

**How Did We Get Here? Exploring Socio-Political Influences in Canadian  
Penitentiaries: 1800-1955**

A Thesis Submitted to the Committee of Graduate Studies in Partial Fulfillment of the  
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## Abstract

### **How Did We Get Here? Exploring Socio-Political Influences in Canadian Penitentiaries: 1800-1955**

Alicia Carefoote

This thesis examines how political and social issues have molded and altered Canada's penal system since the nineteenth-century. From early Anglo-Canadian society to Joseph Archambault's *1938 Report of the Royal Commission to Investigate the Penal System of Canada*, the Canadian penal system waxed and waned against social and political tides. As rehabilitative justice took hold throughout the developed world in the early twentieth century, Canada attempted to shift its justice ideologies only to find that punitive justice had created strong footings. This made reform challenging to implement.

**Keywords:** Canadian penal system, socio-political influences of prisons, prison systems, Joseph Archambault, 1932 Archambault report, Canadian society, American society, prison press, prison writing

## **Acknowledgements**

When I decided on this topic for my Master's Thesis, my cohort questioned the validity of my approach considering the breadth of research currently in circulation. Although my question(s) relating to Canada's prison system were not entirely unique, my approach and curiosity were. How did Canadian prison systems evolve to their current state? Towards my main goal of suggesting ways to improve the current state of prisons, I decided to fill a gap in penal research by providing historical insight into the connections between society and punishment.

I would have never been able to dive into systemic research had it not been for the unwavering support of my family. More specifically, my husband John, who questioned my questions and offered alternative explanations to challenge my logic. If it were not for you, my ideas would never be as complex or half as interesting as they currently are. My mother, Barb, provided me with the opportunity to live out my dream – by washing the dishes, folding the clothes, mopping the floors, and making dinner. These small, everyday tasks have amounted to something much larger than I can ever repay: time. My children – Joni Blue, Hunter Rein, and Darcy Beau – who are forever reminding me that the world is sunshine and rainbows, that life is just not that serious, and it is sometimes better to take a break and eat some candy than to stew over unwritten sentences and writer's block.

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On a final, final note, I would like to remind all who stumble across this acknowledgement that you are never too old, and it is never too late to follow your dreams.

Alicia Carefoote

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## Introduction

*San Quentin, you've been a living hell to me.  
You've blistered me since 1963.  
I've seen them come and go and I've seen them die.  
And long ago I stopped asking why.*

*San Quentin, I hate every inch of you.  
You've cut me and you've scarred me through and through.  
And I'll walk out a wiser, weaker man.  
Mr. Congressman, you can't understand.*

*San Quentin, what good do you think you do?  
Do you think I'll be different when you're through?  
You bend my heart and mind, and you warp my soul.  
Your stonewalls turn my blood a little cold.*

*San Quentin, may you rot and burn in hell.  
May your walls fall and may I live to tell.  
May all the world forget you ever stood.  
And the whole world will regret you did no good.*

*San Quentin, I hate every inch of you.<sup>1</sup>*

In a 1969 live performance at San Quentin State Prison, Johnny Cash sang this song to an audience of roughened, blue-jeaned prisoners. The crowd cheered when Cash's raspy, deep voice boomed throughout the auditorium, questioning government officials with, "do you think I'll be different when you're through?"<sup>2</sup> Although Cash's main intent was to establish camaraderie between himself and the prisoners, the live broadcasting unintentionally created a theoretical bridge between the audience and the prisoners. As the camera steadily scans the audience, men's faces become a blur of harmonized elation, reminding the viewer of our shared humanity.

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<sup>1</sup> Johnny Cash, *San Quentin* (San Quentin: Live Concert, 1969).

<sup>2</sup> Ibid.

### Research Path

When I first decided to explore Canadian penitentiaries, I was unaware that the following year of research and analysis would become a profoundly humbling and self-reflective journey. Unfortunately, my naivete in Canadian political history and the impacts that politicians have had on the creation and implementation of the Canadian prison system became apparent. The brutality that many early prison systems inflicted upon their inmates was not particularly shocking; however, the continued use of violence well into the twentieth century was. These unfamiliar facts altered my intended research path.

A rather wonderful mentor and professor once told me to let the evidence speak for itself. Twisting facts to appease an argument is not conducive to historically accurate and representative scholarship. My research path, although stringently focused at the onset, began to widen as I dived into the rabbit holes I encountered along the way. Throughout this process, I remembered my professor's words and followed the path of evidence, which led me further back historically than I had initially intended. Although I would have enjoyed beginning my thesis with a thorough exploration of the *1938 Royal Commission to Investigate the Penal System of Canada*, the amateur historian within me needed to uncover the web of political and societal intricacies that support the fractured foundations of our current penal system.



## Research Rationale

At a 1952 annual meeting of the *Pennsylvania Prison Society*, Joseph McCulley spoke about the current unacceptable state of Canadian penitentiaries. While discussing the need for future penal reforms, he stated:

Unthinking persons are likely to feel that what is needed is higher walls, more steel barriers and more secure locks supplemented by an increase of custodial staff. What is really needed is more intelligent, more humane and more scientific treatment of the offender in keeping with the improved knowledge that we have gathered in recent years of the factors which influence human behaviour.<sup>3</sup>

From early nineteenth-century Kingston mechanics to the strong-will of Agnes Macphail, the main concern behind penal reform has remained consistent: humane disciplinary practices, socially-acceptable living standards, education, medical care, and rehabilitative guidance for prisoners. Unfortunately, providing access to and upholding these guidelines has proven extremely difficult for prison bureaucrats and administration. Even after extensive penology studies and recommendations from some of the most brilliant Canadian scholars, Canada's prison system remains ultimately fractured. What is it about the foundations and ideologies latent within the Canadian prison system that make it resistant to reform? Or, as the proverbial saying goes, so what?

My motivation extends to the masses of misunderstood prisoners who were victims of their socio-economic environment and circumstances.

There was a woman and she was wise,  
Woefully wise was she;  
She was old, so old, yet her years all told  
Were but one score and three,  
And she knew by heart, from finish to start,  
The Book of Iniquity.

There is no hope for such girls as I

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<sup>3</sup> Joseph McCulley, "Broader Horizons in Correctional Service," in *The Prison Journal* (Philadelphia: Sage Publications, 1952), 143.

On earth, not yet in heaven:  
 Unloved I live, unloved I'll die,  
 Unpitied, unforgiven.  
 A loathed jade, I ply my trade,  
 Unhallowed and unshriven.

I paint my cheeks, for they are white,  
 And cheeks of chalk men hate;  
 Mine eyes with wine I make to shine,  
 That men may seek and sate  
 With over head a light of red  
 I sit me down and wait.

Until they come, the mighty scum,  
 With drunken eyes aflame –  
 Your sweethearts, sons, you scornful ones  
 'Tis I who know their shame.  
 The Gods you see are brutes to me,  
 And so I play my game.

For life is not the thing we thought,  
 And not the thing we plan,  
 And woman in a bitter world  
 Must do the best she can,  
 Must feel the whip and bear the yoke  
 And serve the will of man;

Must serve his need and ever feed  
 The flame of his desire,  
 Though she be loved for love alone  
 Or be she loved for hire,  
 For every man, since time began  
 Is tainted with the mire.

And though you know he loves you so  
 And sets you on love's throne,  
 Yet let your eyes but mock his sighs  
 And let your heart be stone,  
 Lest you be left, as I was left,  
 Attainted and alone.

From love's close kiss to hell's abyss  
 Is one sheer drop, I know,  
 And wedding rings and bridal veils  
 Are will-o-wisps of woe,  
 And 'tis not wise to love too well,  
 As we women really know.

Wherefore the wolf-pack having gorged  
 Itself on the lamb, its prey,  
 With siren smile and serpent guile,  
 I make the wolf-pack pay,  
 With velvet paws and flensing claws  
 Of a tigress roused to slay.

In my youth I sought the truest truth  
 And found a devil's lies;  
 A symbol of the sin of man,  
 A human sacrifice,  
 I shall blame on men the shame.  
 Could it be otherwise?

Was I born to walk in scorn  
 Where others walk in pride?  
 By Maker marred and ill-starred,  
 I drift upon this tide,  
 And He alone shall judge His own;  
 So I His judgement bide.

Date has written a tragedy  
 Whose name is "The Human Heart";  
 The theatre is the house of life,  
 Woman, the mummer's part.  
 The devil enters the prompter's box,  
 And the play is ready to start.<sup>4</sup>

This poetry, wrought with emotion and pain, was published in Kingston Penitentiary's prison press, *The Tele-Scope*, in February 1954. It reminds the reader of the anguish and desperation of individuals in the system. As a researcher, my goal is to present evidence in the most objective way possible. However, to remove the emotion from this work would be to deny the humanity of the vulnerable and subservient individuals in ineffective penitentiaries.

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<sup>4</sup> Anonymous, "The Harpy," in *The Tele-Scope* (Kingston: Kingston penitentiary Press, 1954), 30-31.

## Methodology

Understanding how the Canadian penal system has become fractured as a result of an unaccepting society between 1800 and 1955 requires investigation of the origins of the system and the political and personal motives behind it. It also requires a reliance on primary source materials: memoirs, newspaper articles, advertisements, and prison publications. Newspaper articles and memoirs offer salient insights into the complexities of society, with particular consideration paid to advertisements, announcements, and language. As society adapts, how society communicates, primarily through social channels, alters as well; the written word becomes a gateway to personal beliefs and ideologies within the period.

To access these primary sources, I utilized websites such as Proquest, Newspaper Archives, The British Newspaper Archives and Newspapers by Ancestry.ca. In each of these search indexes, I filtered the search to provide articles pertaining to a range of years and particular words or phrases (for instance, “prison abuse,” “prison reformation,” “prisoner,” and “prisons”). This search tactic produced a copious amount of material. However, I read through each piece in order to gain a clear understanding of historical context. I then chose articles based on the clearest argument and from various newspapers to show similar opinions regardless of political affiliation.

I accessed other primary source materials, including prison memoirs and poetry, through the Gaucher / Munn Penal Press collection. The search index allowed me to filter by dates and institution. In doing so, I could provide primary source materials from various prisons across Canada. Although most pieces found within the Prison Press contain sorrow and despair, I chose to provide the reader with a glimpse into the interesting emotional state of these prisoners and, more specifically, the combination of

resentment, advocacy, and fear resulting from Canada's prison system's complicated history.

Nevertheless, this thesis provides helpful conclusions illustrating the interconnectivity of society and prison systems. As Northrop Frye stated, "one disadvantage of living in Canada is that one is continually called upon to make statements about the Canadian identity, and Canadian identity is an eminently exhaustible subject."<sup>5</sup> Seeking to do so is exhausting but necessary when seeking to understand how and why ineffective prison practices remain in Canada.

### Literature Review

To say that there is a plethora of written material regarding the Canadian penitentiary system would be an understatement. The sheer volume is overwhelming, with the majority describing it as a "broken institution."<sup>6</sup> This label has become a quintessential identifier for Canadian penitentiaries since the early advocacy writings of the Brown Commission, E.A. Meredith, and James Moylan in the mid-nineteenth century. Even recent pop culture articles label Canadian prisons as "houses of hate."<sup>7</sup> Collectively, these pieces view the system and criticize its practices from a top-down approach, drawing conclusions based upon "large social structures and [political] processes ... the dominant tropes in criminology and history."<sup>8</sup>

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<sup>5</sup> Colin Robertson, *The True White North: Reflections on Being Canadian* (Montreal: Policy Options, 2008), 79.

<sup>6</sup> Martina Arcuri, "The Canadian Prison System: A "Broken" Institution," in *John Howard Society of Canada* (Kingston: John Howard Society of Canada, 19 May 2021).

<sup>7</sup> Justin Ling, "Houses of hate: How Canada's prison system is broken," in *Maclean's* (Toronto: Maclean's Canada, 28 February 2021).

<sup>8</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 6.

Simply labelling Canadian penitentiaries in this way is counterproductive to enacting change. As I pieced together a timeline of important prison events and reports, read through secondary source materials, and analyzed research approaches, I found myself left with unanswered questions. Specifically, why did proven prison reform recommendations fail to flourish in Canada? With “top-down” research proving the system agreeable for implementing reform tactics, I realized the issue pertained to the “bottom-up” or, simply, individuals: i.e., inmates, wardens, bureaucrats, prison administration, legislators, and social circles.

The writings of scholars Chris Clarkson, Melissa Munn, and Ted McCoy provided essential context and information for the various primary sources I encountered along the way. They each approached their research from the bottom-up, using the words of the inmates to situate the Canadian penitentiaries within the “period’s zeitgeist.”<sup>9</sup> This allowed for a deeper understanding of more significant political and social issues and inspired my own writing.

As Clarkson and Munn noted, the great historians of the past had already “painted a picture of uneven progress in the Canadian prison system. ... From their perspective, Canada’s prisons [had progressed] from savagery to civilized conditions, largely due to the wisdom and exertions of great and determined men and women.”<sup>10</sup> With an already solidified “understanding of penology, practice, and achievement,”<sup>11</sup> my research was not looking to replicate but provide context. Like Clarkson and Munn, I wanted to explore

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<sup>9</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 6.

<sup>10</sup> *Ibid.*, 7.

<sup>11</sup> *Ibid.*

“proposed changes, perceived changes, actual changes”<sup>12</sup> and the repercussions of those changes.

Although I read through various research pieces ranging from Deidre Foucauld’s “Prisoner Labour, Punishment or Reform the Canadian Penitentiary System 1867-1960” to Bryan Palmer’s “Kingston Mechanics and the Rise of the Penitentiary, 1833- 1836,”<sup>13</sup> I found that there was not a clear understanding or representation of the interconnectivity of society, politics, and prisons from 1800 to 1950. More specifically, a bottom-up understanding of why the Canadian prison system was resistant to reform. Even the current historical experts in the socially-centred field of penology focused on specific periods preventing a broader understanding; McCoy thoroughly explored the nineteenth-century while Clarkson and Munn focused on the twentieth-century, beginning in the 1920s. They did, however, illustrate that “much of prison history is the story of relationships among ... disparate groups.”<sup>14</sup> They each connected the “personal with the political ... to challenge what has been seen as historically important”<sup>15</sup> and to fill the social gap in penology studies.

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<sup>12</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 7.

<sup>13</sup> Examples include J. Phillips, “Crime and Punishment in the Dominion of the North: Canada from New France to the Present,” in C. Emsley and L. Knafla, eds., *Crime History and Histories of Crime: Studies in the Historiography of Crime and Criminal Justice in Modern History* (Westport: Greenwood Press, 1996), 163-199; D. Owen Carrigan, *Crime and Punishment in Canada: A History* (Toronto: Oxford University Press, 1997); Peter Oliver, *“Terror to Evil-doers”: Prisons and Punishment in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998); Donald Fyson, *Magistrates, Police, and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764-1837* (Toronto: University of Toronto Press, 2006); and G.B. Baker, “Introduction: Quebec and the Canadas, 1760 to 1867: A Legal Historiography,” in G.B. Baker and D. Fyson, eds., *Essays in the History of Canadian Law. Volume XI: Quebec and the Canadas* (Toronto: Osgoode Society for Canadian Legal History and University of Toronto Press, 2013), 3-95.

<sup>14</sup> Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), 4.

<sup>15</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 6.

With this in mind, I centred my research from the perspective of the individual (inmate, legislator, society) and widened the scope of time, aiming to reveal the socio-political knots causing Canada's resistance to penitentiary reform.

### Thesis

Understanding why the Canadian penal system has become resistant to reforming disciplinary practices is crucial to fixing the twenty-first-century prison system: how do you fix something if you are unsure of how and why it broke? Was the system ever stable? A thorough exploration of society, politics, and the penal system is an essential precondition to repairing our broken system.

This thesis argues that from 1800 to 1955, the Canadian penal system's structural and ideological framework has functioned – even as political tides and cultural influence shifted – within an unaccepting society, thus causing societal distress, prison riots and continuous demand for change. Dating back to the first Canadian penitentiary, the system, devised for political grandeur and potential profitability, sought to force American prison ideologies and punishment onto Anglo-Canadian society. When society proved averse to the American penitentiary system, advocates for penal reform during the nineteenth and early twentieth centuries recommended and attempted to change the Canadian system to mirror the British Glasgow system. With Canadian penitentiary ideologies becoming more aligned with the traditions of Anglo-Canadian society, Joseph Archambault made a significant reformative push in 1938. His report on penitentiaries – a document overflowing with reform recommendations based upon the accomplished British penitentiary system – became a crucial document in informing options for Canadian prison reform. Unfortunately, the implementation of his recommendations halted as the



effects of the Second World War spread throughout North America. When the war ended in 1945, Archambault's report again became a topic of discussion in Canadian parliament. Politicians and the prison administration failed to recognize that Canadians no longer felt culturally represented by Britain. The American media juggernaut reshaped Canadian society, and practical British penitentiary recommendations no longer fit Canadian ideologies of punishment.

## Chapter 1

### *Life and Society in Early 19<sup>th</sup> Century Upper Canada*

The early nineteenth-century found hundreds of thousands of British emigrants flinging their suitcases and prized possessions onto Upper Canadian shores.<sup>16</sup> They timidly disembarked passenger ships with baggage brimming with British societal structures, political thoughts, and ideologies. Although the transportation of ideologies was not solely limited to British emigrants (the early nineteenth-century found many Western Europeans emigrating from their homeland to North America), the sheer volume of British emigrants ensured the new Canadian colony would resemble the socio-economic and political structure of its British imperial master. As Andrew Smith argues, the strategy behind the creation and subsequent push for British emigration was “about building up a British Dominion and resisting the North-South attractions of the United States.”<sup>17</sup>

During Upper Canada’s early nineteenth-century emigration boom, Britain’s general public began critiquing the existing crime and punishment system in Britain itself.<sup>18</sup> Articles in the British media criticized ineffective local gaols and a lack of efficient and reformatory punishments.<sup>19</sup> For example, an early 1819 article published in *The Scotsman* urges the transformation of punitive to rehabilitative justice and marked the beginnings of Britain’s rehabilitative penal movement. The article’s author, who remains unknown, appeals to the audience’s patriotism and faith, proclaiming that:

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<sup>16</sup> Susan E. Houston, “The Role of the Criminal Law in Redefining ‘Youth’ in Mid-Nineteenth-Century Upper Canada,” in *Historical Studies in Education* (Toronto: York University, 1994), 41.

<sup>17</sup> Andrew Smith, “My Thoughts on the Liberal Order Framework,” accessed February 10, 2021, <https://pastspeaks.com/2009/06/02/my-thoughts-on-the-liberal-order-frameekwork/>

<sup>18</sup> Susan E. Houston, “The Role of the Criminal Law in Redefining ‘Youth’ in Mid-Nineteenth-Century Upper Canada,” in *Historical Studies in Education* (Toronto: York University, 1994), 43.

<sup>19</sup> *Ibid.*

The brightest jewel of the Crown is *mercy*; and as to the *Altar*, none has right to approach it who is not kind and forgiving, and who does not believe that the prisoner in the jail, as well as the thief on the cross, may be co-heir with him of all that is hoped from futurity.<sup>20</sup>

The article declares that punishment “is not, and never can be, in the hands of men”<sup>21</sup> and has proven to only “harden prisoners in their guilt, while promiscuous association ... makes the bad, worse.”<sup>22</sup> Similar articles increasingly frequented publications like the *York Herald* and *Lancaster Gazette* during the early 1820s illustrating society’s discontentment with punitive justice.

By the mid-1820s, these criticisms made their way across to the British North American colonies. Public discourse amongst Upper Canadians, especially the elite, generated civil unrest and demand for modifications in punishment.<sup>23</sup> Articles published in the *Kingston Upper Canada Herald* discussed current forms of prisoner punishment, often headlining each piece with phrases like “PRISON TORTURE”<sup>24</sup> in bold lettering. In a specific piece written on 1 January 1828, the anonymous writer labels widely accepted forms of punishment as a “species of cruelty,”<sup>25</sup> targeting the audience’s faith and inability to recognize the difference between good and evil. The author describes prisoner cells as “closely studded with projecting spikes, or pieces of sharpened iron resembling the blades of knives,”<sup>26</sup> aiming to invoke sympathy and disgust in their beliefs while inevitably altering their opinion.

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<sup>20</sup> Anonymous, “State of Prisons and Prison Discipline,” in *The Scotsman or Edinburgh Political and Literary Journal* (Edinburgh: The Scotsman, February 13, 1819), No. 108. Vol. III.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Susan E. Houston, “The Role of the Criminal Law in Redefining ‘Youth’ in Mid-Nineteenth-Century Upper Canada,” in *Historical Studies in Education* (Toronto: York University, 1994), 43.

<sup>24</sup> Report of the Prison Discipline Society, “Prison Torture,” in *The Upper Canada Herald* (Kingston: H.C. Thomson, January, 1, 1828), 4.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

As discussions and concerns regarding the cruel nature of prison punishment frequented social circles and newspapers during the late 1820s, Canadian society began advocating for a provincial prison where inmates were separated and punished based on the offence; those less accomplished in crime could partake in reformatory hard labour and hopefully return to society as upstanding, contributing citizens.<sup>27</sup> The State was finally being held accountable for its inmates. Those within the legislature quickly took notice of this impending social movement and, in a swift, decisive move, Canadian-born businessman and senior civil servant H.C. Thomson emerged as chairman of the penitentiary board.

Thomson, a first-generation Canadian, was born in Kingston, Ontario, in 1791 to Scottish parents, Archibald Thomson and Elizabeth McKay. Thomson spent his early adult years participating in various community activities ranging from justice of the peace to deputy crown clerk. Unknowingly, his political career began after becoming proprietor and editor of the *Upper Canada Herald*. It was here that Thomson, to the best of his abilities, published work that was “loyal and patriotic, open to all parties, but under the control of none.”<sup>28</sup> Unfortunately, his very real political biases began staining the paper’s pages resulting in its inevitable support of moderate reform ideologies.

Thomson’s reform publications would prove problematic when, in 1823, he published “a letter to the editor (probably written by Thomas Dalton) which criticized a report of a legislative committee on settling the affairs of the ‘pretended’ Bank of Upper

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<sup>27</sup> Susan E. Houston, “The Role of the Criminal Law in Redefining ‘Youth’ in Mid-Nineteenth-Century Upper Canada,” in *Historical Studies in Education* (Toronto: York University, 1994), 43.

<sup>28</sup> H. P. Gundy, “Thomson, Hugh Christopher,” in *Dictionary of Canadian Biography* (Toronto: University of Toronto, 2003), vol. 6, University of Toronto/Université Laval, 2003-, accessed February 9, 2021, [http://www.biographi.ca/en/thomson\\_hugh\\_christopher\\_6E.html](http://www.biographi.ca/en/thomson_hugh_christopher_6E.html)

Canada, or, as the writer said, on unsettling its affairs.”<sup>29</sup> This publication landed him in front of the Tory elites, where he was “reprimanded ... for printing a false, scandalous, and malicious libel.”<sup>30</sup> As H.P. Gundy argues, Tory condemnation most likely motivated Thomson to run as a moderate reformer in the 1824 election.<sup>31</sup> He proceeded to spend the next decade within the legislature where he “won a reputation as a fair-minded and judicious committee-man.”<sup>32</sup> His objective views and compassionate mind made him a crucial, if not only, voice within the legislature for the implementation of a Canadian penitentiary, an ambition he fought to implement for the entirety of his legislative career.

Thomson began probing the legislature for a Canadian penitentiary in 1826. Much like the Upper Canadian public, he began criticizing the gaols, where prisoners were “passing their time in idleness and sloth.”<sup>33</sup> Members of the legislature paid little attention to Thomson’s concerns over the years until 1830. In a *coincidental* shift, the Lieutenant Governor of Upper Canada, Sir John Colborne, “adverted to the matter in his address to parliament.”<sup>34</sup> What happened within the confines of the legislature that suddenly made space for this issue? Was it simply societal pressure, or did Thomson intentionally change political sides to have his issue heard and accepted within the legislature?

In 1830, shortly before Sir John Colborne began discussing the need for a Canadian penitentiary, Thomson “abandoned his reform allies and became a consistent

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<sup>29</sup> H. P. Gundy, “Thomson, Hugh Christopher,” in *Dictionary of Canadian Biography* (Toronto: University of Toronto, 2003), vol. 6, University of Toronto/Université Laval, 2003-, accessed February 9, 2021, [http://www.biographi.ca/en/thomson\\_hugh\\_christopher\\_6E.html](http://www.biographi.ca/en/thomson_hugh_christopher_6E.html)

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Deidre Foucauld, “Prisoner Labour, Punishment or Reform the Canadian Penitentiary System 1867-1960,” (Unpublished MA Thesis: University of Ottawa, 1984), 97.

<sup>34</sup> Ibid.

supporter of the administration.”<sup>35</sup> This political shift ensured his position as commissioner of the new penitentiary, one he took great pride in. As commissioner, he formulated a complete and “comprehensive act for the administration and maintenance of the institution.”<sup>36</sup> Thomson’s political ideologies would become the key reason Canadian penitentiaries are functionally problematic.

As Deidre Foucauld discusses in her work on early Canadian punitive justice, Thomson thoroughly explored British and American penitentiary practices. While considering the different “approaches towards incarceration, H.C. Thomson favoured the American Auburn system over the Glasgow Method, and its reliance on moral and religious instruction.”<sup>37</sup> Thomson believed that the “penitentiary was not solely for education”<sup>38</sup> and, unfortunately, the Glasgow Method focused heavily upon reform. On the other hand, the Auburn system encouraged “solitary imprisonment, accompanied by well-regulated labour and religious instruction.”<sup>39</sup> Thomson believed that this form of punishment could undoubtedly “deter others from the commission of crimes”<sup>40</sup> and encourage the reformation of criminals with the continued practice and development of industry-related skills. The Auburn system would become Thomson’s choice, a decision that would cause detrimental rippling effects for centuries to come.

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<sup>35</sup> Deidre Foucauld, “Prisoner Labour, Punishment or Reform the Canadian Penitentiary System 1867-1960,” (Unpublished MA Thesis: University of Ottawa, 1984), 97.

<sup>36</sup> H.P. Gundy, “Thomson, Hugh Christopher,” in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003-, accessed February 9, 2021, [http://www.bigraphi.ca/en/bio/thomson\\_hugh\\_christopher\\_6E.html](http://www.bigraphi.ca/en/bio/thomson_hugh_christopher_6E.html).

<sup>37</sup> Deidre Foucauld, “Prisoner Labour, Punishment or Reform the Canadian Penitentiary System 1867-1960,” (Unpublished MA Thesis: University of Ottawa, 1984), 97.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, 98.

<sup>40</sup> *Ibid.*

Thomson's political ideologies consistently and passionately functioned within reform parameters regardless of his 1830 political shift. Thomson spent most of his time in the legislature as a moderate reformer under the direction of the Lieutenant Governor of Upper Canada, Sir Peregrine Maitland. When Maitland retired in 1828, Sir John Colborne was appointed Lieutenant Governor. Soon thereafter, William Lyon Mackenzie won the York seat in the House of Assembly in 1829. H.P. Gundy, one of the only individuals to provide a thorough exploration of Thomson, argues that Thomson's desire to support the Tories, after almost a decade as a moderate reformer, was due to the "strains imposed on the reform movement by the election of Mackenzie in 1828."<sup>41</sup> To make this claim overemphasizes the impact a newly political Mackenzie had on the seasoned legislators of the 10<sup>th</sup> parliament of Upper Canada.

Historians Frederick Armstrong and Ronald Stagg argue that Mackenzie is the "most frequently misunderstood figures in Canadian history."<sup>42</sup> Although "he regularly recorded his own past and his objectives in great detail, ... his commentaries were often based on a faulty memory, or spurred by the exigencies of the moment."<sup>43</sup> Unfortunately, "as a legend, Mackenzie has a role and importance that Mackenzie the man could never achieve."<sup>44</sup> As a polarizing figure, some would argue that his complexity turned modernists, like Thomson, into conservatives. However, that argument fails to separate the legend from the man. Without separation, it is easy to assume, like Gundy, that

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<sup>41</sup> Deidre Foucauld, "Prisoner Labour, Punishment or Reform the Canadian Penitentiary System 1867-1960," (Unpublished MA Thesis: University of Ottawa, 1984), 97.

<sup>42</sup> Frederick Armstrong and Ronald Stagg, "Mackenzie, William Lyon," in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003-, accessed February 9, 2021, [http://biographi.ca/en/bio/mackenzie\\_william\\_lyon\\_9E.html](http://biographi.ca/en/bio/mackenzie_william_lyon_9E.html)

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

Mackenzie, a new political figure within the legislature, had enough influence and significance to turn a seasoned politician like Thomson into a conservative.

Assumptions like Gundy's also fail to acknowledge the obscure political divisions during the early nineteenth-century. Political "party lines were not clear in those days [and] ... Mackenzie [had] said he [wanted to] run as an independent."<sup>45</sup> By running as an independent, politicians would "hint to the appropriate people of both sympathies that [they] were well disposed towards."<sup>46</sup> In essence, Mackenzie's political ideologies were mixed for the simple fact that "he disliked [ideologies] on both sides."<sup>47</sup> Additionally, Gundy fails to acknowledge that, in 1830, when Thomson became a Tory, Mackenzie and the reform movement lost the majority in the House of Assembly. This would have significantly diminished Mackenzie's overall influence.<sup>48</sup> At this point in Mackenzie's career, his political ideologies, heavily influenced by Andrew Jackson and American institutions, were in their infancy. Although loud and commanding, his voice would not have carried as much influence as Gundy and many other historians would argue.

Unfortunately, Gundy has failed to situate his research within the confines of the period; perhaps Mackenzie's notoriety influenced Gundy's assumption of Thomson. Thomson chose to affiliate himself with the Tories in 1830 for his own political motives. During his time in the legislature, Thomson had "made himself an expert on penitentiary

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<sup>45</sup> William Kilbourn, *The Firebrand: William Lyon Mackenzie and the Rebellion in Upper Canada* (Toronto: Dundurn, 2008), 73.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Frederick Armstrong and Ronald Stagg, "Mackenzie, William Lyon," in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003-, accessed February 9, 2021, [http://www.biographi.ca/en/bio/mackenzie\\_william\\_lyon\\_9E.html](http://www.biographi.ca/en/bio/mackenzie_william_lyon_9E.html)



theory and operation.”<sup>49</sup> In 1826, when he first broached the subject within the House of Assembly, he received little attention and recognition. Knowing the growing importance of a Canadian penitentiary, the positive financial and legislative effects the penitentiaries to the south were garnering, and the limited time he had remaining in the legislature, Thomson made a crucial decision to switch political sides to gain favour with Sir John Colborne. Mackenzie did not force Thomson to reconsider decades worth of his political ideologies; a need for an Upper Canadian penitentiary, an idea Thomson had become passionate about, spearheaded his decision to switch sides within the legislature.

Moreover, Thomson’s true political ideologies are revealed in his choice of the American Auburn system over the British Glasgow system. Had his political sympathies indeed shifted, his framework for Canada’s first penitentiary would have focused on the moral and religious instruction widely praised throughout the British Empire. Thomson disagreed and, in his opinion, believed that the “penitentiary was not solely for education ... [but rather] punishment, reform was secondary.”<sup>50</sup> He insisted that reform could be achieved through “prison labour as a function of discipline and training”<sup>51</sup> while conveniently “defraying the costs”<sup>52</sup> of the prisoner’s housing, an opinion commonly reflected among American prison administrations. Thomson’s decision inevitably created an Americanized penal system functioning within an Anglo-Canadian society.

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<sup>49</sup> H. P. Gundy, “Thomson, Hugh Christopher,” in *Dictionary of Canadian Biography*, vol. 6, University of Toronto/Université Laval, 2003–, accessed February 9, 2021, [http://www.biographi.ca/en/bio/thomson\\_hugh\\_christopher\\_6E.html](http://www.biographi.ca/en/bio/thomson_hugh_christopher_6E.html).

<sup>50</sup> Deidre Foucauld, “Prisoner Labour, Punishment or Reform the Canadian Penitentiary System 1867-1960,” (Unpublished MA Thesis: University of Ottawa, 1984), 154.

<sup>51</sup> *Ibid.*, 156.

<sup>52</sup> *Ibid.*

## Chapter 2

### *American Society and Prisons in the 1830s*

American society during the 1830s “was a time of religious experimentation, an era dominated by spiritual yearns of believers alienated by their parents’ Calvinism.”<sup>53</sup> This period found religious revivalists gathering with “explosive force as both a movement for religious renewal and a forceful critique of the inherited tradition.”<sup>54</sup> Americans were essentially moving to put traditional religion behind them and embrace a new view of God, self, and personal ideologies. However, religious liberation and acceptance were only a fraction of nineteenth-century American society. Literary publishing, production, and print culture passionately reflected and promoted American nationalism as well.<sup>55</sup> Like the mass media juggernaut of the twenty-first century, nineteenth-century American literary productions reflected “nationalism in [American] liberal society,”<sup>56</sup> which undeniably affected public life. Unlike the traditional aspects of Britain and, thus, Canada, the United States reflected progressive ideologies: American religious enlightenment, civil rights advancements, and progressive reform characteristics of its prisons. As a freemason and reformist, these attributes would have undoubtedly enticed H.C. Thomson and influenced his choice in penal system.

When exploring potential penitentiary systems, Thomson believed the following characteristics were crucial to running an orderly prison and providing effective punishment:

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<sup>53</sup> Christopher White, “Minds Intensely Unsettled: Phrenology, Experience, and the American Pursuit of Spiritual Assurance, 1830-1880,” in *Religion and American Culture: A Journal of Interpretation* (Berkeley: University of California, 2006), 228.

<sup>54</sup> Ibid.

<sup>55</sup> Anna Brickhouse, *Transamerican Literary Relations and the Nineteenth-Century Public Sphere* (Cambridge: Cambridge University Press, 2004), 27.

<sup>56</sup> Ibid.

- crimes other than murder be punishable by death.
- fines [be] justifiable to the crime.
- prisoners [be] segregated based upon offence.
- corporal punishment [be] removed and replaced by proper physical and mental discipline.<sup>57</sup>

When exploring ideologies, structure, and punishment within various penitentiary systems throughout the United States and Europe, Thomson concluded that the Auburn system most adequately fit his needs.

The Auburn system is a nineteenth-century form of penal discipline categorized by the unique pairing of stringent, heavy labour and silence.<sup>58</sup> This particular model of prison management was designed to replace the outdated, sequestered and heavily punitive Pennsylvania system, which had “injurious effects ... on the bodies and minds of the convicts; [depicted by] the ratio of deaths and cases of insanity.”<sup>59</sup> Once kept in solitary confinement for the entirety of their sentence, prisoners now maintained daily schedules resembling life outside the prison. Reformation could be achieved through the continued employment and development of industrious skills to solidify the importance of social stability. Based upon the “belief that hard labour and silence would help offenders reform,”<sup>60</sup> inmates partook in manufacturing “boots, harnesses, carpenters’ tools, buckets, and brooms to clocks, wagons, buttons, carpets, and rifles.”<sup>61</sup> Auburn prison itself even partook in “an early experiment in the manufacturing of sewing silk, a type of thread used

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<sup>57</sup> C.J. Taylor, “The Kingston, Ontario Penitentiary and Moral Architecture,” in *Histoire Sociale – Social History* 12 (1979), 386.

<sup>58</sup> Kim Davies, “Auburn System,” in *Encyclopedia of Prisons & Correctional Facilities*, vol. 1 (London: SAGE Reference, 2021), 54.

<sup>59</sup> Peter Laurie, “*Killing No Murder*”; or, *The Effects of Separate Confinement on the Bodily and Mental Condition of Prisoners in the Government Prisons and Other Gaols in Great Britain and America* (London: John Murray, 1846).

<sup>60</sup> Kim Davies, “Auburn System,” in *Encyclopedia of Prisons & Correctional Facilities*, vol. 1 (London: SAGE Reference, 2021), 54.

<sup>61</sup> *Ibid.*

in garment production.”<sup>62</sup> Between 1841 and 1844, inmates at the prison “worked in throwing mills to transform cocoons into sewing silk; they reeled, combed, and dyed silk filaments, added twist, and wound the thread into bobbins.”<sup>63</sup> Regardless of the industry, the Auburn system aimed to exploit inmate labour.

The Auburn system’s potential profitability ensured its widespread popularity throughout North America during the nineteenth-century. In order to capitalize on this inmate-driven industrious revenue stream, silent prisoners were “forced to work together in what were essentially prison-run factories.”<sup>64</sup> Prison administration would “take bids on the convict [labour] to companies, which would supply raw material for the inmates to make goods that the companies would sell.”<sup>65</sup> By providing prisoners with little or no pay, the prison had the potential to create a successful operation; revenue would offset housing costs, and the remaining funds would crisply line the pockets of prison bureaucrats and administration. Yet, for all its reformatory potential, the Auburn system’s financial ambitions prevented any form of inmate rehabilitation.

Living within the constraints of a financially motivated prison required obedience and complete silence, as warden Elam Lynds determined. In order to uphold this requirement, Lynds and John Cray devised a revolutionary “silence enforcing method,” which made silence mandatory throughout the prison, including walking and eating. In order to silently transport inmates within the prison, the lockstep was created, which involved “each man [walking] with their arms locked under the man’s arms in front of

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<sup>62</sup> Denise Green & Nancy Breen, *Silk Mania in the Auburn Prison, 1841–44*. (Toronto: St. Joseph’s Media, Dress. 47), 10.1080/03612112.2021.1877975.

<sup>63</sup> Kim Davies, “Auburn System,” in *Encyclopedia of Prisons & Correctional Facilities*, vol. 1 (London: SAGE Reference, 2021), 54.

<sup>64</sup> *Ibid*, 55.

<sup>65</sup> *Ibid*.

them.”<sup>66</sup> Inmates were then “required to alternate which side they were looking, to discourage communication”<sup>67</sup> and ensure silence was maintained. Guards were also discouraged from communicating with inmates and only “communicated through different tapping, using wooded staffs with metal ends. The guards tapped the sticks loudly, and inmates moved according to the number of taps taught to them.”<sup>68</sup> Even during meals, inmates ate at “hall tables [that] faced outward.”<sup>69</sup> Inmates who broke silence were often severely and publicly punished to ensure adherence to the system.

Strict silence often made inmates vulnerable to the guards’ inhumane and often cruel tactics. Prisoners “were not to laugh, dance, whistle, sing, run, jump, or do anything that will have the least tendency to disturb or alarm the prison.”<sup>70</sup> Inmates were even secretly monitored “from a 2,000-foot passageway through peepholes behind the workshops to be sure they worked hard and refrained from talking or other communication.”<sup>71</sup> If caught communicating, the punishment “included flogging, the yoke, and the shower bath, where guards would cascade freezing water on naked prisoners [while] fastened to wall shackles.”<sup>72</sup> Punishment was often extremely violent as the prison administration believed inmates would quickly learn to adhere to the rules of the prison if the punishment was severe. Yet, for all its cruelty, the Auburn system was widely accepted and even praised throughout the United States.

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<sup>66</sup> Jane Stebbins, “Auburn,” in *The Citizen* (Ottawa: Postmedia Network, 2003), 8.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*, 9.

<sup>69</sup> *Ibid.*

<sup>70</sup> Marilyn McShane, and Frank Williams, *Encyclopedia of American Prisons* (Oxon: Taylor & Francis Group, 1996), 77.

<sup>71</sup> Kim Davies, “Auburn System,” in *Encyclopedia of Prisons & Correctional Facilities*, vol. 1 (London: SAGE Reference, 2021), 54.

<sup>72</sup> Jane Stebbins, “Auburn,” in *The Citizen* (Ottawa: Postmedia Network, 2003), 8.

As Marilyn McShane discusses in her work on early American prisons, the nineteenth-century American “public [favoured] harsh discipline.”<sup>73</sup> The “public venerated “common sense” and scorn for philosophical reflection and book learning.”<sup>74</sup> Americans were unsatisfied with the Pennsylvania system and its prison idleness and segregation, a reflection of a conservative approach to punishment, and found the Auburn system appeased their need for structure and discipline. The public could even witness hard labour and flogging for 25-cents through a narrow window in the prison wall.<sup>75</sup> This widely successful program found many Americans admiring cruelty through a peephole, a public verification method used to prove inmates were no longer sitting in idleness and self-reflection, influenced by the Quaker designers of the previous Pennsylvania system.<sup>76</sup>

For Thomson, the American Auburn system outperformed Mother Britain’s Glasgow system because of its progressive characteristics; Thomson was uninterested in education and reformative practices being the forefront of the justice system. Potential profitability coupled with militaristic inmate regulations made the American Auburn system an ideal candidate to base Canada’s first penitentiary. With swift and enthusiastic proclamation, Thomson declared that this new Canadian penitentiary was going to:

Be a place to lead a man to repent of his sins and amend his life, and if it has that effect, so much the better, as the cause of religion gains by it, but it is quite enough for the purposes of the public if the punishment is so terrible that the dread of a repetition of it deters him from crime, or his description of it, others.<sup>77</sup>

Thomson, however, did not anticipate that, although aspects of Canadian society might have seemed nuanced and progressive compared to the motherland, Anglo-Canadians

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<sup>73</sup> Marilyn McShane, and Frank Williams, *Encyclopedia of American Prisons* (Oxon: Taylor & Francis Group, 1996), 77.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, 564.

<sup>77</sup> C.J. Taylor, “The Kingston, Ontario Penitentiary and Moral Architecture,” in *Histoire Sociale – Social History* 12 (1979), 386.

deeply cherished their traditional social divisions, class divisions, and beliefs, making the Auburn system's characteristics problematic.

### Chapter 3

#### *The First Canadian Penitentiary's American Roots*

“But the silence of an unknown prisoner, abandoned to humiliations at the other end of the world, is enough to draw the writer out of his exile, at least whenever, in the midst of the privileges of freedom, he manages not to forget that silence, and to transmit it in order to make it resound by means of his art.”<sup>78</sup>

-Albert Camus

While Upper Canadian prisoners laid murky bricks upon pasty grey cement, politicians within the legislature – especially reformists with progressive ideologies – were applauding the newly created Kingston Penitentiary and its “humane alternative to public whippings [and] hangings.”<sup>79</sup> Even deeply-rooted conservatives believed Kingston penitentiary “to belong to the vanguard of humanitarianism and enlightenment.”<sup>80</sup> Unfortunately, H.C. Thomson persuaded the legislature to believe Americanized penitentiary roots would cohesively flourish within Anglo-Canadian society.

On June 1<sup>st</sup>, 1835, Kingston Penitentiary officially began housing inmates with an unwavering persistence for “unbroken silence and perfect obedience and submission to the keepers.”<sup>81</sup> Any disobedience by prisoners, regardless of severity, would result in a beating from the guards, usually culminating in unconsciousness and open wounds. As Deidre Foucauld describes, “living standards for prisoners within the institution [were determined to] ... fall just below the average for the lowest level of the free population.”<sup>82</sup> Prison administration, however, viewed these conditions as favourable since the “penitentiary had been built for the purpose of punishing crime, not for education.”<sup>83</sup>

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<sup>78</sup> Albert Camus, *Novel Prize Speech* (Stockholm: Banquet, 1957).

<sup>79</sup> Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), 2.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*, 147.

<sup>82</sup> Deidre Foucauld, “Prisoner Labour, Punishment or Reform the Canadian Penitentiary System 1867-1960,” (Unpublished MA Thesis: University of Ottawa, 1984), 47.

<sup>83</sup> *Ibid.*, 116.



Punishment, therefore, came in the form of physical abuse and hard labour. Most prison labour during the first decade centred on constructing the Rockwood Lunatic Asylum. Other forms of prison labour, although minimal, were performed, like shoemaking, tailoring, and blacksmithing; however, the main focus of prison administration was always economic gain rather than instruction or training.<sup>84</sup>

Although Thomson and other officials had hoped the penitentiary would result in monetary gains, the “practice of contractual penal servitude ... was unsustainable under the crushing inefficiency and ineptitude of the administration at Kingston Penitentiary.”<sup>85</sup> Regardless of internal incompetence, Canadian society became heavily distressed once learning of inmate brutality and contractual prison labour.

As Bryan Palmer discusses, societal concerns regarding the treatment of prisoners began in the mid-1830s when Kingston mechanics became concerned about their economic wellbeing in the face of contractual prison labour.<sup>86</sup> Even though prison labour throughout the 1840s focused on expanding institutional buildings, local tradesmen still felt threatened by the possibility of becoming superseded. In order to “quiet the discontent, prison administration itself employed subtle and sophisticated tactics to diffuse working-class resentments.”<sup>87</sup> Unfortunately, Kingston mechanics felt their livelihood was in direct threat; as the mechanics began digging into the daily lives of prisoners, the specificity of prisoner treatment became public knowledge. This inevitably

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<sup>84</sup> Deidre Foucauld, “Prisoner Labour, Punishment or Reform the Canadian Penitentiary System 1867-1960,” (Unpublished MA Thesis: University of Ottawa, 1984), 104.

<sup>85</sup> Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), 42.

<sup>86</sup> Bryan Palmer, “Kingston Mechanics and the Rise of the Penitentiary, 1833-1936,” in *Histoire Sociale* (Ottawa: University of Ottawa Press, 1980), 7.

<sup>87</sup> *Ibid.*

led to questions regarding the effectiveness of the prisoners' harsh and, often, inhumane treatment.

Within a year of Kingston Penitentiary's official opening, mechanics, and those within working class social circles, began questioning the extent of violence used on its prisoners. Authorities within the penitentiary "vigorously defended their use of violence ... [since] the discipline of Auburn penitentiary [had been] calculated to create docile subjects to wring out of them the maximum productivity."<sup>88</sup> Unlike the American public, this type of justification did not appease Anglo-Canadians. Articles in the *Hamilton Spectator* and the *Globe* began circulating condemning the "unrestrained corporal punishment practiced at the penitentiary."<sup>89</sup> Angus Macdonell, Catholic Chaplain at Kingston Penitentiary, wrote an informative piece on 7 January 1847 in the *Kingston British Whig* where he argues with an anonymous prison reform advocate. In the explosive article, Macdonell chastises the writer by saying, "I again assert, that any man who would attempt to do away altogether with corporal punishment among the Convicts, should be considered a fit subject for a Lunatic Asylum, if not for the Penitentiary."<sup>90</sup> It was not particularly common to witness prison administration arguing with Anglo-Canadian society on such a public platform, illustrating the longstanding tension. Shockingly, Macdonell continued his rant by mocking those that believe in abolishing corporal punishment:

But you want to do away with physical force altogether, and the sooner you say, it is done away with the better. But pray, humane "Phylalethes," will you favor us with the knowledge of what you intend to substitute for it? You must either do

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<sup>88</sup> Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), 43-44.

<sup>89</sup> *Ibid.*, 46.

<sup>90</sup> Angus Macdonell, "To Phylalethes," in *Kingston British Whig* (Kingston: Kingston British Whig, January 15, 1847).

away with the Penitentiary altogether, or allow the officers of the Institution the power of coercing the refractory into compliance, by inflicting punishment of some kind or other. Some are in favor of solitary confinement, others of diminishing the allowance of food; and what is all this but making use of physical force? Solitary confinement has been considered, not by theorists, but by practical men, as insufficient and always dangerous; it depresses the mad, without reforming the morals, or subduing the refractory; in every institution where an attempt has been made to dispense with the use of the whip by substituting solitary confinement, then of mania and idiocy occur for one to be found in those institutions where recourse has been had to the whip for the correction of incorrigible offenders. The punishment by the whip has been much more efficient, and at the same time the most humane; it never injures health when not administered in excess, and, it is said, that it obliges the prisoners to lead a life essentially healthy.<sup>91</sup>

Public disagreements between members of society and prison administration extended beyond the treatment of prisoners; society became aware of various criminal complaints made against the administration. More specifically, criminal charges were laid against Frank Smith, the warden's son. Smith stood accused of "shooting arrows at convicts, improper conduct with female prisoners, [and] abusing the convicts for his own pleasure."<sup>92</sup> The warden was no angel himself, often described as "the cruellest jail-keeper Canadian convicts have ever known."<sup>93</sup> The warden was known to "order physical punishment for the slightest infraction of the rules – talking, nodding, gesticulating, or turning around in the chapel."<sup>94</sup> These punishments were severe and, in one instance, consisted of heavy flogging of inmates five times in three months.<sup>95</sup> Due to public outrage and legislative concern, reformers within the Upper Canadian legislature established an

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<sup>91</sup> Angus Macdonell, "To Phylalethes," in *Kingston British Whig* (Kingston: Kingston British Whig, January 15, 1847).

<sup>92</sup> Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), 46.

<sup>93</sup> Don Townson, "Kingston's sadistic Warden Smith," in *Macleans* (Toronto: September 24, 1960).

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

investigative committee after removing the Tories from power in 1847. After two decades of operation, Kingston penitentiary's failures began to surface.

Protesting demands for a reduction in violent discipline and access to rehabilitative practices within the penitentiary extended beyond the valiant voices of the Kingston mechanics during the 1850s; Upper Canadian social circles became abundantly aware of the abusive practices inflicted upon inmates and demanded change. As Ted McCoy discusses in his book *Hard Time*, reformers within the legislature attempted to appease the public by adding "considerations of individual moral reformation"<sup>96</sup> onto the heavily flawed Auburn foundations. Unfortunately, these reforms were challenging, as the industrial-style foundation was resistant to change.<sup>97</sup> Nevertheless, legislative reformers pushed forward, implementing various rehabilitative changes that attempted to mirror Kingston Penitentiary after the Glasgow Method, a method Thomson had once dismissed for its attention to skill development, inner reflection, and rehabilitation.

Although the addition of indifferent rehabilitative practices began at Kingston Penitentiary with the reform movement of the early 1840s, the implementation of administrative, structural, and rehabilitative methods did not begin until the creation of the Brown Commission and its findings in the late 1840s and early 1850s. George Brown, a crucial member of the Brown Commission, was determined to create drastic change within the Auburn-styled Kingston Penitentiary. Brown had travelled extensively across the United States, researching various prison practices to understand each system's intricacy. He was most impressed by the Charlestown prison, where the warden,

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<sup>96</sup> Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), 57.

<sup>97</sup> *Ibid.*

Frederick Robinson, was committed to practicing “kindness and moral reform above all other principles.”<sup>98</sup> Like the Glasgow Method, prisoners were not required to remain silent and were encouraged to partake in the prison choir and debate club. Brown also thought the Massachusetts penitentiary was impressive, as it believed that a prison sentence was punishment enough and, therefore, hard labour was unnecessary. The results of two thorough investigations led the Brown Commission to recommend Kingston Penitentiary be “an institution purely devoted to the moral reformation of its inmates through education.”<sup>99</sup>

Reformative recommendations proved challenging, not only for lack of direction but also due to the militaristic foundations on which the current penitentiary functioned. More problematically, prison officials remained resolutely against continued reform, especially in education. Chaplain MacDonell, a member of the penitentiary administration, stated that “the condition of the convicts...is better, and the means of acquiring knowledge greater, than that of the majority of children and honest and industrious farmers in many parts of the country.”<sup>100</sup> These functional problems continued to plague Kingston penitentiary over the next decade.

Reform movements – specifically, steering away from barbaric traditional ways of punishment towards progressive rehabilitative practices through education and skill development – inside and outside the legislature began influencing the improvement of Kingston penitentiary by employing rehabilitative instruction. From the enactment of the penitentiary board in 1857 to E.A. Meredith’s Crofton’s Reforms in 1861, Kingston

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<sup>98</sup> Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), 64.

<sup>99</sup> *Ibid.*, 65.

<sup>100</sup> *Ibid.*, 73.

Penitentiary began viewing “each prisoner as an individual who controlled the destiny of his or her eventual release. This was a significant departure that, in the view of reformers, would at last place individual reformation above the dictates of punishment and deterrence.”<sup>101</sup> Although still structurally functioning within the Auburn system, Kingston Penitentiary began allowing prisoners to earn a specified reduction in their sentence for hard work and advance within a social hierarchy. Unfortunately, the beginning stages of a penitentiary-wide transformation – one that would see the abolishment of the Auburn system – halted with the retirement of E.A. Meredith. Unlike Meredith, the other penitentiary board members applauded the already great strides in moral advancements. Without Meredith bringing a constant awareness to the problematic foundations of the prison system, “the board ceased to function as an agent of change and instead assumed the position of defending the status quo.”<sup>102</sup>

The new decade brought another individual determined to bring Kingston Penitentiary’s punishment more in line with the Glasgow Method. Following in the footsteps of E.A. Meredith, James Moylan assumed his seat on the penitentiary board of directors in 1872. Moylan quickly became aware that his views were unlike that of the other board members. Phone calls to American prisons and applications for penitentiary conferences went unanswered, while his colleagues continuously reminded him of the significant improvements that had already transpired in the previous decade. In 1875, the *Acts Relating to Penitentiaries* outlined many of these improvements. For instance:

34. In the treatment of convicts in a penitentiary, the following general rules shall be observed: --

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<sup>101</sup> Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), 80.

<sup>102</sup> *Ibid.*, 85.

1. Every convict shall, during the term of his confinement, be clothed at the expense of the penitentiary, in suitable prison garments;
  2. He shall be fed on a sufficient quantity of wholesome food;
  3. He shall be provided with a bed and pillow with sufficient covering, varied according to the season;
  4. Every convict shall be kept in a cell by himself at night and during the day when not employed, except in case of sickness.
35. Convict labour may be of two categories: --
1. Obligatory, viz: Every convict, except during sickness or other incapacity, shall be kept constantly at hard labour, the kind of which shall be determined by the Warden, every day not exceeding ten hours, exclusive of hours for meals, except Sunday, Good Friday and Christmas Day, and such other days as the Governor may set apart for days of fasting or thanksgiving, and such days as may be designated in the rules made by the Inspector in that behalf: Provided that no Roman Catholic convict shall be compelled to labour on any of the obligatory holidays of his Church; that is to say, Circumcision, Epiphany, Annunciation, Corpus Christi, Saint Peter and Saint Paul, All Saints, Conception and Ascension, or other festivals or obligation;
  2. Voluntary, viz: A Convict of exemplary conduct, may be allowed by the Warden, if he sees fit, to work over hours at such work as can be conveniently done in the institution, and at such rates as shall be fixed by the Inspector, the value of which overwork, at such rates, may either be paid to the convict's family during his imprisonment, should he so desire it, or be credited to him in the books of the Institution to be paid him on his discharge, subject, however, to any general rules which the Inspector may make upon the subject;

The convicts may be employed either in labour or at trades under the control of the Government, or their labour may be let out to a company or private person, offering the requisite guarantees.<sup>103</sup>

The *Act* provided rights for inmates and extended clemency to a sector of society once believed to be unworthy. However, Moylan's concerns concentrated on the breadth and brutality behind inmate offences and punishment. The 1875 legislation did not address these issues and instead reiterated the necessity for the continued use of physical violence.

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<sup>103</sup> A Mackenzie, and C. Fraser, *Acts Relating to Penitentiaries* (Ottawa: Brown Chamberlin, 1875), 11-12.

During this time, offences could be continuously altered since it was subjective to the whims of the Inspector:<sup>104</sup>

36. The Inspector shall draw up a list of prison offences, by way of general warning to the convicts as to their conduct in the prison, among which it shall specially be declared that no convict shall be permitted to speak to another convict upon any pretence whatever, nor to any officer or guard, or other servant of the institution, except with respect to the work at which he is employed, and then only in the fewest words and in a respectful manner. Such list of offences shall be printed, and a copy of the same placed in every cell of the penitentiary.<sup>105</sup>

Punishment for offences would be “followed by the infliction of corporal punishment,” with the understanding that “no more than sixty lashes shall be inflicted upon any prisoner for any such offence.”<sup>106</sup> The Auburn system had evidently created unyielding foundations, ones that were steeped in bureaucratic determination to realize inmate profit potential and keep the status quo. Although Moylan spent roughly thirty years within prison administration, he “found himself powerless to implement new principles of prison reform.”<sup>107</sup> Prison bureaucrats advocated for the continued use of corporal punishment due to its effectiveness in creating a docile inmate population. Detailed descriptions of acceptable forms of violence even found their way into the *Penitentiary Acts, Rules & Regulations* of 1888:

364. The punishment to be inflicted upon male convicts for any one prison offence shall not be other than the following: --

1. Diet of bread and water not exceeding nine consecutive meals.
2. Hard bed, with or without a cover or covers, according to the season, not exceeding six consecutive nights.
3. Diet of bread and water not exceeding nine consecutive meals, combined with hard bed not exceeding six consecutive nights, if approved by the Surgeon.
4. **Ball and chain.**

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<sup>104</sup> A Mackenzie, and C. Fraser, *Acts Relating to Penitentiaries* (Ottawa: Brown Chamberlin, 1875), 12.

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*, 12-13.

<sup>107</sup> Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), 91.



**5. Ball and chain, combined with No.1 or No.2, or No.3.**

6. Confinement in the penal or separate cells, with such diet as the Surgeon shall pronounce sufficient, respect being had to the constitution of the convict, and the length of the period during which he is to be confined.

7. Penal or separate cell, combined with No.1, No.2 or No.3.

8. **Flogging with the cats**, under the restrictions set forth in the “Penitentiary Act,” and in these rules.

**9. Flogging with rods of birch or other wood.**

10. Forfeiture of the whole or a part of the remission of sentence earned by the convict.

11. **Such other punishment** as may be recommended by the Warden, approved of by the Inspector and sanctioned by the Governor in Council, combined with any of the foregoing.

365. The punishment to be inflicted on female convicts shall not be other than the following for any single offence: --

1. Diet of bread and water not exceeding six consecutive meals.

2. Hard bed, with or without one or more covers, not exceeding six consecutive nights.

3. Diet of bread and water not exceeding six consecutive meals, combined with hard bed, not exceeding six consecutive nights.

4. Cutting the hair short.

5. Cutting the hair short, combined with No.1, No.2 or No.3.

6. Penal or separate cell, with such diet as the Surgeon shall declare sufficient; respect being had to the constitution of the convict, and to the period during which she is to be confined.

7. Penal or separate cell combined with any of the preceding.

8. Forfeiture of days or remission of sentenced earned by the convict.<sup>108</sup>

As Moylan found, the entire system, down to the placement of the walls and the indoctrinated beliefs of the board members, had been built around H.C. Thomson’s faith in punitive justice and reform through hard labour. This system was believed to be beneficial in reducing inmate housing costs and providing potential profits through prison labour. In order to do so, the continued use of corporal punishment needed to be inflicted to create a subservient population. As a result, implementing structural and administrative changes became extremely difficult and, rehabilitative prison reforms, at best, became band-aid solutions.

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<sup>108</sup> John J. McGee, *Rules and Regulations for the Government of Penitentiaries of the Dominion of Canada* (Ottawa: Maclean, Roger & Co., 1888), 33-34.

## Chapter 4

### *Quiet Agents of Change: 1890-1910*

Although there was little progress in developing new penitentiary recommendations or reports between 1890 and 1910, continued whispers of reformatory practices from retired prison bureaucrats influenced slow yet crucial change within the legislature. A letter to the editor of *The Globe* in 1890 illustrated the public's irritation with the prison administration's slow reform of inmates. The letter blatantly asks for the:

Remedy [of] all the great evils said to exist in our "Schools of Crime," as County Gaols are called (and we must believe there are evils requiring remedies, if we place confidence in the reports of the Inspectors of Prisons), and have not set the machinery of the law in motion to overcome those complained of defects in the gaol system, then the Government would be open to the imputation of a serious dereliction of a plain duty, for the sake of keeping themselves solid with Country Councils... Besides, why should a private individual throw down the gauge of battle to a rich municipality, when the government elected by the whole people appear afraid of such a contest. The Government are the representatives of the people, and they, not private individuals, should see the Country's Councils who are derelict comply with the requirements of advanced penology.<sup>109</sup>

Moylan's voice, believed to be lost within the previous decade, had found a way to penetrate the ears of society. Society demanded better treatment of inmates and required some form of action. Unbeknownst to the public, small strides in rehabilitative justice were in operation within the administration.

With the creation of the Prisoners Aid Association of Toronto in 1874, insights into the causation of high recidivism rates became a continuous discussion within the legislature. Regardless of the relatively positive annual penitentiary reports, there needed to be "a recognition by the reformers of something wrong with the whole penal

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<sup>109</sup> C.H. Consett, "Letter to the Editor 1 – No Title," in *The Globe* (Toronto: The Globe, 2 Jan 1890), 5.

system.”<sup>110</sup> Prisoners “went into prison owing to faulty environment and lack of opportunity in life, and when they did go in, they were given the wrong treatment.”<sup>111</sup>

There was a fundamental issue with the Canadian penitentiary system, and those within the legislature finally acknowledged its faults and sought guidance.

From scholars to prison wardens, support and advice for Canadian legislatures would come through attending Canada’s first penal convention in 1891. It was here that Canada’s ineffective “classification and segregation [system], lack of parole system and indeterminate sentences, the need for juvenile tribunals and the need for a non-political and permanent prison commission”<sup>112</sup> were thoroughly discussed. Remedies differed amongst those in attendance yet there was an overall consensus that Canadian punitive penitentiaries needed to push forward into the reformatory realm.

Reform practices, especially those in circulation throughout Britain during the late nineteenth-century, made their way to the forefront of Canadian social circles. As a theoretical extension of the British Empire, nineteenth-century Canadians shared what historian John Belshaw argues is a “search for a common denominator, a shared bond that [is] both affectionate and inspiring.”<sup>113</sup> This bond – particularly evident in culture, traditions, history, and ideologies – explains the desire to replicate those practices. During this time, however, England experienced an ideological shift in penitentiary practices, characterized by a movement from complete, “separate confinement ... to improve

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<sup>110</sup> Ken Johnson, *History of the Canadian Penitentiary Service* (Ottawa: Government of Canada, 23 Dec 1974), 8.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> John Belshaw, *Canadian History: Post-Confederation* (Bccampus: PressBooks, 2016), 12.6

prisoners' minds, inducing reflection and reform,"<sup>114</sup> to the three stages of penal servitude; a momentous shift made in direct response to a disheartened English society responding to an onslaught of prison memoirs.

Newspaper articles and publications like Oscar Wilde's *The Ballad of Reading Gaol* in 1898 revealed to British society the atrocities associated with hard labour, silence, and confinement. Upon Wilde's release from prison, he began writing letters to the *Daily Chronicle* advocating for prison reform. These letters criticized England's current penal system and reinforced "the cruelty of stupidity."<sup>115</sup> He stated that:

The present prison seems almost to have for its aim the wrecking and the destruction of the mental faculties. The production of insanity is, if not its object, certainly its result... [men are] brutalized below the level of any of the brute-creation, the wretched man who is confined in an English prison can hardly escape becoming insane.<sup>116</sup>

With Wilde's popularity on the rise, former prisoners began sharing their experiences of prison life; British society was a concerned audience, and chattering's of necessary reformatory changes permeated all of Britain's social circles. As former inmates shared their stories, newspapers became stained with the brutality behind England's current system. For example, one story recounted "the fifteen-year-old who used a broken medicine bottle to cut his leg and then proceeded to eat the rest of it [or] the youth who attempted suicide and was put in a strait-waistcoat who was then compelled to eat his food like a cat, lying prone on the ground."<sup>117</sup> Evidently, being "deprived of books and

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<sup>114</sup> Hilary Marland, "Close confinement tells very much upon a man": Prison Memoirs, Insanity and the Late Nineteenth- and Early Twentieth-Century Prison," in *Journal of the History of Medicine and Allied Sciences*, Vol. 74, No.3, pp. 267-291, (United Kingdom: Advance Access Publication, 2019), 267.

<sup>115</sup> *Ibid.*, 268.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*, 282.

human interaction [and] condemned to silence”<sup>118</sup> was counterproductive in reducing recidivism rates.

Finding current punishment outdated, Edmund Du Cane, the chairman of England’s prison commission from 1877 to 1896, created the penal servitude system towards the end of his career. He characterized it as:

Divided into three principal stages. During the first stage, which endures for nine months in all cases, the prisoner passes his whole time – excepting the period allotted to prayers and exercise – in his cell, apart from all other prisoners, working at some employment of an industrial or remunerative character. During the second he sleeps and has his meals in a separate cell, but works in association under a close and strict supervision, at employment suited to him. The third period is that during which he is conditionally released from prison but kept under the supervision of the police, and liable, for an infraction of the conditions of his release, to be returned to prison, there to fulfill the portion of his sentence which remained unexpired at the time of his release. <sup>119</sup>

Du Cane believed prisoner seclusion to be detrimental to an inmate’s ability to reform:

It cannot be expected that this object would be fulfilled by his perpetual seclusion in a cell for years, with no communication with his fellows, and artificial state of existence absolutely opposed to that which nature points out as the condition of mental, moral, and physical health, and entirely unlike that which he is prepared to follow on his discharge from prison. <sup>120</sup>

These sentiments were mirrored in Canadian society, with newspaper articles reflecting social dissonance, even from upper elites. For example, Justice Rose stated during one of the trials that he oversaw that:

Many of our jails ... are mere schools for crime, and youths and older people who are put in prison because of some minor offence, disheartened, broken down, separated from friends, fall easily, into the hands of those from whom they can get

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<sup>118</sup> Hilary Marland, “Close confinement tells very much upon a man”: Prison Memoirs, Insanity and the Late Nineteenth- and Early Twentieth-Century Prison,” in *Journal of the History of Medicine and Allied Sciences*, Vol. 74, No.3, pp. 267-291, (United Kingdom: Advance Access Publication, 2019), 268.

<sup>119</sup> Andrew Barrett, and Chris Harrison, *Crime and Punishment in England: A Sourcebook* (London: Taylor & Francis Group, 2001), 318.

<sup>120</sup> *Ibid.*

sympathy, and from whom they will learn lessons which will lead to their utter ruin.<sup>121</sup>

Following England's lead, Canada enacted the *Ticket to Leave Act* in 1899 and created the Dominion Parole Office in 1905.

The *Ticket to Leave Act*, more specifically known as *An Act to Provide for the Conditional Liberation of Convicts*, allowed the legislature to grant pardons to prisoners involved in crime. The Act was “based almost word for word on British legislation”<sup>122</sup> and could be used to liberate young offenders or individuals “of good character, who may have committed a crime in a moment of passion.”<sup>123</sup> In addition, Canadian prison bureaucrats finally saw the importance of rehabilitating their convicts, reducing recidivism rates and reducing dependency on the state. Faith in the Auburn system's profit potential based upon prison labour was quickly deteriorating, and the need for rehabilitative practices to alleviate state dependency was increasingly needed.

The Dominion Parole Office appointed its first parole officer, Walter Archibald, a brigadier of the Salvation Army, in 1905. Archibald aimed to provide inmates with the direction and advice needed to secure employment and homes upon release. He was revered as “a man of magnetism and strong sympathies,”<sup>124</sup> often providing parolees with money out of his pocket for basic necessities. Although it is argued that his own opinions regarding aspects of progressive prison reform were rather conservative, like probation and indeterminate sentences, he effectively separated his own opinions from his work. As David Murray argues in his biography on Walter Archibald, he successfully:

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<sup>121</sup> The Globe, “Prison Reforms: Mr. Justice Rose on Some Evils of the Judicial System,” in *The Globe and Mail* (Toronto: The Globe and Mail, 17 May 1898), 7.

<sup>122</sup> Canada.ca, “The Beginning of Parole in Canada,” in *History of Parole in Canada* (Ottawa: Government of Canada, 2022).

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

Carried on a steady campaign of speeches across Canada and abroad on the need for prison reform and the importance of the parole system. He gave addresses at the annual congresses of the National Prison Association of the United States [and spoke] to the Empire Club of Canada in Toronto in 1908 [about] his recipe for reforming criminals: good treatment, a strong and healthy discipline, fair dealing, the criminal's recognition of his own criminality, his desire and willingness to reform, a recognition of the criminal as a human being by outside society, and a recognition by the hand of justice that, while it is necessary and just to punish crime, yet the clemency of a parole is not to be withheld from any really hopeful case.<sup>125</sup>

Archibald's continuous push for prison reform, especially parole, was not always well-received. For instance, police officers "intent on controlling and punishing criminals, did not always agree with his emphasis on social condition as a factor in criminality and juvenile delinquency."<sup>126</sup> Nevertheless, Archibald continued to pursue prison reform until 1920, two years before his death.

This movement – the adaptation from purely punitive justice and corporal punishment to a mixture of punishment and rehabilitative support for reintegration – illustrated Canada's determination to forcefully mould the penitentiary system to reflect Britain's Glasgow method. H.C. Thomson's Auburn system had proven ineffective in providing the type of punishment and rehabilitation needed by the Canadian people.

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<sup>125</sup> David R. Murray, "Archibald, Walter Palmer," in *Dictionary of Canadian Biography* (Toronto: University of Toronto, 2005).

<sup>126</sup> *Ibid.*

## Chapter 5

### *Early Twentieth-Century Attempts to Overhaul the Canadian Prison System*

A more thorough examination of Canada's penitentiary system began with the 1914 *Report of the Royal Commission on Penitentiaries*, followed by two crucial annual reports published in 1919 and 1923-24. Unlike Joseph Archambault's 418-page *Report of the Royal Commission on Penitentiaries* in 1938, each of these documents are approximately 50 pages in length. Regardless of the breadth of examination, these recommendations were never given proper consideration. However, Superintendent Hughes' advocacy laid the foundations and ideologies for future reports.

#### **1914 Report of the Royal Commission on Penitentiaries**

During the early twentieth-century, Canadian penitentiaries were still heavily characterized by their reliance on corporal punishment, solitary confinement and labour. Prison administrative boards thoroughly believed that the treatment of prisoners within Canada was progressive and contributed to the reformation of habitual criminals. The Commission even stated that "from the date of its establishment down to the present time, the terms of the Act, as far as the treatment of inmates is concerned, appear to have been fairly well carried out."<sup>127</sup> The treatment of inmates was most effective, perhaps, in deteriorating a prisoner's self-worth but inhumane and futile in creating a rehabilitated citizen.

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<sup>127</sup> G. M. Macdonnell, Frederick Etherington, and J.P. Downey, *Report of the Royal Commission on Penitentiaries* (Ottawa: J. De L. Taché, 1914), 6.



### Corporal Punishment

During the early twentieth-century, physical punishment attempted to deteriorate the inmate's disposition. In doing so, prisoners became more docile for fear of continued violence. Through complete submission, prisoners were easier to control and directly contributed to the maximum amount of labour output.

Violence within the Canadian penitentiary system took on various forms. In terms of the *1914 Report*, physical punishment included the following:

- (a) Diet of bread and water not exceeding twenty-one consecutive meals.
- (b) Hard bed with blankets according to the season, not exceeding one month.
- (c) Ball and chain, Oregon boot.
- (d) Confinement in the isolated cells with such diet as the surgeon shall pronounce sufficient.
- (e) Flogging with a leather paddle, under the restrictions set forth in the Penitentiary Act regarding corporal punishment.
- (f) Shackled to the cell gate during working hours.
- (g) The application of water from the hose, in the presence of Warden.
- (h) Forfeiture of remission of sentence.<sup>128</sup>

The extent to which prison guards inflicted physical punishment upon inmates began to alter with the publication of the *1914 Report*. Although still frequently administered and revered for its effectiveness, the types of punishment and the ways it was delivered altered due to the information provided by previous members of the prison administration; physical violence was only effective if prison guards followed precautions. For instance:

In addition to the foregoing, flogging, imposed as part of the court sentence, has to be inflicted. Usually, the flogging is ordered to be given a short time after the prisoner is admitted and again before his release. With much reason, ex-Warden Platt urged that the flogging of a prisoner near the expiry of his term was calculated to nullify the good effects of any reformatory treatment by the officials,

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<sup>128</sup> G. M. Macdonnell, Frederick Etherington, and J.P. Downey, *Report of the Royal Commission on Penitentiaries* (Ottawa: J. De L. Taché, 1914), 17.

and send the fellow out vengeful and embittered. The flogging, if it must be administered, should be given at the place of sentence and the prison authorities would then have some chance of consistently dealing with the criminal. To try to reform a man and then, whether he responds or not, lash his bare back before he leaves the prison, would appear to be an unscientific course of treatment.<sup>129</sup>

Even though the *1914 Report* attempted to protect aspects of prisoner well-being, penitentiaries remained focused on breaking an inmate's will in hopes of reformation. This consisted of punishments like the Oregon boot, leather paddle, cat tails, the hose, and the dungeon. These forms of punishment inflicted severe injury to inmates, resulting in the prolonged need for medical assistance.

The Oregon boot, originating in Oregon State Penitentiary by Warden J.C. Gardner in 1866, was designed to prevent inmates from escaping. It “consisted of a heavy iron or lead band that locked around the prisoner’s ankle. To this band was welded or bolted a heavy iron support strap that attached to the heel of a heavy shoe or boot...weighing up to 28 pounds.”<sup>130</sup> The boot intended to replace the ball and chain by making a more compact contraption. Unfortunately, prolonged wear did “severe damage to [inmates] feet, ankles, knees and hips.”<sup>131</sup> This type of pain influenced continued obedience through the constant threat of pain.

The leather paddle and cat tails were another form of physical punishment that used an object to strike an inmate. The leather paddle, a tame comparison to the cat tails, was made entirely of leather and would be repeatedly beat against an inmate's skin to create inflammation, bruising, and pain. On the other hand, the cat tails are a whip

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<sup>129</sup> G. M. Macdonnell, Frederick Etherington, and J.P. Downey, *Report of the Royal Commission on Penitentiaries* (Ottawa: J. De L. Taché, 1914), 17.

<sup>130</sup> Finn J.D. John, “Brutal ‘Oregon Boot’ made our state prison infamous,” in *Off Beat Oregon* (Salem: Off Beat Oregon, 9 March 2014).

<sup>131</sup> *Ibid.*

consisting of multiple pieces of cord with various knots tied throughout. The cat tails would be forcefully swung against a prisoner's back resulting in flesh ripping. Usage of these devices, especially the cat tails, had fallen out of practice during the nineteenth-century; however, many prison wardens found it to be the most effective punishment against unruly prisoners. Inspector Douglas Stewart even stated that he particularly enjoyed using the cat tails since "it took the defiance out of [prisoners]."<sup>132</sup> However, open wounds, especially those requiring medical care, deterred wardens from regularly using these punishments.

The most popular form of punishment during the early twentieth-century – due to its effectiveness and lack of visible harm to the body – was known as the hose. Prisoners were placed in a cell with "rounded [corners] to prevent [them] from getting out of range of the stream."<sup>133</sup> The hose was then stuck into the front of the cell and turned on full-stream; it was described as a "three-quarter inch nozzle [with the stream striking] the opposite wall almost unbroken."<sup>134</sup> As the Commissioners in the *1914 Report* discuss, "hosing as a punishment is effective. The victim must cry out for mercy or suffer physical collapse."<sup>135</sup> However, the Commissioners acknowledged that "as a disciplinary agency, it should be ranked with the rack and thumb-screw, cruel and inhuman."<sup>136</sup> The *1914 Report* illustrated the difficulty that Commissioners had with violence, often approving particular forms of punishment in one paragraph and acknowledging their inhumanity in the next.

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<sup>132</sup> G. M. Macdonnell, Frederick Etherington, and J.P. Downey, *Report of the Royal Commission on Penitentiaries* (Ottawa: J. De L. Taché, 1914), 18.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*

The dungeon, the original form of solitary confinement, consisted of dimly-lit cells with various buckets for food, drink, and excrement. Inmates were strategically shackled in the centre of the cell so they could reach all the buckets. The 1914 Commissioners believed “the dark cell [was] a cruel means of punishment.”<sup>137</sup> They stated that “the most degraded human being if he is to be allowed to live, is entitled to light and air.”<sup>138</sup> Yet, Canadian penitentiaries continued the use of dungeons until better ventilation, lighting, and a shiny new name gave way to the progressive use of prisoner isolation.

The *1914 Report* illustrated a critical change in the opinions surrounding the use of physical violence against inmates. Commissioners illustrated the need for corporal punishment yet recognized there were disadvantages in regularly using certain forms of punishment. Punishment restrictions were therefore necessary in order to produce a reformed citizen that could be reintegrated into society.

### Rehabilitation

The *1914 Report* was a crucial document that began Canada’s shift from punitive to rehabilitative practices and illustrated the Commissioners’ discontent with current punitive measures. For example, the Commissioners blatantly stated that “if the punishment of the offender is the only object society should have in view, the Penitentiaries of Canada fully meet the requirements;”<sup>139</sup> the sarcastic undertone highlights the bureaucratic displeasure in trailing behind other countries’ progressive

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<sup>137</sup> G. M. Macdonnell, Frederick Etherington, and J.P. Downey, *Report of the Royal Commission on Penitentiaries* (Ottawa: J. De L. Taché, 1914), 18.

<sup>138</sup> *Ibid.*, 17.

<sup>139</sup> *Ibid.*, 26.

improvements. For instance, British prisons had recently begun adding more advanced measures through evening classes for inmates in subjects like history, mathematics, modern languages, trades courses, drama, and literature.<sup>140</sup> Rehabilitation, therefore, became an inspiring tactic to reduce high recidivism rates and improve the quality of life after release.

With Canadian Commissioners' concluding that the "trend of prison administration [was moving] away from purely punitive and towards the reformatory,"<sup>141</sup> prisoner punishment had to adhere to societal expectations of punishment as well as "recognize that the prisoner has certain rights."<sup>142</sup> Prisoners were "entitled to productive work under proper sanitary conditions, to a reasonable measure of education, ... to moral training and discipline, [and] ... to every rational assistance towards [their] restoration to good relations with society."<sup>143</sup> The Commission had finally witnessed the costly measures of punitive justice and the importance of reforming and producing an inmate ready for societal reintegration. The challenge was persuading society to view reformatory practices as more effective than punitive.

### Social Commentary on the 1914 Report

During the early twentieth-century, ideas surrounding appropriate forms of punishment differed between society and a freshly progressive prison Commission. Society and prison administration despised the idea of prisoner idleness and leniency in

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<sup>140</sup> Agnes Macphail, *Convict or Citizen? The Urgent Need for Prison Reform* (Toronto: Co-operative Commonwealth Federation, Literature Dept., 1941), 7.

<sup>141</sup> G. M. Macdonnell, Frederick Etherington, and J.P. Downey, *Report of the Royal Commission on Penitentiaries* (Ottawa: J. De L. Taché, 1914), 26.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

everyday movements throughout the prison. Articles explaining the reasoning behind rehabilitative practices conveniently began circulating throughout widely-read Canadian newspapers during the early months of 1914. In one such article, an unknown writer for *The Globe* states that “the most important aspect of prison reform is the provision of occupation for the convicts during their periods of incarceration,”<sup>144</sup> a sentiment holistically felt throughout Canadian society. The author continues to say that “enforced idleness, and therefore, on grounds of humanity alone, is necessary to keep prisoners at work during their waking hours.”<sup>145</sup> These aspects of punishment were already in place throughout Canadian penitentiaries; however, the author decides to reiterate these disciplines to coax the audience into agreement; the author can then put forth new ideologies in hopes that the audience will agree with his direction of thought. With the audience positioned, the author states that:

In the old-fashioned prisons the treadmill was part of the regular equipment, but that sort of physical toil was absolutely useless and had no reforming influence on those engaged in it. Objection has always been taken, not without reason, by workingmen to putting the products of prison labour on the market in competition with the products of free labor. Prison farms are now coming into vogue as a desirable and effective alternative for shop work within a gloomy building, and the experiment bids fair to be a success. The recommendations of the Penitentiary Commission are in the right direction, and it will be worthwhile for the Department of Justice to see that they are acted on with promptitude and thoroughness.<sup>146</sup>

In a deliberate statement to sway the audience’s opinion, the author uses terms like “old-fashioned” to illustrate how punitive practices that inflicted discomfort were a way of the past and not reflective of the progressive penitentiary direction Canada was taking.

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<sup>144</sup> Anonymous, “A Needed Measure of Prison Reform,” in *The Globe* (Toronto: The Globe, 25 April 1914), 6.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

Over the following years, the continuous publications of similar doctrine aimed to remind Canadian society that humane forms of punishment contributed to successful societal reintegration. It was no longer acceptable to “confine [prisoners] in dark cells or dungeons, [or] shackling with ball and chain”<sup>147</sup> Instead, there needed to be some remnant of normal society within the prison to keep inmates sane. Some suggestions included: a school of letters, instruction by a qualified teacher for three hours per day, and suitable exercise every Saturday.<sup>148</sup> Altering societal expectations of justice was tricky, and many proprietors of the “old ways” vehemently reasserted their opinions. Even penitentiary inspector Douglas Stewart declared to the Commissioners that the “penitentiary was a penal institution and not a kindergarten reformatory.”<sup>149</sup> He believed in corporal punishment, specifically the hose, and found that the continuous use of hard labour was the key to a well-functioning prison and rehabilitation.<sup>150</sup> It would take the 1914 Commissioner’s recommendations a decade to permeate the administration’s minds before critical reform alterations could happen within the prison system.

### **Report of the Superintendent of Penitentiaries for the Fiscal Year Ended March 31 1919**

W.S. Hughes, Superintendent and author of the 1919 Superintendent Report on Canadian penitentiaries, spent most of his short, 12-page document discussing the need for rehabilitative changes. Many of Hughes’ ideas were the precursors to Joseph

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<sup>147</sup> Anonymous, “Prisoners’ Treatment Must Be More Humane: Prison Reform Commission Report Made Public,” in *The Globe* (Toronto: Special Despatch to The Globe, 23 April 1914), 1.

<sup>148</sup> Ibid.

<sup>149</sup> Anonymous, “Not a Kindergarten, Says Prison Inspector,” in *Special Despatch to The Globe* (Toronto: The Globe, 7 January 1914), 3.

<sup>150</sup> Ibid.

Archambault's reform ideologies in 1938. More specifically, inmate employment, officer selection, and access to educational materials. Although corporal punishment was an area of contention between the Commissioners and society, Hughes focused on aspects of the system unlikely to create upheaval. In essence, push for slight changes without upsetting the status quo.

### Employment

Hughes viewed prison labour as an absolute necessity in reducing the likelihood of mental distress and disruption as well as providing skill advancement. He pointed out that many inmate industries were “necessary for the maintenance of the institutions, such as carpentering, tin smithing, tailoring, shoemaking, blacksmithing, machine shop, stonecutting, baking,”<sup>151</sup> and farming. Unfortunately, bureaucratic ideologies had deterred industrious inmate labour during the nineteenth century, forcing “wardens to establish [pointless] stone piles”<sup>152</sup> due to the inability to procure meaningful work. Hughes believed that since the “inmates of the penitentiaries are the wards of the Dominion Government ... there is no valid reason why goods required for State use, and State use only, should not be made, in so far as is possible, in the penitentiaries.”<sup>153</sup> He declared that penitentiary inspectors had been advocating for work since 1896; however, the prison administration determined that providing inmates with trade work would remove work

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<sup>151</sup> W.S. Hughes, *Report of the Superintendent of Penitentiaries for the Fiscal Year ended March 31, 1919* (Ottawa: J. De Labroquerie Taché, 1919), 8.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.



from honest workers outside the prison.<sup>154</sup> Hughes blatantly disagreed with this sentiment and stated that:

How utterly hollow this argument is may be judged by the fact that fully one-half of the inmates of the penitentiary are employed on work that pertains wholly to the institution and the remainder who could be employed on government work would form an infinitely small percentage of those employed in the labour world in Canada, and yet this cry has had the effect of blocking any scheme proposed for the manufacture of articles for the Government, excepting in a few very trifling cases.<sup>155</sup>

Evidently, prison bureaucrats disagreed with Hughes' sentiments. Without authority to enact legislative change, Hughes used his report to reassert his opinion and advocate for inmate work opportunities.

### Officer Selection

The selection of prison guards before 1914 had little regulation and guards did not need to have any formal qualifications. As penology studies advanced, officer selection drastically changed in places like Great Britain. Eager to mimic these changes and set Canada on a rehabilitative course, Hughes aimed to alter the qualifications required of Canadian prison guards. He stated in his report that "the inmates respect a good man, and if proper men could be chosen for the staffs of the penitentiaries, the effect would be very far-reaching."<sup>156</sup> Prison guards also needed to respect inmates to effectively produce a well-functioning system. With the addition of these requirements, there was a clear attempt to elevate social perceptions of the system by elevating the stature of the guards.

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<sup>154</sup> W.S. Hughes, *Report of the Superintendent of Penitentiaries for the Fiscal Year ended March 31, 1919* (Ottawa: J. De Labroquerie Taché, 1919), 9.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid., 11.

### Education

Hughes also believed in the addition of educational materials so that inmates had the opportunity to advance their skills and education. He argued that “libraries ... should be vastly improved and a plentiful supply of up-to-date books of instruction should be added. Carefully selected books in French, Italian, Hebrew and, when necessary, in other languages, should be in the libraries so that those not able to read English may be comforted and helped.”<sup>157</sup> As successful improvements to Britain’s prison education system became well known, Hughes asserted the need to advance Canada’s. For instance, he argued that “there should be in each institution a duly qualified, competent, certificated school teacher of good moral character with pure and lofty ideals of Canadian citizenship, and ability to inculcate these ideals in the minds of the inmates; who would be a true example of what a real manly, God-fearing man is.”<sup>158</sup> Not only did the teacher serve as a gateway for skill and knowledge advancement but a role model for respectful behaviour. In addition, Hughes recognized that providing inmates with education meant future job opportunities and a reduction in recidivism rates.

### Social Commentary After the 1919 Report

Although sound in theory and nuanced for the time, Hughes’ recommendations went relatively unimplemented. Becoming increasingly irritated with the lack of progress, citizens began writing to newspapers to discuss their frustrations. In 1920, John C Miller, secretary of the Orillia Canadian Club, penned a damning letter in which he argued that:

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<sup>157</sup> W.S. Hughes, *Report of the Superintendent of Penitentiaries for the Fiscal Year ended March 31, 1919* (Ottawa: J. De Labroquerie Taché, 1919), 11.

<sup>158</sup> *Ibid.*, 12.

The public are not so much concerned in the personnel of the commission as they are in the fact that the Minister of Justice and the Cabinet have for six years allowed the report of their former commission to blue mould on the shelf and have never, so far as the public can judge, shown any desire to carry out any of their many excellent suggestions.<sup>159</sup>

The Department of Justice had come under social scrutiny for its lack of effort in implementing the various recommendations presented in the 1914 Report. In the eyes of society, the administration failed to reform any aspect of the system yet continued to implement investigations. Unfortunately, gentlemen like Miller found this unacceptable and questioned the purpose of the continued silence:

Because the Minister of Justice and his Deputy have been in a trance for six years, do they imagine that the world as stood still, and do they care if Canada of to-day stands with Russia as the two countries in the world the most backward in Prison Reform? Till the control of our penitentiaries is taken out of political hands and placed in the hands of men who are seized with a desire to help out the poor unfortunates to improve their moral status and help fit themselves to become useful members of society, in a word, men who look on prisons as a place of reformation and not simply of punishment, till then we will have all the evils that culminated in the recent events in Kingston.<sup>160</sup>

Concerned citizens continued to inquire about penitentiary reform years after Hughes' 1919 report. It was not uncommon to find questions like, has "reform [even] been tried,"<sup>161</sup> plastered throughout weekly publications. Some authors further illustrated this failure by providing examples of young boys lost within the system. For instance, an anonymous author states that:

Leo Rogers, a convict in Kingston Penitentiary, has been sentenced to a further term of ten years' imprisonment for an assault on Inspector Duncan. No doubt crime must be punished and prison discipline maintained, but the aim of our laws should be reform, and not vengeance. The history of this convict makes one doubt that reform was considered at all. He was sent to the Penitentiary at fifteen years of age with a seven-years' sentence. The right place for a boy of that age would

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<sup>159</sup> John C Miller, "How Canada Lags in Prison Reform," in *The Globe* (Toronto: The Globe, 1 November 1920), 4.

<sup>160</sup> Ibid.

<sup>161</sup> Anonymous, "Has Reform Been Tried," in *The Globe* (Toronto: The Globe, 22 June 1921), 4.

have been a reformatory institution. In the Penitentiary the utmost severity was shown, according to a letter written to *The Kingston Standard* by his father. The boy was fed on bread and water, kept in solitary confinement for months, and strung up by his outstretched arms.<sup>162</sup>

Society was questioning the lack of progress and demanding an explanation as to why reformation of the system had halted; lack of evidence illustrating reform inevitably caused societal distress and agitation in the administration.

### **Annual Report of the Superintendent of Penitentiaries for the year 1923-24**

The 1923-24 Report focused on advocating for continued reformation, with small highlights of successful improvements interspersed throughout, such as upgrading and renovating penitentiaries for improved security, access to meaningful employment and education. These improvements gave prisoners access to meaningful work and skill development, like farming operations, wood cutting, and brick making.<sup>163</sup>

Access to educational materials also improved due to “correspondence work [being] carried on by the various school-teachers.”<sup>164</sup> Hughes praised these teachers for their ability to connect with the inmates and provide transferable knowledge and skills. With this implementation, “two inmates in St. Vincent de Paul penitentiary were presented with medals by provincial Government officers on account of the wonderfully good showing made in their examinations.”<sup>165</sup> An area specifically important to Hughes was the improvement of libraries, which “had been further improved by the addition of many valuable works...[containing] the very best magazines and periodicals.”<sup>166</sup> These

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<sup>162</sup> Anonymous, “Has Reform Been Tried,” in *The Globe* (Toronto: The Globe, 22 June 1921), 4.

<sup>163</sup> W.S. Hughes, *Annual Report of the Superintendent of Penitentiaries for the year 1923-24* (Ottawa: F.A. Acland, 1925), 10-11.

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*

improvements, however, were overshadowed by an area of the penitentiary still resistant to reform.

In Hughes' 1919 Report, he never broached the subject of punishment due to the difficulty in reforming an area so resistance to change, especially from prison administration. In this area, improvements were minimal, and there was still a dire need to alter prisoner punishment. In his 1923-24 report, Hughes argues:

The treatment of inmates in a penitentiary continues to be a subject for debate, and many hundreds of persons, who know little of crime, and nothing of criminals, still continue to offer suggestions or make demands for treatment of the criminal. It is most fortunate for the convicted ones that the suggestions of these inexperienced people are seldom tempted.

In a properly managed institution, discipline is essential. It was the lack of discipline in most cases that caused the commission of the crime for which the inmate has been sentenced. Proper discipline does not tolerate dungeons, chains, nor any form of cruelty or brutal treatment.

There are occasions when inmates must be placed under restraint, but any such must be of a friendly and merciful nature. Real discipline must be humane, just, and firm. There should be no pampering or coddling of inmates. Such treatment has a tendency to make them consider themselves as heroes, and in some cases acts as an incentive for them to continue in wrongdoing. Persons who commit crime are confined in prisons to protect society from them, and also punish them for the offence committed. At present, they are disciplined, taught a trade, how properly to live, treated for mental or physical defect, if they have any, and turned out of prison much improved generally, but our system, while excellent in the care and treatment of inmates as above described, is far from satisfactory in the great essential character building.

Penitentiaries should be places wherein an inmate may be confined to protect society from him, and in order that he may learn to appreciate the value of his liberty; where he may be trained to become a useful citizen. A penitentiary has no right to exist if inmates discharged from same are not turned-out better citizens than when they entered. Inmates might be made a profitable asset, rather than a dangerous liability. This may be done through their being given a fair education, taught a trade, paid a fair wage for labour well performed, thus enabling them to assist in supporting those dependent upon them; where they should be well grounded in the matter of their responsibility as citizens.<sup>167</sup>

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<sup>167</sup> W.S. Hughes, *Annual Report of the Superintendent of Penitentiaries for the year 1923-24* (Ottawa: F.A. Acland, 1925), 13.

Hughes knew that to effectively re-integrate prisoners into society, every penitentiary had to adhere to the above. Unfortunately, not all wardens or prison administrations agreed with abolishing corporal punishment.

#### Social Commentary after the 1923-24 Report

The 1920s ushered in a wave of demands to improve the fate of the underprivileged and delinquent in Canadian society. Although prison administration retained corporal punishment and isolation, the majority of Canadian society, as detailed in the following newspaper clippings, found its use gruesome. Letters to the Editor of *The Globe* regarding the treatment of prisoners were in constant circulation. One woman, who remains anonymous, argued that:

As we know them today, can we say that our prisons and penitentiaries are places where the men and women passing through them are going to meet with higher influences, and to be strengthened in any way to meet the temptations which will be theirs again on their once more being set free?

When as children we did what was wrong, can we ever remember that enforced punishment alone brought out the best that was in us, and made us resolve that we would try to be better next time? Rather, was it the sorrow that we saw in our mother's eyes, the serious words our father said, and the counsel that they gave, which brought us to a determination that this should not happen again...

In these days when philanthropists are spending their time and money for the uplift of the people in the way of better houses, more perfect sanitation, large playgrounds, etc., we could wish that some of them might direct their thoughts to the betterment of those houses, which although belonging to the state are housing these derelicts of humanity; to the providing of trained men and women to deal with the teaching of these people by lectures and personal loving interest; to building up a system such as advocated by Miss Macphail, which might provide a chance for them to gradually regain a self-esteem which has been lowered. So might these men and women, brothers and sisters of us all, once more find a way to regain their rightful heritage.<sup>168</sup>

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<sup>168</sup> Anonymous, "For Those in Prison," in *The Globe* (Toronto: The Globe, 17 April 1926), 4.

Another concerned citizen, Zoo F. Stevens, argued for improved prison reform practices.

He stated that:

The recent finding by the Grand Jury that three young girls were confined for days in a dungeon (or, as the jailer said, semi-dungeon) without beds, light or nourishing food in the terrible old fail on Gerrard Street East, which years ago was condemned as a place unfit for human habitation, seemingly passed unnoticed, even by our women's associations or the general public. It can only be assumed that this state of affairs is a common practice in those institutions.

One remembers the stories of Charles Dickens and other writers which resulted in prison reform in Britain...certainly we are aware that there can be no safety in any community where law breaking is not certain of punishment, but I submit, that such punishment should go hand in hand with corrective education under the jurisdiction of scientifically trained people. Those poor unfortunates, particularly those convicted of minor offenses, committed for lack of religious instruction, if you will, but certainly almost always through either ignorance, poverty, heredity, environment, or lack of opportunity to do better – on apprehension and conviction should be placed in surroundings where light, air, sanitation, employment and education are available, because it is a well-known fact that cruelty is no cure for their many handicaps.<sup>169</sup>

Demands for reform extended beyond the liberal pages of *The Globe*. Articles in the *Times Colonist*, *The Ottawa Journal* and *Western Farmer and Weekly Albertan* supported prison reform by detailing the need to “reform criminals rather than break them.”<sup>170</sup> Staff writers compared Canada's justice system to Britain's, illustrating the need for continued alterations; “we have now reached an age when prisoners of the state, even the most abandoned criminals, are, at least in the countries of the British Empire, treated with a humanity and consideration which some critics deem excessive.”<sup>171</sup>

Although effective in producing a docile inmate, Canadian punitive justice administered harm both physically and mentally, and sometimes caused irreversible

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<sup>169</sup> Zoo F. Stevens, “Voice of the People,” in *The Globe* (Toronto: The Globe, 12 November 1928), 4.

<sup>170</sup> Anonymous, “Canadian Leaders See Need of Penitentiary Reforms; Would have Prisoners Paid,” in *Times Colonist* (Victoria: Times Colonist, 27 March 1925), 5.

<sup>171</sup> Anonymous, “A Pioneer of Prison Reform,” in *The Ottawa Journal* (Ottawa: The Ottawa Journal, 1 March 1926), 6.

damage.<sup>172</sup> With widespread public discussions of prison reform, “no doubt, attention [had to] be given to better and more scientific treatment.”<sup>173</sup> Inevitably, pressure from public inquiry, newspaper articles, and Agnes Macphail’s publications influenced legislators to create the *Royal Commission* to investigate and produce practical recommendations for the complete transformation of Canada’s penal system from punitive to rehabilitative justice.

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<sup>172</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 28-29.

<sup>173</sup> H.B. Adshead, “Prison Reform,” in *Western Farmer and Weekly Albertan* (Calgary: Western Farmer and Weekly Albertan, 23 April 1925), 7.



## Chapter 6

### *1938 Archambault Report: British Band-Aid Penal Solutions*

Advancements in cultural entertainment and widespread access to book clubs, musical societies, art groups, and theatre productions during the 1930s created various opportunities for Canadians to modernize their outdated cultural, political, and socio-economic ideologies.<sup>174</sup> Improvements were happening in various sectors of Canadian society; however, the penitentiary system was still fixing – or at least pretending to fix – age-old problems with makeshift solutions. Solutions that were added to the already fractured foundations of the Canadian penal system inevitably creating ineffective and problematic outcomes.

Christopher Clarkson and Melissa Munn, history and sociology professors at the University of Toronto, argue that the prison reform solutions were as ineffective as illusionary. Although various Commissions addressed problems and recommendations during their penitentiary investigations, “both the superintendent and penal reformers conveyed the impression that the reform plan was [actively] implemented.”<sup>175</sup>

Individuals, both within society and the legislature, had every reason to:

Believe that the system’s failings were being addressed...but because access to the institutions was tightly controlled, the general public had to rely on those published accounts. Even members of Parliament, who had a statutory right to visit the prisons, were taken on carefully guided and staged tours of the facilities.<sup>176</sup>

It was not until various prison riots within Kingston Penitentiary occurred that the public began questioning the extent of the implemented reform measures.

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<sup>174</sup> Jonathan Vance, *A History of Canadian Culture* (Don Mills: Oxford University Press, 2009), 308.

<sup>175</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 32.

<sup>176</sup> *Ibid.*

As the Great Depression's tentacles suffocated Western economic stability, crime rates increased, generating strain on Canadian penitentiaries. Between 1932 and 1937, "many riots broke out, drawing public attention to the situation in correctional institutions."<sup>177</sup> As Clarkson and Munn explain, research has shown that prison riots occur due to "poor conditions, the accumulation of grievances, a single dramatic spark, the reversal of reforms, changes in prison routines and prison administration, and staffing and administrative failures."<sup>178</sup> External factors can also play a significant role in the volatility within the prison walls, especially when there are "high rates of unemployment [which] contribute to higher rates of incarceration, triggering overcrowding and leading to deteriorating conditions."<sup>179</sup> In addition, as Clarkson and Munn argue, "the zeitgeist may stimulate unrest; a general social and political climate critical of social conditions or government authorities may inspire prisoners and lead them to expect sympathy and support for change."<sup>180</sup> The riots at Kingston Penitentiary did just that; the lack of rehabilitative measures intended to be well underway created upheaval within social circles.

The repercussions of the riots provided a platform for inmates to finally have their voices heard. During the heavily publicized riot trials, prisoners testified to deplorable conditions and brutality. Sam Behan, a member of the 1932 riot, stated in court that:

We are not humans. We are dogs. It is a living hell, a living grave ... We asked for humane treatment and they locked us up [in the shops] ... Was it a riot? Right here in the city of Kingston you had a riot of unemployed a few weeks ago. They

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<sup>177</sup> Correctional Service Canada, *History of the Canadian Correctional System* (Canada: Correctional Service Canada, 2012), 3.

<sup>178</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 22.

<sup>179</sup> *Ibid*

<sup>180</sup> *Ibid*

wanted to see the major and committee. What happened? They smashed windows and broke into a meeting. Were there charges laid? No.<sup>181</sup>

Like Behan, prisoners wanted to shed light on the conditions within the prison. They wanted “better food; more letter-writing privileges; safety razors and toilet articles; daily and weekly papers; no reports for minor breaches of rules and regulations; more tobacco; and baseball.”<sup>182</sup>

Reformative practices and humane regulations within the prison should have been well underway since Superintendent William St Pierre Hughes’ annual report in 1914. His report placed “particular emphasis on education, labour, and parole,”<sup>183</sup> as well as the importance of implementing improvements for prison rehabilitation. Within each annual report, wardens also submitted written testimony about the success and failures of their prison; details relating to “new infrastructure, renovated buildings, improved prisoner care, and individual success stories.”<sup>184</sup> Reformative improvements, made on recommendations published by Hughes, appeared to be well underway. In practical terms, however, improvements were scant and prisoners were increasingly infuriated with the illusion that penitentiary administrators and bureaucrats were painting for Canadian society.

In the wake of rampant Depression-era prison riots, liberal legislators launched *The Royal Commission to Investigate the Penal System in Canada* that “emphasized crime prevention and rehabilitation,”<sup>185</sup> explored potential prison systems, and provided

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<sup>181</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 35-36.

<sup>182</sup> *Ibid.*, 37.

<sup>183</sup> *Ibid.*, 32.

<sup>184</sup> *Ibid.*, 33.

<sup>185</sup> Correctional Service Canada, *History of the Canadian Correctional System* (Canada: Correctional Service Canada, 2012), 3.

specific recommendations and directions for designing an improved Canadian rehabilitative prison system. *The Royal Commission* awarded former Liberal MP Justice Joseph Archambault the coveted seat.

Joseph Archambault, born in 1879 in Montreal, Quebec, was a devout Liberal politician and lawyer. Archambault began his political career in the House of Commons in 1917 representing Chambly-Verchères, holding that seat as a Laurier Liberal in 1918 and in 1921. Archambault's dedication to the Liberal party and, more specifically, the Laurier Liberals – a movement characterized by opposing mandatory conscription and support of former Prime Minister Sir Wilfrid Laurier's ideologies – made him an ideal candidate to lead *The Royal Commission*.

The *1938 Royal Commission Report on Penal Reform in Canada* and its 88 recommendations intended to be used to help assist and influence the transformation of Canadian retributive penal justice to rehabilitative. These recommendations aimed to rehabilitate the prisoner through structured discipline, access to basic education, productive employment, and recreation. The commissioners of the *1938 Report* believed implementing these recommendations was a relatively risk-free process whereby the current system was either altered or amended to the specified recommendation. The only areas in which continued study and development were encouraged were concerning “habitual offenders and young offenders, of classification, parole, [and] probation.”<sup>186</sup> Some of the most critical areas, like punishment and rehabilitation, were simply to be amended within the confines of the current penal system.

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<sup>186</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 362.

With Archambault and Macaulay witnessing the successful implementation of many of their 88 recommendations during their exploration of European and American prison systems, researching effective application strategies for Canada appeared unnecessary. For instance, in Britain, many of these reforms had already improved employment prospects, encouraged better societal integration through education and rehabilitative programming, and inspired better behavioural improvement.<sup>187</sup> The commissioners, however, failed to realize that the success of these reformatory practices was built upon a system, both structurally and ideologically, conducive to rehabilitation. Moreover, the British penal administration researched and experimented prior to implementing many of these reforms. For instance, the “British Prison Commission [had] been experimenting in different prisons with the subject of pay for prisoners”<sup>188</sup> before implementing their final revision. This type of experimentation and study extended to other parts of the British penal system: probation, sentencing, and detention. Unfortunately, modifying or removing systemic penal behaviours does not happen easily without a long-term implementation and improvement plan.

Consequently, after the Archambault report was published, these recommendations and methods of implementation became a guideline for how Canadian prisons should operate. As the *National Parole Board* summarizes, “the Archambault Commission was the most comprehensive study of penitentiaries ever undertaken in Canada. Its report ... would become the **bible** for those who wanted to introduce modern methods to penology in Canada.”<sup>189</sup> Like the Fauteux Report in 1956, penitentiary reports

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<sup>187</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 111 and 142.

<sup>188</sup> *Ibid.*, 142.

<sup>189</sup> Canada.ca, “The Archambault Report,” in *History of Parole in Canada* (Canada: Canada.ca, 2022).

to follow echoed Archambault's theories and recommendations.<sup>190</sup> Unfortunately, the issues latent within Archambault's 1938 report have been filtered through a contemporary lens and applied to Canada's current penal system over the past nine decades.

### Corporal Punishment and Violence

Physical violence was an integral part of order and control within penitentiaries until the early twentieth-century, when society became more focused on rehabilitative punishment; prisoners were frequently whipped with leather straps and placed in punishment cells, contributing to death.<sup>191</sup> Archambault and his committee members disapproved of punitive justice and used the report as a way to remove the use of force against inmates. As a result, the *1938 Report* recommended abolishing corporal punishment except for when inmates partook in mutiny or assaulted an officer.<sup>192</sup> However, guidelines regarding inmate punishment, located on pages 54-65 of the *1938 Report*, are vague, thus providing the administration with ample opportunity for the continued use of physical violence. An exhausting list of violations that can justify the use of physical violence are as follows:

1. Assault any Penitentiary officer, employee or servant;
2. Disobeys any order of the Warden, or any other officer, or any Penitentiary rule;
3. Treats with disrespect any officer of the Penitentiary, or any visitor, or any person employed in connection with the Penitentiary;
4. Is idle, careless, or negligent at work, or refuses to work;
5. Is absent without leave from chapel or school;
6. Behaves irreverently in chapel;
7. Swears, curses, or uses any abusive, insolent, threatening, or other improper language;

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<sup>190</sup> Correctional Service of Canada, "The Idea of Rehabilitation," in *1940-1959: Times of Change* (Canada: Correctional Service of Canada, 2022).

<sup>191</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 36.

<sup>192</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 356.

8. Is indecent in language, act or gesture;
9. Commits a common assault upon another convict;
10. Converses or holds intercourse with another convict except during the times and periods permitted, or makes signs or motions to him;
11. Sings, whistles, or makes any unnecessary noise, or gives any unnecessary trouble;
12. Leaves his cell or other appointed location, or his place of work, without permission;
13. Leaves the gang to which he has been attached without permission;
14. Enters the cell of another convict, unless by permission and in the presence of an officer; or looks into cells, or loiters on galleries when passing to or from work;
15. In any way disfigures or damages any part of the penitentiary, or any article to which he may have access, or upon which he has been ordered to perform work, or which has been issue to him;
16. Commits any nuisance;
17. Has in his cell or possession, or takes into or out of his cell, any money, or any article or articles whatsoever other than such as are permitted;
18. Gives to or receives from any convict or any other person any article whatsoever without permission of an officer;
19. Speaks to or communicates with any visitor except with the permission of an officer;
20. Converses or holds intercourse with an officer on any matter not connected with his work, the duties of the Penitentiary, or a proper request regarding his treatment;
21. Neglects to keep his person, clothing, bedding, and cell clean and neat;
22. Is at any time in any place where he ought not to be, or has not received permission to be;
23. Offers to an officer a bribe of any kind whatsoever;
24. Neglects to shut the gate of his cell after entering;
25. Neglects to rise promptly on the ringing of the first bell in the morning;
26. Neglects to go to bed at the ringing of the retiring bell;
27. Gives another convict any offence;
28. In any way offends against good order and discipline;
29. Attempts to do any of the foregoing things.<sup>193</sup>

Although the *1938 Report* claimed to promote rehabilitation, the above rules continued to encourage silence and isolation while supporting efficient, hard labour; characteristics reflective of Canada's original Auburn system and its retributive style. The *1938 Report* may have outwardly denounced the use of force against inmates but the

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<sup>193</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 55-56.

extensive, vague rules aligned with Canada's original Auburn system, allowing prison officials to remain in power and continue to stress fear through punishment. The punishments for the above prison offences included:

1. Forfeiture of tobacco and smoking privileges;
2. Forfeiture of conversational privileges;
3. Forfeiture of library privileges;
4. Forfeiture of privileges of seeing visitors;
5. Forfeiture of letter-writing privileges;
6. Forfeiture of remission of sentences, for a period not exceeding thirty days;
7. Extension of Probation Period, for a period not exceeding three months;
8. Hard bed, with blanket or blankets, according to the season, for a period not exceeding one month;
9. No. 1 Diet for not more than nine consecutive meals in accordance with Appendix III (1);
10. No. 2 Diet for a period of not more than twenty-one consecutive days in accordance with Appendix III (2);
11. Confinement in an isolated cell for a period not exceeding three days.<sup>194</sup>

It is overtly stated within the *1938 Report* that:

If a convict is charged with and found guilty of any offence or repeated offence for which the punishments aforementioned are deemed insufficient, or is charged with and found guilty of any offence mentioned in this Regulation, the Warden may award that the convict shall be flogged or strapped in addition to any other punishment.<sup>195</sup>

Allowing for the continued use of violence within an exhaustive list of rules creates an environment in which inmates become subject to the whims of the guards and warden.

Under these directives, misinterpreting modes of communication can warrant the use of physical force under the guise of safety protocols.

As Carolyn Strange discusses, “pain and death were transferred from the whipping post and the public gallows over the nineteenth century”<sup>196</sup> to the confines of the

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<sup>194</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 58.

<sup>195</sup> *Ibid.*, 59.

<sup>196</sup> Carolyn Strange, “The Undercurrents of Penal Culture: Punishment of the Body in Mid-Twentieth-Century Canada,” in *Law and History Review*, Vol. 19, (Illinois: University of Illinois, 2001), 344.



penitentiary; “physical punishment [has] remained in the repertoire of penal practice [for] more than a century after ... hidden from view.”<sup>197</sup> Although the general public disagreed with physical pain and violence against inmates, “legislative caution, ... the familiarity of penal tradition, ... adherence to historic British practices and an unwillingness to experiment with abolition were defining features of Canadian penal culture”<sup>198</sup> and the continued use of force. Regardless of how progressive Canadian sensibilities had become, it was not enough to incite legislative change. Unfortunately, resistance to penal reform still plagues Canadian penitentiaries well into the 21<sup>st</sup> century.

### Prison Structure / Construction

The physical form and construction of individual cells, common areas, and solitary confinement are integral to punishment, specifically, psychological trauma from prolonged exposure to confinement. In the decade prior to the Archambault report, prison riots and inquiries provided insights into the conditions in which prisoners were living. For example, prisoners reported being “housed individually in tiny, dingy, dimly lit cells.”<sup>199</sup>

Oswald Withrow, the author of *Shackling the Transgressor: An Indictment of the Canadian Penal System*, provides first-hand insights into the conditions in which prisoners were living during the early nineteenth century. He writes that:

The only light in my cell came from an electric bulb screwed into a socket in the roof ten or twelve feet from my table. Its strength was only ten watts. Could anyone see well enough with this amount of illumination?”<sup>200</sup>

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<sup>197</sup> Carolyn Strange, “The Undercurrents of Penal Culture: Punishment of the Body in Mid-Twentieth-Century Canada,” in *Law and History Review*, Vol. 19, (Illinois: University of Illinois, 2001), 344.

<sup>198</sup> Ibid.

<sup>199</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 25.

<sup>200</sup> Ibid.

Reflecting on this information, Clarkson and Munn raise a very interesting point:

“prisoners who wanted to better themselves through education or private study would strain to read the materials in these dark conditions.”<sup>201</sup> Although the prison technically provided a way for inmates to improve themselves, it did so in a way that sabotaged their efforts. As Clarkson and Munn explain of Withrow’s experience, “wooden partitions had been installed in the larger cells so that each could house two prisoners. Unfortunately, this makeshift solution meant that only half the cells had plumbing; the other cells provided buckets.”<sup>202</sup> Without getting into specifics, Withrow states that “the stench from the night pails might well challenge the sensitiveness of the citizens of Canada.”<sup>203</sup> These types of problematic conditions most definitely contribute to psychological trauma.

With the widespread publication of Withrow’s memoir and detailed experiences of prisoner conditions coming to light during the riot trials, Archambault’s *1938 Report* wrote explicitly about the construction of inmate cells. In doing so, Archambault suggested ways in which the prison could alter the psychological punishment by improving or renovating the structure of the prison. Unfortunately, this was not an easy task considering the literal foundations of the prison rested upon Thomson’s original Auburn design.

As with most twentieth-century Canadian prisons, Kingston penitentiary used “the cellular system in use throughout.”<sup>204</sup> These individual cells, where inmates resided alone, were uncleanly, cramped, damp, and unfavourable towards inner reflection and any sense

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<sup>201</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 25.

<sup>202</sup> *Ibid.*

<sup>203</sup> *Ibid.*

<sup>204</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 22.

of privacy. Although Thomson and Macauley had once applauded the structural design, the *1938 Report* believed the open-barrier style cell door “should be altered ... to closed outside cells.”<sup>205</sup> The closed-door cells encouraged inmate privacy, were reminiscent of “home,” and prevented disruptive conversations that tended to happen in the open-door cells. The Commissioners concluded that inmate wellness improved when provided with a sense of privacy. Unfortunately, the initial construction of the cells, regardless of door style, contributed to the uncleanness and improper ventilation of the entire penitentiary; dampness produced an overabundance of moisture, directly causing the development of illness and disease. Proper cleaning and ventilation systems were encouraged to remedy the situation; however initial construction materials and small cells would prove problematic in combating humidity and airborne illnesses.

Although the 1938 Commissioners determined that Canadian penitentiaries were not structurally cohesive to aspects of proper health and well-being, the recommendations failed to encourage a structural atmosphere conducive to rehabilitation: the renovation of inmate cells to allow for larger individual living space. Living in cramped spaces for long periods of isolation negatively impacts an inmate’s mental health. As Jo Nurse, Paul Woodcock, and Jim Ormsby argue in their examination of environmental factors within prisons and their correlation with mental health, “prisoners reported that long periods of isolation with little mental stimulus contributed to poor mental health and led to intense feelings of anger, frustration, and anxiety.”<sup>206</sup>

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<sup>205</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 22.

<sup>206</sup> Jo Nurse, Paul Woodcock, and Jim Ormsby, “Influence of environmental factors on mental health within prisons: focus group study,” in *BMJ (Clinical Research ed.)* (London: BMJ, 2003), 481.

Although almost a century has passed since the creation of the *1938 Report*, its notoriety makes it a crucial document for its continued use. Indeed, the report is often consulted before the implementation of new recommendations or improvements.<sup>207</sup> Unfortunately, the *1938 Report* found no issues with the original structural plans of Canadian penitentiaries, apart from the open-door style. Henceforth, the structural plans of Canadian penitentiaries have been modelled off of the original Auburn system, making isolation, claustrophobia, and the resulting side effects more rampant.

### Rehabilitation

“It has been said that an offender’s punishment begins, not when he goes into prison, but when he comes out of it.”<sup>208</sup>

The *1938 Royal Commission Report on Penal Reform in Canada* vehemently declared that Canadian prisons should not solely function as “places of custody and punishment but also places of reformation and rehabilitation.”<sup>209</sup> In order to create the substantive change that the *Royal Commission* was hoping for, the system had to be “characterized by the firm dignity that is traditional in the *British* administration of justice.”<sup>210</sup> This meant centralized federal government control, thorough training of prison staff, classification systems that identified and segregated criminals by the severity of their crimes, access to education to reduce recidivism rates, and the strict but humane treatment of prisoners.<sup>211</sup> Essentially, the main objective was to create a penal system that

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<sup>207</sup> Canada.ca, “The Archambault Report,” in *History of Parole in Canada* (Canada: Canada.ca, 2022).

<sup>208</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 10.

<sup>209</sup> *Ibid.*, 341.

<sup>210</sup> *Ibid.*, 354.

<sup>211</sup> *Ibid.*, 355.

would “prevent the repetition of crime, bring about the reformation and rehabilitation of those who have committed crimes, and take care of those who have been released from prisons.”<sup>212</sup> Prisoner rehabilitation was, therefore, the core of the modern Canadian penal system; no longer were Canadian prisons a place of retributive justice and physical punishment.

Archambault and his commissioners believed that rehabilitation required a proper classification system consisting of segregation, tailored education and assistance in societal re-integration. The system divided inmates into three main classes: “accidental or occasional criminals, reformable criminals, and habitual criminals.”<sup>213</sup> Unfortunately, Archambault believed that certain types of criminals were unable to be reformed.<sup>214</sup> These prisoners were to be segregated away from other inmates since “the classification and treatment of the remainder may be approached with a greater degree of confidence.”<sup>215</sup> These beliefs have become latent within our current penal system, causing habitual offenders to lack crucial, specialized forms of intervention. More specifically, BIPOC individuals living in socio-economic conditions that lead to cycles of crime and abuse are viewed as untreatable or difficult to treat and left with few forms of rehabilitative programming.<sup>216</sup> These unruly prisoners are often separated into solitary confinement, exacerbating underlying mental health issues and other untreated

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<sup>212</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 10.

<sup>213</sup> *Ibid.*, 100.

<sup>214</sup> *Ibid.*

<sup>215</sup> *Ibid.*

<sup>216</sup> Ivan Zinger, *Annual Report: Office of the Correctional Investigator 2019-2020* (Canada: Office of the Correctional Investigator, 2020), 20.

disorders.<sup>217</sup> Unfortunately, this has been one of the major pitfalls of the *1938 Report* and its continued use as a foundational document.

Archambault also believed that successful rehabilitation included recreational activities, “not as entertainment, but as part of the treatment necessary to strengthen soul, mind, and body.”<sup>218</sup> Physical and mental exercise and monitored access to appropriate recreational activities “would absorb time that would otherwise be spent in idleness or brooding, and [is] an important factor in reformation.”<sup>219</sup> Archambault outlined that the following regulations currently in place were much too stringent:

46. All convicts employed in shops, clerical work or any confined work, shall receive exercise in the fresh air, weather permitting, for not less than one-half hour per day during the winter, and forty minutes per day during the summer, such time to be exclusive of the time required to go to or from cells or work.
47. The exercise shall be, as far as possible, of a varied nature; not less than one-half of the exercise period shall consist of exercises of a rhythmic or systematic nature such as followed in the Public and High Schools of Canada.
48. Not more than half of any exercise period may be used for free movement exercise, but not exercise shall be permitted which calls for competition between groups of convicts or permits or calls for personal contact of convicts.
50. All convicts shall be given not less than one-half hour exercise in the fresh air on each Sunday and such holidays as may be designed by the Minister of Justice.<sup>220</sup>

The Commissioners outlined their grievances with the above regulations stating that:

1. The time allowed each day, thirty minutes in winter and forty minutes in summer, is not sufficient, and the type of exercise given is not a form of recreation, but in many cases more of a hardship and punishment;
2. Those employed on outside work are not granted this period on weekdays, and are therefore prevented from participating in any free movement exercise, including games;
3. If weather conditions are bad, the prisoners are deprived of this period, perhaps for some days;

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<sup>217</sup> Sara Connors, “Former Yukon inmates file claim against territory for mental health issues following lock up in segregation units,” in *APTN National News* (Winnipeg: APTN Network, 2020).

<sup>218</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 109.

<sup>219</sup> *Ibid.*

<sup>220</sup> *Ibid.*, 110.

4. The nature of the exercise is too limited. Prisoners should be allowed part of the time to relax and converse with each other;
5. Softball, handball, quoits, and other outdoor games should be permitted where proper facilities are available;
6. On Saturdays, Sundays, and holidays, the prisoners should be given much longer recreation periods in the yard.<sup>221</sup>

Basing his ideas on the British rehabilitative prison system, Archambault was of the “opinion that the criticisms contained in these representations are justified and that the present regulations are too stringent to allow prisoners to obtain sufficient outdoor recreation and exercise. In Great Britain ... much more latitude is given, both as to time and variety.”<sup>222</sup> Although Archambault aimed to reform Canada’s penal system to reflect Britain’s Glasgow Method, simple modifications almost immediately resulted in pushback from society and prison administration.

The *1938 Report* also detailed the importance of assisting inmates in societal re-integration. He believed that the offender is to be assisted and guided with job acquisition and suitable housing while society, most importantly, is influenced into re-accepting the offender.<sup>223</sup> Society must be open to re-integration since “the most energetic endeavours of the state, or of associations designed to aid the reformed prison on discharge, can be thwarted by the reception metered out to him by the public.”<sup>224</sup> Therefore, it must be a joint operation between prison administration and society to successfully rehabilitate inmates and prevent future criminal activity. Without society’s acceptance and continual cooperation, the inmate stands very little chance to rehabilitate.

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<sup>221</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 110

<sup>222</sup> *Ibid.*, 109.

<sup>223</sup> *Ibid.*, 10.

<sup>224</sup> *Ibid.*

Although Archambault's recommendations were precise and potentially effective, the *Report* soon fell victim to the global conflict in which Canada became immersed. Emerging from the war socially and politically altered, Canadians no longer felt a sentimental attachment to mother Britain. With Archambault's recommendations mirroring the British penal system, implementation of reform measures would prove socially problematic.



## Chapter 7

### *Social Commentary on the 1938 Archambault Report*

The effects of the Second World War permeated all aspects of society. As Canadians became preoccupied with political updates, current allied news, and fatalities, prison reform became a distant priority for Canadians and legislators.

Agnes Macphail, the first female member in the House of Commons, found the war an unacceptable excuse for complete disregard of Canadian penitentiary affairs. As a strong advocate for prison reformation, she appealed to the public through newspapers and magazines to attract the attention of prison administration and bureaucrats. In one article, Macphail declared that “since the war broke out shortly after [the 1938] report was made, nothing [has] been done to implement it except the passing of the Bill setting up the Prison Commission or Board.”<sup>225</sup> She continued to say that “the commissioners were never named, which really means that the Prison Commission is a legislative and legal fiction.”<sup>226</sup> She continued to explain that “conditions within the penitentiaries [have become] so unbearable that a series of riots of a more or less serious nature broke out, twenty in all.”<sup>227</sup> These inmates demanded access to education, standardized medical care, and the ability to speak to one another during recreational activity. The current system had inmates “deprived of exercise, sunshine and fresh air... [elements] essential to their physical and mental health.”<sup>228</sup> As Macphail argued:

Unlike other countries, Canada has put “too much emphasis on discipline; too little on

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<sup>225</sup> Agnes Macphail, *Convict or Citizen? The Urgent Need for Prison Reform* (Toronto: Co-operative Commonwealth Federation, Literature Dept., 1941), 14-15.

<sup>226</sup> *Ibid.*, 15.

<sup>227</sup> *Ibid.*, 4.

<sup>228</sup> *Ibid.*, 10.

reform. There has been strict military discipline not only involving the prisoners but members of the staff. There have been brutal and inhuman punishments ... and not very much attention to the circumstance that it was men's lives and men's bodies and men's souls that were being worked with.<sup>229</sup>

Despite Macphail's advocacy, Canadians' involvement in a total war postponed discussions about the *1938 Report* until the war's end.

### Post-War Canadian Identity

Canada emerged from the Second World War with a heightened sense of patriotism. Accordingly, Canadian pundits and academics put forth recommendations on how to save or generate a new 'Canadian' identity, creating a sharp divide between two schools of thought. On the one hand, some commentators lamented that Canada "as a cultural entity [had] ... stagnated"<sup>230</sup> or was believed to be regressing, "reflecting the wider cultural decadence in the western world."<sup>231</sup> In 1949, members of the *Royal Commission on National Development in the Arts, Letters and Sciences*, determined to see Canadian culture return to its pre-war highbrow identity, became quickly overshadowed by the allurements of American society. Canadians were tempted by widespread consumerism and materialism due to "the onslaught of American popular culture."<sup>232</sup> Did American prison ideologies also infiltrate Canadian society?

The early 1940s saw the emergence of a new prison system throughout the United States, referred to as the correctional institution.<sup>233</sup> Progressives in that country advocated

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<sup>229</sup> Agnes Macphail, *Convict or Citizen? The Urgent Need for Prison Reform* (Toronto: Co-operative Commonwealth Federation, Literature Dept., 1941), 14.

<sup>230</sup> Philip Massolin, *Canadian Intellectuals, the Tory Tradition and the Challenge of Modernity, 1939-1970* (Toronto: University of Toronto Press, 2001), 155.

<sup>231</sup> *Ibid.*

<sup>232</sup> Jonathan Vance, *A History of Canadian Culture* (Don Mills: Oxford University Press, 2009), 362.

<sup>233</sup> Robert Johnson, Ania Dobrzanska, and Seri Palla, *The American Prison in Historical Perspective: Race, Gender, and Adjustment* (Washington: American University, 2005), 34.

for a new style of punishment, one categorized by less severe forms of punishment and more leniency. Improvements included “more yard and recreational privileges; more-liberal mail and visitation policies; more amenities, including an occasional movie or concert; and more educational, vocational, and therapeutic programs.”<sup>234</sup> Nonetheless, physical violence remained a part of everyday life to punish and maintain order within prisons; “the main differences between Big Houses and correctional institutions are a degree rather than a kind.”<sup>235</sup> These institutions still partook in various forms of physical force to punish and maintain order within the penitentiary.

After the war, Canadian legislators and prison administration re-visited the *1938 Archambault Report* and its recommendations. The report, detailed in its instructions and written only years prior, encouraged reform that mirrored the British penal system and its history in the Glasgow Method.<sup>236</sup> The *1938 Report* intended for the Canadian penal system to “be comparable in training, character, and general proficiency, to the British Prison Service.”<sup>237</sup> Under “sustained public pressure, ... officials in the Ministry of Justice and Penitentiary Service [proceeded] ... to implement the Archambault recommendations.”<sup>238</sup> Superintendent G.L. Sauvant had also been quietly working since his posting in 1938 to implement some of Archambault’s recommendations. For instance, “numerous renovations had been completed and new buildings erected; this included improvements to schoolrooms, shops, farm buildings, hospitals, and cell blocks.”<sup>239</sup>

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<sup>234</sup> Robert Johnson, Ania Dobrzanska, and Seri Palla, *The American Prison in Historical Perspective: Race, Gender, and Adjustment* (Washington: American Universtiy, 2005), 34.

<sup>235</sup> *Ibid.*

<sup>236</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 362.

<sup>237</sup> *Ibid.*, 350.

<sup>238</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 56.

<sup>239</sup> *Ibid.*, 59.

Regulations were also adjusted, allowing for increased privileges “to shave and bathe more frequently.”<sup>240</sup> Sauvant experienced success with his minor modifications; however, critical areas of prison reform, like punishment, would prove problematic for prison administration and the public.

Although Archambault and the commissioners had provided extensive evidence to support abolishing corporal punishment and physical violence, prison administration were resistant to change. Superintendent Gibson, unsure of how to approach prison discipline, “proposed that before undertaking further revision of the penitentiary regulations, discussion with the wardens should occur.”<sup>241</sup> Gibson aimed to hear the wardens’ views on removing corporal punishment altogether to make the smoothest transition possible. He also suggested that “change be implemented cautiously, through a gradual, well-planned reconstruction of the prison system.”<sup>242</sup> As criminologist Bob Gaucher discusses, Gibson’s inability to make swift changes in prison discipline with other, less important recommendations is “the conundrum of resistance to change that characterized institutional authorities (from keepers to guards), while cautious desire for change characterized Headquarters.”<sup>243</sup> Another plausible reason for this resistance was its widespread prevalence and acceptance still within prisons throughout the United States.

Public resistance to Archambault’s recommendations, specifically, the removal of corporal punishment, was more complicated. Although the past six decades had been working to improve rehabilitative programming, early release, parole, and ensure less

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<sup>240</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 59.

<sup>241</sup> *Ibid.*, 62.

<sup>242</sup> *Ibid.*

<sup>243</sup> *Ibid.*

physical violence, the end of the war seemed to change the public's perception of inmates and punishment, as can be seen in the writings and commentary made by the public after the second world war.

### The Prison Press

Towards the end of the 1940s, ideas began circulating between prison administrators, wardens, and Superintendent Gibson about creating a prison press for each Canadian prison. Gibson believed it to be nuanced and progressive for its ability to give “the inmate body the opportunity to learn to express themselves in a constructive, orderly and appreciative manner.”<sup>244</sup> It also established “a permanent link between the Commissioner, the Administration and the inmate body.”<sup>245</sup> Interestingly, eight prison publications emerged, many finding great success and running, on average, for 15-20 years.<sup>246</sup> As the prison publications' popularity increased and production costs soared, the prisoners “lobbied for permission to accept outside subscriptions because there was an evident need to inform the taxpayer what goes on inside these walls and hold up for [their] inspection the new rehabilitation program currently unfolding in this and other Canadian penal institutions.”<sup>247</sup> As a result, subscriptions to the penal press opened up to the public in 1951.

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<sup>244</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 70.

<sup>245</sup> *Ibid.*

<sup>246</sup> *Ibid.*, 73.

<sup>247</sup> *Ibid.*, 77-79.

With the public now reading various prison publications, inmates could use the press to discuss penitentiary issues and much-needed reforms. For example, in a March 1953 article, John Brown wrote that:

The *Tele-scope* has never forgotten its duty to the inmates. Not long after it drew its first breath, it began shouting for needed reforms. It should for things inmates now take for granted – newspapers, pay increases, shaving outfits, longer exercise periods, and so on. And the *Tele-scope* will keep on fingering anachronisms, even if it must fight on alone. The *Tele-Scope*, moreover, has tackled social and legal problems of vital importance to the inmates – drug addiction, the Habitual Criminal Act, corporal punishment, capital punishment, and others too numerous to mention. It has usually led the way, sometimes handling dynamite.<sup>248</sup>

Prisoners used the press as an outlet for their frustration and demands. As Clarkson and Munn discuss, the earlier publications “had emphasized prejudice, morality, and the redemption of the fallen men,”<sup>249</sup> but as time wore on, prisoners “now conceived their role as advocates for structural change.”<sup>250</sup>

Prisoner discontent with the lack of prison reforms became widespread throughout many prison publications. For instance, inmate Sam Carr wrote an eloquent piece discussing corporal punishment in a 1951 *Tele-Scope* publication entitled “The Dead Hand of the Past.”<sup>251</sup>

The conviction that inflicting pain on another human being has an educational value, carried over into the field of family relations and child upbringing. Even today we have many individuals who proclaim that “to spare the rod is to spoil the child.”

Gradually, with the general advance of civilization and the beginning of study of the human mind and the forces influencing the development of character, flogging and all its offsprings began to fall into dispute. The Encyclopaedia Britannica tells us that:

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<sup>248</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 89.

<sup>249</sup> Ibid.

<sup>250</sup> Ibid.

<sup>251</sup> Sam Carr, “The Dead Hand of the Past,” in *The Tele-Scope* (Kingston: Kingston penitentiary Press, 1951), 10.

“With a growing consciousness that punishment is not so much a deterrent to crime as had been supposed, flogging as a general practice has been abandoned.”

Alas, the Britannica is somewhat over optimistic! Today there is still a wide range of strap-therapy in use. As late as 1920 the Parliament of Britain authorized the use of the “cat of nine tails” for the flogging of men convicted of robbery. In 1948, the same parliament reversed itself. When it adopted the Criminal Justice Act, it banned all corporal punishment as part of judicial sentences. However, it did **not ban** flogging as a disciplinary measure inside of prisons.

Today, in Canada, courts repeatedly sentence offenders to the lash. Inside of Canadian prisons, federal as well as provincial, corporal punishment remains in use as a disciplinary measure. The dead hand of the past hangs on!

The study of the human mind and of the forces shaping the human personality has made tremendous strides forward. Psychology has already learned of the basic forces that shape our characters. **As a science, psychology stands four-square against all forms of corporal punishment.**<sup>252</sup>

Carr uses this platform to shed light on the continued use of physical force within prisons.

As publications began circulating amongst society, commentary on inmate life became more constant. Inmates used full-length descriptive articles, poetry, and pleas to connect with their audience and hopefully induce a reaction. For example, in a 1953 *Tele-Scope* publication, an anonymous author wrote *A Memorable Plea*, begging society to view prisoners as worthy of a basic standard of living. The author states, “I am pleading for the future; I am pleading for a time when hatred and cruelty will not control the hearts of men. When we can learn by reason and judgement and understanding and faith that all life is worth saving and that mercy is the highest attribute of man.”<sup>253</sup>

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<sup>252</sup> Sam Carr, “The Dead Hand of the Past,” in *The Tele-Scope* (Kingston: Kingston penitentiary Press, 1951), 10.

<sup>253</sup> Anonymous, “A Memorable Plea,” in *Tele-Scope* (Kingston: Kingston Penitentiary Press, 1953), 15.

### Social Commentary After the Second World War

During the era of the prison press, inmates took the formation and publication of the written work very seriously. Each newsletter aimed to represent life within the prison while also providing inmates with a platform for their musings and a way to stay informed on social topics. The publications needed not to be filled with sports or media coverage since this would have provided “the public ...[with] an inaccurate image of life behind bars.”<sup>254</sup>As one prison editor wrote:

If one were to judge an institution by the content of its penal publication, the worst oftentimes is made to look like the best ... and not a few overzealous prison writers portray contemporary gaol as little less than plush country clubs wherein pampered felons languish in perfect socialism ... And despite a growing trend toward portraying prison life ... as one big round-relay of ball games, schoolwork, shop training, hobbycraft, movies, stage shows, ad infinitum, a convict is still very much a convict.<sup>255</sup>

The inmates felt it was essential to inform the public of what life was really like within the confines of the penitentiary. Society was no longer naive to the continued use of physical punishment.

Unfortunately, after the second world war, Canadian society was seen to be less concerned with the removal of prison discipline. On the contrary, Canadian society approved of using force to maintain order and control. For example, in an article written in the *Globe and Mail*, an anonymous author is seen chastising the Canadian public for their beliefs in corporal punishment. The author states:

The many Canadians who think that prisons have to be associated with bars, guns, guards and corporal punishment should visit Aldington Camp prison in England...The British, he said, have a skill and aptitude for experimentation and

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<sup>254</sup> Chris Clarkson and Melissa Munn, *Disruptive Prisoners: Resistance, Reform, and the New Deal*. (Toronto: University of Toronto Press, 2021), 94.

<sup>255</sup> *Ibid*, 94.



an open-minded attitude to penal reform...British prisons showed respect for reform techniques, an absence of cruelty.<sup>256</sup>

Another article in the newspaper claimed that Archambault's rehabilitative recommendations and report "tends to mollicoddle criminals."<sup>257</sup> Even more compelling is a small 1944 piece written by Norman R. White, a concerned citizen, titled "Chronic Criminals Menace to Society":

Society must be protected, and the only way this can be done is to build a prison for habitual criminals and keep them there, away from society, for their natural lives – just as we do in our Provincial hospitals for those mentally ill.

For many years we have been altogether too lenient with the criminals who have appeared in our courts. Our sympathies have been ignored and imposed upon, and so, at long last, we are waking up to the fact that something must be done, and done immediately.

I would suggest that people now in prison, or those who have been in prison, should be considered, if again convicted after their release from prison, as being in the habitual class, and receive a life sentence and permanently segregated from society.

A person could be given more chances to return to a decent life in minor cases, say three chances, but where a major crime has been committed and a conviction registered this party would be in line for a life sentence in the habitual criminals' prison, and the parole system would not apply.

Before closing, may I be permitted to draw your attention to the shocking number of persons who have been convicted of murder and sentenced to hang, and note the foreign names among them, and their brutality?<sup>258</sup>

These forms of commentary provide insight into Canadian society's impressions during the 1940s and early 1950s. Like Americans, Canadians wanted to know that criminal behaviour resulted in punishment. Rehabilitative programming and reformatory measures

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<sup>256</sup> Anonymous, "Prisons Without Bars or Guards Seen Banishing Tensions," in *The Globe and Mail* (Toronto: The Globe and Mail, November 11, 1954), 4.

<sup>257</sup> Anonymous, "Canadian Prisons Seen 100 Years Behind Times," in *The Globe and Mail* (Toronto: The Globe and Mail, October 3, 1946), 15.

<sup>258</sup> Norman White, "Chronic Criminals Menace to Society," in *The Globe and Mail* (Toronto: The Globe and Mail, November 7, 1944), 6.

were still actively encouraged and implemented; but commentators insisted that prisoners still needed to learn that there were repercussions for their actions. In an article published in *The Leader-Post*, a staff writer quoted Mayor Percy E. George as saying “corporal punishment [needed] to be re-introduced.”<sup>259</sup> It was believed that prisoners and delinquents were the “cause [of] untold pain, both mental and physical, by their misdeeds, and must be made to pay for them by feeling pain themselves.”<sup>260</sup>

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<sup>259</sup> Anonymous, “Corporal punishment urged for juveniles,” in *The Leader-Post* (Regina: The Leader-Post, 22 July 1946), 4.

<sup>260</sup> *Ibid.*

## Chapter 8

### *Where Do We Go from Here?*

This thesis suggests why Canadian penitentiaries became dysfunctional in the nineteenth and twentieth centuries. As we have seen, nineteenth-century bureaucrats intended for Canadian penitentiaries to be punitive until the early twentieth century; Canadian identity played a crucial role in society's views on justice and punishment and, thus, the effectiveness of penitentiary practices. As Canada attempted to shift to a rehabilitative justice system during the early twentieth-century, Canada's punitive structural and ideological framework demonstrated how resistant it was to change. Even through Joseph Archambault's impressive research, there still remained holes within the system where prison administration and correctional officers could justify the use of physical force. As a result, until the 1950s, rehabilitation was relatively ineffective, resulting in high recidivism rates.

At the end of this research, I am left wondering the ramifications of Archambault's *1938 Report*. To what extent were the recommendations used since 1955? Have the holes within his report caused irreparable damage? Unfortunately, Canadian prisons in the 1960s "continued the practice of whipping and executing convicted criminals well after most liberal states embraced a welfarist orientation in punishment."<sup>261</sup> As Carolyn Strange discusses, "pain and death were transferred from the whipping post and the public gallows over the nineteenth century"<sup>262</sup> to the confines of the penitentiary; "physical punishment [has] remained in the repertoire of penal practice [for] more than a

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<sup>261</sup> Carolyn Strange, "The Undercurrents of Penal Culture: Punishment of the Body in Mid-Twentieth-Century Canada," in *Law and History Review*, Vol. 19, (Illinois: University of Illinois, 2001), 344.

<sup>262</sup> Ibid.

century after it was hidden from view.”<sup>263</sup> Although the general public began to disagree with the use of violence against inmates, “legislative caution, ... the familiarity of penal tradition, ... adherence to historic British practices and an unwillingness to experiment with abolition were defining features of Canadian penal culture”<sup>264</sup> and the continued use of force. Regardless of how progressive Canadian sensibilities had become, it was not enough to incite legislative change. Unfortunately, resistance to penal reform still continues to plague Canadian penitentiaries during the twenty-first century.

*The Corrections and Conditional Release Act*, created in 1992 and recently amended in 2019, outlines the reasons for the disciplinary actions taken against inmates, a list shockingly similar to the rules found in the *1938 Report*. For instance, the *Act* states that “an inmate commits a disciplinary offence who:

- a) disobeys a justifiable order of a staff member;
- b) is, without authorization, in an area prohibited to inmates;
- c) willfully or recklessly damages or destroys property that is not the inmate’s;
- d) commits theft;
- e) is in possession of stolen property;
- f) is disrespectful toward a person in a manner that is likely to provoke them to be violent or toward a staff member that could undermine their authority or the authority of staff members in general;
- g) is abusive toward a person or intimidates them by threats that violence or other injury will be done to, or punishment inflicted on, them;
- h) fights with, assaults or threatens to assault another person;
- i) is in possession of, or deals in, contraband;
- j) without prior authorization, is in possession of, or deals in, an item that is not authorized by a Commissioner’s Directive or by a written order of the institutional head;
- k) takes an intoxicant into the inmate’s body;
- l) fails or refuses to provide a urine sample when demanded pursuant to section 54 or 55;
- m) creates or participates in
  - i) a disturbance, or

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<sup>263</sup> Carolyn Strange, “The Undercurrents of Penal Culture: Punishment of the Body in Mid-Twentieth-Century Canada,” in *Law and History Review*, Vol. 19, (Illinois: University of Illinois, 2001), 344.

<sup>264</sup> Ibid.

- ii) any other activity that is likely to jeopardize the security of the penitentiary;
- n) does anything for the purpose of escaping or assisting another inmate to escape;
- o) offers, gives or accepts a bribe or reward;
- p) without reasonable excuse, refuses to work or leaves work;
- q) engages in gambling;
- r) wilfully disobeys a written rule governing the conduct of inmates;
  - (r.1.) knowingly makes a false claim for compensation from the Crown;
  - (r.2.) throws a bodily substance towards another person; or
- s) attempts to do, or assists another person to do, anything referred to in paragraphs (a) to (r).<sup>265</sup>

This list ensures robotic behaviour, not allowing for emotional mistakes without the risk of physical punishment. Cruel and unusual treatment, a parameter often cited as protection for prisoners, continues to be an active part of prison society through the justification of the above rules.

Over the past few decades, reports and media coverage have circulated regarding violent forms of prisoner punishment. The Commissioners in the *1938 Report* agreed that the “regulations and punishable offences are too numerous, and corporal punishment, although not often inflicted, is yet awarded too frequently, and for too many prison offences.”<sup>266</sup> Yet, physical punishment, carelessness, and inmate disregard have continued well into the 21<sup>st</sup> century. As recently as 2019, the Standing Senate Committee on Human Rights reported that “human rights abuses remain rampant in Canada’s prisons, where greater access to health care and oversight of the use of force by staff are urgently needed.”<sup>267</sup> The study also found that “force is disproportionately used against federally sentenced Indigenous Peoples, federally sentenced Black persons and federally

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<sup>265</sup> Minister of Justice, *Corrections and Conditional Release Act* (Canada: Minister of Justice, 2019), 38.

<sup>266</sup> Joseph Archambault, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: J.O. Patenaude, 1938), 23.

<sup>267</sup> Jacques Gallant, “Inmates Continue to Face Abuse in Canadian prisons, Senate Committee says,” in *Thestar.com*, Accessed June, 23, 2021, <http://thestar.com/politics/federal/2021/06/23/inmates-continue-to-face-abuse-in-canadian-prisons-senate-committee-says.html>

sentenced persons with mental health issues.”<sup>268</sup> Even though the Canadian Charter of Rights and Freedom “guarantees the rights of federal inmates not to be subjected to cruel and unusual treatment or punishment,”<sup>269</sup> there is a lack of definition by prison administration as to what cruel punishment appears to be. With a meticulous list of punishable behaviours and a vague definition of what constitutes cruel and unusual punishment, prisoners become forced into an endless cycle of abuse, seen as both typical and necessary.

Evidently, the use of force is still a problematic element within Canadian penitentiaries. Inmates continue to be subjected to the whims of the guards, which has caused both physical and emotional trauma:

I was in prison and you visited me  
 Me, “the least”  
 Me, “the least”

Whose just desserts he sits and eats  
 In the belly of the beast  
 On not my first  
 And worst of all  
 Not my second  
 But my third fall  
 Behind bars and barbed wire with guarded gun towers and cement walls  
 And I was only 26  
 A repeat federal offender – a recidivist  
 Me, “the least”  
 Me, “the least”

Serving a sentence of 7 years 9 months and 27 days in prison  
 For which I broke the law was given  
 To be served  
 Until at least 2/3 on a federal reserve  
 In a penitentiary called Collins Bay

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<sup>268</sup> Jacques Gallant, “Inmates Continue to Face Abuse in Canadian prisons, Senate Committee says,” in *Thestar.com*, Accessed June, 23, 2021, <http://thestar.com/politics/federal/2021/06/23/inmates-continue-to-face-abuse-in-canadian-prisons-senate-committee-says.html>

<sup>269</sup> Constitutional Studies, *Solitary Confinement vs the Charter of Rights and Freedoms* (Canada: constitutionalstudies.ca, 2017), <http://constitutionalstudies.ca/2017/07/solitary-confinement-vs-the-charter-of-rights-and-freedoms/?print=print>

Me, "the least"  
 Me, "the least" who could find no inner peace

Who would walk the yard  
 And keep his guard  
 Up  
 As he watched the starved  
 Young men who owe their youth to the State  
 Slowly turning granite hard inside their hearts  
 And full of hate  
 And I'll admit, despite my pride  
 And everything I tried to hide  
 There were times at night that I would cry  
 And thought to take my life, and tried  
 But never seemed to find the drive  
 Or the nerve  
 So on I went, survive, survive  
 Me, "the least"  
 Me, "the least"

I'd walk the yard in days to follow  
 Searching for something to fill my hollow  
 And satiate my innate desire  
 To take my life to some place higher  
 Then this belly of the beast  
 I was in prison, and you visited me  
 Me, "the least"  
 Me, "the least"

It started with a simple book  
 An invitation to the club  
 We meet, you said, once a month  
 Once a month we sit and talk  
 About the book (but often not)  
 We laugh, we listen, we want to hear your thoughts

Me, "the least"?  
 My thoughts matter?

That's something new  
 And you're going to listen too?  
 Just read the book the whole way through  
 Your very best is all that we expect of you  
 My very best?  
 From me, "the least"?  
 Me, "the least"?

My worst is all I've ever done  
Then do your best  
And best is what you will become  
You said  
And I believed  
So on I went to read and read  
Where starved before I'd feed and feed  
And swallow books you gave to me  
Voraciously  
I was in prison and you visited me  
And watched as I developed these  
Developmental tendencies  
You don't know what it meant to me  
To finally find, and feel, some empathy  
Me, "the least"  
Me, "the least"

I was in prison and you visited me.<sup>270</sup>

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<sup>270</sup> Jarrod Shook, "I was in prison, and you visited me," in *A poem from behind bars* (Toronto: The Sunday Magazine, March 3, 2017).



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