Against Prisoner Disenfranchisement in the UK

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Introduction

This essay examines the morality of removing the voting rights of convicted prisoners in the U.K. It examines the arguments used to defend disenfranchisement and examines whether or not the practice is coherent with the traditional goals of our criminal justice system.

The reason for writing on this topic is twofold. Firstly, the issue of disenfranchisement has been forced into the British political arena by recent rulings from the European Court of Human Rights (ECHR) that the blanket ban on prison voting, as it currently stands, violates the Human Rights Convention. The media furore around the issue presented only superficial analysis, and so this essay provides a more in-depth exploration of the issue. Secondly, whilst much has been written on disenfranchisement with reference to The United States, little has been written with reference to the British system. Since the political landscape, the size and nature of the prison population, and the criminal justice system, are subtly different in Britain: this essay seeks to address The United Kingdom’s unique situation.

The essay starts by demonstrating that the arguments in favour of disenfranchisement are simply not strong enough to justify the harm done to the individual, the democratic process and to society. The essay then argues that the nature of prison population, where both the poor and members of ethnic minorities are highly over-represented, makes disenfranchisement a morally dubious practice which perpetuates inequalities and corrupts the democratic process. It is argued that disenfranchisement is against the inclusive and non-prescriptive spirit of democracy and against the general move towards enshrining the right to vote as inalienable. It is also argued that enfranchising prisoners is an important safeguard against unjust laws, overcriminalisation, and oppressive governments.

Various forms of compromise are examined. Whilst more defensible than total disenfranchisement, the proposed compromises are fraught with difficulties and fail to address some of the fundamental problems of justifying any form of disenfranchisement. The essay
suggests that the total enfranchisement of all prisoners is the best way forward, and that
disenfranchisement should be seen as a wholly inappropriate, ineffective, and outdated form of
punishment.

Let us first look at the law as it currently stands, the historical context of prisoner
disenfranchisement in the UK, and the recent pressures placed on the British Government by
the European Court of Human Rights.

Disenfranchisement in the UK: The Present Situation and its Historical Context

The current law on prisoner disenfranchisement in Great Britain is covered in Section 3 of the
Representation of the People Act 1983\(^1\), which states that:

“A convicted person during the time that he is detained in a penal institution in pursuance of
his sentence or unlawfully at large when he would otherwise be so detained is legally incapable
of voting at any parliamentary or local government election.”

There are currently over 85,000 prisoners in the UK and the prison population continues to
grow at an alarming rate: between 1995 and 2009, the prison population in England and Wales
grew by 32,500 or 66% (Ministry of Justice, 2009). The UK government submitted to the
ECHR that the current ban affects 48,000 prisoners (since prisoners on remand can still vote),
which the ECHR deemed to be a significant figure (White, 2011).

The historical origins of disenfranchisement in the UK can be traced back to the Forfeiture Act
of 1870 which states that:

“[...] If any person hereafter convicted of treason or felony, for which he shall be sentenced to
death, or penal servitude, or any term of imprisonment with hard labour, or exceeding twelve

months, shall at the time of such conviction [...] continue thenceforth 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.”

Prior to this the right to vote was mediated by the Reform Act of 1832 which allowed on those with a property worth more than a certain value to vote. Cheney (2008) asserts that the right to vote has always been based on privilege and that current disenfranchisement laws manifest this same injustice.

A recent E.U. ruling seems likely to force changes in the law. In March 2004 the European Court of Human Rights (ECHR) ruled that an absolute ban on convicted prisoners voting was in breach of Article 3 of the First Protocol to the European Convention on Human Rights (the right to free and fair elections). The case (Hirst v. United Kingdom) was brought by John Hirst, a prisoner who was sentenced to a term of discretionary life imprisonment after pleading guilty to manslaughter in 1980. The British government unsuccessfully appealed the decision before the Grand Chamber of the ECHR. A spokesperson of the then labour government said:

“It remains the government's view that the right to vote goes to the essence of the offender's relationship with democratic society, and the removal of the right to vote in the case of some convicted prisoners can be a proportionate and proper response following conviction and imprisonment. The issue of voting rights for prisoners is one that the government takes very seriously and that remains under careful consideration.” (Travis, 2010)

Shadow attorney general Dominic Grieve said: “Giving prisoners the vote would be ludicrous. [...] If convicted rapists and murderers are given the vote it will bring the law into disrepute and many people will see it as making a mockery of justice.” (Johnston, 2010) Indeed, the mention of the murders, rapists and “pedos” is an unfailing recurrence in the media coverage of the debate. As will be discussed, the vast majority of the prisoners are convicted for breaking
lesser serious laws, many of which do not refer to moral issues at all, and some of which are highly contentious.

Very few MPs seem to openly consider the possibility of removing the practice of disenfranchisement completely. When the UK government appealed to the ECHR, the ECHR concluded that:

“There was no evidence that Parliament had ever sought to weigh the competing interests or to assess the proportionality of a blanket ban on the right of a convicted prisoner to vote. It could not be said that there was any substantive debate by members of the legislature on the continued justification, in the light of modern day penal policy and of current human rights standards, for maintaining such a general restriction on the right of prisoners to vote.”

(Quoted in White, 2011)

Indeed, the position of the government seems unduly closed-minded considering the position of other countries. A report by the European Centre for Parliamentary Research and Documentation (ECPRD) surveyed 36 countries’ policies on prisoner voting rights found that, of those countries, prisoners may vote in 16 of them, can “frequently/sometimes” vote in 13 of them, and are disenfranchised in 13 of them. (White, 2011). This illustrates that enfranchising prisoners is possible, it does not risk disrupting the functioning of the democratic process, and is in many ways the norm in the international community.

Six years have passed since the ECHR decided that the general, automatic and indiscriminate restriction on voting by convicted prisoners was a breach of the human rights convention. The justice minister Lord McNally said in 2010 that the government was considering both the view that the view that granting the vote to certain prisoners was a useful way of rehabilitating them into society and that the removal of the vote was a proper response to someone who has committed a serious crime (Rozenberg, 2010). Soon after that, in November 2010 The

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2 CASE OF HIRST v. THE UNITED KINGDOM (No. 2) (Application no. 74025/01)
http://www.echr.coe.int/ECHR/EN/hudoc
European Court of Human Rights delivered a blunt ultimatum to the government, “The UK must introduce laws allowing prisoners to vote within six months or face severe legal and financial penalties.”

David Cameron said he felt “physically ill” at the thought of granting convicted prisoners the right to vote (Carrell, 2010). The government reluctantly agreed it had to amend the law. If they don’t act soon enough at least 2,500 prisoners would be allowed to sue the government for damages, but the court stated that each of the 70,000 convicted prisoners in UK jails at any one time could have a case. The government may soon be facing compensation payments of up to £160m.

Erwin James (2010), the Guardian commentator and released convicted murderer, laments that the government’s choice has not been driven by a recognition of the merits of allowing prisoners to vote, by a recognition of their being “worthy to the same considerations as others under The Human Right Act”, but by money. A government source told the Daily Telegraph, “This is the last thing we wanted to do, but there is no way out and if we continued to delay then it could start costing the taxpayers hundreds of millions in litigation.” (Porter, 2010)

The ECHR ruling does not require Britain to give all prisoners the vote, but it does mean that the government can no longer maintain blanket restrictions on prisoner voting. It would seem that at no point did the government openly the prospect of universal enfranchisement of all convicts serious consideration. Lord Falconer, then Lord Chancellor, said, “I can make it absolutely clear that in relation to convicted prisoners, the result of this is not that every convicted prisoner is in the future going to get the right to vote.” (Ford, 2005). The government seems determined to grant the franchise to as few prisoners as possible whilst still appeasing the ECHR: various compromises have been proposed to grant the franchise to a limited number of prisoners based on sentence-length.
Whilst these compromises may represent progress, and they will be discussed in more detail later in the paper, it is the position of the author that disenfranchisement is a wholly inappropriate form of punishment. Consequently, this paper argues for the enfranchisement of all prisoners. To understand why, let us first analyse the supposed justifications for disenfranchisement, before looking at the arguments that support granting the franchise to prisoners.
Arguments for Disenfranchisement

The Argument from Contempt of Law

The first argument we will examine states that individuals who commit crimes show contempt for the rules of civil society and that consequently they should lose the protection of those rules. The laws of our country aim at establishing a system of mutual benefit: criminals flout these rules, they choose not to shoulder the burdens necessary to maintain such a system. Since they have shown a disregard for the law the state can, in the interest of fairness, legitimately remove the right to participate in the democratic systems that determine what those laws are and who administers them.

However, it is not true that those who break the law necessarily show contempt for the rules of civil society. An individual may show contempt for one or a few such rules, they may still have a high respect for other rules and the rule of law in general. The individual law breaker may have a high respect for the democratic system, assuming his crime was not electoral fraud, he has not shown contempt for the rules that safeguard such processes and thus cannot be legitimately deprived of political franchise.

Furthermore, the idea that breaking a law is, fundamentally, an act of contempt for that law is an over-simplistic interpretation. A desperate heroin-addict may feel compelled to commit burglary, they may feel that they have no choice, they may nonetheless both respect the law and feel pained to break it. It cannot be assumed that all prisoners feel, or have ever felt, contempt for the law: consequently such an argument cannot be used to justify blanket disenfranchisement.

Moreover, Lippke (2001) argues that it is fundamentally a leap to assert that those who break a few rules should lose the protection of them all. Assuming that convicts ought to have some of
their rights curtailed, an account is then required to show which rights it is legitimate to curtail.

**Allowing Prisoners to Vote would Damage Democracy**

There are some crimes, however, which could be deemed to be direct assaults on the democratic political system itself. Examples of such crimes would be electoral fraud, treason or sedition, or attempts to overthrow or undermine an elected government. If an individual broke laws designed to maintain the democratic system, it could be argued that they should lose the right to participate in that system. Failing to disenfranchise such prisoners would risk damaging the democratic system.

This seems fair enough, but such an argument cannot be used to justify a blanket ban on prisoner voting. Only a very small portion of the current prison population would have their disenfranchisement upheld by such a justification since that type of crime is rare.

Lippke (2001) discusses the idea that a great many crimes, perhaps all serious crimes, constitute assaults on democratic political practices: the democratic political process is what yields the laws that are broken, by breaking them, one fails to live in accord with democracy. Since criminals are unwilling to respect the consequences of other peoples’ democratic participation, perhaps they should have their right to participate in the democratic process temporarily revoked.

The above argument, however, rests on the idea that the creation of laws is based on the general-public’s democratic participation. It assumes that enfranchisement is an important factor in the creation of new laws. In a way this is definitely true, we democratically elect a party, they make the laws: so the laws are a result of a democratic process. But in our democracy the general public is kept at a distance from decision making when it comes to laws: we vote for a party, but we have little idea about what laws that party will create, change or abolish whilst in power. Under Tony Blair’s Labour government, for example, over 3,000
new criminal offences were created, almost one new law for every day that government was in power (Morris, 2006), did the right to vote really have much of a role in the creation of these laws? When the right was exercised, did a single one of the voters know what laws would result as a consequence?, clearly not. In “direct democracies” like Switzerland, where citizens have the right to petition public referendums on the creation or abolition of laws, the above argument might carry more weight; but in our own country it carries little weight since, essentially, the laws are not agreed through a meaningful democratic process, consequently, violating the law cannot be deemed an assault on the democratic process.

Lippke (2001) states that if breaking laws implies disrespect for the democratic political system then even non-imprisonable offences should be open to disenfranchisement. He writes:

“Few are prepared to disenfranchise those who commit [...] misdemeanours [i.e. minor offences]. Many in democratic societies are caught violating traffic laws, for instance, but no one proposes disenfranchising them. Yet it will not be easy to locate the line that separates minor from major crimes, and more importantly, to explain why we should attempt to do so in relation to the argument for disenfranchisement now under consideration”

Lippke (2001) also argues that, if the aim is to exclude individuals from the democratic political process, then disenfranchisement alone is not nearly enough. Prisoners can still write letters or articles to national newspapers, publish books, or “in other ways introduce their views into the public discourse about what laws and policies the government ought to adopt”. It could be argued that the right to these other forms of political expression is much more powerful than the right to vote and that, consequently, disenfranchisement fails to politically disempower them anyway.

Whilst defendants of disenfranchisement may wish to exclude prisoners from the democratic process, there doesn’t seem to be an accompanying drive to politically disempower them by removing rights to express their political will through these other channels. Furthermore, if we
recognise that it is important to safeguard the prisoners’ freedom to participate in these alternative forms of democratic expression, then we must recognise the importance of safeguarding their right to vote. Many would feel that curtailment of the freedom to participate in these other forms of political activity would be totalitarian and oppressive, yet the freedom to vote is essentially the same in its basic function.

It is concluded that, aside from cases of electoral fraud, this argument cannot be used to justify the indiscriminate disenfranchisement of prisoners. Later in the essay it will be argued that, far from damaging democracy, the practice of disenfranchisement itself corrupts the democratic process and in many ways threatens our country’s status as a true democracy.

**The Moral Authority Argument**

The moral authority argument can be summarised as follows. Citizens are entitled to vote since it is assumed they are upstanding moral agents, when they break the law they demonstrate that they do not hold the capacity to make moral choices, act in a moral way, and/or understand morality. Consequently, the individual has lost the moral authority required to vote. In October 2003 the Minister of State, Baroness Scotland of Asthal, stated that, “It has been the view of successive governments that prisoners convicted of a crime serious enough to warrant imprisonment have lost the moral authority to vote.” (Quoted in White, 2011)

The term “moral authority” is highly questionable. Perhaps Baroness Scotland of Asthal means to imply that they have lost moral authority in as much as they have broken a social contract? But the European Court of Human Rights’ Grand Chamber quite rightly stated, in
2005: “It cannot simply be assumed that whoever serves a sentence has breached the social contract”\(^3\).

The moral authority argument illicitly equates the illegal with the immoral. Whilst many acts that are illegal are generally agreed to be immoral, many are not. Cases of strict liability for example, where culpability is not essential for prosecution, clearly illustrate that one can be imprisoned whilst having committed no moral wrong. Many cases of prosecuting individuals for recreational drug-possession are clearly not responses to moral wrongs: it may be foolish if an individual wants to take ecstasy pills because of the associated risks, but one could no more say it is immoral than one could say that mountain climbing is immoral. Acts of civil disobedience clearly demonstrate that sometimes breaking the law can be highly moral act. Many (perhaps most) of our new laws are created not with reference to moral wrongs but in the name of social-engineering. In short, not all laws relate to moral wrongs and so it is wrong to state that all criminals have lost the “moral authority” to vote.

Furthermore, there are many acts that are generally perceived to be immoral that are not illegal. For example, many people consider extra-marital affairs to be immoral, yet there are no longer laws that punish such acts. It is not hard to imagine an individual living a thoroughly immoral life whilst still operating in the bounds of the law. Consequently, whether one is incarcerated or free has little bearing on whether one is living a moral life or has a moral character, and consequently whether one has the “moral authority” that is supposedly required to vote.

There are other assumptions at work in the moral authority argument. Even if we assume that a person has performed an act that is both illegal and immoral, is it true that they can no longer be trusted to make informed political choices? This seems like a leap. An individual who has committed even very serious crimes may still make good political decisions, or have exceptional conceptual understanding of right and wrong.

\(^3\) Hirst v. The United Kingdom (No.2), [6 October 2005] (Application no. 74025/01), Grand Chamber, European Court of Human Rights, Strasbourg, 7(b), p.30.)
This notion of ‘loss of moral authority’ ignores the reality of immoral acts: people can and do change, even if it made sense to speak of individuals losing moral authority at the time they committed crime, their regaining of moral authority has little connection to their status as incarcerated or not.

The idea that there needs to be a “moral authority” before one is allowed to vote is highly dubious. Most of the enfranchised population currently vote in accordance with their own self-interest, their vote is not based higher moral principles. To a certain extent, democracy is not about people making moral choices at all, but about expressing their personal needs and interests so that the government is elected in such a way that the majority of people benefit. It might be argued that those in prisoner have, through their crimes, demonstrated that they are only interested in themselves and care not for the interests of society: that this is a reckless assumption notwithstanding, it is worth remembering that self-interest is not incompatible with democracy, expressing self-interest through the vote is precisely how the democratic system manages to respond the myriad interests and needs of its citizens.

This notion of ‘moral authority’ might relate to the “purity of the ballot box” argument. Defenders of disenfranchisement argue that the “purity of the ballot box” is jeopardised if one allows convicted prisoners to vote (Harvard Law Review Association, 1989; Johnson-Parris, 2003). Such an approach is deemed offensive by Johnson-Parris (2003) from the offset by its deeming prisoners to be “impure”. I would call in to question the kind of moral world-view that such notions of purity and impurity assumes, and once again refer to the incomplete correlation between illegality and immorality. Such a theory assumes that a fundamental flaw exists in a person's character as evidenced by his commission of a crime. Johnson-Parris suggests that the “purity of the ballot box” justification is simply another variation of the idea that ‘the franchise should be extended only to those that vote properly’. A similar criticism can be launched against ‘The Criminal Interests’ argument.
The Criminal Interests Argument

One argument in favour of disenfranchisement is that if prisoners were given the vote then they would vote in ways that do not serve the public interest in crime reduction and would instead vote with a view to advancing “criminal interests”. Criminal interests might include the decriminalisation of certain acts, changes in punishment measures, and better prison conditions.

From the offset it seems strange to marginalise this set of interests as being somehow illicit since a member of the non-convicted public may well vote in support of the very same issues. Personally, I sympathise with all of the above examples of political interests, are they “criminal interests” when I hold them? Am I to understand that such interests are off-limits and not worthy of consideration within our democracy?

The issue of prison conditions is an interesting one. Under disenfranchisement the needs and views of prisoners are not represented through the democratic process. Issues such as prison overcrowding, abuses of power, systemic failures, inadequacy of resources are not treated seriously as political issues. Those most directly affected cannot vote to address these issues and the public generally has little interest in prisoners’ wellbeing. Politicians who make decisions about prison conditions are not held accountable by the people most directly affected and so have less reason to improve things.

A recurring point in UK parliamentary discussions on prisoner-voting is that prisoners do not need the vote because there are already established ways of them complaining about prison conditions. Cheney (2008) describes such remarks as disingenuous, stating that it is presumptuous to assume that the only thing likely to motivate prisoners to vote would be potential improvement of prison conditions.

“This not only insults their intelligence but polarises them, even in their very thinking, from an informed and responsible society generally. On a baser level, it completely disqualifies
prisoner complaints from a serious arena of discussion, and suggests they have a callous indifference to any government policies which might actually affect their families outside of prison walls.”

The criminal interests argument implies a misleading duality between the prisoners’ interests and the interests of wider society. Some would argue that it is in the interests of wider society to improve prison conditions in such ways that encourage rehabilitation; the prison system could easily be accused of being thoroughly inadequate in providing an environment suitable for rehabilitation, when doing so would be of great benefit to society.

The idea that prisoner voting would somehow wreak havoc through a mass-decriminalisation movement is clearly nonsense. Firstly, as it has been established, the process by which laws are made is far removed from the process of electing governments. Secondly, I’m sure most prisoners understand the need for laws, even if they feel their prior circumstances compelled them to break the law. Many prisoners have families whose interests they would want to represent through the vote, many still consider themselves to have an enduring stake in society, most will have a future in society after their sentences are complete. These facts indicate that many prisoners would not necessarily vote towards decriminalisation, nor would they necessarily vote based on self-interest alone. Lippke (2001) writes: “Many offenders may well be able to imagine themselves or their loved ones as the victims of crimes. This might lead them to vote in ways similar to those that many of the rest of us vote when it comes to issues of criminal justice”

The argument ‘that prisoners should not be allowed to vote because would fail to vote in a way that serves the public interest’ to be disturbingly undemocratic. Democracy is not about allowing minorities the vote only when they vote for the majority’s interests. This is not so different to the men before 1918 complaining that if women were given the vote they would
only use it to vote in their own interests. Such approaches may well be accused of only wanting to give people to vote if they will vote in a certain way, which defeats the whole point of democracy.

Further, such an attitude makes an assumption about ‘the public good’ as if it can be decided without taking into account a massive subsection of the population. What constitutes ‘the public good’ is always an open question, and a question that needs to be answered democratically by as much of the population as possible.

The notion of ‘criminal interests’ is problematic. What constitutes “criminal interests” is defined in terms of what is socially constructed as crime. But the construction of laws and crimes ought to be informed by the democratic will of the population at large. Since laws should be determined democratically, in a fair democracy it is illegitimate to, from the off-set, marginalise a set of interests as “criminal”.

Moreover, the concept of ‘criminal interests’ is culturally-relative: for example, a large swathe of the prison population in the UK might vote towards decriminalising cannabis, meanwhile a similar portion of the Dutch prison population may feel that cannabis ought to remain legal: in the UK those interests are “criminal interests” whilst in The Netherlands, they are legitimate political interests. The legitimacy of an individual’s political interests should not be determined by the present laws, this runs contrary to the non-prescriptive spirit of democracy.

As a matter of fact, sometimes laws need to be removed: when such circumstances arise “criminal interests” are simultaneously the interests of wider society. Whenever a law needs to be removed, those interests in removing it would constitute “criminal interests”. In the years running up to the abolition of anti-homosexuality legislation, proponents of new legislation would have been representing what at that time were “criminal interests”, yet their political will has come to be viewed as having been in the interests of wider society. Parallels may be drawn between such a case and the current political struggle to end drug-prohibition: currently
such interests may be seen as criminal interests, but many of the movements’ advocates feel they are working towards a wider-public good.

Anyway, given the nature of the UK electoral system, it is impossible that the prisoners could cause changes contrary to the public interest. How many candidates would risk losing the votes of the general public in order to win prisoner votes? If a party or candidate supported these “criminal interests” and they were bad policies, they simply wouldn’t survive the general election. We are talking about, at-most, eighty-five thousand votes, when in 2010 there were almost thirty million voters (House of Commons, 2010): it is not possible that prisoners would be able to cause dramatic shifts in the political landscape of Britain.

It is concluded that the criminal interests argument is wholly flawed as a justification for disenfranchisement: the marginalisation of a set of political interests as “criminal” is highly specious, the argument is undemocratic, and it makes baseless assumptions about the prison populations’ interests and potential voting patterns.

**Social Contract Justifications for Disenfranchisement**

The social-contract argument for disenfranchisement runs as follows. By choosing to live in a civil society we give tacit consent for the state to make laws for the public good, we agree to live by them and support them. When the law is violated, the individual forsakes their right to participate in their own governance (Lippke, 2001). Put differently, a criminal can be said to have failed to uphold his side of the social contract, in response to this the state is justified in removing the person’s right to vote: the right being a benefit only bestowed on citizens who adhere to the social contract. Johnson-Parris writes:

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4 As an aside, there is currently a problem of low voter turn-out in general elections, providing prisoners the vote might spur the public into voting in larger numbers.
“The provisions of the social contract are shaped in the ongoing negotiations between the government and the people through the exercise of the franchise [...] The contractarian approach to disenfranchisement “emphasizes the deliberate nature of the criminal's decision to breach the social charter” as justification for withholding the franchise and effectively silencing the felon in the ongoing contract negotiations.” (Johnson-Parris, 2003)

The social contract justification for disenfranchisement seems to have many supporters; it also seems to carry a great deal of rhetorical power when wielded by the media. David Davis, former Tory leadership contender, referred to the social contract justification for prisoner disenfranchisement when he explained to MPs:

“The general point is very clear in this country – that is that it takes a pretty serious crime to get yourself sent to prison. And as a result you have broken the contract with society to such a serious extent that you have lost all of those rights – your liberty and your right to vote. So it is not unjust. Every citizen knows the same level of crime which costs them their liberty, costs them their vote.” (Watt, 2011)

Davis’ statement is problematic. Firstly, that every citizen knows the punishment for crime cannot justify that punishment: it is the prevailing view in our country that capital punishment is an immoral form of punishment, if capital punishment were still in place and we all knew about it, that would not make it any more reasonable or defensible. Indeed, by Davis’ reasoning, any punishment can be justified as long as every one knows about it. Secondly, in more practical terms, his assumption that every one knows that certain levels of crime will result in disenfranchisement is probably not true.

The social contract theory is just one way of understanding our society: politicians who refer to the theory are doing so as if it is a given, an indisputable fact about the world. Challenging social contract theory at large is far beyond the remit of this essay, suffice it to say that some theorists argue that it is an incomplete and slightly reductionist picture of our social and moral
obligations, some argue it is a system of political thought that has helped to maintain unfair power distributions between the dominant classes and the subjugated ones (see Carole Pateman’s 1988 book, *The Sexual Contract*, Charles Mills’ 1997 book, *The Racial Contract*).

There are many nuanced variations of social contract theory, it is easy to pretend there is this ‘social contract’ that has concrete rules, obligations and meanings that are somehow set in stone, but this is simply not true.

The European Court of Human Rights’ Grand Chamber quite rightly stated, in 2005: “It cannot simply be assumed that whoever serves a sentence has breached the social contract”\(^5\). Therefore justifying a blanket ban on prisoner voting through contractualism is not possible.

Lippke (2001) argues that there is no essential connection between the breaking of laws and the loss of enfranchisement. He states that “It would only seem to follow that offenders are properly subject to whatever legal sanctions attach to the rules they have authorized the state to make on their behalf”. In response to Lippke one might simply argue that adhering to the social contract means abiding by all the laws: whether one agrees with each individual one or not.

Nonetheless, there is ambiguity over what exactly must follow after an individual breaks the social contract. After all, once an individual has broken the they don’t lose *all* the rights that our society affords its population (most of their human rights are still protected): since the prisoner is fully excluded from the benefits that result from the social contract, isn’t removing the right to vote somewhat arbitrary?

It could be argued that whilst the rights of prisoners that are essential to their survival ought to be respected (e.g. rights to food and water), rights such as the right to vote are luxuries only to be given to those who live in compliance with society’s laws. However, aren’t we starting to view basic democratic rights as something that stem quite naturally from the basic dignity and value of the human individual, and something that has a *protective* value that needs to be

\(^5\) Hirst v. The United Kingdom (No.2), [6 October 2005] (Application no. 74025/01), Grand Chamber, European Court of Human Rights, Strasbourg, 7(b), p.30.
maintained for all people equally? Shall we treat voting-rights as superfluous luxuries that can be taken away, or is it better to enshrine them as inalienable? The case for making the right to vote inalienable will be further discussed later.

Some thinkers have sought to challenge the legitimacy of the social-contract (in relation to disenfranchisement) itself. Johnson-Parris (2003) argues that: “disenfranchised felons are unequal parties to a contract that is fundamentally unfair in its formation and substance; thus, their social contracts should be invalidated on the grounds that they are unconscionable.”, the contracts are “unconscionable” in that they are “unreasonably favourable to one party while precluding meaningful choice for the other party”. In his view it should be voided since the terms are unfair and oppressive.

The fairness of disenfranchisement based on social contract theory is highly questionable. It seems that those liable to commit crimes are often the very same people who are reaping the fewest rewards from the social contract, the same people who have had from birth the least access to the benefits of the social contract. In the UK 1% of the population owns 21% of the wealth, the poorest 50% of the population share 7% of the wealth, (HM Revenue & Customs, 2003). We must ask: are we all agreeing to the same social contract here? I think had I been born in the poorest areas of Britain, where I have access to the fewest benefits of the social contract, I would be far less likely to agree to it, in fact, I might feel compelled to breech it.

Whilst the social-contract theory focuses on how the individual has failed society, crime can be symptomatic of society having failed an individual, their anti-social response is not surprising. We cannot treat individual prisoners as isolated from the wider sociological context, by granting individuals moral responsibility we cannot ignore the causal elements that shape criminal tendencies: how has it come to be that they lack understanding about morality and law? Where was the education?
Johnson-Parris (2003) also argues that the social contract ought to have some grounding in morality, and because of this a blanket ban on prisoner voting cannot be justified through contractualism since many criminal offences are not moral wrongs. He also accused contractarian approaches to disenfranchisement of conflating social contracts with legal ones, he cites Professor Michael Lessnoff (1986):

“Contract is a legal term, and the notion of the social or political contract postulates that political obligation is analogous to the legal obligation of a party to a contract [...] not that a political obligation is a legal obligation.” (Michael Lessnoff, Social Contract 1986. Cited in Johnson-Parris, 2003)

One of the reasons this social-contract language is so persuasive is that it presents a very simple and digestible narrative of what crime but the narrative is an over-simplistic and reductionist one. It ignores the myriad sociological correlates with crime, the many criminological theories about what exactly crime is. It presents a situation in which individuals start off as “within society”, they are then ostracized from society after they are found guilty of a crime; one of the aims of prison is then to incorporate individuals into society. But isn’t it true that in many cases, the poorly-educated, low-social mobility, thoroughly alienated individuals were never really a part of society in terms of their access to its goods in the first place?

Social-contract theory ignores the theories of criminology that refer to wider socio-economic processes that cause crime. Mertonian criminology (otherwise known as strain theory), for example, states that crime occurs when individuals believe in the socially-constructed goals society tells them to pursue, but subsequently lose faith in the means of obtaining them that society presents to them. We live in a society of vast inequalities where large swathes of the population have no access to the legitimate means of obtaining the goals that society presents to them: that some of them turn to illegitimate means is not surprising. Whilst the individual may still be said to be responsible for their choices, we must also take into account the
responsibility of the state: both in perpetuating the creation of dubious materialistic goals and (simultaneously) failing to provide sections of the population with the means to attaining them.

When we view disenfranchisement in these terms- isn’t it actually a process of further disempowering the already disempowered? The very people who needed more political power in the first place, who are driven to crime because of detrimental social conditions, are the one’s having their political voices silenced.

Most prisoners have an enduring stake in society, and they are still parties to the social-contract even when they are imprisoned, consequently it is fair for them to influence the unceasing process by which that social-contract is negotiated..

We must also bear in mind that, whilst it is all well and good for philosophers and politicians to understand criminal offending within the neat conceptual framework of social contract theory, it is a way of thinking that many of the offenders themselves may not be aware of. Contractualism is a way of thinking, it is a construct of thought: if an individual has never heard of ‘social contractualism’, and doesn’t view their relationship to society in this way, can they really be said to breach a social contract through a criminal act?

Despite these potential challenges to social-contract justification for disenfranchisement, I feel that it does have some merit. I can see how some might find it a convincing narrative for removing some of the liberties that law-abiding citizens enjoy. It is perhaps the strongest argument for disenfranchisement, but it is nonetheless just one argument and should not be taken as the end of the matter: the argument’s merits need to be weighted against the arguments and proposed benefits that support granting the franchise to prisoners. Further, as discussed above, it is an incomplete account: for there is no clear reason why disenfranchisement ought to be a response to breaching the social contract. We need to ask whether or not the ‘sense of justice’ social contract accounts seem to muster adequately accounts for the reality of crime in terms of socio-economic correlates and whether or not it
results in the greatest good being achieved for society at large. Such an approach fails to indicate any real-world utilitarian benefits that occur as a result of disenfranchisement: especially since, as will now be established, disenfranchisement has little value as a punishment, an incentive for social compliance, a deterrent away from crime or a means of rehabilitation.

**Does Disenfranchisement Cohere with the Aims of Punishment?**

If disenfranchisement was useful in achieving any of the basic goals of criminal punishment, then it might be a defensible practice. The following section argues that disenfranchisement fails to meaningfully contribute to any such goals. This section supports the view of Conservative MP Sir Peter Bottomley who commented that disenfranchisement “is clearly not a deterrent; I do not see that it is a punishment; I do not see that it helps rehabilitation; and I do not think that it is much of a penance either.”

The traditional aims of criminal justice system are to bring about retribution, to discourage crime as a deterrent, and/or to rehabilitate or morally educate offenders. Let us now examine the role of disenfranchisement in achieving these objectives.

**Retribution**

Retributive theories of punishment state that justice is not about merely achieving the greatest good in utilitarian terms, it is not about a social cost/benefit analysis, but providing a criminal ‘what they deserve’ in response to an evil, wicked or forbidden act. In some forms of retributivist theory the state-sanctioned retribution is a moral end in itself (Feinberg & Gross, 6 House of Commons Debate. 10 February 2011 c564
1995). Others emphasise the importance of expressing, through punishment, disgust at a criminal’s act, whilst adding that a purely symbolic expressions of this disgust would be inadequate. Others emphasise “Not allowing people to get away with their crimes.” (Gross, 1979) A strong case can be made for retributivist justifications for punishment in relation to its focus on satisfying the aggrieved party, not least of all because failure to do so may result in further criminal acts if the aggrieved party felt they had to take justice into their own hands. (J Feinberg, 1970)

One form of retributivism states that the aim of punishment is to restore the equal distribution of benefits and burdens that the laws of reasonably just societies establish. (Lippke, 2001)

“By violating the law, criminal offenders either take more benefits than they are entitled to or seek to avoid the burdens of law-abidingness. Legal sanctions aim at proportional removal of the unfair benefits or proportional imposition of compensating burdens”.

Lippke argues that such a theory has no essential implication on the issue of disenfranchisement. “It is possible to remove or cancel the unfair advantages gained by offenders in a variety of ways. There are numerous penal losses or deprivations that might be imposed, and it is not at all clear why or whether disenfranchisement should be one of them.” (Lippke, 2001)

I argue that disenfranchisement is, put simply, a *strange* kind of punishment. Generally we view the punishment aspect of the penal system in terms of hedonic value: the food isn’t good in prison, there’s no way to make money in order to buy goods and services, liberties removed relate to access to pleasurable or enjoyable activities. I think it’s safe to say that the hedonic value of voting is not what draws people to it, nor what gives it its value. It’s an aspect of the punishment given to prisoners that many of them don’t know about, and many of them don’t care about.
Although there is an increasingly popular notion that prison is becoming too soft, and there are, admittedly, “professional prisoners” who would rather be in than out: prison is no holiday. The sanctions imposed on individual freedom and the pursuit of happiness, the limitations on normal sexual expression, the reduced access to pleasurable or enjoyable pursuits, and the harsh environment already constitute a severe punishment. Even after a prisoner is released, their lives have been irrevocably derailed, employment prospects severely damaged (6 out of 10 employers refuse to employ ex-convicts). Since we already have such a formidable and unpleasant means of punishment in the form of prisons: why add disenfranchisement, a quite distinct punishment, on the same grounds? If the concern is that prisoners are not being punished enough, why not just give them more time in prison instead of taking the vote away?

Most accounts of retributivist justice place limitations on the types and degrees of punishment that the state is allowed to use. I argue that disenfranchisement should be off the table as a punishment: it corrupts the integrity of democratic process in that it silences political demographics and movements and removes a vital safeguard against tyranny, it interferes with the rehabilitative aspect of punishment, and it prevents us achieving the noble goal of safeguarding a universal and inalienable right to vote. It fails to carry much weight as a punishment since many prisoner’s don’t care about it; I would even go so far as to say that disenfranchisement harms society far more than it harms the individual prisoner.

The notion of individual criminals “deserving” these punishments is muddied when we consider the socio-economic conditions associated with many of the individuals who commit crimes; further, we must be careful to distinguish between moral wrongs and legal infractions: many of our laws exist for amoral reasons, law is increasingly used as a social-engineering project, many criminals are prosecuted despite there being no victims whose interests are being served through punishment.

A criminal justice system must consider the feelings of the victims of crime. One of the functions of punishment is to appease the wronged. Whilst the victims of a crime, or the
families of victims may feel like they would rather the perpetrator didn’t have the vote: there are many things victims would like to have done to their offenders which an enlightened state would not consider. Whilst disenfranchisement is the current norm, if we change that norm I wonder if victims of crime will really care that much: do we really think, twenty years after the disenfranchisement laws have been changed, that a victim of a crime will leave the courtroom, having seen the perpetrator sentenced to a reasonable and just amount of time in prison, that they will lament that “justice hasn’t been done because the individual can still vote.”?

Disenfranchisement is such a “background” punishment, one that many criminals and victims don’t even realise is implied by a prison sentence, I don’t think that by enfranchising prisoners we are letting the victims down.

“A different sort of retributive argument for disenfranchisement focuses on devising criminal sanctions imposing penal losses on offenders commensurate with the harms they culpably caused their victims. In particular consider offenders whose crimes result in the deaths or drastic diminishment of the quality of their victims’ lives. [...] The state should treat them as political non-entities in much the way these offenders treated their victims as moral non-entities. Disenfranchisement would deprive offenders of more than just their freedom and hence, it could be argued, visit commensurate losses on them.” (Lippke, 2001)

But such an approach would not be relevant to all the individuals currently imprisoned, some of whom are inside for victimless crimes. Of those criminals whose offences did have victims, only a small portion would have been harmed in the kind of ways that would justify a punishment more severe than prison.

This approach, which refers to political non-entities, may have its pedigree in “civic death” approaches to the issue. Prisoners are shut away not only to protect society, but also to symbolise society’s disgust at their acts. Although prisoners are no longer executed, the idea of “civic death” is that they lose the rights of citizens without dying in a literal sense. Those who offend against the common good of society should have no right to contribute to the
governance of society. They can only be readmitted to society, both physically and in terms of their rights, when they have made amends to society by serving their sentence.”

Talk of civic death still crops up in academic writings and is still referred to by the political/legal professionals in America who defend disenfranchisement. But does the idea of ‘citizen death’ make sense? The convicted individual is still expected to follow the laws of society (and they may well do), the individual is still subject to political powers and decisions, they are still a part of society and they have an enduring stake in it: these notions of civil death are remnants of a bygone era, an out-dated mode of thinking, it seems to me the only way you can really stop being a citizen in a country is to leave it. Even if the concept of civic death were a coherent one, is the concept of citizen death a useful one? Is it not better for the individual offender and society that they remain as un-excluded (whilst still being punished) as possible, so that successful integration can be achieved and that individual can begin to contribute to society?

In any case: the notion of civic death is applied selectively. People serving a prison sentence of any length may continue to contribute financially to society. “They pay tax on their savings, capital gains and any earnings that they receive during their sentence. If they are civically alive when it comes to financial contributions, they should be treated in the same way when it comes to basic human rights.” (Cheney, 2008)

Lippke (2001) also points out that if the aim of disenfranchisement is to make offenders into political non-entities then it is a wholly ineffective measure. There are still numerous ways in which prisoners can enter into the political discourses of society, many of them arguably more powerful than the ability to vote, to fully prevent political participation would be hard to achieve and would call for measures most moral-theorists would find unappealing.

It is concluded that if one believes the role of criminal punishment is retribution, disenfranchisement is a peculiar and somewhat insignificant means of achieving it since it
holds no hedonic value and is not especially valued by much of the population; it is also a
punishment that pales in comparison to the punishment of imprisonment itself. Whilst a
retributivist may hold that some of the prisoners rights must be curtailed in the name of
punishment, there is no clear reason why the right to vote ought to be one of them.

**Deterrence**

According to utilitarian accounts of punishment, punishment is only justified when, and only
because, it seems likely to achieve certain social benefits and avoid certain social harms
(Feinberg and Gross, 1995). Deterring potential offenders is one of the goals of punishment
that stems from this account.

Considering the many losses, risks, harms and deprivations already entailed by imprisonment,
it is unlikely that disenfranchisement really serves as much of a deterrent. Considering the
horrors associated with prison, it is difficult to believe that adding disenfranchisement to the
punishment would succeed in deterring potential offenders.

Most deterrents work on a hedonistic basis: by removing access to pleasant or pleasurable
experiences or ensuring unpleasant ones; for all its goods, I think it is safe to say that voting is
not a pleasurable activity. In the 2010 election only 65.1% of the population voted\(^7\) this
suggests that the vote is not particularly valued by much of the population: using it as a
bargaining chip in deterring crime is clearly misguided. One must wonder how many of those
convicted in the UK were active political participants in the first place. Lippke notes, when
discussing the American system, that the extent to which the vote is not valued perhaps
indicates deeper problems with the democracy in which those votes are cast: “it might be
argued that in more just and genuinely democratic societies, all citizens would value the
franchise to a greater extent.” (Lippke, 2001)

\(^7\) House of Commons Research Paper 10/36
Anyway, even after the recent media coverage on the issue, it is likely that a great many offenders and would-be offenders do not know about disenfranchisement: disenfranchisement is not even mentioned when the individual is being sentenced to prison. What good is a deterrent if people don’t know about it?

We can conclude that disenfranchisement provides, at best, a marginal effect as deterrent towards crime-reduction. Therefore deterrence, as a justification for punishment in general, cannot be used to justify disenfranchisement.

**Rehabilitation & Moral Education**

The prospect of turning criminal offenders into useful contributing members of society represents an attractive ideal for many thinkers on the issue. Rehabilitation can be used as a justification for punishment where the process of punishment reforms criminals, and aims to re-habilitate and re-integrate them into wider society. Education or therapy is seen as integral to the process of rehabilitation, the goal being to foster attitudes and mental states that are helpful, rather than harmful, to society. Because of the focus on causing the best possible outcome for society at large, rehabilitation is a thoroughly utilitarian approach to managing criminality.

The current policy of blanket disenfranchisement offers nothing towards rehabilitation and in many ways may present an obstacle to it. There are good reasons for thinking that the ability to vote would aid in the process of rehabilitation. Firstly, the ability to vote encourages individuals to think about politics, society, morality, and citizenship. It encourages the individual to form political and moral views, to weigh up different arguments and perspectives, to arrive at beliefs. It encourages engagement with current affairs, with all the moral issues that naturally arise in that sphere. In this sense, the right to vote can play a role in the moral education of prisoners.

Secondly, the right to vote encourages re-integration. It allows prisoners to feel they have an enduring stake in a society that they can help shape. Cheney (2008) writes: “I would argue that
each and every prisoner is affected by the blanket ban because it quite simply undermines the very core of their rehabilitation and resettlement into the community.” Labour MP Kate Green agrees:

“If we fail to give prisoners any stake in our society, it is difficult to see why they should wish to reintegrate into that society-why they should feel any sense of obligation to mutual rights, dignity and respect when we do not afford that to them. I see an opportunity alongside this new legislation to improve education and rehabilitation in our prisons.” (Quoted in White, 2011)

The Catholic Bishops of England and Wales also support the view that prisoners should have the right to vote for similar reasons. Their report ‘A Place of Redemption’ states that:

“Prison regimes should treat prisoners less as objects, done to by others, and more as subjects who can become authors of their own reform and redemption. In that spirit, the right to vote should be restored to sentenced prisoners.” (from White, 2011)

As will be discussed later, social exclusion is, from the offset, a vital component in the genesis of criminal behaviour. The risk is that Individuals who already feel that they are not really a part of the mainstream society, who have disadvantaged access to the benefits afforded to other members of society, if further excluded by disenfranchisement will be more likely to commit further crimes.

Considering that if successful reintegration is not achieved, then when a prisoner is released the chance of recidivism is increased: enfranchising prisoners may discourage recidivism since the individuals concerned are included in society and are given a civic responsibility. A research article from The United States indicates that, amongst those arrested, individuals that vote are half as likely to be arrested again as those who (Uggen & Manza, 2004) Further research needs to be done to see if such trends are present in the UK also.
The most plausible use of disenfranchisement as a means to reform would be to encourage offenders to improve themselves in order to regain their right to vote:

“It might fulfil this role if offenders were made to feel the sting of exclusion from the ranks of equal political participation. Admittedly this might require some official public announcement of their exclusion, and presuppose more interest in voting than is often displayed by serious offenders. But suppose disenfranchisement was attended with more fanfare and that offenders were more inclined to see its loss as significant. Under these conditions it might play some meaningful role in rehabilitating or morally educating them.” (Lippke, 2001)

But even under such conditions, when compared with the other things offenders regain at the end of their sentences, regaining the vote is probably not the greatest incentive. If the prospect of getting out of prison isn’t going to bring about changes in behaviour then I doubt very much that the ability to vote is going to do it either.

Enfranchising prisoners is one way the state can heal the relationship between itself and the individuals: it’s a way for the state can stand by its more unruly citizens and communicate that they have not been forgotten or abandoned, as many of them feel they have.

A hard-liner might argue that rehabilitation should focus upon making prisoners realise and sincerely regret the effects of their actions; it should not aim to give them a feeling of dignity or the illusion that they are full members of society. But whether or not prisoners are viewed as full members of society, they are human beings and certain rights are implied by that. Such a view fails to recognise the inherent dignity that comes merely from being a human being.

Anyway, disenfranchisement is unlikely to contribute to moral education or lead to regret.

It must be mentioned again that, whilst “moral education” is seen to be a justification for punishment, many crimes are not moral issues per-se. Of our many thousands of laws, many exist for amoral reasons.
It is concluded that disenfranchisement serves no useful role in rehabilitation, enfranchising prisoners may contribute to the process of rehabilitation and reintegration.

The Case Against Disenfranchisement

The Nature of the Prison Population

Understanding the nature of the prison population is necessary before looking at arguments against disenfranchisement. Lippke (2001) points out that many of the arguments in favour of disenfranchisement that seem persuasive in abstract lose much of their weight when the social conditions and backgrounds of offenders are taken into account. This is as true in Great Britain as it is in The United States where Lippke is writing.

I present the case that once we understand the social background of the prison population the meaning of disenfranchisement as a process within wider society becomes very disturbing: it is tantamount to disempowering the already least powerful and further failing those who society has already failed. Further, Cheney (2008) correctly states that “a [...] troubling consideration with regard to fairness and rationality is the threat posed to the very heart of democracy in the uneven disenfranchisement impacting on the participation of certain groups within the political process.” this issue will also be explored in the following section.

Disadvantaged Socio-Economic Backgrounds

The first notable feature that the statistics on the UK prison population indicate is that the vast majority come from disadvantaged social and economic backgrounds. It seems highly questionable that those who already have the least political power are the one’s most likely to be further silenced through disenfranchisement.
Of female prisoners: 1 in 4 spent time in local authority care as children, 74% left school either at age 16 or before, whilst 82% of the population have some form of qualification, only 39% of female prisoners do, 41% have not worked in over 5 years, over half of all women prisoners have suffered domestic violence, over a third have experienced sexual abuse. (The Prison Reform Trust, 2010)

Of the 85,000 prisoners in this country, over three-quarters cannot read, write or count to the standard expected of an eleven year-old. (Jones, 2010) 49% of male prisoners and 33% of female prisoners were excluded from school, 52% of male prisoners (71% of female prisoners) have no qualifications.

These figures indicate that many of the prisoners have come from disadvantaged backgrounds, their lives have been mired by powerlessness (both political and otherwise). Many have been failed by their parents and the care system, the majority have been failed by the education system, many have not been exposed to positive moral influences, role-models or education. We hold them accountable for having failed society, not only do we fail to hold society accountable for having failed them, but their ability to influence the governments that have consistently failed them is taken away through disenfranchisement; governments are made less accountable to these individuals since, under disenfranchisement, their support does not matter.

Cheney, (2008) writes that “the history of voting in England has been one based upon privilege. Prior to the Reform Act 1832, only those with property of a certain value were entitled to vote and the Act extended the franchise to certain householders.” Considering the correlation between poverty and crime it can be stated that the current disenfranchisement laws are similarly biased against the poorer sections of British society: this is undemocratic and unfair.

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8 http://news.bbc.co.uk/1/shared/spl/hi/pop_ups/06/uk_prisons_in_the_uk/html/1.stm
Knowing these statistics, it is problematic to justify disenfranchisement in terms of a social contract, because we know that many those who become disenfranchised have, from the day they were born, reaped the fewest benefits from the social contract (in that they have had the least access to opportunities).

We must consider that if we disproportionately exclude the poor from voting through disenfranchisement laws, then the kind of social, economic and political changes that are liable to readdress the inequalities that mire this nation are less likely to be addressed; essentially, those who the state is failing the most are not given the political power necessary to change the state in such a way as to prevent the same failures affecting future generations.

The correlation between poverty and crime suggests that there are wider socio-economic forces that play a role in causing crime, it is not simply that criminals are bad people, but are in many cases the product of their circumstances: the case for retributivist justification for disenfranchisement is thus weakened, and disenfranchisement is shown to be unfair since in many cases it is, in fact, state punishing individuals for its own failings.

As an aside, I feel this is a good point to mention that the issue of disenfranchisement of prisoners in the UK lends support to two of the key claims of the Marxist Theory of Law (Hunt, 2010) namely that “The content and procedures of law manifest, directly or indirectly, the interests of the dominant classes.” and that “Law gives effect to, mirrors, or is otherwise expressive of prevailing economic relations.”

Not wholly unrelated to the disadvantaged social and economic backgrounds of the prison population are the mental health issues. Whilst less than 5% of the general population have two or more mental disorders, 72% of male and 70% of female sentenced prisoners do. These figures are taken to indicate the need to emphasise rehabilitation over moral-judgement and retribution. 66% of male prisoners and 55% of female prisoners have used drugs in the last
year (compared with 13% and 8% in the general population), 63% of male prisoners drink to hazardous levels, 39% of female prisoners do.

The obvious question is ‘is it right to be punishing the individuals to whom theses statistics refer?’ Perhaps a more refined question, however, is: ‘do we have the balance between retribution and rehabilitation right, given what we know about the challenging experiences that have shaped the behaviour of criminals?’ Let us look at this matter in some depth.

Firstly, we have to be careful not to generalise. What is true of some of the socio-economic conditions that prisoners have come from is not true for all of them. Further, it is a leap to equate correlation with causation. However, it is reasonable to assert that the conditions of poverty and low access to education and opportunity would make individuals more likely to offend.

A balance between social-determinism and recognising moral autonomy needs to be struck. But it seems obvious to me that an individual who is born into a culture of alcoholism, drug use, domestic abuse, crime or poverty, would have the course of their life influenced in ways that would not have been so if they had been born into different circumstances. It is naive to treat people as causally isolated individuals, whose choices flow from some inherent nature that is good or evil, without taking into the account the myriad causal variables that lead to crime. The very concept of rehabilitation rests on the idea that the individual’s future behaviour can be positively influenced by external forces. In other words, one of the primary justifications for punishment, rehabilitation, rests on a partially deterministic worldview.

Regardless of one’s socio-economic background, surely when faced with the choice between committing a crime and not committing a crime, every human being has the ability to chose to live within the law. In this sense they are responsible. Such a perspective, whilst true, risks ignoring the powerful forces that influence decision making. Thirty-five percent of our MPs had the good fortune to be educated in private schools, only 2.3% (in 2005) of our MPs are
non-white (Cracknell, 2005) I think it is clear that many of them would not be where they are today had they been born to alcoholic or drug-addicted parents in a high-unemployment area of the UK, some of them may even have ended up serving prison sentences themselves.

Almost every individual in our society is exposed to the same conditioning: we are raised to want certain things out of life, consumerism encourages people to feel that they need certain things in order to be happy. Given this influence on the minds of the population, it seems largely determined that if one section of society feels (perhaps accurately) that they have no legitimate access to these goods, they may feel compelled to use illegitimate means to get them. This account of crime would explain why, in a culture whose consumerist forces seem to especially target women, in 2006 more women were sent to prison for theft and handling stolen goods than any other crime, accounting for almost a third (31%) of all women sentenced to immediate custody. (The Prison Reform Trust, 2010) Further, much of the media commentary on the 2011 riots that occurred around the UK has referred to the disadvantaged social backgrounds of the rioters, who in their raids stole none other than the objects that have been socially-constructed to symbolise a (previously unobtainable) success.

The economic background of the prison population is also important since, in our society, wealth and economic power are significant forces in determining political outcomes. Given that the poorest sections of society have the least access to these more consequential political forces, we need to at the very least protect their right to vote.

**Racial Disparities within the Prison Population**

A disproportionate number of certain ethnic groups can be found in our nation’s prisons. At the end of December 2005, one in four of the prison population, 19,549 prisoners, was from a minority ethnic background; this figure has risen by 2,000 in just three years. In the general population one in eleven are from a minority ethnic background. (Hollis et al, 2003) Overall,
black prisoners account for the largest number of ethnic prisoners (57%) and their numbers are rising. Between 1999 and 2002 the total prison population grew by just over 12% but the number of black prisoners grew by 51%.

In the UK, Black British Nationals account for 11% of the prison population (Hollis et al, 2003) but only 2% of the population at-large is black. The black population of Britain has long been the subject of discrimination and is still struggling to exert influence over democratic decision-making. This is true for other ethnic-minorities: whilst 9.06% of the UK population are non-white (2001, UK Census), only 2.3% (in 2005) of our MPs are non-white (Cracknell, 2005). Disenfranchisement adds to an established problem of the under-representation of ethnic minorities within our democratic system.

There are numerous factors that contribute to this over-representation: poverty, access to housing, and access to education, employment and the means to social mobility.

Discrimination against ethnic and racial minorities still exists and contributes to the problem. Aside from this there is evidence that the criminal justice system, at various levels, is itself prejudiced against ethnic minorities, for example: black people are six times more likely than white people to be stopped and searched\(^9\), young black people are significantly more likely to be refused bail than young white people, and the arrest rate among for black people is around three times that of white people (King’s College London, 2004).

The need for prisoners of ethnic-minority backgrounds to be given a political voice is clear, especially since “over half of Black and Minority Ethnic groups perceived that they had been subject to racial discrimination while in prison.” (Edgar & Martin, 2004)

When the over-representation of ethnic and racial minorities is coupled with disenfranchisement laws we have a force at work that undermines the very functioning of our democracy. Together, these factors mean that certain (already disadvantaged) demographics

\(^9\) Section 95 Statistics 2002/3 on Race and The Criminal Justice System, Home Office
have their political interests under-represented. Crucially, this undermines not only the interests of the imprisoned individuals’ but also the interests of all other members of that demographic.

Allowing prisoners to vote is a pivotal step in addressing the entrenched social and economic inequalities our country faces. If one holds that these inequalities are linked with the occurrence of crime, addressing them is an important step in reducing it. As with the issue of poverty: the same issues that cause these problems are the ones that need to be addressed through democratic process by ensuring that certain social groups have their interests represented. If an already disadvantaged ethnic or racial minority is being disproportionately locked up, it is being disproportionately disempowered under a system of disenfranchisement. Consequently, disenfranchisement hinders the ability for a democracy to correct the myriad factors that cause both social inequalities and the crime that is associated with them. In this sense disenfranchisement is an obstacle to bringing about positive changes that would lead to a fairer and more just society.

Since it is widely agreed that democracies should not exclude demographics based on factors such as race, and since certain ethnic minorities are over-represented, we must conclude that disenfranchisement favours certain ethnicities over others, excluding or including demographics to different degrees. Whilst this is clearly not the sole motivation behind maintaining disenfranchisement laws it is a significant and overlooked consequence, as long as certain racial and ethnic demographics are over-represented in prisons the laws are tantamount to racial-discrimination.

The issue of prison-demographic imbalance and disenfranchisement is important not least of all because it is the long-term interests of non-offending members of that same demographic that suffer, the future generations whose forefathers did not have the political influence to assure that things would be better for them by voting in accordance with the interests of their social group.
**Gender Issues and Disenfranchisement**

Much of the writing on disenfranchisement comes from The United States where the extent of the aforementioned racial inequalities is much greater. Lippke (2001) writes that one in seven black men in the United States cannot legally vote because of disenfranchisement laws. Because of its significance in America, when discussing notable features of the prison population, race and ethnicity have been quite rightly the focus of much of the writing on the issue. A far less discussed issue is that of the over-representation of men in the prison system.

There are over fifteen times as many men in UK prisons as women. In America, where 1 in every 100 citizens is in prison, 1 in every 75 men is in prison and consequently cannot vote. Regardless of the causes of this imbalance, the consequences of it are problematic for the integrity of a democracy because a demographic is being under-represented. When this occurs the interests of that demographic are not recognised and addressed as much as they ought to be. Crucially, this affects not only the incarcerated but all other members of that demographic, and the future generations of that demographic. In short, whatever the form of demographic over-representation in prisons, where disenfranchisement laws are in place, a corruption of democracy occurs so that that group is disadvantaged in the political sphere.

**Recidivism**

Another notable feature of the prison population is that many of them have served previous sentences. According to the Ministry of Justice Compendium to Reoffending (2011) the reconviction rate in fourteen of our prisons is over 70%. There is a clear case for arguing that prisons: with their inhumane, objectifying, degrading conditions; which impose celibacy and idleness for long periods of time, which were built for punishment and not rehabilitation, further breed the same criminal pathologies that lead to recidivism. “Criminal offenders may not be morally admirable individuals, but a sober assessment of what society does to them in
the name of punishment points ineluctably to the conclusion that it may be somewhat complicit in making them worse individuals.” (Lippke, 2001) Moreover, when an individual leaves prison, a result of their punishment is that they will find it very difficult to find a job, many are left with few options but to return to a life of crime. Erwin James writes:

“Prison remains a fundamentally dehumanising process. It desocialises and decivilises. It infantilises, stripping the prisoner of all sense of responsibility. No wonder most prisoners, within a relatively short period after release, are convicted of further and often more serious offences.”

Combined with the previous statistics on prison demographics it can be argued that prisons themselves are just the final phase in a sequence of failures on the part of society. A broken economy that disadvantages huge numbers of people, social services that are failing to keep up with the breakdown of family and community, an under-funded education system, and an outdated and poorly managed nationwide drug-problem, the picture is made complete by a prison system that wholly under performs in achieving its primary function: rehabilitation.

Taking the vote away from prisoners is once again attempting to punish an individual for the flaws of a society, whilst in the same stroke removing the mechanism of democratic-participation that should correct such flaws. The high rates of recidivism indicate a need to place greater emphasis on rehabilitation: a process that would be aided by encouraging prisoners to participate in society through the civic duty of voting.
Drug Addiction, Drug Laws, & Disenfranchisement

The following section examines firstly the role of drug use and addiction in the genesis of crime, secondly the existence of drug offences and how the criminalisation of recreation drug use when coupled with disenfranchisement represents a corruption of democracy and a process that invariably repeats with the effect of eroding civil liberties.

The NEW-ADAM (2003) research report from the Number 10 Strategy Unit claimed that over half of all property crimes were drug motivated, stating that: “Drug use is responsible for the great majority of some types of crime, such as shoplifting and burglary “ (including 85% of shoplifting, 70-80% of burglaries, 54% of robberies) (p.25).

National and international research demonstrates the strong association between poverty, social exclusion and problematic drug use (O'Higgins, 1998; Home Office, 1998; Shaw et. al 2007). The authors of ‘Drugs & Poverty: A Literature Review’ (Shaw et. al 2007) write:

“The individuals who are most at risk of developing problem drug use are those who are at the margins of society. They are individuals who are socially and economically marginalised and disaffected from school, family, work and standard forms of leisure.”

We can see the prevalence of drug addiction, use and abuse as symptomatic of wider problems within our society. That crime seems often to be related to drug use, and drug use seems often to be related to poverty, further evidences the idea that many of Britain’s prisoners have been disadvantaged from the offset by a fundamentally unjust society: their failing society is a result of society having failed them. Further, the statistical correlates between drug use and poverty point to a further skewing of democracy that marginalises the interests of the poor.

I suggest that where crime is caused by drug addiction, disenfranchisement is harder to justify. These individuals could easily be construed as victims of a treatable mental health condition rather than as malevolent agents who need to be locked away and politically silenced in the
name of punishment. In such cases the retributivist justification for disenfranchisement becomes less compelling because the moral authority of the individual had become compromised. Whilst society must be protected from individuals who would continue to commit crimes in order to feed their addictions, the nature of addiction implies that once an individual is treated for their addiction they pose a significantly reduced threat to society. Clearly, rehabilitation should be the main focus in responding to crimes that relate to drug addiction, but removing the right to vote has no rehabilitative value.

With regards to the argument from moral authority, their crimes reflect the desperation of their immediate drug-fuelled needs rather than a moral failing per se. Whilst the individual’s moral authority has been quite directly corrupted by their addiction, it is hard to see how this would have a detrimental effect on their political views. I’m sure many drug users have a leaning towards more liberal drug laws, perhaps state provided heroin clinics or such schemes, but these are not illegitimate political interests that need to be banished from political discourse, after all many non-addicted, non-criminal individuals also support such initiatives.

Then there is the separate issue of drug offences themselves. According to the most recent figures there are 10613 individuals incarcerated for drug offences (Ministry of Justice, 2008). The numbers incarcerated for drug offences have risen sharply over the last decade, faster than any other identified group of offenders (an increase of 5825 inmates; up around 250% for men and 300% for women (Home Office RDS, 2003).) 40% of sentenced women in prison are for drug offences in 2002, compared to 16% of men (Drugscope, 2005).

Many of those included in the above statistics are not drug-dealers but recreational drug users. There is quite a moral difference between these two offences. In relation to the imprisonment of recreational drug users: unlike laws on murder or rape, the laws on possession of drugs for personal use are recently constructed, their social-utility is highly debatable, and their correlation to morality doubtful. I am sceptical as to whether drug-offences have victims in the same way that crimes like burglary or murder, especially in cases of mere possession. The view
that personal use of recreational drugs, which still puts British citizens in prison, constitutes a moral wrong that needs to be punished with the same method used to punish rapists and murders seems hard to defend: taking the vote away from such individuals is also very hard to justify.

Drug laws have, in recent years, been made in a reactionary fashion (as in the case of methadone), largely in response to tabloid scares and often in the face of the government’s own scientific advisers. It seems strange to make the right to vote, which some argue should be fixed as inalienable, null and void over such whimsical, politically motivated law-creation. Some authors have suggested that many of the anti-drug laws we are working with today can be traced to the purely political motivations of the Nixon administration in 1960s America in relation to controlling the radical left-wing dissident groups of the time (See Lee & Shlain, 1985)

Every illegal drug user is considered a serious (imprisonable) criminal, yet according to the 2005 British Crime Survey around one third of the total adult population has used them at some point (Roe & Man, 2006). Do proponents of disenfranchisement hold that each of these individuals deserves to be temporarily disenfranchised? Is disenfranchising a single one of them the moral thing to do?

A key concern is that there is a legitimate case for changing the UK’s policy on drugs, and by locking up and disenfranchising recreational drug users a legitimate subsection of the political will is silenced. In a true democracy societal and legal approaches to the management of drug use would reflect the attitudes, values and will of the population and be determined by fair democratic process. Assuming that those who hold to a liberal ideology on drug policy are more likely to posses drugs, they are surely more likely to be imprisoned for related offences. In such cases disenfranchisement serves the function of suppressing a legitimate political movement. Just as disenfranchisement unwittingly and unfailingly biases the democratic voice against certain demographic groups, it will always do likewise to certain political interests.
The interaction between drug-legislation and disenfranchisement illustrates an important point against disenfranchisement: under a system of blanket disenfranchisement the support for any given civil liberty, once criminalised, will become under-represented in the democratic system since its supporters will be disproportionately incarcerated. Therefore, disenfranchisement inevitably erodes civil liberties and prevents their reinstatement.

Another example of this process is that of squatting laws. The Green Party have long supported the laws protecting the practice of squatting so as to discourage property owners allowing their properties to sit unused amidst a housing-shortage. The Conservative-led coalition is planning to introduce new laws to fully criminalise the practice of squatting, thus curtailing a civil-liberty: once this legislation is in place, the ability for squatters (those most concerned with defending that particular civil liberty) to have their interests represented through the democratic process severely impaired. Disenfranchisement results in an inevitable erosion of civil liberties: since once a liberty is removed through a law, those with interests in defending that liberty become politically marginalised.

It is concluded that the realities of the drug crisis and the ways in which it is inappropriately managed through the criminal justice system call into question the practice of a blanket ban on prisoner voting. It is further concluded that when disenfranchisement interacts with certain laws, it serves to suppress legitimate political movements and work against the general principles of civil liberty. These are good reasons to revoke current disenfranchisement laws.
Unjust Laws, Totalitarianism & The Police State

The following section argues that enfranchising prisoners serves various functions that are useful to society. These functions are: ensuring that the size of the prison population does not become too large, acting as a safeguard against unjust laws, working against the formation of totalitarian or oppressive governments, limiting the current tendency of overcriminalisation.

Allowing prisoners to vote helps to ensure that a country’s prison population cannot become too large.

An over-sized prison population is the hallmark of a totalitarian system, enfranchising prisoners is an important safeguard against the prison population becoming too large. England and Wales jails more of its population than any other country in Western Europe, about 147 people per 100,000 are in prison. Since the beginning of 1993, the number of prisoners has risen from 41,600 to more than 80,000. Between 1995 and 2009, the prison population in England and Wales grew by 32,500 or 66% (Ministry of Justice, 2009). It is disturbing that a country that claims to be a bastion of democracy is politically silencing an increasingly large section of its population.

I fear that our country may start to look increasingly like America where, a report by the Pew Center in 2008, showed that 1 of every 100 adults in the U.S was in prison. A startling figure, especially when you consider that two states continue to impose a life-long post-release disenfranchisement. Private companies in the United States operate 264 correctional facilities, housing almost 100,000 adult offenders. At year-end 2007 the United States had less than 5% of the world's population and 23.4% of the world's prison and jail population (adult inmates) (Walmsley, 2009).

Let us not forget: there is a whole industry in locking people up, there are many vested interests who earn their living by doing so. The potential for an industry of incarceration to become out of control is a clear road to dystopia and ensuring those who would be victim to
such an industry (i.e. those who would become prisoners through it) cannot have their vote removed is vital in preventing this from occurring.

As long as prisoners become disenfranchised, the state can incarcerate a greater portion of the population, knowing that those who are victims of the system have no ability to change it and knowing that the state will not be held accountable by those most affected.

Whilst Britain is by no means a totalitarian system in its present form, we must never be complacent with regards to the emergence of such systems, especially over the very long-term. Orwell’s dystopian prophecy *Nineteen Eighty-Four* has, some would argue, been fulfilled in many key respects: enfranchising prisoners is an important way of limiting the power of the state in its removal of civil liberties, and limiting the state’s ability to use the criminal justice system for morally suspect ends.

We mustn’t forget that a law is always a curtailment of a liberty. Sometimes these laws are right, just, and necessary; but history is littered with examples of unjust laws which, in retrospect, are recognised as unnecessary and rightfully overturned. An excellent example of this are the anti-homosexuality laws which were in force in the UK until 1967: now imagine if such a law still existed, and that the police were so effective in catching those who broke the law that every homosexual was in prison. By disenfranchising all prisoners a group becomes politically silenced that should, in fact, be represented in such a way that their political participation might overturn such laws. In 1960, if a homosexual openly protested the anti-homosexuality laws, they may well have been subject to a prison-term, and have had their right to vote, which may have influenced changes in such laws, nullified.

Of course, there are no longer anti-homosexuality laws in the UK, but the example illustrates nicely how disenfranchisement can have a corrupting effect on a democracy. Sometimes laws need to be changed, these changes are informed partly through democratic participation, but this process is derailed when those who break pre-existing laws are not allowed to vote. It is
important that a prisoner should be able to protest against the very existence of the law they have broken, this protest should be represented in the form of a vote.

There will usually be laws that some perceive to be unjust. Such laws usually have advocates and defenders as well as those who argue against them: disenfranchisement sets up a bias in democratic representation that always favours maintaining existing laws, it means that in a two-sided debate, one side will always be politically marginalised and silenced.

Britain increasingly manifests what some have termed ‘overcriminalisation’. Whilst many hold that criminal law ought to be used to redress only that conduct which society thinks deserving of the greatest punishment and moral sanction, it is increasingly used to “solve” every problem, punish every mistake (instead of making proper use of civil penalties), and coerce citizens into conforming their behaviour to satisfy social engineering objectives. This claim is evidenced by the aforementioned law-making binge witnessed under Tony Blair’s Labour government: over 3,000 new criminal offences were created (Morris, 2006). Enfranchising prisoners is an important way of making sure this doesn’t go too far: for when governments make new laws, they will know that they will still be accountable to all the individuals who are affected by that law’s enforcement.

It is vital that governments are accountable to all their citizens; the whole point of democracy is that those making the decisions are kept in line by the will of the country’s citizenry. Disenfranchisement means that governments don’t need to worry about making unjust laws because they know that those who suffer because of them will become both politically marginalised and silenced.

In summary: enfranchising prisoners would protect our nation against unjust laws, the formation of a totalitarian and overbearing systems of government, and the formation of a police state. This section outlines some of the ways in which disenfranchisement runs contrary
to the spirit of democracy. It demonstrates how enfranchising prisoners serves a protective value, both with reference to the individual and to the moral integrity of the state’s authority.

**Civil Disobedience & Disenfranchisement**

It is worth considering how the concept of ‘civil disobedience’ fits into this discussion.

Feinberg & Gross (1995) quotes Daube as defining “civilly disobedient” acts as, “offences against human authority, committed openly in a higher cause, or a cause thought to be higher.” Civil disobedience must be distinguished from other sorts of law-breaking; Rawls defines civil disobedience as:

> “a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government. By acting in such a way one addresses the sense of justice of the majority of the community and declares that in one’s considered opinion the principles of social cooperation among free and equal men are not being respected.”

Civil disobedience may involve direct violation of laws with a view to protesting against such laws. Social-contract theorists have a very difficult job accounting for such actions, civil disobedience is a phenomenon that illustrates the political nature of some (but not all) law-breaking; defying a law one sees as unjust cannot be deemed to be anti-social in the conventional sense, and claims that an individual who engages in civil disobedience are breaking a social-contract become muddied.

Where civil disobedience leads to imprisonment and disenfranchisement, such a course would indicate a total failure of the democratic spirit: since a blanket ban on prisoner voting would include such cases, its defensibility is further challenged.
Disenfranchisement and the Spirit of Democracy

Disenfranchisement makes our society less democratic. The very core of democracy is the emphasis that the sovereign power of the people resides in the people as a whole. Consequently, if a nation protects all its citizens right to vote as an inalienable human right: that nation is more democratic than a country that does not.

Disenfranchisement runs contrary to the historic trend towards universal enfranchisement. The history of democracy has been one of expanding the right to political participation to larger sections of the population: the expansion of the franchise usually coincides with that group gaining recognition as equals to other members of society with the respect that implies. Whenever there was a battle to extend the right to vote there was great resistance and trepidation, but after the vote had been extended- in time, the prospect of removing the vote from those groups became outrageous, and those who had previously argued against such extensions came to be narrow-minded.

One of the reasons for this general move, is that the moral integrity of a nation’s government has come to be seen as linked to the extent to which they have been elected democratically. Whilst Britain has been eager to spread democracy to other countries there are many who feel that our own democracy is lacking: it is so indirect, so prescriptive, the election candidates have no legal binding to carry out their promises, and the government is so willing to ignore protests and other forms of activism (as in the case of the huge protests against war in Iraq). It can be argued that Britain currently needs to make itself more democratic: allowing prisoners to vote would be one easy step towards achieving this.

Cheney (2008) points out that the 1998 Select Committee on Home Affairs stated that the government needs to encourage increased participation in elections. They also raised concerns that young people are a demographic group with the lowest level of voter-registration “posing ‘a danger of the development of a whole generation of people uncommitted to the democratic
process’ (House of Commons 1998, para. 37). This sector of the population has large numbers in prison and is therefore highly disadvantaged with regard to political representation.”

As has previously been discussed in-depth: disenfranchisement corrupts the democratic process. In order to fully understand this corruption, disenfranchisement needs to be looked at as a wider process instead of merely in terms of individual prisoners and what they do or do not deserve. The affects of disenfranchising one individual affect all other members of their demographic group, including the unborn future generations of it, as well as non-incarcerated individuals who hold the same interests as the incarcerated.

Uggen & Manza (2002) show quite clearly how American elections would have differed had the prison population of the time been allowed to vote: they suggest that many presidential elections would have had different results had prisoners been able to vote. Interestingly, in the case of America at least, had prisoners been allowed to vote the results would sometimes have favoured the Republicans and sometimes the Democrats; this suggests that generalisations about the political leanings of the prison population in the UK may also be difficult to make. Disenfranchisement laws may potentially serve as a mechanism for unscrupulous political parties to skew elections in their favour.

Disenfranchisement needs to be understood as a very subtle social mechanism that works to marginalise legitimate interests from the political sphere. When we consider the very long-term: setting the right to vote in stone means that the ability to vote is not sat the mercy of ever-changing laws, values and morality of our culture. Recognising the right to vote as an inalienable human right is essential in strengthening a democracy, the case for enshrining the ability to vote as an inalienable human right is considered in the following section.
A Human Rights Approach to Enfranchising Prisoners

There is a strong case for making the right to vote an inalienable human right. Donnelly (1989) defines Human Rights as “literally, the rights that one has simply as a human being. As such, they are all equal rights because we are all equally human beings. They are also inalienable rights because, no matter how inhumanely we act or are treated, we cannot become other than human brings.”

On what basis should we make the ability to vote a right? Lippke (2001) argues that the nature of rights is to secure important interests of individuals (“by imposing duties of various kinds on the state or other individuals”). When we examine the many interests safeguarded by the ability to vote, protecting it in terms of an inalienable right seems like a good idea. Whilst the interests secured by a right to vote are open to debate, Lippke outlines three obvious ones:

“The status interest [-] [...] having the right to participate in democratic political processes is crucial in signifying that individuals have equal status in society. [...] Realization of this status interest is a crucial social basis of self-respect for individuals and, on some accounts, undergirds the legitimacy of exercises of state power. […]

The outcome interest” [-] [...] “Democratic participation is [...] alleged to produce fairer outcomes, in the sense that the beliefs, preferences, and commitments of all citizens are taken into account in the decision-making about matters of public import. Also, democratic participation may be instrumental in securing other important rights, especially by making political officials wary of adopting policies that undermine or erode such rights. […]

The educative interest [-] [...] individuals are encouraged to notice, acknowledge, and respond constructively to the diverse lifestyles, projects, and concerns of others in the body politic. [...] Individuals benefit from having to more clearly and persuasively articulate their own ideas, preferences, and concerns, and by learning to listen to, compromise with, or otherwise accommodate the ideas, preferences, and concerns of other individuals. [...] Some theorists hope for more from the educative interest, suggesting that democratic participation teaches
individuals [to look beyond their own private interests and] develop a conception of the public
good with which their own good is bound up.” (Lippke, 2001)

Crucially, many of these interests benefit wider society, not just the individual. The interests
vouchsafed by the right to vote are relatively modest; many of them are quite basic and it is
hard to state that criminals should not have them protected in the same way that other citizens
do. Advocates of disenfranchisement should be mindful of the number of interests at stake.

Further, this list of interests makes it clear that, as Mbodla (2002) argues, curtailing the right to
vote impinges on other basic human rights such as the right to equality, to dignity, and the right
to freedom of expression, and equal benefit of law; “These are human rights and may be
justifiably included in the right to vote.” (Mbodla, 2002). The interests protected by the right to
vote are so basic and important that, it could be argued, the state has a moral obligation to
protect them and ensure they are safeguarded.

Kate Green of the Labour party stated during a parliamentary debate:

“I do not accept that [prisoners] lose all aspects of citizenship in losing their liberty as a result
of a custodial sentence. I fundamentally disagree with those who feel that prisoners'
fundamental human rights should be weakened. In a decent and civilised society it is right that
we treat all, including prisoners, with respect.” (Quoted in White, 2011)

It is this respect, that the right to vote should be grounded in; to deny the right to vote is to say
that the interests of individual concerned are not worth consideration in the political sphere:
this is degrading and disrespectful. Mbodla (2002), when writing about the disenfranchisement
issue in South Africa, quotes:
“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 [...] nation; that our destinies are intertwined in a singly interactive policy”.10

Such a philosophy is equally relevant to Britain. Ensuring that the right to vote is not something that can be revoked by the state is also essential for the integrity of a democracy; Mbodla (2002) quotes O’Regan:

“The right to vote is a feature of a democracy; without that right, democracy cannot exist. The marking of a ballot is the make of distinction of citizens of a democracy” [...] “Denial of franchise is [...] a curtailment of both Human and Democratic Rights. [...] To build a resilient democracy envisaged by the Constitution, we need to establish a culture of participation in the political process, as well as tolerance of different political views and the recognition that democracy can be a unifying force even when political goals may be diverse.”

It is concluded that there is a strong case for making the right to vote an inalienable human right based on the interests that are protected by such a move, interests that should be respected no matter which individual holds them. It is concluded that disenfranchisement impinges on other human rights (such as the right to dignity and equality), and that treating making the right to vote inalienable has a protective function, both over the citizenry of a democracy and the integrity of the democracy itself.

**The Inconsistencies of Blanket Disenfranchisement**

A blanket ban approach is inconsistent and clumsy. The arguments in favour of disenfranchisement call on justifications that are only relevant to some and not all individuals. For example, the social contract argument assumes all prisoners have broken the social contract to the same extent, and that sentencing accurately and consistently reflects the degree

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10 South African Constitutional Court: Augusta and another vs. Electoral Commission and others, 1999
to which the social contract has been broken. But this assumption doesn’t hold water.

Arguments that refer to a loss of moral authority, or to defective moral characters also rest on sweeping assumptions which fail to do justice to the very different nature of different criminal offences and their individual offenders. Blanket-disenfranchisement inevitably produces injustices.

Disenfranchisement seems to affect criminals that are put in to prison, but it is feasible that an individual may be imprisoned for an offence less serious than an offence for which another criminal is punished in a way other than imprisonment. Adding to this, the popular press seems littered with examples of wildly varying sentences for similar offences, “the sentencing lottery varies between areas and renders some offenders spared incarceration for an offence for which others will face incarceration and denial of the right to vote.” (Cheney, 2008).

Since the passage of the Representation of the People Act (RPA) in 1969, those imprisoned for contempt of court or who have defaulted in paying a fine have not been disenfranchised, “It is strange indeed, that a citizen who strikes at the very heart of the Rule of Law by being held in contempt of court, is nonetheless able to vote whilst serving sentence, whilst someone serving sentence for a strict liability offence (where no guilty mind is required) cannot.” (Cheney, 2008)

The inconsistency of blanket-disenfranchisement just described means that subtle injustices constantly committed. The following section discusses the alternatives to the blanket ban, some of which may be seen as attempts to overcome this criticism.
Compromises & Alternative Systems

Instead of a system that disenfranchises all prisoners (except those on remand), or a system that grants all prisoners the vote, there are numerous compromises that allow some, but not all, prisoners to vote.

Perhaps disenfranchisement could be based on sentence length or limited to certain crimes or types of crime. The advantage to such approach is that it could ensure that those with the smallest future stake in wider society (i.e. those doing life-sentences), who are presumably the more serious offenders, have the vote removed. At the same time, those who have committed lesser crimes may still be allowed to vote. Members of parliament are considering such a solution in order to meet the ECHR’s demands; some have suggested that prisoners serving less than four years should be allowed to vote, others say it should be only one year. A basic problem with such approach is simply deciding at what point an individual deserves to lose this right, who decides and on what basis? Which crimes should cause their perpetrators to be politically silenced? Which ones should not? On what basis would such distinctions be made? Whatever system is devised, it will be a blunt instrument that will lead to injustices.

Such a compromise would also fail to tackle the broader and highly problematic implications disenfranchisement has on the democratic process. Since the prison population will still disproportionately consist of certain over-represented demographics, the democratic process would still be made unbalanced through disenfranchisement. Further, if one holds that the right to vote is an inalienable human right, then no system of partial-disenfranchisement can be justified: since no matter what the crime or prison sentence, the individual is still human.

It is perhaps for these reasons that the ECHR have stated that, whilst they would allow some prisoners to be disenfranchised in some circumstances (particularly when it was an individual decision about an individual prisoner related to their crime), disenfranchising prisoners based
on sentence length would continue to be incompatible with the European Convention on Human Rights because it is still a blanket ban. (White, 2011)

Another alternative is to allow judges to decide on an individual basis, this approach is fraught with difficulties. Senior judges have already protested at the prospect of having to make such decisions, no doubt the government would have to set out guide-lines for the judges which would inevitably face the same problems that the previous forms of compromise face.

Such compromises are a step forward. However, there is a strong case that the government should dispense with disenfranchisement and join the many other nations that simply don’t use it. By allowing our prisoners to vote, we enshrine the right to vote as an inalienable human right: this coheres with the dignity and inherent value recognised as essential in all human beings and makes our country more democratic. We ensure that all citizens, regardless of their poor choices, their circumstances, or their actions, are represented to and considered by the state: this means that our democracy will be more fair, and will function naturally to benefit the greatest number of people. The many advantages to enfranchising prisoners outlined above would not be met by compromise.
Conclusion

This essay has critically evaluated arguments put forward by both philosophers and British politicians that defend the blanket disenfranchisement of prisoners.

The first argument examined states that prisoners have demonstrated a contempt of law and that consequently the state can legitimately and fairly remove their right to vote: this essay concludes that there is no obvious reason that such a consequence should follow from such a premise, secondly, the argument assumes a contempt for the law in general that need not be implied by the breaking of one individual law, and that in some circumstances an individual may break a law whilst not holding contempt for it. It is also argued that, assuming an individual has not broken laws that safeguard the democratic process the specific laws that relate to safeguarding the individual right to vote should not be revoked. In cases where an individual does commit such a crime, it is acknowledged that there is a stronger case for disenfranchising that individual.

The essay goes on to discuss the possibility that, in fact, all law breaking is an affront to the principles of democracy. If Laws are made as result of democratic participation, breaking laws disrespects that process and fails to accord with its outcomes: removal of the vote is therefore an appropriate punishment. To this author, there is, from the offset, something tenuous about such an argument. It is argued that the creation of laws is a process so far removed from the citizenry’s right to vote that breaking a law cannot be said to disrespect that right. Further, if such an argument is to be used, then disenfranchisement in its current form is, as Lippke argued, wholly inconsistent: since many minor, non-imprisonable offences may equally be deemed affronts to democracy. Further, if the aim of disenfranchisement is to remove the individual from political participation, then it is a wholly inadequate measure since there are various other ways the prisoners are allowed to participate in the democratic process; these other forms of democratic participation are arguably more influential than the right to vote.
Leading on from this, if we recognise that it is important that prisoners have their right to participate in these alternative forms of democratic activity safeguarded, then we must recognise the importance of safeguarding their right to vote. It is argued that just as the wholesale removal of the prisoner’s freedom to participate in the political landscape would be hard to justify, so removing their right to vote is hard to justify.

The argument from moral authority is then analysed. This argument proposes that criminals have lost the moral authority thought necessary to vote. Such an approach is accused of illicitly equating illegal activities with immoral ones in a system where many of the laws do not refer to moral issues and many moral issues are not covered by law. It is a false assumption that the personal conduct of an individual that has lead to them having their “moral authority” deemed suspect, would have any implication with regards to their political decision making. The assumption that the right to vote should have anything to do with an individual’s moral character in the first place is also specious: even if we assumed that all criminals are selfish and would only vote with their own self-interest in mind, the vast majority of the general public vote based on self-interest and that is precisely how democracy works to represent their interests.

Both the moral authority argument and the closely related ‘purity of the ballot-box’ argument can be accused of holding the dangerously undemocratic position that ‘the franchise should be extended only to those that vote properly’. The ‘purity of the ballot-box’ argument, which seems to suggest that the democratic process has some kind of “purity” that the “impure” prisoners will sully, is written-off as moralistic, old-fashioned, and baseless.

‘The criminal interests argument’ states that if prisoners were given the vote then they would vote in ways that do not serve the public interest in crime reduction and would instead vote with a view to advancing “criminal interests” such as decriminalisation of certain acts, changes in punishment measures, and better prison conditions. I hold that such an argument emphasises a false-dichotomy between the interests of prisoners and the interests of the general public.
Given that prisoners usually have families, and an enduring stake in society the assumption that “criminal interests” are different to the interests of the general public is debatable. Any of the “criminal interests” could be held by non-criminals: it is undemocratic to marginalise any set of political interests as unworthy of political consideration, especially based simply on whose interests they are. Mass-decriminalisation of certain acts would clearly not happen; radical changes would not be approved by the much larger general voting population unless they themselves also saw it fit.

The essay also points out the conceptual problem of ‘criminal interests’: what is considered a criminal interest in one country may not be a criminal interest in another since the laws that define what is or is not criminal are themselves created through the democratic process. The notion of ‘criminal interests’ implies that laws can determine what is and is not a valid political interest to be considered by the democratic system. The right to vote should not be left at the mercy of ever-changing laws.

It is noted that sometimes laws need to be removed, sometimes acts need to be decriminalised (as in the case of Witchcraft in 1951 and homosexuality in 1976). Prior to these acts being decriminalised, those who had interests in there decriminalisation could be said to hold “criminal interests”. Yet we all recognise those interests as legitimate ones that should be reflected in the democratic process.

The social contract justification for disenfranchisement is incomplete. The ambiguity around what rights should be revoked following a breach of the social contract means that disenfranchisement is not necessarily implied. Moreover, it is suggested that due to the socio-economic variables associated with crime, not all individuals are subject to the same social-contract, different individuals have (through no fault of their own) different degrees of access to the goods of our society, expecting equal compliance with the social contract is unfair and unjust. Johnson-Parris’ (2003) argument that the social contract disenfranchised-felons are forced into to is unconscionable is supported.
An analysis of disenfranchisement’s incoherence with the aims of punishment delivers a critical blow to the practice of disenfranchisement. As a means to retribution, disenfranchisement carries no hedonic weight and since the vote seems to be somewhat unvalued by the general population, it is an ineffective (and quite peculiar) form of punishment. Technically disenfranchisement coheres with the aims of retributivist models in that it is a punishment: but it is a lame punishment, especially when compared to the many other deprivations implied by prison itself. Most retributivists place some limitation on the form and degree of punishments the state can inflict; the case is made that disenfranchisement as an inappropriate and unhelpful form of punishment.

It is concluded that its marginal effects as a deterrent are greatly outstripped by the costs imposed on the prisoners and the damage done to the democracy as a whole. Far from contributing to the aims of rehabilitation and moral education, disenfranchising prisoners is more likely to stand as an obstacle towards such goals since it perpetuates the alienation and exclusion that contributes toward anti-social and criminal behaviour. Disenfranchisement is contrary to the spirit of inclusion and reintegration that is required if prisoners are to become contributing members of society and are to be prevented from slipping into recidivism.

So it is concluded that disenfranchisement serves very little towards any of the goals that the justice-system strives to achieve. In the case of rehabilitation and moral education, it is seen to be an obstacle to progress. Considering this, it is difficult to see what purpose, if any, disenfranchisement serves: the practice is not useful and accomplishes no good.

Before moving on to arguments that support reinstating prisoners' right to vote, it was felt necessary to examine the nature of the prison population. The prison population disproportionately consists of those from disadvantaged social backgrounds who have had limited access to care, education and employment. These correlates indicate that crime is related to more widespread societal problem, it is suggested that allowing these individuals to vote is an important part of the process of correcting these problems and that the current
system politically disempowers the already least powerful. The prevalence of mental health issues amongst prisoners are taken to indicate the need to emphasise rehabilitation over the moral-judgement and retribution some use to justify disenfranchisement.

Ethnic minorities, especially black people, are vastly over-represented in the prison population. Consequently disenfranchising prisoners inevitably causes an under-representation in ethnic minority interests, and may perpetuate the same systemic problems that lead to crime in the first place. It is also concluded that since the prison system will invariably over-represent certain groups of people, disenfranchisement will always bias and therefore corrupt the democratic process by discriminating against certain groups and their interests.

In relation to the gender disparities in British prisons: it is argued that, as with any other case of demographic over-representation, the implications disenfranchisement on the unconvinced members of an over-represented demographic and its unborn future generations must be considered.

The high rates of recidivism indicate a greater need to emphasise rehabilitation, and indicate the penal-system’s own role in perpetuating criminal behaviour. This adds weight to the claim that disenfranchising the prison population is unjust and unhelpful.

The high rate of drug addiction we see in the prison population, and the overwhelming evidence that many of the index-offences were committed under the influence of drugs are also taken to indicate the need to emphasise rehabilitation instead of moral-judgement and punishment. In such cases, rehabilitation is the most direct means of achieving the best outcomes; these individuals could easily be construed as victims of a treatable mental health condition rather than as malevolent agents who need to be locked away as punishment. Disenfranchising drug addicts is therefore deemed to be an irrelevant and arbitrary response.

The interaction between drug-laws themselves and the current policy of disenfranchising drug-users is problematic. The issue demonstrates how the right to vote, which many feel ought to
be inalienable, is rendered at the mercy of highly specious laws, which are often made in a reactionary and politically-motivated fashion without the basis of scientific evidence. Since taking/possessing recreational drugs is not a moral wrong, disenfranchising these individuals can not be justified in terms of morality or justice. Since over one-third of the adult population of UK has used banned substances, a defendant of blanket-disenfranchisement would have to acknowledge that, if the law were applied thoroughly, one third of the population would be excluded from democratic participation.

It is argued that there is a case for changing the current policy on drugs and that, consequently, disenfranchising those in breach of the current policy silences legitimate political interests and thus corrupts the integrity of the democratic process. It is then argued that disenfranchisement inevitably serves as a mechanism to erode civil liberties and prevent their reinstatement; the recent example of squatting laws is cited to illustrate the point.

Since it is clear that disenfranchisement inevitably skews democracy against decriminalisation, and thus against civil liberties, it is argued that where unjust laws exist disenfranchisement hinders the natural democratic process. It is concluded that disenfranchisement needs to be understood as a very subtle social mechanism that works to marginalise legitimate interests from the political sphere.

Making the right to vote inalienable ensures that the size of the prison population does not become too large, acts as a safeguard against unjust laws, works against the formation of totalitarian or oppressive governments, and limits the current tendency of overcriminalisation.

The issue of civil-disobedience is explored. It is argued that disenfranchising individuals who have committed acts of civil-disobedience is a perversion of justice and morality. Such a conclusion implies that a blanket ban on prisoner voting leads to injustices and should be overturned.
The ideal of democracy is contradicted by disenfranchisement in many respects. Firstly in a very straightforward way: it reduces the number of citizens allowed to vote, this is seen to be contrary to the inclusive and non-discriminatory spirit of democracy. The general trend in democracy has, quite-rightly, been to include more and more sections of society, disenfranchisement is an obstacle to such progress. It is argued that the moral integrity of a government is measured by the extent to which it has been elected by the people over whom it exerts power: extending the franchise further ensures that integrity is protected. The over-representation of the poor and of ethnic minority groups skews the democratic process against such groups and is, consequently, clearly undemocratic. Since one of the strengths of democracy is that it is not prescriptive in terms of what interests the people are allowed to express, many of the arguments against enfranchising prisoners are deemed to be undemocratic.

It is argued that there is a strong case for making the ability to vote an inalienable human right. This argument rests on the idea that the right to political representation follows naturally from the basic dignity and equality that is common to all human beings. The interests protected by the right to vote are so basic and important that the state has a moral obligation to protect them and ensure they are safeguarded. Further, Mbodya's (2002) point that the right to vote is inexorably connected to other human rights, and so cannot be revoked, is cited as an argument against disenfranchisement.

The final argument against disenfranchisement seeks to show that it too blunt an instrument, one that is fraught with inconsistencies and produces inevitable injustices. Alternative systems, which attempt to disenfranchise some but not all prisoners, are said to be an improvement. But they still face many of the same problems as blanket-disenfranchisement: including the skewing of democratic process and the Human Rights violation. Since prisoner-disenfranchisement seems to have no solid justification: British politicians should not apply it to any offenders.
Overshadowing the whole debate is the simple, inescapable fact, that the practice of disenfranchisement simply serves no purpose: nobody benefits from it; nothing is accomplished by its enforcement. Indeed, it is wholly counter-productive: it makes the poorest members of society have even less political power, it maintains systemic racial discrimination, it interferes with the process of rehabilitation, and it hinders the natural functioning of democracy in such a way that the social-conditions that correlate with criminal behaviour are less likely to be addressed through the democratic-process. The essay concludes that all prisoners should have the right to vote, that the right to vote should be an inalienable human right, and that the practice of disenfranchisement is undemocratic, immoral, unjust, and unfair.
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