

# Study in Documents

## The Legalization of the Photography of Canadian Prisoners



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**RESUMÉ** Ce texte trace les origines de l'usage de la photographie dans les pénitenciers fédéraux au Canada. En se servant principalement de la correspondance tirée du fonds du ministère de la Justice, conservé à Bibliothèque et Archives Canada, et en utilisant des exemples tirés des registres des détenus du pénitencier de Kingston (« *Kingston Penitentiary Inmate History Description Ledgers* »), l'expérience et la réaction sociale canadiennes sont comparées aux expériences contemporaines des États-Unis, de l'Angleterre et de la France. L'auteure examine aussi le rôle qu'a pu jouer la législation fédérale sur les pratiques policières au niveau municipal.

**ABSTRACT** This article documents the origins of the use of photography within federal penitentiaries in Canada. Drawing primarily on correspondence from the Department of Justice records at Library and Archives Canada, and using examples from the Kingston Penitentiary Inmate History Description Ledgers, the Canadian experience and social response is compared with contemporary developments in the United States, England, and France. Whether federal legislation may have affected police practices at the municipal level is also discussed.

Not ten years had passed since the Daguerreotype technique was publicly announced in 1839, when law officials in both England and France were actively taking and collecting photographs of prisoners. In fact, photographing prisoners became one of the biggest uses for the new technology. In 1841, the Paris police began to include daguerreotype portraits on file with their reports on individual criminals<sup>1</sup> and Bristol Gaol staff in England claimed they had “reduced the [recorded] number of criminals from 160 to 100” when they adopted the practice of photographing their inmates in 1848.<sup>2</sup> In 1871, the United Kingdom passed the *Prevention of Crimes Act*, which required all prisons to adopt photography as a way to document their prisoners.<sup>3</sup> The use

1 Jennifer Green, *Framing the Victorians* (Ithaca, 1996), p. 200.

2 Simon Poppo, “Photography, Crime and Social Control,” *Early Popular Visual Culture*, vol. 3, no. 1 (May 2005), p. 95.

3 Ibid.

of photography in the British, French, and American contexts is well-documented<sup>4</sup> but how did Canadian authorities use and legitimize the new technology of photography in its own penal systems? Did Canada adopt the practice of photographing prisoners automatically, in imitation of either the French, English, or American examples, or was there evidence of a unique approach?

A further question arises in examining the introduction of photography in federal prisons in the Canadian context: Did Canadians anticipate the ethical implications that state-sanctioned photography would raise in society? How did they respond to ethical and moral questions such as how to strike a balance between a state's right to information and an individual's right to privacy? "For a long time ordinary individuality ... remained below the threshold of description," writes Michel Foucault:

To be looked at, observed, described in detail, followed from day to day by an uninterrupted writing, was a privilege ... The disciplinary methods reversed this relation, lowered the threshold of describable individuality and made this description a means of control and a method of domination.<sup>5</sup>

It is John Tagg who picks up on Foucault's thread and specifically identifies photography as one of the new technologies that enabled the state to exercise power over individuals through description. However, Tagg is careful to indicate that there were nuances between how each country began the practice of photographing prisoners:

Nor can national differences and inconsistencies be suppressed. For example, if the 1880s in France were a period of rationalization in police photography ... this does not mesh easily and conveniently with developments elsewhere. In Britain, local police forces had been using photography since the 1860s, but, even after the 1870 Act ... the value of such records for detection continued to be questioned.<sup>6</sup>

Was there discussion within Canadian society, as Tagg alludes existed in Britain, about the implications of the practice of photographing prisoners? In addition to examining when and how prisoner photography was established in Canada, it is valuable to ask whether much discussion arose about the implications of the new practice within Canadian society.

4 Sources documenting the introduction of photography into these countries include the authors mentioned in the first two footnotes as well as authors such as: Michel Frizot, Pierre Albert, and Colin Harding, eds., *A New History of Photography* (Italy, 1999); John Tagg, *The Burden of Representation: Essays on Photographies and Histories* (Minneapolis, MN, 1993); Katherine Giber, *Captive Images: Race, Crime, Photography* (Oxford, 2007), and others.

5 Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York, 1977), p. 191.

6 John Tagg, *The Burden of Representation* (Minneapolis, MN, 1988), p. 7.

On 8 April 1869, the *Daily British Columbian* published a short article entitled, "A Souvenir." It seems the day before, a young man by the name of Brownley had been taken into custody with the charge of stealing the watch of a fellow passenger aboard a ship that was temporarily docked at New Westminster. Though the accused stated he had won the watch fairly on a bet and was not jailed, the fact that he willingly submitted his own photograph to the rogues' gallery at the Police Court for future reference clearly amused the article's writer enough to discuss the event in his column.

Though Canadian newspapers had been describing rogues' galleries in American cities and at local police offices since at least the 1860s, no official decisions were made at the federal level about the legality of photography as a tool used to document prisoners until 1898 when the *Identification of Criminals Act* was passed. This Act stated that

any person in lawful custody, charged with ... an indictable offence, may be subjected to ... the measurements, processes and operations practiced under the ... Bertillon Signaletic System, or to any measurements, processes or operations sanctioned by the Governor in Council having the like object in view.<sup>7</sup>

The Bertillon System, established in France by Alphonse Bertillon and implemented there in 1882, required taking several measurements of the prisoner's body as well as photographing side and front views of his face and upper body. Bertillon was one of the first men to recognize the value of the camera as a powerful tool for the description and control of lawbreakers. He essentially invented the "mug shot," and also standardized crime-scene photography. His system, used to document prisoners, required photographs be taken with a standard focal length, consistent lighting, and a fixed distance between the camera and the sitter.<sup>8</sup> The information was then filed according to the dimensions of the measured parts in a card catalogue where it could be quickly and easily retrieved. The emphasis on the prisoner's physical attributes allowed police to identify an individual without asking the individual his name, thereby avoiding the problem of aliases.

The Bertillon System came to the attention of Canadian lawmakers and enforcers during a conference held in Toronto in the late 1880s. It had been publicly announced by its creator for the first time in Rome at a police officers' conference in 1885, and quickly spread to the United States and other international jurisdictions. Its implementation into the Canadian legal system was recommended by AP Sherwood, the Commissioner of the Dominion Police.<sup>9</sup>

7 *An Act Respecting the Identification of Criminals*, 61 Victoria c.54.

8 Alan Sekula, "The Body and the Archive," in *The Contest of Meaning: Critical Histories of Photography*, ed. Richard Bolton (Cambridge, 1989), p. 361.

9 *Official Report of the Debates of the House of Commons of the Dominion of Canada* (1898), p. 6962.

Interestingly, the motivation for the Act appears to have come not from the House of Commons but from the Senate, where David Mills introduced the bill for the first time on 25 May 1898. At the time of the final reading on 30 May, Senate Speaker George William Allan stated, “this bill is framed, I suppose, on precisely the same lines as the law of France” to which Mills replied, “it is to enable us to do what is being done in Belgium and France.”<sup>10</sup> The House of Commons debates that took place before the passing of the Act were minimal. Of greatest concern to the lawmakers appeared to be the costs, which were estimated “not to exceed \$100 in the beginning for each of our penitentiaries ... and \$75 a year.”<sup>11</sup> Sir Charles Tupper remarked, “this is a capital system and I believe its introduction will assist in the suppression of crime. I saw the system in operation in Paris, where it was wonderously successful.”<sup>12</sup> Clearly, Canada’s politicians were influenced by new developments in France.

The history of the use of photography for recordkeeping within Canadian federal prisons is fascinating because officials in these institutions did not leap into using the technology as soon as it became available or even after 1898, when it had been sanctioned by Parliament. Photography was also practiced very inconsistently from prison to prison, as correspondence in the Department of Justice fonds attests. It is possible that federal prisons were less energetic about photographing prisoners than municipal police forces because they were not under the same degree of community pressure.<sup>13</sup> In contrast to municipal police forces, federal prisons were not often releasing inmates back into the same community where they had served their time.

Another reason federal-prison officials may have been loathe to implement the system could be because the language of the Canadian Act was lethargic. It stated that prisoners “may be subjected to” the identification process. Stunningly, nowhere in the Act was the word “photography” actually used. Members of the House of Commons were confident that Bertillon’s name was synonymous with photographing and measuring prisoners, and believed the system needed no further explanation. Yet there were many doubts on the part of Crown attorneys and law-enforcement officials (even the Department of Justice’s own staff) as to whether photographing prisoners was in fact legal after the passing of the *Identification of Criminals Act* because it was not explicitly mentioned. AP Sherwood, the man who had initially recommended

10 *Journals of the Senate of Canada* (1898), Vol. XXXIII, p. 845.

11 *Debates of the House of Commons* (1898), p. 6962.

12 *Ibid.*

13 In North America, municipal police forces were some of the most committed users of the Bertillon System. John C. Weaver notes that the Hamilton police force adopted the Bertillon System in 1898 and he writes that the system’s “nerve-centre was at the Bertillon headquarters in Chicago.” See John C. Weaver, *Crimes, Constables and Courts: Or der and Transgression in a Canadian City* (Montreal, 1995), p. 110.

the implementation of the Bertillon System in Canada, wrote to inform the Deputy Minister of Justice that the system did in fact include photography. “To my mind it is quite clear that the authorities have the right to photograph the prisoners,” he wrote, “it is being done everywhere in Canada and the United States.”<sup>14</sup> This question was asked enough times (it continued to be asked well into the 1920s) that an Order in Council was passed in 1911 clarifying that the Act allowed for the photographing of prisoners.<sup>15</sup>

The Bertillon System was a convenient shorthand for federal legislators to encourage the systematic photographic documentation of prisoners in federal penitentiaries. It is curious that the new legislation allowing photography did not amend or even refer to existing legislation and regulations that governed recordkeeping in federal prisons. Shortly after Confederation, Order in Council PC 1024 of 11 January 1870, sections 335 to 354, described in detail forty types of “Books to be Kept” under the direction and control of various penitentiary officials in order to meet the requirements of the *Penitentiary Act*.<sup>16</sup> Included among these types of books were the Convict Registers, which were to be maintained by the Clerk. Despite the fact that the new *Identification of Criminals Act* would result in the creation and maintenance of records very similar to those described in 1870, this Order in Council was not once referred to during parliamentary debates in 1898. Why Members of Parliament did not connect the two record-keeping practices, and whether they considered photographic records to be of a different type of record with a different kind of value than the written record, is unknown.

In comparison, the *Prevention of Crimes Act* passed in Britain in 1871 outlined a very specific record-keeping system that decades earlier not only recommended the use of photography but made photography part of the official record-keeping regime. The British legislation required that all persons convicted of a crime be photographed, that photographic registers be compiled, and dictated that certain bodies would be responsible for the registers. It even went so far as to state that prison officials that turned in a “false or imperfect” paper trail concerning each prisoner would be fined.<sup>17</sup> In fact, the British *Prevention of Crimes Act* was a much more detailed and compre-

14 Library and Archives Canada (hereafter LAC), Department of Justice, RG 13, vol. 1900, file 675/1900, “Bertillon System – Inquiry re: above system in the identification of criminals,” Letter from Sherwood to M.M. Brown, 1 September 1900.

15 The Order in Council explicitly refers to photography: “... the process or operation of photographing is hereby sanctioned ...” LAC, Department of Justice, RG 13, vol. 1951, file 1921-2189, “RCMP – Authority of local police to photograph persons convicted of indictable offences,” Memorandum from Mounted Police to Deputy Minister of Justice, 18 November 1921.

16 LAC, Privy Council Office, RG 2, series A-1-a, vol. 273, PC 1869-1024, [Minister of] Justice – Rules and regulations for government, etc. of the penitentiaries of Canada.

17 *Prevention of Crime Act*, 34 & 35 Victoria, c. 112 (1871).

hensive document than the Canadian law; the portion discussing the identification of prisoners only makes up a small segment of the overall Act. It makes no reference to the Bertillon System at all as it predates its invention.<sup>18</sup>

In Canada, archival and museological evidence indicates that the Bertillon system, as designed by Alphonse Bertillon, was never in fact used much by federal prisons, despite it being mentioned in the legislation. The earliest photographic ledger originating from the Kingston Penitentiary (dating to 1886 and held by LAC) does not appear to have corresponding catalogue cards with each prisoner's physical measurements, a key component of the Bertillon system. (See Figure 1 for a typical entry from the Kingston Penitentiary Museum ledger). In fact, no Bertillon cards with physical measurements created by a federal prison could be located by this author in the LAC collection.<sup>19</sup> The Kingston Penitentiary Inmate History ledgers held by LAC appear, instead, to be organic in design, capturing details considered at the time to be essential (including, alongside the front and side view mug shots: ledger entry number, name, prisoner number, "where born," "where sentenced," date of sentencing and crime, with notes on physical description<sup>20</sup>) and adapting when there was a recognized need for it. (Adaptations included dropping the birthplace, or including clippings from newspapers.) It is plausible that even if the concept of the Bertillon System was understood by federal prison staff, it was considered too complex or time-consuming for practical use.

18 Alan Sekula remarks that the British were resistant to the Bertillon System (as opposed to fingerprints, which were a British invention) though it was adopted in Britain with the passing of its 1896 *Penal Servitude Act*. Alan Sekula, "The Body and the Archive," p. 384.

19 Many thanks are owed to Dave St. Onge, curator of the Correctional Service of Canada Museum (CSCM) in Kingston, Ontario, for his assistance in determining the existence of artifacts and archival documents related to those held by LAC but held in various other institutions, including his own. The CSCM has one Remington-Rand "kardex" filing cabinet in its collection of penitentiary artifacts, but St. Onge has been unable to positively identify these or any other similar objects in the collection as being part of the Bertillon System. Additionally, St. Onge has said he has never seen any Bertillon cards coming from federal penitentiaries (personal correspondence, 25 July 2006). It should be noted that early archival sources documenting Canadian federal prisons were not all preserved systematically. LAC began to acquire this material under the *Public Archives of Canada Act* of 1912. Under this legislation, government departments had to ask permission of the dominion archivist to dispose of their records and was, as such, a passive form of acquisition and not done systematically. Before the 1987 introduction of the *National Archives Act* (which made explicit the role of the Archives in the preservation of government records), many early Canadian prison artifacts and archival documents were rescued from disposal by federal penitentiaries by St. Onge and his predecessors. Recently, records from federal penitentiaries (including original glass-plate negatives) were acquired by the CSCM from the online auction eBay.

20 Often physical descriptions were accompanied by a note on the individual's "race" or ethnic background in the earliest Kingston Penitentiary ledgers.



**Figure 1:** Photograph of prisoner number G781, [Joseph Trahau], from the Kingston Penitentiary Inmate History Description Ledger . Though a print is pasted in the ledger , it is obvious that the negative was of glass and cracked prior to printing. The photo was also printed backwards. LAC, Solicitor General, RG 73, vol. 561.

Some of the earliest correspondence between Canadian federal prisons and the Department of Justice (the government institution that administered the prison system until 1965) relating to the implementation of the *Identification of Criminals Act* dates to 1906, when a memo was sent from the Deputy Minister of the department to the wardens of federal penitentiaries. The memo stated that the Minister of Justice “considers the taking of these photographs very important” and asked wardens whether they had the space, facilities, and expertise for photographing prisoners. Both the Stony Mountain, Manitoba, and New Westminster, British Columbia, Penitentiaries had been photographing (New Westminster “for some years” and Stony Mountain according to the Bertillon System). Both prisons had the Hospital Overseer take on the responsibilities of photographing prisoners.<sup>21</sup>

The major barrier for the remaining federal prisons to use photography

21 One warden (from Stony Mountain) wrote that “[the Hospital Overseer] performs the duty in a most satisfactory manner , and it does not interfere in any way with the discipline of the prison.” LAC, Solicitor General, RG 73, vol. 145, file 1-21-20, “Criminal Records, Photographing and Fingerprinting of Convicts,” part 1, Letter from Warden of Stony Mountain, Manitoba to the Inspector of Penitentiaries, 10 October 1906. The Hospital Overseer was responsible in the New Westminster Penitentiary as well; the warden there wrote that “[he] takes deep interest in the work [photography], and it helps a little to break the monotony of his duties” (Ibid., letter from Warden of British Columbia Penitentiary to the Inspector of Penitentiaries, 10 October 1906). It is worth noting that while professional photographers offered their services to the government by mailing their business cards, none of the penitentiaries hired a professional in the first few decades and instead left the duty to existing staff.

was equipment and expertise. In 1906, the warden of St. Vincent de Paul wrote to the Inspectors of Penitentiaries in Ottawa that they had the equipment but not the knowledge on how “to manage the apparatus”<sup>22</sup>; Dorchester Penitentiary in New Brunswick also pleaded ignorance in the art of photography. The Alberta Penitentiary in Edmonton asked for “a complete photographing outfit with instructions,” and the warden at Kingston responded to the inquiry by stating that it was feasible that a photo gallery could be set up with minimal interference with discipline.<sup>23</sup> Up to the point of this inquiry from the Department of Justice, it seemed as though whether or not prisoners were routinely photographed was left up to the individual warden’s judgment.

The use of photography in federal prisons eventually led Department of Justice and prison officials to address ethical issues that arose from the photographing of prisoners. Federal authorities wrestled with the question of what should happen with the photographs that were taken, in addition to having copies stored centrally in Ottawa. The *Identification of Criminals Act* provided that “the results [of the Bertillon System] may be published for the purpose of affording information to of ficers and others engaged in the execution or administration of the law .”<sup>24</sup> Naturally, as soon as federal institutions began photographing their inmates, municipal police forces began requesting copies. Such requests sparked ethical and moral concerns, though the discussion was slow to emerge. In his article, “Photography , Crime and Social Control,” Simon Popple points out that in Britain:

The panoptic tendencies embraced by the modern state found immediate expression through the new scientifically rational technology of the photographs. Many literary and journalistic publications actively followed these developments and they provide a rich source of commentary and opinion.<sup>25</sup>

In Canada, public dialogue was notably lacking in comparison; at the of ficial level, any consideration of ethical issues seems to have been reactive. The repercussions of the use of photography on its prisoners seem only to have been discussed long after its implementation. In fact, despite the Act’s clear statement permitting the circulation of the photographs, the Department of

22 LAC, Solicitor General, RG 73, vol. 145, file 1-21-20, “Criminal Records, Photographing and Fingerprinting of Convicts,” part 1, Letter from the Warden of St. Vincent de Paul to Inspectors of the Penitentiaries, 10 October 1906.

23 The Kingston response is interesting in that LAC’s earliest-known Kingston Penitentiary Inmate History Description Ledger, filled with mug shots, dates from 1886; and this may not be the first ledger in the series. It is possible the Kingston letter addresses the question of setting up a more permanent space dedicated to photographing prisoners, rather than the original question of whether the wardens were doing any photographing at all.

24 *An Act Respecting the Identification of Criminals*, 61 Victoria c. 54 (1889).

25 Popple, p. 95.



Justice's own staff objected strenuously to the circulation of photographs to local forces, and as late as 1933 (nearly thirty-five years after the passing of the *Identification of Criminals Act*) put the onus on local forces to request photographs of particular prisoners. In a memorandum to the Office of the Superintendent of Penitentiaries, Inspector W.H. Craig of the Department of Justice wrote:

To equip one or more municipal police departments with a gallery or records showing photographs of all convicts who have served sentences in penitentiary in many cases would be prejudicial to the ex-convict's future and would hamper him in his efforts to re-establish himself.<sup>26</sup>

The reeve and chairman of the Commission of the Burnaby Police Department wrote defending his position of requesting information from federal prisons, stating: "it is not our intention or desire to shadow unfortunates, or harass those who have made mistakes, but ... it will increase the efficiency of the police departments in the Lower Mainland of this Province."<sup>27</sup> In 1933, Superintendent D.M. Ormond replied to this request by stating that:

It is not the policy of this branch to provide police forces with photographs of all convicts ... police forces should make application in any particular case that may appear to be of interest. On the other hand, where convicts of particular notoriety and unsatisfactory character are being released, there is no objection to notifying the local police force of the release.<sup>28</sup>

This statement can only sound overwhelming naïve at this point in time, nearly thirty years after photography was introduced to Canadian prisons, especially considering criminal-portrait galleries.

The story of the *Daily British Columbian* column earlier in this paper alluded to the role of the newspaper as a public venue where issues relating to photography and the individual were discussed. It is important to remember W.H. Kesterton's characterization of the nineteenth-century newspaper as one where "[the editor] tended to furnish highly subjective accounts interlarded with emotion-provoking value judgments."<sup>29</sup> It is also worth pointing out that local papers intermixed many gruesome stories from relatively distant (often American) locations with local crime stories. For example, in 1887 a newspaper columnist in the *Brandon Weekly Mail* wrote: "No stranger visiting the

26 LAC, Solicitor General, RG 73, vol. 145, file 1-21-20, "Criminal Records, Photographing and Fingerprinting of Convicts," part 1, Memo W.H. Craig to the Superintendent, 2 May 1933.

27 Ibid., Letter from A.K. McLean to The Superintendent, Dominion Penitentiaries, 23 May 1923.

28 Ibid., Letter from D.M. Ormond to The Warden, New Westminster Penitentiary, 3 May 1933.

29 W.H. Kesterton, *A History of Journalism in Canada* (Toronto, 1967). p. 129.

city of New York considers that he has thoroughly ‘done the town’ until he has paid a visit to police headquarters.”<sup>30</sup> The main tourist attraction there was the rogues’ gallery, the display of criminal portraits that everyone was invited to view (though one wonders how many residents of Brandon would have made the trip). During this period, monitoring criminal activities was thought to be a public duty and the newspapers regularly carried all the details of a particular individual’s crime, capture, and sentencing. But the potential of a rogues’ gallery to harm a person’s reputation was also often the subject of news stories and public concern. The *Toronto World* reported in 1883 that one Detective Fahey had placed a photograph of a man in the rogues’ gallery in Chicago, even though the individual had apparently committed no crime. The detective was fined a thousand dollars and ordered to remove it.

Stories about rogues’ galleries did on occasion originate in Canada. Two months after the *Winnipeg Daily Times* reported that the local Winnipeg police had installed a “handsome” new cabinet to contain criminal photographs, and invited residents to come and view it, another story appeared relating one man’s continued harassment from police based on the assumption that he was another man wanted for robbery. The misidentified man (a traveling salesman for a Chicago-based grocery chain) explained:

You see the country is full of defaulting bank cashiers, presidents, express robbers and embezzlers generally, to say nothing of the crooks who are wanted for murder and highway robberies and everything. Every detective and chief of police and constable, throughout the country, has his pockets full of photographs of distinguished crooks, descriptions of men wanted with the amount of the reward, and they are on the lookout for strangers, and they fasten on to them regardless ...<sup>31</sup>

Once it was determined that he was not the thief in question by the forces that held him, he was set free, but the pattern repeated itself throughout Michigan and into Winnipeg, Manitoba. The news of his alleged wrongdoing traveled faster than the realization that the police had nabbed the wrong man. Most local detachments re-photographed him upon arrest and tacked the new photo to their own rogues’ gallery. They also most likely circulated that new photograph, creating and recreating a criminal past for the unfortunate man. Local police so adored taking, swapping, and collecting photographs, that in 1895 the Toronto Police reported with pride that their cabinet was full and

30 Author unknown, *Brandon Weekly Mail*, 3 February 1887.

31 “A strong resemblance,” *Winnipeg Daily Times*, 10 June 1884. To clarify, one can assume the man is referring to the United States as “the country full of defaulting bank cashiers ...” (as that is his country of origin) even though he is telling the story from across the border in Canada. Still, rogues’ galleries and the duplication of photographs, and the adverse effect on one’s identity was an issue for people in both countries.

they required a second one be built.<sup>32</sup>

In 1912, the Toronto Methodist Conference became a place of discussion about the abuses of rogues' galleries. One of their ministers, Reverend R.B. St. Clair, was mistakenly arrested and photographed at the time of arrest, before his innocence or guilt had been established. Fourteen years earlier, the debate held in the House of Commons prior to the passing of the *Identification of Criminals Act* had addressed this very issue. MP Haggart had asked, "does this [legislation] apply only to convicts, or if a person were simply arrested, would he have to go through all this process?," to which the Solicitor General replied, "I may say to my honourable friend that I would not be a party to any attempt to subject these measurements to a person who was simply arrested."<sup>33</sup> Though in the case of the Reverend St. Clair, local police were clearly guilty of overstepping the bounds of the *Identification of Criminals Act*, Chief Inspector David Archibald defended the police at the conference and addressed the crowd saying, "the system was necessary, and as long as an arrested person had no 'record' it did no harm."<sup>34</sup> Despite this, the conference participants decided to carry their motion to petition the Dominion Government over the fact that the faces of innocent people were ending up in rogues' galleries.

As noted in the *Daily British Columbian* article "A Souvenir," local police took advantage of photographs early on. Many files of nineteenth-century police correspondence included letters from police detectives to their colleagues in different jurisdictions, providing written descriptions of suspects or those known to have a criminal record and moving from one community to another. Often a newspaper clipping or photograph from any source would be included in the correspondence.

But did the *Identification of Criminals Act* even extend to municipal police activities? This level of government seemed to be strongly in need of the establishment of boundaries for its use of photography, as the local police were so enthusiastic about the practice. Unlike in other jurisdictions (most notably the Irish Constabulary), Canadian jails were administered under a patchwork of different authorities. In 1849, a municipal act passed in Upper Canada allowed all communities to have their own police magistrate which, as John C. Weaver remarks, "had a part in processing virtually all criminal offences in the second half of the nineteenth century."<sup>35</sup> In 1856, Attorney General John A. Macdonald spoke against this hodgepodge of local police forces, claiming

32 *Evening Star*, 15 February 1895.

33 *Debates of the House of Commons* (1898), p. 6964.

34 *The Globe*, 18 December 1912.

35 Weaver, *Crimes, Constables and Courts*, p. 68. Weaver's book is devoted to the community of Hamilton, Ontario.

the protection of order] should no longer be entrusted to men living among the citizens, sharing prejudice and excited feelings of the populace against whom they might be called to act. It was only by separating these men from the populace that their efficiency could be secured ...<sup>36</sup>

However, as Weaver points out, there was a failure at that point to create a provincial force, and in Canada, “policing retained local touches that proved important in themselves and that provided Canadian police forces with several facets of what would become a complex public image.”<sup>37</sup>

Despite this lack of clarity, records from the Toronto Police Department illustrate a striking relationship between federal guidance on the legality of photographing prisoners and changes to its own record-keeping practices. The Toronto Police Department’s annual report from the city’s 1888 Council Minutes call attention to a significant change in the department’s record-keeping activities, which were summarized by Police Chief H.J. Grasset as

resulting in [the Department’s] entire reorganization, the introduction of photography, the proper registration of criminals and information connected therewith ... [these are] among the features novel to this department.<sup>38</sup>

The catalyst for these changes seems to have been mere rumours of new federal legislation requiring the photography of prisoners. (The *Identification of Criminals Act* came into being eleven years after the Toronto Police Department’s reforms.)<sup>39</sup> In a letter to the Department of Justice, one Inspector Dougall wrote:

It is understood to be the intention of the government to introduce the legislation necessary to enable the authorities of the various prisons and penitentiaries to photograph the criminals confined therein. I am desired by the Board of Commissioners to request that the same power may be established by the police. The aid of photographing in making definite identification is so important that without it many criminals escape recognition and as the creators of the legislation say the likeness of all well known lawbreakers is becoming universal. The Commissioners desire that the police department may be in a position to keep the records of crimes according to the most modern and improved method.<sup>40</sup>

36 *Montreal Gazette*, 29 March 1856.

37 *Ibid.*, p. 87.

38 City of Toronto Archives, *Council Minutes, 1888 Police Department Annual Report* (1888), p. 413: Appendix 81.

39 It has been suggested to me that there may have been an earlier version of the bill that did not make it through the legislative process (Ian McDonald, reference librarian at LAC, personal email). However, no such reference can be found in the *House of Commons Journals* for the years 1887–1888.

40 City of Toronto Archives, *Letterbooks of the Chief Constable*, F 38 SE 90 (1886).

Later in 1898, still well aware of federal initiatives, the Toronto Police Department promptly adopted the Bertillon System just after the passing of the *Identification of Criminals Act*. Ultimately, though, the department maintained only one Bertillon register covering 1898–1920; the register for the next year (1921) was started but no information was entered and the system ceased to be used, for unknown reasons.

Prisoners expressed their own dissatisfaction with the Act of being photographed as soon as the *Identification of Criminals Act* legalized it.<sup>41</sup> A few months into the implementation of the Act, the Brockville County Crown attorney M.M. Brown wrote to the Department of Justice that “some prisoners on hand are now strenuously objecting to being photographed, as also is their Counsel on their behalf.”<sup>42</sup> The law, though, was inflexible and prisoners had to devise means other than legal recourse to avoid being photographed. Prisoners quickly learned that if they moved about while the photo was being taken they could successfully ruin the photograph and the results would not be seen until later in the darkroom (Figure 2). Photographs were expensive enough that prison wardens were loathe to take multiple shots and rarely did.<sup>43</sup> Even though exposure times shortened as photographic technology evolved, this form of protest persisted well into the twentieth century; one photograph from a Kingston Penitentiary ledger shows a woman’s head being physically restrained by two bodiless hands belonging to prison staff (Figure 3). In a letter dated March 22, 1929, the superintendent of penitentiaries wrote a circular letter to all wardens warning of this technique:

Occasionally a photograph is received bearing the evidence of a deliberate attempt on the part of the inmate to distort his features, tilt his head and otherwise defeat the object for which the photograph is intended. An inmate dressed for discharge who deliberately distorts his features and refuses to keep them normal while being photographed ... may be undressed and put back as a punishment to do whatever remission time the Warden sees fit ...<sup>44</sup>

41 LAC, Solicitor General, RG 73, vol. 145, File 1-21-20, “Criminal Records, Photographing and Fingerprinting of Convicts,” part 1, Letter from M.M. Brown to the Minister of Justice, 30 August 1900.

42 Ibid., Memo from George W. Dawson to Federal Wardens, 30 August 1900.

43 Correspondence in the Department of Justice records indicates that the photographs were taken quickly, sometimes without a lot of care, and then sent to Ottawa. In one letter, E.W. Hughes, superintendent of penitentiaries, complains of sloppiness: “occasionally a photograph comes in with so many finger and thumb prints on it that it not only conveys the features of the inmate, but is an excellent finger and thumb print record of the photographer.” LAC, Solicitor General, RG 73, vol. 145, file 1-21-20, “Criminal Records, Photographing and Fingerprinting of Convicts,” part 2, Circular Letter, Superintendent W.E. Hughes to all Wardens, 22 March 1929.

44 Ibid.

Jennifer Green succinctly captures the dilemma that photography posed for prisoners: “photographing a man’s body against his will, after all, in a sense [forces] him to testify against himself.”<sup>45</sup> Despite their protests, prisoners could not escape having their picture taken; the Act allowed that “such force may be used as is necessary to the effectual carrying out of ... such measurements.”<sup>46</sup>



**Figure 2:** Possible example of intentional blurring of mug shot by prisoner Samuel Betts. Betts was convicted of theft and photographed 25 March 1908 at Kingston Penitentiary. LAC, Solicitor General, RG 73, vol. 558.

45 Jennifer Green, *Framing the Victorian* (Ithaca, 1996), p. 199. Green writes about the acceptance of photography as a form of evidence in the British context and the lively debate that took place within British society about the ramifications for privacy. Taking a slightly different view from Green, John Tagg puts the blame on the photograph itself, decrying “the complicity of photographs in this spreading network of power” (Tagg, p. 74) in the context of prisoner photography.

46 *Identification of Criminals Act*, 1898.



**Figure 3:** Unidentified female prisoner being physically restrained. The photograph was taken upon the prisoner's release in 1946. At this time, women were also photographed at the Kingston (men's) Penitentiary though of course jailed in a separate facility. From the collection of the Correctional Service of Canada Museum, Kingston, Ontario, item KP 6991.

Canada was a relative latecomer in the use and legalization of photography of prisoners. Certainly at the federal level, there was little enthusiasm; officials' actions were characterized by a hesitation possibly brought on by concern for prisoners' privacy and reputations, even though there was very little debate considering these aspects. Even after Kingston Penitentiary began to systematically photograph its male prisoners, there were only handwritten entries for its women prisoners (Figure 4). Dorchester Penitentiary's warden wrote in 1923 asking the superintendent of penitentiaries whether photographing female inmates was expected.<sup>47</sup> We can only speculate why the warden had such concerns. His hesitance in using the technology on women could be interpreted as feeling that it was, to him, a degrading or indecent practice; it could also be that he had personally heard from the women prisoners who voiced their own apprehension about the practice. The cold response from the superintendent, "as you already send their fingerprints, I do not see that there would be any objection to the photographs," is the voice of a bureaucrat not working as closely with the women whose facial features were about to be permanently captured.

47 LAC, Solicitor General, RG 73, vol. 145, file 1-21-20, "Criminal Records, Photographing and Fingerprinting of Convicts," part 1, Letter from Warden of Dorchester Penitentiary to W.S. Hughes, Superintendent of Penitentiaries, 24 April 1923.



**Figure 4:** View of a Kingston Penitentiary Inmate History Description Ledger for 1913, demonstrating the lack of a photograph for female prisoner (details about the prisoner, Rosanna Lagenesse, number F620, are recorded in red ink below the photograph). LAC, Solicitor General, RG 73, vol. 559.

Despite its slow beginnings, photographing prisoners became an essential part of the record-keeping practices of both federal penitentiaries and the police in Canada. The shards of protest found within the Department of Justice records and local newspapers tell us that the practice of photographing prisoners was not always considered acceptable—by citizens, prisoners, or even sometimes by the Department of Justice’s own officials. If anything, the issue was ruminated over long after the legislation was implemented. The efficiency was evident, but of ficials remained concerned with the consequences.

In *Discipline and Punish: The Birth of the Prison*, Michel Foucault wrote:

The child, the patient, the madman, the prisoner were to become ... the object of individual descriptions and biographical accounts. This turning of real lives into writing is no longer a procedure of heroisation; it functions as a procedure of objectification and subjection.<sup>48</sup>

A vivid example of Foucault’s belief that description was “a means of control and a method of domination” can be found in the prisoners’ attempts to blur their own photographs and subvert the of ficial documentation process. Of course today, the practice of controlling citizens through photography, in the form of documents such as government-issued drivers licenses and other

48 Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York, 1977), p. 191.



identification cards, is both accepted and well-entrenched in our society, and extends to the majority of the population. The photographing of a prisoner indicted for a federal offence, once a contentious issue, is now legitimate and considered a given; however, the act of photographing citizens for state use is continually being proposed for different circumstances and in different settings. As a result, the ethical implications of state-sanctioned photography, such as the appropriate balance between privacy and public safety, continues to be an ongoing debate. The archival documents discussed within this article provide us with the roots of this debate in Canadian society.