

### Apologia

Some of those who have been kind enough to comment on this in draft have asked why there are not more suggestions as to alternatives. There are also murmurs that the author seeks to make amends for his previous career as a prison Governor, and that more credit should be given for the good work done in prisons. The purpose of the paper is to ask if we should

replace imprisonment, not to suggest how we do it. It does not follow that you go on doing something bad because it is too awkward to face the alternatives. And the only thing worse than imprisonment of the prisoner is the imprisonment of the jailer. It seems to me that if I can make amends for my work as a jailer, this is not a bad way of doing so — unless I seek to excuse. A good prison is still a prison.

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# Prisoners as Citizens

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Arguments that prisoners should be treated as citizens can be pursued from different directions and different perspectives — as matters of human rights and responsibilities, the management of institutions, and the reform and resettlement of prisoners. The arguments do however point to similar conclusions about the nature and purpose of imprisonment, the organisation and culture of the Prison Service, and the character of the relationships within prisons and between prisons and the outside world. They also reflect some common values — that people may be in different positions of power, status and authority and have different relationships with one another, but they are all entitled to equal dignity and respect as human beings; and that the state has both to protect its citizens but at the same time to limit so far as possible the extent to which it interferes with their personal lives.

### Rights and Responsibilities

The idea that prisoners might have rights and responsibilities is quite recent. There is virtually no mention of either in prison legislation. The Secretary of State and governors have various duties to provide facilities which might be seen as rights — correspondence, visits, confidential legal advice, medical attention, opportunities for complaint — but the Prison Service has a lot of discretion of the way in which they are provided. There is no formal procedure, apart from the vigilance of the board of visitors, the Inspectorate and the Ombudsman, for ensuring that prisoners have access to them. The resulting entitlements, or privileges as some of them are significantly described, are limited and conditional. Responsibilities, apart from the enforced responsibility to comply with prison discipline, are not recognised at all.

The situation has to some extent changed over the last 30 years. The change came about partly as a result

of changing attitudes in the Prison Service itself, and partly through a series of judgements — conveniently listed in the Prisons Handbook — in the domestic courts and the European Court of Justice. The process of change is likely to continue, although perhaps not at a rapid pace, as a result of the Human Rights Act 1998 and the incorporation of the European Convention on Human Rights into domestic law. Some of the rights in the Convention and its protocols are absolute and inalienable, for example the rights to life, freedom from torture and degrading treatment and freedom from slavery and forced labour. Although the Convention does not actually say so, the right to equal consideration, dignity and respect, regardless of race, ethnic origin or culture, must be similarly regarded as absolute.

Other rights are qualified by references to what is necessary for public protection in a democratic society. Examples are the rights to respect for private and family life and to freedom of thought and expression. But they all apply to people as human beings, and therefore to prisoners just as they do to anyone else. They are not automatically abrogated or forfeited by the fact that a person has been sentenced to imprisonment. Any restriction on those rights must be justified, proportionate and legitimate. The Act's influence on prisons may come about as a result of specific challenges in the courts, but more probably and more effectively if it helps to generate a stronger sense of respect for individuals, and to reinforce changes in approaches and attitudes which may already be taking place.

A citizen is however, more than a bearer of rights. He or she also has duties and responsibilities — obviously to obey the law but also to play a part in society, to support themselves and their dependants, to show consideration for others, to be a good neighbour, to have some concern for those who are vulnerable or disadvantaged, to support the institutions and legitimate authority of the state but also to hold them to account. These are responsibilities from which

prisoners are at present largely absolved. This paper does not attempt to discuss the position of prisoners who are not citizens of the United Kingdom, except to make the obvious points that it interprets citizenship as meaning much more than a person's status under nationality law, and that there should be no distinction between 'first class' and 'second class' prisoners based on that distinction.

To make a connection between rights and responsibilities is not, as has sometimes been implied, to say that only those who discharge their responsibilities are entitled to enjoy their rights. A person's rights as a human being or as a citizen should not be dependent on someone else's judgement of their good behaviour, any more than a person's responsibilities should be thought of only as a means of gaining access to their rights. Nor should the responsibilities of citizenship be thought of simply in terms of individual good behaviour: they include protecting the rights of others and concern for those who are vulnerable or disadvantaged, as a matter of public duty as well as, ultimately, self-protection. They apply not only to individuals but also to organisations and institutions.

### Management of Institutions

Prisons must inevitably be seen as serving the society of which they are a part by protecting citizens from people who are dangerous. But they also uphold the rule of law by giving effect to sentences of imprisonment imposed by the courts; and they try so far as possible to reform offenders so that they will not commit more offences. All three aims, which are implicit in the formal aims and objectives of the Prison Service, require offenders to be enabled successfully and effectively to exercise their rights and responsibilities as citizens. They imply that the principles of rights and responsibilities should inform the ordinary life of a prison no less than the pre-sentence stages of the criminal justice process (in the case of rights), or the period after release (in the case of responsibilities).

There is no shortage of texts on what this notion of citizenship might or ought to involve. They include:

- Lord Wilberforce's judgement in *Raymond v. Honey* that prisoners should in effect be able to function as citizens to the extent that they are not prevented by law or by the fact of their imprisonment — although as Tim Newell has pointed out, that fact is inevitably a serious limitation;
- Lord Woolf's theme of 'justice in prisons' in his report on the disturbances in Strangeways and other prisons in April 1990;
- the discussion of 'legitimacy' in prisons in *Prisons and the Problem of Order* by Richard Sparks, Anthony Bottoms and Will Hay, in particular the

conditions necessary to achieve legitimacy such as integrity, fairness, explanation of decisions, and consent.

- Tim Newell's book *Forgiving Justice*, including his ideas on sound and political responsibility, and his current work on applying the ideas of restorative justice to the management of prisons and relationships within them in conjunction with the International Centre for Prison Studies and the Thames Valley Partnership;
- Martin Narey's emphasis on decency, in the training of prison officers and throughout the Prison Service;
- Alison Liebling's work with David Price on *The Prison Officer*, and especially the passages on role, culture, relationships, fairness, respect and the uses of power;
- Stephen Pryor's recent paper on *The Responsible Prisoner* and its references to personal autonomy and choice, the nature of punishment, attitudes to risk and authority, prisoners' families and racial and cultural diversity — although the prisoner's responsibilities need to be matched by corresponding responsibilities on the part of the State (and especially the Prison Service itself) and civil society;
- The Prison Reform Trust's forthcoming study of the ways in which prisons are already giving prisoners the opportunity to be active citizens through socially useful work within or outside their establishments.

Indicators of the extent to which institutions, and society more generally, treat prisoners as citizens include the extent to which prisoners are able:

- to make choices for the way in which they spend their time in prison, and for the contact they maintain with their families and accept responsibility towards them;
- to retain their personal identity, expressed through the possessions they are allowed to keep and the clothes they are allowed to wear;
- to have some stake in the institution in which they are detained, for example through some form of consultative process;

But also:

- the extent to which disputes can be resolved by restorative procedures rather than traditional, adversarial form of discipline;
- the way in which prisoners and staff talk to each other, the use of names and tones of voice, and the mutual respect which it reflects.

Two illustrative examples have special symbolic significance. One is a prisoner's right to vote in national elections. This is both a right and responsibility of

citizenship, but it is at present denied to prisoners on the ground, as a former Home Office minister once put it, that 'those ... serving a sentence have no moral right to vote'. The other is the right of children under 17 to protection from physical or sexual abuse, and of looked after children to a special degree of care, with a corresponding responsibility for the state, through social services, to provide that protection and care. These are statutory rights and duties under the Children Act 1989, but although the Prison Service tries to observe the spirit of the Act, it regards the Act itself as not applying to children held in its own establishments or in secure training centres.

Legislation to correct both anomalies should be a high priority.

Most of the aspects of citizenship mentioned so far can in theory be developed in prisons without legislation (the last two are an exception), and probably without new material resources. Some of them are quite well established, at least in principle, in existing regimes at individual establishments. But their development is for the most part piecemeal and haphazard. They all require commitment, shared understanding and a degree of stability and freedom from distraction which are difficult to achieve in an overcrowded system, with competing demands expressed through sometimes inconsistent performance indicators and a culture which is averse to risk. Whether those conditions can be satisfied without radical reform is a more open question.

There are of course corresponding issues for staff — the relationship between staff and management, the kinds of professional practice which are or are not respected and rewarded, and indeed the style of and need for staff uniform. The 'soft' uniform which can now be worn in establishments for juveniles as an interesting example.

### **Reform and Resettlement of Prisoners**

The issue here has two main aspects. One is the extent to which it is a responsibility of the state, of civil society, or of individual citizens, to help the reform and resettlement of those citizens who are or have been prisoners — either as a matter of self-protection against the possibility of re-offending, or more positively as a matter of civic duty in a spirit of social inclusion. The other is the extent to which the fact of imprisonment, or a criminal conviction, should in effect disqualify a person from what could be seen as the normal expectations of citizenship — most obviously employment, but also housing, insurance, financial services and even compensation for a criminal injury. This aspect is the issue which was raised, and intended in part to be resolved, by the Rehabilitation of Offences Act 1974. It has now to be re-examined, together with the degree of protection which must necessarily be provided for those potentially at risk, in the review of the Act which is now taking place.

Both aspects will be crucial to the Social Exclusion Unit's forthcoming report on resettlement, for which high expectations have been raised.

### **Conclusions**

A policy of treating prisoners as citizens does not by any means resolve all the tensions and conflicts which are inherent in imprisonment. In particular, it does not decide the balance which has always to be maintained between respect for individuals on the one hand and the protection of the public and the needs of the institution on the other. But it does provide a conceptual framework within which those tensions and conflicts can be resolved on a consistent basis of principle; it indicates the sort of practical measures which can make a positive contribution to the integrity and legitimacy of prison establishments, to the reform and resettlement of prisoners and hence to a reduction in re-offending; and it has important implications for the location and design of prison buildings. It challenges the Prison Service to manage its institutions in ways which are outward rather than inward looking and which place the needs, hopes and expectations of its prisoners, of its staff and ultimately of society above the convenience of the Service and its institutions themselves.

Above all, an approach of this kind challenges communities, and society as a whole, to feel some sense of ownership for their prisons, and some sense of responsibility for their prisoners, as they do for their schools and hospitals. They should not see prisons as a means by which that responsibility can be avoided.

To achieve that sense of ownership and responsibility may demand a more radical review of the structure and accountability of the Prison Service than any which has so far been attempted.