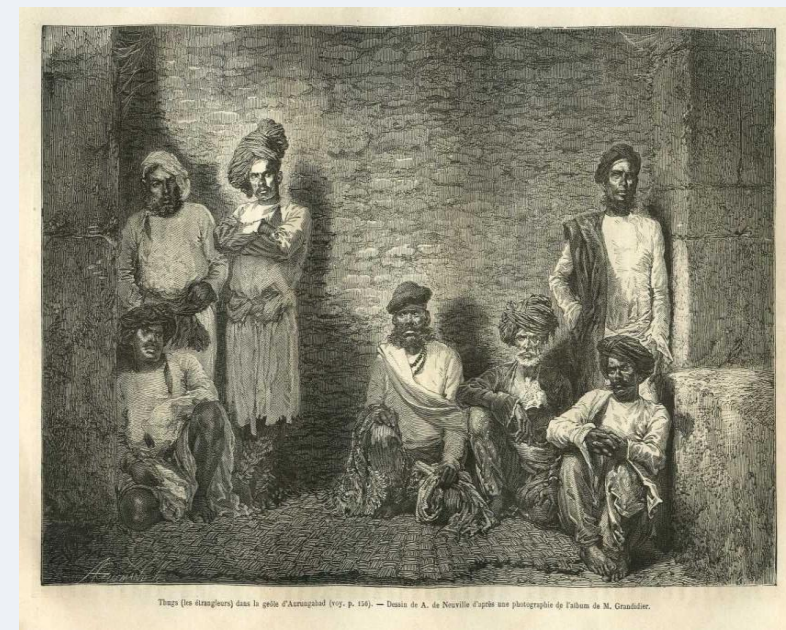
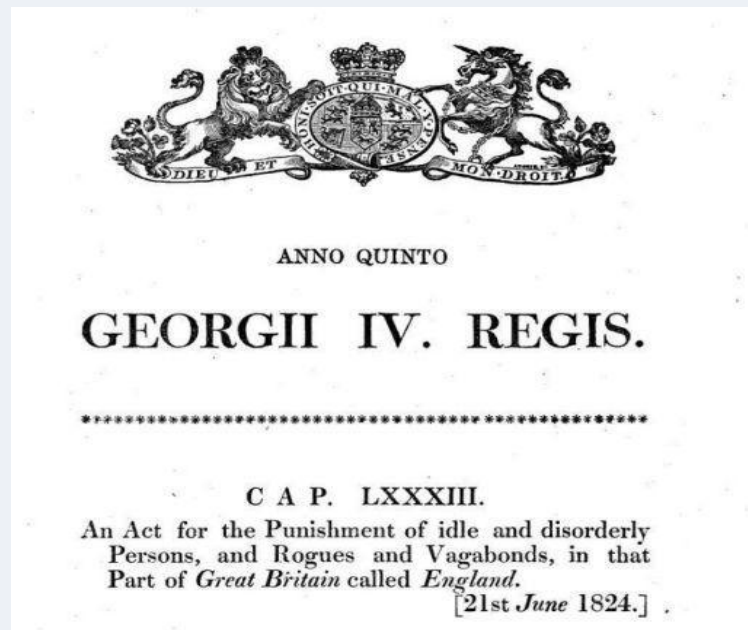
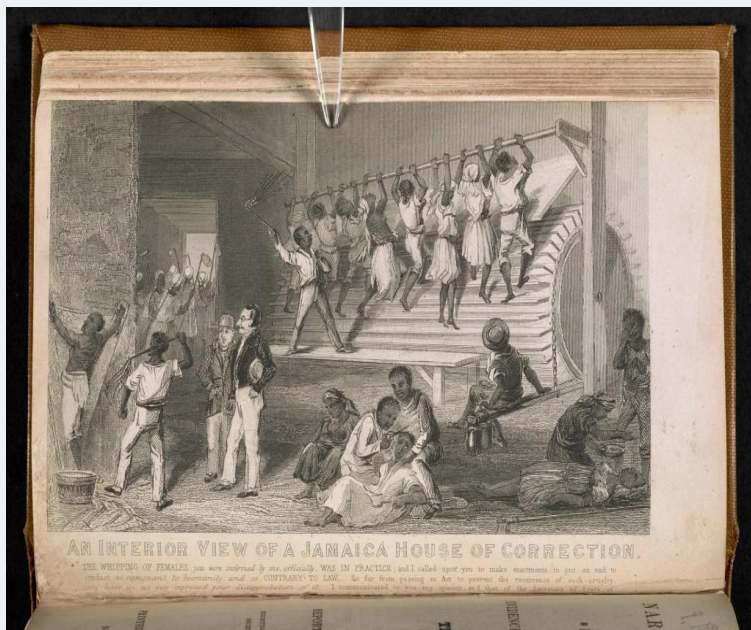




DISCRETION AND THE RULE OF LAW: THE SIGNIFICANCE AND ENDURANCE OF VAGRANCY AND VAGRANCY-TYPE LAWS IN ENGLAND, THE BRITISH EMPIRE AND THE BRITISH COLONIAL WORLD

The Early History of Vagrancy Laws

➤ 1349 & 1351 Statutes of Labourers

➤ 1530 & 1597 Vagabond Acts

➤ 1740 & 1743 Rogue and Vagabond Acts



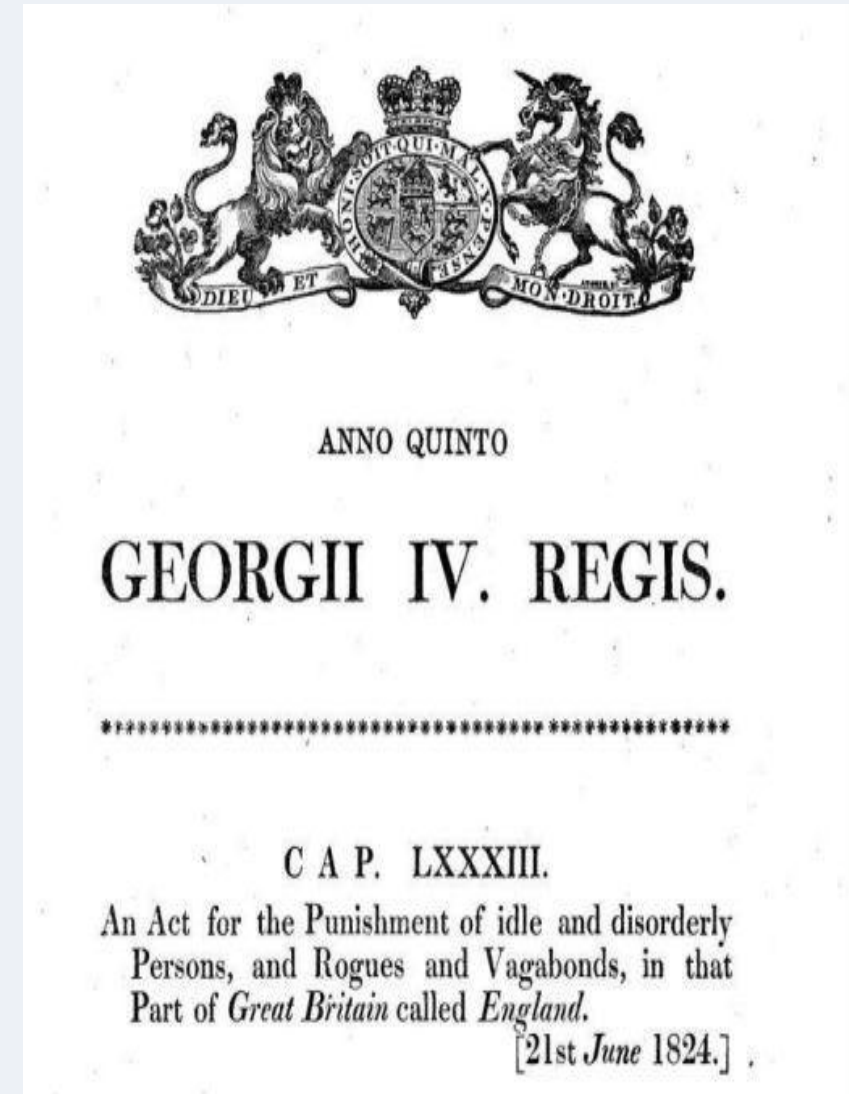
The 1824 Vagrancy Act

➤ 1824 Vagrancy Act

➤ Key features:

1) Definition

2) Procedure



What is a Vagrant?

Being an 'idle and disorderly' person:

- every Person being able wholly or in part to maintain himself or herself, or his or her Family, by Work or by other Means, and wilfully refusing or neglecting so to do ... ;
- every Petty Chapman or Pedlar wandering abroad, and trading without being duly licensed ... ;
- every Common Prostitute wandering in the public Streets ... ;
- every Person wandering abroad, or placing himself or herself in any public Place ... to beg or gather Alms.

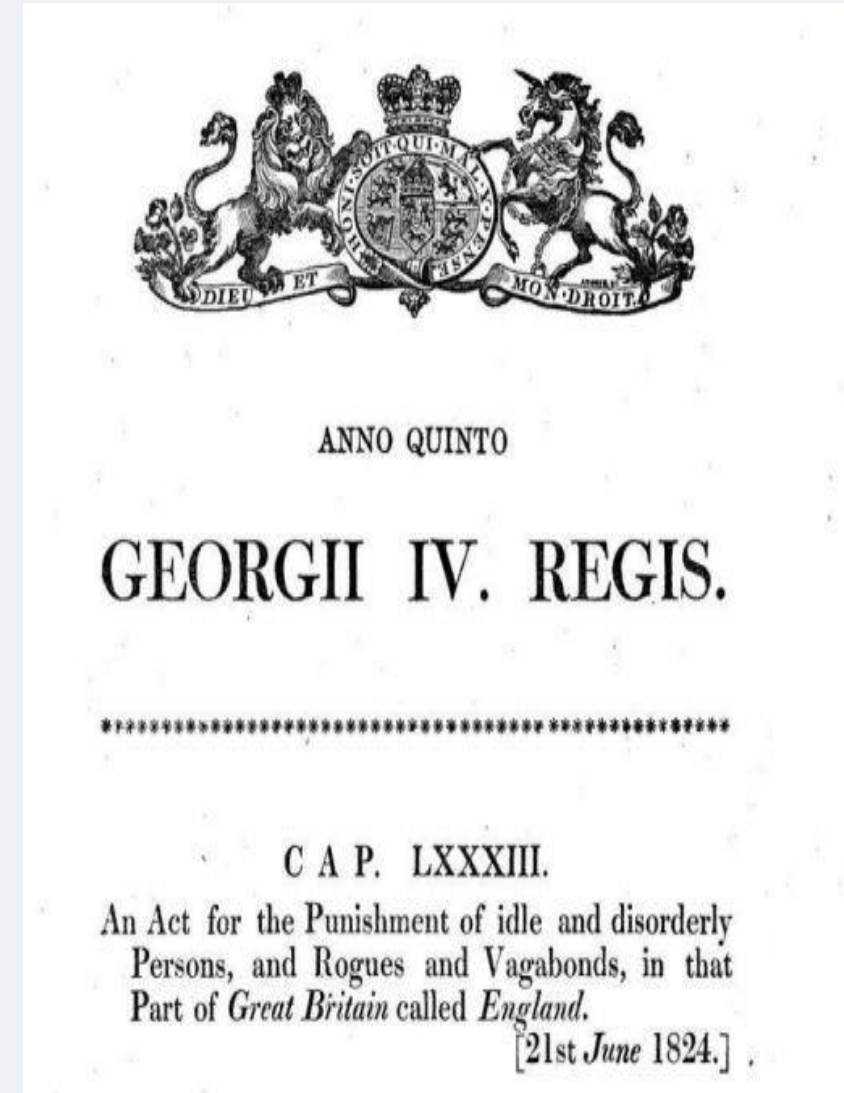
What is a Vagrant?

Being a ‘rogue or vagabond:’

- every Person pretending or professing to tell Fortunes, or using any subtle Craft, Means, or Device, by Palmistry or otherwise, to deceive ... ;
- every Person wandering abroad and [without regular home], not having any visible Means of Subsistence, and not giving a good Account of himself or herself;
- every Person wilfully exposing to view [in any public place] any obscene[ity];
- every Person wilfully, openly, lewdly, and obscenely exposing his Person in any [public place];
- [every fraudulent beggar, or beggar exposing “wounds or deformities”];
- every Person running away, and leaving his Wife or his or her Child or Children ... ;
- every Person playing or betting in any [public place] ... ;
- every Person being found in or upon any [public place] for any unlawful Purpose; every suspected Person [found in a public place] with Intent to commit Felony.

How to Deal with this Threat?

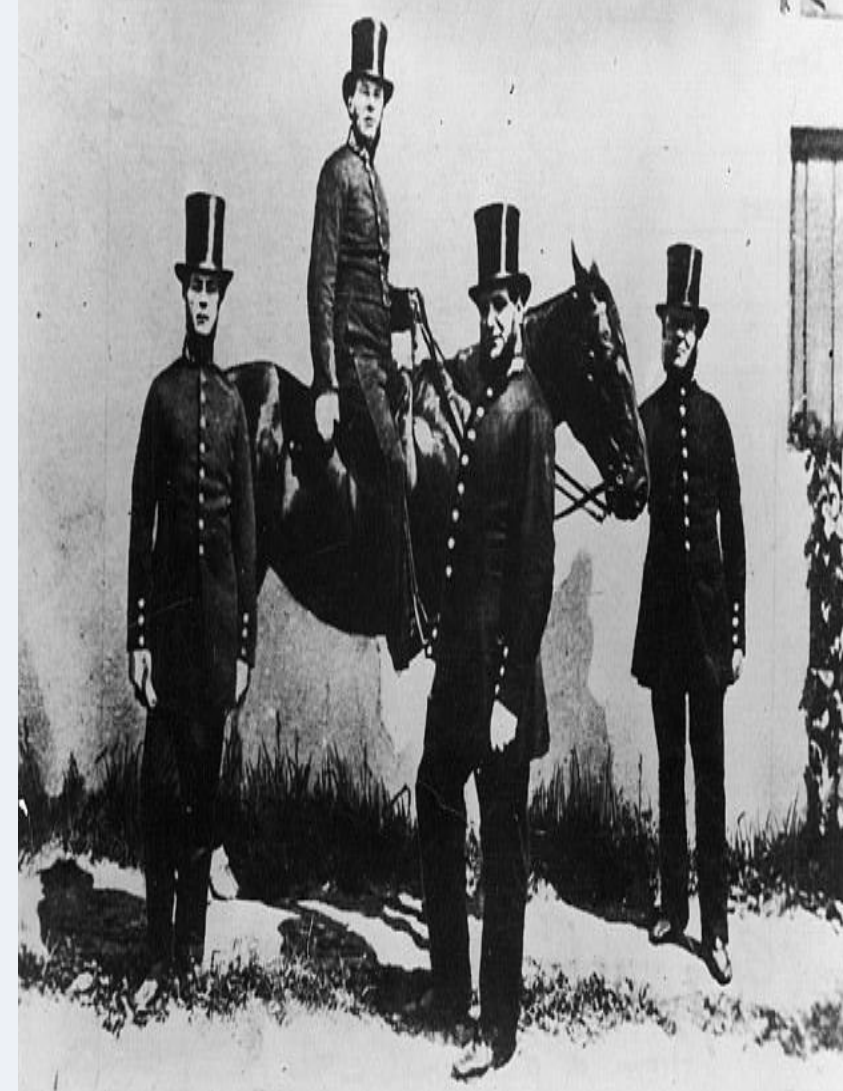
- 1) Any person can apprehend another
- 2) Funding for testimony, jail for refusal
- 3) Penalization for insufficiently rigorous enforcement by constables
- 4) Property of those detained can be seized & sold to cover costs
- 5) Expanded use of summary trial
- 6) Allowed vagrants to be removed



The Metropolitan Police

Metropolitan Police Act 1829:

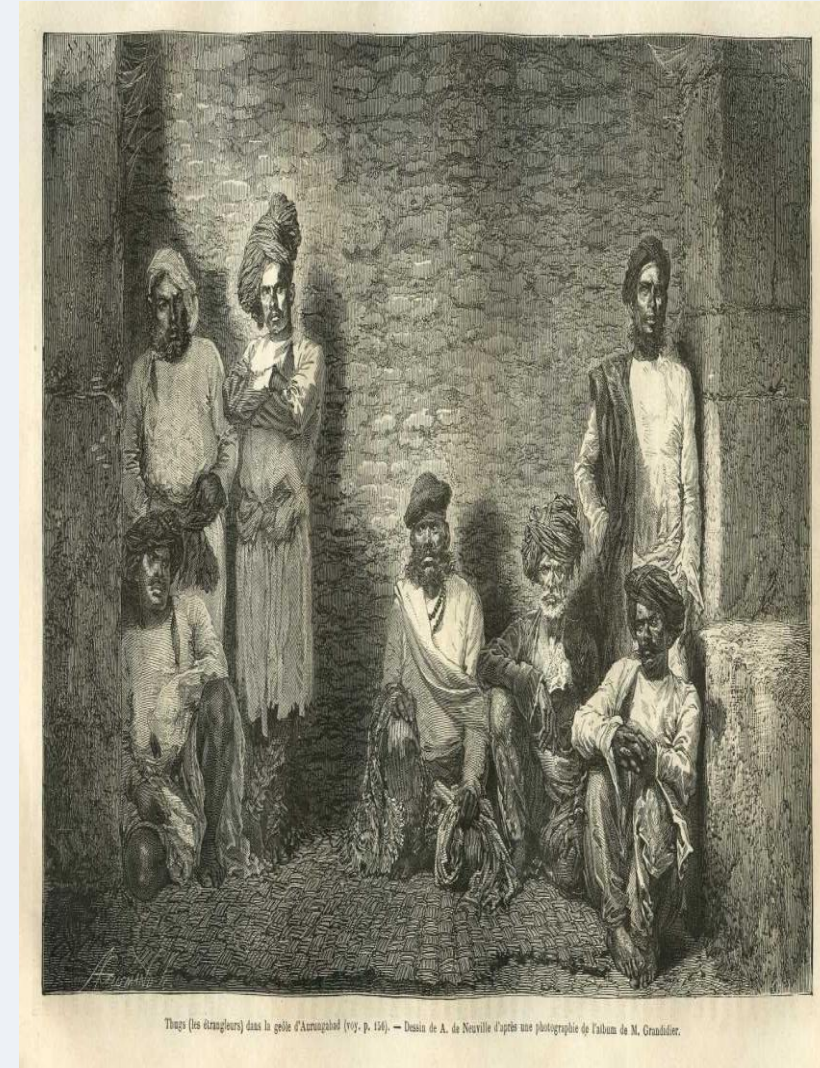
Any man belonging to the police force ... may apprehend all loose, idle, and disorderly Persons ... disturbing the Public Peace, or whom he shall have cause to suspect of any evil Designs, and all Persons whom he shall find between Sunset and the Hour of Eight in the Forenoon lying in any Highway, Yard, or other Place, or loitering therein, and not giving a satisfactory Account of themselves.



India

➤ Thuggee and Dacoity Acts:

- 1) Vague, status-based definition
- 2) Ethnographic characterization
- 3) Orientation towards producing a commercially useful class
- 4) Linked to new procedural and practical enforcement mechanisms



Former Slave Colonies

- 1) Vagrancy laws were passed in all the ex-slave colonies, often many times over, in the years following the end of slavery
- 2) Complemented apprenticeship laws, master and servant laws, pass laws, and practical measures designed to better control workers
- 3) Also complemented by reforms to and the development of the judiciary, measures to create and strengthen police forces

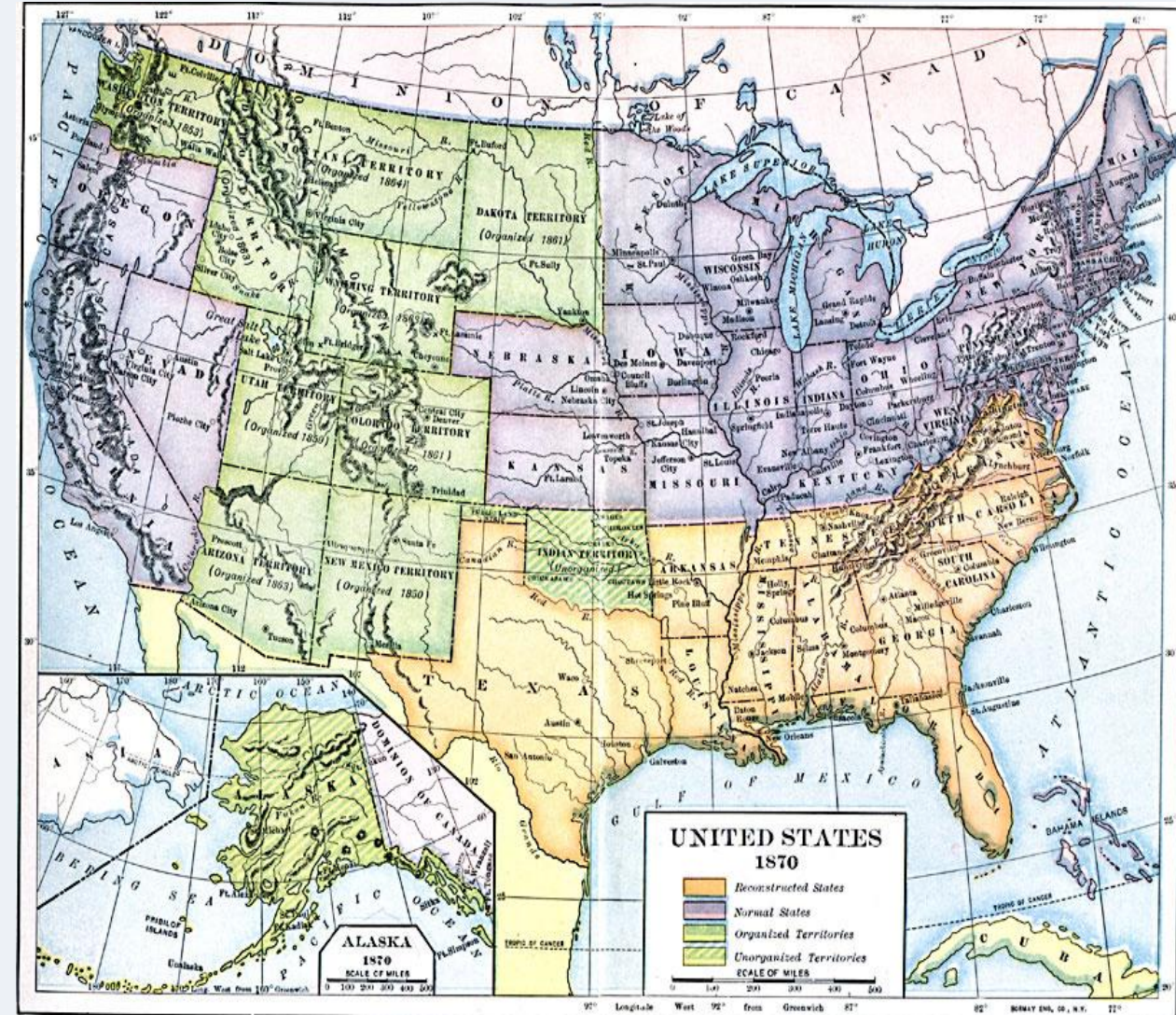


Australia and New Zealand

- Provisions penalizing vagrancy adopted in New South Wales in 1835, Van Diemen's Land in 1838, South Australia in 1844, Victoria in 1852, Western Australia in 1861, and New Zealand in 1866
- §2: “every person not being a black native or the child of any black native who being found lodging or wandering in company with any of the black natives of this Colony shall not being thereto required by any Justice of the Peace give a good account to the satisfaction of such Justice that he or she hath a lawful fixed place of residence in this Colony and lawful means of support and that such lodging or wandering hath been for some temporary and lawful occasion only and hath not continued beyond such occasion ... ” shall be liable to punishment

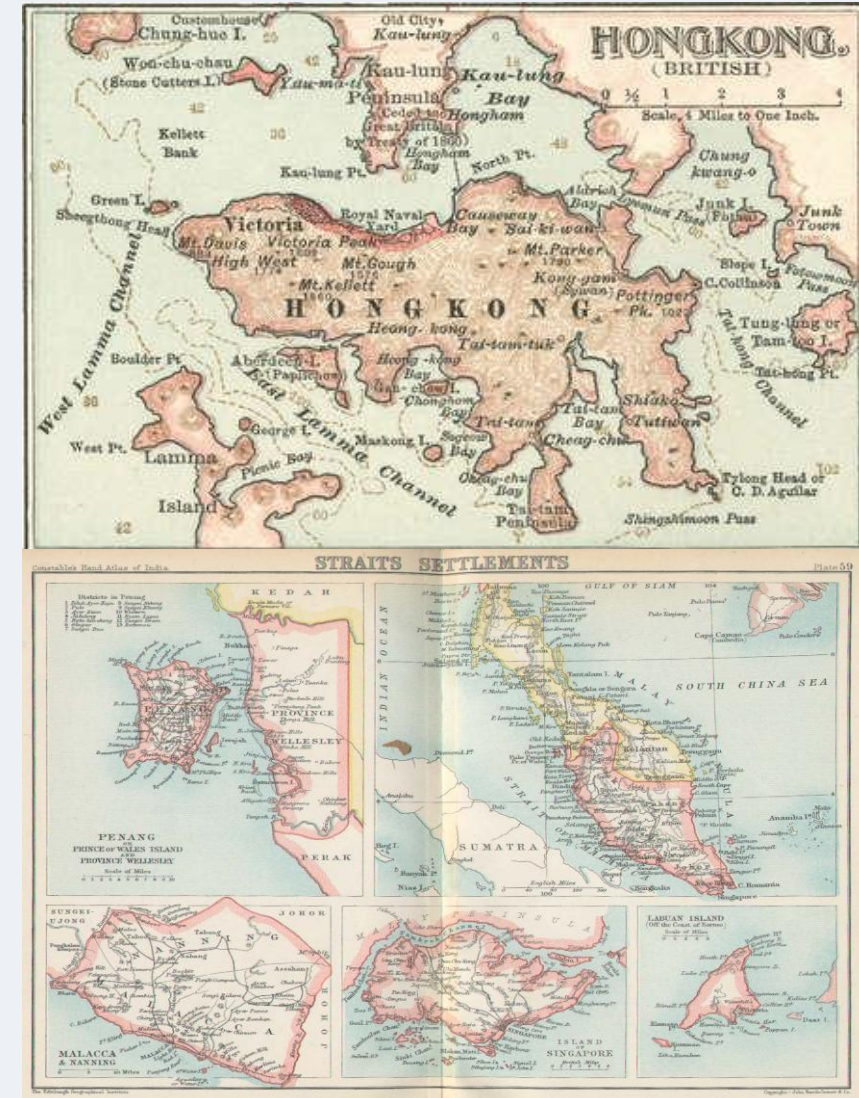
The United States

- ‘Black Acts’ passed in the United States South in the wake of reconstruction
- ‘Tramp Acts’ passed elsewhere around the United States in the subsequent decades



East Asia

- In Hong Kong and the Straits Settlements, various vagrancy acts were passed over the course of the nineteenth century, and increasingly heavily enforced and relied upon to conduct deportations as the century went on
- As elsewhere, these measures were linked to expansions in the police, in the magistracy, and in the magistracy's power of summary jurisdiction

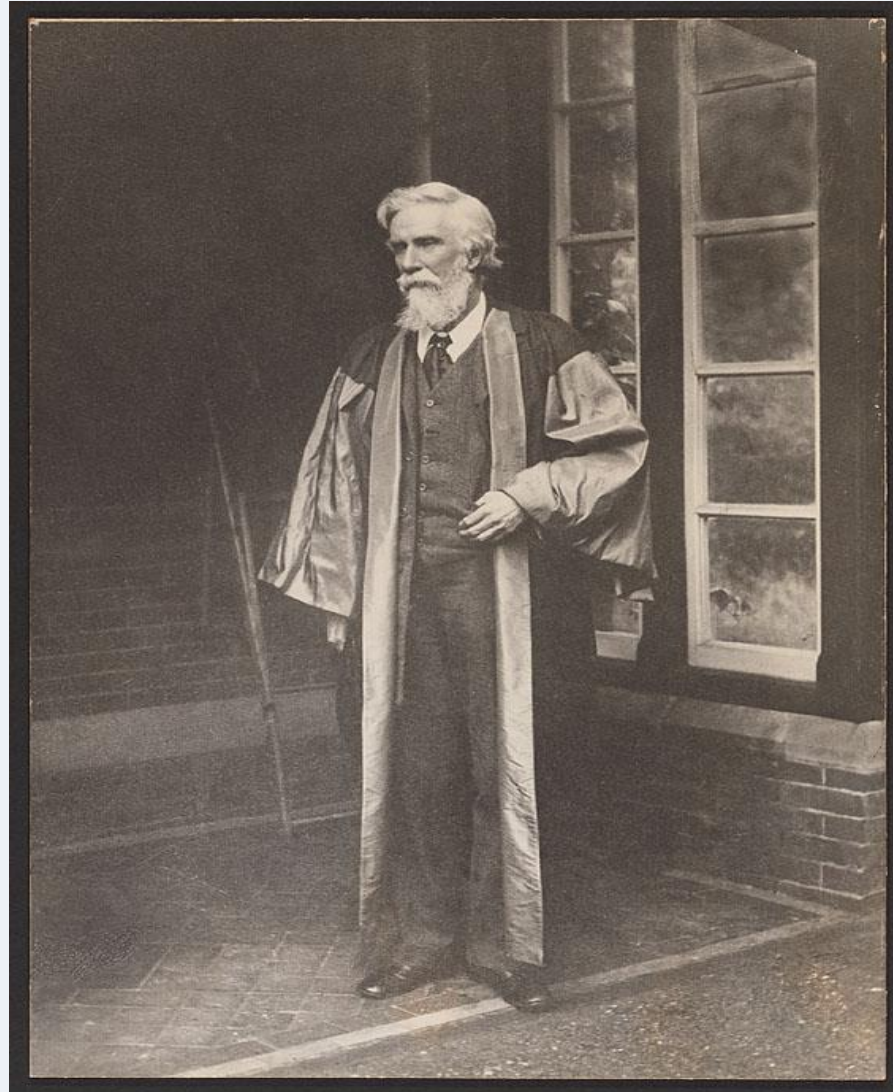


East and West Africa

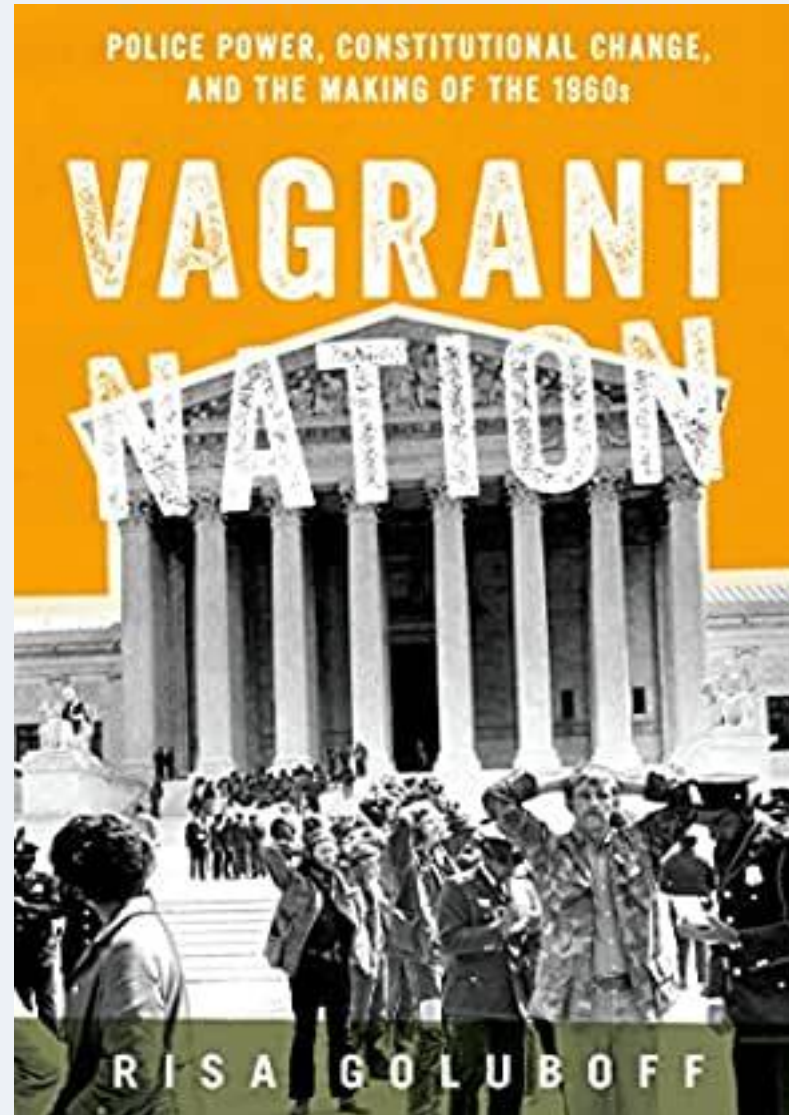
- When the British expanded into East Africa in the late nineteenth century, and Northern Nigeria in the early twentieth century, they passed laws abolishing slavery, but, as elsewhere, replaced those systems with overlapping regimes of labor control, including vagrancy laws
- These measures were complemented by other control measures, including restrictive pass systems that drew on the developing South African approach



Dicey's Role



The Anti-Vagrancy Campaign in the United States



Vagrancy Law Today



ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

The Second Wave of Anti-Vagrancy Challenges

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

REQUEST FOR ADVISORY OPINION

BY

THE PAN AFRICAN LAWYERS UNION (PALU)

ON

THE COMPATIBILITY OF VAGRANCY LAWS WITH
THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS
AND OTHER HUMAN RIGHTS INSTRUMENTS APPLICABLE IN AFRICA

No. 001/2018

ADVISORY OPINION

4 DECEMBER 2020

