
BOOK REVIEW

Prisoners' Rights



PRISONERS AS CITIZENS: HUMAN RIGHTS IN AUSTRALIAN PRISONS

By David Brown & Meredith Wilke (eds)
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THIS is an important collection of writings offering a number of different perspectives about the legal rights of prisoners. It extends over the criminological, human rights, political, historical, administrative and media aspects of incarceration. Perhaps most importantly, it offers insights from the inside, those of a prison inmate himself.

This publication is timely. In the last 10 years, more than ever before, prisons and prisoners have been high on the political agenda but often for the wrong reasons. Removal of prisoners from society is now perceived by many to carry with it the extra penalty that they should be stripped of many of the rights that the public enjoy. Community discussion about prisons is usually in the context of talk-back radio and politicians' seven-second statements on TV. It is therefore likely to be devoid of anything but the most simplistic content and unhelpful to a proper understanding of the circumstances of the vast bulk of prisoners. This is particularly so concerning spectacular and notorious incidents such as prison escapes and commission of crimes by persons on parole. It also often misrepresents those who administer the prison system, commonly resulting in confusion between politics and policy. This type of discussion tends to obscure rather than enlighten the debate.

This book is an important corrective. It is a collection of writings covering a wide range of topics and contributors. Edited by Professor David Brown of the University of New South Wales and Meredith Wilkie, who has a long standing

record of human rights research and publication, it functions on both the theoretical and the practical level. Theoretically it draws upon studies which are based on both international legal principles (the International Covenant on Civil and Political Rights and, comparatively, the European Convention on Human Rights) and domestic law (including such issues as the political right of prisoners to vote). Importantly, some of the articles, such as that of Vivien Stern, focus on the context of citizenship as an important aspect of the discussion. This resonates with a wider constitutional context in that over the last decade citizenship as a civic concept has emerged as an important element in litigation before the High Court, though not with reference to prisoners.

On the more practical level, the writings cover a range of particular problems that warrant individual analysis and debate. These include such matters as how prison administration and policy affect indigenous persons (Loretta Kelly) as well as others with particular disabilities, such as lack of language skills or those who are intellectually disadvantaged (Jenny Green). In terms of indigenous prisoners, there is important statistical and other information about the extent to which the prison population is skewed. Relevant contributions probe this aspect to its root causes in legislative policy. These address issues such as the effect of mandatory sentencing, sentencing policy generally, and the continuing problems surrounding long-term custody. The seemingly insoluble problems of drugs and deaths in custody do not escape scrutiny.

The essays also touch on frontier issues including the emergence of private prisons in Australia. In that regard the chapter by John Rynne of the Crime Research Centre at the University of Western Australia has a particularly interesting local flavour.

With respect to rights, such as the right to vote, the chapter by Linda Ridley-Smith and Ronnit Redman translates the debate from the general level into the practical and specific problem of how to give concrete expression to abstract rights such as those contained in the International Covenant on Civil and Political Rights.

While academia and those involved with prison administration are to the fore, it is important to note other voices that articulate the problems from an insider's perspective. Most notably the chapter by Craig Minogue, speaking from the perspective of advocacy and 15 years' experience as a prisoner, is especially valuable to counter-balance the more extended theoretical discussion.

The contribution by those involved in visiting and support services brings a sense of reality to the discussion, while the role of the media in terms of the wider political debate also receives attention in the chapter by Catherine Lumby. Particular issues which have a practical element are those relating to prison discipline (David Robinson), rights to health and safety (Michael Levy) and the relationship between prisoners' rights and the victims of crime (Sam Garkawe).

Oddly, perhaps, the major omission is the lack of any serious discussion of constitutional rights. The prospect of building on the High Court's decision in

Kable v Director of Public Prosecutions (NSW),¹ while probably of limited scope, receives no considered analysis in the collection.

The collection is significant overall both for its comprehensiveness and its diversity. Its main virtue is the stimulation it provides to the general reader to confront a range of issues about a sector of the community that most would rather not bring to mind. In this it is neither an exercise in hand wringing nor is it censorious. Instead the tone is one of realistic evaluation as a first step to constructively addressing feasible political options, always recognising prisoners are human, with human rights, and not just statistics.

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1. (1996) 189 CLR 51