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## Even convicts have rights

**UBC's Michael Jackson makes a careful case for prison reform**

**By: David Colterjohn**

In the early 1970's, shortly after Michael Jackson became a prisoners' rights advocate, the watchtower guards at the B.C. Penitentiary used to track him from the front gate to the prison's notorious "Penthouse," or segregation unit. When he left his photo ID at the front gate, it was returned to him scarred between the eyes by cigarette burns. Back then, when prison discipline followed the military model, the idea that prisoners might have rights was a novel one.

The past three decades have brought many changes to the Correctional Service of Canada, the agency responsible for administering federal prisons. *In Justice behind the Walls: Human Rights In Canada's Prisons*, Jackson, a University of B.C. law professor, charts the trajectory of the many legislative, administrative and judicial reforms that have taken place.

Although he scrupulously credits progress where he sees it, he constructs a compelling case for further reform. In his view, the rule of law itself needs to be better understood and respected in Canada's prison system, not just by offenders but also by the Correctional Service's administration and staff.

Jackson is careful to detail the progressive, rights-driven thrust of documents like the Canadian Charter of Rights and Freedoms, the Correctional and Conditional Release Act and the Correctional Service's own mission statement. Much has been achieved: Independent chairs now preside over prison disciplinary hearings and prisoners have a fighting chance at winning decisions in their favour.

Other important reforms include the recognition of the administrative "duty to act fairly", the introduction of prisoners' grievance process and the establishment of the Office of the Correctional Investigator.

Also, a new respect for aboriginal culture and needs now resonates among certain members of the correctional staff. For many inmates, travelling the "Red Road" of native healing has opened doors within the deepest chambers of the self.

Still, using sophisticated, sometimes difficult arguments, the author suggests that as a society we have been telling ourselves too many "good stories" about our criminal justice system. Although the stated restorative goals are often lofty, Jackson insists that "the idea and the practice of punishment are driven by conflict and contradiction." He points out that although the vast body of

penal law and policy is written in bureaucratic, morally neutral language, when you strip away the jargon, the people of the Correctional Service remain "the bureaucrats of good and evil."

The Correctional Service emerges, in these pages, as a large, defensive bureaucracy. At times, the service acts according to unwritten rules that subvert both the letter and the spirit of the nation's laws.

With cautious understatement, he demonstrates how "law and policy, carefully crafted by judges, legislators, and senior administrators, are not necessarily translated into the daily practice of imprisonment."

In fact, he documents a fearsome gap between legal theory and the realities of day-to-day prison administration. He argues that many prison staff and administrators have only a limited understanding of such basic legal concepts as due process and the presumption of innocence. A correctional officer's version of a particular event tends to be taken at face value, while a prisoner who disagrees is presumed to be lying. Evidence is often irrelevant.

Made up of a complex blend of legal argument, interview findings and statistics, Jackson's arguments come alive when he details individual prisoners' case histories. By giving a number of inmates the opportunity to describe their experience of "justice" in prison, he stitches human flesh back on to convicted felons' bones. Jackson tries to prove that a prisoner remains a full person, no matter what he may once have done.

It is probably in prisons that society wields its power most nakedly, yet Jackson is more interested in systemic reform than in smearing the Correctional Service with mud. His recommendations, which include more rigorous independent oversight of administrative decisions and practical redress for unjustly treated prisoners, as well as rights-oriented legal training for CSC staff, are moderate, practical and humane.

Jackson has scrupulously included staff perceptions within the scope of his research and shows the highest respect for the dedicated professionalism of many corrections officials.

Several staff members present hard-hitting critiques of his interpretations of certain incidents. Their openness is gratifying, compared with the visceral hatred Jackson used to inspire in some guards at the old B.C. Pen.

At its best, *Justice behind the Walls* offers a forthright challenge to the purely retributive mindset. A formidable scholar, Jackson brings three decades of experience and an acute searching intelligence to his work.

The result of seven years of meticulously documented research, this volume is aimed primarily at legal and corrections professionals. Yet interested

lay readers who grapple with Jackson's insights will find that the effort brings many rewards.

Much to the publisher's credit an online version of this book, complete with photo gallery and hyperlinks to relevant legislation can be read at ***[www.justicebehindthewalls.net](http://www.justicebehindthewalls.net)*** .

Vancouver writer David Colterjohn's last book review in Mix was of Al-Jazeera, by Mohammed El-Nawawy and Adel Iskandar.

## Once a Prisoner

Reviewed by: Colin Freeze

Outsiders looking in have a range of opinions on Canada's prison system. But prisoner advocate Michael Jackson has a unique perspective.

"I found myself on my knees at the food slot of a segregation cell," the B.C. lawyer and professor writes, "endeavouring to reassure a man on the point of giving up that there were still people who cared about him."

That's one of many such scenes in *Justice behind the Walls: Human Rights in Canadian Prisons*, which ambitiously tries to give the reader the view from the food slot.

From that vantage point, prisoners cease to resemble anything like incorrigible monsters. You only see vulnerable humanity, striving for a foothold to climb toward a normal life.

We have always been in a quandary about just how a prison system can help prisoners get that foothold. Jackson documents the journey of the Correctional Service of Canada from the early 1970's to today. In the early days, he writes, more-than-occasional "thump therapy" and a blatant disregard for prisoners' rights led to costly prison riots and unreachable men. Fast forward to now, and corrections officials state they are intent on rehabilitating prisoners by making them understand the value of laws.

But Jackson contends that these officials must themselves first observe the rule of law - to the letter - if they want to rehabilitate prisoners successfully. Why? No one values rights more strongly than prisoners, whose freedoms are like a pauper's pennies. Snatch them away arbitrarily and you will have some very embittered people on your hands.

But when it comes to observing such rights, the Correctional Service of Canada continues to fall short, at great cost. As proof, Jackson chronicles cases in which prisoners find themselves in segregation cells for months, even years, for spurious reasons. He also tells of the lasting damage such seduction wreaks on individuals.

Jackson talks of cases where mere suspicion of wrongdoing moves prisoners from low-security facilities back to maximum-security nightmares. The journey from a Club Fed to a superjail can be short in distance, but it is a psychological odyssey. Surroundings that approximate life on the outside

suddenly give way to a Hobbesian state of nature in which life is nasty, brutish and short - especially if an enemy has a knife in his hand.

In an era of increasing sensitivity for victims' rights, not everyone will buy Jackson's arguments.

Three weeks ago, a book called *Con Game* was reviewed in these pages. There, one of the things author Michael Harris did was look at seized drugs in prisons and point out that zero-tolerance prisons are the Canadian prison system's "biggest lie."

Jackson also writes about the syringes and the home brew and the chunks of hash found by prison guards. Except his inclination isn't to yell "Gotcha," but to argue that correctional officials should conclusively prove who, exactly, the syringe belongs to, before taking anyone's hard-won rights away.

You can fault Jackson for a bleeding heart - and for a long time people have. In fact, in his early days, he writes, tower guards would track him with their rifles on his way into visits, "hoping I would do something that might justify them getting a shot off."

Over 30 years, he has actually won the respect of certain prison wardens, who have given him access to the reasons they make decisions. Outside penitentiaries, Jackson has made his arguments with mixed success to lawmakers, law enforcers and Supreme Court judges. Often these civil servants work in complete isolation from one another.

*Justice behind the Walls* is a scholarly work that will be primarily of interest to people involved in corrections, who want to see how Jackson draws the big picture. Concerned laymen may want to tackle this book, too, but a word of forewarning is necessary. Parts of the book, particularly the legal portions at the beginning, will be a tough slog and try your patience.

Tours through corrections legislation and jurisprudence will not rivet most readers. Nor will Jackson's parsing of them, in his search for the precise gap between the spirit of the law and its application by corrections officials.

But my advice is to soldier through these parts and find the spots where the author journeys back toward the food slot.

Chronicling his own travels through prisons, Jackson will tell you about a group of native prisoners on day pass to gather lava rocks to build a sweat lodge. At another point, he'll talk of one prisoner's journey from super-maximum security to a Club Fed and back again.

Occasionally, he calls upon some powerful friends for help. In literature, he points out, everyone from Dostoyevsky to Solzhenitsyn has documented the perils of punitive prisons.

If you don't think those exposés could possibly apply to Canada today, then read the section on Madam Justice Louise Arbour's inquiry into events in 1994 at the Prison for Women in Kingston.

If you remain unconvinced, read the Correctional Investigator's complaints on being a gelded watchdog, thwarted time and time again by the Correctional Service of Canada.

Still skeptical? Peruse the section on prisoner Gary Weaver's bizarre journey through justice - and see if you don't sometimes, somehow, find yourself sympathetic for a convicted murderer.

Whether or not you agree with the author or not, *Justice behind the Walls* is probably indispensable reading for anyone who wants to understand how - any why - Canada's prison system has changed in the span of a generation.

And if you're not careful, it may change your mind

Colin Freeze has written about crime and the correctional system as a reporter for The Globe and Mail.

## **Justice behind the Walls....Human Rights in Canadian Prisons**

When you hear the name Michael Jackson, you might think of an American rock singer. When you hear the name mentioned in the same sentence as Douglas & McIntyre, however, you just know you're in for a treat. That's because when you hear that the latter has a new nonfiction book on the market and Jackson is the author, you know it will be the best reading you've done in sometime. Such is the case with the popular Vancouver-based book company's newest release, *Justice behind the Walls, Human Rights in Canadian Prisons*, another book by Jackson that not only sheds light on the often dark and archaic conditions and attitudes in the Canadian prison system, but one that is also designed to open eyes and perhaps even the minds of those responsible for setting laws and policies for the nation's penal system.

Jackson, who before writing *Justice behind the Walls, Human Rights in Canadian Prisons* also penned *Locking Up Natives in Canada* and *Prisoners of Isolation: Solitary Confinement in Canada*, has spent much of his life dedicated to the pursuit of a true sense of justice. His latest book, which required many months and unimaginable hours of interviewing, researching and recording, will offer insight to those who have never seen the inside of a prison and encouragement to those who have. Appointed Queen's Counsel in 1999 as acknowledgement for his work and his contributions to the protection of human rights in Canada, Jackson's work is a must read for every conscientious Canadian and for every person who believes in justice and judicial reform.

Jackson's book is a true tale of life in jail and readers will find it's a far cry from the Hollywood version they're used to dealing with on television. *Justice behind the Walls, Human Rights in Canadian Prisons* is coercive, intense, tortuous and yet compassionate in ways that allow the reader to get inside the thoughts and the actions of both prisoners and their jailers. Frankly written and boldly told, this new Douglas & McIntyre release exposes the reality of the contemporary justice system in Canada. Jackson provides several pages near the end of the book to capture the essence of what has yet to be done to correct a system that in itself is as corrupt as it is volatile. Where decisions are made at the spur of the moment and where Native prisoners not only represent the majority, but are also the most discriminated against, a fact that is prevalent both in the courtroom and in the jail system.

Jackson quotes dozens of interviews and numerous vignettes offered by prisoners and others which reveal meaningful insight into the prison system and the justice system, sometimes flawed but seldom apologetic.

*Justice behind the Walls, Human Rights in Canadian Prisons* is a difficult book to decipher for others because each individual who reads it will take something different from it. But one thing most will agree on is the fact that the current system running our nation's jails is not just, is not fair, is not humane, is not for the 21<sup>st</sup> Century. Changes for the better have been made, but those changes are infrequent and inconsistent and most times do not brace the underworld philosophies that reign supreme in Canada's jails.

Buy this book and read it from cover to cover - only then will you have a true understanding of what it means to be a prisoner, especially a long-serving prisoner, in Canada. Though not every jail in the country operates the same or has the jailers, much of what you read in *Justice behind the Walls, Human Rights in Canadian Prisons*, you will abhor. The conscientious will quickly realize that what happens in one jail is likely to be happening in others.

To effect change, especially the change that is needed to turn the Canadian penal system into an institution with an environment conducive to reform, the public must get involved. They must speak out and demand accountability, demand a reckoning of success and failure. So far that has not happened; that prospect lies with you.

## Hitting the Wall?

Rising concern for victims of crime threatens to eclipse prisoner rights, professor argues

Review by: Charles Rusnell

This spring seems to be open season on the Correctional Service of Canada and the country's prison system.

Journalist Michael Harris got off the first shot with his controversial book *Con Game: The Truth About Canada's Prison*. But the impact of Michael Jackson's book will probably reach farther and last longer.

It's not just that it's bigger and weightier; it's more than a book. It's also a Web site that promises to grow with contributions from anyone with an interest in the issues of crime and punishment, and human rights.

The federal prison system plays a huge role in Canadian life. It consumes as much as \$1.3 billion a year in taxpayer dollars. It controls the lives of 13,000 offenders behind the bars of 47 prisons scattered across the country and it manages the lives of 9,000 more who are on temporary release. It also provides employment for 14,000 staff.

What do we do in the name of justice when we send people to prison, Jackson asks?

Prison is by definition a place where no one wants to go. Those who do wind up behind bars lose their freedom to come and go as they please, to wear what they want, to set their own schedules. They lose control over their time and space.

But in Canada at least, these are not places of medieval torture, though some may dispute that, given the continued use of solitary confinement and the presence of prison subcultures that mete out summary justice.

Through meetings and interviews with prisoners and their keepers, Jackson explores how far Canada's prison system has come in living up to the ideals of the universal declaration of human rights.

In case you harbour any doubts, prisoners do have human rights. The United Nations says so, Canada's Charter of Rights says so. But all too often, the prison system says no.

It's a flaw encoded in a system that in every generation has trampled on human rights, Jackson says.

A lawyer and law professor at the University of British Columbia, Jackson has been following the issue for 30 years, focusing on Matsqui and Kent, two prisons near his Vancouver home. When he first looked at the prison system in 1972, he concluded that "the penitentiary was the outlaw of the criminal justice system."

In his first encounters with the federal system, he saw a monolithic bureaucracy, presiding over prisons run along paramilitary lines, seemingly immune to criticism, even from the highest sources, defensive and resistant - but not immune - to change.

But "just as the issue of prisoner rights has emerged from the legal shadows...it appears dangerously close to being eclipsed by rising concern for victims of crime and a growing concern about the erosion of public safety," Jackson writes. (The writing, as you might expect from a law professor, is scholarly.)

For those who want to step up the war on crime, a repudiation of fundamental principles of international human rights law is an acceptable price to pay, Jackson observes.

He recalls a meeting with Canadian Alliance MP Jim Gouk at a conference in Saskatoon. Gouk, a member of the Commons Committee on Justice and Human Rights, asserted that prisoners should earn their rights to more freedoms within prisons. He argued that inmates have rights that are different from those who obey the law.

Jackson asserts that imprisonment may take away a prisoner's freedom, but does not nullify the right to equal treatment under the law and must never be allowed to sever the ties that link the prisoner to the universal declaration of human rights.

Anyone who wants to join the debate can log on to Jackson's Web site at ***[www.justicebehindthewalls.net](http://www.justicebehindthewalls.net)*** .

## **Society of captives**

### **Citizens still, or inmates running the asylum? A journalist and a reformer square off.**

By: David Cole and Michael Cole

Billy Solosky was serving sentence in a Canadian penitentiary. He objected to the prison authorities' routine practice of opening all mail sent to him by his lawyer. He asked the courts to order the Correctional Service of Canada (CSC) to stop. The case eventually wound up before the Supreme Court of Canada in 1979.

The court allowed the correctional service to continue the practice, so long as the interference was no greater than necessary to maintain security. More important for the long term, the court expressly and intentionally endorsed the proposition that "a (prisoner) retains all of his civil rights, other than those....taken away from him by law."

Both Michael Harris and Michael Jackson write about this case in their timely books about the organization and day-to-day reality of life in Canada's prison system. Their descriptions of the issues raised by the case reveal much about the instructive quality and care of their writing.

Harris, a career journalist who has written a number of books critical of Canada's criminal justice system, is upset that CSC "seized upon (this phrase) to....extend prisoners' rights under the guise of following the law" - a powerful indictment indeed. Harris would have us believe that CSC is a dangerous, out-of-control bureaucracy, led by commissioners determined to "let the inmates run the asylum." In fact, if Harris had been more thorough, he would have understood that far from being off-the-cuff "ruminations" of a single judge, this phrase represents the unanimous view of the full Supreme Court. As such, in the absence of new rules from Parliament, CSC must apply the Supreme Court's dictum in its approach to governance of those in its charge.

In contrast, University of British Columbia law professor Jackson's careful, detailed and nuanced description of the laws and practices regulating justice behind the walls places the Solosky case and CSC's response in proper context. Jackson performs an important educational service by first placing the law in historical perspective, then weaving his discussions with detailed and multiple first-hand accounts of how the law is and is not applied within the Canadian penitentiary system. Though portions of this 617-page book are hard going for

even the most enthusiastic layperson, it is essential reading for anyone who wishes to understand and measure how Canada's prison service has evolved over the past thirty years.

Jackson's painstaking analysis - aided by lengthy interviews with different participants, often about the same incident - shows how complex and difficult it is to balance the age-old dilemma between rehabilitation and confinement. More important, he shows the simplistic "we/they" paradigms cannot withstand the scrutiny of the Charter. Whether one likes it or not, the rule of law runs behind the prison walls.

Both authors agree that the epidemic of illegal drug use in our penitentiaries is extremely dangerous for staff and prisoners alike. Harris concludes - without properly referencing his sources - that CSC does not try hard enough to crack down or to eradicate drug use. His "solution" is to chant the overused mantra of "zero tolerance." Jackson asks Canadians to think about the harder, but more important, question: If the "society of captives" or the general public are better served in the long run by permitting prisoners to be segregated or transferred to higher security on the basis of unchallenged information, rather than ensuring due process by first charging and convicting prisoners in prison disciplinary court.

His book contains some shocking examples of how things can go dreadfully wrong. Jackson reminds us that eventually, virtually all prisoners are released from prison - and, as Winston Churchill noted many years ago, how they are treated "inside" may have much to do with how they later treat us "outside."

Harris offers no real answer to this dilemma, beyond parroting simplistic Alliance Party demands for substantial reversal of prisoners' rights, ever tougher prison conditions and longer and even harsher sentences.

Jackson has been following and writing about Canadian prisons for more than 30 years. He acknowledges that this book, which he has been writing for almost a decade, is more complete than his previous writings. For the first time he has tried to integrate the views of correctional staff - guards, managers and wardens - about the difficulties they face in educating themselves about and following the rules laid down by Parliament and the courts. His careful book provides balance in a prison arena that seems to relish pitting prisoners and their individual rights against prison officers' safety and security. He succeeds admirably in presenting interviews with both parties in a comprehensive and non-judgmental manner. This process allows the reader the ability to fully understand both sides of contentious issues in order to arrive at independent conclusions on any particular occurrence.

Conversely, Harris starts with the basic premise that all prisoners need draconian discipline in order to be controlled and deterred from future criminal

behaviour - a superficially attractive but quite unrealistic notion. He would no doubt dispute Jackson's contention: "The law...has an important strategic role to play in providing the framework to support the positive elements of corrections and to protect against the abuse that flows from negative ones."

For Harris, any suggestion that prisoners have fundamental "rights" - as distinct from privileges bestowed by benevolent staff - must immediately be countered with quick rebukes, scornful comments or contrived statistics that provide little room for alternative points of view. His bias comes through stronger than an episode of "Coach's Corner" during the Olympics, and an uninformed reader is unfortunately left with one perspective, one idea and only one conclusion. Little of this provides readers with what they need, a balanced view of the system's strengths and weaknesses.

One drawback to Jackson's book is that his focus stops at the prison gates. He scarcely mentions the important public issue of recidivism. Strangely, Harris is strongest when he goes beyond the prison walls to criticize CSC's continuing ingenuous manipulation of what constitutes "success." As Harris properly notes, Canadians are not impressed with whether a prisoner reoffends one day before or 10 years after the expiry of their sentence. We are more concerned about whether prison authorities did all they could to try to ensure that a released prisoner does not victimize somebody else, and what can be learned from the dreadful tragedies that do happen from time to time.

Harris is right to point out that this is a debate Canadians need to have, one the correctional service's statistical gamesmanship obscures. (Indeed, there is a whole body of recent analytical work suggesting that much of what passes for parole decision-making and supervision is ineffective, and should be re-examined.)

Jackson's book is indispensable reading for anyone who wants to take the time to understand how our prisons must operate in the era of the Charter, as foreshadowed by the Solosky case. Harris' angry rhetoric obscures that understanding. Ultimately, sensationalism about this important and difficult issue is a dis-service to thoughtful Canadians.