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Prisoners should be allowed to share the responsibility of democracy through voting

Prisoners continue to be disenfranchised, despite apparently being on the wrong side of a number of legal cases brought to the European Court of Human Rights. Helen Brown Coverdale argues that the Government should allow prisoners to vote, and that doing so would build legitimacy, benefit prisoners in their rehabilitation, and uphold human rights.

In the 2005 *Hirst v The United Kingdom (No 2)* judgement, the European Court of Human Rights (ECtHR) ruled that it was disproportionate to deny all sentenced prisoners the right to vote and required the UK Government to legislate to address the disproportionality. Successive Governments have dodged this legal and democratic obligation, as demonstrated by the recent *Frith & Others v. The United Kingdom* judgement in which the Court found that prisoners' voting rights had been violated. Debate has quite rightly unfolded largely in terms of rights, but talk of prisoners' rights tends to stir public opposition as sentenced prisoners have previously violated others' rights. Two wrongs don't make a right and prisoners' rights are equally important. Exploring voting in terms of responsibility explains why this is important and helps us understand the benefits.

The Forfeiture Act 1870 banned prisoners sentenced to longer than 12 months for a felony, a term for a more serious offence abandoned in England & Wales in 1967, from voting. In practice, being in prison made voting impossible. When the Representation of the People Act 1948 introduced postal voting, newspapers reported that some sentenced prisoners were able to use postal voting from their cells. The Representation of the People Act 1969 deemed all sentenced prisoners legally incapable of voting.

The ECtHR ruled that the reasons for the ban were not clearly articulated, and that banning all sentenced prisoners from voting sets the bar disproportionately low. Voting rights are not absolute. Other European Union states, such as France, Germany and the Netherlands, limit the voting powers of some sentenced prisoners. But voting is central to democracy as a very basic way of allowing citizens a say in how we are collectively governed. Voting rights are too important to remove simply as a consequence of losing one's liberty, as Colin Murray identifies.

Why is it important that prisoners should vote? There are benefits to individual citizens and the wider community, which can be illuminated by thinking about voting in different ways. The Joint Committee on the Draft Prisoners Voting (Eligibility) Bill identified voting as a right, albeit a qualified right, distinct from a privilege, because democracy is based on the principle of universal suffrage. Professor Jeremy Waldron argues that voting is a power as by voting we exercise some control over our fellow citizens. Waldron argues that this reciprocal, equally held

power of citizens is inappropriate for some offenders. Voting is not a legal duty in the UK. In Australia, for example, voting is compulsory and citizens can be penalized for not voting. However, voting is also a democratic civic responsibility. England & Wales alone have a larger total number of prisoners than any other European Union Member State. Removing voting rights from large numbers of prisoners reduces the democratic legitimacy of our Government and the laws they make.

Voting is a democratic responsibility, which citizens ought to undertake. Part of the purpose of prison is to help prisoners become better citizens by 'encouraging' prisoners towards a 'good and useful life', the long-standing purpose of prison as stated in the Prison Rules. The Prison Reform Trust have argued that voting responsibility might be used as part of the process of reforming prisoners, supporting people who have offended to feel that they do have a stake in our society and should pay attention to its rules, by both abiding by the law and contributing to democratic debate.

In her evidence to the Joint Committee, Prison Reform Trust Director Juliet Lyon argued that the right to vote communicates that prisoners are still people with future roles in the community. Nick Hardwick, of HM Inspectorate of Prisons, raised concern about prisoners' lack of interest in voting. Mark Johnson, Director of ex-offender-led charity User Voice, noted that prisoners facing other difficulties, such as addiction or mental health problems, may not initially prioritize their voting rights. However he argued that democratic engagement can be encouraged through prison council projects, as Bethany Schimdt's research suggests.

The Joint Committee proposed that prisoners sentenced to less than 12 months should be able to vote, reflecting the seriousness of the offence. This complies with the ruling of the European Court of Human Rights by using a principled, more proportionate approach to decide which offenders should have their democratic rights limited.

Enabling prisoners sentenced to less than one year to vote has three benefits:

Democratic legitimacy is in part procedural, and is strengthened when as many citizens as possible have a say in who should govern. Between January and March 2014, 42% of people imprisoned were given sentences of less than 12 months. Including these prisoners increases the democratic legitimacy of our Government.

Helping prisoners to build skills for voting and democratic engagement helps prisoners develop skills they will need on release. Schmidt notes prison councils can help strengthen personal responsibility, collaboration and foster mutual obligations. Professor Joan Tronto argues democratic engagement requires skills such as building networks, explaining points of view, listening and devising compromises. These skills are further necessary for social co-operation. Promoting democratic participation and socio-economic co-operation is important as the vast majority of prisoners will return to the community. These first two arguments could suggest extending voting rights to more prisoners.

We uphold an important precedent that governments do not refuse to implement rulings of the European Court of Human Rights, which provides an important safeguard for basic rights. Being imprisoned for a criminal offence changes how our human rights are protected: Article 5 of the European Convention on Human Rights, protecting liberty and security, allows ‘the lawful detention of a person after conviction by a competent court’. But a criminal conviction doesn’t change our personhood, and our human rights still apply. Deciding that some people don’t deserve the same basic protections as others, or that institutions safeguarding human rights can be ignored, sets a dangerous precedent.

Sentenced prisoners do not lose all of their rights. Sentenced prisoners may lobby MPs, and prison authorities have duties of care towards prisoners, safeguarding their right to life. If voting is understood as a right, some prisoners should retain this important right. If voting is understood as a responsibility, voting is exactly the sort of behaviour we should encourage among prisoners to enable them to participate as ‘good and useful’ citizens. Alexander Paterson, a Prison Commissioner in the 1930’s, commented ‘You cannot train men for freedom in conditions of captivity’. Imprisonment can undermine the conditions or opportunities for taking responsibility. Voting enables prisoners to take and share democratic responsibilities.

Everyone needs to share the responsibilities of democracy and this includes prisoners. Protecting voting as a right is necessary for democracy. Understanding voting as a responsibility helps to explain why it is important for everyone that prisoners do vote: to increase democratic legitimacy, build personal and social skills and uphold human rights protection. Preventing prisoners from voting frustrates their building skills necessary for democratic engagement and social co-operation once released.

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