

# LIKE A BAD PENNY: THE PROBLEM OF CHRONIC OVERCROWDING IN THE PRISONS OF COLONIAL NATAL: 1845 TO 1910 (PART 2)

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## 1 Introduction

Part 1 of this article examined the problem of chronic overcrowding in the prisons of colonial Natal from 1845, the year in which Britain took over the administration of the Colony, to 1875, which saw the penal system of the Colony still adjusting to the influx of prisoners resulting from the Langalibalele Rebellion of late 1873. In the introduction to Part 1 it was pointed out that, like a bad penny, the problem of chronic overcrowding was to turn up time and time again throughout the colonial period, indicating that this scourge is not a recent phenomenon, affecting only the prisons of post-apartheid South Africa.<sup>1</sup> Neither is it a problem which can be

- 1 See, in general, S Peté “The politics of imprisonment in the aftermath of South Africa’s first democratic election” (1998) 1 *South African J of Criminal Justice* 51-83; S Peté “The good the bad and the warehoused – The politics of imprisonment during the run-up to South Africa’s second democratic election” (2000) 13(1) *South African J of Criminal Justice* 1-56; and S Peté “Between the devil and the deep blue sea – The spectre of crime and prison overcrowding in post-apartheid South Africa” (2006) 27(3) *Obiter* 429-453.

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Fundamina  
Volume 21 | Number 2 | 2015  
pp 341–358

DOI: 10.17159/2411-7870/2015/v21n2a8  
Print ISSN 1021-545X/ Online ISSN 2411-7870  
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ascribed solely to the policies imposed during the apartheid period, although the problem was clearly evident during that period and apartheid policies were certainly implicated in the chronic overcrowding experienced during that time.<sup>2</sup> The fact that prison overcrowding first emerges around the start of the colonial period in Natal and becomes increasingly “entrenched” within the penal system, indicates the deep social, political and economic roots of the problem within the South African historical landscape. It may even indicate, thinking along the functionalist lines suggested by Michel Foucault, that chronic overcrowding is a structural feature of imprisonment in South Africa.<sup>3</sup> This latter line of thinking is certainly radical in its implications, but it is by no means the first time that this type of argument has been made in relation to the South African penal system. For example, Lukas Muntingh, one of South Africa’s leading penologists, has made a compelling argument pointing out the “value” to be gained by politicians and businessmen from the apparent and continued “failure” of South African prisons to reform criminals.<sup>4</sup> Whether or not

- 2 See S Peté “Holding up a mirror to apartheid South Africa – Public discourse on the issue of overcrowding in South African prisons 1980 to 1984 – Part 1 ” (2014) 35(3) *Obiter* 485-505; and S Peté “Holding up a mirror to apartheid South Africa – Public discourse on the issue of overcrowding in South African prisons 1980 to 1984 – Part 2” (2015) 36(1) *Obiter* 17-40.
- 3 In *Discipline and Punish – The Birth of the Prison* (London, 1979) at 264 Michel Foucault points out that the birth of the modern prison around the beginning of the nineteenth century in France was almost immediately denounced as a failure. He puts his finger on the cyclical and repetitive nature of critiques leveled at imprisonment as a form of punishment, stating that “the critique of the prison and its methods [which] appeared very early on ... was embodied in a number of formulations which – figures apart – are today repeated almost unchanged” (at 265). Foucault goes on to point out that the same “solutions” to the continuously repeated “problems” have been recycled over and over again for the past 150 years. He puts it as follows: “For a century and a half the prison has always been offered as its own remedy: the reactivation of the penitentiary techniques as the only means of overcoming their perpetual failure; the realisation of the corrective project as the only method of overcoming the impossibility of implementing it ... Word for word, from one century to the other, the same fundamental propositions are repeated. They reappear in each new, hard-won, finally accepted formulation of a reform that has hitherto always been lacking. The same sentences or almost the same could have been borrowed from other ‘fruitful’ periods of reform ...” (at 268 and 270).
- 4 Muntingh begins his argument by pointing out that there is almost no evidence that prisons have been able to reduce crime to any significant extent anywhere in the world. Why then do almost all societies choose to retain this form of punishment? Muntingh’s answer is that, despite their apparent “failure”, prisons provide various types of value to those in power. It is beyond the scope of this article to set out Muntingh’s complex argument in full, but the following extract provides some idea of the type of “value” he has in mind: “[W]ho stands to benefit from prisons – and the answer is simple: politicians and the private sector ... Prisons have symbolic value; they communicate the message that government is tough on crime and is willing and capable of legally depriving citizens of their liberty because they have committed a crime and offended society. Prisons symbolise the state’s power over its citizens. More importantly, they communicate the willingness of the state to use its coercive power” (see L Muntingh “Punishment and deterrence – Don’t expect prisons to reduce crime” (Dec 2008) 26 *SA Crime Quarterly* at 5).

prison overcrowding – one of the most obvious ways in which the South African penal system has been “failing” since its inception – forms part of the “value” pointed out by Muntingh, is an open question.

As stated in Part 1, the aim of this article is to shed light on one small part of South Africa’s penal history – namely the genesis, evolution and development of the problem of prison overcrowding in the Colony of Natal – thereby contributing to a more nuanced understanding of this problem in the context of the South African penal system as a whole. Part 1 of the article covered the period 1845 to 1875. Part 2 starts in 1875 and covers the remainder of the colonial period through to 1910.

## 2 Continuing Efforts to Keep the Ideal of a “Separate System” Alive in the Mid to Late 1870s

In Part 1 of this article, it was noted that the Imperial authorities were anxious to see the introduction of the so-called “separate system” into the prisons of colonial Natal. On 31 August 1875 Lord Carnarvon, Secretary of State for the Colonies, complained that the system of prison discipline in Natal was “at variance in almost every particular” with the principles set out in the Digest.<sup>5</sup> He painted a bleak picture of an excessively overcrowded penal system, of cells without lighting, where groups of prisoners were forced to huddle together during the long hours of darkness. He could only wonder at the “extent of depravity” which must prevail under such conditions.<sup>6</sup> He severely reprimanded the Natal authorities as follows:

It is a serious aggravation of the scandal that the state of things disclosed by these Returns is not now made known for the first time, nor can the Colony plead that the subject has not been brought to the notice of their Government, for I observe that my Predecessors have not failed to urge reform upon the Colony in this most important matter.<sup>7</sup>

He expressed the hope that the legislature would rectify matters and place the prison system of the Colony “on a footing which will be creditable to the community”.<sup>8</sup> However, on 8 November 1876 the Secretary of State noted that it did not appear as if any material improvement had been made and requested a “full and early report” from the Lieutenant-Governor on the subject.<sup>9</sup>

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

5 NAB (KwaZulu-Natal Pietermaritzburg Archives Repository) Government House Natal 66/Despatch 124: Carnarvon to Bulwer, 31 Aug 1875: par 3.

6 *Idem* at par 7.

7 *Idem* at par 9.

8 *Idem* at par 11.

9 NAB GHN (Government House Natal) 73/Despatch 324: Carnarvon to Bulwer, 8 Nov 1876.

Gaol and the implications of this for prison discipline.<sup>10</sup> He pointed out that the prison population of the Pietermaritzburg Gaol had risen from a daily average of fifty-seven in 1872 to 106 in 1875. Occasionally over 130 prisoners were confined in the gaol at one time. Between 1869 and 1877 the number of cells available for prisoners in the Pietermaritzburg Gaol had only increased from seventeen to twenty-eight.<sup>11</sup> The Lieutenant-Governor noted that if each prisoner was given 500 cubic feet of space – well below what had been laid down in the Digest – the prison could accommodate eighty prisoners. However, the daily average prison population was 106. He thus drew the following conclusion:

The present accommodation then is wholly inadequate to the demands upon it, the daily number of prisoners being far greater than the prison can properly accommodate, whilst sometimes there is *excessive* overcrowding ... Additional accommodation therefore is urgently and imperatively needed ...<sup>12</sup>

As a result of the overcrowding the system of prison discipline was gravely defective. Individual separation of prisoners was completely impossible, and the only classification carried out was that between male and female, and black and white. At night “prisoners of European descent” were kept separate from “prisoners of African and Indian nationalities”.<sup>13</sup> Other than that, untried prisoners were held alongside convicted prisoners, juveniles were held with adults, felons with misdemeanants, and long sentenced prisoners with short sentenced prisoners. The Lieutenant-Governor thus recommended “the erection of a strong double storied building containing eighty or one hundred cells” so that prisoners could be separately confined at night and a proper system of classification introduced.<sup>14</sup>

A Special Committee was set up to consider these recommendations of the Lieutenant-Governor and point out possible problems. As to be expected, there was a degree of cynicism among certain of the colonial officials. The Colonial Engineer seemed to think that the authorities in England were out of touch with the practical difficulties of applying penal policies designed in Europe, within the context of a racially divided society such as that which existed in colonial Natal. In Natal, prisoners were already divided into four different racial groups or “nationalities”,

10 NAB COL (Colonial Office London) 179/ 126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure No 1 – Minute of Lieutenant Governor, 31 May 1877.

11 Most of these extra cells were made available by the departure of the lunatics from the gaol in the early part of 1875. A “temporary lunatic asylum” had been set up in the Pietermaritzburg Gaol in 1866 and it was only in 1875 that a separate lunatic asylum was established. See NAB CSO (Colonial Secretary’s Office, Natal) 261/Letters 2257: Letter from the Colonial Secretary, Natal to the Colonial Engineer’s Office, Natal, 27 Nov 1866 and NAB COL 179/ 126: Bulwer to Hicks Beach, 9 Jan 1878: par 4.

12 NAB COL 179/126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure Number 1 – Minute of Lieutenant-Governor, 31 May 1877.

13 *Ibid.*

14 *Ibid.*

namely “Europeans”, “Kafirs”, “Coolies” and “Hottentots”. Further dividing each of these four separate groups into a number of separate categories – males and females; juveniles and adults; untried and convicted; felons and misdemeanants – was unworkable. The Colonial Engineer speculated, perhaps tongue in cheek, that forty-eight different classes of prisons would be required to accommodate all the different categories.<sup>15</sup> The Committee decided, however, that most of the difficulties in effecting a proper system of classification could be overcome by building a sufficient number of cells so as to allow separate accommodation for each prisoner at night. During the day, it would be sufficient to divide prisoners into a more manageable set of categories.<sup>16</sup> A plan was drawn up for the construction of a new cell block at the Pietermaritzburg Gaol which, had it been built, would have contained seventy cells.<sup>17</sup> This would have solved the perennial problem of overcrowding since, as the Special Committee noted, the Pietermaritzburg Gaol would then have contained “separate cell accommodation for one hundred prisoners, or more than double the number which can be separately confined in the largest gaol of the Cape Colony”.<sup>18</sup>

Less ambitious plans were drawn up for extending the accommodation at the Durban Gaol, and in his address on opening the seventh session of the Legislative Council, the Lieutenant-Governor stated as follows:

The large increase in the number of prisoners annually committed to the Pietermaritzburg and Durban Gaols urgently calls for additional accommodation in these two Central Gaols, and you will be asked to make provision for the purpose of supplying such further accommodation in conformity with the requirements of a sound penal system.<sup>19</sup>

On 9 January 1878, the Lieutenant-Governor was able to report to the Secretary of State that

the Legislature has voted £11,000 (£8,000 for Pietermaritzburg and £3,000 for Durban) for the improvement of the two Central Gaols during the year 1878; and, however short that amount may fall of what will be necessary to make these Gaols what they ought to be, it is a very liberal contribution for the year, and will enable the Government to make some essentially necessary additions to the accommodation and efficiency of these two important institutions.<sup>20</sup>

- 15 NAB COL 179/126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure No 5 – Notes by Colonial Engineer, 1 Jul 1877.
- 16 For a more detailed discussion of this point, see S Peté “Falling on stony ground: Importing the penal practices of Europe into the prisons of Colonial Natal – Part 2” (2007) 13(2) *Fundamina* at 123-124.
- 17 NAB COL 179/126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure No 10 – Lieutenant-Governor to Colonial Secretary, 12 Sep 1877.
- 18 NAB COL 179/126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure No 9 – Report of Committee, 4 Sep 1877.
- 19 NAB COL 179/126: Bulwer to Hicks Beach, 9 Jan 1878: Enclosure No 4 – Opening Address of Lieutenant-Governor, 7 Jun 1877.
- 20 *Idem* at par 12.

The initial response of the authorities in England was very favourable. The Secretary of State approved the steps being taken, his only complaint being that more money had not been allocated for the improvement of the Durban Gaol. He instructed Lieutenant-Governor Bulwer as follows:

You should strongly urge on the Legislature the necessity of carrying on the work more vigorously next year and of devoting a considerable sum of money to providing fresh accommodation and reconstructing the interior of the present building.<sup>21</sup>

The Secretary of State approved of the proposed system of classification of prisoners, noting that in his opinion race and colour were not “among the points most urgently demanding to be provided for”.<sup>22</sup> Clearly, many of the colonists would have disagreed. As to the problem of overcrowding, just as it seemed as if real progress was to be made in eliminating this scourge, fate intervened in the form of war. The outbreak of the Anglo-Zulu War in 1879 forced the English authorities to shelve their plans for prison reform in Natal, as the reality of events on the ground forced them to begin operating in crisis mode.

### 3 The Outbreak of the Anglo-Zulu War of 1879 and its Effect on Chronic Overcrowding

The outbreak of the Anglo-Zulu War in 1879 impacted adversely on the problem of prison overcrowding in the gaols of Natal in a number of respects. In the first place, it was decided to confine military prisoners in the already overcrowded civilian gaols of the colony, which tended to exacerbate the problem of overcrowding even further. Clearly, it was not ideal for soldiers convicted of military offences to be imprisoned in civilian prisons alongside “common criminals”. In the case of the Colony of Natal at the time of the Anglo-Zulu War, however, the authorities apparently felt that the only practical solution to the problem of housing increasing numbers of military offenders was to confine them in the central gaols of the colony in Pietermaritzburg and Durban. In order to make this legally possible, these two prisons were appointed in 1880 as “authorised prisons” in terms of the Army Discipline and Regulation Act of 1879.<sup>23</sup>

Another adverse impact of the Anglo-Zulu War on the problem of overcrowding was that the already parlous financial position of the Colony deteriorated even further. This meant that plans to extend prison accommodation came to an abrupt halt. The British Government contended that it had a claim in equity on Natal to recoup part of the money spent in fighting the Anglo-Zulu War. Figures of between

21 NAB GHN 83/Despatch 56: Hicks Beach to Bulwer, 30 May 1878 at par 3.

22 *Idem* at par 4.

23 NAB COL 179/135: Natal No 828, 17 Jan 1880; and NAB GHN 4/Letter from Hicks Beach to Bulwer, 24 Jan 1880.

£1,000,000 and £1,500,000 were mentioned.<sup>24</sup> With this financial threat hanging over it, Natal could not afford to allocate large sums of money to public works such as prisons. The authorities in Natal were instructed to expend such sums as were absolutely necessary to prevent half finished work from deteriorating. Lieutenant-Governor Bulwer was understandably unhappy about this instruction and on 30 July 1879 he reminded the Secretary of State that it was the British Government which had insisted on prison reform in the first place:

Few subjects, perhaps, have of late years more engaged the attention of successive Secretaries of State than the reform and proper organisation of the Prison and Hospital Establishments in the Colonies ...<sup>25</sup>

He further pointed out the *bona fides* of the Natal Government:

The Legislative Council of the Colony has met the proposals of the Government in a spirit that reflects much credit on it, for popular Assemblies in new Colonies are apt to prefer the expenditure of Public money on objects which bring about more material advantage to the various individual or class interests of the community rather than on institutions and Establishments of the kind to which I have been referring.<sup>26</sup>

While the Secretary of State acknowledged the truth of the above statements, he insisted firmly that circumstances had been totally altered by the outbreak of the war. As a small concession, the extension of the Durban Gaol at a cost of £3,000 was to be proceeded with. The major reform of Natal's prisons, however, would have to wait.<sup>27</sup>

In his annual report for 1880 the Colonial Engineer was able to state that the extension of the Durban Gaol mentioned above had been completed, and would "afford additional accommodation for a considerable number of prisoners".<sup>28</sup> Even with the extra accommodation that had been built, however, he pointed out that even more additional cells were needed, since the gaol was still overcrowded. The state of repair of the Durban Gaol at this time was far from satisfactory. On 20 October 1880 the Durban Gaol Board expressed its deep concern as follows:

The Superintendent has brought to our notice the very dilapidated state of the cells in the old Gaol, and also the corridor. The flooring in each case has crumbled away leaving the floor quite unfit for washing and for 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 ...<sup>29</sup>

24 NAB COL 179/130: Bulwer to Hicks Beach, 31 Jul 1879.

25 NAB COL 179/130: Bulwer to Hicks Beach, 30 Jul 1879.

26 *Ibid.*

27 NAB GHN 93/Despatch 68: Hicks Beach to Wolseley, 27 Sep 1879.

28 NAB Natal Blue Book 1880 at p JJ45.

29 NAB CSO (Colonial Secretary's Office, Natal) 777/4202: Meeting of Durban Gaol Board, 20 Oct 1880.

The situation at the Pietermaritzburg Gaol was even worse, since no additional accommodation had been provided. The Colonial Engineer noted that the accommodation provided at the Pietermaritzburg Gaol was “wholly inadequate for the number of prisoners confined in this Gaol”.<sup>30</sup> The overcrowding was made worse by the increasing number of military prisoners sent to the Gaol.

On 10 November 1880, the Superintendent of the Pietermaritzburg Gaol complained as follows:

[It] is almost impossible to crowd more prisoners into the cells where the prisoners have not 200 cubic feet each. Additional accommodation is urgently required and then we can take in as many court martial prisoners as may be sent.<sup>31</sup>

Inevitably the overcrowding led to deterioration in the standard of health within the gaol. The District Surgeon made the following comment in support of the Superintendent’s call for additional accommodation:

The crowded state of the Central Gaol had, since September shown a great increase in the sick list ... As many as 40, out of a total of 185, have been on the sick list on various days during the last month. Serious forms of Dysentery and Diarrhoea are of frequent occurrence. I consider that additional accommodation is urgently needed.<sup>32</sup>

Despite this serious state of affairs, the Government regarded the needs of the military as paramount. The Superintendent was instructed to comply with the wishes of the military authorities “by pitching tents for Kafirs, or by some other means ...”<sup>33</sup> Clearly the interests of white military prisoners were placed above those of black civilian prisoners. The above order was reluctantly obeyed, with the Resident Magistrate of Pietermaritzburg stating as follows:

Order has been complied with; but it involves crowding and it is impossible to put men under long sentence in tents. Moreover, measles have broken out in the Gaol.<sup>34</sup>

Being forced to accommodate military prisoners in the civilian prisons was a millstone which was to remain firmly around the necks of prison administrators in the Colony for years to come. There were further legal developments in May 1882 when, following a request from the War Office in England, the Rules and Regulations of Natal’s gaols were altered to include the following classification:

Military prisoners convicted of breaches of discipline only, who shall, so far as may be practicable, having regard to the prior accommodation and the circumstances of the case,

30 NAB Natal Blue Book 1880 at p JJ45.

31 NAB CSO 778/Letters 4359: Enclosure – Letter from the Superintendent Pietermaritzburg Gaol to the Resident Magistrate Pietermaritzburg, 10 Nov 1880.

32 NAB CSO 778/Letters 4359: Enclosure – Undated minute of the District Surgeon Pietermaritzburg.

33 NAB CSO 778/4359: Colonial Secretary to Resident Magistrate Pietermaritzburg, 10 Nov 1880.

34 NAB CSO 778/4359: Resident Magistrate Pietermaritzburg to Colonial Secretary, 17 Nov 1880.



be kept separate and distinct from prisoners convicted of offences of an immoral dishonest, shameful, or criminal character.<sup>35</sup>

The respective Superintendents of the Durban and Pietermaritzburg Gaols did not have any objection to the above clause, but made it clear that due to lack of space, military prisoners could not at that time be separated from other prisoners. Both Superintendents also stated that due to overcrowding, only a certain number of military prisoners could be admitted to their gaols. The Colonial Secretary was quick to point out as follows:

The Superintendents of both Gaols ... lose sight of the facts which should be within their knowledge that they are acting illegally in refusing to receive military prisoners duly committed under the 'Army Discipline Act'.<sup>36</sup>

It is clear that the colonial authorities who were charged with actually administering the prisons were caught between the legally valid demands of the military authorities on the one hand, and chronic overcrowding in the gaols of the colony on the other hand.

This was a long-standing problem which would remain unresolved for many years. For example, in February 1887, the military authorities requested that a certain number of cells in the Durban Gaol be set aside especially for the use of military prisoners.<sup>37</sup> The Superintendent of Durban Gaol reported that forty-four prisoners were at that time confined in the "European Block" which contained thirty-four cells. He pointed out that in the case of "European prisoners" "to have 3 prisoners in many of the cells is very undesirable and to be avoided if possible".<sup>38</sup> The military authorities were thus informed that due to the overcrowding, a definite number of cells could not be set aside for military prisoners. It is clear that by utilising the Durban and Pietermaritzburg Gaols for the confinement of military prisoners over the years, the problem of overcrowding within these prisons was aggravated.

#### 4 The "Separate System" Remains an Elusive Ideal due to Chronic Overcrowding Throughout the 1880s and 1890s

During 1881 and 1882 additional accommodation was constructed at both the Durban and the Pietermaritzburg Gaols. At the Durban Gaol an additional block of cells and a hospital were provided at a cost of £10,500. A block containing separate

35 Regulation 1e of the Rules and Regulations for the Gaols of Natal – Approved by the Governor in Council on 5 May 1882.

36 NAB GHN 380/G. No 80 of 1882: Minute of Colonial Secretary, 29 March 1882. See also NAB GHN 380/G. No 80 of 1882: Enclosure – Circular from Kimberley to Bulwer, 23 Jan 1882.

37 NAB CSO 1119/Letters 504: Enclosure – Letter from the Colonel on Staff Commanding Troops Natal District to Acting Colonial Secretary, 2 Feb 1887.

38 NAB CSO 1119/Letters 504: Minute of the Superintendent Durban Gaol, 4 Feb 1887 in response to the Regional Magistrate, Durban.

cells for sixty-two prisoners was constructed at the Pietermaritzburg Gaol at a cost of £6,425.<sup>39</sup> In the words of the Colonial Engineer, the extra accommodation was constructed “on what is known as the ‘separate system’, a system which is now universally adopted in all modern Gaols”.<sup>40</sup>

The authorities thus clearly intended to introduce the separate system into the Durban and Pietermaritzburg Gaols. However, due to the rapidly increasing prison population, it proved impossible almost from the start for this intention to be carried into effect. In the case of the Pietermaritzburg Gaol, for example, the Gaol Board resolved as follows on 5 September 1882:

[T]hat the New block be reserved, for the present, for long sentenced prisoners each to be confined in a separate cell and that the remainder of the long sentenced prisoners who cannot be accommodated in the New Block, should be, as far as possible confined in separate cells in the Old Block ...<sup>41</sup>

However, a mere two months later, on 5 December 1882, the Superintendent of the Pietermaritzburg Gaol reported as follows:

That it is impossible to comply with the recommendation of the Board to keep natives in separate cells in the New Block, and recommends that 10 cells be kept for separate prisoners, and that 3 natives be placed in each of the other cells instead of one, owing to the present pressure.<sup>42</sup>

Thus, as with the attempt to introduce strictly penal labour into Natal’s two Central Gaols, the rapidly expanding prison population combined with a lack of resources, prevented the separate system from being widely introduced into the Natal penal system. The separate system was applied to a very limited extent, but was restricted mainly to white prisoners. However, even this limited application of the separate system was to be curtailed as the problem of chronic overcrowding arose once more.

By February 1886, a mere three years after additional accommodation had been provided at the Durban Gaol, the problem of overcrowding had once again reached such proportions that the Superintendent found it necessary to write to the District Surgeon as follows:

All the cells in the Central Gaol are crowded to excess notwithstanding the additional accommodation lately afforded which had given room for 47 more. I think it is advisable that you should report to Government the necessity of providing extended accommodation as early as possible, so that in case of any epidemic breaking out amongst the Prisoners – with a serious result – the responsibility then would not be attached to us.<sup>43</sup>

39 NAB Natal Blue Book 1882 at p FF109.

40 NAB Natal Blue Book 1882 at p FF91.

41 NAB CSO 897/Letters 858: Enclosure – Report of the District Surgeon Pietermaritzburg, 14 Apr 1883, in which he sets out the resolution of the Gaol Board, Pietermaritzburg.

42 *Ibid.*

43 NAB CSO 1066/Letters 684: Enclosure – Report of the Superintendent Durban Gaol to District Surgeon Durban, 13 Feb 1886.

The District Surgeon complied with this request and drew particular attention to the plight of the black prisoners in Durban Gaol:

I found that the cells in the portion of the Gaol appropriated for the Coloured prisoners are far too much crowded especially at night. As many as from 5 to 8 adults are placed frequently in a small cell of say 577 feet cubic space.<sup>44</sup>

As for the forty-eight white prisoners confined in Durban Gaol, these were accommodated in thirty-three cells – twenty-five single cells and eight containing three prisoners each. The Executive Council ordered that three European prisoners be allocated to each cell, and that the cells left vacant in this way be set aside for African prisoners.<sup>45</sup>

There was thus no place for the separate system, even in the case of “European” prisoners, in Natal’s grossly overcrowded gaols at that time. Clearly, additional accommodation was once again required, especially in the case of the Durban Gaol, and the sum of £8,000 was placed on the Estimates for 1887 for this purpose. In the struggle by the Natal authorities to secure approval for the above expenditure, it is interesting to note that they seem to have accepted the impracticability of introducing the separate system in its entirety, into Natal’s prisons. The proposed construction was to be the final stage of the successive improvements which had been carried out according to the plans drawn up in 1879, for enlarging and improving the Durban Gaol. Of course these plans had been drawn up with the aim of providing sufficient accommodation for the introduction of the separate system. As if indicated by the following statements made by the Clerk of Works in October 1886, it was now accepted that this would be impossible:

[O]wing to the large increase in the number of prisoners confined in the Gaol, it has been found altogether impracticable, without incurring considerable outlay in providing large additional accommodation, to carry out the solitary system, except in special instances.<sup>46</sup>

In a despatch to the Secretary of State, the Governor too pointed out that the proposed additional accommodation, while desperately and urgently needed, would not permit of the introduction of the separate system:

The complete scheme provides accommodation on the separate system for 160 convicted prisoners only. The number of convicted prisoners in Durban Gaol, as shown by the daily return of last week, is 301 and this number is below average. The urgency of this work is obvious. Any further delay in carrying it out is to be deprecated.<sup>47</sup>

44 NAB CSO 1066/Letters 684: Enclosure – Report of District Surgeon Durban, 15 Feb 1886.

45 NAB CSO 1066/Letters 684: Minute of the Clerk of the Executive Council, 22 Feb 1886.

46 NAB GHN 140/Despatch 27: Stanhope to Havelock, 4 Oct 1886: Statement by Clerk of Works.

47 NAB COL 179/ 164: Havelock to Granville, 17 Aug 1886.

Despite the urgency of the situation, permission to undertake the necessary expenditure was not immediately forthcoming. The authorities in England at this time were very concerned to keep expenditure in Natal as low as possible and pointed out as follows:

The financial condition of the Colony ... renders it of the utmost importance that all works, which are not of pressing urgency, should be postponed until the equilibrium of the finances has been restored.<sup>48</sup>

The Governor was thus forced to further justify the proposed alterations. In December 1886 he informed the Secretary of State as follows:

[T]he buildings which it is proposed to erect ... include, in addition to thirty two cells, the whole of the Administration Block; and ... by the construction of this Block, cells now appropriated for untried prisoners, rooms now occupied as offices, storerooms etc will become available for occupation by convicted prisoners. In this way ... additional accommodation for at least seventy prisoners, in all, will be provided ...<sup>49</sup>

Only following this despatch did the authorities in England approve of the expenditure. Finally, after all the above arguments and debates, the Legislative Council of Natal decided to grant only £4,000 – namely half the amount required – for additions to the Durban Gaol in 1887.<sup>50</sup> In 1888, however, the permissible expenditure for additions to the Durban Gaol was increased to £10,000.<sup>51</sup> The additions were finally completed in 1889 at a cost of £10,000 18s 3d.<sup>52</sup> In March 1889 construction was begun on a new block of cells at the Pietermaritzburg Gaol.<sup>53</sup> The Governor reported as follows to the Secretary of State on 28 June 1889:

When the extension of the Pietermaritzburg Gaol, now under construction, is completed there will be little danger of overcrowding in that Gaol ...<sup>54</sup>

The new cell block was completed in 1890 at a cost of £8,251 4s 11d.<sup>55</sup>

Despite these additions to the Durban and Pietermaritzburg Gaols, it did not take long before the problem of overcrowding once again reared its ugly head. The problem was particularly pressing in the case of the Durban Gaol. In October 1892 that gaol was overcrowded to the extent that over fifty short sentenced prisoners were forced to sleep in the corridors at night.<sup>56</sup> In December 1893 the Superintendent

48 NAB GHN 140/Despatch 27: Stanhope to Havelock, 4 Oct 1886.

49 NAB COL 179/ 165: Havelock to Stanhope, 6 Dec 1886.

50 NAB GHN 141/Despatch 1: Holland to Havelock, 17 Jan 1887.

51 NAB Natal Blue Book 1888 at p J4-5.

52 NAB Natal Blue Book 1889 at p J6-7.

53 GN 306 GG of 23 Apr 1889 (Natal).

54 NAB COL 179/168: 28 Jun 1889.

55 NAB Natal Blue Book 1890-91 at p JJ12-13.

56 NAB CSO 1345/Letters 4668: Enclosure – Report in *Natal Witness*, 11 Oct 1892.

of the Durban Gaol informed his superiors that chronic overcrowding had resulted in seventy-three prisoners being forced to sleep in the corridors at night.<sup>57</sup> The Governor of the Durban Gaol pointed out in each of his annual reports for the years 1896 and 1897 that the Resident Engineer in charge of the harbour works wished to increase the number of convicts employed on the works, but that the lack of accommodation in the Durban Gaol made this impossible.<sup>58</sup> Finally, in his annual report for the year 1897, the Chief Commissioner of Police was able to report as follows:

A new wing is about to be commenced at the Durban Central Gaol to accommodate extra convicts required for the harbour works, nearly all the convicts confined in this gaol being long-sentenced natives employed upon these works, and the Engineer-in-Charge is continually crying out for more convict labour.<sup>59</sup>

This new cell block was completed in June 1898, and provided accommodation for an additional 114 African and Indian convicts. The Governor of the Durban Gaol reported, however, that there were not sufficient convicts to immediately fill up all the additional accommodation. This was of very little satisfaction to the Engineer of the Harbour Department “who was urgently in need of much more convict labour than could be sent to him at that time”.<sup>60</sup> This critical shortage of convict labour began to ease towards the end of 1898, however, as the new cell block at the Durban Gaol became more fully occupied.

The brief respite in overcrowding at the Durban Gaol due to the completion of building works in 1898 was not to last for long. The following year saw the outbreak of the Second Anglo-Boer War which, as in the case of the Langalibalele Rebellion of 1873 and the Anglo-Zulu War of 1879, greatly exacerbated the problem of overcrowding in the gaols of the colony. As increasing numbers of prisoners flowed into the gaols during this period, greatly increased strain was placed on the prison infrastructure. In his report for the year 1899, for example, the Chief Commissioner of Police stated as follows:

In speaking of the Gaols throughout the Colony I have nothing but praise for the way they stood the extra strain thrown upon them by the large increase in the number of prisoners they were called on to accommodate ...<sup>61</sup>

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

- 57 NAB CSO 1382/Letters 5780: Minute of the Superintendent Durban Gaol to the Regional Magistrate, Durban, 13 Dec 1893.
- 58 NAB Natal Blue Book 1896 vol 2 Departmental Reports at p F44; and NAB Natal Blue Book 1897 vol 2 Departmental Reports at p F55.
- 59 NAB Natal Blue Book 1897 vol 2 Departmental Reports at p F25.
- 60 NAB Natal Blue Book 1898 vol 2 Departmental Reports at p F59.
- 61 NAB Natal Blue Book 1899 vol 2 Departmental Reports at p F11.

In consequence of the large numbers of rebel prisoners, the central gaols have been inconveniently crowded, but the opening of the new central gaol at Eshowe in November afforded a certain relief to the gaols of Durban and Pietermaritzburg ...<sup>62</sup>

## 5 Into the New Century with No Relief in Sight to the Problem of Chronic Overcrowding

Despite the construction of a new wing at the Durban Gaol during 1902, Natal's gaols remained generally overcrowded.<sup>63</sup> For example, the Governor of the Durban Gaol stated as follows in his report for the year 1903:

[T]hough the new block ... has been completed and occupied during the year, the cell accommodation is still insufficient for the requirements, and the Gaol is practically always much overcrowded ... The great majority of cells, each intended for only one convict, are occupied by three, and even then a considerable number of convicts have to be accommodated to sleep in corridors of Blocks.<sup>64</sup>

The Pietermaritzburg Gaol was similarly overcrowded. The District Surgeon of Pietermaritzburg stated as follows in his report for the year 1903:

At present I consider the Gaol very much overcrowded ... If the present state of things is continued, undoubtedly a high rate of sickness will result.<sup>65</sup>

In February 1905, following much agitation on the part of concerned citizens in favour of prison reform in Natal, a Parliamentary Commission of Enquiry was appointed to look into the matter. The so-called "Prison Reform Commission" finally completed its work and delivered its report on 28 May 1906.<sup>66</sup> As to the problem of overcrowding, the Commission was well aware of the fact that the problem was exacerbated by the imprisonment of black petty offenders – often those who had fallen foul of rules and regulations aimed at the social control of the indigenous population:

The Natives are not only subject to their own special laws, of which there are many contraventions, but also to a number of artificial restraints and disabilities, chiefly when in towns, which go to swell the number of offences committed by them.<sup>67</sup>

62 NAB Natal Blue Book 1900 vol 2 Departmental Reports at p F13.

63 NAB Natal Blue Book 1902 vol 2 Departmental Reports: Report of Chief Commissioner of Police at p 5.

64 NAB Natal Blue Book 1903 vol 2 Departmental Reports: Report of Chief Commissioner of Police at p 9.

65 *Ibid.*

66 GN 344 GG of 5 Jun 1906 (Natal): Report of the Prison Reform Commission.

67 *Idem* at par 67.

It was well understood that prisoners who had offended against social control legislation – such as the Native Code, Pass Laws, and Master and Servants Laws – could “in no sense of the word ... be said to be criminals”.<sup>68</sup> The Commission proposed a number of ways in which such offenders would be kept out of the existing overcrowded prisons. These included banishing certain offenders to their *kraals*; punishment by means of corporal punishment rather than by short sentences of imprisonment; and sentencing petty offenders to work on the roads or other public works.<sup>69</sup> With regard to the proposed sentences of forced labour on the roads, the Commission recommended the establishment of “movable prisons”. These movable prisons would be similar to road construction camps, but would be designed to ensure the safe custody of short-sentence black prisoners when they were not working on the roads. Clearly education, reform and scientific treatment were not priorities in the case of black prisoners. To the white colonists, this category of prisoners had two important lessons to learn: Firstly, fear the white man and give him due respect as your natural “master” and, secondly, acquire the habit of docile, obedient manual labour in service of the white man. The first lesson could be taught by the cat-ò-nine-tails and the second by forced labour. To the colonists, modern European-style prisons, which were focused on the rehabilitation of prisoners, were not particularly suitable for black prisoners. Despite the plans and proposals put forward by the Prison Reform Commission noted above, the problem of overcrowding in the prisons of Natal was destined to continue.<sup>70</sup>

In 1906 the overcrowded prisons of Colonial Natal experienced a further shock due to the influx of large numbers of “rebel” prisoners following the “Bambata

68 NAB CSO 2847/Undated Précis of Evidence of the Prison Reform Commission, Natal by B Haslewood, Secretary of the Prison Reform Commission at p 2.

69 The proposal that recourse be had to sentences of corporal punishment in place of imprisonment is interesting from the perspective of the role that whipping, as a form of “racial punishment”, played in the history of the colony. See S Peté & A Devenish “Flogging, fear and food: Punishment and race in Colonial Natal” (Mar 2005) 31(1) *J of Southern African Studies* at 3-21; and S Peté “Punishment and race: The emergence of racially defined punishment in Colonial Natal” (1986) 1(2) *Natal University Law and Society R* at 99-114. The proposal is also interesting due to the fact that a similar proposal was to be made decades later at the height of the apartheid period in the 1980s in a desperate effort to find solutions to the problem of chronic overcrowding. See Peté (n 2) *passim*.

70 Note that the problem of overcrowding was only one of many issues addressed by the Prison Reform Commission. Another interesting proposal put forward by the Commission, which is not directly relevant to this article, was the proposal to build a separate “industrial prison” for the treatment and rehabilitation of white prisoners. In the Commission’s own – shockingly racist – words: “[P]ride of race alone ought to rouse us from our indifference and lethargy ... Several reasons may be suggested for limiting the proposed innovation to Europeans; of a higher average intelligence, and possessing a higher moral basis, with a better knowledge of the claims of society, and of the advantages of being reconciled thereto, they offer a more promising field for reform than would be presented by individuals of other races.” See GN 344 GG of 5 Jun 1906 (Natal): Report of the Prison Reform Commission at par 67.

Rebellion”. The rebellion began in February of that year when Bambata, a minor chief in the Umvoti region, defied the magistrate in charge of that area. It ended on 10 June of the same year, with a massacre of Bambata and 500 of his followers in the Mome Gorge.<sup>71</sup> Following the Bambata Rebellion there was a massive increase in Natal’s prison population, as a result of the influx of a large number of “rebel” prisoners. An intolerable strain was placed on the already overcrowded prisons of Natal, and the Government was forced to take swift action.<sup>72</sup> A Bill was rushed through Parliament which, in the words of the Minister of Justice, conferred power on the Government “to enter into contracts with any municipality, township, or other public body, or with any company or individuals, for the employment of prisoners who are sentenced to terms of imprisonment exceeding three months”.<sup>73</sup> The Bill was promulgated as Act 32 of 1906.<sup>74</sup> Clearly, this legislation was very similar to Law 18 of 1874 discussed in the Section 4 of Part 1 of this article dealing with the Langalibalele Rebellion. The legislation put forward after the Bambata Rebellion seemed to have similar objectives to that put forward after the Langalibalele Rebellion. In each case the legislation seemed to be aimed at preventing the prisons becoming chronically overcrowded with “rebels”, but was clearly just as concerned – if not more concerned – with achieving the objective of providing cheap black labour to white colonists and to the colonial state. Act 32 of 1906 also showed clear similarity to legislation which had been passed in the Cape Colony following the “Langberg Rebellion”.<sup>75</sup> Natal’s Minister of Justice stated in connection with the Cape legislation as follows:

[T]he Cape Government for some years have been in the habit of hiring out prisoners to De Beer’s and other large employers of labour, and I think the experience of that Colony is that the system works very well both in the interests of the Government and in the interests of the prisoners themselves.<sup>76</sup>

The Minister stated that Act 32 of 1906 was to apply to all prisoners, and not simply to political prisoners – namely “rebels”.<sup>77</sup> It would seem, therefore, that the large influx of non-criminal “rebel” prisoners into Natal’s penal system had provided the ideal excuse for the colonists to push through their agenda of implementing legislative measures to secure a supply of cheap black labour. By Government Notice 497 of 1906, regulations were promulgated under the Act, setting out the conditions for the

71 E Brookes & C De B Webb *A History of Natal* (Pietermaritzburg, 1965) at 220-230.

72 Debates of the Legislative Assembly of the Colony of Natal 1906 vol 40 Debate of 2 Jul 1902 at 420-423.

73 *Idem* at 420: Minister of Justice.

74 Act 32 of 1906 (Natal) “To amend the Gaol Law of 1887”.

75 Debates of the Legislative Assembly of the Colony of Natal 1906 vol 40 Debate of 2 Jul 1902 at 422: Mr Tatham.

76 *Idem* at 422: Minister of Justice.

77 *Ibid.*



employment of prisoners.<sup>78</sup> In practice it is not certain how many prisoners were hired out, since a convict station was established at the Point in Durban to accommodate large numbers of “rebel” prisoners.<sup>79</sup> In addition, about 200 rebels were confined in “movable prisons” and made to perform road work.<sup>80</sup> By 1908 the convict station at the Point could accommodate about 700 men.<sup>81</sup> The focus in terms of the punishment of black offenders in the colony had clearly swung decisively in favour of productive forced labour in service of the colonial state. As for the problem of overcrowding, it would be fair to conclude that it remained a problem in the prisons of Natal until the very end of the colonial period.

## 6 Conclusion

Chronic overcrowding remained a pressing problem in the gaols of Colonial Natal throughout the period of the Colony’s existence. Like the proverbial bad penny, the problem reared its ugly head over and over again. Colonial officials commented time and again on the poor and unhygienic living conditions caused by overcrowding in the gaols. The result was decades of unnecessary discomfort and suffering on the part of those unlucky enough to be on the receiving end of a sentence of imprisonment during the colonial period. Furthermore, reading between the lines of the various reports and despatches cited in this article, it is almost certain that overcrowding resulted in an unnecessary loss of life, although it is unlikely that the numbers of prisoners who died because of this scourge will ever be fully known. Both black and white prisoners suffered due to overcrowding in the prisons of colonial Natal but, of course, those who suffered the most were the black prisoners.

The problem of chronic overcrowding in the prisons of colonial Natal was greatly exacerbated by a number of factors: First, due to the fact that Natal was a reluctant addition to the British Empire, the colonial state was generally weak and under-resourced, with the result that it was unable to provide sufficient accommodation for the prisoners in its care. Second, the prisons were used as a means for the social control of the black population, meaning that they were continually overcrowded with petty offenders who were not criminals in the strict sense of the word. Third, the outbreak of war and rebellion at regular intervals throughout the short history of the Colony, meant that the penal system was subjected to a series of severe shocks in terms of increased numbers of prisoners, which greatly exacerbated the problem of overcrowding. Finally, since the colonists regarded imprisonment as an inherently

78 NAB CSO 1827/Minute Papers 1124: Government Notice 497 of 1906.

79 Debates of the Legislative Assembly of the Colony of Natal 1908 vol 46 Debate of 15 Sep 1908 at 251: Attorney General.

80 NAB CSO 1827/Minute Papers 1124: Remarks on recommendations contained in Section 74 of the Natal Prison Reform Commission – Report of the Assistant Commissioner of Police, 13 Feb 1907 at par 14.

81 Debates of the Legislative Assembly of the Colony of Natal 1908 vol 46 Debate of 15 Sep 1908 at 251: Attorney General.

unsuitable form of punishment for the majority of black offenders – preferring forced labour and/or corporal punishment – it is submitted that there was a lack of political will on the part of the local prison authorities to push aggressively for the building of more and more fixed prison accommodation.<sup>82</sup>

To conclude, an examination of the endless despatches and debates concerning the problem of overcrowding in the prisons of the colonial Natal, from the beginning to the end of the colonial period, must, it is submitted, lead one to the conclusion that the problem was much more deeply rooted – socially, politically and economically – than many commentators may be prepared to admit. It is beyond the scope of this article to propose definitive “solutions” to the present problem of overcrowding within the South African penal system. It may be tentatively argued, however, that what was true of prison overcrowding in colonial Natal was, generally speaking, to prove true of overcrowding in South African prisons in the century-and-a-bit which followed. One is struck by the fact that this scourge simply refused to disappear, turning up over and over again, from year to year, from decade to decade, and from one century to the next.<sup>83</sup> This article has shown that prison overcrowding is a deeply rooted phenomenon, with considerable historical reach. Whether or not it is a structural feature of this form of punishment in South Africa, along the functionalist lines discussed in the introduction to Part 2 of this article, is a matter for further research.

## Abstract

During recent decades, like the proverbial bad penny, the problem of chronic overcrowding has turned up over and over again to haunt South African prison administrators. As this article indicates, however, overcrowding in South African prisons is not only a recent phenomenon. Overcrowding has been a significant feature of imprisonment in South Africa from the very introduction of this form of punishment into the country. This article examines overcrowding in the prisons of colonial Natal from 1845 until 1910. Through an analysis of the official discourse surrounding this difficult problem throughout the colonial period, this article shows that imprisonment as a form of punishment in South Africa has always been inextricably bound up with the problem of overcrowding. By illustrating the deeply entrenched nature of the problem from a historical perspective, this article hopes to provide present day prison administrators with useful insights into the nature of their struggle to overcome the problem in the present. The article is in two parts. Part 1 of the article covers the period 1845 to 1875, while Part 2 covers the period 1875 to 1910.

82 Much of the focus in dealing with overcrowding among black prisoners was on facilitating labour gangs to perform forced labour in the open air on public works and, later in the colonial period, in developing the concept of “mobile prisons” – essentially mobile labour camps.

83 See Peté (n 2).