

Letting prisoners vote would undermine the idea that civil liberties are fundamental to democratic citizenship

By Democratic Audit

*Parliament is currently considering how to relax the UK's restrictions on prisoner voting, which have been deemed in breach of the European Convention on Human Rights. In one of two new contributions to the debate – alongside [Chris Bennett and Daniel Viehoff's](#) post - **Peter Ramsay** sets out the democratic argument against prisoner enfranchisement. He argues that enfranchising prisoners would foster the illusion that the political rights enjoyed by prisoners can be on a par with those enjoyed by the free citizens of a democracy.*

One idea lies at the heart of the efforts of penal reformers to persuade Parliament to comply with the Strasbourg ruling that the UK must end its blanket ban on prisoners voting. That idea is that prisoners are citizens too. If prisoners are 'capable of continuing with their lives as citizens' while incarcerated, as Nicola Lacey puts it in [her recent article on Democratic Audit UK](#), they should not be excluded from political participation or deprived of the vote. Proponents of enfranchisement regard denying prisoners the vote as one more aspect of the futile and unjust social exclusion that offenders and ex-offenders are generally subjected to, and a blatantly undemocratic aspect at that. I can understand why they read disenfranchisement this way, given the banal 'tough on crime' posturing that saturates parliamentary and media discussion of the question. And I agree with them that harsh treatment of prisoners does injustice because prisoners are already being punished for their offending by loss of liberty. I also agree that harsh and uncaring treatment of prisoners is counter-productive because it makes addressing the causes of their offending more difficult. Nevertheless, I think enfranchisers are wrong to argue that prisoners can continue with their lives as citizens.

At first glance, arguing for the citizenship of offenders appears to be democratic, promoting universal suffrage and the political rights of the marginalised. However, if we look a little closer, we can see that the enfranchisers' argument both undermines the defence of democratic freedoms in the present and represents a fundamental challenge to the idea of the rule of the people. Nor is it clear that enfranchisement will be an unambiguous advance for the cause of penal reform. Treating prisoners as citizens seems to undermine a key aim of penal reformers: the goal of achieving fewer people in prison.

The central flaw in the liberal idea that prisoners continue their lives as citizens is that prisoners have had their basic civil liberties taken away from them by the executive. The enfranchisers' argument, therefore, makes the claim that civil liberties are *not* an intrinsic aspect of citizenship in a democracy. For the enfranchisers, people continue to be capable of living their lives as citizens even if, like prisoners, they have no right to go where they want, associate or assemble with whomsoever they wish to, in order to express whatever opinion they hold, either in public or private, and to do so without executive interference.

The immediate danger in this idea should be obvious. If prisoners do not need civil liberties in order to enjoy democratic citizenship, why do any of us? At a time when protestors are routinely kettled, political speakers are prosecuted and the entire population electronically spied upon, the argument that civil liberties are not necessary for democratic citizenship is, to put it mildly, not helpful to the defence of political freedom.

Of course, it is true that some sort of 'democracy' is possible even without civil liberty. The sort of democracy in which citizens passively consume whatever narrowly differentiated political brands the elite comes up with, making a purchase once every few years at election time. Which is to say, a democracy not unlike the stagnant electoral politics of our own time. Not much independence of the executive is required to make the marginal political choices that contemporary voters are faced with. Perhaps prisoners can be equal participants in that process. However, a democracy that really aims to achieve the collective self-government of the people cannot do without extensive and well-protected civil liberties, because they are *essential* to its concept. Freedom from executive coercion when debating, associating and assembling in public, and when deliberating in private, are essential if citizens are to thrash out their own understandings of the common good, to *produce* as well as *consume* policy alternatives, or to hold representatives to account in the intensive way that ensures that government truly represents the self-determined views of the people. Only with these freedoms can the people as a whole aspire to collective self-government.

The enfranchisers' argument that civil liberties are not necessary to democratic citizenship serves to obscure the imaginative possibility of representative government as the means to collective self-determination and to entrench the minimal elitist concept of democracy as no more than a choice of political representatives. Enfranchisers are quick to point out that the blanket ban on prisoners voting has some arbitrary effects on political participation. And they are right. Depending on exactly when a prisoner is sentenced and when an election falls, some short-term prisoners will not get to vote at an election at which others' sentenced to exactly same term will be able to vote. No aspect of their case better illustrates the thinness of the liberal concept of democracy. A punctilious concern for equality of treatment with respect to voting in a single election covers up the profoundly subversive effect of their argument on the already weakened civil liberties that are the precondition of actual democratic self-government.

Few sections of society are in greater need of a politically vigorous, emancipatory practice of democracy than those from which prisoners tend to come. But even if we leave aside the long-term damage done to the political prospects of the currently powerless, the enfranchisers' argument does not unequivocally serve the cause of penal reform either. Extending the vote to prisoners might help to improve prison conditions, although in the absence of wider political change that seems unlikely. Either way, it is likely to make it harder to achieve the aim of 'fewer people in prison', as the Howard League's slogan puts it. To construct imprisonment as a continuation of the life of a citizen is to deny what we ought to emphasise: that deprivation of liberty by the state is a severe and traumatic violation of the normal order of citizenship in a democracy. If we want to see fewer people sent to prison, then we need to be clear that imprisonment itself is by its nature a coercive denial of citizenship rights, and *for that reason* should be used very sparingly. It should be restricted to those cases where the offender has herself repudiated democratic citizenship rights by deliberate violation of the citizenship rights of others, and has done so in such a grave or unequivocal way that loss of liberty is the *only* response that takes the offender's actions sufficiently seriously.

The tension between a minimalist democratic approach to imprisonment and the current campaign for prisoner enfranchisement is most sharply posed when enfranchisement is presented as a response to the fact that imprisonment disproportionately affects ethnic minorities, or is imposed for offences that should not be counted as serious public wrongs deserving of imprisonment. To enfranchise prisoners *because* their imprisonment is a consequence of racial discrimination is to adapt to that discrimination rather than to challenge it. The wrongfully imprisoned should be freed. The vote is no answer to the injustice of wrongful imprisonment. On the contrary, the enfranchisers' proposition actually succeeds in converting the vote – the right of rights – into an insult, to be added to the injury of being wrongfully imprisoned.

This then is the democratic argument against prisoner enfranchisement. It is not the same argument as that of the government or the majority at Westminster, who also oppose enfranchisement. Moreover, the democratic argument against enfranchisement has nothing in common with the idea that prisoners should suffer 'civic death'. [As I have argued elsewhere](#), although a prisoner's democratic citizenship is necessarily suspended by her imprisonment, any system that was serious about collective self-government would be committed to extending to prisoners as many rights as possible, to ensuring better than decent prison conditions and to fostering as much political participation in prisons as is possible *within the limits imposed by prisoners' loss of liberty*. Nor does the democratic argument allow for US-style felon disfranchisement. Once released from executive control, a person is restored to full citizenship. Nor does democracy imply the loss of a prisoner's right to seek nomination as a candidate and stand for election, for that would be to deny the right of all citizens to vote for whomsoever they wish.

What the democratic argument against enfranchisement refuses to do is to foster the illusion that the political rights enjoyed by prisoners can be on a par with those enjoyed by the free citizens of a democratic republic. By promoting this illusion, the enfranchisers' argument is potentially lethal for the political freedom of all citizens, including those who have been released from prison.

Note: This post represents the views of the author, and does not give the position of Democratic Audit or the London School of Economics. Please read our [comments policy](#) before commenting.

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