1. Prisons, Human Rights, and the Use of Solitary Confinement

It is still today questioned in various parts of the world whether prisoners have rights, or whether the ordinary rights of a citizen or a human being cease to exist once an individual is detained inside prison walls. In fact, one does not have to venture far back into history in order to find this situation in democratic states. In 1871 a now famous judgment was passed in Virginia in the United States, which declared that a convicted felon “is civiliter mortuus; and his estate, if he has any, is administered like that of a dead man.” A prisoner was accordingly “civilly dead” and inmates were simply “slaves of the State.” This and other cases created the foundation of what was later termed the “hands-off” doctrine, according to which US courts only intervened in extreme cases. Otherwise penal institutions were “virtually abandoned...to the unchecked power of their administrators.”

The hands-off doctrine was in other words practised by US courts for around a century, but during the early 1960s a number of prisoners’ rights became established through court cases.

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in the area of prisoner rights. In 1974 the US Supreme Court, for example, stated that there “is no iron curtain drawn between the Constitution and the prisons of this country”. The significance of prisoner rights was spelled out even more clearly in a Canadian judgment of 1969, according to which “an inmate of an institution continues to enjoy all the civil rights of a person save those that are taken away or interfered with by having been lawfully sentenced to imprisonment.”

Following the Second World War, a human rights framework for securing prisoner rights has also evolved, which includes, for example, the UN Standard Minimum Rules for the Treatment of Prisoners of 1955, the International Covenant on Civil and Political Rights of 1966, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, the UN Basic Principles for the Treatment of Prisoners of 1990, which were revised in 2006, and the European Prison Rules (a regional document).

But the issue of prisoner rights is still contested. Even in states which accept the basic premise of prisoners having rights, extending these rights beyond official law into the reality of the prison might be difficult. In England, for example, judges “are disinclined to intervene in many areas of prison life, notwithstanding the introduction of the Human Rights Act [in] 1998.” The same well-known problem of human rights implementation (versus official adherence to conventions etc.) has also been noticed in the Danish context. As a Danish prison governor pointed out, it is “remarkable that the convention [ECHR] is so invisible in the daily application of law among the authorities responsible for executing punishment.” In the US the concept of prisoner rights is itself being contested at the moment. The government has been “playing fast and loose with the international law of war” in its treatment of detainees, and, according to an English Professor of Criminal Justice, the practice of detention without trial is both “deeply troubling and in deep trouble.” An institution like the detention facility at Guantanamo Bay could, from a historical point of view, be interpreted as a revival of the “slaves of the State” philosophy expressed in Virginia in 1871.

The tendency either to question and oppose human rights or not to prioritise implementation in this area is unfortunate since prisons – as a specific type of institution – tend to provide ample opportunity for violations of human rights. This is well known from social-psychological experiments as well as from the turbulent history of the prison. In the words of the international expert on prison reform,