

Chris Cunneen*

***PRISONERS AS CITIZENS.
HUMAN RIGHTS IN AUSTRALIAN PRISONS***

**Edited by David Brown and Meredith Wilkie
Federation Press, Leichhardt, 2002
ISBN 1 86287 424 7
368 pp**

At a time when the use of imprisonment has been steadily increasing in most jurisdictions in Australia, *Prisoners as Citizens* makes an important contribution to the reconsideration of prisoners as human subjects possessing certain rights. As the editors note in the Introduction to this volume, the politics of prison reform and, consequently, prisoners as political subjects has progressively faded from sight since around the mid 1980s.

Thus, a concomitant feature of the renewed emphasis on imprisonment over the last two decades has been a parallel shift away from the politics of penal reform. As prison has become ever more popular as a political solution to crime, the idea that prisoners have rights or that the prison system itself is in need of reform to ensure that those rights are respected has become largely irrelevant among the political debates around sentencing and punishment. In the current climate, reform of the prison system usually means greater efficiency in the techniques and management of surveillance and containment. Prisoners in this environment become mere objects to be ever more effectively assessed and governed.

Prisoners as Citizens provides a welcome reflection by academics, prisoner activists, people working with prisoners and prisoners themselves on the issue of rights. Prisoner voices punctuate the book through the inclusion of extracts from prisoner responses to a Human Rights and Equal Opportunity Commission call for submissions on issues of concern to prisoners, including health care, segregation and voting rights. Most of the contributions to the collection are not so much concerned with philosophical debates over the nature of rights, but rather with the more basic claim to rights as a guarantee of minimum standards of treatment.

The book is comprised of 17 chapters divided into three separate parts, and it is perhaps helpful in understanding the breadth of issues covered to consider each of these parts in turn. Part One, 'Prisons and Prisoners', provides an overview of changes in imprisonment in Australia, as well as consideration of particular groups

* Institute of Criminology, University of Sydney

of prisoners including Indigenous prisoners, women, people with an intellectual disability, and prisoners from a non-English speaking background. The overview chapter by Hogg draws on the Productivity Commission's *Report on Government Services* for a range of data relevant to prison conditions. While much of this data needs to be treated with circumspection, it does point to problems associated with prison overcrowding and the very high prevalence of prisoner assaults. There are common themes in the four chapters by Kelly, Kilroy and Warner, Green and Bird. Prison shuts people off from their roles, supports and broader culture which give meaning to their existence outside of the definitions of offender and prisoner. For example, Indigenous people are isolated from community and family, women are cut off from their roles and expectations as mothers and daughters, and institutionalised racism prevents ethnic and religious minority groups from participating meaningfully in their culture or religion. If we accept that family, community and cultural links will be important in breaking cycles of criminal activity, then prison itself is indeed an isolating and criminogenic experience for many people. Furthermore, the very category of 'offender' has become a meaningless opposite to 'victim'. The vast majority of women in prison have been sexually and/or physically assaulted prior to imprisonment. For people with an intellectual disability, the prison system provides an environment of exploitation, including sexual and physical assault and the loss of property.

Part Two, 'Regulating Prisons and Prisoner's Rights', has chapters dealing with the history of prisoners' rights in Australia (Finanne and Woodyatt), the media and prisoners (Lumby), prison management perspectives on rights (Dawes), private prisons and the protection of rights (Rynne) and a discussion on European approaches to prisoners' rights (Stern). Finanne and Woodyatt demonstrate that the assertion of rights by prisoners varied over the last two centuries from an early period of relatively active advocacy by prisoners of their rights, to the period of welfare penalty when rights were supplanted by a view of administrative regulation, and now to the more recent period of rights advocacy and the use of international human rights standards. Dawes, who was a former head of Corrective Services in South Australia, highlights some of the institutional constraints which limit the recognition of prisoner rights. Foremost among these, he identifies the new punitiveness which has become reflected in various policy changes and gives rise to overcrowding, and which in turn makes respect for prisoners' rights harder to achieve in practice. Rynne discusses private prisons and the monitoring and complaint handling mechanisms which have been put in place. According to Rynne, standards for defining performance expectations of prisons have greatly improved since the rise in private prisons. Performance expectations often include references to United Nations standards and conventions. However, he concludes that in both the private and public systems, it is the thoroughness of audit and monitoring systems which are likely to ensure that basic human rights are respected.

Chapters 10 (Stern) and 11 (Giffard) deal with international mechanisms for ensuring the human rights of prisoners. Stern analyses the monitoring of prisoners' rights in Europe and in particular the role of the European Committee on the Prevention of Torture. Of particular interest has been the recent move by the Committee to elicit principles for the proper treatment of prisoners based on their 10 years experience of seeing various forms of cruel, inhuman and degrading treatment in many European prisons, from Italy to the United Kingdom. Giffard reviews the international standards applicable to prisoners' treatment and the international complaint handling mechanisms. In particular, she is concerned with the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman and Degrading Forms of Treatment.

Part Three, 'Citizenship and Rights', provides a number of chapters which deal with specific rights for prisoners in the Australian context. Robinson discusses the use of segregation for prison disciplinary offences and the minimum conditions which need to be met in relation to segregation. Robinson notes that

[i]nadequate conditions in isolation cells in some facilities, excessive and arbitrary use of segregation in reported cases, the link between segregation practices and self-harm and the prima facie evidence of racial discrimination in the implementation of segregation all highlight the need for greater accountability in this area.¹

Garkawe analyses the intersection between prisoners' and victims' rights. He notes that over the last several decades there has been a greater entrenchment of the role of victims in the criminal justice system and this role directly impacts on offenders. Depending on the jurisdiction, victims have input ('rights?') into various stages of decision-making within the criminal justice system including bail hearings, sentencing decisions, the classification of prisoners, pre- and post-sentencing restorative justice programs and the opportunity to influence parole hearings. It is the later process of parole with which Garkawe is most concerned in the book. He argues that, 'providing care is taken in introducing victim's rights, the potential benefits outweigh any dangers for prisoners'.² This is obviously a highly contentious issue. Although it is often stated that respect for prisoners' rights does not mean a diminishment of victims' rights, it is clear that an increased role for victims in the criminal justice system can have a direct impact on the length of confinement and the conditions under which confinement is experienced.

Ridley-Smith and Redman examine the voting rights of prisoners in Australia. These rights vary substantially between State, Territory and Commonwealth jurisdictions.

¹ D Robinson, in D Brown and M Wilkie (eds), *Prisoners as Citizens. Human Rights in Australian Prisons* (2002) 236.

² S Garkawe; *ibid* 258.

For example, there are no disqualifications in South Australia while in Tasmania all persons in prison for any conviction at the time of a Tasmanian election are disqualified.

As Ridley-Smith and Redman note,

[t]he denial of one of the fundamental incidents of citizenship — the right to vote — thus serves not only to deny the prisoner tangible civil and political rights of citizenship but also the more symbolic social rights of a sense of membership in the community.³

In the final chapter of the collection, Brown picks up on the issue of the right to vote as a way of introducing debates around democracy, the rule of law and citizenship. He notes that in the United States nearly 13 per cent of the African-American male population are disenfranchised — this figure reaches 30 per cent in States like Florida. In Australia the Howard Government in 1998 introduced a bill to disenfranchise all serving prisoners from Federal elections. The legislation was defeated in the Senate. Brown argues that the idea of the ‘civil death’ of prisoners is not just a left-over from pre-modern times, but does indeed resurface in various forms to continually circumscribe the extent to which prisoners can exercise various rights associated with citizenship. The Howard bill referred to above is one example. Another is the contrasting examples of capital felons separated by nearly two centuries in New South Wales: the Kables, convicts who successfully sued a ship’s captain in relation to lost property in 1788, and Darcy Dugan who, in 1978, was declared by the High Court unable to sue *Mirror Newspapers* because he was a serving prisoner.

Brown argues for the importance of seeing citizenship as a process which can be used to enhance prisoner rights. ‘However desirable in a utopian sense, the current prospect of prisoners enjoying full or universal citizenship is unlikely’.⁴ It is unlikely because of the political demands that some type of ‘forfeiture’ be associated with conviction, and because notions of rehabilitation are built on principles of graduated personal improvement. An agenda for penal reform then would be one which recognises as a political aim the continual rendering of partial citizenship into one which is more complete.

³ M Ridley-Smith and R Redman; *ibid* 283.

⁴ D Brown; *ibid* 322.

