

**MORE THAN JUST 'NOTORIOUS':  
CRITICAL CONSIDERATIONS OF GENDER IN THE EARLY  
HISTORY OF KINGSTON PENITENTIARY**

by

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## Abstract

For centuries, scholarship in the area of punishment, prisons and corrections has been generated by a number of different disciplines. It is difficult to argue the fact that there has been a bias in this literature toward discussions of the crimes and punishments of *men*. Given the historically disproportionate representation of men in criminal justice systems worldwide, the male ‘inmate’ has undoubtedly become the taken-for-granted norm in penality studies. However, works on ‘male imprisonment’ versus ‘female imprisonment’ (particularly feminist works) demonstrate a significant disparity in their approach. Despite the extensive nature of scholarship on penality, and the strong focus on gender by feminist scholars in the area, there has been a vast silence on the incarcerated male as a *gendered subject*, and the male prison as a gendered institution. Although this silence has been briefly noted by feminist scholars in their discussions of female imprisonment (e.g. Hannah-Moffat 2001; Howe 1994; Naffine 1996), few scholars to date have taken up a critical discussion of gender in the context of *male* incarceration. This oversight is especially characteristic of Canadian penal scholarship and Canadian penal histories in particular. It is the aim of this work to initiate the ‘catch-up,’ to engage in a historical examination of male penality in Canada that draws upon a number of the developments made in both the critical literature on punishment – predominantly focusing on the incarceration of men – and feminist scholarship’s gender approaches to women’s incarceration. Arguably, there is no better point to start this inquiry than with Kingston Penitentiary, Canada’s oldest and long-considered most ‘notorious’ prison for men. Using historical documents from the early history of Kingston Penitentiary (1833-1856), an analysis of discourse using a Foucauldian feminist theoretical approach is performed to uncover the gendered nature of the institution, and the policies and procedures developed for inmate men. Findings suggest that gendered power relations involving a number of different strategies (benevolence, control, pastoralism) and

masculinities (aggressive, vulnerable, etc.) were at work. Implications of viewing prisons for men as *gendered institutions* are discussed.

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## Table of Contents

Abstract.....	ii
Acknowledgements.....	iv
Table of Contents.....	vii
Chapter 1 Introduction.....	1
1.1 Background.....	2
1.2 Canadian Male Penalty.....	3
1.2.1 Canada’s Carceral Cornerstone: The Rise of Kingston Penitentiary.....	3
1.2.2 Constituting the Canadian Prison and the Canadian Male Inmate: Approaches to Canadian Penal History and Canada’s Oldest Prison.....	7
1.3 An Alternative Approach to Understanding History: Using <i>Feminism</i> to Examine the Origins of Kingston Penitentiary?.....	12
Chapter 2 The Female Criminal/Inmate in Academic Discourse.....	17
2.1 Origins: The Fathers of Criminology and the Biological Female.....	19
2.2 Twentieth Century Criminology: Birth of the Criminal as Social Subject? (Or Stepping Back in Time?).....	24
2.3 The Rise of Second-Wave Feminism, and a New Female Subject.....	31
2.3.1 Opening the Door.....	31
2.3.2 The Second Wave Meets the Carceral Realm: Feminism on Women’s Incarceration.....	35
2.3.3 Looking to the Past: Finding Answers in Feminist Histories.....	37
2.3.4 Women’s Imprisonment in Canada: Canadian Feminists Join the Critique.....	43
2.3.5 Critical Foucauldian Feminism: Reclaiming History.....	50
2.4 Summary and Conclusions: Toward a Foucauldian Feminist Examination of Male Incarceration in Canada?.....	53
2.4.1 The Problems with Feminism.....	53
2.4.2 Conclusion: Next Steps.....	55
Chapter 3 The Male Criminal/Inmate in Academic Discourse.....	57
3.1 Back to the Beginning: Criminal Man as Every Criminal.....	59
3.1.1 The Earliest ‘Fathers of Criminology’.....	59
3.1.2 Scientific ‘Fathers of Criminology’: Criminal (Man) as Biological Anomaly.....	67
3.2 Criminology’s Golden Age: Criminal (Man) as Socially & Mentally Ill.....	71
3.2.1 Early Theories: Considering the Social.....	71
3.2.2 Prison Sociologies: Finally, Criminal (Male) as Punitive Subject?.....	75

3.2.3 A Return to Inherently Criminal? The Criminal Man as Uncontrolled and Ungendered... Again .....	78
3.3 Rethinking the Past: Foucault’s Critiques.....	80
3.4 “The Masculinity Turn”: Male Inmate as...Gendered Man?.....	85
3.5 Summary and Conclusion: Theoretical Synthesis.....	94
3.5.1 A Foucauldian Feminist Approach to <i>Male</i> Imprisonment.....	94
3.5.2 Conclusion: Stepping Forward.....	98
Chapter 4 Analyzing Historical Discourse: Toward a New History of Kingston Penitentiary....	100
4.1 Methodology .....	102
4.1.1 Sources of Discourse.....	102
4.1.2 “Reading” Discourse.....	104
4.2 Analysis .....	107
4.2.1 Foundations: Establishing Control in the Rough Young Colony.....	107
4.2.2 Growing Pains: ‘Progress’ in the Face of Rebellion, Corruption, and Dangerous Men? .....	122
4.2.3 Crisis: Calls for a Commission .....	136
4.2.4 Fallout: Effects of the Recommendations for an ‘Improved’ Regime .....	147
4.3 Conclusion .....	155
Chapter 5 Synthesis: Unpacking Themes in Discourse .....	156
5.1 Themes in Discourse: Gendered Governance in Kingston Penitentiary .....	157
5.1.1 Ambiguity of ‘Convict’: Roadblock? Or Case in Point? .....	158
5.1.2 Controlling ‘Convict’ Bodies: ‘Masculine’ Strategies of Disciplinary Power .....	159
5.1.3 Foundations for a Gendered Regime?.....	170
5.2 Summary and Conclusion .....	170
Chapter 6 Implications and Future Directions .....	172
6.1 Contributions to the Literature.....	173
6.1.1 Re-Writing Canadian History .....	173
6.1.2 Reversing Gender Myopia? .....	174
6.1.3 Accepting the Challenge of the Masculinity Literature .....	175
6.2 Policy Implications in Canadian Corrections.....	176
6.3 Future Directions .....	178

# **Chapter 1**

## **Introduction**

In 2003, I entered a prison for men for the first time as a prison volunteer. As a sociologist with a focus on criminology and socio-legal studies, I had spent the six years prior to that moment learning about prisons, inmates and the system that put them there; further, like many people, I was fascinated by ‘true crime’ and drawn in by media sensationalism of crime and punishment. However, no classes, journal articles, books, or media could prepare me for what I experienced there, nor could I predict the way it changed my orientation to studies in crime and punishment. For the first time in my academic career, I began to understand ‘prisoners’ and ‘criminals’ less as objects of academic study and the demonized perpetrators of crime created by the media, and more as people who, just like myself, had a story. Although my background in sociology was important, I don’t believe I truly understood inmates, nor the environment they are subject to, until I began to work with them on a regular basis; even then, the complexities of being a ‘criminal’ and an ‘inmate’ were well beyond my academic reach. I wondered how these men – who ranged so incredibly in experience, characteristics, personality – survived as individuals in an environment obviously designed for a specific purpose: to incapacitate them, control them, and provide public security.

With a renewed orientation to my studies, I began to question where sociology and criminology as disciplines were in their attempts to understand this: male inmates, as a diverse population, being subject to an institution designed according to a very narrow view of them. The more work I did in the area, the more I realized that male ‘criminals’ and ‘inmates’ were very much the ‘taken for granted’ norm of crime and punishment, even in sociological and criminological study. Anecdotally, what was more obvious was that this homogenous view of criminal and inmate men was translating into an ineffective system that created a lot of

frustration, damage, pain, and resistance. The question remained, how could I, using my knowledge and experience as a sociologist and a volunteer, start investigating this – and potentially influence the understanding of others as well? It was this experience that inspired this work.

## **1.1 Background**

For centuries, scholarship in the area of punishment, prisons and corrections has been generated by a number of different disciplines. From Bentham and Beccaria's classic works of the eighteenth century,<sup>1</sup> to prison sociologies of the mid-twentieth century (Sykes 1958; Clemmer 1958),<sup>2</sup> to post-modern and critical debates of recent years (e.g. Foucault 1977; Feeley & Simon 1992; Garland 2001),<sup>3</sup> and even the rise of gender studies in the area (i.e. Dobash, Dobash & Gutteridge 1986; Hannah-Moffat & Shaw 2000; Newburn and Stanko 1994), sociology, criminology, and history have collectively engaged in an extensive inquiry on penalty. With the rise of second wave feminist debate on the topic in the late 1970s, however, the complexion of these studies began to change, with scholars such as Heidensohn, Bertrand, and Smart pointing to the androcentric nature of most academic inquiries on punishment. Soon, feminist scholarship on the punishment of women exploded onto the scene, calling for the recognition of gender in theories, research and policies regarding women's imprisonment. Arguably, the approaches adopted by feminist scholars were unprecedented, and permanently changed the complexion of sociological, criminological, and historical studies of incarceration.

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<sup>1</sup> Discussed in Chapter 3, Bentham and Beccaria's works challenged accepted forms of criminal justice, suggesting a more 'humane' approach to punishment.

<sup>2</sup> Discussed in Chapter 3, prison sociologists of the 1950s were among the first to create an understanding of prison subcultures, and the effects of the prison experience on inmates

<sup>3</sup> Postmodern and critical scholarship have questioned long-accepted modernist accounts of 'progress' in penalty by evaluating the role of power relations, governance and the state

It is difficult to argue the fact that there has been a bias in the literature on crime and punishment toward discussions of the crimes and punishments of *men*. Given the historically disproportionate representation of men in criminal justice systems worldwide, the male ‘inmate’ has undoubtedly become the taken-for-granted norm in penality studies. However, works on ‘male imprisonment’ versus ‘female imprisonment’ (particularly feminist works) demonstrate a significant disparity in their approach. Despite the extensive nature of scholarship on penality, and the strong focus on gender by feminist scholars in the area, there has been a vast silence on the incarcerated male as a *gendered subject*, and the male prison as a gendered institution. Although this silence has been briefly noted by feminist scholars in their discussions of female imprisonment (e.g. Hannah-Moffat 2001; Howe 1994; Naffine 1996), few scholars to date have taken up a critical discussion of gender in the context of *male* incarceration. As Naffine (1996) observes, the female criminal is most often portrayed as a *gendered subject*, with discussions of the male criminal subject largely being *non-gendered*. This oversight is especially characteristic of Canadian penal scholarship and Canadian penal histories in particular. It is therefore the aim of this work to initiate the ‘catch-up,’ to engage in an examination of male penality in Canada that draws upon a number of the developments made in both the critical literature on punishment – predominantly focusing on the incarceration of men – and feminist scholarship’s gender approaches to women’s incarceration. Arguably, there is no better point to start this inquiry than with Kingston Penitentiary, Canada’s oldest and most ‘notorious’ prison for men.

## **1.2 Canadian Male Penalty**

### **1.2.1 Canada’s Carceral Cornerstone: The Rise of Kingston Penitentiary**

Incarceration has a long history in Canada, predating Confederation. The early days of punishment, however, witnessed the struggle of an unpredictable and often brutal system, a

system that was reminiscent of the turmoil that defined the settlement of a new colony (Carrigan 1997). Although physical torture, fines, and execution were mainstays in this young system, late 18<sup>th</sup> century Enlightenment ideals of ‘humanitarianism,’ as well as examples set in the United States and Britain, led the Government of Upper Canada to enact a statute in 1792 that gaols be constructed in each provincial district (Carrigan 1997; Oliver 1998; Ekstedt & Griffiths 1993). This legislation marked the official birth of incarceration as a punitive and correctional response to crime in Canada. However, the legislated construction of gaols did not take into account the poverty and scarce resources of the fledging province. As such, a makeshift, poorly maintained and largely neglected system of gaols was established – “the neglected orphans of provincial society” (Oliver 1998:4). Their design and conditions reflected their financial non-priority, being cheaply designed and built, not reflecting any specific punitive or reform objective. Although the districts of Upper Canada slowly gained wealth and resources, the gaols continued to be an ill-favoured priority for expenditure (Oliver 1998).

In large part, not only did they hold individuals sentenced to punishment, the gaols were relied upon to house the poor, homeless and insane. Late 18<sup>th</sup> and early 19<sup>th</sup> century Upper Canada was experiencing a ‘social crisis’: with a large number of immigrants arriving with few financial resources, many in ill health, tremendous pressure was being placed on communities to deal with the destitute (Oliver 1998). Further, judges themselves began to voice their dismay over the deplorable conditions of the gaols, becoming some of the earliest proponents of gaol reform. In response, the government, influenced in large part by institutional systems in Great Britain and the United States, suggested the construction three new institutions in Upper Canada within three years to address these social problems – a house of industry to provide relief for the poor; an asylum for the insane; and a penitentiary. As Oliver argues, together they were meant to “address

the widest possible range of social problems” (1998:90). The consensus in Upper Canada at the time was that the institutional approach to social control was the answer.

Highly influenced by the well-established use of the penitentiary in British criminal justice (circa. 1816), and given British origins of Upper Canada’s criminal justice system, certain members of the local Tory elite believed the penitentiary would be a more influential and deterrent punishment than the existing methods (i.e., banishment, shaming punishments, etc.). Interestingly, however, demands to construct a penitentiary in Upper Canada were not in response to a greater violent crime rate, the rise of more serious crimes, nor public pressure (Carrigan 1997; Oliver 1998). As a result, for 10 years prior to its construction, local authorities debated over whether the Penitentiary would be appropriate for Upper Canada. However, public apathy lead to early proposals largely being disregarded.

The idea was proposed once again in 1830 by two of the most powerful men in Upper Canada – Lieutenant Governor Sir John Colborne and Chief Justice John Robinson (Oliver 1998). Despite their influence and strong assertion that criminal justice reform in Upper Canada need be accompanied by the construction of the Penitentiary, members of the legislature were not as enthusiastic, with the financial ability of the province being the strongest point of dissension. However, in the years following, a fearful government recognized that the absence of a strong deterrent to crime would undermine measures of social control already in place (Oliver 1998). Further, reforms to the criminal law in 1833 saw the number of offences punished capitally decrease from 150 to 12 (Carrigan 1997). Although fines and some shaming punishments were retained, the drastic reduction in capital offences warranted the need for an alternative deterrent to crime.

As observed by both Oliver (1998) and Smandych (1991), gravitation toward an institutional approach to social problems was reminiscent of Canada’s political climate at the

time. Tory governance of the late 18<sup>th</sup> and early 19<sup>th</sup> centuries was defined by “paternalism and commitment to statist activities” and “demonstrated an unbending faith in its ability to use institutional structures to shape the polity and control human activities” (Oliver 1998:100). Upper Canada’s Tory government believed strongly in state leadership, guided largely by Christian values (i.e., charity, relief, aid, intervention), evidenced in an obvious willingness to use government resources to intervene in relief of social and economic maladies. To some members of the Tory government, the law itself was divinely inspired.

With discourses of ‘reform’ and Tory governance at the foundation, the final decision to build the Penitentiary largely rested on the influence of a small group of prominent law reformers. Three ‘pillars’ of the Kingston community would form a local committee on the construction of a jail on Hatter’s Bay: Christopher Hagerman, a Loyalist and judge; John Macaulay, a wealthy Kingston merchant who had been closely involved in gaol reform; and, Hugh Thomson, a merchant, publisher, editor, and reform politician (Hennessey 1999). Preceding this recognized ‘need’ for an institution to house Upper Canada’s unruliest individuals, penitentiaries influenced by the work of reformer John Howard in the UK had begun to emerge in the United States, first in Cherry Hill, Pennsylvania and later in Auburn New York. Influenced by Christian reform discourses (i.e., ‘mending damaged criminal souls’), Pennsylvania’s initial attempt at a North American version of the Penitentiary system was constructed based on the need for *total* isolation, with cells having both a living space and work space, and prisoners having absolutely no contact with anyone except those who were ‘skilled in saving souls’ (Hennessey 1999). This model proved far too expensive to be copied, resulting in Auburn’s efforts to construct a more cost-effective and efficient institution. Established in 1817, the Auburn prison combined solitary confinement with group work, with the rule of silence being in effect at all times to ensure quiet penitence and the reforming effect of Christian virtue. Kingston’s local committee traveled first to

Philadelphia, and then to Auburn in the early 1830s, in order to determine the best option for Upper Canada. However, it was not as much the rehabilitative characteristics that influenced their decision, but rather, a simple matter of economy – prompting their quick agreement to adopt the Auburn model (Oliver 1998).

Armed with the chosen architecture, construction of the Provincial Penitentiary began in 1833, touted as the ‘humane’ solution to maintain order in the colony: “a place by every means not cruel and not affecting the health of the offender, [but] shall be rendered so irksome and so terrible that during [the convict’s] afterlife he may dread nothing so much as a repetition of the punishment...” (from Hennessey 1999:10). At full operating capacity, the Provincial Penitentiary at Kingston could hold approximately 800 inmates, indiscriminate of gender or age.

The rise of the Provincial Penitentiary at Kingston marked the beginning of the penitentiary era in Canada, with the number of penitentiaries and various other penal institutions growing exponentially to the present. Despite undergoing a number of physical and philosophical changes, many of the original institutions, including Kingston Penitentiary, are still in use – this despite being the subjects of a long and arduous debate on the utility of the penitentiary system. The subject of a number of commissions and inquiries (e.g., Brown Commission 1846; Nickel Report 1932) the reputation of Kingston Penitentiary in particular has been substantially tarnished over the years. However, despite its notoriety as an archaic and even counterproductive institution, it has stood the test of time, and continues to act as a federal maximum security prison for men.

### **1.2.2 Constituting the Canadian Prison and the Canadian Male Inmate: Approaches to Canadian Penal History and Canada’s Oldest Prison**

Given the long-standing tradition of male incarceration in Canada, and of Kingston Penitentiary specifically, Canadian authors have offered a broad range of approaches to

presenting this history, ranging from mainstream descriptions to critical post-modern debates, originating from a variety of disciplines and perspectives, and varying in the depth and breadth of their analysis. Some (i.e. Carrigan 1997; Hennessey 1999) have adopted what might be considered a ‘descriptive’ approach, reporting the ‘facts’ of penal evolution as they see it.<sup>4</sup> Others (i.e. Ekstedt & Griffiths 1993; Griffiths and Cunningham 2000; Goff 1999) are oriented in particular disciplines (i.e., sociology, criminology), some of which attempt to incorporate revisionist<sup>5</sup> claims, however doing so in a very limited and non-critical manner. Finally, there are those that adopt particular perspectives (i.e., Marxism, neo-Marxism, historical interpretism, etc.) that challenge mainstream conceptions of the emergence and development of incarceration (Gosselin 1982; Smandych 1991; Oliver 1998). For the most part, these works examine penal history on the basis of social, political, economic and class issues, considerations that are largely absent from other works. However, despite analyzing prisons in this context, there is a fundamental omission from *all* these historical analyses: a consideration of gender, particularly, the *gendered male inmate*.

Obvious silences in Canadian penal histories support this overarching critique. Some authors (i.e. Goff 1999; Taylor 1979; Smandych 1991; Gosselin 1982) omit ‘the subject’ entirely. Such works *imply* a discussion of male incarceration (given the characteristics of the institutions they discuss), but there is no clear acknowledgement of the subject of their discourse. Other histories vary in their [un]acknowledgement of the [gendered] subject. Carrigan (1997), in his very extensive history of crime and punishment in Canada, subtly recognized a penal subject, but does little to gender this subject. Despite presenting a very thorough descriptive history of pre- and post-confederation punishment, he was tacitly unclear as to whom his history is about – he

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<sup>4</sup> These descriptive histories largely draw on accepted, modernist interpretations of penal progress

<sup>5</sup> Revisionist scholarship critically re-examine accepted historical facts. Revisionist works on penality have challenged accepted modernist claims of historical penal ‘progress’ (i.e., Foucault 1977).

speaks of 'the inmates' or 'the criminals,' but does not discuss their experiences, characteristics or gender. In an isolated moment, where he discussed the daily regimen in the early days of Kingston Penitentiary, he does gender 'the inmate' as male (1997:329). Thus one must assume that his pre- and post-confederation history of punishment does, in fact, document the punishment of men.

This is more apparent given his separate and deliberate discussion of the history of 'the female offender,' which, when compared to the remainder of his work, reveals an obvious philosophical difference (1997:245). Essentially, his explanation of 'male incarceration' seems to blame the 'criminal underclass' (presumably, the male criminal underclass) for the failures of the institution. Conversely, his discussion of female penalty takes on a different character, clearly and thoroughly acknowledging the *social* factors that defined women's criminality and incarceration. Consequently, Carrigan is far more cognizant of elements external to the individual in explaining the failure of women's penalty. He also recognized that female offenders/inmates are "far from homogenous," stating that the diversity of female offenders requires a greater investment of resources in preventative programs for women. It is evident that Carrigan is more attentive to the needs of incarcerated women, often making connections between 'femininity' and appropriate penal measures. Thus, where his historical discussion of female penalty acknowledges the *subject*, and remarkably even the *gendered subject*, neither of these elements are present in his history of men's penalty: the underlying assumption of 'male' as the *criminal norm* permeates his history.

Griffiths and Cunningham (2000), in a condensed history of incarceration included in their edited work on corrections in Canada, treated their subjects in much the same way, utilizing similar labels (i.e. 'the prisoner,' 'the inmate') and maintaining a generic voice when referring to the penal subject. In this way, they too homogenized 'the incarcerated,' making little attempt to

distinguish them by class, ethnicity, and most importantly, gender. In the isolated moments where gender (or rather, sex) is clarified, it is in the context of distinguishing the separate experiences of imprisoned women. For example, in an extremely short discussion, Griffiths and Cunningham distinguished the crimes and punishments of women from those of 'other' (i.e. male) offenders, bringing attention to the fact that most of these women were from the "powerless segment of society" (2000:50). However, they did not acknowledge the male penal subject in the same way, despite him being the (unacknowledged) subject of a majority of their discussion.

Fortunately, there have been brief instances in Canadian histories when the male inmate *is* acknowledged as subject. Hennessey (1999), toward the conclusion of his extensive history on Kingston Penitentiary, discussed case studies of inmates, focusing on the context and circumstances leading to their individual experiences. Hennessey went as far to argue that the treatment of these individuals implies "merely punitive management" on the part of administration. As he revealed, "[c]ompassion can never flourish as long as the prisoner is regarded as a lesser being, as someone undeserving of humane treatment, as long as he is merely a 'con'" (1999:144). Importantly, he recognized that circumstances of violence and resistance within the institution (i.e. riots, uprisings, etc) could have been avoided had there been more careful consideration of the needs of incarcerated *men*. Arguably, this acknowledgement points to incarcerated men as penal subjects, drawing awareness to their unique circumstances *as men*. Unfortunately, although Hennessey seemed to problematize the specific experiences of incarcerated men, he does not critically link elements of masculinity to these experiences or to penality in general.

Oliver (1998) went slightly further in recognizing the subject in his history of punishment in 19<sup>th</sup> century Ontario. Despite it primarily being an institutional overview of events, Oliver's history does distinguish between the male and female inmate experience. In his discussion of the

Mercer Reformatory (a female institution) and the Central Prison (a male institution), Oliver (1998) observed how each of these institutions embodied different notions of appropriate punishment for men and women. Specifically, he states:

The discipline of the Central Prison was harsh and deterrent and its work program was designed as the essence of that deterrence, as a punishment of a type that had never been enforced in the local gaols. There was work also in the Mercer, but the discipline was distinctly different, feminist in origin and practice. Its inmate population was equally distinct, a group composed primarily of offenders against the moral code of late-nineteenth-century society...the essential role of the Central Prison was to break men's spirit and enforce obedience and social conformity through terror. To some extent, the Mercer Reformatory for Women was an exception to this mindless brutality and far from benign indifference. (1998:502)

In making this observation, Oliver subtly recognized how traditional notions of assumed gender characteristics influenced the operation of institutions for men and women. A harsh, 'brutal' environment was deemed appropriate for men, whereas a benevolent 'feminine' environment was reserved for women. However, although Oliver (1998) deserves much credit for making this observation, it is disappointing that he did not take up this discussion, or more thoroughly address men and masculinity specifically.

Thus, historical accounts of male penalty in Canada largely neglect a critical discussion of the relationship between masculinity and the development of carceral regimes. Where some (i.e. Carrigan 1997; Griffiths and Cunningham 2000) recognize *female* penalty as distinct (i.e. the exception to the 'penal norm'), they fail to problematize *gender* (i.e. femininity). Most others (i.e. Goff 1999; Smandych 1991; Taylor 1979; Gosselin 1982) make no distinction of the sex differences in penal practice whatsoever. Auspiciously, Oliver (1998) and Hennessey (1999) acknowledged the penal subject, and to a certain extent, the *gendered* penal subject, yet in an understated manner. Largely, the taken-for-granted assumption in all of these histories is that the subjects (or rather, objects) of penal history are *men*, subject to 'men's' institutions – with little

critical acknowledgement of the issues inherent to this fact. As a result, it seems as though ‘male’ is reinforced as the ‘penal norm,’ with incarcerated women being the exception, worthy of special consideration. The question remains: how might penal histories, and a critical history of Kingston Penitentiary in particular, bring the male penal subject to the forefront in a manner that is resistant to mainstream constructions?

### **1.3 An Alternative Approach to Understanding History: Using *Feminism* to Examine the Origins of Kingston Penitentiary?**

To date, the majority of Canadian scholars have not undertaken a major critical evaluation of the history of men’s incarceration. Not surprisingly, they report the rise and evolution of punitive incarceration using a discourse of ‘progress,’ failing to question taken-for-granted perceptions of Canadian prisons. However, there are some (i.e. Smandych 1991; Oliver 1998; Gosselin 1982; Taylor 1979) who have approached Canadian penal history in a more critical manner, challenging the views of ‘progress’ that are typical to most histories of punishment (i.e. Carrigan 1997). These histories examine Canadian prisons in the political, economic, and social context in which their rise and ‘reform’ took place, drawing attention to the role of state/elite influence and questioning the motives behind institutions that have largely proved to be ‘unsuccessful’ since their inception. Goff (1999) even uses Foucault’s arguments to identify a relationship between capitalist ideology and the power exercised over inmates, revealing that attempts at normalization were not forceful but disguised by surveillance and discipline of bodies, minds and souls. Goff (1999) briefly recognizes a fundamentally important point, one more thoroughly addressed by Hannah-Moffat (2001): that penal reform has primarily been masks of discourse, changing from ruthless punishment, to regulation and control, to rehabilitation, to retribution – all disguising underlying power relations inherent in the continued use of the institutions themselves. By questioning the fundamental assumptions that have guided

Canadians' perceptions of the evolution of prison, these authors have provided different ways to think about penal 'progress' – and ultimately, have challenged the utility of the heavily relied upon institutions of today.

However, it is evident from the previous discussion of Canadian histories of male imprisonment that overall, authors fail to question one of the *most* fundamental assumptions: those that guide the construction and development of prisons *for men*. Although it is apparent that most histories discuss male prisons, the taken-for-grantedness of 'male' as inmate is quite obvious not only in their failure to acknowledge the subject of the history, but also in their tendency to give special focus to incarcerated women – both as *subjects* and as *gendered subjects*. This characteristic of Canadian penal histories parallels a paradox that exists among feminist literature on incarceration: where feminists critique the biased (myopic) nature of various works on punishment, arguably, feminists themselves are *gender* myopic by concentrating largely on the relationship between gender and *female* punishment, ignoring the concurrent role that it plays in male punishment. By taking up such an analysis in the context of the history of male incarceration in Canada, a greater understanding of the failures of the current system and the needs and characteristics of incarcerated men could be established.

In working toward a broader and more inclusive history, some important points can be taken from existing histories, feminist literature, prison sociology, and other critical works. First, it is important to perform historical examinations of male penalty at multiple levels. As Carrabine (2000) argues, an examination of the relationship between gender (i.e. masculinity) and penalty cannot be limited to any one type or level of analysis. Canadian penal histories have largely been performed at the macro-level, often excluding considerations of gender due to a failure to acknowledge the dynamics of prison at the level of the (male) penal subject. *Non-historical* prison sociologies (i.e., Sykes 1958; Clemmer 1958) often discuss masculinity at the

individual (i.e. subcultural) level, but (despite their own observations) have yet to consider the relationship between gender and the institution at a broader level. Feminist studies (i.e., Hannah-Moffat 2001; Adelberg & Currie 1987; Dobash, Dobash & Gutteridge 1986) have examined gender at many levels of analysis, yet have not ventured outside the realm of female penalty. Revisionist and post-modern accounts (i.e., Ignatieff 1978; Rothman 1980; Foucault 1977; Garland 1990, 2001) have critically deconstructed relations of power at multiple levels of prison interaction, but have also largely failed to acknowledge *gendered* power relations with regard to the incarceration of men. Arguably, integrating all of these forms of analysis (at all levels) will enable a more inclusive understanding of male penal history, specifically one that is able to understand the role of gender. Secondly, both men as subjects and the concept of ‘masculinity’ must be problematized. Given the taken-for-grantedness of male inmates as subjects in Canadian history, simply identifying them would be a good beginning. However, as discussed by Sim (1994), Jefferson (1994) and Carrabine (2000), critically examining the gender of these subjects must go deeper than theories of ‘hegemonic masculinity’ enable, allowing for an understanding of the experiences of *all* men, of *all* circumstances. Thirdly, the role of gendered power relations must be critically assessed in order to de-homogenize the male inmate body and reveal the origins of control, discipline and normalization in the *male* prison. Examining institutions in this way will surpass the dominant-subordinate relations of power that are commonly perceived of male prisons, for a better understanding of ‘softer,’ ‘benevolent,’ or paternal (maternal?) acts, as well as instances of resistance. Following Hannah-Moffat’s Foucauldian feminist historical analyses of female incarceration in Canada, the use of governmentality as a theoretical concept will enable an understanding of how penal power exists in various forms (i.e. pastoral, disciplinary, maternal), and how ‘knowledge’ of men perpetuates these power relations.

Given the very obvious silences in Canadian male penal history, incorporating these observations and concepts into a ‘new’ view of history would provide a tremendous contribution to reassessing how imprisonment has evolved – and more importantly, would characterize the male inmate as a person as opposed to merely a ‘resource’ for historical volumes. As Evans and Thorpe observe:

[I]f we are ever to appreciate the entire spectrum of masculine interactions under the aegis of convictism, we must continually strain our ears towards these ‘chaunts,’ droning and bawling at us across the centuries, over the mountains of well-preserved reports and official statistics, and above the reproving, imperious voices of the commanding men who equivocated upon the hapless convicts’ respective fates. (1998:31)

As such, this work will proceed with a critical Foucauldian feminist approach to understanding the foundations of Canada’s oldest prison for men – Kingston Penitentiary. In doing so, remembering Jefferson’s (1994) assertion that gender relations and gender subjectivities are best understood by examining the discourses which constitute them, documents defining the rise of Kingston Penitentiary will be examined using this lens. As such, it is hoped that accepted versions of the history of the Penitentiary will be questioned, and that ‘convicts’ will be understood as gendered subjects in a gendered institution.

In order to effectively build and legitimate the use of a Foucauldian feminist lens to examine male penalty, Chapter 2 discusses how the sociological and criminological literature has constituted the female ‘criminal’/ ‘inmate’ over time, and how feminist scholarship has reached the point of critically rewriting the history of female incarceration with a consideration of gender – culminating in Hannah-Moffat’s 2001 Foucauldian feminist analyses of the federal incarceration of women in Canada. Further, this chapter also explains the inadequacies of the current feminist literature for explaining the gendered nature of male penalty. Chapter 3 provides a parallel examination of how the criminological and sociological literature has constituted the

male ‘criminal’/ ‘inmate,’ and how the advancements made in these works might be combined with feminist scholarship to re-examine the history of male penalty. Using this perspective, Chapter 4 engages in a Foucauldian feminist analysis of the discourses at the foundation of Kingston Penitentiary’s regime – those that witnessed both the physical and philosophical rise of the institution, from 1833-1856. Provided the results of this analysis, Chapter 5 discusses the implications of this ‘new’ version of the regime’s history, and its importance to understanding how policies and practices for men have been historically legitimated. Finally, this work concludes by considering the importance of this approach for both the academic literature and policy development, suggesting future possibilities for more extensive, critical gender analyses of men’s imprisonment.

## Chapter 2

### The Female Criminal/Inmate in Academic Discourse

In the late 1960s, Francis Heidensohn (1968) and Marie Andre Bertrand (1969) noted the overwhelming omission of women – namely, *gendered* women – from criminology, implicating its theories for their androcentric orientation. This would be the beginning of second wave feminism’s infiltration of the discipline, and the starting point for a new way to think about criminal women. A decade later, feminist authors (i.e., Smart 1979, Feinman 1981, Heidensohn 1981, Freedman 1981) extended this critique to the theories and practices of women’s imprisonment. These works would initiate extensive dialogue in the sociological, criminological and historical disciplines, broadening the scope and perspective of discussions of female imprisonment and presenting new ways of examining the experiences and circumstances of incarcerated women.

The momentum of this feminist debate has carried on to the present, having fractured into various schools of thought. However, contemporary critical feminist theory has reached an important juncture in discussions of women’s imprisonment, one where taken-for-granted claims about ‘criminal women’ in prison have been deconstructed, and myths of past discourses have been uncovered. While this advancement has changed the face of feminist discussions of female penalty, and to a certain extent, the incarceration of women, few have considered the possibility of a similar discussion of men’s imprisonment – despite greater emphasis of the importance of considering *gender* in sociological, criminological, and historical discussions of social phenomena. This curious omission begs several questions: Why is there a disparity in the way the literature has dealt with the incarceration of women versus men? How has sociology, criminology and history traditionally represented criminal and incarcerated women? What were feminist

scholars up against with regard to the way criminal women had been represented? How were feminists able to infiltrate previously androcentric domains and challenge the ways scholars have constituted women? Conversely, why has there been such a strong focus on women by feminists engaged in *gender* studies, to the denial of the gendered criminal man?

This chapter will examine the various claims-makers on female crime and punishment. First, to establish the source of feminist criminology's dissension, claims about criminal women made by the Fathers of Criminology (i.e., Lombroso & Ferrero 1893) are outlined and discussed, detailing the assumptions that pervaded criminological theories (i.e., Thomas 1907, 1923; Pollak 1950; Adler 1975) into the 20<sup>th</sup> century. Next, the origins and development of second wave feminist critique (i.e., Heidensohn 1968; Bertrand 1969; Smart 1976, 1979, 1981) are revealed, outlining its response to traditional criminology's claims about criminal women. Further, building on these critiques, early feminist works on the punishment of women (i.e., Feinman 1981; Heidensohn 1981) and critical analyses of the history of female incarceration (i.e., Freedman 1981; Rafter 1982, 1983, 1985a; Dobash, Dobash & Gutteridge 1986) are discussed to demonstrate feminism's attempt to reclaim previously taken-for-granted understandings of women's imprisonment. The state of this discussion in the Canadian context is also revealed, outlining the priorities observed by feminists as uniquely important to understanding the incarceration of women in Canada (i.e., Adelburg & Currie 1987; Cooper 1987; LaPrairie 1987; Comack 1996; Hannah-Moffat 1995). This discussion of feminist literature culminates with a special focus on Hannah-Moffat's (2001) Foucauldian feminist examination of female imprisonment in Canada, an example of a critical, post-modern approach to understanding the gendered nature of imprisonment that deconstructs previously accepted perceptions the history of female incarceration – an approach that is arguably vital to a better understanding of the imprisonment of men in Canada. Finally, a critique of the claims and approaches of feminist

criminology details both the benefits and shortcomings of a feminist approach to understanding male imprisonment.

## **2.1 Origins: The Fathers of Criminology and the Biological Female**

“Traditional criminological theories have been based on negative, stereotypical perspectives of female offenders. These theories restrict an understanding of female criminals to a biological or psychological realm and ignore a broader understanding that includes the economic, social, and political realities of women offenders” (Schram and Koons-Witt 2004:7).

This sentiment, expressed by Schram and Koons-Witt (2004) in their recent examination of the development of feminist criminology, is one shared by many present day feminist academics. Feminist sociologists, criminologists, and policy makers have worked tirelessly to challenge the stereotypes of women perpetuated throughout recent centuries in an attempt to cast an alternative light on female offenders – one that places their crimes in the social, cultural, economic, and political context in which they offend – and ultimately, to develop more effective means to respond to their needs *as women*. Unfortunately, this struggle continues to the present day. Although feminist thought has influenced change in the carceral domain, policy and practice is still riddled with the very assumptions about the ‘nature’ of women that existed centuries ago. This observation leads to some important questions: Where did taken-for-granted assumptions about women, and criminal women in particular, originate? How did they become ingrained in criminological and sociological theory? Why have they persisted for so long?

To explore these issues requires revisiting the foundation of criminological theories on female offenders, namely, criminal anthropology and the work of Cesare Lombroso and his partner, William Ferrero. Perhaps one of the most central of the ‘Fathers of Criminology,’ Lombroso’s theory of the ‘atavistic man’ (the theory of the born criminal), which first appeared in his work *Criminal Man* (1876 – to be discussed further in Chapter 3), was one of the earliest ‘scientific’ studies of criminality, an attempt to demarcate the classical school theories of crime

(i.e. Beccaria 1764) that relied so heavily on ideas of ‘free will’ (Rafter & Gibson 2004). Although a number of ‘phrenologists’<sup>6</sup> (i.e. Franz Joseph Gall, Gaspar Spurzheim) and ‘moral statisticians’<sup>7</sup> (i.e. Adolphe Quetelet, Andre-Michel Guerry) preceded Lombroso in using a positivist approach, Lombroso’s general theory provided the basis for a century of contestation among philosophical approaches to explaining crime – female crime in particular.

Lombroso’s original theory was based almost entirely on studies of the male offender. To Lombroso, female crime and deviance differed from ‘normal’ (male) crime in frequency and kind, with women committing fewer of those crimes typical to the criminal norm; therefore, criminal women did not have (or perhaps even need) a place in his brand of criminology. Critics, however, soon pointed to this obvious omission, to which he and William Ferrero responded with their work, *La donna delinquente, la prostituta e la donna normale* (The Criminal Woman, the Prostitute, and the Normal Woman) (1893).<sup>8</sup> Although women were highly underrepresented in crime statistics, which also indicated fundamental differences in the *types* of crime they committed, Lombroso and Ferrero engaged in their study using much the same methodology as what Lombroso had used previously: random observation, measurements of physical attributes, and studying photographs of female offenders and prostitutes. As such, they would not waiver from the precedent set by *Criminal Man*, relying on observable physical and biological characteristics, as well as an abundance of traditional assumptions of women, to develop their typology of female criminals.

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<sup>6</sup> Early 19<sup>th</sup> century ‘scientists’ who argued that an individual’s moral state and propensity to commit crime was correlated with variations in skull shape and size (Rafter & Gibson 2004).

<sup>7</sup> Established in France, the early 19<sup>th</sup> century ‘school of moral statistics’ used aggregate, quantitative data to study crime. They argued that statistical regularity in crime rates could only be explained by general social forces (complemented by biological factors), not free will (Rafter & Gibson 2004).

<sup>8</sup> Reference to Lombroso and Ferrero’s 1893 work appear as Rafter & Gibson’s 2004 translation

However, the fact that women engaged in criminal activity to far lesser an extent than men posed a special challenge to Lombroso's theory of atavism, the idea the criminals are biologically predisposed to crime. Although Lombroso and Ferrero acknowledged that Lombroso's original theory was hard pressed to explain the lesser participation of women in crime, they firmly stressed the biological and social inferiority of women to rationalize this difference. To Lombroso and Ferrero, 'normal' women may be born as equals to men, and maintain the pace until puberty; however, in likening women to females in the "lowest zoological series," they "gradually fall behind, leaving proof of that precocity that is standard among the inferior races" (Rafter & Gibson 2004:36). However, it was not that women displayed the same or greater frequency of "degenerative stigmata" (i.e., moles, hairiness, cleft palate, receding foreheads, jutting brows, facial asymmetry – characteristics they deemed as biologically degenerative) as men; rather, it was the *lack* of degeneration that they used as proof of their biological inferiority.

As such, in developing their 'normal woman' type, Lombroso and Ferrero revealed several inferior traits characteristic of females. Based on random observation, they deemed 'woman' to be physically "more childlike than the man," with this "infantilism" extending to "woman's weaker strength" (Rafter & Gibson 2004:57). Women also displayed "underdeveloped intelligence," which was accompanied by a similar lack of sensitivity – a conclusion drawn from their observation that women were less sensitive to pain than men: "woman...feels less, just as she thinks less" (2004:64). Although less likely to commit crimes, her tendency toward impulsivity resulted in an inability to control her "wicked impulses" (2004:71). Further, Lombroso and Ferrero also stressed that women were largely incapable of real 'love,' asserting that female love is "nothing more than a secondary aspect of maternity," used to find a partner and have a child; this was proved by their observation that women "become nauseated by sex" a

month after marriage (2004:75). Not surprisingly, the combination of these observations lead them to believe that women were “deficient in the moral sense” (similar to children) (2004:183), with dishonesty found to be “habitual and almost physiological” (2004:75). This chronic lack of truth among women was further substantiated by their weakness, menstruation, shame, sexual struggle (due to feeling inferior), their desire to be interesting, a high level of suggestibility, and the duties of maternity.

Based on the established traits of the ‘normal woman,’ Lombroso and Ferrero developed a typology of female offenders which included the ‘female born criminal,’ the ‘occasional criminal,’ those who commit crimes of passion and suicide, the ‘born prostitute,’ the ‘occasional prostitute,’ and the insane and hysterical types. Not surprisingly, the type that most predominated their discussion was the rare, yet troubling ‘female born criminal,’ “whose criminal propensities are more intense and perverse than even those of their male counterparts” (Rafter & Gibson 2004:182). The pure female criminal was a monstrosity, having many characteristics of a ‘normal’ woman (cunning, cruelty, dishonesty), yet displaying subtle male physical characteristics, such as greater strength, build, intelligence, sexuality, dominance, and a number of degenerative characteristics. To Lombroso and Ferrero, given criminal individuals were exceptions to normal individuals, and women were exceptions among criminals, “the born female criminal is, so to speak, doubly exceptional, first as a woman and then as a criminal” (2004:183).

Also central to their typology was the ‘born prostitute,’ who to Lombroso and Ferrero was less exceptional than born female criminals and more equivalent to the male born criminal. Lombroso and Ferrero put forth that prostitutes presented “a real tangle of contradictions” in being “both sexually frigid and sexually precocious,” something that they argue can be explained by characteristics of moral insanity: “lack of natural feelings” (family affection), wickedness as children, jealousy, and “ruthless taste for revenge” (Rafter & Gibson 2004:213). Although they

acknowledged poverty, homelessness and abandonment as precursors to prostitution, they argued that the ‘underlying cause’ was moral insanity and an inherent lack of modesty. Prostitution was deemed the female form of male criminality, in that both prostitutes and male criminals display “lack of moral sense, hardness of heart, youthful appetite for evil, and indifference to public opinion” as well as “improvidence, restlessness” and “taste for immediate gratification”; as such, criminal men became convicts, and prostitutes became ‘fallen women’ (2004:221). Thus, where born female criminals were considered anomalous, and worse than any male criminal, prostitutes represented the criminal norm for women, the direct counterpart of the male born criminal.

Criticism of Lombroso and Ferrero’s position on both women and female criminals would come quickly. Immediately following the release of their work, many questioned the rigour of their ‘scientific method,’ ridiculing their assumptions and dissecting their methods. They were also harshly criticized for violating the “medieval traditional of chivalry toward the gentle sex,” to which they responded with their assertion that the born criminal type had to be studied and explained using science free of bias (Rafter & Gibson 2004:37). Despite this criticism, Lombroso and Ferrero’s view of the female, both ‘normal’ and ‘criminal,’ did not exist in isolation of social perceptions of women at the time. As discussed by Hannah-Moffat (2001), the status of women, particularly during the late 18<sup>th</sup> and early 19<sup>th</sup> centuries, was such that they were considered the purer sex, biologically and psychologically capable of preserving society’s morality – a construction of women born of the Victorian era. The valorization of motherhood provided the foundation of this elevated status, leading to the perception of women as preservers of social morality. Naturally, given social perceptions of ‘good women,’ those who did offend were viewed as even more vile – not only were they behaving in an inappropriate (masculine) way, but they were also failing in their responsibility as keepers of social virtue (Hannah-Moffat 2001). The perception of ‘criminal woman’ as a violation of morality largely guided the way

early scholars – including Lombroso and Ferrero, who adopted a biologically deterministic explanation for this monstrosity – theorized about them.

Although controversial early on, the original “*La donna delinquente*” was translated to English sixteen years prior to Lombroso’s “*L’uomo delinquente*” (*Criminal Man*). Being one of the few English works on female criminals, and the cornerstone of theories based on the sex-differences between men and women, it would have a tremendous influence on future explanations of female crime – which were predominated by sexual and psychological orientations. As observed by Rafter and Gibson: “this work, more than any other book in Western history, determined directions taken in that field of study, albeit in recent decades by providing a backdrop against which feminist criminologists have lobbied very different ideas” (2004:4). Thus, the assumptions at the root of *Criminal Woman* would provide the basis of theories for a century or more to come.

## **2.2 Twentieth Century Criminology: Birth of the Criminal as Social Subject? (Or Stepping Back in Time?)**

As a result of Lombroso and Ferrero’s work, late nineteenth and early twentieth century scholars’ perceptions of criminal women (by a primarily male discipline) were based largely on an assumption of ‘defect’: theories on female criminals regarded them as ‘biological anomalies,’ the authors of which gave little consideration to the everyday realities of women, or the social, economic or cultural significance of their actions (Smart 1976). Further, a majority of the assumptions that guided these theories were directly linked to biological and psychological characteristics of women *as women* (i.e., maternity, menstruation, etc.). As observed by Snider, “...for the Fathers of Criminology, only women had a gender, only women were programmed by nature to behave irrationally, only women were victims of their body, their sexuality, and their reproductive roles” (2004:232). Although the theories developed by the likes of Lombroso and

Ferrero were founded largely on anecdotal evidence about women, and stereotypes of their sex, these claims were supported by a rhetoric of ‘rigorous’ scientific process. Thus, the power of scientific discourse lent support to these early theories of female offending, despite obvious issues with their validity.

However, against the political backdrop of a growing welfare ideology, as well as mounting pressures from first wave feminist reformers, scholars began to question whether purely biological explanations of sex-differences in crime would have legs in a changing social world. One example of this academic trepidation is found in the early 20<sup>th</sup> century works of W.I. Thomas. Thomas’ *Sex and Society* (1907), a collection of previously published articles, set out in the tradition of sex-based theories to describe how observable social differences between men and women could be explained by their innate characteristics:

[T]he differences in bodily habit between men and women, particularly the greater strength, restlessness, and motor aptitude of man, and the more stationary condition of woman, have had an important influence on social forms and activities, and on the character and mind of the two sexes. (1907:v)

Thus, Thomas followed in Lombrosian foot-prints, often citing his and other criminal anthropologists’ work to establish ‘accepted’ observable differences in the physiology of men and women – for example, reproductive capacity, strength, coordination, physique, brain growth, and even lung capacity. Drawing on observations of primitive cultures, Thomas argued that, given men showed a greater and more rapid consumption of energy, as well as a greater variability in strength and motion, they tended to engage in activities “requiring strength, violence, speed and the craft of foresight” (1907:123). Women, on the other hand, were more conservative in energy consumption, oriented toward reproduction, stability, and endurance – their activities being “slow, unsporadic, routine, [and] stationary” (1907:123). Thus, to Thomas, the “extreme variational tendency” of men could be observed in “larger percentage of genius, insanity, and

idiocy,” being less likely to conform to the moral code; conversely, women had a greater propensity toward conforming behaviour (1907:51). Thus, crimes such as theft, arson, rape, murder, etc, were considered “natural accompaniments of the more aggressive male disposition,” with male behaviour bearing a greater influence on the development of the moral code in a particular society (1907:167-168). He argued that women, as a result of their ‘stationary’ demeanour, often merely accept, almost *reflect*, the moral standards set by male behaviour. To Thomas, the nature of women stimulated and modified male behaviour and morality.

However, and very importantly, Thomas expressed concern over the validity of such observations, particularly with regard to the assumptions made about women:

[T]hey [anthropologists] have gone on the assumption that woman is an inferior creation, and have almost totally neglected to distinguish between the congenital characters of woman and those acquired as the result of a totally different relation to society on the part of women and men. They also failed to appreciate the fact that differences from man are not necessarily points of inferiority, but adaptations to different specialized modes of functioning. (1907:51)

Thomas, therefore, was among the first to criticize the general acceptance of both biological determinism *and* the inferiority of women in explanations of social behaviour. For example, he acknowledged that women’s lack of participation in intellectual circles may largely be due to their lack of opportunity to engage in them: “At present, we seem justified in inferring that the differences in mental expression...between men and women are no greater than they should be in view of the existing differences in opportunity” (1907:312). Thomas’ views on the exceptionality of female behaviour would be the predecessor to a future work on female deviance – *The Unadjusted Girl* (1923). Using case histories of prostitutes in the United States, Thomas elaborated on his previous observation, considering more extensively the possibility that deviance was not only a biological, but more importantly, a socially-induced pathology. To Thomas, the unadjusted girl lacked appropriate socialization to the moral code – “a set of rules or behaviour

norms, regulating the expression of the wishes, and which is built up by successive definitions of the situation” – which the family, community, and church was responsible for providing (1923:43). He also recognized that families in particular social strata (i.e., lacking education, economic security) are not able to invest all that is needed to ensure a girl’s successful moral development. Girls that do not have the benefit of this socialization are, according to Thomas, ‘a-moral’ – having no moral code – with early indications of their delinquency being “an impulse to get amusement, adventure, pretty clothes, favourable notice, distinction, [and] freedom in the larger world which presents so many allurements and comparisons” (1923:109). Often, argued Thomas, this combined with their ‘natural’ propensity to love and want love resulted in the ‘unadjusted girl’ resorting to prostitution.

In many ways, Thomas continued the tradition established by Lombroso and Ferrero by drawing on the biological differences between men and women, and the assumptions generated from them, to explain deviance and delinquency. He also contributed to the view that female criminals were very much the social and moral exception, perpetuating the idea that women who displayed non-feminine characteristics (i.e., adventure, freedom, etc.) were a direct indication of deviant pathology. However, what separated Thomas from his predecessors was his acknowledgement of the role that social elements, socialization in particular, played in criminality – that girls who are not properly taught the moral code were more likely to indulge in their ‘wishes’ rather than exercise restraint. Further, he also brought attention to fact that it was often economically and socially disadvantaged families who are unable to provide appropriate socialization. However, resorting back to sex-based foundations, Thomas argued that women’s biological predisposition to fulfill their desire for ‘love’ made them more likely to engage in prostitution as a form of deviance. In this regard, not only did Thomas’ theory struggle to explain other forms of deviance by women, but it also ignored the political, social, and economic position

of women in society, reducing their actions to *biologically-based* social pathology, and their realities to individual interpretations.

Despite Thomas' acknowledgement of the social, future theorizing on women's crime and delinquency could not shed the biological influence of theories as old as Lombroso's. Despite the concomitant rise of the male social subject in criminological theory (to be discussed in Chapter 3), the female criminal continued to be largely viewed as a product of her sex well into the middle of the 20<sup>th</sup> century. Further, given evidence that women were committing considerably fewer crimes,<sup>9</sup> and an accompanying view of women's crimes as anomalous (or, the exception to the norm), theories emerging in the growing discipline of criminology (i.e., Merton's Strain Theory, Sutherland's Differential Association Theory, Becker's Labeling Theory, etc.) focused largely on crimes and behaviours of male offenders. A familiar theme would repeat itself in most of the theories that emerged from the 1920s, 1930s, and 1940s: men committed more crime because it was the norm for men to act more aggressively and spontaneously (based on their biology as 'men'); women committed fewer crimes because they were naturally more capable of exercising restraint.

Otto Pollak's work provided an example of how sex-based explanations of female (non)criminality continued to exert the influence well into the 20<sup>th</sup> century. Despite criminology's move to include more socially-based perspectives of offending (initiated by Thomas, continued by male-oriented theories), Pollak's *Criminal Woman* (1950) largely ignored the modest advances made in that direction, using a biologically deterministic foundation. Echoing an observation made by Thomas, Pollak's early work claimed that the biology of women made them 'naturally' cunning. However, whereas Thomas argued that this was an adjustment made by

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<sup>9</sup> 1940s US and UK statistics found in Pollak's (1950) work demonstrate that women were charged and convicted of considerably fewer crimes than men

women to compensate for their lack of strength and aggression, Pollak (1950) simply believed that women were inherently more deceitful, as evidenced by their ability to conceal such things as menstruation and sexual pleasure. Pollak argued that although statistics suggested that women were less criminal than men, the nature of the crimes they committed made them less detectable, claiming that they actually commit more than statistics suggest. He further added that chivalry on the part of authorities made it less likely for women to be arrested and charged. He also suggested that the subordinate position of women often made them accomplices rather than perpetrators, which also helped them to hide their crimes. To explain the difference between women who deviate and women who do not, Pollak argued that women's *natural* role in the family worked to structure their activities in law-abiding directions, while those without families had more opportunity to deviate.

This latter speculation by Pollak ultimately gave rise to a new debate in criminology, one that coincided with a growing movement in the 1960s and 1970s toward sexual equality, as well as crime statistics that were indicating a changing pattern in women's crime.<sup>10</sup> As observed by Gavigan (1987), Pollak assumed that as women became more 'equal' to men (i.e., become employed, leave the domestic sphere), so do their crimes – leading to the 'masculinization' of women's crime. An increasing number of authors writing on the (supposed) increase in 'female criminality' began to focus on the statistical correlation between women's emancipation and the apparent increase of participation in crime by women – what came to be known as the emancipation hypothesis. Ultimately, this argument carried momentum into the 1970s, showing particular influence in works by Freda Adler.

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<sup>10</sup> Official statistics from the 1960s and 1970s indicated an increase in women's recorded crime; however, many critiques of these statistics would soon appear in feminist studies (Gavigan, in Adelburg & Currie 1987).

In her 1975 work *Sisters in Crime: The Rise of the New Female Criminal*, a study of female crime in the United States, Adler hypothesized that the 'new' patterns of female offending might be attributed to the push to achieve equality: "Women have lost more than their chains, they have lost many of the restraints which kept them within the law" (1975:24). Thus, to Adler, while women were confined to the domestic sphere, they had little opportunity to offend, with family and home occupying their time and energy. Adler correlated women's drift from the domestic sphere with an increased participation in crimes of the economic sphere – such as theft and fraud. To Adler, this shift indicated an abandonment of the female sex role and gravitation toward anti-social behaviour.

A number of studies (i.e. Morris 1965; Wise 1967; Terry 1970; Smart 1976, 1979; Morris & Gelsthorpe 1981, etc.) challenged the conclusions drawn by Pollak and Adler, finding a discrepancy between official statistics and actual and/or self-reported crime for both men and women. Rather than implicate the entrance of women to the public sphere, their findings suggested a number of other possible explanations to explain 'rising' crime rates by women: changes in interpretation of laws by justice officials (Smart 1976), a failure to report crime because of shame (Morris 1965), changes in arrest practices by police (Morris & Gelsthorpe 1981), even the sex double-standard of morality with regard to certain crimes (i.e., prostitution, incorrigibility) (Terry 1970) – amongst others. In any event, points of dissension against traditional and accepted criminological explanations for women's crime were reflected in these works, challenging accepted views of both crime statistics and women.

Treatment of criminal women at the time of Pollak and Adler's works continued to reflect a narrow view of their behaviour and consequent 'treatment' needs. As Smart (1976) suggests, the incarceration of women perpetuated both social and criminological/sociological perceptions of women – criminal women were perceived as both biologically (because of their

sex) and psychologically (because of their lack of morality) abnormal, in need of medical and psychiatric support. Further, given their small numbers and short sentences, prisons did not afford women the opportunity for quality education and vocational training, reinforcing their social status as ‘dependent’; rather, they were perceived as in need of training (both psychological and social) to be ‘good women.’ Arguably, the rhetoric of the emancipation hypothesis reinforced this position – women who had been ‘masculinized’ as a result of emancipation were in need of training to get back to ‘gender appropriate’ behaviour.

Thus, the early to mid-20<sup>th</sup> century witnessed the continuation of many of the same old myths about women – their biology, their social position, their ‘natural’ roles as women – this despite changing social times which saw the growth of equality-based discourses. Despite more voices, more technologies, and more theories, female crime and punishment continued in many of the same veins, perpetuating taken-for-granted ideas about what was ‘right’ for women. However, a growing faction of scholars were beginning to challenge traditional perspectives of women in general – and criminal women in particular – as well as criminology’s backlash against socialist feminism and equality discourses (i.e., in the form of the emancipation hypothesis). These challenges marked the beginning of an entirely new dimension in criminological theory.

## **2.3 The Rise of Second-Wave Feminism, and a New Female Subject**

### **2.3.1 Opening the Door**

As described by Gavigan (1987), the emancipation hypothesis, Adler’s 1975 work in particular, was met with a wave of endorsement by media and practitioners alike – this despite questions over its theoretical validity and the methodological reliability of Adler’s study. The emancipation hypothesis was perceived as a logical explanation to the ‘new crime wave’ by women witnessed in the 1960s and 1970s, reinforcing popular culture discourses of “the break

down of motherhood,” cited as the direct result of feminism’s push for equality. However, in response to these claims, a number of studies and theories began to quietly challenge, even disprove, the claims made by Pollak, Adler, and their supporters, as well as the entire field of criminology as a whole.

To explore the foundation of this dissension requires taking a small step back to the 1960s. Against the back-drop of male-focused theories on criminality, the rise of the emancipation hypothesis, and the resultant debate, Frances Heidensohn, a British sociologist and feminist, posed a profound question of criminology in general – namely, why female offenders had played only a ‘supporting’ role in discussions of crime. To Heidensohn (1968), the popular, century-old conception of the criminal woman as a biological and social anomaly somehow had exempted them from mainstream criminological discussion. Heidensohn recognized that any theory that attempted to explain the behaviour of criminal women used the context of male/masculine forms of deviance in order to make sense of it – whether it be a product of genetics, socialization, cultural adaptation, etc. She observed that many of the theories that emerged in decades prior were inherently flawed – based on assumptions that were not supported empirically, and importantly, uncritical of the forms of deviance in which women engaged. To Heidensohn, “a more meaningful approach would take female deviance as an aspect of the female sex role and its relationship with social structure, rather than trying to make it conform to patterns apparently observed in the male role and its particular relationship with social structure” (1968:170). In this way, Heidensohn proposed a way of understanding women and their crimes not in relation to those of men (i.e., questions of why women offend ‘less than’ men, how women’s crimes are ‘different from’ men, and even, why women’s crimes were seemingly becoming ‘more like’ men’s), but rather, examining female offending *as such*.

Heidensohn's critique of criminology soon inspired a number of others to do the same (i.e., Bertrand 1969; Smart 1976). Carol Smart's *Women, Crime and Criminology: A Feminist Critique* (1976) was one of the more extensive works examining perceptions of women (or lack thereof) in criminology. Smart set out to challenge the ideological frameworks that guided criminological theories of the past, criticizing them for their 'distorted' views of women; further, she attacked the widespread discourses concerning 'emancipation' and female crime, as well as the 'statistical' evidence that had so vehemently been used to defend them. Smart implicated criminological theories and justice practices for their overwhelming acceptance of the 'common-sense' views of women that had been used by scholars for over a century, stating that "the assumption that women are evil and malicious and gentle and caring is part of our cultural heritage" and that although seemingly contradictory, these views "are able to coexist only because the presuppositions about the inherent nature of women which form these perspectives are never examined" (1976:30). Smart offered this cultural acceptance as a partial explanation of why criminal justice *treatment* of women failed to become an issue:

[I]t is quite possible to adhere to a belief as long as it is never questioned or made fully explicit. Consequently such (mis)conceptions and prejudices have remained implicit and unaddressed because their validity is taken for granted and their self-evident nature is shared with all members of our culture. These contradictory assumptions are not only commonly shared in all sections of society however as, in practice, they are also referred to for confirmation of 'scientific postulation on the causes of female criminality. (1976:30)

To Smart, critique of traditional theories, and the 'evidence' that supported them, was imperative to making real change in the justice system's treatment of women. As she concluded: "The aim must not be only to make visible the invisible, to restore women in their own right to social science, but to find alternative modes of conceptualizing the social world so that the interests and concerns of women are addressed and included rather than subsumed or ignored" (Smart

1976:180). Thus, to Smart, not only did criminological theories and research depend on unfounded 'facts' about women, societal attitudes and cultural acceptance resulted in few questions about whether the justice and penal systems were responding appropriately to those who had contact with them.

In later works (i.e., Smart 1979, 1981), Smart built on these critiques, suggesting that 'female criminality' must be considered in a more inclusive manner, one that accounts for the social, political and historical context surrounding 'criminal women,' rather than merely 'reacting' to (supposed) changes in their criminality and social position (i.e., as the emancipation hypothesis had done). Smart (1979) suggested that 'reactionary' theories were attempting to explain criminality in a manner *exclusive* to women; such reactionary theories, she said, were simply convenient ways to explain away complex issues, reminiscent of "a confused and simplistic understanding of the process of emancipation, its influence on consciousness and social institutions, and its location within and alongside other social historical developments" (1979:58). She further elaborated on the influence these accepted theories and perspectives of women had on criminal justice policy – both in an informing and legitimating way (Smart 1981). Specifically, she criticized the paternalist manner in which policies and practices were developed and executed, arguing that it reinforced the disparity in power between men and women and ultimately, the sex double standard. As Smart (1981) observed, women were being punished and/or 'treated' differently for certain crimes (i.e., prostitution) than men – essentially reprimanding women for behaviour deemed 'acceptable' for men. To Smart (1981) these practices were all informed by a 'common-sense' understanding of gender differences.

The work of these early second-wave feminist scholars and their stand against accepted theoretical perspectives and research, as well as the bias inherent in criminal justice policy, was a

breaking point in the way women were perceived in criminological discussions – essentially opening the door for the explosion of feminist debate that followed.

### **2.3.2 The Second Wave Meets the Carceral Realm: Feminism on Women's Incarceration**

The observations made by early second wave feminist writers (i.e. Heidensohn, Bertrand, Smart) marked the emergence of a number of different feminist approaches to examining female crime and punishment. Where some feminist criminologists took on the task of filling the statistical gaps in previously accepted knowledge claims concerning female offenders (i.e., Bowker 1981; Chapman 1980), others carried on the critical debate surrounding theory and practice, some (i.e., Feinman 1981; Heidensohn 1981) with regard to the punishment of women.

Feminist criminology's examination of the incarceration of women emerged in the early 1980s. Prior to this, however, isolated studies in the 1960s had quietly begun to ask questions about women in prison (i.e., Ward & Kassebaum 1964, 1965; Giallombardo 1966a, 1966b). Reminiscent of prison sociologies of the 1950s (i.e., Sykes 1958; Clemmer 1958), these works focused on the 'societies' of women in prison, their interactions with one another (with particular focus on their homosexual relationships), and their experiences in institutions. Further, they recognized the possibility that prison was perhaps not the most appropriate form of punishment for these women – the reason being, based on their observations, that women suffer greater strife and loss than men as a result of incarceration. However, conclusions drawn by these studies were largely based on beliefs about women's inherently 'greater need' for family and the psychological consequences of familial separation – the idea of the 'ideal woman, whose feeling of success or failure was largely dependent on her degree of investment in her natural role. Feminist critique, on the other hand, not only challenged this 'ideal type' woman, but also contested the entire 'system' of 'female punishment' that had been developed based on it.

For example, Feinman (1981) provided one of the first critiques of the separate system for women, identifying the issues in programming affecting women incarcerated in the New York Correctional Institution for Women. Using the available literature, she documented historically how the development of a 'separate system' for women was not reminiscent of the equality or just treatment of women that it had implied. She pointed to the influence of sex-role stereotyping in this failure, claiming that the continued influence of traditional perceptions of women on corrections had ultimately resulted in a lack of real change for women's incarceration. Specifically, she identified three main areas where stereotyping had hindered reform. First, the overall treatment of female offenders reflected historical views of criminal women – from gross-maltreatment of the 'wicked' woman in the 18<sup>th</sup> and 19<sup>th</sup> century, perceived as heinous due to her violation of the 'cult of true womanhood' (a perception perpetuated by the likes of Lombroso and Pollak), to the late 19<sup>th</sup> and early 20<sup>th</sup> century maternalism of upper class reformers attempting to domesticate the 'lost' woman. Secondly, Feinman argued that given the social class, and religious and moral values of female reformers, their attempt to 'mother' actually perpetuated sex-role stereotypes. Finally, she observed that, despite historic attempts at positive change inside prisons and reformatories for women, the world outside the walls continued to live by sex-role stereotypes – "wife and mother remain the socially accepted roles" – ultimately limiting their success once released into the community (1981:388). Feinman, like others before her, also expressed concern over the effects of the 'emancipation myth,' particularly with regard to women's incarceration: not only did it belittle true causes of female crime and ignore the fact that there are non-incarcerated wives and mothers who work without engaging in crime, but further, that most *incarcerated* women are not 'liberated' working women, but rather, are the poor, uneducated and unskilled.

Heidensohn (1981) further elaborated on these ideas in her paper on women in the penal system. Examining literature and documents on women's incarceration in Britain, Heidensohn set out to describe 'who' was being incarcerated in women's prisons (i.e., the female prison population) as well as contemporary issues concerning women and the penal system, particularly with regard to equality debates. Heidensohn observed that although 'official statistics' suggested a rise in female crime, even a rapid growth in the female prison population, the number of women incarcerated was 'tiny' compared to men; further, many were being sentenced to short terms, resulting in a high rate of turnover in female institutions. Given the small population, many rehabilitative aids suggested for women (i.e., temporary release for job, probation interviews, family visits) were unavailable or logistically impossible. In addition, female staff were found to be 'few and far between,' and poorly trained at best. As a whole, Heidensohn concluded that "a small, expensive penal system is kept running for a tiny, but growing number of women" and further, though there had been attempts to modify prison to make it distinctly 'for women,' in practice, they were still essentially governed by a system designed for men (1980:131). To Heidensohn, not only was it necessary to have separate institutional and policy designs for women, but prisons also needed to be developed keeping differences *among* women (i.e., cultural, socioeconomic, educational, etc.) in mind. In order to reach this point, however, Heidensohn observed that a full hearing on women and prisons was in fact necessary.

### **2.3.3 Looking to the Past: Finding Answers in Feminist Histories**

Answers to the call for rigorous examinations of female penal systems were already well in motion. Where some scholars (i.e., Rafter and Natalizia 1981) continued to critically examine the contemporary state of things, an increasing number of scholars (i.e., Freedman 1981; Rafter 1982, 1983, 1985a; Carlen 1983) set out to re-examine the previously taken-for-granted history of women's incarceration, in an effort to develop a better understanding of the origins of

contemporary penal systems for women. Not only did they provide a critique of the treatment of women, in doing so they questioned taken-for-granted discourses of ‘reform,’ revealing previously unconsidered possibilities about the *actual* foundations for penal change.

Freedman (1981) was one of the first to examine the historical development of female incarceration from a feminist perspective, arguing that a critical examination of penal history enables a more comprehensive understanding of penal conditions in the present. As such, using the available historical documents and literature on women’s imprisonment, Freedman explored “the origins of women’s concerns for female inmates,” and the legacy of 19<sup>th</sup> century reformers in America – a group that, she argued, had a tremendous impact on the development of ‘modern’ female penality. According to Freedman, the discourses guiding reform during this time ranged from ‘social control’ to ‘social protection’ to those with more benevolent motives. The approach embraced by white middle-class women reformers of the 1800s was largely the latter. In addition, according to Freedman, reformers had a strong belief that because women – even criminal women – were ‘different,’ having unique needs and experiences, they should be treated differently from men. However, as she observed, one element the reformers failed to recognize in their approach would ultimately prove to be counterproductive: “[P]rison reformers clung to a definition of woman’s separate nature that limited their own power and often stifled the inmates they sought to aid” (1981:2). To Freedman, rather than fighting for the individual liberties of criminal women, or against the institutions that controlled them, reformers were actually fighting for the recognition of sexual differences.

As Freedman observed, this fight led to the separation of the prison system based on sex. The separate system gave women more freedom, avoided the exploitation of women’s labour by male inmates, enabled interaction with children and the companionship of other women, and improved vocational training. However, as revealed by Freedman (1981), the reforms created and

perpetuated other problems: overcrowding due to a shortage of women's prisons; failure to recognize the heterogeneity *among* incarcerated women and the resultant standardization of women's prison programs; the sex-stereotyping of these programs; and, the degrading, infantilizing treatment of women based on (and reinforcing) ideas of women as dependent, imposing "demeaning stereotypes of feminine behaviour" (1981:154). Overall, Freedman recognized that although it was necessary to create separate institutions for women, they still existed within a male dominated system, forcing them to adhere to similar standards and operate under similar policies. Further, she observed that there existed a divide between the keeper and the kept: although women were enlisted to oversee many of the women's institutions, power and class relations prevented the 'sisterly' environment that reformers desperately sought. Essentially, as Freedman concluded, regardless of reform discourses and the benefits extolled by reformers, 'change' still occurred within the context of an unchanging prison ideology.

Freedman provided one of the first critical analyses of the development of the separate system of female incarceration. Rather than accept previously taken-for-granted claims about the benefits of 19<sup>th</sup> century reform efforts, she offered a new perspective on the development of female prisons, shedding light on the source of many of the issues plaguing modern-day systems. Feminist critique in this vein continued in early works by Nicole Rafter (1982; 1983; 1985a), who set out to examine how different types female penal institutions were developed in the context of various socio-historical elements – specifically, the social conditions that contextualized the rise of race, class, and gender stereotypes. Conducting a critical analysis of historical documents, records, and reports from the State Prison for Women in Auburn New York, 1893-1933 (Rafter 1982), and the Western House of Refuge in Albion New York, 1894-1931 (Rafter 1983), Rafter contrasted the nature of these two institutions (i.e., custodial institution versus reformatory), arguing that past scholarly focus on the popular 19<sup>th</sup> and early 20<sup>th</sup> century reformatories had

essentially “produced a distorted picture of the history and nature of the women’s prisons system as a whole” (1982:238). To Rafter (1982), this focus had established a view of women’s crimes and punishments as a “relatively ladylike phenomena,” a misconception she felt had been detrimental to understanding the contemporary punishment of women. According to Rafter, reformatories and custodial institutions for women had to be viewed in a different way, given the ‘bifurcated’ nature of the system they composed. On one hand, the reformatory side of the system was guided by the perspective that ‘good women’ were often led astray by ‘bad influences,’ having no real *intention* to commit crime. On the other hand, the custodial system was influenced by the notion that certain female offenders were ‘bad women’ who displayed ‘masculine’ characteristics – and as such, were beyond ‘reform.’ In short, according to Rafter’s observations, ‘good women’ went to reformatories – where they could receive training, develop a sense of responsibility, and be rehabilitated – whereas those who were sent to custodial institutions were “incapable of resocialization to meet middle-class standards of womanliness,” thereby requiring control, discipline and isolation (1982:248).

In addition, Rafter (1983), like Freedman before her, commented on the influence of first wave feminist reform. Rafter observed that the 19<sup>th</sup>/early 20<sup>th</sup> century reformatory model, and the commitment laws that accompanied it, was the product of a social and state attempt to exert sexual and vocational control over a certain segment of the female population – a segment that, although in violation of norms of appropriate behaviour for women at the time, were deemed ‘reformable.’ Rafter, establishing the socio-historical context of this development, stated that the rise of immigration, urbanization, and capitalism all contributed to this view: women who did not accept and fulfill the roles required of them (i.e., domesticity, demureness, purity, piety) threatened social and familial stability, and as such, were in need of ‘moral training.’ Departing from the men’s carceral model (which was also used for ‘bad’ women), Rafter argued that the

reformatory established a set of “feminized penal practices,” using a number of different techniques to enforce appropriate sexual and vocational behaviour (1983:290). One such technique was the severance of familial ties and infantilizing treatment, which relegated women back to a dependent role. Further, benevolent, nurturing approaches to women during their stay perpetuated an idea that they were being saved, which contributed to their trust and belief in the system. Ultimately, the ‘success’ of the reformatory was indicated according to whether women went on to serve in a domestic role – whether through marriage and family, or a placement in domestic service. However, as Rafter observed, the reality was that reformatories extended the hand of the state, both in confining women convicted of status offences and in the use of social control measures designed specifically to train them to be ‘ideal’ women.

Rafter later recognized the importance not only of contrasting and understanding the various components composing the female penal regime, but also how the realities and experiences of women incarcerated in this system differed from those of incarcerated men. In a more comprehensive history of women’s state prisons in the United States (1800-1835), Rafter (1985a) utilized a national survey of penal institutions for women, as well as a more detailed time series examination of the handling of female prisoners (i.e., examination of prisoner registries) in three states. In doing so, she pointed to the habitual exclusion of women from histories of penalty (which generally focussed on men) as part of a greater tendency to homogenize ‘the prison’ and ‘prisoners.’ As such, Rafter committed to an approach to history that “discriminate[d] more finely among types of institutions and prisoner groups” (Rafter 1985a:xvii). Rafter observed that institutions for men and women – the architecture, policy, and practice – had historically been based on gendered assumption of how male and female ‘criminals’ should be controlled. Women, Rafter found, received *both* milder *and* harsher treatment than men in the penal system. She characterized this ambiguity as “partial justice,”

which she observed was a product of two primary elements: small numbers and gender. With relatively few incarcerated women, fewer opportunities were available for them; further, given traditional views dictating ‘appropriate’ female behaviour, ‘criminal’ women were perceived as ‘more depraved,’ and less deserving of assistance than criminal men. Through this realization, Rafter’s historical work illustrated one of the ongoing problems of women’s corrections today: despite discourses conscientious of ‘women’s needs,’ their incompatibility with the perceived criminal norm (men) renders the services available to them less than adequate.

These early historical studies by Rafter would set an important precedent in their interrogation of both the development of female penalty and the socio-historical context in which it occurred. Rafter shook the foundation of many previously accepted historical claims, questioning the purpose of a regime based on false assumptions. Focusing more narrowly on the experiences of incarcerated women, Dobash, Dobash, and Gutteridge (1986) continued this interrogation in their history of women’s imprisonment in Britain. Using historical and contemporary information, Dobash et al examined the foundation of the imprisonment of women as a response to crime – beginning with 17<sup>th</sup> century, pre-industrial society – toward an understanding of how it has developed into its present form. Importantly, these authors incorporated critical perspectives into penal history, arguing the need for a “comprehensive integrated approach...to demonstrate where possible the way women react to their imprisonment, the ways they struggle against punishment and discipline and/or seek to cope with the deprivation of confinement” (1986:11). To Dobash, Dobash, and Gutteridge, non-feminist critical and revisionist accounts had the potential to uncover the illusion of ‘progress’ in women’s penalty, which had long been enabled by discourses claiming ‘penal reform.’ However, they also observed a fundamental silence of post-modern and revisionist critiques of penal progress: they “seldom if ever consider the possibility that patriarchal and gender-based assumptions might have played a

role in the development of modern prisons” (Dobash et al. 1986:9). As such, they credited feminist writers such as Freedman and Rafter for portraying history in a way that both acknowledges the separate experiences of incarcerated women *and* the role that the institutionalization of gender assumptions has played in shaping these experiences. Dobash et al. argued that the *combination* of these perspectives would produce an historical account of women’s penalty that could both critique the nature of the system as well as its gendered elements. Thus, drawing on Foucault’s views of disciplinary power in prison and those previously established historical critiques of women’s penal systems, they observed that ‘progressive’ techniques in women’s prisons in Britain (rescue, reform, rehabilitation) were actually feminized techniques of control developed from ‘expert knowledge’ of ‘criminal women’ – which itself was largely based on taken-for-granted assumptions of the nature of women.

In combining feminist perspectives with revisionist accounts, Dobash, Dobash and Gutteridge produced a history of women’s incarceration unprecedented at the time, drawing attention to the complexities of discipline and control in female carceral realms, revealing the power of knowledge in the perpetuation of punitive regimes. Taken as a whole, the historical analyses provided by feminist scholars would raise a new series of questions about female penalty, with the late 1980s and early 1990s witnessing an acceleration of feminist studies on women’s imprisonment – particularly in Canada.

#### **2.3.4 Women’s Imprisonment in Canada: Canadian Feminists Join the Critique**

With the rise of critical discussions of women’s imprisonment in the United States and Britain emerged similar critiques of female imprisonment from Canadian feminists. Although critical histories similar to that of Dobash et al (1986) were some time in the making, some important initial inquiries of female punishment would build the foundation for such analyses.

Adelburg and Currie's *Too Few to Count* (1987) is one such work. An edited book with contributions from several Canadian feminists writing from a variety of perspectives, Adelburg and Currie's offering opened a number of avenues of feminist critique in the Canadian penal context. In justifying the importance of this work, they continued in the tradition of both American and British authors, arguing that incarcerated women in Canada had historically received little attention from scholars, correctional officials – even feminists themselves. The inherent lack of literature on incarcerated women in Canada, according to Adelberg and Currie, perpetuated both a lack of knowledge and a lack of interest on the part of officials. As such, these authors proposed to take a closer look at the lives of imprisoned women, and conversely, the effects of imprisonment *on* their lives. Further, they also pointed to the importance of reclaiming the history of women's imprisonment in Canada, given its habitual exclusion from most available Canadian histories of punishment.

Cooper (1987), in her contribution to Adelberg and Currie's work, was one feminist who recognized the importance of reclaiming the history of women's incarceration in Canada. An historical review of available Canadian historical documents on punishment, Cooper's work provided an 'evolution' of women's punishment from the mid-1600s to present, as well as an interrogation the historic controversy surrounding the country's only federal penitentiary for women. Through her study, she revealed that the treatment of criminal women in Canada had ranged from neglect, to "outright barbarism," to well-meaning paternalism (1987:127). This disparity in treatment, she argued, could be traced to a corresponding contradiction in perspectives of women – women as vulnerable, women as lazy and worthless, women as temptresses, etc. According to Cooper, as corporal punishments of women in Canada were increasingly abandoned in favour of incarceration, the recognition of 'women as different,' and the consequent specialization of the Canadian carceral regime (i.e., female section of Kingston

Penitentiary) began. As such, confusion ensued over how to best ‘treat’ women – whether by benevolent means or by strict governance. Royal and Provincial Commissions continually suggested that improvements be made to the punitive treatment of women, particularly the moral damage they suffered by being housed with ‘hardened’ male criminals. According to Cooper, these suggestions were ignored until 1924, when, in response to the Nickel Report, construction of the Kingston Prison for Women was approved. However, only four years after opening, Commissions on the conditions in the Prison for Women began. As Cooper observed, one Commission after the other noted the appalling conditions of the institution, questioned the necessity of its size and location, and even undermined the validity of incarcerating the women held there – with most recommending its closure. As Cooper concluded, although many of the recommendations made by these Commissions worked to further perpetuate misconceptions of women, the obvious neglect of Canadian authorities to act on the findings was reminiscent of a well-established tradition of neglect toward incarcerated women in Canada.

Thus, Cooper (1987), like many American and British feminist historians prior, revealed both the historical issues underlying the Canadian penal system for women, and the gross lack of literature and research on these issues by Canadian scholars. Other contributors to Adelberg and Currie’s work shed light on additional gaps in the Canadian literature. Shelley Gavigan, in her review of criminological theories on women and feminism’s attempts to reconstruct them, argued that feminist criminology must do more than denounce the discipline for ignoring female crime, but additionally, must transcend traditional boundaries set by it. As such, Gavigan suggested that feminist criminology in Canada go beyond the rhetoric of ‘sexism’ in its critique, to consider the relationship of factors such as ethnicity (specifically, the overrepresentation of Aboriginal women in Canadian prisons) and socioeconomic status to the incarceration of women. Further, she also stressed that feminists examine the role of the state and justice system in the punishment of

women – not only in terms of their coercive role, but their paternalistic gestures as well. To Gavigan, although Canada had seen many Royal Commissions on the incarceration of women (i.e., The Archambault Report, 1938; The Ouimet Report, 1969; The Report of the National Advisory Committee on the Female Offender, 1977), Canadian policy-makers continued to make recommendations and decisions based largely on the claims traditional criminology had made about women in the past – relying on historically accepted assumptions of the ‘female.’

A major issue concerning the incarceration of women in Canada, alluded to by Gavigan, was fully explored by Carol LaPrairie in her contribution to Adelberg and Currie’s collection. Responding to official Canadian statistics suggesting the disproportionate involvement of Native women in the criminal justice system, LaPrairie offered suggestions toward a feminist perspective of native women in the criminal context. LaPrairie stressed that such an undertaking required the utmost sensitivity to the experiences of native people, arguing that historically, native women had been consistently alienated from mainstream society as a result of social and structural inequality. Further, she suggested that any discussion of native women in the criminal justice system must account for “the broader economic, sociocultural, and legal factors” that are associated with being a Native person, and further, a Native woman – particularly in a “male dominated, non-Native society” (LaPrairie 1987:110). To LaPrairie, data and research on Native women in the criminal justice system was grossly insufficient to draw any real conclusions or to make productive recommendations to help Native women. As such, LaPrairie pointed to the importance of such research in the future, particularly that which examines issues of structural inequality in Native women’s conflict with the law.

The observations and recommendations that came from this collection of works were engaged by a number of Canadian feminist authors, many of whom would focus on the conditions, needs and experiences of incarcerated women in Canada (i.e., Sugar & Fox 1989;

Adelberg and Currie 1993; Comack 1996; Bertrand 1998; Hannah-Moffat & Shaw 2000). Comack's (1996) examination of women incarcerated in a provincial jail in Manitoba is one example of the direction feminist scholars took in responding to the need for critical discussions of women in the criminal justice system. Comack's theoretical orientation to her study incorporated elements from both socialist and standpoint feminism – examining the structural features that influence women's lives, and how women experience those influences. Using a combination of quantitative analysis of data on the characteristics of her population (women incarcerated in a Manitoba jail), as well as twenty-four qualitative interviews with incarcerated women, she 'pieced together' how women's past experiences are related to their contact with the criminal justice system. Comack's findings suggested strong connections between women's experiences of violence and abuse and their offending history. This led Comack to question the utility of placing women, most of whom have experienced abuse or violence, in prison: "...it would seem relevant to query whether their incarceration serves any *benefit* – to the women themselves, to their families, to their communities or to the larger society" (1996:126). With regard to this observation, Comack posed that understanding the effects of incarcerating women is not a matter of determining whether programming is successful (i.e., in terms of recidivism rates), but rather, whether 'prisoning' (the process of incarceration) is suitable to help women solve their troubles. She further noted that prisons for women often strive to provide the policies and programs they deem women to need; however, the benefit of these programs is debatable.

To answer this quandary, Comack suggested that the failure of prison programs could be due to that fact that "women's troubles have their source and basis *outside* the prison walls," and further, that "women do not have the power or autonomy to attend to those troubles" (1996:136). Further, in prison, women live in a regulated environment where power and control are priority; thus, according to Comack, women who are in need of healing often continue to feel distrust.

However, she also revealed that, due to their socioeconomic status, jail is the first opportunity for many women to get the help they need, be it counseling, access to cultural activities (i.e., sweat lodge for Native women), and/or education or vocational training. Comack elaborated on this inherent contradiction:

Prison, then, may offer the women access to some resources, but the cost of that access is that the women learn to go along with the ‘game’: they harden themselves to the isolation, barricade themselves against the mistrust of those around them and protect themselves from further abuse. In this respect, prison replicates, and thereby adds to, the difficulties the women encounter outside the prison walls. (1996:154)

Comack’s conclusions also spoke to discourses of ‘empowerment’ that had emerged in both academic and policy circles. She argued that an inherent contradiction existed in the notion of providing resources for empowerment in an environment that controls prisoners’ lives in every way. As she stated, “no matter how well-intentioned the staff may be or how adequate the programs offered, the fact remains that this is a *prison*, with all the discipline and control inherent in a ‘total institution’” (1996:145). As a result, Comack observed, those women who do make positive steps while in prison do it “in spite of rather than because of their experience of confinement” (1996:145). Thus, as she concluded, the resources that would make the biggest difference are those available in the community – particularly, women’s shelters, counseling, family services, etc. To Comack, the provision of those resources is indicative of the state taking responsibility for social, economic and political problems that lead to crime.

Comack’s work provided one of the most comprehensive and critical examinations of the incarceration of women in Canada of the 1990s. Not only did she hone in on the lived experiences of incarcerated women, hearing and understanding their voices and giving credence to the effects of their abuse, she also interrogated the inherent difficulties posed by the prison environment (and discourses of ‘empowerment’) in helping these women in a positive manner. Kelly Hannah-Moffat (1995; 2001) focused in on the difficulties posed by discourses of women-

centred corrections in her critiques of *Creating Choices*, the Report of the Task Force on Federally Sentenced Women in Canada. Yet another Royal Commission, this 1990 examination of Canada's treatment of federally sentenced women marked an attempt by policy makers to make women's corrections more responsive to their unique needs *as women*. Similar to Comack (1996), Hannah-Moffat argued that 'women-centred corrections,' despite embracing feminist ideals, still existed within the framework of traditional punishment. Further, she pointed to several problematic elements associated with the *discourses* of 'woman-centred correction.' First, like feminist authors before her (Heidensohn, Freedman, Rafter, Dobash et al.), she argued that the use of 'woman' as a category ignored the inherent social, political, and cultural differences between imprisoned and non-imprisoned women, trivializing the experience of incarceration. Second, distinguishing 'woman-centred' and 'male-centred' corrections created a problematic dichotomy, in the sense that it "reinforced normative standards of femininity in the correctional discourse" (1995:139). It also assumed that, because sex-specific correctional approaches are hailed as 'gender appropriate,' they are suitable for those to whom they apply. The problem with this, Hannah-Moffat asserted, is that acceptance of these approaches ignores the fundamental problems with the institutional framework of prisons and the material reality of incarceration: loss of freedom, disparity in power between the keeper and the kept, etc. Third, the notion of empowerment as a goal of 'woman-centred corrections' is in direct contradiction with the nature of imprisonment: incapacitation, control, and discipline. In light of this, Hannah-Moffat argued: "Although the woman centred model appears to be less intrusive and less punitive, it is not; these qualities of incarceration are simply obscured by a feminized social control talk that tends to deny the legal and material realities of imprisonment" (1995:13).

Hannah-Moffat's early critique of *Creating Choices* not only brought to bear the inherent difficulties posed by discourses of 'woman-centred corrections' (particularly in a system whose

very nature contradicted the goals of those discourses) her observations regarding the male-female dichotomy in penality inadvertently raised similar concerns over ‘male-centred corrections.’ Where this line of inquiry would not find legs in future works, Hannah-Moffat’s (2001) extensive critique of federal imprisonment of women in Canada provided a solid foundation by which a similar critical feminist examination of the gendered nature of male corrections could be undertaken.

### **2.3.5 Critical Foucauldian Feminism: Reclaiming History**

In elaborating on her discussion of *Creating Choices*, Hannah-Moffat (2001) produced an extensive genealogy on the history of female incarceration in Canada that considered how notions of gender (i.e., femininity) have been incorporated by correctional and penal policy, and ultimately, how the general acceptance of these ideas has been constituted in discourses of ‘woman-centred corrections’ that have predominated over time – particularly in recent years, with the release of *Creating Choices*. Hannah-Moffat’s work further attempted to fill a gap in Canadian research, one that she argued needed to address gender and its relationship to penal power, and additionally, to challenge the ways that sociology and criminology have traditionally presented incarceration. In her attempt to re-evaluate the history of federally sentenced women in Canada, the changes in correctional policies and programs, and the role of both state and non-state reformers in the development of Canada’s current regime, Hannah-Moffat accessed primary documents (i.e., official records, commissions, investigation) relating to the operations of federal women’s prisons. Building on critical approaches used in past feminist works, as well as the works of recent revisionist and critical post-modern authors (i.e., Foucault 1977, 1991; Rose & Miller 1992), she adopted a uniquely ‘Foucauldian-feminist approach’ to examining her material that effectively challenged accepted views of the history of women’s incarceration in Canada.

Hannah-Moffat's analyses answered criticisms of past feminist (and non-feminist) approaches to history by thoroughly considering the experiences of women and the heterogeneity among them, and further, making sense of the unique relations of power between the keeper(s) and the female kept. In doing so, she argued that feminism itself must reach beyond concepts of disciplinary power and patriarchy to uncover the more complex nature of penal power relations, particularly those related to discourses of 'reform,' 'care,' and 'benevolence.' From a Foucauldian standpoint, these discourses could be observed in the maternal, pastoral, spiritual, and empowering-responsibilizing strategies used in female prisons. Hannah-Moffat further built on Foucault's observations of the role of penal knowledge in institutional power relations, and the development of penal policy. In the case of incarcerated women, she urged that not only did expert (i.e., scientific) knowledge of women have a major influence, but more importantly, 'non-expert' knowledge – from upper middle class women reformers, volunteers – did as well. As Hannah-Moffat observed, the addition of non-expert (maternal, spiritual) knowledge to 'scientific' correctional strategies essentially 'normalized' the relationship between female inmates and their governors, yielding a tremendous amount of influence.

Central to her analysis was the Foucauldian concept of governmentality, the "ways of reflecting and acting that aim to shape, guide, manage, and regulate the conduct of persons," rational activities undertaken by a "multiplicity of authorities" that shape conduct by appealing to the desires of individuals (2001:11). Relatedly, Hannah-Moffat also considered the concept of self-governance, the ways in which an individual questions his or her *own* conduct in order to ensure it appropriate. From her observations, she found that the neo-liberal strategies of governance that have surfaced throughout the history of separate prisons for women in Canada (most notably evident in *Creating Choices*) have slowly shifted responsibility of incarcerated women from the state to the community, even to the women themselves. As she stated, "the

governance of women prisoners is no longer conceptualized as the sole responsibility of the federal government” but is instead “the collective responsibility of the community and even the individual offender” (2001:155). According to Hannah-Moffat, the responsible subject, her family, and community have, through changing strategies of governance, been made ‘capable’ of managing her risk.

Hannah-Moffat further discussed the role of responsabilization strategies, which describe how correctional tasks are dispersed outside of the prison walls so as to hold the state less accountable for the ‘success’ (failure?) of the correctional regime. Linked to the notion of responsabilization strategies is the discourse of empowerment – holding women responsible for gaining control of their lives by making ‘good decisions’ – that has permeated ‘feminist’ penal reform in recent years. Hannah-Moffat pointed to the inherent contradiction of empowerment discourses: first, that ‘choice’ must be made in an environment designed to minimize choice; and second, that imprisoned women must make these choices not in order to satisfy the objectives she deems important to her life, but rather those set by her governor. Hannah-Moffat uses this as an example of how feminist discourse has been appropriated by the state (Correctional Service of Canada) to demonstrate intuitive change – penal power relations, supported by carceral ‘knowledge,’ masked by rhetoric of reform.

Hannah-Moffat’s work, not only as a history but as a critical commentary of women’s penalty today, clearly delved deeper than most into the complex relations that constitute penalty and penal reform. However, the method, theoretical framework, and approach to her history of female incarceration could arguably be used to fill the large gap in critical histories of *male* incarceration – and perhaps re-write the history of male penalty that has so long been accepted.

## **2.4 Summary and Conclusions: Toward a Foucauldian Feminist Examination of Male Incarceration in Canada?**

### **2.4.1 The Problems with Feminism**

As shown, feminism has come a long way in deconstructing false assumptions about female offenders and their treatment, theories that were established by the ‘Fathers of Criminology’ and perpetuated by sociological and criminological theories of the 20<sup>th</sup> century. By interrogating the role of gender, and recognizing the unique experiences of women *as* women, feminist scholarship has established a better understanding of women’s crimes and punishment. However, despite asserting the importance of considering *gender* in sociological and criminological theories, feminism (particularly feminist criminology) has greatly ignored the gendered man. It is therefore debatable as to whether feminism, and critical Foucauldian feminism in particular, is currently in a position to proceed with such an examination; a closer look at feminist claims do in fact reveal some fundamental flaws.

Feminist discourse in recent decades has continuously pointed to the failure of criminological theory to be inclusive of women – and more importantly, to consider the role that ideas of gender play in criminal justice. Many (i.e., Freedman 1981; Rafter 1985a; Rafter 1985b; Bosworth 2000) point to the obvious *gender* bias in sociological, criminological, and historical works on punishment, arguing that discussions of women and femininity are habitually excluded from the academic literature on penalty. Despite this position, however, it could be argued that the constant criticism of ‘male-stream’ perspectives is inherently hypocritical. For example, in Rafter’s (1985a, 1985b) discussions of histories of incarceration, her main criticism is that they are ‘gender myopic,’ given the majority have male institutions as their subject: “The focus on male subjects is characteristic of historical investigations of crime and social control in general and of histories of prisons in particular (1985a:xiii). It is difficult to argue the fact that much of

the available criminological literature, particularly at the time of Rafter's discussion, had male crime or penalty as its subject; this is very much evident in Canadian penal literature. However, despite the obviousness of this bias, Rafter's (and others') critique is arguably mistaken, for *gender* is largely ignored in *any* historical discussions of penalty. Thus, instead of being *gender* myopic, histories of incarceration, and Canadian histories in particular, might be properly termed *sex-myopic*: the incarceration of males is their subject, but the men themselves are not treated as *gendered* subjects. Rafter's own feminist critique of criminology unknowingly exposes a paradoxical limitation of current feminist analyses of incarceration – where past discussions of penalty are sex-myopic, feminist histories and analysis themselves tend to be *gender-myopic*, neglecting discussions of *masculinity*.

The reasons for this silence may lie in some common tendencies that can be found in feminist works on penalty. One of the predominant feminist criticisms concerns how 'woman-centred corrections' struggle to 'work' within the framework of a male-centred regime. However, the term 'male-centred' in this context is both problematic and misleading in that it implies a system developed for men *as* men – a system that arguably has not yielded positive benefits for men either. This issue also extends to the dichotomy of 'male expert knowledge' versus 'female expert knowledge' often used in critical works (i.e., Hannah-Moffat 2001). Where feminist writers often question the legitimacy of 'female expert knowledge,' drawing a comparison to 'male expert knowledge' may create further issues: Are knowledge claims about criminal men and women *really* about them as *gendered subjects*? The answer, as many critical feminist writers would argue of 'expert knowledge' of women, is no.

'Male' and 'female' imprisonment is further dichotomized in feminist comparisons of the *experiences* of incarcerated men and women (i.e., Freedman 1981; Shaw 2000), a common claim being that women experience the pains of imprisonment more than men. However, in drawing

this comparison, the 'myopia' of feminism reappears. As discussed, feminist academics do well to consider the heterogeneity of incarcerated women; however, in doing so, they often draw comparisons to a *homogenous* group of men. Thus, where they specifically seek to understand the unique experiences of a range of women, their comparisons to 'men' as a group overlooks the reality that 'men' too are defined by a unique range of characteristics, as well as a unique range of experiences in prison. In this way, should feminism, in the interest and importance of being conscientious of gender, not also give the same consideration to men?

#### **2.4.2 Conclusion: Next Steps**

Arguably, for feminism to be used in a way that would understand male imprisonment, it must first become sensitive to the diversity among men, and acknowledge the overwhelming tendency for 'man' to be considered the 'criminal' or 'inmate' norm. Comack (1996) asks an important question of prison policy for women in Canada, namely, whether it is effective in addressing the unique 'troubles' of various different women. If feminist discussions consider the possibility that incarcerated men also possess a range of unique circumstances, perhaps the same question could be asked of them: is the 'prisoning' of men effective in helping them deal with the tribulations of their past, and the disadvantages they experience as a result of ethnicity, socioeconomic status, or simply being the 'criminal norm'? Does male penalty in Canada enable men to address their troubles?

It could be argued that correctional institutions and programs for men are heavily influenced by perceptions of appropriate *male* behaviour and traditional male sex roles. Arguably, past discussions of prisons in Canada (and elsewhere) easily dismiss the incarceration of men as the norm, particularly in comparisons to incarcerated women. However, Hannah-Moffat's (2001) critical post-modern work provides a promising foundation for a study of the incarceration of men in Canada, one that considers gender in a deconstruction of accepted modernist impressions

of penal history – the pervasive discourses of ‘progress’ and care, the taken-for-granted nature of ‘the inmate’ and the legitimacy of carceral knowledge. This approach has successfully revealed the problems with women’s carceral regimes, but the question remains: If the same enquiry is conducted of men’s imprisonment and male inmates, could the walls created by the taken-for-grantedness of gender roles be dissolved? If so, what is required to translate this approach into a study of male imprisonment? Arguably, the solution to this *and* to the gender myopia of that has plagued feminism may be found in the available criminological literature on masculinity.

The next chapter will present a parallel review of major works on the criminal male and the incarceration of men, the goal being to both critique the problems in the ‘masculinist’ literature, and to ‘fill’ the gaps in the feminist literature. This discussion will show the issues inherent in most studies of male incarceration (the acceptance of ‘male’ as the ‘normal’ penal subject, the homogenization of male inmates, the continued dependence on modernist strategies in penal reform for men), and build on the argument that Hannah-Moffat’s brand of feminist analysis could, with some *help* from the literature on men, be similarly applied to history to reveal the ongoing failures of the men’s system.

## Chapter 3

### The Male Criminal/Inmate in Academic Discourse

The previous chapter described how criminology and sociology have constituted the criminal woman. Since the early work of Lombroso and Ferrero, criminology and penal policy have portrayed her according to dominant assumptions of the gendered nature of women: women as biologically inferior; women as the purer sex; women as deceitful; women as victims. The most noticeable assumption made by these scholars has been that female offenders and prisoners are the *exception* to the criminal and correctional rule. They have therefore been subject to alternative theories and policies from those developed for the criminal ‘norm’ (men). Beginning in the late 1960s, the infusion of ideas of gender, femininity specifically, by feminists challenged these assumptions, to the point where ideas about women that had been taken-for-granted for centuries were deconstructed and negated (i.e., Smart 1976, 1979; Freedman 1981; Rafter 1982, 1983, 1985a, 1985b; Dobash, Dobash & Gutteridge 1986; Adelberg & Currie 1987; Comack 1996; Hannah-Moffat 1995, 2001). However, although Lombroso, Ferrero, and other early scholars on female criminality based much of their theories on unmeasured, largely incorrect assumptions about women, they indirectly introduced the notion of theorizing about women *as women*. That is, they identified various characteristics *specific* to *women* (however unsubstantiated) as explanations for their deviant and delinquent behaviour, eventually linking these to the ‘treatment’ required to ‘fix’ them. The idea of theorizing on women *as women* has carried on to recent feminist studies, albeit focusing more on the dynamics of *gender* rather than merely sex-based assumptions. In any event, the criminal woman was not simply an object for scholarly examination, but a unique subject of intense discussion – from Lombroso and Ferrero, to recent feminist inquiry.

However, with regard to the criminological and sociological treatment of men, the story is quite different. Scholarly works on the crimes and punishments of men have been abundant in past centuries: from Bentham and Beccaria's 18<sup>th</sup> and 19<sup>th</sup> century works exploring classical approaches to punishment; to Lombroso's biological explanation of the *Criminal Man* (1876); to modernist theories and studies of the mid-20<sup>th</sup> century on crime and delinquency (i.e., Sutherland 1939, Merton 1938, Lemert 1951, Cohen 1955, Becker 1963, Hirschi 1969, etc.); to Sykes (1958) and Clemmer's (1958) examinations of male prison communities; to Foucauldian-inspired post-modern & poststructuralist critiques of crime and punishment (Foucault 1977; Garland 1990, 2001). As noted in the previous chapter, one of the primary criticisms made by feminist sociologists and criminologists writing in the area was the bias in the literature – the development of theories based on the accepted 'criminal norm' (men). Although these scholars are correct in arguing that most criminological and sociological works – both in theory and research – have had men and their crimes and punishments as their focus, they share a similar problem: as Newton (1994) argued, men are typically resource (objects) of study, rather than the topic (subject) itself. Where discussions of female offending and incarceration typically asked questions about women according to their unique characteristics and experiences *as women* – especially in feminist works – discussions of male offending and incarceration largely constituted them as the taken-for-granted *objects* of study, ignoring their uniqueness *as (gendered) male subjects*.

It was not until the 'the masculinity turn' of the 1990s (i.e., Messerschmidt 1993, 1997; Newburn & Stanko 1994; Collier 1998) that scholars began to ask questions about men as a gendered group rather than merely accepting them as the 'norm' of criminality. Since then, criminological and sociological literature on crime and masculinity has been ubiquitous, covering a broad range of topics. However, conspicuously absent is a significant discussion of gender and the punishment of men. Although a few works in the 1990s opened this line of inquiry (Sim

1994; Newton 1994; Carrabine and Longhurst 1998; Evans and Thorpe 1998; Carrabine 2000; Sabo, Kupers & London 2001), there has not been an extensive body of literature, particularly critical literature, which problematizes the gender of inmates in relation to the carceral regime. The question remains, however, whether much would be gained by pursuing a gendered examination of male penalty; based on the strides made by feminist works in recent decades, particularly in the area of penalty, one might argue to the affirmative. Although feminists still struggle against a resistant penal regime, their influence has resulted in an increased awareness of the special needs of incarcerated women, Canada being no exception. However, while men continue to comprise a substantial majority of those incarcerated (as well as substantial majority of recidivists) scholars have continued to ignore the special situations of incarcerated men *as men*, with few advocating for meaningful change on their behalf.

This chapter examines the way criminal men have been constituted in the criminological and sociological literature on crime and punishment, the assumptions about men that have guided these theories, and most significantly, where scholarly thinking about incarcerated men currently stands. In conclusion, inspired by recent feminist pursuits, this chapter will suggest a direction that future examinations *could* go in order to establish a better understanding of prisoners as *gendered men*, and the male penal regime as a gendered social institution.

### **3.1 Back to the Beginning: Criminal Man as Every Criminal**

#### **3.1.1 The Earliest ‘Fathers of Criminology’**

Examining the development of sociological and criminological thinking about the male offender requires a shift in thinking. As argued in the previous chapter, early scholars on criminality (i.e. Lombroso & Ferrero, Pollak) writing on female offenders often treated them as an exception to the criminal norm, given their perceived biological and social differences from

men. On the other hand, most early scholarly discussions on the crimes and punishments of men did not discuss them *as men*, but rather as ‘criminals,’ with their sex being assumed as such. Unlike the anomalous ‘female criminal,’ ‘man’ (i.e., as aggressive, violent, spontaneous, unfeeling) and ‘criminal’ were synonymous terms, ignoring the fact that men, too, were unique in their experiences (i.e., social, cultural, familial) and characteristics.

The tradition of homogenizing the ‘criminal’ as male began with the earliest ‘Fathers of Criminology’ – Cesare Beccaria and Jeremy Bentham. Accepted as the pre-eminent authorities on criminal justice at the time, they set an important precedent in the philosophy of crime and punishment, challenging the capricious nature of legal systems and promoting the humane treatment of ‘criminals.’ Both innovative and controversial, Beccaria’s composition *On Crimes and Punishments*, originally published in 1764,<sup>11</sup> criticized the legal and penal systems of the time for their arbitrariness, stressing the importance of an all-encompassing legal code that would apply uniformly to all ‘citizens.’ As he stated, the objective of such a code should follow one basic tenet: “The greatest happiness to the greatest number...” (1963:xix). As such, Beccaria stressed that the fundamental purpose of any system of law should be to protect society by maintaining order among its ‘citizens.’ However, equally important to Beccaria was that punishments not be brutal or arbitrary:

And yet the groans of the weak, sacrificed to cruel ignorance and to opulent indolence; the barbarous torments, multiplied with lavish and useless severity, for crimes either not proved or wholly imaginary; the filth and horrors of a prison, intensified by that cruelest tormentor of the miserable, uncertainty... (1963:9)

Beccaria’s belief in a fair, equitable, and just system implied a similar view of the citizens that it was meant to govern – the enlightenment view that all were born equal and, as such, had equal

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<sup>11</sup> References to Beccaria’s 1764 work *On Crimes and Punishments* is referenced as the 1963 English translation

freedom to express their will, sometimes criminally. However, delving further into Beccaria's model for social justice reveals quite a different story.

Beccaria defined 'laws' as "the conditions under which independent and isolated *men* united to form a society," with the 'success' of laws being dependent on the willingness of 'men' to relinquish some of their personal liberty to follow them (1963:11). He emphasized the need for a fixed code of laws requiring no interpretation by a judge, but rather, simply a determination of whether an act conforms to law. The constancy of laws and punishments would give 'men' a sense of security, for it "enabled them to calculate accurately the inconveniences of misdeed" (1963:17). However, to Beccaria, every 'man' possessed a despotic spirit that is capable of "plunging the laws of society into its original chaos": these men, who Beccaria termed 'the wicked,' are untrustworthy, often denying their guilt (1963:12). As such, although all 'men' (as rational individuals) were capable of gauging the costs of criminal behaviour, the inherent propensity for cruelty and dishonesty of 'criminals' made them capable of sacrificing social order for their own benefit.

To Beccaria, punishments were a necessary response to the actions of these 'men.' However, the purpose of punishment was to "neither to torment and afflict a sensitive being, nor to undo a crime already committed," but rather should be used to incapacitate the offender and to deter others from committing similar acts (1963:42). To achieve deterrence, Beccaria argued that punishments must be *proportionate* to the crime committed and not exceed that which is necessary to preserve public security. In this way two important goals would be fulfilled: to impose "the strongest and most lasting impression on the minds of men"; and, "to inflict the least torment on the body of the criminal" (1963:43). To Beccaria, punishments that were more severe than was appropriate to achieve deterrence were not only unjust, but made 'men' all the more callous. Further, Beccaria emphasized that in order to be effective, punishments need to promptly

follow the commission of the crime. The more time passed, the less likely ‘men’ were to associate the action with the response: after all, to Beccaria, their “crude” and “vulgar” minds required simple associations (1963:56).

Beccaria’s discussions of legal codes and punishments revealed a number of basic assumptions about his subject. In general, the androcentric language of his work was very much reminiscent of a greater social perception of the time: ‘male,’ as the dominant sex, was representative of the social whole – including women. It could be argued, for example, that although his definition of laws named ‘men’ as the agent, in practice, women would be subject to the same social contract and similar punishment if found to be in violation of it. However, going beyond this cursory view, it seemed that Beccaria did not view women as a concern in the development of laws and punishments, for his system was based primarily on ‘men’s’ ability for rational calculation, as well as the hidden, despotic spirit of ‘men’ that is capable of leading them to misdeed. Where these perceptions of men were common at the time, Victorian perceptions of women as ‘emotional’ and ‘virtuous’ meant they were viewed as irrelevant to a legal system based on logical forethought. Further, men who committed crimes were, to Beccaria, ‘wicked,’ ‘crude,’ and ‘vulgar,’ characteristics commonly attributed to men in the late 18<sup>th</sup> century, but not commonly associated with the feminine. Thus, these subtleties insinuated that the order Beccaria was concerned with preserving was that chiefly among *men*.

Beccaria’s critique of the legal system, and the assumptions that guided it, were continued on in the work of English scholar Jeremy Bentham. Although Bentham wrote many volumes throughout the 18<sup>th</sup> and 19<sup>th</sup> centuries, suggesting a number of legal and social reforms based on utilitarian philosophy, his most relevant work to penalty came in 1791 in a series of

letters and other compositions on prison design.<sup>12</sup> The main premise behind his institutional model was to *convey* the greatest apparent suffering to the public while administering the least real suffering to the inmates. To Bentham (1995), a *spectacle of punishment* must be created – one that produces the effect of severe punishment without actually inflicting it. Thus, Bentham’s model endeavoured to make punishment more humane, while relying on the deterrent effect of the *idea* of pain. With the development of this vision, however, a number of presuppositions concerning the subjects of his new design were propagated.

Like Beccaria, Bentham wrote in a time when social structures, particularly law, were viewed in an androcentric way, with ‘male’ (as the dominant public figure) portrayed as representative of all. As noted of Beccaria’s work, the language Bentham used to discuss his prison design contained explicit references to ‘men’ as the objects of punishment; however, where one could assume that ‘men’ referred to ‘all,’ these references were a superficial indication of a deeper bias guiding his strategy. Early in Bentham’s series of writings on prison design, he stated that the *penitentiary house* – presumably a place that would house all prisoners, both men and women – would be a place of “*safe custody, confinement, solitude, forced labour, and instruction*” (1995:34). Bentham insisted that ‘prisoners’ be held in their own cell, without being able to see or communicate with others. Most importantly, they would be inspected by guards in the centre of the building – who were concealed in such a way that the inmates could not see them. To Bentham, the best possible scenario was that ‘inmates’ be inspected as much as possible, but understood that this would not always be feasible. In these situations, the *impression* of the unseen gaze as constant was key to the efficacy of the design: “Ideal perfection...would require that each *person* should actually be in the predicament, during every instant of time...this being impossible...*he* should *conceive* himself to be so” (1995:44) [emphasis added]. In

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<sup>12</sup> Bentham’s 1791 work is referenced as the 1995 English translation

eliminating physical oppression, both the *real presence* and the *apparent omnipresence* of the guards were vital to the control of a seemingly *male* group of prisoners.

The characteristics of the decidedly male inmate population were abundantly clear as Bentham worked out the details of the institution's function. In general, the design assumed 'men' to be rational individuals, not only in its reliance on the deterrent effect of 'apparent suffering,' both also in the presumed effect of the unseen gaze – that incarcerated men, even when unshackled, would behave sensibly if under the impression that they were being watched. This assumption translated to prison labour, with Bentham arguing that rational 'men,' if given tasks, should *want* to perform them in order to escape the monotony of isolation, make money, and ultimately to avoid the punishment of bread and water if labour is refused. To Bentham, those who behave irrationally (i.e., are not deterred by the 'gaze' or by punishments) do so by choice, with the isolating design of the prison ensuring that the only harm that could be done as a result is that which the prisoner does to himself – for example, by beating his head against the wall: “and who but himself would be a sufferer by such folly” (1995:49). The only 'offence' he could commit would be to make noise, which could be both prevented and punished by gagging. Thus, to Bentham, 'men' were presumed to be logical, with those who behaved illogically having to suffer their (self) punishment in isolation and silence.

Bentham's discussion of visitor policies and his concerns over pre-trial detainment in the institution further revealed assumptions made about his subject. For example, with regard to visits by superintendents, judges, and magistrates (called from the 'superior ranks of life'), Bentham considered the isolating nature of the design tremendously important. To Bentham, the isolation of 'men' in their cells and their separation from public spaces of the institution ensured that “the disgust [of the inmates] is entirely removed” (1995:46). The importance of separating visitor from inmate extended to concerns over the spread of infection from one class of person (the inmates) to

another (the superior ranks of life): “[I]t carries death, in one of its most tremendous forms, from the seat of guilt to the seat of justice, in involving in one common catastrophe the violator and the upholder of the laws” (1995:47). As such, Bentham revealed a very pertinent assumption guiding his design, namely the undesirable nature and poor health of the criminal class. The importance of segregating the ‘criminal’ from the ‘non-criminal’ (and the assumptions behind it) extended to Bentham’s views on pre-trial detention. To Bentham, if allowed to mix, those not yet convicted would be subject to “that mental infection, which novices in the arts of dishonesty, and in debauchery, the parent of dishonesty, are so much in danger of contracting from the masters of those arts” (1995:78). Thus, not only did the institutional design have to protect higher class visitors from ‘the disgust’ (and their infections), unconvicted prisoners were also in need of protection from the diffusion of criminal thinking. This view positioned convicted prisoners as belonging to the ‘inferior ranks of life,’ capable of treachery and dishonesty, but propagated it in the context of Bentham’s previously established rational ‘male’ prison population.

Both Bentham and his predecessor, Beccaria, very clearly expressed their disdain for the unjust and inhumane systems of punishment of the past. As discussed, Beccaria observed that these systems ‘favoured few’ and ‘outraged many’ and, as such, advocated for a fair and just system that treated individuals in a humane manner. Bentham, guided by a utilitarian philosophy, designed a historically unprecedented technology to improve the *physical* treatment of offenders. However, despite the revolutionary nature of their views, the assumptions that these ‘fathers’ perpetuated in their works are evident. Although not outwardly acknowledged, the subject of both Beccaria and Bentham’s discussions was the male offender. There was no mention of the criminal treatment of women, nor of ‘her’ as a subject of their policies. Further, although Beccaria strived to improve social conditions of justice and Bentham the physical treatment of the punished, both accepted basic criminal stereotypes. Often referring to them as ‘the wicked’ or ‘the wretched,’

Beccaria implied that ‘criminal men’ were inherently dishonest and deceitful. Bentham furthered this position of inferiority, with the co-determinant assumptions about criminal men driving a prison design based on isolating this class of men from all other. Both Bentham and Beccaria depended on a view of criminal men contemporary to that time, one that saw them as dangerous and innately capable of immoral behaviour.

However, central to this was the classical view of men as rational, having the freedom to choose the course of their behaviour. Both works relied heavily on the principle of deterrence, which necessitates that ‘men’ control their behaviour due to *possibility* of punishment: those who commit crimes defy this logic because they do not weigh the consequences of crime prior to acting. To Beccaria and Bentham, however, it was not the fleeting pain of physical punishment that deterred the rational man from committing crime, but rather the ongoing example of deprivation through confinement. As Beccaria states: “It is not the terrible yet momentary spectacle of death of a wretch, but the long and painful example of a man deprived of liberty, who, having become a beast of burden, recompenses with his labours the society he has offended, which is the strongest curb against crimes” (1963:47). However, in relying so vehemently on the assumption of man as ‘rational,’ and ignoring the social, economic, and cultural positions of incarcerated men, Bentham and Beccaria’s theories were fundamentally flawed: neither could account for repeat offending.

The assumptions at the foundation of these early philosophies would resonate through the coming centuries. Not only did they establish men as the taken-for-granted criminal norm, they also solidified the ‘criminal man’ at the lower echelons of life. Further, the sex bias at the heart of Bentham and Beccaria’s works ignored the reality that women of their time were committing crimes. The general acceptance of women as the ‘purer’ sex meant that criminal women did not fit into their established mould – either the status of women at that time did not render their

crimes, nor punishments, worthy of consideration, or the assumptions made about the criminal norm (i.e., as diseased, wretched, wicked, manipulative) could not explain women appropriately. Whatever the reason, these early works clearly established their ‘criminal’ subject as the ‘rational man,’ setting a precedent that would not soon be challenged.

### **3.1.2 Scientific ‘Fathers of Criminology’: Criminal (Man) as Biological Anomaly**

Encouraged by Bentham and Beccaria’s example, the use of incarceration as punishment saw increasing popularity in the late 18<sup>th</sup> and early 19<sup>th</sup> centuries; however, accompanying this was a rising dissent over prison conditions. The early to mid-19<sup>th</sup> century witnessed the birth of a movement, led by the Quakers of England, which attempted to improve the conditions of prisons. Inspired by religious altruism (aiming to ‘save’ wayward souls), reformers shaped the direction of penalty toward a ‘softer’ approach to incarceration, one that showed care and concern for male and female offenders alike. Utilitarian philosophy and religious reform did not occur in isolation, but were the antecedent to a broader public attempt at social welfarism. Accompanying this shift in social ideology was a transformation in thinking about criminals themselves – from philosophizing on how to best respond to criminality to systematic inquiry on factors leading to this behaviour. This ‘birth’ of positivist criminology saw the analytical lens narrow its focus more closely on the criminal individual in order to scientifically determine the best course of response; however, it was also a subtle objection against classical views of the ‘rational man,’ in favour of more pathological orientation to criminality. As discussed in the previous chapter, positivists such as Lombroso, and later, Pollak & Thomas, relied on the ‘new science’ to provide an explanation for women’s criminal behaviour, in a manner specific to their physiology *as women*. However, with regard to men, they continued on the same path set by Bentham and Beccaria: ‘man’ as the bodiless criminal norm; ‘woman’ as the corporeal exception.

One work notable for both its content and its irony was Lombroso's '*Criminal Man*' – originally published in 1876, the final edition published in 1896-97. As the founding father of 'criminal anthropology,' Lombroso pushed the study of criminality toward a positivist science, moving from 'abstract philosophizing' to 'fact-based' research. As discussed by Gibson & Rafter in their introduction to the newest translation of *Criminal Man* (2006), Lombroso sought a more systematic approach than those previously offered by secular thinkers, something he considered important in an increasingly liberal society. Although not rigorous, his assumptions often seriously flawed, he opened the door for a new way to consider criminality - at the level of the individual offender. However, this 'new' way of thinking also perpetuated a number of common assumptions about the 'criminal norm.'

The first edition of *Criminal Man* introduced Lombroso's concept of the 'atavistic offender' or 'born criminal.' Marked by physical and psychological abnormalities that were reminiscent primitive people and even animals, the born criminal was an individual effectively stunted in evolution. To Lombroso, the 'born criminal' was noticeably "insensitive to pain," an external sign of an internal immorality which, he argued, led to his lack of remorse and raucous behaviour: "Complete indifference to their victims and to the bloody traces of their crimes is a constant characteristic of all true criminals, one that distinguishes them from normal *men*" (2006:63) [emphasis added]. Thus, underlying this theory was not only the assumption that criminals were biologically predisposed to criminality but, in perhaps the most obvious yet unacknowledged respect, it was only men that could be born that way – and be capable of such 'bloody' misdeeds.<sup>13</sup> As a result of widespread criticisms of the deterministic foundations of atavism, future editions of *Criminal Man* amended the theory to include classifications of

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<sup>13</sup> It would not be until his later work, *Criminal Woman, the Prostitute and the Normal Woman*, that Lombroso would acknowledge the omission of deviant women from his theory.

criminals, some of which accounted for ‘social’ factors (i.e., alcoholism, sexually transmitted disease, malnutrition). These types of individuals were not considered ‘born criminals,’ but their unique conditions had the potential to trigger similar psychological states. As Lombroso honed his theory and modified his classifications, he increasingly used ‘social factors’ to explain the criminal (man). However, despite this recognition, he never admitted that the criminal (man) was capable of agency.

Although not part of mainstream discussions of Lombroso’s work, *Criminal Man* also discussed his views on punishment. Opposing the classical philosophies that stressed imprisonment, the moral responsibility of criminals, and the deterrent effect of punishment on the ‘rational man,’ he argued that the born criminal was irreversibly immoral. As such, Lombroso viewed prison as incapable of inciting accountability and preventing the criminal from acting on future urges. To Lombroso, prisons were not a humane alternative to more ‘brutal’ punishments, but rather were sites for the transfer of criminality: “Although imprisonment was designed to protect society, it actually provides inmates with introductions to accomplices and instructions in crime” (2006:90). Therefore, Lombroso argued, prisons were required to both separate criminals from the law-abiding *and* from each other – particularly those classified as ‘born criminals’ from those not.

Lombroso’s position on punishment suggested a view of the criminal (man) as having diminished moral responsibility, given the biological (and therefore, uncontrollable) nature of his actions. Based on this position, he adopted a ‘paternal’ approach in his suggestions for prison reform, some of which reflected his biologically deterministic view of the criminal (man), others of which were in direct contradiction to it. Reminiscent of the former, he stressed the need for exercise and other mandatory labours to quell inmates’ natural ‘aggressions.’ Further, he also discouraged extensive education in prison, citing the danger that intelligence among deceitful,

immoral criminals posed. However, in a rather contradictory manner (perhaps geared more toward those offenders *not* of the 'born' variety) he recognized the benefit of literacy and training in "useful trades" in efforts to prevent poverty amongst those released (2006:142). Lombroso even urged the *individualization* of punishment, arguing that the unique classifications of offenders be considered in the development of appropriate conditions of incarceration. He also suggested offender-specific institutions based on his classifications: one type to separate the born and habitual criminal from society; another type providing psychiatric treatment for the morally insane; and others for the treatment of alcoholic and epileptic criminals. Further acknowledging the 'social' causes of crime, he recommended a number of 'penal substitutes,' practical changes (i.e., alarms, early moral education of children, divorce) that would discourage crime in the community, decrease the probability of domestic homicides, and alleviate poverty. Thus, despite the 'atavistic' foundation of his theory, many aspects of Lombroso's views on punishment (primarily found in later editions) revealed not a hardened positivist who distanced himself from his 'born criminal,' but rather, someone compassionate toward a group that he felt simply could not control their behaviour.

However archaic Lombroso's ideas seemed, he did introduce analysis of the offender at an individual level, surpassing the boundaries of traditional philosophizing on crime and justice. Further, although he constantly reiterated 'social defence' as the goal of incarceration, he did sympathize with the inmate, suggesting a number of means to quell the indolence of prison life and discussing with tremendous respect their artistic works. However, the irony of *Criminal Man* was that although the title suggested a work specifically concerned with men, it did not discuss men as a gendered group. Rather, 'criminal man' represented all criminals, always presumed to be men. 'Criminal woman' made brief appearances in some editions, but she was the exception,

her behaviour explained *in relation to* ‘criminal man.’ Essentially, *Criminal Man* was *more* about ‘criminal’ and *less* about ‘man’ – continuing to propagate man as criminal norm.

Although phrenology was not taken seriously beyond the 19<sup>th</sup> century, Lombroso’s orientation to studying criminality (positivism/determinism) gained momentum, as did the political ideology of welfarism - the idea of state responsibility for the care of ‘helpless’ individuals. Penal welfarism, an orientation to social control very much reminiscent of Western political ideology at the time, both informed and was informed by a new correctional expertise, one that increasingly considered social and psychological explanations for men’s criminal actions and stressed the need to care for and reform those individuals who were victims of social ills (Garland 2001). However, although innovative ‘new’ ideas gained momentum, both in the field of penal welfarism and in the study of criminals (*including* the female criminal), there still was little acknowledgement of the ‘criminal man’ as *man*.

### **3.2 Criminology’s Golden Age: Criminal (Man) as Socially & Mentally Ill**

#### **3.2.1 Early Theories: Considering the Social**

In the years following World War II, penal welfarism had become deeply rooted in western crime control ideology. ‘Justice’ discourses had faded into talk of social responsibility, with criminal behaviour being perceived more as a result of social deprivation than biological evil. With roots in the new ‘science’ of crime, correctional approaches depended heavily on the knowledge of social and psychological experts, and worked toward the improvement of education, employment, family support, and psychological adjustment (Garland 2001).

The ongoing development of knowledge of the criminal man, and the concurrent discourses of the 1940s, 1950s and early 1960s, very much reflected this social state. Although this ‘golden age’ of theories on the criminal saw a number of different explanations emerge –

Merton's Strain Theory, Cohen's Subcultural Theory, Sutherland's Differential Association, and many more – a general perception of the criminal subject was evident. To all of these theorists, criminal behaviour, particularly the delinquency of boys, could be explained by under-achieved socialization, deprivation of fundamental necessities required to function as a law-abiding citizen, and the social-psychological consequences of this deprivation. No longer *direct* victims of their biological predisposition to criminality, criminals were instead a product of their social environment – a conclusion drawn primarily from observations of men and boys.

Merton (1938) was one of the first to formalize the idea of social causes of crime, observing that individuals who experienced a discrepancy between culturally defined goals (i.e., wealth, power prestige, stability) and the means to obtain those goals (i.e., education, employment) often turned to anti-social behaviour to mend this discrepancy. To Merton, an eroded moral social state and lack of appropriate family, education, and religious support contributed to this failure to achieve, resulting in a state of strain (anomie) that led to the use of socially unacceptable means to obtain necessities. In proposing this, Merton negated past theories that suggested biological drives caused individuals to violate social controls, asserting that it was social structure that led to delinquent behaviour: “social structures *exert a definite pressure* upon certain persons in society to engage in nonconformist rather than conformist conduct” (1938:672). However, the fact that Merton's conclusions were drawn largely from observations of those who, at the time, participated in the economic sphere – namely, men – was problematic. As Messerschmidt (1993) observed, if the theory was applied to both sexes, logically it would conclude that women commit more crime than men, given their lack of economic opportunity. Although being one of the first to recognize the role of social class in offending, his theory also failed to explain the overrepresentation of males as offenders *because* he did not acknowledge the gender bias of his observations.

Social learning and subcultural theorists (i.e., Sutherland, Cohen) continued in a similar vein as criminology increasingly looked to the role that socialization and learning played in deviance. Sutherland's theory of Differential Association, originating in 1939, was based on the premise that "crime is rooted in the social organization and is an expression of that social organization" – with learning being a significant factor in that process (Sutherland & Cressey 1969:18). Specifically, it stated that an individual's associations with deviant others would lead him to learn more 'definitions' (i.e., attitudes, motives, techniques) favourable than unfavourable to law violation. The more time spent with deviant peers (learning criminal definitions), the greater the likelihood that an individual would engage in criminal behaviour. In developing his theory, Sutherland did observe that criminal activity is most associated with men: nothing "is so frequently associated with criminal behaviour as being male" (1942:19). However, he failed to problematize this, waiting several years before acknowledging the differences in offending between males and females. In doing so, Sutherland (1947) reverted to a sex-based explanation of social learning, arguing the boys are simply taught to be more aggressive than girls.

Following this example, Albert Cohen (1955) relied on sex-based socialization in his subcultural strain theory of delinquency. In his examination of boys' gangs, Cohen explained that delinquency was the result of lower class boys' frustration over failing to achieve middle-class norms, this frustration leading to a rejection of these norms and the acceptance of an oppositional subculture. To Cohen, where certain boys are unable to attain status in "respectable society," the delinquent subculture "deals with these problems by providing criteria of status which [they] *can* meet" (1955:178). In attempting to explain the sex-differences in gang involvement, Cohen proposed the idea that males reject 'feminine' socialization as a threat to their status as males; this is particularly true of lower and middle-class boys who are less likely to have the benefit of a stable masculine influence (given the father is often working outside the home, or not present at

all). As such, Cohen argued, they are drawn to gang activity given it appealed to, and reinforced, their male sex role. Although acknowledging the ‘masculine’ nature of deviance Cohen, and Sutherland before him, viewed the deviant boy as having been socialized according to his ‘natural’ difference from girls – with his conclusions drawn primarily from observations of *male* deviance.

These theories marked the early stages of a debate in criminology that continued through the 1940s, 1950s, and 1960s, one that witnessed constant challenges and substantiations in a continuous cycle of academic inquiry. Although they varied in their orientation to deviance, all had their foundations in the social (e.g., class struggle, subculture, social learning), a dramatic departure from Lombroso’s atavistic man. As such, an obvious shift in thinking about the criminal (man) occurred, from a substantially negative focus on the biologically maladapted ‘wretch’ to a more ‘responsible’ focus on the socially deprived and/or poorly socialized unfortunate. As identified by Garland (2001) these criminological theories would reflect and be reflected in the social response to crime, which came to have a strong focus on correcting and supporting the individual once intercepted. This type of criminal subject could only be helped with individualized social and psychological treatment, involving family and social supports, and welfare assistance to obtain the tools necessary to function as a contributing member of society.

However, although this shift to a ‘softer’ form of theorizing and punishing may have signaled some sort of positive change, the criminal was still considered in a largely ‘generic’ fashion. Although these theorists had begun to question the role of class struggles in offending, gender remained largely unproblematized. Those who did acknowledge sex-differences in offending (i.e., Sutherland, Cohen) relied on a dichotomous view of differential socialization founded on biological sex-differences: boys, being boys, were taught to be aggressive; girls, being girls, were taught to be emotive. In any case, much of the ‘research’ on criminality at the

time was based on observations of men and boys. 'Male' was the socially accepted delinquent to most theorists in this period, with 'female' simply being the opposite.

### **3.2.2 Prison Sociologies: Finally, Criminal (Male) as Punitive Subject?**

Although many social theories on criminality emerged in the first half of the 20<sup>th</sup> century, few focussed on the role or effects of prison. However, concerns over the 'effectiveness' of a western correctional system designed to 'treat' the social disease of criminality resulted in the emergence of a new type of academic inquiry: prison sociology. Although a number of studies had emerged on recidivism, Gresham Sykes (1958) and Robert Clemmer (1958) were among the first to observe that theories and research on the prison *experience* were scant. Following in the tracks made by subcultural and social learning theories, and continuing the focus on 'criminal men,' these sociologists examined prison at the micro-level of prison interaction, the findings from which revealed a unique institutional culture. Sykes (1958) discussed prison social organization as a 'society of captives,' Clemmer (1958) as a 'prison community,' both with the aim of understanding exactly 'what happened' to inmates while incarcerated.

Clemmer's work, originating from data collected in the 1930s, focused primarily on (male) inmates themselves, the antecedents to their crimes, their characteristics, and the process of their 'acquiring' the inmate subculture. According to Clemmer, inmates undergo a process *prisonization*, defined as the adoption of "folkways, mores, customs, and general culture of the penitentiary" (1958:29). According to Clemmer, and later Sykes (1958), prisoners formed highly integrated subcultural groups, the values of which produced *resistance* to the goals of reformation. Essentially, Clemmer observed, inmates were more apt to internalize the subcultural norms than the rehabilitative norms. As Sykes (1958) later revealed, this process was influenced by both the collective experience of, and close contact with, 'criminal' others: "the prisoner is thrown into prolonged intimacy with other men who in many cases have a long history of violent,

aggressive behaviour" (1958:77). Thus, to Sykes, the inmate was not only *exposed* to deviant communications in an environment of similar 'others,' but also developed close relationships with them that resulted in a mutual sharing of experience – ultimately having a counterproductive impact on prison rehabilitation. As observed by Clemmer, the prison culture “has much greater influence on individuals’ personalities...than all the rules, official accomplishments, sermons or other factors intended to guide their lives” (1958:295).

Sykes (1958) added an additional factor to his study, observing the role that the prison regime played in this process. Sykes viewed the prison as a place where individuals were subject to a totalitarian regime, regulated by the invisible hand of bureaucratic rationality. He argued that the effect of this ‘system of total power’ on both the rulers and the ruled could only be understood by examining the prison social system itself. Sykes questioned whether and how an institution designed to deter and reform criminal men actually had a beneficial effect. He observed that the model of ‘total power’ upon which the regime was based required a moral responsibility on the part of the prisoners to succumb to its regulations; however, this being largely unsuccessful, the keepers loosened their grip on control, resulting in a great deal of non-compliance and deviant behaviour on the part of the inmates – at times, in the form of riots: “The system breeds rebellions by attempting to enforce the system’s rules. The custodians’ efforts to secure a greater degree of control result in the destruction of that control...in those uprisings we label as riots” (1958:124). Sykes also spoke of the pains imprisonment created by the regime: deprivation of liberty; lower standard of living; few relationships; loss of independence; and, a feeling of diminished security. To Sykes, the male prisoner is constantly reminded of his status as a rejected and undeserving member of society, as someone who “must be kept apart from ‘decent’ men” (1958:67). To mitigate these deprivations, the prisoner finds solace in social interactions with other prisoners – the group cohesion and solidarity that, to Sykes, “emerges as a dominant value” (1958:82). Sykes

echoes Clemmer (1958) in arguing that it is this inmate social system which must be taken into account in any and all efforts to reform the prison: “any effort to reform the prison – and thus to reform the criminal – which ignores this social system of the prison is as futile as the labours of Sisyphus” (1958:135). The prison social system, engendered by the nature of the authoritarian regime, perpetuates the prisoner’s deterioration and works against his rehabilitation.

Sykes and Clemmer were the first to bring sociological inquiry through the walls of the penitentiary, and into the lives of (male) inmates. Prisoners themselves had become an object of academic study, with their own words often being used to convey the ‘reality’ of prison life, challenging accepted views of the reforming effect of prison. To both authors, especially Sykes, the male inmate was viewed as an agent of the penal regime, capable of resisting the goals and expectations required of him. However, both Sykes and Clemmer’s ‘inmate’ was largely typecast as bad, deceitful, *wanting* of criminality, capable of spreading it to others – and, importantly, *male*. For example, Sykes spoke of the corruption of guards by the ‘captive criminals,’ at times resulting in their enabling inmate deviance, at others joining in their criticism of the administration. With regard to gendering the subject, they continued in the tradition of ignoring the significance of inmates *as men* in a *male* institution, with one interesting exception: discussions of masculinity and masculine behaviour did appear in reference to inmate sexual relationships. For example, Sykes viewed the deprivation of heterosexual relationships as forcing the inmate to renegotiate his ‘maleness,’ with some adopting a passive, feminized masculinity in their homosexual prison relationships, and others developing a more aggressive, dominant masculinity. Clemmer took a very similar standpoint, discussing inmates as taking on ‘masculine’ vs. ‘feminine’ roles in prison relationships, and also discussing prisoners’ struggles with ‘manhood’ due to the absence of women. However simplified, there is a realization of the

criminal man as a gendered subject, however strictly in relation to his sexual behaviour. In other aspects of prison life, the inmate continued to be the ungendered criminal standard.

Prison sociologies made public the inner workings of an environment of which few had previous knowledge. The findings from these studies (suggesting the counterproductive effect of prison), combined with fears of an *apparent*<sup>14</sup> rise in crime, contributed to a mounting skepticism over the model of the ‘reformable’ criminal man that had been heavily relied upon by academics, politicians and policy makers alike for a good part of the 20<sup>th</sup> century. The rumblings of dissent over the utility of incarceration, peaking with Martinson’s (1974) overwhelming charge that ‘nothing works’ in reforming ‘criminals,’ foreshadowed the certain demise of the ‘reformable criminal man.’ As discussed in the previous chapter, by this time, the study of criminal women ‘as women’ had been claimed by second-wave feminism. However, mainstream criminology did not follow this example with regard to men, instead focusing on an increasingly popular form of thinking about ‘the criminal: no longer was he a *deprived* criminal in need of treatment, but was instead simply a product of inadequate control.

### **3.2.3 A Return to Inherently Criminal? The Criminal Man as Uncontrolled and Ungendered...Again**

As more questions were raised concerning the effectiveness of ‘corrective’ criminal justice mechanisms (i.e., police, courts, institutions), criminology made a new turn in the late 1960s. Although many continued in the social learning/subcultural direction founded by the likes of Merton, Sutherland, and Cohen, the question of *control* increasingly dominated explanations of criminal behaviour. As observed by Garland, the type of offender referred to by these emerging

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<sup>14</sup>As Garland (2001) observed, the period of 1960 to 1980 saw a “rapid and sustained increase in recorded crime” in all Western industrialized countries (90). However, changes in reporting and recording practices as well as “evidentiary problems inherent in criminal statistics” could have produced this increase, rather than a change in the ‘real’ amount of crime.

theories was born “from a much darker vision of the human condition,” assuming individuals to be “strongly attracted to self-serving, anti-social, and criminal conduct” (2001:15). Thus, this version of the criminal man was not born that way, nor was he the victim of social injustice; rather, he *wanted* to be that way.

Although some theories (i.e. Sutherland’s Differential Association) had introduced the idea that social relationships could be related to an individual’s propensity for criminal behaviour, Hirschi (1969) fully engaged this notion, developing a theory of criminality based entirely on social control. Hirschi assumed that individuals engaged in delinquent behaviour due to a lack of social bonds (i.e., attachment to significant others, commitment to positive lifestyle, involvement in pro-social activities, belief in accepted moral code). The fewer connections an individual had to family, friends, work, and pro-social beliefs and activities, the more likely that individual will engage in opposing behaviour. Thus, to Hirschi, crime should not be explained according to why individuals *do* commit crime, but rather why they *do not*; individuals who do not engage in criminal activity obviously have better social controls. Throughout the following decades, this original theory of control inspired a number of similar others, expanding on the idea of social control to consider situational control (i.e., Clarke 1983) and later, self-control (i.e., Gottfredson & Hirschi 1990). Theories of situational control (or ecological theories of crime) argued that individuals engage in criminal activity due to inadequate social, environmental, and psychological controls on their behaviour. Gottfredson and Hirschi’s ‘General Theory of Crime’ implicated low self-control (i.e., impulsivity, spontaneity, etc.) as the cause of crime, perpetuated by poor child-rearing by both the family and the school. In any event, control theories of crime painted quite a different picture of the criminal, one that depicted him as a normal but uncontrolled individual.

From the 1970s onward, control theories provided much of the substance of modernist debate over causes of crime. A cycle of theoretical development, empirical testing, and theoretical re-development of control theories defined a number of decades of criminological discussion, occurring against the backdrop of a social-ideological change from state welfarism to state control. Amidst this debate, empirical tests of the theory (i.e. Hagan, Simpson & Gillis 1979; White & LaGrange 1987; LaGrange & Silverman 1999) acknowledged gender differences, but largely to the extent that females simply were more controlled than males. Gender was not discussed by control theorists in a complex, problematized sense, but rather as a function of explaining sex-differences in offending.

As more challenges were posed to the western system of crime control throughout the 1970s and 1980s, and as policy makers struggled to find answers, the ‘comfortable image’ of the criminological enterprise itself “fell into despair”: as Morrison identifies, “things which had been relegated to the past, such as the classical approach to crime...were back on the agenda,” as scholars and policy makers alike struggled to explain what was happening (1995:8).

### **3.3 Rethinking the Past: Foucault’s Critiques**

As the turmoil of late modernity brewed, accompanied by a growing uncertainty over criminal justice policy, the field of criminal ‘expertise’ became increasingly fractured: where some remained dedicated to modernist approaches, an increasing number of others critiqued them and the system based on them. As discussed in the previous chapter, feminism critiqued the exclusion of women and consideration of gender in criminology and criminal justice policy development. Post-structuralist liberal historians (i.e., Ignatieff 1978; Rothman 1980) described the rise, and subsequent failure, of carceral institutions as a product of modern Western social structures, questioning previously accepted notions of the ‘progress’ of penality. Foucault (1977) took this brand of revisionist history one step further, interrogating historically taken-for-granted

systems of knowledge, expertise and power in the area of criminality and punishment. The subject of his critique differed substantially from that which had appeared in criminology, sociology and policy in previous decades: where modernist approaches focused on the behaviour of offenders (whether as biological anomaly, unsocialized unfortunate or uncontrolled rational agent), and histories focussed on the 'progress' of criminal justice, Foucault critiqued the much relied upon ideals in criminal justice (i.e., corrections, rehabilitation) by examining the macro-historical contexts in which they arose, the mechanisms of power that founded and perpetuated them, and the offender/prisoner as subjects of them. However, the tradition of male as criminal norm, and the ungendered male penal subject, would be continued in his work.

Foucault's *Discipline and Punish* (1977) was the hallmark of a stream of thought challenging the rhetoric of the 'progress' of penality and prison as an effective punitive technology. To Foucault, although dominant forms of justice and punishment changed from physical harm to the body, to loss of liberty, to expert-guided reform, these changes could not be viewed as decreasingly punitive and increasingly humane, but rather, as a qualitative change in target from body to soul. Key to this understanding was his idea of *discipline*, an expression of power that trains and coerces individuals so as to maintain control of their behaviour. To Foucault (1977), prison was one form of disciplinary technology among many that was used to regulate behaviour, using a number of disciplinary techniques designed to maintain order in the institution and create 'docile bodies.' As he described, among these techniques were: 'the art of distributions' (the control of the distribution of individuals in space - i.e., enclosure, partitioning, establishing functional sites); the 'control of activity' (i.e., time tables, temporal rhythm, non-idleness, etc.); 'the organization of geneses' (rearranging activities in time for maximum productivity - termed 'disciplinary time'); and, the 'composition of forces' (the combination of all techniques - control of body, time, space - and an accompanying system of command to

ensure an efficient disciplinary machine). In the disciplinary ‘machine’ of prison, these techniques were reflected in strategies such as daily schedules, architecture, positioning of inmates (i.e., in cells, during work), exercise – all carefully regulated by agents of the regime. Foucault further argued that this system of control was not restricted to the prison, but to other areas as well (factory workers, school children, soldiers), the subjects of whom were regulated in seemingly benevolent ways – from their daily routines and activities (i.e., the regulatory timing of factory workers’ labour to maximize efficiency) to their physical organization (i.e., putting school children in rows; correcting the posture of soldiers; the physical arrangement of factory machinery).

Importantly, to Foucault, all of these disciplinary techniques were regulated by a complex network of surveillance, forming “an ‘integrated’ system, linked from the inside to the economy and to the aims of the mechanism in which it was practiced” (1977:176). This complex system, he argued, allowed disciplinary power to function both in an “absolutely indiscreet” manner, given it is all around, and an “absolutely ‘discreet’” manner, given that it “functions permanently and largely in silence” (1977:177). In this way, the bodies and minds that are both the ‘objects and instruments’ of discipline are ‘trained’ in a “modest, suspicious” manner (1977:170). This left disciplinary measures, and the supervision that maintained them, largely unseen and unquestioned by those who were subject to them (i.e., as in the Panopticon).

Central to understanding this process, according to Foucault (1977; 1980), was awareness of the relationship between power, knowledge, and the body. To Foucault, the ‘criminal’ body in particular was historically an object of knowledge and a conduit of power. The penal regime as an ‘apparatus of knowledge’ would generate knowledge of those in its keep, ultimately endorsing the ‘prison expert’ as the authority. The knowledge legitimated by the prison expert was used in the development of disciplinary techniques, making it key to mechanisms of power, according to

Foucault. However, importantly, these mechanisms of power were not merely repressive, but rather generated a number of outcomes – control, discipline, docility, productivity – all in the name of political and economic interests. As such, Foucault’s conception of penal power was not as something ‘possessed’ and imposed by the sovereign or state, but rather a strategy, informed by knowledge, diffused by and through inmate bodies and minds: “[I]n thinking of the mechanisms of power, I am thinking rather of its capillary form of existence, the point where power reaches into the very grain of individuals, touches their bodies and inserts itself in their actions and attitudes, their discourses, learning processes and everyday lives” (1980:39). The knowledge generated from punished minds and bodies would lead to a body of expertise to guide future technologies of control: “power has a need...for such-and-such a form of knowledge, but...the exercise of power itself creates and causes to emerge new objects of knowledge and accumulates new bodies of information” (1980:51). However, important to this concept was an understanding of the *integration* of knowledge and power: one cannot exist without the other, and no line might be drawn between them.

Foucault’s view of power took on a number of different forms in future works. To develop an understanding of non-repressive forms of power, Foucault introduced *pastoralism*, what he suggested was an “old power technique which originated in Christian institutions” (1983:23). Pastoralism thus explained the seemingly benevolent, Christian-centred discourses and techniques that were used to ‘save’ wayward ‘criminal’ souls. Driven by personal, non-scientific knowledge claims, Foucault argued that pastoral power relations were characterized by moral discourses of salvation, sacrifice, and care: “[I]t is salvation oriented...it is individualizing (as opposed to legal power); it is coextensive and continuous with life; it is linked with a production of truth – the truth of the individual himself” (1983:214). In incorporating this notion, Foucault’s conceptualization of power accounted not only for the role of expert (i.e., psychological,

criminological) knowledge in penal power relations, but non-expert (i.e., Christian) knowledge as well.

To further understand power relations, particularly with regard to the role of the state, Foucault (1991) introduced the concept *governmentality*. To Foucault, governmentality as a theoretical and analytical concept enabled a better understanding of the ways in which governing bodies employ techniques, strategies, knowledge, etc., in their attempt to shape, affect, and change the conduct of the governed. Part of this involved establishing an understanding of the role and purpose of the governor, and the nature of the governed – not to mention the goals, outcomes, consequences, etc., of governance. Theorizing on governmentality was later extended to ideas of self-governance (Dean 1999), the ways in which an individual questions his or her own actions in order to govern it more effectively. Collectively, these concepts allowed for a more inclusive examination of power relations in penal settings – from the subtle modes and technologies the state/regime utilize to control inmates and maintain an ordered system, to the ways in which inmates are made responsible for governing their own behaviour.

Foucault's works inspired a vast body of literature that critiqued and reconceptualized accepted discourses of 'progress' in penality, uncovering an alternative way of thinking about inmates as subjects of penal repression and prisons as instruments of state control. Foucauldian analysis also changed views of penal power, and questioned previously relied-upon 'knowledges' of the criminal; as such, he conveyed carceral knowledge not as a progressive accomplishment of experts (or non-experts, as in the case of pastoral power), but rather as an instrument of power and control. Although Foucault questioned many of the categories, theories and assumptions perpetuated by science, psychology, sociology, and criminology over the previous decades, his work did continue one of the traditions established by these disciplines: the treatment of the male offender as 'every' offender. This is particularly evident in *Discipline and Punish*, where, despite

focusing more closely on the inmate as a subject of power, he followed in a path set by so many before him: characterizing the criminal/carceral subject as 'he,' without problematizing it. Thus, although Foucault's work broke new ground in thinking about penalty, and about power relations in general, he failed to consider the gendered nature of knowledge and power, and the prison as a gendered institution.

### **3.4 "The Masculinity Turn": Male Inmate as...Gendered Man?**

Although modernist, postmodernist, and even feminist research had historically refused to problematize the gender of the 'criminal man,' the late 1980s would witness a break in this stalemate. Following the precedent set by second wave feminist studies on women, academics began to question why similar considerations of gender had not been applied to sociological (and later criminological) inquiries of men. R. W. Connell (1987) solidified these inquiries in *Gender and Power*, where he introduced the notion of 'ideal types' of gendered behaviour for *both* men and women. The ideal male type, according to Connell, was 'hegemonic masculinity,' the culturally honoured and extolled 'maleness' that guides gendered behaviour in everyday life. To Connell, against this hegemonic hallmark, all other types of masculinity were viewed as subordinate. Connell's work called into question the ungendered male subject of many and most academic studies, bringing the gendered male to the forefront. He also offered a conceptual framework for examining institutions, which involved four elements: the institutionalization and control of hegemonic masculinity, the persistent and general use of force by men against men, the development of relationships between different masculinities, and the exclusion of women from positions of power. This framework reflected Connell's strong belief that any sociological discussion on or about men must consider them as *gendered* male subjects. Hearn and Morgan supported this observation, arguing:

[S]tudies which are routinely about men, in that men constitute the acknowledged or unacknowledged subjects, are not necessarily about men in a more complex, more problematized, sociological sense. They tend to be resource rather than topic. (1990:7)

Importantly, Morgan further observed that it was time sociology examined men as “gendered individuals rather than as ungendered representatives of humanity” – the latter very much evident in traditional criminological accounts (1992:3).

Connell’s views on gendering the male subject (later echoed by Hearn and Morgan) were soon applied to theories and research in criminology and socio-legal studies. A number of works (i.e., Messerschmidt 1993, 1997; Newburn and Stanko 1994; Collier 1998) appeared in the 1990s that drew attention to the long-standing overrepresentation of men in crime, and further, questioned why little had been done academically to critically address *gender* in understanding this imbalance. Messerschmidt observed that criminology had traditionally “treated the issue of gender in a manner that depoliticized it” (1997:viii). That is, although obvious sex differences in criminal involvement existed, and although men were very much treated as the criminal norm (against which all ‘exceptions’ were measured), little was done to acknowledge these issues in a way that accounted for gender differences. To the contributors to the ‘masculinity turn,’ comparing the gendered female offender to the ungendered ‘male criminal norm’ not only downplayed the role of masculinity, but objectified and homogenized men – exactly what feminists charged had been done to women. In order to address the obvious neglect of the male criminal subject, these ‘masculinity studies’ set out to critically re-examine criminal men and boys according to their unique characteristics, and to clarify the obscure category of ‘criminal man’ that had been the oft-used standard of criminality in many previous discussions.

Although few works in criminology and sociology had ‘the prisoner’ as their focus, this changed as the ‘masculinity turn’ unfolded. A number of very important, largely theoretical discussions (i.e. Sim 1994; Newton 1994; Carrabine & Longhurst 1998; Evans & Thorpe 1998;

Lutze & Murphy 1999) began to ask the same questions of gender and men's imprisonment that feminists had asked of women's imprisonment in previous years. As part of Newburn and Stanko's (1994) edited work, Sim remarked on the increase in studies examining prisons and punishment, ranging from prison sociologies, to histories, to critical Marxist and abolitionist works. However, he also observed that although many of these studies had their individual merits, they conceptualized "*men as prisoners rather than prisoners as men*": they were studies and theories on male prisoners, but not in a gendered sense (1994:101). To Sim, the subculture within the institution, the experiences and actions of individual inmates, and the role and goals of the male prison did not reflect, nor could be explained by, a homogenous category of 'man'; as such, drawing strongly on Connell (1987), Sim argued that a lens accounting for the diversity of gender was required to develop a true understanding of penalty. However, this lens must not only recognize that a culture of masculinity provided the basis for individual actions, but that this culture itself was diverse, "containing internal contradictions and fissures of which other, empowering and positive patterns of behaviour have developed as a challenge to the networks of domination and subordination engendered by male and penal power behind the walls" (Sim 1994:101).

Not only did Sim stress the importance of a gendered understanding of male penalty, he also emphasized the need to recognize the dialectical relationship between gender and power in prison. To Sim, the social order of prison is not simply maintained by the policies of the institution and individual responses to these policies, but also by "deeply embedded discourses around masculinity" (1994:102). To explore this dynamic, Sim turned his attention to the role of violence in reinforcing the hierarchical arrangements of domination and subjugation in the institution. Sim argued that violence is normalized, routinized, and legitimated in the standards and policies of male prisons, becoming part of the identities of both prisoners and their keepers:

“the institution sustains, reproduces and indeed intensifies this most negative aspect of masculinity, moulding and re-moulding identities and behavioural patterns whose destructive manifestations are not left behind the walls once the prisoner is released...” (1994:103). Sim also observed that the prison’s *goals* – punishment, deterrence, prevention, incapacitation and rehabilitation – must also be examined with a gendered reading, questioning the goals of the institution, its conception of what it is to be ‘a good and useful’ citizen, and its idea of institutional *success*.

Despite being inspired by Connell’s views on gender, Sim concluded with an interrogation of his concept of hegemonic masculinity. Sim argued that if applied to studies of penality, Connell’s approach would view prison as having a ‘dominant masculine’ culture, and the conflict between prisoners and keepers (and among prisoners themselves) as a reflection of their struggle to achieve an ultimate ‘masculine’ ideal. Sim stressed that examining the prison according to this relatively static term undermined the nature of a very complex environment:

Despite the domineering brutalization which underpins and reinforces the culture of masculinity inside, this culture has often been undercut by individual and collective strategies of dissent and sometimes by alternative penal policies which have provided a glimpse of the possibility for constructing social arrangements which are not built on violence and domination...not all prisoners are fearless, manipulative and violent hard-men. (1994:111)

Thus, although Sim acknowledged the benefit of using Connell’s approach, he raised the issue that hegemonic masculinity, as a lens through which to examine the male prison environment, could be an essentializing term: it would draw attention to the similarities but ignore the differences in men’s negotiation of imprisonment and the gendered aspects of institutional practice. To Sim, prison masculinity could not be understood according to a dichotomous, static and/or unitary concept, but rather must be viewed in a dynamic, inclusive manner that recognizes non-hegemonic forms of gendered action.

Sim's approach to male penalty provided the foreground for a number of other works that emerged in the 1990s, which both reflected and built on his observations. Newton's (1994) work stressed the importance of a gendered, structural approach to prison sociology, arguing that masculinities are found in and among the social structure of men's prisons. To Newton, "hierarchies of domination," inmate sexuality, and prison codes are better understood when gender is problematized (1994:194). She argued that although life is different 'inside' the prison, "masculinities remain a dominant feature of the social structure" and cannot be ignored (1994:199). To Newton, ideas, beliefs, and social structures are imported from the outside, forming a unique, gendered culture on the inside. In her conclusion, Newton suggested that this approach be expanded to examine the gendered nature of more macro-aspects of the male prison regime. Specifically, she pointed to the masculinized punitive control inherent in male prisons: "Authoritarianism, which characterizes the traditional prison regime, has been described as the embodiment of masculinity" (1994:199). Newton argued that if prisons were controlled in a less 'masculine' way, there might be 'less masculine' organization amongst the prisoners. However, despite identifying a relationship between gender and institutional control, her observation was very simplistic: not only did she fail to acknowledge other less disciplinary forms of power, but she conveyed masculinity and masculine organization as undesirable.

Evans and Thorpe (1998), in their historical study of the convict system in Australia, took up Newton's suggestion to extend gender studies of male penalty beyond the micro-interactional context. Evans and Thorpe noted that although prison studies have extensively examined the 'convict body' and 'convict experience,' there has been little focus on "convictism as a *gendered* social, political, and cultural order" (1998:17) [emphasis added]. Evans & Thorpe implicated past studies for their failure to question 'official and unofficial presumption' that inmates are inherently prone to deceitful, rebellious, and unscrupulous behaviour – a very important point

considering the perpetuation of these assumptions throughout past decades, even centuries, of literature on male criminality and penalty. Although adopting a rather dichotomous (hegemonic) view of gendered power relations (i.e. a dominant form of masculinity on the part of the keepers enforcing a subordinate – indeed ‘feminized’ – form of masculinity on the kept), and relying heavily on a view of prison as ‘patriarchal’ and ‘masculinist,’ Evans and Thorpe detailed how governing bodies impose gendered power on the convict body to achieve control, linking this process to the socio-historical environment. To contextualize this process, they highlighted daily prison activities and interactions between the keepers and the kept, arguing that the rules and punishments of the institution embody domination and subordination, institutionalizing masculine power relations. As an example, they discussed flogging as a way in which “submission, surrender and vulnerability,” traits that they viewed as traditionally associated with femininity, were imposed on the inmate body by a *superordinate* masculinity (composed of the state, patriarchal hierarchies, etc.) (1998:24). They also provided evidence of resistance to this ‘superordination’ (i.e. overseers refusing to perform floggings, offenders refusing to cry out in pain), noting however that these instances were rare: it was often easier for offenders to turn on one another than to combat the system. In this way, the power and authority of the institution grew exponentially:

In reducing the subject to a condition of helplessness and impotence, by such assaults upon both psyche and musculature, a sense of humiliation and emasculation was violently imposed, while the authority figure, directing the punishment, grew concomitantly in power, like a Leviathan. (1998:25)

To Evans and Thorpe, the historical derision that inmates endured was best understood with recognition of the relationship between gender and power.

Echoing Evans and Thorpe, Carrabine and Longhurst (1998) argued that examinations of penalty must be expanded beyond the subcultural context, further examining gendered relations

of power in the construction and reproduction of masculinities in penal institutions. In establishing their position, Carrabine and Longhurst were very critical of past studies, raising two important points. First, echoing Sim's critique, they questioned the tendency of masculinity studies to essentialize hegemonic masculinity, arguing that it tended to organize other forms of gender (less 'dominant' masculinities and femininities) into a position of subordination. Instead, they viewed the process of gender identity construction as a constant negotiation, not as a set of pre-existing structures: a "plurality of masculinities" exists that are continuously being "negotiated and contested" in interactions (1998:162). Secondly, and related to this idea, they argued that masculine power relations are institutionalized in everyday penal practices, and are therefore best understood by examining these practices and related discourses (as opposed to vague and intangible social structures):

[M]anifestations of power in such relations are likely to involve the construction and reproduction of *masculinities*...power relations and gender identities are located and constituted in material practices, rather than in structures external to the lived reality of everyday existence. (1998:164)

As an example, they discussed compulsory physical activity as a common practice that could also be interpreted as a gendered, institutionalized form of control – both of mind and body. Intended to structure the daily lives of prisoners, physical activity also represented a "significant exchange and struggle over power," in that the development of a strong, 'masculine' body in itself could be a threat to the "*disciplined* minds and bodies" idealized by the institution (1998:168) [emphasis added]. This regimented form of control became a site of contestation of masculinities, one that resulted in both regulation and resistance.

Carrabine and Longhurst solidified an approach that acknowledged the gender of male prisoners, its relationship to power relations inherent in daily practices of the institution, and the process of identity formation that occurs over the course of the inmates' prison experience.

Carrabine (2000) elaborated on this in proposing an advanced conceptual framework, one that answered critiques from previous works in an inclusive approach to understanding the gendered male as an object of penal power. Carrabine argued that a more ‘theoretically comprehensive’ account of male penalty needed to account *both* for the gendered nature of the prison subculture *and* the penal regime as a ‘masculine’ institution of the state, achieving a much needed reconciliation among the various orientations to male penalty adopted in the past (i.e., Newton, Sim, Evans & Thorpe, Carrabine & Longhurst, etc.). To Carrabine, the application of Foucauldian notions of governmentality and translation (the process by which governmental discourses are conferred on penal subjects) would bring together micro- and macro-level analyses into a more inclusive understanding of the male prison as a regime. Reminiscent of Rose and Miller (1992), he asserted the importance of understanding prison as a “governmental technology”: a “complex of mundane programmes, calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions” (Rose & Miller, from Carrabine 2000:315). To Carrabine, evidence of penal technologies may be traced to prison discourses, which “enabl[e] the powerful to act in prison...[and to] structure action, belief and conduct” (2000:311). Thus, Carrabine argued, male prisons are best viewed as apparatuses of the state, used to transform, control, and regulate the male criminal, guided by penal discourses that both construct and maintain power relations:

...the power of a state apparatus (in this instance, the penal system) to regulate (as in normalization or control discourses) or transform (the discourse of rehabilitation) the confined results from the composition of actors, devices and strategies, in relatively durable associations through discursive alignments to achieve particular ends. (2000:318)

However, important to Carrabine’s approach was a view of penal power not as a centralized force, but rather as a “composite of diverse forces, techniques, rationalities and devices which seek to regulate the actions of individuals and groups in relation to certain authoritative criteria”

(2000:316). Carrabine noted six discourses common to prisons for men: rehabilitation, normalization and control discourses, which he termed 'ends' discourses; and bureaucracy, professional discourse, and authoritarianism, which he termed 'means' discourses. The translation of these discourses manifested a number of different power relations, from extreme authoritarianism to softer, less evident strategies of care.

Finally, Carrabine (2000) emphasized the vital role that gender plays in the formulation of these discourses, imploring penal scholarship to establish a more critical stance on "male" and "female" inmates in an effort to de-homogenize these biologically based categories. To Carrabine, scholars must take care to acknowledge the heterogeneity among these groups, and to avoid misrepresenting gender in discussing 'male' and 'female'-centred approaches. Carrabine observed that gender is not merely an abstract social structure, but rather that "gender relations are embedded in institutional settings and are enacted through the translation of discursive definitions of conduct" (2000:324). Thus, the discourses establishing rules, regulations, and expectations that govern inmates both produce and reproduce gender relations. Carrabine credited Hannah-Moffat (2001) with starting the process of examining gendered penal power relations in the context of female penalty. However, he noted the dismal attempts at achieving a similar analysis in the context of male penalty, asserting that any analysis that fails to problematize gender is "asymmetrical, if not asocial" (2000:311). Carrabine argued that examining penal discourses reveals an inherent 'gendering,' and often a conflict of masculinities; for example, the authoritarian discourse denotes an aggressive form of masculinity, whereas the rehabilitative discourse denotes a softer, more sensitive masculinity. However, quite disappointingly, Carrabine omitted this consideration of gender from his own analysis of an English prison, leaving it unclear as to how it might be included in this theoretical lens. This leaves future analysis of male penalty open to engage in this line of inquiry.

### 3.5 Summary and Conclusion: Theoretical Synthesis

#### 3.5.1 A Foucauldian Feminist Approach to *Male* Imprisonment

Inspired by Carrabine's recommendations for a more 'inclusive' approach to studying male penalty, the preliminary works by other researchers in the field (i.e., Newton, Sim, Evans & Thorpe), and importantly, the precedent set by feminist researchers, this study aims to examine the complexities of men's imprisonment in Canada, and the historically gendered nature of Kingston Penitentiary specifically, using a Foucauldian feminist approach cognizant of ideas of masculinity. However, given the diversity of perspectives to be used in this pursuit, a brief theoretical synthesis is required.

Hannah-Moffat's Foucauldian feminist approach to studying the federal imprisonment of women in Canada is arguably central to the goals of the current study. As revealed by Hannah-Moffat, although Foucault's theories were not inclusive of gender, the basic conceptual groundwork that he established is helpful to an understanding of "the gendered nature of knowledge and of the disciplining of female [and in this case, male] bodies" (Hannah-Moffat 2001:5). Important to this lens is an understanding of power not only as repressive – the juridico-discursive model of power as centralized, possessed and exerted that has dominated many of the gender analyses of the imprisonment of men – but rather as *productive* – in the form of programs, policies and practices that attempt to 'change' the penal subject in a way that meets normative expectations for 'appropriate' gendered behaviour. A Foucauldian approach, therefore, views power as a *relation*, not simply as possessed by the state and exerted on the prisoner. This more heterogenous view of power allows for a better understanding of the less invasive, yet still 'productive' modes of governance that existed in Kingston Penitentiary in its fledgling years, recognizing the important role that seemingly benevolent strategies played in the regime. As clarified by Hannah-Moffat, this approach can explain both structured (i.e., regulations, controls)

and socially dispersed (i.e., individual ‘responsibilities’) forms of power. As such, it is hoped that both the obvious and subtle ways in which “relations of power give rise to and emerge from particularly strategies of governing” may be uncovered in Kingston Penitentiary’s regime (Hannah-Moffat 2001:7).

Foucault’s (and ultimately, Hannah-Moffat’s) approach challenges taken-for-granted views of carceral relations, which often simplify power as functionally possessed by men/the state in the subordination of objects of social control (inmates). By simply viewing Kingston Penitentiary as a patriarchal tool of state control, the complexity of power relations are limited to a view of ‘dominate-subordinate,’ ignoring softer, more benevolent approaches to control of men. As discussed in the previous chapter, Foucault’s concept of *pastoralism*, which explains Christian salvation-oriented forms of power by “focus[ing] on a personalized, prescientific knowledge of an individual’s mind and soul” is useful to understanding less intrusive (and often less apparent) forms of power (Hannah-Moffat 2001:8). For this analysis in particular, the concept of pastoralism could better explain the relations of power inherent in state welfarist penal policies and the significance of local volunteers, prison ministries, and charitable organizations – particularly important given the rise of the Quaker movement during the early to mid-1800s. Vital to this is recognition of the role that gender-specific forms of *knowledge* – both expert and non-expert – have played in strategies of governance. Adopting this view may help to reveal other less invasive forms of gendered governance and power relations – perhaps similar to Hannah-Moffat’s concept of ‘maternalism.’ Examining penal discourses with consideration of these types of governance and the role of gender specific forms of knowledge has the potential to reveal complex strategies of governance and normalization that have been previously hidden from view, perhaps making more sense of the strategies in existence today.

In order to decipher the complexities of men's imprisonment in Kingston Penitentiary, this Foucauldian-inspired analysis will be cognizant of the role of governmentality in the every day practices of the Penitentiary. As clearly stated by Hannah-Moffat: "[A]nalyzes of government evaluate the governing authority or agency, the forms of knowledge, techniques, and other means employed, the entity governed and how it is conceived, and the ends sought, as well as the outcomes and consequences" (2001:12). Thus, a historical analysis of male incarceration needs to consider the political rationalities and technologies of power implemented, how these rationalities and technologies are developed according to *gendered* assumptions about imprisoned men, and how these approaches have influenced the way imprisoned men have been controlled. Also important is the idea of *self-governance*: "the way in which an individual questions his/her own conduct (or problematizes it) so that he/she may be better able to govern it" (Dean 1999, from Hannah-Moffat 2001:12). As revealed in Hannah-Moffat's work, this recognition provides a more effective foundation to examine discourses of responsabilization and self-regulation (i.e., terms such as 'empowerment'), and provides a view of prisoners not simply as non-active objects of control, but rather agents in a regime's governance of them.

Vital to this more inclusive understanding of the male penal regime is a view of gender that, as Jefferson argues, considers explanations of masculinities beyond the 'patriarchal masculine ideal' – recognizing that there is not necessarily a "single masculinity that all men aspire to," nor is it simply the dichotic opposite of femininity (1994:11). Jefferson (1994) argued that academic models of masculinity often pay attention only to masculinity's 'highly visible social power,' forgetting the 'psychic vulnerabilities' inherent in men who struggle with their masculinity – for example, imprisoned men who, in various ways, attempt to resist the dominant (i.e. "brutish") masculinity in prison. This orientation to masculinity credits imprisoned men as subjects who are conscious of their experiences, characteristics and vulnerabilities. However,

developing a true appreciation of gendered power relations in prison requires taking this observation one step further, to an understanding of the interaction between the male body and the penal regime – and how this interaction influences social experience and the gendered self. Connell’s recent discussion of ‘the body inescapable’ provides a fitting addition to any gender study of men given that it recognizes the role of the body in the construction of masculinity and the social expression of gender, which he argues “are both realized and symbolized in bodily performances” (2005:54). As Connell observes, bodies are ‘diverse to start with,’ becoming more diverse with age, growth, and experience; thus bodily masculinity is also in constant flux. To Connell, “the manifestation of gender through bodily performance becomes vulnerable when the performance cannot be sustained” (2005:54). That is, when the ‘bodily sense’ of gender is threatened, an individual’s response must be adjusted. For example, in the case of physical disability, the masculine body is undermined, requiring a ‘reformulation’ of the individual’s definition of masculinity. A similar case is found in industrial labour, which promotes skill and where men’s bodily capabilities are their economic asset; yet the physical wear and tear of the work threatens this capacity to the point where they may no longer be physically capable – thereby requiring a reconstitution of masculinity. Thus, “the body is inescapable in the construction of masculinity,” subject to social and historical processes, and is therefore, as Connell argues, “a possible object of politics” (2005:56).

Importantly, Connell recognizes that bodies are not merely “objects of symbolic practice and power,” but rather, agents of social processes capable of resistance and participation, of will and submission. Connell terms this process “body-reflexive practice”: bodies as “both objects and agents of practice...the practice itself forming the structures within which bodies are appropriated and defined” (2005:61). Further, body-reflexive practice occurs not merely as process internal to the individual, but rather “involve social relations and symbolism” on many different levels: from

interpersonal interactions to large scale institutions (2005:64). Therefore, critically examining the gendered discourse of Kingston Penitentiary requires recognition of the role of men's bodies (and perceptions of those bodies) in the intricacies of penal power relations.

### **3.5.2 Conclusion: Stepping Forward**

Sociological and criminological accounts of the 'male criminal,' and later the 'male inmate,' evolved in many ways over time: from 'abstract philosophizing' on his criminality (i.e., Bentham, Beccaria); to biologically based, positivist constructions of his abnormalities (i.e., Lombroso); to views of him as a victim of poor socialization (i.e., Merton, Sutherland, etc); to a rational, yet uncontrolled agent (i.e. Hirschi); to a subject of critical discourse (i.e., Foucault); to a gendered criminal man (i.e., Messerschmidt, Collier); and finally to a gendered subject in the penal regime (i.e., Sim, Newton, Carrabine). In any event, *gendered* critical study of male penalty (particularly in a historical context), as had been done for female prisons (Dobash et al 1986; Comack 1996; Hannah-Moffat 2001, etc.), is on the verge of being accomplished. Such an analysis will be vital to understanding how and why punitive regimes for men have developed as they have.

As Carrabine (2000) observed, any critical examination of male prisons must follow in the stride of similar feminist examinations, viewing female penal regimes as closely connected with popular discourses on 'feminine' conduct both within and beyond the prison walls. However, it is important to ensure that a similar analysis of male penalty not fall in the trap of 'dominant' masculinities vs. 'subordinate' masculinities, but rather, as done by feminists previously, consider gender in a more dynamic, less static fashion: namely, gendered power relations as a constant negotiation and renegotiation. Gender therefore *must* be problematized; as Hannah-Moffat (2001) observed, a Foucauldian feminist view of gender challenges taken-for-granted gender dichotomies, and further, considers gender (namely masculinity) outside the

boundaries of hegemony. Connell's (2005) position on gender, and specifically, his concept of the 'body inescapable,' is arguably vital to this understanding.

The question remains: How will this perspective be applied to observable phenomena? As Foucault (1980) observed, in order to truly understand how power relations have come to operate in the prison context, one must examine historically, and to the lowest level of power, the discourses that formed the basis of punitive regimes. Further, by incorporating ideas of gender, more specifically, how knowledge about gender (masculinity) has been used to normalize, discipline and oppress inmates, a more inclusive view of penal history may be realized. The following chapter will attempt this, using Foucauldian feminist theory to examine early discourses from Kingston Penitentiary.

## Chapter 4

### **Analyzing Historical Discourse: Toward a New History of Kingston Penitentiary**

The previous chapters discussed how the female and male ‘criminal’ and ‘inmate’ have been constituted in the criminological and sociological literature. It is clear that the female offender has been portrayed in a markedly more ‘gendered’ manner over time, culminating in feminist discussions covering a broad range of topics. As shown, feminist discussions of female offending and imprisonment were foreshadowed a century before in Lombroso’s portrayal of the criminal woman as ‘different’: *because* she was female, she fell outside the boundaries of what was considered ‘normal’ for ‘criminal.’ However, the story of the ‘male criminal/inmate’ in the literature is quite different. Although in recent decades, the ‘masculinity turn’ in the criminological and socio-legal literature has promoted a more gendered view of the ‘criminal man,’ ‘man’ continues to be viewed as the omnipresent ‘criminal norm,’ the model against which all ‘criminal others’ (i.e. women) are compared.

As such, the criminological and socio-legal literature has little to offer in terms of a critical, gendered approach to examining how prison architecture, programming and policy have been developed for men – the Canadian context being no exception. As discussed in the introductory chapter, little in the way of critical studies has been done to shed light on the historical roots of male penalty in Canada, even with regard to Canada’s oldest and most notorious institution, Kingston Penitentiary. Despite immense criticism and an innumerable number of crises since its inception, the more than century and a half-old prison for men has lived on to this day, with very few critically pursuing the questions of ‘how’ and ‘why,’ and none investigating the question of ‘who.’ With only scattered critical historical works on the Australian (Evans & Thorpe 1998) and Scottish (Carrabine & Longhurst 1998) systems that have addressed

the gendered foundations of male penal regimes, there remains little to go on. Although feminist histories have taken great strides in using critical gender approaches to better understand the development of many areas of law and criminal justice with regard to women, gender studies of men have continued to lag behind, and alone, provide little in terms of models.

It is the goal of this chapter to initiate the ‘catch up’ – to engage in a critical historical analysis of male penalty in Canada, combining critical feminist Foucauldian analysis that has been so prominent in contemporary feminist studies of female penalty with discussions from the ‘masculinity turn’ that have emerged in recent years. It is the goal of this examination to uncover how the *gendered power relations* inherent in the institution influenced the establishment and framed the development of policy and procedures for Upper Canada’s first penitentiary, in the context of the historical conditions of the time. The first section of the chapter will detail the methodology used – the sources of discourse (i.e., the documents used and the discourses through which the inmate was constituted), how and why they were selected, and the ways in which they were examined. Inspired by Hannah-Moffat’s work, the analytical approach to the discourse incorporates perspectives from recent socio-legal works on masculinity in the penal context (i.e., Sim 1994; Newton 1994; Evans & Thorpe 1998; Carrabine & Longhurst 1998; Carrabine 2000), as well as some recent debates in the masculinity literature over how the gendered male is best constituted (i.e., Jefferson 1994; Connell 2005; Connell & Messerschmidt 2005). Following this section, the analysis will thoroughly examine each source document to uncover gendered relations of power and knowledge constituted in the Penitentiary’s discourses. The significance of these strategies will be further considered in context of the social, economic and political conditions in Canada.

## **4.1 Methodology**

### **4.1.1 Sources of Discourse**

As has been stressed in many feminist works (Dobash et al, 1986; Freedman 1981) an understanding of the current state of penalty requires examining its origins, an argument based on Foucault's assertion that "[o]ne needs to investigate historically, and beginning from the lowest level, how mechanisms of power have been able to function" (1980:100). As Jefferson (1994) further observes, an historical analysis that considers the intersection of gender and power in the penal environment produces a different kind of history, one which reveals the "historically specific discursive relations within which particular practices (social and institutional) with their specific modalities of power and accompanying knowledges are necessarily located, and particular subjectivities constructed" (1994:15). As such, an understanding of gendered relations of power in Kingston Penitentiary might best be accomplished through an examination of the discourses that guided its rise.

Since Kingston Penitentiary was opened in 1835, 172 years worth of documents and records have been produced, with many of them having been made available for public viewing. However, practical considerations for the current analysis required a focused selection of discourse for this study. To understand how an institution has persisted through centuries of controversy arguably requires starting from the beginning – exploring the foundations of the regime. Therefore, this analysis focussed on documents from the founding days of the Penitentiary, from the period of 1833-1856. This period has been selected in order to capture several discursive elements:

- The justification and rationale behind the style and construction of the institution
- The justification and rationale behind the policies and procedures of the early days of the institution

- Given that men, women and children were housed in the Penitentiary during these early years, the differences in how each was constituted by the discourses
- How/whether gendered discourses changed in the first twenty years

To capture these discursive elements, documents that not only constituted the architecture, policy and practice of the Penitentiary, but also those that evaluated its progress, were examined. These documents include:

- The Report of the Commissioners Appointed to Superintend the Erection of Penitentiary at Kingston, 1833
- The Act to Provide for the Maintenance and Government of the Provincial Penitentiary, 1834
- The Rules and Regulations to be Observed in the Provincial Penitentiary, 1835
- The Report of the Board of Inspectors of the Provincial Penitentiary, 1838
- The Report of the Board of Inspectors of the Provincial Penitentiary, 1845
- The Report of the Commissioners Appointed to Inquire into the Conduct, Discipline and Management of the Provincial Penitentiary, 1849
- The Rules and Regulations for the Provincial Penitentiary, 1856

This sample of documents reflects a seminal period in the history of the Penitentiary, highlighting a number of definitive events: the establishment of the regime; evaluations of its successes and failures; the first critical juncture in its existence – the Royal Commission of 1849; and, the aftermath of this crisis (i.e., changes to the Rules and Regulations). These earliest discourses arguably set the foundation for a regime that, despite witnessing many changes, has existed for nearly 175 years. It is, therefore, a logical starting point for critical inquiry of male penality in Canada.

#### **4.1.2 “Reading” Discourse**

As listed above, a total of seven major documents specific to the governance of the Provincial Penitentiary for the period 1833 to 1856 were analyzed for the study. Documents were obtained from the Queen’s University Library, some of which were available for viewing only in the W.D. Jordan Special Collections Library. Copies of the documents were made for the researcher’s records when permitted.

With theoretical guidance provided by Hannah-Moffat’s (2001) previously discussed Foucauldian feminist approach to studying female incarceration in Canada, Carrabine’s (2000) suggested framework for a similar study of male incarceration, as well as Connell’s (2005) orientation to masculinity studies and findings from the few available critical studies of masculinity and penalty (i.e., Sim 1994; Newton 1994; Evans & Thorpe 1998; Carrabine & Longhurst 1998), critical discourse analysis was employed to study the documents. The conceptual orientation to discourse was reminiscent of Foucault’s work, which considered it “sometimes as the general domain of all statements, sometimes as an individualizable group of statements, and sometimes as a regulated practice that accounts for a number of statements” (Foucault, 1972:80; from Mills 2004). In this way, the analytical study of the documents from Kingston Penitentiary’s early days considered not only the meaning that these texts held for the governance of the Penitentiary and their effects, but also the ways in which the documents’ “groups of utterances” were regulated and “have a force to them,” and further, what “rules and structures” guided the production of these utterances (Mills 2004:6). Important to this study as well is the consideration of power/knowledge in discourse, and how it is both produced and reproduced by discursive effects; as Hannah-Moffat stressed, “the gendered nature of knowledge and of the disciplining of female [and in this case, male] bodies” is vital to any understanding penal power relations (2001:5). Therefore, documents were read with consideration of both the

gendered influence of power/knowledge on the formation of discursive fields, but also in terms of its effects on the carceral subject – both repressive *and* productive. Following this orientation and the theoretical guidelines provided by past works (i.e., Hannah-Moffat, Foucault, Carrabine, etc.), Penitentiary documents were read for indication of gendered discourse, pastoral discourse, disciplinary discourse, and any other patterns of discourse that constituted the governance of the male subject in the institution. Further, and importantly, Penitentiary discourses were not taken merely as a disembodied collection of statements, but rather, as Mills implores, “groupings of utterances or sentences, statements which are enacted within a social context and which contribute to the way that social context continues its existence” (2004:10). Therefore, analysis of documents was performed bearing in mind the social, political, and economic state of Upper Canada and the community of Kingston at the time.

In order to direct the study, a number of general questions were asked of the discourse over the process of its analysis:

- (1) How were incarcerated men in particular made into compliant subjects (i.e., repressive discourse? productive discourse? gendered discourse?)? How were male bodies governed in a gendered manner?
- (2) In what ways did the Penitentiary discourse ‘invite’ resistance? Or offer the potential for non-compliance?
- (3) What assumptions about men guided the development of the discursive fields, and ultimately, the governance of incarcerated men in the Penitentiary?

To get at the heart of these questions, a number of specific strategies for reading discourse were implemented. First, ‘who’ is speaking in the discourse, and what interests/motivations/epistemes are at work? Second (perhaps most obvious) what patterns of descriptive terms were used in the discourse, and what are their connotations (i.e., words used to describe the kept vs. words used to

describe the keepers)? Third, how are these terms used to restrict and shape perceptions of incarcerated men? Fourth, how are male inmates positioned in discursive structures, particularly in relation to other subjects and even the author(s) of the discourse (i.e., as passive, inferior, threatening, etc.)? Fifth, what limits are placed on how male inmates are constituted? What regulations seem to guide what is said, and what is not said? What restrictions or exclusions exist in the discourse to limit knowledge? Finally, how did all of these elements change over time? Did the discourse reflect an ideal of ‘progress’ on the part of the regime?

Given the exploratory nature of the study, a grounded analytical approach was undertaken, the documents being read very thoroughly a number of times in order to *uncover* any patterns inherent in the discourse. Analysis of the documents proceeded chronologically, with patterns and themes being identified *by* document; however, subsequent readings of the documents revealed that they would be best organized into distinct periods: Foundations (1833 Commissioners’ Report; 1834 Act; 1835 Rules & Regulations); Growing Pains (1838 Inspector’s Report; 1845 Inspector’s Report); Crisis (1849 Royal Commission); and finally, Fallout (1856 Rules and Regulations). Each of these sections is introduced by contextualizing the emergence of the documents (i.e., why they were written, under what circumstances), provided by factual information found in such works as Hennessey’s *Canada’s Big House: The Dark History of Kingston Penitentiary* and Oliver’s *Terror to Evil-Doers’: Prisons and Punishments in Nineteenth Century Ontario*. The following section assesses the discourses themselves, discussing the gendered ways in which the inmate was constituted, the forms of governance employed by the institution, and the power relations at work. Finally, each section concludes with a brief discussion of the implications of these discourses.

This chapter will trace the historical development of the technologies, rationalities and practices that constituted the Kingston Penitentiary inmate from 1833 to 1856, with Chapter 5 synthesizing these themes with a discussion of their significance to the study.

## **4.2 Analysis**

### **4.2.1 Foundations: Establishing Control in the Rough Young Colony**

#### 4.2.1.1 Conditions: 'Social Crisis' and Tory Governance

As discussed in Chapter 1, the Provincial Penitentiary at Kingston was born of a long and arduous debate about both the need and feasibility of such an institution in the fledgling province. On the one hand, the Penitentiary was seen as the solution to overcrowded and inhumane gaols, a consequence of the 'social crisis' that was plaguing Upper Canada at the time – a tremendous number of immigrants settling in the new colony, few financial resources available, and no social infrastructure (except the gaol system) to address the effects of poverty and destitution. In the face of this instability, the Tory Government felt it imperative to restore order to the 'rough young colony' (Hennessey 1999). The Provincial Penitentiary was the 'law and order' part of a three-institution solution, the others being an Asylum and a House of Industry. Influenced by the precedents set in the United States and Britain, the Penitentiary was viewed by the Tory Government as the most effective and influential deterrent to crime, more effective than banishment and corporal punishment. Not only did a period of imprisonment deprive an individual of his or her liberty, but perhaps more punitively, deprived families of a contributing member. Given the nascent social infrastructure and few economic opportunities in the community, the loss of a family member was especially detrimental to its economic well-being – particularly when it was the male head of the family, usually the primary provider (Oliver 1998). As such, encouraged by what were perceived as effective penitentiary systems in Britain and the

United States, a penitentiary in Upper Canada was viewed by the Tory elite as integral to preventing crime, a symbol of order and protection in the community.

Although several concerns hovered over the Penitentiary's construction – the necessity of such a large scale institution in the face of insignificant crime rates, the social cost to some families, and most importantly, the financial cost to the province – the plan went ahead (Oliver 1998; Hennessey 1999). Against the backdrop of an apathetic public, an enthusiastic Tory elite, and a struggling community, the wheels of construction were in motion by 1833. With approval for the Penitentiary granted and the early stages of construction underway, discourses detailing the roles and goals of the new Provincial Penitentiary at Kingston began to emerge: The 1833 *Report of the Commissioners Appointed to Superintend the Erection of the Penitentiary at Kingston*; the 1834 *Act to Provide for the Maintenance and Government of the Provincial Penitentiary*; and, the *Rules and Regulations to be Observed in the Provincial Penitentiary*, 1835. The 1833 Commissioners' Report – authored by the wealthy Kingston merchant John Macaulay, politician, merchant and publisher H.C. Thomson, and future Warden, Henry Smith – primarily discussed the progress of the Penitentiary's construction, rationalizing the selection of the site and design according to its efficiency in controlling inmates and its superiority over similar institutions in the US and UK. Using this discourse of efficiency, the authors subtly legitimated the increasing cost of the institution, which had already gone over budget. With early concerns primarily centering on cost, efficiency, and logistics, however, the actual *purpose* that the Penitentiary would serve remained ambiguous. Although the importance of incapacitation and surveillance were clear in the selection of the Auburn model, the desired effects were not: despite construction being well underway, the debate over 'reform,' 'deterrence,' and 'discipline' continued (Hennessey 1999).

Soon, however, the government of Upper Canada settled this debate in official discourse: The 1834 *Act to Provide for the Maintenance and Government of the Provincial Penitentiary*. A legislated statute of Upper Canada, the Act addressed the purpose of the Penitentiary, its desired effect, and how the regime would achieve its goals – the roles of its staff, the regulations that were to guide its practices and administration and generally, how “the maintenance and good government of the Provincial Penitentiary” would be achieved (1834:212). As the Act solidified the foundation of governance of the Penitentiary, and the south cell block neared completion, the institution was made ready to receive its occupants. To ensure the efficient, day-to-day functioning of the institution, a rough series of thirty-seven *Rules and Regulations to be Observed in the Provincial Penitentiary* (1835) were developed to govern the conduct of staff and inmates, many of which solidified the requisites set by the 1834 Act. By the fall of 1835, fifty-five convicts were housed in the Provincial Penitentiary – 52 men, housed in the completed south cell block, and 3 women, held in makeshift quarters – and subjected to the standards of governance set by these early discourses (Hennessey 1999). However, although the Penitentiary was built, and the governing discourses developed, with the idea that both men and women would be housed there, two things were clear from the outset: first, that men would compose a commanding majority of the carceral subjects; and, not surprisingly, that spatial and disciplinary priorities were determined accordingly.

These documents, although simple and preliminary in nature, were vital to guiding the construction, development, and system of regulation of the prison, their discourses the cornerstones of a carceral regime that would govern its occupants for the next 175 years. Given the Penitentiary was set to house both men and women in its early days, it would be reasonable to assume that its governing documents would constitute a non-gendered subject and/or present a

well-established division between the governing discourses for men and the governing discourses for women. However, the reality was quite unexpected.

#### 4.2.1.2 Governing Discourses: Early Priorities for a Non-Gendered Convict Body?

The 1833 *Report of the Commissioners Appointed to Superintend the Erection of the Penitentiary at Kingston* was primarily concerned with legitimizing its increasing cost and ensuring the economy of the Penitentiary. Given the fledgling progress made in construction, the Commissioners were forced to appeal to the Government for more funds. However, in rationalizing their request, the Commissioners appealed to both the physical organization and commoditization of a homogenous, seemingly ungendered ‘convict’ body, but the solution was based on a fundamentally gendered activity.

Outwardly, the language of the 1833 Report spoke ambiguously of a homogenous inmate population – this despite its age, gender, and likely, ethnic heterogeneity. Identifiers such as “the convicts,” “the prisoners” and “the convicted culprits” standardized the carceral subject as subordinate entity. Reinforcing this position, the ‘culprits’ were positioned against a much more favourable group – the businessmen involved in the institution’s construction, often referred to as “gentleman,” always referred to as “Mr.” Thus, the general language of the report clearly established inmates as socially subordinate to the ‘gentlemen’ overseeing the Penitentiary’s construction; further, it provided little indication of any diversity amongst the inmate population – particularly with regard to gender.

However, closer investigation of the Report’s discourses provides subtle evidence of the assumptions behind ‘the convict,’ particularly in discussions regarding design. One of the chief requests in the Commissioners’ report related to their proposed changes to the lay out, allowing for the greater accommodation of convicts. They continued to recognize the importance of the panoptic design – having the cell blocks arranged around a central rotunda, it would ensure that

prisoners could be closely scrutinized by their keepers “by an admirable system of inspection by invisible watch” (1833:2). However, to “preserve accommodation for the full number of convicts,” the Commissioners proposed an alteration to the original plans that would allow for seventy more cells in each wing of the Penitentiary (1833:2). Despite the new cells being “eight inches less” in size, and a marked increase in construction budget, the Commissioners argued that the benefits of this “more methodical and compact arrangement of prison accommodation” were “so obvious as not to require a minute explanation,” a “decided improvement” from previous plans (1833:2). As they relayed in their justification of the inflated budget, the alteration to the Penitentiary plans provided for “the ultimate reception of eight hundred and ten male convicts, besides the female department”; however, “several years must elapse before space can be required in this Province for the confinement of *so large a number of convicted culprits* (1833:3) [emphasis added]. Thus, ‘improvements’ to the plans served the priority of increasing the admission of a large and definitive number of *male* convicts – with seemingly little concern over the discomfort of smaller cells. Further, provision for augmented accommodation for female prisoners was of no concern, with no estimate of the number expected, and the ‘women’s department’ not even being part of the panoptic section of the institution. Seemingly, not only was accommodation for women deemed a low priority, but so was their surveillance – insinuating a perception of female convicts as posing a lesser threat than males.

It was clear that the commanding majority of the inmate population was *assumed* and predicted to be men. However, other subtleties in the Report’s discourse further support this assumption, and the gender bias inherent in their priorities. The Commissioners’ offset any concerns over the costs of changing the design by speaking to the *benefits* of its other features. In a very substantive and detailed explanation, they insinuated that any perceived disadvantages of the decrease in cell size was made up for by what they perceived as a most innovative feature of

the cells – “the large openings for the doors and windows” (1833:2). The Commissioners stressed that large doors and windows in each cell would provide better ventilation and air circulation, the “consequent salubrity” being a benefit of the prison that would “excel all others” (1833:2). Importantly, these large openings, they argued, would more effectively “warm the Prison during the winter,” a feature they considered most important for “convicts returning from their warm shops” who would “take cold in going immediately into an unwarmed cell” (1833:2). The Commissioners argued that the “superior advantages of the plan” set the Provincial Penitentiary above all others, even Auburn (1833:2). Thus, in discursively appealing to the notion of providing ‘comfort’ to the convict returning from a hard days’ labour, a feature they argued had been ignored by other prisons, the Commissioners minimized both the smaller cell size and the increased cost.

The significance of accommodating and providing ‘comfort’ to a greater number of convict bodies – particularly male convict bodies – was subtly evident in discourses regarding the economic role of convict labour. As previously mentioned, rationalizing the rising cost of the project was of tremendous concern to the Commissioners; however, they found a reprieving solution in discussing the ‘profit’ of hard labour sentences. As they asserted with regard to the selection of the Penitentiary site, “the land...abound with quarries of the finest lime-stone [will] doubtless be *profitable* to open when *Convicts* are sentenced to *hard labour* at the Penitentiary” (1833:1) [emphasis added]. They further stressed this point with regard to the construction of the institution, the Commissioners discourse lauding the economic relief that convict labour would provide once their reception commenced: “labour of convicts...would materially reduce the expense,” for “a *profit* cannot fail to arise from the proceeds of *compelled labour of prisoners*” (1833:3). As such, the discursive construction of ‘convicts’ as an economic commodity was key to the Commissioners’ justification for an inflated budget in 1833, for completion of the initial

cell blocks would expedite the arrival of the convict labour force, and gradually decrease demands for public funds as the prison filled with (mostly male) inmates. Further, a more compact design allowing for more cells would ultimately provide a larger – presumably male – labour force. Ultimately, they stressed that a system of “prison discipline” be developed as soon as possible so that sentences of hard labour may begin (1833:3).

Despite connoting a homogenous inmate body, the 1833 Report clearly rationalized spatial and design priorities according to the accommodation of a *presumed* male inmate majority, and hard labour as an inevitable penal technology. The 1834 Act, however, solidified in *official*, legislated discourse, the roles, goals, and policies of the Penitentiary. In physically incapacitating individuals convicted of crimes and sentenced to periods of incarceration and hard labour, the Act stated that the Penitentiary would serve to *both* deter *and* reform them (reflecting both sides of the debate amongst the Tory elite that had been stirring for previous years):

Whereas, if many offenders convicted of crimes were ordered to solitary imprisonment, accompanied by *well-regulated labour* and *religious instruction*, it might be the means under Providence, not only of deterring others from the commission of like crimes, but also of reforming the individuals, and *inuring them to the habits of industry*. (1834:211-212) [emphasis added]

Thus, reminiscent of the precedent set in the 1833 Report, labour was situated in discourses regarding the goals of the regime as an important carceral technology. However, where the 1833 report discussed the economic benefit of inmate ‘hard labour’ to the regime, the Act used the softer language of ‘well-regulated labour’ to rationalize it as a deterrent and reforming technology. Presumably, ‘well-regulated labour’ was meant to be punitive enough to ‘deter others from the commission of like crimes’; however, the focus of the Act was more toward ‘training’ inmates in such a way that ensured future, pro-social behaviour – ‘the habits of industry.’ Appropriate labour assignments were to be determined by the Warden, who was required “to furnish such Prisoners with employment the most *beneficial to the public*, and the *best suited to*

*their various capacities*” (1834:214) [emphasis added]. Thus, the language of the Act portrayed labour more as a benefit to the inmate than an economic benefit to the regime.

Similar to the language of the 1833 Report, labour as a requisite of prison sentences seemed to apply generally to all ‘offenders’ and ‘prisoners.’ However, arguably, the strong focus on labour as the chief technology of deterrence and reform alluded to an underlying masculine influence – particularly given the gender division of labour at the time. This gendered influence is further alluded to in a clear contradiction between the Act and the 1835 Rules and Regulations with regard to labour. The Act provided that the Warden and Deputy Warden may have “servants from among the Convicts” employed in their homes; as such, ‘well-regulated labour’ could be performed in service to the chief officers of the Penitentiary (1834:217). However, Rule Five of the Regulations of 1835 quickly reversed this postulate, returning to the language of the 1833 Report: “due provision shall be made for the enforcement of *hard labour*.” To ensure this ‘due provision,’ the Rules stated that no prisoner could be employed “as Turnkey, Assistant Turnkey, Wardsman, Yardsman, Overseer, Monitor or Schoolmaster...or in the service of any Officers, or in the service and instruction of any other prisoner” (rule 22). Thus, the Regulations re-awakened the spirit of ‘hard labour’ as punishment, directly contradicting legislation by prohibiting physically less strenuous work assignments, but also alluding to a gendered influence – with servitude deemed inappropriate for a primarily male inmate population.

The centrality of labour extended to a more functional purpose, as stipulated both in the Act and the Rules and Regulations: the physical and temporal organization of inmate bodies. As stated in the Act, “all Convicts in the Penitentiary, other than such as are confined in solitude for misconduct in the Penitentiary, shall be kept constantly employed at hard labour during the day time, except when incapable of labouring by reason of sickness or bodily infirmity, except on Sunday, Christmas Day and Good Friday” (1834:219). More specifically, as dictated by the

Regulations of 1835, all prisoners were to “be employed so many hours everyday, not exceeding ten, exclusive of the time allowed for meals” (rule 8). As such, labour as a carceral technology was the primary means by which the regimented, day to day functioning of the Penitentiary would be maintained, and the inmates’ time would be structured. *All* prisoners were to be occupied daily by work, with the exception of days of religious observance (one day per week, and three additional religious days per year). In this way, although religious instruction was stated in the Act as an important component of inmate reform, the tremendous dependence on labour not only as a punitive and training technology, but also as an organizing/structuring technology relegated religious instruction to a secondary role. If not employed or engaged in religious instruction, idle convicts were to be held in their cells to prevent misbehaviour, ensuring the continued discipline of the institution.

Despite the general language used to constitute the inmate with regard to the purpose and provisions of hard labour, the assumptions at the heart of these provisions assumed a masculine character: well-regulated labour as a measure to teach appropriate ‘pro-social’ behaviour; *hard* labour as an appropriate means to punish and deter; and, ‘employment’ as an appropriate way to structure inmates’ time and ensure the orderly arrangement of their bodies. Thus, where the real ‘identity’ of the subject at the heart of these provisions remained ambiguous (‘prisoners,’ ‘offenders,’ ‘convicts,’ ‘inmates’), evidence in the general priorities regarding carceral technologies suggests a masculine influence. A similar case is found in provisions regarding apprehension and punishment of unruly ‘convicts.’ To restore the institution to a disciplined state, total power and discretion were granted to Officers in cases of prisoner aggression:

When several Convicts combined, or any Convict alone, shall offer violence to any officer of the Penitentiary, or to any other Convict, or do or attempt to do any injury to the Building or any Workshop, or to any appur tendencies thereof, or attempt to escape, or resist or disobey any lawful command, the Officers of the Penitentiary or either of them shall and may use *all suitable means* to defend themselves, to enforce

observance of discipline, secure the persons of the offenders, and to prevent any such escape. (1834:219) [emphasis added]

Thus, the Act constitutes *all* prisoners as subject to punishment for threats to the discipline and security of the institution, with decisions to, and extent of, punishment left to the discretion of the Officers. However, the discourse of this provision assumed that the unruly prisoner would pose a substantial physical threat to the Officers – referring to their resistance as ‘violence,’ granting the Officers permission to defend themselves in any way deemed necessary. Despite referring generally to ‘convicts,’ the degree of the threat expected assumed a decidedly volatile – possibly masculine – presence.

Although the discourses regarding labour and punishment used predominantly homogenizing language to constitute the inmate, the 1835 Rules and Regulation did provide unique provisions for the treatment of female inmates – this despite no similar provisions made by the 1834 Act. Not only was sex-specific language used to constitute female prisoners in the Rules, but provisions for their treatment signaled a need to ‘protect’ them *from* the general inmate population. From the outset, the Rules clearly required mandatory sex-segregation: “The Male and Female Prisoners shall be confined in separate parts of the Establishment, so as to prevent them from conversing or holding any intercourse with each other” (1835:rule 6). Strict safeguards and sex-specific standards were established to ensure that female convicts had as little contact with male convicts and guards as possible, with the second, third, seventh, and twenty-first rules all applying directly to the governance of female convicts *by* women. Importantly, rule two required that a Matron be appointed to live in the institution and “constantly superintend the Female Prisoners,” being subject to all the guidelines and power granted to the ‘Keeper’ (Warden) in rule 1. Further, rule three required that the Matron or, in her absence, a “Female Officer of the Prison” accompany the Warden on his daily visits to the female prisoners. To reinforce the security of the female convicts (and uphold mandatory sex-segregation), the twenty-

first rule stipulated that “the Wards, Cells, and Yards allotted to Female Prisoners shall be locked by Keys in the custody of the Matron, and secured by locks different from those securing the Wards, Cells and Yards allotted to the Male Prisoners” (1835:rule 21). Thus, the discourse of these early Regulations stressed the importance of sex-segregation in a way that protected women *from* men – both male keepers *and* male inmates. Further, in adopting feminized language in provisions applying specifically to women, the discourses constituted the female inmate and her governance as ‘exceptional’ to, and even weaker than, the inmate ‘norm’ – requiring special treatment and protection.

Conversely, discourses regarding the governance of men lacked this gender-specific orientation, the provisions surrounding the responsibilities of the Warden and other officers being considerably more generic. For example, the 1834 Act dictated the role the Warden would play in the maintenance of discipline, order, and security of the institution – with the provisions regarding his roles and responsibilities establishing him as the governor of a homogenous convict body. As stipulated by the Act, it was the duty of the Warden to “receive into the Penitentiary, and *safely to keep* therein, subject to the discipline of the said Penitentiary, *any criminal* convicted of any offence...sentenced to imprisonment” (1834:221) [emphasis added]. The Act further stated that the Warden was “to exercise a general supervision over the Government, Discipline and Police of the said Penitentiary...and to examine daily into the state of the Penitentiary, and the health, conduct and safekeeping of *the Prisoners*” (1834:214). However, despite this ubiquitous role, discourses stipulating the sex-specific governance of women appearing in the 1835 Rules and Regulations (the appointment of a Matron, granted the same powers and responsibilities as the Warden) presumably narrowed the Warden’s responsibility to the governance of male inmates; however, sex-specific language is conspicuously absent from provisions for his duties. Provisions regarding the ‘Keepers’ of ‘inmates’ suffer from a similar

ambiguity. The Act stipulates the appointment of “not exceeding twenty Keepers” (1834:213), with the Rules and Regulations referring to “under-Keepers” of “inmates” – *presumably* for the governance of all inmates. However, special reference to “Female Officers of the Prison” as responsible for the “Female Prisoners” in the 1835 Rules and Regulations again narrows the role of “Keepers” as responsible to the inmate ‘norm’ – men.

#### 4.2.1.3 Implications: A Prison for Men, with Exceptions for Women?

The Provincial Penitentiary at Kingston was born of a great deal of instability and uncertainty. On the one hand, the Tory elite saw the Penitentiary as instrumental to a three-institution solution to poverty and destitution in the province (Oliver 1998). On the other hand, an uncertain community grew steadily more so as both the monetary and social costs to families with incarcerated family members intensified. This mixed reception exerted a tremendous amount of pressure on the founders of the Penitentiary to ensure the institution’s success; as such, institutional architecture, policy and procedure was arguably developed in such a way that appealed to socially acceptable standards. The 1833 Report, the 1834 Act, and the 1835 Rules and Regulations provided the discursive foundation for a structured and well-regulated regime.

The standards guiding the development of the regime were clearly reminiscent of its presumed occupants. Not surprisingly, the early priorities of the institution reflected the reality that a substantial majority of the inmates would be, and ultimately were, male. The influence this certainty would have on the development of the regime was made clear early on by the Commissioners, with their efforts to maximize the number of ‘convicts’ housed in the Penitentiary clearly aimed at accommodating more *men* – ‘eight hundred and ten men, besides the female department.’ What is apparent from these discursive elements is a view of the Penitentiary *primarily* as an institution for men – required to hold a very *precise* number of male convict bodies – and *secondarily*, as an institution for women – required to hold an insignificant, loosely

estimated number of female convict bodies. The early documents give no indication of the number of female inmates that could be held, nor any clear idea of where; as it seemed, their numbers were simply too insignificant to account for. Further, the ‘female department’ was clearly an area of the institution separate from the central, panoptic structure of the main body of the institution.

Significant to the reality of the expected prison population were the disciplinary and governing strategies in the Penitentiary – most significantly, those related to labour. From the selection of the land where the Penitentiary would be constructed, to the design of the cells (to ensure ventilation and comfort following a long days’ work), to the structure of the inmates’ day, to the deterrent effect of physically demanding labour, ‘work’ was the central, organizing technology of the regime. A number of significant observations can be made from this focus, particularly with regard to labour as a gendered technology of power. First, composed in a climate of public resistance to the *cost* of the facility, much of the discourse written by the founding Commissioners regarding labour attempted to curtail these concerns by arguing the fiscal benefit of convict sentences of hard labour. Thus, labour as a normalizing measure meant economic benefit for the Penitentiary and the public: convict bodies subject to hard labour meant financial windfall for the regime. Second, the authors of the Act ensured that, by being sentenced to ‘well regulated labour,’ *presumably* untrained convicts would be properly ‘trained’ while in the Penitentiary in order to ensure their economic contribution to their family and community following their release – a role largely reserved for men at that time. As such, the rationale behind hard labour sentences was presumably fed by the view of a *male* convict having failed in his role as ‘breadwinner’ by electing for a life of crime. By both contributing to the construction of the Penitentiary and subsequently being ‘trained’ to be a ‘better man,’ the convict’s role as an economic agent was perceived to be ensured. Further, ‘hard labour’ simultaneously acted as an

appropriate punitive physical deterrent for men and a productive use of the many male convict bodies housed in the Penitentiary.

On a more micro-level, the use of hard labour as a form of ‘masculine’ governance is evident. For example, early on, the discourse concerning architectural benefits of the prison design (i.e., large windows for better ventilation and warming of the cell) revealed a traditional, middle-class view of spatial priorities: even though the cells would be small – maximizing the number of productive bodies – they would be ‘comfortable’ – ensuring ‘the convict’ would return to a warm, well-ventilated ‘home’ following a hard day’s work. Further, very precise directives were given to ensure that each day, with the exception of Sundays and religious holidays, be occupied by 10 hours of work. Given the social conditions of the time, which witnessed traditional familial gender divisions (male as the head of the household and primary income earner, and women in the domestic sphere) it can only be assumed that these strategies of governance were based on gender ideals for men of the time. Further, the ‘hard,’ ‘detering,’ and ‘well-regulated’ nature of prison labour was presumably inappropriate and uncommon for women – not the type of labour that would necessary be used to reform a female toward appropriate behaviour on the ‘outside.’ In this way, we begin to see that although ‘the prisoner’ is often referred to as a homogenous entity, labour as a carceral *strategy* assumed a *male* prisoner – one that, in the community, was untrained, undisciplined, and did not conform to the socially accepted standards for men of the time.

The perception of institutional security and the threat posed by the inmate population was also significant with regard to the gendered foundations on which the Penitentiary was built. Early discourses reveal the inherent concern over preserving security and order, particularly in the face of the potential ‘violence’ that could erupt – concern that translated into provisions allowing institutional staff to use any and all means necessary to preserve order, and quell any uprisings.

The fear of violence, combined with the total power granted to penitentiary officers to restore order, points to the development of policy based on the presumed nature of the convict – specifically, as a physical threat. Although not stated explicitly, one might assume that the source of this physical threat is male.

The segregation of female inmates *from* male convicts further pointed to the degree of potential danger posed by the male convict body. The discursive treatment of female inmates in relation to male inmates reveals the importance of protecting women *from* the threat of men – women were to be held in an area protected by different locks and keys, the only access granted to female supervisors. The establishment of the role of the Matron as chief officer of the female inmates set a clear line in the discourse with regard to the responsibilities of Penitentiary Officers – only the Matron (and other female officers) was to oversee and supervise the female convicts, trumping even the Warden in that regard: only she could hold the key to the female unit, the Warden requiring her supervision during his visit. These distinct provisions for women clearly established female convicts as exceptions to the carceral norm, having gender-specific needs – an isolated and secure area of the institution to protect them *from* males, and most importantly, women to govern inmate women at all times. With the remainder of the rules *seemingly* applying to all convicts, conspicuously absent was similar gender-specific concern for men.

Despite the historically imposing nature of the Penitentiary and its notorious reputation as a prison for *men*, rather significantly, its early days witnessed a quite a long period of heterogeneity in the population, the prison housing men, women, even children for a time. Although one would think that the design and system of governance would reflect this population, the reality was quite different, as revealed in the Penitentiary's earliest discourses. In forming the discursive cornerstones the regime, these documents provided the rationale behind the 'where,' 'how' and 'why' of the Penitentiary, a rationale guided largely by assumptions

regarding the prototypical penal subject: dangerous, antisocial men. Although a straight read of the discourse does not conclusively denote this fact – with the carceral subject often referred to generically as ‘the prisoner’ or ‘the convict,’ even as ‘he or she’ in the Rules and Regulations – the architecture, carceral technologies and strategies of governance assumed ‘prisoner’ to be male, with ‘exceptions’ (women) dealt with in exceptional ways. Although presumably subject to the same processes of normalization, women were recognized as requiring gender-specific protection and supervision; conversely, little concern was given to men as requiring the same.

#### **4.2.2 Growing Pains: ‘Progress’ in the Face of Rebellion, Corruption, and Dangerous Men?**

##### 4.2.2.1 Conditions: Rebellion on the Outside – Rebellion on the Inside?

As the Penitentiary steadily grew in population, so did the building itself – facilitated largely by the increasing convict work force. Between 1834 and 1840, the south cell block and north wing (for administration and female prisoners) were completed, with work having begun on the east and west cell blocks and the kitchen/dining hall (Hennessey 1999). However, with priority placed on the facilities needed to house the prisoners – the cell blocks – the Penitentiary continued to be wall-less. Although the absence of the wall was given little concern in these early years, this sentiment would soon change, due to an uprising that surfaced in the province in December of 1837. Largely originating in the rural areas of Southern Ontario, a growing group of supporters of William Lyon Mckenzie began a resistance movement against the bureaucratic, colonial control of the British government. The Rebellion was largely waged by working class farmers, the sentiments of whom prison administrators feared would both empower the convicts to escape and, more importantly, might lead to a deliberate assault on the Penitentiary to free those rebels who had been imprisoned for treason. Thus, the uprising, although short and somewhat disorganized, not only resulted in a great deal of instability in the Province, but was

ultimately perceived as a threat to the security and discipline of the new Penitentiary (Oliver 1998).

With the Regulations having been in place for a number of years, the Penitentiary steadily growing in size, and mounting instability in the country, the Report by the Board of Inspectors for the year 1838 (also containing the reports of the Warden, Chaplain, & Surgeon) provided a sense of how the Penitentiary had grown in its early years and the way in which the regime would respond to the perceived threat of the Rebellion. Not surprisingly, the Report very much reflected on and reinforced the purpose and expectations of the institution, its staff, and the prisoners, as set in the early governing documents. However, a number of concerns related to the ongoing construction of the Institution were brought to bear, for the expense and timeliness of the project were in great disparity from the original budget. This, combined with fears resulting from the threat posed by the Rebellion, resulted in a strong focus on security – guided predominantly by assumptions about the nature of the kept.

In addition to the instability (both outside *and* inside the prison) created by the Rebellion, the growing pains of bureaucracy had slowly begun to surface, particularly with regard to the Warden's relationship with his Deputy Warden. The latter part of the 1830s were largely marred by tensions between Warden Smith and Deputy Warden Powers, each accusing the other of neglect of duty and incompetence, and specifically with regard to the Warden, mismanagement and corruption. Twice, the issues between the Warden and Deputy Warden were brought before the Board of Inspectors – in 1837 and 1839 – which ultimately divided them as well. Unable to find a resolution to the rift, the Deputy Warden left the Penitentiary in 1840, with the Governor General ruling that the Province would also be better served with a new Board of Inspectors. However the appointment of a new Deputy Warden and a fresh Board of Inspectors did not result in the harmony that was expected. Shortly after Deputy Warden Utting began his service in the

Penitentiary, fresh disputes broke out between him and Warden Smith, with the Warden making several, often unsubstantiated, charges against the Deputy to the Board for the next five years. In the mean-time, Warden Smith had appointed his son to a position in the Penitentiary, and together they drafted a new version of the Penitentiary Act that greatly increased the powers and salary of the Warden, and decreased the salaries of a number of others – including the Chaplain and the Assistant Warden. Further, the new Act was developed and passed without any consultation with the Board of Inspectors – established in the original Act as having full authority with regard to the general supervision of all matters relating to the Penitentiary. As a result, tension and dissension within the administration intensified (Oliver 1998; Hennessey 1999).

Amongst the turmoil of the mid-1840s, the Inspector's Report of 1845, released on the cusp of the Board's resignation, at the peak of the conflict between Warden Smith and Assistant Warden Utting, and immediately prior to the implementation of the new Penitentiary Act, reflected an air of uncertainty, however surprisingly, less with regard to the administration of the Institution and more with regard to the treatment of prisoners

#### 4.2.2.2 Governing Discourses: 'Upon Inspection'...Escape, Reclamation, and Commodification of Inmate Labour

Over the course of the first ten years of the regime, a number of 'growing pains' emerged, the causes of which were largely viewed on the part of the Board of Inspectors and the Penitentiary staff as symptomatic of the population they were dealing with. Security, economy, and the 'successful' reformation of the convict were central to the concerns expressed by the Inspectors in both their 1838 and 1845 reports; however, a closer inspection of these discourses, although demonstrating a continued ambiguity in the discursive constitution of the inmate, reveals the continued development of policies based on (gendered) assumptions about 'convicts,' and the role of Penitentiary agents in perpetuating these assumptions.

Unlike the discourses in the founding documents, *security* and the ‘safekeeping’ of ‘inmates’ were the key issues to the Inspectors in the first ten years of the regime’s operation. Although the discourses of 1833-1835 acknowledged the necessity of order in the institution, the Upper Canada Rebellion of 1837 triggered a heightened awareness to the threat posed from both within and without – a central issue in the *Report of the Board of Inspectors for the Provincial Penitentiary, 1838*. As the Inspectors observed, “the disturbed state of the country during the last winter...required increased watchfulness for the Protection of the Penitentiary” (1838:10). Fears over this external threat were compounded by the fact that, by 1837, there was still no secure wall around the Penitentiary; as a result, concerns over inmate ‘escape’ appeared for the first time in this report. Despite records indicating no *successful* escapes to that point, Warden Smith expressed that the “few *attempts*” had “*no doubt* been suggested by the apparent insecurity of the fence” (1838:7) [emphasis added]. This, combined with demands for “the safe keeping of an increased number of prisoners,” rendered no issue greater than the “the erection of an outer wall around the establishment” (1838:4). The ‘type’ of individuals held in the Penitentiary, and the disorder created by the Rebellion, made the absence of the wall a tremendous danger to institutional security, according to the Inspectors:

[The wall] must not only embrace security against the Escape of the Convict from within, but sufficient to repeal danger from without – the Inspectors having reason to believe that the liberation of the Convicts formed a part of the plans of the disturbance of the peace of the country. (1838:4)

A defining apparatus of institutional security, the wall figured prominently in the Inspector’s report, necessary to contain the threat of the escaping “Convict.” However, the centrality of this concern was based less on *factual* evidence of the wall’s necessity, and more on assumptions about an ambiguously constituted ‘Convict’: ‘drawn’ to the disorder of the Rebellion and the

possibility of liberation, ‘Convict’ was a *likely* threat to escape provided the opportunity. This view was at the foundation of the Inspectors’ hastening the wall’s construction.

The constitution of the *potentially* threatening ‘convict’ in the rationalization of penal policies continued to be a concern into the 1840s. The 1845 Board’s concern over what to do with inmates serving life sentences was not only reminiscent of the nature of the subject, but provided a further example of how assumptions influenced the priorities of the institution. The Board of 1845 argued that individuals sentenced to life had no incentive for good behaviour, nor hope for sentence remission; thus, the possibility existed that these ‘men’ would risk their lives and the lives of the guards to escape, requiring constant vigilance. The Warden echoed the Board’s argument that those sentenced to life will be those most likely to attempt to escape “by the most desperate means” – given they have so little to lose (1846:6). Further, these individuals, outwardly constituted as *male*, could not be expected to contribute beneficial hard labour, nor be reformed, given their hopeless state: “[F]rom the degraded and dispirited state of the convict, neither *his* moral reformation nor the full benefit to the institution of his labour, can be expected” (1846:1) [emphasis added]. As a result, the Inspectors viewed deportation as the solution, with the Warden alternatively suggesting that “perpetual solitude of a cell...will...have the best effect in bringing culprits of this description to repentance of their crimes” (1846:6). Thus, to the Inspectors and the Warden, in the spirit of institutional security, extreme measures were required to contain the inmate sentenced to life in prison, given *he* was both idle (i.e., non-labouring) and threatening (i.e. desperate, likely to attempt escape).

The constitution of the *male convict* in rationalities and technologies regarding the security of the institution clearly indicated a view of *him* as unruly, unpredictable, and requiring increased vigilance. As such, the use of labour to regulate the convict body continued to be a priority in the 1838 and 1845 Reports, its necessity legitimated primarily with discourses

regarding its economy and efficiency. As stated in Warden Smith's 1838 report, convict labour was crucial to the completion of various parts of the Penitentiary, with "as much convict labour as possible [having] been devoted to the support of the Institution" (1838:8). Further, the Warden lauded the inmates' efficiency, stating: "the building operations and other works...have been performed altogether by the labor of the convicts, whose proficiency in their several trades is such that the work performed by them is of the best description" (1838:8). The Warden estimated that the overall value of convict labour had increased, reporting that "the labor of the prisoners during the last year exceed[ed] that of the preceding by 4 ¼ percent per *man*" (1838:8). Thus, the continued use of inmate hard labour was not only rationalized according to its benefit to the institution, but it constituted the *male* inmate body as a profitable source of labour. The 1845 Board reiterated the economic benefit of convict labour, desiring that it be used less for the construction of the Penitentiary, and instead in ways "more profitable to the institution" (1846:1). In any event, despite the 1834 Act rationalizing inmate labour by constituting an 'untrained' (male) convict, the focus in both 1838 and 1845 returned to the commodification of inmate bodies and the calculated 'return' of their employment by the Penitentiary.

Ensuring the productivity of 'able' male inmate bodies was imperative to institutional profit – particularly given the unruly and unpredictable 'nature' of a (male) 'convict' labour force. Therefore, an 'agent of truth' was designated to ensure the maximization of inmate labour. Dr. Sampson's 1838 report reinforced his role not only as the Penitentiary physician – having the requisite *knowledge* regarding the health of inmate bodies – but, consequently, as an agent of truth responsible for ensuring that healthy inmate bodies were contributing labour to the institution. Specifically, the Surgeon's report pointed to the *natural* tendency for convicts to feign illness to avoid labour, implicating an inherently deceptive inmate character: "the *disposition* to 'malingering' amongst the Convicts is so great, that were not the visits of the Medical Officer known

to be certain and daily, constant advantages would be taken...[by those] who have no other object but a temporary respite from labour” (1838:18). Dr. Sampson further revealed that he had been tricked by convicts on more than one occasion: “successful deceit has frequently been practiced...” (1838:19). As such, the Surgeon’s position as an ‘expert’ on inmate bodies was vital to ensuring their service to the public: “by the vigilance and discrimination of the Medical Officer of such an establishment as this, much imposition may be prevented, and a corresponding quantum of valuable labour secured for the public” (1838:19). Thus, in constituting a deceitful and manipulative inmate, the Surgeon positioned himself as an agent of truth, legitimating his role by the value of his knowledge for ensuring the ‘fitness’ of inmates for labour – and ultimately, their profit to the regime.

As observed, this language of the ‘profit’ of convict labour superseded earlier discourses focusing on the ‘reforming/training’ potential of inmates – with visions of ‘reform’ through industrial training being lost in the discourse. However, the discourse of ‘reform’ was not lost altogether, with 1838 Report expanding on the 1834 Act’s vision for religious reform of inmates. The Chaplain, whose official *purpose* was the ‘reclamation’ of lost convict souls, was the voice of religious reform as an institutional technology. The Chaplain’s report of 1838 resonated a feeling of frustration over the ‘progress’ being made by the Kingston institution with regard to inmate reform: “The review of the past year is attended with mingled feelings of joy and sorrow; of joy, that the melioration of the Convict has been earnestly sought after; of sorrow, that so small a return has been made” (1838:13). However, the Chaplain attempted to mitigate this seeming ‘failure’ as a difficulty not with the institution, but rather, with the inmate: “...when the obduracy of the heart enslaved for years (and in many instances, from childhood) is considered in connexion with the shortness of term for which they were imprisoned, all doubts respecting the successful working of the establishment must vanish” (1838:13). To the Chaplain, the sheer lack

of time in the institution, not the institution itself, rendered these sentences virtually ineffectual in changing the “evil habits” of inmates (1838:14). The Chaplain further stated:

The *prospect* of a speedy liberation, alleviates punishment, banishes reflection, by bringing before the mind the *scenes* of riot, so gratifying to their nature, and even encourages them to form schemes which feed their passion, and render them, when released, a far more terrible scourge to society. (1838:14) [emphasis added]

The Warden’s report reinforced this concern stating that terms of less than 17 months were insufficient in light of the ‘nature’ of men: “[It] has been found by my experience to be too short on which to effect any lasting improvement in the habits of *men* who have lived in the commission of crime” (1838:5). As such, by constituting the inmate as inherently, almost irreversibly, *criminal* in *nature*, driven by the need to “gratify” their natural “passions” with the “scenes of riot,” both the Chaplain and the Warden attempt to mitigate any failure (i.e., recidivism) by the institution. As a result, longer sentencing was legitimated by this perception of the convict: as stated by the Chaplain, a short sentence only “hardens the heart and produces a repetition of crime” (1838:14).

Not surprisingly, the Chaplain implicated a lack of religious influence in the development of ‘criminals’ – namely, “the want of religious instruction in childhood” (1838:16). To the Chaplain, ‘convicts’ not only lacked in religious guidance when they were children, their ‘evil habits’ were “strengthened by the immoral conduct of parents,” with some “thrown upon the world without a friend to counsel, and have unfortunately fallen into company, the very hot-bed of sin” (1838:16). As such, these individuals, having no external restraint, succumbed to their ‘natural’ tendencies toward sinful, “licentious living”: “some by indulging their lustful passions” committing “the most brutal deeds”; others “by suffering *anger* to overcome *reason* driven unwittingly to imbrue their hands in the blood of their fellows” (1838:16-17). Thus, the tendency for uncontrolled children to commit ‘brutal deeds’ could be explained by their naturally existing

propensities toward ‘lustful passion’ and/or anger – with the absence of Christian influence at the root.

As such, in addition to longer sentences, the Chaplain stressed that religious instruction (which he termed “School”) was paramount to reclamation – for “what greater blessing can there be than a privilege of perusing the word of God, which proclaims the plan of salvation to the sinner?” (1838:17). To the Chaplain, the only means to reform the “immoral” convict was through “spiritual knowledge”: “If it be true that knowledge is power, what mighty moral effects may be produced, if that knowledge be communicated to the convict, which will enable him both to discern the evil which disturbs *his* breast as well as discover the antidote” (1838:17) [emphasis added]. Thus, spiritual knowledge would be the saviour of decidedly evil *men*, empowering them to overcome their criminal natures. However, paramount to this process was convincing the men of the justice of their conviction and sentence: as Chaplain Herchmer insisted, “I have endeavoured to impress upon the convicts the absolute necessity of an acknowledgement of their guilt, the *justice* of their punishment, as well as the undeviating *conformity* to the rules of the Institution” (1838:16). Thus, in discovering the root of their evil, the inmates had to accept that they were deserving of punishment for it. Finally, the Chaplain’s position was such that it was up to the convict to prevent his own return: “the attempt has been made, the opportunity has been afforded the culprit to consider his ways; if *he* has not encouraged reflection, if *he* has willfully rejected the means whereby a change might reasonably be expected, his blood then rests on *his* own hands” (1838:17-18). To the Chaplain, until the *male* convict accepted the will of God in his heart, his reform would be long awaited.

Despite Chaplain Herchmer’s insistence on the importance of religious instruction in the prevention of re-committal, it continued to be of little importance in the 1845 Report – not only minimizing the influence of ‘pastoral’ discourses in policy decisions, but relegating the influence

of the Chaplain as a pastoral agent. The Chaplain's report to the Board of Inspectors in 1845 continued to stress that little attention had been given to the "moral instruction of convicts" (1846:2). As an example, the school report revealed that little to nothing had been done to establish a system of religious instruction for male convicts. As expressed by the Chaplain: "The request for more time for the Convict School, and increased accommodation for teaching, as well as the appointment of a Master, has not been thought deserving attention" (1846:2). Further, given construction was still in progress and the number of male convicts was growing, space for an inmate school and time for religious instruction of male convicts was not considered a priority by the Warden or Inspectors; male inmate bodies and time were better put to labour.

However, where it was obvious that 'moral instruction' was not a priority for men, the Board of Inspectors displayed quite a different sentiment with regard to women and boys. The Inspectors of 1845 immediately expressed its "feelings of deepest regret" over the incarceration of boys in the Penitentiary as young as 8 years of age, with the Chaplain conveying a tremendous amount of concern over the use of the same system of discipline for men and boys. Despite a longstanding belief in the role of hard labour and silence in the regime, the Board were apprehensive over the fact that these strategies prevented young male convicts from obtaining education, which they argued would "assist in reforming their character" (1846:1). Thus, although education as a reform measure had seemingly been sidelined as a priority for adult male convicts (in favour of their more profitable labour), the Inspectors perceived the criminal behaviour of young boys as less 'habitual,' constituting them as reformable – with education being vital to this process.

With regard to women, the Protestant Chaplain in particular felt that moral instruction and influence was vital to their time in the institution, evidenced in his discussion of the role of the Female Superintendent:

The female superintendent...should both in moral and social deportment, and in religious and secular education, be raised up to such an eminence, as that the unhappy convict may look up to her as an example; and command moral obedience by moral influence, rather than physical force. (1846:2)

Thus, to the Chaplain, the individual responsible for the supervision of the female convicts need be a moral beacon, capable of invoking moral servitude in the women – rendering physical discipline *unnecessary*. To aid in their reform, as well as the reform of incarcerated boys, he further stressed the importance of separating women and boys from any influence, either criminal (i.e., from male convicts) or otherwise (i.e., visitors), except those whom aid in their moral education. Such ‘refuge’ would provide “protection from the *seducer*, till the moral and religious senses had become so exercised and strengthened as to enable them to resist any further seduction to sin” (1846:2) [emphasis added]. Thus, where women and boys were constituted as both morally reformable and vulnerable to criminal influence, similar concern for male inmates was missing – even to the extent that they were constituted as the *seducers* from whom the ‘morally indefensible’ required protection.

#### 4.2.2.3 Implications: Security and Economy in the Face of ‘Evil’ Habits

The Inspectors Reports of 1838 and 1845, containing the reports of various agents of the Penitentiary, gave a clear indication of the priorities of the Penitentiary in its first ten years of operation, and more importantly, provided discursive evidence of the perceptions of its population and the development of policy based on gendered assumptions. Again, although the discourse of the Reports relied on the previously established constitution of a homogenous, ambiguous inmate body, they increasingly masculinized ‘convicts’ with identifiers such as ‘he,’ ‘him,’ ‘men,’ and ‘dangerous men’ – particularly with regard to discussions of repeat offenders. Further, these Reports also constituted the roles of various Penitentiary agents, revealing evidence of the relations of power that were slowly growing in the institution.

In a place where security and the ‘safekeeping’ of inmates was established as a priority early on, the 1837 Rebellion, whether a true threat to order or not, reinforced and solidified a growing fear over ‘escape’ – the wall being both the structural and symbolic solution to this ‘problem.’ Not only would it prevent the Rebellion from infiltrating the Penitentiary, more importantly, it would prevent convicts, lured by the appeal of disorder by nature, from leaving. Further, and perhaps more importantly, the wall would signify to an uncertain community that it was safe from the *potential* danger within, its imposing nature perhaps even feeding an unfounded fear. However, given the few attempts at escape and only two ‘successes’ to 1845, the wall as an institutional priority was largely based on *assumptions* about its population – who were constituted in the discourses as volatile, deceptive, etc. – rather than the *real* danger it posed. Further, despite these prominent concerns over security and order, discussion of prisoner conduct in the 1838 Report was positive. From the 1838 Warden’s Report, he stated that the “conduct of the prisoners has been generally good,” and importantly, that “the punishment which it has been necessary to inflict has not exceeded the average proportion of last year” – despite a 45% increase in prisoner population (1838:7).

Not surprisingly, inmate labour continued to be a priority, however less with regard to its ‘training’ effect and more with regard its commodification and productivity. Therefore, priority was placed on ensuring that able-bodied convicts were being employed to their maximum potential. The importance of maximizing inmate productivity was reinforced in the Surgeon’s role as an agent of truth. Although outwardly, the Surgeon’s position as Penitentiary physician assumed caring concern over the health of the inmates, in reality, the Surgeon was to use his ‘expert’ scientific knowledge of bodies to see through inmate deception concerning the state of their health and ensure that healthy inmate bodies were utilized in labour. Thus, the doctor-patient relationship was founded on suspicion and accusation, as well as on the assumption that criminal

men were naturally deceptive. Further, his knowledge would play a key role in the economy and profit of the institution.

On the other hand, concern over the Penitentiary as an institution of *moral* reform voiced by its greatest stakeholder – the Chaplain – appeared to have less influence. At a time when the Quaker-lead prison reform movement was gaining momentum in England, and the standards for penitentiaries of the day were much higher (i.e., in terms of staff, reform measures, etc.), the Chaplain's frustrations over Kingston Penitentiary's failures to make significant advancements in the moral reform of inmates were fervent. The Chaplain's Report of 1838 in particular expressed tremendous concern over the recommittal of inmates as a sign of 'failure' – this, despite the fact that very few inmates to that time had re-entered the Penitentiary for a second time. However, to the Chaplain, this 'failure' was more a product of the *nature* of male inmates – as easily tempted, sinful, and deceptive – than the wrong-doing of the institution itself. To the Chaplain, convicts were simply sinful 'men' who were devoid of proper religious upbringing, acting on their 'natural' tendencies toward aggression and gratification. In constituting the male inmate in this way, the Chaplain legitimated both increased sentence time and more importantly, the need for religious reclamation of the inmate. Further, he used this view of a wayward male criminal to rationalize his role in convincing the convict of the justice of his sentence and conformity to the rules of the Penitentiary. Thus, speaking from a Christian-pastoral position as a 'saviour' of lost souls, the Chaplain legitimated the importance of confession and conformity as being in the best interests of the reclamation of the inmate. However, in this way, the Chaplain's discourse also positioned him as an agent of surveillance and discipline.

Despite the Chaplain's assertions, the 1845 Report revealed that the 'moral reform' of male inmates was of little priority to the regime, his pastoral knowledge having little influence on policy priorities in the institution. In light of the ongoing construction of the Penitentiary, and the

dreams of the Inspectors for the use of inmate labour for *profit*, moral reform of male convicts was placed on the back burner. However, the 1845 Report revealed an interesting double-standard with regard to discourses of reclamation and reform, particularly as they related to women and boys held in the institution. Where technologies of moral reform (i.e., school, teacher, etc.) for men were second to labour, the Inspectors insisted that women and boys required focused moral instruction and influence – education for boys, moral influence by the Female Superintendent for women. Thus, where women and boys were constituted as ‘reformable’ to the extent that institutional priorities for their care were directed as such, failures to make progress in the moral reform of male inmates indicated a perception of them as simply unreformable. Further, the insistence by the Inspectors that women, boys, and even soldiers, be kept separate from “the most degraded villains” clearly constituted male inmates as the greatest threat.

In spite of the instability within the prison administration, the focus of the Inspectors’ Reports of 1838 and 1845 was clearly on the management of a presumably unruly and unreformable convict body. Where the Inspectors began to recognize the plights of women and children in the institution, policies related to the inmate ‘norm’ – men – were increasingly designed to contain and control, with ‘moral instruction’ and the pastorally influenced reform suggestions by the Chaplain left far behind. Discourses of ‘failure’ by the institution were matched consistently by discourses of blame and fear – the Penitentiary could not ‘reform’ an ‘unreformable’ group of men. Therefore, their bodies were simply managed and profited from, with the Surgeon’s knowledge being a key instrument of ‘truth’ about male convict bodies and their ability to perform productive and profitable labour.

### **4.2.3 Crisis: Calls for a Commission**

#### 4.2.3.1 Conditions: Brutality, Mismanagement and Misconduct

From the opening of the Penitentiary until the mid to late 1840s, discourses suggested that security and economy coexisted as the regime's 'driving force,' with religious 'reclamation' being of little priority. As such, knowledges that secured these priorities (i.e., Surgeon's knowledge of the health of male bodies) were more influential than those that, incidentally, attempted to explain and remedy criminal 'habits' (i.e., pastoral knowledge of the Chaplain). Established early on, expertise in the area of 'discipline and police' in the Penitentiary, and 'safekeeping' of inmates, was the responsibility of Warden Smith, assigned the duty to ensure security in the Penitentiary. Where early on (i.e., 1833-1835), the focus on security was minimal at best, the threat to the order of the Penitentiary generated by the 1837 Rebellion marked a heightened concern, with discourses increasingly constituting the male convict as a 'volatile' and inherently dangerous threat – allowing officers to use any and all measures to quell disorderly behaviour, including corporal punishment. However, a lack of guidelines regulating the use of corporal punishment subsequently resulted in a great deal of brutality (Hennessey 1999). With the first ten years of the regime already seeing its share of tumultuous times, particularly with regard to prison administration, the largely unregulated punishment of convicts created an increasingly unstable atmosphere in the prison. The 1846 dismissal of Deputy Warden Utting, the appointment of the Warden's son, Francis Smith, to a more esteemed position, and their development of a new Penitentiary Act without consultation with the Board of Inspectors (ultimately leading to their resignation, and the appointment of a new Board of Inspectors who were in favour of Warden Smith's tactics) all contributed to an increasingly corrupt regime that was bursting at the seams. Added to this turmoil was a growing division among staff of the institution, a number of whom testified at the 1847 trial of Francis Smith, charged with

inappropriate conduct and maltreatment of prisoners – testimony which, for many, led to their dismissal. Rumours of corruption, mismanagement, and cruelty ultimately became ‘public clamour,’ finding its way into local newspapers and generating a great deal of criticism (Hennessey 1999).

The year 1847 saw the Warden himself, the subject of many concerns related to the Penitentiary, requesting an inquiry into the conduct of the institution. In response, a Royal Commission led by George Brown (the editor of the Toronto Globe) was formed, given the duty to investigate the general system of discipline and management at the Penitentiary. The central focus of the Commission was the charges against Warden Henry Smith, the proceedings against whom began in the fall of 1848:

It had been forced on our conviction that the Penitentiary was...in a state of complete disorganization; that the officers and convicts were divided into two parties, one for and one against the Warden; that the Warden and Chaplain were at open warfare; that secret caballing was constantly going on among the officers and convicts; and that the extravagance and mismanagement pervaded every branch of the establishment; so, therefore, felt it desirable that not an hour should be lost in restoring order to the Institution. (1849:106)

Where the Commissioners very clearly pointed to the immediate necessity to restore order and ‘increase the Penitentiary’s efficiency and utility,’ also evident (and perhaps more so) was their desire to improve the public’s confidence and to restore faith in the system – public criticism being very much part of the ‘crisis’ that led to the Commission.

In outlining the guidelines for the proceedings, the Commissioners’ discourse determined ‘whose’ testimony would be trusted in the preliminary investigation (intended to establish the charges pursued by the Commission) – firmly establishing a hierarchy of knowledges. To guide the lines of inquiry, “Officers of the Institution” were interviewed for the preliminary investigation; however the Commissioners questioned the accuracy of their information, stating “we would not get so safely at the true state of the case” if only their accounts were relied upon

(1849:80). Thus, the Commissioners turned to prominent citizens – “*gentlemen* residing in the neighbourhood of Kingston, and reputed to be well acquainted with the affairs of the Institution” – to provide lay perceptions of institution as part of the Kingston community (1849:80). As the Commissioners stated, this testimony would be taken “not under oath” but “in the form of conversation,” indicating a high level of trust in the word of these ‘gentlemen’ (1849:80). However, on the other hand, despite an obvious pretence to examine the maltreatment of inmates, convicts were *not* interviewed for this preliminary investigation, nor was their knowledge considered reliable. As stated later in the Commission, even in matters pertaining directly to them, their testimony was given little credence:

As to Convict testimony, it was only used in the charges to complete the evidence of other witnesses, and even then to so small extent, that had it been expunged altogether, the charges would not have been materially affected. *It was never intended any charge should be considered established against Mr. Smith, or any other officer, by Convict evidence.* (1849:106)

Thus, although the charges were many, particularly with regard to the gross maltreatment of inmates, the Commissioners’ discourse established a clear, and gendered, hierarchy of knowledge – the most relied upon being upper class men in the community, followed by the predominantly male officers of the Penitentiary, and *excluding* the knowledge of the well-established ‘deceptive’ male convict. This provision established a clear line between the ‘truth’ of the law-abiding and the ‘truth’ of the convict, significant given that inmates were at the centre of this crisis.

#### 4.2.3.2 Discourses: Pursuing ‘Truths’ in a Volatile Regime

Given the Warden’s role as the central authority in the Penitentiary, much of the blame was focused by the Commission on *his* failures. Where the 1834 Act and the 1835 Rules and Regulations had officially constituted the Warden’s responsibilities around the ‘order’ and ‘policing’ needs of the regime, in light of the ‘crisis,’ the Commissioners’ discourse constructed a

very different view of his character and obligations to the inmates, who themselves were constituted as victims of the Warden's mismanagement.

Where previous guidelines regarding the role of the Matron/Female Superintendent very clearly required her to be a 'moral beacon' for 'lost' female inmates, expectations for the Warden related more to his ability to ensure structure, discipline and security 'unruly' inmate men. However, the tone of the Royal Commission was considerably different. Much of the blame directed toward the Warden related to his *desire* (or lack thereof) to guide and invest in the lives of a considerably more 'destitute' convict. For example, Charge IV against the Warden implicated him for not taking "an active interest in the moral condition of the Convicts" and for failing to impose "moral duties and principles on the minds of the convicts" (1849:141). As such, witnesses testified to his failure to give proper attention to the guidance, education, religion, and moral suasion of the convicts under his charge – concerns which had been raised by the Chaplain and ignored for a decade prior: "proper attention was not paid to the common education of the Convict, and the religious services of the Prison were quire inadequate" (1849:141). In charges relating to his neglect to 'attend constantly' at the Penitentiary, the Commissioners dwelled much on his failure to be present at the Convicts' mealtimes and the 'divine service,' arguing that even though he was not required by the regulations to do so, an individual in his position should *desire* to in order to set a good example for the inmates:

[A]n energetic Warden would naturally take this opportunity of gaining the kindly feelings of the Convicts, by showing an interest in their good treatment, and a determination that every justice should be done them. The great abuses which have arisen...and the treatment of the Convicts in reference thereto, it is to be hoped would not have been allowed to exist had the Warden attended to this duty... (1849:135)

Thus, the discourse of the Commission constituted the Warden's role more as *caring* and *fatherly*, similar to the way the Matron had been constituted as a maternal figure for female inmates. Further, the Commission constructed their expectations of the Warden based on a very different

view of male inmates – less as hardened criminals in need of control and more as emotional beings in need of caring guidance. This is evidenced in the Commissioners’ expectations of the Warden upon the inmate’s release:

We conceive it to have the high purpose in view, of enabling the Chief Officer of the Institution to profit by the moment when all the better *feelings* of the *culprit* are stirred with the thought that his crime has been expiated, and that *he* is returning to his home; we can conceive no more interesting duty than to lead the prisoner at such a moment to unbosom himself freely, to advise him in any good purposes he may have formed. (1849:139) [emphasis added]

These perceptions of the vulnerability of the male convict upon release solidified their argument regarding the Warden’s paternal obligation to him. Further, to the Commissioners, a Warden capable of earning a close and trusting relationship with convicts could also procure information that would benefit the regime: “it affords an opportunity to the Warden to learn any abuses which may exist in the Prison, and to find the effect of the discipline” (139). As such, the Warden as a *paternal* figure could not only guide wayward men, but could also procure information vital to improving order in the Penitentiary.

The constitution of a vulnerable masculinity amongst inmate men, one that commanded a caring, paternal figure, figured prominently in the rationale behind Warden Smith’s dismissal and the Commissioners’ view of appropriate qualifications for his replacement. Primarily, they stressed changes to the duties and character required of the Warden of the Penitentiary:

His position, and so he must *feel* it, is that of a *high minister of justice*, appointed to fulfill the *benevolent* object of the Penitentiary – the reformation of the *unfortunate men* committed to his care. The best safeguard then, against the tyrannical exercise of power by the Warden, is in his being *a man thoroughly imbued with the spirit of philanthropy*, and deeply interested in the moral welfare of those under his charge. (1849:290) [emphasis added]

The standards for the new Warden not only marked a shift away from his being a stern, heavy-hand disciplinarian, but also from a view of the *convict* as an unruly threat to order. To the

Commissioners, the Warden was to be a benign, ‘ministerial’ father-figure who demonstrated genuine care for the ‘unfortunate’ men in his keep. Departing from past views of the Warden as a source of disciplinary knowledge, the Warden was now expected to be a source of *moral* knowledge – having a benevolent desire to aid the ‘unfortunate men’ – with these rationalities legitimating Warden Smith’s dismissal.

This constitution of a decidedly more vulnerable male convict body extended to decisions regarding one of the more contentious issues before them: concerns over corporal punishment. Again, the Commissioners implicated the Warden for failing in his ‘moral obligation’ to oversee punishment, asserting that his watchful eye was imperative to ensure convict safety: “the Convicts were often subjected to the lash, a condition calling for the closest examination of authorities...we think that the claims of common humanity demanded the frequent presence of the chief officers on such occasions” (1849:136). Whereas little concern was previously given to the harm caused by corporal punishment, in light of the interrogation of the Warden’s failures, he was perceived by the Commissioners as morally responsible to supervise its infliction on a very vulnerable group of men. The Commissioners also criticized the regime for what they deemed to be a brutal, unpredictable, and overused system of punishment. To the Commissioners, these practices undoubtedly affected convict morale:

The exasperation which such a system could only produce, must have bid defiance to all hope of reform. To see crowds of full grown *men*, day after day, and year after year, stripped and lashed in the presence of four or five hundred persons, because they whispered to their neighbour, or lifted their eyes to the face of a passerby, or laughed at some passing occurrence, must have obliterated from the minds of the *unhappy* men all perception of moral guilt, and thoroughly brutalized their *feelings*. The argument that such an amount of punishment was necessary to maintain the discipline is quite untenable. (1849:189) [emphasis added]

Again, in implicating the Warden’s failures, the Commissioners appealed to the *male inmate* as an emotional being, pointing to what they considered an obvious relationship between the unjust

use of corporal punishment and the inmate's emotional and moral degradation. To them, the Penitentiary's unjust system of punishment was the culprit in the 'hardening' of men, essentially diminishing their ability to feel moral culpability. Added to this assault was the public display of punishment, which they argued demoralized convicts in the eyes of their peers: "Little good can be obtained by degrading a man in his own estimation or in that of others. *Convicts have the same feelings as other men*" (1849:190) [emphasis added]. However the Commissioners continued to support its use in a responsible manner, under the watchful eye of the Warden: "We are not satisfied that corporal punishment can safely be prohibited in a Penitentiary...its exercise should be rare and marked, and only called out by the most serious offences" (1849:190). Thus, inmate *men*, despite the acknowledged horrors they experienced as a result of a brutal system of corporal punishment, were constituted irregardless as *physically punishable*: physical pain as a deterrent was rationalized according to a gendered assumption that it was necessary to control *men*.

The vulnerability of male inmates with regard to physical punishment was, however, contrasted by discourses regarding use of corporal punishment with women, boys, and the mentally ill. In their thorough investigation of the physical punishment of children in the Penitentiary, the Commissioners observed of one boy that his offences "do not betoken depravity as much as heedlessness...it is very clear that if he was not *naturally bad*, such a frightful amount of punishment must assuredly made him so" (1849:190). Further, they observe: "It is horrifying to think of a child...being lacerated with the lash before 500 *grown men*; to say nothing of the cruelty, the effect of such a scene...must have been to the last degree brutalizing" (1849:190). Thus, given both their age and the absence of 'natural' depravity, young boys were constituted as wholly undeserving of physically punitive punishment – this in contrast to their adult counterparts who were assumed to be 'naturally bad,' requiring corporal punishment to correct their behaviour. This hierarchy of 'punishability' extended to mentally ill men, one of whom was

observed as being “often punished for acts of madness” (1849:197). The Commissioners denounced this practice, providing the following rationale: “the suffering of the body would depend upon the temperament of the party; a callous man would not suffer in body; a sensitive man would do so...to subject a man of this disposition to the cruel punishment...could only make him more reckless and stupid than before” (1849:200). Thus, mentally ill men, whose bodies were constituted as ‘more sensitive’ to the physical pains of punishment, were therefore also unpunishable. Finally, the Commissioners briefly and definitively concluded that the physical punishment of women by the Warden was completely unacceptable: “we are of *opinion* that the practice of flogging women is *utterly indefensible*” (1849:190). Continuing the trend of constituting women as the ‘exception’ in penalty, the Commissioners’ viewed the discontinuation of physical punishment of women as simply intuitive, with little rationale except that they were *women*. Despite thorough justification of the appropriate (or inappropriate) use of physical punishment on different groups of male inmates, female inmates *as women* were simply viewed as exempt.

This disparate representation of genders, and masculinities in particular, was perpetuated in the way male inmates were constituted against more ‘credible’ masculinities, namely, those of the various officers of the institution. This distinction was never more apparent than in proceedings against the Surgeon of the Penitentiary, who was charged with, among other things, not giving proper attention to the health complaints of the convicts. As established in earlier discourse (i.e., 1838 Report), the Surgeon’s expertise on the male convict body established him as an agent of truth in the regime, his duty being “to detect all attempts at deception on the part of convicts” (1849:263). However, given they were the only witnesses to these accusations, several convicts told of the Surgeon’s “improper treatment” and “negligence” with regard to their complaints, often “behaving with cruelty towards them” – this despite the fact that convict

testimony was to be given little credibility in the proceedings (1849:262). Testifying in his own defence, the Surgeon explained that many men tried to avoid their labour by feigning illness, playing to well-established beliefs about the 'innate,' deceptive nature of criminal men. Further adding to the doubt cast on the already discredited convict was the way in which the Surgeon's position was constituted: as "a gentleman of high standing in society, of unimpeachable character, and of eminence in his profession," his testimony stood as for more credible than the 'deceptive' inmate (1849:271). On the other hand, the discourse constituted the accusing male inmate patient largely according to his criminal past: "Berard Forashee, sentenced to 14 years imprisonment for burglary" was "such a great liar, he could not believe him [when he complained of illness]" (1849:263). The constitution of a multiplicity of masculinities, and a hierarchy of credibility based on them (i.e., Surgeon's professional eminence vs. the inmate's criminal ruse), placed the Surgeon's testimony above all others, with the Commissioners concluding that the Surgeon had been "deeply wronged" by the accusations, and that the inmates' charges were largely false (1849:271).

The male inmate constituted in the 1849 Royal Commission thus ranged from an emotional, miserable unfortunate, the victim of the maltreatment and corruption of an immoral and corrupt Warden, to a 'natural criminal,' capable of deception and violence, requiring physically punitive punishment and segregation from other more vulnerable populations. Therefore, the Commissioners stressed the need for a system that was "firm, equable, mild, and humanizing," surpassing the "harsh, cruel, and degrading" system of previous years. To guide this pursuit, they suggested a number of aims they hoped would carry the regime's treatment of those in its charge into the future, among them: "to rescue the child of ignorance and vice from the almost certain destruction to which *he* hastens"; "to implant religious and moral principles and industrious habits on the inmate of the Penitentiary"; and "to strengthen and encourage him

in his struggles with the world when he is discharged from confinement” (1849:297). Thus, to the Commissioners, it was up to the regime to ‘rescue’ and ‘fix’ the vulnerable male convict utilizing an approach that recognized his assumed weaknesses. Evident in these aims was an infantilizing view of the inmate as one who lacks control over his actions and requires training to become a more productive adult. Thus, although the recommendations clearly denote a need for greater control and order in the institution, the ‘official,’ concluding discourse of the Commission appealed to the vulnerability of the male inmate, and the need for a softer approach than the first 15 years of the regime had witnessed under Warden Smith.

#### 4.2.3.3 Implications: Steps Toward an Improved Regime?

The Royal Commission of 1849 was the first official (and most extensive) interrogation of the Penitentiary since its birth. Given the very public charges of corruption, mismanagement and cruelty levied against the regime, the Royal Commission recognized that a very public *response* was required to quell the concerns and restore faith in an institution that had been the subject of criticism since its inception. At the centre of their interrogation was Warden Smith who, by the account of the Commissioners, was to be held responsible for all that was awry. In interrogating his actions with regard to inmates and establishing his fault, however, the Commissioners appealed to the gendered view of his position in relation to them: the Warden as a failed father figure to a very child-like group of male inmates. In recommending his removal, the Commissioners insisted on the esteemed and benevolent role of any future Warden, recommending the appointment of a person morally responsible to the inmates.

For the first time in Penitentiary discourse, inmate masculinity was constituted in a vulnerable manner; however, this perception did not persist throughout their report. Seemingly, male inmates as ‘unfortunates’ were only such in relation to the irresponsible Warden, the one who was to be held publicly responsible for the failings of the Penitentiary. This contrast

effectively demonized the failed paternal obligation of the Warden, however, seemingly only for that purpose. In other sections of the report, particularly those addressing issues of disorder, the Commissioners returned to a view of male inmates as a threat, constituting their masculinity by appealing to assumptions of ‘aggression,’ ‘deception,’ and ‘evil.’ Corporal punishment, segregation from vulnerable populations, and hard labour were still necessary to control the ‘hoary headed evil doer,’ a far cry from the moral guidance required for the ‘child of ignorance.’ Further, in justifying the need for greater diligence, the discursive elements of the report put the ‘bad’ masculinities of the inmates up against the ‘good’ masculinities of men such as the Surgeon, and even the femininity of female convicts and the ‘innocent’ masculinity of young boys and the mentally ill. Seemingly, different views of inmate masculinity were appealed to by the Commissioners in order to legitimate different actions and recommendations.

Amongst other things, the Commissioner’s interrogation of corporal punishment provided evidence of the gendered-nature of decision-making. First, given both public criticism of the brutality of the regime and the need to provide assurance of public safety, the Commissioners were required to simultaneously acknowledge the negative effects of corporal punishment on men while justifying its continued use – something that they accomplished by appealing to a number of different masculinities. With regard to solving the problem of ‘brutality,’ the Warden again was the scapegoat, his guilt discussed in the context of the inmate as a victim. Male inmates were portrayed as emotional beings, not in the sense that the punishment inflicted made them *more* emotional, but rather, less so – as the Commissioners asserted, the injustice of the Warden’s system of corporal punishment removed ‘the perception of moral guilt’ from their already unhappy states. Contributing to this was the demoralization created by punishing men before their peers, and the social harm done by this degradation. Taken as a whole, the Commissioners appealed to the psychological vulnerability of convict men, which they argued existed in all men.

However, in contrast, the Commissioners continued to stress the necessity of corporal punishment, particularly in relation to the ‘type’ of individuals and ‘type’ of institution they were dealing with, revealing a subtle contradiction: despite their assertions that inmate men were ‘emotional’ like ‘normal’ men, they legitimated the necessity of corporal punishment by appealing to their ‘natural’ tendency for criminality. This characteristic justified the use of harsh punishment to their bodies in order to maintain the discipline of the institution. The use of punitive technologies of punishment, however, was markedly less justified for boys, women, and mentally ill male inmates, who by ‘nature’ were far more vulnerable to the pains of these methods. Thus, a gendered rationale guided decisions regarding penal policy: in this case, the continued use of physically punitive punishment for inmate men and its elimination for other ‘more vulnerable’ groups.

The Commissioners’ concluding discourse suggested a move to a more benevolent regime, one that appealed to a paternal approach, investing in the lives of wayward sons, exercising less punitiveness and encouraging greater moral reform. However, given the well-established view of the male inmate as a danger and a threat, the question remained: ‘Who’ would appear in future changes to the governing discourses of the regime?

#### **4.2.4 Fallout: Effects of the Recommendations for an ‘Improved’ Regime**

##### 4.2.4.1 Conditions: A New Document Under New Authority

The Commission left in its wake recommendations for a number of changes to the Provincial Penitentiary’s regime, changes based on the constitution of male inmates still as dangerous threats, but *more importantly*, as misguided unfortunates. Following the recommendation of the Commissioners, Warden Smith was dismissed and a new Warden – D.A. MacDonnell – was appointed in his place. Some histories (i.e., Hennessey 1999) have argued that

the appointment of MacDonnell represented progress in the regime, a ‘new’ era in the Penitentiary’s history that reflected a ‘new’ set of goals as recommended by the Commissioners. This new regime was to be ‘firm, equable, mild, and humanizing,’ focusing on reforming the souls of misguided men rather than punishing the bodies of abhorrent male criminals. To accomplish this, however, a change to the governing discourses of the Penitentiary was necessary. Authored by the new Inspectors (Wolfred Nelson, M.D. and Andrew Dickson), the 1856 *Rules and Regulations to be Observed by the Officers of the Provincial Penitentiary* certainly reflected demands of the Commission for a more closely regulated regime, the provisions being much more thorough and precise than ever before. However, the question remained: How much changed, and how much remained the same?

#### 4.2.4.2 Discourses: The Language of Change?

Despite the 1849 Royal Commission’s focus on softening the regime’s approach to inmates, the Rules and Regulations of 1856 were very much reminiscent of the ‘old’ way of doing things, and the ‘old’ way of thinking about the male inmate. The disorder and corruption that culminated in the Royal Commission appeared to be very much on the mind of Warden MacDonnell and the new Board of Inspectors, whose new governing document clearly reflected the urgency to improve order in the Penitentiary. Not only were the recommendations for a ‘softer’ system largely ignored, with security being the order of the day, but the constitution of the male inmate as an ‘unfortunate’ had faded from memory.

In general, the language of the 1856 Rules and Regulations *outwardly* suffered from a similar ambiguity as earlier documents. Much of the 36 page document referred to ‘convicts,’ ‘inmates,’ and ‘prisoners’ in its discussions of the rules governing the institution and the conduct of the keepers and kept – giving the impression that these stipulations applied generally to *all* inmates. However, a unique section detailing the role of the Matron and expectations for the

behaviour of female inmates clearly constituted them *again* as the ‘exception’ to the male ‘norm.’ As such, it can be presumed that the remainder of the document applied to the governance of male inmates.

Not unlike earlier discourses, the male ‘inmate’ continued to be represented as a threat to institutional security. The new version of the Rules and Regulations revisited concerns over the threat of escape, and the need for increased diligence to prevent it – this despite little or no concern expressed over escape attempts in the 300+ pages of the 1849 Royal Commission. More rigorous than past documents, the Regulations stipulated a number of new security measures, one being numerous head counts throughout the day – with the Deputy Warden being responsible for ensuring the convicts were where they were supposed to be at appropriate times: “It shall be his duty to see that all the Convicts are accounted for...at breakfast or dinner” and “after going to work” (1856:5). Further, the Deputy Warden was also required to inspect the prison yard for unnecessary materials, seeing to it “that no material is kept near the outer wall that would enable the convicts to escape...” (1856:4). Very precise guidelines for night time inspections by Officers, and the opening, closing, locking, and unlocking of doors to the yard were provided, with any and all possible escape routes highly regulated. The Gate Keepers specifically were required to be diligent in their awareness of potential escape plots by the convicts: “The Gate Keepers must be careful to guard against surprise or stratagem on the part of the prisoners...” (1856:25). The Watchmen composing the Prison Guard, who were required to carry loaded arms, were most directly responsible for ensuring the prevention of escape, even if it meant the death of a convict:

Should a Convict be apparently attempting to escape, it will be the duty of the Watchman to call such Convict back...but should the Convict refuse to return, and it still appearing to the Watchman that he is determined to effect his escape, he will give an alarm, and if the Convict should persevere so far in *his* attempt is likely to escape, he will immediately fire at *him*. (1856:18)

Thus, the *assumed* danger posed by the escaping male Convict was so great that the Prison Guard was expected to shoot him (regardless of the absence of evidence supporting the *real* danger posed), a far more extreme measure than any of those established in previous discourses.

The female convict, on the other hand, was constituted in a much less threatening manner, with the rules simply stipulating that either the Matron or Assistant Matron ensure “that the prisoners may never be left without proper oversight” (1856:23). As such, female inmates were perceived as posing little or no threat to institutional security, the discourse of ‘escape’ not even appearing in their set of regulations. This is reinforced in the provisions regarding Sunday Worship for female convicts. Where every effort was made to secure the institution from the escape of dangerous male convicts – and ultimately protect society from contact with these convicts – female Convicts were permitted to be taken out of the institution on Sundays to places of worship *in the community*:

The Matron and Assistant Matron will respectfully take charge of the Protestant and Roman Catholic Convicts, and proceed with them to their several places of worship, when they will remain with them until Divine Service is ended, after which they are to see them safely brought back to the prison, and locked in their cells. (1856:24)

Thus, the allowance for female convicts to have contact with the community indicated a significantly less dangerous subject, a stark departure from the inmate male – necessitating strict controls to prevent him from threatening the community.

The gendered constitution of male convicts as a ‘threatening’ and ‘dangerous’ masculinity was contrasted not only by the less threatening femininity of inmates, but also by provisions regarding the character of Penitentiary’s male officers. A partial reflection of the Commission’s concerns (particularly with regard to the Warden), the new version of the Rules and Regulations clearly and precisely stipulated that officers of the Penitentiary exercise the utmost morality in their duties: “Any Overseer, Keeper, or Watchman...whose moral conduct

shall be obviously indiscreet or incompetent, or unworthy of the station he may hold, will be discharged from the service..." (1856:27). Not only did the new Regulations make clear their expectations for the moral superiority of male officers, they also broadened the line of authority between Convict and Officer, making strict provisions that officers not communicate with the convicts, or with one another in the presence of the convicts: "[they] are prohibited from holding any conversation...with each other...[and] are to hold no unnecessary conversation with Convicts" (1856:11). Further, the rules very stringently provided that they not show any preference or special recognition toward Convicts, in order to preserve the integrity of their respective positions: "they must require from the Convicts great deference and respect, and not suffer the least degree of familiarity to be displayed by the prisoners and not show any towards the Convicts themselves" (1856:11-12). These discourses not only established a hierarchy of moral authority between convict and officer, but perhaps more than those previous, established a gendered relation of power between the keeper and the kept. Interestingly, this line of authority was significantly less clear between the Matron and Deputy Matron and the female inmates under their charge. Where they were also required "to hold no conversation with the Convicts...nor converse with each other in the presence of the Convicts," a clear requirement to act as a moral authority to female inmates was absent from these guidelines.

The continued priority of a disciplined and ordered system, not to mention the line of authority between officers/employees of the Penitentiary and male inmates, was further reflected in the duties outlined for the Chaplains. Although the Commission had conveyed the Chaplains as the key agents of the renewed goal of reform, and male inmates as 'reformable' subjects, the 1856 Regulations continued to relegate religious instruction to a secondary role:

As it is desirable that the labour and discipline of the prison should be as little interfered with as possible, it will be the duty of the Chaplains especially to see and instruct the Convicts...on Sundays and Holidays,

and on week days immediately after meals until they are again taken to work. (1856:9)

Sundays, although not structured by labour, were still well-regulated. The Rules ensured that the silent system would be preserved during this time, stating that “there shall be no singing, chanting or audible responses by the Convicts,” with the Overseers, Keepers and Guards charged with the responsibility of observing “the demeanour of every Convict (1856:31). Although the regulations permitted the Chaplains to have ‘free access to the convicts’ at all times, it was conditional upon it “not interfering with the discipline of the Institution” (1856:9). Thus, where ‘instruction’ of the men by the Chaplain had a place in the efforts of the regime, pastoral technologies aimed at the ‘reformable’ male convict took a backseat to the disciplinary technologies aimed at the ‘unruly’ male convict – with the priority of labour (and its resultant profit) taking precedence. Further, continuing in the pre-Commission tradition, the regulations stipulated that the Chaplain’s instruction endeavour to “convince the prisoners of the justice of their sentences, and enjoin on them strict obedience to the rules of the Institution,” using pastoral strategies to prevent resistance to the regime (1856:9).

Following the insistence of the Royal Commission, physically punitive corporal punishments continued to play a role in the regime, the male inmate constituted as ‘punishable’ by the lash. However, tighter controls were placed on its use, with the Rules and Regulations stipulating that the lash not be used unless under the written order of the Warden (detailing name, offence and nature/amount of punishment), to be approved by the Inspectors. The rules stipulated that no more than “thirty-six lashes shall be awarded to be inflicted on any *one account* of punishment” (1856:30); however, this maximum was raised to seventy-five in the case of “assault upon an Officer of the Institution” (1856:30). “Flogging” was still to be “inflicted in the presence of Convicts,” presumably for a deterrent effect, despite the Commissioners’ concerns over the potential for emotional damage resulting from public subjugation of male inmates before their

peers. The Rules clearly stipulated that the Warden and Surgeon be present during these punishments, assuming a paternal-disciplinary role, with the Surgeon being required to give medical confirmation that the inmate may endure the punishment “without detriment thereto” (1856:30). Thus, at the determination of the institution’s medical expert, the male body was perceived to be capable of enduring the lash. However, similar provisions regulating the use of other, less physically punitive punishments on men were conspicuously absent, the Rules allowing the Warden full discretion to exercise alternatives to flogging: “The warden may at his discretion place any of the Convicts in irons or in solitary confinement in the cell, and subject them to reduced diet until their cases can be reported...” (1856:30). Thus, where the Rules closely regulated the infliction of physical pain (through flogging) on the inmate body, punishments more damaging to the mind and soul were deemed markedly less punitive to the male inmate, permitted to be used at any time. Further, these less painful measures were deemed appropriate for female convicts, whose punishments were to include “reduced diet, cropping of hair and solitary confinement to the cell” (1856:30). Thus, a perception of female inmates as necessitating less invasive punishments to effect ‘pain’ demonstrated a further gendering of punitive policies.

#### 4.2.4.3 Implications: ‘The More Things Change...’

The Rules and Regulations of 1856 clearly reflected a belief that order needed to be restored in the institution, that public safety was the prime goal, and ultimately, that ‘normal’ male convicts posed the most dangerous threat of all convicts. Despite the Commission’s newly constituted male inmate – the poorly socialized unfortunate, in need of benevolent care and concern – the Rules and Regulations of 1856 maintained the ‘old’ view of a ‘criminal’ requiring discipline, order, and surveillance. Despite recommendations that care and reform become the

priorities of the institution, particularly in light of a vulnerable male convict, the new regulations did not reflect this imperative.

Thus, the Rules and Regulations of 1856 took very seriously concerns over mismanagement and discipline expressed by the Commissioners of 1849. A number of new measures appeared to improve the orderly conduct of male inmates and officers, further solidifying in discourse the importance of a well-regulated regime in the face of renewed concerns over a ‘dangerous’ male convict. Therefore, not surprisingly, provisions for moral reform were considerably lacking in the new governing discourses. Although the Chaplains continued to have role to play, their duties as agents of moral reform were clearly controlled by the priorities of discipline and order – a consistent theme since 1833. Discourses specific to the governance of male bodies continued to be reminiscent of the danger they posed, and the consequent actions required to maintain control of them – this, despite a recognition in the Royal Commission of the harmful effects of punitive treatment on the *minds* of inmates. This was contrasted by significantly less concern over both the physical incapacitation of female convicts (and thus, the physical danger they posed), who were permitted weekly, supervised contact with the community for religious worship. As such, the more things could have changed, the more they stayed the same.

The use of words such as ‘convicts’ and ‘prisoners’ in the Regulations continued to refer to the male inmates of the institution, with guidelines governing female convicts being very marked and separate. Although female convicts were subject to similar rules regarding their schedules and expectations regarding preservation of the silent system, and were also constituted subordinately in relation to the character of their keepers (albeit to a lesser extent), the *nature* of their treatment very much reflected a disparate, feminized view of the female convict body. Where treatment of the male convicts focussed largely on their orderly control (prevention of

escape, protection of society) and strict discipline, this emphasis was significantly less so with regard to female convicts. This is particularly apparent in the gendered nature of punishment, with punitive ‘treatment’ of male bodies requiring the lash, and conversely, punitive ‘treatment’ of female bodies commanding hair cropping and reduced diet.

Thus, the discourse of the Rules and Regulations of 1856, developed in the context of a ‘new’ administration with an allegedly more ‘benevolent’ and virtuous Warden in Mr. MacDonnell, were expected to mark a grand change in attitude and approach to penalty. However, in spite of these new conditions, the discourse continued to represent priorities of discipline and control. As such, technologies and rationalities continued to depend on the constitution of a ‘dangerous’ male inmate, with exceptions made for the less threatening female. Thus, traditional perceptions of ‘maleness’ versus ‘femaleness’ were very much reflected in the Rules, often guiding the hand of carceral policies, resulting in disparate forms of governance – a reality that had been building since the Penitentiary’s inception in 1833.

### **4.3 Conclusion**

This close examination of the early discourses of Kingston Penitentiary reveals a number of ‘secrets’ that past histories had kept hidden – particularly with regard to the gendered nature of the institution. Examining Penitentiary discourses in this way has several implications for the way we think about the institution as a ‘male prison’ today. For example: What did these established modes of governance mean in relation to the foundation of Kingston Penitentiary’s regime as a prison for men? What gendered relations of power were at work, and what significance do/did they have? What implications did these early strategies have for future generations? The following chapter will detail the significance of these themes with regard to understanding historic gendered strategies of governance and relations of power in punitive regimes, particularly in the Canadian context.

## Chapter 5

### **Synthesis: Unpacking Themes in Discourse**

Examining the historical foundations of Kingston Penitentiary reveals a number of different aspects of the institution that have previously been ignored by most Canadian scholars. Although these scholars were correct in implicating the early regime for its chaotic beginnings and excessive brutality, few questioned the roots and rationales for the strategies employed by the Penitentiary's founding fathers. Given the nature of the Penitentiary – as a technology of the state used to punish the individual for criminal behaviour – it would be reasonable to argue that understanding the rationalities, techniques, and modes of governance of the Provincial Penitentiary at Kingston requires considering the characteristics imputed to the individuals subject to it: one of the most important of these is that of gender.

Inspired by Hannah-Moffat's critical, Foucauldian-feminist approach and incorporating developments made by masculinity studies, Chapter 4 of this work attempted to initiate a critical feminist dialogue on the incarceration of men in Canada. Examining the founding discourses from Canada's oldest and most notorious prison for men, Kingston Penitentiary, this analysis sought evidence of the gendered ways in which the inmate was constituted and ultimately, the gendered nature of the institution – the power relations, technologies, and modes of governance designed for incarcerated men. Given the preliminary nature of this analysis, a grounded approach was used to identify themes in discourse. It is the purpose of this chapter to synthesize these themes, critically identifying the various strategies by which gendered governance was established and perpetuated throughout the first 25 years of the Penitentiary's history.

## **5.1 Themes in Discourse: Gendered Governance in Kingston Penitentiary**

Analyzing governing discourses from the first twenty-five years of the Provincial Penitentiary reveal an interesting mix of gender relations of power/knowledge at work in the regime, with its fore-fathers advancing a number of gender specific technologies and strategies of governance. As expected of a mid-nineteenth century carceral regime, much of the discourse driving these strategies related to the security and economy of the institution, and the punitive control of the body, particularly with regard to male inmates. However, close examination of governing documents also revealed something other than merely the stern, heavy handedness of its earliest governing principles – discursive evidence of a ‘softer side’ of the Penitentiary, where gendered pastoral and paternal strategies of governance were apparent. However, the relations of power at work in these discourses raise questions as to their purpose: to provide the foundation for a more humane institution, or to strengthen strategies of discipline through benevolence.

Although examination of the discourses that defined the first quarter century of the Penitentiary’s history offered a number of benefits for an exploratory study of gendered relations of power in Canada’s penal system, they also presented a number of challenges. On the one hand, these earliest documents provided a sense of the foundations of governance for the Penitentiary, from the ideals that guided the construction of its buildings (which would stand, in one way or another, for the next 174 years) to the values to be imposed on inmates, how they would be trained, and ultimately, the reality of their time spent in the institution. Further, given the Penitentiary held men and women at the time, gendered strategies of governance for male inmates were potentially more visible alongside those of their female counterparts. However, the promise of these discourses for identifying gendered relations of power was also their challenge, given the homogenous ambiguity of the carceral subject that was often apparent – particularly in the

documents of the 1830s. It is to a brief discussion of the significance of this challenge that we will now turn.

### 5.1.1 Ambiguity of ‘Convict’: Roadblock? Or Case in Point?

The early discourse of the Provincial Penitentiary at Kingston presented a similar challenge to what feminists argue has plagued criminology for decades: the treatment of ‘inmates’ and ‘criminals’ as a homogenous group (despite heterogeneity in age, gender, ethnicity), and the *assumed* masculinity of this group. For example, the 1833 Commissioners’ Report talks quite generally of “convicts” and “convicted culprits,” with the 1834 Act often referring to the detainees as “the Prisoners.” Where one would presume, given both men and women were present, these terms referred to all prisoners, there is evidence in the discourses that this is not the case (i.e., the use of ‘he’). This makes it difficult to discern who the “prisoners,” “convicts” and “convicted culprits” are: the entire body of inmates or the inmate *majority* – presumably, men. One of the most significant questions for this analysis is: Is it safe to assume that ‘the convicts’ refers to inmate ‘norm’? Can we conclude that this generic term was directed toward men, excluding women as the exception?

Answering these questions requires observing both what is *present* in the discourse and, perhaps more importantly, what is *absent*. *Present* in the discourse from the 1835 Rules and Regulations on, is specific reference to ‘female prisoners’ and ‘female inmates,’ the requirement that they be governed by a matron (clearly a female keeper of female inmates), and that they be separated *from* men. On the other hand, sex-specific discourses for men are not present in the majority of documents – with reference to ‘male prisoners’ and ‘male inmates’ being conspicuously *absent*, their keepers are described only as ‘guards’ and ‘officers.’ On rare occasion, reference is made to ‘male prisoners,’ but usually where they are to be treated differently than women. More subtly, languages that refer to all convicts contain identifiers such

as ‘he’ and ‘him’ to refer to the inmates. Although rare, these references further support the hypothesis that the perceived ‘norm’ for convicts was indeed men, with women being the exception – requiring special reference as ‘female convicts.’

Although subtle in nature, discursive references to a male carceral subject indicate strategies based on the assumption of inmate as ‘man.’ However, this direct discursive evidence is supported by the overall strategies of governance constituted by the combination of a number of discourses. The gendered significance of these discourses is obvious from a number of other themes that emerged through the course of the analysis.

### **5.1.2 Controlling ‘Convict’ Bodies: ‘Masculine’ Strategies of Disciplinary Power**

The general priorities, and resultant disciplinary strategies of governance employed by the institution, clearly indicated a regime built first on the assumption that men would primarily be housed there, and second, on assumptions *about* men in general. The architecture, activities, and regulations designed to control inmate bodies are predominantly reminiscent of traditional expectations for behaviour of ‘male’ convicts: violent, aggressive, manipulative, and deceitful.

#### **5.1.2.1 ‘Holding’ Male Bodies: The Significance of Gendered Relations of Power in Physical Incapacitation**

The most visible and longstanding governing technology of the Provincial Penitentiary was, and continues to be, its physical design and structure. Despite many changes to institutional policies and practices over the years, the Penitentiary’s imposing design has remained a constant fixture in the community of Kingston as well as the Canadian prison system. The prominence of the structure is not only symbolic of its goal to incapacitate, but spoke to the nature of its occupants as well. As such, the ‘who’ that this structure was built for is key to understanding the history of the physical structure of the regime: ‘Who,’ according to the discourse, required a

facility of such magnitude? What assumptions about this group guided the design? Further, what gendered relations of power were at work?

According to the discourse, the ‘who’ being held in the Penitentiary was dangerous, animalistic, and threatening to public and institutional security. Assumptions of the natural aggression of criminal men – reflecting a hegemonic view of men in general – were often used to rationalize decisions regarding structure and practice in the Penitentiary. Reminiscent of Sim’s (1994) arguments, the language of masculine ‘violence’ was deeply embedded in these discourses, sustaining, intensifying and reproducing this most regulated aspect of masculinity. Aggressive, violent behaviour was expected in the prison, and in particular, expected of *men* in the prison; therefore, discourses and policies regarding its control were normalized, routinized and legitimated. Thus, discursive terms such as ‘predator,’ ‘preying,’ and ‘brutal’ regularly appeared in policy recommendations prioritizing the increased fortification of the Penitentiary.

Not surprisingly, therefore, paramount to the design was the security of the institution, the physical incapacitation of inmates, and the punitive (deterrent) nature of the environment. Much of the founding discourses were premised on the assumption of unruly and threatening convicts who required solid locks and thick walls to keep them inside and, as demonstrated by concerns surrounding the 1837 Upper Canada Rebellion, to prevent their inherently anarchic nature from being lured by the disruption from without. Thus, of central focus throughout the early years were discourses surrounding ‘escape’ and the prevention of it, almost to the dismissal of a number of other concerns. As a result, a tremendous amount of time and resources were allocated early on to the construction of the wall, which would ultimately be a symbol of institutional security for years to come. However, as revealed in early records, very few successful escapes were carried out in the first quarter-century of the Penitentiary’s history, calling into question the rationality behind these concerns. As such, one might conclude that it

was the mere *threat* posed by the *presumed nature* of those being held (perhaps combined with the symbolic response to public pressure to ensure its safety) that drove the urgency and magnitude of the wall, rather than the *reality* of its necessity.

Exactly ‘who’ was at the root of these threats is apparent not only by the presence of identifiers in the discourse – ‘he,’ ‘him’ – but also in the way this threat is constituted against presumably less intimidating carceral subjects in discussions of the prison architecture. In particular, discourses regarding physical segregation – namely, the construction of a ‘female section’ separate from the rest of the institution – alluded to a belief that women must be protected from the more ‘dangerous’ and manipulative male inmate. Seemingly, it is the presumed threat posed by a *homogenous* group of fearsome men that provided the rationale behind the development of separate sections of the institution.

The constitution of an unruly, irrational male convict pervaded the early discourses. However, the chosen design for the Penitentiary revealed an inherent contradiction. Selected early on as the preferred model of the institution, the panoptic design would form the largest area of the prison. However, as revealed in the 1833 Report, it was presumably reserved for the sizable male population, the ‘female section’ to be located in a different area of the prison. The philosophy behind the Panopticon was inspection by invisible watch which was, as Foucault (1977) observed, a carceral strategy designed to maintain control over convicts’ unruly souls and bodies. Inspection by invisible watch assumed that the mere *threat* of interception would ensure obedience by the logical subject, and ultimately, institutional order. Further, segregation was built on the premise of religious penance, to allow inmates to silently reflect on their behaviour and realize the ungodly nature of their actions. Thus, the success of the Panopticon rested on the assumed rationality of the inmates – both in controlling their behaviour based on the threat of surveillance, and in silently reflecting on their criminality. However, the portrayal of a dangerous,

unpredictable, and irrational criminal that pervaded the discourses is in inherent opposition to the 'rational man' assumed by the selection of the Panopticon, perhaps to the extent that it set him up to fail. The selection of this design for Kingston Penitentiary, therefore, points to a fundamental contradiction that presumably still exists to this day.

#### 5.1.2.2 'Punishing' Male Bodies: The Gendered Nature of Corporal Punishment

In addition to the physical incapacitation provided by the walls of the institution and the surveillance provided by the Panopticon, inmates also faced punishment when they did not conform to standards for expected behaviour. Punishments ranged from bread and water diets, to solitary confinement, to the lash, to flogging until the Royal Commission of 1849, when many of these techniques came under interrogation. Where men, women and children were all subject to punishments, the *extent* of their punishment was largely dependant on sex-based perceptions of the 'effect of pain.'

The 1849 Royal Commission made this disparity particularly clear. Where the Commissioners thoroughly interrogated the brutal, careless, and unpredictable nature of corporal punishments such as flogging and lashing, they supported its continued but well-supervised use on men, rationalizing this decision with the perception that 'hardened men' could only be affected by painful punishments. Conversely, they found the practice of flogging women and boys to be 'utterly indefensible,' strictly requiring that they be punished only with solitary confinement and reduced diet. Although these punishments were punitive in themselves, the fact that corporal punishments were deemed appropriate for men spoke volumes for the gendered assumptions at work: male bodies were deemed 'fit' to be subjected to physically painful punishments, while others were not. Although the emotional effects of corporal punishments – particularly their unpredictability, and their public and demoralizing nature – were acknowledged, it was believed

that they could be ameliorated by ensuring the consistency and surety of corporal punishments, and minimizing their use. Thus, pain was a necessary deterrent for men.

### 5.1.2.3 'Training' Male Bodies? Or Organizing Them?: The Centrality of 'Hard Labour' as a Gendered Strategy of Governance

Another vital disciplinary technology in the early days of Kingston Penitentiary was 'labour.' Officially, as stated in the discourse of the 1834 Penitentiary Act (a statute of Upper Canada), 'well-regulated labour' was to be used as a measure of reform – to 'train convicts' in the 'habits of industry.' Given societal expectations and traditional gender roles of the time, the value and importance placed on labour as a carceral strategy was rationalized by the need to develop acceptable behaviour in *men*. By doing so, the inmate's time in the Penitentiary would ensure that he successfully fulfilled his societal and familial economic obligations once released. However, this 'training' did not necessarily teach valuable job skills, but rather, merely *how* to work – this demonstrating an overarching perception that 'criminal' men were not 'productive' men, having failed to meet expectations for acceptable 'male' behaviour prior to their incarceration. However, discourses specifically warned against training criminal men *too* well, expressing concern over the potential threat posed to 'law-abiding' tradesmen in the community; thus, criminal men needed be trained in the 'habits of industry,' but not to the extent that they encroach upon the status of more 'moral' men in the community.

The regime's appeal to standards for 'male conduct' in its use of hard labour as a 'reform' measure demonstrated a less punitive and more paternal, corrective form of power. However, it was not long before this notion was a fading memory in the discourse, with the reality of its importance becoming all too apparent. The 1834 Act's constitution of 'well-regulated labour' for reform purposes was short lived, soon to be overcome by the more pervasive discourse of 'hard labour.' 'Hard labour' (the reference to which was found more often in the

Rules and Regulations and the various institutional reports, rather than the more 'official' statute) served a more punitive and disciplinary purpose in the Penitentiary than previously indicated, evidenced in the rules prohibiting convicts from serving their sentences in positions of servitude. Hard labour sentences 'punished' (caused pain to) the male inmate body via a productive, gender appropriate technology, simultaneously providing an economic benefit to the institution. However, where 'hard labour' appealed to the behaviour that policy-makers feared (i.e., expressions of physical strength by 'hardened' men), its expression was enforced, performed within the confines of expectations for acceptable, orderly behaviour. Ironically, hard labour sentences were served constructing the walls around the inmates; thus, while being forced into a punitive expression of masculinity, this expression was gradually facilitating their increased containment.

Hard labour not only acted as gender appropriate punitive sentence, but also as a technology for the daily management of prisoner bodies. As revealed in the discourse, the inmates' time was primarily organized around labour, which they were to engage in 10 hours a day, six days a week; bodies that could not work were to be held in their cells in order to maintain the daily order of the institution. Arguably, hard labour as a disciplinary technology indicated the translation of traditional gender expectations into carceral policy: 'employment' would structure the convicts' day and organize their bodies just as was expected of men in society. This middle-class standard for men was also reflected in the 'comforts' provided by the institution. As revealed in the 1833 Report, priorities for cell comfort were very much reminiscent of what one might consider of a traditional middle class home: the men were to have a ventilated, well-heated cell upon their return from a hard day's labour.

Although the discourses in the documents constructed labour as a gender-appropriate reform and disciplinary/punitive measure, at the root of its importance was the contribution it

would make to the economy of the regime – with the successful construction of the Penitentiary depending on it. Given community and state criticism over the cost of the facility, ensuring the economy of construction was of the utmost importance. Thus, the governing discourses normalized hard labour as a gender-appropriate strategy of governance, masking its economic benefit to the regime using a rhetoric of ‘reform’ and punishment. This is evidenced in a number of subtle ways. For example, although the Chaplain stressed for a decade that the institution was *failing* in its efforts to ‘reform’ and ‘deter’ male inmates (i.e., due to recidivism), hard labour continued to take precedence over education and moral reform for men. Even when discourses of the 1840s began to prioritize the moral reform and guidance of women, and the education of boys, a similar concern for male inmates was absent. This may indicate that the institutional priority for male bodies was hard labour – which would presumably provide the most economic benefit to the regime.

Ensuring maximum productivity of male inmate bodies was evident in discourses constituting the Surgeon’s role. A recurring theme in the first twenty-five years of the Penitentiary was concern over convicts feigning illness to avoid labour, which was often indicated as being a consequence of the ‘*nature*’ of ‘convicts.’ This form of resistance on the part of inmates capitalized on one of the benevolent regulations of the regime – excusing convicts from labour in the case of illness. Thus, convicts with an ‘ill’ masculine body could avoid punitive treatment via a hyper-masculine governing technology – the consequence of which was tremendous concern to the economy of the regime. As such, to preserve the sanctity of this rule, the Surgeon was delegated as an agent of truth, required to use his knowledge of ‘ill’ male bodies to ensure that all productive men were working. This intersection of gender, knowledge and disciplinary power secured as much hard labour as possible for the benefit of the regime, maximizing the return to the institution.

#### 5.1.2.4 'Supervising' Male Bodies: The Role and Expectations of 'Keepers' in Preserving Discipline

The role of the Penitentiary's agents in preserving order was evident in the regime's discourse. Early on, the Warden was established as the principal disciplinary and managerial agent, charged with ensuring the 'economy, security and police' of the institution. Early discourses constituted the Warden largely in a 'business' role. That is, where he was clearly responsible for the *general* supervision of convicts (i.e., receiving, feeding, clothing), much of the discourse focussed on his managerial obligations: the buying and selling of goods, organization of staff, employment of convicts, submission of reports, etc. The early documents also repeated a discourse of *safekeeping* as one of the Warden's responsibilities. Where this expression implied a paternal/parental responsibility to ensure the safety of the convicts, in reality, other discourses outlining his duties constituted this obligation as a disciplinary/authoritative one: 'safekeeping' as a measure of protecting the public, and the institution's integrity, against convict escape. This was contrasted by the role created for the Matron, who was directly and solely responsible for the protection and ultimately, the moral leadership of incarcerated women. The focus on sex-specific supervision of female inmates was conspicuously absent from discourses regarding the supervision of men – both with regard to the Warden's duties and the duties of the Keepers – reinforcing 'male' as the carceral norm. However, the gendered nature of their respective approaches was evident: where women could be commanded through moral obedience, men needed to be commanded by intimidation and physical force.

The Penitentiary crisis of the mid- to late 1840s (and the consequent need to hold someone accountable) saw the indictment of previously accepted approaches to governing male inmates. Although previous discourses stressed that the Matron and female keepers be of sound moral character, and that they alone were the preservers of female virtue in the institution, these

provisions had never been made for the supervisors of men – that is until the prison’s reputation for the humane treatment of inmates began to unravel before the eyes of the public. In light of this crisis, Warden Smith was marked as the scapegoat for the failed regime, criticized largely for his failure of character and absence of a personal approach to the inmates; thus, although previous discourses had very much constructed a distant, business-like role for the Warden, the Commissioners saw things very differently. Perhaps influenced by public criticism, they insisted that the Warden adopt a fatherly approach to the male inmates, who themselves were constituted in relation to Warden Smith as unfortunate victims of his maltreatment – a substantial departure from the way they had been portrayed previously. These ‘miserable unfortunates’ were in need of strong moral guidance, benevolent but stern supervision, a positive leader, and most importantly, a saviour in the Warden – a ministerial father figure, committed to the well-being of his ‘sons.’ Expectations for the keepers also changed in a similar fashion, for the Commissioners stressed the importance of their being ‘moral’ role models for the inmates, particularly in light of the corruption and brutality observed of keepers in the past. In this way, priorities for a softer, more benevolent approach to a conceivably less dangerous and more victimized convict population were constructed in the discourse.

However, the importance placed on the paternal governance of inmates, and their constitution as ‘victims’ and ‘unfortunates,’ was perhaps merely a result of the need to demonize the Warden and alleviate a very public crisis. Although the section of the Commission indicting the Warden for his misdeeds very clearly constructed male inmates as his victims, other policy concerns in the same Commission (i.e., regarding institutional security) saw the discourse return to a perception of the inmate as ‘dangerous,’ ‘villainous’ and ‘evil.’ This implies ulterior motives in the discourse, masked by impressions of benevolent concern: in relation to Warden Smith, the inmate was an unfortunate victim; however, with regard to institutional security – also a public

concern – he was constituted as a dangerous criminal. As such, suggested changes to the Warden and Keeper’s approach to inmates were short-lived in official discourse, as the Rules and Regulations of 1856 saw little philosophical change in their ‘official’ duties.

#### 5.1.2.5 ‘Saving the Souls of Men’: Gendered Pastoral Governance in Kingston Penitentiary

In addition to security and ‘well-regulated labour’ as official strategies of the Penitentiary was another, significantly less focal one: ‘religious instruction.’ In relation to the extensive discourses on ‘labour,’ and ultimately its central role in the regime, ‘religious instruction’ as a governing technology was relegated to a supporting role. Where labour figured prominently in the day to day lives of the inmates – the discourse appealing to expectations for accepted gender behaviour for men to the ultimate economic benefit of the regime – religious instruction was markedly less important, permitted only when the inmates’ time was not occupied by labour, with strict measures in place ensuring that it did not encroach upon it in any way. Religious instruction was, perhaps, simply not beneficial enough to jeopardize the returns of convict labour.

The few discourses on religious instruction were significant in themselves, however, to the extent that they demonstrated the *priority* of moral reform in the early days of the Penitentiary. Close examination of the foundations on which it was built reveals the role that sex-based assumptions and gendered relations of power had even in the development of less significant carceral strategies. As a secondary strategy, religious instruction clearly connoted a pastoral benevolence. The Chaplain, the chief agent of religious instruction, was charged with ensuring the moral guidance of the inmates, hearing penance, and meliorating their sins – generally, overseeing their spiritual welfare. As such, the Chaplain, perhaps more than any other agent in the Penitentiary, was in a position to develop close personal relationships of trust with convicts. However, as revealed in the regulations guiding the Chaplain’s responsibilities, at work beneath this benevolent, pastoral relationship were subtle forms of disciplinary power: not only

was the Chaplain to guide inmates in their moral and religious instruction, he was also required (as a trusted religious figure) to ‘save convicts’ by procuring confessions and convincing them of the justice of their sentences. In this way, although pastoral in nature, the Chaplain as a ‘ministerial’ agent (and religious instruction as a benevolent strategy) was manipulated to further the disciplinary goals of the regime.

Other more disciplinary policies emerged from the benevolent intentions of pastoral intervention, with these rationalities largely depending on religiously based, gendered assumptions about men. One example was found in the Chaplain’s recommendation for increasing sentence length. As discussed in Chapter 4, the Chaplain’s reports provided very clear perceptions about the ‘nature’ of criminal men at the time, and the assumptions upon which religious interventions were built. According to the Chaplain, ‘men’ became involved in crime due to the absence of religious instruction and appropriate moral influence in their youth; without it, young boys were more apt to submit to their ‘natural’ tendency toward ‘animalistic’ behaviour – submitting to their ‘lustful,’ ‘naturally brutal’ passions and ‘licentious living,’ gravitating toward similar others. As such, criminality was perceived as lifetime behaviour in *all* inmates. The religious basis to this ‘theory’ on criminal men naturally legitimized the need for pastoral, Christian-centred intervention, the Chaplain’s role being the saviour of these lost souls. However, to the Chaplain, the shortness of sentences in the early days of the Penitentiary was a major barrier to the spirit of ‘reform.’ According to him, given the ‘ingrained’ nature of inmates’ criminality and the ‘prospect’ of ‘speedy liberation,’ short sentences only hardened them, making them ‘crave’ criminality that much more; therefore, the Chaplain recommended that longer sentences were *imperative* to the moral reform of inmates. Arguably, however, longer sentences were also more punitive, keeping inmates from their families and subjecting them to the disciplinary/punitive aspects of the regime – particularly hard labour – for longer periods of time.

As such, increased sentence length as a benevolent strategy of the Chaplain, based on gendered notions of ‘masculine’ criminality, was potentially more punitive for inmates.

### **5.1.3 Foundations for a Gendered Regime?**

Analyzing discourses from the early years of the Provincial Penitentiary at Kingston reveals the foundations of a regime that would persist for the next century and a half, the institution still in full use today. The contemporary correctional rhetoric surrounding the Penitentiary is, on the outside, much different from the harking of economy, discipline, and security that so defined the regime in its early years. However, one cannot deny the significance of these early discourses for future generations of the Penitentiary: the institution itself, constructed and maintained based on a number of key gendered assumptions about its inhabitants as well as a number of key interests (social, political, economic) in its construction. That early regime defined not only how the bodies of its objects of control would be held for centuries to come (i.e., through architecture), but also, following the precedent set by the Penitentiary system at the time, determined how inmate bodies and souls, and male inmate bodies and souls in particular, would be manipulated in a gendered way – with a number of gendered, carceral technologies still being in place today.

## **5.2 Summary and Conclusion**

Examining the discourses at the foundation of Canada’s oldest prison in a way that is cognizant of the role gender of gender has revealed a number of observations previously unaccounted for in histories of Kingston Penitentiary. Although these histories have done well to document the social and political foundations of the rise of the Penitentiary in Canada, the brutality of Warden Smith’s regime, and the significance of the 1849 Royal Commission in addressing the problems that emerged during the early years, few have acknowledged the

significance of the male carceral subject in these events, and fewer (if any) have problematized the gender of male inmates. Although various works (i.e. Oliver 1998; Carrigan 1997) have identified the unique circumstances of female penality in Canada, acknowledging the separate and distinct nature of their governance, male penality has typically been treated as the 'norm' not only in Canadian studies, but those worldwide as well. Very few have problematized the male inmate as the subject of power/knowledge relations as has been done by feminists of female inmates: as such, it was the aim of the present study to fill this gap.

It is clear from the analysis that gendered power relations were at work in the first 25 years of the Provincial Penitentiary at Kingston, and that the policies, practices, and design developed in the context of these relations have provided the cornerstone for a centuries-old regime. However, a few questions remain: What is the significance of these findings for understanding the state of the regime today? How can this study shape future considerations of male penality in Canada? What are the implications of evidence collected from centuries old discourses? The final chapter of this work will discuss this study in the context of penal scholarship in Canada, and the disciplines of criminology and sociology in general, suggesting how this preliminary examination may guide future works in the field.

## Chapter 6

### Implications and Future Directions

The present study has initiated a new dialogue on the history of Kingston Penitentiary, one that challenges accepted versions of its rise and legacy as Canada's oldest institution. Standing as a 174 year-old symbol of 'law and order' and a prominent historic feature of the Kingston community, it carries a reputation of being Canada's 'most notorious prison for men.' History has attempted to convey this notoriety to the layperson, communicating the horrors and brutality of the early regime, revisiting the inquiries into its operations, and lauding the 'progress' made by prison reforms. However, these historical descriptions of the Penitentiary have fundamentally ignored the historical *subject*, the inmates, further failing to problematize the assumptions about these subjects that were at the heart of the regime. Arguably, Kingston Penitentiary, and its structure, policies, and practices, was created *for* 'someone,' the influence of whom has persisted for 174 years. It has been the goal of this study to critically examine the gender of this 'someone,' and the gendered foundations of Kingston Penitentiary's regime.

Although preliminary in nature, this study has implications for the way the history of penalty in Canada is written and how male inmates are constituted in Canadian sociological and criminological studies. Further, this study answers calls by the masculinity literature to engage in a critical dialogue concerning male penalty, and supports a new branch of critical 'feminism' – one that genders the male subject and 'male' institutions. The results of this study also have possible implications in the development of penal policy for men in Canada. Finally, the current work opens the door for new research possibilities in the field of Canadian male penalty. It is the intent of this chapter to detail both the contributions of this work and potential future directions for research inspired by its findings.

## 6.1 Contributions to the Literature

### 6.1.1 Re-Writing Canadian History

As discussed in Chapter 1, histories of Canadian penalty have ranged from brief accounts in edited sociological and criminological works designed to ‘teach’ the students of these disciplines the social roots of criminal justice in Canada (i.e., Griffiths and Cunningham 2000; Ekstedt & Griffiths 1993), to heavily descriptive accounts by historians (i.e., Carrigan 1997; Hennessey 1999), to more critical accounts challenging mainstream versions of the emergence and development of incarceration in Canada (i.e., Gosselin, 1982; Smandych 1991; Oliver 1998). Where all of these works have their individual merits, they all suffer from the same tendency: first, to ignore the *subject* of their histories, but more importantly to consider the *gendered* subject of their histories. Where some give special consideration to the historic ‘treatment of women,’ few acknowledge the accepted nature of ‘male’ as the inmate norm. Although Canadian feminist histories (i.e., Hannah-Moffat 2001) have issued a gender-based challenge to established discourses on the incarceration of women, the same has not been done with regard to men. ‘Man’ continues to be the presumed subject in a majority of Canadian penal histories.<sup>15</sup>

The findings of this study challenge the accepted constitution of the (male) inmate in Canadian history, suggesting that the accepted rationalities concerning the emergence of the Penitentiary are missing a fundamental piece of the puzzle: the gendered assumptions about male inmates that influenced the design, policies and procedures of Kingston Penitentiary. Further, it also initiates a Foucauldian-inspired dialogue concerning the intersection gender and penal

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<sup>15</sup> The historic use of generic language to refer to all persons is of important note here. Some of these Canadian histories, and much of the literature on crime and punishment to the 1980s, used language such as ‘he’ and ‘mankind’ to refer all individuals, regardless of gender, ethnicity, etc. Where the subject of these works was in fact often male (due to the pervasive view of ‘inmate’ as ‘male,’ and the tendency to ignore female criminality and punishment), this use of this language often confused this fact, blinding us to both the real subject and the particularities of that subject.

power/knowledge relations in the Canadian context. While this work is simply a preliminary attempt to open this line of inquiry in Canadian history, it offers a new challenge to taken-for-granted versions of the history of Kingston Penitentiary, as well as historically taken-for granted perceptions of the male inmate.

### **6.1.2 Reversing Gender Myopia?**

The approach adopted by this work has also attempted to reverse the gender myopia that has plagued feminism. As discussed in Chapter 2, although feminist scholars in the area of Canadian penality (i.e., Carlen, Hannah-Moffat) and others internationally (i.e., Heidensohn, Bertrand, Smart, Rafter, etc.) have for the last several decades made great strides with regard to the inclusion of gender in studies of female penality, they have continuously failed to recognize its similar importance in discussions of male penality. Despite many critiques of ‘male-centred’ literature, the deconstruction of deeply entrenched biologically based assumptions about female offenders (established by the likes of Lombroso and Ferrero), and the rise of innovative approaches to studying women and penality, feminist works continue to constitute a gendered female against a very non-gendered male – adopting a *gender myopic* view. Although correct in pointing to the long-standing sex bias in the criminological, historical, and sociological literature on incarceration, feminist scholars have been historically guilty of appealing to the taken-for-grantedness of ‘male’ as ‘inmate.’

Inspired by Hannah-Moffat’s Foucauldian feminist approach to studying the incarceration of federally sentenced women and Canada, as well as past feminist attempts to critically reconsider the accepted history of imprisoned women (Freedman 1981; Dobash et al 1986; Rafter 1982), this study suggested a solution to this gap in the feminist literature – this gender myopia – by applying one of feminism’s theoretical innovations to studying male incarceration. In incorporating well-established perspectives on masculinity in the literature (i.e.,

Connell 2005), the current work was able to more effectively look through the lens of Foucauldian feminism, providing a critical view of the gendered relations of power inherent in Canada's oldest prison for men. Where this lens is certainly in need of analytical clarity and more rigorous use, it is arguably an innovation that can be attributed to the advancements made by decades of feminist scholarship.

### **6.1.3 Accepting the Challenge of the Masculinity Literature**

Recent critique of the mainstream criminological and sociological literature by 'masculinity studies' have typically pointed to the fact that, as Hearn and Morgan have argued, 'men' have not been the *subject* of these works in the acknowledged, problematized sense. That is, just as feminists have observed of women, 'male' as a *gendered subject* in a majority of criminological and socio-legal works has been missing: "[he] tends to be resource rather than topic" (Hearn & Morgan 1990:7). Since the late 1980s, positive strides have been made by many scholars (i.e., Messerschmidt, Newburn & Stanko, Collier) to problematize the gendered male subject in criminological studies. However, a majority of critical, post-modern and revisionist studies of penalty – particularly historical studies – have continued to ignore the significance of gender in their pursuits. As observed by Carrabine (2000), a more inclusive critical approach to understanding the incarceration of men must consider gender at all levels of institutional regulation.

The present work has attempted to answer this call by incorporating gender in a critical Foucauldian examination of the roots of Kingston Penitentiary. Contributing to both a fledgling body of Foucauldian literature on Canadian penalty, and to the growing body of literature on masculinity and penalty, this study attempted to fill gaps in both respects. Further, it also initiated a possible reconciliation between 'masculinity' and 'feminist' studies, which are arguably two sides to the same coin. It is only in the reconciliation and synthesis of these two

‘camps’ that the gender myopia of feminism may be solved, and that masculinity studies may make the strides that feminism has in recent decades. Further, and very importantly, this study continues the attempts to make male inmates the *topic* of critical studies, rather than simply the *resource* upon which comparisons are often drawn.

## 6.2 Policy Implications in Canadian Corrections

The offender is ultimately responsible for his criminal behaviour. The sentence of the court constitutes punishment. The community is a responsible participant in the correctional process. Federal corrections are responsible for the provision of an environment with appropriate measures of security, conducive to active participation in program opportunities. Federal corrections are responsible for the provision of adequate procedural safeguards designed to protect the rights of the offender. The offender is responsible for earning and maintaining his privileges. (Correctional Service of Canada 2005a: online)

This excerpt is taken from the Correctional Service of Canada’s 2005 “Facility Role Statement” for Kingston Penitentiary. Despite a pervasive discourse of “responsibility,” a governing strategy largely absent from the Penitentiary’s founding discourses, a few similarities may be drawn. First, despite 175 years of constitution and re-constitution of the male carceral subject, he continues to be ambiguously labeled “the offender” – harkening back to the language of the 1833 Commissioners’ Report. Although it is more clear today than 175 years ago that ‘the offender’ is in fact male (given Kingston Penitentiary is strictly an institution *for* men), the homogeneity of this language continues to disregard any differences within the population. Secondly, measures of security continue to be the primary goal of the regime, with ‘active participation in program opportunities’ being somewhat secondary.<sup>16</sup> Thus, the assumed threat posed by the male inmate continues to guide the priorities of the regime. In comparison, the

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<sup>16</sup> This statement may be read in a number of ways: as measures of security to protect the public *from* inmates; as measures of security to protect inmates from each other; and/or, measures of security to keep inmates inside the prison. In any event, *security* is still of utmost importance in today’s Penitentiary, assuming a perception of inmates as dangerous threats – whether to the public, to staff, or to each other.

“Facility Role Statement” for Grand Valley Institution for Women near Kitchener, Ontario states: “Grand Valley Institution's correctional approach promotes an open and supportive environment reflective of community living. Its goal is to model, promote and empower women to make meaningful and responsible law-abiding choices with a focus on safe and timely reintegration” (Correctional Service of Canada 2005b:online). It is obvious that the language of carceral goals for women’s institutions in Canada is significantly different than those for men. Although the standards for ‘corrections’ are much different for women now than in the mid-1800s, a few similarities may also be drawn. First, similar to early discourses, female inmates are identified *as such* – in today’s case, simply as ‘women,’ in 1833 as ‘female inmates.’ In any regard, they are constituted as gendered ‘exceptions’ to the inmate norm – ‘the (male) offenders.’ Secondly, the technologies and strategies for the governance of women are based on a feminized inmate body. Similar to the discourses of the 1856 Rules and Regulations for Kingston Penitentiary, the language of security does not appear in the constitution of the female inmate. Thus, the gendered nature of penal discourses and strategies are just as evident – even similar – today as they were in the early days of the Penitentiary in Canada.

It is this *acceptance* of the current male penal system as ‘adequate’ *for* ‘men,’ in the face of so many gender-based challenges of the female system, that is at the heart of the present study. With feminist challenges to accepted views of female inmates, and the development of *Creating Choices* (an official policy regarding ‘women-centred corrections’ in Canada), changes to correctional discourses (similar to the one discussed above) were evident, recognizing the unique characteristics of incarcerated women *as* women. Where these discourses are no doubt problematic in themselves (as revealed by Hannah-Moffat’s 2001 study), the deconstruction of the assumptions at the heart of previously accepted approaches to female penalty have resulted in a tremendous number of changes in the system – and at the very least, the injection of gender

perspectives in penal policy development for women. However, as revealed above, archaic perceptions of the male criminal ‘norm’ continue to pervade current discourses, with little having been done in the way of recognizing the fundamental problems with ‘male’ corrections in Canada. Thus, this examination attempts to open the door to this line of inquiry, deconstructing the walls built around the ‘inmate norm,’ proposing that the constitution of the *male* inmate has, and continues to be, problematic in Canadian penalty.

### **6.3 Future Directions**

The preliminary nature of this study, and the new lines of inquiry it opens, offers the potential for a number of future directions. First and foremost, this challenge to the accepted history of Kingston Penitentiary must not stop at 1856, but should arguably be carried on to establish a better understanding of the entire history of the regime. Further, to better appreciate the historic differences in the gendered nature of male vs. female penalty, a comparative study would also be beneficial. Although attempts were made in the current study to draw comparisons between ‘male-centred’ and ‘female-centred’ discourses, the reality was that there were simply very few discourses specific to female inmates. Thus, contrasting how discourses from various institutions (i.e., reformatories, penitentiaries, provincial jails) regarded the Canadian male and female inmate over time would be of great benefit to this pursuit.

Further, as identified by a number of feminist scholars (i.e., Hannah-Moffat, Carlen, LaPrairie), it is not only important for critical studies of penalty to be sensitive to gender relations of power, but issues relating to culture and class as well. Although these issues were outside the scope of this project, future critical works on male penalty in Canada should acknowledge the intersection of gender, race and class in penal power relations. This issue is of particular importance in Canada given long-standing concerns over the disproportionate representation of aboriginal men in Canadian prisons.

Finally, it is hoped that this and similar other studies inspire the interrogation of accepted Canadian policies, practices, and priorities for inmate men, ones that have been developed based on an accepted, homogenized view of male as 'criminal norm.' In this way, a view of Canada's prisons for men (Kingston Penitentiary in particular) as more than just 'notorious' subjects of history and media may be fostered, one that acknowledges and respects the experiences of a unique and diverse population of men.

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