



University of Pennsylvania
ScholarlyCommons

Departmental Papers (SPP)

School of Social Policy and Practice

1-1-2008

The Limits of Citizenship: Rights of Prisoners and ex-Prisoners in USA

Ram A. Cnaan

University of Pennsylvania, cnaan@sp2.upenn.edu

Jeffrey N. Draine

University of Pennsylvania, jdraine@sp2.upenn.edu

Beverly Frazier

University of Pennsylvania

Jill W. Sinha

University of Pennsylvania

Follow this and additional works at: http://repository.upenn.edu/spp_papers

 Part of the [Social Policy Commons](#)

Recommended Citation

Cnaan, R. A., Draine, J. N., Frazier, B., & Sinha, J. W. (2008). The Limits of Citizenship: Rights of Prisoners and ex-Prisoners in USA. Retrieved from http://repository.upenn.edu/spp_papers/136

Postprint version. Published in *Journal of Policy Practice*, Volume 7, Issue 2-3, 2008, pages 178-198.

This paper is posted at ScholarlyCommons. http://repository.upenn.edu/spp_papers/136
For more information, please contact libraryrepository@pobox.upenn.edu.

The Limits of Citizenship: Rights of Prisoners and ex-Prisoners in USA

Abstract

Contrary to popular beliefs and commonly held rhetoric, rights are not naturally given to people/residents/citizens. Very few, if any, rights are inherently granted by virtue of being born a human being. Although the authors of the Bill of Rights (in the USA) as well as the United Nations Declaration of Human Rights want us to believe that these rights are innate, in fact they were fought for and only barely achieved. At any given time, there are counter forces that actively push to minimize and reverse rights that were gained after long and hard struggles. For example, in the United States the “sacred” right for privacy was vastly violated with the signature and support of President George W. Bush soon after the attack of September 11, 2001 was carried out within the boundaries of the country. This is but one example where rights are not guaranteed forever and are only in place so long as there are enough people actively fighting to keep them and, if possible, to expand them.

My argument, though my data are mostly US-based, is that the rights of prisoners and ex-prisoners are an excellent measure and estimate for the strength of human rights in a given society. The more punitive and exclusionary are the policies towards prisoners and ex-prisoners, the less protected are the rights of citizens in general. The more a society excludes prisoners and ex-prisoners, the more ready it is to limit the rights of other members of that society. I would welcome a comparative study of this topic to assess which societies treat prisoners and ex-prisoners more humanly and which in a more exclusionary manner.

Disciplines

Social Policy

Comments

Postprint version. Published in *Journal of Policy Practice*, Volume 7, Issue 2-3, 2008, pages 178-198.

The Limits of Citizenship: Rights of Prisoners and ex-Prisoners in USA

**Ram A. Cnaan, Ph.D.
School of Social Policy and Practice
University of Pennsylvania**

Statement of the Problem

Contrary to popular beliefs and commonly held rhetoric, rights are not naturally given to people/residents/citizens. Very few, if any, rights are inherently granted by virtue of being born a human being. Although the authors of the Bill of Rights (in the USA) as well as the United Nations Declaration of Human Rights want us to believe that these rights are innate, in fact they were fought for and only barely achieved. At any given time, there are counter forces that actively push to minimize and reverse rights that were gained after long and hard struggles. For example, in the United States the “sacred” right for privacy was vastly violated with the signature and support of President George W. Bush soon after the attack of September 11, 2001 was carried out within the boundaries of the country. This is but one example where rights are not guaranteed forever and are only in place so long as there are enough people actively fighting to keep them and, if possible, to expand them.

My argument, though my data are mostly US-based, is that the rights of prisoners and ex-prisoners are an excellent measure and estimate for the strength of human rights in a given society. The more punitive and exclusionary are the policies towards prisoners and ex-prisoners, the less protected are the rights of citizens in general. The more a society excludes prisoners and ex-prisoners, the more ready it is to limit the rights of other members of that society. I would welcome a comparative study of this topic to assess which societies treat prisoners and ex-prisoners more humanly and which in a more exclusionary manner.

Assessing the Size of the Affected Population

The statistics about incarceration in America during the last twenty years indicate soaring numbers of people in prisons and jails. At yearend 2004, state and federal prisons housed 1,502,179 individuals. In addition, at midyear 2007, 813,502 inmates were held in the nation's local jails. Overall, 2,315,681 different individuals were held as prisoners in federal or state prisons or in local jails in 2007. Between 1995 and 2004, the incarcerated population grew by an average of 3.4 percent annually (U.S. Bureau of Justice, 2008). From 1995 to 2004, the number of jail inmates per 100,000 U.S. residents rose from 193 to 243. These numbers combined suggest a very bleak picture: by 2004 nearly 7 million people (3.2 % of U.S. adult residents), or 1 in every 31 adults, were on probation, in jail or prison, or on parole. Put differently, when one sits in a bus or train car, there is a strong likelihood that at least one passenger was previously incarcerated. In any drive to work, one is likely to observe or drive next to an ex-prisoner who is still unadjusting to life in the community.

Rights of Prisoners and Ex-Prisoners

Voting rights

While in prison, American citizens are barred from voting. They cannot register to vote from a prison and no polling station is allowed in any prison. As such, in any given election about one million American citizens who are of the rights age are barred from active participation in the most basic democratic activity. While voting is the “right” of every American citizen; prisoners are prevented from exercising this right.

Twelve states have implemented legal barriers to full citizenship for ex-prisoners. In Florida, Kentucky, and Virginia, ex-felons permanently lose their right to vote. Nine other states have such restrictions in place for two or more years. Most states temporarily prohibit parolees from

voting (Uggen, Manza, & Thompson, 2006). These prohibitions infringe on ex-prisoners' civil rights and send the message that they are outside the realm of citizenry.

Many states and many local authorities permanently prohibit ex-offenders from being elected to any public office. Others place a time limitation from post-release until the time an ex-prisoner can be elected to public office.

Other democracies such as Belgium and Israel allow each person regardless of his or her status as a prisoner or ex-prisoner to participate in any election. Furthermore, these and many other countries arrange for polling stations to be placed in prisons on Election Day and encourage all prisoners to exercise their right to vote.

Location of incarceration

Once a person is arrested, she or he is taken to a local jail until sentencing occurs. After being sentenced, pending on the verdict, some are released, while others must serve short amounts of time and therefore remain in a local jail. Local jails are usually within the same city where the crime occurred. In this case, relatives are able to visit and maintain contact. Visits, however, are limited and closely supervised. Convicts who receive sentences of two or more years are incarcerated in state or federal prisons. In these cases, prisoners may be transferred first to a processing prison and later to a permanent prison. In most cases, state and federal prisons are located hundreds of miles away from urban centers, often in areas that are scarcely populated and do not have public transportation. Some states build large prison facilities to house "out of state" prisoners, known as "interstate transfer" (Lawrence & Travis, 2004). Many prisoners are thus transferred away from their home communities and their natural social networks. Therefore, visitation is time-consuming, difficult, and costly for relatives and friends (Christian, 2005).

Given that the majority of prisoners come from poor families, the further away the prison from the family residence, the lower the chances for frequency of visitation.

Being imprisoned far from one's home makes telephone calls a natural means of communication. Almost all prisons provide telephone opportunities where prisoners can call home or elsewhere according to a certain schedule. However, prisoners must typically call "collect" (with charges to the person receiving the call) and the cost of calls to and from prisons can be exorbitant. Many poor families may lack access to telephones and those with phones may not be able to afford the cost of collect calls from prisons. As a result, many families reluctantly or willingly block collect calls and thus further estrange prisoners (Hairston, 2001).

The U. S. Department of Justice (2000) reported that over half of prisoners have not been visited by their children since entering prison. In some communities, there are programs to facilitate such visits but these may be erratic and program coordinators or facility personnel may make determinations that particular prisoners are not allowed this opportunity. Although 15 percent of couples stay together during the prison term, only three to five percent are still together one year after the partner's release. In other words, it is not only the partner's absence due to incarceration that endangers the stability of relationships, but readjustment after release also takes its toll.

Additionally, most ex-inmates are banned from associating with other "convicts" who are not legal family members and this comes up as problematic for same-sex couples if both people have criminal histories and cannot be legally married

Often, by the time prisoners near release, they have become strangers in their own neighborhoods. Indeed, many find they have been replaced by newer dating partners and that their children have formed strong relationships to individuals who may function as de facto

parents (Beatty, 1997). Those who wish to restore family ties find it disappointing that their children have grown and many decisions were made without their parental involvement.

Women prisoners are of special concern because 65 percent have a child under age eighteen and most were the primary caregiver for their children prior to their incarceration. More than 1.3 million children in the U.S. have a mother who is incarcerated or under parole supervision. Men in prison and prior to incarceration often do not have close contact with their children; women generally keep in touch and desire to be a regular part of their children's lives (Greenfield & Snell, 1999). In addition to the challenge of staying connected with children during imprisonment and re-connecting with them after prison, for many a huge difficulty is the care of children when a mother is sentenced. Often children are declared eligible for adoption when a mother is sentenced, especially if the child is young, and no father or grandparents step in to claim guardianship. Given the growing rate of incarceration for females with dependent children, this is a grave issue for the social work profession and society.

Vacations from Prison

The idea of imprisonment is to hold an offender away from society, to limit his or her mobility, and to confine him or her to unpleasant conditions. However, the way in which this goal is achieved in various societies is different. Unlike European countries where prisoners are allowed conjugal visits and home vacations, American prisoners are deprived of such opportunities for relaxation or intimacy. An American prisoner is allowed a minimal supervised vacation only in extreme cases such as funeral and conjugal visits are fewer and fewer every year.

In other countries, the perception is that a prisoner is a past and future member of society and as such should keep in touch with family, friends, culture, technological advancements, and

ecological development. As such, prisoners are allowed unrestricted periodic vacations from prison. In Israel, for example, after a year in prison every prisoner with the exception of security-related prisoners is allowed 72 hours vacation monthly. As such, a prisoner who is sentenced for 10 years in prison is capable of 108 home visits of three days each while in prison. While it may seem excessive when the idea is to punish that individual, maintaining a status as a member of society and connection with the environment to which she or he will be released facilitates later readjustment.

Employment restrictions

Most states impose restrictions and prohibit the hiring of ex-prisoners in fields such as law, education, real estate, nursing, and medicine. Other states bar ex-prisoners from working in any position of handling money including cashier in a supermarket or working as a bank teller. They are also barred from carrying guns and, as such, are barred from many security-related jobs. Six states permanently bar ex-prisoners from holding any public employment.

In Philadelphia, the two largest employers, the University of Pennsylvania and Comcast (cable company), actively refuse to hire ex-prisoners. Not surprising, studies show that time spent in prison lowers the individual's earning capacity (Kling, 1999).

Jobs that prisoners fulfilled during incarceration are mostly unsuitable for the market demand. Typically, prisoners can only find low-paid unskilled jobs, if they can find any job at all. As such, the chances of an ex-prisoner obtaining a job that will enable him or her to live with dignity are quite slim. These conditions tend to isolate ex-prisoners from vocation-based earnings and support the temptation for illegal cash-earning activities.

Registering as Ex-Prisoners

More and more organizations are requiring applicants for work or education to reveal any criminal history. Laws are being passed in various localities and states that declare incomplete admission of past convictions an offense. Most universities, for example, require applicants to reveal their previous convictions and make admission decisions to minimize risk for the faculty, staff, and students. As there is no constitutional right to higher education, only a right to equal opportunity, universities can bar admission to those who they deem to be a risk to others. American courts have consistently upheld the “four academic freedoms” of colleges and universities: (1) freedom to determine who shall teach; (2) what shall be taught; (3) how it shall be taught; and, (4) who shall be taught, as long as their standards are reasonable and fair (Cole, 1991). In one case (*Carbonaro v. Reeher*, 1975) the court allowed universities to deny admission to convicted felons on the basis of unsatisfactory character.

Redden (2007) reported that “in Virginia, a law went into effect July 1, 2007 requiring institutions of higher education to forward the information of admitted students to police for comparison with the state’s criminal information network and sex offender registry. The Wisconsin Board of Regents voted in December [2006] to require criminal background checks for new hires after much legislative flogging brought about by a February audit finding that 40 felons were employed by the UW [University of Wisconsin] System.”

Summary

In the past thirty years, the rights of prisoners in the United States and their inclusion in society are undergoing a process of erosion. Prisoners and ex-prisoners are considered unworthy of full membership in society and hence their rights are curtailed. However, a society that curtails the rights of so many individuals is also a society that risks forgoing of other rights to other or all of its members. This paper is a call for cross-national study and comparing prisoners’

and ex-prisoners' rights and their relationships with the status and strength of human and civil rights in various societies.

References

- Bates, R., Archibald, J., & Wills, S. (2001). *Improving outcomes for children and families of incarcerated parents*. Chicago: University of Illinois at Chicago, Jane Addams School of Social Work, Center for Social Policy and Research and Chicago Legal Aid to Incarcerated Mothers.
- Beatty, C. (1997). *Parents in prison: Children in crisis*. Washington, DC: Child Welfare League of America.
- Bureau of Justice Statistics, U.S. Department of Justice (2007). *Reentry trends in the United States, 2006*. Retrieved April 1, 2007, from <http://www.ojp.gov/bjs/reentry/reentry.htm>
- Christian, J. (2005). Riding the bus: Barriers to prison visitation and family management strategies. *Journal of Contemporary Criminal Justice*, 21, 31-48.
- Cole, B. S. (1991). Legal issues related to social work program admissions. *Journal of Social Work Education*, 27, 18-24.
- Greenfield, L. A., & Snell, T. L. (1999). *Women offenders*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics (NCJ 175688).
- Kling, J. (1999). *The effect of prison sentence length on the subsequent employment and earnings of a criminal defendant*. Princeton, NJ: Princeton University, Woodrow Wilson School Economics Discussion Paper.
- Lawrence, S., & Travis, J. (2004). *The new landscape of imprisonment: Mapping America's prison expansion*. Washington, DC: Urban Institute.
- Redden, E. (2007, February 14th). Criminals and colleges on the capital. *Inside Higher Ed*. Retrieved March 7th, 2007 from: <http://www.insidehighered.com/news/2007/02/14/dc>.
- U.S. Department of Justice, Bureau of Justice Statistics (2008). *Correction statistics*. Retrieved May 10, 2006 from: <http://www.ojp.usdoj.gov/bjs/pubalp2.htm#M>
- Uggen, C., Manza, J., & Thompson, M. (2006). Citizenship, democracy, and the civic reintegration of criminal offenders. *The Annals of the American Academy of Political and Social Science*, 605, 281-310.