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

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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*).¹ 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.²

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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.³

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.⁴ 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.⁵ 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”.⁶ 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 ...⁷

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.⁸

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 ...”.⁹ 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.¹⁰

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

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 treadmill 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”.¹¹ 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”.¹² 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 treadmill. 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.¹³

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 ...¹⁴

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

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".¹⁵

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.¹⁶ 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.¹⁷ Thus authorities in Durban and Pietermaritzburg were asked to advise the Lieutenant Governor on the forms of penal labour best suited to each gaol.¹⁸

With regard to the Pietermaritzburg Gaol, it was decided that hard labour of the first class would consist of treadwheel labour.¹⁹ 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".²⁰ These suggestions were concurred in by the Lieutenant Governor-in-Executive-Council.²¹

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

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.²² 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”.²³ 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”.²⁴ 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.²⁵

Two treadmills were imported from England, and during 1871 were erected at the Durban and Pietermaritzburg gaols.²⁶ The Lieutenant Governor was not particularly enthusiastic about the importation of the treadmills as he had heard that they were “going out of fashion at home”.²⁷ 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 treadmills, the Executive Council decided to adopt certain suggestions put forward by the Pietermaritzburg Gaol Board.²⁸ 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.²⁹ 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.³⁰ 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”.³¹ 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.³² 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 ...³³

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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”,³⁴ 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.³⁵

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”.³⁶ 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 ...”.³⁷ 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.³⁸ 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”.³⁹ 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”.⁴⁰ The *Natal Witness* was far

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.⁴¹

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”.⁴²

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.⁴³ 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.⁴⁴ 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.⁴⁵

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”.⁴⁶ 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 ...”.⁴⁷ 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”.⁴⁸ 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.⁴⁹ 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

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*.⁵⁰

The response of the authorities in Natal to the principle of separation as set out in the *Digest* was not positive.⁵¹ 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 ...⁵²

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.⁵³ 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.⁵⁴ 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".⁵⁵ 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.⁵⁶ 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".⁵⁷

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.⁵⁸

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

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*.⁵⁹ 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”.⁶⁰ 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.⁶¹ 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.⁶²

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.⁶³ 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.⁶⁴ Since the proposed new building would allow each prisoner to be confined separately at night, the

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 1882.⁶⁵ 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.⁶⁶

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”.⁶⁷ 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

65 See GH Natal 93/Dispatch 68 KwaZulu-Natal Archives Pietermaritzburg Repository: Hicks Beach to Wolseley 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”.⁶⁸ 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.⁶⁹ David Killingray’s work points to the extensive use of corporal punishment in British Colonial Africa.⁷⁰

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.⁷¹

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.

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.