

# PRISONERS AS CITIZENS

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## Abstract

This article considers how the ideas of citizenship, and of the rights and responsibilities which go with it, might be applied to the treatment of prisoners and the management of prisons. Those ideas have different origins and can be applied in different ways and to serve different purposes. They have become politically prominent since the change of government in 1997, especially as a result of the incorporation into domestic law of the European Convention on Human Rights through the Human Rights Act 1998; of the Government's insistence that those rights are linked with responsibilities; of its programme to reduce social exclusion; and of its efforts to promote a sense of common identity among communities which are culturally and religiously diverse.

Within prisons, ideas of citizenship have received some recognition in programmes for resettlement and for work which benefits local communities. But prisoners are often still seen, politically and institutionally, as people who have for the most part forfeited their rights as citizens; and prisons are seen as institutions which are set apart from ordinary society. This article argues that a consistent attempt to treat prisoners as citizens rather than outcasts would not only carry into prisons the values which both the Government and the opposition political parties are seeking to promote in society as a whole, but would also enable the Prison and Probation Services more effectively to achieve the aims of resettlement and rehabilitation to which the Government is also committed. In the process, staff would gain in self-respect and the respect of others, and would find greater satisfaction in their work.

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## Introduction

Arguments that prisoners should be treated as citizens can be pursued from different directions and different perspectives. They can be founded on human rights and responsibilities, on the effective management of institutions, or on the reform and resettlement of prisoners. They 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 relationships both within prisons and between prisons and the outside world. The arguments also reflect some common values - that people may be in

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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 attempts to control their personal lives.

The subject has particular relevance for community justice. The approach suggested here has little in common with the "conservative" or "authoritarian" models which Brian Williams (2002), for example, discusses in his editorial for the first issue of this journal. But it does share many of the characteristics of the contrasting "democratic" model, and it applies many of the principles which he identifies as issues on which there seems to be common agreement. Other writers in the first issue (Kemshall and Maguire, 2002; Raikes, 2002) have drawn attention to the contrast between the "inclusive" and "exclusive" views which can be accommodated within the language of community justice, and the tension between them is likely to be a continuing feature of all criminal justice policy and practice.

The case for treating prisoners as citizens is also the subject of lively debate in Australia (Brown and Wilkie, forthcoming).

## **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 prison governors have various duties to provide facilities which might be seen as rights - correspondence, visits, access to confidential legal advice, medical attention, opportunities for complaint - but the Prison Service has a lot of discretion on the way in which they are provided in practice. There is no formal procedure, apart from the vigilance of the board of visitors, the Inspectorate and the Ombudsman, for making sure 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, have hardly been 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, where acts of humiliation - for example in reception, or at adjudications - which were commonplace a generation ago would no longer be tolerated today. It was also the result of a series of judgments in the domestic courts and the European Court of Justice. Chas Wilson describes the influence of the courts in his chapter in the Prisons Handbook (2002), where he lists those judgments which have been most significant. 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, to freedom from torture and degrading treatment, and to

freedom from slavery and forced labour. Although the Convention does not actually say so, the rights 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 all the rights established by the Convention apply to people as human beings, without discrimination and regardless of status, and they therefore apply 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 which results from a person's imprisonment must be justified, proportionate and legitimate.

Subjects on which challenges might occur under the Convention and the Human Rights Act include suicides and other deaths in prisons (under Article 1, the right to life); assaults on prisoners by other prisoners or members of staff, or on members of staff themselves (under Article 2, freedom from torture or degrading treatment, or Article 5, right to liberty and security of the person); adjudications (under Article 6, right to a fair trial or hearing); existing or prospective forms of discretionary release (under Article 5 or 6, but bearing in mind that victims also have rights under Article 5); and visits and correspondence (Article 8, respect for private and family life). More speculative subjects might be prison conditions more generally, for example if they can be judged as inhuman or degrading as a result of overcrowding or shortage of staff (under Article 2); private visits (under Article 8); access to the media (under Article 10, freedom of expression); and the ability of prisoners to form some kind of representative organisation (under Article 11, freedom of assembly and association). There is no sign at present that challenges in the courts are in the short term likely to bring about any dramatic changes in these matters, or in the nature of imprisonment more generally. But the possibility of such challenges should help to concentrate the mind of the Prison Service and help it to focus attention on subjects such as those which have been indicated. And perhaps more importantly and more effectively, the Convention and the Act should help the Prison Service to generate a stronger sense of mutual respect between prisoners and staff, and to reinforce changes in approaches and attitudes which are already taking place. Staff as well as prisoners would benefit.

A citizen is however more than a bearer of rights. Citizens also have 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, and also to hold those institutions to account. These are responsibilities from which prisoners are at present largely absolved - sometimes necessarily, but often not. (This paper does not attempt to discuss the position of prisoners who are not citizens of the United Kingdom, except to make the obvious point that citizenship in the sense in which it is used here means 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 nationality as such).

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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 (Straw, 1999). 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. Those responsibilities apply not only to individuals but also to organisations and institutions, including, importantly for prisoners, employers and providers of accommodation.

## Management of Institutions

Prisons must obviously serve 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 to reform offenders so that they will not commit further offences. All three aims, which are implicit in the formal aims, objectives and principles of the Prison Service, require that offenders should so far as possible be enabled successfully and effectively to exercise their rights and responsibilities as citizens. They imply that the principles of rights and responsibilities should shape the ordinary life of a prison no less than they should inform a person's treatment before they come into prison or after they are released.

There is no shortage of texts on what this notion of citizenship might or ought to involve. From a judicial perspective, the leading authority is probably Lord Wilberforce's judgment in *Raymond v Honey* (a case concerning prisoners' correspondence) where he ruled that "a prisoner retains all civil rights and obligations which are not taken away expressly or by necessary implication". Although that was a landmark judgment which seems at first sight to be of great significance, Tim Newell has pointed out (2000) that the "necessary implications" of imprisonment are inevitably a serious limitation. So too are the practical difficulties which prisoners or their supporters would find in relying on that judgment in initiating any legal proceedings. Also from a judicial perspective, Lord Woolf made "justice in prisons" one of the three main themes (the others being security and control) in his report on the disturbances in Strangeways and other prisons in April 1990 (Woolf, 1991); and the theme was continued in the Government's White Paper which followed (Home Office 1991). The actual outcomes which followed that theme were however quite limited, being concerned mainly with giving reasons for decisions and with procedures for grievances and offences against discipline.

From an academic perspective, Richard Sparks, Anthony Bottoms and Will Hay (1996) have explored the concept of "legitimacy" in prisons and in particular the conditions necessary to achieve it such as integrity, fairness, explanation for decisions, and consent. (Similar considerations apply to all public services which exercise authority over citizens on behalf of the state.) Alison Lieblich and David Price (2001) have explored similar

issues in relation to the work of prison officers, especially with regard to their role, culture, relationships, fairness, respect and use of power.

Among practitioners, Tim Newell (2000) has set out his ideas on sound relationships and professional and political responsibility, and he has directly linked them to the concept of community justice. He is now working on the ideas of restorative and community justice, and applying them to the management of prisons and to relationships within them, in conjunction with the Thames Valley Partnership and the International Centre for Prison Studies Project. The International Centre's work at Albert Park in Middlesbrough, carried out as part of its Restorative Prison Project in conjunction with three prisons, Middlesbrough Council, the Northern Rock Foundation, the Inside Out Trust and the Probation Service, is an important example of how prisoners can still be active citizens (International Centre for Prison Studies, 2002). Stephen Pryor (2001) has written on the subject of prisoners' responsibilities and the means of recognising them in practice; he explores questions of personal autonomy and choice, the nature of punishment, attitudes to risk and to authority, prisoners' relationships with their families, and racial and cultural diversity. The Director General, Martin Narey (2002), regularly emphasises the importance of "decency" throughout the Prison Service.

Among voluntary organisations, the Prison Reform Trust has examined the ways in which prisons try, not always successfully, to give prisoners the opportunity to be active citizens, through socially useful work within or outside their establishments (Farrant and Levenson, 2002). The Howard League for Penal Reform has published a series of papers, based on the League's own research, on Citizenship and Crime, Human Rights and Penal Issues, Children in Prison and Children's Education in Prison (all available from the Howard League).

Several indicators can be found of the extent to which prison institutions, and society more generally, treat prisoners as citizens. One is the degree to which prisoners are able to make choices for the way in which they spend their time in prison, and the means by which they are able to maintain contact with their families and accept responsibility towards them. Another is their ability to retain their personal identity, and to express it (for example) through the possessions they are allowed to keep and the clothes they are allowed to wear. A third is the ways in which prisoners and staff talk to each other, their use of names and tones of voice, and the respect (or lack of it) which they show to one another in the course of ordinary day-to-day contact. Other indicators could include the extent to which disputes can be resolved by restorative procedures rather than traditional, adversarial form of discipline; or to which prisoners are allowed to have some stake in the institution in which they are detained, for example through some form of consultative process.

Two illustrative examples have special symbolic significance. One 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, together with the corresponding responsibility of the state, in

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practice through social services, to provide that protection and care. These are statutory rights and duties under the Children Act 1989, and in international law they are also rights under the United Nations Convention on the Rights of the Child. The Prison Service tries to observe the spirit of the Act, and the Youth Justice Board in its commissioning capacity for secure accommodation for children presses it to do so, but the Service still regards the Act itself as not applying to children held in its own establishments or in secure training centres. The protection of the Act is therefore not available to them. As a result, staff are in an ambiguous situation where they have to reconcile the conflicting expectations and demands of individual care and institutional order, and are themselves divided in their professional attitudes and outlook.

Children's organisations such as the Children's Society and the National Children's Home, together with the Howard League for Penal Reform, have for a long time argued that this situation is unsatisfactory. Their main, long term, objective is to end the imprisonment of children altogether, but in the meantime they have called for the Children Act to be applied to the Prison Service and for the United Nations Convention and other international standards, treaties and rules on imprisoning children to be implemented in full (Goldson and Peters, 2002). The Howard League is seeking a judgment in the courts to the effect that the Children Act applies to prisons as it does to any other residential setting where children are accommodated.

The other example is a prisoner's right to vote in national elections. This is both a right and responsibility of citizenship, which the Government increasingly emphasises for both national and local elections; 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" (Bassam, 1999). Great Britain is in a minority among European countries in not allowing prisoners to vote, and Prison Service managers have been reported as being in favour and seeing no practical difficulty (Prison Reform Trust, 2001).

Most of the aspects of citizenship mentioned so far can in theory be developed in prisons without legislation (the last two are exceptions), and mostly without new material resources. Some of the relevant practices are quite well established, at least in principle, in existing regimes at individual establishments. But their development has been 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, where competing demands are imposed through sometimes inconsistent performance indicators; and where the culture is one of blame and the avoidance of risk.

There are of course corresponding issues for staff. They include the quality of the relationship between staff and management, the kinds of professional practice which are or are not respected and rewarded, questions of recruitment and training, and even the style of and need for staff uniform. The "soft" uniform which on the initiative of the Youth Justice Board can now be worn in establishments for juveniles is an interesting

example. It is essentially an informal tracksuit, with the officer's name displayed on it, in contrast to the traditional "hard" and more military style uniform.

The role of boards of visitors could also be transformed. The recent review of boards of visitors (Lloyd, 2001) has already recommended that they should establish links with the external providers of key services inside the prison, and report to the community rather than the Secretary of State. But boards could have a more dynamic role as representatives of the institution's stakeholders and its local communities, and with functions relating for example to the appointment of staff and the disposal of the budget, on the model of boards of governors for schools.

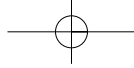
### **Reform and Resettlement of Prisoners**

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 in employment and housing, but also insurance, financial services and compensation for a criminal injury.

The first aspect came to the fore with the publication of the Social Exclusion Unit's report on the resettlement of prisoners.<sup>1</sup> The report focused on the extremes of deprivation from which most prisoners already suffer when they are sentenced, and the extent to which their situation is made even worse by the fact of their imprisonment. Information assembled by Nacro and presented to a conference on resettlement on 24 April 2002 showed that more than two-thirds of prisoners are unemployed before they go to prison, and a third of those with jobs then lose them. A third of prisoners have no permanent accommodation before their sentence, and another third lose their homes. Former prisoners with jobs are a third to a half less likely to re-offend; those without homes are between one and a half and twice as likely to re-offend.

There are good instrumental reasons for correcting that situation, in the sense that the public will be protected because prisoners will be less likely to re-offend. But there is also an argument of social justice that the effect of imprisonment should not be to degrade a person's status as a citizen in respect of such critical issues as employment and housing. It was anticipated that the Social Exclusion Unit's report would recommend organisational changes in which dedicated staff will take on an explicit responsibility for managing prisoners' resettlement within an effective framework of accountability. But staff, however competent, willing and accountable they may be, will only succeed if society as a whole and the communities within it - including employers and providers of accommodation - are themselves prepared to accept their own responsibility towards their own members as citizens.





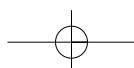
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The second aspect arises from the simultaneous review of the Rehabilitation of Offenders Act 1974, the prospective introduction later this year of "basic disclosure", and the potential conflict between them. The hope for the review is that it will extend rather than restrict the protection of the Act by reducing the periods within which convictions can become "spent", or otherwise extending the circumstances in which offences are not subject to disclosure (information about the review is available on the Home Office website [www.homeoffice.gov.uk/roareview](http://www.homeoffice.gov.uk/roareview)). Basic disclosure will however enable employers to require prospective employees to supply a certificate showing any significant and "unspent" criminal convictions. The effect may be to expose former offenders to more enquiries about their records and therefore to a greater risk of being rejected. Nacro's information is that employers will reject applicants for half their available vacancies if the applicants have criminal records, and for 90 per cent of jobs if the conviction is for a serious offence. Speaking at the conference already mentioned, the Chief Executive of Nacro called for the implementation of basic disclosure to be delayed until legislation to extend the Rehabilitation of Offenders Act is in force.

## **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. It has important implications for the location and design of prison buildings. It challenges the Prison Service, and the Youth Justice Board where it has responsibility, to manage their 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 of its institutions themselves.

Above all, an approach of the kind considered in this article 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 often 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 will demand, but may also result in, a much stronger determination, on the part of government and the courts, to keep the prison population within the capacity of the prison system. It may also demand a more radical review of the structure and accountability of the Prison Service than any which has so far been attempted. But the rewards for society, for the Prison Service and for the government which has the courage to attempt it, might be greater than has so far been imagined.





## End Notes

I Paul Senior will comment on some of the issues addressed in a Review Article on Resettlement in the next issue of the journal.

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