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

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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.¹

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.² 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”.³ 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’”.⁴ 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

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.⁵

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.⁶ 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".⁷ 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.⁸ 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.⁹ 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.¹⁰

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.¹¹ 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.¹² This building was described by the *Natal Witness* as “a low cottage, overgrown with creepers, fronted by a thick, verdant and lofty hedge”.¹³

Clearly the wattle-and-daub structures described above, despite their rustic charm, could not meet indefinitely the needs of a growing Colony.¹⁴ 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.¹⁵

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”.¹⁶ 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”.¹⁷ 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.

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: Carnarvon 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 prisons¹⁸

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”.¹⁹ 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?²⁰

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

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.²¹

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.²² 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.²³

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.²⁴ 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.²⁵ 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”.²⁶ 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”.²⁷ 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.²⁸ Tenders for the construction of the new gaol were called for in 1864.²⁹ On 9 June of that year the Colonial Secretary tabled the designs of the proposed new gaol in the Legislative Council.³⁰ 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.³¹ 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”.

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"³² and the "Report of the Royal Commission on Penal Servitude"³³) 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".³⁴

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 1867.³⁵ 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.³⁶ 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,

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.³⁷

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*.³⁸ 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 ...".³⁹ 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.⁴⁰

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”.⁴¹ 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.⁴² 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.⁴³ 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.⁴⁴ 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”.⁴⁵ 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

41

Ibid.

42

Idem 66-67 IV.

43

Idem 67.

44

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.⁴⁶

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 1596.⁴⁷ 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*.⁴⁸ 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".⁴⁹ This report stated that, of the forms of prison labour, "the treadwheel, crank, and shot-drill alone appear to the Committee properly to merit ... [the] designation of hard labour".⁵⁰ 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.⁵¹

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.⁵² The *Digest* pointed out that the labour undertaken

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 ...”.⁵³ 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”.⁵⁴

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”.⁵⁵ 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 1865.⁵⁶ 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 gaols of Natal are wanting in the most essential elements of prison discipline – separation and strictly penal labour ...”.⁵⁷ Pressure from the imperial authorities was eventually to lead to the appointment of a Commission of Enquiry in Natal on 19 November 1868.⁵⁸ 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*.

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)