

Guanopreneurs and the dynamics of policymaking in the Cape Colony, 1843-1845

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Abstract

Having identified an opportunity to extract significant income from selling guano, a popular and profitable natural fertiliser, from individual islands within its territorial waters, the Cape colonial administration established loading infrastructure and promulgated a new policy to prevent an uncontrolled rush during the mid-19th century. Given the uneven power relations between the administration and its citizenry and the lack of genuinely representative institutions, the new measures generated significant conflict between the authorities and business community that turned the policy-making process into an acrimonious affair. Individual businessmen with networks in London, the Cape legislative council, judiciary and the Cape Town municipality and who desired free access to the source for trading purposes, opposed the attempt of the authorities to monopolise access to the product through Ordinance 4 of 1845 (the so-called Guano Ordinance) in order to generate income for governance purposes. A complicating factor was the fact that the expenditure connected to the new policy regime (infrastructure, customs control, and policing), still had to be sanctioned by the Imperial Government. Similarly, the new ordinance had to be aligned with and sanctioned by the imperial authorities, allowing politically-connected businessmen to use their influence in London and the Colonial Office, to force the Cape government into a process of bargaining, persuasion and compromise. With seabird guano declared Crown property, Cape Town's prospective wealthy guanopreneurs had to pay for guano freight while effectively removing their resource-poor counterparts from the race. On an international scale, the Cape Guano Ordinance provided the basis for similar legal measures in other parts of the world and trade during the next decade.

Keywords: Guano; Policy; Cape Colony; Seabirds; Entrepreneur; Geophysical Environment; Ordinance; 19th century history.

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Introduction

“Guano”, noted Ryan Tucker Jones, “changed the human relationship to the environment in much the same way that fossil fuels did”.² An animal by-product, it became the arena for the interplay between human emotions (for example greed or ambition) and action (for example entrepreneurship and monopoly control).³ This encounter between humans (both individuals and groups) and animals (guano-producing seabirds in this case), noted Swart in a different context, resulted not only in the process of redefinition, but also gave rise to the birth of new identities based on certain power relations.⁴ One of these identities that acknowledged the “ontological presence, vitality and materiality” of seabirds in human affairs,⁵ and that is directly related to the original encounter, is a distinctive group of 19th-century businessmen in Peru, United States of America, England, the Cape Colony, and Australia that Skaggs termed “guanopreneurs” to distinguish them from other entrepreneurs.⁶ These so-called “men of energy and persistence”,⁷ who formed part of the elite of society in both the colony and mother country, regrouped continuously to negotiate mutually beneficial political and economic agreements,⁸ confirming Dye’s observation that policy communication was “intra-elite”, that policy issues formulated and amplified by organised interest group leaders, influential constituents, wealthy contributors and other influential people had the best chance of being placed on the formal agenda.⁹ Gorman, concerning guano in the Peruvian context, argued that income from guano did not only provide critical revenue to the state to consolidate its power but also assisted the emergence and strengthening of an urban-based elite who used their networks and patrons to influence the state and use it as an instrument to further its particular interests.¹⁰ It further gives credence to Boshoff and Fourie’s contention, that “trade is a critical component of

2 RT Jones, Guano and the opening of the Pacific World: A global ecological history, *Journal of Pacific History*, 49, 2014, pp. 362-364.

3 C Jerolmack, Animal archaeology: Domestic pigeons and the nature-culture dialect, *Qualitative Sociology Review*, 111(1), April 2007, p. 88.

4 S Swart, Riding high – horses, power and settler society, c. 1654-1840, *Kronos*, 29, November 2003, p. 48.

5 K Anderson, White natures: Sydney’s Royal Agricultural Show in post-humanist perspective, *Transactions of the Institute of British Geographers*, 28, 2003, p. 425.

6 JA Fry, Constructing an empire? Guano, bananas and American foreign relations, *Diplomatic History*, 20(1), Summer 1996, p. 484.

7 S Firth, The pacific islands and the globalization agenda, *The Contemporary Pacific*, 12(1), 2000, p. 181.

8 A Porter, Britain, the Cape colony, and Natal, 1870-1914: Capital, shipping, and the imperial connection, *Economic History Review*, 34, 1981, pp. 544-555.

9 TR Dye, *Understanding public policy* (Englewood Cliffs, Prentice Hall, 1995), p. 300.

10 SM Gorman, The state, elite, and export in nineteenth century Peru: Towards an alternative reinterpretation of political change, *Journal of Interamerican Studies and World Affairs*, 21(3), August 1979, p. 396.

economic growth in newly-settled societies” and, as the later discussion will indicate, that the addition of new products and services (including guano) to Cape Town’s portfolio of “travel services goods”, contributed to the Colony’s slow shift towards becoming a more market-orientated one.¹¹ These matters and the shifting social, political and economic relationships upon which they were based, are discussed within the context of the early years of the Cape guano trade.

In this article the evolution of the Cape Colony’s guano policy is traced from its origins, as a policy dilemma following the discovery of the product on islands within colonial territorial waters. The possibility of an imminent “rush” for monopoly control against the backdrop of its geophysical challenges were other immediate dilemmas. Section two investigates the dynamics of the policy process – a typical three-legged bargaining process involving competition, persuasion and compromise between a colonial administration intent on appropriating guano income for government purposes, and local and foreign claimants demanding discoverers rights. The final section of the discussion deals with the legislative and policy outcome of the process, specifically the ultimate convergence of colonial and imperial thinking on the matter.

Towards a policy agenda: Geophysical challenges and guano solutions

The Cape Colony’s Mediterranean-type climate, noted Meadows, has always rendered its landscape “susceptible to land degradation, perhaps even desertification”.¹² Cultivating wheat was particularly tricky in the Overberg district with its lime soil, compared to the Swartland with its more sandy soil.¹³ This variation in soil quality in combination with regular and widespread droughts and flooding further rendered only small pockets of the colony suitable for cultivation. Soil erosion also aided the dispersal of weed seeds and the proliferation of nuisance weeds and poisonous plants. Farmers were constantly in battling “with the residual grasses for control of the soils and available water supplies”.¹⁴ The 17th-century Dutch settlers, faced with this reality, used a combination of kraal manure and guano (bird manure) to

11 WH Boshoff & J Fourie. The significance of the Cape trade route to economic activity in the Cape colony: A medium-term business cycle analysis, *European Review of Economic History*, 14(3), 2010, p. 8.

12 ME Meadows, Soil erosion in the Swartland, Western Cape Province, South Africa: Implications of past and present policy and practice, *Environmental Science & Policy*, 6(1), February 2003, pp. 17-28.

13 J Wilson, Rural revolution – wheat, wool and politics in the Overberg, *Contree*, 31, April 1992, p. 3.

14 L van Sittert, “‘The seeds blows about in every breeze’: Noxious weed eradication in the Cape colony, 1860-1909”, *Journal of Southern African Studies*, 26(4), December 2000, pp. 656-657.

fertilise the land. While dung was collected from a range of widely distributed pasturages and paddocks, guano was obtained from the offshore islands in Saldanha Bay. Given the small volumes of the available product, most farmers combined manuring with long fallow periods to aid the recovery of productive land.¹⁵ Hamstrung by a general lack of scientific knowledge about plant growth, land restoration and the general scarcity of cultivable land, farmers continued to struggle to reclaim the veld for agricultural purposes and to arrest its eroding effect on agricultural profits.¹⁶ Cattle-farming, as a result, became the preferred enterprise for individuals involved in subsistence farming. As a result of the dominance of subsistence farmers (75%), the Cape Colony was weighed down by an “unbalanced” economic system at the beginning of the nineteenth century. The small “capitalist upper layer” of industrial (one-eighth or 1/8) and commercial and transport entrepreneurs (one-sixteenth) who were generally risk-averse, as a result, orientated their enterprises towards rendering support services to the farming community in fields such as milling, baking, wine-making, beer brewing, fruit canning and wagon-building, and left “speculative opportunity trade” to others.¹⁷

During the first decade of the 19th century, the results of chemical analyses of guano samples obtained from several Peruvian offshore islands indicated that the excrement of seabirds not only contained significant volumes of nitrogen and phosphate (both pre-requisites for plant growth) but that the product was suitable for the fertilisation of both heavy and light soils. This discovery, together with possession of the right agricultural skills set, globally offered farmers a realistic opportunity to begin to reverse the environmental infertility crisis.¹⁸ It, however, required the skilful marketing efforts of a small group of British businessmen through pamphleteering and the regular publication of positive harvesting results in agricultural publications such as the *Farmers Magazine* and the *Journal of the Royal Agricultural Society*, to position guano as the preferred fertiliser of British and North American farmers at the start of the 1840s.¹⁹ The efforts of British farmers to consistently fertilise were, however, frustrated by the inconsistency of supply from Peru, the only known source of the product at the time. As a result, the British Royal Agricultural Society

15 L. Guelke, *Die blanke setlaars, 1652-1780*, H. Gilliomée & R. Elphick, eds., *'n Samelewing in wording* (Cape Town, Maskew Miller Longman, 1990), p. 50.

16 L. van Sittert, ““The seeds blows about in every breeze’: ...”, *Journal of Southern African Studies*, 26(4), December 2000, p. 662.

17 AL Muller, *Die ekonomiese ontwikkeling van Suid-Afrika* (Pretoria & Cape Town, Academica, 1979), pp. 52-54.

18 J. Fourie & D. von Fintel, “Settler skills and colonial development” (Working Paper Number 213, University of Stellenbosch & University of Utrecht, March 2011), p. 1.

19 WM Mathew, *Peru and the British guano market, 1840-1870*, *The Economic History Review*, 23(1), 1970, p. 114.

offered £1000 as a reward for the discovery of an alternative guano source or an acceptable substitute to aid the farmers.²⁰ Cape farmers, in contrast, were wholly ignorant about both these developments and the availability of compound manures.²¹ This general ignorance contributed to the failure of a contemporaneous initiative by local businessman, Thomas Ramsden to start a guano business with deposits collected from the islands in Saldanha Bay.²² Thus when guano was discovered during 1843-1844, on various offshore islands along the Namib coast north of the Cape's territorial waters, there was no immediate incentive for the establishment of a concurrent market.

Since the Angra Pequena islands on the Namib coast were under no political authority, these spaces in classical "hunter-gatherer" fashion, became the target of a "guano rush" during which shipmasters/owners and speculative businessmen, including several Cape Town citizens, attempted to establish monopoly control over the resource.²³ During the early part of 1843, Ichaboe island, close to Walvis Bay, became the scene of violent conflict when various individuals, organised as the Committee of Shipmasters and Others (COSO), without any proper political or legal authority, set up a port authority, appropriated the labour of all sailors for loading purposes and charged a fee for guano loading. Given the irregular nature of these acts, those excluded from authority mobilised their shipping crews and challenged the authority of COSO. After they took control over the island, they established a "guano republic". In the face of this challenge, COSO appealed to the Cape government, the closest legal authority, for intervention, citing a need for the protection of "Britain's national commercial interests".²⁴ Order and the managerial structure was restored with the aid of the crews of warships dispatched from the British naval base at Simon's Bay, and the islands scraped clean to the rock. Although some of the product reached Cape Town and was sold to local farmers, the bulk of it (about 77 073 tons from Ichaboe during 1844) was exported in its natural form to the overseas market.²⁵ When further discoveries were made on the islands within the Cape's territorial waters during 1843-1844, the focus shifted southward.

20 WT Jordan, The Peruvian guano gospel in the Old South, *Agricultural History*, 24(4), October 1950, p. 212.

21 JC Chase, *The Cape of Good Hope and the Eastern Province of Algoa Bay, with statistics of the colony* (London, Pelham Richardson, 1842), p. 150.

22 Western Cape Archives Services/Kaapse Argief Bewaarplek/Cape Archives Repository, Cape Town (KAB hereafter): Colonial Office (CO hereafter), 4020: 133, Collector of Customs – Governor, 26 December 1844.

23 C Newbury, Mammon in paradise: Economic enterprise in Pacific historiography, *Pacific Studies*, 19(2), 1996, p. 48.

24 H Snyders, From Peru to Ichaboe: The dynamics of a shifting guano frontier, 1840-1845, *African Historical Review*, 48(2), 2016, p. 11.

25 RSF, Statistics of Guano, *Journal of the American Geographical and Statistical Society*, 1(16), June 1859, p. 181.

Monopoly struggles: Opportunity, networks and policy dilemmas

In August 1842, fourteen months before the arrival of the first guano from Ichaboe, Thomas Ramsden launched the first recorded effort to initiate a guano market in Cape Town with a load obtained from Malgas Island in Saldanha Bay. Ramsden, in all probability, was not acquainted with the dynamics or the profitability of the international trade, since he never registered any claim to the guano deposits on the Saldanha islands. Surrounded by a general ignorance about the efficacy of fertilisers other than kraal manure, his product did not raise any particular interest amongst colonial administrators, farmers or merchants. Indeed, after months of struggling, Ramsden was left in possession of half of his original shipment.²⁶ This situation was to change in two years when the Cape Colony faced the possibility of an uncontrollable guano rush.

Ramsden's dilemma was not unusual and was a typical example of the struggle of 19th century small businessmen contemplating the launch of a speculative venture with minimal capital.²⁷ A small boat owner and barkeeper, his limited sales success indicated that he was not a member of the existing commercial or agricultural network of merchants and farmers with Cape of Good Hope Agricultural Society membership.²⁸ Had this been the case, guano would have found a new market and would also have entered the policy domain earlier.

Benjamin Norden & Co from Ichaboe Island collected the first Namibian guano that landed in Table Bay Harbour in January 1844.²⁹ Norden, a successful local Cape businessman and a Ward Master of the Cape Town Municipality, was amongst the first to become involved in the exploitation of the islands along the Namib coast. There is a strong possibility of him having been a member of COSO since a contemporary witness account indicated that Cape Town businessmen were active participants in the attempt to secure a controlled monopoly on the islands.³⁰ A member of Cape Town's commercial elite, he was a prosperous landowner with properties spread over six districts of the Colony, an active and leading member of the Board of Ward Masters,

26 KAB: CO, 4020: 133, Letter: Collector of Customs/Governor, 26 December 1844.

27 W Gamber, Gendered concerns: Thoughts on the history of business and the history of women, *Business and Economic History*, 23(1), 1994, p. 129.

28 KAB: Cape Supreme Court (hereafter CSC) 2/6/1/24:11; 20 May 1845.

29 L Herman, *The history of the Jews in South Africa from the earliest times to 1870* (London, 1930), p. 111.

30 Ex member of the committee, "The African guano trade – being an account of the trade in guano from Ichaboe, and other places on the African coast, more particularly the proceedings of the committee of management", *Nautical Magazine*, XVI, 1845, p. 630.

the local Jewish Society and the Commercial Exchange, the single most important business association in Cape Town.³¹ In May 1841, Norden was also part of a group who attempted to reform the Commercial Exchange to become more broad-based and inclusive. As a member of the colonial elite, he was thus better positioned than Ramsden (with whom he was in partnership in a Hout Street canteen), to steer the process of establishing a local guano market.³²

During 1844 guano forced itself onto the colonial political agenda on the back of an influx of memorials and claims by individuals seeking access to the resource on offshore islands within the Cape Colony's territorial waters.³³ These discoveries stretched from Saldanha Bay in the north to Algoa Bay in the South (see map below – Image 1). Cape Town-based leaseholders involved in fishing and collecting sealskins and penguin eggs on the Cape offshore islands and for whom guano offered new financial opportunities were amongst the first to stake a claim for discoverer's rights. A range of others soon joined them, from foreign ship captains to several shore-based businessmen with no prior involvement in the maritime industry but for whom the collection of guano represented a profitable speculative opportunity.

When the guano question entered the public domain in Cape Town, the colonial administration found itself amid an administrative reshuffle with Governor George Napier in the process of leaving Cape Town following a recall to Britain. Under the existing system, policy formulation, drafting of regulations and the setting up of administrative systems were the sole prerogative of the Colonial Governor. As a particular interest group, Colonial citizens had no say in the colonial administration.³⁴ Indeed, noted Murray, "each of the Governors came with a policy of his own, arranged between himself and his Imperial superiors".³⁵ The battle for guano rights, as a result, unfold as a struggle between the colonial authorities, speculative entrepreneurs, and Cape Colony-based businesses that represented not only distinct social, political and economic interest groups in

31 JL Meltzer, "The growth of Cape Town commerce and the role of John Fairbain's Advertiser (1835-1859)", *Argief Jaarboek vir Suid-Afrikaanse Geskiedenis* (Pretoria, Government Printer, 1994), p. 144.

32 KAB: CSC. Illiquid Cases I2/6/1/24:11, 20 May 1845.

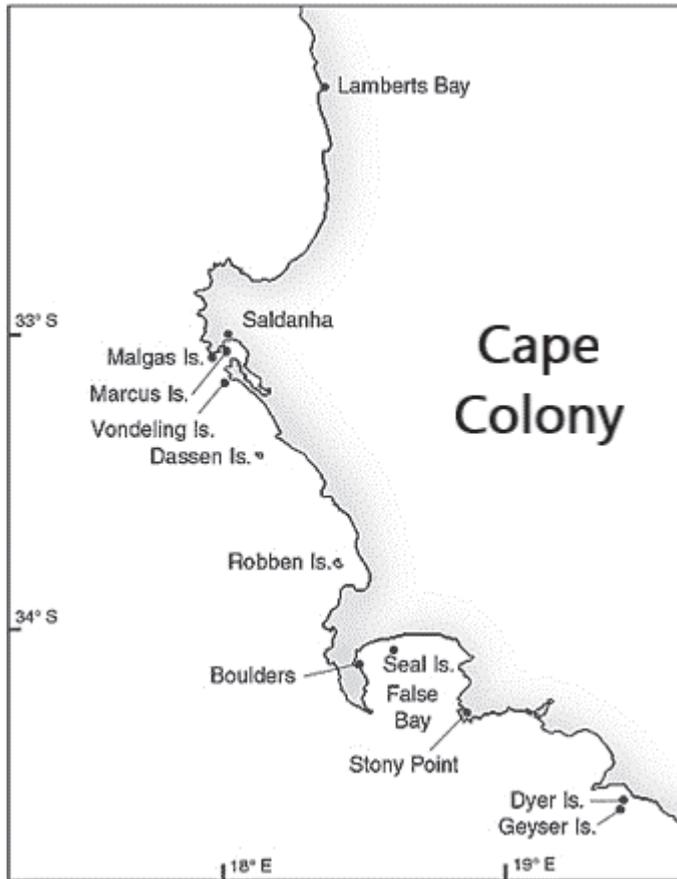
33 The use of tactics such as memorials and claims are all part of what Dye has called political tactics aimed at creating, dramatising, raising awareness and pressuring government towards adopting a particular policy agenda. See TR Dye, *Understanding public policy...*, p. 310.

34 M George, John Bardwell Ebdon: His business and political career at the Cape, 1806-1849, *Argief Jaarboek vir Suid-Afrikaanse Geskiedenis*, 49(1) (Pretoria, Government Printer, 1986), p. 70.

35 RW Murray, *South African reminiscences: A series of sketches of prominent public events which have occurred in South Africa within the memory of the author during the forty years since 1854, and of the public men, official and unofficial, who have taken part in them* (Cape Town, Juta, 1894), p. 177.

the various spheres of colonial life but also more extensive business networks in the Mother Country. These networks promoted interdependence and cultural convergence, transnational diffusion of new entrepreneurial knowledge (economic ideas, technologies and commercial practices) and the establishment of mutually-beneficial partnerships.³⁶ They were also at the centre of the export-orientation of local businesses as they strive to optimise profit through selling on the European market with its higher prices and by exploiting the relatively low freight costs through the use of still useful but non-insurable ships – ones deemed unfit for the transport of any other freight but guano as will be shown in the next discussion.

Image 1: Location of the Cape Guano Islands, ca 1843



Source: Avian Demography Unit, University of Cape Town, ca 1843.

36 A Thompson, "The power and privileges of association: Co-ethnic networks and the economic life of the British imperial world", *South African Historical Journal*, 56, 2006, p. 46.

Leaseholders, discoverer's rights and public income

In February 1844 the trustees of the insolvent estate of John Norton, Messrs John King & RW Paton, submitted a memorial to the Governor requesting the right to collect guano from Bird Island and Chuan Island on the coast of Algoa Bay for their account,³⁷ followed by a further request to have the remainder of this lease transferred to the trustees in May 1844.³⁸ Norton, who held the lease for six years after 18 October 1841, owed the colonial authority an amount of nearly £70 for outstanding rent and penalties. Sensing an opportunity to redeem himself financially, his trustees appealed to the colonial authorities for a second chance. This request was, however, declined on legal grounds, specifically the requirement that forbid the automatic transfer of existing leases to third parties.³⁹ All outstanding debts first had to be settled and the contract renewed before they could consider the request. Given Norton's already precarious financial situation, the likelihood of this happening was very slim. The absence of an appeal authority given the powers vested in the Colonial Governor whose position was still vacant following Napier's recall to England further constrained him. Any review of the original decision, hence, had to stand over until a new Governor assumed office. There was also no other recourse since the colonial legislature had neither the right to establish investigative commissions nor the power to subpoena witnesses to give evidence.⁴⁰ Since the guano market was essentially an export market and the infant nature of the local trade, it was highly unlikely that already struggling businessmen would succeed in establishing anything beyond a small-scale operation.

In October 1844, several months after the Norton application, Robert Arthur Cain, a visiting shipmaster from the port of Greenock, Ireland, registered a claim on guano deposits discovered on Malgas Island in September 1844. In his memorial to both the Resident Magistrate and the Colonial Government, he claimed "discoverers rights" and argued that thanks to the application of his "practical knowledge" of the trade, he was able to ascertain "the existence and value of the said deposit, which ..." otherwise "but for his research

37 KAB: CO, 4020:101, Memorial: John King & RW Paton: Trustees of the Estate of John Norton/Governor, 23 February 1844.

38 KAB: CO, 4020:100, Memorial: John King & RW Paton: Trustees of the Estate of John Norton/Secretary to Government, 10 May 1844.

39 KAB: CO, 4020:101, Memorial: John King & RW Paton, 23 February 1844. Notes scribbled on the original memorial. No record of a formal communication to the applicant could be found in the records.

40 M George, John Bardwell Ebdon ..., *Argief Jaarboek vir Suid-Afrikaanse Geskiedenis*, 49(1), p. 70.

... might have remained dormant for years”.⁴¹ Although this type of claim appeared to be unrealistic or even baseless, it was well within the ambit of the established international law and practice, especially the principal of ‘terra nullius’ or “occupation, that is establishing control over territory that was un-administered at the time of the claim”.⁴² Although Malgas was an offshore island and without a dedicated customs authority, it still formed part of the larger Saldanha Bay, an area that resorted under the direct authority of a Government Resident and Magistrate George Marsh, who was coincidentally also a founder member of the Commercial Exchange.⁴³ As a result, they refuted Cain’s claim while the customs records further revealed Thomas Ramsden as the actual discoverer,⁴⁴ signalling to entrepreneurs that the colonial authorities had no intention of awarding rights based on claims of first discovery. As a visiting shipmaster Cain, also lacked a strong local network and was in no position to influence the colonial administration. He, like most shipmasters who participated in the “Ichaboe Rush”, had little entrepreneurial inclination or intention except to obtain a free load of guano to be sold for maximum profitability.⁴⁵

With the start of a guano rush for Malgas Island in Saldanha Bay in October 1844, things became complicated as several highly influential local businessmen such as John Bardwell Ebden and Antonio Chiappini, Benjamin Norden and Harrison Watson entered the field. The first-mentioned men, according to George, were also the “main defenders of the rights and privileges of the Legislative Council” and thus represented a category of individuals who would not meekly accept the dictates of the colonial authorities.⁴⁶ They were also representatives of distinct social, political and economic interest groups in the various spheres of the Cape Colony without suggesting that all of them were consistently anti-government or pro-government. Watson (a Wardmaster like Norden), for example, occupied the ranks of both the mercantile elite and politically conservative collaborationist group – people with close links to the colonial political bureaucracy and a special relationship with the Governor.⁴⁷ New governor, Peregrine Maitland, consequently had

41 KAB: CO. 4020:150, Memorial of Robert Arthur Cain – Secretary to Government, 21 October 1844.

42 AF Burghardt, “The bases of territorial claims”, *Geographical Review*, 1973, p. 226.

43 JJ Heath-Caldwell, “George Marsh: An overview”, Historical biographies: Ancestors, relatives & people of interest to JJ Heath-Caldwell (available at <http://www.jjhc.info/marshgeorge1868.htm>, accessed on 20 June 2016).

44 KAB: CO, 4020:150, Letter: Secretary to Government/COC, 23 December 1844.

45 WB Gartner, “Who is an entrepreneur? Is the wrong question”, *Entrepreneurship, Theory and Practice*, 13(4), 1989, p. 62.

46 M George, John Bardwell Ebden ..., *Argief Jaarboek vir Suid-Afrikaanse Geskiedenis*, 49(1), p. 68.

47 D Warren, “Merchants, commissioners and wardmasters: Municipal and colonial politics in Cape Town, 1840-1854”, *Argief Jaarboek vir Suid-Afrikaanse Geskiedenis*, II (Pretoria, Government Printer, 1992), p. 15.

more than his fair share of political challenges.

Maitland inherited a debt-ridden administration and “as he was assured by those occupying office at the time, without any resources for him to develop”, was mindful of the need to find new sources of income to fund his administration.⁴⁸ The Cape Colony, noted Gwaindepi, was also still an evolving fiscal state and far from fiscal modernity. A fiscal state, according to him as quoted, is characterised “by the centralisation of government revenue, establishment of long term debt, commitment to welfare provision and the transition to a responsible, albeit limited government”.⁴⁹ The only real instrument at Maitland’s disposal at that point was the established right and privilege of colonial administrations to change policy – “a change both of principle and plan”.⁵⁰ The discovery of guano on islands within the Cape’s territorial waters that threatened to become a significant bone of contention between the administration, citizens and visiting shipmasters, however, offered him with a “fortunate addition” to the treasury. What was needed, however, was for the Colonial Government to establish full management control over the islands and to prevent a disorderly rush as has happened at Ichaboe.

The colonial authorities ordered the Colonial Surveyor General to carry out a full survey to determine the actual size of the resource, to ensure the orderly exploitation of all guano deposits on islands within the Cape’s territorial waters. This exercise indicated that the total available guano on Malgas covered an area of at least eight acres broad and seven to eight yards deep.⁵¹ With the available quantities, determined, the administration erected several stages to facilitate loading. On the 5th November 1844 and following the installation of the necessary loading infrastructure, the authorities informed the public of the availability of guano-loading licences at the cost of £1 per registered ton. These licenses had to be procured from the Office of the Collector of Customs in Cape Town.⁵² Buyers, however, had to provide the labour for the collecting and loading of guano. The colonial authorities, however, were willing to assist in cases of oversubscription of licenses to determine loading priority.⁵³ In a notice dated 31 December 1844, the authorities ordered all

48 RW Murray, *South African reminiscences...*, p. 99.

49 A Gwaindepi, “State building in the colonial era: Public revenue, expenditure and borrowing patterns in the Cape Colony, 1820-1910” (Ph.D, Stellenbosch University, 2018), p. 17.

50 RW Murray, *South African reminiscences...*, p. 178.

51 KAB: Cape of Good Hope Government Gazette, No. 2048, 21 March 1845, Government Notice, 5 November 1844.

52 KAB: Cape Archives Depot (CAD hereafter), 2/1/1/63:C14/117: Letter: Assistant Chief Archivist/RW Rand, 24 September 1948.

53 KAB: Cape of Good Hope Government Gazette, No. 2048, 21 March 1845, Government Notice, 5 November 1844.

civil commissioners, resident magistrates, peace officers and other public officials to enforce these rules and police this geographically dispersed area. Since they undertook this work without any prior Imperial approval, the levying of a license fee was instituted as a cost-recovery measure. While the system of licenses prevented some problems, it also created new tensions in government-business relations. At stake was the future of the license system itself – a measure rejected by some businessmen. In the absence of specific conservation legislation in the Colony, licenses contained no stipulation about the protection of the guano birds, their eggs or chickens. The first legislation to protect seabirds in Britain followed only in 1869 with the promulgation of the English *Sea Birds Preservation Act*. Similar legislation in the Cape Colony only followed in 1891 with the publication of Proclamation 316 that formed part of the stipulations of the *Game Act* (Act 36 of 1886) that outlawed the wanton killing and disturbance of gannets, cormorants and penguins.⁵⁴ Guano-collection was mostly a free-for-all with little regard to the protection and preservation of both the seabirds and their natural habitat.

New claims, proposed joint ventures, rogues and thieves

In the second half of December 1844, ship-owner N Mellon approached the colonial authorities with an offer of a mutually-beneficial public-private partnership with terms that extended beyond those laid down by the standard guano licence conditions. He proposed to remove 10 000 tons of guano at a rate of £1.10 per registered ton.⁵⁵ Mellon, like Cain earlier, was a single operator and similarly intent on making a quick profit from a speculative venture, and also lacked a robust business-support network. Consistent with the official approach, Mellon's offer was also rejected. Despite the consistency in official refusal, it failed to resolve the existing policy dilemma. Instead, it fostered dissatisfaction and generated open opposition from colonial citizens.

Later in the same month, Antonio Chiappini of A Chiappini & Co, a member of the Commercial Exchange and an individual with close personal relationships with individual colonial functionaries and multiple business interests that ranged from wool farming (as a member of the Association for the Improvement of Cape Wool), cotton-trading (through the Natal Cotton Company) and inter-colonial trade as far as Australia, submitted a claim to

54 KAB: Official Papers of the Cape Colony (AMPT PUBS), CCP 1/2/1/82: Memorandum on the Working of the guano islands (G.55 – '92), 1892.

55 KAB: CO, 4020:152, Memorial: N Mellon/Governor, 21 December 1844.

an island to the north of Cape Town.⁵⁶ He, however, refused to identify the island in question and demanded the conclusion of a joint venture with the colonial authorities as a precondition for disclosure.⁵⁷ It is not clear whether this strategy meant to test the resolve of the new Governor or whether it was an attempt to use his long-standing relationship with the authorities to his advantage. Whatever his motivations were, his strategy backfired as his proposal was summarily rejected. The colonial authorities refused to conclude entrepreneurial agreements based on selective disclosure of information and, arguably, subtle forms of blackmailing. Chiappini, unlike Norton or Cain, as earlier mentioned, was well-connected politically and resented the rejection of what he regarded as legitimate claims and demanded that the existing system be scrapped. He also denounced the official approach of the colonial government as open opposition to private enterprise,⁵⁸ further polarising the contestation around guano and aggravated what Keegan labelled the 'chaffing' felt by a significant group of Cape citizens about "their lack of leverage over the governor and his administration".⁵⁹

Despite consistent government rejection of applications for leaseholder and discoverer's rights as well as joint ventures, individual requests continued. In January 1845 George Twycross followed the established method of submitting memorials to the authorities requesting the right to collect guano freely for the remainder of his existing lease over Dyer Island near Cape Agulhas. He was particularly offended by the Colonial Government's failure and accused the authorities of giving no privilege as the present lessee, ignoring his legitimate rights and indifferent to his lack of means of paying such demand.⁶⁰ Like his predecessors, Twycross was also in financial difficulty and identified the discovery as a potential means to resuscitate his struggling business.⁶¹ To show his goodwill, he offered to provide the authorities with a guarantee or surety for payment of 20% for the right to collect guano from the island.⁶² When both the Collector of Customs and the Secretary to Government failed to respond timeously despite Twycross having raised the amounts he previously offered, he resorted to guano theft.⁶³ The Collector of Customs, as a result, impounded his boat and equipment. Fortunately for Twycross, nothing more

56 D Warren, "Merchants, commissioners and wardmasters...", *Argief/Jaarboek vir Suid-Afrikaanse Geskiedenis*, II, p. 15.

57 KAB: CO, 4020:151, Memorial: A. Chiappini & Co./Governor, 24 December 1844.

58 KAB: CO, 4020:143, Memorial: A. Chiappini & Co./Governor, 18 June 1850.

59 T Keegan, *Colonial South Africa and the origins of the racial order* (Claremont, David Phillip, 1996), p. 168.

60 KAB: CO, 4027:659, Memorial: George Twycross/Governor Maitland, 11 January 1845.

61 KAB: CO, 4027:156, Memorial: George Twycross/Governor Maitland, 13 January 1845.

62 KAB: CO, 4027:157, Memorial: George Twycross/Governor Maitland, 27 January 1845.

63 KAB: CO, 4027:158, Memorial: George Twycross/Governor Maitland, 31 January 1845.

serious happened, and his boat was returned after three days.⁶⁴

Judging by the stream of correspondence around collector's rights, a growing sense of anger with the authorities was growing amongst significant sectors of colonial society. The blatant rejection of what applicants regarded as their legitimate claims undoubtedly reminded Cape citizens of their lack of proper representation in the light of the systematic disempowerment of the Legislative Council by successive Colonial Governments. In the two decades before the discovery of guano in the Cape's territorial waters, Cape citizenry was actively agitating through public meetings and petitions, for self-rule and representative government. Although a Legislative Council and Executive Council were instituted in 1834, it was far from representative since it consisted of a majority of colonial government officials and about six unelected or unofficial members, with the former group dominating local political affairs. Further, in addition to its inadequacy in terms of powers and functions, it was also elitist (mostly land and business owners) and therefore not a genuinely democratic institution reflective of all shades of political opinion and group interests.⁶⁵ This situation, according to Kilpin, was still one of bureaucracy and one that continued to give "little more satisfaction than autocracy".⁶⁶ By 1841 the Cape Municipal Council in the presence of a continued lack of a genuinely representative government, consequently, assumed the mantle of becoming the "self-appointed articulator of public opinion in Cape Town", demanded full representative government.⁶⁷ The registration of further discoveries and claims from Donkin Bay on the west coast to Algoa Bay on the east coast with islands such Dassen and Bird Island (False Bay) in between, aggravated matters and introduced the likes of John Owen Smith into the contested situation.

Smith, in comparison to most of the other applicants, represented a different trajectory in the struggle for guano rights. When the first guano arrived in Table Bay in January 1844, Smith was still en route to Cape Town after a visit to England. Shortly after his arrival on 21 January, he obtained the fishing and sealing licence for Bird Island, Algoa Bay, formerly held by John Norton.⁶⁸ Norton, as mentioned earlier, was unsuccessful in his efforts to convince the

64 KAB: CO, 4027:661, Memorial: George Twycross/Governor Maitland, 31 January 1845.

65 JL Meltzer, "The growth of Cape Town commerce...", *Argief Jaarboek vir Suid-Afrikaanse Geskiedenis*, p. 177.

66 RP Kilpin, *The romance of a colonial parliament: Being a narrative of the parliament and councils of the Cape of Good Hope from the founding of the colony by Van Riebeeck in 1652 to the Union of South Africa in 1910* (Longmans, Green and Company, 1930), p. 4.

67 D Warren, "Merchants, commissioners and wardmasters...", *Argief Jaarboek vir Suid-Afrikaanse Geskiedenis*, II, p. 133.

68 A Porter, "John Owen Smith 1804-1871", *Looking Back*, 24, 1984, p. 94.

colonial authority to allow him collection rights. As an astute businessman, Smith was always on the lookout for new opportunities to advance his diverse economic interests that included boating, shipping, fire-arms, farming and property development.⁶⁹ When the guano craze hit Cape Town in early 1844, Smith started to sell guano, only to be prevented by the colonial authorities since his actions were contrary to the conditions of his lease. Over time, and fully conscious of the profitable nature of the guano trade, Smith in open defiance of the restrictions on unofficial collection and sales, went ahead and launched a rogue enterprise. In addition to selling guano for fifteen shillings per ton in direct competition with the official government price of £1, he employed F Joly in London as his marketing agency to manage overseas sales.⁷⁰ These actions were not only an unambiguous rejection of the official policy but also communicated a strong sentiment that as far as the leaseholder was concerned, the existing fishing and sealing lease was sufficient grounds for the right to remove guano from the same locality. When the government retaliated by appropriating the guano, Smith threatened legal action to ascertain his rights and to challenge any attempt to terminate his hold over Bird Island. This standoff resulted in the first deviation from the official course.

In the light of Smith's legal threat and following the advice from the colonial legal establishment, the authorities started to negotiate with him in the hope of securing his compliance. In contrast to the impounding of Twycross' property for guano theft, the authorities further offered Smith £25 000 to abandon his rights and to vacate the island.⁷¹ Smith, in turn, refused and proposed a compromise whereby he would receive 50% of the proceeds of all guano licenses issued as compensation for terminating his activities. On 6 May 1845, the Colonial Government, contrary to its official position, accepted this proposal (plus amendments) as a formal agreement between itself and Smith. In terms of this agreement, Smith would take responsibility for all entrepreneurial activities (collecting, bagging and exporting of guano) while the authorities would take responsibility for overseas marketing. In addition, Joly (Smith's original agent) had to cease his activities. The parties further agreed that once operational costs had been deducted, the net profit would be equally distributed and the agreement would remain valid until

69 KAB: CO, 4020:101, Memorial: John King & RW Paton: Trustees of the Estate of John Norton/Governor, 23 February 1844.

70 A Porter, "John Owen Smith...", *Looking Back*, 10, 1970, p. 95.

71 KAB: Public Works Department (PWD hereafter), 2/3/12/B.300 – Précis of Papers in the Office of the Commissioner of Crown Lands and Public Works relative to the removal and sale of guano from the Bird Islands, Algoa Bay, April 1886, p. 2.

all the guano on the island had been removed. This particular stipulation was extremely problematic because it ignored the fact that guano birds are migratory (they left the islands on a seasonal basis and added to the existing deposits continuously). It was also challenging to demarcate precisely where the new deposits started and where the old ones ended. The source was virtually permanent and thus presented a major structural flaw in the Cape's guano administrative system.

The exclusive agreement between Smith and the Colonial Government created an unhealthy precedent given the consistent rejection of similar other claims. It was, however, not surprising considering Smith's networks within the colonial administration. His attorney, E Christian, was not only an influential member of the Commercial Exchange and the Colonial Harbour Board but also an elected representative and member of the Legislative Council (1851 – 1853).⁷² These links provided Smith with potent allies with direct links to critical colonial functionaries and institutions – a trend also observed in other parts of the international guano trade. Smith also played an essential role in the political and social affairs of the Eastern Province. Beyond having organised a defence strategy for Port Elizabeth against a possible Xhosa attack (1835), his properties housed a government customs office and bond warehouse. He was also a justice of the peace, an auctioneer and agent for Lloyd's insurers in London.⁷³ These were not the sole reasons for his preferential treatment as there is undoubtedly evidence of other less successful clashes between Smith and the colonial authorities such as when he sold guns and ammunition to the Boers in Natal after the British occupation of the territory in 1838.⁷⁴

However, when one considers the combination of his various roles and the strategic importance of the eastern districts for the colonial project, Smith became much more than an ordinary businessman and more of a valuable ally and de facto functionary in the colonial network, placing him in the ranks of the colonial political elite whose potential input about the management of guano, has mostly been ignored by the new Governor. Given the vital role that he and his peers typically played within the larger scheme of things and the influence that they were able to muster, ignoring their applications represented a strategic miscalculation on the part of Governor Maitland. Smith's special dispensation further set an important precedent given concerns

72 D Warren, "Merchants, Commissioners and Wardmasters...", *Argief Jaarboek vir Suid-Afrikaanse Geskiedenis*, II, p. 138.

73 A Porter, "John Owen Smith...", *Looking Back*, 10, 1970, pp. 93-95.

74 A Porter, "John Owen Smith...", *Looking Back*, 24, 1984, pp. 93-96.

about the possibility of London-based entrepreneurs outmanoeuvring their colonial counterparts once the colonial authority has reported the full extent of the Cape guano resource to the Imperial Government as requested. Those close to the events in Cape Town had more than a passing interest in the Smith-affair. These events also give credence to Day's assertion in a different context that the activities of elite political constituents influenced the final policy outcome.⁷⁵

The colonial state, in a short time, developed a direct financial stake in the maintenance of the status quo. By 31 December 1844, one month after the implementation of guano licenses, the colonial treasury had already collected £1 276 without any significant capital layout.⁷⁶ Keeping this readily available income (or "fortunate addition" as the Colonial Secretary described it) as a source under the exclusive control of the authorities, thus, became a priority.⁷⁷ Policing the geographically dispersed Cape guano trade was already difficult with the potential of guano-theft increasing to the detriment of the system as a whole, a distinct possibility. Such a situation had to be prevented at all costs as it was central to ensuring the long-term profitability of the trade. The constant refusal of applications given the growing dissatisfaction amongst key colonial stakeholders was, however, not sustainable within a context of political fragility and unhappiness about direct citizen representation in decision-making.

From a "non-judicial opinion" to the guano ordinance⁷⁸

At the beginning of 1845, functionaries within the colonial bureaucracy began to question the legal basis of the Colonial Government's guano collection arrangements, following several applicants claiming that Judge Menzies of the Cape Supreme Court had expressed the opinion that:⁷⁹

... being merely or mainly the droppings of unreclaimed birds, of a base nature it [guano] could not in law [emphasis in the original] [be] deemed to be property or to be possessed of legal value.

This question had severe practical and legal implications for the further management of the Cape trade. If the basis of the existing system were in doubt, it meant that the requirement of obtaining a licence before collecting

75 TR Dye, *Understanding public policy...*, p. 301.

76 KAB: CAD, 2/1/1/63: C14/117, Letter: Assistant Archivist/RW Rand, 24 September 1948.

77 J Burman & S Levin, *The Saldanha Bay story* (Cape Town & Pretoria, Human & Rossouw, 1974), p. 97.

78 KAB: GH. 23/12 : 36, Maitland – Stanley, 27/2/1845.

79 KAB: GH, 23/12: 36, Letter P Maitland/Lord Stanley, 27 February 1845.

guano was also without force and effect, signalling a possible return to the hunter-gather situation where the most influential power rules and where anyone could harvest and sell guano freely. It would also deprive the colonial treasury of a significant source of income. Despite doubts about the real motives behind the new developments, operating according to an ad hoc policy was wholly unsustainable. The only way to resolve the current dilemma was to formulate and promulgate a formal policy or legislation with the prerequisite administrative arrangements.

Based on the strategic considerations outlined above and to prevent guano theft and the rampant collection as well as to rectify the legal deficiencies, the Colonial Government published Ordinance 4 (the so-called Guano Ordinance) on 1 January 1845. According to this ordinance all guano, irrespective of location within the jurisdiction of the Cape Colony or its dependencies, was instantly declared Crown property.⁸⁰ After further refinement it was formally promulgated as the law on 21 March 1845, thereby removing all uncertainty regarding guano collection on the colonial islands and other colonial dependencies. The ordinance stated unequivocally that all unclaimed or non-concessionary and saleable guano was declared Crown property and that theft would be punishable by law, to address any non-obvious deficiencies in the measure.⁸¹

As a control measure, the Ordinance provided for definite administrative arrangements aimed at streamlining control of the exploitation of the various islands. The administrative responsibility for managing the new system, inclusive of the islands and dependencies, was given to the Collector of Customs and the Secretary to Government collectively.⁸² The daily task of issuing guano licenses in areas beyond Cape Town was delegated to several functionaries, including ordinary customs officials, resident magistrates, field cornets and Civil Commissioners. They were further also tasked with the prevention of guano theft.

The Guano Ordinance provided for penalties for various offences. Guano thieves or collection without a license were liable for a maximum fine of £100 as well as a term of imprisonment not exceeding three months with or without hard labour. Accomplices were liable for similar punishment and also faced confiscation of their property (boats and equipment). To ensure the workability of the system, the Ordinance made provision for some incentives

80 KAB: Cape of Good Hope Government Gazette, no. 2048, 21 March 1845.

81 KAB: GH, 23/15: 153; Letter: P Maitland / Lord Stanley, 28 October 1845.

82 Ex member of the committee of management, "The African guano trade ...", *Nautical Magazine*, XVI, 1845, p. 641.

for informants. Informants, whose testimony, for example, resulted in a successful conviction would receive half the fine payable by the convicted offender. The fines attached to the new Ordinance were particularly steep. An analysis of property values in Cape Town in the late 1830s and early 1840s indicated that an amount of £150 was enough to procure significant pieces of land in Stellenbosch and Rondebosch.⁸³ As stated earlier, John Norton was unable to settle his government debt of an estimated £70 that stood between him and economic survival. Judging by these measures, the Ordinance brought stability into the system. It, however, also cleared the way for the removal from the trade of those with limited capital to invest in a speculative venture given the operating costs associated with guano collection. Those with financial means, on the other hand, were better positioned to take advantage of the new system. The Guano Ordinance, given its status as colonial legislation, however, still had to be aligned with Imperial law.

Aligning the Cape Guano Ordinance and Imperial Law

Following the standard procedure in the British Empire, all colonial measures were subject to review by the Colonial Office to ensure full compliance with existing Imperial legislation, rules, precedents and procedures. Further, the type of measure, the colony from where it originated and “the attitude which the Colonial Office chose to take towards its enactment” determined the approval or rejection of any legislative proposal.⁸⁴ The arrangements and the resulting cost incurred by the Cape authorities to facilitate guano collection on the coastal islands were undertaken without the prior approval of the Imperial government. Until this matter was rectified, there was a real possibility that the proposed policy and its accompanying administrative system would be rejected.

With due consideration for the need to ensure full compliance, the Cape colonial authority communicated its actions around guano collections and the subsequent promulgation of the Guano Ordinance to the Imperial authorities on different occasions. In February 1845, before the promulgation of the Guano Ordinance, Governor Maitland requested formal approval for the passing of the legislation.⁸⁵ In terms of standard procedure, Lord Stanley, Secretary of State for Colonies, raised concerns about the expenses incurred in

83 JL Meltzer, “The growth of Cape Town commerce...”, *Argief Jaarboek vir Suid-Afrikaanse Geskiedenis*, p. 144.

84 DB Swinfen, *Imperial control of colonial legislation, 1813-1865: A study of British policy towards colonial legislative powers* (London, Clarendon Press, 1970), p. 36.

85 KAB: GH, 23/15: 36, Letter: P Maitland/Lord Stanley, 27 February 1845.

an industry about which the authorities had little knowledge of exploiting.⁸⁶ Given the importance of guano for the British farming community, it was agreed that the proposed ordinance was to be handled as an act approved by the Governor and already in force.⁸⁷ The Imperial government's formal consent, was, however, made dependent on the Cape administration's provision of more detailed information on expenditure and the true extent of guano resources for the benefit of London-based merchants as a whole.⁸⁸ This stipulation left Cape Town-based businessmen with a distinct feeling of discomfort.

Given the request for more information about the Cape trade, formal approval for the historical expenditure on loading infrastructure remained outstanding for a substantial period,⁸⁹ not unusual, nor was it indicative of serious differences between the Cape administration and their London counterparts about the interpretation of the policy. Non-approval in the domain of colonial administration was, however, considered a grave matter. Special permission, in turn, could restrict the powers of the local legislature and had to be handled with the utmost care. Furthermore, approval was usually only refused when the particular act contained a suspension clause and action was required.⁹⁰ The Guano Ordinance as an approved colonial act was not subject to restrictions or any further legal impediment to its implementation and enforcement. However, certain crucial policy matters had to be clarified before its approval.

In May 1845 the Colonial Secretary, Lord Stanley, submitted the Ordinance to the Privy Council for Trade and requested the Lords to give their opinion as to "whether this enactment would be productive of any such injury of this Kingdom as should prevent the confirmation of it by Her Majesty".⁹¹ Given the status of guano within British agriculture and the Royal Agricultural Society's support for more suppliers, the Privy Council did not object to the Ordinance. It, however, requested that the Cape Legislature refrains from imposing levies on the export of guano,⁹² complicating matters since the requirement of a guano licence was similar to a special levy and could, consequently, be construed as an obstruction to the free trade.⁹³ Its appearance

86 KAB: GH, 23/15:153, Letter: P Maitland/Lord Stanley, 28 October 1845.

87 DB Swinfen, *Imperial control of colonial legislation, 1813-1865...*, p. 36.

88 KAB: GH, 1/167: 21, Letter: Lord Stanley/P Maitland, 28 February 1845.

89 KAB: GH, 23/15: 41, Letter: P Maitland/Lord Stanley, 6 February 1846.

90 DB Swinfen, *Imperial control of colonial legislation...*, p. 37.

91 KAB: GH, 1/171: 21, Letter: Lord Stanley – P Maitland, 16 September 1845.

92 KAB: GH, 1/171: 21, Memorial: Office of the Committee of Privy Council for Trade/J Stephen, 10 May 1845.

93 KAB: GH, 1/171: 21, Letter: N Thorpe/C Lefevre, 23 May 1845.

on the agenda was the result of appeals by Cape Town businessmen, to their British networks for relief from the “injurious effect” of the need to acquire a guano licence that some regarded as an unjust piece of legislation. The Colonial Office, thus, had to search for further clarification since opposing views could result in the non-confirmation of what had become a critical piece of economic policy in the Cape Colony; further delaying the finalisation of the matter since the ensuing debate also considered issues about guano quality, determining the product’s real value; and balancing a fair charge or levy with duty-free imports to benefit British agriculture.

Following months of discussion, the Privy Council finally resolved that the guano licence be regarded as “a certain payment by way of [the] price paid for the article” and agreed to redeem some of the cost that the Cape government incurred in providing the necessary infrastructure to facilitate loading at individual islands.⁹⁴ The Cape colonial authorities also had to accept that any change in the charge for guano would result in a mandatory repayment of the price difference to all of the previous buyers. Such a result, it was argued, would “encourage the business of carrying away the guano to the adjacent continent, there to be stored as an article of sale and export” by local dealers and speculators rather than the Treasury.⁹⁵ It was therefore left to the Colonial Office to decide on the best action to benefit the imperial cause. The Guano Ordinance was then recommended for Her Majesty’s signature and communicated for formal implementation. This outcome, ironically, did not make it easier for Cape Town’s businessmen to access guano cheaply, as they were now obliged to obtain rights within the framework of British Imperial law.

By October 1845, with a full year’s experience of managing guano collection with the aid of a system of licenses, the Cape authority was able to report on the effectiveness of measures implemented as well as the actions taken to ensure separate and regular reporting to and by the offices of the Collector of Customs and the Secretary to Government.⁹⁶ From December 1844 to December 1845 the actual revenue collected from the islands (based on the sale of licenses to 174 ships) amounted to £46 682.10s.6d. Expenses for the same period, on the other hand, amounted to £4 200, highlighting the profitable nature of this industry.⁹⁷ The Cape government, consequently,

94 KAB: GH, 1/171: 21, Letter: C Lefevre/J Stephen, 14 June 1845.

95 KAB: GH, 1/171: 21, Letter: J Stephen/C Lefevre, 15 July 1845.

96 KAB: GH, 23/15: 153, Letter: P Maitland/Lord Stanley, 28 October 1845.

97 KAB: CO, 525, Treasury and Audit Office/CO: Statement of Revenue and Expenditure of the Colony of the Cape of Good Hope, 1844.

gained a valuable supplementary source of income and a “fortunate addition” of about £51 000,⁹⁸ resulting in increased optimism in local business circles, even amongst those who had initially opposed the system, and calls that this income be utilised for the improvement of colonial infrastructure in general and the construction of a dry dock in Mouille Point in particular.⁹⁹ Given the diverse needs of the Colony, guano income, however, had to be spread over a wide range of functions including for the improvement of public infrastructure.

Conclusion

The promulgation and implementation of the Guano Ordinance policy was the culmination of a short but intensive process of issue-creation, amplification and persuasion driven primarily by a group of well-connected individuals and influential interest groups. During this process, the colonial authority had to deal with a diverse set of ‘guano-claiming techniques’ ranging from negotiation, theft and rogue trading to the more conventional submission of memorials in an unstructured and informal policy process. The administration was also provided with a variety of policy options including using fishing leases as a basis for guano rights, granting discoverer’s rights, and the possibility of establishing joint ventures and public-private partnerships. This agitation by its nature further became an extension of the longstanding struggle for representative government. The existence of a non-judicial opinion that questioned the legal basis of the Guano Ordinance, however, confronted the colonial authorities with the possibility of uncontrolled guano collection and theft. Declaring guano the property of the Crown remedied this matter. The authorities finally also settled on a hybrid management model consisting of the guano collection license system for the majority of the inshore islands and a joint venture based on the Bird Island Agreement. In this way, the Treasury was sure to continue to benefit from the trade as had been the case since opening the exploitation of Malgas Island. The Guano Ordinance, however, still had to pass the test of imperial scrutiny, since those denied first discoverer’s rights contested it, starting a second policy debate wherein the interests of both the Colonial Treasury and British agriculture, in general, were considered. In the end, the Cape Colony’s approach of selling guano licences was accepted as the only sound basis for managing the resource

98 KAB: CO, 539, Treasury and Audit Office/CO: Statement of Revenue and Expenditure of the Colony of the Cape of Good Hope, 1845.

99 KAB: CO, 564, Treasury and Audit Office/CO: Statement of Revenue and Expenditure of the Colony of the Cape of Good Hope, 1846.

to the benefit of the Colony and the Empire at large.

The Cape Guano Ordinance, a novel ordinance to address a practical local problem, laid the foundation for similar policy arrangements, particularly in Australia and the United States of America. When guano was discovered on various islands and rocks in the Pacific Ocean and along the coast of Western Australia during the late 1840s, the Cape Colony was in a strong position to suitably advise its Australian counterparts concerning a proper management system.¹⁰⁰ As a direct result of this advice, the Queensland Coast Islands Act of 1879 was promulgated, whereby the Australian authorities claimed several guano islands.¹⁰¹ More importantly, within two years after the Cape Colony promulgated its Guano Ordinance, the 34th Congress of the United States of America took similar action and adopted the Guano Islands Act on 18 August 1856. An all-encompassing policy was drafted to ensure full coverage of American influence in all guano locations (including islands, rocks and keys).¹⁰² This legislation had strikingly similar features to its Cape counterpart and positioned the USA as only the third guano power (after Peru and the Cape Colony) with legislative control over guano sources. Whereas in the latter cases, guano was used or exported in its raw form, the Americans used the product together with animal bone dust as the critical ingredients in the manufacture of chemical fertilisers – a “significant industry”¹⁰³ that “placed heavy silver dollars in San Francisco and New York pockets”.¹⁰⁴ It further ensured the truly global nature of the industry.

100 KAB: GH, 1/363:46, Lord Carnarvon – Sir H Barkly, 25 October 1876.

101 Museum of Australian Democracy, “Queensland Coast Islands Act 1879” (available at: https://www.foundingdocs.gov.au/resources/transcripts/qld3ii_doc_1879.pdf, accessed, 6 December 2007).

102 Guano Islands Act, “Thirty Fourth Congress, Session 1, Chapter CLXIV” (available at <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=011/llsl011.db&recNum=140>, accessed on 21 December 2019).

103 P Leshner, “A load of guano: Baltimore and the fertilizer trade in the nineteenth century”, *The Northern Mariner*, 18, p. 122.

104 RH Dillon, “A tall tale about the Guano trade”, *Western Folklore*, 11(2), 1952, p. 124.