

## Winning essay, 2010 Writing for Human Rights Essay Competition

# Do criminals deserve the same rights as everyone else?

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To achieve justice, we must balance each wrong with the appropriate penalty. As Justinian, Roman Emperor from AD 527, reflected, 'Justice is the constant and perpetual wish to render to everyone his due.' It is integral to our society that the most basic human rights are defended. However, the rights of those who threaten the safety of the public must be restricted for the greater good. In honouring basic moral values of our community, it is important only to restrict the rights of criminals so as to punish them and ensure society is safe. Aside from this, criminals' rights should be the same as any other human's, most importantly; their civil and educational rights should be maintained, particularly, if incarcerated. This allows for a more positive rehabilitation and integration of prisoners into the society on completion of their jail term.

As the Honorary Justice Michael Kirby declared, 'Prisoners are human beings... They should, so far as the law can allow, ordinarily have the same rights as all other persons before this Court. They have lost their liberty whilst they are in prison. However... they have not lost their human dignity or their right to equality before the law.'<sup>1</sup> Criminals must have certain rights taken from them as this is the basis for which they are punished. If not threatened by an unfavourable penalty, the rate of crimes would increase as more people would be tempted to break the law. Restrictions placed on a criminal's freedom of movement, such as the prevention of paedophiles working or living in the same area as children, is extremely important in maintaining a level of safety within the community. The public must feel safe and trust that the justice system will see to their needs. In addition, the punishment of criminals must deter others from committing the same crimes. As Lord Chief Justice Hewart, British judge and politician, argued 'justice should not only be done, but should manifestly and undoubtedly be seen to be done.'<sup>2</sup> According to Article 22 of the International Covenant on Civil and Political Rights, restrictions cannot be placed on certain human rights of any person unless they are 'prescribed by law and... are necessary in a democratic society in the interests of national security or public safety...or the protection of the rights and freedoms of others.' The wellbeing of society must be placed above the individual right to 'liberty' of a criminal who is a potential threat to others. This allows Article 3 of the UN Declaration of Human Rights to be honoured; that everyone has the right to 'security of person'.

However, criminals too have the right to feel safe in prison as citizens have the right to feel safe in the public arena. By violating the terms of law, some criminals forfeit their right to freedom whilst incarcerated however, they should still maintain their civil rights. These include the right to feel safe and uphold the law within prison. As stated in Article 10 of the International Covenant on Civil and

Political Rights, 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.' Not only is prison currently a violent environment, detrimental to a criminal's own wellbeing and, in some cases, a violation of their human rights; it also does not aid in the rehabilitation process with many prisoners released who, according to the article, published 24 December 2009, 'Tough Law and Order Policies Aren't Working' from the Sydney Morning Herald, 'benefit little if anything from the experience and are far more likely to leave more damaged and more of a danger to the community than they ever were before.' Those rights which are not absolutely necessary to be removed, must remain in place and be maintained for a criminal in order to defend the values of the society.

The criminal justice system is designed to prevent the breaking of the law. Central to this is its goal to decrease the rate of recidivism, or reoffending. This lies in the rehabilitation of criminals after they have committed a crime both in relation to those imprisoned and those sentenced to community orders or financial punishments. Criminals deserve the right to an education to allow them to rebuild their lives. Andrew Fraser, former lawyer and prisoner himself, argues doggedly for the reform of the prison system. 'It is totally dysfunctional' he states, 'the whole thing is a complete and utter joke and needs a total overhaul.'<sup>3</sup> According to 'The Australian' in an article published on January 30, 2009, '40 per cent of released prisoners are back in jail within two years.' This rate can only be decreased if prisoners are assisted and if those with mental illnesses are given appropriate treatment. Fraser, himself, when enquiring about educational facilities in prison, was told that he would have to wait a year at minimum to discuss the possibility of further education. All criminals deserve the right to the same educational facilities as ordinary citizens which is particularly poignant in prisons where resources may be lacking in some cases.

The defence of basic human rights is pivotal in a society which protects the basic value that all men are created equal. Therefore, the process of taking them away as a punishment or for the good of the community must be considered at great lengths. Criminals, though they have committed an offence, do deserve equal treatment before the law and the same opportunities to better their life as an ordinary person. It is important that, even within prisons, all those rights which are not essential to be taken away are maintained so that criminals have the best opportunity to be rehabilitated and to re-emerge, at the completion of their jail sentence, as better citizens. All people must be defended in the face of justice for as Martin Luther King, Jnr proclaimed in a letter from Birmingham Jail, Alabama on April 16, 1963, 'injustice anywhere is a threat to justice everywhere.'

1. *Muir v R* [2004] HCA 21, [25].

2. *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256, 259.

3. ABC Radio, 'Author speaks out against "dysfunctional" prison system', PM, 31 October 2008 [www.abc.net.au/pm/content/2008/s2407305.htm](http://www.abc.net.au/pm/content/2008/s2407305.htm).