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Prison and the Work Ethic

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Article abstract

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ARTICLE

Prison and the Work Ethic

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Abstract: Despite persistent depictions to the contrary, coercion pervades the modern work experience and, in many significant respects, is underwritten by the power of the state. This article outlines some of the ways in which long-standing interventions by Canadian (and British) states continue to affect workplace relations today. To appreciate the scope of this effect, it is necessary to trespass across a number of disciplinary boundaries to include topics such as immigration, deportation, political policing, the legal foundations of employment law, the continuing influence of the British Poor Laws, and the role of prisons and prison labour in helping to regulate work standards. States acted to support proletarianization in a comprehensive way, but their tendency to favour large-scale, "labour-saving" building projects has often undermined the actual effectiveness of their efforts at social control. These patterns still haunt prison policy, as I will show toward the end of the article in discussing the Toronto South Detention Centre.

Keywords: unfree labour, supermax prisons, policy failure, institutional decay, labour policy

Résumé : Malgré les protestations persistantes du contraire, la coercition imprègne l'expérience de travail moderne et, à de nombreux égards importants, elle est garantie par le pouvoir de l'État. Cet article décrit certaines des façons dont les interventions de longue date des États canadiens (et britanniques) continuent d'affecter les relations de travail aujourd'hui. Pour apprécier la portée de cet effet, il est nécessaire de franchir un certain nombre de frontières disciplinaires pour inclure des sujets tels que l'immigration, la déportation, la police politique, les fondements juridiques du droit du travail, l'influence continue des lois britanniques sur les pauvres et le rôle dès prisons et du travail pénitentiaire pour aider à réglementer les normes de travail. Les États ont agi pour soutenir la prolétarisation de manière globale, mais leur tendance à favoriser les projets de construction à grande échelle et « économes en maind'œuvre » a souvent sapé l'efficacité réelle de leurs efforts de contrôle social. La politique pénitentiaire est toujours hantée par ces schémas de coercition, comme on le verra clairement vers la fin de l'article dans notre discussion sur le Centre de détention du Sud de Toronto.

Mots clefs : travail forcé, prisons à haute sécurité, échec de politique, détérioration institutionnelle, politique du travail

In 15th-century Europe, the word "police" was not used to describe a particular institution or set of state officials. Instead, it referred to a notion of "good government" that involved maintaining social order, suppressing crime, regulating public and private morality, and ensuring that economic production proceeded apace.[1] At that point, there seemed to be little question that state coercion should be an integral part of economic and social policy – both in theory and in practice.

To study "police" in this sense today is far from common, although those working in the critical traditions (of Marx, Foucault, and others) have done much to keep a broader perspective alive. These exceptions transcend academic specializations and address the multiple connections between state power and social power that fields such as economics and criminology so often ignore. This article is the product of a new variation on such interdisciplinary approaches, one that focuses on "labour and the Canadian carceral state." A conference under this name was derailed by COVID-19, but two papers that were intended for it – Katie-Marie McNeill's on prison work programs and Cameron Willis's on prisoner strikes – have already been published in *Labour/ Le Travail*.[2] The labour-prison connection is a potentially rich vein that will be important for labour researchers in the future.

Boundaries between disciplines like economics and criminology reflect, to some extent, the important ideological assertion that modern capitalist economies are built on "free" labour in a "free" market where state coercion is *not* an important factor in most people's lives. However, prisons – among the state's most coercive institutions – have long played a prominent role in regulating the labour supply, reforming the "idle," instilling obedience to established authorities, and deterring behaviour of which elites disapprove – or, to be more precise, they have *tried* to play these roles, with varying degrees of success.

The neoconservative era has been marked by a general escalation of coercion aimed at subordinate populations.[3] On the one hand, what Marx called

1. Mark Neocleous, *The Fabrication of Social Order: A Critical Theory of Police Power* (London: Pluto Press, 2000).

2. See Katie-Marie McNeill, "A Re-education on How to Work: Vocational Programs in Kingston-Area Prisons, 1950–1965," *Labour/Le Travail* 89 (Spring 2022): 61–88; Cameron Willis, "'If You Want Anything, You Have to Fight for It': Prisoner Strikes at Kingston Penitentiary, 1932–1935," *Labour/Le Travail* 89 (Spring 2022): 89–145.

3. In Canada, the transition to neoconservatism began with the Bank of Canada's adoption of monetarist theory in 1975 under Pierre Trudeau's Liberal government. Neoconservative practices bloomed under subsequent governments, beginning with Brian Mulroney's in 1984, and they endured at least until the COVID crisis began in 2020. In this period, Canada's governments (like most others) abandoned Keynesian commitments to maintain relatively full employment and an expanding social safety net. Instead of trying to counter market fluctuations, governments moved increasingly to reinforce the coercive effects of the market (tolerating deeper recessions and the degradation of job security), while also ratcheting up surveillance and regulatory pressure on state dependents and state workers (through

the "dull compulsion of economic relations" intensified dramatically as governments withdrew the Keynesian buffers set in place after 1945.[4] But states have also used the coercive tools at their disposal (de/regulation, criminal law, incarceration) to bolster market forces that are degrading work, and the rights and expectations that surround it. Leo Panitch and Donald Swartz were among the first to highlight the shift "from consent to coercion" in relations with organized labour, but it has since become much more widespread.[5] Forced labour, when it is extracted from welfare recipients and prisoners, has been normalized, and students are trained to work for free through compulsory volunteerism in high school and in unpaid internships thereafter.[6]

This article will explore the role of coercion and prisons in this current form of "police," by linking it to past practices in Canada and the United Kingdom. Tracing the influence of immigration, deportation, political policing, master and servant law, and poor law in structuring allegedly "free" labour markets – and the state's approach toward them – will allow us to see the role of prisons in a clearer light. One underlying theme is that state actions relating to labour have displayed a pattern of pervasive coercion across a number of fronts. This means that labour is nearly always less than "free" and that studying it (or prisons) from inside traditional academic jurisdictions may fail to reveal the web of social constraints that most people experience around work.

Another theme concerns the persistence of the modern prison's formative dream, which follows from that coercive history. This authoritarian (and somewhat delusional) aspiration relies on state buildings to deter crime and model appropriate lifestyles for well-behaved subordinates in a profoundly unequal society. Prisons today serve multiple functions, including racialized warehousing and subsidizing private accumulation.[7] Some may even forestall

disentitlement, cutbacks, and neo-Taylorist work reorganization). I feel that "neoconservatism" captures this disciplinary intensification (and the related growth of the state's coercive branches) better than alternative terms like "neoliberalism." See Greg McElligott, *Beyond Service: State Workers, Public Policy, and the Prospects for Democratic Administration* (Toronto: University of Toronto Press, 2001), esp. 54–59.

4. Karl Marx, *Capital*, vol. 1 (New York: International Publishers, 1977), 737.

5. Leo Panitch and Donald Swartz, *From Consent to Coercion: The Assault on Trade Union Freedoms* (Aurora, ON: Garamond, 2003).

6. See Greg McElligott, "From Caring to Uncaring? Coercive Tendencies in State Service Work," in Sandra Rollings-Magnusson, ed., *Anti-Terrorism: Security and Insecurity after 9/11* (Halifax: Fernwood, 2009), 162–194; Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham: Duke University Press, 2009); Erin Hatton, *Coerced: Work under Threat of Punishment* (Oakland: University of California Press, 2020).

7. See Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010); Loïc Wacquant, "America's New 'Peculiar Institution': On the Prison as Surrogate Ghetto," in Thomas Blomberg and Stanley Cohen, eds., *Punishment and Social Control* (London: Aldine de Gruyter, 2003), 471–482; Christian Parenti, *Lockdown America: Police and Prisons in the Age of Crisis* (New York: Verso Books, 1999); Tara Herivel

more crime than they create. But instilling a "proper work ethic" in prisoners and modelling it for others remain central to the dream that sustains incarceration. Equally persistent, however, are the contradictions and limitations inherent in this dream. These are often linked to ongoing resistance by those it is meant to subordinate.

"Exceptional" Interventions

The rhetoric surrounding "free" labour is misleading in several respects that are relevant to this discussion. First, mature capitalist markets maintain labour discipline mostly by sustaining an oversupply of workers who are dependent on employers and, among those workers, an ever-present fear of poverty to keep their expectations in check. This is Marx's "dull compulsion" – really a form of economic coercion that appears natural, or at least not directly produced by the state. Yet capitalist economies originate in much more violent processes where states (or proto-states) tend to be intimately involved. Marx's summary of the French experience shows a typical pattern: "Thus were the agricultural people, first forcibly expropriated from the soil, driven from their homes, turned into vagabonds, and then whipped, branded, tortured by laws grotesquely terrible, into the discipline necessary for the wage system." Once capitalist production is relatively secure, this era of "primitive accumulation" ends and direct force is only used "exceptionally," according to Marx. But in its earliest stages, and perhaps at other moments, the rising bourgeois class "wants and uses the power of the state to 'regulate' wages, *i.e.*, to force them within the limits suitable for surplus-value making, to lengthen the working-day and to keep the labourer himself in the normal degree of dependence."[8] While there are many reasons that might prompt states to employ exceptionally forceful measures, the ones to be considered here are aimed at ramping up prevailing levels of exploitation.

These sorts of interventions underline the perceived failure of "normal" economic coercion to achieve satisfactory results and the judgement by state officials that supplementary measures are required. Of course, since Marx's time, states have developed vast networks of intervening institutions – especially public schools – that aim to instill labour discipline on an ongoing basis. In Canada, the residential school system did this in a particularly brutal way, holding children hostage to suppress Indigenous dissent and to destroy their culture, at the cost of thousands of young lives.[9] Forcible confinement and

and Paul Wright, eds., *Prison Nation: The Warehousing of America's Poor* (New York: Routledge, 2003); Greg McElligott, "Invested in Prisons: Prison Expansion and Community Development in Canada," *Studies in Social Justice* 11, 1 (2017): 86–112.

8. Marx, *Capital*, 737, 713, 737.

9. See Karen Bridget Murray, "The Violence Within: Canadian Modern Statehood and the Pan-territorial Residential School System Ideal," *Canadian Journal of Political Science / Revue*

"therapeutic" forced labour also featured prominently in Canada's mental asylums.[10] Abuse and malign neglect killed untold numbers there as well. But before public education, and at several moments of crisis thereafter, prisons were deployed as weapons in what Michael Perelman calls "the war on sloth."[11]

Economic and legal coercion: Forming and policing the workforce

Some authors have disputed the suggestion that economic coercion and legal coercion are even conceptually distinct. In trying to distinguish between the various gradations of "free" and "unfree" labour as they are actually practised, Robert J. Steinfeld notes that most forms of labour compulsion are "situations in which the compelled party is offered a choice between disagreeable alternatives and chooses the lesser evil."[12] For instance, when inmates at the Louisiana State Penitentiary "choose" to risk their lives for a chance to win a few dollars in the annual Angola prison rodeo, it is very important to know that, for them, the alternative is to spend years staring at the walls of their cells.[13] This situation replicates in miniature the state's traditional role in finding or creating conditions in which masses of people will be desperate enough to accept wage labour.[14]

Steinfeld also points out that economic coercion ultimately rests on legal rights that are created and enforced by states. These "rights, privileges, and powers … place one person in a position to force another to choose between labour and some more disagreeable alternative." Economic coercion, he argues, "is an artifact of law, not of nature."[15] Even if not all such coercion is constrained by law, we can take Steinfeld's general point that legal relations – and hence state power – permeate and condition capitalist markets in ways that are obscured by the notion of "free labour."

Control of citizenship and immigration, for example, has allowed the federal government both to create a racially defined citizenry in the first place and then to act aggressively in weeding out "troublemakers" and "shoveling

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canadienne de science politique 50, 3 (2017): 747–772, 760–761.

10. See Agatha Barc, "The History of the Lakeshore Psychiatric Hospital in Toronto," blogTO, 22 August 2020, https://www.blogto.com/city/2011/04/a_brief_history_of_the_lakeshore_psychiatric_hospital/.

11. Michael Perelman, The Invention of Capitalism (London: Duke University Press, 2000), 16.

12. Robert J. Steinfeld, Coercion, Contract, and Free Labor in the Nineteenth Century (Cambridge: Cambridge University Press, 2001), 14.

13. See Six Seconds of Freedom: The Angola Prison Rodeo, directed by Jeff Smith (Oasis Films, 2008) https://www.oasisfilms.com/six-seconds-of-freedom.

14. See H. Clare Pentland, "The Development of a Capitalistic Labour Market in Canada," Canadian Journal of Economics and Political Science 25, 4 (1959): 450–461.

15. Steinfeld, Coercion, Contract, and Free Labor, 19, 20.

out" the burdensome poor through deportation.[16] In the early part of the 20th century, when immigration levels were very high, such efforts could have a significant impact on the shape and mood of Canada's workforce. As Barbara Roberts notes, "deportation was one of the mechanisms that maintained a balance between the need for cheap labour in times of economic expansion, and the desire to cut welfare costs in times of economic contraction."[17] Today similar aims are achieved through other forms of conditional inclusion that still carry the threat of deportation.

The largest category of permanent immigrants to Canada has for some time been the "economic class" of migrants who are assessed primarily on the "human capital" they offer to Canadian employers. Those who score low on this points system are simply excluded. But in sync with the shift to precarious work, special temporary foreign worker (TFW) programs now provide a growing range of Canadian employers with an exceptionally dependent and essentially disposable workforce. Most of these workers are tied to their jobs, denied normal workplace rights, and kept vulnerable to deportation until their visas expire. Only a few ever achieve citizenship through this route.[18] By 2014, Canada was admitting twice as many TFWs as permanent economic-class migrants each year, so this form of legally circumscribed "less free" labour was becoming increasingly important.[19]

TFWs tend to be drawn from the same groups that were excluded en masse when Canada's immigration practices were overtly racist.[20] Their situation should remind us of the violence inherent in borders themselves. People who uproot their lives to flee the consequences of international inequality, or war, or climate change, are making the kind of harsh choices that Steinfeld describes. Varying degrees of economic coercion or outright violence push them toward our borders, just as was the case with millions who came before – indentured convicts, enslaved Africans, the dispossessed, the starving, the terrorized and desperate.[21] Canadian governments have selected some and abandoned

16. Myer Siemiatycki, "Continuity and Change in Canadian Immigration Policy," in Harald Bauder and John Shields, eds., *Immigrant Experiences in North America* (Toronto: Canadian Scholars' Press, 2015), 93–117; Barbara Roberts, *Whence They Came: Deportation from Canada, 1930–1935* (Ottawa: University of Ottawa Press, 1988), chaps. 7 and 8.

17. Roberts, *Whence They Came*, 8.

18. Nandita Sharma, "Immigration Status and the Legalization of Inequality," in Bauder and Shields, eds., *Immigrant Experiences*, 204–222.

19. Armine Yalnizyan, "Canada Can't Let Labour Mobility Create an Underclass of TFWs," *The Monitor* (Canadian Centre for Policy Alternatives), 16 October 2015, https://monitormag.ca/articles/canada-cant-let-labour-mobility-create-an-underclass-of-tfws/.

20. Harsha Walia, "Transient Servitude: Migrant Labour in Canada and the Apartheid of Citizenship," *Race and Class* 52, 1 (2010): 71–84.

21. Over the course of three centuries prior to the advent of modern prisons, thousands of indentured prisoners were expelled from Britain and transported to its North American and

others, primarily to suit the needs of employers (relieving labour shortages, breaking strikes) or to fill out sparsely populated territories (at the expense of Indigenous inhabitants).[22] Once here, the presence of newcomers remains conditional until they are granted full citizenship, so deportation continues to affect thousands of people annually. Today those awaiting it are often left to languish in provincial maximum-security prisons for months or years because alternative arrangements are not provided.[23] On the US-Mexico border and many others, of course, huge walls have been erected at great public expense to signal that harsher, more exclusive attitudes now prevail. These are essentially built "solutions" to the problem of inequality on a world scale, which support construction company profits while leading border crossers to risk more deadly routes. But they are also proving to be flawed, fragile, and easily scaled in some cases.[24]

Deportation numbers skyrocketed during the Great Depression of the 1930s, because recent and not-so-recent immigrants who applied for relief

Australian colonies by private operators on contract to the state. This system rid Britain of some of its "troublemakers," advanced colonization for the empire, enriched the contractors, and provided a relatively pliant workforce for employers in the colonies. See Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (1939; London: Transaction, 2003), 114–126. The use of modern prisons to enrich private contractors is not exactly unheard of either. See McElligott, "Invested in Prisons."

22. Though our more humanitarian commitment to refugees seems to have increased in recent years, Canadian governments have also been increasingly involved in the *creation* of refugees by supporting foreign wars and the fossil fuel industry's climate-altering emissions. One estimate has Canadian emissions costing other, mostly poorer countries $247 billion between 1990 and 2014. See Oliver Milman, "Nearly $2tn of Damage Inflicted on Other Countries by US Emissions," *Guardian*, 12 July 2022, https://www.theguardian.com/environment/2022/jul/12/us-carbon-emissions-greenhouse-gases-climate-crisis.

23. Brendan Kennedy and Ann-Marie Jackson, "Caged by Canada, Part 1," *Toronto Star*, 17 March 2017, https://projects.thestar.com/caged-by-canada-immigration-detention/part-1/; Christina Jung, "Human Rights Groups Call for End to 'Horrid System' That Allows CBSA to Lock Up Immigrants in Provincial Jails," CBC News, 7 June 2022, https://www.cbc.ca/news/canada/british-columbia/bc-ends-immigration-detention-1.6475541. These authors are rightly outraged that people not convicted of any crime should end up in maximum security. But *most* people incarcerated in Ontario's superjails have not been convicted either – they are legally innocent and awaiting trial, or awaiting sentencing. There is a broader injustice here. However, similar outrage recently led British Columbia to ban federal immigration detainees from its provincial prisons. See Canadian Press, "BC Ending Immigration Detention Arrangement with CBSA, Citing Human Rights," CBC News, 21 July 2022, https://www.cbc.ca/news/canada/british-columbia/cbsa-immigration-detention-ending-1.6528001.

24. As will be seen below, such high-tech solutions to social problems are often easily foiled by low-tech resistance. See Luke O'Neill, "Ups and Downs: Trump's $27m-a-Mile Border Wall Being Scaled with $5 Ladders," *Guardian*, 24 April 2021, https://www.theguardian.com/us-news/2021/apr/24/donald-trump-border-wall-scaled-ladders; Richard Luscombe, "Trump's Border Wall Reportedly in Severe Disrepair in Arizona," *Guardian*, 23 August 2021, https://www.theguardian.com/us-news/2021/aug/23/trump-border-wall-reportedly-severe-disrepair-arizona.

could be expelled for being a "public charge."[25] Others, criminalized for being poor (through vagrancy laws) or for protesting their poverty (by picketing or obstructing the police), could be removed without appeal by immigration agencies that operated in secret and created their own rules.[26] In fact, one 1940 study found that "the most notable feature of deportation cases in Canada is the apparent desire to get agitators of any sort out of the country at all costs."[27] And the various immigration departments were not the only parts of government looking out for "agitators."

Political policing of ethnic communities predates Confederation, and it has involved not just surveillance and infiltration by agencies like the RCMP but also harsh laws and loose practices that allow jailing, deportation, and exclusion. At first, the targets were Irish Catholics and South Asians suspected of supporting struggles to free their homelands from British rule. But after World War I (and the Winnipeg General Strike of 1919), communism became the "primary enemy of Canadian national security" for the rest of the twentieth century.[28]

This focus had tremendous implications not just for party members who were directly persecuted but also for any organization that the Mounties felt they might try to join – "from schools and universities to youth clubs, from ethnic dancing halls to foreign-language study groups, from civil-liberties associations to peace groups." Obviously, unions were a major concern in this regard, so the force was led to "honeycomb the labour movement with spies, sources and agents." In sowing division, and in targeting the more militant unions, the RCMP was "in effect intervening on behalf of business" to suppress the bargaining power of workers in general.[29]

Yet, as the authors of *Secret Service* point out, the selection of targets was also consistently affected by dubious racist notions as to which ethnic communities were most likely to be susceptible to radicalization from the left. As they note, "the Mounties possessed an unwavering interest in the link between ethnicity and left-wing politics." Ukrainians, Finns, and other "peoples of Slavic origin" were a special concern to the RCMP during and beyond World War II, for example. Plausible threats from the right, whether fascist subversives in that war or the Ku Klux Klan in the 1920s, were consistently neglected

25. Roberts, *Whence They Came*, 44–48.

26. Roberts, *Whence They Came*, 195–196.

27. C. F. Fraser, *Control of Aliens in the British Commonwealth of Nations* (London: Hogarth, 1940), 114, cited in Roberts, *Whence They Came*, 196.

28. Reg Whitaker, Gregory Kealey, and Andrew Parnaby, *Secret Service: Political Policing in Canada from the Fenians to Fortress America* (Toronto: University of Toronto Press, 2013), 179, 532–534.

29. Whitaker, Kealey, and Parnaby, *Secret Service*, 12, 542.

in pursuing the "primary enemy" on the left – a "many-headed Hydra," constantly reappearing in new guises.[30]

Federal public servants were another group selected for special attention, as the RCMP took charge of their screening and surveillance in the 1930s. Operating behind the scenes, without specific authorization or guidelines, the RCMP was, "in effect, the last word on the loyalty of public employees."[31] Once again the force made dubious judgements about potential security threats and conducted decades-long witch hunts against leftists, homosexuals, and other stigmatized groups – undoubtedly helping to intensify their stigmatization in the process.[32] Employers (both public and private) fired and blacklisted people according to the Mounties' secret advice, "induc[ing] political discipline through pervasive, diffuse fear of the consequences of risky ideas, friends, or associations." Though often ineptly applied and frequently resisted, this marriage of legal and economic coercion, buttressed by the growing power of public and private bureaucracies themselves, has had profound effects on the range of options that seem to be available to all working Canadians. Through such means, law and the state have defined the limits of "acceptable" politics, with a key role being played by "what were, after all, secret police."[33]

Master and servant law: Foundations of legal subordination

Workers can hardly count on the state to be a neutral arbiter while it maintains the legal framework of production. The origin of modern employment law in British master and servant legislation has passed on a distinctly unbalanced view of obligations in a job contract. Master and servant law was shaped by its origins during plague years, when massive labour shortages threatened to empower (and enrich) the workers who survived. The British state intervened with measures that tied labourers to their masters and undercut their bargaining power. As the empire expanded, similar methods were used to create and control local pools of wage labour.[34]

Master and servant law set out obligations on the worker's side that criminalized a wide variety of workplace behaviours and punished them with prison or worse. For example, though enforcement varied by race, gender and jurisdiction, it was commonplace throughout the empire that workers who "deserted" their employers could be forced to complete their contracts.

30. Whitaker, Kealey, and Parnaby, *Secret Service*, 110, 74, 157, 71, 106, 157.

31. Whitaker, Kealey, and Parnaby, *Secret Service*, 163.

32. See Gary Kinsman, "'Character Weaknesses' and 'Fruit Machines': Towards an Analysis of the Anti-homosexual Security Campaign in the Canadian Civil Service," *Labour/Le Travail* 35 (Spring 1995): 133–161.

33. Whitaker, Kealey, and Parnaby, *Secret Service*, 165, 162.

34. Douglas Hay and Paul Craven, "Introduction," in Hay and Craven, eds., *Masters, Servants and Magistrates in Britain and the Empire, 1562–1955* (Chapel Hill: University of North Carolina Press, 2004), 1–58.

So-called deserters (and later, strikers) "were presented with the choice of returning to work today, or after a month's imprisonment at hard labour." When fines or fees were assessed, the result was frequently the same, because master and servant law, like imprisonment for debt, "punished the defaulter's body when property was wanting to satisfy his or her obligations."[35]

On the other side, employers were assigned a much smaller set of obligations that were nearly always enforceable through the civil courts, if at all. One of the few offences punishable by prison was "poaching" workers from another employer. This meant, in effect, that "enticing someone else's workers by offering better conditions was punished with greater severity than mistreating or starving one's own."[36]

Such fundamental biases remain deeply embedded in laws that affect workplace relations. Employment law still assumes that parties who are vastly different in wealth and power come to the contract voluntarily and as equals. It still assumes that every employment contract imposes an exceptionally onerous set of duties on workers (obedience, reasonable skill, loyalty, good faith) that must be met to the employer's satisfaction on pain of dismissal and potential economic ruin.[37] In fact, Harry Glasbeek argues that employment contracts are uniquely unbalanced "contract[s] of subordination" that preserve essentially feudal conditions by assuming voluntary consent on the worker's side ("free" labour making unconstrained choices in a "free" market). Corresponding employer obligations are often deflected by "deliciously vague" definitions of employment and by the courts' high tolerance for "legal trickery" around this issue.[38]

Of course, employers are also shielded by the corporate form itself, as limited liability and intricate ownership structures exist precisely in order to evade accountability and obligation of all kinds.[39] Burgeoning layers of management bureaucracy help to deflect responsibility as well, even as they buttress the coercive power of workplace hierarchy.[40] And employers have been able to count on states to keep employment standards and health and safety protections at minimal levels, with enforcement a relatively low priority.[41] As in

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35. Hay and Craven, "Introduction," 50, 35.

36. Hay and Craven, "Introduction," 34.

37. Harry Glasbeek, "Coerced and Unfree in the Private Sector," *Critical Criminology* 26 (2018): 580–581, 585.

38. Glasbeek, "Coerced and Unfree," 581, 586–587.

39. Harry Glasbeek, *Wealth by Stealth* (Toronto: Between the Lines, 2002); Glasbeek, "Where the Buck Stops," *Alternatives Journal* 31, 1 (2005): 23–25; Joel Bakan, *Corporation: The Pathological Pursuit of Profit and Power* (Toronto: Penguin Canada, 2004).

40. See Harry Braverman, *Labour and Monopoly Capital: The Degradation of Work in the Twentieth Century* (New York: Monthly Review Press, 1974).

41. Glasbeek, *Wealth by Stealth*.

criminal law, social harm inflicted by the powerful is overlooked or redefined, while the actions of subordinate groups are much more likely to be criminalized and punished.[42]

This was certainly the case in judicial decisions around strikes and picketing, where courts were slow to appreciate the virtues of free speech and free association when workers tried to use them.[43] The long struggle for basic union and bargaining rights involved fighting outright criminalization in the 19th century and only gradual, grudging, and conditional acceptance thereafter.[44] Even where elaborate legal regimes have been set up to structure labour-management relations, governments have frequently stepped in to override the rules when business feels cornered. After the death of the Keynesian consensus in the mid-1970s, for example, wage control programs that "suspended" bargaining and strike rights were so common in Canada that Panitch and Swartz declared we had entered an era of "permanent exceptionalism."[45] Meanwhile, gains won by workers that had improved their position at the bargaining table (a basic social safety net, some commitment to maintaining full employment) were rolled back across the board.

Glasbeek argues that the unbalanced, feudal character of employment law is still seen as its natural state, so that while statutory reforms can shift the balance, "they are always contingent." Unless private property rights are seriously challenged, their attendant inequalities will continually re-emerge. In collective bargaining, a key vehicle is the standard "prerogative of management" clause, which reserves to management all powers not explicitly shared via the collective agreement. As Glasbeek points out, the word "prerogative" is associated with "rights belonging to gods and kings." And although collective bargaining may limit arbitrary management power by imposing something like the rule of law inside a workplace, it also gives employers a state-sanctioned right to "discipline and punish" inside a "quasi-criminal justice regime."[46] In this regime, unions may have some input into shaping the rules, but they are also legally obliged to control and limit their members' use of economic power.

42. Paddy Hillyard, Christina Pantazis, Steve Tombs, and Dave Gordon, eds., *Beyond Criminology: Taking Harm Seriously* (London: Pluto Press, 2004).

43. Charles Smith, "Class Struggle from Above: The Canadian State, Industrial Legality and (the Never-Ending Usage of) Back-to-Work Legislation," *Labour/Le Travail* 86 (Fall 2020): 113–114.

44. Judy Fudge and Eric Tucker, *Labour Before the Law: The Regulation of Workers' Collective Action in Canada, 1900–1948* (Toronto: University of Toronto Press, 2004); Eric Tucker, "Freedom to Strike? What Freedom to Strike? Back-to-Work Legislation and the Freedom to Strike in Historical and Legal Perspective," *Labour/LeTravail* 86 (Fall 2020): 137–138.

45. Panitch and Swartz, *From Consent to Coercion.*

46. Glasbeek, "Coerced and Unfree," 580–582, 590, 586.

This is particularly true in Canada, where the right to strike is limited and very closely regulated even in comparison with the United States and Britain.[47]

In the role of employers themselves, Canadian governments have been consistently tempted to bend, break, or rewrite the rules when it comes to dealings with public-sector workers – and to jail their leaders if necessary. Their "consistent expediency" here has made a mockery of any claim to be impartial or neutral in such matters, but they are urged on by business voices who argue that special treatment is justified by state workers' alleged insulation from market forces – that is, from economic coercion.[48]

Poor laws and the work ethic

State coercion, in the form of master and servant law, has shaped labour markets since medieval times, and its essence has been woven into modern labour relations. Of course, master and servant law is not the only tool whose influence can be traced in this manner. Bryan Palmer and others who study the history of welfare have made similar and convincing arguments about the long reach of the British Poor Laws, which used workhouses and other means of "psychological class warfare" to terrorize the poor into work, or at least off the streets.[49] The principle of "less eligibility" developed in this field has become the foundation of the prison system as well.[50] In both cases, state funding is never to support lifestyles that are better than the worst conditions available through waged work. The aim is to push desperate people into bad jobs. On a practical level, however, the principle also impels the state to become more and more savage as conditions deteriorate in the private market. In the 19th century, relief requirements had to be sufficiently horrible to deter practically all potential recipients, at a time when many argued that "pauperism" was actually created by the poor laws themselves.[51] So, just as the legal reformers who created penitentiaries searched for a "just measure of pain" to deter each form of crime, relief and welfare administrators sought just the right mix of deprivation and criminalization to fit each economic moment.[52]

47. Panitch and Swartz, *From Consent to Coercion.*

48. "The lawyer's truth is not truth, but consistency, or a kind of consistent expediency." Henry David Thoreau, *Walden, and On the Duty of Civil Disobedience* (Minneapolis: First Avenue Editions, 2014), 328; McElligott, *Beyond Service.*

49. Bryan Palmer, "The *New* New Poor Law: A Chapter in the Current Class War Waged from Above," *Labour/Le Travail* 84 (Fall 2019): 68.

50. For examples, see Rusche and Kirchheimer, *Punishment and Social Structure*, 24–52; Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750–1850* (London: Penguin, 1978), 174–187.

51. Bryan Palmer and Gaétan Héroux, *Toronto's Poor: A Rebellious History* (Toronto: Between the Lines, 2016), 41.

52. On the legal reformers, see Ignatieff, *Just Measure of Pain.*

In 19th-century poorhouses like Toronto's House of Industry, this was often accomplished by means of the "labour test," which could be introduced or made harsher as circumstances required. The first test forced even the frailest of the dispossessed to saw a quarter-cord of wood. This involved at least three hours' hard labour in exchange for "a watery bowl of soup and a hunk of bread."[53] Later downturns made this seem an insufficient deterrent, and inmates were instead forced to break stones, making "the stonepile an emblem for the work ethic."[54] The quota required for wood or stone could be increased as needed, and those who refused the labour test could be taken to prison instead, where they were very likely to encounter many "aged and infirm" men who had been convicted on the same broad charges of "vagrancy."[55] In this case, the relief-to-prison pipeline was exceptionally clear and visible, largely because it was designed to be that way.

Palmer and Gaétan Héroux note many other points at which the screws were tightened on Toronto's poor, in response to rising unemployment, unrest, and organized resistance. Labour tests such as stone breaking and wood chopping were reintroduced during a depression in the early 1920s and greatly expanded in the relief camps of the 1930s. Banned during the early years of Canada's post-1945 welfare state, such tests returned again (albeit in more subtle forms) with the advent of workfare programs in Ontario and elsewhere after 1995. According to Palmer, such programs have now made the deterrent workhouse "an anachronism" in the United States, where "welfare is about restricting all manner of aid and, indeed, forcing many, including significant numbers of Black, Latino, and indigenous youth, into 'choices' likely to end in incarceration." With welfare eclipsed by mass incarceration, the deterrent workhouse has been replaced by the deterrent prison.[56]

It is worth noting here that welfare itself is everywhere stingier and more stigmatizing than it once was, due in large measure to the attachment of punitive work requirements to a large range of benefits. As Eric Shragge says, "the workhouse as an institution is dead, but as a concept it has been reincarnated in workfare."[57] In truth, both workfare and modern prisons embody elements of the workhouse, and both aim to ramp up state coercion partly to "re-regulate" the labour market. Jamie Peck argues that the patterns of growth and contraction in state relief efforts are closely linked to the political economy of

53. Palmer and Héroux, *Toronto's Poor*, 44.

54. James Pitsula, "The Treatment of Tramps in Late Nineteenth-Century Toronto," Canadian Historical Association, *Historical Papers* (1980): 116–132, cited in Palmer and Héroux, *Toronto's Poor*, 47n46.

55. Palmer and Héroux, *Toronto's Poor*, 47, 72, 66.

56. Palmer, "The *New* New Poor Law," 79, 101.

57. Eric Shragge, "Workfare: An Overview," in *Workfare: Ideology for a New Under-Class* (Toronto: Garamond, 1997), 29, cited in Jamie Peck, *Workfare States* (London: The Guilford Press, 2001), 35.

the labour market. So, when economic disruption produces too much social disorder, relief/welfare will be expanded, only to be rolled back again whenever it seems "work incentives" can be restored.[58]

As Peck rightly emphasizes, the precise timing of such shifts is clearly affected by political calculations, and these sometimes backfire (since coercion in general often provokes as much disorder as it subdues). There is, however, a common pattern that can result both in the depletion of welfare supports and the growth of harsh prisons. "Conservative attacks are invariably most fervent at the peak of the relief cycle, when the welfare rolls are at their most bloated and when the supposed psychoses of dependency threaten to reach epidemic proportions," Peck observes. "These conditions are typically associated with a political onslaught against the vacillating work ethics of the poor, a clampdown on relief giving, and the enforcement of both work and work values. At the same time, this is a 'moral panic' and a regulatory crisis."[59] Todd Gordon has also argued that panic-fed campaigns such as these can extend well beyond the field of welfare. His research shows that the Harris government's war on squeegee kids and "aggressive panhandling" (via Ontario's *Safe Streets Act*) in the mid-1990s was motivated largely by a desire to highlight the state's diminished tolerance for anyone subsisting outside the wage economy.[60] As such, it effectively resurrected laws against vagrancy that had long been used for similar purposes. Douglas Hay and Paul Craven observe in another context that "freedom to choose one's employer did not imply the freedom to remain unemployed."[61]

Criminalizing those alternate pathways also had the effect of "demonizing" the youth involved and "commodifying" their crimes for political purposes, according to Dianne Martin.[62] Similarly, the problem of welfare fraud was vastly inflated and more intensely policed, with the public invited to participate through anonymous snitch lines. This helped to justify welfare cuts, but it also laid more layers of stigma onto those still forced to rely on public aid. Workfare itself is a form of "ritualized degradation" according to Frances Fox

58. Peck, *Workfare States*, 35. This is compatible with the "Rusche and Kirchheimer hypothesis" that incarceration rates and prison conditions will worsen when labour is cheap and plentiful, except that those who write in this vein tend to regard the correlation as more or less automatic, at least in the long term. See Dario Melossi, "Introduction to the Transaction Edition: The Simple 'Heuristic Maxim' of an 'Unusual Human Being,'" in Rusche and Kirchheimer, *Punishment and Social Structure*, ix–xlvi; Dario Melossi and Massimo Pavarini, *The Prison and the Factory: Origins of the Penitentiary System* (Totowa, NJ: Barnes and Noble Books, 1981), 144.

59. Peck, *Workfare States*, 40.

60. Todd Gordon, *Cops, Crime and Capitalism* (Halifax: Fernwood, 2006).

61. Hay and Craven, "Introduction," 33.

62. Dianne Martin, "Demonizing Youth, Marketing Fear," in Joe Hermer and Janet Mosher, eds., *Disorderly People: Law and the Politics of Exclusion in Ontario* (Halifax: Fernwood, 2002), 95–96.

Piven and Richard Cloward.[63] And its supervisors seem to have licence to administer work requirements in exceptionally heartless ways, as Erin Hatton has demonstrated quite poignantly.[64]

Last resort: The role(s) of prison labour

This brings us to the purposes of state-imposed work, and these have been somewhat contradictory when applied to prisons in Canada and elsewhere. Hard labour attached to a prison sentence is clearly meant to enhance the sentence's punitive or deterrent effects. Yet these features often undermined more educative efforts aimed at reforming or "correcting" prisoners' attitudes toward work. For example, when prisoners were forced to walk a treadwheel or turn a crank for hours on end, any improvement in their "work ethic" had to be balanced against the not-remote chance that the machine would crush them or drive them to suicide.[65]

Work by inmates is also presented as serving purposes more refined and useful than punishment. Yet even genuinely rehabilitative measures designed to improve prisoners' "employability" can involve dangers that are tolerated partly because they promise to lessen reliance by ex-prisoners and their families on public support. In a remarkable example noted by Jordan House, such motives helped justify building a slaughterhouse at Guelph Correctional Centre as part of a 1970s prison work program. It was a pilot project for more joint ventures with the private sector, but the organizers seemed oblivious to the public relations problems that would come with having "hardened criminals, armed with knives and saws, employed specifically to kill and dismember."[66]

That experiment was not repeated in Ontario, but wood and metalworking shops are commonly used to teach trades (to men), and they pose serious security risks unless every sharp scrap can be kept from returning to the cell blocks. Metal detectors and cell searches are now used to control such contraband, but these are time consuming and can prevent inmates from getting to rehabilitative programs, court dates, and so on. Modern prisons are usually designed to limit the need for inmate movement, but this in turn limits the kind of programming that can be offered, and since lockdowns are such a

63. Frances Fox Piven and Richard A. Cloward, *Regulating the Poor: The Functions of Public Welfare*, 2nd ed. (New York: Vintage, 1993), 366–367, cited in Peck, *Workfare States*, 38.

64. Erin Hatton, "'Either You Do It or You're Going in the Box': Coerced Labor in Contemporary America," *Critical Sociology* 45, 6 (2019): 907–920; Hatton, "When Work Is Punishment: Penal Subjectivities in Punitive Labor Regimes," *Punishment and Society* 20, 2 (2017): 174–191.

65. See Ignatieff, *Just Measure of Pain*, 207–215. Pregnant women, the elderly, and the disabled were most likely to be crushed by the treadwheel, it was discovered.

66. Jordan House, "When Prisoners Had a Union: The Canadian Food and Allied Workers Union Local 240," *Labour/Le Travail* 82 (Fall 2018): 9–39, 16.

common response to security threats, the consistent delivery of such programs is also a major problem.[67]

In many cases, inmate labour was supposed to help defray building and maintenance costs, or actually make a profit for someone connected to the prison. Yet profit making by prisons themselves has generally failed, and prison officials have been exposed as inept and often corrupt entrepreneurs.[68] Still, if prison work is seen as "ritualized degradation," then it may be compatible with the "less eligibility" rule insofar as it represents a continuing effort to imagine and model forms of work that are more horrible than anything outside.

Prison "wages" are certainly degrading. In Canada, the United States, and the United Kingdom, they remain a fraction of minimum wages outside and are undercut by fees and by exorbitant costs inside.[69] The lesson is clear, according to one ex-prisoner: "How can I come out here and *not* appreciate a job in society, in the real world, where it matters, when I was just working for $0.38 or $0.14 or $0.12? You know what I mean? How can I *not* come out here and appreciate it, even if it had to be a minimum wage or, you know, a stepping stone [to a better job]?"[70] If prison work makes insecure, dead-end, micro-managed, low-wage retail jobs look appealing, it may well be serving its most important purpose.

67. See Greg McElligott, "Bearing the Neoconservative Burden? Frontline Work in Prisons" *Social Justice* 34, 3–4 (2007): 78–97, 86. Programming of any sort also assumes that time and resources are available to identify inmate needs and match them to appropriate programs. In Ontario, most provincial prisoners are on remand awaiting trial (and thus simply ineligible for programming) or serving short sentences that make that process difficult. Federal prisoners serve longer sentences, but most prisoners are held by the provinces.

68. Rainer Baehre, "Prison as Factory, Convict as Worker: A Study of the Mid-Victorian St. John Penitentiary," in Jim Phillips, Tina Loo, and Susan Lewthwaite, eds., *Essays in the History of Canadian Law*, vol. 5, *Crime and Criminal Justice* (Toronto: The Osgoode Society for Canadian Legal History, 1994), 439–477; Joseph C. Berkovits, "Prisoners for Profit: Convict Labour in the Ontario Central Prison, 1874–1915," in Phillips, Loo, and Lewthwaite, eds., *Essays in the History of Canadian Law*, 5:478–515.

69. In contrast to the general pattern, some US prisons have managed to make prison labour profitable both for the private corporations that package or contract it and for governments that deliver the prisoners. A recent ACLU report suggests that US prison labour produces goods and services worth at least US$11 billion each year, in exchange for little to nothing in the way of pay or training. Strictly speaking, about 80 per cent of that work does not produce profit because it involves prison maintenance that is not sold, but it is clearly a massive economic benefit extracted from unfree labour. See American Civil Liberties Union and the Global Human Rights Clinic, *Captive Labor: Exploitation of Incarcerated Workers*, research report (Chicago: ACLU and GHRC, 2022), 6–7, https://www.aclu.org/sites/default/files/field_document/2022-06-15-captivelaborresearchreport.pdf.

70. Quoted in Hatton, "'Either You Do It,'" 918.

Prisons and Proletarianization

Palmer observes that as Britain industrialized, both employment law and poverty relief were adjusted to press down harder on workers and the poor. The New Poor Law of 1834 responded to riots and growing immiseration with more emphasis on deterrent workhouses, cutbacks in "outdoor" relief, and attempts to centralize the administration of aid.[71]

Changes in master and servant law, according to Hay, contributed greatly to the intensification of work during this period (1750–1850), which saw many traditional holidays eliminated and the workweek expanded. Parliament and judges redefined the laws, and penalties in master and servant cases more often involved imprisonment – partly because they were increasingly adjudicated by industrial employers acting as Justices of the Peace. These employer-magistrates were supported by a new judicial doctrine asserting that industry, like farmers at harvest time, required a "constantly obedient workforce." This tougher line was linked as well to the dramatic expansion of the British state's capacity for incarceration. Hay mentions the houses of correction springing up parallel to factories in the last decades of the 18th century.[72] He might also have noted the invention and proliferation of the penitentiary in the first decades of the 19th.

These developments took a slightly different route in the Canadian case. Although master and servant law allowed imprisonment in Canada until the 20th century, and its terminology endured in Ontario employment law until 1990, the law was rarely used in most industries.[73] Craven argues that it was important nonetheless, for "the occasional exemplary prosecution served as a useful reminder of superordination and subordination in a British society bordering the American republic. Unequal relations, whether of class or of race, found clear expression in an employment regime that could curtail liberty for insubordination. The rough policy of master and servant law could lend legitimacy to employer authority and … sanction employer self-help."[74]

A unified field of action

Palmer notes that Upper Canada – later Ontario – had a remarkably conscious policy associating "criminalization, incarceration, and relief of the indigent … as part of a common response to proletarianization" in the years prior to

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71. Palmer, "*New* New Poor Law," 65

72. Douglas Hay, "Working Time, Dinner Time, Serving Time: Labour and Law in Industrialization," in Eric Tucker and Judy Fudge, eds., *The Class Politics of Law: Essays Inspired by Harry Glasbeek* (Halifax: Fernwood, 2019), 152–153, 163, 164.

73. Paul Craven, "Canada, 1670–1935: Symbolic and Instrumental Enforcement in Loyalist North America," in Hay and Craven, eds., *Masters, Servants and Magistrates*, 203, 205, 215, 218.

74. Craven, "Canada, 1670–1935," 215.

Confederation in 1867.[75] The merging of policy made some sense because state institutions were few and far between, and often served multiple purposes, in the colony. Local jails, for example, might house not just people awaiting trial or punishment (men, women, and children) but also the elderly, the destitute, the mentally ill, or the addicted.[76] Working-class lives often traversed such boundaries as well, because "dependency on the wage was always rendered precarious by the harsh and recurring realities of being out of work." Hence any complete attempt to intensify work would have to affect both situations, "since waged life was never entirely separate from wageless life."[77]

After Confederation, as Ontario industrialized, the oversight of local jails – along with asylums, poorhouses, and hospitals – was merged into the purview of one provincial inspectorate, headed for many years by J. W. Langmuir, who aimed to "rationalize and reform every aspect of Ontario's prison and welfare systems." In this, says Peter Oliver, Langmuir was "fully in harmony" with "middle-class business and professional elements" who had "embarked on sweeping campaigns to impose order and rationality on almost every aspect of provincial life." In particular, Langmuir was determined to make hard labour a meaningful threat in court by establishing three new provincial prisons organized to enforce it.[78]

The imposition of forced labour – and discipline more generally – on a wide range of populations was a central part of such "rationalization." Michael Ignatieff argues that the logic here was shaped by hospital reformers of the late 18th century like David Hartley, who felt that "physical diseases could have 'moral' causes" and consequently prescribed discipline even in hospitals. "Hygienic rituals were designed to fulfill disciplinary functions," Ignatieff notes. "To teach the poor to be clean, it was necessary to teach them to be godly, tractable, and self-disciplined. Hartleian assumptions led the doctors to be confident that once the bodies of the poor were subject to regulation, their minds would acquire a taste for order."[79]

The new penitentiaries of the early 19th century would, like hospitals, act as quarantine zones. In this case, prison walls would contain "the contagion of criminality," and solitary confinement would "prevent the bacillus of vice from spreading from the hardened to the uninitiate."[80] Such thinking also allowed early industrialists to pose factory discipline as moral improvement. Set against the dissolute and slapdash old pottery workforce, for example,

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75. Palmer, "*New* New Poor Law," 79.

76. Peter Oliver, *"Terror to Evil-Doers": Prisons and Punishments in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998).

77. Palmer and Héroux, *Toronto's Poor*, 28, 40.

78. Oliver, *"Terror to Evil-Doers,"* 356, 357.

79. Ignatieff, *Just Measure of Pain*, 61.

80. Ignatieff, *Just Measure of Pain*, 61–62.

Josiah Wedgwood claimed his new factory had "made machines of the men as cannot err."[81] Such claims merely amplified the more widespread concern with transforming an agricultural workforce into one fit for the rhythms of industry.[82] From here, it was not much of a leap for penitentiary designers to believe that training prisoners for the factory could transform "the criminal into proletarian" – shaping a "violent, troublesome and impulsive criminal … into a disciplined subject, into a mechanical subject."[83]

While we now live in an age when "mechanical subjects" can be produced in a more literal sense, the desire to create complete, perpetual, unthinking obedience is obviously much older. For centuries, employers have been dreaming about ways to reduce workers to automatons – maximizing production and control while minimizing resistance. The influence of Jeremy Bentham's panopticon plans on prisons and factories is now widely known, and F. W. Taylor's "scientific management" approach later spread to most sectors of the economy.[84] Both promise a dramatic intensification of control from above. The panopticon is said to achieve this through architecture that enhances separation, guilt, and the fear of surveillance, while Taylorism studies the micro-motions of any work task to reveal the "one best way" it might be executed. But Bentham actually had broader ambitions that are worth noting here.

At the dawn of the industrial age, Bentham recognized that the accumulation of wealth would increasingly require a wide-ranging struggle "to subdue the poor." Bentham was a passionate advocate of laissez-faire freedoms, but those who challenged capitalist norms or stood in the way of faster accumulation would face "a jarring confrontation with state power."[85] Hence, he planned to use his panopticon design not just for prisons but for schools, hospitals, and in fact the "whole body of the burdensome poor," who were to be housed and to work under strict discipline for (his) profit through a privately owned but publicly funded National Charity Company.[86] Bentham did not live to see this proposal – or the panopticon prison – come to fruition, but its features underline once again the degree to which contemporary observers saw welfare, crime, production, and public morality as a unified field of action. It is also

81. Neil McKendrick, "Josiah Wedgwood and Factory Discipline," *The Historical Journal* 4, 1 (1961): 34, cited in Ignatieff, *Just Measure of Pain*, 63.

82. Ignatieff, *Just Measure of Pain*; E. P. Thompson, "Time, Work-Discipline and Industrial Capitalism," *Past and Present* 38 (December 1967): 56–97.

83. Melossi and Pavarini, *Prison and the Factory*, 144.

84. See Jeremy Bentham, *The Panopticon Writings*, ed. Miran Bozovic (1787; London: Verso Books, 1995); Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1995); Braverman, *Labour and Monopoly Capital*.

85. Perelman, *Invention of Capitalism*, 20.

86. Cited in Perelman, *Invention of Capitalism*, 21.

significant that his proposal focuses on *built* solutions to what was seen as the common underlying "moral" problem of a faulty work ethic.

Deterrence and social order

Bentham's massive private monopoly was superseded in America and elsewhere by what David Rothman calls the "discovery of the asylum." In the early part of the 19th century, as the franchise was gradually expanded, a wide range of institutions sprang into existence in the space between citizens and the central state: schools, penitentiaries, poorhouses, hospitals, mental institutions, and so on. Rothman argues that this new layer of public and privately run organizations was aimed at preserving a social order that was thought to be under siege – primarily from the bad habits of the poor.[87]

In colonial Upper Canada, it took far longer for the franchise to be expanded. However, by the 1830s, local oligarchs were expressing similar fears, focused particularly on dispossessed (mostly Irish) immigrants from the United Kingdom. Refugees from famine and enclosures, these newcomers were congregating in increasingly desperate circumstances, partly because land speculators linked to the colony's ruling Family Compact were squeezing small farmers and hoarding the best farmland.[88]

Colonial authorities in Upper Canada were influenced by the new American efforts to extend social control and, in particular, by the new penitentiary created in Auburn, New York. The deputy warden at Auburn came north to design and supervise the construction of Kingston Penitentiary, which was the flagship of a larger process of criminal justice reform in the colony.[89] The Tory oligarchy had been convinced that vicious criminal penalties were ineffective if rarely enforced, and the new penitentiary was designed to deliver punishment that was both more certain and more "rational."[90]

"Rationality" in this context reflected an obsession with the best use of time, so that calculating a "just measure of pain" for each crime (in time behind bars) was not that different in principle from determining the "one best way"

87. David Rothman, *The Discovery of the Asylum*: *Social Order and Disorder in the New Republic*, rev. ed. (New York: Aldine de Gruyter, 2002). The section that follows summarizes arguments I have made in more depth elsewhere. See Greg McElligott, "A Tory High Modernism? Grand Plans and Visions of Order in Neoconservative Ontario," *Critical Criminology* 16, 2 (2008): 123–144.

88. Gustavus Myers, *A History of Canadian Wealth* (Toronto: James Lewis and Samuel, 1972); Stanley Ryerson, *Unequal Union* (Toronto: Progress, 1973); Reg Whitaker, "Images of the State in Canada," in Leo Panitch, ed., *The Canadian State* (Toronto: University of Toronto Press, 1977), 28–68.

89. Oliver, *"Terror to Evil-Doers."*

90. Barry Wright, "'Harshness and Forbearance': The Politics of Pardons and the Upper Canadian Rebellion," in Carolyn Strange, ed., *Qualities of Mercy*: *Justice, Punishment and Discretion* (Vancouver: UBC Press, 1996), 77–103.

to maximize worker productivity.[91] In each case, motivating good behaviour was seen as crucially dependent on the proper management of time.[92] The authorities also assumed once again that forced labour was economically and legally essential to the "rationalization" of punishment. Despite the panoptic pretensions of the penitentiary's designers, prisoners at Kingston were not "automatically" controlled but instead forced by "lash and fear of the lash" into an "unceasing routine of slave labour" that built and supported the prison.[93]

Influential members of the Upper Canadian elite were clearly perturbed by anecdotal crime trends that they saw as linked to growing disrespect for law, legal authorities, and the state itself.[94] Hugh Thomson, the penitentiary's most consistent booster in the legislature, was appalled at the lack of fear in men convicted of capital crimes and noted that some sentenced to banishment did not even bother to leave the province. This contempt for the law could be remedied, he felt, with a penitentiary – and especially a regime of forced (pointless) labour on a prison treadmill. Oliver cites Chief Justice John Beverley Robinson on the challenge posed by such defiance: "deterrence encompassed the most essential purpose of the criminal law; its absence suggested weakness which, if unchecked, must … eventually undermine law, order and the entire social structure."[95]

It is hard to see such concerns as disconnected from the broader imperatives of managing a subordinate population from above. As Upper Canada created the labour pool that would form its first real industrial working class, the ruling elite sensed incipient revolt and responded with "exceptionally" ambitious legal reforms centred on a massive new building. The focus on deterrence underlines the important ideological aspect of all such reforms: if

91. Ignatieff, *Just Measure of Pain*; Thompson, "Time, Work-Discipline."

92. Max Weber might see the "spirit of capitalism" at work here, which would explain a lot of the overlap between notions of work efficiency and morality. Weber details Benjamin Franklin's obsession with the proper use of time – "*time* is money," says Franklin. Some Protestant theologians, Weber observes, felt that "waste of time is thus the first and in principle the deadliest of sins" because "every hour lost is lost to labour for the glory of God." Such thinking undoubtedly contributed to the "war on sloth" and the tendency to attribute every sort of social problem to "idleness." See Weber, *The Protestant Ethic and the Spirit of Capitalism* (Mineola, NY: Dover, 2003), 48, 157–158.

93. Oliver, *"Terror to Evil-Doers,"* 124–127.

94. Perhaps the massive expense involved in building a prison "far in excess of any conceivable needs" was also made more palatable by the prospect that some suppliers would win lucrative contracts to construct and provision it (C. J. Taylor, "The Kingston, Ontario Penitentiary and Moral Architecture," *Histoire sociale/Social History* 24 [1979], reprinted in R. C. MacLeod, ed., *Lawful Authority: Readings on the History of Criminal Justice in Canada* [Toronto: Longman, 1988], 242, cited in Wright, "'Harshness and Forbearance,'" 82–83). This has certainly been true in more recent penal construction sprees. See McElligott, "Invested in Prisons," and the discussion on the TSDC below.

95. Quoted in Oliver, *"Terror to Evil-Doers,"* 96–97.

the state were to instill fear, it had to possess a credible threat, and it needed a way to get that message out to those who might defy it. Such means were limited in the 1830s, and the hope that one grandiose prison might instill the appropriate amount of terror (while enriching the right people) also reflects an older logic of spectacular punishments that the colony had still not outgrown.

Of course, if we tried to measure the penitentiary's actual impact on social order, the balance sheet would have to include the armed Rebellions of 1837, which occurred just two years after it opened. And order within the prison itself was rarely as certain as its proponents had hoped. Penitentiaries and factories developed together, and by gathering large subaltern populations together in one place, both facilitate economies of scale – but also, potentially, collective organizing among workers or prisoners. Despite extraordinary efforts to divide prisoners so gathered (through hoods and enforced silence at Kingston, or perpetual solitary confinement elsewhere), Kingston Penitentiary has experienced decisive moments of collective resistance – strikes, a union, and especially riots – that have shaped the prison's evolution, sometimes in concert with struggles outside.[96] This has been the pattern elsewhere as well, most notably at New York's Attica prison in 1971. The spectre of the riot continues to haunt those who work inside the confines of prison walls, where guards are always outnumbered and often (in Canada) unarmed.[97]

Modern "supermax" designs (which, like SWAT teams, have spread far beyond their limited initial uses) intensify these problems by gathering many more prisoners in one space and by relying far too heavily on surveillance and central control technologies to keep inmates divided. The limits to such a machine-centred "big box" approach are best encapsulated by one episode at the Central North Correctional Centre (CNCC), a "superjail" built by the Harris government in Penetanguishene, Ontario, that opened in 2001. After authorities boasted that the CNCC had "more video cameras than a Super Bowl broadcast," prisoners blinded many of the lenses with wads of wet toilet paper in a serious 2002 riot.[98] Similar acts of individual sabotage happen all the time, as warehoused prisoners act out against the authorities with whatever means come to hand – for a wide variety of reasons, of course.[99]

96. See House, "When Prisoners Had a Union"; Willis, "'If You Want Anything.'" One common struggle succeeded in shutting down a brutal supermax, using arguments focused mostly on the expense involved. See Jesse Menendez and Yana Kunichoff, "Fight over Closing of Illinois Supermax Ends 14 Years of Prisoners' Silence in Solitary Confinement," Truthout.org, 15 August 2012, https://truthout.org/articles/fight-over-closing-of-illinois-supermax-ends-14-years-of-prisoners-silence-in-solitary-confinement/.

97. McElligott, "Bearing the Neoconservative Burden," 82–83.

98. McElligott, "Tory High Modernism," 138–139.

99. The relative weakness of prison authorities and the inevitability of resistance are long-established themes in the study of prisons and other "total institutions." For some relevant links, see McElligott, "Bearing the Neoconservative Burden"; McElligott, "Tory High Modernism."

"Model societies" then and now

If Kingston Penitentiary was in any sense a nervous response to a seemingly fragile social order, the proximity of the 1837 Rebellions suggest that it was also a failed – or at best, inadequate – one. Despite a state-of-the-art "congregate" design that was meant to facilitate forced labour in a factory setting, the prison also failed to make money or even to pay for its own operations.[100] Undoubtedly, there were profits to be made in designing, financing, and supplying the new prison, but these would likely have accrued to only a small portion of the Tory elite. Disappointments such as these – and of course, the dubious record of prisons in actually reducing crime – highlight the degree to which prison planning has often been an exercise in wishful thinking. As Dario Melossi and Massimo Pavarini noted some time ago, "the internal organization of prison, the 'silent' and 'labouring' prison community, with time inexorably marked out in work and worship, the total isolation of each prisoner-worker, the impossibility of any form of association between them, the discipline of work as 'total' discipline become the paradigmatic terms for that which 'should be' in the so-called free society. The 'inside' aspires to be an ideal model of what it should be like 'outside.'"[101]

To the extent that prisons actually aim for "rehabilitation" rather than mere control, work programs typically offer *limited* opportunities for *some* prisoners to train for jobs that *might* be available upon release and that are "proper" for their gender, age, and so on. For example, McNeill shows quite vividly how federal work programs in Kingston-area prisons during the 1950s and 1960s gave preferential treatment to young male prisoners who might learn a trade, at the expense of female and/or older prisoners.[102] On a practical level, then, the ideal modelled inside prisons has included not just individualization, industriousness, and obedience. It has also been marked by traditional patterns of occupational segregation and labour-market exclusion.

In spite of many documented failures, hopes that prisons might model and shape a more perfectly controlled workforce have not died. As I have shown elsewhere, dreams very much like this lay behind both the construction of Kingston Pen in the 1830s and the imposition of a centralized "supermax" model on the Ontario prison system at the dawn of the 21st century.[103] The attempt by Stephen Harper's Conservative government to extend the Ontario model into the federal prison system also followed this pattern, especially in its initial emphasis on reviving prison work programs.[104]

100. Oliver, *"Terror to Evil-Doers,"* 114, 243–256.

101. Melossi and Pavarini, *Prison and the Factory*, 149.

102. McNeill, "Re-education on How to Work."

103. McElligott, "Tory High Modernism."

104. Greg McElligott and Justin Piché, "Grand Visions Interrupted? Debating the Future of Federal Prisons in Canada," paper presented at the annual meeting of the Canadian Law and

A kinder, gentler superjail?

The Liberal provincial government that succeeded the Harris Tories in Ontario set out a different model for prison building that is instructive in many respects. The Toronto South Detention Centre (TSDC) was intended to replace a number of older prisons, including the notorious Don Jail. Opened in 2014, the TSDC was huge, enclosing 1,650 prisoners itself, along with 320 more serving intermittent (often weekend) sentences in the same complex.[105] Said to be brighter and more environmentally friendly, humane, and program-oriented than the Tory superjails, the TSDC also cut a less ominous profile. Its three pastel-toned towers blend easily into its Etobicoke surroundings and are often mistaken for apartment blocks. It could be argued that this emphasis on better camouflage extends into the public-private partnership (PPP) that financed and built the prison, for this model has been criticized as a way of depoliticizing prison expansion "while infusing international financial capital more deeply into the prison system."[106]

Yet these innovations sit atop patterns that are broadly consistent with past practice. On the one hand, the PPP financing arrangements guaranteed the winning consortium a steady stream of income (amounting eventually to over a billion dollars) for 30 years.[107] Some Ontario suppliers were still getting a direct cut of prison spending, and if that cut was now shared with international banks, at least it was guaranteed for the long term. At the same time, messaging from the consortium on the subject of work and job creation embodied the same contradictions that plague the modern labour market.

As with the federal prison expansion program, Ontario's public statements about the TSDC stressed the value of prison building to host communities, particularly during the construction process. Some 500 to 550 people would be on-site every day to build the prison, according to Infrastructure Ontario.[108] However, as with the federal program, these local benefits were undocumented and probably overstated, as outside contractors and financiers tend to benefit most from construction, and costs to the community in terms of safety, over-loaded infrastructure, and so on tend to be absent from these calculations.[109]

Society Association, Waterloo, ON, May 2012.

105. Braiden Bhindi, "Promises Broken or Promises Kept? An Analysis of the Vision and Current Operation of the Toronto South Detention Centre," MA thesis, Carleton University, 2019, 58, 82.

106. Amy Buitenhuis, "Public-Private Partnerships and Prison Expansion in Ontario: Shifts in Governance, 1995 to 2012," MA thesis, University of Toronto, 2013, 115.

107. Buitenhuis, "Public-Private Partnerships," 59, 104.

108. Bhindi, "Promises Broken," 71–72.

109. See McElligott, "Invested in Prisons." Host communities are also vulnerable to funding changes once new prisons are established. In 2021, the Ontario government downloaded policing costs onto the town of Penetanguishene, about twenty years after a new superjail was built there in the face of substantial opposition. Penetanguishene's mayor says the town will

In any case, the consortium seemed to take the opposite tack when planning the TSDC with the government. True to the historical obsession with extreme labour saving in prisons, the consortium's "pre-fab" design apparently allowed just six men to assemble it over a period of seven months (each cell was imported from an American factory; then cells were stacked together on-site).[110] This seems to fly in the face of the job-creation claims noted above, but it is consistent with the approach planned for the daily operations of the prison.

The TSDC employed a new model called "direct supervision," which placed guards closer to the pods in which prisoners spent most of their time. These were essentially open observation posts, rather than the glass-enclosed ones more typical of supermax prisons and the "superjails" built under the former Conservative government. Although this model had not been tested in Canada, the Ontario Liberals implemented it at the TSDC, portraying it as not only more humane but also more staff efficient. Guard numbers could be reduced by 33 per cent in the massive new jail, it was claimed. Other aspects of the prison were clearly designed with staff reduction in mind. Aside from the widespread use of surveillance technologies and centralized access controls, labour-intensive in-person visits were largely abolished in favour of video chats. One defence of the latter was that they could continue even in the face of staff shortages and lockdowns. When it came time to negotiate staffing levels with the guard union (the Ontario Public Service Employees Union), the government argued that the prison should aim for a ratio of one guard for every 40 prisoners. They did not achieve this goal, settling with the union for a 1:16 ratio, but their aspirations here are clear.[111]

Complications arose when the government had to hire larger numbers amid its self-imposed hiring freeze. After the hiring process was tightened to weed out gang members, the TSDC operated without prisoners for a year, at a cost of about a million dollars per month.[112] Thereafter, high turnover among the part-time guards and persistent staff shortages created a vicious cycle wherein prisoners were continually confined to their cells; food, programming, and other services were compromised; prisoners became angrier; the prison

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now have to absorb nearly $374,000 in new yearly expenses – the equivalent of a 3.3 per cent rise in property taxes – to cover prison-related policing alone. When the prison was being built, and the province was talking about the economic spinoffs that would flow to Penetang, a different funding arrangement was in place. See Craig Momney, "Penetanguishene Mayor Demands Answers from Ontario Gov't over CNCC Policing Costs," CTV News, 15 October 2021, https://barrie.ctvnews.ca/penetanguishene-mayor-outraged-over-cncc-policing-costs-demands-answers-from-province-1.5622655.

110. Bhindi, "Promises Broken," 62.

111. Bhindi, "Promises Broken," 57, 67, 90.

112. Bhindi, "Promises Broken," 90.

became increasingly dangerous; and more guards left.[113] The staffing issues were aggravated by a series of problems with the prison's automated security systems, which look remarkably similar to the ones experienced by guards at the CNCC, the flagship Conservative prison at Penetanguishene, and speak to a continued overreliance on large-scale carceral technologies at the expense of human contact.[114]

It should be remembered that most prisoners at both the TSDC and the CNCC are legally innocent and awaiting trial. Some 38 per cent of such remanded prisoners are normally released without being convicted.[115] But the TSDC became known as a "plea factory," where prisoners would plead guilty just so they could be sent elsewhere.[116] If convicted, there was a chance the judge would give them extra credit for time served in the TSDC; one prisoner had a seven-year sentence disposed of in this way.[117] But, for those who would have been found innocent, any time served beyond TSDC simply added to the injustice of their position.[118] More recently, the TSDC – like other "big box," high-intensity operations – proved vulnerable to COVID-19, and its scale and design are looking increasingly obsolete in the post-pandemic world.[119]

So what sort of dream is embodied in the TSDC experience? Clearly, it is the familiar one full of technological hubris, (faulty) panoptic controls, excessive

113. Ontario Human Rights Commission, *Report on Conditions of Confinement at Toronto South Detention Centre* (Toronto, 2020), http://www.ohrc.on.ca/en/report-conditions-confinement-toronto-south-detention-centre; Bhindi, "Promises Broken," 84–89.

114. Bhindi, "Promises Broken," 79–84; see McElligott, "Bearing the Neoconservative Burden."

115. Holly Pelvin, "Remand as a Cross-Institutional System: Examining the Process of Punishment before Conviction," *Canadian Journal of Criminology and Criminal Justice* 61, 2 (2019): 67.

116. Bhindi, "Promises Broken," 112.

117. This is a traditional means by which judges register their displeasure at exceptionally bad prison conditions. Prisoners held in the Don Jail during its final years often got similar credits; see, for example, Betsy Powell, "Citing 'Unconscionable' Conditions at Toronto South Jail, Judge Imposes 7-Year Sentence But Says Man Should Face No Further Prison Time," *Toronto Star*, 11 June 2019, https://www.thestar.com/news/gta/2019/06/11/citing-unconscionable-conditions-at-toronto-south-jail-judge-imposes-7-year-sentence-but-says-man-should-face-no-further-prison-time.html.

118. Pelvin describes the role of police, courts, and prisons in inflicting "unnecessary punishment on legally innocent people" through the bail and remand system (Pelvin, "Remand," 80). Such punishment before conviction is a larger and more widespread problem that reflects the repressive functions of these institutions. As in older/more authoritarian legal systems, the actual guilt or innocence of the accused often seems secondary to the general deterrent effect that a hard line (on bail, sentencing, etc.) is thought to instill in the rest of the population. Like rape and murder in "warehouse" prisons, mass punishment of the legally innocent is an "accidental" cost that the system has consistently shown itself willing to bear.

119. Alyshah Hasham, "COVID-19 Outbreak at Toronto South Detention Centre Spikes to 25 Active Cases," *Toronto Star*, 11 December 2020, https://www.thestar.com/news/gta/2020/12/11/covid-19-outbreak-at-toronto-south-detention-centre-spikes-to-25-active-cases.html.

job automation, and chaotic dangers visited upon everyone inside the prison. Just as workers on the outside must get by with insecure jobs and a government that has largely abandoned them (at least before COVID), the people warehoused inside places like the TSDC are expected to survive in chaos, with little in the way of organized support, much less outside human contact. Work training and other programs were never very strong among remanded prisoners like these (who comprise more than 60 per cent of the province's prisoners), but now they have been sacrificed in the perpetual lockdown, which itself is the product of a misguided attempt to reduce labour costs.

Conclusion

THIS ARTICLE HAS EMPHASIZED the degree to which coercion still penetrates the labour market, despite attempts to ignore its presence. Conceptual and historical evidence attested to the role of the state in organizing the supplementary shocks needed to create and occasionally discipline the industrial workforce in Canada. Prisons and prison construction became a crucial part of these efforts, but the state's unified field of action extended beyond them to include relief and welfare efforts, public schools, and so on.

Along the way, care was taken to feed and water some prominent members of the corporate elite, and governments became enmeshed in building projects that embodied fantasies of total control through carceral technology. Capital's dream of escaping dependence on human labour has been shared by state officials since the first modern prisons were built. Yet partaking in this dream always comes at a cost, as it usually produces disastrous results for the people held in prison. The TSDC experience was not an exception; the failure of prison technology in this respect has many precedents in Ontario and elsewhere.

In this field, as in others, the state has shown itself to be deeply devoted to the needs of capital, even to the point of sharing its delusions and failures. This has meant that prisons, and crime, and criminals, are shaped by economic constraints and imperatives that are neglected in mainstream accounts within traditional academic disciplines. It also means that "outside" labour markets are undergirded by coercion and prisons to an extent that is rarely acknowledged by those same mainstream accounts. It is time to look at both work and prisons with clearer eyes.