Pace Law Review

Volume 24
Issue 2 *Spring 2004* Article 20
Prison Reform Revisited: The Unfinished Agenda

April 2004

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The International Context of U.S. Prison Reform

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All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.[1]

International Covenant on Civil and Political Rights

[N]or cruel and unusual punishments inflicted.[2]

United States Constitution

Within the U.S. international human rights laws, standards and norms are generally regarded as a framework necessary to constrain the behavior of other less compassionate, less democratic nations. It is assumed that our own Constitution and Bill of Rights, buttressed by strong and independent courts to which all of us have access, guarantee us rights far beyond

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1. *International Covenant on Civil and Political Rights, opened for signature* Dec. 16, 1966, art. 10(1), 999 U.N.T.S. 171, 176 (entered into force Mar. 23, 1976).

2. U.S. CONST. amend. VIII.

those which any international body could confer.[3] Yet the current treatment of prisoners and the lack of tolerance for the view that the Constitution should confer any rights on them at all, argue that all is not well under our present system.

Litigation in federal courts, based on the Eighth Amendment to the U.S. Constitution, has had a profound impact on the conditions in U.S. prisons in the past thirty years.[4] Lawyers who were active in the civil rights struggle of the 1960s had learned to use the power and independence of the federal courts to bring reform to state institutions. Having seen first-hand the horrendous conditions in which their clients (and sometimes the lawyers themselves) were housed in state prisons and local jails, they understood that prisoners were the next powerless segment of American society in need of federal protection. The prisoner rebellion and its aftermath at Attica in 1971, in which forty-three prisoners and guards lost their lives, served as an opening into the dark world of America's prisons and became the catalyst for the development of the modern prisoners' rights movement.[5]

The pioneering work of these early advocates of prisoners' rights forced the courts to move away from the "hands off" doctrine under which they had declined to review prison conditions or practices for many years.[6] Over the next twenty-five years,

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3. *See generally* Jack Goldsmith, *International Human Rights Law & The United States Double Standard*, 1 GREEN BAG 2D 365 (1998).

4. *See, e.g.*, Furman v. Georgia, 408 U.S. 238, 316-29 (1972) (reviewing the history and interpreting the meaning of the Eight Amendment's prohibition against cruel and unusual punishment); Estelle v. Gamble, 429 U.S. 97 (1976) (holding "that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' . . . proscribed by the Eighth Amendment"); Hutto v. Finnely, 437 U.S. 678 (1978) (finding that, "as a whole," the conditions in isolation cells violated the petitioner's Eighth Amendment rights).

5. *See generally* N.Y. STATE COMM'N ON ATTICA, ATTICA: THE OFFICIAL REPORT OF THE NEW YORK STATE SPECIAL COMMISSION ON ATTICA (1972); *see also* LYNN S. BRANHAM, THE LAW OF SENTENCING, CORRECTIONS, AND PRISONERS' RIGHTS 337 (6th ed. 2002); Edgardo Rotman, *The Failure of Reform: United States, 1865-1965*, *in* THE OXFORD HISTORY OF THE PRISON 169, 192- 93 (Norval Morris & David J. Rothman eds., 1995).

6. *See* MALCOLM M. FEELEY & EDWARD L. RUBIN, JUDICIAL POLICY MAKING AND THE MODERN STATE: HOW THE COURTS REFORMED AMERICA'S PRISONS (1998); *see also*Kenneth C. Haas, *Judicial Politics and Correctional Reform: An Analysis of the Decline of the "Hands-Off" Doctrine*, 1977 DETROIT C. L. REV. 795. The Supreme Court formally rejected the "hands off" doctrine in *Wolf v. McDonnell*, 418

all areas of prison life were reformed as a result of lawsuits brought by the American Civil Liberties Union's (ACLU) National Prison Project, by other non-profit litigating organizations and by individual attorneys.[7] But times changed.

More conservative courts, in particular a more conservative Supreme Court, became less likely to find prison conditions unconstitutional.[8] Meanwhile, the increasing politicization of crime led to calls not only for harsher punishments but also for harsher conditions for those being punished.[9] The "harsh on prisoner" movement began a widespread attack on the very notion of prison litigation, insisting that frivolous lawsuits were tying up the courts and activist liberal federal judges were tying the hands of prison administrators by micromanaging every area of prison management through intrusive consent decrees.[10] Stories of lawsuits over crunchy versus smooth peanut butter and consent decrees requiring a specific cleaning agent to be used were widely circulated as examples of these two trends.[11] The conflation of so-called "frivolous" lawsuits and the claims of micromanagement by the federal courts implied that all prison condition lawsuits were without merit, wasted tax payer money, tied up the federal courts to the detriment of more worthy litigation and undermined the move to harsher conditions of confinement.

U.S. 539 (1974), finding that "[t]here is no iron curtain drawn between the Constitution and the prisons of this country." *Id.* at 555-56.

7. *See* FEELEY & RUBIN, *supra* note 6, at 366-69.

8. *See id.* at 47; *see also* Bell v. Wolfish, 441 U.S. 520 (1979) (finding that "prison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security"); Wilson v. Seiter, 501 U.S. 249 (1991) ("[O]nly those deprivations denying 'the minimal civilized measure of life's necessities,' are sufficiently grave to form the basis of an Eighth Amendment violation."); Hudson v. McMillian, 503 U.S. 1 (1992) (holding "extreme deprivations are required to make a condition-of-confinement claim . . . [and that b]ecause society does not expect that prisoners will have unqualified access to health care, deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are 'serious' ").

9. *See* Susan Yoachum, *Public, Politicians Agree: Get Tough on Felons*, S.F. CHRON., Apr. 18, 1994, at A1.

10. *See* Naftali Bendavid, *Putting Lawsuits in Lockdown: House Bill Curbs Inmates' Legal Redress*, LEGAL TIMES, Feb. 20, 1995, at 1; *cf.* Nat Hentoff, *Congress's Brutal Treatment of Prisoners*, VILLAGE VOICE, Apr. 4, 1995, at 18.

11. *See* 141 CONG. REC. S14, 413 (daily ed. Sept. 27, 1995) (statement of Sen. Robert Dole).

This campaign of misinformation brought about the passage of the Prison Litigation Reform Act (PLRA) which severely restricted prisoners' access to the courts and the powers of the federal courts to ameliorate bad prison conditions.[12] This paper does not discuss the consequences of that legislation which are discussed in detail elsewhere.[13] Our purpose is to suggest another approach to change the focus of litigation and of advocacy on behalf of prisoners.

As a key advocate for human rights worldwide, the U.S. unquestionably has a moral responsibility to accept as binding the human rights standards by which we judge the conduct of other states. The legal requirements imposed on the U.S. by international human rights treaties are more ambiguous and currently the subject of considerable debate.[14] In some instances the U.S. has signed but not ratified treaties. In others it has ratified them but reserved the right not to implement certain key provisions. The extent to which international law has been used in U.S. courts and suggestions for its wider use are made below. This paper is not intended to provide an exhaustive review of those cases where international law has been used, nor to discuss all the ramifications of litigation using international law. Both of those have been well documented by others and we provide some of those sources for lawyers wishing to pursue this issue.[15] Rather we hope to provide an overview of the need for and significance of international human rights in domestic prison reform and encourage a debate on what the next steps should be.

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12. Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified at 11 U.S.C. § 523; 18 U.S.C. §§ 3624, 3626; 28 U.S.C. §§ 1346, 1915, 1915A; 42 U.S.C. §§ 1997-1997h).

13. *See, e.g.*, Randal S. Jeffrey, *Restricting Prisoners' Equal Access to the Federal Courts: The Three Strikes Provision of the Prison Litigation Reform Act and Substantive Equal Protection*, 49 BUFF. L. REV. 319 (2001); David M. Adlerstein, *In Need of Correction: The "Iron Triangle" of the Prison Litigation Reform Act*, 101 COLUM. L. REV. 1681 (2001); Thomas Julian Butler, *The Prison Litigation Reform Act: A Separation of Powers Dilemma*, 50 ALA. L. REV. 585 (1999).

14. *See generally* Douglass Cassel, *Does International Human Right Law Make A Difference?*, 2 CHI. J. INT'L L. 121 (2001); Jack Goldsmith, *Should International Human Rights Law Trump U.S. Domestic Law?*, 1 CHI. J. INT'L L. 327 (2000).

15. *See, e.g.*, FRANCISCO FORREST MARTIN, CHALLENGING HUMAN RIGHTS VIOLATIONS: USING INTERNATIONAL LAW IN U.S. COURTS (2001) (focusing on U.S. human rights violations).

The idea of using human rights law in prison reform is not as far fetched as it might have seemed a few years ago. It is certainly remarkable how the general debate on the use of international human rights law has developed recently. Interest in the issue can be seen at every level, from Supreme Court Justices to public interest law groups to individual practitioners. For example, the American Civil Liberties Union held a meeting in Atlanta, in October of 2003, to discuss the use of international human rights law in litigation and advocacy.[16] The meeting was attended by a number of individuals including more than a hundred lawyers.

In the recently completed Supreme Court term, the opinions in two important cases and the dissent in another invoked legal principles from outside U.S. domestic law.[17]

In one affirmative action case Justice Sandra Day O'Connor wrote for a 5-4 majority that the University of Michigan Law School's effort to enroll "a critical mass" of Black, Latino and Native American applicants could pass muster under the U.S. Constitution.[18] Justice Ginsburg wrote a separate concurring opinion, joined by Justice Breyer, referencing the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the U.S. in 1994.[19] In addition, in their dissent in the undergraduate affirmative action case,[20] Justices Ginsburg and Souter referenced "[c]ontemporary human rights documents" to distinguish measures designed to promote racial equality from those designed to support racist policies.[21]

Justice Anthony Kennedy buttressed his majority opinion in the Texas sodomy case[22] by noting that the court's past approval of state sodomy bans was out of step with the law in

16. Press Release, American Civil Liberties Union, ACLU Convenes First National Conference on the Use of International Human Rights Law in the U.S. Justice System (Oct. 8, 2003), *available at* http://www.aclu.org/International/International.cfm?ID=13994&c=36.

17. Grutter v. Bollinger, 539 U.S. 306 (2003); Gratz v. Bollinger, 539 U.S. 244 (2003); Lawrence v. Texas, 123 S. Ct. 2472 (2003).

18. *Grutter*, 539 U.S. 306.

19. *Id.* at 344.

20. *Gratz*, 539 U.S. 244.

21. *Id.* at 302 (Ginsburg, J., dissenting).

22. *Lawrence*, 123 S. Ct. 2472.

other Western democracies.[23] Citing opinions of the European Court of Human Rights, he wrote that "[t]he right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries."[24]

In 2002 the Court's ruling banning the death penalty for mentally retarded criminals also invoked international opinion.[25] In explaining why that practice violated contemporary notions of permissible punishment, Justice John Paul Stevens, writing for a 6-3 majority, said that "within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved."[26]

This is not only so in the U.S. Supreme Court. Perhaps even more surprisingly, the Missouri Supreme Court, in its recent finding that it is unconstitutional to execute someone for a murder committed when under the age of eighteen, referred to international laws and standards in reaching that decision.[27] The court noted that the views of the international community have consistently grown in opposition to the death penalty for juveniles.[28] The court references Article 37(a) of the United Nations Convention on the Rights of the Child as prohibiting death penalty for juveniles and noting that "several other international treaties and agreements expressly prohibit the practice."[29]

Indeed there is a good deal of activity in both litigation and advocacy around the juvenile death penalty making use of international law, as the U.S. is so clearly in defiance of all norms and standards on this issue—we are now the only country that, at least officially, still allows the death penalty for children.[30] It

23. *Id.* at 2481.
24. *Id.* at 2483.
25. Atkins v. Virginia, 536 U.S. 304 (2002).
26. *Id.* at 316 n.21.
27. State *ex rel.* Simmons v. Roper, 112 S.W.3d 397 (Mo. 2003).
28. *Id.* at 410-11.
29. *Id.* at 411.
30. *See* AMNESTY INT'L, UNITED STATES OF AMERICA—INDECENT AND INTERNATIONALLY ILLEGAL: THE DEATH PENALTY AGAINST CHILD OFFENDERS (2002), *available at* http://www.amnestyusa.org/abolish/reports/amr51_144_2002.pdf; *see also* AMNESTY INT'L, CHILDREN AND THE DEATH PENALTY—EXECUTIONS WORLDWIDE SINCE 1990 (2002), *available at* http://www.amnestyusa.org/abolish/reports/children_and_dp_since1990.pdf.

does not seem far-fetched to expect that when the Supreme Court next addresses the issue of executing juveniles, it will find such a punishment to be unconstitutional and will buttress that argument by reference to international laws and norms.

International human rights law provides another source of law for prison litigators too. Although there are many impediments to its use, creative litigators are working to find ways around these problems.

The main obstacle to successful use of conventional human rights standards is that the U.S. has attached reservations to treaties it has ratified, and has argued that such treaties are not applicable unless Congress passes enabling legislation. They are not self-executing and do not provide a private right of action. Attorneys must therefore develop arguments to attack the validity of U.S. reservations and the supposed non-self executing status of the treaties.

An alternative approach would be to address the supremacy of international treaties to state law. The practices of U.S. states, rather than the federal government, are often claimed to violate international human rights standards. Because international treaty obligations traditionally trump state activities, practitioners may succeed in applying international norms to state actions. Article VI of the Constitution, states "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[31]

Using a federal statute provides a way around the problems of attempting to litigate using international human rights law. The Aliens Tort Claims Act (ATCA) is a federal statute that is being increasingly used.[32] The Act allows foreigners to bring complaints of violations of the "laws of nations" to U.S. courts for adjudication. In order for the court to establish that the "laws of nations" have been violated, they are obliged to consult the enabling statutes and decisions of human rights tribunals,

31. U.S. CONST. art. VI, § 1, cl. 2.

32. 28 U.S.C. § 1350 (2004).

as well as international human rights covenants and declarations.[33]

In New Jersey, Rutgers Law School International Law clinic is using the Aliens Tort Claims Act to purse a case against the INS and the private contractors who were running a detention center where the immigrants were subjected to brutal treatment by the guards until eventually they rioted.[34] Senior Judge Dickinson R. Debevoise ruled that immigrants seeking asylum can sue for damages over the abusive conditions of their confinement. He dismissed one count of the suit against the INS itself,[35] brought under ATCA, allowing the plea of sovereign immunity, but he refused to dismiss the ATCA claim against the individual INS officials sued, or against Esmor and its employees.

Given the ever increasing number of immigrant detainees now being confined, and the increasing number of non-U.S. citizens being held in U.S. prisons and jails, there may be many opportunities to make use of the Aliens Tort Claims Act on their behalf. And that of course might put us in the interesting position of requiring better conditions of confinement for immigrants than for our own citizens.

Clearly more work needs to done to develop arguments that specific human rights treaties and standards are applicable to U.S. law before we can hope to see the courts find international law to be dispositive. More judicial education about those treaties and standards will be required before judges are willing to accept their use.

Attorneys may find courts more receptive to arguments based on international human rights standards if they present the standards first as useful interpretive aides. The courts have for some time accepted that international standards can offer us guidelines for the appropriate treatment of prisoners. The United Nations Standard Minimum Rules for the Treatment of Prisoners[36] have been referenced in courts many times

33. *See* BETH STEPHENS & MICHAEL RATNER, INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS (1996).

34. Jama v. I.N.S., 22 F. Supp. 2d 353 (D. N.J. 1998).

35. The case against the INS is going forward on other theories of action.

36. *Standard Minimum Rules for the Treatment of Prisoners*, E.S.C. Res. 633C (XXIV) U.N. ESCOR, Annex 1, U.N. Doc. A/CONF/611 (1950), U.N. ESCOR,

over the years,[37] although they are rarely seen in use in U.S. prison administration.

The earliest reference by the Supreme Court to the applicability of an international human rights instrument to a prisoner's case is in *Estelle v. Gamble* in 1976.[38] In discussing "evolving standards of decency," the Court listed the Standard Minimum Rules for the Treatment of Prisoners (*SMRs*) as one of many proposed standards or model legislation that regulate the standards of medical care provided to prisoners.[39]

The court relied on the *SMRs* as an interpretive aid again in *Sterling v. Cupp*.[40] The court noted that federal standards reflect principles found in nonofficial sources, such as the *SMRs* and cited these sources "as contemporary expressions of the . . . concern with minimizing needlessly . . . dehumanizing treatment of prisoners . . . ."[41]

Similar cases come out of the lower courts too. In *Lareau v. Manson*,[42] the court uses the *SMRs* and other standards to define what constitutes prison overcrowding.[43] The court states that the *SMRs* "may be significant as expressions of the obligations to the international community of the member states of the United Nations."[44] The court states that the *SMRs* and provisions of the United Nations Charter are evidence of principles of customary international law.[45] The court also notes Connecticut's administrative adoption of the *SMRs* as well as federal courts' use of the *SMRs* for guidance in particular cases.[46]

Supp. No. 1, at 11, U.N. Doc. E/3048 (1957), *amended by* E.S.C. Res. 2076, (LXII), U.N. ESCOR, Supp. No. 1, at 35, U.N. Doc. E/5988 (1977).

37. *See, e.g.*, Estelle v. Gamble, 429 U.S. 97 (1976); Lareau v. Manson, 651 F.2d 96 (2d Cir. 1981); Detainees of Brooklyn House of Detention for Men v. Malcolm, 520 F.2d 392 (2d Cir. 1975); Kane v. Winn, 319 F. Supp. 2d 162 (D. Mass. 2004).

38. 429 U.S. at 104-05 (holding "that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' . . . proscribed by the Eighth Amendment").

39. *Id.* at 104 n.8.

40. 625 P.2d 123, 132 n.21 (Or. 1980) (holding that only guards of the same sex may conduct a patdown or search of prisoners' anal-genital areas).

41. *Id.* at 131.

42. 507 F.Supp. 1177 (D. Conn. 1980).

43. *Id.* at 1189.

44. *Id.*

45. *Id.*

46. *Id.*

In *Bott v. DeLand*,[47] the court notes that the Utah's unnecessary abuse standard was based upon "internationally accepted standards of humane treatment," including various human rights instruments.[48]

While such references by the courts may not seem to be revolutionary, there is no question that the acceptance of the *SMRs* as a universal standard would be a major step in the acceptance of human rights standards in prison administration. Penal Reform International uses the *SMRs* and other human rights standards as the basis for prison staff training programs throughout the world, and is currently working with the American Correctional Association to explore ways in which the *SMRs* can become an accepted and integrated part of prison administrative policy and practice in the U.S.

The implication of these rules for prison policy and day-to-day prison management has been explicitly laid out in Penal Reform International's handbook *Making Standards Work*.[49] In 2002, the International Centre for Prison Studies published *A Human Rights Approach to Prison Management: a Handbook for Prison Staff*,[50] which relates the *SMRs* and all the other relevant international human rights treaties and standards to the work of prison staff in all areas including healthcare, disciplinary procedures, death row and the treatment of women prisoners.

The treatment of women prisoners is one area where U.S. practice clearly deviates from the *SMRs* and other human rights standards. One creative litigator who is actively pursing the international law option in prison conditions litigation is Deborah LaBelle from Michigan. Her cases on behalf of women prisoners subjected to sexual abuse by guards, in the Michigan State Department of Corrections and in county jails, have been

47. 922 P.2d 732 (Utah 1996), *overruled by* Spackman v. Bd. of Educ., 16 P.3d 2000 (Utah 2000).

48. *Id.* at 740 (referring, in a civil suit by a prisoner against prison officials, to the International Covenant of Civil and Political Rights, the Universal Declaration of Human Rights, and the *SMRs*).

49. PENAL REFORM INT'L, MAKING STANDARDS WORK: AN INTERNATIONAL HANDBOOK ON GOOD PRISON PRACTICE (2d ed. 2001), *available at* www.penalreform.org/english/MSW.pdf.

50. ANDREW COYLE, A HUMAN RIGHTS APPROACH TO PRISON MANAGEMENT: HANDBOOK FOR PRISON STAFF (2002).

ground-breaking in many respects.[51] International standards are quite clear, male guards should not be in charge of women prisoners, and as part of the initial settlement in the prison case it was agreed that the *SMRs* should be made available in the prison library.[52]

The Michigan prison case is particularly interesting because it illustrates the benefits that can come from the synergy between litigation and advocacy. Human Rights Watch's report on the sexual abuse of women prisoners, *All Too Familiar—Sexual Abuse of Women in U.S. State Prisons*,[53] which looked at the situation in Michigan, among other states, was released with great publicity around the time of the trial and undoubtedly influenced the climate in which the case was heard.

Advocacy and public education are essential parts of the process of change. Litigation using international human rights law will certainly need the support of a program of public education about the laws, their applicability and purpose. And the introduction of human rights laws, standards and norms into the language of advocacy can change the dialogue about prison and prison reform in a way that is essential if we are to see systemic change.

The PLRA and other anti-prisoner legislation passed at the federal and state level have been successful and have provoked little opposition, in part, because of the dehumanization of prisoners that has been part of the politicization of crime. It would be difficult to exaggerate the extent of attempts to dehumanize prisoners, to declare that all efforts at rehabilitation had been proven useless, to insist that enforcing harsh conditions of confinement was the only way to control crime and reduce recidivism. The reintroduction of chain gangs, of striped prison

51. *See, e.g.*, Overton v. Bazzetta, 539 U.S. 123 (2003); Hadix v. Johnson, 228 F.3d 662 (6th Cir. 2000); Nunn v. Mich. Dep't of Corr., No. 96-CV-71416-DT, 1997 U.S. Dist. LEXIS 22970, 1997 WL 33559323 (E.D. Mich. Feb. 4, 1997).

52. *See Nunn*, 1997 U.S. Dist. LEXIS 22970, 1997 WL 33559323. An article for the HARVARD HUMAN RIGHTS JOURNAL, by Martin Geer, looks at the interesting international aspects of this case and the whole area of women prisoners and human rights. *See* Martin A. Geer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections Under Domestic Civil Rights Law–A Case Study of Women in United States Prisons*, 13 HARV. HUM. RTS. J. 71 (2000).

53. HUMAN RIGHTS WATCH, ALL TOO FAMILIAR—SEXUAL ABUSE OF WOMEN IN U.S. STATE PRISONS (1996), *available at* http://hrw.org/reports/1996/Us1.htm.

uniforms and the reduction of opportunities for education and recreation are among the examples of "punishing" conditions imposed.[54] Even levels of violence within prisons and brutal behavior by guards was viewed as acceptable and indeed deserved. The kind of violent behavior that had brought some prisoners long prison sentences was considered acceptable when administered to them by the supposed agents of the law who were guarding them. Meanwhile, any discussion of prisoners' "rights" was judged as support for criminal behavior and damaging to the victims of crime.[55]

The language of human rights is important precisely because it speaks of universal rights—rights that belong to everyone based on their humanity without regard to conduct or status. Indeed all the major human rights documents make specific reference to the rights of detained people. The Universal Declaration of Human Rights states in Article 5 that, "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."[56] The International Covenant on Civil and Political Rights, Article 10, states, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."[57] Similar wording is included in the European Convention on Human Rights, the African Charter on Human and People's Rights and the Inter-American Convention on Human Rights.[58]

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54. *See* Rick Bragg, *Chain Gangs Return To Roads of Alabama*, N.Y. TIMES, Mar. 26, 1995, at A16 ("the sight of a man in chains would leave a lasting impression on young people," according to the state's Prison Commissioner); *see also* Kate Stone Lombardi, *Sing Sing Anecdotes Find a Chronicler*, N.Y. TIMES, Feb. 22, 1998, at C1 ("the institution of striped prison uniforms . . . was meant both to humble prisoners and make them easier to guard.").

55. *See generally* ROBERT JOHNSON, HARD TIME: UNDERSTANDING AND REFORMING THE PRISON (3d. ed., 2002); MATTHEW SILBERMAN, A WORLD OF VIOLENCE: CORRECTIONS IN AMERICA (1995).

56. *Universal Declaration of Human Rights*, G.A. Res 217A (III), U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948).

57. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 10(1), 999 U.N.T.S. 171, 176 (entered into force Mar. 23, 1976).

58. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 5, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953); African Charter on Human and People's Rights, June 27, 1981, 21 I.L.M. 58 (entered into force Oct. 21, 1986); American Convention on Human Rights, Nov. 22, 1969, O.A.S. T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978).

As Vivien Stern argues in *A Sin Against the Future: Imprisonment in the World*, it is not an accident that these key documents clearly include prisoners among those whose rights they define.[59] The Universal Declaration of Human Rights was drawn up in 1948 by the generation who had lived through the Second World War and seen the worst that a state can inflict on human beings in its power. They saw how the dehumanization of particular groups—Jews, gypsies, homosexuals—and the sanction of the state for their degradation and abuse could lead to the institutionalized abuse of human rights. As a result, the Charter of the United Nations, adopted in June 1945, reaffirmed a belief in "fundamental human rights, in the dignity and worth of the human person . . . ."[60] The Universal Declaration of Human Rights came three years later and was followed by all the covenants and conventions on human rights that make up the framework for how states of the world should treat their citizens. Article 5 of the Universal Declaration of Human Rights says, "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."[61] As Vivien Stern so eloquently expressed it,

> Detained people are included because human rights extend to all human beings. It is a basic tenet of international human rights law that nothing can put a human being beyond the reach of certain human rights protections. Some people may be less deserving than others. Some may lose many of their rights through having been imprisoned through proper and legal procedures. But the basic rights to life, health, fairness and justice, humane treatment, dignity and protection from ill treatment or torture remain. There is a minimum standard for the way a state treats people, whoever they are. No one should fall below it.[62]

The assertion of an inalienable right to human dignity should form the basis for review of all prison conditions.

The first step in any widespread use of international human rights in U.S. prison reform has to be a program of public and judicial education. The "public" in this instance begins

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59. VIVIEN STERN, A SIN AGAINST THE FUTURE: IMPRISONMENT IN THE WORLD 191-224 (1998).

60. U.N. CHARTER pmbl.

61. *Universal Declaration of Human Rights*, *supra* note 56.

62. STERN, *supra* note 59, at 192.

with prison reform litigators and activists and prison administrators and then must include the media and the more general public who need to be convinced that international human rights law is not some alien, foreign entity but rather something that shares, and indeed in many instances was built on, the same language and values as our own Constitution and Bill of Rights and was largely shaped with American involvement over the years.

Law schools are increasingly offering international human rights courses to their students. But judges who come from an earlier generation of lawyers will also need, and in many instances would welcome, education in the meaning and significance of international law.[63]

In the words of Mary Robinson,[64]

> [D]espite the progress that has been made in recent years in moving human rights to the center of the international agenda, the reality is that they are still viewed by many merely as rhetoric rather than legal realities which must be taken seriously . . . education alone won't be enough. The human rights obligations of states must be understood and taken seriously as legal obligations.[65]

This is at least as true for the U.S. as it is for any other country. Prison conditions and the right of prisoners to decent and human treatment would be an excellent place for us to start.

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63. A panel of judges at the First National Conference on the Use of International Human Rights Law in the U.S. Justice System, *supra* note 16, discussed this issue at length and stressed that state judges in particular will tend to ignore issues of international law raised in briefs presented to them simply because they do not know anything about the laws.

64. Mary Robinson is a past president of the Republic of Ireland and was the U.N. High Commissioner for Human Rights from 1997-2000.

65. Mary Robinson, *Making Human Rights Matter: Eleanor Roosevelt's Time Has Come*, 16 HARV. HUM. RTS. J. 1 (2002).