

## **ARE PRISONERS ENEMIES OR CITIZENS? WHAT IS THE RESPONSIBILITY OF THE STATE?**

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by Vivian Stern

### **A memory**

While preparing this paper I am thinking of someone whose memory should be honoured among prison ministry workers. His name is Father Francisco Reardon and he came from Boston. He lived in Sao Paulo in Brazil most of his working life. Everyone called him Padre Chico. He was Co-ordinator of Brazil's Bishops' Council's Prison Ministry. He was a tireless worker on behalf of the prisoners of Brazil. He produced a stream of documents publicising the illtreatment that they suffered and the abuses they endured. He took up the cause in particular of sick prisoners, those suffering from HIV and AIDS, paraplegics in prison and women ill-treated and beaten.

He sympathised too with the position of the prison guards. They were badly paid, working in overcrowded and understaffed prisons. They had no training and no prospects. For him the plight of all the people in prison was a passion and not just another cause.

I was with him once in Porto Alegre in Brazil for a conference. As part of it we visited the central prison. It was on a large site surrounded by barbed wire and watchtowers. The prison was handed over to the military police to run as a six-month emergency measure after a mass breakout. That was five years earlier. The emergency power was renewed every six months. There were about 2000 prisoners. We went first to the area where the women visitors were strip-searched and internally inspected. The internal searching was not done by a female medical worker in a discreet side room. It was done in one of six small booths without doors, each had a little platform and a strategically placed spotlight. The naked woman had to stand on the platform and perform a number of gyrations and knee bends under the spotlight.

As we walked down the passage to the living quarters we passed several cages, like those in a zoo, holding prisoners. A number of prisoners were chosen as assistants to the guards. They wore orange vests. They controlled the prisoners and the guards controlled them. The function of the guards, who were wearing bullet-proof vests, seemed to be to be stationed along the corridors at regular intervals of about three metres apart holding a gun at the ready. Some of the guards standing in the corridors were wearing blue rubber gloves and masks — presumably for fear of infection.

Some prisoners were waiting to go from one location to another and found themselves in the corridor when visitors were passing. As soon as they saw the visitors they turned their faces to the wall and lowered their heads. The visitors walked in silence past a row of backs and lowered heads. There was a yellow line painted on the floor of the corridor to show the area where prisoners had to walk. The other side of the line was for non-prisoner people.

Padre Chico talked to the prisoners. It was in Portuguese, so I did not understand what he was saying. But I did not need to understand because it was clear that for them suddenly a light went on. He talked to them with respect and humanity. He asked each one his name. He smiled and chatted. The prisoners changed before my eyes. They changed from being frightened, humiliated, different beings, who had to turn their face to the wall when visitors, civilised citizens from the outside world, came by. They changed into equal human beings.

He achieved that with a few words and a smile, and the respect that shone out of him, a respect for each prisoner as an individual. Padre Chico died suddenly of a heart attack on 19 November 1999 aged 59. The prisoners of Brazil mourned – as did the prison reformers of the world. Someone wrote about him - ‘he gave us the courage to fight for this our particularly difficult cause’. He always made me feel that what my colleagues and I were doing in a little way with scant success, trying to reform the prisons of the world, was heroic work.

The way he worked is important for the topic I wish to address — namely prison and the responsibility of the State. He cared for the prisoners. He also cared for the guards, the State agents, the poorly paid State servants from the same backgrounds as the prisoners. He met them and their representatives. He dealt regularly with the bosses, the Directors of the prison administrations and the people responsible in the Government. He assumed that they felt as badly as he did about the state of the prisons and wanted to put it right.

### **Prisoners as enemies**

Here is a clear illustration of the first half of my title, ‘prisoners as enemies or prisoners as citizens?’ The Central Prison in Porto Alegre saw prisoners as enemies. It was a place where people were taken solely to remove them, as if they were plague-ridden, a contagion. The aim of the institution was to hold them, to prevent them from rising up against their confinement and to humiliate them and their families in order to break their spirit. It was a form of internment, a sort of concentration camp, in many ways worse than the Russian gulag system.

### **Prisons must be civilian institutions**

This leads to my first point about the responsibilities of the State. All the international human rights instruments and requirements make it clear beyond all doubt that prisons must not be like internment camps or concentration camps. Prisons are not places to hold people deemed to be enemies of the state. Prisons have nothing to do with the military or defence, or enemies. In a democratic society prison is a public service. Prisons are places like schools and hospitals. They should be run by the civil power. They should have the objective of contributing to the public good. Therefore prison authorities should have some accountability to an elected parliament. The public should be regularly informed about the state and aspirations of the prisons. Government ministers and senior officials should make clear that they hold prison staff in high regard for their work. The public should frequently be reminded that prison work is an important public service. So first of all, the State’s responsibility is to run prisons as part of civilian society, as a public service accountable to Parliament.

### **The duty of care**

Now for my second point. Father David Cullen is a White Father. He works in Zambia and has been there for many years. He writes emails to his friends. One recent one described his daily work:

*Last Wednesday I said Mass in one of the four prisons I go to, Mwembeshi, some 50 km out of the city. I celebrate the Mass on a table under a tree and the inmates sit on the ground and are very attentive. The majority of them surely are not Catholics. I take a group from the parish, usually to do the singing, many of them coming from our shantytown, Misisi. They like to collect money to give the prisoners something. Last Wednesday each of the 250 prisoners got a little packet of salt and a piece of fairy soap, each bar being cut into five*

*pieces. The prison authorities don't give out soap and often not salt to put into the dull, meagre one meal a day the men get, so the inmates were delighted with what they received. Scabies is a big problem and at times we take what is required to kill the lice and bed bugs.*

*Last Thursday I went to the women's prison for Mass, again under a tree and competing with a strong wind. I always take a couple of drums with me, As usual there were a few problems, food and clothing for the children with their mothers, contacting lawyers who seem slow in coming to see their clients...*

*Last Sunday I was in still another prison, the Central. There some 1300 men at least are herded into a very small space, with no room to lie down at night because of the cramped conditions. After Mass again I had a list of needs, the most urgent being that the leader of the Catholic Community, Moses, has to go for an operation next week, and has to find about £7 to pay for it. Also there are 78 TB patients in the prison, and with the congestion, it surely gets passed on to others. Also there is a chronic outbreak of scabies, and about three-quarters of the prison population have rashes on their bodies. They had hoped to control it sometime ago, but again its got the upper hand.'*

A man doing great work – but he should not have to do such work. And the prisoners should not be living in such conditions.

My first point was that the prison should be a civilian public institution. My second is that however poor the country, and however low the standard of living, the state once it locks up a human being, has a duty of care for that person. It is no answer to say 'everyone is poor' and 'prisoners are at the end of the line, the least deserving'. All the international human rights instruments make that very clear beyond any doubt. The State has deprived them of their liberty and the State must provide for them the basics for life, food, water, clothing, bedding, light, air and health care. Above all it must protect the right to life.

Yet in all our countries prisons are places of great violence, sickness and unnatural deaths. Here are some recent examples. 'On 2 May 2002 17 were killed in fire started deliberately by prisoners in a prison in Algeria'. 'November 2002 prison rebellion leaves 10 dead in Brazil'. '20 February 2002 Three prisoners were killed in Salvadorean prison uprising'. 'March 2002 Three were dead in Venezuelan prison gunfight'.

Let me give you a specific example from England. In July a report was published of an enquiry into the death of a young prisoner. He was called Zahid Mubarak. He was 19 and in prison for three months for stealing some razorblades. He was sharing a cell with a boy called Robert who was mentally ill and was in pre-trial detention. The two should have been separated because of their different status. Pre-trial and sentenced prisoners should be held separately. In England we ignore that. Robert had very racist views. He did not like black people. Zahid was of Pakistani origin. On Zahid's last night in prison Robert used a table leg to beat Zahid unconscious. Then he called the prison personnel and said 'Something has happened to my cellmate.' Zahid died a week later. A prison officer asked Robert why he did it. He said: 'I just did it'.

Another example from England. There is an English couple I know called Mr and Mrs Edwards. They had a son called Christopher. Sometimes he had bad attacks of mental illness. One night when he was 21 he was arrested for breaking a window, charged, and sent to prison. He was locked up in a cell with another man. In the morning he was found battered to death. His ear was torn off and found in one corner of the cell. He had been killed by the other man in the cell. Mr and Mrs Edwards felt very strongly that it should not have happened. Their son should have been protected. They went to court and they went to the European Court of Human Rights. Eventually after 8 years the Court ruled that the British Government had failed in its duty to care for that prisoner. Now Mr and Mrs Edwards are devoting their time to prison reform and the promotion of restorative justice.

### **Humanity and inherent dignity**

These are basics. Once we have thought about the basics of the place of prison in the machinery of government and the duty of the State to protect prisoners from harm there is another important question. What sort of place should a prison be? We have some guidance on this. Article Ten of the International Covenant on Civil and Political Rights makes it clear what the ethical basis of imprisonment should be.

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

That is the duty of the State towards its prisoners. What does humanity and with respect for the inherent dignity of the human person mean? The answer to that question lies in the body of UN instruments and instruments of other

bodies such as the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, and the European Convention on Human Rights. It also lies in the ethical sense of each individual who works in prison, visits prison or sends people to prison. Adele Price, a thalidomide victim with no arms or legs, was sent to prison for seven days for contempt of court by an English judge. She suffered terribly in those seven days. The European Court of Human Rights found that her treatment in prison amounted to inhuman and degrading treatment. One of the judges in the judgement, said .

*In my opinion, everyone involved in the applicant's imprisonment – the judge, police and prison authorities – contributed towards this violation' (of Article 3 prohibiting inhuman and degrading treatment). It requires no special qualification, only a minimum of ordinary human empathy, to appreciate the situation of Adele Price.*

Let us look at how humanity, respect for the inherent dignity of the human person, and ordinary human empathy, are manifested in various prison settings.

I want to do a comparison of the way two systems deal a major deprivation of liberty, that is separation from loved ones, loss of the right to enjoy family life. I will give you a picture of how this aspect is dealt with in an English prison, not a specific one but a composite, based on recent official documents and on my own observation.

The prisoners have family visits for one hour twice a month. They meet in a room with tables and chairs screwed to the floor. They are watched from a control room on closed circuit television. The cameras are so powerful they can read the writing on a crisp packet. The prisoners and the visitors sit on different coloured chairs. The prisoners wear a sort of tabard, a waistcoat-type garment. There is a system of good behaviour grades which puts prisoners on levels one to three. The prisoners on the top level get TV in their cells and more family visits. The prisoners on the lowest grade wear different coloured tabards from the other prisoners when they see their visitors.

There are dogs, sniffer dogs, sniffing at all the visitors for drugs. Anyone who might have been contaminated by any contact with someone using drugs in the past 24 hours will be sniffed out and sent away or told they must have their visit behind glass with no contact.

I want to share with you a different experience. This is a large prison in a Latin American country. It was built for 800 prisoners and now holds 4500 prisoners. I visited with my camera and the prisoners urged me constantly to take their picture. The prison was run by the police – not penitentiary police but the regular police service. It was visiting day. Visitors can stay from 10 am to about 4 pm. There were about 1500 women coming in. There were no sniffer dogs or X-rays. A manual search of shopping bags took place. Maybe the visitors had to pay the policeman a small amount to be allowed to bring in their bags. They entered the prison and joined the big crowd wandering around. Everyone was wandering around, prisoners, family members. There were shops selling their produce, a bank, a pawnshop, a delicatessen. For the first time in many years of prison visiting I saw a blind man shaking his tin and begging in the prison yard. The family members were heading for the living quarters where each prisoner, except those who had more money to spend on bribing the guards, lived in a private space of about 2 square metres.

I hope that my comparison shows that most prison systems have strengths and weaknesses. It is not obvious that one country's model is better than that of another. There is no model of the right prison. Prison is an intensely cultural institution. The models of imprisonment in Western Europe and North America are imbued with Christian ideas of guilt, punishment and atonement. They are modelled on the monastery with individual rooms that are called cells. The Russian concept is of banishment and work. In the East, in China and Japan, the aim is to remould the person of into conformity. In other parts of the world the whole idea of the prison as the main punishment for crime is an imposition, a colonial legacy, and still sits uneasily in the thinking of Africa or India. What it is deemed right to take away from prisoners is cultural. What prisoners will see as legitimate deprivations and what they will not accept is also rooted in their ideas of right and wrong.

### **An ethical framework**

What is universal is the need to run prisons according to an ethical framework, based on Article 10 of the International Covenant on Civil and Political Rights. The prison business has to be an ethical business. Locking up people has to be done within an ethical framework. Without a strong ethical context the situation where one group of people has considerable power over another can easily become an abuse of power.

The ethical context is not just a matter of the behaviour of individual staff towards prisoners. A sense of the ethical basis of imprisonment needs to pervade the management process from the top down. It must be imparted to all personnel working in the prison as the guiding principle of their work. If you look at the mission statement of the Uganda department of prisons for example, you will see that the Prison Service requires all these involved in it to be guided by a belief in the 'dignity and worth of individuals'.

That is also the role of the State. And this is my third point. The State must make clear at all times that whatever people have done, however bad they are, however much the public feels violent hatred towards them, prison personnel have a duty to behave decently towards them and protect them. In a newly independent Central European country one night a man accused of child murder was taken into prison. The child he was accused of murdering was the child of a prison guard. The following morning the accused man was found dead in his cell. He had been violently assaulted and killed. The Director-General of that country's prison system, a good man who would never have sanctioned such a thing, was sacked the same day. It sends a message.

Many prison personnel have a very strong sense of their duty to treat prisoners 'with humanity and respect for the inherent dignity of the human person'. Throughout the world, I have seen examples of prison personnel acting out of sheer human empathy, showing what a difference individuals can make.

I think of the prison doctor in Kazakhstan, working in what is called a TB colony — a special prison for sentenced prisoners who are seriously ill with TB. In Russia there are 45 of them, holding about 1000 prisoners each. There are not enough places for all the people who need TB treatment. He had few medical resources, few medicines, and the medical staff had no masks. He was so poorly paid he wore battered shoes but no socks. A visiting foreign doctor asked him, why do you do this? You could work in a civilian hospital?' His reply was 'I am a doctor. They are sick'. He got TB. He was away from work for a long time. After treatment he came back to his work in the prison hospital.

I think of the prison officer I met in Malawi, in Africa, who took a sick prisoner to hospital on the handlebars of his bicycle because they had no transport.

There is the woman prison director in New Zealand who stood up to her hierarchy and threw out the male-dominated rule-book. She redesigned the prison for women as a place of healing and reintegration for the damaged and abused women she was holding there.

There is the head of the prisons run by the army in the Dominican Republic. Some prisons there are run by the police and some by the military – there is no prison service. He is a military man. He saw how many people he was locking up in his prisons, people who should not have been there. He organised the military lawyers to provide legal advice to the prisoners and thus managed to release 400 prisoners who were being held illegally.

Many more prison personnel are capable of these things. They are the key to the right treatment of prisoners. The State has a duty to its prison personnel, to provide them with proper pay, proper training, opportunities to use their initiative and proper recognition. And that is my fourth point, the State's responsibility towards the prison personnel.

### **The basics of penal reform**

I have been involved in this strange, fascinating and tragic world of incarceration for over 25 years. I have had many ideas about penal reform in that time, many of them subsequently proved quite wrong. I now think there are two basic things for which one should aim. One, get as many people as possible out of prison and two, get as many people as possible from the outside, non-prison world, into prisons.

### **Too many prisoners**

Let me start with the first. There are 8.7 million prisoners in the world, roughly. 2.16 million of these are in the United States, giving an imprisonment rate per 100,000 of 702. The United States has 5 per cent of the world's population and 23 per cent of the world's prisoners. The highest 'imprisoner' in the European Union is England and Wales with 140 per 100,000 of the general population. This high imprisonment rate is not the result of rises in crime reflected in rises in prison sentences. It is a result of a devaluing of liberty, a climate which allows liberty to be taken away promiscuously.

A young man in England was sent to prison for three months for knocking the head off a statue of Mrs. Thatcher. A woman failed to make sure that her daughters went to school. The background was a sad one. The family had

been upset since the daughters had come home one day and found their beloved grandmother dead in the house. The woman was sent to prison for two months for not sending her children to school, but the court reduced the sentence to one month when the lawyers appealed. A man put on a diving suit and dived into ponds and lakes near golf courses to collect stray golf balls. He then sold them. He had been doing it for 10 years. He got 6 months imprisonment and served 9 days in prison before the Appeal court changed it to a conditional discharge.

In so many countries most of the prisoners in prison are not sentenced to anything. They are waiting for their trial and sometimes they wait longer than the time they could have served in prison if found guilty. I was in Malawi some years ago, in a large prison. I asked the prisoners to form into lines, a line for those who had been waiting for their trial for 10 years, 5 years and three years. The longest line was the five years. It was too long.

The duty of care and the duty to provide proper work for personnel means that prisons cannot be so overcrowded and resources so stretched. Therefore, states need to look again at their use of imprisonment. It can be done. Russia reduced its prison population recently by 150,000. Canada too has reduced its prison population. Imprisonment is costly and unnecessary imprisonment is damaging to the social fabric. Prisons are a threat to public health and in some countries a short prison sentence can become a death sentence.

Who is in the prisons of the world? Are they filled with the serious, the violent, the organised gangsters and the racketeers? Hardly. They are filled with the poor, the children who have graduated from the orphanages and the reformatories, the addicted and the mentally ill.

I think of Johnno Warramarrba. He was a 15-year-old Aboriginal boy from Australia, that is, a child, and subject to all the protections of the Convention on the Rights of the Child. He stole stationery worth less than £20 but it was his second offence of stealing small items. In the Northern Territories where he lived the penalty for a first property offence is a warning. The penalty for the second is a month's imprisonment. He seemed bewildered when the sentence was passed. The solicitor in the court, trying to explain the mandatory sentencing laws asked him. 'Do you understand why you are going to jail and why you have been convicted?' Johnno replied, 'Yes, because I am black'. He got 28 days in a detention centre. Four days before the end of his sentence he hanged himself with his bed sheet.

I think of the poor women imprisoned in the Caribbean for dealing in small amounts of substances grown all over the hillsides, substances that suddenly became illegal and heavily punishable because of the wish of the great power nearby.

### **Prisoners are citizens**

Many people in prison should not be there. But more people from outside do need to be there, in prison, alongside the prisoners and the personnel, showing that the prison is part of society and that prisoners are citizens, ensuring that the values of the outside world, the noncarceral society, are brought right into the prison yard and onto the prison wing.

High profile visits to prisons by world figures serve to remind governments and people that prisoners are citizens. In July 2000 Pope John Paul visited the overcrowded and dilapidated Regina Coeli prison in Rome. He spoke of a prison system with 'human features' and 'a penal system more in conformity with human dignity.'

There are other ways of bringing people in that also give prisoners a chance to show that they wish to remain part of the community and to be seen as citizens who can make a contribution. In the North of England in a poor part of a medium sized town, a local park built by the Victorians has been refurbished. Much of the work has been paid for but some has come free because the prisons in the neighbourhood of the town have all become involved in the refurbishment of the park. The parks people went to the prisons. They did not say, 'We have come to help you'. They said 'We have a problem. Can you help us?'

The prisoners have mended all the park benches, refurbished the boats on the lake, recreated the roller skating rink, built replica railing in the Victorian style, and grown Victorian flowers. The park is covered with little plaques saying 'this bench was refurbished by prisoners at such and such a prison'. The project has had a lot of publicity. Already, the community in the town has a different image of the prisoners, that they are all not bad, not completely selfish; they can think about other people and so maybe they are worthy of some respect. The prison and the community are forging a new relationship and the idea is spreading throughout England. Prisoners are getting a chance to make their peace with the community they have wronged.

Also in England we now have some projects where the churches outside prison are taking on some responsibility for prisoners. These projects are based on the model of the Canadian community chaplaincy. They are working with the chaplains in the prisons making arrangements for prisoners before they are released and taking responsibility for them when they come out.

In some States in India long-term prisoners, often those convicted of murder, are leaving the prison after a few years and going to live with their families in small prison villages, where there are a couple of prison guards for security, where the prisoners work, the children go to school.

Speaking at the pan-African penal reform conference in Kampala in 1995, William Omaria, Minister of State for Internal Affairs in Uganda, said

*‘One day in the distant future, people will probably look back on what happens in most countries today and wonder how we could do that to our fellow human beings in the name of justice.’*

We need to think about new ideas. Can the prison become a different place, a place where the deprivation and the cruelty is minimised, where prisoners are held securely but seen as citizens, allowed to express their altruism and their humanity? Can the prison become a place where the emphasis is on the chance for the prisoner to make his or her peace with society through restitution and restoration?

*Vivian Stern, Senior Research Fellow at the International Centre for Prison Studies, Kings College, London*

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