

Cabals, Quarrels, Strikes, and Impudence: Kingston Penitentiary, 1890–1914

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Kingston Penitentiary opened in 1835 with expectations of deterring crime and reforming criminals through labour, solitude, and careful discipline. The failures of the penitentiary, though, were exposed dramatically by the Brown Commission in 1849. Disappointments with regard to the penitentiary did not end there, and formal investigations recurred, especially in the 1890s and in 1914. The flawed character of the penitentiary model suggests that Michel Foucault's theories might be both applied and critiqued in the case of the Kingston Penitentiary, especially with reference to the years after 1850.

Le pénitencier de Kingston a ouvert ses portes en 1835 avec la mission de prévenir la criminalité et de réformer les criminels par les travaux, la solitude et une discipline vigilante. La commission Brown leva cependant le voile sur les échecs du pénitencier en 1849. Les déceptions à l'égard du pénitencier ne s'arrêtèrent pas là et d'autres enquêtes officielles eurent lieu, surtout dans les années 1890 et en 1914. Le caractère imparfait du modèle de pénitencier suggère que les théories de Michel Foucault pourraient tout à la fois s'appliquer et être critiquées dans le cas du pénitencier de Kingston, surtout en ce qui a trait aux années postérieures à l'an 1850.

UPPER CANADA'S FIRST "Penitentiary Act" announced, with dignified optimism, that "if many offenders convicted of crimes were ordered to solitary imprisonment, accompanied by well-regulated labour and religious instruction, it might be the means under Providence, not only of deterring others from the commission of like crimes, but also of reforming the indi-

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viduals, and inuring them to habits of industry.”¹ The report of the penitentiary inspector for 1889 sounds a very different note: “It is to be regretted that, the degree of reformation accomplished in any one or all of the penitentiaries is not commensurate with the exact observance of rule and discipline which is sought to be enforced and which, for the most part, is promptly rendered.”² This elegant, yet stark pronouncement on the penitentiary’s inability to meet expectations admits of a quiet failure as monumental as it was understated. Indeed, the unique characteristic of penitentiary discipline which separated it from its penal ancestors was its touted ability to reconstruct the idle and vicious characters of convicts. Given the impressive parentage of Kingston Penitentiary — the Canadian “Penitentiary Act” was a near copy of its English predecessor and the penitentiary itself a modified version of that in Auburn, New York — how does one account for the comments above?

In the Canadian context there have been few attempts to treat this issue. This inattention is surprising, considering that Kingston Penitentiary was among the early penal institutions built in North America and one whose records are both extant and voluminous.³ This is not to say that Kingston Penitentiary has been ignored by Canadian historians, but there has been a disproportionate amount of work done on the early period of the institution’s existence. Moreover, much of this material is now dated and usually concludes with the reports of the Brown Commission of 1848–1849.⁴ Given the stinging revelations of Kingston Penitentiary’s discipline that emerged from this commission, the question of how the institution fared in subse-

1 “An Act to provide for the Maintenance and Government of the Provincial Penitentiary, erected near Kingston in the Midlands District”, *Statutes of Upper Canada*, 4 Wm. IV, c.37, s.1834.

2 “Report of the Inspector”, *Canada Sessional Papers* (hereafter *CSP*) no. 10, 1890, p. xii.

3 Kingston Penitentiary lagged only somewhat behind the Auburn (New York) and Philadelphia penitentiaries, both of which reached prominence in the 1820s. See Adam J. Hirsch, *The Rise of the Penitentiary: Prisons and Punishment in Early America* (New Haven: Yale University Press, 1992). Collections of Kingston Penitentiary records are extensive, even though truckloads of material were taken from penitentiary attics and carted to the dump in the early 1970s.

4 Rainer Baehre, “The Origins of the Penitentiary System of Upper Canada”, *Ontario History*, vol. 69 (1977), pp. 185–207; J. Gerald Bellomo, “Upper Canadian Attitudes Towards Crime and Punishment (1832–1851)”, *Ontario History*, vol. 64 (March 1972), pp. 11–26; Alex J. Edmison, “Some Aspects of Nineteenth-Century Canadian Prisons”, in W. T. McGrath, ed., *Crime and its Treatment in Canada* (Toronto: Macmillan 1965); Charles Jolliffe, “An Examination of Medical Services at Kingston Penitentiary, 1835–56” (Master’s thesis, Queen’s University, 1983); Sidney Shoom, “Kingston Penitentiary: The Early Decades”, *Canadian Journal of Corrections*, vol. 8 (1966), pp. 215–220; Dorothy Chunn, “Good Men Work Hard: Convict Labour in Kingston Penitentiary, 1835–1850”, *Canadian Journal of Criminology Forum* (1981), pp. 13–22. W. C. G. Norman, “A Chapter of Canadian Penal History: The Early Years of the Provincial Penitentiary at Kingston and the Commission of Inquiry into its Management, 1835–51” (Master’s thesis, Queen’s University, 1979); Russell Smandych, “Tory Paternalism and the Politics of Penal Reform in Upper Canada, 1830–34: A ‘Neo-Revisionist’ Account of the Kingston Penitentiary”, *Criminal Justice History*, vol. 12 (1991), pp. 57–83, and “The Upper Canadian Experience with Pre-Segregative Control” (Ph.D. thesis, University of Toronto, 1989).

quent years has received relatively short shrift in our historiography. An important exception is C. J. Taylor, whose work well describes the intellectual and social influences that shaped Kingston Penitentiary, literally and figuratively. Yet his work brings the student again to the doorstep of a crucial issue: if Kingston Penitentiary was “a model society, a laboratory of controlled behavior”, then how well did that model society work?⁵ How effective was that laboratory?⁶

The short answer is that the model society did not work well. If the years 1890 to 1914 are any indication, Kingston Penitentiary responded sluggishly to the penal and reformatory expectations that uniquely defined penitentiary discipline. Moreover, the disciplinary problems of this period reflect a thematic unity with the penitentiary’s history from 1835 to 1890. That continuity rests on the penitentiary’s difficulty in disciplining two important groups of people: marginal convicts such as the “refractory”, the female, and the lunatic, as well as the feuding and often incompetent penitentiary officers. Indeed, the penitentiary’s troubles in digesting the former were in no small way augmented by the latter.

Difficulties of this order are not significant merely because they soil the penitentiary ideal. Indeed, a large body of work points to evidence of nineteenth-century dissatisfaction and disillusionment with the reformatory project.⁷ What is significant is that penitentiary routines and structures were rarely without difficulties, whether in county, state, and provincial penitentiaries like Kingston or the grand institutions on the scale of Pentonville or Mettray. One does not need to idealize the penitentiary in order to critique its operation.

The disjuncture between generalized expectations of penitentiary discipline and daily practice is central to the study Kingston Penitentiary from 1890 to 1914. These are years convenient for the sources which are readily available, and little work has been done on Canadian penitentiaries in this period. This study of Kingston Penitentiary also suggests the theoretical value of Michel Foucault’s work on penitentiary development.

5 C. J. Taylor, “The Kingston, Ontario Penitentiary and Moral Architecture”, *Histoire sociale/ Social History*, vol. 12, no. 24 (November 1979), pp. 385–408. See also Alex J. Edmison, “The History of Kingston Penitentiary”, *Historic Kingston*, vol. 3 (1954), pp. 26–35; Donald Weatherall, “Rehabilitation Programmes in Canadian Penitentiaries, 1867–1914: A Study in Official Opinion” (Ph.D. thesis, Queen’s University, 1980).

6 See Richard Zubrycki, *The Establishment of Canada’s Penitentiary System: Federal Correctional Policy 1867–1900* (Toronto: University of Toronto Faculty of Social Work, 1980), who argued that the “stark and dehumanizing” elements of the penitentiary system left moral reformation of convicts a rhetorical abstraction, secondary to the concerns of the federal government to expand its coercive power from 1867 to 1900, made clear in the rash of penitentiary construction in the 1870s and 1880s.

7 Robin Evans, *The Fabrication of Virtue: English Prison Architecture, 1750–1840* (Cambridge: Cambridge University Press, 1982); William James Forsythe, *The Reform of Prisoners, 1830–1900* (London: Croom Helm, 1987); Patricia O’Brien, *The Promise of Punishment: Prisons in Nineteenth-Century France* (Princeton: Princeton University Press, 1982).

The apparent utility of Foucault to the 1890–1914 period of Canadian penitentiary development is not especially clear. He studied primarily the French experience, ending in the mid-nineteenth century, and, it might be noted, quickly acquired a host of critics. Yet Foucault was the most articulate and provocative critic of penitentiaries as the humanitarian fruit of Enlightenment thinking, and his book *Discipline and Punish* was “one of those rare works that refocuses the way a whole generation of scholars looks at history”.⁸ Furthermore, penitentiary structures have mutated little since their origins, and in fact Foucault’s interest was sparked by French prison riots in the 1970s.⁹ Issues of regulation, discipline, economy, and reformation continue to have currency long after the penitentiary was conceived. Finally, Foucault is instructive both for where he is right and where he is wrong. As Thomas Brown has argued, Foucault — as well as Michael Ignatieff and David Rothman — has left important theoretical legacies that have not been exploited by subsequent scholarship.¹⁰

In *Discipline and Punish*, his most complete statement on the origins and importance of penitentiaries, Foucault described a shift in legal punishment that moved from the direct and violent focus on the criminal’s body — such as that visited on the regicide Damiens, with which the book opens — to a less spectacular but more systematic punishment that by the nineteenth century was “a technology of subtle, effective, economic powers, in opposition to the sumptuous expenditure of the power of the sovereign”.¹¹ That is, the penitentiary. The body of the prisoner became less important than the soul, “a surface of inscription for power” where the submission of the convict was effected through the “control of ideas”.¹²

Foucault expanded on this by reconfiguring Jeremy Bentham’s idea of the “panopticon”.¹³ Bentham conceived the panopticon as an architectural innovation, allowing constant surveillance of convicts without them knowing

8 O’Brien, *The Promise of Punishment*, pp. xi–xii.

9 For example, one might note the ease and approval which have marked the leasing of convict labour in the southern United States, an issue firmly embedded in the nineteenth century. Note also the largest and most damaging convict riots in Kingston Penitentiary, which occurred in 1971.

10 Thomas Brown, “Dance of the Dialectic? Some Reflections (Polemic and Otherwise) on the Present State of Nineteenth-Century Asylum Studies”, *Canadian Bulletin of Medical History*, vol. 2 (1994), pp. 276–296. Foucault is not absent from Canadian historiography: see Jean-Marie Fecteau, *Un nouvel ordre des choses : la pauvreté, le crime, l’État au Québec, de la fin du XVIII^e siècle à 1840* (Outremont: VLB Éditeur, 1989).

11 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1979), p. 103. Previously published as *Surveiller et Punir : naissance de la prison* (Paris: Éditions Gallimard, 1975).

12 *Ibid.*, p. 102.

13 Jeremy Bentham, *Panopticon; or the Inspection House* (London: T. Payne, 1791). See also G. Himmelfarb, “The Haunted House of Jeremy Bentham” in *Victorian Minds* (New York: Alfred Knopf, 1968); David Lyon, “Bentham’s Panopticon: From Moral Architecture to Electronic Surveillance”, *Queen’s Quarterly*, vol. 98 (Fall 1991), pp. 596–617.

when, or if, they were being watched. The key for Foucault was the degree to which this observation technique marked a political power; knowledge, or *savoir*, was not simple observation, but a “disciplinary writing” intended to examine, regulate, and remake the convict.¹⁴

For a penitentiary, one might imagine this disciplinary writing as a series of records containing information such as conviction history, physical characteristics, and religious denomination. Certainly Kingston Penitentiary produced a wealth of this record-keeping. Foucault took this further, however, until the panopticon became panopticism, a “generalizable model of functioning”.¹⁵ Thus the “carceral archipelago” of prisons, almshouses, and penitentiaries became a pattern “destined to spread throughout the social body”.¹⁶ One could then find the penitentiary technique of discipline in houses of industry, orphanages, apprenticeships, hospitals, factories, and schools, to name only a few examples. The mid-nineteenth century disillusionment with penitentiaries and their “failures”, such as recidivism, by no means heralded the end of the penitentiary.¹⁷ Instead, Foucault identified an unexpected utility of the penitentiary as the production of “delinquents” whose criminal inclinations and activities could be observed, defined, catalogued, and loosely contained, thus again contributing a dispersal of power and surveillance. The penitentiary model, then, was as useful in its “failures” as its once-touted programme of successes. As one reviewer suggested, Foucault was describing a “Whig history in reverse, tracing the Rise of Unfreedom and the inexorable regress of liberty”.¹⁸

This judgement is perhaps a bit harsh. There are a number of reasons why any study of a penitentiary needs to consider Foucault’s thinking. More effectively than anyone else, Foucault drew attention to the *idea* of the penitentiary. This was an institution with a particular arrangement of power and disciplinary technique, both of which Foucault used to extract the penitentiary from its interpretive place in an Enlightenment ancestry of rational, humanitarian progress. Indeed, Foucault spent most of *Discipline and Punish* locating the penitentiary in the reorganization of social institutions such as hospitals, armies, and factories. Moreover, Foucault was among the few theorists who was concerned not only with penitentiary origins, but especially with the problem of their continued existence.¹⁹ Neither of his able contemporaries, Michael Ignatieff or David Rothman,

14 Foucault, *Discipline and Punish*, p. 190.

15 *Ibid.*, p. 205.

16 *Ibid.*, p. 207.

17 *Ibid.*, pp. 264–266.

18 Clifford Geertz, “Stir Crazy”, *New York Review of Books*, January 26, 1978, pp. 3–6. See also David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford: Clarendon Press, 1990), pp. 131–176; Dorinda Outram, *The Body and the French Revolution: Sex, Class and Political Culture* (New Haven: Yale University Press, 1989), pp. 16–25.

19 For an exception, see David Rothman’s *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (Boston: Little, Brown, 1980).

was as original or evocative on these matters.²⁰ Finally, Foucault was effective in pointing to the technical devices of disciplinary intent, such as record-keeping and the emphasis on surveillance.

Yet it is on the issue of the penitentiary's relationship to the social body that this essay departs from Foucault's writing. The limits to disciplinary power were more telling than Foucault allowed, even if the student regards his description of that power as more omniscient than omnipotent.²¹ There is good ground on which to question Foucault's assessment of penitentiary efficiency and the depersonalization of power that emerges in *Discipline and Punish*.²² The evidence suggests that the dysfunctions of Kingston Penitentiary exceeded the tolerances given by Foucault and that in key respects Kingston Penitentiary mimicked its social context, impinging then on theoretical extensions by Foucault and others that penitentiary discipline became the model for wider society.²³ As well, this limited study suggests that, while penitentiary analysis must grapple with Foucault's thinking, such analysis should not finish there. In this historical case, the development of Kingston Penitentiary's disciplinary routines was often ragged, confused, and disappointing to its managers. Administrative problems, coupled with the proliferation and forms of convict intransigence, suggest that the penitentiary was less a model for than a mirror of the society outside its walls. Significantly, all these disappointments were grounded in the penitentiary experience of 1835 to 1890.²⁴

20 Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750–1850* (London: Penguin, 1978); David Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic*, 2nd ed. (Boston: Little, Brown & Co., 1990), and *Conscience and Convenience*. For later comments, see Ignatieff's reflective but "unrepentant" article, "State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishment" in Michael Torry and Norval Morris, eds., *Crime and Justice: An Annual Review of Research*, vol. 3 (Chicago: University of Chicago Press, 1981), pp. 75–101, and his reviews of Michelle Perrot, ed., *L'impossible prison : recherches sur le système pénitentiaire au XIX^e siècle*, and Robert Roth, *Pratiques pénitentiaires et théorie sociale : l'exemple de la prison de Genève, 1825–1862*, in *Social History*, vol. 7 (May 1982), pp. 227–229. Rothman's introductory essay to the second edition of *The Discovery of the Asylum* is valuable (pp. xii–xliv). For a short but able critique of Rothman, see Hirsch, *The Rise of the Penitentiary*, pp. xii–xiv.

21 See Colin Gordon, "Afterward" in *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977* (New York: Pantheon, 1980), pp. 246–247; S. Best and D. Kellner, *Postmodern Theory: Critical Interpretations* (London: Macmillan, 1991), p. 55. On the overshadowing tone of depersonalized power, see Foucault, *Discipline and Punish*, pp. 273ff. See also his supplementary comments in Sylvère Lotringer, ed., *Foucault Live: Interviews 1966–84*, trans. John Johnston (New York: Semiotexte 1989), pp. 179–192, 275–292, and "Prison Talk" in *Power/Knowledge*, pp. 27–54.

22 Mark Lilla, "A Taste for Pain", *Times Literary Supplement*, March 26, 1993, pp. 3–4; Best and Kellner, *Postmodern Theory*, pp. 46–47. There have been works that suggestively use prison records to evaluate Foucault's conception of the penitentiary: Dawn Roberts, "The Scandal of Birmingham Borough Gaol, 1853: A Case for Penal Reform", *Journal of Legal History*, vol. 7 (1986), pp. 315–340; Janet Saunders, "Warwickshire Magistrates and Prison Reform, 1840–75", *Midland History*, vol. 11 (1986), pp. 79–99.

23 See again Taylor, "Moral Architecture"; Wetherall, "Rehabilitation Programmes".

24 For a fuller account of Kingston Penitentiary's history from 1835 to 1890, see Roger Neufeld, "A

These were years when the state in Canada was doing more than building a penitentiary; by mid-nineteenth century, the Canadian state was expanding its governance to police forces, primary and secondary schools, and railways.²⁵ This expansion was not without its opposition and difficulties.²⁶ Similarly, the penitentiary's routines did not begin smoothly. Though finished in 1834, the penitentiary could not open for another year because the legislators had neglected to vote funds for the maintenance of the new prison.²⁷ When three female convicts arrived several months after the June opening, authorities had no idea where to put them. They were whisked to the prison hospital, which became female quarters until 1839, when other makeshift arrangements were made.²⁸ Still, the routines were expected to produce convicts who were penitent, industrious, and obedient. Prisoners would rise early and eat, work in “congregate” with their colleagues, and retire for the evening to cells barely 30 inches wide. Throughout, silence was to be observed.²⁹

The first formal recognition that this model was not working well was the Commission of Inquiry which reported in 1848–1849 and which acquired the name of its most colourful member, George Brown.³⁰ Yet even after noting the 6,063 punishments ordered by Warden Henry Smith in 1846, including the flogging of an eleven-year-old boy, as well as the recognition that the “reformation of Convicts is unknown”, the commissioners merely urged a return to the “true principles of a prison system”.³¹

To seclude the prisoners from their former associates; to separate those of whom hopes might be entertained from those who are desperate; to teach them

World Within Itself: Kingston Penitentiary and Foucauldian Panopticism, 1834–1914” (Master’s thesis, Queen’s University, 1993), pp. 1–40.

25 See A. Greer and I. Radforth, *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1992).

26 Bruce Curtis, *Building the Educational State: Canada West, 1836–1871* (London: Althouse Press, 1988); R. D. Gidney and W. P. J. Millar, *Inventing Secondary Education: The Rise of the High School in Nineteenth-Century Ontario* (Montreal and Kingston: McGill-Queen’s University Press, 1990); R. D. Gidney, *Professional Gentlemen: The Professions in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1994).

27 “Report of the Inspectors of the Provincial Penitentiary, 1835”, *Journals of the Assembly*, Appendix no. 19, p. 2.

28 “Inspectors’ Report”, *Journals of the Assembly*, Appendix no. 10, 1836–1837, n.p.

29 “Rules and Regulations respecting the discipline and policy of the Penitentiary”, *Journals of the Assembly*, Appendix no. 1, 1836, n.p. See also J. M. Beattie, *Attitudes Towards Crime and Punishment in Upper Canada, 1830–1850: A Documentary Study* (Toronto: Centre of Criminology, 1977), pp. 113–130; U. H. R. Henriques, “The Rise and Decline of the Separate System of Prison Discipline”, *Past and Present*, vol. 54 (1972), pp. 61–93.

30 Beattie, *Attitudes Towards Crime and Punishment*, pp. 23–35; Chunn, “Good Men Work Hard”.

31 “First Report of the Commissioners Appointed to Investigate into the Conduct, Discipline, and Management of the Provincial Penitentiary”, *Journals of the House of Assembly*, Appendix (B.B.B.B.) 1849, n.p.; Michael Jackson, *Prisoners of Isolation: Solitary Confinement in Canada* (Toronto: University of Toronto Press, 1983), pp. 25–31; Norman, “A Chapter of Canadian Penal History”, *passim*.

useful trades; to give them religious instruction; and to provide them with a recommendation to the world and the means of obtaining an honest livelihood, after the expiration of their term of punishment.³²

The years 1850 to 1890 did not see the refinement and perfection of penitentiary operation, however. Labour, for example, was to give the convict practical skills, provide revenue for the penitentiary, and above all act as a reformatory agent. Yet, as one inspector snapped in his annual report, “the winning of the unfortunate convict over to a new life of industry should be the paramount object of those entrusted for a time with his destiny, rather than the extraction from him of that species of labour realizing the greatest profit to the institution.”³³

It was still more difficult to explain the embarrassing reality of recidivism: in 1853 and 1856 recommitments formed nearly one-third of the yearly admissions, and in 1888 30 of the 149 men received had been in Kingston Penitentiary before.³⁴ There was little for penitentiary administrators to offer in explanation of this phenomenon, though in one of the most memorable attempts, soon after the Brown Commission ended, an inspector defensively claimed that most convicts were “a class of people not given to much reflection, and who only look upon confinement as a severe punishment.”³⁵

This desired inner reflection, though, was mostly irrelevant concerning female and insane convicts. Both were considered nuisances by their presence in the penitentiary. The women, for example, seemed forever in the way of the prison’s expansion. They were moved from the hospital to another wing, and in 1852 were again housed in the prison hospital awaiting the completion of the new dining hall, after which they would occupy the old.³⁶ As for the insane, they were not only shuffled about the prison in similar fashion, but they were also temporarily moved outside the penitentiary. Rockwood Asylum, originally intended to house criminally insane patients in 1865, quickly relieved itself of these troublesome inmates in 1868 when it was closed to this population.³⁷ What an inspector wrote of them in 1883, in fact, might have easily applied to the female convicts as well: “Their presence in a penal institution impairs discipline.”³⁸

32 “First Report of the Commissioners”, n.p.

33 T. J. O’Neill, “Special Inspector’s Report”, *CSP* no. 66, 1863, n.p. This was an issue that pre-dated the construction of the penitentiary itself; see Bryan D. Palmer, “Kingston Mechanics and the Rise of the Penitentiary, 1833–1836”, *Histoire sociale/ Social History*, vol. 13, no. 25 (May 1980), pp. 7–32.

34 “Warden’s Report”, *Journals of the House of Assembly*, Appendix (D.D.), 1854, n.p.; no. 10, 1856, n.p.; no. 12, 1889, p. 7.

35 “Inspector’s Report” *Journals of the House of Assembly*, Appendix (I.I.I.), 1852, n.p.

36 *Ibid.*

37 “Inspector’s Report”, *CSP* no. 42, 1874, p. 9.

38 “Inspector’s Report”, *CSP* no. 29, 1883, p. 13.

Finally, the friction among penitentiary officials, evident in the period between 1890 and 1914, was similarly embedded in Kingston Penitentiary's history. One warden, long criticized by his inspectors for his "failing mental and physical powers", was eventually replaced by one of the inspectors, J. M. Ferres.³⁹ After doing an immense amount of administrative and disciplinary housekeeping, Warden Ferres pointedly and with irritation commented:

I deeply regret to say, too, that remarks, respecting my appointment to the office, which had been made to my disparagement, by gentlemen occupying the highest position in the country, encouraged every employee in the institution to look upon me with ill-will, and taught them to be prepared to be dissatisfied with my every act.⁴⁰

Ferres's report, candid and direct even by nineteenth-century standards, went unpublished. Coincidentally, he died in 1870.

The foregoing summary of Kingston Penitentiary between 1835 and 1890 renders the panoptic model somewhat less effective and penetrating than either Foucault has suggested or the imposing moral and physical architecture of the penitentiary was intended to produce. Yet, if one looked at the breadth of registers kept by penitentiary staff, the impression would be one of strict routine, discipline, and efficiency. Indeed, nowhere could Foucault's theories on "disciplinary writing", the written knowledge of punishment's objects, be more clearly exemplified. Published annual reports included contributions by the inspectors, warden, surgeon, Protestant and Catholic chaplains, matron, and schoolmaster. To these were appended perhaps 30 returns showing, for example, a list of convicts received, a statement of the movement of those convicts, a list of convicts who became insane during the year, those who died, "moral habits", and length of sentences. The statistical component of the annual report usually ended with a balance sheet, statements of revenue and expenditures, and, almost as an afterthought, an inventory of volumes held in the penitentiary libraries.⁴¹ This stock of record-keeping occupied a substantial amount of staff time.⁴² Thus one can read through the "Daily State of Sick" register, the "Register of the

39 "Inspector's Report", *CSP* no. 40, 1868, p. 3.

40 *Ibid.*

41 These annual reports for the penitentiaries in the *CSP* are indexed under "Justice" for this period. The returns were stipulated by regulation. Between 1865 and 1880 four more Canadian penitentiaries were built: St. Vincent de Paul (1873), Stony Mountain (1877), BC Penitentiary (1878), and Dorchester (1880). See Zubrycki, *Establishment of Canada's Penitentiary System*, on these developments.

42 Warden Lavell grumbled in his official journal one day of being engaged in "the usual duties, some of them trying, if varied, pushing Dept. for Estimate", and for the next several weeks repeatedly mentioned "clerical work". See Queen's University Archives (hereafter QUA), "Warden's Daily Journal", bk. 11, March 1889.

Criminally Insane”, the “Diet Roll”, and records detailing “Visitor’s Book and Business Visits”.⁴³

The faces behind this tremendous volume of paper and penitentiary routine, of course, were the penitentiary guards. For the years 1890 to 1914, Kingston Penitentiary employed about 40 guards, eight keepers, a warden and his deputy, and a matron with her assistant. Guards were the front-line disciplinarians, making their reports to the keepers, and, if punishment was necessary, this was reported by the chief keeper to the deputy warden. Indeed, the records that centrally concerned the penitentiary’s discipline were those of the punishments.

In the punishment rolls one sees at once the searching eye of penitentiary surveillance and the evidence of its failure. Indeed, the variety of punishments could scarcely keep pace with the innovative means of breaking prison rules. By regulation, eighteen classes of offence required matching penalties, ranging from bread and water rations to flogging with birches “or other wood”, hobbling with ball and chain, or imprisonment in the dark cell.⁴⁴ Female prisoners, who were expected to commit only eight kinds of infractions, were liable to bread and water rations, though in one departure from male penalties these convicts were threatened with the cutting of their hair.⁴⁵

Taken together, all these elements represented the smooth functioning of the penitentiary, a sort of nineteenth-century answer to the Great Chain of Being: every warden, guard, and convict in his or her place. There were, however, some irregularities in this order, chiefly in the form of convict populations, alternately submissive, unruly, obedient, and rebellious.

Sometimes convict unrest was rather easily dismissed, such as their complaints about the penitentiary diet. In 1890, for example, the convicts circulated a petition “asking for changes in the diet”.⁴⁶ After consulting the

43 National Archives of Canada (hereafter NAC), RG73, 87–88/013, bk. 9, 29, 34, 42, 65. The National Archives, late in the 1980s, removed more than 187 volumes of records from the Kingston Penitentiary Museum to augment its already extensive holdings on the penitentiary. Archives staff left that many volumes and more behind, which still tax the museum’s shelves in the attic.

44 See *The Penitentiary Acts and the Rules and Regulations for the Government of the Penitentiaries of Canada* (Ottawa: MacLean, Roger, & Co., 1888), no. 365 (1–11). Failed escapes, for example, meant at least a solitary cell with leg iron and loss of remission. The “dark cells” were on the main floor near the centre of the rotunda, where the stone walls were thickest.

45 NAC, RG75, vol. 134, file 1–21–1, pt. 1, “Pursuant to Section 58 of the Penitentiary Act of 1886 the Inspector, with the approval of the Minister of Justice, makes the following rules for the discipline and correction of convicts in any Penitentiary”.

46 QUA, “Warden’s Journal”, bk. 11, June 19–22, 1889; NAC, RG73, vol. 349, “Inspector’s Minutes Book”, June 29, 1889. The stipulated diet was to include four ounces of cold meat, twelve ounces of white bread, one ounce of brown, one and a half pints of coffee, and half an ounce of sugar for breakfast; lunch had more meat and another pound of potatoes, while supper was bread, tea, and sugar. See *The Penitentiary Acts and the Rules and Regulations*, no. 375. For this and other aspects of daily penitentiary routine not addressed here, see W. A. Calder, “Convict Life in Canadian Federal

warden and the surgeon, Inspector Moylan was “quite convinced that there [was] no need for any alteration in the ration” and that “even in a Penitentiary epicures are to be met whose fastidious tastes are difficult to suit”.⁴⁷ But on January 24, 1899, the Kingston *Daily Whig* reported that the previous day 40 men working in the binder twine factory had refused the soup for their dinner. After lunch 33 of them refused to work; they were marched to the dome, where the ringleaders were put in cells and the rest dealt with later. The *Whig* reporter noted that “the food is that prescribed by the inspector” and that a general strike had been avoided only by a “mis-understanding between the convicts”.⁴⁸ “The men”, concluded the writer, “will likely be punished.”⁴⁹

The general strike which had failed on the 23rd proceeded on the 25th, as convicts working in the stone shed struck. As they were sent to the dungeons, the mason gang refused to work, and the lot were sent to the Prison of Isolation until further orders. Soon after, workers on the stone pile and in the blacksmith shop struck. In all, the warden sent 91 convicts to sundry places of punishment between January 24 and 28: 22 prisoners were sent to the Prison of Isolation for one year, 10 more received six-month sentences, 39 lost light and library privileges for three months, 10 were assigned to dark cells for 24 to 48 hours, and 10 more went to the dungeons for periods of 48 to 165 hours.⁵⁰

Despite the dramatic nature of collective and organized convict resistance, punishment and dungeon cells were usually filled with convicts guilty of individual and spontaneous acts of disobedience. Indeed, it was this process of dealing with the refractory individual that provided the axis of penitentiary operation. Convict C. Kincaid (D833), for example, was confined to the dungeon after the following report was made:

Penitentiaries, 1867–1900” in Louis A. Knafla, ed., *Crime and Justice in Europe and Canada* (Waterloo: Wilfrid Laurier University Press, 1981), pp. 297–318.

47 “Inspector’s Report”, *CSP* no. 12, 1891, p. xv.

48 “The Men Revolted”, Kingston *Daily Whig*, January 24, 1899.

49 NAC, RG73, vol. 477, “Warden’s Letterbook”, Foster to Stewart, February 4, 1898. Calder mistakenly records this strike as occurring on February 23 rather than January; see “Convict Life”, p. 311. A journalist writing in 1895 alluded to another “skillfully prepared meeting” which was thwarted when its “powerful negro” organizer was drawn inexplicably into shop machinery and instantly killed, some five minutes before the scheduled event. See W. J. McLeod, “Canada’s Greatest Prison”, *Canadian Magazine*, vol. 6 (November 1895), pp. 3–16.

50 NAC, RG73, 87–88/013, “Register for Prison of Isolation”, bk. 144. Punishment cells and the dungeon were a group of cells located under the asylum ward, light for which was available mostly through each cell’s inner barrier door. The heavy outer door, made of oak-encased steel, had no holes drilled in it as did the inner door, and when it was closed no light entered the cell, nor any ventilation. When the inner door was closed, the room was a punishment cell; when both doors were closed, the cell became a dungeon. See Kingston Penitentiary Museum, “Evidence, Inspector Douglas Stewart”, *Report of the Royal Commission* (1914), vol. 3, pp. 1631–1632, 1662.

He was put in punishment cell at 12.45. At 12.55 he called to Runwell on the opposite side of the block and started a conversation in a loud voice, telling Runwell he was sent over for shouting while in his cell. I told him loud talk or shouting would not be tolerated here, he answered that his tongue was his own. I shut the outer door. He then called to Runwell, saying — “the dirty son of a bitch has shut my door.”⁵¹

Both convicts received additional punishments, in Runwell’s case because he didn’t “give a fuck” if his outer door was closed.

Surveillance and discipline certainly seemed to be a grimy and exasperating affair, for convicts and guards. When G. Slack (C1000) was being searched for contraband tobacco, he wondered if the guard “would want to search my drawers? Here search them, you might find something in the crotch.” Similarly, the guard who confronted convict Baker (D601) wrote with irritation, “When I told him to load wheelbarrows he said he had a lame back. I told him to go to the hospital: he said he did not want to go. I told him to go to work or go to Hospital; he did not want to go back to work.” When taken to the keeper’s desk, Baker added that “[deputy warden] Dan O’Leary could kiss his ass and he would tell him so when he got out and he would fill him with bullets”.⁵² It is the heavy sedimentation of these many disciplinary experiences, and those that follow, that impairs the clean flow of the “Penitentiary Act” and the panoptic society.

Similar patterns also described the conduct and disciplining of female convicts, who numbered anywhere from 10 to 35. Though these prisoners were expected to be less intransigent than their male counterparts, they still filled their own punishment registers. Eliza Hayes and Sarah Beals were both admonished for “giving impudence” and singing in their cells; Sarah Larmer was reported for “finding fault with her dinner”, but because she was “mostly insane” no punishment was given.⁵³ The same generosity was not extended to convict Anderson, who was at first “abusive at table about her dinner” (dark cell one night and loss of three days’ remission), and then later “interrupted matron during blessing”. For this she was given one of the “inferior cells”.⁵⁴ Indeed, the women had reached such a state of unruly

51 NAC, RG73, vol. 387, “Punishment Book”, October 10, 1904.

52 Slack was given two days in the punishment cell; Baker was sent to isolation “until further orders”. See *ibid.*, June 26, 1903; January 14, 1904. Lewdness was not the only criterion for punishment: convict Drummond (D869) was given five hours in the punishment cell for his unfortunate habit of “talking and dancing in his cell”. *Ibid.*, December 11, 1904.

53 NAC, RG73, vol. 377, “Female Punishment Book”, March 8, 1891 (Hayes); July 11, 1981 (Beals); February 21, 1891 (Larmer).

54 *Ibid.*, January 25, 1895; February 6, 1897. Remission of sentenced time was instituted in the 1868 “Penitentiary Act” and was granted to convicts on a discretionary basis at the maximum rate of five days per month; if 30 days were gained, then the rate was increased to seven and a half days per month; when 120 days were accumulated, the convict could gain 10 more days per month. See *The Penitentiary Acts and the Rules and Regulations*, no. 55 (1–4).

behaviour that by 1898 Warden Metcalf was himself issuing punishments to the women.

Commentary on this unhappy disciplinary situation became a standard feature of formal penitentiary literature. Annual reports, for example, usually held explanations of the nation's criminals. Considering the agreeable and uplifting influence which the penitentiary was to have on the physical and social body, prison officials had a great deal to answer for. They did so on a regular basis, and none more rigorously than James Moylan, Inspector of Dominion Penitentiaries. As the administrative officer responsible to the Minister of Justice for all penitentiaries, Moylan rarely missed an opportunity to pass comment on these matters. The trends in criminal conviction rates were usually grim, so that even the slightest improvement brought considerable and disproportionate attention: "The small increase of two, in the total number of convictions in the Dominion ... is a small matter, to the right-minded people, for rejoicing. It argues a very slight criminal tendency and great respect for law and order, on the part of the masses."⁵⁵ Moylan, inspector from 1875 to 1895, was fond of such optimistic appraisals. Thus a drop in Ontario's convicts in 1893 prompted this response: "Has an era of reformation set in? Is crime really lessening? ... Let us hope ... that the large percentage of diminution in evil doing can be properly attributed to the social, moral and religious improvement of the people of Ontario."⁵⁶ Conversely, when Kingston Penitentiary's population was on the rise, it would have been rash to argue that "law, order and morality are losing ground among the people."⁵⁷ It was, Moylan felt, preferable to base some explanation, perhaps, on convict gender, such as that lauded on the 24 women imprisoned during 1891:

[T]he crimes for which most of these women have been convicted was not of a serious nature and did not indicate any marked degree of depravity. This fact ... reflects credit upon the female portion of the community and should give pleasure to every genuine philanthropist and true Canadian.⁵⁸

Yet these bromides did not mask the internal discipline problems of Kingston Penitentiary. Warden Platt, who was responsible for the penitentiary from 1899 to 1913, presented a reliable and hopeful explanation of convict misbehaviour to his superiors: "The number of prison offenses reported and punishments inflicted is not a reliable index as to the general behavior of the convicts. It is, however, an index as to the vigilance of officers."⁵⁹

55 "Inspector's Report", *CSP* no. 18, 1892, p. vii.

56 "Inspector's Report", *CSP* no. 18, 1893, p. vii.

57 "Inspector's Report", 1895, p. xi.

58 "Inspector's Report", *CSP* no. 18, 1892, p. vii.

59 "Warden's Report", *CSP* no. 34, 1904, p. 21. Other explanations were more rambling. Dr. Phelan, penitentiary surgeon and avid criminologist, offered this analysis of criminal degeneracy: "The original endowments of the recidivist is [*sic*] generally below the average in mentality, and give

Indeed, the pressures of disciplining convicts often led to explanations and analyses that ran headlong into each other. For example, Warden Lavell told a board of commissioners in 1891 that “the worst men I have in prison and the men who have been committed for the most serious crimes, are the best-behaved prisoners.”⁶⁰ Inspector Moylan, to the same group, also noted that “the worst prisoners that we have are the men who get least into trouble with the prison authorities” and whose visit there “will not reform them”.⁶¹ But a subsequent inspector, Douglas Stewart, wrote his Minister to explain that “the penitentiary is adapted to those whose criminal habits have been formed, and who therefore require reformation in the full sense of that expression. It is a very undesirable place for those whose habits are unformed and whose character is yet in the plastic or formative condition.”⁶² No one publicly explained whether bad convicts were good prisoners, if good convicts were bad prisoners, or how penitentiary could reliably apply reformatory discipline to the deserving miscreant.

To complicate matters still more, the convict populations of female and insane prisoners were sectors of the disciplinary economy that continually troubled penitentiary authorities, certainly to a degree well out of proportion to their numbers. Next to these prisoners, the conventionally surly male convict seemed by comparison to be most amenable to penitentiary discipline. The women were irksome merely by virtue of their presence. From 1890 to 1894 alone, wardens and inspectors described the female prison as “defective”, “unsuitable”, and “unfit” and its replacement “one of our most needed requirements”.⁶³ It was not until 1893 that Ottawa agreed to fund a women’s prison outside the walls of Kingston Penitentiary, yet Moylan’s comment in 1894 that “the building of the female prison to the east of the Penitentiary, will be commenced next spring” was entirely in vain.⁶⁴ Not until 1913 did female convicts get new quarters, though even these were still within the penitentiary, and in one year the warden wrote that “ground space is limited”.⁶⁵

The prison staff themselves testified to their institution’s inability and

strong evidence to the assumption of a low physical organization of the parentage, in reference to which the poet and philosopher have not ceased to tell us from time immemorial that from the poisoned fount no healthful stream can flow. The signs of degeneracy are frequently stamped on this individual, but it may be remarked that many of the so-called signs of degeneracy may be observed in persons of the highest character and greatest mental attainments.” “Surgeon’s Report”, *CSP* no. 34, 1904, p. 22.

60 Evidence of Lavell, *Report of the Commissioners Appointed to Enquire Into the Prison and Reformatory System of Ontario, 1891*, p. 315.

61 Evidence of Moylan, *ibid.*, p. 356.

62 “Inspector’s Report”, *CSP* no. 34, 1906, p. 3.

63 “Inspector’s Report”, *CSP* no. 12, 1891, pp. xiii–xiv; no. 18, 1892, p. xxii; no. 18, 1894, p. xii; “Warden’s Report”, *CSP* no. 12, 1891, p. 4; no. 18, 1893, p. 2.

64 “Inspector’s Report”, *CSP* no. 18, 1894, p. xii. In 1893 it was thought that the proposed prison would be north of the penitentiary.

65 “Warden’s Report”, *CSP* no. 34, 1914, p. 26.

unwillingness to cope with female convicts. From all appearances these concerns were rooted, not in disciplinary problems as such, but in the peculiarities of female physiology. It was not unusual, for example, for penitentiary officials to comment with perplexity on the children of female convicts, many of whom were born in captivity, who “with their mothers enliven the rooms”.⁶⁶ Meanwhile, the threat of male and female convicts mingling within the penitentiary motivated administrators to lobby for the removal of the women “at such a distance from the Penitentiary as would preclude the possibility of the male and female convicts being able to see or hold any communication with one another”.⁶⁷

It is remarkable that such a small population — often less than a dozen female convicts — should elicit this degree of agitation, worsened when penitentiary staff were confronted by the unhappy union of femininity and insanity. This, of course, was a comparatively rare event, but the elegant and powerful sweep of penitentiary discipline could not dislodge these specks from the penal floor. Inspector Moylan wrote in 1893:

There is no proper place for female lunatics and there is no other alternative than to pardon them in order that they may be sent to an asylum, or retain them, to the great annoyance of the other prisoners, not to speak of the trouble and inconvenience caused to the matron and her assistant.⁶⁸

It might be noted that these comments of distress were provoked by two “crazy” women, of whom one gave “very much trouble”.⁶⁹ These two women compelled the inspector, warden, and surgeon to petition annually for their removal, requests which were honoured only years later.

Given this response to insane female convicts, it is not surprising that the penitentiary’s group of male insane prisoners likewise strained the prison’s disciplinary capacity. The residue of administrative shuffles between Rockwood Asylum and Kingston Penitentiary, insane convicts shared a good deal with the female prisoners: sordid quarters, policy confusion, and a near-leper existence inside penitentiary walls.⁷⁰ Moylan, for example, commented archly, “The treatment of our criminal lunatics — which was intended to be but temporary and experimental — is not in keeping with the well-known liberality and sympathy of the Government.”⁷¹

66 “Warden’s Report”, *CSP* no. 18, 1895, p. 2.

67 “Inspector’s Report”, *CSP* no. 12, 1891, pp. xiii–xiv.

68 “Inspector’s Report”, *CSP* no. 18, 1893, p. xi.

69 See also Dr. O. S. Strange’s complaints, “Surgeon’s Report”, *CSP* no. 18, 1893, p. 6.

70 For a more detailed discussion of the topic, see Jolliffe, “An Examination of Medical Services”; Simon N. Verdun-Jones and Russell Smandych, “Catch 22 in the Nineteenth Century: The Evolution of Therapeutic Confinement for the Criminally Insane in Canada, 1840–1900”, *Criminal Justice History: An International Annual*, vol. 2 (1981), pp. 85–108; Neufeld, “‘A World Within Itself’”, pp. 1–53.

71 “Inspector’s Report”, *CSP* no. 12, 1891, p. xiii. Moylan was quoting himself from the previous year’s report.

Douglas Stewart, Moylan's successor, also grumbled about the insane, complaining that "it does not seem to have been intended that a Penitentiary should be utilized as a poorhouse or a madhouse".⁷² One of Stewart's subordinates, Warden Platt, concurred with this exclusionary analysis and, in reference to the "lunatics", wrote that "in my humble opinion an irresponsible human being has no proper place inside the walls of the penal prison".⁷³ Platt further noted, "the important question as to the proper disposition of insane criminals is still with us and, so far as I can discover, is as far from solution as it was twenty years ago."⁷⁴

It seemed that the sole voice of encouragement contained within the penitentiary was that of the irrepressible Dr. Daniel Phelan, prison surgeon, who commented in reference to the insane that they "require that care and disciplinary guardianship which could not elsewhere be accorded them".⁷⁵ At moments Phelan was positively ebullient, and as he surveyed his charges in 1900 he burred, "Never in the history of this department have there been such a large number of insane to deal with, and never have we been better-equipped to deal with them."⁷⁶

Female and insane convict populations, then, did little to advertise the success of the penitentiary model, and were treated as disciplinary outcasts. In the discussion regarding these prisoners, reformation was incidental to the perceived difficulties of their incarceration. What is remarkable, though, was the incapacity of hard labour, the favoured tool of moral redevelopment, to make good its theoretical value. Formally, there was little debate over this value, and Warden Lavell raised few eyebrows when he testified to the Royal Commission on Relations of Labour and Capital that "we send out men worse than when they came in, unless they are taught intelligent labour", adding, "I can hardly find words to express what I think of keeping prisoners in idleness."⁷⁷ The considerable opposition to the sale of convict labour, however, like that expressed at the commission hearings, dogged administrative attempts to make the penitentiary self-supporting, or at least to keep the convicts occupied.⁷⁸ Persistent lobbying by "free" interests hobbled the prison's twine factory, an otherwise lucrative operation, restricting the sale of its product so effectively that by 1907 the Warden wrote

72 "Inspector's Report", *CSP* no. 18, 1896, p. 11. Stewart, it will be recalled, asserted that the penitentiary was meant for those with well-formed criminal habits.

73 "Warden's Report", *CSP* no. 34, 1901, p. 13. After this date, Warden Platt's reports became exceedingly brief.

74 "Warden's Report", *CSP* no. 34, 1904, p. 5.

75 "Surgeon's Report", *CSP* no. 34, 1901, p. 34.

76 "Surgeon's Report", *CSP* no. 18, 1900, p. 39. As we have seen, Phelan's genial optimism grew more from clinical interests than the disciplinary concerns of his colleagues.

77 Evidence of Warden Lavell, *Report of the Royal Commission on the Relations of Labour and Capital in Canada, Evidence — Ontario* (Ottawa: Queen's Printer, 1889), pp. 937–938.

78 See, for example, the testimony of John McNeil, a Kingston iron moulder, *ibid.*, p. 951.

bitterly, “Altogether the outlook is discouraging.... If we cannot have the market why run the factory?”⁷⁹ Indeed, by 1913 the factory was closed. Similarly, the flour mill, which began operations in 1871, failed to meet expectations and was closed by 1885.⁸⁰

During the period of 1890 to 1914, penitentiary labour was in a state of perpetual crisis. In 1891 both the inspector and Kingston’s warden complained that they were “compelled to place a much greater number of men at stonebreaking than our needs in that direction require” and that “there is certainly no reformation in that task”.⁸¹ By 1911 the inspectors were speaking in dark terms about disciplinary and reformatory crises in their labour programs at Kingston: “If the term of imprisonment and the expense that is incurred to provide technical instructors are intended to fit the delinquents for future usefulness, the hope is rendered nugatory by the failure to supply adequate labour.”⁸²

Out of this confusing experience of penitentiary administration one can draw an example that aptly combines the issues of labour, discipline, reformation, and bureaucratic squabbling that attended penitentiary life. That item is the Prison of Isolation, to which, it will be recalled, participants in the 1899 strikes were sent. Inspector Moylan was the enthusiastic promoter of this prison within a prison, and wanted a facility where “intractable” and new convicts could be confined in solitary cells 24 hours a day, including their working time.⁸³ Despite being begun in 1888, however, the Prison was not finished until 1894. By that time, Moylan saw his project jeopardized by poorly formulated managerial structures, and in 1892 his evangelical vision of the Prison ran headlong into these worries. “It is not necessary to look for Christian work, soul-saving work, in distant Boorioboola Gha,” he wrote:

There is plenty of it in the walls of our penitentiaries. It rests with the Government to decide whether, with the Prison of Isolation at Kingston, a new and healthy system of Penitentiary *regime* shall be inaugurated, all over, or whether we shall be content to let things take their course, *quieta non movere*, following the *laissez faire* “rest and be thankful” policy of the past.⁸⁴

In 1894, though complete, the Prison stood empty. In early October,

79 “Warden’s Report”, *CSP* no. 34, 1907, p. 23. Platt noted that the twine factory was practically the penitentiary’s sole revenue-producing activity; see “Warden’s Report”, *CSP* no. 34, 1905, p. 4.

80 “Inspector’s Report”, *CSP* no. 18, 1892, p. xx.

81 “Inspector’s Report”, *CSP* no. 12, 1891, p. xiv; “Warden’s Report”, *CSP* no. 12, 1891, p. 2.

82 “Inspector’s Report”, *CSP* no. 34, 1911, p. 1.

83 “Inspector’s Report”, *CSP* no. 12, 1891, p. xi. E. A. Meredith, the inspector and one-time warden of the penitentiary, also called for a penal prison: see “Inspector’s Separate Report”, *CSP* no. 12, 1862, n.p.

84 “Inspector’s Report”, *CSP* no. 18, 1892, p. xviii.

Warden Lavell explained to Inspector Moylan that “this solitary prison has had an excellent effect in maintaining discipline”.⁸⁵ This shrewd attempt to show the Prison as its own antidote impressed neither Moylan nor Deputy Minister of Justice Newcombe, however. Writing back, Newcombe spoke pointedly:

It appears quite inconceivable that among a number of four hundred convicts you have none who might properly be considered as a fit subject for incarceration there. Several convicts, as you are aware have recently been transferred from Dorchester to Kingston, and I hope to have their names submitted, together with the others of the class in question, in order that a beginning may be made in the occupancy and industries for which the prison was intended.⁸⁶

Lavell complied, submitting a list of convicts classified into three groups, A through C. Yet the letter was equivocal, because Lavell did not actually recommend anyone for the Prison.⁸⁷ After some pestering by Newcombe, Lavell finally acquiesced, ending his memo with the dry comment, “I would only be too glad to add to their punishment in this way. It would in many ways have a salutary effect.”⁸⁸ Lavell was vague on whether this salutary effect would be directed to his convicts or his superiors.

The Prison of Isolation began its good work in 1894 and continued until 1907, when it was closed as an isolation ward. The renovation and enlargement of the penitentiary’s 1835 cells, nearly complete in 1904, had resulted in a space problem and administrators were looking hungrily at the Prison. Convict reformation, even discipline, sometimes had to bow to the demands of an amoral architecture. Moreover, the Prison of Isolation offers the first substantive glimpse at the disagreements that occurred between penitentiary administrators and guards. In this case it was muted and resolved quickly without public intervention, but the years between 1890 and 1914 were stormy times for Kingston Penitentiary, with mounting evidence that the guardians quarrelled and watched each other to a debilitating degree.

Indeed, the most substantial critique of the actual workings of Foucault’s idealized “carceral archipelago” comes from the ranks of its own authorities, where guards were nearly as refractory as the convicts. Certainly the penitentiary was understood by Foucault to work without a high degree of intended disciplinary efficiency, but the range of shabby surveillance that occurred in a penitentiary like Kingston’s is not well contained by his carceral city. While the bulk of the penitentiary’s records documented the convicts, wardens also kept journals and order books, and within these

85 NAC, RG73, vol. 108, file 4-21-22, pt. 1, Lavell to Moylan, October 9, 1894.

86 NAC, RG73, vol. 108, file 4-21-22, pt. 1, Newcombe to Lavell, October 16, 1894.

87 NAC, RG73, vol. 108, file 4-21-22, pt. 1, Lavell to Newcombe, October 23, 1894.

88 NAC, RG73, vol. 108, file 4-21-22, pt. 1, Lavell to Moylan, November 1, 1894.

surviving records one can find the frequency and scope of punishments directed at prison staff themselves. Guard Alex Spence, for example, was suspended for three months and fined ten dollars “for lack of vigilance in permitting convicts Bottrite and Blakey to escape from him”.⁸⁹ Warden Metcalf also disciplined guards Ryan and Tobin for similar failures.⁹⁰

Warden Platt, who succeeded Metcalf, was also plagued by breakdowns of surveillance; he wrote a lengthy entry in his order book when the key to the asylum’s safety box — which contained all the keys to the cells in that block — was stolen by one of the asylum’s inmates. Apparently the key was routinely left on a certain window sill and frequently went unattended by any penitentiary officer; such was the “antiquity of the careless custom” that each guard thought the other had the key until, some time later, they collectively discovered it was missing.⁹¹

A previous warden, Michael Lavell, complained of guards leaving their posts early with convicts keeping charge over the shop area, and wrote plaintively, “I do not think I am too exacting, and hence in all matters which I deem of moment in conducting the affairs of the Prison, I should get a little more than half-hearted support from officers.”⁹² This did not stop guard Darragh from writing the Minister of Justice in 1894 to complain of the penitentiary’s diet. Lavell, who vetted all correspondence from the penitentiary to the Minister, denied Darragh’s claims.⁹³ Undeterred, Darragh questioned his colleagues one morning during roll call and asked if they would support his statements. The deputy warden, investigating on Lavell’s orders, declined to give the names of the officers who supported Darragh because the vote was “almost unanimous”.⁹⁴ The last communication on “ex-guard” Darragh was in reference to his hearing before the Minister, after which Darragh vanished from the salary lists.⁹⁵

In face of these violations, both trivial and significant, successive wardens tried to cajole their staff into behaving as more appropriate officers. Metcalf, for example, wrote a lengthy and encouraging greeting in the order book:

The Warden desires to convey to the officers, his high appreciation of their services so loyally and faithfully rendered by them the past year to the Peni-

89 NAC, RG73, 1987–88/013, vol. 128, “Warden’s Order Book, April 1887 – July 1898”, order no. 47, October 2, 1897.

90 NAC, RG73, 1987–88/013, vol. 129, “Warden’s Order Book, July 1898 – May 1907”, order nos. 217–218, August 22, 1898. Tobin was dismissed, then re-hired the next month by the interim warden, Foster, as a temporary guard; see order no. 232, September 13, 1898.

91 *Ibid.*, order no. 22, August 29, 1899. Platt drily remarked that “the occurrence reflects upon the management and discipline of the Penitentiary to a very marked degree.”

92 NAC, RG73, vol. 437, “Warden’s Letterbook, 19 January 1881 – 23 June 1892”, April 1, 1891.

93 NAC, RG73, vol. 442, “Warden’s Letterbook, 10 October 1894 – 15 January 1896”, January 14, 1894.

94 *Ibid.*, February 16, 1895.

95 *Ibid.*, March 16, 1895.

tentiary. He is sensible that he owes much to all the officers for their uniform wish to carry out the orders and regulations of the prison; and sincerely wishes a very Merry Christmas and a happy New Year.⁹⁶

After him, Warden Platt offered these hopeful expressions in 1901:

As perfection is always to be aimed at, though never reached, the Warden indulges the hope that the year 1901, upon which we have just entered, will be marked by an ever-increasing zeal in the performance of duty, increasing knowledge in the requirements of our profession and increasing fellowship and good will toward each other.⁹⁷

Undoubtedly there was fellowship and good will, but if the scattered evidence left by a succession of wardens is any indication, this warmth of feeling was greatly tempered by dissension among the officers.

In fact, during the 1890s Kingston Penitentiary was investigated three times — twice in 1892 and again in 1897 — and before the First World War began the institution endured yet another Royal Commission in 1913–1914. The first inquiry convened in July 1892 and was conducted by Inspector Moylan regarding charges brought against Warden Lavell. Moylan accumulated 501 pages of material, to which were added another 188 pages handwritten by himself. Curiously, when the inspector titled his investigation, he never drew attention to the fact that he was himself also named in the charges, including non-payment for work done by convict tailors, shoemakers, and carpenters, illegal appropriation of prison wood and coal for personal use, a lack of accounting for receipts obtained at the prison gate for visitors' tours, overseeing the distribution of penitentiary farm produce to his friends, and more.⁹⁸ Claiming to have interviewed over 80 witnesses, Moylan absolved Warden Lavell (and by extension, it seems, himself) of all charges. Instead, the penitentiary accountant was permitted to resign on

96 "Warden's Order Book, April 1887 – July 1898", December 24, 1897.

97 "Warden's Order Book, July 1898 – May 1907", January 1, 1901.

98 For correspondence between Lavell and Moylan regarding some of the charges, see "Warden's Letterbook, 18 January 1881 – 23 June 1892", August 20, 1891; March 30 and May 9, 1892. NAC, RG73, vol. 108, file 4–20–22, pt. 1, "Report of Inspector re: Evidence of Charges Against Warden of Kingston Penitentiary", p. 4. The draft report is located in pt. 2 of the same file. When Lavell's son, A. E. Lavell, requested the report for his work for the Dominion Penal Commission in 1937, it was loaned to him on the understanding that it was "the only typewritten copy" possessed by the Department of Justice. He returned it within four days, noting it as "an example of the trouble to which officials in all public institutions are subject through anonymous attacks, based usually upon stories of subordinate officers who have been discharged, the report is of little or no value to an historian, and certainly the Penal Commission would have no interest in its contents." See QUA, "A. E. Lavell Papers", I Correspondence, 2a, 1899, 1923–25. The charges were first brought by an anonymous letter from "Nemo", thereafter taken up by ex-guard Loughrane and in Parliament by William Mulock, later Post-Master General and patron of Mackenzie King's sweatshop investigations.

November 5, 1892, while the penitentiary farm instructor, N. P. Wood, was removed to “supernumerary guard, temporary”.⁹⁹ Moylan tersely reported to his Minister, “a full and searching inquiry into alleged irregularities and wrong-doing, on the part of certain officers, was made under your instructions. Every member of the staff was examined under oath. The evidence is now before you.”¹⁰⁰

It would seem highly irregular to have the accused party conduct his own prosecution, but there was apparently no serious objection raised. In fact, there were two investigations — one in July and one later in November — and both were conducted by Inspector Moylan. Perhaps this was the key to complete surveillance, administrative unity, and pragmatic moral architecture.

Moylan, however, would not oversee many more investigations. He retired in 1894, filling his last annual report with a summary of his achievements as well as a number of sore points.¹⁰¹ Meanwhile, Warden Lavell was replaced by 1896 by Warden Metcalf, who kept that post just long enough to preside over the 1899 binder twine strike. Lavell was very conscious of the foreboding uncertainty of his job: apparently unsure of his relationship with his new inspector, Douglas Stewart, Lavell wrote directly to his Minister, at that time Sir Charles Tupper, and asked petulantly why “Mr. Metcalf M.P. for this city has stated openly to an intimate friend of mine that he has the Wardenship in his pocket, and that very soon he will assume its duties”.¹⁰² Lavell added defensively that “there was necessarily friction with portions of the staff [which] resulted in anonymous malignant attacks of vilification” on himself.¹⁰³

The departure of Moylan and Lavell did not stop future investigations. In fact, these two officials had barely left their posts when another inquiry was launched in November 1896. The two investigators who made up this commission — one an Inspector of Prisons in Ontario — were to inquire into seven charges, among them the complaints of the deputy warden against the chief keeper and the chief keeper against the deputy warden, the shooting of a convict, and the escape of two others.¹⁰⁴ Their findings, in short, were as follows:

⁹⁹ “Draft Report”, 1892, p. 5.

¹⁰⁰ “Inspector’s Report, CSP no. 18, 1893, p. x.

¹⁰¹ *Ibid.*, pp. xii–xxii.

¹⁰² “Warden’s Letterbook, 10 October 1894 – 15 January 1896”, Lavell to Tupper, February 1, 1895. The administration of Kingston Penitentiary was always closely imbricated with politics. For example, Henry Powers of Brown Commission fame was defended by his friend John A. Macdonald, and Dr. Wolfred Nelson, rebellion hero of St. Denis, was later rehabilitated as penitentiary inspector.

¹⁰³ *Ibid.*

¹⁰⁴ Kingston Penitentiary Museum, *Report of the Commissioners to Examine into the Affairs of the Kingston Penitentiary*, p. 1. My thanks to curator David St. Onge for directing me to this source.

[O]fficers ... as a rule are divided in cliques, caballing [*sic*] and quarreling amongst themselves, jealous and suspicious of each other and utterly careless and indifferent as to the interest of the prison, the public or the prisoners. The economic management of the institution is if possible in a still more hopeless condition ... waste and extravagance prevail in all the departments of the prison, accentuated in some by dishonest and corruption.¹⁰⁵

The commissioners also complained that there were no regulations governing the dungeon, that the regulations designed for the Prison of Isolation were inadequate (as admitted frequently by their author, James Moylan), and that there was a complete lack of discipline on account of these shoddy regulations.¹⁰⁶ Warden Metcalf, though a “worthy” man, had presided over discipline that had deteriorated “if that were possible, ever since the retirement of ex-warden Lavell”. There were also comments on the female prison, which was condemned for being “in the basement, two feet below the level of the ground”, and the asylum, which “can hardly be too strongly condemned”. Their final comment was directed at the officers, who continually offered “pleadings of verbal instructions from some superior, and a shuffling of responsibility from the shoulders of one to the other”.¹⁰⁷

The strongest censure, though, was directed at Moylan’s 1892 investigations. In the view of the 1896 commissioners, there was ample evidence to “warrant the dismissal of the then warden, accountant, and farmer”.¹⁰⁸ The commissioners were particularly incensed that the *Juno*, an old steam-powered towing vessel, acquired under the administrations of Moylan and Lavell, had apparently been used exclusively for recreational purposes. One day in 1886, after a summer outing, the boat was left in the charge of a convict, as was the custom. The alert convict, a creditable boatsman, attracted the help of a colleague and together they steamed safely to the American side of the lake. One convict was later found dead of drowning; the other simply disappeared. The *Juno*, having been discreetly recovered, was finally salvaged and burnt in 1894.¹⁰⁹

In response to this and other evidence, the commissioners recommended the dismissal of Warden Metcalf, Deputy Warden Sullivan, the penitentiary

105 *Ibid.*, p. 3.

106 *Ibid.*, p. 5.

107 *Ibid.*, pp. 19–20.

108 *Ibid.* One can follow some of this in NAC, RG73, vol. 441, “Warden’s Letterbook, 24 June 1892 – 9 October 1894”, November 2, 1892. The farmer’s convoluted career is partially traced in letters of January 31, February 1 and 3, and March 10, 1893.

109 This story, evidently taken from this report, was retold by Alex Edmison in the Kingston *Whig-Standard*, July 1, 1965. See also NAC, RG73, vol. 444, “Warden’s Letterbook”, memos from Metcalf to Devlin, penitentiary engineer, badgering him on behalf of the commissioners for information on the *Juno*, February 19 and March 10–12, 1897. See also *Report of the Commissioners* (1897), p. 5.

storekeeper, his assistant, the engineer, the surgeon, and the steward. Chief keeper Hughes, considered the only upright officer of the group, was recommended for transfer.¹¹⁰ It was certainly a difficult time for the penitentiary staff; judging from Warden Metcalf's letterbook, the bulk of his time was spent relaying orders from commissioners to junior officers, and explanations from junior officers to commissioners.¹¹¹ In the published annual report, only the actions of engineer Devlin were included in an appendix.¹¹² Had all reports been included as appendices that year, the volume would have been weighty indeed. Charges and investigations much like that at Kingston were also conducted at St. Vincent de Paul and Stony Mountain.¹¹³ These were not happy times for Canada's penitentiary system, much less for its flagship at Kingston.

Warden Metcalf, for example, who held that office for only three years, included only the briefest of reports for 1898. The following year he was replaced by J. M. Platt, completing the high-level penitentiary administration at Kingston, with Douglas Stewart taking over Moylan's duties. To these were added two more personalities, Daniel Phelan as the new surgeon and Brigadier Archibald, a Salvation Army major, in charge of the Dominion's 1899 parole system. This produced an odd mix. Inspector Stewart — joined in 1903 by George Dawson — was firm and, it seems, hard-bitten, with scarcely any patience for reformers. It was, in fact, "professional prison reformers" who made it their duty to "agitate in and out of season, in the press and on the platform, for the abolition of everything that in his alleged mind degrades the abnormally acute self-respect of the convicts".¹¹⁴ As for convict reformation, Stewart admitted:

Imprisonment should be accompanied by all reasonable facilities for moral reformation. These are, however, incidental. All that the state requires — all that it has a right to exact — is that society shall be protected against the delinquent until he shall have given satisfactory evidence that he will comply with the legal requirements of the state.¹¹⁵

110 *Report of the Commissioners* (1897), pp. 32–35.

111 Metcalf, seemingly transformed into an administrative "go-for", wrote memos for information on such items as the number of electric lamps in the prison and their size and location; account balances from all departments for 10 years; accounts of wood and coal deliveries; size of lathe chuck purchases, June 14, 1888; costs of building the water tower; record of tenders for the Prison of Isolation fittings; and numbers of convicts out on Sundays from September to November 1896. See NAC, RG73, vol. 443, "Warden's Letterbook".

112 "Commissioners' Report on Late Engineer, Kingston Penitentiary", *CSP* no. 18, 1898, Appendix R, pp. 291–318.

113 *Ibid.*; NAC, RG73, no. 2, regarding Stony Mountain Penitentiary investigation.

114 "Inspector's Report", *CSP* no. 18, 1906, p. v.

115 "Inspector's Report", *CSP* no 34, 1905, p. v.

Stewart was much more interested in the Canadian Warden's Conferences, which were inaugurated by his efforts in 1898, and which he modestly described as "an important epoch in the history of Canadian penal reform".¹¹⁶

Surgeon Daniel Phelan, one-time president of the American Association of Prison Surgeons, recorded "with pleasure, the exceptionally low death rate during the year, when one considers the depraved mental and physical conditions of so many who enter prison".¹¹⁷ Phelan was most enthusiastic about his duties, commenting that the asylum offered "brilliant opportunities for the study of the insane criminal" and further noting that "the fact must be recognized that a large number of the insane prisoners are recruited from the ranks of a perverse and ill-balanced parentage".¹¹⁸ Phelan's predilection for eugenically controlled populations allowed him to assert that disciplinary problems in the prison lay "not so much with the prison as the prisoners", simultaneously ignoring chronic staff problems while viewing the penitentiary as a laboratory experiment.¹¹⁹

Major Archibald, reflecting the progressives who were his contemporaries, viewed the criminal as "linked in a thousand and one ways with his fellows", and, since his act was "anti-social, anarchic", the criminal needed to be "illuminated with scientific viewpoints and by all facts".¹²⁰ Yet within two years Archibald wrote that "the day seems far distant when crime will hide its diminished head", adding a year later that "the criminal problem is practically permanent".¹²¹

116 "Inspector's Report", *CSP* no. 18, 1899, p. xvi.

117 "Surgeon's Report", *CSP* no. 34, 1903, p. 22. See also *Proceedings of the Annual Conference of the American Prison Association, 1909* (Indianapolis: Wm. B. Burford, 1909), pp. 222–234.

118 "Surgeon's Report", *CSP* no. 18, 1900, p. 35.

119 Phelan recommended a number of eugenic devices for eliminating crime and "moral imbeciles", which would herald the "dawn of an era of higher and safer citizenship". See *Proceedings of the Annual Conference of the American Prison Association*, pp. 227–229. Angus McLaren contextualizes these ideas in *Our Own Master Race: Eugenics in Canada, 1885–1945* (Toronto: McClelland & Stewart, 1990).

120 "Dominion Parole Officer's Report", *CSP* no. 34, 1907–1908, p. 14. Archibald was particularly fond of illumination metaphors: thus "we must accept the criminal as he is now revealed to us in the searchlight which science and religion turn upon him" (p. 17). Foucault would certainly have enjoyed this. For the "Progressive reform movement for the deviant", see Rothman, *Conscience and Convenience*, pp. 3–16. See also Mariana Valverde's *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885–1925* (Toronto: McClelland & Stewart, 1991), for the Canadian context of social purity movements and the rational, moral reform of society.

121 "Dominion Parole Officer's Report", *CSP* no. 34, 1909, p. 16, and no. 34, 1910, p. 10. Archibald was careful to point out, however, that "I find it is best to always look upon that which is innocent, beautiful, and inspiring" (no. 34, 1909, p. 16). In 1913 he wrote that "it is also gratifying to note that the recidivist class of criminal is receding in the penitentiaries", in clear opposition to figures published in that year's annual report, showing near historic high rates of recommittals in both St. Vincent de Paul and Kingston, Canada's two largest penitentiaries. "Dominion Parole Officer's Report", *CSP* no. 34, 1913, p. 17.

Meanwhile, Warden Platt's reports were becoming increasingly withdrawn. Platt's annual reports for 1909 to 1913 were cryptically introduced as "a submission of statistical tables and report", and in 1911 even this was missing.¹²² Were it not for the sometimes effusive commentaries of Phelan and Archibald, Parliament's annual look at Kingston Penitentiary would have been dry and brief indeed. As it was, Platt's reticence proved to be ominous. In September 1913 the Royal Commission on Penitentiaries began hearings that would go on for six months and accumulate 1,773 pages of evidence.¹²³ The material touches on a variety of disciplinary problems, all of them damaging to the panoptic model of an effective penitentiary.

First, surveillance was shoddy, if not altogether absent for lengthy periods. In one case, guard Ingledew charged hospital overseer Wilson for neglect of duty in refusing to see a patient when called to do so. Wilson, in turn, charged Ingledew with having a convict orderly make rounds for him at night, with the orderly winding the station clocks.¹²⁴ The commissioners, exasperated with this degree of bickering, ignored both charges and proceeded to more clearly defined examples of poor observation. The trade in tobacco was particularly troublesome: charges flew that officers accepted money from convicts to purchase tobacco for them, in one case to the sum of \$194.¹²⁵ Other contraband seemed to circulate freely in the prison: ex-chief keeper Hughes, for example, commented that officers routinely trafficked in jewelry and watches. While the commissioners tried to have convicts give names of those who helped them traffick — the convicts, after all, were the ones providing the sensational testimony — none was forthcoming. Neither would a list of threats cajole testimony from penitentiary guards. Since convicts were for their own reasons particularly reluctant to supply names and details, much of this prison economy remained obscure. Only guard Randall was found out, buying money orders for convicts and "raking off" a healthy percentage.¹²⁶

122 "Warden's Report", *CSP* no. 34, 1912, p. 17.

123 Kingston Penitentiary Museum, "Royal Commission on Penitentiaries — Evidence", vols. 2 and 3, 1914. The first volume of 569 pages is missing. Again, my thanks to David St. Onge for permitting the use of this material. The gap in evidence can be partially repaired by *Daily British Whig* coverage, September 19, 1913, through April 29, 1914.

124 "Royal Commission on Penitentiaries — Evidence" (1914), vol. 2, pp. 570–765. The published report did not include evidence taken; see *Report of the Royal Commission on Penitentiaries* (Ottawa: Tache, 1914). The title is misleading, for this investigation was wholly concerned with Kingston Penitentiary.

125 "Royal Commission on Penitentiaries — Evidence" (1914), vol. 2, p. 939. Tobacco was vital to the financial and social economy of the prison culture, prompting one guard to blame it for 90% of the penitentiary's problems, while another warned that cutting off the supply of tobacco "might lead to disastrous results" (vol. 2, p. 854; vol. 3, p. 1613).

126 The threats are in vol. 3 of the evidence, p. 1655, and *Daily British Whig*, December 27, 1913. Randall fetched a \$20 money order for a convict, for example, and kept \$5 for himself. One other guard did eventually confess to participating in the tobacco trade.

As it was, the ongoing commission was embarrassing enough. Money was smuggled into the prison in jam jars, wrapped in layers of silk and foil, or within a turkey dressed and delivered for Christmas.¹²⁷ Whiskey could be hidden in bags of empty walnut shells.¹²⁸ This testimony was supported by the punishment rolls, which show an amazing variety of contraband held by the convicts: watches, pocket knives, a great number of knife blades and bone carvings, files, drills, copper wire, newspapers, oatmeal, an impressive tool collection found in the cell of an escaped convict, and a box with “detachments” of a bicycle.¹²⁹ One officer gave a Galician prisoner a plug of tobacco as payment for beating another convict, surely a gross violation of surveillance and discipline.¹³⁰

The second matter was that of peculiar, though innovative, disciplinary policies. Inspector Stewart repeated his earlier views on penal theory by stating that “the deprivation of all liberty is the greatest degradation to which a man can be subjected”, while both “reformation” and “punishment” were incidental to the general protection of society.¹³¹ Stewart’s application of penal theory could be remarkably petty: newspapers were banned because they would allow convicts to stay “in touch with the criminal world outside”, while family photographs were likewise forbidden because “they would be besmirched” as well as introduce threatening sanitary conditions because “the dust catches on them in the cells”.¹³²

Yet Stewart had more substantive innovations in physical punishment, introducing “hosing” into the penitentiary while in the position of acting warden from May 1, 1912 to April 10, 1913. It was, according to Stewart, “the most efficient and humane and cleanest method of treating an incorrigible that I know of”.¹³³ The hosings took place in the Prison of Isolation, in a cell with the front corners rounded out to prevent the convict from escaping the water.¹³⁴ The cell door was cut to allow a three-inch fire hose, equipped with a three-quarter inch nozzle, to be aimed into the cell. Water at 62 pounds of pressure was directed at the convict until he apologized for the offence. Convicts were hosed thirteen times during Stewart’s wardenship, having only to shout or dance in their cells at night to earn this

127 “Royal Commission on Penitentiaries — Evidence” (1914), vol. 3, pp. 1672–1675; there was a sum of \$52 tucked into this fowl.

128 *Ibid.*

129 These were taken from NAC, RG73, vol. 387, “Punishment Book”, and were selected from random pages covering the period from September 12, 1898 to September 1, 1904. For the tools, see NAC, RG73, 1987–88/013, vol. 129, “Warden’s Order Book”, June 1, 1906.

130 “Royal Commission on Penitentiaries — Evidence” (1914), vol. 3, p. 850.

131 *Ibid.*, vol. 2, pp. 1578–1579.

132 *Ibid.*, pp. 1645–1647.

133 *Ibid.*, p. 1555.

134 *Ibid.*, vol. 2, p. 803. Note the flexibility of the penitentiary in adapting Moylan’s pet project to this purpose.

punishment.¹³⁵ This is certainly an unexpectedly material representation of Mariana Valverde’s emphasis on the social purity movement and its discursive categories of hygiene and cleanliness.¹³⁶

The other bit of disciplinary sport concerned the “tubbing” of insane convicts. Here the convict was strapped at his ankles and his wrists, put in a tub of cold water, then had his feet pulled up, forcing his head under water. This position would be maintained until “the bubbles would begin to rise from their mouth”.¹³⁷ It might be noted that neither hosing nor tubbing was stipulated in regulations, recorded in punishment registers or order books, or tabled in annual reports. Asylum guards, who invented tubbing, stopped temporarily when Dr. Phelan ordered them to do so, but quickly began again when insane convicts assaulted them, as when John Troy jumped on guard Beaupré and bit him on the ear.¹³⁸

Testimony of this sort highlighted the condition of discipline’s marginalized objects. The insane ward was inspected by Dr. E. H. Young, assistant superintendent of Rockwood Asylum.¹³⁹ He was most disapproving of the prison’s facilities, complaining that insane convicts were locked in their cells from 4 p.m. until 7 a.m. without “sanitary convenience”.¹⁴⁰ The fact that these convicts were gathered together in a “large day room, the acute with the chronic, and old and helpless with the impulsive and violent” did not further endear the asylum to Dr. Young. As for the rate of suicides — seven in nine years — Young commented that, even if a sane convict were isolated there, “he is liable to have a spasm of remorse for his crime, or something he has committed, and he is left in there for hours all alone and cannot even see anything — I cannot imagine that anything would be more conducive to suicide than that.”¹⁴¹

Yet perhaps the most understated but disturbing facet of penitentiary life that emerged during the hearings, which was not published in the final report, was the testimony regarding convict homosexuality. Convict Huckell, the most persistent source of this testimony, was “always seeing out for sodomy” and apparently made notations on each liaison he saw in his ten-by-seven-inch Knox bible.¹⁴² The bible was later stolen, but Huckell knew that the stone pile and stone shed, where 60 or 70 convicts would be supervised by one guard — whom Huckell named — was a favourite place for

135 *Ibid.*, p. 825.

136 Valverde, *The Age of Light, Soap, and Water*, pp. 3–14.

137 “Royal Commission on Penitentiaries — Evidence” (1914), vol. 2, testimony of ex-guard Robert Patterson, p. 978.

138 *Ibid.*, pp. 883–885.

139 His findings were also reported verbatim in the *Daily British Whig*, December 13, 1913, p. 1.

140 “Royal Commission on Penitentiaries — Evidence” (1914), vol. 3, pp. 1250–1255. See also Jolliffe’s useful background in “An Examination of Medical Services”.

141 “Royal Commission on Penitentiaries — Evidence” (1914), vol. 3, pp. 1256–1276.

142 *Ibid.*, vol. 2, pp. 905–922, 930–939, 951.

these liaisons. So, too, was the chapel and the hold of the coal boat, where the guard would deliberately stand out of the way on the deck of the boat.¹⁴³ One witness, rebuked for not stopping “so outrageous a thing”, would only reply, “you do not understand this place.”¹⁴⁴ While the experiences of female convicts showed the reluctance and inability of the panopticon to deal with gendered punishment, the practice of homosexuality was formally and wholly outside the moral and disciplinary universe of the penitentiary.

In their published report, the commissioners were unsure of where to locate the difficulties of the penitentiary. At one point they asserted that the “lack of proper employment at Kingston has been the cause, we believe, of the institution’s chief troubles”, in reference to the abandonment of the contract labour system in 1886.¹⁴⁵ Later, though, it was the “system of administration” that caused the unsatisfactory conditions at Kingston Penitentiary.¹⁴⁶ Quarreling officers, “political jealousies”, and “religious animosities” had a decidedly unhappy effect on prison discipline, the commissioners noted. In fact, the intrusive and debilitating effect of political influence especially hampered proper administration, affecting the hiring of guards and the disempowerment of the warden.¹⁴⁷ No dismissals were recommended, and the suggestions chiefly concerned the adjustment of managerial structures.¹⁴⁸

As for the beleaguered penitentiary staff, the response was predictable. Warden Platt had left his post, under circumstances which are not entirely clear, particularly given the respect and warm reception given him by the newspapers during the commission. Warden Irvine of Stony Mountain Penitentiary, who served as Kingston Penitentiary’s interim warden, said little. Even Phelan, whose extra-curricular interest in the criminal was normally prolix, fell silent. Inspector Stewart, however, was most outspoken. The previous three years, he wrote, had recorded “a vigorous and determined effort ... to discredit Canadian Penitentiary management”, and all this on the basis of convict testimony that represented “the scum of Canadian

143 *Ibid.*, vol. 3, p. 1217. Huckell directly implicated officers in the prison’s homosexual subculture.

144 *Ibid.* Convict Bagley protested against “all the stuff [sodomy] that is appearing in the newspapers for our wives and families on the outside to read about this place. I think it is a disgrace to the people printing it” (p. 1228).

145 *Report of the Royal Commission on Penitentiaries* (1914), pp. 31–36. Though the commissioners argued strenuously for state use of convict labour, their assessment on the contract system flew in the face of prison administrators, who grumbled about its disagreeable effects on discipline, skill development, and reformation.

146 *Ibid.*, p. 41.

147 This dilution of the warden’s authority was itself the outcome of the Brown Commission, where the administrative and penal excesses of Warden Smith were to be guarded against by the redistribution of his powers.

148 *Report of the Royal Commission on Penitentiaries* (1914), pp. 41–44. The commissioners, however, were specific on the cessation of hosing and dungeon sentences as punishments.

criminality and even insane convicts”.¹⁴⁹ Those three books of evidence, he continued, failed to show “a single case of cruelty, inhumanity, or willful injustice to any convict”. Tubbing was defended as well, on grounds that “when an insane convict defied authority and refuses to take his periodical bath, sanitary reasons oblige”.¹⁵⁰

The only other comment worthy of record here is that offered by Major Archibald. Unlike Stewart, Archibald would not address the issues directly. Instead, he again began an exposition that was determinedly transcendental:

We may rightly have our penological systems, our criminological sciences, but in and through them all, if we are to expect results from our efforts, we must bring the human life in contact with its Author, for in and through Him only is found the vital force of a redeemed and regenerated humanity.¹⁵¹

Whatever the nature of spiritual conversion, Archibald refused to grapple with the findings of the commission. Yet his manner of evading responsibility for the discipline and reformation of convicts was echoed by Stewart, who in 1916 wrote that “to eliminate an evil it is necessary to eliminate the causes ... [and] the causes of criminality lie outside the prison”.¹⁵² It is extraordinary that the panoptic facility, of such material and symbolic value to Canadian legislators, could even be temporarily considered irrelevant to issues of discipline and crime.

By this point, the very function of Kingston Penitentiary was becoming occluded. On one hand, convict discipline and reformation were matters for the Creator alone, and on the other criminal origins and repairs were to be properly effected outside the penitentiary. Was Canada’s bold investment in rational and humane discipline now little more than an expensive custodial service?¹⁵³ At times it seemed that even adequate administration was near impossible, much less convict reformation. Was this the penitentiary that Charles Dickens, in 1842, had described as “an admirable jail ... well and wisely governed, and excellently regulated”?¹⁵⁴

When Inspector Stewart wrote his report in 1898, on the heels of an investigation, his comment was typical of formal solutions to penitentiary problems: “I respectfully submit the opinion that the weakness does not lie in the system, but in the manner in which it has been administered.”¹⁵⁵ Stewart, like those before and after him, missed the essential point of the

149 “Inspector’s Report”, *CSP* no. 34, 1915, p. 6.

150 *Ibid.*, p. 7.

151 “Dominion Parole Officer’s Report”, *CSP* no. 34, 1914, p. 21.

152 “Inspector’s Report”, *CSP* no. 34, 1916, p. xii.

153 This is Rothman’s assessment of the American asylum and penitentiary, *Conscience and Convenience*.

154 Charles Dickens, *American Notes* (London: Hazell, Watson & Viney Ltd., n.d.), p. 165.

155 “Inspector’s Report”, *CSP* no. 18, 1898, p. xx.

penitentiary model, however: the administration *was* the system. Moral architecture, for example, was a persuasive and impressive thing, but brick and mortar would not leap out and effect discipline, reform, or industry. Guards, keepers, wardens, and matrons were most immediately responsible for the expected success of the penitentiary, and problems of their competency profoundly shaped the nature and breadth of that success.¹⁵⁶ Given a largely uncooperative convict population, the range of effective discipline was, over the years, eroded by the dusty grit of penitentiary operation. Female convicts provoked administrative confusion and frustration, insane convicts did likewise, and even the garden-variety male convict proved remarkably resistant to penitentiary routines. Prison records describe the praxis of discipline and reformation as a contested, prolonged, and disappointing affair. The following extract, though taken from a warden's annual report and bearing the usual stamp of self-vindication, nevertheless fairly encapsulates penitentiary life:

The varied duties of my position, involving as they do, responsibility, care and much anxiety, are performed with a consciousness of their importance. The improvements, material and disciplinary, invite fair criticism, and in carrying them out I have spared neither labour or thought. Duties are exacting, and the ever present unexpected possibilities which may happen, keep up a constant tension, only appreciated by those who have a full knowledge of all that is required to be kept in view.¹⁵⁷

Kingston Penitentiary, then, was an institution whose stated mission was fractured by experience: relentless confrontations between staff and convicts, and between staff members, meant that penitentiary duties were gritty and mundane, complex and stubborn. By all accounts, this is how much of the penitentiary staff received those duties. Thus to summarize Kingston Penitentiary as "a microcosm of Canadian society ... patterned upon those features of free society that led to social control and stability" evades as much as it explains.¹⁵⁸

Indeed, Foucault's vision of penitentiary discipline reproducing itself throughout society is poorly supported by the Kingston experience. Certainly the penitentiary idea and its technical components, such as the huge variety of registers, confirm Foucault's description. The attempts at regulation must be acknowledged, as well as the general relations of power modeled in the penitentiary. Whatever the original intention, however, this penitentiary

156 See O'Brien, *The Promise of Punishment*, p. 205: "[B]efore architecture defined the new carceral system, the guard structured the daily life of the prison in accordance with administrative goals and directives. The guard was the lowest and most indispensable agent in the hierarchy of punishment."

157 "Warden's Report", *CSP* no. 18, 1894, pp. 2-3.

158 Wetherall, "Rehabilitation", p. 295.

quickly began to imitate important features of Canadian life outside its walls. Throughout the period studied here, Kingston Penitentiary's convicts were overwhelmingly unskilled agricultural and industrial labourers who worked for poor wages, in poor conditions, complained about poor food, and organized strikes. Women were shunted out of general prison life and resented for disrupting, somehow, the smooth routine of a male-oriented disciplinary society. Homosexuality, whatever its practice, could by no means be acknowledged. Political patronage and corruption were ubiquitous, and shoddy administration was the rule of this society. The educated and wealthy governed the generally poor and semi-literate working population. Surely there are thematic parallels here between penitentiary life and the broader context of Canadian society.

If Kingston Penitentiary can be imagined as a panoptic institution, it must be understood as a prison that was suffused with social conditions, rather than as a disciplinary model reproduced throughout society. The structures and typical forms of class unrest, gender subordination, and blunt coercion that characterized Kingston Penitentiary were largely the *reflection* of the social order beyond its walls, an unhappy reality that dulled the edge of discipline. Thus, in an inversion of Foucault's thinking, the penitentiary did not insert its discipline into society as much as society inserted itself into the penitentiary.