

Colonial Britain's Convict Labour Policies and the Cape Colony, 1806–1899

*Maylene Swiegers and André Wessels**

Abstract

This article evaluates how convict labour alleviated labour shortages experienced in the Cape Colony from 1806 to 1899. It explores and evaluates Britain's significant impact on labour policies followed in the Cape Colony and focuses on the imperial government's role in developing legislation and procedures regarding management and transportation of convicts. It also considers the influence of nineteenth century policies of convict control in Britain, and the application of these policies and labour regimes in the Cape Colony. The article describes convict transportation, anti-convict agitation by Cape colonists and the economic significance of convict labour and public works projects. Finally, the convict lease system – the practice of hiring convicts to mines and to farmers – and Cape labour legislation's role in increasing the convict labour force through criminal sanctions will be examined.

Keywords: Convict labour; Cape Colony; anti-convict agitation; public works projects; mining companies.

Opsomming

In hierdie artikel word aangedui in welke mate bandietearbeid die arbeidstekorte in the Britse Kaapkolonie in the jare 1806 tot 1899 verlig het. Die belangrike impak wat Brittanje op die arbeidsbeleid in die Kaapkolonie gehad het, word ook geëvalueer. Dit sluit in die rol wat die Britse regering gespeel het ten opsigte van wetgewing en beleid wat op die bestuur en vervoer van bandiete van toepassing was; en die toepassing van hierdie praktyke en bestuurstelsels in die Kaapkolonie. Die vervoer van bandiete, asook die agitatie teen die invoer van bandiete word in oënskoue geneem, soos ook bandietearbeid en openbare werke-projekte. Die rol van mynmaatskappye word bespreek, asook die Kaapse wetgewing wat tot die uitbreiding van die bandietewerksmag gelei het, en die gebruik om bandiete aan myne en boere uit te huur.

Sleutelwoorde: Bandietearbeid; Kaapkolonie; teenbandiete-agitatie; openbare werke-projekte; mynmaatskappye.

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Introduction

A severe shortage of labour characterised the period from 1806 to 1899 in the Cape Colony. The discovery of diamonds in Griqualand West in 1867 strained the limited labour supply even further, while increased mining activities facilitated the transition from an agrarian to an industrial society, resulting in profound social and economic changes in South Africa. The agricultural sector found it increasingly difficult to compete with the higher wages paid in the mining and public works sectors, and thus turned to several alternative strategies to secure labour. Mines required cheap labour to ensure high profit margins, while the Cape Colony government interacted with capital interests to ensure revenue from taxes. Consequently, throughout this period, convict labour was used to supplement the labour supply in public works projects and to alleviate labour shortages experienced by both the farming and mining sectors.

This article focuses on and assesses the deployment of convict labour in the Cape Colony in the nineteenth century. It will also clarify imperial Britain's impact on convict labour policies in this colony. Great Britain was acutely aware of the Cape Colony's labour situation and influenced the region which would later form South Africa in many ways. The Cape Colony's government was directly affected by political decisions and colonial policies implemented by the British government which governed it before responsible government was introduced in 1853. Even after responsible government was granted, however, colonial policies, as determined by the British government, continued to influence the political environment in southern Africa. British colonial policies thus shaped ideas and policies deeply regarding labour in South Africa. In turn, economic development contributed to changes in the labour environment in the region.

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As many historians have shown, convict labour (and associated coercive practices such as forced labour, prison administration and punishment strategies), cannot be evaluated without considering the impact of political, economic and social forces.¹ Forced labour is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.² Notably, labour strategies utilising forced labour did not end after slavery was abolished, but continued to exist in the form of both convict and

1. See for example, T.C. Sherman, 'Tensions of Colonial Punishment: Perspectives on Recent Developments in the Study of Coercive Networks in Asia, Africa and the Caribbean', *History Compass*, 7, 3 (2009), 668–670.

2. International Labour Organisation (ILO), 'CO29–Forced Labour Convention, 1930 (No. 29)', http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029, accessed 12 September 2013.

indentured labour.³ Convict labour was not classified as forced labour however if a government authority directed the work. It was, however, of a forced nature if a prisoner was ‘placed at the disposal of private individuals, companies or associations’.⁴ The lease system facilitated the supply of convict labour to private organisations. It transferred authority over prisoners to private employers, and prisoners performed labour outside the prison under the employer’s direct control.⁵

In Britain, convicts were often employed in public works projects. The Penitentiary Act, passed in 1779, included provisions for the establishment of two national prisons. These new prisons incarcerated prisoners sentenced to imprisonment with hard labour, thereby providing an alternative punishment strategy to transportation. The Penitentiary Act was significant in creating a national prison system, thereby terminating privately run prisons for profit.⁶

Social, legal and other reformers had differing views on the role of labour within prison administration. Labour could be either punitive (unproductive or penal) or profitable for the state; prisoners could either work in silent groups or in solitude, and labour could also be performed inside or outside prisons.⁷ During the nineteenth-century, ‘idleness’ was often regarded as contributing to crime, and, it was argued, hard labour could therefore be used to inculcate ‘good working habits’.⁸ The Prison Act of 1823 enacted legislation supporting imprisonment with hard labour.⁹

Penal reforms in nineteenth-century Britain centred on two American prison management systems: the Separate System and the Silent System. The Separate System focused on solitary confinement and on the performance of apparently ‘productive’ labour while confined. In the Silent System, prisoners worked communally, but no free communication between them was allowed. The Prison Act

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3. K. Boehme, P. Mitchell and A. Lester, ‘Reforming Everywhere and All at Once: Transitioning to Free Labor across the British Empire, 1837-1838’, *Comparative Studies in Society and History*, 60, 3 (2018), 690-691.
 4. ILO, ‘CO29–Forced Labour Convention, 1930 (No. 29)’.
 5. Cory Library, Rhodes University, Grahamstown/Makhanda, Pamphlet Box 49: A. Cook, *Akin to Slavery: Prison Labour in South Africa*, 7.
 6. J.J. Willis, ‘Punishment and the Cultural Limits to State Power in late 18th Century Britain’, *Punishment & Society*, 10, 4 (2008), 405; D. Wilson, *Pain and Retribution: A Short History of British Prisons 1066 to the Present* (London: ProQuest EBook, 2014), 66.
 7. J.M. Moore, ‘Labouring out of Adversity: Maconochie, Political Economy and Penal Labour’, *The Howard Journal of Crime and Justice*, 57, 2 (2018), 182.
 8. K.M. Reid, ‘Work, Sexuality and Resistance: The Convict Women of Van Diemen’s Land, 1820-1839’ (PhD thesis, University of Edinburgh, 1995), 91.
 9. M. Ogborn, ‘Discipline, Government and Law: Separate Confinement in the Prisons of England and Wales, 1830-1877’, *Transactions of the Institute of British Geographers*, 20, 3 (1995), 300.

of 1839 determined that the Separate System would be the preferred system in Britain. Authorities saw the Separate Prison System as complementary to convict transportation in the 1840s but did not replace it completely due to what was by then, large scale construction cost of cellular prisons.¹⁰

The Penal Servitude Act of 1853 replaced the sentence of transportation with ‘penal servitude’.¹¹ Acts of 1853 and 1857 laid further groundwork for the extensive use of prison labour in public works and introduced provisions for prisoner parole as a mechanism to combat prison overcrowding.¹² Punitive labour was integrated with productive labour in the latter part of the nineteenth century.¹³

The increase in Britain’s convict population had long been dealt with by transportation to colonies. As early as 1617 and 1618, the first groups of convicts were shipped to Virginia in North America to meet the new plantations’ labour demands and to develop the economies of the new colonies.¹⁴ Convicts could be used as a regular labour supply to establish the new public infrastructure and serve as a labour source for settlers.¹⁵

The outbreak of the American War of Independence in 1775, halted extensive convict transportation from Britain, and from 1787 onwards, Australia became the main focus of convict transportation from Britain, with a penal colony established in New South Wales (NSW).¹⁶ To reduce costs to the British state, convicts were assigned to employers, mainly to act as farm labourers or domestic workers.¹⁷ Settlers were responsible for the (minimal) material provisions for convicts, but no wages were paid to them.

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10. R.P. Dobash, ‘Labour and Discipline in Scottish and English Prisons: Moral Correction, Punishment and Useful Toil’, *Sociology*, 17, 1 (1983), 10; E. Teagarden, ‘A Victorian Prison Experiment’, *Journal of Social History*, 2, 4 (1969), 359; P. Harling, ‘The Trouble with Convicts: From Transportation to Penal Servitude, 1840–67’, *Journal of British Studies*, 53, 1 (2014), 88.
 11. W.J. Edgar, ‘The Convict Era in Western Australia: Its Economic, Social and Political Consequences’ (DPhil thesis, Murdoch University, 2014), 147.
 12. H.L. Witmer, ‘The History, Theory and Results of Parole’, *Journal of Criminal Law and Criminology*, 18, 1 (1927), 35.
 13. Dobash, ‘Labour and Discipline’, 17.
 14. S. Winter, ‘Global, Regional and Local Networks: Archaeological Investigation of the Western Australian Penal Colony 1850–1875’ (DPhil thesis, University of Western Australia, 2013), 14–15.
 15. H. Maxwell-Stewart, ‘The Rise and Fall of Penal Transportation’, in *The Oxford Handbook of the History of Crime and Criminal Justice*, eds P. Knepper and A. Johansen (Oxford: Oxford Handbooks Online, 2018), 13.
 16. Bristol Selected Pamphlets Collection: W. Molesworth, *Report from the Select Committee of the House of Commons on Transportation: Together with a Letter from the Archbishop of Dublin on the same Subject, and Notes* (pamphlet), 1838, 8.
 17. M. Pearson and D. Marshall, ‘Study of World Heritage Values Convict Places’, Canberra: *Department of the Environment, Sport and Territories* (Report, 1995), 50.

During Governor Lachlan Macquarie’s term of office (1810-1821), the assignment system in NSW was from time to time criticised in Britain. Some British officials maintained that a penal colony ought to focus primarily on punishment and not on the provision of labour to private individuals.¹⁸ In 1819, governance in NSW was investigated by Judge John Bigge. The British government under Conservative Party prime minister, Robert Jenkinson, endorsed Bigge’s recommendation in 1822 that the assignment system in NSW and Van Diemen’s Land (now Tasmania) should be expanded, and at the height of transportation in 1833, an estimated 7 000 convicts were transported annually.¹⁹

In 1838, however, the Parliamentary Select Committee on Transportation recommended that transportation to NSW should be terminated, and the assignment system cancelled. It was now argued that convicts should instead be incarcerated in prisons in Britain and engaged in hard labour. Transportation, according to the committee, did not fulfil a deterrent function and the convicts were neither punished nor rehabilitated under that system.²⁰ Accordingly, in 1840, convict transportation to NSW was discontinued, although some convicts were still sent to Van Diemen’s Land. Then, the assignment system in Van Diemen’s Land was also terminated in 1842 and replaced by a probation system; a system that was rooted in the major penal philosophy in Britain that favoured separation and classification.²¹ After the discovery of gold in Australia in 1851, all convict transportation to Van Diemen’s Land was terminated in 1853, but transportation of convicts from Britain continued to Bermuda until 1863, to Western Australia until 1868 and Gibraltar to 1874.²²

The convict systems in Britain and in its colonies in America and Australia (as alluded to above), also formed the basis of convict administration in South Africa. It is against this background that convict labour in the Cape Colony can now be reviewed and evaluated.

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18. Pearson and Marshall, ‘Study of World Heritage Values Convict Places’, 51.
 19. H. Maxwell-Stewart, ‘Convict Transportation from Britain and Ireland 1615-1870’, *History Compass*, 8, 11 (2010), 1231-1232.
 20. J. Ritchie, ‘Towards Ending an Unclean Thing: The Molesworth Committee and the Abolition of Transportation to New South Wales, 1837-40’, *Australian Historical Studies*, 17, 7 (1976), 151.
 21. JSTOR Primary Sources, Foreign and Commonwealth Office Collection: J.E.E. Wilmot, *Transportation the Best Secondary Punishment: A Charge by Sir John E. Eardley Wilmot*, 1864, 6; R. Tuffin and M. Gibbs, ‘Uniformed and Impractical? The Convict Probation System and its Impact upon the Landscape of 1840s Van Diemen’s Land’, *History Australia*, 17, 1 (2020), 92.
 22. Maxwell-Stewart, ‘Convict Transportation from Britain and Ireland 1615-1870’, 1233.

Convict transportation and anti-convict agitation in the Cape Colony

During the Dutch East India Company rule in the Cape Colony (1652-1795) the penal system was based on Western European principles of determent and punishment.²³ Its practices concentrated on disciplining the physical body of a convict. Conviction for minor offences, such as petty theft, received corporal punishment, while those found guilty of major crimes received the death penalty.²⁴

In 1806, the Cape once again became a British colony. Thereafter, the origin of some aspects of the Cape convict system can be traced directly to penal ideas and practices in Britain and its Australian colonies.²⁵ Nineteenth-century penal policy in the Cape would be shaped by both British colonial policy and by more local economic and social conditions.²⁶ As C. Anderson has recently demonstrated, prisoners were conveyed from one location to another within the empire, and ideas about the administration of convict labour and ‘appropriate’ punishments also flowed between colonial areas.²⁷

During British rule in the Cape Colony, methods of punishment changed and prison sentences became more frequent than sentences of corporal punishment.²⁸ During the early nineteenth century, some political prisoners, including exiled Khoikhoi, were transported to Robben Island. This proved unsatisfactory, however, and in 1815, Governor Somerset requested that convicts sentenced to ‘banishment for life’ be transported from the Cape to NSW in Australia.²⁹ Khoikhoi prisoners such as David Stuurman were, for instance, sent to NSW in 1823.³⁰ However, following extensive criticism of the transportation system in Britain, Lord Glenelg’s circular of

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23. T.M. Corry, ‘Crime and Imprisonment in South Africa with Particular Reference to Prison Labour’ (DPhil thesis, University of Cape Town (1975), 4.
 24. J.O. Midgley, ‘Corporal Punishment and Penal Policy: Notes on the Continued Use of Corporal Punishment with Reference to South Africa’, *Journal of Criminal Law and Criminology*, 73, 1 (1982), 393.
 25. N. Penn, ‘Towards a History of Convict Labour in the Nineteenth Century Cape’, *Workers of the World: International Journal on Strikes and Social Conflicts*, 1, 3 (2013), 119.
 26. M. Firth, ‘Reformation or Rebellion: Convict Discipline and the Lash, 1788–1838’, *History in the Making*, 4, 1 (2015), 9.
 27. C. Anderson, ‘Convicts, Carcerality and Cape Colony Connections in the 19th Century’, *Journal of Southern African Studies*, 42, 3 (2016), 429-430.
 28. D. van Zyl Smit, ‘Public Policy and the Punishment of Crime in a Divided Society: A Historical Perspective on the South African Penal System’, *Crime and Social Justice*, 21/22 (1984), 148-149.
 29. L.C. Duly, “‘Hottentots to Hobart and Sydney’: The Cape Supreme Court’s Use of Transportation 1828-38’, *Australian Journal of Politics and History* 25, 1 (1979), 44.
 30. V.C. Malherbe, ‘David Stuurman: “Last Chief of the Hottentots”’, *African Studies*, 39, 1 (1980), 60; and V.C. Malherbe, ‘Khoikhoi and the Question of Convict Transportation from the Cape Colony, 1820-1842’, *South African Historical Journal*, 17, 1 (1985), 19-21.

May 1837, instructed that the Cape Colony end convict transportation to Australia.³¹ Colonies were now encouraged to implement improved local prison systems and to incorporate prison practices that were current in Britain at the time.³²

Labour shortages in the Cape Colony prompted the colonial government there to consider importing convict labour from outside the region. In 1825, Governor Charles Somerset requested such a measure to help with road construction in the colony but his request was refused.³³ In 1841, a proposal by the Commandant of Robben Island, Captain Van Reenen, was sent to London, requesting that juvenile offenders from Parkhurst Penitentiary on the Isle of Wight be sent to the Cape Colony as farm apprentices.³⁴ The British-appointed government at the Cape was opposed to introducing juveniles however, believing, that they would have a ‘corrupting influence’ on a largely uneducated black Cape population. Indeed, in a despatch to Lord Russell, Governor Sir George Napier stated that the British government could not justify ‘endangering a population just emerged from slavery by the contamination of so many adept in crime’.³⁵

In 1846, the British government was more receptive to the needs of the Cape and suggested that convict labour be sent to the Cape to build a breakwater in Table Bay.³⁶ Cape Governor, Sir Peregrine Maitland, requested that 300 convicts be despatched to the colony to meet the need for labour.³⁷ Despite objections by some inhabitants to the general introduction of convicts in the colony, a petition was sent to the British government from the Cape Town municipality’s executives who supported the transportation of convicts for public works projects. However, the petition demanded that convicts’ movements be limited and also that they be repatriated after the expiry of their sentences.³⁸ In the face of such stipulations, the introduction of the requested convicts was refused.³⁹

31. Duly, ‘Hottentots to Hobart and Sydney’, 44.

32. S. Scicluna and P. Knepper, ‘Prisoners of the Sun: The British Empire and Imprisonment in Malta in the Early Nineteenth Century’, *British Journal of Criminology*, 48, 4 (2008), 504.

33. Anderson, ‘Convicts, Carcerality and Cape Colony Connections in the 19th Century’, 437.

34. British Parliamentary Papers (hereafter BPP) 217, No. 2, Enclosure, 4-5: Despatch from Governor Sir George Napier to Lord Russell, 25 September 1841.

35. BPP 217, No. 3, 6: Despatch from Sir George Napier to Lord Stanley, 14 January 1842.

36. BPP 217, No. 9, 15-16: Extract of a Despatch from Gladstone to Sir P. Maitland, 29 April 1846.

37. BPP 217, No. 10, 16-17: Extract of Despatch from Governor Sir Peregrine Maitland to Gladstone, 10 September 1846.

38. BPP 217, No. 10, Enclosure 2, 17: Extract from Memorial addressed to the Governor and Legislative Council by the Commissioners and Ward Masters of the Cape Town Municipality, 26 August 1846.

39. BPP 217, No. 13, 19: Extract of a Despatch from Governor Sir H.G. Smith to Earl Grey, 8 May 1848.

In 1846, Earl Grey became the Secretary of State of the Colonies. It was his view that British colonies should accept transported convicts in return for Britain’s financial expenditure in the colonies. Due to the suspension of penal transportation to Australia in 1847, Grey considered transferring military convicts to the Cape Colony rather than to Mauritius.⁴⁰ In August 1848, he sent a circular to several colonial governors to persuade them to accept convicts.⁴¹ He then changed the Cape Colony’s status to that of a penal colony by publishing an order-in-council and informed Governor Sir Harry Smith (governor of the Cape Colony, 1847-1852) that Irish convicts would be sent to the Cape. These convicts had already completed their separate confinement period in Bermuda.⁴² The convicts would be deployed to public works on their arrival and then (after completion of their sentence) be issued with tickets-of-leave to secure employment in the colony.⁴³

Governor Smith published a notification in the Cape *Government Gazette* to determine whether the Cape colonists would accept the scheme. In 1848 and 1849 several petitions from mission stations, business people and farmers were submitted to the Cape government in response.⁴⁴ These petitions reveal that the land-owning class and social elites in the Cape feared that the Irish convicts would exacerbate labour problems, contribute to social decay, discourage emigration from Britain, and possibly even delay the granting of representative government.⁴⁵ Dutch speakers and English-speaking inhabitants united in their opposition to the proposal and in 1849 formed the Anti-Convict Association to resist convict transportation to the Cape.⁴⁶ By focusing on the perceived moral contamination of convicts, the anti-convict movement garnered popular support amongst whites.⁴⁷

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40. BPP 217, No. 12, 38-39: Extract of a Despatch from Earl Grey to the Governor of the Cape of Good Hope, 10 September 1847; and BPP 217, No. 17, 41-43: Copy of a Despatch from Earl Grey to Governor Sir H.G. Smith, 19 March 1849.
 41. BPP 217, No. 14, Enclosure 2, 20-21, 18 November 1848; Knowsley Pamphlet Collection: W.L. Clay, *Our Convict System*, 1862, 28.
 42. M. George, ‘John Bardwell Ebdon, his Business and Political Career at the Cape, 1806-1849’ (MA dissertation, University of Cape Town, 1980), 186.
 43. T. Keegan, *Colonial South Africa and the Origins of the Racial Order* (Birmingham (US) and Cape Town: Ebsco eBook, 1996), 225.
 44. BPP 217, No. 14, 19: Despatch from Governor Sir H.G. Smith to Earl Grey, 19 December 1848; BPP 217, No. 16, Enclosure 2, 28: The Humble Petition of the Undersigned Residents of the Missionary Institution of Genadendal; BPP 217, No. 17, 29: Petition to Earl Grey, 16 March 1849.
 45. BPP 217, No. 14, Enclosure 2, 20-21: Memorial to Earl Grey, 18 November 1840; C.A. Holdridge, ‘Sam Sly’s African Journal and the Role of Satire in Colonial British Identity at the Cape of Good Hope, c. 1840-1850’ (MA dissertation, University of Cape Town, 2010), 72.
 46. C. Holdridge, ‘The Pageantry of the Anti-Convict Cause’, *History Australia*, 12, 1 (2013), 145-146.
 47. K. McKenzie, *Scandal in the Colonies: Sydney and Cape Town, 1820-1850* (Carlton: Melbourne University Press, 2004), 178.

This reaction to accepting convicts in their midst was not unique to the Cape Colony, for in Australia, the proposed recommencement of transportation had also led to numerous protests. These resembled the opposition in the Cape that emphasised the ‘moral corruption’ that might ensue.⁴⁸ In NSW, the progress of the Anti-Convict Association in the Cape was reported diligently in Sydney newspapers. Speakers at public meetings in Van Diemen’s Land, for example, made much of the agitation in the Cape Colony, insisting that it should serve as a role model for opposing convict transportation.⁴⁹

Despite this opposition, however, Irish convicts were despatched to the Cape Colony on the *Neptune*. This decision led to another wave of anti-convict agitation in the period 1849 and 1850 in the Cape Colony. There were speeches and rallies opposing the landing of convicts in the Cape and a consumer boycott of government institutions was launched. The British government had little choice but to order that the *Neptune* should leave Cape Town in 1850 and transport the convicts to Van Diemen’s Land.⁵⁰

Supporters of the convict transportation system in Britain were perplexed by the reaction in the Cape Colony and Australia. They believed that the economic progress achieved by Australia had demonstrated the benefits of using convict labour.⁵¹ In Britain, *The Spectator* went so far as to term the anti-convict agitation in the Cape Colony a ‘rebellion’. The imperial government was in a difficult position because landing the convicts against the wishes of the Cape colonists might lead to further resistance. However, by agreeing to the Cape’s demands, transportation to other colonies would be hampered because they could well follow the Cape’s example and reject the idea of accepting transported convicts. The Cape Colony was condemned in the British press for its reluctance to accept convicts, especially since at that time Britain was spending significant sums of money on military operations in the Cape.⁵²

In 1851 in the House of Lords, Lord Lyttelton attributed the Australian resistance to convict transportation as having its origins in the successful anti-convict agitation in the Cape Colony. He raised the question of whether the importance of removing convicts from British society outweighed the displeasure the proposal engendered in the colonies.⁵³ Nonetheless, it was due to the colonies’

48. Holdridge, ‘Sam Sly’s African Journal’, 75.

49. McKenzie, *Scandal in the Colonies*, 177; Harling, ‘The Trouble with Convicts’, 94.

50. House of Commons Debates, 1 February 1850, Vol. 108, cc 161-162; *The Observer*, 26 November 1849, 6.

51. Anonymous, ‘The Transportation Question’, *Blackwood’s Edinburgh Magazine*, 66, 409 (1849), 525-526.

52. *The Spectator*, 22 September 1849, 15.

53. House of Lords Debates, 9 May 1851, Vol. 116, cc740-769.

objections in the Cape and Australia that Britain was obliged to shift to a policy of internal prison incarceration. It repealed the Orders in Council for the Cape Colony in 1850, for NSW in 1851, and Van Diemen's Land in 1853.⁵⁴ However, while the Cape resisted convict importation from Britain, convict labour by local prisoners, mostly of African prisoners, played an essential role in supplementing the colony's labour supply after 1850.

Convict labour and public works projects

While it is clear that the prison reform movement in Britain influenced the colonies' prison systems, colonies implemented only those parts of the penal theory that benefited them.⁵⁵ The prison system was adapted to reflect local conditions by enacting new legislation and methods of punishment.⁵⁶

In 1822, a Commission of Inquiry was appointed to study conditions in the Cape Colony. Unsurprisingly, the commission reported – in 1825 – that local prison administration and facilities were deficient. There was no existing reform programme, and it was recommended that sanctions for minor misdemeanours be changed to imprisonment and fines.⁵⁷ Some changes to the system to segregate and classify prisoners, were also suggested.⁵⁸ However, due to financial considerations, the recommendations of the commission were not implemented, and the administration of the carceral policies continued to be unsystematic.⁵⁹

A variety of economic factors, including the continued expansion of agriculture in the Cape (especially that of wheat and wool farming), the need for improved transport and infrastructure, and, importantly, the emancipation of slaves and their release from apprenticeships in 1838, affected the colony's labour supply.⁶⁰ Reliant on Britain for trade, the colony was especially vulnerable to economic fluctuations. In the

54. C.R. Wood, 'Great Britain's Exiles sent to Port Philip, Australia, 1844-1849: Lord Stanley's Experiment' (DPhil thesis, University of Melbourne, 2014), 332.

55. Winter, 'Global, Regional and Local Networks', 27.

56. J. Alexander and G. Kynoch, 'Introduction: Histories and Legacies of Punishment in Southern Africa', *Journal of Southern African Studies*, 37, 3 (2011), 396.

57. BPP 371, No. 12, 77-88: Report of Commissioners of Inquiry, 21 April 1825.

58. Corry, 'Crime and Imprisonment in South Africa with Particular Reference to Prison Labour', 7.

59. Van Zyl Smit, 'Convicts on the Hard Road: Reflections on the System of Convict Labour Introduced by John Montagu in the Cape Colony (1844-1853)', *De Rebus*, 61 (1981), 223; J.C. Mubangizi, 'The Rights of Prisoners under the South African Constitution: Compatibility with International Laws and Standards' (LLD thesis, University of Durban-Westville, 2001), 35-36.

60. W. Dooling, 'The Decline of the Cape Gentry, 1838-1900', *Journal of African History*, 40 (1999), 218.

1820s, the British government lifted the preferential duties on Cape wine, and the emancipation of slaves soon thereafter impacted negatively on the Cape wine industry and led to an economic recession in the colony. The Cape Colony also experienced droughts, commercial slumps and the cost of warfare continued to rise.⁶¹

After the emancipation of slaves, employers had to contend with a market in which competition for available labour resources was fierce, wage labour became more expensive and the labour supply was less stable. The Cape had to find other labour sources, and decisions had to be taken concerning the importation of indentured labour from India or other countries. The Cape Colony, however, decided not to follow the precedent set by colonies such as Mauritius which had imported indentured Indian labour, but rather chose to enact stricter labour legislation, utilising the apprenticeship system to indenture local indigenous children and political prisoners and to use convict labour in the growing public sector.⁶²

Before John Montagu's arrival as Cape Colonial Secretary in 1843, convict labour had already been used in road-building. However, that system proved ineffectual due to the small size of convict labour gangs and a general lack of supervision. Moreover, farming activities and market access were hampered by inefficient roads. The low wages offered for public works projects discouraged a regular labour supply and impeded infrastructure development.⁶³

In response, Montagu determined to reorganise the Cape Colony's convict labour system so as to build and maintain the colony's infrastructure.⁶⁴ In a memorandum to Governor Sir George Napier, dated 16 August 1843, Montagu emphasised the importance of a reformed convict labour system. He proposed the employment of 300 convicts. Their maintenance would cost the colonial government an estimated £15 000 per year.⁶⁵ In this scheme, all male convicts sentenced to a prison term of more than three months would be sent to newly established prison

61. M.I. Rayner, 'Wine and Slaves: The Failure of an Export Economy and the Ending of Slavery in the Cape Colony, South Africa, 1806-1834' (PhD thesis, Duke University, 1986), 7; Dooling, 'The Decline of the Cape Gentry, 1838-1900', 225.

62. J.L. Gibson, 'A Critical Study of the Report of the De Villiers Commission on Technical and Vocational Education' (MEd thesis, University of Natal, 1968), 22-24.

63. Keegan, *Colonial South Africa and the Origins of the Racial Order*, 211; N. Penn, "Close and Merciful Watchfulness": John Montagu's Convict System in the Mid-Nineteenth Century Cape Colony', *Cultural and Social History*, 5, 4 (2008), 471.

64. BPP 742, No. 1, 3: Despatch from Governor Sir George Napier to Lord Stanley, 27 October 1843.

65. BPP 742, No. 1, Enclosure 2, 12: Memorandum John Montagu to the Governor, Sir George Napier, 16 August 1843; BPP 742, No. 1, Enclosure 2, 11: Minute of His Excellency the Governor of the Cape of Good Hope on the Subject of Roads and Convict Discipline, 14 September 1843.

stations, and employed in convict gangs used for road-building projects to build new roads and mountain passes connecting outlying areas of the colony to trade centres such as Cape Town.⁶⁶

In addition, Montagu’s planned changes would ‘civilise’ and ‘rehabilitate’ prisoners, while contributing to the colony’s economic development, advancing communications and promoting ‘European’ immigration.⁶⁷ As historian Nigel Penn explains, the characteristics of the restructured Cape convict system can be traced back to Montagu’s time as the colonial secretary of Van Diemen’s Land (1834-1843).⁶⁸ There, Montagu had been involved in implementing the probation system and was also introduced to Maconochie’s ‘Mark System’.⁶⁹ This Mark System focused primarily on reform, and in it labour played a central role. Time sentences were replaced by task sentences,⁷⁰ and commendation marks could be earned for the successful completion of tasks and good conduct.⁷¹

Adopted practices in the Cape that were similar to those in Van Diemen’s Land included probation gangs, convicts’ management by a superintendent and advancement as a reward for ‘good behaviour’.⁷² Montagu established three main convict stations and separated prisoners into two groups: the road party and the chain gang.⁷³ Guidelines prescribed that there should be regular visits by medical officers and magistrates, set out supervisors’ responsibilities and stipulated labour hours.⁷⁴ Montagu also believed that Christian religious practice would play a crucial role in facilitating reform.⁷⁵ Mandatory church attendance and literacy training were incorporated into the Cape system. Similar to Maconochie’s Mark System, rewards and punishments were instituted, and a convict could ‘progress’ through different stages.⁷⁶

66. BPP 742, No. 2, Enclosure 3, 71: Regulations for the Discipline and Management of Convicts Employed on the Roads of the Colony of the Cape of Good Hope, 1 January 1844.

67. BPP 742, No. 1, Enclosure 2, 20: Report of John Montagu to His Excellency the Governor, 11 September 1843.

68. Penn, ‘Close and Merciful Watchfulness’, 466-467.

69. Penn, ‘Towards a History of Convict Labour in the Nineteenth Century Cape’, 119-120.

70. J. Moore, ‘Alexander Maconochie’s “Mark System”’, *Prison Service Journal*, 198 (2011), 38-41.

71. R.N. Maconochie, *Prison Discipline* (London: T. Harrison, 1856), 1.

72. Penn, ‘Close and Merciful Watchfulness’, 469.

73. Van Zyl Smit, ‘Convicts on the Hard Road’, 224.

74. T.M. Goetze, ‘Thomas Bain, Road Building and the Zwartberg Pass: With Particular Emphasis on Socio-economic and Civil Engineering Aspects in the Southern Cape, c.1843-1962’ (MA dissertation, University of Stellenbosch, 1993) 54.

75. BPP 742, No. 2, 16: Report of John Montagu to His Excellency the Governor, 11 September 1843.

76. BPP 742, No. 2, 16: Report of John Montagu to His Excellency the Governor, 11 September 1843.

The Cape government supported the system because of the colony’s great need for improved infrastructure.⁷⁷ In 1852, Maitland praised the progress made in what he regarded as reforming prisoners and for the improvement of their conditions.⁷⁸ This time, the convict system was received positively by colonists, who now accepted that convict labour would advance the colony and would encourage criminals to acquire ‘good work habits’.⁷⁹ Montagu made significant progress in developing the prison system, but financial considerations hampered the improvement of prison amenities.⁸⁰

The convict system in the Cape also absorbed prisoners of war taken during armed conflicts. Xhosa chiefs captured after the Eighth Frontier War (1850-1853) and the Cattle-Killing (1856-1858) were sentenced to imprisonment on Robben Island. The Cattle-Killing, in which many Xhosa people slaughtered a large number of their cattle, led to considerable impoverishment and concomitant crime in British Kaffraria.⁸¹ In 1857, new legislation laid down that criminal offenders from this region would be sent to the Cape Colony. They would be treated as hard-labour prisoners and employed in public works projects as convict labour.⁸² About 900 prisoners were conveyed to Cape Town, the labour of most of whom was directed to the harbour works.⁸³

The 1857 legislation also extended the use of convict labour, and the governor could allocate convicts to road-building projects in any district.⁸⁴ The Breakwater Prison in Cape Town was built by convicts in 1859.⁸⁵ Management of convicts at the Breakwater Prison was influenced by two views: the British system in which prisoners had to be classified and segregated, and a colonial and disciplinary outlook which focused on physical labour for African convicts.⁸⁶

77. Penn, ‘Close and Merciful Watchfulness’, 471.

78. BPP 104, No. 1, 1: Despatch from Governor Sir Peregrine Maitland to Lord Stanley, 3 March 1846.

79. BPP 130, 37-38: Letter W. Cock to John Montagu, 14 May 1852.

80. Corry, ‘Crime and Imprisonment in South Africa with Particular Reference to Prison Labour’, 9.

81. In 1847, the Cape government annexed the area between the Great Kei and Keiskamma rivers. It was administered as a British Crown Colony named British Kaffraria.

82. *The Cape of Good Hope Government Gazette*: Bill to Provide for the Imprisonment in this Colony, of Certain Criminals Sentenced in British Kaffraria, 27 March 1857.

83. J.B. Peires, *The Dead Will Arise: Nongqawuse and the Great Xhosa Cattle-Killing Movement of 1856-7* (Johannesburg: Ravan Press, 1989), 299.

84. *The Cape of Good Hope Government*: Draft of Bill for Improving the Public Roads of the Colony, 24 February 1857.

85. H. Deacon, ‘A History of the Breakwater Prison from 1859 to 1905’ (PhD thesis University of Cape Town, 1989), 47-48.

86. L. Rizzo, *Photography and History in Colonial Southern Africa: Shades of Empire* (Abingdon: Routledge, 2020), 222.

Colonial Office circulars in the 1860s recommended that colonial prisons be modelled on British prisons.⁸⁷ The 'Digest and Summary of Information Respecting Colonial Prisons' suggested two areas of 'improvement': the institution of punitive labour using the crank or treadwheel, and the enforcement of the separation system. Consequently, in 1865, the Secretary of State recommended that the Cape institute punitive labour. However, Governor P.E. Wodehouse indicated that existing prison infrastructure in the Cape could not accommodate punitive labour and prisoner separation. He indicated that punitive labour, which utilised convict labour in the prison, would also be unsuitable, since convict labour was needed in many districts of the Cape Colony. Consequently, reformation by punitive labour did not become a dominant system at the Cape.⁸⁸

In 1866, the high cost of maintaining the existing dedicated convict stations meant that no additional convict stations could be established. Therefore, the Select Committee on the Employment of Convicts recommended that newly convicted prisoners be accommodated in local general prisons. 'Excess' convicts, it was decided, could be allocated to neighbouring municipalities to be used as labourers.⁸⁹ The four principal convict stations were the Breakwater (Cape Town), De Vlucht (near Prince Albert), Katberg (between Balfour and Queenstown in the Eastern Cape) and Kowie (Port Alfred) and were spread intermittently over a distance of about 900 kilometres from Cape Town. A classification system similar to that at Van Diemen's Land was used at the convict stations and incorporated three categories: a punishment group, a probationary group, and a good conduct group.⁹⁰ Prisoners sentenced to shorter periods of imprisonment were placed in the probation class. Convicts who had committed serious crimes such as murder, were placed in the penal class.⁹¹

During the 1870s, and in part now due to large-scale movement of labourers to the diamond mines in Kimberley, the colonial government was unable to secure sufficient labour for public works projects. Convict labour thus remained an important labour source, used in harbour projects and public road building to support

87. V. Miller and J. Campbell, *Transnational Penal Cultures: New Perspectives on Discipline, Punishment and Desistance* (Abingdon: Routledge, 2015), 23.

88. BPP 3961, No. 2, 34: Cape of Good Hope, 17 January 1865; BPP 3961-I, No. 24, 68: Despatch from Governor Sir P.E. Wodehouse to the Duke of Buckingham and Chandos, 26 October 1867.

89. Cape of Good Hope Parliament, *Select Committee on the Employment of Convicts: First Report*, 3 October 1866, v.

90. Cape of Good Hope Parliament, *Select Committee on the Employment of Convicts: First Report*, 3 October 1866, 15-16; and Van Zyl Smit, 'Convicts on the Hard Road', 224.

91. Cape of Good Hope Parliament, *Select Committee on the Employment of Convicts: First Report*, 3 October 1866, 15-16.

an energised and developing Cape economy.⁹² Economic motives governed the use of convict labour and moral perspectives, as exemplified by classification and separation, were not a priority of the Cape convict system. For example, in 1874, it was reported that one of the main convict stations – that in Port Alfred – was overcrowded with prisoners of all classes being incarcerated in the same space.⁹³

In July 1878, due to the Ninth Frontier War (1877-1879), new regulations allowed the deployment of Xhosa prisoners on the railways and in other public works projects to alleviate labour scarcity. Most of the Xhosa prisoners were sent to Cape Town.⁹⁴ A report in 1878 by the Kaffrarian Vigilance Association, comprising largely local white farmers, gives some insight into the colonist’s punitive views on convict labour. The association recommended harsher sentences and convicts’ deployment to industrial convict institutions to produce goods, or to private white employers, after completing a period of hard labour.⁹⁵ The administration did not implement these recommendations. However, greater emphasis was placed on convict labourers’ deployment to private employers for the rest of the century. Indeed, the Cape Colony continued to use Montagu’s convict management system for most of the nineteenth century. In Penn’s view, however, the system’s initial objectives shifted because reformatory matters, such as religious education, were disregarded.⁹⁶ Overall, penal policies became more racially segregated, and Montagu’s non-discrimination policy was abandoned.⁹⁷

A Commission of Inquiry in 1887 investigated the prison system, concluding that convicts were not in fact classified and separated according to social class and the seriousness of the crime.⁹⁸ As the working conditions of white workers in general were controlled nowhere near as closely as those of African labourers, there was a great expansion of the illegal diamond trade in Kimberley. White prisoner numbers increased and at the inquiry, concerns were raised regarding their circumstances

92. BPP C.709-I, No. 10, Enclosure 4, 240-242; Memorandum upon the Discipline and Maintenance of Convicts during the Year 1871, Submitted for the Information of His Excellency the Governor by R. Southey, Colonial Secretary.

93. J. Cock, *Writing the Ancestral River: A Biography of the Kowie* (Johannesburg: Wits University Press, 2018), 88.

94. D.A. Webb, ‘The Historian, the Premier and Forced Labour in the Cape Colony, 1878-1879’, *Journal of Southern African Studies*, 46, 3 (2020), 499-500.

95. Colonial Office (CO) 879/13/4. No. 151, 258: Report Kaffrarian Vigilance Association, 30 May 1878.

96. Penn, ‘Close and Merciful Watchfulness’, 477.

97. J.M. Matetoa, ‘The Professional Role of the Correctional Officer in the Rehabilitation of Offenders’ (DPhil thesis, University of South Africa, 2012), 83.

98. Goetze, *Thomas Bain, Road Building and the Zwartberg Pass*, 56.

under imprisonment.⁹⁹ Among its recommendations the commission proposed that the classification system should accommodate the separation of whites from Africans and that white prisoners should receive industrial training.¹⁰⁰

These recommendations led to new legislation, and Act 23 of 1888 amalgamated convict stations and local prisons into a single system under consolidated regulations.¹⁰¹ Separation based on race became a central characteristic of prison administration. In this, the Cape Colony was not alone as its prison system was marked by the same contrasting ideologies and practices identified in Stacey Hynd’s analysis of the British Gold Coast prison system. As she explains, on the one hand, imprisonment was seen as part of the European ‘civilising mission’ and it was believed that the replacement of corporal punishment such as flogging by imprisonment would modernise outdated penal practices and in so doing place emphasis on reform and education as integral ‘civilising doctrines’.¹⁰² In this ideal, the reform model would ensure economic productivity, religious conversion and integration into ‘civilised society’. At the same time, more control was required over local populations and the penal system had to meet objectives that were not based on reform principles, but in many cases were in fact political (such as a reduction in armed conflict) and economic (including the management of labour).

From the late 1880s, principles of racial segregation were tested in Cape prisons. At the Breakwater Prison, a system of segregation was instituted that separated prisoners based on sex and race.¹⁰³ This was a key development in South African convict labour, laying the foundation of a segregated system in which male African convicts were allocated to outdoor labour, while white male convicts received industrial training in trades such as carpentry, tailoring and boot making, and performed industrial labour inside the prison. Racial separation was further entrenched by the establishment of an industrial Breakwater Prison for white prisoners in 1901, and by the turn of the twentieth century separation of prisoners based on race had become the norm in South African prisons.¹⁰⁴

99. F. Bernault (ed.), *A History of Prison and Confinement in Africa* (Portsmouth, N.H.: Heinemann, 2003), 9.

100. Corry, ‘Crime and Imprisonment in South Africa with Particular Reference to Prison Labour’, 13.

101. S. Singh, ‘The Historical Development of Prisons in South Africa: A Penological Perspective’, *New Contree*, 50 (2005), 18.

102. S. Hynd, *‘Insufficiently Cruel’ or ‘Simply Inefficient’? Discipline, Punishment and Reform in the Gold Coast Prison System, c.1850-1957* (London: Routledge E-Book, 2014), 18.

103. Bernault, *A History of Prison and Confinement in Africa*, 9.

104. Rizzo, *Photography and History in Colonial Southern Africa*, 222-223.

Mining companies and the leasing of convicts

The convict lease system, terminated in Britain in 1802, was introduced in the Cape in the mid-nineteenth century.¹⁰⁵ From 1866 to 1867, the Cape government provided 300 convicts as mine labourers to private capitalist mine owners in Namaqualand.¹⁰⁶ The Cape Copper Mining Company supplied housing and transport for these convicts.¹⁰⁷

The amalgamation of mining interests in Kimberley during the late 1870s and early 1880s, provided new opportunities for the control of workers.¹⁰⁸ Cheap convict labour was seen as a viable option to cut labour costs in the mines.¹⁰⁹ In 1884, another economic depression in the Cape Colony forced the Cape government to consider different ways to decrease expenditure. An agreement with the De Beers Mining Company allowed the use of 300 convicts as labourers, accommodated in closed compounds. Thus, as William Worger amongst others has shown, De Beers would have access to a guaranteed and 'sustained' labour force.¹¹⁰

In 1888, De Beers reached a further agreement with the Cape authorities and a convict station was established near the mine. The convict labour experiment was deemed so successful that in 1890 the number of convicts increased to 700. Not everyone was in favour of convict labour, however, and in 1891, the Select Committee on Trade and Business heard numerous complaints from witnesses. These witnesses were largely concerned about an alleged lack of employment opportunities for white workers on the diamond mines. In response, De Beers defended the convict labour system citing the risks to profits by the widespread illegal trade in diamonds and argued the case that it was possible and desirable to exercise greater control over convict labour than was possible for other workers.¹¹¹

105. Cory Library, Pamphlet Box 49: A. Cook, *Akin to Slavery: Prison Labour in South Africa*, 8.

106. Foreign and Commonwealth Collection: R. Walter, *Saldanha Bay Harbour: Its Special Capabilities for Colonisation* (pamphlet), 1867, 16-17.

107. Cape of Good Hope Parliament, *Select Committee on the Employment of Convicts: First Report*, 3 October 1866, iv, xi.

108. J. Crush, 'Scripting the Compound: Power and Space in the South African Mining Industry', *Environment and Planning: Society and Space*, 12, 1994, 305-306.

109. W.H. Worger, 'Convict Labour, Industrialists and the State in the US South and South Africa, 1870-1930', *Journal of Southern African Studies*, 30, 1 (2004), 72.

110. A. Mabin, 'Labour, Capital, Class Struggle and the Origins of Residential Segregation in Kimberley, 1880-1920', *Journal of Historical Geography*, 12, 1 (1986), 13; D. Bryceson and D. MacKinnon, 'Eureka and Beyond: Mining's Impact on African Urbanisation', *Journal of Contemporary African Studies*, 30, 4 (2012), 517-518; Worger, 'Convict Labour, Industrialists and the State in the US South and South Africa, 1870-1930', 74.

111. BPP C.6595-XI, 84: Royal Commission on Labour, 1892.

The utilisation of convict labour also elicited criticism in Britain, and in 1898 and again in 1905, the use of convicts at the De Beers diamond mines was questioned in the House of Commons. The Secretary of State, however, confirmed the use of convict labour and stated that the British government could not terminate this practice, since the Cape Colony was a self-governing colony.¹¹²

As Alan Mabin was among the first to illustrate, the compound system's genesis in South Africa can be traced to the utilisation and control of convict labour on Kimberley's diamond mines.¹¹³ Moreover, the closed compound system in Kimberley served as a template for compounds on the Witwatersrand gold mines. In 1903, mine representatives from the Witwatersrand visited Kimberley to evaluate the system there. In 1904, imported Chinese mineworkers were accommodated in similar closed compounds on the gold mines, and thereafter, the system was extended to include African workers.¹¹⁴ Race and assumptions of criminality were therefore increasingly closely linked to one another.

Farmers and the convict lease system

The 1828 Commission of Inquiry noted that leasing of convicts to private employers had been a recognised policy in the Cape since 1806. In 1879, overcrowding led to prisoners being 'leased' to individuals outside the public sector for no charge, and magistrates were permitted to allocate prisoners to private employers in groups of six. Before 1887, the leasing to individuals of the rights to the use of convicts' labour was permitted on an informal basis, but after 1887 convict labour could be obtained by individuals, municipalities, and farmers at a fixed rate of one shilling per day. In 1889, convict labour was expanded to the farming sector by allocating convicts to wine farmers.¹¹⁵

Act No. 23 of 1888 formalised regulations controlling the management of convict stations that were constructed by private employers. Government Notice No. 1182 of 1896 further enhanced the Act's stipulations determining that one or more employers could establish a convict station. A station superintendent would determine working hours, and convicts would not, in theory, be allowed to work outside these hours.¹¹⁶

112. *House of Commons Debates*, Vol. 149, 20 July 1905, cc62-63; *House of Commons Debates*, Vol. 60, 4 July 1898, c938.

113. Mabin, 'Labour, Capital, Class Struggle and the Origins of Residential Segregation in Kimberley, 1880-1920', 13.

114. Crush, 'Scripting the Compound', 306.

115. Cape of Good Hope Parliament, *Reports on the Management and Discipline of Convict Stations and Prisons for the Year 1889* (Cape Town: W.A. Richards & Sons, 1889), 70-73; D. Horner and F. Wilson, 'A Tapestry of People: The Growth of Population in the Province of the Western Cape', *A Southern Africa Labour and Development Research Unit Working Paper Series*, 21 (2008), 50.

116. CO 879/80/4, No. 343, Enclosure 3, 292-295: Government Notice No. 1182, 7 December 1896.

In 1904, the Tokai Convict Station supplied convicts to 23 farmers, and there were convict outstations on several large farms, such as Klein Constantia in Cape Town. In Stellenbosch, the Elsenburg Convict Station supplied convict labour to seven farmers, of whom one was the prominent politician, John X. Merriman.¹¹⁷ The passage of the South African Prisons and Reformatories Act in 1911 further formalised practices in which African male prisoners were leased as labourers.¹¹⁸ Labour strategies which served to increase the ‘availability’ of labour to employers, most if not all of whom were white, were further supported by the increased labour control legislation that included a Master and Servant Act as well as vagrancy laws, which are discussed briefly below.

Master and Servant and Vagrancy legislation and convict labour supply

Master and servant legislation was not standardised in the British colonies. Colonial governments adapted metropolitan laws and those from other colonies to accommodate their local circumstances. A key aspect of British master and servant legislation, ranging from the Statute of Apprentices of 1563 to the Master and Servant Act of 1823, was the fact that employment contract breaches were criminalised. Offending employees could receive prison sentences or large fines. The criminalisation of contract breach was incorporated into colonial labour legislation such as Tasmania’s Van Diemen’s Land Act of 1854. That Act gave rise to worker protests and was replaced two years later by the Master and Servant Act of 1856.¹¹⁹ Closer to the Cape, the Natal Master and Servant Ordinance of 1850 also provided for either a prison sentence or corporal punishment for any breach of contract by a servant.¹²⁰

Master and servant laws, pass laws and vagrancy laws facilitated labour control after the abolition of slavery in 1834 and the emancipation of slaves in 1838.¹²¹ Legislation became another colonial labour strategy since contraventions of these laws had the additional, although possibly unintentional, side-effect of increasing the number of convict labourers.¹²² In the Cape Colony, the 1841 Masters and Servants

117. CO 879/80/4, No. 343, Enclosure 2, 292: Mr Lyttelton to Governor Viscount Milner, 13 February 1904.

118. A. Alexander, ‘Democracy Dispossessed: Land, Law and the Politics of Redistribution in South Africa’ (DPhil thesis, Columbia University, 2016), 76.

119. A.P. Davidson, ‘A Skeleton in the Cupboard: Master and Servant Legislation in the Industrial Torts’, *University of Tasmania Law Review*, 5, 2 (1976), 123-124.

120. E. Delport, ‘The Legal Position of Domestic Workers in South Africa’ (Master of Laws, University of South Africa, 1995), 110-111.

121. E. Boddington, ‘Domestic Service: Changing Relations of Class Domination, 1841-1948. A Focus on Cape Town’ (MA dissertation, University of Cape Town, 1983), 28-29.

122. S.L. Engerman, ‘Coerced and Free Labour: Property Rights and the Development of the Labor Force’, *Explorations in Economic History*, 29 (1992), 17.

Act criminalised any breaches of contract by employees. An amended Master and Servant Act in 1856 introduced more severe sanctions for farm workers and increased the range of misdemeanours for which a servant could be punished.¹²³ Thus, legislation both created and maintained racial segregation in South Africa, because in many instances the enforcement of master and servant laws was dependent on the employee's race, as Le Roux has shown.¹²⁴

Vagrancy and pass legislation also increased the number of convict labourers. In Griqualand West, for example, pass regulations were enforced through Proclamation No. 2 of 1872, and any African who contravened these regulations was either incarcerated or sentenced to corporal punishment.¹²⁵ In 1879, Act No. 23 was passed to control vagrancy. This law stipulated that Africans contravening pass regulations could be indentured to white employers for a maximum period of three months, instead of receiving the standard sentence of a one-month imprisonment. Vagrancy laws were enforced throughout the period and became an important tool to control labour along with master and servant laws and pass legislation.¹²⁶

Concluding perspectives

Britain had a significant impact on the development of South African labour regimes in the nineteenth century, including in the specific context of convict labour. In a variety of ways, imperial structures and forces helped to mould British government policies that became influential in South Africa, shaping its labour context and policies through legislation governing convict management and transportation; through the influence of convict practices in Britain and its British colonies, and in the application of these practices and management systems in South Africa. Yet, the indirect impact of civil society and philanthropic groups concerned with the treatment of convicts was also felt in South Africa. British convict systems, adapted from other colonies, and key British administrative practices, were incorporated into southern African convict systems and into essential tools of labour control, such as the compound system and passes.

123. P. Scully, 'The Bouquet of Freedom: Social and Economic Relations in Stellenbosch District 1870-1900' (MA dissertation, University of Cape Town, 1987), 102; E. Bradlow, 'The "Great Fear" at the Cape of Good Hope, 1851-52', *The International Journal of African Historical Studies*, 22, 3 (1989), 421.

124. R. le Roux, 'The Evolution of the Contract of Employment in South Africa', *Industrial Law Journal*, 39, 2 (2010), 144.

125. M. Sullivan, "'Sixteen Tons': Mineworkers and their Communities in Clifton-Morenci, Arizona and Kimberley, South Africa, 1880-1910' (DPhil thesis, Michigan State University, 2013), 83-84.

126. D. Reid, 'The Aborigine's Protection Society as an Imperial Knowledge Network: The Writing and Presentation of Black South African Letters to the APS, 1879-1888' (MA dissertation, University of Victoria, 2018), 77-78.

The legacy of the nineteenth-century convict labour system in South Africa was wide-ranging and endured for most of the twentieth century, including the apartheid years. Racial segregation in prisons became the norm throughout the country and white prisoners received preferential treatment, while African convicts were used as manual labourers. African convict labourers remained a significant source of labour for the public works sector and the practice of supplying convict labour to private employers was expanded in the twentieth century. The control of convict labourers through the compound system in Kimberley also formed the basis of similar systems adopted by gold mining companies during the twentieth century. Due to the initial regulation of convict labour and practices instituted to regulate and separate groups according to race, the compound system and the issuing of passes became part of South African political and economic dispensations.

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