

**Penal Discourse and Imprisonment in South Africa:  
An examination of the evolving discourse surrounding  
imprisonment in South Africa, from the colonial period  
to the post-apartheid era, and its effects on the  
human rights of prisoners**

**Stephen Allister Peté**

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Stephen Allister Peté

## **NOTE TO EXAMINERS**

This PhD dissertation by published works comprises a selection of articles that have either been published, or accepted for publication, in a variety of peer-reviewed SAPSE-accredited law journals, as well as a chapter which has been published in a peer-reviewed SAPSE-accredited academic book. There is also additional material which has not yet been – but will be in the near future – submitted for publication, as well as material drafted for the specific purposes of this thesis.

Full publication details of the published and about-to-be published materials which make up the separate chapters of this thesis are clearly set out at the start of each separate chapter of the thesis.

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Thus format and style vary somewhat in accordance with the format and style of the original publications – but apart from this, every effort has been made to ensure consistency in format and style throughout the thesis.

The thesis is arranged in three main parts stretching across two volumes. Volume I comprises the introduction and covers the Colonial and Apartheid Periods in Parts One and Two respectively. Volume II includes the Post-Apartheid Period (Part Three), the Conclusion and the Bibliography.

## **ACKNOWLEDGEMENTS**

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## **ABSTRACT**

The focus of this thesis is on the evolving public discourse surrounding imprisonment in South Africa from the colonial period to the post-apartheid era, and its effects on the human rights of prisoners.

Although the punishment of imprisonment has dominated the penal landscape for around 200 years it is clear that, in terms of its stated aims of reducing crime and rehabilitating criminals, it has proven to be an abject failure. The influential philosopher Michel Foucault maintains that the failure of this form of punishment was apparent from the very beginning of its rise to prominence in the Nineteenth Century. It turned out, however, that the very failure of the prison system – its propensity to "create" a class of criminals separated from the rest of society – was useful in the context of developing capitalist industrial societies. As a result, this form of punishment did not wither away, but continued in existence despite repeated crises and widespread public acknowledgement of its failure to reform criminals or to reduce crime.

The above may be true of the manner in which imprisonment, as a form of punishment, evolved in France and in the developed world in general, but the question at the heart of this thesis is whether or not Foucault's theory holds true in the South African context. In other words, by carefully tracing the public discourse surrounding imprisonment in South Africa from the colonial to the post-apartheid periods, a primary aim of this thesis is to establish whether the evolution of imprisonment in South Africa follows the same pattern as that outlined by Foucault – a pattern of apparent "failure" from the very start, with regular and repeated, but ultimately futile, attempts at "reform". By showing that this is, in fact, the case – that the South African prison system has been lurching from crisis to crisis since its inception, with the same "solutions" being suggested from one decade to the next – this thesis suggests that the "problem" with imprisonment in this country lies at a structural and ideological level. If this thesis is correct, "reforming" the South African penal system will not be possible without completely rethinking imprisonment as a form of punishment at an ideological level. Precisely what such a rethinking might entail, this thesis leaves open for future scholarship.

An important secondary aim of this thesis is to trace the evolution of penal ideology in the South African context. In other words, it sets out to trace the development of the perceptions and ideas which have underpinned the punishment of imprisonment in this country over its history. Starting in the colonial period and focusing in particular on colonial Natal, these ideas may be described as the articulation of the penal theories and assumptions of an industrialised metropolitan political economy – Great Britain – and those of a rural colonial political economy – the Colony of Natal. A unique ideology of racially defined punishment emerges strongly towards the end of the colonial period. Moving to the apartheid period, through a careful analysis of various themes which arise in the public discourse surrounding imprisonment, the thesis traces the penal ideology operating within a society rigidly segregated according to race. Finally, once again through a careful analysis of the public discourse surrounding imprisonment, the ideas and perceptions which underpin punishment within post-apartheid South Africa, are examined. The thesis thus provides a unique overview of the manner in which penal ideology has developed within a uniquely African setting, by tracing the evolution of a set of ideas reflected in public discourse.

A tertiary aim of this thesis is to trace the manner in which the role played by imprisonment within the social, political and economic structure of the country as a whole, has changed over time – together with social, political and economic developments. The use of imprisonment as a mechanism of social control during various periods – particularly the colonial and apartheid periods – as well as the constant problems which arose within the South African penal system because of this, is particularly important.

Finally, as part of a detailed analysis of the public discourse surrounding imprisonment in South Africa during specific periods in the colonial, apartheid and post-apartheid eras, this thesis examines selected themes and sub-themes which emerged at various times. Taken together, these themes and sub-themes provide a series of "snapshots" of what it was like to be imprisoned in South Africa at particular times in the country's history. A constant focus throughout the thesis is the manner in which the human rights of South African prisoners have been abused from the time that prisons rose to prominence in this country almost two centuries ago – to the present day. This thesis strives not to lose sight of the human suffering which has characterised imprisonment in South Africa from colonial times to the present.

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# VOLUME I

## 1. Introduction

# 1. INTRODUCTION

## 1.1 General Overview

For more than a century and a half, the South African penal system has failed to provide adequate accommodation for prisoners – resulting in periodic crises when, time and again, the prisons reach bursting point. It has failed to curb endemic gang activity within the prisons, which has become so deeply entrenched, that prison gang culture may be said to have become a way of life for generations of prisoners. It has also failed to provide rehabilitation programmes on a widespread and sustained basis, resulting in many prisons being turned into universities of crime, rather than performing any sort of rehabilitative function. The prisons still function politically as mechanisms of social control, with far too many petty offenders, who are simply hardened by the prison experience. All these issues, as well as many other on-going chronic failures, have resulted in the basic human rights of South African prisoners being severely compromised, year after year, decade after decade, and from one century to the next.

Through a detailed analysis of the public and political discourse surrounding imprisonment in South Africa during specific periods within the colonial, apartheid and post-apartheid eras, this thesis aims to achieve a number of objectives. A central thrust of the thesis is to trace the continued failure of the South African penal system over time, from the colonial era to the present day. This will illustrate that the history of imprisonment in this part of the world follows a similar pattern to that described by the philosopher Michel Foucault in "Discipline and Punish", his seminal work on the origins of this form of punishment in Nineteenth Century Europe.<sup>1</sup> This thesis shows that, as in Europe, from the beginning of its rise to prominence, imprisonment as a form of punishment in South Africa has been characterised by repeated crises and public condemnations. The thesis reveals that the penal system is stuck in a repetitive cycle, in which similar "solutions" – which essentially amount to "more of the same" – are offered in response to each successive crisis, but with little effect.

The thesis also traces the evolution of penal ideology in the South African context, and examines the

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<sup>1</sup> Foucault pointed out that the very failure of the prison system proved to be an advantage, in that it manufactured a class of delinquents which could then be controlled by those in power. See Foucault, M (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972-1979*. Gordon, C (Ed). Brighton: Harvester Press. See also Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books.

emergence of a unique set of ideas and perceptions which underpin the punishment of imprisonment in this country. The thesis reveals the process in terms of which penal ideologies originating in Europe have been shaped and moulded over time by the social, political and economic realities of Southern Africa – to become a distinctive ideological construct, shaping a form of punishment which is uniquely South African. This thesis can trace ideological resonances across South African penal history – like repeated themes in a single piece of music – which either reinforce each other over time, or morph into something different and unique.

Furthermore, this thesis traces the overtly political role played by imprisonment over time, within the social, political and economic structure of South Africa. It will be shown that a common theme throughout the penal history of this country is the use of prisons as mechanisms of social control. The use of prisons to achieve overtly political ends – for example, the subjugation of the Zulu people during the colonial period, or the enforcement of the infamous "Pass Laws" during the apartheid period – colours much of South Africa's penal history and contributes greatly to the unique 'flavour' of imprisonment in this country.

Finally, this thesis examines a range of different themes and sub-themes, which provide insights into life in South African prisons at various times in the country's history. The thesis highlights the abuse of the basic human rights of prisoners in South Africa during each of the periods examined. It provides a close-up look at the suffering of inmates in South African prisons over time, and endeavours to convey to the reader a sense of the 'smell and feel' of South African prison life. In somewhat more formal terms, the thesis may be said to trace the dialectical relationship between penal ideology and penal practice in South Africa – with particular focus on the abuse of the basic human rights of South African prisoners.

The empirical part of this thesis has been divided into three: Part One, The Colonial Period; Part Two, The Apartheid Period; Part Three, The Post-Apartheid Period. Before briefly describing each of these parts, it must be pointed out that, throughout this thesis, the aim was to achieve a nuanced and close analysis of the public discourse surrounding imprisonment in South Africa, as reflected in official documents and the printed public media. For this reason, it has been necessary to narrow the area of focus in respect of each of the above three periods. In respect of the Colonial Period, the focus of this thesis is on the Colony of Natal during the period 1845 to 1910. In respect of the Apartheid Period, the focus is on the period 1980 to 1984. In respect of the Post-Apartheid Period, the focus is on the period

1994 to 2004. A wider focus would have resulted in a more superficial analysis. As it stands, these three areas of intense focus provide detailed snapshots of South African penal discourse and prison life over time.

As far as the colonial period is concerned, the emphasis is on the penal system of colonial Natal. The focus on this colony, as opposed to a broader focus on all the South African colonies, allows a more detailed analysis of penal discourse during the colonial period, than would otherwise have been possible. A central aim of this part of the thesis is to adequately theorise the complex social meanings attached to punishment and race in colonial Natal. The gradual emergence of racially differentiated punishment within colonial Natal is examined, as well as the role played by the penal system within society as a whole – as it adapted to changes over time in the social, political and economic situation within the colony. The evolving public and political discourse surrounding imprisonment in the colony is examined over the entire colonial period. Archival documents in the form of official despatches and reports, together with records of parliamentary debates and extracts from newspapers published at the time, provide important source materials for this part of the thesis.

The thesis then moves to the apartheid period, with a particular focus on the years 1980 to 1984. It may be argued that this period represented something of a "high water mark" for the apartheid system. The first cracks were starting to appear in the carefully constructed edifice of apartheid, and shortly thereafter, President P.W. Botha declared a "State of Emergency" in response to what the apartheid authorities called the "Total Onslaught". This period is thus particularly fruitful from the perspective of an analysis of penal discourse. Much of the social, economic and political turmoil of this period is reflected in the ideas which emerge from the public discourse surrounding prisons. The role of South Africa's prisons as mechanisms for the enforcement of draconian apartheid social control legislation – including the infamous "Pass Laws" – is particularly prominent. Furthermore, the widespread abuse of the human rights of prisoners – not just political prisoners, but also non-political prisoners – is especially marked during this period. Empirical data drawn from a wide variety of national newspapers form the foundation of much of this part of the thesis. The extent to which South African newspapers were, at this time, able to circumvent strict censorship regulations applicable to reporting on prisons, forms an interesting sub-theme in this part of the thesis.

Finally, the thesis moves to the post-apartheid period, which runs from the immediate aftermath of South Africa's first democratic election in 1994, to the report of the Jali Commission of Enquiry into

South African prisons in 2004<sup>2</sup> Both these events form important milestones in South African penal history. This part of the thesis traces the periodic crises experienced by the South African penal system during the first decade of democracy, many of which were related to chronic overcrowding and increasing perceptions within the country that crime was out of control. From the perspective of penal discourse, the first decade following the demise of apartheid is particularly fascinating. Among the most interesting aspects of this period, are the many continuities in the penal discourse of this period – compared to the penal discourse of the apartheid and colonial periods. It is these continuities, stretching back one and a half centuries, which reveal that the South African penal system is following the basic pattern pointed out by the French philosopher Michel Foucault in his seminal work "Discipline and Punish".

In terms of Foucault's thesis, imprisonment as a form of punishment was a failure from the very beginning of its rise to prominence during the first decades of the Nineteenth Century. Imprisonment was never able to rehabilitate criminals or reduce crime. In fact, it served to "create" a separate class of criminals, who became locked into a closed system, together with the police and prison warders. Foucault considered the construction of this separate class of criminals as being useful within the context of early industrial capitalism. For Foucault, having a separate "criminal class", which was clearly separate from the French proletariat, operated as a kind of "safety valve" at an important stage in the development of the capitalist system. Foucault believed that this useful but unintended side effect of the prison system explained why imprisonment, as a form of punishment, continued to dominate the penal landscape – despite its apparent "failure". This thesis demonstrates that the same mechanism was at work in the context of the South African penal system. Despite being situated a world away from the developed capitalist economies, with a distinctively different set of social, political and economic factors at play, the South African penal system was also a "failure" from the very beginning. It too has lurched from crisis to crisis, with the same "solutions" and "reforms" being suggested over and over

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<sup>2</sup> Luyt points out that the South African prison system underwent such drastic changes during the period immediately preceding and following the collapse of apartheid that it might well qualify as the system which has undergone "the most transformation in the shortest space of time in the entire history of imprisonment." Luyt catalogues the following changes in the South African penal system over this period: "[B]ecoming an independent department of Government (1990), releasing political prisoners (since 1990), implementing community corrections (1991), ending separation of inmates on racial grounds (1993), incorporation of five separate prison systems (apartheid South Africa, Transkei, Ciskei, Venda and KwaZulu-Natal) into one (since 1993), allowing legitimate inmates to vote (1994, 1999), adapting to a system ruled by constitutional requirements (since 1994, but more so since 1996), transforming managerial level representativity nationally (since 1995), demilitarization (1996), implementing new legislation (since 1998), instituting a judicial inspectorate (1998), implementing super maximum prisons (1999), and unit management (since 2000), and closing contracts for private facilities (2001)." See Luyt, WFM (2008) *Imprisoned Mothers in South African Prisons with Children Outside of the Institution* *European Journal of Crime, Criminal Law and Criminal Justice* 16: 299-323 at 299.

again, from one decade to the next.

Overall, this thesis provides a detailed historical analysis of the evolving public and political discourses surrounding imprisonment in South Africa from colonial times to the post-apartheid period, and of the impact of changing penal practices on the fundamental human rights of South African prisoners. A more detailed summary of the many themes which emerge out of the data analysed as part of this thesis, is provided in the conclusion to this thesis. It is hoped that this analysis will contribute to a better understanding of the complex ideologies which underpin imprisonment in South Africa and will provide insights which are useful to policymakers charged with shaping South African penal policies in the future.

Chapter 1.2, which follows this general overview, sets out the theoretical foundation on which this thesis is based. Chapter 1.3, which follows the theoretical analysis, explains the research methodology adopted. Chapter 1.4, which concludes the introduction to this thesis, provides a brief historical overview of human rights in the prisons of Africa – thereby situating this thesis within the broader context of the penal history of the continent as a whole.

## 1.2 Theoretical Framework and Literature Review

Before proceeding to outline the general theoretical framework and to review the literature upon which this thesis is based, it is worth pointing out that each of the separate sections which make up this thesis comprises an independent article or book chapter, which has been or is about to be published in a peer-reviewed academic journal or book. As such the theoretical underpinnings of each section – each of which stands as an independent piece of academic work – are made clear within the particular section concerned. It is nevertheless important to explain the general theoretical orientation of the thesis as a whole and to draw together certain of the common theoretical themes which run throughout the work.

This thesis is informed by a range of theoretical influences:

A central theoretical influence is that of the philosopher Michel Foucault, who may be said to adopt an early post-modernist approach, which is strongly influenced by neo-Marxist thinking. While the thesis cannot be categorised as being overtly Marxist, its roots lie in the thinking of the critical left, and the development of such thinking in the direction of the "post-Marxist" or "post-modern" style "archeology of knowledge", which is unique to Foucault and his followers. Brief notes on the thinking of Foucault – as well as certain other influential thinkers like Michael Ignatieff – on the roots of imprisonment as a form of punishment, follow this brief introduction. Thereafter, this section focuses on Foucault's theory of the apparent "failure" of the prison – which is of central concern to this thesis from the viewpoint of the South African penal system in particular.

Apart from its neo-Marxist and "Foucaultian" theoretical orientation, this thesis also makes use of a particular form of "critical discourse analysis". A central concern of this thesis is to trace the evolution of penal discourse, in order to identify the ideological underpinnings of the South African penal system. A brief discussion of the parameters of the type of "critical discourse analysis" adopted in this thesis therefore follows the discussion of Foucault's thinking on the perpetual failure of imprisonment as a form of punishment.

A third theoretical approach which influences this thesis, is "symbolic interactionism". One of the aims of this thesis is to uncover the social meanings attached to the many social practices which make up the "world" of the South African prison. Where possible, it seeks to uncover the meanings ascribed to this

world by prisoners themselves, and to bring this world of meaning to life. A brief discussion of the symbolic interactionist approach follows the examination of critical discourse analysis.

This brief theoretical overview then turns to the South African literature, in order to outline certain of the more specific theoretical frameworks which underpin the thesis. A brief note on the political economy of the colony of Natal provides the theoretical framework from which Part One of the thesis is launched – thereby providing a set point of departure for the thesis as a whole.

Finally, more recent South African academic literature on the apparent failure of the prison in this country is examined – in particular the work of Lukas Muntingh, Amanda Dissel, and others.

Apart from the theoretical influences mentioned above – which are outlined in somewhat more detail below – there are other strands of theory which are woven into the body of this thesis. It is impossible to discuss every separate theoretical strand in a general overview of this kind. However, as explained at the start of this overview, each of the separate sections making up the whole of this thesis contains its own discussion of the theory utilised in the section concerned. What follows provides a broad overview of the general theoretical orientation of this thesis.

### **1.2.1 General Theory - The Birth of the Modern Prison**

To begin at the most general level of the theoretical framework upon which this thesis is based, it may be noted that imprisonment as a form of punishment did not always dominate the penal landscape.<sup>3</sup> Imprisonment, as we know it today, emerged towards the end of the eighteenth and beginning of the nineteenth centuries. It is essentially a "modern" phenomenon, which first arose together with the development of industrial capitalism in Europe. A number of influential thinkers have traced the birth

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<sup>3</sup> For example, Clive Emsley points out that the punishment of imprisonment played a relatively minor role in the penal landscape of England for most of the Eighteenth Century: "From Tudor times petty offenders, vagrants, and prostitutes could have found themselves sentenced to a period in a Bridewell or House of Correction; and those awaiting trial on an indictment for felony were kept in prison, often for several months, awaiting trial. The use of imprisonment to punish simple felonies had been largely abandoned after the Transportation Act of 1718. Interest was revived during the 1760s and early 1770s, at least in part, because the combination of the occasional example on the gallows and transportation did not appear to be effectively deterring crime. The outbreak of the American War of Independence forced the issue; the courts might still sentence felons to transportation, but now there was nowhere that the sentence might be carried out. By the end of the 1780s the government had settled on the colony of New South Wales as its receptacle for felons; however, by then moves for creating prisons where the offender might be reformed were already under way, partly through local initiative, but also with significant moves on the part of central government." See Emsley, C (1997) *The History of Crime and Crime Control Institutions*. In Maguire, M, Morgan, R and Reiner, R (Eds) (1997) *The Oxford Handbook of Criminology* 2nd Ed. Oxford: Oxford University Press, 57-86 at 77-78.

of the modern prison. Foremost among these is Michel Foucault – whose work serves as an important point of departure for this thesis.<sup>4</sup>

For Foucault, the birth of the modern prison was tied up with the emergence of an entirely new form of power, which arose with the development of large-scale productive industry, and was essential to it. This new form of power – which Foucault calls "disciplinary power" – consisted of a whole range of novel techniques for the control of the body. As Foucault puts it:

"The classical age discovered the body as an object and target of power, the body that is manipulated, shaped, trained, which obeys, responds, becomes skillful and increases its forces."<sup>5</sup>

Discipline was important in training an inexperienced work-force to fit into the industrial production process. Discipline was often exerted very particularly, and with great attention to detail on the worker's individual body and its movements. Managers who exerted discipline tended to be concerned not only with obedience – but with the precise manner in which a task was performed. The aim of discipline was efficiency in execution, in addition to obedience. A good example of disciplinary power is the manner in which an army drill instructor instructs a squad of soldiers. The precise position and movement of each part of each soldier's body is regulated, as is the dress and movement of the squad as a whole. Through repeated drills, in which close attention is paid to each minute gesture and movement – the squad becomes a "disciplined" whole. It is clear why Foucault calls this a "micro physics of power".<sup>6</sup> For Foucault, the purpose of discipline is to produce trained and "docile" bodies, which will respond by habit in the manner required by those in control. Foucault argues that discipline is a unique

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<sup>4</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books. This thesis is not alone in adopting Foucault's work as a theoretical cornerstone. The rich theoretical framework constructed by Foucault around the birth of the prison in Europe, is widely acknowledged as central to a proper understanding of imprisonment as a form of punishment. For example, Rod Morgan describes the emergence of the modern prison as follows: "The modern prison emerged slowly in Northern Europe from the sixteenth century onwards, but it was not until the late eighteenth and early nineteenth centuries that the idea came to fruition ... The modern prison, and its institutional counterpart - the workhouse for the indigent poor, the asylum for the insane, the reformatory for wayward youth, and the penitentiary for fallen women - reflected what Foucault ... has termed 'the great confinement' and emerged alongside the factory. They were social and architectural counterparts. In the factories labour was rationalised for the purposes of more efficient production. In the new institutions of confinement those unproductive sections of the labour force were differentiated, segregated, and disciplined." See Morgan, R (1997) *Imprisonment: Current Concerns and a Brief History since 1945*. In Maguire, M, Morgan, R and Reiner, R (Eds) *The Oxford Handbook of Criminology* 2<sup>nd</sup> Ed. Oxford: Oxford University Press 1137-1194 at 1141.

<sup>5</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 136.

<sup>6</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 139. To expand somewhat on this point, Foucault does not believe that power is exercised in a hierarchical fashion from the top down. Rather, power is exercised through a network or web of relationships, and diffused throughout the social structure. These relationships are characterised by inequality, meaning that power is exercised through a multiplicity of unequal relationships at the micro level of social interaction. Foucault uses the term "capillary" power to indicate its diffuse and decentralised nature.

form of power, since it increases the body's forces, thereby making it economically more useful – while at the same time causing the body to become more obedient and therefore politically less dangerous. The need for "disciplined" workers, able to perform dull repetitive labour, was apparent during the early stages of development of the industrial capitalist system. According to Foucault, discipline lay at the heart of the modern prison. The prison, with its complex rules and regulations, was a disciplinary institution characterised by a range of specific and unique disciplinary techniques.

The above may have been true of prisons in Europe, but this thesis reveals that it was not necessarily true of prisons in Britain's distant colonies. The lessons to be learned by the inmates of prisons in colonial Natal, were far less complex than those taught in the finely tuned disciplinary institutions of the mother country. Central among these lessons was that the white man's word was law. That lesson was taught, to a large extent, by the "cat-o-nine-tails" – as opposed to a complex set of disciplinary regulations.

Another thinker who, along with Foucault, has been central to the work of tracing and theorising the birth of the modern prison in Europe, is Michael Ignatieff, whose work may, in certain respects, be regarded as an important counterpoint to that of Foucault.<sup>7</sup> For Ignatieff, one of the key factors in the rise to prominence of imprisonment as a form of punishment, was that it held out the prospect of reforming prisoners. It was seen by the middle class as a "humane" form of punishment, which was in step with the times. This was important at this stage in the development of industrial capitalism in Britain. As factory production advanced and the crafts were deskilled, labour went through a process of homogenisation. The emerging factories were operated, to a large extent, by masses of unskilled workers who had been released from their old ties to the land, and who thronged to the developing industrial towns and cities. Social order could no longer rest on the imposition of political authority from the outside. Essentially, a mechanism had to be found for workers to discipline themselves. Social order had to rest on a foundation of consensus – rather than coercion. In particular, mechanisms of social control had to seem legitimate in the eyes of the broader public – particularly the working class.

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<sup>7</sup> Clive Emsley, for example, states: "Pinpointing the reasons behind the growth of the prison has given rise to considerable debate. On one level there are the arguments which tie its development in with an interrelationship between forms of knowledge and the shifting strategies and institutions through which power is exercised; thus the prison becomes interlinked with the new expertise of medicine and psychiatry and with a new, enclosing, and restricting orientation to the body (Foucault, 1977). For others, the emergence of the prison ties in with the needs of a new industrial order and its desire for a controllable, disciplined workforce (Ignatieff, 1978)." See Emsley, C (1997) *The History of Crime and Crime Control Institutions*. In Maguire, M, Morgan, R and Reiner, R (Eds) (1997) *The Oxford Handbook of Criminology* 2nd Ed. Oxford: Oxford University Press, 57-86 at 77-78.

Ignatieff explains as follows:

"The key problem for social order ... was to represent the suffering of punishment in such a way that those who endured it and those who watched its infliction conserved their moral respect for those who inflicted it. The efficiency of punishment depended on its legitimacy."<sup>8</sup>

With its emphasis on the reform of the criminal, imprisonment seemed to offer a form of punishment which was in tune with the capitalist ideal of a self-regulating society based upon consensus. As Ignatieff puts it:

"The reformatory ideal had deep appeal for an anxious middle class because it implied that the punisher and the punished could be brought back together in a shared moral universe."<sup>9</sup>

As this thesis reveals, however, imprisonment as a form of punishment did not hold as much appeal for the middle class in colonial Natal. For the white settlers, what held colonial society together was not a common set of beliefs among all citizens. Rather, it was the respect and awe of the indigenous (black) people for their (white) masters. In other words, colonial society was held together by the threat of coercion – rather than a manufactured consensus. This point is explored further in subsection 1.2.5 below.

To conclude this brief overview of the birth of the modern prison during the Nineteenth Century in Europe, it is worth noting one further strand in the discourse surrounding the emergence of this form of punishment in England, in particular. It was, after all, the penal ideology of England which was imported into the far-flung colonies of the British Empire, including the Colony of Natal in the middle of the Nineteenth Century. Emsley notes a significant debate which took place during the 1830s, at the height of the prison reform movement in England:

"Prison reform reached a climax in the 1830s with debates between the advocates of the separate system (wherein convicts were separated from each other in the belief that, in the quiet of their solitary cells, with their Bible, the exhortation of the chaplain, and their work at a hand crank, they would reach a realisation of their wrongdoing and consequent repentance) and those of the

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<sup>8</sup> Ignatieff, M (1978) *A Just Measure of Pain* London: MacMillan at 72.

<sup>9</sup> Ignatieff, M (1978) *A Just Measure of Pain* London: MacMillan at 213.

silent system (wherein a strict discipline of silence would bring the prisoner to a similar recognition). The former, urged by William Crawford, a member of the Society for the Improvement of Prison Discipline, and by the Rev. Whitworth Russell, the chaplain of Millbank, who were both appointed to a new inspectorate of prisons in 1835, resulted in the opening of Pentonville in 1842."<sup>10</sup>

The debate between the "separate" and "silent" systems was to resonate within the Colony of Natal. As this thesis reveals, however, the fine theoretical and ideological distinctions made by penologists in the "mother country", were somewhat lost on the colonists, thousands of miles away from the colonial metropole and its concerns. As discussed in more detail below, the colonists were to develop their own uniquely colonial ideologies of punishment.

### **1.2.2 Foucault and the Apparent 'Failure' of the Prison**

Central to the concerns of this thesis, is Foucault's theory concerning the apparent "failure" of the prison as a form of punishment, from the time it emerged to prominence. In his seminal text "Discipline and Punish - The Birth of the Prison", Foucault points out that the birth of the modern prison around the beginning of the Nineteenth Century in France was almost immediately denounced as a failure.<sup>11</sup> He puts his finger on the cyclical and repetitive nature of critiques leveled at imprisonment as a form of punishment, stating that "the critique of the prison and its methods [which] appeared very early on ... was embodied in a number of formulations which – figures apart – are today repeated almost unchanged."<sup>12</sup> Among the arguments raised over and over again against imprisonment as an effective form of punishment, Foucault mentions the following:

"Prisons do not diminish the crime rate: they can be extended, multiplied or transformed, the quantity of crime and criminals remains stable or, worse, increases ..."<sup>13</sup>

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<sup>10</sup> Emsley, C (1997) *The History of Crime and Crime Control Institutions*. In Maguire, M, Morgan, R and Reiner, R (Eds) (1997) *The Oxford Handbook of Criminology* 2nd Ed. Oxford: Oxford University Press, 57-86 at 77-78. Emsley goes on to note that: "Pentonville was a bleak, dehumanising establishment from which, in its early years, an annual toll of between five and fifteen of the 450 inmates were taken away to the asylum; and others sought escape through suicide. But while the separate and silent systems were experimented with in varying degrees across the country, the majority of prisons remained under the control of local authorities and developments here were constrained by local government finance and the pressures from rate-payers."

<sup>11</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 264.

<sup>12</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 265.

<sup>13</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 265.

"Detention causes recidivism; those leaving prison have more chance than before of going back to it; convicts are, in a very high proportion, former inmates ..."14

"The prison cannot fail to produce delinquents. It does so by the very type of existence that it imposes on its inmates ..."15

"The prison makes possible, even encourages, the organisation of a milieu of delinquents, loyal to one another, hierarchized, ready to aid and abet any future criminal act ..."16

"The conditions to which the free inmates are subjected necessarily condemn them to recidivism: they are under the surveillance of the police; they are assigned to a particular residence, or forbidden others ... Being on the loose, being unable to find work, leading the life of a vagabond are the most frequent factors in recidivism ..."17

"[T]he prison indirectly produces delinquents by throwing the inmate's family into destitution ... "18

Foucault goes on to point out that the same "solutions" to these problems have been recycled over and over again for the past 150 years. He puts it as follows:

"For a century and a half the prison has always been offered as its own remedy: the reactivation of the penitentiary techniques as the only means of overcoming their perpetual failure; the realisation of the corrective project as the only method of overcoming the impossibility of implementing it ... Word for word, from one century to the other, the same fundamental propositions are repeated. They reappear in each new, hard-won, finally accepted formulation of a reform that has hitherto always been lacking. The same sentences or almost the same could have been borrowed from other 'fruitful' periods of reform ..."19

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<sup>14</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 265.

<sup>15</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 266.

<sup>16</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 264.

<sup>17</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 267.

<sup>18</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 268.

<sup>19</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 268 and 270.

It may be argued that Foucault's observations are equally true in the context of the South African penal system. The same "problems" repeatedly come to the fore in public discourse, decade after decade, and from one century to the next. "Shock revelations" periodically paint prisons as "universities of crime" – as institutions which are quite incapable of reforming offenders and which increase rather than decrease overall criminality in society. Furthermore, the "solutions" offered are essentially the same, repeated from one decade to the next. If only, the mantra goes, our prisons were not chronically overcrowded with petty criminals, who have ended up in prison for essentially political reasons – for example, contravention of colonial or apartheid-era social control measures, or the minimum sentence legislation characteristic of the post-apartheid period – we could put in place effective programmes to rehabilitate offenders. And yet the chronic overcrowding, in particular, continues decade after decade, waiting for the next "shock revelation" within the public discourse.

But why would society continue to tolerate an institution which, from its inception over a century ago, has consistently failed in its stated objective of rehabilitating criminals and reducing crime? Foucault concludes that what is usually regarded as the "failure" of the prison system is actually an essential part of the manner in which the system operates.<sup>20</sup> After all:

"If the prison-institution has survived for so long, with such immobility, if the principle of penal detention has never seriously been questioned, it is no doubt because this carceral system was deeply rooted and carried out certain very precise functions."<sup>21</sup>

But what are these "functions"? What societal purpose is served by a penal system based on imprisonment, which not only fails to stamp out criminality, but in fact encourages it by serving as a "university of crime"? In a startling insight, Foucault proposes that the very "failure" of imprisonment as a form of punishment – the fact that it serves to "create" criminals rather than reform them – fulfils an important function for those in power:

"The failure of the project [i.e. imprisonment as a form of punishment] was immediate, and was realised virtually from the start. In 1820 it was already understood that the prisons, far from transforming criminals into honest citizens, serve only to manufacture new criminals and to drive

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<sup>20</sup> Foucault describes the "failure" of the penal system as "the maintenance of delinquency, the encouragement of recidivism, the transformation of the occasional offender into a habitual delinquent, the organisation of a closed milieu of delinquency ..." See Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 272.

<sup>21</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books at 271.

existing criminals even deeper into criminality. It was then that there took place, as always in the mechanics of power, a strategic utilisation of what had been experienced as a drawback. Prisons manufactured delinquents, but delinquents turned out to be useful, in the economic domain as much as the political."<sup>22</sup>

Foucault argues, in other words, that the artificial construction/constitution of a separate class of "delinquents", which is an inevitable consequence of imprisonment as a form of punishment – served an important function under the conditions of early capitalism.<sup>23</sup> In a key passage from certain of his later writings, Foucault explains why this was the case:

"What worried the bourgeoisie was the kind of amiable, tolerated illegality that was known in the eighteenth century. One should be careful not to exaggerate this: criminal punishments in the eighteenth century were of great ferocity. But it is nonetheless true that criminals, certain of them at least, were perfectly tolerated by the population. There was no autonomous criminal class ... But once capitalism had physically entrusted wealth, in the form of raw materials and means of production, to popular hands, it became absolutely essential to protect this wealth. Because industrial society requires that wealth be directly in the hands, not of its owners, but of those who labour, by putting that wealth to work, enables a profit to be made from it. How was this wealth to be protected? By a rigorous morality, of course: hence the formidable layer of moralisation deposited on the nineteenth-century population. Look at the immense campaigns to christianise the workers during this period. It was absolutely necessary to constitute the populace as a moral subject and to break its commerce with criminality, and hence to segregate the delinquents and to show them to be dangerous not only for the rich but for the poor as well, vice-ridden instigators of the gravest social perils."<sup>24</sup>

So Foucault sees the punishment of imprisonment as driving a wedge between the working class in general and a "manufactured" class of "delinquents". He states that "the morality and politics of the nineteenth century set out to establish" a "great intolerance [on the part] of the population for the

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<sup>22</sup> Foucault, M (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972-1979* Gordon, C (Ed). Brighton: Harvester Press at 40.

<sup>23</sup> In one interview, Foucault points out that the apparent failure of prisons to carry out their task of reforming criminals gave rise to the emergence of "a whole new criminal 'race'... into the field of vision of public opinion and 'Justice'." See Foucault, M (1996) *Foucault Live: Collected Interviews, 1961-1984* Lotringer, S (Ed). New York: Semiotext at 282.

<sup>24</sup> Foucault, M (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972-1979* Gordon, C (Ed). Brighton: Harvester Press at page 41.

delinquent".<sup>25</sup> Furthermore, he explains the mechanism whereby the punishment of imprisonment serves to "manufacture" a class of "delinquents", as follows:

"The moment someone went to prison a mechanism came into operation that stripped him of his civil status, and when he came out he could do nothing except become a criminal once again. He inevitably fell into the hands of a system which made him either a pimp, a policeman or an informer. Prison professionalised people. Instead of having nomadic bands of robbers – often of great ferocity – roaming about the countryside, as in the eighteenth century, one had this closed milieu of delinquency, thoroughly structured by the police: an essentially urban milieu, and one whose political and economic value was far from negligible."<sup>26</sup>

In other words, for Foucault, the reason for the apparently absurd state of affairs in which a perpetually failing penal system is repeatedly offered as its own remedy, is that the apparent failure of the system is useful. It creates a separate "class" of delinquents – separate from the working class – who can then be monitored and controlled. The working class distance themselves from this class of delinquents. The overall system works to syphon off rebellion and discontent into a separate "pocket", where it can be effectively controlled. Foucault explains the "usefulness" to bourgeois society of "crime" perpetrated by a separate class of "delinquents", as follows:

"At the end of the eighteenth century, people dreamed of a society without crime. And then the dream evaporated. Crime was too useful for them to dream of anything as crazy – or ultimately as dangerous – as a society without crime. No crime means no police. What makes the presence and control of the police tolerable for the population, if not fear of the criminal? This institution of the police, which is so recent and so oppressive, is only justified by fear. If we accept the presence in our midst of these uniformed men, who have the exclusive right to carry arms, who demand our papers, who come and prowl on our doorsteps, how would any of this be possible if there were no criminals? And if there weren't articles every day in the newspapers telling us how numerous and dangerous our criminals are?"<sup>27</sup>

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<sup>25</sup> Foucault, M (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972-1979* Gordon, C (Ed). Brighton: Harvester Press at 42.

<sup>26</sup> Foucault, M (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972-1979* Gordon, C (Ed). Brighton: Harvester Press at 41 and 42.

<sup>27</sup> Foucault, M (1980) *Power/Knowledge: Selected Interviews and Other Writings, 1972-1979* Gordon, C (Ed). Brighton: Harvester Press at 41 and 42.

This thesis does not seek to answer the rhetorical questions asked by Foucault in the above quotation. Instead, its central aim is a more modest one – to establish whether the penal system of South Africa follows the same pattern as that outlined by Foucault. This being a pattern of repeated "failure", and futile "reforms", leading from one crisis to the next.

### 1.2.3 Critical Discourse Analysis

Much of this thesis is concerned with the analysis of "penal discourse". The punishment of offenders is a social practice. This social practice does not exist in a vacuum, but is a function of a particular confluence of social, economic and political developments at a particular historical conjuncture. Social practices are constituted – given life – through the social discourse of the time. It is through discourse that ideologies are formed and complex relationships of power – a dialectical interplay between the imposition of power and its resistance – are established. Tracing the social discourse surrounding the punishment of offenders in a particular society over time, is thus essential to a proper understanding of the nature and role of punishment in that society. This thesis is concerned with examining the evolution of penal discourse in South Africa – from the colonial period to the present.

An important distinction must be drawn between the type of "discourse analysis" undertaken in this thesis, and what may be implied by this term in other academic contexts. Norman Fairclough, one of the founders of critical discourse analysis as applied to sociolinguistics, points out that:

"Discourse is a difficult concept, largely because there are so many conflicting and overlapping definitions formulated from various theoretical and disciplinary standpoints ..."<sup>28</sup>

This thesis does not focus on 'discourse', as this term is traditionally employed in the field of linguistics. Although much of the thesis is concerned with an analysis of articles and reports appearing in various South African newspapers, it does not attempt to conduct a close linguistic analysis of the texts examined. Rather, the thesis adopts a broader social perspective – seeking to uncover the ideology which underpins the punishment of imprisonment in South Africa. To put it another way, this thesis employs the term "discourse" in a largely "socio-theoretical sense", as opposed to in a strictly linguistic

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<sup>28</sup> Fairclough, N (1992) *Discourse and Social Change* Malden: Polity Press at 3.

sense.<sup>29</sup> Fairclough notes that:

"'[D]iscourse' is widely used in social theory and analysis, for example in the work of Michel Foucault, to refer to different ways of structuring areas of knowledge and social practice."<sup>30</sup>

He goes on to state that:

"Discourses do not just reflect or represent social entities and relations, they construct or 'constitute' them; different discourses constitute key entities (be they 'mental illness', 'citizenship' or 'literacy') in different ways, and position people in different ways as social subjects (e.g. as doctors or patients), and it is these social effects of discourse that are focused upon in discourse analysis."<sup>31</sup>

In her work on women in prison in Ireland, Christina Quinlan provides the following useful overview of the "constitutive" nature of discourse from the perspectives of various theorists:<sup>32</sup>

"Discourse is constitutive. Discourse, according to Sunderland ... means a broad constitutive system of meaning, or, she suggests, different ways of structuring areas of knowledge and social practice. Discourses in this sense, she says, are indistinguishable from ideology ... For Foucault ... discourses are intrinsically ideological flows of information. Within discourse, identities are constructed. Discourses are 'ways of seeing' ..., the world. They are ideological flows of information through which the social is constructed and communicated. Discourses are constituted through power; the power that constitutes them also transmits them, or communicates them. This is Foucault's order of things, his knowledge/power nexus. For Foucault, social reality is always discursively produced. Highlighting the strength of the constitutive potential of discourses, Judith Butler said ..., that discourse has the capacity to produce that which it names. Thus, discourse is more than just perspective, discourses call into being particular realities. The powerful, through discourse, create knowledge and circulate it and in this way, produce that

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<sup>29</sup> The term "socio-theoretical sense" in reference to "discourse" is borrowed from Fairclough. See Fairclough, N (1992) *Discourse and Social Change* Malden: Polity Press at 4.

<sup>30</sup> Fairclough, N (1992) *Discourse and Social Change* Malden: Polity Press at 3.

<sup>31</sup> Fairclough, N (1992) *Discourse and Social Change* Malden: Polity Press at 3 to 4.

<sup>32</sup> Quinlan refers to the following: Sunderland, J. (2004) *Gendered Discourses* London: Palgrave; Eagleton, T. (1991) *Ideology*. London: Verso; Foucault, M. (1984) *The Order of Discourse*. In Shapiro (Ed) (1984) *Language and Politics* London: Blackwell; Berger, J (1972) *Ways of Seeing* London: Penguin; and Butler, J. (1993) *Bodies that Matter: On the Discursive Limits of Sex* London: Routledge.

which is known that, which is real. Reality is produced, or that which is generally and popularly accepted as reality."<sup>33</sup>

Historical context is important to an analysis of 'discourse', in the sense in which it is used in this thesis.<sup>34</sup> The thesis is concerned particularly with the manner in which the discourse surrounding imprisonment in South Africa has either changed or remained static over time. It seeks to unpick various "strands" in this discourse, and then to examine the manner in which these strands are either recycled from decade to decade in substantially the same form, or morph into alternative strands of discourse. It seeks to examine both continuities and discontinuities in the discourse surrounding judicial punishment in South Africa, over an extended period of time.

Revealing the role of discourse within relations of power and domination is also central to the manner in which the term "discourse analysis" is employed in this thesis. Fairclough makes clear the links between discourse, power and hegemony. He utilises the work of Louis Althusser and Antonio Gramsci within Twentieth-Century Marxism, to "place discourse within a view of power as hegemony, and a view of the evolution of power relations as hegemonic struggle".<sup>35</sup> He defines ideologies as being: "significations/constructions of reality (the physical world, social relations, social identities), which are built into various dimensions of the forms/meanings of discursive practices, and which contribute to the production, reproduction or transformation of relations of domination."<sup>36</sup>

This thesis is centrally concerned with the interrelationship between ideology, power and domination. It takes a critical approach to the analysis of penal discourse in South Africa, since it seeks to show how that discourse is shaped by, and, indeed, gives shape to, the ideological forces and relationships of power which have characterised South African society over time. In other words, it follows Michel Foucault in adopting a critical social theory of discourse, which is centrally concerned with the relationship between discourse and power over time.<sup>37</sup> As stated in Chapter 3.2.1 of this thesis:

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<sup>33</sup> Quinlan, C (2006) *Discourse and Identity: A Study of Women in Prison in Ireland* PhD Thesis, School of Communication, University of Dublin at 22.

<sup>34</sup> This is in keeping with Fairclough's observation that: "Another important focus is upon historical change: How different discourses combine under particular social conditions to produce a new, complex discourse." See Fairclough, N (1992) *Discourse and Social Change* Malden: Polity Press at 4.

<sup>35</sup> Fairclough, N (1992) *Discourse and Social Change* Malden: Polity Press at 86.

<sup>36</sup> Fairclough, N (1992) *Discourse and Social Change* Malden: Polity Press at 87.

<sup>37</sup> Foucault uses the term "discourse" to refer to institutionalised patterns of knowledge within disciplinary structures like the prison, the insane asylum and the hospital. Power and knowledge are intimately connected through discourse.

"In general terms, public discourse surrounding imprisonment as a form of punishment is multi-layered and nuanced. It is influenced by the social, political and economic history of the penal system under discussion, as well as by the particular historical conjuncture at which the discourse is examined."<sup>38</sup>

Like any other social practice, the evolving nature of imprisonment in South Africa has been shaped by the discourse surrounding that particular social practice. By tracing the penal discourse in South Africa over time, and unpicking the ideologies and power relations embedded in that discourse, it is possible to shed new light on the nature of judicial punishment in South Africa.

#### **1.2.4 Symbolic Interactionism**

Another theoretical strand which has shaped the overall theoretical perspective of this thesis, is that of Symbolic Interactionism. The Symbolic Interactionist approach is associated particularly with the work of the American philosopher, sociologist and psychologist, George Herbert Mead.

According to Mead, the "self" is constructed through a process of social interaction. He emphasises that the "self" is essentially a social construction:

"The individual experiences himself as such, not directly, but only indirectly, from the particular standpoints of other individual members of the same social group, or from the generalized standpoint of the social group as a whole to which he belongs. For he enters his own experience as a self or individual, not directly or immediately, not by becoming a subject to himself, but only in so far as he first becomes an object to himself just as other individuals are objects to him or in his experience; and he becomes an object to himself only by taking the attitudes of other individuals toward himself within a social environment or context of experience and behavior in which both he and they are involved."<sup>39</sup>

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<sup>38</sup> Peté, SA (2015) Angels and Demons, Innocents and Penitents: An Analysis of Different 'Characters' within the Penal Discourse of Apartheid South Africa 1980 to 1984 - Part One *De Jure* 48: 55-74.

<sup>39</sup> Mead, GH (1934) *Mind, Self and Society from the Standpoint of a Social Behaviourist* Chicago: University of Chicago Press, from Section 18 - The Self and the Organism. Mead further states as follows: "The self, as that which can be an object to itself, is essentially a social structure, and it arises in social experience. After a self has arisen, it in a certain sense provides for itself its social experiences, and so we can conceive of an absolutely solitary self. But it is impossible to

For Mead, language is crucial in the social construction of the "self":

"... the language process is essential for the development of the self. The self has a character which is different from that of the physiological organism proper. The self is something which has a development; it is not initially there, at birth, but arises in the process of social experience and activity, that is, develops in the given individual as a result of his relations to that process as a whole and to other individuals within that process ..."<sup>40</sup>

The term "Symbolic Interactionism" was, in fact, coined by Herbert Blumer, a student and interpreter of Mead – who summed up this theoretical approach as follows:

"The term 'symbolic interaction' refers, of course, to the peculiar and distinctive character of interaction as it takes place between human beings. The peculiarity consists in the fact that human beings interpret or 'define' each other's actions instead of merely reacting to each other's actions. Their 'response' is not made directly to the actions of one another but instead is based on the meaning which they attach to such actions. Thus, human interaction is mediated by the use of symbols, by interpretation, or by ascertaining the meaning of one another's actions. This mediation is equivalent to inserting a process of interpretation between stimulus and response in the case of human behavior."<sup>41</sup>

Apart from the brief comments and quotations set out above, it is beyond the scope of this brief theoretical overview to provide a more comprehensive analysis of the Symbolic Interactionist approach. It should be sufficiently clear from the above, however, why this approach has played a part in influencing the theoretical framework which underpins this thesis. This thesis is centrally concerned with perceptions of imprisonment – as reflected in public discourse. These perceptions are actually social constructions which shape the "reality" of imprisonment as a form of punishment. The social meanings ascribed to people, objects and events by social actors, affect "real life" outcomes. This is particularly true within "closed institutions" such as prisons. One need only refer to the infamous

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conceive of a self arising outside of social experience." See Mead, GH (1934) *Mind, Self and Society from the Standpoint of a Social Behaviourist* Chicago: University of Chicago Press.

<sup>40</sup> Mead, GH (1934) *Mind, Self and Society from the Standpoint of a Social Behaviourist* Chicago: University of Chicago Press, from Section 18 - The Self and the Organism.

<sup>41</sup> Blumer, H (1962) Society as Symbolic Interaction. In Rose, A (Ed) *Human Behavior and Social Processes: An Interactionist Approach* Boston: Houghton Mifflin 179-192 at 180.

"numbers gangs" which are so much a part of the South African penal system. These gangs utilise a rank structure and mode of dress, which exists purely in the "imagination" of the gang members concerned – and yet are as "real" to those gang members as any uniform or rank device belonging to a soldier in the South African National Defence Force. The fact that much of this thesis deals with social discourse – with perceptions as opposed to empirical reality – does not make it any less relevant to the "reality" of imprisonment as experienced by the social actors who play out their roles within the penal system.

### **1.2.5 A Clash of Ideologies - A Note on the Political Economy of Colonial Natal**

An important goal of this thesis is to situate the development of the South African penal system within the historical, social, political and economic development of the country as a whole. Since Part One of this thesis concerns the evolution of penal ideology within the Colony of Natal, it is useful to sketch briefly the parameters of the political economy into which an essentially European and alien penal ideology – the punishment of imprisonment and all that it entailed – was imported. This brief discussion not only constitutes a focused theoretical point of departure for Part One of the thesis, but also informs the rest of the thesis from a more general theoretical perspective.<sup>42</sup>

The main reason for the annexation of Natal by the British Empire in 1842 was the open defiance of British sovereignty by Boer trekkers in the region. The colony was not a welcome addition to the British Empire from an economic perspective – and the new Imperial Government was determined to run the new colony on a shoestring budget.<sup>43</sup> The result of this was a weak and perpetually underfunded colonial state, which was unable to effectively assert its will over the entire region. On the other side of the coin were the Zulu people who, together with smaller local tribes, were well organised and able to produce a sufficient surplus of food and other necessities of life, to give them independence from the colonial state. The economic system of the local tribes revolved around separate homesteads as units of production, which were able to function very effectively within the environment within

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<sup>42</sup> For a somewhat more detailed analysis of the political economy of colonial Natal, see Peté, SA (1984) *The Penal System of Colonial Natal: From British Roots to Racially Defined Punishment* LLM Thesis, University of Cape Town at 3-10.

<sup>43</sup> See Brookes, EH & C De B Webb (1965) *A History of Natal*. Pietermaritzburg: University of Natal Press at 29-41. See, also Welsh, D. (1971) *The Roots of Segregation: Native Policy in Colonial Natal 1845-1910* Oxford: Oxford University Press at 7-9.

which they were operating.<sup>44</sup> The Imperial Government chose to leave this system in place, rather than having to absorb the costs of replacing an economic system which was functioning quite efficiently.<sup>45</sup> Therefore it adopted a system which has come to be known as "indirect rule" – championed by the well-known colonial administrator Theophilus Shepstone. The Shepstonian system of "Native Administration" allowed African social, legal and economic structures to be consolidated.<sup>46</sup>

For most of the Nineteenth Century, a class of African peasant producers was able to maintain its independence from the colonial economy. The white farmers of colonial Natal, on the other hand, were unable to obtain African labour at a price which suited them. They waged a bitter political struggle over many years to force the black peasant farmers off their land and into wage labour for the white man.<sup>47</sup> Their constant complaints about the apparent unwillingness of the local tribespeople to "do an honest day's work", is a perpetual refrain throughout much of the colonial period. The labour shortages experienced by the white farmers of colonial Natal, eased somewhat when indentured labourers were imported from India.<sup>48</sup> The labour shortages on white farms were not, however, eliminated – with stock farmers in the interior of the colony continuing to experience particularly severe shortages. According to Shula Marks, these stock farmers were inclined "to be far more radical in their views than the officials, planters, or townsmen", and "regarded the failure of Africans to work for them virtually as a criminal offence."<sup>49</sup>

Stanley Greenberg puts forward an analysis of what he calls the "German route" to capitalist agriculture, which seems particularly pertinent to the process which unfolded in colonial Natal. According to Greenberg, commercial farmers, in a racial order, would tend to plunder the peasantry by means of labour-repressive machinery. Race would play an important part in this suppression and plunder. According to Greenberg:

"Dominant landowners ... make the transition to capitalist agriculture by underlining the role of

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<sup>44</sup> See Marks, S and Rathbone, R (Eds) (1982) *Industrialisation and Social Change in South Africa*. New York: Longman at 168-169. See also Marks, S and Atmore, A (1980) *Economy and Society in Pre-Industrial South Africa* London: Longman at 113-114.

<sup>45</sup> See Slater, H (1972) *The Natal Land and Colonisation Company 1860-1948* London: University of London. Institute of Commonwealth Studies Seminar Paper. (Collected Seminar Papers on Societies of Southern Africa in the 19th and 20th Centuries 4, Oct 1972 -June 1973) at 44.

<sup>46</sup> See Welsh, D. (1971) *The Roots of Segregation: Native Policy in Colonial Natal 1845-1910* Oxford: Oxford University Press at 7-30.

<sup>47</sup> See Marks, S and Atmore, A (1980) *Economy and Society in Pre-Industrial South Africa* London: Longman at 158-160.

<sup>48</sup> See Marks, S and Atmore, A (1980) *Economy and Society in Pre-Industrial South Africa* London: Longman at 149.

<sup>49</sup> Marks, S (1970) *Reluctant Rebellion: The 1906-1908 Disturbances in Natal* Oxford: Clarendon Press at 15 and 17.

race in the society and labour market. For landowners, the race lines are so intimately associated with their access to the state and their control over rural labourers as to be indistinguishable from them ... During an extended transition to capitalist agriculture, dominant landowners would remain a distinctive and powerful remnant of the precapitalist period, insisting on the elaborated state role in the labour market and insisting on the racial order itself."<sup>50</sup>

So it was in colonial Natal. In this particular peripheral economy, racial domination was intimately connected to a system of labour coercion and exploitation. This helps explain the flavour and fervour of the racist ideology, which was so strongly embedded within white settler society in colonial Natal. Since the colonial state was too weak to destroy the prosperous African peasantry, the white settlers were forced to push for a labour system structured according to race, and based on coercion.

The penal ideologies imported into the colony of Natal from the "mother country" were bound to be warped and twisted by the racist and coercive nature of social relations in the colony. Whereas punishment in the colonial metropole might have been focused on the reform of the offender and his reintegration into society, in this far-flung colony on the periphery of the British Empire, the penal system was firmly aimed at enforcing colonial settler domination, and consolidating white sovereignty. Punishment in the colony of Natal was thus strongly coloured by a stridently racist ideology, which permeated white settler society.<sup>51</sup>

It is important to note that the racism characteristic of white settler society in colonial Natal did not exist in a vacuum. It received considerable ideological support from widespread and popular theories at the time. A good example was the doctrine of "Social Darwinism" put forward by Herbert Spencer. This doctrine supposedly supplied a "scientific" basis for the idea that Anglo-Saxon civilisation was the culmination of the evolutionary process.<sup>52</sup> Victorian imperialists, as a whole, were utterly convinced of the "superiority of their own culture over indigenous native cultures."<sup>53</sup> Imbued with this ideology of racist paternalism, the white settlers of colonial Natal regarded it as being their duty to uplift the "less civilised" coloured races, which were regarded as occupying a lower evolutionary plane.

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<sup>50</sup> Greenberg, S (1980) *Race and State in Capitalist Development* New Haven: Yale University Press at 59.

<sup>51</sup> See Marks, S (1970) *Reluctant Rebellion: The 1906-1908 Disturbances in Natal* Oxford: Clarendon Press at 3-26.

<sup>52</sup> See Riekert, JG (1983) *The Natal Master and Servant Laws* LLM thesis, University of Natal, Pietermaritzburg at 15.

<sup>53</sup> Welsh, D (1971) *The Roots of Segregation: Native Policy in Colonial Natal 1845-1910* Oxford: Oxford University Press at 27.

In an ironic twist – apart from the racist paternalism – white settler ideology in colonial Natal was also tinged with a strong dose of fear and apprehension. The Zulu nation, with its "hordes of savage warriors" just north of the colony's borders, was never far from the colonial mind. The white colonists saw themselves as constituting a tiny and vulnerable outpost of civilisation, surrounding on all sides by savage barbarians. This helps to explain the strong retributive element within the penal ideology of colonial Natal. Challenges to white authority in the form of criminal acts by "natives" had to be met with immediate and severe retribution. White sovereignty and control had to be maintained. The strong element of fear within white settler ideology exerted a profound effect on penal ideology in colonial Natal.

Throughout most of the colonial period, conflict raged between the Imperial authorities on the one hand – who strove to bring the penal system of Natal into line with "accepted penal practice" – and the colonists on the other, who accused the Imperial authorities of misguided sentimentalism, and who complained bitterly that imprisonment had no effect on the idle and savage "natives". The colonial state stood in the middle of this ideological conflict, forced on the one hand to carry out their orders from London, but obliged on the other hand to respond to constant complaints by the white colonists. During the course of the colonial period, power shifted gradually from the Imperial Government to the colonists. Responsible government status was granted to Natal in 1894, following which the voices of the colonists – imbued with their particular brand of racist and paternalist ideology, as discussed above – began to dominate colonial discourse.<sup>54</sup>

### **1.2.6 A South African Perspective on the Failure of the Prison**

Turning to the South African academic literature on the ability of prisons to rehabilitate criminals and to reduce crime, it useful to begin with the following summary of general academic thinking on this issue by the South African scholar Amanda Dissel:

"The rehabilitation ideal served as the basis for penal reform in the west until it was forced to re-evaluate the impact of this approach following Robert Martinson's startling conclusion to a study of 231 treatment programmes across the developed world. Martinson concluded that 'with few

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<sup>54</sup> See See Marks, S and Atmore, A (1980) *Economy and Society in Pre-Industrial South Africa* London: Longman at 163 and 164.

and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism' ... Although Martinson hoped to provide evidence that imprisonment was an ineffective method of punishment and to promote non-custodial sentences instead, the 'nothing works' message was interpreted by conservatives in government as support for a more retributive approach ... Despite Martinson's criticisms, the rehabilitation ideal made somewhat of a comeback in the late 1980s and early 1990s, when studies using meta-analytical techniques indicated that some treatment programmes may be effective under certain conditions ... These studies reveal that the recidivism rate is on average 10 percentage points lower for prisoners going through treatment programmes, though sometimes the reduction in recidivism may be as high as 25 per cent ..."<sup>55</sup>

Despite the strictly limited "comeback" of the rehabilitative ideal referred to by Dissel, it would appear that South African scholars are highly sceptical of the ability of the South African penal system, in particular, to rehabilitate criminals. One such South African thinker is Lukas Muntingh. In the following key paragraph from an article published in 2008, Muntingh reinforces the point made by Michel Foucault in "Discipline and Punish" – that imprisonment as a form of punishment has been an apparent failure from the time it rose to prominence around 200 years ago:

"One of the most persistent traits in thinking around crime and safety is the belief that imprisonment will reduce crime. This belief is shared by the judiciary, ordinary citizens, and politicians. It is merely a 'belief' as there is little (if any) evidence to support the idea that imprisonment can reduce crime on any significant scale anywhere in the world (Gendreau *et al* 1999). For the past 200 years the basic principles of imprisonment have remained essentially unchanged. Post-apartheid South Africa inherited a prison system built on these principles, yet we have not critically asked what the purpose of imprisonment is and whether prisons really do serve this purpose."<sup>56</sup>

Muntingh then sets out to uncover the "actual" purpose of imprisonment in South Africa, assuming that South African prisons are not, in fact, capable of achieving their stated aim of rehabilitating criminals and reducing crime. He starts by asking the eminently sensible question of who benefits from the

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<sup>55</sup> Dissel, A (2008) Rehabilitation and Reintegration in South African Prisons. In Sarkin, J (Ed) (2008) *Human Rights in African Prisons* Cape Town: HSRC Press.

<sup>56</sup> Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 3.

continued existence of prisons in South Africa, and reached some interesting conclusions:

"[W]ho stands to benefit from prisons – and the answer is simple: politicians and the private sector ... Prisons have symbolic value; they communicate the message that government is tough on crime and is willing and capable of legally depriving citizens of their liberty because they have committed a crime and offended society. Prisons symbolise the state's power over its citizens. More importantly, they communicate the willingness of the state to use its coercive power."<sup>57</sup>

Aside from their perceived symbolic value to the political authorities, Muntingh points out that prisons are also perceived to be valuable in several other respects, – including their supposed (but in fact very limited) ability to secure retribution, deterrence and incapacitation. Furthermore, he maintains that prison buildings possess "visibility value", which he describes as follows:

"We can see the buildings, even from a distance, and know that this is where people who have offended are kept. As monuments to law enforcement they have simultaneously a comforting value and a deterrent value."<sup>58</sup>

Muntingh notes further that prisons create a large number of jobs for public-sector employees (42,000 when he was writing in 2009), and consume vast amounts of resources largely supplied by private-sector businesses, by way of lucrative contracts with the state. Summing up why prisons remain popular despite their inability to reduce crime, he states:

"Perhaps the most attractive attribute, from the view of politicians, is that prisons have simplicity value. By stringing together the retributive value, deterrence, the value of incapacitation and visibility value of prisons, it becomes fairly easy for any politician to explain, in a convincing manner, why we need prisons and why we should have even more prisons."<sup>59</sup>

Unfortunately, the reality behind the "smoke and mirrors" is that the punishment of imprisonment

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<sup>57</sup> Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 5.

<sup>58</sup> Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 5.

<sup>59</sup> Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 6.

simply does not work to reduce crime. In fact, prisons achieve the very opposite of their stated aim – by in fact acting as "universities of crime". Citing studies by Clear,<sup>60</sup> Piquero et al,<sup>61</sup> and Gendreau et al,<sup>62</sup> Muntingh explains as follows:

"There is a growing body of evidence to indicate that large-scale imprisonment makes the situation worse (Clear 2007). Even the incapacitation argument is unconvincing. It has been shown that in order to affect a ten per cent reduction in crime in the UK, using a general incapacitation approach, would require a doubling of the prison population (Piquero et al 2007:17). One can only speculate about what this means in the South African context. Other research has also confirmed that imprisonment does not contribute to reducing recidivism (Gendreau et al 1999). Even when controlling for risk profiles, those offenders who were sent to prison had a higher re-offending rate than those who received a community-based sentence. Higher recidivism rates are also associated with longer prison terms. In short, this implies that imprisonment per se increases the recidivism rate and the longer the term, the worse the impact. It is also reported that imprisonment increases recidivism for low-risk offenders."<sup>63</sup>

Furthermore, in relation to violent crime in particular, it would appear that increasing or decreasing the number of persons imprisoned does not have an appreciable effect on the rate of such crimes. Comparing the rate of violent crime in South Africa between 2003 and 2008 (which remained fairly stable), with the rate of prison admissions during that same period (which declined by a massive 47%), Muntingh concludes that:

"The number of offenders imprisoned does not appear to have any direct and observable impact on the rate of violent crime. If this was not the case, the rate of violent crime should have climbed steadily during the period because fewer offenders were imprisoned, but this did not happen."<sup>64</sup>

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<sup>60</sup> Clear, T (2007) *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighbourhoods Worse* New York: Oxford University Press.

<sup>61</sup> Piquero, AR, Farrington, DP & Blumstein, A (2007) *Key Issues in Criminal Career Research* Cambridge: Cambridge University Press.

<sup>62</sup> Gendreau, P, Goggin, C & Cullen, FT (1999) *The Effects of Prison Sentences on Recidivism* Canada: Public Works and Government Services.

<sup>63</sup> Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 6.

<sup>64</sup> Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 7 and 8. In relation to the massive drop in the numbers of persons being sentenced to imprisonment between 2003 and 2008, Muntingh points out that: "The number of sentenced admissions to prisons ... dropped from 178 569 in 2003 to 94 566 by 2007/8; a drop of 47 per cent." [See Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to

Finally, increasing the length of prison sentences does not seem to have any appreciable effect on the rates of violent crime. After examining the effects of the introduction of minimum sentences for certain crimes in South Africa from 1998 onwards, Muntingh reaches the following sobering conclusion:

"What is clear is that imprisonment has a minimal (if any) deterrent effect and that the minimum sentences introduced in 1998 have similarly had no deterrent effect. There is simply no evidence of this."<sup>65</sup>

As a final nail in the coffin of the argument that imprisonment helps to reduce violent crime, Muntingh makes the telling point that the low conviction rates for violent crimes in South Africa – he mentions rates of 8.9 to 12.6 per cent - make it "unlikely that imprisonment could have an impact on the rate of violent crime."<sup>66</sup> As to what *does* impact on rates of violent crime, Muntingh speculates that factors such as "socio-economic conditions, the general character of a violent society, the quality of policing, the effectiveness of prosecutions and so forth" may be relevant.<sup>67</sup> As to the future use of imprisonment as a form of punishment in South Africa, citing his own previous work,<sup>68</sup> Muntingh recommends:

"The point of departure must be that imprisonment should be used as a measure of last resort. This means that all other options, not only penal sanctions, need to be assessed and exhausted before a person is deprived of his or her liberty (Muntingh 2007:7). This requires the highly selective and intelligent use of imprisonment, and above all, avoiding the over utilisation of imprisonment, especially on offenders who may benefit from other interventions or much shorter terms of imprisonment. Imprisonment must be regarded as the most severe sanction to be imposed when no other sanction would have been reasonably able to achieve the same results

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Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 7]. The reasons for this massive drop were complex, according to Muntingh, but are possibly related to "the quality of crime detection, docket preparation, effectiveness of prosecutions and so forth" [See Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 7].

<sup>65</sup> Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 8.

<sup>66</sup> Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 8.

<sup>67</sup> Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 8.

<sup>68</sup> Muntingh L (2007) *Prisons in South Africa's Constitutional Democracy* Braamfontein: CSV.

intended by the court in a less restrictive manner."<sup>69</sup>

This thesis is in full agreement with Muntingh's argument. In fact, the close historical analysis of South African penal discourse undertaken in completing this thesis, serves to reinforce the central contention of Muntingh and many others – that imprisonment simply does not work, and has never worked.

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<sup>69</sup> Muntingh, L (2008) Punishment and Deterrence: Don't Expect Prisons to Reduce Crime *S.A. Crime Quarterly* 26: 3-10 at 8 and 9.

### **1.3 Methodology**

What follows is a brief overview of the methodology adopted during the research process – including the reasons for the various methods adopted and the potential limitations of the study.

#### **1.3.1 General Methodological Orientation**

The methodology used for the research for this thesis was qualitative, as opposed to quantitative. The reason for adopting qualitative research methods, was to enable a deep and nuanced understanding of South African penal discourse, as opposed to a broad but shallow understanding. Despite sacrificing a certain amount of breadth for increased depth of understanding, the methodology does seek to maintain sufficient breadth in terms of the knowledge produced. This is further explained in the sub-sections which follow.

#### **1.3.2 Utilisation of a Process of Reflexivity**

As discussed in the previous section, this thesis was guided from the beginning by a number of general theoretical assumptions, and began with a number of broad research questions in mind. Firstly, it aimed to establish whether the South African penal system followed the same pattern of "repeated failure", as outlined by Michel Foucault in his seminal work "Discipline and Punish – The Birth of the Modern Prison". Secondly, it sought to trace the evolution of South African penal discourse over time. Thirdly, it aimed to trace the overtly political role played by imprisonment over time within the social, political and economic structure of South Africa as a whole. Finally, it sought to remain open to whatever themes and sub-themes emerged from the raw data, in order to trace the dialectical relationship between penal ideology and penal practice in South Africa – with particular focus on the abuse of the basic human rights of prisoners. In keeping with the qualitative research method adopted, the researcher did not attempt to impose a more rigid set of theses from the beginning of the research process, which he then sought to prove or disprove. Instead, themes and sub-themes were allowed to emerge from the data in a reflexive manner during the research process.

### **1.3.3 The Research Role of the Author**

All the research undertaken, as part of this thesis, was carried out by the author acting as a single researcher – without the help of research assistants. This obviated the need to put in place protocols to ensure that the data collected by a number of different researchers was of a uniformly high standard. However, it also placed a burden on the shoulders of the author, as a single researcher, to guard as far as possible against the effects of any personal biases or “research blind-spots” which may, unconsciously, have influenced the research.

Since the research for this thesis involved locating, selecting and analysing primary and secondary documentary materials, there was no need for the author to enter the field. It was not necessary, therefore, for the researcher to adopt a field role, or to develop research protocols for conducting interviews. Furthermore, since the research is primarily qualitative as opposed to quantitative, there was no need to conduct any significant statistical analysis. Finally, apart from the general ethical requirement that the research be conducted as honestly and objectively as possible – with due regard to the methodological safeguards and cautions discussed below in relation to archival and documentary research – no other significant ethical issues arise out of the research methods adopted in this thesis.

### **1.3.4 The Selection of Data**

The thesis is based almost entirely on historical documentary research, utilising a wide range of primary and secondary documentary materials obtained from a variety of sources, including various libraries, official document repositories, archives and databases. As detailed below, care was taken in the selection of data, to ensure, as far as possible, that the picture which emerged from that data would be as accurate and unbiased as possible.

A wide range of primary and secondary sources have provided data for this thesis. Documents sourced and analysed include: colonial dispatches and other forms of government communication during the colonial period; a wide variety of newspaper reports (relating to the colonial and post-apartheid periods); records of parliamentary debates; official reports (in particular annual reports by the Department of Correctional Services, and by independent officials such as the Inspecting Judge of Prisons); records of commissions of enquiry (such as the Prison Reform Commission in Colonial Natal at the turn of the Nineteenth Century and the Jali Commission of enquiry at the turn of the Twentieth

Century); books; articles; and legal judgments.

Apart from the archival material, perhaps the most significant of the data sources for this thesis was the Press Cutting service provided by the Institute for Contemporary History (INCH) at the University of the Free State. The Institute came into existence towards the end of 1970, and houses an extensive collection of press cuttings for the periods covered in Parts Two and Three of this thesis. Using a range of key words and broad phrases, every effort was made to obtain as wide a variety, and as great a number of, different newspaper reports relating to imprisonment in South Africa during the time periods under scrutiny. Various data searches produced hundreds of different newspaper reports from a range of national and local South African newspapers – including the English and Afrikaans "white mainstream press";<sup>70</sup> the more "politically conservative Afrikaner press";<sup>71</sup> and the "black mainstream press".<sup>72</sup> The only limitation on the net cast as part of the various data searches conducted by staff of the Institute for Contemporary Legal History, was an upper limit on the funding available to the researcher to pay for the said data. The many hundreds of newspaper reports obtained in this manner were then carefully sorted and analysed by the author.

As stated in Section 1.3.2 above, care was taken by the author to not inadvertently exclude possible themes or sub-themes emerging from the data – by looking only for what "should" be found in the data according to a pre-conceived thesis. Instead, themes and sub-themes were allowed to emerge and develop during the research process, providing an overall picture of South Africa's penal discourse, which is as accurate and true-to-life as possible.

### **1.3.5 The Use of Newspaper Reports**

As mentioned in the previous sub-section, newspaper reports formed a significant part of the data utilised in the research for this thesis. Clearly, such reports will always be an important source of data

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<sup>70</sup> In this thesis the term "white mainstream press" is used as a rough rule of thumb, and should not be read as a strict scientific definition. The English white mainstream press is taken to include newspapers such as the *Cape Times*, the *Rand Daily Mail*, the *Natal Mercury*, the *Natal Witness*, the *Daily News*, the *Cape Times*, *The Star*, the *Eastern Province Herald*, the *Sunday Tribune*, and the *Daily Despatch*. The Afrikaans white mainstream press is taken to include newspapers such as *Beeld* and *Rapport*.

<sup>71</sup> In this thesis the term "more politically conservative Afrikaner press" is used as a rough rule of thumb and should not be read as a strict scientific definition, and the more politically conservative Afrikaner press is taken to include newspapers like *Die Volksblad* and *Die Vaderland*.

<sup>72</sup> In this thesis the term "mainstream black press" is used as a rough rule of thumb and should not be read as a strict scientific definition; it is taken to include newspapers like *City Press* and *Sowetan*.

when tracing the evolution of public discourse on a particular topic. This important source of data – utilised in many sections of this thesis – must, however, be handled cautiously. There are advantages and disadvantages to making use of newspaper reports in a study like this.

On the negative side, newspaper reporting is often sensationalised, and "cherry picking" sensational reports for analysis will give a skewed picture of what people are actually saying and doing on the ground. Furthermore, different newspapers have different editorial policies, ranging from radical to liberal to conservative, as well as different political, social and cultural agendas. Following reports in a single newspaper, or in a small group of newspapers which are similarly aligned, will similarly result in a skewed picture. Finally, the researcher must always be aware that there may have been "voices" which were effectively silenced, since they were either not heard or were not considered sufficiently important to be included in newspaper reports at the time. This is a particularly important point to be borne in mind when researching powerless groups such as prisoners.

The way to overcome these challenges is to ensure that the widest possible cross-section of newspaper reports is utilised, in order to cancel out bias. In theoretical terms this could be classified as a form of "triangulation" – i.e. drawing data from as many sources as possible in order to check the veracity of each particular part of the data. Of course, using a wide cross-section of newspaper reports drawn from as many different newspapers as possible, has the added advantage of allowing the researcher to trace individual lines of discourse which may differ from one newspaper to the next. The researcher must also be particularly sensitive to listen for traces of the potentially "silenced voices" within the data.

In researching the different sections of this thesis, care was taken to include a wide cross-section of reports drawn from a wide range of national and regional newspapers. By comparing and contrasting hundreds of different reports from this wide range of sources, it was usually possible to extract a relatively clear overall picture of the public discourse surrounding imprisonment during the particular period under investigation. As a further form of "triangulation", data gleaned from official reports, dispatches, parliamentary debates and other government documents, were used together with data from newspaper reports. Furthermore, every effort was made to bring to the fore the "silenced" voices of prisoners.

From a methodological viewpoint, the positive aspects of making use of a significant amount of newspaper data, include that the researcher gains instant access to information gleaned by many

different investigative reporters over a considerable period of time. In other words, a single researcher is able to obtain broad and deep data relating to a particular topic, representing the accumulated work over time of scores of reporters “on the ground” – which would be physically impossible for that researcher to secure in any other way. Of course, the reliability of the data assumes the existence of a more-or-less diverse and vibrant “free” press, usually made up of a significant number of well-established independent newspapers. For a single researcher, access to such quality and quantity of data would not be possible using other methods of data collection such as interviews or questionnaires.

Newspaper data may not always be completely accurate, but in countries with a vibrant and fairly diverse press, they provide a very detailed first-hand account of historical events – as the saying goes: “News is a first rough-draft of history”.<sup>73</sup> In many cases, reporters give eye-witness testimony of what they witnessed at a particular time. Furthermore, reporters often quote their interviewees verbatim, allowing the “voices” of those involved in a particular incident – including normally “silenced” voices – to be heard by the researcher through the mists of time. Newspaper reports can thus provide a useful source of “living data”, which resonate with the urgency and preoccupations of a particular time. Finally, as to the potential danger of political bias within newspaper data, it must be borne in mind that data drawn from “official” sources may also be guilty of bias. In many cases, official sources – for example an official report by an official in the apartheid government – may be less trustworthy than a report in the national press.

### **1.3.6 A Note on Triangulation**

Triangulation, in relation to newspaper reports, may take place in a number of ways. Firstly, the same story as related separately and independently in a number of credible newspapers may be compared, taking care to ensure that the separate reports are not simply the same story by the same reporter – and which has been syndicated to different newspapers. Secondly, details of the story as reflected in the newspapers may be compared to details contained in official government reports (such as the annual report of the Department of Correctional Services). Thirdly, details of the story as reflected in the newspapers may be compared to details contained in official reports by independent monitoring bodies (like the annual report of the Inspecting Judge of Prisons). Fourthly, details of the story as reflected in the newspapers may be compared to details contained in the official records of parliamentary debates

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<sup>73</sup> This phrase appeared in the 13 June 1948 edition of the *Washington Post*. See website: [http://www.slate.com/articles/news\\_and\\_politics/press\\_box/2010/08/who\\_said\\_it\\_first.html](http://www.slate.com/articles/news_and_politics/press_box/2010/08/who_said_it_first.html) (Accessed 7 March 2015).

and official press releases by government departments. Finally, secondary sources such as credible academic articles may be utilised to provide a measure of triangulation, in certain instances.

This thesis has made use of all the above forms of triangulation. It should be noted, however, that much of this thesis is concerned with "perceptions" as opposed to "reality". One of the primary goals of the thesis is to trace the discourse - the public perceptions - surrounding imprisonment in South Africa over time.

### 1.3.7 Secondary Sources

For reasons of space it is impossible to refer in this section to all the secondary sources consulted during the research for this thesis. All such sources are, however, fully referenced in the body of the thesis. A few of the more prominent thinkers whose works have influenced the shaping of various parts of this thesis, may, however, be mentioned at this point:

Particularly influential in shaping the general theoretical framework of this thesis, were: Michel Foucault, Michael Ignatieff, Georg Rusche and Otto Kirchheimer, Dario Melossi and Massimo Pavarini, Stanley Greenberg, and Bob Fine *et al.*<sup>74</sup>

In relation to the development of imprisonment in Africa, works of the following theorists were prominent: James Read, William Clifford, Robert Seidman, Gerald Zarr, Florence Bernault, Thierno Bah, Laurent Fourchard, Dior Konaté, A Milner and David Killingray.<sup>75</sup>

As far as the social, political and economic background to the Colony of Natal was concerned, the following thinkers were particularly influential: Charles van Onselen, David Welsh, Shula Marks, Colin Bundy, Anthony Atmore, Richard Rathbone, David Welsh, and Edgar H Brookes and Colin de B Webb.<sup>76</sup>

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<sup>74</sup> Foucault, M (1979) *Discipline and Punish: The Birth of the Prison* London: Peregrine Books; Ignatieff, M (1978) *A Just Measure of Pain: The Penitentiary in the Industrial Revolution* London: MacMillan; Rusche, G & Kirchheimer, O (1939) *Punishment and Social Structure* New York: Columbia University Press; Melossi, D & Pavarini, M (1981) *The Prison and the Factory* London: MacMillan; Greenberg, S (1980) *Race and State in Capitalist Development* New Haven: Yale University Press; Fine, B et al. (1979) *Capitalism and the Rule of Law: From Deviancy Theory to Marxism* London: Hutchinson.

<sup>75</sup> Bernault, F (Ed) (2003) *A History of Prison and Confinement in Africa*. Portsmouth: Heinemann; Milner, A (Ed) (1969) *African Penal Systems* London: Routledge.

<sup>76</sup> Van Onselen, C (1982) *Studies in the Social and Economic History of the Witwatersrand 1886–1914: 2 New Nineveh*

For those sections involving more recent scholarship focused on South African prisons, in particular, the work of the following scholars was especially useful: Dirk Van Zyl Smit, Lukas Muntingh, Amanda Dissel, Jonny Steinberg, Julia Sloth-Nielson, Lisa Vetton and Martin Schonteich.<sup>77</sup>

### 1.3.8 The Periods Covered by the Research

There must be a way of limiting the focus of any research project, in order to make it achievable in practice. This is particularly true in the case of research conducted by a single researcher – even one with a number of years at his disposal, as in the case of PhD research. The way the scope of this thesis was limited was, firstly, to focus on a specific strand of discourse – i.e. the public and political discourse associated with imprisonment in South Africa and its effect on the human rights of prisoners. Secondly, Part One of the thesis focused only on the Colony of Natal.<sup>78</sup> Thirdly, Parts Two and Three of the thesis focused on specific periods – 1980 to 1984 in Part Two, and 1994 to 2004 in Part Three.

Despite the "gaps" between the periods covered, as explained in the introduction to this section, the focus in this thesis is on a deep and nuanced understanding of South African penal discourse – as opposed to a broad but shallow understanding. It is submitted that the three “snapshots” which emerge from the three periods covered, provide an accurate and deeply nuanced sense of the manner in which South African penal ideology evolved over time. The "gaps" must, however, be noted as a formal limitation to the conclusions reached by this study, as a whole.

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Johannesburg: Raven Press; Bundy C (1979) *The Rise and Fall of the South African Peasantry* Berkeley: University of California Press; Brookes, EH & Webb, C de B (1965) *A History of Natal* Pietermaritzburg: Natal University Press; Marks, S (1970) *Reluctant Rebellion: The 1906-1908 Disturbances in Natal* Oxford: Clarendon Press; Marks, S & Atmore, A (Eds) (1980) *Economy and Society in Pre-industrial South Africa* London: Longman; Marks, S & Rathbone, R (1982) *Industrialisation and Social Change in South Africa: African Class Formation, Culture and Consciousness 1870-1930* New York: Longman; Welsh, D (1971) *The Roots of Segregation: Native Policy in Colonial Natal 1845-1910* Oxford: Oxford University Press.

<sup>77</sup> Van Zyl Smit, D (1992) *South African Prison Law and Practice* Durban: Butterworths; Van Zyl Smit, D & Dunkel, F (Eds) (2001) *Imprisonment Today and Tomorrow: International Perspectives on Prisoners' Rights and Prison Conditions* The Hague: Kluwer International; Sloth-Nielsen, J & Gallinetti, J (Eds) (2004) *Child Justice in South Africa: A Guide to Good Practice* Cape Town: Community Law Centre, University of the Western Cape; Steinberg, J (2004) *The Number: One Man's Search for Identity in the Cape Underworld and Prison Gangs* Jeppestown: Jonathan Ball.

<sup>78</sup> It should be noted that the emergence of imprisonment in colonial Natal coincides with the widespread introduction of the prison as a form of punishment into the African continent as a whole. See Section 1.4 of this thesis: Peté, SA (2008) *A Brief History of Human Rights in the Prisons of Africa*. In Sarkin, J (Ed) (2008) *Human Rights in African Prisons* Cape Town: HSRC Press. - Chapter 2, 40-66, in particular from page 44 onwards.

### 1.3.9 Limitations of the Study

Overall, every effort was made to ensure the validity of the conclusions reached in this thesis by: Careful and comprehensive data collection (making use of a wide variety of sources such as archives, research libraries, and a range of credible and extensive electronic data bases); exhaustive analysis by an experienced single researcher (taking care to guard against personal biases and research blind spots); and careful triangulation among and between a wide range of documentary sources (both primary and secondary).

Despite the above, the following limitations are acknowledged:

First, there are large "gaps" between the periods covered. This could not be avoided given the limited time and resources available to the author.

Second, as noted in Section 1.3.4 above, there are certain disadvantages to the use of newspaper data.

Third, as a single researcher who is fluent in only the English and Afrikaans languages, the author was unable to analyse newspapers or other material written in any of the other South African languages. Fortunately, during the periods examined in this thesis, English operated as the *lingua franca* – with Afrikaans playing an important role during the apartheid period, in particular.

## **CHAPTER 1.4**

### **A Brief History of Human Rights in the Prisons of Africa**

Chapter published in a peer reviewed book:

Peté, SA (2008). A Brief History of Human Rights in the Prisons of Africa. In Sarkin, J (Ed) *Human rights in African prisons* Cape Town: HSRC Press, 40- 66.

## 2 A brief history of human rights in the prisons of Africa

Stephen Peté

In his introduction to the work *African Penal Systems*, Alan Milner warns that '[t]he making of generalizations about Africa is a foolish pastime' (1969: 1). Africa is a vast continent with a long and complex history. Attempting to trace the history of human rights in the prisons of Africa in a single chapter may seem too broad an undertaking. Consequently, this chapter should not be considered to be more than a brief overview of certain main themes which, from a human rights standpoint, characterise the development of prisons in Africa.

As many scholars have pointed out (see for example Rusche & Kirchheimer 1968; Foucault 1977; Ignatieff 1978), imprisonment is essentially a form of punishment that rose to prominence during the birth of the modern era in Europe. For centuries before the onset of modernity, criminals, slaves and those defeated in war were subjected to detention of one kind or another. Imprisonment as a specific form of punishment,<sup>1</sup> however, is a distinctly modern phenomenon. Thus, in a strict sense, imprisonment in Africa may be said to have begun with the introduction of this 'modern' form of punishment to the continent by the colonial powers. Although some of the forms of detention in the pre-colonial period will be discussed briefly, the main focus of this chapter will be on the colonial and post-colonial periods. Of particular interest will be the manner in which penal theories and technologies of punishment imported from Europe were adapted and transformed in the African context and the effects of this on the human rights of prisoners in Africa.<sup>2</sup> Although not strictly 'imprisonment' in the modern sense, some attention will be devoted to the detention of slaves in Africa, due to the massive impact of slavery on the continent prior to the colonial period. The overall focus of this chapter will be to reveal the intense suffering endured over the years by millions of ordinary prisoners, confined in deplorable and inhumane conditions in the prisons of Africa, and to isolate some of the reasons for the systematic abuse of their human rights.

### The pre-colonial period

Penal incarceration was rare in pre-colonial Africa.<sup>3</sup> The detention of criminals, prisoners of war, slaves and others did take place but was usually secondary to some other purpose and was not regarded as a specific form of punishment. Criminals in the smaller decentralised African societies were usually detained by being

chained out in the open. Although the centralised states of West Africa did possess permanent prisons, these were used for detaining political prisoners, or accused persons awaiting trial and punishment by other means.<sup>4</sup>

The fact that imprisonment, as such, was not regarded as a suitable form of punishment for ordinary offenders during the pre-colonial period is confirmed by James S Read (1969), who points out that forms of physical restraint were rarely used in East Africa during pre-colonial times. Detention does not appear to have been regarded as a punishment in itself. In those rare cases involving detention, offenders would be held for purposes of attending their trial, or awaiting the imposition of some other form of punishment. Read points out that on rare occasions offenders in the kingdom of Ankole were detained in a form of stocks usually pending their execution and that stocks were used also in Buganda. Read confirms, however, that 'prisons were introduced only after the advent of British rule' (1969: 103).

Similarly, in discussing the kingdom of Dahomey and the empire of Samori Touré, the great military states which existed in West Africa during the nineteenth century, Thierno Bah (2003) notes that there is no firm evidence to support the existence of a systematically organised penitentiary system in either of these states. The penal systems which existed in certain pre-colonial states do, however, share certain characteristics with modern systems of imprisonment. In discussing the centralised states of Cameroon during the nineteenth century, Bah states:

Standardized state imprisonment seems to have been practiced by centralized states, such as the Mandara kingdom, which reached its pinnacle during the nineteenth century. The Mandara system of official titles proves that the kingdom used a classical penitentiary system, complete with torture and squads of guards... The Fulani emirate of northern Cameroon, founded in the wake of Usman dan Fodio's *jihād* (1804), also established a judiciary system with punishments that varied from fines to long prison sentences, and included forced labor. Each political unit of command (*lamidat*) had a prison, perceived by local populations as a place of terror... In the *lamidat* of Mindif, the *Bongo*, a Muslim convert who did not belong to the Fulani ethnic group, acted as chief of police and prison guard... Physical cruelty and starvation were frequent. Recalcitrant prisoners were tortured by being shut up in a stifling hut, and exposed to smoke of hot peppers thrown onto fire. (2003: 74)

In a modern sense, however, it may be said that, apart from southern Africa, the punishment of imprisonment became widespread only towards the end of the nineteenth century.

According to Read, the main focus of penal systems in traditional societies was to secure compensation for the victim, as opposed to punishment of the offender. He points out that compensation for some common injuries was probably fixed in certain communities and refers to Kikuyu law, which provided that 'nine sheep or

goats had to be paid for adultery or rape, and one hundred sheep or ten cows for homicide' (Read 1969: 103–104). The rate of compensation did not change with the wealth or age of the victim and was not affected by the intention or motive of the killer. Read submits that the purpose of the compensation was to restore the equilibrium of society. The family of the offender could be held collectively liable to pay compensation to the victim. The focus of the colonial authorities on punishment of the offender, as well as their lack of concern for arranging compensation for the victim, led to great dissatisfaction among East Africans, who felt that justice was not served if compensation was not paid. William Clifford (1969) confirms Read's views on punishment in pre-colonial African societies. Speaking of the punishments imposed by the tribes of Central Africa prior to colonisation, Clifford states that death or exile was used only in response to crimes which threatened the safety of the community, such as 'in cases involving witches or persistent offenders' (1969: 241–242). In other cases, the penal system was focused on compensating the victim and restoring the equilibrium of the community which had been upset by the crime. According to Clifford, prisons did not exist 'and even murder, assault and property damage could be redressed by compensation and only provoked penal sanctions when their effects threatened the stability of the community as a whole' (1969: 241–242).

As far as corporal punishment and the death penalty are concerned, Read submits that these punishments were rarely used in the traditional societies of East Africa. The death penalty was regarded as an exceptional punishment of last resort, to be used only to protect the community from dangerous offenders. While a habitual thief might be regarded as a danger to the community as a whole and be subject to execution, isolated instances of theft would generally be addressed by demanding the payment of some form of compensation. According to Read, Kikuyu law drew a distinction between different kinds of homicide. Normally homicide would be a matter requiring some form of compensation. To cause death by poison or witchcraft, however, was regarded as a crime against the whole community, and could attract the punishment of death by burning (Read 1969).

Prisoners of war, in certain parts of Africa at least, were liable to be executed or sold into slavery. In a discussion of West African societies during the nineteenth century, Bah (2003) points out that the end of a military campaign was celebrated by the distribution of war booty. War booty could include prisoners, who would be executed, ransomed, exchanged or enslaved.

A significant punishment in pre-colonial times was to ostracise the offender. In the context of the cohesive societies of pre-colonial Africa, ostracism was a severe punishment. It could take the milder form of social isolation within the community itself or the more severe form of total banishment by means of a formal ritual (Read 1969; Bernault 2003).

Spiritual sanctions were also an important sanction during the pre-colonial period. Religious rites were often conducted to protect the community from the anger of the

ancestral spirits and to make amends for the actions of the guilty parties. Religious rites denouncing the crime were also used as a form of punishment. According to Read, the elders of the Nandi tribe of Kenya would deal with serious crimes by uttering curses which, unless formally removed, 'would prove fatal, spreading also through the offender to his family and descendants' (1969: 105).

Finally, the Muslim *Shari'a* law that was applied in many areas of Africa during pre-colonial times continues to regulate many parts of the continent to this day. For example, one of the early British administrators had the following to say about the law applied in Zanzibar:

According to strict Mahommedan law murder may be atoned for, and in cases of mutilation the application of the *lex talionis*, which I need scarcely say now no longer obtains in practice, may be avoided by the payment of '*diya*' or blood-money with the consent of the victim, or, if he has been killed, of his legal heirs. (Read 1969: 105)

### The Atlantic slave trade

No discussion of human rights and imprisonment in Africa would be complete without reference to the Atlantic slave trade, which involved the capture and detention of millions of Africans. Although enslavement did not amount to imprisonment in the strictly modern sense, the sheer scale of this trade in human beings, which began around 1440 and lasted for over four centuries until finally coming to an end around 1870, demands attention.<sup>5</sup> Moreover, the forts and slave castles which were put in place as a result of the trade were to become important centres of detention even after the abolition of slavery.

There are many examples of slave castles and fortresses along the west coast of Africa. For example, Ghana is home to the slave castles of Elmina and Cape Coast. The former was built in 1482 by the Portuguese and is now the oldest European structure in tropical Africa, while the latter was built in 1650 by the Swedes. Another well-known slave castle was built by the French at Goree Island off the coast of Senegal, where an important port for the trans-shipment of slaves was situated.<sup>6</sup> In the Portuguese colony of Angola, three fortresses, known as São Miguel, Penedo and São Pedro, were built in Luanda shortly after the city was founded in 1576. Although these fortresses contained dungeons, they were reserved for white inmates or high-profile African political prisoners. For example, in 1836 Alexis, a prince of Kongo, was imprisoned in Penedo 'for having asserted the independence of the kingdom of Kongo' (Vansina 2003: 59). Ordinary slaves, however, had to be content with places of confinement that were far more rustic than a castle or fort.

Transporting slaves from the hinterland to the coast, and then on to slave ships for their journey to the Americas, involved different methods of confinement. One method of transporting slaves across country was to attach between 30 and 100

captives to a long chain known as a *libamo*, which became a kind of walking prison (Vansina 2003: 63).

Once on board a ship, the conditions of slaves' detention were even worse (Reader 1997).

## The colonial period

### The rapid development of imprisonment

Although prisons have existed on the continent of Africa for centuries, the punishment of imprisonment became widespread in most of sub-Saharan Africa, with the notable exception of southern Africa, only towards the end of the nineteenth century.<sup>7</sup> As the colonial powers extended their control across the length and breadth of the African continent, they established prisons in all their garrisons and administrative outposts.<sup>8</sup> These institutions were to play an important role in the expansion and consolidation of colonial authority (Bernault 2003). Florence Bernault (2003) describes the early spread of prisons in sub-Saharan Africa as being massive and systematic. She argues that in the British territories a comprehensive series of prison ordinances was issued and jails were built in all new administrative posts. She notes that in French West Africa white administrators were permitted to sentence Africans to 15 days in prison without trial. In French West Africa and Equatorial French Africa, Bernault notes that a variety of penal facilities were provided. Within each police precinct, 'security rooms' known as *cachots* were provided for the detention of accused persons. Within each small administrative district or 'circumscription', a modest prison known as a *maison d'arrêt* or a 'house of correction' was provided to hold persons awaiting trial or offenders sentenced to a short term of imprisonment. In the capital of each colony, a larger prison known as a *maison central* was provided for the detention of those sentenced to between six months and five years' imprisonment. Finally, at the federal level there were a number of larger fortified prisons known as *pénitenciers*, which held persons who had been sentenced to more than five years' imprisonment, as well as political prisoners.<sup>9</sup>

In the British colony of Uganda, the first prisons were established during the late nineteenth and early twentieth centuries. Uganda is an interesting example because it is one of the few African countries in which a dual prison system emerged, with some prisons controlled by the local authorities and others by the colonial authorities. Read notes that it was not the colonial government, but the 'native government of Buganda' (1969: 108), that established the first prisons in Uganda, soon after the declaration of the Protectorate in 1894. The colonial government established prisons some years later based on legislation passed in 1903 and 1909 (Read 1969).

In the East African Protectorate, the first prison was established at Fort Jesus in Mombasa during the first years of British rule. Read points out that in 1897 Fort Jesus held a total of 130 convicts on average and that the prison 'was also used for the custody of vagrants, lunatics and paupers, who were accommodated separately from

the convicts' (1969: 109). Bernault submits that the British colony of Kenya 'offered the most extraordinary attempt to organize a full hierarchy of penal institutions' (2003: 13). She points out that by 1911 a total of 30 penitentiaries had been established in the colony and that by 1927 there were 22 'detention camps', which supervised hard labour in the territory. By 1933, according to Bernault, 'forced labor had become such a frequent sentence that the government began building "prison camps" entirely devoted to agricultural and public works' (2003: 13). She comments that the system of detention operating in the colony was 'perhaps one of the few in Africa to resemble a "carceral archipelago"' (2003: 13).

The first prisons in Ghana were mainly custodial institutions and, by 1850, a maximum of 129 prisoners could be accommodated in cells located in four different forts (Seidman 1969: 435). During the 1860s, the punishment of imprisonment became increasingly harsh, with the introduction of penal labour in the form of shot drill, crank drill and the treadmill.<sup>10</sup> Severe corporal punishment was administered by the dreaded cat-o'-nine-tails and prison diets were diminished to a level at which they were only just sufficient to keep the prisoners alive (Seidman 1969).

Other British colonies included Freetown, where a three-storey stone prison building was completed in 1816 'that remained largely unaltered for a century' (Killingray 2003: 102). In Nigeria, the Broad Street Prison in Lagos opened in 1872, and could accommodate 300 prisoners (Killingray 2003: 102). In Zambia, prisons were erected after the then Northern Rhodesia became a colonial territory in 1924. By 1935, there were six central prisons and 29 local prisons (Clifford 1969: 241–242).

Prisons in a modern sense were established earlier in southern Africa than in the rest of Africa. The punishment of imprisonment was imported into the Cape Colony at the beginning of the nineteenth century, at around the time of the prison reform movements in Europe and the Americas (Bernault 2003). Before this, from the time of the first colonial settlement at the Cape in 1652 until the reforms of the nineteenth century, the main focus of punishment in the Cape Colony was the direct infliction of physical pain on the body of the accused. Van Zyl Smit notes that the punishments usually involved a cruel public spectacle and included 'public crucifixions in which the convicted, with some of their limbs broken or severed, were left to die slowly' (1984: 148). Increasing opposition to such cruel 'punishments of the body' (to use Michel Foucault's term) ensured that the punishment of imprisonment came to the fore at the beginning of the nineteenth century.

From the time of their inception, prisons in southern Africa were to become an integral part of a system of racial oppression which, towards the middle of the twentieth century, developed into the notorious political system known as 'apartheid'. Bernault notes that 'from the late 1880s onward, prisons [in southern Africa] provided early sites for testing racial segregation, thus offering crucial models for racial separation schemes in the larger society' (2003: 8).<sup>11</sup> Further, as I have noted in relation to colonial Natal, prisons played an important role in enforcing racist

legislation aimed at controlling the indigenous African population, and in particular the power of their labour (Peté 1986).

In the southern African context, prisons were seen as part of a wider set of institutions which were designed to confine and control the African population, in particular African workers. For example, from the 1870s on, compounds and hostels were built to accommodate the thousands of African workers employed in the diamond and gold mines of southern Africa. For the inmates of these compounds and hostels, life was similar to that of the average prisoner. As Bernault notes, spatial confinement in southern Africa 'shaped the economic, medical, and political landscape in ways that far exceeded other policies of enclosure on the continent' (2003: 8). The extent to which prisons and mine compounds operated in tandem to confine and control the emerging black working class in South Africa is well captured in Jonny Steinberg's (2004) work *The Number*.

#### **Antiquated facilities, chronic overcrowding and social control**

If there is a single theme which may be said to characterise the punishment of imprisonment in the African context, from the time this form of punishment became widespread on the continent to the present day, it is consistent and chronic overcrowding. Part of the reason for this is found in the particular way in which prisons in Africa were used as instruments in the struggle to establish colonial and racist control over indigenous populations. The colonial authorities resorted to the widespread use of administrative sentences, which entailed short arbitrary periods of detention affecting a high percentage of the indigenous adult male population. According to Bernault, the purpose of administrative imprisonment was to act 'as an economic incentive to enforce tax collection, forced labor, or cultivation, and to provide colonial companies with a constant influx of cheap labor' (2003: 12). The prisons of Africa were employed not only, or even principally, to control crime, but were used to impose colonial control on the indigenous population.<sup>12</sup> Such policies resulted in penal facilities which were constantly and chronically overcrowded.

Just after the turn of the century, official inspectors in French West Africa denounced chronic overcrowding in the prisons.<sup>13</sup> Furthermore, dilapidated prisons beset by chronic overcrowding characterised the penal systems of French West Africa well after the turn of the century (see Fourchard 2003).

Prisons in the British colonies were often similarly dilapidated and chronically overcrowded. Referring to Owerri Prison in south-eastern Nigeria, Killingray (2003: 101) notes that by 1919 there were more than 900 prisoners in a structure designed to accommodate about 100. He notes that conditions there were unsanitary, there was little food and that as a result many inmates died.

In the prisons of Ghana, overcrowding was a problem from the very earliest times. In 1869, for example, the secretary of state advised the administrator of the Gold Coast that the need to build additional prison cells might be avoided 'by resorting

to shorter and sharper punishments, by whipping in addition to shorter terms of imprisonment or in total substitution for any imprisonment...by substituting in the earlier stages of imprisonment strictly penal labour, and by lowering diet to the minimum required for health' (Seidman 1969: 436).<sup>14</sup> In 1899 the Accra Prison was described by Acting Governor Low as being unfit for its purpose. He commented that prisoners were 'crammed into unsuitable rooms, sometimes as many as 15 in one room. There is no accommodation for the various grades of prisoners. Debtors, political prisoners, prisoners awaiting trial, are all huddled into one room at night and penned like sheep during the day within a small concreted yard under a galvanized iron roof' (Seidman 1969: 440).

Robert Seidman points out that overcrowding in Ghanaian prisons had reached crisis levels by 1949 and that this situation became even worse as time went on. The prison population of Ghana increased from 1 500 before World War Two to 3 600 by 1951 and showed no signs of decreasing (Seidman 1969: 448). This chronic overcrowding within the Ghanaian penal system was to continue into the post-colonial period.

The situation in southern Africa was no better. In 1938, the Director of Prisons for Southern Rhodesia visited and reported on the prison system in Northern Rhodesia. He found that there were inadequate facilities for classification and segregation, which resulted in juveniles as well as certified mental patients being confined in prisons together with both male and female offenders (Clifford 1969). The Livingstone Central Prison was found to be 'antiquated and thoroughly unsatisfactory from every point of view' and the Kasama prison was condemned as being in 'a dangerous state of repair' (quoted in Killingray 2003: 103). Poor conditions in the prisons of Northern Rhodesia resulted in serious abuses of the human rights of inmates. In 1940, for example, justices visiting the Livingstone Central Prison remarked on the disgraceful practice of chaining prisoners to large pieces of railway ties to prevent their escape (Killingray 2003).

In South Africa, prisons during the colonial era were often similarly dilapidated and overcrowded. The penal system of colonial Natal provides a good example of the chronic and enduring nature of the overcrowding which afflicted many prisons in South Africa during the colonial period. Almost from the time of their establishment in 1842, the prisons of colonial Natal were plagued by overcrowding. Over the years, African resistance to restrictive colonial legislation aimed at the social control of the indigenous population resulted in large numbers of what were essentially political prisoners (in the broad sense) being confined within the prisons of the colony. In 1872, for example, the Durban Gaol was overcrowded to such an extent that only 176 cubic feet of space was available for each prisoner. This was despite the fact that official policy required at least 900 cubic feet of space per prisoner.<sup>15</sup> Space in the Durban Gaol was so limited that even the cells allocated to sick prisoners were overcrowded. On 5 November 1872, the Durban Gaol Board noted that 'in some cases it is to be feared that life has been sacrificed for want of proper accommodation for the sick'.<sup>16</sup> In May 1877, the lieutenant governor of the colony examined the state of accommodation at the Pietermaritzburg Gaol and concluded that it was 'wholly

inadequate to the demands upon it, the daily number of prisoners being far greater than the prison can properly accommodate, whilst sometimes there is excessive overcrowding.<sup>17</sup> Overcrowding in the Pietermaritzburg Gaol was made even worse by the outbreak of the Anglo-Zulu War in 1879, which resulted in an increasing number of military prisoners being sent to the prison. In 1880, the superintendent of the goal complained that it was 'almost impossible to crowd more prisoners into the cells where the prisoners have not 200 cubic feet each.'<sup>18</sup> The overcrowding resulted in serious health problems, and the district surgeon pointed out that serious forms of dysentery and diarrhoea were a frequent occurrence in the Pietermaritzburg Goal.<sup>19</sup> Eventually, the prison authorities were ordered to pitch tents for African prisoners in order to relieve the overcrowding. The resident magistrate of Pietermaritzburg complained that the '[o]rder has been complied with; but it involves crowding and it is impossible to put men under long sentence in tents. Moreover, measles have [sic] broken out in the Gaol.'<sup>20</sup> The increase in the prison population of colonial Natal was such that, as soon as extra accommodation was built, it was filled to bursting point. In 1886, only three years after additional accommodation had been constructed at the Durban Gaol, the district surgeon reported that, in the cells set aside for 'Coloured' prisoners '[a]s many as from 5 to 8 adults are placed frequently in a small cell of say 577 feet cubic space.'<sup>21</sup> Despite further additions to the Durban and Pietermaritzburg gaols in 1889 and 1890 respectively, within a very short time overcrowding had once again become a major problem. In October 1892, the Durban Gaol was so overcrowded that 50 short-sentenced prisoners were forced to sleep in the corridors at night.<sup>22</sup> In December 1893, the superintendent of the Durban Gaol informed the government that, as a result of overcrowding, 73 prisoners were forced to sleep in the corridors at night.<sup>23</sup> This chronic overcrowding persisted after the turn of the century. In his report for 1903, the Chief Commissioner of Police noted that even though a new block had been completed at the Durban Goal, the accommodation was still insufficient and the gaol was overcrowded.<sup>24</sup>

The chronic overcrowding which beset the prisons of colonial Natal more or less throughout the colonial period was not unique to the colony, the region or the continent as a whole.

### Corporal and capital punishment

An enduring theme which has, over the years, had a significant impact upon the human rights of offenders in Africa is the extensive use of corporal punishment, both as an alternative to and in conjunction with the punishment of imprisonment. Within the penal system of colonial Natal, for example, the imposition of corporal punishment by means of the infamous cat-o'-nine-tails was so widespread that the Prison Reform Commission of 1906 described it as the 'cult of the Cat' (Peté 1986: 102). In the Belgian Congo, Bernault notes that 'the famous *chicotte* – whipping administered by agents of the Force Publique – became so widespread that it later remained as an icon of colonial punishment in the memories of contemporary Zairians' (2003: 15). In relation to German East Africa, Read (1969: 109) describes

the 'widespread and frequent use of corporal punishment as a summary punishment' during the German administration of the colony.<sup>25</sup> Furthermore, Killingray's (2003) work points to the extensive use of corporal punishment in British colonial Africa.

The main purpose of the colonial prison was not to promote social harmony within African society but rather to secure white sovereignty and control.<sup>26</sup> For this reason, corporal punishment formed an important part of the penal systems of most colonies. This pre-modern sanguinary form of punishment, to use Foucault's term, which had lost much of its authority in western societies, still resonated with power in the colonies of Africa. As Bernault points out, the penal systems of Africa had a completely different *raison d'être* from those of Europe, accounting for the importance of apparently archaic forms of punishment in Africa. She argues that prisons aimed at reinforcing:

[the] social and political separation of the races to the sole benefit of white authority by assigning the mark of illegality to the whole of the dominated population. As such, the colonial prison did not supplant, but rather encouraged penal archaism. This is why the colonial prison did not *replace* physical torture in the colonies; it only *supplemented* it – recycling, far from the European metropolises, the long-forgotten practice of state violence and private vengeance. (2003: 16)

The ideological reasons for the particularly prominent role of this barbaric form of punishment within African penal systems over the years are, perhaps, to be found in colonial attitudes towards African offenders. The ideology of racist paternalism, which dominated the thinking of many colonists, resulted in an ambiguous view of African offenders as being brutal and savage, but at the same time, simple and childlike.<sup>27</sup> Corporal punishment was regarded as the ideal form of punishment, both to impress the power of white colonial sovereignty upon the 'brutal savage', and to guide the 'childlike Native' towards civilised values.<sup>28</sup> An argument which was consistently advanced in favour of the extensive use of corporal punishment was that many African petty offenders simply did not have the money to pay the small fines to which they had been sentenced. It was argued that in the absence of whipping as an alternative form of punishment the prisons would be crowded with petty offenders who did not really belong in prison, but were simply there because they were poor (see for example Read 1969). The colonists also believed that imprisonment, in itself, was not sufficient punishment for African offenders. It was believed that imprisonment was 'too civilized a punishment for the black man, who received better food, clothes, treatment, and accommodation while inside prison, than during his normal life as a free man' (Peté 1986: 104). The liberal application of corporal punishment inside African prisons was thought to add a necessary punitive dimension to the punishment of imprisonment.<sup>29</sup>

Killingray points to the brutal nature of the whippings and beatings administered throughout British colonial Africa, noting that the notorious cat-o'-nine-tails was 'a brutal instrument that cut the body of the victim unless he...were protected in some

way' (2003: 107). Although the use of the cat-o'-nine-tails had been phased out by the early part of the twentieth century, Killingray (2003: 107) notes that the hide-whip which replaced it 'could also cut the body of the victim', and that the use of this instrument was phased out in Uganda only in 1925, Tanganyika in 1930 and Nigeria in 1933. In the context of colonial Natal, 'white sovereignty, power, and authority received expression in the lash marks on the backs of countless black offenders' (Peté 1986: 106).

At a political and psychological level, the white colonists tended by and large to regard themselves as the bearers of civilisation, who were outnumbered and surrounded on all sides by warlike savages. A challenge to white authority and sovereignty had to be swiftly and severely dealt with, before it developed into open rebellion. Corporal punishment, with its sanguinary roots linking it to the absolute power of the pre-modern monarch, was seen as a potent form of punishment, capable of protecting white civilisation from the savage onslaught (see Peté 1986, 1998a). The purpose of punishment in the colonial context was not to reform but to intimidate. According to Bernault, punishment in colonial Africa 'was to be limited to the body, and should not attempt to reach the native's soul' (2003: 25). Its purpose was to contain crime, intimidate wrongdoers, and discipline the masses into an amenable workforce. The prisons of colonial Africa were not designed to replace archaic sanguinary punishments with a set of humane and reform-oriented disciplinary techniques, as may have been the case in Europe. Instead, African prisons acted as points of focus, where brutal pre-modern forms of punishment could be employed openly in support of colonial hegemony.<sup>30</sup>

Turning to capital punishment, it is submitted that an important function of the death sentence was to reinforce colonial domination by acting as a symbol of white sovereignty and authority. As applied by the colonial powers in Africa, this form of punishment retained something of its pre-modern character as an instrument of terror. In the Belgian Congo, for example, capital punishment and public executions were permitted many years after such sentences had been outlawed in Belgium. Bernault cites the case of an offender who was put to death in 1922, in a ceremony clearly designed to re-establish white authority: 'In Elisabethville, the spectacle of the torture of Francois Musafiri, a man who had stabbed a European who had seduced his wife, took place in front of a crowd of a thousand Europeans and three thousand Africans. He was hung on the public square on September 20, 1922' (2003: 15). In the case of South Africa, the imposition of the death penalty during the apartheid era was clearly biased along racial lines (see Welsh 1969).

### Racial discrimination

An important factor which affected the human rights of prisoners in colonial Africa was discrimination and the segregation of inmates on the basis of race.<sup>31</sup> In work detailing the penal history of colonial Natal, I have pointed to the social stigma which, in the eyes of white colonial society, attached to the imprisonment of white offenders

alongside African offenders (see Peté 1985, 1986). To the white colonists of Natal, this practice not only degraded the white prisoner himself, but also brought shame upon the white race as a whole. The authority relationship between white master and black servant had to be preserved at all costs, and it was regarded as 'particularly important that white prisoners as members of the white master class should not be seen by the black public in a position of subservience' (Peté 1986: 109).<sup>32</sup> A fierce debate on this issue took place in the newspapers of the colony in 1904:

In numerous articles and letters the practice of 'herding together...black and white prisoners' was condemned as a 'grave defect in prison administration.' The practice was seen as being intensely degrading to the white prisoner who would be hardened by the experience. It was pointed out time and time again that the white prisoner had not only to face the social stigma of imprisonment but also that of being placed on [a] par with black prisoners. (Peté 1986: 107)

The proposed solution to this problem was the construction of a separate industrial prison for white prisoners, where they would be provided with industrial skills which would enable them to fit in as members of the white ruling class upon their discharge from prison (Peté 1986). Commenting on the architecture of prisons in colonial Africa, Bernault notes that the 'prison architectures sought to reproduce colonial hierarchies, erected not only upon the race distinction, but also upon a subtler contrast between individual citizens (whites) and the collective, untitled mass of African subjects' (2003: 21).

Racial discrimination within the prisons of colonial Africa often manifested itself in different dietary scales which applied to different race groups, with serious consequences for the human rights of prisoners who found themselves classified in the most poorly fed groups.<sup>33</sup> For example, Killingray (2003) has noted that rations were graded by race and socio-cultural status. Laurent Fourchard (2003: 138) points out that in 1958 in the prisons of Upper Volta food for an African prisoner cost 8 500 francs a year while that of a European prisoner cost around 55 000 francs per year. Poor diet coupled with a lack of hygiene led to the deaths of many inmates in the prisons of Upper Volta. Fourchard notes that in 1929, a shocking 66 per cent of the prison population detained at Ouagadougou died from dysentery. In 1959, 30 years later, prisoners detained in the Ouagadougou prison were still dying because of a 'chronic lack of hygiene' (Fourchard 2003: 141).

### The imprisonment of women

Bernault (2003) has commented that as regards conditions of detention of female offenders in the prisons of colonial Africa, women experienced the worst conditions of confinement. Because they fell into the three vulnerable categories – women, prisoners and Africans – they were subjected to greater abuse. Referring to the prisons of Senegal during the colonial period, Dior Konaté (2003) notes that female prisoners suffered chronic neglect. In fact, the neglect and abuse which women

inmates suffered in the prisons of Africa during the colonial period had the most severe impact on their human rights. Konaté sums up as follows:

Deprived of special wards, subject to promiscuity and sexual abuse, and forced to labor without wages, female detainees – both adults and minors – experienced a harsher exclusion than male convicts. As a result, women's health and psychological security deteriorated dramatically in prison. (2003: 161)

### The struggle for independence and its effect on the human rights of prisoners

During the twentieth century, the African continent experienced great political turmoil, which impacted on the conditions in prisons. The struggle for independence in Kenya, for example, placed great strain on the infrastructure and staff of the Kenyan penal system (Read 1969; see also Killingray 2003). Bernault points out that, during this period in Kenya, 'the government organized fifty additional "emergency camps" in which entire villages and thousands of Gikuyu prisoners were forced to resettle. At that time, the entire colony – whites excepted – was subject to incarceration on a massive scale' (2003: 13).

### The post-colonial period

Crumbling infrastructure and chronic overcrowding, political oppression and economic collapse, the continued use of corporal and capital punishment, long delays in awaiting trial, a lack of separate facilities for juveniles, the activities of prison gangs, the ravages of HIV/AIDS, and rampant corruption have all exacted a terrible toll on the human rights of prisoners in post-colonial Africa.<sup>34</sup>

Before each of these aspects is examined in turn, it should be noted that there have been moves at the international level during recent years to confront these challenges. In September 1996, 133 delegates from 47 countries, including 40 African countries, met in Kampala, Uganda, to discuss penal reform in Africa. The deliberations produced the Kampala Declaration on Prison Conditions in Africa (UN Economic and Social Council 1996) which, it was hoped, would set the agenda for prison and penal reform in Africa in the years that followed. One positive outcome of the Kampala Declaration was the appointment of a Special Rapporteur on Prisons and Conditions of Detention in Africa.<sup>35</sup>

In September 2002, a second Pan African Conference on Penal and Prison Reform in Africa took place. It was held in Burkina Faso and resulted in the Ouagadougou Declaration on Accelerating Penal and Prison Reform in Africa. Prior to the conference in Burkina Faso, a questionnaire had been sent to prison services, representatives of the judiciary, and non-governmental organisations throughout Africa. The answers to this questionnaire were combined in a report setting out the main issues confronting African countries in relation to penal reform. Some of the findings set out in this report are referred to in the discussion that follows.<sup>36</sup>

### Crumbling infrastructure and chronic overcrowding

Most prisons in Africa today are poorly maintained and characterised by material degradation. Bernault notes that the maintenance of prisons 'is often relegated to the last lines of national budgets' (2003: 32). Referring to prisons in Niger and Congo-Brazzaville, Bernault points out that maintenance is no longer carried out on the buildings, which date from the colonial era. As a result, the prisons have become 'permeable' and Bernault notes that 'Families and donors can enter the prison yard on a daily basis, while prisoners can leave the buildings for work, visits, walks or errands, or casual conversation with visitors' (2003: 32). In relation to Liberia, Gerald H Zarr noted in the late 1960s that the 'jails and prisons of Liberia vary considerably in their physical condition from each other, but have officially been described as being in a deplorable state of disrepair' (1969: 199). In Mali, the report of the Special Rapporteur on Prisons in Africa following a visit conducted in August 1997 indicates that appalling conditions prevailed in the prisons of that country at the time.<sup>37</sup>

In Ghana, the post-colonial government inherited a chronically overcrowded network of prisons. Seidman (1969: 449–450) points out that, in the years between 1953 and 1964, the overcrowding in Ghanaian prisons as a whole varied between 125 and 164 per cent, whereas in the years between 1953 and 1962 the overcrowding in the male central prisons varied between 153 and 198 per cent. In 1962, the 17 local male prisons in Ghana were 180 per cent overcrowded. Seidman notes that '[c]omplaints about the seriousness of overcrowding permeate the reports since 1949, as they had perennially before that' (1969: 458). Writing in the late 1960s, Seidman outlines the experience of the average Ghanaian prisoner as follows:

The impact upon the convict admitted to the prisons must be the same as it was in 1876. He sees the same fortress-like structures. He meets conditions of almost animal overcrowding. The Regulations are read to him, on their face imposing a severe, degrading, dehumanizing regime. (1969: 451)

Summing up the main factors influencing the Ghanaian prison system, Seidman submits that endemic overcrowding 'more than any other single factor has frustrated the humanely motivated and strenuous efforts of the staff' (1969: 463). Writing in 1972 on the topic of penal practice in Africa as a whole, RES Tanner points out that 'overcrowding of prison buildings is widespread' and, referring specifically to prisons in Ghana, states that 'it has been officially admitted that many have held double the authorised number' (1972: 453).

With regard to the prisons of Kenya, it is startling to note that there were more prisons at the time it became independent in 1963 than there were almost 40 years later in September 2000. In 1963, there were 86 prisons in Kenya accommodating 13 000 prisoners, whereas in September 2000 there were only 78 prisons, with a capacity for 18 953 prisoners, accommodating 41 211 prisoners (Dissel 2001). Conditions in Kenya's prisons during the post-colonial period were and remain appalling.<sup>38</sup> Hundreds of prisoners are alleged to have died in Kenyan prisons annually, with

650 reported to have died in 1997. Torture and ill-treatment of prisoners was reported to be widespread, including beatings with hippo-hide whips (Dissel 2001). Conditions in the prisons of Uganda during the post-colonial period were similarly appalling.<sup>39</sup>

South African prisons were characterised by chronic overcrowding throughout the apartheid period. One of the main reasons for this overcrowding is found in the apartheid legislation which was introduced to control the African population.<sup>40</sup> According to the report of the Truth and Reconciliation Commission, set up after the demise of the apartheid system, pass law offenders comprised as many as one in four inmates confined in South African prisons during the 1960s and 1970s (TRC 1998: 200 paragraph 8). According to the report, conditions in South Africa's overcrowded prisons were particularly brutal for black prisoners.

The chronic overcrowding within South African prisons failed to improve with the advent of democracy in 1994. In 1995, for example, certain prisons in South Africa, such as Pollsmoor Maximum Security Prison in Cape Town, were overcrowded by more than 100 per cent (Peté 1998b: 54). The chronic overcrowding in South Africa's prisons reached such crisis proportions that, in 1995, the government was forced to authorise the mass release of certain categories of prisoner (informally known as 'bursting') in order to relieve the pressure (Peté 1998b). In October 1997, the South African Minister of Correctional Services condemned the conditions in most South African prisons (*Sunday Tribune* 19 October 1997).<sup>41</sup> By the year 2000, the situation had not improved, and the Judicial Inspectorate of Prisons in South Africa reported that conditions in the prisons were so ghastly that they could not wait for long-term solutions (Inspecting Judge of Prisons 2000). By the year 2005, the human rights of South African prisoners were still being seriously compromised due to the evils which resulted from overcrowding. On 31 January 2005, the percentage overcrowding in the 10 most overcrowded prisons in South Africa ranged from 268.44 per cent to 383.38 per cent.<sup>42</sup> In February 2005, South African High Court Judge Bertelsmann commented that the state of overcrowding in South African prisons was such that if animals were to be similarly crammed into a cage, there would be a prosecution for cruelty to animals.<sup>43</sup>

The appalling human rights abuses suffered by prisoners in Africa during the post-colonial period are, perhaps, best summed up by reference to the various responses to a questionnaire sent out prior to the second Pan African Conference on Penal and Prison Reform. The 20 African countries which responded to the questionnaire all reported that their prisons were overcrowded. The rate of overcrowding ranged from 69 per cent to 296 per cent, with an average rate of 141 per cent (PRI 2003: 6). One of the authors of the report, Roy Walmsley, stated:

[T]he Kampala Declaration uses particularly strong language about the level of overcrowding in African prison systems, and it is clear from the responses received that this is one of the two or three most important problems of all that are faced by the prison administrations.

Overcrowding, which reaches tragic proportions in some cases, has consequences on many other aspects of prison life: hygiene, health, exercise are, among others, affected. (PRI 2003: 7)

The other author of the report, Amanda Dissel, pointed out that the most pervasive problem reported by NGOs in relation to African prisons was overcrowding. In a separate paper written in 2001, Dissel provides the following overall assessment of prisons in Africa:

A review of the literature on prisons in Africa suggests that these prisons are characterized by severe overcrowding. In most cases the prison capacity is very limited and has not been expanded over time. Although the inmate to population ratios may be small, the impact of overcrowding on inmates is nevertheless severe. Coupled with this, many of the facilities are rudimentary in nature, and there are shortages of food, bedding, medical supplies and treatment, and an absence of recreation facilities. Ill-treatment or torture of inmates was also reported for many of the countries.

#### Political oppression and economic collapse

As was the case in the colonial period, much of the post-colonial period in Africa has been characterised by intense political turmoil. John Reader (1997) points out that more than 70 military coups occurred during the first 30 years of the post-colonial period, and that by the 1990s most African states did not preserve even the vestiges of democracy. Furthermore, according to Reader, 'One-party states, presidents-for-life, and military rule became the norm; resources were squandered as the elite accumulated wealth and the majority of Africans suffered' (1997: 657). The political turmoil of the post-colonial period had a significant impact on the human rights of prisoners in Africa. The breakdown of effective government, coupled with economic collapse in certain states, led to the neglect of the prison infrastructure and resulted in appalling conditions of detention in many parts of the continent. Furthermore, political unrest resulted in the prisons being used to detain political opponents of dictatorial regimes, thereby becoming instruments of political repression rather than a means to rehabilitate offenders. A lack of infrastructure, desperate overcrowding, and the inability to conduct any meaningful rehabilitation programmes are enduring themes which characterise imprisonment on the African continent during the post-colonial period.<sup>44</sup>

Developments in the penal system of Rwanda following its independence provide an interesting case study of the negative effects of political turmoil on the prisons of Africa during the post-colonial period. In the early years following independence in 1960, political leaders began to use the penal system to terrorise their political opponents. Michele Wagner notes that 'throughout Rwanda, from Kibungo to Cyangugu, local-level officials – *bourgmestres* and *préfets* – arbitrarily threatened, detained, and abused their competitors' (2003: 256). Particularly before elections,

the political opponents of those in power were subjected to 'preventative detention', without much regard for the legality of this process. Wagner points out that 'the tedious problem of justifying renewals, were non-issues in this era, since magistrates had little training and were beholden to political authorities' (2003: 256). Throughout the 1960s, 1970s and 1980s, those in political control continued to use mass arrests and detentions to retain their grip on power.<sup>45</sup> Those subjected to preventative detention were usually detained in a *cachot*, a site either inside or outside prison designated for this purpose. Wagner notes that:

[a]buses of preventative detention, in conjunction with mass arrests or 'sweeps' of opponents or public 'examples', increased in the 1980s, a decade ushered in by the detention of more than thirty persons without charge and without trial in the *cachot* of Ruhengeri for more than a year. Held incommunicado, some in cells of total darkness (*cachots noirs*) for nearly a year, the untried detainees could neither be visited, nor rendered medical assistance, despite reports that some of them had been tortured by beatings and electric shock in order to elicit confessions and after preliminary inquiries had found that some of the defendants had no accusations filed against them. (2003: 259)

Frequent reports of the widespread torture of political detainees eventually resulted in an admission by the government in 1986 that 56 political prisoners had been killed without recourse to law (Wagner 2003: 259). In 1990, the situation grew worse, however, as political conflict between Rwandan Patriotic Front guerrillas and the government intensified. Following the genocide of 1994 in which hundreds of thousands of people (mainly Tutsis) lost their lives, the Rwandan penal system had to cope with a massive influx of detainees who were thought to have been responsible for the mass killing. Wagner points out that 'accused criminals were apprehended and detained in all manner of arbitrary ways' since there were 'almost no trained judicial authorities to investigate, issue arrest warrants, process inmates, or establish the circumstances of their cases' (2003: 260). Wagner cites cases of detainees 'being amassed and often tortured in private houses, in abandoned buildings, in sheds and outhouses, in military barracks, in shipping crates, and even in holes in the ground' (2003: 261). Conditions within Rwanda's prisons were appalling, with a prison population five times its maximum capacity. The conditions in Rwanda's *cachots* were equally appalling (Wagner 2003). The result of this almost unbelievable overcrowding in the *cachots* was an influx of calls by international human rights organisations for detainees to be transferred to prisons. This was despite reports of appalling conditions in the prisons, which included reports 'of high death rates, of amputations of gangrenous limbs caused by endlessly standing in mud and filth' (Wagner 2003: 262).

There is insufficient space in a brief overview such as this to examine in detail the numerous other cases in which prisoners in various parts of Africa in the post-colonial period have suffered the most appalling human rights abuses at the hands of brutal political dictators. No discussion on this point would be complete, however, without

at least a passing reference to certain of the most notorious centres of detention and torture constructed by different dictators. According to Bernault, centres such as Sékou Touré's Camp Boiro in Conakry (Guinea), Bokassa's prison at Ngaragba (Central African Republic) and Idi Amin Dada's jails in Kampala (Uganda) 'speak to no other logic than that of megalomaniacal and murderous power' (2003: 32). With regard to Camp Boiro, Bah (2003) points out that hundreds of prisoners died from hunger at this notorious camp during Sékou Touré's regime. Referring to Didier Bigo's study of Ngaragba Prison, Bernault states that this prison functioned like an 'open-air theatre, where torturers and prisoners enacted tragic scenes of power and submission that celebrated Bokassa's personal will and grandeur' (2003: 33).

Yet another example of a penal system abused by corrupt politicians in order to oppress their political opponents is that in South Africa during the struggle against apartheid. Van Zyl Smit notes that, in the period following the Sharpeville massacre, 'The incarceration of political detainees and sentenced political prisoners became a significant permanent feature of South African prison life' (1992: 33).<sup>46</sup> This is confirmed in the report of the South African Truth and Reconciliation Commission (TRC 1998). The report goes on to confirm that the Truth Commission received 'extensive evidence of gross human rights violations suffered by prisoners, either in detention or serving prison sentences' (1998: 199 paragraph 2). Referring to detention without trial during the apartheid period, the report notes that an estimated 80 000 South Africans were detained without trial between 1960 and 1990 (1998: 201 paragraph 12). Further, the report states that possibly 20 000 detainees were tortured in detention and 73 deaths of detainees were recorded (1998: 201 paragraph 14). Van Zyl Smit (1992) points out that the suffering of both ordinary prisoners and political prisoners within the South African penal system during the apartheid era has been detailed in a 'virtual literary subgenre' comprising many autobiographical accounts of life in South African prisons and police cells.<sup>47</sup>

It is important to note that abuses such as those detailed in this section are not simply a historical phenomenon. Many prisoners in Africa today continue to suffer the most appalling abuse of their human rights due to political oppression and economic collapse.<sup>48</sup>

### The continued use of corporal and capital punishment

Harsh corporal punishment of offenders did not disappear when the colonial period came to an end. In Tanzania, for example, corporal punishment was widely extended after independence with the passing of the Minimum Sentences Act of 1963. This legislation required a minimum sentence of two years' imprisonment plus 24 strokes of the cane for a number of corruption-related offences. Read notes that 'it was the German policy which was cited with approval by many speakers in the Parliamentary debate' (1969: 109).

In South Africa, corporal punishment continued to play an important part within the penal system until the advent of democracy in 1994. In March 1993, for example, the

South African Minister of Justice revealed that more than 30 000 offenders had been sentenced to corporal punishment without the option of a fine or imprisonment during 1992 (Peté 1994: 302–303). With regard to capital punishment, the report of the Truth and Reconciliation Commission of South Africa notes that ‘capital punishment was used as an important weapon against opponents of apartheid’ (TRC 1998: 213 paragraph 47). The report notes that 1 154 people were executed for capital crimes in South Africa between 1976 and 1985 (TRC 1998: 213 introduction to ‘Capital Punishment’).

### Long delays awaiting trial

An inordinate delay awaiting trial amounts to a serious abuse of a prisoner’s human rights; unfortunately, this is a common theme for prisoners detained in Africa. Over the years, many African prisons have been overcrowded with large numbers of persons either accused or convicted of petty offences. Owing to poverty, these persons are unable to pay even a small amount set as bail or imposed as a fine. Confined with hardened criminals, they become hardened to a criminal way of life. In 1931, for example, a Committee of the Legislative Council of Tanganyika considered this problem and found that ‘almost one-third of the admissions [to prisons] were of persons on remand who were subsequently acquitted, discharged or given sentences other than imprisonment’ (Read 1969: 112). The committee recommended that ‘for first offenders, fines might well be replaced in many cases with cautions or binding over to keep the peace; that strict and full inquiry should be made into the individual’s ability to pay before a fine was imposed, and that corporal punishment should be extended, particularly for juveniles’ (Read 1969: 113). Zarr refers to the following serious abuses which he encountered in the 1960s in a Liberian prison:

Of the forty-five prisoners incarcerated in Monrovia Central Prison in May 1965 on charges of murder, nearly half had been in detention for periods of two to six years and I encountered three individuals who had each been incarcerated for more than ten years. (1969: 203)

A more recent example of the problem of large numbers of prisoners awaiting trial, clogging the prisons, is found in the penal system of South Africa following the demise of apartheid. In 1998, for example, prisoners in South Africa spent an average of five months in prison before their trials were finalised. With the penal system in crisis, groups of prisoners embarked on a series of hunger strikes in protest at the long delays awaiting trial. South African Human Rights Commission chairperson Jody Kollapen pointed out that ‘[e]verybody is entitled to a speedy trial, depending on the circumstances and complexity of the case. If prisoners can show that their constitutional rights to speedy trials have been violated, they have the right to claim damages’ (*Cape Argus* 22 September 1997).<sup>49</sup>

### Juvenile offenders

The detention of juvenile offenders together with adult prisoners has proved an enduring problem on the continent of Africa. For example, Zarr (1969) points out that in the late 1960s no separate facilities were provided for the detention of juvenile offenders in Liberia, other than in Monrovia, where a separate wing of the new prison building in that city had been set aside for juveniles. In the rest of the country, juveniles were committed to ordinary prisons. A more recent example is that of South Africa where, even in the post-apartheid period, juvenile offenders were detained in adult prisons under conditions that left much to be desired.<sup>50</sup> The conditions in certain facilities set aside for juvenile offenders were not much better (*City Press* 26 October 1997).

### Prison gangs

A significant influence on the human rights of prisoners in some parts of Africa has been a continuing reign of terror by powerful prison gangs. This is particularly the case in the prisons of South Africa, where prison gangs have existed since the end of the nineteenth century (see van Onselen 1982; Steinberg 2004).<sup>51</sup> Amanda Dissel and Stephen Ellis (2002) point out that highly organised and structured criminal gangs have dominated all aspects of life in South African prisons for more than a century. The activities of prison gangs often make the lives of ordinary prisoners a living hell, and contribute substantially to the gross violation of the basic human rights of such prisoners (see Steinberg 2004).

### HIV/AIDS

Towards the end of the twentieth century, the prevalence of HIV/AIDS within the prisons of Africa, coupled with a lack of funds and political will to provide effective treatment, began to have a serious impact on the human rights of prisoners.<sup>52</sup> In South African prisons, for example, the number of deaths of prisoners due to 'natural causes' rose abruptly from 186 in 1995 to 1 087 in 2000, with as many as 90 per cent of these deaths believed to have been AIDS-related (Dissel & Ellis 2002). Dissel and Ellis (2002) point out that '[t]he prison environment creates many opportunities for the spread of the disease through high-risk behaviour. Sodomy – coercive, forced and consensual – is widely practiced in prison. Gang violence and sharing of tattooing needles also contributes to the spread of HIV.' In 2005, the South African Inspecting Judge of Prisons, Judge Johannes Fagan, noted that between 1995 and 2004 the death rate in South African prisons escalated from 1.65 deaths per 1 000 prisoners per annum, to 9.1 deaths per 1 000 prisoners per annum.<sup>53</sup> Clearly, the reality of the AIDS epidemic sweeping through the prisons of Africa poses a serious and escalating threat to the human rights of prisoners in Africa.

### Corruption

Corruption in the ranks of prison staff is yet another scourge which seriously affects the human rights of prisoners in Africa. The example of South Africa during the post-apartheid period indicates the extent to which rampant corruption is able to turn the lives of ordinary prisoners into a living nightmare.<sup>54</sup> In order to confront the problem of rampant corruption, and following the assassination of an official tasked to investigate corruption within the prisons of KwaZulu-Natal,<sup>55</sup> the South African Minister of Correctional Services set up a national commission of inquiry under the chairmanship of High Court Judge Thabani Jali, in August 2001. In the years that followed, many witnesses appeared before the commission and recited an appalling litany, detailing a never-ending list of corrupt practices permeating every aspect of South African prison life. During hearings throughout the country, the Jali Commission heard evidence of activities involving violence, intimidation, the operation of criminal syndicates, sodomy, prostitution and drug dealing, all of which were taking place within the prisons of South Africa with the active participation of corrupt prison staff.

### Conclusion

From its inception, the prison system in Europe failed to live up to its ideal of reforming and reintegrating wayward citizens into a social order founded on the idea of a broad social consensus. Michel Foucault makes the point, however, that the very failure of the prison system proved to be an advantage in that it manufactured a class of delinquents which could then be controlled by those in power (Gordon 1980).

If the reformative ideals of the modern prison failed to be realised in Europe, the birthplace of this particular technology of punishment, this was even more the case in the African context. From the time that the colonial powers introduced and disseminated this alien form of punishment across the length and breadth of the African continent, it was inextricably bound up with aims and ideals that had far more to do with the subjugation of the indigenous population and the maintenance of white sovereignty than with the reform and reintegration of the offender. The punishment meted out in African prisons was characterised by a distinctly pre-modern coercive flavour, evidenced in particular by the extensive use of corporal punishment. From inception, the prisons of Africa were used by the colonial powers to control and subjugate the indigenous population. This social control function continued into the post-colonial period, with political dictators making full use of the coercive traditions embodied within these institutions. As many countries lapsed into dictatorship and experienced economic collapse, so the prisons of Africa crumbled, becoming ever more overcrowded and moving further and further from the reformative ideals which characterised the birth of this form of punishment.

After examining the systemic and sustained violations of human rights in African prisons, it is a fair assessment to say that Africa's overall record with respect to human rights in prisons is appalling. Urgent and immediate steps are required

to ensure that the continued gross violations of the basic human rights of this vulnerable population are brought to an end.

#### Notes

- 1 What Foucault might call a specific 'technology' of punishment.
- 2 As Steinberg points out, '[P]lans seldom travel well, especially to the colonies, where the questions of fear and control are bound to shape the organization of people and space' (2004: 104).
- 3 Bernault notes, for example, that this form of punishment 'was unknown to sub-Saharan societies prior to the European conquest, when colonial regimes built prisons on a massive scale for deterring political opposition and enforcing African labor' (2003: 2). See also Killingray (2003: 100).
- 4 Bernault describes the prisons of pre-colonial West Africa as follows: 'Instruments of aristocratic power, state goals mostly aimed to reduce political opponents. African states, however, did not use prisons as a penalty in itself. Captivity worked as an exceptional form of public and domestic power, both in daily life (domestic hostages, and pawns), or to meet unusual circumstances (prisoners of war, and, in some rare cases, dangerous criminals)... [R]eclusion did not aim to correct, but rather to seize the body to inflict punishment and allow legal reparation' (2003: 5-6).
- 5 The total number of slaves whose human rights were violated over the period the trade was conducted is immense. In his seminal work setting out the history of the Atlantic slave trade, Thomas (1998: 806) estimates the total number of slaves shipped from African ports at around 13 million. He estimates the number of slaves who arrived in the New World at around 11 million, which implies that as many as 2 million slaves died during their journey.
- 6 Slaving Castles of Africa, available at <<http://www.mtholyoke.edu/~rmcamara/index.html>>, accessed on 4 September 2007.
- 7 Before this, prisons on the African continent were few and far between. Bernault notes: 'European trading forts, erected on the coast since 1500, possessed jails and military cells, mostly used for the incarceration of military personnel. Outside the forts, Europeans had erected a few prisons in some coastal colonies in the nineteenth century. In Freetown (Sierra Leone), a prison opened in 1816. In Senegal, the senatus-consulte of July 22, 1867, allowed the construction of prisons at the trading and military stations of Saint-Louis and Gorée. In the mid-nineteenth century, colonial authorities started to use the prison of Saint-Louis to control African itinerant populations and petty urban criminals... Yet, in most cases, only a fraction of the inhabitants of the trading posts were liable to be detained in these prisons, and the experience of modern incarceration seldom touched the daily life of most Africans' (2003: 7).
- 8 Killingray (2003) notes that prisons were among the earliest examples of colonial architecture.
- 9 Bernault (2003) notes that *pénitenciers* were established at Fotoba in Guinea, Kidal in Mali and Ati in Chad.

- 10 Each of these forms of labour had no point other than punishment. Crank drill, for example, consisted of 'the useless turning of a braked windlass for thousands of turns per day', while shot drill entailed the lifting of heavy cannon balls, known as 'shot' (Seidman 1969: 436, 438).
- 11 See also my own work in which I trace the emergence of racially defined punishment in colonial Natal (Peté 1986; Peté & Devenish 2005).
- 12 Bernault provides the following interesting statistics indicating the widespread use of imprisonment as a method of social control: 'In the Upper Volta in 1932, during the peak of the farming season, the administrators pronounced at least 1,900 monthly disciplinary sentences of imprisonment – an average of one imprisonment for every 140 persons annually...In Tanganyika, one decade later, the state enforced regulations on soil erosion by imprisoning recalcitrant peasants on a large scale. In Kenya, the thirty prisons...received approximately 28,000 detainees in 1931 – 36,000 in 1941 and 55,000 in 1951, or one detainee for 146, 136 and 109 Africans, respectively. The highest figures come from the Belgian Congo, where, in the late 1930s, the administration evaluated the number of annual detainees at 10 percent of the male population. In 1954, in the province of Kivu, almost 7 percent of the adult males spent some time in prison' (2003: 12).
- 13 In December 1907, the prison at Kindia in Guinea, which consisted of two small rooms measuring five by six metres, contained 29 prisoners (see Bernault 2003: 12).
- 14 By 1876 the diet of prisoners in Ghana was less than one-half of what it had been in 1860.
- 15 This was set out in the Digest and Summary of Information Respecting Colonial Prisons of 1867, Chapter XVI, p. 84. The figure of 900 cubic feet of space per prisoner was applicable to prisoners in England, and it was generally accepted that even more space was necessary for prisoners in tropical climates such as that of colonial Natal.
- 16 Colonial Secretary's Office, *Natal 424/2228 Meeting of Durban Gaol Board* (5 November 1872).
- 17 Colonial Secretary's Office, *London 179/126 Bulwer to Hicks Beach 9 January 1878: Enclosure Number 1 – Minute of Lieutenant Governor 31 May 1877*.
- 18 Colonial Secretary's Office, *Natal 778/4359 Superintendent Pietermaritzburg Gaol* (10 November 1880).
- 19 Colonial Secretary's Office, *Natal 778/4359 District Surgeon Pietermaritzburg* (10 November 1880).
- 20 Colonial Secretary's Office, *Natal 778/4359 Resident Magistrate Pietermaritzburg to Colonial Secretary* (17 November 1880).
- 21 Colonial Secretary's Office, *Natal 1066/684 Report of District Surgeon Durban* (15 February 1886).
- 22 Colonial Secretary's Office, *Natal 1345/4668 Report in Natal Witness* of 13 October 1892.
- 23 Colonial Secretary's Office, *Natal 1382/5780 Superintendent Durban Gaol* (13 December 1893).
- 24 Governor Durban Gaol, *Report of Chief Commissioner of Police* (1903), Natal Blue Book, Volume II: 9.

- 25 No fewer than 5 944 official floggings were administered in the colony during the period 1911–12.
- 26 Bernault is clearly correct when she comments that: ‘contrary to the ideal of prison reform in Europe, the colonial penitentiary did not prevent colonizers from using archaic forms of punishment, such as corporal sentences, flogging, and public exhibition. In Africa, the prison did not replace but rather supplemented public violence...[T]he principle of amending...criminals was considerably altered in the colonies, and largely submerged by a coercive doctrine of domination over Africans, seen as a fundamentally delinquent race’ (2003: 3). I make a similar point in certain of my own previous work. In commenting on the differences between prisons in Europe and Africa during the colonial period, in particular prisons in England as compared to those in the colony of Natal, I point out that: ‘[I]n Natal there was no need for the rigid discipline and clockwork regularity of an institution such as England’s Pentonville prison, since the colony possessed no large scale capitalist industry requiring a well disciplined work force. The black farm labourers of Natal had a far simpler lesson to learn than that taught by such a finely tuned institution as Pentonville. That lesson was that the white man’s word was law, since it was he who held the whip in his hand’ (Peté 1986: 101–102).
- 27 For example, the Kenyan Commission on the subject of ‘Native Punishment’ reported in 1923: ‘The arguments advanced in favour of flogging are that it is inexpensive, that it is summary, that the native is a child and should therefore be punished as a child and that it is effective’ (Read 1969: 111).
- 28 For an extensive discussion of the ideology underlying corporal punishment in colonial society, see Peté and Devenish (2005: 3–21); Killingray (2003: 106–110); Peté (1994, 1998a).
- 29 Bernault states, for example: ‘Physical torture was routinely administered inside the prison as an additional punishment. In 1906, the governor of Dahomey reported that detainees who did not comply with the internal regulations of the prisons in Cotonou and Porto Novo were routinely submitted to “palm beating” (*correction palmatoire*), as guards violently beat the detainees’ hands with a flat wooden cane twenty or thirty times...The frequency of physical violence in the prison suggests that administrators failed to believe that detention and the loss of liberty was a sufficient sentence for Africans’ (2003: 15–16).
- 30 Killingray (2003: 106) notes, for example, that the pillory and stocks were introduced into Nigeria in 1904 and abolished only in 1932.
- 31 Bernault points out: ‘The internal architecture of colonial prisons almost always provided for separate cells and courtyards for whites and blacks. When the buildings did not allow for separation, Europeans were incarcerated in a separate room in the police precinct or in the administration’s residential housing. Even when detained in regular jails, the rare white prisoners enjoyed preferential treatment. In the prisons of Haute-Volta, for example, white prisoners enjoyed privileges related to food, sanitation, and clothing...Everywhere, they were exempt from forced labor. Penal segregation lasted well into the 1950s. Even when interracial marriages increased, urban segregation declined, and political privileges multiplied, the collective detention of Europeans and Africans was never practiced nor even envisioned by colonial authorities’ (2003: 18–19).

- 32 Note that it was not only in colonial Natal that it was considered dangerous to allow the general public, particularly Africans, to see black and white convicts receiving equal treatment from prison guards. In 1929, the governor of the colony of the Ivory Coast stated: 'It would be immoral insofar as it would damage French prestige to send [European detainees] out to public work sites' (cited in Fourchard 2003: 138).
- 33 For a detailed discussion of the link between evolving conceptions of race and prison dietary scales in colonial Natal, see Peté and Devenish (2005: 14–16).
- 34 Bernault characterises the penal regimes of post-colonial Africa as follows: 'Colonial jails, whose carcass mimicked the reformed penitentiary, submerged African prisoners in corporal punishment, the personalization of sentences and authority, and the confusion between political and economic imperatives. Colonial legacy, moreover, has encouraged radical forms of political detention, later practiced extravagantly by post-colonial regimes. African prisons today reflect the exasperation of colonial modes of governance and social control, as well as their articulation with earlier, pre-colonial forms of despotism. These legacies are reinvented today in the context of a new political order (clientelism, personalisation of power, prebendal culture). Through the lens of its penitentiary regime, the African state does not resemble the Weberian or even the Foucaultian state based on techniques of power, general surveillance, and the citizen's interiorization of omnipresent discipline. Its prisons shed light on the personalization of relations of power, and the prevalence of social coercion over social protection' (2003: 33).
- 35 This is dealt with in other chapters of this book.
- 36 The report was co-authored by Roy Walmsley, consultant with HEUNI and the International Centre for Prison Studies (ICPS – UK), and Amanda Dissel, Centre for the Study of Violence and Reconciliation (CSVR – South Africa).
- 37 In the words of the report: 'Mopti prison requires urgent and early attention. Cells 1 and 2 where inmates are held 24 hours a day except when they go out for shower or toilet should have windows to let in light and air...Chaining of prisoners, especially those in cells should cease...Assault and battery of prisoners in Mopti prison should cease.' See ACHPR (1998d).
- 38 According to Dissel (2001): 'Kenya's prisons, described as "death chambers", are overcrowded and unhygienic. For instance, in Nakuru prison, 450 convicted inmates and 780 remand prisoners were held in 14 cells. Prisoners sleep on dirty and damp cement floors. The communal cells are often poorly ventilated and badly lit, and lack adequate washing facilities. Overflowing buckets in one corner of the cell usually serve as the only toilets. Acute water shortages in some prisons have exacerbated the unsanitary conditions. King'ong'o Prison had its water supply disconnected for failing to pay its water account in September 2000, and a water shortage in Nakuru Prison led to an outbreak of cholera.'
- 39 Reporting on the conditions in Ugandan prisons in 2001, Dissel (2001) pointed out that: 'Due to overcrowding, facilities were overused. Toilets, often in the form of buckets, were filthy and overflowing. The cells were generally unclean and prisoners complained of lice, bedbugs and fleas. Proper bedding was not available and prisoners had to sleep on the bare floor. Poor conditions in these prisons inform severe health risks and had led to a number of deaths from malnutrition, dehydration, dysentery and pneumonia...[T]he Uganda Human Rights Commission...found that the levels of torture in prisons were alarming. A visit to Nakifuma prison in Mukono District in August 2001 by the African Centre for the

Treatment and Rehabilitation of Torture Victims at work (ACTV) revealed that prisoners were often beaten with sticks, iron bars, metallic wires and motor vehicle fan belts. One of the prisoners had scars on his back from a recent beating with an iron bar.’

- 40 Dissel and Ellis (2002) state: ‘Between 1975 and 1984, 1.9 million people, almost all of them black, were arrested for failing to carry their documents or for being in an unauthorised location. Pass-law offences, together with offences against the Immorality Act, and various forms of opposition to apartheid, were responsible for a large proportion of people sent to prison.’
- 41 For a more detailed analysis of overcrowding in South African prisons during the period 1995 to 1999, see Peté (2000: 9–14).
- 42 Judge Johannes Fagan, *Annual Report of the Inspecting Judge of Prisons – for the Period 1 April 2004 to 31 March 2005*, p. 13 paragraph 6.3.
- 43 Fagan, *Annual Report*, p. 12 paragraph 6.2.
- 44 Bernault speaks also of ‘the proliferation of illegal cells and clandestine jails, the increasing spread of temporary confinements linked to conflict and war’ which ‘constitute a growing portion of African incarcerations’ (2003: 39).
- 45 The country was led first by Grégoire Kayibanda and then by Juvénal Habyarimana. In 1973, the latter overthrew the former in a coup.
- 46 The Sharpeville massacre took place in 1960, when South African police shot dead 69 unarmed people who were protesting against the infamous pass laws, which were aimed at keeping black South Africans out of areas demarcated for the exclusive use of white South Africans. The Sharpeville massacre was followed by the declaration of a state of emergency, and ushered in a period of increased state repression.
- 47 These accounts include Blumberg (1962); First (1965); Sachs (1966); Kantor (1967); Jacobson (1973); Lewin (1974); Pheto (1983); Breytenbach (1984); Kathrada & Vassen (2000); Naidoo & Sachs (2000); Maharaj (2002); Mandela (2002, 2003); Steinberg (2004).
- 48 To take just one example drawn from a recent Amnesty International (2005a) report relating to the notorious Black Beach Prison in Equatorial Guinea: ‘About 70 of the people held at Black Beach prison, in the capital, Malabo, are at risk of death from starvation and denial of medical treatment. Among them are scores of political detainees held without charge or trial, and 11 foreign nationals sentenced to long prison terms after an unfair trial...Many of the prisoners are weak because of the torture or ill-treatment they have been subjected to and because of chronic illnesses for which they have not received adequate treatment. The 11 foreign nationals (six Armenians and five South Africans) were among a group convicted of attempting to overthrow the government...They have been kept with their hands and legs cuffed 24 hours a day since they were arrested in March 2004. This constitutes torture; leg-irons are prohibited under international law.’
- 49 For a more detailed analysis of awaiting trial prisoners in South African prisons during the period 1997 to 1999, see Peté (2000: 14–19).
- 50 According to Fagan, *Annual Report*, there were still 3 284 children under the age of 18 years in prison. The Inspecting Judge commented: ‘Children should not be in prison at all save in exceptional circumstances’ (p. 18 paragraph 7.6). For a more detailed analysis of the conditions of detention of juvenile offenders in South Africa during the post-apartheid period, see Peté (1998b: 79–80; 2000: 32–39).

- 51 For a brief discussion of the abuse of human rights by South African prison gangs in the aftermath of South Africa's first democratic election in 1996 and during the period leading up to South Africa's second democratic election in 1999, see Peté (1998b: 80–81; 2000: 39–41).
- 52 One bright spot in the gloom which characterises the struggle of African prisoners against the ravages of HIV/AIDS is provided by a case heard in the Cape High Court in South Africa. On 10 April 1997, judgment was handed down in the matter of *Van Biljon and Others v. The Minister of Correctional Services and Others* 1997 (4) SA 441 (C). In this case, four HIV-positive prisoners brought an application for an order to declare, amongst other things, that they and any other HIV-positive prisoners who had reached the symptomatic stage had the right to have prescribed, and to receive at state expense, appropriate antiretroviral medication. The court ruled in their favour. See also Bukurura (2002: 102–103).
- 53 Fagan, *Annual Report*, p. 31 paragraph 16.
- 54 Commenting on the South African prison system in 2002, Dissel and Ellis (2002) state: 'The Correctional Services Department seems plagued by endemic corruption that interferes with its ability to meet its legal objectives. It has affected its most senior members. In 1999 Parliament's public accounts committee found the Commissioner for Correctional Services, Dr Khulekani Sitole, unsuitable for high office in public service and he was allowed to resign. The committee found that Sitole had wasted and misused state money and given himself generous merit awards of more than R100,000. He had also employed 24 players for his personal amateur soccer club and paid their salaries from the Correctional Services budget...[C]orruption extends right throughout the prison system. Media reports allege that prisoners are obliged to pay warders a fee for food, beds, bedding, or for a decent cell...In January 1998, it was reported that prisoners were able to purchase prostitutes, alcohol and even weekends out of prison. It was also alleged that prisoners had formed criminal syndicates with warders to smuggle and steal state property. Two warders from Grootvlei Medium B Prison in Bloemfontein were convicted in October 2001 for offering to give two prisoners a key that would secure their release.' For further analysis of the corruption plaguing South African prisons during the post-apartheid period, see Peté (2000: 23–24).
- 55 During July 2001, the Deputy Correctional Services Commissioner for KwaZulu-Natal, Thuthu Bhengu, was gunned down in the study of her home near Pietermaritzburg's Napierville Prison. At the time, she was believed to be in the process of finalising a report on her internal departmental investigation into allegations of wide-scale bribery and corruption within the Department of Correctional Services in KwaZulu-Natal.

## 2. Part One

### Colonial Period

## **CHAPTER 2.1**

### **Punishment and Race: The Emergence of Racially Defined Punishment in Colonial Natal**

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# PUNISHMENT AND RACE : THE EMERGENCE OF RACIALLY DEFINED PUNISHMENT IN COLONIAL NATAL

Steve Peté\*

## INTRODUCTION

In 1842 Natal was annexed to the British Empire, and with the introduction of the Imperial administration in 1845 the colony became part of a single expanding world capitalist economy. The institutions and ideologies of the most advanced capitalist country in the world were transplanted into a rural pre-capitalist society, setting the stage for a clash of cultures and ideologies which was to dominate Natal's colonial period. This clash was reflected in the systems of punishment which developed in Natal; perhaps best described as the articulation of the penal theories and assumptions of an industrialised metropolitan political economy, and those of a rural colonial political economy. To understand punishment in colonial Natal we must turn to the roots of the penal system which developed in the mother country.

## CONSENSUS, FORMAL EQUALITY AND DISCIPLINE : THE BIRTH OF THE PRISON IN EUROPE

The development of imprisonment as the most significant form of punishment in Europe was tied up with the capitalist industrial revolution, during which European society was reconstructed on a new basis. With the advance of factory production the crafts were deskilled and labour went through a process of homogenization. The power of the capitalist factory owner lay in the fact that workers could easily be replaced since very little skill was involved in factory production. However, this power required a "free" and mobile labour force. Legislation binding an employee to a single employer became outmoded. Under the new system, economic forces and the "silent compulsion of economic relations"<sup>1</sup> would be the only coercion required. Everyone would be subject to the power of the market which would operate to the good of all, rewarding only those who worked diligently. Authority would thus cease to be imposed politically and visibly from the outside and each individual operating in his economic self-interest, would exercise authority over himself. Social order was to rest

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1 K Marx *Capital Vol 1* in B Fine et al (eds) *Capitalism and the Rule of Law* (1979) 9.

on consensus rather than coercion, and thus it was essential that the institutions of punishment and in particular the institutions of social control attain a measure of legitimacy in the eyes of the people. Imprisonment as a form of punishment, with its image of humane treatment and its proclaimed purpose of transforming and reforming prisoners, was well suited to this new consensus based society. The coercive nature of prison punishment was hidden from view, and imprisonment appeared to be a restrained and humane punishment which was in the interests of all. Ignatieff states:

"The reformatory ideal had deep appeal for an anxious middle class because it implied that the punisher and the punished could be brought back together in a shared moral universe"<sup>2</sup>.

No longer could punishment take the form of brutal public torture designed to impress upon the populace the invincible power of the king by making an example of a few individuals. Punishment would now be far more restrained but at the same time much more thorough. The forces of law and order would be ever present and every crime would be detected and met with an exact measure of punishment. Within the prison the criminal would be subjected to a strict disciplinary regimen. Every aspect of his life would be controlled from the way he dressed to the length of his hair. Even his movements would be restricted to those rigid stylised movements laid down in the drill manual. Thus the punishment of imprisonment was not merely a reflection of bourgeois ideology but also the expression of a new form of power, designed to imbue the discipline and regularity of the capitalist factory into a reluctant proletariat, still steeped in culture and tradition.<sup>3</sup> The French philosopher of ideas, Michel Foucault, called this form of control a "micro physics of power".<sup>4</sup> Disciplinary power focussed not on behaviour or attitude in general, but very particularly and with great attention to detail on the individual body and its movements. It was concerned with the way an act was performed rather than merely with the result of an act. It was designed not only to achieve obedience, but also to regulate in what manner, how fast, and how efficiently a task was performed. Its object was to produce trained and "docile" bodies which would respond by habit in the required manner. Discipline was thus unique since it increased the body's forces making it economically useful, while at the same time causing the body to become more obedient, and thus politically less dangerous. The prison as it arose in Europe was a good example of what Michel Foucault termed a "disciplinary institution", which aimed at the control of individuals through various techniques of disciplinary training.

Born as a response to large scale industrialisation and the rapid expansion of capitalist relations of production, it was the penal system described above which was imported into Natal following its annexation by Britain in 1842. Incongruities were bound to arise in transplanting the

2 M Ignatieff *A Just Measure of Pain* (1978) 213.

3 See for example D Melossi "Strategies of Social Control in Capitalism: A Comment on Recent Work" 1980 *Contemporary Crises* 392.

4 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) 139.

penal theories and assumptions of an industrialised metropolitan political economy into a rural colonial political economy.

### COLONIAL IDEOLOGY, RACIAL DOMINATION AND PUNISHMENT IN THE COLONY OF NATAL

While British society itself might theoretically have been based upon middle class ideals of consensus and formal equality, in the far flung colonies of the empire it was the ideology of racist paternalism which held sway. Colonialism and imperialist exploitation were justified and rationalised by racist ideology. For example Herbert Spencer's doctrine of Social Darwinism supposedly provided a "scientific" basis for the view that the Anglo-Saxon civilisation was the culmination of the evolutionary process.<sup>5</sup> It was the philanthropic duty of the white race to uplift the degraded coloured races who were seen as being on a lower plane of evolution and civilisation. The white settlers of colonial Natal were led by Victorian imperialist ideology to believe implicitly in the "superiority of their own culture over indigenous native cultures."<sup>6</sup>

The racist ideology of the white settlers did not only stem from the mother country but was also a product of local economic and political conditions. For the greater part of the nineteenth century a relatively independent class of African peasant producers was able to continue in existence, resisting all attempts to subordinate them to capitalist relations of production, and competing very effectively with the white farmers.<sup>7</sup> Since the colonial state was too weak to destroy this strong and prosperous African peasantry the white settlers were forced to look to a coercive labour system based upon racial domination, rather than to the creation of a class of free wage labourers subject only to the control of market forces. The system of racial domination which developed in Natal, supported by imperialist ideology, was thus ultimately connected to the development of a system of labour coercion and exploitation.<sup>8</sup>

Consensus and formal equality, highly valued by the British middle class, were clearly not as important to the colonists of Natal, particularly when dealing with blacks. Colonial Natal was a more openly coercive society than the mother country, and over the years the colonists waged a bitter struggle against the British colonial authorities to subject the African population to ever stricter controls.<sup>9</sup> It was to be expected that imprisonment, with its emphasis on reform, and its image as a humane and egalitarian form of punishment, would meet with opposition in the colony. In addition, in Natal there was no need for the rigid discipline and clockwork regularity of an institution such as England's Pentonville

5 See J G Riekert *The Natal Master and Servant Laws* Unpublished LLM thesis University of Natal (1983) 150.

6 D Welsh *The Roots of Segregation - Native Policy in Colonial Natal 1845-1910* (1971) 27.

7 See S Marks & R Rathbone (eds) *Industrialisation and Social Change in South Africa* (1982) and S Marks & A Atmore *Economy and Society in Pre-Industrial South Africa* (1980).

8 In general see S Greenberg *Race and State in Capitalist Development* (1980).

9 Marks & Atmore op cit 158-160.

prison,<sup>10</sup> since the colony possessed no large scale capitalist industry requiring a well disciplined work force. The black farm labourers of Natal had a far simpler lesson to learn than that taught by such a finely tuned institution as Pentonville. That lesson was that the white man's word was law, since it was he who held the whip in his hand.

## COERCION AND THE PUNISHMENT OF BLACK OFFENDERS

"We have a law for the Kafir in this colony," stated the Attorney General of Natal in a debate in the Legislative Assembly in 1909, "and the law is to flog him and to flog him severely . . ."<sup>11</sup> Throughout the colonial period whipping played a prominent part in the punishment of black offenders in Natal. In fact so strong was the belief of the white colonists that the lash was indispensable as a means of punishing black offenders, that the Prison Reform Commission of 1906 described it as the "cult of the Cat".<sup>12</sup> A prolonged and often acrimonious struggle developed between the British colonial authorities and the colonists over this issue. The colonial authorities saw the excessive whipping of blacks in Natal as barbaric and out of step with the humane reform-orientated system of punishment applied in the mother country. The colonists, however, insisted that flogging was the only suitable means to punish the black offenders, and stubbornly defended their right to impose this form of punishment freely.<sup>13</sup>

In 1876 the Lieutenant Governor of Natal introduced a Bill into the Legislative Council which proposed to abolish the punishment of whipping under the Master and Servants Ordinance.<sup>14</sup> Passed into law this Bill would in effect have denied to the white colonists the right to flog their black servants for various minor offences such as "misconduct", "neglect", "disobedience", "bad conduct", "absence without leave" etc.<sup>15</sup> Predictably the response of the colonists to the Bill was negative in the extreme and it was thrown out of the Legislative Council on its Second Reading.<sup>16</sup> The opinions of the various members of the Council, couched in racist and paternalistic terminology, disclose an interesting and typically colonial perception of the aims of punishment:

"Mr J N Boshoff thought that . . . [w]hipping was no degradation to Kafirs, and only a punishment so far as the pain was concerned. They knew what kind of servants they were, and if this punishment were not allowed there

10 The "clockwork regularity" of Pentonville prison is vividly described by Michael Ignatieff in the opening pages of his work *A Just Measure of Pain* (1978) 3-11.

11 *Natal Legislative Assembly Debates* 1909 vol 42 381.

12 *Natal Government Gazette* 5 June 1906 *Government Notice* 344 : Report of Prison Reform Commission para 70.

13 The ideological perceptions of the colonists as to the treatment of blacks were very different from those of the English authorities. In general see S Marks *Reluctant Rebellion - The 1906-08 Disturbances in Natal* (1970) and D Welsh *The Roots of Segregation - Native Policy in Colonial Natal 1845-1910* (1971).

14 Bill 9 of 1876 "To Alter and Amend the Ordinance No 2, 1850, entitled Ordinance for Regulating the Relative Rights and Duties of Masters, Servants and Apprentices".

15 *Government House Natal* 58 / Despatch 325 Kimberley to Pine 17 May 1873 paras 3 and 7.

16 *Colonial Office, London* 179/124 Bulwer to Carnarvon 30 August 1877 para 1.

only remained imprisonment, which . . . was no punishment to them. In many cases a Kafir had such a thick skin that whipping had little effect".<sup>17</sup>

"*Mr King* said if flogging was abolished here, imprisonment would be of no service in its place. The only punishment a Kafir feared was that of the lash. The amount of money he lost by being in prison was very little, and he was well fed, so that it was scarcely any punishment at all to him. It was perfectly absurd to treat Kafirs as if they were white persons; while a Kafir remained a savage, he should be treated as such."<sup>18</sup>

"*The Reverend Mr Newnham*: . . . Ever since he had been on a farm, when a Kafir had misconducted himself he had him flogged . . . The fact was a Kafir liked a master who was masterful."<sup>19</sup>

In 1883 the British Colonial authorities again tried to limit the power of the Colonists to whip black offenders. A Bill was introduced into the Legislative Council which proposed to abolish the public flogging of prisoners and thus bring penal practice in Natal into line with that of the mother country.<sup>20</sup> Once again the Bill received an extremely hostile reception from the representatives of the colonists:

"*Mr Reynolds*: I contend that public flogging is necessary in the transitional state of the Natives . . . The native Zulu was once a tractable, docile, and obedient servant. He was afraid of the sjambok and you may depend upon it that nothing but that will make him dread doing wrong . . . Unless we can impress upon the Natives the terror of vice and wrong-doing, so certainly will they tread upon our corns."<sup>21</sup>

"*Mr Boshoff*: I think it would go a long way if a dozen or half a dozen Kafirs were flogged on the Market Square; we would no longer hear of insults to ladies, and they would be safe."<sup>22</sup>

"*Mr Garland*: The result of flogging upon the Native mind, is very similar to that which was conclusive to my mind as a boy at school . . . I believe that the mind of the Native population is very similar to what is found in the boyhood of our life."<sup>23</sup>

Natal's white ruling class regarded the indigenous black peoples as being on a lower plane of civilisation. The black man was seen as a simple childlike creature requiring firm guidance and upliftment from the superior white race. This racist paternalism inherent in white ruling class ideology raised doubts in the minds of the white settlers as to the suitability of imprisonment as a punishment for black offenders. Deprivation of

17 *The Natal Witness* 28 September 1876.

18 *Ibid.*

19 *Ibid.*

20 Bill 6 of 1883 "Private Flogging of Prisoners Bill". See *Government House, Natal* 372 / Circular Despatch Carnarvon to Bulwer 7 January 1878 and *Government House, Natal* 382 / Circular Despatch Derby to Bulwer 18 January 1883.

21 *Natal Legislative Council Debates* 1883 vol 6 30-31 : Debate of 16 July 1883.

22 *Op cit* 32.

23 *Op cit* 34.

liberty was a rather abstract form of punishment which was difficult for the childlike "Native" to understand, much less respond to in a positive and reformatory way. The black man's faculties of reason were not sufficiently developed to allow him to be punished without at least some degree of physical coercion<sup>24</sup>. Like a child the black man was very impressionable and could easily fall victim to the corrupting influences of the prison. Corporal punishment was both quick and effective, and insured that the offender's contact with the penal system was kept to a minimum.

The black man was not only seen as an innocent and simple child. He was also regarded as being possessed of a brutal and savage nature, upon which the mere punishment of imprisonment would have no effect. While the deprivation of liberty was severely felt by the civilized (white) man, this punishment had no effect upon the uncivilized (black) savage who could only understand physical pain. Imprisonment was thus too civilized a punishment for the black man, who received better food, clothes, treatment, and accommodation while inside prison, than during his normal life as a free man. Whereas the white prisoner was tormented by the shame of his degraded position, no stigma attached to imprisonment in the eyes of the black prisoner himself, or the black community at large. Upon discharge from prison the black ex-convict was not discriminated against with regard to employment opportunities as was the case with the white ex-prisoner. The only way in which the punishment of imprisonment could be made sufficiently punitive of black offenders was by the inclusion of a significant element of corporal punishment along with the prison punishment.<sup>25</sup>

Severe corporal punishment for trivial offences against prison discipline formed an integral part of the punishment of imprisonment for black prisoners in Natal. One of the few first hand accounts of life inside a Natal Colonial prison was written by a white journalist who was confined in the Durban Gaol just after the turn of the century.<sup>26</sup> This account details *inter alia* the severe corporal punishment which was meted out to blacks on a daily basis:

"The most gruesome thing in prison life is the flogging. It takes place almost every morning in one of the yards . . . If the flogging that goes on in [Durban] . . . Gaol is a necessary part of the Christianizing of the Natives, our boasted civilization is a farce. It is a cruel, morbid spectacle that degrades alike the Natives who are flogged and the whites who flog . . ."<sup>27</sup>

The writer also made it clear that corporal punishment was, in general, restricted to black prisoners:

"Whites are only flogged for very serious crimes, but the Natives are unmercifully whipped for really small offences. Fifteen and twenty lashes are given by the magistrates all over the Colony with as much unconcern as a man in England is fined

24 See P R Spiller *The Natal Supreme Court : Its Origins (1846-1858) and its Early Development (1858-1874)* Unpublished PhD thesis University of Natal (1982) 63 and 308-310.

25 See S A Peté *The Penal System of Colonial Natal : From British Roots to Racially Defined Punishment* Unpublished LLM thesis University of Cape Town (1985) part II chapter 3.

26 G W Hardy *The Black Peril* (Year of publication unknown).

27 Op cit 280-281 and 283-284.

5s and costs . . . You would be astounded if you knew of the gross recklessness in the prison regarding the treatment of blacks. Sometimes the wrong man is lashed."<sup>28</sup>

Perhaps the most important element of white ideology which affected the form of punishment applied to blacks was the deeply entrenched, almost paranoid white fear of the surrounding black tribes. The colonists saw themselves as being outnumbered and surrounded on all sides by warlike black savages, who had to be kept firmly under control if the safety of the white community was to be ensured. Any black challenge to white authority or civilization had to be swiftly and severely dealt with to prevent it from developing into open rebellion. The kind of siege mentality displayed by the colonists may perhaps best be illustrated by reference to the periodic waves of public hysteria that swept through white ranks following assaults on white women by black men. The rape of a white woman by a black man was possibly the ultimate denigration of white authority and civilization, and public reaction to such "outrages" reached fever pitch on numerous occasions over the years. Again and again the colonists condemned imprisonment as far too lenient a punishment for the perpetrators of "outrages". For example in March 1872 a black man was caught "in a state of nudity" in the bedroom of a white woman, and was sentenced to one month's hard labour.<sup>29</sup> The *Natal Witness* commented as follows:

"What a punishment! If indeed it can be called a punishment to feed such a villain for a month, who all but committed a frightful outrage. After this, is it to be wondered at if Europeans determine to take the law into their own hands, in cases of this sort."<sup>30</sup>

Finally white hysteria reached such a pitch that it was reported that:

"The ladies of Durban and the Berea have taken to the practice of carrying revolvers, and know how to use them; and the secretary of the Durban Teetotal Society suggests that these ladies should have meetings in the Town Gardens, for pistol practice."<sup>31</sup>

In 1883 the link between the "crime of indecency" and the "effect on the Native mind of the punishment of imprisonment" was debated in the Legislative Council.<sup>32</sup> The crime was labelled as "one of the grossest that any Native can commit to the white race" and it was pointed out that imprisonment was a totally inadequate punishment for such a grave crime.<sup>33</sup> The member who initiated the debate described the effect of imprisonment upon the black man as follows:

"Is it not a fact well-known to those who have anything to do with the Natives that they have an utter and supreme contempt for being sent to prison? . . . The Native is sent to prison, and is there fed and clothed, and is better cared for, and has less work to do than happens in the ordinary current of his life. He comes out of prison, walks down the street, and at the first place he asks for employment he obtains it."<sup>34</sup>

28 Op cit 283 and 286.

29 *The Natal Witness* 26 March 1872.

30 Ibid.

31 *The Natal Witness* 2 April 1872.

32 *Natal Legislative Council Debates 1883* vol 6 323-326 : Debate of 24 August 1883; and 361-367 : Debate of 29 August 1883.

33 Op cit 324, Mr Crowder 24 August 1883.

34 Ibid.

The dissatisfaction with the apparent ineffectiveness of the penal system in dealing with black offenders was not restricted to pronouncements in the Legislative Council. On at least one occasion public hysteria reached such a pitch following an "outrage", that the security of the Durban Gaol was seriously threatened. On 7 December 1886, a disturbance occurred outside the gaol in which a "lawless mob" threatened to break into the gaol and deal summarily with the perpetrator of an outrage.<sup>35</sup> The Superintendent of the Durban Gaol felt the threat posed by the volatile colonists to be so serious that he requested a detachment of the Natal Mounted Police be stationed within the gaol.<sup>36</sup>

In conclusion, the coercive nature of the form of punishment of blacks in colonial Natal may perhaps best be understood as an assertion of white sovereignty and authority. Michel Foucault spoke of "penal torture" as:

"A differentiated production of pain, an organised ritual for the marking of victims and the expression of the power that punishes."<sup>37</sup>

In colonial Natal white sovereignty, power and authority received expression in the lash marks on the backs of countless black offenders:

"You see hundreds and thousands of Natives today in the country districts that are ashamed to go about according to their naked Native custom; they wear shirts simply because they are branded."<sup>38</sup>

The punishment of black offenders in Natal thus retained elements of that form of punishment which Foucault called "punishment of the body". The power wielded against Natal's black offenders was more visible and openly coercive than the hidden low-level, "micro-physics" of power, which, according to Foucault, characterised the punishment of imprisonment in Europe.<sup>39</sup>

## SOCIAL STIGMA AND THE IMPRISONMENT OF WHITE OFFENDERS

"[T]here can be no greater means of bringing the governing race into contempt than to allow a coloured man to whip a white man, even though he be a prisoner under confinement."<sup>40</sup>

This was the opinion of a member of the Legislative Council of Natal following an incident in 1883 in which a white prisoner was whipped by a black guard for attempting to escape. Although white prisoners formed only a small percentage of Natal's total prison population they assumed a symbolic importance as representatives of the white master class.

The white colonists of Natal formed a small tightly-knit community and they perceived of themselves as the guardians of "civilized" norms and

35 *Colonial Secretary's Office, Natal 2562/C 117/86* Resident Magistrate of Durban to Superintendent Durban Gaol 8 December 1886.

36 *Op cit* Report of Superintendent Durban Gaol, 8 December 1886.

37 Foucault *op cit* p34.

38 *Natal Legislative Assembly Debates* 1909 vol 42 378 : Mr Armstrong.

39 See Foucault *op cit*.

40 *Natal Legislative Council Debates* 1883 vol 6 323 : Mr Crowder 24 August 1883.

standards in a savage and heathen country. These factors accounted in part for the stern moralism which was characteristic of public opinion in white colonial Natal. The closed, homogenous nature of white society meant that those who deviated from the norms of that society would be met with social ostracism. The effects of such ostracism could be both psychologically and materially devastating to the individual involved. It was small wonder that the scorn of the white community formed a major part of the punishment of white prisoners in Natal.<sup>41</sup> For example in October 1868 the resident magistrate of Durban stated:

“To white prisoners the exposure of having to appear in public amongst the Convict Gang is a greater punishment than any labour inside the walls of the Gaol could be.”<sup>42</sup>

The white prisoner did not only suffer the degradation of being branded as a criminal, however, but to this was added the humiliation of being confined alongside black prisoners and being subjected to the authority of black prison guards. There was thus a double stigma attached to imprisonment for a white person in Natal, and on leaving the prison the white ex-prisoner encountered extreme difficulty in obtaining employment as a result of this stigma. For example in 1883 a member of the Legislative Council of Natal described the experience of the white ex-prisoner as follows:

“Let that man seek employment where he is known. Will he obtain it? No. Everyone shuns him, and his only place is in the society of criminals.”<sup>43</sup>

To confine whites alongside blacks in the same prison did not only degrade the white prisoner himself, but brought disgrace upon the white race as a whole. This held ideological ramifications for white colonial society which regarded the authority relationship between white master and black servant as being of paramount importance.

All the themes referred to above are well illustrated by a public debate in the various newspapers of the Colony which took place in 1904, in which the white prisoner and his treatment came under the spotlight. From the outset the issue of race formed a central part of the debate. The white prisoner was seen as a member of the white master class and the fact that he had committed a crime did not alter this fact. In numerous articles and letters the practice of “herding together . . . black and white prisoners” was condemned as a “grave defect in prison administration.”<sup>44</sup> The practice was seen as being intensely degrading to the white prisoner who would be hardened by the experience. It was pointed out time and again that the white prisoner had not only to face the social stigma of imprisonment but also that of being placed on a par with black prisoners. For example a prisoner at the Central Gaol in Pietermaritzburg described as follows the white prisoner’s experience of stone breaking:

41 See Peté op cit part II chapter 4.

42 *Colonial Secretary's Office, Natal* 314/2265 : Report of Assistant Resident Magistrate Durban 8 October 1868.

43 *Natal Legislative Council Debates* 1883 vol 6 324 : Mr Crowder 24 August 1883.

44 *The Natal Witness* 30 May 1904 “Industrial Prisons”.

"All around him in barbed-wire cages, he sees specimens of every native tribe in South Africa performing the same labour. Most likely on either side he finds a dirty Hottentot or Griqua, clad in exactly the same dress, and treated in every respect on a par with himself. It is then that he realises the utter degradation to which he has sunk, and the iron begins to enter his soul."<sup>45</sup>

A prominent clergyman, Archdeacon Barker, objected to the fact that "white and black are not only incarcerated in the same prison, but are made to march through the streets together to and from their work."<sup>46</sup> He stated further:

"This must, I think, tend to harden them. I have often seen the white prisoners marching at the head of a long column of Native prisoners, and have felt my face crimson with a feeling of shame, and have seen the same prisoners upon being watched, hang their heads and blush for very shame — as much, perhaps, from their companionship as from their position."<sup>47</sup>

The above quotation illustrates very clearly the double stigma attached to imprisonment for a white person in colonial Natal. The result of this double stigma it was believed, was to harden the white prisoner to such an extent that he could not be reformed. Calling the "indiscriminate admixture" of races "possibly one of the very worst features of our treatment of the prisoner at the present day," the *Natal Advertiser* editorialised as follows:

"If any condition of life in our prisons is responsible for the turning out of a class of men who return immediately upon their release to their old pursuits that undoubtedly is, for as it has been pointed out by chaplains and others who have had opportunities of watching the conduct of prisoners while in confinement, it affects the average [white] prisoner as a horrible degradation."<sup>48</sup>

Racially mixed prisons did not only have a degrading effect on the white prisoner but held ideological consequences for colonial society as a whole. By placing black guards in charge of white prisoners, two different authority relationships were brought into conflict: the authority relationship between the prison guard and the prisoner; and that between the white master and the black servant. This contradiction is revealed in the following statement by a white prisoner confined in a gaol in Northern Natal:

"I consider that the way the white prisoners are treated is a disgrace to civilization. They are compelled to work side by side with Kafirs, while they must submit to the indignity of being ordered about the place by Native constables."<sup>49</sup>

He commented indignantly that the Native guards were looked upon by the white prison officials "as the superiors of unfortunate Europeans whose ill luck it is to be given into their charge."<sup>50</sup> The ideological implications of this contradiction for 'society at large were spelt out time

45 *The Natal Advertiser* 1 June 1904 "Testimony from Within".

46 *The Natal Advertiser* 30 May 1904 "Opinions of Representative Men" — Letter of Joseph Barker.

47 Ibid.

48 *The Natal Advertiser* 7 June 1904 "The Criminal Regenerate" (Editorial).

49 *The Natal Advertiser* 1 June 1904 "Testimony from Within".

50 Ibid.

and again by the newspapers of the Colony. On 1 June 1904 the *Natal Witness* noted as follows:

"The indiscriminate mixing of whites and blacks is a matter which calls for urgent consideration if the respect of the black man for his white master is to be maintained, and our readers will agree that steps should be taken to separate the white and coloured races entirely during the period of incarceration."<sup>51</sup>

It was particularly important that white prisoners as members of the white master class should not be seen by the black public in a position of subservience. The *Natal Witness* made this point strongly in its editorial of 15 June 1904, in which it condemned as a "public and official contravention of decency", the practice of marching black and white prisoners for trial through the streets of Pietermaritzburg, from the gaol to the courthouse.<sup>52</sup> The *Witness* warned that the public would "no longer permit the degradation of Europeans before a black population", and asked why no "Black Maria" had been provided "to keep white prisoners from the inquisitive gaze of the crowd".<sup>53</sup> Clearly then, if the authority relationship between white master and black servant was to be maintained in society at large, it had to apply within the gaols as well. The only way in which to do this was to separate white prisoners from black prisoners, and shield the white prisoners from public view.

In addition to the degradation caused by imprisonment, the white prisoner faced the additional problem of being unable to find employment upon leaving prison. White unemployment had reached fairly severe proportions at the turn of the century and the problem could not be solved by employing whites at unskilled jobs, since these were performed by cheap black labour.<sup>54</sup> Thus a white ex-convict who did not possess work skills would not be able to find employment in Natal, and would be forced to re-enter a life of crime. This point was well illustrated by the *Natal Witness* in commenting on a proposal to separate white from black prisoners, and employ the former as agricultural labour:

"To teach a European the duties of an agricultural labourer in this country might be of passing benefit to the prison authorities, while he was with them, but neither the convict himself nor the society to which he must return when liberated would be much the better. There is no opening for white agricultural labourers here, and the only thing that will elevate the prisoner and improve his position in the world will be the acquirement of a trade by which he can earn an honest livelihood as soon as his sentence has expired."<sup>55</sup>

This important point was also made by Mr T C C Sloane, General Secretary of the YMCA in Natal, who pointed out that it was a problem peculiar to Natal:

"In the large cities at Home missions and societies existing for the betterment of the

51 Ibid.

52 *The Natal Witness* 15 June 1904 "Prison Reform 11" (Editorial).

53 Ibid.

54 The reasons for the rise in white unemployment at this time are set out in F A Johnstone *Class, Race and Gold* (1976) 52-53.

55 *The Natal Witness* 29 December 1904 "Prison Reform".

people have one great advantage, in that they are able to obtain employment requiring no previous knowledge for men whom they are seeking to raise. Many prisoners are, of course, 'skilled' men; but even these when discharged are willing to take anything, and out here the 'anything' is done to such an extent by the Kafir and the Indian that a greater difficulty is created."<sup>56</sup>

Thus if the white prisoner in Natal was to be reformed, he had, while in prison, to be taught to earn his living by performing skilled labour.

The solution to all the special problems and contradictions posed by the punishment of whites in colonial Natal was the proposed construction of a separate industrial prison for "Europeans".<sup>57</sup> Here, out of the public gaze and away from the negative influences of black criminals, white prisoners would be reformed and taught industrial skills to enable them to fit in as members of the ruling white middle class upon their discharge.<sup>58</sup> Like Bentham's "Panopticon" this industrial prison for whites was never built.<sup>59</sup> However, the theories behind it, which have been examined above, provide significant insights into the form taken by punishment in colonial society, in relation to members of a racial elite.

#### "YOU ARE WHAT YOU EAT" — RACE CLASSIFICATION AND PRISON DIET

It should be clear from the above that punishment in colonial Natal was very much racially based. As is testified by the complex web of racial legislation existing in South Africa today, however, a society (or penal system) based upon racial divisions gives rise to immense difficulties in accurately defining the various racial categories. The definition and redefinition of racial categories is largely an artificial process since "pure" racial groups do not in reality exist. Moreover, the definitions tend to change over time along with changing social circumstances.

The penal system of colonial Natal was faced with formidable problems in defining racial categories. These problems were compounded by the fact that the penal system imported from Britain was not racially based as was its colonial counterpart. It was only towards the turn of the century that the colonists were able to gain control of the colonial state and vigorously promote racial segregation by means of legislation.<sup>60</sup> For much of the early colonial period, and in the absence of directly legislated divisions between the races, racial segregation and classification was carried out in Natal's penal system under the guise of a system of prison dietary scales. Thorny problems of race classification were discussed in terms of diet and changing conceptions were reflected in the dietary systems applied in the colony's gaols.

56 *The Natal Advertiser* 3 June 1904 "Employment Bureau for Ex-Convicts".

57 *Natal Government Gazette* 5 June 1906 *Government Notice* 344: Report of the Prison Reform Commission.

58 *The Natal Advertiser* 1 June 1904 "Testimony from Within". See also *The Natal Advertiser* 30 May 1904 "A Plea for the Criminal"; *The Natal Witness* 8 June 1905 "Why Waste Prison Labour?" and *The Natal Witness* 6 May 1905 "The City Gaol".

59 The "Panopticon" was a blueprint of a total institution drawn up by the utilitarian reformer Jeremy Bentham, but was never built. See Foucault op cit 195-228.

60 See C Bundy *The Rise and Fall of the South African Peasantry* (1979).

Although from the very earliest days prisoners were separated along racial lines in Natal's gaols, it was in the area of prison diet that the authorities first adopted a formal system of racial classification. In January 1865 the District Surgeon of Pietermaritzburg pointed out that over the previous thirteen years the number of white persons confined in the Pietermaritzburg Gaol had risen from an average of two or three to an average of about thirty. Whereas previously any "needful variation" in the diet of white prisoners could be made "quietly and at little cost", it was now necessary that the dietary scale of white prisoners be officially revised and altered.<sup>61</sup> A dietary scale for white prisoners at the Pietermaritzburg Gaol was thus drawn up and approved.

Time and again the problem of how to classify the prisoners who fell in between the categories of "European", "Indian" and "Native" was discussed in the context of diet. A good example of this was a debate which arose in 1884 over the fact that the Durban and Pietermaritzburg Gaols had adopted different systems of race classification.<sup>62</sup> The District Surgeon of Durban pointed out that at the Durban Gaol it had "been the custom to treat people from Saint Helena, the Island of Mauritius, and the West Indies, also American coloured people as Europeans".<sup>63</sup> The District Surgeon considered this a good policy, since Durban was a seaport town, and sailors of various nationalities and races were more likely to find their way into the Durban Gaol than into the gaols of the interior. The Colonial Secretary was not impressed by this agreement, however, and commented as follows:

"The nationalities you mention are none of them in their own countries accustomed to European diet. The St. Helena lives on yams and fish. The West Indies Negro on plantains, yams and fish (chiefly salt). The Chinese on anything he can get and the Arab on rice, dates etc. Why then should . . . they be fed on the same diet as the flesh eating Europeans."<sup>64</sup>

The District Surgeon replied to the Colonial Secretary as follows:

"Many of these people have lived a long time in South Africa, and probably have been treated and fed as Europeans, and it might be argued that it would appear somewhat harsh to classify and feed them in the gaols as Natives of their country are treated and fed."<sup>65</sup>

At the Pietermaritzburg Gaol a different system of racial classification was adopted, and this was reflected by the dietary arrangements at the gaol. Unlike the system in force at the Durban Gaol where mulatto prisoners were classified as "European", at the Pietermaritzburg Gaol, "half castes, known as Dutch Bastards or Cape men, and natives of St. Helena and of Mauritius" were classified separately and placed on the dietary scale for "Hottentots"<sup>66</sup>. The District Surgeon of Pietermaritzburg reported that Hottentots were "thin small bodied men" who were "more

61 *Colonial Secretary's Office, Natal* 215/227 District Surgeon Pietermaritzburg to Resident Magistrate Pietermaritzburg 21 January 1865.

62 *Colonial Secretary's Office Natal* 993/5081.

63 Op cit District Surgeon Durban to Resident Magistrate Durban 24 January 1885.

64 Op cit Colonial Secretary to Resident Magistrate Durban 27 January 1885.

65 Op cit District Surgeon Durban to Resident Magistrate Durban 2 February 1885.

66 Op cit Report of District Surgeon Pietermaritzburg 2 March 1886.

numerous in Pietermaritzburg twenty years ago than at present", and that such prisoners "now rarely appear on the prison register".<sup>67</sup> The Hottentot dietary scale was in urgent need of revision, since it was being applied to "much abler bodied men than the Hottentot... capable of doing nearly the same work as an European".<sup>68</sup>

The unsuitable nature of the Hottentot dietary scale was eventually to lead to a new dietary system, and a new system of racial classification. In March 1887 the resident magistrate of Pietermaritzburg labelled the Hottentot dietary scale an "anachronism" and stated as follows:

"The Cape men, Creoles, St Helenas etc now grouped under the name of Hottentot are the best labourers in the Gaol. Many of them have European blood in their veins; all have been, equally with Europeans, accustomed to animal food. It appears to me most unreasonable as well as unjust, that these people, *only on the grounds of colour*, should be reduced to a diet, which in comparison with that of Europeans is near to starvation."<sup>69</sup>

A Committee was set up to revise the dietary scales, and recommended the retention of the "European", "Indian", and "Native" dietary scales, and the abolition of the "Hottentot" dietary scale. Every prisoner was thus to be classified into one of three categories which were carefully defined by the Committee;<sup>70</sup>

"European" — "... all persons of European descent, Eurasians, natives of St Helena and the Cape, and their descendants (excluding Kafirs), American Negroes, French Creoles, and West Indians."<sup>71</sup>

"Indian" — "... all natives of Hindustan, and their descendants (excluding Eurasians), natives of Madagascar, Mozambique, China, and all other Asiatics."<sup>72</sup>

"Natives" — "... natives of South Africa, commonly called Kafirs."<sup>73</sup>

Of course it was the definition of "European" which really mattered to the prisoners in Natal's gaols since this group received gratuities from work performed, better accommodation and diet, and generally superior treatment to other groups. The definition of "European" quoted above was fairly wide and this was resented by certain white prisoners who felt that only "true" European persons should be included. The issue was taken up strongly in the great prison reform debate of 1904. Time and again the negative consequences of confining "Hottentots, Griquas, Negroes (*et omnes hoc genus*)" alongside "true" European prisoners was emphasised.<sup>74</sup> It was argued first of all that white prisoners were greatly degraded by the practice:

67 Ibid.

68 Ibid.

69 *Colonial Secretary's Office, Natal 1138/1197* Resident Magistrate Pietermaritzburg March 1887.

70 *Colonial Secretary's Office, Natal 1138/2457*.

71 *Natal Government Gazette* 2 August 1887 *Government Notice* 360.

72 Ibid.

73 Ibid.

74 *The Natal Advertiser* 5 January 1905 "Prison Reform"

"Nothing is more keenly felt, nothing tends more to make a white man lose his self respect in effecting reformation than to be paraded cheek by jowl several times a day with, and addressed in terms of familiarity by sombre tinted individuals, who in this part of the world only pass muster as 'Europeans'..."<sup>75</sup>

The second major argument advanced against the wide definition of "European" was that blacks would begin to lose their respect for the white master race if the so called "Coloured" prisoner continued to be treated on a par with the white prisoner:

"The gaols in Pietermaritzburg and Durban see some thousands of Natives passing through every year, and they observe that you treat white men (whom they naturally regard as your brother) on an absolute equality with Hottentots, Griquas, and other coloured races, whom they themselves regard as their inferiors".<sup>76</sup>

Eventually the matter was examined by the Prison Reform Commission of 1905 which created a separate "Coloured" category in addition to the existing categories of "European", "Indian" and "Native".<sup>77</sup> "European" was now narrowly defined and a prisoner who did not fall clearly under one of the three principal categories would automatically fall under the "Coloured" category. Thus a system of race classification which had been instituted almost two decades earlier under the guise of dietary arrangements was altered to fit in with changing social circumstances.

## CONCLUSION

The main thrust of this article has been to examine the ideological contradictions which arose when the penal theories and assumptions of industrialised Britain were transplanted into rural Natal; and the gradual development of a unique system of racially differentiated punishment in the colony. Because of this focus on the ideological level, important social functions performed by the colony's penal system have been somewhat neglected. For example the use of prison labour, particularly upon the Durban harbour works played a major part in the economic development of the colony. Indeed, Natal's prisoners formed a useful reserve labour force to be utilised when resistance was encountered from free wage labour.<sup>78</sup> The prisoners were also important instruments of social and political control over the black population. The black labour force was kept on a tight rein by restrictive legislation such as the pass laws, the Master and Servants Ordinance, the Borough By Laws etc. Contravention of this legislation and inability to pay stipulated fines was punishable by terms of imprisonment, and Natal's gaols were almost always chronically overcrowded with these petty offenders against social control legislation.<sup>79</sup> This led to contradictions at the ideological level since the penal system had been designed to deal with "real" criminals, and over the years various schemes were suggested to keep petty offenders out of the prisons eg

75 Ibid.

76 *The Natal Advertiser* 5 January 1905 "Prison Reform".

77 *Natal Government Gazette* 5 June 1906 *Government Notice* 344 : Report of the Prison Reform Commission para 26.

78 See Peté op cit part I chapter 2.

79 Peté op cit part I chapter 3: "Prison Accommodation" 75-92.

assigning convicts as servants to private individuals; establishing movable prisons; replacing short sentences of imprisonment with corporal punishment etc.<sup>80</sup>

While this article has been restricted to the development of racially defined punishment in Colonial Natal, many of the themes discussed have relevance to the current South African penal system. It is not possible to understand punishment in South Africa today in terms of the penology of Europe or America, and our knowledge should rather be based upon an understanding of our unique African history.

80 Peté op cit part II chapter 5 : "The Prison Reform Commission of 1905-1906 — A Blueprint for Racially Differentiated Punishment" 167-186.

## **CHAPTER 2.2**

### **Falling on Stony Ground: Importing the Penal Practices of Europe into the Prisons of Colonial Natal.**

#### **CHAPTER 2.2.1**

##### **Falling on Stony Ground: Importing the Penal Practices of Europe into the Prisons of Colonial Natal - Part 1.**

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# FALLING ON STONY GROUND: IMPORTING THE PENAL PRACTICES OF EUROPE INTO THE PRISONS OF COLONIAL NATAL (PART 1)

Stephen Peté\*

## 1 Introduction

In Western societies, penal reform emerged at the heart of a large social consensus – in response to the convulsive passage of European economies to industrial capitalism – seeking to resolve the most dangerous social aspects of this economic disruption to the benefit of the dominant classes. In the colonies, by contrast, economic profit depended upon political despotism and the enduring antagonism between different segments of colonial society. The tropical prison did not seek to separate lawful citizens from marginals and delinquents. It aimed to reinforce the social and political separation of the races to the sole benefit of white authority by assigning the mark of illegality to the whole of the dominated population.<sup>1</sup>

In the above quotation, Bernault points out that penal systems of colonial Africa had a completely different *raison d'être* to those of Europe. The reasons for this become apparent upon an examination of the historical context in which the penal theories of Europe were imported into the far-flung colonies of Africa. The penal system of colonial Natal provides a good example of the often less than successful attempts by colonial authorities to plant alien penal principles and concepts into African soil.

When the first prison was established in Pietermaritzburg by the Boers in 1842, the Colony of Natal was soon to be annexed by the world's oldest and most powerful capitalist state.<sup>2</sup> The legal and administrative institutions which were set up to govern and regulate the Colony in the interests of the Empire were, of course, modelled upon British institutions. These institutions had arisen together with the development of industrial capitalism, and the officials and administrators sent out from "home" to operate these institutions were ideological products of the most advanced industrial capitalist country in the world. The penal system which was imported into the Colony of Natal in the

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1 Bernault "The politics of enclosure in colonial and post-colonial Africa" in Bernault (ed) *A History of Prison and Confinement in Africa* (2003) 16.

2 The Colony of Natal was officially annexed by the British Empire in August 1845.

middle of the nineteenth century inherited all the ideological baggage which came with that system. The principles and policies relating to punishment which were imported into the Colony were to be shaped and twisted by local conditions, conflicts and needs, so that the penal system which finally emerged may be described as the articulation of the penal theories and assumptions of an industrialised metropolitan political economy with those of a rural colonial political economy.

This article will sketch the birth of the prison in colonial Natal, and trace the ultimately unsuccessful efforts of the British colonial authorities to introduce penal principles derived from the prison reform movements in Europe at the start of the nineteenth century into the prisons of the colony. Particular attention will be paid to the attempts – which were ultimately unsuccessful – to introduce strictly penal labour as well as the “separate system” into the prisons of the Colony. In terms of this system each prisoner was confined in a separate cell at night. During the day a prisoner worked alone in a cell or in association with other prisoners under strict conditions of silence.

## **2 The birth of the prison in colonial Natal**

The first prison in the colony of Natal was erected in Pietermaritzburg by the Voortrekkers. In the words of Hattersley it was “a wattle-and-daub structure, flanked with sod walls and surrounded by a pleasant garden, – not in the least suggestive of the rigours of prison life”.<sup>3</sup> The prison, or “tronk” as it was known, formed part of the Police Station, and in the words of another author, Goetzche, it was “a small, low building, constructed of raw bricks and ‘very shaky’”.<sup>4</sup> It would seem that the first record of the conditions of prison life is contained in a petition by ten Natal traders who were captured by the Boers during the hostilities of 1842 and then imprisoned in the “tronk”. They petitioned the Boer Commandant-General in the following rather dramatic terms:

We ... beg to lay before you that we were this morning much grieved and surprised to find without cause that we are to suffer the extreme of prison punishment that is ever inflicted on the greatest murderers in the whole Christian World ... We humbly submit to you and hope you will take into consideration and kindly ease us of being chained during

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3 Hattersley *Portrait of a City* (1951) 9-10.

4 Goetzche *Father of a City* (publication date unknown) 44.

the day and of the intolerable stench caused by our being obliged to ease ourselves inside the Tronk, this with being confined with closed windows which may soon cause a disease fatal to us and perhaps spread through the whole town.<sup>5</sup>

In August 1845 Natal was officially annexed by the British Empire, and on 12 December 1845 Martin West, the first Lieutenant-Governor of the Colony of Natal, took the oath of office at Pietermaritzburg.<sup>6</sup> One of West's first duties was to ensure that the Colony had a functional penal system. With regard to Pietermaritzburg, he reported in February 1846 that he had appointed a gaoler and incurred certain expenses in "temporarily improving the small public building used as a prison".<sup>7</sup> He pointed out, however, that the erection of a suitable gaol was altogether indispensable, and in March he submitted a plan of a proposed new gaol in Pietermaritzburg to the Governor of the Cape, for the consideration of the Secretary of State for the Colonies.<sup>8</sup> The cost of this proposed new gaol was estimated at between £1,000 and £1,200. Perhaps because of this high cost, it was never built. At this time, only five criminal prisoners were confined in the Pietermaritzburg Gaol.<sup>9</sup> In 1849 it was described as follows in *An Emigrant's Letters Home*:

It was some time before we found out that a comfortable-looking cottage residence was in reality the 'tronk', or prison, the doors of which usually stand open, there being seldom an inmate to claim the care of the gaoler, who therefore turns his leisure to account (listen and gnash your teeth, ye Cerberi of Clerkenwell, Whitecross Street and Newgate) in the Arcadian occupation of keeping cows and cultivating oat-hay.<sup>10</sup>

The origins of the Durban Gaol were even more humble than those of its Pietermaritzburg counterpart. In 1846 a gaoler was appointed and £10 was set aside by the Government as the annual rental for a suitable lock-up house, when such could be found.<sup>11</sup> In 1847 a building was hired from a Mr Benningfield at the annual rent of £30. However, when Mr Benningfield raised the rent to £40 per annum, this was considered "exorbitant", and a "much more

5 *Idem* 47-48.

6 Brookes & Webb *A History of Natal* (1965) 54.

7 BPP (Irish University Press Series of British Parliamentary Papers – Colonies Africa) Vol 28 Natal at 65: West to Maitland 24 February 1846.

8 GH (Government House) Natal 1209/18 KwaZulu-Natal Archives Pietermaritzburg Archives Repository: West to Maitland 30 March 1846.

9 BPP (n 7).

10 *Natal Witness* 22 June 1849.

11 BPP (n 7) 114: Enclosure – Maitland to Grey 7 November 1846.

commodious" building was hired from a Mr Dand in 1849 at £40 per annum.<sup>12</sup> This building was described by the *Natal Witness* as "a low cottage, overgrown with creepers, fronted by a thick, verdant and lofty hedge".<sup>13</sup>

Clearly the wattle-and-daub structures described above, despite their rustic charm, could not meet indefinitely the needs of a growing Colony.<sup>14</sup> By 1859 it was clear that the gaols of Natal were totally inadequate. The Lieutenant-Governor pointed out as follows:

Our present gaol [in Pietermaritzburg] is a small building erected in the time of the Dutch Volksraad, in every respect unsuited for the present wants of the Colony, and there is now a pressing need for better provision being made for prisoners, not only in Pietermaritzburg, but also in Durban and elsewhere.<sup>15</sup>

The Pietermaritzburg Gaol was the first to receive the attention of the authorities. On 4 February 1859 Lieutenant-Governor Scott submitted a plan of a proposed new gaol to be erected in Pietermaritzburg for the approval of the Secretary of State. The estimated cost of this building was £6,000, and it was to serve not only as a gaol, but also as a fortification in the event of an attack "by the Barbarous Tribes throughout the Colony".<sup>16</sup> Indeed, the plan of the proposed building resembled that of a fortress rather than a gaol. It showed the gaol buildings surrounded by a wall which was twenty feet high, loopholed, and flanked with towers. The surrounding wall was never built, however, since the British Government was not willing to authorise the immediate expenditure of £6,000. The British Government was, nevertheless, willing to sanction "an annual appropriation of such sums as may be available from time to time ... so as to admit of gradual enlargement".<sup>17</sup> Work on the construction of a new gaol for Pietermaritzburg was thus able to proceed on an *ad hoc* basis and was begun in January 1861.

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12 CSO (Colonial Secretary's Office) Natal 23/12 KwaZulu-Natal Archives Pietermaritzburg Archives Repository: 22 May 1849. Mr Dand occupied the position of Durban Gaoler for many years until he was replaced by Mr Owen in January 1865. However, Mr Owen was removed from office in February 1866 for maltreating and assaulting the lunatics in the Gaol (CSO Natal 239/70) KwaZulu-Natal Archives Pietermaritzburg Archives Repository: 19 February 1866. He was replaced by Mr John Phillips.

13 *Natal Witness* 18 April 1851.

14 *Natal Witness* 14 June 1864. See also Spiller *The Natal Supreme Court: Its Origins (1846-1858) and Its Early Development (1858-1874)* (LLD thesis University of Natal – Durban 1982) 62 304-305.

15 CO (Colonial Office) London 179/51 KwaZulu-Natal Archives Pietermaritzburg Archives Repository: Scott to Lytton 4 February 1859.

16 *Idem*: Enclosure – Report of Surveyor General November 1858.

17 GH Natal 33/171 KwaZulu-Natal Archives Pietermaritzburg Archives Repository: Camarvon to Scott 27 April 1859.

Prison construction at this time was not restricted to Pietermaritzburg, and provision was made also for constructing gaols in the country districts. In his opening address to the Legislative Council on 3 June 1861, the Lieutenant-Governor reported as follows:

With the annual progress of the Colony, our great deficiency in prison accommodation becomes more and more conspicuous amongst the pressing requirements. I have therefore recommended an appropriation for the erection of four small county prisons ....<sup>18</sup>

The Lieutenant-Governor also stated that he had made "an additional grant for the gaol now being erected in Pietermaritzburg, in order that it may be made habitable if possible, at the commencement of next year".<sup>19</sup> In its review of the Lieutenant-Governor's speech, the *Natal Witness* was quick to point to the irony of the fact that the pressing need for prison accommodation went hand in hand with the "annual progress of the Colony":

Tell it not in Gath! Hitherto a hundred and twenty thousand heathen have maintained order, and deported themselves so as to render state discipline almost unnecessary, and when progress sets in, and 'industrial training', and legislative love controls them, prisons are required. What have the advocates of progress to say to this development?<sup>20</sup>

This statement reveals more than just the racist paternalism which characterised the ideology of the white rulers of colonial Natal. To the white colonists, struggling to force the local tribesmen from their land and to coerce them into wage labour on colonial farms, the extension of the prison system must indeed have seemed a step forward for "civilisation" and "progress". The humane and reform-orientated punishment of imprisonment surely represented the moral high road in the penal discourse of the time. In November 1861 the *Natal Witness* commented on the extension of the prison system in the Colony as follows:

One of the most striking features in the advance of civilisation is the necessity for prisons. We remember the day when one mud building, of three or four apartments, held the gaoler, and all the culprits, out of

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18 *Natal Witness* 7 June 1861.

19 *Ibid.*

20 *Ibid.*

a population of a hundred thousand savages, including an unruly editor who thrice had an opportunity of seeing and smelling the beautiful cells. Now our Colonial Engineer is providing prison accommodation in every county.<sup>21</sup>

In contrast to the above discourse linking the extension of the punishment of imprisonment to the “advance of civilization”, it should be noted that many of the colonists were deeply sceptical of the value of modern reform-oriented methods of punishment (such as imprisonment) when applied to the “native” population. The almost fanatical support of white colonists for pre-modern forms of “sanguinary” punishment, such as whipping with the notorious cat-o-nine-tails, in particular when dealing with black offenders, has been traced by a number of scholars.<sup>22</sup> Florence Bernault makes the point that

[c]ontrary to the ideal of prison reform in Europe, the colonial penitentiary did not prevent colonizers from using archaic forms of punishment, such as corporal sentences, flogging, and public exhibition. In Africa, the prison did not replace but rather supplemented public violence ... [T]he principle of amending ... criminals was considerably altered in the colonies, and largely submerged by a coercive doctrine of domination over Africans, seen as a fundamentally delinquent race.<sup>23</sup>

Thus the extension of the punishment of imprisonment to all parts of the Colony of Natal in the 1860s should be seen as part of a rather complex process, whereby the penal ideologies of the colonial power were twisted, adapted and supplemented to suit local conditions, within the context of an ongoing struggle between the colonisers and the indigenous population.

With the construction of the new Central Gaol at Pietermaritzburg and the several country gaols, there was increasing agitation for the construction of a

21 *Natal Witness* 1 November 1861.

22 See, eg, Peté “Punishment and race: The emergence of racially defined punishment in colonial Natal” 1986 *Natal University Law and Society Review* 102; Peté & Devenish “Flogging, fear and food: Punishment and race in colonial Natal” 2005 *Journal of Southern African Studies* 3-21; Bernault (n 1) 15; Read “Kenya, Tanzania and Uganda” in Milner (ed) *African Penal Systems* (1969) 109; Killingray “Punishment to fit the crime? Penal policy and practice in British colonial Africa” in Bernault (n 1) 106-110.

23 Bernault (n 1) 3. I make a similar point in certain of my own previous work. In commenting on the differences between prisons in Europe and Africa during the colonial period, in particular prisons in England as compared to those in the Colony of Natal, I point out that “[i]n Natal there was no need for the rigid discipline and clockwork regularity of an institution such as England’s Pentonville prison, since the colony possessed no large scale capitalist industry requiring a well disciplined work force. The black farm labourers of Natal had a far simpler lesson to learn than that taught by such a finely tuned institution as Pentonville. That lesson was that the white man’s word was law, since it was he who held the whip in his hand”. See Peté “Punishment and race” (n 22) 101-102.

new gaol in Durban.<sup>24</sup> Conditions in the old Durban Gaol (still the same building rented from Mr Dand in 1849) were far from suitable. On 12 February 1864 the Durban Gaoler reported upon the conditions in the Gaol.<sup>25</sup> The seven rooms of the gaol were occupied by thirty six prisoners. Clearly, no individual separation of prisoners was possible, but white prisoners were kept apart from black prisoners. The white prisoners received better treatment and whereas a particular room might accommodate nine black prisoners "there would not be more than six white men in such a room".<sup>26</sup> Many of the prisoners in the old Durban Gaol had to be chained at night since a "man could make a hole through the wattle-and-daub wall with a spoon or any piece of wood".<sup>27</sup> The prisoners chained at night were those who were chained during the day at work. There was a clear racial bias in that all black hard labour prisoners were chained at work, while only long sentence white prisoners (twelve to eighteen months) were chained.

Considering the conditions in the old Durban Gaol, it is not surprising that on 17 June 1863 the Legislative Council noted that the erection of a new gaol in Durban was a work of "immediate necessity", and urged the Lieutenant-Governor to authorise the expenditure of £3,000 for this purpose.<sup>28</sup> Tenders for the construction of the new gaol were called for in 1864.<sup>29</sup> On 9 June of that year the Colonial Secretary tabled the designs of the proposed new gaol in the Legislative Council.<sup>30</sup> It is interesting to note that a single building was planned, containing both a court house and a gaol, but at this time only the wing containing the gaol was erected.<sup>31</sup> On 22 November 1864 the *Natal Witness* reported that construction work on this gaol had begun. In the following year, the imperial authorities launched an investigation into the state of colonial prisons in general. This was to mark a period of close attention to the development of prisons in colonial Natal, as the colonial authorities attempted to bring the penal system of the colony into line with that of the "mother country".

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24 *Natal Witness* 12 June 1863; *Natal Witness* 26 June 1863; *Natal Witness* 17 May 1864.  
25 CSO Natal 196/327 KwaZulu-Natal Archives Pietermaritzburg Archives Repository: Report of Durban Gaoler 12 February 1864.  
26 *Ibid.*  
27 *Ibid.*  
28 *Natal Witness* 26 June 1863.  
29 *Government Gazette*, Natal 22 March 1864 and *Natal Witness* 20 May 1864.  
30 *Natal Witness* 14 June 1864.  
31 *Natal Witness* 26 June 1864.

### 3 The proposed reforms of 1865-1867

In 1863 two reports concerned with the state of imprisonment in England (the "Report of the Committee of the House of Lords on the State of Discipline in Gaols"<sup>32</sup> and the "Report of the Royal Commission on Penal Servitude"<sup>33</sup>) were forwarded to the respective colonies, in order that "the Colonies might be enabled to share with this country the benefit to be derived from experiments and operations on the largest scale, conducted with care and vigilantly observed, and from the labour of our most enlightened public men in digesting our experience and drawing conclusions from it".<sup>34</sup>

This was to mark the beginning of a period of keen interest by the Imperial authorities in the penal systems of the colonies and their possible improvement and reform. The first step in this effort to bring penal practices in the colonies more into line with those in England was a thorough investigation into the state of the colonial prisons and the systems of discipline in operation in these prisons. Accordingly, a questionnaire was sent to each colony in 1865, and from the information received in reply a *Digest and Summary of Information Respecting Colonial Prisons* (hereafter referred to as *Digest*) was drawn up and presented to the British Parliament by Command of Her Majesty in 1867.<sup>35</sup> The penal principles set out in the *Digest* were to have an important effect on the future development of imprisonment in Natal. In the years which followed, various reforms were to be attempted in accordance with these principles. The two principles which were stressed particularly in the *Digest* and in various dispatches at this time were the separation of prisoners according to the "separate system" and the need for strictly penal labour. Each of these principles will be examined in turn.

As for the principle of separation, Michel Foucault points out that it is fundamental to discipline of the type which emerged with the birth of the modern prison that individuals be partitioned off into their own individual spaces.<sup>36</sup> This prevents groups from forming, enables a particular individual to be easily located, and allows for each individual to be judged and assessed separately in accordance with various disciplinary techniques. For example,

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32 GH Natal 359/2 KwaZulu-Natal Archives Pietermaritzburg Archives Repository: Circular Despatch Newcastle to Scott 19 October 1863.

33 GH Natal 358/162 KwaZulu-Natal Archives Pietermaritzburg Archives Repository: Circular Despatch Newcastle to Scott 19 August 1863.

34 *Imperial Blue Book – Digest and Summary of Information Respecting Colonial Prisons* (drawn up and presented to the British Parliament by Command of Queen Victoria in 1867, C3961 of 1867) (hereafter referred to as *Digest*) KwaZulu-Natal Archives Pietermaritzburg Archives Repository 4: Circular Despatch Cordwell to Maclean 16 January 1865.

35 *Ibid.*

36 Foucault *Discipline and Punish – The Birth of the Prison* (1977) 143.

the principle of separation operates in schools, where pupils sit at particular desks arranged in rows before the teacher, and in the army, where a squad is arranged so that each man occupies a position which is a specified distance from the men around him. In the context of prison punishment, Michael Ignatieff states as follows:

Solitary confinement was designed to wrest the governance of prisons out of the hands of the inmate subculture. It restored the state's control over the criminal's conscience. It divided convicts so that they could be more efficiently subjugated, so that they would lose the capacity to resist both in thought and action.<sup>37</sup>

The Imperial authorities regarded the principle of separation as being of fundamental importance, and the necessity of introducing the "separate system" into the colonial prisons was stressed in the *Digest*.<sup>38</sup> The *Digest* pointed out that the "separate system" required, at the very least, that each prisoner be confined in a separate cell during the night. During the day, prisoners could either work alone in their cells, in accordance with the "Pennsylvania system", or work in association under strict conditions of silence, in accordance with the "Auburn system". In Britain at this time, the Pennsylvania system was followed during the early stages of imprisonment and the Auburn system during the later stages. Separation could be ensured by construction (by providing separate cells), by system (by formulating and enforcing rules against communication), or by a combination of these two methods. In the Dispatch accompanying the questionnaire sent to the colonies in 1865, the authorities in the colonies were exhorted to "bear in mind that no ordinary difficulties from defects in the construction of a prison, nor indeed any difficulties which are not absolutely insurmountable, should be allowed to stand in the way of the establishment of this system ...".<sup>39</sup> The *Digest* stated unequivocally as follows:

It has been recognised too long and too widely to be now disputed that good discipline is impracticable and corruption certain where prisoners are in communication with each other, and that separation is the only basis for a sound penal system.<sup>40</sup>

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37 Ignatieff *A Just Measure of Pain – The Penitentiary in the Industrial Revolution, 1750-1850* (1978) 102.

38 *Digest* (n 34) 65 IV.

39 *Ibid.*

40 *Ibid.*

According to the *Digest*, the importance of the principle of separation was increased by the fact that "it is the only principle of prison discipline which can be regarded as absolutely certain".<sup>41</sup> Not only was it seen as being an effective means of deterrence, but also as providing the only possible environment in which reform of the prisoner could take place without "contamination" from fellow prisoners. Separation by night was seen as being more important than separation by day; separation of untried prisoners as more important than separation of convicted prisoners; and separation of short term prisoners as more important than separation of long term prisoners.<sup>42</sup> Where the separate system was not immediately practicable, the *Digest* urged the adoption of a comprehensive system of classification by dividing prisoners up into the following categories: males/females; juveniles/adults (especially in the case of Asiatic prisoners); untried/convicted; civil/criminal; first conviction/subsequent convictions; crimes of violence/crimes of fraud. Each class should have a particular dress, and the divisions should be kept as strictly as possible, although hard labour might necessitate the mingling of different classes.<sup>43</sup> Clearly, such a refined system of classification was beyond most of the smaller colonies.

Turning to the issue of penal labour, it is clear that the principle of regular, strenuous, punitive labour formed an important element of the punishment of imprisonment under the penal systems of industrial capitalism. Dario Melossi maintains that the prison as it developed in Europe may be characterised as an "ancillary institution" of the factory.<sup>44</sup> If he is correct, it is clear that one of the most important aims of early prisons was to instil an ethic of regular hard work into prisoners. One way in which prisoners could be brought to accept subjection to the dull repetitive work of the early factories, was to impose upon them, in David Rothman's words, "a daily routine of hard and constant labour".<sup>45</sup> According to Dario Melossi

[t]he role of prisons is ... linked to the necessity of transforming adult men into workers in a period when the bourgeois power is still struggling to become wholly hegemonic. It is somehow linked to the

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*Ibid.*

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*Idem* 66-67 IV.

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*Idem* 67.

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Fine *et al* (eds) *Capitalism and the Rule of Law – From Deviancy Theory to Marxism* (1979) 94.

45

Rothman *The Discovery of the Asylum* (1971) 103.

violence of primitive accumulation when 'nature, tradition and habits' of the masses are not yet fully capitalist.<sup>46</sup>

It is not surprising that the prison evolved, to a significant extent, out of the early workhouses such as the famous "Rasp Huise" of Holland, the first of which was inaugurated in Amsterdam in 1596.<sup>47</sup> The importance of the principle of penal labour was not lost on the imperial authorities. The form which penal labour should take in British colonial prisons was laid down in the *Digest*.<sup>48</sup> Naturally, the principles expounded were based firmly on the practice in England, and in particular on the "Report of the Committee of the House of Lords on the State of Discipline in English Gaols".<sup>49</sup> This report stated that, of the forms of prison labour, "the treadmill, crank, and shot-drill alone appear to the Committee properly to merit ... [the] designation of hard labour".<sup>50</sup> The forms of prison labour thus defined will hereafter be referred to as "strictly penal labour".

A term of strictly penal labour was considered to form an essential part of any sentence of imprisonment since such labour was regarded as an effective means of deterrence and punishment, as well as a useful way to inculcate discipline and a healthy work ethic. The ideology underlying the principle of strictly penal labour took on a particularly nasty racist twist in the colonial context. Although it was assumed that rigorous penal labour would have similar effects on prisoners of all races, the *Digest* made it clear that

[s]hort and sharp terms of strict separation and hard labour would seem peculiarly appropriate for races sunk in fatalism and listlessness, to whom the mere loss of free action is no hardship, and for races talkative and averse to regularity and work.<sup>51</sup>

Indeed, at this time many of the white colonists of Natal would have regarded the African tribesmen as being "averse to regularity and work", in the sense that such tribesmen were reluctant to subject themselves to wage labour in the service of white farmers.<sup>52</sup> The *Digest* pointed out that the labour undertaken

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46 Melossi "Strategies of social control in capitalism: A comment on recent work" in 1980 (4) *Contemporary Crises* 392.

47 Melossi & Pavarini *The Prison and the Factory* (1981) 16-23.

48 *Digest* (n 34) 69-72 VI & VII.

49 *Idem* 65-83 I-XV.

50 *Idem* 69 VI.

51 *Idem* 70 VI.

52 The colonial state was weak and unable aggressively to impose capitalist relations of production on the entire region. The large African population of Natal consisted mainly of peasant producers engaged in the homestead system of production. This mode of production was very efficient, and enabled the production of sufficient surplus to allow the peasant producers to avoid being drawn into wage labour on white farms. See Guy "The destruction and reconstruction of Zulu society" in Marks & Rathbone (eds) *Industrialisation*

by the inmates of colonial prisons was usually “gang labour in the open air on roads or other ‘public works’”, and that prisoners looked upon it “as a pleasant alleviation of their incarceration, as it affords an opportunity of seeing and hearing what is passing outside of the prison ...”.<sup>53</sup> Labour on public works was regarded as a form of industrial labour, to be undertaken once a period of strictly penal labour had been undergone. Even when classed as a form of industrial labour, it was seen to possess several defects, in that it was “incapable of measure, not severe, and productive of communication with the outside world”.<sup>54</sup>

In relation to industrial labour, the *Digest* stipulated that it should be that “which is most severe, requires least instruction, and with these qualifications is most profitable”.<sup>55</sup> The reason that such labour should require as little instruction as possible was that it should be depressing and mundane in order to provide effective punishment. The profitability of such labour would be an important consideration and would outweigh any consideration of undue competition with private capital and labour. However, if prisoners could be employed equally profitably in activities not in competition with free labour, then they should be so employed. The contract system (ie hiring prisoners to private contractors) was strongly disapproved of.

It was only in May 1868 (ie after the publication of the *Digest*) that Natal responded to the questionnaire sent out in 1865.<sup>56</sup> It was apparent that neither of the two important principles discussed above (ie the separate system and strictly penal labour) were being applied in the prisons of Natal. The Secretary of State of the Colonies pointed out that “the goals of Natal are wanting in the most essential elements of prison discipline – separation and strictly penal labour ...”.<sup>57</sup> Pressure from the imperial authorities was eventually to lead to the appointment of a Commission of Enquiry in Natal on 19 November 1868.<sup>58</sup> The purpose of this Commission was to recommend ways in which penal practices in Natal might be rectified, so as to conform to the principles set out in the *Digest*.

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*and Social Change in South Africa* (1982) 168-169; and also Marks & Atmore *Economy and Society in Pre-Industrial South Africa* (1980) 113-114.

53 *Digest* (n 34) 69 VI.

54 *Idem* 71 VII.

55 *Idem* 70 VII.

56 CO London 179/89 KwaZulu-Natal Archives Pietermaritzburg Archives Repository: Keate to Buckingham 6 May 1868.

57 *Digest* (n 34) 71: Buckingham to Keate 24 July 1868.

58 CSO Natal 324/304 KwaZulu-Natal Archives Pietermaritzburg Archives Repository: 10 April 1869.

#### **4 Conclusion**

Part one of this article has traced the birth of the prison in colonial Natal, and discussed the principles set out in the *Digest and Summary of Information Respecting Colonial Prisons*. In particular, the penal theories surrounding principle of separation according to the “separate system”, as well as the principle of “strictly penal labour” have been discussed. Part two of the article will trace the attempts by colonial authorities to implement policies based on these two principles in the prisons of colonial Natal.

*(to be continued)*

## **CHAPTER 2.2.2**

### **Falling on Stony Ground: Importing the Penal Practices of Europe into the Prisons of Colonial Natal - Part 2.**

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# FALLING ON STONY GROUND: IMPORTING THE PENAL PRACTICES OF EUROPE INTO THE PRISONS OF COLONIAL NATAL (PART 2)

Stephen Peté\*

## 1 Introduction

Part one of this article began by tracing the birth of the prison in colonial Natal. It then examined the investigation undertaken by the colonial authorities in the 1860s into the state of the colonial prisons, culminating in a set of penal reforms which were set out in the *Imperial Blue Book Digest* (hereafter referred to as *Digest*).<sup>1</sup> As explained in Part 1, the two principles which were stressed particularly in the *Digest* and in various dispatches at this time, were the separation of prisoners according to the “separate system” and the need for strictly penal labour. Part two of the article will trace the attempts by colonial authorities to implement policies based on these two principles in the prisons of colonial Natal.

## 2 The imperial authorities, strictly penal labour, and colonial reality

The *Digest* stressed the importance of the deterrent effect of strictly penal labour. Although strictly penal labour, that is, a regime of regular, strenuous, punitive labour, was not directly remunerative, it was believed that, in the long run, costs would be saved through a reduction in the prison population:

[T]he result of all attempts to economise by industrial employment at the sacrifice of effective punishment, is to show that whilst the labour of the prisoners does not repay the cost of their subsistence and supervision, their number is greater in proportion as the labour is less deterrent, and the community is charged with the cost of more prisoners, whilst at the same time it suffers by the commission of more offences.<sup>2</sup>

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1 *Imperial Blue Book – Digest and Summary of Information Respecting Colonial Prisons* (drawn up and presented to the British Parliament by Command of Queen Victoria in 1867, C3961 of 1867) (KwaZulu-Natal Archives Pietermaritzburg Archives Repository).

2 *Digest* (n 1) at 4-5: Circular Dispatch Cordwell to Maclean 16 January 1865.

Lieutenant Governor Keate agreed with this view, but pointed out that sometimes broader economic imperatives, as opposed to purely penal considerations, were of overriding importance, and dictated the manner in which convict labour should be employed. His response indicates the importance of economic factors in dictating penal policy in colonial Natal:

It should not be overlooked that in young and thinly peopled colonies (and, setting aside the native population, this is one of them) the industrial employment of convicts is due not so much to a mistaken view of economizing as to the paucity of free labour which is available.<sup>3</sup>

Various government officials in Natal were asked to give their opinions upon the desirability of introducing strictly penal labour, in the form of treadwheels and cranks, into the penal system of the colony.<sup>4</sup> Some responded positively, and saw treadwheel and crank labour as an effective means of punishment which would lead to an increase in productivity on the public works and a decrease in the number of black petty offenders.<sup>5</sup> For example, the Civil Engineer stated that, in his opinion, strictly penal labour “would induce prisoners to work with much more energy than they do at present at ordinary occupations ...”, and would “very considerably reduce the number of prisoners sent to gaol for minor offences, especially Natives and Coolies”.<sup>6</sup> The Resident Magistrate of Newcastle similarly supported the proposed introduction of strictly penal labour:

[T]he introduction of penal labour into the Gaols here will have the salutary effect of keeping out of them to a great extent Hottentots, and Coolies which form our lowest class of offenders ... [T]he treadmill ... will if judiciously controlled cause no unreasonable hardship on the convicts and will above all other methods prove the most deterrent in its effects upon the lower and more degraded portion of prisoners, individuals who having no social position in the community are not in the least affected by imprisonment ...<sup>7</sup>

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3 CO (Colonial Office) London 179/89 KwaZulu-Natal Archives Pietermaritzburg Repository: Keate to Buckingham 6 May 1868.

4 CSO (Colonial Secretary's Office) Natal 314/2265 KwaZulu-Natal Archives Pietermaritzburg Repository.

5 Treadwheels and cranks were machines designed to allow prisoners to perform repetitive hard labour (ie either climbing on a treadmill or turning a crank). Nothing was produced by the working of these machines, the sole purpose of which was to instill discipline and to punish the offenders concerned.

6 CSO Natal 314/2265 KwaZulu-Natal Archives Pietermaritzburg Repository: Report of Civil Engineer 16 October 1868.

7 *Idem*: Report of Resident Magistrate of Newcastle 7 October 1868.

However, not all the officials of colonial Natal were in favour of the introduction of strictly penal labour. Certain officials, particularly in Durban, considered treadmill and crank labour to be a waste of time, since convict labour was desperately needed at the Durban harbour works. For example, the Assistant Resident Magistrate of Durban stated that, in his opinion, the facilities at the Durban Gaol were not adequate to permit of strictly penal labour within the walls of the prison. He stated further that

the change of air daily to the quarries and Harbour Works has the effect of keeping the prisoners in health and I question whether any greater punishment can be inflicted on Kafirs than having to work in chains regularly at the Harbour Works where they are continually exposed to the salt water ... To White prisoners the exposure of having to appear in public amongst the Convict Gang is a greater punishment than any labour inside the cells of the Gaol could be.<sup>8</sup>

Finally, it was left to the Commission of Enquiry appointed on 19 November 1868 to decide upon whether or not strictly penal labour should be introduced into the prisons of Natal, and if so, how this was to be accomplished. The Commission was also to make recommendations as to the employment of prisoners at industrial work.

The Commission of Enquiry described the work performed by prisoners at the Durban Harbour Works and the Government Brickyard as "a mild form of labour having no deterrent effect, incapable of measure, light in character, productive of communication with friends of prisoners ...".<sup>9</sup> In his evidence before the Commission, Mr Cooke, the Gaoler at Pietermaritzburg, stated as follows:

I consider the present employment of convicts outside especially with free labour as subversive of all prison discipline and consider it to working men a recreation rather than a punishment.<sup>10</sup>

The Commission decided that it was desirable to introduce a system of strict penal labour in the form of labour on the treadmill and crank. Such labour was to be performed daily for the first six months of any sentence of hard labour, and during this period prisoners could be employed at shot drill (which involved the lifting and carrying of iron cannon balls) when they were not

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8 *Idem*: Report of Assistant Resident Magistrate of Durban 8 October 1868.

9 CSO Natal 324/304 KwaZulu-Natal Archives Pietermaritzburg Repository: Report of Commission at 5.

10 *Idem*: Evidence of Cooke.

working at the treadwheel or crank. The Commission recommended that "Natives, Hottentots and Coolies" not be compelled to perform shot drill, since it was believed that these races were "liable to rupture the spleen in performing shot drill".<sup>11</sup> It was suggested the "these prisoners may be compelled to march about the yard with weights strapped on the shoulders, such being an approximation to the pack drill employed in military prisons".<sup>12</sup> Two treadwheels were to be provided, one for the Durban Gaol and the other for the Pietermaritzburg Gaol, as well as twelve crank machines for the district prisons. All prisoners sentenced to over three months' hard labour would be sent to the Durban or Pietermaritzburg Gaol to undergo labour on the treadwheel. The Commission seemed to regard the main functions of strictly penal labour as being deterrence and retribution. The concluding remarks of the Commission's report read as follows:

In Natal there is uncertainty of detention, an inefficient police, and mild punishment. The latter above can be remedied and the Committee recommend the immediate adoption of Penal labour.<sup>13</sup>

After the initial six month period of strictly penal labour, prisoners were to be employed at some form of industrial work. The Commission recommended that industrial labour be performed within the precincts of the gaol to prevent prisoners from associating with free labourers. In practice, however, it was not possible to employ all prisoners within the precincts of the gaol, since their labour was needed at the various public works. Neither was it considered feasible to keep prisoners employed on public works entirely separate from free labourers:

The work of the convicts is chiefly that of ordinary unskilled labourers and must therefore be done in conjunction with, and under the direction of the Free Mechanics employed ...<sup>14</sup>

Thus, in practice at this time, the utility of prison labour was placed above considerations of prison discipline. Some effort was made, however, to subject prisoners employed in public works to a form of discipline. The Civil Engineer drew up stringent rules "for the guidance of the Superintendent and convict guards at Durban ... by which they are specially directed to prevent all

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11 *Idem* at 6.

12 *Ibid.*

13 *Idem* 10.

14 *Idem*: Report of Civil Engineer 10 April 1869.

intercourse or communication between the prisoners or anyone else beyond what is absolutely necessary in carrying on the work".<sup>15</sup>

Certain blatant irregularities in the employment of prison labour were pointed out by the Commission and stopped. Prisoners at the Durban Gaol were no longer to be allowed to wander about the town collecting stores for the gaol, and in future contractors were required to deliver stores to the gates of the gaols. The employment of prisoners as servants to the officers of the gaols was prohibited. The Commission also recommended that selected prisoners be taught certain skills such as tailoring, shoemaking, and tent making. The major consideration seems to have been the saving of expense that would result from the scheme, since prisoners would supply the goods they made to the gaols and public works.

It was only after the passing of the *Law for the Better Government of Public Gaols* that the recommendations of the 1868 Commission of Enquiry were carried into effect.<sup>16</sup> Besides labour at the treadwheel, shot drill, capstan and stonebreaking, which were designated hard labour of the first class, it empowered the Lieutenant Governor, with the advice of the Executive Council, to stipulate what should constitute hard labour of the first and second class.<sup>17</sup> Thus authorities in Durban and Pietermaritzburg were asked to advise the Lieutenant Governor on the forms of penal labour best suited to each gaol.<sup>18</sup>

With regard to the Pietermaritzburg Gaol, it was decided that hard labour of the first class would consist of treadwheel labour.<sup>19</sup> The Pietermaritzburg Gaoler, Cooke, suggested that hard labour of the second class should consist of the following types of employment: Mechanics should be "employed at their various trades so far as may be required for Gaol or Engineer services" while labourers should be "employed in the necessary Prison Services or such other labour as may from time to time be required".<sup>20</sup> These suggestions were concurred in by the Lieutenant Governor-in-Executive-Council.<sup>21</sup>

The Durban Gaol Board suggested that hard labour of the first class in Durban should consist of labour at the Harbour Works, at the Umgeni Quarry, and at

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15 *Ibid.*

16 Law 6 of 1870.

17 S 10.

18 CSO Natal 2311/467 KwaZulu-Natal Archives Pietermaritzburg Repository and CSO Natal 2311/523 KwaZulu-Natal Archives Pietermaritzburg Repository.

19 CSO Natal 400/2625 KwaZulu-Natal Archives Pietermaritzburg Repository: Meeting of Pietermaritzburg Gaol Board 2 December 1871.

20 CSO Natal 400/2634 KwaZulu-Natal Archives Pietermaritzburg Repository: Pietermaritzburg Gaoler 6 December 1871.

21 CSO Natal 2312/244 and 246 KwaZulu-Natal Archives Pietermaritzburg Repository: Colonial Secretary to Pietermaritzburg Gaol Board 18 December 1871.

the public works.<sup>22</sup> Since labour at the treadmill was not remunerative, the Board saw no reason “why the Principal class of Prisoners, employed on Public works, should be directed from their highly useful employment to a preliminary course of work on the treadmill”.<sup>23</sup> They considered that work on the treadmill should be reserved for “the class of delinquent servants, and other misdemeanants upon whom it is no doubt calculated to effect salutary reform”.<sup>24</sup> Thus the gaol authorities in Durban remained opposed to the introduction of strictly penal labour in the form of labour at the treadmill or crank despite the fact that such a step had been recommended by both the *Digest* and the Commission of Enquiry of 1868. Clearly economic considerations, in the form of an urgent need for convict labour at the Durban harbour works, played a decisive role in this reluctance of the Durban Gaol authorities to accept the prevailing view. Despite the opposition of the Durban Gaol Board, however, the Executive Council decided that, as in the case of the Pietermaritzburg Gaol, treadmill labour would constitute hard labour of the first class in Durban. With regard to hard labour of the second class, the regulations accepted for the Pietermaritzburg Gaol would also be applicable to the Durban Gaol, and Durban prisoners would be employed at the harbour works and other public works.<sup>25</sup>

Two treadwheels were imported from England, and during 1871 were erected at the Durban and Pietermaritzburg gaols.<sup>26</sup> The Lieutenant Governor was not particularly enthusiastic about the importation of the treadwheels as he had heard that they were “going out of fashion at home”.<sup>27</sup> Prisoners in colonial Natal were clearly to be subjected to reformatory techniques which had been tried and had failed in the “mother country”. With regard to regulations for the working of the treadwheels, the Executive Council decided to adopt certain suggestions put forward by the Pietermaritzburg Gaol Board.<sup>28</sup> As to the hours to be worked, the Gaol Board recommended the experimental adoption of a scale appearing in the *Encyclopedia of Arts and Manufacturers* published in England in 1848. This scale reflected the average hours worked on the treadmill by prisoners in England at the time the scale was published.

22 CSO Natal 405/307 KwaZulu-Natal Archives Pietermaritzburg Repository; Meeting of Durban Gaol Board 6 February 1872.

23 *Ibid.*

24 *Ibid.*

25 *Idem*: Meeting of Executive Council 24 February 1872.

26 See CSO Natal 359/1196 KwaZulu-Natal Archives Pietermaritzburg Repository; CSO Natal 355/755 KwaZulu-Natal Archives Pietermaritzburg Repository; and CSO Natal 357/Dispatch 988 KwaZulu-Natal Archives Pietermaritzburg Repository. Cf, too, Spiller *The Natal Supreme Court: Its Origins (1846-1858) and its Early Development 1858-1874* (Unpublished PhD Thesis, University of Natal-Durban, 1982) at 308.

27 CSO Natal 359/1196 KwaZulu-Natal Archives Pietermaritzburg Repository.

28 See CSO Natal 400/2625 KwaZulu-Natal Archives Pietermaritzburg Repository and CSO Natal 391/1702 KwaZulu-Natal Archives Pietermaritzburg Repository.

Prisoners were to be worked for nine hours per day in summer and eight hours per day in winter. They would work for two-thirds and rest for one-third of that time. Clearly the scale was out of date and ill-adapted to the climatic conditions which existed in Natal.

The deeply racist and paternalistic ideology prevalent among the colonial elite is revealed in a debate which took place between various colonial officials, concerning the manner in which it was thought that treadmill labour would affect prisoners of different races. Because it was thought that the effect of this labour would vary according to the race of the prisoners, the Executive Council stipulated that, for a period of three months, the gaoler and district surgeon of each gaol should report weekly on the working of the treadmill.<sup>29</sup> There was some discussion amongst the colonial authorities in England as to whether or not black prisoners would be able physically to undergo the same amount of treadmill labour as white prisoners.<sup>30</sup> The Assistant Under Secretary thought not, and the Resident Clerk in the Colonial Office agreed that the "amount of labour prescribed does certainly seem severe for the blacks".<sup>31</sup> It was felt, however, that if a distinction were made between the treatment of white and black prisoners, this would lead to discontent and would undermine prison discipline. Since there were very few white prisoners in the colony of Natal, it was felt that the standard of labour should be adjusted to suit the capacity of the black prisoners. Thus the Secretary of State approved of the arrangements that had been made, but noted that the amount of treadmill labour seemed "somewhat severe, at all events for natives" and expressed his surprise that the scale had been taken from an Encyclopedia which was twenty four years old.<sup>32</sup> Ironically, in practice treadmill labour seemed to affect prisoners of different races in precisely the opposite manner to that predicted by the authorities in England. In his annual report for the year 1872, the Pietermaritzburg Gaoler reported as follows:

The treadmill labour is very severely felt by the Europeans, especially in the summer months, but the natives, being less affected by the heat, perform their work with more apparent ease ...<sup>33</sup>

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- 29 CSO Natal 2312/244 KwaZulu-Natal Archives Pietermaritzburg Repository: Colonial Secretary to Pietermaritzburg Gaol Board 18 December 1871.  
 30 CO London 179/104 KwaZulu-Natal Archives Pietermaritzburg Repository: Keate to Kimberley 21 December 1871 Minutes of Colonial Office Officials on Despatch.  
 31 *Idem*: Minute of Mr Fairfield 24 February 1871.  
 32 GH (Government House) Natal 55/Dispatch 154 KwaZulu-Natal Archives Pietermaritzburg Repository: Kimberley to Keate 2 March 1872.  
 33 CO London 179/112 Dispatch 59 KwaZulu-Natal Archives Pietermaritzburg Repository.

Besides the importation of treadwheels for the Durban and Pietermaritzburg Gaols, cranks were also introduced into the prisons of Natal. The Pietermaritzburg Gaoler reported that the crank machine in use at the Central Gaol had proved very effective in punishing "unruly prisoners",<sup>34</sup> and the Secretary of State suggested that it be used not only as a means of punishment, but also to give effect to ordinary sentences of hard labour.<sup>35</sup>

As far as public reaction to the importation of cranks and treadwheels into the colony of Natal was concerned, the *Times of Natal* reported that the cranks were "productive of no good to the community and only provoke the prisoners' dislike, and no doubt to this extent answer the purpose of prison discipline".<sup>36</sup> The *Times* regarded the introduction of shot drill in a similar light and stated that it would "add another to the irksome unproductive labour of prisoners ...".<sup>37</sup> Treadwheel and crank labour had been devised as a means of disciplining prisoners in the dull repetitive labour of the early factories in Europe. The colony of Natal, however, was not highly industrialised. The introduction of treadwheels and cranks must have seemed rather out of place in the prisons of the colony. The mixed reaction which greeted the introduction of treadwheel and crank labour would seem to confirm the uneasiness with which the new forms of strictly penal labour were viewed. On the one hand, the new forms of penal labour were praised for their deterrent value, but on the other hand condemned as being totally unproductive. The treadwheel in Durban was attached to machinery for grinding maize and thus at least performed some useful function.<sup>38</sup> A report on 17 April 1872 in the *Times of Natal* emphasised the unproductive nature of the treadwheel labour performed at the Pietermaritzburg Gaol, but seemed unsure as to whether or not this was a good thing. On the one hand, the utter uselessness of the labour was part of the punishment and could perhaps "partially account for the unpopularity of the work amongst the prisoners and the detestation in which wheel labour is held amongst them".<sup>39</sup> On the other hand, the work was entirely useless to the public and "might with some expenditure be rendered useful and reproductive, either by grinding maize or in some other way".<sup>40</sup> The *Natal Witness* was far

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34 CO London 179/104 KwaZulu-Natal Archives Pietermaritzburg Repository: Keate to Kimberley 21 December 1871.

35 GH Natal 55/Dispatch 154 KwaZulu-Natal Archives Pietermaritzburg Repository: Kimberley to Keate 2 March 1872.

36 *Times of Natal* 17 April 1872.

37 *Ibid.*

38 CO London 179/104 KwaZulu-Natal Archives Pietermaritzburg Repository: Keate to Kimberley 21 December 1871.

39 *Times of Natal* 17 April 1872.

40 *Ibid.*

more critical of the authorities, however, and on 19 April 1872 it registered the following complaint:

In England gaols are now made not only self-supporting but remunerative, by utilising the labour of convicts. Here, our Governmental authorities appear to scorn such an idea, and go on the principle of making our prisons a comfortable hotel for Kafir prisoners.<sup>41</sup>

This seemed to contradict an earlier report in the same newspaper, which stated that treadmill labour "must be rather distasteful work to the delinquent Kafirs, and the effect will doubtless be salutary".<sup>42</sup>

Eventually, economic conditions in the colony, which gave rise to a desperate need for convict labour upon Natal's public works, were to result in the failure of the policy of strictly penal labour in the prisons of the colony. By August 1872, the Pietermaritzburg Gaol was so overcrowded that the treadmill could not accommodate all those prisoners undergoing hard labour of the first class.<sup>43</sup> Shot had to be procured so that those prisoners who could not be accommodated on the treadmill could be employed at shot drill. In February 1873 the Pietermaritzburg Gaol Board pointed out that since hard labour prisoners were compelled to work on the treadmill for the first three months of their sentences, there was not sufficient convict labour to run the Government Brickyard.<sup>44</sup> Thus the Gaol Board suggested that the Lieutenant Governor appoint labour at the Brickyard as hard labour of the first class. The Lieutenant Governor, with the advice of the Executive Council, acceded to this request, with the proviso that each hard labour prisoner serve the first month of his sentence at hard labour on the treadmill.<sup>45</sup>

Thus, due to overcrowding and the need for convict labour on the public works, the principle of strictly penal labour for the first three months of imprisonment was severely compromised at the Pietermaritzburg Gaol, virtually from its introduction. A similar situation applied in the case of the Durban Gaol, and complaints as to the unproductive nature of treadmill labour were raised in

41 *Natal Witness* 19 April 1872. According to the *Natal Witness*, the Pietermaritzburg Gaol was nicknamed "Cooke's Hotel."

42 *Natal Witness* 2 February 1872.

43 CSO Natal 416/1455 KwaZulu-Natal Archives Pietermaritzburg Repository: Meeting of Pietermaritzburg Gaol Board 7 August 1872.

44 CSO Natal 432/453 KwaZulu-Natal Archives Pietermaritzburg Repository: Meeting of Pietermaritzburg Gaol Board 6 February 1873. Prisoners who had completed their initial three-month period of labour on the treadmill were often sent to the Durban harbour works.

45 CSO Natal 1875/84 KwaZulu-Natal Archives Pietermaritzburg Repository: Report of Resident Magistrate Pietermaritzburg 11 February 1875.

January 1875. The Civil Engineer called attention to the "great dearth of Labour" which existed in Natal, and pointed out that "practically no Native labour can be procured or White labour of a reliable description".<sup>46</sup> In February he called for the introduction of two hundred labourers from India for service at the Durban harbour works and complained that a "steady supply of labour cannot be procured in this country [which] ... is necessary for works of this nature ...".<sup>47</sup> It was natural, therefore, that the Civil Engineer should regard treadmill labour as a useless waste of energy. He suggested that hard labour prisoners be employed on remunerative works from the moment they entered prison, since "then prisons will be self-supporting, and the finances of the Colony spared a very considerable and useless present expenditure".<sup>48</sup> Although the Executive Council decided not to agree officially to the Civil Engineer's request, it would seem that, in practice, strictly penal labour for the first three months of imprisonment was never applied at the Durban Gaol in any sustained manner. An investigation conducted in 1886 revealed that the treadmill was used simply to punish offences against prison discipline.<sup>49</sup> Prisoners at the Durban Gaol did not undergo a period of strictly penal labour, but were simply set to work at the harbour works or other public employment. Thus it is clear that in the case of both the Durban and Pietermaritzburg Gaols, general economic conditions and lack of facilities within the prisons forced a compromise of the principle of strictly penal labour.

### **3 The separate system and the reality of chronic overcrowding**

The separate system required that each prisoner be confined in a separate cell during the night, and that work during the day be performed alone in a cell or in association with other prisoners under strict conditions of silence. Its implementation was prevented by the almost constant overcrowding which characterised the prisons of colonial Natal. This overcrowding was the result of two factors: first, the weakness of the colonial state, which lacked the resources to provide sufficient and suitable accommodation, and secondly, the explosive growth of Natal's prison population. One of the main reasons that

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46 CSO Natal 503/84 KwaZulu-Natal Archives Pietermaritzburg Repository: Civil Engineer to Colonial Secretary 7 January 1875.

47 CSO Natal 508/503 KwaZulu-Natal Archives Pietermaritzburg Repository: Civil Engineer to Colonial Secretary 8 February 1875.

48 CSO Natal 508/502 KwaZulu-Natal Archives Pietermaritzburg Repository: Civil Engineer to Colonial Secretary 8 February 1875.

49 CSO Natal 1062/291 KwaZulu-Natal Archives Pietermaritzburg Repository: Report of Superintendent Durban Gaol 10 May 1886.

Natal's prison population grew so rapidly, was the coercive nature of social relations between the white settlers and the indigenous population. Black resistance to restrictive legislation aimed at social control led to the imprisonment of a large percentage of the African population. This meant that the prisons were filled with a large number of persons guilty of petty offences against social control legislation, for example offenders against the *Native Code*, the *Pass Laws*, and the *Master and Servants Law*.<sup>50</sup>

The response of the authorities in Natal to the principle of separation as set out in the *Digest* was not positive.<sup>51</sup> The reasons for this negative response were, primarily, economic. Prison accommodation in Natal was simply not sufficient to provide each prisoner with a separate cell, making separation by construction impossible. Separation by system was also impossible due to the nature of prison labour performed in Natal, which required that prisoners work in gangs on public works. A further reason that the colonial authorities in Natal rejected the separate system for black prisoners is to be found in the racist ideology which characterised the white ruling class in the colony at this time. For example, the Colonial Engineer expressed the following opinion:

[The separate system will not be] particularly advantageous in the case of Kafirs and Coolies who form the great majority of prisoners in Natal. Provision for enforcing this system, however, in particular cases and especially amongst persons of European blood is very desirable ...<sup>52</sup>

The Lieutenant Governor agreed with this view. It would seem that, in the crowded prisons of colonial Natal, a separate cell was regarded as a privilege. The purpose of separating prisoners was to create a suitable climate for reform, and to prevent hardened criminals contaminating those still capable of improvement and change. Clearly, black prisoners in colonial Natal were not considered worthy or capable of reform. In the case of black prisoners, imprisonment was to serve primarily as punishment and deterrence. White sovereignty and authority were maintained by a harsh system of penal sanctions which included liberal use of the dreaded "cat-o-nine-tails". The punishment of black offenders was designed to subjugate and terrify, rather than to reform.<sup>53</sup> Even though the colonial authorities in Natal were brought to accept the necessity of applying the separate system to all prisoners, with the

50 See the Report of the Prison Reform Commission of 1905-1906: CSO 2847/Precis of Evidence at 2 KwaZulu-Natal Archives Pietermaritzburg Repository.

51 See, eg, CO London 179/89 KwaZulu-Natal Archives Pietermaritzburg Repository; Keate to Buckingham 6 May 1868: Enclosure – Report of Colonial Engineer 26 December 1867.

52 *Ibid.*

limited prison accommodation in the colony, white prisoners were always given preference when extra cells did become available.

The Commission of Enquiry appointed on 19 November 1868 to investigate the reform of Natal's penal system, confirmed the fact that, because of lack of accommodation, it was impossible to carry out the separate system either in the Durban or the Pietermaritzburg Gaol. For example, at this time twenty two white prisoners were confined in seven cells in the Pietermaritzburg Gaol, while forty black prisoners occupied ten cells in the gaol.<sup>54</sup> With regard to a possible increase in gaol accommodation, the Commission noted that "in the present financial state of the Colony there is no probability that new gaols would be constructed".<sup>55</sup> While the separation of prisoners by construction was not possible, the Commission recommended that a system of classification of prisoners be introduced. The Commission recommended that prisoners be classified as follows: convicted/untried; first or second conviction/repeated conviction; short sentence/long sentence; particular offence (eg rape)/other offences.<sup>56</sup> In practice, only the separation of convicted from untried prisoners was effected at this time. However, Lieutenant Governor Keate promised that the "further classification suggested I shall endeavour to carry out in proportion as I can introduce improvement into the internal arrangement of the Gaol".<sup>57</sup>

By 1872, the year in which treadwheels and cranks were imported into Natal for the purpose of introducing strictly penal labour in the prisons of the colony, severe overcrowding in the gaols still made it impossible to introduce the separate system. The *Natal Blue Book* for 1872 stated as follows:

None of the prisons are on the separate system. The separation enforced, where the gaol accommodation admits of it, is that of sexes and races. Prisoners on remand are also, where practicable, kept apart from convicted prisoners. All male prisoners sentenced to hard labour are worked in association.<sup>58</sup>

In the years which followed, there was to be constant pressure from the authorities in England for this situation to be remedied. For example, on 31

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53 See, in general, Peté & Devenish "Flogging, fear and food: punishment and race in colonial Natal" 2005 *Journal of Southern African Studies* 3-21.  
 54 CSO Natal 324/304 KwaZulu-Natal Archives Pietermaritzburg Repository: Evidence of Superintendent Pietermaritzburg Gaol to Commission.  
 55 CSO Natal 324/304 KwaZulu-Natal Archives Pietermaritzburg Repository: Report of Commission at 3.  
 56 *Ibid.*  
 57 CO London 179/93 KwaZulu-Natal Archives Pietermaritzburg Repository: Keate to Granville 14 April 1869.  
 58 At AA8 point 1.

August 1875 the Secretary of State, Lord Carnarvon, noted that the system of prison discipline in Natal was “at variance in almost every particular” with the principles set out in the *Digest*.<sup>59</sup> No attempt had been made to introduce the separate system and the prisons were excessively overcrowded. Since there was no lighting in prison wards “a number of depraved men are left huddled together in the closest proximity in unlighted wards for from eight to twelve hours at a time”.<sup>60</sup> In 1877 the Lieutenant Governor of Natal analysed the serious lack of accommodation in the prisons of the colony and found that, due to serious overcrowding, the individual separation of prisoners was completely impossible. The only classification carried out was between male and female on the one hand, and black and white on the other.<sup>61</sup> The Lieutenant Governor found that

[u]ntried prisoners, convicted prisoners, juveniles, adults, felons, misdemeanants, long sentenced prisoners, short sentenced prisoners, – all are associated indiscriminately together.<sup>62</sup>

A special committee was set up to wrestle with this problem. The Colonial Engineer pointed out that, whilst in England only “European” males and females had to be dealt with, in Natal there were at least four different “nationalities”. He identified them as “Europeans”, “Kafirs”, “Coolies” and “Hottentots”. If each different “nationality” confined in the prisons of Natal was to be divided into males and females; juveniles and adults; untried and convicted; and felons and misdemeanants, it would mean the creation of forty eight separate classes of prisons. Of course, besides being highly impractical, it was economically impossible to build separate accommodation for each of these classes.<sup>63</sup> It was decided, however, that such “refinement of classification” was not necessary, and a plan was drawn up for a new cell block at the Pietermaritzburg Gaol containing seventy cells.<sup>64</sup> Since the proposed new building would allow each prisoner to be confined separately at night, the

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59 GH Natal 66/Dispatch 124 KwaZulu-Natal Archives Pietermaritzburg Repository: Carnarvon to Bulwer 31 August 1875 par 3.

60 *Idem* par 7.

61 At night “prisoners of European descent” were kept separate from “prisoners of African and Indian nationalities”. See CO London 179/126 KwaZulu-Natal Archives Pietermaritzburg Repository: Bulwer to Hicks Beach 9 January 1878: Enclosure No 1 – Minute of Lieutenant Governor 31 May 1877.

62 CO London 179/126 KwaZulu-Natal Archives Pietermaritzburg Repository: Bulwer to Hicks Beach 9 January 1878: Enclosure No 1 – Minute of Lieutenant Governor 31 May 1877.

63 CO London 179/126 KwaZulu-Natal Archives Pietermaritzburg Repository: Bulwer to Hicks Beach 9 January 1878: Enclosure No 5 – Notes by Colonial Engineer 1 July 1877.

64 CO London 179/126 KwaZulu-Natal Archives Pietermaritzburg Repository: Bulwer to Hicks Beach 9 January 1878: Enclosure No 10 – Lieutenant Governor to Colonial Secretary 12 September 1877.

problems of classification would, to a great extent, be solved. Prisoners of all “nationalities” could be associated by day, the main classification being between male and female, and between convicted and unconvicted prisoners. Convicted prisoners could then be divided into felons and misdemeanants, and juveniles and adults; and unconvicted prisoners into juveniles and adults, and “European” and “other nationalities”. This would mean eight classes of male and eight classes of female prisoners.

With the outbreak of the Anglo-Zulu War in 1879, however, the ambitious plans to extend the prison accommodation in the colony received a setback. Some additional accommodation was, however, provided at the Durban and Pietermaritzburg Gaols between 1880 and 1882.<sup>65</sup> But, overall the growth in the prison population was such that the full implementation of the separate system remained forever out of reach. Indeed, chronic overcrowding was a characteristic of imprisonment in Natal until the end of the colonial period, which meant that the separate system was never fully implemented in the colony.<sup>66</sup>

#### 4 Conclusion

The overall failure of “strictly penal labour” and “the separate system” to make a lasting impression in the prisons of colonial Natal is not surprising. The purpose of punishment in the colonies of Africa, and in particular the punishment of Africans, was not to reform offenders in order to reintegrate them as fellow citizens in a shared moral universe. The colonists were far more intent on asserting their sovereignty and authority over the indigenous population, than on reforming errant members of that community.

One result of the attitude described above was the important role which the colonists accorded to brutal forms of corporal punishment in the prisons of the colony. Within the penal system of colonial Natal, the imposition of corporal punishment by means of the infamous cat-o-nine-tails was so widespread that the Prison Reform Commission of 1906 described it as the “cult of the Cat”.<sup>67</sup> It is interesting to note that corporal punishment played an equally prominent role in other African colonies during the colonial period. For example, in the Belgian

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65 See GH Natal 93/Dispatch 68 KwaZulu-Natal Archives Pietermaritzburg Repository: Hicks Beach to Woiseley 27 September 1879; and *Natal Blue Books* for 1880 at JJ45; 1881 at FF91 and 1882 at FF109.

66 Peté *The Penal System of Colonial Natal: from British Roots to Racially Defined Punishment* (Unpublished LLM Thesis, University of Cape Town, 1985) 75-92.

67 Peté “Punishment and race: the emergence of racially defined punishment in colonial Natal” 1986 *Natal University Law and Society Review* 102. See also, in general, Peté & Devenish (n 54) 3-21.

Congo, Florence Bernault notes that “the famous *chicotte* – whipping administered by agents of the Force Publique – became so widespread that it later remained as an icon of colonial punishment in the memories of contemporary Zairians”.<sup>68</sup> In relation to German East Africa, James Read describes the “widespread and frequent use of corporal punishment as a summary punishment” during the German administration of the colony.<sup>69</sup> David Killingray’s work points to the extensive use of corporal punishment in British Colonial Africa.<sup>70</sup>

Apart from the importance of corporal punishment, another of the main concerns of colonial penal theory was to ensure a steady and reliable supply of African labour for the colonial economy. Florence Bernault notes as follows:

The use of penal labor rested upon three principles. First, all African prisoners had to work, including women. Only the infirm were exempt. No geographical exceptions existed: both urban and rural prisons made systematic use of penal labor. Second, the penal administration routinely assigned detainees to work for private entrepreneurs, especially after the abolition of forced labor. Third, colonial rulers perceived penal labor as a necessary, even vital, part of the colonial economy.<sup>71</sup>

Clearly, the reformatory ideals embodied in the principles of “strictly penal labour” and the “separate system” did not accord with the main concerns of colonial penal ideology as set out above. The experience of colonial Natal provides ample evidence of the extent to which penal ideas originating in industrialised Europe could be twisted and adapted to suit local conditions. In the long run, attempts by authorities in England to implant foreign penal principles into the stony soil of the colonies, were bound to fail. The price of this failure was paid, *inter alia*, by the prisoners of colonial Natal. They were subjected to labour at the treadmill and crank before these useless and outmoded forms of punishment were finally abandoned, and were herded into chronically overcrowded cells, while authorities bickered incessantly over the introduction of the separate system.

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68 Bernault “The politics of enclosure in colonial and post-colonial Africa” in Bernault (ed) *A History of Prison and Confinement in Africa* (2003) 15.

69 Read “Kenya, Tanzania and Uganda” in Milner (ed) *African Penal Systems* (1969) 109. No fewer than 5 944 official floggings were administered in the colony during the period 1911 to 1912.

70 Killingray “Punishment to fit the crime? Penal policy and practice in British colonial Africa” in Bernault (n 68) 106-110.

71 Bernault (n 68) 22.

## **CHAPTER 2.3**

### **Penal Labour in Colonial Natal: The Fine Line Between Convicts and Labourers**

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## PENAL LABOUR IN COLONIAL NATAL – THE FINE LINE BETWEEN CONVICTS AND LABOURERS

Stephen Allister Peté\*

### 1 Introduction

[T]he native Zulu was once a tractable, docile, and obedient servant. He was afraid of the sjambok, and you may depend upon it that nothing but that will make him dread doing wrong.

These were the words of Mr Reynolds, a member of the Legislative Council of the Colony of Natal, during a debate which took place on 16 July 1883 on the issue of whether or not the public flogging of prisoners should be abolished. Much has been written on the almost fanatical devotion of colonists in various parts of Africa during the colonial period to the liberal use of corporal punishment against the indigenous African population.<sup>1</sup> Apart from its strong support for the sjambok, however, the words of Mr Reynolds reveal another issue on which almost all of the white colonists of Natal were agreed. That was the issue of “servants”. Throughout the colonial period in Natal the white colonists directed a constant stream of complaints against the colonial authorities in relation to the poor quality of African labour. Indeed, the colonial period was characterised by a long and bitter struggle on the part of the colonists to gain control of the power of African labour, since such control was crucial to the consolidation of their position as the ruling class in the colony.

During the early years of white settlement in particular, the colonial state was weak and unable to force large numbers of Zulu tribesmen into wage labour on white farms. The large African population of Natal consisted mainly of peasant producers, who were engaged in an efficient system of production based on separate homesteads. This system enabled the production of sufficient surplus to allow the peasant producers to avoid being drawn into wage labour on white

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1 See, in general, Peté “Punishment and race: The emergence of racially defined punishment in colonial Natal” 1986 (1-2) *Natal University Law and Society Rev* 99-114; Bernault “The politics of enclosure in colonial and post-colonial Africa” in Bernault (ed) *A History of Prison and Confinement in Africa* (2003) at 15; Read “Kenya, Tanzania and Uganda” in Milner (ed) *African Penal Systems* (1969) at 109; Killingray “Punishment to fit the crime? Penal policy and practice in British colonial Africa” in Bernault (ed) *A History of Prison and Confinement in Africa* (2003) at 106-110; Killingray “The ‘rod of empire’: The debate over corporal punishment in the British African colonial forces, 1888-1946” 1994 *J of African History* 202-216; Peté & Devenish “Flogging, fear and food: Punishment and race in colonial Natal” 2005 (Vol 31 No 1) *J of Southern African Studies* 3-21.

farms, and resulted in labour shortages being experienced by the white colonists.<sup>2</sup>

The issue of prison labour was affected by white colonial attitudes to African labour, as well as by the periodic shortages of labour experienced by officials tasked with overseeing various public works in the colony, such as the work which was carried out over a long period at the Durban harbour. The failure of strictly penal labour in the prisons of colonial Natal, in the form of labour at the treadmill and the crank, which was aimed at the reformation of the prisoner, has been traced.<sup>3</sup> This failure is not surprising. The colonists were far more concerned with controlling the power of African labour and directing that power towards their own interests. They were not interested in reforming criminals. What they wanted was "tractable and docile servants".

The purpose of this article will be to trace the manner in which convict labour was employed upon public works in colonial Natal, and how this was affected by the supply of free labour at different times during the colonial period. The article will attempt to illustrate that, at times when the supply of free labour was scarce, there was considerable pressure for the productive employment of convict labour on public works, whereas when free labour was more plentiful, it became more acceptable to force prisoners to perform types of strictly penal labour such as stone breaking.

## **2 Prison labour on public works in colonial Natal – convicts or workers?**

Speaking of the characteristics of penal labour in Africa generally, Florence Bernault comments:

The use of penal labor rested upon three principles. First, all African prisoners had to work, including women. Only the infirm were exempt. No geographical exceptions existed: both urban and rural prisons made systematic use of penal labor. Second, the penal administration routinely assigned detainees to work for private entrepreneurs, especially after the

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2 See Marks & Rathbone (eds) *Industrialisation and Social Change in South Africa* (1982) at 168-169; and Marks & Almore *Economy and Society in Pre-Industrial South Africa* (1980) at 113-114.

3 See Peté "Falling on stony ground – Importing the penal practices of Europe into the prisons of colonial Natal (Part 1)" 2006 (12-2) *Fundamina* 100-112; Peté "Falling on stony ground – Importing the penal practices of Europe into the prisons of colonial Natal (Part 2)" 2007 (13-2) *Fundamina* 111-125.

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abolition of forced labor. Third, colonial rulers perceived penal labor as a necessary, even vital, part of the colonial economy.<sup>4</sup>

In colonial Natal, convict labour was employed on many of the major public works which were undertaken in the colony.<sup>5</sup> Convict labour in Pietermaritzburg was employed mainly at the government brickfields in the Zwartkop's Valley near Pietermaritzburg. In Durban, most convict labour was employed in connection with the harbour works, and this involved labour at the Point and at the Umgeni Quarries.<sup>6</sup> Convicts were employed in many other areas as well. For example, in May 1865 the Resident Magistrate of Pietermaritzburg complained that the demand for convict labour by the various government departments was such that the gaoler was often embarrassed in being unable to meet all the demands. He suggested that, in future, "whenever a working party of convicts may be required by any of the Government offices for public purposes, notice should be sent to this office before 2 o'clock of the preceding day in order that arrangements may be made betimes for the distribution of the prisoners and their guard".<sup>7</sup>

From the time that prisoners were first employed on public works, contradictions arose as to whether they should be treated first and foremost as prisoners and then as workers, or *vice versa*. There was a conflict of interests between the various departments involved, since the different officials who were concerned with prison labour approached the matter from opposing points of view. One point of view considered effective prison administration to be of paramount importance, whereas the opposing point of view held that the efficient utilisation of prison labour was more important than competing considerations. This conflict was shaped by certain material conditions. First, the lack of space and inadequate accommodation in the two central gaols located in Pietermaritzburg and Durban made it imperative that prisoners be employed outside the prisons during the day. Second, and perhaps more importantly, the state of the free labour market had a profound effect on the employment of prisoners.

The conflict noted above was reflected in a division of authority over prisoners, namely between the prison authorities on the one hand and the Colonial Engineer's Department on the other. It would seem that this rather

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4 Bernault "The politics of enclosure in colonial and post-colonial Africa" (n 1) at 22.

5 See Spiller *The Natal Supreme Court: Its Origins (1846-1858) and its Early Development (1858-1874)* (Unpublished LLD Thesis, University of Natal, 1982) at 307-308.

6 See, eg, *Natal Blue Books*: 1873 at AA13 point IX(1); 1874 at AA13 point IX(1); 1875 at AA11 point IX(1). (KwaZulu-Natal Archives Pietermaritzburg Archives Repository.)

unsatisfactory situation arose in 1866 when the Durban harbour works became an important priority and convict labour on these works was urgently required. In October of that year, sixty four convicts were transferred from Pietermaritzburg to Durban to be employed at the harbour works.<sup>8</sup> The transfer of so many prisoners to Durban caused the temporary closure of the Government Brickfields near Pietermaritzburg, which relied on convict labour.<sup>9</sup> In order to control the large numbers of prisoners to be employed at the harbour works, two superintendents and twelve convict guards were appointed and placed under the authority of the Colonial Engineer.<sup>10</sup> Thus authority over the prisoners was divided between the "Convict Establishment" under the Colonial Engineer, and the "Gaol Establishment" under the Superintendent of the Gaol.<sup>11</sup> Whilst employed at the public works the prisoners would be under the control of the Colonial Engineer's Department, but when they returned to the Gaol the responsibility would pass to the officers of the Gaol.

Inevitably, there was friction between the two establishments. Time after time, the evils of divided authority were discussed and various suggestions made. One of the first suggestions was made by the Colonial Engineer in November 1866. He suggested that a Committee be set up to frame a set of rules and regulations, similar to those of the convict establishment at the Cape, to define the duties of the various officials connected with the two establishments.<sup>12</sup> However, for reasons which will become clear, the friction was to continue for many years. A good example of this friction was a dispute which arose in June 1869, over whether or not the Gaoler had authority over Convict Guards when these men were not employed in guarding prisoners at the public works.<sup>13</sup> The Durban Gaol Board passed a resolution stating that the gaoler should have this authority. The Colonial Engineer, however, was of the opinion that the convict guards fell solely under his authority and control. He complained to the Lieutenant Governor as follows:

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7 Colonial Secretary's Office, Natal 220/797 Resident Magistrate Pietermaritzburg to Colonial Secretary 5 May 1865.

8 Colonial Secretary's Office, Natal 258/1979 Resident Magistrate Pietermaritzburg to Colonial Secretary 2 October 1866.

9 Colonial Secretary's Office, Natal 242/378 Colonial Engineer to Colonial Secretary 14 February 1866; Colonial Secretary's Office, Natal 260/142 Colonial Engineer to Colonial Secretary 30 October 1866; Colonial Secretary's Office, Natal 264/27 Colonial Engineer to Colonial Secretary 4 January 1867.

10 Colonial Secretary's Office, Natal 254/1582 Colonial Engineer to Colonial Secretary 25 July 1866; Colonial Secretary's Office, Natal 260/141 Colonial Engineer to Colonial Secretary 30 October 1866; Colonial Secretary's Office, Natal 261/2259 Colonial Engineer to Colonial Secretary 28 November 1866.

11 Colonial Secretary's Office, Natal 261/2259 Colonial Engineer to Colonial Secretary 28 November 1866.

12 *Ibid.*

13 Colonial Secretary's Office, Natal 335/1465.

Ever since a Superintendent of convicts has been appointed and the Guards have been placed under my control there has been a jealousy on the part of the Gaol authorities and attempts have been made to interfere with my arrangements and to make the guards subservient to the Gaoler's orders.<sup>14</sup>

Another example of the problems caused by the division of authority concerned the maintenance of discipline on the public works. It was realised that there was no means whereby convicts employed on the public works could be punished for misconduct whilst at work, or rewarded for performing work well. It was proposed that two ration scales be adopted for all classes of prisoners. The Colonial Engineer would then be given the power to change a convict from one class to another as a reward or a punishment. If a convict in the lower class committed an offence, or if a convict in the higher class committed a serious offence, the matter would be dealt with by the Resident Magistrate.<sup>15</sup>

To uncover the reasons for the friction between the two establishments, it is necessary to examine a dispute which arose between the Superintendent of the Pietermaritzburg Gaol and the Colonial Engineer in the year 1885.<sup>16</sup> The dispute arose in January 1885, after the Colonial Secretary observed that discipline exercised by convict guards over convict labour gangs was far from satisfactory. The Superintendent of the Pietermaritzburg Gaol stated that this was a result of the convict labourers being scattered "in threes and fours all over the City and vicinity ...".<sup>17</sup> He stated that

[i]t would be far better to employ prisoners inside the Gaol than have them gossiping idly along the public roads. We are continually finding pipes, sulphur and tobacco upon the persons of these convicts ...".<sup>18</sup>

The Resident Magistrate of Pietermaritzburg supported this argument and stated that the "division of gangs is fatal to discipline, and dangerous to the security of prisoners".<sup>19</sup> Clearly, the above arguments were made from the point of view of prison administration. The Clerk of Works, however, approached the matter from the standpoint of the effective utilisation of labour, and pointed out that, if convict labour gangs were not broken up, "the

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14 Colonial Secretary's Office, Natal 335/1465 – Report of Civil Engineer 30 June 1869.

15 Colonial Secretary's Office, Natal 273/931 – Colonial Engineer to Colonial Secretary 8 May 1867.

16 Colonial Secretary's Office, Natal 999/182.

17 Colonial Secretary's Office, Natal 999/182 – Report of Superintendent Pietermaritzburg Gaol 13 January 1885.

18 *Ibid.*

19 Colonial Secretary's Office, Natal 999/182 – Resident Magistrate Pietermaritzburg to Colonial Secretary.

employment of prison labour, except on special works, and in large numbers will be impossible".<sup>20</sup> Further, he complained as follows:

There is apparently an impression amongst the Guards that their *only* duty is to see that they take back to Gaol as many prisoners as they bring out. They seem to consider the instructions given them by Officers of the C.E.D. [Colonial Engineer's Department] to see that the prisoners do a fair day's work, a piece of officiousness to be totally disregarded.<sup>21</sup>

Clearly, the Clerk of Works was of the opinion that the Convict Guards should perform the dual role of guard and labour supervisor. The Colonial Engineer was in total agreement with this and wrote to the Colonial Secretary:

Gaolers and Magistrates do not sufficiently impress upon Convict Guards that it is their duty not only to see that the prisoners do not escape but also to take care that they do a good day's work ...<sup>22</sup>

As a result of these complaints, a circular was sent by the Colonial Secretary to all Resident Magistrates. The Resident Magistrates were ordered to ensure that convict guards were made responsible not only for the safe custody of prisoners, but also for the effective performance of work by prisoners. Clearly, this order did not resolve the essential contradictions inherent in divided authority and a clash of departmental interests. The interests of efficient prison administration, as well as effective utilisation of labour, were bound to suffer. The Resident Magistrate of Pietermaritzburg provided the following bleak assessment of the system:

The present system is utterly and entirely hopeless as regards its results in work, in discipline, and in security against escapes and outbreaks; and until it becomes feasible to create a separate establishment for the long sentenced prisoners, and to employ responsible European overseers over *all* convicts employed outside gaol walls, these evils will continue to increase ... It seems to me that the only result of the present system is to create and ferment jealousies between the officers of the two departments.<sup>23</sup>

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20 Colonial Secretary's Office, Natal 999/182 – Report of Clerk of Works 21 January 1885.

21 *Ibid.*

22 Colonial Secretary's Office, Natal 999/182 – Colonial Engineer to Colonial Secretary 22 January 1885.

23 Colonial Secretary's Office, Natal 999/182 – Resident Magistrate Pietermaritzburg to Colonial Secretary 29 January 1885.

### 3 The effect of overcrowding on convict labour

One of the major material conditions which affected the employment of convict labour in Natal was the constant overcrowding within the prisons of the colony. Due to a chronic lack of space within the prisons, it became increasingly imperative to employ prisoners outside the gaols during the day, since to keep large numbers of prisoners confined day in and day out in cramped conditions was to court disaster. The authorities were deeply concerned at the possibility of epidemics, riots or mass escapes. This is well illustrated by proposals put forward by officials of the Pietermaritzburg Gaol in February 1893.<sup>24</sup> The Superintendent of the Pietermaritzburg Gaol pointed out that

if the employment of the convicts is not continuous then the whole system of gaol discipline becomes nullified. I consider it, therefore, essentially necessary that a constant supply of convict labour, either intra or extra-mural should be kept up ...<sup>25</sup>

Due to the increase in the prison population, increasingly it was becoming difficult, particularly in the case of the Pietermaritzburg Gaol, to find employment for all the hard labour prisoners.<sup>26</sup> On 14 April 1883 the District Surgeon, Dr Gordon, wrote a long minute setting out the manner in which he believed this problem might be solved. He pointed out that despite extensive additions to both the Durban and Pietermaritzburg Gaols, it had not been possible to carry out the separate system, due to the rapid increase in the prison population.<sup>27</sup> In order to solve the problem, and at the same time ensure that there was sufficient hard labour for prisoners to perform, Dr Gordon recommended "the construction of a separate establishment in the neighbourhood of the Point and to be called the 'Convict Establishment' in which all long sentenced prisoners be kept and where Government work is always carried on".<sup>28</sup> The Resident Magistrate of Pietermaritzburg also held this view:

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<sup>24</sup> See Colonial Secretary's Office, Natal 897/858.

<sup>25</sup> Colonial Secretary's Office, Natal 897/858 – Superintendent Pietermaritzburg Gaol to Pietermaritzburg Gaol Board.

<sup>26</sup> Colonial Secretary's Office, Natal 897/858 – Meeting of Pietermaritzburg Gaol Board 6 March 1883 – Point IV.

<sup>27</sup> For a detailed exposition of the failure of the separate system in the prisons of colonial Natal see Peté (n 3).

<sup>28</sup> Colonial Secretary's Office, Natal 897/858 – District Surgeon Pietermaritzburg to Resident Magistrate Pietermaritzburg 14 April 1883.

[U]ntil a *complete separation* is effected between short-sentenced, and long-sentenced prisoners, the entire system of punishment must break down. I can see no other remedy than in a permanent labour works establishment ... .<sup>29</sup>

According to Dr Gordon the treadmill, crank, and shot drill were unsatisfactory forms of labour, and were not favoured by prison authorities in England.<sup>30</sup> Instead, it was the practice in England to employ convicts in the execution of large public works, and good results had been obtained. The Harbour Board pointed out, however, that Dr Gordon's scheme for a separate "Convict Establishment" near the harbour works was not feasible. The Board estimated that fewer than one hundred convicts would be required daily at the harbour works for some time to come. The Board suggested that the proposed "Convict Establishment" be situated near a large quarry which would provide ample work for prisoners.<sup>31</sup> Although the colony did not have the financial resources to put these schemes into operation, they illustrate the need of the prison authorities to provide suitable employment for prisoners. They also reflect the desire to do away with the system of divided authority. In the proposed "Convict Establishment", prison labour and prison administration would have been under the control of a single authority.

#### 4 The effect of the free labour market on convict labour

The state of the free labour market at any particular time was another important material condition which affected the employment of convict labour. If free labour was plentiful, the demand for convict labour would drop and *vice versa*. The bargaining positions of the various officials would thus be either stronger or weaker according to the condition of the free labour market. For example, in the years 1884 and 1885 the demand for convict labour was decreasing. By August 1884 it was apparent that there was insufficient public labour for prisoners to perform in Pietermaritzburg. The Colonial Secretary stated as follows:

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29 Colonial Secretary's Office, Natal 897/858 – Resident Magistrate Pietermaritzburg to Colonial Secretary 6 April 1883.

30 The treadmill was a device similar to the exercise wheels sometimes seen in the cages of pet hamsters today, but on a much larger scale of course, which could be worked by a number of prisoners. Usually labour on the treadmill was completely unproductive ("strictly penal"), although it was possible to connect the treadmill to machinery for the grinding of maize, thereby rendering the labour performed by the prisoners productive to a limited extent. Crank drill consisted of "the useless turning of a braked windlass for thousands of turns per day", while shot drill entailed the lifting of heavy cannon balls, known as "shot". See Seidman "The Ghana prison system: An historical perspective" in Milner (ed) *African Penal Systems* (1969) at 436 and 438. For a discussion of the introduction of these forms of strictly penal labour into the prisons of colonial Natal see Peté (n 3).

31 Colonial Secretary's Office, Natal 897/858 – Report of Resident Engineer 6 July 1883.

The question of employment of gaol labour becomes daily more pressing. The Colonial Engineer has accumulated so large a stock of bricks and tiles at the Government Brickyard that – in view of the prohibition to sell for private use and of the remote prospect of any considerable amount of building for Government being required – he has quite lately been consulting me as to the feasibility of ceasing to manufacture bricks.<sup>32</sup>

Alternative forms of employment had to be found. One suggestion was that prisoners be employed on the Gaol Farm which had been leased for a twenty year period from 1879. Until this time only convalescents who were unable to perform hard labour had been employed on the farm.<sup>33</sup> Another suggestion, which was eventually adopted, was that a system of stone breaking be introduced, which would be performed within the walls of the Gaol.

In Durban, the situation was similar to that in Pietermaritzburg. The falling price of free labour led to a dispute between the Colonial Engineer, who was the government official in charge of convict labour on the public works, and the Resident Engineer, who was employed by the Harbour Board and was responsible for securing labour for the harbour works.<sup>34</sup> The debate between these two officials, and between the Government and the Harbour Board in general, indicates that disputes over convict labour did not merely occur between the Gaol Superintendents and the Colonial Engineer. There was also a conflict of interest between the Government, which was ultimately responsible for the employment of convicts, and the public employers of labour, such as the Harbour Board. The debate reveals clearly the important influence exerted over penal practice by the condition of the free labour market. During the early months of 1885, the price of free labour in Durban was falling, and this placed the Harbour Board in a position to demand more favourable conditions for the employment of convicts. On 5 February 1885, the Harbour Board passed the following resolution:

[A]lthough the convict labour is less cheap than free labour, the Board are willing to continue the employment of convict labour in case new regulations can be made placing the convicts, not under dual control, as

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32 Colonial Secretary's Office, Natal 1000/205.

33 Colonial Secretary's Office, Natal 1000/205 – Superintendent Pietermaritzburg Gaol to Resident Magistrate Pietermaritzburg 28 August 1884.

34 Colonial Secretary's Office, Natal 1014/1697.

at present, but under the control of the Resident Engineer, during such time as the convicts are employed on the Works ...<sup>35</sup>

It does not seem as if the above suggestion was carried out, since by law, prisoners had to remain under the control of Government appointed officials, and the Resident Engineer was appointed, not by Government, but by the Harbour Board. Nevertheless, the Harbour Board was still in a strong bargaining position, and agitated strongly for a reduction in the price of convict labour employed on the harbour works. Despite various arguments put forward by the Colonial Engineer which attempted to show the advantages of convict labour over free labour, the Government was forced to comply with the Harbour Board's demand. The Government's bargaining position had been weakened considerably by the fact that, with sixty convicts without employment and idle in the Durban Gaol, it was becoming increasingly difficult to maintain standards of discipline and health. The cost per convict employed at the harbour works was thus reduced from six pence to three pence per day. The Harbour Board was pleased with this development, and its Chairman instructed the Resident Engineer to extend to the Government "all the consideration which we can show, as regards unemployed convicts in the gaol ...".<sup>36</sup>

The problem of lack of employment for convicts was not solved, however, as was indicated a few days later when a dispute arose over the employment of white convicts.<sup>37</sup> The Superintendent of the Durban Gaol stated that three white prisoners, two of whom were skilled bricklayers, had complained that they were being kept confined in their cells and not sent to the harbour works. The Resident Engineer explained that the work on which the men had been engaged was completed, and that he had a sufficient supply of convict labour. In addition, he stated that he found that "the fewer white convicts I have at work the better, except when employed at their trade (if they have one)".<sup>38</sup> Clearly, black convicts were more easily controlled and exploited than white convicts. The District Surgeon supported the demand of the prisoners to be employed:

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35 Colonial Secretary's Office, Natal 1004/620 Natal Harbour Board 5 February 1885. See also Colonial Secretary's Office, Natal 1010/1234 and Colonial Secretary's Office, Natal 1018/2018.

36 Colonial Secretary's Office, Natal 1014/1697 Chairman Natal Harbour Board to Resident Engineer 13 June 1885.

37 Colonial Secretary's Office, Natal 1026/2851.

38 Colonial Secretary's Office, Natal 1026/2851 – Resident Engineer to Resident Magistrate Durban 20 June 1885.

I am of opinion that these men will certainly become diseased in mind and body if this be continued. They are right in asking to be set to work as required by their sentences.<sup>39</sup>

This indicates once again the considerable pressure which was exerted on the authorities to provide suitable employment for prisoners. This pressure was added to by the Gaol Board which called on the Government to provide the necessary employment.<sup>40</sup> Due to the considerable pressure, the Government was forced very much onto the defensive. On 26 June 1885, the Colonial Secretary almost pleaded with the Chairman of the Harbour Board to take cognisance of the Government's position:

[T]he Colony is paying for able bodied white men who are being kept idle in the Gaol while the Colony is also paying for free labour (be it white or coloured) which presumably might be replaced by prison labour ...<sup>41</sup>

The Colonial Secretary entreated the Harbour Board "to treat the question from the 'all round' point of view and not allow departmental differences ... to interfere with the general public interests".<sup>42</sup> The only response from the Harbour Board was to request once again that the Convict Guards be placed under the control of the Resident Engineer.

The strong position of the Harbour Board as regards labour supply at this time is further indicated by its response to a Government proposal in August 1885 that light labour convicts be sent free of charge to the harbour works. The Secretary of the Harbour Board replied to this offer as follows:

I am directed to say that if the Harbour Board takes over light labour convicts, it does so rather to give relief to the Gaol than with any idea of deriving benefit from the working of this particular gang.<sup>43</sup>

Clearly, the Harbour Board could only afford to reply in this manner due to the fact that there was a plentiful supply of cheap free labour at this time. Because of the difficulty of obtaining employment for prisoners outside the gaols at this time, the prison authorities were forced to look to other means of employing prisoners. This was to lead to the introduction of stone breaking.

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39 Colonial Secretary's Office, Natal 1026/2851 – Superintendent Durban Gaol to Resident Magistrate Durban 23 June 1885. (Sending extract from District Surgeon's day book.)

40 Colonial Secretary's Office, Natal 1026/2851 – Superintendent Durban Gaol to Resident Magistrate Durban 25 June 1885. (Sending extract from Minutes of Durban Gaol Board.)

41 Colonial Secretary's Office, Natal 1026/2851 – Colonial Secretary to Chairman Natal Harbour Board 26 June 1885.

42 *Ibid.*

43 Colonial Secretary's Office, Natal 1030/3227 Secretary Harbour Board 9 September 1885.

## 5 The introduction of stone breaking

On 10 April 1886 the Governor of Natal wrote:

The question of finding labour for hard labour prisoners is an important and pressing one. When I visited Durban Gaol on the 19<sup>th</sup> March, I found many hard labour prisoners in their cells, during working hours, and was informed that they were kept there because there was nothing for them to do.<sup>44</sup>

In order to devise suitable means of employment for prisoners, the Governor called for a report on the practice in the gaols as to hard labour of the first and second class. The reports of the respective Superintendents of the Pietermaritzburg and Durban Gaols revealed that the principle of strictly penal labour for the first three months of sentence had never really been applied in practice in Natal. In Pietermaritzburg, some attempt had been made to comply with the Gaol rule concerning strictly penal labour, but this was largely a compliance with the wording of the rule rather than with the principle which underlay the rule. The Superintendent of Pietermaritzburg Gaol reported that since the treadmill and shot drill could not accommodate all prisoners for the first three months of their sentence, the period of strictly penal labour was reduced to one month, and labour at the Government Brickyard was appointed as hard labour of the first class. This had been the position since December 1871.<sup>45</sup> The Acting Superintendent of Durban Gaol reported that "the only custom hitherto in vogue at this Gaol ... has been the simple practice of sending all male convicts (except boys under 16) at once to labour on the Harbour Works or elsewhere ...."<sup>46</sup> In the Durban Gaol, the treadmill and shot drill had only been used for purposes of punishment. In response, the Governor commented as follows:

With regard to the practice of the two gaols in regard to the penal stage, uniformity must be established on a practical and practicable basis ... The proper carrying out of the penal stage is of the first importance in the prison system.<sup>47</sup>

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44 Colonial Secretary's Office, Natal 1062/291 Governor to Colonial Secretary 10 April 1886.  
45 Colonial Secretary's Office, Natal 1062/291 – Report of Superintendent Pietermaritzburg Gaol 7 May 1886.  
46 Colonial Secretary's Office, Natal 1062/291 – Report of Superintendent Durban Gaol 10 May 1886.  
47 Colonial Secretary's Office, Natal 1062/291 – Governor to Colonial Secretary 27 May 1886.

One of the ways in which the Governor's instruction could be carried out was to institute a system of stone breaking at the Durban and Pietermaritzburg Gaols. The Governor considered stone breaking to be "one of the most suitable forms of labour for prisoners while undergoing the *penal stage* ...".<sup>48</sup> Perhaps the Governor's reason for emphasising that stone breaking was a form of strictly penal labour was that, in the past, it had been classified as light labour in the Durban Gaol. Indeed, in 1882 a dispute had arisen over this practice. In February of that year, the Colonial Engineer suggested that light labour prisoners employed at stone breaking in the Durban Gaol, be used instead to clean and maintain the prison, thus allowing hard labour prisoners, who were then performing these maintenance functions, to be sent to the harbour works.<sup>49</sup> The Colonial Secretary supported this suggestion and stated that

[t]he employment of prisoners in 'light labour' at stone breaking is an utter contradiction of terms such as is, I venture to say, unknown in prison nomenclature outside Durban Gaol.<sup>50</sup>

The Durban Gaol Board, however, felt that it was "inadvisable to employ in cooking, men who are now employed at stone breaking inasmuch as they are inexperienced in cooking and in many instances suffer from loathsome diseases".<sup>51</sup> Presumably, the same argument applied against employing such prisoners at cleaning and other maintenance tasks about the gaol. Thus, despite the objections raised by the authorities, the situation remained unchanged.

It is clear from the above that the proposed introduction of stone breaking in 1886 was not without precedent in the gaols of colonial Natal. Indeed, towards the end of 1885, prisoners at the Durban Gaol had been employed in carrying stones from one side of the Gaol to the other. This form of labour had been introduced as a temporary measure, to provide exercise and punishment for the large number of prisoners for whom employment could not be found outside the Gaol at that time.<sup>52</sup>

Despite the numerous practical difficulties of instituting a system of stone breaking, the Colonial Secretary was able to report on 13 August 1886 that "arrangements have now been completed for stone breaking at Durban Gaol

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48 Colonial Secretary's Office, Natal 1062/291 – Governor to Colonial Secretary 26 April 1886.

49 Colonial Secretary's Office, Natal 846/810 Colonial Engineer to Colonial Secretary 28 February 1882.

50 Colonial Secretary's Office, Natal 846/810 – Colonial Secretary to Resident Magistrate Durban 15 March 1882.

51 Colonial Secretary's Office, Natal 846/810 – Meeting of Durban Gaol Board 20 March 1882.

52 Colonial Secretary's Office, Natal 1043/4725.

and are now in train for that work at the City Gaol ...".<sup>53</sup> Stone breaking was to take place within the gaols, since the Governor regarded "confinement within the walls" as "one of the generally accepted principles of the penal stage of imprisonment".<sup>54</sup> Thus the Gaol Rules were altered to make *intra mural* labour during the penal period (ie the first three months) of a prisoner's sentence imperative. Whereas the introduction of the treadwheels, cranks and shot drill had failed to ensure a system of strictly penal labour in colonial Natal, the authorities hoped that a system of stone breaking would now make this possible.

Generally, the introduction of stone breaking was regarded positively by the gaol authorities, and resulted in a re-evaluation of the other forms of strictly penal labour. In October 1886 the Pietermaritzburg Gaol Board recommended that treadmill labour be alternated with stone breaking, and that shot drill should be performed only when stone was not available. The Resident Magistrate of Pietermaritzburg commented as follows:

The Board was of opinion that the advantages of stone breaking both as to its effect on the prisoners, and as to its results are so great, as to render it unnecessary to alternate it with shot drill. The treadmill, on the other hand, is most useful in grinding the maize for the prisoner's food, and its disuse would be a serious loss.<sup>55</sup>

It is interesting to note that the advantages of treadmill labour were seen in economic terms rather than in terms of its effect on the prisoners. Indeed, in the case of the Durban Gaol, the effects of treadmill labour were roundly condemned by the district Surgeon in May 1887:

I am of the opinion that work on the mill is calculated to bring on heart disease or lay the foundation for its future development ... I do not know whether the treadmill is still in use in the gaols at home or whether the medical profession are of the same opinion as myself that it is an unsuitable [method]... of punishment.<sup>56</sup>

The implementation of stone breaking at the Pietermaritzburg Gaol resulted in a number of practical problems, since the Government Brickyard was to close down in February 1887. This meant that approximately fifty prisoners would be

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53 Colonial Secretary's Office, Natal 1175/1699 Colonial Secretary to Resident Magistrate Pietermaritzburg 13 August 1886. Note that "City" refers to Pietermaritzburg.

54 Colonial Secretary's Office, Natal 1175/2144 Governor 26 July 1886.

55 Colonial Secretary's Office, Natal 1100/4050 Resident Magistrate Pietermaritzburg to Colonial Secretary 12 October 1886.

56 Colonial Secretary's Office, Natal 1062/291 District Surgeon Durban 30 May 1887.

withdrawn from outside labour and set to work at stone breaking within the Gaol.<sup>57</sup> The Gaol authorities agreed with the Governor that it was inadvisable to employ all prisoners within the Gaol since it was clear that the "space generally within the walls is insufficient for from 250 to 270 prisoners".<sup>58</sup> However, there was very little public work in Pietermaritzburg at the time which was suitable for the employment of convicts. Thus the Gaol authorities were forced to carry out stone breaking on a large scale within the walls of the Gaol. This created severe problems with regard to the safe custody of prisoners, and in August 1887 the Superintendent of the Pietermaritzburg Gaol aired his view:

I beg to bring again before the Government the extreme danger of having 60 or 70 convicts employed at stone breaking in the Gaol Yard, all armed with stone hammers. In the event of an outbreak we are entirely at the mercy of the prisoners.<sup>59</sup>

The Superintendent considered it unsafe to arm the guards with firearms, since they were surrounded by convicts and could easily be disarmed. He requested that a yard for stone breaking be constructed, with towers from which armed guards could supervise the work. In September 1887 the Resident Magistrate of Pietermaritzburg again pointed to the urgency of providing an extra yard for stone breaking. He pointed to the "very inflammable nature of native convicts, which the slightest spark may at any moment kindle to a blaze" and stated further as follows:

Should disaffection spread among the convicts, a leader appear among them, nothing could, under present arrangements, avert an outbreak, which must inevitably entail most disastrous consequences. That no such outbreak has yet occurred I consider due to chance more than to watchfulness, though I know that no possible precaution is wanting, on the part of the Superintendent and Warders.<sup>60</sup>

Clearly at this time tensions between the colonisers and the colonised were running high. After the Resident Magistrate's dire warning, a stone breaking yard was constructed at a cost of £200. Despite this security measure, a riot occurred amongst the prisoners, and on 29 May 1888 the Superintendent of the Pietermaritzburg Gaol reported that

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57 Colonial Secretary's Office, Natal 1118/960 and Colonial Secretary's Office, Natal 1118/963 and Colonial Secretary's Office, Natal 1118/983.

58 Colonial Secretary's Office, Natal 1118/496 Governor to Colonial Secretary 12 March 1887.

59 Colonial Secretary's Office, Natal 1166/5283 Superintendent Pietermaritzburg Gaol 11 August 1887.

60 Colonial Secretary's Office, Natal 1175/4001 Resident Magistrate Pietermaritzburg to Colonial Secretary 1 September 1887.

[t]here has been an outbreak amongst the convicts this afternoon. They all rose en masse with their hammers. Several of the native guards are badly hurt and also some of the convicts. The convicts attempted to get through the door, but were prevented ...<sup>61</sup>

Following this incident, it was decided to divide the stone breaking yard into stalls, containing from eight to ten men each. Clearly, all the above problems arose as a result of the fact that there was insufficient outside labour for prisoners to perform. The situation was eased during 1889 with the re-opening of the Government Brickyard and the use of convict labour for the construction of a new block of cells at the Gaol.<sup>62</sup>

The implementation of stone breaking at the Durban Gaol was to follow a completely different course to that followed at the Pietermaritzburg Gaol. Once again, the general economic conditions prevailing in Durban, and the state of the free labour market, were to play a determining role. In January 1887 economic considerations forced the Governor to accept the compromise of what he had, a few months previously, called the "generally accepted principle" that a prisoner be confined within the walls of the prison during the first three months of his sentence.<sup>63</sup> The Governor directed that in the case of the Durban Gaol "a relaxation of this rule may be allowed as an exception in favour of the Harbour Board, and that hard labour convicts, otherwise available for employment on the Harbour Works gang, shall, during the penal stage, be sent out with that gang".<sup>64</sup> Thus it would seem that the supply of labour to the harbour works was no longer as favourable as it had been in previous months, and the Government had found it necessary to compromise the penal principle which, a short while previously, it had ordered to be enforced. Some attempt was made, however, to adhere to the penal principle. The Chairman of the Harbour Board was informed that the relaxation of the Rule had been permitted on the following condition only:

[T]hat these prisoners are so conveyed and employed as to carry out the spirit and intention of the Rule, by their complete isolation from intercourse of any sort with the outer world, and by their being put to such work only as will not bring them within sight or hearing of persons

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61 Colonial Secretary's Office, Natal 1188/2329 Superintendent Pietermaritzburg Gaol to Colonial Secretary 29 May 1888.

62 Colonial Secretary's Office, Natal 1213/1370.

63 Colonial Secretary's Office, Natal 1175/2144 Governor 26 July 1886.

64 Colonial Secretary's Office, Natal 1117/315 Colonial Secretary to Resident Magistrate Durban 18 January 1887.

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not immediately connected with the works or with the management of the Gaol.<sup>65</sup>

Whether the Harbour Board would have been able to comply with the above condition in practice is to be doubted. Subsequently the harbour works gang was increased by about seventy convicts, although a certain number of convicts continued to be employed on the treadmill and at stone breaking: "The former for mealie crushing purposes and the latter to complete the contract with the Durban Corporation".<sup>66</sup> Thus stone breaking at the Durban Gaol was carried out to fulfil contract requirements rather than of necessity as at the Pietermaritzburg Gaol. In Durban at this time, as much labour as possible was needed at the harbour works. In July 1887 it was even proposed that prisoners employed within the Gaol at cooking and cleaning be sent to the harbour works. The various tasks of Gaol maintenance would then be carried out by those prisoners who were kept within the Gaol to work the treadwheel, during the intervals between their work on the treadmill.<sup>67</sup>

## 6 Conclusion

The development of penal policy in colonial Natal, particularly in relation to the employment of convict labour, was influenced significantly by changing conditions in the free labour market. When free labour was scarce, employment of convict labour upon the public works of the colony, particularly the Government Brickyard in Pietermaritzburg and the Harbour Works in Durban, became imperative. When free labour was more plentiful, however, it became more difficult to find suitable employment for convicts upon the public works of the colony, and alternative employment had to be found. In 1886 this alternative was provided by the introduction of stone breaking. The Gaol Rules were altered to make *intra mural* labour during the first three months of a prisoner's sentence imperative, but this principle was soon departed from as free labour became more scarce, and convict labour was required once again upon the public works. Economic considerations, as opposed to "pure" penal principles relating to the reform of the prisoner, seemed to play a more important role in the Durban Gaol than in the Pietermaritzburg Gaol, although it is to be doubted whether the systems in place at either Gaol contributed to reform or rehabilitation of offenders.

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65 *Ibid.*

66 Colonial Secretary's Office, Natal 1117/315 – Superintendent Durban Gaol to Resident Magistrate Durban 20 January 1887.

67 Colonial Secretary's Office, Natal 1146/3241 Colonial Engineer to Colonial Secretary 17 July 1887.

Rather than being regarded purely as a measure necessary to reform criminals to enable them return to society as useful citizens, penal labour in colonial Natal was seen also as a way of dealing with problems of chronic overcrowding. Employment in the open air on the public works was regarded as necessary to the health of the prisoners, as well as a way of avoiding unrest which could break out if the inmates were crammed into overcrowded prisons during the day. The line between prisoners and ordinary labourers seems to have been less sharply defined in the gaols of colonial Natal than in the prisons of England. Prisoners within the colony constituted a kind of reserve labour force which could be deployed in times when free labour was scarce. Of course, what to do with these prisoners when free labour was plentiful was a pressing problem which required innovative solutions, such as the introduction of stone breaking during the 1880s.

## **CHAPTER 2.4**

### **Apartheid in the Food: An Overview of the Diverse Social Meanings Attached to Food and its Consumption Within the Prisons of Colonial Natal**

Part one of a two-part co-authored article (Part one written entirely by me under supervision) published in a SAPSE accredited journal:

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# APARTHEID IN THE FOOD: AN OVERVIEW OF THE DIVERSE SOCIAL MEANINGS ATTACHED TO FOOD AND ITS CONSUMPTION WITHIN SOUTH AFRICAN PRISONS DURING THE COLONIAL AND APARTHEID PERIODS (PART ONE)

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Angela Diane Crocker\*\*

## 1 Introduction

Every time they cage a bird  
the sky shrinks. A little.

Where without appetite –  
you commune  
with the stale bread of yourself,  
pacing to and fro, to shun,  
one driven step on ahead of the conversationist  
who lurks in your head ...<sup>1</sup>  
Jeremy Cronin, *Inside*

Eating is never *just eating*. As Elspeth Probyn points out: “[I]t seems that eating brings together a cacophony of feelings, hopes, pleasures and worries, as it orchestrates

1 Jeremy Cronin *Inside and Out* (1999) quoted in Suttner *Inside Apartheid's Prison: Notes and Letters of Struggle* (2001) x. Cronin, who served seven years in prison for politically motivated activities, uses emotionally charged food imagery to communicate the depth of emotion felt by a political prisoner in solitary confinement.

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experiences that are at once intensely individual and social.”<sup>2</sup> Eating is suffused with social meaning, and this is particularly so when it comes to eating in prison.<sup>3</sup> The focus of this article is on the diverse social meanings attached to food and its consumption within South African prisons during the colonial and apartheid periods.

Eating in a South African prison during both the colonial and apartheid periods certainly amounted to more than *just eating*. On the one hand, it was tied up with the assertion of power, dominance and control on the part of the prison authorities. On the other hand, it was linked to resistance and the assertion of solidarity and identity on the part of the inmates. The assertion of power and dominance through the manipulation of dietary scales within the prisons of colonial and apartheid South Africa was not unique to these penal systems. The extent to which the twisted logic of racial segregation and apartheid seeped into the food which inmates were allowed to consume, however, was certainly distinctive. Likewise, resistance on the part of inmates by means of hunger strikes and other food-related activities are common to the histories of many penal systems, but the manner in which food played its part in the struggle for liberation within South Africa’s apartheid penal system has a flavour all its own.<sup>4</sup>

The purpose of this article is twofold: Firstly, focusing on the prisons of colonial Natal in particular, the article will discuss the use of prison dietary scales to punish inmates during colonial times, as well as examine the origins of racially defined punishment during this period, through the lens of ever changing prison dietary scales designed to cater for variously defined racial groupings. Secondly, the article will trace the themes mentioned in the previous paragraph – food as power and dominance, as well as food as a form of resistance – as these themes are reflected in the prison literature dealing with the South African penal system during the apartheid period.

## 2 Colonial period

### 2.1 You are what you eat: Prison dietary scales and the emergence of racially defined punishment in colonial Natal

From the early stages of its development, the penal system of colonial Natal adopted prison dietary scales which were linked to issues of both punishment and race. Each

2 Probyn *Carnal Appetites: FoodSexIdentities* (2000) 3.

3 Rebecca Godderis notes that food and its consumption plays a vital role in reflecting cultures and establishing identities within society, and none more so than in the social structure of the prison community. See Godderis “Dining in: The symbolic power of food in prison” 2006 *The Howard J* 255-267.

4 In the introduction to a recent recipe book dedicated to South African struggle icon Nelson Mandela, which the author Anna Trapido describes as “not so much a cookbook as a gastro-political history with recipes” it is stated: “Food has provided the backdrop and occasionally the primary cause for momentous personal and political events in Madiba’s life ... [T]he reader will taste the journey from the corn-grinding stone of Madiba’s boyhood to prison hunger strikes, presidential banquets and beyond. Tales told in sandwiches, sugar and *samoosas* will speak eloquently of intellectual awakenings, emotional longings and, always, the struggle for racial equality.” (Trapido *Hunger for Freedom: The Story of Food in the Life of Nelson Mandela* (2008) xi).

of these issues became recurring themes which were apparent throughout the colonial period.

Strict dietary scales formed an important part of the punishment of imprisonment in colonial Natal. The penal system of colonial Natal was derived from penal practice in England; and the influence of the English authorities on matters of diet is clear from the following instruction of the Secretary of State to the Lieutenant Governor on 24 July 1868:

It would appear that all the three scales of diet in use for different races are excessive. The diet of a prisoner undergoing penal imprisonment should be as small as is consistent with keeping him free from sickness ... I have therefore to instruct you to go on making gradual and moderate reductions in all three diets until you have good grounds to believe that you have reached a point beyond which actual injury to health might be reasonably apprehended.<sup>5</sup>

These instructions were carried out and rations to prisoners were drastically reduced. The reductions were not well received by prisoners at either the Durban or the Pietermaritzburg Gaol. On 21 November 1868 the Resident Magistrate of Pietermaritzburg informed the Colonial Secretary that

the prisoners confined in the Central Gaol of the City have in a body represented to me that the dietary scale in use at the Gaol is wholly insufficient to maintain their strength and their appearance seems to me to confirm this statement.<sup>6</sup>

On 23 November 1868 the Resident Magistrate of Durban forwarded to the Colonial Secretary a petition drawn up by certain prisoners confined in the Durban Gaol. They complained:

[W]e are now supplied with a New Scale of Rations, unfit for the sustenance of bodily strength, of supporting us with stamina during the hours of hard labour, and deficient in nourishment for the energy demanded by those in command over us at the Stone Quarry and Harbour Works.<sup>7</sup>

The Commission of Enquiry, which had been appointed on 19 November 1868 to investigate the reform of Natal's penal system, stated in its report that the reduction in diet had been too sudden.<sup>8</sup> Certain abuses came to light, particularly in the Durban Gaol where certain prisoners had been supplied with meat by their friends, and white prisoners at the harbour works had received food from the free labourers.<sup>9</sup> The Commission submitted a more liberal dietary scale for white prisoners, which was adopted.

5 *Imperial Blue Book – Digest and Summary of Information Respecting Colonial Prisons* (drawn up and presented to the British Parliament by Command of Queen Victoria in 1867, C3961 of 1867) 71: Buckingham to Keate, 24 Jul 1868.

6 NAB (Pietermaritzburg Archives Repository) CSO (Colonial Secretary's Office, Natal) 317/2580: Resident Magistrate Pietermaritzburg to Colonial Secretary, 21 Nov 1868.

7 NAB CSO 317/2592: Petition of Thirteen Prisoners in the Durban Gaol, Nov 1868.

8 NAB CSO 324/304: Report of the Commission of Enquiry into the Reform of the Penal System of the Colony of Natal at 9.

9 *Idem* 8; see, too, NAB CSO 320/2857: Report of Superintendent Durban Gaol, 5 Jan 1869.

It should be clear from the above that diet formed an important part of the punishment of imprisonment in colonial Natal. The dietary scales were divided into first, second, and third class; and a prisoner would be allocated to a particular scale according to his conduct and length of sentence.<sup>10</sup> This is of course typical of the system of ranking employed in a “disciplinary” institution.<sup>11</sup>

In common with the English penal system, reduction of diet was used in Natal as a means for punishing breaches of prison discipline. For example, under the Gaol Regulations drawn up in terms of the Gaol Law of 1870,<sup>12</sup> both the Resident Magistrate and the Superintendent could punish refractory prisoners by half rations in addition to solitary confinement.<sup>13</sup> Furthermore, a specific dietary scale (“Spare Diet”) was drawn up for purposes of punishment. The punishment of “Spare Diet” appeared among the list of punishments which could be imposed upon refractory prisoners under the Gaol Regulations.<sup>14</sup> However, in 1876 the Pietermaritzburg Gaol Board pointed out that this punishment was never applied.<sup>15</sup> The reason was that neither regulation 15 nor regulation 39 of the Rules, which laid down the respective powers of the Magistrate and the Superintendent, empowered these officials to inflict this punishment. This was so despite the fact that, as has been noted, the punishment of “Spare Diet” was listed as one of the punishments which could be imposed upon refractory prisoners.<sup>16</sup> Thus by a proclamation of 21 July 1877, regulation 15 of the Rules was amended, to give the Resident Magistrate the power to punish serious or repeated offences against prison discipline, by up to ten days solitary confinement, with half or full rations, or on a diet of one pound weight of bread per day for up to three days. Without going into more detail as to the various dietary punishments which were laid down over the years, it should be clear from the above example that reduction of diet was used as a means for punishing breaches of prison discipline. In Foucault’s terms it would be classed as an internal disciplinary mechanism.<sup>17</sup>

In addition to the divisions mentioned above, the dietary scales in colonial Natal were divided into different categories to be applied to the various race groups. This distinguished the dietary system applied in the gaols of the Colony from that applied in English prisons. It would seem that dietary scales were an important reflection of the racial divisions which existed within the penal system of colonial Natal.<sup>18</sup> It was in the area of prison diet that colonial authorities first adopted a formal system of racial classification. From a very early stage in the development of the penal system of the

10 From 1869 onwards, prison dietary scales were set out in the *Natal Blue Books* under the heading “Gaols and Prisons”.

11 Foucault *Discipline and Punish – The Birth of the Prison* (1977) 181-184.

12 Law 6 of 1870 (Natal).

13 Regs 15 and 39.

14 Reg 19.

15 NAB CSO 581/573: Meeting of Pietermaritzburg Gaol Board, 6 Dec 1876.

16 NAB CSO 581/573: Meeting of Pietermaritzburg Gaol Board, 7 Feb 1877.

17 Foucault (n 11) 177-178.

18 In this regard, see Peté & Devenish “Flogging, fear and food: Punishment and race in colonial Natal” 2005 *J of Southern African Studies* 3-21 esp 14-16.

Colony, the colonial authorities accepted the fact that the dietary scales of prisoners needed to distinguish between different racial groupings. It was taken for granted that white prisoners should be provided with a superior diet, and while this could be achieved informally and at little cost during the very early years of the Colony, it became impossible to do so as the number of white prisoners increased. In January 1865, for example, the District Surgeon of Pietermaritzburg was compelled to point out that the number of white prisoners confined in the Pietermaritzburg Gaol had increased to such an extent that it was necessary to draw up an official dietary scale for these prisoners, which was duly done.<sup>19</sup>

In subsequent years, thorny problems of race classification were discussed in terms of diet, and changing conceptions of race were reflected in the prison dietary scales, which were altered regularly in accordance with these changing conceptions. A problem which arose time and again over the years was how to classify prisoners who fell on the borderlines between the established racial categories of the time. For example, the penal authorities found it difficult to distinguish clearly between the categories of “European”, “Indian” and “Native”. Discussions of where to draw the line between these categories focused on the issue of diet. A good example of this was a complaint made by a prisoner confined in the Durban Gaol to the Gaol Board on 14 September 1880.<sup>20</sup> The prisoner was a Creole from the Isle of Bourbon, and complained that he was classified as “Indian” instead of as “European”. Initially the Gaol Board approved of this prisoner being placed on the “European” scale of diet. This decision was reversed, however, after the Colonial Secretary had objected: “Why should Philips be rationed as an European when he is, I presume, a man of Indian parentage born in Bourbon. It appears that the terms of the Committal should be adhered to.”<sup>21</sup>

Towards the end of 1884, the problem of how to classify mixed race prisoners again arose.<sup>22</sup> Once more the discussion, which essentially concerned race classification, revolved around the various dietary scales in force. Different systems of race classification were adopted at the Durban and Pietermaritzburg Gaols. According to the District Surgeon of Durban, it was customary in the Durban Gaol “to treat people from St Helena, the Island of Mauritius, and the West Indies, also American coloured people as Europeans”.<sup>23</sup> He believed that this was a good policy since it took into account that, being situated in a busy harbour town, the Durban Gaol was required to accommodate a wider variety of nationalities and races than the Pietermaritzburg Gaol, which was situated in the interior. The Colonial Secretary rejected the argument put forward by the District Surgeon of Durban and, in a comment reflective of the racist conceptions of the time, stated:

19 NAB CSO 215/227: District Surgeon Pietermaritzburg to Resident Magistrate Pietermaritzburg, 21 Jan 1865.

20 NAB CSO 771/3611: Complaint by Prisoner Philips, 14 Sep 1880.

21 NAB CSO 771/3611: Response by Colonial Secretary, 24 Nov 1880.

22 See in general NAB CSO 993/5081.

23 NAB CSO 993/5081: District Surgeon Durban to Resident Magistrate Durban, 24 Jan 1885.

The nationalities you mention are none of them in their own countries accustomed to European diet. The St. Helena lives on yams and fish. The West Indies Negro on plantains, yams and fish (chiefly salt). The Chinese on anything he can get and the Arab on rice, dates etc. Why then should ... they be fed on the same diet as the flesh eating European?<sup>24</sup>

Clearly, the Colonial Secretary wanted to keep the “European” category as exclusive as possible, and preferred the model of racial classification adopted in the Pietermaritzburg Gaol, to that adopted in the Durban Gaol. Whereas in the Durban Gaol mixed race prisoners were classified as “European”, in the Pietermaritzburg Gaol “half castes, known as Dutch Bastards or Cape men, and natives of St Helena and of Mauritius” were classified separately and placed on the dietary scale for “Hottentots”.<sup>25</sup> In a poignant reference to the San people (sometimes referred to as “Bushmen”) who, under pressure from both the white colonists as well as more powerful African tribes, were driven to the brink of extinction in the region, the District Surgeon of Pietermaritzburg noted that Hottentots were “thin small bodied men” who were “more numerous in Pietermaritzburg 20 years ago than at present”.<sup>26</sup> He noted further that such prisoners rarely appeared on the prison register of the Pietermaritzburg Gaol any more, and that the “Hottentot” dietary scale needed to be revised, since it was being applied to “much abler bodied men than the Hottentot ... capable of doing nearly the same work as an European”.<sup>27</sup>

By March 1887, a year after the comments by the District Surgeon of Pietermaritzburg quoted above, the problem remained unresolved. In terms which provide an interesting insight into the conceptions of race prevalent amongst the colonial authorities at the time (reminiscent, perhaps, of the ideological entanglements in which the apartheid authorities became embroiled around a century later, in their efforts to administer a system of rigid racial classification and segregation) the Resident Magistrate of Pietermaritzburg commented as follows on the Hottentot dietary scale, which he described as an anachronism:

The Cape men, Creoles, St Helenas etc. now grouped under the name of Hottentots are the best labourers in the Gaol. Many of them have European blood in their veins; all have been, equally with Europeans, accustomed to animal food. It appears to me most unreasonable as well as unjust, that these people, *only on the grounds of colour*, should be reduced to a diet, which in comparison with that of Europeans is near to starvation.<sup>28</sup>

Eventually, a committee was set up to revise the prison dietary scales. This committee recommended that the categories “European”, “Indian” and “Native” be retained, but

24 NAB CSO 993/5081: Colonial Secretary to Resident Magistrate Durban, 27 Jan 1885. In response to this rather harsh argument put forward by the Colonial Secretary, the District Surgeon replied as follows: “Many of these people have lived a long time in South Africa, and probably have been treated and fed as Europeans, and it might be argued that it would appear somewhat harsh to classify and feed them in the Gaols as Natives of their country are treated and fed.” See NAB CSO 993/5081: District Surgeon Durban to Resident Magistrate Durban, 2 Feb 1885.

25 NAB CSO 993/5081: Report of District Surgeon Pietermaritzburg, 2 Mar 1886.

26 *Ibid.*

27 *Ibid.*

28 NAB CSO 1138/1197: Statement by Resident Magistrate Pietermaritzburg, Mar 1887.

that the “Hottentot” dietary scale be abolished.<sup>29</sup> Following the recommendations of the committee, prisoners were classified into one of the following three categories:<sup>30</sup>

[A]European ... all persons of European descent, Eurasians, natives of St Helena and the Cape, and their descendents (excluding Kafirs), American Negroes, French Creoles, and West Indians.

[B]Indian ... all natives of Hindustan, and their descendents (excluding Eurasians), natives of Madagascar, Mozambique, China, and all other Asiatics.

[C]Native ... natives of South Africa, commonly called Kafirs.

It is interesting to note the existence of such a “sophisticated” system of racial classification, almost a century before the establishment of the apartheid system in South Africa. Furthermore, although the system of classification was ostensibly put in place for purposes of prison diet, it affected the lives of prisoners in other ways, apart from their diet. In 1888, the year after the establishment of this new system of racial classification, it was decided that the definition of “European” would be used to determine which prisoners would be eligible for gratuities for labour performed on public works.<sup>31</sup> In effect, this meant that mixed race prisoners were classified as “European” for purposes of prison labour. Indeed, even in the case of prison accommodation, the above definition of “European” led to a certain amount of racial intermixing.

Twenty years later, towards the end of the colonial period, the system of racial classification within the prisons of Natal changed yet again. This change was in line with the recommendations of the Prison Reform Commission of 1906, which suggested the creation of a separate “coloured” category. The link between prison diet on the one hand, and evolving conceptions of race and racial classification on the other, is clear in the following comments of the Commission:

[I]n the Durban Gaol, where solitary confinement cannot throughout be adhered to, members of the above divergent races, [i.e. Eurasians, natives of St Helena and the Cape (excluding Kafirs), American Negroes, French Creoles, and West Indians] now classified alike as Europeans, may be found confined in the same cell, simply because they are supplied with the same kind and quantity of food.<sup>32</sup>

Clearly, the Prison Reform Commission of 1906 wanted the category “European” to be narrowly defined, and a strict segregation between “Europeans” and other races to be observed. A prisoner who did not fall clearly into one of the three principal categories - “European”, “Indian”, “native” - would automatically fall into the “coloured” category. In effect, the introduction of the new “coloured” category allowed prison authorities to tighten up on the definition of “European”. Of course, it was the definition of “European” which really mattered to prisoners in the gaols of colonial Natal, since this group received

29 NAB CSO 1138/2457: Finding of Committee to Revise Dietary Scales.

30 GN 360 *Government Gazette* 2 Aug 1887.

31 Reg 9 GN 161 *Government Gazette* 20 Mar 1888. Only “Europeans” were permitted to participate in the gratuity mark system.

32 Par 26 Report of Prison Reform Commission: GN 344 *Government Gazette* 5 Jun 1906.

gratuities for work performed, better accommodation and diet, and generally superior treatment to other groups.

Since “pure” racial groups do not in fact exist, the definition and redefinition of racial categories is an artificial process, dependent on the social and political forces in play at a particular time. In the context of the penal system of colonial Natal, conceptions of race and racial classification changed over time, along with changing social and political circumstances. Overall, it may be said that the development of different dietary regimens in the gaols of the Colony provided a mechanism for formalising and institutionalising racial differences and inequalities within the Colony’s prisons. Prison dietary scales reflected these changing social definitions. It should be noted that it was only towards the turn of the century that the colonists were able to gain control of the colonial state and vigorously promote racial segregation by means of legislation.<sup>33</sup> For much of the early colonial period, in the absence of directly legislated divisions between the races, racial segregation and classification within the penal system of colonial Natal was carried out under the guise of a system of prison dietary scales.

### 3 Apartheid period

In the sections which follow, we move forward by more than half a century in order to examine the social meanings attached to food in South African prisons during the apartheid era. As will become apparent, despite the fact that the colonial and apartheid periods are separated by many decades, certain of the main themes examined in the previous section dealing with the colonial period, find resonance in the apartheid period. The first central theme to be examined is the use of food as an expression of power, dominance and control within the prisons of apartheid South Africa. This central theme will be divided into three subsections, starting with a discussion of the manner in which the apartheid prison authorities “took the freedom out of the food”.

#### 3 1 Food as an expression of power, dominance and control: Taking the freedom out of the food

Food is extremely important to prisoners. Smith maintains that “for many prisoners it conditions their life in custody and, in many respects, is symbolic of *the* prison experience”.<sup>34</sup> The lack of dietary choice in prison is often a source of frustration for prisoners, as well as an added punishment, since the ability to choose one’s own food is an important source of personal independence.<sup>35</sup> During the apartheid period in particular,

33 See Bundy *The Rise and Fall of the South African Peasantry* (1979) 183-192.

34 Smith “Punishment and pleasure: Women, food and the imprisoned body” 2002 *The Sociological R* 197.

35 *Idem* at 203. The manner in which prisoners often obsess about food is nicely illustrated in the following quotation by Myrna Blumberg, a white middle-class woman arrested and imprisoned for anti-apartheid activities in South Africa 1960: “We couldn’t be sure whether the cell was wired or not, but considered the chances against it as there seemed to have been little preparation for our arrests. Nevertheless, even if there was only a five per cent chance, we felt an hysterical need for caution, not to involve others, or give anything, God knows what, away. Most of us forgot about it now and then,

the symbolic meanings attached to prison food were frequently heavily laden in terms of political significance, with the prison authorities often consciously using the preparation and presentation of food to demean prisoners, in particular political prisoners, under their control.

One of the most eloquent descriptions of the quality of the food in apartheid prisons is provided by James Kantor in his book *A Healthy Grave*.<sup>36</sup> Kantor, one of the defendants in the famous Rivonia Trial which took place in 1963 (which resulted in Nelson Mandela being sentenced to life imprisonment on 12 June 1964), was a Johannesburg lawyer who had defended political detainees but was himself not involved in any subversive activities. He was arrested and detained by the apartheid authorities out of spite, after his brother-in-law, Harold Wolpe, who was cited as a “co-conspirator” in the Rivonia indictment, escaped from police custody.<sup>37</sup> Kantor provides the following wonderfully descriptive account of his first encounters with South African prison food:

On the floor outside my cell was an enamel Dixie similar to the drinking basin I had received the night before. It was filled almost to the brim with a glutinous white mess which I presumed to be the regulation mealie-meal porridge. Swimming on the top was about a tablespoonful of milk. Next to the dixie was a small loaf of coarse brown bread, which has always been known in prison jargon as kat-kop – cat’s head ... I asked du Preez whether I could have some sugar for the coffee but was told brusquely that, as sugar rations were given only in the evenings, I would have to go without ... I tried the coffee. Goodness knows what it had been made from, certainly not the humble coffee-bean. I hate unsweetened coffee at the best of times, but this brew was positively foul.<sup>38</sup>

Lunch was, apparently, no better:

Outside on the floor was a dixie with some food in it. Next to it was the inevitable kat-kop loaf. I took my food into the cell and saw that the dixie contained a lump of steaming mashed potato and a dollop of cold, soggy, boiled beet. A sniff told me that the third lump in the dixie was minced fish ... The minced fish ... was the *pièce de résistance*. I longed to be able to summon the chef and ram the whole lot down his unimaginative throat, dish and all. What he had obviously done was to take all the gutted fish, cut off the heads and tails and then put them straight through the mincer. The resulting mess consisted of scales, flesh and pieces of bone, the latter in glorious and dangerous profusion.<sup>39</sup>

but we always whispered, whether it was to discuss, in a corner, a possible hunger strike if our cases were not dealt with immediately, or reconstruct over and over again the menu for our planned reunion dinner.” See Blumberg *White Madam* (1962) 77.

36 Kantor *A Healthy Grave* (1967).

37 According to Lionel Bernstein, one of the Rivonia trialists, James Kantor “was a strictly non-political lawyer, uninvolved in any of the events covered by the trial, who had been arrested as an act of petty spite and as surrogate for his brother-in-law, Harold Wolpe, who was cited in the Rivonia indictment as a ‘co-conspirator’, but had escaped from a police cell before he could be charged. There was no case at all against Kantor, and an application for his discharge at the end of the state case succeeded.” See Bernstein “Rivonia: Telling it as it is was” <http://www.anc.org.za/ancdocs/history/trials/rivonia.html> (4 Mar 2010).

38 Kantor (n 36) 41.

39 *Idem* 47-48.

Another eloquent description of the poor quality of the food in the apartheid prisons is provided by Molefe Pheto, who was the director of the Music, Drama, Art and Literature Institute, and was arrested as an alleged communist in 1975. In his memoirs, he describes the food he received at Johannesburg's old "Fort" prison, now a national museum, as follows:

Wednesdays and Sundays were 'special' days. Supper was a mixture of old rotten boiled fish whose stink would reach us, permeating from the prison kitchens, long before the fish itself arrived; and when it did so, it was hardly recognizable as fish, with hundreds of thin bones that made it difficult to eat, quite apart from the disgusting smell of it. The alternative ... was pig-skins boiled with old shrivelled carrots and dirty pale green beans. All this garbage was then ladled on to the foul mealie-meal porridge. On the day it was pig-skins, the fat had long curdled by the time it reached us, with the pieces of skin sticking out of the mess like shark fins.<sup>40</sup>

Clearly, food is more than *just food*. As Anna Trapido points out: "[F]ood is an invaluable social tool for communicating emotional messages."<sup>41</sup> There is an inextricable link between human freedom and food. This link is illustrated by Nelson Mandela in the following simple and eloquent passage:

I was not born with a hunger to be free. I was born free. Free in every way that I could know. Free to run in the fields near my mother's hut, free to swim in the clear stream that ran through my village, free to roast mealies under the stars ...<sup>42</sup>

One of the ways in which food may be used to exercise power, dominance and control over prison inmates is, simply, to rob their food of its positive social meanings – to take the freedom out of the food. This may be achieved by the simple expedient of rendering the food tasteless and monotonous, as is made clear in the following quotation relating to the food given to prisoners detained on Robben Island:

There are many ways to starve. Even when the food on Robben Island was nutritionally adequate, prisoners were aware of the danger of dietary monotony destroying their sense of self. Food has a social as well as a nutritional purpose. All human beings use diet to define who they are. Madiba recognised this in a letter to his wife: 'A human being whatever his colour ... ought never to be compelled toward the taking of meals simply as a duty. This is likely to be the case if the product is poor, monotonous, badly prepared and tasteless.'<sup>43</sup>

It was not only the poor quality of the food that dehumanised the inmates of apartheid prisons. It was also the manner in which the food was served. Nelson Mandela, for example, speaks of a vindictive prison warder by the name of Van Rensburg and states: "When our lunch arrived at the quarry [ie where the prisoners had been performing hard labour] and we would sit down to eat ... Van Rensburg would inevitably choose that

40 Pheto *And Night Fell: Memoirs of a Political Prisoner in South Africa* (1983) 183.

41 Trapido (n 4) xiv.

42 *Idem* xi.

43 *Idem* 109.

moment to urinate next to our food.”<sup>44</sup> Winnie Mandela, who was Nelson Mandela’s wife at the time, makes a similar point about the degrading manner in which food was served to inmates during the apartheid period. She speaks of her experience of being incarcerated in the Pretoria Central Prison as follows:

When we were in jail, they served us food as if they were giving to dogs. They used food to insult us, to demean us, to insult in a manner that so demeaned you that you didn’t feel human – in a manner that said, ‘I am giving you food that I give to pigs and dogs’ ... every day there were cooked mealies and porridge that had maggots. In the mealies, some of the worms weren’t dead. We never saw another vegetable. On the day that they say it’s meat, there is just lard and the fatty part of pork that you can’t eat ... I was hospitalised several times in that prison.<sup>45</sup>

This image of prisoners as dogs is a recurring theme, with a political detainee of British nationality by the name of Quentin Jacobsen invoking this imagery to describe his first impressions of prison utensils. Jacobsen was arrested in 1971 in connection with the production of illegal political pamphlets.<sup>46</sup> Recalling his first day in detention, he describes with horror the prison plates carried by the African prisoners at John Vorster Square:

[V]ery quietly the Africans started to come out ... I saw they were carrying a vast number of dripping aluminium plates, a bit like dog bowls. In fact that describes them very accurately from more points of view than one, because later we had to eat from them and they smelt of grease, like my last dog’s breath.<sup>47</sup>

It should be clear from the examples provided above that, particularly in the case of political prisoners, both the type of food as well as the manner in which it was served to prisoners within apartheid prisons, was meant to rob the daily ritual of eating of its positive social connotations. In an important sense, there seems to have been an effort on the part of the authorities to take the freedom out of the food.

## 4 Conclusion

Part one of this article began its overview of the diverse social meanings attached to food and its consumption within South African prisons, by focusing on prison dietary scales in colonial Natal. In particular, the origins of racially defined punishment were examined through the lens of the ever changing prison dietary scales which characterised

44 *Idem* 99, quoting Nelson Mandela, *Long Walk to Freedom* (1994) 515. Mandela recounts the following amusing anecdote in relation to the vindictive prison warder: “Van Rensburg was widely known by the prisoners as ‘Suitcase’ because like all prison warders he carried his lunch to work with him in a small cardboard suitcase. While the prison warders who worked in the criminal section got prisoners to carry their lunch cases, the political prisoners refused to do so for Van Rensburg and gave him the nickname ‘Suitcase’ because he was forced to carry his own lunch.”

45 *Idem* 120.

46 Jacobsen *Solitary in Johannesburg* (1973) Preface.

47 *Idem* 19.

the colonial period. As conceptions of race developed and changed within colonial Natal, so too did the dietary scales designed to cater for variously defined racial groupings. The article then shifted its focus to the apartheid period, with an exploration of the social meanings attached to prison food during this time. A central theme associated with this period was identified, namely the use of food as an expression of power, dominance and control within South African prisons. The article as a whole divides this central theme into three subsections, one of which was examined in part one of the article. This relates to the manner in which the prison dietary scales during the apartheid period seemed designed to take the freedom out of the food, to rob prisoners' food of all positive social meaning.

Part two of this article will begin with a second subsection of the central theme referred to above, namely the manner in which food, and the withholding thereof, was used actively by the prison authorities as a direct form of punishment. Thereafter, it will deal with a third subsection of the said central theme, namely the manner in which the ideology of apartheid literally penetrated South African prison food. Following this, it will move on to a second central theme, which will examine the manner in which food and its (non-) consumption was employed as an active weapon of resistance, in particular the use of hunger strikes in chipping away at the power of the apartheid prison authorities. Final conclusions will then be drawn to end the article as a whole.

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## **Abstract**

Eating is an activity which is suffused with social meaning, and this is particularly so when it comes to eating in prison. The focus of this article is on the diverse social meanings attached to food and its consumption within South African prisons during the colonial and apartheid periods. On the one hand, food and its consumption was tied up with the assertion of power, dominance and control on the part of the prison authorities. On the other hand, it was linked to resistance and the assertion of solidarity and identity on the part of the inmates. The twisted logic of racial segregation and apartheid may be seen as having permeated the food which inmates were allowed to consume within the South African prisons during the colonial and apartheid periods. The manner in which food played its part in the struggle for liberation within South Africa's apartheid penal system, by means of hunger strikes and other food-related activities, has a flavour all of its own.

## **CHAPTER 2.5**

### **Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal 1845 to 1910.**

#### **CHAPTER 2.5.1**

##### **Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal 1845 to 1910 - Part 1.**

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# LIKE A BAD PENNY: THE PROBLEM OF CHRONIC OVERCROWDING IN THE PRISONS OF COLONIAL NATAL: 1845 TO 1910 (PART 1)

**Stephen Allister Peté\***

## 1 Introduction

Almost two decades after the end of apartheid, chronic overcrowding remains one of the most serious problems facing the South African penal system. For example, the most recent annual report of the Judicial Inspectorate for Correctional Services in South Africa states as follows:

The inmate population in South Africa has been characteristically one of the highest per capita in the world as has been written about in numerous publications including in the Inspectorate's Annual Reports. It is accepted that the over-population of inmates per available infrastructure is a problem in certain centres and then, within such centres, largely in the communal cells and, in some instances, single cells where inmates are "doubled-up" or even "tripled-up". These conditions are unacceptable and have been found to be so during our inspections around the country.<sup>1</sup>

1 *Annual Report of the Judicial Inspectorate for Correctional Services for the period 1 Apr 2013 to 31 Mar 2014* at 37. (See website [http://judicialinsp.dcs.gov.za/Annualreports/Annual%20Report%202013%20-%202014%20\(2\).pdf](http://judicialinsp.dcs.gov.za/Annualreports/Annual%20Report%202013%20-%202014%20(2).pdf) (accessed 22 Jan 2015).) Figures setting out the precise

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Overcrowding is, quite simply, a scourge which bedevils efforts to ensure that imprisonment in South Africa is, at the very least, a humane form of punishment. At various times during the post-apartheid period the extent of overcrowding in South African prisons has been sufficiently serious so as to raise doubts as to the constitutionality of this form of punishment. In 2004, for example, Jonny Steinberg conducted research on behalf of the Centre for the Study of Violence and Reconciliation into prison overcrowding and the constitutional right to adequate accommodation in South Africa. At the outset of his paper detailing the results of his research he gave the following sobering assessment:

At risk of second-guessing a jurisprudence which is yet to emerge, it seems clear that the extent of overcrowding in South Africa's prisons places the incarceration of the vast majority of this country's inmates in violation of constitutional standards, no matter how low these standards are set.<sup>2</sup>

extent of overcrowding are not provided in the 2013/2014 report. An examination of the 2012/2013 report, however, reveals that during that particular year, the total South African prison population amounted to 153,049 prisoners, whereas the system as a whole was designed to accommodate just 119,890 persons (see the *Annual Report of the Judicial Inspectorate for Correctional Services for the period 1 Apr 2012 to 31 Mar 2013* at 40. See website <http://judicialinsp.dcs.gov.za/Annualreports/ANNUAL%20REPORT%202012%20-%202013.pdf> (accessed 4 Feb 2015).) This means that South African prisons were approximately 128% overcrowded during the 2012/2013 year. It is interesting to note that the total prison population in South Africa as at 31 Mar 2014 amounted to 154 648 prisoners (*Annual Report of the Judicial Inspectorate for Correctional Services for the period 1 Apr 2013 to 31 Mar 2014* at 38. See website [http://judicialinsp.dcs.gov.za/Annualreports/Annual%20Report%202013%20-%202014%20\(2\).pdf](http://judicialinsp.dcs.gov.za/Annualreports/Annual%20Report%202013%20-%202014%20(2).pdf) (accessed 22 Jan 2015).) It is further interesting to note certain comments made on 11 Feb 2013 by the Minister of Correctional Services, Sibusiso Ndebele. He was reported as stating that South Africa had the highest prison population in Africa and that the country was "currently ranked ninth in the world in terms of prison population, with approximately 160 000 inmates". (See *Mail & Guardian Online* available at <http://mg.co.za/article/2013-02-11-south-africa-has-highest-prison-population-in-africa-says-ndebele> (accessed 12 Feb 2013).)

- 2 J Steinberg *Prison Overcrowding and the Constitutional Right to Adequate Accommodation in South Africa* (Paper commissioned by the Centre for the Study of Violence and Reconciliation) Jan 2005 at 1. Steinberg went on to examine the space available in South African prisons as at 31 Jul 2004, and pointed out that just under 2,1 square metres of floor space was available to each prisoner confined in an average communal cell. He went on to point out that, in Europe, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the body charged with monitoring compliance to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, had set four square metres per prisoner in a communal cell as a bare minimum standard. This meant that, at the time in question, "the average South African prisoner in a communal cell thus occupies just over half the floor space considered a bare minimum in the CPTs jurisdiction" (at 2). Steinberg pointed out that, although the constitutionality of prison accommodation could not be judged simply on the basis of available floor space, "when floor space per prisoner diminishes to the extent that it has in South Africa, even the most reticent and cautious courts have ruled, on an adjudication of floor space alone, that prison conditions are degrading or cruel" (*ibid*).

Clearly, Steinberg's research was conducted at a time of particular crisis in relation to overcrowding within South Africa's penal system. Despite the fact that the gravity of the problem has fluctuate over time, it has remained of serious concern to both the prison authorities and South Africa's leading penologists throughout the post-apartheid period. The dogged persistence of this problem during the post-apartheid period is well illustrated in the following extract from a 2006 research report by Chris Giffard and Lukas Muntingh, in which they summarise trends in overcrowding within South Africa's prisons during the country's first decade of freedom

The total number and proportion of prisoners living in prisons that are overcrowded have increased substantially since 1995. It is only the special remissions of 2005 that have brought some respite ... [E]ven though the proportion of prisoners living in conditions of between 100% and 200% occupancy slowly decreased from 1996 to 2004 (a trend ended by the remission), this decrease has been at the expense of the proportion of prisoners living in conditions of occupancy rates more than 200%: those detained in prisons which have more than twice as many prisoners than they were intended for increased from just 1% in 1995 to 36% in 2004 ... Of equally great concern is the proportion of prisoners detained in institutions in which there are three times as many prisoners than capacity allows. There were no prisoners in this category until 1997, but by 2004 as many as 5% of all prisoners (a total of over 9000) were held such facilities. The special remissions reduced this number only slightly, to just less than 8 500.<sup>3</sup>

Prison overcrowding is not, however, solely a feature of the post-apartheid period. During the apartheid period, the problem plagued the National Party government and its prison authorities, providing those opposed to the apartheid system with the

- 3 See C Giffard & L Muntingh *The Effect of Sentencing on the Size of the South African Prison Population* (Report commissioned by the Open Society Foundation for South Africa) 2006 at 64-65. See, also, in general, J Steinberg (n 2); J Redpath "Unsustainable and unjust – criminal justice policy and remand detention since 1994" (2014) 48 (June) *SA Crime Quarterly* at 25-37; C Ballard *Research Report on Remand Detention in South Africa: An Overview of the Current Law and Proposals for Reform* (Community Law Centre: University of the Western Cape, 2011); S Johnstone-Robertson, SD Lawn, A Welte, L-G Bekker & R Wood "Tuberculosis in a South African prison: A transmission modelling analysis" (2011) 101(11) *South African Medical J* at 809-813; D van Zyl Smit "Swimming against the tide: Controlling the size of the prison population in the new South Africa" in B Dixon & E van der Spuy (eds) *Justice Gained? Crime and Crime Control in South Africa's Transition* (Cape Town, 2004) at 227-258; D van Zyl Smit "National report – South Africa" in D van Zyl Smit & F Dünkel (eds) *Imprisonment Today and Tomorrow – International Perspectives on Prisoners' Rights and Prison Conditions – Second Edition* (Kluwer Law International, 2001) at 589-608; S Peté "The politics of imprisonment in the aftermath of South Africa's first democratic election" (1998) 1 *South African J of Criminal Justice* 51-83 (hereafter Peté "Politics"); S Peté "The good the bad and the warehoused – The politics of imprisonment during the run-up to South Africa's second democratic election" (2000) 13(1) *South African J of Criminal Justice* 1-56 (hereafter Peté "The good"); S Peté "Between the devil and the deep blue sea – The spectre of crime and prison overcrowding in post-apartheid South Africa" (2006) 27(3) *Obiter* 429-453 (hereafter Peté "Devil").

means to launch a series of ideological attacks on the apartheid regime.<sup>4</sup> Aspects of the apartheid system clearly contributed to the problem of prison overcrowding during this period – for example the thousands of people imprisoned under the infamous pass laws.<sup>5</sup> But the problem of prison overcrowding in South Africa did not start with the rise of apartheid. It can be traced back much earlier than this, to the very introduction of this form of punishment into South Africa by the colonial authorities. It is the aim of this article to examine just one of the four British colonies which were joined together to form the Union of South Africa in 1910, in order to illustrate the manner in which chronically overcrowded prisons, as well as countless debates on the problem, remained a feature of colonial life throughout the period during which the colony was in existence. The colony in question is the Colony of Natal and the period under examination is from the time of the introduction of British administration in 1845, following the annexation by the British Empire three years earlier in 1842, until the Union of South Africa came into existence in 1910. By shedding light on this one small part of South Africa’s penal history, it is hoped that this article will contribute to a more nuanced understanding of the problem of chronic overcrowding in South African prisons.<sup>6</sup> Part 1 of the article will cover the period 1845 to 1875, while Part 2 will cover the period 1875 to 1910.

- 4 See, in general, S Peté “Holding up a mirror to apartheid South Africa – Public discourse on the issue of overcrowding in South African prisons 1980 to 1984 – Part One” (2014) 35(3) *Obiter* 485-505. See also Part Two of this article, which is due to be published in (2015) 36(1) *Obiter*. A clear indication of the continued severity of prison overcrowding in South Africa throughout both the apartheid and post-apartheid periods, is the fact that both periods are marked by a succession of “special amnesties” – colloquially known as “bursting” – designed to relieve pressure on an overstretched penal system. Giffard & Muntingh (n 3) at 56-57 summarise the use of special amnesties to reduce severe overcrowding in South Africa from the early 1970s as follows: “In conditions of severe overcrowding (180%) in 1971, about 13 000 sentenced prisoners were given between three and six months amnesty. A further 28 000 sentenced prisoners were released in 1981, and in total, nearly 88 000 more between then and the first democratic elections in 1994. Between 1994 and the end of 2000, a further estimated 49 000 prisoners were released, including 8 000 unsentenced prisoners who had been granted bail of less than R1000, and there were also amnesties for certain politically motivated violent offences. In 2005, a special remission of sentence was granted to prisoners who were serving sentences for non-violent offences. This eventuated in the release of nearly 32 000 sentenced offenders, reducing the total prisoner population from an all-time high of 187 000 to a more manageable 155 000.”
- 5 See, in general, S Peté (n 4). Many must have hoped that the end of apartheid would bring an end to chronic overcrowding in the prisons, but as is indicated by the following comment in Feb 2013 by the Minister of Correctional Services, Sbu Ndebele, this was not to be: “That our offender population has remained constant, whether you remove pass laws, group areas, or apartheid laws, should make us search more urgently for answers to the high prison population in South Africa”: see *Mail & Guardian Online* available at <http://mg.co.za/article/2013-02-11-south-africa-has-highest-prison-population-in-africa-says-ndebele> (accessed 12 Feb 2013).
- 6 For an analysis of prison overcrowding in the context of the African continent as a whole, including a very brief summary of overcrowding in the prisons of colonial Natal, see S Peté “A brief history of human rights in the prisons of Africa” in J Sarkin (ed) *Human Rights in African Prisons* (Cape

## 2 Background and Early Years 1845-1860

Any discussion of penal policy requires some understanding of the social, political and economic context within which that penal policy is shaped and implemented. The first point to be noted in relation to the penal policy of colonial Natal is that the annexation of Natal by the British in 1842 was carried out, primarily, to thwart the ambitions of Afrikaner Voortrekkers who were intent on establishing control over the area. It was with some reluctance that the Colony of Natal was added to the British Empire, since the British colonial authorities did not believe that the new colony held out much prospect of financial gain for the mother country. Because of this, the administration of the colony was conducted, by and large, “on the cheap”, with the Imperial Government determined to keep costs to a minimum.<sup>7</sup> As will be seen in the sections which follow, colonial officials stationed in Natal were forced, time and again, to plead with the Imperial Government in London for the necessary funds to build additional prison accommodation. These pleas were often either rebuffed by the Imperial authorities or else acceded to only in part, in a half-hearted and begrudging manner. The fact that the colonial state was permanently weak due to lack of sufficient finances was a major factor which shaped penal policy in the Colony of Natal and affected the degree of overcrowding in the gaols.

Another major factor which affected penal policy in colonial Natal was the relationship which existed between various political and economic interest groups in the colony. The most important of these interest groups was a large class of African subsistence farmers, who were essentially peasant producers engaged in the homestead system of production.<sup>8</sup> The efficiency of this mode of production meant that peasant producers were well able to produce sufficient surplus to maintain their economic independence. To the British government, it made sound financial sense to retain the system of peasant production, since revenue obtained from these producers could offset expenditure in the new colony. The British government decided, therefore, to adopt a system of “indirect rule”, as advocated by Theophilus Shepstone, who later became the Secretary for Native Affairs in the Colony. This allowed the consolidation of Zulu social structures within the colonial system and the continued existence of a strong class of peasant producers.<sup>9</sup> Certain powerful economic interests within the

Town, 2008) 40-66 at 46-48 and 53-55. Further, for an analysis of prison overcrowding during the apartheid period, see, in general, S Peté (n 4). Finally, for an analysis of prison overcrowding during the post-apartheid period, see Peté “Devil” (n 3) at 429-453 *passim*.

- 7 See EH Brookes & C De B Webb *A History of Natal* (Pietermaritzburg, 1965) at 29-41; D Welsh *The Roots of Segregation – Native Policy in Colonial Natal 1845 to 1910* (Cape Town, 1971) at 7-9.
- 8 See J Guy “The destruction and reconstruction of Zulu society” in S Marks & R Rathbone (eds) *Industrialisation and Social Change in South Africa: African Class Formation, Culture and Consciousness 1870-1930* (New York, 1982) at 168-169; S Marks & A Atmore *Economy and Society in Pre-Industrial South Africa* (London, 1980) at 113-114.
- 9 See Welsh (n 7) at 7-30.

white ruling class were also in favour of the continued existence of the Zulu peasant producers. Among these were absentee speculators who owned large sections of land in the colony, and who found that the easiest way to make a profit was to allow the Zulu subsistence farmers to continue utilising the land in return for rent.<sup>10</sup> Due to a desire to maintain trade, merchants in the colony were also inclined to support the continued existence of the Zulu subsistence farmers. With the Imperial government and several powerful economic interest groups on their side, the Zulu subsistence farmers in Natal were able to avoid becoming involved in wage labour for the white colonists for much of the nineteenth century.

The independence of the Zulu subsistence farmers was bitterly resented by the white farmers of the colony, since they were deprived of all the advantages which would be offered by cheap black labour. Over the years these white farmers and their allies waged a bitter struggle to narrow the options available to the black peasant producers, and so force them into the service on their farms.<sup>11</sup> The white stock farmers of the interior were more strident in their views than the coastal sugar farmers, since the latter were somewhat pacified by the importation of Indian indentured labour, from 1860 onwards, to work on the sugar cane fields. According to Shula Marks, the stock farmers were inclined “to be far more radical in their views than the officials, planters, or townsmen” and they “regarded the failure of Africans to work for them virtually as a criminal offence”.<sup>12</sup> The white farmers desired a coercive labour system based on racial lines and sought every opportunity to secure a reliable supply of cheap black labour. In general, the social relations between the white colonists and the indigenous population of the colony were deeply coloured by the coercive nature of the economic relationships which the colonists wished to enforce over the reluctant black populace. Generally speaking, the ideology of the white colonists was dominated, on the one hand, by a deeply ingrained fear of the massive Zulu nation on their doorstep and, on the other hand, by racist paternalism towards the childlike black “savages” who needed to be “civilized” by the superior white race.<sup>13</sup>

The powerful mix of fear, racist paternalism, and extreme frustration at the reluctance of the indigenous inhabitants of Natal to become docile and obedient workers, was bound to influence ideologies of punishment within the colony. Whereas penal theory in Britain may have been based on the idea that offenders were to be rehabilitated by means of imprisonment within the so-called “separate system” – discussed further below – the social system of colonial Natal was based

10 See Brookes & Webb (n 7) at 50-57. This practice was known by the racist term “Kafir Farming”. See Marks & Atmore (n 8) at 162-163.

11 See Marks & Atmore (n 8) at 158-160.

12 See S Marks *Reluctant Rebellion: The 1906-1908 Disturbances in Natal* (Oxford, 1970) at 15, 17.

13 See S Peté & A Devenish “Flogging, fear and food: Punishment and race in colonial Natal” (2005) 31(1) *J of Southern African Studies* 3-21; S Peté “Punishment and race: The emergence of racially defined punishment in colonial Natal” (1986) 1(2) *Natal University Law and Society Review* 99-114. See, also, Marks (n 12) at 3-26.

upon white domination, meaning that colonial penal theory sought to emphasise white sovereignty through the firm punishment of black offenders. In general, white colonial opinion favoured harsh corporal punishment and forced labour as forms of punishment suitable for black offenders, rather than imprisonment. The latter form of punishment was seen as a “humane” European-style of correction, which did not quite fit the realities of colonial society. Throughout the colonial period there was a conflict between the Imperial authorities on the one hand, constantly urging penal reform in order to bring the colony into line with “accepted penal practice”, namely the best practice in England at the time, and the white colonists on the other, who complained bitterly and in racist terms that imprisonment had no effect on the idle and ignorant indigenes. To the white colonists in Natal, the officials in England who prescribed the “proper” forms of punishment for black offenders were guilty of a deeply misguided sentimentalism. The colonial state stood in the middle of these two ideological forces – on the one hand having to implement the instructions handed down by the Imperial authorities, and on the other hand having to resist political pressure brought to bear by the white colonists. Before Natal was granted responsible government status in 1894, the balance of power in this ideological conflict rested with the Imperial authorities, but thereafter it shifted in favour of the white colonists.

An important reason for overcrowding in the prisons of colonial Natal was an explosive growth of the prison population over the years of the colony’s existence. One of the main reasons why Natal’s prison population grew so rapidly, was the coercive nature of social relations – as sketched above – between the indigenous inhabitants of the region and the white colonists. Resistance on the part of the indigenous inhabitants led to the imprisonment of large numbers of Africans for petty offences. A significant reason for this was that, throughout the colonial period, prisons were used as a means of exercising social control over the indigenous population of the colony.<sup>14</sup> In other words, Natal’s gaols were, in general, overcrowded with offenders against social control legislation – such as the Masters and Servants Ordinance; the Pass Laws; and the Borough Bye Laws rather than with “criminals” in the true sense of the word.<sup>15</sup> As was to happen a century later during the apartheid period,

14 This was to become a recurring theme in the penal history of South Africa as a whole. See, eg, in general, Peté (n 4).

15 See, in general, J Riekert *The Natal Master and Servant Laws* (unpublished LLM thesis, University of Natal: Pietermaritzburg, 1983). Similar processes were at work in other parts of the country. C van Onselen makes the following perceptive comment about the close inter-relationship between the mechanisms of economic coercion – in his example the mine compounds of the Witwatersrand – and the mechanisms of social coercion – namely the prisons: “[Economic forces] prised black South Africans off their land, separated them from their families, reduced them to the status of workers, and then ruthlessly reallocated them to the towns. There, on the bureaucratic leash of the pass laws, they were soon exposed to two sociologically similar institutions which served the

countless numbers of ordinary black residents in the Colony became victims of the petty rules and regulations designed by the white colonists to keep control over the black population. Persons swept up in this dragnet of petty rules and regulations were often unable to pay the stipulated fines, and so ended up in the colony's overcrowded gaols. Many prisoners were not criminals but victims of economic forces beyond their control, forced to seek wage labour in towns or on farms controlled by the white colonists, before falling foul of the restrictive legislation designed to keep a tight rein on the black labour force, or some other petty measure aimed at the "protection" of white society. Sometimes low-level strife erupted into all-out war or rebellion – for example, the Langalibalele Rebellion of 1873; the Anglo-Zulu War of 1879; the Anglo-Boer War of 1899; and the Bambata Rebellion of 1906. Each of these events delivered a shock to the penal system of colonial Natal, and led to an influx of prisoners into already overcrowded prisons.

With the above as general background, we turn now to a few brief remarks on prison overcrowding in the first fifteen to twenty years of the colony's existence. Details of the birth of the prison in colonial Natal have been set out elsewhere and need not detain us here, apart from highlighting certain points relating to overcrowding.<sup>16</sup> The first "prisons" in the colony – perhaps better described as lock-up houses – consisted of a few wattle-and-daub cottages, at least one purpose built by the Voortrekkers before the arrival of the British, but others simply rented from local residents.<sup>17</sup> Initially, the number of offenders who had the misfortune to end up in one of these "gaols" was very low. For example, there were only five

rapidly industrialising economic system particularly well – the prisons and the mine compounds": see C van Onselen *Studies in the Social and Economic History of the Witwatersrand 1886 to 1914* (Johannesburg, 1982) at 171.

- 16 For more details on the birth of the prison in colonial Natal, see S Peté "Falling on stony ground: Importing the penal practices of Europe into the prisons of colonial Natal (Part 1)" (2006) 12(2) *Fundamina* 100-112 at 101-106.
- 17 The "Tronk" in Pietermaritzburg was described by AF Hattersley as "a wattle-and-daub structure, flanked with sod walls and surrounded by a pleasant garden, – not in the least suggestive of the rigours of prison life": see *Portrait of a City* (Pietermaritzburg, 1951) at 9-10. The Gaol in Durban, a wattle-and-daub building rented from a certain Mr Dand in 1849 (the previous lock-up having been rented from a Mr Benningfield in 1847), was described by the *Natal Witness* as "a low cottage, overgrown with creepers, fronted by a thick, verdant and lofty hedge". See 18 Apr 1851 *Natal Witness*. Despite these idyllic descriptions, life for inmates could clearly be unpleasant. One of the earliest complaints about prison conditions in Natal came from a group of ten traders who were locked up in the Pietermaritzburg "Tronk" in 1842 when the Boers were still in charge of the town. They complained to the Boer Commandant-General *inter alia* as follows: "We humbly submit to you and hope you will take into consideration and kindly ease us of being chained during the day and of the intolerable stench caused by our being obliged to ease ourselves inside the Tronk, this with being confined with closed windows which may soon cause a disease fatal to us and perhaps spread through the whole town." See E Goetzche *The Father of a City: The Life and Times of George Cato, First Mayor of Durban* (Durban, 1967) at 47-48.

prisoners in the Pietermaritzburg Gaol in February 1846.<sup>18</sup> As the years went by, however, the number of prisoners began to rise and the accommodation provided by the rustic cottages became increasingly inadequate. For example, in February 1859, Lieutenant-Governor Scott described the Pietermaritzburg Gaol as “in every respect unsuited for the present wants of the Colony” and informed the Imperial authorities in London that “there is now a pressing need for better provision being made for prisoners, not only in Pietermaritzburg, but also in Durban and elsewhere”.<sup>19</sup> On 3 June 1861, in his opening address to the Legislative Council, the Lieutenant-Governor alluded to the fact that growth in the Colony had resulted in “our great deficiency in prison accommodation”, which he described as “more and more conspicuous amongst the pressing requirements”.<sup>20</sup> Although the construction of purpose built prisons to replace the wattle-and-daub structures of earlier times began in the first half of the 1860s, certain gaols remained dilapidated and overcrowded well into this period.<sup>21</sup> As late as February 1864, for example, the Durban gaoler reported that thirty-six prisoners were forced to occupy the seven rooms which were available in the antiquated gaol. Racial segregation was firmly in place within the Durban Gaol at this time, with white prisoners being kept apart from black prisoners. As was to be expected in a colony dominated by racist ideology, white prisoners were shielded from the very worst effects of the overcrowding. According to the Durban Gaoler, whilst a particular room in the gaol might accommodate as many as nine black prisoners, “there would not be more than six white men in such a room”.<sup>22</sup> It is clear, therefore, that the general suffering inflicted on prisoners due to severely overcrowded conditions, was much harsher in the case of black prisoners than their white counterparts.

### 3 Chronic Overcrowding and the Failure to Introduce the “Separate System” into the Penal System of Colonial Natal in the 1860s and early 1870s

An enduring theme within the discourse surrounding imprisonment in colonial Natal during the 1860s and early 1870s was a series of calls by the Imperial authorities in England, directed at the Government of Natal, to introduce the so-called “separate

18 *Irish University Press Series of British Parliamentary Papers – Colonies Africa* (Shannon, 1971) vol 28 *Natal* at 65: West to Maitland, 24 Feb 1846. Martin West had taken up his duties as the first Lieutenant-Governor of Natal in Dec 1845.

19 NAB (KwaZulu-Natal Pietermaritzburg Archives Repository) Colonial Office (London) 179/51: Scott to Lytton, 4 Feb 1859.

20 7 Jun 1861 *Natal Witness*.

21 Construction of a new Central Gaol in Pietermaritzburg was begun in Jan 1861, while construction of a new gaol in Durban only started in Nov 1864. See 22 Nov 1864 *Natal Witness*.

22 NAB CSO (Colonial Secretary’s Office, Natal) 196/327: Report of Durban Gaoler, 12 Feb 1864.

system” into the gaols of the colony.<sup>23</sup> These calls were, however, doomed to failure as a result of the ever increasing prison population, as well as scepticism on the part of the white colonists in general. For the latter, although the “separate system” might be necessary in the punishment of “European” offenders, who needed to be rehabilitated before they could be re-accepted into the fold of white colonial society, in the case of “non-European” offenders the lessons needed could be taught most effectively by the cat-ò-nine-tails, as well as by forced productive labour for the colonial state and/or for white colonial society in general. In the eyes of the white colonists, who lived in a society stratified along strict racial lines and dominated by racist ideology, “rehabilitation” for the latter category of prisoners consisted in knowing who was the “master” and who the “servant”, as well as in understanding that the economic future of “non-Europeans” lay in wage labour for the white man.

The insistence of the Imperial authorities that the “separate system” be introduced into the gaols of colonial Natal was based upon what was at the time believed to be “best practice” in the treatment and rehabilitation of offenders in England. During the 1860s an extensive and widespread investigation was conducted by the Imperial authorities in order to determine whether or not the various penal practices of the many British colonies conformed to the model provided by the penal practices of the mother country. In 1863, two reports were sent to the colonies describing what was believed to be the “state of the art” in relation to methods of punishment.<sup>24</sup> The purpose of sending these reports to the colonies was clearly to enable the colonies to copy these state of the art methods.

In 1865, questionnaires were sent to all British colonies in order to gather information on the different penal practices which were in operation across the Empire. The information received was used to compile what came to be known as the “Digest and Summary of Information respecting Colonial Prisons” (hereafter referred to as the Digest).<sup>25</sup> Two principles which were particularly stressed in the Digest were the principle of “strictly penal labour” – for example, non-productive labour on a “treadwheel” or “crank” or at “shot drill” – and the principle of strict separation of prisoners, one from another – the “separate system” – which was regarded as fundamental to prison discipline.<sup>26</sup> The inescapable implication of the

23 For a more general discussion of the penal reforms proposed by the Imperial authorities during the period 1865 to 1867, including in particular the issue of penal labour, see Peté (n 16) at 107-111.

24 These reports were the “Report of the Committee of the House of Lords on the State of Discipline in Gaols” and the “Report of the Royal Commission on Penal Servitude”. See NAB Government House, Natal 359/2: Circular Despatch Newcastle to Scott, 19 Oct 1863; and NAB Government House, Natal 358/162: Circular Despatch Newcastle to Scott, 19 Aug 1863.

25 See NAB Imperial Blue Book – Digest and Summary of Information Respecting Colonial Prisons (drawn up and presented to the British Parliament by Command of Queen Victoria in 1867, C3961 of 1867) at 4: Circular Despatch Cordwell to Maclean, 16 Jan 1865.

26 For details on the introduction of strictly penal labour into the prisons of colonial Natal, see Peté (n 16) at 100-112; S Peté “Falling on stony ground: Importing the penal practices of Europe into the prisons of Colonial Natal – Part Two” (2007) 13(2) *Fundamina* 111-125.

latter principle for prison accommodation was that a sufficient number of cells had to be built so as to allow each prisoner be confined in a separate cell.<sup>27</sup> Clearly, in a financially strapped colony such as Natal where the prisons were already overcrowded, this was always going to be a tall order. What made it even more difficult was the fact that the white colonists saw no good reason to treat African prisoners in the same manner that “European” prisoners were treated in England. For their part, the Imperial authorities remained resolutely wedded to the principle of separation.<sup>28</sup>

The response of the authorities in Natal to the insistence of the Imperial authorities in London that the principle of separation as set out in the Digest be implemented in the colony, was very negative.<sup>29</sup> There were not nearly enough cells in the penal system to allow prisoners to be kept apart at night, and during the day most prisoners worked together in gangs on public works. In any event, most colonists believed that the “separate system” would be wasted on “non-European” prisoners, who were not so much in need of being rehabilitated into society, as in need of a swift harsh lesson as to who was in charge of the colony – namely the white colonists – and what the role of “non-Europeans” in the colony actually was – namely to provide a source of cheap labour for the white colonists.<sup>30</sup> To the colonial mind, the “separate system” only made sense if it meant reserving separate cells for white prisoners. In other words, in the overcrowded conditions of a colonial prison, a single cell was something of a “luxury” for selected (white) prisoners, rather than a necessity for all prisoners.

On 19 November 1868 a Commission of Enquiry was appointed to investigate the reform of Natal’s penal system. The Commission confirmed that it was impossible to carry out the separate system in either the Durban or the Pietermaritzburg Gaol,

27 M Ignatieff *Just Measure of Pain* (New York, 1978) at 102 describes the attraction of the “separate system” to prison authorities in England as follows: “Solitary confinement was designed to wrest the governance of prisons out of the hands of the inmate subculture. It restored the state’s control over the criminal’s conscience. It divided convicts so that they would lose the capacity to resist both in thought and action.”

28 They clearly believed the following principal stated in the Digest: “It has been recognised too long and too widely to be now disputed that good discipline is impracticable and corruption certain where prisoners are in communication with each other, and that separation is the only basis for a sound penal system.” See NAB Imperial Blue Book – Digest and Summary of Information Respecting Colonial Prisons (drawn up and presented to the British Parliament by Command of Queen Victoria in 1867, C3961 of 1867) (n 25) at 65 IV.

29 See, eg, NAB Colonial Office, London 179/89: Keate to Buckingham, 6 May 1868: Enclosure – Report of Colonial Engineer, 26 Dec 1867.

30 A good example of the general rejection of the “separate system” by the colonial authorities is the following opinion of the Colonial Engineer that the separate system would not be “particularly advantageous in the case of Kafirs and Coolies who form the great majority of prisoners in Natal. Provision for enforcing this system, however, in particular cases and especially amongst persons of European blood is very desirable ...”: see NAB Colonial Office, London 179/89: Keate to Buckingham, 6 May 1868: Enclosure – Report of Colonial Engineer, 26 Dec 1867.

because of lack of accommodation. In the Pietermaritzburg Gaol at this time, seven cells were occupied by twenty-two white prisoners, whereas forty black prisoners were forced to live in only ten cells.<sup>31</sup> Furthermore, due to financial constraints, there was not much hope of more prison accommodation being built. The Commission pointed out that “in the present financial state of the Colony there is no probability that new gaols would be constructed”.<sup>32</sup>

The situation did not improve over the years which followed. In 1872 the Durban Gaol was overcrowded to such an extent that only 176 cubic feet of space was available for each prisoner. The Digest laid down that 900 cubic feet of space per prisoner was suitable for prisoners in England, while even more space was necessary in tropical climates.<sup>33</sup> This was the lowest figure of all the Natal gaols and compared very unfavourably with the figure for the Pietermaritzburg Gaol, namely 696 cubic feet per prisoner.<sup>34</sup> Overcrowding had many adverse effects; for example, since there was no infirmary at the Durban Gaol, the general overcrowding resulted in the cells which were allocated to sick prisoners also being overcrowded. On 5 November 1872, in a chilling comment, the Durban Gaol Board stated that “in some cases it is to be feared that life has been sacrificed for want of proper accommodation for the sick”.<sup>35</sup> Of course, with the overcrowding in Natal’s gaols, it was impossible to introduce the separate system, although the Imperial authorities continued to urge that this problem be rectified.<sup>36</sup> On 30 July 1873 the Secretary of State, Lord Carnarvon, expressed his concern at the lack of prison accommodation in Natal and recommended that the Lieutenant-Governor give the matter his “early and serious consideration”.<sup>37</sup> Within a few months of this despatch being sent, the problem of chronic overcrowding in the two central gaols of the colony was to become worse than ever, as these gaols were flooded with “rebel” prisoners who were captured and incarcerated following the “Langalibalele Rebellion” of 1873.

31 NAB CSO 324/304: Evidence of Superintendent Pietermaritzburg Gaol to Commission of Enquiry appointed on 19 Nov 1868.

32 *Idem* at 3.

33 NAB Imperial Blue Book – Digest and Summary of Information Respecting Colonial Prisons (drawn up and presented to the British Parliament by Command of Queen Victoria in 1867, C3961 of 1867) (n 25) at 84 XVI.

34 NAB Natal Blue Book, 1872: AA8 point IV.

35 NAB CSO 424/2228: Meeting of Durban Gaol Board, 5 Nov 1872.

36 The Natal Blue Book for 1872 stated as follows: “None of the prisons are on the separate system. The separation enforced, where the gaol accommodation admits of it, is that of sexes and races. Prisoners on remand are also, where practicable, kept apart from convicted prisoners. All male prisoners sentenced to hard labour are worked in association.” See NAB Natal Blue Book, 1872: AA8 point I.

37 Government House Natal 58/Despatch 350 KwaZulu-Natal Archives Pietermaritzburg Archives Repository: Kimberley to Pine 30 Jul 1873.

## 4 The Langalibalele Rebellion of 1873 and its Effect on Prison Overcrowding

An infrequent yet important factor contributing over the decades to chronic overcrowding in the prisons of colonial Natal was the outbreak, from time to time, of war or serious rebellion within the colony. An important example of one such “rebellion” was the so-called “Langalibalele Rebellion” of 1873 which led to the imprisonment of a large number of African “rebels” in prisons of the colony. Clearly, the “rebels” were not “criminals” in the strict sense of the word. This being the case, it was inappropriate for them to be confined in gaols of the colony, which were already bursting at the seams with conventional “criminals”. After both the Langalibalele Rebellion and the Bambata Rebellion, the Natal governmental authorities took steps to keep the “rebels” out of the penal system. Each rebellion will be examined in turn.

The events which came to be known as the “Langalibalele Rebellion” took place towards the end of 1873. Langalibalele was the chief of the Hlubi tribe which occupied land in the foothills of the Drakensberg mountains near Champagne Castle and Cathkin Peak. Following a dispute with the local magistrate over unregistered guns in the possession of his tribesmen, Langalibalele ignored an order to report in person to the authorities in Pietermaritzburg. In the eyes of the authorities this amounted to open rebellion. A force consisting of 200 British troops, 300 colonial volunteers, and 6 000 African tribesmen was sent to quell the “insurrection”. During the ensuing battle, between 150 and 200 of the Hlubi were killed. Langalibalele and one of his sons were banished to Robben Island and 200 Hlubi tribesmen were imprisoned.<sup>38</sup>

The increase in the prison population due to the sudden influx of “rebel” prisoners placed great strain on Natal’s already overcrowded gaols. On 30 December 1873, the Pietermaritzburg Gaoler reported that he had been forced to confine the “rebel” prisoners as follows:

... 24 in the carpenter’s shop, 12 in a tent and 9 in a small shed, making in all 45 in the Gaol yard.<sup>39</sup>

He pointed out that “the rebel chief may be expected soon, and the confinement of prisoners in the Gaol yard is to say the least dangerous ...”.<sup>40</sup> Forty-eight prisoners were transferred to Durban to make room for the “rebel” prisoners, and five additional staff members were appointed at the Durban Gaol to cater for the increase in the prison population.<sup>41</sup> Langalibalele was subsequently confined in the Pietermaritzburg Gaol for a time, amid intense speculation on the part of the local African population

38 Brookes & Webb (n 7) at 113-123.

39 NAB CSO, 459/3127: Superintendent Pietermaritzburg Gaol to Colonial Secretary, 30 Dec 1873.

40 *Ibid.*

41 NAB CSO 460/97: Superintendent Durban Gaol, 8 Jan 1874.

that he would escape somehow. This speculation was caused by two unusual natural phenomena which happened to occur at this time, namely an eclipse of the sun, followed by a fierce hailstorm. According to the *Natal Witness* the local African population believed both these phenomena to be the work of Langalibalele.<sup>42</sup> The eclipse was seen as an attempt by Langalibalele to bring total darkness to the earth, under cover of which he might be rescued by his followers. He was believed to have caused the hailstorm in an attempt to break open the roof of the gaol in which he was imprisoned. Needless to say, neither Langalibalele nor any of the imprisoned Hlubi tribesmen were able to escape. The overcrowded conditions in the prisons remained of major concern to the authorities at the time.

One of the consequences of the Langalibalele Rebellion was the passing of Law 18 of 1874, with the following self-explanatory title: “To make Special Provision with regard to the Employment of Convicts”.<sup>43</sup> Under this law the Lieutenant Governor was authorised to assign any convict who had been sentenced to hard labour, as a servant to any private individual or to the Colonial Engineer, for the term of his sentence.<sup>44</sup> The Lieutenant Governor in Executive Council was empowered to frame rules and regulations for carrying out the new Law, and on 10 April 1874 a set of such rules and regulations was promulgated in the *Government Gazette*.<sup>45</sup> The rules and regulations laid down not only the rights and duties of the “European employer” and the “native convict” who had been assigned to him, but also made provision for the convict’s family.<sup>46</sup> Family members were permitted to reside with the convict on the land of his employer.<sup>47</sup> The employer was required to provide both the convict and his family with food and lodging.<sup>48</sup> In return, the employer could demand the services of any unmarried female who was over ten years of age and any male who was over twelve years of age, who belonged to the convict’s family and

42 1 May 1874 *The Natal Witness*.

43 Law 18 of 1874 (Natal) “To make Special Provision with regard to the Employment of Convicts”.

44 It is interesting to note that there had been a failed attempt to pass similar legislation just over a decade earlier in 1863. In that year a Bill was proposed which sought to give the Lieutenant Governor the power to “permit any person undergoing any sentence of imprisonment to become the servant or apprentice of any house-holder applying for the same ...”. (See GN 56 *Government Gazette*, Natal of 21 Apr 1863: Bill “For the Employment of Prisoners on Public Works” at s 10.) Prisoners so assigned were to be subjected to the provisions of the Masters and Servants Ordinance Number 2 of 1850 (*idem* at s 11). However, the punishment for desertion was to be more severe for prisoners assigned as servants, than the punishment for desertion by “normal” servants under the Masters and Servants Ordinance. Prisoners who deserted their masters were to be punished by up to two years’ additional punishment plus, at the discretion of the resident magistrate, up to fifty lashes (*idem* at s 7). The Bill was rejected by the Legislative Council and never became law. (See 17 Jul 1863 *The Natal Witness* “Legislative Council 8 July 1863”.)

45 NAB Executive Council Vol 9 at 258; and NAB Colonial Office, London 179/117: Pine to Carnarvon, 22 Feb 1875 – Enclosure 1: Government Notice 117 of 1874.

46 *Ibid.*

47 *Idem*: Regulation 1.

48 *Idem*: Regulation 2.

were residing with the convict on the employer's land. Males over eighteen years of age who belonged to the convict's family and were residing with the convict on the employer's land, were not free to work elsewhere until such time as the convict's period of assignment had expired.<sup>49</sup> This did not apply, however, if the employer was unwilling to employ such males and pay them wages equivalent to the going rate at the time. In terms of the regulations, family members were to be remunerated "at such rate of wages as shall in each case be fixed by the magistrate, taking into account the obligations of the employer".<sup>50</sup>

With regard to the convict, the employer was to be entitled to his services "at all reasonable times" and his wages were to be fixed by the magistrate.<sup>51</sup> These wages were not to be paid directly to the convict, except by direction of the Lieutenant Governor.<sup>52</sup> In the normal course of events all such wages were to be paid into an account entitled "The Convict Relief Fund".<sup>53</sup> The Lieutenant Governor was authorised to

draw upon such fund for the purpose of relieving from want or rewarding for good conduct, or for the purpose of enabling any native convict on expiration of the period of imprisonment to acquire the means of re-establishing himself in the Colony: Provided that in no case shall the amount so granted for relief, reward, or otherwise, exceed the aggregate amount of wages earned by the said convict during his imprisonment.<sup>54</sup>

Law 18 of 1874 was aimed at black political offenders, namely "rebels", who had resisted white domination rather than at "criminals" in the true sense of the word. This is apparent from the circumstances under which the Law was framed and the contents of the Law itself.

Following the Langa libalele Rebellion, 200 tribesmen were imprisoned. Clearly these men were not criminals from whom society would have to be protected, and who would have to be rehabilitated before they could take up their place in society. They were "rebels", political offenders, and once the rebellion had been broken, a punishment was needed which would be sufficiently severe yet would not involve imprisonment, since the prisons were already overcrowded with "real" criminals. In other words, the law had been used as an instrument of political oppression. The penal system was not suitable for dealing with political offenders. In the eyes of the white colonists, Law 18 of 1874 clearly provided the ideal punishment for "rebels", namely compulsory labour for the benefit of the white man. As pointed out earlier in this article, a major theme of the political economy of Natal throughout the colonial period was the constant struggle by the white colonists to force the African tribesmen

49 *Idem*: Regulation 5.

50 *Idem*: Regulation 3.

51 *Ibid*.

52 *Idem*: Regulation 9.

53 *Idem*: Regulation 12.

54 *Idem*: Regulation 13.

into wage labour on white farms. Indeed, certain white farmers viewed the failure of the African tribesmen to work on their farms as tantamount to a criminal offence. To these white colonial farmers, forcing “rebels” into wage labour on white farms was a fitting punishment for those who had dared to challenge white sovereignty. Of course, such punishment would not have been suitable for “criminals” in the strict sense of the word, such as murderers, rapists, thieves and so on. On 21 April 1874, *The Natal Witness*, commenting on the rules and regulations promulgated under Law 18 of 1874, stated that since strong opposition was to be expected from “English negropholists”, perhaps it would be better to treat offenders such as Langalibalele’s 200 “rebels” as ordinary criminals.<sup>55</sup> As hard labour prisoners they could be employed in the construction of much needed public works. The *Natal Witness* found it difficult to understand why the “Exeter Hall mind ... would rather the Kafirs endured penal servitude, than that they should be restored to their families and be required to work for white employers at fair wages”.<sup>56</sup>

Clearly the reason was that the authorities in England feared that, since Law 18 of 1874 was designed to deal with political offenders, it would be used as a means of political oppression. As an official in the Colonial Office in London remarked

If the law is intended to apply really to convicts condemned to hard labour, fancy assigning 20 criminals to a farmer without any provision either for his protection or their discipline, while if it is intended to be applied as it really is to political offenders it must inevitably be used as an instrument of oppression.<sup>57</sup>

In his Despatch of 29 April 1875, the Secretary of State, Lord Carnarvon, informed the Lieutenant Governor that Law 18 of 1874 had been disallowed. The following reasons were given for the step that had been taken:

On a sudden emergency, such as lately arose, where it was imperatively necessary to make instant provision for feeding a large number of prisoners, and the resources of the Government were inadequate for the purpose of lodging and keeping them, such a course as assigning natives for a short period to those who would provide properly for them, might be defensible as a temporary measure resorted to under pressure; but to take a general power of assigning convicts as private servants, would open a door to many objectionable practices, owing, among many other causes, to the impossibility of properly supervising either the employers or the employed.<sup>58</sup>

55 21 Apr 1874 *The Natal Witness*.

56 *Ibid.*

57 NAB Colonial Office, London 179/117: Pine to Carnarvon, 22 Feb 1875: Minute by Colonial Office official, Apr 1875.

58 NAB Government House, Natal 64/Despatch 57: Carnarvon to Wolseley, 29 Apr 1875 at par 3.

## 5 Conclusion

Throughout the period dealt with in part one of this article, chronic overcrowding remained a pressing problem in the gaols of colonial Natal. Starved of adequate financial resources, the colonial state was unable to provide sufficient prison accommodation to cater for the number of inmates confined within the system. The problem was aggravated by the fact that the prisons were used as a method of social control over the indigenous population of the Colony. Furthermore, as illustrated by the Langalibalele Rebellion, the penal system was vulnerable to external shocks caused by war and civil strife, which greatly increased the number of prisoners requiring accommodation. Finally, the problem of overcrowding in the prisons of colonial Natal came with a nasty racial twist. Due to socio-economic circumstances prevailing in the Colony and the peculiar nature of the racist ideology which dominated white colonial society, most white colonists did not regard imprisonment as a particularly suitable form of punishment for black offenders, preferring harsh corporal punishment combined with forced labour in service of the colonial state and/or white society in general. The result was that conditions were always considerably more overcrowded for “non-European” prisoners than for “European” prisoners in the gaols of colonial Natal. These themes will be further explored in part two of this article, which will examine the period from 1875 until the end of the colonial period in 1910.

## ABSTRACT

During recent decades, like the proverbial bad penny, the problem of chronic overcrowding has turned up over and over again to haunt South African prison administrators. As this article indicates, however, overcrowding in South African prisons is not only a recent phenomenon. Overcrowding has been a significant feature of imprisonment in South Africa from the very introduction of this form of punishment into the country. This article examines overcrowding in the prisons of colonial Natal from 1845 until 1910. Through an analysis of the official discourse surrounding this difficult problem throughout the colonial period, this article shows that imprisonment as a form of punishment in South Africa has always been inextricably bound up with the problem of overcrowding. By illustrating the deeply entrenched nature of the problem from a historical perspective, this article hopes to provide present-day prison administrators with useful insights into the nature of their struggle to overcome the problem. The article is in two parts. Part 1 of the article covers the period 1845 to 1875, while Part 2 covers the period 1875 to 1910.

## **CHAPTER 2.5.2**

### **Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal 1845 to 1910 - Part 2.**

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# LIKE A BAD PENNY: THE PROBLEM OF CHRONIC OVERCROWDING IN THE PRISONS OF COLONIAL NATAL 1845 TO 1910 – (PART TWO)

**Stephen Allister Peté\***<sup>1</sup>

## 1 Introduction

Part One of this article examined the problem of chronic overcrowding in the prisons of colonial Natal from 1845, the year in which Britain took over the administration of the Colony, to 1875, which saw the penal system of the Colony still adjusting to the influx of prisoners resulting from the Langalibalele Rebellion of late 1873. In the introduction to Part One it was pointed out that, like a bad penny, the problem of chronic overcrowding was to turn up time and time again throughout the colonial period, indicating that this scourge is not a recent phenomenon, affecting only the prisons of post-apartheid South Africa.<sup>2</sup> Neither is it a problem which can be

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- 2 See, in general, S Peté “The politics of imprisonment in the aftermath of South Africa’s first democratic election” (1998) 1 *South African Journal of Criminal Justice* 51-83; S Peté “The good the bad and the warehoused – The politics of imprisonment during the run-up to South Africa’s second democratic election” (2000) 13(1) *South African J of Criminal Justice* 1-56; and S Peté “Between the devil and the deep blue sea – The spectre of crime and prison overcrowding in post-apartheid South Africa” (2006) 27(3) *Obiter* 429-453.



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ascribed solely to the policies imposed during the apartheid period, although the problem was clearly evident during that period and apartheid policies were certainly implicated in the chronic overcrowding experienced during that time.<sup>3</sup> The fact that prison overcrowding first emerges around the start of the colonial period in Natal and becomes increasingly “entrenched” within the penal system, indicates the deep social, political and economic roots of the problem within the South African historical landscape. It may even indicate, thinking along the functionalist lines suggested by Michel Foucault, that chronic overcrowding is a structural feature of imprisonment in South Africa.<sup>4</sup> This latter line of thinking is certainly radical in its implications, but it is by no means the first time that this type of argument has been made in relation to the South African penal system. For example, Lukas Muntingh, one of South Africa’s leading penologists, has made a compelling argument pointing out the “value” to be gained by politicians and businessmen from the apparent and continued “failure” of South African prisons to reform criminals.<sup>5</sup> Whether or not

- 3 See S Peté “Holding up a mirror to apartheid South Africa – Public discourse on the issue of overcrowding in South African prisons 1980 to 1984 – Part One ” (2014) 35(3) *Obiter* 485-505; and S Peté “Holding up a mirror to apartheid South Africa–Public discourse on the issue of overcrowding in South African prisons 1980 to 1984–Part Two” (2015) 36(1) *Obiter* 17-40.
- 4 In *Discipline and Punish – The Birth of the Prison* (London, 1979) at 264 Michel Foucault points out that the birth of the modern prison around the beginning of the nineteenth century in France was almost immediately denounced as a failure. He puts his finger on the cyclical and repetitive nature of critiques leveled at imprisonment as a form of punishment, stating that “the critique of the prison and its methods [which] appeared very early on ... was embodied in a number of formulations which – figures apart – are today repeated almost unchanged” (at 265). Foucault goes on to point out that the same “solutions” to the continuously repeated “problems” have been recycled over and over again for the past 150 years. He puts it as follows: “For a century and a half the prison has always been offered as its own remedy: the reactivation of the penitentiary techniques as the only means of overcoming their perpetual failure; the realisation of the corrective project as the only method of overcoming the impossibility of implementing it ... Word for word, from one century to the other, the same fundamental propositions are repeated. They reappear in each new, hard-won, finally accepted formulation of a reform that has hitherto always been lacking. The same sentences or almost the same could have been borrowed from other ‘fruitful’ periods of reform ...” (at 268 and 270).
- 5 Muntingh begins his argument by pointing out that there is almost no evidence that prisons have been able to reduce crime to any significant extent anywhere in the world. Why then do almost all societies choose to retain this form of punishment? Muntingh’s answer is that, despite their apparent “failure”, prisons provide various types of value to those in power. It is beyond the scope of this article to set out Muntingh’s complex argument in full, but the following extract provides some idea of the type of “value” he has in mind: “[W]ho stands to benefit from prisons – and the answer is simple: politicians and the private sector ... Prisons have symbolic value; they communicate the message that government is tough on crime and is willing and capable of legally depriving citizens of their liberty because they have committed a crime and offended society. Prisons symbolise the state’s power over its citizens. More importantly, they communicate the willingness of the state to use its coercive power” (see L Muntingh “Punishment and deterrence – Don’t expect prisons to reduce crime” (Dec 2008) 26 *SA Crime Quarterly* at 5).

prison overcrowding – one of the most obvious ways in which the South African penal system has been “failing” since its inception – forms part of the “value” pointed out by Muntingh, is an open question.

As stated in Part 1, the aim of this article is to shed light on one small part of South Africa’s penal history – namely the genesis, evolution and development of the problem of prison overcrowding in the Colony of Natal – thereby contributing to a more nuanced understanding of this problem in the context of the South African penal system as a whole. Part One of the article covered the period 1845 to 1875. Part Two starts in 1875 and covers the remainder of the colonial period through to 1910.

## 2 Continuing Efforts to Keep the Ideal of a “Separate System” Alive in the Mid to Late 1870s

In Part One of this article, it was noted that the Imperial authorities were anxious to see the introduction of the so-called “separate system” into the prisons of colonial Natal. On 31 August 1875 Lord Carnarvon, Secretary of State for the Colonies, complained that the system of prison discipline in Natal was “at variance in almost every particular” with the principles set out in the Digest.<sup>6</sup> He painted a bleak picture of an excessively overcrowded penal system, of cells without lighting, where groups of prisoners were forced to huddle together during the long hours of darkness. He could only wonder at the “extent of depravity” which must prevail under such conditions.<sup>7</sup> He severely reprimanded the Natal authorities as follows:

It is a serious aggravation of the scandal that the state of things disclosed by these Returns is not now made known for the first time, nor can the Colony plead that the subject has not been brought to the notice of their Government, for I observe that my Predecessors have not failed to urge reform upon the Colony in this most important matter.<sup>8</sup>

He expressed the hope that the legislature would rectify matters and place the prison system of the Colony “on a footing which will be creditable to the community”.<sup>9</sup> However, on 8 November 1876 the Secretary of State noted that it did not appear as if any material improvement had been made and requested a “full and early report” from the Lieutenant-Governor on the subject.<sup>10</sup>

Clearly the Lieutenant-Governor had to act. In May 1877 he compiled an important Minute in which he analysed the lack of accommodation at the Pietermaritzburg

6 NAB (KwaZulu-Natal Pietermaritzburg Archives Repository) Government House Natal 66/Despatch 124: Carnarvon to Bulwer, 31 Aug 1875: par 3.

7 *Idem* at par 7.

8 *Idem* at par 9.

9 *Idem* at par 11.

10 NAB GHN (Government House Natal) 73/Despatch 324: Carnarvon to Bulwer, 8 Nov 1876.

Gaol and the implications of this for prison discipline.<sup>11</sup> He pointed out that the prison population of the Pietermaritzburg Gaol had risen from a daily average of fifty-seven in 1872 to 106 in 1875. Occasionally over 130 prisoners were confined in the gaol at one time. Between 1869 and 1877 the number of cells available for prisoners in the Pietermaritzburg Gaol had only increased from seventeen to twenty-eight.<sup>12</sup> The Lieutenant-Governor noted that if each prisoner was given 500 cubic feet of space – well below what had been laid down in the Digest – the prison could accommodate eighty prisoners. However, the daily average prison population was 106. He thus drew the following conclusion:

The present accommodation then is wholly inadequate to the demands upon it, the daily number of prisoners being far greater than the prison can properly accommodate, whilst sometimes there is *excessive* overcrowding ... Additional accommodation therefore is urgently and imperatively needed ...<sup>13</sup>

As a result of the overcrowding the system of prison discipline was gravely defective. Individual separation of prisoners was completely impossible, and the only classification carried out was that between male and female, and black and white. At night “prisoners of European descent” were kept separate from “prisoners of African and Indian nationalities”.<sup>14</sup> Other than that, untried prisoners were held alongside convicted prisoners, juveniles were held with adults, felons with misdemeanants, and long sentenced prisoners with short sentenced prisoners. The Lieutenant-Governor thus recommended “the erection of a strong double storied building containing eighty or one hundred cells” so that prisoners could be separately confined at night and a proper system of classification introduced.<sup>15</sup>

A Special Committee was set up to consider these recommendations of the Lieutenant-Governor and point out possible problems. As to be expected, there was a degree of cynicism among certain of the colonial officials. The Colonial Engineer seemed to think that the authorities in England were out of touch with the practical difficulties of applying penal policies designed in Europe, within the context of a racially divided society such as that which existed in colonial Natal. In Natal, prisoners were already divided into four different racial groups or “nationalities”,

11 NAB COL (Colonial Office London) 179/ 126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure No 1 – Minute of Lieutenant Governor, 31 May 1877.

12 Most of these extra cells were made available by the departure of the lunatics from the gaol in the early part of 1875. A “temporary lunatic asylum” had been set up in the Pietermaritzburg Gaol in 1866 and it was only in 1875 that a separate lunatic asylum was established. See NAB CSO (Colonial Secretary’s Office, Natal) 261/Letters 2257: Letter from the Colonial Secretary, Natal to the Colonial Engineer’s Office, Natal, 27 Nov 1866 and NAB COL 179/ 126: Bulwer to Hicks Beach, 9 Jan 1878: par 4.

13 NAB COL 179/126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure Number 1 – Minute of Lieutenant-Governor, 31 May 1877.

14 *Ibid.*

15 *Ibid.*

namely “Europeans”, “Kaf rs”, “Coolies” and “Hottentots”. Further dividing each of these four separate groups into a number of separate categories – males and females; juveniles and adults; untried and convicted; felons and misdemeanants – was unworkable. The Colonial Engineer speculated, perhaps tongue in cheek, that forty-eight different classes of prisons would be required to accommodate all the different categories.<sup>16</sup> The Committee decided, however, that most of the difficulties in effecting a proper system of classification could be overcome by building a sufficient number of cells so as to allow separate accommodation for each prisoner at night. During the day, it would be sufficient to divide prisoners into a more manageable set of categories.<sup>17</sup> A plan was drawn up for the construction of a new cell block at the Pietermaritzburg Gaol which, had it been built, would have contained seventy cells.<sup>18</sup> This would have solved the perennial problem of overcrowding since, as the Special Committee noted, the Pietermaritzburg Gaol would then have contained “separate cell accommodation for one hundred prisoners, or more than double the number which can be separately confined in the largest gaol of the Cape Colony”.<sup>19</sup>

Less ambitious plans were drawn up for extending the accommodation at the Durban Gaol, and in his address on opening the seventh session of the Legislative Council, the Lieutenant-Governor stated as follows:

The large increase in the number of prisoners annually committed to the Pietermaritzburg and Durban Gaols urgently calls for additional accommodation in these two Central Gaols, and you will be asked to make provision for the purpose of supplying such further accommodation in conformity with the requirements of a sound penal system.<sup>20</sup>

On 9 January 1878, the Lieutenant-Governor was able to report to the Secretary of State that

the Legislature has voted £11,000 (£8,000 for Pietermaritzburg and £3,000 for Durban) for the improvement of the two Central Gaols during the year 1878; and, however short that amount may fall of what will be necessary to make these Gaols what they ought to be, it is a very liberal contribution for the year, and will enable the Government to make some essentially necessary additions to the accommodation and efficiency of these two important institutions.<sup>21</sup>

16 NAB COL 179/126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure No 5 – Notes by Colonial Engineer, 1 Jul 1877.

17 For a more detailed discussion of this point, see S Peté “Falling on stony ground: Importing the penal practices of Europe into the prisons of Colonial Natal – Part Two” (2007) 13(2) *Fundamina* at 123-124.

18 NAB COL 179/126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure No 10 – Lieutenant-Governor to Colonial Secretary, 12 Sep 1877.

19 NAB COL 179/126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure No 9 – Report of Committee, 4 Sep 1877.

20 NAB COL 179/126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure No 4 – Opening Address of Lieutenant-Governor, 7 Jun 1877.

21 *Idem* at par 12.

The initial response of the authorities in England was very favourable. The Secretary of State approved the steps being taken, his only complaint being that more money had not been allocated for the improvement of the Durban Gaol. He instructed Lieutenant-Governor Bulwer as follows:

You should strongly urge on the Legislature the necessity of carrying on the work more vigorously next year and of devoting a considerable sum of money to providing fresh accommodation and reconstructing the interior of the present building.<sup>22</sup>

The Secretary of State approved of the proposed system of classification of prisoners, noting that in his opinion race and colour were not “among the points most urgently demanding to be provided for”.<sup>23</sup> Clearly, many of the colonists would have disagreed. As to the problem of overcrowding, just as it seemed as if real progress was to be made in eliminating this scourge, fate intervened in the form of war. The outbreak of the Anglo-Zulu War in 1879 forced the English authorities to shelve their plans for prison reform in Natal, as the reality of events on the ground forced them to begin operating in crisis mode.

### 3 The Outbreak of the Anglo-Zulu War of 1879 and its Effect on Chronic Overcrowding

The outbreak of the Anglo-Zulu War in 1879 impacted adversely on the problem of prison overcrowding in the gaols of Natal in a number of respects. In the first place, it was decided to confine military prisoners in the already overcrowded civilian gaols of the colony, which tended to exacerbate the problem of overcrowding even further. Clearly, it was not ideal for soldiers convicted of military offences to be imprisoned in civilian prisons alongside “common criminals”. In the case of the Colony of Natal at the time of the Anglo-Zulu War, however, the authorities apparently felt that the only practical solution to the problem of housing increasing numbers of military offenders was to confine them in the central gaols of the colony in Pietermaritzburg and Durban. In order to make this legally possible, these two prisons were appointed in 1880 as “authorised prisons” in terms of the Army Discipline and Regulation Act of 1879.<sup>24</sup>

Another adverse impact of the Anglo-Zulu War on the problem of overcrowding was that the already parlous financial position of the Colony deteriorated even further. This meant that plans to extend prison accommodation came to an abrupt halt. The British Government contended that it had a claim in equity on Natal to recoup part of the money spent in fighting the Anglo-Zulu War. Figures of between

22 NAB GHN 83/Despatch 56: Hicks Beach to Bulwer, 30 May 1878 at par 3.

23 *Idem* at par 4.

24 NAB COL 179/135: Natal No 828, 17 Jan 1880; and NAB GHN 4/Letter from Hicks Beach to Bulwer, 24 Jan 1880.

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£1,000,000 and £1,500,000 were mentioned.<sup>25</sup> With this financial threat hanging over it, Natal could not afford to allocate large sums of money to public works such as prisons. The authorities in Natal were instructed to expend such sums as were absolutely necessary to prevent half finished work from deteriorating. Lieutenant-Governor Bulwer was understandably unhappy about this instruction and on 30 July 1879 he reminded the Secretary of State that it was the British Government which had insisted on prison reform in the first place:

Few subjects, perhaps, have of late years more engaged the attention of successive Secretaries of State than the reform and proper organisation of the Prison and Hospital Establishments in the Colonies ...<sup>26</sup>

He further pointed out the *bona fides* of the Natal Government:

The Legislative Council of the Colony has met the proposals of the Government in a spirit that reflects much credit on it, for popular Assemblies in new Colonies are apt to prefer the expenditure of Public money on objects which bring about more material advantage to the various individual or class interests of the community rather than on institutions and Establishments of the kind to which I have been referring.<sup>27</sup>

While the Secretary of State acknowledged the truth of the above statements, he insisted firmly that circumstances had been totally altered by the outbreak of the war. As a small concession, the extension of the Durban Gaol at a cost of £3,000 was to be proceeded with. The major reform of Natal's prisons, however, would have to wait.<sup>28</sup>

In his annual report for 1880 the Colonial Engineer was able to state that the extension of the Durban Gaol mentioned above had been completed, and would "afford additional accommodation for a considerable number of prisoners".<sup>29</sup> Even with the extra accommodation that had been built, however, he pointed out that even more additional cells were needed, since the gaol was still overcrowded. The state of repair of the Durban Gaol at this time was far from satisfactory. On 20 October 1880 the Durban Gaol Board expressed its deep concern as follows:

The Superintendent has brought to our notice the very dilapidated state of the cells in the old Gaol, and also the corridor. The flooring in each case has crumbled away leaving the floor quite unfit for washing and for Kaffir's sleeping. The plaster on the walls of nearly all the cells has dropped off. Our attention again has been brought to the present state of the 'Gaol yard' which in bad weather is nothing but a chain of water holes ...<sup>30</sup>

25 NAB COL 179/130: Bulwer to Hicks Beach, 31 Jul 1879.

26 NAB COL 179/130: Bulwer to Hicks Beach, 30 Jul 1879.

27 *Ibid*

28 NAB GHN 93/Despatch 68: Hicks Beach to Wolseley, 27 Sep 1879

29 NAB Natal Blue Book 1880 at p JJ45.

30 NAB CSO (Colonial Secretary's Office, Natal) 777/4202: Meeting of Durban Gaol Board, 20 Oct 1880.

The situation at the Pietermaritzburg Gaol was even worse, since no additional accommodation had been provided. The Colonial Engineer noted that the accommodation provided at the Pietermaritzburg Gaol was “wholly inadequate for the number of prisoners confined in this Gaol”.<sup>31</sup> The overcrowding was made worse by the increasing number of military prisoners sent to the Gaol.

On 10 November 1880, the Superintendent of the Pietermaritzburg Gaol complained as follows:

[It] is almost impossible to crowd more prisoners into the cells where the prisoners have not 200 cubic feet each. Additional accommodation is urgently required and then we can take in as many court martial prisoners as may be sent.<sup>32</sup>

Inevitably the overcrowding led to deterioration in the standard of health within the gaol. The District Surgeon made the following comment in support of the Superintendent’s call for additional accommodation:

The crowded state of the Central Gaol had, since September shown a great increase in the sick list ... As many as 40, out of a total of 185, have been on the sick list on various days during the last month. Serious forms of Dysentery and Diarrhoea are of frequent occurrence. I consider that additional accommodation is urgently needed.<sup>33</sup>

Despite this serious state of affairs, the Government regarded the needs of the military as paramount. The Superintendent was instructed to comply with the wishes of the military authorities “by pitching tents for Kaf rs, or by some other means ...”<sup>34</sup> Clearly the interests of white military prisoners were placed above those of black civilian prisoners. The above order was reluctantly obeyed, with the Resident Magistrate of Pietermaritzburg stating as follows:

Order has been complied with; but it involves crowding and it is impossible to put men under long sentence in tents. Moreover, measles have broken out in the Gaol.<sup>35</sup>

Being forced to accommodate military prisoners in the civilian prisons was a millstone which was to remain firmly around the necks of prison administrators in the Colony for years to come. There were further legal developments in May 1882 when, following a request from the War Office in England, the Rules and Regulations of Natal’s gaols were altered to include the following classification:

Military prisoners convicted of breaches of discipline only, who shall, so far as may be practicable, having regard to the prior accommodation and the circumstances of the case,

31 NAB Natal Blue Book 1880 at p JJ45.

32 NAB CSO 778/Letters 4359: Enclosure – Letter from the Superintendent Pietermaritzburg Gaol to the Resident Magistrate Pietermaritzburg, 10 Nov 1880.

33 NAB CSO 778/Letters 4359: Enclosure – Undated minute of the District Surgeon Pietermaritzburg.

34 NAB CSO 778/4359: Colonial Secretary to Resident Magistrate Pietermaritzburg, 10 Nov 1880.

35 NAB CSO 778/4359: Resident Magistrate Pietermaritzburg to Colonial Secretary, 17 Nov 1880.

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be kept separate and distinct from prisoners convicted of offences of an immoral dishonest, shameful, or criminal character.<sup>36</sup>

The respective Superintendents of the Durban and Pietermaritzburg Gaols did not have any objection to the above clause, but made it clear that due to lack of space, military prisoners could not at that time be separated from other prisoners. Both Superintendents also stated that due to overcrowding, only a certain number of military prisoners could be admitted to their gaols. The Colonial Secretary was quick to point out as follows:

The Superintendents of both Gaols ... lose sight of the facts which should be within their knowledge that they are acting illegally in refusing to receive military prisoners duly committed under the 'Army Discipline Act'.<sup>37</sup>

It is clear that the colonial authorities who were charged with actually administering the prisons were caught between the legally valid demands of the military authorities on the one hand, and chronic overcrowding in the gaols of the colony on the other hand.

This was a long-standing problem which would remain unresolved for many years. For example, in February 1887, the military authorities requested that a certain number of cells in the Durban Gaol be set aside especially for the use of military prisoners.<sup>38</sup> The Superintendent of Durban Gaol reported that forty-four prisoners were at that time confined in the "European Block" which contained thirty-four cells. He pointed out that in the case of "European prisoners" "to have 3 prisoners in many of the cells is very undesirable and to be avoided if possible."<sup>39</sup> The military authorities were thus informed that due to the overcrowding, a definite number of cells could not be set aside for military prisoners. It is clear that by utilising the Durban and Pietermaritzburg Gaols for the confinement of military prisoners over the years, the problem of overcrowding within these prisons was aggravated.

## 4 The "Separate System" Remains an Elusive Ideal due to Chronic Overcrowding Throughout the 1880s and 1890s

During 1881 and 1882 additional accommodation was constructed at both the Durban and the Pietermaritzburg Gaols. At the Durban Gaol an additional block of cells and a hospital were provided at a cost of £10,500. A block containing separate

36 Regulation 1e of the Rules and Regulations for the Gaols of Natal – Approved by the Governor in Council on 5 May 1882.

37 NAB GHN 380/G. No 80 of 1882: Minute of Colonial Secretary, 29 March 1882. See also NAB GHN 380/G. No 80 of 1882: Enclosure – Circular from Kimberley to Bulwer, 23 Jan 1882.

38 NAB CSO 1119/Letters 504: Enclosure – Letter from the Colonel on Staff Commanding Troops Natal District to Acting Colonial Secretary, 2 Feb 1887.

39 NAB CSO 1119/Letters 504: Minute of the Superintendent Durban Gaol, 4 Feb 1887 in response to the Regional Magistrate, Durban.

cells for sixty-two prisoners was constructed at the Pietermaritzburg Gaol at a cost of £6,425.<sup>40</sup> In the words of the Colonial Engineer, the extra accommodation was constructed “on what is known as the ‘separate system’, a system which is now universally adopted in all modern Gaols”.<sup>41</sup>

The authorities thus clearly intended to introduce the separate system into the Durban and Pietermaritzburg Gaols. However, due to the rapidly increasing prison population, it proved impossible almost from the start for this intention to be carried into effect. In the case of the Pietermaritzburg Gaol, for example, the Gaol Board resolved as follows on 5 September 1882:

[T]hat the New block be reserved, for the present, for long sentenced prisoners each to be confined in a separate cell and that the remainder of the long sentenced prisoners who cannot be accommodated in the New Block, should be, as far as possible confined in separate cells in the Old Block ...<sup>42</sup>

However, a mere two months later, on 5 December 1882, the Superintendent of the Pietermaritzburg Gaol reported as follows:

That it is impossible to comply with the recommendation of the Board to keep natives in separate cells in the New Block, and recommends that 10 cells be kept for separate prisoners, and that 3 natives be placed in each of the other cells instead of one, owing to the present pressure.<sup>43</sup>

Thus, as with the attempt to introduce strictly penal labour into Natal’s two Central Gaols, the rapidly expanding prison population combined with a lack of resources, prevented the separate system from being widely introduced into the Natal penal system. The separate system was applied to a very limited extent, but was restricted mainly to white prisoners. However, even this limited application of the separate system was to be curtailed as the problem of chronic overcrowding arose once more.

By February 1886, a mere three years after additional accommodation had been provided at the Durban Gaol, the problem of overcrowding had once again reached such proportions that the Superintendent found it necessary to write to the District Surgeon as follows:

All the cells in the Central Gaol are crowded to excess notwithstanding the additional accommodation lately afforded which had given room for 47 more. I think it is advisable that you should report to Government the necessity of providing extended accommodation as early as possible, so that in case of any epidemic breaking out amongst the Prisoners – with a serious result – the responsibility then would not be attached to us.<sup>44</sup>

40 NAB Natal Blue Book 1882 at p FF109.

41 NAB Natal Blue Book 1882 at p FF91.

42 NAB CSO 897/Letters 858: Enclosure – Report of the District Surgeon Pietermaritzburg, 14 Apr 1883, in which he sets out the resolution of the Gaol Board, Pietermaritzburg.

43 *Ibid.*

44 NAB CSO 1066/Letters 684: Enclosure – Report of the Superintendent Durban Gaol to District Surgeon Durban, 13 Feb 1886.

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The District Surgeon complied with this request and drew particular attention to the plight of the black prisoners in Durban Gaol:

I found that the cells in the portion of the Gaol appropriated for the Coloured prisoners are far too much crowded especially at night. As many as from 5 to 8 adults are placed frequently in a small cell of say 577 feet cubic space.<sup>45</sup>

As for the forty-eight white prisoners confined in Durban Gaol, these were accommodated in thirty-three cells – twenty-five single cells and eight containing three prisoners each. The Executive Council ordered that three European prisoners be allocated to each cell, and that the cells left vacant in this way be set aside for African prisoners.<sup>46</sup>

There was thus no place for the separate system, even in the case of “European” prisoners, in Natal’s grossly overcrowded gaols at that time. Clearly, additional accommodation was once again required, especially in the case of the Durban Gaol, and the sum of £8,000 was placed on the Estimates for 1887 for this purpose. In the struggle by the Natal authorities to secure approval for the above expenditure, it is interesting to note that they seem to have accepted the impracticability of introducing the separate system in its entirety, into Natal’s prisons. The proposed construction was to be the final stage of the successive improvements which had been carried out according to the plans drawn up in 1879, for enlarging and improving the Durban Gaol. Of course these plans had been drawn up with the aim of providing sufficient accommodation for the introduction of the separate system. As if indicated by the following statements made by the Clerk of Works in October 1886, it was now accepted that this would be impossible:

[O]wing to the large increase in the number of prisoners confined in the Gaol, it has been found altogether impracticable, without incurring considerable outlay in providing large additional accommodation, to carry out the solitary system, except in special instances.<sup>47</sup>

In a despatch to the Secretary of State, the Governor too pointed out that the proposed additional accommodation, while desperately and urgently needed, would not permit of the introduction of the separate system:

The complete scheme provides accommodation on the separate system for 160 convicted prisoners only. The number of convicted prisoners in Durban Gaol, as shown by the daily return of last week, is 301 and this number is below average. The urgency of this work is obvious. Any further delay in carrying it out is to be deprecated.<sup>48</sup>

45 NAB CSO 1066/Letters 684: Enclosure – Report of District Surgeon Durban, 15 Feb 1886.

46 NAB CSO 1066/Letters 684: Minute of the Clerk of the Executive Council, 22 Feb 1886.

47 NAB GHN 140/Despatch 27: Stanhope to Havelock, 4 Oct 1886: Statement by Clerk of Works.

48 NAB COL 179/ 164: Havelock to Granville, 17 Aug 1886.

Despite the urgency of the situation, permission to undertake the necessary expenditure was not immediately forthcoming. The authorities in England at this time were very concerned to keep expenditure in Natal as low as possible and pointed out as follows:

The financial condition of the Colony ... renders it of the utmost importance that all works, which are not of pressing urgency, should be postponed until the equilibrium of the finances has been restored.<sup>49</sup>

The Governor was thus forced to further justify the proposed alterations. In December 1886 he informed the Secretary of State as follows:

[T]he buildings which it is proposed to erect ... include, in addition to thirty two cells, the whole of the Administration Block; and ... by the construction of this Block, cells now appropriated for untried prisoners, rooms now occupied as offices, storerooms etc will become available for occupation by convicted prisoners. In this way ... additional accommodation for at least seventy prisoners, in all, will be provided ...<sup>50</sup>

Only following this despatch did the authorities in England approve of the expenditure. Finally, after all the above arguments and debates, the Legislative Council of Natal decided to grant only £4,000 – namely half the amount required – for additions to the Durban Gaol in 1887.<sup>51</sup> In 1888, however, the permissible expenditure for additions to the Durban Gaol was increased to £10,000.<sup>52</sup> The additions were finally completed in 1889 at a cost of £10,000 18s 3d.<sup>53</sup> In March 1889 construction was begun on a new block of cells at the Pietermaritzburg Gaol.<sup>54</sup> The Governor reported as follows to the Secretary of State on 28 June 1889:

When the extension of the Pietermaritzburg Gaol, now under construction, is completed there will be little danger of overcrowding in that Gaol ...<sup>55</sup>

The new cell block was completed in 1890 at a cost of £8,251 4s 11d.<sup>56</sup>

Despite these additions to the Durban and Pietermaritzburg Gaols, it did not take long before the problem of overcrowding once again reared its ugly head. The problem was particularly pressing in the case of the Durban Gaol. In October 1892 that gaol was overcrowded to the extent that over fifty short sentenced prisoners were forced to sleep in the corridors at night.<sup>57</sup> In December 1893 the Superintendent

49 NAB GHN 140/Despatch 27: Stanhope to Havelock, 4 Oct 1886.

50 NAB COL 179/ 165: Havelock to Stanhope, 6 Dec 1886.

51 NAB GHN 141/Despatch 1: Holland to Havelock, 17 Jan 1887

52 NAB Natal Blue Book 1888 at p J4-5.

53 NAB Natal Blue Book 1889 at p J6-7.

54 GN 306 GG of 23 Apr 1889 (Natal).

55 NAB COL 179/168: 28 Jun 1889.

56 NAB Natal Blue Book 1890-91 at p JJ12-13.

57 NAB CSO 1345/Letters 4668: Enclosure – Report in *Natal Witness*, 11 Oct 1892.

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of the Durban Gaol informed his superiors that chronic overcrowding had resulted in seventy-three prisoners being forced to sleep in the corridors at night.<sup>58</sup> The Governor of the Durban Gaol pointed out in each of his annual reports for the years 1896 and 1897 that the Resident Engineer in charge of the harbour works wished to increase the number of convicts employed on the works, but that the lack of accommodation in the Durban Gaol made this impossible.<sup>59</sup> Finally, in his annual report for the year 1897, the Chief Commissioner of Police was able to report as follows:

A new wing is about to be commenced at the Durban Central Gaol to accommodate extra convicts required for the harbour works, nearly all the convicts confined in this gaol being long-sentenced natives employed upon these works, and the Engineer-in-Charge is continually crying out for more convict labour.<sup>60</sup>

This new cell block was completed in June 1898, and provided accommodation for an additional 114 African and Indian convicts. The Governor of the Durban Gaol reported, however, that there were not sufficient convicts to immediately fill up all the additional accommodation. This was of very little satisfaction to the Engineer of the Harbour Department “who was urgently in need of much more convict labour than could be sent to him at that time”.<sup>61</sup> This critical shortage of convict labour began to ease towards the end of 1898, however, as the new cell block at the Durban Gaol became more fully occupied.

The brief respite in overcrowding at the Durban Gaol due to the completion of building works in 1898 was not to last for long. The following year saw the outbreak of the Second Anglo-Boer War which, as in the case of the Langalibalele Rebellion of 1873 and the Anglo-Zulu War of 1879, greatly exacerbated the problem of overcrowding in the gaols of the colony. As increasing numbers of prisoners flowed into the gaols during this period, greatly increased strain was placed on the prison infrastructure. In his report for the year 1899, for example, the Chief Commissioner of Police stated as follows:

In speaking of the Gaols throughout the Colony I have nothing but praise for the way they stood the extra strain thrown upon them by the large increase in the number of prisoners they were called on to accommodate ...<sup>62</sup>

The Gaols were similarly crowded during 1900 and the Chief Commissioner reported as follows:

58 NAB CSO 1382/Letters 5780: Minute of the Superintendent Durban Gaol to the Regional Magistrate, Durban, 13 Dec 1893.

59 NAB Natal Blue Book 1896 vol 2 Departmental Reports at p F44; and NAB Natal Blue Book 1897 vol 2 Departmental Reports at p F55.

60 NAB Natal Blue Book 1897 vol 2 Departmental Reports at p F25.

61 NAB Natal Blue Book 1898 vol 2 Departmental Reports at p F59.

62 NAB Natal Blue Book 1899 vol 2 Departmental Reports at p F11.

In consequence of the large numbers of rebel prisoners, the central gaols have been inconveniently crowded, but the opening of the new central gaol at Eshowe in November afforded a certain relief to the gaols of Durban and Pietermaritzburg ...<sup>63</sup>

## 5 Into the New Century with No Relief in Sight to the Problem of Chronic Overcrowding

Despite the construction of a new wing at the Durban Gaol during 1902, Natal's gaols remained generally overcrowded.<sup>64</sup> For example, the Governor of the Durban Gaol stated as follows in his report for the year 1903:

[T]hough the new block ... has been completed and occupied during the year, the cell accommodation is still insufficient for the requirements, and the Gaol is practically always much overcrowded ... The great majority of cells, each intended for only one convict, are occupied by three, and even then a considerable number of convicts have to be accommodated to sleep in corridors of Blocks.<sup>65</sup>

The Pietermaritzburg Gaol was similarly overcrowded. The District Surgeon of Pietermaritzburg stated as follows in his report for the year 1903:

At present I consider the Gaol very much overcrowded ... If the present state of things is continued, undoubtedly a high rate of sickness will result.<sup>66</sup>

In February 1905, following much agitation on the part of concerned citizens in favour of prison reform in Natal, a Parliamentary Commission of Enquiry was appointed to look into the matter. The so-called "Prison Reform Commission" finally completed its work and delivered its report on 28 May 1906.<sup>67</sup> As to the problem of overcrowding, the Commission was well aware of the fact that the problem was exacerbated by the imprisonment of black petty offenders – often those who had fallen foul of rules and regulations aimed at the social control of the indigenous population:

The Natives are not only subject to their own special laws, of which there are many contraventions, but also to a number of artificial restraints and disabilities, chiefly when in towns, which go to swell the number of offences committed by them.<sup>68</sup>

63 NAB Natal Blue Book 1900 vol 2 Departmental Reports at p F13.

64 NAB Natal Blue Book 1902 vol 2 Departmental Reports: Report of Chief Commissioner of Police at p 5.

65 NAB Natal Blue Book 1903 vol 2 Departmental Reports: Report of Chief Commissioner of Police at p 9.

66 *Ibid.*

67 GN 344 GG of 5 Jun 1906 (Natal): Report of the Prison Reform Commission.

68 *Idem* at par 67.

## LIKE A BAD PENNY

It was well understood that prisoners who had offended against social control legislation – such as the Native Code, Pass Laws, and Master and Servants Laws – could “in no sense of the word ... be said to be criminals”.<sup>69</sup> The Commission proposed a number of ways in which such offenders would be kept out of the existing overcrowded prisons. These included banishing certain offenders to their *kraals*; punishment by means of corporal punishment rather than by short sentences of imprisonment; and sentencing petty offenders to work on the roads or other public works.<sup>70</sup> With regard to the proposed sentences of forced labour on the roads, the Commission recommended the establishment of “movable prisons”. These movable prisons would be similar to road construction camps, but would be designed to ensure the safe custody of short-sentence black prisoners when they were not working on the roads. Clearly education, reform and scientific treatment were not priorities in the case of black prisoners. To the white colonists, this category of prisoners had two important lessons to learn: Firstly, fear the white man and give him due respect as your natural “master” and, secondly, acquire the habit of docile, obedient manual labour in service of the white man. The first lesson could be taught by the cat-o-nine-tails and the second by forced labour. To the colonists, modern European-style prisons, which were focused on the rehabilitation of prisoners, were not particularly suitable for black prisoners. Despite the plans and proposals put forward by the Prison Reform Commission noted above, the problem of overcrowding in the prisons of Natal was destined to continue.<sup>71</sup>

In 1906 the overcrowded prisons of Colonial Natal experienced a further shock due to the influx of large numbers of “rebel” prisoners following the “Bambata

69 NAB CSO 2847/Undated Précis of Evidence of the Prison Reform Commission, Natal by B. Haslewood, Secretary of the Prison Reform Commission at p 2.

70 The proposal that recourse be had to sentences of corporal punishment in place of imprisonment is interesting from the perspective of the role that whipping, as a form of “racial punishment”, played in the history of the colony. See S Peté & A Devenish “Flogging, fear and food: Punishment and race in Colonial Natal” (Mar 2005) 31(1) *Journal of Southern African Studies* at 3-21; and S Peté “Punishment and race: The emergence of racially defined punishment in Colonial Natal” (1986) 1(2) *Natal University Law and Society R* at 99-114. The proposal is also interesting due to the fact that a similar proposal was to be made decades later at the height of the apartheid period in the 1980s in a desperate effort to find solutions to the problem of chronic overcrowding. See Peté (n 2) *passim*.

71 Note that the problem of overcrowding was only one of many issues addressed by the Prison Reform Commission. Another interesting proposal put forward by the Commission, which is not directly relevant to this article, was the proposal to build a separate “industrial prison” for the treatment and rehabilitation of white prisoners. In the Commission’s own – shockingly racist – words: “[P]ride of race alone ought to rouse us from our indifference and lethargy ... Several reasons may be suggested for limiting the proposed innovation to Europeans; of a higher average intelligence, and possessing a higher moral basis, with a better knowledge of the claims of society, and of the advantages of being reconciled thereto, they offer a more promising field for reform than would be presented by individuals of other races.” See GN 344 GG of 5 Jun 1906 (Natal): Report of the Prison Reform Commission at par 67.

Rebellion". The rebellion began in February of that year when Bambata, a minor chief in the Umvoti region, defied the magistrate in charge of that area. It ended on 10 June of the same year, with a massacre of Bambata and 500 of his followers in the Mome Gorge.<sup>72</sup> Following the Bambata Rebellion there was a massive increase in Natal's prison population, as a result of the influx of a large number of "rebel" prisoners. An intolerable strain was placed on the already overcrowded prisons of Natal, and the Government was forced to take swift action.<sup>73</sup> A Bill was rushed through Parliament which, in the words of the Minister of Justice, conferred power on the Government "to enter into contracts with any municipality, township, or other public body, or with any company or individuals, for the employment of prisoners who are sentenced to terms of imprisonment exceeding three months".<sup>74</sup> The Bill was promulgated as Act 32 of 1906.<sup>75</sup> Clearly, this legislation was very similar to Law 18 of 1874 discussed in the Section 4 of Part One of this article dealing with the Langalibalele Rebellion. The legislation put forward after the Bambata Rebellion seemed to have similar objectives to that put forward after the Langalibalele Rebellion. In each case the legislation seemed to be aimed at preventing the prisons becoming chronically overcrowded with "rebels", but was clearly just as concerned – if not more concerned – with achieving the objective of providing cheap black labour to white colonists and to the colonial state. Act 32 of 1906 also showed clear similarity to legislation which had been passed in the Cape Colony following the "Langberg Rebellion".<sup>76</sup> Natal's Minister of Justice stated in connection with the Cape legislation as follows:

[T]he Cape Government for some years have been in the habit of hiring out prisoners to De Beer's and other large employers of labour, and I think the experience of that Colony is that the system works very well both in the interests of the Government and in the interests of the prisoners themselves.<sup>77</sup>

The Minister stated that Act 32 of 1906 was to apply to all prisoners, and not simply to political prisoners – namely "rebels".<sup>78</sup> It would seem, therefore, that the large influx of non-criminal "rebel" prisoners into Natal's penal system had provided the ideal excuse for the colonists to push through their agenda of implementing legislative measures to secure a supply of cheap black labour. By Government Notice 497 of

72 E Brookes & C De B Webb *A History of Natal* (Pietermaritzburg, 1965) at 220-230.

73 Debates of the Legislative Assembly of the Colony of Natal 1906 vol 40 Debate of 2 Jul 1902 at 420-423.

74 *Idem* at 420: Minister of Justice.

75 Act 32 of 1906 (Natal) "To amend the Gaol Law of 1887".

76 Debates of the Legislative Assembly of the Colony of Natal 1906 vol 40 Debate of 2 Jul 1902 at 422: Mr Tatham.

77 *Idem* at 422: Minister of Justice.

78 *Ibid.*

1906, regulations were promulgated under the Act, setting out the conditions for the employment of prisoners.<sup>79</sup> In practice it is not certain how many prisoners were hired out, since a convict station was established at the Point in Durban to accommodate large numbers of “rebel” prisoners.<sup>80</sup> In addition, about 200 rebels were confined in “movable prisons” and made to perform road work.<sup>81</sup> By 1908 the convict station at the Point could accommodate about 700 men.<sup>82</sup> The focus in terms of the punishment of black offenders in the colony had clearly swung decisively in favour of productive forced labour in service of the colonial state. As for the problem of overcrowding, it would be fair to conclude that it remained a problem in the prisons of Natal until the very end of the colonial period.

## 6 Conclusion

Chronic overcrowding remained a pressing problem in the gaols of Colonial Natal throughout the period of the Colony’s existence. Like the proverbial bad penny, the problem reared its ugly head over and over again. Colonial officials commented time and again on the poor and unhygienic living conditions caused by overcrowding in the gaols. The result was decades of unnecessary discomfort and suffering on the part of those unlucky enough to be on the receiving end of a sentence of imprisonment during the colonial period. Furthermore, reading between the lines of the various reports and despatches cited in this article, it is almost certain that overcrowding resulted in an unnecessary loss of life, although it is unlikely that the numbers of prisoners who died because of this scourge will ever be fully known. Both black and white prisoners suffered due to overcrowding in the prisons of colonial Natal but, of course, those who suffered the most were the black prisoners.

The problem of chronic overcrowding in the prisons of colonial Natal was greatly exacerbated by a number of factors: First, due to the fact that Natal was a reluctant addition to the British Empire, the colonial state was generally weak and under-resourced, with the result that it was unable to provide sufficient accommodation for the prisoners in its care. Second, the prisons were used as a means for the social control of the black population, meaning that they were continually overcrowded with petty offenders who were not criminals in the strict sense of the word. Third, the outbreak of war and rebellion at regular intervals throughout the short history of the Colony, meant that the penal system was subjected to a series of severe shocks

79 NAB CSO 1827/Minute Papers 1124: Government Notice 497 of 1906.

80 Debates of the Legislative Assembly of the Colony of Natal 1908 vol 46 Debate of 15 Sep 1908 at 251: Attorney General.

81 NAB CSO 1827/Minute Papers 1124: Remarks on recommendations contained in Section 74 of the Natal Prison Reform Commission – Report of the Assistant Commissioner of Police, 13 Feb 1907 at par 14.

82 Debates of the Legislative Assembly of the Colony of Natal 1908 vol 46 Debate of 15 Sep 1908 at 251: Attorney General.

in terms of increased numbers of prisoners, which greatly exacerbated the problem of overcrowding. Finally, since the colonists regarded imprisonment as an inherently unsuitable form of punishment for the majority of black offenders – preferring forced labour and/or corporal punishment – it is submitted that there was a lack of political will on the part of the local prison authorities to push aggressively for the building of more and more fixed prison accommodation.<sup>83</sup>

To conclude, an examination of the endless despatches and debates concerning the problem of overcrowding in the prisons of the colonial Natal, from the beginning to the end of the colonial period, must, it is submitted, lead one to the conclusion that the problem was much more deeply rooted – socially, politically and economically – than many commentators may be prepared to admit. It is beyond the scope of this article to propose definitive “solutions” to the present problem of overcrowding within the South African penal system. It may be tentatively argued, however, that what was true of prison overcrowding in colonial Natal was, generally speaking, to prove true of overcrowding in South African prisons in the century-and-a-bit which followed. One is struck by the fact that this scourge simply refused to disappear, turning up over and over again, from year to year, from decade to decade, and from one century to the next.<sup>84</sup> This article has shown that prison overcrowding is a deeply rooted phenomenon, with considerable historical reach. Whether or not it is a structural feature of this form of punishment in South Africa, along the functionalist lines discussed in the introduction to Part Two of this article, is a matter for further research.

83 Much of the focus in dealing with overcrowding among black prisoners was on facilitating labour gangs to perform forced labour in the open air on public works and, later in the colonial period, in developing the concept of “mobile prisons” – essentially mobile labour camps.

84 See Peté (n 2).

## 3. Part Two

### Apartheid Period

## **CHAPTER 3.1**

### **Angels and Demons, Innocents and Penitents: An Analysis of Different 'Characters' Within the Penal Discourse of Apartheid South Africa 1980 to 1984.**

#### **CHAPTER 3.1.1**

##### **Angels and Demons, Innocents and Penitents: An Analysis of Different 'Characters' Within the Penal Discourse of Apartheid South Africa 1980 to 1984 - Part 1.**

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# Angels and demons, innocents and penitents: An analysis of different “characters” within the penal discourse of apartheid South Africa 1980 to 1984 – Part One

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## OPSOMMING

### Engel en Duiwels, Onskuldiges en Boete-doeners: 'n Analise van Verskillende “Karakters” in die Gevangenis-diskoers van Apartheid Suid-Afrika (1980 tot 1984)

Wat ras, klas en geslag betref was daar vanaf koloniale tye af nog altyd 'n tweespalt in die Suid-Afrikaanse gemeenskap. In so 'n verskeurde samelewing is die openbare debat rondom 'n komplekse sosiale praktyk soos straf of gevangenisskap noodwendig deurspek met nuanse. Hierdie artikel ondersoek wyses waarop temas in die openbare debat rondom gevangenisskap in Suid-Afrika verskil van een kategorie van gevangenes tot die volgende. Die tydperk wat ondersoek word is die eerste helfte van die 1980s – 'n dekade waarin aansienlike krake in apartheid toegedien is; 'n tydperk waarin interne en eksterne opposisie teen die stelsel 'n hoogtepunt bereik het, en die owerhede met 'n “algehele strategie” opgetree het. Elke draad van die ondersoekte diskoers onthul 'n ander “karakter” in die oorkoepelende verhaal wat spruit uit die gevangenis-diskoers van die tyd. Die diskoers rondom die volgende vier kategorieë van gevangenes word ondersoek: wit manlike gevangenes, bende-lede in gevangenis, wit vroulike gevangenes, kinders. Die artikel bestaan uit twee dele – Deel Een fokus op die eerste twee kategorieë en Deel Twee op die laaste twee.

## 1 Introduction

In general terms, public discourse surrounding imprisonment as a form of punishment is multi-layered and nuanced. It is influenced by the social, political and economic history of the penal system under discussion, as well as by the particular historical conjuncture at which the discourse is examined. Furthermore, penal discourse will often vary widely from one category of prisoners to the next. The complex and multivalent nature of such discourse is particularly apparent in the case of the South African penal system, perhaps because of the deeply divided nature of South African society from colonial times to the present. The

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purpose of this article is to examine the ways in which, at a particularly crucial time in the country's history, strands in the public discourse surrounding imprisonment in South Africa differed from one category of prisoners to the next. Each strand reveals a different "character" within the overall story which emerges from the penal discourse of the time.

The period examined is the first half of the 1980s, a decade which witnessed major cracks in apartheid, as internal and external opposition to the system reached a climax and the authorities responded with their so-called "total strategy". The total strategy of the apartheid government included the further militarisation of an already militarised white South African society, as well as the declaration of a state of emergency on 20 July 1985. The first half of the 1980s is particularly interesting from the point of view of penal discourse since the prisons were one of the points at which the stresses and strains within the apartheid system became visible, despite efforts on the part of the authorities to stifle reporting in the press.<sup>1</sup> The focus of this article is on a cross-section of reports drawn from national and regional newspapers published during this time, including both the English and Afrikaans "white mainstream press";<sup>2</sup> the more "politically conservative Afrikaner press";<sup>3</sup> and the "black mainstream press".<sup>4</sup> By comparing and contrasting many reports from these sources, it is possible to extract a fairly clear overall picture of the public discourse surrounding imprisonment at this time.

The discourse surrounding the following categories of prisoners is examined: white male prisoners; prison gang members; white female prisoners; and children. The first two categories will be dealt with in Part One of this article, and the last two categories in Part Two. The reasons for choosing to examine these particular categories of prisoners are: firstly, each of these categories is clearly distinguishable in the data as giving rise to a separate strand of discourse; secondly, the categories are sufficiently distinct from each other to provide clear points of contrast, sometimes appearing as polar opposites within the penal discourse as a whole; and thirdly, for each of the categories there are historical parallels

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1 See in general, Peté 'Holding up a mirror to apartheid South Africa – Public discourse on the issue of overcrowding in South African prisons 1980 to 1984 – Parts one and two' (forthcoming).

2 In this article the term "white mainstream press" is used as a rough rule of thumb and should not be read as a strict scientific definition. In this article, the English white mainstream press is taken to include newspapers such as the *Cape Times*, the *Rand Daily Mail*, the *Natal Mercury*, the *Natal Witness*, the *Daily News*, the *Cape Times*, *The Star*, the *Eastern Province Herald*, the *Sunday Tribune* and the *Daily Dispatch*. The Afrikaans white mainstream press is taken to include newspapers such as *Beeld* and *Rapport*.

3 In this article, the term "more politically conservative Afrikaner press" is used as a rough rule of thumb and should not be read as a strict scientific definition. In this article, the more politically conservative Afrikaner press is taken to include newspapers such as *Die Volksblad* and *Die Vaderland*.

4 In this article the term "mainstream black press" is used as a rough rule of thumb and should not be read as a strict scientific definition. In this article the mainstream black press is taken to include newspapers such as *City Press* and *Sowetan*.

to be drawn – historical resonances – with strands of discourse which emerged long before during colonial times. In relation to the historical parallels which may be drawn, it is clearly beyond the scope of this article to capture every nuance of South African penal discourse over several centuries, in order to identify each possible point of convergence within the discourse. Instead, this article will focus particularly on the penal discourse of colonial Natal for purposes of comparison. A defined focus of this kind allows a deeper and more nuanced analysis and comparison of penal discourse than would otherwise be possible.

Public discourse is important since it provides a clear indication of the ideological context within which the punishment of prisoners is taking place. A detailed understanding of this ideological context will, it is submitted, be helpful in getting to grips with the dilemmas faced by the South African penal system today. While problems such as overcrowding, “warehousing”, racial discrimination, the continued existence of prison gangs, the general failure to rehabilitate offenders, and so on, are often discussed in practical terms, the ideological dimension of the general failure of our penal system is not often addressed. Why is it that the same “problems” and the same “solutions” are endlessly, but fruitlessly, debated from year to year, decade to decade, and from one century to the next? In separating out the strands of public discourse in respect of different categories of prisoners in apartheid South Africa during the first half of the 1980s, and linking these strands to previous debates during colonial times, this article hopes to make progress towards answering this question and to contribute to a deeper understanding of the ideological context of imprisonment in South Africa.

## **2 Penitents – White Male Prisoners**

As a starting point to an examination of the discourse surrounding the punishment of white male prisoners in the first half of the 1980s, it is useful to make brief mention of what I have termed “historical resonances” within this particular strand of penal discourse. As mentioned in the introduction, the penal system of colonial Natal will be used as a point of comparison. An established theme in the discourse surrounding punishment in Natal during the colonial period was that the punishment of white offenders should be approached in a different manner to the punishment of black offenders.<sup>5</sup> Whereas the punishment of black offenders was often discussed in terms of retribution and the re-establishment of (white) authority and control, the discourse surrounding the punishment of white offenders was concerned mainly with rehabilitation and training. Corporal punishment with the dreaded cat-o-

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5 For a detailed account of the different strands of discourse surrounding the punishment of white and black prisoners in colonial Natal, see Peté ‘Punishment and Race: The Emergence of Racially Defined Punishment in Colonial Natal’ 1986 *Natal University Law and Society Review* 99-114.

nine-tails was considered a particularly suitable punishment for black “savages”, whereas skills-training in an environment segregated from the “brutalising” world inhabited by black prisoners, was considered appropriate for white offenders.<sup>6</sup> As stated in previous work by this author:

Although white prisoners formed only a small percentage of Natal’s total prison population they assumed a symbolic importance as representatives of the white master class. The white colonists of Natal formed a small tightly-knit community and they perceived of themselves as the guardians of ‘civilised’ norms and standards in a savage and heathen country ... The closed, homogenous nature of white society meant that those who deviated from the norms of that society would be met with social ostracism ... The white prisoner did not only suffer the degradation of being branded as a criminal, however, but to this was added the humiliation of being confined alongside black prisoners and being subjected to the authority of black prison guards. There was thus a double stigma attached to imprisonment for a white person in Natal, and on leaving the prison the white ex-prisoner encountered extreme difficulty in obtaining employment as a result of this stigma.<sup>7</sup>

In an important public debate which took place in the Colony of Natal at the beginning of the twentieth century, the issue of white prisoners and their treatment was discussed.<sup>8</sup> There was intense anxiety within white colonial society as to the perceived negative consequences of allowing “European” prisoners to be confined with prisoners of other races. For example, in January 1905 a correspondent to the *Natal Advertiser* expressed the following opinion:

Nothing is more keenly felt, nothing tends more to make a white man lose his self-respect in effecting reformation than to be paraded cheek by jowl several times a day with, and addressed in terms of familiarity by sombre tinted individuals, who in this part of the world only pass muster as ‘Europeans’ ...<sup>9</sup>

The anxiety of white prisoners to avoid “contamination” by contact with prisoners of mixed race was, at times, paranoid in nature. This is well illustrated in the following laughable account by a white journalist who was confined in the Durban Gaol at the turn of the century:

[A] European in [Natal] ... outside of a prison, means a white man with no coloured blood in him. Inside a prison it means anybody with a nominal education and dressed something like a European ... [T]he idea of whites and blacks huddled together is, when you see it as I saw it in gaol, revolting ... Three in a little cell – think of it – with the same bucket to use as a latrine, the

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6 See for example, Peté *supra* n 5 at 99-114; and Peté & Devenish ‘Flogging, Fear and Food: Punishment and Race in Colonial Natal’ 2005 *Journal of Southern African Studies* 3-21.

7 Peté *supra* n 5 at 106 & 107.

8 This debate took place during the deliberations of the Prison Reform Commission, between 1904 and 1906, when the final report of commission was delivered. See the *Natal Government Gazette* 1906-06-05 Government Notice 344: Report of the Prison Reform Commission.

9 *Natal Advertiser* (1905-01-05) ‘Prison Reform’.

same blankets continually interchanged, the same filth, and insect life creeping and crawling from white to black and from black to white!<sup>10</sup>

The white colonists were worried about more than the perceived dangers of "contamination" and its effect on the rehabilitation of "European" prisoners. Mixing "European" prisoners with "Coloured" prisoners was regarded as posing an ideological threat to white sovereignty as a whole. This is well illustrated in the following extract from the *Natal Advertiser*:

The gaols in Maritzburg and Durban see some thousands of natives passing through every year, and they observe that you treat white men (whom they naturally regard as your brothers) on an absolute equality with Hottentots, Griquas, and other coloured races, whom they themselves regard as their inferiors.<sup>11</sup>

The Natal Prison Reform Commission, which delivered its report in June 1906, concluded that the most fitting solution to the particular dilemmas faced by "European" prisoners – the double stigma and the near impossibility of finding unskilled employment upon release – was the construction of an entirely separate prison focused on industrial skills training for "Europeans".<sup>12</sup> Although this separate prison was never built, the ideology behind its proposed construction is clear. Within the proposed industrial prison for "Europeans", white prisoners would be reformed and taught industrial skills to enable them to fit in as members of the ruling white middle class upon their discharge.<sup>13</sup> Furthermore, with white prisoners sequestered from the public gaze in their exclusive industrial prison, unnecessary threats to white sovereignty would be avoided.

Moving forward in time from the 1900s to the 1980s, it is significant that the theme of racially differentiated punishment which, as pointed out above, emerged particularly strongly during the late colonial period, is still present within penal discourse. Although, by the 1980s, South Africa was clearly a country in transition, this theme – harsh treatment of black offenders versus rehabilitation and training for white offenders – continued to assert itself. An examination of newspaper reports dealing with white prisoners and their treatment in the first half of the 1980s, reveals a completely different ideological and conceptual world to that which is presupposed when the treatment of "non-white" prisoners is being reported on.<sup>14</sup> Although not all reports mention explicitly that it is "white" prisoners as opposed to "non-white" prisoners that are being discussed, by reading between the lines it soon becomes clear whether one is dealing with the smaller and more exclusive category of "white"

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10 Hardy *The Black Peril* (exact date of publication unknown) 274-275.

11 *Supra* n 10.

12 See the *Natal Government Gazette supra* n 8.

13 Peté *supra* n 5 at 110.

14 In this context, the category of "white prisoners" should not be taken to include white political prisoners, who form a completely separate ideological and conceptual category of their own.

prisoners, or with the much bigger category of “normal” – ie overwhelmingly “non-white” – prisoners. In the case of the latter group, imprisonment in apartheid South Africa during the early 1980s almost inevitably meant having to survive chronic overcrowding and brutal treatment. It also meant that many of those imprisoned were not criminals at all, but ordinary people caught in the net of legal social control measures designed to prop up the system of apartheid. Public discussion concerning such prisoners was characterised by wider political concerns; outrage at or support for the apartheid system and its methods of social control; concern over the levels of violence and brutality within the system; worries over the stability and ultimate sustainability of the system, and so on.<sup>15</sup> In the case of “white” prisoners, the concerns expressed were quite different. The language in newspaper reports describing the “white” prison experience is filled with references to introspection, self-discipline, honest hard work, skills-training and rehabilitation. A good example is a series of articles which appeared in September 1980 in *Die Volksblad*. The experiences of white male prisoners in Kroonstad prison were described, *inter alia*, as follows:

At Kroonstad, in the prison for white men, a new day has begun. It is 05h00 and it's another day, another un-ending round of self-examination and self-pity, discipline and silence, a re-examination of one's sense of value... At half past six, with the clang of tin plates and knives still in their ears and the sense of comfort afforded by full stomachs and the memory of warm bodies together around the dining tables, they stand in the first bleak rays of a winter morning with drawn faces, ready for the day's work which must help shape and prepare for a new life – one day ... Hands work with wood, weld, paint, bend and shape – for five hours. At half past eleven it is lunch time. At a central point hundreds of mouths swallow and chew eagerly at a meal of warm, nutritionally balanced food, smoke a precious cigarette, exchange desires and dreams... and then walk back to the work stations. Until half past four. Then it's the long, depressing road back to the prison ... Afterwards a chance for rest and relaxation. Competitive sport, measuring strength and skill, winning trophies and shields – or simply relaxing with a book, listening to music and trying to achieve inner peace within your restricted surroundings.<sup>16</sup>

The descriptions of daily life experienced by white male prisoners at Kroonstad, make it seem as if life for this category of prisoners was healthier inside the prison than out. A good example is a description of

15 See for example, Peté *supra* n 1.

16 The words used were: “Op Kroonstad, in die gevangenis vir blanke mans, het n nuwe dag begin. Dis 05h00 en dis nog 'n dag, nog n oneindiging van self ondersoek, selfbejammering, van discipline en stilstand, om weer jou sin vir waardes in oënskou to neem ... Halfsewe, met die geklingel van blikbord en mes nog in die ore en die behaaglikheid van 'n vol maag en warm lywe saam om n eettafel staan hulle met strak gesigte in die eerste bleek strale van n winteroggend, gereed vir die dagtaak wat moet help skaaf en voorberei vir die nuwe lewe – eendag ... [H]ande timmer, sweis, verf, buig en vorm – vyf ure lank. Halftwalf is dit etenstyd. Op 'n sentrale punt sluk en kou honderde monde gretig aan warm, gebalanseerde kos, rook n kosbare sigaret, wissel begeertes en verlangens ... en stap na

the wholesome prison diet, which was said to lower the usual health risks faced by the white population in general:

As a medical official recently explained: ‘Improved diets incorporating greater quantities of fibre and fewer refined foods mean that white prisoners in South African goals are less likely to suffer from coronary heart disease, obesity and appendicitis than the rest of the white population.’<sup>17</sup>

The list of indoor sports activities provided for white prisoners at Kroonstad reads more like the offerings made available at a sports oriented resort than a prison. The sports at Kroonstad included snooker, body building, darts, table tennis, squash, jukskei, boxing, card games and chess.<sup>18</sup> The overarching theme which informed the descriptions in *Die Volksblad* of the white male prison experience, was that all aspects of their lives were focused on rehabilitation. Over and over again the articles in *Die Volksblad* emphasised treatment, rehabilitation and training as the central goal of imprisonment for this category of offenders, with the aim of producing a better “product” for society in general:

Although, of necessity, the treatment programmes of short and long term prisoners differ, they essentially amount to discouraging negative patterns of behaviour and strengthening positive socially acceptable forms of behaviour. It boils down to the development of self-discipline, constructive labour as a counter to idleness and the cultivation of a sense of responsibility.<sup>19</sup>

A possible reason for this is that, for politically conservative newspapers such as *Die Volksblad*, white male prisoners were still regarded as being part of the “white lager”. Misguided they may be, but certainly not beyond salvation and eventual re-integration into white society. Of course, this somewhat romanticised view of white male prisoners as penitents engaged in a process of self-reflection and

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werkplekke. Tot halfvyf. Dan is dit die lang, trae pad terug na die gevangenis ... Dan is die geleentheid daar vir ontspanning en rus. Mededinging in sport, kragte en vernuf meet, trofee en skilde verower – of net met n boek le, na musiek luister en orde prober kry in jousef en jou beperkte ongewing”. See *Die Volksblad* (1980-09-23) ‘Hier gaan dae traag en grou verby ...’ 10.

17 The words used were: “Soos ’n mediese beampte onlangs gese het: ‘Die beter dieet met meer veselstowwe en minder geraffineerde kos veroorsaak dat blanke gevangenes in Suid-Afrikaanse gevangnisse minder ly aan koronêre hartsiektes, oorgewig en blindedermonsteking as die res van die blanke bevolking”. See *Die Volksblad* (1980-09-23) “’n Beter produk gevorm vir gemeenskap’ 13.

18 “Binnenshuise sport op Kroonstad bestaan uit onder meer snooker, liggaamsbou, veerpyltjies, tafeltennis, pluimbal, jukskei, boks, kaartspele en skaak”. See *Die Volksblad supra* n 17 at 13.

19 The words used were: “Hoewel die behandelingsprogramme vir kort en langtermyngevangenis noodwendig verskil, behels dit essensieel vir alle gevangenis n dekontisionering van negatiewe gedragspatrone en n versterking van positiewe, sosiaal aanvaarbare gedrag. Dit kom neer op die ontwikkeling van selfdissipline, konstruktiewe arbeid as teenvoeter vir ledigheid en die aankweek van n verantwoordelike sin”. See *Die Volksblad supra* n 17 at 13.

rehabilitation may not have been shared by the broader “white” ruling class. Nevertheless, it is submitted that the views expressed in these articles provides an interesting insight into the attitudes of a least one faction of the white community at this time, ie those conservatively minded members of that community who tended to form the core of the apartheid government's political support base. The political and ideological assumptions embedded within the *Volksblad* articles provide important clues to the manner in which this important faction of the white ruling class conceptualised the fundamental nature and purpose of punishment. It may be argued that, consciously or unconsciously, they viewed the nature and purpose of punishment in a schizophrenic manner, shifting between diametrically opposed ways of looking at the issue, depending upon whether they had in mind the punishment of “white” offenders or “non-white” offenders. This bifurcation in attitude, dependent upon the race of the offender concerned, harks back to colonial times, when the colonial elite – particularly towards the end of the colonial period in Natal – conceived of the punishment of white and black offenders in completely separate terms.<sup>20</sup>

### 3 Demons and Gangsters – The Explosion of Interest in Prison Gangs

Although South African prison gangs have a long and rich history, it is interesting to note that public discourse on the activities of prison gangs is largely absent during colonial times, at least in so far as the point of historical comparison in this article – the discourse surrounding the penal system of colonial Natal – is concerned. Of course, penal discourse in colonial Natal had its share of designated “demons”, but these were defined in terms of racist colonial conceptions of the “brutal” and “savage” nature of the colony’s indigenous inhabitants in general, rather than in terms of the activities of prison gangs in particular. In the minds of Natal’s white colonists, black offenders in general were “childlike savages”, possessed of natures which were brutal as well as childishly immature. They needed to be punished with sufficient severity so as to deter the “brutal savage”, as well as in a manner which provided simple and direct guidance to the “childlike Native”. For this reason, corporal punishment with the dreaded “cat o’ nine tails” was regarded as a particularly suitable form of punishment for black offenders in colonial Natal, so much so that the practice became known as the “cult of the Cat”. Much has been written on the ideology behind corporal punishment during colonial times, and need not be repeated here.<sup>21</sup> For the purposes of this article it is sufficient to point out that, within the

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20 See for example, Peté *supra* n 5; Peté & Devenish *supra* n 6.

21 See in general, Peté *ibid*; Peté & Devenish *ibid*; Crocker & Peté ‘Letting Go of the Lash: The Extraordinary Tenacity and Prolonged Decline of Judicial Corporal Punishment in Britain and its Former Colonies in Africa (Part 1)’ 2007 *Obiter* 271-290; Crocker & Peté ‘Letting Go of the Lash: The Extraordinary Tenacity and Prolonged Decline of Judicial Corporal

penal discourse of the 1980s, the position of the "brutal savage" or "demon" – what Stanley Cohen would refer to as a "folk devil"<sup>22</sup> – has been assumed largely by the figure of the prison gangster, a member of one of South Africa's notoriously violent "numbers gangs".<sup>23</sup>

The 1980s were a particularly important decade from the perspective of public discourse on the issue of prison gangs. Public interest in the topic was ignited by the publication of a particularly fascinating study on South African prison gangs and their bizarre history. The study was conducted at the University of Cape Town's Institute of Criminology by an anti-apartheid activist and former head of the National Union of South African Students, Nicholas 'Fink' Haysom. It was entitled "Towards an Understanding of Prison Gangs" and the shocking details it revealed about the origins and activities of South African prison gangs were seized upon by the public media.<sup>24</sup> Publicity around the details revealed in this study was to mark the beginning of period of intense public fascination with these gangs, which continued into the post-apartheid period.

A good example of the public furore, ignited by Haysom's study, may be found in a number of newspaper articles published in June 1981, when the *Weekend Argus* carried no less than three reports focusing on various aspects of Haysom's study. The following provocative headlines were used: "It's 'boere' v 'bandiete' in SA jails", "Biblical origin of 28 gang" and "When the 'kring' says kill".<sup>25</sup> Details of the bizarre history and entrenched nature of the "numbers gangs", which had been operating in South African prisons since the late nineteenth century, as well as the extent of their power and brutality of their practices, must have come as a shock to members of the South African public, particularly the sheltered (mainly white) middle class. For example the following are extracts from the initial reports on Haysom's study carried by the *Weekend Argus*:

Prison gangs have created elaborate alternative societies. They have a structure, ranking and a discipline code maintained by an overall governing body – the 'kring'. Each gang has its oral history and has its uniform, tattoos, flags, salutes and other military paraphernalia. In each gang, decisions must be made by the proper procedure. For example, a 28 Circle decision to kill a prisoner must be taken by a full 'kring' and the 'judge' must sign the death warrant ... Prison officials say it is nearly impossible to prevent a murder once the decision has been taken. Inmates who have reported to the authorities that the finger has been pointed at them may be killed before the authorities

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Punishment in Britain and its Former Colonies in Africa (Part 2)' 2007 *Obiter* 465-501.

22 Cohen *Folk Devils and Moral Panics – The Creation of the Mods and the Rockers* (1973).

23 For a contemporary account of life in one of the prison "numbers gangs", see Steinberg *The Number – One Man's Search for Identity in the Cape Underworld and Prison Gangs* (2005).

24 Haysom 'Towards an Understanding of Prison Gangs' 1981 *UCT, Institute of Criminology*.

25 See *Weekend Argus* (1981-06-20) 'When the "kring" says kill' 15.

take steps to protect them. A prisoner may attempt suicide rather than be confined in a cell with hostile gangsters, aware that he might endure months of nerve-racking tension before he might be killed. Murders are extremely brutal. Usually, the victim is strangled with a belt, or has his throat cut, or is eviscerated and his intestines removed and played with. A victim may receive numerous stab wounds and be left to die.<sup>26</sup>

Around two weeks after the above report, Haysom's study was, once again, the subject of a detailed report in the national media. The newspaper concerned was the *Sunday Express*, which discussed the disturbing conclusions set out in Haysom's study. Among the details published were the following:

In the paper, Mr Haysom asks who really controls South Africa's prisons. 'If many witnesses are reluctant to appear in the Supreme Court and if some State witnesses are murdered after they have given evidence, the question arises as to who actually does wield power in the prisons. If gang members would rather face the gallows than refuse to participate in murders that can only be described as suicide missions, does it not seem that there are two authority systems operating in the prisons?' ... 'The most notable feature of South African prison gangs is that they are nationwide. While their potency and membership fluctuates from prison to prison, the gangs boast, and with justification, that they have brothers in every prison. It is this fact that gives the gangs tremendous power. In essence this means that no prisoner is beyond their reach. A State witness in a trial will, they claim, never escape their vengeance ...'<sup>27</sup>

After a further two weeks, the highlights of Haysom's study were, yet again and in similar terms, set out and commented upon in a detailed report in the South African media. The newspaper concerned was the *Daily Dispatch*, which ended its report by congratulating Haysom on his study and calling upon the government to act.<sup>28</sup> Just over a week later, the Afrikaans press in the form of *Die Burger* picked up on the story and set out Haysom's findings in a detailed report. It began its report by stating that the contents of Haysom's study bordered on the incredible, and pointed to Haysom's assertion that it was almost impossible for the prison authorities to prevent the murder of an inmate sentenced to death by a prison gang.<sup>29</sup>

The publicity around Haysom's study seems to have caused an upsurge of interest within the media on the issue of South African prison gangs and their gruesome activities. For example, on 25 June 1981, *Die Oosterlig* reported that, over the previous four years, the Supreme (now High) Court in Port Elizabeth had sentenced eighteen persons, who were all members of one or other prison gang, to death for their involvement in seven prison murders. A further five prisoners were on trial for a similar prison murder in the St Albans prison. After describing the

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26 *Ibid.*

27 *Sunday Express* (1981-07-05) 'Gangs rule with iron fists in SA's prisons' 11.

28 *Daily Dispatch* (1981-07-20) 'Murder gangs in SA's jails' 12.

29 *Die Burger* (1981-07-28) 'Wrede moorde in tronke' 6.

gruesome nature of these murders, which involved the use of razor blades and sharpened spoons, the newspaper claimed that the motives for the murders were, in most cases, related to conflict between various prison gangs.<sup>30</sup> The following month, it was reported that three of the five prisoners who had been standing trial for the St Albans prison murder had been found guilty. Under the headline "Prison horror", the *Eastern Province Herald* reported the facts of this shocking case *inter alia* as follows:

A man was held down by his feet and a belt was used to choke him. Then his throat was cut with a razor blade. The man, a convict, had been in the care of the State at the time. But the State was unable to protect him in the cell he shared with 25 other men in Port Elizabeth on the night of August 22 last year. The power of a prison gang was more effective ... The evidence in this case was as repulsive as it was bizarre. One of the convicted men said the gang held a 'court' and decided a man in the cell should be put to death. It was left to the designated killers to choose the victim. There was testimony about homosexual rape in terms suggesting habitual practice. Then there was a description of a deliberate killing. Nobody intervened.<sup>31</sup>

A further result of all the publicity on the issue of prison gangs, seems to have been that the authorities were spurred into action. In October 1982, it was announced that the Prisons Service had commissioned the Human Sciences Research Council to conduct extensive research into the activities of prison gangs in South Africa.<sup>32</sup>

Perhaps because of its bizarre and shocking content, Nicholas Haysom's 1981 study of South African prison gangs continued to enjoy an extraordinarily long "shelf-life" as far as the press was concerned. For example, on 16 October 1983 under the sensational headline "Inside the Circle of Death", the *Sunday Express* carried an in-depth report on South African prison gangs, based very largely on the details set out in Haysom's study. The report detailed, *inter alia*, the brutal murder in May 1978 of Mleleki Dhlamini, by members of the 26 and 28 gangs in the Leeuwkop prison. Dhlamini's death was described in the following lurid and shocking terms:

After Dhlamini had been sentenced in 'The Circle' or 'Kring', his executioners held him down, slit his stomach open with a razor blade, beginning a slow, merciless murder in a dark communal maximum security cell shared by 41 prisoners. He cried out for mercy - to be killed quickly. But his executioners took their time with tortures too gruesome to relate. Eventually, a belt was tied around his neck and he was hanged over the bars of the cell door.<sup>33</sup>

Yet further articles, summarising various sections of Nicholas Haysom's 1981 study, appeared in the press on 5 November 1983, 13

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30 *Die Oosterlig* (1981-06-25) 'Bendes pleeg moorde in nag - 18 in PE tronke kry doodstraf in 4 j' 11.

31 *Eastern Province Herald* (1981-07-14) 'Prison horror' 6.

32 *Beeld* (1982-10-29) 'Tronk-bendes ondersoek' 12; *Hoofstad* (1982-10-29) 'RGN kyk op versoek na tronk-bendes' 11.

33 *Sunday Express* (1983-10-16) 'Inside the circle of death' 19.

April 1984 and 14 April 1984 respectively. The first article appeared in the *Weekend Post* under the headline “SA's notorious prison gangs date back to late 19th century”; the second, in *The Cape Times*, under the headline “A mechanism for control over lives”; and the third, in the *Rand Daily Mail*, under the headline “Rituals and edicts of prison gang societies”.<sup>34</sup>

In addition to the articles essentially re-cycling the results of Haysom's seminal study, South African newspapers continued to report on the activities of prison gangs throughout the period under examination. For example, in June 1983 reports of gang warfare at Leeuwkop prison emerged in the media. The reports emerged as the result of evidence led at the trial of nineteen prisoners at the Johannesburg Magistrate's Court. The prisoners on trial were members of the “Big Five” prison gang and were alleged to have assaulted a member of the rival “28” gang, a certain Jeremiah Maseko, who died in a coma two months later. A witness to the incident, Simon Makau, appeared to be terrified of testifying against the accused in the matter and, according to a report in *The Star*, he told the magistrate, Mr IJJ Luther, that: “If I point the men out, I will be selling my life because they will kill me when we return to Leeuwkop ... There is no safety for prisoners in that jail”.<sup>35</sup> The report went on to state that: “A trembling Makau later reluctantly identified the men and told Mr Luther: ‘I have signed my death warrant and have taken my soul out of my life’”.<sup>36</sup> These words portray in poignant fashion, the terrifying power exercised by prison gangs over the lives of inmates at this time.

In October 1983, the Afrikaans language newspaper *Rapport* published an article detailing prison life at the Brandvlei maximum security prison.<sup>37</sup> One of its reporters had been permitted to interview inmates at Brandvlei and had asked them about the extent of gang

34 *Weekend Post* (1983-11-05) ‘SA's notorious prison gangs date back to late 19th century’ 15; *The Cape Times* (1984-04-13) ‘A mechanism for control over lives’ 15; *Rand Daily Mail* (1984-04-14) ‘Rituals and edicts of prison gang societies’ 6.

35 *The Star* (1983-06-18) ‘Tale of gang warfare inside prison walls’ 4.

36 *Ibid.*

37 This was one of a series of articles published by *Rapport* in October 1983. The newspaper claimed that the Commissioner of Prisons, Lieutenant-General JF Otto, had specifically lifted the veil of secrecy so that the newspaper could write a series of “no-holds-barred” articles on South African prisons (see *Rapport* (1983-10-16) ‘Unieke reeks oor SA gevangenis begin – Agter tronk deure – Ons kon oral instap ...’ 1). Under the headline ‘Behind Prison Doors - We had total access’, the newspaper made much of the fact that it had been afforded unhindered access to all South African prisons (see *Rapport* (1983-10-16) *supra*); it labeled this fact as “unique” in South African newspaper history (the words used were: “iets unieks in koerantgeskiedenis”; see *Rapport* (1983-10-16) *supra*) The newspaper gushed (ironically when viewed from the perspective of post-apartheid South Africa) that it had not even been expected to submit its reports to the prison authorities before publication and was able to make its own observations (the Afrikaans words used were: “Daar is nie eens van *Rapport* verwag om ons berigte voor publikasie voor te le nie. Ons kon ons eie waarnemings maak” (see *Rapport* (1983-10-16) *supra*). Although

activities in the prison. After speaking to several inmates, including a certain inmate named "Samma" who was said to carry the rank of a "fighting general [veggeneraal]" in one of the prison gangs, the reporter came to the conclusion that much of life in the prison revolved around sex. He explained as follows in his report:

One gets the impression that each man has his own 'moffie' or 'laaitie'. Sodomy is rife. Samma confirmed that most trouble revolves around 'moffies'. Although each man usually has his own 'moffie', the prison also has its quota of 'whores'. They are the people who do not belong to one 'man', but shop around. It is around them that all hell often breaks loose. It is the duty of each man to look after his 'laaitie' and to care for him. A bit of oil for his hair or an extra helping of food is important to maintain the relationship.<sup>38</sup>

In April 1984, a certain Mr James D Petersen, who was said to be a "General" in the 26 prison gang, revealed to the press the story of his involvement with the gang. Petersen had been released from Brandvlei in February 1984, and seems to have been motivated to tell his story due to the fact that he had undergone a religious conversion.<sup>39</sup> By revealing details of gang activities and practices to the press, Petersen was clearly taking a great risk. The *Rand Daily Mail* described Petersen's story as "an at times bizarre and brutal account of organised gangsterism behind bars".<sup>40</sup> According to the *Rand Daily Mail*, both Petersen's tattoos (six stars and a law book on each shoulder) and his knowledge of the structure and policies of South African prison gangs, marked him out as a "General" of the 26 prison gang. According to the report, Petersen had been known in prison by the nickname "Kettings [Chains]". Among his revelations to the *Rand Daily Mail*, Petersen stated that, in 1974, there

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*Rapport* may have been playing up the significance of its series of articles for dramatic effect, the tone of the comments which accompanied the newspaper's announcement of the series, indicates clearly that access to South African prisons by newspaper reporters was not a common occurrence at this time. The newspaper stated that the Prison Service had allowed its reporters to walk into any prison in South Africa unannounced and without prior warning. It warned its readers that they might be shocked at what went on in prisons, but pointed out that the series was a "warts and all" expose. The Afrikaans words used were: "Ons skryf in die reeks kaalkop daaroor"; see *Rapport* (1983-10-16) *supra*. Significantly, the newspaper claimed that this indicated that there was nothing that the Prison Service wished to hide.

38 "'n Mens kry die indruk dat elke man sy eie 'moffie' of 'laaitie' het. Sodomie vier hoogty. Samma het bevestig dat die meeste moeilikheid om moffies gaan. Hoewel elke man gewoonlik sy eie 'moffie' het, het die gevangenis ook sy kwota 'hoere'. Hulle is die mense wat nie een 'man' het nie, maar rondsmous. Rondom hulle bars alle hel dikwels los. Elke man maak dit sy taak om sy 'laaitie' op te pas en mooi na hom te kyk. 'n Olietjie vir die hare of 'n extra skoepie is belangrik in die verhouding." *Rapport* (1983-10-16) 'Bendes het eie straf' 9.

39 Petersen was quoted as stating that: "Gang fights have got to stop no one is benefitting from them. I would like to help achieve this now that I have given myself over to the Lord". See *Rand Daily Mail* (1984-04-14) 'A stark, sordid underworld behind bars' 6.

40 *Rand Daily Mail supra* n 39 at 6.

had been around 500 members of the 26 prison gang in the Brandvlei prison. He told the newspaper that he “didn't like the way the 28s continually practiced homosexuality or their favourite method of killing other prisoners – by using poison”.<sup>41</sup> Petersen maintained that it was established practice for members of the 28 prison gang to force young prisoners “to act as 'moffies'”. He stated further that: “These boys have got very little choice. Gang rapes still take place in every prison in South Africa – the authorities will never be able to stamp this out”.<sup>42</sup>

The South African Prisons Service decided to respond publicly to the shocking claims made by Petersen in his interview with the *Rand Daily Mail*. A spokesman for the Prisons Service, Brigadier HJ Botha, rejected Petersen's contention that members of the 28 prison gang used poison to kill their victims, stating that “no record could be found of cases where prisoners were killed by other prisoners by using poison”.<sup>43</sup> Botha also stated that: “In South African prisons ... gangs are not tolerated and steps are continually taken to combat their formation and functioning”.<sup>44</sup> He also spoke of the existence of a “prison milieu” which “promotes the cultivation of those characteristics that are necessary for a prisoner's successful reintegration into society as a law-abiding citizen”.<sup>45</sup> Whatever the accuracy of Petersen's statements to the *Rand Daily Mail*, in light of the significant degree of evidence that had been put forward over the years of a long-established and thriving gang culture within South African prisons, the general thrust of the statements by Brigadier Botha, on behalf of the South African Prisons Service, smacks of extreme naïveté or a wilful disregard of reality. One indication that South African prisons were clearly extraordinarily violent places during the period under examination, was the number of unnatural deaths which occurred within the penal system. For example, in March 1984 in answer to a question in Parliament, the Minister of Justice, Mr Kobie Coetzee, revealed that 260 deaths had been reported in South African prisons in 1983. Of these, 76 deaths had been classified as “unnatural”. The reason given for the vast majority of these unnatural deaths was “assault by fellow prisoners”. It was revealed that 57 “black prisoners” and 16 “coloured prisoners” had died in this way.<sup>46</sup> These shocking statistics reveal something of the extent of violent activity in South African prisons at this time.

In May 1984, widespread publicity was given to the report of the Van Dam Committee of Enquiry. This committee had been set up at the insistence of the Minister of Justice and Prisons, Kobie Coetsee, in order to investigate a series of violent incidents which had occurred within the

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41 *Ibid.*

42 *Ibid.*

43 *Daily Dispatch* (1984-04-13) ‘SA Prisons to combat gangs’ 17. See also *Rand Daily Mail* *ibid.*

44 *Daily Dispatch* *idem* 17. See also *Rand Daily Mail* *ibid.*

45 *The Cape Times* (1984-04-13) ‘Steps taken to stop gangs in jails’ 15. See also *Rand Daily Mail* *ibid.*

46 *The Citizen* (1984-03-06) ‘Prison deaths top 250’ 4.

Barberton prison complex between 29 December 1982 and 30 September 1983.<sup>47</sup> No fewer than twelve prisoners had died as a result of violence during this period.<sup>48</sup> One of the main findings of the committee was that the activities of prison gangs, which it described as "horrifying", had played a central role in the violence.<sup>49</sup> The extent of the publicity given to the activities of Barberton's prison gangs was such that it is impossible to summarise all the reports in a short article such as this.<sup>50</sup> The following two extracts from articles published in the mainstream media in May 1984, however, provide a flavour of the type of press coverage given to prison gangs at this time. Under the headline "*Report details brutal prison gangs*", the *Rand Daily Mail* stated as follows:

Alarming evidence of the existence of violent gangs in South African prisons has been uncovered by the Van Dam Inquiry into the Barberton prisons. It said the gangs, which were 'very strong', were mainly found in maximum security prisons. The committee found evidence of violence, assaults, murders, homosexuality and gangs specialising in escapes ... The committee described as 'frightening' the 'merciless cruelty' of the gangs and their members who could, in exceptional circumstances, take action against prison personnel. Often gangs sentenced members to death for the flimsiest of reasons and the death penalty was carried out with a variety of brutal methods.<sup>51</sup>

On the same day as the above report was published, another mainstream South African newspaper, *The Star*, provided its readers with the following shocking details about the activities of Barberton's prison gangs:

Cold-blooded murders were committed for rumours or transgressions of the gang codes. Innocent people were often assaulted simply as a show of force or to take revenge for a misdemeanour. Many weapons, including knives, were made in prison to use against prisoners. A favourite weapon was the heavy metal mugs in which prisoners received coffee or tea. Tied to a half-metre belt of towel, they formed a dangerous weapon. Six gangs were identified in the prison. In some of them, sodomy was prevalent and younger members were known as 'wyfies'. Members of such a gang did not hesitate to

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47 See Peté 'Apartheid's Alcatraz – The Barberton prison complex during the early 1980s' (forthcoming).

48 *Sunday Express* (1984-02-05) 'Minister still to see prison report' 11. See also *Die Burger* (1984-05-17) 'Tronkbendes was agter geweld' 7.

49 *The Argus* (1984-05-17) 'Gangs' role in prison riots "horrifying" 4.

50 The headlines of various articles published at this time reflect the extent of public concern about the activities of Barberton's prison gangs. For example: *Die Vaderland* (1984-05-17) 'Bendes in tronke moet vasgevat word [Prison gangs must be curbed]' 2; *Rand Daily Mail* (1984-05-17) 'Report details brutal prison gangs' 11; *Die Burger supra* n 48 at 7; *The Argus supra* n 49 at 4; *The Star* (1984-05-17) 'New strategy on prison gangs "vital"' 1; *The Star* (1984-05-17) 'Horror gangs a key factor in prison riots' 5; *The Star* (1984-05-19) 'Prison gangs: the grim truth' 11.

51 *Rand Daily Mail* (1984-05-17) *supra* n 50 at 11. See also *Die Vaderland supra* n 50 at 2.

murder if members of their own or of other gangs interfered with their 'wyfies' ...<sup>52</sup>

The following month, in June 1984, as part of a series of articles on "The Killer Gangs", the *Eastern Province Herald* published a report dealing with prison gangs in the Port Elizabeth area. According to the report, since 1978 no fewer than 22 prison gang members had been sentenced to death in Port Elizabeth for murders committed behind bars. Most prison gang activity was said to take place at the St Albans prison in Port Elizabeth. The report emphasised the brutality of the prison gangs, citing a former convict who had risen to the rank of captain – a senior position in the 28 prison gang at St Albans. In the words of the report:

Nobody gets to the top of a prison gang without spilling blood. 'If you want to become a leader you have to be willing to kill. You must be bad, worse than the next man'. Only ruthlessness can ensure total obedience by others in the gang. A soldier ordered to kill a cell-mate will do so without hesitation, knowing his own throat would be slit if he refused. Seldom will convicts before court implicate a gang leader in the killing. That also means certain death. 'It is a big thing to smuggle dagga into jail but it is not unusual. And we make knives from all kinds of things', said the former captain of the 28s. 'If we want to punish somebody without stabbing him, we would put a belt through the ear of a tin mug and beat him unconscious with it'.<sup>53</sup>

The *Eastern Province Herald* also described, in grisly detail, a number of murders which had been committed by prison gangs in the Port Elizabeth area. According to the newspaper, these accounts were "based on reports of murder trials held in Port Elizabeth".<sup>54</sup> A good example of the spine chilling detail to which the readers of the *Eastern Province Herald* were exposed, concerned the murder of a certain Simon Joseph on 22 August 1980 in the North End Prison, by members of the 28 gang. The murder was described as follows:

Two of the men were sitting alongside Joseph and a third was on his haunches near Joseph's feet. Suddenly this man jumped forward and threw a belt around Joseph's neck. One man fell across his legs, pinning Joseph to the floor. Two others held his arms. Then his throat was hacked open with a razor blade. Blood spurted everywhere, covering Joseph's assailants, the floor and walls. His throat gaped from ear to ear... From across the cell the 28's general watched. When the body lay still the general got up and crossed to a member of the 27 gang. 'We have taken a head,' he said.<sup>55</sup>

The South African Prisons Service responded to these reports in the *Eastern Province Herald* with a bland statement to the effect that gangs were not tolerated in South African prisons and that steps were continually taken to combat their function and ability to function. The Chief Liaison Officer of the South African Prison Services, Brigadier HJ Botha, stated that the prisons service was "deeply concerned about any

52 *The Star* (1984-05-17) 'Horror gangs a key factor in prison riots' 5.

53 *Eastern Province Herald* (1984-06-21) 'It's murder behind bars' 10.

54 *Idem* 15.

55 *Ibid.*

incident of a violent nature” and that the service strove constantly “through research and practical experience, to eliminate the phenomenon of gangs in prison, or at least to contain it to the extent that it can be neutralised effectively”.<sup>56</sup> What is revealed by the examination of the public discourse on prison gangs set out above, however, is that this problem was both severe as well as deeply entrenched within South Africa's penal system. Due to the extensive publicity surrounding the activities of prison gangs during the period in question, it seems clear that no informed South African could honestly deny knowledge of either the severity or extent of the problem. This makes the “formulaic” responses of the South African Prison Services seem out of touch with the reality of the problem. The discourse consists of one shock revelation after the other, with the problem remaining firmly in place from one year to the next. In fact, the theme of extreme violence caused by entrenched prison gangs, was to extend way beyond the 1980s and well into the post-apartheid period.<sup>57</sup> The sadistic and violent prison gangster – the “demon” or “folk devil” who could not be safely contained – was to remain a prominent figure within South African penal discourse for many years to come.

To end this section, two brief notes on the brutality of the South African penal system in response to those perceived as “demons”. The first concerns the “caging” of dangerous prisoners. In October 1983, a reporter and photographer from the Afrikaans newspaper *Rapport* visited the maximum security prison situated at Brandvlei near Worcester in the Boland.<sup>58</sup> At the time, the prison contained 664 dangerous prisoners and was known as the Barberton of the Cape.<sup>59</sup> What the reporter and photographer saw on their visit is reminiscent of what one might have seen during a visit to a prison in colonial Natal during the nineteenth century.<sup>60</sup> According to an article which appeared in *Rapport* following the visit, a series of wire cages, approximately two metres square, had been erected in an enclosed courtyard at the prison. The courtyard was

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56 *Idem 2*.

57 See in general, Peté ‘The Politics of Imprisonment in the Aftermath of South Africa’s First Democratic Election’ 1998 *South African Journal of Criminal Justice* 51-83; Peté ‘The Good the Bad and the Warehoused – The Politics of Imprisonment During the Run-up to South Africa’s Second Democratic Election’ 2000 *South African Journal of Criminal Justice* 1-56; Peté ‘No Reason to Celebrate: Imprisonment in the Aftermath of South Africa’s Second Democratic Election’ (forthcoming).

58 This was for the purpose of obtaining material for a series of “first hand” articles on South African prisons. See n 37 for a full description of the manner in which this series of articles was conceived and brought to fruition.

59 The Barberton Maximum Security Prison was notorious for housing the most dangerous prisoners within the South African penal system at that time. See Peté ‘Hell on Earth – The Barberton Prison Complex in the Early 1980s’ (forthcoming).

60 See in general, Peté ‘Falling on Stony Ground: Importing the Penal Practices of Europe into the Prisons of Colonial Natal (Part 1)’ 2006 *Fundamina* 100-112; and Peté ‘Falling on Stony Ground: Importing the Penal Practices of Europe into the Prisons of Colonial Natal (Part 2)’ 2007 *Fundamina* 111-125.

open to the elements and each cage contained a convict busy breaking stones with a hammer. The reporter expressed his amazement at witnessing this scene by stating that, for the first time in his life, he realised that, just as the convicts of old had done, South African prisoners at Brandvlei still engaged in stone-breaking.<sup>61</sup> The convicts' food was passed to them in bowls which was pushed underneath the gates to the wire cages. The spoons with which they ate had no handles, in order to avoid the possibility that they could be turned into weapons.<sup>62</sup> The report pointed out that the stone breakers were all "brown or black" ie there were no white prisoners among them. According to the report, none of the prisoners complained about being locked in the cages to perform stone breaking, since it was preferable to being locked up in a single cell day and night. The prisoners also told the reporter that they felt safe in the cages, where they did not have to be on the lookout for other violent prisoners.<sup>63</sup> The prison authorities informed *Rapport* that this was a pilot project aimed only at the most dangerous prisoners within the penal system. At that stage, authorities believed that the project had been successful in all respects.<sup>64</sup> There were "single cages", which each measured approximately two square metres, as well as larger "group cages". Cages had been constructed at two prisons in the Cape – Brandvlei prison in the Boland and Victor Verster prison in Paarl. Brandvlei had 330 single cages as well as a number of group cages which could accommodate 70 prisoners, while Victor Verster had 96 single cages, with a further 96 being built. It was also revealed that there were group cages at the Leeuwkop prison near Johannesburg which could

61 "Vir die eerste keer besef jy dat mense vandag nog soos die bandiete van ouds in 'n gevangenis letterlik klippe kap." See *Rapport* (1983-10-16) 'Elke man in sy kampie – en hy kap klippe!' 9.

62 In relation to the issue of "homemade" weapons, another article in the same edition of *Rapport*, spoke of the ingenious ways in which prisoners manufactured weapons using items such as nails, spoons, tin plates and pieces of metal pipe. The article also described the ingenious methods employed by prisoners to conceal weapons. According to the article, on one occasion the internal search of a certain prisoner at Brandvlei, had discovered no fewer than three knives concealed in the man's rectum. The reporter summed up his astonishment as follows: "One must see it to believe what sorts of objects prisoners are capable of secreting in their bodies. Those 'suitcases [soetkyste]' as they are known in prison slang, are capable of concealing virtually anything" (the Afrikaans words used were: "'n Mens moet sien om te glo wat die gevangenis alles in hul lywe kan opdruk. Daardie 'soetkyste', soos dit in gevangenis taal genoem word, verberg feitlik enigiets"; See *Rapport* (1983-10-16) 'Alles word wapens' 10). In a comment with slightly racist overtones, the article mentioned that white prisoners were even more ingenious in manufacturing weapons. It cited the example of a weapon that had been manufactured at the Zonderwater prison near Cullinan, which looked like a normal pen, but could fire .22 rounds. See *Rapport* (1983-10-16) 'Alles word wapens' 10.

63 *Rapport supra* n 61 at 9.

64 In view of the fact that stone-breaking was a common form of hard labour for convicts in colonial times, one gets a strong sense that the apartheid prison authorities, who came up with this idea, were looking "back to the future". For example, see Peté 'Penal Labour in Colonial Natal – The Fine Line between Convicts and Labourers' 2008 *Fundamina* 66 77-82

accommodate 200 prisoners. In view of the type of work being performed by these "caged" prisoners – ie stone-breaking – an ironic twist to the article in *Rapport* was the assurance by the prison authorities that, as far as practically possible, attention was focused on opportunities for training, and that prison labour was designed to be productive in nature and as constructive as possible.<sup>65</sup> Significantly, although reporters may have expressed surprise at the sight of caged prisoners performing stone breaking, there was no real critique of the penal system in the articles examined above. It would seem that, during the period under examination, South Africans were inured to the brutality of the apartheid system in general and the penal system in particular.

A final note to end this section, concerns the cruel manner in which the death penalty was carried out at this time, further illustrating the brutality of the South African penal system at this time. In July 1981, a disturbing report appeared in *The Cape Times* concerning the manner in which four death row prisoners had been executed. The report started with the following firm denunciation of the death penalty: "Judicial murder, in the form of hanging, is still one of the more barbaric aspects of South African society, one that disposes of more than a hundred human beings a year without noticeable effect on the ever-increasing homicide rate".<sup>66</sup> It then went on to explain that four death row prisoners had been tear gassed when they refused to leave their cell and be led to the gallows. After the tear gassing, the men were dragged out of the cell and hanged. The Prison Service stated that it could not give an expert opinion on whether the men were still under the influence of tear gas when they were hanged. *The Cape Times* commented on the response of the Prison Service as follows:

The very fact that the prison authorities cannot be sure is a tacit admission that the men were not allowed to recover completely from the gassing before being plunged into eternity. The execution should have been delayed, and the men sedated. That at least would have restored to them some human dignity before being deprived of life.<sup>67</sup>

Another example of the brutality that is encompassed in the death penalty, is a poignant report which appeared in *Die Volksblad* in April 1983, concerning the manner in which prisoners on death row reacted to an approaching execution. The main focus of the report was on the well-known Afrikaans poet Breyten Breytenbach, who had served a period of seven years imprisonment. According to the report, one of Breytenbach's most prominent recollections of his time in prison was the way in which black prisoners used to sing before they were put to death. When a black inmate on death row was told of the date on which his sentence would be carried out, he would begin to sing. All his fellow black prisoners on death row would then sing along with him, almost constantly, for the week which preceded the execution. According to the

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65 *Rapport* (1983-10-16) 'Kampies hou hulle uit mekaar' 8.

66 See *The Cape Times* (1981-07-22) 'Gassed and hanged' 12.

67 *Ibid.*

report, the prisoners sang Christian songs, particularly psalms, but also blues, as well as the hit songs of Myriam Makeba.<sup>68</sup> The death penalty was widely used in South Africa at this time. In October 1984, a brief report in *The Cape Times* mentioned that, during 1983, about 100 people had been executed in South Africa for non-political offences and three for treason.<sup>69</sup>

#### 4 Conclusion

In Part One of the article, two “characters” who formed part of the story told by penal discourse in the first half of the 1980s have been examined – the white male prisoner (the “penitent”) and the prison gangster (the “demon”). It has been shown that these two characters occupied completely different conceptual spaces within the penal ideology of the time. White male prisoners, segregated in their own prison, were seen as “penitents” undergoing a period of enforced self-reflection and rehabilitation, which would enable them to be reabsorbed into white society. Prison gangsters were the “demons” of the story – cruel, sadistic, violent and savage – who generated intense anxiety on the part of the white middle class and were surrounded by a discourse of retributive punishment. In each case, it has been shown that there are “historical resonances” which serve to cast light on the penal discourse surrounding each of these categories of prisoner in the early 1980s. The fact that clear historical parallels can be drawn between penal debates which took place in colonial Natal, and those which took place during the height of apartheid in the early 1980s, is significant. It shows that ideological attitudes are deeply rooted and are able to endure over many decades. Prison reform is not simply a matter of bringing about physical changes within the penal system, but also about understanding and transforming these deeply rooted ideological attitudes. Part two of the article will deal with another two characters in penal drama of the early 1980s, namely, “Fallen Angels” (white female prisoners) and “innocents” (children).

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68 See *Die Volksblad* (1983-04-25) ‘Digter se onthulling oor werk in selle’ 13.

69 See *The Cape Times* (1984-10-24) ‘Amnesty puts SA in report’ 19.

## **CHAPTER 3.1.2**

### **Angels and Demons, Innocents and Penitents: An Analysis of Different 'Characters' Within the Penal Discourse of Apartheid South Africa 1980 to 1984 - Part 2.**

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# **Angels and Demons, Innocents and Penitents: An Analysis of Different "Characters" Within the Penal Discourse of Apartheid South Africa 1980 to 1984 - Part Two**

Stephen Allister Peté<sup>1</sup>

## **1. Introduction**

As was pointed out in Part One of this article, the purpose of this study is to examine several different "characters" which emerge within the penal discourse of Apartheid South Africa. The early 1980s were a particularly crucial time in the country's history, in many ways marking the beginning-of-the-end of the apartheid system. The period examined is particularly interesting from the perspective of penal discourse, since the prisons were points at which the stresses and strains within the apartheid system became visible. Penal discourse, particularly as reflected in public debates, is important since it provides a clear indication of the ideological context within which the punishment of prisoners is taking place. A nuanced understanding of this ideological context will, it is submitted, be helpful in getting to grips with the dilemmas faced by the South African penal system today. Ideological attitudes are deeply rooted and able to endure over many decades. True prison reform cannot be accomplished without understanding and transforming these deeply rooted ideological attitudes.

Part One of this article examined two "characters" who formed part of the overall story which emerged from penal discourse in the first half of the 1980s - the white male prisoner (the "penitent") and the prison gangster (the "demon"). It was shown that these two characters occupied completely different conceptual spaces within the penal ideology of the time. It was pointed out that white male prisoners, segregated in their own prison, were seen as "penitents" undergoing a period of enforced self-reflection and rehabilitation, which would enable them to be reabsorbed into white society, whereas prison gangsters were the "demons" of story, surrounded by a discourse of retributive punishment. In each case historical parallels were drawn with penal debates which had taken place in colonial Natal many decades before, illustrating the resilience of penal ideology and casting new light upon the debates taking place in the early 1980s.

Part Two of this article will continue with this project. It will deal with a further two characters in penal drama of the early 1980s, viz. "Fallen Angels" (white female prisoners) and "Innocents" (children).

## **2. Fallen Angels - White Female Prisoners**

This section of the article is concerned with the manner in which white female prisoners were represented in public discourse during the early 1980s. Black female prisoners did not feature in the public discourse surrounding prisons at this time. The "invisibility" of black female prisoners within

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the public discourse is telling. Before proceeding to discuss the manner in which white female prisoners were represented in the public discourse during this period, it is worth commenting briefly on the different challenges facing white and black women, as well as the "invisibility" of black female prisoners within the penal discourse, at this time. Writing in 1979 – at virtually the same time as the period under examination in this article – Jacklyn Cock drew attention to the "three lines along which social inequality is generated - class, race and sex."<sup>2</sup> Cock pointed out that, while both black and white women in South Africa at this time were subjected to discrimination on the basis of sex: "Many white women are free to enjoy a considerable amount of leisure, or to lead economically productive lives outside the home, because of the availability of cheap, black domestic labour."<sup>3</sup> This did not mean, however, that the discrimination and challenges faced by white women, within the particularly chauvinist and patriarchal society which existed in apartheid South Africa at this time, were insignificant. The position of white women in South Africa during the period in question was as follows:

"More than half of white South African marriages are under community of property, whereby the husband acquires guardianship of the wife and she is considered a minor even if she is over 21. He holds the 'marital power', which means, for example, that a wife cannot enter into any binding contract, even a hire purchase agreement, or open a credit account without the prior permission of her husband. The Matrimonial Affairs Act, No. 37 of 1953 greatly alleviated the legal disabilities of married women. Since then the woman's earnings are protected, but her husband may still take possession of anything she may have bought with the money, unless she gets a court interdict against him. Also her husband's creditors can claim on her earnings for his debts, with the exception of liquor bills."<sup>4</sup>

Of course, the oppression suffered by most black women at this time – due to the intersection of discrimination on the basis of sex, class and race – was far worse than that suffered by white women. As Cock pointed out:

"An African woman married by customary union is considered a minor under the tutelage of her husband. She has no contractual capacity and cannot own property in her own right. If she owns wages these become the property of her husband... Influx control is the core of the structure of legal constraints experienced by African women... In South Africa, African women do not have what are considered basic rights throughout the world: that is, the right to live with their husbands and lead a normal kind of family life... The government policy is that the African migrant labour force 'must not be burdened with superfluous appendages such as wives, children and dependants who could not provide service.'... It is where there is a

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<sup>2</sup> Jacklyn Cock (1980) *Maids and Madams - A Study in the Politics of Exploitation* Ravan Press: Johannesburg at page 5.

<sup>3</sup> Jacklyn Cock (1980) *Maids and Madams - A Study in the Politics of Exploitation* Ravan Press: Johannesburg at page 240.

<sup>4</sup> Jacklyn Cock (1980) *Maids and Madams - A Study in the Politics of Exploitation* Ravan Press: Johannesburg at page 243.

convergence between the systems of racial domination and sexual domination... that the disabilities of African women are greatest."<sup>5</sup>

In the more than three decades which have passed since the above was written, there has been much scholarly focus on the concept of "intersectionality" - which concerns the way in which different systems and forms of discrimination and oppression, such as sex, race and class, intersect in a mutually reinforcing manner. The term "intersectionality" was first adopted in 1989 by the critical race theorist Kimberlé Williams Crenshaw.<sup>6</sup> While it is beyond the scope of this article to conduct a detailed analysis of the concept, it should be kept in mind as a possible explanation for the virtual "invisibility" of black female prisoners within the public discourse surrounding South African prisons during the early 1980s.<sup>7</sup> We turn now to a discussion of white female prisoners and the manner in which they were represented in the public discourse.

Adopting the penal discourse of colonial Natal as a point of comparison, it is possible to point to historical resonances within the strand of penal discourse relating to white female prisoners in the 1980s. Although white females do not enter the penal discourse of colonial Natal as prisoners – there being little mention in the public discourse about white female prisoners in the colony – they certainly do enter that discourse as a special category of victims.<sup>8</sup> The manner in which this special category of persons is conceived during colonial times as a category of victims, speaks directly to the discourse surrounding white female prisoners in the 1980s. As stated in previous work by this author:

"The colonists saw themselves as being outnumbered and surrounded on all sides by warlike black savages, who had to be kept firmly under control if the safety of the white community was to be ensured. Any black challenge to white authority or civilisation had to be swiftly and severely dealt with to prevent it from developing into open rebellion. The kind of siege mentality displayed by the colonists may perhaps best be illustrated by reference to the periodic waves of public hysteria that swept through white ranks following assaults on white women by black men. The rape of a white woman by a black man was possibly the ultimate denigration of white authority and civilisation, and public reaction to such 'outrages' reached

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<sup>5</sup> Jacklyn Cock (1980) *Maids and Madams - A Study in the Politics of Exploitation* Ravan Press: Johannesburg at pages 244, 245 and 247.

<sup>6</sup> See Kimberlé Crenshaw (1989) "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antidiscrimination Politics" *The University of Chicago Legal Forum*, 1989: 139 to 167. See also Kimberlé Crenshaw (1991) "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" *Stanford Law Review*, Volume 43, Number 6 (July 1991) pages 1241 to 1299.

<sup>7</sup> It is not only in South Africa that black women have been rendered "invisible" by the intersection of multiple layers of oppression and discrimination. For example, Geneva Brown comments as follows in relation to the American criminal justice system: "The legal community has overlooked the impact of the intersectionality of race and gender, and the criminal justice system suffers from the same dilemma. Law enforcement, the government, and research institutions measure "gender" as "white women" and "race" as "African-American men." African-American women remain invisible until the policies being pursued have had a devastating impact on their lives." See Geneva Brown "The Intersectionality of Race, Gender and Reentry: Challenges for African-American Women" American Constitution Society for Law and Policy Issue Brief November 2010 at page 3.

<sup>8</sup> It is interesting to note that, at the time the Natal Prison Reform Commission delivered its report in June 1906, there were so few white female offenders that the Commission recommended that they be placed under the care of "approved private institutions" instead of being sent to gaol. See *Natal Government Gazette* of 5 June 1906 *Government Notice* 344: Report of the Prison Reform Commission - Paragraph 74(10).

fever pitch on numerous occasions over the years. Again and again the colonists condemned imprisonment as far too lenient a punishment for the perpetrators of 'outrages'.<sup>9</sup>

It is clear that, during colonial times, white women were regarded as representatives of all that was best in and most sacred to the "white race". As a category, white women played an important part in the formation of white identity - including the conception of whites as torch bearers of civilisation in a dark continent. The ideas surrounding white womanhood and what it stood for formed the apex of a much larger ideological construction around what it meant to be "white" or "European" in the Colony of Natal.<sup>10</sup>

Shifting from the colonial period to that of late apartheid, it is interesting to note that the discourse surrounding white female prisoners in the 1980s retains a significant flavour of the debates referred to above. The patriarchal underpinnings of the apartheid system, as well as the political and ideological assumptions at work within powerful factions of the white elite, are often clearly on display in newspaper articles dealing with this category of prisoners in the early 1980s, particularly in articles which appeared in the conservative *Afrikaner* press. For example, *Die Volksblad* published an article in 1980 discussing the daily lives of white women in Kroonstad prison. Not afraid to 'wear its heart on its sleeve', the article is characterised by the use of highly emotive language. Just beneath the surface of the earnest discussion about the experiences of white female prisoners, lies the unspoken assumption that white women are the guardians of civilised values on a dark continent, the sacred keepers of the flame of Christian civilisation.<sup>11</sup> The article is filled with empathy and pathos and one can almost hear violins playing in the background as the daily lives of these 'fallen angels' are described:

"When a woman finds herself in prison, it is essential that a consistent effort be made by the authorities to appreciate the extent of her humiliation and regret. She remains a woman, and that fact is important in determining the manner in which she is to be treated and trained. This is the first thing to strike you when you walk into the section reserved for women prisoners at Kroonstad: the feminine atmosphere, the order, the peaceful surroundings. The long corridors almost exude the serenity of a hospital... In the spacious, sunny needlework room, white women are busy working with quick skilled hands, carrying on subdued conversations about everyday topics. They are neat, feminine and relaxed. Each woman is wearing a dress which she made in the prison according to her own preferences and taste. There is no sign of uniform, shapeless prison clothing... In the cells - each white female prisoner at Kroonstad has a single cell - you see evidence of their longings and desires. The bits of decor and colour which she employs to transform the small, claustrophobic square space behind the barred cell door into a reflection of her own personality are authentically feminine and often excessive in

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<sup>9</sup> Stephen Peté "Punishment and Race: The Emergence of Racially Defined Punishment in Colonial Natal", 1986 1(2) *Natal University Law and Society Review*, pages 99 to 114 at page 105.

<sup>10</sup> See also Robert Morrell (2001) "From Boys to Gentlemen: Settler Masculinity in Colonial Natal 1880 - 1920" Unisa Press: Pretoria at page 160.

<sup>11</sup> Indeed, this patriarchal tone harks back to colonial times. See, for example, Stephen Peté and Annie Devenish (2005) "Flogging, Fear and Food: Punishment and Race in Colonial Natal", 2005 31(1) *Journal of Southern African Studies*, pages 3 to 21, at pages 10 to 11.

character. The photographs on the metal cabinet next to the steel bed, the pictures on the walls, the artistic needlework mat in front of the bed, the rag dolls and library books... It's been like this since her childhood..."<sup>12</sup>

The theme of white women prisoners as "fallen angels" was to repeat itself three years later. In September 1983, *Die Vaderland* ran a series of four articles on life inside the Kroonstad prison for women. This prison housed all white female prisoners sentenced to more than two years' imprisonment. Once again, the plight of these "fallen angels" was described with great pathos and empathy, with an emphasis on the trauma and humiliation of their fall from grace:

"After the stress and humiliation of the court case, her traumatic experience does not come to an end. On top of it all she now feels the fear of the unknown."<sup>13</sup>

The image of white woman prisoners as fragile and emotionally vulnerable, desperately in need of the tender loving care of understanding prison personnel, is well illustrated in the following paragraph:

"A woman is a person driven by feeling, who can at times become more emotional than a man. She does, however, have the comfort of knowing that she is being guarded and looked after by female warders, who are able to assist her if she encounters problems."<sup>14</sup>

Predictably, the patriarchal assumptions inherent in comments about the nature of white women prisoners extended to a firm rejection of any form of 'deviant' sexuality. Readers of *Die Vaderland* were reassured in the second article in the series on the Kroonstad women's prison that "lesbian relationships were almost impossible" in that prison.<sup>15</sup>

The final instalment in the sugar coated series of articles in *Die Vaderland* made the Kroonstad women's prison sound more like some sort of health spa than a place of punishment. The article spoke of the range of facilities available to female prisoners in Kroonstad, including their own

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<sup>12</sup> The words used were: "Met die vrou wat in die gevangenis beland, word voortdurend gepoog om begrip te toon vir haar vernedering, berou en verse. Sy bly vrou, en dit is belangrik in haar behandeling en opleiding. Dit is ook wat n mens die eerste opval wanneer jy instap by die afdeling vir vrouegevangenes op Kroonstad: die gevoel van vroulikheid, die netheid, die rustigheid in die lug. Die lang gange het byna die sereniteit van n hospital... In die groot, sonnige naaldwerkkamer is die blanke vroue met vlytige en knap hande besig, en handel gedempte gesprekke oor allegaagse dinge. Hulle is netjies, vroulik en ontspanne. Elke vrou het n rok aan wat sy self na eie smaak en voorkeur in die gevangenis gemaak het. Van eenvormige, vormlose gevangenisdrag is daar nie sprake nie... [I]n die selle – elke blanke vrouegevangene op Kroonstad het n enkelsel – sien jy die verlangens en begeertes. Eg vroulik en dikwels tot oordadigheid gevoer, is die versierings en kleur wat sy aanwend om die klein, kloustrofobiese vierkant agter die traliedeur te omskep in haar eie minipersoonlikheid... Die fotos op die staalkassie langs die staalkatel, die prente teen die mure, die kunsnaaldwerk-matjie voor die bed, die lappoppies en biblioteekboeke... Dis soos sy was van kleintyd af..." See *Die Volksblad* 25 September 1980 "Vrou bly 'n vrou – ook in dié klein wêreld" at page 13.

<sup>13</sup> The words used were: "Na die spanning en vernedering van die hofspraak, hou haar traumatiese ondervinding nie op nie. Boonop het sy nou die vrees vir die onbekende." See *Die Vaderland* 26 September 1983 "Uit die gemeenskap verwyder..." at page 11.

<sup>14</sup> The words used were: "n Vrou is 'n gevoelsmens wat by tye meer emosioneel as n man kan raak. Sy het darem die vertroosting dat sy deur bewaarders bewaak en versorg word wat haar kan help as sy probleme sou ondervind." See *Die Vaderland* 26 September 1983 "Uit die gemeenskap verwyder..." at page 11.

<sup>15</sup> See *Die Vaderland* 27 September 1983 "Lesbiese verhoudings byna onmoontlik" at page 9.

library (of course, said the article, love stories were the prisoners' favourite reading material) and prison radio station (which would play prisoners' requests). Prisoners could take part in a wide range of sporting activities (including netball, tennis, squash, badminton, and fitness groups) as well as a selection of cultural activities and crafts (including chess, macramé, batik, decoupage, clay modelling and crochet.) They were also treated to a movie once a week at the prison, could attend any one of a wide variety of church services in the prison on Sundays and could study by correspondence for an external qualification.<sup>16</sup> Clearly, Kroonstad women's prison was a world away from the antiquated and overcrowded facilities which accommodated the majority of South Africa's prison population. Furthermore, if the articles in *Die Vaderland* are taken at face value, it would seem that the ideological assumptions surrounding the treatment of white female prisoners - the creation of a homely, caring and stimulating environment within which to rehabilitate these traumatised "fallen angels" - were very different to the assumptions surrounding the treatment of other categories of prisoners in South Africa.

At around the same time one of the more mainstream Afrikaans newspapers, *Rapport*, also published an article describing conditions at the Kroonstad prison for women. As in the previous articles discussed in this section, the language adopted in the *Rapport* article was that of a romantic soap opera. The tragedy of the 'fallen angel' was expressed in melodramatic terms and the prison was described as a place of healing, where these angels were to be nursed back to health. The sense of romantic tragedy which ran through the article was apparent from the drama of its title: "Women in Prison - For them you weep inside".<sup>17</sup> The opening paragraph (the Afrikaans text is replete with the diminutive form used to indicate childlike affection) made the patriarchal attitude of those responsible for the article even more apparent:

"A woman remains a woman, even in prison. She makes herself beautiful, tidivates and makes her small cell cheerful with photos or a little plant - and even when the prison food is dished up, one can see that a woman was involved in its preparation... There is a hairdresser, the women wear cheerful floral print dresses and little curtains hang in front of the windows."<sup>18</sup>

The language used by the writer seems to indicate that women are regarded as the "weaker sex" - sensitive, emotional, and ornamental. The writer seems deeply concerned with the inner nature of the female prisoners, a concern largely absent from the descriptions of male prisoners in a series of articles published in the same newspaper at the same time. The nurturing role of women as mothers is apparent in many of the descriptions provided:

"But they remain people inside. Some of them are mothers, even grandmothers. Fortunately the Prisons Service remembers and understands this all too well. 'When one is forced to listen to the problems of some of these prisoners, woman to woman, sometimes one cannot

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<sup>16</sup> *Die Vaderland* 29 September 1983 "Tyd in die gevangenis is 'n dure les" at page 15.

<sup>17</sup> *Rapport* 23 October 1983 "Die vrou in die gevangenis - Vir hulle huil jy na binne" at page 10.

<sup>18</sup> "n Vrou bly 'n vrou, selfs in die gevangenis. Sy maak haar mooi, kikker en vrolik haar klein selletjie met foto's of 'n plantjie op - en selfs wanneer die gevangenis uitgeskep word, kan 'n mens die hand van 'n vrou daarin sien... Daar is 'n haarkapsalon, die vroue dra vrolike geblomde rokke en voor die vensters hand gordyntjies." See *Rapport* 23 October 1983 "Die vrou in die gevangenis - Vir hulle huil jy na binne" at page 10.

but help shed a tear with them. But you cry inside, because you are not supposed to show your emotions,' says Major Maureen Halgryn, the Commanding Officer of Kroonstad Women's Prison."<sup>19</sup>

At one point in the article, the writer admits how strange it was for him a man - to walk into a women's prison. His concern with the appearances of the women prisoners is, perhaps, revealing of the patriarchal attitudes prevalent during the apartheid period:

"There are those who are impeccably groomed. Their hair and faces are cared for and made up as if they were on their way to a premiere. It's just that the prison frock would have been out of place there. Others look like the woman on the other side of the street, who is always leaning over her front gate so as not to miss anything. And really there are those that could have been your own mother or grandmother."<sup>20</sup>

As far as prison labour for women is concerned, it is described as "women's work", which is designed to rehabilitate the female prisoners and turn them into 'good' wives and mothers:

"The women are kept busy with hand-and-needle work. Some are trained to be hairdressers and a few work in the kitchen. There are sufficient opportunities for study and those who wish to are able to become well qualified. Certain of the prisoners obtain outstanding results."<sup>21</sup>

For purposes of comparison, it is worth concluding this section by pointing to one tiny group of white female prisoners who were not painted as "fallen angels" in terms of the general public discourse. This group consisted of white female political prisoners, of whom there were only a very small number in the first half of the 1980s.<sup>22</sup> On 5 April 1984, *The Citizen* reported that Barbara

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<sup>19</sup> "Maar dit is tog mense wat daar binne is. Van hulle is ma's, selfs oumas. Gelukkig onthou en besef die Gevangenisdiens dit baie goed. 'Wanneer 'n mens sommige van die gevangenes se probleme vrou-tot-vrou moet aanhoor, kan jy nie anders as om soms 'n traan saam met hulle te stort nie. Maar jy huil binnekant toe, omdat jy nie veronderstel is om jou emosies te wys nie,' gesels maj. Maureen Halgryn, bevelvoerder van die Kroonstadse vrouegevangenis." See *Rapport* 23 October 1983 "Die vrou in die gevangenis - Vir hulle huil jy na binne" at page 10.

<sup>20</sup> "Daar is dié wat jy deur 'n ring kan trek. Die hare en gesig is versorg en bewerskaf asof hulle op pad na 'n première toe is. Dis net dat die gevangenisrokkie nie heeltemal daar sou gepas het nie. Ander lyk soos die vrou oorkant die straat wat altyd oor die voorhekkie hang om tog niks te mis nie. En rêrig, daar is dié wat jou eie ma of ouma kon gewees het." See *Rapport* 23 October 1983 "Die vrou in die gevangenis - Vir hulle huil jy na binne" at page 10.

<sup>21</sup> "Die vroue word besig gehou met hand- en naaldwerk, van hulle word as haarkapsters opgelei en 'n klompie werk in die kombuis. Daar is genoeg geleentheid vir studie en dié wat wil, kan hulle baie goed bekwaam. Van die gevangenes behaal dan ook skitterende uitslae." See *Rapport* 23 October 1983 "Die vrou in die gevangenis - Vir hulle huil jy na binne" at page 10.

<sup>22</sup> It is not the aim of this article to examine in detail the public discourse surrounding political detainees in the early 1980s. The focus of this article is on certain categories of prisoners within what may be termed the "general" prison population, as opposed to the special category of "political prisoners". Political prisoners - in the strict sense of those detained for anti-apartheid activities, as opposed to the many thousands of South Africans who were imprisoned for infringing against social control legislation such as the pass laws - fell into a relatively small but distinct category within South Africa's penal system at this time. The public discourse surrounding this category of prisoners deserves separate treatment. It should be noted that an extensive "prison literature" dealing with political detention during the apartheid period already exists. See, for example, Blumberg M 1962 *White Madam* Oxford University Press: Cape Town; First R 1965. *117 Days* Penguin: Harmondsworth; Jacobson Q 1973 *Solitary in Johannesburg* Michael Joseph: London; Lewin H 1974 *Bandiet: Seven Years in a South African Prison* Bone and Jenkins: London; Kantor J A 1967 *Healthy Grave* Hamish Hamilton: London; Pheto M 1983. *And Night Fell: Memoirs of a Political Prisoner in South Africa* Alison and

Hogan, who had been sentenced in October 1982 to 10 year's imprisonment for treason, had brought an application in the Supreme Court concerning her conditions of detention. At the time of the report, Hogan was the first white woman, as well as the first white person since the second world war, to be convicted of treason in South Africa. At that stage, Hogan was the only white female political prisoner in the country. As a white female political prisoner, Hogan seems have occupied a fairly unique position within the South African penal system. On reading the report, it is clear that Hogan's conditions of detention at the Johannesburg prison were a world away from the "homely" conditions described in reports about the Kroonstad Women's Prison, where "normal" white female offenders were imprisoned. The main problem encountered by Hogan at the time of this report seems to have been the fact that she was utterly isolated, even to the extent of not being allowed out of doors to exercise during certain periods of her incarceration. This isolation, devoid of any form of life-affirming contact with fellow prisoners or with nature, seems to have had a negative psychological effect on Hogan. Hogan contended in her court papers that she was being subjected to cruel and inhuman treatment, including the fact that she was being kept alone in a cell surrounded by other empty cells, and had been told that exercise in the open air was privilege and not a right. On one occasion when she was told that she was not allowed to exercise outside, she had become hysterical and was then taken to hospital where she was kept under sedation for a week. She was only permitted one letter and one visit from her family per month.<sup>23</sup> Hogan's application to court appears to have resulted in an improvement in the conditions of her detention. In May 1984 Helen Suzman visited Pretoria Central Prison and spoke to a number of white female political prisoners, including Hogan. According to Suzman, the prisoners had no complaints about their treatment by the authorities and there had been no restriction on the questions she could ask them. She was quoted in a report in *The Natal Mercury* as follows:

"The conditions are very satisfactory. The food is good and so is the medical and dental attention. I met the three white women political prisoners... Barbara Hogan, Mrs Ruth Gerhardt and Jansie Lourens - in a sunny courtyard where there was a table tennis table and an exercise bicycle."<sup>24</sup>

### 3. Innocents - Public Discourse on Children in Prisons

During both the apartheid and post-apartheid periods, the topic of children in South African prisons raised much public interest.<sup>25</sup> This was not the case, however, during colonial times, as least as far

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Bushby: London; Sachs A 1966 *The Jail Diary of Albie Sachs* Horvill: London; Breytenbach B 1984 *The True Confessions of an Albino Terrorist* Taurus: Emmarentia; Mandela N 2002 *Long Walk to Freedom: The Autobiography of Nelson Mandela – Volume 1* Abacus: London; Mandela N 2003 *Long Walk to Freedom: The Autobiography of Nelson Mandela – Volume 2* Abacus: London); Kathrada A M and Vassen R 2000 *Letters from Robben Island: A Selection of Ahmed Kathrada's Prison Correspondence 1964-1989* Zebra: Cape Town; Maharaj M 2002 *Reflections in Prison: Voices from the South African Liberation Struggle* University of Massachusetts Press: Amherst; Naidoo I and Sachs A (2000) *Island in Chains: Indres Naidoo Prisoner 885/63 – Ten Years on Robben Island* Penguin: Sandton .

<sup>23</sup> *The Citizen* 5 April 1984 "Hogan seeks order on jail treatment" at page 1.

<sup>24</sup> *The Natal Mercury* 14 May 1984 "A call for flexibility over parole" at page 3.

<sup>25</sup> Public discourse on the issue of children in prison during the first half of the 1980s, at the height of apartheid, is traced later in this section. For details on the discourse surrounding children in prison during the post-apartheid period, see, in general: Stephen Peté "The Politics of Imprisonment in the Aftermath of South Africa's First Democratic Election", (1998) 1 *South African Journal of Criminal Justice*, pages 51 to 83; Stephen Peté "The Good the Bad and the Warehoused - The Politics of Imprisonment During the Run-up to South Africa's Second Democratic Election" (2000)

as the colony of Natal was concerned. It was only towards the end of the colonial period, after the turn of the century, that a level of concern began to be expressed at the confinement of children in adult prisons.<sup>26</sup> Before this, references to children within the penal system were few and far between. There were, however, a few references to juvenile offenders in various prison rules and regulations, and the laws relating thereto. For example, Law 14 of 1862, which empowered the Lieutenant Governor to "make Rules and Regulations for the Maintenance of Order in the Public Gaols of the Colony", provided that punishments in terms of such rules and regulations could not exceed ten days solitary confinement or twenty-five lashes and, in addition, that such punishments could not be imposed at all on civil prisoners, female prisoners or children under twelve years of age.<sup>27</sup> This implied, of course, that the framers of Law 14 of 1862 (which, admittedly, was only a piece of empowering legislation) did not regard sentences of ten days solitary confinement or twenty-five lashes as being entirely beyond the pale for male prisoners above eleven years of age who had contravened prison disciplinary rules. When a common set of rules and regulations for the gaols in the Colony was eventually promulgated in 1870, the shocking punishments mentioned above were retained, but this time children under fifteen years of age (in addition to civil prisoners and females) were excluded.<sup>28</sup> Although the heavier punishments laid down in terms of the regulations – up to ten day's solitary confinement with half or full rations; or a whipping of up to twenty-five lashes – were permissible maximum punishments as opposed to being mandatory, and could be imposed only by the Resident Magistrate for serious breaches of prison discipline, they still induce a sense of shock when viewed from the perspective of the twenty-first century.<sup>29</sup> The idea of a fifteen year old child being in prison and potentially subject to punishments of this sort was clearly not as disturbing to the colonial sensibility.

Prisoners who would be considered children today, were also not spared hard labour during colonial times. Natal's prison regulations stipulated that, for the first three months of any sentence of hard labour, all male prisoners over fifteen years of age were to perform between six and ten hours of hard labour of the first class daily.<sup>30</sup> Hard labour of the first class was defined as labour at the treadmill, crank, shot drill, capstan, stone breaking or any other form of labour appointed by the Lieutenant Governor with the advice of the Executive Council.<sup>31</sup> Male prisoners under sixteen years old sentenced to hard labour and female prisoners sentenced to hard labour, were to perform between six and ten hours of hard labour of the second class daily.<sup>32</sup> Hard labour of the second class was defined as any form of labour appointed as such by the Lieutenant Governor with the advice of the Executive Council.<sup>33</sup>

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13(1) *South African Journal of Criminal Justice*, Pages 1 to 56; and Stephen Peté "No Reason to Celebrate: Imprisonment in the Aftermath of South Africa's Second Democratic Election" forthcoming publication.

<sup>26</sup> This reflected, perhaps, a slow change in the ideology of white colonial society towards children in general.

<sup>27</sup> Section 1 of Law 14 of 1862 "Law to enable the Lieutenant Governor to make Rules and Regulations for the Maintenance of Order in the Public Gaols of the Colony".

<sup>28</sup> "Rules and Regulations for the Gaols in the Colony" were laid down in the Schedule to Law 6 of 1870 "Law for the Better Government of Public Gaols".

<sup>29</sup> See Regulation XV of the "Rules and Regulations for the Gaols in the Colony" which were laid down in the Schedule to Law 6 of 1870 "Law for the Better Government of Public Gaols".

<sup>30</sup> See Regulation XVI of the "Rules and Regulations for the Gaols in the Colony" which were laid down in the Schedule to Law 6 of 1870 "Law for the Better Government of Public Gaols".

<sup>31</sup> Section 10 of Law 6 of 1870 "Law for the Better Government of Public Gaols".

<sup>32</sup> See Regulation XVII of the "Rules and Regulations for the Gaols in the Colony" which were laid down in the Schedule to Law 6 of 1870 "Law for the Better Government of Public Gaols".

<sup>33</sup> Section 10 of Law 6 of 1870 "Law for the Better Government of Public Gaols".

It was only after the turn of the century, however, at the time of Natal Prison Reform Commission which delivered its report in 1906, that there seems to be any real interest in juveniles as a separate category of offenders. The exclusive "Industrial Prison" proposed by the Commission for white prisoners, was to have a separate section for the treatment of white juvenile offenders, but only if there was a sufficient number of such prisoners to justify the expense. If not, the Commission suggested that:

"Natal might follow the example of the Transvaal and Orange River Colony, in sending her [white] juvenile offenders to the Reformatory near Cape Town, where they are received at a charge of two shillings and sixpence per head per diem."<sup>34</sup>

Another option mentioned by the Commission was the establishment of a "Truant or Farm School" for white juvenile offenders, again if numbers justified:

"The truant school is intended to meet the case of the undisciplined, disorderly, and backward boy; who, after some three months or so of appropriate moral and physical training, is released upon condition that his attendance at the ordinary school is exemplary."<sup>35</sup>

In this way, through education and corrective treatment, it was hoped to keep white juveniles out of the penal system altogether. Interestingly, the Commission also recommended the use of "hypnotic suggestion" to cure juveniles of the "criminal disease", since this was regarded as another form of education.<sup>36</sup> As far as black juvenile offenders were concerned, however, the Commission adopted a completely different ideological approach. Of major concern to the Commission, which concerned black offenders in general, was that the prisons were being used as a means of social control. This meant that Natal's prisons were overcrowded with petty offenders against social control legislation such as the Master and Servants Act and the Borough Bye-Laws.<sup>37</sup> One way of keeping black petty offenders out of prison was to employ corporal punishment as an alternative to imprisonment. Corporal punishment had long been seen as a suitable form of punishment for juvenile offenders, and it is interesting to note the Commission's recommendation that black adults be birched across the buttocks in a similar manner to juveniles, in order to make the punishment more humiliating and thus more effective:

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<sup>34</sup> See *Natal Government Gazette* of 5 June 1906 *Government Notice* 344: Report of the Prison Reform Commission - Paragraph 30.

<sup>35</sup> See *Natal Government Gazette* of 5 June 1906 *Government Notice* 344: Report of the Prison Reform Commission - Paragraph 36.

<sup>36</sup> See *Natal Government Gazette* of 5 June 1906 *Government Notice* 344: Report of the Prison Reform Commission - Paragraph 36.

<sup>37</sup> This was to become a major theme during apartheid. See, in general, Stephen Peté "Holding up a Mirror to Apartheid South Africa - Public Discourse on the Issue of Overcrowding in South African Prisons 1980 to 1984 - Part One". (2015) 35(3) *Obitor* pages 485 to 505 and Stephen Peté "Holding up a Mirror to Apartheid South Africa - Public Discourse on the Issue of Overcrowding in South African Prisons 1980 to 1984 - Part Two". (2015) 36(1) *Obitor* pages 17 to 40.

"The Native has a strong sense of humour, and sees the ludicrous in many things; and, if no distinction were made between manhood and youth, the man who was treated as a boy would be subjected to much banter by his fellows, and would be less likely to forget it."<sup>38</sup>

The Commission was of the opinion that prison was no place for black women or children, and recommended that petty offenders in these two classes be sent back to their kraals:

"Released from the restraints of parental control, Native boys and girls too often abuse the personal freedom permitted in the towns to such an extent that they are fast becoming a nuisance, and developing dangerous criminal tendencies."<sup>39</sup>

Thus, whereas white juvenile offenders would be placed under reformatory supervision, black offenders in this category would either be subjected to corporal punishment or removed from the towns so that they could no longer constitute a threat to white society and "civilization".<sup>40</sup> At the very end of the colonial period, in terms of Act 23 of 1909, provision was made for the birching of juveniles convicted of petty offences instead of sending them to prison.<sup>41</sup> Finally, on 23 November 1909, the Attorney General of Natal informed the Natal Parliament that an industrial establishment for boys was to be situated in the old Police Quarters at Estcourt, which was to be the first in a series of similar institutions.<sup>42</sup> The end of the colonial period thus marks increasing interest in children as a special category of offenders who need to be kept out of adult prisons. In the years which followed this was to become an increasingly important theme within South African penal discourse. Unfortunately, the sad phenomenon of juvenile offenders being confined in adult prisons was to remain a reality in South Africa well into the post-apartheid period.<sup>43</sup>

As far as the first half of the 1980s was concerned, it was towards the end of this period that public concern about children being confined in adult prisons came to the fore. In June 1984 alarm was expressed in the media at the number of infants and juveniles who were spending time in South African prisons, either because they had been sentenced to terms of imprisonment, or because they were accompanying their mothers who had been sentenced to terms of imprisonment. It was revealed in parliament that, on 19 March 1984, a total of 403 persons under 18 years of age were serving terms of imprisonment, and a further 570 persons under 18 years of age were in prison awaiting trial. Most of the persons serving terms of imprisonment (317 out of 403) were between 17 and 18 years of age, but one was as young as 14 and seven others were between 15 and 16. Included in the awaiting trial group were two 10-year-old girls, an 11-year-old boy, seven 12-year-olds,

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<sup>38</sup> See *Natal Government Gazette* of 5 June 1906 *Government Notice* 344: Report of the Prison Reform Commission - Paragraph 71.

<sup>39</sup> See *Natal Government Gazette* of 5 June 1906 *Government Notice* 344: Report of the Prison Reform Commission - Paragraph 30.

<sup>40</sup> See *Natal Government Gazette* of 5 June 1906 *Government Notice* 344: Report of the Prison Reform Commission - Paragraph 40.

<sup>41</sup> Act 23 of 1909 "To provide for boys being punished by whipping instead of imprisonment for minor offences".

<sup>42</sup> Natal Legislative Assembly Debates 1909 Volume 42 pages 512 to 513: Attorney General 23 November 1909.

<sup>43</sup> See, in general, Peté S "The Politics of Imprisonment in the Aftermath of South Africa's First Democratic Election", (1998) 1 *South African Journal of Criminal Justice*, pages 51 to 83; "The Good the Bad and the Warehoused - The Politics of Imprisonment During the Run-up to South Africa's Second Democratic Election" (2000) 13(1) *South African Journal of Criminal Justice*, pages 1 to 56; and "No Reason to Celebrate: Imprisonment in the Aftermath of South Africa's Second Democratic Election" forthcoming publication.

twelve 13-year-olds and twenty-nine 14-year-olds. As far as infants were concerned, it was revealed that, during 1983, no fewer than 3,415 babies had either been born in South African prisons, or had been admitted to prison with their mothers.<sup>44</sup> In an article entitled "Spotlight on children in South Africa's jails", the *Rand Daily Mail* summarised concerns around this sensitive issue *inter alia* as follows:

"Disturbing facts about the detention of children in South Africa have emerged during the current session of Parliament. They include the detention of two pre-school children for nearly three years while the authorities worked out their race classification, the imprisonment of two girls between the ages of 10 and 11 as unsentenced prisoners and the arrest of a 10-year-old child in Cradock on a charge of public violence. These grim facts are bad enough, but, even more disturbing, was that they were mostly black."<sup>45</sup>

The *Rand Daily Mail* quoted the Opposition Spokesman for Justice, Mr David Dalling, as stating that: "A caring government would ensure that children are not put into prisons, except where no other alternative exists."<sup>46</sup> The *Mail* also pointed out that the Leader of the Opposition, Dr Frederik van Zyl Slabbert, had called on the Prime Minister, Mr P.W. Botha, "to justify laws that caused the detention of mothers under the Pass Laws."<sup>47</sup>

In December 1984, another wave of concern swept through the South African media on the issue of children in prison. This wave of concern was triggered by the release of a report which had been compiled by the Institute of Criminology at the University of Cape Town, entitled "Children in Prison in South Africa". The report had been commissioned by a Swiss-based organisation called "Defence for Children International", and was compiled by the Director of the Institute of Criminology at the University of Cape Town, Professor Dirk van Zyl Smit, together with a researcher, Ms Fiona McLachlan, who was a Johannesburg attorney.

The detention of children in prisons designed for adults was clearly an emotional issue which was bound to generate significant interest in the public media. A good example of the tone of the debate which followed is to be found in a report in *The Argus* entitled "Many children detained in bleak adult prisons".<sup>48</sup> The report began with the following distressing statement: "Many children are detained in 'bleak' adult prisons and receive 'basically the same' treatment as adult prisoners, a leading university criminologist has found."<sup>49</sup> The report then went on to quote Professor van Zyl Smit in terms which made clear his evident frustration and distress at the fact that many South African children were being detained in conditions which were completely unacceptable:

"It might be true that alternative facilities are not available for the detention of juveniles. Where this is the case something must be done about it... Prisons everywhere

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<sup>44</sup> *Cape Herald* 23 June 1984 "3 415 babies in jail last year" at page 4.

<sup>45</sup> *Rand Daily Mail* 28 June 1984 "Spotlight on children in South Africa's jails" at page 12.

<sup>46</sup> *Rand Daily Mail* 28 June 1984 "Spotlight on children in South Africa's jails" at page 12.

<sup>47</sup> *Rand Daily Mail* 28 June 1984 "Spotlight on children in South Africa's jails" at page 12.

<sup>48</sup> *The Argus* 20 December 1984 "Many children detained in bleak adult prisons" at page 35.

<sup>49</sup> *The Argus* 20 December 1984 "Many children detained in bleak adult prisons" at page 35.

are grim places, but especially horrifying are large, bare cells, designed for adults but filled with juveniles who look as though they belong somewhere else."<sup>50</sup>

Different newspapers highlighted different aspects of the wide-ranging report. The Afrikaans newspaper *Die Burger*, for example, highlighted the fact that, according to the report, South Africa appeared to have a larger number of young people in prison than most other countries in the world. For this reason, courts needed to be discouraged from sentencing children under eighteen to terms of imprisonment.<sup>51</sup> An article in the *Rand Daily Mail* pointed to a recommendation by the authors of the report that many children who would usually end up in prison, first awaiting trial and then after conviction, could more suitably be dealt with by being classified by the courts in terms of the Children's Act, as being "in need of care". This would remove the children concerned from the criminal justice system and no criminal conviction would be recorded.<sup>52</sup> An article in the *Eastern Province Herald* began by emphasising the conclusion of the researchers that there was "little real protection for children in the criminal justice system", as well as their finding that the adult prisons in which most juvenile prisoners were held were "unsuitable for the detention of children", and that the potential consequences for juvenile political offenders were "disturbing".<sup>53</sup> *The Argus* highlighted the fact that, according to the report, juveniles in prison were accorded the same basic treatment as adults. For example, the report pointed out that juvenile prisoners could be tried and punished in the same manner as adult prisoners for contraventions of prison regulations: "Punishments may entail the deprivation of one or more meals on any one day, corporal punishment of a maximum of six strokes for males, solitary confinement for up to 30 days, or a combination of solitary confinement with periods of reduced, spare and full diets."<sup>54</sup> Clearly, most readers of *The Argus* would have been horrified at the thought of juveniles having to undergo certain of these punishments.

Certain newspapers included moving accounts of the conditions under which juveniles were detained, providing a disturbing glimpse into what life was like for juveniles in prison at this time. The *Eastern Province Herald*, for example, quoted from a section of the report in which Professor Dirk van Zyl Smit provided a first-hand account of the conditions in which juvenile prisoners were detained at Pollsmoor Prison near Cape Town. According to Professor van Zyl Smit, sentenced juveniles at Pollsmoor were held in communal cells, with each cell holding around 25 children in total. He went on to describe the living conditions as follows:

"They wear prison uniform. They sleep on the floor on mattresses about one-and-a-half centimetres thick. Each juvenile has four blankets. In each cell there is a toilet and wash basin. As far as recreation facilities are concerned, sentenced juveniles exercise twice a day for half-an-hour in a large bleak prison yard. In this (as all other stages of their detention) they are separated from adult prisoners. In the cell they had a kerrim board (a

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<sup>50</sup> *The Argus* 20 December 1984 "Many children detained in bleak adult prisons" at page 35.

<sup>51</sup> *Die Burger* 19 December 1984 "Baie kinders met ma's in tronke" at page 19.

<sup>52</sup> *Rand Daily Mail* 19 December 1984 "Courts urged to help keep kids out of jail" at page 4.

<sup>53</sup> *Eastern Province Herald* 20 December 1984 "Children behind bars" at page 15.

<sup>54</sup> *The Argus* 20 December 1984 "Many children detained in bleak adult prisons" at page 35.

form of snooker) and dominoes. Library books were also on display above each juvenile's locker."<sup>55</sup>

Professor van Zyl Smit pointed out that, with the relative large numbers of juveniles being detained, there was limited scope for the rehabilitation of juvenile offenders. He also pointed to the potentially negative influence on children of violent prison gangs.<sup>56</sup> In terms of the Prisons Act, "juveniles" were defined as persons under 21 years of age. This meant that juveniles under 18 year's old were confined with juveniles between 18 and 21 year's old. According to Van Zyl Smit, this latter category included "many hardened criminals and tough gang members".<sup>57</sup> There was thus a need for a separate classification of offenders aged between 18 and 21 years of age. *The Argus* quoted the following deeply worrying statement made in the report:

"No evaluation has been made of the long-term effect upon a juvenile confined to a cell dominated by violent and ruthless gangs. Assaults, stabbings, theft and homosexual rape are commonplace with prison gangs."<sup>58</sup>

There was also some limited reporting on the effect that the political context at the time had on the detention of children. The *Eastern Province Herald* reported on comments by Professor van Zyl Smit pointing out that children were not granted any special protection in terms of apartheid security legislation, and that increasing numbers of children were being detained for "security reasons", due to "increasing participation in school boycotts, bus boycotts, political riots and in 'anti-apartheid' organisations".<sup>59</sup>

The response by the Prisons Service to the report was also published extensively in the press. The basic thrust of its response was to reiterate that: "Although it is the ideal to incarcerate young offenders in separate institutions, the prison authorities endeavour at all times to ensure that in those cases where it is unavoidable to incarcerate children in prison facilities for adults, they are kept separately from adult prisoners and everything possible is done to prevent contaminating influences by hardened criminals."<sup>60</sup> It is interesting to note that this type of "hand-wringing" on the part of the authorities at the fact that there was no alternative but to detain juveniles in adult prisons, was to continue well into the post-apartheid period.<sup>61</sup> In addition to the "hand-wringing" the Prisons Service also bemoaned the fact that they had not been consulted about the findings of the research and disputed the unsubstantiated nature of the allegations:

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<sup>55</sup> *Eastern Province Herald* 20 December 1984 "Children behind bars" at page 15.

<sup>56</sup> *Eastern Province Herald* 20 December 1984 "Children behind bars" at page 15.

<sup>57</sup> *The Argus* 20 December 1984 "Many children detained in bleak adult prisons" at page 35.

<sup>58</sup> *The Argus* 20 December 1984 "Many children detained in bleak adult prisons" at page 35.

<sup>59</sup> *Eastern Province Herald* 20 December 1984 "Children behind bars" at page 15.

<sup>60</sup> *The Argus* 20 December 1984 "Reply - 'Prison Service maintains professional standards'" at page 35. See also *Eastern Province Herald* 20 December 1984 "Children behind bars" at page 15; and *Sunday Tribune* 23 December 1984 "What the Prisons Service says about this report" at page 1.

<sup>61</sup> See, for example, "Section 9 Juvenile offenders" in Stephen Peté (2000) "'The Good, the Bad and the Warehoused': The Politics of Imprisonment During the Run-Up to South Africa's Second Democratic Election" 13 *South African Journal of Criminal Justice*, pages 1 to 56 at pages 32 to 39.

"Unfortunately, the Prisons Service was not approached for months about the findings of research based on interviews with former prisoners whose statements were not verified beforehand. No substantiation was given for the allegations regarding maltreatment by Prisons Service staff."<sup>62</sup>

Predictably, the editorial commentary in various newspapers on the issue was scathing. For example, in an editorial with the title "Shocking Story" *The Natal Mercury* commented *inter alia* as follows:

"There have been many disturbing disclosures down the years about conditions in South Africa's overcrowded prisons. But those contained in the University of Cape Town's latest survey, 'Children in Prison in South Africa', are undoubtedly among the most shocking. In parts the report becomes a dossier of horror, with stories of juvenile inmates - 97 percent of whom are black - being raped by adult prisoners and terrorised by gangs. Overall it presents an appalling indictment of a system that would seem to be losing touch with its obligations to children in custody. And if society is not stirred into demanding drastic reforms, it too could have much to answer for. Easily the most devastating finding in the survey is the conclusion that there is 'little real protection for children in the criminal justice system'. For it is a system in which children can be arrested, detained, tried, convicted and sentenced without their parents' knowledge. And in the words of the report 'one can only speculate at the chances of a fair trial', since the State does not provide free legal counsel to indigent accused except for capital offences. The terrible conclusion is that the law does not encourage the police or the courts to find alternatives to detaining children in prison. Even innocent infants find their way behind bars with mothers who have done no more than offend the country's influx laws... As things stand the Prisons Service itself emerges as an institution seemingly trying to maintain professional standards towards children in its care, but hogtied by inadequate facilities and overwhelmed by the scale of the problem."<sup>63</sup>

A similarly scathing editorial appeared in *The Natal Witness*, which stated *inter alia* as follows:

"If the degree of civilisation of any country can be gauged from the treatment meted out to those in its prisons, South Africa does not measure up very well. The findings of the University of Cape Town's survey into Children in Prisons is a shocking indictment, not so much of the Prisons Service, which seems to be doing its professional best under adverse circumstances, but of a system of justice which fails to protect children in custody and sometimes, in the case of infants, puts them behind bars with mothers who have done no more than fall foul of the pass laws. In the opinion of the Director of UCT's Institute of Criminology, there appears to be an exceptionally high number of children in South African prisons and little is being done to prevent them from being victimised and intimidated or to safeguard them from the generally harsh conditions

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<sup>62</sup> *Sunday Tribune* 23 December 1984 "What the Prisons Service says about this report" at page 1.

<sup>63</sup> *The Natal Mercury* 21 December 1984 "Shocking Story" at page 10.

experienced by their adult counterparts. Some of the horrifying case studies outlined in the report could come straight out of the last century."<sup>64</sup>

*The Sunday Star* published the following two horrifying "case studies" from the report:

"Peter, a young coloured boy: 'The most difficult thing about that cell for me was just sitting there all day. The cell was dark and there was no fresh air. They wash the floors with Jeyes Fluid which makes the place stink. There were gangsters in the cell and they often fought. Sex is often forced on you and you have to obey, especially if that person is a member of one of the powerful gangs. My food was placed on a piece of paper. There were no plates or cups. Food was watery soup and "katkop", a large, square chunk of bread."<sup>65</sup>

"Dennis, 17, arrested for alleged car theft and kept in police cells with adults for three weeks awaiting trial, claimed he was regularly assaulted by inmates and the last thing he remembered was being hit over the head with a broom. He was apparently raped and later found himself in hospital. He is now physically and mentally disabled."<sup>66</sup>

#### 4. Conclusion

In Part Two of this article, a further two "characters" who formed part of the overall story which emerged in penal discourse during the first half of the 1980s have been examined - the white female prisoner (the "Fallen Angel") and the juvenile offender (the "Innocent"). As with the two characters examined in Part One of this article, it has been shown that the characters examined in Part Two occupied completely different conceptual spaces within the penal ideology of the time. White female prisoners, segregated in their own cosy prison in Kroonstad, were seen as "fallen angels", sadly misguided, but still very much representatives of all that was good, loving, tender and refined in white society. Juvenile offenders were the "innocents" of story, trapped in bleak adult prisons filled with depravity and gang violence, but unable to escape despite screeds of outraged reporting in the public media. In the case of each of these two categories of prisoner, there were historical parallels to be drawn with penal debates which had taken place in colonial Natal. As in the case of the historical parallels discussed in Part One of this article, the "historical resonances" examined in Part Two illustrate the deep roots of the ideological attitudes concerned, as well as their resilience over time. The overall "lesson" of this article as a whole is that prison reform is not simply a matter of bringing about physical changes within the penal system, but also about understanding and transforming these deeply rooted ideological attitudes.

Tracing certain of the themes raised in this article through to the post-apartheid period, it is interesting to note resonances over time. For example, the image of the vicious prison gangster - the "demon" of the penal system - continued to exert considerable influence within the public

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<sup>64</sup> *The Natal Witness* 27 December 1984 "Children in prison" at page 6.

<sup>65</sup> *The Sunday Star* 23 December 1984 "Kids say it's hell behind bars" at page 2.

<sup>66</sup> *The Sunday Star* 23 December 1984 "Kids say it's hell behind bars" at page 2.

imagination well into the post-apartheid period.<sup>67</sup> Likewise the idea of special treatment for a select group of "penitents" - those lucky few within the South African penal system considered to be worthy of rehabilitation - also continued well into the democratic era, although with much less emphasis on race than previously.<sup>68</sup> Furthermore, public discourse surrounding the problem of children detained in adult prisons did not cease with the end of apartheid, but continued to take up a significant number of columns within South African newspapers during the immediate post-apartheid period.<sup>69</sup> Female prisoners were, however, virtually invisible within penal discourse at this time.

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<sup>67</sup> See, for example, "Section 5.2 Abuse of human rights by prison gangs" in Stephen Peté (1998) "The Politics of Imprisonment in the Aftermath of South Africa's First Democratic Election" *South African Journal of Criminal Justice*, Volume 11, Number 1, Pages 51 to 83 at pages 80 and 81. See also "Section 2.3 The idea behind a 'purgatory' for dangerous prisoners" and "Section 10 Prison gangs - A continuing reign of terror", in Stephen Peté "'The Good, the Bad and the Warehoused': The Politics of Imprisonment During the Run-Up to South Africa's Second Democratic Election" (2000) 13(1) *South African Journal of Criminal Justice*, pages 1 to 56 at page 4 and at pages 39 to 41 respectively.

<sup>68</sup> See, for example, "Section 3 New 'model' prisons - 'Five Star Hotels' for the lucky few" in Stephen Peté (2000) "'The Good, the Bad and the Warehoused': The Politics of Imprisonment During the Run-Up to South Africa's Second Democratic Election" *South African Journal of Criminal Justice*, Volume 13, Pages 1 to 56 at pages 8 and 9. With regard to the reduction in emphasis on race, Professor Dirk van Zyl Smit commented in the late 1990s that: "Perhaps the most significant change in South African prison regimes in the past decade has been the abolition of official segregation of prisoners according to their officially recognised population groups... Official figures of the number of prisoners in the different population groups are no longer published. Figures that were made available to the author indicate that these disparities, while large, are gradually diminishing. Thus in 1976 the rate of imprisonment for whites was 79 per 100,000 of population and that for blacks 350 per 100,000. By June 1996 the figure for whites had declined to 57 per 100,000, while that for blacks had declined even further to 198 per 100,000... The Coloured (mixed race) group had the highest rates of all, but they too have declined significantly from 776 in 1976 to 714 per 100,000 in 1996." See Dirk van Zyl Smit "Chapter 21 - South Africa" pages 589 to 608 at pages 605 to 606, in Dirk van Zyl Smit and Frieder Dünkel (editors) (2001) "Imprisonment Today and Tomorrow - International Perspectives on Prisoners' Rights and Prison Conditions" Kluwer Law International: The Hague.

<sup>69</sup> See, for example, "Section 9 Juvenile offenders" in Stephen Peté "'The Good, the Bad and the Warehoused': The Politics of Imprisonment During the Run-Up to South Africa's Second Democratic Election" (2000) 13 *South African Journal of Criminal Justice*, pages 1 to 56 at pages 32 to 39.

## **CHAPTER 3.2**

### **Apartheid's Alcatraz: the Barberton Prison Complex During the Early 1980s.**

#### **CHAPTER 3.2.1**

##### **Apartheid's Alcatraz: the Barberton Prison Complex During the Early 1980s - Part 1.**

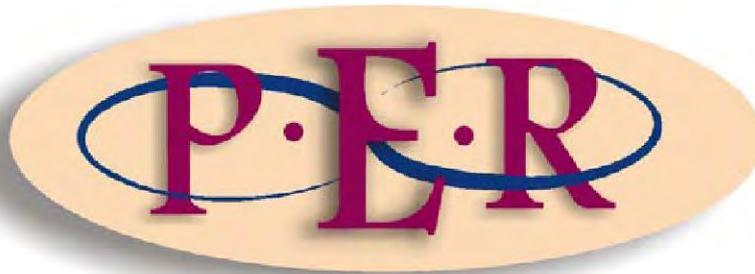
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COMPLEX DURING THE EARLY 1980s - PART ONE**

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# **APARTHEID'S ALCATRAZ: THE BARBERTON PRISON COMPLEX DURING THE EARLY 1980s - PART ONE**

**SA Peté\***

## **1 Introduction**

uring the course of the well-known Hart-Fuller debate which took place in the aftermath of World War II, one of the participants in the debate made an interesting appeal. In his analysis of the perversions of the Nazi "legal system", legal philosopher Lon Fuller spoke of the need "to move a little closer within smelling distance of the witches' caldron..."<sup>1</sup> This appeal to emotion was not meant to distract from the academic rigour of his argument, but rather to sharpen the understanding of his readers as to the true nature of the social institution he was examining.

The social institution examined in this article is not a legal system but a penal system - ie the penal system of apartheid South Africa. The period examined is the early 1980s - in many ways the height of the apartheid period. The particular focus of this article is on the Barberton Prison Complex which, at the time, was known as the place to which the most dangerous and violent prisoners in the South African penal system were sent to serve their sentences. The importance of Barberton is that, in many respects, it represents the worst of what the South African penal system had to offer at the height of the apartheid era. Through a series of widely publicised, shocking and violent incidents which occurred within the Barberton Prison Complex in the early 1980s, the term "Barberton" came to epitomise brutality, racism, cruelty, and endemic violence - qualities which, to a greater or lesser extent, were to be found within all apartheid prisons. A proper understanding of the nature of the apartheid penal system depends, in part, on an appreciation of what it meant to be confined within what this article terms "Apartheid's Alcatraz".

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<sup>1</sup> Fuller 1958 *Harv L Rev* 650.

By choosing to examine the Barberton Prison Complex, the focus of this article is on the treatment of "normal" as opposed to "political" prisoners during the period in question. One reason for this is that South Africa already has a rich prison literature dealing with what it was like to be a political detainee or a political prisoner during the apartheid era.<sup>2</sup> Much has been written, for example, on the notorious Robben Island Prison and its inmates.<sup>3</sup> By focusing on Barberton, the "voices" of ordinary prisoners – often sidelined and silenced – can be brought to the fore. In order to get "within smelling distance of the witches' caldron" that was Barberton in the first half of the 1980s, this article will examine the prison complex through the lens of public discourse – as reflected in a wide range of South African newspapers at the time. By analysing a large number of reports dealing with events at Barberton during the period in question, in both English and Afrikaans language newspapers, as well as in both politically conservative and politically liberal newspapers, this article attempts to capture both the "smell" and the "feel" of what it was like to be imprisoned in one of apartheid's toughest prison complexes. Furthermore, this article seeks to show that – despite legislative measures restricting the publication of information on conditions inside apartheid prisons – the press was able to provide a steady stream of information to the South African public on the shocking events which occurred at Barberton during the period in question.<sup>4</sup> With Barberton so much in the public eye during the early 1980s, no thinking South African could legitimately claim to be unaware of the brutality which existed within the apartheid penal system at this time. Although the widely publicised events at Barberton discussed in this article did not concern political prisoners, this article will show that considerable ideological pressure was brought to bear on the apartheid authorities due to adverse publicity around the Barberton Prison

<sup>2</sup> See, for example, Blumberg *White Madam*; First *117 Days*; Jacobson *Solitary in Johannesburg*; Lewin *Bandiet*; Kantor *Healthy Grave*; Pheto *And Night Fell*; Sachs *Jail Diary*; Breytenbach *True Confessions*; Mandela *Long Walk to Freedom – Vol 1*; Mandela *Long Walk to Freedom – Vol 2*; Kathrada and Vassen *Letters from Robben Island*; Maharaj *Reflections in Prison*; Naidoo and Sachs *Island in Chains*.

<sup>3</sup> See previous footnote.

<sup>4</sup> The legislation referred to was s 44(1)(f) of the *Prisons Act* 8 of 1959. The effects of this section on penal discourse at the time are discussed in detail in Peté "Holding Up a Mirror".

Complex. This may well have widened the cracks which were beginning to show in the edifice of the apartheid system at this time.

This article is divided into two parts. Part One deals with a day of violence at the Barberton prison farm on 29 December 1982, as well as the ramifications of the violence: the deaths of three prisoners and injuries to others; the criminal trial which followed, which came to be known as the Barberton "heat exhaustion trial"; and also the direct ramifications of that infamous trial. Part Two examines several violent incidents which occurred within the Barberton Prison Complex during the course of 1983 – leading to a further nine inmate deaths. The response of the authorities to the orgy of violence at Barberton is discussed, including the setting up of a committee of enquiry. The findings of this committee are extensively analysed through the lens of public discourse, as reflected in a wide range of newspaper articles published at this time. The wider relevance of the events at Barberton in the early to mid-1980s, as well as the state of public discourse surrounding these events, is then assessed.

## **2 Barberton explodes in the public media following deaths of prisoners**

On 30 December, 1982, the Commissioner of Prisons announced that three "black male prisoners" had died the previous day at the Barberton prison farm – possibly from heat exhaustion.<sup>5</sup> This marked the beginning of a public debate which was to explode in the media and rumble on over many months. The debate was to shock South Africans to the core, as the barbaric nature of the penal regime in place at Barberton became increasingly apparent. In May 1983 it was reported that eight warders, four "whites" and four "blacks", would stand trial on three counts of murder and 34 counts of assault with intent to do grievous bodily harm.<sup>6</sup> What came to be termed the Barberton "heat exhaustion" trial started three months later, towards the end of August 1983 – leading to a storm of publicity in the media. For the next two months or so South Africans were to be treated to a string of shocking revelations about the treatment meted out to prisoners at the Barberton prison farm, as the

<sup>5</sup> Sapa *Oggendblad* (30 December 1982) 1.

<sup>6</sup> De Bruin *Beeld* (27 May 1983) 1. See, also, Sapa *The Citizen* (28 May 1983) 13.

evidence of witness after witness was splashed across the pages of all the main South African newspapers.

The basic story which emerged during the trial may be described in fairly simple terms. On 28 December, 1982 48 convicts were transferred from the Durban Point Prison to the Barberton Prison Farm. Barberton had a reputation as a place where recalcitrant or troublesome prisoners were sent in order to be disciplined. It was alleged that, while still in Durban, prisoner Barry Bloem had sworn at one of the Durban warders, a certain Lieutenant Fourie, and also insulted the Lieutenant's wife. This incident may have acted as a trigger for the events which followed. The prisoners were shackled together in pairs and were transported in a truck which left Durban during the early hours of the morning. It was alleged that they received no food or water during the trip and that some prisoners had urinated through the windows of the truck during the journey. Upon their arrival at Barberton, it was alleged that the prisoners were punched and booted by warders. On 29 December, 1982 certain of the prisoners were sent to perform hard labour near a dam in the prison grounds. It was an extremely hot day, with temperatures of around 35 degrees Celsius. The prisoners were forced to push wheelbarrows loaded with gravel. While the work was being performed, prisoners were beaten with rubber truncheons by warders. A number of prisoners passed out as a result of this treatment, and three prisoners died. The prisoners who died were Ernest Makhatini, Mayo Khumalo and Mhlakaza Xaba.<sup>7</sup>

The trial was covered in detail by the press, with the evidence of witness after witness being summarised and commented upon in a variety of newspapers. Although the large number of such reports precludes a complete summary of the details which emerged into public view, it is possible, nevertheless, to provide highlights of the story told by the prisoners and the response of the warders. Clearly, the evidence of witnesses with an "axe to grind" must be treated with caution and the tendency of newspapers to sensationalise events must also be borne in mind. Despite this note of caution, however, it is submitted that the importance of this story lies in the fact that

<sup>7</sup> Vanvolsem *Rand Daily Mail* (27 August 1983) 3; Vanvolsem *Rand Daily Mail* (2 September 1983) 3; Blow *City Press* (4 September 1983) 2.

the voice of ordinary prisoners was, for once, heard loudly and clearly. The story provides first-hand testimony of what it was like to be imprisoned in "Apartheid's Alcatraz" at the height of the apartheid era, and vividly captures the "smell" and "feel" of the place. The fact that the veil of secrecy behind which prisons usually operated during the apartheid era was lifted in this dramatic way was also important.

The trial in the Nelspruit Circuit Court got off to a dramatic start when the first witness for the prosecution – the same Barry Bloem mentioned above – refused to give evidence, complaining about maltreatment and intimidation by warders at the Barberton Prison Farm. Bloem alleged that warders at the prison farm had threatened that they would "get" the inmates who testified against the eight warders on trial. The trial judge, Mr Justice Vermooten, ordered that the complainants should not be returned to a prison in Barberton.<sup>8</sup> The trial was subsequently moved to Witbank for the protection of the witnesses.<sup>9</sup>

The trial was to continue in further dramatic fashion. On 26 August 1983, under the headline "Court told of death beatings by warders", *The Citizen* reported on the evidence of prisoners Andries Mtembu and Barry Bloem, *inter alia* as follows:

Mtembu told the court how Mklakaza Xaba, one of the dead, had cried out, 'help me I'm dying'. According to the witness Xaba had behaved like a drunk person and staggered about before one of the accused, Mr Burger van Dyk, caught up with him and hit him with a rubber truncheon on the neck. Mtembu described how Xaba had fallen to the ground. He said Mr Van Dyk had continued beating him with the truncheon ... Bloem told the court that December 29, the day on which the alleged murders and assaults had taken place, had been an extremely hot day. "I was continuously assaulted by the accused, Mr Gert Louis Joubert Smit, who had been in charge of the other warders that day", Bloem testified. He also said he had lost consciousness several times that morning due to the assaults, before he had been allowed to drink water. "Mr Smit assaulted me so severely I thought I would die and I asked him if he would allow me to say my last prayer. He said that I could pray, but that I had to do it very quickly," Bloem said. He added he had been in a kneeling position after the prayer when Mr Smit had assaulted him again.<sup>10</sup>

<sup>8</sup> Vanvolsem *Rand Daily Mail* (20 August 1983) 1. See, also, Beltramo *Sunday Tribune* (21 August 1983) 22.

<sup>9</sup> Blow *City Press* (28 August 1983) 3.

<sup>10</sup> Bothma *The Citizen* (26 August 1983) 3.

On 27 August 1983, under the headline "Convict tells of persistent beatings by warders", *The Citizen* summarised the evidence of witness Cecil Moreland, also a prisoner, *inter alia*, as follows:

Moreland said he was taken to the dam on the prison farm where the others had been working. "Before I could start working a White warder started assaulting me from behind with a rubber truncheon" Moreland told the court. He said the wheel barrow he had been ordered to push had been too heavy and he had tipped it over to lighten the load. "That was when Warrant Officer Smit and two other White warders started assaulting me until I lost my senses. Even when I stopped moving they kept on beating me" Moreland said. Moreland testified he had realised he was being dragged towards the dam and later discovered he was lying next to other semi-conscious prisoners. "A medical official, Warrant Officer Jordaan, told me to get up. When I told him that I could not, and that I needed water, he told me to get up and fetch the water myself" Moreland told the court.<sup>11</sup>

On 28 August 1983, under the headline "Convicts' 48 hours of horror", a report in the *City Press* spoke of a "horrifying tale of alleged brutality in one of the country's few maximum security prisons" and of prisoners being "treated so inhumanely that within 48 hours three were dead and 34 were hospitalized".<sup>12</sup> An insight into the racial dynamics between black and white prison warders at the Barberton Prison Farm can be glimpsed from evidence given three days later – on 31 August 1983 – by a black prison-dog handler, a certain Mr John Zulu. Explaining why he did not respond to pleas from one of the inmates who subsequently died, he is reported to have said: "I could see the prisoner, Ernest Makhatini couldn't take it anymore, but what could I do, I am a black man and the white warder had already made a decision [to ignore the prisoner's complaints]."<sup>13</sup> According to the same report in the *Rand Daily Mail*: "The court also heard that Mr Zulu was instructed by his superior to keep his Alsatian dog in the shade of a tree, so that the animal would not get sick or die from the excessive heat, while injured prisoners were left lying in the blazing sun after being beaten, some of them unconscious."<sup>14</sup> The judge hearing the trial was understandably shocked by this evidence and was reported to have asked: "If a dog can't stand it, how are human beings supposed to stand it?"<sup>15</sup>

<sup>11</sup> Bothma *The Citizen* (27 August 1983) 2.

<sup>12</sup> Blow *City Press* (28 August 1983) 3.

<sup>13</sup> Vanvolsem *Rand Daily Mail* (1 September 1983) 2.

<sup>14</sup> Vanvolsem *Rand Daily Mail* (1 September 1983) 2.

<sup>15</sup> Vanvolsem *Rand Daily Mail* (1 September 1983) 2.

On 1 September 1983, Warrant-Officer Pieter Jordaan, a medical officer at the Barberton Prison Farm, gave evidence which seemed to indicate that the shocking incidents which took place on 29 December 1982 had been orchestrated by the acting head of the Barberton Prison Farm at the time, a certain Lieutenant J Niemand. According to a report in the *Rand Daily Mail*, Jordaan told the court that on the morning of 29 December "he had heard at the prison that they were looking for staff members 'who could swing batons' and that Lieutenant Niemand had instructed them to 'make the convicts warm'".<sup>16</sup> His further evidence, according to the report, included the following:

"I saw before me [at the dam] convicts being beaten up several times with rubber batons by warders when they did not run fast enough with their wheelbarrows," he said. Several prisoners had collapsed and were lying down at a "sort of field hospital" he had put up. Asked by Mr Justice Vermooten why the injured, some unconscious, were lying in the blazing sun on a very hot day while a guard dog was kept in the shade of a tree, W/O Jordaan replied that all he had done, "was doing my best for these people". He said he had wiped their faces with a wet cloth and had given them water to drink. He did not complain to W/O Smit to stop the beatings, as "Smit is my senior and I believed he was acting under instructions."<sup>17</sup>

Complainant Adam Gys, one of the prisoners, and allegedly beaten by warders at the dam, told the court that at one stage he had pleaded for mercy and asked for a drink of water. According to Gys, Warrant Officer Smit replied: "This is Barberton. Prisoners don't drink water. The sun drinks water."<sup>18</sup>

Gys also alleged that the acting head of the Barberton Prison Farm, Lieutenant JH Niemand, had arrived at the dam while the beatings were taking place – bringing with him three more prisoners. According to Gys, Lieutenant Niemand told Warrant Officer Smit that the three prisoners "must be hit dead".<sup>19</sup> The trial was clearly a tense affair, with raised emotions on all sides. On 3 September, 1983 the *Rand Daily Mail* reported that Lieutenant Niemand had chased a *City Press* journalist, Desmond Blow, down the

<sup>16</sup> Vanvolsem *Rand Daily Mail* (2 September 1983) 3. See, also, *Spesiale Verteenwoordiger Beeld* (2 September 1983) 6; Blow *City Press* (4 September 1983) 2; Staff Reporter *Sunday Express* (4 September 1983) 13.

<sup>17</sup> Vanvolsem *Rand Daily Mail* (2 September 1983) 3. See, also, *Spesiale Verteenwoordiger Beeld* (2 September 1983) 6; Bothma *The Citizen* (2 September 1983) 3.

<sup>18</sup> Vanvolsem *Rand Daily Mail* (2 September 1983) 3.

<sup>19</sup> Vanvolsem *Rand Daily Mail* (2 September 1983) 3. See, also, *Spesiale Verteenwoordiger Beeld* (2 September 1983) 6.

street in front of the Witbank Magistrates' Courts when the journalist attempted to take a photograph of him. It also reported that:

... earlier in the week, relatives of the complainants in the case allegedly shouted abuse to the eight accused when they left the courts during the adjournment.<sup>20</sup>

The nervous strain under which all those involved in the trial were operating is apparent from a report which appeared in the *Cape Times* on 2 September 1983. According to the report, the officer commanding the Barberton Prison Complex at this time, Brigadier EJ Victor, had been admitted to hospital and was "reported to be suffering from a nervous collapse".<sup>21</sup>

On 6 September, 1983 George Geldenhuys, another of the prisoners allegedly beaten by warders at the dam, gave evidence. *Die Volksblad* reported on his testimony under the disturbing headline "Sick prisoner was apparently beaten until he began 'bleating'".<sup>22</sup> Geldenhuys told the court, *inter alia*, about a brutal assault by two of the white warders, Christiaan Horn and Jacques Stoltz, both of whom had red hair, on Ernest Makhatini – one of the prisoners who died at the scene. *Die Volksblad* summarised this part of Geldenhuys's evidence as follows:

According to Geldenhuys, the "old man" Ernest Makhatini, one of the deceased, could no longer push the wheel barrow up the incline. He put it down to rest. 'The redheads ordered him to walk with the wheelbarrow. He couldn't make it. He was a sick old man who had been receiving medical treatment. Both redheads hit him. He lay on his back. He was crying. He was screaming like a bleating goat, he said in evidence. According to Geldenhuys, Makhatini was then laid next to three other prisoners, including Bloem.<sup>23</sup>

Another of the prisoners to give evidence on 6 September 1983 was Gen Griffen, who ended up in hospital as a result of being assaulted at the dam. He claimed that, while

<sup>20</sup> Vanvolsem *Rand Daily Mail* (3 September 1983) 1.

<sup>21</sup> Anon *Cape Times* (2 September 1983) page unknown.

<sup>22</sup> "Sieke glo geslaan tot hy 'bler'". See Eie Beriggewer *Die Volksblad* (7 September 1983) 3.

<sup>23</sup> "Volgens Geldenhuys kon die 'ou man' Ernest Makhatini, een van die oorledenes, later nie meer die kruise teen die opdraand uitstoot nie. Hy het dit neergesit om te rus. 'Die rooikoppe het hom beveel om te loop met die kruise. Hy kon dit nie maak nie. Hy was 'n siek ou man en het mediese behandeling ontvang. Al twee rooikoppe het hom geslaan. Hy het op sy rug gele. Hy het gehuil. Hy het geskreeu soos 'n bok wat blêr' het hy getuig. Volgens Geldenhuys is Makhatini toe by drie ander gevangenes, onder meer Bloem wat daar gele het, neergelê." See Eie Beriggewer *Die Volksblad* (7 September 1983) 3.

he was still in hospital, one of the accused, Warrant Officer Gert Smit, had threatened him, stating: "I am still going to get you, I am not finished with you yet."<sup>24</sup> Griffen also claimed that – on arrival at Barberton from Durban – the arriving prisoners were addressed by the acting head of the Barberton Prison Farm, Lieutenant Niemand, as follows: "You think you are clever. You swear at officials."<sup>25</sup> Griffen further told the court that he and two other "coloured" prisoners, Barry Bloem and George Geldenhuys, were taken to the dam by Lieutenant Niemand and that he heard Niemand telling Warrant Officer Stoltz that they must be beaten to death.<sup>26</sup>

Further allegations of brutal and sadistic treatment were made on 7 September 1983, when another of the complainants, Tony Walker, gave evidence. Walker, who allegedly suffered from asthma (although he later admitted under cross-examination that tests conducted before he had been transferred to Barberton had indicated that he was not an asthma sufferer), claimed that he was assaulted by certain of the warders and experienced difficulty in breathing. He alleged that when he informed Warrant Officer Smit of this, he was told that "in Barberton there are no sick people".<sup>27</sup> According to *The Citizen* there had been medical evidence earlier in the trial which "stated that Walker had received more than 25 blows with a rubber truncheon".<sup>28</sup> *The Citizen* summarised the evidence given by Walker, *inter alia*, as follows:

Walker said he, himself, had been beaten until he was unconscious. I later regained my consciousness, but I was too frightened to open my eyes in fear of getting assaulted again. He testified that the medical official on the scene of the alleged murder and assaults, had felt his pulse after a while and just stated: "This one is still alive."<sup>29</sup>

<sup>24</sup> "Ek sal jou weer kry, ek is nog nie klaar met jou nie." See Eie Beriggewer *Die Volksblad* (7 September 1983) 3. See, also, Vanvolsem *Rand Daily Mail* (7 September 1983) 3.

<sup>25</sup> "Julle dink julle is slim. Julle vloek beamptes." See Eie Beriggewer *Die Volksblad* (7 September 1983) 3. See, also, Vanvolsem *Rand Daily Mail* (7 September 1983) 3.

<sup>26</sup> Bothma *The Citizen* (7 September 1983) 9. See, also, Vanvolsem *Rand Daily Mail* (7 September 1983) 3; Anon *Sunday Express* (11 September 1983) 12.

<sup>27</sup> Bothma *The Citizen* (8 September 1983) 3. See, also, Vanvolsem *Rand Daily Mail* (8 September 1983) 2; Anon *Sunday Express* (11 September 1983) 12.

<sup>28</sup> Bothma *The Citizen* (8 September 1983) 3.

<sup>29</sup> Bothma *The Citizen* (8 September 1983) 3. See, also, Vanvolsem *Rand Daily Mail* (8 September 1983) 2.

Further indications of brutality emerged during evidence given the following day. Among those to take the witness stand was a certain Joseph Rademeyer, whose evidence *The Rand Daily Mail* summarised, *inter alia*, as follows:

Mr Rademeyer said that at one stage dog-handler John Zulu had advised him to lie down "otherwise they will hit you dead". While he was lying there, he saw Xaba getting up, "as if he was groggy" and then being hit with a baton on the neck by Mr Van Dyk. "Xaba howled and screamed and then collapsed," he said.<sup>30</sup>

On 9 September 1983 there was further dramatic evidence from prisoners – including from a certain Johannes Zuma who had been crippled in a motor vehicle accident before he was imprisoned. Zuma gave evidence of how he had been assaulted by warders at the dam, prompting *The Citizen* to run its story on the day's evidence under the headline "Convicts tell of assault on crippled prisoner".<sup>31</sup> Another witness, prisoner Abel Norkey, told the court how Nklakaza Xaba, one of the prisoners who later died, had been assaulted by warder Burger van Dyk:

I heard a voice saying "shoot him" but instead the warder hit Xaba behind his neck with a rubber truncheon until he dropped. He (the warder) then assaulted him further - even on his private parts.<sup>32</sup>

The day's proceedings ended early in dramatic fashion as one of the accused warders, Warrant Officer Gert Smit, complained of chest pains and had to be rushed to a doctor.<sup>33</sup> The trial took a further dramatic turn on 12 September 1983 when one of the witnesses, prisoner Patrick Schieman, claimed that he had been threatened by a warder in the Witbank Prison. Schieman alleged that when the warder had caught him (Schieman) eating in his cell, he (the warder) had said: "You must not think you are a gentleman. These things of Barberton are not yet finished - we'll see who laughs last."<sup>34</sup> In his evidence Schieman told the court that he had seen fellow prisoner Gen Griffin receive a beating which still frightened him.<sup>35</sup>

<sup>30</sup> Vanvolsem *Rand Daily Mail* (9 September 1983) 2.

<sup>31</sup> Bothma *The Citizen* (10 September 1983) 5.

<sup>32</sup> Bothma *The Citizen* (10 September 1983) 5.

<sup>33</sup> Anon *Sunday Express* (11 September 1983) 12.

<sup>34</sup> Vanvolsem *Rand Daily Mail* (13 September 1983) 2. See, also, Bothma *The Citizen* (13 September 1983) 8.

<sup>35</sup> Vanvolsem *Rand Daily Mail* (13 September 1983) 2.

The following day prisoner Nicolas Mutawa told the court that he could not identify any of the accused, and was described by the judge as a "man with the heart of a mouse, who is too scared to implicate any of the accused".<sup>36</sup> One of the witnesses who did give evidence against the accused that day was prisoner David Johnson, who stated that the assault on him had been "far worse than any hiding he had ever received at school".<sup>37</sup> Another witness, Robert Khumalo, told the court that he had been knocked unconscious while being assaulted by Warrant Officer Smit, and had regained consciousness only later that day in the prison hospital.<sup>38</sup> Witness Jerome Hlope complained about the manner in which the identification parade had been conducted during the investigation of the case. The *Rand Daily Mail* summarised this part of Hlope's evidence, as follows:

Jerome Hlope said certain warders on the parade drew their caps over their eyes, looked down at the ground and tried to confuse the prisoners by swearing at them and joking about their identity. He said the warders pointed to themselves and urged the complainants to pick them out, saying: 'It was me who hit you, wasn't it? Point me out, come on - choose me, charge me.'<sup>39</sup>

The next day, yet further disturbing evidence was given by a number of state witnesses. Under the dramatic headline "Court told of 'human dump' in blazing sun", the *Rand Daily Mail* summarised the evidence of prisoner Boyce Levy as follows:

In his evidence, Levy stated that he and other convicts had been "brutalised" by the white warders. He described how warders Horn and Stoltz "pounded" on fellow prisoner Barry Bloem and how W/O Smit had "worked him over". Levy said he saw several convicts being "worked over" by warders with the help of their rubber sticks. Those who collapsed were taken to a place which looked like "a human dump" he said. Levy then saw Xaba getting up from the "dump", walking like as if dizzy and then being hit by warder Van Dyk, who "dropped him" with one baton blow between his shoulderblades. "Xaba screamed and after that he never spoke again. He had dropped dead," Levy said.<sup>40</sup>

On 15 September 1983, further evidence emerged as to possible irregularities in the identity parade conducted as part of the police investigation of the case. Prisoner Tom

<sup>36</sup> Bothma *The Citizen* (14 September 1983) 3. See, also, Vanvolsem *Rand Daily Mail* (14 September 1983) 3.

<sup>37</sup> Bothma *The Citizen* (14 September 1983) 3.

<sup>38</sup> Bothma *The Citizen* (14 September 1983) 3.

<sup>39</sup> Vanvolsem *Rand Daily Mail* (14 September 1983) 3.

<sup>40</sup> Vanvolsem *Rand Daily Mail* (15 September 1983) 2. See, also, Bothma *The Citizen* (15 September 1983) 9.

Booyesen confirmed the evidence of previous witnesses who had alleged that, during the identification parade, warders who were part of the parade had dropped their caps on their noses. He also told the court that when he had started pointing out the warders who had taken part in the assaults, Warrant Officer Smit had said "yes, choose me" and had referred to his (Booyesen's) mother, using foul language. According to the *Rand Daily Mail*, Booyesen told the court that he had been afraid, and explained as follows:

You must understand me, I am just a black person and there in front of me were whites in uniform making remarks in bad language. I became scared.<sup>41</sup>

Judge Vermooten expressed his displeasure that the identity parade may have been conducted in an irregular manner – stating as follows:

I want to know why it was only held four months after the events, what all that swearing was about, why suspects were allowed to drop their caps over their eyes, and why witnesses were intimidated.<sup>42</sup>

When questioned by Judge Vermooten, the policeman who had been in charge of conducting the identity parade – a certain Warrant Officer Botha – told the judge that the warders had behaved in an undisciplined manner during the parade and that he had had to warn them several times.<sup>43</sup>

The state closed its case on 20 September 1983, by which stage no fewer than 33 prisoner complainants had given evidence.<sup>44</sup> In comparison, the defence case was to be short and sweet. After the state closed its case, the defence called the head of training in the Prisons Service, who stated that the accused warders had not received any training in relation to heatstroke or heat exhaustion. The defence also called the head of health services in the Prisons Service to testify that regulations relating to the treatment necessary for victims of heatstroke had been circulated within the Prisons

<sup>41</sup> Vanvolsem *Rand Daily Mail* (16 September 1983) 2.

<sup>42</sup> Vanvolsem *Rand Daily Mail* (16 September 1983) 2.

<sup>43</sup> Staff Reporter *Sunday Express* (18 September 1983) 10.

<sup>44</sup> Bothma *The Citizen* (16 September 1983) 3; Bothma *The Citizen* (21 September 1983) 4.

Service only after the deaths at the Barberton Prison Farm. The defence case for six of the accused was then closed, without any of the warders giving evidence.<sup>45</sup>

Judgment in the case was handed down on 27 September 1983. The court found that the main cause of death of the three prisoners who had died at the Barberton Prison Farm on 29 December 1982 was heat exhaustion. The court also found that the warders did not intend to murder the three inmates who had died. None of the accused warders were found guilty of either murder or culpable homicide. Two of the warders, Lefasa Makhola and Fanyana Mahumane, were found not guilty on all counts, and were discharged. The other two black warders – William Kobyané and Jonas Madonsela – were found guilty on several counts (seven and two counts respectively) of assault with intent to do grievous bodily harm. The four white warders – Gert Smit, Christiaan Horn, Jacques Stoltz and Burger van Dyk – were also found guilty on several counts (19, 18, 18 and 6 respectively) of assault with intent to do grievous bodily harm, as well on several counts (9, 9, 9 and 3 respectively) of assault common.<sup>46</sup> Kobyané and Madonsela were sentenced to three and a half years and one year's imprisonment respectively. Smit, Horn, Stoltz and Van Dyk were sentenced to eight, five, three and two years' imprisonment respectively.<sup>47</sup>

In his judgment Judge Vermooten characterised 29 December 1982 as a sad day for the Barberton Prison Farm and found that a large-scale attack on prisoners by warders had taken place. He stated that the area around the prison dam had been turned into a battlefield and that when everything was over there were three bodies and a large number of injured prisoners. He criticised the failure of the warders to give evidence in their defence at the trial and pointed out that the state's case stood uncontested. According to the judge, the case of the prisoner complainants "cried out to heaven"<sup>48</sup> for an answer – which was not forthcoming. The judge concluded that the motive for the attack on the prisoners had its origins in Durban when a staff member at the Point

<sup>45</sup> Bothma *The Citizen* (21 September 1983) 4; Spesiale Verteenwoordiger *Beeld* (21 September 1983) 5.

<sup>46</sup> Spesiale Verteenwoordiger *Beeld* (28 September 1983) 2.

<sup>47</sup> Burger Kantoor *Die Burger* (29 September 1983) 1.

<sup>48</sup> The words used were: "skreeu ten hemele". See Spesiale Verteenwoordiger *Beeld* (28 September 1983) 2.

Prison, Lieutenant Fourie, was insulted by prisoners. A group of 47 prisoners were transported from Durban to Barberton in appalling conditions, and without water. At the Barberton Prison Farm they were forced to run naked down a passage while being slapped and kicked. According to the judge, the dispatch of the convict work-party to the prison dam was nothing but a punitive expedition. The prisoners were sent to the dam without first being examined by a prison doctor to make sure that they were capable of performing hard physical labour. The temperature at the dam on the day in question was 35 degrees Celsius<sup>49</sup> Judge Vermooten expressed his disgust at the actions of the six guilty warders – in no uncertain terms. According to a report in *The Star*, the judge accused the warders of dragging the name of the Prison Service through the mud and, in words clearly reflecting both irony and disgust, he addressed the guilty warders as follows:

You are heroes of the truncheon who assaulted unarmed and defenceless prisoners on a large scale while protected by two police dogs and two armed guards.<sup>50</sup>

Describing the cowardly nature of the attacks on the prisoners, the judge stated that:

Most of the prisoners were pushing loaded wheelbarrows up an incline when assaulted and did not even have their hands free to defend themselves.<sup>51</sup>

The *Rand Daily Mail* reported the reactions of the warders to their sentences, as follows:

Barberton Prison Farm warders broke down and cried uncontrollably yesterday as they were led down to the cells below the Witbank Circuit Court after being sentenced to prison terms, ranging between one and eight years, by Mr Justice D.O. Vermooten for their part in "an orgy of assaults" on prisoners in December last year.<sup>52</sup>

Following the judgment the press had a field day commenting in shocked tones on the pronouncements of the judge. *Die Volksblad*, for example, stated that the comment of Judge Vermooten that the accused had "behaved like wild animals"<sup>53</sup> summed up the revulsion felt by ordinary civilised people at the misbehaviour of those

<sup>49</sup> Spesiale Verteenwoordiger *Beeld* (28 September 1983) 2.

<sup>50</sup> Openshaw and Macleod *The Star* (29 September 1983) 3.

<sup>51</sup> Openshaw and Macleod *The Star* (29 September 1983) 3.

<sup>52</sup> Vanvolsem *Rand Daily Mail* (29 September 1983) 1.

<sup>53</sup> The words the judge used were: "soos wilde diere te kere gegaan het". See Redakteur *Die Volksblad* (29 September 1983) 18.

involved.<sup>54</sup> Reflecting perhaps the "laager mentality" prevalent within white society at the time, the newspaper stated that the events at Barberton provided those who always stood ready to undermine the image of the South African Prison Service in the eyes of the world with a stick with which to beat the country. *Die Volksblad* warned its readers that they should not think that the Barberton incident would not be used (and misused) against South Africa.<sup>55</sup>

### **3 The snowball effect – criminal charges against Niemand and civil claims filed**

Despite the conclusion of the so-called "heat exhaustion trial", public interest in the Barberton Prison Complex was to remain high.<sup>56</sup> Two direct consequences of the trial which were to receive much publicity in the press were the charging and criminal trial of Lieutenant JH Niemand – the acting head of the Barberton Maximum Security Prison during the "heat exhaustion" incident – and the filing of civil claims by the prisoners who had been assaulted during the incident.

On 7 January, 1984 it was reported that Lieutenant Niemand was to appear in court on charges of assault with intent to do grievous bodily harm, incitement, and interfering with the course of justice.<sup>57</sup> The *Rand Daily Mail* tacitly indicated its support for the bringing of charges against Lieutenant Niemand *inter alia* by quoting the following words of Judge Vermooten at the end of the heat exhaustion trial: "I can't stress enough that the accused and Lieut Niemand took the law into their own hands."<sup>58</sup> According to the *Rand Daily Mail*, Judge Vermooten had "likened the assaults to old-style American lynching".<sup>59</sup> In an editorial headlined "It's right to press the Barberton case", the *Eastern Province Herald* also supported the charges against Niemand. The *Herald* stated that it was important to prosecute Niemand, since the

<sup>54</sup> The precise words used by the newspaper were: "som die weersin op wat gewone beskaafde mense oor die betrokkenes se wandrag voel". See Redakteur *Die Volksblad* (29 September 1983) 18.

<sup>55</sup> Redakteur *Die Volksblad* (29 September 1983) 18.

<sup>56</sup> There were six prisons situated in and around Barberton at this time. See Political Staff *Cape Times* (1 September 1983) 4.

<sup>57</sup> Bothma *The Citizen* (7 January 1984) 10.

<sup>58</sup> Vanvolsem *Rand Daily Mail* (11 January 1984) 1.

<sup>59</sup> Vanvolsem *Rand Daily Mail* (11 January 1984) 1.

"crippling restrictions on Press reporting" of what went on in prisons meant that the system was "wide open to abuse".<sup>60</sup> On 22 January, 1984 under the headline "Warders to testify against boss", *City Press* pointed out that the six warders who had been jailed following the "heat exhaustion trial" would be key witnesses in the case against Lieutenant Niemand.<sup>61</sup>

The criminal trial of Lieutenant Niemand took place in the Witbank Regional Court during February 1984. He pleaded not guilty to all charges. The widespread newspaper reporting of all the lurid details of the trial forced South Africans to relive the events of the infamous Barberton "heat exhaustion trial" all over again. For example, on 15 February, 1984 *The Citizen* reported, *inter alia*, that one of the former warders who had been imprisoned after being found guilty at the conclusion of the "heat exhaustion trial", William Kobyané, had given evidence that Niemand had shouted out orders that the prisoners should be beaten. Kobyané also told the court that Niemand had ordered him (Kobyané) not to tell anyone, including the police, what had really happened at the dam. According to *The Citizen*, Kobyané told the court that: "Lt Niemand said that if the police asked us to make a statement we should bluntly refuse".<sup>62</sup> *Beeld* reported, *inter alia*, the evidence of a certain Warrant Officer Ewald Ferreira, who told the court that – on the day in question – Niemand had ordered the warders to take rubber truncheons with them so that they could "fuck the prisoners up" while they were working at the dam.<sup>63</sup> According to *Beeld* another warder, Raymond Mahwasa, told the court that Niemand had ordered the warder in charge of the working party, Warrant Officer Gert Smit, to "hit the damn convicts who stand still and don't work".<sup>64</sup> Under the lurid headline "'Beaten to death' order recalled by prisoner", *The Citizen* reported on the evidence of Gen Griffen, a prisoner who had been so badly assaulted

<sup>60</sup> Anon *Eastern Province Herald* (12 January 1984) 10. The *Herald* summarised what had happened at Barberton, as follows: "Thirty-seven men were savagely clubbed while pushing loaded wheelbarrows until three died. They had got into trouble in Durban for swearing at an officer. They were transported without food or water to Barberton, put to work in 35-degree heat the next day, and systematically beaten by baton-wielding warders while armed guards prevented any escape. The judge said it seemed the prison authorities had taken their revenge."

<sup>61</sup> Blow *City Press* (22 January 1984) 4.

<sup>62</sup> Bothma *The Citizen* (15 February 1984) 8.

<sup>63</sup> The words used were: "om die gevangenis 'op te f..." See Anon *Beeld* (15 February 1984) 2.

<sup>64</sup> The words used were: "om 'die d... bandiete te slaan wat stilstaan en nie werk nie". See Anon *Beeld* (15 February 1984) 2. See, also, Vanvolsem *Rand Daily Mail* (16 February 1984) 3.

at the dam that he had been obliged to spend two weeks in hospital. According to *The Citizen*, Griffen told the court that Niemand had given orders that he and two other prisoners "should be beaten to death".<sup>65</sup> According to *Beeld*, which also reported on Griffen's evidence, the reason given by Niemand for this order was that the three prisoners were "dagga smokers and too big for their boots".<sup>66</sup> The *Sunday Express* summed up the evidence against Niemand as follows:

Former Warrant Officer Gert Smit, now serving eight years, told the court that on the morning of December 29, 1982, Lt Niemand ordered him to assemble some warders and arm them with batons. They were then to take a group of prisoners, who had arrived from Durban Point Prison the night before, to the farm dam 'to make them warm'. Former warder Jacques Stoltz told the court that Lt Niemand had visited the dam site while the assaults were in progress. He said the lieutenant had warned him not to strike the prisoners on the head or kidneys. Other witnesses all confirmed that Lt Niemand had been at the dam and had seen the assaults in progress.<sup>67</sup>

Once the state had closed its case, the defence made an application to acquit Niemand on all charges. This application was refused, but the magistrate did agree to acquit Niemand on the charge of attempting to defeat the ends of justice. The reason for the acquittal on this charge was that:

Lt Niemand had merely advised Mr Horn and Mr Stoltz [two of the accused warders in the "heat exhaustion trial"] about their lawful rights not to make a statement if they so wished to, just like any attorney would have advised his clients.<sup>68</sup>

The defence then opened its case and Niemand gave evidence in his own defence. According to *Beeld*, Niemand told the court that, prior to the alleged assaults at the prison dam, the group of prisoners concerned had misbehaved by cursing a prison officer in Durban and urinating through the window of the prison van transporting them to Barberton. He wanted them to work so that they would be too tired to think up further mischief.<sup>69</sup> He denied that he had seen any assaults on the prisoners when he went to the dam. He did not look around on his way to the dam because he was

<sup>65</sup> Bothma *The Citizen* (16 February 1984) 2.

<sup>66</sup> The words used were: "hulle 'mos daggarokers en menere is" See *Spesiale Verteenwoordiger Beeld* (16 February 1984) 2.

<sup>67</sup> Staff Reporter *Sunday Express* (19 February 1984) 13.

<sup>68</sup> Vanvolsem *Rand Daily Mail* (17 February 1984) 2.

<sup>69</sup> The words used were: "sodat hulle moeg genoeg is om nie aan allerhande onheilighede te dink nie." See *Spesiale Verteenwoordiger Beeld* (17 February 1984) 4.

driving, and he did not see any assaults when he got there. He saw the three prisoners (who later died) lying to one side. When he asked the warder in charge about their condition, he was told that they were tired and had fainted.<sup>70</sup> According to *The Citizen*, Niemand contended that "he had seen no assaults at the Pretorius dam that day and had not even seen that the warders had rubber truncheons in their hands".<sup>71</sup> The *Rand Daily Mail* did not seem to find Niemand's explanations particularly credible. Under the scathingly ironic headline "It was therapy, says Barberton accused", the newspaper summarised Niemand's contention that the prisoners were not sent to the dam as punishment as follows:

The 37 Barberton prisoners beaten up with rubber batons by warders at the prison farm dam on December 29 1982 were not sent there for punishment, but to "assist them to get rid of their frustrations".<sup>72</sup>

The defence closed its case on 17 February 1984, and the case was adjourned to 2 April 1984.<sup>73</sup>

The verdict in Niemand's criminal trial was not extensively covered in the English language press, and proved to be something of an anti-climax. On 4 April 1984, a tiny report on the front page of the *Rand Daily Mail* revealed that Niemand had been found guilty on charges of common assault and had been fined R900 or 360 days imprisonment, plus a further two year's imprisonment suspended for four years.<sup>74</sup> In its coverage of the verdict, the Afrikaans newspaper *Beeld* chose to focus on the comment of the magistrate – that Niemand had misused his position and had elicited unfair criticism of the country from abroad.<sup>75</sup> That the magistrate chose to comment so prominently about the external criticism to which South Africa had been subjected as a result of the case, instead of focusing only on the reprehensible nature of what Niemand had done, speaks volumes. It may be argued, perhaps, that those in

<sup>70</sup> The words used were: "Hy het vir my gesê hulle is moeg en flou". See Spesiale Verteenwoordiger *Beeld* (17 February 1984) 4.

<sup>71</sup> Bothma *The Citizen* (18 February 1984) 8.

<sup>72</sup> Vanvolsem *Rand Daily Mail* (17 February 1984) 2. See, also, Vanvolsem *Rand Daily Mail* (18 February 1984) 2.

<sup>73</sup> Badenhorst *Beeld* (18 February 1984) 3.

<sup>74</sup> Mail Reporter *Rand Daily Mail* (4 April 1984) 1.

<sup>75</sup> The words used were: "onregverdige kritiek vir die land in die buiteland uitgelok". See Sapa *Beeld* (5 April 1984) 2.

authority within apartheid South Africa at this time, including this particular magistrate, were feeling misunderstood and isolated from world opinion – and hence the concern at how this offence was perceived from abroad.<sup>76</sup>

One person who was less concerned about the extent to which South Africa's image had been harmed by the case and more about the consequences for the future operation of the South African penal system was Helen Suzman – the opposition speaker on law and order in parliament. Suzman called for Niemand to be dismissed from the prisons service in order to act as a deterrent to other members of the service. Suzman said that it was "extraordinary" that Niemand was still in the prisons service and that it would not be good for discipline if he was retained in the service.<sup>77</sup>

In addition to the political ramifications, there were also personal ramifications connected to Niemand's trial and conviction. Shortly after Niemand had been sentenced, *City Press* reported that both "heat exhaustion" cases – leading to the criminal trial of the six warders and then of Niemand – had polarised the small community of Barberton. The newspaper interviewed Detective Warrant Officer Flip de Klerk of the South African Police, who had been responsible for investigating both the cases. Under the headline "Barberton cop tells of his heat trial hell", the newspaper reported that de Klerk had been "shunned by many people in Barberton, where he's lived all his life - and where a large part of the population is connected to the town's five prisons."<sup>78</sup> According to the report, de Klerk had gone through an ordeal in

<sup>76</sup> Note that the criminal trial of Lieutenant Niemand was not the last criminal trial of prison staff arising out of violence at the Barberton Prison Complex. For example, in June 1984 the Minister of Justice revealed in parliament that 11 Barberton prison warders, including an officer, would be criminally prosecuted for the alleged assaults which took place in December 1982 on a group of prisoners who had arrived from Point Prison, Durban. The assaults formed part of a brutal initiation ceremony which was a long-standing tradition at the Barberton Prison. The Minister was, of course, referring to the events which had directly preceded the shocking occurrences which had formed the subject matter of the notorious "heat exhaustion" trial. The initiation ceremony involved new prisoners being made to strip naked and run past a number of warders, who beat them with batons and pieces of hose pipe – as a result of which a prisoner could receive as many as 30 blows. The members to be charged were: Ex Sergeant M van der Westhuizen, Lieutenant JW Niemand, Warrant Officers F Welmans, GP Underhay, E Ferreira, MM Neveling and P Jordaan, Sergeant JJ van den Berg, and Warders AH Duque, JC Janse van Rensburg and JA Bruwer. See Political Staff *Cape Times* (9 June 1984) 4. See, also, Anon *Die Transvaler* (11 June 1984) 3.

<sup>77</sup> Tribune Reporter *Sunday Tribune* (8 April 1984) 12.

<sup>78</sup> Blow *City Press* (8 April 1984) 3.

conducting his investigations during which "he received up to six anonymous telephone calls a night."<sup>79</sup> It would seem that pressure from those connected to the accused warders must have been intense. De Klerk told the newspaper that it had been a difficult time for him and his family, but that justice had been done. *City Press* quoted de Klerk as stating:

I know some of the accused socially, but I had my duty as a policeman and was always supported by my wife. I have no regrets. A policeman must always act without fear or favour.<sup>80</sup>

Apart from the criminal trial of Niemand and its ramifications, another direct consequence of the original "heat exhaustion" trial – which kept the Barberton Prison Complex at the forefront of public debate during the mid-1980s – was the launching of civil claims by the prisoners who had been assaulted. On 23 October, 1983 it was reported that civil claims were to be filed against the Minister of Justice. In terms of the law at the time, these prisoners had only 12 months within which to launch their civil claims.<sup>81</sup> On 20 November, 1983 it was reported that letters of demand claiming civil damages had been issued by 30 of the prisoners who had been assaulted at the Barberton Prison Farm. Letters of demand were served on: the Minister of Justice and Prisons, Mr Kobie Coetzee; on the six prison warders who had been found guilty after the criminal trial and who were serving their sentences of imprisonment at the Witbank prison; and on seven other warders who were still working at the Barberton prison –

<sup>79</sup> Blow *City Press* (8 April 1984) 3.

<sup>80</sup> Blow *City Press* (8 April 1984) 3. The other side of the story was the stress suffered by Barberton prison warders at this time. On 13 November 1983, *Rapport* ran an article concerning the reaction of prison warders to the outcome of the Barberton "heat exhaustion" trial. According to the article, it was not always easy and pleasant to be a warder following the events at Barberton. Warders were often forced to put up with serious insults and told the reporters that they had been hit hard and deeply hurt. (The Afrikaans words used were: "Die manne moes dikwels kwaai beledigings sluk" and "Ons is hard geslaan en seergemaak." See Anon *Rapport* (13 November 1983) 28.) A chaplain at the Brandvlei prison told the reporter of a young warder who had been seriously insulted while playing a cricket match. When the warder had requested a replacement cricket bat, he was asked by the wicket keeper why he wanted a new bat – after all was the old bat he was using was not good enough to assault prisoners with? (The Afrikaans words used were: "Sal hierdie een nie die bandiete goed genoeg kan bykom nie?" See Anon *Rapport* (13 November 1983) 28.) The reporter claimed that in all the weeks that *Rapport* was conducting its investigation, and when it could walk into any prison in South Africa unannounced, they had only come across one prisoner that claimed that he had been assaulted by a warder. He also claimed that the rule that a warder was not permitted to lift a hand against a prisoner was strongly enforced. See Anon *Rapport* (13 November 1983) 28.

<sup>81</sup> Blow *City Press* (23 October 1983) 1. See, also, Blow *City Press* (30 October 1983) page unknown.

including Lieutenant JH Niemand, who had been the acting head of the prison when the incidents occurred, and Warrant Officer Jordaan, who had been the medical orderly who had been present when the assaults took place. The claims totaled nearly one million rand.<sup>82</sup> At the end of September, 1984 *City Press* reported that a total of 32 prisoners (not 30 prisoners as reported in November 1983) had in fact sued the State for the assaults which had taken place at the Barberton Prison Farm, and that the State had settled 29 of these cases out of court the previous month.<sup>83</sup>

#### **4 Conclusion**

To conclude Part One, it is clear from the ongoing furore in the press which surrounded the Barberton "heat exhaustion trial" and the events which followed that no South African who was even moderately au fait with public discourse at the time could be ignorant of the cruelty, racism and violence which lay at the heart of the South African penal system. Despite the restrictions imposed by section 44(1)(f) of the *Prisons Act* on reporting on conditions within South African prisons, the South African press was, by and large, successful in conveying to the public a sharp sense of the horror of the events which had taken place within "Apartheid's Alcatraz". It is also evident that the "fall out" from the Barberton "heat exhaustion trial" was traumatic for all involved, including the victims, the perpetrators, the colleagues of the perpetrators, those who investigated the matter, and all their families. The extent of the adverse publicity surrounding events at Barberton must have shocked the authorities at this particularly

<sup>82</sup> Blow *City Press* (20 November 1983) 1.

<sup>83</sup> Blow *City Press* (30 September 1984) 3. It should be noted that subsequent incidents of violence within the Barberton Prison Complex also led to the institution of civil claims against the authorities. For example, on 30 September 1984 the *City Press* reported that a further 29 claimants had come forward to lodge civil claims against the state and various warders. The claims were for damages allegedly suffered as a result of assaults during September 1983 – by warders on prisoners. The claimants alleged that they had been severely assaulted at the Barberton prison in September 1983, following the stabbing of Colonel Johannes Grundling, the head of the Barberton Maximum Security Prison – an incident dealt with in part 2 of this article. The claimants contended that in some cases the assaults inflicted on them by warders were continued for a month after the attack on Colonel Grundling, and that some of them were forced to eat their food in a communal dining room in the nude. They also alleged that baton marks were still visible on the bodies of certain of the claimants a year after the assaults. In addition to the Minister of Prisons, 15 prison officials were sued in the new civil actions, including Brigadier E Viktor, then head of the Barberton complex of prisons, and a certain Lieutenant-Colonel JC Hall. *City Press* commented that it was the first time in the saga surrounding the Barberton Prison Complex that a Brigadier had been summonsed. See Blow *City Press* (30 September 1984) 3.

sensitive time, during which the first major cracks were beginning to appear within the edifice of apartheid. In a way, Barberton reflected the unstable and rotten core of the apartheid system itself. The massive jolt delivered by the press to its readers in response to events at Barberton must have shaken the confidence of many middle-class South Africans – weakening their resolve to support the *status quo*. For all these reasons it is submitted that the Barberton "heat exhaustion trial" and the events which followed played an important role in South Africa's penal history – as well as its general political history.

Part Two of this article will continue to explore pivotal events which occurred within "Apartheid's Alcatraz" in the first half of the 1980s.

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*Prisons Act* 8 of 1959

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Harv L Rev

Harvard Law Review

Sapa

South African Press Association

## **CHAPTER 3.2.2**

### **Apartheid's Alcatraz: the Barberton Prison Complex During the Early 1980s - Part 2.**

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**APARTHEID'S ALCATRAZ: THE BARBERTON PRISON  
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# **APARTHEID'S ALCATRAZ: THE BARBERTON PRISON COMPLEX DURING THE EARLY 1980S - PART TWO**

**SA Peté\***

## **1 Introduction**

This article is focused on the Barberton Prison Complex, as it existed in the early 1980s at the height of the apartheid era. The first major cracks began to appear in the edifice of apartheid during the early 1980s, and Barberton was the place to which the most dangerous and violent prisoners in South Africa were sent to serve their sentences. For the most part, the inmates at Barberton were "normal" offenders, as opposed to the high-profile political offenders detained in prisons like the infamous Robben Island. The importance of Barberton lies in the fact that it was a "normal" as opposed to a "political" prison, and that it may be said to represent the worst of what the South African penal system had to offer the general prison population at a crucial time in the country's history. This article examines the Barberton Prison Complex in the early 1980s through the lens of public discourse at the time – specifically as expressed in a wide range of South African newspapers. The prison complex was subject to extensive publicity in the press over a number of years, as a series of violent incidents rocked the nation and threatened to overwhelm the prison authorities and destabilise the South African penal system. The wide-scale publicity surrounding events at Barberton in the early 1980s must certainly have dented the confidence of many middle class South Africans in the penal system, and, perhaps, in the policy of apartheid as a whole.

Part One of this article focused on the orgy of violence which occurred at the Barberton prison farm on 29 December 1982 – leading to the deaths of three prisoners and serious injuries to others. The criminal trial which followed – which came to be known as the Barberton "heat exhaustion trial" – was examined, as well as the direct ramifications of that infamous trial.

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Part Two begins with an examination of several violent incidents which occurred within the Barberton Prison Complex during the course of 1983 – which led to a further nine inmate deaths. The response of the authorities to the orgy of violence at Barberton is then discussed, including the setting up of a committee of enquiry. The findings of this committee are then extensively analysed through the lens of public discourse, as reflected in a wide range of newspaper articles published at this time. The wider relevance of the events at Barberton in the early to mid-1980s, as well as the state of public discourse surrounding these events, is then assessed.

## **2 Further violence keeps Barberton in the headlines and the authorities respond**

Apart from the "heat exhaustion trial" and the events which "snowballed" out of it – such as the criminal trial of Lieutenant Niemand and the launching of civil claims by prisoners – there was another factor which kept Barberton at the forefront of public discourse throughout the mid-1980s. While the heat exhaustion trial was still under way, a number of violent incidents occurred within the prisons around Barberton, leading to injuries and deaths. These incidents kept the notorious prison complex very much in the public eye throughout 1983 and 1984.

For example, on 19 April 1983 a violent brawl between prisoners took place at the Barberton Maximum Security Prison, which was said to have been caused by friction between rival gangs. Eight inmates were reported to have been injured, as well as certain members of the prison staff when they intervened. One of the staff members injured was Major CDH Visser, the head of the prison. He was assaulted with hammers and had to be admitted to the intensive care unit at a hospital in Nelspruit, where he regained consciousness only 11 days later.<sup>1</sup> Although four prisoners were put on trial for the attack on Visser, they were eventually acquitted as there was insufficient evidence to link them to the assault.<sup>2</sup> According to City Press, the trial was not without

<sup>1</sup> Mail Reporter *Rand Daily Mail* (21 April 1983) 3; Sapa *Rand Daily Mail* (14 April 1984) 3. See, also, Anon *Daily Dispatch* (19 April 1984) page number unknown.

<sup>2</sup> They were acquitted on 13 April 1984. See Sapa *Rand Daily Mail* (14 April 1984) 3.

drama. In a page-one report under the dramatic headline "Another Barberton bombshell! 'Warders staged' convict battle", the newspaper informed its readers that:

Startling allegations that Barberton warders armed two enemy prison gangs with four-pound hammers and put them together in a locked enclosure to "solve their problems" were made in the Nelspruit Regional Court this week. While warders stood outside the fenced-in "camp" where the fighting took place, injured members of the 26 Gang clawed their way under or over a three-metre high fence to escape being beaten to death by members of the 28 Gang, the court heard.<sup>3</sup>

These allegations were denied by Major Visser, who told the court that the group of prisoners who began fighting had been a normal working party who had been given hammers to crush stones. He also told the court that members of different gangs always worked together.

During June and July 1983 further incidents occurred at the Barberton Maximum Security Prison which, although not resulting in deaths, nevertheless indicated serious levels of violence within the prison complex at the time. On 20 June 1983 an attempted escape by four "very dangerous" prisoners was prevented only by the firing of shots, and on 1 July 1983 night-duty staff at the prison were overpowered during an escape by 10 prisoners.<sup>4</sup>

On 22 August 1983 another violent brawl took place between prisoners in the Barberton Maximum Security prison. This incident resulted in the deaths of three prisoners.<sup>5</sup> Just over a week later on 31 August 1983 – responding to a question posed in parliament by Mrs Helen Suzman – the Minister of Justice and Prisons, Mr Kobie Coetsee, confirmed the deaths. He told parliament that "the most dangerous and worst possible elements" of South Africa's prison population were confined in the Barberton Prison Complex. These prisoners had "little to lose" – so making them extremely difficult to control. Coetsee also spoke of the role played by gangs in

<sup>3</sup> Blow *City Press* (15 April 1984) 1. See, also, Anon *Daily Dispatch* (19 April 1984) page number unknown.

<sup>4</sup> These incidents were revealed by the Minister of Justice and Prisons, Mr Kobie Coetsee, in answer to a question put to him in Parliament by Mrs Helen Suzman. Political Staff *Cape Times* (1 September 1983) 4. See, also, Political Correspondent *Natal Mercury* (1 September 1983) page number unknown.

<sup>5</sup> Political Staff *Cape Times* (1 September 1983) 4.

instigating violence, and admitted that it was impossible to stamp out gang activity completely.<sup>6</sup>

September 1983 was to prove even more violent and deadly. The month started with the death of prisoner Jackson Khumalo. Khumalo, who had escaped from prison in Barberton some weeks before, died in hospital on 5 September 1983 as a result of injuries suffered while he was being recaptured by prison warders two weeks before his death.<sup>7</sup> On 20 September 1983 a further four prisoners died after being shot during an attempted mass escape.<sup>8</sup> The incident occurred within the maximum security section of the prison complex – situated in the town of Barberton itself. Apart from the four deaths, three prisoners and two warders were hospitalised due to injuries sustained during the escape attempt.<sup>9</sup> According to the Rand Daily Mail:

A warder was allegedly stabbed several times with sharpened spoons, another was hit in the face with a plate of food, smashing his nose, while three prisoners were wounded – including one whose arm had to be amputated after he was blasted with a shotgun.<sup>10</sup>

Following the deadly riot of 20 September, one may have expected the rest of the month to pass without incident. Unfortunately yet more death and violence was to occur on the last day of this tragic month. On 30 September 1983 the newly-arrived acting head of the Barberton Maximum Security Prison, Lieutenant-Colonel J Grundling – who had been transferred to Barberton from the Zonderwater Maximum Security Prison a few days before in order to strengthen the management at Barberton following the violence of 20 September – was attacked by two prisoners as he walked through a mess hall. He was stabbed in the back and stomach with a sharpened copper pipe. A warder who went to the aid of Lieutenant-Colonel Grundling, N Gukeya, was stabbed in the head. One of the two prisoners who had carried out the attack was then shot and killed by another warder. The violence on 30 September 1983 brought the total number of violent deaths at Barberton since the "heat exhaustion" incident

<sup>6</sup> Political Staff *Cape Times* (1 September 1983) 4. See, also, Political Correspondent *Natal Mercury* (1 September 1983) page number unknown.

<sup>7</sup> Pretoria Bureau *The Star* (13 September 1983) page number unknown. See, also, Olckers *Rand Daily Mail* (13 September 1983) 1.

<sup>8</sup> Editor *The Citizen* (23 September 1983) 6.

<sup>9</sup> Vanvolsem *Rand Daily Mail* (21 September 1983) 1.

<sup>10</sup> Pretoria Bureau *The Star* (23 September 1983) page number unknown.

on 29 December 1982 to 12.<sup>11</sup> Ironically, the violence of 30 September 1983 occurred only a few days after a visit to Barberton aimed at addressing the causes of the violence – by the Minister of Justice and Prisons, Kobie Coetzee, and the acting Commissioner of Prisons, Lieutenant-General WH Willemse.<sup>12</sup>

Clearly, the orgy of violence within the Barberton Prison Complex over a short period of time – resulting in an escalating number of deaths and cases of serious injury, coupled with the fact that details of each incident were splashed across a wide range of South African newspapers – caused alarm in the minds of the authorities. Apart from steps to strengthen the management within the Barberton Prison Complex, the prison authorities were forced to rethink their previous decision to confine all the most violent prisoners in the country in one place. In October 1983 it was reported that a decision had been taken to reclassify the Barberton Maximum Security Prison to a medium-security prison and to transfer the "bad apples" to other prisons. In the future, Barberton would cater for prisoners with better prospects of rehabilitation.<sup>13</sup> The other major response of the authorities to the violence at Barberton was to initiate a high-level investigation into conditions within the prison complex – as well as the causes of the violence. In September 1983 a three-man committee of enquiry was set up by the Minister of Justice and Prisons. The chairman was Mr JA van Dam, the President of the Johannesburg Regional Magistrates' Courts. The other two members of the committee were Dr Herman Venter, a criminologist and former mayor of Pretoria, and Brigadier EA Venter, a member of the Prisons Service.<sup>14</sup> The committee took around seven months to complete its investigation, and on 23 April 1984 the

<sup>11</sup> Staff Reporter *Sunday Express* (5 February 1984) 11. See, also, Anon *Die Burger* (17 May 1984)b 7.

<sup>12</sup> Argus Correspondent *The Argus* (30 September 1983) page number unknown. See, also, Pretoria Correspondent *The Star* (30 September 1983) page number unknown; Own Correspondent *Cape Times* (1 October 1983) page number unknown; Weekend Argus Correspondent *Weekend Argus* (1 October 1983) page number unknown; Jones *The Star* (1 October 1983) page number unknown; Vanvolsem *Rand Daily Mail* (1 October 1983) page number unknown.

<sup>13</sup> Polisieverslaggewer *Beeld* (3 October 1983) 3. Of course, transferring the "bad apples" from one prison to another could also serve to transfer the problem of violence from one prison to another. For example, the same newspaper report which gave details of the transfers from Barberton also pointed out that, over the preceding weekend, two prisoners had been killed by fellow inmates at the Modder-Bee prison outside Springs.

<sup>14</sup> Staff Reporter *Pretoria News* (12 October 1983) 9. See, also, Anon *Die Transvaler* (14 October 1983) 3.

Rand Daily Mail reported that the findings of the committee had been handed to the Minister of Justice and Prisons.<sup>15</sup>

### **3 The furore in the press following the release of the Van Dam committee report**

The press was to have a field day publishing details of the Van Dam committee's report. For example, summarising the various incidents of violence which had taken place within the Barberton Prison Complex, as well as the lengthy criminal trials which had arisen out of these incidents, the Rand Daily Mail spoke of "a sickening picture of abuse and mismanagement" and an "ugly catalogue of violence" which needed to be addressed.<sup>16</sup> It is not possible in this short article to summarise completely the extensive publicity given to the Van Dam committee report in the press, or to cover all the details in the report. It is possible, however, to provide an overview of the publicity surrounding certain of the committee's major findings – in order to assess the state of penal discourse at this time.

One of the major findings of the Van Dam committee was that the activities of prison gangs – which it described as "horrifying" – had played a major role in much of the violence which had occurred at Barberton.<sup>17</sup> This was seized upon by the press, since it played into an ongoing fascination on the part of the South African public with the brutal activities of prison gangs. The intense focus on prison gangs is reflected in the many references to gangs in newspaper headlines at this time:

- Prison gangs must be curbed (Bendes in tronke moet vasgevat word)<sup>18</sup>
- Report details brutal prison gangs<sup>19</sup>
- Prison gangs were behind the violence (Tronkbendes was agter geweld)<sup>20</sup>
- Gangs' role in prison riots "horrifying"<sup>21</sup>

<sup>15</sup> Editor *Rand Daily Mail* (23 April 1984) 8.

<sup>16</sup> Editor *Rand Daily Mail* (23 April 1984) 8.

<sup>17</sup> Wentzel *The Argus* (17 May 1984) 4.

<sup>18</sup> Parlementêre Redaksie *Die Vaderland* (17 May 1984) 2.

<sup>19</sup> Freimond, Streek and Sapa *Rand Daily Mail* (17 May 1984) 11.

<sup>20</sup> Anon *Die Burger* (17 May 1984)b 7.

<sup>21</sup> Wentzel *The Argus* (17 May 1984) 4.

- New strategy on prison gangs "vital"<sup>22</sup>
- Horror gangs a key factor in prison riots<sup>23</sup>
- Prison gangs: the grim truth<sup>24</sup>

An editorial in the Eastern Province Herald summed up the Van Dam committee's findings in respect of the role played by prison gangs at Barberton, inter alia, as follows:

The Van Dam committee which looked into a variety of events at Barberton last year – 12 deaths in all – has come up with the unsurprising discovery that prison gangs are responsible for murder, assault and sexual abuse in our overcrowded cells. But this has been known for several years. What we must hope for is that, because the Van Dam inquiry has won the stamp of Government approval, some concerted effort will be made now to tackle this hideous phenomenon.<sup>25</sup>

Many of the articles published at this time did not hesitate to provide gruesome details of gang activity – as outlined in the report of the Van Dam committee. In blunt terms which must have horrified many ordinary South Africans, the Rand Daily Mail stated, inter alia, as follows:

Alarming evidence of the existence of violent gangs in South African prisons has been uncovered by the Van Dam Inquiry into the Barberton prisons. It said the gangs, which were "very strong", were mainly found in maximum security prisons. The committee found evidence of violence, assaults, murders, homosexuality and gangs specialising in escapes ... The committee described as "frightening" the "merciless cruelty" of the gangs and their members who could, in exceptional circumstances, take action against prison personnel. Often gangs sentenced members to death for the flimsiest of reasons and the death penalty was carried out with a variety of brutal methods.<sup>26</sup>

Another good example of the manner in which the "shock findings" of the Van Dam committee, particularly in relation to gang activities, were reported in the press, is to be found in *The Star*. This newspaper summed up certain of the committee's findings in respect of the nature and extent of gang activities in Barberton prisons, in the following disturbing terms:

<sup>22</sup> Leeman *The Star* (17 May 1984) 1.

<sup>23</sup> Political Staff *The Star* (17 May 1984) b 5.

<sup>24</sup> Chester *The Star* (19 May 1984) 11.

<sup>25</sup> Editor *Eastern Province Herald* (18 May 1984) 8.

<sup>26</sup> Freimond, Streek and Sapa *Rand Daily Mail* (17 May 1984) 11. See, also, Parlementêre Redaksie *Die Vaderland* (17 May 1984) 2.

The report refers to a merciless brutality with which gang members acted against each other and, in exceptional cases, against prison staff. Cold-blooded murders were committed for rumours or transgressions of the gang codes. Innocent people were often assaulted simply as a show of force or to take revenge for a misdemeanour. Many weapons, including knives, were made in prison to use against prisoners. A favourite weapon was the heavy metal mugs in which prisoners received coffee or tea. Tied to a half-metre belt of towel, they formed a dangerous weapon. Six gangs were identified in the prison. In some of them, sodomy was prevalent and younger members were known as 'wyfies'. Members of such a gang did not hesitate to murder if members of their own or of other gangs interfered with their 'wyfies'... The committee said authorities had to be wary of explosive gang situations.<sup>27</sup>

Two days later, *The Star* once again highlighted the problem posed by prison gangs in terms which were bound to shock ordinary members of the South African public. In the introduction to its analysis of the Van Dam committee report, the newspaper stated as follows:

Even the most hardened veterans of the criminal underworld have been shocked by the extent and power of the vast network of secret prison gangs that have been uncovered in government probes into the causes of the 1983 riots inside the maximum security jail at Barberton. A full dossier on the "merciless barbarity" of the cell warlords has been handed over to the Minister of Justice by Lieutenant-General WH Willemse, Commissioner of Prisons, and the Prisons Service has been ordered to give top priority to finding a remedy.<sup>28</sup>

The following day, an article in the *Sunday Express* dramatically entitled "Tales of mayhem in our prisons", once again summarised the findings of the Van Dam committee in relation to the activity of prison gangs at Barberton. The article emphasised the conclusion of the Van Dam committee that gangs exercised a measure of control over the day-to-day lives of inmates, and stated that: "The report disclosed the vicious domination of prisoners by gangs in the Barberton maximum security jails".<sup>29</sup> The article also contained the admission by the Commissioner of Prisons, Lieutenant-General WH Willemse, that gangs had been rife in South African prisons for several decades.<sup>30</sup>

There was an interesting political twist to certain stories published at this time concerning prison gang activity at Barberton. These stories concerned the apparent

<sup>27</sup> Political Staff *The Star* (17 May 1984) b 5.

<sup>28</sup> Chester *The Star* (19 May 1984) 11.

<sup>29</sup> Le May *Sunday Express* (20 May 1984) 19.

<sup>30</sup> Le May *Sunday Express* (20 May 1984) 19.

existence of a mysterious prison gang by the name of "Kilimanjaro", which had been mentioned by the Van Dam committee. This gang was said to incite prisoners to become involved in political-type activities, and was alleged to have links to the banned African National Congress.<sup>31</sup> In a page-one report entitled "ANC 'got to prison gang" – a headline which must have sent shivers through many in the ruling elite – the City Press detailed certain of the Van Dam committee's findings relating to "Kilimanjaro", including the fact that this gang had "discussed ANC policies" and that:

Black power salutes had ... been given and letters smuggled out to certain political figures and people who are opposed to the existing order.<sup>32</sup>

As interesting as the activities of the "Kilimanjaro" gang might have been, however, from the perspective of ordinary prisoners it is clear that they were nowhere near as important or influential as the activities of traditional "numbers" gangs.

Another major focus area of the press during this time – which was connected to the activities of Barberton's prison gangs – was on the findings of the Van Dam committee in relation to the revolt which took place at Barberton Maximum Security Prison on 20 September 1983. Much publicity was given to the revelation by the committee that this incident, which led to the shooting to death of four prisoners by warders, "was not spontaneous but in fact a carefully thought-out and planned attempt at mass escape".<sup>33</sup> The fact that – according to the Van Dam committee – the planned mass escape had been foiled only just before it was due to take place and purely by chance, provided the press with sensational copy for a series of chilling reports on the incident. For example, in an article dramatically entitled "Mass prison escape was foiled by chance", the Rand Daily Mail informed its readers that:

A carefully planned mass escape from one of Barberton's maximum security prisons by nearly 400 of the country's most hardened criminals was inadvertently thwarted by prison officials only hours before it was due to take place on September 20 last year ...<sup>34</sup>

<sup>31</sup> Freimond *Rand Daily Mail* (17 May 1984) 1.

<sup>32</sup> CP Correspondent *City Press* (20 May 1984) 1.

<sup>33</sup> Sapa *The Citizen* (17 May 1984)b 12.

<sup>34</sup> Anon *Rand Daily Mail* (17 May 1984)b 11.

The newspaper went on to describe the Van Dam committee's finding that leaders of four of the main gangs in Barberton's Maximum Security Prison had planned the mass escape for more than a month. It also described how prisoners had made keys for various doors in the prison using plastic material from polish containers, as well as knives to be used as weapons – using any material that could be fashioned into a sharp instrument. The brutal nature of the plan was described in chilling detail as follows:

On the pre-planned day, a number of prisoners were to attack their warders with knives after being released from their cells for breakfast. It was decided to kill all warders encountered during the operation. When the warders had been neutralised, the prisoners would put on their uniforms and release all other prisoners. The prisoners wearing warden's uniforms would then gain access to the outer areas of the prison on the pretext of seeking help to counter the unrest. Warders in the reception area would have been overpowered and the armoury would have been plundered. Warders on the catwalks around the prison walls would then be shot. All members of the 'Big Five Gang', who were known as informers, would be killed.<sup>35</sup>

The Rand Daily Mail then went on to explain that it was only by chance that the escape plan was foiled, when the authorities decided not to open the cell doors on the morning of 20 September (when the plan was to have been put into effect) – due to unrest which had taken place the previous evening. A group of prisoners decided to make a bid to escape later in the day, but:

... instead of a well organised breakout the incident developed into a situation of disorganised violence in which four prisoners were killed and four warders and three prisoners injured.<sup>36</sup>

When reading this report, ordinary members of the South African public must surely have been greatly disturbed at the idea of how narrowly a disaster had been averted. Had the mass escape been successful, many innocent lives would surely have been lost trying to track a large number of dangerous and desperate men through the mountainous and densely wooded countryside surrounding Barberton.

Apart from the activities of Barberton's prison gangs and the attempted mass escape on 20 September 1983, another set of findings by the Van Dam committee to receive

<sup>35</sup> Anon *Rand Daily Mail* (17 May 1984)b 11.

<sup>36</sup> Anon *Rand Daily Mail* (17 May 1984)b 11.

coverage in the press at this time, concerned initiation ceremonies which were traditionally carried out within the prison complex. For many years, according to the committee, it had been a tradition for new arrivals at Barberton to be stripped naked and beaten with batons or rubber hoses by warders.<sup>37</sup> The practice was known as "greeting" or "warming up" new arrivals.<sup>38</sup> What made this finding particularly shocking was that senior officers appeared to be aware of the practice, but ignored it since it was regarded as "tradition".<sup>39</sup> A good example of the adverse publicity generated by this finding is to be found in an article dramatically entitled "Initiation shocks Willemse", in which the Afrikaans language newspaper *Die Burger* reported on the horrified reaction of the Commissioner of Prisons, Lieutenant-General WH Willemse to the finding.<sup>40</sup> In a written memorandum attached to the Van Dam report, the Commissioner gave the assurance that the matter had been taken up with the police at the highest level, which could lead to yet further charges being preferred against Barberton prison warders.<sup>41</sup> Clearly, the sordid details of the Barberton prison initiation ritual must have been deeply shocking to the South African public – indicating a culture of entrenched brutality which had been in place over many years.

#### **4 Differences in emphasis between "conservative" and "liberal" newspapers**

Having examined certain of the main themes which emerged in the press around the findings of the Van Dam committee, the subtle differences in emphasis between newspapers which were either more or less politically conservative are discussed. A good example of such a difference in emphasis relates to reporting on the committee's findings on the conduct of Barberton prison warders. On the one hand, in an article entitled "Report clears prison staff of misconduct", the more conservatively inclined newspaper *The Citizen* summarised the violent events which had taken place at

<sup>37</sup> Freimond *Rand Daily Mail* (17 May 1984) 1.

<sup>38</sup> In the words of one report: "die gebruik was ons nuwe aankomlinge te 'groet' of 'warm te maak'". See Anon *Die Burger* (17 May 1984)a 7.

<sup>39</sup> Freimond *Rand Daily Mail* (17 May 1984) 1.

<sup>40</sup> See Anon *Die Burger* (17 May 1984)a 7.

<sup>41</sup> Anon *Die Burger* (17 May 1984)a 7. See, also, Anon *Die Transvaler* (17 May 1984) 19; Anon *Rand Daily Mail* (17 May 1984)a 11.

Barberton on 20 and 30 September 1983, and quoted the committee's finding that: "The above events have no direct link to unlawful or irregular action on the part of members of the prisons service".<sup>42</sup> On the other hand, in an article entitled "Prison report tells of abuse by warders", the more politically liberal newspaper the Rand Daily Mail adopted a far more critical tone and summarised the findings of the Van Dam committee, inter alia, by stating that:

Serious allegations of the abuse of prisoners by warders at the Barberton maximum security prison and details of severe conflict between warders and inmates were disclosed yesterday in a report into incidents at the prison last September.<sup>43</sup>

While The Citizen reported on the committee's findings in respect of the infamous "heat exhaustion" incident by emphasising the conclusion that it "was an isolated case, and that the current regulations and laws were sufficient to prevent a repetition", the Rand Daily Mail reported simply that a number of warders had "since been convicted and sentenced to jail terms for their parts in the incident".<sup>44</sup> Whereas The Citizen failed to mention the committee's disclosure that warders at Barberton had been involved in brutal initiation ceremonies involving new prisoners, the Rand Daily Mail listed among the committee's "disclosures, findings and recommendations" that:

It had been "tradition" [at Barberton] for many years that new arrivals at the maximum security prison be stripped naked and beaten with batons or rubber hoses by warders to initiate them.<sup>45</sup>

Another example of the way in which reports in various newspapers about the findings of the Van Dam committee were politically slanted in different ways concerns the issue of overcrowding. The Van Dam committee found that overcrowding was not a direct but an indirect cause of the trouble which had occurred at Barberton. Some newspapers chose to focus on the fact that the much publicised problem of prison overcrowding had been fingered as a cause of the trouble at Barberton, and played

<sup>42</sup> Sapa *The Citizen* (17 May 1984)a 12.

<sup>43</sup> Freimond *Rand Daily Mail* (17 May 1984) 1.

<sup>44</sup> See Freimond *Rand Daily Mail* (17 May 1984) 1; Sapa *The Citizen* (17 May 1984)a 12.

<sup>45</sup> Freimond *Rand Daily Mail* (17 May 1984) 1. The Rand Daily Mail further listed as one of the findings of the Van Dam committee that: "The actions of certain warders during an identity parade on May 5 last year connected to the December 29 incident [i.e. the incident which led to the infamous 'heat exhaustion' trial] were 'undisciplined' and bordered on an attempt to defeat the ends of justice."

down the finding that it was identified as only an indirect cause. Other newspapers played up the finding that overcrowding was identified as only an indirect cause, and made much of the fact that the committee had not pointed to prison overcrowding as a direct cause of the violence. Liberally inclined newspapers seemed to follow the former approach, whereas conservatively oriented newspapers tended to follow the latter route. A good example of the former approach is to be found in the *Sowetan*, which stated, inter alia, that:

Overcrowding in South African prisons has once again been identified as a flashpoint for trouble in jail... . According to the report, overcrowding was an indirect cause of riots at the Barberton Prison, a view which strengthened Opposition calls for action in this regard.<sup>46</sup>

Another example of the "liberal" approach is to be found in *The Star*. In a report entitled "Crowded cells affected inmates", the newspaper focused on the dangers of overcrowding as highlighted in the Van Dam report, stating inter alia as follows:

Overcrowding could indirectly have led to prison riots at the Barberton maximum security prison in September, a committee of inquiry [the Van Dam committee] has found ... The overcrowding was 33 percent on average... . Overcrowding had probably contributed to the desire to escape. Over-full cells brought about irritation, unpleasantness and sometimes physical violence. Supervision of overcrowded cells was difficult and dangerous.<sup>47</sup>

In contrast, an example of the more politically conservative approach to the question of overcrowding is to be found in *The Citizen* which, in a report entitled "Overpopulation was not to blame", stated inter alia that:

The Barberton maximum security prison (town) was overpopulated by an average of 33 percent when violence broke out there last September, according to a report [the Van Dam report] released in Cape Town yesterday... . It pointed out, however, that there was no evidence overpopulation had played a direct role in the attempted mass revolt and escape on September 20, or the violence that broke out 10 days later. Indirectly, overpopulation probably contributed to and increased the desire to escape.<sup>48</sup>

Another example of this more conservative approach is to be found in a report in *Die Vaderland*. Under the heading "Overcrowding not the reason for unrest", the report

<sup>46</sup> Editor *Sowetan* (18 May 1984) 4.

<sup>47</sup> Political Staff *The Star* (17 May 1984)a 5.

<sup>48</sup> Anon *The Citizen* (17 May 1984) 12.

pointed to the committee's finding that there was no evidence that overcrowding of around 33 percent at Barberton had played a direct role in the violent incidents which had occurred there.<sup>49</sup> According to *Die Vaderland*, all the prisons visited by the committee were overcrowded, but in spite of this, these prisons were characterised by orderliness and calm.<sup>50</sup> Having painted this optimistic picture, the report then went on to explain the dangers of overcrowding.<sup>51</sup>

A difference in emphasis can also be seen in various editorials which appeared in different newspapers at this time. More conservatively inclined newspapers such as *Die Volksblad* tended to adopt a more forgiving attitude towards the prison authorities than the more politically liberal newspapers. This is not to say that the former newspapers deliberately hid the facts. For example, *Die Volksblad* told its readers in an editorial that the glimpse provided by the Van Dam committee into the robust life behind prison walls at Barberton would be a revelation and a shock to many. Cruel treatment by warders, as well as cruelty among prisoners themselves, and reckless gangs which time and again committed murder at the slightest provocation had been revealed. There was even talk, said the editorial, of an extremely secretive gang with probable political motives. According to *Die Volksblad*, the sensational story of a planned mass escape which would have set almost 400 hardened criminals free in the lush Eastern Transvaal read like the script of a Hollywood movie. However, while condemning the actions of warders which had led to the various criminal trials and convictions involving incidents at Barberton, *Die Volksblad* adopted a more conciliatory tone than was, perhaps, warranted. The newspaper stated in its editorial that – although it did not excuse such repugnant actions – the background provided by the committee at least shed light on the almost superhuman task performed by warders in keeping violent offenders with little regard for human life out of one another's hair and under control. The newspaper welcomed the fact that one of the committee's recommendations was that the training of warders should include more practical content, which would encourage discipline and help reduce panic under pressure. The

<sup>49</sup> See Anon *Die Vaderland* (17 May 1984) 2.

<sup>50</sup> The words used were: "word hulle deur ordelikheid en rustigheid gekenmerk". See Anon *Die Vaderland* (17 May 1984) 2.

<sup>51</sup> See Anon *Die Vaderland* (17 May 1984) 2.

newspaper also welcomed the fact that the prison authorities had reacted decisively and positively to the report, and had made it clear that malpractices, such as the barbaric "greeting" of new prisoners by assaulting them with truncheons and pieces of hose-pipe, would not be tolerated. The newspaper postulated that the lifting of the veil of secrecy might have resulted in a degree of discomfort for the prison authorities, but that the result would be positive in the long run. An informed public and media were better able to judge matters in a balanced way.<sup>52</sup>

Editorials in the more liberally inclined newspapers were far less favourably disposed towards the prison authorities. A good example is a scathing editorial which appeared in the Pretoria News under the heading "Prison shocker" which stated, inter alia, as follows:

What the Van Dam committee uncovered at Barberton Prison is enough to make the hair stand on end ... homicidal gangs of prisoners, warders so brutalised by the environment that they rely mainly on baton and boot, idleness and overcrowding among the convicts leading to the most horrendous excesses, plans for a mass escape by some 400 of South Africa's toughest outlaws... It is as well that the Commissioner of Prisons in a memorandum attached to the Van Dam report says he is shocked by the findings. To be anything less would be a travesty. It has long been suspected that conditions at some of South Africa's prisons are not all that they might be but confirmation of that has mostly been stifled by the tough secrecy provisions of the Prisons Act which, hitherto, have been rigorously applied. Now that the matter has been dragged into the light (and praise to the authorities for permitting that at least) it is the time for the authorities to set about the problem once and for all: less crowded prisons, more, better trained, higher paid warders – the list of important reforms which may be undertaken is clearly a long one. And it is important that these reforms be tackled. Otherwise, it is virtually certain, what happened at Barberton will happen again.<sup>53</sup>

Another example of the shock and outrage felt by "liberal" commentators at the revelations of the Van Dam committee is to be found in an editorial published in The Cape Times entitled "Prison horrors". The Times expressed its shock at the findings of the Van Dam committee inter alia as follows:

The Van Dam Committee which investigated conditions in Barberton prison has brought to light the existence of barbarous malpractices, including a degrading initiation ceremony at the prison in which new prisoners were stripped naked and assaulted by warders with truncheons or pieces of rubber pipe, sometimes receiving

<sup>52</sup> Redakteur *Die Volksblad* (17 May 1984) 10.

<sup>53</sup> Editor *Pretoria News* (17 May 1984) 20.

as many as 30 blows. This was an established practice, it appears, and it was condoned by senior officers... If the moral fibre of a society is to be judged by its prisons, what a reflection on South Africa!<sup>54</sup>

To end the discussion on the subtle differences between "conservative" and "liberal" newspapers in their reporting on the findings of the Van Dam committee, it is useful to examine the responses of various newspapers to the issue of censorship. In particular, it is instructive to examine their responses to a "charm offensive" by the Minister of Justice and Prisons, Kobie Coetsee, which he launched at the same time as the findings of the Van Dam committee were made known. This charm offensive - clearly an effort to reverse the negative pounding the apartheid authorities had suffered in the press over Barberton - consisted of an announcement that the media would, in future, be allowed to publish allegations and reports dealing with prisons, provided commentary on those allegations and reports by the Prisons Service received the same treatment.<sup>55</sup> The Afrikaans language newspaper *Beeld* welcomed the

<sup>54</sup> Editor *Cape Times* (18 May 1984) 12.

<sup>55</sup> In the words of the newspaper report: "mits die diens se kommentaar daarop dieselfde behandeling kry". See Redakteur *Beeld* (18 May 1984) 10. It must be noted that the English and Afrikaans press had long been united in opposition to s 44(1)(f) of the *Prisons Act* 8 of 1959, which curtailed reporting about conditions in South African prisons. When the violence at Barberton was at its height in September 1983, the *Rand Daily Mail* stated as follows: "Let us put it like this: jails ... in their nature, have to be closed institutions, with differences only in degree. That demands extra, not less, vigilance to ensure that as little as possible goes wrong. To leave the vigilance to the people who administer the jails is both absurd and cynical. They cannot possibly do the job. Instead, the maximum amount of attention from outside must not only be allowed but actively fostered. Section 44(1)(f) does not allow this. It must be scrapped." (See Editor *Rand Daily Mail* (22 September 1983) 10.) The *Citizen* supported the *Rand Daily Mail* in its call. The newspaper stated that there was clearly "cause for the gravest concern" about the violent events which had taken place at the Barberton Prison Complex, and bemoaned the fact that newspapers were unable to reveal to the public what was going on in South Africa's prisons. It called on the authorities to take "another look at the Prisons Act which, in its effect on the Press, is so inhibiting as virtually to prevent reporting on what goes on". (See Editor *The Citizen* (23 September 1983) 6.) The *Citizen* pointed out in its report that: "After the *Rand Daily Mail* lost the *Prisons Act* case against it in 1970, at a cost to it exceeding R275 000, no newspaper has dared report on prisons, their administration or the experience of prisoners or ex-prisoners, the exception being reports that place the Prisons Department in a favourable light." (See Editor *The Citizen* (23 September 1983) 6.) The Afrikaans press joined in the calls for a relaxation of the legislative measures restricting open reporting on prison conditions. *Rapport*, for example, stated that this would serve to improve the credibility of the whole Prisons Department. (See Sidego *Rapport* (25 September 1983) 3.) Even *Die Volksblad*, which tended to adopt a pro-government stance, pointed out that restrictions on reporting could be taken as licence by certain irresponsible members of the prisons service to do as they pleased. (See Redakteur *Die Volksblad* (29 September 1983) 18. The relevant sentence reads: "... beskermende wetgewing wat normale bespieding deur die pers in baie opsigte belemmer, deur sommige minder verantwoordelike elemente in die gevangenisdiens as lisensie gesien kan word om te maak en te breek".) The newspaper proposed that a formula be found to bring greater balance to the opposing needs for the restriction of information on the one hand and

minister's announcement, calling it a particularly important development. In a somewhat gushing tone, the newspaper claimed that the announcement indicated a constructive and honest attempt to establish better relations between the media and the Prisons Service – with obvious benefits for both parties.<sup>56</sup> While generally approving, the liberal English-language newspapers were more cautious. The *Natal Mercury*, for example, also welcomed "the Government's more conciliatory attitude towards the Press concerning the reporting of prison affairs" and called the minister's announcement "particularly timely".<sup>57</sup> The *Mercury* pointed out, however, that the picture of Barberton prison life which had emerged from the report of the Van Dam committee was "frightening to say the least", and went on to state that: "What happened at Barberton may never have taken root if the Press had been able to fulfil properly its duty as society's eyes and ears".<sup>58</sup> The *Mercury* was by no means as positive as *Beeld* in its assessment of the "'informal' arrangement whereby newspapers obtain comment from prison authorities on any allegations...".<sup>59</sup> According to The *Mercury*, this was "no more than standard newspaper practice" and what was really needed was "access to facts – especially if they are unpalatable".<sup>60</sup> The *Mercury* did, however, "commend the minister for taking his first cautious step towards raising the shutters".<sup>61</sup> Similarly, the *Eastern Province Herald* expressed guarded approval of the minister's announcement. After condemning the fact that the Prisons Act had "closed off jails from critical public scrutiny for the past 25 years", the *Herald* stated, in an editorial, that it remained to be seen if the "arrangement with the Press" proposed by the minister would sufficiently ease the restrictions imposed by the Act. The *Herald* ended its editorial on the following cautiously optimistic note:

Still, the Government's attitude plus its willingness to take the Barberton events seriously promise a little light in this long dark tunnel of prison abuse.<sup>62</sup>

openness to the public on the other. (See Redakteur *Die Volksblad* (29 September 1983) 18. The relevant sentence reads: "Dit lyk of 'n formule gevind moet word wat groter ewewig sal bring tussen geslotenheid en openheid.")

<sup>56</sup> Redakteur *Beeld* (18 May 1984) 10.

<sup>57</sup> Editor *Natal Mercury* (18 May 1984) 10.

<sup>58</sup> Editor *Natal Mercury* (18 May 1984) 10.

<sup>59</sup> Editor *Natal Mercury* (18 May 1984) 10.

<sup>60</sup> Editor *Natal Mercury* (18 May 1984) 10.

<sup>61</sup> Editor *Natal Mercury* (18 May 1984) 10.

<sup>62</sup> Editor *Eastern Province Herald* (18 May 1984) 8.

The Star, in an editorial entitled "Bringing light into the prisons", condemned the "blanket of secrecy" which it said had been "imposed by the Prisons Act", but welcomed the minister's announcement as "a start" in eventually ending the "unneeded Prisons Act".<sup>63</sup> The editorial concluded by stating that: "Light on the dark recesses of the prisons is one valuable step towards remedying their ills".<sup>64</sup> Somewhat less charitably, the Sunday Express commented that the proposed relaxation of the censorship regime was "fair enough", but that this would simply mean that:

Section 44(1)(f) of the Prisons Act becomes another of those pieces of Nationalist legislation which are so rotten that they can't be enforced, but which the government does not have the courage to repeal.<sup>65</sup>

Finally, in a well-balanced editorial comment entitled "Prisoners of silence", which left no doubt as to the evils of censorship when it came to reporting on prison conditions, The Argus stated as follows:

For almost 20 years South African prisons have operated behind an almost impenetrable wall of legislative restrictions. So all-embracing is Section 44(f) of the Prisons Act that the Press has effectively been shut out of matters concerning prisons. The effect was so prohibitive and inhibiting that virtually all that emerged was what authorities permitted the public to know or was so dramatic that nothing could suppress it. The atrocities at Barberton prisons constituted such an event. Deaths, injuries, sadistic beatings, gang battles – they were all there. In the wake of court cases, the Van Dam Inquiry's disclosures, and sensible discussions on means of improving communications, the Minister of Prisons has decided for a trial period to waive the clause that vitally affects the media. We hope the arrangement becomes permanent. The Prisons Department has also fallen prey to its own law. Its image has been tainted by the likes of Barberton, perhaps unjustly, perhaps not. Who was really to know? Prisons require reasonable public scrutiny like any other State department. A free flow of information to the public is one of its own strongest safeguards against internal abuses and the distortions of an uninformed public, at home and abroad.<sup>66</sup>

## **5 Conclusion**

As has been pointed out in both parts one and two of this article, the Barberton prison complex in the early 1980s represented the worst of what the South African penal

<sup>63</sup> Editor *The Star* (18 May 1984) 6.

<sup>64</sup> Editor *The Star* (18 May 1984) 6.

<sup>65</sup> Tantalus *Sunday Express* (20 May 1984) 18. The newspaper also commented perceptively that: "South African experience suggests that every secrecy clause creates a presumption of hidden evil."

<sup>66</sup> Editor *The Argus* (18 May 1984) 16.

system had to offer at the height of the apartheid era. Barberton was, in effect, "Apartheid's Alcatraz". Despite the measures which were in place at the time to restrict reporting on conditions in South African prisons, events at Barberton were simply too serious and too widespread to enable the prison authorities to "keep a lid on" the bad news which kept emerging from the prison complex. Although there were clear differences in emphasis in the coverage of politically conservative and politically liberal newspapers, the South African press was able, by and large, to provide the public with a clear picture of the cruelty, violence and racism which lay at the heart of the Barberton Prison Complex.

At a time when cracks were beginning to appear in the edifice of the apartheid system itself, it would be surprising if the tremors caused by the ongoing violence at Barberton did not contribute to a widening of those cracks.

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## **CHAPTER 3.3**

### **Holding up a Mirror to Apartheid South Africa: Public Discourse on the Issue of Overcrowding in South African Prisons 1980 to 1984.**

#### **CHAPTER 3.3.1**

##### **Holding up a Mirror to Apartheid South Africa: Public Discourse on the Issue of Overcrowding in South African Prisons 1980 to 1984 - Part 1.**

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# **HOLDING UP A MIRROR TO APARTHEID SOUTH AFRICA: PUBLIC DISCOURSE ON THE ISSUE OF OVERCROWDING IN SOUTH AFRICAN PRISONS 1980 TO 1984 – PART 1**

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## **SUMMARY**

During the first half of the 1980s, the issue of chronic overcrowding within the South African penal system formed part of an intense ideological struggle between those who supported and those who opposed the apartheid regime. Public debate around this issue acted as a mirror, reflecting early cracks which were beginning to appear in the edifice of apartheid. Since the prisons were the ultimate instrument of social control within the apartheid system, the ongoing crises caused by chronic overcrowding within these institutions served as a kind of “canary in the mine” for the apartheid system as a whole. The debates which took place during the early 1980s around overcrowding are also important because they form part of a common theme running through South African penal discourse as a whole. This article seeks to show how the debates on prison overcrowding which took place in the first half of the 1980s fit into a long term pattern of recurring ideological crises surrounding this issue.

## **1 INTRODUCTION**

In many ways, the 1980s marked a particularly tragic time in the sad history of apartheid South Africa. During these years, resistance to the apartheid system from both inside and outside the country, gained inexorably in strength. Popular protest by millions of ordinary South Africans against the system reached its peak during this period, with the United Democratic Front playing a major role in a sustained campaign of mass action against the apartheid government. As resistance to the system increased, it was met with the full might of the apartheid security apparatus, with those in power determined to resist what was termed a “total onslaught”. An official “State of Emergency” was in operation for much of the decade, which was marked by

extreme brutality, violence and repression. On the positive side, these years also marked a turning point in the struggle against apartheid, with cracks finally beginning to show in the authoritarian structure built up by the National Party government. As Nigel Worden comments:

“The resistance of the mid-1980s destroyed utterly the „total strategy“ tactics of the Botha government. Tricameralism and African urban councils had been firmly rejected by the demand for „People’s Power“. The campaign to win hearts and minds was in tatters, with thousands in detention ... and an occupying army in the townships ... With the collapse of „total strategy“, the government seemed bankrupted of ideas, relying on internal repression and international bravado.”<sup>1</sup>

The focus of this article is on the first half of this crucial decade and examines only one aspect of the broad ideological struggle which was taking place in South Africa during this time – the ideological struggle waged in the mass media around the issue of overcrowding in South African prisons. It will be argued that public debate around this issue acted as kind of mirror, reflecting clearly for those who wished to see, the early cracks which were beginning to appear in the edifice of the apartheid system. Debates around the issue of prison overcrowding were only one of many ideological struggles being waged at the time, but these debates are interesting and significant for at least two reasons:

The first reason is that the debates to be examined took place at a particularly interesting time in the history of apartheid South Africa, as it was becoming increasingly clear that the stresses and strains brought about by the various measures of apartheid social-control (such as influx control and the infamous pass laws) were not sustainable and would eventually lead to the demise of the system. Since the prisons were the ultimate instruments of social control in the apartheid system, it may be argued that what was happening in the prisons during this period served as a kind of “canary in the mine” for the apartheid system as a whole. It will be contended in this article that, as alluded to in the title, public debates on the issue of prison overcrowding throughout the early 1980s held up a mirror to South African society, in which those willing to look could see reflected the inevitable demise of the apartheid system. The first task of this article is thus to illustrate the above point, by carefully tracing the public debates which took place on the issue of prison overcrowding during the period 1980 to 1984, within the specific historical context of this period.

The second reason that public debates which took place in the early 1980s around the issue of prison overcrowding are interesting and significant, is that these debates tie in with a much broader and longer-term public and academic discourse. This discourse concerns the inextricable link which is apparent throughout South Africa’s penal history, between imprisonment as a form of punishment and chronic overcrowding of prisons. This article will contend that, of all the different intertwined strands which together make up the history of public discourse surrounding imprisonment

<sup>1</sup> Worden *The Making of Modern South Africa – Conquest, Apartheid, Democracy* 5ed (2012) 144 and 145.

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in South Africa over decades and even centuries, there is one strand which predominates. It is a strand of debate which is strongly and consistently evident across different time periods, and is apparent whether one is examining the public discourse of the colonial period, the apartheid period, or the post-apartheid period. The debate consists of an interminable series of “shock revelations” about the state of chronic overcrowding in South African prisons and the steps that must be taken to remedy the problem. What is most interesting about the many discussions and debates that have taken place over many years in the public media on the issue of chronic overcrowding in South African prisons, is the remarkable similarity of these discussions and debates. The points made and the concerns expressed have remained the same over an extraordinarily long period of time. Over and over again, year after year, the same problem was identified, the dreadful consequences of overcrowding were spelled out in lurid detail, similar reasons are put forward as to its cause, and similar solutions were proposed. The debates seem, somehow, to be stuck in a loop, destined to be repeated from year to year, decade to decade, and even from one century to the next. This article will seek to show how the debates on prison overcrowding which took place in the first half of the 1980s fit into this long-term pattern.

Part one of the article will begin by examining the effect on public discourse of the measures which were in place at the time to restrict reporting on prison conditions. In particular, the manner in which section 44(1)(f) of the Prisons Act restricted reporting in the public media will be examined.<sup>2</sup> Following this, continuing in the same vein, evidence presented to the Steyn Commission of Enquiry into the public media will be discussed. Attention will then turn to the Hoexter Commission of Enquiry into the structure and functioning of South Africa’s courts, in particular the way in which evidence before this commission led to an explosion of public debate on prison overcrowding in the early 1980s. The final section of part one of this article will examine the strong link which was evident in the public discourse of the early 1980s, between the crises caused by overcrowding in South African prisons, and the major cracks which were becoming increasingly apparent in the edifice of the apartheid system and its measures of social control. Part two of the article will take forward certain of the themes examined in part one, in particular the clear link revealed in the public discourse between prison overcrowding and a political and economic system in crisis. The article will conclude by drawing together the main themes referred to in this introduction.

## **2 THE EFFECT OF CENSORSHIP ON PUBLIC DISCOURSE DURING THE EARLY 1980S**

Any analysis of the public discourse surrounding imprisonment in South Africa during the 1980s, in particular the issue of overcrowding, must start with a consideration of the effects of the legislation which, at the time,

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<sup>2</sup> Prisons Act of 1959.

restricted the media from reporting on prison conditions in the country. The legislation in question was section 44(1)(f) of the Prisons Act.<sup>3</sup> The said section reads as follows:

“Any person who publishes or causes to be published in any manner whatsoever any false information concerning the behaviour or experience in prison of any prisoner or ex-prisoner or concerning the administration of any prison, knowing the same to be false, or without taking reasonable steps to verify such information (the onus of proving that reasonable steps were taken to verify such information being upon the accused) shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or, in default of payment, to imprisonment for a period of not exceeding two years or to such imprisonment without the option of a fine or to both such fine and such imprisonment.”<sup>4</sup>

Although clearly designed to stifle discussion in the media about conditions in South African prisons, an unintended (and somewhat ironic) consequence of this measure was that the measure itself became the focus of much public discussion. Time and time again, reports in South African newspapers bemoaned the fact that reporting on conditions in South African prisons was a risky business, with section 44(1)(f) of the Prisons Act exercising a significant “chilling effect” on what they chose to publish. The negative consequences of this censorship were discussed in the media over and over again. Furthermore, when facts about conditions in any of South Africa’s prisons were placed in the public arena by prison officials, or by legal order, newspapers eagerly seized the opportunity to “lift the veil” of censorship surrounding conditions in the country’s prisons. This eagerness to reveal details of a world usually shrouded behind the provisions of section 44(1)(f) of the Prisons Act, seems to have lent a certain urgency, prominence and dramatic effect to media reports on prison conditions in South Africa during this period – the opposite, presumably, of what those who framed the section hoped to achieve. It may be argued, perhaps, that the relationship between censorship on the one hand and public discourse on the other ought not to be understood as fixed, immutable and one-directional. Rather, this relationship ought to be understood as an ongoing dialectical struggle, constantly changing and evolving, as the broader battle between those forces defending the apartheid system and those opposed to it played itself out. Certainly, the many ironies associated with the censorship provisions in force during this period of the struggle were not lost on the news reporters who contributed to the public discourse surrounding South African prisons in the early 1980s. A good example is the following extract from an article which appeared in the *Eastern Province Herald* in July 1980, concerning certain negative comments on South African prison conditions which had been made in a report by the American State Department:

“The American State Department’s report alleging maltreatment of South African prisoners is a good example of how attempts by the Government to restrict information can backfire. The report, based on allegations from unnamed sources, claims that people detained under the security laws have

<sup>3</sup> Of 1959.

<sup>4</sup> S 44(1)(f) of the Prisons Act of 1959.

been tortured. Not unexpectedly, the South African Government has denied this charge. Whether the State Department's report is true is not at issue here. The point is that no ordinary person is in a position properly to judge between the allegations and the denial. This is because the Government has made it almost impossible, under pain of severe penalties, for independent inquirers to disclose details of how prisoners are treated ... The only way to remove public suspicion is to ensure that the activities of officials are accessible to thorough public scrutiny."<sup>5</sup>

During the years to come this was a point which would be made over and over again in the public media. The ideological pressure brought to bear on the prison authorities around the issue of censorship was such that, from time to time, they were pressurized into adopting a more lenient approach towards the censorship of information relating to prison conditions, in the hope of "getting the press on their side".<sup>6</sup> This should not be taken to mean that the steps taken by the apartheid government to censor information about conditions in South African prisons were ineffective. Indeed, the "chilling effect" of section 44(1)(f) of the Prisons Act on public discourse on this topic was very real, as is apparent from public debates which took place in the early 1980s around the Steyn Commission of Enquiry into the mass media.

### 3 THE STEYN COMMISSION OF ENQUIRY AND THE CHILLING EFFECT OF SECTION 44(1)(F)

Any discussion concerning the Steyn Commission of Enquiry must take into account the political and ideological environment surrounding the mass media at the time the Commission was set up. During the late 1970s and early 1980s, as the struggle against the apartheid regime intensified, there was increasing pressure on the Nationalist Party Government to exert even

<sup>5</sup> "Promoting Rumour" 30 July 1980 *Eastern Province Herald* 22.

<sup>6</sup> Eg, in June 1981 the *Sunday Tribune* was allowed limited access to Zonderwater Prison, which housed one thousand long-term white prisoners, in terms of a more "open" policy which had, supposedly, been adopted by the public relations section of the prison service. The novelty of being allowed some limited access to South African prisons at this time is apparent from the tone of the report by the *Sunday Tribune's* investigating journalist, Sanderson-Meyer: "Zonderwater is a world within the world, a world which the prison service public relations section, under its newly-proclaimed open policy, is apparently willing to unpeel layer by layer before a curious and even critical media." (See reference below.) Not too much must be made of this more "open" policy, since Sanderson-Meyer was only allowed to interview three prisoners selected by a warder. Despite this, he was able to provide readers of the *Sunday Tribune* with at least some insight into the seamier side of life in Zonderwater. He explained that "[t]wo of the most vicious prison murders by inmates" had occurred in that prison, and that the court hearing the matter had been given an insight into a side of prison life which included "[s]odomy, drug abuse, violence, and sudden death". (See reference below.) He further informed readers that: "One of the prisoners interviewed said homosexuality was rife, but could be avoided if one did not tangle with a „Mr Big“. He said the Mr Bigs dominated prison society in the same way as did schoolboy bullies in the classroom. The ordinary prisoner had to tread a narrow path between not offending the Mr Bigs and the warders, although he said there was very little victimisation by the warders ..." For all quotations in this footnote see "The Dark Side of Zonderwater – Sodomy, Drugs, Violence and Murder are all part of Prison Life ... but Sometimes it's Harder on Warders than Convicts" 14 June 1981 *Sunday Tribune* 10.

stricter control over an already hamstrung press. On 18 September 1979 Alwyn Schlebusch, the Minister of Justice and the Interior, proposed the establishment of a press code, to be enforced by a statutory press council. Had this proposal been adopted it would, of course, have brought the South African press under much tighter Government control, and delivered a serious blow to what remained of press freedom in South Africa at the time. It was in this context that the Government set up a commission of enquiry in June 1980 under the chairmanship of Mr Justice MT Steyn. The question which the Steyn Commission of Enquiry was asked to address was “whether the conduct of, and the handling of matters by the mass media meet the needs and interests of the South African community and the demands of the times, and, if not, how they can be improved”.<sup>7</sup>

For the purposes of this article, discussion will be focused on the evidence given by Benjamin Pogrund, the Deputy Editor of the *Rand Daily Mail*, who was particularly knowledgeable about the effects of section 44(1)(f) of the Prisons Act on the South African mass media, since he had been intimately involved in reporting on South African prison conditions for more than two decades.<sup>8</sup> Pogrund gave his evidence in December 1980 and spoke at length about the extent to which section 44(1)(f) of the Prisons Act discouraged newspaper reporters from reporting on poor conditions within South Africa’s prisons. Referring to his experiences two decades earlier as a reporter for the *Rand Daily Mail*, he recalled an incident which took place in 1960, in which eighteen people had died in Modderbee Prison due to overcrowding and poor conditions. He informed the Commission that these people had died while he was conducting a lengthy and cautious investigation, since he was well aware of the severe burden placed on reporters by section 44(1)(f). He told the Commission that he “wondered then, and still wonders, if those lives might have been saved had publicity been given earlier to what was happening inside the prison”.<sup>9</sup> Although the provision might seem reasonable on the face of it, Pogrund maintained that, in his own personal experience and in that of the South African Press as a whole, the effect of the provision had been that it had “sealed off prison conditions from the public gaze”.<sup>10</sup> Pogrund told the Commission that, during the early 1960s, he “constantly received information, especially from blacks, about poor conditions in prisons” but that he only occasionally bothered to take notes because “like every other journalist in South Africa of whom I was aware, I had come to accept that virtually nothing could be published unless it emanated from the Department of Prisons and that independent reporting was at an end”.<sup>11</sup> Pogrund then detailed events which took place in 1965, leading up to the well-known criminal case of *State vs SAAN*, in which he and his editor, Laurence Gandar, were prosecuted and convicted of

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<sup>7</sup> See Myburgh “The ANC, the Nats and the Free Press” 17 August 2010 <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=193622&sn=Detail> (accessed 2013-11-25).

<sup>8</sup> “Sealing off Prisons from the Public Gaze” 10 December 1980 *Rand Daily Mail* 16.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

contravening section 44(1)(f) of the Prisons Act.<sup>12</sup> The matter involved a series of reports in the *Rand Daily Mail* on the experiences of two warders and two prisoners at Cinderella Prison, Boksburg, as well as the experiences of a former political prisoner, Harold Strachan, who had served a three-year sentence of imprisonment. Pogrund explained in moving terms what happened to him and those around him as a result to his reporting:

“To my astonishment, publication of the reports had the most extraordinary consequences. A banning order was immediately imposed on Mr Strachan ... He was prosecuted and found guilty and jailed. My other informants were also prosecuted; one was, however, acquitted. In due course, Mr Gandar and I were prosecuted under Section 44(f) and after a trial of many months were found guilty. My company was involved in the expenditure of some R300 000. My passport was seized and I did not regain it until some five years later. We were subjected to the overwhelming might of the State, directed at disproving the reports. All the proceedings took more than four years out of my life.”<sup>13</sup>

Apart from describing what happened to him and those around him as a result of his reporting, Pogrund went further in providing the Steyn Commission of Enquiry with the following disturbing insight into the way in which measures such as section 44(1)(f) of the Prisons Act served to “chill” the operations of South Africa’s free press, when it came to reporting on conditions within South African prisons:

“[T]he practical effect to my knowledge has been that newspapers invariably handle critical information on prisons by going to the Department of Prisons with the material and asking if it is true. Only if the department says the information is indeed correct, or else specifically agrees to publication, will the report be viewed as legally safe for publication. According to legal opinion I have had in a specific case, the department’s failure to comment, or evasion of the issue, or use of „no comment“, are not sufficient to allow for safe publication.”<sup>14</sup>

Pogrund pointed out that this situation was “manifestly absurd”, since it meant that the Department of Prisons could effectively control what information would appear in the Press. He made the obvious point that, where undesirable prison conditions were uncovered, it would be “expecting over-much of the human character to expect officials to own up readily, and to confirm, that abuses are taking place in areas under their control”.<sup>15</sup> The overall result, according to Pogrund, was that “remarkably little about prison conditions” appeared in the South African Press.

The chilling effect of the section 44(f) was not only wide but also deep. Pogrund pointed out that information received by a newspaper from an informant might not even be submitted to the Department of Prisons, because of fear of the possible consequences for the informant involved. Simply by publishing the information to a journalist, the informant could be laying himself open to prosecution in terms of Section 44(f). Extreme caution had to be exercised in such matters and those involved were forced to

<sup>12</sup> *State v South African Associated Newspapers Ltd* 1962 (3) SA 396 (T).

<sup>13</sup> “Sealing off Prisons from the Public Gaze” 10 December 1980 *Rand Daily Mail* 16.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

operate in a climate of fear. Pogrund pointed out that, in the case in which he had been involved, one of the cautionary steps taken was to require informants to swear to the accuracy of their statements. Unfortunately, this eventually led to charges of perjury being brought against the informants. It turned out that even the *Rand Daily Mail's* legal adviser was not immune from the poisonous atmosphere created by section 44(f). As Pogrund explained:

“There was even an attempt to involve our legal adviser in criminal charges: a summons under the Prisons Act was served on Mr Stuart – at 1am! – and he was charged „as agent and legal adviser of South African Associated Newspapers Ltd“. The charges were withdrawn only some 15 months later.”<sup>16</sup>

Pogrund made the important point that prisons were closed institutions and, as such, were particularly prone to abuse. This meant that they should be more open to being investigated and reported upon than most other public institutions. Because section 44(f) seemed to be designed to achieve the opposite, it amounted to “an extremely grave restriction on what should be the ability of the Press to report on matters of public concern”.<sup>17</sup>

The publicity surrounding the evidence of Pogrund and others before the Steyn Commission was sufficiently damaging to the reputation of the Prisons Service to prompt the head of its information section, Colonel SP Malan, to appear before the Commission in March 1981, in order to “put the issue in perspective”.<sup>18</sup> Colonel Malan strongly denied that the Prisons Act prevented reporting about the conditions in South African prisons. In response to the contention that it was difficult for journalists to judge whether or not they had taken “reasonable” steps in terms of section 44(1)(f) of the Prisons Act to check their facts, Colonel Malan stated as follows:

“The solution is that if there is any doubt, the authorities must be approached. If (the journalist) gets no answer – „no comment“ – he may publish; if he gets a negative answer he can publish his side of the issue and in the same report the answer from the authorities. There is therefore no question of Section 44(1)(f) placing unreasonable restrictions on Press freedom.”<sup>19</sup>

Colonel Malan’s claim that the Prisons Act did not restrict reporting on conditions in South African prisons was subjected to severe criticism in the media. An authority on South African press law, Mr Kelsey Stuart, told the *Rand Daily Mail* that, in his opinion, Colonel Malan’s understanding of section 44(1)(f) was incorrect. According to Stuart: “If a newspaper publishes information which turns out to be false, it will be prosecuted whether or not it gave the version of the Prisons Department, and the onus will be on the newspaper to prove that it took reasonable steps to verify the information which it published”.<sup>20</sup>

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> “Prisons Act „Does not Stop Reports” 21 March 1981 *Rand Daily Mail* 2.

<sup>19</sup> *Ibid.* See also “Prisons Act Curb on Media Defended” 21 March 1981 *The Star* 2.

<sup>20</sup> “Reporting Freedom under Prisons Act Challenged” 26 March 1981 *Rand Daily Mail* 2.

In summary it may be said that, during the period under examination, the South African public was essentially caught in a double bind in regard to both the accuracy and comprehensiveness of the information they were given about conditions in the country's prisons. On the one hand, as has been pointed out above, section 44(1)(f) of the Prisons Act certainly had a "chilling effect" on public media reporting about prison conditions. Furthermore, those reports that did appear in the public media could be skewed by sensationalist or politically biased reporting. On the other hand, the information that South Africans received from official sources at the time, such as that recorded in the annual reports of the Commissioner of Prisons, was by no means guaranteed to provide a full and fair picture of conditions in South African prisons. In February 1981, for example, a report in the *Sunday Express* pointed out that the previous three annual reports of the Prisons Department had made no mention of chronic accommodation shortages revealed by General Brink of the Prisons Department in evidence before the Hoexter Commission.<sup>21</sup> According to the report, the Prisons Department admitted to this factual omission.<sup>22</sup> Under the heading "Double Scandal" the *Sunday Express* made the following editorial comment, which neatly sums up the no-win situation in which South Africans found themselves when it came to information about what was really going on in the country's prisons:

"The revelations about prison overcrowding this week were shocking. What is even more shocking is that, successive annual reports by the Commissioner of Prisons made no specific reference to deteriorating conditions – and newspapers, effectively gagged by the Prisons Act, were unable properly to alert the public to an alarming situation. But that's the price we all pay when your right to information is undermined."<sup>23</sup>

Despite the *caveats* expressed above, particularly in relation to the public media, it is submitted that the South African press as a whole did manage to provide the public with valuable insights into what was really happening in the country's prisons in the first half of the 1980s. A close examination of the main South African newspapers during the period 1980 to 1984 reveals a rich series of debates on the issue of prison overcrowding, and it is to these debates that we now turn.

#### **4 THE "LIFTING OF THE VEIL" BY THE HOEXTER COMMISSION AND THE EXPLOSION OF PUBLIC DEBATE ON PRISON OVERCROWDING**

From the very start of the 1980s, the issue of prison overcrowding was in the public eye. On 12 May 1980, for example, the Minister of Prisons, Mr Louis le Grange, stated in parliament that overcrowding in South African prisons was of concern and was receiving attention at the highest level.<sup>24</sup> It was

<sup>21</sup> This evidence is discussed in detail in the next section of this article.

<sup>22</sup> "Last 3 Prison Reports didn't mention the Crisis in Jails" 8 February 1981 *Sunday Express* 8.

<sup>23</sup> "Double Scandal" 8 February 1981 *Sunday Express* 8.

<sup>24</sup> "Vol Tronke Wek nou Kommer" 13 May 1980 *Die Burger* 11.

early the following year, however, that debate on the issue really exploded in the public media. This came about due to a somewhat fortuitous turn of events. In February 1981, evidence was being heard by the Hoexter Commission, which had been appointed to investigate the structure and functioning of South Africa's courts. When the Chief Deputy Commissioner of Prisons, General Brink, appeared before the commission on 4 February 1981, he asked that his evidence be heard *in camera*. The chairperson of the Commission, Judge Hoexter, refused this request, effectively "neutralizing" the usual "chilling effect" of section 44(f) of the Prisons Act. The result was that, when General Brink gave evidence detailing, *inter alia*, the badly overcrowded state of many of South Africa's prisons, the media were free to report on the facts disclosed. The following sample of just some of the headlines to the many reports on this issue, in a wide variety of newspapers, illustrates the fact that the press made full use of the opportunity to reveal the shocking state of overcrowding in many prisons. For the sake of accuracy, the headlines which appeared in Afrikaans language newspapers are reflected as they appeared, followed by an English translation in square brackets:

- "Krisis in tronke gaan kom" ["A crisis in prisons is looming"]<sup>25</sup>
- "Crisis in our prisons must be resolved"<sup>26</sup>
- "Vol tronke" ["Full prisons"]<sup>27</sup>
- "Prison overcrowding: Govt must act now"<sup>28</sup>
- "Tronke in SA oorvol, getuig general" ["Prisons in SA overcrowded, according to general's evidence"]<sup>29</sup>
- "House full"<sup>30</sup>
- "Overhaul our jail system"<sup>31</sup>
- "The prisons crisis"<sup>32</sup>
- "Skokfeite oor SA se oorvol tronke" ["Shocking facts about South Africa's overcrowded prisons"]<sup>33</sup>
- "Disturbing glimpse behind prison walls"<sup>34</sup>
- "Gevangenisse loop oor" ["Prisons overflow"]<sup>35</sup>
- "Prison crisis looming"<sup>36</sup>
- "Oorbevolkte tronke" ["Overcrowded prisons"]<sup>37</sup>
- "Concern over extent of prison overpopulation"<sup>38</sup>
- "Prison time bomb"<sup>39</sup>
- "Prison's crisis"<sup>40</sup>

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<sup>25</sup> 4 February 1981 *Die Volksblad* 2.  
<sup>26</sup> 5 February 1981 *Pretoria News* 20.  
<sup>27</sup> 5 February 1981 *Hoofstad* 14.  
<sup>28</sup> 5 February 1981 *Evening Post* 6.  
<sup>29</sup> 5 February 1981 *Oggendblad* 5.  
<sup>30</sup> 5 February 1981 *The Daily News* 18.  
<sup>31</sup> 5 February 1981 *Sunday Tribune* 22.  
<sup>32</sup> 5 February 1981 *The Argus* 18.  
<sup>33</sup> 5 February 1981 *Die Burger* 3.  
<sup>34</sup> 5 February 1981 *The Star* 20.  
<sup>35</sup> 6 February 1981 *Die Burger* 12.  
<sup>36</sup> 6 February 1981 *The Natal Witness* 10.  
<sup>37</sup> 6 February 1981 *Die Vaderland* 10.  
<sup>38</sup> 6 February 1981 *The Sowetan* 1.  
<sup>39</sup> 6 February 1981 *The Natal Mercury*.  
<sup>40</sup> 6 February 1981 *Rand Daily Mail* 14.

"Oorvol gevangenis" ["Overcrowded prisons"]<sup>41</sup>  
 "Pass laws a key to dangerously overcrowded cells"<sup>42</sup>  
 "Last 3 prison reports didn't mention the crisis in jails"<sup>43</sup>  
 "Getting to grips with the prisons" crisis"<sup>44</sup>  
 "The problem of full prisons"<sup>45</sup>  
 "We tried to tell you".<sup>46</sup>

The cause of this media frenzy was the fact that, according to the evidence of General Brink referred to above, South Africa's prisons were approximately 40% overcrowded. In the case of black, Indian and coloured prisoners, the rate of overcrowding was even worse, standing at 59%. Whereas South Africa's prisons had been built to house approximately 70,000 prisoners in total, approximately 102,000 prisoners were being accommodated in the prisons on a daily basis.<sup>47</sup> According to the general, the overcrowding resulted in prisoners being left idle and unproductive in their cells, which increased the danger of unrest and gang warfare. The general also warned that antiquated prisons, which had been built between ninety and a hundred years previously, were neither safe nor hygienic. There was an increased risk of epidemics and General Brink warned that South Africa would have to make a super-human effort in order to avoid a crisis in its prisons.<sup>48</sup>

One of the major themes to emerge in the public discourse surrounding General Brink's evidence to the Hoexter Commission concerned the issue of censorship and the fact that the commission had lifted a "veil of secrecy" which usually obscured the realities of South African prison life from public view. Various newspaper reports pointed to the fact that the glimpse they were able to provide of the true state of affairs in South Africa's prisons at this time was thanks to the actions of Judge Hoexter in refusing to allow the evidence of General Brink to be heard *in camera*. Time and again, reporters and editors took the opportunity to criticize severely the manner in which reporting on conditions in South African prisons was generally restricted. For example the *Rand Daily Mail* spoke of the "heavy and expensive punishment" which it had suffered many years before when it tried to report on undesirable conditions in South African prisons, and stated that it was to the credit of the Hoexter Commission that General Brink's evidence was

<sup>41</sup> 6 February 1981 *Die Oosterlig* 8.

<sup>42</sup> 8 February 1981 *Sunday Express* 21.

<sup>43</sup> 8 February 1981 *Sunday Express* 8.

<sup>44</sup> 9 February 1981 *Rand Daily Mail* 6.

<sup>45</sup> 10 February 1981 *The Friend* 8.

<sup>46</sup> 12 February 1981 *Rand Daily Mail* 8.

<sup>47</sup> In response to the statistics provided by General Brink, the *Rand Daily Mail* was prompted to ask the following difficult questions: "What unspeakable conditions of misery lie behind those statistics? And what bungling is responsible for allowing such a parlous and dangerous situation to develop over the years? To which much be added this Government's specific responsibility in creating laws which land so many people in jail unnecessarily." See "Prisons" Crisis" 6 February 1981 *Rand Daily Mail* 14.

<sup>48</sup> "Krisis in Tronke gaan kom" 4 February 1981 *Die Volksblad* 2; "Crisis in our Prisons must be Resolved" 5 February 1981 *Pretoria News* 20; and "Skokfeite oor SA se Oorvol Tronke" 5 February 1981 *Die Burger* 3.

heard in open session.<sup>49</sup> In a subsequent editorial, the newspaper expressed the following opinion:

“There is no reason why jails should be sealed off, and every reason for them not to be. If anyone has had any doubt about this, then the sudden disclosure of the alarming state of the prisons should dispel it. Had it been easier for the Press to probe the prisons, the crisis situation we now have would surely have been made public long before, allowing pressure for improvement to take place.”<sup>50</sup>

The extent of the chink in the armour of the apartheid-penal system opened up by the Hoexter Commission should not be over-estimated. A few days after the report quoted above, the *Rand Daily Mail* asked the Prisons Department for permission to visit various prisons in the Transvaal for the purpose of reporting on overcrowding within those prisons, but his request was refused.<sup>51</sup> Under the heading “We tried to tell you”, the newspaper commented bitterly as follows:

“Well, we tried. When no less a person than the Deputy Chief Commissioner of Prisons, Lieutenant-General MCP Brink, disclosed – unwillingly – the crisis of overcrowding in jails, we applied to send in reporters and photographers. We wanted to tell the public what the overcrowding means in practice. The Department of Prisons has refused our request. Its reasons ... are not reasons. They are evasions. The Department of Prisons is using its power of control to conceal whatever is going on behind the high walls. Worse still, Section 44(f) of the Prisons Act, with its pervasive effects in preventing proper investigation and reporting of jail conditions, ensures that little, if anything at all, will now come to light. Any department of government which has allowed such gross overcrowding to develop ... is clearly bungling its responsibilities. How fortunate for the Prisons Department that it can hide behind restrictive laws. But how tragic for the public good – and for the prisoners crammed into their cells.”<sup>52</sup>

Another newspaper to speak out against the restrictions surrounding press reporting on conditions in South African prisons at this time was the *Pretoria News*. After outlining the disturbing facts revealed by General Brink surrounding overcrowding in the prisons, the newspaper stated *inter alia* as follows:

“These are disturbing facts, made more so because the Prisons Act has clamped an iron curtain of secrecy over any and all reports of conditions in our jails. That curtain was only lifted yesterday because the commission chairman refused an application for General Brink to give his evidence in camera. His ruling did the nation a considerable service. It is high time the shortcomings of our system were exposed and the potentially explosive situation that has grown up around it was defused.”<sup>53</sup>

Another example of the weight of critical opinion within the press at this time against the restrictions imposed on reporting about conditions in South African prisons is to be found in an editorial in *The Star*. Under the headline

<sup>49</sup> “Prisons” Crisis” 6 February 1981 *Rand Daily Mail* 14.

<sup>50</sup> “Getting to Grips with the Prisons Crisis” 9 February 1981 *Rand Daily Mail* 6.

<sup>51</sup> “Mail” Refused permission to visit Prisons” 11 February 1981 *Rand Daily Mail* 2.

<sup>52</sup> “We Tried to Tell You” 12 February 1981 *Rand Daily Mail* 8.

<sup>53</sup> “Crisis in our Prisons must be Resolved” 5 February 1981 *Pretoria News* 20.

“Disturbing glimpse behind prison walls” the editorial began and ended as follows:

“Because of the iron curtain of secrecy imposed by the Prisons Act, South Africans are rarely afforded an in-depth glimpse of conditions inside the country’s jails. Yesterday there was an exception ... There is plenty of food for thought in what the deputy commissioner had to say yesterday. Not least it should give pause to reappraise the Prisons Act, which stifles any regular flow of information on a subject about which the public has every right to be concerned.”<sup>54</sup>

Yet another example comes from an editorial in *The Natal Witness* which stated, *inter alia*, as follows:

“Since a court case against a newspaper more than a decade ago, South Africa’s prisons have to all intents and purposes been off limits to the Press. This is no doubt one of the factors which have contributed to the current crisis in our prisons. Fortified by the law against public scrutiny and criticism, the authorities have allowed the situation in our prisons to deteriorate to the alarming extent revealed to the Hoexter Commission by the Chief Deputy Commissioner of Prisons, General M.C.P. Brink.”<sup>55</sup>

With the above examples all being drawn from English-language newspapers, it is important to note that opposition to restrictions on reporting about conditions in South African prisons was not restricted to what may be termed, perhaps, the “English liberal press”. Certain Afrikaans-language newspapers were also roundly critical of the general secrecy surrounding prison conditions in South Africa at this time, as well as the *de facto* censorship of open and honest reporting on these conditions. A good example is the following extract from a report in the Afrikaans-language newspaper *Rapport*:

“Full points to judge Hoexter, who decided this week that shocking evidence about South Africa’s overcrowded prisons must be given in public ... The overcrowded state of our prisons is a scandal. And what makes it even more scandalous is the fact that the Viljoen Commission made recommendations concerning the same problem in 1976 and that the implementation of those recommendations is still being hampered. And then this week General M.C. Brink has the audacity to attempt to have his evidence before the Hoexter Commission concerning this same problem heard in secret. It drives one to tears.”<sup>56</sup>

Another example of disapproval within the Afrikaans-language press of the restrictions around reporting on conditions in South African prisons at

<sup>54</sup> “Disturbing Glimpse behind Prison Walls” 5 February 1981 *The Star* 20.

<sup>55</sup> “Prison Crisis Looming” 6 February 1981 *The Natal Witness* 10.

<sup>56</sup> “‘n Volle punt aan regter Hoexter, wat die week beslis het dat die skokkende getuienis oor Suid-Afrika se oorvol tronke in die openbaar gelewer moet word ... Dis ‘n skande dat dit so in ons tronke gaan. En wat die skande nog erger maak, is dat die Viljoen-kommissie al in 1976 aanbevelings oor dieselfde problem gedoen het en dat daar nou nog gesloer word met die uitvoering van daardie aanbevelinge. En dié week wend genl. M. C. Brink jou waarlik ‘n poging aan om sy getuienis oor dieselfde ou problem in die geheim voor die Hoexter-kommissie te lewer. Dis om van te huil.” See “Volle Punt, Regter H!” 8 February 1981 *Rapport* 18.

this time is to be found in the following extract from an editorial in the newspaper *Beeld*:

“A final thought is that the Prisons Act would have prevented or made it difficult for the press to reveal these conditions to the world. Hopefully changes can also be made in that regard. It is only by revealing the existence of poor conditions that society may be mobilised to make its contribution, through its ideas and deeds, to ensuring transparent and clean governance.”<sup>57</sup>

Stating that it was time to seriously reconsider the restrictions on reporting about prison conditions in South Africa, *Rapport* expressed the opinion that, in the long run, there were more advantages than disadvantages to greater openness.<sup>58</sup>

From the above, it would seem clear that more than ten years before the official demise of the apartheid system, the tide of public opinion (at least as seen through the lens of the mainstream media) was turning against the apartheid regime on the issue of censorship, in particular when it came to details about the deteriorating conditions in South Africa's prisons.

## 5 THE WRITING ON THE WALL? PUBLIC DISCOURSE, PRISON OVERCROWDING AND THE APARTHEID SYSTEM OF SOCIAL CONTROL

A second major theme which emerged from the public discourse around General Brink's evidence to the Hoexter Commission, was the commonly expressed view that much of the chronic overcrowding in South Africa's prisons was due to the fact that the prisons were being used to enforce ideologically driven policies of “social control”. This meant that, in addition to accommodating a large number of convicted criminals, South African prisons were forced to accommodate thousands of ordinary citizens whose only “crime” was to have fallen foul of one or other of the social-control measures (such as the notorious “pass laws”) put in place by the apartheid regime. These social-control measures were designed to prevent “non-white” citizens from moving freely about the country, potentially “flooding” (so the apartheid logic went) those areas reserved for “whites”.

The public discourse around General Brink's evidence to the Hoexter Commission makes it clear that, by the early 1980s, most thinking South Africans were fully aware of the fact that using imprisonment as a method of enforcing “social control” was not only morally unacceptable, but gave rise to a host of social problems. Foremost among these problems was fact that it contributed to the chronic overcrowding in South Africa's prisons, with all the

<sup>57</sup> “'n Laaste gedagte is dat die Gevangeniswet die pers sou gekeer het of dit sou bemoelilik het om die soort toestande wereldkundig te maak. Ook daarin kan hopelik veranderinge aangebring word. Alleen deur verkeerde toestande te openbaar, kan die gemeenskap gemobiliseer word om deur denke en dade ook sy bydrae te lewer ten einde oop en skoon landsadministrasie te verseker.” See “Gevangenis-les” 6 February 1981 *Beeld* 8.

<sup>58</sup> “Tronke” 8 February 1981 *Rapport* 18.

negative consequences for the day-to-day lives of prisoners.<sup>59</sup> From the start, it was clear to all concerned that the scale of the problem was so great that it could not be solved by simply building more prisons.<sup>60</sup> In responding to the evidence of General Brink on the extent of overcrowding in South Africa's prisons, the Minister of Justice, Mr Kobie Coetzee, admitted to the press that the problem could not be solved simply through the provision of additional prison accommodation. He stated that methods would have to be found to reduce the flow of offenders into prisons.<sup>61</sup>

The debates which took place in the national newspapers following General Brink's revelations to the Hoexter Commission, indicate that most informed commentators at that time had come to believe that the continued use of imprisonment as a means of enforcing apartheid social-control legislation was no longer sustainable. Over and over again, commentators in the public media pointed out that South Africa's prisons were filled with ordinary citizens who had fallen foul of apartheid laws designed to control the black population. It is worth quoting *The Sowetan* at some length on this point:

"Last week's revelations of overcrowding in South African jails came as no surprise to us and a great number of blacks who have had the misfortune of falling foul of the law. Being black in itself can make sure that you get a taste of jail. The reason is not difficult to find: Thousands of people are daily being arrested and locked up for what are in fact technical offences related to the pass laws. We know the majority of those people who are forced to populate our jails are not criminals ... So what do they want in those jails? The answer is simple: All they wanted to do was find employment that would bring them the income they so desperately want and need to keep the home fires burning. All they want to do is sell their labour to the highest bidder. After all, South African is a capitalist country. Is it not? Yet, those people are made instant criminals simply because of some endorsement or other in their pass book. The Government prescribes to them whether they can, or cannot, live or work in certain areas ... [T]he general public, particularly whites, never fully

<sup>59</sup> It should be noted that it was not only the prisoners who suffered due to overcrowding. One of the consequences of chronic overcrowding was a drastic shortage of prison personnel, and it was reported that there was a shortage of 5000 "white" and 5000 "non-white" prison-staff members. According to the evidence of General Brink before the Hoexter Commission, the R49,000,000 which it would cost to employ these extra staff members was simply not available. Furthermore, the Department of Prisons was already finding it difficult to attract suitable persons to join the Department. The General even went so far as to state that he did not get the impression that people (young white men) were joining the department in order to avoid their (compulsory) military service. See "Tronke in SA Oorvol, Getuig Generaal" 5 February 1981 *Oggendblad* 5.

<sup>60</sup> It is interesting to note that authorities in the post-apartheid period would reach a similar conclusion, after realizing that the cost of building the extra accommodation needed to solve the problem would be prohibitive, and rejecting several bizarre schemes which proposed making use of disused mine shafts or de-commissioned ships to accommodate South Africa's burgeoning prison population! See in general, Peté "The Politics of Imprisonment in the Aftermath of South Africa's First Democratic Election" 1998 1 *South African Journal of Criminal Justice* 51-83; Peté "The Good the Bad and the Warehoused – The Politics of Imprisonment During the Run-up to South Africa's Second Democratic Election" 2000 13(1) *South African Journal of Criminal Justice* 1-56; and Peté "Between the Devil and the Deep Blue Sea – The Spectre of Crime and Prison Overcrowding in Post-apartheid South Africa" 2006 27(3) *Obiter* 429-453.

<sup>61</sup> "Minister oor Oorval Tronke" 6 February 1981 *Die Burger* 11.

appreciate the problems that people face when going to jail, or the extent and impact of such jailings.”<sup>62</sup>

*The Sowetan* was not alone in its condemnation of the apartheid regime and its laws. The *Pretoria News* pointed out that apartheid had “made statutory criminals of too many people” and stated that this had “overburdened and slowed down the administration of justice and swollen our jails to a dangerous degree”.<sup>63</sup> *The Argus* stated that the effect of the apartheid social-control laws was to “manufacture prisoners from a generally respectable population” and to “make criminals of tens of thousands of decent South Africans”.<sup>64</sup> Calling the evidence given by General Brink a “shocking indictment of the overcrowded conditions in South African prisons”, an editorial in the *Evening Post* called for the practice of “sending blacks to prison for minor technical offences under the pass laws” to be stopped.<sup>65</sup> The *Eastern Province Herald* called the pass law system enforced by the apartheid regime “unique to South Africa in the Western world” and pointed out that:

“Laws based solely on skin colour and stipulating where a person may live, move or work can make of a black man a criminal within minutes. These laws, lacking any moral force and bitterly resented by blacks, are one of the worst manifestations of apartheid.”<sup>66</sup>

The *Herald* quoted a spokesperson for the Black Sash, Mrs Val Oertel, who condemned the apartheid social-control measures as “a feudal system inappropriate to the 20th century” and stated that it was “a scandal that human beings should be imprisoned in the land of their birth for contraventions of laws imposed on them by a Government which they did not vote for”.<sup>67</sup> The *Herald* further called for the pass laws and related regulations to be scrapped, stating that: “Perhaps then South Africa would not have 440 of every 100 000 of its people in prison each year – a rate more than double that of any other country in the West.”<sup>68</sup>

Within the “liberal” press, there was a clear understanding that the legal and structural edifice put in place by the apartheid regime in order to control the movement of “non-white” South Africans, was built on sand. It was clear to the majority of commentators that the system was not sustainable in the long term, not only because it was morally reprehensible, but because it was prohibitively expensive. The *Sunday Tribune* was one of the newspapers which pointed to the crippling cost, both financial and moral, of implementing the social-control measures put in place by the apartheid regime:

“It is estimated that in the decade 1965 to 1975 there were more than six million prosecutions under the pass laws. The cost of prosecution and

<sup>62</sup> “Why Jail People who are not Criminals?” 5 February 1981 *The Sowetan* 6.

<sup>63</sup> “Crisis in our Prisons must be Resolved” 5 February 1981 *Pretoria News* 20.

<sup>64</sup> “The Prisons Crisis” 5 February 1981 *The Argus* 18.

<sup>65</sup> “Prison Overcrowding: Govt must Act Now” 5 February 1981 *Evening Post* 6.

<sup>66</sup> “System that Clogs the Prisons” 6 February 1981 *Eastern Province Herald* 12.

<sup>67</sup> “Call on Use of Aid Centres Welcomed” 6 February 1981 *Eastern Province Herald* 4.

<sup>68</sup> “System that Clogs the Prisons” 6 February 1981 *Eastern Province Herald* 12.

imprisonment was R200-million and the cost of policing and patrolling more than R100 000 000. No other country in the world has to bear such a crippling burden of expenditure to maintain what are blatantly discriminatory laws ... It is inconceivable that in the year 1981 we are trying to maintain a system of population control that just will not work any more. What is more it fills with deep resentment the majority of people, and it helps to intensify a dangerous world hostility. Lastly, but by no means least, it gives many blacks a contempt for these particular laws, and an acceptance of imprisonment as an inevitable feature of black life. In some it generates a contempt for all law and order. We are dealing here with a social problem of the gravest kind."<sup>69</sup>

The *Tribune* made it clear that any attempt to "repair and strengthen the existing machinery" would be futile, and recommended a complete overhaul of the system, large parts of which should be "permanently dismantled".<sup>70</sup> Similar sentiments were expressed by the editor of *The Natal Witness*, who insisted in a perceptive editorial that merely tweaking the apartheid system of social control would not work:

"As long as Blacks can be sent to jail in their thousands for technical offences under the pass laws, our prisons will continue to be over-populated. To streamline procedures, expand prisons, and employ more warders is to address the symptoms of the problem, but not the underlying causes."<sup>71</sup>

The press also reported on calls by the Progressive Federal Party, the official parliamentary opposition at the time, that the apartheid social-control legislation be scrapped. Mrs Helen Suzman, the opposition's chief spokesperson on justice, pointed out that more than 700,000 people had been imprisoned for pass offences between 1977 and 1979, and that 15,000 people had been imprisoned for curfew violations in 1980, and she called for these laws to be changed.<sup>72</sup> Mrs Suzman castigated the apartheid authorities for failing to address the problem of overcrowding and stated that:

"I have been pointing to the problem for a long time. They appear to have been unconcerned for years over the bad over-crowding – which is a result of the high number of statutory offenders. We don't need more prisons, we need to change the laws."<sup>73</sup>

The opinions of "experts" were also harnessed in support of the call for the apartheid social-control regulations to be scrapped. For example, pointing out that over 300,000 black South Africans were arrested annually for offences under influx laws, Professor Marinus Wiechers, then head of Constitutional Law at the University of South Africa, was quoted as stating that: "The moral of this sad story ... is quite simple: you cannot regulate socio-economic matters by making them crimes."<sup>74</sup>

<sup>69</sup> "Overhaul our Jail System" 5 February 1981 *Sunday Tribune* 22.

<sup>70</sup> *Ibid.*

<sup>71</sup> "Prison Crisis Looming" 6 February 1981 *The Natal Witness* 10.

<sup>72</sup> "Prisons: Act Now, Govt Urged" 5 February 1981 *The Argus* 4.

<sup>73</sup> "Last 3 Prison Reports didn't Mention the Crisis in Jails" 8 February 1981 *Sunday Express* 8.

<sup>74</sup> "Pass Laws a Key to Dangerously Overcrowded Cells" 8 February 1981 *Sunday Express* 21.

Most but not all the commentary in the press at this time supported the scrapping of the social-control measures that had been put in place by the apartheid regime. Certain commentators, particularly in certain sections of the Afrikaans Press, seemed to believe that it might be possible to fine-tune the support mechanisms which underpinned the apartheid social-control measures, so as to take the pressure off the prisons. For example, *Oggendblad* spoke of the need for the “advice centres” run by the Department of Co-operation and Development, as well as certain courts, to operate during the night as well as during the day. Apparently hoping for a way out of the administrative quagmire created by the apartheid system, without having to scrap the entire edifice, the newspaper stated that it was thinking “particularly of black people who have problems relating to their documentation, reporting at labour bureaus, residential permits, pass-law offences and so on, who can be assisted easily at advice centres and possibly never have to come near a prison if timeous attention is given to their problems”.<sup>75</sup> These words hint at the administrative nightmare in which the majority of South Africans were enmeshed at this time of the country’s history.

One of the more subtle arguments which was put forward in opposition to the idea that apartheid social-control legislation should simply be scrapped, was to acknowledge that the apartheid social-control measures were a significant factor contributing to overcrowding in South African prisons, but to argue that the repeal of these measures would lead to even more serious problems. Such arguments were, once again, raised mainly in certain sections of the Afrikaans press. For example, the Afrikaans-language newspaper *Hoofstad* commented as follows on the evidence of General Brink to the Hoexter Commission:

“One of the factors which he identified for this unhealthy state of affairs [*ie*, the overcrowding] is the detention of black people for technical offences, *inter alia* as a result of social control measures. It would be shortsighted to claim that the problem can be solved by revoking these social control measures. Indeed, we believe that this would create conditions that would lead to many more serious problems.”<sup>76</sup>

<sup>75</sup> “Hier word veral gedink aan swart mense wat probleme met dokumente, aanmelding by arbeidsburo’s, losiespermitte, bewysboekootredings en dies meer het, wat maklik by hulpentrums van raad bedien kan word en moontlik nooit eens naby ’n gevangenis hoef te kom indien daar betyds aan hulle probleme aandag gegee kan word nie.” See “Tronke in SA Oorvol, Getuig Generaal” 5 February 1981 *Oggendblad* 5.

<sup>76</sup> “Een van die faktore wat deur hom uitgesonder word vir die ongesonde toedrag van sake [*ie*, the overcrowding], is die opsluiting van swartmense weens tegniese oortredings, onder meer ingevolge instromingsbeheermaatreels. Nou is dit ’n kortsigtige siening om te beweer dat die probleem opgelos sal word deur die opheffing van dergelike beheermaatreels. Trouens, ons glo dat juis daardeur omstandighede geskep kan word wat sal lei tot veel ernstiger probleme.” See “Vol Tronke” 5 February 1981 *Hoofstad* 14.

*Die Oosterlig* expressed a similar view, stating that:

“Revoking influx control could lead to indescribable problems in providing housing, and the labour market in cities would be swamped with people seeking employment who could not be accommodated.”<sup>77</sup>

For its part, the apartheid government was certainly not ready to simply abandon the social-control measures that it had put in place over many years. In his response to the furore over prison overcrowding, the Minister of Justice, Mr Kobie Coetzee, pointed out that, whereas social-control offenders had made up 32,5 percent of the South African prison population during the period 1 July 1978 to 30 June 1979, this percentage had subsequently dropped to 24 percent.<sup>78</sup> *The Rand Daily Mail* responded to these statistics provided by the Minister by stating that: “Either way, it is unacceptable, and is making criminals out of ordinary people whose „crime“ is that they are desperately trying to find jobs to earn money for survival.”<sup>79</sup> Whether or not the Minister fully appreciated the *Mail's* point that the apartheid government's position on this issue was morally untenable, it must have been clear to him that the long-term stability of the prison system (and, indeed, the apartheid system itself) was under serious threat. Faced with the intractable problem of prison overcrowding, and ideologically unable to reconcile his Government to admitting and addressing the deep political injustices and economic imbalances which caused the problem, the Minister's response was to prevaricate and suggest stopgap solutions. While assuring the public that the Government was paying serious attention to the problem, the actual steps he proposed taking indicated that the apartheid Government had no real idea how this problem was going to be solved. The best the Minister could do was to inform the press that a departmental seminar would be held in the near future in order to discuss the problem of prison overcrowding, and that he had decided to set up a working group which would investigate possible solutions to the problem.<sup>80</sup> The Minister also told the press that he would recommend to Cabinet that certain prisoners should be granted amnesty “on the occasion of the coming Republic Festival”.<sup>81</sup> The proposal that prisoners be granted amnesty in order to relieve pressure on the system is indicative of the strain on the apartheid penal system at the time, as well as the absence of any proper plan to deal with the problem. It should be noted at this point that the granting of amnesty to certain categories of prisoners as a means of relieving the pressure created by chronic overcrowding, was not only used during the apartheid period, but also became an enduring theme of the post-apartheid period, when the practice became known as “bursting”.<sup>82</sup> This

<sup>77</sup> “[O]m ... instromingsbeheer af te skaf, kan onbeskryflike probleme met huisvesting veroorsaak en die arbeidsmark in die stede sal toegegooi word met werksoekers wat net nie geakkommodeer sal kan word nie.” See “Oorvol Gevangenis” 6 February 1981 *Die Oosterlig* 8.

<sup>78</sup> “Minister oor Oorvol Tronke” 6 February 1981 *Die Burger* 11.

<sup>79</sup> “Getting to Grips with the Prison Crisis” 9 February 1981 *Rand Daily Mail* 6.

<sup>80</sup> “Minister oor Oorvol Tronke” 6 February 1981 *Die Burger* 11.

<sup>81</sup> 6 February 1981 *The Cape Times* 4.

<sup>82</sup> See in general, Peté 1998 1 *South African Journal of Criminal Justice* 51-83; Peté 2000 13(1) *South African Journal of Criminal Justice* 1-56; and Peté 2006 27(3) *Obiter* 429-453.

clearly indicates that the problem of prison overcrowding is much more deeply entrenched than many commentators over the years have been prepared to admit.

The fact that many of the deep social and economic roots of South Africa's problem of prison overcrowding would remain after the abolition of the apartheid social-control regulations was appreciated by certain commentators in the early 1980s, even though the apartheid system was to endure for more than a decade after this period. As pointed out above, certain commentators, particularly on the right of the political spectrum, did warn that the abolition of measures such as influx control would lead to serious social problems. On the left of the political spectrum, there were also commentators who appreciated that prison overcrowding in South Africa was a deep-rooted economic and social problem, which would not be easy to remedy. For example, at the time of the debate over General Brink's evidence to the Hoexter Commission, an editorial in *The Daily News* stated as follows:

"A combination of poverty and numerous technical offences are saddling prisons with large numbers of people who should not be there in the first place. The problem is not in the prisons, it lies outside in our society and the laws that govern it."<sup>83</sup>

In concluding this section, it is worth emphasizing the point that the demise of apartheid, together with its reprehensible measures of social control, did not mark the end of chronic overcrowding in South Africa's prisons. As has been documented elsewhere, imprisonment during the post-apartheid period was, for many years, characterized by chronic overcrowding, despite the repeal of social-control measures.<sup>84</sup> Indeed, as this article is being written in 2013, chronic overcrowding remains the single most serious problem confronting the Department of Correctional Services in South Africa. This is well illustrated by the reported comments of the Minister of Correctional Services, Sbu Ndebele, at a meeting with senior leadership of the Police and Prisons Civil Rights Union and the Public Servants Association of South Africa in February 2013. The Minister was reported as stating that South Africa had the highest prison population in Africa and that the country was "currently ranked ninth in the world in terms of prison population, with approximately 160 000 inmates".<sup>85</sup> From the perspective of this article, looking at the present through the lens of debates which took place in the early 1980s, it is interesting to reflect upon the following further comment of the Minister: "That our offender population has remained constant, whether you remove pass laws, group areas, or apartheid laws, should make us search more urgently for answers to the high prison population in South Africa."<sup>86</sup> Clearly, the post-apartheid experience has

<sup>83</sup> "House Full" 5 February 1981 *The Daily News* 18; and see also "The Problem of Full Prisons" 10 February 1981 *The Friend* 8.

<sup>84</sup> See in general, Peté 1998 1 *South African Journal of Criminal Justice* 51-83; Peté 2000 13(1) *South African Journal of Criminal Justice* 1-56; and Peté 2006 27(3) *Obiter* 429-453.

<sup>85</sup> See <http://mg.co.za/article/2013-02-11-south-africa-has-highest-prison-population-in-africa-says-ndebele> *Mail & Guardian Online* (accessed 2013-02-12).

<sup>86</sup> *Ibid.*

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revealed that the problem of prison overcrowding in South Africa is a much more deeply rooted economic and social problem than may have been believed by many commentators over the years.

## **6 CONCLUSION**

In part one of this article it has been argued that public debates which took place during the early 1980s in South Africa on the issue of prison overcrowding are relevant in a number of respects. In the first place, debates around the issue provided a platform for a wide range of commentators to express concern about the dangers of censorship and the extremely negative consequences of legislation designed to restrict the free reporting of information on crucial social and political issues, such as the conditions in the country's prisons. Furthermore, despite the legislative restrictions which were in place during the early 1980s preventing open reporting about conditions in South African prisons, a close examination of the public discourse during this period reveals a rich series of debates on the issue of chronic overcrowding. Of particular interest is the fact that these debates were inextricably linked to debates on the viability of the apartheid system itself, in particular the measures of social control which had been put in place by the apartheid regime. It is submitted that these debates acted as a mirror to ordinary South Africans, particularly white middle-class South Africans who were the beneficiaries of the apartheid system, revealing to them the moral bankruptcy of the system, as well as the fact that it was impractical and untenable in the medium to long term. For those prepared to look beyond the political realities of the time, as crucially important as they were, the debates also revealed a deeper truth, relevant to imprisonment as a form of punishment in South Africa across decades and even centuries. This is the fact that chronic overcrowding seems to be inextricably, perhaps even structurally, linked to this form of punishment, and that the same "solutions" are recycled year after year, decade after decade, and even from one century to the next. Part two of this article will take forward these and other themes as revealed in the public debates around prison overcrowding in South Africa during the first half of the 1980s.

## **CHAPTER 3.3.2**

### **Holding up a Mirror to Apartheid South Africa: Public Discourse on the Issue of Overcrowding in South African Prisons 1980 to 1984 - Part 2.**

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# **HOLDING UP A MIRROR TO APARTHEID SOUTH AFRICA: PUBLIC DISCOURSE ON THE ISSUE OF OVERCROWDING IN SOUTH AFRICAN PRISONS 1980 TO 1984 – PART 2**

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## **SUMMARY**

During the first half of the 1980s, the issue of chronic overcrowding within the South African penal system formed part of an intense ideological struggle between those who supported and those who opposed the *apartheid* regime. Public debate around this issue acted as a mirror, reflecting early cracks which were beginning to appear in the edifice of *apartheid*. Since the prisons were the ultimate instrument of social control within the *apartheid* system, the ongoing crises caused by chronic overcrowding within these institutions served as a kind of “canary in the mine” for the *apartheid* system as a whole. The debates which took place during the early 1980s around overcrowding are also important because they form part of a common theme running through South African penal discourse as a whole. This article seeks to show how the debates on prison overcrowding which took place in the first half of the 1980s fit into a long-term pattern of recurring ideological crises surrounding this issue. The article is divided into two parts. In Part One, the above themes were explored through the public discourse surrounding the Steyn Commission of Enquiry into the public media, as well as the Hoexter Commission of Enquiry into the structure and functioning of South Africa’s courts. Whereas Part One deals only with certain early debates arising out of the Hoexter Commission – up to February 1981 – Part Two takes this as a starting point and traces a number of further themes which arose in the debates surrounding the Hoexter Commission between February 1981 and April 1984, when the Commission delivered its report.

## **1 INTRODUCTION**

The purpose of this article is to analyze the ideological struggle waged in the mass media between 1980 and 1984 on the issue of overcrowding in South African prisons. Although debates on the issue of prison overcrowding were only one of many ideological struggles being waged at the time, the debates are interesting and significant for at least two reasons: In the first place, it is

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contended that public debates on the issue of prison overcrowding throughout the first half of the 1980s held up a mirror to South African society, in which those willing to look could see reflected the inevitable demise of the *apartheid* system. In the second place, it is argued that these debates tie in with a much broader and longer-term public and academic discourse on the issue of prison overcrowding, leading to the conclusion that there is an inextricable link between imprisonment as a form of punishment and chronic overcrowding of prisons. This link is apparent throughout the penal history of South Africa, whether one is examining the colonial period, the *apartheid* period, or the post-*apartheid* period, and the debates are characterized by the repeated identification of the same problem, together with the same set of “solutions”, which are repeated year after year, decade after decade, and from one century to the next.

In part one of this article, both themes mentioned above were explored through an analysis of different aspects of the public debates on prison overcrowding which took place during the early 1980s. In particular, part one examined critical debates on the legislative restrictions which prevented free reporting about conditions in South African prisons at the time. It was pointed out that the general debate on prison overcrowding provided a platform for a wide range of commentators to express concern about the dangers of censorship in *apartheid* South Africa. Part one also tapped into a rich series of public debates, conducted in a variety of national newspapers despite the legislative restrictions in place, on the link between prison overcrowding and the continued enforcement of *apartheid* social-control measures such as influx control and the pass laws. It was pointed out that the debates on prison overcrowding acted as a mirror to ordinary South Africans, particularly white middle-class South Africans who were the main beneficiaries of the *apartheid* system, revealing to them the moral bankruptcy of the system, as well as the fact that the system was untenable in the medium to long term. Finally, part one made the link between the debates on prison overcrowding which took place in the early 1980s, and similar debates which took place at other times in South Africa’s penal history. It was pointed out that chronic overcrowding seems to be inextricably, perhaps even structurally, linked to imprisonment as a form of punishment in South Africa.

Part two of this article will continue to explore the broad themes unearthed in part one and mentioned briefly above. In the section which follows a number of themes will be examined, which emerged in the public debate after General Brink’s evidence before the Hoexter Commission. These themes include the legacy of hatred which was being created by the imprisonment of large numbers of “social-control offenders”; a diminution in the deterrent effect of sentences of imprisonment by imprisoning too many ordinary citizens, guilty only of trying to make a living in the land of their birth; the creation of “Universities of Crime” by imprisoning too many petty offenders alongside “real” criminals; and concern over negative global perceptions of the supposedly “civilized” South African penal system. The section after that will trace the development of the public debate on prison overcrowding, from the time the debate calmed down following the furore created by General Brink in February 1981, until the Hoexter Commission delivered its report in April 1984. The next section will trace a second

explosion in the debate, caused by the release of the Hoexter Commission report. The final section will discuss corporal punishment as one of the proposed “solutions” to the problem of chronic overcrowding. The article will conclude by drawing together all themes discussed.

## 2 A LEGACY OF HATRED, REDUCED DETERRENCE, THE CREATION OF “UNIVERSITIES OF CRIME” AND CONCERN OVER GLOBAL PERCEPTIONS

The focus of the final section in part one of this article was on the fact that most commentators who took part in the public debate on prison overcrowding which followed the evidence of General Brink before the Hoexter Commission, had come to believe that the continued use of prisons to enforce *apartheid* social-control legislation was untenable. This section will explore certain central themes which were raised over and over again in the debate to illustrate the negative consequences of allowing persons who were “technical offenders” against social control legislation, or persons driven by poverty to commit petty offences, to be incarcerated alongside “real criminals” in the country’s overcrowded prisons.

The first theme concerns the legacy of hate which was an inevitable by-product of a system using prisons as a means of social control. Since only “non-white” South Africans were subject to imprisonment for committing offences against social control measures, and since the measures targeted normal law-abiding citizens who simply wished to find employment, the branding of such persons as “criminals” was deeply resented by the overwhelming majority of black South Africans. As was to be expected, reports in the “black press” at this time confirmed the view that the system was creating a legacy of hatred. For example, a Soweto social worker, Mr Shimane Khumalo, was quoted in *The Sowetan* as follows:

“Only 10 percent of people sent to jail need to be there, and these are the dangerous criminals whose imprisonment is for their own protection and the protection of society. But other people who commit trivial technical offences could be kept out of jail by being placed under the supervision of a probation officer while being made to do community service. My opposition to sentencing people to jail is because jail makes people bitter. You will sometimes find that people who are jailed for minor offences, come out of prison being more sophisticated in their criminal ways.”<sup>1</sup>

This view was shared wholeheartedly by commentators in the mainstream “white” press – both English and Afrikaans. Time and again commentators made the point that the *apartheid* system of social control was creating a legacy of bitterness which would haunt South Africa for years to come. For example, *Die Transvaler* pointed out that imprisonment for offences against “administrative legislation” (that is, *apartheid* social-control measures) held serious long-term implications for sound race relations in the country.<sup>2</sup> Another Afrikaans language newspaper, *Rapport*, pointed to the thousands

<sup>1</sup> “Concern Over Extent of Prison Overpopulation” 6 February 1981 *The Sowetan* 1.

<sup>2</sup> “Ernstige Misstand” 6 February 1981 *Die Transvaler* 8.

of ordinary breadwinners that were forced to sit in jail for weeks on end purely on account of technical offences, and commented dramatically as follows:

“This is how we cultivate hate. This is how we cultivate rage. This is how we cultivate contempt for authority.”<sup>3</sup>

Even more conservatively inclined Afrikaans-language newspaper editors agreed that using prisons to enforce *apartheid* social-control measures was leading to race hatred. For example, an editorial in the Afrikaans-language newspaper *Die Vaderland* stated that it was a common perception among back people that “it is ‘them’, the white people, who so regularly throw ‘us’, the black people, into prison”.<sup>4</sup> What comes through in this editorial is the real fear among certain sections of the “white” community, that imprisoning thousands of ordinary South Africans for offences against social-control measures put in place by the *apartheid* regime, was creating a whirlwind of bitterness and resentment which would come back to haunt South Africa in the future.

The second theme to be examined concerns the reduction in the deterrent effect of imprisonment which was seen to result from imprisoning very large numbers of ordinary persons for petty offences, many of them political, which they could not reasonably avoid. By subjecting large numbers of normal law-abiding citizens to imprisonment for violating ideologically motivated measures of social control, or other petty rules and regulations, it was pointed out that the punishment of imprisonment would lose its stigma, and thus its deterrent effect, particularly in the minds of black South Africans. This view is well illustrated in an editorial which appeared in *Die Vaderland* at this time, which set out its opinions on this point in blunt and frankly racist terms. According to the editorial, the scale of pass offences meant that imprisonment had become a way of life for “the black man”. Imprisonment was no longer a deterrent for “the black man” because no stigma attached to “a black who was in prison”, either in the eyes of “his own community” or in the eyes of “whites who employed him”. This had serious consequences for South Africa with its “big black and small white” population, since it led to polarization between white and black.<sup>5</sup> Essentially the same view was expressed in many of the more mainstream English and Afrikaans language newspapers, although with less of a racist overtone. For example, *Die Transvaler* stated that if it was too easy for offenders to end up in prison for nominal offences, it had the effect of “cheapening” the punishment of imprisonment, which eroded the stigma attached to such punishment together with its deterrent effect.<sup>6</sup> *The Natal Mercury* made the same point as follows:

<sup>3</sup> “So Kweek ons Haat. So Kweek ons Woede. So Kweek ons Minagting vir Gesag”. See “Volle punt, Regte H!” 8 February 1981 *Rapport* 18.

<sup>4</sup> “Oorbevolkte Tronke” 6 February 1981 *Die Vaderland* 10.

<sup>5</sup> *Ibid.*

<sup>6</sup> “As oortreders te maklik vir geringe oortredings in die gevangenis beland, het dit ook die uitwerking dat tronkstraf ‘goedkoop’ gemaak word. Dit verweer die stigma daaraan verbonde en gevolglik ook die effektiwiteit daarvan as afskrikmiddel.” See 6 February 1981 *Die Transvaler* 8.

“[I]mprisonment – one in four adult blacks being arrested each year on technical offences – no longer carries much stigma in the black community at all. The law, therefore, has been brought into contempt.”<sup>7</sup>

The *Mercury* castigated the *apartheid* government for its “dictatorial and authoritarian attitude” as well as its “only passing concern for the unnecessary human suffering and degradation caused by respectable people being imprisoned for technical offences ...”<sup>8</sup>

The third theme to be examined concerns the idea that South African prisons had become “universities of crime”. Many commentators in the early 1980s expressed the idea that, far from curbing crime, the South African penal system was in fact leading to an increase in the country’s crime rate. In other words, South African prisons were regarded by many as being “universities” or “schools” of crime, rather than places where criminals were rehabilitated. The incarceration of far too many petty offenders, most of whom did not really belong in prison, together with chronic overcrowding in the penal system, were regarded as crucial factors in a cycle which was not only negative, but also fed on itself. A good example of the way in which commentators saw the negative self-reinforcing cycle to be operating is to be found in the following extract from an editorial in *The Citizen*:

“Courts jail more and more people, who go into more and more overcrowded prisons. Petty offenders come into contact with hardened criminals and become more prone to crime rather than chastened by their incarceration. Instead of prisoners being rehabilitated, more and more are recidivists, people who commit further crimes and return to jail. We cannot blame the prison authorities. They do their best. The system is such that jail is not a deterrent, but helps increase crime rather than reduce it ... Shouldn’t the whole object be to keep as many people out of jails rather than put as many people as possible in them? Shouldn’t we be looking at our system of punishment to see that it is less punitive and more rehabilitative? Shouldn’t we stop sending to jail people convicted of relatively minor offences? ... As it is, we are simply breeding crime and criminals. And no country can afford to have as many people in jail as we have.”<sup>9</sup>

Another example within the public discourse at the time which put forward the view that South African prisons were incubators of crime, rather than places in which criminals were rehabilitated, appeared in *Die Vaderland*. The newspaper quoted a criminologist at the University of South Africa, Professor Piet van der Walt, as stating that it had been proved repeatedly all over the world that sentences of imprisonment for petty offences promoted crime. Petty offenders came into contact with hardened criminals in prison, who then recruited them and led them into the underworld. Professor Van der Walt pointed out that more than 80 per cent of South Africa’s prison population were imprisoned for less rather than more serious offences, and that a disturbing percentage of the prisoners were awaiting trial. He explained that fines were an alternative to imprisonment, but pointed out that most offenders were in no position to pay fines, which meant that they ended up in prison for a week or two. This provided the hardened criminals in

<sup>7</sup> “Prison Time Bomb” 6 February 1981 *The Natal Mercury*.

<sup>8</sup> *Ibid.*

<sup>9</sup> “Out Not In” 6 February 1981 *The Citizen* 6.

prison with an ideal opportunity to recruit “new blood”.<sup>10</sup> Similar views were expressed by other public commentators at this time, who drew attention to a statement made by General Brink before the Hoexter Commission, to the effect that awaiting-trial prisoners could spend as long as seven weeks in jail and then receive sentences as little as a fine of R4 or 10 days imprisonment. *The Natal Mercury* expressed the opinion that this was “the most chilling statement” by General Brink in his evidence to the Hoexter Commission and pointed out that: “The effect on petty offenders ... has not been to reduce their numbers but increase them and while doing so bring into contempt laws, many of which social scientists and lawyers feel should be scrapped.”<sup>11</sup> An editorial in the *Evening Post* stated that, one way to reduce prison populations was “to end the system in which awaiting-trial prisoners, which make up about 15% of prison inmates, spend weeks in jail before receiving sentences of as little as R4 fines or 10 days’ imprisonment”.<sup>12</sup> The problem of large numbers of awaiting-trial prisoners, as well as prisoners remaining in jail because they could not afford bail, was to continue long into the post-apartheid period.<sup>13</sup>

A final theme which may be mentioned before concluding this section relates to the global political context within which the debate in question was taking place. An interesting strand in the discourse surrounding chronic overcrowding in South African prisons at the time of General Brink’s evidence before the Hoexter Commission in the early 1980s, was the concern expressed by some commentators as to how his revelations would be perceived by the outside world. *The Natal Mercury*, for example, called the chronic overcrowding a “sickening blot on the country’s image”.<sup>14</sup> An editorial in the Afrikaans language newspaper *Beeld* stated, *inter alia*, that the overcrowded conditions in South African prisons could not be allowed to continue if South Africa wanted to avoid being accused of running a prison system which could not “pass the test of civilised norms”.<sup>15</sup> Clearly, ideological pressure against the *apartheid* system had been building,

<sup>10</sup> 5 February 1981 *Die Vaderland* 1.

<sup>11</sup> 6 February 1981 *The Natal Mercury*.

<sup>12</sup> “Prison Overcrowding: Govt must Act Now” 5 February 1981 *Evening Post* 6.

<sup>13</sup> See, in general, Peté “The Politics of Imprisonment in the Aftermath of South Africa’s First Democratic Election” 1998 1 *South African Journal of Criminal Justice* 51–83; and Peté “The Good the Bad and the Warehoused – The Politics of Imprisonment During the Run-up to South Africa’s Second Democratic Election” 2000 13(1) *South African Journal of Criminal Justice* 1–56; and Peté “Between the Devil and the Deep Blue Sea – The Spectre of Crime and Prison Overcrowding in Post-apartheid South Africa” 2006 27(3) *Obiter* 429–453. A related issue which received some mention during the period under examination, but which was to become a much more prominent part of the public debate during the post-apartheid period, was that of the negative effect of minimum-sentencing legislation on the South African prison population. One example of this issue being raised in the early 1980s is to be found the following extract from the *Rand Daily Mail*: “[A]s the Prisons Department notes, five-year sentences for minor drug offences plus the system of compulsory indeterminate sentences are clogging the prisons – while their effect in deterring others is problematical” in “Getting to Grips with the Prisons Crisis” 9 February 1981 *Rand Daily Mail* 6.

<sup>14</sup> 6 February 1981 *The Natal Mercury*.

<sup>15</sup> “[T]oestande [is] aan die lig gebring wat nie ongehinderd toegelaat kan word om voort te duur as ons nie daarvan beskuldig wil wees dat ons gevangenis nie die toets van beskaafde norme kan deurstaan nie” in “Gevangenisles” 6 February 1981 *Beeld* 8.

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worldwide, for many years, making the perceptions of the outside world a particularly sensitive point for those (white) South Africans who supported the *status quo*. This appeal to “civilized values” is, interestingly, somewhat reminiscent of calls made during the post-*apartheid* period to ensure the prison overcrowding did not render the living conditions in South African prisons so bad that they amounted to a breach of the fundamental human rights of prisoners as enshrined in the constitution.

### 3 THE DEVELOPMENT OF THE DEBATE AFTER FEBRUARY 1981

Having examined the upsurge in public debate on the issue of prison overcrowding which occurred with the evidence of General Brink before the Hoexter Commission in February 1981, the section which follows will provide a broad overview of the manner in which the debate developed from that point, until the report of the commission became available in April 1984.

In May 1981, an editorial in *The Natal Mercury* commented on the activities of the working group which had been established by the Department of Justice to investigate overcrowding in South Africa’s prisons. The chairperson of the working group was the Chief Magistrate of Pretoria, Mr WF Krügel. The editorial began with the startling allegation that “South Africa’s staggeringly large prison population of 440 per 100 000” was “more than twice that of any other country in the Free World”.<sup>16</sup> It then went on to bemoan the seeming inability of the Government to address the problem of overcrowding in the prisons which had been apparent for many years. A sense of the frustration felt by many commentators at this time – particularly those in the “liberal” press – is apparent in the following extract from the editorial:

“[O]ne cannot help feeling that the establishment of ... [the] working group ... is more a measure of the Government’s desperation than a promising excursion into new territory. For more years than we care to remember, the prison authorities, lawyers, politicians, academics and other concerned bodies and individuals have been voicing their alarm over the country’s ever-growing prison population ... The departmental working group ... may turn up something new in this exhaustively tilled field, but what is really needed is not more information and opinions but some urgent Government action on the glaring facts already known.”<sup>17</sup>

One cannot help but feel sympathy for the view expressed by the editor of *The Natal Mercury*. Similar debates about chronic overcrowding in South African prisons had been taking place since colonial times, and were to continue well into the post-*apartheid* period, without any resolution to the problem. Indeed, *The Natal Mercury*’s description of the debates on the problem as being an “exhaustively tilled field”, seems an apt description not only of debates which took place during the *apartheid* period, but also of

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<sup>16</sup> “Crowded Jails” 25 May 1981 *The Natal Mercury* 14.

<sup>17</sup> *Ibid.*

similar debates which took place during the colonial and post-*apartheid* periods.<sup>18</sup>

In June 1981, the national chairman of the National Institute for Crime Prevention and Rehabilitation, Mr Justice Kumleben, told the annual meeting of the organization that South Africa's prisons were grossly overcrowded and that: "The gravity of the situation can hardly be overstated."<sup>19</sup> He then spoke of the need to develop alternatives to imprisonment, which he said should be a form of punishment reserved primarily for isolating "chronically dangerous persons" from society.<sup>20</sup> An editorial in *The Natal Mercury* expressed cautious approval of Judge Kumleben's views:

"We could not agree more with the Judge's basic concept of seeking acceptable and workable alternatives to imprisonment, but obviously the crimes which would qualify for non-custodial sentences would need some careful study, and frankly we would question the merit of allowing all but 'chronically dangerous persons' to escape the time-honoured punishment and stigma of being removed from society for their crimes ... But that is a matter of opinion on where to draw the line. The fact remains that a great many people who appear in South African courts do not pose any threat to the community, yet they face imprisonment because there is no more enlightened means available to deal with them."<sup>21</sup>

In the months which followed, the point that South Africa's prisons were clogged up with too many petty offenders, particularly people guilty of technical offences against *apartheid* social-control legislation, was made time and again. For example, the following comments were made in two different national newspapers in July 1981:

"[M]any of the people who are in jail should not be there at all. Far too many are accused only of technical offences under the pass laws."<sup>22</sup>

"Whatever the long-term solution, there is no doubt that pass laws, invariably undesirable in themselves, are a major factor in prison overcrowding and create a host of unpleasant by-products. The need for a review is urgent."<sup>23</sup>

It is interesting to note that precisely the same sentiments were to be expressed, almost two decades later, in debates on the issue of chronic overcrowding in the prisons of post-*apartheid* South Africa.<sup>24</sup> The same problem and the same suggested "solutions" were to be recycled decade after decade, over and over again.<sup>25</sup>

<sup>18</sup> See, in general, Peté 1998 1 *South African Journal of Criminal Justice* 51–83; Peté 2000 13(1) *South African Journal of Criminal Justice* 1–56; Peté 2006 27(3) *Obiter* 429–453; and see also Peté "Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal 1845 to 1910 – Parts One and Two" forthcoming publications.

<sup>19</sup> "Overcrowding of Prisons Grave, says Durban Judge" 18 June 1981 *The Daily News* 10.

<sup>20</sup> "To Fit the Crime" 19 June 1981 *The Natal Mercury* 12.

<sup>21</sup> *Ibid.* See also "Prison Reform" 20 June 1981 *The Daily News* 6.

<sup>22</sup> "Vicious Circle" 8 July 1981 *The Argus* 12.

<sup>23</sup> "People Behind Bars" 9 July 1981 *The Cape Times* 12.

<sup>24</sup> See, in general, Peté 1998 1 *South African Journal of Criminal Justice* 51–83; Peté 2000 13(1) *South African Journal of Criminal Justice* 1–56; and Peté 2006 27(3) *Obiter* 429–453.

<sup>25</sup> One suggestion which was regularly put forward as a means of easing the chronic overcrowding in South Africa's prisons, was to replace sentences of imprisonment with sentences of community service in suitable cases. The idea was that imprisonment should

In May 1982 the issue of chronic overcrowding in South Africa's prisons once again reared its head in the public media. In the discussion of his annual report in Parliament, the Director-General for Justice, Mr JPJ Coetzer, revealed that in February of the previous year the average daily prison population in South Africa was 104 622 inmates, whereas the prison system was designed to accommodate only 75 576 inmates. He stated that the figure of 104 622 prisoners was "the highest figure ever recorded in the history of this country".<sup>26</sup> Some success had been achieved in reducing the average daily prison population from this all time high. By May 1981 the average daily prison population had fallen to 99 581 inmates, a decrease of 4,8 percent. An amnesty granted to certain prisoners on 31 May 1981 further reduced the prison population so that, by 30 June 1981, only 82 706 inmates were imprisoned in South African jails.<sup>27</sup> This relatively "good news" was, however, not to prove very long-lasting in its effect.

By June 1982 overcrowding in South African prisons was at a sufficiently serious level to cause Judge JPG Eksteen to state that it was one of the most important factors which prevented the rehabilitation of prisoners in South Africa. The judge pointed to comments in Parliament by the Minister of Justice to the effect that more than ninety prisons in South Africa were overcrowded, in some cases up to 309 per cent. He stated that a large percentage of prisoners were serving short terms of imprisonment. The

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be reserved for hardened criminals, with petty offenders serving their sentences within the community. This would lead to a significant decrease in the South African prison population, since many of those imprisoned were petty offenders as opposed to hardened criminals. One of the main challenges faced by those advocating this idea, was that implementing community service sentences required an extensive infrastructure to be in place within the community. As an article in *The Cape Times* put it: "Community service means involving the community – using men and women who are prepared to give of their time without remuneration to a project which they believe can be of benefit not only to the offender but also to the community at large" in "Community Service as Alternative to Jail" 18 January 1982 *The Cape Times* 8. During the first half of the 1980s, community service orders did operate, but only on a very small scale. The limited extent to which such orders were employed at this time is revealed by a report in *The Argus*, which concerned community service orders in Cape Town. The report revealed that only forty-six persons had received community service orders since the first such order was served in January 1979. See "Alternative to Jail" 16 June 1983 *The Argus* 27. On 13 May 1984 the *Sunday Tribune* commented favourably on the fact that the Witwatersrand Local Division of the Supreme Court had, for the first time, handed down a sentence in a criminal trial which required the convicted offender to complete a period of community service under the supervision of the National Institute for Crime Prevention and the Reintegration of Offenders: "There is much to do in community service and such sentences would also promote a greater awareness of community needs while allowing the offender to continue his job and provide for his family. Money and time should be spent to organize effective supervision of such sentences. Once this is done the way will be open for courts to impose community service regularly as part of sentences which will not only ease prison overcrowding, but deal with minor offenders in an acceptably humane way" in "Sensible Sentence" 13 May 1984 *Sunday Tribune* 20.

<sup>26</sup> "Prison Population 'Is a Problem'" 6 May 1982 *The Citizen* 3.

<sup>27</sup> *Ibid.* See also the Afrikaans newspaper *Beeld*, which was somewhat more alarmist in its assessment of the Director-General's presentation to Parliament. Under the heading "Gevangenisdiens het 'n Krisis Ophande" – "Prison Service has a Crisis on its Hands" – its report began by stating that South African prisons were often hopelessly overcrowded and that, linked to a shortage of prison staff, there was cause for serious concern. See "Gevangenisdiens het 'n Krisis Ophande" 6 May 1982 *Beeld* 14.

courts had repeatedly spoken out against short terms of imprisonment and indicated that such sentences often did more harm than good. First offenders were exposed to the negative aspects of imprisonment without being exposed to any rehabilitative influences.<sup>28</sup>

During the year which followed, the media were to keep the problem of prison overcrowding high on the public agenda. In March 1983, the *Cape Herald* reported that South African prisons were “bursting at the seams” with the daily average prison population standing at 102 069.<sup>29</sup> In April of that year, it was reported that South African prisons were 22,4 per cent over their capacity. The Minister of Justice, Mr Kobie Coetzee, revealed in Parliament that, according to the latest figures available to him, South Africa's prison population stood at 105 634. The Minister brushed aside concerns expressed by opposition members of parliament, including Mrs Helen Suzman, by stating that prisons all over the world were over-populated and that the situation in South Africa was not unusual.<sup>30</sup> In an editorial under the heading “Any Room Left for Compassion?”, *The Star* responded, *inter alia*, as follows:

“Well, it is unusual in that a considerable proportion of those prisoners would not be there if not for apartheid. They are ‘technical’ offenders against a system of colour-based laws, mostly to do with influx control, which do not exist in more normal societies. Some are there for offences against a range of sweeping security laws, while others again are detained under such laws without having been found guilty of any offence.”<sup>31</sup>

In an editorial with the headline “Our Overflowing Jails”, *The Natal Mercury* was similarly scathing in its response to the somewhat callous position taken by the Minister on this issue:

“There is no more reliable growth industry in South Africa than the country's booming prison population. Notwithstanding an amnesty granted last May it has surged ahead to set a new current record of 105 634 – a figure which even the Minister of Justice spoke of with ‘regret’ this week. Politicians, lawyers, academics and other concerned bodies have long voiced their alarm at this developing crisis. Commissions have reported on it, but still the Government seems unable or unwilling to come to grips with it ... What can one say, other than to reiterate what has been stated time and again? Much of our prison congestion is due to the arrest of thousands of blacks for influx-control offences and other technical infringements which are not regarded as crimes elsewhere in the world. Meanwhile there are thousands of awaiting-trial prisoners who may wait weeks behind bars before being acquitted or sentenced to a few days in jail.”<sup>32</sup>

In September 1983 the State President, Mr Marais Viljoen, revealed that South Africa's prisons were overcrowded by 36 per cent and that the daily prison population over the preceding three months had averaged 106 000.

<sup>28</sup> “Te Vol Tronke Maak Opheffing Moeilik” 11 June 1982 *Die Oosterlig* 5.

<sup>29</sup> “South African Prisons Burst at the Seams” 26 March 1983 *Cape Herald* 23.

<sup>30</sup> “South Africa has More than 105 000 in Prison” 26 April 1983 *The Star* 6.

<sup>31</sup> “Any Room Left for Compassion?” 27 April 1983 *The Star* 10.

<sup>32</sup> “Our Overflowing Jails” 29 April 1983 *The Natal Mercury* 10. For yet another example, see the “A Nation of Too Many Prisoners” 2 May 1983 *Eastern Province Herald* 8.

He also revealed that the cost to the country was about R700 000 per day.<sup>33</sup> In the same month, an editorial in the *Pretoria News* expressed deep alarm at the situation that was developing in the prisons due to overcrowding:

“There have long been too many prisoners in South Africa, partly because of the multitude of laws (and the near impossibility of observing some of them) designed to prop up apartheid. The legacy of this has struck the Prisons Department with full force. As the Minister of Justice, Mr Kobie Coetzee, said yesterday: the ratio of warders to prisoners in South Africa is one to 12. In some European countries it is one to one ... The situation has now arrived where hard-pressed Prisons staff appear in danger of being overwhelmed ... Mr Coetzee ... calls for greater emphasis on hand combat training for prison warders. One will be forgiven for the impression that it's beginning to sound a little like a war out there.”<sup>34</sup>

In October 1983, *The Daily News* made the following important point about the hidden costs of imprisoning thousands of ordinary South Africans for offences against social control legislation:

“The news that South Africa's prisons are overcrowded by 36 percent helps explain how maladministration and violence, as revealed in the Barberton prison trial, can occur. The irony is that the daily prison population of 106 000 could be considerably cut by decriminalising many statutory crimes, such as pass offences. Every prisoner costs the country R6,52 a day – but the cost in terms of lingering bitterness is incalculable.”<sup>35</sup>

Two days after the publication of the above report, a strongly-worded editorial in *The Natal Mercury* reflected the editor's considerable sense of frustration at the fact that the Government appeared incapable of properly getting to grips with the problem of prison overcrowding:

“Apart from a periodic wringing of hands and some appropriate words about the gravity of the position, the Government's responses down the years to the country's burgeoning prison population have been memorable mostly for their inadequacy ... Commissions have reported on the situation, and numerous politicians, lawyers, academics and other concerned people have contributed their thoughts. But still the Government refuses to come to grips with fundamental causes of the overcrowding ... [M]uch of the prison congestion is due to the arrests of thousands of blacks for influx control offences and other technical infringements which are not regarded as crimes elsewhere in the world. This has led to the unhappy situation where many blacks regard a spell 'inside' more as an acceptable hazard of life than a stigma. Meanwhile there are thousands of awaiting-trial prisoners who may wait several weeks behind bars before being acquitted or sentenced to a few days in jail.”<sup>36</sup>

Later during the same month, a report in the *Pretoria News* noted that, between 1970 and 1980, South Africa's prison population had risen by twelve per cent, whereas the population of the country had only risen by

<sup>33</sup> “SA Prisoners Cost us R700 000 a Day” 14 September 1983 *Pretoria News* 5. See also “Prisons Crowded 36 pc says Viljoen” 14 September 1983 *The Natal Mercury* 1; “Overcrowding Crisis in SA's Prisons” 14 September 1983 *The Citizen* 8; and “Prisons Upkeep R700 000 a Day 15 September 1983 *The Citizen* 18.

<sup>34</sup> “A War out There?” 16 September 1983 *Pretoria News* 8.

<sup>35</sup> “Cost of Jailing” 4 October 1983 *The Daily News* 16.

<sup>36</sup> “Crowded Jails” 5 October 1983 *The Natal Mercury* 14.

seven per cent.<sup>37</sup> On the same day, *The Star* published a report under the alarming headline “Gross overcrowding allied to understaffing creates ‘time-bomb’”. The report pointed out, that although South African prisons were overcrowded by an overall average of 36 per cent, certain individual prisons were overcrowded by a much greater percentage – some by as much as 300 per cent.<sup>38</sup> In another report published in *The Star* on the same day, it was pointed out that, due to significant prison-staff shortages<sup>39</sup> as well as a large turnover of prison staff,<sup>40</sup> the ratio of trained prison-staff members to prisoners was one to 635. This rendered the rehabilitation of prisoners “extremely difficult if not impossible”.<sup>41</sup> It was also reported that there was a chronic shortage of social workers and only 23 psychologists to care for the prison population.<sup>42</sup> An editorial in the same newspaper the following day summed up the major problems faced by the South African penal system, *inter alia*, as follows:

“Chief cause for concern is overcrowding – 25 percent on average at the country’s 242 prisons – closely followed by an alarming 20 percent shortage of warders ... Inevitably, the cry is for more prisons and more staff. If ever there was an example of tackling a problem the wrong way, this is it. Switching the objective to *fewer prisoners* makes much more sense; although that would be no panacea, it would serve as an excellent palliative. For those who commit serious crimes – particularly of a violent nature – there is of course no alternative to a jail sentence. But far too many people are locked up for minor offences, a large proportion stemming from the political system. Abolish apartheid measures such as influx control and the Group Areas Act and there would be an immediate, significant fall in the prison population.”<sup>43</sup>

The public pressure brought to bear by such reports must have taken their toll on the *apartheid* Government. One indication of this is that the start of the new year witnessed an effort by the conservatively-inclined newspaper *Die Vaderland* to shift the public debate onto a track less critical of the authorities. In January 1984 the newspaper published a number of articles on the question of overcrowding in South African prisons. Among other sources, it solicited the views of Mr FW Krügel, the chairman of the working group which had been set up in 1981 in order to investigate the problem of

<sup>37</sup> “Prisons Service has Tough Challenge” 14 October 1983 *Pretoria News* 3; and see also “Behind SA’s Prison Bars” 15 October 1983 *Pretoria News* 10.

<sup>38</sup> “Gross Overcrowding Allied to Understaffing Creates ‘Time-bomb’” 14 October 1983 *The Star* 11.

<sup>39</sup> It was reported that there were 1 318 vacant posts in the Prisons Service at that time.

<sup>40</sup> Eg, it was reported that, at that time, 53 per cent of the 3 454 white prison warders had fewer than two-years’ experience.

<sup>41</sup> “Staff and Cash Crisis Face SA Jail Service” 14 October 1983 *The Star* 1. Just one of the indicators that those confined within the South African penal system at this time were unlikely to be rehabilitated, was the fact that the number of prisoners involved in formal study was shockingly low. The total prison population at this time was around 106,000 and, according to a report in the *Pretoria News* on 14 October 1983: “Only 700 prisoners were registered for formal study last year while 1900 were involved in literacy training.” See 14 October 1983 *Pretoria News* 3.

<sup>42</sup> 14 October 1983 *The Star* 1; see also “Difficult Times for Prison Service” 15 October 1983 *Weekend Argus* 4; and “Some of the Facts and Figures Given” 15 October 1983 *Pretoria News* 10.

<sup>43</sup> “Give Prisons a Break” 15 October 1983 *The Star* 10.

overcrowding on an ongoing basis. According to Krügel, the problem of overcrowding in South African prisons had improved since the time of the Viljoen Commission in 1976, but there was still much room for improvement. He stated that it was not simply the *apartheid* legal system which lay at the heart of the problem, but the socio-economic condition of the country as a whole. Further, Krügel expressed the opinion that the situation in relation to overcrowding in prisons was better in South Africa than in many other countries.<sup>44</sup> Krügel was supported in this opinion by the Commissioner of Prisons, Lieutenant-General Willem Willemse. Willemse characterized overcrowding in South African prisons as “mild”.<sup>45</sup> This was despite the fact that, by his own admission, South African prisons were overcrowded by 22,4 per cent.<sup>46</sup> Although this figure indicated that there was a problem, according to Willemse it compared favourably to the figures for certain other countries, such as 40 per cent in France, 60 per cent in Italy and 89 per cent in certain American prisons.<sup>47</sup> In the South African context, Willemse pointed out that it was prisons near cities, which served as reception centres for large numbers of awaiting-trial prisoners and contained large numbers of short-term prisoners, which tended to be most overcrowded.<sup>48</sup>

*Die Vaderland* seized on Willemse’s opinion that South African prisons were only “mildly” overcrowded. The newspaper published an editorial under the headline “We compare favourably”, as well as an article under the headline “South Africa is not experiencing a crisis”.<sup>49</sup> In its editorial, *Die Vaderland* stated that much of the criticism in relation to overcrowding in South African prisons was “uninformed and out of context”.<sup>50</sup> At the same time, the newspaper pointed out that the prison authorities had to carry a great deal of the blame for the lack of information on the part of its critics. After all, the authorities were responsible for the measures which kept prisons out of the public spotlight and discouraged people from becoming properly informed. But the critics could not be excused, said *Die Vaderland*, for comparing the South African penal system solely to the penal systems of Western countries. South Africa was part of both the “Third World” and “The West” and this would be reflected in its prison population. Seen in that light, South Africa compared favourably to other countries since, at the very least, South African prisons met basic standards in relation to the provision of adequate light, air, medical facilities and recreational facilities.<sup>51</sup>

Unfortunately for *Die Vaderland*, the fact of chronic overcrowding in South African prisons could not be wished away. In March 1984 the issue once again received extensive negative coverage in the mainstream South African media. In response to a parliamentary question, the Minister of Justice

<sup>44</sup> “Tronkstraf vir Klein Misdade Skep Probleme” 10 January 1984 *Die Vaderland* 9.

<sup>45</sup> “Matig”.

<sup>46</sup> “Oorbevolking in SA Gevangnisse” 10 January 1984 *Die Vaderland* 9.

<sup>47</sup> “Ons Vergelyk Gunstig” 11 January 1984 *Die Vaderland* 8.

<sup>48</sup> 10 January 1984 *Die Vaderland* 9.

<sup>49</sup> 11 January 1984 *Die Vaderland* 8; and “Suid-Afrika Beleef nie 'n Krisis nie” 10 January 1984 *Die Vaderland* 9.

<sup>50</sup> The words used were “oningelig en buite verband”. See 11 January 1984 *Die Vaderland* 8.

<sup>51</sup> 11 January 1984 *Die Vaderland* 8.

revealed that while the South African prison system had been designed to accommodate 74 378 prisoners, in December 1983 the daily average prison population in South Africa was 105 509.8. The Minister provided a list of no fewer than 33 prisons which were overcrowded by more than 100 per cent. Eight of these prisons were overcrowded by more than 200 per cent, and one by more than 300 per cent. The most overcrowded prison in the country was Fauresmith in the Free State at 352 per cent. Opposition Member of Parliament, Mr David Dalling,<sup>52</sup> expressed his “shock” at these figures, claiming that the real problem was that too many people were jailed “unnecessarily for technical offences such as the pass laws and curfew regulations”.<sup>53</sup> *The Natal Mercury* castigated the Minister for downplaying the extent of the problem and pointed perceptively to the wider social causes of prison overcrowding:

“Last year the Minister of Justice spoke with ‘regret’ of a new record in the prison population. This year he has referred with masterly understatement to a ‘mildly overcrowded’ situation ... The Government should be looking not so much to new prisons as to the dismal quality of life in the rural areas, which causes thousands to migrate to the cities in search of jobs. It is here that so many get caught up in the web of statutory offences that lead to prison sentences and often weeks behind bars as awaiting-trial prisoners. The sobering prognosis given this week at the seminar of the Mayor’s Steering Committee in Durban was that by the year 2000 ‘a cascade’ of people from poor rural areas could be expected, as the living standards of rural blacks would improve about 29 times if they moved to urban areas ... As long as the Government fails to meet these challenges, and balks at decriminalising certain statutory offences, it must not be surprised if its jails overflow.”<sup>54</sup>

Other mainstream South African newspapers expressed similar opinions. An editorial in *The Natal Witness* castigated the Minister of Justice for stating that the prisons were only “mildly” overcrowded, and characterized the Minister’s comments as “callous”.<sup>55</sup> The Afrikaans newspaper *Beeld* took the Minister to task for raising the excuse that, during the day, prisoners spent most of their time working outside, meaning that there was plenty of room inside. With heavy irony, the newspaper summed up the Minister’s attitude as follows: “Well, do you want to sleep or do you want to break stone?”<sup>56</sup> In an editorial dripping with irony, *The Daily News* commented, *inter alia*, as follows:

“Prison overcrowding takes on a new dimension when it appears that Minister of Justice and Prisons, Mr Kobie Coetsee, has some sort of grading system that describes present conditions as simply ‘mildly overcrowded’ ... Whether in the Minister’s book the overcrowding is ‘mild’, ‘semi-mild’ or ‘slightly mild’, the daily prison population has to be seen in world terms, or more specifically in *western* world terms. (The Government, after all, insists that it is a beacon of western enlightenment at the tip of the Dark Continent.)”<sup>57</sup>

<sup>52</sup> Progressive Federal Party – Sandton.

<sup>53</sup> *The Cape Times* 7 March 1984 “SA prisons overcrowded” at page 4.

<sup>54</sup> *The Natal Mercury* 8 March 1984 “Our overflowing jails” at page 16.

<sup>55</sup> *The Natal Witness* 8 March 1984 “Prisons overcrowding” at page 10.

<sup>56</sup> The question was phrased as follows: “wil julle slaap of wil julle klippe breek?” See “Méer as Vyfster-vol” 8 March 1984 *Beeld* 15.

<sup>57</sup> “Mildly Disturbing?” 10 March 1984 *The Daily News* 8.

The caustic comment that the Minister should be held to a “western” standard must have been particularly galling to the authorities. Overall, public debate on the issue of prison overcrowding between the years 1981 and 1984 was strongly critical of the policies adopted by the *apartheid* Government. Considerable ideological pressure was brought to bear on the regime by constantly turning the knife – the inescapable fact that South African prisons remained stubbornly overcrowded.

#### 4 THE HOEXTER COMMISSION REPORT AND THE DEBATE ON PRISON OVERCROWDING

In April 1984, the Hoexter Commission once more took centre stage in the debate on prison overcrowding. Public concern on the issue reached boiling point as the media reported on the findings of the Hoexter Commission into the structure and functioning of the courts. The Commission eschewed a narrow focus on the particular area it had been asked to investigate – the structure and functioning of the courts – in favour of a more integrated “big-picture” approach. It insisted on exposing the link between the structure and functioning of the courts on the one hand, and the chronic overcrowding within the penal system on the other. It then sought to tie the problem of prison overcrowding to the economic, social and political realities of South Africa. In the words of the Commission:

“On the face of it, the overcrowding of prisons appears to have little bearing on the functioning of the courts. In the commission’s opinion, however, the overcrowded prisons of our country are a dismal social phenomenon closely linked to the whole system of justice.”<sup>58</sup>

The Commission stated that the problem of prison overcrowding was intimately related to the fact that prisons were being used as a form of social control. The clear message conveyed to South Africans through newspaper reporting on the Commission’s findings, was that a major cause of overcrowding was the racist social-control policy of the *apartheid* Government. The findings of the Commission also made it clear that there was a broader social and economic dimension which underpinned the entire problem – that is, the problem of inequality and widespread poverty, particularly in the rural areas, which was bound to result in an unstoppable wave of urbanization as rural people sought to better their lives. Under the headline “Many should not be in prison at all”, *The Argus* reported that the Hoexter Commission had found that South Africa had one of the biggest prison populations in the world and that “large numbers of people” should not be in prison at all. *Inter alia*, the newspaper quoted the following interesting extract from the Commission’s findings:

“A material factor in regard to the overcrowding of our prisons is that hordes of blacks land in prison as a result of influx control. Judged by civilised norms, these people are not real malefactors. They are the needy victims of a social system that controls the influx of the people from the rural to the urban areas

<sup>58</sup> “Overcrowding of Jails Linked to System of Justice” 6 April 1984 *The Citizen* 10.

by penal sanctions. The reason for this virtual unstemmable influx is poverty.”<sup>59</sup>

The consequences of this state of affairs, where thousands upon thousands of ordinary breadwinners were being crammed into prisons for committing technical social-control offences, alongside hardened criminals, were deeply disturbing. According to the Commission, this unhappy state of affairs resulted in “a two-fold psychological effect on the largest population group in the country”.<sup>60</sup> *The Citizen* summarized this negative psychological effect as follows:

“In the first place the commission says, it breeds in many Blacks especially those who have actually suffered the shame and indignity of imprisonment for minor offences, contempt for the administration of justice in general and the criminal courts in particular. In the second place the result was that, contrary to sound social norms, the serving of a prison sentence was no longer regarded as a stigma by many Blacks, and that imprisonment as a punishment for the commission of a crime was consequently losing its power as a deterrent.”<sup>61</sup>

A further negative consequence of chronic overcrowding identified by the Commission was related to the length of sentences served by long-term prisoners. The Commission pointed out that overcrowding could lead to the premature release of serious criminals sentenced to longer terms of imprisonment. Interfering with the carefully considered sentences passed by the courts could negatively affect the rehabilitation of such criminals.<sup>62</sup> In the words of the Commission:

“An immediate and inevitable result of overcrowded prisons is that convicted persons on whom a long term of imprisonment has been imposed are released prematurely for the reason that prison accommodation is limited rather than that they merit release on parole. This at once defeats the criminal court’s carefully considered sentence and the rehabilitative object of a prison sentence.”<sup>63</sup>

As far as the effects of overcrowding on gang activity were concerned, the Commission stated that it was quite frequently the case that “20 or 30 vicious thugs” were forced to sleep together in a single cell. The Commission commented that:

“This unhealthy state of affairs breeds gangsterism; and in particular it leads to the utterly callous and gruesome murder, by the members of a gang, of a defenceless cell-mate who for some reason has incurred their wrath.”<sup>64</sup>

The Hoexter Commission’s unequivocal finding that the chronic overcrowding in South African prisons was linked to the *apartheid* system of social control, and that it was untenable to allow the situation to drag on, was driven home in the public mind by a number of articles in the country’s

<sup>59</sup> “Many Should not be in Prison at All” 5 April 1984 *The Argus* 6.

<sup>60</sup> 6 April 1984 *The Citizen* 10.

<sup>61</sup> *Ibid.*

<sup>62</sup> 5 April 1984 *The Argus* 6.

<sup>63</sup> 6 April 1984 *The Citizen* 10.

<sup>64</sup> “Hoexter Probe Slams Influx Control Laws” 6 April 1984 *Rand Daily Mail* 7.

newspapers. The headlines to these articles reflected a tone which was extremely critical of the *apartheid* Government:

“Hoexter probe slams influx control laws”<sup>65</sup>

“SA tronke hieroor oorvol” [“South African prisons are overcrowded because of this”]<sup>66</sup>

“Social system ‘jails hordes’”<sup>67</sup>

“SA jails crammed with technical offenders – Hoexter probe puts the courts on trial”<sup>68</sup>

“SA’s tragedy: prisoners who are not criminals.”<sup>69</sup>

*The Weekend Argus* called the Hoexter Commission’s report a “devastating indictment of the Government’s policies” and predicted that it would “blow up into a major political storm when the opposition and the Government square up to each other in a special debate”.<sup>70</sup> Under the headline “SA’s tragedy: prisoners who are not criminals”, the *Evening Post* referred approvingly to the work of the Hoexter Commission as having “opened to fresh air a festering sore”.<sup>71</sup> The newspaper submitted the following dramatic and depressing assessment of the Hoexter Commission’s findings:

“The gap between the law makers (the Government) and the judiciary – in other words those who mete out justice – may be close to unbridgeable. Law and justice cease to mean the same thing or even be on the same side when innocents are thrown together with hardened criminals in police cells to await trial and later, when convicted of minor technical offences, in overcrowded jails. There is no space in the cells to accommodate the killers and the innocents separately. So they are thrown in together, the innocents forced, so often, to share the excesses of the vicious and depraved. They watch in terror as thugs slice each other to death using knives and razor blades, smuggled into prison in all sorts of ways. There is a plethora of evidence of this from our own Supreme Court.”<sup>72</sup>

Reflecting an old theme characteristic of the South African penal system stretching back to colonial times – that is, that overcrowded South African prisons were, in fact, “universities of crime” – the *Evening Post* challenged its readers to answer the following rhetorical question: “How many ... gangsters became gangsters after being forced by the overcrowded system to spend time with veteran mobsters?”<sup>73</sup>

<sup>65</sup> *Ibid.*

<sup>66</sup> “SA Tronke Hieroor Oorvol” 6 April 1984 *Die Burger* 6.

<sup>67</sup> “Social System ‘Jails Hordes’” 6 April 1984 *The Cape Times* 4.

<sup>68</sup> “SA Jails Crammed with Technical Offenders – Hoexter Probe Puts the Courts on Trial” 7 April 1984 *Weekend Argus* 12.

<sup>69</sup> “SA’s Tragedy: Prisoners Who are Not Criminals” 10 April 1984 *Evening Post* 10 April 1984 8.

<sup>70</sup> 7 April 1982 *Weekend Argus* 12.

<sup>71</sup> 10 April 1984 *Evening Post* 8.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.* Also, see in general Peté and Devenish “Flogging, Fear and Food: Punishment and Race in Colonial Natal” 2005 31(1) *Journal of Southern African Studies* 3–21; and Peté “Punishment and Race: The Emergence of Racially Defined Punishment in Colonial Natal” November 1986 1(2) *Natal University Law and Society Review* 99–114. See also Peté “Like

The parliamentary opposition seized on the Hoexter Commission report in order to direct a heavy critical broadside at the Government. Mr David Dalling, the spokesman on justice for the Progressive Federal Party, labelled the report a “public crucifixion of Nationalist complacency, indifference, insensitivity, inefficiency, bureaucracy, incompetence, indolence, racial prejudice and bluster in the area of justice administration in our country”.<sup>74</sup> The conservatively-aligned newspaper *The Citizen* responded to Dalling's comment by stating that:

“We doubt whether the commission would see its report in that light – and even as a politician seeking to make capital out of the report, Mr Dalling goes beyond reason, stringing together a lot of words as if he had swallowed a dictionary.”<sup>75</sup>

The Government responded by stating that the Progressive Federal Party's “political and unfounded” use of the report was deplorable and would do nothing beneficial for justice in South Africa.<sup>76</sup>

The Hoexter Commission Report was debated in Parliament on 12 April 1984. The Minister of Justice, Mr Kobie Coetsee, admitted that the Government was concerned about the problem of prison overcrowding. Despite efforts by the Government to address the problem, the extent of overcrowding had been reduced from only 46 per cent to 41,8 per cent. Coetsee claimed that influx-control offenders made up only 7,09 per cent of the country's prison population.<sup>77</sup> The Government was investigating the feasibility of building new prisons to alleviate the problem. The Minister pointed out that minimum-security prisons could be built at a much lower cost and in a much shorter time than maximum-security prisons.<sup>78</sup> It is not clear whether the Government actually believed that it could “build its way out” of the problem of prison overcrowding, or whether it was simply raising the issue as a smokescreen to deflect the severe criticism directed at it in the media. What does seem to be clear is that, with the figures on prison overcrowding clearly indicating a serious problem, and the opposition making the link between prison overcrowding and the disastrous social-control measures implemented by the *apartheid* regime, the tone of the Government's response was defensive and focused particularly on deflecting the heavy critique directed at it.

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a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal 1845 to 1910 – Parts One and Two” forthcoming publications.

<sup>74</sup> “Hoexter Report” 7 April 1984 *The Citizen* 7 April 1984 6.

<sup>75</sup> *Ibid.*

<sup>76</sup> 7 April 1984 *Weekend Argus* 12.

<sup>77</sup> In December 1984 it was reported that, according to a special survey conducted on 15 March of that year, a total of 7,480 prisoners (both sentenced and unsentenced) were in prison due to violations of influx-control measures. The total number of sentenced and unsentenced persons detained in South African prisons of the day in question was 108,246. Those detained due to violations of *apartheid* influx-control measures on 15 March 1984 thus represented 7,09 per cent of the total South African prison population. See “Prison Service Maintains Professional Standards” 20 December 1984 *The Argus* 35.

<sup>78</sup> “More Prisons to be Built” 13 April 1984 *The Cape Times* 4; see also “Regering Aanvaar LLB-vereiste” 13 April 1984 *Die Vaderland* 4; and “More Prisons Needed” 13 April 1984 *The Citizen* 4.

The conservatively-inclined newspaper *Die Vaderland* latched on to the Minister's contention that influx control was not the main reason for chronic overcrowding in South Africa's prisons. Under the headline "Pass offenders only 3,9 per cent of prison population", the newspaper ran a story citing the National Party Member of Parliament for Kroonstad, Mr Willie Breytenbach, who stated that, according to a census of the prison population conducted on 31 January 1983, only 4 170 of the more than 103 000 persons in prison on that day were influx-control offenders. Removing the influx control offenders completely from the equation would have reduced overcrowding in South African prisons on that day from only 41,3 per cent to 35 per cent. In line, perhaps, with the general "laager mentality" of those within the ruling party at this time, Breytenbach emphasized that prison overcrowding was not a problem which was unique to South Africa.<sup>79</sup>

The more liberal South African newspapers were loathe to accept the contention that South Africa's infamous pass laws were only a minor factor contributing to overcrowding in South African prisons. Under the headline "Disbelief Greets Official Tally of Pass Law Inmates", the *Eastern Province Herald* published an article sceptical of the claim by the Minister of Justice that only 7,09 per cent of South African prisoners were influx-control offenders. The article cited the views of Helen Suzman, the Progressive Federal Party spokesperson on Justice, who stated that she simply did not believe the Minister. It also cited the views of Mrs Joyce Harris of the Black Sash, who stated that she would be extremely surprised if the figure of 7,09 per cent was correct and said that she thought Helen Suzman was "much more likely to be correct".<sup>80</sup> Suzman stuck to her guns when, on 18 May 1984 during a debate in Parliament, she once again drew the attention of the Government to the chronic overcrowding in South African prisons. According to a report in *The Citizen*, Suzman suggested to the Minister of Justice that he should tell his cabinet colleagues that the overcrowding in prisons, which was due to influx-control laws, was intolerable and that something should be done about it. She suggested to the Minister that he "take the Hoexter, Van Dam and other reports on the system of justice in South Africa and 'shove them under the noses' of his Cabinet colleagues".<sup>81</sup> Suzman also called for the appointment of a permanent monitoring body, appointed from outside the Prisons Service, to conduct regular inspections of prisons. Certain National Party members of Parliament accused Suzman of "misusing" the debate on the Prisons' budget vote to attack the Government.<sup>82</sup>

During the first half of the 1980s, South Africans were involved not only in a physical struggle, but also in an ideological struggle. The fact of chronic overcrowding in South African prisons during this period was used as ideological weapon by those opposed to the *apartheid* regime. While those who supported the *apartheid* Government sought to minimize the overall role played by *apartheid* social-control legislation in aggravating the problem,

<sup>79</sup> "Pasoortreders net 3,9 ps. Van Tronkvolk" 13 April 1984 *Die Vaderland* 4.

<sup>80</sup> "Disbelief Greets Official Tally of Pass Law Inmates" 14 April 1984 *Eastern Province Herald* 3.

<sup>81</sup> "Prison Overcrowding is Intolerable – Suzman" 19 May 1984 4.

<sup>82</sup> "Call for a Monitoring Body to Inspect Prisons" 19 May 1984 *Weekend Argus* 3.

those who opposed the regime sought to maximize its role. Whatever figures are used, it is clear that *apartheid* social-control legislation did play a significant role in prison overcrowding at the time. It is equally clear, however, that *apartheid* social-control legislation was not solely to blame for the problem. It should have been obvious to all concerned in the ideological debate that the roots of prison overcrowding lay much deeper than *apartheid* social-control legislation. Deep economic inequalities, as well as gaping social and political divides, stretching back decades and even centuries had an equally important role to play. As bitter experience during the post-*apartheid* period was to prove, simply removing influx control and the pass laws would not magically solve the deep-seated problem of prison overcrowding.

## 5 CORPORAL PUNISHMENT AS A POSSIBLE “SOLUTION” TO PRISON OVERCROWDING

Of all the possible “solutions” proposed to deal with the problem of prison overcrowding in the first half of the 1980s, one of the most interesting was the suggestion that, wherever possible, corporal punishment should be used as an alternative to imprisonment.<sup>83</sup> Although there is no evidence that the suggestion was ever implemented, one of the reasons that it is worthy of further discussion lies in the fact that it ties in with a theme which was prominent within South African penal discourse during colonial times – that is, that corporal punishment was a particularly suitable punishment for dealing with black offenders.<sup>84</sup> Despite the fact that whipping was a form of punishment more at home in the eighteenth than in the nineteenth century,

<sup>83</sup> See, eg, *Die Vaderland* 5 February 1981 1. Note that the proposed increase in the use of corporal punishment was not the only “strange” suggestion made to improve penal policy during this period. In August 1984, in an article intriguingly entitled “Use prisoners as guinea pigs – vet”, *The Daily News* reported on a bizarre suggestion by a certain Dr Brian Wessels, made during a lecture at the University of Natal. According to the report Dr Wessels, who was a veterinarian, suggested that long-term prisoners be allowed to “repay their debt to society by volunteering to be subjects in medical experiments”. The report went on to describe the rationale for this bizarre suggestion, *inter alia*, as follows: “[I]f prisoners, excluding non-violent political prisoners, could give their permission for the research knowing the consequences of the experiments, they would not be a burden on society. Commercial firms would pay a fortune to have live volunteer subjects in a closed environment for their experiments. The prisoners could also in this way earn money to support their families.” See “Use Prisoners as Guinea Pigs – Vet” 9 August 1984 *The Daily News* 6.

<sup>84</sup> See the following articles on the use of corporal punishment as a weapon of “last resort” when confronted with intractable social problems, and as a particularly suitable form of punishment for black offenders: Peté and Devenish 2005 31(1) *Journal of Southern African Studies* 3–21; Peté November 1986 1(2) *Natal University Law and Society Review* 99–114; Peté “Spare the Rod and Spoil the Nation?: Trends in Corporal Punishment Abroad and its Place in the New South Africa” 1994 3 *South African Journal of Criminal Justice* 295–306; Crocker and Peté “Letting Go of the Lash: The Extraordinary Tenacity and Prolonged Decline of Judicial Corporal Punishment in Britain and its Former Colonies in Africa (Part 1)” 2007 28(2) *Obiter* 271–290; Crocker and Peté “Letting Go of the Lash: The Extraordinary Tenacity and Prolonged Decline of Judicial Corporal Punishment in Britain and its Former Colonies in Africa (Part 2)” 2007 28(3) *Obiter* 465–501.

the ideological power retained by this form of punishment in the penultimate decade of the latter century is significant.

During his evidence before the Hoexter Commission in February 1981, General Brink expressed the view that, in certain cases, it was preferable to sentence an offender to corporal punishment than to imprisonment. He made it clear that he was speaking in his personal capacity and that he was not a supporter of compulsory corporal punishment. He pointed out, however, that imprisonment often brought with it a degree of disruption to the offender and his family. For example, on being imprisoned the offender might lose his employment. Sentencing certain petty offenders to corporal punishment as opposed to imprisonment, would reduce the degree of disruption experienced by those offenders.<sup>85</sup>

Three years later, in April 1984, corporal punishment once again became part of the public discourse when the *Sunday Tribune* broke the news that a secret Department of Justice document had proposed an increase in sentences of corporal punishment as an alternative to imprisonment, in order to cut down on prison overcrowding. In a dramatic report under the headline “Cane the criminal: Whippings will ease prison overcrowding – secret report”, the *Sunday Tribune* alleged that South Africa had “the most prisoners per capita in the world” and that certain prisons were overcrowded by almost eighty per cent.<sup>86</sup> According to the report, one of the proposals put forward by a Department of Justice working group investigating ways of reducing the prison population, was to increase the number of offences for which whippings could be imposed, as well as to increase the age limit beyond which whippings could no longer imposed.<sup>87</sup> If accepted, this latter proposal would have extended an antiquated and brutal form of “sanguinary” punishment to offenders who could, by no stretch of the imagination, be classed as “juveniles”. At this time juveniles were the only group deemed suitable to receive corporal punishment. The fact that this antiquated form of sanguinary punishment was being seriously considered as a possible solution to prison overcrowding at this time should not be all that surprising. The temptation to resort to corporal punishment as a “quick fix” in times of stress, is a very old theme within South African penal history, stretching back to colonial times.<sup>88</sup>

The increased use of corporal punishment was supported by the Deputy Attorney General of the Transvaal, Dr JA van S D’Oliveira, who believed that “whipping was not more humiliating than imprisonment and would teach a short, sharp lesson”.<sup>89</sup> It appears, however, that D’Oliveira was in the minority. According to the *Sunday Tribune*, a confidential document had

<sup>85</sup> “Tronke in SA Oorvol, Getuig Generaal” 5 February 1981 *Oggendblad* 5.

<sup>86</sup> “Cane the Criminal: Whippings will Ease Prison Overcrowding – Secret Report” 15 April 1984 *Sunday Tribune* 4.

<sup>87</sup> It was proposed that the age limit be increased to 29.

<sup>88</sup> See in general: Peté and Devenish 2005 31(1) *Journal of Southern African Studies* 3–21; Peté November 1986 1(2) *Natal University Law and Society Review* 99–114; Peté 1994 3 *South African Journal of Criminal Justice* 295–306; Crocker and Peté 2007 28(2) *Obiter* 271–290; Crocker and Peté 2007 28(3) *Obiter* 465–501.

<sup>89</sup> 15 April 1984 *Sunday Tribune* 4.

been sent to the judiciary and the Bar, outlining the proposals relating to corporal punishment, which had elicited a significant degree of opposition. The newspaper quoted a string of experts expressing their strong opposition to the proposed expansion of corporal punishment within South Africa's penal system. The Chairman of the General Council of the Bar was quoted as stating that: "Whipping is a particularly brutal punishment which civilised societies should avoid."<sup>90</sup> The director of the Centre for Applied Legal Studies at the University of the Witwatersrand, Professor John Dugard, condemned the proposals a "crazy and barbaric" and stated that: "Corporal punishment has no place in the 20th Century."<sup>91</sup> Dugard pointed out that the European Court of Human Rights had condemned judicial corporal punishment as inhuman and degrading, and that the United States of America had abandoned this form of punishment in 1968 when it was found to be unconstitutional on the grounds of cruelty. According to Dugard: "The way to reduce prison population is to repeal the host of racist laws and introduce a more effective system of probation."<sup>92</sup> Professor David McQuoid-Mason of the University of Natal stated that: "While most criminologists agree that prison is not the most suitable place for trying to resocialise or rehabilitate criminals, that does not mean resorting to semi-barbaric sentences."<sup>93</sup> The head of Criminology at the University of Durban-Westville, Graser, expressed the opinion that corporal punishment was "not effective as a deterrent and has no rehabilitative effect" and concluded bluntly that: "It merely brutalises."<sup>94</sup> According to Graser, violent punishment could make offenders more violent, creating a "vicious circle".<sup>95</sup> Finally, the *Sunday Tribune* quoted from the 1965 judgment of DG Fannon, a former judge of the Supreme Court in the Natal Provincial Division:

"Whipping is a punishment of a particularly severe kind. It is brutal ... and constitutes a severe assault upon not only the person of the recipient, but upon his dignity as a human being."<sup>96</sup>

When contacted by the newspaper, the former judge expressed the opinion that South Africa should be limiting corporal punishment rather than extending it. In an editorial under the title "Degrading proposal", the *Sunday Tribune* summed up its opinion on the proposal *inter alia* as follows:

"It appears to be one of the peculiarities of the Government that as one section attempts reforms, another moves inexorably in the opposite direction. The Department of Justice is circulating a proposal that, in order to ease prison overcrowding, greater use should be made of whipping ... A more misguided approach would be difficult to imagine. The Hoexter Commission has already identified the prime cause of overcrowding. It is the race laws which make criminals of decent people convicted for the 'crime' of seeking a living. Whipping is a particularly brutal punishment. It is an assault not only on the person, but on human dignity. It brutalised the recipient, the persons and

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

the society administering it. Medieval in concept, whipping has no place in a civilised judicial system ... [I]f the Government accepts the thrust of the Hoexter Commission's thinking this repugnant idea will be abandoned immediately.<sup>97</sup>

Ten days later on 25 April 1984, *The Natal Mercury* carried a report entitled "Whipping as an expedient slammed by lawyers". *Inter alia*, the article cited the views of the President of the Natal Law Society, Mr Tony Brokensha, who was quoted as stating that: "In my view whipping is seldom appropriate other than for juveniles to whom the alternative would be either prison or reformatory."<sup>98</sup> The article also went into grisly detail – provided by Dr JA van S D'Oliveira who was one of the few supporters of corporal punishment at this time – about the way in which a sentence of corporal punishment was carried out in practice:

"Juveniles were caned while wearing their trousers but seniors were stripped and a protective cloth was placed over their naked buttocks to prevent cutting and bleeding and their kidneys were padded. Their hands were either tied to a frame or held away from the buttocks to prevent arm injuries. The maximum amount of cuts were seven."<sup>99</sup>

Dr D'Oliveira could not tell the newspaper how much force went into each blow, but confirmed that it was "very considerable".<sup>100</sup> Reading these extracts – even taking into account that the debate took place during the brutal *apartheid* years – one may be forgiven for thinking that the article relates to a discussion of penal policy which took place in 1884, as opposed to 1984. A cutting editorial in *The Daily News* on 25 April 1984 summed up the disapproval felt by most commentators at this time:

"It really is dismaying to find in 1984 almost enthusiastic endorsement by the Department of Justice for whipping as a punishment ... [A]s Mr Justice Didcott said last week, flogging stoops to the level of the criminal it punishes – 'This is not the time for putting the clock back'. Quite. There are other, more civilised, ways of reducing the jail population: by eliminating certain statutory crimes, such as influx control offences, for a start."<sup>101</sup>

Even though, as indicated above, the arguments in favour of the extension of corporal punishment were firmly rejected by most commentators in the mid 1980s, their re-appearance more than seventy years after the end of the colonial period is significant. Firstly, it illustrates the ideological power of whipping as form of punishment. Secondly, it indicates a dysfunctional penal system characterized by the endless repetition of sterile debates. Indeed, it is interesting to note that even during the post-*apartheid* period, corporal punishment was suggested as a possible "solution" to chronic overcrowding in the South African penal system.<sup>102</sup>

<sup>97</sup> *Ibid.*

<sup>98</sup> "Whipping as an Expedient Slammed by Lawyers" 25 April 1984 *The Natal Mercury* 16.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> "Back to the Whip" 25 April 1984 *The Daily News* 20.

<sup>102</sup> Reference my post-*apartheid* articles.

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## 6 CONCLUSION

It has been argued in this article that public debates on the issue of prison overcrowding throughout the first half of the 1980s held up a mirror to South African society, in which those willing to look could see reflected the inevitable demise of the *apartheid* system. Open discussion in the media of the legislative restrictions which prevented free reporting about conditions in South African prisons provided opponents of the *apartheid* system with a platform to lambast the Government for its censorship of information. Furthermore, the extensive public debate which took place throughout the period examined on the clear link between prison overcrowding and the continued enforcement of *apartheid* social-control measures, must have made it clear to all but the most closed-minded supporters of the system that these measures could not be maintained indefinitely. Those who followed the debates in the mainstream national newspapers would have known that imprisoning large numbers of ordinary black citizens for petty offences against social-control legislation was creating a long-term legacy of hatred and rage; that the deterrent effect of imprisonment was being eroded in the eyes of the black community; that the prisons had been turned into "Universities of Crime" by imprisoning large numbers of petty offenders alongside "real" criminals; and that the chronic overcrowding in South Africa's prisons was tarnishing the already poor image of the country in the eyes of the global community. They would have noted that not a year went by when overcrowding was not a major issue of public debate, and that the highly-respected Hoexter Commission placed much of the blame squarely on the policies of the *apartheid* Government. Finally, they would have detected a hint of desperation in the suggestion that part of the solution to overcrowding could be found in the increased use of corporal punishment, an antiquated and discredited form of dealing with offenders.

Apart from holding up a mirror to *apartheid* South Africa, it has been suggested in this article that the debates which took place during the first half of the 1980s are tied in with a much broader and longer-term public and academic discourse on the issue of prison overcrowding. Overcrowding was not unique to the *apartheid* period, but has remained a consistent feature of the South African penal system from its inception to the present day. Following the debates which took place during the first half of the 1980s, one is struck by the similarities with debates which took place during the colonial period, as well as the post-*apartheid* period. Indeed, the debates are characterized by the repeated identification of the same problem, together with the same set of "solutions", which are repeated year after year, decade after decade, and from one century to the next. Clearly, the problem of chronic overcrowding in South Africa prisons has deep roots and is inextricably linked to intractable social and economic ills, such as extreme poverty and inequality. It may even be that overcrowding is structurally intertwined with imprisonment as a form of punishment.