CLAUSE 3: FURTHER PUNISHMENT OF IMPRISONED OFFENDERS BY DEPRIVING THEM OF THE VOTE

This is a proposal for an amendment to Clause 3 of the Scottish Independence Referendum (Franchise) Bill, which deprivies convicted offenders serving a prison sentence at the time of the independence referendum of their vote in the referendum.

Proposed amendment to clause 3:

The committee is requested to consider introducing an amendment such that courts have the discretion to allow prisoners sentenced to shorter prison terms in the period before the referendum to vote in the referendum, and that the parole board may allow prisoners coming to the end of their prison terms to vote.

Automatically depriving all convicted prisoners of their vote in the referendum is an arbitrary punishment in addition to the prison sentence

No case needs to be made to members of a democratic Parliament that depriving someone of the right to vote is a punishment. It is self-evident.

The referendum involves one of the most important choices any of us will make in our lifetime. We should not lightly deprive anyone living in Scotland of the opportunity to take part in the choice.

The point here is to understand that depriving a prisoner of the vote is a punishment additional to the prison sentence that offenders would receive at any other time. The same prison term is likely to be imposed for a similar offence before or after the referendum, e.g. someone sentenced to a week’s imprisonment for breach of the peace is likely to receive the same sentence whenever convicted, but deprivation of the right to vote will be added to the punishment of a person who happens to be in prison on referendum day.

As compared with the offence that might have been committed, some people will feel being deprived of their vote as very severe punishment. It is also an arbitrary punishment for the following four reasons:

1. There is nothing in the bill that allows the court to take deprivation of the vote into account in determining sentence

   Courts have no express power to remit part of the sentence to make up for the additional punishment of deprivation of the vote.

2. Other similar offenders will not be deprived of the vote

   The following will not be deprived of their vote:
   - offenders who have just been liberated from prison,
   - offenders on bail awaiting sentencing,
• offenders who have been sentenced to alternatives to prison (probation, restriction of liberty orders, drug treatment and testing orders)
• offenders serving a sentence in a prison outside the UK (if they remain on the electoral register)
• offenders previously convicted of electoral fraud

3. Receiving the punishment depends entirely on when the offender happens to be imprisoned
   The punishment will not be imposed if:
   • There is a delay in the court process, leading to a delay in sentencing
   • The offender is released early from prison

4. The punishment is not fitted to the crime:
   Deprivation of the vote is a punishment that will fall on murderers and minor offenders equally:
   • the judge might have decided that a relatively light sentence fits the offence (41% of all prison sentences in 2011-12 were for less than 6 months) but an imprisoned offender will still be deprived of the vote
   • offenders might conceivably be deprived of the vote for an offence such as:
     o Shoplifting to feed a drugs habit
     o Civil disobedience in support of the “yes” or “no” campaign
     o Drunken over-exuberance after a Scotland match resulting in breach of the peace

Depriving all prisoners of a vote fails any equalities test:

The punishment will fall disproportionately
• on the poor
• on the young
• on those who were brought up in local authority care
• on the mentally ill
• on ex-servicemen and women

because these groups have a disproportionately high representation in the prison population.

There are no practical difficulties in enabling prisoners to vote that cannot be overcome:
Remand prisoners, fine defaulters and civil prisoners are all entitled to vote although imprisoned.

Many offenders do have an interest in the future of their country but will be deprived of a say in it
It is justifiable to deprive people who are serving long sentences of their right to vote. The court that convicted them decided that their offence is sufficiently serious it merits their exclusion from society for a long time. However, most offenders are
going to re-enter society imminently. They have the same stake in the future shape of their country as every other citizen.

You might think that this is hard luck. However, one aim of prison is to reform offenders and reintegrate them into society. Someone serving the last day of their sentence on referendum day will nonetheless be deprived of their vote, and therefore be deprived of any say in the world they are about to re-enter. Depriving prisoners of the vote just before their liberation is a bad start for their re-integration.

**Proposed amendment**

If people are to be punished for an offence they have committed, it should be by the courts, not by a mechanical operation of the law like that proposed. The committee is requested to consider introducing an amendment with the effect:

- that from now until the referendum, a court sentencing an offender for a period that may include the referendum should be entitled to determine that, although sentenced to prison, an offender is not to be deprived of the right to vote; and
- that prisoners serving the last year of their sentence should be entitled to apply to the parole board for the right to vote.

Dostoyevsky's comment is well known: “The way society treats its prisoners characterises the level of its civilization”. A better country, and a higher level of civilisation, is something both sides in the independence debate should be aspiring to.

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