

The Paradox of Penal Colonization: Debates on Convict Transportation at the International Prison Congresses 1872-1895

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France's decision to introduce penal transportation at precisely the moment that Britain was winding it back is a striking and curious fact of history. While the Australian experiment was not considered a model for direct imitation, it did nonetheless provide a foundational reference point for France and indeed other European powers well after its demise, serving as a yardstick (whether positive or negative) for subsequent discussions about the utility of transportation as a method of controlling crime. The ultimate fate of the Australian experiment raised questions in later decades about the utility, sustainability and primary purpose of penal transportation. As this paper will examine, even if penologists saw penal transportation as serving some useful role in tackling crime, the experience of the British in Australia seemed to indicate the strictly limited practicability of the method in terms of controlling crime. Far from a self-sustaining system, penal colonization was premised on an inherent and insurmountable contradiction; namely, that the realization of the colonizing side of the project depended on the eradication of its penal aspect.

As the Australian model demonstrated, it was a fundamental truth that the two sides of the system of penal colonization could not be maintained over the long term. The success of the one necessarily implied the withering away of the other. From the point of view of historical analysis, the legacy of the Australian model of penal transportation provides a useful hook for us to identify international ways of thinking

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about penology and the management of crime in the second half of the nineteenth century. This was the period in which French transportation took off and when many other countries – in a desperate bid to solve the crime problem and also to secure colonial territories – contemplated following suit. Indeed, the practice of transportation in these years (particularly by the French) aroused considerable curiosity among foreign observers who, in the last few decades of the nineteenth century, looked with increasing skepticism at the penitentiary as an effective means of controlling crime.

Drawing primarily on the discussions about transportation that took place within the International Penal Congress (IPC), this paper provides a sketch of some of the expectations of and rationales for penal colonization held by its practitioners – past, actual and aspiring – in the final decades of the nineteenth century. It seeks to plot out some of the dynamics of the ideology of convict transportation among Western penologists and to offer a reflection on the prospects that they believed the technique to possess in a period marked by acute international rivalry and imperial conquest. The analysis in this paper focuses on the discussions about transportation at two of the eight conferences organized by the IPC held between 1872 and 1910. While the other five congresses (Rome in 1885, Saint Petersburg 1890, Brussels 1900, Budapest 1905 and Washington 1910) saw only very brief discussions, the Stockholm congress of 1878 and the Paris congress of 1895 produced the lengthiest exchanges about transportation.

Rather than attempting to provide a broad portrait of attitudes towards transportation, the focus here is squarely on the perceptions and arguments of delegates at these congresses (the jurists, social scientists and diplomats). French jurists and penologists were requested by their international counterparts – curious supporters and critical opponents in equal measure – to explain the value of the technique both as an effective long-term measure for dealing with crime, and as an instrument of colonization. Their justifications frequently centered on the obvious and immediate utility of purging the *métropole* of unwanted elements (in other words, transportation as a form of social defense) and on the regenerative potential of outdoor work in colonies (transportation as an effective agent of rehabilitation) – the rehabilitative function of transportation would have provided an effective counterargument to accusations that it was a continuation of the now-abolished slavery, simply in another guise.

By looking at international perspectives on the practice of convict transportation, this paper aims to contribute to the current of historical research into internationalism by starting to tease out the role played by the international community in formulating ideas and standardizing practices relating to the management of crime. It builds on the research produced in recent decades examining the degree of influence and cross-fertilization of penal practices among global powers throughout history, which encompasses the history of the use of convict labor for imperial expansion (traceable to ancient times) and which seeks to move away from Eurocentric approaches to the study of regimes of punishment and towards an “integrated global perspective that no longer privileges the development of Western penal history, whether as a humane model or the poisoned taproot of total bio-power.”¹ Although the cross-pollination of penal practices has long been acknowledged, it is only in recent years that scholars have begun to critically

¹ Christian G. De Vito and Alex Lichtenstein, “Writing a Global History of Convict Labour,” *International Review of Social History* 58, no. 2 (July 2013): 317.

interrogate the international institutions that emerged in the nineteenth century, among them the group that organized the gatherings of the IPC.²

Of course the demise of convict transportation to Australia did not signal the definitive end of the practice elsewhere in the British Empire. In the preface to his serialized novel *For the Term of His Natural Life*, published in the early 1870s, novelist Marcus Clarke drew his readers' attentions to this point in order to highlight the ongoing relevance of his ripping yarn. Although Britain had abandoned transporting criminals from England, Clarke wrote, readers needed to bear in mind that it still maintained the system in other areas of the empire, including the Andaman Islands. "Port Blair is a Port Arthur filled with Indian-men instead of Englishmen," he observed. Clarke likewise alluded to France's adoption of the practice. In a very brief reference to New Caledonia, he expressed little optimism about the fate of France's penal experiment in the South Pacific, predicting that it would, "in the natural course of things, repeat in its annals the history of Macquarie Harbour and of Norfolk Island."³ In Clarke's assessment, it was imperative to keep alive the memory of Britain's failed experiment in Australia so as to put paid to any future suggestion that the practice be readopted. In his view, the experience of convict transportation in Australia demonstrated the inherent flaws of the practice and proved that it could never be anything other than a failure.

Many penologists at the end of the nineteenth century shared Clarke's critical view of convict transportation, pointing out its inadequacy from a humanitarian point of view and questioning its efficacy. Debates about transportation in this period frequently centered on whether it possessed greater humanitarian virtues than the prison, whose efficacy was also being increasingly questioned.⁴ Opponents saw transportation as cruel, harsh and out of step with rational methods of treating criminality.⁵ The most prominent critic of transportation in France was probably Charles Lucas, long-time campaigner for the abolition of the death penalty and the *éminence grise* of French penal reform in the nineteenth century. In the late 1870s Lucas argued that Napoleon III's decision to introduce transportation a quarter of a century earlier was motivated by a basic desire to be rid of criminals, even though the

² These connections between transportation practices were on greater and smaller scales. For instance, one of the factors weighing in favor of Captain Arthur Philip to command the First Fleet was that he had experience in transporting convicts to Brazil while employed by the Portuguese. Emma Christopher and Hamish Maxwell-Stewart, "Convict Transportation in Global Context," in *The Cambridge History of Australia*, Alison Bashford and Stuart McIntyre, eds (Melbourne, 2013), 84. Further, Jeremy Bentham's idea for the panopticon prison was derived from his brother Samuel's experiences working on Prince Potemkin's estate in Russia. Ian R. Christie, *The Benthams in Russia, 1780-1791* (Oxford, 1993), 177. The current research project "Carceral Archipelago: Transnational Circulations in Global Perspective, 1415-1960," led by Clare Anderson at the University of Leicester, promises to reveal even more of these global threads. See: "The Carceral Archipelago: Transnational Circulations in Global Perspective, 1415-1960," *University of Leicester: School of History* (accessed 26 February 2015), www2.le.ac.uk/departments/history/research/grants/CArchipelago.

³ Marcus Clarke, "Dedication," *For the Term of His Natural Life* (London, 1899), iv.

⁴ For an overview of the history of prison reform in this period, with a focus on Britain, see David Garland, *Punishment and Welfare: A History of Penal Strategies* (Aldershot, 1985).

⁵ The contours of this debate between supporters and opponents of transportation have been well established over the past few decades. See Gordon Wright, *Between the Guillotine and Liberty: Two Centuries of the Crime Problem in France* (Oxford, 1983); Robert A. Nye, *Crime, Madness and Politics in Modern France* (Princeton, 1984); Stephen Toth, "Colonisation or incarceration?: The changing role of the French penal colony in fin-de-siècle New Caledonia," *The Journal of Pacific History* 34, no. 1 (1999): 59-74; and Stephen Toth, *Beyond Papillon: The French Overseas Penal Colonies, 1854-1952* (Lincoln and London, 2006).

experiment in Australia had provided evidence of the system's failure.⁶ Lucas maintained that transportation was "an anachronism which society should reject for being incompatible with the spiritualist principle which characterizes today the mission of human justice and the moral needs of its efficacy for the preservation of the social order."⁷

But at the same time there was also considerable support for the practice of transportation. The appeal lay partly in the way it managed to appease both those who were for and against capital punishment – by banishing offenders to the colonies, it ensured public safety, yet at the same time the emphasis on rehabilitation in transportation also enabled offenders to earn back their freedom, even though it denied them the right of return to the *métropole*. Transportation's apparent potential to reconcile supporters and opponents of capital punishment made it an attractive option to some countries, especially Italy and, to a lesser extent, Belgium.⁸ Transportation also appealed to those who questioned the utility of the conventional penitentiary as a method of correction and deterrence amid ever-increasing rates of recidivism.⁹

The inaugural meeting of the IPC took place in London in 1872 on the initiative of the American penal reformer and clergyman Enoch Wines. Like other congresses established in the second half of the nineteenth century, including the International Congress of Criminal Anthropology (set up in 1885) and the International Association of Criminal Law (set up in 1889), the founding of the IPC enabled practitioners of particular disciplines of knowledge to lay claim to areas of expertise. While there had been international meetings of individuals concerned about penal matters earlier in the nineteenth century, these later assemblies were distinct in being less dominated by private philanthropists and more by government representatives.¹⁰ What was special about the IPC was its close ties to government – since it included government representatives not just penal reformers, it had a semi-official status. The fuzziness of the line distinguishing social scientist and diplomat potentially made "participation in the congress through the provision of information and statistics ... as important as political participation in more formal diplomatic settings."¹¹

The congresses attracted delegates from a large number of countries – around twenty of them, including Belgium, Switzerland, Sweden, Italy, France, Spain, Germany, the Netherlands, Britain, Russia, the United States, as well as (initially, at least) China, India, the Gambia, Japan and Turkey.¹² It is striking that representatives from non-Western polities were included at these gatherings, though this inclusion

⁶ Charles Lucas, *La transportation pénale ou la politique du débarras: Rapport verbal de la notice publiée par le ministère de la marine sur la Guyane française et la Nouvelle Calédonie* (Orléans, 1878), 8-9.

⁷ Charles Lucas, *La transportation pénale*, 12.

⁸ Nicolas Derasse, "La récidive dans les Congrès pénitentiaires internationaux du XIXe siècle," in *Les Récidivistes*, Jean-Pierre Allinne and Mathieu Soula, eds (Rennes, 2010), 110.

⁹ For more on the history of recidivism, see Bernard Schnapper, "La récidive, une obsession créatrice au XIXe siècle," in *Voies nouvelles en histoire du droit: La justice, la famille, la répression pénale XVIe-XIXe siècles* (Paris, 1991), 313-51; and Allinne and Soula, *Les récidivistes*.

¹⁰ For this earlier phase of penal reform, see, for instance, Chris Leonards and Nico Randerad, "Transnational Experts in Social Reform, 1840-1880," *International Review of Social History* 55, no. 2 (August 2010): 215-39.

¹¹ Nir Shafir, "The International Congress as Scientific and Diplomatic Technology: Global Intellectual Exchange in the International Prison Congress, 1860-90," *Journal of Global History* 9, no. 1 (March 2014): 84.

¹² Shafir, "The International Congress as Scientific and Diplomatic Technology," 79-80.

proved short-lived. (To all intents and purposes, Russia appears to have been more or less accepted as a de facto European state.) As Nir Shafir has recently argued, participation by colonial delegates alongside Western ones threatened to undermine the basic principle of empire which rested on a distinction between colony and *métropole*. Similarly, the collection of data concerning the administration of penal institutions in non-European polities introduced a dangerous implication of comparability between colony and *métropole*. As Shafir puts it, “Claiming comparability was in effect [tantamount to] claiming sovereignty and ultimately this conflict was resolved through the exclusion of non-Western polities.”¹³

The discussions and resolutions of the IPC were recorded and published along with reports, statistics and diagrams, thus providing invaluable insight into ideas and attitudes concerning crime in this period. It is possible to discern something of the tenor and atmosphere at the congresses by looking at the types of auxiliary social events and excursions that took place as part of the formal congress schedule. Despite the packed timetabling of sessions, sufficient time was always made available for elegant banquets and soirées – events said to provide the distinguished gentlemen with invaluable opportunities for the exchange of ideas and opinions outside the official program.¹⁴ With the exception perhaps of the rigorous timetabling, the conditions of these meetings could not have been further removed from the world of the incarcerated subjects who constituted the focus of their discussions. The clear sophistication of the delegates’ socializing reinforced their claims to civility.

There was an assumption undergirding the IPC that the most effective methods of penal discipline would emerge from comparing the systems of different places. The world was envisaged as a laboratory governed by the laws of science. In the words of two French delegates, “Science is a country that has no borders.”¹⁵ Despite this, however, their aims were by no means universalist. On occasion the international delegates’ debates revealed strong differences of opinion, which could produce tense exchanges. The topic of penal transportation was a case in point. Representatives of countries that employed the practice expressed displeasure at being unfairly targeted for using what their antagonists considered to be an abusive, archaic and destructive technique. In such instances delegates would be politely reminded of the central importance of intellectual civility, which essentially signified that the purpose was to compare individual polities’ penal systems in order to guide the formation of a rational penology, not to influence national policy. Political disagreement was not to be encouraged. At the IPC meeting held in Stockholm in 1878, Tancredi Canonico, an Italian jurist and statesman, offered a neat summary of the overarching ethos of the congress, declaring that their objective was “to raise ourselves above the questions which relate to one nation or another. We are here to resolve questions of principle.”¹⁶ In short, it was a governing principle of the congress that the intellectual sovereignty of a particular polity could not be violated and differences of practice were given a wide berth. In this way, the professed internationalism of these gatherings was simply an extension of national priorities.

¹³ Shafir, “The International Congress as Scientific and Diplomatic Technology,” 84, 91.

¹⁴ “Fêtes et Banquets,” *Actes du Congrès Pénitentiaire International de Rome, November 1885*, vol. 3 (Rome, 1888), 529.

¹⁵ Fernand Desportes and Léon Lefébure, *La science pénitentiaire au Congrès de Stockholm* (Paris, 1880), 12.

¹⁶ Tancredi Canonico, “Procès-Verbaux des Séances de la Première Section,” *Congrès Pénitentiaire International de Stockholm, 15-26 Août 1878*, vol. 1 (Stockholm, 1879), 200.

At the 1878 Stockholm congress, support for transportation was particularly strong among French delegates, but there was also support from Russian, Finnish, Spanish and Portuguese representatives – these advocates of transportation saw it as the surest means of ridding the *métropole* of recalcitrant offenders (that is, recidivists) and serious criminals, while at the same time providing the transportee with skills that would enable them to live a productive life, albeit banished in the colonies. Following the Stockholm congress interest in the issue apparently faded somewhat, but was reignited at the Paris congress in 1895; the result, one might assume, of the intensity of international rivalry for colonial territories, but also the fact that it was France (one of the few extant practitioners of transportation) that played host to that congress. It is important to acknowledge that penal transportation was just one of many issues tackled at the congresses, and by no means the most prominent. Delegates also discussed such issues as whether isolation or socialization was more effective in incarceration; whether criminality was treatable; whether prison labor should be remunerated; the extent to which crime was preventable through education and welfare; and support for prisoners post-release.

Yet although transportation was not the pre-eminent topic of debate within these fora, it was nonetheless a strategy that generated considerable interest among those in attendance. With levels of faith waning in the penitentiary as an effective instrument for managing crime, new techniques needed to be found. Because France was an active practitioner of convict transportation in the period, penologists from other countries called on their French colleagues to justify the utility of the practice. Although solicitations were not always made in a hostile way, there was nevertheless an undercurrent of skepticism among many delegates towards the technique. That there was some level of implicit resistance to penal transportation (or, at least, suspicion of it) among the organizers of the congresses is evident in the very language used to phrase the question on transportation to which delegates of the “First Section” (which focused on matters concerning penal law) were invited to respond, posed as follows: “Can transportation, in its broadest sense, be admitted within a rational system of punishment, and, if so, what specific role would it be called on to fill?”¹⁷

Before turning to a close analysis of these debates about convict transportation at the IPC, it is important to provide some outline of the longer history of the practice and the reasons for its adoption in the mid-nineteenth century. France’s flirtation with convict transportation can be traced back at least as far as the early eighteenth century, when Louis XV sent offenders to Louisiana; this brief experiment ended as a result of pressure from the *parlements* and resistance from the free colonists.¹⁸ Later, during the Revolutionary period and the early years of the Napoleonic Empire, French legislators held on to the idea of transporting repeat offenders beyond the borders of the hexagon but struggled to identify an appropriate site. Although transportation was written into the Penal Code of 1791 and despite sustained levels of enthusiasm among legislators for transporting criminals, the practice was only used on counter-revolutionaries, who were deported to Cayenne.¹⁹ The 1810 Penal Code removed

¹⁷ *Ve Congrès Pénitentiaire International (Paris - 1895)* (Melun, 1896), vol. 3: *Rapports de la Première Section*, 101. (The original French reads: “La transportation, dans le sens le plus large, peut-elle être admise dans un système rationnel de répression, et, dans l’affirmative, quel rôle particulier serait-elle appelée à remplir?”)

¹⁸ Wright, *Between the Guillotine and Liberty*, 31.

¹⁹ The Penal Code of 1791 sanctioned deportation for life for anyone who committed the same offence twice, but the decision as to where these offenders would be sent was left unresolved. Suggestions ranged from Corsica to isolated regions of coastal Africa, to Madagascar. Wright, *Between the Guillotine and Liberty*, 44-45. During the Convention, the idea of transporting offenders was again

transportation from the range of punishments for common criminals, retaining deportation only as a measure for political prisoners.²⁰ Under the Bourbon Restoration and the July Monarchy, the penitentiary (on a cellular model) predominated as the preferred method for fighting crime, with debates focused on the relative benefits of the Auburn and Pennsylvania models.²¹

The 1848 revolution (which saw mass convictions of insurgents and the end of slavery) brought transportation back onto the agenda of French authorities.²² The insurgency ended with the conviction of 12,000 individuals; those deemed to be the most dangerous were sent to Algeria. But this was only to be a temporary salve – Algeria (like Corsica) had consistently been ruled out as a permanent holding pen for criminals or political prisoners on account of its being too close to France.²³ In the following years, the momentum to transport continued to build and in 1850 the French parliament ordered that political offenders be detained outside continental France. Various sites were suggested, some of them, like Madagascar, already familiar, but others more novel: an area in the West Indies, Senegal, and even the remote Kerguelen Islands in the Antarctic.²⁴ The urgency to locate an appropriate site was heightened following Louis-Napoleon's coup, which created tens of thousands more political prisoners, a large fraction of whom were deported to Algeria.²⁵ At the same time, added pressure was placed on the issue by Louis-Napoleon's recommendation of the closure of the *bagnes* in Toulon, Brest and Rochefort and the transfer of the 6,000 prisoners held in them elsewhere in the empire to fulfill the needs of colonization.²⁶

In 1854 French criminal law inaugurated the establishment of penal colonies to which would be sent those sentenced to hard labor. Legislators were quite aware of the importance of selecting an appropriate site for a penal colony. Along with climate and the quality of the soil, the other criterion crucial for a successful penal colony was understood to be what Peter Redfield has neatly termed “an algorithm of distance” – the colony had to be “not too close, but also not too far” from the colony's parent state.²⁷ From France's point of view both French Guiana and New Caledonia were considered safely distant, ensuring the quarantining of dangerous elements. In the case of New Caledonia, however, the Pacific island's extreme distance from France would make administration of the colony a constant challenge. It was with the express intention of setting up a penal colony that France had taken possession of New Caledonia in 1853 (though it was not until 1863 that New Caledonia was officially

supported and – anticipating the landmark legislation of 1885 – the definition of “recidivist” was broadened to include habitual vagrants, thereby extending the pool of offenders theoretically at risk of transportation. J. Orgeas, *Contribution à l'étude du non-cosmopolitisme de l'homme: La Colonisation de la Guyane par la transportation: Etude historique et démographique* (Paris, 1883), 11.

²⁰ Isabelle Merle, *Expériences coloniales: La Nouvelle-Calédonie (1853-1920)* (Paris, 1995), 40.

²¹ Patricia O'Brien, *The Promise of Punishment: Prisons in Nineteenth-Century France* (Princeton, 1982); Jacques-Guy Petit, *Ces peines obscures: La prison pénale en France 1780-1875* (Paris, 1990).

²² Wright, *Between the Guillotine and Liberty*, 130.

²³ Wright, *Between the Guillotine and Liberty*, 92.

²⁴ For a brief time at least, it was the South Pacific Marquesas Islands that were settled upon, with a small number of offenders transported there in 1850. Wright, *Between the Guillotine and Liberty*, 92. But in the end the distance and costs of using the Marquesas proved too great and the scheme was abandoned. Orgeas, *Contribution à l'étude du non-cosmopolitisme de l'homme*, 12.

²⁵ Peter Redfield, *Space in the Tropics: From Convicts to Rockets in French Guiana* (Berkeley, 2000), 62.

²⁶ Wright, *Between the Guillotine and Liberty*, 92.

²⁷ Redfield, *Space in the Tropics*, 59.

nominated as a site for penal transportation, with the first shipload of convicts arriving the following year).

What proved primarily compelling in persuading French parliament to adopt the legislation in 1854 (and there was very little resistance to the bill) was not so much a faith in transportation's capacity to rehabilitate, but rather in its ability to deter others from committing similar offences.²⁸ The disease-ridden conditions of French Guiana offered a perfect advertisement for the validity of this argument, less so the idyllic conditions of New Caledonia which seemed to promise an easy life.²⁹ Yet because of the high rate of mortality in French Guiana it was to New Caledonia that all French transportees were sent from 1867 to 1887. The presence of Indigenous peoples in New Caledonia was acknowledged but dismissed.³⁰ It is estimated that over the course of the practice (from 1854 to 1938), 67,000 individuals were sent to Guiana – 52,000 deportees and 15,000 *relégués* (recidivists) – and about 30,000 sent to New Caledonia – 20,000 deportees and 10,000 *relégués*.³¹ The draconian 1885 law on the relegation of recidivists resulted in the transportation of more than 22,000 individuals between 1887 and 1938; 4,270 of them to New Caledonia between 1887 and 1897, and 17,375 to French Guiana between 1887 and 1938.³²

Having long nurtured the idea of transporting convicts to French territories outside of the hexagon, France finally put the idea into systematic practice from the mid-nineteenth century onwards. The ambitions of the French to establish a penal colony in the South Pacific, inspired by the Australian example, are now well known.³³ It is important, however, to distinguish between inspiration and implementation. Indeed, while Britain's experiment in Australia provided a point of fascination for the French, what the British had attempted did not have any actual bearing on the nuts-and-bolts *modus operandi* of France's own penal colonies.³⁴ While it may have had some basic similarities to the British system – particularly in terms of isolation, the role of intimidation and commitment to the regenerative potential of work – French transportation practice was significantly different. It bore the hallmarks of mid-nineteenth century French penological ideas about rational long-lasting punishment – what the jurist Fernand Desportes referred to as “useful

²⁸ Merle, *Expériences coloniales*, 40.

²⁹ Indeed, in 1897 transportation to the South Pacific was “quietly suspended” not because conditions were too harsh (nor, indeed, because the free colonists rejected it, as had been the case in Australia), but because its conditions were held to be too desirable – its beaches said to surpass in beauty those of the Mediterranean. Wright, *Between the Guillotine and Liberty*, 148.

³⁰ During the national parliamentary inquiry, known as the Haussenville Commission, of the early 1870s, when it was pointed out that New Caledonia already possessed a certain population at the time of French possession, Léon Martin Fourichon replied that they could not supply useful labor, and were simply engaged in “cultural work.” Admiral Fourichon, *Enquête parlementaire sur le régime des établissements pénitentiaires, vol. 1: Procès-verbaux de la commission (compte-rendu des dépositions des témoins)* (Versailles, 1873), 270-71.

³¹ Vito and Lichtenstein, “Writing a Global History of Convict Labour,” 304.

³² Jean-Lucien Sanchez, “La relégation des récidivistes: enjeux politiques et pénales,” in *Les Récidivistes*, Jean-Pierre Allinne and Mathieu Soula, eds (Rennes, 2010), 155.

³³ Colin Forster, *France and Botany Bay: The Lure of a Penal Colony* (Melbourne, 1996); and Colin Forster, “French Penal Presence in New Caledonia,” *The Journal of Pacific History* 26, no. 2 (1991): 135-50. See also Jacqueline Dutton, “Imperial Eyes on the Pacific Prize: French Visions of a Perfect Penal Colony in the South Seas,” in *Discovery and Empire: The French in the South Seas*, John West-Sooby, ed. (Newark, 2012), 245-82.

³⁴ Miranda Spieler, *Empire and Underworld: Captivity in French Guiana* (Cambridge, Mass., 2012), 113. No doubt because of its longer duration and more extreme conditions, the penal colony in French Guiana has and continues to attract greater scholarly attention than New Caledonia. Among the most recent work is Jean-Lucien Sanchez, *A perpétuité: relégués au bagne de Guyane* (Paris, 2013).

suffering”³⁵ – and was undergirded by an understanding of crime as deriving from an unhealthy environment, and ideas about the importance of quarantine to prevent the spread of criminality.³⁶ Such a position served to validate the argument that, far from constituting a throwback to barbaric techniques of old, convict transportation represented a shift towards rational, civilized modes of managing crime. From a different perspective, some jurists argued that the natural aversion felt by honest French towards migration, in contrast to the British, served as evidence of how effectively the threat of transportation operated as a deterrent against crime in the *métropole* itself. This disinclination then became a further argument supporting the need for France to adopt convict transportation as a means of securing and developing colonial possessions.³⁷ In their response to the National Parliamentary Inquiry’s questionnaire distributed in the early 1870s, jurists from Amiens argued that “the idea of a distant journey has nothing terrifying in it for the English mind; but it is this distancing, on the contrary, antipathetic to the French character, which in France gives this punishment its intimidating aspect.”³⁸

The question of whether or not transportation acted as a deterrent was an ongoing controversy throughout the lifespan of France’s penal project in New Caledonia. The argument was consistently advanced that the system of assigning convicts to work for free settlers and, later, of rewarding regenerated convicts with plots of land amounted to instituting a preference for the most immoral types and rewarded those who felt no attachment to their homeland, who were unmarried and who had no family ties.³⁹ The system of allocating plots of land to transported convicts led some to indignantly proclaim that crime had become a lucrative way of acquiring property.⁴⁰ Supporters of the system replied, however, that not only was land ownership a reward for good behavior, it was also a vehicle for ensuring ongoing moral rectitude and for fostering an attachment to place. The technique aimed to satisfy the central objectives of French penal colonization: the rehabilitative punishment of the individual, the acquisition of profitable territory and the unidirectional flow of miscreants from France to the colonies. Economic prosperity and moral growth were presented as two sides of the same coin. If a lack of attachment to place constituted a common profile for criminals, the challenge of penal transportation was to encourage them to develop a sense of the importance of setting down roots, but, crucially, only in new lands. Ensuring that transportees remained in the colonies at the end of their sentence was a critical part of the colonizing project. As Jules

³⁵ Fernand Desportes, “Procès-Verbaux des Séances de la Première Section,” *Congrès Pénitentiaire International de Stockholm, 15-26 Août 1878*, vol. 1 (Stockholm, 1879), 187.

³⁶ The environmental cause of crime was the central defining aspect of French criminological thought and was opposed to the so-called Italian biological determinist position. See Christian Debuyst, “L’école française dite ‘du milieu social’,” in *Histoire des Savoirs sur le Crime et la Peine*, vol. 2, Christian Debuyst, Françoise Digneffe and Alvaro P. Pires, eds (Bruxelles, 2008), 343-402. For the broader cultural contours of this debate, see Daniel Pick, *Faces of Degeneration: A European Disorder, 1848-1918* (Cambridge, 1989), esp. 176-221.

³⁷ On this pattern of a lack of enthusiasm for migration by the French, see Merle, *Expériences coloniales*, 59-61.

³⁸ “Réponse de la Cour d’appel d’Amiens,” in *Enquête parlementaire sur le régime des établissements pénitentiaires, vol. 4: Rapports des cours d’appels de France* (Paris, 1873), 299.

³⁹ Martino Beltrani-Scalia, “Procès-Verbaux des Séances de la Première Section,” in *Congrès Pénitentiaire International de Stockholm, 15-26 Août 1878*, vol. 1 (Stockholm, 1879), 182; Merle, *Expériences coloniales*, 53-54.

⁴⁰ J. Leveillé, *Ve Congrès Pénitentiaire International (Paris - 1895)*, vol. 2 (Melun, 1897), 113. This system was significantly overhauled in New Caledonia in the 1890s: convicts were no longer rewarded with land concessions before they had served out their complete sentence. Toth, *Beyond Papillon*, 116.

Leveillé, a Parisian professor of criminal law and politician put it: “colonization is not made with travelers.... On the contrary, the link must be broken, the cable that can reattach them to the mother country. They have to be sent faraway and be told: You will stay there, try now to make as good a life for yourself as you can.”⁴¹

The logic of facilitating new beginnings and reintegrating released prisoners was used to legitimate the perceived need to transport convicts to new colonial possessions, that is, ones that had not already been settled or developed. Supporters of penal colonization alleged that transportation to a colonial environment enabled convicts to be released and reabsorbed into society more readily. By being removed from the unfeeling and judgmental society of their homeland, they would be spared the taint of having been convicted, and would not suffer “the contempt of honest men.”⁴² French delegate Hubert Michaux, a highly-ranked official of the Colonial Ministry, argued that:

The choice of where to send them is important: if one takes an old colony, there are a host of difficulties. The land has an owner, society is organized and in that society one will find the same susceptibilities, the same repugnance, the same prejudices against the convicted offenders as in the *métropole*.⁴³

Freed convicts, Michaux maintained, would more easily be reclassified in a newly formed colony because the need of that society (that is, labor) “constrains prejudices to silence”.⁴⁴ Alongside transportation, however, successful colonization and effective absorption of released convicts relied on a certain level of development of society: “how will the freed convict manage to reclassify themselves in society if society does not exist around him?”⁴⁵

For some observers, including Charles Lucas, France’s decision to transport its criminals to far-flung colonies signaled a regressive step, a cruel and barbaric technique which had no place in modern systems of justice. The fact that France’s adoption of transportation coincided with Britain’s abandonment of the practice became a means of reinforcing this point. Indeed Australia’s rejection of transportation in the 1840s was seen as evidence that the system was “archaic, [the] symbol of another century.”⁴⁶ In response, advocates of transportation argued that it was in fact cellular imprisonment that was more harmful and less likely to rehabilitate, since it deprived inmates of fresh air and appropriate, regenerative labor.⁴⁷ They claimed that the experience in Australia amounted to an imperfect, trial

⁴¹ Leveillé, *Ve Congrès Pénitentiaire International (Paris - 1895)*, vol. 2, 111.

⁴² Fernand Desportes, “Procès-Verbaux des Séances de la Première Section,” in *Congrès Pénitentiaire International de Stockholm, 15-26 Août 1878*, vol. 1 (Stockholm, 1879), 188.

⁴³ Hubert Michaux, *Enquête parlementaire sur le régime des établissements pénitentiaires, vol. 1: Procès-verbaux de la commission (compte-rendu des dépositions des témoins)* (Versailles, 1873), 151.

⁴⁴ Hubert Michaux, quoted by Viscount d’Haussonville, *Enquête parlementaire sur le régime des établissements pénitentiaires, vol. 6: Rapport de M. le Vicomte d’Haussonville*, 431.

⁴⁵ Michaux, quoted by d’Haussonville, *Enquête parlementaire sur le régime...*, vol. 6, 433.

⁴⁶ Merle, *Expériences coloniales*, 48. Australian settlers’ refusal to be further exposed to the detritus of the mother country was a particularly common and persistent explanation given by contemporaries for the demise of transportation from Britain. Schnapper, “La récidive, une obsession créatrice au XIXe siècle,” 339. Other explanations include its perceived outmoded brutality, which members of the British establishment worried reflected badly on their own claims to moral integrity. Lawrence Goldman, *Science, Reform, and Politics in Victorian Britain: The Social Science Association 1857-1886* (Cambridge, 2002), 150.

⁴⁷ For an extended discussion of this, see Gordon Wright, *Between the Guillotine and Liberty*, 129-52.

run of the system. France would learn from the mistakes made by the British and, through its rational, centralized system, would transcend them. This argument was deployed by Michaux, at the International Prison Congress of 1878. Michaux declared that “we have arrived in second place, we can therefore do better.”⁴⁸ Advocates of the French system of transportation maintained that it was the product of a perfected method, one which laid greater emphasis on the rehabilitation of the offender and which, most importantly, was centrally administered according to a pre-conceived, rational plan. Centralizing French rationalism was explicitly contrasted with English trial-and-error amateurism; the British had failed, they argued, not because transportation itself was flawed but because their system of governance in the penal colonies of Australia had been developed in too *ad hoc* a fashion.⁴⁹

In the eyes of supporters of transportation, the free Australian population’s rejection of the convict presence was a demonstration of the level of civilization their society had attained and thus, in turn, served to validate and vindicate the project of penal colonization that France itself was engaged in. It was certainly the professed opinion of some penologists towards the end of the nineteenth century that a colony’s rejection of miscreants was a sign of its civilized character and that the process of the initial phases of colonization was complete. Moreover, in a neat (and self-serving) twist of logic, some held it to be the sign of just how effective transportation was in regenerating convicts themselves. Indeed, this was the view put forward by Michaux at the 1878 Stockholm congress, who argued that the repugnance to transportation shown by the descendants of transported convicts was itself a sign of the system’s regenerative capacity. Responding to other delegates’ arguments that transportation could not work because colonial populations rejected it, Michaux declared that “since the sons of the transported people themselves put so much ardor into getting rid of that which might remind them of their origins,” this “offer[ed] proof of the moralizing efficacy of transportation.”⁵⁰

The experience of the abolition of transportation to the Australian colonies was cited by some penologists as evidence of the generally flawed nature of penal colonization. Finnish jurist and statesman Leo Mechelin warned his international colleagues in 1878 that transporting criminals “only succeeds in poisoning the free populations of the colonies,” and proposed a resolution vehemently rejecting transportation on the grounds that it hindered the “civilizing influence that the mother country ought to exert on the distant countries that are under its control.”⁵¹ Other penologists expressed similar misgivings. In response to an Italian delegate’s enthusiastic support for penal colonization, the General Inspector of Prisons of South Australia argued that the presence of convicts was pernicious to the healthy and effective settlement of a new society in the process of development.⁵² Many saw that the quarantining of criminals in the colonies caused more problems than it solved and

⁴⁸ Hubert Michaux, “Procès-Verbaux des Séances de la Première Section,” *Congrès Pénitentiaire International de Stockholm, 15-26 Août 1878*, vol. 1 (Stockholm, 1879), 178.

⁴⁹ Merle, *Expériences coloniales*, 48-49. Charles-Ogé Barbaroux, *Procureur général* of Réunion Island (Île Bourbon) under the Second Republic, was among those who pointed to the haphazard manner with which the British had implemented convict transportation to Australia. Charles-Ogé Barbaroux, *De la transportatio: Aperçus législatifs, philosophiques et politiques sur la colonisation pénitentiaire* (Paris, 1857), 105.

⁵⁰ Michaux, “Procès-Verbaux des Séances de la Première Section,” 178.

⁵¹ Leo Mechelin, “Procès-Verbaux des Séances de la Première Section,” in *Congrès Pénitentiaire International de Stockholm, 15-26 Août 1878*, vol. 1 (Stockholm, 1879), 175.

⁵² Hinde, “Procès-Verbaux des Séances de la Première Section,” in *Congrès Pénitentiaire International de Stockholm, 15-26 Août 1878*, vol. 1 (Stockholm, 1879), 173.

could only be undertaken and pursued with the explicit support of free settlers. The prominent Belgian jurist Adolphe Prins observed that transportation effectively deferred the problem of how to tackle crime and recidivism, distancing it in such a way as to give the impression of having solved it, and thus offering superficial satisfaction to public opinion eager to see results.⁵³

Penologists in the later decades of the nineteenth century were quite aware of the provisional nature of the project of penal colonization. French penologists – supporters and opponents alike – drew on Britain’s experience in Australia as an example of the success or failure of penal colonization. While critics of transportation readily acknowledged that convicts could contribute manpower to the establishment of vital infrastructure in a colony (for example, the clearing of forests and building of roads, etc.), in the end, they argued, the scheme fundamentally served the interests of colonialism, not justice. More than this, and herein lies the central paradox, the very success of the construction of a colonial society meant the death of its penal function. Speaking at the IPC meeting in Paris in 1895, a Russian delegate made the same point in regards to transportation or territorial exile in the Russian Empire. He maintained that the colonizing manpower supplied by transported prisoners worked against the long-term project of fighting crime. The time would soon come, he said, when, as a result of the completion of the Trans-Siberian railway, Russian transportation to Siberia would become impossible.⁵⁴

During discussions on transportation as part of the parliamentary inquiry into the French criminal justice system in the early 1870s French delegates, including a former governor of Guiana, had presented exactly the same argument: “if a true colony is formed, a society able to live from its own resources, it will not delay in protesting energetically against the dispatch of criminals from the *métropole*, which it is soon forced to abandon. The system thus perishes from its own success.”⁵⁵ At the same forum, Hubert Michaux presented a similar argument, drawing attention to how the continuation of penal colonization as a technique depended on the constant acquisition of new territory: “always marching in advance of civilization, that is the task of colonization which will have won its case when it is recognized that it cannot be a permanent institution; after having passed across one land, it must pass across another.”⁵⁶ Transportation, to be effective, had to be understood and utilized as a pioneering force, establishing essential infrastructure before then allowing the free colonial society to entirely engulf it. In other words, it could only ever be a temporary measure for fighting crime.

In the final decades of the nineteenth century, penologists acknowledged that not only was penal colonization inherently a self-defeating system, but the opportunities for employing it would also necessarily eventually disappear since there was only a finite amount of available territory for appropriation. A German jurist at the 1878 congress in Stockholm declared that

even under the most favorable of conditions, deportation is destined through a historical and almost natural trend to disappear from modern codes, because in future rarely will appropriate lands be found for forced colonization, as soon as voluntary emigration has advanced

⁵³ Adolphe Prins, *Ve Congrès Pénitentiaire International (Paris - 1895)*, vol. 2, 101.

⁵⁴ Ivan Foinitzky, *Ve Congrès Pénitentiaire International (Paris - 1895)*, vol. 2, 120.

⁵⁵ Admiral Fourichon, *Enquête parlementaire sur le régime des établissements pénitentiaires*, vol. 1, 269-70.

⁵⁶ Michaux, *Enquête parlementaire sur le régime des établissements pénitentiaires*, vol. 1, 152.

more and more towards the coasts which promise to free up labor to paid results.... It is a social law that deportation, the more it enjoys economic and colonizing success, the more it will be shortened in its historic duration.⁵⁷

The concluding findings of the 1878 Stockholm congress on transportation as a penal practice were ambivalent. Delegates found that it occupied “an exceptional and transitory place amid penal institutions. The best accredited experiments and the past of English transportation do not promise a happy future for it.”⁵⁸ The reputation of transportation enjoyed a resurgence at the 1895 congress in Paris, with the host country working hard to see transportation (or, specifically, the exile of recidivists) accepted as an appropriate, rational method for dealing with serious criminals and repeat offenders. The congress found that “transportation, in its various forms, with the improvements already achieved and others likely to come, is useful both for the carrying out of long sentences for serious criminals and for the punishment of habitual criminals and stubborn recidivists.”⁵⁹ However, as Nicolas Derasse has recently pointed out, “this recommendation is deceptive and reveals clearly the limits of these international prison congresses” in that “it masks the undeniable isolation of France among nations which abandoned transportation one after the other to return to a system of imprisonment.”⁶⁰

Ultimately, despite advocates’ optimism that France’s colonial convict venture would enjoy greater success because it was making use of a better, more rational system, French penal colonization culminated in less success than the British had enjoyed in Australia. Assessing the success of France’s project of penal colonization depends largely on what one takes to be its central objective: a means of treating crime or a means of developing new colonial possessions. Penologists were quite aware of the fact that there was a basic paradox or incompatibility between the two components of the system: the success of colonial settlement inevitably meant the obsolescence of its penal function, for once a colony achieved a certain level of Western-style development and infrastructure, it could no longer possess a penal component. As the example of Australia had demonstrated, once a colonial settlement established itself all the arguments that had been put forward in the *métropole* about the need to cleanse society by expelling criminals would, in the fullness of time, be restated by the colony’s free (or freed) settlers in order to refuse to accept its continued practice there.

Debates among penologists concerning the utility of convict transportation as a method of controlling crime at the end of the nineteenth century brought to light the inherent contradiction contained within the system of penal colonization. Indeed, what was peculiar about the theory of penal transportation in the late nineteenth century

⁵⁷ Frantz von Holtzendorff, “Procès-Verbaux des Séances de la Première Section,” in *Congrès Pénitentiaire International de Stockholm, 15-26 Août 1878*, vol. 1 (Stockholm, 1879), 17. On German debates on this subject, see Matthew Fitzpatrick, “New South Wales in Africa?: The Convict Colonialism Debate in Imperial Germany,” *Itinerario* 37 (2013), 59-72. Some German states employed transportation in the decades before German unification in 1871. On this, see Richard J. Evans, *Tales from the German Underworld: Crime and Punishment in the Nineteenth Century* (New Haven, 1998), 11-92.

⁵⁸ Frantz von Holtzendorff, “Procès-Verbaux des Séances de la Première Section,” in *Congrès Pénitentiaire International de Stockholm, 15-26 Août 1878*, vol. 1 (Stockholm, 1879), 21.

⁵⁹ “Résolutions votées par le congrès: Première section,” in *Ve Congrès Pénitentiaire International (Paris - 1895)*, vol. 1, 256.

⁶⁰ Derasse, “La récidive dans les Congrès pénitentiaires internationaux du XIXe siècle,” 110-11.

was the fact that it contained within itself the insurmountable paradox of regenerating offenders whose effective rehabilitation would, in large part, be demonstrated by their own reluctance to admit further convicts into the colony. The facilitating of colonization, in other words, thus came at the expense of a long-term solution to criminality. The system would only endure for as long as the two sides of the project (the penal and the colonial) were held in tension. Once the colonial aspect triumphed, the penal would become untenable. The only viable solutions to this paradox was either the constant acquisition of new, isolated, and (in the eyes of Western powers) under-developed territories – an increasingly remote possibility by the end of the century – or the deployment of areas of land less apparently conducive to settlement (for example, French Guiana). As a long-term method for fighting crime, Britain's experience of penal transportation to Australia had less to recommend it than did its capacity for solidifying the imperial ambitions of Western powers. Unlike the British experiment in Australia, France struggled to secure economic returns from its holdings in French Guiana and New Caledonia. Ultimately (and ironically), this failure in the colonial aspect of the enterprise would ensure the longevity of its penal aspect.