Prisoner Disenfranchisement in the UK vs. the US: Whom Does It Affect?

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Prisoner disenfranchisement is the denial of a prisoner’s right to vote. The UK and US both recognize and apply prisoner disenfranchisement in their countries. Both countries are viewed as the biggest advocates of disenfranchisement. The right to vote is viewed as a privilege by both, which may be revoked for antisocial behavior and for violating the laws of the land. There are some differences though between the two countries. The actual extent of the disenfranchisement, where it originates, who it affects, and how it is governed are just a few differences. We will first examine how the UK handles a prisoner’s right to vote, then we will look at the US’ approach.

In the UK, a prisoner right to vote is a qualified right. This is a right where the State may lawfully interfere in certain circumstances. This right may require a balance between the rights of the individual and the needs of wider State interest. Interference is only allowed if there is a clear basis and it seeks to achieve a legitimate aim.¹ UK has a ban on the right of a prisoner who is detained to vote in elections.

The UK’s Representation of the People Act 1983 (amended 1985, 2000) allows for a temporary blanket ban on all citizens convicted of a crime from voting during incarceration. This blanket ban originates from the 1870 Act which denied prisoners there right of citizenship.² The Speaker’s Conference of 1967-1968 recommendations was enacted in the Representation of the People Act of 1969. The basic principle was that where a convicted prisoner was in prison he/she should not be entitled to vote. Parliament states that a prisoner loses his right to have a say in how the country is governed during


² [www.parliament.uk/briefing-papers/sn01764.pdf](http://www.parliament.uk/briefing-papers/sn01764.pdf)
his incarceration. This is proportionate and has a legitimate aim. The ban is only during the individual’s incarceration and aimed to encourage prisoners not to re-offend. Therefore the more serious the crime, the longer the prisoner is denied a qualified right.

The US approach is similar. The federal government allows each of its states discretion on how to handle prisoner disenfranchisement. This right is a qualified right not absolute. This qualified right varies from state to state and allows individual states to pass laws approved by its citizens on whether and when to restore the rights of a prisoner to vote. Both Virginia and Kentucky impose a lifetime ban on the right of a felon to vote unless the state restores that right. In 2007, Florida reversed a 2007 reform to restore the right to votes to felons. Ten states including Iowa disenfranchise felons upon their completion of probate or parole. Some states base the restoration of rights on whether the crime was of a violent and serious nature such as murder, rape, incest, etc. But only two states allow felons the right to vote, Maine and Vermont.³

The US derives its right to disenfranchisement from its written constitution. Section 2 of the 14th amendment proclaims that States which deny the right to vote by male citizens, except in cases of rebellion, or other crime will suffer a reduction in representation. This was examined and explained by the US Supreme Court in Richardson v. Ramirez.⁴ The court stated that even though the equal right protection under the 14th amendment protects individual voting rights, the14th Amendment could not prohibit in one section that which is expressly authorized in another. It was further explained that section 2 expressly allowed for denial of voting rights where rebellion or other crimes were involved. Disenfranchisement was narrowed though in its application

³ http://en.wikipedia.org/wiki/Voting_rights_in_the_United_States
⁴ http://supreme.justia.com/cases/federal/us/418/24/case.html
by a 1985 ruling in Hunter v. Underwood.\(^5\) The court found a disenfranchisement law is illegal if it is found to discriminatory in motive and impact.\(^6\) This United States Supreme Court decision was brought under the constitutional equal rights protection and was therefore reviewable by the federal government. The court found from the evidence of the case that there was a discriminatory motive and impact in including misdemeanors for writing bad checks in the disenfranchisement law of Alabama. Therefore, even though the states have wide discretion on how and whether it will apply disenfranchisement laws in its jurisdiction, the US Constitution must still be adhered to and will be reviewable by the federal courts. Uniformity and balance is maintained by all the states in this application of their written constitution.

The UK does not have a written constitution but recognizes human rights through its treaties. The main human rights document in the UK is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This resulted from the UK’s membership with the Council of Europe. This treaty though does not have a direct effect within the UK. The UK is a dualist state. Parliament therefore has to adopt the international law in order for it to apply directly. This did not happen until October 2000 with the Human Rights Act.\(^7\)

The UK agreed to recognize article 3 of Protocol No. 1 of the Convention. This article recognizes the right to free elections. In Hirst v. the United Kingdom, the Grand Chamber held the UK had violated article 3 in providing a blanket ban on prisoner voting rights. Subsequently, the UK proposed to implement some legislative reforms but had not

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6 http://en.wikipedia.org/wiki/Felony_disenfranchisement
completed any. On November 22, 2012 the UK government proposed a draft bill with three proposals. Two of the proposals allow prisoners voting rights under limited prison terms of either under 6 months or under 4 years and the third proposal allowed for the existing law on a complete ban.\(^8\) A joint committee was appointed to scrutinize the bill and it is currently receiving oral evidence.\(^9\)

This conflict is currently of great concern for the British people. The majority of Britons are against the right of prisoners to vote. They feel the House of Commons should have a say in this not unelected foreign judges. Some argue that the UK should withdraw from the Convention and stand by its citizens, enforcing Parliamentary Supremacy. But others recognize broader issues in withdrawing.\(^{10}\) The duties of the UK as one of the original signatories, the implications for other countries both as signatories and non-signatories, and the future of other fundamental rights are some issues of concern.

Disenfranchisement is a restriction on a convention right. Restrictions placed on rights such as in article 3 of the ECHR provision will be considered against standards of proportionality. The restrictions must be both lawful and proportionate. Proportionate requires the means to be no greater than necessary to meet its lawful aim.\(^{11}\) In a recent 2011 case, *Scoppola v. Italy* the Grand Chamber of the ECHR found article 3 was not violated where a lifetime felon was banned from voting for life. The court found that the lifetime ban was due to the lifetime imprisonment and thus proportionate to the crime.

\(^8\) http://www.echr.coe.int/Documents/FS_Prisoners_vote_ENG.pdf

\(^9\) http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-voting-eligibility-prisoners-bill/

\(^{10}\) http://www.economist.com/blogs/bagehot/2011/02/prisoners_voting_rights

The court further distinguished Italy’s laws on disenfranchisement, recognizing a tiered arrangement where the ban was proportionate to the time served and applied only to prisoners with a sentence of 3 years or more.\textsuperscript{12}

In contrast, in the earlier 2006 UK case, \textit{Hirst v. UK} the court held the blanket ban on disenfranchisement for incarcerated prisoners a violation of article 3 of Protocol 1 of the Convention on Human Rights.\textsuperscript{13} The court did not hold that all prisoners should be given voting rights but pointed out that a blanket ban for all prisoners was a violation.

A compromise on the draft bill being reviewed by the Joint Committee in the UK seems the best solution when comparing the pros and cons of non-compliance with the ECHR. The Britons may still uphold a ban for prisoners who have a sentence of a specific term rather than an outright ban based on \textit{Scoppola}.

If the UK doesn’t comply there are several outcomes. The UK may pull out of the European Convention on Human Rights, the Council of Europe may remove them from their membership, or the Council of Europe may allow the violation by doing very little or nothing about it. All of those outcomes would result in a negative connotation for both the UK and the ECHR. UK is an original signatory to the convention. Other countries both member and non-member will look to the UK’s response to validate the effectiveness and power behind the Convention. If the UK is kicked out, this may result in a weaker Council and maybe less effective Convention. Other States may decide to opt out or leave the Convention because they also apply disenfranchisement. If the UK decides to remove itself from the Convention, the same effects may result as stated above. And if the Convention does little or nothing then they will have little to no

\textsuperscript{12} \url{http://www.headoflegal.com/2012/05/22/ecrhr-grand-chamber-judgment-scoppola-v-italy/}
\textsuperscript{13} \url{http://www.bailii.org/eu/cases/ECHR/2005/681.html}
effectiveness in enforcing any fundamental rights. These outcomes would prove harmful for not only the Convention and the UK but also the other member States and non-member States. The UK has a responsibility to itself and globally to try to find a compromise for its citizens and globally to recognize the rights it agreed to abide to.

Both the US and UK must look to the broader responsibility they signed onto. In the US context, the US Constitution is supreme therefore, each State must defer to it where it applies. Here, the Supreme Court has found an expressed consent to disenfranchisement in the 14th amendment section 2. In the UK context, Parliament passed the Human Rights Act and made the Convention directly applicable. Parliament has not struck the Act and therefore modifications should be made to comply with the article 3 violation. The alternative options will affect the way other countries view and maybe react to the Convention, the Council of Europe, the UK, and fundamental rights, probably in a negative light. The fundamental rights of the members and non-members of Europe should be upheld and protected, as was the intent of the signatories. The recently held Scoppola case allows for disenfranchisement in limited circumstances without an outright ban. This may be a measure with which the UK may be able to rely for its right to ban convicted citizens. A compromise may be had if the UK changes its outright ban to a more narrow scope. The prisoner rights draft bill proposed and currently being reviewed may offer just the compromise the ECHR is looking for.