Prisons and human rights - past, present and future challenges

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Introduction

A free citizen in a democratic society can demand a long list of rights, but what happens when a citizen is taken into state custody and locked in a cell? In the western world, this question has been the subject of intense debate over the last more than 200 years. In the pre-modern prisons of the sixteenth and seventeenth centuries prisoner rights were not a consideration, but in the eighteenth century, and in the spirit of the Enlightenment, a process of reform began and the use of torture, the death penalty and corporal punishment was criticized. Very gradually this led to an increased use of imprisonment and shifted focus from corporal public punishment towards a utilitarian rehabilitative agenda focussing on the individual lawbreaker – illustrated, for example, by Jeremy Bentham's famous panopticon and later by the modern penitentiary and its ideology of rehabilitation through isolation.

While the construction of prisons and the treatment of prisoners began to change significantly from the late eighteenth century and onwards this group of citizens were not granted any rights as such. Furthermore, as described in the literature on the modern penitentiaries of the nineteenth century and in the theoretical literature on the sociology of punishment, the new prisons were not simply utilitarian nor were they necessarily more humane than their predecessors – in reality these institutions produced a modern technology of power through which knowledge of the individual became an instrument of control (Foucault 1995).

It was not until after World War 2 that any serious development of prisoner rights took place. After 1945 an international human rights framework was gradually established and many of the principles and concrete rights underpinning today's human rights standards for prisons were agreed upon in the early aftermath of the war and with the unravelling of the Holocaust still fresh in mind. Nevertheless, the introduction of legally enforceable prisoner rights generally had to wait until the 1960s and 1970s and was mainly a product of national courts and reform processes. A later important addition to the international human rights framework came with the development of human rights prison inspections, which were introduced as part of the international and regional systems of torture prevention.

In recent years, however, the framework for human rights protection of prisoners has been challenged in a number of ways. The most important of these challenges include: the phenomenon of penal populism, tough on crime policies and punitive legislation; the terrorism and security agenda following 9/11; and the broader processes of globalization and migration which have caused, among other things, a significant rise in the number of foreigners in many prison systems. In addition, the international human rights framework and the associated values have in themselves come increasingly under fire, especially in this millennium, and some claim that the 'Endtimes of Human Rights' are now fast approaching (Hopgood 2013).

Despite these developments, human rights continue to develop and sometimes their application is still broadened and strengthened. Two topical and future challenges include the question of prisoners' children and the way in which they and their rights are affected by the use of imprisonment, and the revolution in communications technology and the question of how this will affect prisons and punishment. Both these cases reveal how the use of imprisonment relates to society in very broad and significant ways which clearly have an important human rights dimension.

Prison reform in the wake of the age of enlightenment

There will always be tension between the power of the State and the rights of its individual citizens and at the root of this conflict lies a centuries-old dilemma between an individual's natural freedom and his or her security in a society of law and order (Hobbes 1998, Locke 1997). Cesare Beccaria, in his 1766 book *On crimes and punishments*, found that every individual should only give up the smallest possible amount of freedom which then gave the state a certain power to punish. According to Beccaria, a use of force above and beyond that was a misuse of state power and hence unjustified (Beccaria 1998, p. 56). But principles are one thing and practice another. One can argue that the big philanthropic prison reformers of the late eighteenth century and early nineteenth century were some of the first to look empirically at the possible practical implications of Enlightenment philosophy in the context of prisons. Especially renowned was John Howard, who visited prisons all over Europe and summed up his observations and critique in his book *The state of prisons* in 1777 (Howard 1929). Howard highlighted problems relating to health, religion, and order of the prisons that he visited and his empirical fieldwork created and supported actual reforms. Others undertook similar projects often with the ambition of bringing about comprehensive change in prisons (Smith 2003, p. 79 ff). In 1831, the famous, religious English prison reformer, Elisabeth Fry, for example, brought about changes in Danish prisons after reporting on conditions to the Danish royal family. Concrete outcomes were that heating was introduced in Copenhagen's prisons during the winters and that prisoners received a considerable increase in food rations (Smith 2003, p. 144 ff).

Considered from today's perspective, Fry, Howard and their philanthropic contemporaries performed a monitoring role that anticipated the much later human rights developments in this area. Agencies, such as the European Committee for the Prevention of Torture (CPT) are based on the philosophy that systematic monitoring and documentation of States' actual prison practice can prevent torture and ill-

treatment. However, it can be difficult to assess to what extent prisoners in nineteenth-century Europe were treated better as a result of prison reforms. With the modern prisons the physical health of prisoners generally improved and the mortality rate fell in many prisons but implementation of isolation practices and often-strict solitary confinement led to severe problems with the mental health of prisoners (Smith 2004). In any case, prisoners did not receive individual rights and were still entirely in the hands of the prison management.

The development of prisoners' rights and the principle of normalization

In 1871, the Supreme Court of Virginia determined that imprisoned citizens were 'slaves of the State' (*Ruffin v The Commonwealth 1871*). This and other judgements helped lay the groundwork for the 'hands-off' doctrine, which characterized American jurisprudence for the next nearly 100 years (Morris 1998, p. 219). According to this doctrine, prisoners had no rights and courts should not interfere in internal prison matters whereby prisoners were left 'to the unchecked power of the administration' (Rotman 1998, p. 171). Nevertheless, prison practice developed through international forums. Three international prison conferences were held between 1846 and 1857 where concrete standards for prison practices were adopted and the International Prison Commission (IPC) held further conferences from 1872 onwards. The work within the IPC was oriented towards prison practice and was up until the 1930 congress in Prague unpolitical. In 1935, the penitentiary congress in Berlin became heavily influenced by the Nazi regime and Dr Goebbels was among the official speakers. The IPC was transformed into the IPPC which continued to cooperate with the Nazis during the war and consequently it was dissolved by the UN General Assembly in 1950. Thereafter, the international work with prison standards continued within the UN and resulted in, for example, the adoption of the UN 'Standard Minimum Rules for the Treatment of Prisoners' during the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 (Teeters 1972).

In the meantime, and as I will return to below, an international human rights system had begun to take shape after World War 2. Nevertheless, it was not until the 1960s and 1970s that a proper national and international reform process began whereby prisoners' rights were secured in several countries through a number of ground-breaking decisions and judgements.[1] In 1974, the United States (US) Supreme Court declared that there 'is no iron curtain drawn between the Constitution and the prisons of this country' (*Wolff v McDonnell 1974*). Prisoners' rights were further highlighted in a Canadian judgement in 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' (*R. v Institutional Head of Beaver Creek Correctional Camp 1969*). Arguably, these judgements were also based on the principle that the deprivation of liberty is punishment enough in and of itself. In the words of prison reformer Alexander Paterson: 'Men come to prison *as* a punishment, not *for* punishment' (Stern 1998, p. 197). In Denmark a comprehensive penal reform was introduced in 1973, which led to the formal adoption of the principle of normalization (Engbo and Smith 2012). The principle of normalization is also reflected in the European prison rules and hence part of the regional European human rights framework and consists of two related key elements:

1. Prisoners retain all their rights when imprisoned except those which are taken away by necessary implication of the deprivation of liberty; and
2. Conditions in prison should resemble conditions in the free community as much as possible. (Smith 2012, p. 461)

While the principle of normalization feature quite prominently, for example, in the Scandinavian prison systems this is not always the case. Even the principle that prisoners generally retain their

rights is still very controversial and the question of what rights are 'taken away by necessary implication' is interpreted very differently also within Council of Europe (CoE) member states.

The international human rights framework: a brief outline

Some of the most fundamental human rights principles relevant to the deprivation of liberty were included in the *Universal Declaration of Human Rights* in 1948, which, for example, prohibited slavery and torture (Articles 4 and 5). In the UN *International Covenant on Civil and Political Rights* (ICCPR), adopted in 1966, some of these principles were linked even more explicitly to prisons in Article 10, according to which 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. Furthermore, and unlike most other human rights mechanisms, Article 10(3) of the ICCPR defines that the 'essential aim' of the treatment of prisoners 'shall be their reformation and social rehabilitation'. The convention further confirms a range of other basic human rights relevant to prisoners, including: the prohibition of torture (Article 7), the right to life (Article 6), the right to liberty and security of person (Article 9), freedom of expression (Article 19), freedom of religion (Article 18), the rights to privacy (Article 17) and the right to respect for the family (Article 23). Finally, Article 26 ensures equal protection before the law, regardless of gender, race, colour, and so on.

The UN Human Rights Committee (HRC), which monitors compliance with the ICCPR, has stated that prisoners may not:

> be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the

> rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.
>
> (General Comment No. 21[44] regarding Article 10, 3 April 1992)

This interpretation does not copy but nevertheless lies quite close to the principle of normalization. A wealth of human rights soft law instruments and rules that are highly relevant to prisons and prisoners have also been drafted and adopted by numerous states, not least of which include the UN prison rules which were introduced in 1955 and revised in 1977. A new and quite extensively revised version of these rules has recently been adopted by the UN and entitled the 'Mandela rules' (UN, E/CN.15/2015/L.6/Rev.1, 21. May 2015).

To sum up, if we today consider the history of prisoner rights as well as the overall international human rights approach to the deprivation of liberty, then the following three principles appear as fundamental:

1. The principle of a natural human dignity.
2. The absolute prohibition of torture, inhuman and degrading treatment.
3. Recognition that prisoners, by default, retain their rights except those which are taken away by necessary implication of the deprivation of liberty.

Regional mechanisms: the European human rights framework

Prison practice is also regulated by regional human rights conventions and instruments. One can argue that the European human rights mechanism demand particular attention because it has been equipped with a court, complaint and monitoring system unrivalled by the other regional models. The *European*

Convention on Human Rights (ECHR) entered into force in 1953 and established the European Court of Human Rights (ECtHR), which applies to all of the Council of Europe's 47 Member States. Interestingly, although the ECtHR had a powerful mandate right from the start its judicial role was very limited for the first two to three decades of its existence. During this period the cases were relatively few and most of these were decided by the European Commission of Human Rights which, until it was abolished in 1998, screened and dealt with cases before they reached court. In its first 30 years the ECtHR only delivered 72 judgements, of which approximately 15 dealt with prisons. Furthermore, the ECtHR and the Commission of Human Rights adopted a very conservative approach to a number of prison cases and chose to see a range of potential violations as natural consequences of imprisonment lying within the doctrine of 'implied limitations' (Van and Snacken 2009, p. 10). However, in 1975, in the case *Golder v the United Kingdom*, the ECtHR took the first step in a more progressive direction in this area and concluded that prisoners generally retain their rights. The ECtHR has since repeatedly confirmed this approach and underlined 'that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty' (*Hirst v the United Kingdom 2005*, para. 69).

Among the human rights principles that have gained support, especially within the European system, the principle of normalization is arguably very important as well as the principle that imprisonment should only be used as a last resort. The latter has been included in a range of recommendations from the CoE's Committee of Ministers over a number of years and along with comprehensive practical guidelines. As the Committee of Ministers stated in 1999: 'deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided only when the seriousness of the offence would make any other sanction or measure clearly inadequate' (CoE Recommendation No. R [99] 22). In reality this means that a human rights approach to prisons also becomes a question

of choosing an overall penal policy that ensures minimal use of the deprivation of liberty. Accordingly, recommendations from the CoE in this area includes, for example, that a range of offences are decriminalized, that alternatives to prison sentences are increasingly adopted, and that the legal requirements for pre-trial imprisonment become more strict (Van and Snacken 2009, p. 86 ff).

From human rights principles to prison practice

There is obviously not a direct link between the ratification of human rights conventions and the improvement of prison conditions and prisoner rights. There are large variations in how states and legal systems interpret and relate to human rights soft law as well as hard law. One study of English prisoners' rights, for example, concluded that English judges were 'disinclined to intervene in many areas of prison life, notwithstanding the introduction of the Human Rights Act [in] 1998' (Lazarus 2004, p. 3).

In Europe, a major disagreement on the interpretation of what rights are 'taken away by necessary implication' of the deprivation of liberty has played out between the United Kingdom (UK) and the ECtHR. In the Hirst case, the UK was found in violation of the ECHR for not allowing prisoners to vote (*Hirst v UK*). This led to a national debate in England, including criticism of the ECtHR and in 2011, the influential English Policy Exchange think tank, for example, argued that it was time to consider an English withdrawal from the jurisdiction of the ECtHR. At the same time, English Prime Minister David Cameron declared that 'giving prisoners the vote makes him feel "physically ill"' (*Daily Telegraph*, 7 February 2011). From a human rights point of view, the issue has still not been settled and in February 2015 the UK was again found in violation of the ECHR (Article 3 of Protocol No. 1) for not allowing a prisoner to vote (*McHugh and Others v the UK*). In Denmark, several politicians including previous Ministers of justice have also argued in favour of creating harsher

prison conditions in order to intensify the punitive element of the deprivation of liberty (Engbo and Smith 2012). Some politicians in other words perceive the potentially damaging effects of prisons as a useful element of penalties and not something that should be curtailed to protect prisoners. Accordingly, while:

> many Western European Countries officially adhere to a reductionist policy and have introduced new forms of non-custodial sanctions and measures … their actual policies remain bifurcated … and "serious" offenders, especially those involved in drugs, violent or sexual delinquency, are dealt with by increasingly severe terms of incarceration.
>
> (Van and Snacken 2009, p. 61)

A different question, which in a sense problematizes the whole idea of a human rights approach to prisons, is whether it makes sense at all to argue that the punitive element of imprisonment can be limited to the deprivation of liberty (the loss of freedom of movement) if prisons by their very nature are 'designed to deliberately create human suffering, hurt and injury', as some argue (Scott 2013, p. 301).

On a general note, it is clear that the reform process of the 1960s and 70s has now faded out and in addition, a number of authoritarian regimes apparently continue to ignore prisoners' rights to a greater or lesser extent. According to Amnesty International, torture and arbitrary detention was, for example, widespread in China and Saudi Arabia in 2014 (Amnesty International 2015, p. 107 f. and 313 ff). At the same time, however, there has also been an expansion and consolidation of human rights bodies, standards and especially monitoring mechanisms in recent years, which in some ways has strengthened the protection of prisoners.

Monitoring and prevention

The UN *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) was introduced in 1987 and monitors the relevant activities of the countries which have signed and ratified the CAT, and the UN Special Rapporteur on Torture also has a mandate to conduct visits to institutions in all membership states where people are deprived of their liberty. Furthermore, the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) entered into force on 22 June 2006 and created a sub-committee that can undertake country visits with the aim of strengthening national systems for the prevention of torture. According to this Protocol, individual states also have to establish national preventive mechanisms that undertake prison inspections.

In the CoE Member States, monitoring of prisons was introduced with the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* in 1987, which established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CPT has a very strong mandate, visits Member States regularly, and has free access to prisons and other places of detention. The work of the CPT has been used increasingly by the ECtHR and has, thereby, influenced legally binding standards (Van and Snacken 2009, p. 375). Furthermore, visit reports from monitoring mechanisms have created insight into local practices and raised awareness about prison conditions. The CPT has created an impressive catalogue of empirical data on national prison practices collected during numerous visits in all membership countries – a material which has been surprisingly neglected in comparative criminology and in criminological prison research. The effects of monitoring and torture prevention are still debated but according to Jonathan Simon, who approach the matter from a US perspective, 'the reach of human rights norms as a counterweight to punitive populism in Europe owes much to the development of

specialized governmental organs that support this mission' such as especially the CPT and the CoE Committee of Ministers (Simon 2014, p. 140 f.).

Current human rights challenges

While a human rights approach to prison practice has been strengthened through the development of monitoring mechanisms and national inspection units there are certainly also other contradictory signs on the horizon. One of these has to do with the role of human rights as a legal, political and moral force. Historian Samuel Moyn argues that, during the 1970s, human rights began to appeal to broad communities as a cause of justice and across the western world 'came to define people's hopes for the future as the foundation of an international movement and a utopia of international law' (Moyn 2010, p. 7). As already shown, this was also the period when the rights of prisoners began to be acknowledged by national courts as well as the ECtHR. However, according to Moyn, human rights have since followed a path 'from morality to politics' and today 'stand for an exploding variety of political schemes' why the prominence of human rights may turn out to be short lived (Moyn 2010, p. 227). According to Stephen Hopgood, the 'Endtimes' of what he calls universal 'Human Rights' (with capital letters) are in fact fast approaching as the 'vast superstructure of international human rights law and organization is no longer "fit for purpose"' (Hopgood 2013, p. 2).

To what extent these developments have been correctly analysed and whether the above prophecies are correct is still very much discussed – but there is little doubt that the concept of human rights is questioned and lack the broad political support that it did in democratic states just a few decades ago. In addition, a number of developments specifically challenge prison and punishment standards and threaten to roll back or eliminate a human rights approach to this area. These challenges include the

phenomenon of penal populism, the terrorism and security agenda following 9/11, and the broader processes of globalization and migration.

To start with the first, there is little doubt that recent decades have witnessed an increased focus on retribution and the introduction of more punitive sentencing and penal practices in several jurisdictions. The US has for the last three or four decades inspired and led this international trend and in doing so reached an unprecedented level of imprisonment. During the early 1990s, this wave of punitive policies reached Europe and prison populations grew significantly in, for example, England, Spain and Holland. This tendency has been termed a new 'culture of control' and 'penal populism' (Garland 2001, Tonry 2004, Pratt 2007) and has clearly influenced penal policy in ways that are very problematic from a human rights point of view. In some places, prisoner rights have been directly influenced by this trend an in the US legislation introduced in the mid-1990s means that it is now more difficult for prisoners to assert their rights in court (Jacobs 2003, p. 185). The new punitive penal policies are also reflected in the design of increasingly restrictive and harsh prisons – the American Supermax being prime examples in this regard as 'political symbols of how "tough" a jurisdiction has become' (Riveland 1999, p. 5). In Europe, penal populism has also influenced prison conditions directly including in a Scandinavian country like Denmark (Engbo and Smith 2012).

Furthermore, it is well-known how the anti-terror legislation introduced since 2001 has challenged due process and rule of law principles in many parts of the world, by giving states increased power to control and monitor their citizens (International Commission of Jurists 2009). Within the framework of the War on Terror this security agenda has also had a specific impact on prison conditions and prison standards as the former international leader of the human rights movement, the US, created and upheld inhumane and degrading prison and interrogation practices on a large scale in, for example,

Afghanistan and at Guantanamo and various Black sites around the world. By doing this, and by officially and legally redefining torture, the US administration arguably ridiculed international law, prisoner rights and the entire human rights movement. Post-9/11 security policies have also impacted prison and human rights issues in many other parts of the world (Weber et al. 2014, p. 172 f.).

Thirdly, the broader processes of globalization and migration have caused a significant rise in the number of foreigners in many prison systems along with political initiatives aimed at getting rid of these prisoners (Ugelvik 2014). In some places, including Denmark, there has also been political pressure towards treating such prisoners worse than their national counterparts. Novel methods to lessen the pressure on prison systems are also discussed and the Norwegian state has recently begun to send prisoners to the Netherlands where they have rented prison space (something which Belgium is also doing). The result looks like an experiment with international human rights law and the Norwegian National Preventive Mechanism under the OPCAT has voiced serious concern that the Norwegian state will have trouble living up to the CAT.

Prison and society: the case of prisoners' children and families

Despite of the serious challenges described in the above, human rights continue to develop and as a result standards are sometimes strengthened and broadened in scope in ways that can clearly enhance protection of rights holders. One interesting case in that regard is the question of prisoner's children. Traditionally, discussions, research and court judgements within the field of prisons and human rights have almost exclusively been a matter of balancing the state's legitimate use of power and security concerns against the individual prisoners' rights. The question of whether and to what degree the use of imprisonment has also affected the rights of people living outside of prison has for many years been left out of consideration.

There is however currently a very interesting development in this area and in 2011, the UN Committee on the Rights of the Child produced a detailed set of recommendations, urging:

> that States parties ensure that the rights of children with a parent in prison are taken into account from the moment of the arrest of their parent(s) and by all actors involved in the process and at all its stages, including law enforcement, prison service professionals, and the judiciary.
>
> (Smith 2014, p. 85)

Furthermore, there are now examples of how courts in some jurisdictions have begun to take prisoners children and their rights into account when passing sentences and while the ECtHR for many years treated prisoner family rights cases without referring to the rights of the child this has now also changed (*Horych v Poland 2012*). Norway has taken an important step towards recognizing the rights of prisoners children by legally requiring that children of prisoners 'shall receive special attention' during the imprisonment (Smith 2014, p. 107). This means that some of the wider societal effects of imprisonment are now being acknowledged and gradually incorporated into the human rights, and sometimes national legal, framework.

Modern communications technology and the future of prisons and punishment

The development of digital information and communications technology (ICT) has during a remarkably short time span changed our societies and the way we live. Internet access is today, in many countries, almost a requirement for people who want to actively participate in some of the basic aspects of life and as a result such access is increasingly becoming a human rights issue, meaning that

it requires specific, democratically legitimate and lawful reasons to enforce any kind of restrictions (Jørgensen 2013).

There are, however, groups in society who risk becoming excluded from accessing the Internet and this is certainly the case for prisoners. There are several good reasons for not allowing unrestricted Internet access for all prisoners, some of which have to do with protecting public order, inhibiting the spread of crime as well as protecting victims of crime. There are, however, also several reasons why lack of prisoner Internet access can cause serious problems and further exclude an already marginalized group of citizens. Internet access can be used to educate prisoners; uphold well-functioning family ties; and become indispensable when it comes to maintaining effective contact with public authorities.

It seems that we today stand at a threshold where prison administrators and lawmakers have begun to realize that they must relate much more to ICTs not only from a security point of view but also from a prisoner point of view as well as from a broader societal perspective involving reintegration of offenders. But what will happen when the Internet will clash with the whole concept of deprivation of liberty as a punishment? While the Internet community has been described as being a free 'global social space' which is 'naturally independent' (Barlow 1996) imprisonment is *the* symbol, above any other, of incapacitation and lack of freedom. These two positions and their associated values and ideologies spawn two radically different futures and visions of what imprisonment can come to look like in the age of the Internet. One the one hand, we have a scenario, which in a sense is almost a high-tech revival of the prison abolition movement. In this future, prisoners are always online and although physically inhibited from fleeing their imprisonment they have attained a virtual global freedom where they can communicate with people all over the world – and perhaps offenders will

even be diverted away from prison through the use of electronic tagging. At the other end of the scale we have an Orwellian future where ICTs are used to minimize face-to-face contact and where prisons operate with 'prison cloud' systems and in-cell computer terminals, which do not allow any kind of real access to the Internet but offer the most basic services via a secure intranet and a TV screen in the cell. In this scenario prisoners do not have to leave their cells and are even more isolated and excluded than previously. Electronic tagging can also be used in this manner to create high-tech social control, constant monitoring and very restrictive sanctions outside of prisons. We will thereby have created a new Weberian 'iron cage' where a group of people have become completely trapped in rationalized and bureaucratic systems of control (Weber 1995, p. 181). In the words of Zygmunt Bauman, modernity and bureaucratic decision making have an inherent potential to produce social immorality on a large scale and systems of law and order are particularly vulnerable in that regard (Bauman 1991, 2000).

In reality the future is likely to lie somewhere in between the two scenarios but one can fear that in an age of penal populism the second alternative will appeal more to politicians while the first will be used to create fear, anxiety and 'moral panics' among the public. As this chapter has shown, there is little continuity and no linear progression in human rights over history and across the world. Perhaps this ebb and flow of human rights in prisons illustrate how the symbolism and politics of punishment always carry the potential to undermine the rational nature of the enlightenment project, and equally so the philosophical basis of human rights? In any case the experience of imprisonment is likely to change in the future which in itself might require a redefinition of our human rights standards. It has been argued that ICTs have the potential to change 'the social, technological and legal circumstances in which current definitions of human rights were developed' which can necessitate reinterpretations (Jakubowicz 2011, p. 142). It is not inconceivable that punishment in the age of the internet at some

point will change the practice and concept of deprivation of liberty to a degree where many of our current human rights standards in the area no longer make much sense.

[1] 'The heyday of the prisoners' rights movement roughly spanned the period from 1960 to 1980', according to James B. Jacobs, 'Prison Reform amid the Ruins of Prisoners' Rights', in Tonry (2004), p. 183. Regarding the US, see also Rotman (1998), and regarding Germany see Lazarus (2004), p. 34 ff.

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