ASR Forum: The Politics of Marriage in South Africa

African Marriage Regulation and the Remaking of Gendered Authority in Colonial Natal, 1843–1875

Nafisa Essop Sheik

Abstract: This article examines the gendered relationships of authority that are at the heart of the processes of customary marriage in South Africa, as well as the ways in which colonial political intervention worked to effect social change in nineteenth-century colonial Natal. This analysis reinforces the established historiographical understanding that instigating generational shifts in authority was important to Natal Native Policy, unlike customary regulation elsewhere in colonial Africa in which colonial law worked to shore up the authority of senior men. However, it seeks to underline that while negotiations of colonial power began to shift authority from older to younger men by manipulating Native marriage, and in particular the practice of *lobola*, the effects of such policies produced profound shifts in the experience and articulation of gendered relationships of marriage and colonial authority. The imbrication of changes in gender and generational norms ultimately reveals the contradictions in both colonial claims of liberal gender reform and African claims that colonial policy provoked the usurpation of male traditional authority.

Résumé: Cet article examine les relations d'autorité entre les hommes et les femmes qui sont au cœur des processus du mariage coutumier en Afrique du Sud, ainsi que la façon dont l'intervention politique coloniale a travaillé pour le changement social dans le Natal colonial du XIXe siècle. Cette analyse renforce la compréhension historiographique établie que l'incitation au changement générationnel de la prise d'autorité a été importante pour la politique indigène du Natal, contrairement à la

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réglementation d'usage ailleurs en Afrique coloniale, où le droit colonial consolidait l'autorité des hommes âgés. Cependant, nous voulons souligner que, bien que les négociations du pouvoir colonial ont commencé à donner plus d'autorité aux hommes jeunes en manipulant le mariage indigène, et en particulier la pratique de la *lobola,* les effets de ces politiques ont produit de profonds changements dans l'expérience et l'articulation des relations entre les sexes au sein du mariage et de l'autorité coloniale. L'imbrication des changements dans les normes sur les relations entre les sexes et les générations révèle en fin de compte les contradictions à la fois dans les revendications coloniales de la réforme libérale sur l'égalité des sexes, et dans les revendications africaines indiquant que la politique coloniale aurait provoqué l'usurpation de l'autorité traditionnelle des hommes.

Key Words: Marriage; *lobola*, native policy; Shepstone; Zulu; Indirect Rule; colonial Natal

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In a notorious case in 1863, a young Zulu woman named Nomasondo was tortured for running away from her husband, an older man by the name of Nhlabathi, to her unnamed lover. The incident was reported extensively in the colonial press, alongside the kinds of trenchant criticism of the policies of the colony's Native administration that had become commonplace by the 1860s. Nhlabathi was charged with rape, and John Bird, the magistrate who adjudicated the case, convicted the defendants on basis of the girl's evidence and imposed a heavy fine upon Nhlabathi and his co-accused. The penalties imposed were so severe that they required the procedural intervention of the lieutenant-governor, who referred the case to Theophilus Shepstone, the Diplomatic Agent to the Native Tribes of South Africa and the colony's first Secretary for Native Affairs. Nomasondo had been the sole witness in the case, and Shepstone found reason to doubt her evidence. The fact that she had a lover whom she subsequently married after the annulment of her marriage to Nhlabathi convinced him to overturn the magistrate's sentence (NAB SNA 1/3/13, 1863).

This case has appeared repeatedly in the historiography of colonial Native administration in this region over the past decades (see Welsh 1971; Guy 2013). Invariably, incidents such as this one, which highlight struggles in intimate relationships and the manner in which households came to be established and extended in African society, have served primarily to demonstrate the nature of bitter disputes between colonial elites of different political persuasions. Most often in this scholarship Shepstone features ultimately as a "liberal" defender of Nguni society against the ravages of colonial expropriation. Very little gendered analysis has been brought to bear upon the workings of the Natal Native administration and the effects of its political engagement with Zulu male authority.[1]

The primary aim of this article is to understand the manner in which the policies of the Native administration in Natal and its relationships to customary forms of authority were gendered, and how the interactions between Native Affairs officials and Zulu-speaking Africans in the mid-nineteenth century

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produced contestations, shifts, and new understandings of authority in this region of colonial South Africa. Native marriage forms the fulcrum of such an investigation, as the regulation of local customary marriage practices was key to a number of broadly stated colonial aims in the nineteenth century. The wide-ranging structural relationships that emerged from the establishment of African marital homesteads as key units of agricultural production, and thus of the southern African political economy, meant that issues of Native marriage were at the heart of Native administration in colonial Natal. The legal regulation of marriage is viewed here as a kind of praxis: a relational process of social action, both gendered in its practice by the precepts of colonial officials and their interactions with African subjects, and with ultimately gendering social effects which in turn came to reinscribe the authoritative basis of Native custom. It demonstrates the manner in which a hierarchically gendered customary social order came to be imagined, negotiated, and coproduced by settlers, colonial officials, and African men in their capacity as fathers, husbands, guardians, and chiefs.

The historical literature on this region has long identified the ad hoc manner in which a range of contradictory and inconsistent colonial policies were pursued, reworked, and abandoned by the legislative arm of what Jonathan Hyslop called a "bumbling plantocracy" (2008:127). There is great ambiguity about the nature of the political and philosophical project of a complicated legislature whose range of policy interventions (and noninterventions) shows little philosophical coherence or political consistency. Moreover, the few studies that exist examining the processes and outcomes of colonial interventions in Native marriage practices in Natal render marriage as purely instrumental rather than worthy of study as a central, gendered institution of socialization, politics, and social action in its own right. As a result, what remains absent from the historiography is an analysis of the relational, political, and institutional production of gender in colonial society.[2] While it has been well-demonstrated that colonial interventions in marriage were instrumental to the achievement of aims such as securing the labor supply by restructuring generational ties, very little attention has been paid to the peculiarly gendered outcomes of colonial interest in this area. The realm of Natal Native Law takes on new historiographical significance when it is understood as an exclusionary part of a segregationist settler-colonial project implemented by Shepstone rather than simply as part of the ostensibly assimilationist or "civilizing" colonial law policies desired by missionaries and settler reformers. With marriage at its center, the colonial implementation of Native Law renegotiated the masculinist terms of Native customary practice to suit Shepstonian ends, and its eventual codification decisively excluded Africans in Natal from the modernizing premises of colonial common law (NAB NCP 2/2/2, 1882).

This article thus investigates how relationships of authority that lay at the heart of Native customary marriage were gendered, and aims to reveal the precise manner in which colonial political intervention worked to effect changes in the practices of African customary life by reorienting relationships

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between men and women of different generations. This analysis reinforces the recently established historiographical understanding that generational shifts in male authority away from senior African men to younger men were central to nineteenth-century Natal Native policy. In this respect it differs from analyses of customary regulation elsewhere in colonial Africa that describe the manner in which colonial law did the exact opposite, shoring up the authority of senior men over junior men and women (see Ranger 1983; Chanock 1882, 1985; Schmidt 1992; Jeater 1993). It seeks to underline, further, that while negotiations of colonial power began to shift authority from older to younger men by reworking relationships and processes of marriage—and in particular the marriage exchange practice of *lobola*, with the goal of ensuring a robust labor supply—the effects of such policies produced profound changes in the ways that African men and women experienced and claimed gendered authority. This imbrication of gendered transformations with generational ones ultimately reveals the contradictions in both colonial claims of liberal gender reform and in African claims that colonial policy provoked the usurpation of male traditional authority. A gendered analysis of Natal Native proves otherwise. It offers a view of an ambiguous and complex legislative project, even as it demonstrates a rare consistency of colonial administrative practice, which secured the perpetual minority of African women and African male guardianship over them.

The "Shepstone System"

In July 1889 Isaiah Msindi of the Umsinga District of Natal presented seven cattle to Sonyangwe Tusi as *lobola* (bridewealth) for Baleka Inbedwini, whom he intended to make his wife. Tusi accepted the lobola as he was adjudged to "stand in the position of her guardian" by the Umsinga Magistrate in terms of Native Law. Sonyangwe Tusi was, in fact, Baleka Inbedwini's former husband whom she had recently divorced. The magistrate maintained that "Sonyangwe is her natural guardian (and practically her owner) until [she is] actually married again." In referring the matter to the Native High Court, Secretary for Native Affairs Henrique Shepstone (son of Theophilus and successor to the office) appeared to agree with the magistrate's assessment: "As the law now is . . . a divorced woman is apparently without a guardian. The divorced husband is the only person to have any interest in her" (NAB SNA 742/89 260/89, 1889).

The legal conclusion that Native women such as Baleka, who remained legal minors throughout their lives in terms of colonial Native Law, had the "natural" guardianship of their fathers and male forebears permanently revoked by marriage, was unprecedented. The officials who ruled on the case based their decision on the provisions for male guardianship laid out in the code of Native Law, a document framed by Theophilus Shepstone in 1875 under considerable pressure from colonial legislators and settler critics of his Native administration. With his appointment to the office of Secretary for Native Affairs in 1846, barely three years after the formal

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establishment of the colony, the senior Shepstone had begun to fashion himself as "Paramount Chief" of Natal's Africans, to the great and growing dissatisfaction of the colonial office in Whitehall and settlers and legislators inside the colony.[3] The "Shepstone System," as the administration of Zulu-speaking Africans in Natal later came to be known, was ostensibly predicated on the labor needs of the colony in accordance with instructions from the Colonial Office in Whitehall. But as the nineteenth century progressed, it became more a vehicle of Shepstone's autocratic vision of what some scholars have described as the "traditionalist" rule of Africans in the region (see Guy 1997; McClendon 2010; Etherington 1989; Welsh 1971).

In general, Native policy was based on aims that included generating revenue for local administration by maintaining forms of the traditional economy, and later, for extracting Native labor. These aims were by no means shared evenly among colonial officials in a vast imperial bureaucracy, and Shepstone was continuously in conflict with the Colonial Office and with local Natal settlers who relied on the supply of labor. But despite these "tensions of empire" (Cooper & Stoler 1997), Shepstone's forceful administration and charismatic authority had a profound effect on Native policy, particularly in the area of marriage, placing women in Zulu society at the heart of administrative attempts at raising revenue and expropriating African land for settler use (Guy 1990, 2009).

Liberal Rhetoric and the Place of Native Marriage in Colonial Life

European and American missionaries in the early decades of colonial settlement (up until 1865) urged that any reform of African customary marriage practices contemplated by the colonial state in Natal include the proscription of polygyny and *lobola* and the affirmation of the right of African women to consent to marriage (NAB GH 1538, 1863; see also NAB GH 41, 1863). In addition to the widespread belief that African women were routinely forced unwillingly into marriage with much older men, both missionary and settler rhetoric condemned polygyny and its ties with lobola (see Winter 1877). Many settler colonialists argued that these institutions of African customary marriage—which served the needs of African homestead-based production for women's agricultural labor—were little different from the moral and economic relationships characterizing slavery.

For missionaries in particular, these were primarily moral concerns. But these moral imperatives came to coincide neatly with the labor-seeking concerns of settlers. Together, missionary calls for marriage reform and clamorous settler agitation for African labor formed the familiar rhetorical context for advocating the civilization of Africans in Natal. But although the rhetoric was widespread, it was never translated successfully into practice, and such demands were not the unequivocal aim of Shepstone's Native policy in Natal.[4]

Shepstone held a much more complicated view of African customary practices than most missionaries and his legislative counterparts. He argued, for example, that the structural relationships among polygyny, lobola, and

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family formation in Zulu society were hardly compatible with crude sociological understandings of slavery. At a number of points in the political struggles over Native policy in the nineteenth century his observations and arguments—however self-serving they may have been, or manipulative of Africans, missionaries, or the legislators with whom he disagreed—acknowledged (in a manner resonant with twentieth-century anthropological understandings) that Native customary marriage practices involved configurations of reciprocity, obligation, and affect (NAB TSC, 1872). But for Shepstone, it was in harnessing and manipulating exactly these complex configurations of authority that his autocratic vision for Native policy could be realized. Native administration in Natal in the mid-nineteenth century, to which the regulation of marriage was central, reflected this accommodation of customary authority in order to ensure stability within a large and growing Zulu population while simultaneously asserting forms of social order in which African women would remain under the authority of African men.

Much of the historiography of this colonial moment in Natal understands the protective aspect of Shepstone's administrative role as a liberal defender of Nguni society against the destructive interventions of settler rule and labor expropriation (see Welsh 1971; Guy 2012). But some scholars have argued, persuasively, that Shepstone's protection of African ways of life was, in fact, very much in the economic interests of the colonial state. While fewer than a third of the thirty thousand workers that settlers demanded by the 1850s were drawn from the local African population, the hut tax that Shepstone had instituted in 1848 contributed more than a third of all colonial revenues by the early 1850s (Harries 1987). In the early years of his tenure as Secretary for Native Affairs he worked with chiefs to collect the new tax, which not only funded his own office but also subsidized the entire colonial civil service, whose numbers quadrupled in the decade after the tax was instituted.

The gendered basis of this form of colonial revenue is worth emphasizing.[5] It was calculated according to the number of houses in the African homestead and was, as Jeff Guy points out,

> premised on the continuation of traditional modes of rural agricultural production. . . . [It] implied the gendered division of labor within a polygynous household in which wives were divided amongst a number of houses—that is the "huts" referred to by the tax. . . . [It] was a direct tax on married African men, and an indirect tax on the labor of married African women and their children within the homestead. (1997:13–14)[6]

It was these woman and children who performed most of the agricultural work. And while the role of women in African production ran afoul of imperial and abolitionist concerns about the place of women's labor in "civilized" society, Shepstone's plans for Natal's Africans helped to sustain this form of homestead production through the middle of the century. This was also despite missionary concerns over "female slavery" and settler

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objections that it was the productive role of African women in subsistence life that made the recruitment of male African labor a real difficulty in the colony. The administration of the Hut Tax placed the continuation of African customary marriage and kinship arrangements at the center of colonial attempts to secure the necessary revenue to support and reproduce the state bureaucracy.

Shepstone argued that taxes such as this one, tied to African homestead reproduction, exemplified the logic of making polygyny more expensive and forcing men into wage labor in order to raise the cash to pay the colonial administration (NAB TSC, 1864). If anything, however, his reformulation of the Hut Tax and the unexpected revenue boom it produced for the colonial government tied the economic fortunes of the colonial administration to the polygynous household arrangements among Africans. Shepstone was not unaware of the tensions and contradictions involved in the competing colonial legislative aims of revenue generation, "civilization" of the colony's African population, and the expropriation of African male labor. And his policies, rather than supporting proletarian modernization, had the longer term effect of perpetuating rural homestead life.[7]

The 1869 Native Marriage Act: Consent, Minority, and Rights in African Women

It had become clear by the mid-1860s that reform of African customary marriage was unlikely to be comprehensive, since attempts by the colonial legislature to undermine these practices were scuppered by Shepstone, in consultation with the governor and the Colonial Office (NAB NCP 2/1/1/7, 1885). Not surprisingly, Shepstone stressed the need to avoid antagonizing the large African population whose social and economic labors subsidized colonial life and whose political existence, Shepstone persistently argued, could be more easily controlled through gradual colonial intervention with distinctly paternalist features. The fear of "Native revolt" was a repeated refrain in Shepstone's interactions with settlers and the Colonial Office. The anticolonial uprisings in the 1850s and '60s in India and Jamaica no doubt supported Shepstone's case; his arguments for gradualism and the shoring up of customary practice found favor with a Colonial Office newly attuned to the threat of revolts and freshly reacquainted with the political virtues of the long-stated (if rarely pursued) imperial mandate of "nonintervention."[8]

But incidents such as the assault of Nomasondo by Nhlabathi and others were widely publicized in the Natal press, and the ensuing indignation forced Shepstone to acknowledge the need for some kind of legal reform (*Natal Witness* 1869a). Under fire from settler legislators and vilified by public opinion, Shepstone introduced an African marriage register in 1869 to provide for the administrative regulation of marriages in Natal's African population. Specifically, an official register of marriage was established as a means of assisting the state in adjudicating marital,

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inheritance, and property disputes arising primarily out of the payment of lobola.

Shepstone also claimed that the new regulations represented efforts to bring about moral reform and curb what he claimed was the tendency within Zulu society to "treat the women as chattel" in denying them the right to consent to their marriages. This claim must be understood, however, alongside Shepstone's often-stated understanding that African male authority was, in fact, more benevolent than settler reformers understood (NAB Native Affairs Commission Evidence 1881–82). Such contradictory claims about the nature of authority in African society were not unusual in Shepstone's engagement with settlers with whom he largely disagreed, but whose liberalism resonated with broadly stated colonial and missionary aims of "civilization" and "uplift."

In its effects, the 1869 Native Marriage Act was mostly successful in generating revenue and securing African male labor through the manipulation of custom. Despite its liberalizing appearance, it was not an attempt to further the autonomy of African women. While ostensibly making African women's consent indispensible to marriage, it in fact worked to harden existing lines of male authority. The prospective bride's consent was solicited only in addition to the consent of her father, uncle, or relevant male authority. Most often, the cases that came before local magistrates in regard to the consent provision did not result from instances of "forced marriage" or attempts to coerce women against their will (which occurred on occasion, and often became key to public battles among settlers, reformers, and Shepstone), but rather from instances of elopement in which a woman's desire to marry a partner of her choosing was impeded by a male guardian who withheld his consent. The law therefore cemented the position of African women as permanent legal minors (in contrast, for example, to settler women in the colony who attained legal majority at the age of twenty-one). With this law Shepstone demonstrated his deference to a vision of African custom in which he believed women remained under the authority of men their entire lives.

In this way, this first instance of written colonial law-making directly targeting African marriage initiated the legal codification of African custom.[9] As such, the flexibility and contingencies of customary decision-making came to be replaced by rigid procedures. Whereas elderly, elite African women had previously, in exceptional circumstances, been able to provide consent as guardians of younger women, this possibility was now eliminated. But if the 1869 Native Marriage Law began the process of hardening male authority over—and rights in—women, this was not the perception of the African patriarchs themselves.

In the half-century following the 1869 Marriage Law, African men expressed their displeasure at the transformations initiated by the law's provisions for female consent and its restrictions on lobola—on the number of cattle that could be exchanged and the discrete time frame in which this exchange could take place. In discussions with colonial magistrates and Native

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administration officials in the 1870s, and in appearances before commissions in the 1880s and early 1900s, these men complained that their capacity to attain the respect of their contemporaries by fulfilling the rights and obligations of fatherhood were undermined by the 1869 law. They expressed frustration that daughters could renege on marital agreements made between fathers and chiefs, choosing instead to marry younger "men of no substance" (NAB Native Affairs Commission Evidence 1881–82).

In general, the men claimed that such a concession of rights to women presented a challenge to what they understood as the necessary submission of women within the homestead. As one man testified, "It is our custom. Under our laws a wife was afraid of her husband. This may be against your custom, but it is ours. We husbands are mere nothings now. If you say a word they threaten to go to the courts and get a divorce, and marry someone else" (NAB Native Affairs Commission Evidence 1881–82). In this way, as historians have noted, the Native courts became battlegrounds for gender struggles (Berry 1992; Mann & Roberts 1991; Peterson 2012).[10] The testimony implied that gendered rupture was a key feature of the replacement of traditionalist modes of living with new customs that favored women's autonomy. As they expressed it, what appeared to be modernizing interventions imperiled the reproduction of a particular form of masculinity, whose foundations lay in the ability to initiate and execute transfers of marriage, thereby building material signs of wealth and status (in both cattle and other goods) as well as respect within localities and wider clan groups.

Whereas some of their complaints referred directly to the law's lobola restrictions, others claimed that the consent clause eventually affected their ability even to claim lobola for their daughters, whose "value" diminished in the wake of marriage disputes. The men claimed that the provision for African women's consent rather than the consent of their fathers and male guardians (whose objections could be overridden by the Secretary of Native Affairs, though this rarely occurred) had resulted in an increase in premarital sex: that young people no longer respected the authority of the fathers, and that young women in particular now needed to be "corrected" through beatings (Colony of Natal 1904). Commenting in an editorial in *Ilanga lase Natal* (1909) on the effects of what he understood to be Christian reform in particular on African family life, John Dube, the prominent Kholwa political leader and founding member of the African National Congress, asserted these men's rights to "old obligations of custom" on the grounds that

> daughters . . . are under certain obligations to their fathers. . . . [T]o quote the right of selecting a husband as a warrant for a girl['s] ignoring her moral obligations to her family . . . [and] discard[ing] their mode of living for the purpose of taking up, to them, a somewhat strange and uncertain mode of life, is not logical. . . . Surely . . . one of those Fathers [would have to be sure of] what it really meant for his daughter to leave the old mode of life for a new one.

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The fathers whom Dube referred to accused the magistrates' courts of encouraging women's recalcitrance: according to one man's testimony, "they [women] come here to lodge their complaints and pick up with someone under the trees, and the wives are then gone. Magistrates do not support the men anymore. When the women complain they take their side and we have to pay a fine" (NAB Native Affairs Commission Evidence 1881–82). Speaking before the 1906–7 Native Commission, Chief Ngwaqa lamented the demise of the "old laws" under which "such things never took place." More than simply anger, frustration, and patriarchal nostalgia, these comments reveal the sense of dislocation and the sharp recasting of authority that this particular legal intervention had provided. Chief Mnyamana was speaking on behalf of the men in his district, many of whom claimed that their daughters had run off to the towns and were leading "immoral" lives because fathers no longer had the authority to arrange their marriages (NAB Report of Native Affairs Commission 1906–7).

The complaints of these men before various commissions from the 1880s to the twentieth century did not represent the only male point of view, however. According to the evidence, other men, particularly younger men and converted Christians, welcomed the 1869 restrictions as a way of checking the authoritarian power of chiefs and senior men and making it possible for young men to marry more readily (see Essop Sheik 2012). A key outcome of Native administration was therefore a freeing of young men from the control of their elders, although this change also precipitated the need for young men to earn lobola themselves, independently of the older male relatives. It was also not necessarily the case that young African women had in fact begun to take the kind of liberties in relation to the supposed legal liberalization that their fathers and guardians claimed. Some women may indeed have used the law to leave their parental homes and "come to town," as Shepstone testified before the Native Affairs Commission in 1882 (NAB NCP 2/2/2, 1882). But the protests of older African men in fact reflected the real and imagined consequences of the rupture in terms of their own authority. The *abanumzana* (married men) and chiefs who testified to the ruptures induced by the law were testifying to the manner in which the law appeared to be undermining a specifically generational form of male power. Older men began to feel compromised by what they experienced as a diminishing ability to appoint "men of substance" as appropriate suitors for their female wards. In fact, while the provision for women's explicit oral consent in marriage was in many respects a radical legal intervention (as similar moves proved to be in other colonial African contexts), the totality of the law—in particular the provisions concerning lobola—was tailored less to inspire gender reform in favor of African women than it was an attempt to undermine the generational powers of older African patriarchs.[11]

The consent clause of the 1869 law was just one part of a Shepstonian strategy to weaken the power of older African men over younger ones. This was a necessity spawned by the shortage of cheap labor in the colony despite

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the presence of what settler colonialists viewed as a large potential labor force. Older African men who wielded power over the lives and labor of younger men proved to be an obstacle to securing young men's labor in the service of commercial agriculture in this mid-nineteenth century and for industrial capitalism from the 1880s on. The African homestead-based subsistence economy needed to be undermined if a reliable supply of male labor was to be secured for emerging forms of settler capitalism. The law thus introduced a marriage tax and placed limits on the amount of lobola cattle that could be exchanged between African homesteads, as well as on the duration of time during which the exchange could take place. The movement of lobola from the groom's family to that of the bride was made into a completed, once-off transaction, and the long-standing practice of ongoing exchange between lineages over a period of many years was abolished.[12] In a manner similar to his contradictory statements about women in African society, Shepstone, after warning settlers against expecting a ready supply of African labor in the 1850s (NAB SNA 1/8/83, 1853), claimed that the new marriage tax would encourage "labor habits among the male portion of the native community" (Martens 2003). This was more than just an act to appease settlers clamoring for labor. The other parts of the law regarding polygyny and lobola were all ultimately geared toward a shifting of generational, rather than gendered, power and as I have demonstrated above, this had profound effects on the authority that men could exercise over women in their capacities as fathers or husbands.[13] In a letter to the editor of *The Natal Advertiser* (Feb. 9, 1892), Shepstone offered just such a justification of the truncation of the lobola process in support of younger men:

> The unfortunate son-in-law is never released from legal liability to the avaricious demands of his wife's father or brothers. . . . I have had to adjudicate on scores of cases arising out of this custom, some of them more than fifty years old. I have found that instead of producing domestic or social harmony . . . it is most prolific of family feuds and bitter discord. One generation hands on its quarrels to another exaggerated by the accretions of time. It was surely necessary to restrict this source of constant irritation . . . and ultimately to put a stop to it altogether by taking a step in the direction of civilized useage.

Shepstone made what he considered to be appropriate concessions to the protests of older African men by fixing different amounts of lobola for men of different customary status, allowing ten head of cattle for commoners, fifteen for brothers and sons of hereditary chiefs, twenty for government-appointed chiefs, and no limit at all on the cattle that could be exchanged by hereditary chiefs. Any cattle given in excess of the regulations were subject to seizure and fines by the state. But younger men no longer had to rely on older patriarchs for the accumulation of large numbers of lobola cattle, which could be readily earned by wage labor. The effect of this law encouraged earlier marriage among African men and

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a continued commitment by migrant wage laborers to the maintenance of rural households. Central to this was the transfer of rights in women, and in particular their legal guardianship, which was underwritten in the new law by the transfer of lobola from their fathers to their husbands upon marriage (see NAB SNA 2097,1900). This was how a man like Sonyangwe Thusi, despite being recently divorced, came to retain the guardianship of his former wife.

Thus with the 1869 law, legal intervention began to shift its favor for older male authority in African society, with administrative effects that have been well-documented in the historiography (see Carton 2000). Rather than undermining the basis of rural African reproduction and encouraging proletarian urbanization—which, indeed, could have threatened the security of an emerging white urban landscape—the Natal Native administration harnessed customary relationships and imperatives, such as the need for young men to marry and become *abanumzana* or respected patriarchs in their own right. This development produced the phenomenon of wage labor migrancy, of temporary laborers who moved regularly between town and countryside.

But Shepstone continued to argue for the inviolability of African women's role in the reproduction of their husband's homesteads and lineages. A year after the propagation of the Marriage Law, in 1870, he set out terms for the continuation of the customary practice of *ukungena*, a component of levirate marriage in which the younger brother of a women's deceased husband has sexual intercourse with the widow in order to "raise up seed" for his late brother's lineage. Sensitive to missionary and colonist allegations of coercion involved in ukungena (some of which echoed reformist rhetoric on slavery arising out of prominent cases of coercion such as that of Nomasondo), he corresponded with local newspapers and resident magistrates in an attempt to emphasize that

> Native Custom[,] in accordance with which a junior brother takes the wives of his deceased elder brother to raise up seed to the house of the latter[,] is so universal and held in such respect by the Natives generally that it was deemed undesirable to attempt to put a sudden stop to it by any regulation. . . . It is[,] however[,] a practice which the Government has always discouraged and is still desirous of discouraging as far as it may be wise to do so. . . . The object of [*ukungena*] is to prevent a large establishment from being necessarily broken up, the women dispersed and the children left without any persons to care for their wants on the death of the head of the family. In the view of the Natives themselves[,] therefore[,] the custom was established to benefit the bereaved family. (NAB 1/LDS 3/3/3 H54, 1870)

Echoing Shepstone's arguments, African men such as Chief Mvakwendhlu petitioned the state, claiming that the continuation of ukungena meant that women could look after and provide for their children and families could remain stable. As he told the Under Secretary for Native Affairs,

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"Men do not make the gardens[,] they do not attend to domestic requirements[,] and they cannot look after a number of children deserted or left by their mothers[.] By ukungena these difficulties can be met because the mothers will then remain with their children" (NAB SNA 3143, 1895). Similarly, local magistrates noted that widows continued to be a necessary part of the homestead-based lineages into which they had married. Their ongoing labors were necessary "to attend to the culinary duties of the kraal," as one magistrate put it, with other members of the family "naturally loath to lose [women's] services" (NAB 1/LDS 3/3/3 H54, 1870).

Native policy thus came to feature the accommodationist understandings arrived at between Native administrators and their male African interlocutors over the centrality of female labors to African homestead reproduction. The effective coproduction of new, less discretionary, and increasingly inflexible understandings of gendered labor and the domestication of women in African society soon found expression in a written body of law to which all Africans, as noncitizens excluded from the realm of colonial common law, were subject. The overwhelmingly oral methods that Shepstone favored in his Native administration made room for the flexibility, contingency, and complexity that he believed characterized African customary life. But the absence of written law permitted an administrative opacity and lack of accountability which he desired most of all in the autocratic functioning of the Native Affairs Department—a lack of accountability that would spell the torrid end of his oral administration.[14]

Making Binding Custom: Accountability, Written Law, and a Code of Male Authority

Most settler colonists viewed the recalcitrance of the Native administration toward unequivocal modernizing reform—Shepstone's supposedly "gradualist" approach to civilizing Africans—as threatening to a colonial moral order. They argued that the 1869 proscriptions did not go far enough, and instead institutionalized African customary marriage practices such as polygyny by tying "reform" to revenue generation. An editorial in the *Natal Witness* (1869b) published shortly after the passage of the 1869 Native Marriage Law criticized its endorsement of African marriage practices as "but another phase of slavery" which brought "similar curses in its train."

The key administrative problem for reformers was that most colonial lawmakers were not part of the tiny Native Affairs Department and ultimately had little say in the running of Native Affairs. This was further compounded by Shepstone's practice of conducting his interactions with Africans orally and his general disinclination toward producing a written record. While he justified his reluctance to render customary practice in written form as a reluctance to follow a procedure that would compromise the flexibility of customary practice, the events of the 1860s revealed that he, more than anyone else, is the person who benefitted from the lack of accountability occasioned by the absence of written law.

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These long-simmering disputes about the moral project of colonial rule and the interests served by Shepstone's personalized form of Native administration reached a point of crisis in Natal with the so-called Langalibalele Rebellion of 1873. In this year the Hlubi chief Langalibalele, falsely accused of rebellion by the colonial government, was arrested, tried, convicted largely on Shepstone's misleading evidence, and sentenced to imprisonment on Robben Island, near Cape Town, in what scholars have described as a "sham" trial (see Guy 2001:40). This episode was the turning point in Shepstone's previously cordial relationship with the former Anglican Bishop of Natal, John William Colenso, who had himself been excommunicated from the church for proposing theological accommodations that would allow first-generation African converts to retain multiple wives. Colenso protested the treatment of Langalibalele, characterizing Shepstone's Native administration in Natal as "rotten to the core" (quoted in Rees 1958:277). It was, in part, Colenso's passionate condemnation that resulted in Shepstone's ultimately being forced to render his administration accountable to the colonial legislature by codifying his peculiar interpretations of African custom and oral tradition in the Natal Native Code in 1875.[15]

Shepstone's claims to being the ultimate repository of colonial knowledge of Zulu oral tradition—and his insistence on the centrality of orality to his rule—was no longer tenable in the aftermath of the Langalibalele debacle. In the words of Frances Colenso, daughter of the archbishop (who wrote under the name Atherton Wylde), "I saw before me the man who has for so many years controlled, in England's name, the destinies of the Native races of Natal. . . . To me it is inconceivable that England's honor should have been entrusted, since the birth of this her colony[,] to one who is at heart a Zulu chief" (1880:71). The perception that his personal oral administration of custom was an autocratic system that compromised the benevolent veneer of colonial rule led to the demand that he record his practices in an official written document to which other colonial lawmakers might have access.

The Natal Native Code thus came to form the continuing basis for a legislative understanding of the content of African customary life in Natal and secured a discrete legal place for the ongoing customary administration of Africans. It perpetuated Native administration in Natal through forms of customary authority ultimately supervised by Shepstone and his successors, and incorporated recent colonial administrative interventions and innovations such as the 1869 law as reified "Native custom."Attempts to reform aspects of African customary practice in the years immediately following its passage were offered as amendments to the Native Code but received little support from Shepstone or his immediate successors to the position of Secretary of Native Affairs, his brother John Shepstone and his son Henrique (NAB SNA 1/1/80, 1885).

Such was Shepstone's resistance to codification that he was willing to express regret for the interventions in customary practice that he had been

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forced to codify. In his testimony to the Native Commission in 1882 he addressed the manner in which customary rights in women were remade by the proscriptions on lobola from the 1869 law which were now enshrined in the Native Code.

> I suppose the real purpose of [lobola] is that it keeps the parental authority more intact. To thoroughly understand it you must look at other tribes not affected by our regulations. You will find that amongst all the tribes between Natal and the Cape Colony, when a woman is badly used, she goes to her father, who keeps and protects her if he sees fit until the husband has paid the fine that he may exact. Sometimes this right by the father is used to an extravagant extent; but an appeal to the chief will usually secure the rights of the husband. This system has worked better than ours, for which I am mainly responsible; and which has much loosened the ties between father and child in such cases. According to our system, when a husband dies the father of the wife has no right to receive her back to this protection, but she becomes the daughter of the husband's family. (NAB Native Affairs Commission Evidence 1881–82)

Shepstone was acknowledging the shift in the locus of male power in colonial bridewealth law and practice as the effect of his efforts to secure early marriage among Zulu men in the mid-nineteenth century. In the past, he was suggesting, lobola practices had served as a form of moral restraint on both men and women. Mistreatment on the part of a husband, or a wife's infidelity (or even infertility), had been negotiated in the form of returned cattle and fines, an arrangement that tied families and their patriarchs into long-term reciprocal relationships and, in theory at least, acted as a customary form of moral restraint on men and women (Ngubane 1968; Simons 1968). In his testimony to the Commission Shepstone observed that his peculiar interpretations of lobola laws in the Natal Native Code were not only a temporal attenuation of these material transactions, but effectively reconfigured the customary life of these exchanges and ongoing filial responsibilities previously encompassed by the practice so that, under his system, male authority began to be remade, with the predominant guardianship of fathers over daughters giving way to the guardianship of husbands over wives (Carton 2000). His rendition of customary practice in the above excerpt casts the work of African patriarchy, in terms of the roles of both fathers and husbands, as fulfilling a specifically desirable administrative function: the guardianship of women.

Conclusion

The generational shifts occasioned by colonial intervention in Native customary marriage worked to reinscribe the guardianship of men over women, albeit by husbands rather than fathers, and did little to undermine male power and authority. As Shepstone had foreseen, the act of producing written law required a hardening of previously flexible oral custom in the

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written body of law. While this may have done little to dampen contestations in African society over traditional forms of authority, the Natal Native Code exemplified a legal reification of the gendered structures of African customary life by enshrining as the foundation of its "customary" ambit the legal determinations around women's minority and guardianship. In addition to favoring African men in their roles as husbands rather than as fathers, the Code, in the words of H. J. Simons, "stereotype[d] a concept of feminine inferiority unknown to the traditional society" (1968:26).

It is noteworthy that the gendered reifications produced in this written, colonial iteration of custom were nonetheless embraced by many prominent Africans. The general acceptance of the Code by a number of chiefs as well as a largely Christian, Zulu-speaking literate elite reflected some of the assumptions about masculine power that were shared by colonial administrators and both traditionalist African male subjects and their Christian counterparts. As Welsh has noted, the Zulu/English newspaper *Inkanyiso* reported in September 1891, more than a decade and a half after the Code was promulgated, that it was in many respects a "very good digest of our Native Laws" (1971:168).

The gendered outcomes of customary marriage regulation as embodied in the Code reflected Shepstone's disagreements with missionaries and other reformers and his disinclination toward liberal gender reform. The inclusion of these "accommodations of patriarchy" (Guy 1997) as they were produced in the code exemplified the coproduction of a legal regime that augmented the customary authority of husbands within the household, and assisted with the production of a racially differentiated, gendered social order in the years of rapid colonial expansion in Natal.

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Notes

1. Guy (1997) comes closest to describing the forms of masculinity implicated in these nineteenth-century administrative interactions but does not discuss issues of gender fully. Carton (2000) does pay some attention to gender, although the analysis is generally subordinated to concerns about generation.
2. Essop Sheik (2012) represents the initial stage in a project to understand how gender and racial difference were made in this colonial context.
3. The appropriation of indigenous cultural logics and idioms was an important part of Shepstone's positioning of himself as a legitimate charismatic authority

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in relation to the Zulu-speaking population in the region. See Hamilton (1998).

4. In only one instance, the 1887 Native Christian Marriage Law, did genuine calls for reform of African marriage become codified in law. And when the law was passed, its irregular implementation became a powerful symbol of reformist impotence against the opposition of an aging but still influential Shepstone and his immediate administrative successors (who also happened to be his sons).
5. The gendered implications of the tax, in particular its effects on the relative social status and authority of women and men in the nearby Eastern Cape, has been keenly observed by Redding (1993).
6. An accurate account of the division of labor in African society in the region is provided by the "Evidence of G. R. Peppercorne" contained in the report of the 1852–53 Locations Commission (Proceedings . . . . 1853 [iii]:64).
7. The consequences of Shepstone's recalcitrance toward decisive, modernizing reform became evident by the mid-twentieth century in South Africa, especially in terms of the problems of labor migrancy in industrial life. The complex activities of rural migrants in establishing multiple homes (and families) has remained constant into the present. See, e.g., Hunter (2010); Breckenridge (2012).
8. The 1857 rebellion in India and the rising up of former slaves at Morant Bay in Jamaica in 1865 marked spectacular symbolic ruptures undermining liberal reformist imperialism and heralding the ascendency of a sharper-toothed imperialism and the "Invention of Tradition" turn within the British Empire (Ranger 1983). See Metcalf (1994); Cohn (1983). The Colonial Office remained sympathetic to Shepstone's administrative proclivities until the aftermath of the Langalibalele Rebellion, which exposed the tyranny of Shepstone's oral-based administration.
9. For examples of codification and its effects in other African colonial contexts, see Jean-Baptiste (2008); Chanock (1982).
10. In Natal, the Native High Court was only created in 1875 after the failure of the accountability of Shepstone's personal oral administration of customary law became clear. While attention to the understudied records of this court may shed more light on the character of customary contestations in Natal, that remains outside of the ambit of this article's focus on the negotiations of masculinity that produced the particular patriarchal outcomes evinced by the colonial regulation of custom until the advent of codification.
11. For studies of other colonial contexts, see Booth (1992); Wright (1982); Roberts (1990); Byfield (2000); Hawkins (2002).
12. Anthropological scholarship has underlined the processual nature of wedlock in African societies prior to such interventions. See Radcliffe-Brown and Forde (1951); Murray (1976, 1981). See also Comaroff and Comaroff (2001).
13. These generational shifts associated with Shepstone's legal intervention around consent are similarly identified in Carton (2000).
14. Shepstone's desire for the widest possible latitude in formulating and implementing administrative decisions is elaborated at great length in Guy (2013).
15. The Natal Native Code was Section 10 of the 1875 Native Administration Law.