

Should prisoners be allowed to vote?

Susan Easton, Tim Black and Mandeep K Dhimi give their reasons for and against prisoners being given the vote

Susan Easton: Enfranchisement recognises that prisoners remain citizens while incarcerated

The principal argument in favour of enfranchisement is that it recognises that prisoners remain citizens while incarcerated and marks their inclusion in society. Without the vote they remain in a state of civil death which, as the European Court of Human Rights said in *Hirst v United Kingdom*, is inappropriate in a modern society committed to the principles of democracy and equality.

Enfranchisement is also embedded in international human rights standards. Article 25 of the International Covenant of Civil and Political Rights stipulates that all citizens have the right to vote. Participation in the democratic process would promote civic responsibility by encouraging prisoners to see themselves as citizens and reminding them that citizenship involves obligations or burdens as well as benefits. A study in the United States found that there were 'consistent differences between voters and non-voters in rates of subsequent arrest, incarceration and self-reported criminal behaviour' (Uggen and Manza, 2004). While it is not argued that voting *per se* generates law abiding behaviour, participation in political life can encourage the individual to look beyond self interest, towards the wider interest of the community.

Prisoners are already receiving their 'just deserts' by imprisonment and a further loss of the right to vote is difficult to justify and disproportionate. In most cases this 'punishment' bears no relation to the gravity of the offence committed, or the type of crime, as relatively

few prisoners are convicted of electoral offences. It is arbitrary as its execution will depend on the timing of the election. It is also unlikely that disenfranchisement constitutes a significant deterrent to offenders, or the wider public, compared to the prospect of incarceration. Any danger of prisoners voting in a bloc and affecting the outcome of elections in marginal seats can be averted by allowing them to vote by post in their original place of residence. There is no risk to the public and indeed it is easier to manage postal voting in prison than outside. Remand prisoners are already permitted to vote with no adverse effects. The Electoral Commission has considered proposed arrangements for prisoner voting and is confident that they are appropriate and will maintain the integrity of the process.

Moreover, the overall trend worldwide is towards enfranchisement rather than disenfranchisement. Other states including South Africa and, closer to home, the Republic of Ireland, have given prisoners the vote with no ill effects. But if the UK rejects the Strasbourg Court's ruling to amend the current ban, it undermines its reputation as a state committed to respect for human rights and the rule of law. ■

Reference

Uggen, C and Manza, J. (2004), 'Voting and subsequent crime and arrest: evidence from a community sample', *Columbia Human Rights Law Review*, 36:1, pp. 193-211.

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Tim Black: Unlike every other struggle for democratic freedoms, the campaign for prisoners' vote didn't originate among the disenfranchised

The principal problem with the campaign to grant the right to vote to prisoners is that it is built upon a degraded meaning of the vote. This is why historically those who have struggled for greater democracy have never had any interest in winning the vote for prisoners. Indeed, every significant movement in Britain's centuries-long struggle for suffrage, from the Levellers to the Suffragettes, explicitly stated the vote should be withheld from prisoners.

The reason for this exclusion clause wasn't because of prejudice. After all, many in that grand tradition of democratic struggle had been repeatedly incarcerated themselves. No, the reason why it didn't make sense to give prisoners the vote was because of what the vote meant. It was a means for the hitherto politically unfree, be they wage labourers or indentured servants, to consent actively to a form of rule as opposed to having it arbitrarily imposed upon them, that is, a bit like being

in prison. As Sylvia Pankhurst herself put it in 1915, 'the brave old reformers did not want the vote for merely academic reasons... They wanted to give every man an equal chance to share in controlling the destinies of the nation.'

It would have been bizarre for 'the brave old reformers' to even countenance giving prisoners the vote. How could those without liberty simultaneously exercise their liberty? How could those forcibly removed from society play a part in 'controlling its destiny'? The flipside to this is that, understandably, prisoners themselves have shown little interest in wanting to vote.

But then, unlike every other struggle for democratic freedoms, the campaign for the prisoners' vote didn't originate among the disenfranchised themselves, in this case, prisoners. It came about in 1997-1998 because a postgraduate was looking for 'something interesting' on which to write his Masters dissertation. Subsequently championed by the Prison Reform Trust, over the next 10 years this research project would become a *cause célèbre* of the European Court of Human Rights.

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Given the elite rather than popular origins of the current campaign, and given the fact that the ECHR, which systematically undermines democratic institutions, is at its vanguard, it is unsurprising that the attempt to enfranchise prisoners entails denigrating the vote. For them, the vote is not a means to participate in shaping the society in which one lives. Instead the vote is reduced to a therapeutic tool, a means to make the incarcerated *feel* better about themselves, a means to raise prisoners' self-esteem, to make them *feel* part of the society from which they have removed. Hence, almost without fail, champions of disenfranchised prisoners quote the South African Constitutional Court's feel-good definition of the vote as 'a badge of dignity and personhood'. Yet the vote, as the great radical democrats of the past knew, was never a 'badge of dignity', a means to raise one's esteem; it was a means to have a say in the running of society.

The lives of prisoners can be vastly improved, but denigrating the vote is not the answer. ■

Mandeep K Dhami: Disenfranchisement is a form of 'civil death' that has social costs

International law declares that every individual citizen, regardless of personal circumstance, should have the right to vote in political elections. However, not every society grants this right. The UK does not allow people in prison to vote, including those on remand awaiting trial, conviction and sentence. Although the March 2004 judgment of the European Court of Human Rights in *Hirst v United Kingdom* challenged the ban on prisoner voting, the government has used delay tactics ensuring that prisoners could not vote in either the 2005 or 2010 general elections.

These tactics have included unsuccessful appeals and two public consultations. The consultation process revealed that, contrary to the government's beliefs, the general public is generally in favour of giving prisoners voting rights. Nevertheless, rather than uphold the notion of democracy, the government plans to introduce legislation to modify the blanket ban on prisoner voting so that those sentenced to a custodial sentence of four years or more will lose the right to vote. This would disenfranchise approximately 40 per cent of the more than 85,000 men and women of voting age currently in prison.

There is little to no evidence to support the common reasons cited for disqualifying prisoners from voting, i.e. that it will promote civic responsibility and respect for the law; it is an effective method of crime control; and it protects the purity of the ballot box. It is also ethically

unjustifiable to deny an individual his/her right to vote simply on the grounds of the costly and impractical nature of allowing prisoners to do so.

Disenfranchisement is a form of 'civil death' that has social costs. Prisoner disenfranchisement disproportionately affects ethnic minorities who are over-represented in the prison population, leading to the inequality and disempowerment of these groups. It is automatically imposed on those in prison rather than by the courts on a case by case basis and so is not proportionate to the crime. It also punishes those yet to be convicted or sentenced. All of which leads to unfairness and injustice.

Article 10(3) of the International Covenant on Civil and Political Rights states that 'the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation'. There is no evidence that denying prisoners the right to the vote helps to achieve these goals.

There are, however, several potential benefits of prisoner enfranchisement. For instance, psychologically and socially, the right to vote could enable prisoners to perceive themselves as useful, responsible, trusted and law abiding citizens. Enfranchising prisoners could stimulate debate on penal reform, as well as demonstrate a commitment to human and civil rights and democratic reform. ■

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