gatwick', Times, December 27, 1993

[49] See **Helen Nowicka**, 'Officials were alerted to Jamaica Flight', Independent, December 24, 1993; **Edward Gorman**, 'Jamaicans face expulsion as minister denies racism', Times, December 24, 1993; **Heather Mills**, 'Action looms over expulsion of Jamaicans', Independent, December 27, 1993; **Claude Moraes**, 'A black mark against Britain', Independent, December 29, 1993.

[50] Hansard, 2 November 1992, Issue No.1598, Col.22-144.

[51] **Mr Tony Blair**, Hansard, 2 November 1992, Issue No.1598, Col.36.

to the...Muslim and the Sikh communities'.[52] Bearing out these claims were questions as to why 'of white visitors from America, Australia or Canada, one in 2,000 are refused entry, while one in 50 visitors from Jamaica are refused entry? Why is a visitor 40 times more likely to be refused entry to visit relatives if he is black than if he is white?'.[53] Members opposing the Bill were thus giving voice to the pertinent issue that the proposals to remove appeal rights would affect the very sector of the community who were in desperate need of a redress through appeal by virtue of the very fact the discriminatory operation of control inherently rendered them more liable to refusal. This argument was powerfully summarised by the calculations of one member that: 'Black and Asian people make up 4.5 per cent of the population. They are mostly younger people and they have close ties with their relations who wish to visit them. The immigration and nationality department report for 1990–1991, which covered India, Bangladesh, Pakistan, Ghana and Nigeria, showed that 272,870 applications for visitors visas were received, of which 42,220 were initially refused and 12,080 were subsequently granted on appeal. That meant that 28 per cent of refusals were wrongly decided and later overturned. That 28 per cent will now have no opportunity of having their case reconsidered'.[54]

At its most basic level, reporting upon immigration is revealing of key issues which are at the very heart of legislation directed toward persons seeking entry to the United Kingdom. The reported rhetoric becomes a 'construct' of the 'knowledge' that is immigration, 'feeding from and feeding into' legislation, participating in the creation of reality. The selectivity of issues for reporting creates an imbalance which is detrimental to those seeking entry. By

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[52] **Mr Roy Hattersley**, Hansard, 2 November 1992, Issue No.1598, Col.50.
[53] **Mr John Austin-Walker**, Hansard, 2 November 1992, Issue No.1598, Col.95–96.
[54] **Mrs Mildred Gordon**, Hansard, 2 November 1992, Issue No.1598, Col.76.

consistently reinforcing the importance of, or threat posed to, areas of life which form the core argument for having control at all, the press indirectly reinforces argument for its continuing necessity. This is particularly so given that immigration is consistently invoked as a referent to 'race news' per se, which news itself is invariably of a negative nature.[55] A lurid example of linking, and indeed justifying exclusory immigration practices to sensationalist reporting is seen in the story 'Refugee who stayed to rape'.[56] This front page headline carried the prominent sub-heading: 'it's not a serious crime in my country says jailed man'. The Vice-Chairman of the Tory backbench Home Affairs Committee made the quantum leap to use the case as justification for tightening control in stating: 'the Home Office was absolutely right in announcing measures to tighten up on bogus refugees. We have to err on the side of caution, instead of being soft with them'.

The pivot of newsworthiness of the above case could be said to lie in no small part in capitalising upon general fears that persons with alien and uncivilised practices might infiltrate the kingdom. In that the West has traditionally pointed towards the sexual mores of a society as the barometer of 'civilisation', the perceived chasm between those seeking to enter and those in the society whom they seek to join is conceptualised in the 'deviant' parallel which forms the sub-heading of this particular account.

Chapters Four and Five have elaborated more specifically upon how women fare within this perspective, revealing not least that the legislation itself is not

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[55] Research asking readers to recall the type of stories they had read which involved black people, revealed the highest recall scores in the areas of 'trouble incidents' in the context of: race riots, immigration, Nottinghill carnival, crime and muggings. See **Barry Troyna**, Public Awareness and the Media: a study of reporting on race, Commission for Racial Equality, London, 1981, p65.
[56] **David Williams** and **Hal Austin**, Daily Mail, July 31, 1991.

free from the stain of these media presentations which distort facts, are divorced from the truth and taint attitudes. Indeed the debate upon institutional culture in Chapter One has suggested that the immigration rules are equally informed by and informing of racial and sexual stereotypes. **Ben-Touim** and **Gabriel** claim State racism within immigration legislation and administration post-1962 have led to assumptions underlying official policy. They suggest these assumptions engender physical violence and aggression against the black population, popular racism being encouraged by and encouraging official state policies and practices.[57] This cyclic process is encouraged by the very fact immigration control occupies a space between formality and informality, between the public and the private. This renders operation of control 'porous' and thus susceptible to reflection of these elements.

The indirect reinforcement of the belief in a necessity for stringent control (a consequence of even the most well-meaning reporting) is as common as this direct approach. It is largely the fault of the fact that the parameters of debate in the field of immigration were fixed long ago. Two central issues in this field of reporting, pressure of numbers and economic concerns, were demonstrably expressed as long ago as the sixteenth and eighteenth century. An instance attesting to this is an open letter to the Lord Mayor of London and Mayors and Sheriffs of other towns, issued by Queen Elizabeth I on 11 July 1596. This stated: 'Her Majesty understanding that several blackamoors have lately been brought into this realm, of which kind of people there are already too many here...her Majesty's pleasure therefore is that those kind of people should be

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[57] **Gideon Ben-Touim** and **John Gabriel**, 'The politics of race in Britain 1962-1979: a review of the major trends and recent debates', Race in Britain: continuity and change, (ed) **Charles Husband**, Hutchinson University Library, London, 1982, p145-171.

expelled from the land'.[58] Repeated efforts to remove black people were made, the proclamation reiterated in 1601 in the terms that the queen was: 'highly discontented to understand the great numbers of negars and Blackammors which (as she is informed) are crept into this realm'.[59]

In fact there is rarely deviation from a concentrated repetition of specific key facets in reporting upon immigration and these reiterate the very foundations upon which immigration control was instituted, built, and continues to justify its existence. Immigration rules are designed and drafted with particular considerations in mind, of paramount concern being such matters as national security and public order, together with the economic and social conditions of the country. Each area in its turn fosters areas which stand in need of being controlled and protected in that they are the practical manifestation of these underlying issues which are to be safeguarded. Thus economic fear as a foundational element of immigration control becomes manifested in categories such as employment, this in turn directing attention to the degrees of family unity which can be encouraged without tipping the balance against protection of the local labour force. The protection of the welfare and social conditions of the population attend equally upon this economic category, with the addition of such issues as who is deserving of state benefits and access to the health service. So it goes on, with each category of concern being annexed to actual areas of life in the United Kingdom. Each of these in their turn are manifested in specific categories of passenger within the immigration rules accorded differential criteria, and with it varying degrees of difficulty to be overcome in seeking entry. It is less a 'numbers game' than a game of chance.

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[58] Acts of the Privy Council of England, n.s. XXVI, 1596–7, quoted in **P. Fryer**, Staying Power: The History of Black People in Britain, Pluto Press, London, 1984, p11.

[59] Proclamation of 1601, quoted in **P. Fryer**, Staying Power: The History of Black People in Britain, Pluto Press, London, 1984, p12.

Other factors to be borne in mind when looking at the tenor of reporting are that immigration receives concentrated attention in particular periods. Discussion of control is invariably premised in terms of the practice of 'keeping people out', rather than enabling either equitable procedures or qualification of those who must face the legislative criteria. The tenor of debate can cause a 'blurring' of focus in which the minority ethnic population already within the United Kingdom become an effective 'outsider within' by virtue of association.[60] Not only does this provide fuel for attacks on individuals within these communities[61], it has important and dangerous ramifications. Not least is the spectrum of strategic potential it affords the authorities. This ranges from legitimation of 'internal controls' as a safeguard that those seeking benefits etc are entitled to them, to the 'hue and cry' of repatriation as a force to restrict behaviour.[62] In particular, the pathologising of West Indian and Asian family lifestyles has serious implications for how these nationalities are viewed both

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60 Such alienated status is given visual depiction by **Ingrid Pollard** in her photographic series 'Pastoral Interludes'. See Third Text, No.7, Summer 1989 and **Graham Coster**, 'Another Country', Guardian, June 1-2 1991, p4-6. The latter article discusses the themes of Pollard's work and situates them within the socio-political context where English countryside and Nation are synonymous and the 'black face' seen as incongruous in both.

61 Searchlight and Race and Immigration record: Two children were attacked and an Asian family threatened after sections of the press reported immigrant families had been housed in 'millionaire row' developments. The Council in question received more than 100 threatening phone calls. The Sun reported: 'Here three months and the council gives them £350,000 house free'; Daily Mirror 19.11.1991 records: Racist attacks on a community centre in the belief it had been funded by the taxpayer. See: 'Press Watch', **Runnymede Trust**, Race and Immigration, No.248, September 1991, p4; **Searchlight**, 'Attacks follow "racist" articles', Searchlight, No.194, August 1991, p8.

62 Media coverage of the Muslim Parliament is a case in point, reactions by such papers as The Sun encapsulated in the headline of January 5, 1992: 'If You Don't Like Us, Get Out'. See discussion of the reactions in **R. Richardson**, 'Argument and Subjugation: Media responses to the Muslim Parliament', Race and Immigration, Runnymede Trust Bulletin No.253, March 1992, p2-3.

under the Mental Health Act and within the Criminal Justice system, as Chapter Four and Chapter Five have discussed.

Discussion of the subject of immigration within the media thus bears a heavy ethical responsibility which it infrequently, if at all, acknowledges. It is far from being compartmentalised subject matter divorced from the wider economic and socio-political debate. The 'numbers game' itself provides a link between diverse areas of reporting, often in such a way as to render the control of immigration a paramount safeguard of global proportions. A front page report 'Human tide is pushing world to disaster' is a case in point.[63] Ostensibly reporting upon United Nations findings in respect of world population trends the article talks of a 'chilling' report prophesying 'Unless immediate action is taken to control the spiralling numbers, the very future of humanity is at risk as the planet's resources are swamped'. Pinpointing the growth as 'almost entirely in the Third World', the prime consequence is posed as being 'mass migration from the overcrowded and starving poorer countries to the developed nations where growth is under control'. This factor then lends itself to inclusion within the debate of how 'EC countries, including Britain, are already under huge pressure from a tide of immigrants from the South attracted by the magnet of their prosperity and stability'.

All the common currency vocabulary of immigration-speak is present in the quoted article. The 'Third World' is a term in itself which predicates particular communities as inferior to the 'first world' of the West. That these communities are regarded as having tendencies toward the 'invasion' of those 'advanced' areas of the globe upon which survival of the planet ostensibly depends, poses

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63 **Chris Brooke**, 'Human tide is pushing world to disaster', Daily Mail, April 30, 1992.

them as the enemy to be kept out. Such foregrounding of what 'could happen'[64] is a characteristic of reporting upon immigration that influences and legitimates how applicants are dealt with under the immigration rules. It is a small step from these assumptions, that they seek the West's 'prosperity' and compete over resources, to regard every overseas applicant as being in search of the 'streets of gold' whatever category of passenger they claim to be. It is a small step from the debate upon welfare 'scroungers' to considering every asylum seeker an 'economic refugee'.

The 'ethnic absolutism' that is the quality of immigration rule categories has been identified in Chapters Four and Five as effective instances of culture frozen in time. It is an absolutism in which the media figures by reinforcing the parameters of debate.[65] As Chapter Five suggests within the 'sole responsibility' discussion, how Black women are seen today can be regarded as an example of the 'naturalisation' of myth, myth which is the legacy of colonial

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[64] A 'foregrounding of what could have happened but did not' is identified by **Tim Rackett** as a characteristic in the construction of the Brixton riots by the national press. See **Tim Rackett**, 'Racist Social Fantasy and Paranoia' in Europe and its Others, (eds) **Francis Barker** et al, University of Essex, Colchester, 1985, Vol.II, (190–200), p193.

[65] Visual depiction within TV and film join newspaper reportage in consistently presenting detrimental images. For discussions see: **Donald Bogle**, Toms, Coons, Mulattoes, Mammies and Bucks, Continuum, New York, 1989; **Therese Daniels** and **Jane Gerson** (eds), The Colour Black: Black Images in British Television, British Film Institute, London, 1989; **Stuart Hall**, 'The Whites of their eyes: Racist ideologies and the Media', Silver Linings, (ed) **George Bridges** and **Rosalind Brunt**, Lawrence & Wishart, London, 1981, p28–52; **Preethi Manuel**, 'Black Women in British Television drama – a case of marginal representation', Out of Focus: Writings on Women and the Media, (ed) **K.Davies, J.Dickey** and **T.Stratford**, Women's Press, London, 1987, p42–44; **Pratibha Parmar**, 'Hateful Contraries: media images of Asian Women', Looking On: Images of femininity in the Visual Arts and Media, (ed) **Rosemary Betterton**, Pandora, London, 1987, p93–100; **Paul Gilroy**, 'C4 – Bridgehead or Bantustan?', Screen, Vol.24, No.4–5, July–October 1983, p130–136; **Edward Mapp**, 'Black Women in Films', The Black Scholar, Vol.13, No.4–5, Summer 1982, p36–40.

slavery. Medical attitudes to black women in the fields of abortion; the use of Depro-Provera in Third World countries; their commodification as the 'exotic' in advertising, are all as much testament to a persistently insidious image of the 'black woman' as is their experience of the immigration rules with regard to marriage, children and extended families.

Opinion regarding the very specific debate upon the 'primary purpose' issue of the marriage rules is equally given voice to in such as the reporting upon customary practices of ethnic minority communities. This reportage makes significant distinction between how women of different communities are seen, largely straddling the age-old madonna/whore paradox. Women of those countries associated traditionally with an exotic 'orientalist' stance are premised very differently within the spectrum of assessing marriage motivation to those women regarded as virtually bound hand and foot by traditional practice and ritual. The former are historically situated within the plethora of eighteenth and nineteenth century depictions of the Orient and the East, places which were themselves characterised in feminine terms to encapsulate mystery and extremes. The artistic licence that combined the matter of sexual fantasy with documentary record contextualised women in these areas as desirable objects within a climate of sexual licence.[66] Capitalised upon today in airline advertisements a message survives so insidious that it spills over into negative implications within social reality. The Scan Thai Travellers Club provides one instance in becoming embroiled in a libel case which resulted in a court ruling

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[66] For a discussion of these issues historically, see: **R.Kabbani**, Europe's Myths of Orient: Devise and Rule, Macmillan, London, 1986; **E.Said**, Orientalism, Routledge & Kegan Paul, London, 1978; **J.Mabro**, Veiled Half-Truths: Western Travellers' Perceptions of Middle Eastern Women, I.B.Tauris & Co. Ltd., London, 1991.

that club brochures gave: 'ideas about Eastern women as exotic, different, submissive and willing to meet men's sexual needs'.[67]

Such 'package prostitution' is the exploitative side of a coin which, whilst exploiting women nevertheless poses the men of the west as victims.[68] In the case of those women perceived to be bound by tradition it is the women who must be 'protected', a justification for legislation which coincidentally coincides with stemming male primary immigration to the United Kingdom. In the case of the formerly described 'orientalist' women it is largely a matter of their being seen as predatory and against whose economic motives men need 'protection', justification for legislation which coincidentally coincides with these women being associated with a thriving British male 'marriage market'.

The tenor of the press given to Filipino women is a case in point to illustrate this latter stance. One article entitled 'Marriages made in heaven and hell'[69] recorded the gruesome murder of Arminda, a Filipino woman, by her British husband. Even this was not sacrosanct from links to immigration. Included in the report was a remark by a lawyer handling the couple's divorce that: 'I think that she saw him as a means of getting quite a nice lifestyle. The standard of living in the Philippines is so bad that it forced her to look elsewhere. They are

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67 **Spare Rib**, 'Victory for Women in Sex Tourism Trial', Spare Rib, No.197, December 1988/January 1989, p73. See also a report examining sex tourism in Thailand, the Philippines and Sri Lanka: Wish You Weren't Here, **Save The Children Fund**, London, 1993.

68 See also: **Khin Thitsa**, Providence and Prostitution: Women in Buddhist Thailand, CHANGE International Reports, No.2, 1990; **Mark Edmonds** and **Moira Paterson**, 'Slaves of the rich', Observer Magazine, 28 January 1990, p18–22; **Belinda Rhodes**, 'Back to Base', The Guardian, 20 November 1991 on the sex industry of a Filipino town where 'finding an American husband is also regarded as a way out of the poverty trap'; **Eulali Furriol**, 'Women on the Rack', The Guardian, 1 November 1991, posing 'prostitution from the east is a problem in the west'.

69 **Imogen Edwards-Jones**, Daily Telegraph, 28 November 1991.

so desperate that they can see no further than the nice house and the nice standard of living'. Also, the article was contextualised by discussion of the large numbers of Filipino wives and fiancees coming to the United Kingdom. A friendship club with membership of some 7,000 'hopefuls' was mentioned as having arranged 684 marriages between Filipino women and British men. As one researcher remarked: 'sometimes the girl comes to this country and leaves her husband within 3 months then goes underground because she must be married for a year before she can apply for residency'. Small wonder then that a local paper reported in December 1991 with the headline 'Torn apart by Red Tape', that a 22 year old Filipino bride was being refused permission to join her husband on the grounds of doubts surrounding the genuiness of the marriage.[70] The husband was quoted within the article as saying 'It's not as if she has come from a poor family living in some mud hut and is desperate for a better standard of living', a remark itself reinforcing a popular view which surfaced in a number of examples forming part of Chapters Four and Five. The 'unsaid' within the debate is how the immigration rules facilitate the exploitation of these women and work together with the myths of exoticism and submissiveness to render them more vulnerable.[71]

Within the cauldron which holds socio-political ends and public media representations, an interaction takes place, from this emerges that which we call immigration law. It is a law operated by officials reminiscent of those 'caged within their white collars like healthy watchdogs'[72], who greeted

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70 Editorial, 'Torn Apart by Red Tape', Folkestone Herald, 15 December 1991, p1.

71 **Yasmin Alibhai**, 'For Better or Worse', New Statesman and Society, 6 January 1989, p22-23; **Dorothy Wade**, 'The bride's tale', New Society, 9 October 1987, p10-11; **Mark Edmonds** and **Moira Paterson**, 'Slaves of the Rich', Observer Magazine, 28 January 1990, p16-22.

72 **George Lamming**, The Emigrants, M.Joseph, London, 1954, p107.

Lamming's emigrants and who are the embodiment of the imperatives of the institutional culture elaborated upon in Chapter One.

OTHER VOICES

Out of the dark came thought
Out of thought feeling
Out of feeling the utterance
The Word[73]

Do other more intimate recorded accounts identify clues to a discourse which is fed back into how the original entry is dealt with. This chapter argues they do. Validating their inclusion, validating accounts within prose fiction and poetry, are the words of **Ramchand** in his introduction to **Selvon's** The Lonely Londoners. **Ramchand** writes: 'We could not be sure of the reliability of the kind of information we have been extracting from Selvon's novel if we did not already possess knowledge about West Indian immigration to London in the form of testimonies by migrants, or as a result of research by social scientists and historians. So to praise a novel for its fidelity to social or historical facts is to praise it, as some critics do, for being secondary. Novels characteristically distort and re-shape facts in order to express feelings that are part of the meaning of the facts, feelings that may well be about to lead to a new set of facts'.[74] It is a 'typicality of facts' found in these works which holds their revelatory potential.

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[73] **Radical Alliance of Poets and Players**, 'Songs of Darkness;, News For Babylon: The Chatto Book of West Indian-British Poetry, (ed) **James Berry**, Chatto and Windus, London, 1984, (138-139), p138.
[74] **Kenneth Ramchand**, introduction to **Sam Selvon**, The Lonely Londoners, Longman, London, 1989.

As previous examples have illustrated, the tenor of the press interest in such issues as Asian marriages is premised in concentration upon a perspective of 'strange and alien custom' of dowry and caste. The headlines pointed to in this chapter echo discussion in Chapter Four of the focus taken under the fiance(e) rules and add credence to the official, legitimation of a now infamous immigration category. **Chila Kumari Burman**[75] has amongst her portfolio a large diptych screen print encapsulating the hurdles posed by the marriage rules. Entitled Convenience Not Love it: 'features Thatcher, British passports, barbed wire, Asian people arriving at Heathrow and deals with brutal immigration laws, virginity tests and asserts the fact that despite all this Asian people are here to stay'.[76] Equally, **Chatterjee** takes as subject matter for poetry the 'primary purpose' clause embodied within these rules and by so doing highlights the imperative that it poses. As the work suggests:

"Primary purpose of marriage – immigration"
Is forever the Home Office incantation.
You must prove otherwise, being guilty without trial.
You must learn that yours is a union
Entered into lightly, only witness
All the to–ing and fro–ing of families
Negotiating flimsy alliances.[77]

Focused within the work of **Chatterjee** are issues of: the inherent racism in an 'immigrant' status applied to the British–born by virtue of skin colour; the burden of proof in primary purpose cases; the attitudes to Asian marriages and

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[75] **Burman** says of her work: 'Many different thoughts flow into my works; my feelings – political, spiritual, philosophical; women's issues, sexism, racism and the media's con'. Interview with **Namesta Benji's** in Spare Rib, quoted in The Thin Black Line, Urban Fox Press, p2.
[76] **Nina Perez**, 'Chila Kumari Burman: Horizon Gallery', Feminist Art News, Vol.3, No.6, p30–31.
[77] **Debjanee Chatterjee**, 'Primary Purpose', I was that Woman, Hippopotamus Press, Frome, Somerset, 1989, (21–22), p21.

lack of respect for custom within this; the stereotypical attitudes toward Asian women and their families. The procedures captured by **Chatterjee** and **Burman** reinforce the emotional traumas and repercussions of separation set in train by operation of the immigration rules.[78] The revelatory power of their mediums of expression supplements what Chapters Four and Five record as officially concentrated upon. Supplementation of official accounts is necessary to realise the complexity of the power of the immigration rules. It is important to concentrate upon how the facts came about; how and why they came to be seen as 'facts', much less what the official 'facts' are. **Lal and Wilson** suggest in their work that: 'the exclusion of families is the latest step in the plain exploitation of a people exploited for generations. And we examine how this particular struggle of workers in Britain against immigration legislation links up with colonialism and neo-colonialism'.[79] They juxtapose narrative accounts of the experience of making application with a discussion of colonialism which ranges from British involvement in seventeenth Century Bengal through the Industrial Revolution and nineteenth Century Anglo-Indian relations, adding a further dimension through a poem on family separation.[80]

In sum what **Lal and Wilson, Chatterjee**, and **Burman** pose as the essence of the experience is less the criteria of the rules itself than the ideologies which lie beneath, the 'colonial attitudes' behind the terminology and its application. All

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[78] See: **Immigration Widows Campaign**, Trial by Separation: Women divided from their husbands by the Immigration Laws, IWC, Manchester, 1984; **Manchester Immigration Wives and Fiancees Campaign**, What would you do if your fiancee went to the moon?, Manchester Law Centre, Manchester, 1985.

[79] **Sushma Lal** and **Amrit Wilson**, But My Cows Aren't Going To England, Manchester Law Centre, Manchester, 1985, p7.

[80] **Dawood Haider**, 'I left you behind', Take Me Home Rickshaw, Salamander, in But My Cows Aren't Going to England, **Sushma Lal** and **Amrit Wilson**, Manchester Law Centre, Manchester, 1985, p31.

suggest 'that Western society's stereotyped images of us are how they believe we are – not how we believe we are'.[81] As **Chatterjee** puts it:

All know there is no love in Asian marriages.
The Law knows you for your family's chattel,
So companionship and children do not fit the picture.[82]

The words of **Lubaina Himid** sum up the polarity of 'how they believe we are'. Writing of the difficulty Black women artists face in entering into the 'map of credibility' which is the art circuit, her words are equally valid in the legal arena of immigration control when she states that: 'The gate-keepers still see us as risk at worst and exotic at best'.[83]

The art exhibition catalogue from which the latter quotes were taken was The Thin Black Line.[84] Together with The Other Story[85] it was an exhibition

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[81] **Brenda Agard**, prologue to the 1985 exhibition catalogue for The Thin Black Line, Urban Fox Press, West Yorkshire, 1985, p1.
[82] **Debjanee Chatterjee**, 'Primary Purpose', I Was That Woman, Hippopotamus Press, Frome, Somerset, 1989, (21-22), p22.
[83] **Lubaina Himid**, The Thin Black Line, Urban Fox Press, West Yorkshire, 1985, p12. Lubaina Himid has produced a series of work entitled 'Revenge', engaging in a discourse which works against eurocentric readings of the past. See **Delta Streete**, 'Revenge:by Lubaina Himid', Feminist Arts News, Vol.4, No.3, p31-32. Another artist who generates 'Black women focused images that challenge the margins assigned to us' is Claudette Johnson. See: **Claudette Johnson**, 'Rethinking Radicalism', Feminist Arts News, Vol.4, No.1, p21. For a range of work by Black women artists see: 'Black Women in the Arts 1992, Part One: Perspectives from Britain', Special Issue of Feminist Arts News, Vol.4, No.1 and 'Black Women in the Arts 1992, Part Two: Perspectives from Europe', Special Issue of Feminist Arts News, Vol.4, No.2.
[84] An exhibition of the work of eleven Black women artists at the ICA, London, 1985. The curator **Lubaina Himid** stated: 'All eleven artists in this exhibition are concerned with the politics and realities of being Black women....Our methods vary individually from satire to story telling, from timely vengeance to careful analysis, from calls to arms to the smashing of stereotypes'. Preface, The Thin Black Line, Urban Fox Press, West Yorkshire, 1985.
[85] Touring exhibition organised by the Hayward Gallery, London, 1990.

which sought a place upon the 'map of credibility'[86] for otherwise marginalised Black artists. Exhibitions are institutional contexts in themselves and are situated within a wider political and social context. The exhibition The Other Story was criticised by many as a 'racially defined exhibition'. The curator, **Rasheen Araeen** defended it in the terms: 'Its "exclusivity" represented a contingency which could only be understood in the light of the fact that all important national or international exhibitions of British art in the last forty or so years were comprised exclusively of white artists....The main objective of The Other Story was to question and challenge the white monopoly and exclusivity of British art history. In other words, The Other Story represented what was repressed by and excluded from the history of art in Britain and because this exclusion happened to be "racially defined" it was necessary for The Other Story to focus on this aspect – and thus the exclusion of white artists from the show'.[87]

There are parallels to be drawn between the 'organizational apartheid'[88] these exhibitions drew attention to in the public art arena, and the similar devaluing of 'accounts' which characterises the operation of immigration law. There are four central tenets within arguments relating to the former marginalisation which lend themselves to thesis debate.[89]

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[86] This is a term used by **Lubaina Himid** in her Afterward of the exhibition catalogue for The Thin Black Line. She states: 'It is clear that there is reluctance to place our work on the map of credibility'. **Lubaina Himid**, The Thin Black Line, Urban Fox Press, West Yorkshire, 1985.

[87] Quoted by **Jo-Anne Birnie Danzker**, 'Organisational Apartheid', Third Text, No.13, Winter 1990–1991, (85–95), Footnote, p88.

[88] For this term see **Jo-Ann Birnie Danzker**, 'Organisational Apartheid', Third Text, No.13, Winter 1990–1991, p85–95.

[89] See **Paul Gilroy**, 'Art of Darkness – Black Art and the Problem of Belonging to England', Third Text, No.10, Spring 1990, p45–52 – a talk given in connection with the exhibition The Other Story held at the Royal Festival Hall 10 January 1990; **Jo-Anne Birnie Danzker**, 'Organisational Apartheid', Third Text, No.13, Winter 1990/91, p85–95.

Firstly, that the appropriation by Western artists of the symbolism and visual cultural language of non-western artists can be seen as an 'element of the strategy of control of the other'.[90] This places as pivotal a power relationship which turns the culture of others into a tool against them, as arguably the immigration rules do. Secondly this pillaging is done without maintaining the 'purity' of the symbolic/visual cultural language, in as much as it is an appropriation which carries neither respect nor appreciation of the fact that such symbols invariably operate as symbols of identity. **Dhondy** has premised this assault as a subject of fiction concerning the consequences of British appropriation of Indian film epics. In Bombay Duck[91] a British director stages an international cast production of the Indian epic Ramayana, claiming it to be the cultural property of humankind. As **Bald** poses: 'Since the epics Ramayana and Mahabharata form the foundation of Indian culture to which, in turn, the Indian's identity is closely tied, it is suggested that by universalising the epics the Indians sense of self is assaulted'.[92] As Chapters Four and Five have demonstrated, in the immigration context this cultural genocide is translated into the ethnic absolutism of taking 'cultural identifiers' as isolated qualities and constructing from them the exclusory characteristics of immigration rule categories directed toward specific nationalities. Such identifiers are equally applied in the immigration context without respect for their role as symbols of identity. Thus, as earlier chapters have shown, arranged marriages are taken as a definitional factor but without the acknowledgement of integral qualities which make them the 'arranged marriages' that are true to the culture of which they are part, and on behalf of which culture they are being deemed to stand.

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[90] **Jo Anne Birnie-Danzker**, 'Organisational Apartheid', Third Text, No.13, Winter 1990-1991, (85-95), p89.
[91] **F.Dhondy**, Bombay Duck, Jonathan Cape, London, 1990.
[92] **Suresht Renjen Bald**, 'Images of South Asian Migrants in literature: differing perspectives', New Community, 17(3), April 1991, (413-431), p427.

Not least, the immigration rules require that parties must meet and also undermine the parental authority vested in the tradition. As **Chatterjee** puts it:

Yearlong arrangements, in the twinkling of an eye,
At the stroke of a Home Office pen,
Add up to a marriage of convenience –
Of course an immigrant's, casually fixed[93]

Thirdly, in the same way that the immigration rules demand applicants fit a pre-conceived image (to reiterate **Himid**: 'how they believe we are') **Birnie-Danzker** identifies how: 'First nation artists world wide complain that their tradition and identity have been so subsumed by the dominant culture that even they find themselves trying to fit the myth of the native artist....(we) try to measure up to the white man's definition of ourselves'.[94] A fourth relevant issue is one relating to the universality principle adopted by the art world in relation to aesthetic judgement. As **Gilroy** points out, with reference to Hegel: 'It is important to appreciate that the idea of universality on which aesthetic judgements depend was itself constructed out of debates in which racial difference was a central issue'.[95] Within Hegel's identification, the difference between blacks and whites was a cultural or perceptual one in which: 'He denied blacks the ability to appreciate the necessary mystery involved in the creation of truly symbolic art and placed them outside the realm of authentic

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[93] **Debjani Chatterjee**, 'Primary Purpose', I Was That Woman, Hippopotamus Press, Frome, Somerset, 1989, (21-22), p21.

[94] **Jo Ann Birnie-Danzker**, 'Organisational Apartheid', Third Text, No.13, Winter 1990/1991, (85-95), p90. Taking as an example the definition of arranged marriages, the inappropriateness of homogenised pre-conceived images of arranged marriages is attested to by personal accounts of teenagers found in Barbed Lines, (ed) **Debjani Chatterjee** and **Rashida Islam**, Bengali Women's Support Group, Sheffield and Yorkshire Art Circus, 1990. In this collection see: **Mithu Mukherjee**, 'Tradition and Trust' p54-55; **Nilofar Hossain**, 'Truth in Conflict with Practice' p56-57; **Sonia Islam**, 'What is Normal Marriage?' p57-58; **Ruma Tamuli**, 'Both Sides of the Coin' p58-59.

[95] **Paul Gilroy**, 'Art of Darkness – Black Art and the Problem of Belonging in England', Third Text, Issue No.10, Spring 1990, (45-52), p47.

sensibility'.[96] Within this parameter the native artist is seen as outside the realm of aesthetic sensibility, relegated to categories outside this which are defined by a white universal, within which ambit they are, at best, 'avant-garde'. In the same way that those who succeed in their immigration applications meet the conceptual perceptions of the west, so too has art seen 'a recent development which legitimates as "Art" only certain types of native art, namely that which refers to, or operates within, the "avantgarde" or conceptual western art tradition'.[97]

Mercer identifies that the work of Black artists is not taken seriously as a space for artistic dialogue and is consequently marginalised and inhibited in expression by the authorial policing of the art world. Not least of the reasons for this is the threat black visual art poses as 'the deconstruction of the myth on which ideologies of racism crucially depend, that the "black community" is a homogenous, monolithic, self-identical and undifferentiated entity essentially defined by race (and nothing but race)'.[98] As in the immigration theatre, it is subjectivity and identity that is being quashed. Perhaps it is thus also the case that the categories that stand as the applicants in the immigration rules are, like

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[96] **Paul Gilroy**, 'Art of Darkness – Black Art and the Problem of Belonging in England', Third Text, Issue No.10, Spring 1990, (45–52), p47. Of English art criticism, Gilroy equally identifies this: 'rested on aesthetic principles produced during a period when slavery was still part of western civilisation and therefore a fundamentally political concept. Here too, the image of the black played an important role in debates over taste, judgement and the role of culturally specific experience in grounding aesthetic principles'. The advocacy of such superior sensibilities as those which Gilroy outlines, forms the matter of such 18th Century works as: **David Hume**, Of the Standard of Taste 1757 and **Sir Joshua Reynolds**, Discourses on Art, the latter a series of lectures delivered to students and academicians of the Royal Academy between 1769 and 1790 during his presidency (see particularly Discourses III and VII).

[97] **Jo Anne Birnie-Danzker**, 'Organisational Apartheid', Third Text, No.13, Winter 1990/1991, (85–95), p91.

[98] **Kobena Mercer**, 'Black Art and the Burden of Representation', Third Text, No.10, Spring 1990, (61–78), p71.

the universal of artistic aesthetic judgement, seen as the final 'frontier' against the erosion of a colonial discourse upon which those rules depend. Equally, to allow 'different voices' into the immigration debate would be to risk the same threat posed by **Mercer** to the art world, namely: 'creating a dialogue about the kind of power relations that "difference" brings into play'.[99]

The novels of **Buchi Emecheta**[100] advance such subjectivity as that discussed above. As the author writes in the foreword to her work In the Ditch: 'Everything in this book really happened: it happened to me'.[101] Both this novel and Second Class Citizen mirror issues raised by reports researching the immigration field.[102] In Gwendolen, **Emecheta's** account of a young Jamaican girl joining her parents in England provides the absent childs-eye view of procedures outlined in Chapter Five: 'one officer peered at the picture on the passport and looked at her all over. They all smiled at each other without saying a word, these quiet dumb-like people'.[103] Equally, the perspective of the mothers who are the subject of Chapter Five is indelibly present in the play Motherland, born out of an oral history project encompassing interviews with 23 West Indian women.[104] Projected through the play are the compelling reasons leading women to choose enforced separation from children and the experience of parting. Whilst accounts are of women who migrated to Britain

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[99] **Kobena Mercer**, 'Black Art and the Burden of Representation', Third Text, No.10, Spring 1990, (61-78), p71.

[100] Born Lagos, Nigeria, **Buchi Emecheta** travelled to the UK in 1962. She has written widely in the form of plays, novels and articles and served as a member of the Advisory Council to the British Home Secretary on race and equality.

[101] **Buchi Emecheta**, In the Ditch, Flamingo, London, 1988, p9.

[102] See **Jane Goldsmith** and **Valerie Shawcross**, It Aint Half Sexist, Mum. Women as Overseas Students in the UK, World University Service and UK Council for Overseas Student Affairs, London, 1985; **Buchi Emecheta**, Second-Class Citizen, Flamingo, London, 1987.

[103] **Buchi Emecheta**, Gwendolen, Flamingo, London, 1989, p47.

[104] **E.Dodgson**, Motherland, Heinemann Educational Books, Oxford, 1984.

in the 1950's, their recorded impressions are timeless (as references in Chapter Five suggest) a salutary reminder of a history of marginalised and silenced accounts.[105] Without exception women's expectations were that a reunion with children in the United Kingdom would follow fast-upon their own arrival. The intense emotional bond with children left behind is testament to the inaccuracy of the opposite assumptions of the immigration authorities which Chapter Five reveals are invariably attributed to the situation of separation.

Taking account of the persuasive weight of words of 'applicants' in these diverse mediums is valuable.[106] It is arguably even less valuable in terms of 'what' is stated itself, than revelatory in regard to what evidential status an institutional context affords to what is said and why. As Chapters One, Four and Five suggest, the receptive process is part of the meaning of what is said, the context of production and reception determines evidential status. Thus the emotional impact of Motherlands is powerful whilst the same words in the context of an entry clearance interview or an immigration appeal lose even their relevance. The official texts stand as the definitive account in which there is no room to afford evidential status to what is nonetheless clearly relevant to applicants as 'evidence' in support of applications. As **Perks** of the Bradford

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105 A comparable account on film is found in Dreaming Rivers which deals with the subject of a woman of colour coming to the UK from the Caribbean, having two children born in the UK and one born in the Caribbean. Sonia Boyce, an exhibitor in the earlier mentioned exhibitions The Thin Black Line and The Other Story, was the set designer for the film. For a review of the film see **Manthia Diawara**, 'The Nature of Mother in "Dreaming Rivers"', Third Text, No.13, Winter 1990/1991, p73-84.

106 Relevant issues are raised by the 'Law in literature/Law as literature' debate. The former stance seeks to justify the relevance of literary texts as appropriate for study by legal scholars, a perspective relevant to this chapter. The latter, advocating application of techniques of literary criticism to legal texts, is relevant to debate found in earlier chapters. For a comprehensive argument seeking to justify the relevance of literature in legal scholarship, see: **Ian Ward**, 'Law and Literature', Law and Critique, Vol.IV, No.1, 1993, p43-79.

Heritage Recording Unit suggests: 'Only rarely in the written history of migration to Britain has the authentic voice of migrants themselves been heard' within a climate which has viewed oral sources with 'suspicion and circumspection'.[107]

The relationship between the applicants and operatives of the rules in immigration cases bears close parallel to the literary perspectives outlined by **Bald** and referred to earlier in this chapter. As he stated in respect of the presentation of South Asian Migrants: 'The voice that is mostly silent in the writings of the Anglo Britons comes across loudly and clearly in the writings of the South Asian Britons. What it says and how it says, however, is determined by the indigenous British who "control" the tone and content....They are the powerful 'other' who define the immigrant....They provide the vocabulary for the discourse and, therefore, shape the stories the South Asian writers tell'.[108]

This shaping of stories is crucial to the exclusory nature of control. As other chapters have made clear, it is a shaping that brutally allows no relief. Interview, courtroom, and media use the same templates; there are few, if any, spaces where the voices can be heard and given credibility. Mirroring the

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[107] **Perks**, 'Immigration to Bradford: The Oral Testimony', Immigrants and Minorities, Vol.6, No.3, November 1987, (362-368), p362. For transcribed examples of oral history see: **C.Adams** (ed), Across Seven Seas and Thirteen rivers: Life stories of Pioneer Sylhetti Settlers in Britain, THARP Books, London, 1987; **Bradford Heritage Recording Unit** (eds), Destination Bradford: A Century of Immigration, Bradford, West Yorkshire, 1987; **T.J.Cottle** (ed), Black Testimony: Voices of Britain's West Indians, Wildwood House, London, 1978; **Z.Gifford**, The Golden Thread: Asian Experiences of Post-Raj Britain, Pandora, London, 1990; **J.Green**, Them: Voices from the Immigrant Community in Contemporary Britain, Warburg, London, 1990; **P.Schweitzer** (ed), A Place To Stay: Memories of Pensioners from many lands, Age Exchange Theatre Company, London, 1984.

[108] **Suresht Renjen Bald**, 'Images of South Asian Migrants in literature: differing perspectives', New Community, 17(3), April 1991, (413-431), p428.

criticisms of the 'other voices' within the art world, there is an almost impenetrable wall. Chapter Two has suggested that integral to the impenetrability of this wall is the vocabulary of control. As one Bengali woman records of her arrival in the United Kingdom: 'I had to pass through Customs and Immigration controls. These two words were all but unknown in my vocabulary'.[109] This impenetrable wall of alien concepts faced on arrival is coupled with language barriers and a physical presence of authority which together silences both metaphorically and actually: 'The Immigration people asked many questions. Before I left home I was told many things about "immigration" and I tried to memorise these like a bird. Now when I faced the Immigration men, I could hardly remember anything'.[110]

Dabydeen takes the issue of the power of language wielded by immigration control as a focus within his work The Intended. The central character discusses with his corner shop Asian proprietor: 'the meaning of the word "indefinite" (he showed me his passport which had stamped on it "permitted to remain in the United Kingdom for an indefinite period") – did "indefinite" mean "forever", "unlimited", or was it that the Home Office was still processing his application to stay and could send him home any day now, in which case "indefinite" meant "undefined"?'.[111] The sheer impenetrability of the term is employed as a tool by the central character to the ends of consoling the shop owner or to 'terrify him by talking about the difference between "traditional usage" and "modern legal usage", the latter possibly meaning that

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[109] **Sara Mukherjee**, 'The Journey Here', Barbed Lines, (ed) **D.Chatterjee** and **R.Islam**, Bengali Women's Support Group, Sheffield and Yorkshire Art Circus, Castleford, 1990, (111–114), p112.
[110] **Anonymous**, 'One Beautiful Dawn', Barbed Lines, (ed) **D.Chatterjee** and **R.Islam**, Bengali Women's Support Group, Sheffield and Yorkshire Art Circus, Castleford, 1990, (99–105), p99–100.
[111] **D.Dabydeen**, The Intended, Secker & Warburg, London, 1991, p123.

"indefinite" could be interpreted as "yet to be decided". The Home Office was full of Oxford–and Cambridge–educated lawyers, so anything was possible from them'.[112] The perpetrator of this terror consoles himself 'with the thought that the English language was not of my personal making, and that I could not be held responsible for the way it bewildered and hurt people'.[113]

The bewildering and hurtful impenetrable wall in the theatre of immigration is a tradition of administration which relies for its own legitimation upon rendering of lesser account the reality of those deemed 'different'. As earlier commentary upon the shifting sands of immigration control makes clear the voices which are heard are of those who, at a particular moment in time, the legislators choose to hear. As **Hulme** puts it, what counts as truth depends on strategies of power not epistemological criteria.[114] Even then, the voices which are heard must use the correct language. In **Lyotard's** terms, there is an identification of 'knowledge' by institutions determining what people must say in order to be heard.[115]

The extent to which applicants become 'shaped narratives', is a memory of my own experience within the immigration field. Working as an immigration counsellor the majority of my casework was of the order of representing persons refused abroad in their applications for clearance to enter the United Kingdom. A large proportion of those with whom I dealt were women, in a

112 **D.Dabydeen**, The Intended, Secker & Warburg, London, 1991, p124.
113 **D.Dabydeen**, The Intended, Secker & Warburg, London, 1991, p124.
114 **Peter Hulme**, Colonial Encounters: Europe and the native Caribbean 1492–1797, Methuen, London, 1986. Hulme is applying a Foucaultian analysis in looking at colonial discourse in texts.
115 **Jean–Francois Lyotard**, The Postmodern Condition: A Report on Knowledge, Manchester University Press, Manchester, 1984.

whole spectrum of applications: wives seeking entry with families; women denied a fiance or husband joining them in the United Kingdom; children, refused clearance to join a mother in the United Kingdom; widowed mothers living alone abroad who sought to be reunited in their advanced years with a family here.

My first contact with appellants was at the time appeals were scheduled in the courtroom, for those who were abroad there was no meeting at all. I wrote to applicants abroad raising questions in respect of the record of interview and letters in reply were submitted to the court as evidence. After appeals were dealt with we engaged in a qualitatively different correspondence. The same women wrote to me, usually in response to notification of a final decision. The letters and cards, which I still keep, are their testimony to the nature of the 'impenetrable wall', subjective documents which reveal 'the participant's view of experiences in which he had been involved'.[116]

The 'other voices' of their letters must join the unofficial texts of this chapter in standing testimony to all that is wrong with the operation of control. As **Baily** and **Ramella** suggest, they are a unique documentation of personal insights and feelings, important: 'because they provide the subjective perspective on the immigration experience'.[117] The issues they raise form part of the concluding

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[116] **Robert Angell**, 'A Critical Review of the Development of the Personal Document Method in Sociology, 1920-1940', The Use of Personal Documents in History, Anthropology, and Sociology, (ed) **Louis Gottschalk** et al, Social Science Research Council, New York, 1945, p177. Angell is quoted by Virginia Yans-McLaughlin in support of her work exploring subjective documents and their relationship to immigration and ethnic studies. See **Virginia Yans-McLaughlin**, 'Metaphors of Self in History: Subjectivity, Oral Narrative, and Immigration Studies', Immigration Reconsidered, (ed) **Virginia Yans-McLaughlin**, Oxford University Press, London, 1990, (254-290), p254.

[117] **Samuel L.Baily** and **Franco Ramella** (eds), One Family, Two Worlds: An Italian Family's correspondence across the Atlantic, 1901-1922, Rutgers

debate of the thesis in Chapter Seven where remedies to the problems which have been raised are examined. Their words make clear and reinforce concerns about the difficulties of cross-cultural interviewing on the levels of language, suspicion, sensitivity, value-judgements and subjective bias. They thus stand as: 'a personal document against which we can test certain ideas regarding the immigrant experience. While quantitative analysis may provide answers to certain questions, there are qualitative inquiries which numbers cannot satisfy'.[118] One clear qualitative message is that the impenetrable wall they faced had little time for seeking out 'feelings, impressions, attitudes and opinions'.[119]

The thanks in the letters is directed always at 'the concern' and 'the humanity; at 'the efforts made'; at 'understanding me'. They speak of welcoming an approach which dispelled 'the air of officialdom' in a world of 'total bureaucracy'; for 'explaining the laws I didn't understand'; for support through an ordeal'. They explain the chasm that exists between the official line and the lived reality when, as one woman wrote of the deportation of her husband: 'it was really a social death to him and to me as well. The fact was that we could not explain the reality to the Home Office'. They speak of how 'For the first time in my life I felt myself in the position of the weak and deprived and met people to whom rational arguments are of no use' and they say 'thank you for making it possible

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University Press, New Brunswick, 1988, p4. Baily and Ramella recreate the immigration experience of the Sola Family through their correspondence.

118 **Rudolph J.Vecoli**, 'Foreword', Rosa: The Life of an Italian Immigrant, (ed) **Marie Hall**, University of Minnesota Press, Minneapolis, 1970, x, quoted in One Family, Two Worlds: An Italian Family's Correspondence across the Atlantic, 1901-1922, (eds) **Samuel L.Baily** and **Franco Ramella**, Rutgers University Press, New Brunswick, 1988, p4.

119 **Perks**, 'Immigration to Bradford: The Oral Testimony', Immigrants and Minorities, Vol.6, No.3, November 1987, (362-368), p362. Writing of the work of the Bradford Heritage Recording Unit, Perks is speaking of the qualities deemed necessary as part of the work of the unit recording oral histories.

for me to belong'.[120] There could be no stronger words in which to put the shortcomings of the institutional culture with which these people I knew were faced. Chapter Seven attempts to find a route through the impenetrable wall they describe.

120 All quotes are taken from personal letters in the possession of the author.

CHAPTER SEVEN

LET YOUR INDULGENCE SET ME FREE.

What I resent most...is not his inheritance of power
he so often disclaims, disengaging himself from a system
he carries with him, but his ear, eye and pen, which
record in his language while pretending to speak
through mine, on my behalf[1]

INTRODUCTION: REMEDIES.

As earlier chapters have argued, the fate of those who are applicants under the immigration rules is to face a double jeopardy. They are named and textualised by the law in a transformatory spell that turns their historical reality into an abstract legality. They are transformed into an 'allegory' which is the product of an historically rooted allegorical reading pivoting upon their race.[2] Under the immigration rules applicants are defined and categorised, reproduced in a manner which has specific consequences of which it may be said: 'The more I accept his word-prescriptions, the more my competences shrink'.[3]

It has been suggested throughout this thesis that the manner in which immigration control operates is central to such transformation. Parallels have

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[1] **Trinh T.Minh-ha**, Woman, Native, Other, Indiana University Press, Bloomington & Indianapolis, 1989, p48.
[2] For a discussion of anthropology as allegory see **James Clifford**, 'On Ethnographic Allegory', Writing Culture: the poetics and politics of ethnography, (eds) **J.Clifford** and **G.E.Marcus**, University of California Press, Berkeley, 1986. For an example of how Western imperialism used allegory as a mechanism of domination, see **Haunani-Kay Trask**, 'From a Native Daughter', The American Indian and the Problem of History, (ed) **Cawin Martin**, Oxford University Press, New York, 1987.
[3] **Trinh T.Minh-ha**, Woman, Native, Other, Indiana University Press, Bloomingdale & Indianapolis, 1989, p52.

been drawn with anthropological encounters. Firstly, both face the difficulty of representing oral discourse in a textual form which sufficiently represents the social realities encountered. Anthropologists and immigration operatives equally adopt a specific language to translate concepts and attitudes for a specific readership which has been authoritatively constituted. The readership for which their representations are destined stand in a specific relationship to those represented, a relationship which lends itself to their unwillingness to examine critically the manner of the translation operating through the written word.[4] Secondly, both anthropological and immigration investigation are: 'rooted in an unequal power encounter between the West and Third World....It is this encounter that gives the West access to cultural and historical information about the societies it has progressively dominated, and thus not only generates a certain kind of universal understanding, but also re-enforces the inequalities in capacity between the European and non-European worlds'.[5]

Given this inequality, it would be a considerable feat of social remoulding to eradicate and replace the double jeopardy outlined above. The immigration laws, like all law and judicial discourse, rely for their force and legitimation upon fixing a 'case' by reducing it to narrowly defined legalities. It is on this premise that the law can and does seek its neutrality of approach: 'detaching an experience from its living context and setting it up as an empty positivity outside history. It is a process intended to take out...all that stands for empathy and pity and leave nothing...except the dry bones of a deixis - the "then" and "there" of a "crime"'.[6] Equally, the 'reading' of others by the colour of their skin

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[4] For a discussion of these problems for European anthropologists, see **Talal Asad** and **John Dixon**, 'Translating Europe's Others', Europe and It's Others, (ed) **Francis Barker** et al, University of Essex, Colchester, Vol.1, 1985, p170-178.

[5] **Talal Asad** (ed), Anthropology and the Colonial Encounter, Ithaca Press, London, 1973, p16.

[6] **Ranajit Guha**, 'Chandra's Death', Subaltern Studies V, (ed) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, Delhi, 1987, (135-165), p140. The case **Guha** examines is taken from the archives of Viswabharati University and concerns an event in 1255 (Bengali year) AD1849. Chandra was of the impoverished and low caste Bagdi community and conceived as a result of a socially forbidden liaison between persons related as kin. The father offered Chandra the choice of 'Abortion or Bheck' - the latter an effective loss of caste by expulsion in that: 'a conversion to the Boishnob faith was often the last refuge of a person excommunicated by his or her samaj as punishment for violation of caste codes' (p157). Chandra dies as a result of administration of a herbal medicine to terminate her pregnancy.

is something which this thesis has demonstrated to be rooted even in the very language and identity of this isle, and which is as institutionally pervasive in this age as it was centuries before. To use the words of **Frye**: 'The concept of whiteness is not just used by white people, it is wielded. Whiteness is not just a national category but a political one'.[7] The suggestion this chapter makes is that as long as these two matrices persist, the minimum that can be achieved is a way to eradicate the harmful effects occasioned by their alchemy at points where the two coincide. One such area of collision is the field of immigration law.

RE-READING

> *On new ground we scatter old drum seeds*
> *letting them shape a destiny of sound*
> *unburdening the iron in our blood*[8]

The perfidious effects of the double jeopardy mentioned above at the crucial point of how someone seeking entry is approached and treated, have been demonstrated in earlier chapters through specific examples of those facing immigration control. A parallel can be drawn at this point with a thesis which embodies and explores a number of the issues raised, 'Chandra's Death'.[9] In this work **Guha** examines and 're-reads' depositions in Bengali relating to a case brought for murder in a rural Indian village. At the outset he engages with the fact that the material has already served different 'wills and powers' (the law and the scholar), the purposes of each of these agencies giving the material names and functions under very different classifications. **Guha** must therefore 'name' and textualise the material once again for a new purpose, that of reclaiming the document for history.[10]

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[7] **Marilyn Frye**, 'On Being White', Trouble and Strife 4, Winter 1984, (11-16), p16.
[8] **John Agard**, 'Journey Shango', Mangoes and Bullets, Serpents Tail, London, 1990, p14.
[9] **Ranajit Guha**, 'Chandra's Death', Subaltern Studies V, (ed) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, Delhi, 1987, p135-165.
[10] **Ranajit Guha**, 'Chandra's Death', Subaltern Studies V, (ed) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, Delhi, 1987, p135-165.

This thesis has taken a comparable approach to the 'texts' that make up immigration control, not least the cases called upon in Chapters Four and Five. These precedent cases, like the depositions with which **Guha** deals, are formed of fragmented narratives wherein the original words of applicants are ordered and mediated through the 'object' they become. That 'object' is the appeal statement with all its character of constructing authority. Not least of what **Guha** terms the 'mediation of the law' is that: 'Each of the statements in this document is direct speech, but it is speech prompted by the requirements of official investigation'.[11] The result in his terms, of the 'privileged connotation' of the context, is that it: 'kneads the plurality of these utterances recorded from concerned individuals...into a set of judicial evidence, and allows thereby the stentorian voice of the state to subsume the humble peasant voices which speaks here in sobs and whispers. To try and register the latter is to defy the pretensions of an abstract univocality which insists on naming this many-sided and complex tissue of human predicament as a 'case".[12] What **Guha** advocates as a re-reading, becomes an act of listening.

Within the immigration context the applicant faces a paradoxical situation whereby what is in effect a self-motivated 'personal approach' (the wish to seek entry to the United Kingdom, for whatever purpose) becomes an 'official investigation'. Thus two seemingly mutually exclusive sets of values collide. For their part, entry clearance officers are called upon to fulfil the role of both researcher of and advisor to, applicants. Between these positions there is much incompatibility.[13] Their approach to applicants is mediated through an ethos of control which echoes the indirect rule of the colonial period wherein

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[11] **Ranajit Guha**, 'Chandra's Death', Subaltern Studies V, (ed) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, Delhi, 1987, (135-165), p139.

[12] **Ranajit Guha**, 'Chandra's Death', Subaltern Studies V, (ed) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, Delhi, 1987, (135-165), p141.

[13] A similar point, linking to debate in Chapter Three, can be made in respect of interpreters. As **Berk-Seligson** suggests, contradictory perceptions of the role of the interpreter can be problematic and impact upon the interview situation. Examples are given within her research of interpreters forced into a position of both giving instructions and interpreting, something which fundamentally alters the role of the interpreter in the eyes of the interpreter, the presiding official personnel and interviewee. See **Susan Berk-Seligson**, The Bilingual Courtroom, University of Chicago Press, Chicago, 1990.

subjects of other nations were: 'studied on the one hand as facts related immediately to universal humanity and on the other hand as matters for recommendations on short-term effects of colonial policy'.[14] The interview becomes an echo of the intersection of social anthropology and the colonial power structure which: 'made possible the kind of human intimacy on which anthropological fieldwork is based, but ensured that intimacy should be one-sided and provisional'.[15] The operation of control compounds the imposition of official upon personal reality by denying the essential ingredients that constitute the humanity of applicants, whilst nonetheless asking them to fulfil 'roles' which by their very designation (wife/mother etc) are made distinct by their human complexity.

Equally, an appeal court demands adjudicators make decisions about such as mother/child relationships on the basis of an abstract univocality which is shorn of all determinants, substituting the humanity of that bond with an 'empty factuality of a "mere state of affairs"'.[16] **Guha** explains how in the case of the depositions relating to Chandra's death: 'the law, the states' emissary, had already arrived at the site...and claimed it'.[17] Such is the status of appeal statements, standing as the 'truth' of something already classified, written by those who have classified, and yet standing as a personal appeal by those who have been so designated. What in effect transpires is that the law 'writes' that which the law 'decides upon'. That is to say the law directs not only the 'how and what' of what is recorded at interview, but also what is recorded and taken into account for the sole route of recourse the aggrieved have against that record, namely the appeal. The neutralising effect of what the law has effectively created as 'official truth' serves the law, not the applicant.

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[14] **Stephan Feuchtwang**, 'The Colonial formation of British social anthropology', in Anthropology and the Colonial Encounter, (ed) **Talal Asad**, Ithaca Press, London, 1973, (71-100), p98.
[15] **Talal Asad** (ed), Anthropology and the Colonial Encounter, Ithaca Press, London, 1973, p17.
[16] **Ranajit Guha**, 'Chandra's Death', Subaltern Studies V, (ed) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, Delhi, 1987, (135-165), p141.
[17] **Ranajit Guha**, 'Chandra's Death', Subaltern Studies V, (ed) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, Delhi, 1987, (135-165), p142.

In this eloquence of the law, lies power. As **Fanon** declares: 'A man who has a language...possesses the world expressed and implied by that language .... Mastery of language affords remarkable power'.[18] The tools of Prospero[19], the spellbinding orations and magical literacy of his books, are the tools of the immigration world and "immigration-speak". In the same way that Caliban's curses remain mere figures of speech and Prospero's figures of speech have the power to literalize themselves[20], so too is this hierarchy inherent in the applicant/operative relationship of immigration control. As **Cheyfitz** points out, in Shakespeare's play Prospero tells everyone's 'story' except that of Caliban. Yet when Caliban does speak his own history Prospero recounts the "true" history of their encounter, thereby usurping his words as he does his island.[21] In a similar way the applicant under the immigration rules who "knows how to be a mother" gives voice to the lived role and relationship. Yet if not knowing how to 'be so' in the manner of the master, their words remain figures of speech of 'things occurring' which are deemed constructions of reality devoid of integrity. Thus, drawing an analogy between 'roles' and **Fanon's** words on language, to succeed in an application: 'the native speaker must speak like a native or, more precisely, like the master's conception of how a native speaks'.[22]

A parallel can be drawn with the field of anthropology and the way that 'anthropological understanding is overwhelmingly objectified in European languages'.[23] The figuration of mother 'by the master' has the power to be literalized in court precedent as an immutable certainty. The result mirrors that

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[18] **F.Fanon**, Black Skin, White Masks, Pluto Press, London, 1991, p18.

[19] Prospero is the exiled Duke of Milan, usurped by his brother, who maintains mastery of his island exile through sorcery. **William Shakespeare**, The Tempest.

[20] The work of **Eric Cheyfitz** has been the inspiration for these ideas. See The Poetics of Imperialism: translation and colonization from The Tempest to Tarzan, Oxford University Press, Oxford, 1991.

[21] **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonization from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, p158. Caliban was the occupier of the island to which Prospero was exiled, described in the dramatis personae of Shakespeare's play The Tempest as 'a savage and deformed slave'.

[22] Quoted by **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonization from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, p126.

[23] **Talal Asad** (ed), Anthropology and the Colonial Encounter, Ithaca Press, London, 1973, p17.

of anthropology where: 'the powerful who support research expect the kind of understanding which will ultimately confirm them in their world'.[24] To recall the words of Chapter Three: 'figurative language, of which metaphor, or translation, is the model, is the driving force of interpretation....opens up a space between signified and signifier, a rupture of identity where the conflictive play of dialogue takes place that constitutes the speakers (writers/readers) for and significantly through each other'.[25]

It is this 'struggle for voice' which **Fanon** makes: 'the central force in his understanding of how colonialism and racism work together'.[26] As earlier chapters have suggested, the historical power relationship between the West and the Third World is a relevant factor in both the development of immigration control and the working assumptions (theoretical choices and treatment) and practical conditions of the mode of operation itself. **Asad** identifies the relevance of the reality that contextualised pre–war social anthropology as 'a power relationship between dominating (European) and dominated (non–European) cultures'. Earlier argument has suggested institutional culture and the social milieu have affected not only the pre–conditions of control but: 'the uses to which its knowledge was put; the theoretical treatment of particular topics; the mode of perceiving and objectifying alien societies; and the anthropologist's claim of political neutrality'.[27] The result in both fields has been a contribution: 'sometimes indirectly, towards maintaining the structure of power represented by the colonial system'.[28]

Guha, in his re–reading of the tragedy that is Chandra's death, points to this culpability inherent in the relations between content and expression, posing that a remedy suggests itself if: 'the strategem of assimilating these statements to the processes of law were opposed by a reading that acknowledged them as

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[24] **Talal Asad** (ed), Anthropology and the Colonial Encounter, Ithaca Press, London, 1973, p17.
[25] **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonization from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, p38.
[26] **Eric Cheyfitz**, The Poetics of Imperialism: translation from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, p124.
[27] **Talal Asad** (ed), Anthropology and the Colonial Encounter, Ithaca Press, London, 1973, p17.
[28] **Talal Asad** (ed), Anthropology and the Colonial Encounter, Ithaca Press, London, 1973, p17.

the record of a Bagdi family's effort to cope collectively, if unsuccessfully, with a crisis'.[29] The re-reading demanded by this thesis of that which goes 'before the law' for immigration purposes (in for example Chapters Four and Five) is of the same vein as that which **Guha** poses as a challenge to the stratagem of assimilation which the law pivots upon. It is a re-reading which is a "transcreation", to: 'make the inheritance live, as an immediate force, for us, "whether on the shores of Asia, or in the Edgware Road"'.[30] It is a re-reading which constitutes a basic challenge to the unequal world which control represents. It is a re-reading which poses for immigration control the same fate as that meted out to Shakespeare's Prospero, who is in the end rendered powerless by his own words when they are usurped by the very audience he addresses.[31]

In Shakespeare's play the appearance of Prospero wielding absolute power is just that, illusory. It is illusory because it has always been dependent upon others, thereby it is a power possessed by others as well. In the immigration theatre, if the public will can 'feed' immigration control as Chapter Six suggests, they can also ensure conversely that, like Prospero, control lacks:

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[29] **Ranajit Guha**, 'Chandra's Death', Subaltern Studies V, (ed) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, 1987, (135-165), p142.

[30] **David Holbrook**, preface to **Sitikant Mahapatra**, The Empty Distance Carries, A Writers Workshop Saffronbird Book, P.Lal, Calcutta, 1972. **Mahapatra's** work is subtitled 'Oraon and Mundari Tribal songs transcreated' and Holbrook suggests that: 'In the transcreations Sitikanta Mahapatra has achieved such clear simplicity and directness that these traditional verses make an immediate connection with one's life'. Transcreation is a term also adopted by the editors of Barbed Lines, a bi-lingual book in which the thoughts and feelings of a Bengali Women's Support Group are explored through fiction and fact, story and diary, letter, poem, dialogue, monologue and prayer. As the editors put it, the thorny issue they faced was to: 'capture the sounds, rhythms and the nuances of one language in another'. Turning away from academic purity in translating, they instead aimed 'to convey the substance and the mood of a piece of writing - each translation may be properly called an exercise in transcreation'. See Barbed Lines, (ed) **Debjanee Chatterjee** and **Roshida Islam**, Bengali Women's Support Group, Sheffield and Yorkshire Art Circus, Castleford, 1990, p9.

[31] 'As you from crimes would pardon'd be,
Let your indulgence set me free',
Prospero's Epilogue, Lines 19-20, The Tempest, **William Shakespeare**, The Illustrated Stratford Shakespeare, Chancellor Press, London, 1982, p29.

'Spirits to enforce, Art to enchant'.[32] What is needed, and what the earlier chapters of this thesis has sought, is an 'unmasking'. To use the analogy of **Williams**: 'In many mythologies, the mask of the sorcerer is also the source of power. To unmask the sorcerer is to depower'.[33] As **Williams** points out, this unmasking occurs in different ways in different societies, one manner being the incanting of sacred spells backwards.[34]. This backward incantation is a choice which may also be termed 're-reading'. It is a re-reading through which the powerful are rendered powerless in the same way Prospero is, by the very usurping of their words. It thus remains in this chapter to draw the threads of debate together in offering some suggestions as to what constitutes such a re-reading in the theatre of immigration.

The necessity of re-reading is born of the fact alienation prevails because both parties: 'accept the myth of eloquent orator as natural. And the point of revolution arrives when the colonized begin to read the myth, begin, that is, to understand it as readable, or to put it another way, as charged with politics'.[35]

Earlier chapters have established how impenetrable to any but the 'official reading' the immigration rules appear. There is a claimed political neutrality in rules which pivot upon: categories which are ostensibly 'natural' roles; a claim to value-free objective decision-making in the professionalism of operatives; the contextualisation of the immigration rules in 'law' itself, wherein the 'mental furniture' associated with concepts of justice place non-objectivity beyond question. Earlier chapters have sought to challenge each of these claims, not least that the institutional culture that guides the professionalism of operatives is far from distinct as objective and value-free. Whilst 'professional standards' are ostensibly guaranteed (as Chapter One suggests) by a litany inscribed within the rules and by training, it might be said this assurance: 'is itself an indication of the kind of commonsense world that the typical anthropologist still shares, and knows he shares, with those whom he primarily

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[32] Prospero's Epilogue, Line 14, **William Shakespeare**, The Tempest, The Illustrated Stratford Shakespeare, Chancellor Press, London, 1982, p29.
[33] **Patricia Williams**, 'The Pains of Word Bondage', The Alchemy of Race and Rights, Harvard University Press, London, 1991, p164.
[34] **Patricia Williams**, 'The Pains of Word Bondage', The Alchemy of Race and Rights, Harvard University Press, London, 1991, Footnote 34, p251.
[35] **Fanon**, quoted by **Eric Cheyfitz**, The Poetics of Imperialism: translation from The Tempest to Tarzan, Oxford University Press, Oxford, 1991, p125.

addresses'.[36] That address merges with the dominant status quo of the West, the tenor of which is made clear in the media representations of immigration, explored in Chapter Six.

HOW TO RE-READ?

> *I speak in many tongues, my friend –*
> *Moulded by the black experience*
> *Languages are my inheritance*[37]

Earlier chapters have argued that the operation of immigration control turns upon a seeming paradox. The fixed criteria of the categories within the rules operate alongside a subjective decision-making which itself relies upon a 'categorisation' of applicants born of long-standing and historically rooted assumptions about other races. Such a framework would appear, on the face of it, to offer a choice of only two strands of approach toward women such as those applicants of Chapters Four and Five. The first of these respects women as distinguished by difference, the second essentialises womanhood. That is to say, in such as the sole responsibility category, for example, there can only be either an acceptance of cultural differences in perception of gender roles and definitions of motherhood or, an operation of a dominant ideology of motherhood. However each choice has faults and pitfalls. In the former there is potential to embrace myths in the perception of mothers from specific cultural backgrounds, an outcome demonstrated by the currency of such as stereotypes of Asian women and myths of Afro-Caribbean mothers.[38] Not least this embracing of diversity has the potential to orchestrate a climate for scapegoating. In the latter, as Chapter Five suggests, the dominant ideology is a white ideology setting a standard against which other mothers can only fall

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[36] **Talal Asad** (ed), Anthropology and the Colonial Encounter, Ithaca Press, London, 1973, p15.
[37] **Debjanee Chatterjee**, 'Voice and Vision', I Was That Woman, Hippopotamus Press, Frome, Somerset, 1989, p34.
[38] See **S. Westwood and P.Bhachu**, 'Images and Realities', New Society 20, 1988, p20-22; **A.Phoenix**, 'The Afro-Caribbean Myth', New Society 10, 1988, p10-13; **E.Lawrence**, 'Just plain common-sense: the "roots" of racism', The Empire Strikes Back, (ed) **Centre for Contemporary Cultural Studies**, Hutchinson, London, 1988, p47-94.

short. Equally it is an option with potential to deny the reality of another by mere blindness to cultural practices, as Chapters Four and Five have shown.

This sameness/difference dilemma is not easily resolvable, something to which other fields also attest. Anthropologists have asked the question: 'should ethnographers be stressing difference or sameness – or both?'.[39] Similar debate characterises feminism in the dilemma of an ideal of 'global sisterhood' which sits uneasily with differences of race and colour. Indeed it has been suggested the 'problematizing of the ethnographic endeavour bears a striking similarity to the feminist debates'.[40] The concept of 'universality' is common to both the official rhetoric of immigration and feminist debate, yet in both it is a universality which has at its root, denial. Implicit in the 'sisterhood' (universality) of some feminism is a concept based on male views and experience which makes feminists complicit in their own submission, in the very act of seeking a mode of challenge. The concept of universality embraced in the tenets of the immigration rules is an equally 'suspect' universality with the same danger of drawing applicants into being complicit in their own denial. Both universalities by virtue of the way in which and by whom that universality is defined and historically situated (male/imperial as norm) necessarily pose a particular interpretation on the 'woman/native/other'[41] they ostensibly embrace. The ethnographic endeavour has, in this thesis, been posed as a parallel world with the theatre of immigration control. Standing at the confluence of both areas in respect of the ideas outlined above, 'feminist principles' may provide a source of solution to the sameness/difference dilemma at the root of how applicants are 'read' by control mechanisms.

What the arena of feminism offers is an 'ambivalent, multivalent way of seeing that is at the core of what is called critical theory, feminist theory, and much of the minority critique of the law. It has to do with a fluid positioning that sees

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[39] **Pat Caplan**, 'Introduction 2. The Volume', Gendered Fields. Women, men and ethnography, (ed) **Diane Bell, Pat Caplan** and **Wazir Jahan Karim**, Routledge, London, 1993, (19–27), p21.
[40] **Diane Bell**, 'Introduction I', Gendered Fields. Women, men and ethnography, (ed) **Diane Bell, Pat Caplan** and **Wazir Jahan Karim**, Routledge, London, 1993, (1–18), p2.
[41] The term of **Trinh T.Minh-ha**, Woman, Native, Other, Indiana University Press, Bloomington & Indianapolis, 1989.

back and forth across boundary'.[42] 'Transgression' has been posed as one kind of transcendence of the self-other and sameness/difference dichotomies in both the field of ethnography and feminism. Essays within one particular collection of ethnographic subject matter includes instances where transgression of accepted codes has become the moment of boundaries dissolving.[43] In a similar way French feminists have dealt with issues of difference by looking at language representation and style, concentrating on the acts of reading and writing as subversive and political[44] to pose 'Whether or not we can in fact escape from the structuring imposed by language'.[45] Their approach is one of deconstructing the sociological category of woman per se, 'transgressing' what feminism asserts as the authority of the experience of woman by questioning both the category of experience and experiencer. Perhaps then the answer for the immigration arena lies in 'transgression'. Transgressing the manner in which 'texts' of the applicants are produced facilitates a re-reading of the 'matter' that is the category of passenger which the texts have re-created for such as an appeal court audience.

The format of this thesis has itself gone some way toward a suggested vein of re-reading by revealing the multi-faceted reality hidden within ostensibly opaque immigration rule categories. The revelation itself creates its own (new) order. It is suggested in this chapter that one route to revealing these facets lies

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[42] **Patricia Williams**, 'The Obliging Shell', The Alchemy of Race and Rights, Harvard University Press, London, 1991, p130.

[43] See Gendered fields. Women, men and ethnography, (ed) **Diane Bell, Pat Caplan** and **Wazir Jahan Karim**, Routledge, London, 1993. In an introduction to the volume Pat Caplan outlines the field experiences of the contributors: 'Abramson's single sexual encounter is a moment of rebellion against the dominant ideology of proper behaviour, but at the same time it is the fulfilment of the expectations of his peers, the moment when he truly becomes one of them....Schrijvers, too, finds that the confession to her Sinhalese informants of her divorce enables her to cross a barrier, to be seen as 'just like us'; namely fallible', p22.

[44] For some examples see French Feminist Thought: a reader, (ed) **Toril Moi**, Basil Blackwell, London, 1987; New French Feminisms: an anthology, (ed) **Elaine Marks** and **Isabelle de Courtivron**, The Harvester Press, Brighton, 1981. The latter states: 'We hope that by examining differences and specifity, by confronting modes of writing, thinking and acting, we will be able to enlarge the scope of the discussion to enrich our understanding of women and feminism, of words and acts', x.

[45] 'Introduction I, Discourses of Anti-Feminism and Feminism', New French Feminisms: an anthology, (ed) **Elaine Marks** and **Isabelle de Courtivron**, The Harvester Press, Brighton, 1981, p4.

in learning some lessons from feminism. As **MacKinnon** records: 'To challenge those conditions, our strategies must rest on feminist principles, not feminine stereotypes....Although the feminist agenda incorporates values traditionally associated with women, the stakes in its realisation are ones that both sexes share'.[46]

A possible remedy lies in a route which is advocated by **MacKinnon**, who suggests: 'The sameness/difference dilemma cannot be resolved; it can only be reformulated. Our focus needs to shift from difference to disadvantage and to the social conditions that perpetuate it'.[47] This is a perspective particularly relevant to the field of immigration control where, as earlier chapters have identified, the race/gender/history interstices are crucial to the matter of to whom control is imposed upon, and in what manner. The benefit of talking in terms of 'disadvantage' rather than 'difference' is not least that it poses a different set of questions and encourages a more contextual analysis. As **Rhode** suggests of the feminist debate upon gender: 'The issue is not difference per se, but the consequences of addressing it in a particular way under particular social and historical circumstances. Such a framework demands acknowledgement of the variation in women's interests across race, class and ethnicity, and recognises that trade-offs may be necessary in terms of short and long-term objectives'.[48]

The words of both **MacKinnon** and **Rhode** have resonance both for the field of difference posed by and created through immigration control, and the earlier analogy with this of black artists in the art world. **Rhode** suggests that 'By constantly presenting gender issues in difference-oriented frameworks, conventional legal discourse implicitly biases analysis. To pronounce women either the same or different from men allows men to remain the standard'.[49] Thus **Rhode** advocates that the question to be posed is not whether gender is

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[46] **C.MacKinnon**, Towards a feminist theory of the State, Cambridge Massachucetts, Harvard University Press, 1989, p158.
[47] **C.MacKinnon**, Towards a feminist theory of the State, Cambridge Massachucetts, Harvard University Press, 1989, p158.
[48] **D.L.Rhode**, 'The Politics of paradigms: gender difference and gender disadvantage', Beyond Equality and Difference, Routledge, London, 1992, (149-163), p154.
[49] **D.L.Rhode**, 'The Politics of paradigms: gender difference and gender disadvantage', Beyond Equality and Difference, Routledge, London, 1992, (149-163), p154-155.

relevant, but how matters can be reconstructed to make it less relevant. Echoing this, this chapter suggests that the question to be posed is not whether race is relevant (the immigration rules depending upon the fact that it is), but how the reading of cases can be reconstructed to make it less relevant. The fact that the immigration rules pivot upon an historically grounded 'fact' that race is relevant, by a very particular reading of 'races' and that the law itself and the legal machinery entailed in the operation of control consolidates this, merely serves to increase the very disparities which in the first place allow such disparity of treatment to be possible. As such the self-fulfilling prophecy of the rules is consolidated over and over again.

There is nothing to be gained by challenging in a mode that merely feeds the pre-existent prejudices. This is made clear by drawing again upon the analogy used in Chapter Six of discrimination against black artists. **Gilroy's** criticism of the mounting of the exhibition The Other Story as a 'tactic of corrective inclusion' to counter marginalisation was that it: 'leaves dominant notions of art and artistic creativity entirely unscathed'.[50] In the opinion of **Gilroy**, this state of affairs achieves nothing and: 'The main danger we face in embarking on this difficult course is that the divergent political and aesthetic commentaries will remain the exclusive property of two mutually opposed definitions of cultural nationalism: one black, one white...neither of them offers anything constructive for the future'.[51] So it is with the world of immigration.

The route lies in denial of a choice between the two perspectives in seeking fair and equitable control. There must be a middle ground, one which embraces the concept of indeterminacy. Taking such a perspective implicitly challenges both narrow interpretative ideologies and the 'authority of definitional cages'. By so doing it 'democratizes interpretation' and, eschewing boundaries, carries less imperative to choose a single level on which to evaluate the 'truth' of the words of others. Perhaps more importantly it is also a stance which carries within it a

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[50] **Paul Gilroy**, 'Art of Darkness - Black Art and the Problem of Belonging to England' Third Text, Issue 10, Spring 1990, (45-52), p48.
[51] **Paul Gilroy**, 'Art of Darkness - Black Art and the Problem of Belonging to England', Third Text, Issue 10, Spring 1990, (45-52), p52.

safeguard against 'those injuries made invisible by the bounds of legal discourse'.[52]

Given the problems inherent in the 'sameness/difference' perspectives the remedy perhaps lies less in the 'matter', than the 'manner' of operation of the immigration laws. To adopt such an approach is not only to grapple with the ideologies which underlie the racisms of the operation, but equally the system of legal approach and judicial decision-making itself. This chapter is premised upon the idea that resolution lies not in amending the categories of the rules per se but in a methodology for the 'reading of' those categories which undoes the 'grammatical construct' which they currently become and leaves bare the 'literariness' of the text that they are.

This suggestion is informed by the aim of **de Man**[53] in developing a literary theory. As **Niranjana** has suggested of **de Man's** reading of a text, it: 'produces its "allegory" but it is one that is always an allegory of its own reading'.[54] The symbolic apparent meaning that is 'allegory' in the field of immigration is two-fold: both in the allegory of the applicant per se, 'created' for the legal realm, and allegory in terms of the justification for control standing as substitute for what, crudely put, are the 'real' motivations and meanings behind the reading of applicants in this way. Changing the manner of 'reading' applicants becomes a true challenge to what they face in that it stands as an attack upon the historically rooted ideologies which are embedded in both content and operation of immigration law.

'Sole responsibility', together with all other categories within which passengers fall to be considered, is decided either at initial interview of the applicant by an entry clearance officer or in an appeal context before adjudicator or Tribunal. Each of the decision-makers at these crucial points is born of a specific institutional culture and bound at the time by a specific format of operation. This has bearing upon what is regarded as relevant knowledge and how it is

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[52] I am indebted for ideas and quotes appearing within this paragraph to the work of **Patricia Williams**. In particular, 'The Obliging Shell', The Alchemy of Race and Rights, Harvard University Press, London, 1991, p108-110.
[53] **P. de Man**, 'The Resistance to Theory', The Resistance to Theory, Minneapolis, University of Minnesota Press, 1986, p3-20.
[54] **Tejaswini Niranjana**, Siting Translation: History, Post-Structuralism and the Colonial Text, University of California Press, Oxford, 1992, p92.

sought, thereby directing the quality of the decision taken. Debate upon the strictures of these considerations has formed part of earlier chapters of this thesis in discussion upon factors such as training procedures, internal reports and instructions, and the contexts of operation of control. If each case is to be considered upon individual merits in such a climate, it is surely fundamental to the just operation of the rules that the utmost is capitalised upon within these frameworks of operation. The question is – how to do so?

FEMINISM

We're in the same movement,
Moving, moving for our gain.
Suffering oppression, honey
But yours and mine just ain't the same[55]

Cheyfitz suggests that: 'True eloquence...cannot be achieved in a language that expresses the hierarchical relationships contained in the notion of mastery'.[56] Taking this as a premise, is there a unique method of inquiry wherein contradictions between researcher and researched is removed and which could be utilised by legislator and legislated against in the field of immigration control?

The dynamics of the feminist research arena offers insights into the difficulties inherent in interview situations per se. As such, parallels might be drawn with the immigration interview and appeal. Debate which surrounds feminist methodology has focused significantly upon whether what might be a unique feminist method of enquiry is able to remove contradictions between researcher and researched. This latter concern is of special note in cross-cultural research, particularly given that instances of such enquiry are premised almost exclusively in white Western academics researching 'Third World women'.

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[55] **Marsha Prescod**, 'Womanist Blues: (for those feminists who would ignore race and class)', Let It Be Told: Black Women Writers in Britain, (ed) **Lauretta Ngcobo**, Pluto Press, London, 1987 (113-114), p113.
[56] **Eric Cheyfitz**, The Poetics of Imperialism: translation and colonization from the Tempest to Tarzan, Oxford University Press, Oxford, 1991, p156.

Advocates of feminist research lay claim to a methodology that is premised in interaction devoid of a subject/object split. A view with much currency, acknowledging knowledge creation means power, advocates a feminist perspective developing new criteria for what counts as 'knowledge'. This construct poses feminist research as completely reconceptualising traditional research paradigms from a feminist perspective; transforming not only 'knowledge' but its means of production.[57] The practical manifestation of this stance is the interviewing process as a non-hierarchical relationship, where the researched are transformed from being objects of scrutiny and manipulation; where personal investment by the interviewer introduces a subjective element claimed to increase objectivity.[58] This accommodates feminist traditions of centralising the 'personal', sharing, self-examination, so that in prioritizing women's experiences theory itself becomes situated in that experience. Thus what in traditional paradigms of sociological research remain the unexamined beliefs, feelings and behaviour of social scientists become included through a conscious subjectivity to provide an evaluation of the research process per se. This co-operative interactive/reflexive framework in which research subjects themselves become knowers and actors stands as a 'shared vulnerability' which contributes to altering what is otherwise an imbalance of power between researcher and researched.[59]

A number of texts suggest women can best 'speak for and represent selves' through the use of what has been characterised as 'stories/narrative/oral history', in order to overcome the tendency to 'fracture women's experiences'.[60] **Graham**, the source of this view, suggests the answer is to be found in feminist research, where emphasis claims to rest upon experience and subjectivity as a route to theory. **Graham** and other advocates of feminist research argue that the very experience of women as a disadvantaged group which does not form part of the authoritative knowledge of the world, renders their viewpoint: 'a

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[57] See **D.Spender** (ed), Men's Studies Modified: the impact of feminism on the Academic Disciplines, The Athene Series, Pergamon Press, New York, 1981.
[58] See **S.Harding** (ed), Feminism and Methodology, Open University Press, Milton Keynes, 1987, p9.
[59] **L.Stanley** and **S.Wise**, Breaking Out: Feminist Consciousness and Feminist Research, Routledge & Kegan Paul, London, 1983, p181.
[60] **H.Graham**, 'Surveying through stories', Social Researching, Politics, Problems and Practice, (eds) **C.Bell** and **H.Roberts**, Routledge & Kegan Paul, London, 1984, p104-124.

more accurate view of reality because they have no stake in mystifying that reality'.[61]

Yet such argument is not without its own problems. These tenets are predicated upon the positing of an 'essential womaness' traversing race and class differences. It may be questioned whether absence of a power imbalance is in fact an achievable state given that 'feminist knowledge and skills' can be regarded as part of that theory which is the product of a small number of women enjoying political, social and economic privilege as white western feminists. Indeed there is a case to suggest that historically white women's sexuality and emancipation was itself 'constructed' at the expense of black women. Equally, that this has led to a mainstream feminist theory which either does not 'speak' black women's experiences or, where it does speak them, does so from racist perspectives and reasoning.[62] **Bourne** focuses on the dangers of this, not least that white feminists fall into the trap of supporting institutionalised racism within a society where structural factors oppress black women.[63]

The 'womaness' that is essentialised in both feminism and the immigration discourse of the State is itself eurocentric. If such a stance provides the conceptual framework for research, it will infect method. As **Foster-Carter** suggests, researchers using white conceptual frameworks will assume conceptual attitudes in responses made to the stimulus of their enquiry, thereby imposing simplifying and distorting categories onto the groups they examine.[64] The research process cannot then validate the experiences of non-white women. Rather, there is a danger that a eurocentric model as a 'given' will direct that the evidence selected is likely to be governed by this, that what is 'proven' as a reality will be a reality pre-supposed. An example premised in

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[61] **R.A.Sydie**, Natural Woman. Cultured Men. A feminist perspective on sociological theory, Open University Press, Milton Keynes, 1987.
[62] **Valerie Amos** and **Pratibha Parmar**, 'Challenging Imperial Feminism', Feminist Review, No.17, Autumn 1984, p3-19.
[63] **Jenny Bourne**, 'Towards an anti-racist feminism', Race and Class, Vol.25, Summer 1983, p1-22. On the subject of inadequate consideration of race and racism in feminist scholarship, see also **Marlee Kline**, 'Race, Racism and feminist legal theory', Harvard Women's Law Journal, Vol.12, Spring 1989, p115-150.
[64] **Olivia Foster-Carter**, 'Insiders and anomalies: a review of studies of identity', New Community, Vol.Xlll, No.2, Autumn 1986, p224-234.

feminism would be the criticism levelled by **Bunting** that feminist scholarship in respect of international human rights protections has been dismissive of culturally relative positions and maintains universalistic and essentialist norms.[65]

Talking about differences becomes problematic within a premise which assumes commonality, yet it is only through acknowledgement of differences that any commonality can be understood. If there is no such area of 'innocence' in which to delve, is it the case that no valid alternative can be posed to the procedures of immigration control which marginalise and silence, define and thus 'speak for'?

In the same way that ethnographic description involves a regime of significations of others that reveals the relationship between power and representation, so too does feminist debate often write 'for other women' and thereby maintain them in silence. As **Stephens** suggests, we find 'feminist texts blind to their own image-making and laying claim to accurately portray "real" Third World Women'.[66] The legitimating mechanisms of the unsaid in immigration texts are equally present: 'The "never said" enables certain categories to be produced which appear self-evident and beyond question. Feminism, to convincingly portray itself as universal, relies on premises which are taken as givens above challenge. It is validated 'as much by what it does not say as by what it actually says'.[67] Present also is the pattern of what is included and excluded being guided by what a particular experience represents, whilst the techniques of writing portray a neutrality which is taken as read within a universality of essential womanhood.

The messages echo each other: women, ostensibly facilitating women speaking for themselves, cannot constitute a power relationship. The law, cloaked in

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[65] **Annie Bunting**, 'Cultural Relativism, Feminism and International Human Rights Discourse', LLM Dissertation, London School of Economics, 1991.
[66] **Julie Stephens**,, 'Feminist Fictions: A Critique of the Category "Non-Western Woman" in feminist writings on India', in Subaltern Studies Vl, (ed) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, Oxford, (92-125), p93.
[67] Julie Stephens, 'Feminist Fictions: A Critique of the Category "Non-Western Woman" in feminist writings on India', in Subaltern Studies Vl, (ed) **Partha Chatterjee** and **Gyanendra Pandey**, Oxford University Press, Oxford, (92-125), p111.

vestments of neutrality, suffers all to come before it as equal. Yet both are guided by an ideological system in which difference is the pivot around which knowledge and power operate. In both arenas those written about are, in the words of **Fanon** 'fixed...in the sense in which a chemical solution is fixed by a dye'[68], whilst those who write are indelibly stained by colonial and post-colonial practices whose 'violence' was directed against communal cultures which identified with female forces. The challenge for both feminism and the immigration field is to develop an understanding of subjugation which does not depend upon the erasure of cultural specifity, and to derive political priorities which are not dependent upon Western ethnocentricity.[69]

'History' denotes that differences are self-evidently 'there' and upon this self-evident trope, theory is based. For both mainstream academic feminist theorising and the operation of immigration control 'Every reading...reflects in its lessons and rules...the conception of knowledge underlying the object of knowledge which makes knowledge what it is'.[70] Difference is regarded self-evident and thus determines what is seen and what remains unseen in the production of knowledge. Theories employed in both fields are based on an assumed self-evident history of those who are being conceptualised, yet that very history is and has been itself merely an earlier conceptualisation and interpretation. The final result in immigration cases is a 'reading' of others born out of a 'reading of others' taken to be objective cultural existence. This latter is less fact than a history legitimised by nothing more than those who had the power to inscribe it.

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[68] **F. Fanon**, Black Skin, White Masks, Pluto Press, 1991, London, p109.
[69] This challenge for feminism is advanced by **Cherise Cox**, 'Anything less is not feminism: Racial difference and the white middle class women's movement', Law and Critique, Vol.1, No.2, 1990, (237-248), p247.
[70] **Louis Althusser**, Reading Capital, NLB, London, 1977, p34.

THE LESSONS FROM FEMINISM

As a blackwoman
every act is a personal act
every act is a political act[71]

It is the argument of this thesis that a recognition of the problems of the cross-cultural research situation premised in feminism offers at best an insight into the problems within the manner of operation of immigration control. **Bhave's** research on the self-image of women in India is an example of the relevant insight offered. Her work highlights the inadequacy of conventional research strategies both in the collection of 'authentic oral life history' and in the editing of such history in a way to protect its vital elements of language and experience.[72] Similarly, the work of **Edwards** points to the need to stress acknowledgement of the different structural positions within cross-cultural interviewing, in order to take account of the meanings of race for black women and the fact that race enters into the research process itself.[73] The work of **Finch** raises another perspective, that of the particular position of women in an interview situation, pointing to the exploitative potential inherent in gender dynamics itself. Her argument is that women are more used to accepting intrusions through questioning, due to the questioning they face in everyday life, whilst the structural position of women leads them to welcome a sympathetic listener. Although including no view upon the added ingredient of different cultures to such a situation, **Finch's** work becomes 'food for thought' given the difficulties pointed to in this respect within this chapter.[74] Such work can become a facet of theoretical argument and therefrom a strategy with

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[71] **Maud Sulter**, 'As a Black Woman', Let It Be Told: Black Women Writers in Britain, (ed) **Lauretta Ngcobo**, Pluto Press, London, 1987, (66-67), p67.
[72] **Sumitra Bhave**, 'Dynamics of a women's research project in retrospect', Indian Journal of Social Work, Vol.XLVl, No.3, October 1985, p425-435.
[73] **Rosalind Edwards**, 'Connecting Method and Epistemology: A white woman interviewing Black women', Women's Studies International Forum, Vol.13, No.5, 1990, p477-490.
[74] **Janet Finch**, 'It's great to have someone to talk to: the ethics and politics of interviewing women', Social Researching: Politics, Problems and Practice, (ed) **Colin Bell** and **Helen Roberts**, Routledge & Kegan Paul, London, 1984, p70-87.

which to challenge the basis of an immigration control wherein juridical and epistemological conceptualisation of applicants is repressive.

Both the shortcomings of the traditional interview paradigm identified by feminist debate, and the criticisms that have been directed at the 'feminist interview' in cross-cultural research, are consistent with the criticisms this thesis has levelled at control procedures within the immigration context. Critics of the principles of feminist research have identified similar methodological issues and dilemmas. Not least of these is the imposition of a researcher's own definitions of reality, and thus the need to maximise direct communication in order for the active voice of the subject to be adequate.[75] If the immigration rule categories which have been highlighted as problematic are to remain within the legislation unchanged, it is the manner of decision-making under those rules which must be singled out for review. Taking 'sole responsibility' again as example, this can only be remedied by a fuller opportunity allowed the sponsoring parent to be 'given voice'.[76] This 'giving of voice' includes investing their own 'knowledge' of events with the weight it deserves rather than assessing this as a shadow of 'official knowledge' premised in the legitimating light of statutory procedures and courtrooms. In the same way that the 'legislative systems' of plantocratic masters and British Colonial administrators were culpable in denying women the opportunity to be seen in other than the terms in which they deemed it suitable they be cast (and did so as a means to an end), the immigration conceptualisation is culpable.

If both executives operating immigration control procedures and adjudicatory bodies are proffered the tool of subjectivity with which to make a decision, then it is not equitable to concurrently dismiss the demonstrable belief of a parent in the terms that: 'a subjective belief (is) not sufficient to show a compliance with the rule' (as seen in Chapter Five in the case of Pusey). If the subjectivity of the operatives and appeal courts is to be the safeguard of justice, in being the means to ensure each case is considered upon it's merits, then it

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[75] **Joan Acker, Kate Barry** and **Joke Esseveld,** 'Objectivity and Truth: Problems in doing feminist research', Women's Studies International Forum, Vol.6, No.4, 1983, p423-435.

[76] A parallel in the field of feminist methodology would be the call for this to allow for intersubjectivity and the interaction of facts and feeling. See **Renate Duelli-Klein,** 'How to do what we want to do: thoughts about feminist methodology', Theories of Women's Studies, (ed) **Gloria Bowles** and **Renate Duelli-Klein,** University of California, Berkeley, 1980, p48-64.

must be of the purest kind unfettered by prejudices. If the objectivity of these parties is the sentinel of justice, it too must be of an order wherein the external phenomena it presupposes is not born of stereotypical assumptions. In this difficulty is it not more equitable to turn away from the vagaries of such judgements toward examining the unfairness of placing an additional burden upon a mother and a family that is regarded as falling short of a eurocentric 'ideal'. Is it not time to recognise that the women who seek reunion with their children are asked to be 'doubly mother', given their transgression from the norm in the initial separation from their child. They must meet an 'ideal' of motherhood premised in terms other than their own, that of meeting an 'essential womaness'.

This appeal to universality is a white discourse, and a white discourse is a 'political discourse' per se shared, in the manner in which they work, by the very institutions which exclude and marginalise black experiences. In the same way that feminist concepts are problematic in their application to black women's lives by regarding such elements as reproduction and marriage oppressive by white women's norms, ethnocentric standards clearly hold sway in the field of immigration. Both provide raw material for racist immigration policy.[77] This is demonstrated in the Home Secretary's justification of an integral element of the 'primary purpose' on the grounds that he could see nothing wrong 'in the way in which our country has worked over generations – that people who wish to get married should actually have met before they decide to do so'.[78]

It is the very alchemy of the immigration rules that enables them to render people a 'category' and this in turn a 'site' upon which to challenge what socio–political forces identify as a threat. Thus for example women effectively become a perceived site of challenge to other patterns of family life. Debate in 1979 which accompanied a White Paper setting out the government proposals for revising the immigration rules in respect of marriage (along with other

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[77] Discussion of the oppression of measurement against white nuclear family norms is found in the work of: **Hazel V. Carby**, 'White woman listen! Black feminism and the boundaries of sisterhood', The Empire Strikes Back, (ed) **Centre for Contemporary Cultural Studies**, Hutchinson, London, 1982, p212–235; **Caroline Ramazanoglu**, Feminism and the Contradictions of Oppression, Routledge, London, 1989.

[78] **Mr William Whitelaw**, Hansard, 14 November 1979, Vol.973, No.66, Col.1336.

categories) establishes the socio-political force behind the introduction in that: 'The object of the new rules is to prevent the exploitation of marriage as an instrument of primary immigration'.[79] The 'numbers debate' then was central to the government looking toward ways of excluding entrants who would be a competitive faction to resources, a compromise between being seen to enable family unity whilst also meeting socio-economic demands.

Argument in earlier chapters has highlighted the wilful use and abuse of custom and tradition as a mechanism of control in the service of these aims. This plundering of the cultural specifity of others has been identified as a specifically 'colonial' approach. Adjudications have been seen as taking a format which turns 'voices' into 'grammar'; lives into case studies; people into nationalities and women into "wives" and "fiancees". The marriages and parent/child relationships are not only being seen as 'different' but their very difference seen as a threat by the premise of the 'ideal' attributes of western nuclear norm. Motives equally relevant to those secure in the West, when subscribed to by the 'foreigner', are seen as questionable and thus warranting intervention and regulation. Gender constructions have become categories employed within a political context which seeks to stem a source of primary immigration. These categories embrace roles within which there is little acknowledgement of a multiplicity of selves. Instead, they are rooted in an 'ethnic absolutism' which regards them as part of a culture frozen in time.[80]

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[79] **Mr William Whitelaw**, Secretary of State for the Home Department, Hansard, 14 November 1979, Vol.973, No.66, Col.1329.
[80] For this term see **Kobena Mercer**, 'Black Art and the Burden of Representation', Third Text, No.10, Spring 1990, p61-78.

BREAKING THE SPELL

The Law is your protection, your guidance and blessing,
The Law is your jailer, its rod and staff injure you.
Peers of the realm, is this justice?
Big brother, when will this nightmare end?[81]

Can there then be a remedy? Can the legislation operate in such a manner as to respect women as distinguished by difference, yet avoid the inherent potential of this approach to embrace myths. Alternatively can the legislation essentialise womanhood, yet avoid the denial of the specific reality of others. As **Jardine** states, to universalize 'woman' as beyond culture is to return to anatomical definitions of sexual identity, but to see woman as solely a cultural construction (a metaphor) 'means risking once again the absence of women as subjects'.[82]

At present there is a fusion of these polarised approaches in that the legislation might ostensibly accept cultural differences in perception of gender roles and definitions of motherhood, whilst nonetheless operating a dominant ideology of motherhood and marriage against which others are to be measured. The latter suggests the crucial factor which adjudicates against change is who is casting the spell and why, not the spell itself. As **Rhode** puts it: 'The issue is not difference per se, but the consequences of addressing it in a particular way under particular social and historical circumstances'.[83]

This chapter has suggested that in adopting an analysis 'less fixated on difference and more attentive to disadvantages that it entails'[84], different

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81 **Debjanee Chatterjee**, 'Primary Purpose', I Was That Woman, Hippopotamus Press, Frome, Somerset, 1989, (21–22), p21.
82 **A. Jardine**, Gynesis: Configurations of woman and modernity, Cornell University Press, New York, 1985, p37.
83 **Deborah L. Rhode**, 'The Politics of paradigms: gender difference and gender disadvantage' in Beyond Equality and Difference, (eds) **Giselda Bock** and **Susan James** Routledge, London, 1992, (149–163), p154.
84 **Deborah L. Rhode**, 'The Politics of paradigms: gender difference and gender disadvantage' in Beyond Equality and Difference, (eds) **Giselda Bock** and **Susan James**, Routledge, London, 1992, (149–163), p154.

questions are posed and the contextual analysis which is encouraged reveals the political imperatives which underlie immigration rules and practices. The social conditions which disadvantage applicants who fall within the ambit of control are the now 'everyday practices' of racism. These affect both men and women. Seeking to reduce sex–based disparities in how the immigration rules direct themselves is no 'physik' for the underlying disparate operation of the rules in terms of those nationalities who are 'targeted' by them. As Chapter Four has pointed out, the decision in Adulaziz, Cabales and Balkandali[85] (recognising that the fiance/e rules operated in a sexually discriminatory manner) merely prompted gender alignment within an overall position of disadvantage. The reconstruction may, on the face of it, have made a gender focus less relevant but by aligning male and female fiance(e)s reinforced the agenda of culturally determinist stereotyping upon which the rules operate.

The fact remains that the immigration rules are designed to achieve specific socio–political ends and will thereby direct themselves inevitably and perpetually toward specific groups that are seen as the 'problem' to be faced in achieving these ends. It is less 'what' the problem is that has increasingly been the motivation in the development of operation of control, than 'who' the 'problem' are seen to be. The 'otherness' is a political and economic product at a particular point in history. The excursion into the media reportage of immigration within this thesis suggests this 'who' has been very specifically defined over time. This being the case, changing the 'matter' of immigration control will make little significant inroads into changing the 'manner' of operation. As **Williams** states: 'The rules may be colorblind, but people are not. The question remains, therefore, whether the law can truly exist apart from the color–conscious society in which it exists, as a skeleton devoid of flesh; or whether law is the embodiment of society, the reflection of a particular citizenry's arranged complexity of relations'.[86]

Focusing within this thesis on practices has provided a focus on conduct which both prescribes what is to be done and what is to be known, and interconnects with historical practices.[87] Beneath the manner of operation are long

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85 Adulaziz, Cabales and Balkandali v UK (1985) 7 EHRR 471.
86 **Patricia Williams**, The Alchemy of Race and Rights, Harvard University Press, London, 1991, p120.
87 **G.Burchell, C.Gordon** and **P.Miller** (eds), The Foucault effect: studies in governmentality, Harvester Wheatsheaf, Herts, 1991.

established strategies of power which construct identities within a variety of political contexts. Not least, as earlier chapters have suggested, the imperial mission was one of translating others into the terms of the Empire. As a rationalisation for the domination of 'inferior peoples', that imperialist discourse was inevitably racist.[88] The 'truth' which the operation of the legislation asserts it strives to find in each case and category of applicant is a 'truth' which has been pre-defined, long having been integral to the identity of the West.[89] This identity is one constructed in opposition. Thus examples within earlier chapters: the 'protection' of young Asian wives; the 'ethnic absolutism' of identities fixed through immigration rule categories; the 'humanitarianism' imported into the refugee category[90], are all built upon and perpetuate racism as part of the continuing imperialist moment. To use the words of **Cheyfitz,** calling upon the Poetics of Aristotle on the notion of metaphor: 'From its theoretical beginnings, then, the metaphor comes under suspicion as the foreign, that which is opposed to the "proper", defined inescapably...as the national, the domestic, the familiar, the authoritative, the legitimate....the foreign is never simply that which is outside the national, but is also that by which the national constitutes, or defines, its own identity'.[91]

Changing the manner of operation would provide an invitation to other 'truths', transforming what counts as 'knowledge' to parallel the act of acknowledging the independence and integrity of Caliban.[92] To do this necessitates denial of

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[88] See **Patrick Brantlinger**, 'Victorians and Africans: The Genealogy of the Myth of the Dark Continent', Critical Inquiry, Vol.12, No.1, Autumn 1985, (166-201), p181.

[89] For a discussion of the ideological functioning of discursive practices of the colonial civilising mission in India in the formation of an English national subject, see: **Jennifer A.I.Sharpe**, 'Scenes of Encounter: A Double Discourse of Colonialism and Nationalism', Dissertation in Comparative Literature, University of Texas, Austin, nd.

[90] For a discussion of humanitarianism as a Western construct perpetuating racism within the context of refugee law, see **Jatinder Singh Barn**, 'The Humanity of Law', LL.M. Dissertation, Brunel University, nd.

[91] **Eric Cheyfitz**, The Poetics of Imperialism: translation and Colonization from The Tempest to Tarzan, Oxford University Press, 1991, p90.

[92] **Cheyfitz** writes of The Tempest that the concrete verse which Shakespeare affords Caliban compels audience acknowledgement of 'the independence and integrity of Caliban's construction of reality' (p107) - something which, in the absence of metaphoric understanding, European languages absorb or alienate. The metaphor is thus implicated as the figure of politics. In the same way, the construction of reality of the applicant in immigration cases is denied integrity,

that 'self' which the West has created for itself within an institutional culture which legitimises both that culture and the value of accounts of how people are to be seen and families conceptualised. There cannot be a change without cost in that it is, in the final event, about struggle to maintain and project identity. The very specific alchemy of the immigration rules of the United Kingdom is to maintain the identity of the kingdom, its people, its practices, at the expense of allowing others the dignity of retaining their own.

To reiterate earlier comment within this chapter, the route is to 'unmask' and thereby re-read. As **Boyne** puts it: 'The elimination of the historical tendency to create the other cannot be simply dissolved, but the hierarchical demotion of particular others can be continually challenged'.[93] This has been an imperative of this thesis, but in itself it cannot be the final denouement in that: 'In those ancient mythologies...unmasking the sorcerer was only part of the job. It was impossible to destroy the mask without destroying the balance of things, without destroying empowerment itself. The mask had to be donned by the acquiring shaman and put to good ends'.[94] The government who become the acquiring shaman of the moment must adopt a template for those good ends which moves away from a mode of operation which has 'managed to successfully suppress or ignore the distinguishing variegation of being human'.[95]

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unless that 'integrity' is as the self who is the (created) metaphor of European terms; an 'understanding' of another on your terms which is in/of itself, power. This is the politics of immigration control. See **Eric Cheyfitz**, The Poetics of Imperialism: Translation and colonization from The Tempest to Tarzan, Oxford University Press, Oxford, 1991.

[93] **Roy Boyne**, Foucault and Derrida: the other side of reason, Unwin Hyman, London, 1990.

[94] **Patricia Williams**, 'The Pains of Word Bondage', The Alchemy of Race and Rights, Harvard University Press, London, 1991, p164.

[95] **Patricia Williams**, 'The Obliging Shell', The Alchemy of Race and Rights, Harvard University Press, London, 1991, p100.

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