The treatment of prisoners: International standards and case law

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Objective. In some countries questions are asked about the extent to which human rights should be applied to those who have been detained in prison, particularly if they have been convicted of a criminal offence. However, the international human rights treaties and instruments are quite clear that detained persons are entitled to all human rights that are not expressly removed by the fact of their detention.

Method. This article describes in detail what these standards are and how they apply to imprisonment. It also considers how these issues have been interpreted judicially by the European Court of Human Rights and the lessons to be learned from its increasing body of case law.

Conclusion. All those who are involved in the management of prisons or who deal in any way with prisoners must always bear in mind ‘the inherent dignity of the human person’. This obligation applies particularly to psychologists and others who develop programmes and other activities aimed at influencing the future behaviour of prisoners.

The sentence of imprisonment

In the majority of countries in the world, that is to say those which do not inflict capital or corporal punishments on those who have been convicted of breaking the law, imprisonment is the most serious form of punishment which can be imposed on an offender by a court or other judicial process. This is an important starting-point for any discussion about prison and its purposes. Imprisonment is in essence a punishment which consists of deprivation of liberty and punishment of this severity should be reserved for those who have committed very serious crimes.

In England and Wales the Criminal Justice Act 2003 lists the purposes of sentencing as follows:

Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing:

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(a) the punishment of offenders;
(b) the reduction of crime (including its reduction by deterrence);
(c) the reform and rehabilitation of offenders;
(d) the protection of the public; and
(e) the making of reparation by offenders to persons affected by their offences (Criminal Justice Act, 2003).

However, when it comes to the imposition of a sentence of imprisonment, the same statute, in Section 152, is much more prescriptive:

The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.

This leaves little room to doubt that in passing a sentence of imprisonment the judge is required to focus primarily on the degree of wrong that has been done. In the words of the philosopher Immanuel Kant:

Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime (Kant, 1797, p. 138).

The experience of imprisonment

The imposition of a prison sentence is a negative act, but that is not to say that the subsequent experience of imprisonment for an individual should be entirely negative. On the contrary, in the words of Alexander Paterson, a famous English prison Commissioner in the early part of the 20th century:

It must, however, be clear from the outset to all concerned that it is the sentence of imprisonment, and not the treatment accorded in prison, that constitutes the punishment. Men come to prison as a punishment, not for punishment (Ruck, 1951, p. 23).

A UK House of Lords judgment in 1982, often referred to as the Wilberforce judgment, confirmed that the punishment involved in imprisonment is not absolute but is restricted in its nature:

Under English law a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication (Raymond v. Honey, 1983).

This is all very well as a principle but there is room for a great deal of interpretation about which civil rights are 'expressly or by necessary implication' taken away by the fact of imprisonment. The coercive nature of the prison environment means that the punitive element of imprisonment extends into many features of daily life in prison. Prisoners do not have freedom to circulate at will. In most circumstances they are told what they must do and where they must be at every moment of the day. Their personal possessions are limited. They and their cells are subject to regular inspection and search. They are told how much money they may have and what they may spend it on. Their opportunities for activities such as work and education are restricted. Looking beyond the prison walls, their relationships with their families are fundamentally changed and severely limited.

Courts began to make more general use of imprisonment as a direct sentence in the late 18th and early 19th centuries. At that time offenders were sent to prison solely as a punishment. Conditions in many prisons were appalling. Prisoners frequently had to
pay for their own food, for bedding, and even to be released at the end of their sentences. As a result of the efforts of a number of penal reformers, particularly in the UK and in North America, prison conditions gradually began to improve. One feature of this improvement was the recruitment of a number of staff who were not satisfied to be mere jailers but who wished also to contribute in some way to the personal reform of the prisoners. Some of these staff were inspired by religious principles, with chaplains often taking the lead in rehabilitative work. Initially much of this effort was focused on the need to find work, accommodation and support for prisoners when they were released. As the 20th century progressed, the reform initiatives inside the prison expanded with the introduction of teachers, social workers, and psychologists. These new staff worked with prisoners either individually or in groups with the objective of encouraging them to change their behaviour and their attitude to life. In England and Wales this objective is enshrined in the first substantive Prison rule:

The purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life (Prison Rules, 1999, Rule 3).

Over the years this work has been given increasing emphasis and in a number of jurisdictions the manner in which individuals react to it is now taken into consideration when making decisions about conditional early release and parole. This raises a whole raft of issues about whether one can ever, in the words of the aphorism attributed to Sir Alexander Paterson, train a person for freedom in conditions of captivity and whether one should be at all surprised that so many people commit further offences relatively soon after being released. However, that is not the main interest in this paper.

Principles concerning to imprisonment

This article seeks to provide some objective understanding of, firstly, which civil rights are taken away ‘expressly or by necessary implication’ from prisoners and, secondly, what limits are to be placed on prison authorities in their worthy ambition of training and treating prisoners. In virtually, all jurisdictions which have prisons there will be some form of legislation which limits both the use of imprisonment and its nature. This may take the form of a penal execution code and a penal procedure code or else of a Prison Act and accompanying regulations for the management of prisons. These forms of domestic legislation are important in their own right but in many instances they deal with matters of process rather than of principle. It would also be a very complicated exercise to extrapolate general principles from hundreds of pieces of national legislation. Fortunately, the international community has agreed a set of principles and standards which can be used as a reference point for every country.

International standards

Many of these principles and standards have been agreed by the member states of the UN. The first of these is the Universal Declaration of Human Rights (UDHR), which was adopted by the General Assembly of the UN in December 1948. The UDHR is not a legally binding instrument but its provisions are held to constitute general principles of law or to represent elementary considerations of humanity. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were adopted by the General Assembly in 1966 and came into force in
1976. They have the legal force of treaties for the member states which have signed and ratified them. Article 10 of the Covenant requires that:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Other UN conventions which are relevant to the treatment of people deprived of their liberty include the Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984), the Convention on the Elimination of All Forms of Racial Discrimination (1966), and the Convention on the Elimination of All Forms of Discrimination against Women (1979). These conventions are not theoretical or academic treatises. They comprise a body of international law which must be respected by the community of nations and they have direct relevance to the management of prisons.

The general principles which are contained in these covenants and conventions are covered in more detail in a number of international instruments which refer specifically to prisoners. These include the UN Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Basic Principles for the Treatment of Prisoners (1990), and the Standard Minimum Rules for the Administration of Juvenile Justice (1985). There are also a number of UN instruments which refer specifically to staff working with people who have been deprived of their liberty. They include the Code of Conduct for Law Enforcement Officials (1979), the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment (1982), and the Basic Principles on the Use of Force and Firearms (1990). All of these documents are crucial to any understanding of the principles which should apply to the practice of imprisonment.

Regional standards
These international standards are supplemented by a number of regional human rights instruments. In Europe these are the Convention for the Protection of Human Rights and Fundamental Freedoms (1953), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989). The American Convention on Human Rights entered into force in 1978, while the African Charter on Human and Peoples’ Rights came into force in 1986.

Regional judicial bodies are a useful reference point for measuring the extent to which individual states implement international standards. In the Americas this role is fulfilled by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, while in Europe a similar role is carried out by the European Court of Human Rights (ECHR). The remainder of this article will consider how the ECHR has interpreted international standards in its case law. All the case law referred to below can be accessed on the Court’s HUDOC database (Council of Europe).

Torture
The international human rights instruments do not leave room for any doubt or uncertainty in respect of torture. They state clearly that there are absolutely no circumstances in which torture can ever be justified. The closed and isolated nature of prisons can offer the opportunity for abusive actions to be committed with impunity,
sometimes in an organized manner and at other times because of the actions of individual members of staff.

The prohibition against torture is particularly important in relation to places where those undergoing interrogation or investigation are detained. This is a matter which has become of increasing importance in recent years as a number of states have sought to justify the use of torture against suspects whom they consider to be a threat to international safety and security. The actions of agents of the USA in places such as Abu Ghraib and Guantanamo have breached international standards and, sadly, have been used by other states as justifications for torture.

 Standards and definitions

Universal Declaration of Human Rights, Article 5
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.1
...the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in, or incidental to lawful sanctions.

European Convention on Human Rights, Article 3
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

 Jurisprudence of ECtHR

The case of Chitayev and Chitayev v. Russia (59334/00). The Court found that the suffering to which these two applicants were subjected while in detention was particularly serious and cruel and amounted to torture, in violation of Article 3 of the of the European Convention on Human Rights (ECHR).

 Cruel, inhuman and degrading treatment

Prisons are by definition coercive institutions. That is because one group of people, the staff, are responsible for detaining another group of people, the prisoners, against their will. If the gates of the prison were opened, most if not all prisoners would leave. The primary task of prison staff is to implement the punishment of the court which is that prisoners should be detained for the duration of their sentence. In most jurisdictions the majority of prison staff are likely to carry out their duties in a positive manner and will try to treat prisoners decently and humanely. However, even in the best managed prisons, there will always exist a danger that the power which the staff have over prisoners may on occasion tip over into an abuse of power.

There is an added danger that in institutions where the punitive nature of imprisonment is given priority, actions which amount to cruel, inhuman, or degrading treatment can come to be regarded by staff as acceptable behaviour. This is more likely to happen when prisoners are stripped of their humanity and treated as passive objects.
Standards

International Covenant on Civil and Political Rights, Article 10
All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

European Prison Rules, Rule 4
Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

Jurisprudence of ECtHR
The Court has found a wide range of violations of Article 3 of the Convention in respect of inhuman and degrading treatment of prisoners in a broad cross-section of member states. Many of these relate to conditions of detention. Several of these concern countries in Central and Eastern Europe, such as Kalashnikov v. Russia (47095/99), Khudoyorov v. Russia (6847/02), Karalevicius v. Lithuania (53254/99), and Cenbauer v. Croatia (73786/01). Western European member states have also been found guilty by the court of breaching Article 3. Cases include Peers v. Greece (28524/95), Labita v. Italy (26772/95), and Mathew v. Netherlands (24919/03).

There have been two notorious cases in respect of the UK. One is Price v. UK (33394/96), in which the court was particularly critical of the treatment of a severely handicapped woman in prison. The other is Paul and Audrey Edwards v. the UK (46477/99), a case in which a prisoner was beaten to death by his cell mate.

Health care
All human beings have a right ‘to the enjoyment of the highest attainable standard of physical and mental health’ (International Covenant on Economic, Social, and Cultural Rights, Article 12). Prisoners are not excluded from this right. In addition, when a state deprives people of their liberty it takes on a responsibility to look after their health in respect both of the conditions under which they are detained and of the individual treatment which may be necessary as a result of those conditions.

Standards

Basic Principles for the Treatment of Prisoners, Principle 4
The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State’s other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

Basic Principles for the Treatment of Prisoners, Principle 9
Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

Jurisprudence of ECtHR
The court has found violations of Article 3 of the ECHR in respect of a number of health care issues. These include Keenan v. UK (27229/95), Mouisel v. France (67265/01), McGlinchey and others v. UK, and Hénaf v. France (55524/00).

Operating secure, safe, and orderly prisons
In all prisons there has to be a balance between security, control, and justice. Treating prisoners with humanity and fairness is likely to enhance security and good order and
the objective of preventing escapes and ensuring control can best be achieved within a well-ordered environment:

- which is safe for prisoners and staff;
- in which all members of the prison community perceive they are being treated with fairness and justice; and
- in which prisoners have the opportunity to participate in constructive activities and to prepare themselves for release.

All well-ordered communities, including prisons, need to operate within a set of rules and regulations that are perceived by the members of the community to be fair and just. In prisons these regulations will be designed to ensure the safety of each individual, both staff and prisoner, and each group has a responsibility to observe those rules and regulations. Prisons need to have a clearly defined system of hearings, discipline and sanctions for those who deviate from the agreed rules which is applied in a just and impartial manner.

The majority of prisoners accept the reality of their situation and provided they are subject to appropriate security measures and fair treatment they will not try to escape or seriously disrupt the normal routine of the prison. However, a small number may well do everything in their power to try to escape. If they were to escape, some prisoners would be a danger to the community; others would not be a threat to the public. All of this means that the prison authorities should be able to assess the danger posed by each individual prisoner in order to make sure that each one is subject to the appropriate conditions of security, neither too high nor too low.

Only in extreme circumstances, when there is a complete breakdown in order and all other interventions have failed, either individually or collectively, can use of force be justified as a legitimate method of restoring order.

Standards

- **European Convention on Human Rights, Article 13**
  Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

- **UN Standard Minimum Rules, Rule 58**
  The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

**Jurisprudence of E CtHR**

In the case of Van der Ven v. The Netherlands (50901/99), the court found a violation of Article 3 of the ECHR because of the frequency and mode of body searches to which the applicant was subjected. In Messina v. Italy (25498/94) the court found that there had been a violation of Article 13 on the grounds that the applicant had no effective remedy against placing in restrictive regime. In Frerot v. France (70204/01), there was a violation of Article 3 on the grounds that the applicant had been subjected to a full body search including systematic visual inspection of the anus after each prison visit during a period of 2 years.

**Disciplinary procedures and punishments**

It is important to acknowledge that the rule of law does not end at the prison gate. For example, a person who is assaulted in prison is just as entitled to the protection of
the criminal law as is someone who is assaulted in a public place. It should be normal practice in any prison when a serious criminal act has or is thought to have taken place that a system of investigation similar to that which is used in civil society should operate.

By their nature, prisons are closed institutions in which large groups of people are held against their will in confined conditions. From time to time, it is inevitable that some prisoners will break the rules and regulations of the prison in any one of a variety of ways. There has to be a clear set of procedures for dealing with such incidents.

Standards

UN Standard Minimum Rules for the Treatment of Prisoners, Rule 30
(1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.
(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

UN Standard Minimum Rules for the Treatment of Prisoners, Rule 31
Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

UN Standard Minimum Rules for the Treatment of Prisoners, Rule 33
Instruments of restraint, such as handcuffs, chains, irons and strait jackets, shall never be applied as a punishment.

Jurisprudence of ECtHR

Article 6 of the ECHR deals with the right to a fair trial and the minimum rights connected with this. In the case of Ezeh and Connors vs. the UK (39665/98 and 40086/98) the ECtHR found that procedures in the UK which enabled prison governors to add days to a prisoner’s sentence for breaches of discipline was a violation of Article 6, as was refusal of the right to be legally represented in proceedings before the prison governor.

Constructive activities and resettlement

It is not sufficient for prison authorities merely to treat prisoners with humanity and decency. They must also provide the prisoners in their care with opportunities to change and develop. This requires considerable skill and commitment. Most prisons are filled with people from the margins of society. Many of them come from extreme poverty, and disrupted families; a high proportion will have been unemployed; levels of education are likely to be low; some will have lived on the streets and will have no legitimate social network. Changing the prospects in life of people with such disadvantages is no easy task.

Prisons should be places where there is a full programme of constructive activities which will help prisoners to improve their situation. This programme should include education, work, and personal skills training.

Standards

International Covenant on Civil and Political Rights, Article 10 (3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.
UN Standard Minimum Rules for the Treatment of Prisoners 65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead
law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

Case law in England and Wales

The Criminal Justice Act 2003 introduced a sentence of imprisonment for public protection. This was a sentence of imprisonment for an indeterminate period, subject to the provisions of the relevant legislation affecting conditional release on parole. This led quickly to a significant increase in the number of offenders being sentenced to indeterminate sentences, many of them with a short punitive tariff. This had two immediate consequences. The first was that the prison service could not offer many of these prisoners the courses or programmes which would allow the Parole Board to consider them for release once their tariff had expired. The second was that the Parole Board could not cope with the increased volume of cases which they had to consider.

When asked to consider this matter the High Court found that continued detention once the tariff period had expired where the offender had not been permitted access to the courses needed to satisfy the Parole Board that he no longer posed an unacceptable risk to the public amounted to unlawful detention. (Wells v. Parole Board and SSJ, 2007; Walker v. SSHD, 2007)

Contact with the outside world

One of the most important rights that prisoners retain is that of contact with their families. As well as being a right for the prisoner, it is equally a right for the family members who are not in prison. They retain the right of contact with their father or mother, son or daughter, brother or sister who has been sent to prison. Prison administrations have a responsibility to ensure that these relationships can be maintained and developed. Provision for all levels of communications with immediate family members should be based on this principle. One implication of this is that the loss or restriction of family visits should not be used as a punishment under any circumstances. Ensuring the best possible access to family must be part of a system that treats prisoners with humanity.

This means that careful consideration needs to be given to locating prisoners close to their homes, providing opportunities for home leave, and providing arrangements for family visits in the prison which allow for as much privacy and sensitivity as possible. Specific consideration regarding these matters should be given to the needs of women and juvenile prisoners. Forms of contact other than family visits are also important. Prisoners should be able to send and receive correspondence as freely as possible and where feasible to make and to receive telephone calls.

Standards

*Universal Declaration of Human Rights, Article 12*

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence. . .

*International Covenant on Civil and Political Rights, Article 23*

The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
European Convention on Human Rights, Article 8

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Jurisprudence of ECtHR

The court has found breaches of Article 8 in several cases, including Boyle and Rice v. The UK (9659/82 and 9658/82), in respect of correspondence, and Lavents v. Latvia (58442/00), Nowicka v. Poland (30218/96), and Messina v. Italy (25498/94) in respect of visits by family members.

Special categories of prisoner

The standards described above apply to all prisoners. There are also a number of specific standards which apply to special categories of prisoner, such as those awaiting trial, women, young prisoners and juveniles. These need to be taken into account when dealing with prisoners in these categories.

Pre-trial prisoners

The most important principle in the management of pre-trial prisoners is the fact that they must always be presumed to be innocent. Unlike convicted prisoners they are not being held in prison as a punishment. Prison administrations must ensure that their unconvicted status is reflected in their treatment and management.

Universal Declaration of Human Rights, Article 11

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

The ECtHR has delivered a wide range of judgments in connection with pre-trial prisoners dealing with matters such as the length of detention, prison conditions and presumption of innocence.

Women prisoners

The proportion of women in prison in any prison system throughout the world varies between 2% and 8%. One consequence of this small proportion is that prisons and prison systems tend to be organized on the basis of the needs and requirements of the male prisoners. This applies to architecture, to security, and to all other facilities. Any special provision for women prisoners is usually something which is added on to the normal male provision. This can result in significant discrimination against women prisoners.

Convention on the Elimination of All Forms of Discrimination Against Women, Article 2

States Parties condemn the discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.
Juvenile prisoners

In some countries no one who is under the age of 18 years is detained in prison service custody. This arrangement is to be encouraged. Where such young people need to be detained, they should be held in the custody of a welfare agency rather than one which is part of the criminal justice system.

If a young person does have to be kept in prison special arrangements should be made to ensure that the coercive elements of prison life are kept to a minimum and that maximum use is made of the possibilities for training and personal development. A special effort needs to be made to help the young person to maintain and to develop family relationships.

Convention on the Rights of the Child, Article 1

. . . a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Conclusion

We are now in a position to return to the issues which we raised at the beginning of this paper, where we argued that the essence of imprisonment is deprivation of liberty and that the only rights forfeited by prisoners are those that are ‘taken away expressly or by necessary implication’ by the fact of this deprivation of liberty. That left us with the question as to what was implied in the Wilberforce judgment. Our analysis of some of the relevant judgements of the ECtHR has provided us with a relatively comprehensive answer to this query. We are left with a clear understanding of what is prohibited in terms of torture and inhuman or degrading treatment. These are not terms which are usually associated with imprisonment in developed countries but the jurisprudence makes clear that there is no room for complacency, particularly in the conditions which apply when prison overcrowding reaches the levels which it has done in a number of countries. Domestic courts have reached judgements similar to the Strasbourg court with far reaching implications, as demonstrated by the Napier case in Scotland (Robert Napier against The Scottish Ministers, 2004). A study of the case law shows what prisoners are entitled to in respect of access to health care, where there is an obligation to regard them as patients and not only as prisoners. The UK does not have an enviable record on this matter.

One of the challenges facing all prison administrations is to find the right balance between the legitimate demands of security and good order and the need to provide prisoners with opportunities to reform themselves and to prepare for reintegration into the community after release. In many countries the political attitude towards offenders has hardened in recent years. Coupled with an increasing sense of public insecurity, this has placed greater demands on prisons to increase security and to impose restricted regimes on prisoners. It is now estimated, for example, that in the United States around 2% of all prisoners are held in the conditions of the highest security, colloquially described as ‘supermax’ (Federal Bureau of Prisons, 2008; Mears, 2006). Prison administrations should restrict the use of very high security to those prisoners who have been assessed individually as requiring it and should keep each case under regular review.

While the essence of imprisonment is deprivation of liberty, we have also suggested that there is an onus on prison administrations to provide prisoners with the opportunity to use their time in prison constructively and to prepare themselves to live
in a law-abiding manner after release. There are at least two major issues to bear in mind when considering these matters. The first is the positive obligation on the prison authorities to provide a constructive regime for prisoners. In many countries this is an objective which is not achieved, for a variety of reasons, with prisoners spending extensive periods each day simply confined to their cells.

The second issue is an important one, especially for readers of this journal. Over the last 30 or so years there has been an increasing tendency, often inspired by psychologists, to involve prisoners in a variety of programmes aimed at influencing their behaviour and changing this for the better, particularly in regard to aspects of their lifestyle that might contribute to what is now called in some jurisdictions ‘reducing re-offending’. This is not the place nor is there space to enter any discussion about the extent to which such programmes can achieve the objectives which are set for them, but what the arguments in this article have demonstrated is that those who work with prisoners must be very cautious about moving beyond the boundaries of imprisonment set by the court. There are serious questions of justice to be asked about relating the length of time a person spends in prison to the degree to which he or she cooperates with or is involved in such activities, in respect of parole or any other form of conditional release. The cases of Wells and Walker referred to above are salutary reminders of that fact.

All those who work in prisons or who have any responsibility for those who are held in them need constantly to remind themselves of the humanity and the individuality of those who are in their care. Respecting ‘the inherent dignity of the human person’ strengthens rather than weakens the implementation of good prison management. It is also more likely to improve public protection. It may even reduce the all too frequent possibility that someone who has experienced a prison sentence is more likely than not to do so again in the future.

References


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