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Prisoners Have No Right to Procedural Due Process in Interinstitution Transfers: *Meachumn v. Fano*, 427 U.S. 215 (1976)

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Note

Prisoners Have No Right To Procedural Due Process In Interinstitution Transfers

Meachum v. Fano, 427 U.S. 215 (1976).

I. INTRODUCTION

The past decade marked an evolution in the development and definition of rights retained by individuals after conviction and incarceration. In a cautious, step-by-step approach, a number of Supreme Court cases rejected the traditional "hands-off" attitude toward conflicts between prisoners and prison administrators.[1]

These decisions delineated specific constitutional rights that were not to be limited by the mere fact of incarceration. The general precept of these decisions was that incarceration should not deprive one of constitutionally protected rights, when the exercise of such rights could be reconciled with confinement.[2]

A corresponding line of cases was dedicated to protecting individuals from arbitrary governmental interference or deprivation. These decisions delineated which interests were to be protected by the requirements of procedural due process, and what procedures were required before particular deprivations could be made.[3]

These two emerging trends intersected in *Morrissey v. Brewer*[4] and *Wolff v. McDonnell*.[5] In *Morrissey*, the Supreme Court held

1. *See, e.g.*, Procunier v. Martinez, 416 U.S. 396 (1974); Preiser v. Rodriguez, 411 U.S. 475 (1973); Cruz v. Beto, 405 U.S. 1319 (1972); Johnson v. Avery, 393 U.S. 483 (1969); Mempa v. Rhay, 389 U.S. 128 (1967). *See also* Sastre v. McGinnis, 442 F.2d 178 (2d Cir. 1971).
2. Millemann & Milleman, *The Prisoner's Right to Stay Where he is: State and Federal Transfer Compacts Run Afoul of Constitutional Due Process*, 3 CAP. U.L. REV. 223 (1974).
3. *See, e.g.*, O'Connor v. Donaldson, 422 U.S. 563 (1975); Goss v. Lopez, 419 U.S. 565 (1975); Fuentes v. Shevin, 407 U.S. 67 (1972); Goldberg v. Kelly, 397 U.S. 254 (1970).
4. 408 U.S. 471 (1972).
5. 418 U.S. 539 (1974).

that certain minimal procedural safeguards protected a parolee's interest in his limited liberty.[6] *Wolff* was of even farther reaching consequence. There, Nebraska prisoners had been deprived of statutory "good time" and placed in solitary confinement without adequate notice of the charges against them or a chance to refute those charges. It was held that due process required that certain protections, tailored to the prison environment, be given before such deprivation.[7]

Many courts and observers saw *Wolff* as a call to examine arbitrary prison practices which denied inmates basic rights and privileges.[8] One logical extension was to the area of interinstitution transfers. *Morrissey* had stated that whether any procedural protections were due depended on the extent to which an individual would be "condemned to suffer grievous loss."[9] *Wolff* indicated that due process was required when there was a "major change in the conditions of confinement."[10] Many lower court decisions held that when a transfer from a minimum security institution to a maximum security institution involved a grievous loss, notice and hearing had to be afforded.[11] This issue was presented to the Su-

6. Specifically, the parolee was entitled to a preliminary probable cause hearing at or reasonably near the place of the alleged violation or arrest and as promptly as convenient after arrest and a revocation hearing with a wider panoply of due process requirements. 408 U.S. at 485, 489.
7. A prisoner is entitled to: (a) advance notice of the charges; (b) a written statement by the fact-finders as to the evidence relied on and reasons for disciplinary action; (c) the right to call witnesses and present documentary evidence in his behalf. 418 U.S. at 563, 566.
8. *See, e.g.*, Clutchette v. Procunier, 497 F.2d 809 (9th Cir. 1974); Meyers v. Alldredge, 492 F.2d 296 (3d Cir. 1974); Mims v. Shapp, 399 F. Supp. 818 (W.D. Pa. 1975); United States v. Johnson, 383 F. Supp. 600 (E.D. Pa. 1974).
9. 408 U.S. at 481.
10. 418 U.S. at 571-72 n.19.
11. See Lokey v. Richardson, 527 F.2d 949 (9th Cir. 1975); Carlo v. Gunter, 520 F.2d 1293 (1st Cir. 1975) (transfer to a more severe wing of the same institution); Aikens v. Lash, 514 F.2d 55 (7th Cir. 1975); United States v. Speaker, 471 F.2d 1197 (3d Cir. 1973); Gray v. Creamer, 465 F.2d 179 (3d Cir. 1972); Daigle v. Hall, 387 F. Supp. 652 (D. Mass. 1975); Robbins v. Kleindienst, 383 F. Supp. 239 (D.D.C. 1974) (transfers between federal institutions); Clonce v. Richardson, 379 F. Supp. 338 (W.D. Mo. 1974) (transfer into special behavior modification program); Walker v. Hughes, 375 F. Supp. 708 (E.D. Mich. 1974); Ault v. Holmes, 369 F. Supp. 288 (W.D. Ky. 1973); Croom v. Manson, 367 F. Supp. 586 (D. Conn. 1973) (transfer from state to federal institution); Newkirk v. Butler, 364 F. Supp. 497 (S.D.N.Y. 1973), *modified*, 499 F.2d 1214 (2d Cir. 1974), *rev'd as moot sub nom.* Preiser v. Newkirk, 422 U.S. 395 (1975); Hoitt v. Vitek, 361 F. Supp. 1238 (D.N.H. 1973); White v. Gillman, 360 F. Supp. 64 (S.D. Iowa 1973);

preme Court in *Meachum v. Fano.*[12]

II. THE FACTS

In 1974, there were ten weeks of serious unrest at the Massachusetts Correctional Institution at Norfolk, a medium security institution. Using information obtained from informants, prison authorities identified six inmates who engaged in "criminal conduct" possibly related to the unrest. These inmates were removed from the general prison population and placed in an area usually used for processing new inmates.[13]

The Norfolk prison classification board then initiated proceedings to determine whether the six prisoners should be transferred to another institution. Each was notified of the classification hearing and of the allegations against him. Individual hearings followed, at which the prisoners appeared, were allowed to present evidence in their own behalf and were represented by individual counsel. The classification board also relied on testimony given *in camera* by Meachum, the Norfolk prison superintendent, concerning reports from informants.[14] The six inmates, however, were not told the details of the informants' reports.[15]

The classification board recommended that inmate Royce be placed in administrative segregation for thirty days, that inmates Fano, Dussault, and MacPherson be transferred to Walpole, and that inmates Debrosky and Hathaway be transferred to Bridgewater. Walpole is a maximum security institution where the living

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Park v. Thompson, 356 F. Supp. 783 (D. Hawaii 1973); Capitan v. Cupp, 356 F. Supp. 302 (D. Ore. 1972); Bowers v. Smith, 353 F. Supp. 1339 (D. Vt. 1972); Gomes v. Travisono, 353 F. Supp. 457 (D.R.I. 1973); United States v. Wolfe, 346 F. Supp. 569 (E.D. Pa. 1972). *See also* Broude, *The Use of Involuntary Interprison Transfer as A Sanction*, 3 AM. J. CRIM. L. 117 (1974); Millemann & Millemann, *The Prisoners Right to Stay Where he is: State and Federal Transfer Compacts Run Afoul of Constitutional Due Process*, 3 CAP. U.L. REV. 223 (1974); Note, *Procedural Due Process in the Involuntary Institutional Transfer of Prisoners*, 60 VA. L. REV. 333 (1974); Note, 5 SETON HALL L. REV. 134 (1973). *But see* United States v. Henderson, 526 F.2d 889 (5th Cir. 1976); Bloeth v. Montayne, 514 F.2d 1192 (2d Cir. 1975) (distinguishing between protective and punitive transfers); Fajeriak v. McGinnis, 493 F.2d 468 (9th Cir. 1974); Hillen v. Director of Dep't of Social Serv. & Hous., 455 F.2d 510 (9th Cir. 1972), *cert. denied*, 409 U.S. 989 (1972); Urbano v. McCorkle, 334 F. Supp. 161 (D.N.J. 1971).

12. 427 U.S. 215 (1976).
13. *Id.* at 216.
14. *Id.* at 216-18.
15. *Id.* at 218.

conditions are substantially less favorable than those at Norfolk, while Bridgewater has both maximum and medium security facilities.

The Acting Deputy Commissioner for Classification and Treatment and the Commissioner of Corrections reviewed the classification board's recommendations and written report. They approved the recommendation that Fano, Dussault, and MacPherson be transferred to Walpole and, in addition, ordered that DeBrosky and Royce be transferred there. Hathaway's transfer to Bridgewater also was approved. These transfers were carried out as to Fano, Dussault, MacPherson, and Royce.[16]

During this procedure, the inmates initiated an action under 42 U.S.C. section 1983, alleging that the petitioners, Meachum, Hall, the State Commissioner of Corrections, and Dawbar, the Acting Deputy Commissioner for Classification and Treatment, had deprived them of liberty without due process of law in that the transfers had not been accompanied by a full fact-finding hearing. They sought an injunction setting aside the ordered transfer, with declaratory relief.[17]

The district court, relying on *Wolff v. McDonnell*, ordered that the inmates be returned to the general prison population, because it found the notice and hearing to be constitutionally inadequate.[18] A divided panel of the court of appeals affirmed.[19]

III. THE DECISION

The Supreme Court's inquiry focused on whether the transfer from the medium-security institution at Norfolk to the maximum-security institutions of Walpole and Bridgewater infringed upon any "liberty interest" within the protection of the due process clause of the fourteenth amendment.

The Court rejected the notion that every grievous loss requires the procedural protections of the due process clause.[20] This rejection was grounded on *Board of Regents v. Roth*,[21] wherein the Court held that due process did not apply to the dismissal of a nontenured university professor.

16. *Id.* at 218-21.
17. *Id.* at 222.
18. *Id.*
19. 520 F.2d 374 (1st Cir. 1975).
20. 427 U.S. at 224.
21. 408 U.S. 564 (1972).

The claim that any change in the conditions of confinement that has a substantial adverse impact on the prisoner must be prefaced or accompanied by the procedural guarantees of due process also was dismissed. The opinion reasoned that a prisoner, once validly convicted, has been deprived of his liberty to a significant extent. This deprivation of liberty subjects a prisoner to the rules of a state's prison system, subject only to certain constitutional limitations. These constitutional limitations do not require that due process be followed when the initial assignment to a particular prison is made, or that a state maintain different prisons for different classifications of individuals.[22]

Proceeding from this base, the Court held that a decision to transfer among various institutions was "within the normal limits or range of custody which the conviction has authorized the State to impose,"[23] despite the fact that the prisoner might be transferred to an institution where life is much more disagreeable.

Although *Wolff v. McDonnell* established that prisoners retain important rights, the Court was unwilling to interfere with the discretion of prison officials in ordering transfers. *Wolff* was distinguished because its roots were in state law. The Court emphasized that the liberty interest involved there was the statutory right to "good time," created by state law, not a right originating in the Constitution.[24]

In contrast, Massachusetts law does not protect the right of a prisoner to remain where he is. In fact, Massachusetts law appears to authorize discretionary transfers by prison authorities.[25] Thus, the Court found *Wolff* to be inapplicable.[26]

The Court also dismissed a claim that transfers are often linked, as in this case, to charges of serious behavior and thus require a hearing process. It was noted that transfers may occur for any of a number of reasons, and that a prisoner has no interest that must be protected in the transfer situation, regardless of the reason.[27]

In a brief footnote, the Court dealt with the effect of a transfer on the possibilities of parole.[28] It simply stated that "the grant-

22. 427 U.S. at 224.
23. *Id.* at 225.
24. *Id.* at 225-26.
25. *See* MASS. GEN. LAW. ANN. ch. 127, § 97 (West Supp. 1974).
26. 427 U.S. at 227.
27. *Id.* at 228.
28. *Id.* at 229 n.8.

ing of parole has itself not yet been deemed a function to which due process requirements are applicable."[29]

In conclusion, the Court commented on the propriety of federal judges' interference in the daily functioning of state prisons.[30] Ironically, in support of this language which reflected the traditional hands-off approach to prisoners' rights, the Court cited *Preiser v. Rodrigier*,[31] *Cruz v. Beto*,[32] and *Johnson v. Avery*.[33] These cases were instrumental in establishing that certain rights are retained by prisoners.

IV. THE DISSENT

Mr. Justice Stevens, joined by Mr. Justice Brennan and Mr. Justice Marshall, wrote a strong dissent.[34] Stevens criticized the majority's analysis of the origins of a "liberty interest," rejecting its holding that such an interest must either originate in the Constitution or have its roots in state law. Instead of liberty flowing from the law, he reasoned, law is a limitation on liberty imposed by the sovereign. Liberty is a cardinal inalienable right which the due process clause protects.[35]

Moreover, the prisoner does not surrender all of his "liberty" interest upon conviction. Stevens noted that the view that an inmate is a mere slave has been rejected.[36]

His dissent relied heavily on *Morrissey v. Brewer*,[37] and on his own analysis of *Morrissey* for the Seventh Circuit in *United States v. Twomey*.[38] There, Stevens had reasoned that *Morrissey* established that due process should accompany any substantial deprivation of the liberty of a person in custody.[39] To limit the holding of *Morrissey* to a parolee's interest in his limited freedom would demean *Morrissey*, and the very concept of liberty.[40]

Justice Stevens recognized the state's interest in the preservation of order and discipline in its institutions, but also noted that an

29. *Id.*
30. *Id.* at 228-29.
31. 411 U.S. 475 (1973).
32. 405 U.S. 319 (1972).
33. 393 U.S. 483 (1969).
34. 427 U.S. at 229.
35. *Id.* at 230.
36. *Id. But see* Ruffin v. Commonwealth, 62 Va. (21 Grat.) 790, 796 (1871).
37. 408 U.S. 471 (1972).
38. 479 F.2d 701 (7th Cir. 1973).
39. *Id.* at 712-13.
40. 427 U.S. at 233.

inmate has a right to maintain his dignity and to pursue his limited rehabilitative goals.[41] For the prisoner's interests be protected, it is important that the state interests be achieved in a nonarbitrary manner—that is, certain procedural requirements of due process must be met.

Stevens noted that the due process clause should be activated only when a transfer occasions a "grievous loss,"[42] and that the requirements of due process are flexible and adaptable to various situations. However, he added that an interinstitution transfer may require procedure similar to that used when a prisoner is moved to solitary confinement.[43]

V. ANALYSIS

The opinion of the majority is disconcerting in many respects. Not only is the holding a step backward away from freeing prisoners of the arbitrary decisions of prison officials, but the analysis has frightening implications.

The decision in *Meachum* conflicts with the stance of a great majority of lower federal and state courts.[44] These courts carefully considered the prisoner's interest in remaining in his present place of confinement. The injuries suffered by transferred inmates have been catalogued by the lower courts as including separation from family and friends,[45] difficulty in access to counsel and the courts,[46] drastic changes in the conditions of confinement,[47] interruption of rehabilitative programs,[48] injury to parole opportunities,[49] revocation of "good time,"[50] problems in integration into the prison community,[51] loss of educational opportunities,[52] and exposure to a more hardened inmate population.[53] The lower courts held that because transfer could involve these injuries, it often constituted a grievous loss.[54] Such a grievous loss, according to a

41. *Id.* at 234.
42. *Id.* at 234-35.
43. *Id.* at 235.
44. *See* note 11 *supra.*
45. *See* Robbins v. Kleindienst, 383 F. Supp. 239 (D.D.C. 1974).
46. *See id.*; Croom v. Manson, 367 F. Supp. 586 (D. Conn. 1973).
47. *See* Robbins v. Kleindienst, 383 F. Supp. 239 (D.D.C. 1974); Walker v. Hughes, 375 F. Supp. 708 (E.D. Mich. 1974); Croom v. Manson, 367 F. Supp. 586 (D. Conn. 1973).
48. *See* cases cited in note 46 *supra.*
49. *See* cases cited in note 47 *supra.*
50. Broude, *supra* note 11.
51. *See* cases cited in note 47 *supra.*
52. *See* cases cited note 45 *supra.*
53. Walker v. Hughes, 375 F. Supp. 708 (E.D. Mich. 1974).
54. *See generally* cases cited in note 11 *supra.*

Morrissey-based analysis, must be accompanied by the procedural requirements of due process.

Prior to *Meachum*, the Ninth Circuit was alone in its determination that transfers need not be accompanied by due process.[55] However, by 1975, the Ninth Circuit appeared to be heading in the direction of the other circuits which had considered the question.[56]

The Supreme Court, thus, rejected the well-reasoned and articulate decisions of many federal courts. In doing so, it employed an analysis that appears to be based on an incorrect view of the interrelationship of law and liberty.

As Justice Stevens emphatically noted in his dissent in *Meachum*, the Court's decision was based on the contention that liberty is defined by either the Constitution or state law.[57] Such an approach is antithetical to the political philosophy employed by this nation in its development. John Locke, one of the guiding spirits of the American Revolution saw all men as naturally in a state of liberty, "a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man."[58] This natural liberty is not "to be under the will or legislative authority of man, but to have only the law of Nature for his rule."[59] The authors of the Federalist Papers saw no need for an enumerated Bill of Rights, for as the people "retain every thing, they have no need of particular reservations."[60] As Justice Stevens noted in his dissent, liberty exists in and of itself, apart from the rule of law. Law serves to impose restrictions on the government's interference with liberty.[61]

The decision in *Meachum* also was at odds with the principles set forth in *Morrissey v. Brewer*.[62] *Morrissey* held that "[w]hether any procedural protections are due depends on the extent to

55. Hillen v. Director of Dep't of Social Serv. & Hous., 455 F.2d 510 (9th Cir. 1972), *cert. denied*, 409 U.S. 989 (1972); Duncan v. Madigan, 278 F.2d 695 (9th Cir. 1960).
56. *See* Lokey v. Richardson, 527 F.2d 949 (9th Cir. 1975) (due process is required where a nonconsensual transfer results in conditions of confinement substantially worse than those prior to transfer).
57. 427 U.S. at 230.
58. J. Locke, *An Essay Concerning the True Original, Extent & End of Civil Government* (1690), in SOCIAL CONTRACT 1, 4 (1948).
59. *Id.*
60. A. Hamilton, *The Federalist No. 84*, in THE FEDERALIST 575, 578 (J. Cooke ed. 1961).
61. 427 U.S. at 230.
62. 408 U.S. 471 (1972).

which an individual will be 'condemned to suffer grievous loss.' "[63] Many of the lower court decisions dealing with prison transfers relied on the *Morrissey* analysis of "grievous loss."[64] The majority's decision failed to consider this analysis, and did not even mention *Morrissey*.

Morrissey's emphasis on "grievous loss" was based on *Goldberg v. Kelly*,[65] and Justice Frankfurter's concurring opinion in *Joint Anti-Fascist Refugee Committee v. McGrath*.[66] In *Goldberg*, the Court held that a welfare recipient could not have his or her welfare payments terminated without at least minimal procedural protection. *Meachum* appears to reject the logic of *Goldberg*.

Meachum also implicitly rejected some of the holding in *Wolff v. McDonnell*.[67] Although the major concern in *Wolff* was the loss of good time, which, as the *Meachum* majority emphasized, was based in state law, it also was concerned with the imposition of solitary confinement. In a footnote, *Wolff* stated that solitary confinement

> represents a major change in the conditions of confinement and is normally imposed only when it is claimed and proved that there has been a major act of misconduct. Here, as in the case of good time, there should be minimum procedural safeguards as a hedge against arbitrary determination of the factual predicate for imposition of the sanction.[68]

Justice Marshall, in a partially concurring partially dissenting opinion joined by Justice Brennan, viewed this statement as vitally important to the logic of *Wolff*. Justice Marshall wrote:

> The Court defines the liberty interest at stake here in terms of the forfeiture of good time as a disciplinary measure. Since it is only loss of good time that is at issue in this case, this definition is of course quite appropriate here. But lest anyone be deceived by the narrowness of this definition, I think it important to note that this is obviously not the only liberty interest involved in prison disciplinary proceedings which is protected by due process. Indeed, the Court later observes that due process requires the same procedural protection when solitary confinement is at issue. . . . The Court apparently holds that inmates' "liberty" is protected by due process whenever "a major change in the conditions of confinement" is imposed as a punishment for misconduct. I agree.[69]

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63. *Id.* at 481.
64. *See* cases cited in note 11 *supra*.
65. 397 U.S. 254 (1970).
66. 341 U.S. 123, 168 (1951).
67. 418 U.S. 539 (1974).
68. *Id.* at 571-72 n.19.
69. *Id.* at 581 n.1.

The focus on "a major change in the conditions of confinement" is merely *Morrissey's* "grievous loss" test, refined for the penal environment. The lower courts utilized the "major change" rationale in holding that prison transfers required due process.[70] *Meachum* rejected the rationale of *Goldberg*, *Morrissey*, and *Wolff*.

Meachum may signal a return to the right-privilege dichotomy that characterized earlier due process analysis. Its emphasis on the role of state law and the Constitution in defining the "liberty interest" was remarkably similar to decisions such as *Adler v. Board of Education*,[71] and *United Public Workers of America (C.I.O.) v. Mitchell*,[72] which held that due process was not required when government action deprived a person of a privilege.[73] The right-privilege dichotomy has been explicitly rejected,[74] yet *Meachum* appears to mark a return to that logic.

Meachum also emphasized the ancient priority of property rights. By rejecting the expansive "liberty interest" definition of *Morrissey*, the Court, in effect, held that it is principally property interests that are protected from arbitrary government deprivation.

This analysis is particularly disconcerting when considered in the context of the prison environment. As Justice Douglas has stated: "Every prisoner's liberty is, of course, circumscribed by the very fact of his confinement, but his interest in the limited liberty left to him is then only the more substantial."[75] The Court in *Meachum* failed to recognize that although the ordinary individual enjoys many rights that are protected, the prisoner has a very real and substantial interest in the limited pleasures and expectations that confinement allows him. Furthermore, the state has an interest in insuring that prisoners are not subject to arbitrary decisions.[76] Rehabilitation, may be impaired if the prisoner is deprived of any voice in decisions which affect him.[77]

The Court's decision also failed to reflect on the use of transfers as punishment. The American Correctional Association Manual of Corrections noted that "[i]n any penal system embracing several institutions, transfer from one to another is often an effec-

70. *See* note 11 *supra*.
71. 342 U.S. 485 (1952).
72. 330 U.S. 75 (1947).
73. 342 U.S. at 492.
74. *See, e.g.*, Morrissey v. Brewer, 408 U.S. 471 (1972). "It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a 'right' or a 'privilege.'" *Id.* at 482.
75. Wolff v. McDonnell, 418 U.S. 539, 594 (1974) (dissenting opinion).
76. *See* 427 U.S. at 234 (Stevens, J., dissenting).
77. Comes v. Traviseno, 353 F. Supp. 457, 468 (D.R.I. 1973). *See also*

tive disciplinary procedure."[78] *Meachum* approved the use of transfers to punish prisoners without due process. Prison authorities now may proceed to transfer inmates whom they suspect of misconduct, but against whom there is insufficient evidence to meet the due process requirements of *Wolff*.

Finally, some statements in *Meachum* appear to mark a return to the traditional hands-off approach regarding the protection of prisoners' rights.[79] The Court expressed its concern that a contrary decision "would subject to judicial review a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts."[80] This holding, coupled with the recent decision in *Baxter v. Palmigiano*,[81] which left certain procedural matters in disciplinary hearings to the "sound discretion of prison authorities,"[82] may herald a return to a noninterventionist role by the federal courts in prisoners' rights cases. Such a return would mark an end to an era of decisions that reflected a serious concern for the rights and dignity of inmates.[83]

VI. CONCLUSION

Meachum v. Fano severely limited the "liberty interest" of prisoners. Deciding that prisoners facing interinstitution transfers have no interest protected by the due process clause of the four-

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PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 82 (1967).

78. AMERICAN CORRECTIONAL ASSOCIATION, MANUAL OF CORRECTIONAL STANDARDS 416 (1966).
79. For a discussion of the "hands-off" doctrine and the cases formulating that doctrine, see Goldfarb & Singer, *Redressing Prisoners' Grievances*, 39 GEO. WASH. L. REV. 175 (1970); Comment, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506, 508 n.12 (1963).
80. 427 U.S. at 225.
81. 425 U.S. 308 (1976).
82. *Id.* at 322.
83. The future may not be totally dim. In Holmes v. United States Bd. of Parole, 541 F.2d 1243 (7th Cir. 1976) the Seventh Circuit held that the classification as a "special offender" required due process. The court distinguished the holding in *Meachum* as follows:

> No such cognizable benefit was bestowed upon prisoners in *Meachum* or *Montayne* and we do not read those cases to eliminate due process where cognizable benefits have been established by prison policy itself and eligibility for the benefits is precluded or significantly reduced by the occurrence of a specified event . . . .

Id. at 1252-53. If other courts adopt this narrow interpretation of *Meachum*, many of the problems discussed above may be eliminated.

teenth amendment, the Court focused on whether the "liberty interest" was defined or protected by state law or the Constitution.

This decision may indicate a return to a traditional "hands-off" approach regarding conflicts between prisoners and prison authorities. It is an unfortunate retreat from the federal courts' position of insuring that incarceration does not draw an iron curtain between the individual and the Constitution.

Tim Sindelar '77