Prison Personnel in the Colony of Natal from circa 1850 to the Prison Reform Commission of 1905-1906

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Abstract

White colonial ideology was produced as a result of the fractured nature of the relations – social, political and economic – between black and white in the colony of Natal. Apart from the racial tensions between warders and prisoners of different races, tensions within the colonial edifice itself – particularly between police officers and gaol officials – reveal deep divisions within the colonial state. The article is primarily based on material housed in the Pietermaritzburg Archives Repository; some quotations from *The Black Peril* by an imprisoned journalist, George Webb Hardy, have also been included.

Keywords

Colonial Natal; gaol system; prison personnel; Durban; Pietermaritzburg.

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1 Introduction

White colonial ideology in Natal was produced because of the fractured nature of the relations – social, political and economic – between black and white. This contribution focusses on the lives and careers of prison officials in colonial Natal between approximately 1850 and the Prison Reform Commission of 1905-06, highlighting the complexity of the experiences lived behind prison walls. It aims to provide a holistic picture of the staffing component of Natal's penal system through a discussion of a range of themes starting with accounts of early prisons in the colony of Natal. Friction and rivalry between gaol staff – particularly those working in the Durban and Pietermaritzburg Gaols – is also considered. The role of African gaolers is also an important issue. Interestingly, in the case of African personnel a system similar to migrant labour developed, whereby African guards would serve in a gaol for a few months and then return to their homes to work their fields. In order to do so, they would ensure that replacement guards assumed their duties in their absence. It appeared that this informal system became commonplace even though prison authorities disagreed with the practice. Although there was an unequal power relationship between prisoners and the administration it was an established principle that prison labour could not be used for private gain. There were also differences between urban and rural gaols and in the districts policemen tended to operate as jacks of all trades, acting as gaolers, postmasters and agricultural officers.

Particular focus is placed on the examination of testimony given to the Prison Reform Commission of 1905-1906, which dealt with a range of issues such as the treatment of prisoners used in prison labour and the duties of matrons with respect to female prisoners. The commission also examined the separation of the Police and Gaol departments and inspections of gaols by the Natal police. The Prison Reform Commission was discussed in a previous article written with Stephen Peté, with particular attention being placed on racial division.[1] In this contribution the same commission is looked at with greater emphasis being placed on the human resources aspects of the prison administration. Some material from *The*

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1 Swanepoel and Peté 2019 *Fundamina* 169-198.

Black Peril – an account of a journalist's imprisonment for the crime of publishing "obscene literature" – has also been included.[2]

Apart from the racial friction between warders and prisoners, tensions in the colonial edifice itself – particularly between police officers and gaol officials – reveal wide fissures in the colonial state and it is apparent that perceptions of class and race played a central role. More widely, law was central to colonialism in Natal in terms of its invention and execution by the colonisers, and as it was understood by the colonised.[3] It is possible to draw similarities with other parts of the British empire such as India whose colonial penal system – "an ideal space of administrative infrastructure where the British could develop and articulate new categories of difference" – shared much with the gaol structure that developed in colonial Natal.[4] In addition to providing a narrative account of the fascinating lives of prison officials in colonial Natal, one of the principal aims of the article is to explore the nature of the colonial state in Natal by examining the multiple fractures within it. Crucially, the colonial state in Natal was not simply an agent of metropolitan interests. In other words, its frameworks cannot be explained solely from the perspective of the metropole as they were also constructed to a large degree by internal social, political and economic forces in the colonies themselves.[5]

2 Beginnings

A small settlement was established at Port Natal in 1824 and formal British protection was established over Natal – the territory between the Thukela and the Umzimkhulu – on 4 May 1843. The territory – which was directly administered as a Crown colony – was formally annexed in August 1845. Britain chose to annex the territory principally for strategic reasons and not because of the territory's coal deposits and potential for growing cotton.[6] Around this time there were approximately 3,000 whites in the colony and up to 100,000 Africans.[7] Pietermaritzburg was founded by the Voortrekkers in 1838 as the capital of the Republic of Natal, being named after Piet Retief and Gert Maritz. It remained the capital under British rule.[8] Initially, with a small population, crime was not a major issue in the colony of Natal. Durban didn't have a prison at first but eventually a small cottage came to be used

2 Hardy *Black Peril* 221-222.
3 Roberts and Mann "Introduction" 3.
4 Waits 2018 *Journal of the Society of Architectural Historians* 157.
5 Young *African Colonial State* 35-42.
6 Davenport and Saunders *South Africa* 113-114.
7 Hattersley *British Settlement of Natal* 65.
8 Davenport and Saunders *South Africa* 79.

as a jail and was known as the Dutch word for prison: "tronk". It was a humble structure, its walls consisting of clay and twigs.[9] Writing about Durban circa 1850, George Russell described the gaol as a "pretty thatched cottage of wattle and daub, surrounded by a cluster rose fence, in Central West Street, having iron bars to the windows".[10] Thomas Dand, who had arrived in the colony in 1850 as personal attendant to Lieutenant-Governor Benjamin Pine, was appointed as Durban's first gaoler[11] If prisoners "became very riotous or unruly", they were kept in stocks at night. Prisoners were also employed in public works, for example, working on a drain from Grey Street to the harbour:

> They were guarded, in addition to the great-coated Native with knobstick and assegai, by a European constable armed with a regulation Tower musket. He wore his own clothes and slouch hat, carried a spare ball cartridge in his pocket, and smoked his pipe peaceably in company with his chatty prisoners, seated on a convenient log. The military method of escorting prisoners to justice was with the aid of handcuffs. The Civil method, which we learnt from the Boers, was to drop the loop of a bullock rein over the head of the prisoner, and, secured by a half-hitch at the nape of the neck, thus was he led, or driven to safe keeping. Country cases had frequently to trot on foot to keep up with the farmer's horse. If, in addition, his hands were tied, the journey was not without its inconveniences. Yet we were not brutal, every European being regarded as his own special constable, and viewing these things in the light of African 'custom', just as the Fishwife did the skinning of eels.[12]

By 1853 Henry F Fynn had been appointed as assistant resident magistrate and administrator of native law. He was assisted in his custodial duties by a "native assistant" or "chief constable", named Tuta,

> who for his services was afterwards raised to the rank of 'Induna,' and with his successor, Mafingo, was for many years connected with the Resident Magistrate's Court. He had a krall under the large fig tree ... serving as Native Police Camp ... Prisoners for minor offences, master and servant cases, thefts, assaults, etc., would be marched up from the 'Tronk' by great-coated Native constables, armed with assegais.[13]

Following sentences handed down by Fynn,

> Tuta and his men took the culprit aside a convenient distance, spread-eagled him on the sand face downwards, and counted out the stripes with a sjambock on his back and shoulders. Prisoner, on his release, would writhe into his blanket, hold up his hand and shout a respectful 'Inkosi' to the dignified white chief, while walking past to resume his employment.[14]

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9 Robinson *Life Time in South Africa* 17.
10 Russell *History of Old Durban* 112.
11 Russell *History of Old Durban* 112.
12 Russell *History of Old Durban* 112.
13 Russell *History of Old Durban* 171.
14 Russell *History of Old Durban* 171.

On 15 November 1857 the Durban Town Council, which had been established three years earlier, rejected plans for a new gaol, resolving that Durban didn't need a gaol more than other parts of the colony and any "superfluous" prisoners could be sent to Pietermaritzburg if necessary.[15]

By 1860, however,

> [i]t was found that the Gaol accommodation was becoming a scandal, and that some separation of patients and prisoners, including lunatics, was essentially necessary, the old 'Tronk' being wholly inadequate for both, apart from its use as a Police Station, nothwithstanding Mr T. Dand's good management, and the transfer of long-term convicts and their clanking chains to Pietermaritzburg and the Government Brickyards.[16]

The old gaol was used until 1862 and a new gaol was completed in 1864, at a cost of £13,000. The new site in Pine Terrace was used for over 100 years and initially housed 80 prisoners.[17] In 1863 the gaoler for the County of Durban, Thomas Dand, earned an annual salary of £100. He supervised a staff of one European constable, three European "turnkeys", five African constables and two African "turnkeys". There was also a European constable in Pinetown. In the County of Pietermaritzburg, the gaoler, W. Cook, also earning £100, supervised one European constable, four European "turnkeys", two European "constables as convict guards" and two African "constables as convict guards".[18]

3 Natal Police

The first police force in Natal was formed in 1846 and this was named the Mounted Police of Natal in 1861. In 1874 the force was reorganised and re-named the Natal Police. Around the time that self-government was granted – 1893 – the force was made up of around 300 whites and 100 Africans. The Zululand Mounted Police was established in 1883 and was incorporated into the Natal Police in 1898. Pietermaritzburg and Durban were policed by their own municipal forces.[19] In 1855 Pietermaritzburg held its first "Police Board" meeting, which was attended by six policemen, one chief constable and a gaoler.[20] In 1894 the Natal Mounted Police, Native Magisterial Police, Railway and Water Police, messengers at magistrates'

15 Russell *History of Old Durban* 333; Bjorvig *History of the Durban Town Council* 21.
16 Russell *History of Old Durban* 448.
17 Kearney *Alas Poor Little Colony* 1237.
18 Colony of Natal *Blue Book* 1863.
19 Cooper 1929 *Police Journal* 249-250.
20 Anon *The Natal Witness* page unknown. The synonyms for "gaol" and "goaler" are "jail" and "jailer" respectively.

offices, warders and convict guards were combined into a single force: the "Natal Police".[21]

4 Central gaols

Natal's two principal penal institutions were situated in Durban and Pietermaritzburg, and a third central gaol was situated in Eshowe. The officers in charge of each of these gaols, although fairly minor colonial officials, thus occupied relatively responsible positions. As might be expected, there was much friction and rivalry between them.

4.1 Relative importance of the Durban and Pietermaritzburg Gaols

For example, in 1873 a major dispute arose as to the relative importance of the Durban and Pietermaritzburg Gaols. Until 1873 the Pietermaritzburg Gaol had been acknowledged as the "Central Gaol" of the colony. However, in December 1873 the lieutenant governor informed the Legislative Council that

> it is the intention of Government to increase the size and for the future make the Jail at Durban the Chief Jail for the Colony, especially for all long sentenced criminals where they can be better subjected to classification and discipline while all other Jails will be merely local or county Jails, containing it is to be hoped a limited number of Prisoners only.[22]

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

> while it may be perfectly safe to entrust the charge of the local Jails under due supervision, to such officers as retired soldiers of good character who can read and write, the kind of officer required as Governor of the Chief Jail for the

21 Ivey *The Making of Natal* 235.

22 PAR CSO 539/63, Message No 13, Lieutenant Governor to Legislative Council, 12 December 1873.

> Colony is one possessed of greater intelligence and larger education than will be usually found among the former class.[23]

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

> [i]t would be wrong to say the Colony will not be benefitted by this change, for no doubt Mr Phillips will have more time and money to devote to his racing proclivities. Why Mr Cooke, the senior gaoler, who has so long managed the Maritzburg gaol has been overlooked; why he is not made governor of this gaol, is probably because he does not drive a nice trap. It is another of those appointments for which Sir Benjamin has ever been famous, and in which he seems to excel as he grows older.[24]

Cooke submitted memorials to the secretary of state on 8 July 1874 and 6 May 1875 stating that it was unfair that a "junior officer" had been appointed Governor of the Durban Gaol at a much higher salary than himself. He stated that although the Durban Gaol (for reasons of which he had not been advised) was now called the "Central Gaol", yet

> the City Gaol must always be the principal one of the Colony Indeed, in practice the decision to make the Durban Gaol the only major gaol of the Colony, did not succeed.[25]

By 1876 it was clear that both gaols had continued to play an equally important role in the penal system of the colony. Lieutenant Governor Bulwer admitted that

> it is difficult to find any sufficient reason, now at all events existing, for naming the Durban Gaol, the 'Central Gaol' in place of the Pietermaritzburg gaol, which practically is, and ought to be, the central gaol of the Colony.[26]

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23 PAR CSO 539/63, Message No 13, Lieutenant Governor to Legislative Council, 12 December 1873.

24 PAR CSO 539/63, Message No 13, Lieutenant Governor to Legislative Council, 12 December 1873.

25 PAR CSO 539/63, Message No 13, Lieutenant Governor to Legislative Council, 12 December 1873.

26 PAR CSO 516/143, Memorial of William Cook, 6 May 1875.

By Law 3 of 1876 the officers in charge of the Durban and Pietermaritzburg gaols were each given the title "Superintendent of the Gaol". Parity was restored between the respective salaries of these two officers. Notwithstanding this, friction between the superintendents of the Durban and Pietermaritzburg gaols did not end with the death of Mr Phillips in March 1886.[27]

Following the assumption of control over the penal system by the police force in 1894, the superintendents of the Durban and Pietermaritzburg gaols were each given the title "Governor" in place of "Superintendent".[28]

4.2 Appointment of Captain AM Smith as Superintendent of the Durban Gaol

On the death of Mr Phillips, Captain AM Smith was appointed Acting Superintendent of the Durban Gaol, and it was his task to rectify the irregularities that had arisen. On Captain Smith taking charge of the gaol it was found, for example, that a convict was in charge of the treadmill, while other convicts were employed to supervise prisoners under sentence of death. The resident magistrate of Durban described these practices as "monstrous" and "utterly wrong in principle".[29] The seriousness with which the authorities viewed this state of affairs is apparent from the fact that Captain Smith was ordered to take up immediate residence within the gaol:

> If no room is vacant you should apply to clerk of works for loan of a tent, as you cannot enter upon the Gaol cottage until 1st May.[30]

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

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27 PAR CSO 516/143, Memorial of William Cook, 6 May 1875.

28 PAR CSO 1395/2236, 4 CSO 1068/897, Resident Magistrate, Durban, 3 March 1886.

29 PAR CSO 1071/1197, Resident Magistrate, Durban, 19 March 1886 and 8 April 1886; 3 CSO 2562/C, Report of Resident Magistrate, Durban, 22 March 1887.

30 PAR CSO 1071/1197, Resident Magistrate Durban, 19 March 1886 and 8 April 1886; 3 CSO 2562/C, Report of Resident Magistrate, Durban, 22 March 1887.

> It is with great reluctance and pain that I feel myself compelled to state that I cannot conscientiously recommend that the appointment now held by Captain Smith on probation should be confirmed.[31]

Although the resident magistrate had no serious allegations to make, he summed up his objections about Captain Smith as follows:

> He has no energy or zeal or administrative capacity; and if this be so now, when he is on probation, he is not likely to improve when he finds himself securely established in his position.[32]

Following this report the Governor decided not to confirm Captain Smith in his appointment, and Captain Smith's term of probation was extended. Obviously, Captain Smith was greatly disappointed by the turn of events. He became even more bitter when the Governor decided, in August 1887, that it would be beneficial if Superintendent Cooke of the Pietermaritzburg Gaol exchanged duties with Captain Smith for a short period. In this way the long experience of Mr Cooke could be utilised in remedying the defects of the working of the Durban Gaol, and at the same time Mr Smith would be able to acquire valuable information from experience in the manner in which Pietermaritzburg Gaol was governed. This exchange was carried out between 1 October and 31 December 1887. The authorities were full of praise for the manner in which Mr Cooke managed the Durban Gaol during this three-month period, and the resident magistrate of Durban stated as follows:

> Mr Cooke has been most assiduous and energetic in his attempts to reform the management of the Durban Gaol, and he has been successful in bringing about a very noticeable and satisfactory improvement in its administration.[33]

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

> Mr Cooke must be well aware of this fact. He is not, I would suggest his living in the rooms which I occupied in the heart of the Gaol, for in his own quarters he must be living in a fools paradise.[34]

The resentment caused by this incident was to rankle for many years, although Captain Smith was confirmed in his appointment soon after his

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31 PAR CSO 1071/1197 Resident Magistrate, Durban, 19 March 1886 and 8 April 1886; 3 CSO 2562/C, Report of Resident Magistrate Durban, 22 March 1887.

32 PAR CSO 1071/1197, Resident Magistrate, Durban, 19 March 1886 and 8 April 1886.

33 PAR CSO 1071/1197, Resident Magistrate, Durban, 19 March 1886 and 8 April 1886.

34 PAR CSO 1071/1197, Resident Magistrate, Durban, 19 March 1886 and 8 April 1886.

return to the Durban Gaol. The governor wrote as follows to the secretary of state on 17 March 1888:

> Having regard to the great difficulties encountered by Captain Smith, arising out of abuses that had, under his predecessor, Mr Phillips existed for years, and having regard also to the inefficiency and misconduct of several of the subordinate Gaol officers. Captain Smith has effected a very considerable degree of reform.[35]

It is clear from the above examples that the office of superintendent of each of Natal's two central gaols was greatly affected by the intense rivalry which existed between Durban and Pietermaritzburg. If the superintendents of Natal's central gaols occupied relatively minor positions in the colonial hierarchy, it followed that the other prison officials were drawn from the lowest ranks of colonial society. In general, because of the poor wages paid to prison personnel in Natal, this branch of the Government Service attracted poorly qualified and unmotivated men. In addition, the uncompetitive nature of the wages offered led to a high turnover of prison staff, resulting in staff shortages and the constant need to train new personnel. Over the years, dissatisfaction at the low level of wages was expressed in numerous petitions to the Government from both black and white turnkeys and convict guards.[36]

4.3 Dissatisfaction among African prison personnel

In January 1872 dissatisfaction amongst the African prison personnel at the Pietermaritzburg Gaol was particularly strong. The *Natal Mercury* reported that the African guards had gone on strike for an increase in pay and that the magistrate's persuasive powers had to be brought to bear on the gaol guard before they could be persuaded to resume their work. However, it was not only the turnkeys and convict guards themselves who agitated for pay increases.

The gaol authorities were quick to point out to the Government that, in order to acquire good quality prison staff, it was imperative that competitive wages be offered. For example, in October 1881 the Superintendent of the Pietermaritzburg Gaol reported that he was short of "native" guards. The Resident magistrate of Pietermaritzburg commented as follows:

> It is of the greatest importance that these offices should be filled; and filled by trustworthy natives: and it is impossible to obtain such men at less wages than

35 PAR CSO 1071/1197, Resident Magistrate, Durban, 19 March 1886 and 8 April 1886.

36 PAR CSO 179/171, Havelock to Knutsford, 17 March 1888.

> they can obtain elsewhere. Government Service, as a rule, is not popular among the natives.[37]

Apart from the uncompetitive nature of the wages offered, certain issues affected white and black prison personnel separately. In the case of African personnel, a system akin to migrant labour developed, whereby an African guard would serve for six to nine months and then return home to work his lands. He would ensure that a substitute took over his duties in his absence. The colonial secretary took a dim view of this practice and commented as follows in October 1881:

> It is obvious that so long as men are allowed to place others in their posts and go away for months at a time any increment of pay based on length of service (presumably because of the increase of efficiency thereby procured) is a fallacy.[38]

However, even though "native" guards did not remain in service for longer than six to nine months at a time, it is clear that there was continuity of service, since the same guards returned year after year. In requesting an increase of pay for "Native" turnkeys and convict guards the superintendent of the Pietermaritzburg Gaol stated as follows on 11 May 1882:

> I hope that some increase may be given as an encouragement and although they do not as a rule stay longer than from 6 to 9 months at a time, still we get the same natives alternately.[39]

Although this particular labour pattern obviously arose as a result of the economic realities facing African prison personnel the white authorities sought racist explanations. For example, in 1877 Superintendent Cook pointed to the difficulty of training the "native mind" to accept the three virtues of "discipline, order and regularity".[40] The "continual desire" of change from work to idleness exhibited by the "Native" guards and turnkeys meant that just as a guard was beginning to benefit from his disciplinary training,

> his father, grandfather, or some unknown relative is dangerously ill, and he wants to get away and is of no use if he does not get away.[41]

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37 PAR CSO 179/171, Havelock to Knutsford, 17 March 1888.

38 PAR CSO 837/3627, Resident Magistrate Pietermaritzburg, 24 October 1881.

39 PAR CSO 888/1 880, Superintendent, Pietermaritzburg Gaol, to Resident Magistrate, Pietermaritzburg, 11 May 1882.

40 PAR CSO 888/1 880, Superintendent, Pietermaritzburg Gaol, to Resident Magistrate, Pietermaritzburg, 11 May 1882.

41 PAR CSO 888/1 880, Superintendent, Pietermaritzburg Gaol, to Resident Magistrate, Pietermaritzburg, 11 May 1882.

The African guard was clearly placed in an invidious position, since it was his task to uphold the white man's law which was totally alien to him, and to which he owed his own subjection and repression. On the one hand he had to enforce the authority of his white masters, while on the other hand he owed tribal allegiance to his fellow kinsmen who might be in prison. The white authorities clearly realised this problem and the resident magistrate of Pietermaritzburg stated as follows:

> I do not doubt that the Native warders do convey money and prohibited articles to their relations in gaols. The claims of clanship are stronger with them than the claims of their employers.[42]

The relationship of African guards with white prisoners was complicated by the fact that in general life outside the prison a black man would not dare to give orders to a white man. As for the white prison personnel, it may be stated that in general these men were taken from the very lowest orders of white colonial society. The white prison officer had a very low social standing, and in the words of the resident magistrate of Pietermaritzburg,

> the office of Convict Guard is regarded as the last refuge of those who have failed in every other attempt to earn a living.[43]

In the words of the secretary for native affairs:

> It is for the European Guard to set the example – if he is impartial and strict, order and discipline will be maintained as long as they are taken from the class they are, neither discipline nor order will be properly maintained.[44]

5 Convict labour used for private use

During his last few years in office Mr Phillips had suffered greatly from ill health. Perhaps because of this, several irregularities had arisen in the running of the Durban Gaol and discipline was lax. For example, in 1884 Mr Phillips was for reasons of ill health unable to perform his duties as Superintendent for a time. Mr Leonard, the chief turnkey, was temporarily placed in charge of the gaol, and misused this office by utilising convict labour for work around his home**.** Following what appears to have been the correct legal position, the governor commented as follows in June 1884:

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42 PAR CSO 888/1 880, Superintendent, Pietermaritzburg Gaol, to Resident Magistrate, Pietermaritzburg, 11 May 1882.

43 PAR CSO 179/169, Resident Magistrate, Pietermaritzburg, 15 September 1887.

44 PAR CSO 1166/5283, Secretary for Native Affairs to Colonial Secretary, October 1887.

> He has been guilty in doing this of a very grave abuse of office, and ought not in my opinion to be any longer employed in a position which would enable him to make such a misuse of his powers and opportunities.[45]

This issue was raised in *Queen v Jantjes*, heard in the Cape Supreme Court approximately five years later. The accused initially appeared before the resident magistrate of Graaff-Reinet charged with wrongfully refusing to work while serving a custodial sentence with hard labour. A letter had been sent by Hampden Willis, the under-colonial secretary of the Cape colony to the magistrate of Graaff-Reinet authorising Olivier and Bekker to "have the convicts".[46]

It was established from the evidence that Mr Olivier was constructing a dam on his farm, which was for his private use. He had asked the accused to collect water in order to make clay for the dam. In his capacity as a gaoler Olivier was prohibited from engaging in this occupation and the court found that the prisoner was justified in refusing to perform the work.[47]

De Villiers CJ held that:

> Of course it may be said that it would be very dangerous to allow prisoners to question orders given to them by persons who have the custody of them, and I have borne this consideration in mind; but at the same time it must also be borne in mind that a prisoner who disobeys an order does so at his own peril; and if it turns out that the order was a lawful one, the prisoner disobeying it would be severely and very properly punished. But if the prisoner proves at the trial that the order was not a lawful one, the Court is bound to sustain the defence and to quash the conviction.[48]

Confusingly, the court held that Olivier ought to have "relinquished his occupation as a farmer" upon his appointment as a gaoler, while also finding that the custody exercised of Jantjies was not unlawful "because he (Olivier) happens to be employed in another occupation."[49]

De Villiers CJ held that the order was unlawful as it directed the prisoner to work for the benefit of the gaoler in connection with his occupation as a farmer, an occupation he was prohibited from pursuing while he was employed as a gaoler.

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45 PAR CSO 516/143, Memorial of William Cook, 6 May 1875.
46 *Queen v Jantjes* (1888-1889) 6 SC 20 23.
47 *Queen v Jantjes* (1888-1889) 6 SC 20 25.
48 *Queen v Jantjes* (1888-1889) 6 SC 20 25.
49 *Queen v Jantjes* (1888-1889) 6 SC 20 25.

6 Districts outside the main centres

There was only one gaoler for most of the rural areas in the colony. As a result the apprehension and guarding of prisoners was the responsibility of the constabulary, in particular the African constabulary.[50] In larger centres such as Durban and Pietermaritzburg, where the gaols had considerable staffs, there was a clear distinction between "guard" and "constable". This distinction wasn't necessary in the rural areas.[51]

In the districts, policemen acted as "gaolers, post-masters, registrars of births and deaths, immigration officers, inspectors of weights and measures, etc."[52] They also assisted the Agricultural Department in controlling stock disease and assisted in compiling voters' rolls and jury lists. The Lands Department also relied on the police to report on loan proposals and to provide information about debtors who were in arrears. Native promotions were made on the recommendation of district commandants and were restricted to the rank of sergeant.[53]

7 Prison Reform Commission, 1905

In May 1904 F Horrace Rose, the editor of the *Natal Witness*, began a campaign with the aim of achieving prison reform in the colony of Natal. The main focus of the campaign was to bring an end to the practice of incarcerating white and black prisoners in the same gaols. This ultimately resulted in a commission of inquiry being appointed on 16 September 1905.[54] The impartiality of the Commission was questioned from the start. According to Governor Smith,

> [s]eeing that all Gaol Officials are members of the Natal Police, the head of which is himself responsible for anything that may be wrong, it is unlikely that this Commission will be able to get complete evidence.[55]

The main proposals set out by the Prison Reform Commission were strongly influenced by the white supremacist ideology of the time and sought to ensure the separation of European and African prisoners.[56]

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50 Ivey *The Making of Natal* 240.
51 Ivey *The Making of Natal* 244 (AGO I/8/9, 439A/1867).
52 Cooper 1929 *Police Journal* 259.
53 Cooper 1929 *Police Journal* 259.
54 Swanepoel and Peté 2019 *Fundamina* 178-179.
55 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.
56 Peté 2021 *Fundamina* 90.

Various themes arising from the testimony of different members of Natal's prison personnel are now explored with the aim of focussing on the aspects of the Commission's report dealing with human resources.

7.1 Labour

The treatment of prisoners used for prison labour is an important theme across the empire. For instance, in India in the mid-nineteenth century it was a widespread practice for prisoners to be engaged in the production of handicrafts, even though some officials did not regard this type of labour as being sufficiently rigorous compared with labouring on the roads or operating treadwheels.[57] The work undergone by prisoners in Natal was also varied, although the main project in Durban for many decades was the harbour works. In Pietermaritzburg, for instance, according to one prison inspector, white prisoners were employed in carpentry, making wheelbarrows and "kit-boxes" for the "Police and Colonial Office Boys".[58]

It also appeared easy for "shirkers" to avoid working too hard:

> As there is no system of good and bad marks for conduct outside the Gaol, the man who loafs and merely does sufficient when under the eye of the Guard to avoid being reported for idleness or refusing to work, is just as well off as he who does his very best to put in a conscientious day's work. So little is Hard Labour dreaded that a prisoner will frequently, on a second conviction, ask his lawyer to try and get him Hard Labour instead of ordinary Imprisonment without Hard Labour.[59]

According to Chief Convict Guard Brittain – who also held the rank of sergeant in the Natal Police – "[t]he gangers of the Harbour Department say that they prefer the Labour Gang, as workers, to the Free Labourers".[60] Brittain also observed that "[s]ome of the work at the Harbour is really hard labour, but a great deal of it is mere loafing about".[61]

There were separate gangs of "free natives" working alongside convict gangs at the harbour works. This led to convicts being supplied with contraband such as tobacco and snuff. Brittain had reported this to his superiors but nothing further was done about it. As a result, he suggested

57 Yang 2023 *Modern Asian Studies* 27.
58 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.
59 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.
60 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, Durban, 10 November 1905.
61 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, Durban, 10 November 1905.

that the free labourers be kept outside and the convicts brought inside the gaol.[62]

Inspector Mardall, an inspector of prisons and the assistant commissioner of police, was one of the rare officials who spoke out against convict labour, commented in 1909 that "instead of being a valuable asset, convict labour is in reality a burden on the colony."[63] He also claimed that magistrates purposely sentenced convicts to hard labour in order to ensure a steady labour supply: "there cannot help but be some inducement to the magistrate to keep up the supply of such labour by sending men to prison in cases where a fine would be sufficient".[64]

Mardall also observed that the Public Works Department and the Gaols Department viewed the labour issue "from quite antagonistic points".[65] While the former "merely wanted labour for their needs ... the latter aim[ed] at reformation. From a reformative point of view, it would be better to keep long-sentence men at work of a more or less industrial nature inside the prison."[66] As in India and other parts of the empire, it is clear that colonial debates about convict labour were normally centred on the severity of punishment rather than the rehabilitation of prisoners.[67] In other words, colonial prisons were not "meant to encourage individual reforms; rather the buildings were designed as spaces of containment and control where the British could house a population that upset their notions of rational behaviour and social order".[68]

7.2 Matrons

In country gaols the prevailing practice in 1905 was for gaolers' wives to assume the duties of matron but "only in a very cursory sort of manner" and for a low wage.[69] No more than "an occasional visit to the Female Quarters

62 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, Durban, 10 November 1905.

63 *Nongqai* II (12) 377 cited in Kearney *Alas Poor Little Colony* 1221. *Nongqai* was the Natal Police journal at the time; Swanepoel and Peté 2019 *Fundamina* 176.

64 PAR CSO 2847, Evidence of George Stratford Mardall, Assistant Commissioner of Police, 11 January 1906.

65 PAR CSO 2847, Evidence of George Stratford Mardall, Assistant Commissioner of Police, 11 January 1906.

66 PAR CSO 2847, Evidence of George Stratford Mardall, Assistant Commissioner of Police, 11 January 1906.

67 Yang 2023 *Modern Asian Studies* 4.

68 Waits 2018 *Journal of the Society of Architectural Historians* 165.

69 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.

is to be expected of these persons."[70] By contrast, there were "proper Matrons at [the] Maritzburg and Durban Central Gaols."[71]

Reportedly, venereal disease was a problem among Black and Indian prisoners, both male and female. In respect of the female prisoners, one of the reasons given was that because there were no matrons or female warders in country gaols, there was no way of confirming the disease among female prisoners.[72]

A Mrs Jenkinson had been matron at the Pietermaritzburg Gaol for two years, having assumed the position with no previous gaol experience. Her duties included supervising the female wards and prisoners, with the average number of female prisoners under her supervision numbering about 30, mostly Africans with a few whites, Indians, and coloureds amongst them. In some years it was recorded that there were no female white prisoners. When the gaol housed a few white female prisoners they were always housed in separate cells and were instructed to wash the prisoners' clothes and be employed in sewing.[73]

Jenkinson claimed that there:

> was an insufficient number of white woman (sic) to warrant their separation from blacks. If a white woman wanted to she could keep to herself. Books were provided and they all had to have a bath once a week. There were two ordinary single baths and they could have their baths in private if they liked ... White women had been put in with half-castes and they mingled together outside. There had only been two cases in which white women did not mingle with the half-castes. She had to make the best of the circumstances. In one case a white women (sic) was kept in the store-room one night."[74]

Jenkinson also commented that none of the female prisoners had asked for beds. In stating this she alluded to the social background of the women: "[t]he class of women that came into the gaol were unaccustomed to beds – drink and a bad life were the principal causes of their being sent to

70 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.
71 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.
72 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.
73 PAR CSO 2847, Evidence of Mrs Jenkinson, Matron, Central Gaol, Pietermaritzburg, 5 October 1905.
74 PAR CSO 2847, Evidence of Mrs Jenkinson, Matron, Central Gaol, Pietermaritzburg, 5 October 1905.

prison."[75] In the Durban Gaol white women were given mattresses and other races used "bed-boards" and blankets.[76]

Petta Nolan held the position of matron in Durban for six years. In keeping with Jenkinson's sentiments, she believed that white woman "generally belong to the Prostitute class".[77] Sewing work was assigned to female prisoners – in particular, mending and making button-holes – as well as laundering linen and clothes. Nolan stated that there wasn't enough work for female prisoners even though they did all the gaol's washing and mending.[78] Nolan testified that there were 25 female prisoners in Durban in 1905. The most she had supervised had been 61, with the average being 39.[79] As far as possible, white women were kept separate from the other races but all female prisoners exercised together.[80]

7.3 Separation of the Police and Gaol Departments

There was a change in the gaol system with the reorganisation of the Police Force in 1894. Prior to that date, gaols and convicts were placed under the supervision of magistrates. Subsequently gaols were placed under the supervision of the chief commissioner for Police and – putting it simply – every "warder and gaoler became a policeman".[81] According to Acting Chief Commissioner WJ Clarke, the "system worked perfectly as they were associated with the criminal right up to his release."[82] The two departments were in close contact, and it was feared by some officials who testified in 1905 that the "smoothness of working" would be adversely affected if they were separated.[83]

Under the "Natal system" the board comprised the chief commissioner and two assistant commissioners and "the rights of prisoners and warder [are] far more secure than if the whole control was in the hands of one man".[84]

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75 PAR CSO 2847, Evidence of Mrs Jenkinson, Matron, Central Gaol, Pietermaritzburg, 5 October 1905.

76 PAR 2847, Evidence of Mrs Petta Nolan, Matron, Durban Gaol, 10 October 1905.

77 PAR 2847, Evidence of Mrs Petta Nolan, Matron, Durban Gaol, 10 October 1905.

78 PAR 2847, Evidence of Mrs Petta Nolan, Matron, Durban Gaol, 10 October 1905.

79 PAR 2847, Evidence of Mrs Petta Nolan, Matron, Durban Gaol, 10 October 1905.

80 PAR 2847, Evidence of Mrs Petta Nolan, Matron, Durban Gaol, 10 October 1905.

81 PAR CSO 2847, Evidence of Acting Chief Commissioner WJ Clarke, 5 October 1905.

82 PAR CSO 2847, Evidence of Acting Chief Commissioner WJ Clarke, 5 October 1905.

83 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.

84 PAR CSO 2847, Notes by Assistant Commissioner George Stratford Mardall for the information of the Prison Commission, 11 January 1906; Lt Col GS Mardall, joined

Most of the evidence before the 1905 Commission, however, was clearly in favour of separating the prisons from the police. Those in favour of continuing the existing amalgamated system stated that the prisons service provided

> a convenient outlet for would-be married men belonging to the Police, and also a means of transferring men who are rendered incapable, as for instance owing to accidental rupture or other accident, or who are unfitted by inclination for the Mounted Branch.[85]

This quotation refers to the policy prohibiting married men from joining the Natal Mounted Police. Men who turned out to be unsuccessful warders could later be drafted into other branches of the police force. If the system had not been in place, such officers might have been dismissed.[86]

Those in favour of separating the two departments – including an ex-chief convict guard and an ex-convict – argued that the "class of men" who enlisted in the police was "not the right stamp of men to make either good warders or Guards".[87]

It was admitted by Mr Mardall that it was difficult to recruit sufficient numbers of men as warders or the "right stamp of men". Furthermore, it proved

> impossible to select specially suitable men from among the Police, as it is entirely a matter of choice for a man himself whether he cares to volunteer for a position as Warder or not.[88]

It was also submitted by several witnesses that the interests of gaol officials were neglected at the expense of the Mounted Branch of the Police. Edward Brittain, the chief convict guard in Durban, stated that the "result of the present system is that all other branches of the Police have to play second fiddle to the Mounted Branch."[89] In his opinion the officers in the Natal Police took little interest in what happened outside the Mounted Branch, going so far as to say that when a man left the Mounted Branch, "he is looked upon

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the Natal Mounted Police with the rank of trooper in 1879, and retired as Assistant Commissioner, Natal Police in 1911. During the South African War he was based as an inspector at Estcourt for the duration of the Siege of Ladysmith. Angloboerwar.com date unknown https://www.angloboerwar.com/forum/2-introductions/9099-lt-colonel-g-s-mardall-natal-police.

85 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.

86 PAR CSO 2847, Evidence of Acting Chief Commissioner WJ Clarke, 5 October 1905.

87 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.

88 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.

89 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.

as 'done for'".[90] He didn't personally know of any superior officer in the Police who had been appointed to a responsible position in the gaols.[91]

It was suggested by those in favour of amalgamation that the Customs, Excise, Police and Gaols departments be brought under a single ministerial head but operationally kept separate, and with a "specially qualified man at the head of the Gaols Department".[92] This would allow the transfer of men between "these more or less kindred Departments, so as to secure getting the right man in the right billet."[93]

Governor Smith was strongly in favour of separating the gaols from the police department and creating a separate department. Significantly, as far as he was aware, there was no precedent outside Natal for the amalgamation of the two departments. He also believed that there was sufficient work in each of the two proposed departments for the appointment of a chief officer to each. In his opinion it was "not likely that Police Officers can know sufficient about the proper management of the Gaols, as a Department".[94] Smith also strongly advocated the appointment of a commissioned police officer as deputy governor.[95]

Smith went on to state that there was a serious shortage of non-commissioned officers in the Durban Central Gaol. In 1905 the only non-commissioned officers were the chief warder, the chief convict guard, the storekeeper and the dispenser. As a result the command of the gaol at night rested with the senior warder on duty, irrespective of whether he was a non-commissioned officer or not.[96]

Thomas Kelly, a former chief convict guard in Durban, felt that the old system of having separate departments was preferable. Under the previous system there had been less frequent changes of personnel and he believed

90 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.
91 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.
92 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.
93 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.
94 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.
95 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.
96 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

that a man "only begins to be of real use when he has a year or two's experience".[97] He went on to testify that

> Many of the young men who enlist in the Police now-a-days are too much the Gentlemen to make good Warders or Guards. Under the old system, the men we used to get were mostly old soldiers, time-expired men, of good character, and well acquainted with discipline, and how to exercise it.[98]

He also revealed that it was not the practice to send "drafts from the Police to take the place of the European Guards as might leave".[99]

George Mansell, the chief commissioner of police, testified that "[t]he present system affords a convenient outlet for would-be married men in the Police".[100] He added that:

> The most difficult question arising is that the Police Department is not able to furnish satisfactory men as Warders; it is impossible to compel any man to go as a warder; consequently the men who do go are generally those who are unsatisfactory as Police – men, for instance, who take a dislike to horses, and to being continually kept up to the mark; others volunteer with the idea of getting married; or it may be that a man gets ruptured, or otherwise unfitted for mounted service.[101]

Mansell went on to state that:

> Old soldiers have been always found failures as Police, and are never taken on the Force now. If better pay were offered, so as to attract the better class of non-coms these would make the very best warders, and he personally would be delighted to have such men as Warders.[102]

Mansell stated that it was sometimes necessary to enlist men as warders if there were no volunteers from the Police.[103]

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97 PAR CSO 2847, Evidence of Thomas Kelly, former Chief Convict Guard, 10 November 1905.

98 PAR CSO 2847, Evidence of Thomas Kelly, former Chief Convict Guard, 10 November 1905.

99 PAR CSO 2847, Evidence of Thomas Kelly, former Chief Convict Guard, 10 November 1905.

100 PAR CSO 2847, Evidence of Geo. Mansell, Chief Commissioner of Police, 11 January 1906.

101 PAR CSO 2847, Evidence of Geo. Mansell, Chief Commissioner of Police, 11 January 1906.

102 PAR CSO 2847, Evidence of Geo. Mansell, Chief Commissioner of Police, 11 January 1906.

103 PAR CSO 2847, Evidence of Geo. Mansell, Chief Commissioner of Police, 11 January 1906.

Edwin Davis, the chief warder in Durban, believed that the system of selecting warders from the Natal Police was "a bad one".[104] In his view,

> A new man sent to a Gaol as a Warder has of course to retain his Police rank, and thus ranks senior to a man who, having been longer at Gaol work, knows far more about his work.[105]

Assistant Commissioner George Stratford Mardall testified that although there were insufficient warders for the gaols in general, the Natal Police were unable to spare more at the time.[106]

7.4 Inspections by the Natal Police

By 1905 a system of gaol inspections by members of the Natal Police had been implemented. The purpose of the programme and the standard of inspections, however, were not clearly outlined. As part of this system, country gaols were inspected by district officers. The cost of an inspection covered both police stations and gaols.[107] At the time of the Commission the only inspecting officers were the chief commissioner of police, two assistant commissioners and various magistrates.[108]

Commissioner Mardall was responsible for inspecting the central gaols only and maintained that it was essential that inspectors were members of the police.[109] Some officials believed it was necessary to have a dedicated officer for the inspections of gaols. Colonel Mansell noted that his responsibilities prevented him from visiting gaols – particularly the central gaols – as frequently as he would have liked.[110] Chief Warder Frederick Wade from the Pietermaritzburg Gaol corroborated this, noting that Mr Mardall inspected the prison "every two or three months and had a look round".[111]

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104 PAR CSO 2847, Evidence of Edwin Davis, Chief Warder, Durban Central Gaol, 11 October 1905.

105 PAR CSO 2847, Evidence of Edwin Davis, Chief Warder, Durban Central Gaol, 11 October 1905.

106 PAR CSO 2847, Notes by Assistant Commissioner George Stratford Mardall for the information of the Prison Commission, 11 January 1906.

107 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.

108 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

109 PAR CSO 2847, Evidence of Acting Chief Commissioner WJ Clarke, 5 October 1905.

110 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.

111 PAR CASO 2847, Evidence of Chief Warder Frederick Wade, Central Gaol, Pietermaritzburg, 5 October 1905.

The Commission concluded that,

> District Officers, never having had any practical experience of working of Gaols, cannot possibly be competent to make more than a superficial inspection simply on the lines laid down in the Rules and Regulations, and in matters of detail cannot have as much knowledge as the Gaoler whose Gaol they are inspecting.[112]

Acting Chief Commissioner WJ Clarke testified that inspections of the gaols by district officers were carried out every month. Central gaols were frequently inspected by senior police officers and country gaols were inspected by a senior officer at least once a year. Inspectors had regard to "the interests of discipline, the checking of stores, inspection of cells, enquiry into complaints etc. They were always on the look out for defects".[113]

Not surprisingly, country gaolers often did not approve of inspections by police officers. WJ Clarke testified that such inspection acted as a "great check" on country gaol officials.[114] It was somewhat optimistically suggested by WJ Clarke that gaols were generally found to be "very satisfactory" as a result of this system.[115] Mansell said the system of inspection of county gaols by district police officers provided a check that would be difficult to replicate in another system.[116] District Officers inspected country gaols but their inspections only covered prisoners inside the gaols themselves. Labour outside the gaols was run entirely by the Public Works Department.[117]

Captain Arthur Munro Smith, governor of the Durban Gaol, supported the appointment of a director of gaols in addition to inspectors and the existing system of visiting magistrates and visiting justices.[118] Interestingly, Smith mentioned that he had recently visited neighbouring colonies and noted with

112 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.
113 PAR CSO 2847, Evidence of Acting Chief Commissioner WJ Clarke, 5 October 1905.
114 PAR CSO 2847, Evidence of Acting Chief Commissioner WJ Clarke, 5 October 1905.
115 PAR CSO 2847, Evidence of Acting Chief Commissioner WJ Clarke, 5 October 1905.
116 PAR CSO 2847, Evidence of Geo. Mansell, Chief Commissioner of Police, 11 January 1906.
117 PAR CSO 2847, Evidence of George Stratford Mardall, Assistant Commissioner of Police, 11 January 1906.
118 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

approval the system of separate departments for police and gaols.[119] Echoing the debate about the overall control of the gaol system, Chief Convict Guard Edward Brittain strongly recommended that the inspector of gaols be someone trained in gaol work.[120]

Ultimately Mardall believed there was no comparison between the state of the gaols at the time of the commission with the system that prevailed when gaols were under the control of magistrates. He believed that the system of inspection by district officers prevented "any slackness on the part of country gaolers."[121] In his view, to create a separate department at least two inspectors would be required at an additional cost of £10,000, when considering the travelling costs. Presently district officers made a monthly inspection. Under a new system inspectors would be able to visit only two or three times a year.[122]

7.5 Warders

The European staff complement at the Durban Gaol in 1905 was as follows: 22 guards – comprising 18 Natal Police and four supernumerary guards – at the Point, Congella and elsewhere.[123]

A solicitor who frequented the Durban Gaol, William Thomas Lee, painted a relatively rosy picture of the warders' conduct and did "not cast any imputation on the Officials of the Durban Gaol, whose management he believes is really as humane as it is possible to be".[124]

It was also noted that that there had been frequent changes of staff at the gaols, with the result that a gaoler or governor never became properly acquainted with his subordinates.[125]

Acting Chief Commissioner WJ Clarke recommended that more warders be appointed for night duty. When there were as many as 80 prisoners sleeping

119 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

120 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.

121 PAR CSO 2847, Evidence of George Stratford Mardall, Assistant Commissioner of Police, 11 January 1906.

122 PAR CSO 2847, Notes by Assistant Commissioner Mardall for the information of the Prison Commission, 11 January 1906.

123 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.

124 PAR CSO 2847, Evidence of William Thomas Lee, Solicitor, 11 October 1905.

125 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.

in the corridors in the Durban Gaol, there was a risk of them overpowering the warders.[126]

Tellingly, Governor Smith revealed that his staff were "not all perfectly loyal".[127] In his view this "could be remedied by a more careful selection of the men sent as Warders."[128]

At the time of the Commission, Edward Brittain had been employed as a chief convict guard for six months and held the rank of sergeant in the Natal Police. He was responsible over all prisoners working outside the gaol. He had been in the department for seven years and had previously been a country gaoler at Melmoth and Impendhle, having enlisted in the Natal Police ten years previously.[129] Brittain complained that the responsibilities of the chief convict guard were not sufficiently recognised. He pointed out that he had the same number of men under his command as when he was a sergeant major in the Police and ought to have been given more authority. In particular he wanted the discretionary power to "punish a refractory prisoner himself, instead of, as at present, having to report the man and bring evidence to prove what he has witnessed with this own eyes".[130]

According to Brittain,

> [u]nder the present system, the Convict who has done really good and conscientious work goes out of the Gaol no sooner and with no better gratuity than the man who merely loafs about, and just does enough to escape being reported.[131]

Mardall wrote that

> [u]nder the present system the men appointed as warders are men of whom something (sic) is known to the Department, and therefore there is less risk of getting bad characters as warders.[132]

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126 PAR CSO 2847, Evidence of Acting Chief Commissioner WJ Clarke, 5 October 1905.

127 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

128 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

129 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.

130 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.

131 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.

132 PAR CSO 2847, Evidence of George Stratford Mardall, Assistant Commissioner of Police, 11 January 1906.

He also commented that "[y]oung men do not as a rule make good warders. [O]lder men are preferable" and that

> [v]ery young men should not be appointed as Gaolers or Warders and we do not now appoint them.[133]

Johannes Anthony Roos, a convict, noted that the government sometimes appointed juveniles as warders, which brought "ridicule on the system".[134] He added that

> [n]o man should be sent to a Gaol, especially to take charge of White men, who has not had experience of the proper way to exercise discipline.[135]

Roos also felt that the hours worked by the warders were excessive.[136] In sum, he had no complaints against the officials, only against the system.[137]

Richard Charles Alexander, Superintendent, Durban Borough Police, advocated "sterner treatment" for prisoners:

> Hard Labour should really be hard labour – not playing at it. At present the sentence is not properly carried out, because the people employed to see to the carrying out of the sentence are not capable of doing their work properly.[138]

Regarding convict guards, Alexander described them as

> men recruited from the riff-raff, while even the Warders are generally casts-offs from the Police.[139]

Reginald Dilke, an ex-prisoner, provided a withering account of his captors:

> The warders are selected from the wrong class of man altogether; they are not selected for their capabilities for the work; most of them are too young and frivolous – something like the class of men who came out with the later batches of Imperial Yeomanry; consequently quite unfitted to exercise disciplinary powers.[140]

In his testimony, Dilke concluded that

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133 PAR CSO 2847, Notes by Assistant Commissioner Mardall for the information of the Prison Commission, 11 January 1906.

134 PAR CSO 2847, Evidence of Johannes Anthony Roos, Convict, 11 October 1905.

135 PAR CSO 2847, Evidence of Johannes Anthony Roos, Convict, 11 October 1905.

136 PAR CSO 2847, Evidence of Johannes Anthony Roos, Convict, 11 October 1905.

137 PAR CSO 2847, Evidence of Johannes Anthony Roos, Convict, 11 October 1905.

138 PAR CSO 2847, Evidence of Richard Charles Alexander, Superintendent, Durban Borough Police, 11 October 1905.

139 PAR CSO 2847, Evidence of Richard Charles Alexander, Superintendent, Durban Borough Police, 11 October 1905.

140 PAR CSO 2847, Evidence of Reginald W Dilke Wing, ex-prisoner, 11 October 1905.

> [b]oth Warders and Convict Guards are wrong stamp of men.[141]

Chief Warder Edwin Davis reported that there had been "disloyal" men in the gaol who had left Durban but were still in the service.[142] Davis added that there should be more supervisory officials in the gaols. For instance, between 5.45 pm and 5.45 am there was no responsible official above the rank of warder in the gaol.[143]

Finally, George Webb Hardy expressed the following views in respect of the warders who were in control of the Durban Gaol during his incarceration:

> Warders are lazy men, with a few exceptions, and those in charge of the men at the docks allowed the prisoners to take things easily in the broiling sun, especially white men.[144]

Hardy also exposed the cruel practice of flogging that was widespread in Natal's gaols:

> The most gruesome thing in prison life is the flogging. It takes place every morning in one of the yards. If a morning or two are, for some reason, missed, the spectacle is all the longer when it does come along. The flogging-warder is then in fine fettle. The warders, who gather to see the wretched natives butchered to make a warders' holiday, seem to like the lashing inhumanely. Theirs is a rather monotonous life, and it provides a sort of Spanish bull-fight for them, except that in Spain the bull has a sporting chance of coming though the ordeal with little harm, while a Kafir or coolie stretched and strapped on the triangle is simply the sport of the warder who has attained to the position of 'champion lasher', and prides himself upon the efficacy of his cuts, and upon the good red blood that is only stopped when handfuls of brine are rubbed into the naked body of the howling victim.[145]

What is perhaps most revealing about Hardy's account is what he exposed about corruption among warders in the Durban Gaol:

> There is a good deal of bribery in connection with the flogging. Both blacks and whites bribe the flogging-warder to 'lay it on lightly'. So much is this bribery encouraged. Indeed, that it is an understood thing that, unless the flogging-warder is duly 'insulted', he will 'lay it on' with all the energy at his command. And you must remember that the severity of the punishment depends entirely on the flogging-warder. He is such an expert at the game that he can touch a prisoner lightly or cut him to pieces, just as he wills, while seeming to strike hard all the time... You may ask: Where do the prisoners get the money wherewith to bribe the warders? My dear fellow, prisoners in a Colonial gaol

141 PAR CSO 2847, Evidence of Reginald W Dilke Wing, ex-prisoner, 11 October 1905.
142 PAR CSO 2847, Evidence of Edwin Davis, Chief Warder, Durban Central Gaol, 11 October 1905.
143 PAR CSO 2847, Evidence of Edwin Davis, Chief Warder, Durban Central Gaol, 11 October 1905.
144 Hardy *Black Peril* 268.
145 Hardy *Black Peril* 280-281.

> have their own ways obtaining money from the outside, and very effectual they are. Warders are bribed to bring the money in, and then bribed to allay the pangs of punishment.[146]

Hardy also wrote of "gross recklessness".[147] For instance, sometimes the wrong man was lashed. He also gave the example of a prisoner who was sentenced to six months and 30 lashes for assaulting a female. When the warder called out his name, another man with the same name stepped forward and he underwent 30 lashes with no compensation given.[148]

7.6 "Native" Warders

The Commission repeatedly heard that gaol authorities experienced "[v]ery great difficulty" in recruiting "reliable Native Warders and Guards".[149] Edward Brittain stated that,

> It is the duty of the Ganger to set the Convicts their work and of the Guards to see that the Convicts do what they are told. Generally speaking, Native Convicts do a fair day's work. Has seen the Gangers themselves standing about waiting for more work. The ganger is answerable to his own Department if insufficient work is done by a gang.[150]

Brittain also recorded that,

> [i]t is the Native Guards who are lax, and allow ... communication between the Free and Convict Gangs.[151]

He also testified that he had personally enlisted "native" guards:

> They are taken on just as they offer themselves, all that is known about them being what is shown by the Finger-Print system viz. that they have not been in Gaol. These men are free to come and go, practically as they like, provided that they find other acceptable men to take their places. This is very unsatisfactory. Convict Guards ought to be enlisted for a definite period, and care should be taken that they are recruited from Kraals as far away as possible from Durban, and from different districts from which the prisoners hail. As a rule these men stay such a short time that they do not even get to know the Regulations. Generally speaking, they are very unsatisfactory and slack.[152]

146 Hardy *Black Peril* 285-286.
147 Hardy *Black Peril* 286.
148 Hardy *Black Peril* 286.
149 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.
150 PAR CSO 2847, Evidence of, Chief Convict Guard, Durban, 10 November 1905.
151 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.
152 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.

Unsurprisingly, Brittain was more complimentary when describing the European guards, describing them as being "satisfactory", noting that some guards had been in been in their posts for 16 or 17 years.[153] Thomas Kelly, a former chief convict guard, also recruited "native" guards himself. They often came from the Tugela District and were described as "reliable and good men".[154]

In his fourth year of service Ukina, a "native" sergeant at the Dundee Gaol, stated that he was acquainted with everything that took place in the gaol.[155] He also stated that all keys were in the possession of the duty warder, excepting three which were kept by the "native" warder at night, which were given to him for the purpose of admitting prisoners who were brought to the gaol at night.[156] Ukina further stated that in instances where white prisoners were admitted at night, the duty warder was called and he personally placed such prisoners in individual cells.[157]

Arthur Reynolds deposed to an affidavit, which was submitted to the Commission in evidence:

> On the subject of the treatment of European prisoners by native constables and warders, I would like to give my personal experiences. It is no uncommon thing, – in fact it happens almost every day – for the native warders to abuse European prisoners in a disgusting manner. This they evidently take a delight in doing, without the smallest apparent cause, knowing quite well that should any complaint be lodged with the authorities, the native warder will be upheld. During my first three months here, I was compelled myself to put up with almost intolerable insolence from black men; and I can assert, without hesitation, that the native warders treat the European prisoners worse in every respect than they do the black. One case I remember in which a European turned on an insolent black warder, and threw a hammer at him, which resulted in the European being consigned for five days to the dark cell on half rations. No effort whatever is made by the European warders to check the insolence and bad language of the native warders; but on the contrary it seems to be encouraged. I may add that prisoners sentenced to the dark cell by the Governor of the Gaol are compelled to undergo the punishment for as long as three days without any relief in the shape of exercise.[158]

153 PAR CSO 2847, Evidence of Edward Brittain, Chief Convict Guard, 10 November 1905.

154 PAR CSO 2847, Evidence of Thomas Kelly, former Chief Convict Guard, 10 November 1905.

155 PAR CSO 2847, Evidence of Ukina, Native Sergeant, Dundee Gaol (interpreted by Mr Armstrong, Commissioner), 28 November 1905

156 PAR CSO 2847, Evidence of Ukina, Native Sergeant, Dundee Gaol (interpreted by Mr Armstrong, Commissioner), 28 November 1905.

157 PAR CSO 2847, Evidence of Ukina, Native Sergeant, Dundee Gaol (interpreted by Mr Armstrong, Commissioner), 28 November 1905.

158 PAR CSO 2847, Gaol Enquiry Committee: Minutes of Proceedings, 17 June 1904.

Mardall claimed that there was always a difficulty in recruiting a sufficient number of good men as "native" warders and guards at the prevailing rates of pay. He also claimed that "native" warders and guards are "very difficult to obtain and we often get absolute failures".[159]

7.7 Chief Warder

Regarding the position of chief warder, it was submitted that such an officer had far too much clerical work and that "he is really in the position of a Chief Clerk rather than a Chief Warder".[160] Partly as a consequence of this, there was a "great lack" of supervision at the central gaols and it was urged that additional superintendents and sergeant warders be appointed. Colonel Mansell suggested a gaol of Durban's size warranted the appointment of a commissioned officer, who the chief warder would report to.[161]

Governor Thompson was not in support of prisoners being employed as clerks

> as they obtained knowledge in the office which became the whole property of the prison, and they were also unreliable.[162]

Frederick Wade – chief warder at the Pietermaritzburg Gaol for 27 years – carried out clerical duties and supervised the other warders and had been chief warder for 15 years. If he had no clerical work he spent more time among the prisoners and other warders to ensure that the blocks were properly cleaned.[163] Regarding prison work, he had no objection to prisoners learning handicrafts, but instructors rather than warders should be appointed to teach the prisoners, so as not to detract from the warders' responsibility to safeguard the prisoners. The chief warder maintained that the prisoners were "well treated and left prison better men physically than when they came in but he could not say whether they were so morally".[164]

On a normal working day Wade arrived at work at 6.30 am and left at about 5.30 pm. His first task was to order rations and at 7 am he counted the

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159 PAR CSO 2847, Notes by Assistant Commissioner Mardall for the information of the Prison Commission, 11 January 1906.

160 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.

161 PAR CSO 2847, Prison Reform Commission, 1904-1905, Precis of Evidence.

162 PAR CSO 2847, Evidence of Governor Thompson, Central Gaol, Pietermaritzburg, 5 October 1905.

163 PAR CSO 2847, Evidence of Chief Warder Frederick Wade, Central Gaol, Pietermaritzburg, 5 October 1905.

164 PAR CSO 2847, Evidence of Chief Warder Frederick Wade, Central Gaol, Pietermaritzburg, 5 October 1905.

prisoners and sent them off to work.[165] He noted that no warder ever visited the female section of the prison but he personally visited every cell each morning with the doctor. [166] Wade was assisted in his clerical work by two "[c]onvict-clerks".[167] In Durban Governor Smith did not regard his role as chief warder as that of "merely an Office man".[168] Regarding employing convicts as clerks, he felt they were necessary despite the risk of "their getting to know what they ought not to know."[169]

7.8 Office of the Governor

Mansell recorded that the chief commissioner of the Natal Police did not have the power to dismiss or appoint a governor but did possess the power of suspension.[170] At the time of the Commission, Governor Thompson had been governor of the Pietermaritzburg Gaol for 15 years and had no experience of gaol supervision outside the colony.[171] Thompson approved of the site of the gaol and noted that,

> The whites were entirely separate from the blacks. As a rule the whites did not object to working in association with blacks. He had only know[n] two prisoners object to working with blacks. They would prefer working with black to being shut up in the gaol. A white would not do bricklaying unless he had a black to assist him.[172]

Thompson went on to add that,

> It would be well to build a dividing wall across the present gaol yard so as to keep blacks & whites entirely separate in living but a new hospital and new cookhouse would be required as well. As regards initial expenses it would require almost two staffs.[173]

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165 PAR CSO 2847, Evidence of Chief Warder Frederick Wade, Central Gaol, Pietermaritzburg, 5 October 1905.

166 PAR CSO 2847, Evidence of Chief Warder Frederick Wade, Central Gaol, Pietermaritzburg, 5 October 1905.

167 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

168 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

169 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

170 PAR CSO 2847, Evidence of Geo. Mansell, Chief Commissioner of Police, 11 January 1906.

171 PAR CSO 2847, Evidence of Governor Thompson, Central Gaol, Pietermaritzburg, 5 October 1905.

172 PAR CSO 2847, Evidence of Governor Thompson, Central Gaol, Pietermaritzburg, 5 October 1905.

173 PAR CSO 2847, Evidence of Governor Thompson, Central Gaol, Pietermaritzburg, 5 October 1905.

Thompson felt it would be advantageous to establish a separate gaol for European prisoners with sentences exceeding six months with hard labour, as "it was no use sending a man to an industrial prison whose sentence was less than three months as it would not give him time to learn anything".[174]

Captain Arthur Munro Smith, the governor of the Durban Gaol, like his counterpart in Pietermaritzburg, Governor Thompson, believed that the system of management was to be found in the Gaol Rules.[175] He also claimed that he

> was prevented by the Gaol Regulations from granting any treatment to ordinary prisoners, but the Government could have done so.[176]

In effect, both governors preferred to lay the blame for their gaols' shortcomings on the colonial government.

Smith was in favour of completely separate prisons but as long as the races were kept apart by walls he was satisfied.[177] In this respect Mira Rai Waits has reflected on prisons in colonial India, commenting that prison architecture "was *the* critical apparatus used to concretize colonial categories of difference".[178] Smith believed it would be a good thing if blacks and coloureds were allocated to the harbour works, while whites were allocated "suitable industrial work" within the Durban Gaol.[179] Although Smith believed that "a prisoner is more likely to go out worse rather than a better man" he didn't go "so far as to say that our Gaols make Criminals".[180] The gaol did not have a reformatory and, as a consequence, Smith was in favour of giving juveniles

> such a whipping as they would get at home, and let them go, instead of putting them in prison. A Central Gaol is no place for Children.[181]

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174 PAR CSO 2847, Evidence of Governor Thompson, Central Gaol, Pietermaritzburg, 5 October 1905.

175 PAR CSO 2847, Evidence of Governor Thompson, Central Gaol, Pietermaritzburg, 5 October 1905.

176 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

177 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

178 Waits 2018 *Journal of the Society of Architectural Historians* 147.

179 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

180 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

181 PAR CSO 2847, Evidence of Captain Arthur Munro Smith, Governor, Central Gaol, Durban, 10 October 1905.

In his novel George Webb Hardy corroborated some of the views expressed during the Commission:

> I was escorted to the presence of the Governor by one of the warders, and the gallant Captain immediately gave me a good impression. He appeared genuinely anxious to do anything he could for me, and frankly admitted to the strength of my case, so far as being treated as a first-class misdemeanant was concerned. But he was a weak man, unfortunately for me, He said, over and over again, that he could do nothing in the matter. It was useless for me to suggest that I was the only prisoner in the gaol serving a sentence 'without hard labour', and that, as there was nothing in the prison regulations dealing with such a case, inferentially the Governor could use his own discretion as to treatment. He appeared in a hopeless fix as to how to treat me, and, like all weak men, did nothing at all but shelter himself beneath superior authority.[182]

His account supports the idea of weak governors being placed in command of Natal's prisons.

8 Conclusion

Through an examination of the professional lives of prison officials in colonial Natal between approximately 1850 and the Prison Reform Commission of 1905-06, this contribution has sought to explore how parts of Natal's colonial ideology were produced as a result of the fractured nature of the social, political and economic relations between black and white. This contribution aims to provide a comprehensive picture of Natal's prison personnel through an exploration of a range of topics relating to the colony's gaol system. An important theme was friction and rivalry between gaol staff, particularly those who were stationed in Pietermartizburg and Durban. African gaolers played an essential role in the gaols and were sometimes able to exploit the system to their advantage, an example being the practice of returning home each year to tend their lands in the knowledge that their gaol responsibilities would be temporarily performed by others. The stark contrast between urban and rural gaols was also highlighted. Closely related themes include concerns about the poor quality of the warders and the treatment of female prisoners in the gaols. The contribution also focusses on the Prison Reform Commission of 1905-1906, which dealt with significant themes such as the treatment of prisoners used in prison labour, and the treatment of female prisoners. Differences between the Police and Gaol departments were also of central concern to the commission. In this respect, emphasis was placed on the nature of human resources in the penal system rather than on racial division in the gaols. Unsurprisingly,

182 Hardy *Black Peril* 266.

given the prevailing social and political climate in Natal in the early twentieth century, officials' accounts throughout this period are often deeply racist and offensive. While this article focusses closely on the lives and careers of prison officials in colonial Natal, it moves beyond an analysis of racial tensions in the prison system to enhance our understanding of the nuanced nature of the colonial state in Natal.

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