

Prisoners' right to education: A philosophical survey

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Article 26 of the Universal Declaration of Human Rights declares: 'Everyone has the right to education.' This implies that the right to education and training applies to all persons, including all persons in prison. This position is considered here from a philosophical point of view and it will receive some support. Yet it is not obvious that the position is correct, nor, if it is, how it is best explained. I will examine the basis for asserting a right to education on behalf of all prisoners, and consider what is required by way of its defence in the face of common objections. I illustrate how international conventions and principles express prisoners' right to education, and I look at how this right is defended by appeal to education as a means to an end and as a human right – required by respect for persons and their human dignity.

Prison education; rights; human rights; human dignity; respect for persons

Introduction

Article 26 of the Universal Declaration of Human Rights declares: 'Everyone has the right to education'. Similarly, Article 2 of Protocol number 1 to the 1952 European Convention for the Protection of Human Rights and Fundamental Freedoms says, 'No person shall be denied the right to education.' Each implies that the right to education and training¹ applies to all persons, including, therefore, all persons in prison. This position is considered here from a philosophical point of view and it will receive some support. Yet it is not obvious that the position is correct, nor, if it is, how it is best explained. Persons who commit serious crimes forfeit their right to liberty and other basic rights. Why suppose that the right to education is exempt?

An instrumental defence of prisoners' right to education invokes the potential of education to promote a personal, social, or economic good – employment prospects, for example, or reintegration into society. The difficulty with an instrumental defence is that it represents a hostage to fortune: it depends either on the asserted goods materializing, or on the production of reliable evidence that the goods are likely to materialize. Neither outcome can be unfailingly relied upon.

An alternative approach is to assert that prisoners' right to education is a human right, grounded in human dignity and respect for persons. The attraction of such an approach is that it does not depend on securing (evidence of) outcomes that cannot be guaranteed in advance. The difficulty is that it is not obvious why respect for human dignity entails the right to education. Why suppose that human dignity is compromised merely owing to an absence of education? It is not as if a prisoner has thereby suffered torture or inhuman punishment, which clearly is inimical to human dignity.

I will examine the basis for asserting a right to education on behalf of all prisoners, and consider what is required by way of its defence in the face of common objections. In the next

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section I illustrate how international conventions and principles express prisoners' right to education, and in the later two sections I look at how this right is defended by appeal to education as a means to an end (as a form of rehabilitation, for example) and as a human right – required by respect for persons and their human dignity. No attempt is made to offer a comprehensive survey of the philosophical and legal literature; rather, the paper is designed as an introduction to some of the principal questions that arise in this area.

Conventions, principles, rules

The right to education

Education has been formally recognized as a human right since the Universal Declaration of Human Rights in 1948, and has since been affirmed in global human rights treaties, including the 1960 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention Against Discrimination in Education and the 1966 International Covenant on Economic, Social and Cultural Rights, Article 13(1) of which recognizes 'the right of everyone to education'. The 2007 Lisbon Treaty recognizes the rights of citizens of the European Union through the enforcement of the Charter of Fundamental Rights, and Article 14 of the Charter recognizes that 'everyone has the right to education and to have access to vocational and continuing training'.

These treaties affirm an obligation to develop accessible secondary education for all children, equitable access to higher education, and a responsibility to provide basic education for those who have not completed primary education. We will later enquire whether the right of prisoners to education is *universal* or *inalienable*, or both, and whether the right should be recognized as a *human* right. There is also a question, not pursued here, whether prisoners' rights to education are, or should be, dependent on age, and whether those of secondary-school age have rights that do not apply to their older peers.

International treaties specify the aims of education as promoting personal development and respect for human rights and freedoms, enabling individuals to participate effectively in a free society and fostering understanding, friendship, and tolerance. Education is also considered as necessary for the fulfilment of any other civil, political, economic, or social rights (UNESCO/Unicef: 2007). These aims point towards an instrumental justification of a right to education, either as promoting a further good or as being necessary for the fulfilment of other rights. This is explored in the section 'Education as means to an end'.

Prisoners' right to education²

The United Nations Standard Minimum Rules for the Treatment of Prisoners underlined the importance of education and training for all prisoners who are able to benefit, and stated that prison education and training should be integrated with the mainstream educational system.³ The Rules were adopted by the First National Congress on the Prevention of Crime and the Treatment of Offenders, and subsequently approved by resolutions of the United Nations Economic and Social Council (EROSOC). Rule 77 states:

1. Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

2. So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

Principle 28 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment was adopted by 1988 United Nations General Assembly (UNGA) Resolution 43/173, and states:

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 6 of the Basic Principles on the Treatment of Prisoners was adopted by the 1990 UNGA Resolution 45/111, and states: 'All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.'

The rights of juveniles in detention are the subject of the Rules for the Protection of Juveniles deprived of their Liberty, adopted by UNGA Resolution 45/113 of 14 December 1990. Rule 38 stipulates: 'Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society.' And Rule 39 stipulates that: 'Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.'

In England and Wales prisoners retain a set of fundamental rights and lose only those civil rights that are taken away either expressly by an Act of Parliament, or by a necessary implication of that Act. The test to be applied is whether the right is fundamental and whether the attempt to remove or curtail the right has any authority in such sources as the Prison Act 1952 and the Prison Rules 1999. Prisoners' rights are limited only if this is considered as necessary for the prevention of crime, prison security, or to protect the safety of prisoners or others. Any limitations should be proportionate to the aim that the authorities are seeking to achieve.

Prison Service Order 4205 states that 'Every prisoner able to profit from the education facilities provided at a prison shall be encouraged to do so'. Rule 32 of the Prison Rules 1999 states that '[e]ducational classes shall be arranged at every prison', and Rule 35, which applies to young offenders (those aged between 15 and 21 in Young Offender Institutions),⁴ requires that 'arrangements shall be made for participation in education or training courses for at least 15 hours a week'. Prisoners of compulsory school age are to be denied education only as a last resort and, in relation to young offenders of statutory school age, inadequate educational facilities could amount to a breach of Article 2 of the second protocol of the European Convention on Human Rights.

Education as a means to an end

A right to education may be thought to rest on an appeal to some end for which education is a means, as when proponents point to education as supportive of the rehabilitation of prisoners and their later reintegration into society. I briefly survey and comment on the evidence of the beneficial effects of education in prison, before looking at how collectively these effects might be deployed in an argument for the right to education in prison.

Evidence on the impact of prison education⁵

Levels of education tend to be low amongst the prison population, and, in particular, it appears that many prisoners have low levels of literacy and numeracy.⁶ The provision of education in prison therefore represents an opportunity for prisoners to improve their skills – and not only their literacy and numeracy skills, but also abilities related to social and civic capability, such as the ability to manage one's health and any financial demands (Schuller, 2009). However, the evidence on the effects of education on prisoners' skills is limited – in scope, specificity and methodological rigour (see, for example, Hurry et al 2006). It is a pressing question how far any moral and legal justification for the right to education in prison should be made on the evidence of its impact on any set of skills; a question made more acute by the severe constraints on attempts in this context to conduct research that meets the highest methodological standards (Hurry et al., 2006).

Employment on release is thought to be significant in explaining a reduction in the probability of re-offending, and there is a well-established correlation between levels of qualifications and levels of employment in the European Union (Massarelli, 2009). Former prisoners face numerous barriers to securing employment, including the fact of having a criminal record (Fletcher et al., 2001). Since employment has a significant role in determining the likelihood of re-offending (Social Exclusion Unit, 2002) there is a reason to provide education that is either aimed at or likely to have the effect of improving prospects of finding a job following release from prison.

Education can contribute to a sense among prisoners that they remain a part of the wider community; re-imagining a place in society can help ex-prisoners to become active in their local communities from which there is otherwise a risk of exclusion (Department for Business, Innovation and Skills, 2011). For these reasons the UN Special Rapporteur on the right to education argued that prisons should provide an environment that both 'enables positive change' for prisoners and makes a 'significant contribution in their journey towards rehabilitation and reintegration into society' (Muñoz, 2009: 25). It is, however, easier to identify these as aims of prison education than it is to find authoritative and secure evidence of the positive effects on prisoners that these aims appeal to.

Prison education can provide a source of hope and aspiration, whilst making purposeful use of time in detention. The most significant motivation for prisoners to participate in prison educational activities in Denmark, Finland, Iceland, Sweden, and Norway was 'to spend my time doing something sensible and useful' (Eikeland et al., 2009: 11). Prison education also has the capacity to encourage a prisoner to take some control over their lives and to change their self-perception – from seeing oneself as a 'criminal' or a 'failure' to someone who is worth something and can make a success of one's life (Darkenwald and Merriam, 1982). Although these claims refer to the effect of education on prisoners, the emphasis is less on improving prospects of employment and reintegration, and more on education as a source of self-belief and agency. It is possible to argue that education should serve to encourage self-respect and self-efficacy even in the absence of evidence on the impact on employment and reintegration into society.

Since many prisoners have had a poor experience of education and are likely to have dropped out of school early, education in prison can represent a 'second chance', offering an opportunity for a positive experience of learning that takes account of their distinctive needs and profiles (Ministry of Education, Culture and Science, 2010; Smyth and McCoy, 2009). At the same time, an emphasis on providing a 'second chance' runs the risk of neglecting those who are already studying for higher levels of skills and qualifications (Wilson, 2009). The European Prison Rules state that 'Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations' (Council of Europe, 2006: 28.1). If the right to education in prison

applies to all people, regardless of qualifications, it follows that there are limits on how far the right rests on a claim to compensate for existing educational disadvantage.

The cost of prisoners re-offending forms a significant portion of the cost of crime to society. A Matrix Knowledge Group study, assessing the costs and benefits to UK society of education in prison, found that the net benefit to the public sector associated with educational and vocational interventions ranged from £2,000 to £28,000 per offender (Matrix Knowledge Group, 2009: 3; see also Schuller, 2009; Bynner, 2009). In so far as the right to education invokes the cost to the public purse, this appeal largely rests on the effects on those other than the prisoners themselves. In the following section I confine attention to effects on prisoners, and for the sake of terminological convenience I consider these as belonging under the category of 'rehabilitation'.

Prison education as rehabilitation

Any attempt to justify a right to education in prison on the grounds that it has a rehabilitative effect must consider such familiar alternative views as that the proper purpose of punishment is deterrence or retribution. If the sole legitimate purpose of punishment is retribution, it is immaterial that education has or may have a rehabilitative effect. Unless rehabilitation is part of some practice that is itself deserved as a punishment, or is consistent with what is deserved, the retributivist can both admit that education brings benefits and dismiss these as having no place in the practice and theory of just punishment. There is an extensive literature on punishment as retribution and deterrence, but this cannot be considered here (Duff and Garland, 1994; Garland, 1990; Hart, 1968; Nozick, 1981; Walker, 1991).

A claim about the effects of education in prison might take the form that education *does in fact* uniformly bring about some good, or that it has this *tendency*, or that it has the *potential* to do so; and any one of these claims might apply to a single prisoner, or to a single cohort, or to the prison population generally. It is necessary to identify which of these claims is invoked in support of an argument about rights; some benefits, such as preparedness for employment in the wider community, may be more likely amongst some cohorts – young offenders, for example – as compared with others – prisoners in middle age serving life sentences. If the right to education is to apply to all cohorts of prisoners, it will be necessary to spell out how the anticipated benefit will apply universally despite differences in profile and prospects.

It is necessary, also, to specify the extent to which the right to education rests on an appeal to, on the one hand, an assertion about the proper purpose of punishment as rehabilitation and, on the other, evidence about the putative rehabilitative effects of existing systems of prison education. Rehabilitation is a future-regarding concept, implying something positive about the future condition or potential of a person whilst in prison or following release. It is therefore difficult to maintain that rehabilitation is the only or proper purpose of punishment in the absence of *any* evidence of the impact of education on prisoners. But nor need any appeal to rehabilitation rest exclusively on the available evidence. This is not only for the pragmatic reason that the existing evidence will not bear the demand made of it, but for a reason of principle, that some part of the appeal should rest on what the justification of punishment ought to consist of, and which we should aim at, even if existing efforts fall short of the ideal. On this view, the ideal of prison education as rehabilitation is not undermined by want of evidence. Instead, want of evidence is taken as a reason to improve the scope and quality of education on offer and to redouble efforts to gather evidence of its impact.

One option here is that the right to education rests *both* on the view that the proper purpose of punishment is rehabilitative *and* that prison education does in fact (tend to) have (potential for) a rehabilitative effect. Proponents of this view must then establish the extent to

which the justification of the right to education rests, on the one hand, on an appeal to principle (the proper purpose of punishment), and, on the other, on an appeal to the impact of education as evidenced by empirical enquiry.

A second option is to regard the justification of punishment and the justification of education in prisons as quite separate. On this view punishment takes the form of the deprivation of liberty, and any further deprivations that are a necessary implication of that, or which are required by other necessary features of a lawful prison regime. Education is not, as such, punishment, or a necessary implication of punishment, and its justification, therefore, is quite separate from any justification of punishment *per se*. If education is no part of (the purpose of) punishment it is possible to defend a right to education in prison without being held to the justificatory requirements that apply to judicial punishment. Even so, an instrumental justification of the right to prison education is likely to appeal to rehabilitative and other future-regarding effects. In this case, it remains necessary to establish a relationship between education and some positive change in prisoners, and that will include some requirement for affirming empirical evidence.

An appeal to rehabilitation can extend the argument for the right to prison education beyond what some of its advocates intend. A recent survey on prison education and training amongst adult prisoners in Europe (Costelloe *et al.*, 2012) provides evidence that, in the majority of countries surveyed, less than a quarter of prisoners participate (Hawley *et al.*, 2013: 24). A question arises as to not only whether a prisoner has a right to education, but also whether there is any duty to engage in education as a condition of release – even whether prisoners should be compelled to participate on the grounds of the promised rehabilitative effects that justify punishment in general. These claims cannot be dismissed out of hand. But, equally, we should observe that the justification of prison education as a feature of state punishment cannot rest solely on an appeal to some future good; it must also show that it is the proper purpose of the state to pursue that good as a penal aim by those means. It is one thing to provide a justification of education by appeal to the aim of rehabilitation, another to claim that the state is justified in aiming at rehabilitation by means of compelling prisoners to participate in education as part of their punishment (Duff and Garland, 1994: 3).

In any case, compulsory education in prison may fail to have a significant rehabilitative effect if prisoners resent being forced to attend or if any motivation to learn is thereby undermined. And besides, there is an option that avoids compulsion: to consider the evidence on the most effective and inspiring education and training in prisons and to revise what is offered in the light of that, with the aim of encouraging (and not compelling) higher levels of participation.

We have until this point avoided the question of *how* we should consider any potential benefits of prison education. A classical utilitarian will be disposed to assess the total sum of harm and benefit that is the net effect of providing education to prisoners. Prison education is justified if and only if the net effect comprises a positive sum of benefit, pleasure, or happiness, or if and only if prison education is an integral part of a wider regime that yields this net effect. Otherwise, it is unjustified.

Alternatively, an approach associated with the morality of Immanuel Kant will place less emphasis on estimating costs and benefits and more on how far prison education is compatible with a proper respect for human beings as autonomous and moral agents. The principle question is then, not: 'What is the total sum of prison education-related harms and benefits?' It is, rather: 'Is prison education compatible with respect for the status of the prisoner as a moral, autonomous human being?' Besides moving us towards a view of education as a human right, this last question, in so far as it is concerned with effects on prisoners, encourages us to take seriously some domains above others – in particular, matters of self-respect, respect for persons, and their moral autonomy.

Prison education as a human right

Human rights

According to the United Nations Special Rapporteur on the right to education, '[e]ducation for people in detention should be guaranteed and entrenched in Constitutional and/or other legislative instruments' (Muñoz, 2009: para. 90). Whilst the value of education is generally judged by its impact on recidivism, reintegration, and employment outcomes, education is 'much more than a tool for change. It is an imperative in its own right' (Muñoz, 2009: 2). The Special Rapporteur acknowledged that education in prisons must take account of the criminal justice context, societal calls for punishment as deterrence and retribution, and the administrative priorities of security and resource management. However, these considerations frequently emphasize the 'criminality' of detained persons; there is a conspicuous reluctance 'to recognize their humanity, their potential and their human rights' (Muñoz, 2009: 7).

In a debate on the right of prisoners to vote, the Commissioner for Human Rights at the Council of Europe has stated that '[p]risoners, though deprived of physical liberty, have human rights ... Measures should be taken to ensure that imprisonment does not undermine rights which are unconnected to the intention of the punishment' (Council of Europe's Commissioner, 2011). Likewise, Kennedy has argued:

You punish a person for their crimes through the criminal justice system, you don't take their human rights away. Everyone should have the right to an education – this thirst to know about our world and understand it better is common to most of us – people should be given these opportunities, male or female, prisoner or not. And everyone should be a human rights champion because in the end these are needs we all have. (Kennedy, 2013: 4)

Kennedy's words reveal how the appeal to education as a human right is hard to keep apart from some appeal to the consequences of providing access to education, whether because it allows prisoners to have a better understanding of the world or because it meets needs that we all share. Nor is the reference to needs uncontroversial. Beiter (2006) argues that ensuring access to education for all persons is best regarded not in terms of meeting basic human needs, but as a matter of observing rights protected by law. Once we establish education as a human right laid down in international agreements the failure to comply with the right to education amounts to a violation of international law, and that is then a responsibility of the state.

The claim that education in prison is a human right suggests a claim of a different kind to anything we have considered up until now, resting on grounds other than those which appeal to education as a means to rehabilitation and reintegration into society. A human right is not something whose status is dependent on some cost-benefit calculation, but stands secure and independent of any assessment of the consequences or benefits that might attach to the possession of the right itself.

But this is too quick. The justification of human rights might itself employ consequentialist reasoning, just as when we argue that it is only if we provide an absolute protection against forms of mistreatment, and an absolute guarantee of securing basic human needs, that we thereby minimize human suffering or maximize human happiness. Or the justification might include both a consequentialist element, as here, and a deontological element, which invokes a requirement or prohibition that is to be upheld no matter what the consequences are.

I shall here put aside consequentialism and consider the deontological appeal to human rights as invulnerable to any calculation of consequences. We should first ask what distinguishes rights from human rights?⁷ Human rights are international norms that help to protect all people from severe abuses. They are addressed primarily to governments, requiring compliance and

enforcement, and are largely taken up with avoiding what is terrible for people rather than with achieving what is best for them. The emphasis is on the lower limits of tolerable human conduct and on protecting minimally good lives for all people. The standards, being modest, are designed both to accommodate cultural and institutional variation and to elicit universal endorsement, hence most matters of human rights-related law and policy are left to decision-makers within national jurisdictions. In this context, the minimal standard that meets with universal endorsement is that education is a human right; it is less clear whether there is universal endorsement of the claim that education in prison is a human right and less clear, also, what the specifically human right to education in prison requires of governments and prison authorities. In prisons, where any human right to education must take its place alongside competing duties and rights, the scope for variable interpretation and implementation is significant.

Whilst human rights are *universal* this does not entail that they apply to all human beings. The right to vote, for example, is both universal and held only by adult citizens, and the age of enfranchisement varies across nation states. Prisoners in England and Wales do not, at the time of writing, have the right to vote. It might appear that this is inconsistent with the universal right to vote, and it may be, but if it is, this is a consequence not of any claim that the right applies to everyone, but of the fact that it is inconsistent with its status as a universal human right that it should not extend to people merely on the grounds that they are prisoners.

Not all human rights are *inalienable*. A right is inalienable if the holder cannot lose it as a result of bad behaviour or by voluntarily giving it up. And inalienability does not imply that rights are absolute or that they can never be overridden by other considerations. Whilst persons have a human right to freedom of movement, that right may be forfeited following the just imposition of a prison sentence. The question then arises whether the just imposition of a prison sentence could of itself justify the claim that the right to education is to be forfeited. It is hard to see why education should be treated in the same way as freedom of movement. Curtailment of freedom of movement is a necessary condition of imprisonment; curtailment of education is not. A human right is to be forfeited, if at all, only on condition that this is what is required by respect for an overriding moral concern or on the occasion of conduct that merits treatment over and above what is entailed by imprisonment.

Human dignity and respect for persons

What are the grounds for the view that the right to education in prison is a human right? Noting the prevalence of ‘target driven educational models and practices’, ‘estranged’ from ‘the concept of the human dignity of all persons’, the Special Rapporteur observes that:

Human dignity, core to human rights, implies respect for the individual, in his actuality and also in his potential. As education is uniquely and pre-eminently concerned with learning, fulfilling potential and development, it should be a fundamental concern of education in detention, not simply a utilitarian add-on should resources allow it. (Muñoz, 2009: 7)

This brings out three grounds for conceiving prisoners’ rights to education as a human right: human dignity, respect for persons, and citizenship. I concentrate on dignity and respect, but for reasons of space and not because the argument from citizenship does not deserve a serious hearing.

Beiter (2006: 4) notes that ‘[i]t has ... been held that it is a requirement of human dignity to recognise education as a human right’, and in his view ‘the most important foundation for a human right to education must be seen to be man’s inherent dignity. Human dignity should be recognised as the basis of human rights’ (Beiter, 2006: 27). The Eighth Amendment of the United

States Constitution includes a discussion of ‘cruel and unusual punishments’ in connection with the notion of human dignity. In *Furman v Georgia* the primary principle is said to be:

The true significance of [the barbaric punishments condemned by history] is that they treat members of the human race as non humans, as objects to be toyed with and discarded. They are thus inconsistent with the fundamental premise of the Clause that even the vilest criminal remains a human being possessed of common human dignity. (*Furman v State of Georgia* 408 US 238, 63 L Ed 2d 382, 1972)

This statement contains two assertions that are frequently made in the context of prisoners’ rights: that any person, no matter what their crime or other details about their life, retains a common human dignity; and that punishment incompatible with human dignity is characterized by treating human beings as ‘objects’ and ‘non humans’. In a debate on prisoners’ right to vote, Peter Selby, formerly Bishop to HM Prisons and currently President of the National Council for Independent Monitoring Boards for Prisons, stated that:

Denying convicted prisoners the right to vote ... is to state in the clearest terms society’s belief that once convicted you are a non-person ... whose opinion is to count for nothing. It is making someone an ‘outlaw’. (Quoted in White, 2014: 8)

This is similar to a view expressed by the Catholic Bishops of England and Wales, as presented in their report, *A Place of Redemption*: ‘Prison regimes should treat prisoners less as objects, done to by others, and more as subjects who can become authors of their own reform and redemption’ (quoted in White, 2014: 9).

Can a requirement to respect someone as a person provide a foundation for a human right to education? Consider one central aspect of this question – respect for human dignity. What is ‘human dignity’? I shall mention just four of numerous possibilities. Dignity is commonly invoked to express the idea that all human beings are of equal social status solely in virtue of being human. This is the idea of dignity as rank or position, and of degradation as being reduced to a lower rank, or being ‘lowered in dignity or estimation’ (Shorter Oxford Dictionary). A second conception of human dignity is as absolute, unconditional, and incomparable value, an attribute which according to Kant belongs exclusively to human beings. A third sense of dignity is dignity as measured and self-possessed behaviour, as when a person exhibits a quiet stoicism in the face of abuse. This isn’t a sense to be explored here, but just as being dignified is something that one shows, there is a corresponding and fourth idea – that a person should be *treated* with dignity, and that to treat someone with dignity is to *respect* their dignity:

To respect someone’s dignity by treating them with dignity requires that one *shows* them respect, either positively, by acting toward them in a way that gives expression to one’s respect, or, at least, by refraining from behaviour that would show disrespect. (Rosen, 2011: 57–8, my italics)

Rosen is here drawing attention to the *right* to be treated with dignity, a right enshrined in international law. Under Article 3 of Convention III of the Geneva Convention there is an absolute prohibition on ‘outrages on personal dignity, in particular, humiliating and degrading treatment’. What is at issue here is dignity in the sense of a requirement that people should be treated respectfully – that they should have a right to be treated ‘with dignity’.

The failure to treat someone with dignity may or may not be intentional. It is intended when revealed in behaviour designed to cause humiliation, as when staff ridicule a prisoner for not being able to write his name. But not all failures to respect dignity are intended; the provision of basic literacy classes may be well-intentioned but if these same classes are aimed at prisoners with high levels of literacy they may consider the offer an insult. Lack of respect may also be the product of a system of rules and practices that make up a prison environment. A regime

characterized by the imposition of a mundane routine, including the absence of any education, may prove to be incompatible with respect for the dignity of prisoners if their incarceration is found to have a deadening effect on personality, hope, and self-expression.

The numerous ways in which human dignity is seen as either respected or violated, and the number of conceptions of human dignity itself, leads to a well-known difficulty in arriving at a common understanding of what the concept of human dignity either comprises or requires. McCrudden writes that ‘the meaning of dignity is ... context-specific, varying significantly from jurisdiction to jurisdiction and (often) over time within particular jurisdictions’ (McCrudden, 2008: 724). Perhaps there is a *concept* of human dignity that provides the basis of a human right to education in prisons, even whilst we are bound to recognize a plurality of competing *conceptions*.

In this case we must look to see how either concept or conception is related to education in prisons: what *explains* why education in prison is required by respect for human dignity and why its absence amounts to a violation of dignity? There is, perhaps, an incontestable aspect of treatment and punishment that violates human dignity: that is treatment and punishment that amounts to torture or inhuman or degrading treatment, which is absolutely proscribed by Article 3 of the European Convention on Human Rights and numerous other human rights instruments. This might prove of limited assistance here, however, since it is far from obvious that the absence of education in prisons could be regarded as amounting to inhumane or degrading treatment, or anything equivalent to that.

We might insist that dignity can be maintained, or indignity suffered, irrespective of any physical imposition or mistreatment. As Honneth (1995: 131–9) observes, degradation may be used to designate behaviour that ‘represents an injustice [for people] not simply because it harms subjects or restricts their freedom to act, but because it injures them with regard to the positive understanding of themselves that they have acquired intersubjectively’. Human dignity is related not only to (constrained) action and development but also to self-assessment as revealed in perception and thought. This is to draw attention to the significance of the symbolic or expressive aspects of human behaviour. It can be of great importance that we act in ways that express acknowledgement of the fact that someone is entitled to be treated with respect. One reason is that the symbolic and material aspects of dignity are related, for the point of degrading treatment is often not only to express contempt but also to undermine someone’s capacity for dignity (Glover, 1999: 35–8). This leaves us with the question whether we can regard the denial of prisoners’ right to education as symbolic of a lack of respect for human dignity and, if it is, whether that deserves censure not only in itself but also because any such denial is liable to leave prisoners vulnerable to further and related forms of disrespect.

These related forms are identified in discussion about prisoners’ right to vote. The former Archbishop of Canterbury, Dr Rowan Williams, spoke of the importance of regarding prisoners as citizens at a 2013 meeting of the All-Party Parliamentary Penal Affairs group:

The notion that in some sense, not the civic liberties but the civic status of a prisoner is in cold storage when custody takes over is one of the roots of a whole range of issues around the rights of prisoners. (Prison Reform Trust, 2011)

And in a parliamentary debate on prisoners’ right to vote, Kate Green (Labour) argued:

In a decent and civilized society it is right that we treat all, including prisoners, with respect ... If we fail to give prisoners any stake in our society, it is difficult to see why they should wish to reintegrate into that society – why they should feel any sense of obligation to mutual rights, dignity and respect when we do not afford that to them. (House of Commons, 2011)

These views suggest that the right to be treated with dignity, the right to be treated as a person, and the right to be accorded the status of a citizen are not unrelated. Whilst it is certainly

necessary to consider each separately, the most promising approach for any defence of prisoners' rights to education is one which does not only that, but also shows how human dignity is related to respect for persons and how both are related to the status of prisoners as citizens when in prison and following their release.

Concluding remarks

Statements about prisoners' rights tend either to assert or imply that prisoners have a right to education in prison. Beyond that, it is rare to come across a detailed consideration of the grounds that would serve to justify any such right. The absence of a thorough and robust articulation of the justification of the right to education in prison is, perhaps, one reason why the right is not as secure and consistently upheld in practice as it ought to be. If the right to education is not to be too readily subordinated to competing penal priorities, or to views of punishment as retribution and deterrence, there remains a task of providing a compelling justification which rests on grounds that are neither vulnerable to events, as it were, or to uncongenial conceptions of punishment. These grounds are likely to include reference to human dignity, respect for persons and citizenship. I have suggested that it is necessary to consider these both separately and jointly. And, if the right to education in prison is a human right, it will also be necessary to show how these grounds serve to justify a right that applies to all prisoners, irrespective of ethnicity, age, and gender, and irrespective, too, of whether a prisoner is native born or a recently arrived immigrant. These are matters on which much more remains to be written.

Notes

1. Henceforth I generally refer only to 'education' for ease of reference.
2. This section draws on the valuable account in Beiter (2006).
3. Compare with the revised European Prison Rules (Council of Europe, 2006). See under heading 'Evidence on the impact of prison education', above.
4. Young Offender Institutions are prisons for 15–21-year-olds.
5. This section draws on a helpful compilation of evidence presented in Hawley *et al.* (2013).
6. The Office of National Statistics estimates that 48 per cent of prisoners are at or below GCSE level (grades D–G) in reading, with the figure at 65 per cent in numeracy and 82 per cent in writing (Prison Reform Trust, 2013: 65).
7. This and the following two paragraphs draw on Nickel (2014).

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