Convicts, Carcerality and Cape Colony Connections in the 19th Century

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This article examines the ways in which the 19th-century Cape Colony was connected to other locations in Britain and the British imperial world with respect to the history of imprisonment and penal transportation. It explores prisoner and convict mobility; circulations of penal ideologies, officials and practices; and contemporary understandings of the connections between incarceration of various kinds and other forms of labour bondage. My argument is that in each of these respects the Cape was an integral part of both a regional Indian Ocean and global repertoire of carcerality, with influence over and being influenced by other penal sites. I show that the Cape’s penal regimes can be understood only by appreciating their local, regional and global dimensions, and by appreciating how the colony faced both outwards and inwards.

Introduction

Twenty-first century currents in transnational, global, and new imperial history have encouraged a rethinking and reconfiguring of the nature and importance of space in writing the history of European empires, and in particular a foregrounding of circulation and connectedness in understanding economic, social and cultural relationships between Europe and the colonies. The Indian, Pacific and Atlantic oceans have decentred nations and colonies to become key sites of analysis; with port cities and islands now viewed as especially important nodal points of exchange. This shift in thinking has not only facilitated the displacement of metropolitan and colonial capitals as ‘natural’ historical and historiographical centres, it has also encouraged and been encouraged by the development of work on the multi-directional mobility of imperial or colonised peoples, ideas and practices. This lays stress on movement, and of tracking circulations across and around space.¹

In this article, I work with the key insights of this literature in order to understand some of the ways in which the 19th-century Cape Colony was connected to other locations in the British imperial world. My focus is on the local, regional and global dimensions of imprisonment and penal transportation. I discuss the movement of prisoners and convicts, the circulation of ideas about punishment and penal labour, and contemporary understandings of the relationship between convict status and other kinds of bondage or unfreedom. My argument is that penal regimes in the Cape were not just networked to other metropolitan and imperial sites, but were

an integral part of both a regional Indian Ocean and global repertoire of carcerality. Penal sites were mutually constituted: they had influence over and were influenced by one another, and prisoners, convicts and officials experienced, viewed and moved around them as a set of linked sites. Moreover, incarceration and penal transportation were often associated with, or compared to, confinement of indigenous people and the management of the enslaved. Critics of penal colonies in particular drew on discourses of anti-slavery in their calls for abolition. In this way, carceral regimes were embedded in larger practices of both indigenous containment and unfree labour expropriation.

I will explore Cape Colony connections by centring on four aspects of carcerality in the 19th century. First, I will examine the reports of the parliamentary Commission of Eastern Inquiry on the Cape and Mauritius, and the writings of the Quaker travellers ‘under concern’, James Backhouse and George Washington Walker, on the Cape, Mauritius and New South Wales (NSW). The Commission of Eastern Inquiry was one of 16 commissions appointed during the period 1818–26, and one of six that travelled outside Europe. It reported on its work in the western Indian Ocean, and then Ceylon, during 1823–31; and its archives include notes on the Cape Colony’s prison in Robben Island and the Indian penal settlement of Mauritius. Backhouse’s account of his tour of 1832–41 with Walker similarly included writing on the condition of prisoners and transportation convicts in Mauritius and NSW. As I will show, both investigations were conducted within the larger context of the relationship between punishment, the slave trade, enslavement and abolition. Second, I will consider the parallels between the Cape Colony’s prison on Robben Island and other penal locations within and without the region, and Robben Island specifically as a hub through which prisoners and transportation convicts moved on their way to and from alternative carceral sites in Mauritius, St Helena and the Australian colonies. Robben Island thus connected the Cape to larger circuits of imperial punishment in tangible ways. Third, as penal ideologies changed in the middle of the 19th century, and British and Irish prisoners moved through stages of punishment that implied transfer from metropolitan prisons to colonial hulks and penal colonies, the Cape at large became imbricated in an even more expansive imperial geography of carcerality. I will discuss proposals about the punishment of metropolitan juvenile offenders, in this respect, as also the Cape’s relationship to the convict hulks located in the Atlantic outpost of Bermuda. Finally, I will consider the development of local scales of punishment in the Cape that were associated with new programmes of prisoner rehabilitation and reform through hard, road-building labour. As will be shown, these were based directly on the model of previously successful practices in Van Diemen’s Land (VDL, later Tasmania), transferred to the Cape through the mobility of imperial personnel.

My argument is that the Cape’s penal regimes can be understood only by appreciating their local, regional and global dimensions. They had local specificity, and features that make sense only from the perspective of southern African studies. However, the Cape was also one of many places that constituted both regional and global forms of comparison and imperial punishment during this period. To recognise its peculiar regional features, the article suggests, scholars must look outwards across the Indian Ocean, and beyond. This perspective reveals how, through a colonial repertoire of carceral regimes as articulated in the Cape, the local was tied not just to the regional but to the global – through the movement and relocation of prisoners and convicts, and especially through discussions of the ideal character of punishment, and of enslavement.

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and other forms of extractive and coerced labour. The article thus positions the Cape as both inward- and outward-facing, and Robben Island in particular as a place that connected Cape Town and southern Africa to colonial sites in the Indian Ocean, and to metropolitan Britain and its colonies in other regions of the world.

The Commission of Eastern Inquiry and Backhouse and Walker’s Indian Ocean Tour

In 1823, the Commission of Eastern Inquiry published a report on its wide-ranging investigations into governance in the Cape Colony. Its itinerary had included a visit to the prison on Robben Island. As is well known, from the 17th century onwards, the Dutch Vereenigde Oost-Indische Compagnie (VOC) used the island as a place of banishment. On taking permanent control of the Cape following the Napoleonic wars, the British kept existing inmates there, and augmented their numbers with long-sentenced prisoners. By this time, the population included slaves, ‘free blacks’ and a few Europeans who were awaiting banishment or transportation. A European commandant was in charge, and an elderly Malay slave, himself serving a life sentence, undertook the role of overseer in exchange for tea, tobacco, a separate cottage, and occasional visits to Cape Town. The British engaged convicts in public works, including quarrying, cutting and polishing stone. They also hired them out to the island’s private contractor to work as bakers, builders and herdsmen. A group of ‘liberated Africans’, captured from illegal slave vessels (following the abolition of the slave trade in 1807) and apprenticed into servitude in the colony, were similarly employed. Eight near-destitute lunatics and ‘two women of colour of advanced years’ were also present. The commissioners were highly critical of the island’s overlapping incarceratory regimes in each of these respects. They proposed the appropriation of the whole island for ‘the purposes of penal discipline and labour of convicts and … the prevention of their escape’.

In considering the purport of the commissioners’ recommendations, it is important to register their imperial mobility, and to note the frame of experience and comparison that they brought to the Cape, with respect to their prior knowledge and experience of other colonies, in the Caribbean and Australia; and so of enslavement and penal transportation. In charge was John Thomas Bigge, who had served previously as chief justice and judge of the vice-admiralty court of the former Spanish slave colony of Trinidad. He had also chaired an important and highly critical parliamentary commission of inquiry into the NSW penal colony just a few years

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earlier. The Bigge reports, as they were known, were critical of the failure of transportation both to punish convicts and to deter the public at large from crime, and influential in directing metropolitan and Australian policy to combine and render penal colonies ‘an object of real terror’. The commission’s recommendation that Robben Island be appropriated solely as a site of penal discipline and labour coincides with Bigge’s earlier Antipodean perspective, and it seems likely that he brought a similar view about the purpose of punishment on Robben Island to his work in the Cape.

As Zoë Laidlaw has shown, the commissioners were also strongly networked to anti-slavery and indigenous people’s rights movements. This connected the Cape, Mauritius and Ceylon to London and to each other. Indeed, as Penny Edmonds argues in a similar vein, anti-slavery, indigenous rights and penal reform ‘were all clearly linked in the minds of many non-conformist Whig humanitarians’. It is important to appreciate the significance of these links, because they have the potential to deepen our understanding of contemporary perspectives on carceral regimes in particular localities, and because they enable us to see incarceration and penal transportation as part of an imperial repertoire of confinement and extractive labour that had meaning both regionally and across a much larger geography of empire.

When the Commission of Eastern Inquiry toured Mauritius, later in 1827, it visited the Indian penal settlement then located on the island. At the time, it held around 550 convicts, mainly shipped from the Bengal Presidency. The commissioners recorded similar details as for Robben Island, and heard evidence from some of the soldiers who were employed as overseers. One of their main lines of enquiry, in the context of the commission’s general interest in illegal slave trading, was to what extent overseers had used parties of Indian convicts to search for illegally imported slaves. But what is interesting for the argument here is that it also made recommendations about the potential value of transportation convicts as permanent settlers, in a period when the slave trade had been abolished, but the first importations of indentured Indian labourers had not yet begun. Reporting on prospects for labour in Mauritius, the commission recommended that all Indian life convicts be worked at chain-gang labour for a fixed term, and afterwards be settled with their families from India, ‘in the manner proposed for the Government Negroes [liberated Africans]’. The enquiry noted: ‘By these means some useful settlements will be formed in the Colony; an accession will be gained to the industrious classes

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9 Laidlaw, ‘Investigating Empire’.


11 C. Anderson, Convicts In The Indian Ocean: Transportation from South Asia to Mauritius, 1815–53 (Basingstoke, Macmillan, 2000).

12 TNA CO167/24, Commissioners of Eastern Enquiry 1828, Volume I: Appendix No. 23: Return of the number of Indian Convicts at Mauritius 30 October 1828, distinguishing their trades and the number who have left families in India; Mauritius Archives [hereafter MA] IB9/14, Original Evidence Given Before the Commissioners of Inquiry, 5–8 February 1827. On illegal slave trading, see A.J. Barker, Slavery and Antislavery in Mauritius, 1810–33: The Conflict Between Economic Expansion and Humanitarian Reform Under British Rule (Basingstoke, Palgrave, 1996).
of free people, by whom useful arts will be introduced’. 13 Here, commissioner Bigge proposed a rather different function for transportation from India to Mauritius than for that which he had earlier suggested for transportation from Britain and Ireland to NSW. He stressed the value of transportation not as a means of severe punishment and deterrence, but for its potential utility as a form of labour migration in the aftermath of the abolition of the slave trade.

The commission’s interest in abolition, convicts, liberated Africans and migration, and its understated and tacit acknowledgement of the links between them, reveals much about the early 19th-century association of punishment with other kinds of unfree labour. It is also telling of contemporary views about the importance of family formation for permanent colonial settlement. 14 It is noteworthy that Backhouse and Walker made similar comparisons and connections during their Indian Ocean visit in the 1830s, drawing attention in particular to incarceration, penal transportation and other kinds of unfree labour as forms of enslavement. They criticised the fetters used in the Cape for refractory prisoners, for instance, as ‘relics of the barbarous punishments introduced by a system of slavery and oppression’. They called indentured labourers, apprentices and Indian convicts ‘coloured people, in bondage’. They noted that one transportation convict in Mauritius had remarked: ‘the poor slaves had been befriended, but nobody thought of the poor Indian convict’. 15 In the Australian colonies, which they had visited previously, Backhouse and Walker had joined contemporary criticism of penal transportation as a ‘lottery’, or uncertain punishment – a view that coincided with that of commissioner Bigge. They compared convicts to the enslaved: ‘[t]he convict, like a slave, may happen to be the servant of a kind or of a hard-hearted master … he cannot change at pleasure, because he is in bondage – galling bondage!’ 16

Robben Island

Harriet Deacon has argued: ‘[o]ne can map the expansion of the colonial frontier in South Africa by tracing the origins of political prisoners who were sent to Robben Island’. 17 This had been the case from the mid 17th century, and, during the early 19th century, Robben Island remained important in the so-called pacification of the Cape. Black leaders from the eastern and northern frontiers were imprisoned on the island, including those convicted in the aftermath of the frontier wars (1799–1803, 1818–19), as well as slave rebels. 18 The island was especially well known for the incarceration of ‘Kaffir chiefs’ in the 1850s–1870s. 19 Later, the 1880 Cape Act authorised its use as a place of confinement for ‘prisoners of war’, and subsequently ‘native headmen’ were imprisoned. 20 Robben Island was not locally unique in this respect; it became embedded in a network of southern African sites of coercion and confinement. These included

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13 TNA CO167/123, Colebrooke and Blair to Sir George Murray, secretary of state for war and the colonies, 15 December 1828.
16 Ibid., p. 162.
19 Western Cape Archives (hereafter WCA) GH23/29.187, Governor Philip Wodehouse to the Duke of Newcastle, secretary of state for war and the colonies, 6 December 1862 (see associated correspondence at TNA CO48/414); WCA GH1/336.9, Earl of Kimberley, secretary of state for the colonies, to Governor Henry Barkly, 5 January 1872.
20 WCA GH1/411.71, Kimberley to Governor Hercules Robinson, 21 March 1881 (Cape Act No. 12, 1880); WCA GH1/450.54, Henry B. Lock, officer administering the government, Cape, to Viscount Knutsford, secretary of state for the colonies, 6 September 1890. (The prisoners in question were Klaas Pofadder and John Adams.)
the supposedly civilising institutions of mission stations and schools, which were set up for incarcerated rebel leaders’ children.\textsuperscript{21}

There are striking parallels between the use of the island for indigenous confinement, and the removal, isolation and incarceration of insurgents and rebels in other colonial penal settlements across the Indian Ocean. Moreover, underscoring these parallels, as well as the imaginative connections that contemporaries made between carcerality and other kinds of unfreedom, were tangible, peopled connections between various imperial sites. Though most transported convicts were ordinary, criminal offenders, the East India Company (EIC), from the beginning of the 18th century, sent rebels and insurgents from all over India to carceral sites in St Helena, Bencoolen, Penang, Singapore, Malacca, Burma, Aden and, as noted above, Mauritius. They included peasant rebels resisting colonial expansion and revenue extraction in areas of the Bengal Presidency, a few dozen Kandyan nobles convicted in the aftermath of the Great Rebellion of Ceylon in 1817–18,\textsuperscript{22} and high-ranking soldiers transported in the aftermath of the Anglo-Sikh wars of the 1840s. A decade later, the catalyst for the establishment of what would become the largest Indian penal colony, the Andaman Islands, was the Great Uprising of 1857. The convict settlements in south-east Asia had refused to receive transported mutineers, and, in the context of the EIC’s existing interest in establishing a settlement in the middle of important Bay of Bengal trade routes, it sent the first batch of convicts to the Andamans in 1858.\textsuperscript{23}

Penal isolation was supposed to curtail anti-colonial sentiment, but was not always successful. As illustrated through the work of Uma Kothari on political exile in the Seychelles later in the 19th century, it provided a concentrated geography of association in which it could flourish.\textsuperscript{24} A good example of this can be seen in an outbreak on Robben Island in 1820, when a group of rebels, including Khoi banished after the third frontier war (1799–1903), stole weapons and escaped in three whaling boats. Many were drowned, but those who were recaptured were executed, sent back to Robben Island, or, in two cases (more on which in a moment), transported to the penal colony of NSW.\textsuperscript{25} Certainly, in other locations across the Indian Ocean, penal transportation and exile provided a vector for the spread of anti-colonial resistance rather than its containment in supposedly isolated settlements. For example, it is possible to trace the engagement of Indian peasants transported for insurgency during the first half of the 19th century, Sikh soldiers, and 1857 mutineers and rebels, in outbreaks and escape attempts in, or on board vessels voyaging to, penal settlements during the period to 1860.\textsuperscript{26}

There are parallels also between the Cape and other Indian Ocean colonies regarding the confinement of indigenous peoples, often in reservations or on islands. Though sometimes expressed as a means of ‘protection’ or ‘civilisation’, this practice resulted in demographic catastrophe.\textsuperscript{27} There were Empire-wide, comparative conversations about the management of

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\footnote{For a theoretically sympathetic approach to this theme, see A. Lester, Imperial Networks: Creating Identities in Nineteenth-Century South Africa and Britain (London, Routledge, 2001).}
\footnote{MA RAS, Governor Robert Brownrigg to Major-General Hall, Acting Governor of Mauritius, 18 May 1818; TNA CO54/73, Brownrigg to Bathurst, 8 January 1819. See also British Library, India Office Records (hereafter IOR) F/4/421, Transportation of persons banished from Ceylon to certain parts of the Company’s dominions (1813); IOR F/4/1594, Proceedings relating to the Kandyan prisoners (1836).}
\footnote{For a detailed account, see C. Anderson, The Indian Uprising of 1857–8: Prisons, Prisoners and Rebellion (London, Anthem, 2007), pp. 107–15.}
\footnote{There is an extensive literature on Aboriginal devastation. For an excellent recent article, see B. Madley, ‘From Terror to Genocide: Britain’s Tasmanian Penal Colony and Australia’s History Wars’, Journal of British Studies, 47, 1 (2008), pp. 77–106.}
\end{footnotes}
This policy gathered momentum after the Cape Supreme Court was established in 1828 (as recommended by the Governor Charles Henry Somerset to Bathurst; TNA CO48/8 June 1815, Governor Charles Henry Somerset to Bathurst; 31 V.C. Malherbe, ‘Khoikhoi and the Question of Convict Transportation from the Cape Colony, 1820–1842’, See also ‘Empire and Humanitarianism’, Special Issue, Journal of Imperial and Commonwealth History, 40, 5 (2012).

Incarceration on Robben Island was also connected to other places of confinement and punishment through the movement of convicts between colonial sites. During the VOC period, the Dutch banished convicts from the Cape to the Netherlands, Batavia and Mauritius, and the Cape received convicts from the East Indies – constituting what Kerry Ward has described as Networks of Empire. The British in the Cape at first banished convicts to unspecified places, with individuals arranging their own shipment. 30 But its penal regime changed significantly in the decades after 1814. This was largely because the British substituted penal transportation for the Dutch punishment of banishment. But the practice of transportation also became associated with a growing attachment to the idea that Robben Island might be used as part of a scale of severity of punishment. This necessarily led to its incorporation within a network of other imperial penal sites. Though Robben Island continued to hold previously convicted local banishment convicts, a key moment in the constitution of these larger geographical relationships was the 1815 decision to send the first capitally convicted (and pardoned) convict from the island to NSW. 31 This led to a more general substitution of the Australian colonies as the destination for capitally convicted and commuted convicts, and for convicts sentenced to transportation for life. Khoisan, settlers and soldiers were all transported out of the Cape in subsequent years: the enslaved, the apprenticed, the impressed and the free. They included the famous Khoikhoi leaders Jantje Piet and David Stuurman, two of the 1820 Robben Island rebels mentioned above. It is interesting to note that the peak years for transportation from the Cape were 1836–38, in the context of the imminent abolition of slavery and the desire to use the punishment as a deterrent against property crime and social unrest. 32

For transportation offenders, Robben Island became a place of intermediate custody, holding Cape convicts before their transportation to the Australian colonies. Convicts from Mauritius and St Helena, also awaiting their onward shipment, joined them. 33 While keeping ‘natives’, with administrators often placing distant locations like Tasmania and North America in the same imagined world, where the demise of the dying races was tragic but inevitable after first contact with Europeans. 28 Both the Commission of Eastern Inquiry, and Backhouse and Walker’s Australian and Indian Ocean tour, discussed in the first part of this article, can be conceptualised as elements of this expansive, global discussion. 29


29 See also ‘Empire and Humanitarianism’, Special Issue, Journal of Imperial and Commonwealth History, 40, 5 (2012).


31 TNA CO48/8 June 1815, Governor Charles Henry Somerset to Bathurst; Records of the Cape, pp. 32–3.

32 This policy gathered momentum after the Cape Supreme Court was established in 1828 (as recommended by the Commission of Eastern Inquiry). See 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), pp. 39–50; Malherbe, ‘Khoikoi’; V.C. Malherbe, ‘David Stuurman: ‘Last Chief of the Hottentots’”, African Studies, 39, 1 (1980), pp. 47–64. On the transportation of Jaantje Piet, see TNA CO48/49, Somerset to Bathurst, 26 July 1820. Piet’s sentence of execution was respited on 29 April, the day it was due to take place, on the accession of King George IV to the throne. Somerset wrote: ‘I did not think it decorous, that an execution should take place at the time of notifying so important an event to this colony’.

33 For example, WCA GH1/114.1719, Lord Glenelg, secretary of state for war and the colonies, to Governor Benjamin D’Urban, 1 May 1837; WCA GH1/135.2154, Lord John Russell, secretary of state for war and the colonies, to Governor George Napier, 13 May 1840; WCA GH23/14 vol. 2, ref. 86: Napier to Russell, 29 May 1843 (convict Robert Taylor, artilleryman in EIC service, St Helena); MA RA121, Governor George Lowry Cole to Governor Charles Colville, Mauritius, 14 October 1832, 3 November 1832, 13 November 1832, 1 September 1834; John Bull, secretary to government Cape Colony, to G.F. Dick, secretary to government Mauritius, 5 February 1835, 24 February 1840; Nominal List of all Slaves Belonging to Inhabitants at the Mauritius at present at Robben Island, under Sentence of Transportation, 2 February 1845. The convicts were: Adrien, Felix, Hypolite, Louya, Paul, Sargine, Thomy and Isidore. Three other Mauritians destined for NSW (Edouard, Azor and Jean Baptiste) were washed overboard, presumed drowned, during a storm on the way to the Cape.
those convicted locally and regionally destined for outward transportation, the island was simultaneously used as an inward destination, for convicts from Mauritius and St Helena. Such convicts included two Indian transportees, originally sent from Bengal to the penal settlement of Mauritius, and re-transported to the Cape for a second offence.34 We begin to get a sense here of the outward- and inward-facing and networked character of Robben Island and other penal sites, with respect to both the sending and the receiving of transportation convicts. We also glimpse something of convict agency, for we know that before transportation they were keenly aware that their sentences exempted them from hard labour, and made complaints if they were asked to work while they awaited shipment.35

Transportation from most of the colonies to Australia ended in 1837, against the background of the publication of the anti-transportation Molesworth Report by the British parliament. The secretary of state for war and the colonies ordered that transportation convicts in the Cape should be sent to Robben Island instead of the Australian colonies unless there was a ‘conclusive objection’. The colonial secretary’s decision was born partly out of pragmatism, for many colonies, including the Cape and places like Mauritius, faced difficulties in transporting convicts. Because they were so few in number, there were no separate convict vessels, and trading ships often refused to take them. Convicts could spend years awaiting transportation, making punishment for transportation offences uncertain, and thus reducing its deterrent appeal. But the decision was also the result of metropolitan discussions about the need for an overall reduction in transportation – and the related desire to reserve the Australian colonies for white convicts only.36 Indeed, despite the sanction on the transportation of colonially convicted offenders generally, court-martialled white soldiers from the colonies were still sent to the Antipodes.37

The colonial office decision coincided with a local view among some officials in the Cape that if convicts were kept in the colony and made subject to hard labour, their visibility and eventual return home would, unlike the invisibility and permanent removal of convicts in transportation, render the punishment more feared and thus deterrent.38 There was local disagreement on the issue, however. Governor D’Urban himself argued that Robben Island was not a suitable alternative to Australia, because its proximity to Cape Town rendered it an ineffective destination. He argued:

Transportation … as is well known – so close to the main Land that the Convicts and their Friends and acquaintances constantly hear and sometimes see, each other, and can often communicate, and where, consequently that complete removal of them from all future view, that conveying them to the oblivion of a distant banishment which enquiry cannot follow –wherein rests the essence in terrorem ceases altogether to be attained.39

Not all islands were equal, then, with their appeal as penal sites linked to the spatial dynamics of their location. As a result, when the Australian penal colonies were closed off as destinations for colonial convicts, the Cape authorities commuted the sentences of all transportation convicts then on Robben Island and repatriated them. They included the remaining Mauritians; the

34 MA JB242, Trial of Naraflme and Bourdaye, 1831–32; TNA CO48/155, Return of Convicts, Robben Island, 1 July–1 August 1834.
35 TNA CO414/1, Journal of Proceedings of the Commissioners of Inquiry at Capetown, commenced 28 July 1823; Register of Documents in the Office of the Commissioners of Inquiry relating to the colony of the Cape of Good Hope, Index: K Police and Gaols, no. 39; TNA CO48/134, Commissioners of Eastern Enquiry 1828: Police and Trade Reports. Convicts were sent to the Australian colonies on trading ships, usually from Simonstown.
36 TNA CO48/171, Colonial office circular 25 May 1837; D’Urban to Glenelg, 14 February 1837.
37 As, somewhat anomalously, were black soldiers. Malherbe, ‘Khoikhoi’, p. 32.
39 TNA CO48/171, D’Urban to Glenelg, 14 February 1837 (also in Cape Archives GH23/11/16).
Cape even returned the two re-transported Bengal convicts, unaware of their twice-transported status, to Calcutta.  

Within a few years of the colonial office’s decision on the Australian colonies, convicts were once again being sentenced to transportation and sent to Robben Island. Several petitioned Governor Napier, comparing their lives in the Cape to their likely fate in NSW, had they been transported there. I am certain that their knowledge of the Australian colonies was related to the island’s use as a holding depot for escaped convicts awaiting their return to the Antipodes. One such man, John Curtis, who had been arrested in St Helena and sent on to the Cape for shipment, was kept on Robben Island for an incredible 10 years. In 1841, he petitioned that, had he been sent to Sydney, he would by then have had a ticket of leave and thus enjoy ‘a state of comparative freedom’. Incredibly, Chief Justice William Menzies agreed, and recommended that Curtis be sent to NSW and be treated as though he had served his whole sentence there. If he could not be so transported, he should be pardoned. The Governor himself supported other petitions from locally convicted prisoners, which sought remission of sentence on the grounds that perpetual banishment to Robben Island was more severe than transportation to Australia. The spread of subaltern knowledge about life in the Antipodes thus had a profound impact on the constitution of punishment in the Cape context.

Penal Transportation to the Cape

If Robben Island was an inward- and outward-facing penal hub locally and regionally during these years, and a site for the exchange of convict knowledge about punishment, there were also wider discussions about the potential use of the Cape Colony at large as an imperial penal settlement. Governor Charles Somerset had urged the importation of British convicts as road labourers as early as 1825, though none was ever sent. Over a decade later, in 1841, as anti-transportation sentiment grew in Britain, the EIC abolished the transportation of white soldiers from India to Australia and asked the Cape to accept them. In contrast to his predecessor, Governor Napier was far from enthusiastic. He was concerned that after release they ‘might have a destructive influence on the morals of the lower classes’, and in particular ‘contaminate’ a recently emancipated slave population, which, he argued, did not yet understand the difference between right and wrong. Ideas about race, white privilege, degradation and status were clearly important here.

A near-identical argument was used again in 1842, following the colonial office’s enquiries about whether the colonies were willing to receive juvenile offenders from Parkhurst prison on England’s Isle of Wight. This was an experimental scheme, part of a growing enthusiasm for

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40 MA RA570, Napier to Governor Lionel Smith, Mauritius, 1 September 1840; MA RA818, John Montagu, secretary to government Cape Colony, to Dick, 9 October 1845. The other remaining Mauritians were: Thorny, Paul and Sargini (or Sargine).
41 WCA CO3969.116, Your Excellency’s most Humble Memorialist John Davis now a Convict on Robben Island formerly a Convict in New South Wales, 16 June 1834; TNA CO48/213, Napier to Russell, 27 October 1841, enc. the memorial of John Curtis, convict at Robben Island, 23 October 1841; Justice W. Menzies to Napier, 26 January 1839. (See also WCA GH23/13.113.)
43 TNA CO48/68, Somerset to Bathurst, 8 June 1825; TNA CO48/81, Somerset to R.W. Hay, 7 July 1826.
44 IOR P/141/62, J. Moore Craig, acting secretary to government Cape Colony, to G.A. Bushby, secretary to government of India, 6 November 1841; Napier to Russell, 23 October 1841. (Also reproduced in TNA CO48/213 and Parliamentary Papers 1849 [217] Transportation. Convicts. Transportation [Cape of Good Hope]. Copies of correspondence with the governors of the Cape of Good Hope and Ceylon, respecting the transportation of convicts to those colonies; and correspondence with the Governor of Bermuda, on the removal of convicts from that station to the Cape, printed 4 April 1849.) See also IOR P/403/6, Minute of the Governor of Bombay, 23 February 1842.
penal stages, through which criminal minors would serve a sentence of separate confinement in Britain and then be sent out to the colonies to be indentured on conditional pardons.\footnote{45 TNA CO48/220, Napier to Stanley, 2 July 1842, 15 August 1842; TNA CO48/221, Napier to Stanley, 7 September 1842. On the larger connection between changing forms of punishment in Britain, and imperial penal sites, after 1840, see Harling, ‘The Trouble with Convicts’, pp. 85–89.} The idea came in the context of an earlier pauper emigration scheme, effected by the London-based philanthropic Children’s Friend Society, which had sent some children into indenture in the Cape in the early 1830s, supported by the colonial office.\footnote{46 PP 1835 (438) (439) (440) (441) First report from the Select Committee of the House of Lords appointed to inquire into the present state of the several gaols and houses of correction in England and Wales; with the minutes of evidence and an appendix, 28 July 1835 (henceforth PP 1835), Evidence of Mrs Rebecca Bourhill, Head of the Royal Victoria Asylum, or Female Institution belonging to the Children’s Friend Society, Chiswick, 11 April 1835; evidence of Charles Forss, Agricultural Master of the Children’s Friend Society, Hackney Wick, 11 April 1835; evidence William Wright, Head Master of the Brenton Juvenile Asylum, Hackney Wick, 13 April 1835, pp. 97, 99, 107.} There were, in fact, strong links between pauperism, convictism and labour bondage. Some of these children were transportation orphans, with convict parents in Australia; many had been picked up on the streets in a state of abject destitution.\footnote{47 PP 1835, Evidence of Henry Wilson, Superintendent of School of Industry (opposite the dock yard at Woolwich), 6 August 1835, presenting ‘A statement of the characters and ages of twenty boys, sent to the Cape of Good Hope, by the Charles Kerr, Indiaman, 22 January 1833’, pp. 448–52.} Moreover, they were, in practice, not free migrants, but were indentured in the Cape – as clerks, servants, farmworkers, or in other occupations. In 1835, the Cape authorities asked that no more be sent, writing of their antipathy to their labour conditions. The older boys, they claimed, ‘had objected to being bound, and endeavoured to induce the younger boys to object too’.\footnote{48 PP 1835, Fourth Annual report of the committee of management, 3 May 1834 (quote); Table of boys and girls apprenticed, including the last returns received up to 4 February 1835 (total of 293 children), pp. 398, 405–9. On child migrants in the Cape Colony, see A.F. Hattersley, Convict Crisis and the Growth of Unity: Resistance to Transportation in South Africa and Australia (Pietermaritzburg, University of Natal Press, 1965), pp. 17–28. One of the first novels to be set in South Africa centred on the rights of emigrant children in the Cape: Edward Augustus Kendall, The English Boy at the Cape: An Anglo-African Story, 3 volumes (London, Whittaker, 1835). I thank Isabel Hofmeyr for this reference.}

In contrast, Richard Wolfe, commandant of Robben Island, was enthusiastic about the Parkhurst juveniles. He wrote that labour shortages would guarantee them employment, ‘remove them from their wicked associates … and put them in the road of becoming useful members of society’. As for the prospect of receiving white soldier convicts from India, Governor Napier again invoked the language of race and contamination, counselling colonial secretary Lord John Russell: ‘I doubt not you will pause before sanctioning a measure which, however much for the benefit of the mother country and the individuals themselves, might have a most injurious effect upon a colony just emerging from the trammels of slavery’.\footnote{49 PP 1849 (217), Transportation (Cape of Good Hope) (hereafter PP 1849), Note of Wolfe, 25 September 1841; Napier to Russell, 23 October 1841; Napier to Stanley, 2 July 1842.} Napier took the opportunity to criticise the earlier pauper emigration scheme, writing that the children had largely been employed as servants and had not been taught trades, as had been envisaged. Because they were largely based in Dutch-speaking households, he suggested that some had even lost their English.\footnote{50 PP 1849, Napier to Stanley, 2 July 1842, citing Ordinance no. 3 26 May 1836: An Ordinance appointing and authorising certain Persons to be Commissioners, and to act as Guardians to Emigrants, being Minors, sent to this Colony from the United Kingdom, by a Society known by the name of the Children’s Friends’ Society.} Napier was writing in the context of the presentation of a series of local petitions against the introduction of juvenile offenders; one such in 1842 pleaded that the colony ‘may not be made a depot, penitentiary or place of confinement, or of refuge, for criminals of any description’.\footnote{51 PP 1849, The Memorial of Her Majesty’s Loyal and Faithful Subjects of the Cape of Good Hope, 7 September 1842 (also at TNA CO48/221).}
After the incorporation of Natal into the Cape Colony in 1843, once again convicts were proposed for public works. Secretary of state for war and the colonies Lord Gladstone, together with influential penal thinker Alexander Maconochie, made proposals for convicts to undertake harbour improvements in Natal. Maconochie was a globally important figure: he developed a ‘mark system’ of reward and reform in the penal colony of Norfolk Island, which was widely copied across the Empire. Norfolk Island itself was a secondary site of punishment in Australia, which, as I will discuss in a moment, was part of the comparative, imperial context for the reconfiguration of Robben Island as a place of dread. In 1846, finally, Governor Peregrine Maitland agreed to accept 300 transported British convicts to work in Table Bay. None was sent, though, and so again in 1848 Governor Smith requested convicts. Shortly afterwards, the convict ship Neptune tried to land in the colony. It had sailed from the convict hulks of Bermuda in 1849, after secretary of state Earl Grey had designated the Cape a penal colony – but without local agreement. The colony refused to allow the ship to land. An anti-transportation movement sprang up, and branches in Cape Town and Natal held public meetings, staged protests, and petitioned the Governor. Grey backed down, and eventually the Neptune was ordered to sail on to VDL. This was an important moment for the Cape’s growing independence from London and the development of political unity. Citing the Cape Town Mail, historian A.F. Hattersley has noted the contemporary view that ‘the struggle has created a people of South Africa’.

Beyond the local political importance of this event, we can also conceptualise the sailing on of the Neptune as a key moment in the constitution of connected Empire. Indeed, on learning of the intense resistance against the Neptune’s arrival, Grey tried to pressure the colony into accepting the convicts, writing: ‘you will find much aid from the long experience which Mr. Montagu, the colonial secretary, had in Van Diemen’s Land’. New penal thinking had by this time led to a change in the treatment of prisoners, and it had been directed that, similar to the system proposed for juveniles, they should undergo a period of separate confinement in Britain, followed by public works in Britain or on the hulks of Bermuda or Gibraltar, and then be sent on to Australia as ‘exiles’, under tickets of leave. This new form of metropolitan punishment, then, was necessarily imperial in its very character, and in this context Grey envisaged the Cape as an alternative final destination for convicts. There is, then, a larger point here, regarding the need to consider the connected history of the localities with which we are concerned, metropolitan and imperial. This brings me to the final section of this article: the influence of changing metropolitan and colonial forms of punishment on the revised constitution of the penal regime of the Cape in the 1840s. Here, colonial secretary Montagu, who was mentioned in Earl Grey’s Neptune correspondence, was a vitally important figure.

**Punishment in the Cape**

In 1843, John Montagu was appointed secretary to government in the Cape Colony. He had served previously for nearly 20 years in VDL, where he had been private secretary to the Governor, during which time there had been important changes in transportation discipline. The

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52 For a superb summary of the proposed introduction of convicts in Natal, see Hattersley, Convict Crisis, pp. 104–17.
54 PP 1849, Governor H.G. Smith to Earl Grey, secretary of state for the colonies, 19 December 1848, enc. The humble Petition of Her Majesty’s faithful People of the Cape of Good Hope, 18 November 1848.
55 For a wonderful account of this period, see Hattersley, Convict Crisis (quote, p. 80); TNA CO48/297, Grey to Smith, 30 November 1849, where Grey ‘laments’ his error in sending the convicts to the Cape, without appreciating the depth of anti-transportation feeling there.
56 PP 1849, Grey to Smith, 19 March 1849. (For voluminous correspondence, and numerous anti-transportation petitions, see also TNA CO49/296 and CO49/297.)
57 PP 1849, Grey to Smith, 7 August 1848; Grey to Maitland, 10 September 1847; Grey to Smith, 23 March 1849.
most significant of these was the introduction of a probation system through which convicts progressed in penal stages, from chain gangs to ultimate liberation.\footnote{E.I. Carlyle, ‘Montagu, John (1797–1853)’, revised Lynn Milne, DNB, available at \url{http://www.oxforddnb.com/view/article/19028}, retrieved 11 June 2014.} Such transformations in punishment were connected to metropolitan thinking, and the continued desire to render transportation a more certain and systematic punishment, and therefore an object of terror and deterrence, as articulated by Commissioner Bigge a quarter of a century earlier, with the additional penal requirement of making convicts responsible for their own fate.\footnote{For a detailed account, see I. Brand, \textit{The Convict Probation System: Van Diemen’s Land 1839–1854} (Sandy Bay [Tasmania], Blubber Head Press, 1990).} Given the new secretary to government’s extensive experience of convict management and penal labour in the Australian colonies, it was perhaps to be predicted that one of the first things that he did after his appointment in the Cape was to overhaul the penal system, framing a new code of rules. He based them on the principles that secondary punishment ought to be proportionate to the offence and to the character of the offender, that the period of punishment ought to be fixed, that convicts must be reformed before they were restored to society, and that they should earn a small amount of money (if well conducted), which would be paid to them upon release.\footnote{TNA CO48/298, Montagu to Smith, 27 July 1849, enc. Rules, Regulations &c for the Discipline, Instruction, Custody, &c, of CONVICTS at ROAD STATIONS, in the Colony of the CAPE of GOOD HOPE, issued during the years 1844–48.}

Underpinning the new rules was an extensive programme of convict road building, which, as Nigel Penn has shown, comprised feats of incredible engineering across the colony.\footnote{Penn, ‘“Close and Merciful Watchfulness”’, pp. 465–80.} Governor Harry Smith reported at the time that the object of this work was ‘to reform the criminal so that he may be returned to the Society from which he emerged without danger to that society or without being an object of scorn and dislike to those by whom he will be surrounded’. He added: ‘it is most gratifying to me to know that while these local offenders are undergoing the just sentence of the Law, their labors are turned to such good account’.\footnote{TNA CO48/298, Smith to Grey, 6 September 1849, enc. Montagu to Smith, 27 July 1849.}

Through Montagu’s reforms, the colony became embedded in imperial conversations about punishment, transportation, labour and reform.\footnote{Penn, ‘“Close and Merciful Watchfulness”’, pp. 466, 467.} Penn has shown that the Cape’s penal regime was similar to that of VDL. In this respect, it was ‘intimately connected to the broader history of the penal dynamics of metropolitan and colonial governance’, and ‘serves as an important reminder of the intertwined penal histories of Australia and South Africa, and the relationship of both to developments in Britain and its empire overseas’.\footnote{TNA CO48/298, Montagu to Smith, 27 July 1849, enc. Rules, Regulations &c for the Discipline, Instruction, Custody, &c, of CONVICTS at ROAD STATIONS, in the Colony of the CAPE of GOOD HOPE, issued during the years 1844–48.} Furthermore, in the colonial office the Cape was seen as a penal pioneer: ‘in all I have had occasion to read on Secondary Punishment’, Earl Grey noted by hand on the reverse of one of his despatches, ‘I never met with anything so satisfactory before … [it] bear[s] the marks throughout of a master-hand which has been employed, with no sparing of trouble, to shape every part of the system’.\footnote{TNA CO48/298, Grey’s note, 7 February 1850.}

A key element of Montagu’s radical transformation was to stimulate a change in character of Robben Island. Montagu visited the island at the end of 1843, and undertook what he described as a minute examination of convict discipline and management there. He was critical of ‘severe’ punishment, of the liberal use of fetters and flogging, and of the use of convicts as overseers. He did not see quarrying and the collecting of shells for lime as truly ‘hard’ labour. Moreover, he reported: ‘[t]here was no provision of any kind for their instruction either moral, Secular, or
Religious; – neither was personal cleanliness enjoined; nor any attempt made to re-establish in
the mind of the Convict a feeling of self control’. Subsequently, Montagu recommended that
all well-conducted convicts be removed to the roads, and that, as Governor Napier interpreted
it, Robben Island become a place of ‘severe punishment for run-aways, the refractory and other
bad characters, to render it an important adjunct to the working of the new Convict system on
Road Stations’. ‘Punishment at Robben Island must be made more severe than that of the road
parties’, Montagu wrote, ‘so that convicts dread removal there’. He later ordered Commandant
Wolfe to render the island ‘a place of dread’.67

I noted earlier the colonial government’s interest in scales of punishment, and the Cape’s
new system imitated that of VDL in this respect. Indeed, the creation of a special place of
punishment within the revised system bears comparison to the use of remote locations like
Norfolk Island, as also VDL’s Sarah Island and Macquarie Harbour (established 1821–22), and
Port Arthur (1830), as sites of severe punishment for the worst offenders. To be sure, the newly
constituted Robben Island was viewed as a success.68 Commandant Wolfe noted in 1844 that,
as a result of the severity of its regime, over the previous ten years the reconviction rate had
been just one per cent, and only one prisoner who had been at Robben Island had ever been
sent back for a further offence.69

Just as convicts destined for the Australian colonies had submitted petitions to the Governor
after their transportation had been cancelled in 1837, military convicts on Robben Island,
complaining of their comparative treatment, wrote after Montagu’s reforms that they had
no hope of improving their position, as they would have if they had been sent to VDL and
worked out their sentence in the probation system. There was, Governor Maitland agreed,
‘some degree of truth’ to their assertions. He ordered that their eventual fate be made certain.70
This was effected in 1846, when the prison on the island was closed; criminal convicts were
either released or transferred to the road parties, and most of the soldiers were sent to VDL.71
Changing forms of punishment locally in the Cape meant, of course, that Mauritius lost its
regional destination for transportation convicts, leading to some consternation in the island
about what it would do with them in future.72 With the closing off of the Australian colonies
to colonially convicted offenders, this became an Empire-wide dilemma.

66 TNA CO48/298, Montagu to Smith, 27 July 1849.
67 PP 1847 (742), Convicts (Cape of Good Hope). Copies or extracts of despatches, and of their enclosures, received
during the years 1843 and 1844, from the Governor of the Cape of Good Hope, relative to a plan for improving
discipline among the convicts, and employing them on the roads of the colony, 23 July 1847; Napier to Stanley,
15 March 1844, enc. Report on Robben Island, by John Montagu, 6 January 1844; Montagu to Wolfe, 29 February
1844, pp. 84–93; TNA CO48/239, Napier to Stanley, 15 March 1844.
68 TNA CO48/245, Governor Peregrine Maitland to Stanley, 2 December 1844, enc. An Ordinance to empower the
Governor to appoint, in all cases, the places at which Convicts sentenced to be imprisoned shall be confined, 4
July 1844. At this time, of the 107 military convicts transferred since 1834, only 57 had been transported. Three
had died, three had absconded, 13 had served out their sentences, and the rest remained.
69 TNA CO48/239, Report on Robben Island by the secretary to government, 6 January 1844, enc. Return of
retransported convicts.
70 TNA CO48/245, Maitland to Stanley, 23 December 1844, enc. Wolfe to Montagu, 8 November 1844 (also
reproduced at WCA GH 23/15.141).
71 PP 1850 (104), Convict discipline, &c. Copies or extracts of despatches relative to convict discipline, and the
employment of colonial convicts in the formation and improvement of roads at the Cape, 1 March 1850: Maitland
to Stanley, 26 February 1846 (14), enc. Report of Montagu, 5 September 1845. See also WCA GH1/168.50,
Stanley to Maitland, 1 May 1845.
72 MA RA827, Prosper d’Epinay, procureur-général Mauritius, to Dick, 20 October 1845.
Conclusion

In this article, I have argued that the Cape Colony’s carceral regimes were both locally specific and embedded in regional and imperial ideas about and networks of punishment and unfree labour. As we have seen, the Commission of Eastern Inquiry and Backhouse and Walker conducted their investigations in the 1820s–40s against a background of the abolition of the slave trade and enslavement, and increasing calls for the abolition of metropolitan penal colonies. In this respect, while, in the Cape, the Commission of Eastern Inquiry expressed strong views about the ideal character of penality in Robben Island, in the context of the abolition of the slave trade in 1807, it viewed Indian convicts in Mauritius as a potential source of permanently settled labour. Further, it is clear that from the first decades of the 19th century, Robben Island, in particular, existed both in parallel with and in connection to other penal locations – as convicts themselves were all too aware. These included the EIC convict settlements that were scattered across the Indian Ocean, and also metropolitan-established prisons, penal colonies and hulks in Britain, Bermuda and the Antipodes. With regard to the latter, the Cape itself was repeatedly suggested as a potential site of convict transportation, especially from the 1840s, when changing ideas about punishment favoured convict movement through penal stages that necessarily implied mobility across the Empire. Though local resistance put an end to these proposals, the Cape did set up a convict labour programme that was directly influenced by innovations in VDL, including the establishment of associated and discrete sites of isolation for secondary offenders. The history of the Cape’s carceral regimes makes sense only when we examine them from these different vantage points. In order to understand the local, regional and global mobility of ideas, practices, officials and convicts, it is clear that we must look outwards from southern Africa across the Indian Ocean and beyond, and inwards from the larger British imperial world to the Cape Colony.

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