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Race in Prisons

'Why do prisoners have rights? The lessons of our history.'

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Vivien Stern is Senior Research Fellow at the International Centre for Prison Studies (ICPS) at King's College, London. She has been a Crossbench Peer since 1999 and was a member of the Parliamentary Joint Committee on Human Rights from 2004 to 2008. She is a member of the Advisory Council of the International Legal Foundation in New York, and a member of the Advisory Council of the Legal Policy Research Centre in Kazakhstan. In September 2009 she was appointed by the UK Government to lead a review of how rape complaints are handled from when a rape is first disclosed until the court reaches a verdict. Her publications include *Bricks of Shame: Britain's Prisons, A Sin Against the Future: Imprisonment in the World, Alternatives to Prison in Developing Countries, Developing Alternatives to Prison in East and Central Europe and Central Asia and Sentenced to Die? The problem of TB in prisons in Eastern Europe and Central Asia. Her latest book, *Creating Criminals: People and Prisons in a Market Society*, was published by Zed Books in May 2006.*

It is an honour to be invited to give one of these lectures in a building named after perhaps Liverpool's greatest woman. Eleanor Rathbone is a towering figure and for me one of the greatest — an inspiration, a human rights activist, a great democrat and Member of Parliament, an anti-poverty campaigner, a fighter for the rights of women. So to give an Eleanor Rathbone lecture is an honour, a privilege and a great challenge. I want to tell you something Eleanor Rathbone could not have known: what she did in her life not only saved many lives at the time but improved the lives of so many others all over the world. Even more than this, what Eleanor Rathbone did shaped one of the most powerful unifying ideas that gives an ethical framework to our world today.

Human Rights Law and Practice

Let me begin by telling you a story, a story that would have amazed and delighted Miss Rathbone. It is a small story about a small event but for anyone with a sense of history it is a marvel. This story is about a Polish national, Mr Krzysztof Iwa czuk. In 1993 he was in prison in Poland having been remanded in custody for fraud. During the long time he was on remand, a parliamentary

election took place; and he asked the prison authorities to take him to the voting room that was set up in the prison so that he could cast his vote. In Poland all prisoners can vote.

Instead of being taken to the voting room, he was taken to the guards' room. There the four guards in the room told him that if he wanted to vote he had to get undressed and undergo a full body search. So he took off all his clothes except his underpants. At that point, it is alleged, the prison guards made fun of him, exchanged humiliating remarks with each other about his body, and abused him verbally. Mr Iwa czuk was then ordered to take off his underpants and strip naked. He refused. He repeatedly asked for permission to go and vote. The guards said no. And he was taken back to his cell without being allowed to vote.

He then did something no Polish prisoner had ever done before. He took a case to the European Court of Human Rights saying his treatment was against the European Convention on Human Rights which Poland had acceded to in 1991. The Court heard the case. The Court noted that Mr Iwa czuk was ordered to strip naked in front of a group of prison guards; that the guards verbally abused and derided him; that they intended to make him feel inferior and humiliated. The Court said this 'showed a lack of respect for the applicant's human dignity' and ruled that Poland was in violation of Article 3 of the European Convention, which 'enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour'. The Court is saying to everyone who has power over other people when they have lost their liberty, 'you cannot do that. If it is inhuman and degrading you cannot do it. You are not allowed to degrade another human being or be inhuman to him or her because every human being is as human as you are. No human being, prisoner or not, is less human'.

I choose to tell you about this case from the European Court of Human rights (there are many others, a fair number involving the United Kingdom) because it is a Polish case about a Polish man living in Poland and imprisoned in Poland. Auschwitz too was also in Poland, a concentration camp where about one and a half million people, Poles, Jews, Gypsies and homosexuals were exterminated with gas or were worked to death or shot or

used for medical experiments. A few of those might have been people that Eleanor Rathbone had tried to save but failed because of the excuses and delaying tactics of the Government.

This is worth thinking about for a moment. In 1946, the year that Eleanor Rathbone died, the world was coming to terms with this carnage that Europe had wrought upon itself; barbarism scarcely to be believed. Why? Why did this happen? Well in a sense it happened because one group of human beings decided that another group was not worthy of being treated as human because that other group was different in some way, differences of skin colour, of ethnic origin, maybe of sexual orientation. If these groups were human then they were a lesser form of human. We, the human family, learnt from this that we have to try and build a new world order, built on a view derived from all the great religions of the world, a view of the intrinsic worth and dignity of each human being. There are no lesser forms of human. By 1953 the European Convention on Human Rights had been ratified by enough countries to ensure it came into force, and in 1959 the European Court of Human Rights began its work.

Had she lived a little longer Eleanor Rathbone would no doubt have been amongst the drafters of the Convention. Had she been, she could have felt that her life's work to create an ethical framework which defined how governments had to treat each human being — was richly rewarded. This new ethical framework which began with 14 countries now covers 47 countries stretching from the Atlantic to the Pacific, from Lisbon to Vladivostok. It is not just Europe.

Another Eleanor, Eleanor Roosevelt in New York, was doing her bit to put through the United Nations the Universal Declaration on Human Rights. That led to the International Covenant on Civil and Political Rights which at Article 10 states that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. 165 countries have signed up to this Covenant.

Something very important happened in the world in those years: an internationally accepted human rights framework was created based on the idea of the equal humanity of each human being. It applied to everyone, including those deprived of their liberty, whatever they had done, however much we might dislike or abhor their actions if they had murdered, or raped they were still

within that framework. A consequence was that in Poland, where so many millions had been degraded, humiliated, used as objects and murdered, a prisoner — one single individual could say 'they can't treat me like that. I am entitled to respect and to keep my dignity intact. This is wrong and I will do something about it. These were world-changing developments, and Miss Rathbone from Liverpool was a part of making them happen. This framework expresses the vision of that post-war generation.

But is that vision realised? Has the world changed for its 10 million or so prisoners? Yes, it has. Proper prison conditions and humane treatment of prisoners are seen almost everywhere in the world as a human rights obligation by governments. The 47 countries in the

Council of Europe have all opened their prisons to international inspectors through a system called the European Committee for the Prevention of Torture, and the United Nations has recently set up a similar worldwide detention inspection system. The progress is indeed substantial. In most places it is still very much a 'work in progress' but every day in every continent something is going on to try and make the human rights framework a reality.

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Pursuing Human Rights Internationally

I remember the fall of the Berlin wall and the crumbling of the gulag, the prison camp system of the Soviet Empire, a prison system designed for enemies of the state, a vast economic enterprise. Prison sentences were served in labour camps with a wall around. Everything ten metres in from the wall was called the zone. If you were in the zone you could be shot. Prisons in the western sense were only used for pre-trial prisoners.

I was at the first penal reform conference there in 1992. It was suggested we should visit a prison. We heard there was an internal battle, foreigners visiting a prison! Even the fact the prison was there was a state secret. The modernisers won and we went, the first foreigners into Butyrka prison. Its façade was hidden by a block of flats inhabited by agents who worked for the KGB, the Russian secret service. No one in the prison knew what to do when the foreigners arrived. This had never happened before. The cell doors opened. The air of 100 men living in a space for 30 hit us. The prisoners blinked as the doors opened and light flooded into the cells. We all shook hands and the foreigners took photographs. It was a bit

like Beethoven's opera *Fidelio* where the prisoners emerge from the dungeon into the light.

Did Russian prisoners come into the light? Well Russia embarked on a huge prison reform programme led by the man who won the battle to open the doors of Butyrka to the foreigners. They changed many of the prison laws. Putting prisoners in straitjackets was no longer allowed. Prisoners in special secure units and those awaiting sentence had to be given bedding and allowed daily exercise outside. Prisoners were not to be kept in special units for longer than six months. Freedom of conscience and the right to participate in religious activities and have religious books were recognised. Adult women prisoners could wear their own clothes. Male prisoners were allowed to have beards and moustaches and no longer had to have their heads shaved. The restrictions on prisoners' correspondence were abolished. More family visits were allowed and some prisoners were allowed home. Prisoners could use telephones where these were available. They were given the right to receive parcels from the very beginning of their sentence and to receive more in the parcels. They were allowed to send letters to the prosecutor, the court and other supervisory agencies without them being stopped or read by the authorities. Neither visits nor parcels, nor the right to buy food from the prison shop, could any longer be withheld as a punishment. Minimum wages were guaranteed for prisoners who met the production quotas.

Prisoners became entitled to twelve working days paid holiday — some even were allowed to spend the holiday outside the camp. Time spent in prison could now count towards the calculation of pension rights. A very good list for anyone wanting to reform a totalitarian prison system

Russia joined the Council of Europe and ratified the European Convention on Human Rights. Altogether they have become rather European. They lose cases at the European Court like everyone else. They are into electronic monitoring like everyone else. They are moving away from camps with dormitories and building prisons with cells like everyone else.

I remember my first visit to a Japanese prison and walking through a workshop. They were all working away and not one prisoner raised his eyes to look at us nor even swivelled them round surreptitiously. Not one prisoner spoke to us or to anyone else. We discovered later that raising the eyes was not allowed and speaking was only allowed for one hour a day. The movement to

reform Japanese prisons has been energetic and got a big boost after a scandal in 2002. A prisoner had died after prison staff applied a high-pressure water hose to his rectum.

Then another prisoner was placed in a restraining device with handcuffs. The hands are cuffed to the waist in a belt and the belt was tightened to the point where his liver was damaged and he died. Following the scandal the Minister for Justice apologised to the Japanese people for what had happened. There were reforms including introducing independent monitoring boards for each prison on the English model.

Finally a word about Jamaica. St Catherine's district prison in Jamaica is a place of darkness. As you walk further into the cell block past the ancient British built

crumbling compartments called cells it gets darker and darker till you can see nothing, just hear and smell. The death row is at St Catherine's district prison. When I went there the prisoners awaiting execution had hung out a huge banner across the front of their block which read 'Greetings and thanks to the UK solicitors'. This was a reference to two heroic British solicitors who have devoted 20 years of their lives to getting Caribbean prisoners off death row, to ensuring fair trials and to limiting the death penalty's application.

Has Human Rights Law been Effective?

So what can we say about all this? It's all good. We are

optimistic. Things are getting better. Or do we conclude, as some Americans did at a conference on penal reform a couple of years ago, that whilst they had laboured away at fighting court cases to get prisoners their rights under the Constitution things were getting no better. For while they sought change, resisting the death penalty, getting private health care providers to prisons replaced because too many prisoners were dying at their hands, the prison population increased. It went up from just over half a million in 1987 to 2.3 million in 2008, from a rate of 354 per 100,000 Americans to 753 prisoners per 100,000. America now has five per cent of the world's population and 25 per cent of the world's prisoners. Statistics which should make us shudder:

- ❑ a white male imprisonment rate of 727 prisoners per 100,000 U.S. residents; and,
- ❑ a black male imprisonment rate of 4,777 prisoners per 100,000 U.S. residents. A ratio of around 7 to 1.

. . . Russia embarked on a huge prison reform programme led by the man who won the battle to open the doors of Butyrka to the foreigners. They changed many of the prison laws.

The American penal reformers said that while this was happening, they were looking the other way — reforming what went on inside the prison — but concluded that they got it wrong. I do not take that path. What I conclude is this. We inherited a human rights framework that changed fundamentally the way deprivation of liberty is seen, and to a considerable extent the way it is done. And that vital work must continue. But we now have another job to do as well and if we do the first without this second we shall have failed.

We must now face up to the injustice that has taken over many justice systems including our own. A justice system is the bedrock of a civilised society. It sets out the values and standards. It reinforces the norms. It should protect the weak and keep the power of the strong under check. It should allow people's sense of right and wrong to be vindicated without revenge or vindictiveness. When it is pervaded by injustice we have cause to worry.

Now we face new battles. What should we be concerned about today when we look at the prisons of the world? Perhaps we should be concerned not only about how prisons are but who is in them. Prisons have become the place for the unwanted people of our consuming society. Crime control is impacting substantially on people with problems that society has failed to deal with. Children from care are highly over-represented in prison: because the care system fails. Children who did not go to school are highly over-represented in prison: because the education system fails. Women who have been abused and ill-treated to the point of trying to kill themselves are over-represented in prison: because the mental health services fail. Here in the UK, we are choosing to punish many people whom life has already punished severely in other ways.

Let me end with a quotation from a letter written by a boy to his mother. The letter says:

I can't last much longer and I will end up trying to kill myself, and this time I will probably succeed. At least I will be with Nana and Grandad (that is, in heaven). If I could have the chance to be at home with my family I will never get into trouble again in my life. Anyway, I have got to go now because I am too upset to write.

This is an extract from the last letter that Adam Rickwood wrote to his mother. He was 14. He was 5ft 1in tall. He had severe emotional problems. He was admitted to hospital seven times after he had harmed

himself. He got into trouble. Eventually he appeared in court charged with 'wounding with intent' and was sent to a children's home to wait for the legal proceedings to take place. He settled well. His mother bought him a rabbit which he looked after. Then suddenly he was sent away, 150 miles from home to a Secure Training Centre. A Secure Training Centre is a prison-like place for teenagers as young as 12 run by a private security company. There are four of these and they are run, not by companies that specialise in child care but companies that are all-purpose service companies. They also transport cash, run private prisons for adults and own electricity meter reading businesses.

On the night of 9 August 2004 there was a bit of bother at the Secure Training Centre. Adam refused to go to his room when told to do so. Then, according to a press report, a 'First Response' team was called in, and four prison staff carried Adam, facedown, to his room. When Adam attempted to bite, one of them employed a controversial technique known as a 'nose distraction'. This involves placing brief upward pressure on the nose to cause severe pain. Adam's nose bled. He then flooded his room as a sort of protest. Between 11.45 and 12 that night he hanged himself with his shoelaces from a curtain rail.

There was an inquest. At the inquest it emerged that the use of force to restrain children with the addition of inflicting pain was being used to get the young people to obey orders. It appeared that this was against the rules laid down by the Government. According to the rules, force should only have been used to prevent harm or serious damage. The Government then changed the rules to allow the Secure Training Centres to restrain the young people with these pain-infliction methods. Eventually the Court of Appeal reversed that decision: it quashed the new Rules and said the way they were introduced was unreasonable and unlawful. What they permitted was in breach of Article 3 of the European Convention on Human Rights, which forbids inhuman and degrading treatment, and in breach of Article 8, respect for family life.

So in the end Adam got his rights. But, sadly, by then he was dead. Miss Rathbone would not have stopped there, nor should we. Thank you for inviting me and thank you for listening.

We are grateful to the Eleanor Rathbone Lecture Series organisers for kindly permitting this lecture to be published in the Prison Service Journal.

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