

Angels and demons, innocents and penitents: An analysis of different “characters” within the penal discourse of apartheid South Africa 1980 to 1984 – Part Two

Stephen Allister Peté

BA LLB LLM M Phil

Associate Professor, School of Law, Howard College Campus, University of KwaZulu-Natal

Attorney of the High Court of South Africa

OPSOMMING

Engel en Duiwels, Onskuldiges en Boete-doeners: 'n Analise van Verskillende 'Karakters' in die Gevangenis-diskoers van Apartheid Suid-Afrika (1980 tot 1984)

Wat ras, klas en geslag betref was daar vanaf koloniale tye af nog altyd 'n tweespalt in die Suid-Afrikaanse gemeenskap. In so 'n verskeurde samelewing is die openbare debat rondom 'n komplekse sosiale praktyk soos straf of gevangenis-skap noodwendig deurspek met nuanse. Hierdie artikel ondersoek wyses waarop temas in die openbare debat rondom gevangenis-skap in Suid-Afrika verskil van een kategorie van gevangenes tot die volgende. Die tydperk wat ondersoek word is die eerste helfte van die 1980s – 'n dekade waarin aansienlike krake in apartheid toegedien is; 'n tydperk waarin interne en eksterne opposisie teen die stelsel 'n hoogtepunt bereik het, en die owerhede met 'n 'algehele strategie' opgetree het. Elke draad van die ondersoekte diskoers onthul 'n ander 'karakter' in die oorkoepelende verhaal wat spruit uit die gevangenis-diskoers van die tyd. Die diskoers rondom die volgende vier kategorieë van gevangenes word ondersoek: wit manlike gevangenes, bende-lede in gevangenis, wit vroulike gevangenes, kinders. Die artikel bestaan uit twee dele – Deel Een fokus op die eerste twee kategorieë en Deel Twee op die laaste twee.

1 Introduction

As was pointed out in Part one of this article,¹ the purpose of this study is to examine several different 'characters' which emerge within the penal discourse of apartheid South Africa. The early 1980s were a particularly crucial time in the country's history, in many ways marking the beginning-of-the-end of the apartheid system. The period examined is particularly interesting from the perspective of penal discourse, since

1 Peté 'Angels and demons, innocents and penitents: An analysis of different 'characters' within the penal discourse of apartheid South Africa 1980-1984 - Part One' 2015 *De Jure* 55-74.

the prisons were points at which the stresses and strains within the apartheid system became visible. Penal discourse, particularly as reflected in public debates, is important since it provides a clear indication of the ideological context within which the punishment of prisoners is taking place. It is submitted that a nuanced understanding of this ideological context will be helpful in understanding the dilemmas that face the South African penal system today. Ideological attitudes are deeply rooted and able to endure over many decades. True prison reform cannot be accomplished without understanding and transforming these deeply rooted ideological attitudes.

Part one of this article examined two 'characters' who formed part of the overall story which emerged from penal discourse in the first half of the 1980s – the white male prisoner (the 'penitent') and the prison gangster (the 'demon'). It was shown that these two characters occupied completely different conceptual spaces within the penal ideology of the time. It was pointed out that white male prisoners, segregated in their own prison, were seen as 'penitents' undergoing a period of enforced self-reflection and rehabilitation, which would enable them to be reabsorbed into white society, whereas prison gangsters were the 'demons' of the story, surrounded by a discourse of retributive punishment. In each case, historical parallels were drawn with penal debates which had taken place in colonial Natal many decades before, illustrating the resilience of penal ideology and casting light upon the debates taking place in the early 1980s.

Part two of this article will continue with this project. It will deal with a further two characters in the penal drama of the early 1980s, viz. 'fallen angels' (white female prisoners) and 'innocents' (children).

2 Fallen Angels - White Female Prisoners

This section of the article is concerned with the manner in which white female prisoners were represented in public discourse during the early 1980s. Black female prisoners did not feature in the public discourse surrounding prisons at this time. The 'invisibility' of black female prisoners within the public discourse is telling. Before proceeding to discuss the manner in which white female prisoners were represented in the public discourse during this period, it is worth commenting on the different challenges facing white and black women, as well as the 'invisibility' of black female prisoners within the penal discourse at this time. Writing in 1979 – at virtually the same time as the period under examination in this article – Cock drew attention to the 'three lines along which social inequality is generated – class, race and sex'.² Cock pointed out that while both black and white women in South Africa at this time were subjected to discrimination on the basis of sex, '[m]any white women [were] free to enjoy a considerable amount of leisure, or to lead

2 Cock *Maids and Madams – A Study in the Politics of Exploitation* (1980) 5.

economically productive lives outside the home, because of the availability of cheap, black domestic labour'.³ This did not mean, however, that the discrimination and challenges faced by white women, within the particularly chauvinist and patriarchal society which existed in apartheid South Africa at this time, were insignificant. The position of white women in South Africa during the period in question was as follows:⁴

More than half of white South African marriages are under community of property, whereby the husband acquires guardianship of the wife and she is considered a minor even if she is over 21. He holds the 'marital power', which means, for example, that a wife cannot enter into any binding contract, even a hire purchase agreement, or open a credit account without the prior permission of her husband. The Matrimonial Affairs Act, No. 37 of 1953 greatly alleviated the legal disabilities of married women. Since then the woman's earnings are protected, but her husband may still take possession of anything she may have bought with the money, unless she gets a court interdict against him. Also her husband's creditors can claim on her earnings for his debts, with the exception of liquor bills.

Of course, the oppression suffered by most black women at this time – due to the intersection of discrimination on the basis of sex, class and race – was far worse than that suffered by white women. As Cock points out:⁵

An African woman married by customary union is considered a minor under the tutelage of her husband. She has no contractual capacity and cannot own property in her own right. If she owns wages these become the property of her husband ... Influx control is the core of the structure of legal constraints experienced by African women ... In South Africa, African women do not have what are considered basic rights throughout the world: that is, the right to live with their husbands and lead a normal kind of family life ... The government policy is that the African migrant labour force 'must not be burdened with superfluous appendages such as wives, children and dependants who could not provide service' ... It is where there is a convergence between the systems of racial domination and sexual domination ... that the disabilities of African women are greatest.

In the more than three decades which have passed since the above was written, there has been much scholarly focus on the concept of 'intersectionality' – which concerns the way in which different systems and forms of discrimination and oppression (such as sex, race and class) intersect in a mutually reinforcing manner. The term 'intersectionality' was first adopted in 1989 by the critical race theorist Crenshaw.⁶ While

3 *Idem* 240.

4 *Idem* 243.

5 *Idem* 244, 245 & 247.

6 See Crenshaw 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antidiscrimination Politics' 1989 *The University of Chicago Legal Forum* 139-167; see also Crenshaw 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' 1991 *Stanford Law Review* 1241-1299.

it is beyond the scope of this article to conduct a detailed analysis of the concept, it should be kept in mind as a possible explanation for the virtual 'invisibility' of black female prisoners within the public discourse surrounding South African prisons during the early 1980s.⁷ We turn now to a discussion of white female prisoners and the manner in which they were represented in the public discourse.

Adopting the penal discourse of colonial Natal as a point of comparison, it is possible to point to historical resonances within the strand of penal discourse relating to white female prisoners in the 1980s. Although white females did not enter the penal discourse of colonial Natal as prisoners – there being little mention in the public discourse about white female prisoners in the colony – they certainly do enter that discourse as a special category of victims.⁸ The manner in which this special category of persons is conceived during colonial times as a category of victims, speaks directly to the discourse surrounding white female prisoners in the 1980s. As stated in previous work by this author:⁹

The colonists saw themselves as being outnumbered and surrounded on all sides by warlike black savages, who had to be kept firmly under control if the safety of the white community was to be ensured. Any black challenge to white authority or civilisation had to be swiftly and severely dealt with to prevent it from developing into open rebellion. The kind of siege mentality displayed by the colonists may perhaps best be illustrated by reference to the periodic waves of public hysteria that swept through white ranks following assaults on white women by black men. The rape of a white woman by a black man was possibly the ultimate denigration of white authority and civilisation, and public reaction to such 'outrages' reached fever pitch on numerous occasions over the years. Again and again the colonists condemned imprisonment as far too lenient a punishment for the perpetrators of 'outrages'.

7 It is not only in South Africa that black women have been rendered 'invisible' by the intersection of multiple layers of oppression and discrimination. For example, Brown comments as follows in relation to the American criminal justice system: 'The legal community has overlooked the impact of the intersectionality of race and gender, and the criminal justice system suffers from the same dilemma. Law enforcement, the government, and research institutions measure "gender" as "white women" and "race" as "African-American men". African-American women remain invisible until the policies being pursued have had a devastating impact on their lives' see Brown 'The Intersectionality of Race, Gender and Reentry: Challenges for African-American Women' 2010 *American Constitution Society for Law and Policy* 3.

8 It is interesting to note that, at the time the Natal Prison Reform Commission delivered its report in June 1906, there were so few white female offenders that the Commission recommended that they be placed under the care of 'approved private institutions' instead of being sent to gaol; see *Natal Government Gazette* of 1906-06-05 *Government Notice* 344: Report of the Prison Reform Commission – par 74(10).

9 Peté 'Punishment and Race: The Emergence of Racially Defined Punishment in Colonial Natal' 1986 *Natal University Law and Society Review* 105.

It is clear that, during colonial times, white women were regarded as representatives of all that was best in and most sacred to the 'white race'. As a category, white women played an important part in the formation of white identity – including the conception of whites as torch bearers of civilisation in a dark continent. The ideas surrounding white womanhood and what it stood for, formed the apex of a much larger ideological construction around what it meant to be 'white' or 'European' in the Colony of Natal.¹⁰

Shifting from the colonial period to that of late apartheid, it is interesting to note that the discourse surrounding white female prisoners in the 1980s retains a significant flavour of the debates referred to above. The patriarchal underpinnings of the apartheid system, as well as the political and ideological assumptions at work within powerful factions of the white elite, are often clearly on display in newspaper articles dealing with this category of prisoners in the early 1980s, particularly in articles which appeared in the conservative Afrikaner press. For example, *Die Volksblad* published an article in 1980 discussing the daily lives of white women in Kroonstad prison. Not afraid to 'wear its heart on its sleeve', the article is characterised by the use of highly emotive language. Just beneath the surface of the earnest discussion about the experiences of white female prisoners, lies the unspoken assumption that white women are the guardians of civilised values on a dark continent, the sacred keepers of the flame of Christian civilisation.¹¹ The article is filled with empathy and pathos and one can almost hear violins playing in the background as the daily lives of these 'fallen angels' are described:¹²

When a women finds herself in prison, it is essential that a consistent effort be made by the authorities to appreciate the extent of her humiliation and

10 See also Morrell 'From Boys to Gentlemen: Settler Masculinity in Colonial Natal 1880–1920' 2001 *UNISA Press* 160.

11 Indeed, this patriarchal tone harks back to colonial times; see, for example, Peté & Devenish 'Flogging, Fear and Food: Punishment and Race in Colonial Natal' 2005 *Journal of Southern African Studies* 10-11.

12 The words used were: 'Met die vrou wat in die gevangenis beland, word voortdurend gepoog om begrip te toon vir haar vernedering, berou en verse. Sy bly vrou, en dit is belangrik in haar behandeling en opleiding. Dit is ook wat n mens die eerste opval wanneer jy instap by die afdeling vir vrouegevangenes op Kroonstad: die gevoel van vroulikheid, die netheid, die rustigheid in die lug. Die lang gange het byna die sereniteit van 'n hospital ... In die groot, sonnige naaldwerkkamer is die blanke vroue met vlytige en knap hande besig, en handel gedempte gesprekke oor allegaagse dinge. Hulle is netjies, vroulik en ontspanne. Elke vrou het n rok aan wat sy self na eie smaak en voorkeur in die gevangenis gemaak het. Van eenvormige, vormlose gevangenisdrag is daar nie sprake nie ... [I]n die selle – elke blanke vrouegevangene op Kroonstad het n enkelsel – sien jy die verlangens en begeertes. Eg vroulik en dikwels tot oordadigheid gevoer, is die versierings en kleur wat sy aanwend om die klein, kloustrofobiese vierkant agter die traliedeur te omskep in haar eie minipersoonlikheid... Die fotos op die staakkassie langs die staalkatel, die prente teen die mure, die kunsnaaldwerk-matjie voor die bed, die lappoppies en biblioteekboeke ... Dis soos sy was van kleintyd af'; see *Die Volksblad* (1980-09-25) 'Vrou bly 'n vrou – ook in dié klein wêreld' 13.

regret. She remains a woman, and that fact is important in determining the manner in which she is to be treated and trained. This is the first thing to strike you when you walk into the section reserved for women prisoners at Kroonstad: the feminine atmosphere, the order, the peaceful surroundings. The long corridors almost exude the serenity of a hospital ... In the spacious, sunny needlework room, white women are busy working with quick skilled hands, carrying on subdued conversations about everyday topics. They are neat, feminine and relaxed. Each woman is wearing a dress which she made in the prison according to her own preferences and taste. There is no sign of uniform, shapeless prison clothing ... In the cells – each white female prisoner at Kroonstad has a single cell – you see evidence of their longings and desires. The bits of decor and colour which she employs to transform the small, claustrophobic square space behind the barred cell door into a reflection of her own personality are authentically feminine and often excessive in character. The photographs on the metal cabinet next to the steel bed, the pictures on the walls, the artistic needlework mat in front of the bed, the rag dolls and library books ... It's been like this since her childhood.

The theme of white women prisoners as 'fallen angels' was to repeat itself three years later. In September 1983, *Die Vaderland* ran a series of four articles on life inside the Kroonstad prison for women. This prison housed all white female prisoners sentenced to more than two years imprisonment. Once again, the plight of these 'fallen angels' was described with great pathos and empathy, with an emphasis on the trauma and humiliation of their fall from grace – '[a]fter the stress and humiliation of the court case, her traumatic experience does not come to an end. On top of it all she now feels the fear of the unknown'.¹³

The image of white woman prisoners as fragile and emotionally vulnerable, desperately in need of the tender loving care of understanding prison personnel, is well illustrated in the following paragraph:¹⁴

A woman is a person driven by feeling, who can at times become more emotional than a man. She does, however, have the comfort of knowing that she is being guarded and looked after by female warders, who are able to assist her if she encounters problems.

Predictably, the patriarchal assumptions inherent in comments about the nature of white women prisoners extended to a firm rejection of any form of 'deviant' sexuality. Readers of *Die Vaderland* were reassured, in the second article in the series on the Kroonstad women's prison, that 'lesbian relationships were almost impossible' in that prison.¹⁵

13 The words used were: 'Na die spanning en vernedering van die hofszaak, hou haar traumatiese ondervinding nie op nie. Boonop het sy nou die vrees vir die onbekende'; see *Die Vaderland* (1983-09-26) 'Uit die gemenskap verwyder ...' 11.

14 The words used were: 'n Vrou is 'n gevoelsmens wat by tye meer emosioneel as n man kan raak. Sy het darem die vertroosting dat sy deur bewaerstes bewaak en versorg word wat haar kan help as sy probleme sou ondervind'; see *Die Vaderland supra* n 13 at 11.

15 See *Die Vaderland* (1983-09-27) 'Lesbiese verhoudings byna onmoontlik' 9.

The final instalment in the sugar coated series of articles in *Die Vaderland* made the Kroonstad women's prison sound more like some sort of health spa than a place of punishment. The article spoke of the range of facilities available to female prisoners in Kroonstad, including their own library (of course, said the article, love stories were the prisoners' favourite reading material) and prison radio station (which would play prisoners' requests). Prisoners could take part in a wide range of sporting activities (including netball, tennis, squash, badminton, and fitness groups) as well as a selection of cultural activities and crafts (including chess, macrame, batik, decoupage, clay modelling and crochet.) They were also treated to a movie once a week at the prison, could attend any one of a wide variety of church services in the prison on Sundays and could study by correspondence for an external qualification.¹⁶ Clearly, Kroonstad women's prison was a world away from the antiquated and overcrowded facilities which accommodated the majority of South Africa's prison population. Furthermore, if the articles in *Die Vaderland* are taken at face value, it would seem that the ideological assumptions surrounding the treatment of white female prisoners – the creation of a homely, caring and stimulating environment within which to rehabilitate these traumatised 'fallen angels' – were very different to the assumptions surrounding the treatment of other categories of prisoners in South Africa.

At around the same time one of the more mainstream Afrikaans newspapers, *Rapport*, also published an article describing conditions at the Kroonstad prison for women. As in the previous articles discussed in this section, the language adopted in the *Rapport* article was that of a romantic soap opera. The tragedy of the 'fallen angel' was expressed in melodramatic terms and the prison was described as a place of healing, where these angels were to be nursed back to health. The sense of romantic tragedy which ran through the article was apparent from the drama of its title: 'Women in Prison – For them you weep inside.'¹⁷ The opening paragraph (the Afrikaans text is replete with the diminutive form used to indicate childlike affection) made the patriarchal attitude of those responsible for the article even more apparent:¹⁸

A woman remains a woman, even in prison. She makes herself beautiful, tidivates and makes her small cell cheerful with photos or a little plant - and even when the prison food is dished up, one can see that a woman was involved in its preparation ... There is a hairdresser, the women wear cheerful floral print dresses and little curtains hang in front of the windows.

16 *Die Vaderland* (1983-09-29) 'Tyd in die gevangenis is 'n dure les' 15.

17 *Rapport* (1983-10-23) 'Die vrou in die gevangenis – Vir hulle huil jy na binne' 10.

18 'n Vrou bly 'n vrou, selfs in die gevangenis. Sy maak haar mooi, kikker en vrolik haar klein selletjie met foto's of 'n plantjie op – en selfs wanneer die gevangenskops uitgeskep word, kan 'n mens die hand van 'n vrou daarin sien ... Daar is 'n haarkapsalon, die vroue dra vrolike geblomde rokke en voor die vensters hand gordyntjies'; see *Rapport supra* n 17 at 10.

The language used by the writer seems to indicate that women are regarded as the 'weaker sex' – sensitive, emotional, and ornamental. The writer seems deeply concerned with the inner nature of the female prisoners, a concern largely absent from the descriptions of male prisoners in a series of articles published in the same newspaper at the same time. The nurturing role of women as mothers is apparent in many of the descriptions provided.¹⁹

But they remain people inside. Some of them are mothers, even grandmothers. Fortunately the Prisons Service remembers and understands this all too well. 'When one is forced to listen to the problems of some of these prisoners, woman to woman, sometimes one cannot but help shed a tear with them. But you cry inside, because you are not supposed to show your emotions', says Major Maureen Halgryn, the Commanding Officer of Kroonstad Women's Prison.

At one point in the article, the writer admits how strange it was for him – a man – to walk into a women's prison. His concern with the appearances of the women prisoners is, perhaps, revealing of the patriarchal attitudes prevalent during the apartheid period.²⁰

There are those who are impeccably groomed. Their hair and faces are cared for and made up as if they were on their way to a premiere. It's just that the prison frock would have been out of place there. Others look like the woman on the other side of the street, who is always leaning over her front gate so as not to miss anything. And really there are those that could have been your own mother or grandmother.

As far as prison labour for women is concerned, it is described as 'women's work', which is designed to rehabilitate the female prisoners and turn them into 'good' wives and mothers.²¹

The women are kept busy with hand-and-needle work. Some are trained to be hairdressers and a few work in the kitchen. There are sufficient opportunities for study and those who wish to are able to become well qualified. Certain of the prisoners obtain outstanding results.

19 'Maar dit is tog mense wat daar binne is. Van hulle is ma's, selfs oumas. Gelukkig onthou en besef die Gevangenisdiens dit baie goed. "Wanneer 'n mens sommige van die gevangenes se probleme vrou-tot-vrou moet aanhoor, kan jy nie anders as om soms 'n traan saam met hulle te stort nie. Maar jy huil binnekant toe, omdat jy nie veronderstel is om jou emosies te wys nie", gesels maj. Maureen Halgryn, bevelvoerder van die Kroonstadse vrouegevangenis'; see *Rapport supra* n 17 at 10.

20 'Daar is dié wat jy deur 'n ring kan trek. Die hare en gesig is versorg en bewerskaf asof hulle op pad na 'n premiere toe is. Dis net dat die gevangenisrokkie nie heeltemal daar sou gepas het nie. Ander lyk soos die vrou oorkant die straat wat altyd oor die voorhekkie hang om tog niks te mis nie. En rêrig, daar is dié wat jou eie ma of ouma kon gewees het'; see *Rapport supra* n 17 at 10.

21 'Die vroue word besig gehou met hand – en naaldewerk, van hulle word as haarkappers opgelei en 'n klompie werk in die kombuis. Daar is genoeg geleentheid vir studie en dié wat wil, kan hulle baie goed bekwaam. Van die gevangenes behaal dan ook skitterende uitslae'; see *Rapport supra* n 17 at 10.

For purposes of comparison, it is worth concluding this section by pointing to one tiny group of white female prisoners who were not painted as 'fallen angels' in terms of the general public discourse. This group consisted of white female political prisoners, of whom there were only a small number in the first half of the 1980s.²² On 5 April 1984, *The Citizen* reported that Barbara Hogan, who had been sentenced in October 1982 to 10 year's imprisonment for treason, had brought an application in the Supreme Court concerning her conditions of detention. At the time of the report, Hogan was the first white woman, as well as the first white person since the Second World War, to be convicted of treason in South Africa. At that stage, Hogan was the only white female political prisoner in the country. As a white female political prisoner, Hogan seems to have occupied a fairly unique position within the South African penal system. On reading the report, it is clear that Hogan's conditions of detention at the Johannesburg prison were a world away from the 'homely' conditions described in reports about the Kroonstad Women's Prison, where 'normal' white female offenders were imprisoned. The main problem encountered by Hogan, at the time of this report, seems to have been the fact that she was utterly isolated, even to the extent of not being allowed outdoors to exercise during certain periods of her incarceration. This isolation, devoid of any form of life-affirming contact with fellow prisoners or with nature, seems to have had a negative psychological effect on Hogan. In her court papers, Hogan contended that she was being subjected to cruel and inhuman treatment, including the fact that she was being kept alone in a cell surrounded by other empty cells, and had been told that exercise in the open air was a privilege and not a right. On one occasion when she was told that she was not allowed to exercise outside, she had become hysterical and was taken to hospital where she

22 It is not the aim of this article to examine in detail the public discourse surrounding political detainees in the early 1980s. The focus of this article is on certain categories of prisoners within what may be termed the 'general' prison population, as opposed to the special category of 'political prisoners'. Political prisoners – in the strict sense of those detained for anti-apartheid activities, as opposed to the many thousands of South Africans who were imprisoned for infringing against social control legislation such as the pass laws – fell into a relatively small but distinct category within South Africa's penal system at this time. The public discourse surrounding this category of prisoners deserves separate treatment. It should be noted that an extensive 'prison literature' dealing with political detention during the apartheid period already exists. For example, see Blumberg *White Madam* (1962); First *117 Days* (1965); Jacobson *Solitary in Johannesburg* (1973); Lewin *Bandiet: Seven Years in a South African Prison* (1974); Kantor *A Healthy Grave* (1967); Pheto *And Night Fell: Memoirs of a Political Prisoner in South Africa* (1983); Sachs *The Jail Diary of Albie Sachs* (1966); Breytenbach *The True Confessions of an Albino Terrorist* (1984); Mandela *Long Walk to Freedom: The Autobiography of Nelson Mandela – Volume 1* (2002); Mandela *Long Walk to Freedom: The Autobiography of Nelson Mandela – Volume 2* (2003); Kathrada & Vassen *Letters from Robben Island: A Selection of Ahmed Kathrada's Prison Correspondence 1964-1989* (2000); Maharaj *Reflections in Prison: Voices from the South African Liberation Struggle* (2002); Naidoo & Sachs *Island in Chains: Indres Naidoo Prisoner 885/63 – Ten Years on Robben Island* (2000).

was kept under sedation for a week. She was only permitted one letter and one visit from her family per month.²³ Hogan's application to court appears to have resulted in an improvement in the conditions of her detention. In May 1984 Helen Suzman visited Pretoria Central Prison and spoke to a number of white female political prisoners, including Hogan. According to Suzman, the prisoners had no complaints about their treatment by the authorities and there had been no restriction on the questions she could ask them. She was quoted in a report in *The Natal Mercury* as follows:²⁴

The conditions are very satisfactory. The food is good and so is the medical and dental attention. I met the three white women political prisoners ... Barbara Hogan, Mrs Ruth Gerhardt and Jansie Lourens – in a sunny courtyard where there was a table tennis table and an exercise bicycle.

3 Innocents – Public Discourse on Children in Prisons

During both the apartheid and post-apartheid periods, the topic of children in South African prisons has raised much public interest.²⁵ This was not the case, however, during colonial times, at least as far as the colony of Natal was concerned. It was only towards the end of the colonial period, after the turn of the century, that a level of concern began to be expressed at the confinement of children in adult prisons.²⁶ Before this, references to children within the penal system were few and far between. There were, however, a few references to juvenile offenders in various prison rules and regulations, and the laws relating thereto. For example, Law 14 of 1862, which empowered the Lieutenant Governor to 'make Rules and Regulations for the Maintenance of Order in the Public Gaols of the Colony', provided that punishments in terms of such rules and regulations could not exceed ten days solitary confinement or twenty-five lashes and, additionally, that such punishment could not be imposed at all on civil prisoners, female prisoners or children under the age of twelve.²⁷ This implied, of course, that the framers of Law 14 of

23 *The Citizen* (1984-04-05) 'Hogan seeks order on jail treatment' 1.

24 *The Natal Mercury* (1984-05-14) 'A call for flexibility over parole' 3.

25 Public discourse on the issue of children in prison during the first half of the 1980s, at the height of apartheid, is traced later in this section. For details on the discourse surrounding children in prison during the post-apartheid period, see, in general, Peté 'The Politics of Imprisonment in the Aftermath of South Africa's First Democratic Election' 1998 *South African Journal of Criminal Justice* 51-83; Peté 'The Good the Bad and the Warehoused – The Politics of Imprisonment During the Run-up to South Africa's Second Democratic Election' 2000 *South African Journal of Criminal Justice* 1-56; and Peté 'No Reason to Celebrate: Imprisonment in the Aftermath of South Africa's Second Democratic Election' (forthcoming).

26 This, perhaps, reflected a slow change in the ideology of white colonial society towards children in general.

27 S 1 of Law 14 of 1862 'Law to enable the Lieutenant Governor to make Rules and Regulations for the Maintenance of Order in the Public Gaols of the Colony'.

1862 (which, admittedly, was only a piece of empowering legislation) did not regard sentences of ten days solitary confinement or twenty-five lashes as being entirely beyond the pale for male prisoners above eleven years of age who had contravened prison disciplinary rules. When a common set of rules and regulations for the gaols in the Colony was eventually promulgated in 1870, the shocking punishments mentioned above were retained, but this time children under fifteen years of age (in addition to civil prisoners and females) were excluded.²⁸ Although the heavier punishments laid down in terms of the regulations – up to ten day's solitary confinement with half or full rations; or a whipping of up to twenty-five lashes – were permissible maximum punishments as opposed to being mandatory, and could only be imposed by the Resident Magistrate for serious breaches of prison discipline, they still induce a sense of shock when viewed from the perspective of the twenty-first century.²⁹ The idea of a fifteen-year old child being in prison and potentially subject to punishments of this sort was clearly not as disturbing to the colonial sensibility.

Prisoners, who would be considered children today, were also not spared hard labour during colonial times. Natal's prison regulations stipulated that, for the first three months of any sentence of hard labour, all male prisoners over fifteen years of age were to perform between six and ten hours of hard labour of the first class daily.³⁰ 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.³¹ Male prisoners, under sixteen years old, and female prisoners who were sentenced to hard labour, were to perform between six and ten hours of hard labour of the second class daily.³² 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.³³

However, it was only after the turn of the century, at the time of the Natal Prison Reform Commission which delivered its report in 1906, that there seemed to be any real interest in juveniles as a separate category of offenders. The exclusive 'Industrial Prison' proposed by the Commission for white prisoners, was to have a separate section for the treatment of white juvenile offenders, but only if there was a sufficient

28 'Rules and Regulations for the Gaols in the Colony' were laid down in the schedule to Law 6 of 1870 'Law for the Better Government of Public Gaols'.

29 See Reg XV of the 'Rules and Regulations for the Gaols in the Colony' which were laid down in the schedule to Law 6 of 1870 'Law for the Better Government of Public Gaols'.

30 See Reg XVI of the 'Rules and Regulations for the Gaols in the Colony' which were laid down in the schedule to Law 6 of 1870 'Law for the Better Government of Public Gaols'.

31 S 10 of Law 6 of 1870 'Law for the Better Government of Public Gaols'.

32 See Reg XVII of the 'Rules and Regulations for the Gaols in the Colony' which were laid down in the schedule to Law 6 of 1870 'Law for the Better Government of Public Gaols'.

33 S 10 of Law 6 of 1870 'Law for the Better Government of Public Gaols'.

number of such prisoners to justify the expense. If not, the Commission suggested that:³⁴

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.

Another option mentioned by the Commission was the establishment of a 'Truant or Farm School' for white juvenile offenders, again if numbers justified:³⁵

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.

In this way, through education and corrective treatment, it was hoped to keep white juveniles out of the penal system altogether. Interestingly, the Commission also recommended the use of 'hypnotic suggestion' to cure juveniles of the 'criminal disease', since this was regarded as another form of education.³⁶ However, as far as black juvenile offenders were concerned, the Commission adopted a completely different ideological approach. Of major concern to the Commission, which concerned black offenders in general, was that the prisons were being used as a means of social control. This meant that Natal's prisons were overcrowded with petty offenders against social control legislation.³⁷ One way of keeping black petty offenders out of prison was to employ corporal punishment as an alternative to imprisonment. Corporal punishment had long been seen as a suitable form of punishment for juvenile offenders, and it is interesting to note the Commission's recommendation that black adults be birched across the buttocks in a similar manner to juveniles, in order to make the punishment more humiliating and thus more effective:³⁸

34 See *Natal GG of 1903-06-05 Government Notice 344: Report of the Prison Reform Commission* – par 30.

35 *Idem* par 36.

36 *Ibid.*

37 For example, the Natal Prison Reform Commission stated that: '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'; see *Natal GG of 1903-06-05 Government Notice 344: Report of the Prison Reform Commission* – par 67. The use of imprisonment as a social control mechanism was to become a major theme during apartheid; see in general Peté 'Holding up a mirror to apartheid South Africa: Public discourse on the issue of overcrowding in South African prisons 1980 to 1984 – Part One' 2014 *Obiter* 485-505 and Peté 'Holding up a mirror to apartheid South Africa: Public discourse on the issue of overcrowding in South African prisons 1980 to 1984 – Part Two' 2015 *Obiter* 17-40.

38 See *Natal Government Gazette of 1906-06-05 supra* n 34 at par 71.

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.

The Commission was of the opinion that prison was no place for black women or children, and recommended that petty offenders in these two classes be sent back to their kraals.³⁹

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.

Thus, whereas white juvenile offenders would be placed under reformatory supervision, black offenders in this category would either be subjected to corporal punishment or removed from the towns so that they could no longer constitute a threat to white society and 'civilization'.⁴⁰ At the very end of the colonial period, in terms of Act 23 of 1909, provision was made for the birching of juveniles convicted of petty offences instead of sending them to prison.⁴¹ Finally, on 23 November 1909, the Attorney General of Natal informed the Natal Parliament that an industrial establishment for boys was to be situated in the old Police Quarters at Estcourt, which was to be the first in a series of similar institutions.⁴² The end of the colonial period thus marks increasing interest in children as a special category of offenders who need to be kept out of adult prisons. In the years which followed, this was to become an increasingly important theme within South African penal discourse. Unfortunately, the sad phenomenon of juvenile offenders being confined in adult prisons was to remain a reality in South Africa well into the post-apartheid period.⁴³

As far as the first half of the 1980s was concerned, it was towards the end of this period that public concern about children being confined in adult prisons came to the fore. In June 1984, alarm was expressed in the media at the number of infants and juveniles who were spending time in South African prisons, either because they had been sentenced to terms of imprisonment or because they were accompanying their mothers who had been sentenced to terms of imprisonment. It was revealed in Parliament, on 19 March 1984, that a total of 403 persons under eighteen years of age were serving terms of imprisonment, and a further 570 persons under eighteen years of age were in prison awaiting trial. Most of the persons serving terms of imprisonment (317 out of 403) were between seventeen and eighteen years of age, but one was as young as

39 *Idem* par 30.

40 *Idem* par 40.

41 Act 23 of 1909; '[t]o provide for boys being punished by whipping instead of imprisonment for minor offences'.

42 Natal Legislative Assembly Debates (1909) vol 42 512-513: Attorney General (1909-11-23).

43 See, in general, the scholarly works referred to in n 25 *supra*.

fourteen and seven others were between fifteen and sixteen. Included in the awaiting trial group were two ten-year-old girls, an eleven-year-old boy, seven twelve-year-olds, twelve thirteen-year-olds and twenty-nine fourteen-year-olds. As far as infants were concerned, it was revealed, during 1983, that no fewer than 3 415 babies had either been born in South African prisons, or had been admitted to prison with their mothers.⁴⁴ In an article entitled 'Spotlight on children in South Africa's jails', the *Rand Daily Mail* summarised concerns around this sensitive issue, *inter alia*, as follows:⁴⁵

Disturbing facts about the detention of children in South Africa have emerged during the current session of Parliament. They include the detention of two pre-school children for nearly three years while the authorities worked out their race classification, the imprisonment of two girls between the ages of 10 and 11 as unsentenced prisoners and the arrest of a 10-year-old child in Cradock on a charge of public violence. These grim facts are bad enough, but, even more disturbing, was that they were mostly black.

The *Rand Daily Mail* quoted the Opposition Spokesman for Justice, Mr David Dalling, as stating that: 'A caring government would ensure that children are not put into prisons, except where no other alternative exists'.⁴⁶ The *Rand Daily Mail* also pointed out that the Leader of the Opposition, Dr Frederik van Zyl Slabbert, had called on the Prime Minister, Mr PW Botha, 'to justify laws that caused the detention of mothers under the Pass Laws'.⁴⁷

In December 1984, another wave of concern swept through the South African media on the issue of children in prison. This wave of concern was triggered by the release of a report which had been compiled by the Institute of Criminology at the University of Cape Town, entitled 'Children in Prison in South Africa'. The report had been commissioned by a Swiss-based organisation called Defence for Children International, and was compiled by the Director of the Institute of Criminology at the University of Cape Town, Professor Dirk van Zyl Smit, together with a researcher, Ms Fiona McLachlan, who was a Johannesburg Attorney.

The detention of children, in prisons designed for adults, was clearly an emotional issue which was bound to generate significant interest in the public media. A good example of the tone of the debate which followed is to be found in a report in *The Argus* entitled 'Many children detained in bleak adult prisons'.⁴⁸ The report begins with the following distressing statement: 'Many children are detained in "bleak" adult prisons and receive "basically the same" treatment as adult prisoners, a leading university criminologist has found'.⁴⁹ The report then went on to

44 *Cape Herald* (1984-06-23) '3 415 babies in jail last year' 4.

45 *Rand Daily Mail* (1984-06-28) 'Spotlight on children in South Africa's jails' 12.

46 *Ibid.*

47 *Ibid.*

48 *The Argus* (1984-12-20) 'Many children detained in bleak adult prisons' 35.

49 *Ibid.*

quote Van Zyl Smit in terms which made clear his evident frustration and distress at the fact that many South African children were being detained in conditions which were completely unacceptable:⁵⁰

It might be true that alternative facilities are not available for the detention of juveniles. Where this is the case something must be done about it ... Prisons everywhere are grim places, but especially horrifying are large, bare cells, designed for adults but filled with juveniles who look as though they belong somewhere else.

Different newspapers highlighted different aspects of the wide-ranging report. For example, the Afrikaans newspaper *Die Burger*, highlighted the fact that, according to the report, South Africa appeared to have a larger number of young people in prison than most other countries in the world. For this reason, courts needed to be discouraged from sentencing children under eighteen to terms of imprisonment.⁵¹ An article in the *Rand Daily Mail* pointed to a recommendation by the authors of the report that many children who would usually end up in prison, first awaiting trial and then after conviction, could more suitably be dealt with by being classified by the courts in terms of the relevant legislation, as being 'in need of care'. This would remove the children concerned from the criminal justice system and no criminal conviction would be recorded.⁵² An article in the *Eastern Province Herald* began by emphasising the conclusion of the researchers that there was 'little real protection for children in the criminal justice system', as well as their finding that the adult prisons in which most juvenile prisoners were held, were 'unsuitable for the detention of children', and that the potential consequences for juvenile political offenders were 'disturbing'.⁵³ *The Argus* highlighted the fact that, according to the report, juveniles in prison were afforded the same basic treatment as adults. For example, the report pointed out that juvenile prisoners could be tried and punished in the same manner as adult prisoners for contraventions of prison regulations: 'Punishments may entail the deprivation of one or more meals on any one day, corporal punishment of a maximum of six strokes for males, solitary confinement for up to 30 days, or a combination of solitary confinement with periods of reduced, spare and full diets'.⁵⁴ Clearly, most readers of *The Argus* would have been horrified at the thought of juveniles having to undergo certain of these punishments.

Certain newspapers included moving accounts of the conditions under which juveniles were detained, providing a disturbing glimpse into what life was like for juveniles in prison at this time. The *Eastern Province Herald*, for example, quoted from a section of the report in which Van Zyl Smit provided a first-hand account of the conditions in which juvenile prisoners were detained at Pollsmoor Prison near Cape Town. According

50 *Ibid.*

51 *Die Burger* (1984-12-19) 'Baie kinders met ma's in tronke' 19.

52 *Rand Daily Mail* (1984-12-19) 'Courts urged to help keep kids out of jail' 4.

53 *Eastern Province Herald* (1984-12-20) 'Children behind bars' 15.

54 *The Argus supra* n 48 at 35.

to Van Zyl Smit, sentenced juveniles at Pollsmoor were held in communal cells, with each cell holding around 25 children in total. He went on to describe the living conditions as follows:⁵⁵

They wear prison uniform. They sleep on the floor on mattresses about one-and-a-half centimetres thick. Each juvenile has four blankets. In each cell there is a toilet and wash basin. As far as recreation facilities are concerned, sentenced juveniles exercise twice a day for half-an-hour in a large bleak prison yard. In this (as all other stages of their detention) they are separated from adult prisoners. In the cell they had a kerrim board (a form of snooker) and dominoes. Library books were also on display above each juvenile's locker.

Van Zyl Smit pointed out that, with the relative large numbers of juveniles being detained, there was limited scope for the rehabilitation of juvenile offenders. He also pointed to the potentially negative influence on children of violent prison gangs.⁵⁶ In terms of the Correctional Services Act,⁵⁷ 'juveniles' were defined as persons under 21 years of age. This meant that juveniles under eighteen years old were confined with juveniles between eighteen and 21 years old. According to Van Zyl Smit, this latter category included 'many hardened criminals and tough gang members'.⁵⁸ Thus, there was a need for a separate classification of offenders aged between eighteen and 21 years of age. *The Argus* quoted the following deeply worrying statement made in the report:⁵⁹

No evaluation has been made of the long-term effect upon a juvenile confined to a cell dominated by violent and ruthless gangs. Assaults, stabbings, theft and homosexual rape are commonplace with prison gangs.

There was also some limited reporting on the effect that the political context at the time had on the detention of children. The *Eastern Province Herald* reported on comments by Van Zyl Smit pointing out that children were not granted any special protection in terms of apartheid security legislation, and that increasing numbers of children were being detained for 'security reasons', due to 'increasing participation in school boycotts, bus boycotts, political riots and in "anti-apartheid" organisations'.⁶⁰

The response by the Prisons Service to the report was published extensively in the press. The basic thrust of its response was to reiterate that:⁶¹

Although it is the ideal to incarcerate young offenders in separate institutions, the prison authorities endeavour at all times to ensure that in those cases

55 *Eastern Province Herald supra* n 53 at 15.

56 *Ibid.*

57 Correctional Services Act 8 of 1959.

58 *The Argus supra* n 48 at 35.

59 *Ibid.*

60 *Eastern Province Herald supra* n 53 at 15.

61 *The Argus* (1984-12-20) 'Reply - "Prison Service maintains professional standards"' 35; see also *Eastern Province Herald supra* n 53 at 15; and *Sunday Tribune* (1984-12-23) 'What the Prisons Service says about this report' 1.

where it is unavoidable to incarcerate children in prison facilities for adults, they are kept separately from adult prisoners and everything possible is done to prevent contaminating influences by hardened criminals.

It is interesting to note that this type of 'hand-wringing', on the part of the authorities, at the fact that there was no alternative but to detain juveniles in adult prisons, was to continue well into the post-apartheid period.⁶² In addition to the 'hand-wringing', the Prisons Service also bemoaned the fact that they had not been consulted about the findings of the research and disputed the unsubstantiated nature of the allegations:⁶³

Unfortunately, the Prisons Service was not approached for months about the findings of research based on interviews with former prisoners whose statements were not verified beforehand. No substantiation was given for the allegations regarding maltreatment by Prisons Service staff.

Predictably, the editorial commentary, in various newspapers, on the issue was scathing. For example, in an editorial with the title 'Shocking Story' *The Natal Mercury* commented, *inter alia*, as follows:⁶⁴

There have been many disturbing disclosures down the years about conditions in South Africa's overcrowded prisons. But those contained in the University of Cape Town's latest survey, 'Children in Prison in South Africa', are undoubtedly among the most shocking. In parts the report becomes a dossier of horror, with stories of juvenile inmates – 97 percent of whom are black – being raped by adult prisoners and terrorised by gangs. Overall it presents an appalling indictment of a system that would seem to be losing touch with its obligations to children in custody. And if society is not stirred into demanding drastic reforms, it too could have much to answer for. Easily the most devastating finding in the survey is the conclusion that there is 'little real protection for children in the criminal justice system'. For it is a system in which children can be arrested, detained, tried, convicted and sentenced without their parents' knowledge. And in the words of the report 'one can only speculate at the chances of a fair trial', since the State does not provide free legal counsel to indigent accused except for capital offences. The terrible conclusion is that the law does not encourage the police or the courts to find alternatives to detaining children in prison. Even innocent infants find their way behind bars with mothers who have done no more than offend the country's influx laws ... As things stand the Prisons Service itself emerges as an institution seemingly trying to maintain professional standards towards children in its care, but hogtied by inadequate facilities and overwhelmed by the scale of the problem.

A similarly scathing editorial appeared in *The Natal Witness*, which stated, *inter alia*, that:⁶⁵

62 See, for example, 'Section 9 Juvenile offenders' in Peté (2000) *supra* n 25 at 32-39.

63 *Sunday Tribune supra* n 53 at 1.

64 *The Natal Mercury* (1984-12-21) 'Shocking Story' 10.

65 *The Natal Witness* (1984-12-27) 'Children in prison' 6.

If the degree of civilisation of any country can be gauged from the treatment meted out to those in its prisons, South Africa does not measure up very well. The findings of the University of Cape Town's survey into Children in Prisons is a shocking indictment, not so much of the Prisons Service, which seems to be doing its professional best under adverse circumstances, but of a system of justice which fails to protect children in custody and sometimes, in the case of infants, puts them behind bars with mothers who have done no more than fall foul of the pass laws. In the opinion of the Director of UCT's Institute of Criminology, there appears to be an exceptionally high number of children in South African prisons and little is being done to prevent them from being victimised and intimidated or to safeguard them from the generally harsh conditions experienced by their adult counterparts. Some of the horrifying case studies outlined in the report could come straight out of the last century.

The Sunday Star published the following two horrifying 'case studies' from the report:

Peter, a young coloured boy: 'The most difficult thing about that cell for me was just sitting there all day. The cell was dark and there was no fresh air. They wash the floors with Jeyes Fluid which makes the place stink. There were gangsters in the cell and they often fought. Sex is often forced on you and you have to obey, especially if that person is a member of one of the powerful gangs. My food was placed on a piece of paper. There were no plates or cups. Food was watery soup and "katkop", a large, square chunk of bread'.⁶⁶

Dennis, 17, arrested for alleged car theft and kept in police cells with adults for three weeks awaiting trial, claimed he was regularly assaulted by inmates and the last thing he remembered was being hit over the head with a broom. He was apparently raped and later found himself in hospital. He is now physically and mentally disabled.⁶⁷

4 Conclusion

In Part two of this article, two further 'characters' who formed part of the overall story which emerged in penal discourse during the first half of the 1980s have been examined – the white female prisoner (the 'fallen angel') and the juvenile offender (the 'innocent'). As with the two characters examined in Part one of this article, it has been shown that the characters examined in Part two occupied completely different conceptual spaces within the penal ideology of the time. White female prisoners, segregated in their own cosy prison in Kroonstad, were seen as 'fallen angels' – sadly misguided, but still very much representatives of all that was good, loving, tender and refined in white society. Juvenile offenders were the 'innocents' of the story, trapped in bleak adult prisons filled with depravity and gang violence, but unable to escape despite screeds of outrage in the public media. In the case of each of these two categories of prisoners, there were historical parallels to be drawn with penal debates which had taken place in colonial Natal. As in the case of

⁶⁶ *The Sunday Star* (1984-12-23) 'Kids say it's hell behind bars' 2.

⁶⁷ *Ibid.*

the historical parallels discussed in Part one of this article, the 'historical resonances' examined in Part two illustrate the deep roots of the ideological attitudes concerned, as well as their resilience over time. The overall 'lesson' of this article is that prison reform is not simply a matter of bringing about physical changes within the penal system, but also about understanding and transforming these deeply rooted ideological attitudes.

Tracing certain of the themes raised in this article through to the post-apartheid period, it is interesting to note resonances over time. For example, the image of the vicious prison gangster – the 'demon of the penal system' – continued to exert considerable influence within the public imagination well into the post-apartheid period.⁶⁸ Likewise, the idea of special treatment for a select group of 'penitents' – those lucky few within the South African penal system considered to be worthy of rehabilitation – also continued well into the democratic era, although with much less emphasis on race than previously.⁶⁹ Furthermore, public discourse surrounding the problem of children detained in adult prisons did not cease with the end of apartheid, but continued to take up a significant number of columns within South African newspapers during the immediate post-apartheid period.⁷⁰ Female prisoners were, however, virtually invisible within penal discourse at this time.

68 See, for example, 'Section 5.2 Abuse of human rights by prison gangs' in Peté (1998) *supra* n 25 at 80-81; see also 'Section 2.3 The idea behind a "purgatory" for dangerous prisoners' & 'Section 10 Prison gangs – A continuing reign of terror' in Peté (2000) *supra* n 25 at 4 & 39-41.

69 See, for example, 'Section 3 New "model" prisons – "Five Star Hotels" for the lucky few' in Peté (2000) *supra* n 25 at 8-9. With regard to the reduction in emphasis on race, Van Zyl Smit commented in the late 1990s that: 'Perhaps the most significant change in South African prison regimes in the past decade has been the abolition of official segregation of prisoners according to their officially recognised population groups ... Official figures of the number of prisoners in the different population groups are no longer published. Figures that were made available to the author indicate that these disparities, while large, are gradually diminishing. Thus in 1976 the rate of imprisonment for whites was 79 per 100,000 of population and that for blacks 350 per 100,000. By June 1996 the figure for whites had declined to 57 per 100,000, while that for blacks had declined even further to 198 per 100,000 ... The Coloured (mixed race) group had the highest rates of all, but they too have declined significantly from 776 in 1976 to 714 per 100,000 in 1996'; see Dirk van Zyl Smit 'Chapter 21 – South Africa' pages 589 to 608 at pages 605 to 606, in Dirk van Zyl Smit and Frieder Dünkel (ed) *Imprisonment Today and Tomorrow – International Perspectives on Prisoners' Rights and Prison Conditions* (2001).

70 See, for example, 'Section 9 Juvenile offenders' in Peté (2000) *supra* n 25 at 32-39.