

HARD TIME



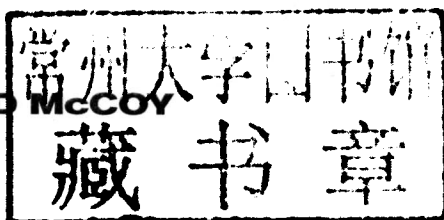
**Reforming the Penitentiary
in Nineteenth-Century Canada**

TED McCOY

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Tables

- 1 Convicts' Daily Diet at Kingston Penitentiary, 1838 55
- 2 Daily Schedule of Inmates at Manitoba Penitentiary, 1885 144
- 3 Officers' Salaries, Manitoba Penitentiary, 30 June 1878 154
- 4 Ailments Treated at Kingston Penitentiary, 1837 185

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Contents

List of Tables vii

Acknowledgements ix

Introduction 1

ONE Labour 19

TWO Reform 61

THREE Criminality 93

FOUR Prison Life 139

FIVE Medicine 181

SIX Punishment 225

Conclusion 261

Notes 277

Bibliography 311

Index 325

Introduction

In 1849 a government commission of inquiry heard the details of a troubling incident at Kingston Penitentiary. It involved the warden, Henry Smith, and the punishment of a prisoner named Narcisse Beauché, whom the staff regarded as a troublesome inmate. Beauché was no stranger to punishment, having been disciplined on at least two dozen occasions since arriving at the prison. This time, Beauché had evidently awoken in a state of terror and was screaming and climbing the bars of his cell in desperation. Warden Smith arrived and ordered, "Open the doors! I will bring this scoundrel out." Guards removed the prisoner and attempted unsuccessfully to place a gag in his mouth. Beauché promised to be quiet, but, upon returning to his cell, he continued to scream about something under the bed. Again, the warden ordered him removed. The guards then held the prisoner to the floor while Smith beat him with a length of rope until he was bloodied and subdued. Beauché was twelve years old. This disciplinary encounter with the warden turned out to be his last. He did not leave his cell again until he was declared insane and transferred to the provincial lunatic asylum.¹

The Beauché incident was part of the evidence presented before the 1849 Brown Commission in its investigation of Canada's first penitentiary, in Kingston. Other witnesses provided accounts of prisoners who were starving and the sexual abuse of female inmates by members of the staff. On the punishment of Narcisse Beauché, the commissioners concluded, "The thought of the Warden of a high penal institution, in the middle of the night and while evidently labouring under personal excitement, flogging a manic lad with his own hands is too horrible to dwell upon."² Nor was the Beauché incident an isolated outburst of violence. The investigation uncovered a disciplinary regime that had inflicted thousands of corporal punishments upon men, women, and children, often for the slightest of infractions. The commission, led by George Brown of Toronto, publisher of *The Globe*, investigated every area of the penitentiary, searching for evidence to support charges of cruelty and mismanagement.

What had gone wrong? In the 1820s, the emerging concept of the penitentiary was thought to belong to the vanguard of humanitarianism and enlightenment. The penitentiary was regarded as a progressive solution to crime, one that would force criminals to do penance for their crimes while also giving them the skills and moral training necessary for their successful return to society. In the early 1830s, Upper Canadian politicians embraced the institution as a humane alternative to public whippings or hangings, and in 1835 Kingston Penitentiary opened. Within a decade, however, the entire endeavour was mired in insolvency and corruption, and violence was rampant within its walls. The penitentiary had also failed in a more fundamental way. It had not reduced crime, as its promoters had promised. The dismayed Brown Commission concluded simply, "The moral reformation of convicts is unknown." The need for change was apparent. In view of the commission's findings, the Upper Canadian government might have retreated, abandoning the penitentiary as an ineffective response to criminal behaviour. But the commission of inquiry proposed solutions that evinced optimism about the future of the penitentiary in Canada.

Hard Time is a book about penal reform in Canada and the rise of the modern Canadian penitentiary. From one generation to the

next, reformers condemned the failures of their predecessors, assigning blame and formulating solutions that promised to move the penitentiary in new directions. Previous interpretations of the nineteenth-century penitentiary have chronicled the “failure” of reform but have for the most part neglected the broader historical impact of reform movements on the evolution of the penitentiary.³ At the heart of the penitentiary reform project lay a contradiction: while reform was flawed, it also moved the penitentiary in new directions that made it less miserable and debasing. It is indisputable that, as the nineteenth century progressed, fewer prisoners died of untreated illnesses, fewer were brutally whipped for breaking the rules, and more emphasis was placed on education, religious instruction, and industrial training in an attempt to reform and rehabilitate prisoners. The penitentiary reform movement contributed to such changes.

At the same time that conditions improved, however, the institution also expanded its practices of physical and moral surveillance and its exercise of control over the lives of prisoners. These developments were facilitated by the growing concern among reformers about the individual needs and moral condition of inmates. This ambiguity of outcome complicates our efforts to judge reform as a social movement. What should we use as a measure of success or failure? Seeing reform merely as a project of reinvention cannot speak to the larger and ongoing failure of the penitentiary to reduce crime, to transform individuals, and, in general, to reinforce faith in modern, enlightened solutions. Neither can such a view fully address how reform ideas themselves were often subverted in ways that sustained larger structures of domination and, in effect, made the institution itself one of the pillars of class control, racism, and gender inequality.

In *Discipline and Punish*, Michel Foucault was the first to suggest that reform was a continuous condition of the modern penitentiary rather than merely a response to its failures. I use this perspective on reform as my point of entry into the study of the penitentiary to suggest that the discourse of reform was a constant influence on the direction in which the prison developed. Canadian prison reform was influenced by internationally renowned figures such as England’s John

Howard and Elizabeth Fry and American Louis Dwight, along with some of the towering figures of Canadian history like George Brown. It is important to recognize, however, that reform was also promoted and carried out by figures who remained relatively unknown. These included penitentiary wardens, chaplains, and inspectors, who reacted to the same sense of crisis and failure but from a more immediate perspective. In this sense, reform itself was both an idea and a practice: it unfolded not only because of overarching ideological shifts but also as a result of what happened within the walls of the penitentiary.

My focus in this book is more on the effects of nineteenth-century penal reform than on its intent. I am interested in the larger ideological climate in which reform developed, but I also seek to understand the penitentiary experience as it evolved in the wake of reform and its influences. This entails a study of penitentiary practices in the nineteenth century, but I also intend to understand something more about prison life itself, advancing on terrain established by historians like E. P. Thompson, Douglas Hay, and Peter Linebaugh, all of whom wrote about the law and punishment with a focus on experience and human agency.⁴ Thompson in particular suggested that agency was at the core of class struggle. In *The Making of the English Working Class*, he wrote, "We cannot have love without lovers, nor deference without squires and labourers. And class happens when some men, as a result of common experiences (inherited or shared), feel and articulate the identity of their interests as between themselves, and as against other men whose interests are different from (and usually opposed to) theirs."⁵ It may seem obvious, but we cannot have prison history without prisoners. Their interests were undoubtedly set against those of their keepers and, indeed, against those of reformers who sought to improve their lot (as well as their moral character). So much of prison history is the story of relationships among these disparate groups. There is much to learn from tracing the ways in which agency and experience played out in the operation and evolution of the penitentiary.

My study of punishment writes individuals back into the story by focusing on their place in the interplay of ideology, practice, and human experience. Inevitably, viewing the historical prison from this

perspective leads to some sobering observations. Throughout the nineteenth century, despite its overt intentions, the reform movement generated a particular legacy of social harm and oppression, costs that were often exacted in terms of human suffering. This history can be read in the experiences of prisoners who lived through the growing pains of an uncertain and untested social practice. Many were victims of violent and inhumane penitentiary officials and staff who distorted and subverted the humanitarian goals of the reform movement. Prison history is also populated by those who experienced the penitentiary in ways that were more than merely punitive in the legal sense: the sick, the disabled, members of racial and ethnic minorities, and women and children. Even as the reform movement pushed the penitentiary to modernize and become more humane, these prisoners continued to experience discomfort, neglect, and abuse to a greater degree than others. Ultimately, as this book documents, it was the most vulnerable members of nineteenth-century Canadian society who paid the greatest price for the failures of criminal justice policy. With this lesson, we can use the penitentiary to paint a much more nuanced portrait of Canada in its formative modern era.

The reform movement focused on three key priorities that together shaped the penitentiary over the course of the nineteenth century. I take my direction from these priorities, using them as a springboard to the multiple dimensions and intricacies of penitentiary history. The first, and most central, was a concern with labour and with transforming inmates into productive workers. Second was the growing desire to effect the moral reformation, or rehabilitation, of individual prisoners.⁶ The third priority was to make the penitentiary a more humane institution by eliminating violent methods of punishment in favour of approaches promoted by an emerging class of professional criminologists, such as the isolation of individuals deemed especially troublesome. In exploring these concerns, I also consider questions about criminality that touched on each. First and foremost, who were the men and women inside Canadian prisons? This is a question with which reformers grappled constantly in their efforts to address the three central priorities of the reform program.

The areas of concern to reformers also speak to questions confronting nineteenth-century Canadian society as a whole, questions about how to organize labour and how to respond to the pressures of the industrial revolution, and, more broadly, how to help individuals adapt to, and participate in, the new capitalist order. The history of the penitentiary is central to these questions. It allows us to see how one institutional response to change embodied the hopes and failures of Canadian modernism.

LABOUR

The modern penitentiary was an innovation of industrial capitalism. It constituted one reply to the question of how industrial society should organize its workforce. Arguing that this question is fundamental for any society, H. Clare Pentland points to the period between 1820 and 1850 as the critical moment in Canada's transition from a capitalist labour market to industrial capitalism.⁷ During this period of transition, we find the rise of the penitentiary.

The penitentiary was one reaction to pressing issues raised by a rapidly changing society at the start of the industrial revolution. Among them was how an industrial capitalist society should respond to the poor and marginal elements of the population. Karl Marx reflected on this in a passage from the 1844 *Manuscripts*:

Political economy . . . does not recognize the unoccupied worker, the workingman, in so far as he happens to be outside this labor relationship. The cheat-thief, swindler, beggar, and unemployed; the starving, wretched and criminal workingman—these are *figures* who do not exist for *political economy* but only for other eyes, those of the doctor, the judge, the grave digger, and bumbailiff, etc.; such figures are specters outside its domain.⁸

While Marx never directly explored the function of the penitentiary within the broader political economy, subsequent generations of his

students expanded on his invocation of “specters outside its domain.”⁹ They illustrated how the capitalist state gradually learned to accommodate people who stood at society’s margins, while at the same time marginalizing them further by excluding them from the political economy. The penitentiary was a key institution in this process, as were hospitals, insane asylums, orphanages, and reformatories. The combined histories of these institutions help us to understand the emphasis on labour within the penitentiary. Recognizing the ideological underpinnings of prison labour makes clear the larger significance of the penitentiary to the political economy of this era.¹⁰

The penitentiary played an important role in the construction of class in nineteenth-century Canada. In *The Social Organization of Early Industrial Capitalism*, Michael Katz, Michael Doucet, and Mark Stern argue that capitalism gives rise to a particular class structure, one that provides “the basis of a system of inequality.” As they go on to point out, “just as the essential attributes of capitalism [have] remained fixed, its structural inequality continues to define social and economic relations.” Attention to class also reveals what these authors call “the structured inequality of social experience” (2). I advance a similar structural view of social experience, one that “reflects the belief that the dimensions of social and human experience are not random, the result of luck or genetic superiority. To the contrary, the relations between inequality, exploitation, bureaucracy, and the pain and contradictions of private life are neither accidental nor ephemeral” (41). Incorporating the notion of class into penitentiary history sheds light on the relationship between economic and social change and human experience. Attention to class is an essential ingredient in any attempt to attribute motivation to the penitentiary reform movement, which was, after all, merely the efforts of particular men and women who sought to change the course of social practice. Their efforts were made up of words and actions, and both are important. While ideological developments within the reform movement were often distinct from the practices that formed the experience of imprisonment, we cannot distance ourselves from the attempt to understand the meaning of reform. This requires striving to understand how individuals

made sense of the ideas that reformers espoused. I argue that these ideas were not merely subjective discourses divorced from historical circumstance. Positioning the reform movement within a historical materialist framework helps us to grasp the relationships between social practices and the structures that sustain those practices and their accompanying discourses. This view also facilitates an understanding of the penitentiary both as the manifestation of a particular ideology and as an institution that was the product of social forces. We can identify both as sites of class struggle.

Much of Canadian prison history has focused on the new institution as a primarily legal innovation in the social response to crime.¹¹ It was this, but it was also part of the broader social upheaval ushered in by the advent of an industrial urban economy. As an institution, the penitentiary incorporated long-standing ideas about poverty, dependence, and idleness in new form. Clearly, labour was linked to imprisonment for centuries before the rise of the modern penitentiary. The first penitentiary promoters looked to older responses to idleness and poverty and found examples in the European workhouse and the English Bridewells of the sixteenth century. Labour stood at the core of these established institutions and offered a ready-made solution for the growing social disorder of the industrial age. In the nineteenth century, these institutional innovations were applied to another form of social disorder—crime.¹² While institutional confinement was an innovation in legal punishment, it was not an entirely new idea at its formative moment near the end of the eighteenth century.

The modern penitentiary developed in Upper Canada at the same time that the northeastern United States was undergoing a transition to industrial capitalism. In New York and Pennsylvania, the first American penitentiaries were constructed to mimic large-scale industrial factories. Canadian legislators were moved by the apparent modernity of what they witnessed in the United States and modelled the Canadian penitentiary on these new examples. Thus, from the earliest years of the nineteenth century, legal punishment in Canada, as in the United States, was tied to the model of industrial development. Not only did prisons share the design and discipline of the

new factories; they shared their unending drive for profit. On these points, my interpretation borrows from the first political economy of punishment, Georg Rusche and Otto Kirchheimer's *Punishment and Social Structure*, which argued that the evolution of the penal system was directly linked to changes in the labour market and the relations of production.¹³ In the case of Kingston Penitentiary, the relationship may have reflected aspirations for industrial development more than the actual speed of industrialization in Upper Canada. Ultimately, it proved impossible for Kingston Penitentiary or other federal institutions to compete in the capitalist marketplace, and this failure played an important role in how the Canadian penitentiary developed.

Prison labour was also inherently ideological. Not only was labour an economic imperative, but the actual practice of making prisoners work appealed deeply to the moral and religious culture of the nineteenth-century bourgeoisie, with its deep suspicion of idleness. Reformers increasingly viewed labour not only as a source of profit but also as a method of individual reform. The new focus allowed prison reformers and administrators to emphasize the ideological importance of the penitentiary labour project even after the original economic aspirations of prison industry proved unfeasible.

In spite of the importance of labour in shaping the penitentiary as a social institution, the multiple failures of the penitentiary served to reveal the limitations of the governing imperative of labour. The theory that hard labour produced moral reform rested on the assumption that prisoners were healthy enough to perform hard labour. As prison medical records confirm, not all prisoners met this standard. Some were too physically weak or ill or too mentally disabled to work. Even as medical care improved throughout the century, the chronically ill and the disabled continued to be held to the standards of moral reform imposed by the guiding imperative of labour. Thus the penitentiary doctor increased his power in two respects. As the century progressed, doctors became the exclusive experts on questions surrounding health and illness. Empowered to make distinctions between the healthy and the ill, between the sane and the insane, doctors also formed judgments about who among the penitentiary population could

be considered “a worker.” Those whom medical diagnosis deemed unfit for labour were inevitably marginalized and, as a result, experienced the penitentiary very differently from those who were able, and expected, to work. In spite of improving medical care, penitentiaries struggled and failed to adapt to these “unproductive prisoners.”

The evolution of constructions of criminality stands as a counterpart to the ideological history of prison labour. Both within the penitentiary and in the broader society, prevailing discourses about class (and likewise about race) contributed to notions regarding the relative propensity for criminal behaviour. Gertrude Himmelfarb’s study of poverty in this era underscores the important role played by discourse in the creation of dominant cultural ideas. Himmelfarb explores the construction of poverty as primarily a moral issue, arguing that discourse plays a part in constituting class struggle.¹⁴ A similar approach, one that tracks changing discourses about class and morality, can contribute to an understanding of how society conceived of the criminal. In the simplest terms, the ways in which criminals were talked about, written about, and understood played a part in how penitentiary reform developed. Such discourses helped to determine how the penitentiary was structured and what was considered appropriate and necessary when dealing with the criminal. The discourse of criminality, especially as it related to penitentiary labour, sprang from many sources, but key among them were discourses that linked idleness, poverty, and criminality. I probe these discourses and connect them to the political economy of punishment as a way to better understand how reform developed in concert with the Canadian penitentiary.

VIOLENCE

After the shocking testimony before the Brown Commission, reformers advocated a more humane approach to corporal punishment in the penitentiary. But what would such an approach look like? In spite of reformers’ efforts, wardens and other staff tasked with maintaining