Pursuing Human Techniques of Progressive Justice:
The Ethical Assumptions of Early-to-Mid-Twentieth-
Century English-Canadian Penal Reformers

by

Joel Kropf

A thesis submitted to the Faculty of Graduate and Postdoctoral
Affairs in partial fulfillment of the requirements for the degree of

Doctor of Philosophy

in

History

Carleton University
Ottawa, Ontario

© 2014 Joel Kropf

Abstract

In all portions of the nineteenth and twentieth centuries, at least a little of the commentary in Canada concerning criminal justice discussed reforms that might in some way make for a more promising genre of penal activity in the colony or country. This dissertation allows us to probe reformist commentary from the first two thirds of the twentieth century, primarily discourse between 1920 and the mid-1950s regarding imprisonment and parole-related measures pertaining to adult men. Scholarship on nineteenth- or twentieth-century reformist penal activity, or on social reform more generally, has often identified ways in which such activity proved quite consonant with more conservative assumptions or outcomes than would sit well with present-day progressive readers. My dissertation, by contrast, numbers among the studies which associate penal reformers' outlook primarily with liberal or progressive perspectives.

In this particular study, the liberal tenor of their mentality will register in our minds through an assessment of the ethical assumptions that reformers displayed, especially their assumptions concerning condemnation, exclusion, coercion, and compassion. Reformers' speeches, publications, and so forth allow us to highlight four "moral sources" due to which they thought their penal perspective qualified as compelling: *Christianity*, the notion of *humanness*, the meritoriousness of *technique*, and the idea of *justice*. Their commentary assigned priority to technique-related rhetoric, to statements that associated penal activity, including rehabilitative tactics, with instrumentalist plans through which "the protection" with which the citizenry was enamoured would materialize. Yet even though reformers' arguments savoured primarily

of instrumentalist assumptions, neither justice nor compassion was wholly neglected in their discourse. In fact, reformers hit upon a defensible affirmation of quasi-compassionate ideas thanks to instrumentalist rhetoric itself.

Acknowledgments

A special thanks to my supervisor, Dr. Brian McKillop, for providing the freedom to pursue the issues on which I was keen, and for showing great patience and support as the project crept to a finish. A special thanks as well to Dr. Greg Donaghy, head of the Historical Section at Foreign Affairs, Trade and Development Canada. The persistent, good-humoured encouragement which Greg extended during some of the more difficult months helped a great deal to ensure that I would not decide to assign priority to other work and end up mothballing the partially written dissertation.

The members of Carleton's Department of History display a consistently supportive attitude toward the students in their graduate program. Thanks especially to Dr. Paul Nelles and Dr. Michel Hogue for the encouragement and opportunities they provided in academic activities unrelated to my dissertation itself.

Thanks to Dr. Rick Helmes-Hayes of the University of Waterloo for kindly giving me a copy, in 2008, of his then-unpublished paper on C.W. Topping.

History dissertations get off the ground due in significant part to the work carried out by librarians and archivists. Through their efforts, grad students acquire permission to draw upon restricted papers; thanks to their suggestions, we hit upon relevant sources that would otherwise have escaped our notice; and if we neglect to obtain an important document during a trip to a distant archive in person, a copy often ends up being acquired as a result of an email and an archivist's work to rustle up the material for us. I came out ahead as a result of the efforts of Sarah Fontaine at the Archives of Ontario, Heather Home at Queen's, Candice Bjur at UBC, Loryl MacDonald and Harold Averill at the University of Toronto, Anne Daniel at Western University, Michelle Curran at Simon Fraser University, John Court at the Centre for Addiction and Mental Health Archives, and various other individuals.

I am grateful for the strong financial support that the Social Sciences and Humanities Research Council of Canada supplied through a Canada Graduate Scholarship (Doctoral). Thanks also to Carleton University for its financial assistance.

Family members provided both practical support and equally valuable encouragement. Thanks to Bashy, Roxanne, and Ahyoka Salami for their hospitality in Toronto on so many occasions over the last few years, and for a home to go to at Christmastime. Fernando and Jan DeGuzman supplied a comfortable place to stay in Vancouver. And I am grateful to my parents, and to Brent Yoder, for their encouragement on various fronts over the last number of years.

Finally, though it may be unorthodox to verbalize this in an academic product, I must say thanks to the One "of [who]m, and through [who]m, and to [who]m, are all things"¹—thanks for the chance to live, and for the merciful pleasure of completing a thesis.

¹ Romans 11:36.

Table of Contents

	Page
Abstract	ii
Acknowledgements	iv
Table of Contents	v
Introduction	1
Chapter 1: Evolving Away from Condemnation: Richard Maurice Bucke on Crime And Punishment.....	30
Exploring Moral Psychology and Evaluating the Universe	37
Assessing Criminals and Punishments	52
Chapter 2: The Undesirability of Exclusion: Alfred Lavell’s Non-Carceral Penal Options in 1920s Ontario	83
A Preacher from Prison	89
Developing Parole in Canada and Ontario	93
Promoting Inclusionary Penal Ideas	107
Lavell’s Hell	134
Excluding the Human Animal	141
Chapter 3: Enhanced Denunciation: Systems, Persons, and the Critique of the Penitentiaries in the 1930s	153
“One Law for the Rich and Another for the Poor”	160
Commenting on Criminals and Class	175
Systems and Persons: Inveighing against Institutional Structures	185
The Archambault Commission	213
Chapter 4: Embracing Science, Shunning Sentimentalism: The Validation of Coercion and Compassion in Twentieth-Century Penal-Reform Discourse....	227
Lavellian Coercion and Compassion	234
Scientific Coercion and Exclusion	246
Rehabilitation and Humane Technique	274
The Appeal of Experiments	282
Pre/Modern Ethics and Interests: a Reflection	289

Chapter 5: Uncoerced Excellence: Educational Strategies, Postwar Reform in Federal Corrections, and the Ethical Perspective of Joseph McCulley	300
Christianity, Education, and Camp Ahmek	304
Progressive Education at Pickering College	310
A Net-Widening Headmaster?	316
Excellence and the Individual: Recreation, Religion, and Political Ideology	326
McCulley and Reformist Initiatives in the Postwar Penitentiaries	338
Moral Sources in McCulley's Postwar Discourse	345
Correctional Net-Widening?: The Fauteux Committee and Parole Reform	353
 Epilogue: Authority in Question, Liberalism in the Ascendant: Coercion, Non-Carceral Correctional Measures, and Ethical Sensibilities in the Sixties and Later Decades	 360
Authority, Treatment, and Non-Carceral Corrections in the 1960s	362
Ethical Sensibilities in Interwar, Postwar, and Present-Day Canada	373
Technique, Justice, and Compassion in the Twenty-First Century	381
 Bibliography	 389

Introduction

This dissertation will examine the ethical assumptions reflected in commentary that advocated penal reform in Canada, primarily commentary from the decades between 1920 and 1960. The analysis will focus mainly on the writings of five individuals, although it will also touch more briefly on several other significant pro-penal-reform voices in the nation, as well as offering occasional glimpses of the viewpoints on punishment expressed in periodicals or newspapers that served middle-class anglophone readers.

In one sense, a historian could interpret interwar and postwar Canadian penal reform as having resulted in part from a vein of reformist thought to which many progressive commentators in Western nations gravitated not only in the years straddling World War II, but also in the longer era between the 1870s and the 1960s. In the last quarter or third of the nineteenth century, a number of reformist voices began to embrace ideas evocative of some of the thought patterns that many early-to-mid-twentieth-century reformers would end up championing. Indeterminate sentencing would make for more promising penal activity, in the opinion of the authors of the Cincinnati Declaration, the 1870 American reformist document upon which many subsequent penal commentators would remark.¹ Parole also numbered among the ideas for which some late-nineteenth-century figures in both the United States and Canada rooted. And “positivist” perspectives concerning criminals took off among certain thinkers in this era, especially

¹ See David J. Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (Boston: Little, Brown, 1980), 31-32; see also Peter Oliver, *'Terror to Evil-Doers': Prisons and Punishments in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998), 133, 426.

in Europe, but also in North America.² Nevertheless, scholarship on both American and British penal habits has suggested that only in the last five years of the nineteenth century or the first decade of the twentieth did great momentum begin to be displayed by the type of reformist tactics which early-to-mid-century authorities would pursue.³ A preliminary chapter in my dissertation will allow us to probe the perspective with which one late-nineteenth-century figure was enamoured; but this study, like others, assigns priority to the analysis of a twentieth-century brand of penal reform, a brand associated with commentary from the interwar decades, the 1940s, and the early 1950s.

Between the last quarter of the nineteenth century and the early 1960s, a substantial percentage of progressive thinkers tended to hew to the version of criminological thought that many writers have described as “positivist.” People enamoured with “positivist” criminological ideas tended to regard a given person’s criminal deeds as materializing due to a short- or long-term *disposition* of his, a disposition that he owed, more or less deterministically, to some biological dynamic, or to vitiating events among the tos and fros of his earlier years, or to the milieu among whose inhabitants he currently numbered. Elucidating that disposition through scientific activity could ensure that truly workable penal options would dawn more easily upon the

² See Mary Gibson and Nicole Hahn Rafter, introduction to *Criminal Man*, by Cesare Lombroso, trans. Mary Gibson and Nicole Hahn Rafter, with translation assistance from Mark Seymour (Durham, NC: Duke University Press, 2006), 2; see David Garland, *Punishment and Welfare: A History of Penal Strategies* (Aldershot, Hants, England; Brookfield, VT: Gower, 1985), 78-79, 81; see Nicole Hahn Rafter, “Criminal Anthropology: Its Reception in the United States and the Nature of Its Appeal,” in *Criminals and Their Scientists: The History of Criminology in International Perspective*, ed. Peter Becker and Richard F. Wetzell (Washington, DC: German Historical Institute; New York: Cambridge University Press, 2006), 159-181.

³ See Rothman, *Conscience and Convenience*, 3, 43-45; see Garland, *Punishment and Welfare*, 4-6.

authorities.⁴ And some of the ideas onto which penal reformers in interwar and postwar Canada latched exhibited a good deal of consonance with that positivist perspective. Reformers tended to regard scientific inquiry as one of the keys that would probably make their country capable, before too long, of devising penal initiatives far superior to the strategies already in use. And in penal reformers' view, the task of ascertaining how people's behaviour began to exhibit criminal features did not merely involve scientific study of a limited set of offenders to identify typical patterns. It also needed to involve an extensive appraisal of each particular convict, an appraisal noting what had transpired over the course of his life and what traits he had acquired, so as to make the authorities aware of the penalty or "treatment" most applicable to him. As most penal reformers of the period saw it, making a stronger effort to implement ideas offered by social workers, psychologists, or others who possessed social-scientific insight would eventuate in the emergence of more promising penal tactics. By contrast, continuing to privilege the older assumptions that came more easily to lawyers, prison guards, and the typical citizen would require the country to continue to make do with a second-rate form of criminal justice. Or so believed the reformers.⁵ Thanks to their viewpoints on such matters, reformers' proposals displayed a significant degree of overlap with the ideas of more thoroughgoing positivists.

⁴ For brief remarks about positivist criminological perspectives, see, for example, Maeve W. McMahon, *The Persistent Prison? Rethinking Decarceration and Penal Reform* (Toronto: University of Toronto Press, 1992), 11-14, 18-19; Elise Chenier, *Strangers in Our Midst: Sexual Deviancy in Postwar Ontario* (Toronto: University of Toronto Press, 2008), 18-22; and Garland, *Punishment and Welfare*, 78-79, 81; see also Rothman, *Conscience and Convenience*, 50, 61. For one remark about the offender's "disposition," see clipping of R. Bickerdike and John Kidman, letter to the editor, *Quebec Chronicle*, in scrapbook of Robert Bickerdike, vol. 1, p. 151, W.D. Jordan Special Collections and Music Library, Queen's University.

⁵ For American parallels concerning some of the thought patterns described in this paragraph, see Rothman, *Conscience and Convenience*, including 5-6, 50-63, 66-68; more generally, see also Chenier, *Strangers in Our Midst*, 18-22.

That said, Canadian reformers' perspective amounted to a rehabilitative mind-set as much or more than to a positivist mentality per se. The majority of the individuals whom I discuss probably did not subscribe to the general philosophical position known as positivism.⁶ Nor did their assumptions about crime always accord fully with those affirmed by positivist criminology. Due to the believability which many twentieth-century thinkers assumed that positivist tactics possessed, the brand of offender reformation onto which reformist rhetoric often latched exhibited a good bit in common with relatively positivist ideas. But those sorts of positivist tactics tended to strike reformers as meritorious primarily due to the rehabilitative component in such plans, rather than chiefly as a result of these ideas' positivist tenor itself.

The ideas on which reformers were keen pertained to three kinds of renovations in penal policy that they thought the Canadian authorities could implement. First, they wanted prison to be a less prominent feature of most convicts' experience, especially since an affinity for rehabilitation seemed to become such a rare commodity among offenders highly conversant with prison life. To ensure that prison did not hook its claws into convicts on so many occasions, reformers promoted non-carceral penal options like fines and probation.⁷ To provide a less fully carceral punishment for some of those who did have to don a prison uniform, reformers championed policies through which the penal authorities could avail themselves of parole. Second, since they still assumed that incarceration would remain part of the penal process for many offenders, reformers wished to see abusive features eliminated from, and rehabilitative dynamics created

⁶ Admittedly, quite a few "positivist" criminological thinkers probably also looked askance at general philosophical positivism on one or more counts as well—see Garland, *Punishment and Welfare*, 79.

⁷ See, for example, F.R. Scott, "Penal Reform," *Saturday Night*, July 11, 1936, p. 7.

within, Canadian prisons. Third, some of the reformers portrayed a small set of miscreants as “habitual” or “dangerous” convicts, and indicated that in the case of these individuals, the authorities needed to have recourse to *lengthier* periods of incarceration than would result from traditional sentencing practices. Thus, “reformation and rehabilitation” enjoyed high priority among reformers, although the third aspect of their agenda departed from this generally dominant theme in their advocacy.⁸

The era which the majority of academic historical writing concerning Canadian punishment has highlighted is the nineteenth century rather than the twentieth. Even so, quite a few written descriptions of twentieth-century penal reform (or of some limited element thereof) have materialized, including studies about the reformist attempts or outlook of a specific individual or body,⁹ books or chapters concerning a particular city or province or section of the country,¹⁰ scholarship pertaining to one or two limited types of penal activity,¹¹ and somewhat more panoramic depictions of federal penal tactics or

⁸ For statements that portrayed “reformation and rehabilitation” as a duo, see, for example, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: King’s Printer, 1938) (hereafter Archambault Report), 341, 362.

⁹ See, for example, Terry Crowley, *Agnes Macphail and the Politics of Equality* (Toronto: James Lorimer, 1990), chapter 7; Patrick Boyer, *A Passion for Justice: The Legacy of James Chalmers McRuer* (Toronto: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 1994), chapters 6-7; Joan Sangster, “Reforming Women’s Reformatories: Elizabeth Fry, Penal Reform, and the State, 1950-1970,” *Canadian Historical Review* 85, no. 2 (June 2004): 227-252; Rick Helmes-Hayes, “Coral W. Topping, Pioneer Canadian Public Sociologist: ‘A Veteran Warrior for Prison Reform,’” in *The Public Sociology Debate: Ethics and Engagement*, ed. Ariane Hanemaayer and Christopher J. Schneider (Vancouver: UBC Press, 2014), 175-202.

¹⁰ See Shirley Skinner, Otto Driedger, and Brian Grainger, *Corrections: An Historical Perspective of the Saskatchewan Experience* (Regina: Canadian Plains Research Center, 1981); see Herbert Gamberg and Anthony Thomson, *The Illusion of Prison Reform: Corrections in Canada* (New York: Peter Lang, 1984), 8, chapter 6; see Diana Doherty and John W. Ekstedt, *Conflict, Care and Control: The History of the British Columbia Corrections Branch, 1848-1988* ([Burnaby, BC]: Simon Fraser University Institute for Studies in Criminal Justice Policy, [1991]); see Michael Boudreau, *City of Order: Crime and Society in Halifax, 1918-35* (Vancouver: UBC Press, 2012).

¹¹ See Carolyn Strange, “The Undercurrents of Penal Culture: Punishment of the Body in Mid-Twentieth-Century Canada,” *Law and History Review* 19, no. 2 (2001): 343-385; see Patrick Brode, “‘Perverts a Menace’: The Development of the Criminal Sexual Psychopath Offence, 1948,” in *Essays in the History of*

Canadian patterns more generally.¹² Some studies' depiction of reformers tends to bear the scent of affirmation. But a sizeable amount of historiography pertaining to social reform in Canada has tended to identify ways in which such reformist activity proved consonant with partially conservative, exclusionary, or coercive assumptions or habits. And a good bit of the more scholarly or theoretical work concerning penal reform in particular has been evocative of that type of interpretive outlook.¹³ Ted McCoy's exploration of nineteenth-century penitentiaries associates reformers' outlook with a relatively liberal mentality, but also associates their efforts with "unintended outcomes" upon which present-day progressive thinkers should frown.¹⁴ As Michael Boudreau depicts it, a genuinely "progressive" streak did number among the traits of some of the reformist figures in interwar Halifax. On certain vital counts, however, their mind-set nevertheless displayed a good deal of overlap with that of the more sizeable

Canadian Law, Volume X: A Tribute to Peter N. Oliver, ed. Jim Phillips, R. Roy McMurtry, and John T. Saywell (Toronto: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 2008), 107-128; see Chenier, *Strangers in Our Midst*.

¹² See Donald Grant Wetherell, "Rehabilitation Programmes in Canadian Penitentiaries, 1867-1914: A Study of Official Opinion" (Ph.D. Thesis, Queen's University, 1980 – Ottawa: National Library of Canada, 1982); see John W. Ekstedt and Curt T. Griffiths, *Corrections in Canada: Policy and Practice*, 2nd ed. (Toronto and Vancouver: Butterworths, 1988), chapter 2; see D. Owen Carrigan, *Crime and Punishment in Canada: A History* (Toronto: McClelland & Stewart, 1991).

¹³ See Michael D. Whittingham, "Criminality and Correctional Reformism in Ontario, 1831 to 1954" (Ph.D. Thesis, York University, 1981 – Ottawa: National Library of Canada, 1982); see Gamberg and Thomson, *The Illusion of Prison Reform*, including 7-8, 135-136, 141, 144 (but see 143-144); see Carolyn Strange, "'The Criminal and Fallen of Their Sex': The Establishment of Canada's First Women's Prison, 1874-1901," *Canadian Journal of Women and the Law* 1, no. 1 (1985): 79-92; see also Sangster, "Reforming Women's Reformatories," 232-240, 249-250 (on the other hand, see 239-249, 251-252). For such studies on similar topics, see Jennifer Stephen, "The 'Incorrigible,' the 'Bad,' and the 'Immoral': Toronto's 'Factory Girls' and the Work of the Toronto Psychiatric Clinic," in *Law, Society, and the State: Essays in Modern Legal History*, ed. Louis A. Knafla and Susan W.S. Binnie (Toronto: University of Toronto Press, 1995), 405-439; Brode, "'Perverts a Menace.'" On the other hand, for scholarly work by interpreters whom certain types of reformist activity strikes as relatively meritorious, see, for example, McMahon, *The Persistent Prison?*, and Chenier, *Strangers in Our Midst*, chapter 2.

¹⁴ See Ted McCoy, *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada* (Edmonton: AU Press, 2012), including 2-18, 261-272 ("unintended outcomes" on 16).

“traditionalist” portion of the city’s citizenry, a citizenry whose assumptions and ethos concerning “the rule of law” made for relatively conservative sociopolitical habits.¹⁵

By contrast, the tenor of this dissertation highlights the liberal sensibilities of Canadian penal reformers. The ideas they adopted and the activities they undertook testify to their politically, ideologically, and ethically centrist proclivities—they neither approved of the penal preferences of conservatives in their own society nor opted for radical critiques of their polity or culture, as would certain later figures like prison abolitionist Claire Culhane.¹⁶ Their lack of inclination to think about crime and punishment in radical terms might tempt some current scholars to highlight those facets of the reformers’ outlook that seem more traditional, more coercive, and less liberal or progressive than a present-day observer might find acceptable. My approach, however, tends to reflect the opposite concerns. In examining reformers’ perspectives on matters like exclusion and coercion, my story points toward similarities—albeit only partial similarities—between reformers’ outlook and the emphases that particularly characterize liberal or progressive sensibilities in our present period. And rather than taking a liberal or anticoercive perspective on punishment for granted, and therefore probing the reformers’ failure to be sufficiently liberal, this dissertation focuses primarily on what led them to maintain a liberal outlook at all.¹⁷

¹⁵ See Boudreau, *City of Order*, including 3, 6-9, 13, 15, 184-189.

¹⁶ On Culhane, see Claire Culhane, *Barred from Prison* (Vancouver: Pulp Press, 1979), and Mick Lowe, *One Woman Army: The Life of Claire Culhane* (Toronto: Macmillan Canada, 1992).

¹⁷ Pointing out the “liberal” flavour of a given person’s perspective concerning criminal justice may in many cases merely portray her ideas as reflective of less punitive sensibilities than those which “conservative” citizens possessed, and perhaps also as reflective of a stronger belief in embracing new strategies than conservatives tended to prefer. On the other hand, remarks about “liberal” viewpoints may attempt to associate the views in question with certain key assumptions related to the political-economic system which the term “liberalism” identifies (such as the assumption that relatively few state edicts should

Penal reformers' cause did not always win hearty affirmation from their fellow citizens. Although most of the reformers whom I discuss sought to keep an even keel as they argued their case, they did put their heartfelt opinions on record at various points, sometimes in fairly bracing terms, and occasionally they offered their arguments in moments of significant public controversy. This study will allow us to investigate those aspects of their reasoning and rhetoric that reflected the ethical ideas which they themselves embraced, or which they believed their audiences respected. My discussion will revolve in large part around four types of actions or stances that often come into play in the punishment of lawbreakers or in the attempt to modify penal practice:

condemnation, exclusion, coercion, and compassion. Each of these four ways of responding to crime and punishment held a partly problematic status in Canadian discussion of penal reform: though all of them did find favour with reformers in some contexts, each also looked dubious in certain ways. Examining penal reformers' mentality with respect to these four phenomena will reveal some of the most important features of twentieth-century liberals' ethical perspective concerning criminal punishment.

be permitted to bar the road to social or economic endeavours on which individuals are keen; or the idea that groups and similar social entities ought to wield clout only to the extent that they are embraced by individuals; or other such notions) (I hit upon this description of liberalism thanks in part to certain comments by David Tough, in an email of April 8, 2011).

In my view, the penal reformers' sensibilities testify primarily to their possession of the first, more generic type of liberal, non-punitive perspective. At quite a few points, however, my comments either implicitly or (more often) quite obviously connect reformers' "liberal" viewpoints concerning penal matters with the kind of thought patterns to which political-economic liberalism is conducive. As I see it, liberal assumptions concerning political economy do indeed go over well with many people partly because of the fact that such assumptions mesh with the more generic type of liberal sensibilities. And in any event, the articulation and espousal of generically liberal perspectives pertaining to offenders or to penal activity has proved easier for many commentators thanks to thought patterns related to political-economic or sociological liberalism. Therefore, due to the fact that a substantial portion of this study revolves around the ferreting out of the generally liberal assumptions harboured by reformers, the dissertation can at various moments scout out considerations connected to liberalism as well.

In applying these four concepts to my historical evidence, I am adopting a rather presentist perspective. The first three—condemnation, exclusion, and coercion—have arguably grown much more problematic in Canadians’ eyes during the past forty years than they were in the period examined in this dissertation. Exclusion has acquired an especially disreputable image, while coercion and condemnation, if still practiced a great deal, are also regarded as suspect. By contrast, the qualities that represent the inverse to this dubious trio—we can use the terms *tolerance*, *inclusion*, and *autonomy*—now receive stronger affirmation in public culture than almost any other norms. But of course these issues did matter to previous generations too, even if not to the same degree or in the same form. By considering how penal reformers’ efforts reflected their assumptions about exclusion and inclusion, coercion and autonomy, and condemnation and tolerance, I will point out some of the ways in which concerns that now typify Canadians’ general sensibilities affected certain earlier citizens’ stances on penal issues in particular.

The fourth concept—compassion—probably has no higher profile in the current public ethic than it had in the past. I have chosen to use the term “compassion” to denote a stance or disposition associated with several different concepts that arose in penal reformers’ statements, such as kindness, mercy, and humanitarianism. Just as these various terms differ in meaning, so some of them obtained readier affirmation in public discussion than others. During the period covered by this study, citizens tended to assume that a willingness to demonstrate kindness could, *prima facie*, claim moral merit. Yet in the context of crime and punishment, at least, Canadians could also perceive a significant downside to the idea of compassion. Penal reformers often kept their distance from the rhetoric of compassion, at least from the kind that could be depicted as

“sentimentalism.” Despite some changes in the terminology used to discuss the issue, Canadians today treat the idea of compassion with a mixture of approval and caution comparable to the stance taken by early- and mid-twentieth-century citizens.

The various penal reformers considered in this study occasionally differed from one another in their assessment of the four topics discussed above. But if we were to sum up their outlook in a nutshell, we might say that they disliked exclusion, engaged in only limited condemnation, adopted a cautious approach to compassion, and became, over the course of this period, more dubious about coercion. As this description suggests, reformers’ sensibilities about coercion underwent more noticeable change than did their views on the other three issues. In the second half of the study, the topic of coercion and the metamorphosis in reformers’ assumptions about it will emerge as an especially important component of the overall narrative.

Although the discussion in this dissertation frequently highlights these four topics, the overarching argument itself actually centres on a second list of concepts. I am curious about the more foundational ideas which convinced penal reformers that they had taken an ethically viable stance concerning exclusion, coercion, condemnation, and compassion, or concerning penal matters more generally. This study therefore seeks to pinpoint the *moral sources* embraced by penal reformers—the pivotal ideas or authorities by virtue of which these commentators considered their own assessments or proposals to be morally persuasive.¹⁸ While there are probably a large number of ideas that in some sense served

¹⁸ Regarding one genre of “moral sources,” see Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, Mass.: Harvard University Press, 1989), chapter 4. However, only partial parallels to the type of “moral source” that Taylor ferrets out can be identified in the type of “moral source” to which my sentence refers.

as moral sources for twentieth-century exponents of penal reform, I will highlight four such sources, sources that centred, as I explain below, upon esteem for *Christianity*, *humanness*, *technique*, and *justice*. As the dissertation will argue, each of these left a strong mark on penal-reform advocacy in Canada. And the way in which reform rhetoric employed these moral sources, I will claim, suggests that reformers possessed a stronger commitment to both compassion and justice than the often utilitarian or positivist flavour in their arguments might lead us to imagine.

One moral source that proved influential among the people featured in this study was *Christianity*. Perhaps it might seem obvious that ethical claims in a society like early-to-mid-twentieth-century Canada would often reflect reputedly Christian assumptions. But by no means do I assume that people who are inclined to make moral claims or to feel ethical obligation will necessarily be adherents of a religion. Nor do I assume that a project on a topic like this one would by its very nature have to discuss avowedly religious ideas at great length. Nevertheless, in the present case the evidence left by various penal reformers gives us plenty of opportunities to note their invocation of religious considerations, their references to biblical content, and so forth, and I have chosen to draw repeated attention to this aspect of their thinking.

Admittedly, the claim that some penal reformers wanted their ethical decisions to align with “Christianity” remains rather vague, considering the wide assortment of sensibilities, tenets, and activities that have been championed by the variety of groups in Canada which have regarded themselves as adherents of Christianity. As other research has shown, the various persons in other societies who have advocated an allegedly Christian outlook on penal questions have not always espoused either the same variety of

Christianity or the same penal objectives. Historical writing about penal-reform efforts that occurred in late-eighteenth-to-mid-nineteenth-century Britain, for example, have often made reference to the Quakerism, evangelicalism, or Nonconformist Christianity of the era, sometimes portraying these as pro-reform phenomena which fostered a “disciplinary” or quasi-humanitarian variety of rhetoric.¹⁹ On the other hand, some scholarship has suggested that retributive punishment acquired a good deal of its cultural strength in Britain or the United States from evangelical or theologically conservative Protestant patterns of thought.²⁰ It does, in fact, seem likely that many twentieth-century Canadians’ sensibilities about punishment continued to acquire some of their flavour from the kind of beliefs about sin, the Crucifixion, Heaven, Hell, and so forth that “orthodox” Christian teaching has encouraged for hundreds of years. And perhaps orthodox Christian belief may also have had some presence among the limited subset of citizens who strongly favoured penal reform in the twentieth century.²¹ But at least among the individual penal reformers whom I have highlighted, we find much clearer evidence of viewpoints characteristic of “liberal” Christianity. My study, therefore, provides more

¹⁹ See Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Pantheon Books, 1978), 47-59, 143-153 (“disciplinary” on 54).

²⁰ See Timothy Gorringer, *God’s Just Vengeance: Crime, Violence and the Rhetoric of Salvation* (Cambridge, UK: Cambridge University Press, 1996); see Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865* (New York: Oxford University Press, 1989), 69, 145-156; see Anne-Marie Cusac, *Cruel and Unusual: The Culture of Punishment in America* (New Haven, CT: Yale University Press, 2009), including 6, 19, 40, 158-162.

²¹ For instance, the United Church clergyman J.D. Hobden, a key Canadian proponent of penal reform whom I generally do not discuss in this study, appears to have had a positive attitude regarding the Oxford Movement, a well-known evangelical phenomenon of the 1930s—see [J.D. Hobden], Executive Secretary, John Howard Society to C.H. Mercer, January 24, 1935, in John Howard Society of the Lower Mainland of British Columbia fonds, F-1, Container 1-24, File F-1-2-14-0-9: “Canadian Penal Association (Discontinued),” Simon Fraser University Archives; see comments by J. Dinnage Hobden in *Summary of Proceedings of the First Canadian Penal Congress, Montreal, June 13 and 14, 1935* ([Montreal]: [1936?]), 7-8.

discussion of the ethical notions that a relatively liberal or modernist version of Christian commitment encouraged people to affirm.

The idea of *humanness*, a concept for which Canadians displayed great esteem, served as a second moral source. In some minds this esteem for humanness had taken root on a quasi-philosophical level. That is, the thinking of some penal reformers reflected the type of human-centric sensibility familiar among highly educated residents of the post-Enlightenment West, an ethical mind-set that revolves around a belief in fostering the vitality of human beings, whose humanness itself counts as confirmation of their importance—as opposed to an ethic that concentrates on the desires of a deity, the goals of a tribe, or the significance of other creatures or aspects of nature. However, the concept of humanness most often contributed to the cause of penal reform not via philosophical declarations about mankind, but rather through more ordinary statements that capitalized on the rhetorical potential of the term “human” itself. Describing actions, attitudes, or strategies as “human” affirmed their worthiness, or at least offered them a degree of legitimacy.²² Applying the term “human being” to a convict or other individual served notice that to abuse or neglect him was no laughing matter. This latter type of reference to humanness may very well be an obvious and ubiquitous means of insisting that a given person or group not be relegated to fifth-class status. But it helped nonetheless to impart conviction to various citizens’ pro-reform comments in the specific context of penal affairs.

The evidence contained in the following chapters allows me to identify *technique* as another key moral source for Canadians who discussed penal reform. The study

²² See, for example, Archambault Report, 345.

highlights this particular term partly as a result of my keenness on George Grant's claims about technique. However, my portrayal of technique as a moral source makes a more limited and less interesting point than he did in his assertion that "[t]he pursuit of technological advance ... is our morality."²³ I am also assigning a more generic meaning to the term "technique" than he did. When reformers championed a practice or stance not by arguing that it would itself qualify as an urgent objective, but rather by highlighting the pivotal role it could play in the pursuit of a greater objective, then that practice or stance can be described, for my purposes, as a "technique." Canadians considered the identification of advantageous techniques to be one of the most valid and urgent challenges that a proponent of penal reform could take on. Accordingly, even if a particular reformist proposal looked morally desirable to some citizens, people might embrace it in greater numbers or with more confidence if they came to perceive the proposed practice as a technique.

I will elaborate. Although I argue that reformers' thinking drew upon ethical assumptions pertaining to Christianity, humanness, and so forth, public advocacy of penal reform in twentieth-century Canada did not consist primarily of explicit moral assertions. Instead, reformers tended to assign priority to utilitarian varieties of argument, as other scholarship on punishment might indeed lead us to expect. Sociologist David Chandler has portrayed anti-death-penalty advocates of the 1960s and 1970s as having been prone to associate law primarily with "instrumental" expectations harboured by citizens and by the state. Such advocates assumed, in other words, that the effort to furnish a society with

²³ George Grant, *Philosophy in the Mass Age* (Toronto: Copp Clark, 1966), iv, quoted in R. Douglas Francis, *The Technological Imperative in Canada: An Intellectual History* (Vancouver: UBC Press, 2009), 247.

sound criminal-justice practices should be an exercise in selecting techniques that will deny crime the opportunity to do as much harm in the future, rather than an exercise in ensuring that criminal conduct receives an “expressive” moral rebuke.²⁴ Whether or not Chandler’s specific analysis of the key issues in his book hits the mark,²⁵ his observations about anti-capital-punishment voices’ instrumentalist mind-set provide a good clue about the outlook of those Canadians who promoted a broader range of penal reforms. In both the first and second halves of the century, the dominant type of reformist rhetoric ran in this same instrumentalist vein. For one thing, reformers withheld their blessing from retributive punishment. Furthermore, although they focused on advocating rehabilitative efforts, they preferred to do so by arguing that, thanks to rehabilitation, society would less often have the headache of seeing former prisoners continue to act like criminals. They were less keen about offering the non-utilitarian argument that, regardless of the benefits which might be involved for society, the authorities ought to assist with rehabilitation as a matter of course, out of a straightforward commitment to ensuring that a convict’s life did not remain in ruins.

This instrumentalist proclivity in reform commentary might itself be quite familiar. The real point of interest here is that this genre of reasoning could end up providing support for the kinds of practices that more readily remind us of humanitarian sensibilities than of utilitarian analysis. Fostering inclusion, opting for “kindness,” refraining from coercion, acting in a “humane” style—each of these could be validated by

²⁴ See David B. Chandler, *Capital Punishment in Canada: A Sociological Study of Repressive Law* (Toronto: McClelland and Stewart Limited, 1976), including xxii-xxiii, 4-6, 11, 24, 27-29, 53.

²⁵ For a sophisticated critique of a few of Chandler’s more specific ideas, see Dianne Pothier, “Canadian Legislative Behavior under a Free Vote: The Case of Capital Punishment” (M.A. Thesis, Carleton University, 1978), 164-167, 181-182, 197, 200.

being portrayed, in effect, as a technique. Given the overall character of reformers' advocacy, it would appear that a penal proposal typically had a strong chance of sparking their interest if the idea had a humanitarian flavour. At the same time, it would seem that they often doubted the wisdom of trying to promote a proposed policy primarily by encouraging citizens to exercise philanthropic virtue. At times, therefore, they were happy to strengthen the case for such a policy by offering a technique-focused argument instead.²⁶ In short, the ability to pursue possibilities that seemed ethically desirable stemmed in part from confidence in instrumentalist rhetoric. Historian R. Douglas Francis has identified certain elements in various Canadian figures' thought that amounted in part to an assessment of "the technological imperative" and "the moral imperative" experienced by their society. To hear Francis tell it, "a tension between the two imperatives" materialized in such thinkers' interpretation of certain twentieth-century issues.²⁷ By contrast, reformist statements pertaining to penal topics reveal that at least this one particular type of technique-related rhetoric proved fairly consonant with the ethical assumptions of many interwar and mid-century citizens.

Finally, we will obtain a fuller grasp of penal reformers' sensibilities if we recognize that the notion of *justice* numbered among their moral sources. Sometimes their commentary highlighted the "unjust" features of a practice they opposed, or pointed out the "just" character of a potential policy they endorsed. They disliked the type of retributive argument that encouraged punishment, the kind that urged the authorities not

²⁶ Regarding historian Roger Anstey's somewhat similar perspective concerning a different topic, see Patrick Collinson, "Religion and Human Rights: The Case of and for Protestantism," in *Historical Change and Human Rights: The Oxford Amnesty Lectures, 1994*, ed. Olwen Hufton (New York: BasicBooks, 1995), 52.

²⁷ See Francis, *The Technological Imperative in Canada*, including 1-2, 8 (quotation on 2).

to cut an offender any slack, but they employed the type of implicitly retributive reasoning that permitted *opposition* to an egregious punishment. At times, that is, they objected to a given penal option by suggesting, in effect, that more hardship resulted from the penalty in question than an assessment of the offender's just deserts would give us reason to permit. Admittedly, their occasional references to what was "just" or "unjust" seldom led them to analyze the *concept* of justice for the benefit of their audiences. They assumed that the average reader would have little difficulty understanding why scenarios that they described as just or unjust qualified as such. The idea of justice tended to surface in brief comments, and usually did not form the dominant motif in reformers' advocacy, but it did expand the range of reasons that they could present in favour of revising penal policy. The body of the dissertation will not discuss this aspect of their rhetoric at great length. I will provide enough examples of it, however, to suggest that believing in or promoting penal reform proved significantly easier as a result of the assumption that such reform would lessen certain discrepancies between penal practice and moral justice.

The significance of this point stems from the fact that we might not have expected reformers to have promoted the notion of justice, given their tendency to employ more-or-less utilitarian reasoning, and to support quasi-positivist strategies. In one sense, the promotion of positivist perspectives on penal affairs could be seen as an attempt to make justice a lower priority in judicial and penal authorities' minds than it had been in the past, and thereby to make more room for "scientific" claims or rehabilitative strategies. But as it turned out, vocabulary and assumptions centring upon justice did not disappear from reform rhetoric. In noting this, I do not mean to claim that the reformers

“contradicted” themselves (a suggestion that I believe historians should offer only with caution). After all, in portraying some of the reformers’ proposals as “quasi-positivist,” I am seizing upon a term that highlights an important feature of their mentality but by no means applies to them in all respects. Their thinking was not so positivist as to leave no logical room for a commitment to justice in penal affairs. The crucial point is that the issue of justice caught the interest and served the purposes even of those whose principal line of reasoning could have steered them away from the topic.

Neither compassion nor justice, then, could be left out of the penal equation, no matter how attractive it may have seemed to pursue a style of corrections centring overwhelmingly on technique. As it turned out, instrumentalist arguments and a commitment to technique ended up helping reformers to advocate such compassion confidently. And at the same time, their utilitarian proclivity could not prevent an insistence upon just practice from surfacing in their rhetoric.

An assessment of citizens’ perspectives concerning moral sources reveals noteworthy differences, if not extreme or easily measured ones, between the assumptions of early-to-mid-twentieth-century liberal professionals and the viewpoints of educated liberals today. Arguably, highly educated Canadians are less inclined to treat either Christianity, humanness, or technique as a principal moral source today than they were in the period covered by this study. It is more difficult to estimate whether or in what way such citizens’ confidence in the moral notion known as justice has changed. During the period covered by this dissertation, Canadians found the latter idea impressive enough that penal reformers drew upon it even in the course of advocacy that concentrated on other kinds of ethical issues. As the concluding chapter will note once again, we should

not underestimate the degree to which questions about what is just continue to count in the minds of citizens, including liberal citizens.

Although a few of my assertions in the main chapters may amount to very limited types of theoretical remarks, by no means does my analysis gravitate toward sharply spelled-out theoretical claims. I have not attempted to show, for example, how penal practices or proposals reflected the division of labour in Canada (as a Durkheimian might), or the efforts of capital or government to make optimal use of labour's wealth-producing potential (as a Marxist might), or the attempt to implement methods that would make for the emergence of subjectivities and resulting patterns of conduct consonant with authorities' plans (as a Foucauldian interpreter might).²⁸ Still, a description of a few of the theoretical suppositions onto which I have latched may perhaps warm readers up to the (advantageous) ambiguity of some of my remarks concerning "ethical" topics.

As philosopher Charles Taylor portrays it, twentieth-century philosophical thinkers tended to attempt to pinpoint the relatively limited number of types of actual "obligation" due to which it can be morally indispensable for a person to opt for some particular type of conduct, or for the performance of a particular deed. In Taylor's own view, by contrast, the "obligatory" or "prohibit[ed]" character of certain sorts of *deeds* may number among the quasi-ethical considerations to which people are often attuned, but so do their assessments of various dispositions, mentalities, or pursuits, ones that may strike them as highly meritorious (even if not as "obligatory") or as third- or fifth-rate

²⁸ For one scholar's explication of Durkheimian, Marxist, and Foucauldian interpretations, see David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford, UK: Clarendon Press, 1990), chapters 2-6. For another scholar's remarks about Durkheim's perspective, see Chandler, *Capital Punishment in Canada*, 145-156.

(even if not as “prohibit[ed]”). Given this assortment of considerations, the phrase “strong evaluation” makes for the identification of the sort of psychological activity to which ethical and quasi-ethical assumptions are tied, suggests Taylor. He discerns this “strong evaluation” in (for example) suppositions “about what makes our lives meaningful or fulfilling” or “what makes life worth living.”²⁹

Only a limited amount of the analysis in the chapters ahead will offer clues pertaining directly to reformers’ existential assumptions about whether a given habit or perspective helps to “make life worth living.” But Taylor’s “strong evaluation” supplies a phrase quite applicable to the variegated collection of notions and claims that the chapters ahead ferret out. Accordingly, if a historian ends up remarking upon a historical person’s “strong” opinion that a given outlook or deed counted as either meritorious or as unseemly, then often this scholar will, in my description, have identified an “ethical” element in that historical figure’s mentality. As a result, some of the assumptions or proclivities that I describe as “ethical” perspectives may well exhibit a great deal in common with “strong” species of “political,” “ideological,” or “aesthetic” suppositions.³⁰ This dissertation assigns priority to the discussion of reformers’ “ethical” assumptions not because I am pursuing the sort of analysis that a moral philosopher would offer, but rather because I am identifying some of the ways in which reformers’ commentary obtained propulsion thanks to their strong evaluation.

²⁹ See Taylor, *Sources of the Self*, 3-5, 14-15, 79-80 (“obligation” on 3; “obligatory” on 79, 80; “prohibitions” on 14; “strong evaluation” on, e.g., 4; quoted phrases on 4); see Christopher Dummitt, “The ‘Taint of Self’: Reflections on Ralph Connor, His Fans, and the Problem of Morality in Recent Canadian Historiography,” *Histoire Sociale/Social History* 46, no. 91 (Mai-May 2013): 80.

³⁰ Regarding people’s “aesthetic” outlook and their perspectives concerning criminals or concerning penal activity, see Martin J. Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990), 337-341 (“aesthetic” on 337).

Perhaps the key theoretical assumption in light of which I write is a highly obvious point: that most citizens, or at least most individuals who comment on penal issues, tend to regard their own perspective as morally viable. The exploration of ethical ideas and statements can make for analysis either of a given person's own psychological outlook or of the habits and happenings in a society (or in portions thereof). An individual's gravitation toward particular ethical ideas or arguments may be connected to the "intrapsychic" or "epistemic" coherence produced by such ideas, the genres of coherence that her various propensities or assumptions exhibit as a result of this ethical perspective.³¹ Analyses of ethical notions in conjunction with sociological considerations sometimes savour of largely "functionalist" ideas. Thinkers who regard this latter sort of perspective as believable may sometimes create the impression that most of the denizens of a given society will end up butting heads to only a fairly limited degree, thanks in part to the morality-related thought patterns to which most of that society's inhabitants hew.³² Other thinkers, by contrast, might suggest that one portion of society often avails itself of a particular interpretation of ethical topics because those sorts of moral notions can scupper certain options for one or more other sets of citizens, citizens with whom the first set of people tends to tussle, or in light of whom they tend to have recourse to "moral regulation."³³ The interpretation in this thesis, particularly in the first, second, and fifth chapters and the final portion of Chapter 4, implies that people regard particular ethical

³¹ See Jonathan Haidt and Selin Kesebir, "Morality," in *Handbook of Social Psychology*, 5th ed., ed. Susan T. Fiske, Daniel T. Gilbert, and Gardner Lindzey (Hoboken, NJ: John Wiley & Sons, [2010]), especially 2: 808-814, 823-824 ("cohere" [with respect to a somewhat different matter] on 818).

³² See *ibid.*, 2: 800, 808, 815-818, 820-821; but see 2: 813-815, 818-820.

³³ See Jonathan Glover's remark about "Nietzschean" and "Marxist" assumptions regarding ethics, in Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (London: Jonathan Cape, 1999), 18; see the historiographical remarks about moral "regulation" in Dummitt, "The 'Taint of Self,'" 77-80, 89-90.

perspectives as persuasive especially (though by no means merely) because of the “epistemic” or “intrapsychic” coherence produced by the notions in question. At times the analysis does suggest ways in which certain reformist arguments materialized especially due to social strong evaluation—due, that is, to perspectives to which a large portion of the citizenry hewed, rather than simply as a result of particular reformers’ own outlook. At these points in the discussion, my depiction of such social thought patterns is arguably tied to more or less functionalist suppositions, since the thought patterns in question pertained to assumptions into which I imply that most of the citizenry bought, rather than to notions thanks to which different sets of Canadians tended to end up wrangling. Nevertheless, ethical rhetoric may also, I assume, materialize due to “regulatory” considerations or “conflictual” social dealings.³⁴ But even in these latter cases, the moral perspective that people promulgate will usually, I claim, possess at least partial consonance with their own “strong evaluation.” By no means do people’s moral statements typically assign priority to notions to which they themselves in no way subscribe, but which they verbalize *merely* as a result of the rhetorical profitability of doing so.³⁵

Finally, my frequent reference in this dissertation to ethical “sensibilities” reflects my supposition that “perceptions,” “emotions,” and propensities typify the tos and fros of

³⁴ For one scholar’s remarks about “conflictual” portrayals of social dealings (with respect to criminal justice, rather than with respect to ethical notions), see Donald Fyson, *Magistrates, Police, and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764-1837* (Toronto: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 2006), 185-186, 405 n. 6 (references obtained through a Google Books search).

³⁵ See also Dummitt, “The ‘Taint of Self,’” 80.

the moral component of people's psychology as much or more than "reasoning" does.³⁶ Accordingly, the discussion in the chapters ahead will eventuate in analysis not only of commentators' explicit claims about ethical topics, but also of certain verbal motifs that materialized due to people's more implicit normative assumptions. Thanks to my attempt in this study to analyze rhetoric, moral sources, and so forth, the chapters do of course gravitate toward the discussion of *ideas*. But even reformers' statements about ideas could bear the scent of emotion.

The arguments outlined in abstract terms a little earlier in this introduction are meant to sum up the main points I want to make about the story as a whole. We will find evidence for these overarching claims scattered here and there throughout the following chapters, each of which examines a more specific part of the penal-reform story and offers its own argument about the particular topic in question. Although this study primarily focuses on the interwar and early postwar periods in the twentieth century, the first chapter will serve as a sort of prelude, offering an analysis of what Richard Maurice Bucke, the well-known Canadian alienist of the Victorian Era, thought about crime and punishment. In many ways Bucke's outlook stands in contrast to that of the main penal reformers whom we will encounter. However, examining his views will allow us to see a few of the key features of late-nineteenth-century positivist criminology, a helpful piece of context for the subsequent chapters' discussion of twentieth-century penal reform and its somewhat different quasi-positivist traits. The chapter will highlight Bucke's aversion to condemnation and his non-traditionalist sensibilities about punishment, thereby

³⁶ See Haidt and Kesebir, "Morality," 2: 798, 801-808, 823 ("perceptions" on 798, "emotions" on 802, "reasoning" on, e.g., 802).

revealing one component in his perspective that we might not have anticipated if we were to rely on certain other scholars' portrayal of his viewpoints on crime.

In many respects, penal reform in the first three decades of the twentieth century revolved around non-carceral possibilities.³⁷ For instance, probation loomed large in reformist statements and initiatives pertaining to juvenile delinquents during the earlier part of this period.³⁸ And on the adult penal front, the imprisonment-truncating phenomenon of federal parole materialized in 1899. To dip into this facet of reform during that era, the second chapter will analyze the thought and rhetoric of Alfred Lavell, a Methodist clergyman who spent the 1920s managing Ontario's parole program for convicts from provincial carceral establishments, along with a 1920s version of what would later be known as "work-release" arrangements for prisoners. Many audiences in Ontario heard Lavell's claims, either in publications or in public talks, about the value of non-carceral penal options, particularly the parole and work-release initiatives in which he was involved. While we might often view early-twentieth-century Canadians as having been quite willing to exclude those whose manner of life displeased them, I will show that Lavell's arguments in some respects made exclusionary habits out to be suboptimal.

From the thirties to the mid-1950s, reformist discourse in Canada majored in the assessment of prisons and the discussion of new plans concerning these establishments. In the early 1930s, due to riots and various penal tactics which struck some writers as off-

³⁷ With regard to the United States, see Rothman, *Conscience and Convenience*, including 43-44 (but see also 12).

³⁸ See Joanne C. Minaker and Bryan Hogeveen, *Youth, Crime, and Society: Issues of Power and Justice* (Toronto: Pearson Prentice Hall, 2009), 56-64.

putting, the penitentiary authorities were dressed down by a great deal of energetic commentary in the Toronto *Globe* and other publications—commentary thanks in part to which the Archambault Commission materialized in 1936. In Chapter 3, my assessment of reformist citizens’ mind-set will highlight this commentary in newspapers and periodicals in the thirties, including a large batch of writings authored by a Toronto doctor, Oswald Withrow, whose imprisonment in the late 1920 had allowed him to obtain a certain degree of conversance with the habits of inmates and penal personnel at Kingston Pen. The chapter will investigate the ways in which proponents of reform depicted class patterns and other structural phenomena from which key features of imprisonment in Canada stemmed. My analysis will highlight the ways in which their portrayals of such structural features allowed them to convey a denunciatory message concerning the penitentiaries.

Chapter 4 will introduce an assortment of material from the interwar period and the 1940s, focusing especially on sociologist C.W. Topping, but also touching on the views of a few other key reformist voices, including Lavell, Withrow, Agnes Macphail, F.R. Scott, and the authors of the Archambault Report. Much of the discussion will highlight the more coercive ideas that reformers affirmed, including “preventive detention” or even quasi-“permanent” incarceration to immobilize “habitual” or “anti-social” convicts. However, I will also examine comments by reformers that pertain to compassion. The evidence will illustrate their cautious desire not to champion the wrong brand of compassion; it will also reveal the rhetorical tactics through which they still sought to validate a quasi-compassionate policy in penal affairs. As we will see, both

pro-coercion and pro-compassion rhetoric could occasionally capitalize on North Americans' assumptions about "science."

Mid-century discourse on crime and penal policy often made reference to the education or "re-education" involved in rehabilitative corrections, and pointed on various occasions toward the need to use educational efforts to prevent the fire of crime from igniting or spreading among young people in particular. And in the early years after the Second World War, the authorities ended up assigning one of the leading positions in the federal correctional system to Joseph McCulley, a man whose career to that point had been dominated by his work as headmaster of Pickering College, an Ontarian private boys' school that championed "progressive education." McCulley served as Deputy Commissioner of Penitentiaries only from 1947 until 1952, at which point the University of Toronto pulled him back into the orbit of academia, giving him the run of Hart House. But it was during the late 1940s and early 1950s that federal efforts to pursue rehabilitative policies in the penitentiaries began to take off, and McCulley was probably the most determined backer of the rehabilitative agenda within the upper levels of the correctional hierarchy. The fifth chapter will examine the ways in which McCulley's views on coercion, "repression," and morality took shape during his young adulthood and his teaching career in the interwar period, and the ways in which the perspective he had acquired would shape his efforts to promote a rehabilitative genre of corrections.

In the 1960s and early 1970s, non-carceral ideas again began to fuel an especially sizeable portion of reformist activity or rhetoric. Restructured federal parole, "mandatory supervision," "temporary absences," "diversion"-related correctional tactics, and ideas pertaining to "decarceration" more generally numbered among the non-carceral features

of penal activity and thought in these years. In the epilogue of this study, several remarks in the *Canadian Journal of Corrections* about parole, probation, or other sorts of “treatment” will allow us to pursue a few of the clues that commentators’ ideas about “authority” offered concerning Canadians’ sensibilities pertaining to coercion in the 1960s.

These chapters do not count as a thorough description of interwar and postwar Canadian penal reform writ large. The many twentieth-century reformist statements and measures concerning juvenile delinquents number among the subjects largely omitted from this dissertation. Only at one or two spots does my discussion expressly touch upon penal suppositions or activity pertaining to convicted women. One could also identify a dearth of discussion in this thesis with respect even to some of the principal figures whose reformist pursuits pertained to adult men. In the interwar period, the (limited) momentum exhibited by the Canadian Prisoners’ Welfare Association, and then by the Canadian Penal Association, materialized thanks in large part to the Montreal journalist John Kidman, perhaps the most dedicated penal reformer of that era.³⁹ Moreover, both a large number of interwar citizens and some later interpreters perceived a reformist perspective concerning prisons as an outlook that parliamentarian Agnes Macphail promulgated with special valour.⁴⁰ Yet my discussion eventuates in relatively little analysis of Macphail’s statements, and also in rather little concerning Kidman’s. An exploration of interwar or postwar penal reform could also opt for an analysis of various other interwar reformers,

³⁹ See, for example, C.H. Mercer to Agnes C. Macphail, July 15, 1935, in MG27-IIIC4 (Agnes Macphail fonds), Vol. 1, File titled “Correspondence, 1935,” p. 428, Library and Archives Canada (hereafter LAC); see Carrigan, *Crime and Punishment in Canada*, 363-365.

⁴⁰ See, e.g., Carrigan, *Crime and Punishment in Canada*, 364; see Boyer, *Passion for Justice*, 102-103.

such as C.H. Mercer of Nova Scotia or the John Howard Society of British Columbia's J.D. Hobden, or postwar figures like the Saskatchewan Penal Commission's Samuel Laycock, Phyllis Haslam of the Elizabeth Fry Society,⁴¹ or Bill McGrath of the Canadian Corrections Association. But the omission of these various reformist figures or activities from the discussion does not eliminate the viability of the study, given the particular topic. Chapters in which a specific individual's statements or a limited vein of commentary can be mulled thoroughly make for greater elucidation of at least a few reformers' moral sources—and probably also, by the same token, make for a more revealing glimpse of the ethical assumptions of quite a few similar citizens—than would a more panoramic discussion of reformist activity as a whole.

On certain points I myself look askance at the type of progressive perspective to which the penal reformers often gravitated. In fact, in much of my thinking I hew to a sort of reactionary antimodernism (a pretentious claim in itself, to be sure), and that mentality shapes a good bit of what I write in the following chapters, even if not in obvious ways.⁴² Admittedly, the tenor of the dissertation might actually tend to create the impression that I regard the reformers' outlook as meritorious, or at least as more so than certain other scholars would. Indeed, due partly to my dubiousness concerning present-day progressive assessments of reformist mind-sets, I do end up making certain reformist assumptions out to be more reasonable than is implied by some interpretations. That does

⁴¹ On Haslam, see Sangster, "Reforming Women's Reformatories."

⁴² In using this slightly (but only slightly) tongue-in-cheek phrase, I am not offering an endorsement of the current thinkers known as "neo-reactionaries." I do, however, admire the perspective of a "premodern radical" like Patrick Deneen, and especially the perspective of the Canadian premodernist thinker George Grant. See Patrick Deneen, "Introduction," *Postmodern Conservative* (blog), *First Things* online, January 2, 2009, <http://www.firstthings.com/blogs/firstthoughts/2009/01/introduction> ("a premodern radical"); see George Grant, *The George Grant Reader*, ed. William Christian and Sheila Grant (Toronto: University of Toronto Press, 1998).

not eliminate all my scepticism about other thought patterns displayed by the reformers. But of course their pursuits did savour of praiseworthy activity on a number of counts—especially because of the on-the-ground good will that they displayed with regard to specific convicts or erstwhile prisoners. And in any case, whether praiseworthy or misguided, their commentary on penal topics was connected, at least in a minor sense, to an enticing assortment of subjects—not only to justice, compassion, coercion, and technique, but also to stockbrokers, Soviets, animals, factories, experiments, riots, science, and “the System.”⁴³

We will start, however, with Hell.

⁴³ I hit upon the idea for the last part of this sentence after thinking of a somewhat similar verbal comment (on a different subject) by John Walsh.

Chapter 1
Evolving Away from Condemnation:
Richard Maurice Bucke on Crime and Punishment

Richard Maurice Bucke did not want to go to Hell. He didn't want anybody to go to Hell. And he was pleased to conclude that no human being had a future in Hell to worry about.

In commenting on Bucke's beliefs about Hell, I am opting for a dollop of dramatic conjecture. While this Victorian alienist said a good bit about the fate of the human being following death, I have seen very few remarks of his which touch directly on the notion that some who have died may end up marooned in a realm of punishment. But it would appear that the idea aroused his resistance during childhood, and that it continued to do so when, much later in life, he described the outlook which he had preferred during those early years. Bucke "never, even as a child, accepted the doctrines of the Christian church." Indeed, "as soon as old enough to dwell at all on such themes," he developed the view "[t]hat no one would ever be condemned to everlasting pain."¹ Bucke probably looked askance at the idea of Hell at other points in his life too. In one bit of documentation that he completed for McGill College, the institution which he attended in pursuit of a medical education, the twenty-one-year-old Bucke pinned a religious label on himself, indicating that he was a Universalist. It is not wholly clear whether Universalism had won Bucke's heartfelt approval or merely his limited or nominal allegiance, and his commitment to that particular form of religion would appear to have been relatively short-

¹ Richard Maurice Bucke, *Cosmic Consciousness: A Study in the Evolution of the Human Mind* (Innes & Sons, 1901; New York: E.P. Dutton and Company, 1923, reprinted 1973), 8. Citations refer to the E.P. Dutton edition.

lived.² Even so, the fact that he appears at this point to have viewed Universalism as a better choice than other religious options suggests that he was still partial to the belief that everlasting doom had no place in the human story. And although Bucke may not have often made direct declarations of his disinclination to believe in Hell, a number of his writings did, as we shall see, suggest that the dynamics which characterized the existence of human beings, especially the realities which would unfold after their biological lives had come to a close, would prove to be anything but hellish.³

If it seemed unlikely to Bucke that some people might find themselves “condemned to everlasting pain,” then perhaps his outlook on this count not only turned him off the idea of Hell, but also led him to question the merits of condemnation in various other contexts as well. Those other contexts included his thought on insanity, on psychology, on the cosmos itself—and even on crime and punishment.

In more than one way, Bucke was a man of the mind. The glitches in other people’s minds provided him with an income—for about two-and-a-half decades in the late nineteenth century, the authorities employed Bucke as head of the Asylum for the Insane in London, Ontario.⁴ Bucke also made his own small mark in certain pockets of the intellectual world through the occasional lectures that he provided and the articles and books that he authored or edited. At times he offered his audience ideas concerning the phenomenon of insanity, although he more frequently discussed the mental dynamics

² See S.E.D. Shortt, *Victorian Lunacy: Richard M. Bucke and the Practice of Late Nineteenth-Century Psychiatry* (Cambridge, UK: Cambridge University Press, 1986), 6-10, 64-66, 178 n. 2; see also Ramsay Cook, *The Regenerators: Social Criticism in Late Victorian English Canada* (Toronto: University of Toronto Press, 1985), 87.

³ See especially [Richard Maurice Bucke], “The Question of a Future Life,” ca. 1882, in Richard Maurice Bucke Collection, A20, B5805, Western Archives, Western University.

⁴ The years in question were 1877-1902—see Shortt, *Victorian Lunacy*, 24.

operative within broader swaths of the human population. Indeed, two of the topics to which Bucke returned most often in his writings could be described as late-nineteenth-century forms of moral psychology and evolutionary psychology.⁵ In addition, his fondness for offering laudatory commentary on the poetry of Walt Whitman, or on Whitman himself, made Bucke one of the most fervent “Whitmaniacs” of the era. And Whitman’s writings, thought Bucke, could make it easier for a reader to obtain a more fulfilling perspective on the universe, and on the ways in which it was possible to engage with this universe psychologically.⁶ In Bucke’s view, the kind of mind that most people possessed was rather a ho-hum thing when measured against the wholly superior type of mental phenomenon that he explored in *Cosmic Consciousness*, a book he authored during his later years, in time for publication at the beginning of the twentieth century.⁷ This last endeavour was the part of Bucke’s work for which readers would display the greatest appetite.⁸ It appears to have been possible to purchase new copies of the volume for the majority of the twentieth century, thanks to the frequency with which new print runs came off the presses.⁹

⁵ Regarding the latter, see especially the first paragraph in Richard Maurice Bucke, “Cosmic Consciousness (I),” *The Conservator* 5, no. 3 (May, 1894): 37; for another particularly obvious example of Bucke’s interest in “mental evolution,” see R.M. Bucke, “Mental Evolution in Man,” *Montreal Medical Journal* 26, no. 4 (Oct. 1897): 322-330, CIHM no. 8_05178_112, http://canadiana.org/record/8_05178_112.

⁶ See Cook, *The Regenerators*, 92, 96-100 (Cook uses “Whitmaniac” on page 92); see Peter A. Reznitz, *R.M. Bucke: Journey to Cosmic Consciousness* ([Toronto]: Associated Medical Services; Markham, ON: Fitzhenry & Whiteside, 1994), 56; see Bucke, *Cosmic Consciousness*; see “At the Graveside of Walt Whitman,” *The Conservator*, Supplemental (April, 1892): III.

⁷ Richard Maurice Bucke, *Cosmic Consciousness: A Study in the Evolution of the Human Mind* (Innes & Sons, 1901; New York: E.P. Dutton and Company, 1923, reprinted 1973); see Bucke, “Cosmic Consciousness (I),” *The Conservator* 5, no. 3 (May, 1894): 39; see Shortt, *Victorian Lunacy*, 109, 111.

⁸ See Shortt, *Victorian Lunacy*, 109, 111; cf. 91; see Cook, *The Regenerators*, 87.

⁹ On the frequent production of new copies, especially between the 1920s and 1970s, see Mary Ann Jameson, ed., *Richard Maurice Bucke: A Catalogue Based upon the Collections of The University of Western Ontario Libraries* (London, ON: The Libraries, University of Western Ontario, 1978), 40-41, and Shortt, *Victorian Lunacy*, 109, 193 n. 101. For a more recent example, search www.uspenguingroup.com,

Although Bucke's writings did not discuss offenders or criminal justice nearly so extensively as certain other issues, more than one portion of his activities did relate in some sense to judicial or penal affairs. In operating an asylum that housed individuals with mental difficulties, Bucke was engaging, some might argue, in the same general work of "confinement" that prisons accomplished with respect to convicts.¹⁰ Also, in various murder cases, lawyers sought the input of an alienist, arranging for him to provide information due to which the court might more easily ascertain whether insanity had been part of the equation in this particular homicide. On several occasions, this strategy put the court in position to draw on Bucke's perspective, due to the task he carried out as the alienist (or as one of the alienists) whose input was obtained.¹¹ However, neither Bucke's policies in the London Asylum nor his statements to the courts or the Department of Justice serve as the focus in this chapter. Instead, the key evidence here comes from the more general opinions concerning criminals or punishments that he occasionally articulated to students, inquiry officials, or other audiences. The limited assortment of documents on which I will draw allows us to discern how his take on crime and

which reveals a 1991 Penguin edition. See also the editors' comment in the preface to *The New Consciousness: Selected Papers of Richard Maurice Bucke*, comp. Cyril Greenland and John Robert Columbo (Toronto: Columbo & Company, 1997), first paragraph of document (this volume is unpaginated). Many of the primary sources cited in this chapter can be found in this volume; this is where I originally discovered many of them.

¹⁰ For comments describing the denizens of asylums as "confined," see, for example, Geoffrey Reaume, "Patients at Work: Insane Asylum Inmates' Labour in Ontario, 1841-1900," in *Mental Health and Canadian Society: Historical Perspectives*, ed. James E. Moran and David Wright (Montreal & Kingston: McGill-Queen's University Press, 2006), 74, 90.

¹¹ See Allison Kirk-Montgomery, "'Loaded Revolvers': Ontario's First Forensic Psychiatrists," in *Mental Health and Canadian Society: Historical Perspectives*, ed. James E. Moran and David Wright (Montreal & Kingston: McGill-Queen's University Press, 2006), 117, 119, 121-122, 124-125, 131, 135, 139 n. 20, 140 n. 36; see Allison Kirk-Montgomery, "Courting Madness: Insanity and Testimony in the Criminal Justice System of Victorian Ontario" (Ph.D. Thesis, University of Toronto, 2001 – Ottawa: National Library of Canada, [2004]), 310 n. 2.

punishment reflected the overarching philosophical assumptions with which he was especially enamoured.

To provide an extensive analysis of Bucke in a thesis on *penal reform* might, admittedly, seem idiosyncratic. After all, he did not engage in the same kind of major reform efforts pursued by several of the key characters whom we will encounter further on in this dissertation. And on certain crucial counts his outlook ran counter to the perspective of the small set of Victorian Canadians who qualified more obviously as penal reformers. But some of his comments did indicate his desire to see Canada modify certain aspects of its approach to criminal justice. And the criminological or penal ideas that he espoused tended to be the kind promoted by certain European thinkers who did much more than Bucke to argue in favour of criminal-justice reform. In any case, the connections between Bucke's claims about crime and punishment, on the one hand, and his thought on more profound questions, on the other, are intriguing and revealing. I would hate to neglect the opportunity to write about them.

A rather large number of works—some of them academic, some of them less scholarly—deal with Bucke in brief or in depth. At least a few of these do take note of his ideas on crime and punishment. Based on the portrayals offered by Peter Oliver, Allison Kirk-Montgomery, and S.E.D. Shortt, we might suppose that Bucke's perspective on offenders had a conservative flavour—that he regarded them as firmly attached to criminal activity, and that he considered it necessary for the authorities to ensure that penalties remained sufficiently potent. In a discussion of late-nineteenth-century alienists' involvement in capital cases that offered opportunity for psychiatric input, Kirk-Montgomery points out similarities between Bucke and two other Ontarian alienists of

that era, Joseph Workman and Daniel Clark. She identifies these men as “forensic conservatives,” portraying Workman and Clark especially as individuals who did not want to see the authorities become too prone to dispense with firm punishment for just any offender who claimed that his mind had been on the fritz.¹² Moreover, as Oliver’s, Shortt’s, and Kirk-Montgomery’s accounts reveal, Bucke seems to have taken a liking to ideas associated with the Italian formulator of “criminal anthropology,” Cesare Lombroso. As Bucke saw it, therefore, to gravitate towards crime was, broadly speaking, a biological attribute of many offenders—an attribute for which he saw little by way of a reformatory solution, despite some people’s desire to help offenders get their lives squared away.¹³ Furthermore, based on Shortt’s and Kirk-Montgomery’s depictions, it might seem that the kinds of pursuits in which Bucke engaged or the types of tactics he adopted helped to provide continuing advantages to those who had already been blessed with some measure of privilege. On the whole, his approach may well have produced outcomes desirable primarily to alienists, or to the middle or upper classes.¹⁴

We will encounter certain key documents that might seem to align well with these kinds of portrayals. An exploration of other parts of Bucke’s writings, however, will reveal that such a depiction misses a more foundational aspect of the mind-set he developed. One striking feature of Bucke’s thinking on crime and punishment, I suggest, was his tendency to opt for an anti-condemnatory perspective. Admittedly, his comments

¹² See Kirk-Montgomery, “‘Loaded Revolvers’,” 119, 121, 124, 126-127, 129-131, 135-136 (the quoted phrase is from 119; see also “conservative” on 136).

¹³ See Peter Oliver, *Terror to Evil-Doers’: Prisons and Punishments in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998), 315, 492-493, 544 n. 102; see Shortt, *Victorian Lunacy*, 98-99, 101-103; see Kirk-Montgomery, “‘Loaded Revolvers’,” 124-125, 127-128, 130.

¹⁴ See Kirk-Montgomery, “‘Loaded Revolvers’,” 119, 124, 128, 130-133, 135-136; see Shortt, *Victorian Lunacy*, including, for example, 91-93, 98-110 (but see Shortt’s remarks on 108).

sometimes offered pointed reminders of the serious flaws that he perceived in criminal perpetrators or in punitive behaviour. As Bucke preferred to see it, however, an ultimate verdict of actual moral condemnation could not suitably be applied to anyone's life, no matter the activities in which he or she had engaged. As my analysis will reveal, Bucke's mind-set on this front stemmed at least partly from the major idea around which his thinking revolved: the idea that no aspect of reality provided anyone with genuine cause for deep dismay.¹⁵ He made rather bold statements in this vein, the kind of claims that many people in his time, as in other eras, would have regarded with scepticism, in light of the obvious heartache arising from various aspects of human experience and conduct, including those highlighted by crime and punishment. But Bucke devised ambitious arguments in favour of his perspective, drawing especially upon several evolutionary ideas found in the late-nineteenth-century intellectual marketplace. And as he interpreted the dynamics of evolution¹⁶ and proclaimed the universe to be "good and beautiful,"¹⁷ Bucke developed both the general mind-set and the more specific patterns of reasoning that would steer his commentary on punishments and criminals in a non-condemnatory direction.

¹⁵ See especially Richard Maurice Bucke, *Man's Moral Nature: An Essay* (New York: G.P. Putnam's Sons; Toronto: Willing & Williamson, 1879; Canadian Institute for Historical Microreproductions [microfiche], 1980), microfiche, CIHM no. 00324, p. 199.

¹⁶ For passages in Cook's portrayal of Bucke's mind-set that highlight evolution, see Cook, *The Regenerators*, especially 88, 94-96, 98, 100-101; for vocabulary similar to some of the wording in my sentence, see 94.

¹⁷ Bucke, *Man's Moral Nature*, 199.

Exploring Moral Psychology and Evaluating the Universe¹⁸

The rather pleasant portrayal of reality that Bucke sought to promulgate should not lead us to imagine that nothing dismaying had ever happened to Bucke himself. He spent most of his life without his right foot, and also without a section of the left one, due to their removal when he was twenty, after a perilous trek in the wilderness of the western United States gave him frostbite. An extension later replaced the missing foot, but the soreness at the ends of his legs would number among the nettlesome elements of earthly existence throughout most of his adulthood.¹⁹ Whether or not he had any major psychological difficulty in dealing with this particular injury,²⁰ he was by no means unaware of the hardship encountered by human beings more generally. Indeed, the matter bothered the twenty-three-year-old Bucke enough for him to share his thoughts about it when writing to his sweetheart, Jessie Gurd, who would later become his wife.²¹ “Can you wonder dearest Jessie that I should get very sad sometimes,” he reflected,

here all alone, when I sit in my room all by myself and think of *what has been—what is—and what might have been*—much misery upon this earth, what was its beginning and why it was ever called into existence we cannot tell—the *fact* of its existence we know and the *reason* of that we hope one day to be cleared up—you must forgive me dear Jessie for getting so dull over my letter but I will not offend again, the fact is it is rather hard to keep from complaining sometimes although we all know it never does any good.²²

In a sense, much of Bucke’s intellectual work in the decades ahead would stem from his attunement to this issue,²³ and from his desire to have something more uplifting to say about it.

¹⁸ For a comment by Bucke about “the ... value to us of the universe,” see *ibid.*, 197.

¹⁹ See Cook, *The Regenerators*, 89-90; see Shortt, *Victorian Lunacy*, 6; see Rechnitzer, *Journey to Cosmic Consciousness*, 29.

²⁰ See also Cook, *The Regenerators*, 90, which uses the term “injuries.”

²¹ See Rechnitzer, *Journey to Cosmic Consciousness*, 33.

²² Bucke to Jessie Gurd, August 19, 1860, quoted in *ibid.*, 34.

Twelve years later, in 1872, he got the chance to seize hold of something exceptionally uplifting. Bucke did a little traveling that year, at least to Britain, and a remarkable bit of time in a horse-drawn carriage one night turned out to be the highlight of his stay in the mother country.²⁴ Although Bucke showed little inclination to buy into traditional religious claims, on this occasion he found out firsthand how captivating a mystical encounter could be.²⁵ A passage from *Cosmic Consciousness*, the work of Bucke's that readers began to explore in 1901, provides a sense of what that event in 1872 was like, or at least of how he preferred to present it. In this passage, the individual in the affair was "he," rather than "I":²⁶

He was in a state of quiet, almost passive enjoyment. All at once, without warning of any kind, he found himself wrapped around as it were by a flame-colored cloud. For an instant he thought of fire, some sudden conflagration in the great city; the next, he knew that the light was within himself. Directly afterwards came upon him a sense of exultation, of immense joyousness accompanied or immediately followed by an intellectual illumination quite impossible to describe. Into his brain streamed one momentary lightning-flash of the Brahmic Splendor which has ever since lightened his life; upon his heart fell one drop of Brahmic Bliss, leaving thenceforward for always an aftertaste of heaven. Among other things he did not come to believe, he saw and knew that the Cosmos is not dead matter but a living Presence, that the soul of man is immortal, that the universe is so built and ordered that without any peradventure all things work together for the good of each and all, that the foundation principle of the world is what we call love and that the happiness of every one is in the long run absolutely certain.²⁷

The ideas that he associated with this dramatic experience probably did not flash into his mind and take his fancy merely as a result of the moment itself.²⁸ A slightly

²³ Peter Reznitzner makes a very similar point—see Reznitzner, *Journey to Cosmic Consciousness*, 34. My comment is also rather similar to two statements of Cook's, although these statements of his make somewhat different points than mine—see Cook, *The Regenerators*, 86 and 92.

²⁴ See Cook, *The Regenerators*, 92; see Shortt, *Victorian Lunacy*, 23.

²⁵ See Cook, *The Regenerators*, including 86-87, 92-93. Cook also opts for the adjective "mystical" in his remarks about this event—see 93.

²⁶ Shortt and Cook each quote this passage (plus a little more) as well; see the comments with which they preface it—Shortt, *Victorian Lunacy*, 21-23; Cook, *The Regenerators*, 92.

²⁷ Bucke, *Cosmic Consciousness*, 9-10.

earlier remark of his, for example, had already indicated his desire to outline a vein of thought that “will supply a new theory of the universe and of man’s relation to the external universe,” a kind of “religion” that would prove “as positive as positivism” but would “supply more hope for mankind.”²⁹ Still, his euphoric moments on that night in England became a key memory from which he could draw inspiration and validation when he sought to formulate his views about humans and the universe in which they make their home.³⁰ As some historians see it, the ideas that he proposed in *Cosmic Consciousness* owed a great deal to the conclusions he drew from this exceptional event of 1872.³¹ Bucke himself linked the experience to another book of his—his first book, *Man’s Moral Nature*, which came off the presses in 1879. This was a volume, he claimed many years after its publication, “in which he sought to embody the teaching of the illumination” that he had obtained during that cab ride in England.³² Whether generated more by his eureka moment or by long-developing patterns of thought, *Man’s Moral Nature* conveyed both the primary ethos and a number of the key assumptions that would flavour Bucke’s future writings as well, including some of his commentary regarding crime or penal matters.

Man’s Moral Nature examined the moral psychology of humankind, though the author was attempting, when all was said and done, to make a metaphysical point.³³ In

²⁸ See Cook, *The Regenerators*, 92-93; see Rechnitzer, *Journey to Cosmic Consciousness*, 53, 57 (“moments”).

²⁹ Bucke to H.B. Forman, December 11, 1871, quoted in Shortt, *Victorian Lunacy*, 80 (and see pages 21, 23, 79, 183 n. 65), and quoted in Cook, *The Regenerators*, 93 (Cook uses the longer passage from which I have taken this quotation to illustrate the same point that I am making here—see also 92).

³⁰ See Bucke, *Cosmic Consciousness*, 10 (“a few moments”).

³¹ See Cook, *The Regenerators*, 100; see Shortt, *Victorian Lunacy*, 111.

³² Bucke, *Cosmic Consciousness*, viii, 10 (the quotation is from 10).

³³ See *ibid.*, 10; but see Bucke, *Man’s Moral Nature*, x.

discussing “moral” phenomena, Bucke was not primarily examining the ideas or forms of thought involved in the process of making ethical decisions or defining ethical requirements. Indeed, people’s beliefs or attitudes concerning ethical *requirements* do not appear to have been of primary interest to him. Instead, he highlighted moral emotions—emotions that might in some cases make an individual more inclined to acknowledge a moral imperative, but that would also heavily shape her conduct or psychological life even if they generated no sense of obligation.³⁴ One of Bucke’s major claims was that “the moral nature” acquired its power and character not primarily from the cognitively oriented components of the brain or from “the cerebro-spinal nervous system,” but rather from “the great sympathetic nervous system,” which Bucke envisioned as “the seat of the emotions.”³⁵ Humans owed their moral attributes more to affect than to cognition.³⁶

The kinds of feelings that Bucke highlighted, and the claims he made about how present-day humans differed from people of the past with respect to these emotions, gave him the primary assumptions and evidence from which he would move on to make his overarching point. In his view, an exploration of moral psychology revealed four key types of feeling: fear, faith, love, and hate.³⁷ While there were many other moral attitudes

³⁴ See, for example, Bucke, *Man’s Moral Nature*, 3, 13-16, 19, 46, 65, 90, 130-131, 177-179, 184-187; see also R.M. Bucke, “The Growth of the Intellect,” *American Journal of Insanity* 39, no. 1 (July 1882): 37; see Cook, *The Regenerators*, 97; see the editors’ introductory comments to R.M. Bucke, “The Moral Nature and the Great Sympathetic,” in *The New Consciousness: Selected Papers of Richard Maurice Bucke*, comp. Cyril Greenland and John Robert Columbo (Toronto: Columbo & Company, 1997), first page of document (this volume is unpaginated). For remarks about “moral emotions,” see also Haidt and Kesebir, “Morality,” 2:802.

³⁵ See Bucke, *Man’s Moral Nature*, chapter 3 (quoted phrases from 47-48, 119).

³⁶ See, for example, *ibid.*, 24-27, 153 (“affection”), 168-170, 184-185.

³⁷ See Bucke, *Man’s Moral Nature*, 13, 15, 20-21, 23, 28, 125, 132. In *Man’s Moral Nature*, Bucke’s discussion of the moral emotion of “faith” referred not to agreement with the claims of some religion, but rather to something more generic—a tendency to expect that deities, people, events, and so forth would prove helpful rather than malevolent. “Faith,” wrote Bucke, “is the opposite of fear”—see, for example, *ibid.*, 20, 23-27, 66-67, 86, 179-181 (the quotation appears on both page 23 and page 24).

of which humans were also capable, these latter feelings generally resulted from the intermingling of an idea (or ideas) and at least one of the four basic emotions, or merely from the intermingling of two of the four emotions themselves.³⁸ But humanity had not remained equally given to each of the four main emotions in all portions of history. In Bucke's view, historical scholarship could suggest that during earlier eras people had gravitated toward hate and fear more readily, and toward love and faith less readily, than they did in the current period.³⁹ Bucke believed that human mind-sets concerning death provided an important example of this slow, continuing change. Although dying still seemed somewhat frightening to most individuals, various earlier cultures had envisioned death in bleaker terms, he argued.⁴⁰ This illustrated one aspect of the broader reality: that people's psychological lives now featured less significant levels of fear and hate, and ampler portions of faith and love, than in previous periods. And the gradual, desirable emotional reorientation to which this testified was by no means over.⁴¹

In general terms, then, moral feeling was one human phenomenon in which a kind of evolutionary dynamic, a dynamic of gradual improvement, could be seen.⁴² But more

³⁸ See *ibid.*, 19, 21-23, 28-33; see also 187-188. For at least three instances in which Bucke uses the phrase "moral attitude" (although perhaps not in exactly the same manner that I have here), see *ibid.*, 24-25, 182.

³⁹ See *ibid.*, 133, 135-150, especially 133, 139, 143-144, 146-150; see also R.M. Bucke, "Sanity," *American Journal of Insanity* 47, no. 1 (July 1890): 22-23, accessed on Google Books, <http://books.google.ca/books?id=ok0XAQAAMAAJ&printsec=frontcover&dq=american+journal+of+insanity+volume+47&source=bl&ots=RCDgXAv-r8&sig=JzCand2eV3Gh8L-vKjfq8ewHdQI&hl=en&sa=X&ei=RrI1UOi9A5OQ0QHlq4DoBQ&ved=0CDEQ6AEwAA#v=onepage&q&f=false>

⁴⁰ See Bucke, *Man's Moral Nature*, 24-25, 35-36, 136-141, 148-150; see also 30-31.

⁴¹ See *ibid.*, 138, 150, 188, 191-192; similarly, see Bucke, "Sanity," 24-25.

⁴² Although I have used the term "gradual" here and elsewhere, that should not be taken to mean that Bucke described the shift as continuous and steady. Rather, he portrayed it as "intermittent," as involving fits and starts. See Bucke, *Man's Moral Nature*, 137. Bucke mentions "gradual evolution" in other writings—see R.M. Bucke, "The Origin of Insanity," *American Journal of Insanity* 49, no. 1 (July 1892): 56, and Bucke, "Mental Evolution," 323. Note also Bucke's comment about "improvement in moral feeling" in R.M.

technical ideas about biological and anthropological evolution gave Bucke additional ways to bolster his arguments, both in *Man's Moral Nature* and in later writings.⁴³ For one thing, his desire to cut the fear of death down to size provided a reason to turn to the central Darwinian concept of natural selection. Though he was attempting to show that there had been a reduction in human fearfulness over the past few millennia,⁴⁴ he also considered it relevant to indicate what had enabled the fear of death to grow so prevalent in the first place. The idea of natural selection supplied what he needed here. Given the dangers that their earthly milieu created for living creatures, those which had perceived death as an ominous event against which to protect themselves had managed to live the longest and generate the most offspring. And since certain heritable attributes fostered the tendency to experience this valuable fear, the progeny of fear-equipped parents also tended to display that same propensity, which consequently had grown ever more widespread as the centuries passed, until virtually no surviving individuals remained unmarked by it. In short, to understand natural selection was to see why the thought of dying could give nearly anyone a scare.⁴⁵ However, although this kind of fear had previously proved especially helpful in stopping people from perishing prematurely, Bucke would seem to have assumed that the ongoing evolution in the years ahead would depend relatively little on the potent distress that people might feel when reminded that death could soon snuff them out. If that was indeed his view, then a late-nineteenth-

Bucke, "The Value of the Study of Medicine," *Montreal Medical Journal* 20, no. 5 (November, 1891): 342, CIHM no. 8_05178_41, http://canadiana.org/record/8_05178_41.

⁴³ The three evolutionary ideas that I discuss in the next few pages—natural selection, "the comparative method" for exploring evolutionary anthropology, and recapitulation—are each discussed (although the second one only minimally, and not with that label) by Shortt in his comments about *Man's Moral Nature*—see Shortt, *Victorian Lunacy*, 89-90.

⁴⁴ See Bucke, *Man's Moral Nature*, 135-150.

⁴⁵ See *ibid.*, 36-38, 149-150; similarly, see Bucke, "Sanity," 18-19.

century individual who allowed the phenomenon of death to hold her in *deep* fear would thereby be putting up with the painful part of an evolutionary aid which was not actually doing so much anymore to foster further evolution, and which was in fact conveying “a lie,” a lie that proclaimed the purported nastiness of death.⁴⁶ Eventually—even if only at a much later point in history, when humanity was less given to fearfulness—it would be possible, in Bucke’s view, to see a clear similarity between fear and “rudimentary organs in the higher vertebrata which linger long imperfectly formed after the animal has outgrown the need of them and at last fade away entirely.”⁴⁷ It appears that fear looked undesirable to Bucke not merely in theory, but also because he himself had become acquainted with potent forms of it. There seem to have been certain occasions on which a fear-igniting dynamic kicked in with special power in his psyche, immersing him in dread or some kind of “nervous depression.” Admittedly, the fear featured in such “panic attacks” or flare-ups of “acute anxiety” may not necessarily have been related to a dread of eventual death.⁴⁸ As we shall continue to see, however, he thought that fear more generally, rather than just the fear of death, had not only seen its own influence ebb over the past long while, but ought to wield even less power in human life than it did right now. In any case, in assessing a human proclivity that he disliked, Bucke found, as would

⁴⁶ See Bucke, *Man’s Moral Nature*, 38-40, 149-150 (the quoted words are from page 38); see also Bucke, “Sanity,” 18-19, 25-26 (but, on the other hand, see also page 20); see also Bucke, “The Question of a Future Life,” ca. 1882, especially pp. 50-51, in Richard Maurice Bucke Collection, A20, B5805, Western Archives, Western University.

⁴⁷ See Bucke, *Man’s Moral Nature*, 191.

⁴⁸ See Shortt, *Victorian Lunacy*, 21-23. “[N]ervous depression” was a phrase used by Bucke, quoted by Shortt in *ibid.*, 22. “[A]cute anxiety” and “panic attacks” are used by Shortt himself on pages 21 and 22. See also Bucke, *Man’s Moral Nature*, 97-100. Bucke claimed that, in the wake of his “illumination” in 1872, “[f]ear of death fell off him as a worn out garment”—see Richard Maurice Bucke, “The Case of R.M.B.,” in *The New Consciousness: Selected Papers of Richard Maurice Bucke*, final page of document (this volume is unpaginated). At least one “violent attack of nervous depression from Dyspepsia” (as Bucke described it) appears to have overtaken him in the late 1870s—see Shortt, *Victorian Lunacy*, 22, 170 n. 58.

other evolutionary thinkers in the twentieth and twenty-first centuries, that the idea of natural selection could be used to show both why the propensity in question had been an acceptable element of life in the past and why it would be quite in order to regard it with scepticism in the present and the future.⁴⁹

Bucke also bought into “the comparative method” to which various thinkers in the nineteenth century or previous eras had recourse as they developed anthropological ideas. In the first quarter of the twentieth century, anthropologists would begin to focus on understanding the cultural principles and practices specific to the society they were studying, without necessarily seeking to assess how that society stacked up against other peoples. In the Victorian era, by contrast, anthropological writers liked to envision the overarching evolutionary trajectory of the human species in general, and to size up a given group with respect to that general trajectory, and thereby with respect to other peoples who appeared to be in a more or a less “advanced” state.⁵⁰ As many nineteenth-century writers and members of the educated public saw it, a given human society generally possessed the attributes of one of three main socio-cultural forms: “savagery,” “barbarism,” or “civilization.” In no human group had civilization been on display from the start. Rather, in each presently civilized culture, savagery had provided the initial

⁴⁹ Certain other writings or talks by Bucke also offered an interpretation of the fear of death similar to that found in *Man's Moral Nature*: he suggested that death did not have the nasty downside that humans' fears about death urged them to suspect, and/or he focused on natural selection when trying to indicate what had enabled the fear of death to leave such a major imprint on the human species—see Bucke, “Sanity,” 18-20, 25-26; see Bucke, “The Question of a Future Life,” ca. 1882, in Richard Maurice Bucke Collection, A20, B5805, Western Archives, Western University. One of Bucke's talks, however, offered a more positive take on the fear of death—the talk suggested that much of the interest which people had shown in medical matters over the course of history could be attributed to this kind of fear, and it highlighted the contribution that medical endeavours had made to a number of major non-medical accomplishments. That said, it seems unlikely that this latter speech was meant to persuade his listeners to embrace a deep fear of death themselves. See Bucke, “Value of the Study of Medicine,” 328-344, especially 328, 330, 332, 342-343.

⁵⁰ See Hamilton Cravens, *The Triumph of Evolution: American Scientists and the Heredity-Environment Controversy, 1900-1941* (Philadelphia: University of Pennsylvania Press, 1978), 94-95, 105-110.

framework, and then the more “advanced” phenomenon of barbarism had had its turn, and only after this had the era of civilization begun.⁵¹ Accordingly, if currently civilized people wanted to get a rough sense of the habits which their own group had possessed in much earlier eras, they could obtain this by examining present-day “savage” cultures.⁵² The general assumption embodied in this “comparative method” had influenced European anthropological thought in the preceding century too. Many eighteenth-century writers had supposed that there were key points of commonality between the characteristics of more “primitive” current societies, on the one hand, and the way of life that had prevailed long ago within cultures that had by now become highly advanced, on the other hand, such that many clues about the predecessors of the present era’s leading societies could be rustled up through exploration of currently primitive groups. This assumption had surfaced in the “conjectural histories” that various eighteenth-century thinkers had concocted.⁵³ Bucke’s writings contained comments consonant with this general idea, an idea consonant with much of the evolutionary anthropology of the Victorian years.

⁵¹ See Gail Bederman, *Manliness & Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: University of Chicago Press, 1995), 25; see George W. Stocking, Jr., *Race, Culture, and Evolution: Essays in the History of Anthropology* (New York: Free Press, 1968), 114, 116; see Cravens, *Triumph of Evolution*, 107; and see Bucke, *Man’s Moral Nature*, 25, 150-151, 188—Bucke makes reference to the savagery-barbarism-civilization trajectory on page 25.

⁵² See Stocking, *Race, Culture, and Evolution*, 26-27, 113-116; see also Shortt, *Victorian Lunacy*, 89, 186 n. 103, and Christopher Fox, “Introduction: How to Prepare a Noble Savage: The Spectacle of Human Science,” in *Inventing Human Science: Eighteenth-Century Domains*, ed. Christopher Fox, Roy Porter, and Robert Wokler (Berkeley, CA: University of California Press, 1995), 16 (electronic copy of book accessed through the Carleton University library). For comments of Bucke’s endorsing or reflecting this general line of thinking, see Bucke, *Man’s Moral Nature*, 39, 133-134, 150-151, 191-192; and Bucke, “Sanity,” 21-22.

⁵³ See Stocking, *Race, Culture, and Evolution*, 26-27, 113-114 (“the comparative method” on 26, 114); see Fox, “How to Prepare a Noble Savage,” 16; see Robert Wokler, “Anthropology and Conjectural History in the Enlightenment,” in *Inventing Human Science: Eighteenth-Century Domains*, ed. Christopher Fox, Roy Porter, and Robert Wokler (Berkeley, CA: University of California Press, 1995), 31 (electronic book accessed through the Carleton University library); see John H. Zammito, *Kant, Herder, and the Birth of Anthropology* (Chicago: University of Chicago Press, 2002), 235-236.

Thanks to this logic, Bucke had further grounds to believe that human moral psychology was no longer as strongly flavoured by fear or by hate as it had been before. In his own era, suggested Bucke, the emotional experiences of “savages” were dominated by fear and hatred more than those of civilized individuals were. Accordingly, the savagery of the predecessors of currently civilized groups would also have featured higher levels of those two emotions than of faith or love. The fact that civilization had emerged in various once-savage cultures showed that hatred and fear no longer shaped the experiences of the whole of humanity as significantly as they had in earlier eras.⁵⁴

But perhaps the technical evolutionary notion out of which Bucke would get the most mileage in his various writings was the idea of recapitulation. Between the 1860s and 1910s, the exploration both of biological topics and of other subjects put various writers in position to suggest that “ontogeny recapitulates phylogeny,” as the point could be formulated. While some theorists in much earlier periods had espoused this general notion, a particularly large number of people proved ready to believe the idea in the late nineteenth and early twentieth centuries.⁵⁵ As an unborn individual turned from a zygote to an embryo to a fetus and came to the moment of birth, the ways in which it (or at least its respective organs) changed and grew seemed to testify to the changes and growth that had occurred in its ancestral line as the species to which it belonged had evolved. The fertilized cell, which reflected the one-celled condition of the first living organism, soon turned into an embryo with certain traits suggestive of somewhat more advanced species (e.g. fish). After gaining attributes that could be associated with even more advanced

⁵⁴ See Bucke, *Man's Moral Nature*, 25-26, 39, 133-134, 150-153; similarly, see Bucke, “Sanity,” 21-23.

⁵⁵ See Shortt, *Victorian Lunacy*, 98-100; see Stephen Jay Gould, *Ontogeny and Phylogeny* (Cambridge, MA: Belknap Press of Harvard University Press, 1977), chapters 1-5.

creatures, the fetus acquired an appearance more fully consonant with its humanness.⁵⁶ However, many people who had embraced this idea believed that recapitulation occurred not only prior to birth, and in relation to obviously biological facets of evolution, but also during the years that it took for an individual to reach adulthood after she had been born. As some thinkers saw it, even if an individual belonged to a group that now qualified as civilized, his mind-set and conduct in his childhood would more nearly align with the “savage” framework within which this group had functioned in earlier eras. Only in his adult or near-adult years would he himself wholly display the palette of civilized attributes that his race had managed to acquire in more recent times.⁵⁷ In sum, those who studied the embryo and the fetus would find a recapitulatory pattern pointing to the bodily evolution that had eventually permitted the human species to enter the picture. And those who examined the recapitulation that occurred as the born individual grew up could discover much about the “mental evolution” that had equipped humankind for the kind of experiences which people now enjoyed.⁵⁸

Perhaps it was this second part of recapitulation, the part observable in the life of the born individual, that exerted the most important influence over late-nineteenth- and early-twentieth-century thought. For example, a particularly large number of people in the late nineteenth or early twentieth centuries gained exposure to the psychological ideas about childhood and adolescence devised by G. Stanley Hall, an American academic whose esteem for notions linked to recapitulation had led him to employ these latter

⁵⁶ See Gould, *Ontogeny and Phylogeny*, including 2-4, 89, 95, 102; see Bucke, “Sanity,” 21-22; see also Bederman, *Manliness & Civilization*, 92; see also Bucke, “Value of the Study of Medicine,” 333.

⁵⁷ See Bederman, *Manliness & Civilization*, 92-110; see also Bucke, “Sanity,” 21-22.

⁵⁸ See Bucke, “Sanity,” 21-22; see Bucke, “Mental Evolution,” 323-328; see Bucke, *Man’s Moral Nature*, 134; see also Bucke, “Cosmic Consciousness (I),” *The Conservator* 5, no. 3 (May, 1894): 37.

assumptions quite heavily in the formulation of his psychological framework.⁵⁹ Bucke's use of the idea of recapitulation also centred primarily on the part of this phenomenon that occurred in the child, the juvenile, and the near-adult. In general, he believed it provided a way to examine evolutionary psychology in slightly more specific detail, an opportunity that he would pursue especially in the 1890s.⁶⁰ In Bucke's view, recapitulation supplied a rough time line of the human species' (or a particular race's) acquisition of certain psychological abilities or attributes. While it did not indicate the precise point at which the species had become equipped with a particular ability, it did in some cases suggest which of two traits had evolved first.⁶¹ Bucke would use this kind of reasoning with respect to several traits now widespread among human beings, such as "self-consciousness," "the colour sense," "the musical sense," and "the human moral nature." Two of his articles, for instance, conveyed the idea that colours typically became apparent to a child many years before her "musical sense" blossomed. This served as one indication that musicality had become a characteristic of humankind (or of the child's race) long after the species' (or race's) ability to identify colours had materialized.⁶² Over

⁵⁹ See Shortt, *Victorian Lunacy*, 99-100; see Bederman, *Manliness & Civilization*, 77-78, 92-110; see Gould, *Ontogeny and Phylogeny*, 141.

⁶⁰ Shortt makes the basic point conveyed in the first part of this sentence—see Shortt, *Victorian Lunacy*, 98; see Bucke, "Origin of Insanity," especially 58-60; see Bucke, "Mental Evolution," especially 323-328. For an example from the early 1880s, see Bucke, "Growth of the Intellect," especially 36, 46-47, 53.

⁶¹ See Bucke, "Origin of Insanity," 57-59; see Bucke, "Mental Evolution," 325-328; see Bucke, "Cosmic Consciousness (I)," *The Conservator* 5, no. 3 (May, 1894): 38; see Bucke, "Value of the Study of Medicine," 337. In this chapter, I describe Bucke as having maintained certain views about the evolution of "humanity," "the human species," and so forth. Although these views do seem to have shaped his outlook concerning human evolution in general, his statements in sources which I cite often referred to evolutionary dynamics within "the race." In many cases, at least, this was a reference to a specific race, not merely to humanity in general. For a particularly clear instance of this, see Bucke, "Origin of Insanity," 56-66 (but see also 62).

⁶² See Bucke, "Mental Evolution," 325-328; Bucke, "Origin of Insanity," 58-60. Bucke claimed that, even at this point in history, only about fifty percent (or perhaps even a lower percentage) "of the race"

the years, the ability to make this sort of claim would help Bucke to develop arguments concerning psychological topics that might seem more consequential than colour or music, such as mental illness and moral awareness.⁶³

Recapitulation also aligned well with the broad ideas that he was seeking to promote in the late 1870s, in *Man's Moral Nature*. As Bucke portrayed it, fear and hatred maintained a more significant presence in children's emotional lives than in adults', while people tended to grow readier than before to display love and exhibit faith as they entered their adult years. Because of the idea of recapitulation, children's fearfulness and proclivity for hatred could be perceived as indicating, once again, that such traits had stronger links to early human groups than to recent societies, and had therefore flavoured human life as a whole more strongly in former eras than in the current period.⁶⁴

Bucke found it fulfilling to develop such a portrayal of moral emotion because of the broader point that it allowed him to make.⁶⁵ In his view, the contrast that he was establishing between the emotional tendencies of long ago and those of the present era could help readers to form an encouraging assessment of the cosmos in general. In the final chapter of *Man's Moral Nature*, he tried to provide a sense of the connection between evolving "moral attitude[s]," on the one hand, and the general attributes of the world, on the other, by offering suggestions about the connection between the latter and both the technological and cognitive pursuits of human beings. People devising new technologies typically did a better job than previous innovators of both identifying and

experienced "the musical sense"—see Bucke, "Mental Evolution," 328; see also Bucke, "Origin of Insanity," 58, 60. For a different example, see Bucke, "Growth of the Intellect," 53.

⁶³ See Bucke, "Origin of Insanity," 56-66; see Bucke, "Mental Evolution," 328-329.

⁶⁴ See Bucke, *Man's Moral Nature*, 133-134, 153-156; see also Bucke, "Sanity," 21-22.

⁶⁵ See Bucke, *Man's Moral Nature*, 40, 188.

drawing upon the actual physical “forces” that shaped existence on planet earth, and the technological endeavours pursued in the years ahead would have greater and greater degrees of success on this front. In addition, human beings in a given period tended to figure out more than earlier people had about the actual “facts and laws” that it was possible to identify in the universe. In other words, as mankind’s history on the planet grew in length, there were “more and more” respects in which the species’ endeavours and assumptions “accord[ed] with” the dynamics that the world really did display.

Therefore, Bucke also suspected that the moral emotions of later historical periods, rather than those of earlier eras, provided the more plausible “index of” the actual attributes that the universe possessed. People now gravitated toward love and faith more readily than before because they were more inclined to perceive things that they admired as they observed the world, and because they were less inclined to feel jeopardized by phenomena that had once seemed frightening. And it was quite appropriate that their perception had grown more positive. Indeed, they still remained only partly aware of just how highly rewarding “the real nature of the universe” would prove to be.⁶⁶ According to Bucke, “we live in a world where everything is really good and beautiful”—sufficiently good and beautiful to make “unlimited love and absolute trust” appropriate, if humans had been capable of such. And perhaps he expressed the idea with which he was the most enamoured when he minimized, once again, the perils related to death. This was a

⁶⁶ See *ibid.*, 169, 191-200 (for “force” or “forces,” see 192-195, 197-198; for “facts and laws,” see 196; for “more and more,” see 196; for “in accord with the,” see 192, 200; for “index of,” see 197; for “the real nature of the universe,” see 199—in some cases, I have used these terms or phrases to convey similar but not exactly the same points as Bucke conveys in the sentences from which they are taken; for Bucke’s use of the phrase “moral attitude,” see, for example, 25, 182); see also some of the wording in Bucke, “Sanity,” 18.

cosmos, he suggested, “in which an all-powerful and infinitely beneficent providence holds us safe through life and death in its keeping forever.”⁶⁷

While *Man's Moral Nature* had examined certain dynamics in moral psychology, most of the book had not focused primarily on making direct ethical claims. Yet of course Bucke was not merely discussing the moral emotions, but also trying to promote some of them and discourage others. A gradual emotional “modification” had been reflavouring human experience,⁶⁸ and it would be best, he believed, to embrace the change without hesitation. The book’s final paragraph declared his view decisively:

This, then, is the end, the conclusion of the whole matter: Love all things—not because it is your duty to do so, but because all things are worthy of your love. Hate nothing. Fear nothing. Have absolute faith. Whoso will do this is wise; he is more than wise—he is happy.⁶⁹

One wonders whether Bucke’s readers would have perceived this statement as alluding to and countering the closing words of Ecclesiastes, a book more often associated with wisdom than with happiness. “Let us hear,” the Preacher had declared, “the conclusion of the whole matter: Fear God, and keep his commandments: for this is the whole duty of man. For God shall bring every work into judgment, with every secret thing, whether it be good, or whether it be evil.”⁷⁰ The Preacher had advocated a certain kind of fear, and had introduced the issue of judgment. Bucke had devised a rather different recommendation—a kind, as it happens, that could foster an anti-condemnatory mind-set.

⁶⁷ See Bucke, *Man's Moral Nature*, 199-200 (the quotes are from 199). See also Cook, *The Regenerators*, 87.

⁶⁸ For the term “modification,” see Bucke, *Man's Moral Nature*, 125.

⁶⁹ *Ibid.*, 200.

⁷⁰ Ecclesiastes 12:13-14 (KJV).

Assessing Criminals and Punishments

Most people never get any first-hand experience in the shooting of an American president. Charles Guiteau, however, did not fit the same mould as the average person. His atypicality took forceful form on July 2, 1881, when his pistol shot punctured the back of the man whom he had ambushed, President James Garfield. Now the authorities had to decide how out-of-the-ordinary Guiteau really was. That task mattered even more after September 19, when the wounded Garfield's moment of death finally arrived, which ensured that the prosecution could try to convict Guiteau of murder. To hear Guiteau tell it, he had deemed it advisable to kill the President not because Garfield ignited his personal hostility, but rather because God had supplied the idea. There were also various other actions or tendencies observable in Guiteau's life currently and in the past that could lead some people to wonder whether some facet of his mind might have long been in less than full working order. For some time after this event, psychiatric authorities in Europe who wished to comment on the stance of the courts toward mentally unsound offenders would often allude to Guiteau, at least sometimes portraying him as the kind of unwell individual whom the state was supposed to refrain from executing.⁷¹ But claims of insanity did not prove convincing to the court that dealt with Guiteau's offence, so Garfield's killer got to die prematurely himself, through execution on June 30, 1882.⁷²

Though Americans were the ones who had most reason to dwell on the crime, Canadians talked about it too. Richard Maurice Bucke's perspective on Guiteau surfaced

⁷¹ See Charles E. Rosenberg, *The Trial of the Assassin Guiteau: Psychiatry and Law in the Gilded Age* (Chicago: University of Chicago Press, 1968), including x, xvi, 2-3, 10, 39-42, 75-76, 79, 83, 124-134, 243-244, 249-251, 277-283.

⁷² See *ibid.*, 219-223, 225, 236-238.

in public just six days after the shooting, thanks to a July 8 article in the *London* [Ontario] *Advertiser* that stemmed from a conversation between Bucke and one of the paper's staffers. As Bucke saw it, citizens who wanted to know how Guiteau had come to perform his crime ought not to latch onto the notion of insanity, or at least not onto the idea of cognitive breakdown that people typically had in mind when they discussed the condition of being "insane." It would be better, suggested Bucke, to conclude "that [Guiteau] is a moral idiot." There were virtually no "moral qualities" to be found in the psychological makeup of moral idiots—the kinds of emotion that helped the typical person to maintain moral awareness and refrain from reprehensible conduct did not materialize within a moral idiot's heart. Although the "moral qualities" of the majority of criminals might be more limited than those of non-offenders, even that limited type of moral tendency made the typical criminal different from a moral idiot.⁷³ In short, Bucke's comments about "moral idio[cy]" aimed to describe more or less the same type of condition of which twenty-first-century citizens are thinking when they refer to "psychopathy" or "sociopathy."⁷⁴

If the usual assumption was that an insane man's commission of an offence did not constitute a legitimate reason to execute him,⁷⁵ Bucke did not maintain the same perspective with respect to moral idiots, at least not with respect to this particular moral idiot. Guiteau, Bucke suggested, "should be killed," although "not as a punishment for

⁷³ See "'A Moral Idiot,'" *London Advertiser* [London, Ontario], July 8, 1881. The quoted words in sentences 3-6 of my paragraph appear in statements of Bucke's that are quoted in the article. I became aware of this newspaper article after reading Alison Kirk-Montgomery's essay, which quotes the article—see Kirk-Montgomery, "Loaded Revolvers," 127-128, 143 n. 90.

⁷⁴ See also editorial comments in Cesare Lombroso, *Criminal Man*, trans. Mary Gibson and Nicole Hahn Rafter, with translation assistance from Mark Seymour (Durham, NC: Duke University Press, 2006), 379 n. 33; but see Rosenberg, *Trial of the Assassin Guiteau*, 69-70.

⁷⁵ See Rosenberg, *Trial of the Assassin Guiteau*, 66.

his crime, for he is incapable of understanding that he has committed a crime.” Instead, “he should be killed as a protection to society—killed just as you would kill a wild beast or a rattlesnake. You would not kill a mad dog in punishment for being mad and biting someone—you would kill him in order to ensure the general safety.”⁷⁶ By no means, therefore, was Bucke assuming a stance of support for retributive execution. Rather, his construal of penal activity placed him in basic agreement with other thinkers who looked askance at retributive criminal justice but proclaimed the validity of “social defence.” At least some of the advocates of social defence, such as the European writers who were beginning to promote a “positivist” perspective on crime, thought that criminal-justice authorities ought to stop viewing “responsibility” as a crucial issue, with an offender’s punishment legitimized by the court’s awareness that his free will could have enabled him to refrain from criminal action. After all, suggested such thinkers, it was implausible, from a scientific point of view, to highlight free will when trying to show why a given person did a given deed. It was an offender’s “dangerousness,” not his supposed “responsibility” or his reputed heinousness, that made it legitimate for the authorities to imprison him or penalize him in some other way.⁷⁷ Those who promoted this penal perspective might still sometimes portray offenders as reprehensible, in passages that conveyed at least quasi-moral condemnation.⁷⁸ On the whole, however, the social-defence viewpoint suggested that there were rather more important issues than moral

⁷⁶ Bucke, quoted in “‘A Moral Idiot,’” *London Advertiser* [London, Ontario], July 8, 1881. Part of this quotation is also quoted in Kirk-Montgomery, “‘Loaded Revolvers,’” 128.

⁷⁷ See Garland, *Punishment and Welfare*, 79-82, 84-87, 89-92; see Cesare Lombroso, *Criminal Man*, trans. Mary Gibson and Nicole Hahn Rafter, with translation assistance from Mark Seymour (Durham, NC: Duke University Press, 2006), 92-93, 165-166, 168, 171.

⁷⁸ For a possible example, see Lombroso, *Criminal Man*, 131.

blameworthiness to be dealt with in criminal justice.⁷⁹ And for someone like Bucke, that assumption could help to solidify a broader inclination to reject condemnation. If his comments about Guiteau do indeed reveal one small part of Bucke's overall anti-condemnatory mentality, they also demonstrate that at this point in 1881, that mentality nevertheless allowed Bucke to recommend death as a measure to deal with the President's shooter.⁸⁰ But Bucke's desire to discourage condemnation would shape his comments about punishment more clearly on later occasions.

One of Bucke's best opportunities to spread his ideas about criminals and penalties arose on August 21, 1890, when he was quizzed by a five-man commission that was considering the modifications through which Ontario could potentially opt to renovate its penal practices or its crime-impeding plans.⁸¹ The conversation gave the commissioners direct interaction with a Canadian supporter of recent biological ideas about criminality. In the late nineteenth century, certain thinkers began to promote the idea that if an individual readily embraced crime, then certain biological traits of his had probably done much to generate this behaviour.⁸² Biological motifs had certainly arisen in some earlier nineteenth-century commentary on crime (in some phrenological thought between 1820 and 1850, for example), and many people would buy into such themes in later periods as well (in eugenicist claims about crime during the first quarter of the

⁷⁹ See Garland, *Punishment and Welfare*, 85.

⁸⁰ Kirk-Montgomery briefly discusses this newspaper article, and makes an observation somewhat similar to the one I offer here, although she portrays Bucke (in this instance) as having embraced "Lombrosian determinism," not as having an anti-condemnatory mind-set—see Kirk-Montgomery, "'Loaded Revolvers,'" 127-128 (the quoted phrase is from 128).

⁸¹ See *Report of the Commissioners Appointed to Enquire into the Prison and Reformatory System of Ontario, 1891* (Toronto: Warwick & Sons, 1891; Ottawa: Canadian Institute for Historical Microreproductions [microfiche], 1994), microfiche, CIHM no. 94076, pp. 511, 530-536 (hereafter Report of the Prison and Reformatory Commission [1891]); see Oliver, 'Terror to Evil-Doers', 488.

⁸² See Oliver, 'Terror to Evil-Doers', 490.

twentieth century, for instance, or in the exploration of neurological and genetic issues at the start of the twenty-first century). Be that as it may, in the last few decades of the nineteenth century, criminological ideas that highlighted biological dynamics seem to have struck people as at least a little more plausible than they usually have.⁸³ During these years the biological viewpoint was shaped to a particularly great extent by the thought of Italy's Cesare Lombroso, although readers could also find criminological ideas of this sort in the publications of certain British and American writers, for instance, rather than only in Lombroso's own writings.⁸⁴ Nevertheless, at least some late-nineteenth-century commentators said more about the crime-instigating pushes and pulls that lurked among the events, the experiences, and the environmental realities around which offenders' lives had revolved. Indeed, this environmental perspective seems to have maintained greater influence in Ontario during this period than biological emphases did. The penal approach that Canadian officials claimed to support tended to align with assumptions linked to the environmental interpretation. A number of penal reformers in Ontario—people like the members of Toronto's Prisoners' Aid Association—demonstrated an affinity for that interpretation too. One of the four members of the 1890-91 Ontarian commission (the one with which Bucke was now speaking) was A.M. Rosebrugh, a central figure in the Prisoners' Aid Association. As we might imagine, then, the commission generally seemed to be less than enamoured with biological

⁸³ See Nicole Rafter, *The Criminal Brain: Understanding Biological Theories of Crime* (New York: New York University Press, 2008), xi, 4-5, 8-9, 15; see Neil Davie, *Tracing the Criminal: The Rise of Scientific Criminology in Britain, 1860-1918* (Oxford: Bardwell Press, 2005), 38-41; see Nicole Hahn Rafter, "Criminal Anthropology: Its Reception in the United States," 161, 167, 170.

⁸⁴ See Havelock Ellis, *The Criminal* (London: Walter Scott, 1890); see Davie, *Tracing the Criminal*, 22, 29, 74-86; see Rafter, "Criminal Anthropology," especially 166-167, 171; see Oliver, 'Terror to Evil-Doers', 490.

construals of criminal activity.⁸⁵ But the commissioners had certainly noticed that some people were advocating the biological viewpoint, and they latched onto the opportunity to examine the issue in their exchange with Bucke.⁸⁶

As his discussion with the commissioners revealed, Bucke bought firmly into the idea that crime was one human activity to which heredity proved quite able to contribute. If a criminal proclivity could be found in a given individual, it could probably be found in that person's progeny as well.⁸⁷ But we can explore a more specific biological element in his criminological thought, an element connected to other topics raised in this chapter, if we discuss the idea of atavism. From time to time, an individual creature might turn out to be dissimilar to the vast majority of the living members of its species, due to its possession of some characteristic which had typified the species in an earlier period of time, but which had since become very uncommon, having been altered or largely eradicated by that species' evolutionary metamorphosis. When observers found an atypical person who displayed attributes reflecting this kind of "lapse," then they had encountered an instance of human "atavism."⁸⁸ Bucke would seem to have regarded atavism as the major reason why moral idiots could still be born in the late nineteenth

⁸⁵ See Oliver, *'Terror to Evil-Doers'*, 315, 469, 471, 486, 488, 490-495, 497, 499; see Wetherell, "Rehabilitation Programmes," chapters 1 and 2, and especially pp. 46, 79, 297, 299; see also Shortt, *Victorian Lunacy*, 101.

⁸⁶ See Report of the Prison and Reformatory Commission (1891), 530-534; see Oliver, *'Terror to Evil-Doers'*, 491—to go by Oliver's comments, it appears that they probably explored the matter in their conversations with many other figures as well.

⁸⁷ See the answers by Bucke recorded in Report of the Prison and Reformatory Commission (1891), 530-535; see Oliver, *'Terror to Evil-Doers'*, 492.

⁸⁸ See the answers by Bucke recorded in Report of the Prison and Reformatory Commission (1891), 530-532; see Bucke, "Value of the Study of Medicine," 340; see Bucke, "Growth of the Intellect," 52. Bucke's assumptions about atavism and criminal atavism can be grasped somewhat more readily if one examines several of the different writings or statements in which he commented on such topics—see also Bucke, "Mental Evolution," 329; see also Bucke, "Origin of Insanity," 61-63.

century.⁸⁹ Moreover, Bucke seems to have thought that some individuals, though not so poorly outfitted for good conduct as moral idiots, still proved psychologically much readier to act criminally than the average citizen, and that atavism (or perhaps biological connection to an atavistic parent or another atavistic forbear) had created the “defective moral nature” and the criminal proclivities of many of these individuals too.⁹⁰

For someone keen on Bucke’s perspective and the various ideas which it implied, an exploration of atavism could reveal a few of the evolutionary intricacies of human psychology more generally and, in so doing, could suggest a further part of the reason why the earth was still home to a significant number of persons whose moral limitations enabled them to act in a criminal manner. To hear Bucke tell it, some of the now standard features of human psychology were altered by atavism more often than others. Very few individuals would find themselves endowed with an atavistic trait if a great length of time had already passed since the current standard trait had started to become a typical feature of the human species. By contrast, atavism would in a greater number of cases prevent the development of a current attribute (or the proper form of that attribute) in an individual if that trait had begun to grow widespread only in the less distant past.⁹¹ For instance, Bucke indicated to the commission that humans had been employing their intellects for many thousands of years before they began both to see in colour and (in

⁸⁹ See the answers by Bucke recorded in Report of the Prison and Reformatory Commission (1891), 530-531; see Bucke, “Value of the Study of Medicine,” 340; cf. “A Moral Idiot,” *London Advertiser* [London, Ontario], July 8, 1881, and Bucke, “Origin of Insanity,” 63.

⁹⁰ See Bucke, “Value of the Study of Medicine,” 340-341 (the quoted phrase appears on page 340); see the answers by Bucke recorded in Report of the Prison and Reformatory Commission (1891), 530-532, 535-536; see “A Moral Idiot,” *London Advertiser* [London, Ontario], July 8, 1881; see Bucke, “Origin of Insanity,” 63; see also Bucke, *Man’s Moral Nature*, 178-179.

⁹¹ See Report of the Prison and Reformatory Commission (1891), 531; see Bucke, “Growth of the Intellect,” 52; see Bucke, “Origin of Insanity,” 61-66; see Bucke, “Mental Evolution,” 326, 329.

approximately the same broad range of time) to become clearly attuned to moral matters. Accordingly, he believed, atavism was today much less likely to take the form of utter intellectual disability (as it did, according to Bucke, for perhaps 0.1 or 0.2 percent of the population) than of colourblindness or of the elimination of an individual's "moral nature" (as it did, in each of these two cases, for about 1.7 percent of the population).⁹² In one sense, this characteristic of atavism could permit the phenomenon to be interpreted in terms slightly more favourable than the construals that some voices in that period might have offered. Perhaps a number of late-nineteenth-century people may have assumed that atavism was likely to create the opportunity for crime to leave a deeper and deeper mark on society. But atavistic traits could potentially provide a reminder of a more appealing fact. As Bucke implied in an 1892 article, if atavism seemed especially prevalent in a particular facet of psychological life, then it could also be said that this was an area which had undergone a significant evolutionary improvement not too long ago, an improvement that may have taken the form of some new capacity or trait. And though atavism might negate that new capacity in the case of many present-day individuals, it would do so less and less often in the centuries ahead.⁹³ In one sense, atavism provided little cause for trepidation; rather, it demonstrated that evolution had continued to put the species (or a

⁹² See Report of the Prison and Reformatory Commission (1891), 531. The figure that Bucke provided here for colourblindness (I have converted it to an approximate percentage) actually pertained (according to him) to the frequency of colourblindness in Great Britain, not necessarily within humanity in general. Although he does not say so explicitly in this document, perhaps the figure he offered here for the frequency of moral atavism may also have pertained to Great Britain rather than to a broader population—for evidence perhaps suggesting that this may have been what he meant, see Bucke, "Origin of Insanity," 59-60, and cf. Report of the Prison and Reformatory Commission (1891), 531. I am not, of course, suggesting that either his figures or his concepts were correct.

⁹³ See Bucke, "Origin of Insanity," 61-66; see Bucke, "Mental Evolution," 329.

particular race⁹⁴) in a more and more promising position. If, then, there were quite a few people whose moral emotions remained too limited to ensure that they would refrain from nasty behaviour toward their fellows, that reality did not have to spark much mental vexation among observers. After all, Bucke's interpretation of atavism could imply that such behaviour did not testify to some surprising or growing peril, but instead resulted from a basic dynamic in the evolution of the human species,⁹⁵ and would, in the long run, touch fewer and fewer lives as that evolution continued.

Whether or not the majority of Bucke's various comments about atavism reflected a perspective that other thinkers espoused as well, the basic idea that crime would have a smaller presence in society if it were not for atavism had certainly been promoted by other, more influential figures than Bucke—especially by Lombroso.⁹⁶ One way or another, Bucke seems to have known something about Lombroso, whom he mentioned in at least two of his articles in the 1890s.⁹⁷ But that in itself does not necessarily suggest that it was Lombroso's own writings which supplied Bucke with his criminological views. There would have been various other sources through which a late-nineteenth-

⁹⁴ See *ibid.*, especially 65-66.

⁹⁵ Cook makes what might be a vaguely similar point to part of what I am saying in this sentence, although his comment pertains to mental illness rather than crime—see Cook, *The Regenerators*, 94.

⁹⁶ See Mary Gibson and Nicole Hahn Rafter, introduction to *Criminal Man*, by Cesare Lombroso, 1, 5-11; see Shortt, *Victorian Lunacy*, 101-102. We can find certain other similarities between Bucke's and Lombroso's perspectives as well. Bucke, as we have discussed, portrayed the undesirable emotions of fear and hatred as particularly prevalent among humans in their childhood and when they lived in savage cultures, and he portrayed crime as an activity of the adults who had greater-than-average similarities to savages. Lombroso thought that the conduct or qualities of criminals could remind observers of the deleterious behaviour or propensities of children or of savages—see Lombroso, *Criminal Man*, 69, 77-78, 86, 91, 105, 119, 143, 188-197; see Shortt, *Victorian Lunacy*, 102.

⁹⁷ See Bucke, "Value of the Study of Medicine," 340; see Richard Maurice Bucke, "Was Whitman Mad?," *The Conservator* 6, no. 4 (June, 1895): 55; see Shortt, *Victorian Lunacy*, 103.

century North American thinker might have become knowledgeable about such ideas.⁹⁸ In fact, it was in 1890, the same year in which the Ontarian commissioners spoke with Bucke, that people began to read *The Criminal*, a new volume by the British writer Havelock Ellis—a work in which Lombrosian ideas had proven highly influential, even though Ellis’ interpretation did not wholly align with Lombroso’s own.⁹⁹ Whether or not Bucke had known about the volume by the time he sat down with the commission, references to Ellis’ claims about criminals did surface in at least one of Bucke’s publications during the next few years.¹⁰⁰ And by the end of his life, at least, a copy of the book had come into his possession.¹⁰¹ Criminological notions like atavism may perhaps have looked a little dubious to some Canadian penal reformers, but in this period Bucke could assume that there were intelligent writers in more eminent nations who had portrayed such ideas as sound.

If some atavistic element in an offender’s biology ensured that he would find criminal activity appealing, that dynamic in his life would also tend, in Bucke’s view, to continue over the years, rather than subsiding after just a short time. To refrain from breaking the law after having already played several rounds in the game of crime generally proved to be a more difficult undertaking than a genuine criminal could manage, believed Bucke. And this would usually remain true even if penal authorities or

⁹⁸ See Rafter, “Criminal Anthropology,” 166-167; see Shortt, *Victorian Lunacy*, 102, 190-191 n. 57; see also Gibson and Rafter, introduction to *Criminal Man*, by Cesare Lombroso, 6. That said, it appears that at least one of Lombroso’s studies, and at least one of criminologist Enrico Ferri’s writings, did number among the publications belonging to the London asylum just after (and probably also before) Bucke’s death—see Shortt 127, 197 n. 14; see also Rechnittzer, *Journey to Cosmic Consciousness*, 231.

⁹⁹ See Havelock Ellis, *The Criminal* (London: Walter Scott, 1890); see Rafter, “Criminal Anthropology,” 166-167; see Oliver, ‘*Terror to Evil-Doers*’, 491, 493; see Shortt, *Victorian Lunacy*, 102.

¹⁰⁰ See Bucke, “Origin of Insanity,” 60; but see also Bucke, “Value of the Study of Medicine,” 340.

¹⁰¹ See Jameson, *Richard Maurice Bucke: A Catalogue Based upon the Collections of The University of Western Ontario Libraries*, 68, 76.

charitable organizations made major rehabilitative efforts. To anyone who wanted to envision a large proportion of Ontarian convicts as individuals who might sooner or later prove ready for “reclamation,” Bucke’s comments would hardly have sounded encouraging.¹⁰² Here too it might seem logical to suggest that Lombroso’s views had sparked Bucke’s thinking, since Lombrosian ideas have sometimes been perceived as implying that a thoroughly rehabilitative perspective would by no means possess complete viability. In actuality, certain kinds of rehabilitative penal tactics did obtain Lombroso’s support, at least during some parts of his career.¹⁰³ And the possibility of offender reformation shaped Ellis’ proposals in *The Criminal* to a greater extent.¹⁰⁴ More importantly, Bucke’s view stood in contrast to that of most Ontarian penal reformers, who tended to regard rehabilitative efforts as worthwhile, and to think that many delinquent young people, at least, might buy into the idea of waving crime goodbye.¹⁰⁵ Among the advocates either of liberal penal reform in Ontario or of new criminological perspectives, therefore, relatively few people portrayed reformation as quite so uncharacteristic of offenders as Bucke did.

Bucke’s talk with the commissioners gave him the chance to voice his thoughts not only about criminals, but also about punishments. His perspective remained quite

¹⁰² See the questions to and answers by Bucke recorded in Report of the Prison and Reformatory Commission (1891), 530, 533-535 (“reclamation” comes from the question of the Chairman [John Langmuir] on page 534); see Oliver, *Terror to Evil-Doers*, 492. I should note that Bucke’s statements about “criminals” did not necessarily reflect his assessment of persons who contravened the criminal law once or twice in a minor way, or who served a single term of incarceration. Rather, the main characteristic of a “criminal” was that he gravitated toward crime (or some comparable negative behaviour) in a strong and ongoing way, especially because of his biological attributes—see especially the answers by Bucke recorded in Report of the Prison and Reformatory Commission (1891), 534-536.

¹⁰³ See Lombroso, *Criminal Man*, 142-143, and the editors’ comment in 380-381 n. 40.

¹⁰⁴ See Ellis, *The Criminal*, 258-260, 276, 281-282.

¹⁰⁵ See Oliver, *Terror to Evil-Doers*, 315, 487, 491, 493-495.

similar to the outlook he had conveyed when commenting on Guiteau a decade earlier. The anti-retributive element in his thinking took unequivocal form, highlighted by his disparagement of “punishment” itself. “In the first place,” declared Bucke,

I am thoroughly opposed to punishment. I look upon all punishment as simply revenge, neither more nor less than a barbarous thing. I am perfectly certain it does no good; I am perfectly certain it does harm to the people who endure it, to the people who inflict it, and it does harm to the community in which the system exists.¹⁰⁶

By no means, however, was he advocating the relinquishment of all potent, tangible quasi-penal measures—such measures, after all, enabled the government to engage in social defence, although Bucke did not use that term. “In the second place,” he continued,

I would recommend that the rights of the civilized portion of the community should be protected against the savage. It is just simply this, that we law-abiding citizens are more civilized than the criminals, and those who are civilized have a right to protection from the savages. I would not punish savages any more than I would punish animals, but they should be prevented from the perpetuation of their degraded race, and I would try to prevent that as far as possible.¹⁰⁷

He expressed the same idea later in the conversation:

I think that the attitude of society towards the criminal should be self-protecting—an attitude of benevolence; I look upon the criminal as a defective fellow creature, and we want to do the best we can for him and for ourselves; but I would never loose [sic] sight of one thing—prevent the propagation of this class [sic] as much as possible.¹⁰⁸

¹⁰⁶ Quoted in Report of the Prison and Reformatory Commission (1891), 532. This is part of a statement that Bucke made when the Chairman (John Langmuir) asked him to suggest “the best method for the treatment of criminality in children” (a phrase used by Langmuir, not by Bucke himself) (532). I am not sure whether Bucke was in fact thinking only about the punishment of child offenders when he made this particular anti-punishment statement, or whether he was thinking about punishment more generally. In the same paragraph, however, he speaks in favour of the elimination or reduction of offenders’ opportunity for procreation, which suggests that perhaps he might have been thinking about more kinds of offenders than just young delinquent children in his comments throughout the paragraph. And the outlook conveyed by his comments about punishment seems quite similar to that conveyed by other comments of his about the punishment of adult criminals.

¹⁰⁷ Quoted in *ibid.*, 532; see also 533, where he seems to affirm the use of reformatories.

The “protection” that it was incumbent upon the authorities to provide could be upgraded in more than one way. Although it does not appear that any large proportion of Canadians bought into eugenics to any great extent until the twentieth century, eugenicist thinking did shape Bucke’s proposals to the commission, as the quotations above reveal. Since individuals’ readiness to embrace crime tended to be much greater if they were the offspring of criminals, Bucke thought the Canadian authorities would do well to “control marriages,” presumably so that criminals’ opportunity for procreation (or at least their opportunity for detrimental procreation) could be eliminated or reduced.¹⁰⁹ Measures to ensure the “seclusion” of many offenders would also benefit the country—partly, it would seem, by reducing the possibility of procreative sex, and partly by ensuring that these “seclude[d]” criminals had no chance for “mischief.”¹¹⁰ Furthermore, the authorities might be able to spare the public some crime-related headaches by adopting policy changes to ensure that there would not be so many British “gutter children” among the immigrants Canada received in the future. Those young creatures, Bucke asserted, “are not only savages, but they are nearly all diseased savages.”¹¹¹ However, in contrast to his earlier comments about Guiteau, Bucke now seems to have thought that the authorities’

¹⁰⁸ Quoted in *ibid.*, 535.

¹⁰⁹ See Report of the Prison and Reformatory Commission (1891), 532-533, 535. The quoted phrase appears in Bucke’s comments on page 532. Since he did not explicitly refer to the possibility of making wedlock illegal for criminals, but rather referred to the idea of “control[ling] their marriages” (532), I am not certain whether all procreation by a criminal seemed perilous to Bucke, or whether he might possibly have thought, for example, that an individual born to an offender and a non-criminal spouse would not find crime nearly so difficult to avoid as a child conceived by two criminals would, and that society could therefore put up with procreative sex between offenders and certain kinds of non-criminal wives or husbands.

¹¹⁰ See *ibid.*, 532-533.

¹¹¹ See *ibid.*, 532; see also 536. This comment is also quoted in Oliver, “*Terror to Evil-Doers*”, 492.

“protecti[ve]” penal work provided no good reason to opt for execution. The death penalty, he declared, “is all wrong. It is a relic of barbarism altogether.”¹¹²

In light of the eugenicist vein in Bucke’s suggestions and the nature of his comments about British immigrant children, it is hardly surprising that some scholars might tend to draw attention to viewpoints of his that we might associate with particularly negative attitudes concerning criminals. To historian Peter Oliver, “some” of the criminological claims that Bucke offered to the commission look like “pure Lombroso,” a description that stands in unflattering contrast to the more rehabilitative flavour that Oliver finds in the perspective of the Prisoners’ Aid Association.¹¹³ To hear Allison Kirk-Montgomery tell it, Bucke’s earlier support for the idea of bumping off Guiteau “just as you would kill a wild beast or a rattlesnake”¹¹⁴ could be regarded as one of the “harshest expression[s]” of the kind of criminological thought that highlighted “Lombrosian atavism.”¹¹⁵ And if Bucke regarded quite a few children from underclass Britain as “diseased savages,”¹¹⁶ then perhaps he might also in other instances have formed a more negative assessment of underclass lawbreakers than of offenders from “the respectable classes,” as Kirk-Montgomery suggests that Ontarian alienist Daniel Clark did.¹¹⁷ Kirk-Montgomery and Shortt say little, on the other hand, about Bucke’s disparagement of

¹¹² Bucke, quoted in Report of the Prison and Reformatory Commission (1891), 535.

¹¹³ See Oliver, *Terror to Evil-Doers*, 544 n. 102, and 470-471, 475, 477-478, 481-482, 491, 499 (but see 477, 480).

¹¹⁴ Bucke, quoted in “A Moral Idiot,” *London Advertiser* [London, Ontario], July 8, 1881. This quotation is also provided in Kirk-Montgomery, “Loaded Revolvers,” 128.

¹¹⁵ See Kirk-Montgomery, “Loaded Revolvers,” 128.

¹¹⁶ Bucke, quoted in Report of the Prison and Reformatory Commission (1891), 532.

¹¹⁷ Some of Kirk-Montgomery’s general statements make it sound as though she is suggesting the same thing about Bucke, although her specific evidence pertains mostly to Clark, and in some respects to Workman—see Kirk-Montgomery, “Loaded Revolvers,” 123, 131-134, 136 (but see also 124-125, 130-131) (the quoted phrase is from 133).

“punishment” and espousal of “benevolence.”¹¹⁸ Perhaps that might seem quite in order; after seeing the ideas that Bucke offered to the commission, many readers might regard his anti-punitive comments as little more than meaningless rhetorical flourishes. But there were certain later moments too at which Bucke demonstrated his tendency to look askance at condemnation. And the manner in which he did so suggests that we should not understate this aspect of his thinking. Perhaps offenders themselves might have preferred it if Bucke had decided to advocate measures which would tangibly deal with real difficulties confronting them, rather than to promote an anti-condemnatory stance at a largely abstract level. Be that as it may, this stance of his reveals a more central aspect of his overall mentality than do his views about concrete penal practices.

On October 1, 1891, a little over a year after his encounter with the commission, Bucke got to serve as a guest speaker at McGill University’s medical school, where he himself had received his medical training three decades earlier. His address, “The Value of the Study of Medicine,” soon reached a reading audience as well, thanks to the decision of the *Montreal Medical Journal* to publish the text.¹¹⁹ Over the centuries, as a result of their efforts to find medical remedies for physical ailments, human beings had gained greater and greater degrees of “liberation” at a broader level, argued Bucke. There were a number of ways, for example, in which medical endeavours had helped mankind to gain a better grasp of non-medical subjects too—subjects such as morphology,

¹¹⁸ See Shortt, *Victorian Lunacy*, 99 (but see also 108); Kirk-Montgomery, “‘Loaded Revolvers’.” Oliver does provide a small quote from one of Bucke’s anti-punishment comments, but Oliver’s portrayal still does not primarily highlight that motif in Bucke’s thinking—see Oliver, “*Terror to Evil-Doers*,” 492-493, and also 315, 544 n. 102.

¹¹⁹ See R.M. Bucke, “The Value of the Study of Medicine,” *Montreal Medical Journal* 20, no. 5 (November, 1891): 321-344, CIHM no. 8_05178_41, http://canadiana.org/record/8_05178_41; on Bucke’s medical training at McGill, see also Shortt, *Victorian Lunacy*, 6-10.

histology, chemistry, dynamics, psychology, and sociology.¹²⁰ Moreover, the beneficial spinoffs stemming partly from these kind of “liberati[ng]” accomplishments were in some cases more than merely cognitive. On certain fronts, humans had begun to acquire a mentality that fostered an “improvement in moral feeling.”¹²¹ Bucke tried to make this latter aspect of his argument convincing by discussing society’s approach to two associated issues. In the past, noted Bucke, the actions that society had taken with regard to the insane had highlighted its deeply unfavourable perception of these individuals, who had been “looked upon and treated almost as wild and dangerous animals.” By the late nineteenth century, however, people no longer believed that an individual’s insanity provided a good reason to adopt such a stance toward him.¹²² And there was a similar reorientation that Bucke explored at greater length—part of his speech highlighted the new mind-set that people had begun to display when they thought about criminals.¹²³

Bucke’s comments about criminals and punishments focused partly on ways in which people had already started to adopt new ideas about such issues, but his discussion also implied that it remained necessary to embrace this new viewpoint more fully. Thanks to what scientific efforts had revealed, thinkers now perceived the atavistic dynamic in criminal activity, he claimed. And people who acknowledged this atavism could no longer view a criminal’s offences as cut-and-dried decisions to violate obvious behavioural requirements, nor as actions that the offender would have been able to avoid in the same way that non-criminal citizens did. That being the case, Bucke argued that it

¹²⁰ See Bucke, “The Value of the Study of Medicine,” 328-339, 342-344. The term “liberation” is found on pages 328, 332, 334, 336, 337, 338, and 344.

¹²¹ See *ibid.*, 338-343. The quoted phrase is from page 342.

¹²² See *ibid.*, 339.

¹²³ See *ibid.*, 339-342.

would “rarely, if ever,” be legitimate to regard criminals with the kind of “moral reprobation” that mankind had so long considered appropriate. The basic dynamics of human existence created a kind of automatic penalty for such offenders, even if no one tried to do anything punitive, suggested Bucke. “A person born with the criminal constitution,” he claimed, “does not need to be damned either by God or man—he is damned already. He does not need to be punished—he is punished already.” It appears, however, that Bucke said this not to suggest that such punishment was fully in order, but rather to show why non-criminals would do well to “pity” these offenders. Indeed, he believed them to be “more deserving of pity than is any other person whatever.” In the past, at least, most people would probably have found that claim quite dubious, but their mind-set concerning this subject had little merit. “The feelings of horror and dread with which society has looked for centuries upon lunatics are sufficiently disgraceful to it,” declared Bucke, “but they are not half so much to be deplored and deprecated as are the feelings of abhorrence, aversion and hatred with which it has looked down in lofty and virtuous scorn upon the wretched criminal.”¹²⁴ It was incumbent upon present-day humans to relinquish the animosity that had so often flavoured people’s opinions concerning these individuals.

As humanity bought more fully into this non-condemnatory mind-set, the authorities would also wave goodbye to certain sorts of penalties for which they had formerly opted. “[T]he day is surely coming (and is perhaps not far distant) when the gallows, the whip, and the jail will be as obsolete as are today the stake, the thumbscrew and the rack,” Bucke prognosticated. He did indicate once again that “[a]s long as there

¹²⁴ See *ibid.*, 340-342.

are criminals[,] doubtless society must protect itself from them.”¹²⁵ But in this speech, he was seeking to advocate an ameliorated perspective on offenders and penal matters, rather than trying to imbue his audience with a stronger interest in acquiring sufficient “protection.” If Bucke could affirm the kind of “protect[ive]” activity that seemed essential to a functional society, that was because such activity did not appear to clash with the idea of relinquishing animosity toward criminals.

Even if Bucke thought it best to refrain from “moral reprobation” when discussing criminals, that might not seem to demonstrate that he wished to undermine any and all kinds of condemnation. I have already quoted a strong assertion from this very speech that “deplored and deprecated” a certain kind of anti-offender mind-set. Any members of Bucke’s audience who had formerly tended to dwell on offenders’ supposed moral heinousness could have taken such a statement as an attempt to rebuke people like themselves. But as his comments at a later date revealed, his outlook could sometimes encourage him to develop a non-condemnatory assessment of dubious non-criminal activities too, including activities of punishers.

On May 30, 1894, a group of individuals gathered to spend the evening exploring part of the work of Walt Whitman, whose death two years previously had eliminated the possibility of speaking with him in person. The group listened to some of Whitman’s poetry, with Richard Maurice Bucke serving as reader. And of course they also spent time exchanging views about certain aspects of the poet’s thinking.¹²⁶ One issue on

¹²⁵ Ibid., 342.

¹²⁶ See Horace L. Traubel, “Walt Whitman and Good and Evil: A Discussion,” *The Conservator* 5, no. 7 (September, 1894): 103.

which Bucke and others commented was the topic of evil. As Whitman saw it, suggested Bucke,

[w]e could not have good in the world if we did not have evil. Whitman does not seem to think that there is an absolute distinction between good and evil, but a relative distinction, and he thinks, I believe, that there will always be evil along with the good, but it is like this, you see: The whole human life rises, and, as it rises, the good rises and the evil rises.¹²⁷

Bucke's interpretation of the issue suggested, in one sense, that his listeners ought to avoid overstating the influence which evil had wielded in human affairs. Here too a kind of evolutionary perspective did much to shape his thinking. In this case, however, he did not highlight biological evolution per se. Instead, he drew attention to the general metamorphosis in which humans had, bit by bit, again and again, abandoned less desirable practices and adopted more acceptable ones instead. Due to such evolution, people in any given era would have become accustomed to conditions or activities that were more attractive than those which had been characteristic of earlier periods; and, as a result, persons living in that given era would also have become sceptical of or hostile toward less attractive practices that had won previous societies' affirmation. Indeed, some practices might currently appear sufficiently heinous to make it seem necessary for a late-nineteenth-century citizen to recognize their thoroughgoing reprehensibility, even when evaluating the use of those practices in the distant past. But Bucke favoured a different assessment. In his view, present-day thinkers ought to bear in mind the other equally or more off-putting options that had faced earlier people during or prior to the period in which they had maintained what might now seem to be an evil practice. By comparison to those other options, that practice might well appear to possess some

¹²⁷ Richard Maurice Bucke, quoted in *ibid.*, 103-104.

beneficial qualities. In some cases, moreover, human cultures might never have managed to latch onto the improved options of later eras if it were not for the ways in which their highly flawed former practices had equipped them to do so.¹²⁸ “There was a time in the world,” he suggested,

when slavery was not an evil but a good. It suited society at that time to have slaves, and I do not believe that the human race could ever have got on without slaves. I believe, myself, that slavery was as necessary as bread to the human race. Well, that time has gone by, and now slavery from being a good has become an evil. Same way with war. Same way with capital punishment. These things were necessary and good at one time, but have become or are becoming evil.¹²⁹

The death penalty may have seemed to Bucke to be “all wrong” in the late nineteenth century,¹³⁰ but it does not appear that he considered it fitting to condemn everyone who had employed or supported this punishment in previous eras. In general, those who too readily deemed a past phenomenon evil often failed, in Bucke’s view, to fully recognize the ways in which it had contributed to the evolution through which so many eventual advantages materialized.

Bucke’s perspective certainly did not take the fancy of everyone with whom he was conversing that evening. For at least one of the attendees, the idea that some earlier human groups had been acting in a “good” way when they made it possible for their members to own slaves was too much to stomach, and more than one attendee voiced scepticism.¹³¹ In the eyes of Arthur Stephenson, human beings who held others as slaves were engaging in a reprehensible practice; those who did so today could not be excused,

¹²⁸ See *ibid.*, 104-106; and see the comments of Frank MacIntire on page 105.

¹²⁹ Bucke, quoted in *ibid.*, 104.

¹³⁰ Bucke, quoted in Report of the Prison and Reformatory Commission (1891), 535.

¹³¹ See the comments of Thomas Earle White, Arthur H. Stephenson, and H.V. Hetzel in Traubel, “Walt Whitman and Good and Evil,” 104-106 (for first names, see page 103).

and neither could those who had done so in any other historical period. It was not that there was something extraordinary about the issue of slavery: in general, if a genuine ethical requirement made an act or stance heinous in one historical era, then that requirement had possessed the same significance in all previous periods. As Stephenson saw it, individuals would stray into inaccuracy in their ethical reasoning if they failed to bear in mind the kind of imperatives or realities that were “unchangeable.”¹³² There were more than just minor blemishes in the relativist form of moral appraisal that Bucke’s comments appeared to encourage: Stephenson castigated it as “the vilest method possible.”¹³³

But the possibility of downplaying the prevalence of evil had a certain appeal for Bucke, and he did not find an anti-relativist viewpoint like Stephenson’s convincing. Bucke did not refrain from further comment on slavery after his first statement about that topic; instead, he found himself addressing the subject multiple times over the course of the conversation as he sought to show why his perspective had merit. “[F]or a long time” now, societies had possessed no defensible basis for affirming slavery. However, the slavery in some previous portions of history—perhaps in instances “a thousand ages ago,” for example—had ended up creating certain kinds of advantages, rather than wholly detrimental results. Mankind, after all, had owed some of its crucial economic accomplishments to slavery, and such accomplishments had helped to foster the overall progress from which human beings were now benefitting—or would eventually benefit—

¹³² See the comments of Arthur H. Stephenson in *ibid.*, 105-106; see also 103. The quoted word was used by Stephenson on page 106. Similarly, attendee Morris Lychenheim appears to have regarded “moral ideas or principles” as “eternal,” though his brief comments do not make his viewpoint too clear—*ibid.*, 105; see also 103-104.

¹³³ Arthur H. Stephenson, quoted in *ibid.*, 105.

so greatly.¹³⁴ Slavery and other such practices might in themselves seem morally heinous, but if present-day people would bear in mind the evolutionary character of human existence, they would cease to make the erroneous assumption that human beings could have adopted admirable practices right away. Bucke claimed, for instance, that very early humans “were brutes and had to start as brutes.”¹³⁵ From his perspective, the decision to regard many previous human practices as instances of especially obvious and thoroughgoing evil might require the acceptance of an implausible, or at least an unpleasant, corollary. “I can only repeat,” he declared,

what I have several times said: Slavery, or anything else we to-day call evil, is utterly wrong out of its place. But we cannot pronounce upon the history of the whole human race by the standard of the present. We face an inevitable process. If the process up to the present was all evil, then is all evil still and all likely to remain evil.¹³⁶

The comments he made this evening showed, more directly than usual, that his evolutionary perspective tended to foster a non-condemnatory interpretation of people from previous eras. This might appear to run counter to the initial impression conveyed by some of the evolutionary claims and terminology that he employed over the years. Bucke’s arguments tended to associate early humans with fear, or savagery, or “brut[ality],”¹³⁷ for example—with phenomena, in other words, that highlighted the contrast between the less desirable qualities of mankind in the past and the more attractive attributes of present-day people. Such a portrayal of early peoples might have seemed rather unflattering. But as Bucke’s arguments about evil reveal, his evolutionary

¹³⁴ See *ibid.*, 104-105. The quoted phrases were used by Bucke.

¹³⁵ Bucke, quoted in *ibid.*, 105; see also 106.

¹³⁶ Bucke, quoted in *ibid.*, 106.

¹³⁷ In this last case, I am referring to his use of the term “brutes” in *ibid.*, 105.

interpretation of humankind could suggest that many of the undesirable practices of former societies gave little cause to regard their inhabitants with an attitude of strong reprehension. In a sense, the idea of evolution played one of the same parts in his interpretation of mankind that the notion of atavism played in his interpretation of criminals. Both atavism and evolution drew attention to deleterious activities in which some human beings had participated, and both also suggested that there had been too little possibility of refraining from such behaviour for those people to be excoriated by present-day thinkers.

While Bucke may have wanted to avoid adopting a condemnatory attitude concerning people who lived in earlier centuries, his statements about evil create the impression that he was equally determined not to accept the possibility that “all [is] evil still and all likely to remain evil.”¹³⁸ The fact that he mentioned but seemed inclined to discount this possibility could be interpreted in at least two ways. First, the belief that “all [is] evil still” would also have enabled a late-nineteenth-century North American to say, more specifically, that “*we* are evil still.” Perhaps the latter idea may have been what bothered Bucke the most, even if he did not articulate the issue in that manner. If this was indeed a key dynamic shaping his arguments about the notion of evil, then those arguments, or at least his last comment, would appear to highlight his affinity for non-condemnation in a particularly suggestive way, revealing his desire to find a basis for embracing a non-condemnatory assessment not only of criminals or people from previous eras, but also (or especially?) of himself and others in his own century.

¹³⁸ Bucke, quoted in *ibid.*, 106.

Perhaps it is more likely, however, that when Bucke drew attention to the implausibility of the notion that “all [is] evil still and all likely to remain evil,” he was primarily expressing a favourable opinion about the universe in general, rather than thinking specifically about the positive or negative qualities of human beings. As already discussed, Bucke’s attempt to offer a highly encouraging portrayal of the cosmos had formed a crucial part of the argument of *Man’s Moral Nature*. It had also continued to be one of the most important features of other talks and publications of his since that book’s completion, and would influence some of his further writings during the next several years.¹³⁹ However, when he sought to make this broad point about the universe in general, he was dealing with an idea that intrigued him not just on paper, but also in relation to his own existential interests. On March 30, 1892, the people who had gathered for Walt Whitman’s interment listened to Bucke, as well as a few other men, speak about the poet.¹⁴⁰ In the course of his remarks, Bucke lauded Whitman’s outlook:

His trust in the essential friendliness to man of the infinite universe; his calm and contented acceptance of all that is or that happens; his absolute assurance that he and all of us came well and shall go well; his conviction that death (‘God’s eternal, beautiful right hand,’ as he named it) is not an evil but a good; in fine, his faith, intense, glowing, vital beyond the limits of any I have elsewhere known or read of, have been to me the great solace of my life.

Despite Whitman’s departure, Bucke declared that

I do not lament or repine, I am tranquil and resigned. Whatever others may think or say, I (inspired and informed by the great soul which has just left us) have made up my mind that I shall not give in to this arrogant and masterful Time Spirit who desires to deceive and enslave us. I am not going for one instant to admit that Time, Death, or any other power or influence can take from us what we have once had.

¹³⁹ See Bucke, “Growth of the Intellect,” 54; see Bucke, “Sanity,” 17-26, especially 25-26.

¹⁴⁰ See “At the Graveside of Walt Whitman,” *The Conservator*, Supplemental (April, 1892): I, III; see Cook, *The Regenerators*, 86.

Again Bucke highlighted, in slightly different form, the general issue that proved so pivotal in his thinking. “This universe,” he claimed, “is not the hollow nutshell containing the rotten kernel that so many make it.”¹⁴¹ There is more than one attitude that this latter statement might possibly have conveyed, more than one vocal quality or pitch by which Bucke might have signaled the significance of the comment. To me it sounds like a vigorous remark, a controlled but emotional assertion in rebuttal of a disheartening notion that had to be repudiated. Admittedly, just five sentences later he declared that “[i]n this faith, learned from the friend whom we mourn, I rest satisfied and at ease.”¹⁴² But even if the actual manner in which Bucke spoke also suggested him to be “at ease,” in my view his comments still hint at the fervour with which he had embraced his encouraging interpretation of existence, and at the distress he might have felt if he had started to think that he might need to relinquish this perspective.

Furthermore, as Bucke portrayed it, people who realized what an appealing group of attributes the cosmos possessed also tended to grasp, as part of the same realization, that neither they nor anyone else had cause to buy into certain discouraging assumptions that individuals often maintained about themselves or about what they would encounter down the road. Thanks to “cosmic consciousness,” the optimal psychological phenomenon that would powerfully supply this realization, an individual’s “sense of sin” would also tend to evaporate, suggested Bucke in an 1894 article, and again in his last book at the beginning of the new century.¹⁴³ Bucke thought that he had become directly

¹⁴¹ Richard Maurice Bucke, quoted in “At the Graveside of Walt Whitman,” p. III.

¹⁴² Ibid.

¹⁴³ See Richard Maurice Bucke, “Cosmic Consciousness (II),” *The Conservator* 5, no. 4 (June, 1894): 52; see Bucke, *Cosmic Consciousness*, 74, 79.

acquainted with this kind of psychological change, thanks to his remarkable “illumination” in 1872 in England. One of his writings described how this event had shaped the subsequent psychological life of “R.M.B.” (himself):

He did not simply believe, he knew that God is infinitely good and that no real evil can happen to anyone—that no real evil exists in the world. These convictions, the absolute knowledge of these truths, never left him. Even in sickness and great despondency though he might not be able at the moment to feel them he still knew them. Another change which it seems difficult to put in direct intelligible words was his loss of the sense of sin. It did not seem to him (after the experience related) that there was such a thing as sin. Acts before called by that name simply seemed stupid, senseless. So far from there being a temptation to do them the idea of them excited nothing but repulsion, disgust.¹⁴⁴

So although Bucke’s efforts to downplay the influence of evil may have at least partly reflected his evaluation of the universe rather than his assessment of human beings, his perspective on the cosmos was itself associated with an outlook which implied that he had little cause to worry about condemnation.¹⁴⁵

The argument of this dissertation requires a brief discussion of one more dimension in Bucke’s stance on punishment, a dimension different from what the documentation examined in the rest of the chapter has revealed. Each year, the Ontarian authorities received updated information on the mental asylum in London, thanks to the annual reports that Bucke provided. When he prepared his report in 1896, he decided to point out certain aspects of Canadian law that proved particularly disadvantageous for mentally ill citizens. Canada did not, in his opinion, do a good enough job of ensuring

¹⁴⁴ Richard Maurice Bucke, “The Case of R.M.B.,” in *The New Consciousness: Selected Papers of Richard Maurice Bucke*, final page of document (this volume is unpaginated); see also Jameson, *Richard Maurice Bucke: A Catalogue Based upon the Collections of The University of Western Ontario Libraries*, 3-4.

¹⁴⁵ See also especially Bucke, “Cosmic Consciousness (II),” 52.

that it avoided executing insane offenders.¹⁴⁶ In theory, a criminal deed performed by an insane person could not give rise to a conviction in court.¹⁴⁷ But this held true only if the individual's insanity had been sufficiently thoroughgoing to ensure that he neither "appreciat[ed] the nature and quality of the act or omission" nor "kn[ew] that such act or omission was wrong" (to use the terms in which the Canadian *Criminal Code* articulated the M'Naghten rules).¹⁴⁸ If his cognitive abilities had not been destroyed quite this badly, then the court could still convict him and provide the appropriate sentence, as per standard practice with respect to "responsible" adult offenders. Bucke considered this to be an unsatisfactory way of dealing with the issue. By looking only for such thoroughgoing insanity, the authorities would too often end up convicting or executing offenders who had less obvious yet still very real mental illnesses—illnesses potent enough to make it implausible, in Bucke's view, to affirm these offenders' criminal responsibility or to claim that the death penalty was suitable in such cases. By contrast, a mentally ill person who owned significant amounts of money or property might well see

¹⁴⁶ See Ontario, Legislative Assembly, "Twenty-Ninth Annual Report of the Inspector of Prisons and Public Charities upon the Lunatic and Idiot Asylums of the Province of Ontario, Being for the Year Ending 30th September, 1896," *Sessional Papers*, No. 10 (1897) at 76. Bucke's report (which is dated October 1, 1896—see p. 73) was one component of this larger report.

¹⁴⁷ See Kirk-Montgomery, "Loaded Revolvers," 119.

¹⁴⁸ See *The Criminal Code, 1892*, SC 1892, c 29, s 11; see Ontario, Legislative Assembly, "Twenty-Ninth Annual Report of the Inspector of Prisons and Public Charities upon the Lunatic and Idiot Asylums of the Province of Ontario, Being for the Year Ending 30th September, 1896," *Sessional Papers*, No. 10 (1897) at 76. A statement by certain British legal authorities in 1843 in relation to *R. v. M'Naghten*, a case in the British courts, had outlined a basic formula highlighting the pivotal issues on which a court needed to focus to figure out whether an accused person qualified as having performed his crime while insane. The M'Naghten rules had come into use in the courts in Canada too, and a direct affirmation of the basic idea outlined in the M'Naghten rules materialized in 1892 via the new Canadian *Criminal Code* itself, although the wording used in the *Criminal Code* differed somewhat from the original British formulation. It appears that the difference was in fact significant enough to potentially result in a somewhat different substantive interpretation of insanity than the original formulation had outlined. See Martin L. Friedland, *The Case of Valentine Shortis: A True Story of Crime and Politics in Canada* (Toronto: University of Toronto Press, 1986), 38-41; see Kimberley White, *Negotiating Responsibility: Law, Murder, and States of Mind* (Vancouver: UBC Press, 2008), 57; see also Kirk-Montgomery, "Loaded Revolvers," 119, 132.

the authorities nullify his legal power to perform transactions involving that property or those funds, the supposition being that such transactions required a greater degree of “responsibility” than individuals with that kind of mental limitation could display. So the authorities tended to overestimate the responsibility of the mentally ill during criminal prosecutions, but minimize it when determining who should have charge of their property.¹⁴⁹ People with mental diseases just could not win. Given these two aspects of current law, Canada could not claim to have opted for a sufficiently “liberal” mind-set in its policies concerning the mentally ill. And in Bucke’s view, it appears, “strict justice would demand” at least that these citizens be given the benefit of a “fair[er]” approach than prevailed at present.¹⁵⁰

Bucke’s report did not directly indicate in which actual particulars he wanted the law to change. His discussion would imply that he did indeed think the expectations and punishments maintained for sane criminals ought to be eliminated or modified for a wider range of mentally ill offenders than was presently the norm. But the report outlined no tangible features of any new policy that he thought the authorities could adopt with respect to these offenders. Nor did he make it clear whether he believed that the mentally ill should in fact receive much more opportunity to determine what was done with their property. The point of interest for us is that one of his ways of portraying current practice as unacceptable was to imply that it was a violation of “justice.” This might not sound quite like Bucke; justice might seem to be a concept that an advocate of retributive

¹⁴⁹ See “Twenty-Ninth Annual Report of the Inspector of Prisons and Public Charities upon the Lunatic and Idiot Asylums of the Province of Ontario, Being for the Year Ending 30th September, 1896,” *Sessional Papers of Ontario*, 1897, no. 10, pp. 76-78 (“transaction” on 77).

¹⁵⁰ See *ibid.*, 78.

punishment would be more likely to highlight. In his remarks about Guiteau, his statements to the 1890-91 commission, and his speech to the students at McGill, Bucke had spoken about punishment from an anti-retributive or nonretributive perspective—and indeed, he had said nothing about the merits of “justice.” In reality, though, his choice in 1897 to portray justice as a crucial consideration points not primarily to something atypical in his rhetoric, but rather to one basic similarity between Bucke and other figures examined in this dissertation. In later chapters we will encounter other reformers who, though generally wary of retributive punishment, nevertheless found occasion to advocate “justice” or abjure “injustice” as they articulated reformist arguments. Bucke made stronger anti-retributive statements than most of the reformers whom we will discuss; but even he could see that expressing his support for the idea of justice might do much to make his argument attractive.

Over the course of the twentieth and early twenty-first centuries, there have probably been other people whose views on crime and punishment have been strongly shaped by a broad anti-condemnatory vein in their thinking. It is far less likely, of course, that such individuals would have articulated their perspective by means of the same specific evolutionary ideas that Bucke embraced, or that they would have tried fervently to highlight “the essential friendliness to man of the infinite universe.”¹⁵¹ Even though his specific ideas might have found relatively few takers, his thought illustrates an important, if obvious, general point: that an individual’s opinions about crime and punishment tend to reflect, at least to some degree, her perspective on far broader issues—on religious or

¹⁵¹ Bucke, quoted in “At the Graveside of Walt Whitman,” p. III.

philosophical or cosmological or existential matters.¹⁵² Admittedly, this is more obvious in Bucke's case than in many others, since he proved readier than most people to discuss such matters in public and at length. But if we investigate the thought of other commentators thoroughly enough, we do begin to encounter evidence (even if in lesser amounts than in Bucke's case) about their views on broad philosophical issues, and about the possible influence of these upon their penal or criminological opinions. Later chapters in the dissertation will provide further reminders of this.

There was an obvious late-nineteenth-century flavour in some aspects of Bucke's thinking, such as his belief in recapitulation and atavism. Be that as it may, the particular elements in his thought that are highlighted in this chapter should probably not be taken as indicative of the mentality of more than a minority of Victorian Canadians. Nor, by any means, did all of his views match those of the twentieth-century penal reformers on whom this dissertation will now begin to focus. These reformers did tend to look askance at retributive punishment, though typically without repudiating it quite as vigorously as he did. From their perspective, as from his,¹⁵³ authorities who were seeking to properly appraise criminal activity or penal possibilities would do well to draw on scientific ideas.

¹⁵² I am certainly not suggesting that Bucke's perspective on offenders and penalties stemmed only from his opinions about broad philosophical matters, or from other *ideas* that he frequently expressed. Historian S.E.D. Shortt in particular has drawn attention not only to the ideas that Bucke embraced, but also to the sociological realities, professional endeavours, and economic expectations that shaped his views and his practices. To provide the full picture concerning Bucke's mind-set on crime and punishment, we would need to discuss such factors to a greater extent than I have in this chapter. Nevertheless, considering how strongly his writings and speeches focused on offering a positive assessment of the universe, and on promoting certain notions about moral psychology or evolution, we have especially good reason not to overlook the points of overlap between these broad ideas and his assessment of offenders and penalties.

¹⁵³ See Bucke, "Value of the Study of Medicine," 340-342; see the answers by Bucke recorded in Report of the Prison and Reformatory Commission (1891), 536.

A few—though certainly not all¹⁵⁴—of them may have supported a more or less determinist interpretation of criminals' actions,¹⁵⁵ as Bucke too had sometimes seemed to do.¹⁵⁶ But the desire to avoid condemnation and minimize the idea of evil probably did not leave as much of an imprint, or at least not such a visible one, on most reformers' thinking as on Bucke's. More importantly, it would appear that rehabilitative penal efforts did not interest Bucke greatly, due to his belief that criminals' gravitation toward crime could rarely be vanquished. Few things, by contrast, characterized the agenda of twentieth-century penal reformers as much as their support for one form or another of offender rehabilitation. In other words, the stance that these reformers tended to maintain on penal issues was less like Bucke's position than like that of Toronto's late-nineteenth-century Prisoners' Aid Association.¹⁵⁷ Only until perhaps 1915 did convicts or reformers still make use of that particular organization.¹⁵⁸ But at least one of its turn-of-the-century supporters was still kicking around in the 1920s, and contributing to reform in a more tangible way than before. We will hear plenty about him in the next chapter.

¹⁵⁴ See, for example, Horace G. Wyatt, *Crime in Canada and the War* (Toronto: Oxford University Press, 1944), 34.

¹⁵⁵ See *House of Commons Debates*, 17th Parl, 5th Sess, Vol. 1 (14 February 1934) at 567 (Agnes Macphail—Progressive, Grey Southeast, ON).

¹⁵⁶ See Bucke, "The Value of the Study of Medicine," 340-342; but see also Bucke's comments quoted in Report of the Prison and Reformatory Commission (1891), 532.

¹⁵⁷ See Oliver, 'Terror to Evil-Doers', 499.

¹⁵⁸ See *ibid.*, 496-497.

Chapter 2

The Undesirability of Exclusion: Alfred Lavell's Non-Carceral Penal Options in 1920s Ontario

In 1897, a few of Kingston attorney G.M. MacDonnell's ideas about penal matters reached a number of readers through *Queen's Quarterly*. Like Richard Maurice Bucke, MacDonnell assumed that penal viewpoints in the past possessed a little less merit than those to which society currently gravitated. A growing (if still small) number of people, for example, now preferred penal practices and ideas associated with either the emerging objective of "prevention" or the more familiar "reformation or rehabilitation," rather than with the older "repression" or the still older "vengeance or retribution."¹ On several fronts, however, MacDonnell could hardly admire Canadians' present-day mind-set. At one point in the article, for instance, part of a quotation drew attention, in a sense, to an exclusionary dynamic that would impede offenders who might wish to re-engage with the non-criminal public:

"By solemn trial and public punishment the criminal is made conspicuously visible to his fellow-citizens, he is held up to their criticism and it becomes a part of their duty and of their education to hate him. When the law is satisfied and the punishment inflicted can he return to his former estimation and rank in the community? Not so—beyond the legal punishment another is inflicted of endless duration and fatal severity. He may be condemned to fine, or imprisonment, or exile, but in all cases he incurs another sentence, in all cases he is condemned to a place among the bad, to excommunication from the society and league of the virtuous. A fatal prejudice rests upon him for the future, a clinging suspicion oppresses him: crime is expected of him, his virtuous acts require explanation, his endeavour after virtue is distrusted by the good, or passed unobserved by them, he lives among the bad."²

¹ See G.M. MacDonnell, "The Treatment of Crime by the State," *Queen's Quarterly* 4, no. 4 (April, 1897): 257, 261, 263, 267. MacDonnell referred to the American reformist figure Enoch Wines' discussion of these four "stages."

² *Ecce Homo*, quoted in *ibid.*, 265-266. MacDonnell does not indicate who wrote this *Ecce Homo*.

An offender, declared MacDonnell himself, “must be treated for his disease and not cast out and trodden under foot of men.” Encouragingly, certain kinds of “prevent[ive]” initiatives were in fact materializing in Ontario. Even so, Canadian society as a whole could certainly stand to acquire a much more thoroughgoing affinity for a strategy of “treat[ment]” or (especially) “prevention,”³ rather than for a mind-set that gave rise to exclusion.

MacDonnell’s espousal of rehabilitative or preventive measures, rather than practices through which offenders might “be cast out and trodden under foot,” would have won the affirmation of many other reformist commentators, including Ontario’s Alfred Lavell. Lavell may in fact have read MacDonnell’s article, either in 1897 or in one of the next few decades.⁴ In any case, Lavell’s own writings and speeches would often feature topics related to penal reform, both at the turn of the century and in the 1920s. During the latter decade, he became especially well acquainted with the practice of paroling prisoners, thanks to his activities for a dozen years as Chief Officer of the Ontario Board of Parole.⁵ His parole activities also put him in good position to help a number of prisoners gain rejuvenation by means of an “extramural” program,⁶ an initiative of his relatively similar to the “work release” from which some convicts would

³ See MacDonnell, “Treatment of Crime,” 267-268 (quoted wording on 267).

⁴ A copy of MacDonnell’s article numbers among the various publications found in the Alfred Lavell fonds in Queen’s University Archives—see Alfred Edward Lavell fonds (hereafter A.E. Lavell fonds), Coll. 2214, Box 3, File 30: “Re Prisons and Reformatories,” and File 31: “Re Prisons and Reformatories,” Queen’s University Archives (hereafter QUA).

⁵ The years in question were 1920-1932. Technically, “Chief Officer” may not have been Lavell’s title for all of these years. See A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” p. 86, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA; see Alfred E. Lavell, “An Autobiography,” pp. 131, 135-136, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: “Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic],” QUA.

⁶ Lavell often hyphenated “extra-mural,” or treated the term as two words (“extra mural”); I use the unhyphenated, one-word form.

benefit in the last third of the twentieth century.⁷ And, proving quite ready to discuss penal topics both in speeches and in publications, Lavell made himself a key interwar proponent of methods and ideas that were in some respects nourished by the same anti-exclusionary viewpoint conveyed in commentary like MacDonnell's article.

While various comments of Lavell's do in some way reveal the stance that he tended to adopt with respect to exclusionary mentalities or actions, few of those comments featured the actual terms "exclusion" or "inclusion" or their cognates. These are words of which educated North Americans have grown fond primarily within the past three or four decades. There are now many occasions on which we hear commentators or citizens make unflattering remarks about "exclusionary" behaviours or endorse "inclusive" approaches.⁸ Scholarly work that attended to penal issues began to say quite a bit about exclusion and inclusion at least by the mid-eighties, or perhaps somewhat earlier.⁹ In any case, the role that the adjective "inclusive" has come to play in current discourse on other public issues as well suggests that late-twentieth- and early-twenty-first-century people have indeed become more attuned to issues of exclusion and inclusion, and to these particular words themselves, than citizens were in the first two

⁷ See Ekstedt and Griffiths, *Corrections in Canada*, 272.

⁸ For one instance in which historical scholarship mentions "exclusion" or "inclusion," see Jarrett Rudy, *The Freedom to Smoke: Tobacco Consumption and Identity* (Montreal & Kingston: McGill-Queen's University Press, 2005), 4-6, 171.

⁹ See especially Stanley Cohen, *Visions of Social Control: Crime, Punishment and Classification* (Cambridge, UK: Polity Press, 1985), 219, 233, 266-271 (for the phrase "exclusion and inclusion," see 266); see also Richard V. Ericson, "Responsibility, Moral Relativity, and Response Ability: Some Implications of Deviance Theory for Criminal Justice," *University of Toronto Law Journal* 25 (1975): 25. For another example of a reference to "inclusion and exclusion," see Joan Sangster's quotation of a statement from Jane Jenson and Susan Phillips, "Regime Shift: New Citizenship Practices in Canada," *International Journal of Canadian Studies* 14 (1996): 114, in Joan Sangster, "Creating Social and Moral Citizens: Defining and Treating Delinquent Boys and Girls in English Canada, 1920-65," in *Contesting Canadian Citizenship: Historical Readings*, ed. Robert Adamoski, Dorothy E. Chunn, and Robert Menzies (Peterborough, ON: Broadview Press, 2002), 339. See also Sangster, "Reforming Women's Reformatories," 229.

thirds of the century. Today people, activities, or an ethos may be described as “inclusive” to indicate that they or it tend to give anyone the chance to participate, rather than neglecting or ostracizing certain types of individuals. In the first three quarters of the century, by contrast, this term appears to have been perceived as a descriptor that was applicable not primarily to the practice of including people and cultivating an anti-exclusionary ethos, but rather to the attribute of incorporating a full slate of certain other kinds of items (“April-November inclusive,” or “the very much larger and more inclusive problem of Dominion-Provincial fiscal relationships,” to offer just two examples).¹⁰ So by exploring how reformers evaluated “exclusion” and “inclusion,” this chapter opts for the lingo of a later era while attempting to identify certain sensibilities of liberal Canadians during the interwar years.

¹⁰ For the quoted phrases, see editorial, “Sobering Statistics,” *Globe and Mail*, December 28, 1954, p. 6, and editorial, “Significant Beginning,” *Globe and Mail*, June 29, 1951, p. 6. Using the full-text search feature in the ProQuest Historical Newspapers database of past *Globe and Mail* issues, I have (rapidly) examined statements employing “inclusive” in 126 editorials from 1950 to 2008. I have found few unambiguous instances from earlier than 1980 in which “inclusive” serves to describe the anti-exclusionary ethos that I am discussing here. But that is indeed the kind of inclusion which the term addresses in several editorials from the 1990s, and on many occasions after 2000. For a few possible examples from the fifties and sixties, see editorial, “Problems of the Artists,” *Globe and Mail*, June 30, 1951, p. 6; editorial, “The Time Has Come,” *Globe and Mail*, February 6, 1952, p. 6; editorial, “This Is Christmas,” *Globe and Mail*, December 25, 1952, p. 6; editorial, “Debate at San Francisco,” *Globe and Mail*, June 27, 1955, p. 6; editorial, “Make the Best the Goal,” *Globe and Mail*, April 7, 1958, p. 6; and editorial, “A Parental Duty,” *Globe and Mail*, March 3, 1961, p. 6. For a few of examples from the eighties and nineties, see editorial, “The Splinter Brokers,” *Globe and Mail*, July 6, 1981, p. 6; editorial, “Latin’s America’s Challenge,” *Globe and Mail*, December 12, 1994, p. A16; editorial, “A Frustrated Alternative Works to Change Spots: The Reform Party’s Goal Remains Power on Its Own Terms,” *Globe and Mail*, February 22, 1999, p. A14; editorial, “Let Jesus Be Jesus,” *Globe and Mail*, December 18, 1999, p. A22. For just two of more than twenty-five examples from the 2000s, see editorial, “Getting Past Lott,” *Globe and Mail*, December 21, 2002, p. A22, and editorial, “The Spencer Factor,” *Globe and Mail*, November 28, 2003, p. A22.

Even today (at least as of April 9, 2014), none of the definitions for “inclusive” in the online version of the *Oxford English Dictionary* fully reflects the particular use of this term that I am highlighting here. (My description perhaps has the most affinity with the definition that focuses on gender and vocabulary: the terminology in a written passage or spoken discussion can be described as “inclusive,” notes the online OED, if it is “non-sexist,” such that it “seeks to avoid sexual bias [such as that represented by the generic use of masculine pronouns], either by explicit reference to both sexes or by omission of inessential gender-specific terms.”) Yet at least some commentators have certainly begun to regard “inclusive” as a term with which they can describe the ethos that I have mentioned, even if the OED does not point this out.

My attempt in this chapter to highlight a certain degree of anti-exclusionary thinking among interwar reformers perhaps diverges in some respects from the way in which that era is often depicted. Historical studies dealing with Canadians who lived during the first four decades of the twentieth century tend to portray English-Canada as displaying, in fact, a rather strong exclusionary propensity—a propensity of which non-Anglo-Celtic persons received particularly unappealing reminders. Jewish refugees and prospective Chinese emigrants discovered, in some cases, that they would not be permitted to make Canada their home.¹¹ Other minorities learned that many citizens had a negative reaction to those who seemed not to display or adopt putatively “British” attributes.¹² And indeed, I am not trying to refute the notion that Canadians in the interwar period often gave the cold shoulder to those from racial or ethnic groups with which they believed they had little in common. Although most of the interwar reformers whom I discuss in this dissertation appear to have exhibited relatively good will when they commented on persons of non-British ethnicity, some of their comments do still supply evidence of the racially themed suppositions that many Canadians maintained. On one occasion, for example, Lavell wrote about a particular individual who displayed great religious “ferv[our]” but also engaged in theft, helping himself to other people’s chickens.

¹¹ See Irving Abella and Harold Troper, *None Is Too Many: Canada and the Jews of Europe, 1933-1948* (Toronto: Lester & Orpen Dennys, 1982); see Catherine Carstairs, *Jailed for Possession: Illegal Drug Use, Regulation, and Power in Canada, 1920-1961* (Toronto: University of Toronto Press, 2006), 30-31, 33-35.

¹² For a study which, among other things, highlights the fact that interwar criminal justice at times exhibited a rather sub-par streak when one or more of the persons to whom the crime in question pertained numbered among the non-“British” denizens of Canada, see Boudreau, *City of Order*, chapter 6, and 288 n. 128. On the other hand, regarding the relatively non-“exclusion[ary]” attitude of “progressive Protestant clergymen” in the 1910s and the interwar years, see Nancy Christie and Michael Gauvreau, *A Full-Orbed Christianity: The Protestant Churches and Social Welfare in Canada, 1900-1940* (Montreal & Kingston: McGill-Queen’s University Press, 1996), 186-190 (quotes on 188) (located with a Google Books search). Christie and Gauvreau more or less suggest that late-twentieth-century historiography concerning early-twentieth-century Canada tends to highlight racism a little inordinately—see 187-188, 328 n. 95.

Lavell considered it relevant to point out immediately that “[h]e was not a coloured man.”¹³ Nevertheless, by addressing the issue of exclusion while examining a topic other than racial thought, this chapter will show that Lavell, like other liberal figures in both the interwar period and later decades, preferred in many respects to include rather than exclude.

An exploration of Lavell’s commentary will remind us, therefore, that reformers often wanted Canadian mentalities or policies concerning penal matters to become, in a sense, less exclusionary. And the way in which he validated his views about such issues illustrates how strongly reformers were attracted to instrumentalist perspectives on punishment. As Lavell portrayed it, there was a great deal of overlap between the attributes of offenders and those of non-lawbreakers; the appropriate response to that reality was to acknowledge criminals to be comparable on many counts to regular Canadians, rather than perceiving offenders primarily as a strange and odious subset of the public. In Lavell’s view, moreover, a sound penal strategy would enable a nation to adopt measures associated with the “re-establishment of criminals as citizens”¹⁴—an expression conveying the same basic idea that people in the last third of the century would invoke by speaking of “reintegration.” He promoted these kinds of ideas and policies by noting offenders’ humanness, by pointing out injustices that exclusionary penalties tended to foster, or by making the more utilitarian suggestion that non-exclusionary penal initiatives would enable offenders to have greater success in their

¹³ See Alfred E. Lavell, *The Convicted Criminal and His Re-Establishment as a Citizen: With Special Reference to the Province of Ontario, Canada* (Toronto: Ryerson Press, 1926), 107.

¹⁴ For the quoted phrase, see the title of Alfred E. Lavell, “The Possible Re-Establishment of Criminals as Citizens,” *Social Welfare* 8, no. 5 (February-March 1926): 95-98, in MG28-I327 (Canadian Council of Churches fonds), microfilm reel H-2946, LAC.

attempt to embrace non-criminal conduct. In some cases, however, major forms of penal exclusion seemed to Lavell to have—or at least appeared as if they might possibly have—some real validity. As we examine his comments on certain occasions of that kind, we will discover that the notion of justice was not a sufficiently powerful moral source in his mind for him to portray it as a generally sound basis for affirming major types of exclusion. Instead, when he did endorse exclusionary penal options, he tended to depict those options as credible by drawing upon instrumentalist patterns of thought.

A Preacher from Prison

In 1938, while writing about the bygone days of late-nineteenth-century Kingston, the preacher, theologian, and commentator Salem Bland described the Lavells as “a family which for brilliance almost rivals Canada’s premium family, the Oslers.” The Lavells in question were Alfred and his many siblings, the offspring of Michael and Betsy Lavell.¹⁵ Sir William Osler—the member of the “premium family” who has been forgotten the least—had one particularly obvious thing in common with Michael Lavell: the medical profession in which both could claim membership. But Michael got more opportunity than most doctors to deal with prisoners—first as Kingston Penitentiary’s official surgeon, and then, beginning in 1885 and for a decade thereafter, as its warden.¹⁶ The Lavell children dove into a wide assortment of endeavours over the years: law, federal

¹⁵ Salem Goldworth Bland, “Some Memories of Old Kingston,” *Toronto Daily Star*, July 30, 1938, p. 4.

¹⁶ See Peter Oliver, “Lavell, Michael,” in *Dictionary of Canadian Biography*, vol. 13, University of Toronto/Université Laval, 2003-, accessed April 11, 2014, http://www.biographi.ca/en/bio/lavell_michael_13E.html; see Alfred E. Lavell, “An Autobiography,” pp. 5, 17, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: “Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic],” QUA; see Charles G. Roland, “Osler, Sir William,” in *Dictionary of Canadian Biography*, vol. 14, University of Toronto/Université Laval, 2003-, accessed April 11, 2014, http://www.biographi.ca/en/bio/osler_william_14E.html.

politics, medicine, academic scholarship, church leadership, homemaking, and so forth. Between 1914 and 1938, a number of offenders would learn of their impending prison sentences from Michael and Betsy's son Harry, who sat as a judge on the court established for Frontenac County.¹⁷ But the son who would engage the most with penal matters, as opposed to merely judicial affairs, was Alfred.

Thanks to his father's occupation, Alfred Lavell would later be able to assert that "my earliest recollections are of the inside of a penitentiary."¹⁸ And for over a year-and-a-half in the early 1890s, when he was in his early twenties, he got his own taste of being a Kingston Pen staffer. At first his work was of the white-collar variety, as he dealt with correspondence and so forth. But for the greater part of this period he seems to have carried out the more blue-collar function of putting and keeping the institution's electrical system in good working order.¹⁹ Although he bid the penitentiary itself goodbye after 1894,²⁰ during the next decade or so he helped to cultivate awareness about penal issues through his efforts as a speaker, and occasionally as a writer. His addresses or publications sometimes played the penal-reform tune loudly and clearly, and at least some of his speeches took place at events linked to the reformist camp, such as gatherings initiated by Toronto's Prisoners' Aid Association, or the Fourth Canadian Conference of

¹⁷ See Alfred E. Lavell, "An Autobiography," pp. 1, 9-12, 32, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA; see Salem Goldworth Bland, "Some Memories of Old Kingston," *Toronto Daily Star*, July 30, 1938, p. 4.

¹⁸ Alfred Lavell, remarks printed in Chief Constables' Association of Canada, *Proceedings of Nineteenth Annual Convention, Held at Windsor, Ontario, June 19, 20, 21, 1923* (Toronto: n.d.), p. 67, in RG 8-56 (Ontario Board of Parole, Miscellaneous Printed Material), Box 2, Envelope 8: "Ontario Board of Parole, misc. printed material, (1922-1923), envelope #8," Archives of Ontario (hereafter AO).

¹⁹ See Alfred E. Lavell, "An Autobiography," pp. 32-33, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA; see Alfred E. Lavell, "Story of an Attempt," p. 30, in A.E. Lavell fonds, Coll. 2214, Box 2, File 21: "Methodist Church. Education Policy, 1918," QUA.

²⁰ See Alfred E. Lavell, "An Autobiography," p. 33, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA.

Charities and Correction.²¹ It appears, however, that he often resorted to a largely “descriptive” discussion of the dynamics, people, or events at Kingston Pen. In one document hammered out in his later years, he indicated that audiences had heard this latter talk of his on “hundreds of” occasions,²² although one suspects that perhaps he could have provided a more accurate estimate here by saying “dozens” rather than “hundreds.” In any case, thanks to his addresses and articles, quite a few turn-of-the-century Ontarians got the chance to think about prisons from the perspective that Lavell had acquired while he was still a young man.

During this stage of his life, however, the issues that his ordinary duties most often allowed him to address were not penal topics, but rather religious matters—because Alfred Lavell, whom his daughter would later describe as “a man’s man,”²³ made a living as a Methodist preacher. In the second half of the nineteenth century, some Christian thinkers or leaders in Canada sought to explore, oppose, modify, or (in a few cases) promote “the Higher Criticism”—the attempt that certain biblical scholars had been making in recent decades to identify the processes which might have been involved in the creation, assembly, reorganization, and adjustment of the texts that now made up the Bible, or the processes via which the ideas and reports that those texts articulated might

²¹ See, for example, *Twenty-Sixth Annual Report of the Prisoners’ Aid Association of Canada, for the Year 1899-1900* (Toronto: Hill Printing Co., 1901; Ottawa: Canadian Institute for Historical Microreproductions, 1988), microfiche, CIHM no. 00675-1899-1900, pp. 31-32, and *Proceedings of the Fourth Canadian Conference of Charities and Correction: Toronto, September 25th and 26th, 1901* (N.p.: [1901?]), 33-35, 37.

²² See A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” pp. 24, 76, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA. One ad for a Lavell talk identified his topic as “Life in Kingston Penitentiary,” and referred to this “most Unique, Entertaining, and Powerful Lecture” as “[t]he easiest possible way to go to prison”—see clipping of ad, in A.E. Lavell fonds, Coll. 3612, Box 1, File 12: “Various Clippings, note, letters, copies, newspaper account; The Old Roads, 1941-1983,” QUA.

²³ “Notes by Nora Wade,” A.E. Lavell fonds, Coll. 3612, Box 1, File 3: “Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic],” QUA.

have been generated.²⁴ This type of scriptural scholarship, and the “modern” outlook of liberal theology more generally, intrigued Lavell in his early adulthood, and would appear to have received his lasting support.²⁵ Before 1905, however, only a small minority of Canadian Methodist clergy embraced these kind of ideas in a way that would necessarily have qualified as erroneous in the eyes of orthodox Protestants.²⁶ In Lavell’s own initial view, his tendency to perceive these types of “modern” ideas as compelling, and to suspect that certain longstanding Methodist tenets were erroneous, showed that he was not sufficiently on board with the church’s stance to permit him to become a clergyman. But the idea of working as a minister did still appeal to him, and certain individuals of whom he thought well believed this idea had real merit. Before long, therefore, church work became his primary pursuit after all. By the turn of the century, more than one Ontarian Methodist congregation had had Lavell as its minister.²⁷ During the first decade of the new century, there was one occasion on which Lavell’s theological or biblical perspective did in fact help to spark a sort of ecclesiastical donnybrook with a few more

²⁴ See Michael Gauvreau, *The Evangelical Century: College and Creed in English Canada from the Great Revival to the Great Depression* (Montreal & Kingston: McGill-Queen’s University Press, 1991), including 82, 87, 129-132, 144-147, 150-154, 173-174, 178-180, 223, 225.

²⁵ See Alfred E. Lavell, “An Autobiography,” pp. 8, 18-19, 23, 49, 53-54, 57, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: “Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic],” QUA; see Alfred E. Lavell, “The Story of an Attempt to Change (1) the Educational Policy of the Methodist Church in General and (2) the Policy and Methods of the Theological Faculty of Victoria University” (hereafter “Story of an Attempt”), pp. 12, 16, 18, 34, in A.E. Lavell fonds, Coll. 2214, Box 2, File 21: “Methodist Church. Education Policy, 1918,” QUA; see Alfred E. Lavell, *Back of the Bible: An Outline of the Historical Background of the Bible for the Non-Theological Student* (Toronto: Ryerson Press, 1948).

²⁶ See Gauvreau, *Evangelical Century*, including chapter 4, and 146-147, 179, 223-224, 289-291.

²⁷ See Alfred E. Lavell, “An Autobiography,” pp. 23, 33-42, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: “Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic],” QUA; see Alfred E. Lavell, “Story of an Attempt,” p. 12, in A.E. Lavell fonds, Coll. 2214, Box 2, File 21: “Methodist Church. Education Policy, 1918,” QUA.

theologically orthodox persons.²⁸ Lavell would appear, actually, to have gotten a certain degree of gratification out of the church politicking in which he occasionally engaged, or at least out of describing, later in life, how he had connived more astutely and acted more decisively than the dubious individuals who had been trying to hamper the worthwhile things that he was attempting to do.²⁹ Despite the irritation that he may have produced or felt in a case or two, his ministry in Methodist churches enabled him to work for about two decades in various spots in Ontario. Then the Great War spurred him to carry out chaplaincy duties with the Canadian military in other parts of the country and the world: in Britain, the Balkans, and Saskatchewan. By the beginning of the 1920s, Lavell's home province had provided him with a new responsibility. Rather than preaching to church-goers, he now took the lead managerial role in the parole system established by the Ontarian government.³⁰

Developing Parole in Canada and Ontario

Prior to the 1920s, Canada had incorporated a significant but in some respects limited form of parole into its penal practice.³¹ Even in the nineteenth century, prior to the advent

²⁸ See Alfred E. Lavell, "Story of an Attempt," pp. 16-18, 31-33, in A.E. Lavell fonds, Coll. 2214, Box 2, File 21: "Methodist Church. Education Policy, 1918," QUA; see Alfred E. Lavell, "An Autobiography," p. 54, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA; see also A.B. McKillop, *A Disciplined Intelligence: Critical Inquiry and Canadian Thought in the Victorian Era*, Carleton Library Series 193 (Montreal & Kingston: McGill-Queen's University Press, 2001), 209-210, 271 n. 9.

²⁹ See Alfred E. Lavell, "An Autobiography," pp. 52, 64-65, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA; see Alfred E. Lavell, "Story of an Attempt," pp. 31-33, in A.E. Lavell fonds, Coll. 2214, Box 2, File 21: "Methodist Church. Education Policy, 1918," QUA.

³⁰ See Alfred E. Lavell, "An Autobiography," pp. 88, 90-133, 135-136, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA.

³¹ My claims here about parole in Canada prior to the 1920s, and my statements concerning interwar parole in the rest of the chapter, are meant to describe practices used for adult offenders, not measures employed

of parole, many convicts in Canada had ended up being imprisoned for a shorter period than their sentences had suggested they would be. For one thing, from 1868 onward, the Penitentiary Act gave federal inmates the opportunity for “earned remission.” If a convict carried out his work adequately and managed not to contravene the institution’s rules, then perhaps only a truncated term in prison might be required of him—about eighty-five percent of the initial sentence (and after 1883, an even smaller portion), if he avoided any flubs.³² But there were also a number of other instances in which the nineteenth-century state ended up deciding that a given convict’s stay in prison should not in fact stretch out so long as the judge had originally indicated. The authorities would end such an offender’s incarceration early not by paroling him, but rather by providing a pardon.³³ Prisoners’ early departure from the slammer started to take the form of parole in 1899,

for juvenile delinquents. In general, the kinds of positivist or semi-positivist measures that this dissertation’s protagonists promoted in their discussion of adult corrections tended to be adopted quite a lot earlier in Canadian penal initiatives for juveniles than in adult courts or prisons—see also Minaker and Hogeveen, *Youth, Crime, and Society*, 56-64; see also A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” p. 75, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA. For information on various penal measures, including parole, to which Canadian authorities had recourse with regard to juvenile delinquents during the late nineteenth century or the first half of the twentieth, see, for example, Bryan Hogeveen, “‘You Will Hardly Believe I Turned Out So Well’: Parole, Surveillance, Masculinity, and the Victoria Industrial School, 1896-1935,” *Histoire sociale/Social History* 37, no. 2 (2004): 201-227; Bryan Hogeveen, “‘The Evils with Which We Are Called to Grapple’: Élite Reformers, Eugenicists, Environmental Psychologists, and the Construction of Toronto’s Working-Class Boy Problem, 1860-1930,” *Labour/Le Travail* 55 (Spring 2005): 37-68.

³² See Wetherell, “Rehabilitation Programmes,” 119-120, 122-123; see Oliver, *Terror to Evil-Doers*, 314. (Oliver’s comment on this page refers to “[e]arned remission.” The Penitentiary Act does not offer that exact phrase, as my wording in the text might imply, but the Act does use the same vocabulary, describing prisoners as getting “to earn a remission”—see *An Act respecting Penitentiaries, and the Directors thereof, and for other purposes*, SC 1868, c 75, s 62.)

³³ See Wetherell, “Rehabilitation Programmes,” 112-119 (“early” on 112); see Oliver, *Terror to Evil-Doers*, 175, 259-268; see Inquiry transcript, February 18, 1937, pp. 1837-1838, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume X – pps. 1823-1967 incl.,” AO.

thanks to the “ticket-of-leave” measures adopted by the federal government.³⁴ The document with which a convict was supplied when his parole began—a document known as a license or ticket-of-leave—showed that he was in fact a parolee rather than a prisoner running from the authorities. His acquisition of a ticket-of-leave indicated not that the length of his sentence was being pared down, but rather that, from now until the completion date of that sentence, he would be spared imprisonment itself, at least if the conduct which he embraced in that time, on the one hand, and the “conditions” which his ticket of leave specified, on the other, could claim full alignment. If it were discovered that he was engaging in activities it prohibited, or was butting heads with the parole system in some other sense, the authorities would have a basis for using “the portion of the term to which he was sentenced that remained unexpired at the time his license was granted,” and perhaps an extra interval as well, for another stint of incarceration.³⁵ In establishing its ticket-of-leave system, however, the federal government did not create many of the type of social-work-oriented employees who in the second half of the century would be given the role of ensuring, through “supervision,” that parolees developed non-criminal life patterns. From 1905 until about 1930, the country did, admittedly, have a Dominion Parole Officer to help facilitate ticket-of-leave business. But the work of this single figure would appear to have centred at least as much on sizing up the merits of paroling particular prisoners as on interacting with paroled men to determine whether

³⁴ See Wetherell, “Rehabilitation Programmes,” 112, 128 (“early” on 112); see “History of Parole in Canada,” Part 1, Parole Board of Canada website, accessed October 14, 2014, <http://pbc-clcc.gc.ca/about/hist-eng.shtml>.

³⁵ See Wetherell, “Rehabilitation Programmes,” 128, 130-132; see *An Act to provide for the Conditional Liberation of Penitentiary Convicts*, SC 1899, c 49 (long quotation from section 11; “conditions” from section 7 and from appended “Schedule”); see Lavell, *Convicted Criminal*, 80.

their activities were on the up-and-up.³⁶ There were in fact certain state officials to whom a convict with a ticket-of-leave would typically provide a basic monthly heads-up concerning his recent activities. The officials in question, however, were not parole officers, but rather the policemen in the community among whose inhabitants the convict numbered.³⁷ Ticket-of-leave practices were not, therefore, designed in exactly the same way that later Canadian parole would be.³⁸

Though penal reformers of the late nineteenth and early twentieth centuries were certainly keen on parole, the federal ticket-of-leave measures did not approach this penal idea in quite the same manner that such reformist voices had tended to advocate.³⁹ In the eyes of some of the kind of late-Victorian reformers found in the (American) National Prison Association, or in Toronto's Prisoners' Aid Association, parole would tend to do the most good as a rehabilitative measure if the sentence due to which the offender had

³⁶ See Wetherell, "Rehabilitation Programmes," 128, 133-134, 136, 147-153; see "History of Parole in Canada," Part 1, Parole Board of Canada website, accessed October 14, 2014, <http://pbc-clcc.gc.ca/about/hist-eng.shtml>; see David R. Murray, "Archibald, Walter Palmer," in *Dictionary of Canadian Biography*, vol. 15, University of Toronto/Université Laval, 2003-, accessed April 7, 2014, http://www.biographi.ca/en/bio/archibald_walter_palmer_15E.html; see *Report of the Canadian Committee on Corrections: Toward Unity: Criminal Justice and Corrections* (Ottawa: Queen's Printer, 1969) (hereafter Ouimet Report), 332-333.

³⁷ See Wetherell, "Rehabilitation Programmes," 131-132, 142-144; see Greg Marquis, *Policing Canada's Century: A History of the Canadian Association of Chiefs of Police* (Toronto: University of Toronto Press, 1993), 143; see *An Act to provide for the Conditional Liberation of Penitentiary Convicts*, SC 1899, c 49, s 6.

³⁸ On the other hand, if paroled convicts in the first two decades of the twentieth century did not always interact extensively with the actual Dominion Parole Officer (which in these years was W.P. Archibald), it appears that many of them may perhaps have interacted quite a bit with other non-policemen who, although not state employees, harboured a few of the reformative, "supervis[ory]" objectives that we might associate with a parole officer's viewpoint. This was due especially to Archibald's attempts to match parolees with such people, some of them from groups that focused on "prisoners' aid," and some of them from the business sphere, for example. Accordingly, ticket-of-leave practices in this era may have done more to generate social-work-oriented endeavours pertaining to parolees than we might suppose when I indicate that early-twentieth-century federal authorities described just one of their official employees as a "parole officer." See Wetherell, "Rehabilitation Programmes," 150-151, 153.

³⁹ See also A.E. Lavell, "History of Prisons in Ontario 1792-1932 [1937]," p. 75, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: "History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.," QUA.

been incarcerated prior to parole had been of the “indeterminate” type. Some reformers believed that in many instances, there ought not to be a particular date established from the outset for a prisoner’s departure from the institution. Instead, the proper moment at which to have his prison term conclude (and his parole begin) was at whatever point it became clear that he had grown inclined to reject crime, whether that point turned out to be in the near future or at a much later time.⁴⁰ Prior to World War II, however, federal criminal-justice policy regarding adult offenders tended not to adopt the idea of indeterminate sentencing, at least not in large-scale or obvious ways. Admittedly, the practices that the federal government established in its provision of tickets-of-leave did help to endow sentences with a certain degree of indeterminacy.⁴¹ It was often in the second half of his sentence that an offender would have a real chance of obtaining a ticket-of-leave. But even if fewer offenders had a ticket-of-leave conferred upon them prior to the halfway mark, there was actually no point in a prison term, even in its early

⁴⁰ See Rothman, *Conscience and Convenience*, including 32-33; see *Twenty-Second Annual Report of the Prisoners’ Aid Association of Canada, for the Year 1896-96* (Toronto: Dudley & Burns, 1897; Ottawa: Canadian Institute for Historical Microreproductions, 1988), microfiche, CIHM no. 00675-1895-96, pp. 7, 9-11, 34; see *Twenty-Sixth Annual Report of the Prisoners’ Aid Association of Canada, for the Year 1899-1900* (Toronto: Hill Printing Co., 1901; Ottawa: Canadian Institute for Historical Microreproductions, 1988), microfiche, CIHM no. 00675-1899-1900, pp. 42-43. However, in the American states where certain types of indeterminate sentencing did acquire a little momentum, the sentences in question did not typically exhibit complete indeterminacy—some particular date was usually established as the point after which the state could wait no longer to call the convict’s incarceration to a halt, even if his criminal streak had not yet evaporated. See Rothman, *Conscience and Convenience*, 33; see Peter Oliver, “‘To Govern by Kindness’: The First Two Decades of the Mercer Reformatory for Women,” in *Essays in the History of Canadian Law, Volume V: Crime and Criminal Justice*, ed. Jim Phillips, Tina Loo, and Susan Lewthwaite ([Toronto]: The Osgoode Society, 1994), 533. At least some Canadian reformers’ pro-indeterminate-sentencing remarks pertained to this latter kind of indeterminacy—see *Twenty-Second Annual Report of the Prisoners’ Aid Association of Canada, for the Year 1896-96*, p. 9.

⁴¹ See Inquiry transcript, February 18, 1937, pp. 1837-1838, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume X – pps. 1823-1967 incl.,” AO; see C.W. Topping, “What about Parole in Canada?,” in *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949* (Toronto: Canadian Penal Association, [1949]), 60.

stages, at which the law denied the state the ability to provide this kind of parole.⁴²

Actually, in some ways this kind of indeterminacy had already been provided by the pardons of the nineteenth century.⁴³ However, neither sentences that could be ended thanks to a pardon nor prison terms that could be truncated with a ticket-of-leave were typically described as “indeterminate.”⁴⁴ After all, an unreformed prisoner who qualified for neither a pardon nor a ticket-of-leave could still identify the date by which he would, in any event, have finally completed his whole term in prison, and would therefore get to depart, thanks to the fact that there had been an actual length of time laid out in the sentence which the judge had provided at the outset. By contrast, whether or not many late-nineteenth-century reformers regarded complete indeterminacy as an essential attribute of well-designed incarceration, quite a few of them certainly did employ the actual phrase “indeterminate sentence” to identify the type of prison terms that they were advocating.

⁴² See “History of Parole in Canada,” Part 1, Parole Board of Canada website, accessed October 14, 2014, <http://pbc-clcc.gc.ca/about/hist-eng.shtml>; see *An Act to provide for the Conditional Liberation of Penitentiary Convicts*, SC 1899, c 49, s 1.

⁴³ See Topping, “What about Parole in Canada?,” 60.

⁴⁴ Admittedly, in Justice minister David Mills’ description in 1899, the ticket-of-leave initiative would “introduce into the administration of justice in Canada the indeterminate sentence system.” Again, the initiative “is an adaptation of the principle of what are called indeterminate sentences in the United States, but which in England are usually designated as in this bill.” But “indeterminate sentencing” did not number among the phrases with which the initiative was identified in other MPs’ commentary in Parliament. See *Senate Debates*, 8th Parl, 4th Sess, Vol. 1 (30 June 1899) at 562-563 (David Mills) (see also 563), and (4 July 1899) at 588 (David Mills) (see also 589-590), and (7 August 1899) at 1048-1049; see *House of Commons Debates*, 8th Parl, 4th Sess, Vol. 3 (5 August 1899) at cols. 9599-9609, and (7 August 1899) at cols. 9726-9731. For remarks which would suggest that the genre of indeterminate sentencing for which early-twentieth-century reformers rooted struck them as different than the sentences which typified judicial and penal activity in Canada, even though penalization now acquired part of its tenor from imprisonment-truncating tickets of leave, see Parliament, “Report of the Royal Commission on Penitentiaries,” by G.M. MacDonnell, Frederick Etherington, and J.P. Downey, in *Sessional Papers*, No. 252 (1914), at 38-40, 44, <http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/macdonnell1914-eng/macdonnell1914-eng.pdf>.

If the notion of indeterminate sentencing obtained more support from many reformers than from the creators of the ticket-of-leave, then perhaps we should not be too confident in our description of such reformers' stance with respect to imprisonment in general. When we first learn of these reformers' endorsement of parole, we might imagine that they regarded Canadian criminal justice as majoring too heavily in incarceration. That might, however, be an erroneous assumption. Since they tended to promote not just parole itself, but rather the creation of indeterminate carceral terms from which convicts could be paroled, it would appear that one of their strongest beliefs may have actually been that some offenders' stints in prison required *extension*.⁴⁵ In various scholars' telling, parole amounted to a power-enhancing ingredient in the authorities' penal endeavours, rather than a power-attenuating phenomenon. Now, if the authorities called a halt to a convict's carceral captivity by conferring a parole upon him, they would still have a while to find out whether the pursuits in which he became involved would remain non-criminal as he sallied forth into milieus other than the one provided by prison. Thanks to parole, admonitions or penalties could readily kick in if he did not watch his p's and q's.⁴⁶ Moreover, after American authorities put parole and indeterminate sentencing to work in their criminal-justice endeavours, the sentences to which they began to resort may perhaps have allowed even the carceral components of convicts' penalties to implement a lengthier type of penalization than had typically been attempted

⁴⁵ See Rothman, *Conscience and Convenience*, 33; see Oliver, "'To Govern By Kindness,'" 532-536; see *Twenty-Second Annual Report of the Prisoners' Aid Association of Canada, for the Year 1896-96*, pp. 7, 9.

⁴⁶ See Rothman, *Conscience and Convenience*, 176-177, 193-194, 197; see Wetherell, "Rehabilitation Programmes," 128, 130-132, 138, 140, 155-156.

in earlier decades.⁴⁷ Indeed, even the general attributes of the semi-indeterminate sentencing employed in interwar Ontario (which we will explore over the next two pages) suggest that the periods for which offenders were incarcerated after the courts started to avail themselves of indeterminate sanctions may have ended up being as great or even greater than in the era before these new sanctions were developed. Nevertheless, commentary in which parole was endorsed could at times involve some degree of rhetoric portraying imprisonment as an often second-rate penal measure to which the authorities gravitated a little too readily. This chapter will tend to highlight reformist suggestions of that latter type.

In any event, Canadian criminal justice turned out to provide opportunities for the establishment not only of the federal ticket-of-leave measures, but also of provincial parole initiatives. Throughout Canada's century-and-a-half as a federation, the country's criminal-justice practices have required both federal and provincial authorities to engage in penal activity. In general, only in the case of at least a two-year sentence has a criminal's punishment involved incarceration in a federal penitentiary. When offenders are to be penalized with briefer stints of imprisonment, the carceral task has been carried out by provincial institutions.⁴⁸ In adult parole, by contrast, the national state called the shots both with regard to penitentiary inmates and (during the early and mid-twentieth century) with respect to the majority of provincially incarcerated convicts. Provincial parole boards did start up in a few provinces, including BC (at mid-century) and Quebec

⁴⁷ See Rothman, *Conscience and Convenience*, 12, 194-197.

⁴⁸ See Ekstedt and Griffiths, *Corrections in Canada*, 46-48.

(in the late 1970s).⁴⁹ The Ontarian government, however, decided to engage in this aspect of criminal justice already in the 1910s.

As this central province involved itself in parole, it created measures that sounded a little more like the reformers' approach than federal practices did. By the latter part of the Great War, incarceration in Ontario could feature both an indeterminate phase in a provincial prison and a provincial version of parole rather than a federal ticket-of-leave. One part of the new approach had materialized near the beginning of the decade. The Ontario Parole Commission (as the Board of Parole was known at first), an entity that the authorities founded in 1910, gave the province a means of forming and voicing its own views about which particular inmates in Ontarian penal institutions ought to be first in line for a ticket-of-leave.⁵⁰ But the next few years brought the more crucial innovations. From 1913 onward, an Ontarian court conviction could generate a two-part provincial prison sentence, a sentence with both a "definite" component and a second, indeterminate segment, which together might permit much more than two years of internment in a provincial institution, even if neither part of the sentence could by itself require such an extensive term. The court that created such a sentence for a given offender could make either of these two portions relatively minor (several months, for example) or more

⁴⁹ See Ouimet Report, 332; see Ekstedt and Griffiths, *Corrections in Canada*, 283; see Curt T. Griffiths and Alison Cunningham, *Canadian Corrections* (Scarborough, ON: Nelson Thomson Learning, 2000), 323.

⁵⁰ See Lavell, *Convicted Criminal*, 82-84; see Alfred E. Lavell, "An Autobiography," pp. 132-133, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA; see Ontario, Legislative Assembly, "Forty-Fourth Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, Being for the Year Ending 31st October 1911," in *Sessional Papers*, No. 25 (1912), at 47; see Ontario, Legislative Assembly, "Forty-Fifth Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, Being for the Year Ending 31st October 1912," in *Sessional Papers*, No. 25 (1913), at 47, 56; see Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1925," in *Sessional Papers*, No. 16 (1926), at 8-9.

protracted (sometimes a few months more than two years, in the case of the definite segment, and just under two years, in the case of the indeterminate portion). In a few instances, therefore, a convict's sentence from an Ontarian judge could end up entailing more than a four-year stint in a provincial prison—a little more than half of it due to the definite component and a little under half due to the indeterminate segment. In other cases the court might ensure a quicker ending, perhaps with a year for the first part and a year-and-a-half for the second, or perhaps three months for the first and twelve months for the second. The definite component functioned as all sentences had up to this point; accordingly, parole for an offender possessing one of these two-part sentences could still begin even during the definite phase, if federal officials decided that a ticket-of-leave would be in order. But if those personnel had made no such decision by the time he completed this component of his term, then the indeterminate period provided Ontarian authorities (from 1916 onward) with the opportunity to parole him themselves. Provincial officials could do so as soon as the indeterminate phase began, or at some later date; but in any case, the convict could not remain marooned in prison past the end of the limited indeterminate period that the judge had selected at the outset. The new ability of the province to parole inmates itself gave the Ontario parole board the obviously important task of identifying the particular prisoners who appeared as though they truly would move forward lawfully, and who therefore could be outfitted with an actual parole.⁵¹ However,

⁵¹ See *An Act to Amend the Prisons and Reformatories Act*, SC 1913, c 39, s 1; see *An Act to Amend the Prisons and Reformatories Act*, SC 1916, c 21, s 2; see Lavell, *Convicted Criminal*, 69-70, 74, 82-84, 86; see [Alfred Lavell] to Judge Denton, Senior Magistrate, City Hall, Toronto, May 4, 1923, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 7, AO; see Alfred E. Lavell, "An Autobiography," pp. 133, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA; see A.E. Lavell, "History of Prisons in Ontario 1792-1932 [1937]," p. 74, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: "History of Prisons in

the province obtained personnel for its parole board not by hiring them as full-time employees, but rather by finding a set of individuals who would fulfill this function on the side. The authorities would also need a full-time official who could concentrate on managing the actual provision of parole. In 1920, that need allowed Lavell to begin his decade in this facet of the penal system.⁵²

Thanks in large part to Lavell's efforts, parole quickly expanded to become a much more significant component of provincial penal activity during the 1920s. It appears that several times more convicts per year found themselves on provincial parole in the twenties than in the preceding decade.⁵³ Before too long, Lavell had plenty of work to delegate to additional parole officers.⁵⁴ Parole itself, however, was not the only non-carceral penal practice that made Lavell a busy man during the first half of the interwar period. Indeed, he displayed a special fondness for a slightly different initiative through

Ontario (Typescript), 1892-1937, 223 pp.,” QUA; see Alfred E. Lavell, “The Treatment of the Criminal in Ontario,” *Canadian Journal of Religious Thought* 2, no. 4 (July-August, 1925): 287; see A.E. Lavell, “Criminals and Citizenship,” *Dalhousie Review* 6, no. 2 (July, 1926): 156.

⁵² See Alfred E. Lavell, “An Autobiography,” pp. 131, 133, 135-136, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: “Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic],” QUA; see “The Ontario Board of Parole,” May 22, 1923, attachment to memorandum, A.E. Lavell to H.C. Nixon, Provincial Secretary, May 22, 1923, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 7, AO; see Lavell, “Treatment of the Criminal in Ontario,” 287; see Inquiry transcript, February 18, 1937, pp. 1851, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume X – pps. 1823-1967 incl.,” AO.

⁵³ See, for instance, Ontario, Legislative Assembly, “Forty-Ninth Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, Being for the Year Ending 31st October 1916,” in *Sessional Papers*, No. 26 (1917), at 46; Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1920,” by Alfred E. Lavell, in *Sessional Papers*, No. 57 (1921), at 7; see Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1928,” in *Sessional Papers*, No. 16 (1929), at 5; see “The Ontario Board of Parole,” May 22, 1923, attachment to memorandum, A.E. Lavell to H.C. Nixon, Provincial Secretary, May 22, 1923, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 7, AO.

⁵⁴ See Alfred E. Lavell, “An Autobiography,” pp. 136-137, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: “Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic],” QUA; see Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1922,” in *Sessional Papers*, No. 24 (1923), at 5.

which some offenders' sentences ended up revolving largely around "extramural employment" rather than actual imprisonment. Even if much of the determinate component of a convict's prison term still lay ahead, so that there was not yet any way for the province to parole him, and even if the federal authorities could not be expected to fork over a ticket-of-leave at this point, Lavell might still want to see that offender keep functioning as a worker in the mainstream economy rather than being immobilized at length through incarceration.⁵⁵ In late 1920 and early 1921, this kind of "extramural employment" began to materialize for certain offenders as the authorities bought into Lavell's suggestion that he proceed with the provision of such opportunities.⁵⁶ The extramural work in which these convicts would engage would sometimes be supplied by employers who were new to them, but in other cases by those for whom they had been working up till the time at which they were accosted for their crimes.⁵⁷ Sometimes the extramural opportunity eliminated incarceration from only part of a convict's daily timetable, since Lavell could specify that prison would still serve as the nocturnal dwelling of this particular individual. The initiative put other extramural convicts, by contrast, in position to slumber in their own beds at home, without any continuing need to log additional hours in a carceral establishment.⁵⁸ In neither case did the selection of an

⁵⁵ See Lavell, *Convicted Criminal*, 85-89.

⁵⁶ See Ontario, Legislative Assembly, "First Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1921," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1922), at 5-6; see Lavell, *Convicted Criminal*, 88; see Alfred E. Lavell, "An Autobiography," p. 140, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA.

⁵⁷ See Ontario, Legislative Assembly, "First Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1921," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1922), at 7.

⁵⁸ See Ontario, Legislative Assembly, "First Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1921," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1922), at 7; see Ontario, Legislative Assembly, "Annual Report of the

offender for such employment change the fact that the authorities continued to deem him a prisoner, in legal terms.⁵⁹ And at a more tangible level, if anything that the convict did, whether at work or during his other activities, looked dubious to Lavell, the latter could scupper the offender's job and have the prison treat him as a full-time inmate once more. But as long as he did not turn out to be one of these relatively unusual convicts who flubbed their extramural opportunity,⁶⁰ the portion of his definite sentence that he had not yet fulfilled would require virtually no incarceration during the daytime, at least. In short, Lavell's extramural practices constituted an initiative similar to the "work release" measures used in Canada during the last third of the twentieth century.⁶¹ Although Ontario continued to parole prisoners more often than it selected them for extramural work,⁶² this latter option did make hundreds of convicts' imprisonment briefer than they might otherwise have expected. And in Lavell's view, both parole and the extramural

Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 6-7; see Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra-Mural Employment of Sentenced Persons for the Year Ending October 31st, 1923," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1924) at 5; see Lavell, *Convicted Criminal*, 90.

⁵⁹ See Lavell, *Convicted Criminal*, 90; see Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra-Mural Employment of Sentenced Persons for the Year Ending October 31st, 1923," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1924) at 6.

⁶⁰ See Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 7; see Ontario, Legislative Assembly, "Fifty-Seventh Annual Report upon the Prisons and Reformatories, the Ontario Board of Parole, and the Commissioner of Extra-Mural Employment of the Province of Ontario, Being for the Year Ending 31st October 1924," in *Sessional Papers*, No. 24 (1925), at 32; see Ontario, Legislative Assembly, "Fifth Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1925," by Alfred E. Lavell, in *Sessional Papers*, No. 61 (1926), at 14; see Lavell, *Convicted Criminal*, 92; see also Ontario, Legislative Assembly, "Sixth [sic] Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1928," by Alfred E. Lavell, in *Sessional Papers*, No. 33 (1929), at 6.

⁶¹ See Ekstedt and Griffiths, *Corrections in Canada*, 272.

⁶² See the figures provided in the various yearly reports concerning the parole and extramural initiatives in the 1920s, in the Ontario *Sessional Papers*.

system helped to ensure that Ontarian penal activity gained a valuable dose of the vitality that non-carceral methods could foster.⁶³

Although Lavell's work required him to focus the most on managing the provision of actual parole and extramural opportunities to particular offenders, he also paid attention to the need to cultivate a belief in these practices among the broader public.⁶⁴

Not every parole pleased the citizenry or all other state personnel. A particularly potent type of flak concerning Ontarian parole practices took the form of negative comments and efforts by William Wallace, a prominent Toronto policeman.⁶⁵ In general, Lavell sought to stay on good terms with leading policemen, although certain ones in Toronto "maintained the attitude of a combination refrigerator and steel bars."⁶⁶ At least a few other noteworthy figures in the police community also raked parole over the coals on an occasion or two, but most did not do so very readily.⁶⁷ In any case, since quite a few citizens besides Wallace sometimes looked askance at parole,⁶⁸ it is in no way surprising that speaking or writing about the strengths of this penal initiative, or about other similar

⁶³ Another major type of non-carceral penalty that Lavell advocated, although he does not seem to have been involved (at least not to any significant degree) in its management, was probation—see Alfred E. Lavell, "The Cure of the Criminal," in *Addresses Delivered before the Canadian Club of Toronto: Season of 1920-21* (Toronto: Warwick Bros. & Rutter, 1922), 163; [Alfred Lavell,] Chief Officer to O.M. Biggar, Chief Electoral Officer, October 26, 1921, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 4, AO; Lavell, *Convicted Criminal*, ix, 79.

⁶⁴ See Alfred E. Lavell, "An Autobiography," p. 136, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA.

⁶⁵ See Marquis, *Policing Canada's Century*, 140-142.

⁶⁶ See "Parole Archives," in A.E. Lavell fonds, Coll. 2214, Box 2, File 26: "Parole Board of Ontario. Archives, 1920-1925," QUA (note that there are two documents in this file titled "Parole Archives"). Lavell was describing "[Chief] Dickson and the Inspectors of Detectives."

⁶⁷ See, for example, Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1922," in *Sessional Papers*, No. 24 (1923), at 7-8; see Marquis, *Policing Canada's Century*, 141; see also Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 7-8.

⁶⁸ For hints of this, see Lavell, "Possible Re-Establishment of Criminals as Citizens," 98.

reformist ideas, would strike Lavell as a valuable activity.⁶⁹ The frequency of his talks might surprise us a little, however. At one point in 1925, he indicated that his speeches concerning topics like parole were taking place almost every week.⁷⁰ The public therefore appears to have heard from Lavell on a rather large number of occasions. Many of these will not be explored in this chapter. But an examination of a portion of the things that he said or wrote to validate non-carceral practices like parole, or to champion other ideas about crime or punishment, will put us wise to his anti-exclusionary sensibilities, and to his instrumentalist take on penal issues.

Promoting Inclusionary Penal Ideas

From Lavell's perspective, a penal system was not operating in the right way if it did not devote a good deal of attention to offender reformation. But he perceived a stronger flavour of retribution or deterrence than of reformation in most of the criminal justice that authorities had provided during previous eras, and in the penal mind-set even of quite a few interwar Canadians. Lavell found fault with such habits and mentalities.⁷¹ In his view, there tended to be a less than ethically wholesome streak in the attitudes of people who practiced robust retributive punishment.⁷² Indeed, as he saw it, a true attempt to heed "the highest authority on ethics," Jesus Christ, would stop people from assuming that they could permissibly embrace either "revenge" or the ethos of "an eye for an

⁶⁹ See [Alfred Lavell] to Judge E. Reynolds, December 10, 1925, RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 11, AO.

⁷⁰ See *ibid.*

⁷¹ See Lavell, *Convicted Criminal*, 23-33, 54-55, 63-64.

⁷² See *ibid.*, 27, 30, 54.

eye.””⁷³ But in any case, if present-day Canadians were to try to buy into wholehearted varieties of retribution and deterrence, and therefore to punish crime in truly hardboiled ways, they would soon find that such practices turned them off, and their criminal justice would not end up growing a whole lot grimmer after all. On this front, interwar citizens would never manage to match what people of former eras had shown they could do. In Lavell’s estimation, “our punishments compared with those of the past are as a feather to a flail,” and by this point Canadians simply “[h]a[d] not the nerve” to adopt ferocious penal measures. Accordingly, the putatively deterrent or retributive facets of penal practice in interwar Canada sometimes fell rather flat.⁷⁴ Reformatory genres of punishment, however, tended to win the affirmation of those with an ethical outlook like Lavell’s.⁷⁵ Furthermore, a society that hoped not to end up struggling with any more criminal deeds cooked up by the offenders whom it had already convicted actually had a straightforward *need* to establish penal policy which focused on reforming these lawbreakers. After all, prison itself would typically deprive them of their criminal powers for only a limited number of years.⁷⁶ Drawing their hearers’ attention to this latter consideration was in fact one of the most elementary and central ways in which twentieth-century penal reformers defended a rehabilitative approach to corrections.

⁷³ See *ibid.*, 54 n. 1; see Lavell, “Treatment of the Criminal in Ontario,” 284; see Lavell, “Possible Re-Establishment of Criminals as Citizens,” 97.

⁷⁴ For the first quotation, see Lavell, *Convicted Criminal*, 63 (and see 29-31, 55, 64); for the second quotation, see Lavell, “Possible Re-Establishment of Criminals as Citizens,” 97; see also Lavell, “Criminals and Citizenship,” 154.

⁷⁵ See Lavell, *Convicted Criminal*, 55.

⁷⁶ See *ibid.*, 56; see [Alfred Lavell] to Judge Denton, Senior Magistrate, City Hall, Toronto, May 4, 1923, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 7, AO; see Lavell, “Treatment of the Criminal in Ontario,” 285-286; see Lavell, “Possible Re-Establishment of Criminals as Citizens,” 97; see Lavell, “Criminals and Citizenship,” 153-154; see “The Prevention of Crime,” *New Outlook*, June 15, 1927, p. 18; see Lavell, “Crime and Criminals,” 62.

If Lavell thought that Canadian penal practice had not yet been shaped as strongly as necessary by a desire to reform offenders, he also believed his society had acquired an excessively strong tendency to imprison its convicts. In the 1920s and early 1930s, Lavell claimed that the prisons and similar establishments which the Ontarian provincial authorities had developed could currently be characterized as “excellent.”⁷⁷ Even so, the criminal inspiration that certain “vicious” inmates tended to end up supplying to others could prove rather potent. Having to live in the hoosegow, therefore, would sometimes “contaminat[e]” an offender, particularly one who had not yet acquired much experience either as an adult or as a prisoner, suggested Lavell on a few occasions.⁷⁸ Admittedly, the sanctions that he advocated did in fact include very lengthy stays in a carceral establishment for certain types of offenders, such as “vicious and dangerous or persistent” lawbreakers, on the one hand, or some kinds of prostitutes, on the other.⁷⁹ But especially during his first several years of parole work, he tended to imply that incarceration should no longer continue to shape penal activity quite so potently as in the past.⁸⁰

⁷⁷ See Lavell, *Convicted Criminal*, 89; see A.E. Lavell, “The Supervision of Paroled Persons,” in *Proceedings of the Canadian Conference on Social Work, Toronto, Ontario, April 28, 29, 30 and May 1, 1930* (Ottawa: Metropolitan Life Insurance Company, 1930), 209-210; see also Lavell, “Possible Re-Establishment of Criminals as Citizens,” 96-97; see also Lavell, “Treatment of the Criminal in Ontario,” 286.

⁷⁸ See Lavell, *Convicted Criminal*, 51, 59, 89; see Lavell, “Possible Re-Establishment of Criminals as Citizens,” 97; see Lavell, “Criminals and Citizenship,” 156; see also Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1922,” in *Sessional Papers*, No. 24 (1923), at 8-9, and Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1923,” in *Sessional Papers*, No. 24 (1924), at 7; see also Lavell, “The Supervision of Paroled Persons,” 209; see also inquiry transcript, February 18, 1937, pp. 1879-1880, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume X – pps. 1823-1967 incl.,” AO.

⁷⁹ See Lavell, *Convicted Criminal*, 51, 53.

⁸⁰ See especially Lavell, “The Cure of the Criminal,” 160, 163-164, and Lavell, “Treatment of the Criminal in Ontario,” 286; see also [Alfred Lavell], “Basal Principles of the Board of Parole,” March 1931, in A.E. Lavell fonds, Coll. 2214, Box 2, File 25: “Parole Board of Ontario, 1921-1935,” QUA.

Lavell's belief that extensively incarcerated convicts might "becom[e] unfitted for freedom and re-establishment"⁸¹ contributed in some degree to what might be regarded as a surprising stance of his on one particular issue. A number of Ontarians who ambled through the items in the *Globe* on February 10, 1921, would have devoted a few moments to an article that described a Lavell talk on crime and punishment, a talk to which about 185 people had listened at an event provided the day before by the Canadian Club in Toronto.⁸² Perhaps many citizens might not have tended to associate a reformist perspective with the kind of punishment highlighted in the *Globe* article's headline: "Good Spanking to Suit Crime."⁸³ If Lavell took the same approach at the event itself that we find in the written version of the speech which was later provided in the volume of Canadian Club talks from 1920 and 1921, then it would appear that he actually shared only brief reflections on corporal punishment, with the talk as a whole offering a much broader exploration of penal affairs. Still, "spanking" could, as the headline implied, count as a worthy penal option in Lavell's mind—partly because the outcomes springing from incarceration tended not to include as much offender reformation as he deemed it desirable for penal practices to generate. Since some inmates "g[ot] all rusted up" during a substantial prison term, the possibility of using non-carceral sanctions instead ought to spark the state's interest. Providing a reprimand to many convicts by means of probation

⁸¹ See Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1920," by Alfred E. Lavell, in *Sessional Papers*, No. 57 (1921), at 9.

⁸² See *Addresses Delivered before the Canadian Club of Toronto: Season of 1920-21* (Toronto: Warwick Bros. & Rutter, 1922), 291.

⁸³ "Good Spanking to Suit Crime," *The Globe*, February 10, 1921, p. 9; see also "'Easy Money' Scarce, Hence Crime Wave: Dr. Lavell Would 'Spank' Law-Breakers and Abolish Crime Movies," *Toronto Daily Star*, February 9, 1921, p. 11. In this dissertation, nearly all of the articles that I cite from *The Globe* (or from the *Globe and Mail*) and the *Toronto Daily Star* have been found and perused with the Proquest Historical Newspapers databases for the *Globe and Mail* and the *Toronto Star*. However, I have generally omitted any mention of these databases from the footnotes.

would allow Canada to come out ahead. And at times, thought Lavell, to punish sagaciously would be to bestow a “short, sharp” helping of hardship upon the convict—perhaps by jailing him briefly and strapping him—and also to establish an extensive time frame in which he would be spared incarceration but still receive significant “observation” through some measure like parole.⁸⁴ Lavell was not merely suggesting something strange at this one particular Canadian Club event; a similar perspective on corporal punishment surfaced in his commentary at other points too in the interwar period.⁸⁵ A sentence that involved a strapping could convey the criminal-justice system’s point, and might also help the authorities to decide that the potentially more baneful sanction of major incarceration could be largely discarded in this particular case.

Interwar Ontario was certainly home to a number of people who spoke disparagingly about corporal punishment; the chapters ahead will give us a taste of a few of those figures’ mentality. By and large, however, Canadians of the 1920s tended not to frown upon the idea of getting the penal message across to certain criminals by means of a limited helping of bodily pain. Indeed, by the early 1920s, a somewhat broader range of

⁸⁴ See Alfred E. Lavell, “The Cure of the Criminal,” in *Addresses Delivered before the Canadian Club of Toronto: Season of 1920-21* (Toronto: Warwick Bros. & Rutter, 1922), 159-160, 163-164.

⁸⁵ See Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1920,” by Alfred E. Lavell, in *Sessional Papers*, No. 57 (1921), at 9; see Lavell, *Convicted Criminal*, 49-50, 57-58; see also [Alfred Lavell,] Chief Officer to O.M. Biggar, Chief Electoral Officer, October 26, 1921, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 4, AO (compare page 4 of this letter with page 9 of the above-cited “Report of the Ontario Board of Parole for the Year Ending October 31st, 1920”); see also Ontario, Legislative Assembly, “Fifth Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1925,” by Alfred E. Lavell, in *Sessional Papers*, No. 61 (1926), at 6-7; see also [Alfred Lavell,] Chief Officer to Judge Emerson Coatsworth, Committee on Administration of Criminal Justice, Canadian Bar Association, August 24, 1927, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 14, AO. For other complimentary comments of Lavell’s about corporal punishment, see, for example, Alfred E. Lavell, “Crime and Criminals: What is the Matter?,” *Social Welfare* 16, no. 3 (June 1936): 62, in MG28-I327 (Canadian Council of Churches fonds), microfilm reel H-2948, LAC; inquiry transcript, February 18, 1937, pp. 1873-1874, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume X – pps. 1823-1967 incl.,” AO.

scenarios than in the first decade of the century would appear to have numbered among the circumstances in which a convict might find that the court had decided he was to be not only incarcerated, but also whipped.⁸⁶ To no surprise, some of those who affirmed such physical sanctions were figures whose mind-set concerning criminal justice exhibited a generally conservative bent, such as the editorialist of *Saturday Night* in the 1920s.⁸⁷ But even certain figures who tended to embrace either positivist or liberal varieties of reform also put in a good word for corporal punishment. Robert Bickerdike, a Member of Parliament from Montreal, became known in the 1910s for his belief that Canada should practice a death-penalty-free version of criminal justice.⁸⁸ Despite his later penchant for inveighing against the tradition of capital punishment, Bickerdike had suggested in 1909 that the state would sometimes do well to bestow a whipping upon a person who engaged in robbery, or upon one “who [physically] assaults his wife or other female and thereby occasions actual bodily harm.”⁸⁹ In the 1920s, a number of other people took a liking to the same sort of idea implicitly suggested in some of the documents in which Lavell legitimized corporal punishment—namely, the idea that the

⁸⁶ See Strange, “Undercurrents of Penal Culture,” 350.

⁸⁷ See, for example, editorial, “Treating ’Em Rough in the U.S.A.,” *Saturday Night*, February 26, 1921, p. 1; editorial, “Stamping Out Crime of Violence,” *Saturday Night*, October 15, 1927, pp. 1-2. It would appear that *Saturday Night*’s commentary on penal issues acquired a significantly less conservative flavour after 1932, probably because of the outlook of its new editor B.K. Sandwell, who would exhibit an affinity for penal reform. See, for instance, editorial, “Corporal Punishment,” *Saturday Night*, August 26, 1933, p. 1 (see also p. 6); see editorial, “Thanks to the Lawyers,” *Saturday Night*, September 9, 1933, p. 1; see B.K. Sandwell, “Administration of Penitentiaries Hasn’t Changed in 100 Years,” *Saturday Night*, August 25, 1945, p. 12; see Boyer, *A Passion for Justice*, 400-401 n. 35.

⁸⁸ See Carrigan, *Crime and Punishment in Canada*, 364; see Carolyn Strange, “Discretionary Justice: Political Culture and the Death Penalty in New South Wales and Ontario, 1890-1920,” in *Qualities of Mercy: Justice, Punishment, and Discretion*, ed. Carolyn Strange (Vancouver: UBC Press, 1996), 147.

⁸⁹ See *House of Commons Debates*, 11th Parl, 1st Sess, Vol. 1 (25 January 1909) at cols. 92-93, and (4 February 1909) at cols. 556 (quotation here), 565, 567-569 (Robert Bickerdike—Liberal, St. Lawrence, QC); see also clipping of “To Protect Life,” publication and date unknown, in scrapbook of Robert Bickerdike, vol. 1, p. 84, W.D. Jordan Special Collections and Music Library, Queen’s University.

crime-encouraging or anti-rehabilitative tenor of imprisonment tended to prove more deleterious to certain kinds of miscreants than whatever they might experience as a result of a penalty like a strapping.⁹⁰ Perhaps nineteenth-century people may have already been quite familiar with this perspective; Cesare Lombroso himself approached corporal punishment from that standpoint on at least one occasion.⁹¹ In any case, it would appear that the idea proved attractive to certain interwar Canadian officials who functioned as magistrates in adult courts or as judges for juvenile courts, including a key figure like Toronto's Hawley Mott.⁹²

Though corporal punishment tended to win Lavell's affirmation, the specific type of bodily reproof to which the authorities had recourse did not always please him. For a convict in Canada, the pain of corporal punishment would centre upon one of two bodily regions: his back, if his punisher were using the whip-like cat-o'-nine-tails, or his

⁹⁰ See Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1920," by Alfred E. Lavell, in *Sessional Papers*, No. 57 (1921), at 9; see Lavell, "Cure of the Criminal," 160, 163-164; see Lavell, *Convicted Criminal*, 50, 57-58. For an articulation of this type of notion a few decades later, see F.H. van Nostrand's remark that "[i]n its place corporal punishment for juveniles is effective and does less permanent damage to the child than many other forms of punishment which are often devised"—see untitled statement by F.H. van Nostrand in "Current and Candid: Is There a Place for Corporal Punishment in a Penal System?", *Canadian Journal of Corrections* 4, no. 1 (January, 1962): 51.

⁹¹ See Cesare Lombroso, *Criminal Man*, trans. Mary Gibson and Nicole Hahn Rafter, with translation assistance from Mark Seymour (Durham, NC: Duke University Press, 2006), 141.

⁹² See editorial, "Spanking for Young Delinquents," *Saturday Night*, October 3, 1931, p. 1; see "Strapping Penalties Urged for Young Housebreakers," *Toronto Daily Star*, December 5, 1935, p. 12; see also remarks regarding the Ontario Magistrates Association, and regarding J.J. Kelso, in editorial, "Corporal Punishment," *Saturday Night*, August 26, 1933, p. 1. For a document suggesting that some interwar prisoners bought into this kind of perspective as well, see Austin Campbell, "House of Hate," *Maclean's*, September 1, 1933, pp. 13, 38. For statements conveying a related though not identical perspective, see *Third Report of the Committee on the Administration of Criminal Justice, to the Canadian Bar Association, for Presentation at the 10th Annual Meeting of the Association to be Held in Winnipeg, Manitoba, August 26th, 27th and 28th, 1925*, p. 11, in RG 8-56 (Ontario Board of Parole, Miscellaneous Printed Material), Box 3, Envelope 9: "Ontario Board of Parole, misc. printed material, 1924-1925, envelope #9," AO.

buttocks, if he were being “paddled” (with a large strap).⁹³ The cat-o’-nine-tails did not, in fact, pass muster with Lavell, who described “the lash” as “brutalizing.” The authorities had identified a far more satisfactory type of physical punishment, he thought, when they got the idea of using the strap, a method that allowed them to “spank” the offender “on the place provided by Providence.”⁹⁴ But whatever the narrow particulars of his stance, Lavell’s perspective on corporal punishment owes much of its memorability to the fact that he promoted this sanction partly by pointing out the limitations of imprisonment,⁹⁵ a much more widely accepted penalty.

Even if prison had not tended to create new wounds, Lavell could still have continued to point out its unhelpfulness in relation to certain pivotal elements of rehabilitation. This key limitation of prison was related to the very concrete type of exclusion that incarceration involved. “A prisoner cannot be re-established in citizenship inside an institution,” declared Lavell. “He can be taught, aroused, disciplined, assisted; he may be institutionalized into conditional good behaviour; but he can only be brought back

⁹³ Concerning strapping, see O.C.J. Withrow, “Prisoner with Paralyzed Arm Brutally Beaten into Collapse and Finally Tortured to Death,” *The Globe*, August 21, 1933, pp. 1, 3.

⁹⁴ See inquiry transcript, February 18, 1937, p. 1873, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume X – pps. 1823-1967 incl.,” AO; see Lavell, “Crime and Criminals,” 62; see Lavell, *Convicted Criminal*, 57-58; see Lavell, “The Cure of the Criminal,” 164. The six-word quotation comes from the first two sources.

⁹⁵ For a remark about “the limitations of incarceration,” see Joseph Gondor Berkovits, “Prisoners for Profit: Convict Labour in the Ontario Central Prison, 1874-1915,” in *Essays in the History of Canadian Law, Volume V: Crime and Criminal Justice*, ed. Jim Phillips, Tina Loo, and Susan Lewthwaite ([Toronto]: The Osgoode Society, 1994), 479.

to citizenship among free citizens.”⁹⁶ And some incarcerated convicts, in fact, “g[ot] all rusted up.”⁹⁷

The fact that Lavell regarded these as key points which could help him cut incarceration down to size suggests that instrumentalist assumptions strongly influenced his statements about penal practice, as I will explain before too long.⁹⁸ But his claim that incarcerated people sometimes “g[ot] all rusted up” also puts me in position to touch upon a perspective that this dissertation itself does not generally espouse. Lavell’s descriptions of convicts or penal measures featured industrial or mechanical motifs on various occasions over the years. He was keen on describing inmates as “raw material,” and on ascertaining a bit more fully “what we propose to manufacture, and what are the best and most economic means to this end.” There may have been some instances, implied Lavell, in which a convict’s penalty had neither “closed up the breach between him and society” nor “oiled him up for work,” but rather had “damaged his gearings or rusted his bearings.”⁹⁹ At times Lavell seemed to indicate that the attributes of “[f]actories,”¹⁰⁰ or of “used car repair shops,”¹⁰¹ could serve as an illustration of some of the traits which prisons were to display or of some of the tasks that they were to discharge. The

⁹⁶ Lavell, “Treatment of the Criminal in Ontario,” 286.

⁹⁷ See Lavell, “The Cure of the Criminal,” 160. See also Lavell, “The Supervision of Paroled Persons,” 209; see also [Alfred Lavell], “Basal Principles of the Board of Parole,” March 1931, p. 3, in A.E. Lavell fonds, Coll. 2214, Box 2, File 25: “Parole Board of Ontario, 1921-1935,” QUA.

⁹⁸ For another writer’s comment in which the expression “cut down to size” is offered with regard to certain notions about imprisonment, see Davie, *Tracing the Criminal*, 47.

⁹⁹ See Lavell, “Treatment of the Criminal in Ontario,” 286.

¹⁰⁰ See [Alfred Lavell] to Professor Mercer, September 5, 1935, and “Statement and Recommendations” attached to [Lavell] to Allan J. Fraser, October 12, 1937, both in A.E. Lavell fonds, Coll. 2214, Box 1, File 3: “1899, 1925-1939,” QUA; see Lavell, “Crime and Criminals,” 60-61.

¹⁰¹ See Lavell, “Possible Re-Establishment of Criminals as Citizens,” 97. See also Lavell, *Convicted Criminal*, 124 (“repair shops”). On the other hand, Lavell sometimes found fault with “mechanical” penal activity—see Ontario, Legislative Assembly, “Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922,” by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 6; see Lavell, *Convicted Criminal*, 49.

possibility of pointing out parallels between certain features of mechanized industry and certain characteristics of the human realm had certainly caught the attention of a number of observers in interwar Canada.¹⁰² Perhaps some thinkers might have frowned upon the degree to which those sorts of perceptions of or attitudes concerning human beings left an imprint on interwar culture.¹⁰³ Penal officials, however, may perhaps have embraced industrial imagery more often than they pointed out its shortcomings. “Penitentiaries are now regarded as industries, factories not only to manufacture state material, but to make men,” claimed William St. Pierre Hughes, the nation’s Superintendent of Penitentiaries, in 1920. “From crude, crooked and waste materials, their task is to turn out, as their product, good citizens.”¹⁰⁴

This specific remark of Hughes’ portrayed currently imprisoned individuals as the items which were being manufactured (and which would no longer have to remain in jail once the process was finished). But perhaps the industrial imagery found in the commentary of figures like Hughes and Lavell suggests that such officials may also have been keen to see convicts themselves engage in actual manufacturing, not only while they numbered among the nation’s prisoners (as Hughes did in fact discuss in the letter in which he penned the statement above), but also during subsequent years.¹⁰⁵ If we explore

¹⁰² For just one example, see Francis, *The Technological Imperative in Canada*, 286 n. 10.

¹⁰³ For sources which might suggest the possible distaste of some interwar figures for such construals of the human realm, see Sara Z. Burke, *Seeking the Highest Good: Social Service and Gender at the University of Toronto, 1888-1937* (Toronto: University of Toronto Press, 1996), 115-130, especially 118, 128-130; Joseph McCulley, “Education in a Changing Society,” *Canadian Forum*, August 1932, pp. 416, 418; Herbert A. Bruce, “Human Progress,” in *Friendship: The Key to Peace and Other Addresses* (Toronto: Macmillan Company of Canada, 1937), 208-209.

¹⁰⁴ W.S. Hughes to Tom Moore, January 8, 1920, in MG27-IIIIC4 (Agnes Macphail fonds), Volume 1, File: “Correspondence, 1920-1929,” LAC.

¹⁰⁵ See *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: King’s Printer, 1938) (hereafter Archambault Report), 129-130.

how scholars have portrayed incarceration, we will soon find that prisons, in at least some cases, have indeed shared certain traits which factories display. Admittedly, in scholarship highlighting Canadian prisons, this notion has perhaps been conveyed most strongly by studies discussing the nineteenth century. Indeed, in the nearly two hundred years during which punishment in Canada has revolved around incarceration, the occasion on which the authorities set out to establish the most thoroughgoing type of factory-style manufacturing at a penal site may perhaps have been in the 1870s, at Central Prison, the provincial institution that had just been created in Toronto.¹⁰⁶ Nevertheless, a number of officials in interwar Canada may still have hankered for some type of penal strategy through which offenders would end up embracing factory labour, or at least engaging in some sort of work that would energize the economy in ways worthwhile for middle-class citizens or persons with capital. Perhaps, therefore, both the penal practice of the nineteenth century and the initiatives pursued between the World Wars might give us reason to affirm certain ideas suggested by Marxist thinkers.

Some scholars who discuss Marxist explorations of penal history highlight one of the first key works to examine the penal past in that manner: *Punishment and Social Structure*, a study authored by Georg Rusche and Otto Kirchheimer.¹⁰⁷ The fact that the volume explores European penal policies from a several-hundred-year period prior to World War II helps to ensure that the authors examine not merely imprisonment, but also such measures as banishment, corporal penalties, monetary sanctions, punitive labour,

¹⁰⁶ See Berkovits, "Prisoners for Profit: Convict Labour in the Ontario Central Prison, 1874-1915," 478-515.

¹⁰⁷ See Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939; New Brunswick, NJ: Transaction Publishers, 2003); see, for example, Garland, *Punishment and Modern Society*, chapter 4.

and so forth. Among other things, the book points out two dynamics which helped the European (and colonial) ruling classes to come out ahead, from an economic point of view, as a result of their societies' penal practices. For one thing, if the number of people who were trying to make a living as labourers in either a European state or one of its colonies was smaller than the kingpins of society wished, then the authorities could more frequently reprimand offenders with types of punishment that would expand the quantity of workers, such as transportation or labour-focused incarceration. In the second place, the authorities could acquire funds or other valuables from the offender population through fines, confiscation of property, or other such penalties, particularly if such measures struck the powers-that-be as more desirable than corporal chastisements with respect to the crimes in question. In some ways therefore, Rusche and Kirchheimer's study suggests that certain penal practices appealed to the ruling and capitalist classes either due to their pursuit of the labour that workers (including criminals) could provide, or as a result of considerations involving the authorities' more specifically financial resources.¹⁰⁸ While the authors offer no observations about Canada in their book, familiarity with their ideas on these two fronts may in some respects make us more perceptive when we examine criminal justice in interwar Ontario.

If we wished to develop a Marxist portrayal of Alfred Lavell's penal pursuits, we could point to both the metaphorical motifs and the straightforward claims to which he resorted. Lavell's occasional dollops of mechanical imagery were not the only tropes of his that might help us to provide such a characterization of his work. An editor of the

¹⁰⁸ See Rusche and Kirchheimer, *Punishment and Social Structure*, including 5-7, 9-10, 16-17, 26, 41-42, 53, 55, 57-60, 67, 84, 86, 88, 122-123, 128-132, 139-140, 161, 168-169.

Winnipeg Tribune once received a letter from Lavell that portrayed offenders as “damaged goods” which ought to go “back on the market as soon as they can be put into useful shape.”¹⁰⁹ And on some occasions Lavell opted for lingo with a financial flavour. Certain individuals’ imprisonment might show them to be “liabilities,” but there was still the possibility of “becom[ing] assets,” provided that they did not neglect the opportunity for reformation.¹¹⁰ Moreover, at a non-metaphorical level, both of the dynamics discussed by Rusche and Kirchheimer can perhaps be discerned in the extramural and parole initiatives championed by Lavell. For a prisoner to become either a provincial parolee or an extramural convict, some proprietorship or company generally had to have said that it would become his employer.¹¹¹ It would appear, therefore, that the degree to which obtaining more workers looked economically attractive to owners did much to determine how many offenders found themselves paroled in the 1920s. And Lavell tended to draw attention to state finances as he tried to persuade the province that it would gain nothing by mothballing its current non-carceral penal practices. The ability of

¹⁰⁹ Lavell to Hooper, February 1, 1928, quoted in A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” p. 189, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA.

¹¹⁰ See Lavell, *Convicted Criminal*, 33, 48, 76, 79; see Lavell, “Criminals and Citizenship,” 153 (“become assets”; “liabilities”), 159; see [Alfred Lavell], “Basal Principles of the Board of Parole,” March 1931, p. 1, in A.E. Lavell fonds, Coll. 2214, Box 2, File 25: “Parole Board of Ontario, 1921-1935,” QUA; see also Ontario, Legislative Assembly, “Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1926,” by Alfred E. Lavell, in *Sessional Papers*, No. 43 (1927), at 7.

¹¹¹ See Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1921,” in *Sessional Papers*, No. 59 (1922), at 5; see Ontario, Legislative Assembly, “Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922,” by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 5-6; see Ontario, Legislative Assembly, “Fifty-Seventh Annual Report upon the Prisons and Reformatories, the Ontario Board of Parole, and the Commissioner of Extra-Mural Employment of the Province of Ontario, Being for the Year Ending 31st October 1924,” in *Sessional Papers*, No. 24 (1925), at 28; see Ontario, Legislative Assembly, “Fifth Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1925,” by Alfred E. Lavell, in *Sessional Papers*, No. 61 (1926), at 8; see Lavell, “The Supervision of Paroled Persons,” 209-210.

inmates to function as labourers might, admittedly, give prisons the opportunity to pursue manufacturing, farming, or other such activities. But a provincial government, suggested Lavell, would find that the quantities of money which such activities enabled its carceral establishments to acquire would not usually be much larger than the sums with which it parted to create and run these prisons. Accordingly, only scant income (if even that) would remain for the prisoners to bestow upon their spouses or their offspring.¹¹² Rather than using such a labour strategy for all of its convicts, the Ontarian government of the day was wisely creating parole and extramural opportunities for many offenders. Employing some of these convicts put a number of businesses in position to generate greater volumes of goods or commodities than they had been making previously. At least a small percentage of the activity in the economic mainstream, therefore, stemmed from the work that such offenders were completing for private firms.¹¹³ Readers of Lavell's yearly extramural reports could gain a sense of the volume of this work, since he would point out the tens of thousands of dollars in total that Ontarian employers shelled out in a year to the dozens or hundreds of extramural labourers working in the province.¹¹⁴ In

¹¹² See Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 11; see Lavell, *Convicted Criminal*, 60-61, 86-87.

¹¹³ See Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 11-12; see "The Ontario Board of Parole," May 22, 1923, attachment to memorandum, A.E. Lavell to H.C. Nixon, Provincial Secretary, May 22, 1923, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 7, AO; see Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1923," in *Sessional Papers*, No. 24 (1924), at 10.

¹¹⁴ In addition to the extramural reports in the 1920s in the Ontarian *Sessional Papers*, see also Lavell, *Convicted Criminal*, 91, and Lavell, "Criminals and Citizenship," 158. For the same sort of provision of a monetary figure with regard to paroled employees, see "The Ontario Board of Parole," May 22, 1923, attachment to memorandum, A.E. Lavell to H.C. Nixon, Provincial Secretary, May 22, 1923, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 7, AO; and Ontario, Legislative Assembly, "Fifty-Seventh Annual Report upon the Prisons and Reformatories, the Ontario Board of Parole,

addition, the state would find it more attractive to use a limited amount of money for the work of a small number of parole officials than to continue with the larger disbursements that would have had to be made if its extramural convicts or parolees had remained prison inmates who generally got hungry by dinnertime.¹¹⁵ Furthermore, the wife of a parolee or extramural worker would no longer need to receive the aid which the municipal authorities may have been rustling up for her so that she and her children would survive.¹¹⁶ Whether through the greater thrift that the government would be exercising or through the economic energy that the work of former inmates would enable the province to display, employing non-carceral penal methods could be a financially agreeable practice from the Ontarian public's perspective.

Did the Ontarian government's provision of parole and its adoption of extramural measures stem primarily from the fact that they seemed to have these putative economic merits, merits that would count as such especially in the eyes of the province's more influential citizens, whom we can regard as its ruling class? A conservative might

and the Commissioner of Extra-Mural Employment of the Province of Ontario, Being for the Year Ending 31st October 1924," in *Sessional Papers*, No. 24 (1925), at 28.

¹¹⁵ See "The Ontario Board of Parole," May 22, 1923, attachment to memorandum, A.E. Lavell to H.C. Nixon, Provincial Secretary, May 22, 1923, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 7, AO; see Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra-Mural Employment of Sentenced Persons for the Year Ending October 31st, 1923," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1924) at 6-7; see Ontario, Legislative Assembly, "Sixth Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1926," by Alfred E. Lavell, in *Sessional Papers*, No. 43 (1927), at 6. By no means were all of the ideas about parole addressed in this paragraph unique to Lavell. It appears, for example, that notions similar to some of these ones surfaced in Dominion Parole Officer W.P. Archibald's discussion of the ticket-of-leave system a little earlier in the century—see Wetherell, "Rehabilitation Programmes," 138. And several decades later, at least some reformist voices still seem to have supposed that similar arguments would strike at least some Canadians as viable—see, for instance, T. George Street, "Parole as a Social Control," *Canadian Journal of Corrections* 7, no. 1 (January 1965): 6-7, and *House of Commons Debates*, 28th Parl, 3rd Sess, Vol. 8 (7 October 1971) at 8503 (Jean-Pierre Goyer).

¹¹⁶ See Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra-Mural Employment of Sentenced Persons for the Year Ending October 31st, 1923," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1924) at 6; see Lavell, *Convicted Criminal*, 91; see Lavell, "The Supervision of Paroled Persons," 209.

suppose that a Marxist thinker would be prone to regard this as highly believable. In any case, a scholar who truly wanted either to substantiate this idea thoroughly, on the one hand, or to refute it, on the other, would examine not merely the way in which Lavell tended to characterize parole when he was commenting on it in general terms, but also the practices that actually prevailed as parole officials created or ruled out opportunities for the individual convicts whom they encountered. On this latter subject, I myself will make just a few observations. (Although I have read some of the letters that Lavell authored as part of his job, I did not hunt down or examine the case files of his parolees,¹¹⁷ and therefore have not seen a large number of documents that discuss specific convicts. Nevertheless, I did come across a few letters that reveal what parole officials actually said in certain cases to specific Ontarians who thought that the province might be willing to see them serve as employers for parolees or extramural convicts.)

Perhaps Lavell may have regarded his initiatives as playing a part in the economic nourishment of Ontarian companies and individual proprietorships; but even if so, he and his fellow parole officials do not appear to have adopted the blatant tactic of letting employers skimp too much when the latter were determining the amounts that might be provided as compensation. In at least the occasional case, those who had an unduly frugal perspective on this issue were family farmers rather than manufacturers. One citizen, indicating that a prisoner would be welcome to come help on his farm, suggested at least

¹¹⁷ A few comments about these case files can be found in Alfred E. Lavell, "An Autobiography," pp. 137-138, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: "Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic]," QUA, and in Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1926," in *Sessional Papers*, No. 16 (1927), at 7.

ten dollars as a monthly amount.¹¹⁸ “I will take this matter up with some of the boys but you cannot expect much of a man for \$10 a month,” answered T.D. Bell, one of Lavell’s officials. “I am glad to know that you are willing to pay more if the chap is efficient. I feel that we cannot make these men who have been in trouble honest and upright unless we can give them a fair deal. \$10 a month for the winter months is not too bad but when it comes to summer work any young man that is any good should be worth more money.”¹¹⁹ On another occasion, Bell indicated that a prospective employer’s suggestion of fifteen dollars was “far too small. We have not hired out any men for such small wages.”¹²⁰ An inclusionary flavour could be detected in a letter composed by a woman from another farm household. “[W]e are good to our men,” she claimed; “they are one of the family, you know.” She also appeared to be slightly inclined to pinch pennies at the moment. “We thought one of those boys wouldn’t come so expensive as we can’t afford to pay one too high a wages you know,” her letter pointed out.¹²¹ Lavell was less than impressed when he saw the actual dollar figure that she envisioned for the requested

¹¹⁸ See [deleted] to A.E. Lavell, Chief Officer, Ont. Parole Board, February 21, 1930; [T.D. Bell,] Assistant Parole Officer to [deleted], February 22, 1930; and [deleted] to T.D. Bell, March 10, 1930, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 17, AO. (The privacy stipulations associated with this particular collection require me to delete the names of the citizens with whom the parole personnel were corresponding in the situations discussed in this paragraph.)

¹¹⁹ [T.D. Bell,] Assistant Parole Officer to [deleted], March 12, 1930, RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 17, AO.

¹²⁰ [T.D. Bell,] Assistant Parole Officer to [deleted], March 6, 1930; and see [deleted] to T.D. Bell, Parol[e] Dept., March 4, 1930, RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 17, AO. However, in at least some situations (perhaps especially or primarily in wintertime), more meagre amounts may not necessarily have elicited any pushback from Bell—see, for instance, [deleted] to T.D. Bell, Parliament Bld’gs, January 10, 1930, and [T.D. Bell,] Assistant Parole Officer to [deleted], February 12, 1930; but see also [deleted] to [deleted], March 13, 1930.

¹²¹ See [deleted] to E.A. [sic] Lavell, March 20, 1930, RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 17, AO.

worker's compensation. "\$7⁰⁰ a month Very kind of her I am sure," he commented sarcastically in a note.¹²²

To no surprise, a Marxist portrayal of the Ontarian parole and extramural initiatives runs at least partly counter to Lavell's own perception of these penal practices. Although economic themes stood out strongly at times in his discussion of criminal justice, he indicated that certain other factors did more to confirm that the extramural measures were legitimate. For one thing, as a result of these measures, a greater number of offenders would find that they were not merely spinning their tires, but were instead becoming quite accustomed to the activities or habits associated with "re-establishment." And a greater degree of actual justice (or at least a lesser amount of "undeserved suffering") tended to materialize when an initiative like this one was adopted. The extramural method would therefore allow the penal authorities to address "human" issues quite admirably.¹²³ But discussion focusing on such considerations as "justice and humanity" usually proves popular, of course, in liberal circles within capitalist societies.¹²⁴ And, whatever Lavell's claims about the issue, it remains unclear whether the actual operational dynamics at work in the parole system of this particular capitalist province did or did not resemble those which might, in a Marxist thinker's telling, tend to leave their imprint on the penal activities of other capitalist jurisdictions. The documentation that I have examined for this thesis does not reveal clearly whether or not

¹²² See the remark penciled by Lavell at the bottom of [deleted] to E.A. [sic] Lavell, March 25, 1930, RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 17, AO.

¹²³ See Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra-Mural Employment of Sentenced Persons for the Year Ending October 31st, 1923," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1924) at 6-7; see Lavell, *Convicted Criminal*, 91.

¹²⁴ For a remark by Lavell about "justice and humanity," see Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 6.

either Lavell himself or the Ontarian authorities bought into non-carceral measures primarily because of the seeming financial preferability of such initiatives.

In any case, Lavell's mechanical metaphors, his claims regarding finances, and his assertions about reformation all tended to imply that wise penal practice would bear an instrumentalist scent. Perhaps Lavell may have believed that a description of parole or of the extramural initiative would not in its own right convince too many Ontarians to regard these measures as morally indispensable. But such citizens might instead be intrigued by the claim that some other attractive dynamic—such as the emergence of desirable financial opportunities, or the evaporation of a certain amount of the crime in the province—would stem from the pursuit of these non-carceral penal measures. In a sense, then, Lavell was highlighting one of the instrumentalist strengths of his penal initiatives when he discussed the promising economic scenario that these initiatives might help to produce. More interestingly, some of his key comments pertaining to reformation involved a similar instrumentalist approach. Crime would give society fits less frequently if convicts began to prefer the perspective and conduct entailed by “good citizenship,” rather than the possibilities offered by criminality. Accordingly, if a particular penal method could ensure that offenders would start to perceive such reformation as viable, and that many of them would indeed proceed with this behavioural shift, then that would be a truly desirable method for a criminal-justice system to embrace. In Lavell's view, full rehabilitation would not take place if convicts' sentences featured simply the exclusionary sanction of imprisonment. “You cannot,” he claimed, “make citizens in a prison, of course, and the longer the detention after adequate discipline and change of heart and mind are assured, the more difficult is the task of civil reestablishment.”

“[W]hile institutions can do much to hamper or prepare an offender in his advance to good citizenship, the greatest work in this respect can be done only if he is outside under supervision.”¹²⁵ “[P]arole can be said to be really the only method in which a large majority of our prisoners can ever hope to be rehabilitated as citizens,” he asserted at one point in 1921.¹²⁶ When the state latched onto the non-exclusionary approach of paroling prisoners or offering them extramural opportunities, it tended to become less commonplace, suggested Lavell, for a convict to avail himself of the new criminal possibilities that surfaced after the conclusion of his carceral stint.¹²⁷ Whether by ensuring that offenders went “back on the market,”¹²⁸ or by creating a form of criminal justice that would not rack up so large a bill, or by “re-establish[ing] ... criminals as citizens,”¹²⁹ the provision of non-carceral initiatives would generate more desirable conditions in some noteworthy facet of Ontarian society. Although non-exclusionary measures like parole might not on their own have been perceived as compelling, Lavell

¹²⁵ Lavell, “Criminals and Citizenship,” 157, 158; and see Lavell, *Convicted Criminal*, 56, and [Alfred Lavell], “Basal Principles of the Board of Parole,” March 1931, in A.E. Lavell fonds, Coll. 2214, Box 2, File 25: “Parole Board of Ontario, 1921-1935,” QUA. See also “Tells of Benefits of Parole System,” *The Globe*, December 11, 1925, p. 11; see also Lavell, “The Supervision of Paroled Persons,” 209.

¹²⁶ [Alfred Lavell,] Chief Officer to O.M. Biggar, Chief Electoral Officer, October 26, 1921, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 4, AO.

¹²⁷ See Lavell, *Convicted Criminal*, 85; see Lavell, “Treatment of the Criminal in Ontario,” 288; see also Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1923,” in *Sessional Papers*, No. 24 (1924), at 5; see also Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1928,” in *Sessional Papers*, No. 16 (1929), at 6; see Ontario, Legislative Assembly, “First Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1921,” by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1922), at 7; but see also Ontario, Legislative Assembly, “Fifth Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1925,” by Alfred E. Lavell, in *Sessional Papers*, No. 61 (1926), at 11-12.

¹²⁸ See Lavell to Hooper, February 1, 1928, quoted in A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” p. 189, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA.

¹²⁹ For this phrase, see the title of Lavell, “The Possible Re-Establishment of Criminals as Citizens.”

believed the public would prove readier to admire them if they were depicted, in effect, as generating dynamics comparable to those produced by a valuable technique.

Though Lavell often promoted the extramural initiative and the type of parole practiced in Ontario by highlighting their instrumentalist merits, he did not dwell solely on that issue in his discussion of these non-carceral measures. One of the less utilitarian ingredients in his commentary was, of course, the notion of moral justice. Concepts associated with justice and injustice proved especially meaningful to Lavell when he reflected on the potential ruinousness of incarceration for a prisoner's family. Like most other social reformers in early-to-mid-twentieth-century Canada, Lavell seems to have assumed that families usually lived, or ought to live, on the money stemming from the job or self-employment of the husband.¹³⁰ Accordingly, Lavell tended to highlight the "undeserved suffering" that befell a convict's "innocent dependents" when imprisonment yanked him out of his job. In many instances, Canadian society could not produce a legitimate excuse for putting such non-offenders through that "unjust" tribulation. "By what ethical right," asked Lavell, "can these persons, wholly guiltless of wrong-doing, be included in the penalty quite properly inflicted upon the criminal himself, unless there is no escape from this?"¹³¹ The impact of criminal sentences in Ontario would less

¹³⁰ See Nancy Christie, *Engendering the State: Family, Work, and Welfare in Canada* (Toronto: University of Toronto Press, 2000); see A.E. Lavell, "The Prisoner's Family," in *Proceedings of the Canadian Association of Child Protection Officers at the Second Annual Meeting Held in Toronto, Ontario, September 27-30, 1922* (Ottawa: F.A. Acland, 1923), 86-87; see Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 11; see "Tells of Benefits of Parole System," *The Globe*, December 11, 1925, p. 11; see Lavell, "The Supervision of Paroled Persons," 209.

¹³¹ See Ontario, Legislative Assembly, "Fifth Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1925," by Alfred E. Lavell, in *Sessional Papers*, No. 61 (1926), at 11, and Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st,

frequently prove to be unjust if a significant number of convicts got to become extramural workers, and thereby remained financially capable of ensuring that their families would continue to eat.

Both his instrumentalist ideas and his perspective regarding justice put Lavell in position to speak in favour of practices that happened to be less exclusionary, in a concrete sense, than incarceration was. But his commentary also equipped readers to dispense with other types of exclusionary actions or assumptions concerning criminals. *The Convicted Criminal and His Re-Establishment as a Citizen*, a book authored by Lavell in the mid-1920s, testifies to this reformer's inclusionary sensibility. As another Canadian reformer observed,¹³² readers who looked at the frontispiece of Lavell's book got a quick reminder of the exclusion that a former offender might experience even after he had no more hours to log in jail. The illustration on that page highlighted a man on his way through town alone, shoulders hunched, face forlorn, eyes staring slightly downward, dogged by the suspicion or curiosity of the gawking residents of the community, none of whom seemed keen on socializing with someone who a short time before had been living in prison.¹³³ As other commentary of his would demonstrate as well, Lavell clearly regarded Canadians as too prone to ostracize offenders, a response rather discouraging to

1926," by Alfred E. Lavell, in *Sessional Papers*, No. 43 (1927), at 5, 7. For other comments in a similar vein, some of which employ words like "undeserved punishment," "innocent dependents," or "unjust," see Lavell, "The Prisoner's Family," 86-87; Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 11-12; Lavell, *Convicted Criminal*, 60-61, 85, 89, 91; Ontario, Legislative Assembly, "Sixth [sic] Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1928," by Alfred E. Lavell, in *Sessional Papers*, No. 33 (1929), at 6.

¹³² See Topping, "What about Parole in Canada?," 57.

¹³³ See Lavell, *Convicted Criminal*, frontispiece; for the same illustration, see Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1925," in *Sessional Papers*, No. 16 (1926), at [2].

men not yet “re-established.”¹³⁴ Lavell’s inclusionary perspective left its imprint on his written depiction of criminals too. In the first fifth of the book, he discussed a sizeable range of events or personal characteristics as a result of which people might end up embracing criminal activity. Some of the lawbreakers whom he mentioned as he explored this matter—mentally disabled offenders, for example, or “vicious, persistent” rascals—certainly did not seem like run-of-the-mill individuals.¹³⁵ By and large, however, his portrayal tended to demonstrate how many attributes criminals shared with non-offenders. “[M]ost lawbreakers,” he claimed, “are practically as normal—or subnormal—as the rest of us.”¹³⁶ Late in the book, he pointed out “the common kinship of all sorts and conditions of men everywhere,” convicts included.¹³⁷ As Peter Oliver reveals, Lavell had conveyed this same kind of viewpoint in at least some of the commentary that he had offered a quarter-century earlier. A document described one verbal statement of his as having indicated that “[t]he convicts are our kinsmen. Except the absolutely criminal they were not really different from other men, and were a very ordinary lot; ordinary in ability, in sin, and in aspiration.”¹³⁸

On the whole, Lavell maintained the universalist outlook that typically prevailed in liberal circles. In his view, it would seem, the assumptions that we make about others, and especially about how society ought to behave toward them, should generally be more

¹³⁴ See Lavell, “Possible Re-Establishment of Criminals as Citizens,” 98; see also Lavell, *Convicted Criminal*, 9.

¹³⁵ See Lavell, *Convicted Criminal*, 1-22, especially 15-16, 21-22.

¹³⁶ See *ibid.*, 12.

¹³⁷ See *ibid.*, 94.

¹³⁸ See *Twenty-Sixth Annual Report of the Prisoners’ Aid Association of Canada, for the Year 1899-1900* (Toronto: Hill Printing Co., 1901; Ottawa: Canadian Institute for Historical Microreproductions, 1988), microfiche, CIHM no. 00675-1899-1900, p. 31. This document does not construe its description as a direct quotation of Lavell’s statement. Most of what I have quoted here is also quoted in Oliver, *Terror to Evil-Doers*, 482.

or less comparable to the assumptions that we harbour concerning people who are near and dear to us. Lavell seems to have thought that people who truly bought into Christianity might come to possess this type of perspective a little more readily than most individuals did. In unpublished comments about nineteenth- and twentieth-century penal reform, he described “the conviction that ‘all men’s good’ should be ‘each man’s rule’” as “a fundamental principle of Christian ethics, though long antedating the Christian era.” Admittedly, Canadians may have come to embrace this “principle” in their penal activity to only a minor or middling degree. Even so, the idea “that Christian ethics could not leave prisoners out of its scope” had indeed sunk in for certain reformers.¹³⁹ In any case, notions such as humanness could also help Lavell provide some quasi-universalist inspiration in his commentary concerning criminals. Readers who had ambled through the bulk of *The Convicted Criminal* came to a final chapter, suitably entitled “A Human Problem.” While the book’s very topic highlighted problems, at this juncture the key term in the phrase was “human.” “An offender against the law,” declared Lavell, “attracts and holds the interest of every discriminating student of human nature not because he is a criminal but because he is a man.”¹⁴⁰ In Canada, there was a limited opportunity for penitentiary inmates to keep in contact with their families by letter, but this correspondence was examined by prison officials to prevent the authors from commenting on forbidden topics.¹⁴¹ Lavell pointed out the “very human” qualities of the many letters that he had ended up checking over while on the job at Kingston Pen in the early

¹³⁹ See A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” p. 77 (see also 75-76, 78-79), in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA.

¹⁴⁰ Lavell, *Convicted Criminal*, 94.

¹⁴¹ See O.C.J. Withrow, “Home Folk Write Prison Doctor Anxious Over Health of Inmate and Get Curt Note from Warden,” *The Globe*, September 5, 1933, pp. 1, 3.

1890s.¹⁴² And as another publication of his had stated in 1925, his parole activities were continuing to familiarize him with the compelling traits of many Ontarian criminals. As he encountered convicts, claimed Lavell, “I find real human persons, with defects, of course, but with much good in them, potential and actual. It does me good to meet them.”¹⁴³

Canadians who did not read Lavell’s own writings would, of course, encounter commentary expressing a similar inclusionary outlook if they heard or read many ideas promoted by other penal reformers. Some citizens, for example, were provided with a dollop of such universalist thinking at the Congress of the American Prison Association in the fall of 1929, one of those rare years in which Ontarians could go to this annual event by simply making their way to Toronto, rather than to a city in the United States. Although the conference obtained the majority of its presenters from the U.S., a number of others were residents of Canada,¹⁴⁴ including Clarence B. Farrar, a psychiatrist of substantial reputation, currently in the employ of the Toronto Psychiatric Hospital and the University of Toronto.¹⁴⁵ Religious assertions do not appear to have played a noteworthy part in Farrar’s rhetoric, as they sometimes did in Lavell’s; indeed, this psychiatrist

¹⁴² See Lavell, *Convicted Criminal*, 96-97; see also Alfred E. Lavell, “An Autobiography,” p. 32, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: “Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic],” QUA.

¹⁴³ Lavell, “Treatment of the Criminal in Ontario,” 289.

¹⁴⁴ See *Proceedings of the 59th Annual Congress of the American Prison Association, Toronto, Canada, September 20th to 26th, 1929* (New York: American Prison Association, n.d.).

¹⁴⁵ See Ian Robert Dowbiggin, *Keeping America Sane: Psychiatry and Eugenics in the United States and Canada, 1880-1940* (Ithaca, NY, and London, UK: Cornell University Press, 1997), 183-185; see Biographical Note on page 6 of finding aid for Clarence B. Farrar fonds, B1999-0011, University of Toronto Archives; see Edward Shorter, “C.B. Farrar: A Life,” in *TPH: History and Memories of the Toronto Psychiatric Hospital, 1925-1966*, ed. Edward Shorter (Toronto: Wall & Emerson, 1996), 77-78, 80.

probably looked askance at religion.¹⁴⁶ From the looks of it, moreover, making straightforward claims about people's ethical duties would have seemed dicier to Farrar than to Lavell. "[T]here is no such thing as absolute right or absolute wrong," claimed Farrar at the 1929 congress. "They are abstractions which convey no meaning. Nowhere does the Einstein theory of relativity apply more perfectly than to morals which shift and alternate and reverse from social level to social level, from generation to generation, from country to country."¹⁴⁷ Furthermore, not every penal option endorsed by Farrar reflected a wholly inclusionary, universalist sensibility. At one point in his talk, he touched upon an idea that he had publicly affirmed on previous occasions: that there were grounds, in some cases, for incarcerating offenders without necessarily expecting to allow them to experience non-detention again before they died.¹⁴⁸

Nevertheless, at this prison conference Farrar strongly affirmed the practice of regarding penal activity in rehabilitative terms, as an activity revolving around "[r]eclamation." Admittedly, his talk was laced with classic positivist ideas. Farrar was not keen on the authorities' habit of regarding "responsibility" as a pivotal idea on which to focus when evaluating the criminal deeds that an individual had performed. As he saw it, buying into a perspective similar to that of psychiatrists could make criminal-justice personnel or other North Americans much more perceptive as they discussed offenders or

¹⁴⁶ Farrar's archived papers contain at least two files that focus on religious topics; based on at least some of the items in these files, it would appear that, at least in the 1950s or early 1960s, he saw little or no merit in religion. See Clarence B. Farrar fonds, B1999-0011, Box 14, File 7: "Clippings, Catholicism," and Box 41, File 58, "C.B.F. Notes on Religion (1961)," University of Toronto Archives.

¹⁴⁷ C.B. Farrar, "Criteria of Responsibility," in *Proceedings of the 59th Annual Congress of the American Prison Association, Toronto, Canada, September 20th to 26th, 1929* (New York: American Prison Association, n.d.), 345.

¹⁴⁸ See Farrar, "Criteria of Responsibility," 343; see C.B. Farrar, "Radio Talk: Mental Disease in Relation to Crime," *Public Health Journal* 17, no. 2 (February 1926): 89; see C.B. Farrar, "Social Aspects of Mental Deficiency," *Canadian Medical Association Journal* 16, no. 10 (October 1926): 1235-1236.

produced new penal initiatives.¹⁴⁹ Such views would seem quite consonant with Farrar's practice of describing people as "reacting mechanism[s]."¹⁵⁰ Yet in this speech, the statement which employed that description also drew attention, in one sense, to the "human" attributes of criminals, rather than merely highlighting their putative mechanistic tendencies. "The criminal is no longer the case simply," claimed Farrar. "He is a human being; he is an individual; he is a reacting mechanism."¹⁵¹ And his concluding comments highlighted the universalist perspective that this positivist psychiatrist appeared to deem appropriate on at least the present occasion. "What is true of the sane and insane is also true of the law-abider and the criminal," declared Farrar. "All are brothers under the skin."¹⁵²

In sum, universalist notions numbered among the ideas into which both a liberal reformer like Lavell and even a more thoroughly positivist figure like Farrar might sometimes seem to buy. As we can readily conclude due to other historians' work, many interwar Canadians were, admittedly, less than enamoured with immigrants or members of other groups who seemed to stand out from the middle-class Anglo-Celtic crowd. But inclusionary rhetoric regarding criminals, at least, could still seem compelling in reformist circles.

¹⁴⁹ See Farrar, "Criteria of Responsibility," 343-349.

¹⁵⁰ See *ibid.*, 347; see Farrar, "Mental Disease in Relation to Crime," 88.

¹⁵¹ Farrar, "Criteria of Responsibility," 347. For a comment of his in which the actual word "mechanistic" surfaces, see Farrar, "Mental Disease in Relation to Crime," 88.

¹⁵² Farrar, "Criteria of Responsibility," 349. It would seem that at least some statements by early-twentieth-century European commentators on crime or penal affairs also reflected an anti-exclusionary sensibility—for examples, see comments quoted in Richard F. Wetzell, *Inventing the Criminal: A History of German Criminology, 1880-1945* (Chapel Hill, NC: University of North Carolina Press, 2000), 159-160, 165-166.

Lavell's Hell

Yet as a result of his sensibilities regarding justice, Lavell did not always find himself wholly eager to embrace a perspective consonant with rehabilitation. A letter he composed in 1935 pointed out an issue to which his thoughts had turned at a certain juncture during his decade in the parole enterprise. "Did you ever try to harmonize the doctrine of forgiveness and sound ethics?" he asked Nova Scotia penal reformer C.H. Mercer. "It took me a long time to work this out. I *had* to do it for my own self respect when I was administrating the Parole work of Ontario."¹⁵³ It may have been in the second half of the 1920s that Lavell's special attunement to the matter emerged. Talking over perplexing issues on theological or other topics with people who would not necessarily assert familiar conclusions was an attractive activity, from Lavell's perspective. A circle of such individuals with whom he met now and then at Victoria College provided the opportunity for this kind of exploration on a number of occasions in the late 1920s and the following two decades. One of the group's evening chats in 1927 centred upon "Christian forgiveness and our penal practice." And that made the circle keen to devote a second session to "the problem of squaring forgiveness with sound ethics."¹⁵⁴ Perhaps the matter may have already intrigued Lavell quite a lot in earlier years, or perhaps, by contrast, these two sessions may have made the issue seem more significant to him now

¹⁵³ [Alfred Lavell] to Professor Mercer, September 5, 1935, in A.E. Lavell fonds, Coll. 2214, Box 1, File 3: "1899, 1925-1939," QUA. Emphasis in original. Though only the first page of this letter seems to be found in this file, it would indeed appear to be a letter composed by Lavell—cf. C.H. Mercer to A.E. Lavell, August 23, 1935, in the same file.

¹⁵⁴ See clipping of A.E. Lavell, "Let Knowledge Grow ... and ... Reverence," *Religious Education* 22, no. 10 (December 1927): 560?, and attached note, in A.E. Lavell fonds, Coll. 3612, Box 1, File 6: "Photos; correspondence; articles; brochure; photocopy. [1915-," QUA. For a document that would appear to offer a sense of the issue that the group sized up at one particular point in the early 1930s, see "Notes on 'The God Whom We Worship' for the Discussion Group, Victoria College, November 1931," in A.E. Lavell fonds, Coll. 3612, Box 1, File 13: "Various: Copy of poetry; notes; A Little Family History [ca 194-]," QUA.

than before. In any case, his ideas about forgiveness ended up shaping key facets of a 1928 article of his in the religious magazine *New Outlook*—an article in which he highlighted Hell.

Lavell rarely tried to point out any specific criminological thinkers in his own era whose claims could be construed as consonant with his own. At one point he claimed that in his activities related to the extramural initiative, several classic writings by non-criminologists served as his “best text-books”: the Bible, and works penned by Dante, Shakespeare, and Victor Hugo.¹⁵⁵ The *New Outlook* article touched upon something from each of these four works or authors, but it especially highlighted Dante’s *Divine Comedy*. Among the kinds of citizens who would be reading his article, implied Lavell, a typical response to the idea of Hell, or at least to Dante’s portrayal of *inferno*, may have been to suppose that such notions were, on the whole, neither believable nor very compelling. And Lavell himself was not trying to claim that the experience of any of the dead would end up featuring punishment in perpetuity. Nevertheless, the deplorable actions embraced by some people helped to show, in his view, that Dante and others had actually been maintaining quite a plausible perspective when they supposed that plenty of human beings might become acquainted with some phenomenon like Hell. Even if no one specifically punished him, the hardships that nonetheless tended to befall a reprehensible individual sometimes proved rather dire. And his unwholesome habits would often shape his actions, mind-set, or emotional dynamics in ruinous ways.¹⁵⁶ Sometimes other people would also acquire major wounds (even if non-physical ones) as a result of his behaviour.

¹⁵⁵ Lavell, “Treatment of the Criminal in Ontario,” 288.

¹⁵⁶ See Alfred E. Lavell, “Is It a Divine Comedy?” *New Outlook*, February 29, 1928, p. 5. Concerning the last two sentences, see Bucke, “Value of the Study of Medicine,” 341-342.

In one sense, the discussion of *inferno* allowed the *Divine Comedy* to hint at these kinds of abysmal conditions that did in fact dog many people in their earthly milieu. After all, observed Lavell, “[e]vil and its resultant suffering are facts that cannot be laughed away.”¹⁵⁷

Dante had suggested that the inhabitants of Hell had to “abandon” “[a]ll hope.”¹⁵⁸ Lavell, however, did not believe that the hell produced by heinous behaviour would necessarily turn an offender into a wholly hopeless person. Actually, though Dante’s work provided the thought of *inferno*, it offered the motifs of *purgatorio* and *paradiso* too. And from Lavell’s standpoint, if a blameworthy individual’s tribulation sometimes worked in Purgatorial terms, concluding once his unwholesome streak had evaporated, then perhaps the thought of waving goodbye even to starkly hellish conditions should not be regarded as preposterous. “What we appear to need,” declared Lavell, “is the conviction that as there is a way from *purgatorio* to *paradiso*, so there is a way, through *purgatorio* from the *inferno* itself to *paradiso*.”¹⁵⁹ Such an idea may have run counter to what was conveyed by *The Divine Comedy*, but not to the way in which Victor Hugo described the actions and attributes of Jean Valjean, the protagonist of *Les Misérables*. Both in his comments about Valjean and in the article more generally, Lavell associated heaven primarily with the moral vitality that a person might acquire and with the emotional fulfillment that this would produce—with “an ‘inward happiness,’ love and faith in purity and goodness.”¹⁶⁰ An agreeable outcome like that, however, would

¹⁵⁷ See Lavell, “Is It a Divine Comedy?,” 5.

¹⁵⁸ See *ibid.*, 5.

¹⁵⁹ *Ibid.*, 5.

¹⁶⁰ See *ibid.*, 5.

certainly not materialize overnight for someone whose behaviour had borne an odious scent; the afflictions characteristic of hell or purgatory would by no means end up serving as merely a minimal reprimand. To gain deliverance from the ghastly situation to which his nasty conduct had given rise, such an individual would have to focus tenaciously on reforming his conduct and character, making a protracted effort that would probably be punctuated by frequent discouragements. Lavell noted the admirable illustration supplied by Hugo: “[t]he demons of passion, hatred, convention, ignorance and brutality, oppose with ambush or direct attack every step of the man whom he guides upward toward the shining table-lands.... The inferno is changed into purgatorio and then into paradiso by the man Valjean, who through pain and struggle, changes from brute to angel.”¹⁶¹

Nevertheless, the notion that some kind of wonderful situation comparable to Paradise might materialize at some point down the road even for a presently reprehensible individual may perhaps have failed to prove fully compelling in Lavell’s mind. “Is the offer of mercy to sinners a *bona fide* offer which it is really possible for any one and every one to make or to accept at any time?” he asked. “If so, is it not really immoral or subversive of sound ethics and morals? Does belief in the forgiveness of sin shake confidence in the belief that goodness and justice hold such a supreme place that their violation necessarily must bring lasting penalty?” Again,

[w]hen forgiveness is offered can it in all cases without exception be confirmed and completed by its acceptance? ... In a moral universe can the offer be made to all—by an individual, by the state, by God—and is it right to make it? Is the play a comedy? Is there a real and demonstrable path out of hell, and every part of it, that does not imperil heaven?¹⁶²

¹⁶¹ Ibid (in this statement, Lavell is analyzing *Les Miserables*, not providing Hugo’s own remarks).

¹⁶² Ibid., 27.

In a sense, he was addressing a question associated not only with the topic of justice, but also with the issue of exclusion. Perhaps the quasi-heaven of thoroughgoing earthly rehabilitation would entail more extensive inclusion than was appropriate for some heinous individuals, bestowing the sorts of benefits on them that ought to be experienced only by people who had mostly steered clear of the habits of Hell. If endorsing such a scenario would prove “subversive of sound ethics,” then perhaps citizens who regarded ethics as indispensable might have good grounds for affirming an at least partly exclusionary approach to major offenders, such as particularly blameworthy criminals.

Despite this possibility, Lavell was not eager to see forgiveness and reformation discarded. After all, anyone cognizant of her own behaviours and dispositions would realize at times that she and her fellows could certainly find fault with some of her habits. The acquisition of forgiveness or the opportunity for reformation might therefore prove quite pivotal in even a rather reputable person’s attempt to proceed toward *paradiso*. “One of the Psalmists writes, ‘He hath *not* dealt with us after our sins nor rewarded us according to our iniquities.’ Another,” stated Lavell,

says that our sins and iniquities will be blotted out. A deed done cannot be blotted out. There is a grim and firm fixity in facts. The writer seems rather to mean that the evil in the soul that did the unchangeable and inerasable evil deed—any evil deed, and all of them—may be purged from him by the transforming power of love and goodness. The evil will then ‘be remembered no more’ against the offender. Are these right? If *not*, humanity is in a rather bad fix: not *some* people but *all* of us.¹⁶³

Given that reality, it would in some ways seem incongruous, Lavell hinted, for people like those in his audience to suppose that the prospect of paradise had completely evaporated in the case of certain individuals. Nevertheless, if he was seeking to legitimize a

¹⁶³ Ibid. Emphasis in original.

thoroughly rehabilitative perspective, he did not regard it as desirable for people to buy too readily into that viewpoint. But because at least a few individuals would in fact tend to do so, Lavell drew the attention of that kind of person to “the Borgias and the Spanish Inquisition,” to “the Armenian massacres,” and to

the sinking of the hospital ship, *Llandovery Castle*. Let him, further, meditate upon those who deliberately slew a young man called Jesus. Let him think of certain other vicious scoundrels of our present day, some of whom are covered in the article by the reference to Caliban. Will he then give an easy assent to the doctrine which he may claim is an obvious Christian commonplace? If he can do so in these cases, the others—that is the cases of the rest of us—will offer no difficulty. If not, what then?¹⁶⁴

With these sentences serving as the article’s final remarks, perhaps quite a few in Lavell’s audience would have given some portion of the essay another read to ascertain again whether the author was seeking to affirm or to discourage the forgiveness of highly reprehensible persons. But even Lavell’s final question itself implied what an extra pass through his previous discussion would also have revealed: that if the despicable deeds which some people had at one point embraced would inherently ensure that their dispositions and habits could never become appropriate for *paradiso*, then by Lavell’s lights, “humanity is in a rather bad fix: not *some* people but *all* of us.”¹⁶⁵ As on previous occasions, Lavell’s writing revealed his readiness to suppose that many of the dynamics leaving their imprint on criminals or on other blameworthy figures might in certain pivotal ways prove characteristic of the experiences of everyone else as well. This universalist facet of his outlook, a feature which itself reveals his penchant for inclusion,

¹⁶⁴ Ibid.

¹⁶⁵ Ibid., 27. Emphasis in original.

helped to ensure that he would refrain from embracing exclusionary assumptions about the rejuvenation and moral vitality which he associated with heaven.

Lavell's *New Outlook* article made little use of the terms "crime" or "criminal." But offenders would nonetheless seem to have numbered among the particularly blameworthy persons whom he was discussing as he explored the elements of hell, purgatory, and paradise with which human existence appeared to be laced. It was Hugo's portrayal of Jean Valjean, a man who initially belonged to the criminal realm, that Lavell regarded as providing a particularly valuable illustration of the heavenly qualities that purgatory could indeed help to generate in a formerly hell-flavoured individual. At one point Lavell referred to "those of us who must necessarily and continually, day by day, look upon wrong and its inevitable consequences."¹⁶⁶ Such a remark suggests that his own perceptions concerning these dynamics were probably shaped to a great degree by the activities, stances, and situations of provincial convicts, or of their loved ones. And as is apparent in the discussion above, Lavell's last paragraph had associated the Shakespearean figure Caliban with the "vicious scoundrels" whom people might find themselves disinclined to forgive. Other writings of Lavell's also characterized certain unusual, particularly disagreeable criminals as possessing traits evocative of Caliban's.¹⁶⁷ Furthermore, one of Lavell's comments construed forgiveness as an act that "the state" might potentially perform¹⁶⁸—a remark that may perhaps have hinted at practices related

¹⁶⁶ Ibid., 5.

¹⁶⁷ See Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1922," in *Sessional Papers*, No. 24 (1923), at 9-10; see Lavell, *Convicted Criminal*, 11-12.

¹⁶⁸ See Lavell, "Is It a Divine Comedy?," 27.

to criminal justice, perhaps rehabilitative practices revolving around inclusionary initiatives like parole.

As we explore his ruminations about hell and paradise, therefore, we continue to gain a sense of the way in which he regarded convicts and perceived certain penal issues, including issues pertaining to justice and rehabilitation. Lavell did want society to dispense with measures that would make its penal practices unjust. But neither in this article nor in his various other writings would he promote the concept of justice in a manner which would delegitimize the inclusionary “forgiveness” that the rehabilitation of a criminal entailed.

Excluding the Human Animal

Although Lavell generally displayed universalist sensibilities and served as an advocate of non-exclusionary penal policies, there were still certain instances in which potent types of exclusion not only intrigued him to some degree, but actually won his affirmation. An exclusionary stance may in fact have been quite consonant with certain parts of the commentary that he offered during the years subsequent to January 1932, the point at which he had ceased to manage Ontarian parole activity. His writings in the 1920s had, of course, already demonstrated his belief in some types of exclusion, such as “permanent[ly] quarantin[ing]” certain criminals who displayed especially baneful traits.¹⁶⁹ But in the 1930s, he became perhaps just a little more prone to make comments that offenders, at least, might have perceived as slightly antagonistic. January 17, 1937,

¹⁶⁹ See Lavell, “Criminals and Citizenship,” 154 (the quoted phrase comes from this article); see Lavell, *Convicted Criminal*, 51.

turned out to be full of irksome happenings for the penal authorities in Guelph at the Ontario Reformatory, due to the rioting to which this main provincial prison fell prey that day. Thanks to the inquiry that stemmed from the riot, a number of opinions concerning the reformatory or associated topics reached the ears of Judge James Madden through oral input from various correctional staffers or other figures, including Alfred Lavell, during the next several weeks.¹⁷⁰ As Lavell saw it, the inmates at Guelph would more readily get the message that their sentences ought to be providing if the authorities would finally turn the reformatory into a walled establishment.¹⁷¹ Furthermore, this carceral establishment struck Lavell as inappropriately “beautiful.” “I would not have it beautiful,” he pointed out. “It would be far better, speaking now of reformatories, for everybody who passed a place like this or who went through it, to shudder and say: ‘I do not want any of that place.’”¹⁷² And perhaps the slightly less lenient attitude from which such comments stemmed may have also made him a little readier to endorse exclusionary penal practices or viewpoints.

One way to promote exclusionary penal practices was to depict certain characteristics of criminals as redolent of attributes exhibited by animals. In 1936, certain remarks in an article of Lavell’s suggested that Canada might not necessarily be putting

¹⁷⁰ See, for example, “Denies Charges Laid at Guelph,” *Globe and Mail*, January 30, 1937, p. 17; see “Parole Cases Often Tragic, Probe Is Told,” *Globe and Mail*, February 18, 1937, p. 15; Canadian Press, “Warden Backs Prison Policy,” *Globe and Mail*, February 19, 1937, p. 15; Canadian Press, “Public Inquiry Ends at Prison,” *Globe and Mail*, February 25, 1937, p. 17.

¹⁷¹ See inquiry transcript, February 18, 1937, p. 1832, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume X – pps. 1823-1967 incl.,” AO; see also Lavell, *Convicted Criminal*, 72; see also “Severe Penalties Do Not Stop Crime, Says Dr. A.E. Lavell,” *The Globe*, November 6, 1928, p. 15.

¹⁷² Inquiry transcript, February 18, 1937, p. 1840, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume X – pps. 1823-1967 incl.,” AO.

its best foot forward in its penal activities. “Would you release from its cage an ape or a tiger, in the form of a man but still an ape or tiger, merely because it had been imprisoned for a set, arbitrary time?” asked Lavell. “We do that now with lamentable results. Should you retain a *person* in a cage who, though once an ape or tiger by his own choice, has now ‘come to himself’ and will be an asset instead of a burden to society?”¹⁷³ This was the type of perspective which had long led reformers to suppose that there were many offenders for whom the government would have excellent grounds to use an indeterminate period of imprisonment as a penalty. On certain other occasions, though, Lavell or his fellow reformers had implied that indeterminate sentencing would prove particularly worthwhile by giving the state the ability to adopt a rehabilitative parole strategy.¹⁷⁴ This, by contrast, was one of the times when he did as much or more to suggest that the authorities ought to be cognizant of the sorts of offenders whose readiness for additional criminal pursuits should be addressed with protracted imprisonment, rather than with the kind of definite sentences of which the state still availed itself so often, some of which ultimately seemed “altogether too short.”¹⁷⁵ Given

¹⁷³ Lavell, “Crime and Criminals,” 63.

¹⁷⁴ See Ontario, Legislative Assembly, “Fifty-Seventh Annual Report upon the Prisons and Reformatories, the Ontario Board of Parole, and the Commissioner of Extra-Mural Employment of the Province of Ontario, Being for the Year Ending 31st October 1924,” in *Sessional Papers*, No. 24 (1925), at 29 (but see also 30); see Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1928,” in *Sessional Papers*, No. 16 (1929), at 6; and see A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” p. 171, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA.

¹⁷⁵ Lavell, “Crime and Criminals,” 63. It appears that for at least a short time in early 1937, Lavell was actually no longer keen on the kind of sentencing which he was at that point describing as “indeterminate.” However, his comments in this 1936 article (“Crime and Criminals”) convey the impression that the kind of sentencing which he is discussing would provide a degree of indeterminacy (with respect to a convict’s period of imprisonment itself) relatively similar to that provided by Ontarian indeterminate sentencing. Compare “Crime and Criminals,” p. 63, with Inquiry transcript, February 18, 1937, pp. 1850-1855, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume X – pps.

the attributes of such a convict, Canadians could be quite confident in regarding an exclusionary sanction like imprisonment as a credible instrumentalist measure. Similar remarks in an unpublished document composed by Lavell may also have seemed, in effect, to legitimize an exclusionary perspective concerning offenders such as these. He portrayed the quest to supply “punishment proportionate to the offence” as a “futil[e]” pursuit. That said, he also enjoined the nation not to buy into “mistaken notions of mercy and forgiveness” maintained by “the sentimentalists.” “[T]hough the attitude of kindness toward all animals, human and other, is imperative,” declared Lavell,

society must treat tigers, gorillas and skunks as such or suffer for its folly. Men who choose to act like these animals must also be dealt with in the light of what they now are and so long as they decide to remain so. If they change, and their attitude becomes that of responsible cooperative members of society (and the hope of this should always be felt and shown by society) they should be then treated as such ‘and their sins and iniquities remembered no more against them’; but until they so change they must be treated like the animals they choose to be.¹⁷⁶

Even though he sometimes mentioned animals in an attempt to supply a metaphorical description of criminals, Lavell does not seem to have borne ill will toward non-human animals in general, as a note about his dog will amusingly demonstrate. In 1927, the Lavells readied themselves to part with Peter, the household’s terrier, who would now be living at Burwash Industrial Farm, a provincial penal establishment north

1823-1967 incl.,” AO. In any case, by the fall of 1937, he was again singing the pro-indeterminate-sentencing tune—see “Statement and Recommendations” attached to [Lavell] to Allan J. Fraser, October 12, 1937, in A.E. Lavell fonds, Coll. 2214, Box 1, File 3: “1899, 1925-1939,” QUA.

¹⁷⁶ [A.E. Lavell], Introduction [to History of Prisons in Ontario], p. 14, in A.E. Lavell fonds, Coll. 2214, Box 1, File 5: “History of Prisons in Ontario 1792-1932, First Draft TS & Proofs, pp. 2-15,” QUA.

of Lake Huron.¹⁷⁷ Peter, noted Alfred to the superintendent of the institution, “is a very active little person.”¹⁷⁸ “The difficulty here [in Toronto],” explained Lavell,

is that the dog-catchers take a fiendish delight in seizing in their nets every dog that wanders off his own lawn, and even take them from people’s own property if no one is looking. Peter, therefore, has no chance to exercise himself except in our little back yard, and that seems cruelty to animals. I will bring with him in the baggage car the basket he has been accustomed to sleeping in. If you will think out some one place where you would probably wish it to be put it can be placed there immediately on his arrival, and if you are acquainted with dogs you know that the sooner he locates what he looks on as his home under new surroundings, the better for all concerned. He would be a good little watch-dog for your house or anywhere else, but the chief thing is that he will be able to race around the woods to his heart’s content.

The family will be very sorry indeed to lose him, and we only decided to ask you to accept his custody because it did not seem fair to Peter to keep him in the city.¹⁷⁹

We might say that Toronto had burdened Peter with a life of virtual house arrest. Now the bush, by contrast, would let him go traipsing hither and yon. The wooded region in which it was found certainly did give Burwash Industrial Farm a non-urban flavour. In 1918, the superintendent of this four-year-old institution, C.F. Neelands, had suggested that Burwash convicts would tend to come out ahead, thanks partly “to the natural atmosphere of the forest and land.”¹⁸⁰ At that point, at least, the authorities hoped not to hem in the convicts in the claustrophobic way that prisons often did. In 1917, Neelands had pointed out that, through Burwash, penalization took the form of captivity “without

¹⁷⁷ For a discussion of Burwash Industrial Farm, see Friedland, *Case of Valentine Shortis*, 243-245.

¹⁷⁸ [Alfred Lavell,] Chief Officer to J.K. Fairfull, Superintendent, Burwash Industrial Farm, June 21, 1927, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 14, AO.

¹⁷⁹ [Alfred Lavell,] Chief Officer to J.K. Fairfull, Burwash Industrial Farm, June 7, 1927, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 14, AO.

¹⁸⁰ See Ontario, Legislative Assembly, “Fifty-First Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, Being for the Year Ending 31st October 1918,” in *Sessional Papers*, No. 26 (1919), at 46; see Friedland, *Case of Valentine Shortis*, 243-244; see also Ontario, Legislative Assembly, “Report of the Ontario Board of Parole for the Year Ending October 31st, 1920,” by Alfred E. Lavell, in *Sessional Papers*, No. 57 (1921), at 10.

bars or cells.”¹⁸¹ Even so, perhaps “rac[ing] around the woods” had never been as possible for most of the inmates as it would be for Peter.¹⁸² In any case, to a dog the industrial farm certainly offered the opposite of incarceration, and he, unlike the convicts, would have no reason to long for parole.

Lavell, therefore, might decide that a non-human animal, at least one so “person”-like as Peter, should not have to put up with a quasi-carceral existence in Toronto. And he could also, by contrast, treat the supposedly animalesque attributes of certain criminals as a reason why the state should wait longer before allowing their imprisonment to conclude. Perhaps my discussion above could be used to argue that Lavell, despite his admirable previous statements about criminals’ “human” character, was now “dehumanizing” such people in his writing. But though his claim that certain offenders possessed animalistic qualities did put him in position to endorse exclusion, in some respects these comments about the animality of such criminals still provided grounds for affirming their humanness. After all, these remarks employed as many terms of agency as of animality. Such criminals struck him as being “ape[s] or tiger[s] by [their] own choice,”¹⁸³ as being people “who choose to act like these animals,” people who might “decide to remain so.”¹⁸⁴ If he made them out to be metaphorical tigers and apes, he also

¹⁸¹ See Ontario, Legislative Assembly, “Fiftieth Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, Being for the Year Ending 31st October 1917,” in *Sessional Papers*, No. 26 (1918), at 46. See also Friedland, *Case of Valentine Shortis*, 243-244, and Inquiry transcript, February 18, 1937, pp. 1826-1828, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume X – pps. 1823-1967 incl.,” AO.

¹⁸² On the other hand, at least one inmate, Valentine Shortis, could “go wherever he wished on the property”—Friedland, *Case of Valentine Shortis*, 244.

¹⁸³ Lavell, “Crime and Criminals,” 63.

¹⁸⁴ [A.E. Lavell], Introduction [to History of Prisons in Ontario], p. 14, in A.E. Lavell fonds, Coll. 2214, Box 1, File 5: “History of Prisons in Ontario 1792-1932, First Draft TS & Proofs, pp. 2-15,” QUA.

clearly portrayed them as individuals who made decisions, like the rest of the human race. On one occasion, Lavell employed the notion of animality in a comment describing what he regarded as the quite appropriate viewpoint of a number of late-nineteenth-century American reformers. From their perspective, he claimed, “[t]here were many criminals who though they had behaved as apes or other animals might repentantly now choose to act like men.”¹⁸⁵ If indeed this statement would have won the affirmation of plenty of figures pursuing reform in the late 1800s, then this is one instance in which Richard Maurice Bucke had not promoted the usual reformist perspective. When Bucke offered animal analogies in his discussion of criminals, his comments implied that whatever degree of agency such offenders might possess would prove less powerful than the propensity from which their criminal actions so readily resulted.¹⁸⁶ From Lavell’s perspective, by contrast, the life of the currently animalesque criminal still featured the option of non-animality.

In one sense, Lavell’s construal of animality in these passages served to emphasize that the behaviours pursued and attitudes acquired by such offenders were truly reprehensible. Indeed, someone advocating a retributive variety of imprisonment might have latched onto the same sort of motifs that Lavell did, drawing attention to the “choice[s]” which offenders had made and to the egregious traits they had thereby come to exhibit. In the 1930s, there might occasionally be a quasi-retributive flavour in

¹⁸⁵ A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” p. 79, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA. See also Lavell, “The Supervision of Paroled Persons,” 211.

¹⁸⁶ See “‘A Moral Idiot,’” *London Advertiser* [London, Ontario], July 8, 1881; see Ontario, *Report of the Commissioners Appointed to Enquire into the Prison and Reformatory System of Ontario, 1891* (Toronto: Warwick & Sons, 1891; Ottawa: Canadian Institute for Historical Microreproductions [microfiche], 1994), microfiche, CIHM no. 94076, pp. 530-536, especially 532.

Lavell's discussion of penal issues even when he did not avail himself of animal terminology. One newspaper reporting on Lavell's talk with the Madden commission in 1937 seemed to suggest that Lavell deemed it desirable for the authorities to employ imprisonment from a retributive penal perspective.¹⁸⁷ However, the transcript which details Lavell's comments to the commission shows that the news article had provided an at least slightly erroneous portrayal with respect to this particular matter. Lavell had pointed out that the retribution on which some citizens were keen did in fact maintain a strong presence within the penal practices of the justice system.¹⁸⁸ But he had not claimed that the authorities ought to maintain a retributive viewpoint as they worked to develop enhanced ways of operating prisons. Rather, both at the Madden inquiry and in the arguments which he outlined later that year to the Archambault commissioners (whose report will be discussed in Chapters 3 and 4), Lavell tended to promote instrumentalist measures.¹⁸⁹ And his remarks about the incarceration of animalistic criminals would also have proved most compelling to Canadians who harboured instrumentalist assumptions. Even though someone who was fond of retribution could probably have gleaned some inspiration from those comments about animality, Lavell does not in fact seem to have been providing a retributive interpretation of the incarceration that he was endorsing for "tigers" and "apes." Rather than trying to ensure that his audience would associate such a sanction with ethical justice, he drew attention to

¹⁸⁷ See clipping of Canadian Press, "Real Punishment in Prisons Urged," [Montreal?] *Star*, February 18, 1937, in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1282, Volume 22, File 17: "Penal Documents, 1936-1937," LAC.

¹⁸⁸ See inquiry transcript, February 18, 1937, pp. 1829-1830, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, "Guelph Reformatory Inquiry Evidence, Volume X – pps. 1823-1967 incl.," AO.

¹⁸⁹ See *ibid.*, pp. 1833-1834; see "Statement and Recommendations" attached to [Lavell] to Allan J. Fraser, October 12, 1937, in A.E. Lavell fonds, Coll. 2214, Box 1, File 3: "1899, 1925-1939," QUA.

the “lamentable results” that materialized due to the kind of definite sentences currently prevalent in Canada. There was a strong possibility, suggested Lavell, that such offenders’ behaviour would remain quite true to criminal form in the days ahead, and that the “protection” preferable to Canadians could be supplied by means of greater amounts of incarceration.¹⁹⁰

The motif of “protection” meshed quite well with the ideas Lavell had offered in both the twenties and the thirties. His depiction of inclusionary techniques like parole had highlighted the re-establishment which they would put offenders in position to pursue, so that “good citizenship” would grow more commonplace even among men who had formerly been turned on by crime. And as he later portrayed it, to saddle animalesque offenders with heavy stints of incarceration, or at least to employ some kind of sanction that fully recognized their tiger-like or skunk-like attributes, would be quite in order because of the crimes or other “suffer[ing]” from which Canada would thereby be spared.¹⁹¹ From the perspective both of Lavell and of a number of other reformers, the development of astute protective penal techniques could most often be regarded as a commendable initiative. Such an assumption could help to validate both inclusionary practices and sanctions that necessitated tangible exclusion.

During the past four decades, a small number of thinkers and activists have acquired an abolitionist perspective concerning incarceration. From the standpoint of prison

¹⁹⁰ See Lavell, “Crime and Criminals,” 63.

¹⁹¹ See Lavell, “Crime and Criminals,” 63; see [A.E. Lavell], Introduction [to History of Prisons in Ontario], p. 14, in A.E. Lavell fonds, Coll. 2214, Box 1, File 5: “History of Prisons in Ontario 1792-1932, First Draft TS & Proofs, pp. 2-15,” QUA.

abolitionists, societies like Canada can produce no truly viable excuse for imprisoning more than a small portion (at most) of the kinds of convicts currently interned by the criminal-justice system.¹⁹² Abolitionist figures in this later era have certainly disparaged incarceration to a more thoroughgoing degree than did the pre-1970 reformers on whom I focus in this dissertation. Yet the more potent assertions and more left-wing politics of current abolitionists should not lead us to assume that the earlier, more centrist reformers never portrayed imprisonment as a genre of punishment on which Canadians should sometimes frown. In every decade of the twentieth century, at least a little of the reformist commentary generated in Canada suggested that criminal justice erred on the side of incarcerating too readily.¹⁹³ Alfred Lavell certainly does not appear to have preferred radical political options or social possibilities, nor to have hankered for prison abolition.¹⁹⁴ Even so, in the 1920s, his commentary occasionally suggested that imprisonment was not all it had once been cracked up to be, and that Canada could at times get more correctional mileage out of other tactics. But although Lavell and others had worked for years to make non-carceral measures more popular, the discussion and

¹⁹² See Culhane, *Barred from Prison*, including 217; see Claire Culhane, *Still Barred from Prison: Social Injustice in Canada* (Montreal: Black Rose Books, 1985), including 145.

¹⁹³ See, for example, F.R. Scott, "Penal Reform," *Saturday Night*, July 11, 1936, p. 7; see Milton L. Hersey, F.R. Scott, R. Gordon Burgoyne, and John Kidman, Memorandum Presented by Officers of the Canadian Penal Association and of the Prisoners' Aid & Welfare Association of Montreal, Inc., to the Royal Commission on Penitentiaries and the Penal System of Canada, September 1936, pp. 4-5, in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1282, Volume 22, File 17: "Penal Documents, 1936-1937," LAC; see Joseph McCulley, "A Canadian Correctional Treatment Plan: Objectives," in *Proceedings of the Canadian Penal Association, Held in Conjunction with the American Prison Association, King Edward Hotel, Toronto, October 15 and 16, 1953* (Toronto: Canadian Penal Association, n.d.), p. (2); see Gordon W. Russon, review of *Crime and Juvenile Delinquency*, by Sol Rubin, *Canadian Journal of Corrections* 1, no. 1 (October, 1958): 52-54; see T. George Street, "Parole as a Social Control," *Canadian Journal of Corrections* 7, no. 1 (January 1965): 6.

¹⁹⁴ As he portrayed it on one occasion, "[p]risons and similar institutions will probably always be necessary though this is a fearful indictment of society in general"—Lavell to editor of *New Outlook*, May 23, 1927, in RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 14, AO. On another occasion, he suggested that "[p]enal establishments ... will continually need changes, ... but places of safe custody of some sort are essential."—Lavell, *Convicted Criminal*, 67.

initiatives of administrators, reformers, and the Canadian public regarding penal affairs during the next two decades would not, admittedly, revolve chiefly around practices like parole. The 1960s, a period with which we will deal in the epilogue, ended up being the era in which reformers began to take an especially strong liking to non-carceral correctional possibilities. From the thirties to the fifties, by contrast, reformist advocacy tended to highlight prisons themselves, whether by showing that current penitentiaries were on the friz or by promoting measures through which rehabilitative dynamics could be produced in an institution that adopted beneficial methods.

If remarks about “prison abolition” seldom surfaced prior to the last third of the twentieth century, it was also in the last part of the century that many people began to highlight “exclusion” as a phenomenon that societies or smaller social groups should, in most situations, refrain from creating. In earlier decades, there may have been relatively few Canadians to whom it would have occurred that terms like “inclusive” or “exclusionary” could serve as descriptors for attitudes or practices. Be that as it may, the anti-exclusionary streak with which some people in those previous periods were in fact equipped did leave at least a limited imprint on their political stances or social ideas. Even in the interwar period, of course, liberal citizens, including penal reformers, tended to cavil at behaviours or attitudes associated with ostracism. The discussion in this chapter has familiarized us with several facets of Lavell’s commentary that testify to the inclusive mentality he maintained, although it should also be apparent that his affinity for instrumentalist interpretations of penal practice proved at least as powerful as his anti-exclusionary outlook.

Lavell did not manage to make many Ontarians particularly excited about either his inclusionary perspective or his methods of dispensing with protracted imprisonment. But interwar citizens, like other Canadians in both earlier and later periods, could occasionally display a good degree of excitement about certain kinds of events that the convicts who did stay in their nation's prisons might experience or create in those fearsome institutions. In the early 1930s, no Canadian prison would do so much to intrigue the newspaper editorialists and their audiences as the institution to which Lavell himself had gone daily, many years before, as an employee—Kingston Penitentiary. And if we were to select one former prisoner who did the most to make people look askance at Kingston Pen, perhaps our choice would be neither a robber, burglar, smuggler, nor ruffian, but rather a gynecologist ...

Chapter 3

Enhanced Denunciation: Systems, Persons, and the Critique of the Penitentiaries in the 1930s

In Ruth Dembner's estimation, the fall of 1927 would be too soon to give birth. Or perhaps this may have been the opinion of her beau, Bartlett Brooks. During his years as a doctor in Toronto, Oswald Withrow had heard from other women like Dembner every now and then. Most of those clients, of course, would die only after many more years on earth. But Dembner's session with Dr. Withrow on February 12 ended up being one of the last events of her life, due to the peritonitis to which she fell prey a week later—peritonitis ignited by a scratch in her womb.¹

In the authorities' view, this wound had stemmed from an abortion, an abortion that had been Withrow's handiwork. By early May, the state had moved forward with a criminal trial for both Withrow and Brooks, the man whom Dembner had expected to marry before long, since it had seemed to the authorities that the abortion had taken place due partly to Brooks' hand in facilitating this surgery. May 6 became the pivotal day in the trial, the day on which the court would find out whether or not the jury would allow the state to penalize the doctor and the lover. The situation had certainly sparked the curiosity of plenty of Torontonians. The telephone rang nearly five hundred times at the *Globe* that evening, as people too eager to wait for the next issue of the paper sought to ascertain the nature of the decision. The next day's front page noted the key

¹ See Carolyn Strange, "Casting Light on Women in the Shadow of the Law: Toronto at the Turn of the Century," in *Great Dames*, ed. Elspeth Cameron and Janice Dickinson (Toronto: University of Toronto Press, 1997), 113-116; see *R v Brooks* (1927), [1928] 1 DLR 268 (SCC); see "Dr. Withrow Tells Story of Treatment Given Ruth Dembner," *The Globe*, May 6, 1927, pp. 13-14; see "Brooks 'Flippant' after Ruth's Death, Mrs. Dembner Says," *The Globe*, May 3, 1927, p. 17; see "Guilty on Second Count Declares Jury Verdict in Brooks-Withrow Case," *The Globe*, May 7, 1927, pp. 1-2.

developments: Withrow and Brooks were now convicts, as individuals who had indeed “attempt[ed] to procure an illegal operation” (although the two men did not, according to the jury, qualify as perpetrators of a manslaughter, as had been claimed by the Crown).² Beginning on May 21, therefore, O.C.J. Withrow got a turn as prisoner in Kingston Penitentiary.³

The doctor ended up hanging out with fellow convicts in prison for less than forty percent of the seven-year penalty that had been bestowed upon him.⁴ But he certainly hankered for his carceral stint to be pared down even more. For his first several months in Kingston Pen, Withrow felt deeply forlorn. He had perked up by the end of the year, though. A more buoyant aroma now oozed from his letters, which highlighted such topics as the large array of books, the self-training in shorthand, and the language study that rejuvenated him during the hours subsequent to his workday.⁵ At about this same time, the state’s attempt to punish Brooks had begun to flounder. In the fall of 1927, Brooks’ original conviction failed to withstand the Supreme Court of Canada’s appraisal of the trial. The Crown therefore went mano a mano with Brooks again, taking him on in

² See Strange, “Casting Light on Women in the Shadow of the Law,” 113-116; see “Dr. Withrow Tells Story of Treatment Given Ruth Dembner,” *The Globe*, May 6, 1927, pp. 13-14; see *R v Brooks* (1927), [1928] 1 DLR 268 (SCC); see “Brooks ‘Flippant’ after Ruth’s Death, Mrs. Dembner Says,” *The Globe*, May 3, 1927, p. 17; see “Guilty on Second Count Declares Jury Verdict in Brooks-Withrow Case,” *The Globe*, May 7, 1927, pp. 1-2 (the quoted phrase appears on p. 1); see “Globe Phones Busy,” *The Globe*, May 7, 1927, p. 17. See also “Dr. Withrow and Brooks to Be Jointly Indicted,” *The Globe*, April 12, 1927, p. 13; “‘Not Guilty,’ Is Plea in Regard to Death of Ruth E. Dembner,” *The Globe*, April 20, 1933, p. 13.

³ See O.C.J. Withrow, “Dr. Withrow Sheds Light on Penitentiary Life: Newcomer Enters ‘Big House’ Gate[,] Gets ‘Instruction’ on Regulations and Is Housed in ‘Furnished’ Cell,” *The Globe*, August 7, 1933, pp. 1, 3.

⁴ On his sentence, see “Brooks Five Years and Withrow Seven, Is Court’s Sentence,” *The Globe*, May 19, 1927, pp. 13-14.

⁵ See O.C.J. Withrow, “Arrayed in White Suit as Hospital ‘Orderly’ in Latest Prison Role,” *The Globe*, August 24, 1933, pp. 1, 3; see O.C.J. Withrow to Eva B. and Bessie V., May 15, 1928; [Withrow] to “Darlings,” November 15, 1927; [Withrow] to “Darlings,” December 10, 1927; and also the other letters authored by Withrow between May and November 1927, in Oswald C.J. Withrow fonds (hereafter Withrow fonds), F 1375, Container B228810, File: “Withrow Papers,” Archives of Ontario (hereafter AO).

another trial, and then in a third and a fourth. But according to the eventual ruling of the fourth jury in late November of 1928, Brooks' actions did not in fact qualify as criminal.⁶ At first Withrow regarded this as good news. By his lights, if anyone was at fault with respect to Dembner's death, it was Brooks. The de-jailing of the latter man, therefore, ought to persuade the authorities that Withrow could not defensibly be incarcerated anymore either. He was deeply miffed when that reasoning failed to prevail in the authorities' minds.⁷ "'Tis the night before Xmas and the 32nd day since Brooks was acquitted (on an identically similar charge to mine)," he noted in a letter on December 24, 1928.⁸ Almost all of his subsequent family letters listed the growing number of days for which the authorities had failed to rectify their inappropriate penalization of his own conduct even after they had realized they could not punish "that scoundrel Brooks."⁹ "[I]t's all been so heartlessly cruel, terribly unjust, and horribly unfair if not veritably illegal," seethed Withrow in January 1929.¹⁰ If the issue gnawed at him and turned his outlook slightly acrid, an ailment related to his thyroid also prevented him from displaying much physical vigour for a substantial portion of 1929. And this latter malady helped to ensure that, with two months left in the decade, he would in fact cease to be a prison inmate. After October 25, 1929, Kingston Penitentiary saw no more of the

⁶ See *R v Brooks* (1927), [1928] 1 DLR 268 (SCC); see "Outline of the Brooks Case," *Toronto Daily Star*, January 21, 1928, p. 3; see "Jury Again Disagrees in Trial of Brooks," *Toronto Daily Star*, April 20, 1928, p. 3; see "Bartlett J. Brooks Found Not Guilty," *Toronto Daily Star*, November 28, 1928, p. 3.

⁷ See [Withrow] to "Darlings," December 10, 1928, and "'Poppy' à la Hincks" [Withrow] to "My Dear Home Folks," December 24, 1928, in Withrow fonds, F 1375, Container B228810, File: "Withrow Papers," AO. At one point in the 10 December 1928 letter, he declared that "I'm disheartened, disappointed, disgruntled, and disgusted."

⁸ [Withrow] to Home Folks, December 24, 1928, in Withrow fonds, F 1375, Container B228810, AO.

⁹ See the letters from 1929 in Withrow fonds, F 1375, Container B228810, File: "Withrow Papers," AO. For the phrase "that scoundrel Brooks," see [Withrow] to Family, January 15, 1929, and in [Withrow] to Family, February 15, 1929; see also [Withrow] to Family, March 15, 1929.

¹⁰ [Withrow] to family, January 15, 1929, in Withrow fonds, F 1375, Container B228810, File: "Withrow Papers," AO.

Toronto physician, thanks to his acquisition of a ticket-of-leave supplied from a “compassionate” standpoint.¹¹

By no means did he grow well disposed toward the penal authorities now that he had donned the hat of parolee rather than prisoner. A second round in Kingston was possible for a ticket-of-leave convict whose conduct nettled state personnel, so the need to watch his p’s and q’s dogged Withrow psychologically.¹² As he saw it, his parole itself ought to be dispensed with by means of a pardon, but the state was in no hurry to agree.¹³ He would have been of a mind to bring the public up to speed concerning some of the proclivities to which Kingston Pen employees or penitentiary bigwigs were currently given. He quickly saw, however, that it would be foolhardy to do so while he still had parole time left to log, since the thought that an article authored by Withrow might surface in the newspapers appeared to disquiet the authorities.¹⁴ On one occasion, a relative of his let him know about a particular missive that someone in “Ottawa” (possibly Superintendent of Penitentiaries William St. Pierre Hughes), had composed. This

¹¹ See O.C.J. Withrow, “Home Folk Write Prison Doctor Anxious Over Health of Inmate and Get Curt Note from Warden,” *The Globe*, September 5, 1933, pp. 1, 3; see [Withrow] to “Dear Gurli,” July 31, 1929, in Withrow fonds, F 1375, Container B228810, File: “Withrow Papers,” AO; see J.D.M.G[riffin], “Oswald Charles Joseph Withrow, 1878-1946,” pp. 2-3, in JDM Griffin fonds, Bio File for O.C.J. Withrow (Dr.) (1878-1946), Centre for Addiction and Mental Health Archives.

¹² See O.C.J. Withrow, “Keep Mouths Clamped or Go Back to Prison Fear of Men on Parole,” *The Globe*, September 12, 1933, pp. 1, 10..

¹³ See Withrow diary, entries for January 11, 1930; April 2, 1930; April 3, 1930, April 25, 1930; and May 9, 1930, in Withrow fonds, F 1375, Container B253379, AO.

¹⁴ See O.C.J. Withrow, “Keep Mouths Clamped or Go Back to Prison Fear of Men on Parole,” *The Globe*, September 12, 1933, pp. 1, 10; see Withrow diary, entries for January 2, 1930; January 19-21, 1930; February 28, 1930; April 2, 1930; May 2, 1930; November 27, 1930; December 22, 1930; January 8, 1932; and October 20, 1932, in Withrow fonds, F 1375, Container B253379, AO.

relative's "quotations," declared Withrow in his diary, "are the most damnable indictments against the system it would be possible to imagine."¹⁵

Up to the time of this particular comment, Withrow's statements about the authorities in his letters or diary had not frequently described Canadian penitentiaries or other types of government entities as a "system."¹⁶ A few years down the road, however, that word would leave a major imprint on his discussion of penal affairs. And his comments denouncing "the System" would intrigue a much larger audience than just a few historians examining his diary. A number of Canadians would make critical remarks of their own about "the system" or about certain other quasi-structural traits of interwar criminal justice. Several factors, including Withrow's highly unflattering assessment of penitentiary realities, would end up making a portion of the Canadian citizenry unusually keen on penal reform in the early 1930s. In fact, the cause gained enough momentum for the federal authorities to decide, around mid-decade, that a royal commission could devote itself to the issue.¹⁷ The resulting Archambault Commission would prove to be a major force in favour of the rehabilitative mind-set upon which federal corrections would fasten in the postwar decades.¹⁸ Canada was presented with strong reformist arguments

¹⁵ See Withrow diary, entry for May 22, 1930, in Withrow fonds, F 1375, Container B253379, AO. It is in light of two other documents that I think the missive to which the relative put Withrow wise might possibly have been authored by Hughes: note the "quotations" that Withrow's diary provided early the next week, remarks which a Hughes letter appears to have supplied—compare Withrow's diary entry for May 26, 1930, with O.C.J. Withrow, "Keep Mouths Clamped or Go Back to Prison Fear of Men on Parole," *The Globe*, September 12, 1933, pp. 1, 10.

¹⁶ But see Withrow diary, entry for May 9, 1930, in Withrow fonds, F 1375, Container B253379, AO.

¹⁷ See C.W. Topping, *Canadian Penal Institutions*, rev. ed. (Toronto: Ryerson Press, 1943), xvi-xvii.

¹⁸ See Doherty and Ekstedt, *Conflict, Care and Control*, 69-70; see Carrigan, *Crime and Punishment in Canada*, 367-371, 374; see R.B. Gibson, "What's Happening in Our Penitentiaries?" *Saturday Night*, October 25, 1952, p. 9.

through the Archambault Report in 1938 partly because certain citizens had vigorously inveighed against prevailing penal habits in the first half of the decade.

Various studies which deal with twentieth-century social reformers or correctional personnel take note of these figures' assumptions about the structural patterns to which their society adhered, or about the norms that society created for the human individual. As such studies often portray it, reformers and personnel who pointed out weaknesses in society, or who identified options for correcting these weaknesses, tended not to draw attention to structural dynamics, nor to collective practices. Instead, they tended to highlight issues that could be dealt with at "the level of the individual." This is one trait of the reformers that does not sit well with their historians, who think that social structures mattered much more than the reformers' approach implied.¹⁹

Perhaps we could use this same type of interpretation when discussing O.C.J. Withrow or other penal reformers of the 1930s.²⁰ But an exploration of these figures' advocacy also creates a good opportunity to provide a different take. Reformers in this decade did point out structural phenomena to a certain degree, sometimes by noting the

¹⁹ For comments conveying this type of depiction of reformist measures, or of figures who attended to penal issues, see Gamberg and Thomson, *The Illusion of Prison Reform*, 135-137, 141-142 (quoted phrase on 135) (on the other hand, see other comments on 135 as well); Garland, *Punishment and Welfare*, 82-83, 92-93; Jennifer Stephen, "The 'Incorrigible,' the 'Bad,' and the 'Immoral': Toronto's 'Factory Girls' and the Work of the Toronto Psychiatric Clinic," in *Law, Society, and the State: Essays in Modern Legal History*, ed. Louis A. Knafla and Susan W.S. Binnie (Toronto: University of Toronto Press, 1995), 409; Sangster, "Reforming Women's Reformatories," 227-252, especially 233-235, 247, 250-251. For this kind of depiction of another kind of twentieth-century social reformer, see Angus McLaren, *Our Own Master Race: Eugenics in Canada, 1885-1945* (Toronto: McClelland & Stewart, 1990), 30-34, 44. For a similar approach to nineteenth-century reformist endeavours related to education, see Bruce Curtis, *Building the Educational State: Canada West, 1836-1871* (London, ON: Althouse Press, 1988).

²⁰ For statements of Withrow's which might suggest that such an interpretation could apply in his case, see O.C.J. Withrow, "Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates," *The Globe*, September 16, 1933, pp. 1, 3; O.C.J. Withrow, "Dr. Withrow Replies to 'Pen' Questions," *The Globe*, September 19, 1933, pp. 1, 3; and O.C.J. Withrow, "Dr. Withrow Replies to 'Pen' Questions," *The Globe*, September 23, 1933, p. 1, 3.

class realities reflected in present penal habits or in current social practices more broadly, and sometimes by informing readers about the structural patterns characteristic of institutional activity. Still, in their criticisms of interwar criminal justice, Canadians demonstrated that they considered the qualities and actions of persons to be of at least as much concern as were the structures in their society. And by no means did this aspect of their mind-set ruin reformers' attempt to portray the authorities' practices as seriously flawed. Indeed, both the portions of their rhetoric that focused on structures and the portions that drew attention to the characteristics of persons contributed usefully to Canadian reformers' denunciatory message regarding objectionable penal activity during this period. Sometimes, thanks to their awareness of structural considerations, reformers discussed offenders or punishers without opting for the strong flavour of rebuke which a less sagacious commentator might have employed, and which could have turned their audience off. At certain other points, structural imagery proved consonant with especially voluble denunciation. Most importantly, reformers' structural rhetoric helped to ensure that their denunciatory message would prod the *relevant* persons, those whose stance might end up being most pivotal.²¹ Occasionally a commentator would portray a putatively structural phenomenon itself as displaying attributes usually perceived as belonging to persons. Such a depiction allowed a writer to hint, perhaps, at the extent to which structures did in fact owe their features to the concrete actions and habits of people. In any case, reformers resorted at other points to more forthright assertions concerning the

²¹ For a vaguely related remark about "the right people," see Karl Menninger, *The Crime of Punishment*, 53-54, quoted in Chadwick Alem Marr, "A Series of Nasty Situations': The Causes and Effects of Riots at Kingston Penitentiary" (M.A. Thesis, Queen's University, 1998 – Ottawa: National Library of Canada, 1999), p. 3, <http://www.nlc-bnc.ca/obj/s4/f2/dsk2/ftp01/MQ36053.pdf>.

faults or obligations of human figures. Accordingly, the disparaging claims of commentators concerning current penal activity, even their observations about the structural dynamics therein, tended to offer enough reminders about the qualities and duties of persons to catch the attention of readers, and to highlight the need for a meaningful response. So, in a very un-Foucauldian chapter, let us nonetheless riff off of Foucault's classic observation: the reformers highlighted both structures and persons not to denounce less, but instead to denounce better.²²

“One Law for the Rich and Another for the Poor”

Heading off to court was not one of Austin Campbell's usual morning activities. But certain other activities of his had now caused the police to close in, making January 30, 1930, a rather atypical Thursday for this Torontonion. During the past decade, Campbell had plunged into the stereotypical endeavour of the 1920s business world: stock brokering. Now, in the months subsequent to the Crash, the authorities had gotten wise to the unlawful investment expedients for which Campbell and the head of his company, D.S. Paterson, had opted at times. The state had obtained more than merely a chance to collar Campbell and Paterson; eight other arrestees in Toronto this Thursday had landed in hot water for the same type of offences. Before the end of the day, bail had prevented the further jailing of most of these stockbrokers. Still, imprisonment would eventually call a halt to the usual activities of at least eight of the men for a portion of the early

²² See Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (original edition of translation published in 1977; New York, NY: Vintage Books, 1979), 82 (“And ‘reform’ ... was the political or philosophical resumption of this strategy, with its primary objectives: ... not to punish less, but to punish better”).

1930s. In November, the court decided that a thirty-month penalty would be in order for Campbell—a reprimand similar to the two- or three-year sentences of most of the others. The primarily blue-collar individuals in Kingston Pen would be meeting a few more white-collar malefactors.²³

By the summer of 1931, however, it became apparent that the people of Kingston Pen had not had very long to get to know the brokers. These particular Torontonians' punishment in the Kingston region had involved incarceration in the main penitentiary at first, but soon thereafter in the Collins Bay prison, an institution which had materialized just a mile or two away.²⁴ On June 8, 1931, an article in the *Globe* pointed out certain facets of the Collins Bay establishment that ran counter to the traits often perceived as typifying penitentiaries. The first and largest headline on the paper's front page, and the secondary headline above the article, drew attention to the major theme on which the author, William Marchington, had fastened: "Open-Air Camp Life Fate of Convicted Brokers: No Rocks to Break, No Dungeon Cells; Lots of Good Food." "On a beautifully wooded Frontenac farm," stated Marchington, "not far from the rippling blue waters of Lake Ontario, nine Toronto and Ottawa stock brokers are paying the penalty for crimes which deprived thousands of clients of lifetime savings and left a trail of misery and grief throughout Canada." Aesthetically speaking, Collins Bay had a great deal going for it,

²³ See "Arrest 10 Brokers, Seek Others in Clean-Up: Leading Operators on Standard Exchange Accused of Conspiracy," *Toronto Daily Star*, January 30, 1930, pp. 1-2; see "One Million Dollars Bail Fixed for Brokers Detained on Fraud Charges," *Toronto Daily Star*, January 30, 1930, pp. 1, 3; see "Eight Brokers' Prison Terms Total 22 Years: Smart and Heppleston, Paterson and Stobie Get Three-Year Terms; Young, Campbell, Shutt, Forlong to Serve Two Years and Half Each," *Toronto Daily Star*, November 13, 1930, pp., 1-2; see "Six Brokers Lodged in Penitentiary," *Toronto Daily Star*, March 19, 1931, p. 1.

²⁴ See editorial, "Boys or Brokers?," *The Globe*, August 10, 1931, p. 4; see *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: King's Printer, 1938) (hereafter Archambault Report), 14.

thanks to such factors as its “[g]raceful elms and lovely maples” and “[t]he song of birds and the scent of wildflowers.” “At the Collin’s Bay Farm,” declared the journalist, “the guards carry no firearms or weapons of any kind, the guests are housed in buildings similar to those found at construction camps, and all that separates them from freedom is a barbed-wire fence.” Furthermore, “[t]heir trays are heaped with nourishing foods: soups, meats, fish, vegetables and the kindly fruits of the earth in due season.” The roughly two hundred Collins Bay convicts seemed to be experiencing imprisonment in style. In Marchington’s telling, the penitentiary leadership had latched onto the thought of getting significant rehabilitative mileage out of Collins Bay, and considered it undesirable to put this institution’s inmates through the wringer. The author did not actually provide any out-and-out assertion that Collins Bay had jettisoned more of the grim flavour of incarceration than it should have.²⁵ But that idea was undoubtedly blazing in the minds of many of those who took the article’s fulsome phrases even partly to heart.

The authorities did indeed believe that Collins Bay might prove most helpful if it managed to be a somewhat unusual Canadian penitentiary, even if not in quite the sense that Marchington’s piece implied. For the first six decades after Confederation, the number of federal prisons in Canada had remained low—no more than seven at any given moment. In the main Canadian penitentiaries, only a rather modest degree of rehabilitation had ended up taking place. But in the estimation of at least some penal leaders, there were a number of inmates who might find it quite workable and desirable to

²⁵ See William Marchington, “Open-Air Camp Life Fate of Convicted Brokers,” *The Globe*, June 8, 1931, pp. 1-2.

abandon criminal activity, or who might get to that point without too much difficulty, provided that there was a more wholesome prison which would supply the kind of activities and employ the kind of practices that would put such offenders in an optimal position to reform. This was the vision that the authorities had adopted for the Collins Bay penitentiary.²⁶ As a result of comments coming from the authorities in the late 1920s concerning this prison that they would soon be creating, many people had tended to perceive “juvenile” convicts as the inmates to which Collins Bay would be devoted.²⁷ Convicts without many years under their belts did strike many people as more “reformable” than offenders who were well into their adulthood;²⁸ accordingly, a government developing a rehabilitative institution might very well gravitate toward a “young offender” emphasis. Still, it would appear that the objective in this case may have

²⁶ See Archambault Report, 104; see editorial, “Why Is ‘Mystery Camp’?” *The Globe*, June 16, 1931, p. 4.

²⁷ See editorial, “Is It a Holiday Outing?”, *The Globe*, June 10, 1931, p. 4; editorial, “In the ‘Preferred Class,’” *The Globe*, June 12, 1931, p. 4; editorial, “Preference to Be Explained,” *The Globe*, June 15, 1931, p. 4; editorials by *Brantford Expositor* and *Stratford Beacon-Herald*, reprinted in “The Collin’s Bay Camp,” *The Globe*, June 15, 1931, p. 4; editorial, “Where Explanation Fails,” *The Globe*, October 21, 1932, p. 4; see Archambault Report, 302-303. According to at least some editorials, the genre of incarceration in which the authorities had indicated they would major at Collins Bay would have revolved around “juvenile delinquents”—see, for instance, editorial, “Is It a Holiday Outing?”, *The Globe*, June 10, 1931, p. 4; editorial by *Stratford Beacon-Herald*, reprinted in “The Collin’s Bay Camp,” *The Globe*, June 15, 1931, p. 4; and editorial, “Not in the Public Interest,” *The Globe*, June 24, 1931, p. 4. However, the “juvenile delinquents” in question would not have been individuals whose penalization had stemmed from the Juvenile Delinquents Act, but instead young convicts whom the state got the chance to incarcerate thanks to the two-year or more-than-two-year sentences in which their trials in adult court had eventuated. Despite their references to “juvenile delinquents,” commentators would have realized that it was this second cohort for which Collins Bay could have served as a prison. The term with which the authorities would have referred to these young federal convicts would probably not have been “juvenile delinquents,” but rather “young offenders”—a phrase which at least some interwar penal thinkers regarded as applicable primarily to convicts at least sixteen years old, but “not more than twenty-one” (although in some instances a thinker might regard some 22- and 23-year-olds as “young offenders” too). Many present-day Canadians might associate the phrase “young offender” with individuals for whom “juvenile delinquent” was in fact the chief term in the interwar era—young people, many of them below age 16, whose penalization took place by means of judicial and correctional arrangements created solely for non-adult offenders. But again, for interwar penal thinkers, it would appear that an individual became a “young offender” not if he qualified merely as a juvenile delinquent, but rather if an adult court penalized him (while he was still between the ages of 16 and 21). See Archambault Report, 105, 195 (“not more than twenty-one”); see editorial, “Is It a Holiday Outing?”, *The Globe*, June 10, 1931, p. 4.

²⁸ See also Archambault Report, 104-105, 302-303, 308.

actually been to provide reformation-friendly imprisonment both to young inmates and potentially also to other convicts of the kind who might wave criminal activity goodbye.²⁹

In any case, whether the authorities' vision for Collins Bay assigned greatest priority to young offenders or to "reformable" men more generally, the type of perspective on incarceration that the government was starting to display by creating this institution would in time leave a very strong imprint on federal corrections, primarily in the second half of the century. In that later era, during which penitentiaries would become much more numerous in Canada, the inmates in a given institution would tend to belong to a limited segment of the overall assortment of federal prisoners—a segment made up of men possessing some relevant trait in common (such as a readiness for medium security), a segment with respect to which the approach employed in that specific institution seemed particularly appropriate. Prior to World War II, by contrast, a federal prison usually carried out a more generic carceral task with a large hodgepodge of inmates, most of whom had been denizens of the same broad geographical region that contained the penitentiary itself.³⁰ Even in the early 1930s, though, the authorities thought that they had put the penitentiary system in position to utilize a non-generic, reformatory institution in a limited but significant number of instances, now that the Collins Bay establishment had been created.

²⁹ See editorial, "Why Is 'Mystery Camp'?" *The Globe*, June 16, 1931, p. 4; see also Archambault Report, 104, 307-308.

³⁰ See *Toward Unity: Criminal Justice and Corrections: Report of the Canadian Committee on Corrections* (Ottawa: Queen's Printer, 1969) (hereafter Ouimet Report), 433-434; see F.R. Scott, "Penal Reform," *Saturday Night*, July 18, 1936, p. 4; see Archambault Report, 12.

When Marchington wrote his article, Collins Bay had been an institution with prisoners for less than six months—since just a little before Christmas in 1930.³¹ And some of those prisoners appeared to be neither young offenders nor the kind of convicts which the typical citizen would have described as “most likely to reform.” A number of these men had put themselves at odds with the state not merely by stealing, but by plunging into armed robbery.³² Perhaps many of the latter types of inmates now at Collins Bay may in fact have been individuals who seemed quite “reformable” to the prison authorities, regardless of how baleful their actions might have looked at one time. It would appear, however, that at this point the extent to which a given prisoner’s work might prove helpful in the task of constructing the prison buildings was of as much or more concern to the authorities than was the possibility that his presence might help the institution to display a little rehabilitative vigour.³³ As some commentators saw it, therefore, the Collins Bay penitentiary that had in fact materialized failed to fully match the rehabilitative vision which was believed to have given rise to this putatively unusual institution.³⁴

If the practices for which the authorities had opted with regard to Collins Bay might have sparked derisory giggles among some citizens, the fact that the penal leadership claimed to envision this prison as a “preferred class penitentiary” would have

³¹ See Archambault Report, 303.

³² See editorial, “Why Is ‘Mystery Camp’?” *The Globe*, June 16, 1931, p. 4; see also Archambault Report, 308. (Although the phrase “most likely to reform” possesses quotation marks in my sentence, I am not suggesting that either this editorial or the Archambault Report had recourse to this particular phrase.)

³³ See editorial, “Why Is ‘Mystery Camp’?” *The Globe*, June 16, 1931, p. 4; see also Archambault Report, 104, 307-308 (“most reformable” on 104).

³⁴ See also Archambault Report, 104, 302-303, 307-308.

generated a dollop of frustration.³⁵ The “preferred class” label that was applied to this new carceral establishment had been pointed out in Marchington’s June 8 article, of course.³⁶ From the authorities’ standpoint, the “preferred class” individuals in question would be somewhat similar to the “star class” in certain British institutions.³⁷ In other words, an inmate’s chance for “preferred class” incarceration would typically materialize in light of the reformability or agreeability that seemed to flavour his outlook and actions, not as a result of the money that had enabled him or his relatives to hobnob with other wealthy citizens. Be that as it may, references to a “preferred class” prison did make many members of the public think of the phenomenon of socioeconomic class, at least once they realized that brokers had gotten in on the deal.³⁸ “Is the farm [Collins Bay] set apart for a ‘preferred class’ or the ‘upper class’ of prisoners?” asked the *Toronto Daily Star*. “Is it possible for well-to-do convicts thus to escape some of the discomforts of imprisonment and merely go into retreat for a time?”³⁹ This penitentiary “was a ‘Preferred Class’ prison in the strict sense of the word, wealthy brokers getting the preference,” declared the *Globe* editorialist almost two years later.⁴⁰

More than one factor, therefore, put newspaper editorialists in position to upbraid the powers-that-be concerning the flaws of Collins Bay—especially in the summer of 1931, after Marchington had penned his June 8 article in the *Globe*, but also over the next

³⁵ See *ibid.*, 303.

³⁶ See William Marchington, “Open-Air Camp Life Fate of Convicted Brokers,” *The Globe*, June 8, 1931, pp. 1-2.

³⁷ Regarding the British “‘Star’ class offenders,” see Archambault Report, 105-106.

³⁸ See editorial, “Where Explanation Fails,” *The Globe*, October 21, 1932, p. 4.

³⁹ “Note and Comment,” *Toronto Daily Star*, June 11, 1931, p. 6.

⁴⁰ Editorial, “The Truth Must Come Out,” *The Globe*, April 5, 1933, p. 4. For further statements indicating the cushiness of certain aspects of the brokers’ imprisonment, and the less agreeable flavour of other convicts’ penalties, see *House of Commons Debates*, 17th Parl, 5th Sess, Vol. 1 (14 February 1934) at 573-574 (A.E. Ross—Conservative, Kingston City, ON).

two years. Putting young offenders in an institution of their own appeared quite advisable to the *Globe* editorialist and certain other writers. Collins Bay might fail, however, to rectify certain key shortcomings of federal incarceration if these young men had to share this penitentiary with a large number of older crooks. And even if adult prisoners would not themselves have been baneful to the institution, these writers believed that the penal bureaucracy was nevertheless reneging on the young-offender emphasis which the authorities had at one point indicated this new establishment would employ.⁴¹ To many Canadians, the institution's "preferred class" label proved more acutely irritating; commentators riffed off of the phrase as they objected to the authorities' practices so far with regard to Collins Bay and the brokers.⁴² And when a prison containing stockbrokers was endowed with such exceptional cushiness as Collins Bay appeared to possess for those particular affluent men,⁴³ the government was going to get dressed down by the press. These offenders, "who fleeced the public out of millions of dollars," now "have all the comforts and privileges of home, except the privilege of going out at night," claimed

⁴¹ See editorial, "Is It a Holiday Outing?", *The Globe*, June 10, 1931, p. 4; see editorial, "In the 'Preferred Class,'" *The Globe*, June 12, 1931, p. 4; see editorial, "Preference to Be Explained," *The Globe*, June 15, 1931, p. 4; see editorial, "Why Is 'Mystery Camp'?" *The Globe*, June 16, 1931, p. 4; see editorials by *Brantford Expositor* and *Stratford Beacon-Herald*, reprinted in "The Collin's Bay Camp," *The Globe*, June 15, 1931, p. 4; see editorial, "Boys or Brokers?", *The Globe*, August 10, 1931, p. 4; see editorial, "Where Explanation Fails," *The Globe*, October 21, 1932, p. 4; see editorial, "The Truth Must Come Out," *The Globe*, October 25, 1932, p. 4; see also editorial, "'Steal a Million and See Collins Bay,'" *Toronto Daily Star*, October 19, 1932, p. 4.

⁴² See editorial, "In the 'Preferred Class,'" *The Globe*, June 12, 1931, p. 4; see editorials by *Barrie Examiner*, *Chatham News*, and *Midland Free Press*, reprinted in "The Collin's Bay Camp," *The Globe*, June 15, 1931, p. 4; see "Making a Farce of Justice," editorial by *Oshawa Times*, reprinted in *The Globe*, June 16, 1931, p. 4; see also editorial, "Where Explanation Fails," *The Globe*, October 21, 1932, p. 4; see also editorial, "Public Inquiry Needed," *The Globe*, October 28, 1932, p. 4.

⁴³ See "Making a Farce of Justice," editorial by *Oshawa Times*, reprinted in *The Globe*, June 16, 1931, p. 4; see editorial, "The Prison Revolt," *The Globe*, January 10, 1933, p. 4.

the *Ganonoque Reporter*.⁴⁴ In the fall of 1932, the *Globe*'s commentary on Collins Bay made the institution out to be a "preferred-class resort camp" that had bestowed "customary home comforts" upon the brokers, "including afternoon tea served to the accompaniment of suitable music."⁴⁵ In light of the character of this penitentiary, every citizen accosted by the police would have a further reason to wish he belonged to the rich portion of society. In the *Globe*'s opinion, the authorities ought by no means to deem it "astonishing" that a commentator might depict the state as providing "one law for the rich and another law for the poor in Canada."⁴⁶ The idea that the penalties employed for wealthy Canadians did not match the punishments which citizens of limited means had to undergo sat poorly with the editorialist.

Most prisoners, presumably, were still less keen on the "resort camp" than on release itself. And of course it was not too long before the brokers got their way on this count too. By the time of Austin Campbell's parole in early July of 1932, a halt had already been called to the imprisonment of at least four of the brokers from the January 30, 1930, "clean-up" in Toronto.⁴⁷ Some citizens may have been rather miffed to realize that the incarceration of these perpetrators had been truncated so substantially, at or relatively near the midway point in their prison terms. The paroles of certain other

⁴⁴ *Ganonoque Reporter*, quoted in editorial, "Boys or Brokers?," *The Globe*, August 10, 1931, p. 4. See also editorials by the *Barrie Examiner*, the *Chatham News*, and the *Midland Free Press*, reprinted in "The Collin's Bay Camp," *The Globe*, June 15, 1931, p. 4; editorial, "'No Trespassing!,'" *The Globe*, June 16, 1931, p. 4.

⁴⁵ See editorial, "Judge Stubbs Supported," *The Globe*, October 1, 1932; see also editorial, "The Prison Revolt," *The Globe*, January 10, 1933, p. 4.

⁴⁶ See editorial, "Judge Stubbs Supported," *The Globe*, October 1, 1932.

⁴⁷ See "Free 2 More Brokers before Term Expires," *Toronto Daily Star*, July 7, 1932, p. 1; Canadian Press, "Ticket-of-Leave for Two Brokers," *The Globe*, June 10, 1932, p. 10; see Canadian Press, "William J. Smart, Maurice E. Young Freed from Prison," *The Globe*, June 25, 1932, p. 1; see "Arrest 10 Brokers, Seek Others in Clean-Up: Leading Operators on Standard Exchange Accused of Conspiracy," *Toronto Daily Star*, January 30, 1930, pp. 1-2.

brokers in August proved even more irksome to some observers, since the authorities had seemingly not even waited till the midway date for these latter men before having recourse to a ticket-of-leave.⁴⁸ As remarks in October by Justice minister Hugh Guthrie would reveal, the state actually considered about half of a sentence in prison and roughly half on parole to be the typical proportions for a non-violent, non-recidivist federal convict at whose actions in the penitentiary the authorities could not cavil.⁴⁹ But especially before people had come to this realization as a result of such comments by the minister or by other voices, it had seemed to some citizens that once more the well-heeled individuals' penalties had by no means equaled those of offenders with modest or diminutive bank accounts.⁵⁰ The possibility that the state might have availed itself of parole too soon in its penalization of the brokers had dawned upon quite a few citizens, indicated the *Kingston Whig-Standard*. "Canadians," declared the paper, "will not tolerate one law for the rich and another for the poor."⁵¹

In the fall of 1932, withering statements about current criminal justice were materializing not only in Ontario, but also in Manitoba—particularly in the discourse of

⁴⁸ See Canadian Press, "Ticket-of-Leave for Two Brokers," *The Globe*, June 10, 1932, p. 10; see Canadian Press, "William J. Smart, Maurice E. Young Freed from Prison," *The Globe*, June 25, 1932, p. 1; see "Free 2 More Brokers before Term Expires," *Toronto Daily Star*, July 7, 1932, p. 1; see "Notes and Comments," *The Globe*, August 4, 1932, p. 4; see "Stimson Officials Released on Ticket," *The Globe*, September 9, 1932, p. 11; see editorial, "Is Punishment Partial?," *The Globe*, September 23, 1932, p. 4; see editorial, "Uneven Justice," *The Globe*, September 30, 1932, p. 4; see editorial, "Judge Stubbs Supported," *The Globe*, October 1, 1932, p. 4; see editorial, "The Prison Mutiny," *The Globe*, October 19, 1932, p. 4; see also comment by *Canadian Statesman* quoted in editorial, "Bowmanville's Retort," *The Globe*, December 19, 1932, p. 4; but see *House of Commons Debates*, 17th Parl, 4th Sess, Vol. 1 (19 October 1932), at 362 (Hugh Guthrie—Conservative, Wellington South, ON).

⁴⁹ See *House of Commons Debates*, 17th Parl, 4th Sess, Vol. 1 (19 October 1932), at 362-363 (Hugh Guthrie—Conservative, Wellington South, ON).

⁵⁰ See editorial, "Mr. Guthrie Questioned," *The Globe*, September 13, 1932, p. 4; see editorial, "Is Punishment Partial?," *The Globe*, September 23, 1932, p. 4; see editorial, "Where Explanation Fails," *The Globe*, October 21, 1932, p. 4; see "Stimson Officials Released on Ticket," *The Globe*, September 9, 1932, p. 11.

⁵¹ *Kingston Whig-Standard*, quoted in editorial, "Mr. Guthrie Questioned," *The Globe*, September 13, 1932, p. 4.

Lewis St. George Stubbs, a judge at the county court level. On more than one occasion during the last few years, wealthy individuals or governmental figures had found that this judge would take them on with unusual feistiness, both in his rulings and on other occasions. Stubbs and certain Manitoban leaders had grown especially irritated with one another as a result of a legal episode known as the “Macdonald will case,” and then due to further friction over other matters. And they certainly had not started now to take a liking to each other.⁵² Quite a few Canadians would have regarded Stubbs as a maverick on more than one count. In contrast to many citizens, he latched onto a humanist-rationalist outlook rather than embracing Christianity.⁵³ This judge also strongly found fault with certain habits and assumptions of governmental leaders and other figures who helped to ensure that current economic and political norms continued to prevail in Canada.⁵⁴ According to historian Tom Mitchell, the political and philosophical outlook to which Stubbs subscribed was a type of “communitarian liberalism.”⁵⁵ Although Mitchell has good reason to emphasize the liberalism in Stubbs’ mind-set, the Manitoban did indicate at least occasionally in the fall of 1932 and during the next few years that the term

⁵² See Tom Mitchell, “‘Laws Grind the Poor and Rich Men Rule the Law’: Lewis St. George Stubbs, the Canadian State, and the Ignominy of Judicial Insurgency,” *Prairie Forum* 22, no. 2 (Fall 1997): 279, 281-288, 290-295, 301-302, 304.

⁵³ See Stubbs to Harold J. Laski, October 13, 1932, in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1290, Volume 29, File 9: “Stubbs, Judge, 1932,” LAC; see Lewis St. George Stubbs, *A Majority of One: The Life and Times of Lewis St. George Stubbs* (Winnipeg: Queenston House, 1983), 55-57, 137; see also Mitchell, “‘Laws Grind the Poor and Rich Men Rule the Law,’” 290. However, in his writings or addresses, he sometimes availed himself of quotations from the Bible—see L. St. G. Stubbs to the Editor of the *Winnipeg Free Press*, September 15, 1932, in Lewis St. George Stubbs fonds (hereafter Stubbs fonds), MSS 188, PC 180, Accession A.96-94, Box 4, Folder 7: “Correspondence Re: Judicial Difficulties, 1929-1933,” University of Manitoba Archives (hereafter UMA), and “The Law and the Poor,” in Stubbs fonds, MSS 188, PC 180, Accession A.96-94, Box 24, Folder 25: “The Underdog in Law or Law & the Poor [ca. 1935],” UMA.

⁵⁴ See Mitchell, “‘Laws Grind the Poor and Rich Men Rule the Law,’” 288-289, 292, 296-297, 305-307.

⁵⁵ See *ibid.*, 312; and see 280-281.

“socialist” could serve as a workable label for his current political perspective.⁵⁶ His claims or his efforts seem to have gone over quite well in Winnipeg, a city with plenty of people who were ready to try out at least some slightly radical political platform that might enable workers to come out further ahead than they did through the capitalist activity which the leaders of their society preferred.⁵⁷ In any case, there were certain occasions, sometimes even in court itself, on which Stubbs offered rather forthright allegations about the insubstantial chastisements of which the state availed itself in instances involving highly affluent offenders, or about the hardship of the poor in Canada, particularly the hardships of theirs which stemmed from the law or the activities of legal authorities.⁵⁸ And now, in the fall of 1932, the federal regime was of a mind to bring his employment as a judge to an end, should a commission from which the government was seeking an appraisal of the situation conclude that certain utterances or deeds of Stubbs’ had “amount[ed] to misbehaviour under the Judges Act.”⁵⁹ Stubbs fulminated all the more against the noxiousness of the government’s approach. “There has been nothing

⁵⁶ See Stubbs to Harold J. Laski, October 13, 1932, in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1290, Volume 29, File 9: “Stubbs, Judge, 1932,” LAC; see *Lewis St. George Stubbs, Saskatchewan Farmer-Labor Group Candidate, Co-operative Commonwealth Federation, Mackenzie Electoral District* (Preeceville, SK: Ralph Milbourne, [1933?]), 5, 8; see Stubbs, *A Majority of One*, 57-59, 63 (indeed, this biography, authored by one of his grandchildren, claims that “[b]y a process of slow growth, Stubbs became a thorough going socialist” [p. 57]); see also Lewis St. George Stubbs to Herbert T. Owens, April 4, 1939, in Stubbs fonds, MSS 188, PC 180, Accession A.96-94, Box 1, Folder 14: “Information about Stubbs’ Early Influences upon Arriving in Wpg., Fred Dixon & Prof. R.M. Mobius,” UMA.

⁵⁷ See Mitchell, “‘Laws Grind the Poor and Rich Men Rule the Law,’” 305-306.

⁵⁸ See *ibid.*, 285-286, 288-289, 294-295; see also L. St. G. Stubbs to the Editor of the *Winnipeg Tribune*, February 1, 1932, in Stubbs fonds, MSS 188, PC 180, Accession A.97-69, Box 1, Folder 28: “Stubbs correspondence with editors, *Winnipeg Free Press*, *Winnipeg Tribune*, *Saturday Night Magazine*—1932,” UMA.

⁵⁹ See Mitchell, “‘Laws Grind the Poor and Rich Men Rule the Law,’” 295-296, 302; for the quoted phrase, see *Report of the Commissioner upon Complaints Preferred against His Honour Lewis St. George Stubbs, Senior Judge of the County Court of the Eastern Judicial District of Manitoba* (Ottawa: King’s Printer, 1933), 11, in MG26-K (R.B. Bennett fonds), Volume 627, file titled “Reports – Stubbs L S G Judge,” microfilm reel M-1313, p. 387331, LAC.

quite so crude in the history of Canada as the political lynching planned for me,” he declared to F.R. Scott, a left-leaning academic in McGill University’s Faculty of Law. “The proceedings against the communists pale beside it.”⁶⁰

Whatever the opinion of the potentially radical portion of the Winnipeg citizenry, many commentators saw little merit in the authorities’ response to Stubbs.⁶¹ Even liberal, by-no-means-radical papers like the *Globe* considered Stubbs’ assertions to be much less deleterious than the government was making them out to be.⁶² Indeed, there was plenty of reason to suspect the judge was right. According to the *Globe*, it had been dawning on a large number of people, not only on Stubbs, “that there is one law for the rich and another for the poor.” For many Canadians, suggested the editorialist, this had sunk in as a result of the authorities’ actions concerning the brokers.⁶³

While various commentators had been addressing penal matters to some extent in the early fall of 1932, the public received an especially compelling reason to talk about prisons on October 18, thanks to news of rioting in Kingston Pen.⁶⁴ After an uprising on October 17, the prison fell prey to a further riot on the 20th.⁶⁵ A *Globe* editorial on the

⁶⁰ L. St.G. Stubbs to F.R. Scott, October 13, 1932, in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1290, Volume 29, File 9: “Stubbs, Judge, 1932,” LAC; and see Mitchell, “‘Laws Grind the Poor and Rich Men Rule the Law,’” 296, 301-304; and see Sandra Djwa, *The Politics of the Imagination: A Life of F.R. Scott* (Toronto: McClelland and Stewart, 1987), VII, 74-75, 105-106.

⁶¹ See Mitchell, “‘Laws Grind the Poor and Rich Men Rule the Law,’” 299; see editorial, “Judge Stubbs Supported,” *The Globe*, October 1, 1932.

⁶² See editorial, “The Pursuit of a Judge,” *The Globe*, October 12, 1932, p. 4; and see Mitchell, “‘Laws Grind the Poor and Rich Men Rule the Law,’” 299-300, 311.

⁶³ See editorial, “Judge Stubbs Supported,” *The Globe*, October 1, 1932; see editorial, “The Pursuit of a Judge,” *The Globe*, October 12, 1932, p. 4 (this article contains the wording which I have quoted); see also editorial, “It Cannot Be Permitted,” *The Globe*, October 17, 1932, p. 1; and see editorial, “The Truth Must Come Out,” *The Globe*, October 25, 1932, p. 4.

⁶⁴ See Jack Hambleton, “Riots Quelled in Penitentiary, Kingston Troops Aid Guards,” *The Globe*, October 18, 1932, pp. 1, 4.

⁶⁵ See Marr, “‘A Series of Nasty Situations,’” 38-44; see Archambault Report, 69-70, 74-97.

19th characterized even the events on the 17th as “the greatest prison revolt in Canadian history.”⁶⁶

State personnel, scholars, and other such figures who would later seek to shed light on the riot would in most cases say relatively little about Collins Bay.⁶⁷ The *Globe*, however, assumed that remarks about the rather limited penalization of the brokers would prove germane in its commentary about the new event as well. Although the editorialist did not claim that the riot had necessarily revolved primarily around this factor, he did suspect that the issue had gnawed at Kingston Pen inmates to some extent.⁶⁸ “The first, final lesson of the penitentiary mutiny,” declared the *Globe* on October 19, “is that favoritism as between classes of criminals is not only gross injustice, but crass folly.”⁶⁹ As an editorial that day in the *Toronto Daily Star* demonstrated, the *Globe*’s rival paper also perceived the Collins Bay factor as an ingredient to which the rioters may have owed some of their hostility.⁷⁰ Over the next half year, there would be several more editorials in the *Globe* in which the cushiness of Collins Bay for white-collar offenders would be construed as having helped to make Kingston Pen convicts readier to plunge into a spate of rioting.⁷¹ As the *Globe* portrayed it on October 25, the brokers’ modest penalties, the issues that Stubbs had been addressing, and the Kingston inmates’ riot all provided

⁶⁶ See editorial, “The Prison Mutiny,” *The Globe*, October 19, 1932, p. 4.

⁶⁷ See Marr, “A Series of Nasty Situations”; see Archambault Report; see also Peter H. Hennessy, *Canada’s Big House: The Dark History of the Kingston Penitentiary* (Toronto: Dundurn, 1999), 91-94; see also Peter Donald Brian Sawatsky, “Prison Riots: How Do the Media Portray Them” (M.A. Thesis, University of Manitoba, 1986 – Ottawa: National Library of Canada, 1987).

⁶⁸ See editorial, “The Prison Mutiny,” *The Globe*, October 19, 1932, p. 4; see also editorial, “A Full Probe Wanted,” *The Globe*, November 7, 1932, p. 4.

⁶⁹ Editorial, “The Prison Mutiny,” *The Globe*, October 19, 1932, p. 4.

⁷⁰ See editorial, “Steal a Million and See Collins Bay,” *Toronto Daily Star*, October 19, 1932, p. 4.

⁷¹ See editorial, “Public Inquiry Needed,” *The Globe*, October 28, 1932, p. 4; see editorial, “A Full Probe Wanted,” *The Globe*, November 7, 1932, p. 4; see editorial, “The Prison Revolt,” *The Globe*, January 10, 1933, p. 4; see editorial, “The Whole Story Needed,” *The Globe*, February 8, 1933, p. 4; see also editorial, “The Truth Must Come Out,” *The Globe*, April 5, 1933, p. 4.

reasons to remonstrate with the government concerning the occasions on which it supplied “one law for the rich and another for the poor.” Thanks to their decisions regarding the brokers and Collins Bay, the authorities had helped to generate “the spirit of revolution” at Kingston Pen.⁷² As several editorials mentioned, it appeared that certain Kingston Pen convicts had conveyed their displeasure about the brokers’ penalties by resorting to a facetious adage: “Steal a million and see Collins Bay.”⁷³ At one point the *Financial Post* described that statement as “the riot slogan.”⁷⁴ Later discussions of the riot might dwell more upon the non-provision of cigarette paper and upon other workaday prison practices than upon issues related to the brokers.⁷⁵ But in these first months, at least some commentators regarded this event partly as a reminder that the state had allowed more agreeable penalties to materialize for well-heeled offenders than for most run-of-the-mill convicts.⁷⁶

Statements upbraiding the authorities for employing “one law for the rich and another for the poor” tended to express a liberal outlook rather than a radical mentality. To many liberals, especially to the kind writing in a thoroughly capitalist newspaper like the *Globe*, the genre of equality to which high priority should be assigned will emerge

⁷² See editorial, “The Truth Must Come Out,” *The Globe*, October 25, 1932, p. 4; see also editorial, “The Prison Mutiny,” *The Globe*, October 19, 1932, p. 4.

⁷³ See editorial, “The Prison Mutiny,” *The Globe*, October 19, 1932, p. 4; see editorial, “Steal a Million and See Collins Bay,” *Toronto Daily Star*, October 19, 1932, p. 4; see editorial, “Where Explanation Fails,” *The Globe*, October 21, 1932, p. 4; see editorial, “Full Truth Wanted,” *Kitchener Daily Record*, quoted in editorial, “Public Inquiry Needed,” *The Globe*, October 28, 1932, p. 4; see editorial, “A Full Probe Wanted,” *The Globe*, November 7, 1932, p. 4; see editorial, “The Prison Revolt,” *The Globe*, January 10, 1933, p. 4. In some of these editorials, the adage differed slightly: “Steal a million and go to Collins Bay,” or “Steal a million and spend a summer at Collins Bay.”

⁷⁴ See portion of *Financial Post* editorial quoted in editorial, “A Startling Charge,” *The Globe*, November 3, 1932, p. 4.

⁷⁵ See Marr, “A Series of Nasty Situations,” 38, 40, 45-46, 51; see Archambault Report, 75, 78; see Carrigan, *Crime and Punishment in Canada*, 367; see Hennessy, *Canada’s Big House*, 91, 94.

⁷⁶ See editorial, “The Truth Must Come Out,” *The Globe*, October 25, 1932, p. 4; see editorial, “The Prison Revolt,” *The Globe*, January 10, 1933, p. 4; but see Marr, “A Series of Nasty Situations,” 45 n. 69.

largely as a result of satisfactory law, and of strong allegiance thereto on the part of state personnel. If the financial means of some Canadians remained much paltrier than the funds of other citizens, liberals could accept this reality quite readily, provided that economic and social habits and occurrences, rather than the law, had given rise to this wealth and shortage thereof. The key was to ensure that neither the law itself nor the personnel performing the activities of the state would *increase* the degree to which society provided cushier conditions for affluent people than for poorer citizens. Still, if statements which deplored the less stringent penalization of well-heeled citizens than of poor ones did indeed reflect liberal rather than radical assumptions, this was nevertheless a liberal mentality that enabled commentators to perceive at least some types of class realities as worthy of being addressed. And there would be other occasions too on which commentary about criminal justice offered opportunities to take note of class-related phenomena.

Commenting on Criminals and Class

When newspapers reprimanded the government for supplying “one law for the rich and another for the poor,” it may in many respects have appeared that the state, rather than the rich and the non-wealthy classes themselves, was creating the class-themed flavour which criminal-justice activities currently possessed. Occasionally, however, a commentator’s remarks would suggest that class patterns and actual class friction materialized in Canada and other societies not merely as a result of the baneful practices of the government or of a small set of people, but also due to more powerful habits and preferences of large

portions of the citizenry. Perhaps Canadians' outlook revolved around class to a greater degree than a liberal observer like the *Globe* editorialist tended to indicate.

On October 17, the same day that the riot had gotten underway at Kingston, Lewis St. George Stubbs had once again given the authorities a piece of his mind, this time while informing the court of his "not guilty" ruling concerning several young men. The five individuals in question had been involved in certain activities associated with a strike, activities at which some policemen had looked askance. In the authorities' view, the episode had put the Crown in position to try to penalize the five for "rioting, unlawful assembly, and ... possessing and carrying offensive weapons for dangerous purposes."⁷⁷ Perhaps the Crown had suspected that Stubbs was the wrong judge with whom to be dealing when attempting to convict people like this; in any event, his articulation of his take on the case would have reminded the government why it disliked him. By contrast, the periodical *Canadian Forum*, which supplied the kind of writing preferred by middle-class, educated individuals who harboured moderately leftist views, decided to enable its readers to peruse Stubbs' statements.⁷⁸ Accordingly, these comments of his from October 17 turned up in the December issue of the publication.

The judgment had given Stubbs occasion to admonish the police for the "physical force and violence" to which they had resorted at one point. "Anything in the nature of undue force or excessive violence in the performance of police duties, particularly anything of a punitive nature, cannot be too carefully avoided," he declared. "Wherever

⁷⁷ See "The Case of Judge Stubbs," *Canadian Forum*, December 1932, pp. 91-92 ("not guilty" on 92). For the long phrase which I have quoted, see Stubbs' judgment (on page 91 of the article); I have not ascertained whether this was also the actual wording in the Crown's formal charge.

⁷⁸ For a slightly different portrayal of the tenor of *Canadian Forum* during the interwar years than I have offered here, see A.B. McKillop, "Science, Authority, and the American Empire," in *Contours of Canadian Thought* (Toronto: University of Toronto Press, 1987), 111-128.

and whenever present, it cannot be too strongly censured and condemned.” There was less reason to chide the five citizens whom the Crown had been prosecuting. Stubbs depicted them as “working men, strongly imbued with the philosophy of the community of interest of their class. The same philosophy which pervades all other classes of society.” In one sense, the remark suggested that it would be incongruous to upbraid the men for their behaviour, given the comparable tendency of so many other citizens to try to ensure that their own class would not miss out. Yet his discussion did not provide a wholly flattering portrayal of this tendency that all classes generally exhibited, for he described it as “[t]he same philosophy which expresses itself in such perverted and dangerous form in the fierce nationalisms of our time, which prevent world cooperation, and which will inevitably precipitate world conflict.” In showing why the men on trial did not qualify as criminals, he opted not simply to construe their actions as reflective of current structural realities, but also to note the morally appealing attributes of these “earnest, honest, straightforward” persons themselves. The five men lacked “criminal natures or tendencies,” but possessed “understanding minds, sympathetic hearts, and sensitive souls.”⁷⁹ In Stubbs’ mind, at least some of the hardship and social wrangling in this economically harrowing time reflected the fact that the different socioeconomic classes in Canada often found themselves at loggerheads, and that the authorities’ views concerning the law generally enabled the wealthy portion of the citizenry to come out ahead. But in a concrete situation where there was structurally generated hardship to

⁷⁹ See “The Case of Judge Stubbs,” *Canadian Forum*, December 1932, 90-92. A text that Stubbs had authored (L. St. G Stubbs, “The King vs. John Chorney *et al*: Reasons for Verdict,” October 17, 1932) formed the majority of this piece in *Canadian Forum*, although the periodical provided some discussion of its own in the first section of the article. In my paragraph above, I am in all cases quoting Stubbs’ judgment, not the discussion provided by *Canadian Forum*.

rectify, Stubbs also perceived that he could make a certain degree of headway by reminding his listeners about the qualities displayed by particular people.

Canadian Forum subscribers who did not happen to read Stubbs' statement still had other opportunities to ruminate upon criminal justice. When interwar thinkers needed a reminder about the progressive penal policy that they ought to be developing, the logical place to find that reminder was, of course, in Stalin's Soviet Union. In late 1932, a number of working-class people and several writers, including *Canadian Forum*'s general editor, J.F. White, undertook a firsthand exploration of the intriguing society that had materialized in Russia.⁸⁰ Quite a few educated North Americans did that in the 1930s.⁸¹ In this particular case, at least some of the participants in the expedition appear to have been associated in some way with the Friends of the Soviet Union.⁸² For a half-year after the trip, White offered observations about the USSR in his magazine, publishing one article each month from February to July of 1933. The March article dealt with Soviet penal ideas,⁸³ a topic about which there seems to have been a good bit of discussion among Canadian thinkers who saw some degree of promise in communism (or perhaps simply in Russia itself) during the thirties or forties.⁸⁴ In the Soviets' view, suggested White, current intellectuals could find few good reasons to opt for condemnatory

⁸⁰ See J.F. White, "Russian High-Lights I: Soviet Power + Electricity = Socialism," *Canadian Forum*, February 1933, p. 166.

⁸¹ Kirk Niergarth, "Through the Looking Glass and Back: Non-Communist Canadian Tourists and the Soviet Union, 1930-1939" (paper delivered at Annual Meeting of the Canadian Historical Association, Fredericton, NB, June 1, 2011); see also White, "Russian High-Lights I: Soviet Power + Electricity = Socialism," p. 165.

⁸² See F.H.U[nderhill] to Frank [R. Scott], November 1932, in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1290, Volume 29, File 9: "Stubbs, Judge, 1932," LAC.

⁸³ See J.F. White, "Russian High-Lights II: Iron Bars," *Canadian Forum*, March 1933, pp. 212-213.

⁸⁴ See Watson Kirkconnell, "Property Rights in Russia Doom of Human Rights," *Saturday Night*, October 18, 1947, p. 6.

construals of the behaviour of criminals. “The basic change in the Russian prison system,” he noted, “is that the principle of punishment has been entirely abolished. The inmate of a jail is not regarded as a ‘wicked’ individual who must undergo a period of suffering in order to expiate a moral transgression, but rather as the victim of a bad environment. If crime is a result of defective education it is obvious that the criminal cannot be held morally responsible for his anti-social behaviour, and therefore the state cannot reasonably exact any penalty.” While the authorities deemed it desirable to spurn retributive chastisement, they still availed themselves of incarceration and other such penalties, in light of their “oblig[ation]” to ensure that very little of the activity in society involved “anti-social” practices like crime. “[S]o long as these anti-social elements persist,” observed White, “the state is obliged to take measures to protect the community. So the law-breaker in the Soviet Union is placed in detention, not to be punished, but to be trained as a normal useful citizen.”⁸⁵ The state’s vision for many of its prisoners, therefore, was that they would undergo a truly wholesome metamorphosis thanks to the authorities’ penal efforts, such that these convicts would end up embracing conduct advantageous to their society.

Many “modern penologists” in other nations shared such opinions as well, noted White. But to a far greater extent than most other governments, the Soviet authorities actually employed penal methods reflective of these ideas, he believed. The article described a prison found in Kharkov, an institution that White and his party had received the opportunity to view. One of the author’s key points about the prison centred on the “normal[ity]” of the happenings in the institution: he depicted the convicts’ activities and

⁸⁵ White, “Russian High-Lights II: Iron Bars,” 212.

interactions as having much in common with those around which daily existence revolved for non-incarcerated citizens.⁸⁶ For instance, Kharkov's prison was a two-sex establishment, supplying offenders with chances to interact with other convicts of both genders, even if males and females did not inhabit the same portion of the institution at night. White noted both the work and the assortment of other worthwhile activities to which the convicts applied themselves. Moreover, frequent and substantial dollops of non-imprisonment—often two nights and a day each weekend—were bestowed on more than half of the institution's convicts.⁸⁷ In general, the portrayal which White conveyed tended to suggest that there was much more to praise about this establishment than about most prisons in Canada or other parts of the world.

White's piece in March about the Soviet penal approach did not address the topic of class at length. But one assertion in the second paragraph did perhaps reveal a little about the author's perspective on one facet of the latter subject, particularly in light of his comments concerning class in the February article. The topic had been mentioned at more than one point in that previous write-up. Descriptions of Soviet affairs offered by people from non-communist societies like Canada, indicated White, tended to revolve around issues crucial to middle-class individuals. He suggested that his articles, by contrast, would also draw attention to the ways in which this socialist society proved

⁸⁶ See *ibid.*, 212-213 ("modern penologists" appears on page 212, "normal" on pages 212 and 213); see also White, "Russian High-Lights I: Soviet Power + Electricity = Socialism," p. 166. Here White's characterization of this institution seized on a motif with which a number of U.S. reformers were enamoured in the interwar period—the idea that the authorities could create tenable imprisonment by trying to ensure that various facets of a prison would give it much in common with "a normal society"—see Rothman, *Conscience and Convenience*, 117-122, 387-388 (quoted phrase on 388).

⁸⁷ See White, "Russian High-Lights II: Iron Bars," 213.

either attractive or unappealing to workers.⁸⁸ White noted the admirable Soviet objective of developing “complete social equality.” Western thinkers might not, of course, prefer to help equality blossom by using political practices comparable to those employed in Russia. “To understand what is taking place in the U.S.S.R.,” he maintained, “it is necessary to keep constantly in mind that the present government is a dictatorship of the proletariat, that the state is being run by workers, in the interest of the workers, and any attempt to weigh the results from an objective ‘classless’ point of view can only lead to misunderstanding and confusion. The U.S.S.R. is patently and admittedly a class state, with a ruling class—the proletariat—in control, and its successes and failures must be gauged in terms of what it is attempting to perform.”⁸⁹ While not presented as an attack, such a reminder would presumably have given some degree of pause to his largely white-collar, middle-class, democracy-espousing readers, and perhaps to White himself. If White considered the political perspective and actions of the Russian working class to have some degree of merit, perhaps this may have been partly because the Soviets construed their current class particularism as an ingredient that would facilitate the eradication of class wrangling over the long run. “The ultimate aim of the Soviet Union,” he claimed, “is a classless state, when the economic basis of exploitation, and of the oppression of one class by another, or one individual by another, will have disappeared, and when every worker ... will be on a footing of complete social equality, but that time is still in the future.”⁹⁰ Perhaps we could suggest, therefore, that working-class militance

⁸⁸ See J.F. White, “Russian High-Lights I: Soviet Power + Electricity = Socialism,” *Canadian Forum*, February 1933, pp. 165-166.

⁸⁹ *Ibid.*, 165-166.

⁹⁰ *Ibid.*, 166.

dismayed White relatively little, in light of the possibility of a weakening or even evaporation of class conflict at some point down the road. And even now, various practices in Russia were growing more wholesome thanks to the proletarian authorities. “When the proletariat seized power, fifteen years ago, they did not merely transfer authority from one class to another,” claimed White near the beginning of the March article on penal matters. Instead, on various key fronts, including that of penal practice, the flavour of Russia now stood in massive contrast to the tenor of the country in the pre-communist era.⁹¹ And the following paragraphs in this second article revealed that the current correctional stance qualified as rather desirable, in White’s opinion. Whether or not Canadian left-leaning thinkers like White regarded many Soviet assumptions about class as highly worthwhile insights, such thinkers did not consider these notions to be so severely flawed as to suggest that Russian ideas on other matters, such as penal practice, could simply be ruled out. Indeed, in the mind of a figure like White, such viewpoints of the Soviets’ as their non-condemnatory, rehabilitative outlook concerning crime may in some modest measure have legitimized the overwhelming political clout which the working class wielded in that socialist society.

If a Soviet prison could intrigue an editor of *Canadian Forum*, *Maclean’s* dwelt at much greater length on penitentiaries in Canada. And the main individual who enabled this second publication to do so was one of the brokers from Toronto. Between August and December of 1933, nine articles authored by Austin Campbell allowed readers of *Maclean’s* to think over his take on the penitentiaries at Kingston and Collins Bay, the two institutions at which he had hung out with fellow inmates from the spring of 1931 till

⁹¹ See White, “Russian High-Lights II: Iron Bars,” p. 212.

the summer of 1932. From Campbell's viewpoint, current penal practices were rife with blemishes. The attributes of Kingston Pen allowed him (or at least *Maclean's* itself) to utilize "House of Hate" as the title for his set of articles.⁹² In his view, the Canadian authorities were making a "colossal sociological error" by employing the kind of incarceration provided in most of the penitentiaries.⁹³ At least some of his readers certainly perceived his pieces as pointing out the shortcomings of the main Kingston prison. The author of a rather livid letter to the editor attacked *Maclean's* for "circulat[ing] the most mawkish, disgusting appeal to false sympathies with an evident desire to prove the authorities to be brutal, heartless, etc., etc. The thing is so damnably opposed to common truth and decent respect for proved authority that your publication should be banned from public subscription."⁹⁴ To no surprise, though, Campbell offered few of the kinds of recriminations that other writers had expressed when they commented on the rather limited punishment of himself and the other brokers. His depiction of the work that he had carried out at Collins Bay suggested that his imprisonment there had possessed a slightly more unappetizing streak than some would have tended to suppose after perusing certain editorials.⁹⁵ Moreover, although Campbell mentioned class, he wished to portray it as an ineradicable phenomenon. Chances to gab—with whichever other prisoners happened to be of a mind to do so—were plentiful for a Collins Bay

⁹² See, for instance, Austin Campbell, "House of Hate," *Maclean's*, August 1, 1933, p. 42; see also "A Public Service," editorial by *Trenton Courier-Advocate*, reprinted in *The Globe*, August 18, 1933, p. 1.

⁹³ See Austin Campbell, letter to the editor, *The Globe*, August 26, 1933, p. 4. But Campbell seems to have seen some merit in Collins Bay Penitentiary—see Campbell, "House of Hate," *Maclean's*, September 1, 1933, p. 39.

⁹⁴ M.D. Cole, letter to the editor, *Maclean's*, November 1, 1933, p. 29. For more complimentary comments, see, on the same page, the letters to the editor from C.R. Walrod and J.J. Patterson.

⁹⁵ See Austin Campbell, "House of Hate," *Maclean's*, September 15, 1933, pp. 44-45; cf. editorial, "The Truth Must Come Out," *The Globe*, April 5, 1933, p. 4.

convict, thanks to various factors, including supper and the stretch near the end of the day that centred on games, conversation, or other such activities. But the particular prisoners who did in fact serve as a given convict's main chums at those times were generally individuals who engaged in prison tasks more or less comparable to his own, or who had made a living by a means cognate to his occupation, or who had majored in a genre of crime somewhat similar to his. That coterie of pals would tend not to include offenders whose occupations, institutional niche, or criminal practices smelled either far more white-collar or much more blue-collar than did those of the group in question.

"[C]ommunists or those who seek to abolish the social distinctions, those who decry the 'classes,' should go to prison to see how vain are their schemes," declared Campbell at one point. "Prison provides proof that to arrange themselves into distinct social grades is biologically inherent in the human race."⁹⁶

Stubbs might legitimize working-class particularism by noting the admirable qualities of individual persons. White might legitimize it by indicating the possibility of its eventual evaporation, and by suggesting that for now it could generate some desirable state practices. Campbell, by contrast, justified the phenomenon of class in a conservative vein. Reformers might articulate compelling reasons to opt for a thorough renovation of interwar carceral practices. But as Campbell saw it, they would make little headway in any attempt to fully do away with the class alignments which inmates—and other Canadians—so readily embraced.

⁹⁶ Austin Campbell, "House of Hate," *Maclean's*, September 1, 1933, p. 40; and see Austin Campbell, "House of Hate," *Maclean's*, November 15, 1933, p. 21.

Systems and Persons: Inveighing against Institutional Structures

Although some critics of criminal justice showed that class friction in the early '30s had not escaped their notice, one particularly striking type of structural imagery in reformist commentary pertained more to institutional tendencies than to socioeconomic arrangements. And perhaps the most potent depiction of these institutional patterns was authored by another man who had a period as an inmate under his belt. In August and September of 1933, while *Maclean's* was featuring Austin Campbell's interpretation of the penitentiaries, many citizens in Toronto and elsewhere were absorbing the assertions being offered by O.C.J. Withrow.

There had already been some degree of discussion in the press concerning certain prisoners other than Withrow or Campbell. As the authorities saw it, what many Kingston Pen inmates had done during the riot in October 1932 would count as an important criminal offence. The Crown's desire that a number of these men be penalized on that basis had required criminal trials for twenty-seven individuals in the spring and summer of 1933.⁹⁷ Thanks to these court cases, some observers grew increasingly sceptical of the federal penal authorities.⁹⁸ Prison became decidedly more abysmal on the occasions when an inmate realized that a gun barrel was pointed at his cell, that the projectiles flying from the muzzle might well leave him a lifeless heap if he failed to make himself scarce, and that the latched door prevented him from running away. For Tim Buck, the figure who captained the Communist Party of Canada, such an occasion

⁹⁷ See Archambault Report, 69.

⁹⁸ See, for example, editorial, "The Penitentiary Problem," *The Globe*, August 11, 1933, p. 4; "A Public Service," editorial by *Trenton Courier-Advocate*, reprinted in *The Globe*, August 18, 1933, p. 1; and editorial, "Patchwork Penology," *The Globe*, May 26, 1934, p. 6.

arose during the 1932 riot.⁹⁹ Even quite minor political endeavours in favour of communist possibilities for Canada could land a citizen in hot water, thanks to the component of the Criminal Code found in Section 98, a segment which had materialized in 1919.¹⁰⁰ That section had enabled the authorities to imprison eight communists from Toronto, including Buck, in 1932.¹⁰¹ Incarceration made this political leader conversant not only with general norms in Kingston Pen, but also, near the end of the year, with the surprises that a prison riot could feature. Buck did not himself fall prey to any of the speeding bullets with which he had to share his cell at one point on October 20. But the fact that these projectiles had created such a potent scare—perhaps courtesy of either some prison employees or of some of the personnel whom the militia had provided to help bring the riot to an end—struck many citizens as odious.¹⁰² The rioters’ trials, as well as other information that the newspapers offered concerning penal activity, increased Canadians’ cognizance not only of the nip-and-tuck scenario into which Buck had been plunged, but also of a few of the rather grim aspects of incarceration for certain other inmates. In quite a few instances, for example, corporal punishment functioned as the penitentiary authorities’ tactic for getting the message across to what they regarded as obstinate inmates. In one inmate’s description, the institution had on a certain occasion

⁹⁹ See Archambault Report, 81-86, 89; see Marr, “Series of Nasty Situations,” 37, 41-44. It appears that several other Kingston convicts’ cells also had to put up with a speeding bullet or two from staffers’ guns at one point on October 20. The bullet-damaged shoulder subsequently nursed by one of these prisoners shows that the event ended up creating more than just a scare. See Archambault Report, 79-81; see Marr, “Series of Nasty Situations,” 41-42.

¹⁰⁰ See *Criminal Code*, RSC 1927, c 36, s 98; see *An Act to amend the Criminal Code*, SC 1919, c 46, s 1.

¹⁰¹ See Tim Buck, *Yours in the Struggle: Reminiscences of Tim Buck*, ed. William Beeching and Phyllis Clarke (Toronto: NC Press, 1977), 162, 190-194; see “Communists Fail in Their Appeals against Sentences,” *The Globe*, February 20, 1932, p. 13.

¹⁰² See Archambault Report, 81-97.

“flogged me like a dog.”¹⁰³ And some readers tended to suspect that this particular offender might indeed have become acquainted firsthand with an overly harrowing physical penalty, rather than just with a limited sanction about which he was voicing a quasi-rhyming gripe.¹⁰⁴ Another man’s imprisonment at Kingston Pen had featured a great deal of incarceration—about twenty-five months, apparently—in the portion of the institution known as the Prison of Isolation. As some newspapers and readers saw it, the penitentiary had, in effect, put him through two years of “solitary confinement.”¹⁰⁵ The baleful possibilities that a penitentiary could generate sank in a little further for at least a few Canadians as a result of the comments that the press and its readers voiced about such scenarios. Even after the rioters’ trials came to a close, remarks in the newspapers about such examples suggested that some observers, at least, were retaining their wariness of the penal powers-that-be.

¹⁰³ See Canadian Press, “‘Framed,’ Then Flogged, Convict Tells Court,” *The Globe*, July 29, 1933, p. 1.

¹⁰⁴ See Citizen, letter to the editor, *The Globe*, August 10, 1933, p. 4; see H.B. Parnaby, letter to the editor, *The Globe*, August 30, 1933, p. 4; see D.M. Ormond, memorandum to Minister of Justice, August 22, 1933, in “Officialdom Claims Prison Reform Under Way,” *The Globe*, August 28, 1933, pp. 1, 3.

¹⁰⁵ See “W.M. Nickle Tears Off Mask; Tells How Ormond Sat Silent as Inmates Cited Cruelties,” *The Globe*, September 2, 1933, pp. 1, 3; see Kingstonian, letter to the editor, *The Globe*, September 6, 1933, p. 4; see editorial, “Demand Grows in Volume,” *The Globe*, September 7, 1933, p. 4; see editorial, “‘News’ from the ‘Pen,’” *The Globe*, September 8, 1933, p. 4; see “Prisoner in Hole for Two Years Refused Appeal to U.S. Minister[,] Ormond Dreading Public Inquiry,” *The Globe*, September 11, 1933, pp. 1, 4; see editorial, “Reforms Must Come,” *The Globe*, September 23, 1933, p. 4; see “Affidavit Clears ‘Two-Gun’ O’Brien of Plotting 1931 Riot,” *The Globe*, October 14, 1933, p. 1; see editorial, “What Is Ottawa’s Answer?” *The Globe*, October 14, 1933, p. 4. For Justice minister Hugh Guthrie’s perspective about how solitary confinement differed from incarceration in the Prison of Isolation, see *House of Commons Debates*, 17th Parl, 5th Sess, Vol. 4 (3 July 1934) at 4612-4615 (Hugh Guthrie—Conservative, Wellington South, ON). A number of people also obtained the unfactual idea that Kingston Pen had put another individual through a far more protracted stretch as an inhabitant of the Prison of Isolation—not two years, but twenty-three (!) years. See, for example, I.G. Bowles, letter to the editor, *The Globe*, August 23, 1933, p. 4; Citizen, letter to the editor, *The Globe*, August 10, 1933, p. 4; Law-Abiding Citizen, letter to the editor, *The Globe*, August 26, 1933, p. 4. On solitary confinement at Kingston Pen, see, among other things, *House of Commons Debates*, 17th Parl, 5th Sess, Vol. 1 (14 February 1934) at 574 (A.E. Ross—Conservative, Kingston City, ON).

These developments heightened the readiness of the press to fasten on the statements of a figure like Oswald Withrow. By mid-May of 1933, Withrow no longer had to put up with the frustrating condition of being a parolee.¹⁰⁶ For quite some time, he had suspected that reading Canadians might go for written pieces exploring the types of matters which he wished to discuss regarding Kingston Penitentiary.¹⁰⁷ And at this point he had no more need to wait until later to give the public a piece of his mind about that prison, since the ticket-of-leave authorities were now bereft of any sanction to employ if his statements proved nettlesome.¹⁰⁸ In August, the *Globe* shifted into penal-reform mode with special gusto. The publication infused its advocacy with the needed zing by giving Withrow a front-page spot every day for nine straight weeks to highlight Kingston Pen and comment on related prison topics. The *Globe* expected that such issues would strike readers as compelling not only as a result of Withrow's writings, but also due to the many additional pieces of commentary on penal affairs (many of which made reference to Withrow or Campbell) in the paper during this nine-week period, including more than one hundred letters to the editor, editorial material from over fifty other Canadian newspapers, and more than thirty editorials of the *Globe*'s own.¹⁰⁹ Thanks in part to Withrow's

¹⁰⁶ See O.C.J. Withrow, "Keep Mouths Clamped or Go Back to Prison Fear of Men on Parole," *The Globe*, September 12, 1933, pp. 1, 10.

¹⁰⁷ See Withrow diary, entries for January 2, 1930; January 19-21, 1930; and October 24, 25, and 27, 1932, in Withrow fonds, F 1375, Container B253379, AO; see also entries for June 8, 1930; December 22, 1930; October 28, 1932.

¹⁰⁸ See Withrow diary, entries for November 27, 1930; January 8, 1932; and October 20, 1932, in Withrow fonds, F 1375, Container B253379, AO; see O.C.J. Withrow, "Keep Mouths Clamped or Go Back to Prison Fear of Men on Parole," *The Globe*, September 12, 1933, pp. 1, 10.

¹⁰⁹ By mid-October, people who were of a mind to peruse the first six weeks of Withrow's *Globe* writings a second time could find them in a book rather than just in the original issues of the newspaper. Some paragraphs had been shifted to different spots within the respective chapters, but on the whole, *Shackling the Transgressor* differed very little from the original articles. See Oswald C.J. Withrow, *Shackling the Transgressor: An Indictment of the Canadian Penal System* (Toronto: Thomas Nelson & Sons, 1933); see also "Dr. Withrow's Book," *The Globe*, September 25, 1933, p. 4. Canadians did not display any great

writings and to the high priority the *Globe* assigned to the subject, plenty of people got in on the act of critiquing the penitentiary.

Like Campbell, Withrow could thank his own middle-class image for his social credibility. According to the *Globe*, this Torontonion was “a physician—a man of undoubted culture and discernment.”¹¹⁰ A number of writers pointed out how “educated” he was.¹¹¹ If people commented in favour of Withrow by means of class-related remarks, he himself rarely mentioned the class structures whose imprint might be found on the penal patterns in Canada. Nevertheless, in some ways his articles in the *Globe* did evoke structural notions. In discussing Canadian penal affairs, especially the pernicious aspects thereof, he frequently referred to “the system,” often capitalizing the “s.” And embracing the alternative penal strategies that he endorsed would amount, in his description, to the establishment of a “new order”—a phrase that surfaced frequently in his writing during the later part of his nine-week stint.¹¹² This kind of structural imagery proved compatible with a denunciatory message, partly because his construal of current penal realities could draw attention both to systems and to persons.

eagerness to shell out their dollars for the book, at least not during the first three months—see Withrow diary, entry for January 3, 1934, in Withrow fonds, F 1375, Container B253379, AO.

¹¹⁰ “Not for the Sake of Sensationalism, but That the Truth May Be Known,” *The Globe*, August 5, 1933, p. 1.

¹¹¹ See “The Light of Publicity,” editorial by *St. Marys Journal-Argus*, reprinted in *The Globe*, August 14, 1933, p. 1; see “The Public to Judge,” editorial by *Barrie Examiner*, reprinted in *The Globe*, August 16, 1933, p. 1; see “Needs Vigorous Inquiry,” editorial by *Simcoe Reformer*, reprinted in *The Globe*, August 23, 1933, p. 1; see W.H., letter to the editor, *The Globe*, September 4, 1933, p. 4; see also “Behind the Grey Stone Walls,” editorial by *Port Arthur News-Chronicle*, reprinted in *The Globe*, August 26, 1933, p. 1, and A Taxpayer, letter to the editor, *The Globe*, September 13, 1933, p. 4. For comparable remarks about Campbell, see “A Public Service,” editorial by *Trenton Courier-Advocate*, reprinted in *The Globe*, August 18, 1933, p. 1, and “Real Reform Needed,” editorial by *Fort Erie Times-Review*, reprinted in *The Globe*, August 30, 1933, p. 1.

¹¹² See especially O.C.J. Withrow, “Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates,” *The Globe*, September 16, 1933, pp. 1, 3.

“System” may not sound like a morally freighted word. Even so, Withrow’s writing contained an unmistakable vein of rebuke. At various points, for instance, he referred to “injustice” directed against offenders during their prosecution or imprisonment, or to prison staffers who had developed a propensity for “unjust” conduct.¹¹³ Other targets of his criticism included the “cruel” habits or “brutal” style adopted by some of the employees manning Kingston Pen.¹¹⁴ Admittedly, when Withrow tried to make the unacceptable dynamics in Canadian prisons apparent to readers, he was not always discussing the types of issues that would have easily grabbed headlines on their own. “[T]he petty pin-pricks day by day,” he noted, “can cause a ‘Reign of Terror’ more harrowing even than the drawing of blood upon the naked body or the languishing in the darkness of the dungeon.”¹¹⁵ However true that may have been, one doubts that Withrow’s cause would have gained as much popularity if his articles had dwelled only upon these “petty pin-pricks.” But he did not neglect the opportunity to turn to topics like corporal punishment as well. Inmates who demonstrated an inclination to misbehave might receive a reminder who was boss, through the medium of the paddle. Withrow made sure that readers would get the point: “Oh! the pain and anguish! The bruising and the bleeding! Smack! Smack! Smack! Bruises and blood! Ten blows! Fifteen!

¹¹³ See, for example, O.C.J. Withrow, “Newcomer Enters ‘Big House’ Gate, Gets ‘Instruction’ on Regulations and Is Housed in ‘Furnished’ Cell,” *The Globe*, August 7, 1933, pp. 1, 3; O.C.J. Withrow, “Prisoners Helped by Little Sammy, Chinese Factotum of Change Room at Once-a-Week Bath and Clean-Up,” *The Globe*, August 14, 1933, pp. 1, 4 (“injustice” on page 4); “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, September 28, 1933, pp. 1, 4 (“injustices” on page 4); O.C.J. Withrow, “Periodic Prison Riots Always Win Something in Improved Conditions,” *The Globe*, August 30, 1933, pp. 1, 3 (“unjust” on page 3).

¹¹⁴ See O.C.J. Withrow, “Dr. Withrow ‘Talks Back’ as Warden Calls Him ‘Liar,’ Gets ‘Five Nights Hard Bed,’” *The Globe*, August 26, 1933, p. 1; see O.C.J. Withrow, “Prisoner with Paralyzed Arm Brutally Beaten into Collapse and Finally Tortured to Death,” *The Globe*, August 21, 1933, pp. 1, 3 (“brutal” on page 3); see “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, September 20, 1933, p. 1.

¹¹⁵ O.C.J. Withrow, “Guard Points Out ‘Red’ When Visitors at Prison Ask for ‘Bold, Bad Man,’” *The Globe*, August 18, 1933, pp. 1, 4 (quote from page 4).

Twenty! The burly guard uses all the force of his hefty arm.”¹¹⁶ “[P]addling,” he noted in another spot, “was the greatest punishment and most satisfactory to the System. Bruises and blood! With what zest it was pursued!”¹¹⁷ Yet one or two of the situations discussed in his articles put mere corporal punishment in the shade. One prisoner, for instance, “was killed by the System as surely as by an assassin’s bullet.”¹¹⁸

Perhaps it was such reports of beatings and deaths that did it.¹¹⁹ In any case, a number of readers and editorialists came out swinging against the kind of penal patterns to which Kingston Pen, in Withrow’s telling, had gravitated. Several writers described themselves or others as having now acquired a fittingly “indignant” viewpoint, or a justifiable stance of “indignation,” toward the prison realities in question.¹²⁰ “[T]he picture, as Dr. Withrow paints it, is one which must cause a Christian people to hang their heads in shame,” declared the *Vernon News*.¹²¹

Indeed, from the standpoint of many of the citizens hammering out letters or editorials, the balefulness of the kinds of penal habits that Withrow was highlighting

¹¹⁶ O.C.J. Withrow, “Prisoner with Paralyzed Arm Brutally Beaten into Collapse and Finally Tortured to Death,” *The Globe*, August 21, 1933, pp. 1, 3 (quote from page 3).

¹¹⁷ O.C.J. Withrow, “Dr. Withrow ‘Talks Back’ as Warden Calls Him ‘Liar,’ Gets ‘Five Nights Hard Bed,’” *The Globe*, August 26, 1933, pp. 1, 3 (quote from page 3).

¹¹⁸ O.C.J. Withrow, “Brutal Guard Attacks Weak Little Old Man Just After ‘Paddling,’” *The Globe*, August 19, 1933, pp. 1-2 (quote from page 2). See also O.C.J. Withrow, “Drugged to His Death by Mixture of Serum and Case Deemed Closed,” *The Globe*, September 1, 1933, pp. 1, 3.

¹¹⁹ See, for example, the response of I.G. Bowles, letter to the editor, *The Globe*, August 23, 1933, p. 4. As Bowles saw it, “[t]he letter telling of the treatment, brutality and death of Miglio [a particular prisoner] should be enough of itself to cause the dismissal of all in authority who sympathize with such inhuman treatment.”

¹²⁰ See, for example, Gordon C. Parker, letter to the editor, *The Globe*, August 23, 1933, p. 4; I.G. Bowles, letter to the editor, *The Globe*, August 23, 1933, p. 4; J.P. Lobb, letter to the editor, *The Globe*, September 2, 1933, p. 4.

¹²¹ Editorial matter from *Vernon News*, reprinted in *The Globe*, September 9, 1933, p. 4.

ought to dawn especially easily upon the denizens of “a Christian country.”¹²² “Christian people everywhere are seething with righteous indignation,” claimed one reader.¹²³

Withrow himself serves as a telling reminder of the considerable influence of Christianity in interwar Canada, even if religion did not seem to attract people so readily as it had in the nineteenth century, or as it would for a time in the 1950s.¹²⁴ In fact, we could concoct an amusing description by calling Withrow an evangelical Christian abortionist. That suggestion is partly tongue-in-cheek; “evangelical” may not actually be a satisfactory adjective in this case. A “traditional” Protestant take on theological matters may not necessarily have won such firm allegiance from him as from many evangelicals, and at least a few of his sensibilities may have been comparable to those of “modernist” interwar Christians.¹²⁵ Nevertheless, this Baptist asserted in the *Globe* that “I am old-fashioned enough to believe in the power of religion to cleanse and keep.”¹²⁶ Withrow appears to

¹²² See “A Taxpayer,” letter to the editor, *The Globe*, September 13, 1933, p. 4. See also, for example, Citizen, letter to the editor, *The Globe*, August 26, 1933, p. 4; J.P. Lobb, letter to the editor, *The Globe*, September 2, 1933, p. 4; A.G. Bucknell, letter to the editor, *The Globe*, September 4, 1933, p. 4; Old Subscriber, letter to the editor, *The Globe*, September 4, 1933, p. 4.

¹²³ Mildred B. Brown, letter to the editor, *The Globe*, September 18, 1933, p. 4. See also W. Oliver Williams, letter to the editor, *The Globe*, August 26, 1933, p. 4, and Old Tory, letter to the editor, *The Globe*, September 8, 1933, p. 4.

¹²⁴ See Doug Owram, *Born at the Right Time: A History of the Baby-Boom Generation* (Toronto: University of Toronto Press, 1996), 103-106.

¹²⁵ At one point in one of his letters, Withrow praised a piece written by Harry Emerson Fosdick, a New York clergyman whose preaching proved particularly attractive to those who preferred “liberal” Christianity—see [Withrow] to Darlings, July 15, 1929, in Withrow fonds, F 1375, Container B228810, AO. The piece in question was Harry Emerson Fosdick, “Religion and Birth Control,” *Outlook and Independent*, June 19, 1929, pp. 301, 314. On Fosdick, see George M. Marsden, *Fundamentalism and American Culture: The Shaping of Twentieth-Century Evangelicalism, 1870-1925* (Oxford: Oxford University Press, 1980), 171-173; and Robert Moats Miller, “Fosdick, Harry Emerson,” in *American National Biography* (New York: Oxford University Press, 1999), 283-284.

¹²⁶ O.C.J. Withrow, “Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates,” *The Globe*, September 16, 1933, pp. 1, 3 (quote appears on p. 3). Withrow appears not to have belonged formally to any Baptist church at this particular moment in time. Soon after his criminal conviction in 1927, his congregation had ceased to deem him a member (a shift facilitated by his acquiescence). But some of the church meetings at which he surfaced during the early 1930s were in Baptist congregations, and he appears to have been quite involved in a Baptist church again in later years, at least in the early 1940s. See O.C.J. Withrow, “Day of Departure Rolls Round Prisoners Go Forth to

have perceived the tos and fros of his existence as being of concern to God, such that divine assistance was perfectly possible.¹²⁷ “Things have moved so mysteriously and wonderfully during the last few years that I ought to be prepared for any leading of my Father,” stated Withrow in some private written ruminations in 1934.¹²⁸ In the early 1930s, Withrow’s diary often mentioned the church services that took up an hour or two of many of his Sundays. Phrases from the Bible or remarks about biblical passages or figures punctuated his letters, diary, and published articles from time to time.¹²⁹ Admittedly, at certain points he felt bereft of religious stamina, and the possibility of jettisoning Christianity (or church involvement) may well have crossed his mind. But he found that possibility less attractive than his religious habits still proved to be.¹³⁰ In any case, if Christianity won at least the partial allegiance of both Withrow and many of those in his audience, the *Globe* itself championed Christianity more than most other major

Freedom Seared, Bitter, without Hope,” *The Globe*, September 14, 1933, p. 3; see [Withrow] to “Darlings,” October 1, 1928, in Withrow fonds, F 1375, Container B228810, AO; see, for example, Withrow diary, entries for April 13, 1930; May 25, 1930; October 9, 1932; April 9, 1934; April 23, 1934, in Withrow fonds, F 1375, Container B253379, AO; see L.A. Gregory, *Kwasind Remembered* (N.p.: Dept. of Communications, [1979?]), pp. [3]-[4], in JDM Griffin fonds, Bio File for O.C.J. Withrow (Dr.) (1878-1946), Centre for Addiction and Mental Health Archives.

¹²⁷ See Withrow diary, entry for June 8, 1930, in Withrow fonds, F 1375, Container B253379, AO. See also, for example, diary entries for March 31, 1908, August 30, 1930, and June 3, 1934.

¹²⁸ Withrow diary, entry for February 16, 1934, in Withrow fonds, F 1375, Container B253379, AO.

¹²⁹ See [Withrow] to Darlings, June 15, 1928 (cf. Mark 14:3), [Withrow] to Household, August 15, 1928 (cf. II Peter 1:10), and O.C.J.W[ithrow] to Geo. R., Major Grimshaw, Clare Hincks, Harold Ball, Tressider, and J.W. Hopkins, August 15, 1928 (cf. Matthew 6:29), in Withrow fonds, F 1375, Container B228810, AO; see Withrow diary, entry for January 1, 1930 (cf. Philippians 3:13-14), in Withrow fonds, F 1375, Container B253379, AO; see O.C.J. Withrow, “Prison Hospital Cares for Those on ‘Sick Leave,’” *The Globe*, August 9, 1933, pp. 1-2 (cf. John 19:41); see O.C.J. Withrow, “Bodies of Dead in Rough Boxes Hurried Away to Potter’s Field; No Service or Attending Clergy,” *The Globe*, August 17, 1933, pp. 1, 3 (cf. Luke 16:26; Matthew 18:20); see O.C.J. Withrow, “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, September 19, 1933, p. 3 (cf. Acts 23:12); see also [Withrow] to Home Folks, December 24, 1928 (cf. Psalm 137), in Withrow fonds, F 1375, Container B228810, AO, and Withrow diary, entry for June 14, 1930 (cf. Matthew 7:24-25).

¹³⁰ See [Withrow] to “Darlings,” October 1, 1928, in Withrow fonds, F 1375, Container B228810, AO; see Withrow diary, entries for June 28, 1930; April 15, 1934; April 29, 1934; and May 6, 1934, in Withrow fonds, F 1375, Container B253379, AO.

mainstream newspapers in the country. With the fundamentalist William Jaffray as the *Globe*'s publisher, there was typically one editorial each Wednesday which conveyed a fully evangelical viewpoint on a religious topic.¹³¹ The *Globe*'s frequent editorials in the fall of 1933 concerning penal reform did not actually highlight religious imperatives too often. Be that as it may, the sight of religious assertions on the editorial page would presumably have seemed familiar to quite a number of the letter writers in the *Globe*, and to little surprise, some of these writers themselves remarked upon the Christian reformist sensibilities into which Canada ought to buy.

Some writers dressed down current penitentiary practices not (or not only) from an explicitly Christian standpoint, but rather in light of the "human[ness]" of the inmates. "I feel that I would have failed in my duty as a Canadian taxpayer and a red-blooded citizen," claimed one reader, "if I did not express my disgust at the method of handling convicts—who are human beings—at Kingston Penitentiary."¹³² According to the *Peterborough Examiner*, interned malefactors "are human beings, and they are entitled to be treated as such."¹³³ "[N]o matter how low he may get," declared another letter, "a man is still a man, and not a serpent to have his head crushed."¹³⁴ "[I]f Dr. Withrow's statements are founded on fact," wrote the *Creemore Star*, "the wanton cruelty handed out

¹³¹ See Allan Levine, *Scrum Wars: The Prime Ministers and the Media* (Toronto: Dundurn Press, 1993), 142-143; for examples of Wednesday editorials with a strong evangelical flavour, see editorial, "Life from Above," *The Globe*, August 30, 1933, p. 4, and editorial, "Knowledge and Faith," *The Globe*, October 11, 1933, p. 4.

¹³² A.M. Cooper, letter to the editor, *The Globe*, August 28, 1933, p. 4.

¹³³ "Investigation Needed," editorial matter from *Peterborough Examiner*, reprinted in *The Globe*, September 5, 1933, p. 4. Sometimes writers' comments about humanness were firmly connected to Christian ideas. One letter indicated convicts to be "human beings made in the image of God"—Sydney T. Jordan, letter to the editor, *The Globe*, September 13, 1933, p. 4. See also [W.R. Givens], "General Ormond's Statement Justifies Demand for Inquiry: Age-Old System Must Be Shaken Stem to Stern," *The Globe*, September 1, 1933, pp. 1, 5.

¹³⁴ Clarence M. Brown, letter to the editor, *The Globe*, September 1, 1933, p. 4. See also Old Tory, letter to the editor, *The Globe*, September 8, 1933, p. 4.

by guards to convicts in our leading penal institution is such as would never be allowed to be inflicted on dumb animals, let alone fellow-creatures.”¹³⁵

While comments construing convicts as animals might have struck some readers as quite pernicious, a few citizens believed the scent of animality—or perhaps of an even more odious phenomenon—suffused the conduct of some of the penitentiary’s staffers.¹³⁶

One commentator fulminated about “inhuman monsters and practicers of what can only be characterized as devil-craft,” and about “flogging such as could only be administered by a human being with a heart such as would degrade and disgrace a beast.”¹³⁷

Withrow’s discussion inspired another reader to castigate some of the penitentiary personnel as “pure barbaric devils; refined and unadulterated brutes, void of any human feeling, and unworthy to draw a breath of free fresh air—so much lower than the brutes that language fails.”¹³⁸

At least a few citizens, however, looked askance at blistering denunciation. One reader believed that other letter writers had been rather imperceptive in their angry comments about prison personnel. “Indignant correspondents, who are eager to execute vengeance on brutal jailors, probably are of the same species as the unhappy blunderers whom they abuse,” he declared. As he saw it, awareness of “the system” strengthened the case against such vituperation: “Many of the turnkeys had the best intentions when they were raw recruits, but ‘the system’ has made ‘turncoats’ of them; and in ignorant

¹³⁵ “Real Public Service,” editorial by *Creemore Star*, reprinted in *The Globe*, September 1, 1933, p. 1. See also Law-Abiding Citizen, letter to the editor, *The Globe*, August 26, 1933, p. 4. Also, quite a few readers or editorialists were up in arms over the “inhuman” measures with which Kingston Pen convicts had to put up—see, for example, I.G. Bowles, letter to the editor, *The Globe*, August 23, 1933, p. 4, and F.R., letter to the editor, *The Globe*, August 23, 1933, p. 4.

¹³⁶ See Gordon C. Parker, letter to the editor, *The Globe*, August 23, 1933, p. 4.

¹³⁷ Editorial matter (?) from *Athens Reporter*, reprinted in *The Globe*, September 14, 1933, p. 4.

¹³⁸ W. Oliver Williams, letter to the editor, *The Globe*, August 26, 1933, p. 4.

desperation they have become unsympathetic disciplinarians—as would a large proportion of us under similar disadvantages.”¹³⁹

Those who preferred cautious judgment rather than stark excoriation would have perceived at least a few parts of Withrow’s own discussion as quite commendable.

Admittedly, his portrayal did make a number of personnel sound rather reprehensible.

Yet he found that commenting on “the system” sometimes helped him to avoid being excessively hard on penitentiary staff members. “Some of the guards are much superior to the system,” he pointed out.¹⁴⁰ Indeed, many members of the staff “are pretty decent fellows in the beginning,” but “[t]he tendency is for them to become harder and more brutal the longer they remain under such a system as now prevails.” “How,” he asked, “can guards help deteriorating under such an in[i]quitous system?”¹⁴¹

In making such comments, Withrow was employing a kind of vocabulary and reasoning that other penal critics in Canada had taken up on occasion as well. Three decades earlier, for example, an article by Alfred Lavell had suggested that the regrettable penal practices in Canada did not result from something heinous in the character of the key criminal-justice “officials.” Indeed, he depicted these figures as relatively “high-minded.” “Let us stop this grim farce,” he declared. “Either let us cease to appoint wise, humane, and just men to carry out an unwise, scientifically inhuman, and unjust system, and instead give the work to a lower class of men who will more resemble the system; or

¹³⁹ A.W. Rodway, letter to the editor, *The Globe*, September 13, 1933, p. 4.

¹⁴⁰ O.C.J. Withrow, “New Testament Teaching and Old-Fashioned Hymns Are What Prisoners Want,” *The Globe*, August 16, 1933, p. 1.

¹⁴¹ “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, September 20, 1933, p. 3. See also O.C.J. Withrow, “Border Cities Bad Actor Carted in Full of Dope Tenant of Prison Hole,” *The Globe*, September 4, 1933, pp. 1-2; see also O.C.J. Withrow, “Home Folk Write Prison Doctor Anxious Over Health of Inmate and Get Curt Note from Warden,” *The Globe*, September 5, 1933, pp. 1, 3.

let us so modify and change that system as to give the freest opportunity to our criminal experts to wisely, humanely, and justly do their duty to society in the positions which we have given them to fill.”¹⁴² In the 1920s, Lavell got to see how this kind of notion sounded when uttered by those who had it in for parole. In June 1923, Lavell’s connection to parole matters took him to the convention of the Chief Constables’ Association of Canada. One of the presentations at this event encouraged the audience to take a dim view of the parole activities occurring in Canada. “You have all had your experiences with parole boards,” the listeners were reminded, “and to mention the subject is to start a swearing bee.” Yet there was one kind of criticism that the presentation specifically claimed not to be offering: “I am not finding any fault with the members of the board. I could not if I wished. It is the system.”¹⁴³ We find another example in a statement offered in 1932 by Milton Hersey, John Kidman, and Gordon Burgoyne, three Montreal-based reformers involved in the Canadian Prisoners’ Welfare Association and/or a related group. The statement revealed that not all facets of Canadian penal practice elicited the authors’ admiration. But these reformers paid a rather high compliment to the penitentiary wardens, describing those figures as having “humane instincts and social understanding,” along with “strong and irreproachable character.”

¹⁴² See Alfred E. Lavell, *Our Prison Problem* (“Reprinted from ‘Methodist Magazine and Review’ June 1901”) (Toronto: William Briggs, 1901; Ottawa: Canadian Institute for Historical Microreproductions, 1999), microfiche, CIHM no. 88219, p. 10. Lavell provided relatively similar comments about persons and “our system” in Alfred E. Lavell, “Christianity and the Criminal,” *Christian Guardian*, May 8, 1901, pp. 2, 12.

¹⁴³ Chief Inspector of Detectives Guthrie, “The Cause and Cure of Crime,” in Chief Constables’ Association of Canada, *Proceedings of Nineteenth Annual Convention, Held at Windsor, Ontario, June 19, 20, 21, 1923* (Toronto: n.d.), p. 62, in RG 8-56 (Ontario Board of Parole, Miscellaneous Printed Material), Box 2, Envelope 8: “Ontario Board of Parole, misc. printed material, (1922-1923), envelope #8,” AO. For another comment in this vein (although not on the topic of parole or punishment) about “the system,” see George T. Denison, *Recollections of a Police Magistrate* (Toronto: Musson Book Company, 1920), 127.

“Any recommendation for amelioration,” declared the document, “or any criticism of existing conditions, therefore, is entirely impersonal and pertains to the system handed down from the Dominion Penitentiaries Act and the traditions that naturally have been created in that connection.”¹⁴⁴ And now, during the weeks in which Withrow himself was saying so much about “the System,” other voices in Ontario latched onto the idea as well. “It is not the guards or the keepers but the system that is cruel,” declared W.R. Givens, whom the *Kingston Daily Standard* and the *Kingston Whig-Standard* had previously counted as their publisher or president.¹⁴⁵ A letter penned by Givens reminded Prime Minister R.B. Bennett about “the shocking system,” while also describing the Bennett administration as “not itself responsible for” this odious penal phenomenon.¹⁴⁶ A number of months later, the idea surfaced in the House of Commons, thanks to A.E. Ross, a Conservative MP for whom Kingstonians had opted in the 1930 election. Ross indicated

¹⁴⁴ Milton L. Hersey, John Kidman, and R. Gordon Burgoyne, Petition to the Hon. Hugh Guthrie, M.P., Minister of Justice, Ottawa, November 1932, in MG26-K (R.B. Bennett fonds), Volume 411, File J-204, 1930-31-32: “Penitentiaries,” microfilm reel M-1086, pp. 261990-261995, LAC. The wording that I have quoted appears on p. 261990.

¹⁴⁵ [W.R. Givens], “General Ormond’s Statement Justifies Demand for Inquiry: Age-Old System Must Be Shaken Stem to Stern,” *The Globe*, September 1, 1933, p. 1; and on Givens, see “Kingston Publisher Flails ‘Pen.’ System,” *The Globe*, August 31, 1933, p. 1.

¹⁴⁶ See W.R. Givens to R.B. Bennett, September 11, 1933, in MG26-K (R.B. Bennett fonds), Volume 411, File J-204-K, 1932-33: “Justice-Penitentiaries, Penitentiary at Kingston,” microfilm reel M-1086, pp. 262357-262359, LAC. With the phrase “not itself responsible for,” Givens may have been portraying the Bennett administration as “not [solely] responsible for” these penal habits rather than as “not [at all] responsible for” them. After all, he claimed earlier in the letter that “Liberal and Conservative Governments were alike to blame, because each in turn tolerated and continued a system that has seen little real change or improvement in three score years” (see also [W.R. Givens], “General Ormond’s Statement Justifies Demand for Inquiry: Age-Old System Must Be Shaken Stem to Stern,” *The Globe*, September 1, 1933, pp. 1, 5). But even if so, another sentence in the Givens letter touched upon “long existing abuses, especially those not of your own making [,] and faulty systems, also not of your own creation.” In any event, therefore, Givens was availing himself of “system”-highlighting discourse partly to make sure the letter would not rake Bennett over the coals as forcefully as it could have.

that he “ha[d] some criticism of the system, and not particularly against the administration by this or that official.”¹⁴⁷

Most of these reformers, including Withrow, may well have felt convinced that the personnel in question had not in fact taken the lead in producing the pernicious penal patterns which characterized “the system,” or at least that it would be dishonourable to make disparaging suggestions about those men when one could see quite plausible grounds for evaluating them more positively. In addition, however, rhetoric highlighting “the system” may have proved attractive to some reformers partly because it allowed them to express a denunciatory message without running the same rhetorical risks involved in castigating penal workers. In certain cases, reformers might have ended up turning off some of their readers or listeners if they had chosen to lambast the personnel who carried the cell keys, wore the warden’s uniform, or engaged in other kinds of penal work. Focusing on “the system” instead made that negative response from their audience less likely, and may at times have freed these critics to deprecate current penal patterns more forcefully than would otherwise have seemed prudent. Such a dynamic was probably at work in the case of the 1932 statement from reformers in Montreal, the statement which conveyed an occasional dollop of possible “criticism,” but only in an “entirely impersonal” vein. In this particular instance, the authors avoided forceful wording even in that (rather understated) “system”-focused “criticism.” Still, they may have believed that the Minister of Justice would be more inclined to view their missive to him as a document which offered worthwhile suggestions if they especially refrained

¹⁴⁷ *House of Commons Debates*, 17th Parl, 5th Sess, Vol. 4 (25 June 1934) at 4296 (A.E. Ross—Conservative, Kingston City, ON); see also 17th Parl, 5th Sess, Vol. 1 (14 February 1934) at 577.

from upbraiding the people involved in penal endeavours. Similar considerations may perhaps have encouraged complaint about “the system” in the anti-parole presentation during the 1923 gathering of the Chief Constables’ Association of Canada, or in the statements of A.E. Ross or W.R. Givens during the 1930s. The latter two figures probably did in fact consider the guards to be no more ignoble than any other Canadians; to hear Givens tell it, Kingston Pen staffers were “as fine a body of men as one will meet anywhere and by no means brutal and inhuman as some of the inmates would make them out to be, but decent God-fearing men unfortunately compelled to work under an age-old system.”¹⁴⁸ Accordingly, his remarks about the non-perniciousness of the guards likely were a true attempt to discourage his hearers from regarding those personnel as blameworthy, rather than merely an attempt to prevent his own claims from appearing too accusatory. Even so, since Kingston had been Givens’ home for a major portion of his life,¹⁴⁹ he might in any case have preferred to speak tactfully about the numerous current or past prison staffers with which the community was endowed. Regardless of reformers’ actual attitudes, the choice to cut certain people some slack made unflattering comments about “the system” itself all the more viable.

It is not clear whether this second kind of rhetorical logic left a major imprint upon Withrow’s own writing. Although he certainly sought to give some prison staffers the benefit of the doubt, he did not try nearly so hard as the Canadian Prisoners’ Welfare

¹⁴⁸ See [W.R. Givens], “General Ormond’s Statement Justifies Demand for Inquiry: Age-Old System Must Be Shaken Stem to Stern,” *The Globe*, September 1, 1933, p. 1; see also W.R. Givens to R.B. Bennett, September 11, 1933, in MG26-K (R.B. Bennett fonds), Volume 411, File J-204-K, 1932-33: “Justice-Penitentiaries, Penitentiary at Kingston,” microfilm reel M-1086, pp. 262357-262359, LAC.

¹⁴⁹ Concerning Givens, see Canadian Press, “William R. Givens: Once Publisher and President of Kingston Paper,” *Globe and Mail*, September 19, 1950, p. 24; Canadian Press, “Famed Canadian Newsman W.R. Givens, 82, Passes,” *Toronto Daily Star*, September 19, 1950, p. 4.

Association to make the personnel he discussed sound admirable. Indeed, references to some staffers' "sadistic" inclinations, "cruel" habits, or "brutal" style surfaced at a number of points in his articles.¹⁵⁰ So he does not appear to have been too worried that unflattering descriptions of prison employees might make readers less likely to accept his message. Nevertheless, he thrust larger accusations at "the System" than at workaday employees. He may have seen only modest rhetorical danger in characterizing individuals harshly, but there was even less danger in slamming "the System," and the latter option held greater denunciatory potential. His critical statements might in some respects have ended up being more limited if he had fulfilled his denunciatory task only by commenting on individuals, none of whom had ruined the prison so fully on their own as all of them had in combination. "The System," on the other hand, was a potent, pervasive phenomenon with which each particular instance of pernicious penal behaviour could be associated. Withrow's choice to offer recurring reminders about that "System" gave him the chance to decry a larger conglomeration of this behaviour with more resounding accusations concerning one heinous entity, an entity so heinous that it could even turn homicidal. One prisoner "was done to death by the System."¹⁵¹ And one, of course, "was killed by the System as surely as by an assassin's bullet."¹⁵²

¹⁵⁰ See O.C.J. Withrow, "Dr. Withrow 'Talks Back' as Warden Calls Him 'Liar,' Gets 'Five Nights Hard Bed,'" *The Globe*, August 26, 1933, pp. 1, 3 ("cruel" on page 1, "sadistic" on page 3); see O.C.J. Withrow, "Prisoner with Paralyzed Arm Brutally Beaten into Collapse and Finally Tortured to Death," *The Globe*, August 21, 1933, pp. 1, 3 ("cruel" and "brutal" on page 3); see "Dr. Withrow Replies to 'Pen' Questions," *The Globe*, September 20, 1933, p. 1 ("brutal," "sadistic").

¹⁵¹ Shoddy medical efforts provided by "the System" elicited the above comment from Withrow. "[L]ack of knowledge, or supreme carelessness, or both, resulted in tragedy"—O.C.J. Withrow, "Drugged to His Death by Mixture of Serum and Case Deemed Closed," *The Globe*, September 1, 1933, pp. 1, 3 (quote on 3).

¹⁵² O.C.J. Withrow, "Brutal Guard Attacks Weak Little Old Man Just After 'Paddling,'" *The Globe*, August 19, 1933, pp. 1-2 (quote from page 2). See also

While denunciatory commentary that drew too much attention to individual prison staffers might have had to weather some blowback, criticism that failed to say enough about personnel may have run the risk of falling flat. At least a few Canadians wanted to ensure that interest in “the system” would not divert attention from the traits, capacities, and performance of actual people. One letter writer, commenting on broad issues raised by the penal situation, declared that “[w]hat is wanted in this Canada of ours is not a new party, or even a new system, but new men.”¹⁵³ “[I]s a reform of the system all that is needed?” asked another *Globe* reader. “Are the officials who have been enforcing such a system capable of reforming themselves? Have they not been going even beyond the cruelties warranted by a cruel system?” In this reader’s view, “the whole lock, stock and barrel of officials, from the Warden down,” ought to “be changed.”¹⁵⁴ Analysis of “the system” might do some good, but a meaningful critique of Canadian penal habits had to say something about persons.

Actually, the manner in which Withrow used rhetoric about “the system” ensured that this structurally themed discourse did still offer noteworthy reminders about the attributes or duties of persons. In fact, it is not clear whether Withrow always meant to imply a strong distinction between “the System[’s]” impersonal protocols, precedents, and patterns, on the one hand, and the people involved therein, on the other. Sometimes his comments about “the System” had a quasi-personifying effect, making reference to actions that “the System” took, ideas that it maintained, attitudes that it displayed, and so

¹⁵³ R.R. Judd, letter to the editor, *The Globe*, August 30, 1933, p. 4.

¹⁵⁴ Citizen, letter to the editor, *The Globe*, August 30, 1933, p. 4. Another writer advocated attention to the realm of persons along with, rather than in priority over, attention to systems: “there is a drastic need for a change, not only in the system at Portsmouth, but in the personnel of the institution”—“A Direct Challenge,” editorial matter from *Oshawa Daily Times*, reprinted in *The Globe*, September 6, 1933, p. 4.

forth. “The System,” he claimed at one point, “didn’t wish us to have any joy of anticipation, if it could be helped.” As he saw it, “the System rather enjoys the discomfiture of the convict and feels somewhat righteous in having presented one of its dangerous characters in the most unpleasing and true-to-type prison perspective.”¹⁵⁵ On one occasion he mentioned an individual by the name of Wall-Eye. “The System,” Withrow asserted, “was always fearful lest he commit suicide.”¹⁵⁶ Another prisoner, claimed Withrow, “was hated by the System.”¹⁵⁷ Perhaps this suggests that Withrow had a strong inclination to view institutional dynamics as overwhelmingly powerful in Canadian penal affairs, as fully overshadowing any influence exercised by particular persons functioning as independent agents. On the other hand, perhaps his quasi-personifying wording could be taken as a hint that he was talking about actual persons. Some of his statements about “the System,” that is, might have served partly to express his opinions concerning certain penal workers, or concerning the persons who provided penitentiary leadership, such as the warden at Kingston, the Ottawa-based Superintendent of Penitentiaries, or other comparable figures. If so, this would not be the only case in which Withrow used an abstract, impersonal term in reference to a concrete person within the leadership. We find a clear example of such usage when we examine the term “Constituted Authority,” a phrase which recurred frequently in Withrow’s articles,

¹⁵⁵ O.C.J. Withrow, “Home Folk Write Prison Doctor Anxious over Health of Inmate and Get Curt Note from Warden,” *The Globe*, September 5, 1933, p. 1.

¹⁵⁶ O.C.J. Withrow, “Dr. Withrow ‘Talks Back’ as Warden Calls Him ‘Liar,’ Gets ‘Five Nights Hard Bed,’” *The Globe*, August 26, 1933, pp. 1, 3 (quote from page 3).

¹⁵⁷ O.C.J. Withrow, “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, September 20, 1933, p. 3. For other personifying comments about “the system,” see, for example, O.C.J. Withrow, “Concert for Convicts in Protestant Chapel Rouses Chaplain’s Ire,” *The Globe*, August 15, 1933, p. 1; O.C.J. Withrow, “Expelled from School Because He Appealed for ‘Light’ to Study,” *The Globe*, August 23, 1933, p. 4; O.C.J. Withrow, “‘Red’ Ryan of Banditry Past on Staff of Prison Hospital Ministering to Ills of Inmates,” *The Globe*, August 28, 1933, p. 5.

usually carrying a touch of sarcasm or hostility. In one instance the phrase served as a label for a particular individual, probably Superintendent of Penitentiaries William St. Pierre Hughes. “Constituted Authority,” noted Withrow, “showed itself from another angle. At the prison congress in 1929 he was approached by two interested and eminent persons, who urged strongly that I be allowed to return to my family and to my work after proper surgical treatment. Constituted Authority assured them that he was very much concerned about me, and was deeply interested in me.”¹⁵⁸ In another case the phrase designated Kingston warden J.C. Ponsford. Recounting a specific incident, Withrow described the arrival of the perhaps intoxicated warden: “Just then there entered Constituted Authority with his hat on from an evening at the club, swinging his cane and visibly affected.”¹⁵⁹ Perhaps a similar dynamic obtained in statements concerning “the System.” When referring to “the System,” Withrow might have sometimes been thinking about the head honchos as individuals as much as about an abstract institutional structure.

If indeed the leaders and “the System” partially merged in Withrow’s mind, he did not entirely conflate the two. This becomes apparent when we examine his assessment of people like Hughes and Ponsford. Withrow seems to have created a soundly negative impression of these two men, especially of Ponsford.¹⁶⁰ Still, Withrow did appear to suggest that Ponsford would have been swimming upstream had he adopted the ethos that Withrow would have wished. “If there is anything to bring forward in his behalf,”

¹⁵⁸ O.C.J. Withrow, “Keep Mouths Clamped or Go Back to Prison Fear of Men on Parole,” *The Globe*, September 12, 1933, pp. 1, 10 (quote from page 10).

¹⁵⁹ O.C.J. Withrow, “Border Cities Bad Actor Carted in Full of Dope Tenant of Prison Hole,” *The Globe*, September 4, 1933, pp. 1, 2 (quote from page 2).

¹⁶⁰ That said, in one or two spots his words did reflect positively upon Ponsford—see O.C.J. Withrow, “‘Red’ Ryan of Banditry Past on Staff of Prison Hospital Ministering to Ills of Inmates,” *The Globe*, August 28, 1933, pp. 1, 5 (comment on page 5); and possibly O.C.J. Withrow, “Men Who Man Big House Are Watched by Inmates and Watch One Another,” *The Globe*, September 6, 1933, pp. 1, 3.

observed Withrow, “it is that he was carrying out the orders of an iniquitous system. The system required that type of man. That type of man enjoyed carrying out the wishes of the system. There you have it.”¹⁶¹ So Withrow did not make reference to “the System” merely as an alternative means of referring to Ponsford himself, at least not in all cases.

It is not clear in all instances, therefore, whether Withrow wanted to make a point about penitentiary leaders as human agents or about a “system” as a self-propelling institution. Admittedly, the kind of imagery he offered could potentially have been used in reference to a different phenomenon that I have not yet mentioned. If Withrow had paid an inhabitant of the ancient Hellenistic world to author his articles for him, or even if he himself had been more prone to latch onto ideas found in the writings of Saint Paul, then perhaps the depiction of “the System” as a personifiable entity could have stemmed from an assumption that the dynamics at Kingston Pen had been generated by some spiritual being—by an *archon* or a “principality” or “power.”¹⁶² But probably this interwar doctor was trying simply to draw attention to the conduct of human figures, to more abstract institutional tendencies, or to another sociological phenomenon—or, most likely of all, to all of these.

Whichever of the three he may have perceived his articles as emphasizing, the personifying descriptions that he utilized made an interesting contribution to his discussion. If any readers did in fact take these descriptions to be portrayals of key

¹⁶¹ “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, September 25, 1933, pp. 1, 3 (quote from page 3).

¹⁶² See David Bentley Hart, *Atheist Delusions: The Christian Revolution and Its Fashionable Enemies* (New Haven, CT: Yale University Press, 2009), 113-116, 126 (“archons,” “powers,” “principalities” on 114); Ephesians 6:12 (“principalities,” “powers”); see N.T. Wright, *Evil and the Justice of God* (Downers Grove, IL: InterVarsity Press, 2006), 38, 83, 107-114. Although my suggestion stems at least partly from ideas discussed in Wright’s and Hart’s books, I am not suggesting that either of these authors would necessarily say that some people in the Hellenistic era would have regarded the tenor of a particular institutional entity like a prison as stemming from a spiritual being.

administrators themselves, then Withrow had found one more way to highlight the undesirability of these particular leaders' influence. But even if this personification did not strike his audience as being an attempt to convey impressions about real people, it could still add potency to Withrow's denunciatory depiction of Canadian penal practice itself. The personifying rhetoric encouraged readers to view "the System" with the same kind of strong disapproval which they were more accustomed to feeling toward concrete persons who displayed the type of undesirable qualities that Withrow was pointing out. It was just a little easier to feel "indignant" toward something that acted, had objectives, and exhibited attitudes than it was to become angry at a mere structure or some other non-living phenomenon. If Withrow wanted Canadians to begin to detest "the System," he could help matters along by making this entity sound like a person.

Besides helping readers to perceive current penal patterns as reprehensible, Withrow's claims about "the System" called attention to the need for a meaningful response from real people. Withrow did not want to make a point only about the penal leadership: he also drew attention to the duties of the citizenry in general. "When I say the System," he explained in one article, "I run the whole gamut from public to penitentiary. For the public in the last analysis is the System, and the System can only be cleansed when the public decides to cleanse itself."¹⁶³ It is unclear whether he intended this explanation to apply to his use of "the System" in all of his articles, or merely in this particular instance. But in any event, the statement gave readers a firm signal that their

¹⁶³ O.C.J. Withrow, "Guard Points Out 'Red' When Visitors at Prison Ask for 'Bold, Bad Man,'" *The Globe*, August 18, 1933, pp. 1, 4 (quote from page 4).

emerging knowledge of prison realities ought to prod them to make sure that the country developed a healthier stance toward criminal justice.

In light of Withrow's, Campbell's, and other convicts' characterization of penitentiary practices, the *Globe* itself was up in arms over the prison situation, asserting ad nauseam that a major inquiry would be in order. And Prime Minister R.B. Bennett was offered quite a few reminders about the possibility of resorting to an inquiry, thanks to the numerous missives in which church groups or other citizens let him know that they would deem the idea worthwhile.¹⁶⁴ From Bennett's perspective, however, putting the penitentiaries through the wringer via an extensive, formal inquiry would be a non-starter.¹⁶⁵ Without apology, he tried to legitimize the country's penitentiaries as he commented on these carceral establishments to correspondents.¹⁶⁶ The prime minister saw no good reason to draw the conclusions about Kingston Pen that Withrow wanted to promote. "[E]very day I am more and more disappointed," he declared to Arthur Barner, a reformist minister, "that members of the United Church should place themselves behind a convicted abortionist whose only knowledge of penitentiary conditions was prior to

¹⁶⁴ See documents at various spots in in MG26-K (R.B. Bennett fonds), Volume 411, File J-204, 1933: "Justice-Penitentiaries," File J-204, 1934-35: "Justice-Penitentiaries," and File J-204-K, 1932-33: "Justice-Penitentiaries, Penitentiary at Kingston," microfilm reel M-1086, pp. 262064-262151, 262163-262177, 262364-262373, LAC.

¹⁶⁵ See R.B. Bennett to Reverend Chas. J. Mea, September 22, 1933, and Bennett to W.H. Price, September 26, 1933, both in MG26-K (R.B. Bennett fonds), Volume 411, File J-204, 1933: "Justice-Penitentiaries," microfilm reel M-1086, pp. 262073-262075, 262080, LAC. However, Bennett did not discourage all activities that could provide putative first-hand awareness of federal prisons' flavour. The following comment appeared in his letters to certain reformist writers: "I am informing the representatives of all bodies that communicate with me that, without notice, when and whenever permission is sought, an opportunity will be afforded investigators to observe how all or any of our penitentiaries are administered." See, for example, Bennett to Reverend W. Mackintosh, October 23, 1933, in MG26-K (R.B. Bennett fonds), Volume 411, File J-204, 1933: "Justice-Penitentiaries," microfilm reel M-1086, pp. 262108-262110, LAC.

¹⁶⁶ See, for example, "Bennett Is Satisfied with Prison Conditions," *The Globe*, October 28, 1933, pp. 1-2, and Bennett to Winnifred Thomas, November 30, 1933, and Bennett to Mark P. Wickett, December 21, 1933, both in MG26-K (R.B. Bennett fonds), Volume 411, File J-204-K, 1932-33: "Justice-Penitentiaries, Penitentiary at Kingston," microfilm reel M-1086, pp. 262367, 262399-262400, LAC.

1926 [sic], when he was released for ill health.” “I do not propose,” asserted Bennett, “to in any way be deflected from my course of action, either by the attacks of the few or the clamour of the mob.”¹⁶⁷ Barner persisted with another letter, and again the prime minister gave this citizen a piece of his mind. “I only wish,” declared Bennett, “that all my fellow-Canadians who are suffering from want were receiving as good food, as warm shelter and that they were not subject to any greater hardships than those of whom you complain.”¹⁶⁸

By the beginning of 1934, penitentiaries were no longer inspiring quite such avid and frequent discussion as they had in the fall. But the House of Commons, devoid of activity since July, would soon create an opportunity once more for MPs to voice their views on subjects pertinent to the federal state. And on a few occasions in 1934 the discussion in Parliament would briefly revolve around penitentiaries, thanks especially to Agnes Macphail, an MP very familiar to many newspaper-reading Canadians. Over the past few years, convicts had come to realize that if they let Macphail know about some major need they had, she would prove willing to contribute to a remedy.¹⁶⁹ Her advocacy during the interwar period may perhaps have helped more citizens to warm up to penal

¹⁶⁷ Bennett to Rev. Arthur Barner, November 2, 1933, in MG26-K (R.B. Bennett fonds), Volume 411, File J-204, 1933: “Justice-Penitentiaries,” microfilm reel M-1086, p. 262127, LAC; see also Barner to Bennett, October 31, 1933, p. 262124. As discussed at the beginning of this chapter, Withrow’s final year of imprisonment was 1929, not 1926. For similar comments about Withrow, see Bennett to Reverend Chas. J. Mea, September 22, 1933, and Bennett to Reverend A. Barner, November 22, 1933, both in Volume 411, File J-204, 1933: “Justice-Penitentiaries,” microfilm reel M-1086, pp. 262073-262075, 262135, and Bennett to E.E. Hallman, November 30, 1933, and Bennett to Mark P. Wickett, December 21, 1933, both in Volume 411, File J-204-K, 1932-33: “Justice-Penitentiaries, Penitentiary at Kingston,” microfilm reel M-1086, pp. 262370, 262399-262400, LAC.

¹⁶⁸ Bennett to Reverend A. Barner, November 22, 1933, in MG26-K (R.B. Bennett fonds), Volume 411, File J-204, 1933: “Justice-Penitentiaries,” microfilm reel M-1086, p. 262135, LAC; see also Barner to Bennett, November 8, 1933, p. 262133.

¹⁶⁹ See Crowley, *Agnes Macphail and the Politics of Equality*, 128-132, 135-138; see Carrigan, *Crime and Punishment in Canada*, 364; see Agnes Macphail, typescript providing material from letter to the newspapers of Grey-Bruce, February 24, 1934, p. 4, in MG27-IIIC4 (Agnes Macphail fonds), Vol. 6, File: “Weekly letters, 1934,” LAC; see also Agnes Macphail, *Convict or Citizen? The Urgent Need for Prison Reform* (Toronto: Co-operative Commonwealth Federation Literature Department, n.d.), 4.

reform than did the efforts of any other Canadian of the time.¹⁷⁰ In any case, in 1934 she sallied forth as a reformer keen on some type of inquiry. CCF kingpin J.S. Woodsworth made common cause with Macphail, and Conservative MP A.E. Ross also encouraged the government not to neglect the opportunity for reform.¹⁷¹ Moreover, in mid-May, fires which a convict had probably ignited laid waste to a portion of one or more buildings in Kingston Pen. Given such a development, commentators like the *Globe* editorialist could readily suggest that the institution had not overcome the major defects which reformers had highlighted in the past two years.¹⁷² In short, both parliamentarians and journalists offered reformist exhortations in the summer of 1934.

Indeed, for the next two months, from late May to late July, the *Globe* dwelt on the topic of penal reform in editorial after editorial. And as it did so, the paper proved particularly inclined to send a message to the leaders of the Justice department, especially to the minister, Hugh Guthrie. “How much longer,” demanded the editorialist on May 26, “will it take the Ottawa procrastinators to realize that they—and they alone—are being held responsible by the public for the delay in instituting an independent and thorough inquiry; and that they—and they alone—must answer for any untoward events that may be the consequence of their obstinacy.” Such a remark suggested that the *Globe*’s

¹⁷⁰ For a comment that helped to raise this possibility in my mind, see Carrigan, *Crime and Punishment in Canada*, 364; see also Michael D. Whittingham, “Biographical Profiles of Leading Canadian Correctional Reformers,” ([Toronto: M.D. Whittingham], 1990), [5], [9].

¹⁷¹ See Crowley, *Agnes Macphail and the Politics of Equality*, 135-138; see *House of Commons Debates*, 17th Parl, 5th Sess, Vol. 1 (14 February 1934) at 565-571 (Agnes Macphail—Progressive, Grey Southeast, ON); 17th Parl, 5th Sess, Vol. 1 (14 February 1934) at 571-577 (A.E. Ross—Conservative, Kingston City, ON); 17th Parl, 5th Sess, Vol. 4 (25 June 1934) at 4289-4290 (Agnes Macphail); 17th Parl, 5th Sess, Vol. 4 (25 June 1934) at 4293-4296 (J.S. Woodsworth—CCF, Winnipeg North Centre, MB); 17th Parl, 5th Sess, Vol. 4 (25 June 1934) at 4296-4298 (A.E. Ross); 17th Parl, 5th Sess, Vol. 4 (30 June 1934) at 4585-4587 (Agnes Macphail); 17th Parl, 5th Sess, Vol. 4 (3 July 1934) at 4600-4605 (J.S. Woodsworth).

¹⁷² See Archambault Report, 70; see editorial, “Officialdom Fails Again,” *The Globe*, May 17, 1934, p. 6; see editorial, “Patchwork Penology,” *The Globe*, May 26, 1934, p. 6.

remonstrations with the government or bureaucracy applied to a number of persons therein. Still, a later declaration in the same editorial revealed that “the system” had not yet outgrown its role as penal scoundrel of the year. “The public is not greatly concerned,” stated the writer, “with the culpability of any official or set of officials, past or present. It is concerned—deeply, gravely concerned—with the maintenance in Canada of a system that is unworthy of the country—a system that compels every one [sic] who has anything to do with its administration to shape his thinking into the pattern prescribed by Mr. Facing Backward.”¹⁷³ When the paper preferred not to denounce prison employees, it had a ready means of justifying its choice not to do so. “The question of penal reform is not a party issue; nor is there any particular concern with misconduct of individual officials,” claimed the editorialist on June 28. “Most officials who err do so because they are themselves the victims of a cruel, antiquated system.” But the editorialist’s claims about the “system” did not stop him from needling more specific groups or individuals concerning their obligations. “The Department of Justice,” he announced, “instead of letting in the light, has chosen a course of evasion, of quibbling, of trying to ‘fool the people.’”¹⁷⁴ “For the devious [meth]ods of Departmental policy,” he declared several days later, “both Mr. [Gut]hrie and Superintendent Ormond must [be] held to account.”¹⁷⁵

By this point the *Globe* was zeroing in on Guthrie more and more. “If there is to be continuance of gunfire instead of proper discipline at Kingston, continuance of things

¹⁷³ Editorial, “Patchwork Penology,” *The Globe*, May 26, 1934, p. 6.

¹⁷⁴ Editorial, “Now—‘Let in the Light,’” *The Globe*, June 28, 1934, p. 6. See also editorial, “‘Whole Cloth’—Whose?,” *The Globe*, June 16, 1934, p. 6.

¹⁷⁵ Editorial, “Should Mr. Guthrie Resign?” *The Globe*, July 3, 1934, p. 6.

as they are in the face of a grave situation, the responsibility must be placed precisely where it belongs—on the shoulders of the Minister of Justice,” insisted the paper on July 5.¹⁷⁶ W.B. Megloughlin, the warden from whom the penitentiary had obtained leadership over the past nineteen-and-a-half months, had concluded in mid-June that the time had come to make a living somewhere other than at Kingston Pen, since concluding otherwise would probably have led to a quick firing. Now the prison was being piloted by Warden Richard Allan.¹⁷⁷ Perhaps some might have perceived this as a development that had put the authorities in position to get matters squared away at the penitentiary. If the government had wanted to elicit strong affirmation from the *Globe*, however, it ought to have come up with a more convincing step. In a remark about Megloughlin on July 10, the Toronto paper claimed that the country’s editorial writers tended to “look upon the retired official as merely ‘the goat.’ What assurance is there that the heart of the Minister has undergone a change?”¹⁷⁸ So the *Globe* cared not only about “the system,” but also about Guthrie’s “heart.” On July 18, the paper noted that according to W.M. Nickle, a pro-reform lawyer whom the *Globe* liked to cite, Guthrie “suffers, as the convicts do, and have done, from a system of secrecy.” But the *Globe* itself was not so sure. The editorialist reminded readers of a particular instance a few weeks earlier in which Guthrie’s trustworthiness had appeared rather questionable. “[W]as he then also a victim

¹⁷⁶ Editorial, “Mr. Guthrie’s Tangled Wire,” *The Globe*, July 5, 1934, p. 6.

¹⁷⁷ See editorial, “‘Whole Cloth’—Whose?,” *The Globe*, June 16, 1934, p. 6; see editorial, “A Shameful ‘Confession,’” *The Globe*, June 27, 1934, p. 6; see *House of Commons Debates*, 17th Parl, 5th Sess, Vol. 4 (25 June 1934) at 4291-4292 (Hugh Guthrie—Conservative, Wellington South, ON); see “Quarry Searched for Hidden Arms,” *The Globe*, October 25, 1932, p. 1.

¹⁷⁸ Editorial, “The Session’s Blemish,” *The Globe*, July 10, 1934, p. 6; see also editorial, “‘Whole Cloth’—Whose?,” *The Globe*, June 16, 1934, p. 6.

of the ‘system of secrecy?’” asked the editorialist. “Or was he merely reckless of the truth?”¹⁷⁹

Perhaps Withrow and the *Globe* editorialist may have believed that the objectionable attributes of the penitentiary enterprise did actually qualify as “emergent properties,” as characteristics with which no individual connected to the system was endowed in his or her own right, but which would nonetheless typify the system itself once that system writ large had materialized.¹⁸⁰ But if the *Globe* were to have chosen to accuse “the system” in all instances and to chide persons in none, it would have been failing to get down to the advocacy that mattered the most—the kind of advocacy that provided a reminder about persons and their obligations, about the persons whom it was most necessary to prod into reformative action. The key was to ensure that pro-reform “pressure” was applied to the *relevant* persons, the persons whose response had the potential to alter the system for the better.¹⁸¹ Rhetoric highlighting “the system” could help to prevent the useless castigation of less relevant people, such as the guards. But the

¹⁷⁹ Editorial, “Mr. Guthrie’s Opportunity,” *The Globe*, July 18, 1934, p. 6. That said, two weeks later the *Globe* did again zero in on “the system” rather than on “officials.” An “inquiry,” the editorialist claimed, “would have no political implications. Nor would its purpose be to bring censure or condemnation upon officials who, doubtless, have been doing the best they could in trying circumstances. The officials, indeed, have themselves been the victims of an antiquated system”—editorial, “Mr. Bennett’s Opportunity,” *The Globe*, August 1, 1934, p. 6. It is not wholly clear whether the editorialist regarded this remark about “officials” as applying to men like Guthrie and Ormond or simply to figures with less authority. The editorial did again portray “[t]he secretive policy of the Department of Justice” as detrimental. But it provided a very positive portrayal of Bennett himself, perhaps to butter him up.

¹⁸⁰ My elementary familiarity with the concept of “emergent properties” stems from a comment by Craig McFarlane.

¹⁸¹ At least one *Globe* editorial remarked upon the advantageous moral “pressure” being applied to the Bennett administration or the leadership of the Penitentiary Branch by means of Withrow’s articles and the associated demands which newspapers and citizens were voicing—see editorial, “A Shameful ‘Confession,’” *The Globe*, June 27, 1934, p. 6. For a vaguely related remark about “the right people,” see Karl Menninger, *The Crime of Punishment*, 53-54, quoted in Marr, “‘A Series of Nasty Situations,’” 3.

Globe was less likely to embrace a construal of “the system” that might discourage critics from needling the most pivotal decision-makers, such as Minister Guthrie.

The Archambault Commission

Reformist citizens did not manage to prod the Bennett government toward a thoroughgoing inquiry.¹⁸² By the summer of 1935, however, it looked as though the Conservatives might not rule the roost much longer, since the voters were soon going to have their say about the economic situation. Reformers were aware of the possibility that Mackenzie King might go for the idea of an inquiry. One figure able to put in a word with King was Harry Anderson, who took the lead role at the *Globe* as the paper’s managing editor. Many of the *Globe* editorials concerning penitentiaries during the preceding two years had probably been Anderson’s handiwork.¹⁸³ In any case, this journalist certainly believed the pernicious facets of the prisons offered a strong basis for the authorities to explore reform energetically. The commentary which the *Globe* churned out on various political questions could create either advantages or impediments for the federal Liberals, especially when an election was approaching, so King had reason to discuss current issues with the paper’s editor now and then.¹⁸⁴ At more than one point in the summer and early fall of 1935, Anderson drew the politician’s attention to the topic

¹⁸² However, regarding a different type of penal inquiry in 1935, see Crowley, *Agnes Macphail and the Politics of Equality*, 139-143.

¹⁸³ *Globe* editorials did not themselves list any individual as their author, of course. On Anderson as editor, see also Levine, *Scrum Wars*, 145, 149.

¹⁸⁴ See Levine, *Scrum Wars*, 142-150; see Mackenzie King diary, entry for July 5, 1935, p. 4, and entry for July 30, 1935, in William Lyon Mackenzie King fonds (hereafter King fonds), MG26-J13, LAC, “The Diaries of William Lyon Mackenzie King” online database, <http://www.collectionscanada.gc.ca/databases/king/index-e.html>; and see the letters cited in the following footnote.

of penal reform, portraying it as an idea that the Liberals ought to espouse during the electoral campaign and then implement as the next government.¹⁸⁵ And on August 7, King put the citizenry wise to part of the perspective that he espoused with regard to penal issues, indicating that a penitentiary inquiry would take place before long if a new opportunity to pilot the federal state were bestowed upon a Liberal administration in the October election.¹⁸⁶ In late October, on the same day that he embarked on his new round as Prime Minister, King received further prodding from Anderson, who was still keen on the idea of an inquiry.¹⁸⁷ And the administration did not take too long to show that it was reformist on at least this one particular count. On November 21, the *Globe's* front page highlighted certain remarks by the Minister of Justice with a banner headline: "Royal Commission to Probe Prisons."¹⁸⁸ On February 28, 1936, the newspaper's front page could indicate that a royal commission had now in fact materialized. According to a February 27 order-in-council, both the penitentiaries themselves and certain other penal

¹⁸⁵ See Mackenzie King diary, entry for July 5, 1935, p. 4, in King fonds, MG26-J13, LAC, "The Diaries of William Lyon Mackenzie King" online database, <http://www.collectionscanada.gc.ca/databases/king/index-e.html>; see H.W.A[nderson] to King, undated [ca. summer 1935]; Harry W. Anderson to Mackenzie King, August 1, 1935; and Harry W. Anderson to Mackenzie King, September 14, 1935, in King fonds, MG26-J1, Volume 203, microfilm reel C-3678, pp. 174005, 174020-174021, 174030-174032, LAC. Interestingly, Anderson's comments to King regarding penal matters in the summer and early fall of 1935 tended especially to depict publisher William Jaffray as strongly reformist with respect to penitentiaries—see the above-cited diary entry of July 5 and the above-cited letters of August 1 and September 14.

¹⁸⁶ See William Marchington, "Early Prison Probe Is Pledged by Mr. King," *The Globe*, August 8, 1935, pp. 1-2.

¹⁸⁷ See Mackenzie King diary, entry for October 23, 1935, p. 7, in King fonds, MG26-J13, LAC, "The Diaries of William Lyon Mackenzie King" online database, <http://www.collectionscanada.gc.ca/databases/king/index-e.html>. Formally, at least, the last day of Bennett's administration, and the first day of King's, was October 23, nine days after the actual election—see *House of Commons Debates*, 17th Parl, 6th Sess, Index Volume (for 1935) at iii; *House of Commons Debates*, 18th Parl, 1st Sess, Index Volume (for 1936) at iii.

¹⁸⁸ See William Marchington, "Royal Commission to Probe Prisons: Board Personnel Being Considered by King Cabinet," *The Globe*, November 21, 1935, p. 1.

facets of the nation's criminal justice would number among the topics on which the commission would zero in.¹⁸⁹

Commissionerships were bestowed upon three figures: Joseph Archambault, a Montreal-based judge; R.W. Craig, a Manitoban lawyer who had gotten a turn as provincial Attorney-General in the 1920s; and Harry Anderson.¹⁹⁰ In Agnes Macphail's opinion, the three men would have good reason to regard the Commission's work as a worthwhile endeavour, though the regrettable efforts of Daniel Ormond, the Superintendent of Penitentiaries, might prevent their task from being a cakewalk. "I am so afraid this man Ormond will have covered all his tracks," she declared to Anderson. "[S]o I make bold enough to suggest that a talk with Megloughlin might enable you to catch the beggar."¹⁹¹ Anderson would not end up getting in on Ormond's capture; two months after Macphail's remark, lethal post-surgical "[c]omplications" made April 29, 1936, the last day of the journalist's life.¹⁹² Anderson's commissionership was therefore bestowed upon J.C. McRuer, an Ontarian lawyer whose goal of reaching the House of Commons with his fellow Liberals in 1935 had been thwarted by the voters, but who would eventually turn out to be the most historically prominent and influential of the three royal commissioners, in light of his work as a leading judge in Ontario from the mid-1940s to the mid-1960s, and his involvement in further types of criminal-justice

¹⁸⁹ See William Marchington, "Wide-Open Probe of Prison System by Commission," *The Globe*, February 28, 1936, pp. 1-2; see Archambault Report, v, 2.

¹⁹⁰ See Archambault Report, v; see "Craig, Richard W.," and "Archambault, Hon. Joseph," both in *Who's Who in Canada, 1940-41*, ed. B.M. Greene (Toronto: International Press, 1941), pp. 534, 918.

¹⁹¹ [Macphail] to Harry W. Anderson, undated [ca. late February 1936], in MG27-IIIC4 (Agnes Macphail fonds), Vol. 1, File: "Correspondence, 1936," pp. 612-613, LAC. See also, in the same file, [Macphail] to Ernest Lapointe, February 27, 1936, p. 614, and Harry W. Anderson to Agnes C. Macphail, March 2, 1936, p. 619.

¹⁹² See "Tributes to Memory of H.W. Anderson Widely Expressed," *The Globe*, April 30, 1936, p. 1.

reform during that time.¹⁹³ The commissioners used the fall of 1936 and most of 1937 to ascertain what developments and tendencies had characterized federal imprisonment in Canada of late, and what new efforts ought, in their view, to characterize the state's penal activity in the next few years. They developed their views partly by means of firsthand exploration of the seven Canadian penitentiaries, of other establishments in the various provinces, and also of certain British, American, French, Dutch, Belgian, German, and Swiss prisons. Leading administrators, prison employees, and many Canadian convicts found themselves discussing imprisonment or other topics related to criminal justice with the members of the inquiry. The opinions of many other Canadians also reached the commissioners' eyes and ears, sometimes through documents, and sometimes verbally, on one of the various days during which the commission's activities revolved around oral input that assorted citizens offered.¹⁹⁴ By mid-June of 1938, parliamentarians could read the over-400-page report in which the commissioners encouraged the state to embrace thoroughly reformist initiatives.¹⁹⁵

The report offered observations on numerous topics pertaining to penal policy. For now we will address only two features of the study: the commissioners' comments pertaining to justice and their outlook with respect to structural matters. To no surprise, the report's portrayal of the penal activity that the state ought to undertake tended to feature rehabilitative and instrumentalist motifs, a brief discussion of which will be offered in the next chapter of this dissertation. Even so, the concept of justice also helped to put the commissioners in position to portray current penitentiary practices as

¹⁹³ See Boyer, *A Passion for Justice*, including 108, 114, 119-121.

¹⁹⁴ See Archambault Report, 1-5, 352, 365-368.

¹⁹⁵ See "Summary of Report by Prison Commission," *The Globe*, June 15, 1935, p. 9.

indefensible. One important statement in the first chapter of the publication seemed to express an anti-retributive ethos. “[I]t is admitted by all the foremost students of penology,” declared the commission, “that the revengeful or retributive character of punishment should be completely *eliminated*.” The actual outlook encouraged by the report would turn out to be anti-vengeful rather than fully anti-retributive: according to a comment slightly further on in the same chapter, the prisoner “has been guilty of a crime, and it is inevitable and just that he should suffer.”¹⁹⁶ In any case, though, the commissioners were more inclined to draw attention to the inordinately nettlesome flavour of certain penal habits than to emphasize the just features of grueling but legitimate penalties. At a number of spots in the report, the commissioners construed a given penal phenomenon as pernicious in light of the “injustice” or “unjust” situation that it engendered (or would engender) in the penitentiaries.¹⁹⁷ The new penal initiatives which the commissioners preferred might assign high priority to instrumentalist ideas, but a dearth of moral justice in the state’s current penal endeavours could strengthen the degree to which the authors and their audience perceived reformist efforts as worthwhile.

Though the Archambault Report pertained to “the penal system of Canada,” crucial facets of the publication reflected the widespread tendency to suppose that persons, not just structures, could substantially strengthen or weaken the penal efforts of the state.¹⁹⁸ To no surprise, the authors did not explore Canadian class patterns in any depth, especially not in a vein that would shed much light on the nation’s socioeconomic

¹⁹⁶ Archambault Report, 9, 10.

¹⁹⁷ See *ibid.*, 23, 61-62, 65, 140, 153, 233-234, 253, 323-324; similarly, see 73, 168, 290.

¹⁹⁸ An editorial in *Saturday Night* conveys an idea about the Archambault Report which is quite similar to my claim here—see editorial, “Archambault Report,” *Saturday Night*, June 25, 1938, pp. 1, 3.

structure writ large, or encourage readers to mull over the idea of massively renovating that structure. Commentators both in the late 1930s and in subsequent years noticed that the report dwelt a good bit on the aspects of penitentiary administration which a particular individual, Superintendent Daniel Ormond, had botched. In the commission's view, the Canadian penitentiary system would accomplish much more if it sent Ormond packing and acquired better leadership.¹⁹⁹ That said, some of the commissioners' comments concerning leadership, and a few of their other significant ideas as well, did in certain respects address a structural phenomenon—the “organization[al]” configuration of the state's carceral efforts.²⁰⁰ For instance, according to the authors, the component of the penitentiary bureaucracy by which the system was piloted ought no longer to be a Superintendent of Penitentiaries, but rather a three-person Prison Commission.²⁰¹ The shots ought to be called by the federal state with respect to far more of the imprisonment in the nation—with regard to the incarceration not only of offenders on whom penalties of two or more years had been bestowed, but also of many convicts whose more modest sentences currently waylaid them merely as provincial prisoners. And Canada would come out ahead if its assortment of prisons would end up including not just generic institutions, but also establishments in which the state could carry out its carceral task with regard to a certain limited set of criminals, such as “habitual” convicts or “young

¹⁹⁹ See D.M. LeBourdais, “Our Barbaric Penal System,” *Canadian Magazine*, September 1938, p. 16; see Marr, ““A Series of Nasty Situations,”” 32-33, 35-36; see Archambault Report, 26-31, 33-38, 43-51, 354.

²⁰⁰ *Saturday Night* remarked upon the report's “recommendations concerning radical changes in the entire structure of the penal organization”—see editorial, “Archambault Report,” *Saturday Night*, June 25, 1938, p. 3.

²⁰¹ See Archambault Report, 342-344, 354, 362. The idea was that this Prison Commission would be a long-term entity serving as one component of the penitentiary system—it would not be something comparable to the Archambault Commission or any other commission of inquiry.

offenders.”²⁰² Yet even though the commissioners considered it worthwhile to explore such quasi-structural issues regarding the overarching administration of Canadian imprisonment, their discussion also savoured of the realization that the abilities and outlook of the particular individuals working as prison staffers would prove to be pivotal ingredients in the actual outcomes stemming from the state’s penal efforts. Accordingly, another motif in the report, a motif emphasized in the concluding chapter, pertained to “the reconstruction of the personnel.”²⁰³ Some penitentiary staffers in Canada had not proved adept at carrying out the sort of penal activity which the commission preferred. But the new employees which the prisons would obtain could potentially enhance federal penal practice to a significant degree. In any case, the goal of maintaining viable penitentiaries would require the authorities to develop significant preparatory initiatives that would bring prison staffers up to speed regarding the assumptions and practices which they now had the obligation to embrace. “Precipitate action without reconstruction of personnel would invite failure,” claimed the report.²⁰⁴ In short, the commission assigned high priority to ensuring the proficiency both of the prison bureaucracy’s leaders and of key employees who dealt with more run-of-the-mill tasks.

Plenty of publications found the commission’s work sufficiently intriguing to offer commentary concerning the Archambault Report itself at some point during the next year or two. In the opinion of a number of reformist commentators, the report supplied an excellent reminder about their society’s duty to shape up in its provision of

²⁰² See *ibid.*, 339-342, 354-356. See also J.W. Ekstedt and Curt Griffiths’ description of what was suggested in the report—Ekstedt and Griffiths, *Corrections in Canada*, 51.

²⁰³ See Archambault Report, 344, 362 (quote on 362).

²⁰⁴ See *ibid.*, 344-355, 362 (quotation on 362).

imprisonment.²⁰⁵ In the fall of 1938, the *Dalhousie Review* remarked upon the somewhat limited chance that politicians had obtained to explore the report in parliamentary speeches earlier that year. “Of course, confronting an indictment and condemnation so formidable there was not much to say,” declared the writer, “except possibly by way of contrition and repentance.”²⁰⁶ As *Saturday Night* saw it, however, the Commission had been excessively inclined to offer “personal criticism of officials.” Consequently, suggested the editorialist, the arguments in the report on which the authorities ought to dwell—the arguments revealing the merits of “radical changes in the entire structure of the penal organization”—might not end up being taken fully to heart.²⁰⁷

A substantial review in *Canadian Magazine*, a piece authored by left-leaning observer D.M. LeBourdais, also deprecated certain facets of the commissioners’ outlook, partly in light of structural considerations. The political developments of the 1930s had allowed LeBourdais to become Secretary of the CCF Provincial Council of Ontario for a time.²⁰⁸ And a little before mid-decade, readers of *Maclean’s* and *Canadian Forum* had received opportunities to mull over prison issues discussed in articles which this writer had composed.²⁰⁹ By no means was LeBourdais fully enamoured with the Archambault

²⁰⁵ See C.W. Topping, “The Report of the Royal Commission on the Penal System of Canada,” *Canadian Journal of Economics and Political Science* 4, no. 4 (Nov., 1938): 551-559; see E.J. Urwick, “The Penal Commission’s Report,” *Queen’s Quarterly* 46, no. 3 (Autumn 1939): 320-323; see J. Alex Edmison and Walter Turner, “Canada’s Prison Shame,” *National Home Monthly* 40, no. 9 (September 1939): 5-7, 58.

²⁰⁶ See “Topics of the Day,” *Dalhousie Review* 18, no. 3 (October, 1938): 389.

²⁰⁷ Editorial, “Archambault Report,” *Saturday Night*, June 25, 1938, pp. 1, 3.

²⁰⁸ See D.M. LeBourdais, Secretary, Co-operative Commonwealth Federation, Provincial Council of Ontario, to “Dear Comrade,” February 8, 1934, in MG27-IIIC4 (Agnes Macphail fonds), Vol. 1, File titled “Correspondence, 1930-1934,” p. 308, LAC; see also Allen Reid, letter to the editor, *The Globe*, August 17, 1933, p. 4; see also *The Canadian Who’s Who*, vol. 6, 1952-1954 (Toronto: Trans-Canada Press, 1954), s.v. “LeBourdais, Donat Marc.”

²⁰⁹ See D.M. LeBourdais, “Show-Down or Blow-Up?” *Maclean’s*, March 1, 1933, pp. 13, 51-52; see D.M. LeBourdais, “They Still Require Investigating,” *Canadian Forum*, February 1934, pp. 167-168.

Commission's work. At one point in his discussion, he commented on socioeconomic realities. "[C]rime is a social manifestation," declared LeBourdais,

not an evidence of original sin or the 'deliberate choosing of a criminal career', as is so often asserted. It can be shown that juvenile crime—of which adult crime in most cases is merely a continuation—bears a direct relation to such social defects as ignorance, unemployment, poor housing, and lack of recreational facilities. It is therefore obviously futile to expect to eliminate crime as long as large numbers of people are condemned to live in idleness and poverty, and subject to feelings of social injustice.

The penal perspective that the commissioners perceived as desirable might not fully turn the crank of a thinker who was strongly attuned to such structural realities. Despite its disparagement of many features of the penitentiaries, the report tended to suggest that Canadian carceral practices could still end up acquiring a good deal of "efficien[cy]" by means of massive reforms. The fact that "the system" of Canadian imprisonment writ large qualified as "inherently" pernicious had not fully dawned upon the commissioners. Accordingly, they continued to assume that the most relevant component of the state through which to govern carceral institutions and non-carceral initiatives pertaining to convicts would be the Department of Justice, rather than "a properly organized Department of Welfare," which LeBourdais would have preferred.²¹⁰ The commission's viewpoint with regard to that issue was still compatible with the authorities' objectionable tendency to assign higher priority to criminal justice and to law than to social science or rehabilitation. From Lebourdais' standpoint, a firm reprimand for the Ministers of Justice of the past decade-and-a-half, Conservative Hugh Guthrie and Liberal Ernest Lapointe, would have been even more justifiable than the commission's strong chastisement of Superintendent Ormond was. But neither of the first two men had been chided much at

²¹⁰ See D.M. LeBourdais, "Our Barbaric Penal System," *Canadian Magazine*, September 1938, 16-17, 68.

all in the report, even though “Ministers of Justice, past and present, are chiefly to blame.” “Our penal system has been dominated by a legalistic rather than a humanistic concept,” declared LeBourdais. “[T]o Ernest Lapointe and Hugh Guthrie,” he claimed, “prisoners are merely by-products of legal cases, not beings of flesh and blood.”²¹¹

In some respects, therefore, LeBourdais’ method of disparaging a “legalistic” outlook drew attention to the concreteness of the persons who found themselves penalized. And it also highlighted specific leaders whose regrettable views had helped to prevent the federal state from dispensing with “barbaric” criminal-justice habits during the interwar period. LeBourdais was probably more aware than many penal reformers that structural components in Canada’s socioeconomic makeup may have served as major ingredients in the crimes the authorities had to address. But by no means was he so engrossed by structural questions as to prefer that commentary on penal affairs be devoid of remarks about persons.

A number of sociologists, historians, or other critics have displayed their regret about twentieth-century penal reformers’ inability or unwillingness to see the forest for the trees—to see the social structure rather than simply the assortment of people, to recognize the oppressive features of society to which criminals in general tend to fall prey, rather than just the varied experiences of particular offenders. Despite the significant number of complaints about “one law for the rich and another for the poor,” *some* of the structural realities of Canada probably did escape the notice of quite a few reformers in the interwar period, including some of the individuals on whom we have touched in this chapter. One

²¹¹ See *ibid.*, 16-17, 68 (the quoted words appear on 68).

observer writing to the *Globe* in September of 1933 seemed to suggest that the political-economic structures which Canadian leaders had firmly embraced were due for an encounter with much more scepticism than the reformist paper itself supposed. “I find it difficult,” he pointed out, “to reconcile your paper’s splendid campaign for a complete reorganization of the penitentiary system with its general opposition to a complete reorganization of our whole social system, which is just as barbarous and inconsistent, and which, getting down to fundamentals[,] is the sole reason why such institutions as penitentiaries exist.” Yet as the quotation indicates, the current efforts of the paper with respect to penitentiary reform itself struck the writer as admirable.²¹² Some element in the commentary offered by the *Globe*—perhaps especially the volubility with which the paper was enjoining the authorities to assign high priority to penitentiary reform—proved attractive even to an observer who was far more attuned to structural considerations than this right-liberal daily seemed to be.

If commentary which failed to point out crime-related structural realities could still dress down the authorities with gusto, discussion which *did* dwell on such realities might not always convey an equally decisive rebuke. Three decades later, in the *Canadian Journal of Corrections*, a young University of Alberta faculty member, James Hackler, wrote about “an ‘underdog’ approach to correctional research.” Hackler was keen on a “systems perspective,” which in this case involved a number of ideas associated with the sociology of deviance, particularly labeling theory. The sociology of deviance drew upon suppositions rather different than those which had been nourished by the genre

²¹² Don Riverdale, letter to the editor, *The Globe*, September 23, 1933, p. 4.

of criminological thought that academics or policymakers had usually preferred.²¹³

Twentieth-century criminologists or rehabilitative personnel had tended to assume that shedding light on criminal activity would especially involve an exploration of the attributes exhibited by individual malefactors, and of the tos and fros that these individuals' previous years or recent months had brought.²¹⁴ By contrast, the "systems"-emphasizing viewpoint which Hackler was advocating suggested that thinkers' exploration of crime-related topics ought especially to highlight the habits and mentality of the non-criminal portion of the citizenry, including those of "the social control professions." Concentrating on those latter factors would reveal many lawbreakers to be "underdog[s]" whose criminality had blossomed not primarily due to their own attributes, but instead due to the criminal "role" that social practices or state endeavours, including criminal justice, had bestowed upon these individuals.²¹⁵ Interestingly, Hackler may have believed that his claims concerning the "systems" relevant to crime might be weakened if he were to create the impression that he was zeroing in on correctional workers or thinkers with a complaint. "The purpose of the underdog approach is not to criticize but rather to view a scene more realistically," he claimed.²¹⁶ Some of the observations that he was offering did, of course, reveal large "problems" which current practices had

²¹³ See James C. Hackler, "An 'Underdog' Approach to Correctional Research," *Canadian Journal of Corrections* 9, no. 1 (January 1967): 27-36 (the quotes appear in the title and on 27). On labeling theory, see Ericson, "Responsibility, Moral Relativity, and Response Ability: Some Implications of Deviance Theory for Criminal Justice," 23-41. On the sociology of deviance, see David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001), 57, 65-66.

²¹⁴ See Rothman, *Conscience and Convenience*, 5-6, 50, 54-59, 61-62; see Garland, *Punishment and Welfare*, 82-83, 92-93; see Hackler, "'Underdog' Approach," especially 27-31, 33-34.

²¹⁵ See Hackler, "'Underdog' Approach," 27-31; and see 34-35.

²¹⁶ *Ibid.*, 27.

generated, or which they had failed to curb. He summarized certain ideas that a thinker named Thomas Scheff had promulgated. “Notice,” Hackler urged his readers,

that the purpose of Scheff’s study was not to criticize psychiatric practices, but obviously this report could be taken as a threat, especially since systematic evaluations of most psychotherapy indicate that it is no more effective, on the average, than no treatment at all. No normal individual, be he psychiatrist, sociology professor, or correctional administrator, can feel happy about the type of research that indicates his work is completely ineffective.²¹⁷

Actually, one might cavil at more facets of current corrections than just its

“ineffective[ness].” Hackler suggested that correctional personnel did not always refrain from even putatively baneful practices which the authorities would have enjoined them to avoid. Still, “[t]he systems approach ... is not particularly interested in the individual acts *per se* nor in the ‘badness’ of such acts. Rather an awareness of the way a social system operates can help to explain the way individuals will react when they are part of such a system.”²¹⁸ On the whole, therefore, Hackler preferred to minimize the flavour of reprimand that his readers might have assumed his interpretation contained. In the last third of the century, plenty of thinkers who subscribed to ideas associated with the sociology of deviance would in fact express more uncomplimentary opinions about the activities of correctional practitioners or about the policies of state authorities. And Hackler’s exposition itself surely offered far more of what left-leaning academics today would describe as “critical” interpretive ideas than did the liberal *Globe* of the 1930s. But on this occasion in 1967, at least, Hackler did not wish to make his discussion out to be an exercise in “criticiz[ing]” correctional personnel.

²¹⁷ See *ibid.*, 32-33, 35 (the long quote appears on 33; the term “problems” appears on 33 and 35).

²¹⁸ See *ibid.*, 33-35 (the quote appears on 35).

Reformers in the 1930s also indicated at times that certain statements of theirs did not amount to attempts to chide actual people. But a good deal of the commentary presented by reformist writers did inveigh against penal practices in relatively forceful terms, and occasionally it even needled specific leaders. Indeed, the willingness of certain reformers to draw attention on occasion to the fault or duties of persons helped to ensure the viability of their rhetoric about the perniciousness of certain structural phenomena. Actually, perhaps almost all structurally themed complaints about any matter of public concern will tend to convey this kind of message, even if primarily by implication. In practice, of course, trying to turn other citizens against deleterious political or social structures does not usually involve putting a stop to all attempts to point out the obligations or shortcomings of persons. Instead, as the writings of Withrow and the *Globe* illustrate, advocating structural changes often amounts to demanding a changed response from *a different array* of persons than an individual-centred form of rhetoric might encourage—in this case, a changed response from penal leaders rather than merely from guards, or from a large constellation of Canadians rather than simply from state personnel.²¹⁹ While Withrow and the *Globe* editorialist articulated denunciatory sentiments concerning “the System,” they also indicated that *somebody*, whether particular individuals or a larger cohort of citizens, had the obligation to rectify matters.²²⁰ The fact that penal reformers still rebuked or exhorted persons at times is part of what made their commentary—including their structural arguments—meaningful.

²¹⁹ See also D.M. LeBourdais, “Show-Down or Blow-Up?” *Maclean's*, March 1, 1933, p. 52; see editorial, “The Crusade Must Go On,” *The Globe*, September 18, 1933, p. 4.

²²⁰ See also F.R., letter to the editor, *The Globe*, August 23, 1933, p. 4; see also [W.R. Givens], “General Ormond’s Statement Justifies Demand for Inquiry: Age-Old System Must Be Shaken Stem to Stern,” *The Globe*, September 1, 1933, pp. 1, 5.

Chapter 4

Embracing Science, Shunning Sentimentalism: The Validation of Coercion and Compassion in Twentieth-Century Penal-Reform Discourse

The views of British penal reformers in the first stretch of the twentieth century won little admiration from the waggish author G.K. Chesterton. “It is a good exercise to try for once in a way to express any opinion one holds in words of one syllable,” he noted in 1908, at roughly the time that the possibility of “preventive detention” was materializing for “habitual criminals” in England. “If you say ‘The social utility of the indeterminate sentence is recognized by all criminologists as a part of our sociological evolution towards a more humane and scientific view of punishment,’ you can go on talking like that for hours with hardly a movement of the gray matter inside your skull. But if you begin ‘I wish Jones to go to gaol and Brown to say when Jones shall come out,’ you will discover, with a thrill of horror, that you are obliged to think.”¹

Perhaps no Canadian commentator dressed down penal reformers, eugenicists, or comparably coercive quasi-Fabians with quite the kind of panache that Britain’s Chesterton displayed.² Be that as it may, at least a few Canadians did look askance at the coerciveness of some reformist suggestions. Occasionally, for instance, someone may have caviled at the idea of the additional imprisonment to which the purportedly rehabilitative outlook of reformers might give rise. But by no means did such citizens’ hesitation scare all Canadians away from fairly coercive reformist ideas. Various people

¹ G.K. Chesterton, *Orthodoxy* (New York: Dodd, Mead & Co., 1908; New York: Doubleday, 2001), 130. On “preventive detention” and the 1908 Prevention of Crime Act, see Garland, *Punishment and Welfare*, 19-20.

² See especially G.K. Chesterton, *Eugenics and Other Evils* (1922), in *The Collected Works of G.K. Chesterton, IV* (San Francisco: Ignatius Press, 1987).

saw merit in at least some degree of indeterminate sentencing—not only in the first quarter of the century, as mentioned in Chapter 2, but also subsequent to the Second World War. Indeed, William Blatz, a Canadian psychologist rather active in the interwar period, claimed in 1946 that “[a]ll terms of sentence should be indeterminate. We should put wrongdoers in prison for as long as it takes to teach them not to commit crime, no matter how long that is.”³

At times, a coercive spice could flavour not only reformers’ mind-set concerning indeterminate sentencing, but also their outlook regarding such measures as parole or certain “scientific” possibilities. Indeed, occasionally a penal reformer in the interwar period or the 1940s would seem to have displayed what many might now consider to be a cavalier attitude toward coercion. Why did reformist commentators consider it morally viable, or at least socially unembarrassing, to convey support for rather coercive penal or “scientific” plans?

Canadians may, admittedly, have been more inclined to censure reformers for exhibiting a quality quite different than coerciveness. In 1918, penitentiary inspector Douglas Stewart gave the government a piece of his mind about some of those who displayed an interest in promoting a heavily modified genre of penal practice. “Actual results,” he declared, “speak more effectively than either the hysterical shrieks of theoretical critics or the plaintive wail of super-humanitarians, who are suffering from abnormal development of the bowels of compassion.”⁴ Stewart opted to comment on this

³ W.E. Blatz, quoted in A.S. Marshall, “Crime Wave,” *Maclean’s*, April 15, 1946, pp. 7-8, 53-55 (quote on 55). On Blatz, see, for example, Hogeveen, “The Evils with Which We Are Called to Grapple,” 62-68.

⁴ Parliament, “Report of the Inspector of Penitentiaries for the Fiscal Year Ended March 31, 1917,” by Douglas Stewart, in *Sessional Papers*, No. 34 (1918), at 10. This statement of Stewart’s is pointed out by

issue far more adamantly than many citizens would have. In any event, though, Canadians do appear to have more often supposed that penal reformers assigned high priority to compassion than that they gravitated too readily toward coercion. And plenty of people would have regarded this putative feature of reformers' stance as somewhat inadvisable. Yet the type of quasi-"humanitarian" ideas on which some reformers seemed keen retained a meaningful presence in these figures' penal proposals. Stewart would probably have been miffed by some of the measures that reformist Canadians did in fact end up promoting in the next thirty years, measures which he would have associated with excessively compassionate viewpoints. How did reformers ensure that other citizens in their audiences would not perceive their ideas as stemming from a detrimentally compassionate ethos?

This chapter will give us occasion to dip further into the ideas of reformers explored in the previous two chapters, and also to highlight additional individuals, especially sociologist C.W. Topping. The exercise will allow us to draw particular attention to one key facet of reformers' outlook, a facet that gave rise both to many of the comments which they offered in favour of quite coercive measures and to the arguments with which they touted quasi-compassionate ideas.

Historian Richard Wetzell suggests that, at least at times, certain early-twentieth-century reformist figures in Germany "were almost solely concerned with the protection

Michael Whittingham in "The Role of Reformers and Volunteers in the Advance of Correctional Reform in Canada, since Confederation" (working paper No. 1984-70, for Ministry of Solicitor General of Canada, [1984]), Section I, p. 9. It was thanks to Whittingham's study that I became aware of the quotation.

of society rather than the welfare of the individual.”⁵ Twentieth-century reformist activity in Canada sprang from attunement to “the welfare of the individual” to a slightly greater degree than this particular statement of Wetzell’s might appear to suggest about Germany. Admittedly, Canadian figures probably did share at least a little of the proclivity that Wetzell has noted in his exploration of German thinkers. From many Canadian reformers’ perspective, a back-burner position for individuals did qualify as more acceptable than a back-burner position for society. But another facet of their mentality deserves to be highlighted far more—their readiness to suppose that appetizing dynamics for society and rewarding dynamics for individual citizens would *both* end up being created as a result of reformist initiatives.⁶ Indeed, reformers’ discourse tended to imply that their suggestions could claim merit regardless of the particular issue on which an observer might concentrate as she sized these ideas up. Thanks to reformist ideas, promising dynamics would come into play for individual criminals, but would also do so at least as strongly for the citizenry writ large. Canadians who admired scientific thought could find as many promising features in penal reform as citizens who were keen on ethical ideas or religious notions would. And as they focused on promoting techniques that could put a chill on crime, reformers would also be helping the authorities to employ “humane” (yet non-“sentimental”) rehabilitative practices. Partly as a result of this general mentality, reformist voices could readily come up with arguments in favour of both coercive and “kind” initiatives.

⁵ See Richard F. Wetzell, *Inventing the Criminal: A History of German Criminology, 1880-1945* (Chapel Hill, NC: University of North Carolina Press, 2000), 83-96 (quote on 96) (but see 87).

⁶ See David J. Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (Boston: Little, Brown and Company, 1980), 10, 48-49, 60-61, 115-116, 213, 235, and especially 224.

In resorting to this argument, I am opting in many respects for mimicry, employing a primary theme which historian David Rothman has provided. This chapter shows that an important part of what he has already argued about American penal reformers from the first four decades of the twentieth century can also be said of Canadian reformers in the interwar and postwar periods. According to Rothman, reformist voices in the United States tended to create the impression “that their innovations could satisfy *all* goals”—“custodial” goals as well as rehabilitative ones, goals that would generate greater “convenience” as well as calming Americans’ “conscience.”⁷

In Rothman’s view, such thinking ended up facilitating coercive practices. After all, the reformers’ assumptions suggested that although the state now subscribed to a rehabilitative viewpoint, the authorities could still be as committed as ever to taking steps which would ensure that the misdeeds for which a convict might hanker would seldom end up being pulled off. As a result, rehabilitative pursuits or non-coercive tactics tended to go by the board in the kind of scenarios in which the authorities considered grimmer measures to be more likely to ensure that their “custodial” efforts would not come up short. “When treatment and coercion met,” claims Rothman, “coercion won.”⁸ A good deal of Rothman’s argument focuses on tangible American criminal-justice activities in this period that did in fact owe part of their momentum to reformist notions. If we were to explore the tangible activities to which criminal-justice personnel in Canada tended to

⁷ See *ibid.*, 6, 10 (quoted phrase), 71-72, 115-116, 124-125, 144, 193, 213, 224-225, 385-386, 389, 419-421; see also 48-49, 60-61, 235. For “custodial” or cognates, see 144, 385, 389, 419-420.

⁸ See *ibid.*, 10 (main quotation), 144, 235, 385-386, 419-421 (“custodial” or cognates on 144, 385, 419-420).

resort, perhaps we would indeed end up regarding coercion as the primary dynamic at work. But the main phenomena which this dissertation sizes up are thought patterns and the moral sensibilities that gained sustenance from them. So although this chapter will point out coercive ideas onto which reformers latched, it will also highlight (to a greater degree than Rothman does) the legitimation that these figures could proffer for quasi-compassionate policies, thanks to their assumption that criminal justice “could satisfy all goals.”

The topic of mercy has been touched upon by a number of Canadian legal historians. Studies dealing with offenders who were sentenced to hang often provide opportunity to discuss the royal prerogative of mercy. Pertinent ideas may also dawn upon us thanks to a few historians’ broader comments concerning mercy itself.⁹ The writings of these various scholars have certainly recognized the nuances and variations in the idea and uses of mercy. By and large, however, such studies have tended to highlight the ways in which governing authorities have found merciful deeds toward convicted persons to be a useful means of buttressing the authority of the state (or of a certain portion of the citizenry). Mercy, like “terror,” facilitates the preservation of “power.”¹⁰

⁹ See especially Carolyn Strange, introduction to *Qualities of Mercy: Justice, Punishment, and Discretion*, ed. Carolyn Strange (Vancouver: UBC Press, 1996), 3-18. On the royal prerogative of mercy, see, for instance, Jonathan Swainger, “A Distant Edge of Authority: Capital Punishment and the Prerogative of Mercy in British Columbia, 1872-1880,” in *Essays in the History of Canadian Law, Volume VI: British Columbia and the Yukon*, ed. Hamar Foster and John McLaren (Toronto: University of Toronto Press, 1995), 204-241.

¹⁰ Tina Loo, “Savage Mercy: Native Culture and the Modification of Capital Punishment in Nineteenth-Century British Columbia,” in *Qualities of Mercy: Justice, Punishment, and Discretion*, ed. Carolyn Strange (Vancouver: UBC Press, 1996), especially 108-110, 124-125 (“power” on 108-109, 125); see Strange, introduction to *Qualities of Mercy*, 4-10, 15-17, especially 4-5 (“power”); see Jerry Bannister, *The Rule of the Admirals: Law, Custom, and Naval Government in Newfoundland, 1699-1832* (Toronto: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 2003), chapter 6 (“terror”); see Barry Wright, “‘Harshness and Forbearance’: The Politics of Pardons and the

Some scholarship has noted an “instrumental,” “procedural,” or “industrial” scent in certain mid-twentieth-century Canadian activities or thought patterns related to punishment—a scent slightly less “expressive,” “discretionary,” or “meaning[ful]” than in former eras.¹¹ Such a depiction might suggest that interwar or postwar citizens would have been relatively disinclined to highlight or promote phenomena like mercy or compassion.¹² Indeed, penal reformers in these years spoke about mercy per se on relatively few occasions. Yet as my discussion above suggests, they did sometimes find themselves mentioning kindness, humaneness, compassion, or (especially) sentimentalism. And although they denied that compassion was their priority, they did not abandon the type of ideas which many compassionate citizens would support. Instead, they offered remarks that instrumentalized compassion, or at least humaneness. As reformist arguments sometimes portrayed it, “kindness” and “humane” forms of correctional work would serve, in effect, as techniques, as methods that would enable rehabilitation to obtain substantial momentum. And in reformers’ telling, this latter outcome itself deserved support for utilitarian reasons: thanks to rehabilitation, fewer citizens would end up getting a taste of the crimes for which a former prisoner might opt. In short, a down-to-earth, utilitarian goal provided their cause with credibility; but kindness, happily, had a secure role as a method that would make that goal realizable.

Upper Canada Rebellion,” in *Qualities of Mercy: Justice, Punishment, and Discretion*, ed. Carolyn Strange (Vancouver: UBC Press, 1996), 77-103.

¹¹ See Chandler, *Capital Punishment in Canada*, xxii-xxiii, 4-6, 11, 24, 27-29, 53, 70 n. 17, 125-126, 141, 198-200, 204 n. 48, 205-206 n. 53 (“instrumental,” “expressive”); see Strange, “Undercurrents of Penal Culture: Punishment of the Body in Mid-Twentieth-Century Canada,” 349, 353-364, 383-384 (“procedural”); see Carolyn Strange, “The Lottery of Death: Capital Punishment, 1867-1976,” *Manitoba Law Journal* 23, no. 3 (January 1996): 597, 599-600, 617-619; see Strange, “Discretionary Justice,” especially 130-131 (“discretionary”); see Ken Leyton-Brown, *The Practice of Execution in Canada* (Vancouver: UBC Press, 2010), 80, 103, 146-147, 150-153 (“industrial,” “meaning”).

¹² See also Strange, introduction to *Qualities of Mercy*, 3-4.

So in contrast to the dynamic that sometimes might seem discernible in the state's habits concerning the royal prerogative of mercy, twentieth-century penal reformers did not play up their commitment to mercy in order to validate their power. Instead, reformers portrayed themselves as calm utilitarians to validate their quasi-humanitarian proposals.¹³

Lavellian Coercion and Compassion

At times reformers seemed slightly eager to draw a little attention to the coercion that their ideas would put the authorities in position to employ. This sort of mentality flavoured a few of Alfred Lavell's statements about parole or the extramural initiative. A letter of Lavell's in 1921 familiarized the police chief in Hamilton with a few features of Ontarian parole. Lavell drew attention to the possibility of making it incumbent upon a given paroled individual "to remain in any certain place, or to leave any certain place, or to engage in any employment, or to refrain from certain company, or to do or not to do anything else." Indeed, according to Lavell, "[t]he Board of Parole is ... in every way [a paroled person's] master and custodian."¹⁴ At the 1923 gathering of the Chief Constables' Association of Canada, a meeting that offered him a whole audience of policemen, Lavell endowed his discussion with a little zing by means of a somewhat more adamant comment. "We do not pamper the men," he asserted. "I often tell them, 'Here are my two hands. All Canada is behind them both. This hand is to help you as long as

¹³ Regarding historian Roger Anstey's relatively similar perspective concerning a different topic, see Collinson, "Religion and Human Rights," 52.

¹⁴ Alfred E. Lavell to Chief Whatley, June 9, 1921, in A.E. Lavell fonds, Coll. 2214, Box 2, File 25: "Parole Board of Ontario, 1921-1935," QUA.

you play fair. I will back you; if you get in any trouble let me know; I will try to get you work, and do my best to put you on your feet as long as you are in my custody, but if you do not play fair, here is the other hand with all Canada behind it, and I will crush you as hard as I can; I will smash you and never give you another chance.”¹⁵ In light of such comments, we might conclude that Lavell assigned particularly high priority to “control[ling]” his parolees, and that he readily sallied forth in a coercive stance. One day he offered a judge a brief appraisal of indeterminate sentencing. “The strongest argument in its favour,” declared Lavell, “is that it enables the Province to exercise control over the offender in the interest of himself and public [sic] after he has completed the definite sentence of the court.”¹⁶

Despite such statements, Ontarian parole may not in fact have majored in coercion. Comments which highlighted the coercive streak that Lavell purportedly exhibited may testify especially to his determination to ensure that figures like policemen would not assume that the parole staff gravitated toward excessive generosity. If he was trying to show police officers that his work had merit, Lavell might note his inclination to “smash” parolees who demonstrated that they were not on the up-and-up.¹⁷ If he was

¹⁵ Alfred Lavell, remarks printed in Chief Constables’ Association of Canada, *Proceedings of Nineteenth Annual Convention, Held at Windsor, Ontario, June 19, 20, 21, 1923* (Toronto: n.d.), pp. 66-67, in RG 8-56 (Ontario Board of Parole, Miscellaneous Printed Material), Box 2, Envelope 8: “Ontario Board of Parole, misc. printed material, (1922-1923), envelope #8,” AO. See also Alfred E. Lavell, “An Autobiography,” p. 139, in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: “Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic],” QUA.

¹⁶ [Alfred Lavell] to Judge E. Reynolds, December 10, 1925, RG 8-54 (Correspondence of the Secretary of the Ontario Board of Parole), Box 11, AO. Also, on “control,” see Alfred E. Lavell to Chief Whatley, June 9, 1921, p. [3], in A.E. Lavell fonds, Coll. 2214, Box 2, File 25: “Parole Board of Ontario, 1921-1935,” QUA.

¹⁷ See Alfred Lavell, remarks printed in Chief Constables’ Association of Canada, *Proceedings of Nineteenth Annual Convention, Held at Windsor, Ontario, June 19, 20, 21, 1923* (Toronto: n.d.), pp. 66-67, in RG 8-56 (Ontario Board of Parole, Miscellaneous Printed Material), Box 2, Envelope 8: “Ontario Board of Parole, misc. printed material, (1922-1923), envelope #8,” AO.

hobnobbing with social workers, however, he might indicate his disapproval of the idea of “nagging” a parolee, or of “h[olding] him by the coat collar with a club in our hand and watch[ing] him day and night.” “It is essential,” argued Lavell, “for the man so far as possible to learn to walk by himself.”¹⁸ Other scholarship suggests that both in interwar American parole and in federal ticket-of-leave activities in early-twentieth-century Canada, relatively few state personnel found themselves utilized primarily for parole purposes. In many instances, therefore, these parole staffers’ “supervis[ory]” exertions would not have brought them completely up to speed with significant developments pertaining to a given parolee, and such personnel would not have frequently shown up to squelch an activity that he had a mind to carry out.¹⁹ Perhaps a dynamic of this type may also have enabled quite a few paroled offenders or extramural convicts in interwar Ontario to opt for activities from which Lavell had enjoined them to abstain.

On the other hand, Ontarian parole may in fact have ensured that the convicts on whom it focused would interact with parole personnel on a greater number of occasions than ticket-of-leave offenders did. And in various instances, of course, Lavell did realize that specific parolees or extramural convicts were acting in ways with which he would take issue. On at least some such occasions, the type of reproof to which Lavell resorted possessed two components: 1) the convict would again don the hat of prisoner rather than of parolee or extramural convict, and 2) Lavell would see whether the court would contribute by opting for an extra conviction, in view of the impudence that the offender

¹⁸ See A.E. Lavell, “The Supervision of Paroled Persons,” in *Proceedings of the Canadian Conference on Social Work, Toronto, Ontario, April 28, 29, 30 and May 1, 1930* (Ottawa: Metropolitan Life Insurance Company, 1930), 210.

¹⁹ See Rothman, *Conscience and Convenience*, 162, 176-182; see Wetherell, “Rehabilitation Programmes,” 128, 133, 142-144, 147-153.

had displayed through his or her waywardness during such a promising non-carceral opportunity.²⁰ At one point in 1923, for instance, Lavell had been miffed by the fact that a particular parolee, Harriette Richie, had “fail[ed] to remain in her position.”²¹ Lavell’s belief in the propriety of turning to a judge for a punishment for this woman—a punishment for “escaping from custody while on parole”—was not shared by the pivotal criminal-justice personnel who found out about the situation.²² Eric Armour, a key prosecutor in Toronto, and Margaret Patterson, a magistrate for the city’s Women’s Court, may in this particular instance have believed in a slightly less coercive policy than Lavell did. As Armour saw it, Richie had “broke[n] a condition of the parole,” but Lavell could not persuasively make this misdeed out to qualify as “escaping from lawful custody.” After all, “[d]uring the time on parole the accused was not under lawful custody,” to hear Patterson tell it.²³ From Lavell’s perspective, by contrast, the phenomenon of “custody” certainly did still obtain after the paroling of an inmate, despite the non-carceral flavour that this custody now bore. Moreover, in the event that the state embraced Armour and Patterson’s construal, “the parole system” would “fal[l] to the ground,” in Lavell’s opinion. “If [convicts] are able to go away from our parole ...[,] then the whole thing becomes impossible.” “We cannot,” he argued, “let that sort of thing go

²⁰ See Ontario, Legislative Assembly, “Fifty-Seventh Annual Report upon the Prisons and Reformatories, the Ontario Board of Parole, and the Commissioner of Extra-Mural Employment of the Province of Ontario, Being for the Year Ending 31st October 1924,” in *Sessional Papers*, No. 24 (1925), at 29.

²¹ See “Refuse to Convict Woman on Parole,” *The Globe*, June 13, 1923, p. 7. The quoted words are a phrase provided by a comment of Eric Armour’s, a comment quoted in the article. The quoted remark does not indicate whether “her position” is a reference to her job, her dwelling, or something else.

²² See *ibid.* The quoted words in this sentence are a phrase provided by the writer of the article itself, not by Armour.

²³ Eric Armour and [Margaret] Patterson, quoted in *ibid.*

on. It is contrary to the conditions of law and order.”²⁴ So although Ontario parole itself may not have ended up majoring in coercion, Lavell did gravitate toward coercive tactics to some degree. In any event, regardless of the degree to which parolees or extramural convicts did or did not end up having to put up with tangible coercion, Lavell’s espousal at times of rather amply coercive *ideas* suggests that we would do well to explore the ethical views which facilitated his stance.

Coercive practices could claim ethical propriety in many instances, but certainly not in every case. Lavell would have proved hesitant about buying into some genres of governmental coercion. In *The Convicted Criminal*, he drew attention to the fact that some people’s behaviour involved an “assertion of individual independence against the conventional, traditional or deliberate will or custom of the powers that be.” “Our freedom from many vexatious and arbitrary laws and customs of the past,” he claimed, “is due to this same spirit.” In fact, he construed some offenders’ crimes as testifying partly to their affinity for that attitude, and perhaps to their partly commendable (even though erroneously applied) disinclination to see their freedom evaporate through excessively irksome directives from the state or from their country’s inhabitants.²⁵ If Lavell would have regarded some kinds of coercive activity as unseemly, one key consideration could help a great deal to ensure that the authorities had grounds for a given type of coercion.

²⁴ Lavell, quoted in “Refuse to Convict Woman on Parole,” *The Globe*, June 13, 1923, p. 7. Perhaps Armour may have genuinely wanted to ensure that inordinate coercion would not come into play for Richie, or perhaps he was just of a mind to thwart Lavell’s efforts—see A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” p. 123, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA. I have read too little about Armour to make a decisive claim about which factor was most strongly at work here.

²⁵ See Lavell, *Convicted Criminal*, 14, 38-40 (quotations from 38).

One day, on a pamphlet concerning crime and penal affairs, Lavell wrote out eight lines from a poem that John Greenleaf Whittier had penned in the mid-nineteenth century:

Thank God that I have lived to see the time
 When the great truth at last begins to find
 An utterance from the deep heart of mankind
 Earnest & clear, that all Revenge is Crime
 That man is holier than a creed, that all
 Restraint upon him must consult his good
 Hope's Sunshine linger on his prison wall
 And Love look in upon his solitude.²⁶

Criminal justice could claim to offer an ethically viable genre of “restraint,” provided that the authorities ensured “the good of” Canadian convicts would be augmented by means of such coercion.

Lavell often exhibited a belief in the idea of allowing a convict’s “good” or his “interests” to shape penal practice to some degree. Such considerations proved relatively agreeable thanks to a more crucial assumption of Lavell’s—that the helpfulness of a given measure for non-criminal Canadians typically testified to its comparable wholesomeness for convicts as well. To hear him tell it, “identical” “interests” obtained both in the case of a convict and in the case of the citizenry writ large.²⁷ Similarly, in a comment about a generic prisoner, those in the convict’s household, and Ontario itself, he mentioned the presumably “identical” character of all three parties’ “interest[s].”²⁸ Such notions could facilitate reformers’ penal stance on at least two counts. For one thing, if an initiative

²⁶ See poem penciled by Lavell on Lyman Abbott, *How to Treat the Criminal Classes* (Toronto: Dudley & Burns, 1896), in A.E. Lavell fonds, Coll. 2214, Box 3, File 29: “Re Prisons and Reformatories,” QUA. For the full poem, see John Greenleaf Whittier, “The Gallows,” in *The Complete Poetical Works of John Greenleaf Whittier*, Cambridge Edition (Boston and New York: Houghton Mifflin Company, 1894), 352-353 (source identified thanks to a Google Books search); and see Thomas Franklin Currier, *A Bibliography of John Greenleaf Whittier* (1937; repr., New York: Russell & Russell, 1971), 250. Lavell wrote out these lines with the punctuation, capitalization, and underlining that appear in my paragraph above.

²⁷ See Lavell, *Convicted Criminal*, 37, 59.

²⁸ See Lavell, “Treatment of the Criminal in Ontario,” 287.

would entail the type of penal change on which it seemed that convicts would probably be keen, then reformers' portrayal of the proposal could concentrate on the ways in which the citizenry more generally could consider it to be attractive as well. On the other hand, if a given initiative appealed to observers in light of the non-criminal citizenry's interests, then that might imply that some type of advantageous dynamic would also kick in for offenders thanks to this measure, even if the latter dynamic did not currently seem so apparent. The notion that comparable "interests" obtained both for convicts and for Canada writ large—or the kind of thought patterns this notion might foster—could provide validation for various penal practices in which Lavell saw merit: parole, indeterminate sentences, imprisonment, protracted incarceration, the provision of extramural opportunities, and so forth.²⁹ Lavell could create the impression that reformist

²⁹ Regarding parole, see Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1922," in *Sessional Papers*, No. 24 (1923), at 6; see Ontario, Legislative Assembly, "Fifty-Seventh Annual Report upon the Prisons and Reformatories, the Ontario Board of Parole, and the Commissioner of Extra-Mural Employment of the Province of Ontario, Being for the Year Ending 31st October 1924," in *Sessional Papers*, No. 24 (1925), at 31; see Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1926," in *Sessional Papers*, No. 16 (1927), at 5; see Lavell, "The Supervision of Paroled Persons," 209. Regarding indeterminate sentences, see Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1920," by Alfred E. Lavell, in *Sessional Papers*, No. 57 (1921), at 8. On imprisonment, see Ontario, Legislative Assembly, "First Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1921," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1922), at 9; see Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1923," in *Sessional Papers*, No. 24 (1924), at 8; see Lavell, *Convicted Criminal*, 97; see Lavell, "Crime and Criminals," 63. Regarding protracted imprisonment, see Alfred E. Lavell, *Our Prison Problem* ("Reprinted from 'Methodist Magazine and Review' June 1901") (Toronto: William Briggs, 1901; Ottawa: Canadian Institute for Historical Microreproductions, 1999), microfiche, CIHM no. 88219, p. 9; see Lavell, *Convicted Criminal*, 52. On extramural opportunities, see Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 10 (see also 6); see also Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1926," by Alfred E. Lavell, in *Sessional Papers*, No. 43 (1927), at 4. More generally, see also Lavell, "Crime and Criminals," 62.

penal authorities might often find themselves having recourse to a given measure “in the public interest and the interest of the prisoner.”³⁰

Other reformers also bought into the kind of assumptions Lavell was promoting through his construal of convicts’ and non-criminals’ “interests” as basically “identical,” even if “identical” conveyed the idea more starkly than most of these commentators might have. Agnes Macphail saw a major upside in the type of correctional activity that would facilitate the paroling of many prisoners. But as she noted in *Canadian Forum* in 1946, sometimes a parolee’s waywardness would highlight the propriety of reincarceration “for his own good and in the public interest.”³¹ “[S]upervision” numbered among the measures for which University of British Columbia criminologist Elmer Kim Nelson rooted, with regard both to parolees and to many other convicts. “[T]here must be a law which permits *all* offenders who are to be released at all to be released under supervision,” he claimed in 1954. According to Nelson, “new statutes should provide for protection of the public welfare through close supervision as well as rehabilitation of the offender by the same means.”³² The sometimes-coercive elements of both imprisonment and non-carceral penal activity could obtain reformers’ affirmation in light of two

³⁰ For the quoted phrase, see Alfred E. Lavell to Chief Whatley, June 9, 1921, p. 2, in A.E. Lavell fonds, Coll. 2214, Box 2, File 25: “Parole Board of Ontario, 1921-1935,” QUA.

³¹ See Agnes Macphail, “A Report on Penal Reform,” *Canadian Forum*, December 1946, p. 207.

³² See E.K. Nelson to J. Alex Edmison, March 8, 1954 (emphasis in original), in John Alexander Edmison fonds (hereafter Edmison fonds), Coll. 2330, Box 4, File 5: “1950’s,” QUA. For a discussion of Nelson, see Gary Parkinson, “Recovering the Early History of Canadian Criminology: Criminology at the University of British Columbia, 1951-1959,” *Canadian Journal of Criminology and Criminal Justice* 50, no. 5 (October 2008): 589-620, doi:10.3138/cjccj.50.5.589.

considerations, considerations often amalgamated in reformist rhetoric: convicts' good and Canadians' good.³³

People disinclined to advocate coercion might still have gotten some gratification from reading certain other comments of Lavell's, such as his affirmation of "kindness."³⁴ Indeed, interwar Canadians seem to have readily construed "kindness," or "kindly" individuals, as admirable.³⁵ He also offered affirmations of "humanitarianism," and even of "compassion," buttressing his belief in the latter by pointing to the stance of Jesus Christ.³⁶ Lavell was eager, however, to deprecate one type of seemingly compassionate attitude—the attitude which "sentimentalism" produced.

In the twentieth century, at least, "sentimentalist" has generally been an unflattering term with which to describe someone's perspective on crime and punishment. But perhaps this may have been especially true in the interwar years. Some North American literary types in the twenties, for example, would seem to have regarded sentimentalism as one of the characteristic weaknesses of the Victorian culture that they were so eager to abandon.³⁷ Perhaps, then, the 1920s may have featured a more general anti-sentimental tendency that made it even easier to employ "sentimentalist" as a slur in discussions of criminal justice. In any case, commentators in this decade who harboured

³³ See also clipping of John Howard [J. Alex Edmison], letter to the editor, *Kingston Whig-Standard*, March 21, 1952, in Edmison fonds, Coll. 2330, Box 3, unlabeled scrapbook [third scrapbook in box], QUA.

³⁴ See Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1922," in *Sessional Papers*, No. 24 (1923), at 9; see Lavell, *Convicted Criminal*, 36, 46, 98; see also 52.

³⁵ For other positive references to "kindness" or its cognates, see, for example, Canadian Who Was Imprisoned on False Charges, "Canadian Jails from the Inside," *Saturday Night*, August 26, 1922, p. 2; Gary Moore, "The Tombs and the Don: Difference in Jail Systems One Reason Why United States Crooks Prefer to Stay at Home," *Saturday Night*, March 7, 1931, p. 3; An Ex-Convict, "Beating Back," *Maclean's*, May 15, 1933, pp. 21, 22.

³⁶ See Lavell, "Treatment of the Criminal in Ontario," 284; see Lavell, *Convicted Criminal*, 32, 36, 95.

³⁷ See Ann Douglas, *Terrible Honesty: Mongrel Manhattan in the 1920s* (New York: Farrar, Straus and Giroux, 1995), 6, 22, 33, 35, 40-43, 470.

conservative views about crime, such as the editorial writers in *Saturday Night*, certainly found plenty of opportunities to point out the shortcomings of sentimentalism.³⁸

Many reformist citizens also sought to distance themselves from such an undesirable form of compassion. A number of the writers commenting on Kingston Pen in 1933, for example, depicted themselves as non-sentimentalists, and portrayed the “mollycoddling” of inmates as a tactic that they would reject.³⁹ Conservatives, however, did not stop associating reform ideas with an unseemly level of sentimentality. In response, one writer in the *Globe* finally opted for a different line. According to papers like the *Toronto Mail and Empire* and the *Ottawa Journal*, claimed the writer, many of the Canadians singing the reformist tune in 1933 were giving voice to the kind of viewpoint to which “a sentimentalist” or “a sob-sister” would gravitate. “If to denounce underground ‘holes,’ solitary confinement without trial, neglect of disease and callous indifference to death ... is to be a sob-sister, then *The Globe* is content to earn the title,” he declared. And “[i]f it be sentimental to suggest that it is time to look for other and more effective ways of reforming wrongdoers than by tearing the flesh from their backs and beating their teeth loose, then *The Globe* must resign itself to sentimentality.”⁴⁰ But usually, rather than offering that type of argument, reformers construed sentimentalism as a trait which they themselves did not display.

³⁸ See, for example, editorial, “Sentimentalists and Murderers,” *Saturday Night*, August 12, 1922, p. 1; editorial, “Newspaper Stimulus to Crime,” *Saturday Night*, January 19, 1924, p. 1; editorial, “Sentimental Pleas for Murderers,” *Saturday Night*, July 7, 1928, p. 1.

³⁹ See, for example, Gordon C. Parker, letter to the editor, *The Globe*, August 23, 1933, p. 4; see editorial matter from *Winnipeg Tribune*, reprinted in *The Globe*, September 7, 1933, p. 4; see editorial matter from *Vernon News*, reprinted in *The Globe*, September 9, 1933, p. 4; see editorial matter from *Midland Free Press*, reprinted in *The Globe*, October 10, 1933, p. 4.

⁴⁰ J.R.R., “Canadian Papers Line Up on Penitentiary Reform,” *The Globe*, September 30, 1933, p. 4.

As Lavell saw it, sentimental attitudes could be shorn from compassionate reformers' mentality thanks in part to reminders provided by "scientific" considerations. Lavell took issue with the way in which the label of "sentimentalist" was so readily slapped on people when it became apparent that they cared about prisoners.⁴¹ Nevertheless, he himself still made plenty of negative comments about "sentimentality," "sentimental coddling," and so forth.⁴² "[S]ympathy for offenders" could be quite in order, he believed, provided that it remained "just" and "wise" and fostered "progress." It was crucial, though, to steer clear of the kind of "sympathy" that proved "foolish, sentimental and injurious."⁴³ In Lavell's view, reformers would do well to embrace "scientific humanitarianism." Humanitarianism by itself possessed some limitations. "Scientific observation and deliberation," he claimed, "have been needed to save it from sentimentality."⁴⁴

At times, therefore, Lavell's espousal of "science" served partly to ensure that only an acceptable genre of compassion would appear to have left an imprint on his outlook. Penal topics put him in position to resort to "science"-flavoured comments at other points as well. Indeed, as many interwar and postwar reformers saw it, the type of mind-set that they promoted would enable criminal justice to operate more

⁴¹ See Lavell, *Convicted Criminal*, 95.

⁴² See Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1920," by Alfred E. Lavell, in *Sessional Papers*, No. 57 (1921), at 9 ("sentimental coddling"); see Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 10 ("[s]entimentality").

⁴³ See Lavell, *Convicted Criminal*, 94.

⁴⁴ See *ibid.*, 32, 36, 29.

“scientifically.”⁴⁵ In advocating a type of penal practice nourished by “science,” reformers were not resorting to a morally second-rate perspective, in Lavell’s view. “In times past,” he declared at one point near the beginning of the century, “economy, ethics, science, and religion, have often been at sixes and sevens on questions which were up for settlement, and have thwarted their solution, but on this matter of the necessity for a radical change in our treatment of the criminal, these four all point unmistakably in the same direction.”⁴⁶ “We must be practical,” he asserted in another instance. “We must not let our sympathies run counter to our judgment. But where sympathy and judgment agree—and in this matter the scientific expert and the teachings of Jesus are in complete harmony—how can you and I, in the name of Christ, forbear to force the needed change?”⁴⁷ Occasionally another commentator might also note the inspiration that both Christianity and science could supply to penal reformers.⁴⁸ Or, if religious norms were not mentioned in a given selection of commentary that advocated reform, it might still suggest that penal initiatives would tend to obtain both scientifically and ethically admirable attributes thanks to the reformist perspective. “The way of modern penology,” claimed one article in *Saturday Night*, “is the way of decency, kindness, intelligence, science.”⁴⁹ Reformist Canadians—compassionate ones included—could construe penal reform in general as very promising in light of its supposedly scientific tenor. But now perhaps we ought to explore certain more specific measures that “scientific” notions

⁴⁵ See, for example, J. Alex Edmison, “The Significance of the ‘Red’ Ryan Case,” radio talk, Montreal, Station CFCF, 1936, pp., 7, 10-11, in John Alexander Edmison fonds, Coll. 2501, Box 4, File 15: “‘Red’ Ryan,” QUA.

⁴⁶ Lavell, *Our Prison Problem*, 10.

⁴⁷ Alfred E. Lavell, “Christianity and the Criminal,” *Christian Guardian*, May 8, 1901, p. 12.

⁴⁸ See “The Need for a Christianized Penal System,” in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1282, Volume 22, File 17: “Penal Documents, 1936-1937,” LAC.

⁴⁹ F.R. Scott, “Penal Reform,” *Saturday Night*, July 18, 1936, pp. 4, 8 (quote on page 8).

could also put reformers in position to advocate—measures much more evocative of coercion than of compassion.

Scientific Coercion and Exclusion

In 1960, a brief volume titled *Crime & You* allowed Canadians to explore a sociologist's summary of various penal issues, a summary articulated in down-to-earth terminology. The initial paragraph of the first chapter resorted to comments relatively similar to the suggestions that commentators had made at previous points in the century about the “scientific” and “humanitarian” viewpoint provided by reformist ideas. “The new penology, as I have seen it at work in the world, makes sense to me,” declared the author. “I hope it makes sense to you. It is humanitarian. It is constructive. And where it is taken seriously, it solves the crime problem.”⁵⁰

Crime & You provided the perspective of a man named Coral Wesley Topping, one of the first academics in Canada whom we could perhaps identify as a sociological criminologist.⁵¹ Though this partly retired figure had been able to regard universities or colleges as his home turf for roughly three decades,⁵² it was not only students, scholars, or other book readers who had gotten a taste of Topping's views on penal topics. At certain

⁵⁰ C.W. Topping, *Crime & You* (Toronto: The Ryerson Press, 1960), 1. See also Rick Helmes-Hayes, “Coral Wesley Topping: Pioneer of Sociology at UBC” (draft paper, copy in my possession, courtesy of Rick Helmes-Hayes), 18-19. If memory serves, it was because of Helmes-Hayes' essay that this statement of Topping's caught my attention.

⁵¹ Regarding Topping's endeavours as an academic, see Helmes-Hayes, ““Veteran Warrior for Prison Reform,”” 176, 178-181, 184, 187-189; Helmes-Hayes, “Coral Wesley Topping,” 3-4, 6-8, 10-22; and C.W. Topping, “Quest: An Autobiography,” undated [ca. 1970], including chapters 6-9 and 15, and pp. 225, 238, in Coral Topping fonds (hereafter Topping fonds), Box 2, File 2-9: “Quest, an autobiography (n.d.),” University of British Columbia Archives (hereafter UBCA). For comments regarding Samuel Prince, another interwar Canadian sociologist who seems to have been intrigued by penal issues at times, see Boudreau, *City of Order*, 19, 72, 87-88.

⁵² See also Helmes-Hayes, “Coral Wesley Topping,” 11, including n. 22.

points, the stance to which the John Howard Society of British Columbia adhered may have stemmed at least slightly from the perspective to which Topping—a familiar figure in the association—gave voice.⁵³ The four provincial commissions or “advisory committees” among whose key figures he numbered, three of them in the 1930s and one a few years after World War II, put Topping in position to help provide an appraisal of certain penal issues that the British Columbian authorities were trying to size up.⁵⁴ During the interwar period and the 1940s, his commentary on penal matters or criminological topics had certainly tried to draw readers’ attention to the substantial mileage that society could purportedly get out of “scientific” ideas.⁵⁵ Perhaps we might take issue, though, with any discussion that would construe his penal perspective in these years as truly “humanitarian.”

⁵³ See Minutes, Sixth Annual Meeting, John Howard Society of BC, March 3, 1937, and Minutes, Seventh Annual Meeting, John Howard Society of BC, March 2, 1938, in John Howard Society of the Lower Mainland of British Columbia fonds, F-1, Box 1-1 (?), File F-1-1-1-1: “Minutes of Annual Meetings/1st-19th Annual Meeting, 1932-1950,” Simon Fraser University Archives (hereafter SFUA); see Report of the Executive Secretary on the Work for the Year 1937 Presented at the Annual Meeting of the John Howard Society of British Columbia Wednesday, March 2, 1938, p. 7, in John Howard Society of the Lower Mainland of British Columbia fonds, F-1, Box 1-1, File F-1-1-1-5: “Report of the Executive Secretary, 1937,” SFUA; see C.W. Topping, “Quest: An Autobiography,” undated [ca. 1970], p. 212, in Topping fonds, Box 2, File 2-9: “Quest, an autobiography (n.d.),” UBCA. A directorship on this offender-focused charitable organization’s board numbered among Topping’s functions for a great many years, and at certain times the presidency of the organization numbered among his functions—see the minutes for various dates, especially the minutes for March 8, 1939, and March 15, 1940, in John Howard Society of the Lower Mainland of British Columbia fonds, F-1, Box 1-1 (?), File F-1-1-1-1: “Minutes of Annual Meetings/1st-19th Annual Meeting, 1932-1950,” and File F-1-1-1-2: “Minutes of Annual Meetings/20th-34th Annual Meeting, 1951-1965,” SFUA; and see Helmes-Hayes, “Coral Wesley Topping,” 16 n. 28, and Helmes-Hayes, ““Veteran Warrior for Prison Reform,”” 179-180.

⁵⁴ See Helmes-Hayes, “Coral Wesley Topping,” 3-4, 15-16, 21-22; see “Report of the Advisory Committee on Juvenile Delinquency to the Honourable G.M. Weir, Provincial Secretary for British Columbia, and the Honourable G.M. Sloan, Attorney-General for British Columbia,” October 3, 1936, including p. 67, in Topping fonds, Box 4, File 4-12: “Advisory Committee on Juvenile Delinquency, 1936,” UBCA; see also Helmes-Hayes, ““Veteran Warrior for Prison Reform,”” 180, 182-184.

⁵⁵ See *ibid.*, 18-19; see, for example, C.W. Topping, *Canadian Penal Institutions*, rev. ed. (Toronto: Ryerson Press, 1943), 132-133.

With an 1889 birthday, Topping got in on the last years of the Victorian period and the first bit of the twentieth century. During his first eighteen years, he hobnobbed primarily with residents of small towns in Ontario and Quebec, since his father preached for a living to Methodist churchgoers in small communities or rural areas. By mid-1912, the twenty-two-year-old Coral Topping's efforts at Queen's University had been rewarded with a B.A. degree. Soon a number of citizens had this young man as their minister, with a Methodist circuit in the Prairies providing multiple spots at which to preach. During the Great War, he turned to military activities. Having gained familiarity with war, he next became conversant with criminals—not as accomplice, but rather as jailer. In 1917, Kingston Gaol welcomed Topping as warden.⁵⁶

Topping does not appear to have been eager to adopt reformist practices at the jail. As he depicted it in later writings, the rehabilitative ideas of which he had become a supporter by the mid-1920s did not gain a particularly strong presence in his policies during the two years for which he piloted the institution.⁵⁷ On at least some occasions, his interpretation of imprisonment to the convicts seems to have given voice to quasi-retributive notions. “When [inmates] were leaving the prison,” he declared about half a decade afterward, “my aim was to convince them that they were now square with society and were entitled to look the world in the face again the same as they should have if they had committed no crime.” If this institution did not assign priority to offender

⁵⁶ See C.W. Topping, “Quest: An Autobiography,” undated [ca. 1970], pp. 1-88, in Topping fonds, Box 2, File 2-9: “Quest, an autobiography (n.d.),” UBCA; see Helmes-Hayes, “Coral Wesley Topping,” 8-9; see Helmes-Hayes, “‘Veteran Warrior for Prison Reform,’” 178; see timeline for 1889-1929, in Topping fonds, Box 2, File 2-10: “‘Autobiography’ (1889-1929),” UBCA.

⁵⁷ Regarding these first two sentences of my paragraph, see C.W. Topping, “Ontario Gaol Theory Illustrated by Kingston Gaol Practice” (undated [ca. mid-1920s]), pp. 89-90, in Topping fonds, Box 1, File 1-1: “The Jail at Kingston, Canada, 1922,” UBCA; and see C.W. Topping, “Quest: An Autobiography,” undated [ca. 1970], pp. 90-91, in Topping fonds, Box 2, File 2-9: “Quest, an autobiography (n.d.),” UBCA.

“reform[ation],” imprisonment at Kingston Gaol did produce a sufficiently expiatory dynamic to allow former inmates to qualify as “square with society.”⁵⁸

Whatever upside he may have found in his activity at the jail could not hold Topping in the position for more than two years. He soon set out to add to his already substantial education, a process that allowed him to try out life in New York City. One part of the schooling on which he initially concentrated in New York was that provided by Union Theological Seminary.⁵⁹ Topping appears to have opted for a “modernist” perspective on Christianity rather than a “fundamentalist” viewpoint. He had certainly done so by the mid-1960s.⁶⁰ And certain comments of his in the second half of the century seemed to suggest that the stance of Harry Emerson Fosdick, a major “religious liberal” voice in New York during the interwar years, had appealed to him even in the early 1920s.⁶¹ While the short thesis which he hammered out at Union Theological Seminary did spring to a substantial degree from a modernist outlook, it did not resort to

⁵⁸ See C.W. Topping, “Ontario Gaol Theory Illustrated by Kingston Gaol Practice” (undated [ca. mid-1920s]), p. 90, in Topping fonds, Box 1, File 1-1: “The Jail at Kingston, Canada, 1922,” UBCA. For evidence that at least some material in this particular document dates from the mid-1920s rather than the early 1920s, see, for example, pp. 1-2, 13.

⁵⁹ See C.W. Topping, “Quest: An Autobiography,” undated [ca. 1970], pp. 88, 94-98, 101, in Topping fonds, Box 2, File 2-9: “Quest, an autobiography (n.d.),” UBCA; see timeline for 1889-1929, in Topping fonds, Box 2, File 2-10: “‘Autobiography’ (1889-1929),” UBCA; see Helmes-Hayes, “Coral Wesley Topping,” 10; see also Helmes-Hayes, “‘Veteran Warrior for Prison Reform,’” 178.

⁶⁰ For documents which create this impression (but with wording other than “modernist”), see C.W. Topping, letter to the editor, *United Church Observer*, November 15, 1965, p. 6; see Topping to the Editor, *United Church Observer*, September 26, 1965, in Topping fonds, Box 4, File 4-15 (Folder 1): “[Correspondence and Clippings] (1960-72),” UBCA; see also Topping to Bruce Hutchinson [sic], December 17, 1971, and C.W. Topping, “A Sociologist Looks at Christmas,” in Box 4, File 4-15 (Folder 2): “[Correspondence and Clippings] 1960-72”; see also Topping to William Sloane Coffin, May 29, 1979, in Box 4, File 4-16 (Folder 2): “Letters and Other Papers, 1975-80,” UBCA.

⁶¹ See Topping to Harry Emerson Fosdick, May 14, 1959, in Topping fonds, Box 4, File 4-14 (Folder 2): “UBC – 1954, June 30 to 1960, July 1 – Willamette,” UBCA; see C.W. Topping, “Quest: An Autobiography,” undated [ca. 1970], p. 312, in Topping fonds, Box 2, File 2-9: “Quest, an autobiography (n.d.),” UBCA. On Fosdick, see also Marsden, *Fundamentalism and American Culture*, 171-173; and Robert Moats Miller, “Fosdick, Harry Emerson,” in *American National Biography* (New York: Oxford University Press, 1999), 283-284 (“religious liberal”).

an especially stark articulation of that kind of perspective. But perhaps the work revealed a smidgen about Topping's ethical viewpoint. From his perspective, one of the strengths of the Apostle Paul had been the inclusionary, "universal[izing]" tenor of his activities and writings. And the comments which the thesis offered about Christ pointed out, among other things, "that [he] 'had compassion on the multitudes.'"⁶² Topping's remarks about such issues might seem to have given voice to an ethical outlook comparable on at least certain counts to that of figures like Lavell. On occasion, though, the viewpoint for which Topping opted in his discussion of criminals or penal issues would prove less compassionate or universalist than the ethos which his thesis might appear to suggest that he admired.

In addition to availing himself of this academic training at Union Theological Seminary, Topping sallied forth into Columbia University, as a Master's and then a doctoral student. The three decades of post-secondary teaching that stemmed from this period of study took place not on the Atlantic coast, but rather on the Pacific—in Tacoma, Washington, for much of the twenties, and at the University of British Columbia for most of his subsequent career. Teaching in Tacoma allowed him to get a protracted taste of being both a lecturer and a student, since it was during these years that he tackled the dissertation project for the sociology doctorate which he coveted from Columbia.⁶³

⁶² See [C.W. Topping], "The Church as the Organ of the Kingdom of God," [Union Theological Seminary thesis], especially pp. 35 (quotation), 36, 53-54, 60-63, in Topping fonds, Box 3, File 3-4: "Church as the Organ of the Kingdom of God, Union Thesis," UBCA; see also C.W. Topping, "Quest: An Autobiography," undated [ca. 1970], p. 101, in Topping fonds, Box 2, File 2-9: "Quest, an autobiography (n.d.)," UBCA.

⁶³ See C.W. Topping, "Quest: An Autobiography," undated [ca. 1970], pp. 101-105, 109, 111-113, 120-121, 225, 238 (but see also 225-226, 228-229, 232, 235-236, 238-239, 242-243), in Topping fonds, Box 2, File 2-9: "Quest, an autobiography (n.d.)," UBCA; see Helmes-Hayes, "Coral Wesley Topping," 10-11; see Helmes-Hayes, "Veteran Warrior for Prison Reform," 178-179.

Thanks especially to his graduate study as a sociology student, the exploration of Canadian incarceration was one of Topping's main scholarly pursuits in the 1920s. He commented on his work at Kingston Gaol at a few different points in his long life, but he did so most extensively in a document that appears to have been completed in the mid-twenties, a 215-page typescript titled "Ontario Gaol Theory Illustrated by Kingston Gaol Practice." Topping's interesting discussion included comments, a few of them relatively positive, about certain inmates. But his assessment of one individual, "'The Moron,'" was starkly uncomplimentary. "I have never," declared Topping, "seen such a degraded face Weak chin, sloppy mouth, bleary eyes, lop-ears, low forehead, coarse hair, and a sidelong glance, picture him as he stood before me on the day of my arrival asking a silly question and trying to fawn upon the new official. One's first reaction was to kick him out of the way and pass on; one's second a feeling of pity for one whom the powers that be had permitted to live on in a hopeless and miserable existence." Clearly, "this 'thing'—I hesitate to call him a man"—was not Topping's favourite acquaintance.⁶⁴

When encountering a man like this inmate, perhaps many of us might have the same sort of heat-of-the-moment mental response that Topping described. Topping, however, put his thoughts in writing. It might be commonplace to vent in a diary. But in the case of Topping's typescript, we are dealing with an academic work, a study that was crisply organized and tidily footnoted, despite being unpublished. Although I do not know for certain whether he actually showed it to anyone, its neat, formal appearance would suggest that he at least considered it a possibility to do so at some point. His

⁶⁴ C.W. Topping, "Ontario Gaol Theory Illustrated by Kingston Gaol Practice" (undated [ca. mid-1920s]), p. 94, in Topping fonds, Box 1, File 1-1: "The Jail at Kingston, Canada, 1922," UBCA. For comments on other inmates, see pages 93-104 of that document.

correspondence also appears to mention this work, which turned out to serve as a sort of warm-up for his doctoral dissertation, as a comment and a footnote in his eventual book revealed.⁶⁵ Moreover, it would appear that his statement about “‘The Moron’” was an almost exact replication of a description he had provided in a document which he may have authored as a participant in a course at Columbia in 1922.⁶⁶ From the looks of it, Topping was quite ready to give an academic audience a taste of his rather derogatory appraisal of a mentally challenged individual.

If Topping did not regard that kind of denigratory depiction as a remark with which an academic ought to take ethical issue, neither did he always choke back his occasionally draconian ideas about measures that might perhaps enhance the state’s strategies concerning certain offenders who proved especially vexing. In his dissertation itself, Topping tried to improve readers’ familiarity with certain criminal-justice phenomena in Canada, especially with incarceration.⁶⁷ And writing this thesis again gave him occasion to make one or two particularly striking statements. In the decade after

⁶⁵ See Topping to W.S. Hughes, March 27, 1924, in RG73, Series C-1, Volume 14, File 1-11-8: “Manuscript on Prison Theory and Practice by C.W. Topping,” LAC; see also, in the same file, Franklin H. Giddings to Topping, January 27, 1924; see C.W. Topping, *Canadian Penal Institutions* ([Toronto]: Ryerson Press, 1929), x-xi, and xi n. 7.

⁶⁶ See pages 12-13 near the end of File 1-3: “Canadian Justice (n.d.),” in Topping fonds, Box 1, UBCA, and see “The Jail at Kingston, Canada: A Report to the Gidding’s [sic] Seminar, Columbia University, New York, 1922,” in Topping fonds, Box 1, File 1-1: “The Jail at Kingston, Canada, 1922,” UBCA. In light of both the numbering of and the discussion within the last eleven pages (numbered 11-21) in File 1-3 and the first twenty-five pages (numbered 1-10, 22A-33) in File 1-1, it would appear to me that the eleven pages in File 1-3 are pages 11 to 21 from the document titled “The Jail at Kingston, Canada: A Report to the Gidding’s [sic] Seminar, Columbia University, New York, 1922,” in File 1-1. Perhaps other participants may also have become familiar with some or all of this document if Topping was obliged to outline it verbally in the seminar. See Topping’s later comment about some type of lengthy verbal “report” of his about the jail in this seminar—C.W. Topping, “Quest: An Autobiography,” undated [ca. 1970], p. 103, in Topping fonds, Box 2, File 2-9: “Quest, an autobiography (n.d.),” UBCA.

⁶⁷ See C.W. Topping, *Canadian Penal Institutions* ([Toronto]: Ryerson Press, 1929), including [iii], and C.W. Topping, *Canadian Penal Institutions* (Chicago: Chicago University Press, 1930); see C. Wesley Topping, “Canadian Justice: with special reference to the treatment of sentenced persons” (Ph.D. Thesis, Columbia University [draft], [ca. 1927]), in Topping fonds, Box 1, File 1-5: “Canadian Penal Institutions, First Draft (n.d.),” UBCA.

World War II, Topping would emerge as an anti-capital-punishment voice.⁶⁸ At this point in the 1920s, however, such a stance did not yet strike him as convincing. A footnote in a typed draft of his dissertation contained a positive comment about the Canadian Prisoners' Welfare Association.⁶⁹ But Topping simultaneously distanced himself from this reformist group's anti-death-penalty perspective. "The author," noted Topping, referring to himself in the third person, "... does not favor 'hanging' or 'electrocution' for a specific crime but favors extermination of anti-social persons on the basis of careful scientific tests of personality. Probably permanent segregation would do as well, however, as some form of chloroforming by physicians."⁷⁰ Admittedly, by the point in 1929 at which he had turned the draft into a book, the study no longer contained this footnote. Even so, one of his comments did have something in common with that earlier statement. "[T]o the modern student of penal practices," he remarked matter-of-factly, "the ultimate protection of society rests in the killing off of all anti-social persons, or in their permanent segregation from their fellows, or in their reformation into law-abiding citizens, or in all three of these combined into a carefully worked out programme of

⁶⁸ See Parkinson, "Recovering the Early History of Canadian Criminology," 593; see clipping of "Topping Raps Death Sentences," *Winnipeg Free Press*, April 1, 1955, in Topping fonds, Box 4, File 4-14 (Folder 1): "UBC – 1954, June 30 to 1960, July 1 – Willamette," UBCA; see also C.W. Topping, "The Death Penalty in Canada," *Annals of the American Academy of Political and Social Science* 284 (Nov., 1952): 147-157, <http://www.jstor.org/stable/1029454>. However, in the 1970s he began speaking in a more positive tone, though not an unequivocally affirmative one, about capital punishment. See, for example, Topping to John Turner, January 7, 1972, in Topping fonds, Box 4, File 4-15 (Folder 2): "[Correspondence and clippings] 1960-72," UBCA, and Topping to Doris McCubbin Anderson, August 13, 1976, in Topping fonds, Box 4, File 4-16 (Folder 1): "Letters and other papers, 1975-80," UBCA; see C.W. Topping, "Crime in the Streets," in *Blood on the Snow: Sixty Years of Observation and Comment* (Vancouver: College Printers and Publishers, 1980), 115-118 (it appears that this essay dates from 1974).

⁶⁹ See C. Wesley Topping, "Canadian Justice: with special reference to the treatment of sentenced persons" (Ph.D. Thesis, Columbia University [draft], [ca. 1927]), 206 n. 2, in Topping fonds, Box 1, File 1-5: "Canadian Penal Institutions, First Draft (n.d.)," UBCA.

⁷⁰ See C. Wesley Topping, "Canadian Justice: with special reference to the treatment of sentenced persons" (Ph.D. Thesis, Columbia University [draft], [ca. 1927]), 206 n. 2, in Topping fonds, Box 1, File 1-5: "Canadian Penal Institutions, First Draft (n.d.)," UBCA.

societal self-defence.”⁷¹ But his discussion did not necessarily supply a straightforward endorsement of the idea of “killing off ... all anti-social” individuals. In any case, the draft was not the only document in which he gave more unambiguous voice to the kind of perspective that the footnote seemed to embody. In a text that appears to date from 1926, Topping had put it in the following terms: “Persons who demonstrate that they cannot be made social enough not to murder, rape, assault, rob, kidnap or maim their fellows should either be quietly chloroformed or permanently segregated. The chief argument against their segregation and for their extermination is that some unfortunate person is forced to guard them while they continue to live.”⁷² Why didn’t Topping worry that readers would denounce such comments as ethically objectionable?

It seems that Topping had initially intended the piece from 1926—the item which I have just quoted—to appear in a group of essays assembled to salute Columbia University sociologist Franklin Giddings.⁷³ Although it is unclear whether this volume ended up materializing, the Giddings connection points to one factor that might possibly have contributed to Topping’s boldness in making the remarks discussed above. Historical scholarship portrays the American schooling of graduate students in sociology as having obtained substantial momentum at two main universities near the beginning of the twentieth century: the University of Chicago, which at first relied especially on Albion Small for the cultivation of this academic pursuit, and Columbia University, where the not-particularly-scholarly Franklin Giddings had called the shots with respect

⁷¹ C.W. Topping, *Canadian Penal Institutions* ([Toronto]: Ryerson Press, 1929), 12; and C.W. Topping, *Canadian Penal Institutions* (Chicago: Chicago University Press, 1930), 12.

⁷² C.W. Topping, “Recommendations for Treatment,” in *Blood on the Snow: Sixty Years of Observation and Comment* (Vancouver: College Printers and Publishers, 1980), 138. For evidence suggesting that this text dates from 1926, see pages v and 137.

⁷³ See *ibid.*, 137.

to this subject in the early years of the century.⁷⁴ Giddings' belief in Topping's talents had done much to bring Topping on board for the sociology program at Columbia, and Topping seems to have harboured a special appreciation for this professor.⁷⁵ It appears that Giddings' contribution to Topping's pursuit of sociology or to his outlook made this Columbia figure one of "three men who influenced me greatly," from the Canadian academic's perspective.⁷⁶ A letter from Giddings in 1924 had praised Topping's intention to make prison issues the focus of his dissertation. "I hope," noted Giddings, "that incidentally you may drive your rapier through the teachings and the deplorable influence of our sentimentalist school of prison reformers who are doing mischief among us. They talk idiotically about reforming and salvaging the prison population. What society needs is a policy which will make some headway in protecting society against crime."⁷⁷ So when Topping talked tough, perhaps he might have been saying what he thought his academic mentor wanted to hear.

Perhaps Topping's stark comments may also suggest that such notions simply did not strike nearly all intellectuals in the interwar period as egregious. University of

⁷⁴ See Cravens, *Triumph of Evolution*, 123-129.

⁷⁵ See Helmes-Hayes, "'Veteran Warrior for Prison Reform,'" 185-186; see Helmes-Hayes, "Coral Wesley Topping," 10; see C.W. Topping, "Quest: An Autobiography," undated [ca. 1970], pp. [ii], 103, 312, in Topping fonds, Box 2, File 2-9: "Quest, an autobiography (n.d.)," UBCA; see Topping to Sidney Biddell, December 26, 1944, in Topping fonds, Box 4, File 4-13 (Folder 2): "[Correspondence and Clippings] 1929-54," UBCA. Topping gravitated not only toward the genre of sociological thought on which Giddings had focused, but also toward the ideas of interwar "Chicago School" sociology, including notions concerning the "human ecolog[ical]" patterns typical of cities. See Helmes-Hayes, "Coral Wesley Topping," 12-15, 17; see Helmes-Hayes, "'Veteran Warrior for Prison Reform,'" 187; see also Marlene Shore, *The Science of Social Redemption: McGill, the Chicago School, and the Origins of Social Research in Canada* (Toronto: University of Toronto Press, 1987).

⁷⁶ See Topping, *Blood on the Snow*, ii. In another typescript, Topping made Giddings out to be one of "the three men who influenced me most"—see C.W. Topping, "Quest: An Autobiography," undated [ca. 1970], p. [ii], in Topping fonds, Box 2, File 2-9: "Quest, an autobiography (n.d.)," UBCA. Helmes-Hayes too notes that "Giddings [wa]s one of the three" figures in question—see Helmes-Hayes, "Coral Wesley Topping," 10 n. 17.

⁷⁷ Franklin H. Giddings to Topping, January 27, 1924, in RG73, Series C-1, Volume 14, File 1-11-8: "Manuscript on Prison Theory and Practice by C.W. Topping," LAC.

Pennsylvania criminologist Thorsten Sellin's writings and commentary pertaining to capital punishment would make him a crucial anti-death-penalty voice in English-speaking academia in the mid-twentieth century, especially in the postwar period.⁷⁸ Nevertheless, in the foreword to a 1939 scholarly work, he noted that "[m]ost liberal-minded penologists today claim that the aim of punishment is the protection of society." Adherents of that perspective, suggested the relatively matter-of-fact Sellin, often "think in terms of the means by which protection is to be achieved: research into the causation of crime in order to make possible the effective removal of criminogenic factors, the rehabilitation or the segregation—perhaps even the extermination—of offenders after a scientific appraisal of the chances of their reintegration into social life as useful members of the community."⁷⁹ In the period prior to the Final Solution, perhaps references to "extermination," particularly to a kind that was "careful" and "scientific," did not so readily remind readers of thoroughly nefarious initiatives created by a baleful government.

Remarks in which Topping toyed with euthanasia or pointed out the supposed physiognomic odiousness of a particular criminal do not by themselves provide a balanced sense of the mind-set he displayed with respect to penal topics. Neither in commentary on penal practice nor in his stance on other issues did he advocate a reactionary outlook. His allegiances lay more with progressive notions than with

⁷⁸ See Marvin E. Wolfgang, "Thorsten Sellin (26 October 1896-17 September 1994)," *Proceedings of the American Philosophical Society* 140, no. 4 (Dec., 1996): 584; see also Strange, "Undercurrents of Penal Culture," 371.

⁷⁹ Thorsten Sellin, foreword to *Punishment and Social Structure*, by Georg Rusche and Otto Kirchheimer (New York: Columbia University Press, 1939; New Brunswick, NJ: Transaction Publishers, 2003), xlvii (in Transaction edition). Sellin's statement bore a relatively matter-of-fact flavour; although he was picking a bone with the perspective of the thinkers whose mind-set he was describing, he does not in this case appear to have been excoriating the idea of "extermination" in particular.

traditionalist ideas.⁸⁰ To government officials, penal reformers, and journalists, Topping looked like a reformer himself.⁸¹ On the one occasion when the press did publicize the comments of certain citizens who were willing to rake Topping over the coals, his detractors thought he was inclined to go overboard as an advocate of *meliorative* reform, giving the authorities too much grief or cutting offenders too much slack. The presentations at the American Prison Association's 1929 gathering in Toronto included one which Topping had composed, and which took issue with current county jails on certain points. The unflattering depiction of jails and their personnel that he had supposedly offered was played up in certain newspapers' subsequent description of his ideas.⁸² The assumption that Topping was keen on the provision of cushier imprisonment inspired one artist to create a political cartoon featuring "Topping Jail," whose offering of "comfort, recreation, amusement," and "rest" attracted a large surfeit of underprivileged men looking to share in the largesse.⁸³ By no means would the majority of Topping's

⁸⁰ By contrast, a comment in Helmes-Hayes' draft paper suggests that Topping's perspective bore an at least slightly more "traditionalist" scent: "He was a traditionalist in many respects, and regretted many modern trends," but "he also held to some progressive views"—see Helmes-Hayes, "Coral Wesley Topping," 5; and see 6; but see Helmes-Hayes, "Veteran Warrior for Prison Reform."

⁸¹ See, for example, W.S. Lawson, A/Superintendent, Memorandum to the Deputy Minister of Justice, May 3, 1943, in RG73, Series C-1, Volume 14, File 1-11-8: "Manuscript on Prison Theory and Practice by C.W. Topping," LAC (see also, in the same file, W.S. Hughes, circular to wardens of penitentiaries, May 17, 1926, and W.S. Hughes to Topping, May 12, 1927); see clipping of [illegible], "Comfort, Recreation, Amusement, Rest" (political cartoon), *Montreal Daily Star* [1929], in Topping fonds, Box 4, File 4-13 (Folder 2): "[Correspondence and clippings] 1929-54," UBCA.

⁸² See Helmes-Hayes, "Coral Wesley Topping," 20-21; see C.W. Topping, "The Passing of the County Jail in Canada," in *Proceedings of the 59th Annual Congress of the American Prison Association, Toronto, Canada, September 20th to 26th, 1929* (New York: American Prison Association, n.d.), 238-249; see various newspaper clippings from September 1929, especially "Topping Allegations Strongly Resented," *Toronto Daily Star*, September 25, 1929, in Topping fonds, Box 4, File 4-13 (Folder 2): "[Correspondence and clippings] 1929-54," UBCA; see C.W. Topping, "Quest: An Autobiography," undated [ca. 1970], 123-127, in Topping fonds, Box 2, File 2-9: "Quest, an autobiography (n.d.)," UBCA.

⁸³ See clipping of [illegible], "Comfort, Recreation, Amusement, Rest" (political cartoon), *Montreal Daily Star* [1929], in Topping fonds, Box 4, File 4-13 (Folder 2): "[Correspondence and clippings] 1929-54," UBCA.

interwar and postwar commentary have appeared to many Canadians to be championing especially coercive ideas.

Even in the draft of the thesis containing the “extermination” footnote, one of Topping’s comments had seemed to suggest that practices sometimes linked with “scientific” viewpoints might in some cases generate inordinately coercive kinds of activity. One part of the draft summarized a number of issues on which reformers could reflect concerning the kinds of courts that the Canadian authorities might or might not find helpful, including “[t]he scientific court” (the type in which the authorities’ tactics would stem from the sorts of positivist ideas on which certain reformist figures in the United States were keen). While rehabilitation would claim priority in a court of this latter kind, Topping observed that such measures as sterilization or euthanasia could also sometimes claim merit from the non-“sentimentalist” standpoint of quite a few of the thinkers to whom such a court looked attractive.⁸⁴ Topping’s commentary conveyed no obvious disapproval of these measures. He did, however, seem to suggest that at least one other tactic to which scientifically flavoured courts would often gravitate might be flawed. In such bodies, including juvenile courts (which tended to have recourse to positivist viewpoints and tactics similar to those which he had portrayed as shaping “[t]he scientific court”), the decision-making in which the authorities engaged did not usually feature participation by a jury. But in the nation of Canada, trials involving a jury would probably continue to take place on at least a few occasions, suggested Topping. A jury,

⁸⁴ See C. Wesley Topping, “Canadian Justice: with special reference to the treatment of sentenced persons” (Ph.D. Thesis, Columbia University [draft], [ca. 1927]), pp. 38–46, especially 43–44, in Topping fonds, Box 1, File 1-5: “Canadian Penal Institutions, First Draft (n.d.),” UBCA. Topping mentioned “the sterilization of the grossly incompetent and the permanent segregation or the quiet putting out of the way of those who show themselves incurably anti-social, including the criminally insane” (44). I am assuming that “the quiet putting out of the way” is a reference to euthanasia.

after all, “is the safeguard of the rights of the common citizen and guarantees freedom from that tyranny of a clique that secret hearings before a judge and the secret sessions of a juvenile court permit.”⁸⁵

Yet if certain sorts of quasi-positivist courts could occasionally engender a dollop of “tyranny,” the discussion in Topping’s draft still suggested that embracing at least a few “scientific” measures would make for greater vitality in the judicial realm.⁸⁶

Moreover, Topping’s book itself created the impression that the leaders of carceral institutions would do well to take advantage of the promise in “scientific” activity, having recourse to “scientific observation, scientific sorting, and scientific treatment.”⁸⁷

And a few of his later writings, especially in the forties, would more visibly reveal Topping’s eagerness to champion scientific possibilities. In sum, it had dawned upon this Canadian that the “tyranny of a clique” could perhaps materialize in certain scenarios. Even so, in contrast to quite a few thinkers and citizens in the last third of the century, he did not assume that authorities’ affinity for excessive coercion would *readily* blossom when they latched onto correctional initiatives which revolved around scientific tactics.

Both in the draft of his thesis and in at least one other instance, Topping’s exploration of penal issues or of topics that highlighted crime gave him occasion to

⁸⁵ See *ibid.*, 43-45 (long quotation on 45). On early-twentieth-century and interwar reformers’ perspectives concerning courts, see Rothman, *Conscience and Convenience*, chapters 6 and 7, and Dorothy Chunn, *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario, 1880-1940* (Toronto: University of Toronto Press, 1992).

⁸⁶ See C. Wesley Topping, “Canadian Justice: with special reference to the treatment of sentenced persons” (Ph.D. Thesis, Columbia University [draft], [ca. 1927]), pp. 43-46, in Topping fonds, Box 1, File 1-5: “Canadian Penal Institutions, First Draft (n.d.),” UBCA.

⁸⁷ See Topping, *Canadian Penal Institutions*, especially 10-17, 83 (quote on 83); see also Helmes-Hayes, “Coral Wesley Topping,” 18-19; see also Helmes-Hayes, ““Veteran Warrior for Prison Reform,”” 182.

mention sterilization, seemingly as a supportive voice or a matter-of-fact commentator.⁸⁸

Oswald Withrow proclaimed the validity of eugenics more straightforwardly.

Sterilization and “better human breeding” won his affirmation in his *Globe* writings of 1933.⁸⁹ One of Withrow’s readers voiced scepticism: tactics like sterilization struck this citizen as “lazy” rather than helpful.⁹⁰ But such a suggestion could not make Withrow disinclined to admire eugenics. Without apology, he suggested that having certain citizens sterilized would ensure, in a “scientific” way, that a potent criminal streak would less frequently materialize among persons of Canadian birth.⁹¹ The idea of sterilizing some individuals found certain other takers too among the figures mentioned in this dissertation, including C.B. Farrar.⁹² Agnes Macphail would certainly qualify as one of the most compassionate MPs, at least with respect to convicts. Be that as it may, apparently even she regarded sterilization as a promising measure.⁹³

⁸⁸ See C. Wesley Topping, “Canadian Justice: with special reference to the treatment of sentenced persons” (Ph.D. Thesis, Columbia University [draft], [ca. 1927]), p. 44, in Topping fonds, Box 1, File 1-5: “Canadian Penal Institutions, First Draft (n.d.),” UBCA; see C.W. Topping, “The Report of the Ontario Royal Commission on Public Welfare, 1930,” *Tribunal* 1 (1932): 84-87 (in this article he noted [positively, it would appear] the pro-sterilization stance of the royal commission). For a remark of Topping’s that seems to reflect some degree of support for eugenics, though not explicitly for sterilization, see offprint of C.W. Topping, “Youth and Civilization,” *Wesleyan Mirror* 4, no. 2 (April, 1924): 21, in Topping fonds, Box 3, File 3-20: “Scrapbook material – offprints etc.,” UBCA.

⁸⁹ See O.C.J. Withrow, “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, October 2, 1933, p. 3.; O.C.J. Withrow, “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, October 5, 1933, p. 3 (“better human breeding”); O.C.J. Withrow, “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, October 6, 1933, p. 3.

⁹⁰ Letter from “Eastern Ontario,” quoted in O.C.J. Withrow, “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, October 6, 1933, p. 3.

⁹¹ See O.C.J. Withrow, “Dr. Withrow Replies to ‘Pen’ Questions,” *The Globe*, October 6, 1933, p. 3.

⁹² See C.B. Farrar, “Social Aspects of Mental Deficiency,” *Canadian Medical Association Journal* 16, no. 10 (October 1926): 1233-1238, especially 1235-1236; and see Dowbiggin, *Keeping America Sane*, 185. For another positive or relatively positive comment about sterilization, see *House of Commons Debates*, 17th Parl, 5th Sess, Vol. 4 (3 July 1934) at 4601 (J.S. Woodsworth—CCF, Winnipeg North Centre, MB). For more ambiguous comments, see A.B. Harvey, “Some Problems of Punishment,” *Queen’s Quarterly* 35, no. 2 (November, 1927): 160-162.

⁹³ However, I cannot make a decisive claim about whether she perceived any criminals as the sorts of “sub-normal” individuals with regard to whom the state could have recourse to sterilization, nor about whether she perceived crime as the sort of phenomenon for which fewer Canadians would end up hankering after the authorities had recourse to sterilization. See “Sterilization of Sub-Normal Urged by Miss Macphail,”

Euthanasia may not have obtained a quasi-endorsement from any Canadian penal reformer other than Topping. Even these reformers' supportive references to eugenics tended to be brief and relatively rare. But Topping had a good deal of company in his readiness to suggest such measures as "permanent segregation." Allowing the state to occasionally avail itself of "permanent" or quasi-permanent incarceration of one sort or another struck Lavell as quite sensible, in light of the "vicious[ness]" or "dangerous[ness]" of certain offenders.⁹⁴ "Scores, possibly hundreds, of the inmates in our Canadian penitentiaries should never be free," declared Withrow in the *Globe*.⁹⁵ Another article of his allowed readers to ponder an opinion to which Margaret Wilson, a British detractor of prisons, had given voice: "there is no acceptable reason for shutting four-fifths of the present prisoners in prisons—and none for letting the other fifth out."⁹⁶ Other reformist commentators also shared their thoughts regarding "hardened" or "habitual" or "incurable" lawbreakers; and several of these reformers, including Macphail, J.S. Woodsworth, and the Archambault commissioners, concluded that the authorities would do well to pursue the possibility of permanent incarceration, or something in that vein.⁹⁷

Toronto Daily Star, December 4, 1935, pp. 23, 25; see "Ontario's Prisons Lauded as Models by Agnes Macphail," *The Globe*, December 4, 1935, p. 11.

⁹⁴ See Ontario, Legislative Assembly, "Report of the Ontario Board of Parole for the Year Ending October 31st, 1922," in *Sessional Papers*, No. 24 (1923), at 10 ("dangerous"); see Lavell, *Convicted Criminal*, 51 ("vicious"); see Lavell, "Criminals and Citizenship," 153-154 ("permanent").

⁹⁵ O.C.J. Withrow, "Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates," *The Globe*, September 16, 1933, p. 1. See also see O.C.J. Withrow, "Dr. Withrow Replies to 'Pen' Questions," *The Globe*, September 25, 1933, p. 3; see also O.C.J. Withrow, "Dr. Withrow Replies to 'Pen' Questions," *The Globe*, October 5, 1933, p. 3.

⁹⁶ Quoted in O.C.J. Withrow, "Dr. Withrow Replies to 'Pen' Questions," *The Globe*, September 23, 1933, p. 1; Margaret Wilson, *The Crime of Punishment* (New York: Harcourt, Brace and Company, 1931), 15.

⁹⁷ See Farrar, "Social Aspects of Mental Deficiency," 1235-1236; see *House of Commons Debates*, 17th Parl, 5th Sess, Vol. 4 (3 July 1934) at 4601 (J.S. Woodsworth—CCF, Winnipeg North Centre, MB) ("incurable"); see J. Alex Edmison, "The Significance of the 'Red' Ryan Case," radio talk, Montreal,

If reformers believed in allowing permanent incarceration in certain (comparatively rare) instances, some of them also believed in creating a genre of sentencing through which more appropriate punishments would materialize for a large array of prisoners, not just for permanent internees. From the perspective of one subset of reformist commentators, imprisonment ought not to stem primarily from a sentence on which an offender's trial judge fastened.⁹⁸ A few of these reformers, at least, became slightly enamoured with the idea of having recourse to a board of one sort or another for the sentencing of convicted individuals.⁹⁹ When reformers took issue with current sentencing arrangements, they sometimes pointed out the dissimilar sentences with which

Station CFCE, 1936, p. 8 ("hardened"), in John Alexander Edmison fonds, Coll. 2501, Box 4, File 15: "'Red' Ryan," QUA; see *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: King's Printer, 1938) (hereafter Archambault Report), 9, 222-224 ("habitual" [222, 224]); see Agnes Macphail, *Convict or Citizen? The Urgent Need for Prison Reform* (Toronto: Co-operative Commonwealth Federation Literature Department, n.d.), 12 ("incorrigible"); see Agnes Macphail, "A Report on Penal Reform," *Canadian Forum*, December 1946, p. 206.

⁹⁸ See O.C.J. Withrow, "Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates," *The Globe*, September 16, 1933, p. 1; see F.R. Scott, "Penal Reform," *Saturday Night*, July 11, 1936, p. 4; see inquiry transcript, February 20, 1937, testimony by Alfred George Hall, p. 2140, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, "Guelph Reformatory Inquiry Evidence, Volume XII – pps. 2112-2228 incl.," AO; see [Alfred Lavell], "Statement and Recommendations," attached to [Lavell] to Allan J. Fraser, October 12, 1937, in A.E. Lavell fonds, Coll. 2214, Box 1, File 3: "1899, 1925-1939," QUA; see Jean Tweed, "Royal Commission Will Overhaul Our Antiquated Criminal Code," *Saturday Night*, March 15, 1949, p. 6.

⁹⁹ See Scott, "Penal Reform," July 11, 1936, p. 4; see Lavell, "Crime and Criminals," 63; see inquiry transcript, February 20, 1937, testimony by Alfred George Hall, p. 2140, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, "Guelph Reformatory Inquiry Evidence, Volume XII – pps. 2112-2228 incl.," AO; see Exhibit No. 12, Brief of National Committee on Penal Reform, p. 2, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, Envelope titled "Guelph Reformatory Inquiry, Exhibits Nos. 1 to 31 Inclusive," AO; see [Alfred Lavell], "Statement and Recommendations," attached to [Lavell] to Allan J. Fraser, October 12, 1937, in A.E. Lavell fonds, Coll. 2214, Box 1, File 3: "1899, 1925-1939," QUA; see also O.C.J. Withrow, "Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates," *The Globe*, September 16, 1933, p. 1; see also O.C.J. Withrow, "Dr. Withrow Replies to 'Pen' Questions," *The Globe*, September 30, 1933, p. 3; see also Milton L. Hersey, F.R. Scott, R. Gordon Burgoyne, and John Kidman, Memorandum Presented by Officers of the Canadian Penal Association and of the Prisoners' Aid & Welfare Association of Montreal, Inc., to the Royal Commission on Penitentiaries and the Penal System of Canada, September 1936, p. 5, in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1282, Volume 22, File 17: "Penal Documents, 1936-1937," LAC.

different convicts had to put up, even if these offenders had butted heads with the state through quite comparable criminal deeds. That vexatious divergence, suggested reformers, stemmed partly from the fact that the respective convicts owed the punishments in question to different judges.¹⁰⁰ Perhaps such criticism, which occasionally referred to the “inequality” or non-“uniformity” of such punishments,¹⁰¹ may sound a little incongruous in reformist discourse, since reformers also suggested that “punishment must suit the criminal rather than the crime.”¹⁰² Actually, as a number of these reformist figures saw it, optimal sentencing would by no means major in “uniformity”—by their lights, though, non-uniformity ought to spring from genuine heterogeneity on the part of the lawbreakers in question, not on the part of judges.¹⁰³ But perhaps their negative remarks about current sentences’ heterogeneity also remind us

¹⁰⁰ See Lavell, *Convicted Criminal*, 61-62; see Scott, “Penal Reform,” July 11, 1936, p. 4; see Milton L. Hersey, F.R. Scott, R. Gordon Burgoyne, and John Kidman, Memorandum Presented by Officers of the Canadian Penal Association and of the Prisoners’ Aid & Welfare Association of Montreal, Inc., to the Royal Commission on Penitentiaries and the Penal System of Canada, September 1936, p. 5, in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1282, Volume 22, File 17: “Penal Documents, 1936-1937,” LAC; see inquiry transcript, February 20, 1937, testimony by Alfred George Hall, p. 2140, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume XII – pps. 2112-2228 incl.,” AO; see Tweed, “Royal Commission Will Overhaul Our Antiquated Criminal Code,” 6; see A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” pp. 87-90, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA; see also Ontario, Legislative Assembly, “Annual Report of the Ontario Board of Parole for the Year Ending October 31st, 1926,” in *Sessional Papers*, No. 16 (1927), at 7 (but note that this document claims not to be “criticiz[ing] judicial sentences”); see also Archambault Report, 169-170 (but note that this was a criticism to which the Archambault Report itself did not subscribe, at least not fully).

¹⁰¹ See Lavell, *Convicted Criminal*, 62 (“inequality”); see A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” p. 87 (“inequalities”), in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA; see Archambault Report, 169 (“uniformity”), 170 (but note that this was a criticism to which the Archambault Report itself did not subscribe, at least not fully).

¹⁰² See Scott, “Penal Reform,” July 11, 1936, p. 4 (quotation from here); see Tweed, “Royal Commission Will Overhaul Our Antiquated Criminal Code,” 6.

¹⁰³ See especially Scott, “Penal Reform,” July 11, 1936, p. 4; [Alfred Lavell], “Statement and Recommendations,” attached to [Lavell] to Allan J. Fraser, October 12, 1937, in A.E. Lavell fonds, Coll. 2214, Box 1, File 3: “1899, 1925-1939,” QUA; and A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” pp. 87-90, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA. For the term “uniformity,” see the discussion of this type of issue in Archambault Report, 169.

again that although reformers bought into certain quasi-positivist ideas concerning sentencing (e.g. sentencing boards, and sanctions which “fit the criminal”), they still in some respects regarded moral justice as a consequential consideration in light of which they might very well have grounds to attack a particular practice. Indeed, as some reformist commentary depicted it, the “inequalities in” current sentences did sometimes qualify, or at least appeared to convicts to qualify, as “unjust” in certain respects.¹⁰⁴ In any case, a more instrumentalist appraisal could also contribute to commentators’ depiction of current sentencing as a second-rate practice. Reformers could suggest that existing sentencing arrangements gave rise in quite a few instances to either more extensive or less substantial incarceration than would have optimally equipped the authorities for incapacitative practices or for rehabilitative activity.¹⁰⁵

A sentencing board, on the other hand, could ensure that neither excessive nor inordinately limited incarceration would retain a significant presence in the criminal justice which the state offered. Perhaps the board’s function might require it to prepare most sentences itself, or perhaps simply to refashion sentences which trial judges or the Criminal Code had supplied, in instances when the board came to realize that more appropriate sanctions could be offered through truncation or extension of the

¹⁰⁴ See A.E. Lavell, “History of Prisons in Ontario 1792-1932 [1937],” pp. 87, 89-90, in A.E. Lavell fonds, Coll. 2214, Box 1, File 8: “History of Prisons in Ontario (Typescript), 1892-1937, 223 pp.,” QUA. For comments which do not resort to vocabulary like “unjust,” but which perhaps create the impression that such realities might sometimes embody a certain degree of apparent injustice, see also Lavell, *Convicted Criminal*, 62, and Scott, “Penal Reform,” July 11, 1936, p. 4.

¹⁰⁵ See Lavell, “Crime and Criminals,” 63; see Scott, “Penal Reform,” July 11, 1936, p. 4; see Tweed, “Royal Commission Will Overhaul Our Antiquated Criminal Code,” 6; see also Milton L. Hersey, F.R. Scott, R. Gordon Burgoyne, and John Kidman, Memorandum Presented by Officers of the Canadian Penal Association and of the Prisoners’ Aid & Welfare Association of Montreal, Inc., to the Royal Commission on Penitentiaries and the Penal System of Canada, September 1936, p. 5, in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1282, Volume 22, File 17: “Penal Documents, 1936-1937,” LAC.

imprisonment which had appeared worthwhile to the judge. In either case, the board's views concerning the offender's sentence might materialize in full only after this convicted individual had had a while—perhaps a month, perhaps more—to get some internment under his belt, though perhaps at an institution other than the run-of-the-mill establishment which would waylay him for most of his carceral stint. Thanks to this first interval, a full “study of” the lawbreaker in question could put the board wise to pivotal considerations that might suggest the way in which his carceral term ought to be shaped. And the board's receptiveness to ideas that such “study” might spark would prove quite strong, thanks partly to the affinity of at least some of its members for “scientific” notions. In suggesting the kinds of figures whose presence on such a board would contribute helpfully to its activity, reformers sometimes proposed an assortment of “experts”: perhaps one or more judges or lawyers, but perhaps also one or more psychologists, psychiatrists, doctors, or social workers.¹⁰⁶ In many instances the board

¹⁰⁶ For documents which suggest one or more of the sorts of ideas which this paragraph discusses, see the items below. (However, by no means did all of the ideas mentioned in the paragraph strike all of the writers of the documents below as optimal.) See Lavell, *Convicted Criminal*, 62-63; see O.C.J. Withrow, “Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates,” *The Globe*, September 16, 1933, pp. 1, 3 (“study of”); see Scott, “Penal Reform,” July 11, 1936, p. 4 (“sciences”); see Lavell, “Crime and Criminals,” 63; see Milton L. Hersey, F.R. Scott, R. Gordon Burgoyne, and John Kidman, Memorandum Presented by Officers of the Canadian Penal Association and of the Prisoners' Aid & Welfare Association of Montreal, Inc., to the Royal Commission on Penitentiaries and the Penal System of Canada, September 1936, p. 5 (“experts”), and “The Need for a Christianized Penal System,” p. 3 (“experts”), both in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1282, Volume 22, File 17: “Penal Documents, 1936-1937,” LAC; see inquiry transcript, February 20, 1937, testimony by Alfred George Hall, p. 2140, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, “Guelph Reformatory Inquiry Evidence, Volume XII – pps. 2112-2228 incl.,” AO; see Exhibit No. 12, Brief of National Committee on Penal Reform, pp. 2-4, in RG 18-112 (Records of the Commission to Inquire into the Recent Disturbances of and among the Prisoners at the Ontario Reformatory at Guelph), Container 2, Envelope titled “Guelph Reformatory Inquiry, Exhibits Nos. 1 to 31 Inclusive,” AO; see [Alfred Lavell], “Statement and Recommendations,” attached to [Lavell] to Allan J. Fraser, October 12, 1937, in A.E. Lavell fonds, Coll. 2214, Box 1, File 3: “1899, 1925-1939,” QUA; see Tweed, “Royal Commission Will Overhaul Our Antiquated Criminal Code,” 6. Chapter 3 of this dissertation highlighted Withrow's assertions regarding “the System,” but another idea served as a second key motif in his *Globe* articles: the notion that the

might not resort to particularly extensive incarceration, but occasionally it (or related authorities) might eventually realize that to imprison a particular convict sufficiently would be to do so at great length, or perhaps to do so permanently.¹⁰⁷

By opting at times for this kind of imprisonment, the authorities would not, in reformers' opinion, be pursuing "punitive" activity, but would instead be chiefly providing more thoroughgoing incapacitation.¹⁰⁸ If the idea of permanently incarcerating certain "dangerous" or "habitual" or "incorrigible" or "anti-social" inmates intrigued the government, then it would do well, believed some reformers, to concentrate on this sort of tactic at a particular penal establishment.¹⁰⁹ To hear Withrow tell it, some spot "in the centre of our great Dominion" would lend itself to an initiative to develop "a penal colony," an initiative especially attractive because of permanent prisoners or other convicts of this kind.¹¹⁰ The Archambault Report noted that the St. Lawrence River and its islands offered a possibility: perhaps the government could avail itself of Grosse Île, relatively near Quebec City, for the development of a penal establishment in which to maroon "habitual criminals," convicts to whose indeterminate internment the parole

authorities had frittered away the chance to "study" convicts. See, for example, O.C.J. Withrow, "Home Folk Write Prison Doctor Anxious Over Health of Inmate and Get Curt Note from Warden," *The Globe*, September 5, 1933, pp. 1, 3; O.C.J. Withrow, "Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates," *The Globe*, September 16, 1933, p. 1; and O.C.J. Withrow, "Dr. Withrow Replies to 'Pen' Questions," *The Globe*, September 23, 1933, p. 3.

¹⁰⁷ See O.C.J. Withrow, "Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates," *The Globe*, September 16, 1933, pp. 1, 3; see also Lavall, "Crime and Criminals," 63.

¹⁰⁸ See Archambault Report, 223; see J. Alex Edmison and Walter Turner, "Canada's Prison Shame," *National Home Monthly*, September 1939, p. 7.

¹⁰⁹ See Lavell, *Convicted Criminal*, 51 ("dangerous"); see O.C.J. Withrow, "Dr. Withrow Replies to 'Pen' Questions," *The Globe*, September 25, 1933, p. 3 ("anti-social"); see J. Alex Edmison, "The Significance of the 'Red' Ryan Case," radio talk, Montreal, Station CFCF, 1936, p. 8, in John Alexander Edmison fonds, Coll. 2501, Box 4, File 15: "'Red' Ryan," QUA; see Archambault Report, 11, 105, 222-223, 355-356 ("habitual" on 105 and 222, "incorrigible" on 105); see Macphail, *Convict or Citizen?*, 12 ("incorrigible").

¹¹⁰ See O.C.J. Withrow, "Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates," *The Globe*, September 16, 1933, p. 1; similarly, see O.C.J. Withrow, "Dr. Withrow Replies to 'Pen' Questions," *The Globe*, September 25, 1933, p. 3.

authorities might or might not call an eventual halt.¹¹¹ At least one reformist article that made common cause with the Archambault Report referred to this potential island prison as “a Canadian Alcatraz.” But that article was not thereby associating such an institution with a particularly spine-chilling form of imprisonment.¹¹² The authors and various other reformers, such as Lavell, Withrow, and Macphail, seemed to believe that the permanent internees’ prison ought to major in a “less exacting” genre of incarceration than other penitentiaries did.¹¹³ Such internees “should have a society of their own with much more liberty than they have today within the prison walls,” claimed Macphail.¹¹⁴ Withrow noted the “bearable and possibly reasonably pleasant” flavour that the “work and recreation” in the penal colony would generate.¹¹⁵

A board’s involvement in sentencing and the non-punitive tenor of the penal establishment devoted to such inmates may have seemed to some reformers to be two points on which quasi-permanent incarceration could be affirmed.¹¹⁶ And occasionally a commentator would also offer another type of suggestion about the putative upside that such imprisonment might possess from a convict’s perspective, rather than only from non-criminal citizens’ standpoint. According to an article of Lavell’s from 1901, a “morally spineless” or an “obdurate” offender “should not be repeatedly sentenced to short terms, but be kept continually under prison authority, for the good of society and

¹¹¹ See Archambault Report, 222-223. However, I do not know whether or not the incapacitation which an island might offer served as the consideration that generated the commissioners’ remark about Grosse Île.

¹¹² See Edmison and Turner, “Canada’s Prison Shame,” 7.

¹¹³ See *ibid.*, 5-7, 58; see Lavell, *Convicted Criminal*, 51 (this is the item which opts for the phrase “less exacting”); see also Archambault Report, 223-224.

¹¹⁴ Macphail, *Convict or Citizen?*, 12.

¹¹⁵ See O.C.J. Withrow, “Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates,” *The Globe*, September 16, 1933, p. 1.

¹¹⁶ See also Lavell, *Convicted Criminal*, 51.

himself, even though this should mean imprisonment for life.”¹¹⁷ Describing a minor fraction of lawbreakers as “definitely anti-social,” Withrow asserted that such men “should never be freed.” “I have talked with dozens of them,” he claimed, “and they are afraid of themselves, much more conscious of their real condition than is the system which has never yet taken any trouble to find out.”¹¹⁸ His remarks implied that protracted or permanent internment might not in fact strike these individuals as wholly undesirable, in light of the perils that it would thwart. Non-criminal citizens might well receive some psychological gratification from the “protection” bestowed upon them when permanent internment kicked in with respect to the most “anti-social” lawbreakers. And even those prisoners would end up having fewer metaphorical wounds to nurse, thanks to their inability to pursue the criminal activity that proved so ruinous to them.

The government of Canada would not end up buying into the idea of a sentencing board. And very rarely would the authorities in the second half of the twentieth century have recourse to imprisonment of a genuinely permanent type. Even so, full-fledged indeterminate sentences, ones which in a few instances *might* eventuate in nearly permanent internment, did gain a small presence in federal penal practice after the late 1940s. In mid-1947, a new segment in the Criminal Code emerged, a segment in which the “habitual criminal” starred. Some lawbreakers might have taken lengthy turns as prisoners at three or more junctures, each stint stemming from a crime that could potentially have given rise to a five-year sentence (or a greater sanction). If another indictable crime by such an individual sparked a trial yet again, the imprisonment to

¹¹⁷ Lavell, *Our Prison Problem*, 9.

¹¹⁸ See O.C.J. Withrow, “Recreation, Education, Religion Need of Penitentiary System to Aid in Reform of Inmates,” *The Globe*, September 16, 1933, p. 1.

which the authorities resorted might now expand markedly, thanks to an indeterminate sentence that implemented “preventive detention.” By no means would such a sentence materialize for every such criminal having his fourth punishment bestowed upon him because of offences which belonged to this genre. Only if indeterminate imprisonment struck the Crown (and the court) as desirable in that particular situation would such an offender’s punishment be augmented by means of this “habitual criminal” sentence. And key authorities would receive specific reminders concerning each such prisoner during his indeterminate internment, thanks to the Justice minister’s reassessment now and then of the incarceration of that particular convict. The law created an interval of just three years between these recurring checkup points. Even so, if it always appeared that the criminal fire in the offender’s belly remained potent, then it would never be necessarily incumbent upon the government to decide that he could don the hat of parolee.¹¹⁹

It does not appear that many parliamentarians perceived this particular variety of indeterminate sentencing as a practice on which they ought to frown. According to David Croll, a Liberal politician from whom reform had received an endorsement at the 1946 Canadian Penal Congress,¹²⁰ the government’s habitual-criminal initiative qualified as “progressive.”¹²¹ But a few MPs, including Progressive Conservative John Diefenbaker,

¹¹⁹ To gain a fuller sense of this law, see *An Act to Amend the Criminal Code*, SC 1947, c 55, s 18; and see *House of Commons Debates*, 20th Parl, 3rd Sess, Vol. 6 (3 July 1947) at 4685, 5030, 5056.

¹²⁰ See David D. Croll, “Outmoded Penal System,” in *Fourth Canadian Penal Congress, Windsor, Ontario: Proceedings, Sec. 1 & 2, Monday, Oct. 7 & Tuesday, Oct. 8, 1946* (Montreal: Canadian Penal Association, [1946]), sec. 1, pp. 4-5.

¹²¹ See *House of Commons Debates*, 20th Parl, 3rd Sess, Vol. 6 (3 July 1947) at 5029 (David Croll—Liberal, Spadina, ON). However, it does not appear that every facet of the government’s bill itself qualified, from his perspective, as fully optimal—see, in addition to the above reference, his discussion at pp. 5054-5055.

did offer a negative appraisal of the measure.¹²² To Daniel McIvor, an Ontarian Liberal, the government's readiness to run with indeterminate sentencing in view of some lawbreakers' "habitual" crime appeared to be encouraged by a poor assumption. "I must confess," he remarked, "that I am afraid of this amendment. It seems to indicate that, no matter what influence is brought to bear on a man's life, he is not capable of change. I should like to think that no one is so depraved that he cannot be changed for the better."¹²³ Justice minister J.L. Ilsley suggested that rehabilitative assumptions had shaped the proposed indeterminate arrangements slightly more than McIvor perceived. Ample non-incarceration could still lie ahead for an imprisoned habitual offender. If he genuinely bought into non-criminal practices and perspectives, as a reformed individual should, then the authorities would call a halt to his captivity.¹²⁴ But a Quebec Liberal, Maurice Hartt, raked the proposal over the coals with remarks more adamant than McIvor's. Hartt was up in arms over the non-rehabilitative flavour of the indeterminate sentencing in question. "Even God Almighty does not want to destroy the sinner," he argued. "All He wants is for him to redeem himself. Here we are smarter than God Almighty. We are going to do something that God would not do." Moreover, if some prisoners' sentences would soon be materializing thanks to the nasty deeds in which their criminal streak might *later* result, rather than thanks to criminal deeds in which they had become involved by the current point in time, then the authorities, in Hartt's opinion, were becoming rather too cavalier in their carceral strategies. In his view, the example of

¹²² See *House of Commons Debates*, 20th Parl, 3rd Sess, Vol. 6 (3 July 1947) at 5057-5059 (John Diefenbaker—Progressive Conservative, Lake Centre, SK).

¹²³ *House of Commons Debates*, 20th Parl, 3rd Sess, Vol. 6 (3 July 1947) at 5056 (Daniel McIvor—Liberal, Fort William, ON).

¹²⁴ See *House of Commons Debates*, 20th Parl, 3rd Sess, Vol. 6 (3 July 1947) at 5056 (J.L. Ilsley—Liberal, Digby-Annapolis-Kings, NS).

the Nazis highlighted the odiousness of abusive imprisonment or comparably coercive actions by the state. “I think we are committing a crime against the criminals,” he declared.¹²⁵ As Ilsley saw it, however, Hartt “[wa]s thinking too much about the criminal and too little about society for whose protection we have to pass these laws.”¹²⁶ In any case, if habitual-criminal indeterminate internment struck a few MPs as odious or unseemly, the qualms of the House as a whole were so slight that the Commons refrained from even using a recorded vote when bestowing its approval on the bill.¹²⁷

If indeterminate sentencing intrigued the federal authorities in the case of habitual lawbreakers, it did so with regard to “criminal sexual psychopaths” as well. An indeterminate sanction focusing on the latter offenders materialized in 1948, thanks to another small expansion in the Criminal Code. Even if a sex offender were now on the cusp of just his first punishment, rather than his fourth, an indeterminate carceral sentence could kick in, provided that his “course of misconduct in sexual matters” had embodied “criminal sexual psychopath[y],” he “ha[ving] evidenced a lack of power to control his sexual impulses,” to a degree which revealed that he would “[be] likely to attack or otherwise inflict injury, loss, pain or other evil on any person.”¹²⁸ Actually, the indeterminacy of the sentence would obtain not during its first segment (since the penalty could give rise to “n[o] less than two years” of incarceration), but rather during the

¹²⁵ See *House of Commons Debates*, 20th Parl, 3rd Sess, Vol. 6 (3 July 1947) at 5060-5061 (Maurice Hartt—Liberal, Cartier, QC). Admittedly (and amusingly), Hartt did claim that “I do not rise to discuss this clause in a spirit of criticism.”

¹²⁶ *House of Commons Debates*, 20th Parl, 3rd Sess, Vol. 6 (3 July 1947) at 5061 (J.L. Ilsley—Liberal, Digby-Annapolis-Kings, NS).

¹²⁷ See *House of Commons Debates*, 20th Parl, 3rd Sess, Vol. 6 (3 July 1947) at 5035, 5065; see *House of Commons, Journals*, 20th Parl, 3rd Sess, vol. 88 (3 July 1947) at 714, 714A, 714B.

¹²⁸ See *An Act to Amend the Criminal Code*, SC 1948, c 39, s 43. In this sentence, part of my wording or the structure thereof has much in common with Patrick Brode’s wording—see Brode, “‘Perverts a Menace’: The Development of the Criminal Sexual Psychopath Offence, 1948,” 107, 118.

subsequent time, whether the latter ended up stretching for months or years or decades. In any event, the convict would at no time be regarded as a necessarily permanent internee: the three-year interval for checkups by the Minister of Justice would be utilized with regard to sexual psychopaths as well with respect to habitual criminals. The particular rehabilitative methods to which the authorities might resort in light of offenders' sexual psychopathy might in some cases send the convict's psychopathic ailment packing, after which point the state would be ready to allow him to wave the prison goodbye.¹²⁹

Parliamentarians could create the impression either that offenders might find merit in the sexual-psychopath initiative or, more plausibly, that its strengths would count as such primarily from the perspective of the non-criminal citizenry. As John Diefenbaker seemed to portray it, the initiative might end up striking not only MPs, but also some sex offenders, as helpful. To hear him tell it, some of these offenders might actually be of a mind to attempt to make the judge aware of their sexual psychopathy (presumably in light of the rehabilitative measures which would then be implemented), even if the prosecution were not endeavouring to do so.¹³⁰ One MP rather miffed by the proposal perceived it as reflecting an unseemly surfeit of "compassion" with regard to sex criminals. "The question of human rights makes some people crazy," fulminated Jean-François Pouliot. "He has human rights; we must respect his human rights!" That man is dangerous to society. Does not the child who is bestially attacked by a much older person have human

¹²⁹ For a fuller sense of this law and of various issues related to mid-century mind-sets concerning "criminal sexual psychopathy," see *An Act to Amend the Criminal Code*, SC 1948, c 39, s 43 ("not less than two years"); see *House of Commons Debates*, 20th Parl, 4th Sess, Vol. 5 (14 June 1948) at 5196-5197, 5199; see Brode, "Perverts a Menace," especially 107, 118-120; and see Chenier, *Strangers in Our Midst*.

¹³⁰ See *House of Commons Debates*, 20th Parl, 4th Sess, Vol. 5 (14 June 1948) at 5195-5196 (John Diefenbaker—Progressive Conservative, Lake Centre, SK).

rights? ... What about the parents of the child; have they no human rights? But no, we pay no attention to them; we pay attention only to the human rights of the criminal, the bestial criminal offender.”¹³¹ From the Justice minister’s perspective, however, the kind of viewpoint disparaged by Pouliot had not served as any major ingredient in the initiative, or at least not as such a significant ingredient as that MP supposed. According to Ilsley, the proposed penal policies concerning sex offenders by no means stemmed from “sentimentality.” Thanks to this sexual-psychopath sentencing, many sex offenders might well be waylaid by more protracted incarceration than would otherwise have been par for the course. Indeed, Ilsley seems to have seen merit in the measure especially because of the possibility of interning such convicts at greater length. Still, attempting to concoct rehabilitative methods for such prisoners as well struck Ilsley and the government as optimal, provided that these sentences would prove to be potent incapacitators.¹³²

Reformers’ relatively numerous supportive remarks regarding permanent or indeterminate imprisonment, and the perspective that Ilsley exhibited in his parliamentary discussion, might suggest that reformist figures proved readier to coerce or exclude than to try to warm Canadians up to compassionate or humanitarian practices. And it might well appear that even reformers’ rhetoric testified more to their affinity for measures which would qualify as worthwhile from the perspective of the citizenry writ large than to their commitment to “the good of” lawbreakers. Then again, in reformist commentary of the thirties, forties, and early fifties, discussion of permanent or indeterminate

¹³¹ See *House of Commons Debates*, 20th Parl, 4th Sess, Vol. 5 (14 June 1948) at 5199 (Jean-François Pouliot—Independent Liberal, Témiscouata, QC).

¹³² See *House of Commons Debates*, 20th Parl, 4th Sess, Vol. 5 (14 June 1948) at 5196-5197, 5199 (J.L. Ilsley—Liberal, Digby-Annapolis-Kings, NS).

incarceration proved quite a bit less plentiful than did remarks about “reformation,” “rehabilitation,” or cognate ideas. And reformers’ stance on these latter issues sometimes suggested that genuine “protection” might owe a good bit to policies often perceived as stemming partly from compassion.

Rehabilitation and Humane Technique

Alfred Lavell’s attempt to pair humanitarianism with science illustrates one of the ways in which reformers tried to enhance the credibility of compassion. In some instances, though, reform rhetoric associated humanitarian or compassionate responses less with science than with technique. We can find one example of this latter rhetorical tactic in a speech by F.R. Scott at the first Canadian Penal Congress, a small conference in Montreal in June of 1935 that contributed to the inauguration of a reformist organization known as the Canadian Penal Association (CPA).¹³³

Of the personnel involved in the CPA at that point, Scott was the individual who would gain the greatest public prominence in Canada in the years to come. His ideas would reach quite a few Canadian eyes and ears during the interwar and postwar periods, thanks in part to his academic post in McGill University’s Faculty of Law, but also by means of other pursuits, such as his authorship of a good deal of well-respected poetry over the next few decades. In the early 1930s, he had done his part to promote progressive politics through vital input to such entities as the League for Social Reconstruction, *Canadian Forum*, and the CCF. And the years between the early thirties

¹³³ See *Summary of Proceedings of the First Canadian Penal Congress, Montreal, June 13 and 14, 1935* ([Montreal]: [1936?]), including 13, 18-19.

and the mid-forties saw him chime in with reformist arguments pertaining to penal matters, a topic on which he commented in magazine articles, in radio addresses, and so forth.¹³⁴

Scott's statements about penal issues did not primarily highlight compassion. Instead, many of the notions to which he gave voice appeared to evince his affinity for instrumentalist patterns of thought. If the authorities were to act as Scott preferred, they would acknowledge the obvious problems to which statistical indicators pointed. They would avail themselves of what social science had revealed. And the recommendations of "experts" would gain greater influence in correctional practice.¹³⁵ Scott thought highly of the "training" possessed by "[t]he penologist, the welfare worker, the psychologist, the psychiatrist."¹³⁶ He questioned the sufficiency of "philanthropic" efforts to deal with penal problems.¹³⁷ His perspective on this front was conveyed by the title used for one of his articles: "Penal Reform Is Not a Field for Amateurs."¹³⁸ Scott was one of the reformers who preferred to look like a calm strategist rather than a fervent feeler.

Even so, figures like Scott could both promote compassion and encourage an instrumentalist genre of penal thinking in the same argument. "We do not desire," he declared at one point in his speech at the 1935 Canadian Penal Congress, "to 'molly-

¹³⁴ See Sandra Djwa, *The Politics of the Imagination: A Life of F.R. Scott* (Toronto: McClelland and Stewart, 1987), VII-IX, 74-75, 105-106, 122, 131, 137-147, 151-153; see *Canadian Encyclopedia*, s.v. "Scott, Frank," by Keith Richardson, last modified December 16, 2013, <http://www.thecanadianencyclopedia.ca/en/article/frank-scott/>. For some of his writings or addresses, see MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1282, Volume 22, File 16: "Penal Association, 1945-1950," and File 17: "Penal Documents, 1936-1937," LAC.

¹³⁵ See F.R. Scott, "Penal Reform Is Not a Field for Amateurs," *Saturday Night*, June 27, 1936, p. 2; see F.R. Scott, "The Need for a Canadian Penal Association," in *Summary of Proceedings of the First Canadian Penal Congress, Montreal, June 13 and 14, 1935* ([Montreal]: [1936?]), 13-17, especially 16; see F.R. Scott, "Penal Reform," *Saturday Night*, July 18, 1936, p. 4.

¹³⁶ See Scott, "Penal Reform Is Not a Field for Amateurs," 2.

¹³⁷ See Scott, "The Need for a Canadian Penal Association," 16.

¹³⁸ Scott, "Penal Reform Is Not a Field for Amateurs," 2.

coddle the prisoner' in the sense of making crime seem profitable to him, but we shall not be afraid to advocate the kinder treatment of the prisoner and the removal of restrictions and irritations unjustified to science if by so doing we shall the better achieve the purpose of reformation."¹³⁹ Kind penal measures might well end up contributing to the emergence of non-criminal inclinations among a greater number of offenders. Scott described kind action in this same instrumentalist vein on another occasion too, when he referred, in an article written for *Saturday Night* magazine, to "the curative power of kindness."¹⁴⁰

At certain spots the Archambault Report offered a perspective relatively similar to the viewpoint illustrated by Scott's remark from 1935. The commissioners deprecated both "weak sentimentality" and "cruel severity."¹⁴¹ If the years ahead saw the authorities gravitate toward one of those unseemly stances, then the type of instrumentalist penal tactics with which reformers were enamoured would gain little momentum. According to the report, the penal authorities were obliged to attend most closely to the task of giving the public the "protection" it needed.¹⁴² Indeed, quite a bit of mid-twentieth-century reformist commentary suggested that the provision of protection could claim highest penal priority.¹⁴³ But if protecting the country mattered the most, that also allowed voices

¹³⁹ F.R. Scott, "The Need for a Canadian Penal Association," in *Summary of Proceedings of the First Canadian Penal Congress, Montreal, June 13 and 14, 1935* ([Montreal]: [1936?]), 17.

¹⁴⁰ See Scott, "Penal Reform Is Not a Field for Amateurs," 2. Another selection of commentary resorted to a more straightforward statement: "Progressive and kindly prison treatment has invariably produced good results in reducing crime." See "The Need for a Christianized Penal System," p. 5, in MG30-D211 (Francis Reginald Scott fonds), microfilm reel H-1282, Volume 22, File 17: "Penal Documents, 1936-1937," LAC. I assume that this latter item was probably composed by Scott.

¹⁴¹ See Archambault Report, 354.

¹⁴² See *ibid.*, 8, 354.

¹⁴³ See Topping, *Canadian Penal Institutions*, rev. ed. (Toronto: Ryerson Press, 1943), 12; see Ralph B. Gibson, "Progress [i]n Penal Institutions," in *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949* (Toronto: Canadian Penal Association, [1949]), 25; see R.B. Gibson, "What's Happening in Our Penitentiaries?" *Saturday Night*, October 25, 1952, pp. 9, 29-30, especially 30.

like the Archambault Commission to argue for the adoption of a thoroughly rehabilitative mind-set. The public would face the least danger of crime if the authorities would develop a strong ability to rehabilitate offenders. After all, convicts whom the state neglected to reform would tend to play another round in the criminal game at some point down the road. Accordingly, to rehabilitate convicts was to protect the rest of the citizenry. “[E]ntirely apart from humanitarian grounds,” claimed the report, “and from a purely economic point of view, and for the eventual benefit of society, the task of the prison should be, not merely the temporary protection of society through the incarceration of captured offenders, but the *transformation* of reformable criminals into law-abiding citizens, and the prevention of those who are accidental or occasional criminals from becoming habitual offenders.”¹⁴⁴ In other words, the report argued for rehabilitation by highlighting its utilitarian merits rather than by pointing to humanitarian duty. In quite a bit of other reformist rhetoric as well, both in the interwar and (especially) the postwar years, rehabilitation was legitimized by construing it as a “protecti[ve]” tactic, or as something comparable thereto.¹⁴⁵ Indeed, over the course of the twentieth century, the supporters of rehabilitative corrections have perhaps relied on this sort of argument more than on any other.

The authors of the Archambault Report may have believed that they had shown rehabilitation to be desirable “entirely apart from humanitarian grounds.” But they were

¹⁴⁴ Archambault Report, 9; see also 8.

¹⁴⁵ See, for instance, Macphail, *Convict or Citizen?*, 3; see Agnes Macphail, “A Report on Penal Reform,” *Canadian Forum*, December 1946, p. 206; see “Some Aspects of Penitentiary Education and Re-Education, Abstract of address delivered by Joseph McCulley, M.A., Deputy Commissioner of Penitentiaries, Ottawa, at the Urban and Secondary School Trustees’ Association, Tuesday, March 27, 1951,” p. 2, in Joseph McCulley fonds, B92-0013, Box 4, file titled “Speeches by J. McC.,” University of Toronto Archives; see Gibson, “What’s Happening in Our Penitentiaries?,” 30.

in no way suggesting that the penal system should bid humaneness itself goodbye. The commissioners soon proved ready to mention humaneness again, as the same chapter pointed out some principles through which the authorities could help offenders' "personal and emotional rehabilitation" to materialize. In this discussion, the report offered the same rationale for being humane that Scott had provided for being kind. "[W]ithout proper *classification and segregation*," declared the commission, "without education, without effective means of understanding the offender, the motivation of his offence, and his basic capacity for effective citizenship, without physical and mental exercise, moderate recreation, and above all, without *humane approach*, any treatment is bound to fail."¹⁴⁶ So as we have seen, the Archambault Report promoted rehabilitation by portraying it as a technique—a technique attractive to authorities who wanted to put a chill on crime and avoid shelling out too much money in the process. And reformist discourse could turn humaneness into a technique too. Being humane, or kind, to use Scott's terminology, could serve as a method, a method to ensure that the broader technique of rehabilitation would not come up short.¹⁴⁷

This general pattern of thought surfaced, in one form or another, at other times as well,¹⁴⁸ including certain occasions in the postwar years. In a 1946 article, Ralph Allen of

¹⁴⁶ Archambault Report, 10. Italics in original.

¹⁴⁷ Historian Donald Wetherell also refers to "kindness" as a "technique" at one point in his dissertation on late-nineteenth- and early-twentieth-century Canadian rehabilitative penal perspectives and activities, and his discussion points out that, from the perspective of late-nineteenth-century penal commentators, kindness served instrumental purposes—see Wetherell, "Rehabilitation Programmes," 86-89 ("technique" on 87).

¹⁴⁸ For other remarks from the interwar era that in one way or another provided instrumentalist construals of kindness or humaneness or cognate phenomena, see "Understanding the Criminal: Former Chief of Detectives of New York Explains Why Humanity Is Best Policy in Catching Crooks," review of *The Criminal as a Human Being*, by George S. Dougherty, *Saturday Night*, June 20, 1925, p. 10; see Allen Reid, letter to the editor, *The Globe*, August 17, 1933, p. 4; see "Reform Overdue," editorial, *Chesley Enterprise*, reprinted in *The Globe*, August 19, 1933, p. 1; see Arthur P. Woollacott, "Jail without Locks," *Maclean's*, June 15, 1939, pp. 7, 38-39.

Maclean's gave voice to the instrumentalist and largely rehabilitative perspective on which reformers had now fastened. At one point in the article, the author employed what at the time was a standard means of criticizing Canadian penal customs: he suggested that realities in Britain tended to throw the sub-par practices of Canada into unflattering relief. The mother country had gotten with the reformist program, of course; the Dominion, on the other hand, had merely hemmed and hawed. It was easy to decide which country had found the better way. As Allen put it, "one stresses humanity and reform and gets results, the other stresses custody and punishment and doesn't get results."¹⁴⁹ Once again, the value of "humanity" lay in the "results" generated by the decision to embrace this utilitarian kindness.

Such a construal of penal dynamics also appealed to Ralph Gibson, the Commissioner of Penitentiaries in the decade-and-a-half subsequent to World War II.¹⁵⁰ During these years, the government and many Canadian citizens seem to have been relatively inclined to buy into a rehabilitative portrayal of corrections. Even so, in the late forties and early fifties, Gibson's strategy for touting rehabilitative policies involved reminding people about the "protection" bestowed upon the country thanks to offender reformation.¹⁵¹ And humaneness qualified as a promising ingredient in such correctional activity. At the 1946 Canadian Penal Congress, Gibson remarked on the potentially

¹⁴⁹ See Ralph Allen, "Schools for Crooks," *Maclean's*, May 15, 1946, pp. 7-8, 66-69, especially 66 (quotation on 66).

¹⁵⁰ Regarding Gibson, see *The Canadian Who's Who, Volume VIII, 1958-1960* (Toronto: Trans-Canada Press, 1960), s.v. "Gibson, Maj.-Gen. Ralph Burgess"; cf. *The Canadian Who's Who, Volume IX, 1961-1963* (Toronto: Trans-Canada Press, 1963), s.v. "MacLeod, Allen Joseph."

¹⁵¹ See "Manuscript of Interview with Gen. Gibson for C.K.C.O. Broadcast, Recorded June 30, 1948," in RG73, Series C-1, Volume 15, File 1-11-28, pt. 1: "Public Broadcasts. Generally," LAC; see Gibson, "What's Happening in Our Penitentiaries?," 30.

auspicious “results to be obtained from a new and more humane approach.”¹⁵² At the following Canadian Penal Congress, in 1949, Gibson again suggested that “humane[ness]” would tend to help rehabilitation acquire a greater degree of momentum.¹⁵³

Perhaps these types of supposedly instrumentalist statements advocating humaneness might allow us to suggest that the reformers were resorting to a certain degree of “stealth virtue.”¹⁵⁴ An ironic, though not surprising, dynamic may well be at work here, at least in some instances. In debates about criminal justice, individuals who gravitate toward compassion most readily will often tend to downplay their feelings, while people who are less kindly by inclination will be more likely to play up what compassion they do have. In the last few decades, historical scholars have had little hesitation about pointing out the latter situation. When historians have found a powerful individual or set of people in the past who were not actually quite so merciful as they claimed or appeared to be, these scholars have tended to discuss the matter quite readily in their writings.¹⁵⁵ On at least an occasion or two, however, a writer has shown how historical figures tried to validate their own proclivity for kindness by portraying it as

¹⁵² See Ralph B. Gibson, “Dominion Penitentiaries Situation Reviewed by Commissioner,” in *Fourth Canadian Penal Congress, Windsor, Ontario: Proceedings, Sec. 1 & 2, Monday, Oct. 7 & Tuesday, Oct. 8, 1946* (Montreal: Canadian Penal Association, [1946]), sec. 1, p. 14.

¹⁵³ See Ralph B. Gibson, “Progress [i]n Penal Institutions,” in *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949* (Toronto: Canadian Penal Association, [1949]), 25.

¹⁵⁴ My use of this phrase stems from my awareness of another writer’s claim about the “stealth virtue” of a number of American men with regard to other matters—see Charles Murray, “Prole Models,” *Wall Street Journal*, February 6, 2001, reprinted on website of American Enterprise Institute, accessed May 20, 2014, <http://www.aei.org/article/society-and-culture/citizenship/prole-models/>. Also, see Cohen, *Visions of Social Control*, 246, and Collinson, “Religion and Human Rights,” 52.

¹⁵⁵ See Strange, introduction to *Qualities of Mercy*, 5-7.

something *less* compassionate.¹⁵⁶ In some cases, at least, this last dynamic left its imprint upon the discourse of mid-twentieth-century penal reformers. That was the great thing about humane correctional ideas—reformers could promote them in an instrumentalist vein, without appearing to be too *gratuitously* kind.

My construal above may provide a sense of only some reformers' stance on this front. For one thing, assertions about the humaneness or inhumaneness of the state's penal policies certainly did not always convey instrumentalist commitments. On the other hand, the *attitude* that some particular reformers did in fact harbour with regard to rehabilitation or humaneness may well have been endued with just as much of an instrumentalist flavour as their rhetoric was. In any event, Canadians had certainly gained a good deal of familiarity with endorsements of "humane" penal endeavours well before the 1930s or 1940s. The supposed "humane[ness]" of the country's penitentiary practices had been highlighted back in the 1920s, for instance, in the rhetoric of Superintendent of Penitentiaries William St. Pierre Hughes (a man to whom Withrow once referred as "that arch-fiend Hughes," but whose proposals other reformers in the thirties and forties tended to interpret as having been relatively valuable).¹⁵⁷ And perhaps people have always been just as ready as mid-twentieth-century reformers were to think in instrumentalist terms when arguing in favour of kindness. It appears that quite a few remarks by nineteenth-century Canadians involved in penal activity were reflective of these kinds of thought

¹⁵⁶ See the remarks (pertaining to the ideas of historian Roger Anstey) in Collinson, "Religion and Human Rights," 52.

¹⁵⁷ See "Real Convention on Penitentiary Humane Methods," *Ottawa Citizen*, March 27, 1923, p. 3; see Withrow diary, entry for October 18, 1932, in Withrow fonds, F 1375, Container B253379, AO; see Topping, *Canadian Penal Institutions*, rev. ed. (Toronto: Ryerson Press, 1943), xiii-xiv; see also Scott, "Penal Reform," July 18, 1936, p. 4.

patterns as well.¹⁵⁸ In any case, whatever the degree to which the actual appeal of humaneness for mid-twentieth-century reformers stemmed from either compassionate or instrumentalist proclivities on their part, their rhetoric suggested that the authorities' "protecti[ve]" mind-set concerning non-criminal citizens could itself help rehabilitative policies to blossom.

The Appeal of Experiments

Occasionally reformers' proposals concerning convicts explored measures different from the familiar ideas about rehabilitating many offenders or excluding certain others. C.W. Topping, for example, also saw merit in using prisons and their occupants as instruments for scientific experimentation. In 1943, readers of an academic journal based in Washington state got to sample Topping's ruminations about such a strategy.¹⁵⁹

The possibility of "experimenting" with alterations in correctional practice to see whether the country could put more suitable penal tactics to work appealed to other reformers as well.¹⁶⁰ "[C]riminology is an experimental science as much as biology and chemistry," claimed Lavell in one document.¹⁶¹ The "experimental" flavour of the extramural initiative was mentioned in quite a few of Lavell's comments about that penal

¹⁵⁸ See Wetherell, "Rehabilitation Programmes," 86-89, 120; see Oliver, *Terror to Evil-Doers*, 265.

¹⁵⁹ See C.W. Topping, "Experimental Criminology," *Research Studies of the State College of Washington* 11, no. 1 (March, 1943): 44-47, offprint located in Topping fonds, Box 3, File 3-20: "Scrapbook material – offprints etc.," UBCA. For another copy of this article, see Topping, *Blood on the Snow*, 95-97.

¹⁶⁰ See Andrew Elliott, "Crime in Canada Would Lessen with Borstal," *Saturday Night*, September 21, 1946, p. 12; see J. Alex Edmison, "General Penal Situation in Canada," in *Fourth Canadian Penal Congress, Windsor, Ontario: Proceedings, Sec. 1 & 2, Monday, Oct. 7 & Tuesday, Oct. 8, 1946* (Montreal: Canadian Penal Association, [1946]), sec. 1, p. 6; see Jean Tweed, "Ontario Outstrips Provinces in Prison Reform Experiment," *Saturday Night*, May 22, 1948, pp. 6-7 ("experimenting").

¹⁶¹ Ontario, Legislative Assembly, "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell, in *Sessional Papers*, No. 60 (1923), at 12.

measure.¹⁶² But Topping was enamoured with a different genre of experimentation. In his opinion, a number of ingredients might leave an imprint on the phenomenon which an experimenter was trying to assess. During a genuine scientific experiment, the experimenter needed to have confidence that none of those ingredients were fluctuating substantially, except for the one which he himself was treating as his independent variable. No viable experimentation of this sort was involved, therefore, in the implementation of a new penal initiative (such as parole) merely in the “uncontrol[ed]” milieu provided by society itself. A carceral institution, by contrast, could serve as an advantageous place to learn about criminals, and maybe humans more generally, through genuine experimentation.¹⁶³

According to the unpublished academic exploration of jails that Topping had drafted in the 1920s, certain significant characteristics displayed by Kingston Gaol had stemmed from particular “traditions” for which the jail leadership had opted, or onto which the internees had latched.¹⁶⁴ Through his penal work and his academic endeavours in the decade subsequent to the Great War, therefore, Topping had gained exceptional familiarity with the fact that a prison could conform tightly to the institutional patterns it

¹⁶² See, for example, *ibid.*, at 12; see Alfred Lavell, remarks printed in Chief Constables’ Association of Canada, *Proceedings of Nineteenth Annual Convention, Held at Windsor, Ontario, June 19, 20, 21, 1923* (Toronto: n.d.), p. 66, in RG 8-56 (Ontario Board of Parole, Miscellaneous Printed Material), Box 2, Envelope 8: “Ontario Board of Parole, misc. printed material, (1922-1923), envelope #8,” AO; see Alfred E. Lavell, Memorandum to Accompany the MS on the Penitentiary History until Confederation, the Book on ‘The Convicted Criminal,’ and the Report on the Ten Years’ Experiment in the Extra Mural Employment of Prisoners, February 5, 1937, in A.E. Lavell fonds, Coll. 2214, Box 2, File 25: “Parole Board of Ontario, 1921-1935,” QUA.

¹⁶³ See C.W. Topping, “Experimental Criminology,” *Research Studies of the State College of Washington* 11, no. 1 (March, 1943): 44-46, offprint located in Topping fonds, Box 3, File 3-20: “Scrapbook material – offprints etc.,” UBCA; and see Topping, *Canadian Penal Institutions*, rev. ed. (Toronto: Ryerson Press, 1943), 132-133.

¹⁶⁴ See C.W. Topping, “Ontario Gaol Theory Illustrated by Kingston Gaol Practice” (undated [ca. mid-1920s]), pp. 74-83, 143, in Topping fonds, Box 1, File 1-1: “The Jail at Kingston, Canada, 1922,” UBCA.

had developed, at least if the prison authorities so desired. Now, in the early 1940s, he explored the possibility of experimental pursuits in light of that characteristic of “custom-bound” carceral institutions. This trait of many prisons might annoy penal reformers, but criminologists could look on the bright side of the matter. A social site in which fluctuation and metamorphosis remained at a minimum ought to have high appeal for social scientists who were keen on experimentation. If each given facet of a particular prison tended to conform to familiar patterns until authorities decided to modify that aspect, then making a specific modification might prove quite revealing. If, after the deliberate introduction of such a change, new dynamics emerged among the residents of the prison, there would be reason to believe that this outcome stemmed from the specific intervention in question. Important insight into certain “biological,” “psychological,” “psychiatric,” or “sociological” facets of human life thus awaited scientists who would put their experimental talents to work in the prison milieu.¹⁶⁵

Present-day readers might find Topping’s article striking not merely because of its basic idea concerning experimentation, but also because of certain comparisons or rationales that he offered. “Vivisection,” he pointed out, “is now done on animals; it was conducted on criminals when Alexandria was the center of Grecian culture. It might be unwise to revive this lost art, but experiments by prison doctors ought to be encouraged and facilitated.” Furthermore, “[a] whole series of experiments carried out by the behaviorists on animals might well be transferred to the general population by way of an

¹⁶⁵ See C.W. Topping, “Experimental Criminology,” *Research Studies of the State College of Washington* 11, no. 1 (March, 1943): 44-47, offprint located in Topping fonds, Box 3, File 3-20: “Scrapbook material – offprints etc.,” UBCA; and see Topping, *Canadian Penal Institutions*, rev. ed. (Toronto: Ryerson Press, 1943), 132-133.

inmate group.” Such plans, he admitted, might get a chilly reception in some quarters, especially among “the sentimentalists.” By contrast, the idea would likely go over quite well with prison inmates themselves, he argued. Involvement in such experiments would ensure that imprisonment would no longer prove so deeply boring for the convicts, and they would find it satisfying to participate in an activity that benefitted “[their] own prison community” or “humanity” more generally.¹⁶⁶ In one sense, Topping could create the impression that an inclusionary dynamic might flavour experiments of this sort, since they might help prisoners perceive their inclusion not only in a “community” of interned persons, but also in the human species writ large. Moreover, he suggested that he had grounds for his claims concerning prisoners’ viewpoint. “The readiness with which incarcerated Americans took to such war work as was permitted to them,” he declared, “should leave no doubt in our minds as to their attitude toward the work of the experimental criminologist.”¹⁶⁷ An undertaking profitable for non-criminal citizens in a social-scientific sense could simultaneously carry some degree of appeal for convicts themselves.

Proposals for such experiments in prisons might strike many early-twenty-first-century citizens as morally flawed in an obvious way. If “the sentimentalists” of the 1940s might also have frowned upon such ideas, at least some citizens of that era were less inclined to evaluate these kinds of possibilities negatively. Perhaps North Americans’ qualms about such measures might have been less substantial in the early

¹⁶⁶ See C.W. Topping, “Experimental Criminology,” *Research Studies of the State College of Washington* 11, no. 1 (March, 1943): 46-47, offprint located in Topping fonds, Box 3, File 3-20: “Scrapbook material – offprints etc.,” UBCA.

¹⁶⁷ *Ibid.*, 47.

1940s than at other points in the mid-century decades. In the middle of such a lethal activity as a world war, mere prison experiments, especially ones to which the convicts would purportedly not be antagonistic, might have appeared fairly anodyne. Still, individuals like Topping did not, of course, owe their pro-experiment sensibilities merely to wartime dynamics. Since the 1980s, historical scholarship has alerted many Canadians to experiments engendered by other figures' scientific or social-scientific explorations in the 1940s or 1950s. Canadian experiments in the 1940s put some Aboriginal persons in position to avail themselves of more vitamins or more substantial food than the minimal kinds than certain other penurious Aboriginals possessed, so that scientists could probe the patterns of health or unhealth that might emerge.¹⁶⁸ Some of Ewan Cameron's psychiatric endeavours with ill individuals in 1950s Montreal involved "psychic driving"—a practice sufficiently comparable to certain aspects of "mind control" that the CIA decided to do its part to put Cameron in monetary position to pursue this kind of experimental activity.¹⁶⁹ And Topping, at least, remained a fan of the prison-experimentation idea even in the sixties and early seventies.¹⁷⁰

In any case, raising the subject of prison experimentation does not appear to have struck reformers as too embarrassing in the 1940s. The 1949 Canadian Penal Congress helped to familiarize a few reformers with the perspective of Sanford Bates, thanks to this key American penal figure's presentation during the symposium. Bates had had a long

¹⁶⁸ See Ian Mosby, "Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952," *Histoire sociale/Social History* 46, no. 91 (May 2013): 145-172, <http://muse.jhu.edu/journals/his/summary/v046/46.91.mosby.html>.

¹⁶⁹ See Anne Collins, *In the Sleep Room: The Story of the CIA Brainwashing Experiments in Canada* (Toronto: Lester & Orpen Dennys, 1988), especially chapter 8 ("mind control" on 137, for example).

¹⁷⁰ See Topping to Arnold Edinborough, September 21, 1966; Topping to Jim Hackler, August 6, 1970; and Topping to Andre [sic] Normandeau, August 29, 1970, in Topping fonds, Box 4, File 4-15 (Folder 2): "[Correspondence and clippings] 1960-72," UBCA.

while to hone his perspective on carceral matters, due to his work as kingpin of Massachusetts' Department of Correction in the 1920s, his subsequent captaincy of the federal Bureau of Prisons, and his current position as New Jersey's Commissioner of Institutions and Agencies.¹⁷¹ Near the end of his speech, Bates provided evidence that the United States had gotten a little medical mileage out of some of its prisoners. The authorities had explored certain anti-encephalitis and anti-jaundice vaccines or measures—vaccines or methods recently employed for U.S. servicemen—partly by means of the inoculations that certain prisoners in New Jersey had obtained, inoculations through which these admirable convicts had allowed “experimentation on themselves,” and had thereby enabled the medical substances or methods in question to be assessed and honed. Bates also noted that the Red Cross had received very large amounts of blood from certain New York inmates during World War II.¹⁷²

Bates' positive portrayal of such initiatives and of prisoners' wartime behaviour addressed a consideration partly comparable to those which Topping had invoked. As Bates portrayed it, a great deal of ability to labour had been displayed by prisoners in the United States, at least by those offenders involved in war-linked manufacturing, as the country made the Second World War one of its major pursuits. “[H]elp[ing] their country win” had seemingly provided a significant degree of fulfillment for these inmates.¹⁷³ In addition, however, Bates' discussion suggested that the labour or medical initiatives in

¹⁷¹ See *Who's Who in America, Vol. 27: 1952-1953* (Chicago: A.N. Marquis Company, 1952), s.v. “Bates, Sanford”; see Trent Shotwell, finding aid for Sanford Bates Collection, 1906-1972, Thomason Special Collections & SHSU University Archives, <https://archon.shsu.edu/?p=collections/findingaid&id=2&q=>.

¹⁷² See Sanford Bates, “Parole -- An Essential of Treatment,” in *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949* (Toronto: Canadian Penal Association, [1949]), 56-57 (quote on 56).

¹⁷³ See *ibid.*, 56.

which prisoners had done their part involved an important retributive dynamic. “If there is any single thing,” suggested the American leader, “... that will give a lasting change in direction of a prisoner’s conduct, it is the feeling that prison or reformatory has given him a chance to pay back or repay us some of the damage that he has done.”¹⁷⁴ Indeed, after mentioning prisoners’ provision of blood, Bates noted that an inmate “[ha]s got in his veins something that will help him requite his sins.”¹⁷⁵ Bates (a Unitarian) may or may not have been trying to evoke a religious idea through this comment.¹⁷⁶ But the potency of such wording for him and his listeners probably stemmed at least in part from the fact that they, like so many of their forbears, had been influenced by the Christian representation of Christ’s crucifixion, the leading source in Western culture of the association between relinquished blood and pardon for wrongdoing. Whatever Bates’ intentions, his verbal imagery hints at the long absorption of Christian narrative into Western culture—and also at the potential to forget exactly whose veins had supplied the blood that permitted this kind of atoning payment. Initiatives involving prison experiments or employing bodily substances which convicts had provided might win some degree of credit in light of their seemingly scientific flavour; but retributive and possibly religious sensibilities could also make an individual more inclined to evaluate such initiatives positively.

Topping’s rhetoric, though, testified to his positivist mentality, rather than to any sensibilities of his that would encourage retribution. In contrast to Bates’ speech,

¹⁷⁴ Ibid., 57.

¹⁷⁵ Ibid., 56.

¹⁷⁶ See *Who’s Who in America, Vol. 27: 1952-1953* (Chicago: A.N. Marquis Company, 1952), s.v. “Bates, Sanford.”

Topping's 1943 article on experiments seems to have been devoid of retributive ideas. Perhaps the retributive notions that he had employed at Kingston Gaol subsequent to the First World War—the ones which suggested that prisoners' incarceration served to make them “square with society,” “entitl[ing]” them “to look the world in the face again”¹⁷⁷—would have still deserved his endorsement more than prison experiments did. But at this point he was much more enamoured with “scientific” possibilities. In the course of a 1948 article, Topping suggested that quite possibly, after another five decades, “scientists will have identified and immunized a very high percentage of such persons as are suspected of being dangerous criminals.”¹⁷⁸ If such advantageous changes might stem from scientific pursuits, then a reformer might well find himself inclined to suppose that experiments or other such initiatives would have at least a little appeal for prisoners as well.

Pre/Modern Ethics and Interests: a Reflection

As penal reformers saw it, their proposals would make for both more astute incapacitative tactics and more adept rehabilitative activity—for measures in which both offenders and non-criminals might perceive an upside. In David Rothman's telling, this type of viewpoint received the support of many educated voices in the early-twentieth-century United States partly as a result of “their underlying Progressive belief in a harmony of

¹⁷⁷ See C.W. Topping, “Ontario Gaol Theory Illustrated by Kingston Gaol Practice” (undated [ca. mid-1920s]), p. 90, in Topping fonds, Box 1, File 1-1: “The Jail at Kingston, Canada, 1922,” UBCA.

¹⁷⁸ C.W. Topping, “Saintly Faces Easily Hide Dangerous Criminals,” *Saturday Night*, November 13, 1948, p. 27.

interests within American society.”¹⁷⁹ The way in which a reformer like Lavell sized up convicts’ and non-criminals’ interests probably did stem to some degree from the Progressive-flavoured thought patterns to which many educated North Americans gravitated in the first few decades of the century. On the other hand, maybe we would do well to mull over the reformers’ mentality in light of much more than just the stance of other twentieth-century American or British citizens.

Thought patterns which suggest that “a harmony of interests” obtains in society have also appealed to thinkers from eras other than the eighteenth-to-twentieth-century period most frequently associated with “modernity.” Indeed, in light of virtue ethicist Alasdair MacIntyre’s portrayal, it would seem that people displaying modern mind-sets might *less* readily perceive such harmony—partly *because of* their strong attunement to such concepts as “interests” or “rights.”¹⁸⁰ In the modern West, ethical thinkers have tended to suppose that there are many situations in which an individual who goes ahead with an action to which she is attracted, and which would in itself be quite appropriate, will thereby squelch or decrease someone else’s ability to perform a (likewise appropriate) action for which he has a hankering. From such thinkers’ standpoint, it is worthwhile to ponder ethical issues largely because it will enable us to deal with these instances in which we find ourselves at loggerheads with one another.¹⁸¹ Thanks in part

¹⁷⁹ See Rothman, *Conscience and Convenience*, 10, 115 (quoted phrase), 144, 225, 385-386, 419-421 (Rothman opts for terms like “incapacitation,” “rehabilitation,” or their cognates on, for example, 144, 385-386).

¹⁸⁰ See Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry: Encyclopaedia, Genealogy, and Tradition: Being Gifford Lectures Delivered in the University of Edinburgh in 1988* (Notre Dame, IN: University of Notre Dame Press, 1990), 182-185. Perhaps only some of the interpretation for which I am opting via my possibly exaggerated suggestions in this paragraph aligns with the portrayal which MacIntyre’s book champions, or with notions to which he would subscribe.

¹⁸¹ See also *ibid.*, 183, 185-187.

to assumptions like these, the moral claims of modern Western intellectuals have tended to highlight concepts like “interests” and “rights.”¹⁸² And these sorts of ethical concepts have provided nourishment for such a mind-set concerning the “competing interests” in human societies, to resort to a commonplace phrase.¹⁸³ By contrast, MacIntyre’s analysis implies that certain premodern ethical mentalities, such as the kind to which the denizens of Hawaii adhered prior to the 1780s, or the kind encouraged by medieval theologian Thomas Aquinas, would not have fostered that sort of dynamic to quite as significant a degree. As such people saw it, morally substantial activity did not stem primarily from the viewpoints for which persons had opted as individuals, nor from the task of ensuring that these various individuals would seldom butt heads due to the interests generated by their respective viewpoints. Instead, ethically meaningful activities, hopes, and imperatives sprang from the perspective provided by the society in question, especially the perspective associated with the particular niches that each person in that society had obtained. This type of perspective implied that morally robust practices in such a society would make for the augmentation of everyone’s “good.” And since such a worldview did not construe people’s interests as stemming from just any aims on which individuals themselves might be keen, people who subscribed to it would end up being less likely to

¹⁸² To take a run-of-the-mill example that highlights “interests,” see Mark Mercer, “It’s Not the Abortion Part of Sex-Selection that Should Concern Us,” *Ottawa Citizen*, April 3, 2013, <http://www2.canada.com/ottawacitizen/news/archives/story.html?id=dd4d6d86-10b3-431e-93af-a870a152dcde>.

¹⁸³ Apropos of my last sentence, MacIntyre gives voice to the view that “[r]ights are claimed *against* some other person or persons; they are invoked when and insofar as those others appear as threats”—MacIntyre, *Three Rival Versions of Moral Enquiry*, 185.

assume that their society's inhabitants would often find themselves tussling because of "competing interests."¹⁸⁴

In light of such considerations, early-to-mid-twentieth-century penal reformers' mind-set might well qualify as *less* reflective of modernity than Rothman's book itself would. Admittedly, certain components of reformers' views, such as their claims about major scientific possibilities, or their assumption that criminal justice "could satisfy all goals,"¹⁸⁵ might seem slightly evocative of the ethos by which the "high modernism" of the interwar and mid-century years was nourished. And Rothman shares the tendency of various late-twentieth-century thinkers to suggest that a high-modernist mind-set possessed much less merit than it was cracked up to have.¹⁸⁶ But the issues on which the preceding paragraph touches, especially those regarding the modern attunement to "competing interests," help to make the modernity of Rothman's perspective more apparent. It would seem that, in his opinion, the interests of respective citizens or sets of people can by no means claim such full alignment as the Progressives supposed. And in general, his study exhibits the sensibilities of the 1970s—an interval during which people who upbraided the state for its penal habits became more likely than in previous periods to highlight convicts' "rights."¹⁸⁷ In those respects, at least, Rothman himself is more strongly given to modern ethical viewpoints than were reformers in the first half of the century.

¹⁸⁴ See *ibid.*, 178-195, especially 183-185, 191-193. (Although I employ quotation marks with "competing interests," I am not suggesting that MacIntyre necessarily avails himself of this phrase anywhere in his discussion.)

¹⁸⁵ The quoted wording is a phrase that Rothman penned (I have de-italicized "all")—Rothman, *Conscience and Convenience*, 10.

¹⁸⁶ For one discussion of high modernism, see James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT: Yale University Press, 1998), including 4-6.

¹⁸⁷ See Garland, *Culture of Control*, 55-57; see also Strange, introduction to *Qualities of Mercy*, 12-13.

“Conflictual” construals of social existence appeal, of course, to many academics—sometimes to left-liberals like Rothman, and more often to thoroughly leftist scholars.¹⁸⁸ But perhaps the reformers’ non-conflictual interpretation should not receive a wholly negative evaluation. If they had highlighted more fully conflictual motifs as they discussed offenders’ and non-criminals’ respective viewpoints, interests, and attributes, then their commentary would probably, if anything, have made Canadians more inclined to conclude that convicts’ interests ought to go by the board. The rhetoric to which the reformers did in fact resort may well have provided at least a little momentum to policies more tolerable for offenders than the measures which would have emerged if commentators had not suggested that “a harmony of interests” obtained.

In any case, the facet of reformist thinking which this chapter has examined centred upon more than merely the assumption that *different people’s* interests would not require the citizens in question to butt heads with one another. Reformist rhetoric also implied, more generally, that both the interests which Canadians *themselves* possessed, on the one hand, and their ethical sensibilities, on the other, could serve as major, simultaneous ingredients in the penal viewpoint that these citizens would do well to adopt. An individual’s determination to treat her interests as a vital consideration would certainly not rule out the possibility of abiding by her ethical commitments as well as she ascertained which penal ideas she was of a mind to promote. And society’s interests, implied reformers, would tend to gain particularly strong sustenance from initiatives

¹⁸⁸ See Donald Fyson’s remarks about “conflictual” construals, in Fyson, *Magistrates, Police, and People*, 185-186, 405 n. 6 (references obtained through a Google Books search).

which a large portion of the citizenry also perceived as morally noble.¹⁸⁹ As suggested by Rothman's portrayal, reformers' construal of penal matters tended to create the impression that relatively little "[in]convenience" would stem from attunement to "conscience."

Obviously, that sort of viewpoint concerning interests and ethics had possessed significant appeal for plenty of people well before the twentieth century too.¹⁹⁰ We can remind ourselves of this with a few reflections about two utterly non-Canadian figures—reflections which, perhaps oddly, highlight a little of historian Quentin Skinner's analysis concerning the Renaissance Florentine thinker Niccolò Machiavelli and the writer and senator Marcus Cicero from ancient republican Rome.

As some see it, an outlook in many respects evocative of modern mind-sets was conveyed in Machiavelli's writing, an outlook that few if any earlier thinkers had championed.¹⁹¹ Admittedly, in Skinner's construal, classical thought left a major imprint on Machiavelli's intellectual endeavours. Still, according to Skinner, the type of viewpoint promulgated by classical figures like Cicero—a perspective quite familiar to many of Machiavelli's readers—threw Machiavelli's arguments in *The Prince* into relief, a fact that the latter thinker perceived as rhetorically advantageous.¹⁹² Cicero had created the impression that the experiences which morally noble people would tend to encounter could claim a major upside, on more than just an ethical level.¹⁹³ He had noted the

¹⁸⁹ See Rothman, *Conscience and Convenience*, 213; see also 10.

¹⁹⁰ See, for instance, MacIntyre, *Three Rival Versions of Moral Enquiry*, 174.

¹⁹¹ For one article that perhaps implies this kind of perception of Machiavelli, see Harvey C. Mansfield, "Self-Interest Rightly Understood," *Political Theory* 23, no. 1 (Feb., 1995): 50-52.

¹⁹² See Quentin Skinner, *Machiavelli* (Oxford: Oxford University Press, 1981), especially v, 28-30, 34-37, 40, 43-47.

¹⁹³ See *ibid.*, 34-37.

widespread assumption “that a thing may be morally right without being expedient, and expedient without being morally right.” But from Cicero’s standpoint, “[n]o more pernicious doctrine than this could be introduced into human life.” To hear him tell it, “it is only by moral character and righteousness, not by dishonesty and craftiness, that [people] may attain to the objects of their desires.” By his lights, “expediency can never conflict with moral rectitude.”¹⁹⁴ In Machiavelli’s view, by contrast, a number of the putatively virtuous attributes on which figures like Cicero had been keen actually possessed a strong ability to hamper a governing figure’s efforts. A prince’s determination to strengthen the state in which he functioned as kingpin might therefore make him quite aware of the value of refraining from excessive devotion to such attributes.¹⁹⁵

On the whole, Machiavelli’s mind-set may well claim more affinity with modernity than Cicero’s classical perspective can. Be that as it may, twentieth-century Canadian reformers gravitated toward an outlook more like Cicero’s than like this particular component of the early-modern Florentine’s thought. And other voices in ancient periods also seemed to suggest that the scenarios which tend to kick in thanks to ethical conduct do turn out to be rather attractive. The Israelites found themselves enjoined to “walk in all the ways which the LORD your God hath commanded you, that ye may live, and that it may be well with you, and that ye may prolong your days in the land

¹⁹⁴ Cicero, *De Officiis*, trans. Walter Miller (London: William Heinemann, 1913), 2.3.9-10, 3.3.11 (pp. 177-179, 279). Some of these statements of Cicero’s are also quoted by Skinner, in *Machiavelli*, 36 (see also 91). It was thanks to Skinner’s book that I became aware of these quotations.

¹⁹⁵ See Skinner, *Machiavelli*, 21-47, 54-55, especially 36-40, 44-47, 54-55.

which ye shall possess.”¹⁹⁶ It is admittedly odd to invoke Machiavelli, Cicero, and the Torah in a dissertation which is sizing up one element of twentieth-century Canadian thought. But highlighting this one (rough) parallel between the perspective of ancient thinkers, on the one hand, and of relatively recent Canadians, on the other, draws attention to the fact that the penal reformers’ outlook regarding interests and ethics amounts to more than merely an idiosyncrasy of theirs, and more than just a widespread mentality that Western modernity has generated. And if we avail ourselves of the metaphorical mirror for a moment, we will probably find that we too have a little more affinity for the reformers’ outlook than might have been apparent before now. Present-day citizens who endorse a commitment to a particular ethical notion—that the inhabitants of a nation ought to ensure state personnel refrain from torturing “terrorists,” for instance—tend to assume that maintaining this commitment will end up making life more fulfilling. Few suppose that the ethical sensibilities which they themselves promote will engender the types of practices that would turn out to saddle society with untenable financial realities or with more irksome social patterns than are currently familiar.

Rothman looks askance at the reformers’ tendency to interpret both incapacitative measures and rehabilitative pursuits as tactics in which the penal authorities could major. More generally, he takes issue with their supposition that “innovations could satisfy all goals.” In his opinion, such ideas proved deleterious especially because of the coercion in which this outlook tended to eventuate.¹⁹⁷ Certain pivotal realities pertaining to penal

¹⁹⁶ Deuteronomy 5:33. Similarly, see Deuteronomy 4:40, 5:16, 5:29, 6:3, 12:25, 19:13. See also Scott B. Rae, *Moral Choices: An Introduction to Ethics*, 2nd ed. (Grand Rapids, MI: Zondervan, 2000), 20.

¹⁹⁷ See Rothman, *Conscience and Convenience*, 10 (quoted phrase [I have de-italicized “all”]), 124-125, 144, 193, 235, 385-386, 419-421.

affairs have dawned upon many of us much more fully because of works like Rothman's. Analyses of this sort provide a reminder that no tactics, not even highly astute ones, will "solv[e] the crime problem."¹⁹⁸ C.W. Topping's references to euthanasia or ruminations about experiments highlight the degree to which coercive initiatives can occasionally appeal to a positivist reformer, provided that "science" will thereby rule more of the correctional roost. Yet writers like Rothman reveal that far more coercion has stemmed from garden-variety penal practices, sometimes from non-carceral measures, but especially from imprisonment—run-of-the-mill practices that quite a few people construe as acceptable partly by invoking the rehabilitative strategy which the authorities may perhaps maintain. Still, if our evaluation of the reformers' mind-set were to revolve around only those issues, we might not highlight one key facet of twentieth-century penal reform that should be discussed in a chapter like this—namely, that the reformers' stance could spawn quasi-compassionate ideas. Nor would we sufficiently mull over an associated question concerning ethics and interests more generally, a question that could well be voiced right now, rather than merely in the 1940s, in ancient Rome's republican era, or in some other bygone period: If we opt for ethically laudable practices, will those practices and our interests end up exhibiting any consonance?

As has been contended in certain parts of this chapter, reformers' construal of their proposals as protective with respect to non-criminals and rehabilitative with respect to offenders eventuated in more than just coercive practices. It also lent itself to commentary in which compassionate policies, or at least humane policies, were

¹⁹⁸ For the quoted phrase, see Topping's claim about "[t]he new penology": "where it is taken seriously, it solves the crime problem"—Topping, *Crime and You*, 1.

encouraged. Admittedly, the postwar decades did not bestow such a strongly rehabilitative flavour on prisons themselves as on the discourse that Canadian commentators or authorities adopted during those years.¹⁹⁹ If reformers had not been so given to the mind-set due to which they perceived rehabilitation as possessing an instrumentalist upside, then perhaps they would have had recourse to more straightforward arguments that championed a humane ethos itself. And perhaps as much or more genuine rehabilitative activity would have ended up being sparked by such means. On the other hand, perhaps mid-century criminal justice would have turned out to major much more strongly in non-rehabilitative measures if reformers had not been inclined to instrumentalize humaneness, and to suggest that rehabilitative practices would be the most likely to make for the evaporation of at least a little of the country's crime. In either case, the kind of proposals of which compassionate citizens would tend to be supportive did at least receive a good deal of affirmation in mid-century commentary as a result of the sorts of assumptions to which reformers subscribed.

And would our evaluation of the more general issue suggest that we have optimal grounds for promoting policies that strike us as ethical? In criminal justice, in other governmental pursuits, or in human activities more generally, can morally admirable practices, on the one hand, and our interests, on the other, usually claim any strong alignment? Or will we find, by contrast, that commitment to ethical policies will end up increasing the likelihood that our bank balances will no longer be robust, or that we might get a taste of a lawbreaker's miscreant behaviour? In light of such questions, perhaps some advocates might actually end up claiming that certain morally crucial measures to

¹⁹⁹ See Marr, "A Series of Nasty Situations."

modify the penal system *would* allow crime to develop more momentum, but that those ethically admirable initiatives nevertheless ought to obtain our allegiance, regardless of the irksomeness of the more frequent offences thereby generated. The moxie of such an argument might at least intrigue listeners, even if few of them would be eager to try out the measures in question. But more of us, I suspect, would end up opting for the assumption that if a halt is called to unjust or draconian or exclusionary penal measures, then matters will be as or more likely to “go well with [our society].”²⁰⁰ In that sense, perhaps early-to-mid-century penal reformers would still have a good deal of company in Canada.

These reformers may well have been enamoured with too many major rehabilitative or incapacitative objectives, some of which we might not consider to have been morally pressing. In light of such objectives’ non-urgency, perhaps such reformers ought not to have gravitated as readily toward the supposition that criminal justice “could satisfy all goals.”²⁰¹ But we admire people who put in a good word for genuinely crucial ethical aims and for truly urgent interests. We can even admire citizens who display an inclination to promote both of these simultaneously. If our society were wholly devoid of the latter kind of people, we would probably end up wanting to emigrate.

²⁰⁰ For the quoted phrase, see Deuteronomy 4:40, 12:25, 19:13. Admittedly, it might seem a little incongruous for me to opt for this phrase in a sentence that is partly discussing the perspective of people who take issue with “draconian” or “exclusionary” punishments, since Deuteronomy 19:11-13 states: “But if any man hate his neighbour, and lie in wait for him, and rise up against him, and smite him mortally that he die, and fleeth into one of these cities: Then the elders of his city shall send and fetch him thence, and deliver him into the hand of the avenger of blood, that he may die. Thine eye shall not pity him, but thou shalt put away the guilt of innocent blood from Israel, that it may go well with thee.”

²⁰¹ The quoted wording is a phrase that Rothman penned (I have de-italicized “all”)—Rothman, *Conscience and Convenience*, 10.

Chapter 5

Uncoerced Excellence: Educational Strategies, Postwar Reform in Federal Corrections, and the Ethical Perspective of Joseph McCulley

As Commissioner of Penitentiaries Ralph Gibson saw it in late 1946 and early 1947, Canadian penal activity would be stronger if he could identify another key managerial figure or two for the Penitentiaries Branch to hire. Alex Edmison pointed out one option. Edmison, a lawyer who had chimed in with reformist arguments in Montreal during the 1930s, was now singing the reformist tune primarily in the province to the west, an activity facilitated by his current employment as the Executive Secretary for the Prisoners' Rehabilitation Society of Toronto. In his view, the penitentiaries might gain some propulsion from a certain individual not known as a penal figure. According to Edmison, the "thoroughly delightful personality" in question, Joseph McCulley, "is six feet three inches in height and is commanding in more ways than in his appearance!"¹

The reformist initiatives with which Gibson sallied forth in the late forties and early fifties tended to be roughly comparable to the type of possibilities championed in the Archambault Report.² Admittedly, Gibson's captaincy of the Penitentiaries Branch did not itself align fully with the perspective articulated in the report, since the authors had wanted the shots to be called by a three-person commission rather than by one chief

¹ See [J. Alex Edmison] to Ralph Gibson, January 8, 1947, in John Howard Society of Ontario fonds, F 846, container B252906, File titled "Department of Justice – Commissioner (1946 to 1953)," Archives of Ontario; see also, in the same file, Ralph B. Gibson to Edmison, January 4, 1947. On Edmison's efforts in the thirties, see, for example, Edmison and Turner, "Canada's Prison Shame," 5.

² See R.B. Gibson, "What's Happening in Our Penitentiaries?" *Saturday Night*, October 25, 1952, pp. 9, 29-30; see also Pierre Jutras, interview with Joan Nuffield, 1978, "Correctional Service of Canada Oral History Project: Jutras, Pierre – Interview," sound recording, consulted via compact disc (consultation copy) 135275-1989-033-010-s1, at 23:00-23:20, in RG73, accession number 1989-0337, item number (ISN) 135275, LAC.

figure.³ By the fall of 1947, however, Gibson was able to draw upon the input of a pair of Deputy Commissioners. The matters addressed by Deputy Commissioner Dr. Louis-Philippe Gendreau pertained to psychiatric work, medical requirements, research, and so forth. Education-related affairs, on the other hand, would find themselves on the receiving end of the reformist energy of Senior Deputy Commissioner Joseph McCulley.⁴

Discussions of twentieth-century penal perspective have sometimes characterized correctional viewpoints between the late 1940s and the late 1960s as exhibiting an affinity for “the medical model,” a perspective which suggested that offenders and correctional initiatives have something in common with ailing persons and with medical “treatment,” respectively.⁵ Medical motifs certainly did leave an imprint on postwar construals of penal possibilities.⁶ But a good deal of mid-century penal commentary also identified educational dynamics in correctional activity. In 1946, for instance, a genre of incarceration that would “protect society by re-educating reformable prisoners in better ways of citizenship” struck the Saskatchewan Penal Commission as meritorious.⁷ Moreover, during the late forties and early fifties, reformist possibilities found themselves championed more eagerly by the educational bigwig, Joseph McCulley, than by any of the other main figures in the Penitentiaries Branch. Admittedly, McCulley’s job in the

³ See Archambault Report, 354.

⁴ See Canada, *Annual Report of the Commissioner of Penitentiaries for the Fiscal Year Ended March 31, 1948* (Ottawa: Queen’s Printer, 1949), 7-8.

⁵ See Ekstedt and Griffiths, *Corrections in Canada*, 52-55.

⁶ See, for example, “Recent Trends in Penal Reform in Canada”: An address by Joseph McCulley, M.A., Warden, Hart House, University of Toronto—formerly Deputy Commissioner of Penitentiaries for Canada (1947-1952),” p. 3, in Joseph McCulley fonds (hereafter McCulley fonds), B92-0013, Box 9, File 16: “Speeches – Committees’ Dinners, 1953-1965 [1],” University of Toronto Archives (hereafter UTA).

⁷ See *Report of the Saskatchewan Penal Commission* (n.p.: 1946), 2. This remark in the report was also pointed out on at least one occasion that year by Edmison—see J. Alex. Edmison, “General Penal Situation in Canada,” in *Fourth Canadian Penal Congress, Windsor, Ontario, Proceedings, Sec. 1 & 2* (Montreal: Canadian Penal Association, [1946]), Sec. 1, p. 7.

penitentiary bureaucracy ended up being only a five-year affair. After mid-1952, he would make his living at the University of Toronto, which had been in need, quite fittingly, of a “warden” for Hart House.⁸ From a number of observers’ perspective, however, a good deal of reformist energy had pulsed within the penitentiary system during that five-year period because of McCulley’s efforts.⁹ In the late 1970s, one individual who had numbered among the federal prison staffers working in the mid-century decades described McCulley as “a real pusher, a real dynamo,” who had “started many, many new programs.”¹⁰ In Chapter 3, we became conversant with some of the events due to which the Archambault Commission materialized. Chapters 3 and 4 each familiarized us with a few of the ideas to which the commission had recourse. In this chapter, we will be apprised of some of the postwar reformist measures of the Canadian authorities—measures that observers expected partly because of the Archambault Report¹¹—as we zero in on the penal, educational, and ethical ideas of the “dynamo” McCulley.

Although this analysis will eventually outline some of McCulley’s efforts in the postwar prison system itself, interwar affairs will hog the limelight in the first two thirds of the chapter. Prior to 1947, McCulley’s career had kept him busy for twenty years in

⁸ See Alan G.A. Stephen to Joseph McCulley, June 4, 1952, and Jos. McCulley to Alan G.A. Stephen, June 18, 1952, in McCulley fonds, B92-0013, Box 6, File 14: “Personal, J. McCulley, Re Hart House,” UTA; see “McCulley, Joseph,” in *Who’s Who in Canada, 1964-65* (Toronto: International Press, 1964), 951-952.

⁹ See, for example, J.A. Edmison to Joseph McCulley, June 3, 1952, and other letters in McCulley fonds, B92-0013, Box 6, File 14: “Personal, J. McCulley, Re Hart House,” UTA; see C.W. Topping to Joseph McCulley, July 12, 1952, in McCulley fonds, B92-0013, Box 5, File 14: “Personal, Mr. McCulley,” UTA.

¹⁰ Pierre Jutras, statement in interview with Joan Nuffield, 1978, in “Correctional Service of Canada Oral History Project: Jutras, Pierre – Interview,” sound recording, consulted via compact disc (consultation copy) 135275-1989-033-010-s1, at 23:40-24:35, in RG73, accession number 1989-0337, item number (ISN) 135275, LAC.

¹¹ See Joseph McCulley, “No Final Answer,” undated speech [ca. 1951], p. 1, in McCulley fonds, B92-0013, Box 4, File titled “Speeches by J. McC.,” UTA.

Newmarket, Ontario, at a boys' boarding school named Pickering College. The ideas and assumptions of which this headmaster had proved fond during those two decades served as significant ingredients in the perspective to which he adhered in the postwar years when he was beavering away in corrections. An explication of a number of his statements pertaining to education, religion, or social realities in the interwar years and the early 1940s will provide a fuller sense of his mind-set, especially of his ethical viewpoint.

In both the interwar and the postwar periods, McCulley proved particularly keen on the idea that (to use commonplace language) every individual mattered immensely, as greatly as every other person—a notion for which both his religious ideas and his political assumptions provided validation.¹² An analysis of his ethical assumptions will allow us to zero in on two other motifs as well. For one thing, he readily chimed in with remarks in favour of ethical excellence.¹³ Secondly, he looked askance at coercive or “repressive” customs or ideas. His perspective on these two fronts throws the viewpoint of late-twentieth- or early-twenty-first-century Canadians into relief. Quite a few citizens now tend to suppose that efforts to champion moral excellence will often end up allowing slightly coercive or repressive dynamics to materialize. McCulley's statements, however, implied that non-coercion or non-repression could serve, in a sense, as techniques,

¹² For a document in which McCulley suggested that some people's “lives have mattered little, if at all,” see [Joseph McCulley], “Neither Hot nor Cold,” pp. 8-9, in McCulley fonds, B92-0013, Box 5, File 12, untitled, UTA. This comment of his referred to a different sort of “matter[ing]” than my statement above does; further discussion in the rest of this chapter will touch upon both types.

¹³ In mid-2010, I selected the term “excellence” as a serviceable word with which to identify the motif that this chapter would discuss. I gravitated toward this word thanks in part to Mark Kingwell's discussion of excellence in a lecture shortly before this point—Mark Kingwell, “Democracy's Gift: Politics, Anxiety, and Hope in the Twenty-First Century” (lecture, Congress of the Humanities and Social Sciences, Montreal, QC, June 1, 2010).

techniques that might warm people up to perspectives or practices that would align with excellence. By no means, though, did the quasi-technique of non-coercion enamour him only because of the moral excellence it could generate. In fact, this latter outcome may have appealed to him partly because of the attractive technique which it seemingly tended to validate. McCulley, in short, was as enchanted by tactics like non-coercion, non-repression, and “human kindness” as he was by objectives like moral excellence or offender reformation.¹⁴

Christianity, Education, and Camp Ahmek

Christianity left its imprint even on Joe McCulley’s two-week-long diary in the early summer of 1917. The seventeen-year-old’s brief daily remarks not only mentioned pals or events, but also listed the reference of a biblical morsel which he had scanned on that particular day. On June 9, he opted for New Testament language in a remark about the first Psalm: “Psalm 1. The contrast between the broad path that leadeth to destruction and the strait and narrow path that leadeth to everlasting life[.] God grant me strength to enter in at the strait gate.”¹⁵

Words like these might suggest that McCulley would tend to see moral excellence as incumbent upon himself. An essay which he hammered out on an undergraduate basis during his University of Toronto schooling in the early-to-mid 1920s, on the other hand,

¹⁴ For the phrase “human kindness,” see Joseph McCulley, “A Canadian Correctional Treatment Plan: Objectives,” in *Proceedings of the Canadian Penal Association, Held in Conjunction with the American Prison Association, King Edward Hotel, Toronto, October 15 and 16, 1953* (Toronto: Canadian Penal Association, n.d.), p. (3).

¹⁵ See McCulley’s diary for June 1-12, 1917, especially the entry for June 9, in McCulley fonds, B92-0013, Box 12, File titled “Clipping [sic] re J. McCullough [sic],” UTA. Cf. Matthew 7:13-14. For McCulley’s date of birth (April 28, 1900), see his birth certificate in McCulley fonds, B92-0013, Box 2, File titled “McCulley, Joseph. Birth Certificate,” UTA.

allowed him to opt for anti-repressive notions pertaining to religious issues.¹⁶ Although a chief Canadian psychiatric thinker like Clarence Farrar tended to look askance at Freudian arguments,¹⁷ at least a few other highly educated interwar citizens toyed with or bought into such ideas more readily.¹⁸ This more positive perception of certain Freudian-flavoured notions surfaced in a twenty-three-page paper of McCulley's, "Psycho-Analysis and Religion." Among other things, the essay suggested that the kind of viewpoint to which the Apostle Paul had subscribed qualified as "repressive." Jesus' outlook, on the other hand, proved consonant with "a religion of expression not repression." While touching upon a few of the occurrences of which Paul's endeavours and outlook were reflective, and upon a few of the particular perspectives of which he had supposedly proved supportive, the paper made little reference to specific statements of Jesus'—which probably facilitated McCulley's rather unpersuasive characterization of the two figures' dissimilarities. In any case, McCulley frowned upon "repressive" responses to "natural instinct." "[S]ublimat[ion]," however, struck him as affirmable. To hear him tell it, "religious leaders" in the twentieth century "should recognize that the conviction of sin is not due to a primal fall but to inner conflict," and "should endeavour to make conversion a complete, scientific process of regeneration leaving no stone unturned to get to the roots of the psychic disturbance. They should preach not a gospel of repression but one of

¹⁶ Regarding McCulley's University of Toronto undergraduate work, see McCulley's Curriculum Vitae, in McCulley fonds, B92-0013, Box 5, File 16: "J. McCulley, Personal," UTA. Thanks to a Massey Fellowship, McCulley subsequently hobnobbed with inhabitants of the mother country as an Oxford University student between 1924 and 1926—see *ibid.*, and D.W.B., "Joe of Pickering College," *Vancouver Province*, November 27, 1932, p. 2 of magazine section.

¹⁷ See Shorter, "C.B. Farrar," 86-87, 89; see Edward Shorter, "The Recent Revolution in the History of Psychiatry," in *TPH: History and Memories of the Toronto Psychiatric Hospital, 1925-1966*, ed. Edward Shorter (Toronto: Wall & Emerson, 1996), 14-15.

¹⁸ Concerning educated interwar Americans, see Ann Douglas, *Terrible Honesty*, 21, 27-28.

expression, not Paul but Christ.” Moreover, “[t]hey must realize that their true function is to *sublimate* man’s instincts and desires not by the mystic process of conversion but by the complete and harmonious socialization of the individual with the world in which he lives.”¹⁹

Inhabiting a Presbyterian clergyman’s household as a boy and teenager familiarized Alex Edmison too with a mind-set that valorized ethical excellence.²⁰ As a nineteen-year-old, Edmison embarked on a minor political pursuit, via the Toronto Boys’ Council mayoral election of January 1923. An advertisement highlighting this candidate’s merits employed a picture of Edmison and the assertion that “He stands for SERVICE above SELF on all underprivileged boy questions—believes ACTIONS speak louder than words.” Edmison’s tank top and boots in the picture implied not primarily that he was conversant with church matters, but rather that he gravitated toward open-air pursuits, especially those related to camping.²¹ The friendship that McCulley and Edmison would share grew substantial partly because they both belonged, in the early-to-mid-1920s, to the staff of Camp Ahmek, the camp that allowed Taylor Statten to spice up many boys’ summers with a number of days in Algonquin Park. Statten, a figure with whom many Ontarian boys had crossed paths via YMCA events in the first two decades

¹⁹ See Jos[eph] McCulley, “Psycho-Analysis and Religion,” pp. 17-19, 22-23 (quotations on 17, 19, 22-23, emphasis in original), in McCulley fonds, B92-0013, Box 4, File 17: “Theses (Philosophy & Psychology. Univ. Coll. 1924),” UTA.

²⁰ Regarding Edmison’s father, see clipping of “Edmison Is Mayor of Boys’ Council by Large Majority,” *The Globe*, January 16, 1923, from p. 23 of Scrapbook from 1920s, in Edmison fonds, Coll. 2330, Box 2, QUA.

²¹ See election advertisement for J. Alex. Edmison, in John Alexander Edmison fonds (hereafter Edmison fonds), Coll. 2330, Box 2, scrapbook from 1920s, p. 17, Queen’s University Archives (hereafter QUA); see, on p. 19 of the same scrapbook, the heading above and remark beneath another copy of the same picture of Edmison; and see, on p. 23 of the same scrapbook, clipping of “Edmison Is Mayor of Boys’ Council by Large Majority,” *The Globe*, January 16, 1923. For Edmison’s date of birth (November 12, 1903), see the entry for November 12 in his diary for 1943, in Edmison fonds, Coll. 2501, Box 6, small interior box titled “Overseas Diaries, 1941-1945,” QUA.

of the century, made Ahmek one of his signature endeavours after 1921.²² McCulley and Edmison each had two or more summers to help youngsters get into the swing of camp at Ahmek.²³ Both Edmison's mind-set concerning penal issues and McCulley's and Edmison's moral sensibilities would in one sense or another bear the scent of camp. In 1952, Edmison commented on the merits of the Ontario Reformatory, "an open type" correctional establishment in Brampton inhabited by certain young-adult convicts. "Doesn't all this remind you of a well-run and superbly equipped boys' summer camp?" he suggested.²⁴ On another occasion in the post-World War II period, McCulley enhanced one of his speeches with several lines that John Oxenham, an Australian writer, had penned:

To every man there openeth
A say and ways and a way.
The high soul climbs the high way
The low soul gropes the low
While in between on the misty flats
The rest drift to and fro
But to every man there openeth
A high way and a low
Every man decideth the way his soul must go.²⁵

²² See Sharon Yvonne Wall, "Making Modern Childhood, the Natural Way: Psychology, Mental Hygiene, and Progressive Education at Ontario Summer Camps, 1920-1955," *Historical Studies in Education* 20, no. 2 (Fall 2008): 76, 78, 81.

²³ See [Joe McCulley] to J. Alex. Edmison, January 6, 1947, in McCulley fonds, B92-0013, Box 5, File titled "Correspondence—Personal, Pickering College, E-G [1]," UTA; see "'Chief'" [Taylor Statten] to J. McCulley, March 4, 1925, Taylor Statten to Jos. McCulley, March 31, 1926, Chubby [George Chubb] to Jos. McCulley, June 15, 1926, and program for "Camp Ahmek, Algonquin Park, Complimentary Banquet, August 16, 1926," all in McCulley fonds, B92-0013, Box 2, File titled "Camp Ahmek 1925-26," UTA; see Alex Edmison, Daily Journal, 1954, entry for November 4, in Edmison fonds, Coll. 2501, Box 6, QUA.

²⁴ See "SOCIAL SCIENCE REPORTER – Canadian Crime and Criminals – J. Alex. Edmison, May 16th, 1950" (text for [radio?] broadcast), pp. 2-3, in Edmison fonds, A.Arch 5002.2, Box 15, File 10: "'Canadian crime and criminals' (*Social Science Reporter*, May 16, 1950)," QUA.

²⁵ See [Joseph McCulley], "Neither Hot nor Cold," pp. 8-9, in McCulley fonds, B92-0013, Box 5, File 12, untitled, UTA. McCulley wrote out these lines with the wording, capitalization, punctuation, and line breaks that appear in my paragraph above—for Oxenham's own version of this poem, see John Oxenham, *Selected Poems of John Oxenham* (Toronto: Ryerson Press, 1924), p. 23.

It would appear that these lines had been voiced relatively often at Camp Ahmek in the 1920s, due to Statten's fondness for the poem.²⁶ And during the decades subsequent to that point in the interwar era, both McCulley and Edmison would familiarize a number of other people with some portion of Oxenham's poem.²⁷ McCulley's diary in 1917 may have referred to "the strait and narrow path," but in the 1920s and following decades, he and Edmison would come to associate morality more with "the high way" than with a "narrow path," more with excellence than with a "strait gate."

A summer at Camp Ahmek might allow a staffer to become conversant not only with some of the poetry on which Statten was keen, but also with his educational strategies. Two typescripts in a file of McCulley's put us in position to sample part of the educational perspective that Statten championed by means of certain "Talks to Camp Counsellors." As Statten saw it, instructors or caregivers who attempted to become persuasive via "coercion" were barking up the wrong tree. They would get more mileage out of a strategy which would allow a student or child to perceive a given praiseworthy activity or attribute as "satisfying," so that he would actually end up gravitating toward it. Such an approach on an educator's part would lead students to sample the activity or stance in question, through which they would become familiar with the fulfillment it offered; and "practice" and "habit" would eventually generate a firm affinity for that type

²⁶ See Chas. E. Hendry and J. Alex. Edmison, compilers, *Companionable Thoughts, Volume II* (N.p.: 1925), p. [12], in Edmison fonds, Coll. 2501, Box 6, File titled "'Companiable [sic] Thoughts' [publication]," QUA.

²⁷ See the remark in [Joseph McCulley], "Neither Hot nor Cold," p. 8, in McCulley fonds, B92-0013, Box 5, File 12, untitled, UTA; see J.A.E[dmison], "In Memoriam: Dr. E. Ross Edmison," November 20, 1968, p. 3, in Edmison fonds, Coll. 2330, Box 4, File 7: "1970's," QUA.

of conduct or mentality.²⁸ In a (hypothetical?) discussion pertaining to the homework undertaken by a previously somewhat negligent boy on a particular occasion as a result of this approach, Statten pointed out that, through this academic task and certain related non-academic activity, the student “had some practice in choosing the right from the wrong. He practiced an appreciation of goodness in people, of cooperation, courtesy, desire for improvement, foresight, integrity, sincerity, gratitude, happiness, harmony, industry, judgment, open-mindedness, self-judgment and self-control.”²⁹ Although Statten depicted such ideas as a strategy through which counsellors, educators, and so forth could attempt to ensure that morally laudable attributes would blossom among their charges, he did not necessarily portray this attempt as evocative of the ethos displayed by previous educators. One of the talks pointed out unsound and somewhat coercive educational practices by touching on the measures to which “Miss Antique” had recourse, while primarily highlighting the more sagacious genre of “character education” in which “Miss Modern” engaged.³⁰ Statten’s perspective concerning uncoerced excellence claimed an affinity with a “progressive,” “modern” mentality.³¹

Perhaps McCulley may not necessarily have gained any great familiarity with these two talks at Camp Ahmek itself, if 1925 was the first year in which counsellors at the camp found themselves serving as Statten’s audience for these particular chunks of

²⁸ See Taylor Statten, “Talks to Camp Counsellors: Number Two,” pp. 1-3 (“satisfying” on p. 1, “coercion” on p. 2, “practice” and “habits” on p. 3, for example), in McCulley fonds, B92-0013, Box 2, File titled “Camp Ahmek, 1925-26,” UTA.

²⁹ See *ibid.*, pp. 1-3 (quote on p. 3).

³⁰ See Taylor Statten, “Talks to Camp Counsellors: Number Three,” (“character education” on pp. 1 and 4), in McCulley fonds, B92-0013, Box 2, File titled “Camp Ahmek, 1925-26,” UTA.

³¹ See Wall, “Making Modern Childhood, the Natural Way,” especially 74-75, 80-83, 90-92, 99-100.

commentary.³² While Ahmek would seem to have loomed quite large in McCulley's affairs during the summers of 1923 and 1924, his next year seems to have revolved around events other than camp, and he numbered among the denizens of Ahmek for only part of the summer of 1926.³³ But whether or not he was ever within earshot of these specific Statten talks at Ahmek, McCulley's educational efforts in the interwar years would certainly exhibit a Statten-esque streak. In 1927, a number of boys started to experience boarding-school life in an institution at which McCulley functioned as headmaster. The school found itself outfitted with a particularly Ahmek-flavoured Director of Character Education: Taylor Statten himself.³⁴ And Pickering College would champion both moral excellence and non-coerciveness at least as energetically as Statten had at Ahmek.

Progressive Education at Pickering College

For a decade prior to 1927, no youngsters had resided in Newmarket as students at Pickering College. From the mid-nineteenth century to the middle of the Great War, Pickering had served as the main institution at which schooling directed by Quakers could be experienced by Ontarian children. Pickering then spent ten years as a mothballed

³² I point out this possible date based simply on the date in the title of the file in the McCulley fonds in which these two documents reside—see McCulley fonds, B92-0013, Box 2, File titled “Camp Ahmek, 1925-26,” UTA.

³³ See [Joe McCulley] to J. Alex. Edmison, January 6, 1947, in McCulley fonds, B92-0013, Box 5, File titled “Correspondence—Personal, Pickering College, E-G [1],” UTA; see McCulley's Curriculum Vitae, in McCulley fonds, B92-0013, Box 5, File 16: “J. McCulley, Personal,” UTA; see “Chief” [Taylor Statten] to J. McCulley, March 4, 1925, Taylor Statten to Jos. McCulley, March 31, 1926, Chubby to Jos. McCulley, June 15, 1926, and program for Camp Ahmek Complimentary Banquet, August 16, 1926, all in McCulley fonds, B92-0013, Box 2, File titled “Camp Ahmek, 1925-26,” UTA.

³⁴ See prospectus for Pickering College, p. 10, in McCulley fonds, B92-0013, Box 12, File titled “Clipping [sic] re J. McCullough [sic],” UTA.

institution, but a new round of educational work finally got off the ground at the school in 1927, with the endeavour now captained by McCulley.³⁵ Though the Anglican McCulley did not himself end up opting for Quakerism, his sensibilities did prove quite consonant with a Quaker ethos.³⁶ Even so, many non-Quaker families perceived a large upside in McCulley's educational approach.³⁷ In the interwar years and the 1940s, relative affluence (though not necessarily a high degree of wealth) would seem to have typified the lives of most Pickering students, and their parents included at least a few quite influential figures, such as Canadian diplomat Hugh Keenleyside and federal Cabinet minister Brooke Claxton.³⁸ But this institution sang a rather different educational tune than most prestigious Canadian boys' schools featured.³⁹

McCulley loved "progressive education," and he let everyone know it during his tenure at Pickering College. According to historian Theodore Christou, interwar Ontarian commentators who portrayed "progressive education" as an idea to which they subscribed tended to major in one of three motifs. Some writers in that period portrayed such

³⁵ See Kirk Niergarth, "Art, Education, and a 'new world society': Joseph McCulley's Pickering College and Canadian Muralism, 1934-1950," *Journal of Canadian Studies* 41, no. 1 (Winter 2007): 175-176; see prospectus for Pickering College, pp. 5-6, in McCulley fonds, B92-0013, Box 12, File titled "Clipping [sic] re J. McCullough [sic]," UTA; see "Punishment to Cease All Public Schools," *Toronto Daily Star*, January 23, 1928, p. 29.

³⁶ See John F. Lockyer, "New Traditions, Old Ideas: The McCulley Years and the Application of Quaker Educational Philosophy at Pickering College," *Canadian Quaker History Journal*, no. 50 (Winter 1991): 4, 6-8, <http://www.cfha.info/journal50.pdf>; see Niergarth, "Art, Education, and a 'new world society,'" 176; see statement about McCulley attached to [J. Alex Edmison] to Ralph Gibson, January 8, 1947, in John Howard Society of Ontario fonds, F 846, container B252906, File titled "Department of Justice – Commissioner (1946 to 1953)," AO; see D.W.B., "Joe of Pickering College," *Vancouver Province*, November 27, 1932, p. 2 of magazine section.

³⁷ See clipping of R.E. Knowles, "Principal Wants 'Pickering' a 'Home and Club' School" [source and date unknown], in McCulley fonds, B92-0013, Box 10, scrapbook for 1937-38, p. 4, UTA.

³⁸ See Hugh L. Keenleyside, *Memoirs of Hugh L. Keenleyside*, vol. 2, *On the Bridge of Time* (Toronto: McClelland and Stewart, 1982), 226; see David Jay Bercuson, *True Patriot: The Life of Brooke Claxton, 1898-1960* (Toronto: University of Toronto Press, 1993), 149.

³⁹ On Pickering and McCulley, see also Charles Ritchie, *Storm Signals: More Undiplomatic Diaries, 1962-1971* (Toronto: Macmillan of Canada, 1983), 54-58.

education as exhibiting an affinity for “social efficiency.” From others’ perspective, progressive educators would especially pursue enhanced attunement to the metamorphic processes that characterized the minds and experiences of growing children. Christou portrays other figures, including McCulley, as keen on the possibility that progressive education might prove conducive to an eventual metamorphosis in their country more broadly, helping the citizenry to opt for practices more consonant with “social justice” than those with which Canadians were currently familiar.⁴⁰ McCulley’s agenda for Pickering displayed this type of progressive streak in a variety of ways. Schools might typically expect students to use the proper title and surname, or the respectful “Sir,” when speaking to a staff member. At Pickering, however, the headmaster was quite happy to be referred to as “Joe.”⁴¹ At elite British boarding schools, students learned to embrace behaviours that were meant to display their class privilege. Pickering, by contrast, was to refrain from encouraging such attitudes or practices.⁴² Living at Pickering would give students a taste of “simplicity” rather than “luxury[y].”⁴³ McCulley also wished to prevent the school’s sporting activities from becoming suffused by an overly competitive ethos—a goal consonant with his broader tendency to criticize “competition” and to tout “co-operation.”⁴⁴ But perhaps the most prominent progressive feature of this boarding

⁴⁰ See Theodore Michael Christou, *Progressive Education: Revisioning and Reframing Ontario’s Public Schools, 1919-1942* (Toronto: University of Toronto Press, 2012), including 6-7, 61-62, 97, 102, 141-142.

⁴¹ See Niergarth, “Art, Education, and a ‘new world society,’” 177; see D.W.B., “Joe of Pickering College,” *Vancouver Province*, November 27, 1932, p. 2 of magazine section; see clipping of R.E. Knowles, “Principal Wants ‘Pickering’ a ‘Home and Club’ School” [source and date unknown], in McCulley fonds, B92-0013, Box 10, scrapbook for 1937-38, p. 4, UTA; see also McCulley, “Education in a Changing Society,” 418.

⁴² See Niergarth, “Art, Education, and a ‘new world society,’” 178.

⁴³ See clipping of “A Modern School,” *Hamilton Herald*, September 8, 1928, in McCulley fonds, B92-0013, Box 10, scrapbook for 1926-28, p. 95 [sixth page from end], UTA.

⁴⁴ See Niergarth, “Art, Education, and a ‘new world society,’” 176, 178; see Joseph McCulley, “Education and the Present Crisis,” *Canadian Forum*, July 1932, p. 378; see clipping of “International Goodwill Basis

school was the non-coercive dynamic that the headmaster strove to maintain at the institution. McCulley spoke out against the kinds of teaching tactics that treated “fear” as useful or that sought to employ “force.”⁴⁵ Comparatively few rules numbered among the measures utilized by the school.⁴⁶ And students could be sure that their experience at Pickering would never include corporal punishment—a point that public statements about the school often noted.⁴⁷

As became apparent in Chapter 2, corporal punishment sat relatively well with many interwar Canadians. But observers would probably not have associated McCulley’s stance with mere eccentricity, since multiple people in the late 1920s chimed in with statements that largely rejected corporal punishment in the educational arena.⁴⁸ James Hughes, who had previously gained familiarity with many schools via the inspections which he had performed for the authorities, made “coercive” bodily chastisement out to be “[t]he most evil kind of” the “coercive training” that may have typified some teachers’ efforts.⁴⁹ According to Taylor Statten, “[a] strapping, a caneing [sic], a whipping, a

for World Security, Hope for Civilization, Says Speaker,” *St. Thomas Times-Journal*, October 4, 1938, in McCulley fonds, B92-0013, Box 10, scrapbook for 1938-39, pp. 18-19, UTA; clipping of “Competition Is Law of Jungle Says McCulley,” *Newmarket Era*, March[?] 9, 1939, in McCulley fonds, B92-0013, Box 10, scrapbook for 1938-39, p. 90, UTA. See also Lockyer, “New Traditions, Old Ideas,” 7, 14.

⁴⁵ See Joseph McCulley, “Education in a Changing Society,” *Canadian Forum*, August 1932, p. 416.

⁴⁶ See *ibid*; see Joseph McCulley, *Reflections of a Headmaster: Being a Statement Regarding the Principles and Methods of Education at Pickering College, Newmarket, Ontario* (Newmarket, ON: Pickering College, n.d.), pp. 5-6, in McCulley fonds, B92-0013, Box 1, envelope between unnamed file and “Treasurer’s Statements etc.”, UTA.

⁴⁷ See McCulley, “Education in a Changing Society,” 416; see clipping of “Old School with New Ideas Permits Its Boys to Smoke,” publication unknown, October 12, 1927, in McCulley fonds, B92-0013, Box 10, scrapbook for February 1929-August 1931, p. 18, UTA; see clipping of “A Modern School,” *Hamilton Herald*, September 8, 1928, in McCulley fonds, B92-0013, Box 10, scrapbook for 1926-28, p. 95 [sixth page from end], UTA; see clipping of R.E. Knowles, “Principal Wants ‘Pickering’ a ‘Home and Club’ School” [source and date unknown], in McCulley fonds, B92-0013, Box 10, scrapbook for 1937-38, p. 4, UTA; see also “College Stops Caning Scheme Is Successful,” *Toronto Daily Star*, January 19, 1928, p. 17.

⁴⁸ See “Punishment to Cease All Public Schools,” *Toronto Daily Star*, January 23, 1928, p. 29.

⁴⁹ See clipping of “Dr. James L. Hughes Calls Corporal Punishment ‘Merciless, Cruel, Humiliating’” [source and date unknown], in McCulley fonds, B92-0013, Box 10, scrapbook for 1926-28, p. 34, UTA.

beating or a blow is an invasion of personal liberty. Everyone who receives a blow feels a natural impulse to resent it.” Moreover, “[c]orporal punishment instead of moralizing serves to demoralize the character.” At least in the educational arena, “[c]orporal punishment is an excellent means of breeding criminals.”⁵⁰ Though McCulley’s own public claims tended not to portray corporal reproof as quite that odious, he did indicate that the coerciveness associated with such punishment struck him as rather unsound.⁵¹ In any case, from his perspective, “kindness” allowed an educator to send a student’s poor conduct packing more readily than bodily chastisement did. “[A]ll boys, no matter what their upbringing will respond to kindness,” claimed McCulley on one occasion.⁵²

Although coercive practices carried little credibility in McCulley’s mind, it was not a live-and-let-live ethos that fueled his educational activities. He certainly wanted attendance at Pickering to endow students with sound “character” and fervent “ideals.”⁵³ Indeed, to hear him tell it, such ideals and character had the best chance of springing to life when a school pursued the kind of policies found at his institution. Non-coercion was one pivotal factor that could help on this front at a school like Pickering. “[C]haracter” would not number among the chief phenomena in which schooling eventuated if a school’s strategy revolved around “force,” or even around “sheer force of personality.” “[F]reedom,” however, could help to facilitate character-fertilizing dynamics, especially

⁵⁰ See clipping of “Say Corporal Punishment Is Breeder of Criminals” [source and date unknown], in McCulley fonds, B92-0013, Box 10, scrapbook for February 1929-August 1931, p. 27, UTA.

⁵¹ See McCulley, “Education in a Changing Society,” 416, 418.

⁵² Quoted in “Punishment to Cease All Public Schools,” *Toronto Daily Star*, January 23, 1928, p. 29.

⁵³ See clipping of R.E. Knowles, “Principal Wants ‘Pickering’ a ‘Home and Club’ School” [source and date unknown] (“ideals”), in McCulley fonds, B92-0013, Box 10, scrapbook for 1937-38, p. 4, UTA.

as “self-discipline” gained momentum.⁵⁴ On one occasion, McCulley had recourse to such a construal of non-coercion through a quotation that he incorporated into an article which he wrote for *Canadian Forum*: “‘You cannot learn to be good or how to make good choices in an environment where there is no chance to be bad. Character comes from choice and choices are only possible in an atmosphere of freedom.’”⁵⁵ In the same article, McCulley indicated that the type of education featured at his school (or the general “social philosophy” upon which students learned to act thanks to this education) “succeeds where repression, fear, and such allied barbaric techniques fail.”⁵⁶ If majoring in “fear” and “repression” was connected to the adoption of “barbaric techniques,” then perhaps that gives me another excuse to use the word “technique” also, and to suggest that the non-coercive policies which McCulley advocated may also have fulfilled a technique-like role (though not, of course, a “barbaric” one). This latter technique would make it easier to lead young people into excellence, an excellence that would prepare them for life’s moral tests.

A few other documents might suggest that the kind of clout which the headmaster and teachers at Pickering sought to wield was a little more potent than we might suppose after observing the quotes in the preceding paragraph. Prior to the fall of 1927, a fifteen-page booklet concerning Pickering provided a sense of the strengths the school would exhibit. “In an age in which ‘freedom from restraint’ seems to be the key note,” stated the

⁵⁴ See Joseph McCulley, *Reflections of a Headmaster: Being a Statement Regarding the Principles and Methods of Education at Pickering College, Newmarket, Ontario* (Newmarket, ON: Pickering College, n.d.), pp. 5-7, in McCulley fonds, B92-0013, Box 1, envelope between unnamed file and “Treasurer’s Statements etc.”, UTA; and see McCulley, “Education in a Changing Society,” 416, 418.

⁵⁵ See Joseph McCulley, “Education and the Present Crisis,” *Canadian Forum*, July 1932, p. 378. He does not indicate whom he is quoting here.

⁵⁶ See *ibid.*, 379; see also 378.

document in one spot, “many parents are anxiously looking for a school whose ideals are Christian and democratic, where there will be adequate supervision of their sons’ activities and where contact with idealistic and sympathetic masters shall insure that boys gain the utmost in character development from their time at school.”⁵⁷ In a newspaper article in 1941, Agnes Macphail pointed out a particular educator’s repudiation of the option of portraying a given political perspective as the one into which students ought to buy, which struck him as “indoctrinati[on].” Macphail depicted McCulley, on the other hand, as “emphatically agree[ing]” with the notion that “a good teacher always indoctrinated his students.”⁵⁸ These various remarks about “self-discipline,” “freedom,” “restraint,” or “indoctrinati[on]” might well suggest that a Foucauldian portrayal of the school could elucidate McCulley’s practices. So let us enter the time warp created by Foucauldian possibilities ...

A Net-Widening Headmaster?

Since the 1970s, historians of criminal justice have often provided an uncomplimentary portrayal of modifications that emerged in the penal policy of European and North American societies during the nineteenth and twentieth centuries. As many earlier interpreters saw it, such modified policies had ensured that offenders were no longer so hard done by as they had been previously, when penalties had often produced starker physical hardship. In the eyes of some thinkers writing after 1970, however, these penal

⁵⁷ Prospectus for Pickering College, p. 8, in McCulley fonds, B92-0013, Box 12, File titled “Clipping [sic] re J. McCullough [sic],” UTA. Even more strikingly, see “Pickering College,” presentation at 15 October 1926 meeting of Pickering College board, pp. 2-3, in McCulley fonds, B92-0013, Box 4, File titled “Speeches by J. McC.,” UTA.

⁵⁸ See Agnes Macphail, “Farm Betterment: Teachers Study Democracy,” *Globe and Mail*, August 23, 1941, p. 15.

changes had permitted a more thoroughly “control[ling]” form of correctional activity to emerge. Indeed, some scholars now perceived this kind of dynamic in the events of their own era. Reformers of the 1960s and 1970s had been arguing that imprisonment should become a far less central component of criminal justice, and these reformers created other correctional options to make that change possible. The various non-carceral options—probation, parole, halfway houses, assorted “diversion” measures, and so forth—might not have had such an unpleasant flavour as imprisonment, but with the authorities now growing fonder of non-carceral sanctions, correctional activity was occurring on more fronts than before. Thanks in part to reformist ideas, the late twentieth century had turned out to be an era of “net-widening,” claimed scholars.⁵⁹

As will be noted towards the end of this chapter, it might be possible to argue that McCulley’s activities in the realm of criminal justice helped, in at least a small way, to generate new federal parole practices in the late 1950s, and that these then fostered part of the correctional net-widening which took place in the sixties and seventies, especially through the adoption, in 1970, of the policy known as “mandatory supervision.” Even so, if we want to show that McCulley engaged in net-widening, perhaps we could do so most easily not by exploring his work in criminal justice, but rather by examining his non-coercive educational policies at Pickering. His utilization of non-coercive practices could easily be seen as a Foucauldian technique that gave him the ability to mould his students

⁵⁹ See especially Cohen, *Visions of Social Control*; see also Chunn, *From Punishment to Doing Good*, 7; see also Ignatieff, *A Just Measure of Pain*, 216-217; see also Thomas G. Blomberg and Karol Lucken, *American Penology: A History of Control*, 2nd ed. (New Brunswick, NJ: Transaction Publishers, 2010), 3-4. For one study which suggests that in Ontario, at least, incarceration has not itself exhibited as much momentum as we might suspect if we bought into most construals of net-widening, see McMahon, *The Persistent Prison?*, including 207-208.

to a more thoroughgoing degree and in a larger assortment of settings, above all through the “self-discipline” which he promoted and which they allegedly found attractive.⁶⁰

Once McCulley’s school was up and running, the press soon found occasion to write about the place. Some of the statements in certain newspaper articles might lead us to think that McCulley the Non-Coercive was managing to mould his students’ thoughts and actions more thoroughly than most headmasters did. On one occasion, an article pointed out McCulley’s insistence that punishment ran counter to standard practice at Pickering. The violation of a school rule would lead not to a potent penalty, but rather to a conversation. The article provided McCulley’s explanation. “[W]e have a talk with the boy,” noted the headmaster. “We are not concerned so much with the fact that he has done it as with his reasons for doing it. We try to find out his attitude—to find out what is behind his action. When we have corrected that attitude, the boy has no feeling of resentment, and no loss of respect, but, on the contrary, he will try his hardest not to do it again.”⁶¹ It appeared that McCulley was indeed striking pay dirt at the psychological level that he had in mind. To hear the newspapers tell it, students really had begun to buy into the mind-set, and the corresponding behavioural standards, that Pickering’s policies were meant to cultivate.

Perhaps nothing illustrates this so well as the issue of smoking, which was one of the practices that McCulley had chosen not to try to squelch with a rule. Actually, smoking does appear to have been a no-no for Pickering students who hadn’t yet reached the last grade or two of high school, and even “the older boys” were to refrain from

⁶⁰ See “College Stops Caning Scheme Is Successful,” *Toronto Daily Star*, January 19, 1928, p. 17.

⁶¹ Quoted in *ibid.*

having a cigarette when not on Pickering property. Still, the newspapers portrayed Pickering's policy on tobacco as a departure from the tendency of southern Ontarian schools to make smoking a forbidden activity for students.⁶² In any case, the papers conveyed the impression that smoking was proving to be no threat at all among the highschoolers at Pickering. According to McCulley, "the boys accepted this privilege in the spirit in which it was given and decided among themselves that it would be bad for the morale and reputation of the school if the boys should be seen lounging about the streets of Newmarket smoking cigarettes. The first week some of the boys went downtown to an ice cream parlor. One of the boys produced a cigarette in the confectionery, and immediately the rest of his friends jumped on him and made him put his cigarettes away."⁶³ A slightly later article quoted a Pickering student to much the same effect. "Here we are allowed to smoke," the young man observed, "but since that rule came in some of us have given up smoking, and none of us smokes down town, as we did before. That is one of the rules we made ourselves."⁶⁴ Pickering was having decided success in the cultivation of the kind of self-governing subjects to which Foucauldian thought has ascribed so much significance.

Furthermore, Pickering's non-coercive policies gave staff members meaningful influence in a larger assortment of settings than would otherwise have seemed likely.

"There would be no use in telling the boys that they must not smoke," claimed McCulley.

⁶² See clipping of "Old School with New Ideas Permits Its Boys to Smoke," publication unknown, October 12, 1927, in McCulley fonds, B92-0013, Box 10, scrapbook for February 1929-August 1931, p. 18, UTA; see "Teachers Favor 'No-Smoking' Edict for Boys," *Toronto Daily Star*, October 13, 1927, p. 25.

⁶³ Quoted in clipping of "Old School with New Ideas Permits Its Boys to Smoke," publication unknown, October 12, 1927, in McCulley fonds, B92-0013, Box 10, scrapbook for February 1929-August 1931, p. 18, UTA.

⁶⁴ Quoted in "College Stops Caning Scheme Is Successful," *Toronto Daily Star*, January 19, 1928, p. 17.

“We know that they would smoke anyway. I would far rather have the boys go to their rooms and smoke than have them smoke in private under constant fear of detection and punishment. Then the masters feel perfectly at ease in going any place about the grounds or buildings without the thought that they might be looked upon as spying upon the boys.”⁶⁵ In other words, thanks to McCulley’s stance on smoking, students would be happy to let staff mingle with and monitor them to a greater degree than in most boarding schools. Accordingly, there would be more chance of ensuring that the boys’ overall behaviour was on the up-and-up, and of offering the casual input that would cultivate the outlook which the school wanted them to acquire. Typical boarding-school residents would seek to ward off staff surveillance; Pickering students would feel less inclined to do that. Pickering staff enjoyed this advantage not only at the school itself, but also in other settings too. “During last week end the Toronto boys, of course, wished to go home,” McCulley recounted. “Four of the boys decided that they would have a party at Casa Loma. They asked four girl friends to go with them. They also asked one of the masters if he would care to go to the party. The master accepted the invitation, invited his own lady friend, and the boys and the master all went to Casa Loma together and had a good time.”⁶⁶ At Pickering College, McCulley was providing such an attractive form of educational surveillance that students had found a way to make it portable, giving an educational overseer a spot in what could have been a Pickering-free occasion. Their bit

⁶⁵ Quoted in clipping of “Old School with New Ideas Permits Its Boys to Smoke,” publication unknown, October 12, 1927, in McCulley fonds, B92-0013, Box 10, scrapbook for February 1929-August 1931, p. 18, UTA.

⁶⁶ Quoted in *ibid.*

of fun might take them well away from the school geographically, but they had ensured that the staff would have eyes, ears, and a mouth at even this informal event.

Of course, if none of the staff members were physically on the scene, that would not prevent their influence from prevailing. Even in settings geographically removed from the school, students tended to maintain their attachment to the mentality that the Pickering leadership had championed, whether or not any school official could directly witness their actions. We might perceive matters this way, in any case, after hearing remarks like one of the student comments that was highlighted just two paragraphs ago. “Here we are allowed to smoke,” one young man observed, “but since that rule came in some of us have given up smoking, and none of us smokes down town, as we did before. That is one of the rules we made ourselves.”⁶⁷

The dynamic at Pickering emerges more sharply when we compare it to the comments about Upper Canada College found in one of these same newspaper articles. In contrast to what budding young adults found at McCulley’s school, students had to do without nicotine when they went to Upper Canada College. This is not to say that the two institutions differed on the issue in absolutely all respects. To W.L. Grant, UCC’s principal, McCulley appeared to be quite an admirable individual. And a few of the students at UCC—ten of them, actually—possessed a special function, having been awarded the role of prefect or steward. When a student acquired one of these positions, the prohibition on tobacco no longer applied to him. In general, though, the newspaper’s description portrayed UCC as having chosen to maintain a “no-smoking” policy, as many

⁶⁷ Quoted in “College Stops Caning Scheme Is Successful,” *Toronto Daily Star*, January 19, 1928, p. 17.

other schools in southern Ontario had also done.⁶⁸ Moreover, as we have seen, McCulley's opinion was that students who wished to smoke should do so at Pickering itself, rather than elsewhere. Grant, by contrast, regarded smoking as an activity to forbid on UCC property, without supposing that students would themselves embrace the school's perspective on the issue when they were in other locations. "[I]t is against the rules of the college here to smoke within the grounds," revealed Grant. However, "we have no control over the boys after they leave the school grounds. They may smoke outside of Upper Canada College and, of course, that is none of our business. Some of the boys may smoke before their parents. We can't stop that."⁶⁹ UCC officials considered their authority to be operative in only a small, specific geographic area. Pickering staff, by contrast, had found a way to ensure that their influence prevailed both at the school and elsewhere, and that it left its mark on what students did, said, thought, and willed. McCulley, surely, was an expert net-widener, spreading his tendrils both into students' heads and across the land.

Admittedly, the strategies of many other teachers, some of them from substantially earlier periods, might also allow historians to trot out this type of argument. For example, *Building the Educational State*, a study in which sociologist Bruce Curtis examines the "public" version of education concocted by the authorities in mid-nineteenth-century Canada West, has already offered observations similar to the basic points suggested in the preceding paragraphs. Curtis shows that, to those mid-nineteenth-century Ontarians who

⁶⁸ See clipping of "Old School with New Ideas Permits Its Boys to Smoke," publication unknown, October 12, 1927, in McCulley fonds, B92-0013, Box 10, scrapbook for February 1929-August 1931, p. 18, UTA; see "Teachers Favor 'No-Smoking' Edict for Boys," *Toronto Daily Star*, October 13, 1927, p. 25.

⁶⁹ Quoted in clipping of "Old School with New Ideas Permits Its Boys to Smoke," publication unknown, October 12, 1927, in McCulley fonds, B92-0013, Box 10, scrapbook for February 1929-August 1931, p. 18, UTA.

believed the portrayals offered by educational authorities, it tended to *sound* as if students would rarely encounter corporal punishment at school. In that era too, educational leaders highlighted the excellent conduct, both in school and in life more generally, that students would come to adopt thanks mainly to measures *other* than physical punishment, measures that would foster an optimal type of subjectivity in each pupil, endowing each with the kind of mental processes, types of affect, and patterns of identification which would allow this society to grow firmly capitalist. But although Curtis highlights educational leaders' promotion of non-physical methods for fostering the preferred type of student subjectivities, his reason for doing so is *not* to show why educators became disinclined to punish students physically. Indeed, he suggests that the schools' penchant for reminding students, through corporal punishment, that the teacher was in charge did not actually evaporate, at least not wholly. (In any case, the violent punishment of which it was still the teacher's prerogative to avail himself in some circumstances stood out in particularly clear contrast to the violence that pupils and parents were now wholly forbidden to use when encountering objectionable conduct by teachers.)⁷⁰ Here we probably do have one point of clear divergence between McCulley and nineteenth-century educators. It is likely that Pickering did in fact do wholly without corporal punishment, just as McCulley suggested it would.

But a more significant difference turns up if we consider how Curtis interprets the mid-nineteenth-century tendency both to champion education not involving physical suffering, on the one hand, and, on the other hand, to keep on bringing out the ruler or the

⁷⁰ See Bruce Curtis, *Building the Educational State: Canada West, 1836-1871* (London, ON: Althouse Press, 1988), 315-325, 329-331, 333, 335, 338-339, 342-343, 345, 350-352, 356-357, 366-371 ("public" on 370).

strap on quite a few occasions to penalize pupils by bodily means. As Curtis seems to portray it, a ““non-violent”” educational approach appealed to educators primarily because of its putative ability to help students blossom as morally upstanding individuals. When educators opted for nonviolent practices, they truly were selecting a “means,” not an “end.” Provided that they seemed to be getting good mileage out of this means, it would win their strong endorsement. If, at a given moment, they thought they could get better mileage out of another means, such as corporal punishment, then they considered it perfectly logical to select that other option instead.⁷¹ But this is the very type of construal that may not in fact be accurate in McCulley’s case. And this is where I will drop the net-widening interpretation, and point out what may be a more plausible way of viewing McCulley’s stance.

When we refer to the familiar issue of “whether the end justifies the means,” we often assume a scenario in which the end is something that I find highly appealing, appealing enough that I am tempted to opt for a means which by itself might look ethically dubious, and with which I would probably not proceed if the end in question did not appeal to me so much. There is, however, a second possible scenario to consider. In some cases, my inclination to argue that the end justifies the means may primarily show that this particular means was a practice I hoped to endorse in the first place, a practice that I supported just as strongly all along as the putative end which I claim it will promote. Perhaps this second scenario points to one part of McCulley’s outlook concerning non-coercion, on the one hand, and the cultivation of character, on the other.

⁷¹ See *ibid.*, especially 315-316, 320-322, 338, 341-342 (“non-violent” on 321; “means” on 316, 320-321, 338; “end” on 320, 338).

McCulley was enamoured with a non-coercive type of education, a type that could be construed as a means. Happily, he also had an end with which to justify it—the end of endowing students with superb “character” and admirable “ideals.” The kinds of arguments offered by McCulley may well have implied, as I have suggested, that his non-coercive approach carried out the task of a technique. But that does not mean that there would have been any more hope of persuading him to dispense with this technique than of eradicating his belief in the end itself. As suggested in Chapter 4, people in twentieth-century Canada who wished to promote non-punitive policies could sometimes do so with the most rhetorical potency by making those policies look like utilitarian techniques, rather than by highlighting their humanitarian character. McCulley was one figure whose style of argument reflected this fact.

In any case, these sorts of issues highlight developments that a later period would feature, developments a few decades after McCulley’s interwar pursuits at Pickering. When present-day scholars, or even an anti-modernist student like myself, read about a progressive educator who pared down the rulebook and dispensed with bodily punishment, we in many cases quite readily perceive the net-widening possibilities in the matter. In other words, whatever part McCulley may or may not have had in net-widening, that concept does remind us about the sensibilities and outlook of late-twentieth- and early-twenty-first-century academics. Scholars or observers after 1970 have in various cases zeroed in on net-widening or related issues because they, to an even greater extent than McCulley, disapprove of coercion, or of the quasi-coercive tendencies that they perceive in measures through which moral excellence is championed. What his work at Pickering highlights most tellingly is not some real dynamic of net-widening in

twentieth-century schools or correctional systems, but rather the deepening of anti-coercive assumptions among educated progressives.

Excellence and the Individual: Recreation, Religion, and Political Ideology

Both in his remarks at Pickering and in his commentary for other audiences during the thirties and early forties, McCulley raised more topics than just ones pertaining to educational strategy or to on-the-ground school-related matters like smoking. For instance, on October 20, 1934, the radio presented a number of listeners with McCulley's perspective on "Leisure and the Youth." Down the road, suggested McCulley, the segment of people's day or week that typically revolved around the tasks by which they made a living would tend to contract, with leisure therefore gaining a greater presence in daily affairs.⁷² Accordingly, people presently growing towards their adult years would discover, to a greater degree than older citizens, that a sound approach to leisure would end up allowing their experience as adults to offer more fulfillment, while a poor approach would turn out to detract from their experience. As McCulley portrayed it, the pastimes of the 1920s had made many young citizens in those years too keen on sub-par types of fun, including recreation that gave rise to mere spectatorship. But he certainly did not regard his discussion as an attempt to advocate the relinquishment of fun. In fact, his analysis acquired its tenor partly as a result of ideas implicitly related to his anti-repressive perspective. At one point in his discussion, McCulley pointed out "five basic

⁷² See "Radio Broadcast Delivered by J. McCulley, Esq., on October 20/1934 under Auspices of the Community Welfare Council of Ontario: 'Leisure and the Youth,'" in McCulley fonds, B92-0013, Box 1 [in no file: within set of papers adjacent to bundle of Oxford essays], UTA; see McCulley, "Education and the Present Crisis," 378.

urges” typical of anyone’s psychological processes: urges pertaining to “[r]ecognition,” “[e]xperience,” “[a]ffection,” “[p]ower,” and “[s]ecurity.”⁷³ By no means was McCulley keen on the possibility of trying to encourage the squelching of “urges.” Rather, he perceived merit at times in identifying viable “outlets.” Some pastimes, for example, could lend themselves to pursuits associated with citizens’ “creative urge,” pursuits whose establishment of an “*outlet*” would help to ensure the vitality of that urge. And pivotally, McCulley perceived these as some of the types of pastimes through which “skill” and “excellence” would blossom—a praiseworthy outcome, from his perspective.⁷⁴ So, as his discussion of certain other topics did as well, McCulley’s statements regarding leisure proved consonant both with his affinity for excellence and with his non-repressive sensibilities. And a few of the general psychological notions on which he touched on this occasion would turn up down the road as well when he embarked on penal pursuits.

If psychological ideas toward which McCulley gravitated left an imprint on his construal of recreation, the religious notions mentioned in quite a bit of his commentary provide a fuller sense of his ethical assumptions. “The religious and spiritual development of the adolescent is basic to everything else that we do,” he claimed in a 1947 document regarding Pickering College.⁷⁵ As became apparent both to Pickering students and to other audiences, the religious perspective to which McCulley adhered

⁷³ See “Radio Broadcast Delivered by J. McCulley, Esq., on October 20/1934 under Auspices of the Community Welfare Council of Ontario: ‘Leisure and the Youth,’” in McCulley fonds, B92-0013, Box 1 [in no file: within set of papers adjacent to bundle of Oxford essays], UTA.

⁷⁴ See *ibid* (quoted words on pp. 2 and 3). Emphasis in original. For other comments of McCulley’s regarding leisure, see McCulley, “Education and the Present Crisis,” 378-379, and Joseph McCulley, “Democracy and Education,” *Canadian Forum*, August 1934, p. 438.

⁷⁵ “Review and Preview by Joseph McCulley, Headmaster, 1926-1947, Pickering College, Newmarket,” [1947], p. 8, in McCulley fonds, B92-0013, Box 4, File 15: “Speeches by J. McC.,” UTA.

often bore the scent of “liberal” Christianity. He tended, for instance, to create the impression that the notion of an afterlife ought not to loom very large in the Christianity onto which citizens should latch. McCulley, it would appear, was “[n]ot concerned about pie in the sky bye & bye—nor worried much about hell fire & brimstone.”⁷⁶ His portrayal of the realities that obtained with respect to people subsequent to their deaths typically conveyed the impression not that they themselves would necessarily experience anything anymore, but rather that “love” or some comparably attractive phenomenon would maintain the momentum that their lives had helped it to acquire.⁷⁷ Death blemished the early spring of 1950 for Alex Edmison, as his mother breathed her last. Before long, a letter from McCulley remarked on the event. “One may be uncertain about other kinds of immortality but there can be no question about the eternal value of lives well lived,” he suggested.⁷⁸

As McCulley saw it, perspectives and activities associated with religion ought to generate more attractive realities pertaining to people’s livelihoods and incomes, to their

⁷⁶ See “A Letter from China,” January 24, 1947 (notes for what appears to be a McCulley talk), p. [3], in McCulley fonds, B92-0013, Box 2, File titled “Notes & Essay drafts [1],” UTA; but see also “A Philosophy for Modern Young People,” Brantford So-Ed, November 26, 1943 [or 1942?] (handwritten notes, presumably for McCulley talk), pp. [5]–[6], in McCulley fonds, B92-0013, Box 2, untitled file, UTA.

⁷⁷ For documents that in one way or another help to convey this sort of impression, see “Links in the Chain of Life,” Loring Bailey Memorial Service, March 7, 1943 (handwritten notes, presumably for talk by McCulley), in McCulley fonds, B92-0013, Box 2, File titled “Notes & Drafts [3],” UTA; Joseph McCulley to Eldon Wright, February 24, 1949 (“Love”), in McCulley fonds, B92-0013, Box 6, File 9: “Mr. McCulley, Re Personal File Generally, Vol. IV,” UTA; Joe [McCulley] to Robert Martin, February 13, 1950 (“love”), in McCulley fonds, B92-0013, Box 5, File 19: “Mr. McCulley, Personal, Feb. 9, 1950–June 23, 1950,” UTA; see Jos. McCulley to H.H. Cummer, February 1, 1952 (“Love”) (cf. Horace Cummer to Joseph McCulley, January 29, 1952, p. 4) in McCulley fonds, B92-0013, Box 6, File 3: “Mr. McCulley, Personal,” UTA; see also “Life Victorious: An Easter Meditation,” March 29, 1942 (handwritten notes, presumably for talk by McCulley), p. 3, in McCulley fonds, B92-0013, Box 2, File titled “Notes & Drafts [3],” UTA; see also “Sacrifice for Victory, April 14, 1946, School, Easter Service” (handwritten notes, presumably for talk by McCulley), pp. 3–4, in McCulley fonds, B92-0013, Box 2, File titled “Notes & Essay drafts [1],” UTA.

⁷⁸ Joe [McCulley] to J. Alex Edmison, March 13, 1950, in McCulley fonds, B92-0013, Box 5, File 19: “Mr. McCulley, Personal, Feb. 9, 1950–June 23, 1950,” UTA.

interactions with other citizens, and to some of the political matters related to those quotidian issues.⁷⁹ In one document whose arguments would appear to have reached a radio audience on May 28, 1935, McCulley portrayed it as incumbent upon Christians not simply to champion ideas or practices of an “other-worldly” sort, but also to encourage the adoption of measures by means of which non-affluent citizens, or people who put up with similarly arduous situations, would end up being supplied with a somewhat more fulfilling earthly experience. A person championing this genre of Christianity could repudiate any notion that it would not permit the censuring of unethical practices or tendencies. One spot in McCulley’s discussion allowed him to mention certain statements of Christ’s—the exhortations in favour of loving persons whom we perceive as enemies, and in favour of an ethos of turning the other cheek. McCulley then observed that

[t]here is certainly no sentimentality in his denunciation of the scribes and [P]harisees. ‘Woe unto you,’ he says, ‘for you make clean the outside of the cup but within it is full of extortion and excess. You bind heavy burdens and grievous to be borne and lay them on men’s shoulders. Outwardly you appear righteous but within you are full of hypocrisy and iniquity. Ye serpents, ye generation of vipers, how can you escape damnation!’ There is nothing of the pale Galilean in the vehemence of this condemnation, and it is to be noted that his condemnation has nothing to do with a kingdom beyond the grave.⁸⁰

Some of the letters to the editor mentioned in Chapter 3 both touched upon a religious notion of some sort and raked Kingston Pen or its employees over the coals

⁷⁹ See following footnote; see also McCulley, “Democracy and Education,” 437; see also see “Religion in the Modern World,” undated [ca. mid-1930s?] (handwritten notes, presumably for McCulley talk), p. 4, in McCulley fonds, B92-0013, Box 1 [in no file: within set of papers adjacent to bundle of Oxford essays], UTA.

⁸⁰ See text for radio talk on CRCT, May 28, 1935, at 7:45 (“other-worldly” on p. 2; long quotation from p. 3), in McCulley fonds, B92-0013, Box 9, File 27: “Written Articles J.M. Mc. [3],” UTA. I am assuming that McCulley was the author of this talk, although the document does not actually indicate the author’s identity. Cf. Matthew 5:21, 39, 44; Luke 6:27-29; Matthew 23:4, 25, 28, 33.

rather adamantly.⁸¹ McCulley's statement in the preceding paragraph again suggests that one significant aspect of the influence of Christianity upon Canadians' ethical sensibilities was the fact that it could sometimes facilitate the development of a mind-set thanks to which quite a few citizens would excoriate ethically noxious practices, rather than choking back their verbal chastisement due to indecision. Admittedly, McCulley demonstrated little inclination to upbraid criminals or other people whose actions would have seemed wayward from the perspective of many Canadian observers. At least in the postwar years, however, he would sometimes pillory "ignorance, inertia and intolerance," or some similar set of backward propensities.⁸² And if his remarks concerning lawbreakers seldom highlighted their egregious deeds, occasionally he might inveigh against sub-par efforts by the kind of non-offenders who from his standpoint could well have opted for ethical excellence. In one speech subsequent to the period in which Pickering provided his livelihood, McCulley enjoined an audience at the school to "use your own legs, hands, arms and head." "If the best you can do," he admonished, "is to be a lukewarm student, a lukewarm athlete, a lukewarm member of this community, life will

⁸¹ For an especially striking letter like this, see W. Oliver Williams, letter to the editor, *The Globe*, August 26, 1933, p. 4.

⁸² See McCulley to Austin Edwards, July 21, 1952, in McCulley fonds, B92-0013, Box 5, File titled "Personal, Mr. McCulley," UTA; similarly, see Joe [McCulley] to Lady [Flora McCrea] Eaton, March 16, 1949, in McCulley fonds, B92-0013, Box 6, File 9: "Mr. McCulley, Re Personal File Generally, Vol. IV," UTA, and Joe [McCulley] to G.L. Sauvant, August 21, 1950, in McCulley fonds, B92-0013, Box 6, File 4: "Mr. McCulley, Personal, June 23-November 7, 1950," UTA; see Joseph McCulley, "No Final Answer," undated speech [ca. 1951], p. 4, in McCulley fonds, B92-0013, Box 4, File titled "Speeches by J. McC.,," UTA; see "Rehabilitation from the Point of View of the Administrator: An Address by Joseph McCulley, M.A., Deputy Commissioner of Penitentiaries, Ottawa, Canada, at the American Prison Association, 1951," p. 8, in McCulley fonds, B92-0013, Box 9, File 16: "Speeches – Committees' Dinners, 1953-1965 [1]," UTA.

deal with you as it properly should—you will be thrown into the discard of all that nameless, unremembered heap of persons whose lives have mattered little, if at all.”⁸³

In any case, if Christian sensibilities might occasionally facilitate verbal “condemnation,” McCulley thought this religion certainly ought to attune Canadians to the economic impediments or other tangible tribulations with which so many citizens were familiar. And the kind of Christian perspective to which McCulley subscribed would encourage the pursuit of initiatives by which some of those tribulations could be sent packing.⁸⁴ McCulley’s May 1935 radio discussion allowed him to offer more than one (non-supportive) reference to Communism or Marxism. “There is ... no reason,” he claimed, “why our religion should be exclusively a way of escape from the harsh realities of the present world. Too often the taunt of the Marxist has been true that religion is the opiate of the people, lulling them into a false satisfaction with present conditions in the hope of a better world to come.” Such references to Marxism perhaps also implied that if Canada or its Christians were to neglect crucial socioeconomic matters of this sort, then many citizens might well acquire the impression that more appetizing possibilities could spring to life courtesy of Communist ideas and initiatives.⁸⁵

⁸³ See [Joseph McCulley], “Neither Hot nor Cold,” p. 7, in McCulley fonds, B92-0013, Box 5, File 12, untitled, UTA.

⁸⁴ See text for radio talk on CRCT, May 28, 1935, at 7:45, in McCulley fonds, B92-0013, Box 9, File 27: “Written Articles J.M. Mc. [3],” UTA; see also “The Church in the Modern World,” handwritten notes for talk at “[illegible] U.C. Newmarket, Feb. 3,” pp. 3-5, in McCulley fonds, B92-0013, Box 2, File titled “Notes & Essay drafts [1],” UTA.

⁸⁵ See text for radio talk on CRCT, May 28, 1935, at 7:45, p. 4, in McCulley fonds, B92-0013, Box 9, File 27: “Written Articles J.M. Mc. [3],” UTA (I am assuming that McCulley was the author of this talk, although the document does not actually indicate the author’s identity). For an in many respects similar notion in a later McCulley talk, see Joseph McCulley, “No Final Answer,” undated speech [ca. 1951], p. 5, in McCulley fonds, B92-0013, Box 4, File titled “Speeches by J. McC.,” UTA.

As we can perceive in his remarks regarding Marxism, McCulley's ethical commentary sometimes addressed matters pertaining to the rather bold political possibilities highlighted by European nations in the 1930s. In 1937, an expedition in that continent allowed McCulley and several Pickering College students and alumni to gain a smidgen of first-hand familiarity with fascist Germany and the Soviet Union, as well as with Denmark, Sweden, France, and Britain.⁸⁶ The outfit facilitating the excursion was The Open Road, a New York-based (and possibly more or less Communist) body which would seem to have often set up such opportunities for interwar citizens to sample a dollop of the Soviets' situation.⁸⁷ McCulley would not appear, however, to have been trying to ensure that his students would start to perceive Soviet political ideas as ones to which they should subscribe. As he portrayed it prior to the expedition, the experience would help to attune this small set of Canadians more fully to "economic and social" issues, to "the glories—and the perils—of democracy," and to the fact "that the claims of human personality are paramount and sacred."⁸⁸

His comments both in the weeks and in the years subsequent to the excursion would also be shaped by his democratic sensibilities. Even so, from McCulley's perspective, the non-democratic countries in Europe did not prove unappealing on all

⁸⁶ See "Itinerary of Mr. McCulley's Party for European Trip under the Auspices of The Open Road, Inc., 8 West 40th Street, New York," in McCulley fonds, B92-0013, Box 1, untitled file [last one in box], UTA; see clipping of R.E. Knowles, "Principal Wants 'Pickering' a 'Home and Club' School" [source and date unknown], and clipping of "Danes, Swedes Are Favorites [sic] of Collegians," [*Newmarket Era*] [date unknown], both in McCulley fonds, B92-0013, Box 10, scrapbook for 1937-38, pp. 4, 9, UTA.

⁸⁷ See preceding footnote; see David H. Price, *Threatening Anthropology: McCarthyism and the FBI's Surveillance of Activist Anthropologists* (Durham, NC: Duke University Press, 2004), 216 (source found through a Google Books search); see William J. Peace, *Leslie A. White: Evolution and Revolution in Anthropology* (Lincoln: University of Nebraska Press, 2004), 70, 159 (source found through a Google Books search).

⁸⁸ Quoted in clipping of R.E. Knowles, "Principal Wants 'Pickering' a 'Home and Club' School" [source and date unknown], in McCulley fonds, B92-0013, Box 10, scrapbook for 1937-38, p. 4, UTA.

points. He remarked to some extent upon the strengths of Soviet and German society. “I came away from Russia with a tremendous respect for the brains behind it all, but with no desire to live there or to import Russia into this country,” said McCulley. Still, as he portrayed it, public works, schooling, and various other auspicious endeavours had begun to obtain a good deal of momentum in the Soviet Union. And he characterized “[t]he Germans” as “wonderful people.”⁸⁹ The apparent inclination of many young citizens in those two societies “to [s]acrifice,” and to pitch in with ardour to bolster “an Ideal,” turned McCulley’s crank in some respects. Many Canadians who were nearing adulthood, on the other hand, tended not to develop “any compelling ideal,” but instead allowed “selfish[ness]” to shape them.⁹⁰ On that particular count, moral excellence seemed to be springing to life more readily in communist and fascist societies than in the democratic polity with which he was most fully acquainted.

Yet if some Canadians’ “selfish[ness]” sat poorly with McCulley, he could still suggest that “[r]espect for individual[s]”⁹¹—or more precisely, respect for *each* individual—was a major strength of the democratic perspective, the pivotal strength due to which this perspective proved more attractive than the political viewpoints of the Germans, Italians, or Soviets. Comments of McCulley’s that pushed “the individual” into

⁸⁹ See clipping of “Build 18-Lane Streets, Save Old Buildings,” [*Newmarket Era*], date unknown [all quotations from this document], in McCulley fonds, B92-0013, Box 10, scrapbook for 1937-38, pp. 10-11, UTA; see “Reflections on a European Trip,” October 2, 1937 (handwritten notes, presumably for talk by McCulley), pp. 3-6, in McCulley fonds, B92-0013, Box 1 [in no file: within set of papers adjacent to bundle of Oxford essays], UTA.

⁹⁰ See “Educ. For Democracy? Is It Possible?,” April 2, 1939 (handwritten notes, presumably for talk by McCulley), p. [1], in McCulley fonds, B92-0013, Box 2, File titled “Notes & Drafts, Addresses? [4],” UTA; see also “A Philosophy for Modern Young People,” Brantford So-Ed, November 26, 1943 [or 1942?] (handwritten notes, presumably for McCulley talk), p. [1], in McCulley fonds, B92-0013, Box 2, untitled file, UTA.

⁹¹ For the quoted phrase, see “Educ. For Democracy? Is It Possible?,” April 2, 1939 (handwritten notes, presumably for talk by McCulley), p. [2], in McCulley fonds, B92-0013, Box 2, File titled “Notes & Drafts, Addresses? [4],” UTA.

the limelight did not stem from any scepticism about “community.” Certain statements of his which pertained partly to economic matters made “an over-emphasis on individualism” out to be baneful, and at least in the early 1930s, he chimed in with positive remarks concerning the strategy of “planning.”⁹² Moreover, McCulley quite often exhibited an attachment to the notion of “the beloved community”⁹³—a notion suggestive of the kind of society in which all types of people could experience membership, a society for which its denizens would develop a potent affinity, and which would not neglect any of them.⁹⁴ But in discussion of democratic and non-democratic political possibilities, he tended to have recourse to arguments in which the individual loomed quite large. At one point in the late 1930s, a remark of McCulley’s about the downside of communism and fascism highlighted the notion that these political frameworks allowed “the supposed welfare of the state” to hold pride of place, and too readily permitted “the freedom of the individual” to evaporate.⁹⁵ In 1943, one of his talks suggested that unappetizing realities obtained for the “ind[ividual]” in Germany, due partly to the “[s]tatism” to which that polity subscribed. In this instance his assessment of the Soviet Union bore a more positive flavour: though on some counts this socialist polity might prove off-putting from North Americans’ perspective, a “genuine concern for [the]

⁹² See Joseph McCulley, “Education and the Present Crisis,” *Canadian Forum*, July 1932, pp. 376-377; see also clipping of “International Goodwill Basis for World Security, Hope for Civilization, Says Speaker,” *St. Thomas Times-Journal*, October 4, 1938, in McCulley fonds, B92-0013, Box 10, scrapbook for 1938-39, pp. 18-19, UTA. See also Lockyer, “New Traditions, Old Ideas,” 5.

⁹³ See, for example, clipping of Joseph McCulley, “Faith—The Conviction of the Reality of Unseen Things,” *United Church Observer*, August 1, 1940, in McCulley fonds, B92-0013, Box 10, scrapbook for 1940-41, p. 30, UTA.

⁹⁴ For a document which creates this kind of impression, see Joseph McCulley, “No Final Answer,” undated speech [ca. 1951], pp. 5-6, in McCulley fonds, B92-0013, Box 4, File titled “Speeches by J. McC.,” UTA.

⁹⁵ See clipping of “Competition Is Law of Jungle Says McCulley,” *Newmarket Era*, March[?] 9, 1939, in McCulley fonds, B92-0013, Box 10, scrapbook for 1938-39, p. 90, UTA.

ind[ividual]” had helped to generate Soviet practices.⁹⁶ In any case, fewer citizens would fall prey to their government in nations characterized by a democratic outlook, due to the affinity between this latter political stance and an inclination to exhibit “[r]espect for individual persons.”⁹⁷ The “fundamental worth” of each given individual—a worth just as substantial as anyone’s—more readily dawned upon people thanks to the perspective associated with democracy.⁹⁸ If democracy proved attractive partly because of its “[r]espect for individual persons,” the fact that McCulley could characterize the “dig[nity] of individual[s]” as an idea that Christianity bolstered tended to strengthen the impression that the democratic political framework encouraged a decidedly laudable ethos.⁹⁹

Neglecting the individual seemed unacceptable due partly to the “human personality” that she exemplified.¹⁰⁰ Interwar citizens gained a great deal of familiarity with the term “personality.” Historians tend to portray “character” as a phenomenon on which Victorians were keen, a phenomenon pertaining to morality. They depict “personality” as a relatively new notion with which people became infatuated in the first few decades of the twentieth century, a notion more evocative of “charm” or “self-

⁹⁶ See “A Philosophy for Modern Young People,” Brantford So-Ed, November 26, 1943 [or 1942?] (handwritten notes, presumably for McCulley talk), pp. [1]-[2], in McCulley fonds, B92-0013, Box 2, untitled file, UTA.

⁹⁷ For the quoted phrase, see “Educ. For Democracy? Is It Possible?,” April 2, 1939 (handwritten notes, presumably for talk by McCulley), p. [2], in McCulley fonds, B92-0013, Box 2, File titled “Notes & Drafts, Addresses? [4],” UTA; see also clipping of “Competition Is Law of Jungle Says McCulley,” *Newmarket Era*, March[?] 9, 1939, in McCulley fonds, B92-0013, Box 10, scrapbook for 1938-39, p. 90, UTA.

⁹⁸ See “A Philosophy for Modern Young People,” Brantford So-Ed, November 26, 1943 [or 1942?] (handwritten notes, presumably for McCulley talk), p. [3] (underlining in original removed from quoted words), in McCulley fonds, B92-0013, Box 2, untitled file, UTA.

⁹⁹ See “A Philosophy for Modern Young People,” Brantford So-Ed, November 26, 1943 [or 1942?] (handwritten notes, presumably for McCulley talk), p. [3] (“dig[nity] of individual[s]”), in McCulley fonds, B92-0013, Box 2, untitled file, UTA; for the phrase “[r]espect for individual persons,” see “Educ. For Democracy? Is It Possible?,” April 2, 1939 (handwritten notes, presumably for talk by McCulley), p. [2], in McCulley fonds, B92-0013, Box 2, File titled “Notes & Drafts, Addresses? [4],” UTA.

¹⁰⁰ For one document which helps to convey this kind of impression, see “Religion in the Modern World,” undated [ca. mid-1930s?] (handwritten notes, presumably for McCulley talk), p. 4, in McCulley fonds, B92-0013, Box 1 [in no file: within set of papers adjacent to bundle of Oxford essays], UTA.

expression” than of ethical merit.¹⁰¹ Even so, scholar Ian Nicholson indicates that quite a few thinkers’ construal of “personality” still helped to highlight ethical matters.¹⁰² The term certainly pointed to McCulley’s ethical sensibilities on many occasions in the mid-century decades. “In this universe of ours,” he claimed in 1937, “there is not, to our knowledge, anything quite so unique and quite so valuable as human life and personality.”¹⁰³ McCulley’s comments about “human personality” pertained not simply to the kind of “personality” exhibited by attractive or intriguing citizens, but rather to the kind that any individual displayed, due to her personhood itself.¹⁰⁴ From his perspective, a democratic mentality encouraged “respect for human personality” in that sense.¹⁰⁵ Remarks about “human personality” also left an imprint on other Canadian figures’ claims regarding not only ethical topics, but also political matters. In the early fall of 1939, in the week when the House of Commons embraced a pro-war stance, Prime Minister Mackenzie King asserted that “[t]he forces of evil have been loosed in the world

¹⁰¹ See Ian A.M. Nicholson, *Inventing Personality: Gordon Allport and the Science of Selfhood* (Washington, DC: American Psychological Association, 2003), 6-7, 15, 36-38 (“self-expression”: p. 37; “charm”: Orison Marden, *Masterful Personality* (1921), quoted by Nicholson on p. 37). My familiarity with this issue and with Nicholson’s book stems from a verbal observation provided by Beth Robertson.

¹⁰² See *ibid.*, 7, 39-40.

¹⁰³ Joseph McCulley, *Reflections of a Headmaster: Being a Statement Regarding the Principles and Methods of Education at Pickering College, Newmarket, Ontario* (Newmarket, ON: Pickering College, n.d.), p. 7 (see also p. 2), in McCulley fonds, B92-0013, Box 1, envelope between unnamed file and “Treasurer’s Statements etc.”, UTA.

¹⁰⁴ For two documents which help to convey this kind of impression, see “Religion in the Modern World,” undated [ca. mid-1930s?] (handwritten notes, presumably for McCulley talk), p. 4, in McCulley fonds, B92-0013, Box 1 [in no file: within set of papers adjacent to bundle of Oxford essays], UTA, and “Life Victorious: An Easter Meditation,” March 29, 1942 (handwritten notes, presumably for talk by McCulley), p. 3, in McCulley fonds, B92-0013, Box 2, File titled “Notes & Drafts [3],” UTA; see also clipping of Joseph McCulley, “Faith—The Conviction of the Reality of Unseen Things,” *United Church Observer*, August 1, 1940, in McCulley fonds, B92-0013, Box 10, scrapbook for 1940-41, p. 30, UTA.

¹⁰⁵ For two documents in which this general sort of idea is implied (but with wording other than “respect for human personality”), see clipping of “Competition Is Law of Jungle Says McCulley,” *Newmarket Era*, March[?] 9, 1939, in McCulley fonds, B92-0013, Box 10, scrapbook for 1938-39, p. 90, UTA, and “Sacrifice for Victory, April 14, 1946, School, Easter Service” (handwritten notes, presumably for talk by McCulley), p. 2, in McCulley fonds, B92-0013, Box 2, File titled “Notes & Essay drafts [1],” UTA.

in a struggle between the pagan conception of a social order which ignores the individual and is based upon the doctrine of might, and a civilization based upon the Christian conception of the brotherhood of man with its regard for the sanctity of contractual relations and the sacredness of human personality.”¹⁰⁶

Even on the occasions when he pointed out the unseemly tendency of non-democratic polities to neglect the individual, McCulley in no way made “selfish[ness]” out to be acceptable for individuals whose societies retained a democratic framework. As he portrayed it, if individuals’ lives featured sizeable opportunities because of, among other things, their government’s democratic mentality, then a sort of ethical excellence became, in a sense, incumbent upon them, an excellence that would engender an ethos evocative of the “Beloved Com[munity].” While “[d]emocra[tic]” “freedom” struck him as laudable, he highlighted the “responsibility for using that *freedom* for *the good of all*.”¹⁰⁷ He encouraged young citizens to opt for “consecration to great purposes.”¹⁰⁸

¹⁰⁶ See *House of Commons Debates*, 18th Parl, 5th (Special War) Sess, Vol. 1 (8 September 1939) at 31 (Mackenzie King) (see also pp. 88-89). This same statement of King’s is pointed out by George Egerton in “Entering the Age of Human Rights: Religion, Politics, and Canadian Liberalism, 1945-50,” *Canadian Historical Review* 85, no. 3 (September 2004): 2. My awareness of this quotation stems from Egerton’s article.

¹⁰⁷ See “Educ. For Democracy? Is It Possible?,” April 2, 1939 (handwritten notes, presumably for talk by McCulley), pp. [1]-[2] (emphasis in original), in McCulley fonds, B92-0013, Box 2, File titled “Notes & Drafts, Addresses? [4],” UTA; for the phrase “Beloved Com[munity],” see “A Philosophy for Modern Young People,” Brantford So-Ed, November 26, 1943 [or 1942?] (handwritten notes, presumably for McCulley talk), p. [5], in McCulley fonds, B92-0013, Box 2, untitled file, UTA; and see clipping of “Competition Is Law of Jungle Says McCulley,” *Newmarket Era*, March[?] 9, 1939, in McCulley fonds, B92-0013, Box 10, scrapbook for 1938-39, p. 90, UTA. See also “‘I Believe’: Closing Address Delivered by Joseph McCulley, M.A., to the Ontario Youth Council, Y.M.C.A., Friday, July 7, 1950,” p. 4, in McCulley fonds, B92-0013, Box 6, File 4: “Mr. McCulley, Personal, June 23-November 7, 1950,” UTA.

¹⁰⁸ See “A Philosophy for Modern Young People,” Brantford So-Ed, November 26, 1943 [or 1942?] (handwritten notes, presumably for McCulley talk), p. [5], in McCulley fonds, B92-0013, Box 2, untitled file, UTA.

From McCulley's perspective, individuals displaying vitality would "lose themselves in something greater than themselves!"¹⁰⁹

McCulley's inclination to have recourse to exhortations in favour of excellence would occasionally kick in during the postwar decades as well. But even in that later period, ideas associated with his tendency to endorse excellence became visible primarily in statements pertaining to possibilities or quasi-imperatives for non-criminal citizens. His anti-repressive sensibilities, on the other hand, would sometimes leave an imprint upon his remarks about prisoners as well.

McCulley and Reformist Initiatives in the Postwar Penitentiaries

On more than one front, the assumptions toward which McCulley had gravitated during the two preceding decades helped to generate the mind-set that he adopted in his penitentiary endeavours during the five years following September 1947.¹¹⁰ Educational ideas, for instance, may have served as significant ingredients in the perspective to which he subscribed concerning the phenomenon of punishment itself, even punishment which pertained to convicts. In 1948, an Ontarian provincial correctional staffer asked whether any particular books struck McCulley as volumes "that might be of use to me."¹¹¹

McCulley's answer suggested that he owed part of his perspective—a perspective to which he had gravitated both at Pickering and now in the penal bureaucracy—to a volume

¹⁰⁹ See "An Immortal Texture," handwritten notes for talk [presumably by McCulley] at Closing Chapel, June 9, 1946, p. 4, in McCulley fonds, B92-0013, Box 2, File titled "Notes & Essay drafts [1]," UTA.

¹¹⁰ See, for instance, "Third Address by Deputy Commissioner McCulley," March 18, 1949, p. 3, in Edmison fonds, Coll. 2501, Box 4, File 13: "Clippings re: Prisons, Parole," QUA.

¹¹¹ See C.R. MacNeill to Joe [McCulley], August 4, 1948, in McCulley fonds, B92-0013, Box 6, File 11: "Mr. McCulley Re Personal File Generally, II," UTA.

titled *The Psychology of Punishment: The New School Discipline*.¹¹² This mid-thirties publication had allowed readers to become conversant with the stance of a British educator named Arthur Allen. Allen's discussion stemmed from a number of the sorts of ideas and sensibilities typical of McCulley's own writings and statements, although the British writer and the author who "collaborat[ed] with" him sallied forth with more voluble rhetoric. The book put Allen in position to disparage corporal punishment. Comments frowning upon "fear," scepticism about "repression," and arguments endorsing "self-discipline" helped to ensure that the volume could both repudiate punitive options and suggest strategies which might warm students up to praiseworthy conduct.¹¹³ If Allen's ideas sat well with McCulley, the Canadian does not appear to have assigned highest priority to eradicating corporal punishment, or at least not to have opted for a strategy of highlighting its banefulness when he brought Canadian audiences up to speed with current penal matters.¹¹⁴ In 1953, by which point he had begun to obtain his livelihood from the University of Toronto rather than the Penitentiary Service, at least one newspaper piece on correctional matters did point out a sceptical remark of McCulley's concerning bodily chastisements.¹¹⁵ And in 1954, a parliamentary committee was apprised of the anti-corporal-punishment component of McCulley's perspective

¹¹² See Joseph McCulley to C.R. MacNeill, August 7, 1948, in McCulley fonds, B92-0013, Box 6, File 11: "Mr. McCulley Re Personal File Generally, II," UTA; see Arthur B. Allen, *The Psychology of Punishment: The New School Discipline*, in collaboration with Evan H. Williams (London, UK: Allman & Son, Ltd., [1936]).

¹¹³ See Allen, *The Psychology of Punishment*, including, for example, 16, 19-21, 27-28, 41, 53-55, 57-58, 75, 77-79, 85, 87, 101, 103-104, 117-118, 141 ("repression" or its cognates on, e.g., 16, 28, 41, 85, 103, 104; "self-discipline" on, e.g., 20, 77, 78, 101; "fear" on, e.g., 19, 57-58).

¹¹⁴ See J. McCulley to J. Alex Edmison, June 12, 1953, in Edmison fonds, Coll. 2501, Box 2, File 4: "McCully [sic], Joseph, 1947-74," QUA.

¹¹⁵ See "Ontario's Bill Placed at \$11,000,000 for Prison Population This Year," *Globe and Mail*, June 12, 1953, p. 17; but see also J. McCulley to J. Alex Edmison, June 12, 1953, in Edmison fonds, Coll. 2501, Box 2, File 4: "McCully [sic], Joseph, 1947-74," QUA.

concerning correctional affairs.¹¹⁶ Even so, in the late forties and early fifties, the anti-repressive sensibilities with which this Deputy Commissioner was endowed gave rise primarily to reformist measures other than attempts to oust corporal penalties.

If McCulley's remarks to media personnel or other citizens seldom pertained to corporal punishment, his various speeches did familiarize quite a few audiences with the overarching correctional viewpoint among whose supporters the authorities now numbered. He tended to opt for an instrumentalist depiction of rehabilitative efforts, a depiction cognate to the one that Ralph Gibson's speeches and writings employed. As both men portrayed it, rehabilitation would strike Canadians as attractive thanks especially to the "protection" in which it would eventuate.¹¹⁷ But inmates' humanness also loomed large in McCulley's construal of penal realities, as did the ethos of "respect for human personality."¹¹⁸ "[P]risoners are people," he asserted, portraying the mind-set associated with this adage as a major element of the stance that had now obtained the Penitentiaries Branch as an adherent.¹¹⁹ The genre of rehabilitation with which he was enamoured would encourage the penal authorities "to demonstrate *a genuine interest in*

¹¹⁶ See Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries, *Minutes of Proceedings and Evidence*, No. 14 (18-19 May 1954) (Ottawa: Queen's Printer, 1954), at 593, 598, 600, 621; see also J. McCulley to J. Alex Edmison, June 12, 1953, in Edmison fonds, Coll. 2501, Box 2, File 4: "McCully [sic], Joseph, 1947-74," QUA.

¹¹⁷ See Gibson, "What's Happening in Our Penitentiaries?," 30; see Joseph McCulley, "No Final Answer," undated speech [ca. 1951], p. 1, in McCulley fonds, B92-0013, Box 4, File titled "Speeches by J. McC.,," UTA.

¹¹⁸ See J[oseph] McC[ulley], text of talk recorded on July 13 [1948] for broadcast on Station C.K.C.O. ("adapted from my closing address at the final banquet of Penitentiary Officers Training Course #2 on June the 25th"), p. 4, in RG73, Series C-1, Box 15, File 1-11-28, pt. 1: "Public Broadcasts. Generally," LAC.

¹¹⁹ See J[oseph] McC[ulley], text of talk recorded on July 13 [1948] for broadcast on Station C.K.C.O. ("adapted from my closing address at the final banquet of Penitentiary Officers Training Course #2 on June the 25th"), p. 1, in RG73, Series C-1, Box 15, File 1-11-28, pt. 1: "Public Broadcasts. Generally," LAC.

inmates as human beings.”¹²⁰ “[R]ecognition of *the worth of human personality and the infinite possibilities of every human soul* ... has at all times been the mark of truly great teachers, and if the prison officer is to be successful in his work he must be at heart a teacher,” declared McCulley during the 1949 Canadian Penal Congress.¹²¹ Remarks about “human dignity,” “respect for human personality,” and so forth lent themselves to the rhetorical efforts of other penal observers too in the mid-to-late 1940s.¹²² But almost no one displayed such a potent attachment to such notions as McCulley did.

McCulley was one figure thanks to whose efforts some of the academic and trades-related educational possibilities that penitentiary inmates encountered would gain a certain degree of momentum in the postwar years.¹²³ But some of the measures with which he dealt revolved around the attempt to educate correctional staffers rather than prisoners—and this struck him as “one of my most significant contributions.”¹²⁴ The authors of the Archambault Report had considered the fuller preparation of prison employees to be a crucial reformist strategy. McCulley’s efforts on this front gave rise to the Penitentiary Officers’ Training Course. After early 1952, the employees being

¹²⁰ See “The Y.M.C.A. in a World of Crisis: Notes for an Address by Joseph McCulley, M.A., Deputy Commissioner of Penitentiaries, Ottawa,” p. 5, attached to G.L.S., handwritten notes, November 11, 1949, in McCulley fonds, B92-0013, Box 4, File 15: “Speeches by J. McC.,” UTA. Emphasis in original.

¹²¹ Joseph McCulley, “The Institution Tackles Its Job,” in *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949* (Toronto: Canadian Penal Association, [1949]), p. 40. Emphasis in original.

¹²² See Stuart K. Jaffary, “The Training of Staff for Penal Work,” in *Fourth Canadian Penal Congress, Windsor, Ontario: Proceedings, Sec. 1 & 2, Monday, Oct. 7 & Tuesday, Oct. 8, 1946* (Monreal: Canadian Penal Association, [1946]), sec. 2, p. 13-B (“respect for human personality”); see James V. Bennett, “Commentary on General Gibson’s Address,” in *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949* (Toronto: Canadian Penal Association, [1949]), 32 (“respect for human dignity”).

¹²³ On some of this education, see Gibson, “What’s Happening in Our Penitentiaries?,” 29.

¹²⁴ See J. McCulley to Sidney Smith, May 28, 1952, in McCulley fonds, B92-0013, Box 5, File titled “J. McCulley, Personal,” UTA; see Canada, *Annual Report of the Commissioner of Penitentiaries for the Fiscal Year Ended March 31, 1948* (Ottawa: Queen’s Printer, 1949), 7.

prepared via this type of schooling tended to have a turn at the Penitentiary Staff College, a new establishment in Kingston. For the first few years, however, the Penitentiary Officers' Training Course was typically a month-and-a-half-long Ottawa-based affair. The assumptions and practices into which the state now believed correctional employees ought to buy would dawn upon the students in a given rendition of the course (generally employees from several of the penitentiaries) thanks to the input of multiple trainers or speakers, including, in at least some cases, McCulley himself.¹²⁵

McCulley's own remarks in these courses sometimes provided a sense of his religious mentality or psychological assumptions. In one speech, at least, biblical ideas lent themselves to his endorsement of rehabilitation. He alluded to Christ's story about the shepherd whose efforts revolved around a single lost sheep, with the ninety-nine non-lost sheep being pushed to the mental back burner. He also availed himself of Christ's remark concerning the punishment of the adulteress: "Let him that is without sin among you cast the first stone."¹²⁶ And at times his anti-repressive mentality left its imprint on his construal of correctional tactics. As more than one of his talks portrayed it, the toss and fro of any human's psyche owed part of their tenor to five pivotal "urges": urges pertaining to people's yearning "for recognition," "experience and adventure," "affection," "power," and "security."¹²⁷ A decade-and-a-half before, his observations

¹²⁵ See Joseph McCulley, "Canadian Penitentiary Staff College," *Prison World* 14, no 4 (July-August 1952): 6-7; see Gibson, "What's Happening in Our Penitentiaries?," 9.

¹²⁶ See "Looking Backward & Looking Forward, P.O.T.C. [Penitentiary Officers' Training Course] #29 [or 19? or 9?]-C-Keeper's Conference Closing Dinner - June 24" (handwritten notes, presumably for speech by McCulley), pp. [5]-[6], in McCulley fonds, B92-0013, Box 5, File 12, untitled, UTA. Cf. Matthew 18:12-14, Luke 15:3-7, John 8:7.

¹²⁷ See J[oseph] McC[ulley], text of talk recorded on July 13 [1948] for broadcast on Station C.K.C.O. ("adapted from my closing address at the final banquet of Penitentiary Officers Training Course #2 on June the 25th"), p. 4, in RG73, Series C-1, Box 15, File 1-11-28, pt. 1: "Public Broadcasts. Generally," LAC; see

about leisure had allowed him to point out this same quintet.¹²⁸ And given the reality of such urges, McCulley still wanted Canadians to develop a mentality more worthwhile than a repressive ethos. From his perspective, even the criminal responses of many offenders testified to the fact that one or more of these major urges had kicked in.¹²⁹ The correctional tactics which McCulley sought to cultivate would familiarize convicts with the types of non-criminal activities and possibilities that would prove to be as or more rewarding than crime, on the various fronts associated with the five major “urges.” “It is our task,” he declared, “to discover ... how ... these individuals may be taught more legitimate ways of satisfying these basic needs.”¹³⁰ As such “legitimate” possibilities dawned upon them, inmates might warm up to rehabilitation, or to particular types of morally acceptable behaviour.¹³¹ At least one of McCulley’s presentations, for instance, pointed out an issue pertaining to the urge associated with affection and sexual hankerings (the kind of “drive” regarding which “Sigmund Freud, the great psychologist,” had engaged in such a riveting exploration). Because this “drive” was characterized by so much ardour, suggested McCulley, prisons often featured “the development of a tendency

“Third Address by Deputy Commissioner McCulley,” March 18, 1949, pp. 3-4, and “Lecture No. 4 by Deputy Commissioner McCulley,” March 19, 1949, pp. 1-5, both in Edmison fonds, Coll. 2501, Box 4, File 13: “Clippings re: Prisons, Parole,” QUA.

¹²⁸ See “Radio Broadcast Delivered by J. McCulley, Esq., on October 20/1934 under Auspices of the Community Welfare Council of Ontario: ‘Leisure and the Youth,’” p. 2, in McCulley fonds, B92-0013, Box 1 [in no file: within set of papers adjacent to bundle of Oxford essays], UTA.

¹²⁹ See J[oseph] McC[ulley], text of talk recorded on July 13 [1948] for broadcast on Station C.K.C.O. (“adapted from my closing address at the final banquet of Penitentiary Officers Training Course #2 on June the 25th”), p. 4, in RG73, Series C-1, Box 15, File 1-11-28, pt. 1: “Public Broadcasts. Generally,” LAC; see “Third Address by Deputy Commissioner McCulley,” March 18, 1949, p. 4, and “Lecture No. 4 by Deputy Commissioner McCulley,” March 19, 1949, pp. 4-5, both in Edmison fonds, Coll. 2501, Box 4, File 13: “Clippings re: Prisons, Parole,” QUA.

¹³⁰ J[oseph] McC[ulley], text of talk recorded on July 13 [1948] for broadcast on Station C.K.C.O. (“adapted from my closing address at the final banquet of Penitentiary Officers Training Course #2 on June the 25th”), p. 4, in RG73, Series C-1, Box 15, File 1-11-28, pt. 1: “Public Broadcasts. Generally,” LAC. See also “Lecture No. 4 by Deputy Commissioner McCulley,” March 19, 1949, p. 5, in Edmison fonds, Coll. 2501, Box 4, File 13: “Clippings re: Prisons, Parole,” QUA.

¹³¹ See Gibson, “What’s Happening in Our Penitentiaries?,” 9.

for unnatural sex practice.” “The sex drive in prisoners,” he asserted, “must find some form of expression. If it cannot find normal expression, it must find some other outlet.” But correctional employees could encourage “[s]ublimation,” by means of which “this psychic energy can be transferred to some other activity.” According to McCulley, “[i]t is our job as educators to take this power and re-direct it through wholesome channels.”¹³²

If McCulley’s statements during the training courses sometimes stemmed from notions that had helped to shape his remarks concerning recreation in the 1930s, the recreation-related strategies of the postwar prison authorities also produced initiatives heavily influenced by McCulley.¹³³ In the late forties and early fifties, measures pertaining to recreation or to similar pursuits may in fact have generated most of the significant but still rather modest reformist scent in the penitentiaries themselves. Convicts served as audience, as editors, and as authors for new penitentiary magazines, and radio segments that prisoners created would reach Kingston citizens via one of the broadcasters in the area. A more substantial helping of sports now created a particularly appetizing form of physical exertion for inmates.¹³⁴ And prisoners’ pursuits in the segments of the day which did not revolve around work began in many instances to feature art or “hobbies.”¹³⁵ One or two of McCulley’s general psychological

¹³² See “Lecture No. 4 by Deputy Commissioner McCulley,” March 19, 1949, pp. 2-3, in Edmison fonds, Coll. 2501, Box 4, File 13: “Clippings re: Prisons, Parole,” QUA.

¹³³ See Canada, *Annual Report of the Commissioner of Penitentiaries for the Fiscal Year Ended March 31, 1948* (Ottawa: Queen’s Printer, 1949), 7.

¹³⁴ See Gibson, “What’s Happening in Our Penitentiaries?,” 9, 29; see [McCulley] to T.W.L. MacDermot, March 2, 1951, in McCulley fonds, B92-0013, Box 6, File 8: “Mr. McCulley, Personal, Nov. 9/50-Mar. 2/51,” UTA; see Canada, *Annual Report of the Commissioner of Penitentiaries for the Fiscal Year Ended March 31, 1952* (Ottawa: Queen’s Printer, 1953), 26-28.

¹³⁵ See Gibson, “What’s Happening in Our Penitentiaries?,” 9; see Canada, *Annual Report of the Commissioner of Penitentiaries for the Fiscal Year Ended March 31, 1952* (Ottawa: Queen’s Printer, 1953), 27-28; also, on “hobbies,” see Pierre Jutras, interview with Joan Nuffield, 1978, “Correctional Service of Canada Oral History Project: Jutras, Pierre – Interview,” sound recording, consulted via compact

assumptions, assumptions associated with his tendency to look askance at “repressive” tactics, turned up in his positive assessment of the penitentiaries’ recreational measures. Due to such recreational initiatives, “outlets for creative energy and ability” were no longer such a rare commodity for convicts in federal prisons.¹³⁶ Also, as McCulley saw it, these kinds of recreation would help to highlight inmates’ humanness, showing “that the administration recognizes them as human beings with normal human needs.”¹³⁷ Sometimes, at least, McCulley perceived the penal process as acquiring crucial momentum thanks to this recreational dimension of the postwar penitentiaries. Indeed, “[a]lthough recreation is far from a complete answer to the problem of individual regeneration, it has been almost miraculous to see the change in the general climate in our institutions” as a result of measures of this sort, he claimed in one letter in March of 1951. “Perhaps,” he suggested, “one might grant the necessity for the existence of institutions such as prisons and say that we can actually be proud of them.”¹³⁸

Moral Sources in McCulley’s Postwar Discourse

As demonstrated in the preceding pages, some facets of McCulley’s remarks about penitentiary matters in the late forties and early fifties suggested at least the general tenor

disc (consultation copy) 135275-1989-033-012-s2, at 8:50-9:10, in RG73, accession number 1989-0337, item number (ISN) 135275, LAC.

¹³⁶ See “‘Recent Trends in Penal Reform in Canada,’ An address by Joseph McCulley, M.A., Warden, Hart House, University of Toronto—formerly Deputy Commissioner of Penitentiaries for Canada (1947-1952),” p. 4, in McCulley fonds, B92-0013, Box 9, File 16: “Speeches – Committees’ Dinners, 1953-1965 [1],” UTA; see also Gibson, “What’s Happening in Our Penitentiaries?,” 9, 30.

¹³⁷ See [McCulley] to T.W.L. MacDermot, March 2, 1951, in McCulley fonds, B92-0013, Box 6, File 8: “Mr. McCulley, Personal, Nov. 9/50-Mar. 2/51,” UTA; similarly, see “‘Recent Trends in Penal Reform in Canada,’ An address by Joseph McCulley, M.A., Warden, Hart House, University of Toronto—formerly Deputy Commissioner of Penitentiaries for Canada (1947-1952),” p. 4, in McCulley fonds, B92-0013, Box 9, File 16: “Speeches – Committees’ Dinners, 1953-1965 [1],” UTA.

¹³⁸ [McCulley] to T.W.L. MacDermot, March 2, 1951, in McCulley fonds, B92-0013, Box 6, File 8: “Mr. McCulley, Personal, Nov. 9/50-Mar. 2/51,” UTA.

of his moral sensibilities. A few of his statements in that period more explicitly highlighted the pivotal ideas thanks to which he perceived his ethical stance as persuasive. On one or two of the occasions already mentioned in this chapter, McCulley portrayed “respect for human personality” as a significant element of the viewpoint of which the penal authorities had now become supportive. And at one spot in a speech during a YMCA-related meeting in July 1950, he suggested, in effect, that ethics more generally (rather than only moral matters pertaining to correctional activity) revolved largely around humanness, around “man.” “[W]ithout him,” McCulley declared, “this whole planet is but a dull uninteresting cinder.” “I believe, you believe, we believe,” asserted McCulley, “that persons have worth and dignity—that all those things in our community life, in our laws, our customs and our institutions that lower human worth or cheapen human dignity are bad; we believe that all those things which ennoble and enrich human life are good. This is a touchstone by which we can measure everything that we do.”¹³⁹

The ethical mind-set with which McCulley was enamoured would attune citizens to the “worth” not just of good-tempered or upstanding humans, nor just of the large majority of the human race, but rather of “each” human being. “I believe in the infinite worth of every human soul,” declared McCulley.¹⁴⁰ As he saw it, this latter aspect of such a mind-set might end up partially evaporating if citizens did not retain Christian sensibilities. Part of McCulley’s perspective concerning Christianity and penal matters

¹³⁹ See “‘I Believe’: Closing Address Delivered by Joseph McCulley, M.A., to the Ontario Youth Council, Y.M.C.A., Friday, July 7, 1950,” p. 3, in McCulley fonds, B92-0013, Box 6, File 4: “Mr. McCulley, Personal, June 23-November 7, 1950,” UTA. See note 142.

¹⁴⁰ See *ibid.*, p. 3.

was spelled out for the RCMP's W.H. Kelly in a letter penned in 1951. "I try to avoid being too much of a sentimentalist on this job," declared McCulley, "but the more I see of it the more I feel that Christianity, with its emphasis on the value of *all* human personality, is the only answer that makes sense to most of our problems. It might be considered a little strange for a Penitentiary official and a Police officer to be thinking in these terms but I am convinced that in our day to day work it is only the emphasis on the value of the apparently valueless material with which we are working which will ever achieve the results we desire."¹⁴¹

McCulley did not always create the impression that all of the major ideas usually associated with Christianity served as crucial ingredients in the ethical energy that this religion could generate. In the YMCA speech of July 1950, he had familiarized his hearers with several lines of verse:

If Jesus Christ is a man and only a man I say
That of all mankind I will cleave to him
And to him will I cleave alway –
If Jesus Christ is a god and the only God, I swear
I will follow him through heaven and hell
The earth, the sea and the air!

This particular bit of the speech thus appeared to imply that viewing Jesus as non-divine might not necessarily kibosh a citizen's inclination to espouse the ethos that Jesus had encouraged. Though a person's determination to actually *embrace* ethically laudable practices might kick in most firmly as a result of her admiration of Jesus, McCulley's discussion seemed in one sense to portray Jesus' ethical ideas and tendencies as persuasive in their own right, rather than as convincing simply by virtue of Jesus'

¹⁴¹ J. McCulley to W.H. Kelly, March 7, 1951, in McCulley fonds, B92-0013, Box 6, File 8: "Mr. McCulley, Personal, Nov. 9/50-Mar. 2/51," UTA. Emphasis in original.

endorsement. Indeed, in some respects McCulley seemed to depict the ethical nobility of Christ's actions and statements as the pivotal ingredient which might convince present-day people to maintain a specially potent admiration for Jesus. "It should be enough for all of us," suggested McCulley,

that he lived and taught,
 'Do unto others as you would that others should do unto you –
 Let him that is without sin among you cast the first stone –
 Love the Lord thy God with all thy heart and thy neighbour as thyself.'
 These and countless more of his teachings are and will be always good, always right, always true; these teachings are the final test of all our actions as individuals, as groups and as nations.

If the pivotal component in his endorsement of Jesus was the fact that certain ethical viewpoints struck McCulley or his listeners as attractive, he also suggested, in effect, that the idea of pinpointing further substantiation for those ethical perspectives themselves could be relinquished. "Why," queried McCulley,

do we need a Canadian culture? Why do we need more social security? Why do we invite the dispossessed to come to our shores? Why should we take a larger share in our government? These and other questions have stirred our minds this week. In my judgment, we might just as well ask why is love better than hate?
 Why is peace better than violence? Why is honesty better than dishonesty? Why is virtue better than vice?

I cannot give you a laboratory proof or a mathematical answer to any of these questions. I only know that there is a time when we take the jump of faith.... We believe in people; we believe in democracy; we believe in Canada; we believe in the Y.M.C.A.; we believe in Jesus Christ. These are our gambles. Have we the courage to act on our beliefs and to pay the necessary price?¹⁴²

¹⁴² See "'I Believe': Closing Address Delivered by Joseph McCulley, M.A., to the Ontario Youth Council, Y.M.C.A., Friday, July 7, 1950," pp. 5-7, in McCulley fonds, B92-0013, Box 6, File 4: "Mr. McCulley, Personal, June 23-November 7, 1950," UTA. A year later, a Pickering alumnus mentioned this YMCA speech of 1950, but seemed to indicate that another speech of McCulley's, "No Final Answer" [discussed in my next paragraph], struck him as more persuasive. McCulley then remarked that the YMCA talk "was for a very much younger audience to whom it was necessary to extend some measure of definite conviction without too much attempt at intellectual argument." See Garth [McDowell] to Joe [McCulley], June 1, 1951, and Joe [McCulley] to Garth McDowell, June 15, 1951, in McCulley fonds, B92-0013, Box 6, File 7: "Mr. McCulley, Personal, Mar. 8/51-June 28/51," UTA. Even so, in 1973 McCulley described the speech

Even if it sometimes seemed that major ethical notions to which he subscribed ultimately struck him as persuasive in their own right, McCulley still tended to associate such notions with Christianity—and also with democracy. One speech of his in 1951 pointed out some of the political and religious ingredients that would lend themselves to practices and thought patterns consonant with “human values.” He perceived a greater affinity for such values in democratic perspectives than in the communist framework, of course. The “materialistic” outlook encouraged by communism struck McCulley as unsound, and he portrayed communist assumptions as a little too cavalier regarding the individual. On the latter front especially, democracy featured tendencies rather more appetizing than those of societies like the Soviet Union. “It is my judgment,” declared McCulley, “that the state itself,—that all social organization and all the normal processes of community life exist primarily for one purpose—to ennoble and enri[c]h the life of the individual human soul.” Neither in his interwar statements nor in this postwar speech did McCulley’s positive remarks about the individual minimize “community.” As he portrayed it, the thought patterns on which he was keen would yield a genre of attunement

“I Believe” as “[s]till valid!” See the handwritten note on the copy of “I Believe” in McCulley fonds, B92-0013, Box 4, File 15: “Speeches by J. McC.,” UTA.

Also, quoting the statements of McCulley’s which this paragraph and the preceding paragraphs have pointed out does not necessarily amount to an identification of his exact wording from the July 7 speech itself. It would appear that in this instance, and in most others, notes constituted McCulley’s textual support for the verbal speech, and that hammering out a polished text was a task undertaken at some point in the following days or weeks. See [Joe McCulley] to J.P.S. Nethercott, March 6, 1944, in McCulley fonds, B92-0013, Box 2, untitled file, UTA. In this particular instance, the polished text did not materialize until October. See [Joe McCulley] to Norma Roantree, October 31, 1950, in McCulley fonds, B92-0013, Box 6, File 4: “Mr. McCulley, Personal, June 23-November 7, 1950,” UTA. However, another typescript would appear to provide a fairly clear sense of the statements that he had penned for his speech-time notes themselves—see, in the same file, Norma Roantree to Joe [McCulley], July 15, 1950, and attachment of Joe McCulley, “Summary Address,” Ontario Youth Council, Friday, July 7, 1950. In the segments of the talk which my paragraphs quote, the polished text (the one my paragraphs quote) does not seem to have modified the wording of the notes very extensively. And the actual ideas appearing in the passages in question in the two respective documents possess even more in common.

to the individual thanks to which “the Beloved Community” would eventually blossom, “the Beloved Community in which *the welfare of each is the concern of all.*” However, by McCulley’s lights, if people’s affinity for Christian sensibilities ended up going by the board, then these kinds of democracy-related perspectives might eventually do so as well. To hear him tell it, the non-Christian figures of the Enlightenment era might indeed qualify as champions of a “humanitarian” perspective somewhat comparable to his own, but their ethical energy had materialized courtesy of largely Christian momentum. He pointed out the inauspicious evaporation of much of that momentum over the era preceding the mid-twentieth-century. “Someone,” he suggested, “has truly said, ‘Our generation is living on the spiritual reserves of its grandparents.’” From McCulley’s perspective, democratic sensibilities and the “human values” with which they were associated would become somewhat firmer in Canada if more substantial mid-twentieth-century Christian energy sprang up.¹⁴³

It appears, therefore, that in his own occasional appraisal of the major ingredients thanks to which citizens might become determined to embrace an ethical viewpoint like his, McCulley gravitated especially toward comments regarding “respect for human personality” and regarding the religious sensibilities by which that respect would be facilitated. But sometimes the ethical influence of technique kicked in as well, not only in his interwar statements about education and Pickering College, but also in his postwar construal of correctional ideas. McCulley certainly characterized both science and

¹⁴³ See Joseph McCulley, “No Final Answer,” undated speech [ca. 1951], (“human values”: p. 4; “materialistic”: pp. 2, 4; “It is my judgment ...”: p. 4; “Beloved Community in which ...”: p. 5 [emphasis in original]; “humanitarian”: p. 2; “‘Our generation is living ...’”: p. 2), in McCulley fonds, B92-0013, Box 4, File titled “Speeches by J. McC.,” UTA.

technique as offering auspicious possibilities. Both while he was making a living via corrections and on subsequent occasions, McCulley suggested that behavioural science would eventually allow correctional efforts to obtain a substantial boost.¹⁴⁴ And he typically opted for postwar vocabulary, which tended to characterize quite a few social-work practices, including correctional measures like probation and parole, as “techniques.”¹⁴⁵ One instance in which a few of his comments pertained to “techniques” was a speech in 1953, a speech that familiarized an audience with his perspective in the course of a Canadian Penal Association symposium. Though McCulley had called a halt to his work in the penal bureaucracy the year before, he was now engaged in a round as president of this reformist association. His speech perhaps implied that the correctional authorities in Canada could stand to embrace an even more reformist ethos than they were currently displaying, but for the most part his discussion proved consonant with the viewpoint to which he had subscribed in other talks since 1947. McCulley portrayed current Canadian penal reformers as espousers of a relatively non-“sentimental” genre of reform. As in other postwar speeches, he opted for an instrumentalist construal of

¹⁴⁴ See Joseph McCulley, “Present Trends in Penitentiary Administration (Notes for an address to the Kiwanis Club, Ottawa, December 10, 1948),” pp. 1, 6, in Edmison fonds, Coll. 2330, Box 4, File 16: “Penitentiaries, 1940’s-50’s, McCulley, Joseph,” QUA; see “Third Address by Deputy Commissioner McCulley,” March 18, 1949, p. 2, in Edmison fonds, Coll. 2501, Box 4, File 13: “Clippings re: Prisons, Parole,” QUA; see McCulley, “The Institution Tackles Its Job,” 40; see Joseph McCulley, “A Canadian Correctional Treatment Plan: Objectives,” in *Proceedings of the Canadian Penal Association, Held in Conjunction with the American Prison Association, King Edward Hotel, Toronto, October 15 and 16, 1953* (Toronto: Canadian Penal Association, n.d.), p. (3); see Joseph McCulley, “Now Is the Time,” *Canadian Journal of Corrections* 2, no. [2] ([April] 1960): 218; see “Continuing Problems in Corrections: An Address by Joseph McCulley, M.A. (Oxon.) to the John Howard Society of Windsor, Wednesday, March 11th, 1964,” p. 7, in McCulley fonds, B92-0013, Box 9, File titled “Speeches – Committee’s [sic] Dinners 1953-1965 [2],” UTA.

¹⁴⁵ See “‘Recent Trends in Penal Reform in Canada’: An address by Joseph McCulley, M.A., Warden, Hart House, University of Toronto—formerly Deputy Commissioner of Penitentiaries for Canada (1947-1952),” pp. 7-8, in McCulley fonds, B92-0013, Box 9, File 16: “Speeches – Committees’ Dinners, 1953-1965 [1],” UTA.

rehabilitative practices, highlighting such measures' facilitation of the authorities' "protecti[ve]" efforts. And having heavier recourse to "scientific procedures and techniques" might well ensure that this rehabilitation-generated "protection" would increase. On the other hand, "punishment, repression and all those techniques which in past days robbed a convicted person of any element of human dignity" would not in fact deprive crime of oxygen to a sufficient degree. Indeed, as McCulley portrayed it, techniques would not by themselves make for optimal correctional activity. In his opinion, the authorities and other Canadians could not neglect "kindness." "[Q]uite apart from the use of scientific procedures by trained social workers, I also wish," declared McCulley, "to make a plea for the simple, human virtue of friendship. If prison aftercare is based too exclusively on technical and professional concepts, it may easily lose its most vital ingredient, namely, a genuine and sincere interest in human beings." Indeed, "I still maintain that if a real job of regeneration, reclamation, re-education or rehabilitation is to be done, it can and will be successful only in so far as there is included in it something of the milk of human kindness."¹⁴⁶

At one level, McCulley's comments made kindness out to be a non-"technical" phenomenon, and perhaps conveyed a miniature dollop of scepticism about technique. On the other hand, this dissertation has characterized certain measures as "techniques" largely by virtue of the fact that reformers sang a relatively instrumentalist tune in their endorsement of these measures, highlighting the attractive outcomes to which they would reputedly give rise. And in this particular instance, McCulley's comments in favour of

¹⁴⁶ See Joseph McCulley, "A Canadian Correctional Treatment Plan: Objectives," in *Proceedings of the Canadian Penal Association, Held in Conjunction with the American Prison Association, King Edward Hotel, Toronto, October 15 and 16, 1953* (Toronto: Canadian Penal Association, n.d.), pp. (1)-(3).

“kindness” had something in common with the kind of argument to which he might have had recourse regarding an optimal technique. The effort to call a halt to the criminal dealings of offenders—an effort that some had once assumed could be facilitated by “punishment” or “repression” or other *suboptimal* techniques—would actually be bolstered in greater measure by kindness. McCulley could warm Canadians up to an ethos of kindness thanks in part to citizens’ and reformers’ gravitation toward instrumentalist construals of correctional activity.

Correctional Net-Widening?: The Fauteux Committee and Parole Reform

In both the nineteenth and twentieth centuries, the authorities’ efforts to ensure that Canadian federal or provincial penal activity would remain viable featured relatively frequent inquiries and assessments regarding prisons or jails.¹⁴⁷ Two of the reports sometimes regarded as highlighting Canadian reformist perspectives on penal matters in the postwar decades are the 1956 Fauteux Report and the 1969 Ouimet Report.¹⁴⁸ The government owed the Fauteux Report not to a royal commission, but rather to a committee of four: Quebec judge Gerald Fauteux, erstwhile Ontarian criminal-justice bureaucrat William Common, and reformist figures Alex Edmison and Joseph McCulley.¹⁴⁹

In the mid-1930s, the Archambault Commission had sallied forth in light of developments in the penitentiaries that had been decried by numerous voices. A slightly

¹⁴⁷ For a discussion of some of these inquiries, see Whittingham, “Criminality and Correctional Reformism in Ontario,” chapters 4 and 5.

¹⁴⁸ See Ekstedt and Griffiths, *Corrections in Canada*, 53-55.

¹⁴⁹ See *Report of a Committee Appointed to Inquire into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada* (Ottawa: Queen’s Printer, 1956) (hereafter Fauteux Report), 1-4.

less massive set of issues faced the Fauteux Committee during 1954, 1955, and 1956. But one feature which the later committee had in common with the Archambault Commission was the on-the-ground familiarity with European prisons that both of these Canadian bodies acquired.¹⁵⁰ In August 1954, at nearly the same time as the start of the committee's European expedition, Kingston Pen fell prey to a heavy-duty riot. "This sort of thing is extremely bad for the cause of penal reform," declared the diary of a miffed Alex Edmison.

It is especially so when we consider all the progress that has been made at K.P. since the regime of General Gibson began. I know that Walter Johnstone, the Warden, is on holidays & I think was due back to-day. He is a progressive—but ill-conceived outbursts of this kind may hamper his work for years. There are some prison mutinies which I can understand—but to me this one defies analysis. The obvious overcrowding at K.P. was not sufficient cause. Now, of course, the reactionaries will blame it all on 'coddling' etc. etc.—& will be conveniently blind to the fact that these outbursts happened frequently during grimmer regimes.¹⁵¹

The committee's project, however, still allowed Edmison and the others to champion a progressive rather than a reactionary perspective. The Fauteux Report was laced with instrumentalist and rehabilitative motifs largely consonant with the viewpoint of the Archambault Report. The idea of utilizing such a committee had at first caught on with the authorities especially because of their belief that federal parole or other remissions-related practices could perhaps stand a certain degree of strengthening on certain fronts. Although such topics as sentencing and incarceration also ended up looming relatively large in the Fauteux Report,¹⁵² the project did help to encourage the

¹⁵⁰ See Archambault Report, 3-5, 366-368; see Fauteux Report, 3.

¹⁵¹ Alex Edmison, Daily Journal, 1954, entry for August 16, in Edmison fonds, Coll. 2501, Box 6, QUA. On this Kingston Pen riot, see Marr, "A Series of Nasty Situations," 53-76.

¹⁵² See Fauteux Report, including i, 1-2.

adoption of a reconfigured federal parole system, a system which, starting in 1959, featured a National Parole Board (a body among whose members Alex Edmison would number for its first decade).¹⁵³

The authorities thought they would end up having more to show for their penal pursuits if the state's correctional activity majored in parole rather than incarceration during the latter segment of most Canadian prisoners' penalties. Parole, however, struck some offenders as inopportune. In the 1960s, quite a few prisoners ended up gaining roughly twice as much familiarity with parole as with incarceration, since the authorities regarded thirty-three percent of a sentence in prison and sixty-six percent on parole as appropriate proportions for some offenders.¹⁵⁴ The entire sentence still constituted a period in which the convict would be watching his p's and q's: until the date that the sentence had indicated all along to be the penalty's concluding moment, no halt would be called to the imperative of putting up with a parole officer and his "supervision"—or perhaps even with imprisonment again, if the parolee's activities did not sit well with the parole board. However, even if the option of paroling a given prisoner were never pursued, only a truncated allotment of incarceration (between sixty-six and seventy-five percent of his term, provided that he displayed no major wayward streak in prison) would

¹⁵³ See Ouimet Report, 333; see clipping of "Breakdown of Home, School, Church Seen Leading to Delinquency, Crime," *London Free Press*, November 19, 1959, in Edmison fonds, Coll. 2330, Box 3, File 4: "Scrapbook, 1959," QUA; see J. Alex Edmison to Joseph McCulley, February 18, 1969, in Edmison fonds, A.Arch 5002.2, Box 9, File 2: "McCulley, Joseph – (2)," QUA.

¹⁵⁴ See Ouimet Report, 343-344, 348; see Canada, *Annual Report of the National Parole Board for the Calendar Year Ended December 31, 1960* ([Ottawa: Queen's Printer, 1961]), 16-17. In the first half of the 1960s, the carceral component of the penalties of more than five hundred offenders—less than a tenth of parolees, admittedly—appear to have contracted this sharply through parole (so sharply, that is, that roughly two thirds [or more] of such offenders' penalty became non-carceral)—see Canada, *Annual Report of the National Parole Board for the Calendar Year Ended December 31, 1964* ([Ottawa: Queen's Printer, 1965?]), 23, 45.

be required of him, as a result of statutory and earned remission. And in the case of such a non-parolee, no directives from the parole authorities, tête-à-têtes with parole officers, or further rounds of imprisonment due to such supervision would blemish the weeks or months or years subsequent to that truncated carceral segment. In other words, putting up with somewhat more incarceration than was incumbent upon a parolee would allow the offender to cease to interact with correctional figures a good deal sooner than parolees did, with no trepidation from any thought that prison might waylay him again as a result of this particular sentence. A determination not to be paroled was therefore exhibited by some inmates.¹⁵⁵

As the authorities saw it, even some of these latter types of prisoners would probably end up gravitating toward non-criminal possibilities to an at least slightly increased degree as a result of interaction with a parole officer and the process of pursuing activities consonant with the expectations which characterized parole. The parole-centred framework on which the state was keen therefore underwent reinforcement in 1970, with the establishment of a measure known as mandatory supervision. Now, even when statutory and earned remission, rather than parole, had acted as the chief imprisonment-truncating ingredient for a given convict, the non-carceral segment of his sentence would familiarize him with the same kind of “supervision” which parolees knew so well.¹⁵⁶ Mandatory supervision, therefore, would seem to qualify clearly as a net-widening move.

¹⁵⁵ See Ouimet Report, 343-350; see Graham Stewart, “Mandatory Supervision: Politics and People,” *Canadian Journal of Criminology* 25, no. 1 (January 1983): 97, 99-100.

¹⁵⁶ See Stewart, “Mandatory Supervision,” 97-103; see also Ouimet Report, 348-351.

In light of developments like mandatory supervision, perhaps it might be possible to suggest that the input from McCulley via the Fauteux Committee eventuated in net-widening, or in similar coercive measures. After all, the Fauteux Report had helped to encourage the pursuit of the reconfigured genre of federal parole which had materialized in 1959 and during the following years. Moreover, the idea of mandatory supervision seems to have struck the Fauteux Committee itself as meritorious.¹⁵⁷ Be that as it may, an interpretation of McCulley that dwelt heavily on this sort of net-widening could probably claim only limited plausibility. Perhaps we could more easily associate Edmison with parole-related net-widening, given his ample input to the National Parole Board's work during the sixties (although the documentation inspected for this dissertation reveals too little about his parole pursuits to demonstrate whether or not his influence fostered net-widening measures). In any event, though, by no means do these two men seem to have become attached to a particularly coercive ethos. Even in the late sixties or early seventies, at least some of their statements were evocative of perspectives to which they or other reformers had gravitated in the interwar or mid-century years, including perspectives highlighted in this chapter.

On one occasion in 1972, for instance, a short radio segment on CBC allowed listeners to sample a small set of Edmison's opinions on penal matters. Certain events in the 1970s may have turned some Canadians off with regard to parole and rehabilitation. For one thing, a large spate of prison riots numbered among the happenings in this decade.¹⁵⁸ A particularly spine-chilling riot at Kingston Pen in 1971, the year before

¹⁵⁷ See Fauteux Report, 61; and see 65.

¹⁵⁸ See Parliament, Sub-Committee on the Penitentiary System in Canada, Standing Committee

Edmison's CBC segment, probably touched a nerve within the general public more sharply than any other single prison fracas in that decade.¹⁵⁹ It is unclear whether the Kingston riot helped to spark Edmison's commentary, since the talk made no explicit reference to this event. In any case, he would seem to have assumed that his listeners were less than enamoured with convicts at the moment. But Canadians would do well, he suggested, to continue to allow the pursuit of the reformist project. "Old methods have largely failed," he remarked. "Now we need more tolerance to see how new experiments work out." Near the end of the piece, he quoted a statement that a chaplain had written nearly a century before, in 1873: "It is true that an act of kindness often produces more effect, even on the most brutal characters, than the severest kind of punishment. Punishment can at best but reduce the body, while benevolence and charity win the heart. And when the heart is won, amendment becomes easy."¹⁶⁰ So if Edmison wanted to encourage his listeners to respond kindly to convicts, he did not have to tell them to do so out of the sheer goodness of their hearts. Instead, he could suggest that prisoners who experienced Canadians' kindness would tend to start behaving well, as the public wanted. Arguments of this sort are, of course, familiar to us after the past two chapters. In the interwar period, the postwar years, and the early 1970s too, such discourse might prevent reformers from appearing too gratuitously compassionate, yet still associate kindness or humaneness with possibilities attractive from non-criminals' perspective.

on Justice and Legal Affairs, *Report to Parliament by the Sub-Committee on the Penitentiary System in Canada* (1977) (MacGuigan Report), 5.

¹⁵⁹ Regarding this riot, see Marr, "A Series of Nasty Situations," 77-104.

¹⁶⁰ See J. Alex. Edmison, "Viewpoint," Canadian Broadcasting Corporation, April 6, 1972, in Edmison fonds, A.Arch 5002.2, Box 15, File 5: "'Viewpoint' (Canadian Broadcasting Corporation, April 6, 1972)," QUA.

And what was McCulley thinking in this last stretch of his life? Thanks to a document from 1972, “Some Reflections of a Retired School-Master,” we possess clues about how he appraised the tendencies that the present period’s culture had encouraged young citizens to adopt. His comments suggested scepticism on his part about the drugs that a large number of them liked, and perhaps about “the new sexual permissiveness” as well. In a pivotal respect, however, McCulley’s evaluation bore the scent of affirmation. “[M]any young people today,” he suggested, “are as fine a generation as one could possibly wish for—more self-reliant, more honest; yes, and, I think, more idealistic than many of their Victorian and puritanical ancestors.”¹⁶¹ If McCulley’s characterization of certain people in preceding eras as “puritanical” was evocative of his tendency to look askance at repression, he was also still enamoured with excellence, an excellence that from his perspective pertained more to “idealism” than to garden-variety rectitude. Both in the interwar and in the postwar periods, the techniques and the moral perspective championed by this educator, speaker, and penal reformer had featured an ethos of this type—an ethos consonant with anti-repressive, anti-coercive sensibilities.

¹⁶¹ See Joseph McCulley, “Some Reflections of a Retired School-Master,” October, 1972, attached to Harry M. Beer to Joseph McCulley, October 11, 1972, in McCulley fonds, B92-0013, Box 9, File titled “Articles & Addresses,” UTA; see also the handwritten note on the copy in Box 4, File 15: “Speeches by J. McC.,” UTA.

Epilogue

Authority in Question, Liberalism in the Ascendant: Coercion, Non-Carceral Correctional Measures, and Ethical Sensibilities in the Sixties and Later Decades

Joe McCulley could refer at one point in the early 1950s to the “pr[ide]” that might, either today or in the years ahead, characterize the authorities’ or citizens’ perspective concerning the country’s penitentiaries.¹ Reformers did not in fact end up bestowing as many smiles on Canadian prisons in the next few decades as he might have prognosticated. Indeed, a few somewhat sceptical comments by McCulley himself concerning prisons numbered among the reformist statements of the late 1950s.² And the claims of certain other voices, such as psychiatric figures engaged in corrections or similar pursuits, would have helped to prevent the strategy of incarceration from wholly enchanting too many of their hearers. Perhaps imprisonment’s exclusionary dimension may have sunk in for listeners via psychiatrist Bruno Cormier’s statements in 1957 at the Canadian Congress of Corrections, thanks to his exploration of the notion that, especially to an inmate, such a sanction quite often seemed to amount to a type of “desertion.”³ At least some facets of current imprisonment were dressed down in Kingston Pen psychiatrist Maurice O’Connor’s talk at the same conference. Among many other things, the “autocratic” scent that characterized prisons struck him as baneful. “The less the force of autocratic authority,” remarked O’Connor, “the more human the society, and

¹ See [McCulley] to T.W.L. MacDermot, March 2, 1951, in McCulley fonds, B92-0013, Box 6, File 8: “Mr. McCulley, Personal, Nov. 9/50-Mar. 2/51,” UTA.

² See Joseph McCulley, *Some Present Problems in Corrections: An Address Delivered at the Annual Meeting of the John Howard Society of London, Ontario. March 14th, 1958* (Toronto: John Howard Society of Ontario, n.d.), pp. 2-3, in McCulley fonds, B92-0013, Box 9, File titled “Articles & Addresses,” UTA.

³ See Bruno M. Cormier, “Types of Regression Determined by the Deprivation of Liberty and Their Implications in Rehabilitation,” in *Proceedings of the Canadian Congress of Corrections, 1957* (Ottawa: Canadian Corrections Association, n.d.), 137-147 (“desertion” on 143, 145-146).

conversely, the greater the force of autocratic authority, the less human the society.”⁴

Moreover, according to Saint Vincent de Paul Penitentiary psychologist Justin Ciale, the “authoritarian” tenor of penitentiaries militated against certain tactics that some associated with rehabilitation.⁵

However, reformist discourse in the third quarter of the century also made for the exploration of supposedly more promising tactics than the aspects of imprisonment at which some observers caviled. In fact, in the 1960s and ’70s, reformers gravitated especially toward non-carceral correctional ideas. As pointed out in Chapter 5, some observers have suggested that the correctional habits which Western states began to exhibit during these two decades ended up featuring “net-widening.” Such an interpretation might create the impression that correctional coercion now qualified, on the whole, as a more plentiful commodity than previously. And at least some developments in this period, such as the mandatory-supervision strategy that the preceding chapter noted, may indeed align with a depiction of that sort. However, the discussions in which penal observers engaged in the 1960s concerning non-carceral correctional measures and other purportedly reformatory tactics suggest that qualms about coercion now materialized a little more readily among educated Canadians than in the first two thirds of the century. In light of the remarks of various writers about “authority” or “treatment,” and of some commentators’ espousal of soundly liberal interpretations of the law, of penalties, or of Canada’s perspective with respect to its citizens, it would appear that

⁴ See Maurice O’Connor, “Impressions Concerning Adaption to Imprisonment,” in *Proceedings of the Canadian Congress of Corrections, 1957* (Ottawa: Canadian Corrections Association, n.d.), 110-120 (quote on 115).

⁵ See Justin Ciale, “Problems in Establishing Therapeutic Relationship in a Prison Community,” *Canadian Journal of Corrections* 1, no. 4 (July 1959): 92, 98-99. For a sense of Ciale’s activities and mentality, see Justin Ciale, *Tales of Saint Vincent de Paul Penitentiary* (New York; Ottawa; Toronto: Legas, 1997).

people's mind-set concerning penal matters was beginning to feature somewhat, though not massively, stronger *anti*-coercive sensibilities.

Authority, Treatment, and Non-Carceral Corrections in the 1960s

In the early-to-mid 1960s, discussions highlighting rehabilitative correctional measures saw quite a few penal commentators touch upon the phenomenon of "authority." On occasion an observer might suggest that the nation's penal activity, or Canadian social habits more generally, could end up majoring too thoroughly in authority. Anthropologist Ronald Cohen portrayed full-fledged imprisonment as a genre of penalization for which nations of "independent," "initiative"-displaying "individuals" would opt. By contrast, a culture in which people's habits and assumptions revolved around "hierarchy," such that they seldom exhibited a proclivity for actions sharply nettlesome to "authorit[ies]," might opt for more or less "minimum security" incarceration. Therefore, if scepticism concerning thoroughgoing imprisonment truly took off in Canada, it would do so partly as a result of the fact that the country was exhibiting more and more of the kind of dynamics which characterized that second type of culture. "[H]umane treatment of prisoners and minimal security imply a paradox," remarked Cohen. "Although this view of penal institutions stems itself from a background of liberal democratic humanitarianism, it requires for its efficient operation a widespread form of passively accepted authoritarianism."⁶

⁶ See Ronald Cohen, "Custody and Treatment: An Anthropological View," *Canadian Journal of Corrections* 3, no. 2 (April 1961): 109-114 ("independent" and "initiative" on 113; "individuals" on 113; "hierarchy" on 111; "minimum security" on 112; long quote on 114).

Quite a few remarks about authority with respect to penal topics revolved not around prisons, but rather around non-carceral facets of corrections, such as the tactics of parole staffers or probation officers. It appears that at least some interwar or mid-century social-work thinkers may have tended to promulgate the notion that people would buy less readily into the ideas or habits which a social worker was seeking to nourish if they perceived her as an authority whose directives the state expected them to regard as imperative.⁷ A few of the statements of Canadian penal commentators in the 1960s concerning “authority” may have aligned in part with this kind of assumption. A good bit of commentary, however, actually tended to suggest that by no means would detrimental dynamics necessarily materialize as a result of parole or probation officers’ authority.⁸ One affirmation of authority-scented parole reached readers of the *Canadian Journal of Corrections* courtesy of T. George Street, the National Parole Board’s chairman. Street rooted for a perspective through which a firm affinity for non-carceral measures like parole and probation would materialize among Canadians, such that the second-rate option of imprisonment would no longer typify so many convicts’ penalization. But the kind of parole on which he was keen would not suggest that it was incumbent upon the state to assign priority to mere generosity. Without apology, Street associated parole with “social control.” Indeed, as he portrayed it, “[t]he ideal solution to the problem of crime

⁷ For comments that mention this supposition but construe it as unsound, see W.R. Outerbridge, “Authority – Its Use or Misuse in Probation,” *Canadian Journal of Corrections* 2, no. 3 (July 1960): 301; F.E.A. Ewald, untitled statement in “Current and Candid: ‘Should Parole Supervision Be the Responsibility of the Government Agency?’,” *Canadian Journal of Corrections* 5, no. 2 ([April] 1963): 134; L.D. Howarth, untitled statement in “Current and Candid: ‘Should Parole Supervision Be the Responsibility of the Government Agency?’,” *Canadian Journal of Corrections* 5, no. 2 ([April] 1963): 132.

⁸ For a reference in one such article to “the dynamics of authority,” see Outerbridge, “Authority – Its Use or Misuse in Probation,” 307. In this chapter, I have generally employed no quotation marks in my various sentences which refer to “dynamics” or a “dynamic,” not even in sentences which refer to dynamics associated with authority.

is the provision of sufficient[,] adequate, authoritative control over offenders”—a phenomenon that would be generated especially well by parole and probation, partly through the “supervision and surveillance” in which parole staffers engaged.⁹

Certain other commentators’ affirmation of authority introduced considerations that displayed a slightly more rehabilitative tenor than the phrase “social control.” Federal official L.D. Howarth asserted that in light of on-the-ground realities with which parole staffers were conversant, it was not in fact incongruous for such staffers to engage in “treatment” even though their pursuits also bore the scent of “authority.”¹⁰ This did not strike the John Howard Society of Ontario’s F.E.A. Ewald as necessarily incongruous either, although state employees’ habits as parole officers would not, by his lights, tend to make for such promising correctional attempts as would the habits of parole personnel from non-state bodies. Ewald depicted the latter type of “personnel” as typically displaying “effective skills and a wise use of therapeutic authority which is inherent in all social work relationships,” and also as typically “avoid[ing] authoritarianism which tends to restrict the freedom of the individual and to discourage a healthy growth of an internalized authority within the individual.” As Ewald portrayed it, therefore, the type of scenario that qualified as optimal from the standpoint of liberalism—a scenario that saw “freedom” characterize the “individual[’s]” dealings—could materialize thanks to the genre of authority which he was affirming. The dynamic created by these parole personnel “reflects the very essence of a democratic society in which the use of authority

⁹ See T. George Street, “Parole as a Social Control,” *Canadian Journal of Corrections* 7, no. 1 (January 1965): 5-7.

¹⁰ See L.D. Howarth, untitled statement in “Current and Candid: ‘Should Parole Supervision Be the Responsibility of the Government Agency?,’” *Canadian Journal of Corrections* 5, no. 2 ([April] 1963): 132.

is recognized as necessary to ensure the maximum amount of individual freedom consistent with the collective needs of society.”¹¹

Since a certain amount of parole-related commentary put in a good word for authority, the correctional discourse of the sixties might not seem to reflect any especially potent anti-coercive mentality on the part of Canadian penal observers. On the other hand, both these commentators’ attunement to the topic of authority itself and their actual remarks about it may suggest that some observers had clued in to an at least slightly increased amount of scepticism on the part of quite a few postwar thinkers concerning the coercion associated with some state activity.¹² And if anything, correctional thinkers may have caviled at coercion more readily in the later 1960s than in the first few years of the decade. The fact that more thinkers’ outlook was beginning to reflect partly anti-coercive sensibilities may sink in for us through a comparison of a 1960 article and a late-sixties piece of commentary, both of them supplied by William Outerbridge, a correctional figure in the Ontario Probation Service.

In 1960, Outerbridge created the impression that certain relatively auspicious—or at least by no means odious—“dynamics” could stem from the phenomenon of authority. As he saw it, “social control” certainly did emerge via correctional activity. He put in a good word, though, for a more or less liberal mentality with respect to the kinds of practices which might or might not deserve to be forbidden by the state. “Our society,”

¹¹ See F.E.A. Ewald, untitled statement in “Current and Candid: ‘Should Parole Supervision Be the Responsibility of the Government Agency?,’” *Canadian Journal of Corrections* 5, no. 2 ([April] 1963): 134. Note that Ewald did not explicitly associate this with “liberalism.”

¹² For other comments concerning “authority,” see B.W. Henheffer, untitled statement in “Current and Candid: ‘Should Parole Supervision Be the Responsibility of the Government Agency?,’” *Canadian Journal of Corrections* 5, no. 2 ([April] 1963): 138; see A.K. Couse, “Pre-Release Preparation for Parole,” *Canadian Journal of Corrections* 7, no. 1 (January 1965): 34, 36-37; see J.W. Braithwaite, “Treadmill—or Treatment?,” *Canadian Journal of Corrections* 7, no. 1 (January 1965): 98.

he asserted, “holds in high regard the dignity of the individual, and his freedom to self-determination, as long as this individual freedom does not impinge upon the freedom of others.” And in Outerbridge’s telling, authority-scented genres of social work had indeed tended to be frowned upon by earlier thinkers. As he perceived it, however, an attempt to maintain the sort of practices that sharply nettled the authorities would prove untenable not only for a probationer, but also for almost any other kind of individual. A probationer could warm up to authority somewhat by means of his interactions with a probation officer, interactions through which this officer’s authority would indeed kick in. Thanks to probation and the authority it featured, the possibility of buying into a viable non-criminal ethos, an ethos that would require no butting of heads with authority, could dawn upon the convict. In non-probationary scenarios, the option of chastisement through incarceration, or even through a mere fine, could allow the state to implement a “punitive sanctio[n].” By contrast, engaging in corrections by means of probation made for a “non-punitive” correctional attempt. By Outerbridge’s lights, a probation officer’s habits could savour of a “benign” genre of authority. Even some type of religious assumption may have numbered among the considerations supplying validation for his affirmation of such authority, given the implicit reference to God or some metaphysical factor which Outerbridge’s final remarks would seem to have conveyed. Availing himself of a metaphorical mirror might allow a probation officer to obtain a key clue about the factors as a result of which probationers might end up relinquishing some of their proclivity for wrangling with authority. A principal factor, suggested Outerbridge, “is the character of the probation officer himself; the kind of person he is, and what he stands for; his own recognition and acceptance of the reality of authority; the degree of comfort with which

he accepts not only temporal authority, but the sincerity with which he lives within the concepts and teachings of the ultimate authority.”¹³

Outerbridge’s article in 1960 certainly did not major in coercive motifs. In the late 1960s, though, Outerbridge more firmly created the impression that reformation-centred correctional tactics must not err on the side of coercion. The idea of rehabilitating convicts, and of doing so via tactics associated with social science, had long appealed to penal reformers. In the 1960s and ’70s, however, some commentators in Anglophone nations took to suggesting that the kinds of coercion sometimes at work in “therapeutic” efforts might in fact be ethically objectionable. At least a few thinkers now pointed out “the right to be different,” to quote the title of an important American book from these years.¹⁴ Outerbridge’s commentary began to align with some aspects of this perspective, particularly in “The Tyranny of Treatment ...?”—a talk of his that reached listeners both in Halifax during the 1967 Canadian Congress of Corrections and in 1968 on CBC.¹⁵ Outerbridge pointed out that some observers had been attempting to pinpoint the degree to which actual rehabilitation ought to be associated with particular tactics of parole or probation staffers. According to at least some explorations of this sort, rehabilitation did not seem to gain any more momentum among convicts conversant with an “intensive”

¹³ See W.R. Outerbridge, “Authority – Its Use or Misuse in Probation,” *Canadian Journal of Corrections* 2, no. 3 (July 1960): 295-309 (“dynamics” on 307; “social control” on 295; “punitive sanctions” on 296; “non-punitive” on 297, 298, 300, 307; “benign” on 306; long quotations on 295, 309).

¹⁴ See Nicholas N. Kittrie, *The Right to Be Different: Deviance and Enforced Therapy* (Baltimore: Johns Hopkins Press, 1971). Regarding Kittrie’s book, other key works, and the perspective associated with them, see Chenier, *Strangers in Our Midst*, 9, 214 notes 21-23.

¹⁵ See W.R. Outerbridge, “The Tyranny of Treatment ...?,” *Canadian Journal of Corrections* 10, no. 2 (April 1968): 378-387 (and see statement on 221); see W.R. Outerbridge, “The Tyranny of Treatment ...?” (“Lecture prepared for CBC Series ‘IDEAS’ – April, 1968”), and W.R. Outerbridge to John Rich, June 27, 1968, both in R3313-0-8-E (William Outerbridge fonds), Volume 1, File 8: “Lecture. The Tyranny of Treatment. (CBC ‘Ideas’ Series), 1967-1968,” LAC; see W.R. Outerbridge, “The Tyranny of Treatment ...?,” *Chitty’s Law Journal* [Peterborough, ON] 17, no. 6 (June, 1969): 188-193.

genre of the “supervis[ory]” and rehabilitative activity of a parole or probation officer than among offenders for whom only a rather limited helping of such supervisory measures materialized. In light of this reality, some thinkers perceived merit in adopting a genre of corrections characterized primarily by the “humane,” gradual evaporation of convicts’ sentences, and in largely dispensing with “the more intensive kinds of” purportedly reformatory “treatments,” given the current impotence or noxiousness of some of these latter tactics. If a truly rehabilitative measure emerged at some point, then corrections could start to major more confidently in treatment once more. By contrast, given the current reality, some other correctional thinkers or workers might tend to exhibit all the more determination to hit upon and avail themselves forthwith of some sort of potent tactic (even a relatively “coercive” one that was tied to “behavioural science”) through which offender reformation would finally take off. In Outerbridge’s telling, rather “sinister” repercussions might emerge due to this latter mentality. He also pointed out an “unethical” phenomenon associated with certain “therapeutic” attempts in some carceral establishments. An inmate’s dubiousness about such therapy might generate the impression among correctional personnel that this particular convict’s parole would have to wait until his mind-set savoured more clearly of rehabilitation. The inmate could, by contrast, exhibit a genuine determination to dive into this supposedly rehabilitative activity; but that too might, in light of the type of activity in question, end up making for a setback on the parole front. After all, the notions verbalized or proclivities displayed by the inmate in these “therapeutic” pursuits might allow the “treatment” personnel to clue into one or more counts on which rehabilitation seemed not to have kicked in yet to a sufficient extent, such that the option of paroling him deserved, by their lights, to be

scuppered until some subsequent point. “[A] dangerously unethical ‘double-bind’ situation” might therefore stem from this type of therapeutic tactic. To be sure, Outerbridge’s exploration of such considerations by no means amounted to an attempt on his part to repudiate rehabilitation in general. He still remained quite strongly supportive of treatment—provided that correctional figures did not permit “its implicit authoritarianism and coercive potential” to take off.¹⁶

Certain kinds of reformatory tactics’ off-putting “coercive potential” probably did not dawn upon all observers in the late 1960s as firmly as upon Outerbridge. The Canadian Committee on Corrections, the five-person body to which the federal government owed the massive 1969 Ouimet Report, generally did not associate either rehabilitative or social-scientific components of correctional activity with baneful coercion. However, the report’s philosophical interpretation of the state’s attempt to forbid and punish criminal deeds did align with straightforward liberal assumptions with regard to the individual—the type of notions affirmed by voices like Outerbridge and Ewald. “The basic purposes of the criminal law,” claimed the authors, “should be carried out with no more interference with the freedom of individuals than is necessary.”¹⁷

¹⁶ See Outerbridge, “The Tyranny of Treatment ...?,” *Canadian Journal of Corrections*, 378-387 (“intensive” on 379-381; “supervision” on 379, 381; “humane” on 382-388; “the more intensive kinds of” on 383; “coercive,” “behavioural science,” and “sinister” on 383; “therapeutic” on 383; “a dangerously unethical ‘double-bind’ situation” on 383-384).; see W.R. Outerbridge, “The Tyranny of Treatment ...?” (“Lecture prepared for CBC Series ‘IDEAS’ – April, 1968”), p. 17, in R3313-0-8-E (William Outerbridge fonds), Volume 1, File 8: “Lecture. The Tyranny of Treatment. (CBC ‘Ideas’ Series), 1967-1968,” LAC. “[I]ts implicit authoritarianism and coercive potential” was actually a phrase which had been associated with such types of correctional tactics by the thinker Robert Martinson—see Robert Martinson, “On the So-Called ‘Custody-Treatment’ Dimension,” provisional article of article for *Issues in Criminology*, II, 1967, quoted in Outerbridge, “The Tyranny of Treatment ...?,” *Canadian Journal of Corrections*, 385.

¹⁷ *Report of the Canadian Committee on Corrections: Toward Unity: Criminal Justice and Corrections* (Ottawa: Queen’s Printer, 1969) (hereafter Ouimet Report), 11. For a more thoroughly liberal statement, see John Stuart Mill, *On Liberty*, Everyman Edition, 72-73, quoted in J.V. Fornataro, “It’s Time to Abolish the Notion of Pre-Delinquency!,” *Canadian Journal of Corrections* 7, no. 2 (April 1965): 189.

According to P.J. Fitzgerald, an academic writer of whose statement the report availed itself, “The aim of crime prevention in a free society is part of the larger aim of producing a society in which the citizen can fulfill himself in the pursuit of his individual happiness.”¹⁸

Even though a number of observers now caviled at coercion a little more readily, or tended to exhibit a firmly liberal perspective concerning the state’s outlook with regard to “the individual,” a slightly increased volume of correctional coercion may actually have materialized in this period. Indeed, if the idea of coercion seems, during the past four or five decades, to have become more objectionable to intellectuals and a major portion of the middle class, perhaps this has stemmed in part from the fact that people were now coming into more frequent contact with a fuller assortment of slightly coercive policies and methods employed both by governments and by other entities,¹⁹ and that it did not take much effort to conceive of more potentially coercive measures that could emerge. An observation by Outerbridge at a 1973 conference may have reflected one unusually striking aspect of this more general sort of dynamic. “Both inside and outside prisons,” he claimed,

many people are becoming increasingly concerned with the possible implications of new technology and the effect that it may have in modifying human behaviour. We have now moved beyond the concern created by one-way glass, projective tests and the use of some drugs, only to enter an era where technology permits very delicate neurosurgery, prosthetic devices, nutritional experimentation, the modification of genetic codes and the use of hormonal implants to ensure the modification of behaviour. These developments raise issues of great concern

See also Richard V. Ericson, “Responsibility, Moral Relativity, and Response Ability: Some Implications of Deviance Theory for Criminal Justice,” *University of Toronto Law Journal* 25 (1975): 24-25, 29, 31, 33-36, 39-41.

¹⁸ P.J. Fitzgerald, *Criminal Law and Punishment* (Oxford: Clarendon Press, 1962), 146, quoted in Ouimet Report, 12.

¹⁹ See also Cohen, “Custody and Treatment: An Anthropological View,” 113-114.

related to the potential tyranny of treatment.²⁰

Moreover, a good bit of coercion emerged partly as a result of parole itself in these years. The Canadian Supreme Court's Chief Justice, Bora Laskin, certainly created that impression in 1975 through the comments which conveyed his dissenting perspective in *Mitchell v. R.* "The plain fact," declared Laskin, "is that the [National Parole] Board claims a tyrannical authority that I believe is without precedent among administrative agencies empowered to deal with a person's liberty. It claims an unfettered power to deal with an inmate, almost as if he were a mere puppet on a string."²¹ Laskin's comment was zeroing in not on the "supervision" in which parole officers engaged, but rather on the second or third round of incarceration that might immobilize a parolee if the board were of a mind to require this, and especially on such stances of the board as its apparent repudiation of the idea of necessarily spelling out its views and conclusions for a convict who was determined to ferret out the rationale due to which this new imprisonment of his had materialized.²² Be that as it may, the remark did still highlight a dynamic that reflected a type of net-widening. And net-widening might begin to strike us as a particularly plausible motif in light of the fact that the National Parole Board now provided a livelihood for William Outerbridge himself, its chairman since April 1974.²³

²⁰ W.R. Outerbridge, "Criminal Justice in the Seventies: In Search of New Perspectives on an Old Problem," in *Proceedings of the Canadian Congress of Criminology and Corrections, 1973, Regina, Saskatchewan, June 24-29* (Ottawa: Canadian Criminology and Corrections Association, n.d.), 15.

²¹ *Mitchell v. R.* (1975), [1976] 2 SCR 570 at 577, Laskin CJC, dissenting. Another writer's comments about this statement of Laskin's acquainted me with the quotation—see Claire Culhane, "The B.C. Pen: A Responsibility," *Makara* 2, no. 4 (1977): 38, in Claire Culhane fonds, RBSC-ARC-1151, Box 10, Folder 10-8: "X, Prisons (Misc)," University of British Columbia Rare Books and Special Collections.

²² See *Mitchell v. R.* (1975), [1976] 2 SCR 570 at 574-585, Laskin CJC, dissenting.

²³ See "Ottawa Professor Named Chairman of Parole Board," *Globe and Mail*, April 16, 1974, p. 8; see *Canadian Who's Who, Volume 21: 1986*, ed. Kieran Simpson (Toronto: University of Toronto Press, 1986), s.v. "Outerbridge, William Robert." However, Outerbridge had not numbered among the personnel of the parole board at the time of the particular situation as a result of which Mitchell and the board ended up

Yet even if the state tended not to relinquish its coercive habits, many Canadians did now more readily associate some types of practices in their country with nettlesome coercion. Perhaps parole may have acquired a more coercive character in the sixties and seventies, but the Bora Laskins in society—whether powerful figures like Laskin himself or merely other energetic voices²⁴—also inveighed against one or more aspects of the coercion which either this non-carceral method or other supposedly reformatory tactics sometimes featured. Even the most powerful official on the “tyrannical” parole board had, on multiple occasions in the past, portrayed coercion as an often-deleterious phenomenon for which penal personnel sometimes displayed a penchant. Whatever the degree of coercion to which the correctional authorities actually resorted, it would in fact appear that moderately heightened scepticism concerning coercive activities, or concerning a larger assortment of kinds of coercion, characterized Canadians’ *outlook* in the last three decades of the century.

In any case, in the last third of the century, Canadians’ assumptions savoured more and more of liberalism, or at least of a largely liberal perspective concerning the individual and his or her autonomy. The determination to allow autonomy to materialize for the typical individual, especially for the typical middle- or upper-class individual, will, of course, quite easily permit a society to avail itself of rather potent coercion in its

wrangling in the legal realm—see *Mitchell v. R.* (1975), [1976] 2 SCR 570 at 575, Laskin CJC, dissenting. Also, the board’s apparent stance in this particular bit of litigation did not very clearly signal the actual parole-related tactics embraced by the board after the spring of 1974. After roughly that point in time, some of the most dubious components of its former activity—some of the methods, that is, which had proved so nettlesome to such parolees as Mitchell—no longer seemed viable to the board. See “Notes of a Speech Delivered by the Chairman of the National Parole Board[,] Mr. William R. Outerbridge, to the Men’s Canadian Club, on October 28, 1978,” p. 14, in R3313-0-8-E (William Outerbridge fonds), Volume 1, File 20: “1978, Men’s Canadian Club, October 28, 1978,” LAC.

²⁴ See Claire Culhane, “The BC Pen: A Responsibility,” *Makara* 2, no. 4 (1977): 38.

penalization of the small set of persons with whom it butts heads on the criminal-justice front.²⁵ And perhaps such coercion may have typified actual penal tactics in the late twentieth century as much or more than liberal assumptions about autonomy did. The tenor of Canadian *discourse* with regard to correctional topics, though, did exhibit a good bit in common with the anti-coercive sensibilities that citizens mainly displayed concerning the non-criminal, gainfully employed, middle-class individual. This dissertation has tended to associate early-to-mid-century reformers' outlook with a relatively "liberal" ethos on a variety of counts. By the 1970s, liberal assumptions concerning individuals and their autonomy were starting to take firmer root among Canadian citizens more generally.

Ethical Sensibilities in Interwar, Postwar, and Present-Day Canada

As signaled in the introductory chapter, this dissertation's interpretation of penal reformers' ethical perspectives has revolved around their sensibilities with respect to four phenomena: condemnation, exclusion, compassion, and coercion. The interwar and postwar developments which this study has highlighted reveal only a relatively modest re-flavoursing of reformers' mind-set on these four fronts. Uttering condemnatory remarks about offenders did not, of course, number among reformers' primary habits.

Occasionally a late-nineteenth-century or interwar figure like Richard Maurice Bucke or Clarence Farrar appeared to perceive merit in some type of "relativ[ist]" mentality.²⁶ The

²⁵ For remarks pertinent to my statement, see Ignatieff, *A Just Measure of Pain*, 216-218.

²⁶ See comments of Richard Maurice Bucke quoted in Horace L. Traubel, "Walt Whitman and Good and Evil: A Discussion," *The Conservator* 5, no. 7 (September, 1894): 103-106 ("relative" on 103, 105); see Farrar, "Criteria of Responsibility," 344-345.

“moral diversity” and “pluralistic” patterns discussed by a mid-1970s Canadian article concerning the sociology of deviance may have made for a slightly more thoroughgoing genre of “moral relativism,” a kind that seemed to imply a partly or largely non-condemnatory mind-set concerning at least some lawbreakers whose agency was clearly acknowledged,²⁷ rather than primarily toward people whose deeds struck observers as quasi-deterministically criminal due to atavism or to the milieu among whose denizens these offenders had numbered.²⁸ In any case, while the main interwar and postwar reformers inveighed at times against penal habits that struck them as baneful, they seldom got carried away with fierce denunciation of the authorities, correctional employees, or non-reformist citizens. On the other hand, a few of the letters to the editor which Chapter 3 pointed out do reveal that citizens in the 1930s would occasionally utter blistering verbal chastisements of certain sorts of penal employees. Letters to the editor in the 1960s still allowed a few readers of publications like the *Globe and Mail* to rather fiercely dress down citizens whose stance on penal matters struck them as noxious.²⁹ Any denunciatory remarks for which letters in the *Globe* might opt today would probably sizzle a bit less acrimoniously than such interwar missives as the one which described prison guards of a particular sort as “so much lower than the brutes that language fails.”³⁰ And many people might suppose, more generally, that Canadians would now display less confidence about verbally zeroing in on allegedly immoral habits or preferences of others.

²⁷ See Ericson, “Responsibility, Moral Relativity, and Response Ability: Some Implications of Deviance Theory for Criminal Justice,” 23-41 (“moral diversity” on 24; “pluralistic” on 32, 34; “moral relativism” on 24-25, 33).

²⁸ See Bucke, “The Value of the Study of Medicine,” 340-342; see Farrar, “Criteria of Responsibility”; see J.F. White, “Russian High-Lights II: Iron Bars,” *Canadian Forum*, March 1933, 212; see also Farrar, “Criteria of Responsibility,” 347-349.

²⁹ See M.E. Willmot, letter to the editor, *Globe and Mail*, March 1, 1960, p. 6.

³⁰ See W. Oliver Williams, letter to the editor, *The Globe*, August 26, 1933, p. 4.

At the same time, political conversation on the Internet reveals that early-twenty-first-century culture has not in fact generated a strong disinclination among citizens to pillory people with whom they are butting ideological heads.

Canadians' strong attunement to the notion of "exclusion" has materialized rather recently. Commentators' appraisals of political initiatives or cultural habits now quite often allow them to espouse "inclusive" stances or to cavil at "exclusionary" mind-sets—remarks seldom uttered before the 1980s. Yet if conversance with this lingo itself emerged only in the last segment of the century, relatively inclusionary facets of penal reformers' mentality did nonetheless help to foster the initiatives and ideas into which they bought, even in the interwar years, a period with regard to which historians have tended to portray Canadian habits as quite exclusionary. By the 1960s, reformers no longer displayed much eagerness to highlight the idea of quasi-permanent incarceration—an idea, admittedly, with which certain interwar reformers had at times seemed relatively enamoured. But the "re-establishment" on which Lavell was keen in the 1920s exhibited much in common with the "reintegration" of which many commentators proved supportive in the late 1950s and subsequent decades. Even if the *general* anti-exclusionary sensibilities reflected in current Canadian culture have materialized primarily since 1950, penal reformers' mind-set with regard to offenders tended to align with an inclusionary ethos in all segments of the twentieth century.

Neither interwar nor postwar penal reformers perceived the citizenry as particularly keen on rhetoric revolving around compassion. "Humane" penal habits, and sometimes even "humanitarian" actions, did strike reformers as meritorious, but they depicted non-"sentimentalism" as an important element of their outlook. Admittedly, by

the 1960s, reformers no longer displayed so much determination to espouse explicitly non-“sentimental” ideas. On the other hand, references to praiseworthy “kindness” or “kindly” habits may have more often numbered among interwar Canadians’ remarks about penal topics than among commentators’ statements in the 1960s. In any case, on this general issue, mid-twentieth-century reformers would find a great deal of company in present-day Canada, where reformist statements similarly tend to dwell primarily on ideas other than compassion.

Coercion is the motif with respect to which the reformist discourse highlighted in this study does reflect a fairly visible metamorphosis, at least in the later part of the period. Comparing the statements of figures like Lavell, Topping, and Outerbridge can remind us of the extent to which our current anti-coercive sensibilities have emerged in the second half of the century, especially since 1960, even though some voices, such as McCulley, had already proved supportive of a non-coercive ethos in the interwar period. In the first half of the century, the “supervision” that parole featured did not typically strike supposedly progressive people as coercive, or at least not as generating an unseemly type of coercion. Although Lavell did look askance at measures evocative of “nagging,”³¹ some of his comments also pointed out the metaphorical Lavellian “fist” or “hand” by which recalcitrant parolees would be “crush[ed]” or “smash[ed].”³² By

³¹ See A.E. Lavell, “The Supervision of Paroled Persons,” in *Proceedings of the Canadian Conference on Social Work, Toronto, Ontario, April 28, 29, 30 and May 1, 1930* (Ottawa: Metropolitan Life Insurance Company, 1930), 210.

³² See Alfred Lavell, remarks printed in Chief Constables’ Association of Canada, *Proceedings of Nineteenth Annual Convention, Held at Windsor, Ontario, June 19, 20, 21, 1923* (Toronto: n.d.), pp. 66-67 (“hand,” “crush,” “smash”), in RG 8-56 (Ontario Board of Parole, Miscellaneous Printed Material), Box 2, Envelope 8: “Ontario Board of Parole, misc. printed material, (1922-1923), envelope #8,” AO; see Alfred E. Lavell, “An Autobiography,” p. 139 (“fist”), in A.E. Lavell fonds, Coll. 3612, Box 1, File 3: “Photocopy of Typed Autobiography with photocover and notes [ca. 199-] [sic],” QUA.

contrast, commentators in the 1960s displayed more conversance with the notion that detrimental dynamics might materialize as a result of authority-flavoured efforts on the part of parole or probation staffers. And even if a number of these latter commentators did not themselves tend to look strongly askance at such authority, remarks in favour of “smash[ing]” a stubborn parolee would not have proved consonant with the tenor of the commentary generated by these voices either. Moreover, the fact that even North Americans might end up embracing abusively coercive practices because of “scientific” notions does not seem to have dawned upon men like Lavell, Withrow, Topping, or even McCulley to the same degree that it did upon thinkers like Outerbridge in the sixties and seventies.

However, perhaps the penal sensibilities of the sixties and seventies exhibited least in common with those of the twenties not with respect to coercion itself, but rather with respect to bodily chastisements. Corporal punishment numbered among the measures of which a reformer like Lavell—and quite a few other interwar voices as well—proved supportive. Even in 1962, affirmative statements by certain individuals with regard to this kind of penal measure reached readers via the relatively reformist *Canadian Journal of Corrections*.³³ In the late 1960s, though, the “brutal,” “degrading,” and non-“rehabilitative” dynamics that characterized this genre of reproof allowed the Ouimet Report to inveigh confidently against strapping, scourging, or other such bodily penalties.³⁴ The creation of a corporal-punishment-free version of the Criminal Code in

³³ See untitled statements by James McLaughlin and by F.H. van Nostrand, in “Current and Candid: Is There a Place for Corporal Punishment in a Penal System?,” *Canadian Journal of Corrections* 4, no. 1 (January, 1962): 50-51; see also statement of A.J. MacLeod on 52.

³⁴ See Ouimet Report, 207-208, 323-324 (quoted words on 208).

1972 does not seem to have proved highly nettlesome to many Canadians, or at least not sufficiently nettlesome for many citizens to remonstrate with the government to an extent that would register with the media.³⁵ The “coercive[ness]” which at times could characterize purportedly rehabilitative “treatment” may have dawned upon figures like Outerbridge, but a good deal of the coercion for which the penal authorities displayed a propensity would nonetheless still be instantiated via both carceral and non-carceral measures in the final three decades of the century. During these latter years, political authorities and citizens would, by contrast, balk much more firmly at penal activity associated with physical battery, even if prison employees did not always completely refrain from such activity.³⁶

The four major “moral sources” highlighted in this dissertation—Christianity, the notion of humanness, an affinity for technique, and the idea of justice—would also begin to be reappraised in the late sixties and seventies, although Canadians’ new perspective concerning these sources had not yet taken root as clearly in the 1960s as it would in the next few decades. After 1960, religious ideas continued to turn up at times in corrections-related statements, but the major reformist voices gravitated toward Christian discourse less readily than some of the interwar or early postwar commentators had. In the interwar and mid-century decades, many citizens’ ethical sensibilities attuned them to humanness, a dynamic that generated both the quasi-philosophical assertions of a figure like McCulley and the garden-variety remarks of various other voices about “treat[ing]

³⁵ See Strange, “Undercurrents of Penal Culture,” 351.

³⁶ On the physical battery in which some prison employees did still occasionally engage, see Claire Culhane, *Still Barred from Prison: Social Injustice in Canada* (Montreal: Black Rose Books, 1985), including 42, 46, 52, 68, 74, 81 (“batter”), 82-84.

[convicts] like human beings.”³⁷ By the end of the century, McCulley’s claim that “without [the human species] this whole planet is but a dull uninteresting cinder” would have sat poorly with many Canadians.³⁸ But in 1970, even that genre of wholesale humanism had probably not begun to strike very many non-religious people as off-putting.

While an affinity for “scientific” notions characterized both interwar and mid-century culture, references to “technique” may have typified postwar vocabulary slightly more than interwar discourse. In the last two or three decades of the century, more people probably would have looked slightly askance at attempts to champion a particular tactic in offender rehabilitation (or in other pursuits revolving around non-criminals’ emotions, conduct, or social dealings) by associating the tactic with “scientific techniques”—a rhetorical motif on which North Americans were no longer quite as keen. Even so, instrumentalist notions more generally do still leave a potent imprint on twenty-first-century Canadians’ statements about penal measures, as they did on discussion of such matters in the first two thirds of the twentieth century. Many present-day people probably owe their instrumentalist rhetorical habits partly to their anti-retributive sensibilities—since those who cavil at a retributive mind-set often perceive instrumentalist assumptions as at least somewhat more appetizing—rather than merely or primarily to some infatuation with technique itself. In any case, a great deal of the penal commentary in the

³⁷ J.D. Conover, quoted in David MacDonald, “New Era Dawns for ‘The Don,’” *Saturday Night*, November 3, 1951, pp. 12, 38 (quote on 38). For similar comments, see, for example, Harriet Parsons, “Why Are Prisoners Rioting Everywhere?,” *Saturday Night*, November 26, 1932, p. 9, and W.M. Nickle to F.G. Scott, quoted in editorial, “Now—‘Let in the Light,’” *The Globe*, June 28, 1934, p. 6.

³⁸ “‘I Believe’: Closing Address Delivered by Joseph McCulley, M.A., to the Ontario Youth Council, Y.M.C.A., Friday, July 7, 1950,” p. 3, in McCulley fonds, B92-0013, Box 6, File 4: “Mr. McCulley, Personal, June 23-November 7, 1950,” UTA.

current media, at least, does tend to draw primarily upon arguments that assign priority to the appraisal of consequences, such as the bigger or smaller platefuls of crime or the steeper or slighter monetary requirements with which the country might or might not have to put up down the road due to a given penal option.³⁹

Although Canadians may perceive less possibility today than before 1970 of proffering validation for their ideas via notions tied to Christianity, humanness, or technique, the notion of justice may not necessarily strike citizens as any less compelling now than it did in the interwar years or mid-century decades.⁴⁰ Such reformist figures as Bucke, Lavell, Withrow, and the Archambault commissioners caviled at certain types of unjust scenarios. A strategy of referring to “justice” or “injustice” may perhaps have been employed a little more readily by observers like these men in the first half of the century than by reformers in the fifties or sixties. In the seventies, eighties, and nineties, however, a number of thinkers and commentators in North America again portrayed moral justice as a crucial dynamic for penal activity to feature.⁴¹ And present-day discourse on various subjects allows citizens to champion at least some kinds of “justice” fairly often, though of course the scenarios associated with “environmental justice” or “social justice” or “retributive justice” or “restorative justice” or “transformative justice” do not mesh with one another on all counts.⁴² In any case, if interwar and postwar

³⁹ Regarding consequentialism, see Haidt and Kesebir, “Morality,” 798.

⁴⁰ See *The George Grant Reader*, ed. William Christian and Sheila Grant (Toronto: University of Toronto Press, 1998), 7.

⁴¹ See Garland, *The Culture of Control*, 57-61, 229 n. 8; see also Strange, introduction to *Qualities of Mercy*, 12-14, 17.

⁴² On the way in which restorative justice and “transformative justice” may not wholly mesh with one another, see W. Gordon West and Ruth Morris, “Introduction to the Case for Penal Abolition,” in *The Case for Penal Abolition*, ed. W. Gordon West and Ruth Morris (Toronto: Canadian Scholars’ Press, 2000), 4, 12, 15.

reformist arguments primarily bore the scent of an instrumentalist ethos, a number of statements in that early-to-mid-century period demonstrated that justice nevertheless numbered among the ethical notions of which at least some reformers were supportive.

And if the motif of moral “justice” left its imprint on some of the reformers’ statements despite the instrumentalist tenor of much of their rhetoric, their instrumentalist discourse itself allowed these non-“sentimental” voices to create affirmative portrayals of quasi-humanitarian measures. Lavell’s non-exclusionary parole and extramural initiatives, F.R. Scott’s and Edmison’s “kindness,” McCulley’s “kindness” and non-repression, and the “humane[ness]” of Gibson and the Archambault commissioners could all warm offenders up to non-criminal possibilities, with this rehabilitation qualifying as one of the crucial elements in the “protecti[ve]” strategy on which the authorities and the Canadian citizenry were keen. These instrumentalized forms of kindness tended to prove more consonant with the main genre of reformist rhetoric than exhortations in favour of compassion itself might have appeared. Reformist rhetoric may have assigned priority to matters associated with techniques or tangible consequences, but techniques themselves could instantiate the quasi-compassionate ideas to which reformers or other Canadians gravitated. In sum, early-to-mid-century reformers’ arguments minimized neither compassion nor justice as much as their “unsentimental” instrumentalist statements might have occasionally seemed to imply.

Technique, Justice, and Compassion in the Twenty-First Century

“The Humanitarian Theory of Punishment”—the non-retributive, instrumentalist penal perspective to which early-to-mid-century reformist voices typically adhered in other

Anglophone nations as well as in Canada—sat rather poorly with C.S. Lewis. An article of his in the late 1940s—a piece that readers would sample at multiple points in the next quarter-century, including Canadian readers in the early 1970s—suggested that “tyrann[ical]” measures might actually end up materializing if the authorities thoroughly bought into such a penal stance. A thoroughly retributive perspective suggested that it was incumbent upon the state to refrain from penalties much more potent than the kind to which an offender’s “deserts” would point. By contrast, a wholly reformation-centred correctional measure might turn out to acquire a more harrowing relentlessness, if the “cure” which the authorities expected the measure to generate did not readily spring to life.⁴³ One of Lewis’ assertions would later be pointed out by William Outerbridge: “Of all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive.”⁴⁴ As Lewis saw it, a retributive, justice-focused perspective would not so readily permit such abusive dynamics to materialize. A mind-set which allowed penalization to revolve around desert would also end up aligning with practices which bore the scent of genuine mercy, rather than the pseudo-mercy associated with “the Humanitarian theory.” “The older view,” observed Lewis, “was that mercy ‘tempered’ justice, or (on the highest level of all) that mercy and justice had met and kissed.” By contrast,

the Humanitarian theory wants simply to abolish Justice and substitute Mercy for it. This means that you start being ‘kind’ to people before you have considered

⁴³ See C.S. Lewis, “The Humanitarian Theory of Punishment,” *Chitty’s Law Journal* [Peterborough, ON] 20, no. 1 (January, 1972): 1-5 (“tyranny” on 4; “deserts” on 2; “cure” on 2, 4). Regarding this article’s publication in 1949 and on other occasions, see C.S. Lewis, *God in the Dock: Essays on Theology and Ethics*, ed. Walter Hooper (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1970), 16-17, 287-294.

⁴⁴ Lewis, “The Humanitarian Theory of Punishment,” 3; also quoted in Outerbridge, “Criminal Justice in the Seventies,” 15.

their rights, and then force upon them supposed kindnesses which no one but you will recognize as kindnesses and which the recipient will feel as abominable cruelties.... Mercy, detached from Justice, grows unmerciful. That is the important paradox. As there are plants which will flourish only in mountain soil, so it appears that Mercy will flower only when it grows in the crannies of the rock of Justice: transplanted to the marshlands of mere Humanitarianism, it becomes a man-eating weed, all the more dangerous because it is still called by the same name as the mountain variety.⁴⁵

A crucial portion of the argument of this dissertation has revolved around issues to which Lewis pointed—issues pertaining to the consonance or the non-alignment of justice, compassion, and an instrumentalist mind-set.⁴⁶ In one sense, my study suggests that interpretations like Lewis’ tend to nourish some misperceptions concerning reformist mentalities and modern cultures. The humanitarian-instrumentalist perspective associated with reformist thought did not turn out to make postwar Western governments keen on the type of massively abusive penal measures portrayed as a “possibility” by Lewis.⁴⁷ The seemingly “humanitarian” tenor of reformers’ instrumentalist stance stemmed partly from its non-retributivism, as suggested by Lewis’ essay, but also, of course, from the fact that humaneness itself numbered among the quasi-techniques of which reformers were supportive. Even quasi-retributive assumptions—particularly the kind that Lewis highlighted the most, the kind that made people look askance at penalties more massive than those which desert could affirm—kicked in at times among some reformers, despite the instrumentalist outlook that typified most reformist rhetoric. Nor did instrumentalist ideas turn out to prevent the *rights* of convicts from being discussed to a noteworthy extent by commentators or state authorities in the final third of the century. Yet one

⁴⁵ See Lewis, “The Humanitarian Theory of Punishment,” 4-5.

⁴⁶ Also, for comments about “the technological imperative” and “the moral imperative,” and about the “tension between the two imperatives,” see Francis, *The Technological Imperative in Canada*, 2.

⁴⁷ See Lewis, “The Humanitarian Theory of Punishment,” 1.

crucial—and perhaps misguided—element of the mind-set into which we have tended to buy in the current era may dawn upon us more thoroughly as a result of Lewis’ remark about “[t]he older” perspective on the justice-mercy duo. If many thinkers of the 1940s no longer expected Mercy to kiss Justice, the second half of the century arguably saw the two interact less and less, as rights and “procedural values” functioned more and more as the pivotal elements of both criminal justice and ethics.⁴⁸

In the early twenty-first century, American penal activity has perhaps again begun to feature moderately rehabilitative assumptions, rather than the retributive stance that “the punitive turn” fostered during the 1980s and 1990s.⁴⁹ In Canada, on the other hand, Stephen Harper’s years in office have seen heavier penal sanctions materialize on a number of fronts. In the press, at least, detractors’ commentary has often implied that the administration has embarked upon an instrumentalist attempt to prevent crime from receiving oxygen, but that this effort will actually acquire no worthwhile propulsion from these new penal measures. However, our grasp of the government’s outlook—and probably also of the (non-monolithic) sensibilities of the citizenry—will broaden somewhat if we not only sample these commentators’ slightly myopic interpretation of the administration’s actions, but also zero in on a few of the comments uttered by politicians themselves. Several weeks prior to the 2011 Canadian election, the Cable Public Affairs Channel (CPAC) allowed a particularly large plateful of New Democratic, Liberal, Conservative, and Green perspectives to reach a number of Canadians via a

⁴⁸ See Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2002), chapters 9 and 10, and pages 307, 309-310; see Strange, “Undercurrents of Penal Culture,” including 349 (“procedural values”), 353-364, 383-384; see also Strange, introduction to *Qualities of Mercy*, 12-14, 17. On rights, see Egerton, “Entering the Age of Human Rights,” 1, 15.

⁴⁹ On “the punitive turn,” see Garland, *The Culture of Control*.

debate—a debate generated by the verbal effort of four figures other than the party leaders, verbal effort on an assortment of topical fronts, including criminal justice.⁵⁰ The observations of New Democrat Peggy Nash, Liberal David McGuinty, and Green politician Rebecca Harrison concerning the latter topic revolved largely around such subjects as “crime prevention,”⁵¹ “evidence-based analysis,”⁵² the crime rate’s current decrescendo,⁵³ and the financial requirements stemming from criminal justice.⁵⁴ By contrast, the statements of the Conservative debater, Jason Kenney, bore the scent not only of instrumentalist assumptions, but also of retributive notions. At one point Kenney portrayed certain types of former sanctions as irritatingly meagre. “[U]nder the old system,” he declared, “prior to a number of these bills we adopted, with time off for pre-trial custody, with very generous parole provisions, without mandatory minimum sentences, we frequently had violent convicted criminals on the streets with no prison time, or virtually none, and that offended Canadians’ basic sense of justice.” Admittedly, he asserted that “it also offends our sense of public safety,” an idea on which he elaborated.⁵⁵ Yet two minutes later he again pointed to citizens’ “basic sense of justice.”⁵⁶

⁵⁰ See “Election 2011: What Does Canada Want Now?,” video of debate sponsored by CPAC and *Maclean’s*, April 20, 2011, CPAC Digital Archive, <http://www.cpac.ca/en/digital-archives/?search=what+does+Canada+want+now%3F>.

⁵¹ See comments by Peggy Nash, in “Election 2011: What Does Canada Want Now?,” 82:48-83:05 (“prevention”); see comments by Rebecca Harrison at 85:00-85:10 (“prevention”) (for the actual phrase “crime prevention,” see the comment of Jason Kenney at 86:31-86:36).

⁵² See comment by David McGuinty, in *ibid.*, 86:05-86:10.

⁵³ See comment by Peggy Nash, in *ibid.*, 82:18-82:25.

⁵⁴ See comments by David McGuinty, in *ibid.*, 81:00-82:05, 86:10-86:30; see comments by Peggy Nash at 83:10-83:20, and by Rebecca Harrison at 84:55-85:00.

⁵⁵ See comments by Jason Kenney, in “Election 2011: What Does Canada Want Now?,” 84:00-84:27ff.

⁵⁶ See *ibid.*, 87:22-87:24.

Judicial and penal matters also numbered among the topics which the party heads hashed out during their English-language debate prior to that same election.

“Rehabilitation is important,” Harper acknowledged. However, the chief adage to which he had recourse was, arguably, evocative mainly of retributive assumptions. “[I]t’s also important,” he asserted, “that the punishment fit the crime”—a notion that he verbalized at two other points as well.⁵⁷ In espousing a less carcerally flavoured stance, the Liberals’ Michael Ignatieff skewered “failed criminal-justice policies from the United States.”⁵⁸ Yet perhaps a dollop of implicit validation for the retributive facet of some Canadians’ viewpoint may have been supplied even in one of Ignatieff’s statements. “When you’ve been hit or knocked over, had your purse stolen, or [been the] victim of personal assault, it matters to you, and you want consequences,” he observed.⁵⁹ And at another spot, he pointed out a form of quasi-compassion for which he displayed no unseemly propensity. “I’m utterly unsentimental about criminals,” declared the Liberal kingpin.⁶⁰ Given his historical scholarship pertaining to British incarceration, and given his own past acquaintance with prisoners,⁶¹ Ignatieff probably numbered among the most knowledgeable Canadian politicians with respect to penal matters. And the assumption which had typified the rhetoric of many knowledgeable reformers in the twentieth century

⁵⁷ See comments by Stephen Harper, in “2011 leaders’ debate,” CBC Television News Special, April 12, 2011, 1:22:53-1:23:00, 1:23:38-1:23:42, 1:26:52-1:27:00, in CBC Digital Archives, <http://www.cbc.ca/archives/categories/politics/elections/leaders-debates-1968-2011-arguing-for-canada/2011-leaders-debate.html>.

⁵⁸ See comments by Michael Ignatieff, in “2011 leaders’ debate,” 1:17:22-1:17:32; see also 1:18:08-1:18:18, and 1:26:16-1:26:26.

⁵⁹ See comments by Michael Ignatieff, in *ibid.*, 1:21:47-1:21:57; see also the comment of Gilles Duceppe at 1:27:53-1:28:00.

⁶⁰ See comment by Michael Ignatieff, in *ibid.*, 1:26:08-1:26:10.

⁶¹ See Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Pantheon Books, 1978); see comment by Michael Ignatieff, in “2011 leaders’ debate,” 1:26:01-1:26:10.

had ended up kicking in for him as well—the assumption that his remarks might convince his listeners a little more readily if his “unsentimental[ity]” dawned upon them.

This remark of Ignatieff’s did not actually create any sense that he had opted for a strategy of apologizing for his stance. And perhaps the debaters’ references to such notions as rehabilitation,⁶² restorative justice,⁶³ and “a balanced approach”⁶⁴ may suggest that they did, in effect, regard both mercy and justice as incumbent upon the state with respect to its crime-related policies—even if on at least these two particular occasions neither “humaneness” nor “kindness,” and certainly neither “compassion” nor “mercy,” numbered among the terms for which they opted. On the other hand, perhaps the tenor of their actual vocabulary does provide meaningful clues about our current sensibilities. Rather than pointing to the duo of mercy and justice, Bloc Québécois head Gilles Duceppe referred to the nurturance of “liberty and, at the same time, justice”⁶⁵—a duo arguably much more consonant with Canadians’ ethos in the last few decades. The genre of liberalism to which a large portion of centrist, left-wing, and right-wing Canadians hew will more readily foster assertions about justice than statements in favour of mercy or kindness.⁶⁶

⁶² See comment by Michael Ignatieff, in “2011 leaders’ debate,” 1:19:45-1:19:50; see comment by Stephen Harper at 1:22:53-1:22:55.

⁶³ See comment by Rebecca Harrison, in “Election 2011: What Does Canada Want Now?,” 85:10-85:14.

⁶⁴ See comment by Michael Ignatieff, in “2011 leaders’ debate,” 1:22:38; similarly, see the comments of Ignatieff at 1:19:51, 1:20:26, 1:22:12, and 1:25:22, and of Stephen Harper at 1:22:49 and 1:28:44.

⁶⁵ See comments of Gilles Duceppe, in *ibid.*, 1:27:43-1:27:53.

⁶⁶ To people who perceive one another as individuals whose major interactions revolve around the various contracts upon which they have freely decided, availing oneself of rights or procedure should nearly always make for the emergence of an affirmable outcome. Mercy, by contrast, may imply that people who major in “independence” are opting for a less than wholly viable habit. It may also imply that membership in society and the various portions thereof actually ought to be a largely non-contractual phenomenon. For one thinker’s unsupportive examination of the “contractarian” interpretation of justice championed by John Rawls, an especially pivotal liberal philosopher of the mid-to-late twentieth century, see George Grant, *English-Speaking Justice* (1985; repr., Toronto: Anansi, 1998), part 2. For another thinker’s remarks about

Perhaps this facet of the mentality which present-day liberalism has fertilized ought not to sit too well with us. Even if our penal discourse majors in motifs related to outcomes or techniques, and tends to minimize both compassion and justice, moral justice will, it appears, continue to turn many people's crank. We might, however, end up with a partial dearth of the kind of voices which will champion the theme of mercy. In light of this, perhaps there is a good bit to be said for a mind-set, ethos, and discourse that would highlight justice a bit more readily, and which, *by the same token*, would begin to highlight mercy again as well, with the two regarded as twins rather than enemies. Such an ethos might allow us to espouse both justice and compassion unapologetically, rather than supposing that all components of penal policy must necessarily function as elements of an "unsentimental," utilitarian "protecti[ve]" strategy, and rather than expecting that a sufficient form of the mercy and justice actually required in the course of our interactions with one another will materialize merely by means of rights and procedural habits. If "be[ing] tough on crime" can allow somewhat myopic penal tactics and patterns of thought to germinate, "being smart on crime" will not by itself make for a wholly "balanced" outlook either.⁶⁷ Arguably, true balance will materialize only when Canadians' discourse savours of the reciprocity associated with justice,⁶⁸ and also of a hefty dollop of *gratuitous* compassion.

dependence and independence, see Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Open Court, 1999). For another reference to "independen[ce]," see Cohen, "Custody and Treatment: An Anthropological View," 113.

⁶⁷ For the quoted words, see comments by Michael Ignatieff, in "2011 leaders' debate," 1:17:38-1:17:40, 1:18:18-1:18:20, 1:20:26, 1:22:12, 1:22:38.

⁶⁸ See Haidt and Kesebir, "Morality," 822.

Bibliography

PRIMARY SOURCES

Manuscript Sources

Archives of Ontario, Toronto, Ontario

Correspondence of the Secretary of the Ontario Board of Parole, RG 8-54

John Howard Society of Ontario fonds, F 846

Ontario Board of Parole, Miscellaneous Printed Material, RG 8-56

Oswald C.J. Withrow fonds, F 1375

Records of the Commission to Inquire into the Recent Disturbances of and among
the Prisoners at the Ontario Reformatory at Guelph, RG 18-112

Centre for Addiction and Mental Health Archives, Toronto, Ontario

JDM Griffin fonds

Western Archives, Western University, London, Ontario

Richard Maurice Bucke Collection

Library and Archives Canada, Ottawa, Ontario

Agnes Macphail fonds, MG27-IIIC4

Canadian Council of Churches fonds, MG28-I327

Correctional Service of Canada fonds, Departmental Operational Files, RG73-C-1

Francis Reginald Scott fonds, MG30-D211

R.B. Bennett fonds, MG26-K

William Lyon Mackenzie King fonds, MG26-J

William Outerbridge fonds, R3313-0-8-E

Queen's University Archives, Kingston, Ontario

Alfred Edward Lavell fonds, Coll. 2214 and Coll. 3612

John Alexander Edmison fonds, Coll. 2330, Coll. 2501, and A.Arch 5002.2

Rare Books and Special Collections, University of British Columbia, Vancouver, BC

Claire Culhane fonds, RBSC-ARC-1151

Simon Fraser University Archives, Burnaby, BC

John Howard Society of the Lower Mainland of British Columbia fonds, F-1

University of British Columbia Archives, Vancouver, BC

Coral Topping fonds

University of Manitoba Archives, Winnipeg, Manitoba

Lewis St. George Stubbs fonds, MSS 188, PC 180, A.96-94 and A.97-69

University of Toronto Archives, Toronto, Ontario
 Clarence B. Farrar fonds, B1999-0011
 Joseph McCulley fonds, B92-0013

W.D. Jordan Special Collections and Music Library, Queen's University, Kingston,
 Ontario
 Scrapbook of Robert Bickerdike, M.P.

Audiovisual Sources

"2011 Leaders' Debate." CBC Television News Special, April 12, 2011. Video, 1:57:49.
 In CBC Digital Archives. <http://www.cbc.ca/archives/categories/politics/elections/leaders-debates-1968-2011-arguing-for-canada/2011-leaders-debate.html>.

"Correctional Service of Canada Oral History Project: Jutras, Pierre – Interview."
 Interview of Pierre Jutras by Joan Nuffield, 1978. Sound recording, 3 hours 9
 minutes. Digital format. Consulted via consultation copy on compact disc. In
 RG73, accession number 1989-0337, item number (ISN) 135275, Library and
 Archives Canada.

"Election 2011: What Does Canada Want Now?" Video, 120:06. Debate sponsored by
 Cable Public Affairs Channel (CPAC) and *Maclean's*, April 20, 2011, Toronto,
 Ontario. In CPAC Digital Archive. <http://www.cpac.ca/en/digital-archives/?search=what+does+Canada+want+now%3F>.

Newspapers

The Globe [viewed in electronic format, from ProQuest Historical Newspapers: The
 Globe and Mail (1844-2011)]

Toronto Daily Star [viewed in electronic format, from ProQuest Historical Newspapers:
 Toronto Star (1894-2011)]

Legislation and Jurisprudence

An Act to amend the Criminal Code, SC 1919, c 46.

An Act to Amend the Criminal Code, SC 1947, c 55.

An Act to Amend the Criminal Code, SC 1948, c 39.

An Act to Amend the Prisons and Reformatories Act, SC 1913, c 39.

An Act to Amend the Prisons and Reformatories Act, SC 1916, c 21.

An Act to provide for the Conditional Liberation of Penitentiary Convicts, SC 1899, c 49.

An Act respecting Penitentiaries, and the Directors thereof, and for other purposes, SC 1868, c 75.

The Criminal Code, 1892, SC 1892, c 29.

Criminal Code, RSC 1927, c 36.

Mitchell v. R. (1975), [1976] 2 SCR 570.

R v Brooks (1927), [1928] 1 DLR 268 (SCC).

Other Government Documents

Canada. *Annual Report of the Commissioner of Penitentiaries for the Fiscal Year Ended March 31, 1948*. Ottawa: Queen's Printer, 1949.

Canada. *Annual Report of the Commissioner of Penitentiaries for the Fiscal Year Ended March 31, 1952*. Ottawa: Queen's Printer, 1953.

Canada. *Annual Report of the National Parole Board for the Calendar Year Ended December 31, 1960*. [Ottawa: Queen's Printer, 1961.]

Canada. *Annual Report of the National Parole Board for the Calendar Year Ended December 31, 1964*. [Ottawa: Queen's Printer, 1965?]

Debates of the Senate

House of Commons Debates

House of Commons, *Journals*, 20th Parl, 3rd Sess, vol. 88 (3 July 1947).

Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries. *Minutes of Proceedings and Evidence*, No. 14 (18-19 May 1954). Ottawa: Queen's Printer, 1954.

Ontario. Legislative Assembly. "Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1922," by Alfred E. Lavell. In *Sessional Papers*, No. 60 (1923).

- . “Annual Report of the Commissioner for the Extra-Mural Employment of Sentenced Persons for the Year Ending October 31st, 1923,” by Alfred E. Lavell. In *Sessional Papers*, No. 60 (1924).
- . “Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1926,” by Alfred E. Lavell. In *Sessional Papers*, No. 43 (1927).
- . “Fifth Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1925,” by Alfred E. Lavell. In *Sessional Papers*, No. 61 (1926).
- . “Fiftieth Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, Being for the Year Ending 31st October 1917.” In *Sessional Papers*, No. 26 (1918).
- . “Fifty-First Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, Being for the Year Ending 31st October 1918.” In *Sessional Papers*, No. 26 (1919).
- . “Fifty-Seventh Annual Report upon the Prisons and Reformatories, the Ontario Board of Parole, and the Commissioner of Extra-Mural Employment of the Province of Ontario, Being for the Year Ending 31st October 1924.” In *Sessional Papers*, No. 24 (1925).
- . “First Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons for the Year Ending October 31st, 1921,” by Alfred E. Lavell. In *Sessional Papers*, No. 60 (1922).
- . “Forty-Fourth Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, Being for the Year Ending 31st October 1911.” In *Sessional Papers*, No. 25 (1912).
- . “Forty-Fifth Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, Being for the Year Ending 31st October 1912.” In *Sessional Papers*, No. 25 (1913).
- . “Forty-Ninth Annual Report of the Inspector of Prisons and Public Charities upon the Prisons and Reformatories of the Province of Ontario, Being for the Year Ending 31st October 1916.” In *Sessional Papers*, No. 26 (1917).
- . “Report of the Ontario Board of Parole for the Year Ending October 31st, 1920,” by Alfred E. Lavell. In *Sessional Papers*, No. 57 (1921).
- . “Report of the Ontario Board of Parole for the Year Ending October 31st, 1921.” In

Sessional Papers, No. 59 (1922).

- “Report of the Ontario Board of Parole for the Year Ending October 31st, 1922.” In *Sessional Papers*, No. 24 (1923).
 - “Report of the Ontario Board of Parole for the Year Ending October 31st, 1923.” In *Sessional Papers*, No. 24 (1924).
 - “Report of the Ontario Board of Parole for the Year Ending October 31st, 1925.” In *Sessional Papers*, No. 16 (1926).
 - “Report of the Ontario Board of Parole for the Year Ending October 31st, 1926.” In *Sessional Papers*, No. 16 (1927).
 - “Report of the Ontario Board of Parole for the Year Ending October 31st, 1928.” In *Sessional Papers*, No. 16 (1929).
 - “Sixth Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1926,” by Alfred E. Lavell. In *Sessional Papers*, No. 43 (1927).
 - “Sixth [sic] Annual Report of the Commissioner for the Extra Mural Employment of Sentenced Persons, for the Year Ending October 31st, 1928,” by Alfred E. Lavell. In *Sessional Papers*, No. 33 (1929).
 - “Twenty-Ninth Annual Report of the Inspector of Prisons and Public Charities upon the Lunatic and Idiot Asylums of the Province of Ontario, Being for the Year Ending 30th September, 1896.” In *Sessional Papers*, No. 10 (1897).
- Parliament. “Report of the Inspector of Penitentiaries for the Fiscal Year Ended March 31, 1917,” by Douglas Stewart. In *Sessional Papers*, No. 34 (1918).
- Parliament. “Report of the Royal Commission on Penitentiaries,” by G.M. MacDonnell, Frederick Etherington, and J.P. Downey. In *Sessional Papers*, No. 252 (1914). <http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/macdonnell1914-eng/macdonnell1914-eng.pdf>.
- Parliament. Sub-Committee on the Penitentiary System in Canada, Standing Committee on Justice and Legal Affairs. *Report to Parliament by the Sub-Committee on the Penitentiary System in Canada* (1977) (MacGuigan Report).
- Report of a Committee Appointed to Inquire into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada*. Ottawa: Queen’s Printer, 1956 (Fauteux Report).

Report of the Canadian Committee on Corrections: Toward Unity: Criminal Justice and Corrections. Ottawa: Queen's Printer, 1969 (Ouimet Report).

Report of the Commissioners Appointed to Enquire into the Prison and Reformatory System of Ontario, 1891. Toronto: Warwick & Sons, 1891; Ottawa: Canadian Institute for Historical Microreproductions [microfiche], 1994. Microfiche. CIHM no. 94076 (cited in footnotes as Report of the Prison and Reformatory Commission [1891]). Discussion with Richard Maurice Bucke on 530-536.

Report of the Royal Commission to Investigate the Penal System of Canada. Ottawa: King's Printer, 1938 (Archambault Report).

Report of the Saskatchewan Penal Commission. N.p.: 1946.

Published Primary Sources

Allen, Arthur B. *The Psychology of Punishment: The New School Discipline.* In collaboration with Evan H. Williams. London, UK: Allman & Son, Ltd., [1936].

Allen, Ralph. "Schools for Crooks." *Maclean's*, May 15, 1946, pp. 7-8, 66-69.

"At the Graveside of Walt Whitman," *The Conservator*, Supplemental (April, 1892): I-IV.

Bates, Sanford. "Parole -- An Essential of Treatment." In *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949*, 47-57. Toronto: Canadian Penal Association, [1949].

Bennett, James V. "Commentary on General Gibson's Address." In *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949*, 31-34. Toronto: Canadian Penal Association, [1949].

Braithwaite, J.W. "Treadmill—or Treatment?" *Canadian Journal of Corrections* 7, no. 1 (January 1965): 93-100.

Bruce, Herbert A. "Human Progress." In *Friendship: The Key to Peace and Other Addresses*, 207-212. Toronto: Macmillan Company of Canada, 1937.

Bucke, Richard Maurice. "The Case of R.M.B." In *The New Consciousness: Selected Papers of Richard Maurice Bucke*, compiled by Cyril Greenland and John Robert Columbo. Toronto: Columbo & Company, 1997.

—. *Cosmic Consciousness: A Study in the Evolution of the Human Mind.* Innes & Sons,

1901. Reprinted with an introduction by George Moreby Acklom. New York: E.P. Dutton and Company, 1923. Reprinted by same publisher in 1973. Citations refer to the E.P. Dutton edition.

- "Cosmic Consciousness (I)." *The Conservator* 5, no. 3 (May, 1894): 37-39.
 - "Cosmic Consciousness (II)," *The Conservator* 5, no. 4 (June, 1894): 51-54.
 - "The Growth of the Intellect." *American Journal of Insanity* 39, no. 1 (July 1882): 36-54.
 - *Man's Moral Nature: An Essay*. New York: G.P. Putnam's Sons; Toronto: Willing & Williamson, 1879; Canadian Institute for Historical Microreproductions, 1980. Microfiche. CIHM no. 00324.
 - "Mental Evolution in Man." *Montreal Medical Journal* 26, no. 4 (Oct. 1897): 322-330. CIHM no. 8_05178_112. http://canadiana.org/record/8_05178_112.
 - *The New Consciousness: Selected Papers of Richard Maurice Bucke*. Compiled by Cyril Greenland and John Robert Columbo. Toronto: Columbo & Company, 1997.
 - "The Origin of Insanity." *American Journal of Insanity* 49, no. 1 (July 1892): 56-66.
 - "Sanity," *American Journal of Insanity* 47, no. 1 (July 1890): 17-26, accessed on Google Books, <http://books.google.ca/books?id=ok0XAQAAMAAJ&printsec=frontcover&dq=american+journal+of+insanity+volume+47&source=bl&ots=RCDgXAv-r8&sig=JzCand2eV3Gh8L-vKjfq8ewHdQI&hl=en&sa=X&ei=RrI1UOi9A5OQ0QHIq4DoBQ&ved=0CDEQ6AEwAA#v=onepage&q&f=false>.
 - "The Value of the Study of Medicine." *Montreal Medical Journal* 20, no. 5 (November, 1891): 321-345. CIHM no. 8_05178_41. http://canadiana.org/record/8_05178_41.
 - "Was Whitman Mad?" *The Conservator* 6, no. 4 (June, 1895): 55-58.
- Campbell, Austin. "House of Hate." *Maclean's*, August 1, 1933, pp. 10-11, 41-43.
- "House of Hate." *Maclean's*, September 1, 1933, pp. 13, 38-40.
 - "House of Hate." *Maclean's*, September 15, 1933, pp. 19, 44-45.
 - "House of Hate." *Maclean's*, November 15, 1933, pp. 21, 31.

Canadian Conference of Charities and Correction. *Proceedings of the Fourth Canadian*

Conference of Charities and Correction: Toronto, September 25th and 26th, 1901.
N.p.: [1901?].

Canadian Forum. "The Case of Judge Stubbs." *Canadian Forum*, December 1932, pp. 90-92.

Canadian Journal of Corrections. "Current and Candid: Is There a Place for Corporal Punishment in a Penal System?" *Canadian Journal of Corrections* 4, no. 1 (January, 1962): 50-53.

—. "Current and Candid: 'Should Parole Supervision Be the Responsibility of the Government Agency?'" *Canadian Journal of Corrections* 5, no. 2 ([April] 1963): 131-140.

Canadian Penal Association. *Summary of Proceedings of the First Canadian Penal Congress, Montreal, June 13 and 14, 1935*. [Montreal]: [1936?].

Canadian Who Was Imprisoned on False Charges. "Canadian Jails from the Inside." *Saturday Night*, August 26, 1922, pp. 2, 11.

Chesterton, G.K. *Eugenics and Other Evils* (1922). In *The Collected Works of G.K. Chesterton, IV*. San Francisco: Ignatius Press, 1987.

—. *Orthodoxy*. New York: Dodd, Mead & Co., 1908; New York: Doubleday, 2001.

Ciale, Justin. "Problems in Establishing Therapeutic Relationship in a Prison Community." *Canadian Journal of Corrections* 1, no. 4 (July 1959): 91-99.

Cohen, Ronald. "Custody and Treatment: An Anthropological View." *Canadian Journal of Corrections* 3, no. 2 (April 1961): 109-114.

Cormier, Bruno M. "Types of Regression Determined by the Deprivation of Liberty and Their Implications in Rehabilitation." In *Proceedings of the Canadian Congress of Corrections, 1957*, 137-147. Ottawa: Canadian Corrections Association, n.d.

Couse, A.K. "Pre-Release Preparation for Parole." *Canadian Journal of Corrections* 7, no. 1 (January 1965): 31-38.

Croll, David D. "Outmoded Penal System." In *Fourth Canadian Penal Congress, Windsor, Ontario: Proceedings, Sec. 1 & 2, Monday, Oct. 7 & Tuesday, Oct. 8, 1946*, sec. 1, pp. 4-5. Montreal: Canadian Penal Association, [1946].

Culhane, Claire. *Barred from Prison*. Vancouver: Pulp Press, 1979.

—. "The BC Pen: A Responsibility." *Makara* 2, no. 4 [1977]: 36-41.

—. *Still Barred from Prison: Social Injustice in Canada*. Montreal: Black Rose Books, 1985.

Dalhousie Review. "Topics of the Day." *Dalhousie Review* 18, no. 3 (October, 1938): 389-393.

Denison, George T. *Recollections of a Police Magistrate*. Toronto: Musson Book Company, 1920.

Edmison, J. Alex. "General Penal Situation in Canada." In *Fourth Canadian Penal Congress, Windsor, Ontario: Proceedings, Sec. 1 & 2, Monday, Oct. 7 & Tuesday, Oct. 8, 1946*, sec. 1, pp. 6-7. Montreal: Canadian Penal Association, [1946].

—. "Kindling the Fires of Friendship." *Saturday Night*, January 5, 1957, pp. 19-20.

Edmison, J. Alex, and Walter Turner. "Canada's Prison Shame." *National Home Monthly* 40, no. 9 (September 1939): 5-7, 58.

Elliott, Andrew. "Crime in Canada Would Lessen with Borstal." *Saturday Night*, September 21, 1946, p. 12.

Ellis, Havelock. *The Criminal*. London: Walter Scott, 1890.

Ericson, Richard V. "Responsibility, Moral Relativity, and Response Ability: Some Implications of Deviance Theory for Criminal Justice." *University of Toronto Law Journal* 25 (1975): 25.

Ex-Convict. "Beating Back." *Maclean's*, May 15, 1933, pp. 21-22, 40.

Farrar, C.B. "Criteria of Responsibility." In *Proceedings of the 59th Annual Congress of the American Prison Association, Toronto, Canada, September 20th to 26th, 1929*, 343-349. New York: American Prison Association, n.d.

—. "Radio Talk: Mental Disease in Relation to Crime." *Public Health Journal* 17, no. 2 (February 1926): 83-89.

—. "Social Aspects of Mental Deficiency." *Canadian Medical Association Journal* 16, no. 10 (October 1926): 1233-1238.

Fornataro, J.V. "It's Time to Abolish the Notion of Pre-Delinquency!" *Canadian Journal of Corrections* 7, no. 2 (April 1965): 189-191.

Fosdick, Harry Emerson. "Religion and Birth Control." *Outlook and Independent*, June

19, 1929, pp. 301, 314.

Gibson, Ralph B. "Dominion Penitentiaries Situation Reviewed by Commissioner." In *Fourth Canadian Penal Congress, Windsor, Ontario: Proceedings, Sec. 1 & 2, Monday, Oct. 7 & Tuesday, Oct. 8, 1946*, sec. 1, pp. 8-15. Montreal: Canadian Penal Association, [1946].

—. "Progress [i]n Penal Institutions." In *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949*, 24-31. Toronto: Canadian Penal Association, [1949].

—. "What's Happening in Our Penitentiaries?" *Saturday Night*, October 25, 1952, p. 9, 29-30.

Hackler, James C. "An 'Underdog' Approach to Correctional Research." *Canadian Journal of Corrections* 9, no. 1 (January 1967): 27-36.

Harvey, A.B. "Some Problems of Punishment." *Queen's Quarterly* 35, no. 2 (November, 1927): 156-171.

Jaffary, Stuart K. "The Training of Staff for Penal Work." In *Fourth Canadian Penal Congress, Windsor, Ontario: Proceedings, Sec. 1 & 2, Monday, Oct. 7 & Tuesday, Oct. 8, 1946*, sec. 2, pp. 13-B to 13-D. Montreal: Canadian Penal Association, [1946].

Kirkconnell, Watson. "Property Rights in Russia Doom of Human Rights." *Saturday Night*, October 18, 1947, pp. 6-7.

Lavell, Alfred E. *Back of the Bible: An Outline of the Historical Background of the Bible for the Non-Theological Student*. Toronto: Ryerson Press, 1948.

—. "Christianity and the Criminal." *Christian Guardian*, May 8, 1901, pp. 2, 12.

—. *The Convicted Criminal and His Re-Establishment as a Citizen: With Special Reference to the Province of Ontario, Canada*. Toronto: Ryerson Press, 1926.

—. "Crime and Criminals: What is the Matter?" *Social Welfare* 16, no. 3 (June 1936): 60-63.

—. "Criminals and Citizenship." *Dalhousie Review* 6, no. 2 (July, 1926): 151-159.

—. "The Cure of the Criminal." In *Addresses Delivered before the Canadian Club of Toronto: Season of 1920-21*, 153-164. Toronto: Warwick Bros. & Rutter, 1922.

—. "Is It a Divine Comedy?" *New Outlook*, February 29, 1928, pp. 5, 27.

- . *Our Prison Problem*. Toronto: William Briggs, 1901; Ottawa: Canadian Institute for Historical Microreproductions, 1999. Microfiche. CIHM no. 88219.
- . “The Possible Re-Establishment of Criminals as Citizens.” *Social Welfare* 8, no. 5 (February-March 1926): 95-98.
- . “The Prisoner’s Family.” In *Proceedings of the Canadian Association of Child Protection Officers at the Second Annual Meeting Held in Toronto, Ontario, September 27-30, 1922*, 86-87. Ottawa: F.A. Acland, 1923.
- . “The Supervision of Paroled Persons.” In *Proceedings of the Canadian Conference on Social Work, Toronto, Ontario, April 28, 29, 30 and May 1, 1930*, 208-211. Ottawa: Metropolitan Life Insurance Company, 1930.
- . “The Treatment of the Criminal in Ontario.” *Canadian Journal of Religious Thought* 2, no. 4 (July-August, 1925): 284-289.
- LeBourdais, D.M. “Our Barbaric Penal System.” *Canadian Magazine*, September 1938, pp. 16-17, 68.
- . “Show-Down or Blow-Up?” *Maclean’s*, March 1, 1933, pp. 13, 51-52.
- . “They Still Require Investigating.” *Canadian Forum*, February 1934, pp. 167-168.
- Lewis, C.S. *God in the Dock: Essays on Theology and Ethics*. Edited by Walter Hooper. Grand Rapids, MI: William B. Eerdmans Publishing Company, 1970.
- . “The Humanitarian Theory of Punishment.” *Chitty’s Law Journal* 20, no. 1 (January, 1972): 1-5.
- Lewis St. George Stubbs, Saskatchewan Farmer-Labor Group Candidate, Co-operative Commonwealth Federation, Mackenzie Electoral District*. Preeceville, SK: Ralph Milbourne, [1933?].
- Lombroso, Cesare. *Criminal Man*. Trans. Mary Gibson and Nicole Hahn Rafter, with translation assistance from Mark Seymour. Durham, NC: Duke University Press, 2006.
- MacDonald, David. “New Era Dawns for ‘The Don.’” *Saturday Night*, November 3, 1951, pp. 12, 38.
- MacDonnell, G.M. “The Treatment of Crime by the State,” *Queen’s Quarterly* 4, no. 4 (April, 1897): 257-268.

- Macphail, Agnes. *Convict or Citizen? The Urgent Need for Prison Reform*. Toronto: Co-operative Commonwealth Federation Literature Department, n.d.
- . “A Report on Penal Reform.” *Canadian Forum*, December 1946, pp. 206-208.
- Marshall, A.S. “Crime Wave.” *Maclean’s*, April 15, 1946, pp. 7-8, 53-55.
- McCulley, Joseph. “A Canadian Correctional Treatment Plan: Objectives.” In *Proceedings of the Canadian Penal Association, Held in Conjunction with the American Prison Association, King Edward Hotel, Toronto, October 15 and 16, 1953*, 1-4. Toronto: Canadian Penal Association, n.d.
- . “Canadian Penitentiary Staff College.” *Prison World* 14, no. 4 (July-August 1952): 6-7.
- . “Democracy and Education.” *Canadian Forum*, August 1934, pp. 436-438.
- . “Education and the Present Crisis.” *Canadian Forum*, July 1932, pp. 376, 378-379.
- . “Education in a Changing Society.” *Canadian Forum*, August 1932, pp. 416, 418.
- . “The Institution Tackles Its Job.” In *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949*, 34-41. Toronto: Canadian Penal Association, [1949].
- . “Now Is the Time.” *Canadian Journal of Corrections* 2, no. [2] ([April] 1960): 216-221.
- Moore, Gary. “The Tombs and the Don: Difference in Jail Systems One Reason Why United States Crooks Prefer to Stay at Home.” *Saturday Night*, March 7, 1931, p. 3.
- New Outlook*. “The Prevention of Crime.” *New Outlook*, June 15, 1927, p. 18.
- O’Connor, Maurice. “Impressions Concerning Adaption to Imprisonment.” In *Proceedings of the Canadian Congress of Corrections, 1957*, 110-120. Ottawa: Canadian Corrections Association, n.d.
- Outerbridge, W.R. “Authority – Its Use or Misuse in Probation.” *Canadian Journal of Corrections* 2, no. 3 (July 1960): 295-309.
- . “Criminal Justice in the Seventies: In Search of New Perspectives on an Old Problem.” In *Proceedings of the Canadian Congress of Criminology and Corrections, 1973, Regina, Saskatchewan, June 24-29*, 1-20. Ottawa: Canadian Criminology and Corrections Association, n.d.

- . “The Tyranny of Treatment ...?” *Canadian Journal of Corrections* 10, no. 2 (April 1968): 378-387.
- . “The Tyranny of Treatment ...?” *Chitty’s Law Journal* [Peterborough, ON] 17, no. 6 (June, 1969): 188-193.
- Oxenham, John. *Selected Poems of John Oxenham*. Toronto: Ryerson Press, 1924.
- Parsons, Harriet. “Why Are Prisoners Rioting Everywhere?” *Saturday Night*, November 26, 1932, pp. 2, 9.
- Prisoners’ Aid Association of Canada. *Twenty-Second Annual Report of the Prisoners’ Aid Association of Canada, for the Year 1896-96*. Toronto: Dudley & Burns, 1897; Ottawa: Canadian Institute for Historical Microreproductions, 1988. Microfiche. CIHM no. 00675-1895-96.
- . *Twenty-Sixth Annual Report of the Prisoners’ Aid Association of Canada, for the Year 1899-1900*. Toronto: Hill Printing Co., 1901; Ottawa: Canadian Institute for Historical Microreproductions, 1988. Microfiche. CIHM no. 00675-1899-1900.
- Russon, Gordon W. Review of *Crime and Juvenile Delinquency*, by Sol Rubin. *Canadian Journal of Corrections* 1, no. 1 (October, 1958): 52-54.
- Sandwell, B.K. “Administration of Penitentiaries Hasn’t Changed in 100 Years.” *Saturday Night*, August 25, 1945, p. 12.
- Saturday Night*. “Archambault Report.” *Saturday Night*, June 25, 1938, pp. 1, 3.
- . “Corporal Punishment.” *Saturday Night*, August 26, 1933, p. 1.
- . “Newspaper Stimulus to Crime.” *Saturday Night*, January 19, 1924, p. 1.
- . “Sentimentalists and Murderers.” *Saturday Night*, August 12, 1922, p. 1.
- . “Sentimental Pleas for Murderers.” *Saturday Night*, July 7, 1928, p. 1.
- . “Spanking for Young Delinquents.” *Saturday Night*, October 3, 1931, p. 1.
- . “Stamping Out Crime of Violence.” *Saturday Night*, October 15, 1927, pp. 1-2.
- . “Thanks to the Lawyers.” *Saturday Night*, September 9, 1933, p. 1.
- . “Treating ’Em Rough in the U.S.A.” *Saturday Night*, February 26, 1921, p. 1.

- . “Understanding the Criminal: Former Chief of Detectives of New York Explains Why Humanity Is Best Policy in Catching Crooks.” Unsigned review of *The Criminal as a Human Being*, by George S. Dougherty. *Saturday Night*, June 20, 1925, p. 10.
- Scott, F.R. “The Need for a Canadian Penal Association.” In *Summary of Proceedings of the First Canadian Penal Congress, Montreal, June 13 and 14, 1935*, 13-18. [Montreal]: [1936?].
- . “Penal Reform Is Not a Field for Amateurs.” *Saturday Night*, June 27, 1936, p. 2.
- . “Penal Reform.” *Saturday Night*, July 11, 1936, pp. 4, 7.
- . “Penal Reform.” *Saturday Night*, July 18, 1936, pp. 4, 8.
- Sellin, Thorsten. Foreword to *Punishment and Social Structure*, by Georg Rusche and Otto Kirchheimer, xlvii-xlix (this pagination in Transaction edition). New York: Columbia University Press, 1939; New Brunswick, NJ: Transaction Publishers, 2003.
- Street, T. George. “Parole as a Social Control.” *Canadian Journal of Corrections* 7, no. 1 (January 1965): 5-7.
- Topping, C.W. *Blood on the Snow: Sixty Years of Observation and Comment*. Vancouver: College Printers and Publishers, 1980.
- . *Canadian Penal Institutions*. [Toronto]: Ryerson Press, 1929.
- . *Canadian Penal Institutions*. Chicago: Chicago University Press, 1930.
- . *Canadian Penal Institutions*. Rev. ed. Toronto: Ryerson Press, 1943.
- . *Crime & You*. Toronto: The Ryerson Press, 1960.
- . “Crime in the Streets.” In *Blood on the Snow: Sixty Years of Observation and Comment*, 115-118. Vancouver: College Printers and Publishers, 1980.
- . “The Death Penalty in Canada.” *Annals of the American Academy of Political and Social Science* 284 (Nov., 1952): 147-157. <http://www.jstor.org/stable/1029454>.
- . “The Passing of the County Jail in Canada.” In *Proceedings of the 59th Annual Congress of the American Prison Association, Toronto, Canada, September 20th to 26th, 1929*, 238-249. New York: American Prison Association, n.d.
- . “Recommendations for Treatment.” In *Blood on the Snow: Sixty Years of Observation*

- and Comment*, 137-139. Vancouver: College Printers and Publishers, 1980.
- . "The Report of the Ontario Royal Commission on Public Welfare, 1930." *Tribunal* 1 (1932): 84-94.
- . "The Report of the Royal Commission on the Penal System of Canada." *Canadian Journal of Economics and Political Science* 4, no. 4 (Nov., 1938): 551-559.
- . "Saintly Faces Easily Hide Dangerous Criminals." *Saturday Night*, November 13, 1948, pp. 26-27.
- . "What about Parole in Canada?" In *Proceedings of the Fifth Canadian Penal Congress, Held at Kingston, Ontario, June 20, 21 and 22, 1949*, 57-65. Toronto: Canadian Penal Association, [1949].
- Traubel, Horace L. "Walt Whitman and Good and Evil: A Discussion." *The Conservator* 5, no. 7 (September, 1894): 103-106.
- Tweed, Jean. "Ontario Outstrips Provinces in Prison Reform Experiment." *Saturday Night*, May 22, 1948, pp. 6-7.
- . "Royal Commission Will Overhaul Our Antiquated Criminal Code." *Saturday Night*, March 15, 1949, pp. 6-7.
- Urwick, E.J. "The Penal Commission's Report." *Queen's Quarterly* 46, no. 3 (Autumn 1939): 320-323.
- White, J.F. "Russian High-Lights I: Soviet Power + Electricity = Socialism." *Canadian Forum*, February 1933, pp. 165-166.
- . "Russian High-Lights II: Iron Bars." *Canadian Forum*, March 1933, pp. 212-213.
- Whittier, John Greenleaf. "The Gallows." In *The Complete Poetical Works of John Greenleaf Whittier*, Cambridge Edition, 352-353. Boston and New York: Houghton Mifflin Company, 1894.
- Wilson, Margaret. *The Crime of Punishment*. New York: Harcourt, Brace and Company, 1931.
- Withrow, Oswald C.J. *Shackling the Transgressor: An Indictment of the Canadian Penal System*. Toronto: Thomas Nelson & Sons, 1933.
- Woollacott, Arthur P. "Jail without Locks." *Maclean's*, June 15, 1939, pp. 7, 38-39.
- Wyatt, Horace G. *Crime in Canada and the War*. Toronto: Oxford University Press,

1944.

SECONDARY SOURCES

Theses

Kirk-Montgomery, Allison. "Courting Madness: Insanity and Testimony in the Criminal Justice System of Victorian Ontario." Ph.D. Thesis, University of Toronto, 2001. Ottawa: National Library of Canada, [2004].

Marr, Chadwick Alem. "'A Series of Nasty Situations': The Causes and Effects of Riots at Kingston Penitentiary." M.A. Thesis, Queen's University, 1998. Ottawa: National Library of Canada, 1999. <http://www.nlc-bnc.ca/obj/s4/f2/dsk2/ftp01/MQ36053.pdf>.

Pothier, Dianne. "Canadian Legislative Behavior under a Free Vote: The Case of Capital Punishment." M.A. Thesis, Carleton University, 1978.

Sawatsky, Peter Donald Brian. "Prison Riots: How Do the Media Portray Them." M.A. Thesis, University of Manitoba, 1986. Ottawa: National Library of Canada, 1987.

Wetherell, Donald Grant. "Rehabilitation Programmes in Canadian Penitentiaries, 1867-1914: A Study of Official Opinion." Ph.D. Thesis, Queen's University, 1980. Ottawa: National Library of Canada, 1982.

Whittingham, Michael D. "Criminality and Correctional Reformism in Ontario, 1831 to 1954." Ph.D. Thesis, York University, 1981. Ottawa: National Library of Canada, 1982.

Books, Chapters, and Articles

Abella, Irving, and Harold Troper. *None Is Too Many: Canada and the Jews of Europe, 1933-1948*. Toronto: Lester & Orpen Dennys, 1982.

Banner, Stuart. *The Death Penalty: An American History*. Cambridge, MA: Harvard University Press, 2002.

Bannister, Jerry. *The Rule of the Admirals: Law, Custom, and Naval Government in Newfoundland, 1699-1832*. Toronto: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 2003.

Bederman, Gail. *Manliness & Civilization: A Cultural History of Gender and Race in the United States, 1880-1917*. Chicago: University of Chicago Press, 1995.

- Bercuson, David Jay. *True Patriot: The Life of Brooke Claxton, 1898-1960*. Toronto: University of Toronto Press, 1993.
- Berkovits, Joseph Gondor. "Prisoners for Profit: Convict Labour in the Ontario Central Prison, 1874-1915." In *Essays in the History of Canadian Law, Volume V: Crime and Criminal Justice*, edited by Jim Phillips, Tina Loo, and Susan Lewthwaite, 478-515. [Toronto]: The Osgoode Society, 1994.
- Blomberg, Thomas G., and Karol Lucken. *American Penology: A History of Control*. 2nd ed. New Brunswick, NJ: Transaction Publishers, 2010.
- Boudreau, Michael. *City of Order: Crime and Society in Halifax, 1918-35*. Vancouver: UBC Press, 2012.
- Boyer, Patrick. *A Passion for Justice: The Legacy of James Chalmers McRuer*. Toronto: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 1994.
- Brode, Patrick. "'Perverts a Menace': The Development of the Criminal Sexual Psychopath Offence, 1948." In *Essays in the History of Canadian Law, Volume X: A Tribute to Peter N. Oliver*, edited by Jim Phillips, R. Roy McMurtry, and John T. Saywell, 107-128. Toronto: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 2008.
- Buck, Tim. *Yours in the Struggle: Reminiscences of Tim Buck*. Edited by William Beeching and Phyllis Clarke. Toronto: NC Press, 1977.
- Burke, Sara Z. *Seeking the Highest Good: Social Service and Gender at the University of Toronto, 1888-1937*. Toronto: University of Toronto Press, 1996.
- Carrigan, D. Owen. *Crime and Punishment in Canada: A History*. Toronto: McClelland & Stewart, 1991.
- Carstairs, Catherine. *Jailed for Possession: Illegal Drug Use, Regulation, and Power in Canada, 1920-1961*. Toronto: University of Toronto Press, 2006.
- Chandler, David B. *Capital Punishment in Canada: A Sociological Study of Repressive Law*. Toronto: McClelland and Stewart Limited, 1976.
- Chenier, Elise. *Strangers in Our Midst: Sexual Deviancy in Postwar Ontario*. Toronto: University of Toronto Press, 2008.
- Christie, Nancy. *Engendering the State: Family, Work, and Welfare in Canada*. Toronto: University of Toronto Press, 2000.

- Christie, Nancy, and Michael Gauvreau. *A Full-Orbed Christianity: The Protestant Churches and Social Welfare in Canada, 1900-1940*. Montreal & Kingston: McGill-Queen's University Press, 1996.
- Christou, Theodore Michael. *Progressive Education: Revisioning and Reframing Ontario's Public Schools, 1919-1942*. Toronto: University of Toronto Press, 2012.
- Chunn, Dorothy. *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario, 1880-1940*. Toronto: University of Toronto Press, 1992.
- Ciale, Justin. *Tales of Saint Vincent de Paul Penitentiary*. New York; Ottawa; Toronto: Legas, 1997.
- Cohen, Stanley. *Visions of Social Control: Crime, Punishment and Classification*. Cambridge, UK: Polity Press, 1985.
- Collins, Anne. *In the Sleep Room: The Story of the CIA Brainwashing Experiments in Canada*. Toronto: Lester & Orpen Dennys, 1988.
- Collinson, Patrick. "Religion and Human Rights: The Case of and for Protestantism." In *Historical Change and Human Rights: The Oxford Amnesty Lectures, 1994*, edited by Olwen Hufton, 21-54. New York: BasicBooks, 1995.
- Cook, Ramsay. *The Regenerators: Social Criticism in Late Victorian English Canada*. Toronto: University of Toronto Press, 1985.
- Cravens, Hamilton. *The Triumph of Evolution: American Scientists and the Heredity-Environment Controversy, 1900-1941*. Philadelphia: University of Pennsylvania Press, 1978.
- Crowley, Terry. *Agnes Macphail and the Politics of Equality*. Toronto: James Lorimer, 1990.
- Currier, Thomas Franklin. *A Bibliography of John Greenleaf Whittier*. New York: Russell & Russell, 1971. Originally published by Harvard University Press in 1937.
- Curtis, Bruce. *Building the Educational State: Canada West, 1836-1871*. London, ON: Althouse Press, 1988.
- Cusac, Anne-Marie. *Cruel and Unusual: The Culture of Punishment in America*. New Haven, CT: Yale University Press, 2009.
- Davie, Neil. *Tracing the Criminal: The Rise of Scientific Criminology in Britain, 1860-1918*. Oxford: Bardwell Press, 2005.

- Djwa, Sandra. *The Politics of the Imagination: A Life of F.R. Scott*. Toronto: McClelland and Stewart, 1987.
- Doherty, Diana, and John W. Ekstedt. *Conflict, Care and Control: The History of the British Columbia Corrections Branch, 1848-1988*. [Burnaby, BC]: Simon Fraser University Institute for Studies in Criminal Justice Policy, [1991].
- Douglas, Ann. *Terrible Honesty: Mongrel Manhattan in the 1920s*. New York: Farrar, Straus and Giroux, 1995.
- Dowbiggin, Ian Robert. *Keeping America Sane: Psychiatry and Eugenics in the United States and Canada, 1880-1940*. Ithaca, NY, and London, UK: Cornell University Press, 1997.
- Dummitt, Christopher. "The 'Taint of Self': Reflections on Ralph Connor, His Fans, and the Problem of Morality in Recent Canadian Historiography," *Histoire Sociale/Social History* 46, no. 91 (Mai-May 2013): 63-90.
- Egerton, George. "Entering the Age of Human Rights: Religion, Politics, and Canadian Liberalism, 1945-50." *Canadian Historical Review* 85, no. 3 (September 2004): 1-15.
- Ekstedt, John W., and Curt T. Griffiths. *Corrections in Canada: Policy and Practice*. 2nd ed. Toronto and Vancouver: Butterworths, 1988.
- Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. Translated by Alan Sheridan. New York, NY: Vintage Books, 1979. Original edition of translation published in 1977.
- Fox, Christopher. "Introduction: How to Prepare a Noble Savage: The Spectacle of Human Science." In *Inventing Human Science: Eighteenth-Century Domains*, edited by Christopher Fox, Roy Porter, and Robert Wokler, 1-30. Berkeley, CA: University of California Press, 1995. Electronic copy of book, accessed through the Carleton University library.
- Francis, R. Douglas. *The Technological Imperative in Canada: An Intellectual History*. Vancouver: UBC Press, 2009.
- Friedland, Martin L. *The Case of Valentine Shortis: A True Story of Crime and Politics in Canada*. Toronto: University of Toronto Press, 1986.
- Fyson, Donald. *Magistrates, Police, and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764-1837*. Toronto: Published for The Osgoode Society for Canadian Legal History by University of Toronto Press, 2006.

- Gamberg, Herbert, and Anthony Thomson. *The Illusion of Prison Reform: Corrections in Canada*. New York: Peter Lang, 1984.
- Garland, David. *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press, 2001.
- . *Punishment and Modern Society: A Study in Social Theory*. Oxford, UK: Clarendon Press, 1990.
- . *Punishment and Welfare: A History of Penal Strategies*. Aldershot, Hants, England; Brookfield, VT: Gower, 1985.
- Gauvreau, Michael. *The Evangelical Century: College and Creed in English Canada from the Great Revival to the Great Depression*. Montreal & Kingston: McGill-Queen's University Press, 1991.
- Gibson, Mary, and Nicole Hahn Rafter. Introduction to *Criminal Man*, by Cesare Lombroso, 1-36. Translated Mary Gibson and Nicole Hahn Rafter, with translation assistance from Mark Seymour. Durham, NC: Duke University Press, 2006.
- Glover, Jonathan. *Humanity: A Moral History of the Twentieth Century*. London: Jonathan Cape, 1999.
- Gorringe, Timothy. *God's Just Vengeance: Crime, Violence and the Rhetoric of Salvation*. Cambridge, UK: Cambridge University Press, 1996.
- Gould, Stephen Jay. *Ontogeny and Phylogeny*. Cambridge, MA: Belknap Press of Harvard University Press, 1977.
- Grant, George. *English-Speaking Justice*. Toronto: Anansi, 1985. Reprinted with introduction by Robin Lathangue in 1998.
- . *The George Grant Reader*. Edited by William Christian and Sheila Grant. Toronto: University of Toronto Press, 1998.
- Griffiths, Curt T., and Alison Cunningham. *Canadian Corrections*. Scarborough, ON: Nelson Thomson Learning, 2000.
- Haidt, Jonathan, and Selin Kesebir. "Morality." In *Handbook of Social Psychology*, 5th ed., edited by Susan T. Fiske, Daniel T. Gilbert, and Gardner Lindzey, 797-832. Hoboken, NJ: John Wiley & Sons, [2010].
- Hart, David Bentley. *Atheist Delusions: The Christian Revolution and Its Fashionable*

Enemies. New Haven, CT: Yale University Press, 2009.

Helmes-Hayes, Rick. "Coral W. Topping, Pioneer Canadian Public Sociologist: 'A Veteran Warrior for Prison Reform.'" In *The Public Sociology Debate: Ethics and Engagement*, edited by Ariane Hanemaayer and Christopher J. Schneider, 175-202. Vancouver: UBC Press, 2014.

—. "Coral Wesley Topping: Pioneer of Sociology at UBC." Draft paper, July 2008. Copy in my possession. Cited with permission of Rick Helmes-Hayes.

Hennessy, Peter H. *Canada's Big House: The Dark History of the Kingston Penitentiary*. Toronto: Dundurn, 1999.

Hogeveen, Bryan. "'The Evils with Which We Are Called to Grapple': Élite Reformers, Eugenicists, Environmental Psychologists, and the Construction of Toronto's Working-Class Boy Problem, 1860-1930," *Labour/Le Travail* 55 (Spring 2005): 37-68.

—. "'You Will Hardly Believe I Turned Out So Well': Parole, Surveillance, Masculinity, and the Victoria Industrial School, 1896-1935." *Histoire sociale/Social History* 37, no. 2 (2004): 201-227.

Ignatieff, Michael. *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850*. New York: Pantheon Books, 1978.

Jameson, Mary Ann, ed. *Richard Maurice Bucke: A Catalogue Based upon the Collections of the University of Western Ontario Libraries*. London, ON: The Libraries, University of Western Ontario, 1978.

Keenleyside, Hugh L. *Memoirs of Hugh L. Keenleyside*. Vol. 2, *On the Bridge of Time*. Toronto: McClelland and Stewart, 1982.

Kingwell, Mark. "Democracy's Gift: Politics, Anxiety, and Hope in the Twenty-First Century." Lecture, Congress of the Humanities and Social Sciences, Montreal, QC, June 1, 2010.

Kirk-Montgomery, Allison. "'Loaded Revolvers': Ontario's First Forensic Psychiatrists." In *Mental Health and Canadian Society: Historical Perspectives*, edited by James E. Moran and David Wright, 117-148. Montreal & Kingston: McGill-Queen's University Press, 2006.

Levine, Allan. *Scrum Wars: The Prime Ministers and the Media*. Toronto: Dundurn Press, 1993.

Leyton-Brown, Ken. *The Practice of Execution in Canada*. Vancouver: UBC Press, 2010.

- Lockyer, John F. "New Traditions, Old Ideas: The McCulley Years and the Application of Quaker Educational Philosophy at Pickering College." *Canadian Quaker History Journal*, no. 50 (Winter 1991): 4-17, <http://www.cfha.info/journal50.pdf>.
- Loo, Tina. "Savage Mercy: Native Culture and the Modification of Capital Punishment in Nineteenth-Century British Columbia." In *Qualities of Mercy: Justice, Punishment, and Discretion*, edited by Carolyn Strange, 104-129. Vancouver: UBC Press, 1996.
- Lowe, Mick. *One Woman Army: The Life of Claire Culhane*. Toronto: Macmillan Canada, 1992.
- MacIntyre, Alasdair. *Dependent Rational Animals: Why Human Beings Need the Virtues*. Chicago: Open Court, 1999.
- . *Three Rival Versions of Moral Enquiry: Encyclopaedia, Genealogy, and Tradition: Being Gifford Lectures Delivered in the University of Edinburgh in 1988*. Notre Dame, IN: University of Notre Dame Press, 1990.
- Mansfield, Harvey C. "Self-Interest Rightly Understood." *Political Theory* 23, no. 1 (Feb., 1995): 48-66.
- Marquis, Greg. *Policing Canada's Century: A History of the Canadian Association of Chiefs of Police*. Toronto: University of Toronto Press, 1993.
- Marsden, George M. *Fundamentalism and American Culture: The Shaping of Twentieth-Century Evangelicalism, 1870-1925*. Oxford: Oxford University Press, 1980.
- Masur, Louis P. *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865*. New York: Oxford University Press, 1989.
- McCoy, Ted. *Hard Time: Reforming the Penitentiary in Nineteenth-Century Canada*. Edmonton: AU Press, 2012.
- McKillop, A.B. *A Disciplined Intelligence: Critical Inquiry and Canadian Thought in the Victorian Era*. Carleton Library Series 193. Montreal & Kingston: McGill-Queen's University Press, 2001.
- . "Science, Authority, and the American Empire." In *Contours of Canadian Thought*, 111-128. Toronto: University of Toronto Press, 1987.
- McLaren, Angus. *Our Own Master Race: Eugenics in Canada, 1885-1945*. Toronto: McClelland & Stewart, 1990.

- McMahon, Maeve W. *The Persistent Prison? Rethinking Decarceration and Penal Reform*. Toronto: University of Toronto Press, 1992.
- Miller, Robert Moats. "Fosdick, Harry Emerson." In *American National Biography*. New York: Oxford University Press, 1999.
- Minaker, Joanne C., and Bryan Hogeveen. *Youth, Crime, and Society: Issues of Power and Justice*. Toronto: Pearson Prentice Hall, 2009.
- Mitchell, Tom. "'Laws Grind the Poor and Rich Men Rule the Law': Lewis St. George Stubbs, the Canadian State, and the Ignominy of Judicial Insurgency." *Prairie Forum* 22, no. 2 (Fall 1997): 277-313.
- Mosby, Ian. "Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952." *Histoire sociale/Social History* 46, no. 91 (May 2013): 145-172. <http://muse.jhu.edu/journals/his/summary/v046/46.91.mosby.html>.
- Murray, David R. "Archibald, Walter Palmer." In *Dictionary of Canadian Biography*, vol. 15. University of Toronto/Université Laval, 2003-. Accessed April 7, 2014. http://www.biographi.ca/en/bio/archibald_walter_palmer_15E.html.
- Nicholson, Ian A.M. *Inventing Personality: Gordon Allport and the Science of Selfhood*. Washington, DC: American Psychological Association, 2003.
- Niergarth, Kirk. "Art, Education, and a 'new world society': Joseph McCulley's Pickering College and Canadian Muralism, 1934-1950." *Journal of Canadian Studies* 41, no. 1 (Winter 2007): 172-197.
- . "Through the Looking Glass and Back: Non-Communist Canadian Tourists and the Soviet Union, 1930-1939." Paper delivered at Annual Meeting of the Canadian Historical Association, Fredericton, NB, June 1, 2011.
- Oliver, Peter. "Lavell, Michael." In *Dictionary of Canadian Biography*, vol. 13. University of Toronto/Université Laval, 2003-. Accessed April 11, 2014. http://www.biographi.ca/en/bio/lavell_michael_13E.html.
- . *'Terror to Evil-Doers': Prisons and Punishments in Nineteenth-Century Ontario*. Toronto: University of Toronto Press, 1998.
- . "'To Govern by Kindness': The First Two Decades of the Mercer Reformatory for Women." In *Essays in the History of Canadian Law, Volume V: Crime and Criminal Justice*, edited by Jim Phillips, Tina Loo, and Susan Lewthwaite. [Toronto]: The Osgoode Society, 1994.

- Owram, Doug. *Born at the Right Time: A History of the Baby-Boom Generation*. Toronto: University of Toronto Press, 1996.
- Parkinson, Gary. "Recovering the Early History of Canadian Criminology: Criminology at the University of British Columbia, 1951-1959." *Canadian Journal of Criminology and Criminal Justice* 50, no. 5 (October 2008): 589-620. doi:10.3138/cjccj.50.5.589.
- Parole Board of Canada. "History of Parole in Canada." Parole Board of Canada website. Accessed October 14, 2014. <http://pbc-clcc.gc.ca/about/hist-eng.shtml>.
- Peace, William J. *Leslie A. White: Evolution and Revolution in Anthropology*. Lincoln: University of Nebraska Press, 2004.
- Price, David H. *Threatening Anthropology: McCarthyism and the FBI's Surveillance of Activist Anthropologists*. Durham, NC: Duke University Press, 2004.
- Rae, Scott B. *Moral Choices: An Introduction to Ethics*. 2nd ed. Grand Rapids, MI: Zondervan, 2000.
- Rafter, Nicole Hahn. "Criminal Anthropology: Its Reception in the United States and the Nature of Its Appeal." In *Criminals and Their Scientists: The History of Criminology in International Perspective*, edited by Peter Becker and Richard F. Wetzell, 159-181. Washington, DC: German Historical Institute; New York: Cambridge University Press, 2006.
- . *The Criminal Brain: Understanding Biological Theories of Crime*. New York: New York University Press, 2008.
- Reaume, Geoffrey. "Patients at Work: Insane Asylum Inmates' Labour in Ontario, 1841-1900." In *Mental Health and Canadian Society: Historical Perspectives*, edited by James E. Moran and David Wright, 69-96. Montreal & Kingston: McGill-Queen's University Press, 2006.
- Rechnitzer, Peter A. *R.M. Bucke: Journey to Cosmic Consciousness*. [Toronto]: Associated Medical Services; Markham, ON: Fitzhenry & Whiteside, 1994.
- Ritchie, Charles. *Storm Signals: More Undiplomatic Diaries, 1962-1971*. Toronto: Macmillan of Canada, 1983.
- Roland, Charles G. "Osler, Sir William." In *Dictionary of Canadian Biography*, vol. 14. University of Toronto/Université Laval, 2003-. Accessed April 11, 2014. http://www.biographi.ca/en/bio/osler_william_14E.html.
- Rosenberg, Charles E. *The Trial of the Assassin Guiteau: Psychiatry and Law in the*

- Gilded Age*. Chicago: University of Chicago Press, 1968.
- Rothman, David J. *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*. Boston: Little, Brown, 1980.
- Rudy, Jarrett. *The Freedom to Smoke: Tobacco Consumption and Identity*. Montreal & Kingston: McGill-Queen's University Press, 2005.
- Rusche, Georg, and Otto Kirchheimer. *Punishment and Social Structure*. New York: Columbia University Press, 1939; New Brunswick, NJ: Transaction Publishers, 2003.
- Sangster, Joan. "Creating Social and Moral Citizens: Defining and Treating Delinquent Boys and Girls in English Canada, 1920-65." In *Contesting Canadian Citizenship: Historical Readings*, edited by Robert Adamoski, Dorothy E. Chunn, and Robert Menzies, 337-358. Peterborough, ON: Broadview Press, 2002.
- . "Reforming Women's Reformatories: Elizabeth Fry, Penal Reform, and the State, 1950-1970," *Canadian Historical Review* 85, no. 2 (June 2004): 227-252.
- Scott, James C. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven, CT: Yale University Press, 1998.
- Shore, Marlene. *The Science of Social Redemption: McGill, the Chicago School, and the Origins of Social Research in Canada*. Toronto: University of Toronto Press, 1987.
- Shorter, Edward. "C.B. Farrar: A Life." In *TPH: History and Memories of the Toronto Psychiatric Hospital, 1925-1966*, edited by Edward Shorter, 59-96. Toronto: Wall & Emerson, 1996.
- . "The Recent Revolution in the History of Psychiatry." In *TPH: History and Memories of the Toronto Psychiatric Hospital, 1925-1966*, edited by Edward Shorter, 1-18. Toronto: Wall & Emerson, 1996.
- Shortt, S.E.D. *Victorian Lunacy: Richard M. Bucke and the Practice of Late Nineteenth-Century Psychiatry*. Cambridge, UK: Cambridge University Press, 1986.
- Shotwell, Trent. Finding aid for Sanford Bates Collection, 1906-1972, Thomason Special Collections & SHSU University Archives. <https://archon.shsu.edu/?p=collections/findingaid&id=2&q=>.
- Skinner, Quentin. *Machiavelli*. Oxford: Oxford University Press, 1981.
- Skinner, Shirley, Otto Driedger, and Brian Grainger. *Corrections: An Historical*

Perspective of the Saskatchewan Experience. Regina: Canadian Plains Research Center, 1981.

Stephen, Jennifer. "The 'Incorrigible,' the 'Bad,' and the 'Immoral': Toronto's 'Factory Girls' and the Work of the Toronto Psychiatric Clinic." In *Law, Society, and the State: Essays in Modern Legal History*, edited by Louis A. Knafla and Susan W.S. Binnie, 405-439. Toronto: University of Toronto Press, 1995.

Stewart, Graham. "Mandatory Supervision: Politics and People." *Canadian Journal of Criminology* 25, no. 1 (January 1983): 97-103.

Stocking, George W., Jr. *Race, Culture, and Evolution: Essays in the History of Anthropology*. New York: Free Press, 1968.

Strange, Carolyn. "Casting Light on Women in the Shadow of the Law: Toronto at the Turn of the Century." In *Great Dames*, edited by Elspeth Cameron and Janice Dickinson, 97-117. Toronto: University of Toronto Press, 1997.

—. "'The Criminal and Fallen of Their Sex': The Establishment of Canada's First Women's Prison, 1874-1901." *Canadian Journal of Women and the Law* 1, no. 1 (1985): 79-92.

—. "Discretionary Justice: Political Culture and the Death Penalty in New South Wales and Ontario, 1890-1920." In *Qualities of Mercy: Justice, Punishment, and Discretion*, edited by Carolyn Strange, 130-165. Vancouver: UBC Press, 1996.

—. Introduction to *Qualities of Mercy: Justice, Punishment, and Discretion*, edited by Carolyn Strange, 3-20. Vancouver: UBC Press, 1996.

—. "The Lottery of Death: Capital Punishment, 1867-1976." *Manitoba Law Journal* 23, no. 3 (January 1996): 594-619.

—. "The Undercurrents of Penal Culture: Punishment of the Body in Mid-Twentieth-Century Canada." *Law and History Review* 19, no. 2 (2001): 343-385.

Stubbs, Lewis St. George. *A Majority of One: The Life and Times of Lewis St. George Stubbs*. Winnipeg: Queenston House, 1983.

Swainger, Jonathan. "A Distant Edge of Authority: Capital Punishment and the Prerogative of Mercy in British Columbia, 1872-1880." In *Essays in the History of Canadian Law, Volume VI: British Columbia and the Yukon*, edited by Hamar Foster and John McLaren, 204-241. Toronto: University of Toronto Press, 1995.

Taylor, Charles. *Sources of the Self: The Making of the Modern Identity*. Cambridge, Mass.: Harvard University Press, 1989.

University of Toronto Archives. Finding aid for Clarence B. Farrar fonds, B1999-0011.

Wall, Sharon Yvonne. "Making Modern Childhood, the Natural Way: Psychology, Mental Hygiene, and Progressive Education at Ontario Summer Camps, 1920-1955." *Historical Studies in Education* 20, no. 2 (Fall 2008): 73-110.

West, W. Gordon, and Ruth Morris. "Introduction to the Case for Penal Abolition." In *The Case for Penal Abolition*, edited by W. Gordon West and Ruth Morris, 3-15. Toronto: Canadian Scholars' Press, 2000.

Wetzell, Richard F. *Inventing the Criminal: A History of German Criminology, 1880-1945*. Chapel Hill, NC: University of North Carolina Press, 2000.

White, Kimberley. *Negotiating Responsibility: Law, Murder, and States of Mind*. Vancouver: UBC Press, 2008.

Whittingham, Michael D. "Biographical Profiles of Leading Canadian Correctional Reformers." [Toronto: M.D. Whittingham], 1990.

—. "The Role of Reformers and Volunteers in the Advance of Correctional Reform in Canada, since Confederation." Working paper No. 1984-70, for Ministry of Solicitor General of Canada, [1984].

Wiener, Martin J. *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914*. Cambridge: Cambridge University Press, 1990.

Wokler, Robert. "Anthropology and Conjectural History in the Enlightenment." In *Inventing Human Science: Eighteenth-Century Domains*, edited by Christopher Fox, Roy Porter, and Robert Wokler, 31-52. Berkeley, CA: University of California Press, 1995. Electronic book accessed through the Carleton University library.

Wolfgang, Marvin E. "Thorsten Sellin (26 October 1896-17 September 1994)." *Proceedings of the American Philosophical Society* 140, no. 4 (Dec., 1996): 581-586.

Wright, Barry. "'Harshness and Forbearance': The Politics of Pardons and the Upper Canada Rebellion." In *Qualities of Mercy: Justice, Punishment, and Discretion*, edited by Carolyn Strange, 77-103. Vancouver: UBC Press, 1996.

Wright, N.T. *Evil and the Justice of God*. Downers Grove, IL: InterVarsity Press, 2006.

Zammito, John H. *Kant, Herder, and the Birth of Anthropology*. Chicago: University of Chicago Press, 2002.

TERTIARY SOURCES

Canadian Encyclopedia

The Canadian Who's Who

Who's Who in America

Who's Who in Canada