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Alien encounters The *jus soli* and reproductive politics in the 19th-century fortress and colony of Gibraltar

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Abstract

In a place where land was scarce and military security paramount, population growth was perceived as Gibraltar's most insidious curse. While British law protected the rightful residence of those who were recognized by the early 19th century definition of Gibraltar "native," colonial authorities realized that the local population was also increasing by other means. The tenet of the *jus soli* became one of Gibraltar's most notable weaknesses in attempting to control local population growth. Laws were enacted in a patchwork fashion, attempting to defeat any loopholes that might encourage large-scale immigration and the birth of alien offspring on the Rock. So far as alien/alien unions were concerned, the laws were straightforward, but problems ultimately arose for those local women and men who married aliens and who intended to remain in Gibraltar. Concerns over alien contributions to population growth seemed to reach crisis proportions in the 1860s and 1870s, but thereafter the burdens and difficulties imposed on that portion of the local population that opted to marry out eased substantially under the authority of a new governor. © 2001 Elsevier Science Inc. All rights reserved.

Keywords: Immigration; Marriage; Childbirth; Law

1. Introduction

While 19th-century Gibraltar never experienced the harsher stamp of colonialism in terms of violence and overt racism, its citizens did endure some degree of marginalization that arose from its dual status as a British colony and garrison town. Throughout the 18th and

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19th centuries, civilians on the Rock were regarded as second-class citizens or subordinates living there on sufferance of the colonial regime. A separate civilian community without any significant political autonomy gradually evolved within an extensive garrison of soldiers and various hierarchies of colonial administrators. Time and again, the administration publicly reiterated that the sole purpose of the civilian presence on the Rock was to serve as the unquestioning instrument of the British Empire. Control was exercised by a Crown-appointed military governor, typically officers in their latter years of service, whose power was absolute. This article examines several manifestations of civilian marginalization in 19th-century Gibraltar, focusing specifically on issues of the right of residency, whom one could marry, and where offspring could be born. It will explore the precarious position of Gibraltarians, particularly women, who married non-natives and the incredible difficulties they faced as a result.

2. Life on the Rock: the right of residency

From the time of its capture in 1704 by Anglo-Dutch forces, Gibraltar represented an oddity in the British Empire. Unlike other territories drawn into the Empire, Gibraltar was not a colonization, rather the annexation of land marked for its strategic military value. As England's troops moved in and the majority of the then resident Spaniards moved out, Gibraltar effectively became a clean slate, at least from a nationality perspective. Only 3.6 square miles in size, Gibraltar's most notable feature was the large limestone outcrop, which made up some three-quarters of the available landmass. A deficiency of natural resources on the barren Rock meant that a small body of civilian immigrants were permitted residence in Gibraltar over the course of the 18th century to help meet the needs of the military. Any further immigration to the Rock was discouraged by frequent hostilities with Spain, in the form of blockades and sieges, and the strictness of military rule in this fortress.

In the aftermath of the Great Siege (1779–1783), a fortunate conjunction of events precipitated the transformation of Gibraltar from a small military garrison town into a "grand emporium" and a principal center of Mediterranean/European trade (Gilbard, 1883, p. 15). The local economy flourished, property values soared, and foreign laborers and their families seized the opportunity to emigrate to the Rock. Seeking steady employment, higher wages, and the opportunity to make quick fortunes, large numbers of foreigners established themselves in Gibraltar (Fig. 1). The heavy tide of immigration is readily apparent in the 1791 census returns, for example, when some 47% of the resident civilian population were of foreign origins (Table 1).

The extent of Gibraltar's attraction saw that the number of civilians on the Rock swelled to over 5000 in 1801, nearly double the figure for the previous decade. Fueled by unrelenting immigration, growth continued at a phenomenal pace (Fig. 1). While Italians, and particularly Genoese, accounted for much of the 18th-century migrant pool in Gibraltar, easing political tensions between England and Spain led to a predominance of Spanish immigration in the 19th century. An early census memorandum from 1814

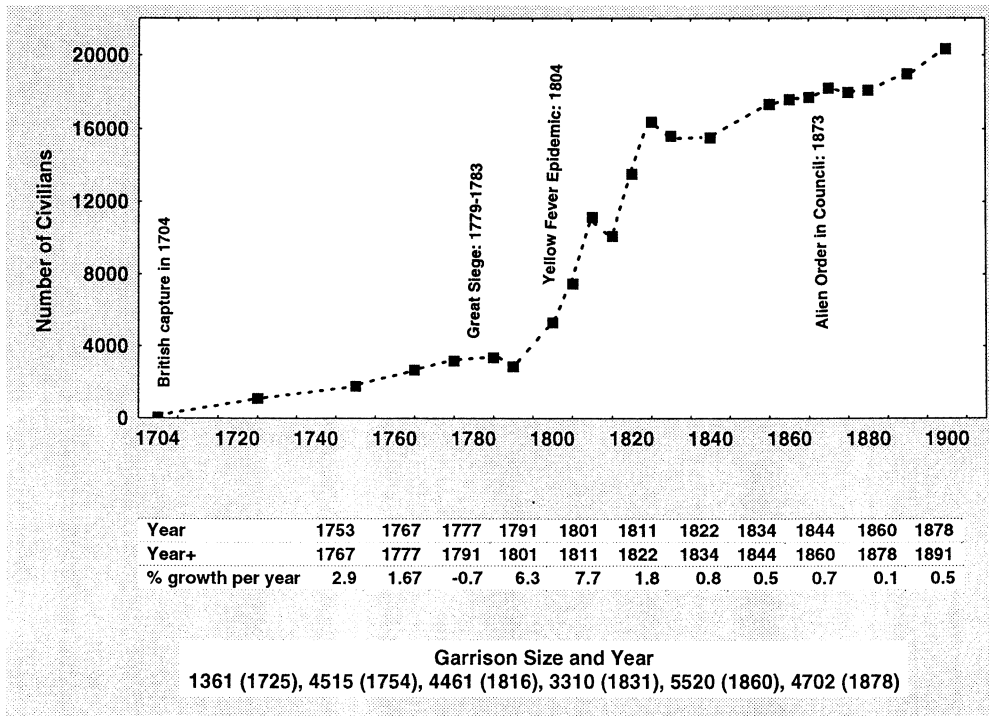


Fig. 1. Population growth in Gibraltar, 1704–1900.

captures the British administration's classification of Gibraltar's population in the heyday of immigration:

First: The old established mercantile houses. These are generally composed of respectable people.

Second: The mercantile adventurers. These are not acknowledged by the communal society here. They are numerous and extremely troublesome. They are connected with all the pettifogging attorneys whom they employ in drawing up false representations. They create great mischief between the military and the inhabitants, and they oppose what may be called the measures of government.

Third: British shopkeepers and tradesmen. The people of this class are also included to be troublesome, being likewise connected with pettifogging attorneys.

Fourth: Foreign shopkeepers. The people of this description are in general not turbulent and tolerably easy to manage.

Fifth: Genoese. Many of the people of this country possess opulent fortunes: the lower class employed as gardeners, fishermen, boatmen, and lightermen; in money transactions they are always ready to take unfair advantage, but in general they are not difficult to manage.

Sixth: The other Italians, as well as the Sicilians and Portuguese may in general be considered as a very bad class of people.

Table 1
Changes in Gibraltar population indices by census year (%)

	Census year		
	1791 ^a	1834 ^b	1878 ^c
<i>Birthplace</i>			
Gibraltar	53.4	62.6	76.0
United Kingdom	3.9	4.3	3.0
Spain	1.8	14.3	12.0
Portugal	5.3	4.4	1.5
Italy (Genoa)	17.4	7.8	0.8
Malta	0.1	0.2	3.4
Morocco	7.0	2.3	1.5
Other	0	4.1	1.8
<i>Marriages</i>			
Gibraltarian husband/Gibraltarian wife	— ^d	6.9	54.6
Gibraltarian husband/alien wife	— ^d	4.1	15.6
Alien husband/Gibraltarian wife	— ^d	9.0	13.3
Alien husband/alien wife	— ^d	80.1	16.5

^a Total population size = 2914.

^b Total population size = 14,834; total number of marriages = 1672.

^c Total population size = 17,783; total number of marriages = 2767.

^d Data not available.

Seventh: The Jews. The old established families are in general opulent, and good subjects. The Barbary Jews are usually employed as porters, and [are] a useful race of men. The Jews who follow the business of hawkers and peddlers are a very bad set of people. The British Jews are extremely refractory, they refuse to acknowledge the Head of the Jews in the garrison as the representative of the Hebrew nation; and they insolently demand what they call the rights and privileges of British subjects.

Eighth: Spaniards. Some of the people of this nation are of respectable characters, but in general they may be considered as a source of nuisance to the place.

Most of the second class, and all of the lower order of foreigners and Jews, are dirty in their houses and in their habits (Gibraltar, 1814).

Interestingly, there is no discussion of the actual native “Gibraltarian” population than a brief mentioning of “Inhabitants.” It was not until 1816 that an actual legal definition was put forward to distinguish who, in this motley population, could actually be considered a citizen of Gibraltar and who was an “alien”:

Every Foreigner, male or female, who has not been permanently resident in this garrison and territory for the space of ten years last past [since 1806], must forthwith apply at the office of the Town Major, and procure a regular permit to remain here, either generally, as for such time as his or her business may require, and it may be judged expedient to grant the same; which permit will be given gratis by the Town Major, to all those it shall be judged advisable to allow to remain in this garrison (Don, 1816).

This meant that whoever was present in 1806, wherever they may have been born, were from then on considered “Gibraltarians” and British subjects. This privilege was also conferred upon their children when born on Gibraltar soil. Anyone immigrating after this point, would be forever after considered an alien. This legal definition allowed British authorities the opportunity, for the first time, to begin controlling the population growth attributable to the part of the local population now identified as “alien.”

The perceived necessity for such controls had been realized as early as 1804, when Gibraltar suffered its first large-scale and devastating epidemic, as yellow fever left thousands dead in its wake (Sawchuk & Burke, 1998). High population density, deficient sanitary and sewerage controls, and high levels of mortality fueled by everyday and epidemic infectious diseases all indicated that if local population growth was not brought under control, the health of Gibraltar’s military population and, by extension England’s ability to retain control of the Rock, was at risk. Accordingly, as early as 1814, Gibraltar’s lieutenant-governor warned that “to preserve health and good order in the Garrison, the number of inhabitants (exclusive of the Military) should never exceed six or seven thousand” (Don, 1814). Without measures to curb population growth, it was generally feared that “the civil population will become a rendezvous for traitors, the city will become a hot bed for pestilence and Gibraltar, calculated under proper treatment to be the right arm of England’s commercial, industrial, naval, and military strength, will be her greatest curse” (Flood, 1866).

There were two general problems that local authorities had to face in order to control any further population growth. The first was to improve the workings of a complex permit system, first introduced in 1720 and aimed at foreign laborers, the majority of whom were Spanish. The object of the permit system was “to preserve peace, order, and good government in Gibraltar, to add security to the fortress, and to promote the health of the garrison” through its controls on foreign laborers (Flood, 1871). To ensure its success, penalties were proposed for those now-defined aliens who did not abide by the new system. Any foreigners found either without permits or with expired permits were to be considered “bad and suspicious characters” and liable for fines, imprisonment, or expulsion from Gibraltar (Don, 1816). The permit system was subject to continually tightening control such that by 1831 the secretary of state ordered “no license of residence held now by any person who may have resided in the garrison for a period exceeding one year be renewed without my express sanction” (Flood, 1871). Around this time the rapid rate of population growth in Gibraltar changed somewhat noticeably, with smaller increases to the local population seen after the 1830s (Fig. 1).

This article explores the attempts made to control the second major means of population growth—the birth of alien children on the Rock. The earliest marriage data available, the nominative census of 1834, indicates that the majority (80%) of married couples on the Rock were those in which both husband and wife had immigrated (Table 1). An additional 13% of unions were exogamous in nature, with Gibraltarians marrying aliens. While by 1878 the majority of marriages took place between locals, a substantial number of marriages continued to be accounted for by those who had chosen a mate from outside of the community. The reason why the birth of children of alien parentage posed any sort

of problem can be traced to the principle of the *jus soli*, a tenet of British law “under which nationality is acquired by the mere fact of birth within the territory of the state” (Jones, 1956, p. 10).¹ According to the *jus soli*, the children of aliens born in Gibraltar became British by birth and, from the perspective of local authorities, represented an irremovable alien liability to the colony.² According to the permit system, those aliens admitted into Gibraltar for the purposes of employment were meant only to be temporary residents on the Rock, so long as their labor was required. This use of alien labor was strategic in the sense that it prevented any further fixed burdens on Gibraltar’s overcrowding problem. There was one simple way in which floating migrants could very easily upset this delicate balance: the birth of their children in Gibraltar.

Since the *jus soli* represented such a resounding weakness in closing the door to alien contributions to population growth, local authorities devised a series of unique measures, not known in other British settings, colonial or otherwise, to undermine its potential impact on the Rock. Some measure of success in this area can be gauged by the relative consistency in vital events, notably births, between 1830 and 1899 (see Fig. 2). Part of the reason for Gibraltar’s ability to circumvent the *jus soli* is tied directly to its origins as a garrison town:

It is true that under Charters of Justice, the civilians are partially governed according to English Law, but only such English Law as is consistent with the circumstances thereof, namely the exclusively military character of the place and as gives way to Military Law for which purpose it is governed by a Military Governor . . . so especially military is the occupation of Gibraltar, that by the articles of War, the Garrison is wholly exempted from the Criminal Jurisdiction of the Supreme Court and to a great extent is by the Charter of Justice exempted from its Civil Jurisdiction. None of these exemptions exist elsewhere (Flood, 1870).

Despite the fact that in the 1830s Gibraltar’s status had evolved from “The Town and Garrison of Gibraltar in the Kingdom of Spain” to “The Crown Colony of Gibraltar,” civilian rights could, by law, be suppressed in light of perceived threats to military order. Recognized as one of the most densely populated urban centers in western Europe (Sawchuk, 1993), with some 15,107 persons per square mile in 1860 (Sayer, 1862), the control of civilian population growth remained one of the British administration’s central concerns in Gibraltar for much of the 19th century. We argue that the Gibraltar situation was novel in this respect, with a conspicuous absence of any universal guiding policy that characterized British

¹ Based on his review of case law, Flood (1868) isolates the trial of Angus Macdonald, who was convicted in England in 1747 for levying war against the king, as pivotal: “From that day to this, this case has been quoted as a decision that mere birth in British Territory confers British Nationality. . .” Macdonald’s council had argued that by virtue of his birth in the dominions of the French king he could not be tried for treason in a British court.

² And, purportedly, created significant disharmony with neighboring Spain. Flood (1868) reviewed the case of Antonio Baez, a suspected deserter from the Spanish military service: “On the day of the deserter’s birth his mother alone had a day ticket. Just before gunfire she proceeded to the barrier to give up her day ticket and return home, but was taken in labour and before passing the barrier went back to the house where she had just been at work and instantly on reaching it the child (the now deserter) ‘fell from her on the floor,’” and thus a British subject was born who was forever exempt from Spain’s mandatory military conscription.

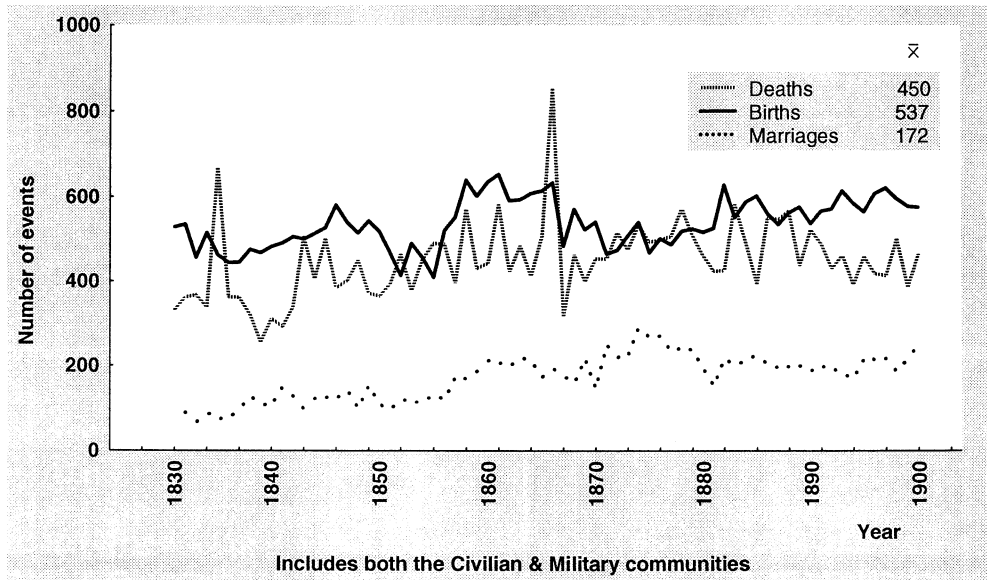


Fig. 2. Vital events frequencies in Gibraltar, 1830–1900.

colonial policy in its entirety. It appears that unique measures developed within culture-, location-, and time-specific contexts according to the demands of local economies (see, e.g., Cassidy, 1989; Clarke & Galligan, 1995; Cross, 1997; Huttenback, 1966; Mangru, 1992; Watts, 1999).

3. Easing the tide of natural born British subjects

As early as 1822, Governor Lord Chatham “determined to endeavour to restrict the extraordinary increase of the fixed population occasioned by births of children of alien parents occurring in Gibraltar” (Flood, 1871). Since marriages could not take place in Gibraltar without the governor’s license, Chatham refused permits of marriage to alien men unless they consented to leave Gibraltar within 3 months of the date of their marriage:

Before any license of marriage is issued from the office of the Civil Secretary, it is to be registered in that of the Town Major, who in cases where the License is granted on condition that the parties are to quit the garrison within a given time, is to withdraw any permits which they may have obtained, and to substitute one for the period specified in the License at the expiration of which the Town Major will ascertain that they have left the garrison (Chatham, 1822).

Any marriage of an alien man, either to an alien, Gibraltarian, or English woman, was permitted so long as the new husband, and presumably but not necessarily, his wife, agreed to leave Gibraltar. While Chatham’s Order may have been effective in principle, it

appears to have been irregularly and somewhat ineffectually enforced over time by the succession of Governors who followed. For most of his term as governor, Chatham himself was notably absent from Gibraltar, choosing instead to remain in England and leave the affairs of the fortress in the hands of his lieutenant-governor, Sir George Don (Jackson, 1987).

Reacting to these restrictions, the local Catholic vicar apostolic, John B. Lima (1837), complained about this “regulation by which I am prohibited from celebrating marriages between my parishioners without the express sanction of the Governor of this Garrison” since “in cases of both or one of the parties being foreigners (even though long domiciled here) such sanction is very frequently refused.” According to Lima, the local government’s refusal to grant alien men the necessary marriage licenses was “an infringement on the free exercise of the Catholic religion guaranteed to Gibraltar by solemn engagements . . .” Unable to sanctify the unions between locals and aliens, the vicar apostolic feared

the perversion of those who originally cherishing virtuous intentions, are by that regulation forced into a most sinful and demoralizing course—Thus inducing among a numerous class of the population a state of prostitution and general corruption involving in some instances as a necessary consequence the crime of infanticide and others perhaps equally heinous (Lima, 1837).

Besides the inability to legitimate offspring who were conceived outside of wedlock (and the suggested association with increasing levels of infanticide), Lima believed there were other more far-reaching implications for the illegitimate children of alien/local parentage:

the object of the system here deprecated is to prevent as much as possible the increase of the native population . . . its real effect is to substitute for the issue of lawful wedlock, a very numerous class of children of spurious origin, repudiated and disgraced, without natural protectors—abandoned to the contamination of profligacy and vice and too surely destined to become a bane to the society in which they live.

As an indirect means to prevent alien contributions to local population growth, therefore, the prohibitions on marriage were not successful since alien children, whether legitimate or not, continued to be born in Gibraltar. Despite Chatham’s Order, the census count of 1830–1831 indicated that of the 6908 aliens enumerated, some 4886 “had received permits of residence, and their subsequent progeny born in Gibraltar became a permanent addition to the native population of alien origin over and above the ordinary increase of that class” (Flood, 1871). By virtue of the *jus soli*, these children of alien parentage claimed Gibraltar status the very day of their birth on the Rock.

By the 1830s, a principle of “cross-border confinements” was introduced. As a measure intended to more directly circumvent this legal loophole for citizenship, alien women and Gibraltar/British women married to aliens were ordered to leave Gibraltar for their accouchements. In order to enforce this provision, the revised permit system ensured that any alien who acted in a manner “inconsistent with temporary residence” would either be refused a permit or have it withdrawn. Authorities made it clear that floating migrants should not be considering childbirth and marriage during their short-term employment-related stay

on the Rock. In 1850, Gibraltar's Governor once again "solemnly promulgated" these restrictions on floating migrants:

Aliens being married to natives or to English pain to this date may be permitted to reside on temporary permits provided that should their wives become pregnant they leave the garrison for confinement. In the event of their not doing so their permits of temporary residence will be cancelled and they will be removed from the garrison. All aliens marrying natives or English after this date will not be permitted to reside here beyond a limited period (Gardiner, 1850).

This system, however, along with many of Gibraltar's other immigration laws, was inconsistently enforced. Over the course of the 19th century, governors and police magistrates came and went and laws often fell victim to the degree to which authorities felt pressed to uphold them. Later critics found that bribery and coercion had been at work. Governors were not immune to persuasion, their influence often being overshadowed by the "dictation of the Vicar Apostolic, the Governor of Algeciras, and one or two foreign consuls" (Flood, 1871). Police magistrates may have been tempted to "grant permits to the influential and the clamorous," adopting more passive attitudes when working under *laissez-faire* governors. As a result, the prohibited confinements and marriages continued to take place in the garrison.

4. A question of spousal nationality: the Naturalization Act

The desires of authorities to curb alien population contributions also touched on the issue of spousal nationality. Solid legislation had been enacted in England in 1844 directing that women, upon marriage, lost claim to their own homeland as they adopted the nationality of their husbands.³ In England, "the main argument for making marriage a ground for automatic change in a woman's nationality [was] that, in the interest of the unity of the family, a wife's nationality should follow that of her husband" and, furthermore, that "the rational basis for this rule was the general subjection, under most legal systems, of the wife to the husband" (Jones, 1956, p. 11).⁴ While Gibraltar had initially followed that lead and instituted the Naturalization Act in 1844, the system was ultimately abandoned only 3 years later in 1847:

In the year 1844, an Act of Parliament was passed 7 and 8 Vict., c.66, by section 16, alien women married to British subjects were naturalized, doubts were entertained whether the Act extended to the colonies, on which the Governor remonstrated with Earl Grey, then Secretary of State for the Colonies, who in 1847 passed the Act 10 and 11 Vict., c.83, by which it was declared the former Act did not extend to the colonies (Costello 1859).

³ According to Mullen (1988), women's groups found fault with this law for several reasons including placing women inferior to men, the risk of women becoming stateless upon marriage, and the loss of British civic rights and duties. With the British Nationality Act of 1948, the right to retain their own nationality upon marriage was returned to British women.

⁴ In the 1950s, Jones (1956, p. 17) argued that "this reason has rapidly lost its force in the modern world, with the juridical emancipation of married women in most countries, in such matters as the right to own separate property, the right to equality of status under the matrimonial régime, the weakening of the doctrine that the husband is the natural head of the family, the right to vote, and the general removal, in public and private law, of the disabilities historically attached to the status of married women."

In 1859, however, the interpretation of Gibraltar's Naturalization Act was challenged as a result of the case of Carmen Hernandez, a Spanish prostitute⁵ married to a Gibraltarian, whom authorities were anxious to see quit the garrison. By her marriage to a Gibraltarian, she claimed to have rights as a British subject including the immutable right to residence on the Rock. It was well understood by Gibraltar's police magistrate that "alien women of bad character frequently induce natives to go through the ceremony of marriage in order to escape expulsion from the garrison" (Sayer, 1859). When Hernandez petitioned her rejected claim to Gibraltarian nationality, further clarification on the Act was requested. According to the response from the attorney general, there had never been "any doubt or uncertainty in the Police Office as to the right of expulsion" though there had "always been a laudable moderation, and discriminating forbearance in exercising the power of separating husband and wife" (Costello, 1859). Legally, therefore, alien wives did not become British subjects and were not granted permanent residence, though in the interest of morality their residence in the garrison had been tolerated.

Based on the attorney general's understanding of the law, an order of expulsion was enforced for Hernandez, "a woman of infamous character and conduct" (Airey, 1866). This was an order that she clearly continued to dispute as she threatened legal proceedings against Gibraltar's new governor, Sir Richard Airey, and new police magistrate, Frederick Solly Flood, in 1866. Flood, a barrister by training, was firm in his defense, arguing that ambiguity had created the grounds for the Hernandez case:

The want of a decision by the English Government as to the status of [an alien] woman so married has led to a belief that such a marriage renders them irremovable; a belief, which an expulsion at rare intervals, once in six years of one abandoned and outrageous character [Hernandez], while others equally bad have not been expelled, fails to remove (Flood, 1866).

He further argued that the continued repeal of the Naturalization Act was absolutely essential in Gibraltar:

There are always upon an average alien prostitutes in Gibraltar, whose presence, however to be deplored, is unavoidable . . . These women, as aliens, are liable to expulsion, and for sanitary reasons are never allowed to reside more than two months at a time continually. Their great object, therefore, is marriage with a British subject . . . The result is that such marriages with the soldiers and other British subjects, principally Maltese, create intolerable mischief of a permanent character, an infamous native population which is daily increasing, and which is eating up the very vitals of Gibraltar . . . Lay down the rule that marriage confers no right of residence, and then marriages will cease to be sought for, and the cancer will cease to spread (Flood, 1866).

As a result, Governor Airey (1866) concluded that alien wives had no grounds for claiming British nationality believing that the "right of the [British] husband as such must be subordinate to the right which . . . he has to introduce or harbour an alien in the city, garrison, or territory of Gibraltar." Thus, in addition to the measures introduced to remove the

⁵ Nearly 200 Spanish prostitutes resided in Gibraltar annually on special "visitor tickets" for limited periods (Sawchuk & Padiak, 1999).

alien husbands of British women, absolute power was retained to remove the alien wives of British men.

5. Gibraltar's new police magistrate: the turning point

The secretary of war ordered Frederick Solly Flood to Gibraltar in April 1865. With a minor cholera epidemic in 1860 and a subsequent hospital and barracks commission in 1862, the need for sanitary reform was clear. Flood was sent to Gibraltar to prepare a sanitary order on the subject. As timing would have it, Flood arrived in Gibraltar in the midst of another more devastating cholera epidemic in 1865.⁶ Later in that year, on December 9, Flood assumed the duties of police magistrate and in light of the year's devastation, he resolved to ease the colony's immense burden of overcrowding. Though cholera had arrived in Gibraltar with the 22nd Regiment restationing from Malta, overcrowding was isolated as one of the prime facilitators of the epidemic and, in typical scapegoating fashion, it was the floating population that was forced to bear the brunt of the blame.

It was against this background of destructive epidemic, the growing awareness of the inseparability of the health of the troops and the civilian community, and the intensifying danger of further overcrowding in Gibraltar that Solly Flood's ambitions were to mark him a highly contentious force in the 19th-century chapter of Gibraltar's population and family history. Despite the fact that Flood acted on behalf of Her Majesty's government, his actions tended to single him out for criticism on a more personal level. Very methodically, he undertook a rich correspondence on the matter of alien control measures adopted historically in the colony, and the failings he uncovered provided the justification for his infamously pragmatic views on the "alien question" in Gibraltar. John Baptist Scandella, then Roman Catholic vicar apostolic in Gibraltar, articulated the civilian resistance to Flood's methods:

Although it has always been the rule that aliens should not be allowed a permanent residence here, nevertheless, as said rule was invariably applied by former Governors and Police Magistrates . . . in a most liberal and enlightened manner, the hardships resulting therefrom were scarcely perceptible for very many years. But since the arrival of F. Solly Flood, Esq., said rule has been applied with such exaggerated rigour as to involve a violation of the most sacred laws of humanity and morality (Scandella, 1869c).

Even the colonial secretary did not entirely support the new police magistrate's endeavors:

Mr. Flood has been resident in Gibraltar but a few months, whereas I have held the Office of Military Secretary in the first instance, afterwards as Colonial Secretary for a period of eleven years, during which time I think I have had ample opportunity of becoming acquainted with the habits, the feelings, and the wishes of the Civil population, and I differ from Mr. Flood in some of his views . . . My experience tends to show that the Inhabitants are quite orderly and peaceful, raising no vexatious or troublesome questions, and perfectly

⁶ Nearly 600 inhabitants died in the cholera epidemic of 1865.

satisfied with any Colonial Officer who performs his duties with courtesy and kindness, who will listen to their representations or complaints, and who will couch a refusal in Civil terms (Freeling, 1866).

Unlike those who came before him, Flood was in more precarious circumstances in undertaking his duties as police magistrate. After the successful removal of an earlier governor⁷ from his post by the members of Gibraltar's Exchange Committee,⁸ wealthy and educated civilians began to assume a larger voice in the actions of colonial representatives in Gibraltar. Flood was to meet the challenges of a native population that had acquired resources and land and now had a vested interest in Gibraltar's social and economic affairs. Also unlike his predecessors, Flood believed that a central failing in controlling the growth of the alien population in Gibraltar stemmed from discretionary interpretations of the alien childbirth and marriage laws. With Flood came the end of discretion and the rise of civilian discontent.

6. Cross-border confinements

On September 20, 1869, the Right Reverend J.B. Scandella (1869a), the Roman Catholic vicar apostolic of Gibraltar, published an article in the *El Calpense*, one of the leading local newspapers written in Spanish. In it, Scandella, a Gibraltarian of Genoese descent, called for an examination "into such cases of hardship reported as being inflicted by the Police on Gibraltarian women — and consequently, British subjects — married to aliens . . . to verify the facts of each case and report thereon accordingly."

In response to Scandella's letter a "Committee of Gentlemen"⁹ was struck, which, by Scandella's (1869c) request, included "a few of the leading gentlemen of the three religious denominations — Hebrew, Protestant, and Catholic." The committee, who "threw their whole souls into the work" and "fulfilled it with laudable zeal and impartiality" (Scandella, 1869c), devoted 1 month to the community-wide investigation. Their announcement was placed in the *Gibraltar Chronicle*:

That no time may be lost in a matter of such emergency, the Committee hereby invite the public to communicate, within the present week, all cases of such reported hardship to them or to the undersigned, who will be in attendance, for the purposes of this notice, at St. Mary's Catholic Presbytery, from 6 p.m. to 8 p.m. each day, to Saturday next, 25th instant, inclusive (MacAuliffe, 1869b).

⁷ Sir Robert Gardiner, a governor who "believed that the population had been allowed to grow too large and was a danger to the fortress" (Jackson, 1987, p. 238).

⁸ The Exchange and Library Committee was formed on April 16, 1817. It consisted of men "of substance and public conscience" who "assumed the role of the unofficial, yet necessary, representative body of the civilian population" (Jackson, 1987, pp. 228–229).

⁹ Members of the Committee of Gentlemen were Reverend Thomas MacAuliffe, Solomon I. Benoliel, Y. Bergel, R. Cowell, William H. Francia, Lewis F. Imossi, Dr. Joseph Patron, and John H. Recaño.

A detailed report ensued, documenting some 56 of the “most distressing cases” where Gibraltar women married to aliens either had to leave Gibraltar or were anticipating their leave from Gibraltar for the purposes of childbirth (MacAuliffe, 1869a). The collection of information proved difficult and the committee suspected that people were hesitant to speak of their experiences for fear of police retaliation and possible removal from the fortress. As a result, most of the cases described in their report came from independent sources.

From what the committee could determine, and perhaps somewhat conveniently, it was not until December 1865, precisely when Solly Flood became police magistrate, that people began to notice a strong enforcement in cross-border confinements; by the time of their report, however, Flood had already been promoted to attorney general in 1866.¹⁰ Based on their interviews, it seemed that before 1865 the birth of alien children in the garrison was not at issue, most likely a perception influenced by the inconsistent application of this clause by earlier governors, as argued by Flood himself. Many people did not know of the changes instituted by the new police magistrate until they actually found themselves in violation of the law. The committee documented a typical example:

Juana de Gracia (daughter of John de Gracia, an alien, who lived here 60 years, and of Ana Padina—the couple enjoyed 40 years of married life and had 9 children here without molestation), wife (17 months) of Manuel Piri, of Olhao, 24 years old, employed under Mr. Beal. She had a child here about four months—reported the fact to the Registrar and took out vaccination order—was asked about the father. Next day three Police Sergeants visited the house to call the husband to the Police Office. Not to take him from his work the wife went. She was asked why the babe was born here: she replied: “I did not know the new orders.” Husband was expelled and thus deprived of work and wages for two months. At length the wife got an order for his re-admission, but was told that they would both be sent out for ever if another child of theirs be born here (MacAuliffe, 1869a).

Reacting to cases such as de Gracia’s documented in the report, Gibraltar’s acting police magistrate argued that he was simply acting “according to instruction” (Duffield, 1869). He explained that in many cases when a woman, such as de Gracia, had delivered in Gibraltar, she was pardoned in case the “usual conditions” had not been endorsed into her husband’s permit at the time of their marriage. The “usual conditions” stipulated “that if the wife give birth to a child in the Garrison the permit will be cancelled” (Duffield, 1872).

The committee learned that in many cases the physical and mental health of the women involved suffered enormously. Those women who were forced out of Gibraltar for their confinements traveled either by land to Spanish territory, which lay just past the border with Gibraltar (the Lines and Campo regions), or by sea across the Straits of Gibraltar to Morocco. In doing so, they typically lost contact with their “usual medical advisers, with no chance of being attended by skilled midwives” and they were “thrown among strangers, obliged to put

¹⁰ Flood, in fact, became a powerful legislative force in the colony as police magistrate, attorney general, judge of the Court of Requests, and law advisor to the Sanitary Commissioner (February 3, 1866, CO 91/283, PRO).

up with damp, uncomfortable and unhealthy lodgings, perhaps even exposed to sea-sickness.” Women from Gibraltar’s Jewish community suffered additional hardship since “placing them with people of a different religion [was] sentencing them to die of starvation.” Such was the case for:

Coti Benatar, a Hebrew, wife (7 years) of Jaim Benzecray (*sic*), from Morocco, 38 years old, 21 years here, under annual permit sanctioned by Sir James Fergusson, and paying £3 3s. 4d. traders’ license to Government. The annual permit was taken from him by Mr. Flood, and a quarterly one with the new Police conditions given in its stead. The wife had 3 children here without molestation. For the fourth she was obliged to go to the Lines among strangers, and this was the more distressing on account of the restrictions imposed by her religion as to food, &c. She had a *fearful accouchement, effected by means of instruments*, used by a Spanish military medical officer. The infant lingered only six months. The mother’s life was long in imminent danger (MacAuliffe, 1869a). (emphasis in original)

In this case, the acting police magistrate responded that Benatar’s husband was a licensed hawker who should have been able to send his wife to Tangier where there was a large Sephardic population better suited to care for her (Duffield, 1869).

If Gibraltar women were discovered to have passed their confinement in the garrison, their alien husbands were typically forced out. Scandella (1869c) described the expulsion of husbands as “nothing short of illegal, violent, and immoral divorce, whereby the husband is compelled to abandon his wife and family and leave them without their natural maintenance and support.” Since the committee members felt the protection of women and children was one of the most meaningful duties of the police, they found it extremely distressing that the laws actually placed the control of husbands beyond their jurisdiction by forcing them out of Gibraltar. Quite simply put, the committee argued that “British mothers and children have a *natural, legal, and constitutional right* to the protection of their husbands and fathers” (emphasis in original) and that the police had a moral obligation to respect this right.

What the committee found particularly distasteful about Flood’s methods, however, was the fact that he did not “recognize non-punishable instances” where there was no intentional violation of the law:

Maria del Pilar Navas, wife (20 months) of Joseph Macola, from Ponteleira, in Italy, 10 years a seaman between this port and Italy and now absent. Anxiety caused by the reports as to Police severity brought on a premature confinement of a 7 months’ child. After three months the milk failed the mother and the poor people were forced to hire a wetnurse. On hearing of the birth the Police sent for the husband, questioned him as to why the birth took place here, and warned him as to the future (MacAuliffe, 1869a).

In turn, Duffield (1869) disputed the committee’s understanding of this case, describing it as “Very untrue. This woman was not disturbed by the Police. On the contrary great kindness was shown to this woman because of the absence of her husband, a sailor.”

The committee’s investigation revealed that the confinement law was also applied to couples who had been married for long periods of time, ranging from 5 to 18 years. While

their previous children had been born in the garrison without trouble, these seasoned married couples were not immune to the new regulations:

Catalina Baglietto, wife (8 years) with permission of the Captain and Lieutenant of the Port, of Juan B. Pisarelo, of Varazze, Italy, 33 years old, 29 here, seaman of the *Samarang* 10 1/4 years, discharged on account of rupture without pension. They had 3 children *without annoyance*. A fourth child was born here on the 15th August last: the birth was duly reported to the Police. Without any previous notice, the husband was refused admission into Gibraltar. He is now two months out. He was never warned that his wife should not be confined here. (emphasis added)

Flood, on the other hand, argued that any leniency that had been shown to those alien men in the past was nothing short of a mistake, that both their marriage to local women and the birth of their children in Gibraltar was in violation of the temporary premises upon which their permits had been issued. The police magistrate also responded on this point:

As the phrase “without molestation” and “without annoyance” frequently occurs, the real and true meaning is “in defiance of an order issued by Sir R. Gardiner in 1850,” at a time of systematic corruption and carelessness, for which various officers were dismissed. This is what “without molestation” means and no one knows it better than Rev. Dr. McAuliffe (Duffield, 1869).

The committee felt it significant to point out that in 37 of the 56 cases documented in their report, the husbands had been long-time community members, residing anywhere from 6 to 41 years in Gibraltar. Presumably because they felt these men deserved some immunity, what the committee did, in fact, was add substance to Flood’s suspicion that abuses had been rampant in Gibraltar’s permit system and floating migrant scheme.

Duffield (1869), the acting police magistrate, further suggested that many of the crises affecting women who had to leave Gibraltar for their confinements were self-perpetuated. He singled out the following two cases documented by the committee:

Simy Masias, a Hebrew, wife of Moses Creciente, of Tetuan, son of Sampson Creciente, of Tetuan, first-class inhabitant of Gibraltar—had two children here without annoyance. For the third she went to the Lines—was delivered there same night. To secure food and nourishment according to the prescription of her religion, and for the circumcision of the infant, she hurried home; midwife considered it a dangerous step. The result was an alarming illness (MacAuliffe, 1869a).

Simy Levy, Hebrew, wife of Jacob Creciente, of Tetuan, went to the Lines for her accouchement. She was put to fearful inconvenience among strangers not of her religion (MacAuliffe, 1869a).

The police magistrate opined that “Both [were] alien husbands and traders and could afford to send their wives to Tangier. The delay was singularly to find out, up to the last moment, if there was any chance of escaping the observations of the police.” He further suggested that women would go to great lengths to remain in Gibraltar for confinement, including being “unexpectedly delivered through mistake or miscalculation of time” or by providing “a Medical Certificate certifying to the fact that if removed for her accouchement it would be attended with peril” (Duffield, 1872).

7. The medical perspective

Upon receipt of the committee's report, Scandella (1869d) sought additional support from medical practitioners in the community, soliciting their views on the laws "obliging Gibraltarian females—and therefore British subjects—married to aliens, to go to Spain, Morocco or other more distant places for their accouchement." In particular, he requested their "medical opinion as to the probable effects of such removal—or of the threat, prospect or apprehension thereof—whether by sea or by land, or, especially, to a disturbed country, on the health and life both of mothers and infants."

Dr. Charles Trenerry (1869), a Gibraltarian and surgeon of the Civil Hospital (see Benady, 1994), responded that "such removals must cause the ruin of hundreds of families, destroy the health and lives of many poor suffering women and their offspring, and materially tend to subvert the laws of God and man." Another physician, Dr. Hauser (1869), was decidedly of the opinion that:

it is . . . an offense against humanity to deprive a woman, in such a trying moment, of her confidential medical adviser and expose her to the mercy of an ignorant midwife in a place like the Lines, Campo, Morocco, where no medical attendance can be obtained, particularly at a moment when any unforeseen complication might occur, as uterine hemorrhage, &c.

He felt, in addition, that "there are some women of a delicate condition to whom bad vehicles and the road through which they have to be conveyed, or a sea voyage to Morocco might be more prejudicial for the safety of the child." This latter point is supported by a case from the committee's report which they entitled "agony in a *calesa*" (a Spanish coach):

Maria Fernandez, wife of John Fernandez, an alien, 20 years here. She has had four children. Three here. Two stillborn. After the third birth, husband was expelled for three months. In June last she was unexpectedly seized with pains. Her husband, alarmed, forced her and midwife into a *calesa*, and in that state she was hurried to the Lines. Two hours after starting she was delivered. She returned two days after with a certificate from the Spanish authorities of the child's birth in Spanish territory (MacAuliffe, 1869a).

Upon receipt of Scandella's request, Joseph Patron (1869) summed up his medically based concerns, all suggesting that the police action imposed unnecessary hazards upon women and their infants at the time of confinement:

1. That, generally, women in a state of pregnancy are naturally inclined to apprehend serious accidents in consequence of their accouchement—apprehensions that the presence of a Doctor, the assistance of the family and the comforts of their homes are often insufficient to appease. By depriving them of those conditions of tranquillity their moral excitement must be increased far enough to be productive of mischief and, more so, in cases of first confinement.
2. Their moving about in carriages, on mules, or on shipboard, always exposes them to accidents of some consideration, as abortion, hemorrhage, and subsequent prostration, thus endangering the life of the fetus and the health of the mother.

3. Delicate persons of a high nervous temperament will be ever more liable to these serious inconveniences.
4. In the moment of accouchement the absence of a midwife has been more than once the cause of death through hemorrhage or retention of the *placenta*.
5. In some small villages of Spain and Morocco, I have known women to suffer distress and danger in consequence of bad attendance. Even if, in those places, the inhabitants run the same chances as here, that will never be a sufficient reason to oblige women that could have avoided them in their own country to stand them.
6. If this be the case in ordinary circumstances, it must be more so in the actual condition in Spain when dread, surprise, and political excitement will, undoubtedly, expose them to miscarriage and danger.

In sum, Patron believed that only “God [had] the right to dispose of human life or to increase [one’s] chances of danger” and was troubled by the fact that laws which were intended to protect the health of a population actually put some of its female and infant members at risk.

Horatio Stokes (1869), a surgeon at the Colonial Hospital, admitted that a number of “evils” had come to his notice since the enforcement of the cross-border confinements for native women married to aliens, including:

1. Dangerous illness produced by the mother taking strong medicines for the purpose of producing abortion to avoid the painful necessity of being separated from her husband and family.
2. The death of several infants at the Spanish Lines, owing to the want of timely medical aid during labor.
3. Severe and dangerous illness, and also permanent injury to the mother caused by her returning to her home at too early a period after her confinement.

Some of those in the medical community to whom Scandella had written were reluctant to supply a medically related position on the issue. Joseph Baggetto (1869), an assistant surgeon at the Civil Hospital, explained that “being to some extent connected with the Police and the Government, I am obliged to decline to do anything in opposition to the laws which, whether good or bad, I must respect.” He did concede, however, that both mother and infant would be exposed to danger if “a pregnant woman is obliged, against her will, to leave her family and home to be delivered in a strange place without the comforts her delicate state require.”

While admitting that the situation was problematic for women, Dr. W. Rutherford (1869), the inspector of health for Gibraltar, also supported the position of the colonial authorities:

On the other hand, the welfare of the community — civil and military — in this very limited and already overcrowded locality, together with the fact of the individuals more immediately interested, voluntarily and in full knowledge of the possible consequence of their act, subjecting themselves to such responsibilities and risks, with other considerations of Colonial

policy, should in the discussion of the subject probably not be overlooked. These are, however, matters which it is unnecessary for me to dilate upon, although they may afford good grounds for the existence of the law regulating this important subject.

Upon receiving Rutherford's reply, Scandella (1869b) responded in kind. In his letter, he questioned how a system of cross-border confinements could possibly limit overcrowding in Gibraltar when, returning as soon after the baby's delivery as possible, "the whole family, father, mother and child, are allowed to dwell amongst us."

8. Alien marriage on the Rock

By 1869, Flood had called for a full revival of Chatham's ordinance of 1822, requiring alien husbands to leave Gibraltar upon their marriage to a Gibraltarian or British woman. This meant that for those who were already married, cross-border confinements were to remain the rule, but for those anticipating marriage, alien husbands, and presumably their wives, were forced out of Gibraltar permanently. Once again, the Committee of Gentlemen discovered that the first few "victims" of this reinstated law knew nothing of its existence until the day of their marriage, when certain conditions were written into their permits. Such was the case for this Gibraltarian woman and her alien husband:

Rosa Garcia, wife (7 months) of José Linares, an alien 25 years old, 6 years here, 3 1/2 years in the employ of J. Martinez, Esq. 2 1/4 years ago she had by him a natural child who is since dead. After marriage the new conditions were endorsed on his permit. Now, in supercession of said conditions, he is refused a renewal and obliged to leave the city (MacAuliffe, 1869a).

The committee documented further family anxieties created by "divided nationalities." Owing to Gibraltar's repeal of the Naturalization Act of 1844, wives and husbands had been retaining their own distinct nationalities upon marriage since 1847. Children born into the union further complicated the dynamic since their nationalities were determined strictly by the *jus soli*. The resulting confusion is illustrated here as alien children are separated from their Gibraltarian mother who, upon the failure of her marriage, desired to return home:

Angela Simone Garcia, wife of a profligate Spaniard, who has deserted her: he is now living with another woman. By her marriage she has had 3 children—a girl now 17 years old and two boys aged 7 and 5 years. On her abandonment she brought them with her to her native city. For sometime they have been allowed a temporary permit. Latterly its renewal was refused. After much trouble a permit has been granted to the girl only. The mother has been placed in the heartrending position of sending the boys back to their unprincipled father (MacAuliffe, 1869a).

And here, an alien mother is separated from her Gibraltarian children:

Catalina Llorente, of S. Roque, 28 years here, wife (18 years) of José Chile, of this city—deceased 1865. They had 6 children, of whom 3 are living—one, a boy, 18 years old, the other two 15 and 10 years old. The widow married (18 months) Antonio Figueras, of Galicia, by whom she has one child 9 months old. Father outside 24 days, mother out a week—now

entering with infant on day ticket but obliged to go out to sleep. The Gibraltar children — British subjects — terribly abandoned in consequence (MacAuliffe, 1869a).

The committee concluded that this treatment of Gibraltar families, despite the inclusion of an alien element, presented “a monstrous hardship, incredible in the nineteenth century, and, above all under the British flag.”

9. Local women and marriage: the Naturalization Act of 1870

By 1870, the Naturalization Act had been reintroduced to Gibraltar. Thereafter, when marrying alien men, Gibraltar or English women assumed the nationality of their husbands. According to Flood (1871), the main motivation for this change was a desire for “the nonseparation of the most intimate relationships” between a husband and a wife. It is important to realize, however, that the Naturalization Act of 1870 effectively rendered local women aliens upon their marriage to alien men. As a result, these women were also obliged to obey the rules of the permit system. If they failed to comply with colonial policies, they were now deemed legally “removable,” along with their alien husbands, therefore eliminating any valid argument for the mistreatment of “Gibraltarian” or “British” women.

Despite the perceived advantages in enacting the naturalization act, Flood was still not entirely content with its enforcement in Gibraltar. His concerns stemmed from the difficulties originally encountered when it was in force in the 1840s that subsequently led to its repeal after only 3 years of functioning in the colony. According to Flood (1871), “the principal mischief was the purchase of British nationality which the Statute attached to the alien wife of a British subject” thereby allowing “alien women of bad character” to obtain British nationality from transitory men. While on the one hand Gibraltar women marrying foreigners were entirely stripped of their right to live in their home country, colonial authorities essentially became powerless as alien women acquired British nationality, leading them to an “abandoned life in Gibraltar without fear of removal, and to add to the population of Gibraltar by giving birth to illegitimate children who, as native British subjects, would grow up a permanent burden on the fortress”¹¹ (Flood, 1871).

10. The ever elusive *jus sanguinis*

Since an underlying objective of both the confinement and marriage restrictions was to prevent the birth of children to alien laborers in Gibraltar, some local authorities, including the acting police magistrate, assumed that the Naturalization Act of 1870 would bring Gibraltar one step closer to resolving the problem of alien offspring more directly:

By the “Naturalization Act of 1870” a married woman is deemed a subject of the state of which her husband is at the time being a subject . . . consequently a native woman marrying

¹¹ These children were illegitimate presumably because the couple was only legally, not spiritually, married.

an alien becomes an alien and adopts the nationality of her husband *and I presume her children follow the same nationality* . . . I would therefore propose that when an alien marries a native woman his permit should be canceled unless he can take out a permit for his wife and for every child born subsequent to his marriage (Duffield, 1872). (emphasis added)

While directly ascribing a man's nationality to his children, regardless of their place of birth, would have been the easiest solution to Gibraltar's problems, and while this idea had certainly been entertained, it never became law in 19th-century Gibraltar. Even in England, it was not until the 20th century that the *jus sanguinis* began to be applied as an alternative to the *jus soli*, where nationality was acquired by descent rather than birthplace (Jones, 1956).

Although local authorities could subvert the British Naturalization Act in the 1840s, they were unable to dismiss the most pivotal and fundamental circumstance that, according to British law, determined an infant's nationality. As a result, the birth of alien offspring in Gibraltar continued to attract the attention of local authorities. Presumably, it was because of this weakness that the indirect and vexatious mechanisms of the confinement and marriage restrictions remained in place and obtained official recognition by an order in council in 1873.

11. Legislating exclusions: Aliens' Order in Council (AOC), Gibraltar, 1873

When Flood later attained the position of attorney general in 1866, the scope of his influence on the colony widened dramatically. In September, the colonial secretary published a notice in the *Gibraltar Chronicle* that "F.S. Flood Esq. Attorney General, has been directed by Her Majesty's Government to prepare for consideration . . . a code of new Regulations relative to the admission of Aliens into Gibraltar and their temporary residence therein" (Scandella, 1866). Flood conceptualized and drafted the legislation that ultimately led to the AOC in 1873. In effect, he took the ambiguous and irregularly enforced laws of earlier years and swathed them within an unbreachable treatise on immigration policy with this order.

The health and the security of the garrison became the focus of Flood's (1871) arguments for the necessity of the AOC, and he stressed the fact that "the principle should remain intact that in this military fortress containing an exceedingly limited habitable area, no legal or moral right to residence can ever be as none ever has been hitherto recognised." He clearly stated, therefore, that aliens could not be admitted except with the intention of supplying the wants and needs of the garrison, occasioned by a chronic deficiency in the workforce of British nationality. Aliens, furthermore, could have no grounds for complaint if they were not admitted into Gibraltar or if they were excluded at any point during their residence in the fortress, since their presence was determined solely by timely necessity. Finally, Flood argued:

That, in view of the frightfully overcrowded condition of Gibraltar, and of the perils to the safety of the garrison thereby created, and also of the limited extent of house accommodation, it is absolutely essential to the health and safety of the garrison that every possible regulation should be made to prevent an increase to the fixed population being occasioned by the occurrence in Gibraltar of *births of children of alien fathers, so long, at all events, as the mere birth of a child in British territory shall confer or be supposed to confer British nationality on such child and irremovability from such territory*. (emphasis added)

Despite strong civilian discontent, the AOC was approved and enacted January 1, 1874. Paragraphs 29 and 30 of the AOC cemented a place in Gibraltar's laws for the cross-border confinement restrictions and Chatham's Order, respectively:

AOC, 1873, paragraph 29: The Police Magistrate shall not, except in a case in which he shall receive special authority from the Governor in manner hereinafter mentioned, entertain any application for, or grant any permit or extension of any temporary permit, for any other person or persons, or for any longer period or periods than is or are set forth in the Schedule (B) to this Order in Council annexed, nor for any person though mentioned in the said Schedule, *being a male, whose wife shall have been delivered of a child, either dead or alive, in Gibraltar, since the 1st day of January, 1870; or being a female, who shall have been delivered of a child, either dead or alive, in Gibraltar, since the day and year aforesaid,* nor for any person whatsoever whom he shall know or have reason to believe to be a person whom the Governor does not judge proper to enter or to be in Gibraltar. (emphasis added)

AOC 1873, paragraph 30: *Every permit shall be and become ipso facto void upon the marriage of the alien thereby admitted, and every alien who shall hereafter be married, save and except an alien female, who shall be married to a natural born subject of Her Majesty, is hereby required immediately upon his or her marriage to leave Gibraltar, together with his or her wife or husband.* (emphasis added)

Paragraph 30 deviated slightly from Chatham's Order of 1822, since the Naturalization Act of 1870 required native women marrying aliens to leave Gibraltar. According to Schedule (B) of the AOC, 1873, those in violation of either paragraph 29 or 30 were given a maximum of 30 days for their preparations to remove from Gibraltar, regardless of their economic or social ties to the community at large. Contrary to public opinion,¹² Flood (1874) argued that a rejection of the AOC and a return to discretionary controls on migratory laborers would achieve little else than the "recurrence of . . . enormous scandals and abuses."

These two contentious paragraphs in the AOC and the subjugation of the native population to "military necessity" became the focal point for civilian discontent, particularly with respect to charges of unfairness and cruelty, the destruction of Gibraltar's morality, and a failure to achieve the ultimate ambition of reducing overcrowding. Civilians, furthermore, carefully drafted numerous memorials suggesting how the AOC, 1873, might be modified to better achieve its original goals. Each of these issues will be examined in turn.

11.1. Unfairness and cruelty

Nearing the enactment of the AOC, 1873, on January 1, 1874, the Exchange Committee of Gibraltar memorialized the secretary of state in England on December

¹² Perhaps best caught by Scandella's comments: "the exaggerated and absurd rigour inaugurated by . . . Mr. Flood and authorized and enforced with such severity under that gentleman's ruinous 'Aliens Order in Council, 1873'" (Scandella et al., 1876).

26, 1873 (Francia, 1873). In its memorial, the Exchange Committee targeted the provision of paragraph 29, namely the exclusion of aliens who had borne children in Gibraltar since January 1, 1870. The committee argued that “the retrospective operation for three years of the Order in Council [was] unfair, as placing all aliens affected thereby in a most unexpected and invidious position.” The Memorialists protested that it could not “have been the intention of Her Majesty’s Government to punish by an *ex post facto* law aliens who may have had children in Gibraltar at so remote a period back as three years . . .” (Francia, 1873). They argued that, because of the retrospective nature of the Order in Council, families would “be deprived of their livelihood, however useful may have been their occupation to the community, and be turned away from the Rock to starve, or seek a livelihood elsewhere” (Francia, 1874).

The secretary of state directed the questions raised by the Exchange Committee to Kendall, who had assumed the active duties of police magistrate in the garrison. Kendall (1874a) dismissed their charges of unfairness associated with the law’s retroactive nature, arguing that “it is a law in mitigation of a law of very many years standing, but as such law has been evaded by every species of fraud, evasion, and perjury, it has become essential to the health and order of the garrison to fence the law by clauses difficult to break through.” The police magistrate found support in the secretary of state since Kimberley (1874) also felt that “the Order in Council cannot properly be termed an *ex post facto* law, as it is in truth only an enforcement of a law of many years standing, which has been hitherto evaded.” In particular, 1870 coincided with the enforcement of the naturalization act in Gibraltar. Kendall did suggest, however, that extending the cutoff date from January 1, 1870 to January 1, 1874 “would give great satisfaction, save much complication and references involving much time and trouble as regards the Secretary of State for the Colonies, his Excellency the Governor, and the Police Magistrate,” though many cases of hardship would persist even with the change. While the secretary of state supported the acquiescence of the police magistrate to extend the cutoff to 1874, it was left as a matter to be discussed “upon further experience of the working of this measure.”

Though he upheld the law as fair, Kendall (1874b) had some reservations about giving only a month’s notice to vacate the fortress to aliens who violated either paragraphs 29 or 30. He suspected that “with only the month’s notice cases of hardship, and even cruelty will arise . . . since the month has hardly been enough to enable the major part of the aliens to understand the meaning of the Order.” As a result, Kendall proposed to allow aliens a 3-month permit in order for them to make the necessary arrangements for moving out of the garrison.¹³ This action was supported by Kimberley (1874) who was “desirous not that the new Order in Council should bear too hardly upon those who have, though irregularly, taken advantage of the undue relaxation of the Orders in Council and rules upon the subject.”

¹³ As Flood (1874) commented: “I have good reason to believe that all existing cases in which family ties have been formed have nevertheless been treated with the utmost discretion and tenderness by the Police Magistrate . . .”

11.2. Moral degradation: illegitimacy, prostitution, dishonor, and sin

Both Scandella and the men of the Exchange Committee held concerns that the AOC would impact negatively on the moral climate in Gibraltar. As Scandella (1876a) so pointedly described the situation:

The heart shudders and the imagination is horrified at the thought of the immorality of a town into which — even to the very bosom of its families — upwards of 4,000 aliens are admitted who must necessarily be husbands separated from their wives; wives parted from their husbands; children severed from their parents; or single persons who will be immediately expelled if they have the misfortune to contract marriage.

On a similar note, the Exchange Committee argued that, in light of the prohibitions associated with marriage, aliens and locals would not be “unlikely to form illicit connections, have illicit progeny, and thus produce a most demoralizing effect on the whole community” (Francia, 1873). Scandella (1874) reasoned that “women . . . here as throughout the world . . . barter their chastity for even less than the right of domicile, especially when their livelihood is to be secured by such means.” Furthermore, the vicar apostolic admitted:

I have heard of more than one case in which British women, natives of Gibraltar, have contracted an illicit union with aliens employed in the garrison. In vain we exhort the unhappy men to do their duty to God, and their unhappy partner and their offspring, and make, by an honorable marriage, the only reparation in their power, for their sin and its consequences. Their answer is “if we marry, our names must go before the Police: we will be expelled from the Garrison; our means of living will be cut off; we and all depending on us will be reduced to starvation” (Scandella, 1866).

In an attempt to provide empirical “proof” to colonial authorities of increasing levels of immorality associated with the AOC, Scandella used the Roman Catholic parish registers to devise a crude index of illegitimacy based on a comparison of the number of marriages to the number of baptisms in any given year. Through his calculations, Scandella demonstrated that there had been an average increase of three illegitimate births per annum since the late 1860s. Indeed, ever since Flood’s arrival and upset in 1865, the vicar apostolic had become increasingly apprehensive of the local situation:

at least as regards the Catholic community, the proportion of legitimate and illegitimate children is more than 20 to 1, a proportion [he believed] not yet obtained elsewhere. In Prussia, according to Mr. Joseph Kay the most moral nation in Europe, the proportion is 13 to 1. But, if the present Police system be allowed to continue much longer, the day is not far distant when the morality of Gibraltar will become like that of Cuba, where the proportion is 2 to 1 (Scandella, 1869c).

Scandella (1876a) believed his quantitative findings and national “morality indices” indirectly attested to the depravity, which could not but exist “in a city requiring the services of at least 4,000 foreigners, all of whom must either be single persons prevented from entering into the matrimonial state; husbands separated from their wives, or wives

separated from their husbands.” Particularly troublesome was the fact that while honest, yet married, aliens were removed from the garrison, “if parents live in concubinage and have illegitimate children, said Law does not molest them; neither does it prescribe the least limit as to the class or the number of dissolute women [prostitutes], who, provided they leave the garrison for 5 days each year, can remain here as long as they please . . .” (Scandella, 1876a).

In defense of Scandella’s claims of fostering immorality, Flood (1874) argued that “it is utterly untrue that [the AOC provisions] in the slightest degree deserve the character which Dr. Scandella has attributed to them,” and that Scandella had furthermore “indulged in strong assertions in support of which he [had] not offered an atom of proof.” Flood identified two main weaknesses in Scandella’s use of the baptism–marriage index as a proxy measure for illegitimacy. First, “with respect to baptisms Dr. Scandella [had] been invited but without success to state the amount of discount which he admits ought to be allowed by reason that his [estimations include] baptisms of adults.” Second, Flood believed that there was also error unaccounted for because Spanish women had a long tradition of entering Gibraltar for the purposes of baptizing their sons. This tradition of cross-border baptisms arose, according to Flood, since “children baptized in Gibraltar as born here were supposed to be exempt from serving as conscripts” for the Spanish army. As a result, “the number of baptisms was therefore for many years in excess of the number of children of the residents born and the excess depended mainly upon the state of alarm in the neighborhood which the fluctuating demand for conscripts created.”¹⁴

With respect to the question of how the AOC might impact on morality, Flood takes a somewhat surprisingly different stance relative to Scandella and the Exchange Committee, arguing that there would be a noticeable *reduction* in illegitimacy over time:

I am afraid that the promiscuous intercourse of the sexes created by the rapid increase of overcrowding . . . is a far more probable [reason for] the increase of illegitimacy . . . and I believe that the Order in Council will by reducing that overcrowding tend to reduce and not to increase the number of such births (Flood, 1874).

Governor Williams (1874) chose to support Flood’s perceptions of the beneficial impact of the AOC on community morals and wrote to the secretary of state in England that “with regard to the conclusion arrived at by Dr. Scandella that the enforcement of these clauses will inevitably result in an increase of concubinarians and illegitimate children, I am, in the absence of any reliable data, unable to consider it otherwise than premature.”

Gibraltar’s Police Magistrate Kendall further argued that there were, in fact, options for aliens other than remaining in Gibraltar in an unmarried state (Kendall, Hoare, & Major,

¹⁴ By our own calculations, using the Registers of Births 1870–1884, there was a slight increase in births out of wedlock among Gibraltar-born mothers; approximately 5.7% of children were born out of wedlock between 1870 and 1873 (n all births = 1367), increasing to 7.1% between 1874 and 1884 (n all births = 4036).

1875a).¹⁵ Besides stressing the completely voluntary nature of the migrant laborers living in Gibraltar, he reasoned that Spanish laborers could easily enter Gibraltar each morning and return to their homes located on the Spanish side of the Lines in the evening. Married aliens would be welcomed in this context since each laborer's spouse and children did not reside in Gibraltar, while at the same time families would benefit from the more reasonably priced provisions and accommodation available in Spain.

Despite these “options” proposed for alien workers, many in the local community remained troubled by the virtue of young unmarried Gibraltarian women. From his perspective as a religious figurehead in the community, Scandella (1876a) was particularly apprehensive:

We are fully aware that this state of things is forced and unnatural, and that, consequently, it cannot be maintained for any lengthened period of time. *Nihil violentum durabile*. We know the weakness of human nature and the depravity of its passions and instincts and we admit that, notwithstanding the utmost vigilance and the most assiduous efforts, it will be, in many cases, impossible to prevent the evil.

As marriage to alien men quickly became an enormous disadvantage with far-reaching consequences for local women, some community members became increasingly concerned over supervising their sexual behavior. Scandella's Lent pastoral for 1876 makes it abundantly clear that Gibraltarians had learned the dangers associated with the involvement of their daughters with aliens. Embodied within his eulogy was the following cautionary note:

we once more exhort fathers and mothers, guardians, heads of families, householders, masters, mistresses, and all others exercising authority, to watch over the unmarried females under their charge and to guard them from that intimacy with aliens which, as it cannot be sanctified by the sacrament of matrimony, cannot but end in sinful unions. Above all, we recommend unwary young females to keep carefully away from whatever may lead them to that road whose inevitable end is dishonour and sin . . . We advise all to be extremely cautious in admitting into their houses husbands separated from their wives, wives parted from their husbands, or children severed from their parents, and to take great care, in the cases of the like admissions, to diminish the evils of all such separations as far as lies in their power (Scandella, 1876a).

11.3. Overcrowding

To the extent that all of the limitations placed on aliens, including the AOC, were intended to discourage population growth in the garrison, the anonymous Scrutator (1874) offered the following astute observation in the *El Calpense*:

We have never heard that the inhabitants on temporary permits are more prolific than the natives, but as the new law can only act on the 2,000 inhabitants on temporary permits, and

¹⁵ According to Scandella et al. (1876), however, since the town's gates closed every evening after sunset, it was virtually impossible for aliens to work in Gibraltar during the day and sleep in their dwellings at the Lines by night. On the other hand, life in Gibraltar was also difficult, with “every article of consumption . . . exorbitantly dear and generally of inferior quality,” decidedly ruinous housing rental prices, and the influence of the state of the weather and political relations on the availability of imported necessities (Sayer, 1862, p. 461).

must leave the 15,000 natives untouched, it can only check the population on the supposition that the 15,000 are struck with sterility, and the 2,000 usually fruitful.

Scrutator concluded that “there seems . . . to be almost a sublime audacity and defiance of the laws of nature in proposing to regulate the population of Gibraltar and prevent overcrowding” with laws that applied to only one-seventh of the population.

Scandella (1876b) argued that “wherever there is capital and commerce thither people will flock, either natives or aliens; and every human endeavour to arrest the movement will be vain and fruitless.” As a result, the AOC was believed to not only encourage a lower level of morality among aliens admitted into Gibraltar, but also the immigration of Maltese laborers, also of British nationality, whom Scandella characterized as “by no means the pick and flower of their island.” These British subjects simply filled the void left by aliens removed from Gibraltar and therefore accomplished little in the way of controlling overcrowding. Like many others in 19th-century Gibraltar, Scandella had an extremely tainted perception of their character and impact on the community, producing a comprehensive list of the perceived disadvantages of indirectly encouraging Maltese immigration:

1. With some honourable exceptions, only the scum of that people betakes itself hither: the worthless, and particularly those who, on the expiration of their imprisonment, have to look elsewhere for that subsistence which they cannot honestly earn in their own country.
2. Employers have no means of satisfying themselves as to the honesty, ability, and activity of those immigrants.
3. Once they have landed here, it is not easy to send them back to their island home or to get rid of them, particularly as they are excessively hardy and inured to want, so that they need but little to live on, and that little is readily found among their own. Were a Maltese unable to eke out a livelihood here, it is not probable that he could maintain himself on his own barren island.
4. As is the case with every British subject habituated to vice, the Maltese becomes, in general, a lasting calamity for this place. Strong in his right of residence, he makes Gibraltar the scene of his crimes or vices. There are certain unfortunate individuals well-known here who are a public disgrace to the city by reason of their drunkenness or other crimes; dragged up almost daily before the Police, they pass the greater part of their lives in prison; and while contributing in no way to the general welfare, they become a heavy burden upon the public.¹⁶
5. As in virtue of their nationality, they cannot be compelled to leave the Garrison, they may prove a source of very serious evil in time of war or epidemic (Scandella et al., 1876).

¹⁶ According to Jackson (1987, p. 249), however, “The police records show Gibraltarians and Spaniards were much more prone to trouble than the Maltese who assimilated well, enriched Gibraltarian society, and added 150 new names to the registers.”

It was for all of these reasons that Scandella and the Exchange Committee argued so strongly for encouraging alien laborers and discouraging the opportunity for widespread Maltese immigration.

11.4. The AOC: the 1-year review

Given all of the indications of civilian discontent with the AOC, the Governor of Gibraltar had ordered “that the Order in Council should be allowed to continue in operation unaltered for the full period of one year, at the end of which . . . a Committee may be appointed to report upon its workings and to offer any suggestions . . .” (Williams, 1874). True to his word, a review was undertaken one full year after the AOC came into effect, based primarily on the perceptions of a select committee of “persons of respectability.”¹⁷ Their findings led Kendall, Hoare, and Major (1875b) to report that “though there is still found some feeling and expression of discontent with its enactments, no case has been brought forward showing an undue severity or extreme hardship.” Overall, the committee felt that since the law had only been “so short a time in force, the opposition to or clamour against it having almost subsided . . . it would be unadvisable to unsettle the mind of the public again on the subject” though they did advise that “if any relaxations are decided on, the opportunity might be taken to recast the Order in Council, simplify its language and cut out many absurd details put in by Mr. Flood” (Kendall et al., 1875b). As a result of the report, the secretary of state, upon communication with Gibraltar’s governor, concluded:

the complaints which are made against the existing law, whatever may be the precise value to be assigned to them, into which I do not propose to enter, cannot outweigh the evils which would result from the relaxation of the stringent regulations which it has been found necessary to prescribe under the special conditions incident of such a fortress as Gibraltar (Carnarvon, 1875).

The question of revisions became a moot subject, therefore, at least in the eyes of the colonial authorities.

Despite satisfaction with the AOC, however, authorities were also once again considering the more direct measure of dispensing with the soil of birthplace nationality law. Secretary of State for the Colonies in England, the Earl of Carnarvon (1875), wrote a dispatch to Governor Williams in Gibraltar suggesting that he had under his “consideration the question of providing that the children of aliens born in Gibraltar should not be entitled to claim the status of British subjects, so as to render it possible to dispense with the provisions of sections 29 and 30.” Mollan (1876), Gibraltar’s police magistrate, agreed that this provision “would effectually remedy many of the difficulties attending the administration of the Act as it now

¹⁷ Excluded from this group, Scandella (1876b) was critical of their findings: “The Commission . . . was shrouded throughout in the greatest secrecy. There was no official or public announcement as to its appointment, the names of its members, or the place and time of its sittings . . . To this day we know not from what source the Commission derived its information, or the persons whom it consulted . . . I was completely ignored.”

stands.” Even through it continued to court the interest of colonial authorities, the *jus sanguinus* was never introduced in 19th-century Gibraltar.

12. AOC, Gibraltar, 1885: the return of discretion

In conclusion, this article ends on a surprising note. By the late 1870s, Flood and his family had left Gibraltar to assume the position of attorney general in Egypt. In 1883, a new governor, Sir John Willer Adye, was appointed to Gibraltar. In the near 4 years that he remained as Governor, civilians saw a number of changes instituted with respect to the AOC. The contentious period in Gibraltar’s family history seems to have been rectified by an unexpected twist favoring the desires of the civilian element of the community.¹⁸ By January 1, 1886, with the official publication of a revised AOC, 1885, it appears that the possibility of gubernatorial discretion, the one thing that Flood had long argued so passionately against, had been reinstated. With its reintroduction, many of the rights previously removed from local women and alien laborers were subsequently returned. What was once paragraph 30 in the AOC, 1873, was now recognized as a more flexible paragraph 21:

AOC, 1885, paragraph 21: *A female British subject, a native of Gibraltar, may, notwithstanding her marriage with an alien, be permitted to reside in Gibraltar together with her husband as an indulgence, and during good behaviour on special temporary permit, to be issued by the police magistrate with the approval of the Governor. Provided also that the Governor may at any time revoke and cancel such permit of residence either for the wife or husband or for both; and in such case either or both of such persons, as the case may be, shall forthwith depart from Gibraltar, and if found therein after the cancellation of such permit shall be considered as aliens unlawfully in the garrison without a permit and shall be liable to the penalties in such case provided by this order (Adye, 1885). (emphasis added)*

And paragraph 29 of the AOC, 1873 was updated by paragraph 22:

AOC, 1885, paragraph 22: *No female alien shall be delivered of a child in Gibraltar, including British female subjects who have become aliens by marriage, without the previous special sanction of the Governor. If such previous sanction shall not have been obtained such alien female who shall be so delivered shall be removed from Gibraltar, and the person upon whose application she shall have been admitted into Gibraltar shall be liable to a penalty not exceeding 100 pesetas (Adye, 1885). (emphasis added)*

These modifications were supported by the Governor himself who, in submitting a draft of amendments to the AOC to the Secretary of State for the Colonies, explained why he felt some discretion was necessary:

there are many women in Gibraltar who, although British subjects, are more or less Spanish in race, language and religion, and who naturally may desire to contract marriages with Spaniards living in the neighbourhood . . . if they are in employment they should be allowed

¹⁸ Unfortunately, Scandella died on July 27, 1880, unable to appreciate these changes in the affairs of the colony.

to reside, with their husbands in Gibraltar, and further should not be obliged to leave before the birth of children . . . as a general rule a woman so marrying should be allowed to give birth to children in Gibraltar but discretionary power might be left to the Governor in special cases (Adye, 1885).

Furthermore, the Governor noted a special grievance among local women marrying aliens who lost their right to claim Gibraltarian nationality. Though he felt that “taken in its strictest sense, this [was] not a grievance at all, because every woman, whether in Gibraltar or elsewhere, who marries a foreigner loses thereof her own nationality,” he did show some compassion in their potentially difficult position and upheld the addition of another discretionary aspect, as embodied in paragraph 23:

AO, 1885, paragraph 23: *In the event of the death of the alien husband of a native female British subject, or of his desertion of his wife, or if for any other reason deemed satisfactory, such female if resident out of Gibraltar shall desire to return to and reside in Gibraltar, she may be allowed to do so as an indulgence on special temporary permit, to be issued by the police magistrate with the approval of the Governor. Such permit may be revoked and cancelled by the Governor at any time (Adye, 1885).*

Despite the problems faced by civilians in a colony growing within what remained primarily a military establishment, at least one small victory had been achieved. Adye’s understanding of the uniqueness of the Gibraltar population seemed to underscore the heightened sensitivity shown to local women who chose to marry alien men. Flood and his ambitions became nothing more than a bygone.

References

- Adye, J. W. (1885, May 2). *Correspondence to the Secretary of State for the Colonies, the Earl of Derby, Gibraltar*. CO 91/370. Public Records Office, England (PRO).
- Airey, R. (1866, July 20). *Lieutenant-General, Governor, Gibraltar, Correspondence to Lieutenant-General J. Peel*. CO 91/285. PRO.
- Baggetto, J. (1869, October 19). *Correspondence to Scandella, Gibraltar*. CO 91/307. PRO.
- Benady, S. (1994). *Civil hospitals and epidemics in Gibraltar*. Grendon, Northants: Gibraltar Books.
- Carnarvon, H. (1875, September 23). *Correspondence to Governor Williams*. Gibraltar Government Archives, Gibraltar (GGA).
- Cassidy, J. (1989). A reappraisal of aboriginal policy in colonial Australia: imperial and colonial instruments recognising the special rights and status of the Australian aborigines. *Journal of Legal History*, 10, 365–379.
- Chatham, J. (1822). *Proclamation dated 22 November*. CO 91/319. PRO.
- Clarke, T., & Galligan, B. (1995). Protecting the citizen body: the commonwealth’s role in shaping and defending an “Australian” population. *Australian Journal of Political Science*, 30, 452–468.
- Costello, M. (1859, September 15). Attorney General, Gibraltar. CO 91/285. PRO.
- Cross, P. (1997). British attitudes to Sudanese labour: the foreign office records as sources for social history. *British Journal of Middle Eastern Studies*, 24, 217–260.
- Don, G. (1814, November 15). *Correspondence from Lieutenant-Governor Don to the Secretary of State for the Colonies*. CO 91/61. PRO.
- Don, G. (1816). *Proclamation by His Excellency Sir George Don, given at Gibraltar this 29th day of June, Section A*. CO 91/285. PRO.

- Duffield, J. M. (1869). *Response to cases in the report*. CO 91/308. PRO.
- Duffield, J. M. (1872, August 31). *Correspondence from the Acting Police Magistrate to Colonial, M. Bellairs*. CO 91/319. PRO.
- Flood, F. S. (1866, April 13). *Correspondence from the Police Magistrate, Police Office, Gibraltar, to S. Freeling, Colonial Secretary*. GGA.
- Flood, F. S. (1868, September 21). *Correspondence from Her Majesty's Attorney-General to the Assistant Military Secretary*. Miscellaneous Papers. GGA.
- Flood, F. S. (1870, June 25). *Correspondence from Her Majesty's Attorney-General to Colonel R. S. Baynes, Gibraltar*. CO 91/309. PRO.
- Flood, F. S. (1871, May 12). *Correspondence from Her Majesty's Attorney-General to Sir W. Fenwick Williams, Governor, Gibraltar*. GGA.
- Flood, F. S. (1874, April 28). *Correspondence from Her Majesty's Attorney-General to Colonel R.S. Baynes, Colonial Secretary*. Enclosure in Despatch No. 66, June 27. GGA.
- Francia, F. (1873, December 26). *Correspondence from the Chairman of the Exchange Committee to the Right Honourable the Earl of Kimberley, one of Her Majesty's Principal Secretaries of State*. Inclosure No. 1 in correspondence respecting the Gibraltar Aliens Order in Council, 1873, Colonial Office, July. GGA.
- Francia, F. (1874, April 20). *Correspondence from the Chairman of the Exchange Committee to the Earl of Carnarvon*. GGA.
- Freeling, S. (1866, July 31). *Correspondence from the Colonial Secretary, Secretary's Office, to His Excellency, the Governor, Gibraltar*. GGA.
- Gardiner, R. (1850, September 23). *Appendix A, #74, Convent, Gibraltar*. CO 91/319. PRO.
- Gibraltar, Town of. (1814). *Population of the Town of Gibraltar according to the Census taken the 24th May*. CO 91/61. PRO.
- Gilbard, M. (1883). *Gibraltar directory*. Gibraltar: Gibraltar Garrison Library Printing Establishment.
- Hauser, P. (1869, October 15). *Correspondence to the Right Reverend Scandella, Gibraltar*. CO 91/307. PRO.
- Huttenback, R. A. (1966). Indians in South Africa, 1860–1914: the British imperial philosophy on trial. *English Historical Review*, 81, 273–291.
- Jackson, W. G. F. (1987). *The rock of the Gibraltarians: a history of Gibraltar*. Grendon, Northants: Gibraltar Books.
- Jones, J. M. (1956). *British nationality law* (Rev. ed.). Oxford: Clarendon Press.
- Kendall, N. (1874, January 3). *Correspondence from the Acting Police Magistrate to Colonel R.S. Baynes, Colonial Secretary, Police Office, Gibraltar*. GGA.
- Kendall, N. (1874, January 10). *Correspondence from the Acting Police Magistrate to Colonel R.S. Baynes, Colonial Secretary, Police Office, Gibraltar*. GGA.
- Kendall, N., Hoare, T. P., & Major, R. C. (1875, May 27). *Correspondence of the committee appointed to enquire into the working of the Aliens Order in Council of 1873 to the Governor of Gibraltar*. GGA.
- Kendall, N., Hoare, T. P. & Major, R. C. (1875, June 22). *Report of the committee appointed to enquire into the working of the Aliens Order in Council of 1873, Despatch, Gibraltar, No. 6817*. CO 91/335, PRO.
- Kimberley, Earl of. (1874, February 20). *Correspondence to Sir W.F. Williams, Governor of Gibraltar, Downing Street*. GGA.
- Lima, J. B. (1837, February 6). *Correspondence from the Vicar General Apostolic, Catholic Church of St. Mary the Crowned, Gibraltar, to His Excellency, Sir Alexander Woodford, Governor*. GGA.
- MacAuliffe, T. D. D. (1869, October 18). *Correspondence from the Honorary Secretary to the Committee to the Right Reverend J.B. Scandella, D. D., Vicar Apostolic, Gibraltar*. CO 91/307. PRO.
- MacAuliffe, T. D. D. (1869, September 20). *Notice placed by the Honorary Secretary to the Committee in the Gibraltar Chronicle, Gibraltar*. GGA.
- Mangru, B. (1992). Indian government policy towards labor recruitment for the sugar colonies, 1838–1883. *Journal of Third World Studies*, 9, 118–138.
- Mollan, W. C. (1876, February 14). *Correspondence from Lieutenant-Colonel, Police Magistrate to the Colonial Secretary, Gibraltar*. GGA.

- Mullen, T. (1988). Nationality and immigration. In: S. McLean, & N. Burrows (Eds.), *The legal relevance of gender: some aspects of sex-based discrimination* (p. 149). Atlantic Highlands, NJ: Humanities Press International.
- Patron, J. (1869, October 16). *Correspondence to the Right Reverend Scandella, Gibraltar*. CO 91/307. PRO.
- Rutherford, W. (1869, October 15). *Correspondence of the Inspector of Health to the Right Reverend Scandella, Gibraltar*. CO 91/307. PRO.
- Sawchuk, L. A. (1993). Societal and ecological determinants of urban health: a case study of pre-reproductive mortality in 19th century Gibraltar. *Social Science and Medicine*, 36, 875–892.
- Sawchuk, L. A., & Burke, S. D. A. (1998). Gibraltar's 1804 yellow fever scourge: the search for scapegoats. *Journal of the History of Medicine and Allied Sciences*, 53, 3–42.
- Sawchuk, L. A., & Padiak, J. (1999). *Public visitors, human rights and hygiene: issues on prostitution in 19th century Gibraltar*. Presented at the CAPA conference, Fredericton, NB.
- Sayer, F. (1859, September 14). *Correspondence to the Police Magistrate, Police Office, Gibraltar*. CO 91/285, PRO.
- Sayer, F. (1862). *The history of Gibraltar and of its political relation to events in Europe*. London: Saunders, Otley, and Co.
- Scandella, J. B. (1866, October 5). *Correspondence from the Vicar Apostolic to S. Freeling, Esq., Colonial Secretary*. GGA.
- Scandella, J. B. (1869, September 16). *Article in the El Calpense*. CO 91/307. PRO.
- Scandella, J. B. (1869, October 16). *Correspondence of the Vicar Apostolic to Dr. W. Rutherford, Esq., C. B., M. D., Inspector of Health, Gibraltar*. CO 91/307. PRO.
- Scandella, J. B. (1869, November 1). *Correspondence of the Vicar Apostolic to the Right Honourable Earl Granville, K.G., Her Majesty's Principal Secretary of State for the Colonies, &c., &c., &c.* GGA.
- Scandella, J. B. (1869, October 13). *The question medically considered [Circular], Gibraltar*. CO 91/307. PRO.
- Scandella, J. B. (1874, February 3). *Correspondence of the Vicar Apostolic to Dr. Trenerry, extract from the Gibraltar Chronicle and Commercial Intelligencer*. GGA.
- Scandella, J. B. (1876, March 21). *Correspondence of the Vicar Apostolic to the Right Honourable the Earl of Carnarvon, Principal Secretary of State for the Colonies, Lent Pastoral Appended*. GGA.
- Scandella, J. B. (1876, January 31). *Correspondence of the Vicar Apostolic to the Right Honourable the Earl of Carnarvon, Principal Secretary of State for the Colonies*. GGA.
- Scandella, J. B., Abrines, R., Amigo, P., Cowell, R., French, T., Imossi, L. F., Madden, D., Mascardi, B., Patron, J., Pitman, M. J., Playa, J., & Speed, J. (1876). *Report on the alien question*. Gibraltar: Garrison Library Printing Establishment (Most respectfully submitted to His Excellency General R.C. Lord Napier of Magdala, Governor of Gibraltar).
- Scrutator. (1874, January 13). *Extract from the Gibraltar Chronicle and Commercial Intelligencer*. GGA.
- Stokes, H. (1869, October 21). *Correspondence to the Vicar Apostolic*. CO 91/307. PRO.
- Trenerry, C. (1869, October 15). *Correspondence to the Vicar Apostolic*. CO 91/307. PRO.
- Watts, S. (1999). British development policies and Malaria in India 1897–c.1929. *Past and Present*, 165, 141–181.
- Williams, W. F. (1874, June 29). *Correspondence to Lord Carnarvon*. GGA.

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