PRISONERS OF ISOLATION: SOLITARY CONFINEMENT IN CANADA. By Michael Jackson. University of Toronto Press, 1983. Pp. xii, 330. ($35.00)

The title of this book is a misnomer. It suggests that the book is solely about solitary confinement in penal institutions. Although the book thoroughly considers the issue of solitary confinement, it also deals with the more important issue of the abuse of state power. Solitary confinement is used as an example to illustrate the manner in which the state can abuse its power. The choice of solitary confinement as an example has been made on two bases. The first is, as the author points out, the fact that solitary confinement represents "the ultimate exercise of the prison's power over the lives of the imprisoned".[1] The second more cogent basis is the author's interest in the subject resulting from his involvement in a case where prisoners in the British Columbia Penitentiary sought to obtain relief from the "cruel and unusual punishment" of solitary confinement. On the subject of abuse of state power, the author assumes a normative stance. He is not satisfied with exposing the phenomenon; he is interested in correcting it. Shocked by what he discovered, the author assumes the role of a prison reformer striving to bring "justice within the walls of the prison" in order to make imprisonment as humane a punishment as possible. This goal, he believes, can only be achieved by the involvement "of the law, the courts and lawyers within the prison walls".[2]

An analysis of this book requires consideration of three distinct subject areas: solitary confinement, the abuse of power and the proposed corrective action. As the author points out in his introduction to the book, "[t]he facts and legal issues surrounding . . . [the] challenge to solitary confinement in the case of *McCann v. Her Majesty the Queen and Dragan Cernetic* form the centre-piece of the book".[3] Chapter four[4] deals with this case[5] in great detail. It also examines the subject of prisoner rights and the manner in which the courts in the United States, the United Kingdom and Canada have come to recognize solitary confinement as a legitimate concern. To put the whole issue of solitary confinement into its proper perspective, the author provides us with an account of the historical development of solitary confinement[6] and a description of solitary confinement as it currently exists in Canadian penitentiaries.[7] The main purpose of these presentations is to show the

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[1] P. 3.
[2] P. 5.
[3] P. 4.
[4] Pp. 81-133.
[5] 29 C.C.C. (2d) 377, 68 D.L.R. (3d) 661 (F.C. Trial D. 1975).
[6] Pp. 6-41.
[7] Pp. 42-80.

effect of solitary confinement on the individual and how it may be categorized as "cruel and unusual punishment" which is repugnant to the social morals of this enlightened age. To support this position, the author cites the evidence given in the *McCann*[8] case by a number of psychologists and psychiatrists on the effects of solitary confinement in a Canadian maximum security penitentiary.[9]

The author indicates that solitary confinement can take three forms: punishment for the infraction of prison regulations — punitive dissociation; prevention "for the maintenance of good order and discipline in the institution" — administrative dissociation; and protection for prisoners whose lives may be in danger — protective custody.[10] Prison regulations limit the period during which a prisoner can be in punitive dissociation and those prisoners in protective custody "generally speaking, are permitted to associate with each other".[11] However, administrative dissociation "confers on the warden of a penitentiary a virtually untrammelled discretion over the lives of prisoners".[12] For this reason, the author restricts his discussion to administrative dissociation, proceeding as if that alone constituted solitary confinement. This limitation suggests that what is objectionable in solitary confinement is not so much the harm it could cause the prisoner but the magnitude of the power that is exercised by the warden. The omission of protective custody from the discussion of solitary confinement implies that voluntary submission to confinement somehow renders it less objectionable.

The author cites from American authorities to show that judicial decisions in the United States indicate that a punishment could be considered cruel and unusual when it is: "so severe as to be degrading to the dignity of human beings";[13] "unacceptable to a contemporary society" and does not "accord with public standards of decency and propriety";[14] "arbitrarily inflicted", in other words, it is not "applied on a rational basis in accordance with ascertained or ascertainable standards";[15] and excessive in that it is inflicted "either gratuitously or by intent without . . . effective regard to the welfare of the person on whom it is being inflicted . . . it is suffering to no useful end to either party".[16] Though these criteria were used in the *McCann*[17] case to show that solitary confinement constituted cruel and unusual punishment, a

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[8] *Supra* note 5.
[9] Pp. 71-80.
[10] Pp. 43-44.
[11] P. 44.
[12] *Id.*
[13] P. 96.
[14] P. 97.
[15] P. 98.
[16] P. 99.
[17] *Supra* note 5.

second argument of procedural fairness was also employed. Administrative dissociation had been inflicted "without a hearing before an impartial decision-maker, without a right to make full answer and defence, and without a right . . . to a fair hearing in accordance with the principles of fundamental justice . . . ".[18] It was necessary to make such an argument to overcome the traditional approach Canadian courts have taken towards prisoner cases. Where the action complained of was the result of an administrative decision, the courts have held that it was not subject to judicial review. Only those actions that resulted from a judicial or quasi-judicial decision were amenable to review. This approach had been adopted because of the belief that interference with administrative decisions would impair the administrator's ability to manage the institution effectively. The fairness argument in *McCann* was put forward to counteract this position.[19]

The fairness argument also appeared necessary in light of the dramatic increase in the number of applications by prisoners for protective custody. There are two explanations for this escalation. The first suggests an increase in attempts by prisoners to secure an easier way of serving time. The second notes the increasing danger of the prison environment due to the presence of more violent prisoners. Studies on this subject[20] indicate the latter to be the more correct explanation. This has required prison administrators to take unprecedented protective measures to ensure the smooth functioning of penal institutions and the safety of inmates and employees. Permitting the prison warden to extend his power through the imposition of administrative dissociation is seen as permitting the prison itself, "as the agent for defending our collective morality as defined by law",[21] to offend against the law. The rule of law must prevail — a position endorsed by the Parliamentary Subcommittee on the Penitentiary System in Canada.[22]

Both the author and the prison authorities support this principle. Both have examined solitary confinement and have formulated a set of rules that would, in their view, eliminate the obnoxious characteristics of solitary confinement. The rules devised by the prison authorities, as stated in the Vantour Report[23] are examined in detail by the author and found wanting.[24] The implementation of these regulations is then discussed, leading the author to the poignant question, *The Winds of Change or the Window of Contempt?*[25] The author contends that the

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[18] P. 106.
[19] Pp. 106-23.
[20] C. Wilson, Protective Custody, 1982 (M.A. Thesis in Univeristy of Ottawa Library).
[21] P. 3.
[22] P. 147.
[23] *Report of the Study Group on Dissociation* (Vantour J. Chairman 1975).
[24] Pp. 133-40.
[25] Pp. 140-203.

regulations merely represent cosmetic changes disguised by considerable linguistic gymnastics. The prisoners, as well, believe that the new system "[is] as bad as the old-style segregation" — a judgment which the author thinks rests more on the "psychological implications of segregation" rather than on the "physical conditions or amenities made available to prisoners".[26] The suggestion is, therefore, that what is wrong is the very idea of solitary confinement rather than the manner in which it is imposed.

The author's model for reform[27] is designed to control the power of prison administrators and "subject it to standards of procedural fairness" that would hopefully demonstrate "to prisoners, to prison administrators, and to lawyers that imprisonment can be subjected to the rule of the law and that the rights of the kept can be protected without undermining the ambiguous and invidious task assigned to the keepers".[28] In presenting this model, the author does not, to his credit, employ vague generalities. He has worked out the logistics in great detail, thereby preventing any possible distortion of his proposals. Nevertheless, whether adoption of the procedures proposed by the author would have any impact on the psychological implications of the segregation of prisoners is highly questionable. He states, "I believe that the adoption of the full reform slate I am advocating will bring about significant changes in the nature of segregation"[29] but hastens almost immediately to add that he may be wrong.

The author believes that any failure of his model to bring about the desired changes would be due to the "deeply entrenched adversarial relationship between the keeper and the kept".[30] In addition to this characteristic of the prison system, further problems arise due to the dynamics of interpersonal interactions in the prison situation[31] as well as the manner in which bureaucratic organizations bridge the gap between what the law requires should be done and what is actually done.[32] One is tempted to conclude that the author is extremely naive in believing that rules having the legitimacy of law and inspection processes having the commitment of the legal profession and the courts could "begin to stop the crippling and destruction of prisoners' lives".[33] After all, the prison itself is an eloquent though mute monument to the failure of such rules and processes to control human behaviour.

The author does such a thorough job of highlighting the atrocities of imprisonment that one begins to wonder why he did not, as some readers

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[26] P. 165.
[27] Pp. 204-38.
[28] P. 205.
[29] Pp. 225-26.
[30] P. 226.
[31] Pp. 52-55, 265-66.
[32] P. 240.
[33] P. 243.

of his draft had suggested to him, join the prison abolition movement.[34] This is what one would expect especially in view of his claim that "[the] historical origins [of the modern practice of solitary confinement], like those of the penitentiary itself, lie not in the practice of torture and the abuse of state power, but rather in a reform-spirited reaction against such practices".[35] Attractive as this proposition must have been, the author states that he refrained from adopting it "because it offers little consolation or hope to those now experiencing the most extreme of the pains of imprisonment".[36] His "endorsement of the abolitionist position . . . is not going to stop the practices that give rise to such experiences".[37] The logical conclusion of this line of argument appears to be a crusade for the abolition of solitary confinement. However, the author fails to go that far. He opts instead for the perpetuation of the system administered in a different way.

Considering the manner in which the author has presented his arguments, one is left with the impression that he views the prison as a sort of modern Roman arena where gladiators fight for the entertainment of the citizenry. The kept and the keepers wage a continuous battle in the prison, periodically bringing their activity to the notice of the public for their entertainment. What the author seems to be saying is that the macabre entertainment has become less entertaining, if not in quality at least in frequency, because of the imbalance of power. Consequently, the rules of the game should be altered to make the fight more even and "to ensure that in the ongoing battle the prisoners have sufficient legal armour to defend themselves adequately against the prison's heaviest assault".[38]

This book is a very enlightening one, highlighting effectively the atrocities of incarceration. It is well written and readable. It reveals the difficulties encountered by prison administrators and enumerates the steps taken by concerned people to correct this situation. It is, however, most important for its "meta-message". The tenacity with which people cling to old ideas even though their dubious value is clearly demonstrated and the obstacles that this tenacity poses to even a consideration of real reform are clearly and forcefully presented. A new coat of paint on a crumbling structure is all that the author views as necessary as long as that coat of paint can hide the decayed foundation of the structure. For this reason alone, *Prisoners of Isolation* is a good book that all should read.

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[34] P. 205.
[35] P. 6.
[36] P. 206.
[37] *Id.*
[38] P. 226.

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