

# PRISONERS, POLITICS AND THE POLLS

## *Enfranchisement and the Burden of Responsibility*

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*In 2006, the Irish Government introduced legislation to allow prisoners to vote. Drawing on international developments in jurisprudence and criminal justice, this article examines the background to, and wider significance of, this change in the law. A lack of political and media opposition ensured the relatively unnoticed passage of this reform through Parliament. Prisoners had their first opportunity to exercise the franchise in 2007. While the number who registered was small, the turnout was relatively high. The seemingly benign desire to restore a measure of civic engagement to prisoners may conceal a narrow desire to see them lead law-abiding and 'responsible' lives rather than encouraging them to engage in a process of personal transformation or become reflective agents for change.*

### *Introduction*

In a democratic polity, the deliberate denial of the right to vote to any section of the population has very serious implications, both symbolic (in terms of devaluing citizenship) and practical (in terms of affecting electoral outcomes). Conversely, the extension of the franchise is similarly emblematic of a political system's priorities and emphases. In 2006, the Irish Government introduced legislation to allow prisoners to vote. This occurred quietly and stimulated little public debate. Interestingly, the law was changed after the Supreme Court had decided that such action was not required and despite a sometimes stifling concern on the part of politicians to avoid being seen as soft on crime or prisoners for fear of losing electoral support. Using the Irish experience as an example, and drawing on international debates, this article locates the legal position concerning the voting rights of the incarcerated in a wider historical, political and societal context. The debate about prisoner enfranchisement gives us some insights into the impact of imprisonment, society's conflicted attitude towards prisoners, the variety of stimuli for penal reform and the nature of citizenship.

Before examining the Irish case more closely, particularly the antecedents of enfranchisement and the levels of prisoner participation in the 2007 general election, it is useful to provide a flavour of international developments.

### *International Developments*

#### *Israel*

In 1995, Yitzak Rabin (prime minister of Israel) was shot dead by Yigal Amir as he left a peace rally in Jerusalem. Soon after, an election was called; under Israeli law, all prisoners

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were allowed to vote. In a case taken by a private citizen, the Israeli courts refused to revoke Amir's citizenship to prevent him voting in the election to replace Rabin (*Jerusalem Post*, 15 May 1996:4). The court declared that disenfranchisement would hurt, not Amir, but Israeli democracy (Ewald 2004: 134). Imprisonment was his punishment, the Supreme Court ruled, and when the right to vote is denied, 'the base of all fundamental rights is shaken' (original in Hebrew, quoted in Ewald 2004: 134). Appalled by Amir's participation in the election to replace her husband, Rabin's widow, Leah, believed that it 'was an unprecedented scandal' (*Jerusalem Post*, 30 May 1996:4). Shimon Peres, who took over as prime minister on Rabin's death, doubtless spoke for many when he asked 'How can this murderer be allowed to vote?' (*The Washington Post*, 29 May 1996:A14). In the election to choose the successor to the man he had killed, Amir was the first to vote in his prison, his attorney declaring 'he's concerned about Israel and the future' (*Jerusalem Post*, 30 May 1996:4). In the 2006 general election, more than 9,000 prisoners were eligible to vote, one of whom—British electrician Daniel Pinner – stood for election (Grayeff 2006).

### *South Africa*

The South African debate on prisoner enfranchisement was politically, socially and historically charged. Many of those who became lawmakers in the 1990s were ex-prisoners or part of a movement—the African National Congress (ANC)—that was led by Nelson Mandela, one of the most famous prisoners of the twentieth century. In 1999, the country's Constitutional Court rejected the Government's argument that there was evidence to indicate immense financial, logistical and administrative difficulties if prisoners were allowed to vote. The Court declared that:

The vote of each and every citizen is a badge of dignity and of personhood. Quite literally, it says that everybody counts. In a country of great disparities of wealth and power it declares that whoever we are, whether rich or poor, exalted or disgraced, we all belong to the same democratic South African nation; that our destinies are intertwined in a single interactive polity. (*August v. Electoral Commission*, CCT 08/99, 1999)

The Government's argument was that as Parliament had not passed any law restricting their right to vote, prisoners still maintained that right. But the Court instructed the Government and the Electoral Commission to make 'all reasonable arrangements' to enable prisoners to vote in the forthcoming election because the right to vote imposes 'positive obligations on the legislature and the executive' (*August v. Electoral Commission*, CCT 08/99, 1999).

With the 2003 Electoral Act, the Government attempted to roll back the Constitutional Court's decision. The legislation ended up back in court and the judges reiterated their earlier ruling guaranteeing prisoners the right to vote. In its affidavit to the Court, the Government contended that there was no denial of the right to vote; there was simply no provision for it. It did this because 'making provision for convicted prisoners to vote would in these circumstances send an incorrect message to the public that the government is soft on crime'. The Chief Justice rejected the Government's argument in the following terms:

It could hardly be suggested that the government is entitled to disenfranchise prisoners in order

to enhance its image; nor could it reasonably be argued that the government is entitled to deprive convicted prisoners of valuable rights that they retain in order to correct a public misconception as to its true attitude to crime and criminals. (*Minister of Home Affairs v. Nicro*, CCT 3/4, 2004)

In a majority verdict, the Court ordered the Government to put in place mechanisms to allow all prisoners to vote in the forthcoming elections. The Chief Justice, Arthur Chaskalson, who had appeared as defence counsel in several major political trials (including the Rivonia Treason Trial, which led to the conviction and imprisonment of Nelson Mandela and other leaders of the ANC) reminded the ANC Government of the country's recent past: 'In light of our history where denial of the right to vote was used to entrench white supremacy and to marginalise the great majority of the people of our country, it is for us a precious right which must be respected and protected' (*Minister for Home Affairs v. Nicro*, CCT 3/4, 2004).

### *Canada*

In 2002, the Canadian Supreme Court, by a margin of five to four, found a 1993 electoral law to be unconstitutional. In a case taken by Richard Sauvé against the federal Government, the Court ruled that the law which denied prisoners serving sentences over two years the vote in federal elections was repugnant to the Canadian Charter of Rights and Freedoms. The majority found that the 'right to vote is fundamental to our democracy and rule of law and cannot be lightly set aside'. They rejected the Government's argument to deny inmates the right to vote because of some 'vague and symbolic objectives' about enhancing civic responsibility and respect for the rule of law. Quite the contrary, in fact; the denial of the right to vote would not promote civic responsibility as the Government had argued, but it was 'more likely to send messages that undermine the respect for the law and democracy than messages that enhance those values'. The Supreme Court ruled that it could not 'permit elected representatives to disenfranchise a segment of the population' (*Sauvé v. Canada*, 2002).

Much public debate followed the ruling, with some scathing attacks launched against what were portrayed as activist judges straying into the realms of politics and penal policy. One commentator was excoriating in his criticism and cast the net wide. He argued that support for the Supreme Court's views 'could no doubt be found in the ethereal nether regions of Canadian criminology departments (where no one is ever deemed responsible for what they do)' (Morton 2002: A23). He suggested that the judgment went against the wishes of the Canadian people and a better option would have been to offer prisoners courses on liberal democracy while incarcerated.

### *United Kingdom*

In 2004, the European Court of Human Rights (ECtHR) ruled that the UK Government's blanket prohibition on sentenced prisoners' voting breached their human rights. Remand prisoners retained the right to vote but did not have the opportunity to exercise that right, as the legislature had not introduced measures to facilitate postal voting or other mechanisms to allow them to vote (Gallagher 2001: 28). A convicted prisoner—John Hirst—challenged the denial of his right to vote. The ECtHR rejected an absolute ban on all convicted prisoners as 'arbitrary and disproportionate' (*Hirst v. United Kingdom*), finding a breach of Art. 3 of Protocol 1 of the European Convention on Human Rights (ECHR), which requires Governments 'to hold free elections at

reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'. But the ECtHR conceded that the right to vote and stand for election is not absolute. In effect, the Court decided that some prisoners in the United Kingdom had their human rights contravened by being denied the vote but stopped short of declaring that the Government must enfranchise all prisoners.

The Westminster Government appealed the decision to the Grand Chamber of the ECtHR but this was rejected in 2005. In December 2006, over two years after the original *Hirst* judgment, the Government issued a consultation paper setting out the legal situation in the United Kingdom and putting forward its case in response (Department of Constitutional Affairs (DCA) 2006). The Lord Chancellor signalled that '[t]he government is firm in its belief that individuals who have committed an offence serious enough to warrant a term of imprisonment, should not be able to vote while in prison' (DCA 2006: Foreword). The Prison Reform Trust accused the Government of 'procrastination' in appealing the original decision and then initiating a consultation process which was 'flawed' because it did not allow for the enfranchisement of all prisoners. It pointed out that even prisoners held in British and American jails in Iraq were allowed to maintain their voting rights, which the occupying forces argued was to 'aid the democratic process' (Prison Reform Trust 2007).

### *United States of America*

The United States has attracted the most attention for its felon disenfranchisement laws (Campbell 2007; Ewald 2004; King 2006; Rottinghaus 2005; Uggen and Manza 2002; Manza and Uggen 2006; Uggen *et al.* 2006). By 2005, 5.3 million citizens (nearly 2.5 per cent of the voting population) were disenfranchised because of a current or previous felony conviction (Manza and Uggen 2006: 250). Felony disenfranchisement disproportionately disadvantages the black community, affecting 1.4 million black men—roughly 13 per cent of the black male population (Reiman 2005: 4). Ewald (2002: 1054) suggested that '[c]riminal disenfranchisement policy in the United States is located squarely at the intersection of voting rights and criminal justice—and it is tainted by the racial history of both policy areas'.

Forty-eight states and the District of Columbia forbid felons to vote while in prison. In 2006, 36 states denied persons on parole and or probation the right to vote and, in 11 states, a felony conviction can lead to a lifetime ban (King 2006: 1). During the 2000 presidential election, 537 votes separated George Bush and Al Gore in Florida when the Supreme Court decided the outcome. Over 600,000 Floridians were disenfranchised because of a prior felony conviction. Analysis of voting patterns and political preferences during the 2000 election found that, even with a conservative estimate of the numbers of ex-felons voting, Al Gore would have won the state by over 30,000 votes, thus changing the outcome in the Electoral College (Uggen and Manza 2002: 792, 797). It is not an exaggeration to say that the disenfranchisement of ex-felons gave the state and election to George W. Bush and changed the course of American and world history (Manza and Uggen 2006: 8).

Yet, even in the United States, there have been moves towards relaxing the restrictions on ex-felons voting. Between 1997 and 2006, in what the Washington-based Sentencing

Project called a decade of reform, 16 states restructured their felony disenfranchisement laws, leading to a modest but significant restoration of voting rights to over 620,000 citizens (King 2006: 7).

### *The Case of Ireland*

The international experience provides a backdrop against which to view the introduction of legislation in Ireland in 2006. During the debates in the Oireachtas (Irish Houses of Parliament), reference was made to the *Hirst* judgment in the ECtHR and to the situation in the United States. One Parliamentarian encouraged his fellow lawmakers to ‘remember the 2000 presidential election and the actions of George Bush’s brother in Florida .... He had many people working for him to disenfranchise all the people who had a previous conviction. It gave a terrible picture of a democracy .... They were pursued to get them off the electoral register because of their race and political situation’ (Fergus O’Dowd, *Dáil Debates*, 2006, Vol. 624, col. 1987). While the debates may have made reference to the international situation, the impetus for reform was different. In contrast to circumstances elsewhere, the Irish legislature was not instructed by domestic courts to take action; indeed, the courts interpreted the law so as to preserve the status quo. Those who introduced the new law reminded prisoners of their responsibilities and the obligations of citizenship while reassuring the general public of their abhorrence of crime. Before examining the impact of the new laws on electoral participation, it is useful to sketch an outline of key historical antecedents.

When the Irish Free State was established in 1922, the electoral laws inherited from the period of British rule still applied. Section 2 of the 1870 Forfeiture Act declared that an individual imprisoned for over 12 months would be:

... incapable of being elected, or sitting, or voting as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise whatever within England, Wales or Ireland.

In the period before the majority of the people had access to the vote, due to property and gender restrictions, felony disenfranchisement was unlikely to have been an issue of much practical concern. The 1918 Representation of the People Act gave the vote to all men over 21 and women over 30 (Foot 2005: 233). The new state introduced a Constitution in 1922 and, under Art. 14, all citizens ‘without distinction of sex, who have reached the age of twenty-one years and who comply with the provisions of the prevailing electoral laws, shall have the right to vote for members of *Dáil Eireann*’. The next year, just before a general election, the 1923 Prevention of Electoral Abuses Act provided for a prohibition on voting for those convicted of personation or ‘aiding, abetting, counselling or procuring the commission of that offence’. Depending on whether it was a first or subsequent offence, there were various penalties, from two months imprisonment up to three years penal servitude. Added to these penalties was an electoral punishment. A person who was convicted of these practices was barred for seven years from the date of conviction from holding any public or judicial office, being a member of Parliament or a local authority, being registered for or voting in general and local elections or voting for any public office (1923 Electoral Abuses Act, s. 6(2–4)). This effectively meant that an individual could be incarcerated for a period of up to three years and, on release, not allowed to stand for office or cast their vote for a further four years.

When the Irish state was established, it immediately degenerated into civil war. This left a bitter political legacy. There was widespread incarceration of political opponents, with estimates of up to 12,000 detained (Lyons 1973: 467). The adversaries of the new Government soon turned to politics, and, during the 1923 election campaign, a political opponent of the Government and future Taoiseach (Prime Minister) and President, Eamon de Valera, was arrested at a political rally in his Co. Clare constituency and imprisoned for nearly a year (Ryle Dwyer 1980: 73). He was elected from his prison cell, in the same prison where he had been condemned to death seven years earlier by the British. The prohibition on prisoners sitting as members of Parliament was somewhat irrelevant in practical terms, as de Valera's party stood on a platform of abstentionism.

Prior to the 1923 election, there was a debate in Parliament on a proposal that 'all political prisoners and internees be afforded an opportunity to vote at the coming elections' (Dáil Debates, 1923, Vol. 4, col. 1379). Anticipating Government inaction on the issue, or arguments about the logistics of the procedure, one of the supporters of this Bill suggested that a postal voters list could be prepared for this purpose and internees could vote in their home constituencies (Dáil Debates, 1923, Vol. 4, col. 1382). If prisoners were allowed to vote, 'nobody will be in a position to say that ... the Dáil elected was unrepresentative' (Dáil Debates, 1923, Vol. 4, col. 1381). The leader of the Labour Party, Tom Johnson, supported the motion. He argued that if the Government felt it was logistically too cumbersome to create a postal voters list, he had an alternative solution: 'I suggest there is a much better way to meet the grievances, and that is release [the internees], not to wait until after the elections but to release before the elections' (Dáil Debates, 1923, Vol. 4, col. 1382). Later in his speech, he anticipated the symbolism discussed in many debates about allowing prisoners to vote in the late twentieth and early twenty-first centuries:

[I]f we are going to encourage the idea that the vote is a matter of importance to the voter, and that he should look upon the vote as something valuable, as symbolic of civic responsibility, then I think we should take this opportunity of adding to the force of that lesson. (Dáil Debates, 1923, Vol. 4, col. 1382)

Responding for the Government, former prisoner and now Minister for Local Government, Ernest Blythe, stated that this would entail special legislation. Setting the scene for future political priorities concerning prisoners and the franchise, he said that while the Government was looking into it, 'this matter is not one of prime importance'. He suggested that while there was no law in place barring prisoners from voting, special arrangements would have to be made and '[t]here is no real reason for that, except the desire to shut mouths' (Dáil Debates, 1923, Vol. 4, col. 1383). This proposal was rejected by the governing party that had just been involved in an inconclusive civil war with those they had interned and was in no mood to listen to sympathetic pleas on their behalf.

Many of those who went on to form a Government in the 1930s had been interned during the civil war. In 1937, Eamon de Valera introduced a new Constitution. Voting for Dáil Éireann was open to every citizen who had reached the age of 21 years and who was 'not disqualified by law and complies with the provisions of the law relating to the election of members of Dáil Éireann' (Art. 16). Despite the constitutional caveat which would have allowed legislation to bar prisoners from voting, no law was enacted in 1937 or thereafter to specifically prevent prisoners from exercising their franchise. There the matter stood until 1963, when a new Electoral Act repealed the disqualifications from

voting under the 1870 and 1923 Acts. It simplified the law. If an individual reached voting age, was an Irish citizen and ordinarily resident in a constituency, then they were entitled to vote.

In the following period, there was not much public debate about prisoners' issues—hardly surprising, given the low numbers incarcerated at the time. In 1965, there were 560 inmates in Irish prisons. By 1984, this had reached only 1,594 (O'Donnell *et al.* 2005: 150–3). In 1992, a new Electoral Act was introduced. The registration of prisoners as electors was specifically set out in s. 11(5), which provided that a person detained in legal custody shall be registered in the place where they would have been residing before their detention.

### *Prisoner litigation*

In 2000, the position concerning prisoners' right to vote was set out in a book on Irish prison law in the following terms:

1. Inmates have a right to be registered in the constituencies where they would normally be resident were it not for their incarceration.
2. Inmates have no right to be given physical access to a ballot box by means of temporary release or a postal vote or otherwise.
3. If an inmate happens to be on parole or temporary release at the time of an election, he is free to vote where registered. (McDermott 2000: 335)

Under some circumstances, serving prisoners would have been able to vote. For example, if a prisoner was on temporary release on the day of the election, and they were registered, they could have voted in their home constituency. However, there was no legal obligation on the Government to put in place provision for voting for those physically present in prison on polling day.

A prisoner, Stiofan Breathnach, challenged this state of affairs and met with initial success. In 2000, the High Court ruled that prisoners retained the right to vote under the 1992 Electoral Act. The Court declared that the failure of the state to provide a means whereby a prisoner could vote breached the constitutional guarantee of equality before the law. The judge ruled that prisoners enjoyed a right, which had been conferred on them by the Constitution, to vote at elections for members of Dáil Eireann, and no legislation was currently in force that removed or limited that right in any way. Drawing on European developments and echoing the South African judiciary, Mr Justice Quirke stated that failing to provide:

The necessary machinery to enable him to exercise his right to vote comprises a failure which unfairly discriminates against him and (a) fails to vindicate the right conferred upon him by article 40.1 of the Constitution of Ireland to be held equal before the law and; (b) fails to vindicate the right conferred upon him by article 14 of the European Convention on Human Rights to vote in national and local elections without discrimination by reason of his status. (*Breathnach v. Government of Ireland*, 2000)

The Government appealed this decision to the Supreme Court and, in a reserved judgment delivered in July 2001, the five-judge Court unanimously rejected the right of prisoners to exercise their franchise while in custody. In stark contrast to South African, Canadian and Israeli jurisprudence, the Irish Supreme Court found that while prisoners were detained in accordance with the law, some of their constitutional rights, including voting, were suspended. Mrs Justice Denham seemed to go further, suggesting that imprisonment was only part of the punishment:

The applicant has no absolute right to vote under the Constitution. As a consequence of lawful custody many of his constitutional rights are suspended. The lack of facilities to enable the applicant vote is not an arbitrary or unreasonable situation. The absence of such provisions does not amount to a breach by the State of the applicant's right to equality. (*Breathnach v. Ireland*, 2001)

This put sentenced prisoners in a unique but similar situation. They were all prevented from voting, so there was no discrimination against the individual who took the case when the reference group was deemed to be other prisoners rather than fellow citizens. However, the Chief Justice, Ronan Keane, did point out that remand prisoners were in a different category, as they were not convicted. It was suggested that the state may have to consider putting in place some practical arrangements to allow remand prisoners to vote.

The Supreme Court had made the legal position clear. An inmate was allowed to register in their home constituency; however, this did not imply that they had a right to vote either there or in the constituency where they were now residing as a prisoner. In response to a Parliamentary question in light of the *Hirst* ruling, the Minister for Justice, Equality and Law Reform pointed out that there was no law on the statute books that prohibited prisoners from voting. However, he noted that the Supreme Court 'held that the state is under no constitutional obligation to facilitate prisoners in the exercise of that franchise' (Dáil Debates, 2004, Vol. 586, col. 1345). There the matter stood until 2006.

#### *Prisoners Go to the Polls*

The 2006 Electoral (Amendment) Act allowed prisoners to cast their ballots by postal vote. Prisoners were permitted to vote in their home constituency, thereby allaying fears of a voting bloc (even though there is no firm evidence that prisoners would vote en bloc). As is the case with voters outside prison, citizenship status determines at which elections a prisoner is allowed to vote. In a relatively short and simple Bill, it was made possible for the state's prisoners to vote in all elections open to them. The Department of the Environment has responsibility for voting and prisoners became one of six categories of the electorate that are allowed to use a postal ballot. (The others are members of the police force, defence forces, Irish diplomats and spouses, those with a physical disability and those with an occupation that will likely keep them away from their constituency on polling day.)

Prisoners, if Irish citizens aged at least 18 years, can vote in local, national and European elections and referendums. Every British subject aged over 18 resident in Ireland may vote in Dáil, European and local elections. Other European Union (EU) citizens resident in Ireland may vote at European and local elections. Non-EU citizens may vote at local elections only.

#### *Change comes quietly*

The legislation was introduced by a coalition Government made up of the Fianna Fail and Progressive Democrat parties—centre-right and right-wing parties, respectively, not known for their liberal attitude towards prisoners. During the 1997 election, the main party in the coalition, Fianna Fail, had stood on a zero-tolerance platform (O'Donnell and O'Sullivan 2003). Previously, there had been some muted debate about the enfran-



chisement of prisoners. In 2002, a report from a Government-appointed forum on the reintegration of prisoners recommended that the Department of Justice, Equality and Law Reform, in consultation with the Irish Prison Service, should 'develop a Charter of Prisoner Rights (including consideration of extending voting rights to prisoners)' (NESF 2002: 71). In 2005, Gay Mitchell, a senior member of the opposition party, Fine Gael, introduced a private members' Bill on prisoner enfranchisement, but to no avail.

Introducing the Bill to the Dáil, Dick Roche, Minister for Environment, Heritage and Local Government, proudly stated that 'Ireland is one of the most progressive nations in the world. This [introduction of legislation to give prisoners the vote] would be the exception rather than the rule'. The legislation would modernize existing electoral law and meet the Government's obligations under the provisions of the ECHR. Referring to the *Hirst* judgment, he argued that while the legal position in the United Kingdom differed significantly from Ireland, 'in light of the judgment it is appropriate, timely and prudent to implement new arrangements to give practical effect to prisoner voting in Ireland' (Dáil Debates, 2006, Vol. 624, col. 1978).

In Ireland, mainly due to the Troubles in Northern Ireland, a number of lawmakers (both north and south of the border) have been imprisoned. They include members of the Sinn Féin party (linked to the Provisional IRA). Four members of the Parliament that debated the Bill had been imprisoned (one for a month during the lifetime of the 2002–07 Parliament). One former IRA prisoner (sentenced to 14 years) argued that 'it is a shame that a judgment was required against Britain in the European Court of Human Rights before the Government brought the law into line with best international civil rights practice'. Arthur Morgan continued by asking '[h]ave the people in our prisons not been penalised enough by their incarceration? One is sent to prison as, not for, punishment' (Dáil Debates, 2006, Vol. 624, col. 2000).

Gay Mitchell, who had previously attempted to introduce his own Bill believed that there was not widespread public support for this measure. However, he assured his Parliamentary colleagues on the opposition benches that we 'are not about being soft on criminals .... People not only have rights but they also have responsibilities. It is time to stop recycling prisoners as if they were some sort of commodity and creating an environment in which prisoners have rights but no responsibilities, which takes from their dignity' (Dáil Debates, 2006, Vol. 624, col. 2004). Previously, the same politician argued that giving votes to prisoners 'would acknowledge their rights and also underline their responsibility for themselves and to society'. He was perhaps overly optimistic, however, when he suggested that 'it might encourage politicians to take a greater interest in penal reform' (McKenna 2003).

One opposition speaker went further than the Government and suggested that there was a wider context; the Bill concerned not only prisoners, but would lead to the enhancement of the democratic system. Fergus O'Dowd claimed:

It is important our prison system forms part of our reform agenda. It is also important that our criminal justice system is framed with the hope that this measure will in some small part go towards the rehabilitation of prisoners. It is an important social step and democratic reform which will, my party believes, strengthen our electoral process. (Dáil Debates, 2006, Vol. 624, col. 1983)

In the course of the debates over the Bill, no one spoke against the enfranchisement of prisoners. Indeed, much time set aside for discussion on the Bill was used to criticize the Government for its failure to update the Register of Electors for the general population. Amendments were put forward to make sure prisoners would have trust in the electoral

process. Outside Parliament, there was little debate about prisoners and enfranchisement in the lead up to, or the discussion surrounding, the legislation.

Very few newspapers even mentioned the issue. A content analysis of every issue of the three Irish broadsheet daily papers—*The Irish Times*, *The Irish Examiner* and *The Irish Independent*—for the period 1 October to 31 December 2006, during the passage of the legislation, showed only one reference to it. This was a 297-word article in the Parliamentary report of *The Irish Times*. The tabloid press, which has tended to take a hard line on crime and would generally oppose enhancing prisoners’ rights, was silent on the issue. In *The Irish Sun* and *The Irish Mirror*, there were no reports about the legislation, outraged editorials or commentary about the ‘privileges’ of prisoners or the rights of victims. There were no letters to the editor in any of the newspapers about the Bill or the significance of such a change in the law. Attempts by the Irish Penal Reform Trust (IPRT) to campaign on the issue (Hamilton and Lines 2008) failed to generate widespread interest, either for or against the legislation. A statement issued by the IPRT welcoming the passage of the legislation was not picked up by the press. There was a surprising lack of interest on the media’s behalf. The only way to find out about the passage of the legislation was to read through the transcripts of Parliamentary debates.

### *Captive citizens*

The 2007 general election was the first time prisoners had the opportunity to exercise their franchise. As tends to be the practice internationally (Rottinghaus 2004: 16), prisoners voted earlier than the rest of the population, casting their ballots between 16 and 22 May. Some prisons provided ballot boxes, although the legislation did not require this. Section 7a (vi) of the 2006 Electoral (Amendment) Act merely states that, after voting, the elector ‘shall hand the ... envelope to the relevant official who shall send it ... by post to the returning officer’.

The 2007 election allows us an opportunity to explore how Irish prisoners responded when allowed to wear the ‘badge of personhood’. The level of registration among prisoners was quite low, at just 451 out of 3,359 (see Table 1). There were a number of reasons for this. There was a short time-span (less than a month) from the issuing of registration forms to the closing date, which was unrealistically tight for both prisoners and prison authorities, bearing in mind that this was the first time voting could take place behind bars. But there were also a number of prisoners who placed their names on the Supplementary Register, which was open until a few weeks before the election. Our best estimate is that there were 57 inmates aged under 18 and therefore ineligible to vote

Table 1 *General election 2007: voting in Irish prisons*

No. in prison on 15 May 2007	No. eligible to vote	No. registered	No. who voted	Percentage of eligible prisoners who voted	Percentage of registered prisoners who voted	Percentage of registered national population who voted
3,359	3,202	451	322	10.1	71.4	67.0

Sources: Personal correspondence with Irish Prison Service and Department of the Environment, Heritage and Local Government, April–July 2007.

and another 100 prisoners who were unable to vote due to nationality. Thus, 14 per cent of those eligible to vote registered to do so.

Sentences in Ireland are usually short, with the majority being for less than six months. Those who had received a short sentence and could have registered in February 2007 (closing date for registration) would not have been in prison three months later during the May general election, thereby removing the incentive to register, even if an individual was eager to vote. In Ireland, the Parliamentary term is for a legal maximum of five years; however, it is at the discretion of the Taoiseach when to call an election. So, for short-term prisoners, there would not be the same urgency to register, considering the date of the election usually remains (albeit a sometimes open) secret until the dissolution of Parliament. There is a clause in the legislation that allows a prisoner to vote at a Garda (police) station if they are released before polling day. Considering the rather ambiguous, indeed hostile, attitude many prisoners have towards the police, this is unlikely to draw many to vote in the event that they registered for a postal vote from prison and were released before polling day. There would also be a number of prisoners who had been sentenced after the closing date for the Supplementary Register and would not have been in time to register for a postal ballot.

The educational level of citizens has an impact on interest in politics and civic engagement, registration for elections and turnout at the polls. According to Halpern (2005: 163), '[i]ndividuals with higher educational attainment have greater civic and voluntary engagement, larger and more diverse social networks, and higher trust in others. This relationship has been found across nations and measures'. Putnam (1995: 3) concluded that education is 'the best individual-level predictor of political participation'. The latest research on literacy levels among Irish prisoners shows that nearly 53 per cent are in the level 1 or pre-level 1 categories (highest is 5) and that the average literacy level of the prison population is much lower than the general population (Morgan and Kett 2003: 35–6). This suggests that prisoners are unlikely voters, all things being equal.

It is possible to discern some trends in registration across the different prisons in Ireland. There were generally greater levels of registration in those institutions that housed long-term and more mature prisoners. The prison with the largest percentage registered, at 50 per cent—Portlaoise—houses those convicted for more serious crimes and the remnants of the paramilitary republican movement that would be more politically active. In 2005, Arbour Hill prison held 30 life-sentenced prisoners and 60 per cent of its population was serving sentences over of seven years (Arbour Hill Visiting Committee 2006: 1). Nearly 40 per cent of the Arbour Hill prison population registered for the 2007 election. Cloverhill is a remand prison with a transitory population and a high proportion of people born outside the state and therefore ineligible to vote. It had a very low level of registration, at less than 1 per cent. St Patrick's Institution is for young offenders aged from 16 to 21. A number of its inmates would be ineligible to vote due to age restrictions and it had a low rate of registration, at just 15 per cent. Shelton Abbey is an open prison, with many inmates leaving on a daily basis for work, training or education. The registration of prisoners in this institution was just over 1 per cent.

Given the low, but variable, level of registration, what do we know about how eligible prisoners voted on polling day? As Table 1 sets out, the percentage of those registered who actually voted was relatively high, at nearly 71.4 per cent. This is a minimum estimate, as some of those who had registered would have been discharged before polling day. This compares favourably with the national turnout in the election, at 67 per cent

(Collins 2007). Again, there were interesting inter-institutional variations. For example, the turnout in Arbour Hill was 98 per cent and in Portlaoise, it was 91 per cent. In Cloverhill, two inmates registered and one voted.

Seanad Éireann is the upper house of the Irish Parliament. It is returned on a restricted franchise of some university graduates and elected representatives, both local and national. The method of voting has been by postal ballot since its inception in 1937. Therefore, serving prisoners who were graduates of the National University of Ireland or Dublin University would have been in a position to cast a vote for one of the six university senators. A jailed councillor was on the electoral register for Seanad Éireann and the first ever to vote in the Seanad elections from behind bars (*The Irish Times*, 5 July 2007:2). What makes this even more notable is that the councillor was serving a 12-month prison term for fraud and attempted theft from the local authority of which he was a member (Sheridan 2007). Ironically, this councillor had previously served as a member and then chair of a prison visiting committee. Indeed, his name was still listed as chair of the visiting committee during his time of incarceration.

### *Electoral outcomes*

Could the enfranchisement of prisoners alter the outcome of an election in Ireland? Given the relatively small number of prisoners, it is unlikely that the impact would be as great as in countries with large custodial populations, such as the United States, where ‘felon disenfranchisement has provided a small but clear advantage to Republican candidates in every presidential and senatorial race from 1972 to 2000’ (Uggen and Manza 2002: 787). However, the nature of the Irish electoral system—Proportional Representation, Single Transferable Vote (PR–STV)—allows for a small number of votes to exercise a decisive influence.

PR–STV is designed to give smaller parties and minority interests the opportunity to be represented in Parliament. The vagaries of the system mean that a small number of second, third or fourth preferences can decide the outcome of a particular constituency and, in a close-run election, can influence who becomes Taoiseach. During the 2002 general election, a handful of votes separated the winners and losers in a number of constituencies. In Limerick West, one vote (out of 36,669 cast) was enough to give victory to Fine Gael’s Dan Neville over his party colleague, Michael Finucane. John Dennehy’s victory over Kathy Sinnott in Cork South Central was by just six votes. In Wicklow, Mildred Fox defeated Nicky Kelly (a former prisoner who was later given a presidential pardon) by 19 votes after a marathon election count. We can only speculate how the outcome might have been different if the 174 Wicklow men and women committed to prison in 2002 had been allowed to vote (Irish Prison Service 2003: 16). Of course, not all would have been inside on polling day but it seems likely that many would have wanted to show solidarity with a former prisoner.

The 2007 election was not as tight as the previous poll, with only two candidates winning by fewer than 100 votes (*The Irish Times* Supplement, 28 May 2007). The data available for registration patterns for prisoners are recorded by the Department of the Environment, Heritage and Local Government on a county-by-county basis. While there are a few counties that share boundaries with the constituencies, the margins in this election meant that even if all registered prisoners had voted as a bloc in a given institution, they could have had no impact on the outcome. However, in the event that the tight contests of 2002 were repeated in future years, it is possible that prisoners could influence who got elected and perhaps even which parties formed a Government.

### *Prisoner inclusion–exclusion*

Prisoners in Ireland are now allowed to vote, which is ‘by a substantial margin the most common form of political activity’ (Putnam 2000: 35). But political activity and voting must be examined in the wider context of citizenship. Prisoners have been given the opportunity to become responsible citizens. If there are debates about the meaning of responsibility, the concept of citizenship is also a fervently contested notion (Ignatieff 1989). Citizenship is about much more than rights, entitlements and obligations. It is about playing a role in the civic life of the community. Citizenship is not about merely giving individuals rights; it is about participation and inclusion. Active participation by citizens, including prisoners, will guarantee these become rights, not privileges dispensed in a paternalistic manner from above. It must be recognized, of course, that should a future Government deem it reasonable, legislation allowing prisoners to vote could be repealed.

Irish prisoners are now politically included. But, in many ways, they are still excluded from the rights of participative citizenship. Denying the ‘full rights of citizenship’ makes performing ‘the duties of citizenship’ difficult (Uggen *et al.* 2006: 281, emphasis in original). Prisoners have a right to vote on an equal basis with other Irish citizens. But, examined from a wider perspective of citizenship rather than just voting rights, they still remain at a distance from civic society. Indeed, the collateral consequences of imprisonment can sometimes be harsher than the actual experience of incarceration. Ireland is unusual among developed countries in that there is no facility to allow for the expungement of adult convictions (Kilcommins and O’Donnell 2003). Those with a criminal record are excluded from employment in the civil and public service (NESF 2002: 12). This not only cuts off an avenue for employment, but also sends a very negative message to private employers. The poor educational attainment and literacy difficulties of many Irish prisoners effectively exclude them from the public sphere. There is a low level of civic engagement in the communities where the majority of prisoners lived before their incarceration. Issues such as marginalization, low educational attainment, urban degeneration and family break-up all impact on the levels of civic engagement outside and it would be naive to think that they would not also have an impact on the level of civic engagement on the inside.

The stigma of imprisonment is possibly the greatest barrier to inclusion in civic society and being part of a law-abiding community. Even though ‘retaining the right to participate as a citizen in the life of the community is symbolised in democratic societies by the right to vote’ (Stern 2002: 135), access to education and employment may, at times, be more important personally to individuals and might encourage greater participation in the civic life of the community. There are still barriers to participation and ‘[t]o best fulfill the duties of responsible citizenship in a democratic society, former felons require the basic rights and capacities enjoyed by other citizens in good standing’ (Uggen *et al.* 2006: 305).

### *Rehabilitation and Responsibility*

So why did the Irish Government decide to introduce new legislation, considering the public was not clamouring for it, the courts did not require it and little political capital could be expected in return? The impetus came from different sources, including European jurisprudence, lack of political and media opposition, and a desire to create not only the ‘rehabilitated’, but also the ‘responsible’ prisoner. In addition, and more

prosaically, this was a measure that could be introduced at virtually no financial cost. It required a simple piece of legislation and no budget.

Using enfranchisement to encourage prisoners to become more responsible was a clear theme in the limited debates on the topic. Dick Roche—the minister in charge of steering the legislation through Parliament—claimed during the debate that to enfranchise prisoners would encourage them to behave responsibly and appreciate the implications of citizenship. He opined that:

The fact that a person is incarcerated for a crime he or she has committed does not mean he or she has ceased to be a citizen or to enjoy the rights of the franchise. We should facilitate that person's exercise of the franchise and encourage responsibility as part of the education process, as we discussed. There are rights and responsibilities of citizenship. (Select Committee on Local Government, November 2, 2006)

During the debate, Fergus O'Dowd, speaking for the opposition, was adamant that 'giving votes to prisoners would not only acknowledge their rights but would also underline their responsibility for themselves, and to society' (Dáil Debates, 2006, Vol. 624, col. 1989). The politicians' position seemed to get some backing from an Irish man who voted for the first time from behind bars in the 2007 election. The act of voting 'brings a bit of pride to yourself .... It brings a sense of equality with the outside. Prisoners are so looked down on, but this is part of taking responsibility for yourself, isn't it?' (cited in Holland 2007). Uggen and Manza (2004: 214–15) found that the opportunity to vote was the most powerful symbol of stake holding in a democratic polity: 'To the extent that felons begin to vote and participate as citizens in their communities, it seems likely that many will bring their behavior into line with the expectations of the citizen role, avoiding further contact with the criminal justice system.' Filling out a ballot paper becomes part of the process of developing a pro-social, responsible identity.

The concept of individual responsibility pervades prison management discourse internationally (Bosworth 2007) and reflects the wider drive towards responsabilization that is so characteristic of attempts to respond to crime (e.g. Garland 1996). While incarcerated, prisoners are constantly reminded that it is up to them to begin to behave responsibly. The Irish Prison Service is committed to 'helping prisoners develop their sense of responsibility' and enabling them 'to return to live as a law abiding member of the wider community having reduced the risk to society of further offending' (IPS 2001: 34). The United Nations Standard Minimum Rules (SMR) (United Nations 1977: 11) state that treatment of prisoners 'shall be such as will encourage their self-respect and develop their sense of responsibility'. The Council of Europe (2006: rule 102) suggests that 'the regime for prisoners shall be designed to enable them to lead a responsible and crime-free life'.

Enfranchising prisoners might be considered a further example of responsabilization in which the 'prison inmate is now said to be responsible for making use of any reformatory opportunities that the prison might offer' (Garland 2001: 119). In preventing and controlling crime, responsibility goes much wider than previously. It is no longer the sole remit of the Government:

The state's new strategy is not to command and control but rather to persuade and align, to organize, to ensure that other actors play their part. Property owners, residents, retailers, manufacturers, town planners, school authorities, transport managers, employers, parents, individual citizens ... the list is endless...must all be made to recognize that they have a responsibility in this regard. (Garland 2001: 126)

The list now includes prisoners. Bosworth reinforces the point by arguing that the criminal justice system is more than just a means of dealing with lawbreakers: 'It is also a primary means of creating accountable and thus governable and obedient citizens' (Bosworth 2007: 68).

Many prisoners find themselves steeped in a prison culture with a gubernatorial regime and authoritarian structure that allows little individual responsibility and yet tries to instill it. In an institution that diminishes individual choice and independent action, it is difficult to encourage the individual to become a responsible actor. No matter how well-intentioned Governments and policy makers are, 'it is hard to train for freedom in a cage' because 'the rhetoric of imprisonment and the reality of the cage are often in stark contrast' (Morris and Rothman 1998: x, xi).

Individual responsibility impacts on more than just the prisoner. The concept of responsibility can be used to exonerate management from the consequences of its actions and Government from its treatment of prisoners. Most importantly, it individualizes the experience, overemphasizes agency and fails to locate the prison and prisoner in a wider social, cultural and political context. Rarely are reformed, rehabilitated or responsible prisoners suggested in the context of rehabilitated prisons, reformed prison administrations or responsible penal policy. Rehabilitation is usually defined by whether an individual reoffends and rarely in terms of whether the individual becomes a reconnected member of civil society. When what constitutes individual responsibility is defined by prison authorities and politicians in narrow and often legalistic terms (especially when reduced to the recidivism rate), it becomes easier to measure 'success'.

Yet, the concept of responsibility reveals a deeper meaning. The onus has shifted from the Government and prison authorities to the prisoner. By engaging in the electoral process, it is now up to the individual to transform him/herself. Time will tell if non-engagement by prisoners will be seen as a further example of their neglect of personal responsibility. Voting 'embodies the most fundamental democratic principle of equality. Not to vote is to withdraw from the political community' (Putnam 2000: 35). If an individual does not take the opportunity to exercise their franchise, it may be argued that they are yet again refusing to face up to their responsibilities. If the ultimate goal of enfranchisement is to create law-abiding and responsible citizens, a change in the law alone will not achieve this because the process of reintegration and desistance from crime (essentially what Governments and prison authorities term 'rehabilitation') is 'both an event and a process' (Maruna *et al.* 2004: 5). By enfranchising prisoners, Governments have reduced the process to a simplified formula with a legal change supposedly acting as a catalyst for shifts in attitude and behaviour.

### *Transforming prisons and prisoners*

Encouraging personal transformation rather than exclusively focusing on the risk of recidivism might yield a more authentic form of change and more positive participatory citizenship. This would entail individuals not just obeying the law, but locating that law in a wider social and political context. Such an approach challenges the incarcerated to become reflective agents for change, rather than passive law-abiding citizens. Those who commit crimes can be viewed as breaking the bonds of community. Imprisonment deepens that disconnection. Reconnecting and positively identifying with community

and civil society is essential to the process of reintegration, and voting is an important part of that process because it is ‘an instructive proxy measure of broader social change’ (Putnam, 2000: 35). While it is ‘sometimes hard to tell whether voting causes community engagement or vice versa’, recent evidence suggests that ‘the act of voting itself encourages volunteering and other forms of good citizenship’ (ibid.).

Individuals cannot be separated from the context in which they are located. Prisoners bring with them into custody low levels of civic participation and these may be further deflated by the cultural context of incarceration. Prisons as institutions do not seek to promote active and participative citizenship. Quite the contrary—the individualized experience of imprisonment discourages it, and the emphasis on recidivism as the key measure of ‘success’ of penal treatment draws the parameters of the debate too narrowly. To create a participative citizenship within a prison environment entails challenges on multiple levels, from reducing the political emphasis on ‘tough’ incarceration to empowering men and women who feel distanced from their fellow citizens.

Prisons, like all social institutions, contain an ‘extraordinary complex set of social relations’ (Cressey 1961: 1). When an individual enters prison, it is into a ‘complex social system with its own norms, values, and methods of control’ (Sykes 1958: 134). In this context, building social capital is a difficult process. It is intangible, ‘for it exists in the *relations* among people’ (Coleman 1988: 100–1). Not only do prisons physically break the connection with outside, but they frustrate attempts at forming positive social relations to campaign for the collective good on the inside.

Everything about prison is political. But prisoners are rarely encouraged by prison authorities to engage in political activity. Nevertheless, it must be remembered that ‘even the most rigorous form of discipline presumes that those subjects are capable human agents’ (Giddens, quoted in Sparks *et al.* 1996: 67). This poses a dilemma for those who control and manage the prison—how to encourage inmates to become responsible and rehabilitated, and, at the same, discourage them from becoming radical and rebellious. This might reflect society’s attitude towards prisoners—rehabilitation equates with legal compliance and rarely with encouraging prisoners to become agents for change while striving for personal transformation.

The consequences of prisoner enfranchisement may be less benign than at first glance. Irish prisoners have been given the opportunity to become politically participative citizens by casting their votes. In other spheres, their citizenship remains qualified. Prisoners have been conferred with some rights of citizenship. And, with those rights comes the burden of responsibility.

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