



Rights, Responsibilities and Religion in a mid-Victorian convict prison

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Abstract

This article investigates the rights and responsibilities of both a prison governor and a prison chaplain in a Victorian Convict Prison. Major Hickey and Reverend Francis served respectively as Governor and Chaplain of HMP Dartmoor in the early 1870s and developed a mutual feeling of irreconcilable resentment following a clash of personalities and ideas regarding the management and punishment of male convicts in one of the most notorious of all Victorian English convict prisons. It details the causes and repercussions of the ensuing argument that led to Reverend Francis resigning his post and complaining directly to the Director of Convict Prisons about both his treatment and that of the convicts under his spiritual care. The paper relates this personal argument to the wider philosophical debates over late-Victorian penal policies that were becoming known to a larger audience thanks to both the publication of numerous prison enquiry reports and the published autobiographies of a number of erudite and well-educated middle-class convicts which proliferated during the period in question.

Keywords: Prison, convict, governance, chaplaincy, penal servitude

I. BACKGROUND

Convict prisons were the punishment of choice for those found guilty of serious indictable offences following the gradual ending of transportation to Australia from the early 1850s. The Penal Servitude Act 1853 (16 & 17 Vict c.99) had restricted the use of transportation to those sentenced to fourteen years or more, and the subsequent Penal Servitude Act 1857 (20 & 21 Vict c.3) had effectively abolished the sentence of transportation for the majority of even the most serious offenders.¹ Transportation was replaced by a sentence of penal servitude; this involved imprisonment, originally for a minimum of three years, but later increased to five

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¹ Banishment overseas was continued in a much-reduced fashion under the guise of 'Penal Servitude Overseas' to Western Australia until 1868, when the last convict ship, the *Hougoumont*, arrived in Fremantle Harbour on 9 January, carrying some 270 convicts – see B. Godfrey and D. J. Cox, 'The "Last Fleet": Crime, Reformation, and Punishment in Western Australia after 1868' (2008) *Australia and New Zealand Journal of Criminology* vol. 41 no. 2 (Summer), pp. 236-58 for further details about these individuals. Penal servitude overseas also continued to both Gibraltar and Bermuda until 1875.

years as a result of the Penal Servitude Act 1864 (27 & 28 Vict c.47) in a newly constructed convict prison such as Parkhurst or Dartmoor.²

The regime of penal servitude was designed to be tough and break the spirit of convicted offenders. After serving an initial period of time in separation (isolated from other prisoners) in a 'government prison' such as Millbank (constructed in 1816) or Pentonville (constructed 1842), offenders served the rest of their sentence in association with other convicts in a convict prison.³ There, they would labour on what became known as 'Public Works'; performing useful labour for the benefit of the State. This could include building military installations or, as in Dartmoor's case, constructing roads over the moors or clearing unproductive areas of moorland in preparation for conversion to farmland.⁴

The system of penal servitude was administered by a Board of Directors of Convict Prisons. This board had been created in 1850 and its first Chairman, Lieutenant Colonel (later Sir) Joshua Jebb, served from 1850-1863.⁵ He was a relatively humane man, keen to both rehabilitate and reform the convict so that he (or she) could successfully be reintegrated into society following their release from prison. He was directly succeeded by Lieutenant-Colonel (later Sir) Edmund Henderson, who appointed Captain (later Sir) Edmund Du Cane as a Director of Convict Prisons, and who in turn succeeded Henderson in 1869. Du Cane was a much harsher disciplinarian than both Jebb and Henderson, having limited belief in the power of prison to rehabilitate offenders. Although ultimately under the direction of the Home Department (Home Office), the Directors (and especially the Chairman of the Directors) had virtual *carte blanche* with regard to the running of the convict prison system; they could hire and fire governors and other senior staff, were responsible for the inspection of all convict prisons, and also ensured that governors kept a detailed system of journals which recorded all day-to-day aspects of convict prison life.⁶ Although prisons have been a rich vein for academic research, surprisingly little has been written about the everyday life of prison staff, especially in the Victorian period; there remains what Crawley has called "a paucity of scholarly work on this occupational group."⁷ Their interaction with each other has similarly received little attention; by investigating the dynamics of power and hierarchy within a Victorian convict prison this article hopefully goes some small way to help fill this lacuna.

² Dartmoor Prison was originally built during the first decade of the nineteenth century to house French prisoners-of-war resulting from the Napoleonic Wars. It was then used to house American prisoners-of-war captured during the War of 1812, later being 'mothballed' until 1850 when it re-opened its doors as a convict establishment.

³ For more details of the complex system of penal servitude see H. Johnston et al, *Penal Servitude: Convicts and Long-Term Imprisonment, 1853-1948* (McGill-Queen's University Press, forthcoming 2021).

⁴ For those elderly or infirm (both physically or mentally) offenders, a system of 'light labour' such as bootmaking or tailoring was specified. By the period under discussion in this article Dartmoor Prison held a mixture of those undergoing both Public Works and light labour; its location far from polluted urban centres was thought to be advantageous for those offenders suffering from respiratory problems.

⁵ For details of Jebb's life, see E. Stockdale, 'The Rise of Joshua Jebb, 1837-1850' (1976) *British Journal of Criminology* volume 16 no. 2 (April), pp. 164-70.

⁶ Several of these journals survive at Dartmoor Prison Museum (www.dartmoor-prison.co.uk) and the author would like here to voice his thanks to the past and present curators, Brian Dingle and Paul Finnegan respectively for their invaluable help enabling his access to Hickey's *Governor's Journals*.

⁷ E. Crawley, *Doing Prison Work* (Routledge, 2013), p. xiii. A number of recent publications have documented the work of prison staff in the latter half of the twentieth century – see for example J. Bennett et al (eds) *Understanding Prison Staff* (Routledge, 2012) – but few have covered the Victorian age of convict and local prisons. McConville's work on prison administration remains an honourable exception – see S. McConville, *A History of English Prison Administration* (Routledge, 1981), whilst Johnston's work on the role and working lives of female prison staff in the late nineteenth and early twentieth century is a fascinating appraisal of a long-overlooked topic – see H. Johnston, 'Gendered prison work: female prison officers in the local prison system, 1877-1939' (2014) *Howard Journal of Criminal Justice*, 53(2), pp. 193-212.

Victorian bureaucracy such as that mentioned above extended into all aspects of convict life; annual reports were compiled by the Directors of Convict Prisons and numerous inquiries were held regarding the state of the convict prison system throughout the second half of the nineteenth century.⁸ In the 1878/79 *Kimberley Commission Report* details emerged of a serious confrontation between two of the senior officers at Dartmoor Convict Prison in the late 1860s and early 1870s.⁹ A major and long-running rift had developed between the governor of Dartmoor, Major Robert John Fayrer Hickey, and the Protestant prison chaplain, Reverend James Francis, over the punishment of convicts for infractions carried out whilst undergoing penal servitude at the prison.

II. THE PROTAGONISTS

Major Robert John Fayrer Hickey (1827-1889) was born at sea on the East India Company ship *Lady Flora* 30 May 1827 *en route* from Bengal, where his father was serving as a merchant for the aforementioned organisation. The ship was captained by Lieutenant Robert John Fayrer, after whom the new-born boy was named. Hickey was commissioned as a Second Lieutenant, Bengal European Regiment (later Bengal Fusiliers, now Royal Munster Fusiliers) in June 1845 and on 20 August 1845 sailed for Calcutta on the P & O paddle steamer *Oriental*. On 17 June 1848 he was commissioned as First Lieutenant, and later saw action in Pegu, Burma (now, Bago, Myanmar). Married in 1856, he was further promoted to Captain on 7 June 1857 and on 3 August 1864 retired on full pay from what had then become the Indian Army and granted an honorary commission as a Brevet Major.¹⁰

Like many ex-military men of the time, he seems to have decided upon a subsequent career in the newly emergent prison service, and in November 1864 was appointed Deputy Governor of Portland Convict Prison. He served there until late-December 1867 when he left to take up a new post as Deputy Governor of Dartmoor Convict Prison on 6 January 1868.¹¹ Just over two years later, he became Governor of the prison on 7 January 1870. He remained there until 11 October 1872.¹² The position of Governor had evolved considerably since the provisions of the Gaol Act 1823 (4 Geo IVc. 64), which had sought to rectify the excesses and privileges often exercised and abused by those who ran the privately administered gaols of the Georgian period. The Act allowed for the regular payment of gaolers rather than them relying on fees paid by those incarcerated for bedding, lighting and food, and also attempted to impose some limited oversight of their actions by the provision of visiting chaplains, medical officers and magistrates.¹³ By the period under discussion in this article much of a

⁸ See for example, *Report of the Commissioners Appointed to Inquire Into the Operation of the Acts (16 & 17 Vict.c.99 and 20 & 21 Vict.c.3.) Relating to Transportation and Penal Servitude: Minutes of evidence* (Eyre and Spottiswoode, 1863).

⁹ Officially titled 1878-79 [C.2368] [C.2368-I] [C.2368-II] *Penal Servitude Acts Commission. Report of the commissioners appointed to inquire into the working of the penal servitude acts* (Eyre and Spottiswoode, 1879), the report became widely known as the Kimberley Commission Report after the 1st Lord Kimberley, John Wodehouse, who headed the Commission. For the sake of consistency and brevity it is referred to as the Kimberley Commission throughout this article.

¹⁰ *British India Office pension registers, Bengal Military Fund ledger of subscriptions L-AG-23-6-8/9; Daily News*, 24 August 1864.

¹¹ *Report of the Commissioners appointed to inquire into the Treatment of Treason-Felony Convicts in English prisons Vol.1 The Report and appendix* (HMSO, 1871), line 642. Hickey was described by a convict as "a gentleman in mufti, who I needed not a second glance to see was a soldier likewise. This was the Deputy-Governor, as gentlemanly a little fellow as ever stepped." (Anon [E. B. Callow], *Five Years' Penal Servitude by one who has endured it* 4th edition (Bentley, 1877), pp. 155-6.

¹² For further details concerning Hickey's time as Governor at Dartmoor, see D. J. Cox and J. Hale, "Major H" – the life and times of a Victorian Convict Prison governor' (2020) *Prison Service Journal* no. 249, pp. 4-10.

¹³ For an oversight of the history of gaolers before the Victorian Age see McConville, *English Prison Administration*, especially Chapter Three – 'Prisons in the Eighteenth Century' – and for an evocative account of their work during the early Victorian period, see R. W. Ireland and R. I. Ireland, *The Carmarthen Gaoler's Journal 1845-1850 Parts One and Two* (Cymdeithhas Hanes Cyfraith Cymru/The Welsh Legal History Society, 2008).

convict prison governor's work was heavily prescribed by a series of Standing Orders issued by the Board of Directors of Convict Prisons.

Reverend James Francis MA was baptised on 15 July 1835, in Newport, Monmouthshire, the son of the Reverend James Francis and Mary Francis.¹⁴ He was awarded a BA from St John's College, Cambridge in 1862, and gained an MA from the same college in 1871.¹⁵ After serving as chaplain in several churches throughout the early 1860s, he was appointed Assistant Chaplain at Wakefield Prison in June 1865, where he served for almost twelve months, working exclusively with convicts rather than those prisoners sentenced to imprisonment.¹⁶ He then became Assistant Chaplain at Millbank Prison in May 1866, serving until 1867, when he left to take up a new post as Chaplain at Dartmoor Prison, where he served until 1872.¹⁷ During his time at Dartmoor, Francis married and had one child.¹⁸ The 1823 Gaol Act had originally envisaged chaplains as acting in an 'overseeing' capacity, permitting them to visit gaols and (theoretically at least) provide a check on the activities of gaolers. By the 1870s Chaplains were, along with Medical Officers and the Governor, one of the senior 'triumvirate' with regard to the day-to-day activities of convict prisons, although their role had been somewhat lessened post-1863; before that date, chaplains had been required to keep both a Conduct Book and a Journal, in order to record their impressions of convicts in order that they could confer with the prison governor on matters relating to the licensing of individual convicts on early release, but this role was removed as a result of the Carnarvon Committee Report.¹⁹ Despite this limitation of their powers, chaplains were still considered (not least by themselves, as will be demonstrated below) to be important members of staff within such establishments; they ministered to the convicts, visited those either in the prison infirmary or undergoing additional punishment on a daily basis and helped give religious succour to those who required it.

By the time they arrived respectively at Dartmoor, both men therefore had a considerable amount of experience within the prison system. This did not however prevent them from clashing both privately and very publicly over the management of the prison and the punishment of its convicts.

III. THE DISPUTE

Reverend Francis had already experienced difficulties working with another prison governor. He informed the Kimberley Commission that during his time in the Wakefield convict department he "found it rather difficult to make a representation [to the governor], and if I did make one it was not attended to so well [as at Millbank]."²⁰ When asked as to whether this difficulty at Wakefield arose because of differences in the governance of the respective

¹⁴ Monmouth Baptisms, 1835, p. 154 (available online via *Find My Past* at <https://www.findmypast.co.uk/transcript?id=GBPRS/B/914237188/1>).

¹⁵ *Crockford's Clerical Directory for 1874* (Horace Cox, 1874), p. 310.

¹⁶ *Oxford Times*, 3 June 1865; Kimberley Commission *Minutes of Evidence*, line 11,180. Wakefield Prison was at the time a local prison used as a place where those offenders sentenced to a lesser sentence than penal servitude underwent imprisonment with hard labour for up to two years in duration, but it also had a 'convict department', where a number of convicts served their initial period of separate confinement before being transferred to a convict prison, where they worked in association with other convicts. Millbank Prison, constructed in 1816, served a similar purpose.

¹⁷ *Pall Mall Gazette*, 7 May 1866; *Crockford's Clerical Directory for 1874* (Horace Cox, 1874), p. 310.

¹⁸ *The Times*, 14 March 1868; *Western Times*, 7 March 1871.

¹⁹ McConville, *English Prison Administration*, p. 447. Standing Order 101 relegated them to helping released convicts gain employment by means of a character letter. The Carnarvon Committee Report (formally known as *Report from the Select Committee of the House of Lords, on the present State of Discipline in Gaols and Houses of Correction*, *Parliamentary Papers 1863 [449]*) was a wide-ranging and conservatively critical investigation into the running of both local and convict prisons.

²⁰ Kimberley Commission *Minutes of Evidence*, line 11,181.

prisons, Francis replied "Yes; of course the system is virtually under his management and guidance for the time being."²¹

The respective perceived status of the senior staff at convict prisons was clearly a source of friction to others as well as to Francis. Mr Richard Eaton Powers, Medical Officer at Dartmoor from 1870 onward, gave evidence to the Kimberley Commission which suggested that he was not happy to be considered less senior than either the Deputy Governor or the Governor. He somewhat petulantly stated that "Although I rank co-ordinately with the governor, yet my pay, with allowances, is absolutely below that of a deputy governor of over one year's service in Dartmoor, although I have 13 years' service", and further emphasised that "the governor is not my superior officer. The director is my superior officer. The chaplain, and the doctor, and the governor have equal relative rank."²²

Although Powers was technically correct in that both he and the chaplain were not appointed by the governor, being appointed directly by the Directors of Convict Prisons, he was perhaps being a little disingenuous in suggesting that the other senior officers were regarded by either the governor or the Directors as being of equal rank with regard to the management of the prison. As will be shown later, in this respect Powers' views were very much out of line with those of both the Directors and most particularly the Chairman of the Directors, Captain Edmund du Cane. McConville argues that by the second half of the nineteenth century "there was in the convict system an almost total subordination of religious objectives and interests to the concerns of discipline and administration", and it is clear that Du Cane was proscriptive in his view of the role played by chaplains in the prison system; he stated unequivocally that:

"Every prison has its staff of ministers of religion, who, in prisons which contain large numbers, are not permitted to have any other duties, and who, therefore, can devote their whole time to the improvement and advantage of the prisoners placed under their spiritual care."²³

The role of religious instructors such as chaplains was, in Du Cane's eyes simple; to instruct the convicts in moral reform, help them with seeking post-release employment and finally, to leave the discipline and administration to the Governor and the Visiting Director.,²⁴

Friction arose between Hickey and Francis over the disciplining and punishment of convicts and the role that Francis played in the prison. Francis appears to have involved himself in disputes between prison staff and convicts concerning the former's disciplining of the latter; he thought that some of the punishments were too harsh and immoral, and tried to intervene in the punishment regime of the prison. Captain Walter Stopford, a Director of Convict Prisons responsible for the inspection of Dartmoor and a former governor of the prison, was questioned by the Kimberley Commission with regard to this matter; Sir Henry Holland (one of the Committee members) asked him:

"As I understand the view was that the chaplain was interfering with the discipline of the prison? – Yes.

²¹ Ibid, line 11,182.

²² Ibid, lines 9,407 and 9,409.

²³ E. Du Cane, *The Punishment and Prevention of Crime* (Macmillan, 1885), pp. 159-60.

²⁴ The Visiting Director was one of the Board of Directors of Convict Prisons; each Director was allocated a number of prisons for which they were responsible and were required to visit on a regular basis, having the powers of a visiting Justice of the Peace.

That is to say, interfering between the governor and prisoners? – Yes.
 Have you reason to suppose that the fact of such interference was known to the prisoners? – I have; it is on record that in more than one instance the prisoners threatened to report the warders to the chaplain."²⁵

Francis was most concerned over the treatment of one particular convict, who was repeatedly subjected to the punishment of a bread and water diet for what Francis viewed as the same disciplinary offence of 'one ebullition of temper' that lasted for several days; he was questioned about this during his evidence to the Kimberley Commission:

"And the view you took was that though nominally each successive punishment was inflicted for a different offence, and therefore the power of the governor was exercised technically according to the letter of the rules, yet practically it was a continuing offence? – Undoubtedly.
 Which was broken up in this way so as to enable the governor to inflict a punishment beyond his power? – Yes."²⁶

In effect Francis was claiming that Hickey had frequently overstepped the mark with regard to his powers of punishment with regard to this particular convict. When asked whether or not the types of punishment meted out to the convict were in the remit of the governor, he replied:

"They could by the letter of the law, but I doubt whether they could by the spirit of the law. I do not believe a governor was ever intended to have such a power of punishment. I believe that if the offence required a punishment beyond 30 days' penal class, it was then to be referred to the director, who had higher powers given to him for in come cased putting fetters on and flogging."²⁷

When asked directly how Hickey had exceeded his powers, Francis replied "When the man [*the convict*] broke out and committed divers [*sic*] offences, the governor did not look upon it as one offence, one outbreak, but the outbreak which was virtually one was subdivided into many different offences."²⁸

When asked "And you think that for all the offences of the same kind committed upon the same day one punishment should have been inflicted?", Francis replied, "I think it would have been more humane, and would have given the man an opportunity of righting himself and getting back to work and to the ordinary prison discipline [...] – My complaint rather is that the governor went contrary to the spirit of the rule while observing strictly the letter of the rule."²⁹ He also voiced his opinion that the governor acted unwisely in "giving bread and water (as a punishment) after so long a time had elapsed from the time when the offence was committed."³⁰

²⁵ Kimberley Commission *Minutes of Evidence*, line 11,227 and lines 12,211-13. Stopford had been Governor at Dartmoor when Francis first took up his position as Chaplain there; it is clear from subsequent remarks in the Kimberley Commission *Minutes of Evidence* that no love was lost between these two individuals.

²⁶ *Ibid*, lines 11203-4.

²⁷ *Ibid*, line 11,222. 'Penal class' was the lowest class within the convict prison system; it was reserved for those whose recalcitrant behaviour whilst in prison continued unabated.

²⁸ *Ibid*, line 11,224.

²⁹ *Ibid*, lines 11,228 and 11,230.

³⁰ *Ibid*, *Minutes of Evidence*, line 11,232.

Perhaps unsurprisingly, Hickey did not take kindly to his authority and judgement being questioned. A series of letters between Francis and Hickey were reproduced in the Kimberley Commission *Minutes of Evidence*, and they clearly demonstrate the breakdown of relations between the two individuals and the increasing acrimonious nature of their correspondence.³¹ On 21 November 1870 Francis wrote to Hickey complaining that a prison warder refused to give him information concerning a prisoner confined in the penal ward (the punishment ward where prisoners were usually kept on a bread and water diet). After receiving no reply from Hickey, Francis wrote again on 24 November, stating that the matter showed "clearly that the officers do not properly understand their duty in informing me of the mental and moral condition of prisoners."³² Correspondence in this vein continued for several weeks, with Francis complaining that Hickey:

"not only hear out the officer in this particular instance, but you actually leave it to be understood that the subordinate officer is the judge as to what point the chaplain has a right to receive information about, and what not, this never could have been the intention of the rule, and it is quite impossible for me to submit to such a position."³³

Hickey's reply a day later stated that in his opinion he was following the rules and that "it is a matter of deep regret to me that these differences of opinion, however slight, should exist between us, but the orders on the subject seem to me very plain."³⁴

The 'orders on the subject' mentioned by Hickey refer to General Order 107, issued on 20 July 1865, which stated that 'the governor request that when the head of the different departments require information upon any subject in connexion with the prison they will make their application to him.'³⁵ Francis rebutted the interpretation that Hickey had put on this order, and also stated baldly that "I feel strongly that *since you were appointed to the governorship of this prison, you have done much to lessen my influence amongst the prisoners, and much to create a bad feeling on the part of the discipline officers towards myself.*"³⁶

This clearly infuriated Hickey, who angrily complained in a subsequent letter to Francis that his previous note was:

"most unbecoming and unwarrantable, so much so that I must again request that in future if you wish to address me on any prison matters, you will do so in strictly official form, so that I may be in a position to submit your communication, if necessary, for the consideration of higher authority."³⁷

In return, Francis penned a final missive to Hickey dated 13 December 1870 in which he stated "I am not going to defend my last letter to you. It was written by me as to a gentleman, and brother officer, *who is my equal.* I presume that it is this fact that gives you offence."³⁸ He went

³¹ Kimberley Commission *Minutes of Evidence*, Appendix H, *Papers delivered in by Captain Stopford*, pp. 1,219-24.

³² *Ibid.*, p. 1220.

³³ *Ibid.*, p. 1221.

³⁴ *Ibid.*, p. 1221.

³⁵ *Ibid.*, p. 1222.

³⁶ *Ibid.*, p. 1222 (my italics for emphasis).

³⁷ *Ibid.*, p. 1222.

³⁸ *Ibid.*, p. 1223 (my italics for emphasis).

on to state that "I must now lay both this correspondence, and the question that gave rise to it, before the Board of Directors."³⁹

As good as his word, Francis took his complaints up with the Director of Convict Prisons who was responsible for the inspection of Dartmoor, Captain Stopford, but found that he was strongly supportive of the governor's view of the matter. In Stopford's evidence to the Kimberley Commission he produced a document that he wrote to Captain Edmund Du Cane, detailing his role in the dispute.⁴⁰ In it, he stated that:

"If the rules for the guidance of the governor, chaplain, and others were acted upon in the spirit in which they were framed and intended, these disputes would never arise. This correspondence [*between Francis and Hickey*] indicated a feeling that happily exists at no other prison, and there is no reason why these rules, which are equally applicable to all other convict establishments, and work well elsewhere, should not be made to do so at Dartmoor..."⁴¹

He went on to roundly criticise Francis, whom he stated was not justified in "censuring or giving orders to an officer, or interfering with any report brought against a prisoner, or the governor's decision thereon, or in fact in any way placing himself between the governor and the discipline of the prison."⁴² He also opined that Francis was not popular with the prison staff before Hickey's arrival, but admitted that Hickey's belligerent tone in his correspondence with Francis had not helped the situation, and implied none too subtly that he (Stopford) was heartily sick of the situation:

"I am bound to say that I believe an ill-feeling on the part of the officers towards the chaplain does exist, and that it originated before Major Hickey went to Dartmoor, through circumstances of this kind, but that it has increased of late there is no doubt, and I think the tone of the governor's letters is not judicious or calculated to have a conciliatory effect in reducing it. In concluding these remarks I may state that, at my periodical visits to this prison, I am invariably called upon to settle disputes of this kind, occupying a great deal of time and materially obstructing the proper performance of other duties."⁴³

Du Cane became personally involved in the matter by replying directly to Stopford's correspondence. In his reply he came down clearly on both Stopford and Hickey's side, stating that:

"The intention of the orders informing the chaplain of the moral conditions &c. of prisoners is clearly to enable him to advise them and act as he should be able to, upon their better feelings. But, of course, judgment is required in the performance of this duty,

³⁹ Ibid, p. 1223.

⁴⁰ Captain Du Cane was knighted in March 1873 – for details of his life, see *Oxford Dictionary of National Biography Online* entry for *Du Cane, Edward Frederick*, available at <https://doi.org/10.1093/ref:odnb/32910>.

⁴¹ Kimberley Commission *Minutes of Evidence*, line 12,209.

⁴² Ibid, line 12,209.

⁴³ Kimberley Commission *Minutes of Evidence, Appendix H, Papers delivered in by Captain Stopford*, p. 1224.

and nothing should be done or said which might bear the appearance of interfering with the discipline or with the functions of any other department of the prison."⁴⁴

Du Cane was also clearly furious about the 'ungentlemanly' accusation made by Francis against Hickey, stating that "the latter part of the chaplain's letter of 6th December containing a vague charge against the governor had better have been omitted."⁴⁵

He went on pointedly to state that:

"If this state of things existed continually between two subordinate officers in any department of the prison, I feel sure the head of that department would desire that one or both of the officers so offending should be removed from the service, and the evil is certainly not the less when it exists in the case of superior officers."⁴⁶

Du Cane's pithy and pointed reply to Stopford's correspondence was forwarded to both Hickey and Francis and the latter was asked to "attach his initials to these papers as a record of his having seen them."⁴⁷

This however was not the end of the matter as far as Francis was concerned. He had a separate grievance with the Board of Directors of Convict Prisons concerning the fact that in his opinion his criticisms of the system of discipline at Dartmoor were deliberately removed from the annual report of the Directors of Convict Prisons – known colloquially as Blue Books.⁴⁸ He stated in his evidence to the Kimberley Commission that:

"After drawing the attention of the director to these cases again and again without any effect, I, in my annual report, referred to this course of discipline, and when the annual report appeared, with the chaplain of Dartmoor's report, this particular paragraph did not appear in the Blue Book. I then asked by what authority my report had been mutilated [...] and I was given to understand that it was with the cognisance of the Home Secretary..."⁴⁹

The following year the form of the 'Blue Book' was altered to include extracts from the senior officers' reports rather than the reports in their entirety.⁵⁰ In between the publication of the two annual reports, Francis remarked that the contents of his first report had been questioned by Captain Stopford:

"...he asked me what had I to do with the discipline of the prison; he asked me that very distinctly more than once; and I told him that I considered every officer appointed to the position I was in, had a perfect right to express his opinion about what was going on;

⁴⁴ Ibid, p. 1224 (my italics for emphasis).

⁴⁵ Ibid, p. 1224.

⁴⁶ Ibid, p. 1224.

⁴⁷ Ibid, p. 1224.

⁴⁸ Each year an annual report on the state of the various convict prisons was published by the Government, which contained reports from all the senior officers at each of the convict prisons. From the 1870 Report onward (published in 1871), only an edited version of the senior officers' full report was published. They were colloquially known as 'Blue Books' due to the original colour of their cover.

⁴⁹ Kimberley Commission *Minutes of Evidence*, line 11,259.

⁵⁰ Ibid, line 11,270.

and he also asked me why I reported as to the discipline of the prison, and I pointed him to the rules of the book, and I told him that the instructions given in the rules of the chaplain distinctly provided for his reporting upon the apparent effects of the discipline [...] 'He shall submit to the directors on or before the 10th day of January in each year a report, in writing, specifying, with reference to the preceding year, the religious and moral condition of the prisoners [...], and the apparent effects of the discipline of the prison'..."⁵¹

It is clear that there was a difference of opinion between Stopford and Francis regarding the semantics of the phrase 'the apparent effects of the discipline of the prison'; Francis believing that this entitled him to comment directly upon specific disciplinary matters rather than upon the overall effect that such discipline had on the convicts. Francis's case was somewhat weakened by the fact that he thought the rules for the composition of the annual reports were created by an Act of Parliament, but he was corrected on this matter by the Chair of the Kimberley Commission, who stated that "as a matter of fact these rules can be made and altered by the directors at their pleasure".⁵²

In his evidence, Captain Stopford stated that "the directors considering the ill-feeling that existed, thought it was not a fair or right thing to the governor to publish these extreme cases as an illustration of the general discipline of the working of the prison, and I believe the Secretary of State's opinion was taken on the matter."⁵³ When questioned closely about this, he conceded that "I think he was quite right in making the report, but I think that the right of publishing the report rested with the directors."⁵⁴ The main reason for suppressing part of Francis's report was revealed by Stopford's answer to a question from a Committee member, rhetorically asking whether the bad feeling between chaplain and governor "would have been brought into prominence had it been admitted into the report, and have become a sort of public scandal, is that the feeling?"⁵⁵ Stopford succinctly replied "Yes, quite so."⁵⁶

Du Cane stoutly defended the right of the directors to suppress portions of reports from senior officers. With specific regard to Francis's report he stated:

"He is open to make the remark if he likes, but to publish it is where the mistake is made, and I do not think it is right that at the desire of any chaplain (who in that particular case happened to be on very bad terms with the governor) a governor should be called upon simply in public, not before any competent board of inquiry, to reply to charges of this kind. [...] no doubt that is very inconvenient; but if it is not true I cannot help any amount of untruths being told."⁵⁷

Du Cane was ostensibly fully supportive of Hickey over this matter; he stated that "It therefore was clearly a most outrageous thing that he [*Francis*] should be allowed to gibbet that governor before the public as a culprit from his own imperfect knowledge of the matter, and in opposition to the views of those who had inquired into it impartially."⁵⁸ However, it is clear that Du Cane was unhappy with the overall situation at Dartmoor; when questioned about Hickey's

⁵¹ Ibid, lines 11,260-1

⁵² Ibid, line 11,263.

⁵³ Ibid, line 12,192.

⁵⁴ Ibid, line 12,195.

⁵⁵ Ibid, line 12,201.

⁵⁶ Ibid, line 12,201.

⁵⁷ Ibid, line 13,051.

⁵⁸ Ibid, line 13,050.

punishment of the convict involved in the dispute, he admitted that "It is not what I should do if I could avoid it."⁵⁹

The situation between Hickey and Francis was clearly irreconcilable, and it was Francis that first left the prison. In his evidence to the Kimberley Commission he was at pains to explain that contrary to popular opinion (both within the convict prison and without), he was not sacked, but instead chose to resign as Chaplain of Dartmoor Prison, stating that

"... one's position there became somewhat painful, and I thought it was advisable for the service that some change should take place in the prison. [...] The relations between myself and the governor became so exceedingly strained, and the visiting director appeared to me to give his whole countenance and influence to the governor in what I regarded from my standpoint as incorrect treatment, that, finding I could get no power of representation, I left the service."⁶⁰

Hickey clearly found the pressure of being governor under such circumstances difficult, and whilst there appears to be no direct surviving evidence suggesting that he was forced to resign, the circumstances of his departure do appear somewhat sudden. A surviving *Governor's Journal* of 1872 indicates that he appeared to have been somewhat abruptly replaced by Major James Farquharson (formerly of Brixton Prison) – the journal contains one entry for 11 October 1872 signed by Hickey, immediately followed by another signed by Farquharson, with no explanation provided for the change in command.⁶¹ Although the heated argument between Hickey and Francis appears to have been largely kept out of the contemporary newspapers, Hickey's and Francis's respective departures from Dartmoor and the numerous subsequent changes within the convict prison management system did make the news; the *Hampshire/Portsmouth Telegraph* stated in its edition of 23 October 1872 that:

"The recent removals of officials from the Government convict establishment at Princetown, Dartmoor have caused numerous other changes. Major Farquharson is now Governor at Princetown, vice Major Hickey. Captain Cookworthy, late deputy-governor at Portland, succeeds Major Farquharson as governor of Brixton, and is succeeded by Mr Johnson. Captain Bell, late deputy-governor of Princetown, goes in a similar capacity to Parkhurst. Captain Harris, late deputy-governor at Woking, proceeds to Gibraltar as governor of the convict establishment there. The Rev. J. Francis, who has resigned the chaplaincy at Dartmoor, after eight years in the service, has accepted a curacy at Ross, Hereford."⁶²

IV. CONCLUSION

What then is to be made of this fairly minor argument between two senior convict prison officials that rapidly escalated and so exercised the minds of the protagonists, the Directors of Convict Prisons, the Chairman of the Directors, and the Kimberley Commission members respectively?

⁵⁹ Ibid, line 13,094.

⁶⁰ Ibid, line 11,195.

⁶¹ *Dartmoor Governor's Journal*, 11 October 1872.

⁶² Francis continued as a minister for the remainder of his working life, but never again worked as a prison chaplain.

First, it is clear that this revolved around a clash of two strong personalities; both Hickey and Francis were convinced that they were following the correct course of action. Hickey comes across as something of a disciplinarian – perhaps this should not come as too much of a surprise considering his military background. However it has to also be borne in mind that in *Five Year's Penal Servitude by One Who Endured It* (an exposé of convict life in Dartmoor published anonymously by a middle-class perpetrator of a fraud), written whilst Hickey was first Deputy Governor and then Governor of Dartmoor, Hickey emerges quite favourably; the author, Edward Bannister Callow, appears to have held quite a high opinion of him.⁶³ Indeed, the Kimberley Commission *Report* contains evidence showing that Hickey had been in correspondence with Callow after publication of the first edition of his book, suggesting that they were on good terms.⁶⁴

Francis himself came in for some criticism by Callow for his lack of compassion with regard to his actions concerning another convict. Callow was generally quite favourably inclined to Francis, stating that "Though I did not agree with him on most points, yet I always found him most assiduous in his duties, very earnest, and a most obliging gentlemanly fellow."⁶⁵ However, he also remarked that "He was, however, a great stickler for rules, and one occasion I felt he did not quite do his Christian duty in adhering too closely to the strict prison rules."⁶⁶ This referred to a fellow convict, whose young wife had recently lost their child. The convict's wife had argued with her mother (with whom she lived) and wrote to her imprisoned husband stating that unless she heard from him bidding to do otherwise, she intended leaving the family home. Callow, who had befriended the young man, asked Francis to put in a request to Governor Hickey for him to waive the usual restriction on out-letters from the prison in order to help prevent the young woman leaving the family home for a life of uncertainty and possible danger.⁶⁷ Callow records the subsequent exchange:

"Oh, I am quite sure," said the Chaplain, "any such an application would be useless, and I should only be told not to travel out of my own duties and department."⁶⁸

Callow then stated, "I must here inform the reader there was a coolness at the time between the Governor and the Chaplain, who did not pull well together."⁶⁹

"Then, sir, will you write yourself to this young woman. Explain to her why her husband cannot write himself, and that he does not wish her on any account to leave her mother's house."

"No, no," he replied, that is against the prison rules, and I cannot do it."⁷⁰

⁶³ Callow, *Five Years Penal Servitude by One Who Endured It*. Callow was what was known as a 'gentleman' convict – a middle-class businessman who perpetrated an unsuccessful large fraud on the railway company for whom he worked as Secretary. His account of his time as a convict became an instant best-seller and he subsequently embarked upon a successful career as a writer on the folk mythology of the Isle of Man – for further details of his life, see D. J. Cox, 'Public and private perceptions of Victorian respectability – the life and times of a 'Gentleman Lag' (2017) *HMP Prison Service Journal* no. 232, pp. 46-52.

⁶⁴ Kimberley Commission *Minutes of Evidence*, line 12,413. Callow appears under the moniker I.K. in order to preserve his anonymity. The author of this article possesses a copy of Callow's book which has an inscription by Major Hickey written in his own hand on the flyleaf, suggesting that Hickey was quite proud of his mentions in Callow's publication.

⁶⁵ *Ibid*, p. 209.

⁶⁶ *Ibid*, p. 209.

⁶⁷ There were numerous strictures concerning both the frequency and content of convicts' outbound correspondence with the outside world; in this case Callow recalled that the young convict was not due for permission to send a letter for another 3 months.

⁶⁸ Callow, *Five Years' Penal Servitude*, p. 211.

⁶⁹ *Ibid*, p. 211.

Callow tried to persuade him further but to no avail, recording that "I could not but think he would have done a higher and more Christian duty by making the little effort I asked him."⁷¹ Callow further recorded that a letter received by his young fellow convict stated that his wife was living as a 'kept woman'.⁷²

It is clear that the particular dispute between Francis and Hickey detailed in the Kimberley Commission *Report* was part of a much larger and ongoing simmering mutual distrust between the two senior officers and as such it throws a considerable degree of light on what is a largely under-researched area of penal history. The day-to-day role of a Victorian convict prison governor was largely prescribed through the Standing Orders and General Orders passed down to him by the Directors of Convict Prisons, and the role of personal discretion rarely received much attention.⁷³ This also clearly applied equally to the role of convict prison chaplain. That the orders were often open to personal and subjective interpretation is also clear; both men appear to have been genuinely convinced that they were conscientiously following both the spirit and letter of the orders, with serious repercussions for both of their careers. Francis was convinced that his role as religious leader within the prison extended to his becoming involved in the moral and physical welfare of the convicts, and that this justified his involvement in the dispute.

It is equally clear that both the Directors of Convict Prisons (especially Captain Stopford) and the Chair of the Directors, Sir Edmund Du Cane, were extremely agitated by the dispute, or rather by the dispute a) reaching the ears of the Kimberley Commission and b) threatening the public image of the Convict Prison service. The change in reporting only extracts from the senior officers in the annual Report of the Directors of Convict Prisons appears to have been directly influenced by the dispute and the possible souring of public perceptions of the convict prison system and the capacity of its senior officers. Then, as now, the prison estate was subject to a considerable amount of public and journalistic scrutiny. In the latter half of the nineteenth century numerous exposés of prison life, written to a varying standard and levels of accuracy, began to appear and these stimulated an interest in the lives of and conditions served by convicts and prisoners alike.⁷⁴ Some, such as *Five Years' Penal Servitude* were generally accepted by both the public and the authorities as a reasonably accurate portrayal of life behind bars; Francis stated in his evidence to the Kimberley Commission that 'when I read the book through it struck me that, from a prisoner's standpoint, it was a fair report of what prison life was.'⁷⁵

Such publications undoubtedly began to influence public perceptions and philosophical debates concerning the state of the late-Victorian penal system, and it is somewhat ironic, bearing in mind Du Cane's efforts to suppress Francis's annual reports as Chaplain of Dartmoor Prison, that he himself subsequently became the target of a concerted

⁷⁰ Ibid, p. 211.

⁷¹ Ibid, p. 212.

⁷² Callow, *Five Years' Penal Servitude*, p. 213.

⁷³ This level of prescription was also applied to senior staff at local prisons following the 1877 Prisons Act, which brought them all under direct State control; prior to this Act local prisons had largely been the responsibility of county or borough magistrates.

⁷⁴ See for example, Anon., *Convict Life; or, Revelations Concerning Convicts and Convict Prisons by a Ticket-of-Leave Man* (Wyman & Sons, 1879). For a detailed discussion of the public's interest in so-called 'gentleman' convicts, see B. Bethell, 'An exception too far: 'gentleman' convicts and the 1879-9 Penal Servitude Acts Commission' (2017) *Prison Service Journal* issue 232, pp. 39-44. The most famous of all 'gentleman' convicts was of course Oscar Wilde, whose experiences of imprisonment for gross indecency formed the basis of his best-selling poem *The Ballad of Reading Gaol*, originally published anonymously – see C3.3.(O. Wilde), *The Ballad of Reading Gaol* (Leonard Smithers, 1898).

⁷⁵ Kimberley Commission *Minutes of Evidence*, line 11,336.

press campaign against his reign as both Chairman of the Directors of Convict Prisons and Chairman of the Prisons Commission. Following a series of highly critical articles in the *Daily Chronicle* in early 1894, public and parliamentary pressure built quickly, resulting in what became known as the *Gladstone Report* in 1895, which looked in great depth at the state of England's prisons in a similar way to that of the Kimberley Commission, and made numerous recommendations in order to improve the penal regime.⁷⁶ Du Cane strongly objected to both the press campaign and the findings of the *Gladstone Report* and tendered his resignation shortly after its publication. The *Daily Chronicle* stated that this was "the inevitable end of a discredited system."⁷⁷

⁷⁶ *Daily Chronicle*, 23, 25 and 29 January 1894; *Report from the Departmental Committee on Prisons, etc.* Chairman, H. J. Gladstone (Parliamentary Papers. House of Commons. Session 1895. vol. 56. c. 7702.).

⁷⁷ *Daily Chronicle*, 15 April 1895. For a succinct discussion concerning the events of this period, see C. Harding, 'The inevitable end of a discredited system? The origins of the Gladstone Committee Report on prisons, 1895', *The Historical Journal*, 31, 3 (1988), pp. 591-608.