

Why Prisoners Should Have the Franchise

To ask why, in a liberal democratic State, prisoners should have the ability to vote is to miss the essence of the issue. In a liberal democracy the default position, unravelled by 400 years of political philosophy, is that all competent adults have that right.

The question, rather, is why should prisoners be denied the vote? What is it that is asserted about the position of prisoners that qualifies them of all people to be excluded from the processes which govern their lives?

The most frequent complaint raised in the prisoners vote discussion arises from the debate over 'rights', specifically 'human rights'. Those making these complaints are usually the least qualified to do so, for they fail to grasp the essential point that 'rights' define the relationship between the people and the State. Rights are the barrier to tyranny, they are the line of demarcation that marks out the sphere of the individual from government intrusion. They are not a liberty to be granted at the whim of government, some temporary favour, but they are absolutes that define the nature of both the individual and the State.

Human rights arose out of the clash between democracies and tyrannies in the Second World War. It was an attempt to define the limits of State power, to mark out the rightful actions that each individual could properly assert without fear and government interference. Only with such absolutes being placed upon State power, it was believed, could the horrors of tyranny be kept in the pages of history.

This is a schema, a set of concepts, which does not sit comfortably within Britain's political culture. Traditionally, we have not possessed individual rights. Rather, we have been at liberty to do what is not forbidden. That places the power in the hands of government and we have been broadly accepting of this. Nations with a history of tyranny and popular revolution are far more cognisant of the dangers posed by any government to its own people than we are in Britain – although the post 9/11 world is slowly changing that perception. It is in America, though, that the appreciation of individualism and circumscribed government takes full bloom. It is the Americans, for example, and not the British who see Magna Carta as a lodestone for freedom. The very idea that government power can – and should – be limited is one that we have never fully appreciated.

Nevertheless, we signed an international Treaty which was intended to give European citizens fundamental rights which no government could properly interfere with. For the first time, the British people had a basis on which they could stand and say 'No' to the government.

And much to our surprise, dozens of legal challenges based on these new rights revealed that our comfortable view of how free and liberal our society was to be a soporific myth. Britain has one of the worst records before the European Court of Human Rights. And that disturbs us, for we are not used to having our liberality questioned. Instead of using these realities to wonder about the nature of our political system and the power of government we prefer to complain about trivia – foreign judges, for instance. Rather than embracing our new rights we handle them as if they are an unexploded grenade.

An essential point with human rights is that they are unearned. They accrue to each individual solely and completely on the basis that they are a human being. The individual doesn't have to be pleasant, law-abiding, industrious or decent in any way. Being of the human species is all that is required, and for a perfectly sound reason: it is intended to prevent the government selecting unpopular or difficult people or groups and oppressing them. No human should be vulnerable to being misused by the mob or the government. That is the essence of human rights and has been for fifty years, and yet the debate conducted around prisoners (and criminals in general) fails to appreciate this beautifully simple point. Just because you don't like someone, or they make your life difficult, is not a reason to leave them vulnerable to misuse.

The myopia of the debate is frighteningly naïve. If human rights had to be earned, if unpopular could be legally misused, then who decides who has rights and who has none? All governments have an inherent urge to usurp all power and to lean heavily upon those who stand out from the crowd. Today, many want prisoners to be stripped of their rights. Tomorrow, who...? Human rights are intended that that question is not even a proper one. All have rights, even those we despise.

And those who are despised are those who need rights the most. Those very people who we would like to inflict atavistic suffering upon are the very ones for whom human rights are the most crucial – for in the face of the popular mob, in the face of government contempt, what other protection exists?

Punishment must be limited according to law and not dictated by the popular sentiment. Human rights offer this protection. Human rights guide the process of conviction and place boundaries on what suffering can be inflicted upon the individual by the government in the name of society. Always remember that it is the function of rights to assure that individuals are not misused. Me today, you tomorrow.

By virtue of their human status, prisoners gain human rights. No matter what the depth of their depravity or repulsiveness of their personality, we are human. By that claim alone, there are limits as to how badly we can be treated. This does not preclude lifelong punishment; it only limits its form. Locking up a teenager for the rest of his natural life is, at present, perfectly acceptable. Refusing to treat any illness he may suffer during that sentence, or repeatedly beating him, is not.

The issue is really quite simple. Prisoners should have the ability to vote because they are human, and human beings acquire inherent rights against their government's powers. This does sit uncomfortably with many people, particularly with those that argue that prisoners forfeit their rights by virtue of their behaviour. They fail to realise – or accept – that rights are inalienable and must remain so if the individual is to be free from overbearing and dangerous government. Rights are not a reciprocal relationship; they are neither earned nor able to be given away. This is their point.

There are also those who argue that prisoners are outlaws, expelled and no longer a part of society – and so have no claims on the rights of that society. This argument is a false one. Prisoners are kept in a secluded part of society, hidden away, but we remain a part of it. Society continues to make a claim on our allegiance, it remains insistent that we fulfil our obligations. We are compelled to comply to every law,

every tax, every obligation that is relevant to our condition. We are intertwined with the rest of society, even if in circumscribed ways.

Prisoners should have the vote for the very same reason that you should not be dragged from your bed and tortured by the police – because there are limits on the power of government. That prisoners appear to be gaining new rights only illustrates the comfortable myth we have surrounded our conscience with, that Britain is a truly free democratic country.

To vote is to assert a claim – that you are a member of a society, and that you have the power to challenge those who you chose to rule your life. As part of society, as human beings, and as vulnerable to populist abuse as we are, prisoners have the right to play their small part in determining the course of the nation.