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BOOK REVIEW

‘Terror to Evil-Doers’: Prisons and Punishments in Nineteenth-Century Ontario

BY PETER OLIVER

(Toronto: University of Toronto Press, 1998)¹ xxvi + 575 pages,
21 illus., 47 tables

If *‘Terror to Evil-Doers’* were a mystery novel of similarly ample girth, one would be tempted to skip to the end to discover “whodunnit.” Although this is an historical tome, the same technique could be deployed to discern the gloomy theme:

[T]here was no significant challenge to the nineteenth-century focus on the prison as the dominant method of punishing offenders until the second half of the twentieth century. And in the same period there was little evidence that Ontarians had much interest in developing more flexible or constructive approaches within the confines of imprisonment, or even a better understanding of the individual and social implications of imprisonment.²

Indeed, throughout the book, one has the sense that the author, Peter Oliver, would have preferred to write a happier story of progress in the post-Archambault Commission era.³ This is a book about “stillborn” possibilities for penal reform in nineteenth-century Ontario.

The author cut his teeth on political biography, and this book extends those earlier interests by tracing the politics of penal reform in a provincial culture torn between “Victorian” faith in progress and “political parsimony and public hostility” toward punishment and prisoners.⁴ For Oliver, analyzing how these opposing forces produced a particular configuration of institutions and practices requires the lens of a political historian. As he explains in his preface, the book focuses on the “carceral politics of the state, the challenges of institutional governance and administrative imperatives, and, perhaps most of all, on that great nineteenth-century contest which characterized emergent

¹ [hereinafter *‘Terror to Evil-Doers’*].

² *Ibid.* at 506.

³ See Canada, *Report of the Royal Commission to Investigate the Penal System of Canada* (Ottawa: King’s Printer, 1938) (Chair: J. Archambault). Serious rioting at the Kingston Penitentiary in the early 1930s produced political pressure for the federal government to review penal policy and to refocus on the reform potential of incarceration.

⁴ *‘Terror to Evil-Doers,’ supra* note 1 at xxii.

nation states: conflicts between central power and local authority in an era of social change and industrialization."⁵ *Terror to Evil-Doers* is a narrative that sets out to explain how and why things turned out the way they did (quite poorly when it comes to humanitarian reform, he judges, in spite of significant improvements in punishment and forward-thinking, well-meaning individuals). It is not, however, a study that locates its understanding of penal administration within any particular theoretical model of governance; rather it is written from the point of view that local jails, intermediate prisons, and the Kingston Penitentiary could have been administered better—more efficiently, more effectively, more humanely, more rationally, more generously.

Substantively speaking, *Terror to Evil-Doers* is the Upper Canadian counterpart to Jean-Marie Fecteau's *Un nouvel ordre des choses*.⁶ It examines the broad shift in penal practice (which occurred elsewhere in the western world over the same period) from a reliance on fines, banishment, corporal punishment, and capital punishment, to a system that delivered punishment almost exclusively through confinement. But this is no Foucauldian study, as is Fecteau's. Nor is it an Eliasian cultural analysis of changing sensibilities about punishment.⁷ Oliver defines himself as a "correctional" historian who is sensitive to the particularities of time, place, personalities and, above all, politics. And if one reads the book from cover to cover, the sheer volume of information about penal politics in Ontario is staggering. Those hoping to find *Discipline and Punish*⁸ Ontario-style will be disappointed, but anyone wanting an empirically rich account of Ontario's penal history will find the work rewarding. In fact, one could think of this book as an account of "Conscience and Contingency" or, in other words, as a variation on a theme begun by American historian David Rothman.⁹

⁵ *Ibid.* at xx.

⁶ J.-M. Fecteau, *Un nouvel ordre des choses : la pauvreté, le crime et l'État au Québec, de la fin du XVIIIe siècle à 1840* (Outremont, Qc.: VLB, 1989).

⁷ For a history of punishment that draws on the work of Norbert Elias, see P.C. Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984).

⁸ See M. Foucault, *Discipline and Punish: The Birth of the Prison*, 2d ed., trans. A. Sheridan (New York: Vintage Books, 1995). Foucault's philosophical approach to the history of punishment and his post-structuralist methodology have yet to inform the historiography of punishment in Canada.

⁹ See D.J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* (Boston: Little, Brown, 1980).

Although Oliver states that “chapters may be read as separate essays” for enlightenment on “discrete aspects of a large topic,”¹⁰ the book is organized in a roughly chronological format. He traces several types of penal institutions from the turn of the nineteenth century (in the case of gaols), the 1830s (in the case of the Kingston Penitentiary), and the 1870s (in the cases of two intermediate prisons: the Central Prison and the Mercer Reformatory for Females). Thus far, Canadian historians have concentrated on Kingston, the country’s first penitentiary, and a few, including Oliver, have looked at the intermediate prisons, but this is the first time that gaols have been added to the mix. *Terror to Evil-Doers* is also the first to do the daunting work of putting these various institutions into the same framework.

Oliver establishes that local gaols changed slowly, from being flimsy, unhealthy, noisome places where miscreants, debtors, drunks, and vagrants spent relatively short periods of time in insecure surroundings, to sturdily-built edifices that incarcerated people charged with minor criminal offences and those awaiting trial. In other respects, little changed in nineteenth-century gaols, in spite of repeated criticism from boards of inspectors and humanitarian reformers. As late as 1861, gaol inspector E.A. Meredith penned the following description of the Ottawa Gaol in his diary:

The dingy cells off the corridor are damp dark and unwholesome. The privy ... was overflowing with abomination ... [T]he Gaoler had one woman ... in the same room with some male prisoners upstairs, intended for debtors, being afraid to leave her in the abominable hole below. There were 6 young boys in the corridor below with the men whose minds must have been poisoned by the moral atmosphere as their bodies were by the physical atmosphere¹¹

In an important argument, Oliver suggests that the establishment of the Kingston Penitentiary siphoned off progressive energy and resources that might otherwise have been devoted to making gaols healthier and safer for inmates. Once Kingston was planned, “[s]adly, the gaol reform movement in Upper Canada had lost all momentum. ... The conditions which had been so well documented by the reformers of the 1830s would continue to prevail to the end of the century and beyond.”¹²

For Oliver, the heroes of penal reform were few, and the villains many. George Brown, the secretary of the 1849 commission that investigated the managerial failures of the Kingston Penitentiary, is

¹⁰ *Terror to Evil-Doers*, *supra* note 1 at xxvi.

¹¹ *Ibid.* at 350.

¹² *Ibid.* at 85.

Oliver's chief villain. Brown and his colleagues catalogued heaps of damning evidence against the staff (who seemed most competent at wielding the lash), but they produced "obfuscatory myths" in the process: "By focusing their inquiry on the sins of [warden] Henry Smith, the commissioners neglected issues of far greater import."¹³ In particular, they failed to question the harsh regime of the so-called silent system of penal discipline, a system that dehumanized and brutalized the prison experience: "[T]he commissioners had been given an opportunity to truly shake the old order, but it was an opportunity missed and their recommendations did little more than shore up that order."¹⁴

If Brown and his commissioners "tragically" perpetuated the managerial design flaws of the country's first penitentiary, the heroic Meredith stood for all that was redeemable in nineteenth-century Ontario penal politics. Throughout the book, Oliver bemoans the fact that so much more might have been done to bring about "real innovation in Canad[ian] penal practices,"¹⁵ but he also hastens to add that things might have been much worse, had tireless gaol inspectors like Meredith not acted as watchdogs. Meredith, as assistant provincial secretary and secretary of the Board of Inspectors of Prisons, Asylums, and Public Charities by 1857, championed the Croftonian model of rehabilitation, oriented towards encouraging and rewarding good behaviour, rather than punishing and deterring bad behaviour. One of the few nineteenth-century gentlemen to consider it worthwhile to ask prisoners' opinions of their treatment, Meredith breathed fire into his reports about loathsome conditions in the province's gaols. In spite of the usual apathy toward prison conditions that prevailed among Ontario's governing elite over the nineteenth century, he was responsible for improving the material conditions of prisoners throughout the province. Nonetheless, Meredith and Oliver would have agreed that progress was frustratingly limited.

The failure of the Croftonian system to take hold in Canadian prisons was yet another example of penal progress thwarted by narrow minds and thin wallets: "The bankruptcy of reform ideology, the stultification brought about by an over-centralized administrative structure, and the final failure of the contract [prison labour] system together destroyed any semblance of a sense of purpose in the

¹³ *Ibid.* at 142.

¹⁴ *Ibid.*

¹⁵ *Ibid.* at 206.

nineteenth-century penitentiary.”¹⁶ Worse still, Oliver points out, the penitentiary system further deteriorated after the turn of the century.

In spite of the system’s failing grade, some prison wardens receive high marks. One of the clearest winners in this account is Mary Jane O’Reilly, Canada’s first female superintendent of a women’s institution. In a chapter that covers Ontario’s two intermediate prisons, the Central Prison for Men and the Andrew Mercer Ontario Reformatory for Females, Oliver contrasts the former institution, ruled through corporal punishment and brutal discipline, and the latter, “govern[ed] by kindness.”¹⁷ Although Oliver provides tables that indicate that Mercer inmates were younger than their Central Prison counterparts,¹⁸ and incarcerated overwhelmingly for minor morals and public order offences (rather than property crimes and offences against the person),¹⁹ he attributes Mercer’s relatively disturbance-free management to its keeper’s “kindness, friendship, and support.”²⁰

In an argument that he has developed over several years, Oliver claims that feminist historians, such as Nicole Hahn Rafter and Estelle Freedman, have misjudged women’s reformatories, charging that they “resulted in forms of differential treatment which effected a double standard which discriminated against women.”²¹ Since sexism was not invented in the 1880s, Oliver correctly observes, it would be wrong-headed to blame gendered committal and sentencing practices on the Mercer Reformatory and its “humane” matron. It is dubious, however, to downplay the importance of gender in the establishment of separate men’s and women’s intermediate prisons. Incarcerating men and women separately (the former in an institution called a “prison” and the latter in the first adult institution purposely constructed, staffed, managed, and defined as a “reformatory”) replicated prevailing gendered concepts of criminality, punishment, and correction, not only in the penal system but

¹⁶ *Ibid.* at 316.

¹⁷ *Ibid.* at 452.

¹⁸ See *ibid.* at 450, Table 11.21.

¹⁹ See *ibid.* at 437-38, Tables 11.13-11.14.

²⁰ *Ibid.* at 452.

²¹ *Ibid.* at 433. See in particular E.B. Freedman, *Their Sisters’ Keepers: Women’s Prison Reform in America, 1830-1930* (Ann Arbor, Mich.: University of Michigan Press, 1981); and N.H. Rafter, *Partial Justice: Women Prisons and Social Control*, 2d ed. (New Brunswick, N.J.: Transaction, 1990). Oliver mentions the work of Lucia Zedner in his notes, but unfortunately he does not engage with her analysis of women’s imprisonment, nor does he refer to her critique of prison historiography’s problem of gender-blindness: see L. Zedner, *Women, Crime and Custody in Victorian England* (Oxford: Clarendon Press, 1991).

in charities, schools, religious institutions, and homes. Not surprisingly, men's prisons staffed by men tended to follow masculinist militaristic models of discipline and control: ranks and uniforms were redolent of army and navy practice, and order was both maintained and disrupted in a manner that conformed to traditionally masculine rituals of domination, submission, and overt resistance.

Rather than conclude, as Oliver does, that the criminal justice historian's focus "must not be on gender,"²² he might have *extended* a gendered analysis to help explain why and how a regime of terror, rather than kindness, prevailed at the Central Prison for Men and the Kingston Penitentiary. After all, late-twentieth century feminists were not the first to problematize the relationship between gender and punishment. In Ontario, it was late-nineteenth century prison bureaucrats, like J.W. Langmuir, the Inspector of Prisons and Public Charities—not "feminists" as Oliver claims in his conclusion²³—who lobbied for separate men's and women's institutions.

In the background to *'Terror to Evil-Doers'* one detects a Weberian humanist conviction that punishment ought ideally to correct, and to do so efficiently and benevolently. It is difficult to take issue with such a sentiment. Indeed, in the current penal climate, voices speaking so feelingly about the plight of prisoners and the stubborn persistence of the less-eligibility principle are rarely heard. There is no question that this is the most comprehensive study to date on the history of imprisonment in Ontario and, for that, Oliver should be commended. But, even after reading close to six hundred pages, one could easily come away wishing for more—particularly in regard to analysis of the cultural sensibilities that fed in and out of penal politics.

It is telling that the book's subtitle is "prisons and punishments" rather than the more commonly used and broader term "punishment."²⁴ Although Oliver mentions David Garland's term "penality" once, he eschews a Garlandesque approach (*i.e.*, an analysis that examines the complex of institutions, practices, mentalities, sensibilities, and cultural

²² *Terror to Evil-Doers*, *supra* note 1 at 460.

²³ See *ibid.* at 502.

²⁴ Recent examples in the international literature include M. Finnane, *Punishment in Australian Society* (Melbourne: Oxford University Press, 1997); J. Pratt, *Punishment in a Perfect Society: The New Zealand Penal System, 1840-1939* (Wellington, N.Z.: Victoria University Press, 1992); D. Garland, *Punishment and Welfare: A History of Penal Strategies* (Brookfield, Vt.: Gower, 1985); and J.A. Sharpe, *Judicial Punishment in England* (London: Farber & Farber, 1990).

forms associated with the delivery and meanings of punishment).²⁵ This would be no small feat for historians who cannot, like contemporary penologists, readily unearth sources to document such illusory qualities as feelings. Still, this is certainly the direction in which international penal historiography is moving.²⁶ Until Canadian historiography begins to take on more analytically ambitious projects, we are not likely to see our work quoted in collections such as the *Oxford History of the Prison* (a recent collection that omits mention of Canada).²⁷ There is no question that the history of punishment in Ontario (a jurisdiction that established one of the earliest penitentiaries and *the* first women's reformatory in North America) certainly deserves to be swept into international historiographical debates about how and why we have punished in the past.

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²⁵ For an extended discussion of penalty, see D. Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: University of Chicago Press, 1990).

²⁶ For a recent example, see V.A.C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford: Oxford University Press, 1994).

²⁷ See N. Morris & D.J. Rothman, eds., *Oxford History of the Prison: The Practice of Punishment in Western Society* (New York: Oxford University Press, 1995).

