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**The Transportation of Chinese Convicts from Hong Kong, 1844-1858**

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**Article abstract**

Between 1844 and 1858 a total of 576 convicts, nearly all of them Chinese, were transported from Hong Kong to other British colonies. For the government this was a convenient, deterrent and inexpensive punishment in a jurisdiction troubled by high crime and low conviction rates. For the convicts the experience was a varied one: some served out long sentences with little prospect of return; others rebelled, escaped, or killed themselves. In 1858, when the last destination closed its doors to Hong Kong's transports, the colony was forced back on its own resources: with a prison dangerously overcrowded during a period of war and disorder, it faced a penal crisis similar to that experienced in England 75 years earlier. This article explores the policies, practices and experiences of transportation from early British Hong Kong and links the demise of transportation with controversial revisions of the colony's penal policies in the 1860s.

## The Transportation of Chinese Convicts from Hong Kong, 1844-1858

CHRISTOPHER MUNN

**B**ETWEEN 1844 AND 1858 THE NEW COLONIAL GOVERNMENT OF HONG KONG transported a total of 576 men convicted by the colony's Supreme and Admiralty courts. These men were shipped to other British possessions in the region, where they laboured on public works under prison regimes of varying severity. All but 20 of them were Chinese: most were convicted of various forms of piracy, robbery or larceny and transported for periods of between seven years and life. To the early Hong Kong government, transportation was an ideal punishment in a jurisdiction troubled by high crime and low conviction rates. It cost little; it removed prisoners from the colony's crowded and insecure gaol; and above all, it "possessed the most salutary terrors" for a "vicious Chinese population," who seemed, in colonial eyes, to find little deterrent in the other secondary punishments available to the colonial courts.<sup>1</sup> For the convicts themselves, the experience was a varied one. The inefficiency of the early colony's criminal justice system makes it likely that many of them were wrongly convicted or given sentences quite out of proportion to their offences. Some killed themselves or died before they reached their destination. Some served out long sentences with little prospect of return. Others escaped or mutinied on the voyage out. Hong Kong's transports quickly gained a reputation for rebelliousness, and it was not long before destinations progressively refused to receive them. When, in 1858, the last colony closed its doors on Hong Kong's transports, the Hong Kong government was forced back on its own resources. Its prison was already dangerously overcrowded during a period of war, civil unrest and mounting regional disorder, and the penal crisis it faced was similar, though on a smaller, more concentrated scale, to that experienced in England 75 years earlier.

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1 Great Britain. Public Record Office (PRO) CO 129/11 and 14, 75 and 100, Governor Sir John Davis to Stanley, 29 January 1845; Davis to Aberdeen, 31 January 1845.

Perhaps because it was short-lived and uncontroversial, this early policy of transportation has received little attention: far less, for example, than the highly visible and much debated other staple punishment of flogging, which was extensively imposed on Chinese offenders for a variety of minor offences. This article explores the policies and practices of transportation in early colonial Hong Kong and the experiences of some of the prisoners subjected to it. It also describes how the abrupt end of transportation in the late 1850s directly influenced the radical and highly controversial penal alternatives introduced in the colony in the 1860s. Part one outlines the problems of crime, government and justice in early British Hong Kong and explains why the colonial authorities considered transportation to be such a useful and effective punishment. Part two examines the mechanics of transportation, the kinds of prisoners transported, the destinations of transports and the experiences of a few of these transports. Part three discusses the penal crisis of the late 1850s and 1860s and the policies and expedients introduced by governors in the 1860s and 1870s to address the crisis.

### **Crime, Government and Justice in Early British Hong Kong**

The British seized the small, remote island of Hong Kong in 1841, during the First Opium War with China, and proclaimed it as a full British colony in 1843 under the terms of the Treaty of Nanjing of 1842. This treaty also opened five Chinese ports to British trade and provided for the extraterritorial administration of justice by British consuls over British subjects in those ports. Hong Kong's status as a colony and as the centre of British administration in China, together with the Admiralty jurisdiction established over the China Seas, gave its courts powers not only over British subjects in the colony and the treaty ports but also over Chinese and other subjects in the colony and on the waters beyond. The province of Guangdong, of which Hong Kong is a small part, was a highly unsettled region during the mid-nineteenth century. A combination of war, weak government, economic dislocation, rapid population increase and widespread rebellion produced extreme poverty, extensive migration and rampant crime.<sup>2</sup> These processes brought both benefits and problems to the new colony. After a decade of stagnation and uncertainty, Hong Kong had, by the mid-1850s, become a flourishing and fast-expanding city. It was the depot for the opium trade, a protected administrative base for European firms, a centre of Chinese regional trade, and a point of embarkation for the hundreds of thousands of labourers and speculators who migrated from China to the New World. A large part of this emigration consisted of the notorious "coolie trade," in

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2 For a discussion of these processes, see Tsai Jung-fang, *Hong Kong in Chinese History: Community and Social Unrest in the British Colony, 1842-1913* (New York, 1993), Ch. 1.

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which destitute Chinese were shipped, often against their will, to work in Caribbean and South American colonies in conditions of virtual slavery.

The juxtaposition of extreme wealth and extreme poverty, the transient, migrant nature of much of Hong Kong's population, and the disorder in the region provided fertile ground for crime. Piracy flourished in the waters around Hong Kong and was a routine problem on the very edges of the harbour itself. In the eyes of panic-stricken colonists, Hong Kong island itself had become the resort of Chinese gangsters and fugitives, the headquarters at which piracies up and down the coast were plotted, and the centre of a wide variety of other crimes, including extortion, kidnapping, burglary, pick-pocketing, pilfering, counterfeiting and armed robbery. "Probably one half of the Chinese inhabitants have no visible mode of earning a living," observed one newspaper in 1844:

they exist by plunder, which with them is a hereditary calling. It is notorious that this, and the neighbouring islands, have for ages been the abodes of pirates. The opportunities for plunder, the almost certainty of escaping undetected, or if caught the mildness of British Justice, compared with that of China, are the causes for such hordes finding their way to Hongkong. We trust that this Island will not long be an Asylum for the very dregs of the Chinese population; as their conduct makes them a disgrace to a British Colony.<sup>3</sup>

The few hundred European colonists living on the island among the thousands of Chinese immigrants and sojourners saw themselves as the principal targets of all this criminal activity, an impression underlined by the frequency with which most of them, from the Governor downwards, fell victim to theft and burglary, or, in the very early years, to night raids by massed bands of robbers from the mainland. The usual victims, however, were the other Chinese men and women who made up more than 97 per cent of the colony's population, and the small trading vessels and passage boats that crowded the sea lanes between Hong Kong and the mainland. Although the colony's courts came down heavily on Chinese accused of offences against Europeans, particularly where violence was involved, the great majority of cases dealt with by the courts involved Chinese complainants and Chinese property.

While various forms of informal justice appear to have flourished within the Chinese community, the early Hong Kong government came to depend on its own courts for maintaining order and deterring crime. In the first three decades of the colony, the equivalent of between 8 and 12 per cent of the colony's population appeared annually before the British courts as prisoners on a wide variety of petty charges. The conditions in which Hong Kong had been acquired ruled out any substantial assistance in the administration of justice by

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3 *Friend of China*, 27 February 1844, p.262.

native officials or pre-existing local elites. Pre-colonial village leaders were weak and often uncooperative. They were, anyway, quickly submerged by the large influx of labourers and servants working in the new colonial city of Victoria, or displaced by the contractors and war collaborators settled on the island by the British with grants of land. Despite early proposals for involving Chinese officials in deciding native criminal cases on the old British India model, suspicion between the British and Chinese governments, fears about erosions of British sovereignty, and a vague desire that Hong Kong should become a model of good government all dictated a system of English law administered by British judges and European juries.

A stipendiary police magistrate and his assistant dealt quickly with the vast bulk of cases and punished offenders with fines, brief terms of imprisonment, and "Chinese punishments" such as caning, queue cutting and exposure in the cangue (or Chinese stocks). Always the mainstay of the criminal justice system, the magistrates took on greater importance as their jurisdiction over cases widened and as they came to enforce the dense mesh of regulatory controls (which included curfews, registration, restrictions on certain trades and extensive vagrancy provisions) introduced to govern an increasingly criminalised Chinese population. A small, declining, though in the 1840s and 1850s still substantial, proportion of serious cases went up to the colony's higher courts for trial by jury. For cases arising within Hong Kong or involving British offenders in the treaty ports on the China coast, Hong Kong's Supreme Court, with some important modifications,<sup>4</sup> dispensed "pure" English law along the lines of the assize courts in England. The Vice-Admiralty Court (whose jurisdiction was absorbed by the Supreme Court in 1850) tried piracies and other maritime cases involving people of all nationalities in a wide jurisdiction that included both the High Seas and (though its claim was a dubious one) Chinese territorial waters.

The higher British courts were peculiarly ill equipped to deal with most of the cases that came before them. Injustices were to be expected under a highly technical trial system applied by non-Chinese-speaking Europeans through inadequate and sometimes corrupt interpretation to Chinese defendants and witnesses who spoke a variety of Chinese dialects among themselves but who, in most cases, knew no English and, in seven cases out of eight, were tried without the assistance of counsel. To these problems were added a climate of malicious prosecution, which English justice, with its dependence on witnesses and adversarial trials, only encouraged; a noticeable hostility and impatience

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4 The main modifications were the absence of grand juries, the employment of a public prosecutor for all criminal prosecutions, and the reduction of the size of the jury from twelve to six. For a discussion of jury trials in early colonial Hong Kong, see Christopher Munn, "'Giving Justice a Second Chance': The Criminal Trial in Early British Hong Kong, 1841-1866," *China Information* 12 (Summer/Autumn 1997): 36-65.

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towards Chinese defendants among the small and overworked pool of all-European jurors; and a series of legislative reforms introduced in the late 1840s and 1850s with the aim of securing more convictions and tending towards reducing the protections traditionally extended to the accused under English law.<sup>5</sup> A few manifest miscarriages of justice came to light soon enough after trial for remedial action to be taken by the executive.<sup>6</sup> In many other cases, in which the trial was rushed, the evidence largely circumstantial, the witnesses self-contradictory, the defence mis-timed, or the process of law compromised in some other way, doubts about the quality of justice were explicit in the trial reports in the colony's newspapers. The graver the offence, the greater was the risk of injustice. Cases involving the deaths of Europeans were notoriously compromised because of the desire of European juries to send a firm and quick message of deterrence to the Chinese population.<sup>7</sup> Defendants on piracy charges (which usually resulted, on conviction, in transportation) faced additional handicaps, particularly where the offence might have taken place some hundreds of miles from the colony. Undefended, usually unable to obtain witnesses on their behalf, and often speaking dialects incomprehensible to the court interpreter, their defences of mistaken identity, duress or malicious prosecution, all plausible enough in the circumstances in which piratical fleets operated, were given short shrift by judges and juries.<sup>8</sup>

The main concern of officials and of colonial opinion was not the possibility that certain individual defendants may have been wrongly convicted but that the higher courts were sending a feeble message of deterrence to the hardened

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5 These included shortening the notice of trial, relaxing restrictions on indictments, allowing convictions on depositions, and dispensing with the requirement of unanimous verdicts, except in capital cases.

6 Among the more striking of these were: (1) the numerous piracy convictions in the early Admiralty Court on the evidence of the informant Too-apo who, in 1848 was exposed as having used the trust placed in him by the government to extort money from innocent victims; and (2) the East Point murder case of 1856, in which intensive post-trial investigations substantiated some of the alibis and pleas of malicious prosecution put forward by seven men convicted of robbery and murder and sentenced to death. In both cases the revelations of miscarriages of justice led to pardons or commutations.

7 The most controversial of these cases were the conviction of Chui-apo, in 1851, of the manslaughter of two British soldiers who had molested a village woman in 1849, and the rushed trial in 1854 of the boatman Chun Cheong-tai and his wife Chun Cheong-she for the murder of an American passenger.

8 Many examples might be cited. The prosecution of Wong Che-foo and 13 others in October 1852 for piracy with violence is typical: witnesses for the prosecution were able to identify only three of the prisoners, and the two principal witnesses could identify none of them positively. All 14 prisoners claimed that they had themselves been taken by pirates and made to work for their captors. Many of them produced witnesses and detailed statements of their activities. The jury convicted all 14 and the acting chief justice sentenced them all to death. *China Mail*, 21 October 1852, p.171.

criminals who sought to make the colony and its trade their field of plunder. Colonists contrasted the “mildness” and “glorious uncertainty” of English justice with the harsh and summary nature of Chinese law, which, particularly in the troubled conditions of southern China at this time, tended to apply the death sentence to crimes, such as simple piracy and robbery, which no longer merited death under English law. The British courts were slow and cumbersome in their procedures and uncertain in their results. It was possible for defendants with money to pay lawyers to get them off on technicalities, an easy matter given the frequent confusion over Chinese names and property rights; it was also common for prosecution witnesses to leave the colony in the long interval between committal and trial, either out of ignorance of English procedures or because of intimidation or bribery. As a result, in the colony’s early years, conviction rates in the higher courts tended to be extremely low. In 1848, when full statistics first become available, the conviction rate of the Supreme Court was as low as 25 per cent.

The courts were circumscribed in the punishments they could impose on those convicted. An early attempt by the colonial government to empower the Supreme Court to dispense “Chinese punishments” was overruled by London.<sup>9</sup> Although it was technically available, and mandatory, for a variety of offences, European sensibilities dictated that hanging, following trends in England, should be carried out only in cases involving murder. Piracy with violence, for example, which carried a mandatory death penalty, was, with some early exceptions, punished with “death recorded,” a mechanism by which the governor, under the Royal prerogative, automatically commuted the death penalty to life transportation on the recommendation of the judge. Hanging was, in the words of one governor, “contrary to the spirit of the present age.”<sup>10</sup> Nor was the tendency of early hangmen to bungle hangings calculated to improve its reputation either among critical colonists or in the eyes of the thousands of Chinese onlookers who assembled, usually in silence, to watch the colony’s occasional executions. Despite the appalling conditions in the gaol, officials and colonists considered imprisonment, on the other hand, to be far too great a luxury for the average Chinese defendant. Some maintained that many of the colony’s unemployed Chinese committed petty crimes to obtain a few days of free food and

9 “The power of punishment according to laws which in certain cases award torture, and in conformity with which a few years ago, upwards of 30 individuals were publicly starved to death in the streets of Canton at one time, was rather too gross to go down,” suggested the *Hongkong Register*, when it heard of the disallowance. Ordinance No. 15 of 1844; *Hongkong Register*, 14 October 1845, p.169.

10 PRO, CO 129/41, 206, Sir Samuel George Bonham, quoted by Chief Justice Hulme in Hulme to Grey, 8 July 1852.

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shelter.<sup>11</sup> The early magistrates minimised the use of prison by awarding sentences of caning for a wide variety of minor offences. For more serious offenders, imprisonment was as unpractical as it was unproductive. The overcrowded state of what was basically an insecure, eighteenth-century-style gaol made any form of separation or classification of prisoners impossible. There was a limit to the amount of work that the colony required, or could extract, out of its chain gangs. Reformation of prisoners was out of the question in a system run by European and Indian guards who had great problems communicating with and even identifying the Chinese inmates. As governors discovered after the end of transportation, the rapid accumulation of long-sentence prisoners required additional building and financial commitments that were beyond the resources a cash-strapped colonial government was willing to spend on accommodating prisoners.

All arguments pointed towards transportation. The practical limitations and resources of the colony, which took on the large responsibility of dealing with crime and criminals operating in regions well beyond its boundaries, demanded it. The tradition of transportation in England and in the British Indian possessions, and an analogous, though milder, punishment in China made it a logical option.<sup>12</sup>

11 Governor Davis maintained that the comforts provided in the gaol tempted labourers "to commit small crimes for the sake of being imprisoned." Davis's view was repeated by, among others, the Magistrate Charles May in 1862 and by the gaol committee in 1877, which found that prisoners got so fat on the food in gaol that they changed in physical appearance during the course of their imprisonment. It therefore recommended that prisoners be photographed on release from gaol, as well as on admission, to enable the police and gaol authorities to detect repeat offenders. PRO, CO 129/23, 188, Davis to Grey, 26 February 1848; PRO, CO 129/87, 134, May to Alexander, 20 August 1862; Report of the Gaol Committee, *Hongkong Government Gazette*, 10 March 1877, pp.116, 123.

12 Although increasingly replaced by penal servitude, transportation continued to be imposed by British courts until 1868. Indian convicts sentenced to transportation were transported in large numbers to the Straits Settlements, mainly Singapore, which were, until 1867, part of Britain's Indian Empire, and to the Andaman Islands. For the English system, see Robert Hughes, *The Fatal Shore* (New York, 1986). For an account of the penal settlements in the Straits Settlements, see J.F.A. McNair (assisted by W.D. Bayliss), *Prisoners their own Warders: A Record of the Convict Prison at Singapore in the Straits Settlements, Established 1825, Discontinued 1873, Together with a Cursory History of the Convict Establishments at Bencoolen, Penang and Malacca from the Year 1797* (London, 1899). The traditional Chinese punishment of exile, of varying distances and terms, to border or "malarial regions" within the Chinese empire bears some superficial resemblances to English-style transportation. Generally, however, it allowed considerable freedom of movement to the convict and was imposed as a lesser form of punishment. Death, by strangling or decapitation (with the possibility of pardon), was the usual punishment for the kind of violent property crimes that merited transportation in early nineteenth-century England. For the Chinese punishment, see Derk Bodde and Clarence Morris, *Law in Imperial China* (Harvard, 1967), 86; E. Alabaster, *Notes and Commentaries on Chinese Criminal Law* (London, 1899), 64-7. Colonists in early Hong Kong were well aware of the Chinese precedent. A detailed account of Chinese forms of transportation to Manchuria, translated from the *Peking Gazette*, appeared in the colony's officially backed newspaper, the *Friend of China*, on 10 September 1844.

The English law imported into Hong Kong mandated it for many of the crimes common in and around the colony.<sup>13</sup> Other British settlements in the region had incorporated mass convict labour into their systems of public works or were in need of forced labour. Above all, transportation was found to be a deterrent that the Chinese dreaded almost as much as death itself. It was this argument that successive governors sought to impress on the home government in their search for transport destinations, and this consideration that was perhaps most prominent in the mind of the colony's first Chief Justice, John Walter Hulme, in his decisions to sentence even many minor Chinese offenders to the punishment.

### Transportation

Between 1844 and 1858, when transportation from the colony came to an end, around 700 prisoners were sentenced to transportation or "death recorded" by the Supreme and Admiralty courts of Hong Kong. A further 20 or so prisoners sentenced to death by the Supreme Court during these years had their sentences commuted to transportation by the Governor in Council.<sup>14</sup> Transportation was, by far, the sentence most commonly imposed by the colony's early higher courts: out of the 798 sentences awarded by the Supreme Court in the 11 years between 1848, when comprehensive sentencing statistics become available, and 1858, 474 were of transportation or "death recorded," compared with only 272 sentences of imprisonment. In the great majority of cases (about 75 per cent), transportation (including "death recorded") was imposed for offences against property involving violence or the threat of violence, such as piracy or robbery, although a significant proportion (about 15 per cent) of transportation sentences were for simple offences against property, such as larceny or burglary.<sup>15</sup>

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13 *The Piracy Act*, 1837, 7 Wm IV & 1 Vict. cap. 88, for example, required a minimum sentence of 15 years transportation for offences of piracy, or death (usually imposed as death recorded) if the offence included violence. The act also provided for prison sentences of up to three years, a punishment rarely imposed by the Hong Kong courts.

14 The figures are estimates because sentencing statistics only become available from 1848. For the years 1844 (when the courts opened) to 1847, I have collected figures from newspaper reports on trials, which, though reasonably extensive in their coverage, probably did not cover every trial. The figure of 694 derived from these sources is, therefore, probably an underestimate. The official statistics are in the Colonial Blue Books for Hong Kong, Great Britain, Public Record Office, CO 133.

15 These percentages are based on the sentences recorded in the Supreme Court (and Admiralty Court for the year 1849) for the decade between 1849 and 1858. Offences against the person accounted for 9 per cent of sentences; the remaining 1 per cent included offences against the currency and offences against authority. Jurisdictional changes in the late 1840s, which allowed most larcenies to be dealt with at the magistracy level, increasingly restricted cases going up to the Supreme Court to the most serious of property and property with violence offences.

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**Table 1**  
**Transportations of Convicts from Hong Kong, 1844-1858**

Year	Month	Chinese	European	Other	Destination	Remarks
1844	Nov.	6	1	3	Van Diemen's Land	
1846	Dec.	32			Sind	
1846	Dec.			7	Singapore	
1847	Nov.	93			Penang	Mutiny
1848	May	20			Penang	
1849	Feb.	10		1	Penang	
1849	Nov.	16		1	Penang	
1850	May	24		1	Singapore	
1850	Nov.	24			Penang	
1851	Mar.	7			Singapore	Shipwreck
1851	Nov.	9		1	Labuan	
1852	Jul.	14		4	Singapore	
1853	Mar.	19		1	Penang	
1854	Jul.	29			Singapore	
1855	June	41			Penang	
1855	Nov.	47			Singapore	
1856	June	21			Penang	
1856	Aug.	24			Singapore	
1857	Sept.	60			Labuan	
1858	Dec.	60			Labuan	
<b>Total</b>		<b>556</b>	<b>1</b>	<b>19</b>		

Sources: Transport Lists from CO 129.

Of the 700 or more prisoners to be transported between 1844 and 1858, 576, most of them Chinese, were transported out of the colony to destinations as far away as Sind to the west and Van Diemen's Land to the south. The colonies which most readily accepted Hong Kong's transports were either established settlements, such as Penang and Singapore, which already maintained highly organised and productive penal communities for prisoners from India, or new frontier colonies, such as Labuan and Sind, which badly needed forced labour for basic public works, such as swamp drainage, site formation and road building. Table one summarises the transportations from Hong Kong.

With the exception of the tiny number of transported prisoners who made it back to the colony and those returned from Singapore after its penal settlement closed in 1873, the colony saw the last of most of its transported prisoners once

they had embarked on the ships contracted to take them away. Given the cost of return passages, and the risks of death by disease during imprisonment, it is doubtful whether much more than a small proportion even of those who were sentenced for short terms made it back to their native places in China. Once it had paid the cost of shipping prisoners to their destination, which ranged from \$30 to \$60 per head, the colony ceased to be responsible for maintaining them.<sup>16</sup> No longer a threat to the colony's safety in the crowded and insecure Victoria Gaol, the prisoners could supply other colonies with the labour needed for their public works. Most satisfying of all to the Hong Kong government, Chinese criminals were thought to look on transportation as a punishment nearly as bad as death itself. The punishment removed most prisoners permanently from their native villages and family ties. The prospect of death overseas deprived the transport of the important burial and ancestral rites that supported the spirit of the deceased in the afterlife. "Chinese call transportation, death," noted one court reporter, "as they say they will never see the transportees again – they will never return to China – in fact they are done for."<sup>17</sup> Governor Davis found that transportation

possessed the most salutary terrors for the Chinese. All our other punishments short of death appear to them light and insignificant, but exile in a foreign land had its terrors.<sup>18</sup>

The nearby Chinese authorities, which anyway challenged the British claim to jurisdiction over Chinese subjects resident in Hong Kong and had to deal with both British diplomatic demands and considerable anti-British activity in and around Canton city, endorsed this opinion. When he learned of Davis's introduction of the punishment to Hong Kong, Qiying, the governor-general of the

16 The cost of transportation depended partly on the distance to the destination and partly on the availability of ships willing to transport prisoners. Since it cost the colony £7 10s (or about \$36) to keep a Chinese convict in gaol for a year, even \$60 was a reasonable price to pay. PRO, CO 129/33, 131, Bonham to Grey, 22 July 1850.

17 This observation arose from a case in January 1856, in which Leong-ahoan, an old man whose house had been burgled, was warned by friends of the two defendants committed for trial to "make his testimony as mild as possible, so as to get them only a slight punishment, as six months, or a year of imprisonment with hard labour; but that if he so spoke . . . as to cause them to be transported they would settle his business . . . , meaning murder him." After Leong failed to follow the warning, and the men were sentenced to 10 years transportation, the prisoners' friends returned to Leong's house, dragged him to the beach nearby and clubbed him to death. His wife, who was badly beaten in the incident, subsequently told the coroner's jury that the men had shouted at her husband "Ah! you caused that death of the two men the other day, now we will settle you." *Friend of China*, 5 March 1856, p.75; *China Mail*, 6 March 1856, p.39.

18 Governor Butterworth of the Straits Settlements also noted that transportation to India was "dreaded almost as much as death by the Chinese" in his colony. PRO, CO 129/14, 100, Davis to Aberdeen, 31 January 1845; Butterworth to Turnbull, 20 October 1845, CO 129/18, 64-5.

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provinces of Guangdong and Guangxi, protested strongly and urged Davis to be cautious. Qiying agreed that it was “a matter of great joy to send them beyond the seas,” but predicted that the violent and stubborn criminals who went to Hong Kong would not willingly submit to the punishment.<sup>19</sup>

Qiying was partly correct. Numerous prisoners evaded transportation by strangling themselves in their cells or by escaping from prison or the chain gangs to which they were assigned while awaiting transportation. William Morrison, the colonial surgeon, reporting on the eleven deaths in Victoria Gaol in 1852, noted that “in nearly every fatal instance the patients have been transports, whose punishment has prostrated their minds.”<sup>20</sup> So great was the number of escapes by prisoners awaiting transportation in the mid-1840s that one newspaper suggested that “the Chief Justice, the other officers of court, and Jurors, may be saved a great deal of trouble, by thrusting the criminals forth out of the court house, to prey upon society.”<sup>21</sup> The problem of chain gang escapes became severe enough again in March 1861 for the authorities to direct that the backlog of Chinese prisoners awaiting transportation be confined to working on the stone heap within the gaol.<sup>22</sup> At, or en route to, their destinations, transports could be equally resistant. In 1847, 93 Chinese convicts on their way from Hong Kong to Penang on board the *General Wood* mutinied and took over the ship with the help of the Chinese ship’s carpenter.<sup>23</sup> In January 1849, 11 out of a further batch of 20 Chinese convicts transported to Penang escaped while bathing and ran into the jungle.<sup>24</sup> Another 25 escaped from Penang at various times between August 1856 and April 1857.<sup>25</sup> The colonial community in Singapore protested loudly against the reception of prisoners from Hong Kong, especially after the *General Wood* incident.<sup>26</sup> The governor of the Straits Settlements reported in 1850 that, in contrast to the much larger, loosely supervised population of Indian convicts, the transports from Hong Kong were so troublesome

19 PRO, CO 129/11, 51, Qiying to Davis, 3 January 1845.

20 Colonial Surgeon’s report for 1852, Colonial Blue Book, 1852, PRO, CO 133/9, 76.

21 *Friend of China*, 29 April 1846, p.1176.

22 PRO, CO 129/86, 99, Colonial Surgeon’s report, 31 January 1862.

23 PRO, CO 129/40, 4-6. They were recaptured and 18 of the ringleaders were tried in Bombay for mutiny. Jervois to Grey, 5 April 1852.

24 Seven were recaptured; one, Lam Po-fook, alias Chun-ayou, sentenced in December 1847 to 15 years transportation for his part in the armed robbery of 20 baskets of sweetmeats, turned up in Hong Kong a few years later and was sentenced in June 1854 to “one year’s imprisonment with hard labor, – at the termination of that time to be transported for life.” *China Mail*, 22 February 1849, p.31; *Hongkong Register*, 28 December 1847, p.211, 20 June 1854, p.98; PRO, CO 129/25, 23, Transport list, 26 May 1848.

25 PRO, CO 129/63, 411, Bowring to Labouchere, 4 July 1857.

26 C. B. Buckley, *An Anecdotal History of Old Times in Singapore* (Singapore, 1902, repr. Singapore, 1984), 475-82.

that in some of the stations it is found indispensably necessary to have a party of petty officers attached exclusively to the Chinese convicts, and furthermore that they are an object of interest to the Secret Societies existing among their countrymen all of whom possess great influence and considerable pecuniary means and are bound under solemn obligation to assist and protect their members against constituted authorities.<sup>27</sup>

Those transports who accepted their fate more quietly had a varied experience. All were transported on British merchant vessels under contract with the Hong Kong government. Some did not make the journey. The Lord Stanley, carrying seven Chinese convicts to Singapore, was wrecked on the Paracels in April 1851: two of the convicts drowned; three starved to death while adrift in a lifeboat; two made it to the mainland and eventually returned to Kowloon (on the opposite shore to Hong Kong) in June, having begged their living along the way. One of these two survivors, Tang-ashing, then crossed the harbour to Hong Kong, where he was picked up by the police. Back in Victoria Gaol, he successfully petitioned a bewildered Governor Bonham for a pardon.<sup>28</sup> Representing perhaps the more usual experience, in December 1857, the 60 convicts carried in chains in December 1857 on the British barque, William Gillies, under a contract drawn up with the Hong Kong merchant Douglas Lapraik were unable to supply the Governor of Labuan with “the full benefit” he looked for.

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27 The Governor contrasted the Hong Kong prisoners with the more manageable Indian prisoners transported to Singapore. On 3 September 1853, however, a mass escape of 100 Sikh prisoners took place. Report of the Governor of the Straits Settlements, quoted in PRO, CO 129/59, 356-357, Cecil Bendon, Secretary to the Govt of India to Colonial Secretary, Hong Kong, 12 September 1856; Buckley, *Anecdotal History*, 578.

28 The pardon was granted on condition that he kept out of the colony for the remainder of his sentence. “It is singular why this man should in his situation have returned to this Colony,” commented Bonham. In his lively account of the episode, conveyed in a grammatically shaky translation by the great missionary-administrator, Charles Gutzlaff, produced only a few weeks before his death, Tang explained that he had returned to the colony “having sworn that I would turn from wickedness and do good, and seek to obtain an honest livelihood. [É] Now I reflect with tears, that I did not return to this Colony as a runaway criminal, but as one, who amidst the dangers of wind and waves, relying on the mercy of supreme heaven, raised from the dead I have now fallen sick in prison, and have no means to attend to the disease. There remains therefore nothing, but to confide in Your Honour’s goodness, and humbly to beseech you to make the case known to the High Authorities, that they may imitate the condescending mercy of God, and shew extraordinary favor, by setting me at liberty, to recover from my sickness and save my wretched life . . . .” Tang had been sentenced to seven years transportation for the burglary and larceny of a watch belonging to a British Army officer. During the trial he had attempted unsuccessfully to throw the blame for the theft on the army officer’s servant. *China Mail*, 6 March 1851, p.39; PRO, CO 129/37, 117-23, Bonham to Grey, 25 June 1851, and Tang’s petition, 21 June 1851.

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Whether from their previous life, or the effects of their treatment on the passage here (which I have reason to believe was severe), their constitutions were so impaired that ailments, considered insignificant, such as diarrhoea and ulcers proved in almost every case incurable.<sup>29</sup>

Unlike many of their British counterparts in the Australian colonies, Chinese transports did not generally receive tickets of leave for good behaviour to enable them to settle as colonists.<sup>30</sup> They remained in prison until their release, if the term was a fixed one, or until their death, if transported for life or if, as commonly happened, they died before their term expired. Prison regimes in the other colonies varied. Singapore's enlightened, and financially profitable, open system had a reputation for mildness. The presence of such a large Chinese community tended to make it less of an exile for prisoners from Hong Kong.<sup>31</sup> In the struggling new colony of Labuan, owing to the "physical inability of the Malay to perform continued laborious employment," Chinese convicts from Hong Kong were prized for the labour they could contribute to draining swamps, making bricks and mining coal.<sup>32</sup> Governor Hennessy pointed with pride to the \$1,193 clear profit Labuan made out of its convict labourers in 1869.<sup>33</sup>

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29 The governor added that the 40 among the convicts who recovered eventually proved to be submissive and hard working. George Edwards, Governor of Labuan, to Labouchere, 29 April 1858, in "Reports Exhibiting the Past and Present State of H.M.'s Colonial Possessions in 1857." *House of Commons Sessional Papers*, Vol. XXI, 256.

30 Among the exceptions were certain convicts transported to Labuan, who were released during Hennessy's governorship in the 1860s. See J.W. Norton-Kyshe, *The History of the Laws and Courts of Hong Kong, Tracing Consular Jurisdiction in China and Japan, and including Parliamentary Debates, and the Rise, Progress, and Successive Changes in the Various Public Institutions of the Colony from the Earliest Period to the Present Time*. 2 vols. (London, 1898, repr. Hong Kong, 1971), I, 554.

31 PRO, CO 129/18, 64, Butterworth to Turnbull, 20 October 1845. Under the Singapore system, thousands of long-term transports from India laboured on public works and in a variety of prison industries in an open, lightly supervised environment. The system brought profit to the government and the possibility of tickets of leave and eventual assimilation into local society for the prisoners. So trusted were the Indian prisoners that in 1851 they were used to help suppress riots within the free Chinese population. It is not clear at all from McNair's account how far the small number of Hong Kong transports were integrated into the open system, though the prison plan (opposite page 77) indicates, not surprisingly, that they were housed separately. In 1873, when the open system was finally dismantled and the majority of Indian prisoners pardoned and allowed to settle in Singapore, the small number of remaining Hong Kong prisoners were returned to serve out the remainder of their sentences in Hong Kong. McNair, *Prisoners their own Warders*.

32 PRO, CO 129/33, 135, Minute by Merivale, 1 October 1850.

33 Extract from speech of Governor Hennessy to the Legislative Council of Labuan on the opening of the session of 1870, PRO, CO 129/145, 382-3.

In the newly acquired Indian Province of Sind, which received a single shipment of 32 convicts from Hong Kong in 1846, Chinese convicts also appear to have been valued prisoners. In 1864, the Bombay government forwarded to Governor Robinson in Hong Kong a recommendation for the pardon of the three remaining prisoners from that shipment. The 29 other prisoners had either died in prison or, having served their terms, been released. Lee-afook, Wong-aung and Wong Poong-neen, their names now romanized as Lo-apook, Wong-anug and Wong Poongulew, were still serving out their life sentences in Shikarpur Gaol, 2,500 miles to the west of Hong Kong. All that the authorities in Sind could ascertain from the prisoners themselves was "that they were sentenced in Hongkong, and as they believe, by a Military Officer."<sup>34</sup> In fact, Lee-afook and Wong-aung, both hawkers, had each been convicted in separate jury trials of robbery with violence, in Lee's case of 2,700 cash and eight rupees (a total value of about £1 12s) from a man who, he claimed, had owed him money. Wong Poong-neen, a blacksmith, had been convicted of cutting and wounding a Portuguese during a fight in Taipingshan.<sup>35</sup> The three men, now aged 53, 44 and 49 respectively, had, in the opinion of the Sind officials, been given sentences "out of all proportion" to the offences committed. They had been exceptional prisoners:

It was by these three men and their fellow Chinese prisoners who were discharged on the expiry of their sentences, that all the different trades and manufactures now carried on so successfully in the Jail Factory were introduced and taught to the Sindee Prisoners. They are most laborious painstaking workmen, and are equally good tempered and amenable to discipline. I am fully persuaded from careful observation that if any natural depravity ever existed in the minds of these men they are now completely reformed and are probably as honest and harmless as the most inoffensive native of India.<sup>36</sup>

The three prisoners, who appear to have had no intention, and probably no practical possibility, of going very far from Shikarpur, had petitioned for release and for permission to work as paid labourers in the factory and gaol garden. Robinson granted the pardon, adding, however, the usual condition that they not return to Hong Kong.

34 The "military officer" was Chief Justice Hulme, though Wong-aung, Lee-afook and Wong Poong-neen might be forgiven for the misunderstanding. Whatever else they may have made of the English court, they would have known of the fate of Wong Hung-chi, a fellow prisoner from the same sessions convicted of housebreaking, who had died after being shot by the police when attempting to escape on the march from the courthouse back to the gaol.

35 *Hongkong Register*, 23 December 1845, p.215; *Friend of China*, 14 November 1846, p.1401; transport list, CO 129/17, 466.

36 PRO, CO 129/99, 199, Mansfield to Frere, 7 May 1864; C. Grant to S. Mansfield, 28 March 1864, pp.202-3.

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The policy of transportation, and the constraints placed upon it, reveals some of the racial distinctions made within a system of justice which, at least at its higher levels, was held by colonial rhetoric to be equal for all. Out of the 700 or so prisoners sentenced to transportation or "death recorded" between 1844 and 1858, 16 are identifiable as being of European or American origin.<sup>37</sup> Only one of these was ever actually transported. John Brennan, an Irish soldier seconded to the colonial police, was sentenced to death at the first sessions of the Supreme Court in October 1844 for the crime of bestiality. His sentence was subsequently commuted to life transportation, and he was among the first batch of ten transports sent to Van Diemen's Land in November of that year.<sup>38</sup> Following a ban imposed by the home government on further transportations of convicts from Hong Kong to the Australian or other temperate colonies, it became impossible to carry out sentences of transportation on Europeans convicted by the civilian courts in the colony. The tropical or semi-tropical destinations deemed suitable for Chinese and other Asian transports were considered unacceptable for Europeans, and the colonial government was left with a small but conspicuous number of long-sentence European prisoners in the sultry and unsanitary gaol at Hong Kong. This fate was considered a harsh injustice towards Europeans, who, in contrast to Chinese prisoners, were traditionally understood to find transportation a lesser punishment than an equivalent term of imprisonment.

The problems of stranded European transports had two effects on judicial policy. First, there is some suggestion that judges and prosecutors took the problem into account in their handling of cases. When, for example, in February 1855, William Clark and Thomas Sinclair were convicted of the armed robbery of some saltpetre from a Chinese house in the west end of the colony, the *China Mail* observed that this was the first time the Court had tried Europeans for robbery, but added that "it is believed that such and worse robberies have been frequently perpetrated, especially afloat." In sentencing them to three years imprisonment with hard labour, the acting Chief Justice, Paul Sterling, referred to the practical problem of giving effect to transportation sentences imposed on Europeans by remarking that "circumstances prevented his passing sentence of transportation, which the crime well merited."<sup>39</sup> The usual sentence for Chinese defendants convicted of armed robbery was either death

37 These are traceable only in the newspaper reports and some other non-comprehensive sources, since annual statistics were not classified by race or nationality.

38 No account survives of the exact nature of this crime, the details of which were "such as cannot appear in a public journal." Brennan was still in Tasmania in 1849, when enquiries were sent back to Hong Kong about a money order in his name that went missing during his stay in the gaol in Hong Kong. *Hongkong Register*, 8 October 1844, 171; PRO, CO 129/7, 219, transport list, 13 November 1844; PRO, CO 129/29, 8-9, Bonham to Grey, 20 April 1849.

39 *China Mail*, 1 February 1855, p.19.

or transportation for 15 years. In July 1855, William Wallace and John Bradley pleaded guilty to plundering the captain's cabin on the ship on which they worked and to throwing overboard the sextant and ship's papers. Chief Justice Hulme sentenced them each to two years imprisonment and told them that they were lucky that the acting attorney general had chosen to prosecute them on an indictment for simple larceny rather than larceny on board a ship, which would have earned them transportation for ten years.<sup>40</sup> The case immediately following that of Wallace and Bradley provides a convenient measure of the lenity of this sentence: the servant Choi-aluk, who, unusually for a Chinese defendant, pleaded guilty to the charge of having stolen a watch from his master, an English publican, was sentenced by the same judge to seven years transportation.<sup>41</sup>

Secondly, in the few cases in which Europeans were sentenced to transportation, the executive usually took into account the unpleasant conditions in the gaol and the poor health of long-term European prisoners and granted pardons to most of them. Of the remaining identifiable 15 European transports sentenced to transportation, one died in prison, one (an American convicted of the manslaughter by strangling of a Chinese tailor in a quarrel over the payment for a flannel shirt) escaped and was never recaptured, and nine were pardoned, usually within two or three years of sentencing after representations made on their behalf.<sup>42</sup> Such pardons, like the more expensive rations, extra blankets, greater trust and spacious rooms extended to European prisoners, were an admirable application of mercy to men who were usually outside the pale of respectable colonial society and sometimes sentenced more harshly than they would have been at home. The first to be pardoned was James Burke, an Irishman, who, in November 1849, was sentenced by the Admiralty Court to 15 years transportation for the larceny of rupees to the value of £500 on board the *Gallant*, of which he was ship's mate. Following representations pointing out

<sup>40</sup> *Hongkong Register*, 3 July 1855, p.122.

<sup>41</sup> "It is all a matter of taste," commented the *Hongkong Register*, acknowledging that W.T. Bridges, the Acting Attorney General "has perhaps more regard for the vicious and miserable of his own countrymen than for the same class in other countries." A similar juxtaposition appears two and a half years later. On 2 November 1857, the European Francisco Merlini was tried on various charges of piracy. One of them related to the depredation of a village near Amoy, in which five women and 12 men had been killed and every house destroyed. The jury found Merlini guilty but recommended him to mercy on account of previous good character. Chief Justice Hulme sentenced him to 12 months' imprisonment with hard labour. Yeep Tung-po, whose trial for piracy and highway robbery came next on the calendar, was convicted solely on the reading out of the depositions of the witnesses who had failed to turn up for the trial and received a sentence of 15 years transportation. It was often "painfully impressed on juries," the *China Mail* noted in 1852, "that with Chinese and Malays, the Judge, otherwise kind-hearted, is excessive, and not very discriminating in awarding punishments." *China Mail*, 19 February 1852, pp.30, 26 July 1855, p.118, & 5 November 1857, p.179.

<sup>42</sup> I have been unable to trace the fate of the other four.

Burke's moral reformation, respectable origins and the deterioration in his health after spending so much time in Victoria Gaol (including one from the Bishop of Hong Kong, who offered to accommodate Burke in his house after his release), Burke, his sentence having already been commuted to four years imprisonment, was pardoned in May 1852.<sup>43</sup> The same consideration was not extended to Chinese prisoners. In February 1862, more than three years after the ending of transportation for Chinese convicts, the prisoners Lum-ahyow, Cheong-assow and Eep-ahkow, sentenced to 15 years transportation for piracy in 1857, with the support of two justices of the peace, sent a petition to the governor asking for a mitigation of their sentences on the grounds that transportation could not be carried out and that they had reformed themselves while in prison.<sup>44</sup> The petition was rejected.

### **The End of Transportation and its Consequences**

Destinations for Hong Kong's transports finally dried up in December 1858, when the last shipment of convicts embarked for Labuan. But finding and maintaining adequate and receptive destinations was a recurrent problem for the Hong Kong government from the very beginning of its transportation policy. Transportation, so convenient a punishment in an extensive jurisdiction of high crime and heavy sentences, was increasingly seen as a burden and a liability by the colonies that had agreed to take Hong Kong's Chinese prisoners. One by one, colonies declined to accept further transports from Hong Kong. Although successive officials pleaded special circumstances, the Colonial Office instructed the Hong Kong government that it must, like other colonies and like Britain itself, look to its own resources. The final withdrawal of transportation in 1858 came at a time when, owing mainly to increasing piracy in the region, sentences of transportation by the Supreme Court of Hong Kong had become a well-established policy.

The struggle to find and maintain destinations began as soon as the Supreme Court began sentencing prisoners to transportation. In October 1844, the month in which the Supreme Court held its first criminal sessions, the Colonial Office instructed Governor Davis to withdraw a proclamation stating that felons would be transported from Hong Kong to the Australian colony of Van Diemen's Land.<sup>45</sup> An act of parliament already prohibited the transporta-

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43 *Hongkong Register*, 27 November 1849, p.190; PRO, CO 129/30, 347-8, Bonham to Grey, 28 November 1849; PRO, CO 129/40, 118; *ibid.*, Smith to Bonham, 29 March 1852; Jervois to Pakington (and comments by the Colonial Office), 26 May 1852, pp.110-15.

44 PRO, CO 129/85, 340-347, petition from Lum-ahyow, Cheong-assow and Eep-ahkow, 5 February 1862.

45 PRO, CO 129/6, 351-2, Colonial Office to Davis, 15 October 1844; PRO, CO 129/7, 217-221, Davis to Stanley (with reply), 13 November 1844.

tion of Indian prisoners to Australia: Chinese convicts, the Colonial Office noted curtly, "would be useless and unintelligible in that Colony."<sup>46</sup> Before Davis had received the instruction, however, he had already despatched ten convicts to Van Diemen's Land, six of whom were Chinese. Objecting to the decision, he pleaded that, in the absence of any effective secondary punishment, hangings would have to be increased and more money would need to be spent on prisons. The prohibition, he added, also weakened his position against the Chinese authorities, who would see the end of transportation as an answer to their objections to the punishment yet would protest even more strongly when they saw the more frequent infliction of the death penalty. Davis urged that destinations be found in India or the Straits Settlements.<sup>47</sup> Meanwhile, the government set about adding an additional storey to Victoria Gaol and the Legislative Council passed a resolution stating that, in the absence of transportation,

no sufficient punishment can be devised in the opinion of this Council which would meet the ends of Justice inasmuch as there can be only eventual deportation from the Island on completion of the term of imprisonment and flogging and wearing the cangue during imprisonment, all of which punishments to their fullest extent are already inflicted for minor offences.<sup>48</sup>

It took more than another year for the Colonial Office to approve Davis's proposed transportations to India and the Straits Settlements. Under the new arrangements, limited numbers of Chinese were to be transported to Sind and the Tenasserim Provinces in India and Burma: other "people of color" were to be sent to Penang, Malacca and Singapore.<sup>49</sup> Passages for convicts to Sind proved to be both expensive and difficult to arrange.<sup>50</sup> In 1847, the Straits Settlements government agreed to accept Chinese as well as other Asian convicts from Hong Kong in alternate shipments to Penang and Singapore.<sup>51</sup> Despite some difficulties in procuring passages and an increase in prices after the General Wood mutiny, this arrangement worked smoothly for a few years.

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46 PRO, CO 129/8, 168, Colonial Office to Foreign Office, 29 August 1844.

47 PRO, CO 129/11, 73-76, 200-202, Davis to Stanley, 29 January & 14 March 1845; PRO, CO 129/14, 94-5, Davis to Aberdeen, 6 February 1845.

48 PRO, CO 131/1, 431, Legislative Council minutes, 13 March 1845.

49 Tenasserim was not, in the end, used as a destination. PRO, CO 131/1, 174-5, Executive Council minutes, 28 April 1846; PRO, CO 129/16, 297-8, Davis to Gladstone, 1 May 1846; PRO, CO 129/17, 459-60, Davis to Grey, 22 December 1846.

50 Ibid.

51 PRO, CO 129/20, 114, Davis to Grey, 22 June 1847.

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In 1851, Labuan was added to the list of destinations.<sup>52</sup> By the mid-1850s, however, the system began to break down. Shipping costs rose sharply. In 1855, the government advertised for more than six months for the shipment of an accumulation of 41 convicts to Singapore and was eventually forced to pay £10 per head for the voyage, 50 per cent higher than the usual charge.<sup>53</sup> Just over a year later, the government of India notified the Hong Kong government that the governor of the Straits Settlements, who had been pressing for an end to the policy since the General Wood mutiny, would accept no further transportations from Hong Kong. Ceylon, the notification added, had been suggested as an alternative destination, but its government had decided not to expose the island “to a source of contamination which all the other colonies of the Crown have successfully repudiated.”<sup>54</sup> Only Labuan now remained as a destination for sporadic and inadequate shipments from Hong Kong. Labuan finally closed its doors in 1859, after a plot originating in the Chinese convict community to murder every European in the settlement was discovered only a day before it was due to hatch.<sup>55</sup>

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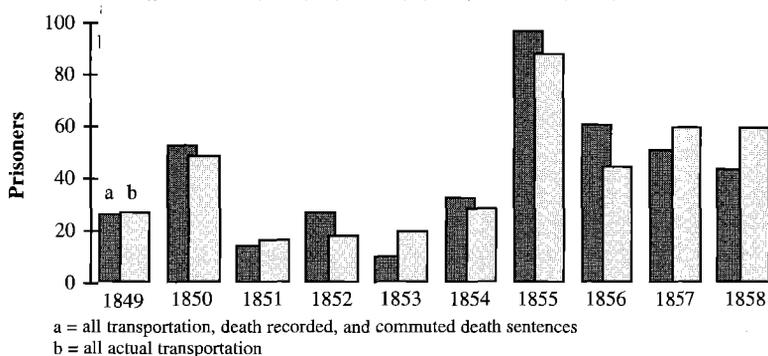
52 The lieutenant-governor there volunteered to accept any kind of convict from Hong Kong, and not just the artisans and light offenders proposed by the Colonial Office. The decision confirmed the Colonial Office’s opinion of the lack of judgement on the part of the lieutenant-governor in wishing to obtain convict labour. “Into an extremely small population, with scant means of control, desperate ruffians are introduced for none of the reasons which have led to Convict Establishments elsewhere, but solely under the idea that they might somewhat cheapen the performance of labor.” The Labuan government was at this time experiencing enormous difficulties in establishing a viable colony. The troops and European community were plagued by fever. The native Labuans were boycotting the colony, and the government was trying to encourage Chinese immigrants to settle there. “The mere fact of hoisting the British flag does not suffice to draw capital and enterprise, to establish trade, and secure prosperity,” commented its governor, George Edwards, in 1858. PRO, CO 129/38, 81-2, Colonial Office minute, 20 January 1852; *House of Commons Sessional Papers*, Vol. XXI, 256, Edwards to Labouchere, 29 April 1858.

53 PRO, CO 129/50, 279-80, Caine to Russell, 18 June 1855.

54 The Ceylon government also claimed that it had special problems of its own: “In no part of Her Majesty’s dominions is the disproportion between the European Residents and the Native population so great, the controlling force so small, or the risk of infusing into an inert mass the spirit and experience of a more lawless and daring race, so obvious and palpable. The convicts in question are stated to be principally Pirates, i.e. men familiar with violence and bloodshed, accustomed to a wild and hard life, proficient in the arts of accomplished European ruffianism, just the sort of men in short, whom it is difficult to keep in custody or impossible to trust when out of it. As settlers or ticket of leave men [ . . . ] they would be the worst colonists and the most dangerous neighbours to any quiet and orderly Chinese settlement that might hereafter be attempted in Ceylon.” PRO, CO 129/59, 348-58, Cecil Bendon, Secretary to the Govt of India to Colonial Secretary, Hong Kong, 12 September 1856.

55 Robinson to Newcastle, 16 December 1861, in *British Parliamentary Papers: China 25: Correspondence, Dispatches, Reports, Returns, Memorials and Other papers relating to the Affairs of Hong Kong 1862-81* (Shannon, 1971), 14-15.

**Figure 1: Transportation Sentences and Transportations of Prisoners, Hong Kong, 1849-58**



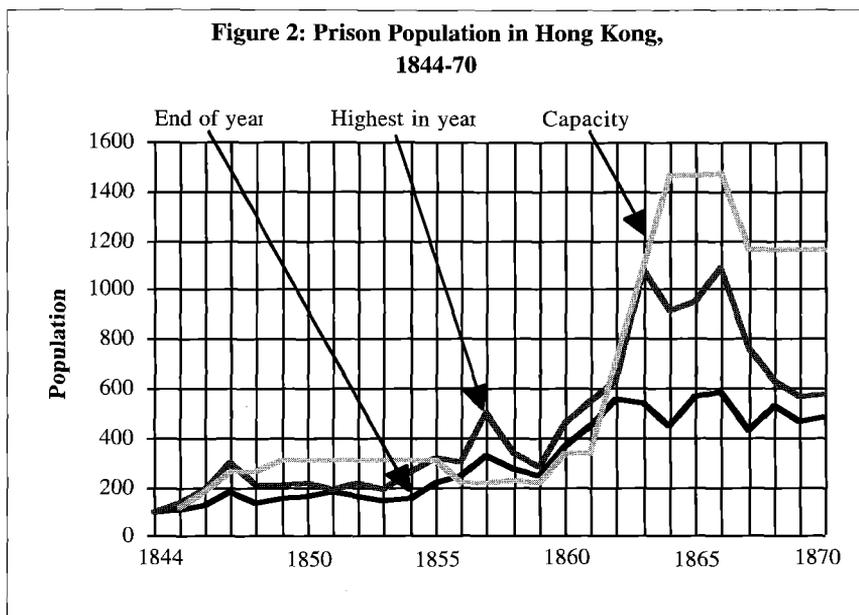
Source: Court returns, Hong Kong Colonial Blue Book, CO 133; transport lists in CO 129.

The rapid drying up of destinations in the late 1850s could not have come at a worse time for the colonial government. Guangdong Province was in a state of rebellion. Piracy and other forms of crime had increased considerably and had inevitably involved the colony, its courts and its gaol. The population of Hong Kong increased threefold between 1848 and 1857 and tighter policing, unpopular sanitary measures and rising crime in the colony had increased the number of remand and short-sentence prisoners entering the gaol. Renewed war between Britain and China and terrorism against the European community in Hong Kong had prompted the government to introduce emergency measures against the colony's Chinese population, which had packed the gaol and other temporary holding centres with political prisoners and "suspicious characters" to the point where officials feared mutinies and mass escapes.<sup>56</sup> The crisis came to a peak during the terrorist campaign of early 1857, during which a plot by Chinese agents to poison the entire European community by putting arsenic in the morning bread supply narrowly failed. While Figure 1, which illustrates the accumulation of transports in the 1850s, does not in itself suggest a dire problem, the pressures on the colony's gaol accommodation are illustrated in Figure 2. In addition to continued attempts to secure new destinations for transports, the government responded, both to the immediate crisis and to the longer-term accumulation of long-sentence prisoners, with two broad policies. The first, which mirrored the earlier English experience, was reluctantly to accept that long-term imprisonment within the colony for serious offenders was to be an inevitable part of the colony's penal system, and to build more prisons to

<sup>56</sup> PRO, CO 129/64, 75, Bridges to Bowring, 21 July 1857.

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accommodate them.<sup>57</sup> The second, which was peculiar to Hong Kong, was to seek to mitigate the burden this placed on the colony by finding alternative punishments and by seeking to transfer some of the responsibility for dealing with crime in the region to the Chinese authorities.



Note: Up to and including the year 1849, daily averages refer to the prison population at Michaelmas.

Source: *Historical and Statistical Abstract of the Colony of Hong Kong, 1841-1930*; Colonial Blue Books for Hong Kong, CO 133.

The short-term response to the crisis of the late 1850s illustrates these trends. Barely able to cope with piracy and the terrorist attacks on the European community, Governor Bowring took drastic action. In February 1857, he despatched two naval ships to capture eight of the pirate junks obstructing access to the harbour, a day after the pirates had murdered ten of their prisoners. Seventy-three pirates were captured and taken before the chief magistrate. Fearing that Hong Kong's gaol and courts could not cope with such a large number of prisoners, Bowring ordered that the 73 men be handed over to the

<sup>57</sup> For the English crisis arising out of the sudden end of transportation to America, see J.A. Beattie, *Crime and the Courts in England 1660-1800* (Princeton, 1986). For a discussion of the introduction of penal servitude to deal with the more gradual loss of the Australian destinations, see M. Heather Tomlinson, "Penal Servitude 1846-1865: A System in Evolution," in Victor Bailey, ed., *Policing and Punishment in Nineteenth Century Britain* (London, 1981), 126-49.

Chinese authorities at Kowloon, “who received them in a most satisfactory manner.”<sup>58</sup> For this action, Bowring was condemned by the local press as “the greatest monster on the face of the earth; a disgrace to the government he serves – a disgrace to the name of Englishman,” and was accused by the Colonial Office of flouting “one of the most important purposes for which the Supreme Court at Hong Kong is established.”<sup>59</sup> In a more measured response to the prospect of an end to transportation, Bowring appointed a commission of enquiry in 1856 and then attempted to pass the financial problem to the home government, arguing that the extensive jurisdiction of the Supreme Court imposed on Hong Kong burdens which were more imperial than colonial.<sup>60</sup> The Colonial Office told him that all colonies faced similar problems but eventually agreed to apply for a parliamentary grant of £10,000 to help the colony through its problems.<sup>61</sup> Calculating that about 50 long-sentence convicts would be added every year to a gaol that was already on average 70 per cent in excess of its capacity, officials continued to put forward vain proposals for transportation to the Andaman Islands, Borneo or the yet uncolonised Gulf of Carpentaria in Australia.<sup>62</sup> The only practical solution to the urgent accommodation problem,

58 Bowring used the powers under the deportation ordinance, No. 2 of 1850. The men were taken over in a steamer and surrendered by a British military detachment to the alarmed authorities at Kowloon. “What their purpose (or intention) may be, it is indeed difficult for any man to divine,” commented a Chinese spy on this transaction. After having been handed over, the men were kept imprisoned in the fort at Kowloon. Their ultimate fate is unknown. Bowring hinted in a later despatch that they had been executed by the Chinese authorities: “If as was said these 73 men had united the characters of pirates and rebels against the Chinese Imperial Government there was no reason to suppose they would be dealt with with any particular lenity and subsequent information has verified such supposition.” Bowring had, in fact, earlier denied that any of the men were rebels against the Chinese government. His attorney general at the time, Thomas Chisholm Anstey, however, in a later polemic against the Hong Kong government, alleged that some of them were Taiping rebels reliant on British protection and brought in as pirates on the information of the gangster and informant Ma-chow Wong. PRO, CO 129/62, 338-40, CO 129/63, 476, Bowring to Labouchere, 28 February & 22 July 1857; *Friend of China*, 25 February 1857, p.62; PRO, CO 129/65, 409, Chan Tsze-tin to Chan Kwei-tsih (trans. Thomas Wade), 21 February 1857; Thomas Chisholm Anstey, *Crime and Government at Hongkong: A Letter to the Editor of the “Times” Newspaper; Offering reasons for an Enquiry, into the Disgraces, brought on the British Name in China, by the Present Hong Kong Government* (London, 1859), 68-9.

59 *Friend of China*, 25 February 1857, 62; PRO, CO 129/62, 344, Labouchere to Bowring, 9 June 1857.

60 PRO, CO 129/58, 341-2, 364-5, Bowring to Labouchere (with minute by Mercer), 13 October 1856.

61 The home government also agreed in early 1858 to bear the cost of European prisoners committed to the gaol in Hong Kong by the consular courts along the China coast. PRO, CO 129/58, 343-5, Labouchere to Bowring, 22 December 1856; PRO, CO 129/70, 182-3, Foreign Office to Colonial Office, 30 January 1858; PRO, CO 129/65, 73-4; PRO, CO 129/65, 73-4; Labouchere to Bowring, 22 February 1858; PRO, CO 129/67, 37, Minute by Merivale, March 1858.

62 Minute by Mercer, 13 October 1856, CO 129/58, 365; Bowring to Labouchere, 4 April 1857, CO 129/63, 411-12; Robinson to Newcastle, 13 April 1863, CO 129/96, 186-90.

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however, was to build more extensions to Victoria Gaol and, finally, a new prison. In 1858, legislation was passed to allow sentences of transportation to be converted into penal servitude.<sup>63</sup> In 1859, work began on extensions to Victoria Gaol and the Supreme Court abandoned the sentence of transportation.<sup>64</sup> In 1863, the government purchased a hulk for the accommodation of 280 long-sentence prisoners off Stonecutters' Island, a small island in Victoria Harbour acquired by the British with the Kowloon peninsula three years earlier.<sup>65</sup>

In the same year, Governor Robinson authorised the construction of a large new gaol on Stonecutters' Island. In the absence of transportation or other convenient secondary punishments there seemed to be no end to the number of long-term prisoners entering Hong Kong's gaols or to the problems of accommodating them. Hong Kong's daily average prison population more than doubled between 1858 and 1862 (from 266 to 558). On some days in the mid-1860s the prison population was higher than a thousand. The construction site on Stonecutters' Island became a scene of death and disaster. In 1863, as many as 80 of the prisoners kept on the hulk died, 41 from natural causes, one from suicide, and 38 by drowning, when the boat carrying them alongside the hulk capsized. In April 1864, a hundred convicts working on the new gaol overpowered their guards and escaped in boats to the Chinese mainland.<sup>66</sup> Continuing population increases and regional disorder, cheaper transport between Hong Kong and the mainland, and rising crime deepened the sense of encirclement among the small colonial community and increasingly persuaded officials that radical measures were needed to deal with the colony's "moving mass of crime and vagabondage, caused by its immediate proximity to millions of the worst population of the Chinese Empire."<sup>67</sup> It was not reasonable, Robinson's successor, Sir Richard MacDonnell argued, for a small colony to be required to house the criminal population of southern China, who were being drawn to Hong Kong for the purpose of plundering its wealth.

The criminal population does not consist of our own countrymen with all the claims, which the latter have on our sympathy and patience, nor even in nine cases out of ten does it consist of residents under the British flag, but simply of the refuse population of the opposite provinces, and piratical banditti, who

63 Ordinance No. 10 of 1858.

64 PRO, CO 129/73, 3-4, Caine to Lytton, 13 January 1859; *ibid.*, 32, Colonial Estimates for 1859, 14 January 1859.

65 PRO, CO 129/91, 185-8, Mercer to Newcastle, 14 February 1863.

66 PRO, CO 129/93, 139-40, Mercer to Newcastle, 27 July 1863; PRO, CO 129/98, 194-6, report by Quin on the escape of 100 convicts from the Convict Hulk, 22 April 1864; *Hongkong Daily Press*, 22 April 1864.

67 PRO, CO 129/120, 122, MacDonnell to Carnarvon, 14 January 1867.

hang about the town and harbor, kidnapping and robbing when a chance presents itself.<sup>68</sup>

MacDonnell abandoned the prison-building policy of his predecessor. The gaol on Stonecutters' Island, though nearing completion when MacDonnell assumed office in 1866, never opened its doors. In addition to stringent measures of control imposed on the Chinese population, which included reinforcing the curfew retained since the war of 1856-60, increasing police powers of search, and registration of the Chinese population, MacDonnell introduced a method of banishment which, in a crude and inexpensive way, sought to fulfill some of the old functions of transportation by relieving the colony's gaols of some of its long-sentence offenders and passing the burden of those offenders to another jurisdiction.

Under this policy, prisoners received a conditional pardon and early release from gaol, the condition being that they would be deported from the colony to the Chinese mainland and flogged and reimprisoned should they be found in the colony again. To aid a largely European and Indian police force, which had problems distinguishing one Chinese from another, a further condition required that prisoners granted the pardon should be branded "with a small broad arrow on the lobe of the left ear."<sup>69</sup> MacDonnell introduced this policy through a mixture of existing law, new legislation, and illegal measures. War legislation, still in force six years after the peace between Britain and China, gave governors extensive powers of deportation of "suspicious" or "dangerous" characters.<sup>70</sup> Section 15 of MacDonnell's "maintenance of order and cleanliness" ordinance (No. 8 of 1866) provided that persons deported from the colony and returning without permission might be branded and flogged. This provision was disallowed by the home government. Later in the year, however, MacDonnell, a barrister by training, got round the problem by introducing a policy in which prisoners still serving sentences could voluntarily petition for early conditional release.<sup>71</sup> Groups of prisoners granted early release under this scheme were escorted on to the steamer bound for Canton after having been "slowly paraded between the lines of the police in order that they might obtain a good view of their features, with a view to their arrest if ever caught here again."<sup>72</sup> Although still illegal, since MacDonnell had no powers to vary a sentence in this way, this policy remained in force, with the acquiescence of the Colonial Office, until some

68 Legislative Council proceedings, 3 October 1868, *Hongkong Government Gazette*, 17 October 1868, 397; PRO, CO 129/116, 108-9, MacDonnell to Carnarvon, 23 November 1866.

69 The brand was effected by means of tattooing with Indian ink, although it was invariably referred to as branding. PRO, CO 131/5, 261, Executive Council minutes, 13 November 1866.

70 Ordinances Nos. 2,6 and 9 of 1857, and No. 8 of 1858.

71 PRO, CO 131/5, 260-6, Executive Council minutes, 13 November 1866; , PRO, CO 129/116, 113-4, CO 129/120, 126-7, MacDonnell to Carnarvon, 23 November 1866 & 14 January 1867.

72 *China Mail*, 25 January 1867.

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officials exposed the illegality and abuses of the system during MacDonnell's absence from the colony in 1870.<sup>73</sup> The scheme was legalised, with Colonial Office sanction, in 1872, after a surge in reported crime persuaded the colonial government that it could not do without it.<sup>74</sup> It was, in a sense, the harsh counterpart for Chinese prisoners both of the ticket-of-leave system in England and of the gentler policy in Hong Kong of early release through conditional pardon for European felons implemented since the early 1860s.<sup>75</sup> Branding was not, MacDonnell assured the Colonial Office, seen as an "ignominious punishment" by the Chinese or as a barrier to obtaining employment. Such a misapprehension was "quite natural to any one viewing the question from an English point of view":

but I believe the fact to be that a criminal escaping to or deported to the mainland, even if the very slight mark be noticed which is put on his ear for purposes of identification afterwards by the Hongkong Police, incurs little disgrace thereby, as it merely proves that he has infringed the laws of the "Barbarians," and I understand that such persons, if willing to work, are not thereby prevented from finding employment in China.<sup>76</sup>

The exact number of prisoners subjected to this "optional" scheme is unclear, though the numbers probably ran into several hundreds.<sup>77</sup> According to

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73 The legal position is set out in the opinion by the Attorney General, Julian Pauncefote, PRO, CO 129/149, 152-6, 23 May 1870.

74 Ordinance No. 4 of 1872.

75 This informal policy, which began in the late 1850s, when the impossibility of transporting civilian European convicts was finally acknowledged, accounted for the release of numerous long-term European offenders on health and other compassionate grounds. In August 1861, the *Friend of China* revealed that one prisoner, Kingston, had had his term of imprisonment shortened to two years in return for his agreeing to "hang all the Chinese that are sentenced to death" during that two-year period. Remissions of sentences were facilitated by Ordinance No. 1 of 1860, which enabled the governor to grant conditional pardons, the condition being usually that the convict should leave the colony. *Friend of China*, 10 November 1860, p.70, 17 August 1861, p.553; PRO, CO 133/27, Gaol report, Hongkong Blue Book, 1870.

76 PRO, CO 129/121, 389, MacDonnell to Buckingham, 29 April 1867.

77 Referring, perhaps, to the period up to 1870, Governor Hennessy informed the Legislative Council in 1878 that "When a deported man came back, the Governor (Sir Richard MacDonnell) wrote - 'Mr Douglas knows what to do with this man,' and thereupon the man was flogged. It was to these illegal floggings Sir John Smale and Sir Julian Pauncefote called attention. 383 men had been so flogged." The scattered figures that have survived indicate that nearly 100 prisoners were deported under the scheme by the end of January 1867. In April 1867 the Colonial Office undermined the scheme by instructing that deportees who returned to the colony under the scheme should only be flogged if they committed a second offence. *Hongkong Government Gazette*, 23 November 1878, p. 571; PRO, CO 129/120, 124, MacDonnell to Carnarvon, 14 January 1867; PRO, CO 131/5, 289-90, Executive Council minutes, 21 January 1867; *Hongkong Daily Press*, 25 January 1867.

MacDonnell, the scheme was an enormous success. By the end of April 1867 he could claim that, in combination with the Supreme Court's flogging sentences, it had brought the gaol population down from 876 in October 1865 to under 500 in April 1867.<sup>78</sup> In restoring to their native province "the scum and crime of the worst criminal population of China" the scheme would, MacDonnell reported, "leave with the Vice Roy the future superintendence and charge of a large proportion of criminals whom it has hitherto been impossible to keep long out of Gaol here." Through this policy and his other measures of control, he was able, he claimed, to maintain a prison regime that was healthy, disciplined and free of the suicides and other forms of death so prevalent in the crowded conditions of the earlier gaol.<sup>79</sup> This claim has to be balanced by the fact that between 1867 and 1876 a total of 1,945 floggings of prisoners took place, some from judicial sentences, but the vast majority for offences committed within the gaol, most of which went unrecorded in the bland prison reports sent back to London.<sup>80</sup>

MacDonnell's branding and deportation policy was complemented by two other trends in justice, which had begun before his assumption of office. The first of these was the practice of allowing the Chinese authorities to try and punish Chinese offenders wanted for crimes in or around the British colony. This practice, which reflected a growing realisation that the colony's criminal justice system was incapable of dealing with the thousands of pirates and other offenders operating within its jurisdiction, was as old as the colony itself. As early as 1844, Davis handed over for summary execution by the Chinese authorities the notorious Chintae and several other pirates alleged to have robbed a British army treasure boat near Stanley, on the south side of Hong Kong island, on the ground "that there would be no sufficient evidence according to the technicalities of English law to condemn him on the opening of the Supreme Court."<sup>81</sup> By the late 1840s, the Royal Navy, its expeditions often accompanied by Chinese officials, had become an agency for capturing pirates and delivering

78 PRO, CO 129/121, 386, MacDonnell to Buckingham, 29 April 1867.

79 PRO, CO 129/116, 107-15, MacDonnell to Carnarvon, 23 November 1866.

80 Recorded deaths among prisoners did indeed begin to decline slowly from the high points of 92 in 1863 and 108 in 1865, although the deaths of as many as 79 prisoners in 1866, when MacDonnell made this claim, hardly seem to justify such complacency. Hennessy to Carnarvon, 23 and 30 August 1877, *Hongkong Government Gazette*, 22 September 1877, pp.420-21. PRO, CO 129/116, 114-5, MacDonnell to Carnarvon, 23 November 1866; PRO, CO 133, Gaol returns, Hong Kong Colonial Blue Books.

81 Reporting on the case in July 1844, the *Hongkong Register* noted that, in another case of a boatman and his wife accused of having thrown two other Chinese from their boat into the sea, the two bodies had been found but were so decomposed as to be unidentifiable: "As the law of England in such a case would not condemn the Prisoners, there being no clear proof of finding the corpus delicti, we presume it will be necessary to hand them also over to their countrymen." Davis to Aberdeen, 20 December 1844, CO 129/7, 302-3; *Hongkong Register*, 30 July 1844, p.131.

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them to the Chinese authorities. In the early 1850s, Chinese officials were reported to be waiting at some Supreme Court trials to apprehend defendants acquitted of piracy.<sup>82</sup> Governor Bowring's handing over of the 73 pirates in 1857, despite the clamour of disapproval, was a mere continuation of this trend. In the 1860s, the trend crystallised into a definite policy. A policy of handing over to the Chinese authorities prisoners taken in piracy cases not involving British subjects became well established, while undertakings were obtained from the Canton authorities that torture would not be used in their trials.<sup>83</sup> With the refusal of the Chinese authorities (in accordance with their treaty rights) to reciprocate this policy and hand over Chinese suspects wanted by the British authorities, several piracy cases involving European victims and even some serious crimes committed against Europeans within Hong Kong were dealt with by the courts in Canton.<sup>84</sup>

The second policy involved varying the sentences of the Supreme Court so that punishment relied less on imprisonment. A measure of 1865 allowed the Supreme Court to impose sentences of whipping in addition to sentences of imprisonment in cases of violent crime. Ordinance No. 12 of 1865, "for the further security of the residents of the colony from personal violence," imported

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82 See, for example, *R v Long-sheihong*, piracy, *China Mail*, 16 January 1851, p.10.

83 The practice of using the Royal Navy as policeman for the Chinese courts caused some concern to the Foreign Office in the late 1860s and led to a policy in the late 1860s of not pursuing pirate vessels into Chinese waters. MacDonnell attributed a decrease in reported piracies during these years to the beneficial effects of his harbour registration policy. More convincing reasons lie in the increase in anti-piracy and anti-smuggling patrols by the Chinese authorities and the likelihood (suggested in the Police Report for 1872) that Chinese victims of piracy, knowing that the Navy would not take action, did not bother to report piracies. PRO, CO 129/134, 564-6, Foreign Office to Colonial Office, 20 November 1868; PRO, CO 129/136, 198-203, MacDonnell to Granville, 20 February 1869; PRO, CO 129/143, 164-9, MacDonnell to Granville, 10 January 1870; Police Report for 1872, *Hongkong Government Gazette*, 8 February 1873, p.39.

84 One prominent case of this kind was the murder of W.W. Holworthy, the assistant superintendent of the military stores, on one of the secluded hill roads on Hong Kong island in 1869. Despite the offer of a \$500 reward and the repeated cross-examination of three suspects produced by Daniel Caldwell (MacDonnell's semi-official "head of secret police"), the evidence was insufficient to send the case to trial. Meanwhile, the real culprits were tracked down to their native village on the mainland: "two prisoners were subsequently convicted, and sentenced to decapitation in Canton by the Chinese authorities, as there existed no means, under any treaty, of claiming the rendition of Chinese guilty of any crime on British soil." In the case of the piracy of the British steamer *Spark* in the summer of 1874 and the murder of its English captain and others on board, nine men were apprehended, tried and decapitated in Canton. One other culprit, seized in Hong Kong, was tried, convicted and hanged in the colony. PRO, CO 129/152, 267-8, report by T. Fitz Roy Rice, 5 October 1871; PRO, CO 129/142, 233-4, Murrow to Granville, 26 November 1869; Police Report for 1869, *Hongkong Government Gazette*, 16 April 1870, p.186, and 14 November 1874, p.624; Norton-Kyshe, *History*, II, 236.

recent English legislation at the request of the colony's judges, and empowered the Supreme Court to add up to three public whippings of up to 50 lashes each to sentences of penal servitude imposed on offenders convicted of violent crimes.<sup>85</sup> The new penalty, which accounted for as many as a quarter of all Supreme Court sentences in 1865, when 48 prisoners shared between them 4,956 strokes of the lash, was considered by judges and officials alike to be a particularly effective deterrent against Chinese offenders.<sup>86</sup> Equally important, it enabled the court to apply shorter sentences of penal servitude to these prisoners. The extension of the same punishment in 1868 to kidnapping cases was also reported to have been effective in deterring crime.<sup>87</sup> A further trend, at least in the early 1860s, was a narrowing of the gap between the number of capital sentences handed down by the Supreme Court and actual hangings, which partly reflected a desire to deter the growing problem of murderous piracies against European ships, but probably also arose out of the consideration that every commuted death penalty now introduced an additional life-sentencer into the gaol. The number of actual hangings in the 1860s (66) was three times the number for the 1850s.<sup>88</sup>

MacDonnell's policies seemed set to become part of the fabric of Hong Kong's criminal justice system. As a result of branding, deportation, whipping and more intrusive policing, crime in the colony had declined by about 20 per cent between 1868 and 1869, he reported. "I am not aware," he boasted, "that the criminal statistics of any British colony have ever shewn so remarkable a decrease of crime in the same period."<sup>89</sup> In March 1870, the chief justice complimented the executive on the dramatic reduction in the criminal caseload of the Supreme Court.<sup>90</sup> Questions, however, about the abuses under the system,

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85 This was modelled on the "garotting act" of 1863, 26 and 27 Vict. Cap. 44. PRO, CO 129/97, 31-2, 51-62, Ball to Alexander, 27 October 1863, Smale to Alexander, 7 January 1864, Mercer to Newcastle, 12 January 1864, and Colonial Office to Mercer, 20 March 1864.

86 PRO, CO 129/107, 219, answers by F. Douglas to prison interrogatories sent out by the Colonial Office, 24 August 1865; *Hongkong Daily Press*, 18 October 1866.

87 Ordinance No. 3 of 1868; Police Report for 1869, *Hongkong Government Gazette*, 16 April 1870, p.186.

88 "In some years after I came to this colony," recalled Chief Justice Smale of the 1860s at the colony's first maiden criminal sessions in 1877, "the number of capital punishments here was half that of the number of executions in all England. I speak from comparing statistics; on one occasion I believe at the least eight criminals were executed at one time. Now capital punishments are very rare, not because the law is less stern, but because serious crime has so wonderfully decreased in this Colony – a Colony more exposed to receiving the worst characters than any Colony I know, owing to our proximity to China." Quoted in Norton-Kyshe, *History*, II, 257.

89 PRO, CO 129/144, 255-9, MacDonnell to Granville, 12 April 1870.

90 *China Mail*, 19 March 1870.

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and about its real effectiveness in dealing with serious crime, began to appear. In May 1870, a complaint from the police magistrate, Charles May, revealed that the Superintendent of Victoria Gaol, F. Douglas, was administering his own system of private justice by branding and deporting even minor offenders. May cited the case of Lee-achoon, who had been "voluntarily" branded and deported only a day before the expiry of his sentence of one month's imprisonment for being a suspicious character. Returnees under the scheme, May pointed out, were often flogged at Douglas's discretion without any reference to the magistrates. Chinese prisoners, he added, had been branded and deported merely for being unable to find security to remain in the colony.<sup>91</sup> Following an opinion from the attorney-general that the whole scheme was illegal, the colonial secretary gave orders that branding should be discontinued.<sup>92</sup> Within two years, however, after a surge in reported crime convinced officials of the need for the scheme, branding was legalised by Ordinance No. 4 of 1872.

Five years later, when the branding and deportation scheme had become well established, the controversial liberal governor, John Pope Hennessy, who had earlier managed Hong Kong's convicts in Labuan, raised serious questions about the effectiveness claimed for it by successive officials. The scheme, he pointed out, made nonsense of sentencing policies and prison discipline and simply created a permanently disfigured criminal class. He discovered that, out of 50 prisoners branded and deported in January 1877, 39 had served less than a third of their legal prison sentences. Some had been sentenced to eight years penal servitude by the chief justice; others had been committed to prison for a few months by the magistrates; yet all were being treated in the same way, whatever their behaviour in the gaol. The Hong Kong branding mark was, he pointed out, well known by employers in Canton and Macao, with the consequence that "the branded man is hunted away by all honest people; he cannot get employment; he is rendered for life ineligible as an Emigrant, and he is driven back again to prey on the property of this Colony, because he has no other means of getting a livelihood."<sup>93</sup> To demonstrate his point, Hennessy published a list of 29 deportees, many of them repeat offenders, found to have returned to

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91 PRO, CO 129/149, 146-50, May to Austin, 11 May 1870.

92 Deportation and the penalty of whipping on return were, however, continued under Ordinance no. 7 of 1870. PRO, CO 129/149, 151, 152-6, opinion by Pauncefote, 23 May 1870, and order by Austin to Douglas, 25 May 1870.

93 Hennessy's address to the Legislative Council, 17 September 1877, *Hongkong Government Gazette*, 22 September 1877, p.411-15.

Hong Kong in the first ten months of 1877, a period in which a total of 76 criminals had been deported.<sup>94</sup>

Hennessy, who also cast serious doubts on the crime statistics used to justify the branding and deportation policy, sought to introduce modern English penal policies into the colony. His reasonable interpretation of the statistical fact that, in a colony of only 140,000 inhabitants, the number of prisoners brought before the magistrates in 1876 amounted to 10,426, with 7,998 of them convicted and punished, was that the criminal justice system was simply not working. His enquiries revealed that nearly two thousand punishments of flogging had been imposed in the gaol during the decade from 1867 to 1876, in addition to various other illegal punishments, and that the trend was increasing.<sup>95</sup> He noted that a gaol committee reporting in 1877 had confirmed that any attempt to reform Chinese prisoners was "hopeless." This, he suggested, was a very grave state of affairs. "In every part of the British Empire," he informed a hostile Legislative Council,

Her Majesty's Government have laid down what they believe to be sound principles of prison discipline. Over and over again it has been said that that system should consist of a due mixture of severe punishment with some attempt at reformation; that the moment you assume one of these to be hopeless and act on that assumption, you deviate from a well established principle, and you are trying not a new, but a very old worn out experiment; an experiment tried years ago, but never with success; on the contrary, with the same lamentable result that you have seen here.<sup>96</sup>

94 Some had been deported more than once. Many had received a succession of sentences for minor crimes, such as being a rogue and vagabond, gambling, unlawful possession or larceny, some up to a total of eight offences in five or six years. The process of criminalisation referred to by Hennessy is illustrated by the case of the coolie Leung-ai, alias Mok-akwai, who received four successive sentences: (1) rogue and vagabond, 14 July 1873, three months hard labour and three months security; (2) unlawful possession, 25 May 1874, 14 days hard labour; (3) rogue and vagabond, 14 July 1875, 14 days simple imprisonment; (4) larceny from the person, October 1875, 12 months hard labour and 12 months security. Unable, it seems, to find the necessary security at the end of this last prison sentence, Leung was deported for five years on 21 October 1876 and then rearrested for returning to Hong Kong on 18 August 1877. Having been flogged four times in prison, he died in the gaol hospital of a lung infection on 28 September 1877. *Hongkong Government Gazette*, 24 November 1877, p.530.

95 The floggings were illegal because Tomlin was using the cat-o-nine-tails on the back, instead of the rattan cane on the breech, as prescribed in the legislation, and was imposing the punishment on minor offenders as well as felons. Other abuses included misreportings of the cubic air space allowed to prisoners, repeated, back-to-back three-day terms of bread and water diets, and floggings of Chinese prisoners when they were ill. Hennessy to Carnarvon, 15 October 1877, *Parliamentary Papers: China* 25, 477-8; Hennessy's address to the Legislative Council, 29 May 1879, *Hongkong Government Gazette*, 4 June 1879, p.293-5.

96 Hennessy's address to the Legislative Council, 17 September 1877; *ibid.*, 22 September 1877, pp.410-11.

Neither the colonial community nor, initially, the Colonial Office sympathised with this view.<sup>97</sup> Confronted by a Legislative Council that still believed flogging and banishment were the best means of dealing with Chinese criminals and a commitment to unlimited prison building would cripple the colony's finances, Hennessy persisted in his plans to reform the system along English principles. His reforms of the late 1870s reduced the incidence of flogging both as a judicial and as a prison punishment, and made it a private punishment rather than a public spectacle.<sup>98</sup> He replaced the scheme of short-term sentences followed by branding and deportation for repeat offenders with longer prison terms (secured by prosecutions in the Supreme Court) accompanied by the more sustained use of alternative deterrents, such as reduced diets, solitary (and even darkened) confinement and a limited use of the separate system, all of which were believed to be particularly onerous to Chinese prisoners, who had hitherto enjoyed each other's company 24 hours a day.<sup>99</sup> Resistance from the colonial community and from the Colonial Office to further heavy expenditure on prison accommodation prevented him from establishing a full separate system on English principles. Changing conditions also ruled out the productive and profitable system of prison labour he had achieved as governor of Labuan

97 The Colonial Office cautiously agreed to Hennessy's reforms but warned him that "the barbarity of Chinese punishments is notorious, and no flogging inflicted in Hong Kong is able to compare with them in severity. It is the knowledge of this fact, and the admitted danger of attracting criminals from the Province of Kwangtung by a system of comparative leniency, that has led to the establishment in Hong Kong of a penal system different from that adopted in other parts of Her Majesty's dominions. The colony under your government has been regarded hitherto in this office as a place per se to be dealt with on principles which might not be sanctioned elsewhere." Carnarvon to Hennessy, 3 January 1878, *British Parliamentary Papers: China* 25, 492-3.

98 Hennessy to Carnarvon, 13 July 1877, *British Parliamentary Papers: China* 25, 465-6; Ordinance No. 3 of 1881.

99 Correspondence relating to the dietary scale and structure of the Hongkong Prison and Legislative Council proceedings, 11 and 18 November 1878, *Hongkong Government Gazette*, 19 October & 16 & 23, November 1878, pp. 536-43, 559-71, 492-8. For a discussion of Hennessy's penal measures see Jeanette Bresnihan, "The Governorship of John Pope Hennessy, 1877-82: Reform and Foreign Policy," M.Phil. thesis, University of Hong Kong, 1990, Chapter 4; and Kate Lowe and Eugene McLaughlin, "'An El Dorado of Riches and a Place of Unpunished Crime': The Politics of Penal Reform in Hong Kong, 1877-1882," *Criminal Justice History* 14 (1993): 57-89. The debate about Hennessy's attempts to introduce the reformed English and European prison systems begs the question of how much the new policy of reforming the soul rather than punishing the body was really to the advantage of the prisoner, and it should be stressed that, despite Hennessy's wish to do away with the vicious use of flogging and to introduce the notion of reforming the prisoner, his arguments (possibly to accommodate the interests of hostile legislators) are couched in terms of finding a better, more concentrated form of deterrent against crime. For discussions of the reformed penal systems in England and Europe in terms of new and more efficient tools of class control, see Michel Foucault, *Discipline and Punish: The Birth of the Prison* (London, 1979), Michael Ignatieff, *A Just measure of Pain: The Penitentiary in the Industrial Revolution* (New York, 1978), and David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago, 1990).

and his proposed reintroduction of transportation to other colonies.<sup>100</sup> The change of course under Hennessy's governorship nevertheless confirmed imprisonment as a central part of the penal system, and not just an unsatisfactory alternative to flogging, deportation and transportation. The coincidental tripling of sentences of imprisonment imposed by the magistrates on minor offenders in the late 1870s, the first year of Hennessy's term as governor, seemed already to underline this trend.<sup>101</sup>

## Conclusion

The 576 transports from early colonial Hong Kong were a drop in the ocean compared to the tens of thousands of men and women transported out of Britain during its long period of transportation, or to the hundreds of thousands of labourers conveyed from the China coast in European ships to Australia and the Americas, often under coercion and sometimes to worse fates than the penal regimes of Singapore or Labuan. Out of a population that rose from less than 20,000 to about 75,000 during this 14-year transportation period, 576 was still a large number. It is one indication both of the extent of crime in the Hong Kong region and the extent of the jurisdiction that the colony's courts claimed over the waters and seas beyond the colony. For the early Hong Kong government, transportation to other colonies served both as an extreme deterrent to Chinese crime, as a means of ridding the region of some of its criminals, and as a cheap form of punishment. Other colonies, however, only accepted Hong Kong's transports so long as the value of their labour outweighed the dangers and problems they introduced into developing settlements that were often as insecure as early colonial Hong Kong. The progressive closing of destinations provoked instability and experiments that in some ways resembled the English experience but in others took on a peculiarly colonial complexion. The immediate response was to scramble to build more prison accommodation. The long-term trend was to domesticate the problem by punishing most offenders within the colony. For a brief period, however, in the late 1860s and 1870s, the colonial government seemed to have established a non-carceral surrogate for transportation in its

100 Hennessy was working on such a scheme in 1877. Legislative Council Proceedings, 19 November 1877, *Hongkong Government Gazette*, 23 February 1878, p.64; Hennessy to Carnarvon, 22 November 1877, *ibid.*, 495-6.

101 Sentences of imprisonment imposed by the magistrates jumped from 926 in 1876 to 2,775 in 1878. Although peremptory imprisonments also increased considerably, the most dramatic jump was in imprisonments in lieu of fines, which were not completely within the magistrates' control. This jump might be explained by the economic difficulties of prisoners, by an increase in the value of fines, or by changes in record keeping. The statistics do not supply the answers. The considerable use of solitary confinement and exposure in the stocks recorded in the magistracy cases publicised in the *Hongkong Government Gazette* in 1879 is also notable. PRO, CO 133, HongKong Colonial Blue Book.

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policy of branding and deporting Chinese prisoners, who were deemed to be too numerous, too unattached to the colony, and too appreciative of prison life to have any long-term claim on the colony's finances. The experiment failed, partly because it was unacceptable to an unusually liberal-minded and progressive governor, but mainly because of its ineffectiveness in deterring criminals.

The drying up of destinations across the seas for the large numbers of pirates and other offenders convicted by Hong Kong's courts helped persuade the colonial government to be less ambitious in its claims to jurisdiction over the seas and waters around the colony, and to rely increasingly on the Chinese authorities for punishing crime. Other factors, such as the manifest failures of justice in the colony's courts and the rehabilitation of Chinese power in the region, also influenced this trend, but the end of transportation undoubtedly accelerated it. After a decade or so of experimentation with a cheap, exotic form of banishment, based on the premise that most of the criminals in Hong Kong were not a part of the colony but an alien intrusion, the colonial government finally accepted the English solution of imprisonment as the natural successor to transportation, even if it was largely unable, for want of space, to implement the elaborate schemes of penal servitude and separate confinement favoured in England. This was not quite the end of the matter. Deportation and flogging continued to be an important part of the colony's penal system until well into the twentieth century, particularly during times of political emergency. Legislators continued to oppose expenditure on new prison facilities, particularly during times of financial stringency.<sup>102</sup> Deterrence, rather than reform, remained the primary aim of punishment. Nevertheless, the domestication of punishment in Hong Kong, the recognition that the colony had to accommodate its own long-term prisoners and not foist them on other jurisdictions, represented an important development in the colony's penal history. "There can," advised the Superintendent of Victoria Gaol, M.S. Tonnochy, in 1881, "only be one opinion as to the desirability of keeping our criminal population under lock and key, although the doing so may be a permanent expense to the ratepayers."<sup>103</sup>

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102 See, for example, the debate on the financial estimates for 1892, *Hongkong Hansard*, 4 December 1891, pp.78-80, in which unofficial members sponsored a motion to omit the vote for \$10,000 for a gaol extension. After the acting governor had set out the government's position on the need for an English-style prison regime, the motion was defeated by the permanent majority of civil servants on the council.

103 Gaol returns and report for 1880, *Hongkong Government Gazette*, 11 June 1881, p.463.