



THE PENAL SYSTEM OF COLONIAL NATAL :

FROM BRITISH ROOTS

TO RACIALLY DEFINED PUNISHMENT

BY

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P R E F A C E

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LIST OF ABBREVIATIONS

CO	Colonial Office, London
CSO	Colonial Secretary's Office, Natal
GG	Government Gazette, Natal
GH	Government House, Natal
GN	Government Notice
NM	The Natal Mercury
NA	The Natal Advertiser
NPP	Natal Parliamentary Papers
NW	The Natal Witness
p(s)	page(s)
Para(s)	Paragraph(s)
Reg(s)	Regulation(s)
S(s)	Section(s)
<i>Times</i>	Times of Natal
Vol(s)	Volume(s)

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The Structure and Layout of the Thesis.

The format of the thesis follows the way it was conceived. Conventional chapter numbering has not been adopted as this would suggest a logical sequence which, quite deliberately, has not been adopted.

Instead, there are no fewer than three introductions : The first general, the second "theoretical" to explain the intellectual context and the third "empirical" to provide historical background to the developments narrated. The more conventional chapters are divided into two parts reflecting major themes and not chronology. There is one conclusion, not illustrated as a chapter as it attempts to pull all these strands together. I hope that the structure enlightens rather than confuses. A reader who tends toward the latter should consult the table of contents.

GENERAL INTRODUCTION

This thesis does not claim to be a complete penal history of the colony of Natal. Rather it investigates selected themes which characterized Natal's penal system during the period 1842 to 1910. It attempts thus to reveal both the similarity of that system to the penal systems of the advanced capitalist states as well as its essentially unique character.

The continuities between penal practice in Natal and elsewhere in the capitalist world do not seem difficult to explain; Natal was after all a colonial possession of the world's oldest and most advanced capitalist state. With the annexation of Natal to the British Empire in 1842, and the introduction of the British administration in 1845, the colony became part of a single expanding world capitalist economy. The legal and administrative institutions which were set up to govern and regulate this new market in the interests of the Empire, were modelled upon British institutions. These institutions had developed with, and formed an integral part of the system of industrial capitalism. The officials and administrators sent out from "home" to operate these new institutions were likewise ideological products of the most industrialised and developed capitalist country in the world. Thus the penal system imported into Natal in the middle of the nineteenth century, and all the ideological baggage which came with that system, had its roots in the metropolitan country, where the punishment of imprisonment had arisen with the development of capitalism, and was linked thereto. Any study of the penal system of Natal thus cannot ignore the origins of imprisonment as a form of punishment, and the reasons for its development along with the rise of capitalism in Europe. It would be a mistake, however, simply to point to the similarity of the prisons of Natal to prisons in the mother country. While Natal's economy was certainly integrated, as a peripheral sector, with a single world capitalist economy, it could certainly not be described as capitalist in nature.

The prison in Europe had emerged as a response to large scale industrialisation and the rapid expansion of capitalist relations of production. Until the last decades of the nineteenth century, Natal had no industries worth speaking of. In addition the white colonists were confronted by a large

indigenous population, which fiercely and successfully resisted being drawn into wage labour for the white man, which in effect meant subjection to capitalist relations of production. Natal's penal system must thus be seen in the context of the colonial situation. To a large extent the role of the prison in Natal and the ideologies of punishment which developed in the colony over the years, were a response to specific local conditions. It is this fact that makes the penal system of Natal unique. This thesis is thus concerned with both continuity and originality; the articulation of the penal theories and assumptions of an industrialised metropolitan political economy, with a rural colonial political economy.

THEORETICAL INTRODUCTION

It is a central proposition of this thesis that an understanding of the penal system of colonial Natal must first and foremost be based upon a sound grasp of the political economy of the colony. The political economy of Natal will be outlined under Section A of this Theoretical Introduction, and the implications for penal ideology in the colony discussed. Penal theories which have been formulated with other more advanced capitalist political economies in mind, will then be examined in the light of the peculiarities of the colonial situation, under Section B.

SECTION A: THE POLITICAL ECONOMY OF NATAL AND IMPLICATIONS FOR PENAL IDEOLOGY

When Natal was annexed by the British in 1842, the new colony did not hold out the prospect of immediate economic advantage for Britain. It was the activities of the rebellious trekkers in Natal and their open defiance of British sovereignty that led to the annexation¹. The reasons for the annexation were thus negative rather than positive, and it could not be said that Natal was a welcome addition to the British Empire. This is an important fact to note since it meant that the Imperial Government was determined to administer its new colony with the minimum of expenditure. This left the colonial state weak and unable aggressively to impose capitalist relations of production on the region. The large African population of Natal consisted mainly of peasant producers engaged in the homestead system of production². The efficiency of this mode of production meant that it was well able to produce sufficient surplus to offset expenditure in the new colony. It thus made sound financial sense to the Imperial government to retain the system of peasant production, instead of attempting to destroy the existing relations of production and replace them with capitalist relations³.

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1. See E H Brookes and C De B Webb *A History of Natal* (1965) pp 29-41 and D Welsh *The Roots of Segregation - Native Policy in Colonial Natal 1845-1910* (1971) pp7-9.
 2. See S Marks and R Rathbone (eds) *Industrialisation and Social Change in South Africa* (1982) pp168-169; and S Marks and A Atmore *Economy and Society in Pre Industrial South Africa* (1980) pp113-114. See also Appendix 1 p199.
 3. See H Slater "The Natal Land and Colonisation Company 1860-1948" (University of London - Institute of Commonwealth Studies Seminar Paper) (Collected Seminar Papers on the Societies of Southern Africa in the 19th

This latter course would have been prohibitively expensive, and would have necessitated the destruction of the entire African social structure, to which the homestead system of production was linked indissolubly¹. Thus the British Government approved the Shepstonian system of "Native Administration" with its several "Reserves", which allowed African social structures to be consolidated². The view that peasant production should be allowed to continue also came to be adopted by several powerful fractions of capital. On account of various circumstances, which need not detain us here, huge tracts of Natal land had fallen into the hands of absentee speculators³, who decided that the easiest way to make a profit was to allow African subsistence farmers engaged in homestead production, to utilise their land in return for rent. This practice was commonly known as "Kafir Farming"⁴. Besides the rentiers, the merchants too were opposed to the destruction of the homestead system of production, since this would adversely have affected trade.

Thus, the desire of the Imperial Government to keep expenditure to a minimum and the interests of several powerful fractions of capital, meant that for the greater part of the nineteenth century, a relatively independent class of African peasant producer was able to continue in existence. They resisted all attempts to subordinate them to capitalist relations of production, in the form of wage labour for the white man.

It is for this reason that the economy of Natal during the colonial period has been described as :

" an articulation of modes of production based upon different and sometimes contradictory forms of socio-labour organisation along a capitalist - pre capitalist continuum ".

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1. See S Marks and A Atmore *Economy and Society in Pre-Industrial South Africa* (1980) p154.
 2. See D Welsh *The Roots of Segregation - Native Policy in Colonial Natal 1845-1910* (1971) pp7-30.
 3. See E H Brookes and C De B Webb *A History of Natal* (1965) pp.50-51
 4. See S Marks and A Atmore *Economy and Society in Pre-Industrial South Africa* (1980) pp162-163.

While the policy outlined above might have been in the interests of the Imperial Government, and of merchant and rentier capital, it was certainly not in the interests of the local white capitalist farmers, who were unable to obtain African labour at a price that suited them. Over the years the colonial farmers waged a bitter and persistent struggle to reduce the options available to the black peasant farmer, and thus force him into wage labour for the white man¹. The conflict within white capital as to the form the exploitation of the African population should take, was clearly irreconcilable. A decisive outcome to this conflict was delayed, however, by the importation of Indian indentured labourers, which eased the labour shortages experienced by the white colonial farmers². Confronted by the strength of the Natal African peasantry, capital was thus forced to delay subjecting the African population to capitalist relations of production, and had to turn outward to obtain the necessary labour. The importation of Indian labour did not eliminate the labour shortages experienced by the colonial farmers however and they continued to call for state action to secure a coerced African labour force. Particularly strident were the stock farmers of the Natal interior since it was only the coastal sugar farmers who were fortunate enough to be allocated Indian indentured labour. The stock farmers relied almost entirely on African labour and, according to Shula Marks, "regarded the failure of Africans to work for them virtually as a criminal offence"³, and were inclined "to be far more radical in their views than the officials, planters, or townsmen"⁴. In calling for the construction of a labour repressive system, the farmers of Natal had much in common with the dominant landowners in other racial orders. As Stanley Greenberg notes, commercial farmers in a racial order were particularly likely to adopt what he calls the "German route" to capitalist agriculture i.e. the plundering of the peasantry by means of labour repressive machinery, rather than the elimination of the peasantry followed by the creation of a class of free wage workers.

Stanley Greenberg argued that commercial farmers in a racial order were particularly likely to adopt what he called the "German route" to capitalist agriculture i.e. the plundering of the peasantry by means of labour repressive machinery, rather than the elimination of the peasantry followed by the creation of a class of free wage workers.

1 *Ibid* pp 158-160.

2 *Ibid* p 149.

3 S Marks *Reluctant Rebellion - The 1906-8 Disturbances in Natal* (1970) p17.

Greenberg also argued that race plays an important part in this "plundering of the peasantry" :

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

In peripheral economies which adopted the "German route" to capitalist agriculture, racial domination could thus be intimately connected to a system of labour coercion and exploitation. This point is a very useful one in understanding the racial prejudices, which were so much part of the ideological make-up of the white settlers in colonial Natal. The colonial state was too weak to destroy the strong and prosperous African peasantry, and create in its place a class of free wage labourers. The white settlers were thus forced to look to a coercive labour system based upon racial lines, rather than to the creation of a class of free wage labourers subject only to the control of market forces. The coercive nature of social relations between whites and blacks in Natal, obviously exercised a profound effect upon ideologies of punishment in the colony. British society was based upon formal equality, and its penal system was designed to convince each individual offender of his guilt, and induce him to reform himself². The social system of colonial Natal, however, was based upon white domination, and could thus be expected to emphasize white sovereignty, and the firm punishment of black offenders against white authority. A strident racist ideology was deeply entrenched in the collective psyche of white colonial Natal³. It was not only direct economic circumstances (i.e. frustration at the shortage of labour amidst a large African population, and the desire to create a racially based

1 S Greenberg *Race and State in Capitalist Development* (1980) p59.

2 See Theoretical Introduction Section B : The Punishment of Imprisonment - With Particular Reference to the Colonial Situation pp11-24.

3 See S Marks *Reluctant Rebellion - The 1906-1908 Disturbances in Natal* (1970) pp3-26.

coercive labour system) which resulted in the rampant racism of Natal's white colonists. 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 civilization was the culmination of the evolutionary process¹. 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 civilization. Racist paternalism played an important part in influencing penal theories in Natal. However, the racist ideology of white Natal was not only a reflection of the confidence of the Victorian imperialists in the "superiority of their own culture over indigenous native cultures"². The brand of racism exhibited by Natal's white settlers was also strongly tinged with an almost paranoid fear of the surrounding African population. With a large African population internal to the colony, and the unconquered Zulu military state to the north, the white colonists felt themselves to be the embattled representatives of "civilization", surrounded on all sides by savage barbarians. Respect for white authority had to be maintained at all costs, and defiance of such authority met with immediate and severe retribution. Obviously this element of fear in white racist ideology had profound implications for the theories of punishment of the colony.

The penal system of Natal clearly reflected the conflict between the two fractions of the ruling class described above. On the one hand the Imperial Government constantly urged penal reform to bring Natal's penal system into line with "accepted penal practice" (i.e. that model adopted in the industrialised capitalist states). The colonists of Natal, on the other hand, complained bitterly in terms of their strident racist ideology that imprisonment had no effect on the ignorant and idle "Kafirs"; and attacked the misguided sentimentalism of the Imperial authorities. In the middle of this ideological conflict stood the colonial state; forced to carry out the directions of the Imperial Government; but at the same time confronted with the reality of Natal's social, political and economic situation. Faced often with implacable opposition from the political

1 See J G Riekert "The Natal Master and Servant Laws" (University of Natal-Pietermaritzburg - Thesis) (1983) p15.

2 D Welsh *The Roots of Segregation - Native Policy in Colonial Natal 1845-1910* (1971) p27.

representatives of the colonists (for example over the proposed abolition of whipping of servants for civil offences)¹ the colonial state was itself subject to the same economic pressures as the colonists (for example it was necessary to utilise convict labour on the Durban harbour works due to the shortage of labour²). For the sake of analysis it may be stated in general terms that the balance of power rested initially with the Imperial Government, which exercised ultimate authority over the direction of penal policy. Thus during the first part of the colonial period (roughly before the granting of responsible government status to Natal in 1894) British influence over penal policy was particularly significant. Part One of this thesis will deal with this period. Part Two will deal with the latter part of the colonial period, towards the end of the nineteenth and beginning of the twentieth centuries. It was during this period that the conflict outlined above began to be resolved in favour of local employer capital over merchant and rentier capital; and in favour of the interests of the colonists over those of the Imperial authorities³.

The changes in the political economy of Natal were primarily due to two factors: the discovery of gold on the Witwatersrand in 1886, and the granting of responsible government status to Natal in 1893⁴. The discovery of gold affected the entire South African region, and the economy of Natal expanded dramatically in response to the new market opportunities which arose with the industrial development of the Witwatersrand. In the field of agriculture the tide turned against the African peasant producers, as commercial farming became increasingly viable, and more and more land passed from the hands of the absentee landlords to the growing class of white commercial farmers. In the political sphere the balance also swung in favour of local interests, and the colonists took control of the colonial state after the granting of responsible government in 1893. As Natal became more independent of the mother country, the penal system of the colony was far less influenced by English penal

1 See Part Two Chapter 3: "Keeping the Natives in their Place" - The Black Man, White Ideology, and the Punishment of Imprisonment pp131-146.

2 See Part One Chapter 2: Prison Labour - B The Employment of Convicts on Public Works in Natal pp 49-59.

3 See S Marks and A Atmore *Economy and Society in Pre-Industrial South Africa* (1980) pp163-164.

4 See C Bundy *The Rise and Fall of the South African Peasantry* (1979) pp183-192.

policy, and came increasingly to reflect ideologies and concerns that were unique to Natal. It was in the increasingly important urban centre of Durban that the policy of strict racial segregation was first systematically implemented. This was to have a profound effect upon penal thinking in the colony.

Although by the turn of the century Natal could by no means be described as being highly industrialised, the colony's urban centres were growing in importance. Durban in particular, as the nearest port to the rapidly industrialising Witwatersrand, was developing into an important commercial centre¹. A higher level of class conflict within Natal's major urban centre was the inevitable result of increased development; and the social unrest following the Anglo-Boer War of 1899-1901 served to further increase the level of conflict. The manner in which the ruling class responded to the new challenges facing it were to have important repercussions for the development of the colony's social system. M W Swanson states :

" The Anglo-Boer War, with its aftermath of crowding, labour shortages and unrest among all groups, intensified the social forces that had shaped the issues in the past and brought to maturity Durban's great debate on the Native question . "

The "great debate" within Durban's ruling class essentially revolved around the manner in which Africans could best be segregated and controlled. The "segregationists" favoured the establishment of an African location on the outskirts of the town, while the "repressionists" advocated the establishment of barracks within Durban itself. This debate was eventually to lead to the establishment of the "Durban system" of urban segregation, which certain scholars regard as the origin of urban apartheid in South Africa. For example, M W Swanson states :

" The concepts and basic components of urban segregation developed in the so-called "Durban System" of administration in Natal by the first decade of the twentieth century".³

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- 1 P La Hausse "Alcohol, the Ematsheni and Popular Struggle in Durban: The Origins of the Beer Hall in South Africa, 1902-1908" (University of Cape Town - Centre for African Studies Seminar Paper) (4 May 1983)p3.
 - 2 M Swanson "'The Durban System' : Roots of Urban Apartheid in Colonial Natal" *African Studies* (1976) p166.
 - 3 *Ibid* p160.

The penal system of Natal was not to remain unaffected by the general movement towards segregation at this time, and the Prison Reform Commission of 1905-6 recommended the establishment of a separate prison for white criminals¹. This call for complete racial segregation within the penal system, may be seen as being tied up with the creation at this time of an isolated white working class in Natal. As D Hemson states, the white working class had to be reproduced :

" as a definite stratum within the working class; dependent politically on the radically racist white petty bourgeoisie and contemptuous of working class solidarity".²

Thus the development of Natal's penal system at this time, cannot be understood in isolation from the wider social trends which were so significant during this period.

1 G G 5 June 1906 GN344 : Report of Prison Reform Commission - Para 74(9).

2 D Hemson "Class Consciousness and Migrant Workers" (University of Warwick - Thesis) (1979) p110.

B. THE PUNISHMENT OF IMPRISONMENT - WITH PARTICULAR REFERENCE TO THE COLONIAL SITUATION

" [T]here is clearly an inverse relation between the development of authority in the factory and in society whereby, in the long period of gestation of the capitalist mode of production, authority withdraws from the wider social universe to concentrate and direct itself in certain, well defined spaces, notably, in the factory. "¹

In the above words Dario Melossi describes the contradiction within capitalist society between the freedom and equality of the public sphere, and the oppression and inequality of the private sphere. The sphere of circulation which "is in fact a very Eden of the innate rights of man",² exists in dialectic tension with the sphere of production where the actual extraction of surplus value takes place. In the public sphere all men are equal and possessed of the same fundamental rights, such as freedom of speech, contract, and association. The content of these rights proves meaningless, however, within the confines of the capitalist factory and its "ancillary institutions",³ such as the prison, the school, and the army. Behind the closed doors of these institutions, the worker becomes subordinated to the factory owner, the prisoner to the warder, the scholar to the teacher etc. There are thus two contradictory but interrelated sides to the capitalist coin. As Michel Foucault points out :

" Modern society --- has been characterised on the one hand, by a legislation, a discourse, an organization based on public right, whose principle of articulation is the social body and the delegative status of each citizen; and, on the other hand by a closely linked grid of disciplinary coercions whose purpose is in fact to assure the cohesion of this same social body. "⁴

1 D. Melossi *Institutions of social control and capitalist organisation of work* in B. Fine (et al) (eds) *Capitalism and the Rule of Law* (1979) p91

K. Marx *Capital* Vol 1.

2 K. Marx *Capital* Vol 1. quoted in B. Fine (et) (al) (eds) *Capitalism and the Rule of Law* (1979) p66.

3 This term was coined by Dario Melossi. See B. Fine (et) (al) (eds) *Capitalism and the Rule of Law* (1979) p94.

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

Adopting the above analysis as a starting point, it is clear that the punishment of imprisonment should be examined from both the "public" and the "private" perspective. The side which the prison presents to the outside world must be investigated, as well as the hidden aspects of the punishment of imprisonment. It must be remembered that the various theories which will be examined do not relate specifically to the colonial situation, but focus rather upon the prison within the more developed capitalist political economies. These theories can thus not be adopted without qualification, and in each case the colonial situation must be taken into account.

THE PUBLIC SIDE - ABOVE THE SURFACE

Punishment by deprivation of a fixed quantum of liberty, exactly proportioned to the gravity of the crime committed, is peculiar to capitalist society. This was the view of E B Pashukanis, put forward in his work *Law and Marxism*.¹ Pashukanis linked his theory of bourgeois punishment directly to Marx's theory of commodity fetishism. In simple terms, commodity fetishism may be described as the double abstraction which takes place under capitalism from a qualitatively distinct object with a use value to a commodity with an exchange value; and from concrete labour to abstract labour. Pashukanis saw both the commodity form and the form of abstract labour as being linked to the bourgeois form of punishment. The concept of equivalence in punishment is derived from the concept of equivalence inherent in the commodity form (through the commodity form qualitatively different objects become "equal" e.g. a cow with an exchange value of x will be the equivalent of a tractor with an exchange value of x). Punishment by deprivation of an abstract piece of freedom is derived from the concept of abstract labour measured in time. Pashukanis thus regarded imprisonment as being a specifically bourgeois form of punishment since it deprives a wrongdoer of his/her

1 E B Pashukanis *Law and Marxism : A General Theory* (1978)

liberty for a fixed period which is determined according to his/her degree of guilt.

While Pashukanis' theory clearly provides a valuable insight into why punishment in capitalist society takes the form of imprisonment, it offers too simplistic a view. Roger Cotterell notes that :

" Legal theory must be theory which confronts legal form in all its complexities, variety, ambiguities and contradictions rather than reducing that form to the 'necessary' expression or embodiment of particular social relations. It must be theory which does not ossify legal analysis through the presupposition that the characteristics of law in all circumstances and conditions are fixed by its unchanging 'necessary' functions, pre-given by social theory. "1

Pashukanis seems to fall into the above trap with the result that his theory is too rigid. Moreover, as Karl Korsch notes, Pashukanis is guilty of an "over-estimation of 'circulation', which he regards ___ as the only economic reality on which property is based today."2 Pashukanis focuses exclusively on the sphere of circulation, the open public side of the capitalist coin, and neglects the sphere of production, which is the hidden reverse side of that same coin. Peter Binns states :

" The problem with Pashukanis ___ is that he is obsessed by the commodity form and by commodity fetishism. He never goes beyond it in his development of the notion of law. "3

In order to achieve a more comprehensive understanding of the "public" aspect of the punishment of imprisonment, we may progress beyond Pashukanis to the work of Michael Ignatieff. In his work *A Just Measure of Pain* 4 Ignatieff points out that an important factor in the rise to

1 R Cotterell "Conceptualizing Law : Problems and Prospects of Contemporary Legal Theory" *Economy and Society* (Vol 10 - 1981) p359.

2 K. Korsch appendix to
E B Pashukanis *Law and Marxism - A General Theory* (1978) p195.

3 P Binns "Review Article - Law and Marxism" *Capital and Class* (Vol 10 - Spring 1980) p105.

4 M Ignatieff *A Just Measure of Pain* (1978)

prominence of imprisonment, was its claim to be a form of punishment which aimed not only at retribution, but also at the reform of prisoners. The "humanity" of imprisonment was very much part of the public image displayed by this new form of punishment which arose along with the development of capitalism. By means of a thorough historical analysis, Ignatieff explains why humanity and reform were so important to the concept of punishment by imprisonment.

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 be easily 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 "dull compulsion of economic relations"¹ 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 on consensus rather than coercion, and thus it was essential that the institutions of government and in particular the institutions of social control attain a measure of legitimacy in the eyes of the people. Ignatieff states :

" 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. "2

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

2 M Ignatieff *A Just Measure of Pain* (1978) p72.

Thus what was significant about the punishment meted out in the "total institution" was what Bob Fine termed its "fetishized character."¹ In other words, punishment did not appear as what it was (i.e. direct coercion), but instead it appeared to represent the general interest. This was the reason why it was aimed at making the criminal realise that he was "guilty" i.e. that he had offended against the general interests of society.² It was the criminal's own guilty conscience which inflicted punishment rather than some external coercive agent. This was in keeping with the capitalist ideal of a self regulating society based on consensus. Once a prisoner had admitted his "guilt" (i.e. his deviation from the abstract fetishized bourgeois norm), solitary confinement ensured that he had time to reflect on that "guilt" and thus "reform" himself. "Reform" entailed in essence, a commitment to the bourgeois moral order :

" 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. "³

The reformatory ideal was thus tied up with the bourgeois ideological conception of a society based on consensus, in which everyone was equal. The above argument may be extended by reference to a point made by Michel Foucault, whose work is examined in more detail below. Foucault noted that punishment by deprivation of liberty seemed to be "self-evident" in bourgeois society, since it seemed to be an egalitarian punishment which corresponded with the formal public equality of such a society.⁴ Liberty was possessed by both rich and poor and its loss would mean the same to both a rich man and a poor man.

From the various theories examined above, it would seem that the punishment of imprisonment, on its open public side, as it developed with the

1 B Fine (et al) (eds) *Capitalism and the Rule of Law* (1979) p43.

2 Ignatieff calls the penitentiary a "machine for the social production of guilt." (M Ignatieff *A Just Measure of Pain* (1978) p 231.)

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

4 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) p232.

rise of industrial capitalism, was characterised by concepts such as fairness, equality, humanity, and reform. These concepts must be carefully examined, however, to determine their relevance in understanding the form taken by imprisonment in the specifically *colonial* situation. There were deep and significant differences between the structure of society in colonial Natal, and the structures of the more advanced capitalist political economies. The ideological foundation of colonial society was not built around the idea of a self-regulating consensus based social structure. As has been discussed under section A,¹ the society of colonial Natal was more openly coercive than that of the mother country; and authority, in the form of white domination, was far more visible in the colonial context. Punishment of a black man was meant as a warning to all blacks that white sovereignty and authority were to be respected. The principles of fairness, equality, humanity, and reform, could thus not be expected to play a prominent role in the ideological conceptions of whites, as to the most suitable means of punishing blacks in the colony.

The attitude of the Natal colonists towards the black tribesmen seems to have been a mixture of paternalism and fear. The African mind was seen to be similar to that of a child, and doubts were expressed as to whether the black man could either understand or receive benefit from the punishment of imprisonment. Indeed it was feared that the childlike "innocent savage" was particularly vulnerable to the corrupting influences of the prison. Imprisonment was also seen as being far too lenient a punishment to have any effect upon a people possessed of brutal and degraded natures. Only direct physical coercion, it was argued, could keep the savage in his place. Deprivation of liberty by means of imprisonment was seen as being an abstract and civilized form of punishment, not entirely suitable in dealing with peoples on a lower plane of evolution. Imprisonment was thus a far more suitable means

1 Theoretical Introduction Section A : The Political Economy of Natal and Implications for Penal Ideology pp3-10.

of punishment for whites than for blacks.¹

To sum up, colonial society was held together by the threat of coercion rather than by a common belief in the equality of all its citizens. The white colonists of Natal could thus be expected to display an ambiguous attitude towards the punishment of blacks. On the one hand, some of their deepest ideological perceptions were derived from the experience of industrial Britain, a society based upon the ideal of consensus (e.g. equality, humane punishment, reform, etc). On the other hand, the colonists were confronted with the realities of the colonial situation. A racist and paternalistic ideology justified a coercive system, in which the white man was the master, and the black man was kept very much "in his place".

THE PRIVATE SIDE - BELOW THE SURFACE

It is not adequate to assess and judge the prison only in terms of its open visible side, and the hidden aspects of the punishment of imprisonment must also be investigated. In the first place, the direct economic and political interests served by the prison and by particular penal practices may be examined.

In examining the economic interests served by particular penal practices, the link between the state of the free labour market and penal labour practice must be investigated. This line of investigation is similar to that adopted by the scholars George Rusche and Otto Kirchheimer. In their work *"Punishment and Social Structure"*,² Rusche and Kirchheimer linked the evolution of the prison to the demands of the capitalist labour market, and concluded that the real function of the prison was the supply and training of labour. The more recent work of Dario Melossi and Massimo Pavarini *"The Prison and the Factory"*,³ also

1 The same sort of situation seems to have existed in the American South, and J Thorsten Sellin states : "There was no need to point out explicitly that the penitentiary was to house criminals from the master class. Criminal slaves were hanged, mutilated or flogged" (J T Sellin *Slavery and the Penal System* (1976) p140.

2 G Rusche and O Kirchheimer *Punishment and Social Structure* (1939).

3 D Melossi and M Pavarini *The Prison and the Factory* (1981)

points to the close link between the aims and effects of the penitentiary system and the condition of the market. These scholars conclude that when there is an excess of labour the penitentiary becomes an institution for destroying the workforce, and levels of subsistence within the institution are lowered. When labour supply is restricted however, the inmates of the penitentiary are usefully employed and then recycled onto the free market. In the context of colonial Natal these theories may be expected to be particularly useful. The continual shortages of African labour so bitterly complained of by the white farmers, also affected the colonial state, which required labour for much needed public works. The employment of convict labour on public works was often the only alternative which could be adopted by the colonial administration in times of a critical shortage of free workers. A clear linkage can thus be expected between imprisonment in Natal and the condition of the free labour market.

Turning to the political interests served by particular penal practices in Natal, the use of the colonial prison as an instrument for the social control of blacks must be examined. Charles van Onselen has pointed to the important role played by the prison in the social control of black mineworkers on the Witwatersrand at the turn of the century. Van Onselen sees the mine compounds, the courts, and the prisons as being "supporting institutions" of a web of legislation designed to control black mine labour. These institutions worked together to form an effective system of control. Van Onselen describes the situation as follows :

" [Economic forces] prised black South Africans off their land, separated them from their families, reduced them to the status of workers, and then ruthlessly re-allocated 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 rapidly industrialising economic system particularly well - the prisons and the mine compounds. "1

1 C Van Onselen *Studies in the Social and Economic History of the Witwatersrand 1886-1914-2* New Nineveh (1982) p171.

It will be suggested that while Natal's Togt barracks, for example, might not initially have proved as effective a means of social control as the mine compounds of the Witwatersrand, the prisons of Natal could certainly claim to be "supporting institutions" of legislation designed to control black labour. An important theme running through the penal history of Natal (particularly visible at the time of the Prison Reform Commission of 1905-1906) was that of overcrowding in Natal's gaols, as a result of the large number of committals for petty offences against social control legislation. Again and again it was pointed out that such offences were not strictly criminal in nature. Imprisonment served merely to expose the offender to hardened criminal elements, while contributing to the constant problem of overcrowding. Indeed, excessive overcrowding due to the imprisonment of large numbers of offenders against the pass laws and other social control legislation, remains a feature of the South African penal system to this day.

The above analysis of the political and economic interests served by particular penal practices, clearly provides valuable theoretical insights into the punishment of imprisonment. However, the legal system in general and the penal system in particular, should not be seen as a ruling class conspiracy, designed specifically as a means of class oppression. Such an approach would be over simplistic, and is typified by the work of Richard Quinney. In his work "Critique of Legal Order" he states :

" [T]he legal system is an apparatus created to secure the interests of the dominant class. "1

Jeffrey Reiman adopts a similar approach to an analysis of the role of prisons in capitalist society. He sees the "real" function of the prison as being to *maintain* crime rather than reduce it, with the object of keeping the threat of crime alive in the public imagination, so as to disguise the exploitative practices of the upper class.² Clearly

1 R Quinney *Critique of Legal Order* (1974) p52.

2 J H Reiman *The Rich get Richer and the Poor get Prison* (1977)

imprisonment can not be adequately understood in such simple and uncontradictory terms. While the overall effect of this form of punishment might have favoured the interests of the dominant class, the prison was not simply an instrument of ruling class oppression.

In his classic work "Discipline and Punish"¹ Michel Foucault looked beyond the direct economic and political interests served by particular penal practices. He contended that the punishment of imprisonment was just one example of the operation of a particular form of power which arose with the development of large scale productive industry. This new form of power was the power of *discipline*. Disciplinary power was different to anything that had come before it, and was essential in training an inexperienced work force to fit into the industrial production process. Foucault illustrated the distinctive nature of this new form of power as follows :

" The classical age discovered the body as an object and target of power, the body that is manipulated, shaped, trained, which obeys, responds, becomes skilful and increases its forces. "2

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. A good example of disciplinary power would be a drill instructor calling his squad to attention. He is concerned not only with obedience, but also with the positioning of every part of each man's body; the distance between the men; whether they are standing in straight rows; whether they are all dressed in the prescribed manner; whether they move in unison, and so on. It is

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

2 *Ibid* p136.

this minute attention to detail that characterises discipline and this is why Foucault called it a "micro physics of power".¹ 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 more useful, while at the same time causing the body to become more obedient, and thus politically less dangerous. The need for discipline in the early capitalist factory was obvious. The workers, recently separated from the land, had to be trained to perform dull repetitive labour, so that they would fit in with the mechanised production process. Just as machines required regular servicing to achieve optimum operating performance, so strict discipline was necessary to ensure an efficient workforce.

It is debatable whether discipline arose in response to the development of large scale productive activity as such, or whether it was a phenomenon peculiar to specifically capitalist industrial production. This debate is not relevant to this thesis, however, since the political economy of colonial Natal was neither industrialised nor capitalist.² The prison was in essence a disciplinary institution, which developed along with the rise of capitalism and large scale industrial production. To transplant such an institution into the rural setting of colonial Natal was clearly to locate it far from its origins. Disciplinary power was a fairly sophisticated form of control, designed to produce human machines which were capable of fitting into the complex industrial production process. While the production lines of Britain might have required highly disciplined human machines, the same could not be said of the productive sphere of colonial Natal. The colonial farmers could rely on a simpler form of control, based on direct coercion. Rather than learn the discipline and regularity of the industrialised capitalist production process, the black labourers of Natal had to learn to obey

1 *Ibid* p 139

2 See Theoretical Introduction Section A : The Political Economy of Natal and Implications for Penal Ideology pp3-10.

the white man without question. The whip was a far less expensive and less complicated means of securing black obedience than the disciplinary institution with its complex rules and regulations. Imprisonment was thus not regarded by the colonists as a particularly suitable form of punishment for blacks.

SUMMARY

To sum up, the prison as it developed in Europe, was characterised on its public side, by concepts such as fairness, equality, humanity and reform. An investigation of the more hidden and private aspects of the punishment of imprisonment revealed, however, that the prison was a disciplinary institution, designed to turn convicts into trained and obedient individuals. The penal system of colonial Natal was of necessity modelled upon that of the mother country. However, the punishment of imprisonment in Natal differed in both form and content from imprisonment in Britain. On the public side, concepts such as fairness, equality, humanity and reform, were not as important in the punishment of black prisoners in the colony, as they were in the punishment of white prisoners. To a significant extent, the punishment of blacks in Natal was an assertion of white sovereignty and authority. The harsh penal aspects of imprisonment were thus stressed when discussing the punishment of blacks. As for the private side of imprisonment in the colony, the gaols of Natal were certainly not model disciplinary institutions. They were clearly based upon the disciplinary model, but equally clearly, disciplinary power was not as important to rural Natal as it was to industrial Britain.

It will be suggested that the complex instruments of disciplinary control such as the treadmill and the crank seemed rather out of place in Natal. This thesis will examine why the minute rules and regulations which characterised disciplinary

power were also not rigidly applied in the gaols of the Colony; why imprisonment in Natal was affected by the economic and political situation which prevailed in the Colony; why the chronic shortage of free black labour exercised a profound effect over penal labour policy, and gang labour upon public works became an important form of penal labour; why the use of the gaols as instruments for the social control of blacks led to problems of overcrowding, and why questions were raised as to whether imprisonment was the best way to deal with civil offenders against social control legislation. Finally it will be suggested that while imprisonment in Natal, on both its public and private sides, was similar to that in the mother country, it was also substantially different.

PART ONE : BRITISH PENAL THEORY AND COLONIAL REALITY

Part One of this thesis is concerned mainly with the period before the granting of responsible government status to Natal in 1894. During this early colonial period, penal policy was still ultimately dictated by the authorities in England, and the ideological balance of power had not yet swung in favour of the Natal colonists. This part of the thesis will deal with the effects of transplanting the penal theories of industrial capitalism into the foreign soil of colonial Natal. It will examine the failure in practice of the attempt by the Imperial authorities, to bring the penal system of Natal into line with "accepted penal practice" (i.e. the practice in England) and the development of Natal's penal system along its own unique lines.

EMPIRICAL INTRODUCTION

The first prison in Natal was erected in Pietermaritzburg by the Voortrekkers. In the words of A F 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. "1

The prison, or "Tronk" as it was known, formed part of the Police Station, and in the words of another author, E Goetzche it was "a small, low building, constructed of raw bricks and 'very shaky'."2 It would seem that the first record of the conditions of prison life are contained in a petition by ten Natal traders, who were captured by the Boers during the hostilities of 1842, and 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 Christain World ___.

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___. "3

In August 1845 Natal was officially annexed by the British and on 12 December 1845 Martin West, the first Lieutenant-Governor of Natal, took the oath of office at Pietermaritzburg.⁴ One of West's first duties was to ensure that the Colony had a functional penal system. With regard

1 A Hattersley *Portrait of a City* (1951) pp9-10.

2 E Goetzche *Father of a City* (?) p44.

3 *Ibid* pp47-48.

4 E Brookes and C De B Webb *A History of Natal* (1965) p54



The Old Durban Gaol ("Tronk"). The gaoler, F A Dand is in a white suit and the photograph shows prisoner's bedding lying out in the sun. It was also the hospital.

(Courtesy Durban Local History Museum : Q81/2585/34a)

to Pietermaritzburg, he reported in February 1846 that he had appointed a gaoler and had incurred certain expense in "temporarily improving the small public building used as a prison"¹. 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.² The cost of this proposed new gaol was estimated at between £1,000 and £1,200, and perhaps because of this, it was never built. At this time only five criminal prisoners were confined in the Pietermaritzburg Gaol.³ In 1849 it was described as follows in "An Emigrant's Letters Home", published in the *Natal Witness*:

" It was some time before we found out that a comfortable - looking cottage residence was in reality the 'trunk', 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. "4

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.⁵ In 1847 a building was hired from a Mr S 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 commodious" building was hired from a Mr T Dand in 1849 at £40 per annum.⁶ This building was

1 Irish University Press Series of British Parliamentary Papers Vol 28 p65 : West to Maitland 24 February 1846.

2 G H 1209/18 West to Maitland 30 March 1846.

3 Irish University Press Series of British Parliamentary Papers Vol 28 p65 : West to Maitland 24 February 1846.

4 N W 22/6/1849.

5 Irish University Press Series of British Parliamentary Papers Vol 28 p114 : Enclosure - Maitland to Grey 7 November 1846.

6 CSO 23/12. Mr Dand occupied the position of Durban Gaoler for many years until he was replaced by Mr E Owen in January 1865. However, Mr Owen was removed from office in February 1866 for maltreating and assaulting the lunatics in the Gaol. (CSO 239/70) He was replaced by Mr John Phillips.

described by the *Natal Witness* as "a low cottage, overgrown with creepers, fronted by a thick, verdant and lofty hedge."¹

Clearly the wattle-and-daub structures described above, despite their rustic charm, could not meet indefinitely the needs of a growing Colony.² By 1859 it was clear that the gaols of Natal were totally inadequate. The Lieutenant-Governor pointed out that

" [o]ur present gaol [at 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. "³

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."⁴ 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.⁵ This wall was never built, however, since the British Government was not willing to authorise the immediate expenditure of £6,000. The British Government was, however, willing to sanction

" an annual appropriation of such sums as may be available from time to time ___ so as to admit of gradual enlargement."⁶

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.

1 NW 18/4/1851.

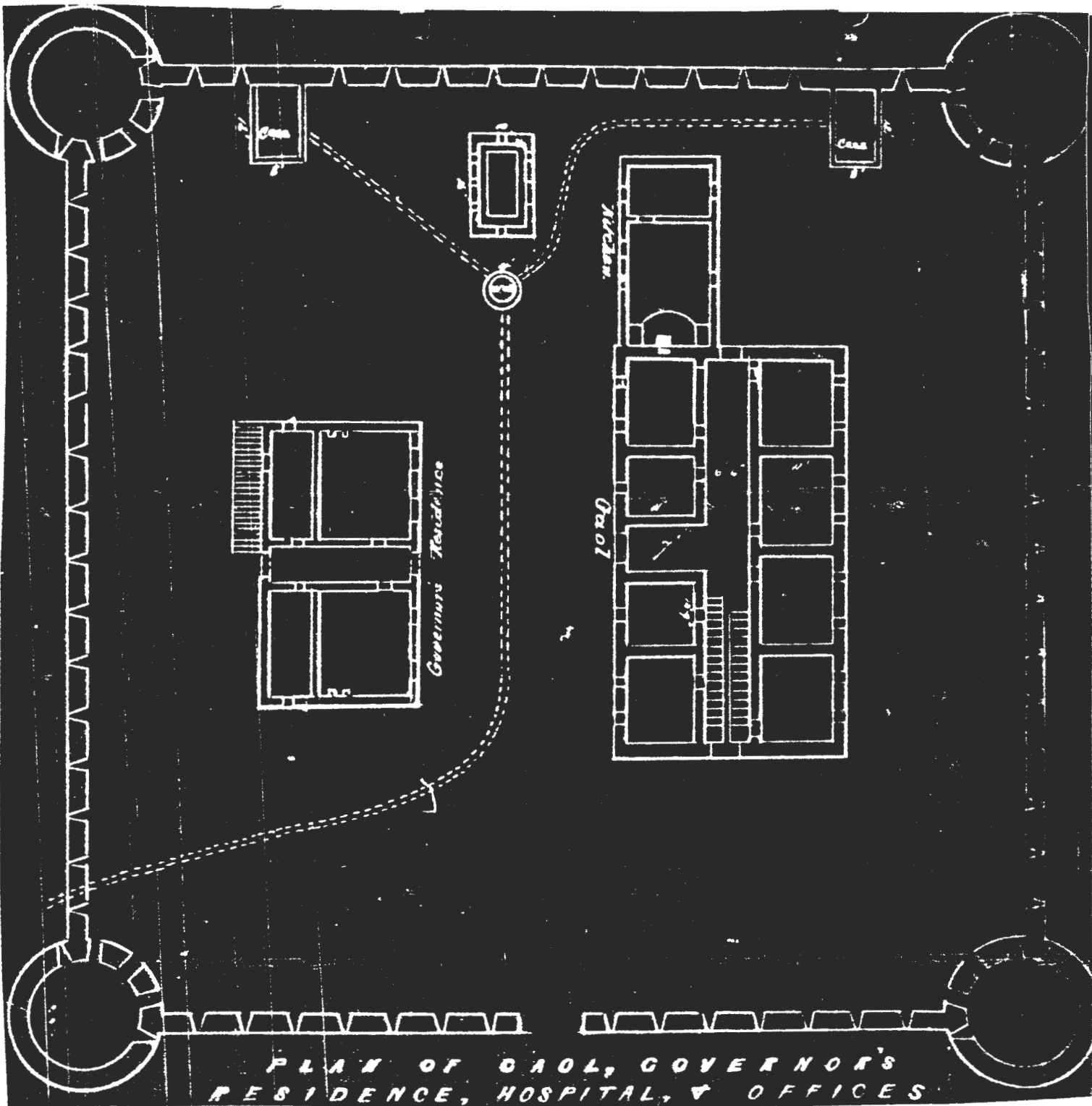
2 NW 14/6/1864. And see also P R Spiller "The Natal Supreme Court : Its Origins (1846-1858) and its EARLY Development (1858-1874) (University of Natal-Durban Thesis) (1982) p62 and pp304-305.

3 CO 179/51 Scott to Lytton 4 February 1859.

4 CO 179/51 Scott to Lytton 4 February 1859: Enclosure - Report of Surveyor General November 1858.

5 See illustration following page.

6 GH 33/171 Carnarvon to Scott 27 April 1859.



Plan of proposed new Goal and fortifications at Pietermaritzburg 1859.
 (By permission of the Controller of H M Stationery Office
 CC 179/51 Despatch 10 of 4 February 1859).

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

" 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___ . "1

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. "2

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? "3

While this statement seems to have been made half in jest, it serves to underline the fact that imprisonment is, in its form and content, a specifically bourgeois punishment. To the colonists, struggling to force the African tribesmen from the land and coerce them into wage labour for the white man, the extension of the prison system (and the particular form of control that this system represented with its ideological connotations of justice and humane treatment) must indeed

1 NW 7/6/1861.

2 Ibid

3 Ibid

have seemed a step forward for "civilization" and progress. In November 1861 the *Natal Witness* again commented on the extension of the prison system :

" One of the most striking features in the advance of civilization 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 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. "1

With the construction of the new Central Gaol at Pietermaritzburg and the several county gaols, there was increasing agitation for the construction of a new gaol in Durban.² 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.³ 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 blacks "there would not be more than six white men in such a room." 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."

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 (12 to 18 months) were chained. Considering the conditions in the old gaol it is not surprising that on 17 June 1863, the

1 NW 1/11/1861.

2 See NW 12/6/1863 and NW 26/6/1863 and NW 17/5/1864.

3 CSO 196/327 Report of Durban Gaoler 12 February 1864.

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.¹ Tenders for the construction of the new gaol were called for in 1864,² and on 9 June the Colonial Secretary tabled the designs in the Legislative Council.³ 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.⁴ On 22 November 1864 the *Natal Witness* reported that construction work on this gaol had begun.⁵

This Empirical Introduction may be concluded by noting that this thesis will take as its starting point, the investigation by the Imperial authorities into the state of the colonial prisons in 1865. This was to mark the beginning of a period of close attention paid by the Imperial authorities to the development of Natal's prisons, in an attempt to bring the penal system of Natal into line with English penal practice.

1 NW 26/6/1863.

2 GG 22/3/1864 and NW 20/5/1864.

3 NW 14/6/1864.

4 NW 26/6/1863.

5 NW 22/11/1864.

CHAPTER 1 : THE BRITISH INVESTIGATION INTO THE STATE OF THE COLONIAL PRISONS 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",¹ and the "Report of the Royal Commission on Penal Servitude"²) 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. "³

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 the "Digest") was drawn up and presented to the British Parliament by Command of Her Majesty in 1867.⁴ The penal principles set out in the Digest were to have an important effect on the future development of imprisonment in Natal, and in the years which followed various reforms were to be attempted in accordance with these principles. The two principles which were particularly stressed in the Digest and in various despatches at this time, were the separation of prisoners according to the "separate system", and the need for strictly penal labour. This Chapter will examine each of these principles in some detail.

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- 1 GH 359/2 Circular Despatch Newcastle to Scott 19 October 1863.
 - 2 GH 358/162 Circular Despatch Newcastle to Scott 19 August 1863.
 - 3 Imperial Blue Books Digest p4 Circular Despatch Cordwell to Maclean 16 January 1865.
 - 4 Imperial Blue Book Digest & Summary of Information respecting Colonial Prisons.

As for the principle of separation, Michel Foucault pointed out that it is a fundamental disciplinary principle that individuals should be partitioned off into their own individual spaces.¹ This prevents groups from forming, enables a particular individual to be easily located, and allows for each individual to be judged and assessed separately. We can see this principle operating, for example, in the school, where pupils sit at particular desks arranged in rows before the teacher; 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, etc. This principle explains why separation of prisoners is so important to imprisonment as a form of punishment. Michael Ignatieff states :

" 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. "²

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 by the Digest.³ 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, (Pennsylvania system) or work in association under strict condition of silence (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. Thus separation could be ensured by construction (i.e. separate cells), by system, (e.g. rules against communication) or by a combination of those two methods. In the Despatch accompanying the questionnaire sent to the colonies in 1865, the authorities in the colonies were exhorted to :

1 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) P143. See also Theoretical Introduction Section B : The Punishment of Imprisonment - With Particular Reference to the Colonial Situation p11-24, above.

2 M Ignatieff *A Just Measure of Pain* (1978) p102.

3 Digest pp65-68 IV

" 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 ___." ¹

In the Digest the following statement appears :

" 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. " ²

The principle of separation was thus regarded as being of great importance by the authorities in England and the Digest stated that "its importance is increased by this, that it is the only principle of prison discipline which can be regarded as absolutely certain." ³ 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. ⁴ 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. ⁵ Clearly such a refined system of classification was beyond most of the smaller colonies.

1 Digest p4 Circular Despatch Cordwell to Maclean 16 January 1865.

2 Digest P65 IV.

3 Digest p65 IV.

4 Digest pp66 & 67 IV.

5 Digest p67.

The principle of regular, strenuous penal labour, formed an important element of the punishment of imprisonment under the penal systems of industrial capitalism. If Melossi was correct in stating that the prison as it developed in Europe constituted an "ancillary institution" of the factory,¹ then it is clear that one of its most important aims was to instill the work ethic into prisoners. One way in which prisoners could be brought to accept subjection to dull repetitive work, was to impose upon them, in David Rothman's words, "a daily routine of hard and constant labour."² Dario Melossi states :

" The 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 violence of primitive accumulation when 'nature, tradition and habits' of the masses are not yet fully capitalist. "³

It is not surprising that the prison evolved, to a significant extent, out of the early workhouses e.g. the famous "Rasp Huise " of Holland, the first of which was inaugurated in Amsterdam in 1596.⁴ The importance of the principle of penal labour to the penal systems of Britain's colonial possessions, was not lost on the Imperial authorities. The form which penal labour should take in colonial prisons was laid down in the Digest.⁵ Naturally the principles expounded were based firmly on English practice, and in particular on the "Report of the Committee of the House of Lords on the State of Discipline in English Gaols."⁶ 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. "⁷

1 B Fine (et al) (eds) *Capitalism and the Rule of Law* (1979) p94.

2 D Rothman *The Discovery of the Asylum* (1971) p103.

3 D Melossi "Strategies of Social Control in Capitalism: A Comment on Recent Work" *Contemporary Crises* (October 1980) p392.

4 D Melossi and M Pavarini *The Prison and the Factory* (1981) pp16-23.

5 Digest p69-72 VI and VII.

6 Included in Digest p65-83 I-XV

7 Digest p69 VI

This thesis will hereafter refer to the forms of prison labour thus defined by the term "strictly penal labour". A term of strictly penal labour was seen as forming an essential part of any sentence of imprisonment; mainly it would seem, since such labour was regarded as an effective means of deterrence and punishment. Clearly the principle underlying such a punishment was the enforcement of capitalist work discipline and the inculcation of the work ethic. In the colonial context this principle assumed a racial aspect. Although it was thought that rigorous penal labour would have similar effects on all races, the Digest stated :

" Short 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. "1

Indeed many of the white colonists would, at this time, have regarded the African tribesmen as being "averse to regularity and work," i.e. unwilling to subject themselves to wage labour for white farmers. The Digest pointed out that the labour undertaken 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 ____."2 Labour on public works was seen 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 i.e. "incapable of measure, not severe, and productive of communication with the outside world."3 As regards industrial labour, the Digest stipulated that it should be that

" which is most severe, requires least instruction, and with these qualifications is most profitable. "4

1 Digest p70 VI.

2 Digest p69 VI.

3 Digest p71 VII.

4 Digest p70 VII.

The reason 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 (i.e. hiring prisoners to private contractors) was strongly disapproved of.

It was only in May 1868 (i.e. after the publication of the Digest) that Natal responded to the questionnaire sent out in 1865,¹ and it was apparent that neither of the above two important principles were being applied in Natal's gaols. The Secretary of State for the Colonies pointed out that "the gaols of Natal are wanting in the most essential elements of prison discipline, - separation and strictly penal labour ___".² Pressure from the Imperial authorities was eventually to lead to the appointment of a Commission of Enquiry in Natal on 19 November 1868.³ 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. The findings of this Commission will be dealt with separately under the chapters dealing with prison labour and prison accommodation.

1 CO 179/89 Keate to Buckingham 6 May 1868.

2 Digest p71 Buckingham to Keate 24 July 1868.

3 CSO 324/304.

CHAPTER 2 : PRISON LABOUR

The main theme running through this chapter will be the effect of the free labour market and the economy in general in dictating the labour performed by prisoners in Natal.¹ The analysis thus follows similar reasoning to that adopted by scholars such as Rusche and Kirchheimer,² and Melossi and Pavarini.³ The influence of Natal's economy over penal policy will be examined in four separate sections. Firstly, following on from Chapter 1, the attempt by the Imperial authorities to introduce a system of strictly penal labour into Natal's prisons will be examined. The failure in practice of this attempted reform, as a result of the peculiar economic situation of Natal, will also be studied. The second section will deal with the employment of convict labour upon public works in Natal, and the strong link between the labour performed and the state of the free labour market. Thirdly, the effect of employing prisoners as public labourers will be studied in respect of penal policy towards remission of sentences. Lastly, the introduction of stone breaking as a form of penal labour into Natal's prisons in 1886 will be examined, and the determining role played by the economic situation in this innovation explained.

SECTION A : THE IMPERIAL AUTHORITIES, STRICTLY PENAL LABOUR, AND COLONIAL REALITY

In the Digest the importance of the deterrent effect of strictly penal labour was emphasized. While strictly penal labour was not directly remunerative, in the long run costs were saved by the 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 the greater in proportion as the labour is less deterrent, and the community

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- 1 See Theoretical Introduction Section B : The Punishment of Imprisonment - With Particular Reference to the Colonial Situation pp11-23. above.
 - 2 G Rusche and O Kirchheimer *Punishment and Social Structure* (1939).
 - 3 D Melossi and M Pavarini *The Prison and the Factory* (1981).

" is charged with the cost of more prisoners, whilst at the same time it suffers by the commission of more offences."¹

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 :

" 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."²

Keate's response indicates the importance of economic factors in dictating penal policy in the situation of colonial Natal.

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.³ 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. 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."⁴

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 ---

1 Digest p4 & 5 Circular Despatch Cordwell to Maclean 16 January 1865.

2 CO 179/89 Keate to Buckingham 6 May 1868.

3 CSO 314/2265.

4 *Ibid* Report of Civil Engineer 16 October 1868.

" [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 effected by imprisonment ___." ¹

However, not all the officials were in favour of the introduction of strictly penal labour.

Certain officials (in particular the Durban officials) considered treadwheel and crank labour to be a waste of time, since convict labour was vitally needed on the public works of the Colony (in particular at the Durban harbour works). Thus, 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 in favour of the status quo as follows :

"[T]he 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 walls of the Gaol could be. " ²

Finally, it was left to the Commission of Enquiry appointed on 19 November 1868, to decide upon whether strictly penal labour should be introduced into Natal's prisons, 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.

1 *Ibid* Report of Resident Magistrate of Newcastle 7 October 1868.

2 *Ibid* Report of Assistant Resident Magistrate of Durban 8 October 1868.

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 ---."1

In his evidence before the Commission, W Cook, the Gaoler at Pietermaritzburg, stated :

" 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. "2

The Commission decided that it was desirable to introduce a system of strict penal labour, in the form of labour on the treadwheel 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 when they were not working at the treadwheel or crank.³ Two treadwheels (one for the Durban Gaol and the other for the Pietermaritzburg Gaol) were to be provided, 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 the 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 :

1 CSO 324/304 Report of Commission p5.

2 *Ibid* Evidence of W Cooke.

3 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". It was thus suggested that "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." (CSO 324/304 Report of Commission p6).

" 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. "1

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 _____. "2

Thus in practice at this time the utility of prison labour was placed above any considerations of prison discipline. However, *some* effort was made to subject prisoners employed in public works to some 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 intercourse or communication between the prisoners or any one else beyond what is absolutely necessary in carrying on the work. "3

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

1 CSO 324/304 Report of Commission p10.

2 *Ibid* Report of Civil Engineer 10 April 1869.

3 *Ibid* Report of Civil Engineer 10 April 1869.

also recommended that selected prisoners be taught certain skills such as tailoring, shoemaking, and tentmaking. 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 Gaol Law of 1870¹ that the recommendations of the 1868 Commission of Enquiry were carried into effect. Besides labour at the treadwheel, shot drill, capstan and stonebreaking, which were designated hard labour of the first class; the Gaol Law of 1870 empowered the Lieutenant Governor, with the advice of the Executive Council, to stipulate what should constitute hard labour of the first and second class.² Authorities in Durban and Pietermaritzburg were thus asked to advise the Lieutenant Governor on the forms of penal labour best suited to each gaol.³ With regard to the Pietermaritzburg Gaol it was decided that hard labour of the first class would consist of treadwheel labour.⁴ The Pietermaritzburg Gaoler, W 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".⁵ These suggestions were concurred in by the Lieutenant Governor in Executive Council.⁶ 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 the public works.⁷ Since labour at the treadwheel 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 treadwheel. "8

1 Law 6 of 1870 "Law for the Better Government of Public Gaols".

2 Law 6 of 1870 s10.

3 CSO 2311/p467 and CSO 2311/p523.

4 CSO 400/2625 Meeting of Pietermaritzburg Gaol Board 2 December 1871.

5 CSO 400/2634 Pietermaritzburg Gaoler 6 December 1871.

6 CSO 2312/p244 & p246 Colonial Secretary to Pietermaritzburg Gaol Board 18 December 1871.

7 CSO 405/307 Meeting of Durban Gaol Board 6 February 1872.

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."¹ 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 (i.e. the 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 official view. Despite the opposition of the Durban Gaol Board, 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.²

Two treadwheels were imported from England, and during 1871 were erected at the Durban and Pietermaritzburg gaols.³ 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."⁴ 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.⁵ 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 thus reflected the average hours worked on the treadmill by prisoners in England twenty three years previously. It was thus out of date and ill adapted to the climatic conditions of Natal. Prisoners would be worked for nine hours per day

1 *Ibid*

2 *Ibid* Meeting of Executive Council 24 February 1872.

3 See CSO 359/1196 and CSO 355/755 and CSO 357/Despatch 988 and P R Spiller "The Natal Supreme Court: Its Origins (1846-1858) and its Early Development (1858-1874)" (University of Natal-Durban Thesis) (1982) p308.

4 CSO 359/1196.

5 See CSO 400/2625 and CSO 391/1702.

in Summer and eight hours per day in Winter, and would work for two thirds and rest for one third of the time. Because it was thought that the effect of this labour on the different races might vary, the Executive Council stipulated that the Gaoler and District Surgeon of each gaol report weekly on the working of the treadwheel, for a period of three months.¹ There was some discussion amongst the Colonial authorities in England as to whether black prisoners in Natal would be physically able to undergo the same amount of treadwheel labour as the white prisoners.² The Assistant Under Secretary thought not, and the Resident Clerk in the Colonial Office agreed that

" [T]he amount of labour prescribed does certainly seem severe for the blacks. "3

However, it was felt that making a distinction between the treatment of white and black prisoners would lead to discontent and would undermine prison discipline. Since there were very few white prisoners the standard of labour should be adjusted to suit the capacity of the black prisoners. The Secretary of State thus approved of the arrangements that had been made but noted that the amount of treadwheel 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.⁴ In practice, the effects of treadwheel labour on prisoners of different races seem to have been the exact opposite of those predicted by the authorities in England. In his annual report for 1872 the Pietermaritzburg Gaoler wrote as follows :

" The treadwheel 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 ___ . "5

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- 1 CSO 2312/p244 Colonial Secretary to Pietermaritzburg Gaol Board 18 December 1871.
 - 2 CO 179/104 Keate to Kimberley 21 December 1871: Minutes of Colonial Office Officials on Despatch.
 - 3 *Ibid* Minute of Mr Fairfield 24 February 1872.
 - 4 GH 55/Despatch 154 Kimberley to Keate 2 March 1872.
 - 5 CO 179/112 Despatch 59.

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",¹ 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.² 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."³

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 ---."⁴

Treadwheel and crank labour had been devised as a means of disciplining prisoners in the dull repetitive labour of the capitalist factory. However, the political economy of Natal could not be described as being either "capitalist" or "industrialised". Treadwheel and crank labour must thus have seemed rather out of place in the prisons of the colony. The mixed reaction which greeted the introduction of treadwheels and cranks, 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, and on the other hand condemned as being totally unproductive. The treadwheel in Durban had been attached to machinery for grinding maize and thus at least performed some useful function.⁵ A report in the *Times of Natal* on 17 April 1872, emphasized the unproductive nature of the treadwheel labour performed at the Pietermaritzburg Gaol, but seemed unsure whether this was a good thing or not. On the one hand, the utter uselessness of the labour

1 C0 179/104 Keate to Kimberley 21 December 1871.

2 GH 55/Despatch 154 Kimberley to Keate 2 March 1872.

3 *Times* 17/4/1872.

4 *Ibid.*

5 C0 179/104 Keate to Kimberley 21 December 1871.

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. "1

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".² The *Natal Witness* was far 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. "3

However, this seems to contradict an earlier report in the *Natal Witness* which stated that treadmill labour "must be rather distasteful work to the delinquent Kafirs, and the effect will doubtless be salutary."4

Eventually, economic conditions in the colony, and the need for convict labour upon Natal's public works, were to lead to the failure in practice of strictly penal labour in the form of labour at the treadmill and crank. 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.⁵ 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.⁶

1 *Times* 17/4/1872.

2 *Ibid.*

3 *NW* 19/4/1872. It is amusing to note that Pietermaritzburg Gaol, according to the *Natal Witness*, had been nicknamed "Cooke's Hotel."

4 *NW* 2/2/1872.

5 CSO 416/1455 Meeting of Pietermaritzburg Gaol Board 7 August 1872.

6 CSO 432/453 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). The Gaol Board thus 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.¹

Thus, due to overcrowding within the gaol, 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 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, nor White labour of a reliable description."² In February he called for the introduction of 200 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 ___ ." ³

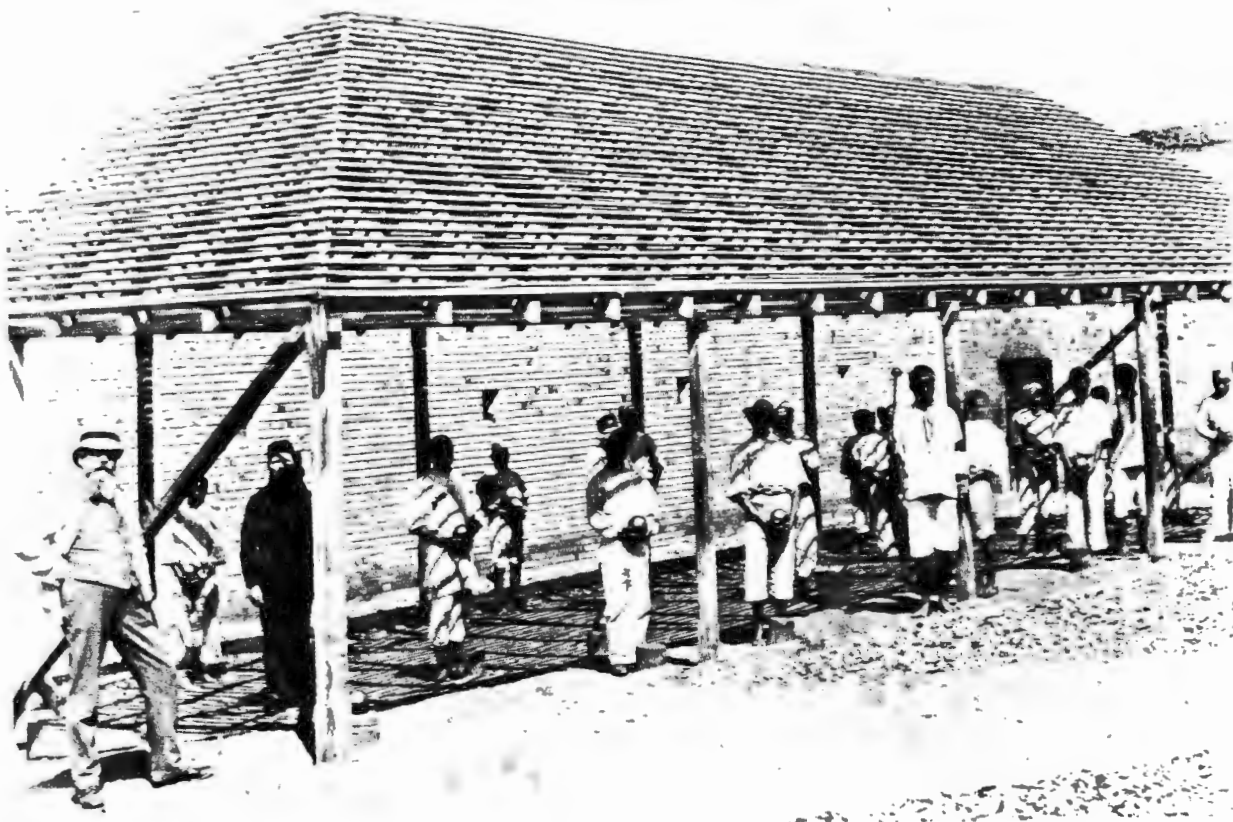
It was natural, therefore, that the Civil Engineer should regard treadmill labour as a useless waste of energy. He suggested that hard labour prisoners be employed on remunerative works from the moment they entered prison; "then prisons will be self-supporting, and the finances of the Colony spared a very considerable and useless present expenditure."⁴ Although the Executive Council decided not to

1 CSO 1875/84 Report of Resident Magistrate Pietermaritzburg 11 February 1875.

2 CSO 503/84 Civil Engineer to Colonial Secretary 7 January 1875.

3 CSO 508/503 Civil Engineer to Colonial Secretary 8 February 1875.

4 CSO 508/502 Civil Engineer to Colonial Secretary 8 February 1875.



Prisoners performing shot drill at the Pietermaritzburg Gaol.
Photographed when Mr Cook was Governor of the Gaol.

(Courtesy Natal Archives Depot - C356)

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.¹ 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. Convict labour on the public works was regarded as essential by the penal authorities in Natal. It is to this aspect of prison labour that we now turn.

SECTION B : EMPLOYMENT OF CONVICTS ON PUBLIC WORKS IN NATAL

This section will concentrate on the major public works upon which prisoners in Natal were employed.² 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.³ It must be made clear, however, that convicts were employed in many other areas. 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. "⁴

1 CSO 1062/291 Report of Superintendent Durban Gaol 10 May 1886.

2 See P R Spiller "That Natal Supreme Court: Its Origins (1846-1858) and its Early Development (1858-1874)" (University of Natal-Durban Thesis) (1982) pp 307-308

3 See for example *Natal Blue Books*: 1873 at AA13 point IX(1); 1874 at AA13 point IX(1); 1875 at AA11 point IX(1). See also Appendix 2 p200.

4 CSO 220/797 Resident Magistrate Pietermaritzburg to Colonial Secretary 5 May 1865.

Before examining the empirical data, a number of general comments may be made. 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, and different officials often approached the matter from opposing points of view i.e. that of effective prison administration or efficient utilisation of labour. This conflict was shaped by certain material conditions. Firstly, the lack of space and inadequate accommodation in the two central gaols made it imperative that prisoners be employed outside the prisons during the day. Secondly, and most importantly, the state of the free labour market had a profound effect on the employment of prisoners.

Turning to the empirical data, the first point to note is that the conflict mentioned above was reflected in a division of authority between the prison authorities on the one hand, and the Colonial Engineer's Department on the other. It would seem that this situation arose in 1866, when the Durban harbour works became an important priority for the employment of convict labour. In October of that year, sixty four convicts were transferred from Pietermaritzburg to Durban to be employed at the harbour works.¹ In fact this caused the temporary closure of the Government Brickfields near Pietermaritzburg, which relied on convict labour.² 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.³ Authority over the prisoners was thus divided between the "Convict Establishment" under the Colonial Engineer, and the "Gaol Establishment" under the Superintendent

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- 1 CSO 258/1979 Resident Magistrate Pietermaritzburg to Colonial Secretary 2 October 1866.
 - 2 CSO 242/378 Colonial Engineer to Colonial Secretary 14 February 1866;
CSO 260/142 Colonial Engineer to Colonial Secretary 30 October 1866;
CSO 264/27 Colonial Engineer to Colonial Secretary 4 January 1867.
 - 3 CSO 254/1582 Colonial Engineer to Colonial Secretary 25 July 1866;
CSO 260/141 Colonial Engineer to Colonial Secretary 30 October 1866;
CSO 261/2259 Colonial Engineer to Colonial Secretary 28 November 1866.

of the Gaol.¹ 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, and 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; 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 to the two establishments.² However, for reasons which will be made clear, the friction was to continue for many years. A good example of this was a dispute which arose in June 1869. over whether the Gaoler had authority over Convict Guards when these men were not employed in guarding prisoners at the public works.³ The Durban Gaol Board passed a resolution stating that the gaoler should have this authority. The Colonial Engineer, however, was of opinion that the convict guards fell solely under his authority and control. He complained as follows to the Lieutenant Governor :

" 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. "4

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

1 CSO 261/2259 Colonial Engineer to Colonial Secretary 28 November 1866.

2 *Ibid*

3 CSO 335/1465.

4 *Ibid* Report of Civil Engineer 30 June 1869.

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.¹

In order to uncover the reasons for the friction between the two establishments let us examine a dispute which arose in the year 1885, between the Superintendent of the Pietermaritzburg Gaol and the Colonial Engineer.² It will become clear from the discussion which follows, that the friction between the prison authorities and the officials of the Colonial Engineer's Department, resulted from the fact that the former were concerned primarily with prison administration, while the latter were concerned with the efficient utilisation of labour. The dispute arose in January 1885, after the Colonial Secretary observed that discipline exercised by the 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 ____." He stated further as follows :

" It 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 ____ "3

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."⁴ 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 employment of prison labour, except on special works, and in large numbers will be impossible."

1 CSO 273/931 Colonial Engineer to Colonial Secretary 8 May 1867.

2 CSO 999/182.

3 *Ibid* Report of Superintendent Pietermaritzburg Gaol 13 January 1885.

4 *Ibid* Resident Magistrate Pietermaritzburg to Colonial Secretary.

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 the 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. "1

The Clerk of Works was thus of opinion that the Convict Guards should perform the dual role of guard *and* labour supervisor. The Colonial Engineer was in entire agreement with this and stated :

" 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 ---. "2

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 not only made responsible for the safe custody of prisoners, but also for the effective performance of work by the prisoners. Clearly, this order could not resolve the essential contradiction of divided authority and interests. The situation was essentially a compromise between the interests of prison administration and effective utilisation of labour; and as a result both of these interests suffered. The Resident Magistrate of Pietermaritzburg summed the situation up as follows :

" 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. "3

1 *Ibid* Report of Clerk of Works 21 January 1885.

2 *Ibid* Colonial Engineer to Colonial Secretary 22 January 1885.

3 *Ibid* Resident Magistrate Pietermaritzburg to Colonial Secretary 29 January 1885.

The final quotation above brings us to a discussion of one of the major material conditions which affected the employment of convict labour i.e. the constant overcrowding and lack of space within Natal's prisons.¹ It became imperative to employ prisoners at labour outside the prisons. To keep large numbers of prisoners confined day in and day out in cramped conditions, would be to court disaster in the form of epidemics, riots or mass escapes. This is well illustrated in proposals put forward by officials of the Pietermaritzburg Gaol in February 1893.² The Superintendent of the Pietermaritzburg Gaol pointed out as follows :

" [I]f 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 intro or extra-mural should be kept up ---."3

Due to the increase in the prison population it was becoming increasingly difficult, particularly in the case of the Pietermaritzburg Gaol, to find employment for all the hard labour prisoners.⁴ On 14 April 1883 the District Surgeon, Dr Gordon, wrote a long minute on the manner in which 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. In order to solve the problem, and at the same time to ensure that there was sufficient hard labour for the prisoners to perform, Dr Gordon recommended as follows :

" [T]he 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 [i.e. harbour works] . "5

1 See Part One Chapter 3: Prison Accommodation pp 75-92.

2 CSO 897/858.

3 *Ibid* Superintendent Pietermaritzburg Gaol to Pietermaritzburg Gaol Board.

4 *Ibid* Meeting of Pietermaritzburg Gaol Board 6 March 1883 - Point IV.

5 *Ibid* District Surgeon Pietermaritzburg to Resident Magistrate Pietermaritzburg 14 April 1883.

The Resident Magistrate of Pietermaritzburg also held this view and stated :

" [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 --- "1

According to Dr Gordon the treadmill, crank, and shot drill were unsatisfactory forms of labour, and were not favoured by prison authorities in England. Instead, it was the practice in England to employ convicts in executing 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.² 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.

The second important material condition which affected the employment of convict labour, was the condition of the economy and the free labour market at any particular time. 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 it would seem that the demand for convict labour was decreasing. With regard to Pietermaritzburg, it was becoming apparent by August 1884 that there was insufficient public labour

1 *Ibid* Resident Magistrate Pietermaritzburg to Colonial Secretary 6 April 1883.

2 *Ibid* Report of Resident Engineer 6 July 1883.

available for prisoners to perform. The Colonial Secretary stated as follows :

" 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. "1

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.² Another suggestion which was eventually adopted, was that a system of stonebreaking be introduced, which would be performed within the walls of the gaol.³ In Durban, the situation was similar to that in Pietermaritzburg, and 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).⁴ 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

1 CSO 1000/205.

2 *Ibid* Superintendent Pietermaritzburg Gaol to Resident Magistrate Pietermaritzburg 28 August 1884.

3 See Part One Chapter 2: Prison Labour - D The Introduction of Stonebreaking pp 67-74.

4 CSO 1014/1697.

the Harbour Board in the 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 at present, but under the control of the Resident Engineer, during such time as the convicts are employed on the Works ____." ¹

Thus the same problems as to dual control which arose between the Superintendents and the Colonial Engineer, also arose between the Colonial Engineer and the Resident Engineer. 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 the 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 considerably weakened 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 6^d to 3^d per diem. 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 ____." ² 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. ³ The Superintendent of the Durban Gaol stated that three

1 CSO 1004/620 Natal Harbour Board 5 February 1885. See also CSO 1010/1234 and CSO 1018/2018.

2 CSO 1014/1697 Chairman Natal Harbour Board to Resident Engineer 13 June 1885.

3 CSO 1026/2851.

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 as follows :-

" I ___ find that the fewer white convicts I have at work the better, except when employed at their trade (if they have one). "1

Clearly, black convicts were more easily controlled and exploited than white convicts. As will be shown in the discussion of gratuities in Part Two, white convicts occupied a privileged position in the convict labour set up. The District Surgeon supported the demand of the prisoners to be employed :

" 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. "2

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.³ 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 ___ "4

1 *Ibid* Resident Engineer to Resident Magistrate Durban 20 June 1885.

2 *Ibid* Superintendent Durban Gaol to Resident Magistrate Durban 23 June 1885 (Sending extract from District Surgeon's day book).

3 *Ibid* Superintendent Durban Gaol to Resident Magistrate Durban 25 June 1885 (Sending extract from Minutes of Durban Gaol Board).

4 *Ibid* Colonial Secretary to Chairman Natal Harbour Board 26 June 1885.

The Colonial Secretary entreated the Harbour Board

" to treat the question from the 'all round' point of view and not allow departmental differences --- "1
to interfere with the general public interests."

The only response of 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. "2

Clearly the Harbour Board could only afford to make this kind of reply 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 stonebreaking which will be discussed in Section D of this Chapter.

Thus, to sum up, general economic conditions, and in particular the condition of the free labour market, exerted a profound influence over penal policy in Natal. Overcrowding within the prisons necessitated finding employment for prisoners outside the gaols. If free labour was scarce, it was easy to find employment for convicts on the public works at terms favourable to the prison authorities. If free labour was more plentiful, the balance swung in favour of the public employers of convict labour, who could then afford to employ convicts on their own terms.

1 *Ibid*

2 CSO 1030/3227 Secretary Harbour Board 9 September 1885.

SECTION C : GANG LABOUR ON PUBLIC WORKS AND ITS EFFECT UPON PENAL POLICY TOWARDS REMISSION OF SENTENCES

Because Natal did not conform to English penal labour practice, and employed prisoners in gangs on public works, other areas of penal practice were affected. A good example is the policy adopted towards the granting of remissions of sentence. In 1875 the question of remission of prison sentences in Natal came to the notice of the Lieutenant-Governor, who called for a report from the Attorney General.¹ This report revealed that over the years a custom had grown up in Natal of remitting one third of a prisoner's sentence, provided his conduct had been good.² This custom had prevailed for a number of years and had come to be looked upon as a promise. While this important question was being debated, a number of prisoners confined in the Durban Gaol claimed that they had the right to be granted a remission of one third of their sentences by the Lieutenant-Governor. When the Lieutenant Governor refused to recognise this right, the Superintendent of the Durban Gaol informed him that such a right had, in fact, been granted by the late Chief Justice Harding. According to the Superintendent it had been the practice of the late Chief Justice to visit the gaol when on circuit and order that the prisoners be mustered before him. He would then inform them that each prisoner's fate was in his own hands, and that good behaviour would be rewarded by a remission of one third of a prisoner's sentence. The Superintendent stated that the promise had been made without reservation and had produced a good effect on the conduct of the prisoners. However, the Lieutenant-Governor did not feel himself bound to honour the promise. He stated that the late Chief Justice had not been authorized to make such a promise and that, in any event, it had been made in an irregular and informal manner. He

1 CO 179/123 Bulwer to Carravon 23 January 1877: Enclosure No 1 - Report of Attorney General 12 February 1876. See also GH 68/Despatch 177 Carravon to Bulwer 21 December 1875.

2 *Natal Blue Books*: 1872 at AAll point XVIII; 1873 at AA15 point XVIII; 1874 at AA15 point XVIII; 1875 at AA13 point XVIII.

later informed the Secretary of State of his decision as follows :

" The rule regulating the remission which I was pressed to support was, it seemed to me, a bad one in itself, and at all events open to great objections; and I altogether objected to this wholesale and stereotyped exercise of the royal prerogative of pardon, which seemed unwarrantable and calculated to degrade the prerogative. "1

Clearly, following the above controversy, an official policy on remission of prison sentences in Natal had to be decided upon. The debate which followed centered around the extent to which the policy adopted in Natal should conform to that adopted in England. In England remissions were only granted for hard work performed, and mere obedience to prison rules was not enough to earn a remission. The amount of hard work performed by each prisoner was determined by a system of marks, which were awarded each day according to the level of industry shown by each prisoner. The authorities in Natal had to decide whether remissions in the Colony should be granted for hard work actually performed (as in England) or for mere good conduct. The Attorney General was of opinion that the English System would not be feasible in Natal, since prisoners in the Colony were treated completely differently to those in England. In Natal, once prisoners had completed their initial period of strictly penal labour, they were employed on public works. The labour on public works (e.g. stone quarrying, brick making, etc) involved prisoners working in gangs, and its nature was such that it was impossible to determine how much work had been performed by each individual prisoner. The Attorney General concluded that it would be impossible to institute a system of marks as in England, since it would be impossible

" to determine with accuracy the result of any convict's individual work, or of the industry for which any particular convict should be rewarded; there can be no result of any individual working, the work of a man industriously idle cannot really be distinguished from the industrious work of a diligent man. "2

1 CO 179/123 Bulwer to Carravon 23 January 1877.

2 *Ibid* Enclosure No 1 - Report of Attorney General 12 February 1876.

Thus general good conduct should be the basis for granting remissions in Natal. Both the Chief Justice and the Colonial Secretary took the opposite view. The Chief Justice stated that

" in any report as to a prisoner's good conduct there should be special mention with reference to his industry in the work to which he has been put. "1

However, he did not say how the industry of each prisoner was to be measured, and it was left to the Colonial Secretary to counter the objections put forward by the Attorney General. He agreed that while the industry of each prisoner in Natal could not be measured with precision, it was quite possible for the gaoler to submit separate reports on a prisoner's good conduct and industry. While the system of "good marks" adopted in England was too elaborate and minute to be applied in the gaols of Natal, a system of "bad marks" might be introduced whereby black marks would be allocated for bad conduct or lack of industry.²

The Lieutenant-Governor understood clearly the theoretical implications, first, of granting a remission of sentence, and second, of granting such remission for industry actually performed or for mere good conduct. With regard to granting remission of sentence, two conflicting principles are involved. On the one hand there is the principle that one of the main tasks of the prison should be to reform and transform the criminal. No time limit can be fixed to this process of reform, and thus a remission of part of the sentence can be justified in terms of the principle. On the other hand there is the principle that for each crime there should be an equivalent punishment. An offender must "pay his debt" to society and this "debt" is fixed by the severity of his crime. Thus to remit a portion of a sentence is in conflict with this principle.³ That the Lieutenant Governor accepted the latter principle is shown by the following

1 *Ibid* Enclosure No 2 - Report of Chief Justice 21 February 1876.

2 *Ibid* Enclosure No 3 - Report of Colonial Secretary 26 February 1876.

3 See Theoretical Introduction - The Punishment of Imprisonment - With Particular Reference to the Colonial Situation pp11-24.

statement :

" When a person is convicted of an offence against the law and sentenced, his sentence I take it, is a measure of punishment awarded and proportioned to the offence of which he is convicted. This being so, to lay down as a rule that a certain proportion of that sentence, will be remitted provided his conduct in gaol be satisfactory, seems to me to establish an undue interference with the sentence of the law --- "1

However, the Lieutenant-Governor considered the former principle (i.e. that imprisonment should reform the criminal) as sufficiently important to justify a remission of sentence, *provided that such remission was essential to the reform of the criminal*. Thus remission of sentence should only be granted if there was *positive evidence* that reform of the criminal had taken place. Remission should be "a prospective inducement to a prisoner not only by his conduct but by his exertions and improvement to win his way to such a privilege."² Because of this theoretical standpoint, the Lieutenant-Governor was firmly of opinion that remissions should not be granted for good conduct alone. Although this would assist the prison authorities to maintain good order in the prisons, it would not assist the reform of the offender. Thus a system of remission of sentences should be based not only on good conduct, but also on positive industry. The Lieutenant Governor summed up his views as follows :

" Whilst --- I am against the --- remission of a --- sentence upon the simple condition of good conduct --- and whilst I also dissent from the purposes for which it is proposed - namely, as a means for the mere aid of prison discipline --- I am not against remission of sentences as a part of a well regulated system of prison management for the purpose of reforming and improving criminal offenders. "3

Following the above debate Law 9 of 1876, entitled a Law "To provide for the granting of Conditional Pardons," was passed, under which

1 C0 179/123 Bulwer to Canavan 23 January 1877: Enclosure No 4 - Report of Lieutenant Governor 21 April 1876.

2 *Ibid*

3 *Ibid*

regulations could be drawn up to provide for a uniform system of granting conditional remission of sentence.¹ It was only in 1878 that such regulations were drawn up and published in Government Notice 48 of 1878.² Conditional remissions were to be granted only to those prisoners who were serving sentences of over four years imprisonment, and were not to be granted to prisoners serving life sentences.³ The maximum period which could be remitted from various sentences was stipulated in the following scale :

Terms of Sentence Years	Maximum Period to be Remitted	
	Years	Months
4	1	-
5	1	3
6	1	6
7	1	9
8	2	-
9	2	3
10	2	6
12	3	-
14	3	6
15	3	9
20	5	-

4

In accordance with the wishes of the Lieutenant-Governor, prisoners had to earn the right to a remission by both industry and good conduct.⁵ A system of black marks, as proposed by the Colonial Secretary, was to be instituted. On each occasion a prisoner was guilty of bad conduct or lack of industry, the Superintendent of the Gaol would record a black mark against the name of such prisoner.⁶ For each black mark

1 Law 9 of 1876 "Law to provide for the Granting of Conditional Pardons".

2 GG 29 January 1878 GN 48.

3 *Ibid* Regs 1 and 3.

4 *Ibid* Reg 2.

5 *Ibid* Reg 4.

6 *Ibid* Regs 5 and 6.

awarded against a prisoner, one week would be deducted from the maximum period of remission which it was possible for that prisoner to obtain.¹ Once the period deducted reached half the maximum period of remission which it was possible for a prisoner to obtain, such prisoner would lose his right to a remission.² Black marks could be awarded by the Superintendent of the Gaol alone, and each case in which a black mark had been awarded had to be reported to the Gaol Board. If a prisoner felt aggrieved he could make representations to the Superintendent and the Gaol Board.³ Black marks were to be awarded according to the following scales :

SCALE A		SCALE B
<u>Industry</u>		<u>Conduct</u>
	No. of Black Marks	Punishment for breaches of prison rules, dealt with by the Superintendent
A failure in the exercise of unremitting diligence during any one days work	1	The First Occasion 1 The Second Occasion 2 The Third Occasion 3
General slothfulness during one days work	2	
Gross neglect of work	4	
		Punishment for breaches of the prison rules, dealt with by the Magistrate
		The First Occasion 5 The Second Occasion 10 Subsequent Occasions 15

4

- 1 *Ibid* Reg 8.
 2 *Ibid* Reg 9.
 3 *Ibid* Regs 10 and 11.
 4 *Ibid* Reg 7.

With regard to Scale B black marks were not to be considered as a punishment for an offence and were not to supercede any punishment to which a prisoner was liable. They merely constituted a record of offences for the purpose of remission.¹

In a Circular Despatch dated 17 November 1882 from the Secretary of State for the Colonies, it was suggested that remission of sentence be granted in certain instances to prisoners under life sentence.² It was proposed that if a convict under life sentence had served fifteen years, or having served ten years had reached the age of sixty, then his case should automatically come up for review by the authorities, who would be empowered to grant a remission of sentence if this was warranted. This rule would be communicated to all prisoners under life sentences. Opposing points of view were expressed on the matter by various authorities in Natal. The Lieutenant Governor approached the matter from the criminal justice viewpoint and stated :

" --- I do not agree with [the proposed rules] --- because to sentence a man for life and to give him to understand that at the end of fifteen years he may, not necessarily, but possibly, and probably, get his release, is to vitiate the sentence that has just been imposed on him. "3

The Attorney General, arguing from the perspective of prison administration expressed the contrary view. He stated that it would be advisable to adopt the proposed rules since

" they might have a salutary influence on prisoners conducting themselves more in accordance with the regulations in gaol than would be the case if no hopes of remission are entertained by them at any time ---. "4

The matter was laid before the Executive Council which decided not to adopt the proposed rules. Thus prisoners under life sentence in Natal

1 *Ibid* Reg 12.

2 GH 381/Circular Despatch Kimberley to Bulwer 17 November 1882.

3 *Ibid* Minute of Lieutenant Governor 20 March 1883.

4 *Ibid* Report of Attorney General 26 March 1883.

were to remain excluded from any system which granted remission of sentences.¹ It was only in 1898 that this ruling was revoked and prisoners under life sentences brought into the system of remission of sentences.²

To sum up, it is clear from the above that the form of prison labour carried out in Natal affected penal policy towards remission of sentences. In terms of penal theory, a remission of sentence could only be justified if it was granted as an inducement for a prisoner to reform himself. Thus it could only be granted for positive industry shown (i.e. evidence of reform) rather than for mere good conduct. However, the gang labour performed upon the public works in Natal, made it impossible for the positive industry of each prisoner to be individually assessed. The English system of "good marks" could thus not be adopted in Natal. The theoretical problem was overcome by introducing a system of "black marks" for lack of industry on the part of any particular prisoner.

SECTION D : THE INTRODUCTION OF STONEBREAKING

As has been pointed out in Section B³, at times when there was an adequate supply of free labour for the public works, the gaol authorities experienced difficulty in obtaining suitable employment for prisoners outside the gaols. The year 1886 was one such period, and the pressure on the authorities to find suitable hard labour employment for prisoners, was to lead to an alteration in the system of prison labour, and the introduction of stone breaking. This innovation in penal labour practice, thus serves to illustrate the significant effect of economic forces in determining penal policy.

1 CO 179/146 Bulwer to Derby 11 May 1883.

2 GG 20 December 1898 GN 727.

3 Part One Chapter 2: Prison Labour - B The Employment of Convicts on Public Works in Natal pp 49-59.

On 10 April 1886 the Governor of Natal wrote as follows :

" The question of finding labour for hard labour prisoners is an important and pressing one. When I visited Durban Gaol on the 19th 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. "

In order to devise suitable means of employment for prisoners, the Governor called for a report upon 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 sentence, the period of strictly penal labour was reduced to one month, and labour at the Brickyard was appointed hard labour of the first class. This had been the position since December 1871.² The Acting Superintendent of Durban Gaol reported as follows :

" [T]he 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 _____. "³

The treadmill and shot drill had only been used for purposes of punishment. In order to rectify the above situation the Governor commanded as follows :

1 CSO 1062/291 Governor to Colonial Secretary 10 April 1886.

2 *Ibid* Report of Superintendent Pietermaritzburg Gaol 7 May 1886.

3 *Ibid* Report of Superintendent Durban Gaol 10 May 1886.

" 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. "1

One of the ways in which the Governor's instruction could be carried out was to institute a system of stonebreaking 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* ---."2 Perhaps the Governor's reason for emphasizing that stone breaking was a form of *strictly penal labour*, was that it had been used in the past, at the Durban Gaol, as a means for employing light labour convicts. Indeed in 1882 a dispute had arisen over this practice. In February of that year the Colonial Engineer suggested that such light labour prisoners be employed at cleaning and maintaining the Gaol, thus allowing hard labour prisoners then employed at such work, to be sent to the harbour works.³ The Colonial Secretary supported this suggestion and stated as follows :

" The 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. "4

The Durban Gaol Board, however, stated 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. "5

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.

1 *Ibid* Governor to Colonial Secretary 27 May 1886.

2 *Ibid* Governor to Colonial Secretary 26 April 1886.

3 CSO 846/810 Colonial Engineer to Colonial Secretary 28 February 1882.

4 *Ibid* Colonial Secretary to Resident Magistrate Durban 15 March 1882.

5 *Ibid* Meeting of Durban Gaol Board 20 March 1882.

It is clear from the above that the proposed introduction of stone breaking in 1886 was not without precedent. 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.¹

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 and are now in train for that work at the City Gaol __."² 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."³ Thus the Gaol Rules were altered to make *intra mural* labour during the penal period (i.e. first three months) of a prisoner's sentence imperative.⁴ Whereas the introduction of the treadwheels, cranks, and shot drill had failed to ensure a system of strictly penal labour in 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 only be performed 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

1 CSO 1043/4725.

2 CSO 1175/1699 Colonial Secretary to Resident Magistrate Pietermaritzburg 13 August 1886.

3 CSO 1175/2144 Governor 26 July 1886.

" 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. "1

It is interesting to note that the advantages of treadmill labour were looked upon 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. "2

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 withdrawn from outside labour and set to work at stone breaking within the Gaol.³ The Gaol authorities agreed with the Governor that it was inadvisable to employ all prisoners within the Gaol :

" The exercising yards and space generally within the walls is insufficient for from 250 to 270 prisoners. "4

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 pointed out as follows :

1 CSO 1100/4050 Resident Magistrate Pietermaritzburg to Colonial Secretary 12 October 1886.

2 CSO 1062/291 District Surgeon Durban 30 May 1887.

3 CSO 1118/960 and CSO 1118/963 and CSO 1118/983.

4 CSO 1118/496 Governor to Colonial Secretary 12 March 1887.

- " 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. "1

The Superintendent considered it unsafe to arm the guards with fire-arms, 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. "2

After this 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 as follows :

- " There 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 _____. "3

1 CSO 1166/5283 Superintendent Pietermaritzburg Gaol 11 August 1887.

2 CSO 1175/4001 Resident Magistrate Pietermaritzburg to Colonial Secretary 1 September 1887.

3 CSO 1188/2329 Superintendent Pietermaritzburg Gaol to Colonial Secretary 29 May 1888.

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 brickyard and the use of convict labour for the construction of a new block of cells at the gaol.¹

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.² 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, ³during the penal stage, be sent out with that gang. "

It would thus 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 found it necessary to compromise the penal principle which, a short while previously, it had ordered to be enforced. Some attempt, however, was made to adhere to the penal principle, and the Chairman of the Harbour Board was informed that the relaxation of the Rule had been permitted on the following condition only :

1 CSO 1213/1370.

2 See footnote 3 p70.

3 CSO 1117/315 Colonial Secretary to Resident Magistrate Durban 18 January 1887.

" [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 not immediately connected with the works or with the management of the Gaol. " ¹

Whether the Harbour Board would have been able to comply with the above condition in practice is to be doubted. The harbour works gang was subsequently increased by about seventy convicts, although a certain number of convicts continued to be employed on the treadmill and at stone breaking," [T]he former for mealie crushing purposes and the latter to complete the contract with the Durban Corporation." ² 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, cleaning etc, 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 treadmill, during the intervals between their work on the treadmill. ³

To sum up, the above section illustrates the effect exercised by the condition of the free labour market upon penal labour policy. When free labour was plentiful, it became more difficult to find suitable employment for convicts upon the public works, 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 once again required upon the public works. The state of the economy thus played an important role in determining penal policy.

1 *Ibid*

2 *Ibid* Superintendent Durban Gaol to Resident Magistrate Durban 20 January 1887.

3 CSO 1146/3241 Colonial Engineer to Colonial Secretary 17 July 1887.

CHAPTER 3 : PRISON ACCOMMODATION

Throughout the period covered by this thesis, the prisons of Natal were almost constantly plagued by the problem of overcrowding, which has remained a feature of South African prisons to this day. The overcrowding was the result of two factors: Firstly, the weakness of the colonial state, which lacked the resources to provide sufficient and suitable accommodation.¹ Secondly, the explosive growth of Natal's prison population. One of the main reasons why Natal's prison population grew so rapidly, was the coercive nature of social relations between blacks and whites in the colony. Black resistance to restrictive legislation aimed at the social control of the African population, led to the imprisonment of large numbers of blacks for petty offences. However, this important point will be fully discussed in Part Two of this thesis, and this chapter will concentrate on the fact of overcrowding and its results. It will outline the attempt of the Natal Government at the insistence of the Imperial authorities, to introduce the separate system into the gaols of Natal, and the eventual failure of this policy as the result of an ever increasing prison population.

As has been pointed out in Chapter 1, the "Digest and Summary of Information respecting Colonial Prisons" of 1867, stressed the importance of the principle of the separation of prisoners, as being fundamental to prison discipline.² The response of the authorities in Natal to the principle of separation as set out in the Digest was not positive.³ The reasons for this negative response were, firstly, 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 not possible due to the nature of prison labour performed in Natal, which required that prisoners

1 See Appendix 4 p204.

2 Part One Chapter 1: The British Investigation into the State of the Colonial Prisons 1865-1867 pp 32-37.

3 For example see CO 179/89 Keate to Buckingham 6 May 1868: Enclosure - Report of Colonial Engineer 26 December 1867.

work in gangs on public works. Secondly, the authorities in Natal rejected the separate system for black prisoners for reasons of racist ideology. For example, the Colonial Engineer was of the opinion 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 ____." ¹

The Lieutenant Governor agreed with this view. Possibly, in the crowded prisons of Natal, a separate cell was looked upon as a privilege. The purpose of separating prisoners was to prevent them contaminating each other and to create a suitable climate for reform. Perhaps black prisoners in Natal were not considered worthy or capable of reform, and imprisonment in their case was to serve merely a punitive and deterrent function. As will be show, even though the authorities in Natal were brought to accept the necessity of applying the separate system to all prisoners, with the limited prison accommodation in Natal 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 it was impossible to carry out the separate system in either the Durban or the Pietermaritzburg Gaol, because of lack of accommodation. For example in the Pietermaritzburg Gaol at this time, twenty two white prisoners were confined in seven cells, while forty black prisoners occupied ten cells.² 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."³ While the separation of prisoners by construction was not possible, the Commission recommended that a system of classification of prisoners be

1 *Ibid*

2 CSO 324/304 Evidence of Superintendent Pietermaritzburg Gaol to Commission.

3 CSO 324/304 Report of Commission p3.

introduced. The Commission recommended that prisoners be classified as follows : convicted/untried; first or second conviction/repeated conviction; short sentence/long sentence; particular offence (e.g. rape)/other offences.¹ 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. "2

The Commission made another recommendation in connection with the separation of prisoners, i.e. that a number of cells be constructed to enforce solitary confinement. The reason given was that

" under Local laws a prisoner may be sentenced to solitary confinement and [also] ___ it must necessarily form a large portion of the treatment of criminals as a punishment for prison offences. "3

When the Commission referred to prisoners being sentenced to "solitary confinement" under "Local laws" they must have been referring to "separate confinement". "Solitary confinement", in its strict sense, constituted a severe punishment for prison offences, necessarily imposed for a short period, and such sentences were not imposed by the courts.⁴ These sentences of "solitary confinement" (i.e. separate confinement) imposed by the Natal courts were reserved for offenders "of the most desperate character."⁵ Thus the separate system was to be applied to a small number of prisoners in Natal's gaols.

By 1872, the year in which treadwheels and cranks were imported into Natal for the purpose of introducing strictly penal labour, severe overcrowding in the gaols still made it impossible to introduce the

1 *Ibid*

2 CO 179/93 Keate to Granville 14 April 1869.

3 CSO 324/304 Report of Commission p3.

4 CO 179/93 Keate to Granville 14 April 1869: Draft of Granville's reply to Keate sent 28 July 1869.

5 *Ibid* Para 4.

separate system. Thus, of the two major penal principles laid down in the Digest - strictly penal labour and the separate system - an attempt was being made to introduce the former, while chronic overcrowding prevented the introduction of the latter. 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!¹) This was the lowest figure of all the Natal gaols and compared very unfavourably with the figure for the Pietermaritzburg Gaol i.e. 696 cubic feet per prisoner.² Overcrowding had many adverse effects e.g. 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 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. "3

Of course, with the overcrowding in Natal's gaols, it was 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. "4

In the years which followed there was to be constant pressure from the authorities in England for this situation to be remedied. On 30 July 1873 the Secretary of State, Lord Carnarvon expressed his concern at

1 Digest p84 XVI.

2 Natal Blue Book 1872 at AA8 point IV.

3 CSO 424/2228 Meeting of Durban Gaol Board 5 November 1872.

4 Natal Blue Book 1872 at AA8 point I.

the lack of prison accommodation in Natal and recommended that the Lieutenant-Governor give the matter his "early and serious consideration".¹ On 31 August 1875 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.² 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. "3

The Secretary of State could only wonder at the "extent of depravity" which must prevail under such conditions.⁴ 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. "5

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".⁶ 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.⁷

Clearly the Lieutenant-Governor had to act. In May 1877 he compiled an important Minute in which he analysed the lack of accommodation at

1 GH 58/Despatch 350 Kimberley to Pine 30 July 1873.

2 GH 66/Despatch 124 Carnarvon to Bulwer 31 August 1875: Para 3.

3 *Ibid* Para 7.

4 *Ibid*

5 *Ibid* Para 9.

6 *Ibid* Para 11.

7 GH 73/Despatch 324 Carnarvon to Bulwer 8 November 1876.

the Pietermaritzburg Gaol and the implications of this for prison discipline.¹ He pointed out that the prison population of the Pietermaritzburg Gaol had risen from a daily average of 57 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 17 to 28.² 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 80 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 _____. "³

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.")

" Untried prisoners, convicted prisoners, juveniles, adults, felons, misdemeanants, long sentenced prisoners, short sentenced prisoners, _____ are all associated indiscriminately together. "⁴

The Lieutenant-Governor thus recommended "the erection of a strong double storied building containing eighty or one hundred cells" so

1 CO 179/126 Bulwer to Hicks Beach 9 January 1878: Enclosure No 1 - Minute of Lieutenant Governor 31 May 1877.

2 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 (CSO 261/2257 and CO 179/126 Bulwer to Hicks Beach 9 January 1878: Para 4).

3 CO 179/126 Bulwer to Hicks Beach 9 January 1878: Enclosure No 1 - Minute of Lieutenant Governor 31 May 1877.



Two views of the Pietermaritzburg Gaol.

(Courtesy Natal Archives Depot - top C405; bottom C376)



that prisoners could be separately confined at night and a proper system of classification introduced.¹

A Special Committee was set up to consider these recommendations of the Lieutenant Governor and point out possible problems. One of the problems considered was raised by the Colonial Engineer. He 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. If each nationality confined in the prisons of Natal (i.e. "Europeans"; "Kafirs"; "Coolies"; "Hottentots") was to be divided into males and females; juveniles and adults; untried and convicted; and felons and misdemeanants, it would mean the creation of 48 separate classes of prisons. Of course, besides being highly impractical, it was economically impossible to build separate accommodation for each of these classes.² However, it was decided that such "refinement of classification" was not necessary, and a plan was drawn up for a new cell block at the Pietermaritzburg Gaol containing 70 cells.³ The Special Committee noted that if this building was constructed, the Pietermaritzburg Gaol would

" contain separate cell accommodation for 100 prisoners, or more than double the number which can be separately confined in the largest gaol of the Cape Colony. "⁴

Since the proposed new building would allow each prisoner to be confined separately at night, the problems of classification would be largely solved. Prisoners of all nationalities could be associated by day, the main classification being between male and female, and 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

1 *Ibid*

2 *Ibid* Enclosure No 5 - Notes by Colonial Engineer 1 July 1877.

3 *Ibid* Enclosure No 10 - Lieutenant Governor to Colonial Secretary 12 September 1877.

4 *Ibid* Enclosure No 9 - Report of Committee 4 September 1877.

of female prisoners. 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. "1

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. "2

The initial response of the authorities in England was very favourable, and 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. "3

The Secretary of State approved of the proposed system of classification of prisoners, noting that in his opinion race and colour were not "among

1 *Ibid* Enclosure No 4 - Opening Address of Lieutenant Governor 7 June 1877.

2 *Ibid* Para. 12.

3 GH 83/Despatch 56 Hicks Beach to Bulwer 30 May 1878: Para. 3.

the points most urgently demanding to be provided for."¹ He recommended that the distinction between felons and misdemeanants, in essence an artificial *legal* distinction, be replaced by a distinction between long and short sentenced prisoners, which was more sound in terms of *penal* practice. The attitude of the English authorities changed dramatically, however, with the outbreak of the Zulu War in 1879,² and the grand scheme for the improvement of Natal's Gaols received a setback. As a result of the war the financial position of the Colony, already not at all good, deteriorated even further. The British Government at this time contended that they had a claim in Equity on Natal to recoup part of the money spent on the Zulu War and figures of £1,000 000 or £1,500 000 were mentioned.³ 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 _____. "⁴

He went further to point 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

1 *Ibid* Para. 4.

2 See Appendix 3 p202.

3 CO 179/130 Bulwer to Hicks Beach 31 July 1879.

4 CO 179/130 Bulwer to Hicks Beach 30 July 1879.

" 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. "1

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.²

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."³ However, he pointed out that 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, and on 20 October 1880 the Durban Gaol Board stated 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 Kafir'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 ---. "4

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."⁵ The overcrowding was made worse by the increasing numbers

1 *Ibid*

2 GH 93/Despatch 68 Hicks Beach to Wolseley 27 September 1879.

3 *Natal Blue Book* 1880 at JJ45.

4 CSO 777/4202 Meeting of Durban Gaol Board 20 October 1880.

5 *Natal Blue Book* 1880 at JJ45.

of military prisoners being 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. "1

Inevitably the overcrowding led to a deterioration in the standard of health within the gaol, and the District Surgeon made the following comment in support of the Superintendent's call for additional accommodation :

" The crowded state of the Central Gaol has, 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. "2

Despite this serious state of affairs, the Government regarded the needs of the military as paramount, and the Superintendent was instructed to comply with the wishes of the military authorities "by pitching tents for Kafirs, or by some other means ____."3 Clearly the interests of white military prisoners were placed above those of black civilian prisoners. The above order was reluctantly obeyed, as is indicated from the following statement by the Resident Magistrate of Pietermaritzburg :

" 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. "4

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- 1 CSO 778/4359 Superintendent Pietermaritzburg Gaol 10 November 1880.
 - 2 *Ibid* District Surgeon Pietermaritzburg.
 - 3 *Ibid* Colonial Secretary to Resident Magistrate Pietermaritzburg 10 November 1880.
 - 4 *Ibid* Resident Magistrate Pietermaritzburg to Colonial Secretary 17 November 1880.

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 cells for sixty two prisoners was constructed at the Pietermaritzburg Gaol at a cost of £6,425.¹ 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. "²

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 ____."³

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. _ _ _ "⁴

1 *Natal Blue Book* 1882 at FF109.

2 *Natal Blue Book* 1881 at FF91.

3 CSO 897/858 Included in Report of District Surgeon Pietermaritzburg 14 April 1883.

4 *Ibid*

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 Natal's 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 has 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. "1

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. "2

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.³

1 CSO 1066/684 Superintendent Durban Gaol to District Surgeon Durban 13 February 1886.

2 *Ibid* Report of District Surgeon Durban 15 February 1886.

3 *Ibid* Executive Council 23 February 1886.

There was thus no place for the separate system, even in the case of "European" prisoners, in Natal's greatly overcrowded gaols at this time. Clearly, additional accommodation had once again to be provided, especially in the case of the Durban Gaol, and the sum of £8,000 was placed on the Estimates for 1877 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 impracticality 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 is indicated by the following statement 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. "1

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. "2

1 GH 140/Despatch 27 Stanhope to Havelock 4 October 1886 : Statement by Clerk of Works.

2 CO 179/164 Havelock to Granville 17 August 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. "1

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 Administrative 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 _____. "2

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 (i.e. half the amount required) for additions to the Durban Gaol in 1887.³ In 1888, however, the permissible expenditure for additions to the Durban Gaol was increased to £10,000.⁴ The additions were finally completed in 1889 at a cost of £10,004 18s 3d.⁵ In March 1889 construction was begun on a new block of cells at the Pietermaritzburg Gaol,⁶ and 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 _____. "7

1 GH 140/Despatch 27 Stanhope to Havelock 4 October 1886.

2 CO 179/165 Havelock to Stanhope 6 December 1886.

3 GH 141/Despatch 1 Holland to Havelock 17 January 1887.

4 Natal Blue Book 1888 at J4-5.

5 Natal Blue Book 1889 at J6-7.

6 GG 23 April 1889 GN 306.

7 CO 179/175 Mitchell to Knutsford 28 June 1889.

The new cell block was completed in 1890 at a cost of £8,251 4s 11d.¹

Despite the additions to the Durban and Pietermaritzburg Gaols noted above, it did not take long before overcrowding was once again a problem. The problem was particularly pressing in the case of the Durban Gaol, and 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.² In December 1893 the Superintendent of the Durban Gaol informed the Government that, as a result of overcrowding, seventy three prisoners were forced to sleep in the corridors at night.³ 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.⁴ 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. "5

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."⁶ This critical shortage of convict labour began to ease towards the end of 1898, however, as the new cell block

1 *Natal Blue Book* 1890-91 at JJ 12-13.

2 CSO 1345/4668 Report in Natal Witness of 11 October 1842.

3 CSO 1382/5780 Superintendent Durban Gaol 13 December 1893.

4 *Natal Blue Books* 1896 Vol II Departmental Reports at F44; and 1897 Vol II Departmental Reports at F55.

5 *Natal Blue Book* 1897 Vol II Departmental Reports at F25.

6 *Natal Blue Book* 1898 Vol II Departmental Reports at F59.

at the Durban Gaol became more fully occupied.

With the outbreak of the Second Anglo-Boer War in 1899, the Gaols of Natal were called upon to accommodate a greatly increased number of prisoners. In his report for the year 1899, 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 ____." ¹

The Gaols were similarly crowded during 1900, and the Chief Commissioner reported as follows :

" 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 ____." ²

Despite the construction of a new wing at the Durban Gaol during 1902, ³ Natal's gaols remained generally overcrowded. 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." ⁴

The Pietermaritzburg Gaol was similarly overcrowded, and the District Surgeon of Pietermaritzburg stated as follows in his report for the

1 Natal Blue Book 1899 Vol II Departmental Reports at F11.

2 Natal Blue Book 1900 Vol II Departmental Reports at F13.

3 Natal Blue Book 1902 Vol II Departmental Reports - Report of Chief Commissioner of Police at p5.

4 Natal Blue Book 1903 Vol II Departmental Reports - Report of Chief Commissioner of Police at p9.

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. "1

The problem of overcrowding and its attendant evils thus continued to plague Natal's penal system into the new century. In 1906 Natal's prisons faced an accommodation crisis with the influx of large numbers of "rebel" prisoners following the Bambata Rebellion.² In response to this crisis, a convict station was established at the Point in Durban which by 1908 could accommodate about 700 men.³

To conclude, it may simply be stated, in light of the above evidence, that overcrowding in Natal's gaols remained a pressing problem throughout the period covered by this thesis. The overcrowding led to a deterioration in the standard of health of the prisoners, as well as increasing the risk of escapes. To help alleviate these problems, the authorities were placed under pressure to find suitable employment for prisoners outside the goals during the day.⁴ Much of the overcrowding was a result of the fact that the prisons were used as means for the social control of blacks. This important theme in Natal's penal history is examined in Part Two of this thesis.⁵

1 *Ibid* p8.

2 See Part Two Chapter 2: Black "Rebels" and Imprisonment pp 123-130 and Part Two Chapter 5: The Prison Reform Commission of 1905-1906 - A Blueprint for Racially Differentiated Punishment pp 167-186.

3 Legislative Assembly Debates 1908 Vol 46 p251: Attorney General
p 15 September 1908.

4 See Part One Chapter 2: Prison Labour - Section B : Employment of Convicts on Public Works in Natal pp49-59.

5 See in particular Part Two Chapter 5: The Prison Reform Commission of 1905-1906 - A Blueprint for Racially Differentiated Punishment pp167-

CHAPTER 4 : RULES AND REGULATIONS - THE SEARCH FOR UNIFORMITY

One of the main characteristics of a penal system based on what Foucault would call the "disciplinary" model, is the existence of a detailed set of rules and regulations, designed to ensure that each prison is governed in a uniform manner, strictly according to laid down policy. Every aspect of life in a disciplinary institution is governed by rules and regulations.¹ The first legislation dealing with prison management in Natal, was passed in 1862. By Law 14 of 1862 the Lieutenant Governor was empowered to "make Rules and Regulations for the Maintenance of Order in the Public Gaols of the Colony."² His power was limited, however, since the Law laid down that Rules and Regulations drawn up under the Law could not impose punishments of more than ten days solitary confinement or twenty five lashes. In addition, such punishments could not be inflicted on civil prisoners, female prisoners or children under twelve years of age.³ It was not until 12 May 1864 that a Commission was appointed under the above Law to frame a set of rules for the management of the Pietermaritzburg Gaol.⁴ The above enabling legislation was thus not used to frame a uniform set of Rules and Regulations for the whole Colony.

By 1870 it had become clear that there was a need for a uniform set of Rules and Regulations for the conduct and management of Natal's gaols. The lack of a set of Rules and Regulations at the Durban Gaol had resulted in considerable friction between the various officials connected with the Gaol, and the Colonial Secretary remarked as follows :

" There seems to be as regards the Gaol at Durban a general clash between the authority of the Magistrate - the Gaol Board - and the Gaoler - and I do not

1 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) P 149-156.

2 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."

3 Law 14 of 1862 S1.

4 CSO 200/241.

" see how this is to be stopped until the Law is papered which the Attorney General reported as long ago as in 1868 ought to be papered - and which I understand is in course of preparation - under which Rules and Regulations may be issued for the conduct of the Gaol. "1

Until the Law being prepared by the Attorney General could be brought into force, the Lieutenant Governor decided to approve as a temporary measure a set of rules for the government of the Durban Gaol which had been drafted by the Durban Gaoler.² This led to even more friction between the Durban Gaol Board and the Durban Gaoler, since the Gaol Board had not been consulted in the matter. In May 1870 the Board resolved as follows :

" [T]he board is unanimously of opinion that there has been an undue interference with its functions and it is impossible that it can continue to perform its duties with satisfaction to itself or advantage to the Government if the Gaoler be instructed to act entirely irrespective of it and the Resident Magistrate. "3

The Durban Gaol Board was informed that the rules approved by the Lieutenant Governor were merely temporary in nature and that legislation of a more comprehensive nature was being prepared.⁴ In the latter half of 1870 a Bill "For the better Government of Gaols" was submitted to a Select Committee of the Legislative Council, and this Committee presented its report to the Council on 1 August 1870.⁵ The Bill was passed into Law on 6 September 1870,⁶ and became Law 6 of 1870.⁷ A set of "Rules and Regulations for the Gaols in the Colony" was laid down in the schedule to this law. Since this was the first uniform set of Rules and Regulations for Natal's Gaols, and was to form the basis for future rules, it is worthwhile examining certain of the more important sections of this set of Rules and Regulations.

1 CSO 349/137.

2 CSO 355/726.

3 CSO 357/986 Meeting of Durban Gaol Board 17 May 1870.

4 CSO 2309/p709 Colonial Secretary to Durban Gaol Board 20 May 1870.

5 NPP 255 Report of the Select Committee appointed to consider the Bill (6) "For the better Government of Gaols".

6 NW 9/9/1870.

7 Law 6 of 1870 "Law for the Better Government of Public Gaols."

Prisoners were to be divided into males and females and then further divided into one of the following four classes :

- (a) witnesses and civil prisoners
- (b) prisoners under examination or awaiting trial
- (c) prisoners sentenced to less than three months imprisonment
- (d) prisoners sentenced to over three months imprisonment.¹

It is interesting to note that the Law did not provide for the racial classification of prisoners although prisoners of different races were separated in practice. It is doubtful whether this system of classification was able to be carried out in practice due to overcrowding of the gaols.

Power to punish prisoners for breaches of prison discipline was given to the Keeper of the gaol² and the Resident Magistrate.³ However, in the case of the keeper of the gaol this power had to be specifically granted by the Lieutenant Governor, and applied only in the case of certain minor offences, which were listed.⁴ All other offences (i.e. those of a more serious nature) were to be punished by the Resident Magistrate. The type and extent of punishments which could be imposed were restricted, the Resident Magistrate having the power to impose more severe punishments than the Keeper of the gaol. All prisoners sentenced to over three months imprisonment (i.e. class (d) above paragraph) were divided into

- (i) first or ordinary class, and
- (ii) second or punishment class.⁵

The Resident Magistrate was empowered to order a prisoner guilty of a serious breach of prison discipline to be placed in the second or punishment class for up to three months. Such a prisoner would be

1 Law 6 of 1870 Schedule: Reg. I.

2 *Ibid* Reg. XXXIX.

3 *Ibid* Reg. XV.

4 *Ibid* Reg. XXXVIII.

5 *Ibid* Reg. I (e) and (f).

placed in irons (if not exempted) and could be employed at emptying tubs, cleaning urinals etc. Other punishments which could be imposed by the Resident Magistrate were : solitary confinement for up to ten days, with half or full rations; or a whipping of up to 25 lashes (not applicable to civil prisoners, females and children under 15 years of age).¹ Punishments which could be imposed by the Keeper of the gaol were: extra labour in cleaning the prison (for up to three consecutive days); confinement in the stocks (for up to three hours per day and for up to three consecutive days); half rations (for up to three days); solitary confinement with half or full rations (for up to three days); or shot drill (for up to two hours per day and for up to three consecutive days).² This wide range of internal sanctions is typical of a "disciplinary institution". In Foucault's terms, all disciplinary systems create their own particular form of "infra-penalty".³ They all have rules and regulations the contravention of which may not be punishable in law but which are punished by means of internal sanctions. In an institution such as the prison which sought to control every aspect of an inmate's life, there was a punishment for every slight breach of prison discipline.

Also typical of a disciplinary institution were the rules which sought to restrict and regulate communication between the prisoner and the outside world, and between the prisoner and his guards. Any person wishing to visit a convicted prisoner required a written order of admission from the Resident Magistrate;⁴ and any letters addressed to prisoners could be stopped at the discretion of the keeper of the gaol.⁵ Prisoners (excluding debtors) had to obtain the permission of the Resident Magistrate to write to their friends, and such letters had to be delivered unsealed to the keeper of the gaol to be censored.⁶ Verbal communication with prisoners

1 *Ibid* Reg. XV.

2 *Ibid* Reg. XXXIX.

3 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) p178

4 Law 6 of 1870 Schedule: Reg. VI.

5 *Ibid* Reg. XII.

6 *Ibid* Reg. XIII.

was also to be severely restricted. Rule 53 read as follows :

" Any unnecessary intercourse on the part of a turnkey with the prisoners, or even speaking to them, unless required to do so in the performance of some necessary duty, will subject the offender to be reported to the Resident Magistrate, and the turnkeys are not to allow any person to hold communication with any¹ prisoners at any time without express permission. "¹

The relationship between turnkey and prisoner was to be a purely formal one. The turnkey was to act as a representative of authority and was to display an impartial aloofness towards prisoners. He was to

" avoid all harshness in language or manner --- but at the same time firmly insist on obedience ---." ²

Prisoners, on the other hand, were to be

" respectful in their conduct and language to all --- officers and persons [set over them], and to all persons engaged at or about the gaol and upon public works on which prisoners may be employed. "³

They were to perform work assigned to them "promptly, energetically, and without murmur or dispute."⁴ Silence was to be observed within the gaol and while outside the gaol there was to be "no loud talking, singing, whistling, dancing, or other unseemly behaviour."⁵

1 *Ibid* Reg. LIII.

2 *Ibid* Reg. LVIII.

3 *Ibid* Reg. LXVIII.

4 *Ibid* Reg. LXX.

5 *Ibid* Reg. LXXI. Whether in practice the relationship between turnkey and prisoner was as strictly formal as demanded by the Regulations, is to be doubted, if the following report in the *Natal Witness* is anything to go by! :

" The Young Lady whose doings both here and at Durban some months ago, were rewarded by a temporary residence in the Maritzburg gaol, was last week - at least so says report - married to one of the warders. Her term of imprisonment had only expired the previous day." (NW 28/6/1870).

With regard to prison labour, it was 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.¹ Hard labour of the first class was defined as labour at the treadwheel, crank, shot drill, capstan, stone breaking or any other form of labour appointed by the Lieutenant Governor with the advice of the Executive Council.² After prisoners had undergone the initial period of three months hard labour of the first class, the Gaol Board could permit such prisoners to be employed at hard labour of the second class.³ 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.⁴ In addition "as a reward for industry and good behaviour", in the case of a few selected prisoners, employment in the necessary services of the prison "could be designated as hard labour of the second class."⁵ 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.⁶ It was envisaged that hard labour of the second class would consist largely of employment on public works. This is evidenced by Rule 32 which reads as follows :

" The keeper of the gaol shall carry out all sentences of hard labour, and shall supply the greatest possible number of prisoners for the public works, retaining no more for the labour of the prison than are absolutely necessary. "⁷

Employment of prisoners on any other than public work was expressly prohibited except in exceptional circumstances.⁸

1 *Ibid* Reg. XVI.

2 *Ibid* S10.

3 *Ibid* Reg. XVI.

4 *Ibid* S10.

5 *Ibid*.

6 *Ibid* Reg. XVII.

7 *Ibid* Reg. XXXII.

8 *Ibid* Reg. XIV.

The first major revision of the Rules and Regulations described above was carried out by a Commission appointed by the Colonial Secretary on 26 November 1879.¹ This Commission completed its work on 16 April 1880, and the revised set of Rules and Regulations was published in the Government Gazette of 22 February 1881.² Without undertaking an exhaustive examination of the revised rules, we may state that while the old rules were very little altered, the scope of the rules was extended and extensive additions were made. For example, the revised regulations included detailed rules for the guidance of the Matron³ and Convict Guards,⁴ which had not appeared in the old rules. To examine each additional rule in detail would seem to be a largely formal and unproductive exercise, since the general thrust and content of the rules remained essentially the same as has been described above. Of more relevance is an examination of the general recommendations made by the Commission, which reveals that the Commission was strongly motivated by the desire to bring about a uniform system of prison administration in Natal. This quest for uniformity was expressed by the Commission in a statement that they were

" impressed with the conviction that the time has now arrived when the whole of the Gaols in the Colony should receive thorough supervision by the periodical inspection of an officer specially appointed; and they strongly recommend this subject for his Excellency's favourable consideration. "5

This constituted a recognition of the fact that conformity could not be achieved simply by drawing up uniform rules and regulations. It was also essential that an officer be appointed to see that these rules and regulations were uniformly enforced.⁶ Although an "Inspector of

1 CSO 719/4231.

2 GG 22 February 1881.

3 *Ibid* Regs. 63-68.

4 *Ibid* Regs. 97-107.

5 CSO 719/4231 Report of Commission: Para 5.

6 At this time there was little uniformity of control. Firstly, separate Gaol Boards dealt with the affairs of the Durban and Pietermaritzburg Gaols. Secondly, the gaols were under the direct control of the respective Resident Magistrates in the various area. The Resident Magistrates reported to the Colonial Secretary whose task it was to co-ordinate penal policy.

Prisons" was not appointed at this time, the call for such an appointment was to be repeated in connection with future revisions of the Rules and Regulations. It is of general interest to note another recommendation made by the Commission i.e. that vans be acquired to convey accused persons from the Gaol to the Court House, to protect such persons from unnecessary publicity.¹ This call was to be repeated twenty five years later by the Prison Reform Commission of 1906.

In 1886 the question of how a uniform system of prison administration was to be achieved, again came to the fore in the report of a Mr Beaumont, who had been instructed by the Governor to draw up a revised set of Rules and Regulations.² Beaumont was in agreement with the Commission of 1879-80 that this object could not be achieved by simply drawing up a revised set of rules. Firstly, he recommended that the various Laws relating to Gaols be consolidated in one Law, so that they might be easily accessible. This recommendation was accepted by the authorities, and Law 39 of 1887, "To Consolidate and Amend the Laws relating to Gaols in the Colony of Natal" was passed.³ Secondly, Beaumont echoed the call of the 1879-80 Commission, that a central authority be appointed to ensure the uniform application of the Gaol Rules and Regulations. This central authority would act, in Beaumont's words, "as central directing power ____."⁴ To Beaumont the most effective way of securing such a central authority would have been to follow the recommendation of the Commission of 1879-80, that an "Inspector of Gaols" be appointed. However, he believed that financial considerations would not permit this, and as a compromise solution, he proposed the creation of a "Central Gaol Board". The Governor, however, considered this as too important a matter on which to compromise, and ordered that legislation which was then being formulated to consolidate the Gaol Laws, provide for the appointment of an "Inspector of Prisons."⁵

1 CSO 719/4231 Report of Commission: Para 7.

2 CSO 1088/2853 Report of Mr Beaumont 7 July 1886.

3 Law 39 of 1887 "To Consolidate and Amend the Laws relating to Gaols in the Colony of Natal."

4 CSO 1088/2853 Report of Mr Beaumont 7 July 1886.

5 *Ibid* Statements of Governor: 4 March 1887; 31 March 1887; 18 April 1887.

While the Legislative Council agreed to the sections of the Bill consolidating the Gaol Laws, the appointment of an Inspector of Prisons was heavily contested, and the Government were unable to secure the appointment of such an officer. The Attorney General described the Government's failure as follows :

" The Government were not successful in carrying through the House this, perhaps the most important provision in the original bill, partly on account of the money vote which would be involved. In its place clauses ___ were passed empowering the Governor, subject to the money vote of the Council, to appoint officers to inspect gaols, with certain authority less extensive than that which it had been proposed to confer on the Inspector. "1

The Governor viewed Parliament's refusal to appoint an Inspector of Prisons, as a serious setback in his attempts to remedy the defective system of management and control of Natal's gaols. He blamed the defective working of the Gaol Boards for the unsatisfactory state of affairs and stated as follows :

" ___ I have little hope of being able to effect much improvement until I am in a position to appoint an Inspector to replace these Boards. "2

The revised set of Rules and Regulations drawn up by Beaumont was not implemented, since it was considered desirable to wait until an Inspector had been appointed. Such an appointment was again refused in 1888, and in November 1888 the Colonial Secretary informed the Attorney General as follows :

" The vote for an Inspector of Prisons having being struck out, the appointment cannot, of course, be made, and a general revision of the Gaol Regulations must stand over for the present. "3

1 CO 179/168 Havelock to Holland 1 September 1887: Enclosure - Statement by Attorney General on Law 39 of 1887.

2 *Ibid* Para 3.

3 CSO 1201/4859 Colonial Secretary to Attorney General 2 November 1888.

It was in January 1890 that a Committee was finally appointed to draw up a revised set of Rules and Regulations.¹ This was despite the fact that an Inspector of Prisons had not yet been appointed. These Rules were published as Government Notice 330 in the Government Gazette of 16 June 1891.²

In 1893, after extensive debate in the Legislative Council, the duties of an Inspector of Prisons were incorporated with the office of Commissioner of Mines.³ By Government Notice 360 of 1893 the Durban and Pietermaritzburg Gaol Boards were dissolved.⁴ The incorporation of the office of Inspector of Prisons with that of Commissioner of Mines, was clearly an unsatisfactory solution to the problem of creating a single authority which would ensure uniformity within Natal's penal system. In 1894, the year in which Natal obtained Responsible Government status, this arrangement was thus terminated before it could really be implemented.⁵ The change in the form of government in Natal had far reaching consequences for the penal system of the Colony. By Sections 22 and 23 of Act 1 of 1894,⁶ all Gaol officers became members of the Police Force, and control of the penal system was vested in the Chief Commissioner of Police. Since all Gaols now fell under a single authority, the need for uniformity within the penal system had to some extent been met, and the Chief Commissioner of Police stated as follows :

" Under the present system of Police and Gaols, an Inspector of Prisons is unnecessary, because the Gaols are under the direct supervision of the District Officers. "

The report of the Prison Reform Commission of 1906 noted that the above change in administration :

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- 1 CSO 1239/6445.
 - 2 GG 16 June 1891 GN 330.
 - 3 Legislative Council Debates 1893 Vol 20 pp247-253: Debate of 29 June 1893.
 - 4 GG 8 August 1893 GN 360.
 - 5 *Natal Blue Book* 1894-5 Vol II Departmental Reports at F4: Report of Chief Commissioner of Police.
 - 6 Act 1 of 1894 "To provide for the Consolidation and Regulation of the Police Forces of the Colony".
 - 7 *Natal Blue Book* 1894-5 Vol II Departmental Reports at F4: Report of Chief Commissioner of Police.

" introduced a better and more uniform scheme of inspection, with the resulting benefits attaching to a higher standard of order, cleanliness, and regularity. "1

It was thus realised that the assumption of control by the Police Force was an important step in ensuring a uniform system of prison administration. As for the Gaol Rules, these were once again revised, and new Rules published as Government Notice 593 in the Government Gazette of 23 June 1896.²

Although a uniform administration had to some extent been achieved under Police Force control, the problem remained that Police officials could not adequately understand, or devote sufficient time to problems of prison administration. In the words of the Prison Reform Commission of 1906, the arrangement

" though united through its officials, ___ lacks the completeness and integrity of a self-acting and self-regulated department. "3

Thus, once again, calls were made for the penal system to be placed under the uniform control of an Inspector of Prisons. The 1906 Commission recommended as follows :

" The management of the gaols to be entrusted to a separate department, under the immediate charge of a trained officer, to be called the Inspector of Prisons, who would be directly responsible to the Minister, and,4 if necessary, assisted by a Board of Control. "4

In 1907 a Board was appointed to inspect the Gaols, Hospitals, Government Schools, and the Natal Government Asylum.⁵ One of the first actions

1 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 14.

2 GG 27 October 1896 GN 593.

3 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 17.

4 *Ibid* Para 74(1).

5 GH 1536/2089.

of this Board was to call on the Government to adopt the above recommendation for the appointment of an Inspector of Prisons. The Board stated as follows :

" [T]he time has arrived for the inauguration of a new policy in regard to Prison Administration, and ___ no time should be lost in taking the first step, by the selection and appointment of an officer qualified to fill the position of Head of the Prison Department and all the staff employed therein ___." ¹

Despite all the above recommendations, an Inspector of Prisons in charge of an independent Department of Prisons, was never appointed. Although the office of "Assistant Commissioner of Police and Inspector of Prisons" was created, this officer was to be a police official, and the prisons were to remain under the control and direction of the Police Force. ²

Thus to sum up, the constitutional development of Natal's penal system was characterized by a constant struggle to achieve a single overall authority, which could ensure uniformity of system and direction. This single overall authority (in the form of a separate Department of Prisons under the control of an Inspector of Prisons) never came into being during the colonial period.

1 CSO 1834/3614 Minute of Government Inspection and Advisory Board 11 May 1907 - Para 3.

2 Legislative Assembly Debates 1908 Vol 46 pp 255-256: Debate of 15 September 1908; and pp 394-396: Debate of 22 September 1908.

CHAPTER 5 : NATAL'S PRISON PERSONNEL - A BRIEF ASSESSMENT

Natal's two principle penal institutions were situated respectively in Durban and Pietermaritzburg. The officers in charge of each of these gaols, although fairly minor colonial officials, thus occupied relatively responsible positions. As might be expected, there was much friction and rivalry between these two officers. For example, in 1873 a major dispute arose as to the relative importance of the Durban and Pietermaritzburg Gaols. Until 1873 the Pietermaritzburg Gaol had been acknowledged as the "Central Gaol" of the Colony. However, in December 1873 the Lieutenant Governor informed the Legislative Council that

" it is the intention of Government to increase the size and for the future make the Jail at Durban the Chief Jail for the Colony, especially for all long sentenced criminals where they can be better subjected to classification and discipline while all other Jails will be merely local or county Jails, containing it is to be hoped a limited number of Prisoners only. " ¹

This decision was probably prompted by the fact that the Durban Gaol was larger than the other prisons in Natal, both in respect of staff and accommodation, since large numbers of prisoners were employed at the Durban Harbour works. In accordance with the decision, the Pietermaritzburg Gaol was deprived of its status as the "Central Gaol" of the Colony. ² As soon as additional buildings under construction at the Durban Gaol were completed, a large draft of prisoners was to be transferred from the Pietermaritzburg Gaol to Durban. The duties and responsibilities of the officer in charge of the Durban Gaol, now the "Central Gaol" of the Colony, would consequently increase. Thus the Lieutenant Governor stated that :—

1 CSO 539/63 Message No 43 Lieutenant Governor to Legislative Council
- Presented 12 December 1873.

2 GG 4 November 1873 GN 242.

" while it may be perfectly safe to entrust the charge of the local Jails under due supervision, to such officers as retired soldiers of good character who can read and write - the kind of officer required as Governor of the Chief Jail for the Colony is one possessed of greater intelligence and larger education than will be usually found among the former class. "1

The officer in charge of the Durban Gaol was thus to receive a greater salary than those in charge of the other gaols of the Colony, and was given the title of "Governor of the Durban Gaol". In practice, W Cooke, the officer in charge of the Pietermaritzburg Gaol, had for years been considered the senior gaoler of the Colony. Instead of transferring Mr Cooke to Durban to take up the post of Governor of the Durban Gaol, the Durban Gaoler, Mr J W Phillips, was simply given the title of "Governor" and his salary increased from £100 to £250 per annum.² It does not seem as if the reasons for this move were adequately explained and much bitterness resulted. The *Natal Witness* commented with bitter irony that

" [I]t would be wrong to say the Colony will not be benefitted by this change, for no doubt Mr Phillips will have more time and money to devote to his racing proclivities. Why Mr Cooke, the senior gaoler, who has so long managed the Maritzburg gaol has been overlooked; why he is not made governor of this goal, is probably because he does not drive a nice trap. It is another of those appointments for which Sir Benjamin has ever been famous, and in which he seems to excel as he grows older. "3

Cooke submitted memorials to the Secretary of State on 8 July 1874 and 6 May 1875 stating that it was unfair that a "junior officer" had been appointed Governor of the Durban Gaol at a much higher salary than himself. He stated that although the Durban Gaol (for reasons

1 CSO 539/63 Message No 43 Lieutenant Governor to Legislative Council - Presented 12 December 1873.

2 NW 3/7/1874.

3 Ibid.

of which he had not been advised) was now called the "Central Gaol", yet "the City Gaol must always be the principal one of the Colony ____".¹ Indeed, in practice the decision to make the Durban Gaol the only major gaol of the Colony, did not succeed. By 1876 it was clear that both gaols had continued to play an equally important role in the penal system of the Colony. Lieutenant Governor Bulwer admitted that

" [I]t is difficult to find any sufficient reason, now at all events existing, for naming the Durban Gaol, the 'Central Gaol' in place of the Pietermaritzburg gaol, which practically is, and ought to be, the central gaol of the Colony. "²

By Law 3 of 1876, the officers in charge of the Durban and Pietermaritzburg gaols were each given the title "Superintendent of the Gaol".³ Parity was restored between the respective salaries of these two officers.

The friction between the Superintendents of the Durban and Pietermaritzburg Gaols did not end with the death of Mr Phillips in March 1886.⁴ During his last few years in office Mr Phillips had suffered greatly from ill health. Perhaps because of this, several irregularities had arisen in the running of the Durban Gaol, and discipline was lax. For example, in 1884 Mr Phillips was, for reasons of ill health, unable to perform his duties as Superintendent for a time. Mr Leonard, the chief turnkey, was temporarily placed in charge of the Gaol, and misused this office by utilising convict labour for work around his home. The Governor commented as follows in June 1884 :

" He has been guilty in doing this of a very grave abuse of office, and ought not in my opinion to be any longer employed in a position which would enable him to make such a misuse of his powers and opportunities. "⁵

1 CSO 516/1434 Memorial of William Cook 6 May 1875.

2 CO 179/123 Bulwer to Carnarvon 2 January 1877 - Para 4.

3 Law 3 of 1876 "Law to provide for the Title and Designation of certain Public Officers connected with the Gaols of the Colony" S1. Following the assumption of control over the penal system by the police force in 1894, the Superintendents of the Durban and Pietermaritzburg Gaols were each given the title "Governor" in place of "Superintendent". (CSO 1395/2236).

4 CSO 1068/897 Resident Magistrate Durban 3 March 1886.

5 CSO 967/2434 Governor to Colonial Secretary 28 June 1884.

On the death of Mr Phillips, Captain A M Smith was appointed Acting Superintendent of the Durban Gaol, and it was his task to rectify the irregularities which had arisen. On Captain Smith taking charge of the Gaol it was found, for example, that a convict was in charge of the treadmill, while other convicts were employed to supervise prisoners under sentence of death. The Resident Magistrate of Durban described these practices as "monstrous" and "utterly wrong in principle".¹ The seriousness with which the authorities viewed this state of affairs is apparent from the fact that Captain Smith was ordered to take up immediate residence within the Gaol :

" If no room is vacant you should apply to clerk of works for loan of a tent, as you cannot enter upon the Gaol cottage until 1st May. "2

Perhaps due to lack of experience, it does not seem as if Captain Smith was able to come to grips with the situation, and conditions at the Durban Gaol remained far from satisfactory. After Captain Smith had been a year in office, the Resident Magistrate was asked to report upon his (i.e. Captain Smith's) probationary services as Superintendent, with a view to his being confirmed in his appointment. That the Resident Magistrate was not at all satisfied with the conduct of Captain Smith, was apparent from the introduction to the report :

" It is with great reluctance and pain that I feel myself compelled ___ to state that I cannot conscientiously recommend that the appointment now held by Captain Smith on probation should be confirmed ___."3

Although the Resident Magistrate had no serious allegations to make, he summed up his objections to Captain Smith as follows :

1 CSO 1071/1197 Resident Magistrate Durban 19 March 1886 and 8 April 1886.

2 *Ibid* 8 April 1886.

3 CSO 2562/C $\frac{49}{87}$ Report of Resident Magistrate Durban 22 March 1887.

" He has no energy or zeal or administrative capacity; and if this be so now, when he is on probation, he is not likely to improve when he finds himself securely established in his position. "1

Following this report the Governor decided not to confirm Captain Smith in his appointment, and Captain Smith's term of probation was extended.² Obviously Captain Smith was greatly disappointed by the turn of events. He became even more bitter when the Governor decided, in August 1887, that it would be beneficial if Superintendent Cooke of the Pietermaritzburg Gaol exchanged duties with Captain Smith for a short period :

" In this way, the long experience of Mr Cooke could be utilized in remedying the defects of the working of the Durban Gaol, and at the same time, Mr Smith would be able to acquire valuable information from experience in the manner in which Pietermaritzburg Gaol is governed. "3

This exchange was carried out between 1 October and 31 December 1887. The authorities were full of praise for the manner in which Mr Cooke managed the Durban Gaol during this three month period, and the Resident Magistrate of Durban stated as follows :

" Mr Cooke has been most assiduous and energetic in his attempts to reform the management of the Durban Gaol, and he has been successful in bringing about a very noticeable and satisfactory improvement in its administration. "4

Clearly, there was a great deal of professional jealousy on the part of Captain Smith towards Mr Cooke, and he stated bitterly as follows :

1 *Ibid.*

2 *Ibid* Governor 24 March 1887.

3 *Ibid* Governor 22 August 1887.

4 CSC 1182/1003 Resident Magistrate Durban.

" [I]n Pietermaritzburg Gaol I found all the irregularities and all the shortcomings which exist here [in the Durban Gaol] Mr Cooke must be well aware of this fact. If he is not, I would suggest his living in the rooms which I occupied in the heart of the Gaol, for in his own quarters he must be living in a fools paradise. "1

The bitterness caused by this incident was to rankle for many years, although Captain Smith was confirmed in his appointment soon after his return to the Durban Gaol. The Governor wrote as follows to the Secretary of State on 17 March 1888 :

" [H]aving regard to the great difficulties encountered by Captain Smith, arising out of abuses that had, under his predecessor, Mr Phillips, existed for years, and having regard also to the inefficiency and misconduct of several of the subordinate Gaol officers, Captain Smith has effected a very considerable degree of reform. "2

To sum up, it should be clear from the above examples that the office of Superintendent of each of Natal's two central gaols was greatly affected by the intense rivalry which existed between Durban and Pietermaritzburg.

If the Superintendents of Natal's central gaols occupied relatively minor positions in the colonial hierarchy, then the other prison officials were drawn from the lowest ranks of colonial society. In general, as a result of the poor wages paid to prison personnel in Natal, this branch of the Government Service attracted poorly qualified and unmotivated men. In addition the uncompetitive nature of the wages offered led to a high turnover of prison staff, resulting in staff shortages and the constant need to train new personnel. Over the years, dissatisfaction at the low level of wages was expressed in numerous petitions to the Government from both black and white Turnkeys and Convict Guards.³

1 *Ibid* Report of Superintendent Durban Gaol 20 January 1888.

2 CO 179/171 Havelock to Knutsford 17 March 1888: Para 2.

3 See for example CSO 421/1915; CSO 825/3732; CSO 837/3627.

In January 1872 dissatisfaction amongst the African prison personnel at the Pietermaritzburg Gaol was particularly strong. The *Natal Witness* reported that the African Guards had gone on strike for an increase in pay and that

" [t]he Magistrate's persuasive powers had to be brought to bear on the gaol guard before they could be got to resume their work. "1

However, it was not only the Turnkeys and Convict Guards themselves who agitated for pay increases. The Gaol authorities were quick to point out to the Government that, in order to acquire good quality prison staff, it was imperative that competitive wages be offered. For example, in October 1881, the Superintendent of the Pietermaritzburg Gaol reported that he was short of a number of African Guards. The Resident Magistrate of Pietermaritzburg commented as follows :

" It is of the greatest importance that these offices should be filled; and filled by trustworthy natives: and it is impossible to obtain such men at less wages than they can obtain elsewhere. Government Service, as a rule, is not popular among the natives. "2

Apart from the uncompetitive nature of the wages offered, certain issues affected white and black prison personnel separately.

In the case of African personnel, a system akin to migrant labour developed, whereby an African Guard would serve for six to nine months, and then return home to work his lands. In his absence, he would ensure that a substitute took over his duties. The Colonial Secretary took a dim view of this practice and commented as follows in October 1881 :

" It is obvious that so long as men are allowed to place others in their posts and go away for months

1 NW 12/1/1872.

2 CSO 837/3627 Resident Magistrate Pietermaritzburg 24 October 1881.

" at a time any increment of pay based on length of service (presumably because of the increase of efficiency thereby procured) is a fallacy. "1

However, despite the fact that African Guards did not remain in service for longer than six to nine months at a time, it is clear that there *was* continuity of service, since the same Guards did return year after year. In requesting an increase of pay for African Turnkeys and Convict Guards, the Superintendent of the Pietermaritzburg Gaol stated as follows on 11 May 1882 :

" I hope that some increase may be given as an encouragement and although they do not as a rule stay longer than from 6 to 9 months at a time, still we get the same natives alternately. "2

Although this particular labour pattern obviously arose as a result of the economic realities facing African prison personnel, the white authorities sought racist explanations. For example, in 1877 Superintendent Cook pointed to the difficulty of training the "native mind" to accept the virtues of "discipline, order and regularity".³ The "continual desire of change from work to idleness exhibited by the Native Guards and Native Turnkeys," meant that just as a Guard was beginning to benefit from his disciplinary training,

" his father, grandfather, or some unknown relative is dangerously ill, and he wants to get away, and is of no use if he does not get away _____. "4

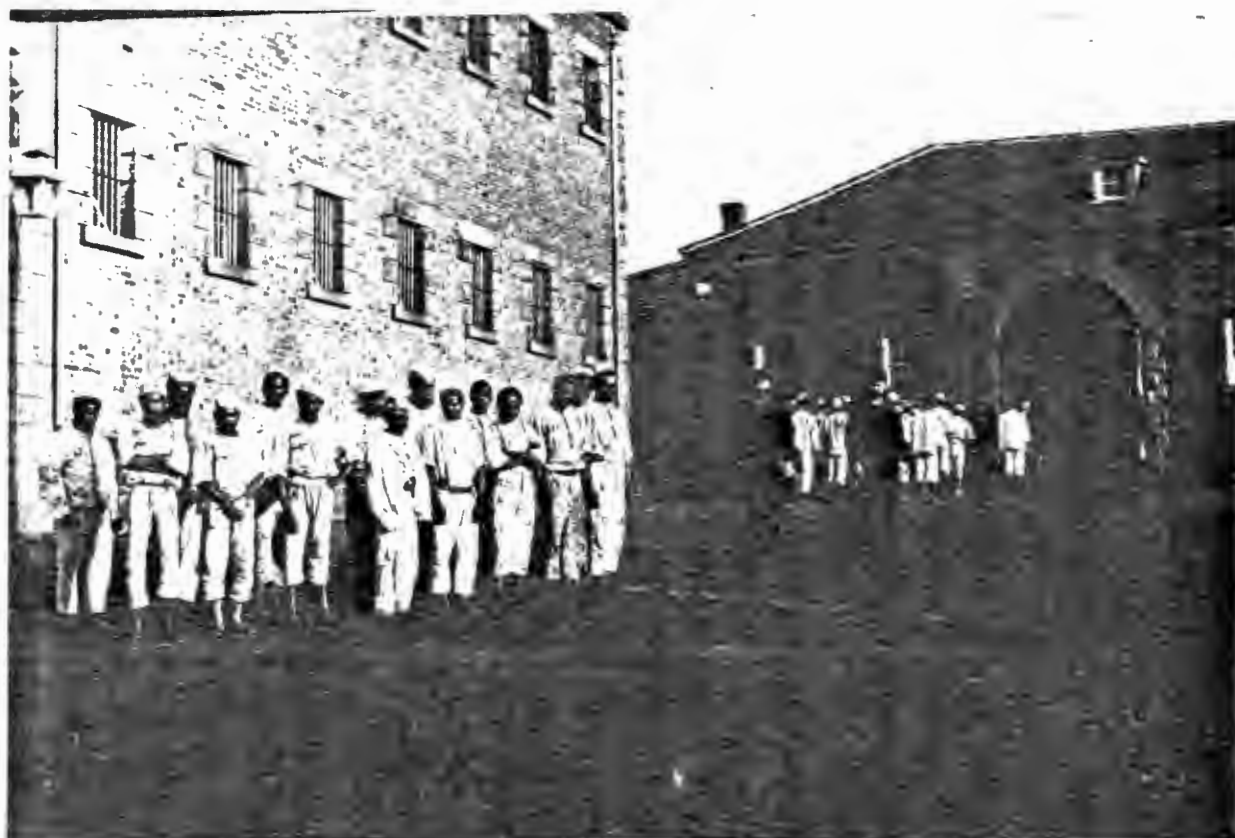
The African Guard was clearly placed in an invidious position, since it was his task to uphold the white man's law which was totally alien to him, and to which he owed his own subjection and repression. On the one hand he had to enforce the authority of his white masters, while

1 *Ibid* Colonial Secretary 11 October 1881.

2 CSO 888/1880 Superintendent Pietermaritzburg Gaol to Resident Magistrate Pietermaritzburg 11 May 1882.

3 CSO 1166/5283 Superintendent Pietermaritzburg Gaol to Resident Magistrate Pietermaritzburg 9 September 1887.

4 *Ibid*.



Prisoners and Warders in the Pietermaritzburg Gaol.

(Courtesy Natal Archives Depot - top C375; bottom C406.)



on the other hand he owed tribal allegiance to his fellow kinsmen who might be in prison. The white authorities clearly realised this problem and the Resident Magistrate of Pietermaritzburg stated as follows :

" I do not doubt that the Native warders do convey money and prohibited articles to their relations in gaols. The claims of clanship are stronger with them than the claims of their employers. " ¹

The relationship of African Guards with white prisoners was complicated by the fact that, in general life outside the prison, a black man would not dare to give orders to a white man. This issue will be more closely examined in Part Two of this thesis.

As for the white prison personnel, it may be stated that, in general, these men were taken from the very lowest orders of white colonial society. The white prison officer had a very low social standing, and in the words of the Resident Magistrate of Pietermaritzburg,

" the office of Convict Guard is regarded as the last refuge of those who have failed in every other attempt to earn a living. " ²

Numerous reports over the years of drunkenness, violence, and insubordinate behaviour on the part of white prison officials, would seem to confirm the unsuitable characters of those attracted to the Prison Service. ³ Without detailing the various cases which arose over the years, we may quote from the first hand observation of a white journalist who was imprisoned in the Durban Gaol at the turn of the century. ⁴ Among his numerous observations as to the character of the white warders are the following :

1 *Ibid* Resident Magistrate Pietermaritzburg 15 September 1887.

2 *Ibid* Resident Magistrate Pietermaritzburg October 1887.

3 See for example CSO 287/2243; CSO 1076/1696; CSO 1076/1697; CSO 1127/1359; CO 179/169 Havelock to Holland 8 December 1887; CSO 1192/3124; CO 179/171 Havelock to Holland 20 January 1888; NA 22/6/1905; NW 26/6/1905; NA 3/11/1905; NA 8/1/1906.

4 G W Hardy *The Black Peril* (p 191).

" I knew a prisoner who regularly backed horses through the warders. He was very successful. He used to bet on all the local races and also on the principal events in England. "1

" No warder is allowed, according to the rules, to strike a prisoner. Yet black prisoners are assaulted every day. If a native swears at a warder, as he frequently does, he is immediately assaulted with fists or the nearest thing handy. It takes place as a matter of course. "2

" Of course, no prisoner, black or white, is supposed to be confined in a dark cell without an order from the Governor and the doctor. Yet natives are put in the dark cells by the warders without the high officials knowing anything of it, and for the most trivial bits of insubordination. The written laws, indeed, of this prison, are useless. And the unwritten ones allow a warder to do any mortal thing with a poor devil with a coloured skin. "3

However, it was not only the evils perpetrated by the white warders against prisoners that created concern. In terms of the racist ideology of white colonial Natal, the white man had a sacred duty to guide and uplift the indigenous black population. It was thus the duty of the white prison warder to set a good example, and provide firm leadership for the black guards under his authority. If the white warder did not adequately fulfil this leadership role, the white master race as a whole was discredited, and the system of order and authority broke down. In the words of the Secretary for Native Affairs :

" It is for the European Guard to set the example - if he is impartial and strict, order and discipline will be maintained ___ [A]s long as they are taken from the class they are, neither discipline nor order will be properly maintained ___. "4

The above issue, however, is more fully dealt with in Part Two of this thesis, which deals with punishment and race in Natal.

1 *Ibid* p 288.

2 *Ibid* pp189-290.

3 *Ibid* p 290.

4 CSO 1166/5283 Secretary for Native Affairs to Colonial Secretary. October 1887.

PART TWO : PUNISHMENT AND RACE IN NATAL

Part Two of this thesis is concerned with the effect of race on punishment in Natal, and the evolution of a racial penal system in the colony. It examines the influence of the extreme racist ideology of the white colonists upon penal theory, and the resulting contradictions and ambiguities within penal practice. The ideology of racially differentiated punishment received its clearest expression in the recommendations of the Prison Reform Commission of 1905-6. The Commission called for the establishment of separate prisons for whites and blacks, each with their own objectives and methods of treatment. For the colonists this represented a logical conclusion to the "common sense" beliefs and theories of punishment which they had been articulating for many years, in opposition to the penal theories originating in Britain. The roots of the racial penal system proposed by the Commission of 1905-6 went far deeper than the immediate circumstances and conditions leading up to the Commission's appointment. These roots will be examined in the various chapters leading up to the final chapter dealing with the Commission itself.

CHAPTER 1 : "YOU ARE WHAT YOU EAT" - RACE CLASSIFICATION AND PRISON DIET

As under the English system, strict dietary scales formed an important part of the punishment of imprisonment in Natal. Natal's penal system 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. "1

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. "2

On 23 November 1868 the Resident Magistrate of Durban forwarded to the Colonial Secretary a petition drawn up by certain prisoners confined

1 Digest p71 Buckingham to Keate 24 July 1868.

2 CSO 317/2580 Resident Magistrate Pietermaritzburg to Colonial Secretary 21 November 1868.

in the Durban Gaol. They complained that

" we 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. "1

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.² 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.³ The Commission submitted a more liberal dietary scale for white prisoners which was adopted. It should be clear from the above that diet formed an important part of the punishment of imprisonment in 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.⁴ This is of course typical of the system of ranking employed in a "disciplinary" institution.⁵

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, both the Resident Magistrate and the Superintendent could punish refractory prisoners by half rations in addition to solitary confinement.⁶ In addition a specific dietary scale ("Spare Diet") was drawn up for purposes of punishment. The punishment of "Spare Diet"

1 CSO 317/2592 Petition of thirteen prisoners in the Durban Gaol November 1868.

2 CSO 324/304 Report of Commission p9.

3 *Ibid* p8 & CSO 320/2857 Report of Superintendent Durban Gaol 5 January 1869.

4 Prison Dietary Scales were set out in the *Natal Blue Book* from 1869 under "Gaols and Prisons".

5 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) p 181-184

6 Law 6 of 1870 Schedule: Regs XV and XXXIX.

appeared among the list of punishments which could be imposed upon refractory prisoners under the Gaol Regulations.¹ However, in 1877 the Pietermaritzburg Gaol Board pointed out that this punishment was never applied.² The reason was that neither Regulation 15 nor Regulation 39 of the Rules, which laid down the respective powers to punish 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.³ 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 i.e. In Foucault's terms it would be classed as an internal disciplinary mechanism.⁴

In addition to the divisions mentioned above, the dietary scales in Natal were divided into different categories to be applied to the various race groups. This distinguished the dietary system applied in the gaols of Natal to that applied in English prisons. It would seem that dietary scales were an important reflection of the racial divisions which existed within Natal's penal system. It was in the area of prison diet that the authorities were first forced to adopt 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 prisoners confined in the Pietermaritzburg Gaol had risen from an average of two or three, to an average of about thirty. Whereas

1 *Ibid* Reg XIX.

2 CSO 581/573 Meeting of Pietermaritzburg Gaol Board 6 December 1876.

3 *Ibid* Meeting of Pietermaritzburg Gaol Board 7 February 1877.

4 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) P 177-178

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.¹ A dietary scale for white prisoners at the Pietermaritzburg Gaol was thus drawn up and approved. Thorny problems of race classification were discussed in terms of diet, and changing conceptions were reflected in a revised system of dietary scales. Time and again the problem of how to classify those 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 the complaint made by a prisoner confined in the Durban Gaol to the Gaol Board on 14 September 1880.² 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 as follows :

" 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. "³

Towards the end of 1884, the problem of how to classify mulatto prisoners again arose.⁴ Again 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. The District Surgeon of Durban pointed out that at the Durban Gaol it had "been the custom to treat people from St Helena, the Island of Mauritius, and the West Indies, also American coloured people as Europeans".⁵ 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

1 CSO 215/227 District Surgeon Pietermaritzburg to Resident Magistrate Pietermaritzburg 21 January 1865.

2 CSO 771/3611.

3 *Ibid* Colonial Secretary 24 November 1880.

4 CSO 993/5081.

5 *Ibid* District Surgeon Durban to Resident Magistrate Durban 24 January 1885.

not impressed by this argument, 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 European? "1

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. "2

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".³ The District Surgeon of Pietermaritzburg reported that Hottentots were "thin small bodied men" who were "more numerous in Pietermaritzburg 20 years ago than at present," and that such prisoners "now rarely appear on the prison register."⁴ 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. "5

1 *Ibid* Colonial Secretary to Resident Magistrate Durban 27 January 1885.

2 *Ibid* District Surgeon Durban to Resident Magistrate Durban 2 February 1885.

3 *Ibid* Report of District Surgeon Pietermaritzburg 2 March 1886.

4 *Ibid*.

5 *Ibid*.

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 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. "1

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.² Government Notice 360 of 1887, which was based on the Committee's recommendations, set out the three categories as follows :

[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."³

Thus, in essence mulatto prisoners were to be classified with the "European" group. This system of racial classification was not only to affect the

1 CSO 1138/1197 Resident Magistrate Pietermaritzburg March 1887.

2 CSO 1138/2457.

3 GG 2 August 1887 GN 360.

diet of prisoners. In 1888 it was decided that the above definition of "European" would be used to determine which prisoners would be eligible for gratuities for labour performed on the public works.¹ (Only "Europeans" were permitted to participate in the gratuity mark system). Thus mulatto prisoners were being 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. This was condemned by the Prison Reform Commission of 1906, which recommended the creation of a separate "Coloured" category :

" [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. "²

In summary, strict dietary scales were adopted in the prisons of Natal not merely to increase the penal nature of imprisonment, and provide specific punishment for breaches of prison discipline. While these were the main objectives of prison dietary scales in England, the dietary scales in force in Natal's prisons had an additional objective. This objective was the racial classification of mulatto prisoners, who fell in between the main racial categories of "European", "Indian", and "Native". Clearly, a major problem faced by a society or penal system based upon racial divisions, is that of 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. Thus in the context of Natal's penal system, we find racial definitions changing over time along with changing social circumstances. Prison dietary scales reflected these changing social definitions.

1 GG 20 March 1888 GN 161: Reg 9.

2 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 26.

CHAPTER 2 : BLACK "REBELS" AND IMPRISONMENT

As has been shown in Part One of this thesis, the prisons of Natal were almost constantly overcrowded. One of the main reasons for this overcrowding was that the prisons were used as a means of social control of blacks. In other words, Natal's gaols were overcrowded with offenders against social control legislation (such as the Masters and Servants Law,¹ the Pass Laws etc) rather than with "criminals" in the true sense of the word (such as murderers, rapists, etc). One of the main problems addressed by the Prison Reform Commission of 1905-6, was the way in which black petty offenders against social control legislation might be kept out of the prisons.² In this way vital prison resources would not be wasted upon such offenders, who were not really "criminals", and thus did not warrant treatment within the penal system. While this issue is discussed extensively in the final chapter of this thesis,³ the present chapter deals with a particular variant of the same problem. It concerns the imprisonment of African "rebels" following the Langalibalele Rebellion of 1873 and the Bambata Rebellion of 1906. Clearly these "rebels" were not "criminals" in the strict sense of the word, and in each case the Natal government authorities were reluctant to commit them to confinement in the already overcrowded gaols of the colony. In each case steps were taken to keep the "rebels" out of the penal system. The case of Natal's black "rebels" thus serves as a particular illustration of the problem of the overcrowding of Natal's prisons with non-criminal blacks. It might be added that this remains a major theme of current South African penal practice.

Towards the end of the year 1873 what came to be known as the "Langalibalele Rebellion" took place. Langalibalele was the chief of the

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- 1 See J Riekert "The Natal Master and Servant Laws" (University of Natal-Pietermaritzburg - Thesis) (1983)
 - 2 GG 5 June 1906 GN 344: Report of Prison Reform Commission - "Reduction of Prison Entrants" - Paras 33-46.
 - 3 Part Two Chapter 5: The Prison Reform Commission of 1905-1906 - A Blueprint for Racially Differentiated Punishment pp 167-186.

Hlubi tribe which occupied land in the foothills of the Drakensberg near Champagne Castle and Cathkin Peak. Following a dispute with the local Magistrate over unregistered guns held by his tribesmen, Langalibalele ignored an order to report personally in Pietermaritzburg. This was tantamount to rebellion and a force of 200 British troops, 300 Natal volunteers, and 6000 Africans was sent to quell the "insurrection". In the ensuing battle between 150 and 200 of the Hlubi were killed. Langalibalele and one of his sons was banished to Robben Island and 200 of the Hlubi tribesmen were imprisoned.¹ Obviously this increase in the prison population placed a 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. " ²

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 ____." ³ 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.⁴ Langalibalele was subsequently confined in the Pietermaritzburg Gaol for a time, amid intense speculation on the part of the local African population that he would somehow escape. This speculation was caused by two unusual natural phenomena which happened to occur at this time, viz. 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 Langalibele.⁵ The eclipse was seen as an attempt by Langalibalele to

1 E Brookes and C De B Webb *A History of Natal* (1965) p113-123.

2 CS0 459/3127 Superintendent Pietermaritzburg Gaol to Colonial Secretary 30 December 1873.

3 *Ibid.*

4 CS0 460/97 Superintendent Durban Gaol 8 January 1874.

5 NW 1/5/1874.

bring total darkness to the earth, under cover of which he might be rescued by his followers. He was believed to have caused the hail-storm in an attempt to break open the roof of the gaol and so make his escape. However, neither Langalibalele nor any of the imprisoned Hlubi tribesmen were able to escape, and the overcrowded condition of Natal's prisons remained unchanged.

One of the consequences of the Langalibalele Rebellion was the passing of Law 18 of 1874, entitled a Law "To make Special Provision with regard to the Employment of Convicts".¹ Under this Law the Lieutenant Governor was authorized to assign any convict condemned to hard labour, as a servant to any private individual or to the Colonial Engineer, for the term of his/her sentence.² The Lieutenant Governor in Executive Council was empowered to frame rules and regulations for carrying out the Law, and on 10 April 1874 a set of such rules and regulations was promulgated in the Government Gazette.³ 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 involved the convict's family.⁴ The convict's family was to be permitted to reside with him on the land of the employer,⁵ and the employer was to provide the convict and his family with food and lodging.⁶ In return the employer could demand the services of any unmarried female belonging to the family who was over ten years of age; and also those of any male belonging to the family who was over twelve years of age and who was residing with the convict.⁷ A male

1 Law 18 of 1874 "To make Special Provision with regard to the Employment of Convicts".

2 In 1863 there had been a failed attempt to pass similar legislation. In 1863 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 householder applying for the same ____." (GG 21 April 1863 GN 56: Bill "For the Employment of Prisoners on Public Works" S10). Prisoners so assigned were to be subjected to the provisions of the Masters and Servants Ordinance No 2 of 1850 (S11). In the case of prisoners, however, the punishment for desertion was to be additional imprisonment for up to two years and, at the discretion of the Resident Magistrate, up to fifty lashes (S7). The Bill was rejected by the Legislative Council and never became law. (NW 17/7/1863 Legislative Council 8 July 1863).

3 Executive Council Vol 9 p258 and CO 179/117 Pine to Carnarvon 22 February 1875 : Enclosure 1 GN 117 of 1874.

4 CO 179/117 Pine to Carnarvon 22 February 1875: Enclosure 1 - GN 117 of 1874.

5 *Ibid* Reg 1.

6 *Ibid* Reg 2.

7 *Ibid* Reg 3.

over eighteen years of age, belonging to the family, and residing with the convict, was not free to go and work elsewhere until the convict's period of assignment had expired.¹ (This did not apply if the employer was unwilling to employ and pay such male the current rate of wages). The 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. "²

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.³ These wages were not to be paid directly to the convict, except by direction of the Lieutenant Governor.⁴ In the normal course of events all such wages were to be paid into an account entitled "The Convict Relief Fund".⁵ The Lieutenant Governor was authorized to

" draw upon such fund for the purpose of relieving from want or rewarding for good conduct any individual native convict, 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. "⁶

Law 18 of 1874 was aimed at black political offenders (i.e. "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 Hlubi tribesmen were imprisoned.

1 *Ibid* Reg 5.

2 *Ibid* Reg 3.

3 *Ibid*.

4 *Ibid* Reg 9.

5 *Ibid* Reg 12.

6 *Ibid* Reg 13.

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, and the penal system was not suitable for dealing with political offenders. Law 18 of 1874 provided the ideal punishment for "rebels" i.e. compulsory labour for the white man. 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 into wage labour on white farms.¹ Indeed certain white farmers viewed the failure of the African tribesmen to work on their farms as a criminal offence. Thus to force a "rebel" into wage labour for the white man was a suitable punishment for daring to challenge white sovereignty. Of course, such a punishment would not have been suitable for "criminals" in the strict sense of the word e.g. murderers, rapists, thieves, etc. 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 negrophobists", perhaps it would be better to treat offenders such as Langa's 200 "rebels", as ordinary criminals.² As hard labour prisoners they could be employed in the construction of much needed public works. The *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. "3

1 See Theoretical Introduction - A: The Political Economy of Natal and Implications for Penal Ideology pp3-10.

2 NW 21/4/1874.

3 *Ibid.*

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. "1

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 disallowance :

" 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. "2

In 1906, what became known as the "Bambata Rebellion" took place. It began in February when Bambata, a very minor chief in the Umvoti Division, defied his magistrate, and ended on 10 June with the massacre of Bambata and five hundred of his followers in the Mome George.³ Following the Bambata Rebellion there was a massive increase in Natal's prison population, as a result of the influx of a large number

1 C O 179/117 Pine to Carnarvon 22 February 1875: Minute by Colonial Office official 7 April 1875.

2 GH 64/Despatch 57 Carnarvon to Wolseley 29 April 1875 - Para 3.

3 E Brookes and C De B Webb *A History of Natal* (1965) p 220-230

of "rebel" prisoners. An intolerable strain was placed on the already overcrowded prisons of Natal, and the Government was forced to take swift action.¹ 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. "2

The Bill became Act 32 of 1906.³ Clearly, this legislation was very similar to Law 18 of 1874, arising out of very similar circumstances and having the same objective i.e. to prevent the prisons being crowded by non-criminal blacks. The Act also showed clear similarity to legislation which had been passed in the Cape Colony following the "Langberg Rebellion".⁴ Natal's Minister of Justice stated in connection with the Cape legislation as follows :

" [T]he Cape Government for some years have [sic] 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. "5

The Minister stated that Act 32 of 1906 was to apply to all prisoners, and not simply to political prisoners (i.e. "rebels").⁶ However, the Act was clearly a response to the large influx of non-criminal "rebel" prisoners into Natal's penal system, was designed primarily to deal with these prisoners. By Government Notice 497 of 1906, regulations

1 Legislative Assembly Debates 1906 Vol 40 pp420-423: Debate of 2 July 1906.

2 *Ibid* p420: Minister of Justice.

3 Act 32 of 1906 "To amend the Gaol Law of 1887".

4 Legislative Assembly Debates 1906 Vol 40 p422: Mr Tatham 2 July 1906.

5 *Ibid* p422: Minister of Justice 2 July 1906.

6 *Ibid*.

were promulgated under the Act, setting out the conditions for the employment of prisoners.¹ In practice it is not certain how many prisoners were hired out, since a convict station was established at the Point to accommodate large numbers of "rebel" prisoners.² In addition, about two hundred rebels were confined in "movable prisons" and made to perform road work.³

In conclusion it may be stated that the legal system of Natal was used not only to maintain law and order, but also as a means of political oppression. The prisons were thus called upon to confine not only "criminals" but also "rebels" (i.e. those who had challenged white authority). In the case of both the Langalibalele and Bambata Rebellions, legislation was introduced which was designed to keep the "rebels" out of the penal system, which was overcrowded with "real" criminals. The legislation had much in common with legislation passed in the Cape following the Langberg Rebellion, and provided for the employment of prisoners at forced labour for white employers.

1 CSO 1827/1124 GN 497 of 1906.

2 Legislative Assembly Debates 1908 Vol 46 p251: Attorney General 15 September 1908.

3 CSO 1827/1124 Report of Assistant Commissioner of Police 13 February 1907: Para 14.

CHAPTER 3 : "KEEPING THE NATIVES IN THEIR PLACE" - THE BLACK MAN, WHITE IDEOLOGY, AND THE PUNISHMENT OF IMPRISONMENT

In general terms it may be said that the English penal system which developed with the rise of capitalism during the nineteenth century, was designed to imbue the discipline and regularity of the capitalist factory, into a reluctant proletariat, still steeped in rural culture and traditions.¹ It was this penal system which was imported into Natal in the 1840's. In Natal, however, there was no large scale capitalist industry with its need for a well disciplined work force. Thus an institution such as England's Pentonville prison with its rigid discipline and clockwork regularity would have been out of place in Natal.² Like the Negro slaves who worked on the cotton plantations in the American South, 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, and it was the white man who held the whip (or to be more accurate the cat-o-nine tails) in his hand.³ This is not to say that Natal's penal system was totally different to the English penal system. Indeed, the penal system of Natal was closely modelled on that in the mother country, and necessarily so, since it embodied the values of an expatriate English middle class. However, there were significant discontinuities between the conceptions of justice held by the English authorities, and those held by the white colonists of Natal. It would be true to say that the punishment of imprisonment was often looked upon by the white colonists as neither a suitable nor a sufficiently severe form of chastisement for black offenders. This resulted in the development of considerable tensions, since the colonists felt that the

1 See for example D. Melossi "Strategies of Social Control in Capitalism : A Comment of Recent Work" *Contemporary Crises* (October 1980) p392.

2 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) (see pp 3-11).

3 The many interesting parallels between the black experience in colonial Natal, and the experience of the black slaves in the American South, become apparent with reference to the work of E. D. Genovese, See, for example *The World the Slaveholders Made* (1969); *The Political Economy of Slavery* (1967); and Roll, Jordon, Roll : *The World the Slaves Made* (1976).

authorities in England, who dictated the policies of the Natal Government, had no conception of the situation as it existed in Natal. The ideological perceptions of the colonists as to the treatment of blacks, were very different to those of the English authorities.¹ The white settlers viewed the large black population which surrounded them with a mixture of paternalism and fear.² In more simple terms, the black man was viewed as both a child and a savage. Just as a father had a duty to guide his child in the paths of righteousness, so the white race had the duty to uplift the uncivilized black population of Natal. Of course, this operated as a rationalisation of and justification for imperialism and exploitation. The implications of the paternalist ideology in the field of punishment were far reaching. Like a child or an animal, the black man's faculties of reason were not sufficiently developed to allow his behaviour to be altered by purely ideological means. Thus in order to secure obedience it was necessary to use physical coercion which could be clearly understood by the black man.³ Just as a dog could not be persuaded by reason alone to obey its master, but required the occasional whipping, so with the black man. Another childlike attribute of the black man was his vulnerability. Like a child, he was very impressionable and easily influenced, and was thus particularly susceptible to the corrupting effects of the prison. Just as it was desirable to keep children out of prison if at all possible, so in the case of the black man. If the paternalistic attitudes outlined above shaped the ideological perceptions of the white colonists to a significant extent; then they were just as significantly shaped by the colonist's fear of the overwhelming savage black population which surrounded them. Many colonists felt that imprisonment was not a sufficient punishment for a rebellious savage who had to be taught in no uncertain terms that the white man was his master. The safety of the white colonists necessitated that it be impressed upon the black man that swift and severe punishment would

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- 1 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).
 - 2 See Theoretical Introduction - A: The Political Economy of Natal and Implications for Penal Ideology pp 3-10.
 - 3 See P R Spiller "The Natal Supreme Court: Its Origins (1846-1858) and its Early Development (1858-1874)" (University of Natal-Durban - Thesis) (1982) p63 and pp308-310.

follow any challenge of the white man's authority. For all the reasons outlined above imprisonment was not viewed by the colonists as a particularly suitable form of punishment for black offenders. In order to illustrate the above points and obtain a more concrete understanding of white ideological perceptions, we may examine a number of debates which took place over the years and had reference to the punishment of blacks.

The first issue which may be examined is the response of the Legislative Council to a Bill put forward by the Lieutenant Governor in 1876, which proposed to abolish the punishment of whipping for offences under the Masters and Servants Ordinance No 2 of 1850. The discretion granted to Magistrates under the Ordinance to order the whipping of servants for civil offences against their masters, had for many years been an issue of dispute between the English authorities and the Natal colonists. The views of the English authorities were represented by the Lieutenant Governor and the various Natal Government officials, while the views of the Natal colonists were represented by the elected members of the Legislative Council. It is not the purpose of this chapter to trace the origins and development of this dispute, since this has been done elsewhere.¹ It is sufficient to note that the English authorities considered it utterly wrong to inflict flogging for offences such as "misconduct", "neglect", "disobedience", "bad conduct", "absence without leave" etc; and urged that this punishment "should be restricted to crimes of violence or brutality, to which it is appropriate."² The abhorrence with which the power to whip servants was regarded by the authorities in England is apparent from the following view expressed by the Secretary of State :

" [T]he infliction of flogging for these trivial offences, is in my opinion unnecessary, liable to great abuse, at variance with sound and equitable legislation in Native matters, and finally is a stain on the Statute book such as I can hardly permit myself to doubt that the Natal Legislature when urged thereto by you will hasten to remove. "³

1 J Riekert "That Natal Master and Servant Laws" (University of Natal-Pietermaritzburg - Thesis) (1983).

2 GH 58/Despatch 325 Kimberley to Pine 17 May 1873 - Paras 3 and 7.

3 GH 64/Despatch 59 Carnarvon to Wolseley 30 April 1875 - Para 6.

In 1876 the Lieutenant Governor introduced a Bill which proposed to abolish the punishment of whipping under the Masters and Servants Ordinance.¹ In the Lieutenant Governor's own words, the Bill was "viewed with the strongest disfavour in the Legislative Council", and was thrown out on its Second Reading.² By examining the response of the Legislative Council to this Bill, it is possible to gain considerable insight into the ideological perceptions of the colonists as to the relationship between black and white, and the most suitable means for punishing blacks. The standpoint of the Natal Government officials, as representatives of the English colonial authorities, was that a measure which sanctioned harsh punishment for minor offences by servants, would have the effect of deterring prospective servants from entering into employment. Thus the clause of the Masters and Servants Ordinance which authorised the whipping of servants for civil offences, contributed to the universal shortage of black labour :

" From the earliest date at which it became my duty to administer the Master's and Servant's Law, I have felt that every lash inflicted under it was doing the employers of labour generally a great dis-service. "3

This argument might have held good in England, where a free and mobile labour force had been created. Workers were at liberty to choose with whom to enter into contracts of employment and it was economic forces which assured a steady supply of labour. In Natal, however, direct coercion played a much more prominent role in securing labour. It was through restrictive legislation and repressive labour practices that the white colonists ensured a supply of black labour.⁴

1 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."

2 CO 179/124 Bulwer to Carnarvon 30 August 1877 - Para 1.

3 NW 28/9/1876

4 See Theoretical Introduction - A: The Political Economy of Natal and Implications for Penal Ideology pp3-10 and B: Punishment of Imprisonment - With Particular Reference to the Colonial Situation pp 11-23.

The representatives of the Natal colonists thus did not espouse the liberal capitalist values of the English authorities. Instead, they emphasized white sovereignty and spoke the language of the feudal lord, the slave owner, the father, and the "baas" i.e. the language of the white master. The relationship between black and white on the farms of Natal was not that of formal equality between employer and employee; rather it was a relationship in which the white man was very much the master, and the black man, by the very fact of his blackness, was very much the servant. It was "natural" that the black man should be the servant of the white man, since the black man was on a lower plane of civilization, little removed from the savage. The only way in which to impress upon an ignorant savage his duties as servant to the white man, was through physical pain. In order to illustrate the paternalist and racist ideology of the white colonists, it is desirable to quote extensively the responses of various members of the Legislative Council to the Government's argument that whipping of servants should be abolished. The *Natal Witness* reported the responses of various members *inter alia* as follows¹:

- " 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 only remained imprisonment, which --- was no punishment to them. In many cases the Kafir had such a thick skin that whipping had little effect. "
- " Mr Saunders did not think it desirable to abolish the flogging of natives under the ordinance ---. Natives were not fit to be brought under civilized laws. "
- " 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 they would white persons; while a Kafir remained a savage, he should be treated as such. "

- " *Mr Hartley* said ___ that a Kafir could only be reached through the skin. It was possible to reach his skin by other means than flogging, and that was by exhausting his knee-joints at the treadmill. "
- " *Mr Aiken* : Declining to work was a greater offence towards a master at certain periods than theft. He ___ spoke very warmly against the bill. "
- " *Major-General Lloyd* [:] ___ imprisonment was no punishment to a Kafir, and something else must be substituted if flogging was abolished. "
- " *Mr Greenacre* also thought flogging alone was the way to reach the natives, and except some other punishment than imprisonment was substituted, he should not vote for the bill. "
- " *The Rev. 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. "

There is no need to comment extensively on the above, since the quotations speak for themselves. It might, however, be as well to emphasize the point that the white colonists did not have high regard for the punishment of imprisonment in the case of black offenders. While imprisonment might have been suitable in the case of white offenders, it did not sufficiently impress upon the disobedient or rebellious black man that the white man was his master.

If the ideological perceptions of white colonists in Natal were to a significant extent motivated by a racist paternalism, then they were also largely influenced by a fear of the surrounding black population. The white settlers perceived themselves as being surrounded by overwhelming numbers of savage tribesmen, against whom there would be no defence. --- should a general uprising against white rule occur. Firm and strict control over the black population was essential to prevent such a situation from ever developing. The authority of the white man and

of white civilization had to be maintained at all costs. Any black challenge to white authority or civilization had to be swiftly and severely dealt with, to prevent it from developing into open rebellion. Any slackening on the reins of control could lead to disastrous consequences, and the "Natives" had to be kept most emphatically "in their place". Blacks were seen as posing both a physical threat to the safety of the colonists, and a metaphysical threat to white values and civilization. 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. It is not the purpose of this chapter to trace the various waves of public outrage and their specific causes. For the purposes of this thesis, the significance of the outrage expressed during such periods, lies in the frequently expressed opinion of the colonists that imprisonment was an insufficient punishment for a crime of such enormity. 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 months hard labour.¹ The *Natal Witness* commented as follows on 26 March :

" What a punishment! If indeed it can be called a punishment to feed and house 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? "2

Clearly the colonists did not feel that the penal system provided sufficient protection or deterrent effect, and on 28 March the *Natal Witness* again

1 NW 26/3/1872.

2 *Ibid.*

stated :

" If things continue to go on in the present way, it will not take long to force people to take the law into their own hands, at any risk. "1

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. "2

For "white ladies" to go to these lengths clearly indicated that the colonists had lost all faith in the established penal system.

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.³ 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.⁴ 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. That man suffers no degradation in the eyes of his

1 *Nw* 28/3/1872.

2 *Nw* 2/4/1872.

3 Legislative Council Debates 1883 Vol 6 pp323-326: Debate of 24 August 1883; and pp361-367: Debate of 29 August 1883.

4 *Ibid* p324 Mr Crowder 24 August 1883.

" fellow, he has suffered no loss of caste among the men whose opinion he cares for, he is not a worse man for it in the opinion of his fellows, and he is in no worse position than he was when he went into prison. "1

Clearly it was felt that imprisonment was not a suitable punishment for the uncivilized black savage. The shame of being branded a criminal, which played such an important part in the punishment of white offenders, did not affect the black offender who was committed to prison. Imprisonment of the black offender was thus lacking in both punitive value and deterrent effect. The only result of such punishment was to bring the authority of the white man into contempt

and this was evidenced by the increasing number of attacks, by black men on white women :

" That it is possible this crime can be committed by the Native races amongst us arises from the fact that our prestige has fallen and the Natives have an utter contempt for the white man ___ [1] It is the fact that we have been seeking to govern the Kafirs of this country as though they were civilized men that lies at the root of the Native difficulty. "2

The punishment of blacks should thus essentially be an assertion of white sovereignty. It had to be realised that the black man was in fact a savage, and had to be treated accordingly. Not only was this necessary to preserve the security of the white man (and in particular the virtue of the white woman) but it was also a kindness to blacks themselves "to prevent their being put into those corrupt places called the gaols of this Colony ___."3 It was pointed out that many blacks were committed to gaol for minor offences which could not really be considered "crimes" in the true sense of the word. Rather than acting as a deterrent, the gaols of the colony were acting as

1 *Ibid.*

2 *Ibid* p325 Mr Crowder 24 August 1883.

3 *Ibid* p361 Mr Crowder 29 August 1883.

"preparatory schools of crime."¹ Many black offenders entered gaol having been convicted only of petty offences, not really criminal in nature, and emerged from prison as hardened criminals. Several members of the Legislative Council condemned the lack of discipline in Natal's gaols and the Superintendent of Police at Durban was quoted as describing the penal system as a "perfect farce".² Thus once again we see imprisonment being condemned as a means for punishing black offenders.

In the same year as the debate outlined in the above paragraph took place, the Government introduced a Bill into the Legislative Council which proposed to abolish the public flogging of prisoners.³ This was an attempt to bring penal practice in Natal into line with that of the mother country.⁴ Indeed, according to Foucault, one of the main characteristics of a disciplinary institution such as the prison, was that inmates were isolated from the outside world, and punishment became the most hidden part of the penal process.⁵ From the extremely hostile reception which the Bill received in the Legislative Council of Natal, however, it would seem that the above principle was outweighed by certain other penal considerations which were peculiar to the Colony. Almost every member of the House spoke against the Bill.⁶ In the responses of the various members we find the familiar themes of paternalism and fear. As has been pointed out in the above paragraph, this happened to be one of the periods of white public panic over the question of black "outrages" on white women, and this is reflected in the responses of the members.

1 *Ibid* p362 Mr Crowder 29 August 1883.

2 *Ibid*.

3 Bill 6 of 1883 "Private Flogging of Prisoners Bill".

4 See GH 372/Circular Despatch Carnarvon to Bulwer 7 January 1878 and GH 382/Circular Despatch Derby to Bulwer 18 January 1883.

5 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) p 141-143

6 Legislative Council Debates 1883 Vol 6 pp29-35: Debate of 16 July 1883.

An examination of the responses of various members is thus desirable :

Mr T Shepstone : "When we have a native population such as we have here in this Colony, and when crime of a particular nature is increasing --- it would be injudicious --- to abolish public flogging."¹

Mr Reynolds : "I contend that public flogging is necessary in the transitional state of the Natives --- [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 --- [U]nless we can impress upon the Natives the terror of vice and wrong-doing, so certainly will they tread upon our corns."²

Mr Crowder : "The present discipline, or the lack of discipline among prisoners within the walls of the gaol is the cause of the degraded and demoralized state of the Natives around."³

Mr Walker : "It is neither humane nor safe not to keep the Natives in their place."⁴

Mr Richardson : "[T]he penalty of simple imprisonment falls very lightly upon them --- The authority to inflict public flogging upon them is not anything too much to ask in order to protect ourselves from the crimes we see amongst us at present."⁵

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."⁶

Mr Robinson : "This measure --- is undoubtedly another instance of that system of pandering to the cries of those sentimentalists at Home who call themselves philanthropists, though they are --- in many respects, the worst enemies the Natives have."⁷

1 *Ibid* p30.

2 *Ibid* pp30-31.

3 *Ibid* p31.

4 *Ibid* p32.

5 *Ibid*.

6 *Ibid*.

7 *Ibid* p33.

Mr Garland : "[T]he 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."¹

Mr Mellersh : "[T]he crimes mentioned in this House tonight can never be stopped by any other means than flogging, so far as our Natives are concerned. They have no ___ feelings of any kind except fear."²

Mr Kershaw : "[I]f there is one punishment which a Native dreads it is flogging. ___ If this mode of punishment has a deterrent effect on the Natives, by whom we are so largely surrounded, this House should hesitate before relaxing it."³

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. Following the "outrage" which was perpetrated on 2 December 1886, a Mr Fisher, the Chairman of a Public Meeting held in Durban, informed the Colonial Secretary by telegram as follows :

" Instructed by a largely attended meeting of townsmen to advise you for the information of His Excellency the Governor that the deepest indignation pervades the entire community in regard to the horrible crime committed in this borough yesterday and to inform him that the most disastrous results beyond control of the law will ensue unless the matter be immediately and effectively dealt with ___ . "⁴

On 6 December 1886, a few days after the above telegram was sent, a member of the Legislative Council issued the following warning :

1 *Ibid* p34.

2 *Ibid*.

3 *Ibid*.

4 CSO 1107/4762 Mr Fisher to Colonial Secretary 3 December 1886.

" If something be not done by the recognised authorities of this Colony, legal and judicial, to arrest this terrible evil, then undoubtedly steps will be taken by the public to take the law into their own hands; and I do not think the moral sense of any community would find fault with any body of men who, in default of action on the part of the governing and judicial authorities, resorted to such extreme steps. "1

This proved to be no idle threat and on 7 December a serious disturbance occurred outside the Durban Gaol, in which a "lawless mob" threatened to break into the gaol and deal summarily with the offender.² The seriousness of the situation was evident from the following statement by the Superintendent of the Durban Gaol, who requested that a detachment of the Natal Mounted Police be stationed within the gaol.

" I believe the knowledge of the weakness of the position at this gaol is an incentive to the mob to attack it, and further I consider that if a small adequate force were stationed here, it would materially assist to allay the excitement, maintain order and prevent the possibility of any attempt being made to storm the gaol as has been suggested. "3

By 11 December the public temper was cooling, and the Resident Magistrate of Durban was able to report as follows :

" I do not consider it necessary or desirable to send a detachment of Natal Mounted Police. The public excitement is now subsiding, especially since His Excellency's reception of deputation from Durban. "4

In February 1887 the *Cape Argus* commented on the affair as follows :

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- 1 Legislative Council Debates 1886 Vol 9 p433: Mr Robinson 6 December 1886.
 - 2 CSO 2562/C-¹¹⁷~~86~~ Resident Magistrate of Durban to Superintendent Durban Gaol 8 December 1886.
 - 3 *Ibid* Report of Superintendent Durban Gaol 8 December 1886.
 - 4 *Ibid* Resident Magistrate Durban to Acting Colonial Secretary 11 December 1886.

" We wish we had reason to think more highly of our Natalian neighbours. Their conduct on this occasion would have disgraced a mob of the Kafirs they despise. "1

The above incident provides a very useful insight into the ideological climate which prevailed in Natal towards the punishment of black offenders. Clearly the white public could not have had much faith in the effectiveness of imprisonment, since they were prepared to storm the gaol and deal with an offender in what they regarded as a more appropriate manner.

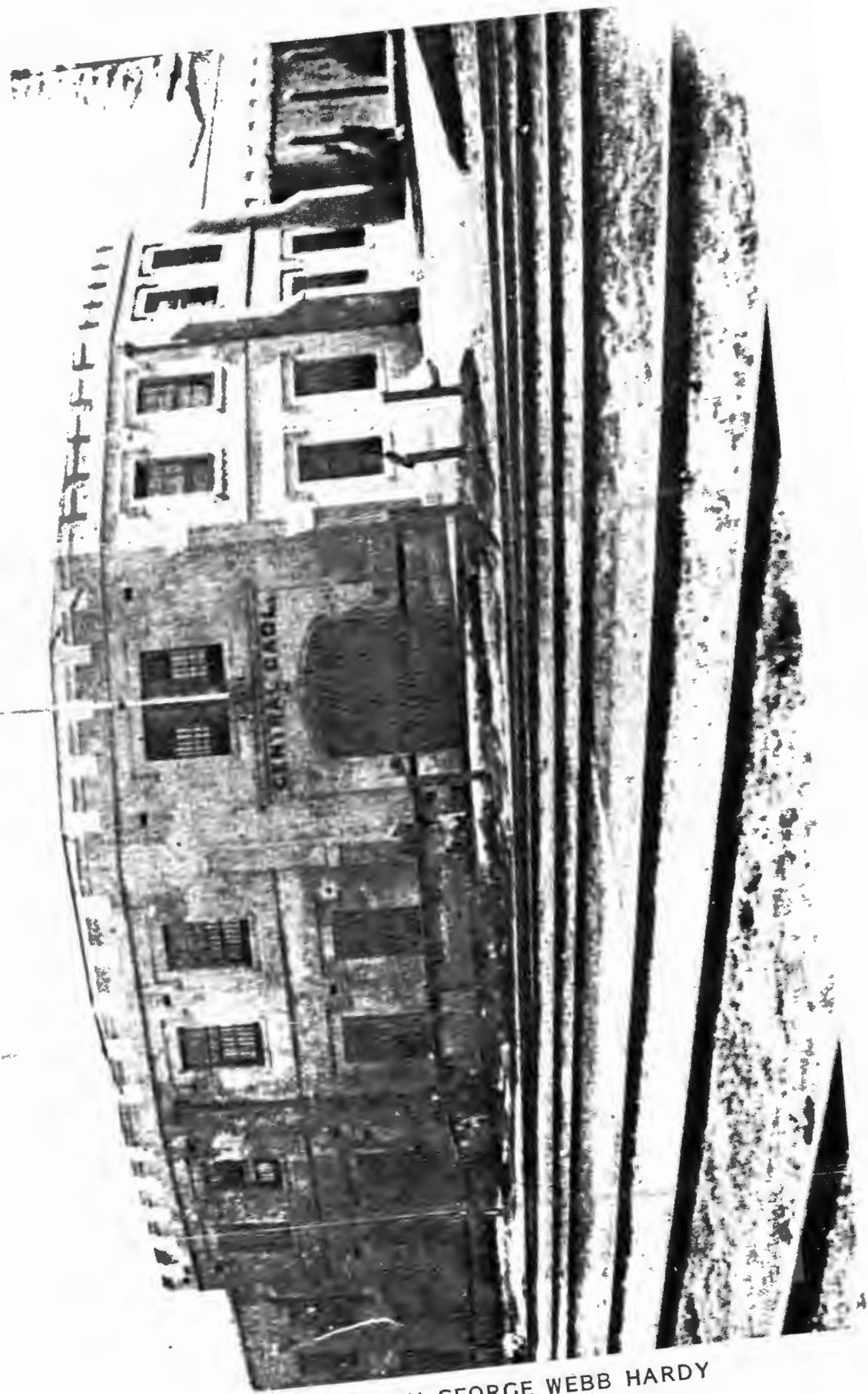
Although the white colonists clearly considered imprisonment to be far too lenient a punishment for black offenders, it would appear that in practice imprisonment in Natal was a very severe punishment, *especially* in the case of black offenders. Severe corporal punishment for trivial offences against 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 prison, was written by a white journalist who was confined in the Durban Gaol just after the turn of the century.² 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 _____. The Nonconformist conscience roused the civilized world over Chinese slavery [on the Witwatersrand]. But very few Chinamen in the Golden City suffered the punishment of the degradation and inhuman cruelty that every day goes on, and has gone on for long, long years, in the prison in which I was incarcerated. "3

1 NW 9/2/1887.

2 GW Hardy *The Black Peril* (?191-)

3 *Ibid* pp 280-281 and 283-284.



THE DURBAN GAOL AS IT WAS WHEN GEORGE WEBB HARDY
WAS IMPRISONED AT AROUND THE TURN OF THE CENTURY.

The writer 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 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. "1

The writer also emphasized the sadistic nature of corporal punishment as inflicted by the white warders upon black prisoners :

" The warders, who gather to see the wretched natives butchered to make a warder's holiday, seem to like the lashing inhumanly. Theirs is a rather monotonous life, and it provides a sort of Spanish bull-fight for them, except that in Spain the bull has a sporting chance of coming through the ordeal with little harm, while a Kafir or coolie stretched and strapped upon the triangle is simply the sport of the warder who has attained to the position of 'champion lasher' and prides himself upon the efficacy of his cuts, and upon the good red blood that is only stopped when handfuls of brine are rubbed into the naked body of the howling victim. "2

Finally, the writer pointed to the corruption that existed within the prison in connection with the flogging :

" There is a good deal of bribery in connection with the flogging. Both blacks and whites bribe the flogging-warder to 'lay it on lightly'. So much is this bribery encouraged, indeed, that it is an understood thing that, unless the flogging-warder is duly 'insulted', he will 'lay it on' with all the energy at his command. "3

1 *Ibid* pp283 and 286.

2 *Ibid* p281.

3 *Ibid* pp285-286.

Clearly in light of the above evidence, "punishment of the body", in Foucault's terms,¹ formed very much part of the punishment of imprisonment for black prisoners in Natal's gaols.

To sum up, it would be a mistake to regard imprisonment as the only, or even the central method of social control employed by the white ruling class over Natal's black population. While imprisonment, with its abstract deprivation of rights, might have reigned supreme in the industrialised capitalist political economies of Europe, direct coercion was very much in evidence in colonial Natal. Natal's white colonists regarded the black population with a mixture of racist paternalism and fear, and believed that imprisonment was neither a suitable nor a sufficiently severe form of punishment for black offenders. Corporal punishment was used extensively against blacks as an assertion of white sovereignty. Whipping not only formed an important alternative to imprisonment, but also constituted an integral part of the punishment of imprisonment in the case of black offenders.

1 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) p 3-31

CHAPTER 4 : DEGRADATION AND SOCIAL STIGMA - THE EFFECT OF IMPRISONMENT ON WHITES

The white colonists of Natal formed a small tightly-knit community and they perceived of themselves as the guardians of "civilized" norms and 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. 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. "1

The degradation of the white prisoner was greatly increased by the fact that he was imprisoned with black offenders, and while in prison was subject to the authority of black prison guards. This held ideological ramifications for society at large, since the authority of the white race as a whole was brought into question. For example, in 1883 a white prisoner was whipped by a black guard for attempting to escape, and the following opinion was expressed in the Legislative Council :

" [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. "2

1 CSO 314/2265 Report of Assistant Resident Magistrate Durban 8 October 1868.

2 Legislative Council Debates 1883 Vol 6 p323: Mr Crowder 24 August 1883.

The effect of imprisonment upon the white man was not merely psychological degradation. As a result of the intense social stigma attaching to imprisonment, white ex-prisoners encountered extreme difficulties in obtaining employment upon being discharged from prison. A member of the Legislative Council described the experience of the white ex-prisoner as follows in 1883 :

" 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. "1

It was towards the end of the nineteenth and beginning of the twentieth centuries that the above issues came to the fore. It would seem that this increase in concern for the interests of the white prisoner, was related to the increasing level of white unemployment, and a growing white proletariat. It was perhaps also related to the increasing level of class conflict between the white rulers and the black proletariat at the turn of the century, and the insistent calls for racial segregation within the towns.²

As has been noted above, one of the major problems encountered by white prisoners was the difficulty in finding employment upon leaving prison. That the authorities realised the severity of this problem is indicated by the introduction of the "gratuity mark system" in 1884, which was to be applicable to "European" prisoners only. In August of that year, it came to light that small gratuities were paid by the Public Works Department to prisoners employed at a skilled trade on public works.³ There were no formal rules regulating the practice, however, and the Acting Colonial Secretary noted that it seemed wrong that a distinction should be made between skilled and unskilled labour.⁴

1 *Ibid* p324: Mr Crowder 24 August 1883.

2 See Theoretical Introduction - A: The Political Economy of Natal and Implications for Penal Ideology 3-10.

3 CSO 982/3976.

4 *Ibid* Acting Colonial Secretary to Colonial Engineer 25 August 1884.

The Colonial Engineer agreed that a formal system should be instituted but stated that

" European prisoners only should be eligible for this gratuity as Natives leaving prison do not labour under the same disabilities as Europeans with regard to obtaining employment or a means of livelihood. "1

As will be shown subsequently, this argument was used extensively by the prison reformers at the turn of the century. The Colonial Secretary approved of a formal system of granting gratuities to European prisoners and stated as follows :

" [T]he introduction of a system of marks, to be applicable in the case of European prisoners of long sentence, would prove very beneficial, as the circumstance that men are discharged from Gaol unprovided with means of any kind frequently induces fresh crime. "2

The Executive Council approved of a system of marks being instituted,³ and regulations were drawn up and published in the Government Gazette of 2 December 1884.⁴ Despite a resolution by the Durban Gaol Board that the mark system be extended to "Natives and Indians",⁵ it was restricted to "European" prisoners sentenced to one year and upwards, when employed on public works. Marks would be allotted on a daily basis for actual work performed, and the gratuity awarded to a prisoner at the end of his term would depend upon the number of marks he had accumulated. However, the maximum of gratuity to be awarded was not to exceed the sum of three pounds sterling. The Superintendent would have the power to deprive a prisoner of a certain number of marks for any breach of prison discipline, and a prisoner reconvicted for a third

1 *Ibid* Colonial Engineer to Colonial Secretary 25 August 1884.

2 *Ibid* Colonial Secretary to Governor 2 September 1884.

3 *Ibid* Clerk Executive Council to Colonial Secretary 6 September 1884.

4 GG 2 December 1884 GN436.

5 CSO 982/3976 Meeting Durban Gaol Board 20 October 1884.

time was not eligible to participate in the system. This system was in no way to interfere with the mark system for remission of sentence.¹

Although tailoring, mat making, carpentering etc were not "public works", these too were to be covered by the mark system. In the Government Gazette of 5 June 1885 the rule was amended to cover not only "public works", but also "such other works of such nature as the Governor may approve".² In this same Gazette authority was also given to make the system applicable to military prisoners.³ Although the system was initially applicable only to "European" prisoners in the strict sense of the word, in 1888 it was extended to include "coloured" prisoners of "European" descent. The Resident Magistrate of Pietermaritzburg stated that these men were "in many instances, the most valuable workers in the Gaol."⁴ The Government thus decided to accept a resolution of the Pietermaritzburg Gaol Board in February 1888 that

" all those prisoners of European descent mentioned in the Ration Scale [i.e. Eurasians, natives of St Helena and the Cape (excluding Kafirs), American Negroes, French Creoles, and West Indians] --- should participate in the gratuity [system]. " ⁵

The gratuity mark system was designed to provide "European" prisoners with funds upon their being discharged from prison, which would tide them over until they were able to obtain suitable employment. However, it was not until the end of the nineteenth and beginning of the twentieth centuries, that institutions were established to assist white ex-prisoners. In July 1895 a Society was formed at Durban to establish a Home for the temporary relief of discharged white prisoners. Although established primarily to aid discharged prisoners, the Home was also to

1 GG 2 December 1884 GN 436.

2 GG 5 June 1888 Amended GN 161.

3 *Ibid.*

4 CSO 1180/614 Residential Magistrate Pietermaritzburg February 1888.

5 *Ibid* Meeting of Pietermaritzburg Gaol Board 7 February 1888.

assist the unemployed and others in need.¹ At this time the unemployment problem was becoming increasingly acute. For example, the Superintendent of Police at Durban reported as follows in April 1897 :

" It will be necessary to devise some plan to cope with the unemployed. Last night I had not room in the Casual Ward for all, and had to allow some to sleep in an empty cell. "2

One of the main functions of "The Durban Home" was thus to assist its inmates to obtain suitable employment. The Governor of the Durban Gaol stated as follows in his report for the year 1896 :

" A system has been adopted during the year whereby, through the kindness of an institution called 'The Durban Home' ____, European convicts on discharge from gaol are assisted in obtaining some sort of employment to keep them from destitution, as is the custom in vogue at English gaols. "3

In 1897 suitable premises were obtained at 65 Stanger Street, adjacent to the Gaol and an ex-officer in the Salvation Army was appointed Superintendent of the Home.⁴ In the same year the Society petitioned the Government for a grant of funds to assist in the running of the Home, and stated, *inter alia*, that

" a large number of Discharged Prisoners have been received into the Home, for whom food and shelter have been provided, and in many cases employment found. "5

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- 1 CSO 1518/2324 Honorary Treasurer Durban Home to Colonial Secretary 30 March 1897.
 - 2 Durban Corporation Superintendent of Police Report Book 6: Report of Superintendent 26 April 1897.
 - 3 Natal Blue Book 1896 at F44: Report of Governor Durban Gaol - Para 5.
 - 4 CSO 1518/2324 Honorary Treasurer Durban Home to Colonial Secretary 30 March 1897.
 - 5 CSO 1518/4040 Petition No 20 of 1897 - Presented 5 May 1897.

The Government authorities approved a grant of £100 for "The Durban Home" for the year 1897-98.¹ However, "The Durban Home" was not the only Home established to aid ex-prisoners. In 1900 the Salvation Army approached the Government for assistance in establishing a Home for discharged white prisoners and other needy cases. This Home was to operate in conjunction with a "Social Farm", as was the practice in Cape Town, and the Government was asked to provide a piece of land in the vicinity of Durban for the establishment of such a farm.² The Attorney General reacted very positively to these requests by the Salvation Army and stated as follows :

" It concerns the welfare of the State to assist in the redemption of those who have been prisoners in its Gaols and who on leaving prison are naturally very heavily handicapped, and in many cases find it exceedingly difficult to get employment. " ³

While the Government decided not to grant any land to the Salvation Army, it was willing to authorize a grant in aid of the establishment of a Receiving Home for discharged white prisoners. A sum of £300 was thus inserted for this purpose in the Estimates for the year 1902.⁴ The Salvation Army was eventually able to obtain a piece of land of approximately thirty acres on the Natal south coast, which became known as the "South Coast Rescue Farm." ⁵

Despite the establishment of the institutions noted above, it was not until 1904 that the problems faced by the white prisoner came fully to the attention of the white public of Natal. In May of that year the *Natal Witness* launched a publicity campaign aimed at bringing about

1 *Ibid* President and Treasurer Durban Home to Principal Under Secretary 15 November 1899.

2 CSO 1685/9488 Commissioner Salvation Army to Attorney General 19 November 1900.

3 *Ibid* Attorney General to Colonial Secretary 26 November 1900.

4 *Ibid* Attorney General to Commissioner Salvation Army 9 January 1907.

5 CSO 2847/Evidence of Peter Stuivenga, Ensign, Salvation Army, 11 October 1905.

prison reform, that was eventually to lead to the appointment of the Prison Reform Commission of 1905-6. The central issue in this publicity campaign seems to have been the treatment of the white prisoner in Natal. The campaign opened with an article written by F Horace Rose,¹ the Editor of the *Natal Witness*, who was to play an important role in keeping the question before the public eye, and in marshaling public opinion in favour of a Parliamentary Commission to investigate the subject. In general, the article put forward two theories, in terms of which the penal system of the time was criticized. Firstly, the criminal instinct was seen as a disease which could be cured by sympathetic treatment. Secondly, it followed from this that punishment should improve the criminal rather than degrade or harden him. Rose stated that the penal system did in fact harden and degrade the prisoner rather than improve him. He saw it as being characterised by a monotonous demoralising routine of futile labour :

" Punishment by means of barren labour is the be-all and end-all of the gaol today. "²

According to Rose the

" routine of gaol life - its galling severity, its degrading toil, its hopeless and well-nigh unsupportable monotony, "

dehumanised long term prisoners and reduced them to the level of mere machines.³ The useless nature of the work performed (i.e. stone breaking) was also seen as having a demoralising effect "on any man capable of turning to profitable account his hands and head."⁴ Apart from causing psychological degradation, the harsh labour resulted in the physical deterioration of long term prisoners. Rose stated :

1 NA 30/5/1904 "A Plea for the Criminal".

2 *Ibid.*

3 *Ibid.*

4 *Ibid.*

" I have heard, and I can well believe it, that seven years imprisonment with hard labour is sufficient to bring mental and physical ruin on the strongest man; and I believe it is a fact that very few Europeans live to complete a longer term than ten years. "1

However, it was not only the individual prisoner who suffered, but society as a whole. Firstly, the work performed by prisoners had no economic value, and did not repay society for the cost of administering the prisons. Secondly, prisoners who had undergone long terms of imprisonment were physically and morally unfit to re-enter society on their release. This resulted in a high rate of recidivism, and one prison official to whom Rose spoke estimated that over 50% of discharged criminals who had served long terms gravitated back to the gaols. In place of the harsh system of crushing penal labour, Rose proposed the establishment of an industrial prison

" in which provision is made for the practise of every useful occupation by which the enforced labour of the convict may be turned to practical account. "2

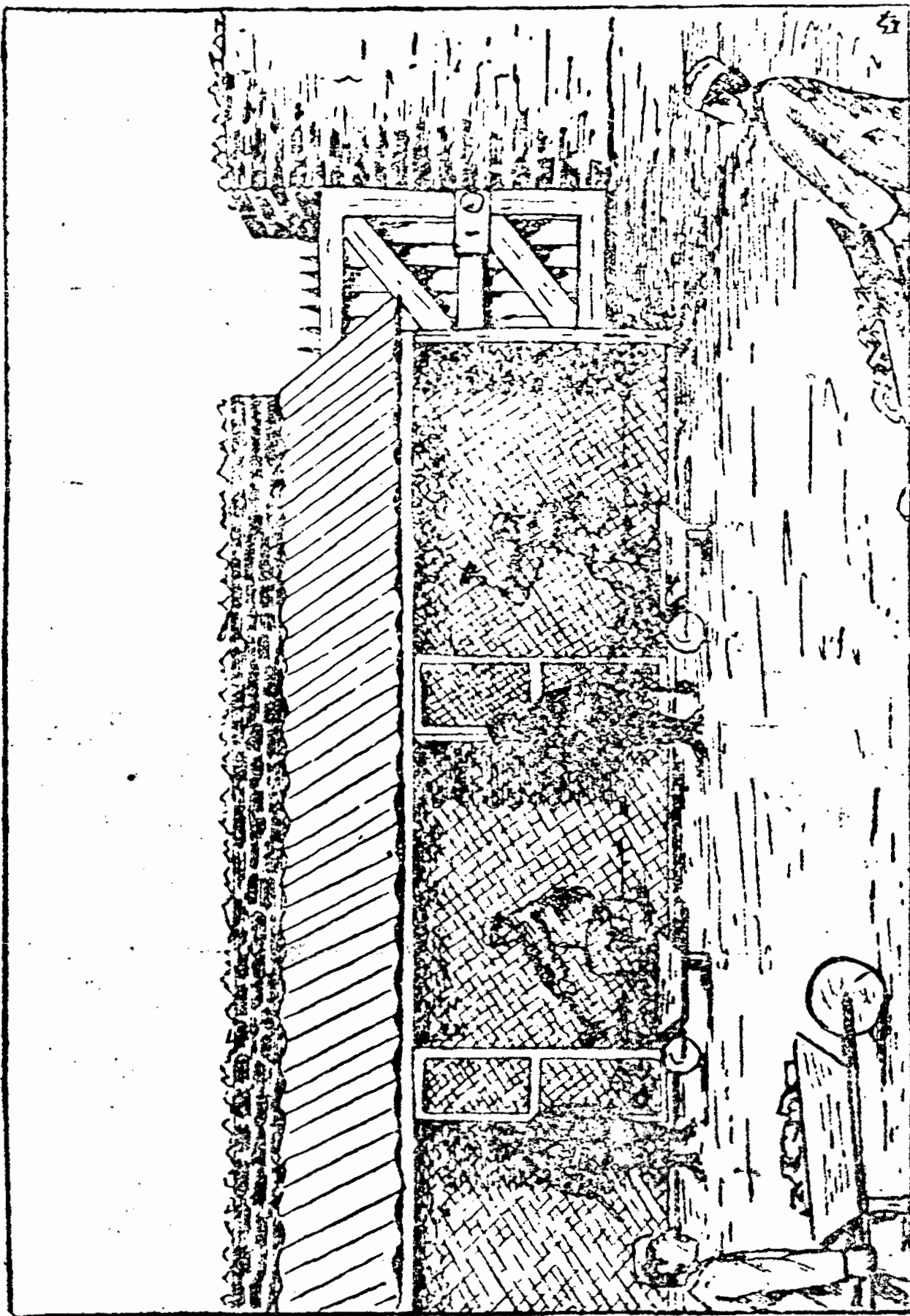
Prisoners who knew a trade would practise that trade and new trades would be taught. In addition, there would be educational instruction in various fields of study.

The public debate which followed Rose's initial article centered on the negative effects of confining black and white prisoners in the same gaols. The racist ideology which pervaded the thinking of Natal's white bourgeoisie at the turn of the century defined the white prisoner as a member of the white master class. The fact that he had committed a crime did not alter this fact, and he should be treated differently to

1 *Ibid.*

2 *Ibid.*

A CORNER OF THE STONE YARD AT THE CENTRAL GAOL, MARITZBURG.

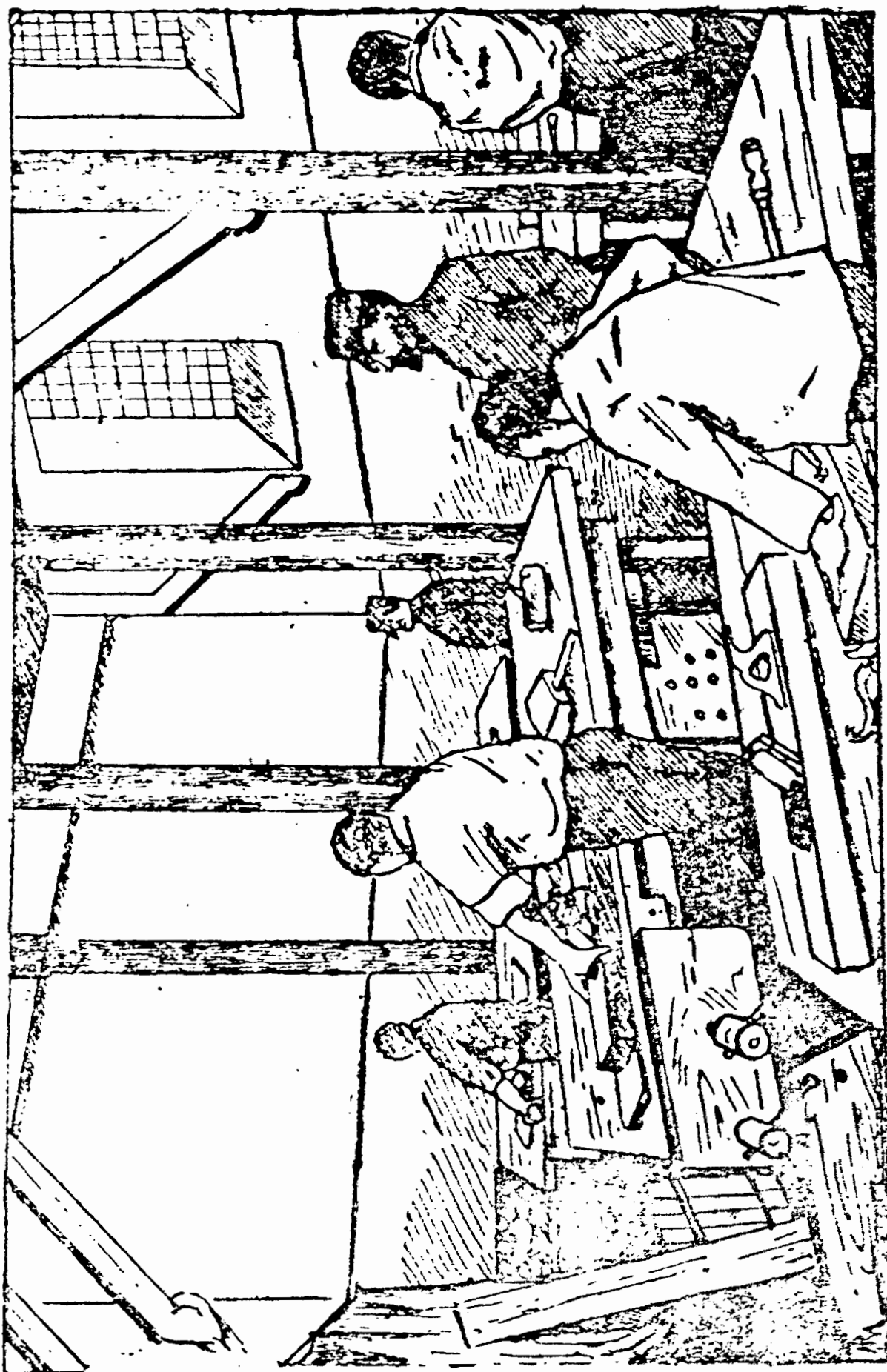


THE PRISON OF TODAY

"Here the convict sits all day in a pen, or cage, breaking stones ____."

(Courtesy Don Africana Reference Library and *The Daily News*
- NA30/5/1904).

A CORNER OF THE CARPENTER'S SHOP IN AN INDUSTRIAL PRISON.



THE PRISON OF TOMORROW

"In place of the stone-yard, well equipped workshops of every description would be found ____."

(Courtesy Don Africana Reference Library and *The Daily News* NA30/5/1904).

the black prisoner who was seen as belonging to the black servant class. In numerous articles and letters the practice of "herding together ___ black and white prisoners" was condemned as a "grave defect in prison administration".¹ The practice was seen as being intensely degrading to the white prisoner, who would be hardened by the experience. 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. This point was made time and again in numerous articles in and letters to the newspapers. For example, a prisoner at the Central Gaol in Pietermaritzburg described as follows the white prisoner's experience of stone breaking :

" 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. "2

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".³ He stated further :

" This must, I think, tend to harden them [i.e. the white prisoners]. 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 I 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. "4

1 NA 30/5/1904 "Industrial Prisons".

2 NA 1/6/1904 "Testimony from Within".

3 NA 30/5/1904 "Opinions of Representative Men" - Letter of Joseph Barker.

4 *Ibid.*

The last portion of the above quotation indicates clearly the twofold degradation to which the white prisoner was subject i.e. the degradation of being placed with criminals, and, even worse, with criminal blacks. The result of this twofold degradation, 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. "1

The mixing of blacks and whites while engaged in labour on the public works was also condemned :

" The white man and the Kafir are placed on the same level; they shovel stones, mix concrete, and push trucks along the rails together, and the moral level of the white man, instead of being raised by useful employment ___ is ___ reduced to one of the lowest planes of degeneration. "2

Racially mixed prisons did not only have a degrading effect on the white prisoner but held ideological consequences for 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

1 NA 7/6/1904 "The Criminal Regenerate" (Editorial).

2 NA 21/2/1905 "Prison Reform".

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. "1

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."2 The ideological implications of this contradiction for society at large were spelt out time 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. "3

On 7 June 1904, the *Natal Advertiser* objected strongly to the practice of placing black guards in charge of white prisoners, and warned as follows :

" It does not take a very far-sighted person to see the possible results of that in the future, nor does it take a far-sighted person to see the gross misuses to which the custom is capable of being put by ignorant natives, who take a certain delight in making the white man feel their power for once in a way. "4

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

1 NA 1/6/1904 "Testimony from Within".

2 *Ibid.*

3 *Ibid.*

4 NA 7/6/1904 "The Criminal Regenerate" (Editorial).

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.¹ The *Witness* warned that the public would "not 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."² 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.

Another aspect of the racist ideology prevalent in Natal at this time concerned the manner in which the various races were defined under the penal system of Natal. A frequent complaint from certain white prisoners was that the category "European" was not narrowly enough defined, and included, in the words of one correspondent to the Natal Advertiser, "Hottentots, Griquas, negroes (*et omnes hoc genus*) ____."³ This meant that so called "Coloured" prisoners were entitled to the same privileges etc as white prisoners and were confined together with white prisoners. Once again the degrading effect on white prisoners (strictly defined) was emphasized :

"... 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' ____." ⁴

1 NW 15/6/1904 "Prison Reform II" (Editorial).

2 *Ibid.*

3 NA 5/1/1905 "Prison Reform".

4 *Ibid.*

The anxiety of white prisoners to avoid "contamination" by contact with prisoners of mixed race was at times almost paranoid. This is reflected in the following rather laughable account by a white journalist 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 of water from which to drink, the same bucket to use as a latrine, the same blankets continually interchanged, the same filth, and insect life creeping and crawling from white to black and from black to white! "1

It was pointed out that to confine "Europeans" with so called "Coloureds", would have far-reaching ideological consequences for society as a whole :

" 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. "2

1 G W Hardy *The Black Peril* (? 191 -) pp274-275.

2 NA 5/1/1905 "Prison Reform".

It is interesting to note that at this time so called "coloured" school children were being removed from white Government schools, and forced to attend Indian schools. This caused a great deal of bitterness; not least because the selection was made on the basis of appearance, and in some cases this resulted in children of the same parents being sent to different schools. The *Natal Mercury* noted as follows :

" It is difficult to imagine anything more tactless or calculated to give pain than to differentiate between children of the same parents, as has been done in some cases ___." (NM 21/9/1905).

In addition to the degradation caused by imprisonment, the white prisoner faced the additional problem of being unable to find employment upon leaving prison. The rehabilitation of the white prisoner could not be accomplished by simply isolating him from black prisoners and thus removing the ideological contradictions discussed above. The reform of the white prisoner was dependent upon his being able to secure lawful employment upon his release. At this time the white unemployment problem was fairly severe, as is revealed by the statements which follow. They were made by the Superintendent of Police at Durban in his annual reports for the years 1902, 1903 and 1904 respectively :

1902 " [T]he Borough being full of Europeans out of employment, I sincerely hope that the authorities will disband the irregulars in the new country _____. "1

1903 " At present there are 150 Europeans of all trades out of work, who have registered their names for employment at the Corporation Office. "2

1904 " I am sorry to find that we have in Durban about 290 able bodied Europeans of various trades registered at our Bureau as out of employ _____. "3

Most urban centres in South Africa at this time were experiencing similar problems. F A Johnstone notes that many whites had been forced off the land by various circumstances at this time. Briefly these include the extension of large scale commercial farming; the severe rinderpest epidemic of 1896; and the devastation and upheaval caused by the South African War.⁴ Colin Bundy states that "Natal's ___ increasingly urbanised white population rose from 46,000 in 1891 to 97,000 in 1904 _____. "5 It does not seem as if the

1 Durban Corporation Superintendent of Police Report Book 6: Report of Superintendent 5 June 1902.

2 Ibid Report Book 7: Report of Superintendent 5 December 1903.

3 Ibid Report of Superintendent 1 January 1904.

4 F A Johnstone *Class, Race and Gold* (1976) pp52-53.

5 C Bundy *The Rise and Fall of the South African Peasantry* (1979) p185.

white unemployment problem could be solved by employing whites at unskilled jobs, since these were performed by cheap black labour. 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 at 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. "1

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 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. "2

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

1 NW 29/12/1904 "Prison Reform".

2 NA 3/6/1904 "Employment Bureau for Ex-Convicts".

The establishment of the industrial prison proposed by Rose provided the solution to both the ideological and material economic problems related to the reform of the white prisoner in Natal. Firstly, it would ensure the separation of white from black prisoners,

" since an institution of this description would open up a field for the labour of white convicts into which it would be impossible, at all events for some time to come, for natives to intrude. "1

Secondly, it would provide the necessary training in skilled work for its inmates :

" Here we would have, in place of the stone yard, well-equipped workshops of every description, for the use of carpenters, blacksmiths, tailors, wheelwrights, bootmakers - in fact, an industrial Whiteley's, at which almost everything a man can fashion with his hand and brain would be made. "2

The establishment of an industrial prison was made possible by the very fact that it was to be restricted to a small percentage of Natal's prison population. Rose noted :

" We have, comparatively speaking, only a small European criminal population here - it is on the Europeans the experiment would have to be tried first, the treatment of native criminals being considered later. With the comparatively few White prisoners we have, it would be possible, at a minimum of expenditure to establish an industrial prison which would pay for itself within a very few years. "3

1 NA 1/6/1904 "Testimony from Within".

2 NA 30/5/1904 "A Plea for the Criminal". See also NW 8/6/1905 "Why Waste Prison Labour?" and NW 6/5/1905 "The City Gaol".

3 *Ibid.*

Rose claimed further that Natal could lead the "civilised" world in prison reform, since there was only a small "civilised" (i.e. white) community in Natal. He stated :

" Natal is the country, par excellence, where such an experiment could be tried with the best prospects of success _____. It is a problem which must be faced sooner or later by civilised communities. The large ones will find it overwhelmingly difficult to grapple with until, perhaps, a small one, more favourably situated for the experiment, solves it for them by practical demonstration. "1

Natal would not only serve as an example for overseas countries, but would also show the way for the rest of South Africa. On 29 December 1904, the *Natal Witness* expressed the wish that a system of industrial prisons conceived in Natal would, in the future, "embrace the whole of the Colony and of South Africa. "2

Hand in hand with a programme of industrial training for white prisoners, Rose saw it as essential to introduce a system of "indeterminate sentences" :

" Acceptance of the principle on which indeterminate sentences are based practically embraces that which underlies prison industrialism, both aiming at the reform of the criminal in almost the same way. The indeterminate sentence places on the criminal the responsibility for his incarceration and prison industrialism gives him the where withal for discharging it. "3

In other words, the purpose of the industrial prison was to reform the criminal by training and educating him in habits of industry. This being

1 *Ibid.*

2 *NW* 29/12/1904 "Prison Reform".

3 *NA* 18/9/1905 "Crime and the Criminal II".

so, the prisoner should remain in prison until it appeared that he had been sufficiently trained and educated so as to enable him to lead an honest and respectable life. This principle could also be expressed by equating crime with a disease of which a prisoner had to be cured before he could be released. To liberate a prisoner before he had been reformed was seen to be irrational :

" As well might we liberate the raving madman because he has been a year in the asylum, or turn the sick out of the hospitals because they have been there a week! "1

Of course a system of indeterminate sentences would give the prison authorities absolute power over the lives of their prisoners. Each prisoner would have to conform to the norms laid down by the authorities or remain in prison indefinitely. Indeed, this was seen as one of the major advantages of the system, since the prisoner was made responsible for his own fate :

" The length of his incarceration depends practically upon himself: upon his conduct, his willingness to learn, his ability to perform; and upon such evidence of reformation as may be demanded of him by the authorities _____. "2

Essentially it was sought to gain control over the prisoner's mind, i.e. ideological control. It was only once the prisoner had convinced himself of the error of his ways and began to co-operate completely with the authorities that he would be released :

" The aim of the reformatory is to apply the principle of probation by making life within its walls a probationary life; a life in which this principle shall become incorporated in the very consciousness and soul of the offender. "3

1 Ibid.

2 NW 20/9/1905 "Crime and the Criminal III".

3 Ibid.

If indeterminate sentences were to be introduced, however, a number of changes would have to be made in the penal system of Natal. Firstly, only "real" criminals (i.e. those who had shown their unfitness to be at large, and were thus in need of reformation) should be admitted to prison. Rose pointed out that many short sentence prisoners were not "criminals" in the true sense of the word, but were merely defined as "criminals" by the law. He protested against the "increasing number of acts, not criminal in themselves, which came under the designation of 'crime'." He stated :

" Legislatures are far too prone to define as crime practices which they desire to suppress, and to make them punishable by terms of imprisonment. "1

In effect, Rose was saying that the prison should not be used merely as a means of social control. The prison had a far more important function, since like the school or the army, it should train, educate, and reform its inhabitants. As an example of the misuse of the penal system, Rose pointed out that the breach of certain municipal laws were punishable by imprisonment. Such practices did not arise from a criminal instinct but were "absolutely legal until by legislation they [were] ___ ranked as crimes."² The solution to the problem was to replace short sentences with fines, which would ensure that only those in need of reform would enter prison. Rose admitted that this might not be practical in the case of "natives and Indians".³ The second change required in the penal system of Natal if indeterminate sentences were to be introduced, was the need for better trained and educated prison warders. Under the proposed system, the warder would carry a great responsibility, since it would be his task to train and educate the prisoner, and decide when that prisoner was reformed. The warders in Natal at this time were anything but refined and cultured

1 NW 13/9/1905 "Crime and the Criminal I."

2 *Ibid.*

3 NW 20/9/1905 "Crime and the Criminal III."

men, able to show an erring individual the error of his ways! Rose stated that the introduction of his proposals

" would demand the employment of a higher - at least a more cultured type of men in our prisons than, generally speaking, we have now. "1

In summary, in terms of the extreme racist ideology of Natal's white colonists, racially mixed prisons were seen as being unsuitable for a number of reasons. Firstly, the white prisoner was psychologically degraded by being confined alongside blacks, and his instinct to reform suppressed. Secondly, the authority of the white race as a whole was brought into contempt when white prisoners were seen by blacks to be in a position of subservience. Thirdly, because of the intense social stigma attached to imprisonment, white ex-prisoners were unable to obtain employment upon leaving prison. The above issues came to the fore in a public debate on the subject of prison reform, which was initiated by the *Natal Witness* in May 1904. The complete separation of white and black prisoners was urged, and the idea of a separate industrial prison for whites raised. The proposed industrial prison would provide industrial training for white prisoners, which would enable them to find suitable employment upon discharge from prison. A system of indeterminate sentences would be instituted along with the programme of industrial training and the reform of the white prisoner would be a major consideration.² The public debate was eventually to lead to the appointment of the Prison Reform Commission of 1905-6, which is examined in the following chapter.

1 *Ibid* See also NW 31/12/1904 "Prison Reform".

2 See NA 25/9/1905 "Crime and the Criminal IV" and NA 27/9/1905 "Crime and the Criminal V".

CHAPTER 5 : THE PRISON REFORM COMMISSION OF 1905 - 1906
- A BLUEPRINT FOR RACIALLY DIFFERENTIATED
PUNISHMENT

The immediate roots of the Prison Reform Commission of 1905-1906 may be found in the social unrest following the Anglo-Boer War of 1899-1902. With a higher level of class conflict between the white rulers and the black proletariat, and the growing problem of white unemployment, there were increasingly strident calls for strict racial segregation at all levels. Scholars have traced the roots of urban apartheid to the establishment of the "Durban System" in the first decade of the twentieth century and calls for the racial segregation of the prisons can be seen as one facet of the development of this system.¹ However, the idea of racially differentiated punishment dated from the time of the establishment of Natal's penal system, as the themes studied above in Part Two of this thesis indicate. In the report of the Prison Reform Commission, all these themes were translated into a blueprint for the establishment of a racial penal system. Like Bentham's "Panopticon",² this racial penal system was never implemented in its pure form, but provides significant insights into the penal system of colonial Natal, particularly towards the end of the colonial period.

Following the initial articles in the *Natal Witness* described in Chapter 4, questions were asked in Parliament, and the Minister of Justice promised to look into the matter.³ Information was obtained from England, Australia and the United States, and on 29 December 1904 the Witness reported that proposals had been drawn up which were to be presented to Parliament. It stated :

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- 1 See Theoretical Introduction - A: The Political Economy of Natal and Implications for Penal Ideology pp3-10.
 - 2 See Appendix 5 p206.
 - 3 NA 16/8/1904 "Prison Reform".

" One of the most important reforms which will be instituted is the complete segregation of European prisoners, thus doing away with the scandal of herding black and white prisoners in the same gaols. "1

It was proposed that the Central Gaol in Durban, which stood on a valuable site in the centre of the city, be sold. The proceeds were to be used to build a new industrial prison for "Europeans" near Pietermaritzburg, and a new prison for blacks at the Point, as near as possible to the harbour works. This proposal indicates the different standards which were applied to white and black prisoners. The proposed industrial prison would be geared to the reform of its inmates by training and education. The proposed new Durban prison for blacks would be aimed at effective punishment and the provision of forced labour for the harbour works. The talk of reform and the treatment of the criminal disease did not apply in the case of black prisoners. The control of an unwilling and repressed black labour force was dependent upon a system of harsh punishment, which would act as an effective deterrent. There were fears among certain whites, particularly those who employed black labour, that the talk of prison reform would lead to more leniency being shown towards black prisoners. Many white employers felt that the penal system was already too lenient towards black prisoners. This matter was brought up in Parliament on 28 June 1904, and one of the members stated as follows :

" We know very well, all of us who are employers of Indian labour, what the Indian's opinion of the gaols of Natal is. They think they are the finest places in the world to go to, that they are far less hard worked there than they are on the estates of their employers, and the same remark applies to Natives ___ [A]lthough I am in favour of doing as much as possible to improve the condition of the white prisoners ___ I certainly, Sir, am not in favour of relaxing in any way the punishment to the Indians and Natives. "2

1 NW 29/12/1904 "Prison Reform".

2 Legislative Assembly Debates 1904 Vol 37 p320: Mr Smythe 28 June 1904.

Clearly the fact that the Government proposed to build separate prisons for blacks and whites to be run along completely different lines, indicates that the above argument was taken very seriously. The proposals put forward by the Government did not end the agitation for prison reform, however, and it was felt by many that a full scale Parliamentary Commission was required to investigate a matter so complex and important. On 10 February 1905 several prominent Natalians petitioned the Government to appoint such a Commission,¹ and on 28 February the *Witness* announced that a Commission had been appointed.² The Report of the Prison Reform Commission, was finally completed on 28 May 1906.³

Many diverse issues were covered in the report of the Commission, which was in places confusing and contradictory. Despite this, it is possible to discern the main thrust of the Commission's findings. The Commission was faced with a penal system which was plagued by excessive overcrowding, and which exercised a corrupting influence on all those who came into contact with it. The system made no attempt to differentiate between various types of criminals, and the gaols were

" used alike for the detention of the convicted and unconvicted of all races and ages, of both sexes, and of all degrees of criminality, from the mere offender against an artificial prohibition to the most villainous transgressor of human and divine law. "4

The Commission set out to separate the various types of offenders, since each required specific treatment. By this means the contamination caused by indiscriminate mixing would be avoided. Since certain categories of offenders would be removed from the existing prisons and placed in separate institutions where they would receive specific treatment, the problem of overcrowding would also be solved. The

1 NA 11/2/1905 "Prison Reform".

2 NA 28/2/1905 "Prison Reform".

3 GG 5 June 1906 GN 344: Report of Prison Reform Commission.

4 *Ibid* Para 25.

major division was to be between whites and blacks. Whites were to be separated completely from blacks and accommodated in a Reformatory or Industrial Prison. This institution would be based on the principles of education, reform and scientific treatment. As for black prisoners, who formed the vast majority of Natal's prison population, the Commission pointed out as follows :

" 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. " ¹

The overcrowding in Natal's prisons was largely the result of sending to prison offenders against the Native Code, Pass Laws, Master and Servants Law etc., who could "in no sense of the word ___ be said to be criminals." ² The Commission proposed a number of ways in which such offenders could be kept out of the existing overcrowded prisons. These included banishing certain offenders to their kraals; punishing by means of corporal punishment rather than short sentences of imprisonment; and sentencing petty offenders to work on the roads or other public works. 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 the 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.

Dealing first with the Commission's proposals relating to white prisoners, the first step towards ensuring the separate treatment of these prisoners was to exclude all "non-whites". The Commission thus added the

1 *Ibid* Para 67.

2 CSO 2847 / Precis of Evidence p2.

category "Coloured" to the existing categories "European", "Indian", and "Native".¹ This would avoid anomalies in classification, since a prisoner who did not fall clearly under one of the three principal categories, would automatically fall under the "Coloured" category. Only a "pure blooded white man" would be entitled to treatment under the separate reformatory system for whites.² Some of the reasons why it was considered necessary to separate whites from blacks have already been discussed earlier in this thesis.³ However, further reasons suggest themselves from the evidence presented to, and report of, the Commission. The following appears in the precis of evidence presented to the Commission :

" Several witnesses have commented on the exceeding difficulty of keeping the races apart when in the same building; and it would appear that even the white man, when in prison, tends to make friends with those other prisoners whom he might be expected to look upon as belonging to the inferior race. "4

Clearly the white ruling class wished to prevent any bonds of solidarity developing between black and white workers, based upon similar class interests. The white proletariat had to be developed as a separate entity, to act as a buffer between the white ruling class and the oppressed black proletariat.⁵ The ideology of racism with its assertion of white superiority and supremacy, had to be jealously guarded, since it provided an effective means of exerting social control over Africans.⁶ Another reason advanced for restricting industrial training to white prisoners, was the opposition which could be expected from white labour if blacks were trained :

1 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 26.

2 CSO 2847 / Precis of Evidence p1.

3 See Part Two Chapter 4: Degradation and Social Stigma - The Effect of Imprisonment on Whites pp147-166.

4 CSO 2847 / Precis of Evidence p1.

5 D.Hemsen(1979)"Class Consciousness and Migrant Workers" (University of Warwick - Thesis) p110.

6 See R Davies *Capital, State and White Labour in South Africa 1900-1960* (1979) pp78-80.

" The needs of the Public Works and the Harbour Departments afford ample outlet for all Coloured Convict Labour; and the industrial training of Native or Coloured Convicts would be probably resented as likely to cause unfair competition with white skilled labour. "1

The above reasons were only mentioned in the evidence presented to the Commission, however, and did not appear in the final report. Instead, the report justified restricting reformative methods to whites, in purely racist terms :

" [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. "2

It would seem that the establishment of a Reformatory or Industrial Prison for whites was regarded as a priority. Various objections to the scheme were noted by the Commission, only to be dismissed. Firstly, it was pointed out that the average number of whites confined in Natal's prisons was very small (200 on average), and that the expense of establishing a separate prison was perhaps not warranted. However, the Commission stated that it was their emphatic opinion "that one of the first measures of reform should be a separate prison for Whites."³ If necessary, it was suggested, Natal could join with a neighbouring Colony in building a Reformatory for the confinement of the white prisoners of both Colonies. Presumably Natal saw itself as leading the sub-continent in the field of prison

1 CS0 2847/Precis of Evidence p6.

2 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 67.

3 *Ibid* Para 69.

reform. Another objection frequently raised to the establishment of an industrial prison was the possibility of unfair competition with "free" labour. Again the Commission seemed to regard the establishment of such a prison as being of overriding importance, and dismissed this objection as follows :

" Protests from 'free', against competition by 'prison' labour, would probably be raised, as they have been in the past; but no such cry should be allowed to embarrass or deter the Government from meeting this pressing want as soon as possible. "

It was envisioned that the goods manufactured in an industrial prison would be used to supply prisons generally and perhaps other public departments as well. The precis of evidence submitted to the Commission stated as follows :

" It is generally admitted that any Industrial Work in the Gaols would have to be restricted to the requirements of Government, so as not to in any way come into competition with the ordinary labour market, and the proceeds of private enterprise. "

The proposed Reformatory was to have separate sections for the treatment of adults and juveniles; inebriates and vagrants. In the future it was proposed also to establish a separate section for "European" women. (At the time, however, there were so few white female offenders that the Commission recommended they be placed under the care of "approved private institutions" instead of being sent to gaol.)³ Special treatment would be provided in that section of the Reformatory dealing with (white) inebriates and vagrants, since these offenders were not "criminals" in the true sense of the word. It would be sought to reclaim these members of society "by suitable manual, mental, and

1 *Ibid* Para 30.

2 CSO 2847 / Precis of Evidence p6.

3 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 74 (10).

moral training, under medical supervision if necessary."¹ As for white juvenile offenders, the Commission recommended that they too be treated in a separate section of the Reformatory, if their numbers justified the establishment of such a separate section. 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. "²

It was also suggested, in preference to both the above options, that a "Truant or Farm School" be established for white juveniles, again if numbers justified such a step. The aim of the Truant School was described as follows :

" 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. "³

In this way it was hoped to keep white juveniles out of the penal system altogether. The truant school was to operate in conjunction with a "First Offenders Act", under which juveniles would be placed under the supervision of a "probation officer" instead of being sent to gaol.⁴ The First Offenders Act was not to be restricted to juveniles but would be "applicable to all ages and races ____."⁵ It would seem, however, that the proposed Act would mainly be applicable to white petty offenders, since as will be shown, there were other methods of dealing with black

1 *Ibid* Para 74 (13).

2 *Ibid* Para 30.

3 *Ibid* Para 36.

4 *Ibid* Para 38.

5 *Ibid* Para 74 (20).

petty offenders. This contention is borne out by the following statement, commenting on petty offences, in the report :

" With Europeans or others of education, the first appearance would be treated under the 'First Offenders Act', and the delinquent cautioned and discharged, or placed under probation. "1

The aim of the First Offender's Act was to keep first offenders away from the corrupting influences of prison life, under the "sympathetic and helpful oversight" of the probation officer.² With regard to white juveniles the report stated :

" Under a First Offender's Act, operating in conjunction with a system of benevolent supervision by specially qualified 'probation officers', and with other forms of corrective treatment suited to the perversity of youth, under the supervision of the Education Department, it may be possible to defer for many years the establishment of a Reformatory for Juvenile Europeans. "3

Thus education and corrective treatment provided the key to keeping white juveniles out of the penal system. The Commission regarded poor education as one of the major causes of white crime. It noted that "out of a total European population of 97,109 persons, as many as 14,757 could neither read nor write,"⁴ and recommended the introduction of a system of compulsory education "applicable to Europeans in the towns, and in harmony with the general conditions of colonial life."⁵ The report also recommended the use of hypnotic suggestion to cure juveniles of the criminal disease since, although supranormal, it was regarded merely as another form of education :

" After all, what is education in the main but suggestion and observation, combined with efforts of the reason and memory? "6

1 *Ibid* Para 40.

2 *Ibid* Para 38.

3 *Ibid* Para 30.

4 *Ibid* Para 36.

5 *Ibid* Para 74 (18).

6 *Ibid* Para 36.

Time and again crime was referred to as a physical or mental disease, capable of cure by modern medical science. For example, the report stated :

" It may be stated without much fear of contradiction that persons mentally well-balanced and physically well-formed and nourished, have not naturally criminal tendencies. If these show themselves early, or develop later, abnormality or degeneracy in the organism is the predisposing cause, and its discovery and removal are within the reach and range of modern medical methods. "1

Clearly the doctor and the psychiatrist were to assume a much greater importance in the treatment of criminals. The reports of surgical operations to cure delinquency, which appeared in the newspapers of the day, foreshadowed the more recent use of chemotherapy, behaviour modification, and psychosurgery.² The Commission also noted the importance of Prisoner's Aid Agencies which would "aid the discharged prisoner to earn his own livelihood, and in time to re-enter the ranks of honest life ____."³ As has been noted in Chapter 4, however, the Prisoner's Aid Agencies were restricted to white prisoners.⁴ Because the number of white prisoners was relatively small, the Commission stated that only one agency would be needed which would operate in conjunction with the proposed white Reformatory.⁵ Thus, to sum up, education, training, reform, and sympathetic treatment were to be the methods adopted in dealing with the white offender.

The black offender was to be treated in a completely different manner to the white offender under the proposed new system. As has been pointed out, the Commission was concerned by the fact that many blacks sent to prison could not be said to be "criminals" in the true

1 Ibid para 70.

2 H Braverman *Labour and Monopoly Capital : The Degradation of Work in the 20th Century* (1974) & NA 19/10/1904 "Disease of Crime - Can Wrongdoers be Cured by Surgical Operation" and NW 9/6/1904 "Of Criminals in General" (Editorial).

3 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 47.

4 See Part Two Chapter 4: Degradation and Social Stigma - The Effect of Imprisonment on Whites pp 147-166.

5 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 47.

sense of the word. Indeed, the criminal law was being used as a means of controlling and repressing the black labour force, and contained many "artificial restraints and disabilities".¹ Many petty offences were punishable by means of a fine, the non-payment of which resulted in a short term of imprisonment. A good example of this was the infraction of "Borough Bye-Laws". The Commission pointed out that in such cases a curious anomaly arose :

" If the delinquent pays the fine, the Corporation benefits; if he does not, the Government has to bear the cost of his imprisonment, receiving a poor return from his labour. "²

Perhaps the point the Commission was attempting to make, was that it was in the interests of society that "criminals", in the true sense of the word, be reformed; and that the Government should bear the cost of the process of reform. However, where the criminal law was being used as an instrument of social control, there was no obligation on the Government to reform individuals who were not "criminals" in any true sense of the word.³ In the case of such individuals, the expense of their confinement

1 *Ibid* Para 67.

2 *Ibid* Para 46.

3 The Government had long adopted this attitude towards the imprisonment of non-criminal blacks. For example under Law 21 of 1888, the Town Councils of Durban and Pietermaritzburg were authorised to establish a system of registration of "Native Servants and Servants belonging to Uncivilized Races within the Boroughs of Pietermaritzburg and Durban." (S2) If offenders under this Legislation were unable to pay a stipulated fine, they could be imprisoned for up to two months (S4). However, since such offenders were not "criminals" in the strict sense of the word, the Law stipulated that the cost of their imprisonment should be borne, not by the Government, but by the respective Corporations (S11). In January 1893 there was a dispute between the Government and the Pietermaritzburg Corporation as to the amount payable by the Corporation per prisoner per day. This dispute was sufficiently serious for the Governor to write as follows to the Colonial Secretary :

" [P]lease ask the Attorney General whether, in the event of the Corporation refusing to pay, we can sue them at Law".

(CSO 1354/220 Governor to Colonial Secretary 4 February 1893).

became the primary concern. As we shall see, the "movable prison" was considered to be a sufficiently cost effective alternative to normal imprisonment in the case of short sentenced black prisoners. Another example of the "artificial restraints and prohibitions" to which blacks were subject, was the terms of the Master and Servants Act, contraventions of which were frequent, and in great part responsible for the overcrowding in Natal's gaols. In order to secure black labour, white employers or their labour agents would loan money to blacks, on condition that the debt was repayed by means of labour service to the particular employer. The labourer would become tired of working for no wage, and would desert. This would render him liable to imprisonment under the Master and Servants Act. Thus a contract which was "purely civil in its inception", became "quasi-criminal in its developments."¹ Clearly the criminal law was not being used merely to combat crime, but also as an instrument of civil oppression and control. Imprisonment as a response to essentially civil offences was both unnecessary and expensive in the eyes of the Commission.

One of the methods proposed by the Commission of keeping short sentenced black offenders out of the penal system, was to set them to work on the roads or other public works. As has been noted, many such offenders were imprisoned because they had been unable to pay their fines. The Commission suggested that

"... in preference to sending males to prison, especially for non-payment of fines, Magistrates might be given power to order them to work on the roads or other Public Works, without being sent to Gaol at all ___." ²

The advantage of such a scheme would be that the full economic potential of the labour power of short sentence black prisoners would

1 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 44.

2 Ibid Para 40.

be realised. (The report commented that "prisoners do more satisfactory work than the free Native labourer."¹) This would compensate the Government for the cost of maintaining these prisoners, who did not really belong within the penal system in the first place. In order to combine the economic advantages of road labour with the need for the safe custody of prisoners, the Commission suggested the establishment of "movable prisons". These "movable prisons" would consist of "portable iron pent-houses, similar to those in use by the Railway for construction work," and would be surrounded by barbed wire entanglements.² Prisoners would be employed at road construction and repair during the day, and confined within this fortified camp at night. The "prison" would be moved as the work progressed. The Commission pointed out that the advantages of establishing such movable prisons throughout the Colony were that they "would in a short time repay their cost by obtaining better results in labour, and improved sanitary conditions in all the gaols. [i.e. by reducing overcrowding in existing gaols]." ³ In the discussion of the white industrial prison, the principle of reformation and the sympathetic treatment of the white criminal was seen as overriding objections as to expense and competition with free labour. On the other hand, the concept of a movable prison seems to have been aimed at the economic utilization of black prison labour, while at the same time reducing the cost of maintaining short term black prisoners.

Another means of keeping black petty offenders out of Natal's overcrowded prisons, was to impose corporal punishment rather than short terms of imprisonment :

" It is strongly urged that, as the effect of short terms of imprisonment ___ is only to degrade the prisoner, and thereby act prejudicially upon the

1 *Ibid* Para 29.

2 CSO 2847 / Precis of Evidence p4.

3 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 29.

" well-being of the community, corporal punishment with a rod or cane, without imprisonment should be more frequently ordered, even in the case of adults. "1

However, the above recommendation did not mean that the Commission was unreservedly in favour of corporal punishment *per se*, and there was an extensive discussion as to the merits of this form of punishment. It was pointed out that whipping had always played a prominent part in the punishment of blacks in Natal. So strong was the belief that the lash was indispensable as a means of punishing black offenders, that the Commission described it as the "cult of the Cat."² Mere imprisonment was not seen as being a sufficient punishment for black offenders, since

" [t]o them a conviction, speaking generally, involves no social degradation or serious loss of respect or position. "3

Corporal punishment provided the necessary penal element and was seen as a form of punishment "to which the Natives have always been accustomed amongst themselves ____."4 However, despite the fact that whipping was seen as being effective as a means of punishment, it was regarded by the Commission as having no reformatory effect. For this reason the Commission recommended that the number of whippings be diminished :

" It is an utterly false conception that the evil in a man can be exercised by flogging, or indeed by any form of punishment; and the sickening sights of torn and lacerated backs should become a less common spectacle in our gaols. "5

1 *Ibid* Para 40.

2 *Ibid* Para 70.

3 *Ibid*.

4 *Ibid*.

5 *Ibid*.

Thus it would seem that the Commission approved of corporal punishment (with a rod or cane only) as a means of keeping black petty offenders out of prison; but disapproved of it as a means of treating confirmed criminals. Corporal punishment was a direct coercive measure which was inexpensive, and could be used to secure obedience from a repressed black working class. However, it was not so useful in dealing with confirmed criminals, who required reformatory treatment. The purpose of corporal punishment was to enforce obedience by creating a lasting impression on the person punished. For this reason the Commission recommended that black adults be birched across the buttocks, in a similar manner to juveniles, in order to make the punishment more humiliating :

" 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. "1

Thus corporal punishment sought to degrade and humiliate; precisely that which reformatory treatment of (particularly white) prisoners sought to avoid. The prevalence of whipping in Natal clearly reflected the paternalistic attitude of the white ruling class towards blacks. Like children or animals, blacks were not seen as possessing sufficient reason to be persuaded by logical argument, and thus physical force was necessary as a corrective. Considering the deeply rooted nature of the belief in the efficacy of whipping, it is not surprising that the Commission should have a fairly ambivalent attitude towards this form of punishment.

As in the case of whites, the Commission was of opinion that the prison was no place for black women or children. The Commission recommended that petty offenders in these two classes be sent back to their kraals.

1 *Ibid* Para 71.

The reason for sending black juvenile offenders back to their kraals was explained as follows :

" 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. "1

Clearly this category of offenders was perceived as a threat by the white ruling class. A possible reason for this is put forward by P La Hausse, who makes the following observation concerning black women in the towns :

" The presence of African women in Durban attracted a great deal of attention from local authority precisely because women symbolized African permanence in the town. "2

Presumably this would apply equally to black juveniles. Thus whereas white women and children offenders would be placed under reformatory supervision, black offenders in these categories would be removed from the towns so that they could no longer constitute a threat to white society and "civilization".³ The treatment of black inebriates would also be vastly different to that of white inebriates. In the case of white inebriate a second offence would be followed by "a short term of rigorous solitary confinement", while a third offence would lead to "long term imprisonment and approved special treatment in the Inebriate's Section of the Reformatory."⁴ However, if the offender was black, a second offence would be followed either by "solitary confinement or consignment to a Movable Prison, as might be deemed most expedient; while subsequent convictions should be followed by progressive sentences to hard labour."⁵ Alcohol was

1 *Ibid* Para 30.

2 P La Hausse "Alcohol, the Ematsheni and Popular Struggle in Durban: The Origins of the Beer Hall in South Africa, 1902-08" (University of Cape Town - Centre for African Studies Seminar Paper) (May 1983) p11

3 GG 5 June 1906 GN 344: Report of Prison Reform Commission - Para 40.

4 *Ibid*.

5 *Ibid*.

seen as a major cause of crime, particularly amongst blacks. The report stated :

" The Native is no longer contented with the simple fermented drink of his forefathers, and, being incapable of moderation, is apt, whenever the opportunity offers, to indulge his appetite to excess. --- The Indian, too, has been allowed greater license here than in his own country, with the result that drunkenness is common amongst them. "1

P La Hausse has pointed out the significance of alcohol to the developing black working class in Durban at the turn of the century. He states :

" The consumption of alcohol by Africans in Durban outside of working hours in the *terra incognita* of Durban's working class living spaces, outside of police control, --- acted in many ways against a well coerced and efficient supply of labour for an urban economy. "2

The white ruling class was united in its opposition to the uncontrolled consumption of alcohol by blacks, and it is not surprising that the Commission saw it as a major source of black crime, and called for greater regulation and control.

The recommendations of the Commission, which amounted to a blueprint for a racially differentiated penal system, were never adopted in their entirety. Despite the assurance of the Minister of Justice on 25 July 1906, that £5,000 had been placed on the Estimates "for the purpose of commencing the erection of an industrial gaol for Europeans,"³ such an

1 *Ibid* Para 37.

2 P La Hausse "Alcohol, the Ematsheni and Popular Struggle in Durban: The Origins of the Beer Hall in South Africa, 1902-08" (University of Cape Town - Centre for African Studies Seminar Paper) (4 May 1983) p11.

3 Legislative Assembly Debates 1906 Vol 40 p753: Minister of Justice. 25 July 1906.

institution was never established during the colonial period. In January 1907, the Colonial Secretary in Cape Town asked the Natal Government to what extent the Commission's recommendations had been adopted. The Minister of Justice replied that

" with a few exceptions the recommendations of the Commission involve legislation and up to the present nothing has been decided in respect thereof. "1

In August 1907 the Government was asked in Parliament if any of the Commission's recommendations had been adopted. The Government stated as follows :

" The recommendations mostly necessitate fresh legislation. Other recommendations involve very heavy expenditure in the way of new Prisons, for Industrial purposes, or Reformatories. "2

However, the Government did list certain recommendations which had been adopted. These included the "establishment of Movable Prisons in various parts of the Colony"; the creation of "a separate class ___ for half casts"; and the sending of "short sentence prisoners of good conduct ___ on to road parties instead of being made to serve their sentence in Gaol."3 At least one of these achievements, however, i.e. the establishment of movable prisons, had not come about because of the force of the Commission's recommendation. Rather, this step had been forced upon the Government to relieve overcrowding within the gaols, following the huge influx of "rebel" prisoners in the aftermath of the Bambata Rebellion of 1906.4 This is evidenced by the following report of the Assistant Commissioner of Police :

1 CSO 1827/1124 Minister of Justice to Colonial Secretary 22 February 1907.

2 PM 67/978 Reply to question by Mr Jameson in the Legislative Assembly on 21 August 1907 - Tabled in Legislative Assembly 29 August 1907.

3 *Ibid.*

4 See Part Two Chapter 2: Black "Rebels" and Imprisonment pp 123-130.

" Four Movable Prisons have been established in which rebel Native Prisoners are confined. 50 Convicts in each prison. Three of these Prisons are on the main roads of the Colony and the convicts are employed road making. The fourth Movable Prison is in the Government Experimental Farm at Cedara ___ Prisoners have been doing good work and shew no inclination to escape. No prisoner with a sentence exceeding two years is sent to a Movable Prison ___." ¹

Towards the very end of the colonial period certain measures were debated in Parliament which were in line with the recommendations of the Commission. In 1908 the Probation of First Offenders Act was adopted.² In 1909 a Bill was introduced and favourably received, which stipulated that corporal punishment should be inflicted with a cane, instead of with the cat-o-nine tails.³ With regard to juveniles, Act 23 of 1909 provided for the birching of juvenile offenders, instead of committing such offenders to prison.⁴ On 23 November 1909 the Attorney General informed 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.⁵ Obviously there was not sufficient time for the above measures to be put into practice before Union in 1910.

To conclude this final chapter, it may be emphasized that, although the recommendations of the Prison Reform Commission were never adopted in their entirety, they are nevertheless important in helping to understand the ideologies of punishment held by Natal's white colonists. The idea that punishment affected blacks and whites differently, and that the penal system should be divided to deal

1 CSO 1827/1124 Report of Assistant Commissioner of Police 13 February 1907 - Para 14.

2 Act 36 of 1908 "To permit the conditional release of offenders in certain cases".

3 Legislative Assembly Debates 1909 Vol 42 pp374-382: Debate of 11 November 1909; pp400-402: Debate of 15 November 1909; pp646-655: Debate of 1 December 1909; pp694-697: Debate of 6 December 1909.

4 Act 23 of 1909 "To provide for boys being punished by whipping instead of imprisonment for minor offences".

5 Legislative Assembly Debates 1909 Vol 42 pp512-513: Attorney General 23 November 1909.

with the problems of each race separately, was fundamental to the findings of the Commission. The treatment of the white prisoner in the proposed Industrial Prison, was to be geared towards education and reform, which would enable him to re-enter white society upon his release. In the case of blacks, the main concern of the Commission was the overcrowding of the prisons with black petty offenders against social control legislation, and various methods were suggested to keep such offenders out of the prisons.

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CONCLUSION

In this thesis many themes have been examined which, it is hoped will have given the reader some insight into the nature and workings of the penal system of colonial Natal. The aim of this conclusion is to attempt, from an overall perspective and in broad terms, to conceptualise the peculiar nature of penal punishment as applied in the colony of Natal. In the general introduction to this thesis, it was stated that the study would deal

" with both continuity and originality; the articulation of the penal theories and assumptions of an industrialised metropolitan political economy, with a rural colonial political economy. "1

Throughout this conclusion the situation of colonial Natal will be contrasted to that of Britain, in order to illustrate how forms of punishment and penal ideologies were adapted to fit the colonial context. In this way it is hoped that an improved understanding of punishment in Natal will be arrived at, which will enable both the public and private sides of specifically colonial punishment to be more accurately conceptualised.

THE PUBLIC SIDE OF COLONIAL PUNISHMENT - ABOVE THE SURFACE

The development of imprisonment as a particular form of punishment in Europe was tied up with the capitalist industrial revolution, during which European society was reconstructed on a new basis. A free mobile labour force was created, and all citizens became theoretically equal. Society was to function by consensus, and would be regulated only by the operation of market forces. Imprisonment as a form of punishment, with its image of humane treatment and its proclaimed purpose of

1 General Introduction p1.

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.¹ Colonial Natal, however, was clearly not a society based upon the idea of consensus. Rather it was a society based upon the idea of white domination over the indigenous black peoples. The white farmers of Natal looked to a racially based coercive labour system, and the black population was subjected to much restrictive and repressive legislation. The ideology of Natal's white ruling class was characterised by attitudes of racist paternalism and a deep seated fear of blacks. In simple terms, Natal was a "coercive society" rather than a "consensus society".² The form adopted by punishment in the colony was profoundly influenced by this fact. Because class domination in Natal openly took the form of racial domination by whites over blacks, the form of punishment to which prisoners were subjected in Natal was different in the case of white as opposed to black prisoners. Natal was not an egalitarian society, and blacks were not seen as being equal to whites. Thus it was logical that blacks should not be punished in the same manner as whites. In other words the form of punishment applied to prisoners of the white master class must be analysed separately to that applied to prisoners of the black servant class.

Before the above analysis can be undertaken, it must be made clear how the essentially artificial distinction between "white" and "black" was made. Pure racial categories do not exist in reality, and a society based upon racial divisions has the constant problem of defining and redefining the various racial categories. In the penal system of colonial Natal, prison dietary scales seem to have been

1 Theoretical Introduction Section B : The Punishment of Imprisonment
 - With Particular Reference to the Colonial Situation pp11-23.

2 *Ibid* Section A : The Political Economy of Natal and Implications
 for Penal Ideology pp3-10.

utilised for purposes of racial classification.¹ Over the years the racial definitions incorporated in the dietary scales were altered along with changing social circumstances. Of course, it was the definition of the "European" category which really mattered, since this group received gratuities for work performed, better accommodation and diet, and generally superior treatment to other groups. The conception of what constituted a "European" changed over the years. For example, in 1887 "Eurasians, natives of St Helena and the Cape, and their descendents (excluding Kafirs), American Negroes, French Creoles, and West Indians" were included in the "European" category.² In 1906 however, such persons were redefined as "Coloured". It is significant that the most exclusive definition of "European" was put forward in 1906 along with proposals for the complete separation of black and white prisoners, and the establishment of an elite industrial prison for the latter.

COERCION AND THE PUNISHMENT OF BLACK OFFENDERS

The form of punishment applied to blacks in Natal was far more openly brutal and coercive than that applied in the disciplinary prisons of Europe. This may be illustrated by contrasting the quotations which follows :

" [G]enerally speaking, punitive practices ... I became I more reticent. One no longer touched the body, or at least as little as possible, and then only to reach something other than the body itself. "3

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- 1 Part Two Chapter 1 : "You Are What You Eat" - Race Classification and Prison Diet pp116-122.
 - 2 *Ibid* p121.
 - 3 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) p11.

" It has been held up practically to the world, to the people outside this House, that we have a law for the Kafir in this Colony, and the law is to flog him, and to flog him severely, and that practically, that is the way the law has been applied. "¹

In the first quotation Michel Foucault describes the shift in emphasis which occurred in Europe during the first decades of the nineteenth century, away from punishment as an "art of unbearable sensations" towards "an economy of suspended rights".² In the second quotation the Attorney General of Natal gives a candid description of the predominant form of punishment of blacks in the colony. However, why should the punishment of blacks in Natal have retained, to some extent, the form of "punishment of the body", which, as Foucault points out, was outmoded in Europe?³

Natal's white ruling class regarded the indigenous black peoples as being on a lower plane of civilization. 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 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. Physical pain was readily understood by the black man, and formed an essential component of the punishment of imprisonment in the case of blacks. The punishment of blacks by whipping *in place* of imprisonment, was justified and rationalised in terms of the same racist and paternalist ideology. Like a child the black man was very impressionable, and could easily fall victim to the corrupting influences of the prison. Corporal punishment

1 Legislative Assembly Debates 1909 Vol 42 p381 : Attorney General.

2 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) p11.

3 *Ibid* pp3-31.

was both quick and effective, and ensured that the offender's contact with the penal system was kept to a minimum.¹

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 the 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 as a form of punishment 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.²

The final and perhaps 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.³ The coercive nature of the form of punishment of blacks in colonial Natal, the "punishment of the body", may perhaps best be understood as an assertion of white sovereignty and authority. Michel Foucault spoke of "penal torture" as :

1 See generally Part Two Chapter 3 : "Keeping the Natives in their Place" - The Black Man, White Ideology, and the Punishment of Imprisonment pp131-146.

2 *Ibid*

3 *Ibid*

" A differentiated production of pain, an organised ritual for the marking of victims and the expression of the power that punishes. "1

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 to-day in the country districts that are ashamed to go about according to their naked Native custom; they wear shirts simply because they are branded. "2

For all the above reasons the punishment of black offenders in Natal, while certainly disciplinary, retained elements of that form of punishment which Foucault calls "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.

REFORM AND THE PUNISHMENT OF WHITE OFFENDERS

Turning to the form of punishment applied to white prisoners in Natal's gaols, it must first be noted that this group formed but a small percentage of the total prison population. For example in 1905 the average number of whites confined in Natal's gaols was approximately two hundred. Because of their white skins, however, these prisoners assumed symbolic importance, since in terms of the ruling class ideology, they were seen as members of the white master class. Particularly around the turn of the century the white prisoner and his treatment came under the white public spotlight. The prison Reform Commission appointed in February 1905, at a time of increasingly

1 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) p34.

2 Legislative Assembly Debates 1909 Vol 42 p378 : Mr Armstrong

strident calls for racial segregation in all spheres of colonial life, was greatly concerned with the form which the punishment of the white prisoner should take.

In a small tightly knit colonial community, the stigma attached to imprisonment formed an important part of the punishment of white offenders. However, white convicts did not only suffer the humiliation of imprisonment, but also the added degradation of being confined alongside black criminals. This twofold degradation was thought to have a very negative psychological effect upon the white prisoner, and to stifle any inclination he might possess to reform himself. By placing white prisoners under the authority of black guards, contradictions arose, since, outside the prison the white man was automatically considered the master, and the black man the servant. The problems of the white prisoner did not cease upon his leaving prison. As a result of the intense social stigma attaching to imprisonment, it was almost impossible for a white ex-convict to obtain employment.

This task was made even more daunting by the fact that, since all menial labour in the colony was performed by blacks, the white ex-prisoner required certain work skills before he could hope to obtain employment. Training in skilled work was not provided to either white or black prisoners in Natal to any significant extent. The Prison Reform Commission of 1905-6 thus proposed the establishment of an Industrial Prison for whites, in which skills would be taught to enable white ex-prisoners to obtain employment upon leaving prison. One of the principle objects of the proposed Industrial Prison was the complete separation of white from black prisoners. The white ruling class was well aware of the negative ideological consequences of confining whites and blacks alongside one another. If respect for the white master class was to be maintained, then whites should never be seen by the black population to be in positions of subservience. Be marching white and black prisoners through the streets together, for example, white authority was undermined, and the white race was insulted as a whole. In addition the white ruling class were anxious to prevent any bonds of solidarity being formed between prisoners of different races. The racist ideology which was so important to the *status quo* had to be maintained inviolate.

For all the above reasons, scientific treatment, education, and reform were considered to be essential elements in the form of punishment for whites in colonial Natal. Above all, prisoners belonging to the white master class should be kept completely separate from prisoners belonging to the black servant class.¹

THE PRIVATE SIDE OF COLONIAL PUNISHMENT - BELOW THE SURFACE

On its public side, the prison in Europe was characterised by concepts such as fairness, equality, humanity and reform. Behind the high walls of the prison and away from the public gaze, however, lay what Michel Foucault termed a "disciplinary institution", which aimed at the control of individuals through various techniques of disciplinary training. The "micro physics of power" which characterized the disciplinary institution was a very thorough, minute, and fairly sophisticated form of control. The precise control of the body and its forces by means of disciplined, was essential to the industrialised capitalist production lines of Europe.² There were no large industries in Natal, however, and in the rural setting of the colony, the disciplinary form with its minutes regulations and exact timetables, must have seemed rather out of place. This is not to say that Natal's penal system owed nothing to the disciplinary form, since the rules and regulations which governed the colony's gaols were clearly disciplinary in character. However, it is clear that there was a considerable gap between the rules and regulations as laid down in the statute books, and actual practice within the prisons. This thesis has shown that there was a constant struggle throughout the colonial period to close this gap, and ensure strict adherence to the rules and a uniform system of prison administration, by creating a separate Department of Prisons under an Inspector of Prisons. This was never achieved.³

1 See generally Part Two Chapter 4 : Degradation and Social Stigma - The Effect of Imprisonment on Whites pp147-166; and Part Two Chapter 5 : The Prison Reform Commission of 1905-1906 - A Blueprint for Racially Differentiated Punishment pp167-186.

2 Theoretical Introduction Section B : The Punishment of Imprisonment - With Particular Reference to the Colonial Situation pp11-24.

3 Part One Chapter 4 : Rules and Regulations - The Search for Uniformity pp93-104.

While the prisons of Natal were clearly not model disciplinary institutions, however, they performed certain important economic and political functions.

PENAL POLICY AND THE STATE OF THE ECONOMY

A strong link existed between penal policy and the state of Natal's economy. In particular, the empirical data revealed that penal labour policy was profoundly influenced by the state of the free labour market.¹ For two reasons it was considered essential that prisoners in Natal be employed, to a large extent, upon the public works of the colony. Firstly, chronic over-crowding within the gaols, as ever expanding prison population, and a lack of resources to provide sufficient additional accommodation, rendered *intra-mural* labour difficult and unsuitable. To confine all prisoners permanently within the walls of the prisons was to invite epidemics, riots, or mass escapes. Secondly, free black labour for the public works of the colony was frequently in short supply, the situation becoming critical at times. These economic realities resulted in consideration of penal theory often taking a back seat in the formulation of Natal's penal labour policy. The form of prison labour adopted in Britain, characterised by the tread-wheel and the crank, was tied up with the work discipline necessary in an industrialised capitalist state. Treadwheel and crank labour, designed to imbue the discipline and regularity of the capitalist factory into reluctant prisoners, seemed rather a waste of time in Natal, and somewhat out of place.² The principle of strictly penal labour was thus rather neglected in Natal, and the employment of prisoners in gangs upon the public works in the colony became very much the norm.

By employing prisoners as substitutes for free labourers, contradictions were bound to arise between the dictates of penal theory and economic

1 See generally Part One Chapter 2 : Prison Labour pp38-74.

2 *Ibid* Section A : The Imperial Authorities, Strictly Penal Labour, and Colonial Reality pp38-48.

necessity. The inmates of Natal's prisons were both prisoners and labourers; and the prison personnel both guards and labour supervisors. Authority was divided between the prison authorities and the Colonial Engineer's Department; and there was a clash of interests between the Government (which was responsible for finding suitable employment for prisoners) and the public employers of convict labour (e.g. the Durban Harbour Board).¹ The contradictions which arise were not restricted to prison labour specifically, but also affected other areas of penal policy, and the example of penal policy towards remission of sentences was examined. It was shown how the English system of "good marks", granted for positive industry on the part of prisoners, could not be applied in Natal because of the communal nature of the penal labour performed in the colony. A system of "black marks" thus had to be devised to suit the situation of colonial Natal.² It is clear that the state of the economy exercised a profound influence over penal policy in Natal, and that British penal theory had to be adjusted to fit in with the colonial situation.

THE PRISON AS AN INSTRUMENT OF SOCIAL CONTROL

A major theme running through the penal history of the colony was the use of the prisons as instruments of social and political control. 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 Bye Laws etc. Contravention of this legislation and inability to pay stipulated fines was punishable by terms of imprisonment. The large numbers of blacks who fell foul of these laws were essentially civil offenders, who had been forced by economic necessity to break the law. They could not be described as "criminal" in any true sense of the word, and yet they were thrust into the penal system

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- 1 *Ibid* Section B : The Employment of Convicts on Public Works in Natal pp49-59.
 2. *Ibid* Section C : Gang Labour on Public Works and its Effect Upon Penal Policy Towards Remission of Sentences pp60-66.

where they contributed greatly to overcrowding. Chronic overcrowding was an almost constant feature of Natal's penal system throughout the colonial period, and resulted in the compromise of the penal principle stressed by the British authorities as fundamental to prison discipline i.e. the separation of prisoners.¹

Since the penal system had been designed to deal with "real" criminals, rather than with petty offenders against social control legislation, various schemes were suggested to keep such offenders out of the prisons, and thereby reduce overcrowding. Following both the Langalibalele and Bambata Rebellions, legislation was passed which gave the authorities the power to assign convicts as servants to private individuals, in place of sending them to prison. This legislation was aimed at the "rebel" prisoners, who were clearly not hardened criminals, and could safely be employed as servants. Overcrowding within the prisons would be reduced, while at the same time the shortage of black labour would be alleviated.² The Prison Reform Commission of 1905-06 also gave serious attention to the problem, and suggested various alternatives to sending black petty offenders to prison. The Commission suggested the establishment of movable prisons, banishing certain offenders to their kraals, and punishing by means of corporal punishment rather than by short sentences of imprisonment.³

It would seem that the overcrowding of the prisons with black offenders against social control legislation, remains a problem to this day. For example, the *Daily News* of 29 April 1983 stated :

" With a daily prison population of more than 100 000 it is hardly surprising that the Minister of Justice --- is at his wit's end trying to fit everybody in ---. One obvious remedy is simplicity itself: stop filling jails with statutory 'criminals' such as influx offenders, who are usually ordinary folk simply trying to make a living. "4

1 Part One Chapter 3 : Prison Accommodation pp75-92.

2 Part Two Chapter 2 : Black "Rebels" and Imprisonment pp123-130.

3 Part Two Chapter 5 : The Prison Reform Commission of 1905-1906 - A Blueprint for Racially Differentiated Punishment pp167-186.

4 *Daily News* 29/4/1983.

Methods of keeping black petty offenders out of the overcrowded penal system, also seem to have changed little from colonial times. For example, many prisoners are employed as servants :

" At present approximately 60 percent of all prisoners who are working are employed by bodies and persons other than the Department of Prisons. This figure takes no account of the 124 648 short term prisoners released on 'parole' to serve their sentences by working for a private person (usually a farmer). "1

Corporal punishment has also recently been suggested as an attractive alternative to short sentences of imprisonment :

" A secret document from the Department of Justice proposes greater use of the cane as an alternative to imprisonment in a bid to cut down prison overcrowding. "2

This conclusion sets out the various themes examined in this thesis, which does not claim to be a complete or exhaustive penal history of the colony of Natal. I hope that the themes examined and my conclusions drawn will shed some light upon both the public and private sides of colonial punishment, and perhaps inspire further in-depth study and research.

1 T M Corry *Prison Labour in South Africa* (1977) p151.

2 *Sunday Tribune* 15/4/1984.

APPENDIX 1 : THE HOMESTEAD MODE OF PRODUCTION

Under the homestead mode of production the kinship relations and the production relations were interlinked and must be seen together. Production took place in or near the homestead (the production community). The homestead consisted of the homestead head (husband) and his wives and their children. Each wife and her children formed a segment (production unit) within the homestead. The homestead head provided each segment with the means of production (cows, land, stores for grain). Each segment provided its own means of subsistence while a portion of the surplus contributed to the subsistence of the homestead head. There was a sexual division of labour and women were the cultivators and men the stock keepers. The homestead was self-sufficient except that it could not produce wives. Women from other lineages were thus exchanged for cattle and vice versa. The more cattle a man possessed, the more wives he was able to acquire, and the greater his production community would be. Cattle were thus a store of self-reproducing labour power. The system perpetuated itself in that each segment would in time break from the homestead and, under the oldest son of the segment, would form a new homestead.¹

1 See S Marks and A Atmore *Economy and Society in Pre-Industrial South Africa* (1980) pp 113-114.

APPENDIX 2 : INDENTURED INDIAN PRISONERS AND PENAL LABOUR

On 10 August 1885 the question of the treatment of Indians undergoing imprisonment for breaches of their indentures was raised by the Resident Magistrate of Durban.¹ He pointed out that thirteen years previously, in January 1872, the Secretary of State had noted that such offenders were guilty of a civil offence, and were thus not "criminals" in the strict sense of the word. They should thus not be subjected to labour at the treadwheel, or shot drill, or other strictly penal labour, but should rather be employed at industrial labour. This instruction had never been carried out. The matter was brought to the notice of the Governor and a circular sent to all Resident Magistrates, instructing them that Indians undergoing imprisonment for breaches of their indentures should only be employed

" on work connected with the interior management of the Gaol, or on such industrial work as painting, carpentering, or for the maintenance and repair of the Gaol. "2

The Protector of Indian Immigrants was far from satisfied with this instruction and stated as follows :

" As has already been reported to the Government this department has at times the greatest difficulty in getting Indians who have deserted to return to their employers. Imprisonment has no apparent effect on them and if the imprisonment in the future is to be made a lighter punishment I apprehend it will cease to have deterrent effect and there will [be] an increase of difficulty in getting these men to fulfil their indentures and an additional burden thrown on the Colony in having to maintain them for longer periods in gaol. "3

The Attorney General agreed with this point of view and expressed his regret that "punishment meted out in other colonies is objected to in Natal."⁴ In November 1889 the Governor was asked if the instruction set out above could be altered so as to allow of Indians imprisoned for breaches of their indentures being sent to labour at the harbour

works. The Protector of Immigrants was very much in favour of this and stated as follows :

" None but the laziest and most incorrigible class of offenders are ever convicted for contravening this particular Section, and how such people are to be made to do either painting or carpentering is a mystery to me, as I do not suppose that one in twenty has ever used a paint brush or handled a Carpenter's tool. I cannot possibly see any objection to work on the Harbour Works being considered as hard labour within the meaning of this Section, and unless something of the kind be done imprisonment will have not the slightest deterrent effect ___."5

"Harbour Works" was thus included in the work on which these men could be employed.

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- 1 CSO 1092/3222 Resident Magistrate Durban to Acting Colonial Secretary 10 August 1885.
 - 2 *Ibid* Acting Colonial Secretary to Resident Magistrates Durban and Pietermaritzburg.
 - 3 *Ibid* Protector of Immigrants 23 November 1886.
 - 4 *Ibid* Attorney General 2 December 1886.
 - 5 CSO 1284/6564 Protector of Immigrants to Colonial Secretary 25 November 1889.

APPENDIX 3 : MILITARY PRISONERS AND OVERCROWDING

As a result of the outbreak of the Zulu War in 1879 and the consequent increase in military offenders, the Durban and Pietermaritzburg Gaols were appointed "authorised prisons" under the Army Discipline and Regulation Act in 1880.¹ This made it legal to confine military prisoners in these Gaols. In May 1882, 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, be kept separate and distinct from prisoners convicted of offences of an immoral,² dishonest, shameful, or criminal character. "2

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'. "3

It is clear that the Government was caught between the legally valid demands of the military authorities and the de facto overcrowding of the prisons. This was a long standing problem which was to remain unsolved 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.⁴ 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."⁵ The military authorities were thus informed that due to the overcrowding a definite number of cells could not be set aside for military prisoners. Thus 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.

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- 1 CO 179/135 Natal No 828 - 17 January 1880 and GH 4/General Hicks Beach to Bulwer 24 January 1880.
 - 2 Reg 1e - Approved by the Governor in Council 5 May 1882.
 - 3 GH 380/Circular Kimberley to Bulwer 23 January 1882 - Minute of Colonial Secretary.
 - 4 CSO 1119/504 Colonel on Staff Commanding Troops Natal District to Acting Colonial Secretary 2 February 1887.
 - 5 *Ibid* Report of Superintendent Durban Gaol 4 February 1887.

APPENDIX 4 : THE CONFINEMENT OF LUNATICS WITHIN THE CENTRAL GAOLS

For many years several buildings at the Pietermaritzburg Gaol were used as a temporary lunatic asylum. In the words of the Commission appointed on 18 November 1868 to recommend changes to Natal's penal system, this was "productive of much annoyance and inconvenience to the Prisoners."¹ In September 1865 a correspondent to the *Natal Witness* reported as follows :

" At the present moment there are nine lunatics in gaol and night after night, more particularly about the time of full moon, the sleep both of turnkeys and prisoners₂ is broken by their melancholy ravings. "²

It was only in 1875 that a separate lunatic asylum was constructed and the lunatics removed from the Pietermaritzburg Gaol. However, this did not solve the problem, since lunatics continued to be confined within the Central Gaols for the purpose of observation, before being sent to the Asylum. Problems continued to be experienced at both the Pietermaritzburg and Durban Gaols. For example on 5 April 1880 the Superintendent of the Pietermaritzburg Gaol reported the escape of a prisoner and stated :

" The prisoner escaped owing to the noise and confusion made by two of the three madmen now in Gaol who make the place more like Bedlam than anything else. "³

With regard to the Durban Gaol, the Acting Superintendent complained on 21 June 1880 that certain of the insane persons confined in the gaol "make such a noise throughout the night that the whole Gaol is kept awake and the same prisoners are continually complaining. "⁴ To rectify this problem it was decided to build a number of temporary cells for lunatics on to the Treadmill House. The only obstacle to the proposal was that a pigeon house stood directly in the way of the proposed alterations. The Colonial Secretary therefore enquired as

follows :

" The Pigeon or fowl house is I presume only there by sufferance or is it a government erection? "5

The Colonial Secretary was assured that the pigeon house was not a "government erection" and could thus be safely removed! Unfortunately the noise problem was still not solved by the erection of the temporary cells, since the walls of these cells were made of iron. The Acting Superintendent of Durban Gaol equated the confinement of violent lunatics in such cells to "placing a cannon ball within an iron trunk ____."6 Finally, it was decided that the walls of the cells be lined with wood, and the space between the wood and iron filled with shavings to deaden sound as much as possible. Thus over many years, the confinement of lunatics within the gaols proved a constant source of discomfort and irritation to both prisoners and authorities.

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- 1 CSO 324/304 Report of Commission p2.
 - 2 NW 19/1865. See also P R Spiller "The Natal Supreme Court - Its Origins (1846-1858) and Its Early Development (1858-1874)" (University of Natal-Durban - Thesis) (1982) p305.
 - 3 CSO 748/1392 Superintendent Pietermaritzburg Gaol 5 April 1880.
 - 4 CSO 787/2740 Superintendent Durban Gaol to Resident Magistrate Durban 21 June 1880.
 - 5 *Ibid* Colonial Secretary 9 August 1880.
 - 6 CSO 771/3611 Acting Superintendent Durban Gaol 7 September 1880.

APPENDIX 5 : BENTHAM'S "PANOPTICON"

The "Panopticon" was a blueprint of a total institution drawn up by the utilitarian reformer Jeremy Bentham, but was never built. It consisted of a central observation tower surrounded by a semi-circular building containing the cells. Each cell had two windows - one on the inside of the ring facing the tower and one facing outwards. This provided the effect of backlighting which rendered the inmates of the cells perfectly visible from the tower. The observation tower was fitted with venetian blinds to render the observer in the tower completely invisible to those in the cells. The building was thus designed to incorporate the principle of what Foucault calls "hierarchical observation". There are no lateral relations between the inmates of the cells, only a non-reciprocal vertical relation between the power in the central tower and the subjects of power in the cells. The Panopticon did not require bars or chains since its inmates were restrained by the thought that they *might* be under observation i.e. the inmates exercised control over themselves. This was an ideal form of total control imagined by the utilitarian reformers and in reality it was bound to meet with fierce resistance. Thus the prison could not dispose of bars and chains, and this explains why the Panopticon was never built.¹

1 M Foucault *Discipline and Punish - The Birth of the Prison* (1977) pp195-228.

APPENDIX 6 : SCHEDULE OF LAWS AND ACTS RELATING TO GAOLS IN THE COLONY OF NATAL 1842 - 1910

This Schedule of Laws and Acts has been compiled from the following references which are available at the Don Africana section of the Reference Library, Durban :

C F Cadiz *Ordinances, Laws and Proclamations of Natal* : Vol I : 1843-1870; Vol II : 1870-1878; Vol III : 1879-1889; Vol IV : 1845-1899.

P L Hitchins *Statutes of Natal 1845 - 1899* : Vol I:AC-JUS.

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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". Cadiz Vol 1 pp 372-373.

Law 6 of 1870 "Law for the Better Government of Public Gaols". Cadiz Vol II pp796-809.

Law 18 of 1874 "Law to make Special Provision with regard to the Employment of Convicts". Disallowed by Proclamation of 14 June 1875. Cadiz Vol II p988.

Law 3 of 1876 " Law to provide for the Title and Designation of certain Public Officers connected with the Gaols of the Colony". Cadiz Vol II p1148.

Law 8 of 1876 "Law to amend certain Provisions of the 'Gaol Law, 1870'". Cadiz Vol II pp1162-1163.

Law 9 of 1876 "Law to provide for the Granting of Conditional Pardons". Cadiz Vol II pp1163-1164.

Law 10 of 1878 "Law to regulate the Disposal of Moveable Property taken from Convicts in certain cases". Cadiz Vol II pp1269-1270.

Law 11 of 1878 "Law to provide for the Restraint and Safe-Keeping of Refractory Prisoners". Cadiz Vol II p1271.

Law 1 of 1880 "To provide for the Restraint and Safe-Keeping of Refractory Prisoners". GG 23 March 1880.

Law 16 of 1882 "To provide for the more effectual Restraint of certain Prisoners". GG 5 September 1882.

Law 18 of 1884 "To amend in certain respects the Gaol Laws, and to make provision for the punishment of Convict Guards or other persons in charge of prisoners, for breaches of duty". GG 4 November 1884.

Law 39 of 1887 "To consolidate and amend the Laws relating to Gaols in the Colony of Natal". Cadiz Vol III pp1745-1751.

Law 21 of 1888 "To facilitate the Registration of Native Servants and Servants belonging to Uncivilised Races within the Boroughs of Pietermaritzburg and Durban". Cadiz Vol III 1819-1919.

Law 6 of 1889 "To amend the Law No 39, 1887 entitled Law 'To consolidate and amend the Laws relating to Gaols in the Colony of Natal'". Cadiz Vol III p2036-2037.

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Act 1 of 1894 "To provide for the Consolidation and Regulation of the Police Forces of the Colony". Hitchins Vol I : "Gaols" p9.

Act 15 of 1905 "To provide for the Imprisonment in this Colony of Criminals sentenced in neighbouring Territories". Acts of the Parliament of the Colony of Natal 1905 p33.

Act 32 of 1906 "To amend the Gaol Law of 1887". Acts of the Parliament of the Colony of Natal 1906 p100.

Act 36 of 1908 "To permit the conditional release of offenders in certain cases". Acts of the Parliament of the Colony of Natal 1908 pp80-82.

Act 23 of 1909 "To provide for boys being punished by whipping instead of imprisonment for minor offences". Acts of the Parliament of the Colony of Natal 1909 p37.

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