THE RIGHT OF PRISONERS TO EDUCATION

by

ARLENE BASTION


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The University of British Columbia  
1956 Main Mall  
Vancouver, Canada  
V6T 1Y3  

Date         August 14 1987
Abstract

Punishment is an acknowledged method of enforcing the law. Forms of punishment may differ, but the main aims remain the same—first, to discourage transgression of the law, thus maintaining order in society. Second, it is hoped, by some at least, that prisoners will be reformed by or during their punishment.

This dissertation raises questions about the status and legal rights of individuals who are subject to the dominant form of punishment in Canada—incarceration. The questions are: Can prisoners continue to be regarded as persons and right-holders during incarceration? Can prisoners, then, have a right to education? If so, should such a right be made a legal right? The answer one gives to these questions clearly has important bearings on the status of prisoners during their incarceration.

It is argued that prisoners retain their status as persons while incarcerated, that they do have rights, in particular the right to education, and that such a right should be made a legal right. Justice dictates that only relevant differences or just cause can provide acceptable justification for withholding rights from prisoners. That punishment is being inflicted on certain persons does not offer/provide adequate grounds for denying their right to education. Indeed, a legal right to education is warranted to ensure their access to education.

Thus, the first proposition is that apart from the loss of rights necessary to protect society and the prison, and in order to fulfil the criteria of punishment, prisoners continue to hold
rights held by other persons, in particular the right to education. This position is defended by considering arguments that prisoners have a moral right to education. These are:

1. The Argument from Incarceration
2. The Argument from The Effects of Punishment
3. The Argument from Punishment of Persons
4. The Argument from Fraternal Obligation
5. The Argument from Social Effects
6. The Argument from Benefits to the Collective
7. The Argument from Equality

The second proposition that this right ought to be made a legal right rests essentially on three premises:

1. That education can contribute to the successful achievement of the goals of incarceration.
2. However, education is not considered a priority.
3. As it now stands, there is no effective way to enforce and sustain education in prisons.

With a legal right to education, prisoners would have some basis for objecting to inadequate educational facilities and opportunities. A legal right would safeguard fair treatment and ensure equal opportunities to education.
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I. INTRODUCTION

The dissertation has two major tasks. The first involves presenting arguments essentially moral in nature, showing why prisoners have at least a moral right to education. It is argued that prisoners are persons. Persons are right-holders. Among the rights held by persons in our society are certain rights to education. Nothing about incarceration argues in favour of taking this right away from prisoners. Rather, their dignity as persons and their special status as prisoners demands recognition of at least a moral right to education.

The dissertation then discusses whether this moral right ought to be made a legal right. While prison-based education programs exist, it is postulated that certain aspects or components are problematic. Legislating prisoners' opportunities to education might ameliorate these problems.

While I believe that the arguments offered here are plausible within any society, I will set my arguments against the background of Canadian corrections practice. Where appropriate and available, references will be made to the penitentiaries in British Columbia.

This chapter outlines the background to the two main arguments of the dissertation. It outlines the grounds for regarding prisoners as persons and rightholders, and explicates the assumptions underlying the claim that prisoners' moral rights to education should be made legal rights. A brief account of the penitentiary education system will be given in chapter two. Chapter three contains a background review of
rights, while chapter four examines some arguments which can be used to justify the right to education for persons in general. In chapter five, arguments to justify the right to education specifically for prisoners are raised. Chapter six concludes the dissertation.

It must be noted that the dissertation is not in the business of establishing empirical conclusions. The dissertation is exploratory in nature. It lays the grounds for according a legal right to education without purporting to have produced incontrovertible arguments for such a policy:

...there is also a place and function in our . . . intellectual life for a less complete work, containing unfinished presentations, . . . open questions and problems, . . . as well as a main line of argument...
(Nozick, 1974, p. xii)

PRISONERS AS PERSONS AND RIGHThOLDERS

The ability to claim rights is essential to all human beings. Feinberg (1979) imagines a world without rights called Nowheresville. The citizens of Nowheresville need not be unhappier than persons with rights, but having no notion of 'what is their due,' are grateful for anything done for them (1979, p. 82). Even when they are treated badly, they 'do not think to leap to their feet and make righteous demands against one another' (1979, p. 84). According to Feinberg, the people of Nowheresville lack the 'personal dignity' (1979, p. 87) of
persons because they do not have rights. Lacking rights, they do not know how to, and are unable to make claims.

Feinberg regards the ability to make claims as an integral part of the dignity, status, and self-respect human beings have as persons (1979, p. 87). Indeed, he suggests that respect for persons might be simply respect for their rights (1979, p. 87). Without the ability to claim rights, we are unable to demand redress when we think that we are being unfairly treated. Being able to assert rights thus becomes a very important part of our dignity as persons. It provides us with self-respect because we know there are limits to how other persons can treat us, and if these limits are exceeded, we are entitled to object. It is thus asserted that rights and the ability to claim rights are essential to the dignity and self-respect of persons.

Some rights belong to all human beings, and some may be claimed only by persons. Human beings who do not possess the distinguishing features of persons, such as responsibility and accountability, cannot claim those rights of persons which are dependent upon such attributes. For example, the apparent lack of maturity of young children is considered by some a relevant reason for restricting their right to freedom. Similarly, the mentally deficient may not claim the right to certain opportunities as can other human beings, because they lack the capacity to use these opportunities in a responsible way. For example, they might not have the same opportunities to freedom as other human beings.

It will be argued that prisoners are human beings as well
as persons. They possess any rights which can be claimed by human beings as human beings, and any rights which can be claimed in particular by persons. A right which can be claimed by all human beings is the right to be treated with respect due the status and dignity of human beings. This means that human beings have the right to be always treated fairly, for any unfair treatment or injustice would be a violation of their dignity as human beings. This right is 'inalienable,' because all human beings, including prisoners, can never be deprived of it.

Prisoners are also persons. What distinguishes persons as persons is much debated. I will adopt the view, common to most, if not all, that persons are able to use reason. A second proposed feature is responsibility. Persons, whatever else distinguishes them, are culpable—they can be held responsible for at least some of their actions. A later chapter argues that only persons—accountable beings—can be punished.

Another feature of persons derives from their possessing beliefs, desires, wants, and intentions. Since these features are also assigned by some to dogs and fish (Dennett, 1976, p. 181), persons must be also capable of 'second order volitions' (p. 192), of having 'beliefs about the beliefs and desires of others':

...men may also want to have (or not to have) certain desires and motives. They are capable of wanting to be different, in their preferences
and purposes, from what they are . . . No other animal . . . appears to have the capacity for reflective self-evaluation that is manifested in the formation of second-order desires...

(Dennett, 1976, p. 192)

Like the state of being human, personhood is also a permanent state so long as one retains the essential prerequisites. This means that even those who have done something morally reprehensible are still persons. They must be punished for their offences and their violation of the rights of others, but they do not cease being persons and claimants of rights, and therefore must still be treated with regard and respect as human beings and persons. Punishment involves the deprivation of certain rights, such as the deprivation of liberty/mobility, but does not entail the denial of various other rights. In chapter five it will be put forth that prisoners retain the rights and privileges of other members of society 'except those necessarily removed or restricted by incarceration' (Correctional Law Review Working Paper One, 1986).

Prisoners as human beings and persons, then, have a right to be treated with fairness, and with dignity and respect. They should be punished in a manner which recognizes their dignity and status as persons. This entails their being allowed to hold rights which others have unless just cause be given for their denial. Thus, with reference to the right to education, unless this right can be shown to be fairly forfeitted during
punishment, denying it to prisoners would be a violation of their rights as human beings - and persons - to be treated fairly.

PRISONERS AND THE LEGAL RIGHT TO EDUCATION

Ought prisoners to have a legal right to education? The argument presented is essentially consequentialist in nature. Chapter two, in particular, through its review of the penitentiary education system in Canada, supplies the basis of this argument. Briefly, there may be many commendable penitentiary education programs. At the same time, doubts have been expressed about the provision and quality of education as a beneficial component of incarceration. One example is an opinion that 'education is 'relatively unimportant,' and occupies 'only a rather marginal function of prisons' (Cosman, 1981, p. 11). Another opinion is that the education being provided is 'inadequate in terms of quantity and quality' (Ontario Institute for Studies in Education Review [OISE], 1978, p. 4).

According to a previous director of the Corrections Service of Canada [CSC], the bureaucracy of the CSC at that time decided that education was not a right of prisoners (Cosman, personal communication, Oct. 1985). The Canadian Criminal Justice Association (1985) in its development of standards for adult corrections came to the same conclusion. It is being claimed that such a factor, whether something is perceived as a right, makes a difference in the way persons act toward it. Because education is not recognised as a right in some penitentiary
circles, for example, might be a reason for insufficient interest in its implementation.

This factor also implies prisoners have no legal grounds for seeking action in the event of valid complaint against the penitentiary system. For example, even if they are presently enjoying excellent educational facilities, they have no grounds with which to challenge decisions to reduce or terminate educational programs. This means that, like the citizens of Nowheresville, they are made dependent upon the goodwill of others, such as the legal bureaucracy, for the provision of something to which they are morally entitled.

Other persons, non-prisoners that is, appear to have relatively unproblematic access to education. Certain factors, such as geographical location, or lack of funds, may impede this access. But, according to the Report of Canada on the implementation of The International Covenant on Economic, Social and Cultural Rights, the 'Government of Canada' supports measures taken 'to promote the full realization of the rights of everyone to education' (Feb. 1985, p. 4). With reference to the implementation of the right to a primary education, assistance is provided persons who have difficulty with access to education (p. 5). The same measures are reported as being taken for the right to secondary and higher education (p. 6). For example, financial assistance is provided in the form of loans, tax exemptions, scholarships, and summer employment (p. 7).

Opportunities of access to education would thus appear in
the main entrenched within society. On the whole, if non-prisoners have grounds for dissatisfaction with educational provision, they can seek the intervention of the law for justification and redress. Prisoners do not occupy such a position. They cannot seek the support of the law for better education.

This could be because it is not generally accepted that prisoners can claim rights, let alone the right to education. Yet the Canadian Charter of Rights and Freedoms (1984) promises "constitutional guarantees" of equality rights. If this turns out to be so, such a right might enable prisoners to continue to claim rights other than those thought necessary to punish them or protect society. It allows them to claim rights which other members of society possess. This implies that if education is being provided members of society, then the right to equality ideally makes it available to everyone--including prisoners.

Along such lines, it is also possible to question whether all penitentiaries in Canada can boast of adequate educational facilities. As will be seen in Chapter two, some discrepancies exist between educational programs in men's and women's prisons and between federal and provincial prisons. It is only fair that good programs are made available to all and satisfactory standards maintained throughout. Entrenching a legal right to education would help ensure that all prisoners can claim the same standards of quality in programs.

Prisoners are in a situation where it can be expected that other persons will be hostile to them. For example, it is
possible that prison guards would be hostile to the idea of prisoners having a right to education, when they might feel they themselves have no such right. A right to education could ensure that prisoners are not interfered with in any efforts they might take to be educated and reformed, and that they still receive the same kind of educational benefits, or access to education, as other persons.

Positive consequences of having a legal right to education are also derived from, being able to claim the provision of educational programs which can result in some of those benefits and advantages usually attributed to education. Typically, education is associated with certain improvements and changes for the better. These benefits can take many forms. A person may be taught to perform a skill and thus become more employable. Chapter four will elaborate how a prominent feature of R.S.Peters' criteria of education is that education is assessable by its betterment or improvement of persons in certain intellectual or cognitive ways. He sees a 'logical contradiction' in stating that a person had been educated, but had not changed for the better (1966, p. 3). Similarly, Frankena disdains from terming anything education 'unless it fosters or is intended to foster desirable dispositions' (1965, p. 6).

Multiple conceptions of 'desirable' dispositions have been promoted through the ages. A common ideal which has permeated the many shifts and changes has been that of the "self-betterment" of human beings (Brumbaugh and Lawrence, 1963,
p. 9). Thus no matter what individual changes are advocated as being desirable for education, the notion of development and improvement of persons with education has remained consistent. Whether it be knowledge, skills or values being conveyed, one can usually infer that they have acquired a state of mind considered as an improvement or development over their previous state, that they are able to think and reason in a more mature way. This is why the notion and perspective of education as seeking to bring about desirable changes is significant in the prison context, where desirable changes are likely to be needed.

There are many ways in which a person can change and develop. Many things can also be done within an educational process to help persons change and develop. In this dissertation, the changes and improvements sought for prisoners are related to the development of mental and intellectual prowess, overall with becoming more informed and rational persons. There is no reason why prisoners, if exposed to these opportunities for developing in these ways, might not also improve in these ways, especially if such improved ways of thinking and reasoning were to contribute toward decreasing their criminal activities.

Prison education programs can be formulated with this aim in view. Chapter five will discuss an example, that of the University Education Program run by Simon Fraser University. This program exemplifies how the criteria of education and those goals deemed as being particularly beneficial to prisoners can be incorporated into a program. It must be noted, though, that
these goals and the criteria they represent can underlie any kind of education programs in prison.

The concern of the dissertation is that any program must be consciously geared to achieving some of the goals of incarceration, mainly those directed at releasing prisoners who are less inclined to commit crimes. Some prisoners require only to learn a useful (and honest) trade to be able to keep themselves (honestly) employed. It is feared, however, that programs which only focus on occupational skills and job placement will result in job-holding criminals rather than reformed criminals. Duguid states:

...Correctional administrators are justified in raising the point that education of prisoners might just lead to educated criminals. This is especially important when the education programs are purely technical, career or job-oriented in their content...
(1987, p. 7)

No direct empirical equation is being made between education and improvement. There is no guarantee that persons who participate in educational activities or 'tasks' will automatically achieve the success of becoming educated persons. What is being stated is that education aims to bring about desirable changes in persons, and to facilitate their development along commendable lines. It would be logically odd to engage persons in educational tasks, but be indifferent to whether they benefit from these activities. It is thus
important that education programs in prison measure up to this concept of education in order to ensure an orientation toward change and betterment.

Admittedly, evidence is sparse, and skepticism present regarding changes in character and perceptions as the result of being educated. The only effects which can be measured might be the increase in grade level (Duguid, 1987, p. 7). An analogy is possible with non-incarcerated persons. That they may never be genuinely changed in character should only suggest, like other instances of unsuccessful teaching, that teaching methods and approaches might be wrong, or inappropriate, but not that the aims or rationale itself is misdirected. The goals of education still remain worthwhile, valid, and meaningful.

The tools of education may not guarantee character, they are nevertheless powerful supplements to its transformation. As quoted by the Education and Training Calendar of the CSC:

...Although we may lack the instruments to predict accurately the impact of education, apart from other personality and social factors, on future success, it is known that education is highly correlated with success of people in the general population...

(1982, p. B5)

There is no necessary connection between being educated, 'changed,' and avoiding/committing crime. But the amelioration
of crime is too important a problem to be left to chance. Thus one must seek those activities which are guided by the deliberate intention of bringing about desirable changes in persons. It is possible that education, because it is deliberately geared to develop persons intellectually may help prisoners broaden their mental capacities and horizons, provide more alternatives, increase their capacity to be rational, increase their awareness of how their actions affect others. It is suggested that establishing a legal right to education will increase the likelihood that these potential benefits of education are fully utilized, and accorded due attention and priority.

According to the criteria of R. S. Peters (to be elaborated in chapter four), one does not call a person educated unless s/he has shown some sort of development in these ways. The function of education is:

...to liberate the mind, strengthen its critical powers, inform it with knowledge and the capacity for independent inquiry, engage its human sympathies, and illuminate its moral and practical choices...
(Scheffler, 1973, p. 139)

This notion of education performs a more influential role in the development of prisoners' intellectual and mental competencies. Such a notion of education is seen as being integral to any
efforts and processes which aim to indeed educate and reform prisoners. Thus, within a prison context with its diversity of programs and goals, it ensures the genuine educational worth and value of these programs.

CONCLUSION TO THE CHAPTER

A period of incarceration can serve many purposes. Chapter two will show that these purposes have shifted in direction and emphasis over time. Regardless of changes in public pronouncements or labels, an important goal has always been the hope that prisoners will cease to commit crimes. Whether referred to as reform, rehabilitation, reintegration, etc., education has often been considered among the more promising facilities and services for helping prisoners improve themselves in some way, either by becoming more Christian, more moral, more literate, more employable, but always with the ultimate hope that they abandon their criminal lifestyle. Other methods can undoubtedly achieve such changes. It is education, however, that is the focus of study.

The case is made for a legal right of prisoners to education in order to ensure priority attention to education, in order that its beneficial effects can be fully felt. While penitentiary education programs are available, there is some misgiving that the system is perhaps not operating as fully and efficiently as it could. A possible reason could be that while authorities may recognize the potential of education, because education is not a priority, it is easily shelved and neglected. Because it is not a right of prisoners, there is no one to whom
anyone need answer to for this lack of attention. It remains to the rest of the dissertation to find the grounds to validate such a claim.
II. PENITENTIARY EDUCATION IN CANADA

The tasks of the dissertation are to discuss the grounds for a moral right of prisoners to education, and the grounds for legislating this right. While it is believed that the arguments used will be significant for incarcerated persons elsewhere, the Canadian penitentiary education system is the main backdrop to the discussion. A focus of the dissertation is the possibility that this system might, with the legislation of the right to education, perform or operate more efficiently than at present.

A BRIEF REVIEW OF THE PENITENTIARY SYSTEM

In Canada, the responsibility for corrections is shared by the federal and provincial governments. The Constitution Act 1867 (Ekstedt, 1984, p. 44) established provincial jurisdiction over prisons and reformatories, and federal jurisdiction over penitentiaries. The terms prisons, reformatories, and penitentiaries are 'not defined,' and actually 'carry little more inherent meaning' than 'places of secure custody' (Correctional Law Review Working Paper Two, 1986, p. 3). A difference, however, lies in the duration of sentences. Offenders with more than two years sentence are incarcerated within federal penitentiaries, and those with shorter sentences in provincial institutions.

The dissertation concerns all inmates. The judicial split has to be kept in mind when describing education programs when it may be relevant whether one is referring to either the provincial or federal system. But the system is not as clear cut as it is made out to sound. We are informed that Canada's
correctional system is 'complex, highly diverse, dispersed and segmented' (Correctional Law Review Working Paper One, 1986, p. 4). Approximately 12,000 inmates are in 60 federal institutions. A further 7,000 federal offenders are on some form of conditional release. Provincial institutions 'house' approximately 20,000 inmates, with about 20% in custody on remand. At any time, there are approximately 77,000 serving non-custodial dispositions (Correctional Law Review, Working Paper One, 1986, p. 5). Federal institutions can also range from maximum security institutions with comparatively 'little programming or inmate movement,' to farm and forestry camps, and community correctional centres. Provincial institutions are even 'more diverse' (Correctional Law Review Working Paper One, 1986, p. 5).

A BRIEF REVIEW OF PENITENTIARY EDUCATION PROGRAMS

The Calendar of Studies (1982-83) of the Education and Training Division (CSC) states the following programs available in medium and maximum security prisons: Basic Adult Education, Upgrading Courses, Secondary School Programs, Vocational Programs, Community College Courses and University Courses.

At the provincial level, education is stated as being provided (Ministry of the Attorney-General, 1980, p. 7) among other activities and programs. The actual availability of education, however, seems to vary. The Prince George Regional Correctional Centre has a school program which provides academic upgrading (p. 15). In the Vancouver Island Regional Correctional Centre, there is 'a definite need' to develop a
'wider range of programs in work, lifeskills training, education' (p. 9). The Lakeside Correctional Centre for Women is expanding programs, apparently, to include academic and vocational training (p. 12). More activities for constructive use are seen to be needed in the Lower Mainland Regional Correctional Centre.

Inmates on the whole are also educable persons. In general, they are said to be 'under-educated in comparison with other Canadian adults,' (Education and Training, CSC, 1985, p. 6), but there is no evidence that disability is a problem, or that inmates are incapable of learning (p. 7).

Education - along with other activities - began to be provided in prisons coinciding with more humane goals and conceptions of punishment. For example, as early as 1851, education was conceived of as a tool of reformation (OISE Review, 1978, p. 22). In British Columbia, more currently, the policy is apparently to be as 'humane as possible,' with the provision of programs and activities in work, recreation, education, lifeskills, and spiritual development (Ministry of the Attorney-General, 1980, p. 7). Section 2.10 of the Penitentiary Service Regulations stipulates that 'programs of academic and vocational education' shall be designed as far as possible:

...to prepare inmates, upon discharge, to assume their responsibilities as citizens and to conform to the requirements of the law...
The Penitentiary Act has also stated that educational programs will be provided among others 'to protect the public and assist individual offenders by returning them to society better equipped to lead socially acceptable lives' (Education and Training, CSC, 1985). The Commissioner's Directive on the Education of Offenders (CSC, 1987) also states that offenders should be encouraged to participate in provincially accredited programs which will help improve their knowledge and skills. The First Report of the Task Force on the Mission and Organizational Development of the Corrections Service of Canada also promises programs to help offenders 'serve their time productively' and which are 'most likely to assist them to become law-abiding' (Task Force, 1984, p. 21).

The concern of the dissertation is with the adequacy and quality of programs provided. The next section is an attempt to look into this matter.

A BRIEF ASSESSMENT OF PENITENTIARY EDUCATION

An obstacle to obtaining a concrete and cohesive picture of the system as a whole is that critiques encountered sometimes apply to only the federal system, and sometimes only apply to particular programs within the federal system. There thus seems to be a lack of any comprehensive evaluation of all prison education programs. The most recent seems to be the OISE Review (1978). Hudson tells us that between 1945 and 1967 only eight studies dealt with education and training in prisons (1981,
According to Ekstedt (1984, p. 185) as well, 'Few evaluations have been conducted on the effectiveness of penitentiary education programs in Canadian institutions' (1984, p. 185).

There are certain factors, situations, and issues evident, however, which indicate certain problem areas. The main statement made by the dissertation is, after all, that education ought to be made available to all prisoners in Canada, so it is insufficient that only some persons can report satisfactory educational experiences.

Differences: Federal and Provincial

One of the situations seen as existing, and revealing cause for concern are the differences between education in federal and provincial prisons, and the differences in education for men and women. Certain 'differences' are inevitable, such as those that must arise as a result of differences in duration of sentence.

In the dissertation, the argument is not that all prisoners receive the same programs. It is that whatever education is being provided should be adequate, worthwhile, and deserving of the term 'education.' It should not be mere perfunctory provision, which is likely to occur in a short-term prison. Although inmates in these places may only be 'passing through,' programs can still be positive and concrete. Good programs might also motivate prisoners to seek other worthwhile educational opportunities once they leave prison.

More educational resources and facilities have just been seen to be required in certain provincial prisons. No
substantive evaluation of provincial prison education programs are available beyond disgruntled comments and opinions collected at random. For example, certain provincial educators have expressed unhappiness at the lack of adequate resources and materials. One teacher relates having to fight the British Columbia Teachers Federation for materials other prisoners, as well as non-prisoners were obtaining (Corrections Education Association Conference, Feb. 1987).

Any lack of emphasis on education within the provincial system is justly attributed to the shorter sentence. A higher turnover of population is an important consideration in the allocation of resources. Inmates might not be around long enough to reap the full benefits of programs. The call for the right to education, however, is made for all inmates. As Chapter three will show, it is possible that one may never need to assert one's rights—unless threatened, or when requiring the services/goods granted by the right. However, if indeed the standards of education in provincial institutions are lower, the right to education will enable all inmates to demand equal standards of education as elsewhere.

Differences: Men and Women

For reasons of a smaller population, and a supposedly shorter sentence, education for women prisoners is said to be poor. The Calendar of Studies of the Education and Training Division of the CSC (1982-83) cites following courses as available at the federal Prison for Women: Basic Adult Education, Pre-secondary Language and Mathematics, Secondary
Art, Biology, Chemistry; Data Processing, Family Studies, Office Procedures, Physics, General Science, Typing, Industrial Sewing, Upholstery, Woodworking.

An evaluation of the programs, however, by the 1979 OISE Report to the Solicitor-General, does not seem so encouraging:

...When visiting the Prison for Women, one may be told that there is a full range of day and evening programs and activities, . . . . one may even assume that there is a fair amount of inmate involvement . . . . However, after spending some time with inmates and staff, one is sharply aware of the grave discrepancy between stated policies and practices...
(Sandeman, 1981, p. 389)

While things may have improved since the writing of this particular report, some doubts can nevertheless still be raised about women's education in prisons—especially at the provincial level. A provincial prison educator has stated that women have to give up their so-called right of access to education if they did not want to be transferred away from 'home' (Corrections Education Association Conference, Feb. 1987).

The Canadian Human Rights Commission (1981) found that 'women are victims of discrimination in the federal penitentiary system' as well (Ekstedt, 1984, p. 325). At the provincial level, the Ministry of the Attorney-General's study on Incarcerated Women in British Columbia Provincial Institutions...
(1978), and the Report of the British Columbia Royal Commission on the Incarceration of Female Offenders (1978), both found inequalities between programs for men and women prisoners (Ekstedt, 1984, p. 324). The 'problem of female offenders' has indeed 'reached critical proportions' (Ekstedt, 1984, p. 322). Two particular problems are 'institutional programming' and 'lack of available research' (Ekstedt, 1984, p. 322).

The population of women prisoners may be much smaller than men. Cost effectiveness might justify the provision of a narrower range of programs. However:

...Natural justice and human rights demand unremitting efforts to bring equality of treatment for female prisoners, however difficult this may appear... (Sandeman, 1981, p. 388)

A statement has been made that 'the news is bad on the whole penitentiary education front' (Jubinville, 1983, p. 2). The Director of Education and Training declared that the 'priority given to education is insufficient' (OISE Review, 1978, p. 68). A study done by the Canadian Association of Adult Education (Duguid and Hoekama, 1985, p. 187) reports 'insufficient attention to education values,' and 'education for responsible decision-making.' Cosman's opinion is that penitentiary education is mainly provided 'as preparation for employment' (1981, p. 38), or as a 'time-filling' activity . . . to relieve boredom.'
Penitentiary education in Canada has been characterized by a general lack of interest in genuine educational achievement, by inadequate standards of teacher selection and training, by a lack of discrimination in matters of curriculum. . . , a lack of discipline and structure... (1981, p. 40)

He thinks that even the academic education provided is 'largely a matter of 'skill-training.'

Certain problems have been seen to beset the system. Ekstedt reports insufficiently qualified teachers and 'deficient curricula' (1984, p. 184). This has also been reported by the OISE Review (1978, p. 75) and the Canadian Association of Adult Education (Duguid and Hoekama, 1985, p. 187). Physical facilities are said to be inadequate in most institutions (Ekstedt, 1984, p. 184). The Bell Report (Hudson, 1981, p. 160) found 'inadequate space, staff and materials' a cause for concern. Many of these issues have been identified as 'requiring attention in the early 1800's' (Ekstedt, 1984, p. 58) despite numerous reforms attempted through the years. Problems still in existence are 'the need for meaningful work and vocational training and education programs' (Ekstedt, 1984, p. 59).

Diversity and Complexity

Another situation indicative of the need for a right to education to stabilize affairs is the diversity and complexity
of the system itself (as mentioned earlier). For example, we are informed of the 'gross irregularities, lack of standards and arbitrariness' (Correctional Law Review Working Paper One, 1986, p. 5).

The lack of coherence within the system itself might thus be a possible factor in influencing the way programs such as education are viewed and carried out. With specific regard to education, Dennison sees an enormous 'variety and quality' in education programs across the country:

...It is fair to say that there are a number of exceptional programs in vocational, academic and cultural areas which are available within the system, but they are sparsely located. In some institutions no educational programs are offered...
(1979, p. 2)

The vastness of the region and the judicial split between federal and provincial prisons might explain why co-ordination and integration are hard to achieve. Some differences will be inevitable. But it is important to distinguish between these and those differences which can be avoided, the continued existence of which is unfair to prisoners as persons. For example, if certain opportunities, such as to a good education of worth and value are provided in some penitentiaries, they must be provided all prisoners, unless there is good reason not to do so.
Conflicts

Another situation which might have some influence upon the implementation of education programs is the possible conflict between the purported goals of incarceration. In 1969, the Ouimet Committee Report called attention to the conflict of aims in dealing with offenders as a major problem for corrections (Correctional Law Review Working Paper Two, 1986, p. 10). There are also apparently conflicts between the rehabilitative goals of prison and with 'the other concerns for security and control' (Ekstedt, 1984, p. 185). Correctional officers are usually looking after the custody and control of the inmates while treatment staff are involved in helping inmates develop 'self-initiative and responsibility' (Ekstedt, 1984, p. 222). According to Hudson:

...Conflict between concerns for security, custody and institutional maintenance inevitably override concerns about the quality of the educational programs provided...
(1981, p. 166)

Miller also thinks that education will always have to 'compete with other correctional interests' (1978, p. 235).

Another attendant and related problem might be the changes and lack of positive direction among these goals themselves:

...Over the years a number of goals for
corrections have seen the light of day,
reflecting different points of view on what
the basic philosophy of corrections should be...
(Task Force, 1984, p. 10)

This Report is of the opinion that a characteristic of policy statements and goals is that they are seldom 'integrated into the programs or in planning processes' (p. 10), being more usually found in textbooks and committee reports rather than in legislation or binding directives.

The Sawatsky Report isolates 'the lack of a clear program strategy' (1985, p. 12) and 'instability within programs' as issues that need tackling. Apparently many varied responses were obtained to the question whether the CSC had a clear program strategy (p. 12). A group of persons felt that there were 'too many contradictions within program approaches' to enable anyone to conclude whether or not there was a 'coherent and consistent program strategy' (p. 12). A similar story is told by the CSC:

...Each program in its own way is a monument to some problem of the past, often designed on an ad-hoc basis and targetted to a single problem without much reference to other programs that may address similar problems...
(1985, p. 3)

According to the Sawatsky Report, the 'continuous program change' which has occurred over the last twenty five years has
been detrimental to implementation of programs (1985, p. 13). For example, impact of changes can take months or years to be felt. But just when 'an equilibrium has been reached,' 'programs are changed again.' Another negative result of the constant changeover in policy and programming is that no breathing space is allowed for thorough assessment of program effectiveness. Another drawback is that correctional objectives can seldom become the 'driving force' of the Services (Task Force, 1984, p. 10).

A good illustration of this problem might be the shift of interest away from reform and rehabilitation as goals of incarceration. Reform—especially in terms of spiritual development used to be an early 'central purpose' of prisons (Cosman, 1985, p. 3). Today the word is hardly mentioned. Rehabilitation was officially reaffirmed with the recommendations of the Fauteux Committee (Ekstedt, 1984, p. 183), but fell into disfavour in the 1970's (Correctional Law Review Working Paper One, 1986, p. 20). This attitude currently prevails among some circles.

Today, the 'Opportunities Model' is dominant. It provides offenders with opportunities to 'improve their educational, vocational and social skills.' It moves away from the rehabilitative ideal of transforming prisoners to providing them with an environment conducive to their learning how to be responsible (Correctional Law Review Working Paper One, 1986, p. 11). On the topic of change, hints that the Opportunities Model could be modified are already present (Task Force, 1984,
p. 11). It is felt that more active motivation and encouragement should be given prisoners to participate in programs.

Another current emphasis is on the teaching of literacy skills. This is part of the idea of equipping prisoners to live more responsibly and self-sufficiently. The Education and Training Division of the CSC (1985, p. 2) recommends the 'highest priority' be placed upon functional literacy, while the Sawatsky Report (1985, p. 34) calls for increased funding for literacy, recommending that it be compulsory.

CONCLUSION TO THE CHAPTER

Although no accurate picture can be drawn of penitentiary education, certain situations do exist which may influence education programs. For example, the shifting policies of corrections can cause a lack of purpose and direction within education programs. The lack of co-ordination and conflict between the various goals might also affect implementation of programs such as education. Differences exist especially in standards of implementation and quality of programs provided.

Penitentiary education cannot be fairly labelled, then, as being in total disarray, but it is not totally satisfactory, either. Some of the problems seen as existing might be due to the fact that education is not considered a priority, to be attended to only after other matters have been settled. Thus the very provision of education as well as the attention paid it will always depend on what the other concerns of incarceration are. But attention must be paid education, for
while education may not represent a goal of incarceration, it nevertheless is an interest of incarceration. It facilitates some of the functions and goals of incarceration, indeed, the logical purpose of education is viewed as to 'reflect the purpose of the custodial regime as a whole' (Baxendale, 1980, p. 84). Its prominence in prisons must therefore be upheld.

Thus, prisoners being able to claim legal rights to education would ensure that education will not be shelved in attempts to carry out other goals. It would guarantee education a place despite the changes made in priorities of incarceration. It would ensure that those purposes which education serves, for example, those goals directed at the personal development of offenders, are always kept in view. In short, a legal right to education helps stabilize education programs within the system. They will not be in danger of being truncated, or lessened in importance, no matter what other goals or policies might be.

Security of society and custody of the offender are prime foci of incarceration. This is understandable. They should not be allowed, however, to dominate, or push aside the other considerations of incarceration, especially those helping the offender 're-enter society.' Indeed, the two goals might be intertwined, for society is also protected through the reintegration of offenders into the community as law-abiding citizens. Education can thus facilitate both goals--through strengthening prisoners' opportunities to resist crime, it protects society by releasing persons who have learned to do other things with their lives.
There are perhaps times when the security of the institution is at stake, when other goals must be laid aside. Apart from this, there is actually no reason why harmony should not be possible between goals. Our review has indicated the propensity of security goals to overshadow others. There should be a way, then, of ensuring that other goals of incarceration retain their importance. Education has been suggested as a way of achieving these other goals, mainly by augmenting a prisoner's resistance to crime. Education is thus a central component of that goal of helping prisoners return to society as more law-abiding citizens. It has been mentioned how such a goal has undergone changes in terminology. It has also been mentioned, however, that no matter the term, education remains as one of the keys to a beneficial incarceration.
III. BACKGROUND REVIEW OF RIGHTS

The dissertation aims to assess the case for a legal right to education for prisoners. This right can be better understood against a background of issues and problems associated with rights in general. This chapter therefore aims to:

a) Find out the meaning of a right.

b) Illuminate the issues/problems that must be confronted in order to understand the specific right to education itself.

Rights can be claimed in many circumstances. My concern is with the use of 'right' as it occurs in 'X has the right to Y.' I will address three questions.

I. What is expected by whom and of whom when such claims are made? This is discussed in the section entitled, "The Nature and Meaning of Rights."

II. What different kinds of rights are there?—that is, the logically different kinds of rights which may be claimed. This is examined in the section entitled, "Categorization of Rights."

III. What reasons or grounds can be given for such a claim? Because rights place serious burdens upon people, one does not claim rights without justification. This is the third section entitled, "Justification of Rights."

I. THE NATURE AND MEANING OF RIGHTS

These can be explained from two points of view:

A. That of the right-holder

B. That of other persons who interact with the right-holder
A. RIGHTS FROM THE POINT OF VIEW OF THE RIGHT-HOLDER

1. Rights and Freedom

Freedom has often been suggested as one of the main things rights provide us with. Having a right sometimes allows persons to do things and sometimes allows them to receive certain things. In the following section on "Categorization," I will refer to the former (rights to do) as Action rights, and the latter (rights to receive) as Recipient rights. With respect to Action rights (that is, rights to do X), it might be suggested that persons were 'free' to do whatever it is their right permits, without restriction. If we say A has the right to do X, we mean A must be free to do X, that is, A cannot legitimately be coerced into carrying X out.

Freedom, then, seems useful in understanding the notion of action rights. It is not, however, appropriate for describing Recipient rights. It is more appropriate to say of these that possessors of such rights have expectations—which are legitimimized by possession of the right. For example, if one has a right to unemployment insurance, one has grounds for expecting to receive this allowance. At the same time, others must expect to provide it because of the right of persons to receive it.

Freedom is, however, central to understanding what action rights are, although the two concepts remain different from each other. Linking rights to freedom also causes problems. It is possible to question, for example, whether or not it is legitimate to hold that one has a right when one might not circumstantially be free to exercise it. This dispute is
sometimes expressed as arising from the difference between Formal and Actual rights. It is asked, if one legally or morally has a right, but is unable to exercise it, then is it not meaningless to say one has the right? Some writers, such as Bentham would like to make this the rule (in Cranston, 1967, p. 44). I am persuaded to the contrary. The fact that we sometimes are not actually free to act on our right does not mean that freedom cannot be a part of what one usually or normally expects from a right.

The argument that rights must be actual to be 'real' rights has proved particularly troublesome in discussions about rights to education. Because fulfilment of such rights is usually dependent upon the provision by others of resources and facilities, it has sometimes been thought that there can be no such right. This dependency upon other persons suggests a restriction upon one's freedom. And because rights can exist only where the right-holder acquires certain freedoms, it is thought that there cannot be a right to education.

This way of thinking fails to recognize that a right to education can imply both non-interference and provision. Rights can be seen to possess this dual nature, that is, they can be both an action and a recipient right. A right to education, at least in some instances, can involve both freedom to study and unhindered access to advice and resources. Thus if resources are unavailable, or persons unwilling to provide active support, right-holders can still claim the freedom to do what they can to educate themselves. Within prisons, assuming that authorities
do not wish to supply programs to prisoners, they cannot impede prisoners' right to seek education from persons who might be willing to help them, for example, through correspondence courses, or the receiving of literature through the mail.

Compulsory education is another issue. The compulsory attendance of persons at schools does seem to contradict the notion of a right to education. It seems odd to state that one was being coerced into doing something that one was supposedly free to do, and free to choose to do. One response might be that compulsory education is usually found at primary levels of education, that is, education for the young. For these, their freedom to other rights is itself limited. The young supposedly lack experience and responsibility, and cannot enjoy certain rights such as the obvious right to freedom. This paternalistic attitude is equivalent to stating that children then do not have a right to education. An implication of this might be that only adults do. Such a claim is too general.

A better response is thus as follows. The next section will show that a corollary of rights is that of duties. Having a right places a duty upon someone else to respect our right. Sometimes, the duty we have toward others means they have a right to claim the performance of this duty. But it is also possible that we can have a duty to do something which obstructs our right, as with a duty which represents a more superior and compelling consideration. In such an instance, the exercise of our right must take a secondary position. Moral duties are often of this nature. But rights and duties, although
interrelated, are separate entities, and thus they can co-exist, such as in the instance of a duty to be educated existing at the same time as having a right to be educated.

If the duty to be educated is considered as a more important factor in influencing one's decisions, then this duty must prevail over the right. In the case of the very young, or anyone who so needs to be educated, it can be said that they owe it to society to educate themselves in order that they can be independent of society and contribute to its progress as responsible citizens/persons. Young children may be regarded as not ready yet to claim the full freedom of their right to education, because they first have to honour their duty to be educated.

As the chapter will show soon, not exercising our rights does not mean we no longer have them. Freedom still remains an integral component of rights, despite the fact that there might be restrictions upon this freedom, or the presence of more compelling priorities. Where prisoners are concerned, for example, participation in education programs should remain their choice. The 1977 Report of the Parliamentary Sub-Committee, for example, reiterated the view that education was equivalent to work, and inmates should be able to choose between the two (Dennison, 1979, p. 1). Prisoners are persons who have the ability to reason, and make decisions and choices. Providing them with the freedom to choose to participate in education programs is only to respect them as persons.

Associating rights, action rights at least, with a concept
like freedom does create some problems. Yet it seems unavoidable. To state that X has an active right without implying, at least ideally, that X has some freedom to enjoy this right, appears meaningless. Flathman (1976) puts it aptly:

...A has a right to do X and therefore he is, in some sense of free, free to do X...

(p. 145)

According to Hart (1979) and Wellman (1980), it would be difficult to understand the concept of right out of the context of freedom. Hart (1979, p. 17) sees an essential connection between rights and a 'certain distribution of human freedom.' I would, therefore, like to suggest as primary features of rights, that they imply either the freedom to do, or the expectation to receive, or both.

As indicated in chapter one, a right to education would provide certain advantages to prisoners, as compared with their being granted education only as a service or privilege. One of these advantages is that prisoners would at least be able to demand non-interference in their efforts to obtain an education. This is an important feature because it must be remembered that the freedom of prisoners will already be curtailed in other ways, as a result of their incarceration.

2. Rights and Choice

If the rightholder is free to exercise a right, then the right-holder has a choice regarding the exercise of the right.
This large element of individual discretion is 'perhaps the single most distinctive feature of the concept' (Flathman, 1976, p. 71). It is odd to state that one has 'a right to do something that one cannot choose not to do' (Flathman, 1976, p. 76).

Flathman also states that choice must be present in the decision, on the part of those who have to honour the right, to discharge obligations. It is possible that persons, if dissatisfied with the justification for the imposition of the obligations, can refuse to discharge them. This for him is the difference between being obligated, and being compelled. When one is compelled to do something, one has to do it even if there is no valid justification given. But when discharging obligations, one is able to choose not to do so, if one finds the justification inadequate. And with rights, one must be obligated, and not compelled.

My difficulty is imagining persons who do resent prisoners as right-holders, but who nevertheless discharge obligations because they 'respect' the right and these obligations. One would think they do so because the law compels them to. But perhaps what Flathman is emphasizing is that one has the choice of refusing to discharge obligations. Despite the fact that they are obligations, one can still choose to find them unwarranted. Such a choice, however, does expose one to criticism and sanctions if one is unable to explain one's decision (p. 77).

Thus, for persons who have to facilitate the right to
education for prisoners, ideally, they do so out of respect for the right, accepting the obligation as arising from the right. If prepared to face the consequences, however, according to Flathman, they need not do so.

3. Rights and Consequences

Rights also engender consequences - for the rightholder - and those around him. These consequences are usually in the form of advantages for rightholders, and disadvantages for some others who might have to respect the right by giving up something to the right-holder.

We would have no need for rights, say, alone on a desert island. Thus we are not just claiming rights so much as that others should acknowledge these rights:

...If no one else is affected by X, there is no need for a warrant for doing it and to claim a right would be an empty gesture...

(Flathman, 1976, p. 80)

With education, one claims not only the active right to engage in education, but more, one claims that certain others should co-operate with rightholders by providing the resources necessary -- that is, as a recipient right.

The consequences of rights, especially in terms of consequences for others, can be stated as being obligatory. It has been said that rights 'generate corresponding obligations on the part of others' (Montagu, 1980, p. 372). The nature of
these obligations - sometimes termed duties or corollaries - are essential to the meaning and study of rights. They will be discussed in a separate section.

Chapters one and two have suggested that prisoners—like the citizens of Feinberg's (1979) Nowheresville, are hardly in a position to "bargain" for anything, let alone to impose obligations on others to do things for them. This may explain the uncertain direction of penitentiary education. Because there is no right to education, there are no grounds for prisoners to make it obligatory upon others to improve their education.

4. **Rights and Protection**

Rights also protect us from interference, or threat. While this may never occur, the point is that when threatened, we can use the fact of our rights to protect us from unwarranted interference. Consider prisoners as an example. They have been found guilty and are incarcerated. They offer, in fact, paradigms of the point of rights. Because their circumstances leave them open to unwarranted interference by others, they may particularly require the protection of a right from such interference. The 'raison d'être' of rights, as Flathman suggests, is the 'protection of unpopular forms of action' (1976, p. 96). It is suggested, then, that rights provide us with a sphere of protection against possible encroachment.

5. **Rights and Society**

Rights are also a 'social phenomenon' (Flathman, 1976, p. 65). They are 'people-oriented' (Flathman, 1976, p. 80).
They must be part of a society which acknowledges such a practice, and binds it by rules which determine the nature of the interaction. For rights can only be effective if they are accorded respect within social practices.

Prisoners have broken the law. The fact that they are still human beings and persons has been stressed. Society cannot, then, ignore them, or their rights. On one hand, communities can be urged to be involved in getting these rights recognized, for this is one way rights can be implemented in society, when sufficient numbers start agitating for them. At a recent CEA Conference (Feb. 1987), for example, many provincial educators stated that they depended on community groups to obtain benefits for prisoners.

On the other hand, the right of prisoners to education is a part of society's practice of rights. This makes it obligatory upon society to recognize this right. The rights of prisoners are as much part of the fabric of society, as much as prisoners are still part of society. Their education is also part of the education system of other members of society, and must merit the same amount of attention and consideration.

Summary

1. Some rights provide us with certain freedoms—action rights.

2. Other rights provide us with expectations to receive certain goods or services—recipient rights.

3. Right-holders are free to exercise their rights, and those discharging obligations also possess a certain amount of
freedom in choosing whether or not to discharge their obligation.

4. Rights always have consequences for others. These consequences are usually in the way of advantages for holders, and disadvantages for certain others. These we will call the corollaries of rights.

5. Rights protect us from interference.

6. Rights are always part of a practice of rights, and can only exist within a society which acknowledges such a practice.

These features are interrelated. While there may be other important features of rights, the ones discussed are considered essential to the issues which arise from considering a right to education, especially for prisoners.

B. RIGHTS FROM THE POINT OF VIEW OF OTHER PERSONS

In section A, it was stated that action rights provide right-holders with freedom. This section now discusses how rights can restrict the freedom of others. There is an 'essential connection' between rights and 'the justified limitation of one person's freedom by another' (Hart, 1979, p. 17). This discussion centres, then, on the corollaries of rights.

It might be accepted that rights are always accompanied by corollaries, but what these constitute is often disputed. Two main perspectives are:

1. That rights must have duties as corollaries
2. That rights can have corollaries other than duties

The two views represent differing opinions as to which rights
are authentic rights. The first view can be described as a 'narrow' view—only to differentiate it from the latter 'broad' view.

Both views hinge upon 'duty.' 'Duty' is used ambiguously. Sometimes it is used as a generic term to cover all corollaries; on other occasions it refers to one special type of corollary. The 'narrow' view holds that only rights which imply duties of the latter kind are 'really' rights. Speaking generally, a duty in this special sense carries with it a specific obligation to carry out some action. An obligation merely not to interfere with someone's action(s) is not sufficiently demanding to count as a duty, and thus, on the narrow view, the person could not be said to have a right. This is why sometimes action rights are not always accepted as 'full' rights, and are termed as 'liberties.'

The 'narrow' view of rights thus sees rights as always correlating directly with specific duties. Some philosophers are quite flexible as to the nature of these duties, as long as they are seen as duties. But here their flexibility ceases, for unlike the 'broad' view of rights, they are not prepared to accept corollaries of rights which are not duties. Thus, whether of provision, or non-interference, rights for this 'narrow' school of thought must always engender duties. The 'broad' view of rights allows for corollaries other than duties. This means that consequences of rights are acceptable besides duties, whether of provision or non-interference. I now elaborate each view.
a) The 'Narrow View'

In Natural Law theory, it was commonly assumed that rights and duties co-existed as part and parcel of this law:

...For example, a law which requires A to fulfil his contract with B, or a law which forbids A to assault B, lays a duty on A and confers a right on B...

This view that there is a correlativity between rights and duties is a traditional one. It is typified by philosophers like Bentham who, according to Lyons (1979, p. 58), considered right-holders as always the beneficiaries of someone else's duty. Lyons quotes him saying that 'it is by imposing obligations or abstaining from imposing them, that rights are established or granted' (1979, p. 59).

On the other hand, Mayo holds that correlative duties are incurred only by 'perfect' rights where the fulfilment of the right rests upon specific persons, in contrast to 'so-called imperfect rights' where 'no specific person has a duty to give' what one has a right to (1967, p. 72). Mayo further thinks that perfect rights - and thus correlations with duties - occur only in 'the limited class of duties and rights generated by undertakings [italics]--including promises and contracts' (p. 73).

Discussion
The 'narrow' view of rights is plausible because one does claim rights in order that it becomes obligatory that other persons do something about it. We claim rights: we are not just making polite requests. Using the force of our right, we are actually asserting our will upon others so that they comply with our right. This was clear even when describing rights from the point of view of the right-holder:

...It is self-contradictory to state that one is entitled to do something, or receive something, but then to deny that anyone else has obligations to let one do it or provide one with it... (Milne, 1979, p. 29).

Feinberg perceives 'duty' as being whatever is 'due' someone else (1979, p. 79). Following this, all corollaries would be 'duties' to the extent that corollaries are always 'due' rights. Many use this view as the basis to reject a right to education, stating that no specific persons are available to bear the duties. Prisoners' right to education could be an empty claim for this reason.

This view restricts rights to only those categories which correlate directly and specifically with some duty, casting doubt upon categories of rights which do not. Lyons' suggestion is more reasonable, that various kinds of rights will correlate with various obligations in different ways (1979, p. 59). The following section will show that there can be more than one category of right available, and each is as valid as the other.
'Rights' 'do not differ in degree; no one right is more of a right than another' (Feinberg, 1979, p. 88). This will be seen to be a more appropriate view for the consideration of prisoners' right to education.

b) The 'broad' view

Following Hohfeld (1919), Flathman (1976) categorizes rights according to the corollaries they imply. Only what Flathman terms as 'rights in the strict sense' would give rise to specific duties. Non-interference, or what Flathman terms as a 'no-right' is not a duty, but is a corollary nevertheless. Rights which engender such corollaries he calls 'liberties.' Flathman cites the liberties held against authority, such as freedom of speech, of the press, and of association, as examples of how liberties can actually represent a 'distinct and significant species of rights' (1976, p. 44). These cannot be termed as rights in the strict sense, however. Although 'there is a sense' in which correlative duties are present--mainly 'not to legislate against' the liberties, these are not specific correlates of the liberties, but rather 'the perfectly general duty' of a government 'not to exceed the authority granted to them' (1976, p. 45).

What is important about Flathman's view is that it accepts liberties as rights, 'the only difference' being that there is 'no obligatory act that falls upon the Bs or Cs through A's liberty' (1976, p. 39). It is contrary to the 'narrow' view which does not regard liberties as rights, because they do not have a strict relationship with specific duties. It is also the
more significant view for the thesis because it allows a right to education where the only expected corollary would be that right-holders were left unrestrained in their exercise of the right.

Lyons' (1970) ideas are akin to Flathman's. He argues that there is a direct correlation between certain kinds of rights and duties, and vice versa - in cases of strict rights - held against others, where duties are expected or 'owed' (1970, p. 47). He postulates a situation where Bernard owes Alvin ten dollars. This means Alvin has a right to be paid - specifically by Bernard. Bernard at the same time has a corresponding obligation to pay Alvin specifically. This represents a case of a 'determinate' correlation where a 'right and obligation entail one another' (Lyons, 1970, p. 46).

Lyons reasons that just because others are prohibited from interfering with some A's doing some X, it does not follow that A has a right to do X (1972, p. 50). There are ordinary legal and moral prohibitions which serve as protection, but which do not logically correlate with rights. Persons are under such obligations even when we do not have such rights (Lyons, 1979, p. 52). This supports the 'broad' view, then. Although rights sometimes do correlate with duties or obligations, we cannot infer that there are rights just because there are duties or obligations, or vice versa.

Benn and Peters (1959, p. 88) are supporters of the broader view. While seeing rights as being 'conditional upon the performance of duties,' they agree that these duties can either
be of 'active performance,' or 'at least, non-interference' (1959, p. 89). They use 'duty' in the generic sense, that is. Kerr also seems to accept that the duties attendant upon rights can include duties of being obligated not to interfere, or duties of being obligated to provide something (1978, p. 167).

Hart categorizes rights which always correlate with duties, such as against specific persons, as 'special rights' (1979, p. 20). Examples are rights which arise out of contracts, agreements. He also distinguishes a 'general' right held against all men, where there is a correlative obligation 'not to interfere' (1979, p. 23). Hart's (1979) "special" rights (which generate specific obligations) are similar to Flathman's rights in the strict sense. "General" rights, incurring duties of non-interference against everyone, are similar to Flathman's concept of liberties--with the difference being that Flathman does not consider non-interference as a duty.

It is not so important whether or not we term non-interference as a duty, for I am more interested in the corollaries of the right to education. I have chosen, therefore, to follow Flathman (1976) and other views which distinguish between corollaries which constitute active participation by others (these I will call 'duties') and other corollaries which, although having impact on others, do not constitute active participation.

This way of dealing with corollaries will enable me to explain why a right to education can (for autodidacts, for example) be a right even though it imposes no duty on others (in
Flathman's [1976] term, rights as liberties). Yet it will also allow me to argue that in the case of education for prisoners, if non-interference is insufficient, then resources etc., must be made available and that, therefore, duties must be placed on others to provide it. The right of prisoners to education, in short, can have both a duty of provision and a corollary of non-interference.

CONCLUSION TO "THE NATURE AND MEANING OF RIGHTS"

Rights always give rise to corollaries. These are in the form of what others are expected to do for us, or to refrain from doing. Rights, however, are authenticated on the strength of the justification we can offer. They can exist for reasons other than its being someone's duty to do something, and vice versa.

It is maintained that penitentiary education might be improved if prisoners had the right to claim it. This section has been necessary, through discussion of what rights are, and what we might do with them, to show how well-founded such a claim might be. The discussion has shown that rights do ensure that rightholders are allowed the freedom to practise whatever their action rights call for. This is particularly important for prisoners, because they are in a position where certain of their freedoms are already being restricted. A right would ensure that they be allowed the freedom to engage in education by providing at least protection from non-interference. This non-interference has been shown to be a valid corollary of rights. At the same time, if necessary and possible, rights
would also impose obligations upon those concerned to take the required action to implement the right.

It has also been noted that rights and duties are separate entities, and even if often related to each other, this relationship is not necessary. Rights and duties can also co-exist. It is possible to have a right to be educated at the same time as one must also observe a duty to be educated.

II. CATEGORIZATION OF RIGHTS

A. Identification

Rights can be classified in many different ways. Four relevant categories are:

1. INALIENABLE AND CONTINGENT RIGHTS
2. ACTION AND RECIPIENT RIGHTS
3. LEGAL AND MORAL RIGHTS
4. HUMAN AND PERSON RIGHTS

Throughout the thesis, I will make use of these distinctions in explicating what would be involved in a right to education.

B. Explication

1. INALIENABLE AND CONTINGENT RIGHTS

Inalienable rights are rights which:

i) Can never be taken away from us

ii) We can always choose not to exercise

iii) We can never waive, or transfer

These rights have been also described as 'imprescriptible,' 'absolute.' This means that:

...no matter what the circumstances may
be, a person possessing such a right is fully justified in demanding, asserting or exercising, and others always wrong in denying him, his right...
(Melden, 1977, p. 1)

Some philosophers view human rights as inalienable, and cite the right to life as an example.

Discussion
This category represents a major way human rights have traditionally been addressed, and consequently criticized. It is important because inalienability is sometimes used as a criterion for the authenticity of rights. The notion of inalienable rights has a long history. Hobbes was one who claimed that certain rights such as that to the preservation of life, were inalienable, because they were human beings' right, as well as part of their nature (Polin, 1967, p. 18).

This concept has also had a parallel history of scathing criticism. Some philosophers have begun to regard the notion of rights being inalienable as a 'mindless doctrine,' and 'an absurd idea' (Melden, 1977, p. 2). It is now being questioned 'whether there is any specific right or value' which can be 'unconditionally or absolutely valid in all conceivable circumstances' (Nielsen, 1968, p. 573). Hart thinks that sometimes 'coercion or restraint' is 'justified' by special circumstances (1979, p. 15). Daniels suggests that such a claim does not mean a right cannot be 'abrogated under any circumstances,' but rather that 'it is always relevant in
deciding what one ought to do in dealing with the person who has the right' (1977, p. 1).

The question whether rights are inalienable is important because it is sometimes proposed that rights have to be inalienable in order to merit regard as genuine. But as Melden states, 'the status of rights' is 'not compromised' just because it has to yield to 'other considerations' (1972, p. 493). I adhere to such an opinion, which I will maintain whenever the question of the authenticity of rights is raised.

**Contingent** rights are rights which:

i) We have as a result of a particular context, circumstance, such as the roles that we are assigned. These are, therefore, rights which are dependent upon extraneous factors.

ii) We can lose or waive according to changes in the situation, or our roles.

iii) We can choose not to exercise.

These rights can also be termed as 'conditional.'

There are at least two kinds of contingent rights. Some, as we have seen, exist only where certain roles exist. Others are not tied to roles but are institutional or legal rights which can justifiably be granted only where certain minimum circumstances, often economic circumstances, make the granting of such rights defensible. Thus while any right, even if inalienable, can be overridden, "minimum-circumstance" rights are rights which are not so much overridden as made impossible where circumstances provide an insufficient basis to make the granting
of such rights sensible. For example, a right to adequate food will, in general, be more important than a right to education—where circumstances force us to choose between them.

A right to education is a good example of a contingent right. It is always contingent upon circumstances, situations, and factors. Role rights are also a good illustration. Certain roles provide appropriate circumstances for certain rights. The rights are contingent because they cease to be once we cease to hold those roles. We can either automatically assume these rights with our roles, as supposedly parents do, or they might be created or bestowed upon us to facilitate the effective carrying out of our roles. Education is sometimes justified as a role right. For example, Kerr (1978, p. 173) thinks that 'one simply cannot fully undertake the role of citizen' without a certain level of education.

**Prima Facie Rights**

The term 'prima facie' is also often encountered in rights literature. This is a way of talking about any kind of right, rather than a way of categorizing rights. It is used by different people in different ways. It is sometimes contrasted with inalienable rights, and confused with contingent rights.

The term can be used in situations whenever there is a presumption of a right, about which, however, we are uncertain:

a) Whether there is sufficient evidence or justification to support the right

b) Whether there are any reasons or circumstances which might override the exercise of the right
But "prima facie" is also used to characterize rights which:

i) May always have to concede to more pressing priorities
ii) Are 'defeasible,' or 'overrideable'
iii) Are rights the status of which we are uncertain about, for example, the right to education itself

Prima facie rights can be distinguished from inalienable rights. The latter, as we have seen, are rights which will always represent relevant considerations. Prima facie rights are not contingent rights, either. With contingent rights, the award of the right depends upon other factors. If certain factors operate, certain conditions exist, then the right would exist. With prima facie rights, one is unsure whether one is justified in asserting or exercising it.

Here is what two philosophers have to say about rights and the term 'prima facie':

...All human rights have a prima facie validity in situations in which they are relevant, but they are not absolutely or categorically binding on conduct in any case although they must always be considered...

(Hook, 1980, p. 71)

Blackstone (1968) states:

...To say that a right is prima facie is
to say that it cannot always be cashed in, that other moral considerations may on occasion properly override it...

(p. 71)

Perhaps, then, two senses of 'prima facie' may be isolated. In one sense, it means that a person is certain about the existence of a right, but is uncertain whether or not there might be reasons to override the right. In the other sense, the person also thinks that a particular right may hold in a particular situation, but is uncertain whether there is sufficient evidence to fully support this belief. Any right could be prima facie in either sense because prima facie, while not a sense of right (firmly stated by Melden, 1972; 1977), is like an objective feature that any right could have.

Having rights does not mean one is always certain about their existence or the justifiability of exercising them. With the right to education, there may be valid grounds for claiming this right, but one might be unsure whether circumstances or reasons might, in turn, invalidate these grounds. Similarly, the term 'contingent' allows us to hold that there could be a right to education--whenever circumstances or conditions are fortuitous.

2. ACTION AND RECIPIENT RIGHTS

These rights embody one of the more basic distinctions in talk about rights--rights to action, that is action rights, and rights to receive certain benefits, that is recipient rights. Examples of the former are the rights we have to do certain
things without anyone interfering. One might have the right to take a walk in the park, or play tennis and not football.

Examples of Recipient rights are welfare rights. They are rights to receive certain types of goods and services, or rights to be in certain social and economic positions. They arise from a concern for man's welfare, but there may be grounds to apply them to such other beings as animals. Most of the time, because one stands to receive things from this right, they are said to be actually claims against persons to provide the form of assistance required. This implies a corresponding correlative duty, which sometimes causes welfare rights to be viewed as entitlements, and not as genuine rights (Peffer, 1978, p. 67).

Discussion

Some problems with these categories are:

1) As discussed previously, an issue which arises from the distinction between action and recipient rights has to do with the nature of the corollaries which arise from these categories of rights. Rights with corollaries which are not strict duties are not regarded by some as actual. Recipient rights are often perceived in this way. These rights require provision of goods. If these cannot be made the specific duty of specific persons, they are considered by some as impractical. Yet views are also available which hold recipient rights to be the only genuine rights, because they do require such specific duties of provision. In this case, action rights are not regarded as genuine because they do not require any specific duties of provision. Chapter four will reveal arguments which question
the validity of education on the grounds that it is viewed as a recipient right.

In my opinion, there is no question that both categories, although containing rights to different things, and consequently resulting in different activities, are each as valid as the other. Each occurs because there are differences with what we want from our rights—be it the freedom to do, or to receive. More important, there is also the possibility that rights possess the dual nature of being both active and passive—as has been envisaged with the right to education.

3. **LEGAL AND MORAL RIGHTS**

Legal and Moral rights are categorized according to how the ensuing correlates (such as duties and obligations) are to be enforced, and what the source, or grounds, of these correlates are. Legal rights are rights enforced by the law, and moral rights are supported by moral rules and principles.

These categories are important because it is a legal right to education for prisoners which is being maintained. Moral approbation is sometimes considered ineffective as a method of enforcement. It has been suggested that penitentiary education lacks direction, which might be because it is not considered a priority of incarceration. If, however, prisoners could look to the law to enforce attention to education, the situation might improve. It is in part in view of the status of prisoners and of penitentiary education that a legal right is considered to be likely to be more effective than a moral right.

At the same time, there is no doubt about the importance or
authenticity of moral rights. The fact that there are prisoners - persons who broke the law - is evidence that the law is sometimes ineffective in stopping persons from violating its laws. Moral or community censure can also be felt quite acutely. It is also important to emphasize the importance of moral rights because it is when a moral right achieves 'widespread recognition in a community's consciousness,' that 'there is established a corresponding legal right' (Young, 1976, p. 20). This is what is being advocated for prisoners' right to education, that it is important enough to now be enforced and guaranteed by law.

My question is whether all rights have equal effectiveness in getting results. I have maintained that I see several kinds of rights as being equally valid, and important. Sometimes too, occasions arise when certain rights will be able to exert more force than can others in demanding recognition, and generating actions required to implement the right. I posit the penitentiary educational system as such an occasion.

4. HUMAN AND PERSON RIGHTS

There can be two ways of talking about these categories. The first way can be termed as 'descriptive' and the second, as 'evaluative.' The 'descriptive' approach is a good way of delineating rights belonging to human beings and persons, in contrast say, to animal/institutional rights. The basis of the categorization rests upon the attributes of human beings and persons. No judgements are made nor any justification given about what rights these human beings ought to have. This task
is left to the second approach. Here, the conditions and nature of human beings and persons are presented as grounds for the allocation of rights.

The thesis will use both approaches. This section on "Categorization" will concentrate on the 'descriptive' way. Attributes of the right-holders who form the basis of the categories will be described. The 'evaluative' approach will be used in the following section on justification of rights.

**A DESCRIPTIVE APPROACH TO HUMAN RIGHTS**

Human Rights are rights which all human beings have, including person rights. They are all those rights 'enjoyed by people simply as people' (Benn, 1978, p. 54). A term sometimes used to describe such rights is 'universal.' Another more traditional perspective is that such rights are inalienable, absolute. It has already been suggested that this may be unrealistic. The thesis does propose, however, that if there is an inalienable right which human beings have, it would be the right of all human beings to be treated with the dignity and respect of human beings.

**Discussion**

The difficulties which arise from this category are:

i) The question of the difference between this category and Natural Rights

ii) Potential confounding of human rights with welfare rights

i) **Human Rights and Natural Rights**

The importance of Natural Rights lies in its being perhaps
a forerunner of the concern for human rights. It is easy to confuse the two. Both rest upon a premise of being essential to the proper state of man. Natural rights, by themselves, create confusion. They seem to have been perceived in different ways through the ages. Their origins are attributed to Locke and other Classic Liberals. These philosophers advocated Natural Rights as rights belonging to man automatically, as part of his inherent nature, and therefore, inalienable, and imprescriptible. They were seen as particularly important to protect man from oppression and exploitation by governing authorities, or those in power. But Natural rights have also been seen to come from God, or Divine Law. There is a wealth of tradition behind Natural rights. I will, however, focus on Human Rights because this is how education has typically been viewed.

(ii) Human, Person, and Welfare Rights

These categories are sometimes mistakenly equated. The confusion arises because many human rights are rights to welfare. The problem is that not all human rights are welfare rights. Some also acknowledge welfare rights for animals. This thesis is interested in human rights, however. That there might be other kinds of rights belonging to other beings does not presently concern me.

A DESCRIPTIVE APPROACH TO PERSON RIGHTS

The idea that human beings can claim rights because of their attributes as human beings has just been discussed. While all human beings possess - and are perhaps to be distinguished
by these features, there are certain other features which some human beings do not have. This necessitates a category of Person Rights.

Benn tells us persons have 'a certain kind of self-awareness' (1978, p. 66). They are also 'conceptually equipped to envisage alternate possibilities.' This view is similar to what seems to have been emphasized from the time of Locke to present day analyses such as Dennett (1969) and Downie and Telfer (1965). It seems agreed upon that persons are rational and responsible agents. Kant isolates rationality or the possession of a rational will as the distinguishing feature of persons (1970, p. 155). Similarly, Peters says that persons are 'centres of valuation, decision, and choice' (1966, p. 133). In Chapter one, it was also mentioned how they must be capable of thinking about their thoughts, desires, beliefs, etc. (Dennett, 1976; Daniels, 1971).

There are possibly other features to persons. For its purposes, the dissertation emphasizes that persons are able to reason, think, plan, make decisions, and are responsible agents who are subject to moral judgement. Such criteria are usually met by most human beings. Exceptions are possibly the mentally retarded, the insane, and comatose. There are also human beings born with potential for these qualities, but who have not developed yet, such as children. These could be classified as 'potential' persons.

Generally, all human beings are persons, or have the potential to be. The distinction helps us account for the
difference between human beings who are mere biological organisms, and human beings who are moral and social beings, that is, 'morally concerned and morally accountable' (Melden, 1959, p. 61). The distinction is also needed when allocating certain rights. We will soon see how certain rights are justified for persons on account of their being considered responsible agents. At the same time, rights are justified for human beings because they possess supposedly common needs and interests.

Discussion

Discussing this category of persons is necessary to emphasize that persons are responsible and rational agents. Only persons can be held answerable for their actions — and consequently — punishable. This will be the basis of an argument used to justify the right to education for prisoners (see chapter five).

It is also necessary to justify allocating prisoners the rights of persons. Human beings are unable to enjoy all the rights which persons have because they lack certain features of persons. For example, they are unable to account for their actions, and cannot claim rights to certain opportunities open to persons. While they will always be able to claim equal treatment as human beings — that is — with respect and dignity — they cannot, say, claim the right persons might have of access to opportunities to education.

CONCLUSION TO "CATEGORIZATION OF RIGHTS"

The discussion has shown that education offers an area
where the various categories come together in complex ways. It has been seen how it is possible to categorize education as both an action right, and a recipient right. The learner is not a passive receptacle, but is involved as an active participant in the process of education. Thus, one might not only require rights to obtain educational resources - that is, recipient rights - but also require the freedom to be left alone to interact with these - that is, as action rights.

This perception of education helps substantiate the case for a right to education. One of the problems with a right to education is that it has too often been seen merely as a recipient right, thereby raising the problems often believed to accompany such rights, such as the absence of persons to provide what is to be received.

Even if one subscribed to the notion of self-education, one would still need resources and other persons to produce the resources. Even prisoner autodidacts require for their further education, provision of such resources as books. The majority of prisoners, however, clearly need much more - almost certainly teachers - and perhaps individual tutoring if they are to have a chance to further their education. In this sense, then, education cannot proceed by itself. This is why I stress that this is not the only aspect of education. It ignores the component which depends upon the active participation of the learner. As Peters (1966, p. 20) suggests, 'the wittingness and voluntariness' of the learner are also important considerations in the process of education.
I am therefore interested in sorting out the merits of possible arguments that there must not only be legal requirements of non-interference, but also legal duties of provision of significant resources. In support of such a stand, I have also investigated the corollaries of rights, where it was concluded that the corollary of non-interference was as valid as the corollary of a duty of provision by specific bodies.

Both corollaries come into play due to the nature of education for prisoners. On one hand, we might see prisoners as needing very extensive support, that is, the education envisaged for them is more of a recipient nature, because of the restrictions of their confinement and dependence upon others. But on the other hand, it is also possible that they need only minimal support, that is, even if no help is forthcoming, they have an action right to be left alone to do what they can to get an education. Thus, even if no one was willing to provide or do anything about prisoners' education, they still maintain the right to the freedom to attempt to educate themselves, as do other persons, non-prisoners.

As we will see, because prisoners are prisoners - with all the restrictions imposed by incarceration - it becomes necessary to make the right a legal right if prisoners are to have the chance to exercise it. It is thus specifically as a legal right that the case for education is being examined. The unsatisfactory situation of penitentiary education suggests that penitentiary education is too dependent upon persons feeling they have only a moral obligation, if any, toward providing
education. At present, there is no binding law to which persons must answer for failure to implement what can be considered as a right of prisoners.

The dissertation also examines an argument for the right to education, for both prisoners and non-prisoners, although specifically for the former, on grounds of equality of opportunity. Thus, if education is a Person right, then all persons, including prisoners, have this right--of equal opportunity to education.

III. JUSTIFICATION OF RIGHTS

The present discussion will:

1. Discuss how rights have usually been justified
2. Discuss the problems that accompany such attempts

This is necessary to:

1. Introduce potential ways of justifying the right to education.
2. Forecast the issues that will be encountered when attempting to justify the right to education in particular.

I am chiefly interested in those categories which concern the right to education. These are Human Rights, and Person Rights. In summary, human rights can be described as rights belonging to human beings. Person rights are further isolated because of certain features distinctive of persons which are relevant considerations when claiming/allocating certain rights. It is said that persons are rational, self-determining, and responsible.
AN 'EVALUATIVE' APPROACH TO HUMAN AND PERSON RIGHTS

This section uses the 'evaluative' approach to understanding human and person rights. In reviewing the strategies which have been used to justify these categories, special reference will be made to the kinds of questions or issues raised which ought to be considered when attempting to justify a right to education.

A. ARGUMENTS FOR HUMAN RIGHTS

1. Argument from Needs and Interests

Human Rights are sometimes justified on the grounds that they fulfil man's most basic needs and interests. According to Kleinig, they are 'those minimum conditions under which human beings can flourish' (1978, p. 45). Peffer suggests the urgency of such need-related rights 'if we are to survive and to have any sort of life worth living' (1978, p. 80). Raphael's rationale is 'that one cannot exercise the initiative of a human being,' or 'indeed remain a human being at all,' unless certain basic needs are taken care of (1969, p. 115). Wasserstrom claims the necessity for rights to 'develop one's capabilities and to live a life as a human being' (1971, p. 179). Barnhardt states that because members of a community are expected to conform to certain rules and aspirations of society, there has to be a minimal limit of means, status, opportunities, and liberty 'below which the deprived will be given every opportunity to prevent themselves from falling' (1969, p. 338).

Discussion

One of the difficulties of such an argument is that there
is no 'fixed principle' for what are regarded as needs and what are not (Raphael, 1967, p. 65). 'Men do not share a fixed nature,' and thus one cannot determine 'fixed ends' that they must necessarily pursue in fulfilment of this nature (MacDonald, 1970, p. 49). According to Crittenden, human beings are capable of such a 'broad range of possibilities,' that it would be unsafe to use such an indeterminate nature as the basis of rights (1973, p. 3).

These comments suggest a lack of concrete ground for determining what needs are basic. Certain philosophers do offer criteria for basic needs, such as that they 'be related to furthering some state of affairs,' or be so 'crucial that without adequate satisfaction of these needs,' the human being 'would suffer some fundamental harm' (Sutton, 1978, p. 103). It can still be challenged, however:

...How can possession of a common human nature, a common humanness, given the vagueness of the content . . . be a ground for . . . equality of treatment, of respect, and the like?...
(McCloskey, 1978, p. 30)

White does not see a logical connection between a need giving rise to a claim, and the need forming the basis of rights (1984, p. 125). He also does not think that rights are based on the need itself, but rather on what it represents, that is, on the worth, value, and benefits it brings to man--when he has had these needs fulfilled. The rights would not (on this account)
stem from needs, but from the good they bring, and there is no necessary logical connection between something being for man's good, and his claiming a right to it.

While rights are among the more potent ways of enforcing, or protecting our needs and interests, they are not the only way. Satisfaction of needs can be also a matter of humanity, benevolence, generosity. Lucas thinks that equal treatment of human beings, or that we do not, in general, torture each other, etc., has little to do with adherence to principles of equality, but stems more from humanitarian reasons (1971, p. 141).

Another criticism is that there seems to be a gap between basic 'survival' needs and the idea that one has rights to their fulfilment. Wasserstrom for one, is unsure how the ways in which men are supposed to be alike 'advances an argument for the achievement of human rights' (1971, p. 116). Seeing a lack of clarity in these ways to start with, he finds missing the necessary 'plausible intermediate premises' which connect the two.

This is a very popular argument against human rights. It is sometimes seen as an instance of the Naturalistic Fallacy. This is not, of course, unique to arguments found against human rights, but is commonly used in philosophy to indicate that certain 'assumed' connections are actually unfounded. In this argument against human rights, it is used to point out that just because human beings possess certain attributes, we do not have sufficient reason to claim they ought to be given certain things. To do so would be to go illicitly from the descriptive
to the evaluative, from 'is' to 'ought.' These are the sorts of difficulties which arise from attempts to justify human rights using some 'antecedent feature of human existence' (Hook, 1980, p. 82).

2. Argument from the Equal Worth and Dignity of Man

Vlastos believes there are two main aspects to human beings in which they do not differ from one another, their 'well-being,' and 'freedom' (1973, p. 312). These two aspects are inherent to the nature of human beings, for they do not involve the different things which individuals enjoy. Consequently, each one's well-being and freedom is 'as valuable as any other's' because the value of each is the same, 'quite independently' of 'the things they happen to choose' (1973, p. 313). This leads Vlastos to a belief 'in the prima facie equality of man's right to well-being and freedom.'

Such an argument 'abstracts' human beings from the external conditions of merit, contribution to society, etc. It forms the foundation of various human rights, and welfare rights, to which everyone is entitled 'simply qua the fact that he is human' (Blackstone, 1968, p. 620).

Discussion

The premise that human beings are 'equal' in sharing basic needs and interests, or in their inherent value as human beings, often underlies claims for human rights. Such a view of human beings is normative:

...To say that a given person is human not
only classifies him according to certain descriptive criteria but also prescribes general modes of treatment for him. (Blackstone, 1968, p. 625)

One has to accept a certain picture of human beings in order to accept the postulation that they have such rights.

Benn (1971) offers an interesting variation on this argument. He prefers to think that it is better presented as an argument from equal consideration of interests, rather than equal treatment. Benn does not think that this particular Argument from Equality gives enough attention to individual interests of persons. For example, elitist moralities acknowledge interests of certain groups, but in their promotion of interests of a particular group they do not give equal consideration to everyone's interests (1971, p. 158). Thus Benn sees the need to 'have everyone's interests considered alongside those of everyone else likely to be affected by the decision' (1971, p. 157). We will not, for example, be able to treat imbeciles in the same way as we do other human beings, but Benn's principle ensures that we will still give the same consideration to their interests to live a decent life, as much as we would our own.

Benn's argument is useful to support claims for prisoners' rights. Prisoners have committed crimes and will have to be treated differently in some respects from non-prisoners. But, as will be argued later, there are limits to this different
treatment. Benn's principle ensures that despite this different treatment, the common interest in living as a decent human being that prisoners still share with other non-prisoners will receive attention and consideration. In other words, despite the fact they will be treated differently in some unavoidable ways, their interests as human beings must still be considered equally with others.

OVERVIEW OF THE ARGUMENTS FOR HUMAN RIGHTS

Both the arguments, that is from "Needs and Interests," and "Equal Worth and Dignity," operate from the premise of man's common needs and interests. It is only the interpretation of these needs and capacities which differs. In the Argument from Needs and Interests, these needs and interests are usually specified as being basic and fundamental requirements of man, while in the second argument, these needs and interests are seen as being a more intrinsic and inextricable part of the nature of human beings. The first argument is also actually the grounds of the second. In other words, the common nature of human beings is postulated as the reason why they should be treated equally with regard to the protection and enhancement of this common nature.

I think that what is being argued for is not so much the direct provision of goods and services as much as a certain quality of life considered appropriate to our dignity and status as human beings. All human beings have at least some of the same basic needs and interests and would enjoy a life according to the standards represented by this quality of life. This
quality of life is considered essential to maintaining our
dignity and respect as human beings. It is, therefore, argued
that it is the right of all human beings to be accorded the
treatment which can enable them to maintain this standard of
life.

How these arguments are stated is also important. Stating
that human rights are accorded because we are human, exposes us
to the dangers of using this nature to claim that we ought to
have certain rights for this reason. This is unwarranted. I
suggest that the arguments go further than postulate humanness
as the basis of rights, but rather, that everyone's requiring
the same sorts of rights makes them 'equal.' This would be the
reason for according them similar rights without discrimination.

There is, therefore, a connection to be made between the
two arguments. It seems odd to state that all human beings have
these common needs, etc., but to accord rights to only some. As
Crittenden (1976) states:

...To assert that something is a human right
is to prescribe that in this respect all
men are to be treated equally...

(p. 39)

As Miller sees it, 'The logical extension of the principle of
need is the principle of equality' (1976, p. 143).

The arguments above are useful to support the claim made
initially in chapter one and elsewhere that all human beings
have the right to be treated with the dignity and respect of human beings. Such a right, as has just emerged, is unqualified - or to use a term mentioned before - inalienable. Later chapters will also show how the philosophy expressed in these two arguments becomes the foundation for an argument to claim the right to education for prisoners.

B. ARGUMENTS AGAINST HUMAN RIGHTS

1. Argument from No Specific Person/Duty

Human Rights are sometimes defined as 'a claim on behalf of all men' (Mayo, 1967, p. 77). This gives rise to the criticism that there is 'no specific person with a duty to give me what I have a right to.' The phrase 'all men' is held to be vague, making such claims void. This argument reflects the issue raised before of the questionable authority of rights which do not have specific duties as correlates.

Discussion

Two points may be offered to counter this argument:

1. Human Rights may include claims to welfare, which would be recipient rights requiring the discharge of duties of provision. But human rights can also contain rights to action, such as the popular right to freedom which does not require any specific correlate beyond non-interference. Flathman's (1976) point may also be recalled, that although only requiring non-interference, a right remains a right. It is possible that the broad category of human rights contain all the kinds of rights human beings can claim, and human beings can claim more than one kind of right.
2. a) Mayo suggests that it is not that 'no specific person/persons has a duty,' but these are 'not readily identifiable' (1967, p. 73). Some attempts to cite definite places and persons places a duty on all human beings. Sutton (1978, p. 105) introduces the notion of 'group responsibility.' Morin (1981) argues it on the basis of fraternal obligation, brotherly love, etc.

   Flathman suggests that in such a situation, 'it is incumbent upon all members of the practice of rights to which he belongs to respect those rights' (1976, p. 89). Flathman labels such members the 'Cs' and the 'Ds.' The Cs are those in positions of authority, where it is part of their responsibility to ensure respect for certain rights, for example, the police (1976, p. 91). The Ds generally or usually do not hold such special authority; they are those members of society who, although having no specific duty to respect certain rights, undertake the obligation to ensure respect of the right. They do so because they think they have an obligation as interested parties, responsible citizens, and members of the practice of rights. If there are enough interested Ds, they may form themselves into some formal or organized body such as Amnesty International or the British Columbia Civil Liberties Association.

   Thus, this counterargument accommodates rights as claims against everyone, and accepts them as rights even in the absence of specifiable persons to bear duties.

   b) Mayo promotes the idea that 'agents of government'
It is thus the State's duty of:

...securing and guaranteeing, to the greatest possible number of persons, the external conditions necessary for the greatest possible development of the capacities of personality...
(Barker, p. 136)

This argument reflects the debate between those who contend that rights ought to engender strict duties of provision or non-interference, and those who hold that it is sufficient that rights have other corollaries. Support or rejection of human rights depends on which view of rights one supports.

2. **Argument from Universality**

The arguments for human rights stress that rights being claimed for human beings on the grounds of their being human beings have to be claimable for everyone. They have to be the 'the rights of all people at all times in all situations' (Cranston, 1967, p. 49). In the minds of some, this requirement is so onerous as to make such claims untenable. It is argued, therefore, that human rights cannot aspire to the state of being valid rights.

**Discussion**

I think human rights are universal—to the extent that they are recommended goals that everyone ought to try to attain, 'a common standard of achievement for all peoples and nations'
(Benn and Peters, 1959, p. 101). Advocating rights for human beings on the grounds that they are human beings means that we would like to see these rights attained by all human beings. That they cannot always be so attained does not mean they are dubious rights.

Summary

This review of how human rights can be justified has helped us anticipate the strategies for justifying the right to education, especially for prisoners. A particularly worthwhile argument is the "Argument from Equal Worth and Dignity."

C. ARGUMENTS FOR PERSON RIGHTS

Person Rights are allocated to persons on the basis of certain features they possess. Human beings possess certain common identifying traits. These can be used sometimes to justify treatment and actions different from others who do not have these, for example, animals. There are some features, however, which some, but not all, human beings possess.

Person rights derive from such features. They are specific rights allocated to competent adult human beings, that is, rational agents who are able to take responsibility for their actions:

...The special feature of persons seems to provide a ground for a special set of moral claims (natural or human rights) which are appropriate only for such creatures and not for any other animals...
Kerr holds that certain 'person' rights are grounded in 'conceptions of what it is to be a person.' She considers these as 'minimal liberties or entitlements.' They enable us to live 'not just in a raw, physical sense,' but also in a 'normatively loaded sense that culturally and socially based definitions constitute' (1978, p. 169). We are not merely biological organisms, but are also 'purposing, self-reflective' moral agents (Kleinig, 1978, p. 30).

Discussion

This argument can be criticized in the same way as the "Argument From Needs and Interests" used to justify Human Rights. In short, the same unqualified "naturalistic" leap is made, an empirical premise leads to a normative conclusion.

Melden provides a different route of justification. Features of persons still remain the basis of justification. But the spectre of the Naturalistic Fallacy is removed because rights are seen as a part of these features. Consequently:

...it is logically impossible for anyone, oneself, or anyone else to do anything that would deprive one of this moral possession without depriving one of one's status as a person...

(1977, p. 167)

Melden sees human beings as moral agents and persons living in a moral community. There is one basic right which these
moral agents have, the right to 'pursue their own interests' (Melden, 1977, p. 167). This right is tied to their unique nature as moral agents.

The problem I have with this argument is that I am uncertain whether Melden categorizes human beings as different from persons. He does state that this basic right is distinguished from other human rights, because these other human rights are the result of social institutions. Examples would be the right to medical aid, education, etc. Put briefly, Melden's view appears to be there is one basic, fundamental, inalienable right which persons/human beings have - that is the right to pursue one's own interest - and other human rights which are the result of societal structures. Only the former is bound up with our status as human beings.

**CONCLUSION TO "JUSTIFICATION OF RIGHTS"

With regard first to human rights, they have been categorized and justified as rights which human beings can claim because they require these rights to be human beings. Education is commonly categorized in this way. It is suggested, however, that education is more appropriately a person right. Human rights are usually basic rights claimed for human beings on the grounds of needs and interests. While everyone might be able to benefit from a basic education, this education can be accomplished only after the basic physical amenities have been taken care of. Education cannot, therefore, be a "basic" human right. It is possibly best viewed as a contingent right.

I have chosen to view human rights broadly as all or any
rights proper for human beings to have. Person rights would be subsumed under this category. But I have also chosen to view them in a more 'narrow' way, when I suggest that the only right a human being might claim as a human being, is the right to be treated with dignity and respect. It is possible to regard such a right as essential because it prescribes the limits to possible indignities we can suffer as human beings. This right can never be ignored, and will always be relevant in the treatment of human beings. It is thus 'inalienable.' Such a view of human rights, and of this right in particular, is central to the thesis, because of the premise that prisoners have the right to be treated fairly and with dignity and respect.

It is also a premise that prisoners are persons. A category of person rights has also to be accounted for, which only persons as responsible agents can claim. While 'we recognize almost all human beings as persons,' we also 'recognize conditions that exempt human beings from personhood' (Dennett, 1976, p. 175), for instance, being totally insane, or irreversibly comatose. Persons as rational individuals responsible for their actions can and must have rights by which they can exercise their responsibilities. They also require a certain range of freedom that ought to be permitted a responsible person who would ideally use this freedom with discretion. This does not mean that persons need rights to demonstrate their responsibility. Rather, rights are part of their personhood, as much as being responsible is. It is as
though they require rights in order to be able to act responsibly as responsible agents. This is why Flathman cites as a 'paradigm' right-holder individuals who are capable of 'self-directed, assertive conduct' (1976, p. 72).

CONCLUSION TO THE CHAPTER

In this chapter I have discussed some things we need to know about rights to carry the thesis forward. One concern of the dissertation has been the question whether a right to education can improve the quality of penitentiary education. Thus we needed to investigate what rights are, and what they can do. We also needed to note some of the problems involved in claiming such a right, as well as some of the grounds for justifying this right.
IV. THE RIGHT TO EDUCATION

Chapter three explored the nature of rights and how one could justify various kinds of rights. It is assumed that if good grounds can be found for claiming that prisoners have a right to education, a large part of the case for making this right a legal right would have been established. This chapter examines the arguments usually advanced to establish such a right. It begins with an explication of the concept of education.

THE CONCEPT OF EDUCATION

The concept of education discussed here is not unique to prisoners. However, what is envisaged for prisoners, by way of content or programs, while based on such a concept, must be appropriate for prisoners. As analyzed by Peters (1966), and Hirst and Peters (1970), what is distinctive about the concept of education is that it embodies the criteria which can be used to distinguish processes, activities, aims, end-products as educational.

Peters argues that certain 'specific achievements and states of mind' (1966, p. 5) form the basis by which one can identify a person as 'educated':

...The central cases of education are cases in which the individual who is being educated is being led or induced to come up to some standard; to achieve something...

(166, p. 16)
The criteria recommended are:

(1) ...that 'education' implies the transmission of what is worthwhile to those who become committed to it;
(2) that 'education' must involve knowledge and understanding and some kind of cognitive perspective which are not inert;...

(1966, p. 20)

These criteria indicate what educated persons are like:

1. They possess knowledge, both in depth and breadth of understanding. This means that, aside from possessing a body of knowledge as a mere collection of facts, they also possess the necessary 'conceptual scheme' by which they can have 'some understanding of the "reason why" of things' (Peters, 1966, p. 8). Educated persons hold a 'cognitive perspective' (p. 12). They are transformed by what they know. The knowledge they possess makes a difference to their outlook on life. It characterizes their 'way of looking at things' (p. 8). Educated persons also care about being able to give reasons and evidence to support what they know.

2. The knowledge is made up of things considered worthwhile and desirable.

These criteria emphasize that, while knowledge is important, how one possesses it, and what one is able to do with it, are also important. Crittenden (1973) supports such a view:

...Education is directly concerned not simply
with discrete bodies of knowledge . . . but with the way they fit together in the experience of the learner, and with the influence of this . . . on the outlook and the manner of acting that constitute a person's lifestyle...

(p. 12)

Scheffler (1973, p. 60) maintains that education aims to 'humanize and civilize,' while Hirst and Peters (1970, p. 57) assert that an educated person possesses not only certain 'human excellences' such as autonomy, integrity, but also some 'knowledge and understanding' upon which these are based.

Both Peters (1966) and Scheffler (1973) also discuss criteria for the assessment of the mode or modes used in efforts to educate people. These are essentially moral criteria. While they are important to a full understanding of the concept of education, they are less central to the thesis and will not further be discussed.

Peters' (1966) approach to this concept is relevant for prisoners. The implications which are particularly useful for prisoners lie in:

1. The notion of an educated perspective as a transformed outlook on life

2. The notion of education as worthwhile and desirable

Education can provide prisoners with what they might have missed in the way of knowledge essential to survival in modern society. It can also provide the chance to develop critical thought, and independent judgement:
...Education serves both to pass on the varied habits of mind that make up civilized culture and, at the same time, to form . . . autonomous participant[s] in that culture...

(Scheffler, 1973, p. 60)

This account by Peters and others of the concept of education is not simply their ideas of what education is. They also amount to a refined analysis and coherent reconstruction of the way one important sense of the concept of education figures importantly in our language. Thus, by "education," I will mean efforts to help people attain the abilities and dispositions needed to meet the sort of criteria these authors have identified. 'We would not call a person 'educated' who had not developed along such lines' (Peters, 1966, p. 5).

There are other senses of education. Two are particularly likely to produce confusion about what is meant by a right to education. One is the sense in which we engage in education in order to prepare ourselves for a trade or occupation. In many cases, it is more appropriate to call this "training." But it too is a criterial sense of education—in this case the criteria are those required to perform well in an occupation. It is also possible that training programs encapsulate broader educational goals. As mentioned in chapter one, it is possible that the conveyance of skills be accompanied by efforts to broaden the mental and intellectual capacities of learners. In this way, training programs in vocational skills or literacy can be considered as education—if they incorporate educational goals.
The other sense is the institutional sense—where the term "education" is used, for example, to refer to a school system. When we ask, for example, 'Have they completed their education?', we may mean roughly 'Have they passed all the grades in the school system?'

It is not always easy to tell whether or not people who have written about rights to education have intended the occupational or the educated person (EP) sense of education. Indeed there can be considerable overlap between these two senses of education. Acquiring basic literacy, for example, is usually a step toward both. And some occupations (lawyers, perhaps) require quite advanced education in the educated person sense to succeed. Unless there is clear evidence to the contrary in what they have written, I will assume that they are talking either about education (EP) or those criteria of the occupational sense which are the same as the EP sense.

In any event, I am not here primarily concerned with assessing the merits of arguments for a right to education in either the occupational or institutional senses. I am concerned with whether or not it can be shown to be defensible to have a right to education—in the sense analyzed by Peters, and adhered to, in this dissertation. Education, in this sense, can be achieved to varying degrees or 'levels.' One can be more or less educated. What is essential is that programs, whatever their content, contain elements which are likely to produce (given appropriate participation on the part of the student) an increasing ability to meet the criteria of educated persons.
For example, a transformation of outlook, a reaching of heights never dreamt of, supposedly depicts an educated person (Peters, 1966, p. 178).

The specific penitentiary programs run first by the University of Victoria, and latterly by Simon Fraser University, are examples of such an education. However, literacy and vocational programs which exist within the corrections system may count as part of a prisoners' education provided they seek to meet the appropriate criteria.

A. ARGUMENTS FOR THE RIGHT TO EDUCATION

1. Argument by 'derivation'

This argument might be termed as a "derivative" argument because it attempts to justify a right to education by showing that it is implicit in other sorts of human or welfare rights. It is postulated that human beings have needs which must be met if they are to survive and live a life worth living. It is further claimed that they have rights to whatever facilities are necessary to secure such a life. Education is claimed as one of these facilities. At least a minimal level of education is vital to our survival and our chances for living a decent life.

Bandman states that the only hope there is to get a 'full right to an education' is to get more rights 'in' education (1977, p. 296). These would be rights which 'involve or imply an education,' such as 'the universal right to a job, to social security.' All of these imply 'the derivative right to education' (p. 291). Similarly, Imber and Namenson argue for a 'set of facts and skills which all persons have a right to have
the opportunity to learn' (1983, p. 105). These are essential to the learning of further skills, and to coping with the complexities of modern life. The right to education is thus derived from the most fundamental of all rights—the right to life.

Discussion

In this argument, education is being justified under some major category of right. What would happen if these categories themselves are subject to criticism? For example, education is categorized often as a human right. But it has been seen that human rights are often criticized as being impractical, etc. To place education within these categories is to render it subject to the same criticism. For example, a belief in the right to education must be preceded by a belief in a right to realize the 'economic, social, and cultural rights indispensable' for our 'dignity' and 'free development' of our personality (Olafson, 1973, p. 173).

Arguments forwarded to justify education as an individual right on its own merit are unlikely to be sufficient. The right to education is contingent upon a particular social context—'dependent on the conditions of a particular location and time' (Imber and Namenson, 1983, p. 103). This fact is a reason for allocating education 'second fiddle' or 'secondary status' (See the "Argument from Relative Importance" in the section entitled, "Arguments Against the Right to Education" later in this chapter). Education, as we saw in chapter three, can never be a fundamental right. It is not necessary, for example, for
physical survival.

What might be maintained, instead, is that although education can never be fundamental, or basic, it nevertheless can be justified as a 'second group' right (Imber and Namenson, 1983, p. 103). Assuming that fundamental and basic needs such as food and water have been satisfied, then persons have grounds for claiming rights to develop and enhance the quality of life, or to avoid what might be called "social death." In other words, education is justified as a contingent right, not a derivative one.

2. Argument from Needs and Interests

This argument attempts to justify education on its own merits, and not as a right belonging to another more major category. Education is viewed as a tool necessary to equip man with whatever skills and abilities he needs to survive, or to develop himself, as a human being. To quote Bandman, 'Education is vital to one's complete development, morally and occupationally and to the quality of one's life' (1977, p. 291). This implies that one needs education in order to be able to survive. Imber and Namenson cite 'Chief Justice Warren's encomium in Brown vs. Board of Education (1954 at 493) ' that:

...In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education...

(1984, p: 107)

Crittenden sees some sort of process of education as
essential to initiate members of society into the ways of life, understanding, and meanings of society (1973, p. 47). He does not consider education a luxury or an 'adornment,' but a 'necessary ingredient' (p. 47) to being a human being. He thinks a certain form of liberal education so vital for human existence, that everyone 'should have an adequate opportunity to engage in some form of liberal education' (p. 47). He believes that one ought to be at least exposed or allowed the opportunity to be initiated into this form of education, in order that one can realize oneself 'significantly qua human.' Everyone ought to have the right to at least opportunities to be exposed to such a form of education.

It is definitely in the interests of most people to receive a basic education. The problem is that many people get by without such an education. Does one require an education to obtain food and water? It is also in the interest of a needy stranger to be given ten dollars, but 'it is hardly plausible that he has a right to it' (Melden, 1979, p. 105). Even though it might be acknowledged that one is in dire need of something, that something can be provided without its being a right of that person. Needs do not imply rights.

To respond to this, one could suggest, as before, that while there is perhaps no right as such to education, because one is a person (or potential person) with these same basic needs and interests as all persons, one should have the same opportunities as anyone else to satisfy them. This establishes, as it were, the basic right to education--equality of
educational opportunity. It does not establish any special claims which might be made by particular persons or groups of persons. Such a rationale underpins the next argument.

3. Argument from Equality

This argument rests upon the assumed equality of all human beings in terms of intrinsic value and worth, and in the possession of certain basic needs and interests. This entitles them either to certain rights which everybody has, or at least the same opportunities as everybody else to fulfil those essential requirements to their lives as human beings. If education is being provided, it should be made available to everyone, unless there is a relevant reason to the contrary. Such reasoning is seen as 'the fundamental principle of morality, if not rationality itself' (Wasserstom, 1971, p. 117). It is 'irrational' to deny to persons the same sorts of goods and services, unless relevant differences can be found to distinguish them:

...If particular educational services are provided to any of society's members, they become - under specified conditions - the right of all members of the society...

(Imber and Namenson, 1983, p. 97)

Thus, although education is not a right per se, all individuals within a society have a right to equal access to education—and this on the grounds that everyone has the right to be treated
fairly.

Discussion

This argument does not claim a direct right to education. It excludes claims to specific goods like educational programs, calling instead for 'unqualified access for all individuals to all educational programs' (Imber and Namenson, 1983, p. 98). It claims that if education is being made available, then everyone has the right to the same opportunities as the next person in obtaining this education.

Everyone possesses certain common properties, among them some capacity to benefit from education. As such, everyone has the same right of opportunity of access to this education. If education is one of the factors in the development of human beings, a factor in the progress society makes, then everyone who possesses the features of being likely to benefit from such advantages ought to have the same opportunities to receive these advantages—if they are being made available to others.

This notion of a common platform of needs, interests, dignity, worth and value is an appropriate justification for prisoners' right to education. It makes it a 'grave affront to justice' (Cranston, 1967, p. 52) to exclude prisoners from the same sorts of opportunities as other human beings. This argument will be discussed again in chapter five.

4. Argument from Roles

Education can also equip persons to cope with certain specific roles. For example, a teacher requires some kind of education in teaching skills to facilitate her role as teacher.
In the same way, it is sometimes suggested that human beings have roles as human beings. Two such roles are that of citizen and responsible moral agent. The education that is required in order that the full potential of these roles can be fulfilled is considered as a right, because one cannot expect persons to operate fully and effectively in these roles without providing them the opportunities to develop the capacities for doing so.

**Discussion**

The problem with this argument is that the role of citizen, etc., is not the only role that human beings have. We do not have rights to the education and knowledge necessary to fulfil all our roles. Reference to "The Argument from Equal Opportunity" might solve this problem. The Argument states that everyone should have the same opportunities as everyone else to the education that is provided. For example, we do not have rights to be doctors. But we do have the right to the opportunities to be doctors in that medical education is provided. Although such opportunities are available, however, many will not be able to use them because they are unable to meet the standards considered as relevant criteria for entry.

5. **Arguments from Duties**

   a) Argument from the Social Contract

   b) Argument by Birth

The overall thrust of these arguments is to rebut the disavowal of education as a right because there can be no corollary duty to provide education. These arguments attempt a defence of education by citing examples of plausible duty-
holders, such as the government, society in general, and generations of society.

a) **Argument from The Social Contract**

This argument is founded upon certain rights being bestowed as the result of an "agreement" between society and its members. Peffer proposes a category of rights called "'Social Contract Rights'" which belong to individuals by virtue of their being members of a particular society at a particular time' (1978, p. 65). These rights are guaranteed us by the society in which we live, 'given the principles of distributive justice and other basic principles.' Examples are the 'right to a free education, to adequate health care, to a fair trial' (1978, p. 66).

One could also explain this agreement which society has with its members in the following way. Society, or the state, undertakes to educate its citizens so that they can be responsible and contributing members of society/the state. It would benefit the state/society to have such members. They therefore have a duty to educate citizens, which provides citizens with grounds for claiming a right to this education which can benefit the state of which they are members. What benefits the state and society supposedly benefits the members who constitute it.

A form of this argument occurs in "The Argument from Benefits to the Collective" in chapter five. A version of it also appeared in the previously discussed "Argument from Roles."

**Discussion**

The main difficulty with this argument is that it may
presume too much on the inclination of many governments to undertake such tasks. It also assumes the availability of resources to educate citizens. It is as though the presence of governments presupposes and fully guarantees the right, or is a necessary and sufficient condition for the right. But even effective governments do not always have the resources to guarantee access to education. At best, then, this argument makes it possible to make claims upon governments to make education a priority when times are propitious, and resources are available. Prisoners, for example, might use this argument to claim adequate education for themselves if the government appears to have adequate resources, and is extending these to other members of society.

b) Argument by Birth

Olafson (1973) thinks that there is a duty correlative with bringing a child into the world to nurture and nourish it. There is, in his opinion, also a collective duty incurred by members of a senior generation - who have managed to reach adulthood only through someone fulfilling the duty to tend to them - to return the compliment by caring and providing for the succeeding generation.

Discussion

A flaw with this argument is that it deals with education only as a recipient right, requiring 'the positive support and expenditure of resources' (1973, p. 175). This overlooks that aspect of education as an action right, requiring only non-interference, if needs be. This argument may also be more
appropriate for children, but not so for prisoners as adult persons. If we hold someone to be sufficiently responsible to feel it legitimate to incarcerate them for what they have done, we are already regarding them as persons. They will thus need specifically an education to improve them and even reform them, but not the nurture or caring that we offer to children. There might be prisoners who are immature or illiterate, but our thesis concerns prisoners as responsible agents.

Another problem arises from the duty we might have to be educated. It has been reiterated that having a duty to do something does not eradicate our right to it. A duty — especially a moral duty — can supersede the practice of a right. Before being able to claim the full freedom of exercising one's right to education, one might first have a duty to submit to a form of education to teach us how to be responsible about our right, and which is an essential prerequisite to claiming our right. This question of duties, however, is not only problematic in itself, it also raises different questions which I cannot discuss here because I am investigating rights to education, not duties.

The Argument might be useful if we include prisoners in the category of the 'generation' which is to receive education, that is, the generation which requires the help of the older generation to receive an education to help them mature, grow, develop. It is also possible that if prisoners leave prison as educated persons, they will consider it their duty to help others as well, thus fulfilling the contract between
generations.

B. ARGUMENTS AGAINST THE RIGHT TO EDUCATION

1. Argument from Duties (or the Nature of Education)

This argument revolves around the alleged relationship between rights and duties. The problem was sketched previously in the section on "The Nature and Meaning of Rights." It is also the crux of an argument against human rights entitled "Argument from No Specific Persons/Duties." The underlying premise is that rights must incur duties—specific duties of provision. While there may be certain rights such as the right to property where the duty of non-interference suffices, education, however, 'requires the positive support and expenditure of resources by others' (Olafson, 1973, p. 175):

...Any case we construct with a view to showing that there is a right to education must be a case showing that some person/persons have a duty to support and assist the education of the persons for whom the right is claimed...

(p. 175)

The problem with education is that it is not possible to see where these duties fall.

Discussion

This argument rests upon a perception of education as a recipient right. However, as I have argued previously when the same criticism was made of human rights, recipient rights are
not the only valid category of rights. Duties of provision are also not the only valid corollaries of rights. And with specific regard to education, it must also be remembered that the 'Janus' nature of education renders it categorizable as both an action and recipient right. I have also considered previously whether the State, as the agency which imprisons persons, can be regarded as the agency which should carry correlative duties, etc., should prisoners be granted a right to education.

2. Argument from Relative Importance

This argument claims that education possesses only secondary importance. It always has to concede to more urgent considerations. The importance of education is acknowledged as an instrument of development and progress, but this importance is subordinate to – if, indeed, not dependent on – other concerns. A right to education (even at the basic level) will be defensible only when persons or societies have reached a certain level of physical comfort and/or development.

As described in the section on categories of rights in chapter three, education can be perceived as a contingent right because its award is dependent upon circumstances and situations. It can also be considered as being prima facie because there is uncertainty about its status or its exercise. The authenticity of such rights is challenged. It is argued that within the economy of a culture, its demands have such a fragile basis, that it would be misleading to call it a right. A right to education is thus rejected because it is subject to
supplanting—and rights are not rights, it is argued, if they can be so easily dismissed.

Discussion

Two counterarguments are possible. Rights to equality of access to education cannot be so easily dismissed, because they represent a special aspect of a fundamental right to justice. And if it were necessary to make such rights legal rights there would be, at least prima facie, strong grounds to justify them. Where the question is one of 'practicality,' I have have already granted that a right to education is a circumstantial right.

Thus the most that this argument shows is that sometimes other things may be more important than education. But this does not cast aspersions upon education, or the right to education. A legal right to education can be granted without its being exercised—for whatever reason. The same goes for all other rights.

OVERVIEW OF THE ARGUMENTS AGAINST THE RIGHT TO EDUCATION

The major arguments against a right to education rest mainly upon claims that:

i) No persons can be found upon whom to place the necessary duty of provision

ii) Education is only of secondary importance to the welfare or survival of persons

These arguments show clearly how ways of categorizing the right to education influence the direction of one's argument. As we have just seen, some of these ways of categorizing education are obstacles to the recognition of education as a
genuine right. One need not, however, accept these ways as the only alternatives. For example, this thesis is interested in the plausibility that education can be a legal right or a 'right in the strict sense' (Flathman, 1976) in order that all those 'troublesome' duties of specific persons then become obligatory for certain bodies.

It is also suggested that restricting education solely to the category of recipient rights ignores its binary nature. Education can be both an action and recipient right. Thus arguments which attempt to refute education as a passive process eliciting only duties of provision are misdirected.

**CONCLUSION TO THE CHAPTER**

This chapter has shown that important as education is, it is not an undisputed right. The main reason for this is that the right to education can be superseded by more compelling considerations, such as unavailability of resources, or a moral duty to be educated. The arguments which support the right to education are thus mainly supportive of it as a contingent right. This feature, however, does not make it any less a right. Chapter three made this clear. The contingent, or conditional status of certain rights is not sufficient reason to contest or doubt them.

But are there good grounds to legislate such a right? In Canada, opportunities of access to education are seemingly protected and guaranteed by the law for the majority of persons. But not all are so favoured. Prisoners are presently excluded. Their right to education at the most is a moral right.
Similarly, other parts of the world may be affluent and developed, but see education as something provided out of moral goodness and obligation.

I propose, however, that a case for a legal right can be made along the following lines. First, it can be maintained that persons should have the right to obtain an education should they wish it. J. S. Mill asserts in 'On Liberty' that it is legitimate for anyone to do as he wishes, as long as it does not harm others, or inconvenience them (1973). This is an argument for a right to non-interference. If people want to educate themselves, they have a right to do so as long as they do not disadvantage others.

The discussion so far would support such a right because action rights have been shown to be valid categories of rights. Because, however, this particular kind of right to education is good only for that portion of a population able to educate themselves, it is not so appropriate in situations requiring guidance.

What is proposed instead is that although barriers do exist to claims for a right to education, it is hard to argue against a right of persons to receive the same kind of opportunities as other persons, in particular, opportunities to acquire things necessary to the status and dignity of persons. All human beings have the right to be treated with dignity and respect, and one of the ways that such a right is manifested for persons is a right to equality of opportunity. In other words, if opportunities to education are being provided, all persons
should have the same kind of access as other persons.

There will naturally be difficulties if one wishes to extend this right to prisoners. Many of these difficulties have already become evident through previous discussions. For example, some might consider the claim that members of society have a right of opportunity to education as farcical, because as in the case of higher education, for instance, many are restricted by an inability to meet rising tuition fees. In this very real instance, it can be countered that if the imposition of high fees is barring too many from a higher education, those responsible for this imposition are violating the rights of persons to an education. They are providing education—but only to a limited elite able to afford it. This does not necessarily imply that other persons do not have this right, but rather that their right is being violated. The same goes for persons unable to receive an education because they are in far-flung rural outposts. It is the duty of the government, in making education available to others, to honour the right of these persons to education, by ensuring that they are not excluded from opportunities to education.

But this dissertation is about prisoners. If one could show that prisons and jailers were universally, or even in the main, places and people who are advocates of things like education for prisoners, that the prison system bent much effort toward the educational betterment of the inmates, then the case for legal rights to education would be much weakened. But if we assume that the social circumstances of prisons and the
attitudes of their jailers makes it unlikely that prisoners will be given either the needed facilities or suitable freedom from interference, then we have at least a plausible case to make education a legal right.
V. THE RIGHT OF PRISONERS TO EDUCATION

Chapter four set out a range of arguments to support a legal right to education. While education is generally an established social institution, it is not commonly accepted as a right of prisoners. We have reviewed the arguments for educational rights generally as preparation for reviewing their applicability to the specific case of prisoners. This chapter investigates the grounds for such a claim. Only if there are such grounds can we reasonably expect a uniform system of education for prisoners to become established and accepted. Only then will prisoners (as with other members of society) have the same 'recourse when their valid claims go unsatisfied' (Imber and Namenson, 1983, p. 102).

Certain issues must first be settled:

I. It must be shown that education and punishment are not incompatible. This involves clarifying the meaning of punishment.

II. It must also be shown that education can enhance the functions of incarceration as the selected form of punishment. This involves clarifying the meaning of incarceration, and education, and then discussing the ways education can contribute toward a beneficial incarceration.

I. EDUCATION AND PUNISHMENT

In order to show how a right to education can be accommodated within a period of punishment, we must first differentiate between the meaning and justification of punishment. Punishment, as most aptly pointed out by Peters
means imposing something unpleasant on someone who has done something wrong. This unpleasantness can only justifiably be imposed upon a guilty party, the offender, and no one else. Lucas (1971) and Quinton (1969) are of the same opinion.

Criteria are available which can be used to identify an activity as punishment. A period of incarceration is punishment if it is:

a) Unpleasant or painful
b) For the reason of an offence
c) Of persons guilty of the offence
d) Delegated by an appropriate authority

(Benn and Peters, 1959, p. 174).

While we may have difficulty in certain cases deciding whether something counts as punishment, I shall assume that we are dealing with legitimate and full cases of punishment.

Justification for such a practice begins when we question why such a practice should exist. Not everyone, however, agrees that justification is needed. Goldman argues that because prisoners have violated the rights of others in their criminal activities, 'they have lost or forfeited their legitimate demands that others honor all their formerly held rights' (1979, p. 43). Prisoners bring the punishment upon themselves by choosing to engage in criminal activity. Other writers have argued that notwithstanding the nature of prisoners' prior acts, punishment must be justified because it involves a restriction of their liberty and an infliction of unpleasantness upon them.
I adhere to the view that justification is necessary. Clearly, some action must be taken to demonstrate effectively society's disapproval of those who break its laws. Lucas claims that punishment is effective in enforcing, inculcating, or expressing a system of law, conventions, customs, rules or moral principles (1971, p. 230). Similarly, for Gahringer, punishment is viewed as 'part of the language of the law,' because it makes known what 'is essential to a social order' (1969, p. 292).

Besides communicating what the rules are, something needs to be done to discourage people from breaking these rules, to make them compensate for their crimes, and to motivate them to maintain law and order. Important also is the hope that prisoners will realize their errors and know how to avoid them. These are some reasons for punishing persons. The form which punishment takes, be it detention, or levying of fines, etc., is meted out to realize these aims.

**Education** must be conceptually differentiated from punishment because education never sets out to be deliberately unpleasant or painful. Punishment does and must. Pain is a deliberate part of the meaning of punishment. We definitely cannot want to educate prisoners as punishment. Rather we **incarcerate** them for punishment, and then possibly educate them during this period. The pain of punishment may teach a lesson, but this sort of incidental side-effect is not considered as education.

Education can, however, contribute to a more successful carrying out of some of the objectives of punishment. One thus
educates in order that some of these goals can be fulfilled. For example, punishment is said to discourage present offenders from committing more crimes. In the section which elaborates education for prisoners, it will be seen how one hopes that such deterrence from future crime is the result rather of a change of perspective and reasoning.

Prisoners are also punished in the hope of making them better. Chapter two showed the term 'reform' sometimes being used in this context. Reform has historically been focussed on inherent and intrinsic changes of character through certain kinds of "educational" programs. For example, it was thought that a Christian education would 'reform' persons into seeing the error of their ways (OISE Review, 1978, p. 22). Of course reform is not the guaranteed outcome of either education or punishment. It is only the hoped-for result of treating prisoners 'constructively,' that is, arranging conditions of punishment so that 'there is some possibility of a person being reformed' (Peters, 1966, p. 178).

Claims are also made that punishment is justifiable to protect society from criminals at large, to protect criminals from themselves. It is justified by benefits to society on the whole. Education as a deterrent agent can help serve this utilitarian premise. If offenders and potential offenders are 'put off' from a life of crime, then society benefits in the long run. The focus is now on the role of education within a specific form of punishment, that of incarceration.

II. EDUCATION AND INCARCERATION
Incarceration

Incarceration is a kind of punishment. Other kinds are fines, flogging, starvation, and quartering. Incarceration or imprisonment refers to the period of relative isolation imposed upon persons during which they are removed from normal society. During this period of isolation, they lose their liberty and other rights thought necessary to protect the institution and the society. This period of incarceration is their punishment. Certain functions are attributed to incarceration. Common are those of custody, protection, reform, and rehabilitation (see chapter two).

Chapter two revealed that education has always been advocated for prisoners. The only questions are about the type of education to be provided and the seriousness of commitment to its implementation. The Education and Training Division of the CSC states their mission as being to 'provide genuine opportunities for academic and vocational education to inmates who are able to benefit from them' (1980, p. 2). Hervieux-Payette sees education at the 'heart of the prison function,' and that all 'prison business is educational business' (1981, p. 40). The discussion now focusses on the kind of education which is envisaged as being able to benefit prisoners during incarceration.

Education

"Education" can be quite an ambiguous term. Sometimes it is used to pick out institutions or programs organized to produce certain kinds of learning in or by people. In addition,
it is used to refer to certain kinds of growth, maturation, etc., implying as Peters tells us, 'some change for the better' (1966, p. 178). The dissertation adopts this latter approach.

The area of education constitutes tasks, activities, processes, designed to help persons fulfil to some degree the criteria of what an educated person is. Such a person is seen to have achieved certain standards of excellence—essentially cognitive excellences. Persons' conduct, actions, judgements, and feelings are affected by their education. They will possess knowledge which is not restricted to utilitarian or vocational purposes, nor merely knowledge of one discipline or field. They will also be able to explain, understand, and use this knowledge in other contexts. The overall result intended is a desirable change for the better. 'Education in its essence' 'is pre-eminentely and uniquely concerned with learning and human development' (Cosman, 1985, p. 19).

These notions of education can offer a sound rationale for prison education. It has been mentioned how it would be odd to incarcerate persons without providing some opportunities for adaptation to non-criminal life. It would be odd not to try to change or develop them in some way to decrease their propensity to commit crimes.

Prisoner educational requirements vary, and so do programs. For example, common programs are in lifeskills, Basic Adult Education, and literacy. These programs do good in their own ways. No one can deny the advantages of being literate, or in becoming a more marketable person. Sometimes these skills are
all a person requires for survival as a non-criminal. The thing is, education is not just the teaching of facts and skills. It is also not just 'schooling or training.' It is:

...a matter of developing the capacities of the student for dynamic intellectual activity and active moral judgement...
(Cosman, 1985, p. 22)

If education is to truly attempt to develop persons, they must be provided opportunities to develop their minds and intellectual abilities, besides just acquiring information.

As has been cautioned before, the danger is that if some education programs do not extend their aims beyond the delivery of skills, there may not be sufficient opportunities for those sorts of changes deemed as particularly desirable for prisoners. Training programs may not provide prisoners with much scope for development as 'educated' persons. But it is possible that thinking abilities be conveyed when teaching persons how to read and write. Thus whether it be literacy or lifeskills as content, penitentiary education must be 'education for thinking and for character, not merely content' (Duguid, 1981, p. 100). It must be oriented to provide prisoners with opportunities to 'make different decisions in future, decisions which will not lead to further criminal activity' (Duguid, 1981, p. 136).

Education is being proposed as a way of enlarging the context out of which a prisoner frames his/her life decisions.
This context might contain, for example, alternatives to criminal choices. It is believed that the way a prisoner thinks and reasons dominates a large expanse of this context, and thus education programs should be directed largely to improving this thinking and reasoning. Other influences upon this context are suggested as being 'poverty, lack of opportunity, limited intellectual stimulation, . . . familial factors,' amidst other social or economic factors (Ross and Fabiano, 1985, p. 11).

Education may not change such factors but it can possibly alter the way a person responds to such situations:

...Criminals act by making decisions in specific situations and those decisions are in large part formed and determined by the cognitive, ethical, and attitudinal make-up of the individual. Change that and different decisions should follow...

(Duguid, 1981, p. 153)

Ross and Fabiano also suggest that the root of criminal behaviour is the prisoners' view of the world, how s/he understands and considers other persons' feelings, and values (1985, p. 11). One would expect educational programs to contain components which address these factors.

We do have some idea what programs to accomplish this should be like. On the one hand, we have empirical evidence that people who have followed certain types of programs of study
have changed in these ways. On the other hand, we have logical grounds for believing that programs must include those materials whose mastery comprise the very changes we seek.

Perhaps the best recent example of this idea is the argument set out by Paul Hirst (1974). The gist of this argument is that there are certain 'forms of knowledge' which can be, indeed, must be conveyed through learning. These forms do not represent mere 'collections of information.' They are rather the main ways of 'understanding experience which man has achieved' (1974, p. 38). Each form has its unique grammar and terminology, involving the 'development of creative imagination, judgement, thinking, communicative skills' (1974, p. 38). According to Hirst, an educated person would have a considerable degree of mastery in all these basic forms of understanding. Examples are 'distinct disciplines' such as mathematics or philosophy (Hirst, 1974, p. 46).

Hirst's ideas are best typified by a standard liberal arts program, containing the traditional humanities disciplines. Such a program is particularly advantageous to prisoners' development because its central aim is the development of mind through exposure and immersion in the various forms of knowledge. Involvement with such disciplines provides potential for development because they represent diverse ways of thinking and experience. For example, it does seem plausible that a substantial focus on forms which directly address social, ethical and legal matters may have more considerable positive impact on prisoners' outlook, perceptions, and attitudes.
A particular example is the program run by the University of Victoria from 1973, and since 1984, by Simon Fraser University. Such a program operates on the assumption that prisoners suffer from certain deficits in the intellectual, moral, and social spheres—for example, in the area of thinking skills, reasoning abilities, and role-taking abilities (Duguid, 1980, p. 5). A further assumption is made that there is a connection between such skills and behaviour in society. The program aims to rebuild and augment these abilities in prisoners. Similar University programs are run by Laval University in Quebec and Queen's University in Ontario.

Education is not proposed as the panacea. It is not expected that education by itself will work wonders. But because educational facilities are designed to bring about desirable changes in persons, they can be geared to achieve this goal of bringing about such changes in prisoners. For example, it can be designed to change the way prisoners understand the world, developing them into more rational beings with an increased ability to understand their world. It may at least strengthen their inclinations to avoid crime, through the development of responsible patterns of thinking and acting. More specifically, it can increase 'the level of ethical knowledge and moral reasoning ability' (1981, p. 143).

Discussion

The above discussion focussed on the workings of a concept of education in prisons. It is not being stated that prisoners have a right to this education. It is claimed that prisoners
have a right to a worthwhile, adequate, and uniform system of education—in the same way that non-prisoners obtain. Some of the underlying principles of what this sort of education might be has just been outlined above. These principles and the concept of education they support can underpin any of the diverse education programs found within the system. For example, principles such as the 'commitment to the development of cognitive thinking and moral reasoning' (Dennison, 1980, p. 103), or the 'emphasis on the structured development of social and interpersonal understanding' (Education and Training, CSC, 1985, p. 8) are transferable to other educational programs.

Evaluations of the previously mentioned programs at the University of Victoria and Simon Fraser University (Ayers, 1981; Ayers, et al., 1981) report changes in attitudes and perspectives, values, maturation, and occupational stability. Elsewhere Ayers states:

...that our ex-students who have gone back into society have . . . re-established themselves as responsible persons...
(Duguid and Hoekama, 1985, p. 198)

A participant of a University penitentiary program tells us that it:

...enables prisoners to give 'going straight' some consideration . . . helps men develop a
perspective which permits them to see themselves not only as individuals but as citizens...
(Duguid and Hoekama, 1985, p. 194)

Fox informs us that evidence exists which indicate that education programs, besides developing prisoners' work skills, 'enhance prisoner self-respect, and stimulate prisoner thoughts regarding their future in the community':

...the benefits of education reduce the social isolation of incarcerated offenders, gives offenders new, realistic but non-criminal access to the world of work and the opportunity structures of society...
(Fox, 1986, p. 51)

These statements may be accused of being either flimsy, isolated or random statements. It seems too that 'Useful evaluations of correctional education, here and elsewhere, are sadly lacking' (OISE Review, 1978, p. 44). Worse, there is the dismal and much quoted opinion represented by Martinson (1974) that 'nothing works.'

The premises of the dissertation, however, do not rest chiefly upon evidence, or empirical data. It does seem odd to talk of according rights on the basis of the evidence of benefits. Sometimes, benefits are claimed as rights, for example, welfare benefits. They are considered important enough to be safeguarded by rights. But the right is not accorded upon
evidence that these benefits do indeed accrue from having the right. It is derived from principles such as respect for persons. The benefits are considered as vital for persons to have simply as persons. One hopes everybody will experience the benefits, but whether this actually happens is not decisive in the awarding of the right.

Education is also an area where it is extremely difficult to collect relevant evidence. The changes desired through education need not be visible. As mentioned previously as well, education has both 'task' and 'achievement' senses. One can have rights to tasks, activities and opportunities, but not to success. Success is not guaranteed or presupposed when undertaking tasks. Thus, although one may hope for success, this is not a major consideration when according rights.

It is being asserted, therefore, that education, because it is usually geared to develop persons in certain ways, can be beneficial to prisoners. There is some evidence that prisoners are helped through education to avoid crime. This success, however, is not an argument in itself, as already mentioned. One cannot have a right to success, especially in an area like education, where there cannot be gains without pains. Some more appropriate arguments are now discussed.

III. ARGUMENTS FOR PRISONERS' RIGHT TO EDUCATION

Some of the foundations to these arguments have already been discussed, briefly, that:

1. Education can fit into the justificatory framework of punishment, as well as be a worthwhile component of
incarceration.

2. Education must be recognized as a legal right to ensure serious and consistent implementation.

3. If opportunities to education are available to all human beings as a right, there is no prima facie reason to exclude prisoners, especially if one is concerned that justice and fairness prevail.

Some other arguments are now examined:

1. Argument from Incarceration

This argument is based upon the premise, first stated in chapter one, that incarceration with the loss of liberty is sufficient punishment:

...the essence of prison is deprivation of liberty for the breaking of law, . . . .

deprivation of food or health or of books is unjust...

(Mabbott, 1973, p. 383)

Further punishment would be inhumane. The British Columbia Civil Liberties Association Policy Paper on the Rights of Prisoners (1981) quotes the Ministry of the Solicitor-General as stating, in 1973, that there is no legal authority for further restrictions or punishment.

Scharf's (1981) argument in support of such a position is derived from Rawlsian (1971) philosophy. It is argued that moral principles, or social practices, are best decided through an 'original position.' This is a hypothetical situation where
persons (that is rational agents) meet to choose principles, rules, and practices, which will govern their society. They operate under a 'veil of ignorance,' that is, they do not know what their own positions will be, or how these would be affected by the decisions they make. Because everyone is 'similarly situated,' everyone would want to ensure protection from major losses and harms, and no one would design schemes 'to favour his particular condition' (Scarf, 1981, p. 234). Applying this philosophy to punishment, Scharf suggests the right to education need not be 'lost.' Rights to be forsaken are only those deemed harmful (Scharf, 1982, p. 82). Thus rights granted to the rest of society, such as the right to education, must belong to the inmate 'unless society can show them incompatible with common welfare.'

In this argument, a period of incarceration ought not to deprive prisoners of any more rights than is necessary to fulfil the purpose of punishment. 'Violating specific rights of others does not entail losing one's own rights' (Goldman, 1979, p. 44). A period of incarceration, with the loss of the right to liberty, should thus be considered as sufficient punishment. Education, or access to education is a right of other persons. There is no reason then to deprive prisoners of this right, especially as has been emphasized throughout, education can be specifically designed to benefit them. Chapter two suggested the likelihood of education being perhaps ignored for other priorities, or perhaps even being shelved should policies change. Standards must be set, and kept to, to ensure that
programs are consistently directed by truly educational and worthwhile goals.

2. Argument from The Effects of Punishment

Education can also help ameliorate the deleterious effects of punishment. Nietzsche for example, thought prison makes men hard and cold (1973, p. 259), and Peters terms it 'the most potent device for estrangement' (1966, p. 179). Eisenberg (1985, p. 8) cites Goffman's (1961) premise that the influence of an institution upon its inhabitants is such that they must inevitably become part of its moral codes. If this is the case, it looks as though the prison itself will work against its very raison d'etre unless adequate attention be paid to the activities of imprisonment.

A period of incarceration can be regarded as an interim period between committing a crime, and returning to the law-abiding world. What happens during this period is very important. Scharf is quoted by Duguid (1980, p. 37) as saying that a criminal leaving prison with 'the same social conscience' with s/he they entered, 'faces a continuing probability of remaining morally alienated from society.' It seems only logical that steps be taken to ensure that this interim period is well-spent, with opportunities for education and reform being provided the prisoner.

The importance of ensuring that prisoners leave 'in a reasonable state of mind' (Mabbott, 1970, p. 383) has been constantly upheld as a sound objective of incarceration. What prisoners undergo within is so likely to influence what they are
like when they come out. The potential of education for influencing persons for the better has been discussed. Education thus becomes an important asset of incarceration:

... At the very least, an offender's prison experience must not make it impossible for him to return to the community: indeed it must actively put him in the way of the means of doing so... (Lord Belstead, 1980, p. 69).

Education can be one of these means. It has also been suggested that it is 'our duty to counterattack' the demoralizing effects of punishment (Ewing, 1929, p. 89). If this is so, can not such a duty be used as grounds for prisoners to claim a right to programs which are geared to ameliorate such negative effects? Can this mean a right to education as one of these programs?

According to Ayers, the traditional prison does not set any goals beyond custody and control, and lacks 'the elements of experience required for intellectual, social, and moral growth' (1981, p. 76). A prisoner makes the statement that 'prisons produce little else than prisoners' (Duguid and Hoekama, 1985, p. 43). Education might be the key factor in changing this situation. Imprisonment might serve its most useful function by protecting society through 'secure confinement,' but it will fail even in this purpose if this goal is met 'at the expense of returning offenders to society the worse for having been incarcerated' (Task Force, 1984, p. 49).
3. Argument from Punishment of Persons

The main point of this argument stresses that it is persons - and human beings - who are being punished. Persons are rational agents, accountable for their actions. The prisoner has been viewed as 'rational, a decision maker, and of course, responsible for his acts' (Duguid, 1980, p. 5). Punishment, then, can only be of persons, because only persons are responsible agents. 'It seems almost a semantic truth,' says Walker, 'that the irresponsible cannot be punished' (1969, p. 280). Barker affirms, the 'presumption of punishment is responsibility,' and thus, the 'right of offenders to be treated as responsible agents and punished as such' (1965, p. 179).

This makes it at least logically odd to claim prisoners are punishable, but not persons. It would be pointless punishing those who have done something wrong through no fault of their own. The point of punishment on those who unjustifiably violate the rules is to discourage the violation of the rules. Thus, punishment can only be of those violators who are capable of guiding their actions by the rules (Gert, 1973, p. 95). A prisoner might have acted irresponsibly by violating some law. A period of punishment ought, therefore, to be used to help prisoners become more responsible beings, to help them see the point of the rules, and to follow them. It ought, therefore, to contain programs which are directed toward this end. Education is upheld as such a program.

Criminal action is no just reason to forfeit all rights, or degrade persons, especially with regard 'for example, [to] the
right to be treated as a person,' which is 'not forfeitable' (Williams, 1978, p. 187). A just system of punishment 'treats human beings as persons' (Morris, 1970, p. 125), remembering that they have the right to be treated fairly and with dignity, even while being punished. Thus if other persons in society receive opportunities to education to improve and develop themselves, so should prisoners:

...if a person is 'sufficiently responsible to answer and be punished for his conduct, he has the right to exercise every available opportunity to . . . make reparation for his offence, and to restore his reputation and status in the community...

(Doyle, 1969, p. 61)

4. Argument from Fraternal Obligation

This argument tries to find support for prisoners' right to education in 'a human obligation to fraternity, brotherly love,' 'charitable action toward fellow man' (Morin, 1981, p. 27). The fundamental basis of this obligation is the 'desire and the will to do good even to those we feel do not deserve it.' There is thus a right to education not because 'the law says so, but because the law of moral obligation says so' (1981, p. 28).

I would not completely discredit such a high-minded line of argument. However, it assumes far too considerate and humane an attitude toward prisoners on the part, for example, of prison guards or indeed of the public at large. We must, of course,
appeal to higher principles to justify rights, but this must be accompanied by other arguments.

5. Argument from Social Effects

According to this argument, citizens can demand that those imprisoned become less likely than they were before to repeat their offences. This is the result of an agreement which citizens have with society, whereby citizens can expect protection from repetition of offences.

How can this right of society bear on the rights of prisoners? If society has the right for a change in prisoners for the better, this would imply more a duty of prisoners to make the change. We are concerned here with prisoners' rights and not duties. It could be that prisoners might have a duty to be educated, but, then, what is being investigated is not this possibility, but that of a right to be educated.

It might, however, be argued that prisoners are also members of society. They require protection—perhaps from avenging members of society, but also from their own proclivity to commit crime. This can be done through education which suggests ways of overcoming such a proclivity. Then too, as proposed earlier, if other citizens can claim the right to be educated on the grounds that this education is required for them to be able to contribute to society, and if the government has a duty of educating its citizens, it owes this duty to all its citizens—including prisoners.

In chapter three, it was shown that rights need not always correlate with duties. A government's duty, however, to educate
its citizens, might represent an occasion of a duty correlating with a right of persons - and thus prisoners - to be so educated. The government can be seen as being cognizant of such a duty, as depicted in various official stipulations mentioned in chapter two in particular. For example, the Task Force states that the CSC recognizes a 'duty to act fairly' by 'controlling offenders' and 'helping them' (1984, p. 19). It sees helping prisoners as developing ways and means that can enhance their chances of living useful lives. It has also been stated that:

...The penitentiary system shall provide for treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation...


If these do represent government ambitions in corrections, it provides grounds for prisoners, as the objects of these aims, to claim materialization of these aims in appropriate programs such as education. It is, therefore, prisoners' right to demand it.

6. Argument from Benefits to the Collective

'The provision of post-secondary education looks to the long-term benefits' of such programs for both the prisoner and society (Duguid and Hoekama, 1985, p. 206). If a decrease in crime does result from educational programs, society will benefit:
...providing . . . educational opportunities to prisoners is as much in the interests of the general Canadian population as of the prisoners...

(Duguid and Hoekama, 1985, p. 205)

Such an argument echoes the Utilitarian argument in that benefits which education can bring to prisoners are extended to society. Evidence of the benefits for prisoners has already been presented. Students with the penitentiary education programs at the University of Victoria and Simon Fraser University assert that 'the social benefits' of education cannot be 'overstated' (Duguid and Hoekama, 1985, p. 133):

...only when correctional institutions become enlightened educational institutions will criminals return to society as better men and citizens...

(Duguid and Hoekama, 1985, p. 134)

Gahringer's point is that punishment should address the individual wrongdoer in such a way that society too can benefit (1969, p. 299). If education can become a fully functioning part of incarceration, then, both the goals of educating prisoners to become responsible persons, and of ensuring society that prisoners who return to society are educated, can be achieved.

7. Argument from Equality

The previous arguments claimed that one does not cease being a person, or lose one's worth as a human being because of
a crime or offence against the rest of society. Prisoners as persons, and members of the moral community, apart from the loss of rights necessary to meet the requirements of punishment, must continue to receive the same rights and opportunities to rights that non-prisoners might have. This argument, then, allows prisoners to claim the same kind of equality of consideration and treatment as other persons.

This claim of equality has been argued for in various ways. In chapter four, we encountered Vlastos' (1973) notion. There is a common platform of intrinsic worth and dignity which could provide persons with grounds for claiming the same kinds of treatment necessary to protect and enhance this intrinsic worth. Everyone else can claim rights to be treated with respect, as creatures possessing this worth and dignity.

Another way of justifying this kind of equal treatment between and among persons is suggested by Peters (1966). Peters suggests we use practical reasoning to determine certain general principles to be used whenever situations arise. This means looking for reasons why we ought to choose a certain way of acting over another. This means that there are 'principles in advance' which will help us 'distinguish in general' what are good or bad reasons for whatever choice we make. These general principles determine and ensure consistency in whatever decisions we make, mainly that whatever is being decided in a situation $X$ must hold for another exactly similar situation $Y$, unless there are relevant differences in situation $Y$: 
...If reasons hold in one situation then they hold in another unless further reasons can be advanced which indicate a relevant reason...

(1966, p. 51)

This for Peters is the 'formal principle of fairness or justice.' It underpins his notion of equality—that 'distinctions should be made if there are relevant differences and that they should not be made if there are no relevant differences' (1966, p. 51). This principle 'condemns arbitrariness' (Peters, 1966, p. 53). It supplies criteria to ensure that decisions and actions concerning others, especially those already disadvantaged, or those who are likely to be unfairly treated, are made from this vantage point of fairness and justice.

This highlights the importance of the principle of equality for prisoners. They are in that precarious position of having done some harm to society, and society might like to see them disadvantaged. This principle maintains limits upon the disadvantages imposed upon them. It reminds us that prisoners are still persons, with the right to be treated fairly as persons. It is acknowledged that incarceration is a relevant reason for deprivation of certain rights, but not of, for example, a right like that of opportunities to education, especially of the sort that can benefit them.

The case is strengthened if members of society already have opportunities to education; then prisoners, as persons, should also have similar opportunities, especially in the light of
Peters' idea that only relevant differences can legitimately result in different treatment. Chapter one suggested that the 'normal rights of a citizen' do 'include the right of access to an education of good quality' (Duguid and Hoekama, 1985, p. 206). Chapter two affirmed that education in prison was 'given a low priority' (Duguid and Hoekama, 1985, p. 206). This implies that prisoners are not receiving the same right of opportunity of access to education as the rest of the population. This violates the principle of equality because there is no relevant reason for this. Prisoners ought to be given this right, then, so that they can claim better programs such as other members of society seem to be getting.

Even if non-prisoners did not have this right, prisoners' incarcerated state puts them in a position to claim it. Melden's philosophy is that human beings are moral agents belonging to a moral community (1977, p. 214). Morally flawed as persons may be, they still remain members of the community, despite the 'extreme variability' of their state. Members of the moral community who have deviated ought to have the right to be shown ways of returning, instead of being dropped for their deviation.

Prisoners, therefore, need opportunities of returning to the community. This is an officially proclaimed function of incarceration. It also adheres to the maintenance of fairness and justice. The Correctional Law Review Working Paper One quotes the 1977 Parliamentary Sub-Committee as stating that 'Justice for inmates is a personal right' (1986, p. 25).
Hervieux-Payette also states:

...Educational opportunity in prison is not based only on society's desire to reform the criminal, but also on a social commitment to . . . educational fairness in a just society...

(1985, p. 187)

CONCLUSION TO THE CHAPTER

It is the Argument from Equality which is central to the thesis. It forges many of the links between arguments. For example, in both the "Argument from Incarceration," and the "Argument from the Punishment of Persons," it was argued that prisoners should not be deprived of any rights apart from those which must be suspended to protect themselves, the institution, and society. They should, therefore, retain the same right of opportunity to education which other persons apparently have. Even in Scharf's interpretation of Rawls' Social Contract, persons involved in this Contract are interested in choosing principles and making decisions which are fair to all, and punishment is not considered a relevant factor in depriving prisoners of a right to education.
VI. CONCLUSION

Two main arguments have been made in this dissertation. The first is moral in theme. Prisoners are persons with the right to be treated with the dignity and respect due persons. It is 'the right of every human being to be treated as a human being and not a thing.' Such a right to be treated as a person is:

...a fundamental human right belonging to all human beings by virtue of their being human. It is also an inalienable ... right...
(MacDonald, 1970, p. 51)

Prisoners possess this right because:

...Even a criminal, though he has lost merit and may deserve punishment, does not become worthless. He cannot be cast out of humanity...
(MacDonald, 1970, p. 57)

Such a right enables prisoners to claim the right to a fair punishment. This means that prisoners are entitled to claim rights which other persons have which need not be lost because of the conditions of punishment and incarceration. 'The real punishment of imprisonment is the loss of liberty' (Correctional Law Review Working Paper One, 1986, p. 16). This moral premise underlies the next statement of the dissertation, that the right
to education is a right that prisoners ought to have during incarceration, and that this right ought to be made legal.

The grounds for this statement are derived from the consequences of being able to claim such a right, and not being able to. For example, because certain beneficial notions have become associated with education, there should be some positive consequences resulting from enforcing programs which incorporate such notions. Primary among these is the notion of education as an initiator of change and development in persons. R.S. Peters relates education to 'some sort of processes in which a desirable state of mind develops' (1965, p. 90), i.e., in worthwhile and valuable ways. Some of these desirable changes are a broadening of outlook, a deeper insight into understanding ourselves and our relationship with others, a sharpening of our mental and intellectual faculties, and the ability to use these to guide us into making sound and rational decisions.

These sorts of development in persons can be fostered through any kind of education program. It thus finds its home within a prison context where many kinds of education programs are also necessary to cater to the many varied abilities of prisoners. It also finds its home where such changes are desirable—if not required. To be educated is to 'travel with a different view' (Peters, 1967, p. 8). Prisoners with their involvement in crime have indicated that their current mode of 'travelling' is somewhat faulty—at least as society views it. It can therefore be inferred that prisoners require to be shown other more socially and morally acceptable modes of 'travelling'
which lead them away from the road to prison.

A legal right to education could secure for prisoners those education programs deliberately designed to present opportunities for the kinds of changes and development deemed desirable in a prison context. If prisoners are able to benefit from such opportunities, their development into more moral and responsible persons benefits society, for such persons are less likely to commit crimes. Confidence has been expressed that 'an important component of successful programs' has been established by correctional research to be 'an educational orientation' (Education and Training, CSC, 1985, p. 8).

The consequences of being able to claim a legal right to education can also be seen as benefitting the penitentiary education system itself. At the moment, education appears to be an official stipulation of incarceration. A review of the penitentiary education system (chapter two), however, suggests some seeming instability in the provision and appropriateness of programs. Questions which can be raised are mainly, whether all prisoners are receiving opportunities to benefit from programs as some other prisoners might be, and whether programs are themselves geared to achieve these benefits for prisoners, and whether the penal education system, as a whole for prisoners, could be said to be as relatively stable as that of non-prison society.

Chapter two in particular showed grounds for the view that not all penitentiaries could boast satisfactory education programs, and that the education system as a whole still had its
problems. Indeed, Morin and Cosman think that most studies, whether official reports or informal accounts by professional educators, would testify that programs are 'mostly of inferior quality,' manifested in:

... . . . mediocre and poorly trained staff, low expectations, poor educational achievement, watered-down curricula, weak supervision, lack of educational counselling, . . . inadequate resources...
(1984, p. 12)

Chapter two also indicated how inconstancy in direction and rationale, as reflected in changing policies and goals of incarceration, could be a problem for the education system as well. The position of the CSC on penitentiary education, for example, is said to be very confused' (Morin, 1981, p. 171). At the moment, there is even uncertainty about whether and how education is being used:

...The extent to which education and training has been utilized as a systematic, universally accepted approach to inmate behavioural change is open to conjecture...
(Dennison, 1979, p. 4)

How can a legal right to education ameliorate such a situation? What would be the consequences of being able to claim such a right for the penitentiary education system? A
right to education for prisoners in themselves as persons and right-holders ensures that they can claim opportunities to education which is worthwhile no matter the changes in social priorities. They claim this right regardless of benefits and advantages—just as other persons in society.

It is also suggested that it would become incumbent upon authorities to ensure that programs do indeed measure up to some standards of what education is. There has to be some assurance and guarantee that it is education which is being provided. The potential for change and development is implicit within the concept of education. But such a potential can only be realized if programs are so geared toward its realization. At the moment, even if "education" programs are available, it is possible that, as cautioned by the OISE Review (1978, p.44), there is a tendency to label everything which occurs in a classroom as education. Yet not everything which does occur can be actually termed as education. The concern has already been expressed previously that if programs do not encapsulate broader educational goals, they will not be able to affect the reasoning and intellectual abilities of prisoners, which are prime targets of attention in genuine educational programs. With prisoners, 'the character of the education they receive is the central point' (Duguid, 1981, p. 143). Thus, it is very important that attention be paid the fact that it is education provided.

One could query whether present education programs are really education or training programs. Training programs, or other sorts of 'education' programs might be valuable in their
own ways, but they mainly aim to prepare persons for employment, or to equip them with a given skill. If they do not consciously incorporate broader educational goals, they will remain as training programs, because they do not attempt to do anything else.

If the underlying rationale of corrections is the turning away of persons from crime, and the development of persons more equipped to avoid criminal actions, being able to claim a legal right to education is a possible way to ensure that it is education which is being provided, and not just training programs, or worse, a perfunctory provision of something to pass the time. A legal right to education would enable prisoners to claim the kind of education which is appropriate for them, for example, programs geared to develop them into more moral and law-abiding persons.

Without this right, prisoners and concerned personnel/public could not complain about standards or the quality of the education being provided. The world of Nowheresville pictured people without rights obtaining services. They had no grounds for complaint if the service ceased, or deteriorated. They were obtaining the service as a privilege, and not as their right, and thus were expected to be content and grateful. Such a position is demeaning to prisoners, who even though wrong-doers and offensive to society, are still persons and right-holders. They thus ought to be allowed to claim enforcement of proper education programs as their right.

This would give them grounds for challenging decisions
which are detrimental to the penitentiary education system, such as perhaps, decisions to terminate worthwhile education programs. This would in turn make decision makers more wary of what they do for they have to answer for their actions, especially those which violate the right to education. They would also have to be more vigilant about the standards of the programs they are providing, for now prisoners will be able to seek redress for inadequate and unsatisfactory programs.

Because such a right will be claimable by all inmates, any inmate who feels unfairly treated will also be able to seek answers from the law regarding unfair differentiation. In chapter two, for example, women prisoners were said to have grounds for such a complaint. A woman inmate is presently seeking judicial intervention because she alleges that women prisoners are not receiving the same services and opportunities as male prisoners. This is seen as a violation of the equality guarantees provided by the Charter of Rights and Freedoms (Van.Sun, Apr. 18, 1987, p. A7).

A feature attributed to the system as a whole is its vastness, its 'structural complexity' (Correctional Law Review Working Paper One, 1986, p. 6). According education the status of a legal right might also help stabilize the system as a whole, for if everyone was able to claim steady, satisfactory, and consistent provision of proper education programs, then, at least in that sphere of corrections aimed to 'correct' prisoners, there will be integration and consistency.

The dissertation has been founded upon the moral principles
of justice, fairness, and respect for persons. On many occasions, these principles are sufficiently potent agents of enforcement and action. Sometimes, however, the intervention of the law is required to instil adherence to these principles. It is postulated that the situation of penitentiary education represents one of these occasions. Prisoners are still persons and members of society despite their having to be isolated from society. If other persons are enjoying steady and stable provision of educational opportunities, it would be inconsistent with the above mentioned principles to deprive prisoners of such opportunities.

The Canadian Criminological Justice Association states that the goal of its Manual of Standards is to 'ensure that prisoners have access to academic and vocational programs equivalent to those in the community' (1985, p. 59). It is therefore a necessity that the right to education be legally enforceable, so that all prisoners can be guaranteed this access to education—and which some are being denied. As Miller sees it, prisoners 'in principle' do retain all rights, but 'in practice, the reverse is often true,' for example:

...Courts and administrators view criminal incarceration as a forfeiture of educational rights...
(1978, p. 230)

Such a situation is compounded by the inability of prisoners, their lack of a defense mechanism, to improve their
educational opportunities. Moral principles appear insufficient, and judicial intervention seems necessary, then, to ensure the provision of an opportunity for education to inmates which is equal to that of the rest of society:

...A prisoner can reasonably expect . . . a quality education to be his due in a . . . just society in that conviction of a serious felony cannot reasonable diminish a person's right to expect relative equality in social goods, including educational services...
(Scharf, 1981, p. 231)

There are therefore no grounds to deny prisoners a legal right to education, especially if resources are available, if education does not harm the institution or society, indeed is found to be a beneficial component of incarceration. Even more so—if other members of society are able to claim the protection of the law to obtain an education, it behooves society to acknowledge a similar right for prisoners:

...If education is a rattle, everyone should be given a chance to shake it for all he is worth...
(Frankena, 1965, p. 78)


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