



OFFICIAL REPORT
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Equalities and Human Rights Committee

Thursday 25 January 2018

Session 5



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EQUALITIES AND HUMAN RIGHTS COMMITTEE

2nd Meeting 2018, Session 5

CONVENER

*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

*David Torrance (Kirkcaldy) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Cormac Behan (University of Sheffield)

Emma Trottier

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 25 January 2018

[The Convener opened the meeting at 09:02]

Prisoner Voting

The Convener (Christina McKelvie): Good morning and welcome to the second meeting in 2018 of the Equalities and Human Rights Committee. I make the usual request that all electronic devices be switched to silent or off and taken off desks.

Agenda item 1 is an oral evidence-taking session on prisoner voting. Today, our focus is on the experience of prisoner voting in other jurisdictions. I welcome Dr Cormac Behan, who is a lecturer in criminology at the University of Sheffield. Good morning and thank you for your written evidence.

Dr Cormac Behan (University of Sheffield): Good morning. Thank you for the invitation.

The Convener: Also with us is Emma Trottier, a former public servant with the correctional service Canada and the department of public safety in the Government of Canada. Good morning and thank you for the evidence that you sent us preceding the meeting.

Emma Trottier: Good morning and thank you for having me.

The Convener: The first question is a general one for both of you about the processes that got things to where they are in the jurisdictions that you have been involved in. I know that the situations are slightly different in Ireland and Canada. To start with, I ask Dr Behan to give the committee an understanding of the Irish example and how Ireland got to where it is.

Dr Behan: I suppose the Irish example is unique in that, prior to the enfranchisement of prisoners, there was no law on the statute book that debarred prisoners from voting—it was simply that they could not access polling stations on the day of elections, referenda and so on. For that reason, no legislation needed to be repealed in order to enable prisoners to vote. In a court case in the early 2000s, the Supreme Court of Ireland said that prisoners were entitled to vote under the Electoral Act 1992. There was no facility to allow them to vote, but the court said that, if an individual happened to be on temporary release on the day of an election and they were registered

in their home constituency, they were legally entitled to exercise their franchise.

In 2006, in response to the Hirst judgment, with which I am sure many committee members are familiar, the Irish Government decided to introduce legislation to enfranchise prisoners, for a number of reasons. There was some discussion about whether a case would be brought to the domestic courts and possibly up to the European Court of Human Rights to allow prisoners to vote or to force the Government to introduce legislation. The Government pre-emptively decided to introduce legislation, which would become the Electoral (Amendment) Act 2006, to enfranchise all prisoners regardless of their sentence or their crime, so the legislation was quite wide in its impact and effect. The first election following that act took place in 2007.

What was somewhat unique about the Irish experience was the lack of controversy surrounding the discussions and debates in Parliament. In the first instance, no member of either house—the Dáil, the lower house, or the Seanad, the upper house—spoke or voted against the legislation, and much of the discussion in the parliamentary debates was about the mechanics of how it would happen. There was an argument that prisoners should be enabled and encouraged to vote in order to engender a sense of responsibility.

Another key aspect was that there was no media opposition. In my research, I found only one reference in a national newspaper to the debates, and that was when the legislation was passed. That is in stark contrast to the research that I have done in the United Kingdom, where the media have tended to report on the issue as a matter of acute controversy, and they have generally come down against allowing prisoners to vote.

Another important element was that the legislation was introduced as an electoral reform—by the Minister for the Environment, Heritage and Local Government—rather than as a penal or criminal justice reform. It was put forward as an idea to modernise the electoral system. In contrast to what has happened in the United Kingdom, there was a much more positive outlook on and idea about the concept of Europe. In the United Kingdom, especially in England, in the Westminster Parliament, the issue has been caught up in the debates about Europe, even though it is the European convention on human rights and the European Court of Human Rights—and not the European Union—that have raised the issue of prisoner voting. It has been caught up in the general milieu and debates on the impact and powers of the European Union, and what has been considered European interference.

Therefore, a number of key elements distinguish the Irish case from other jurisdictions and enabled the passing of what was, in reality, a very minor piece of amending legislation, but one that made a major impact in enfranchising all prisoners regardless of their sentence or crime.

The Convener: Those are interesting points and I will come back to some of them.

Emma, will you explain to us the situation in Canada? It is similar to the situation in Scotland in as much as a court order precipitated the change.

Emma Trotter: I would first like to explain the division in Canada's correctional system, because that is important to the story. Canada's correctional system is divided in two ways. When a sentence of imprisonment is imposed, a dividing line is set at two years. If someone is serving a sentence of two years less a day, they are sent to a prison, and if they are sentenced to two years or more, they are sent to a penitentiary. Prisons are managed by our provincial and territorial Governments, whereas sentences of two years or more are managed by the federal Government. That will become important when I talk about the court challenges.

Quebec was the first province in Canada to allow its provincial prisoners to vote, and that was in 1979. However, it permitted its prisoners to vote only in provincial elections and it disbarred from voting prisoners who were serving a sentence for violating the elections act.

The next stage of the story occurred in 1982, when the Canadian Charter of Rights and Freedoms came into force. That is the second part of our constitution. It set out—in section 3—that every citizen has the right to vote. After the charter came into force, some provinces in Canada allowed prisoners to vote. Manitoba and Newfoundland joined Quebec in allowing prisoners to vote. However, that created disparity across Canada. Whether prisoners could vote was dependent on where they were incarcerated, the length of their sentence and what type of election it was—provincial or federal.

Two years after the charter came into force, a prisoner called Rick Sauvé, who was serving a lengthy sentence, introduced what we call a charter challenge—a constitutional challenge—to the prisoner voting ban. It was not until 1993 that the Supreme Court of Canada ruled that the total ban on prisoner voting was unconstitutional. In the same year, the federal Government introduced a bill, which was passed by Parliament, that removed the disqualification for prisoners serving sentences of two years less a day but maintained the ban on federal prisoners—those serving sentences of two years or more.

The new provision that kept the ban on federal prisoners voting was challenged, again by Rick Sauvé. It took almost 10 years for the case to make its way through the Canadian courts, so it was not until 2002 that it reached the Supreme Court of Canada. Again, it found that the legislation infringing prisoners' right to vote was not a reasonable limit of that right. I can go into more detail if you are interested in why the Supreme Court made that ruling, but it is included in my written evidence.

Since 2002, all prisoners in Canada have had the right to vote. Their first vote in a federal election happened in 2004.

The Convener: I know that committee members have lots of questions, but I am very struck by the fact that, in both examples, all prisoners have the right to vote. The UK Government has proposals for the rest of the UK, apart from Scotland. It will go with the judgment that was passed, but it will only do the minimum. It will only be if someone happens to be out of prison on a day when there is an election that they will be able to vote. Was that a consideration in Canada and Ireland or was there, as Dr Behan described, not really a lot of debate about all prisoners getting the vote? Was it more about how to facilitate prisoners getting the vote? Is that how it worked?

Dr Behan: I suppose it begins with philosophical beliefs about whether we want to give prisoners the right to vote. In the Republic of Ireland, the debates about that seemed to be more about the mechanics of how we would enfranchise prisoners—or enable them to vote because, legally, they still had the right to vote, although they could not exercise it on election day. In other jurisdictions, there have been debates about who should be allowed to vote and whether it should be related to the sentence or to the crime. The discussions in Ireland were very much about the practicalities and how prisoner voting was going to be not just enacted but facilitated within prisons.

The Convener: It was facilitated through postal voting.

Dr Behan: Yes. The legislation enabled prisoners to vote by way of postal voting. The Government just added another category of postal voting to the constituencies. For example, there is postal voting for people who are infirm and cannot make it to a polling station, people who are out of the country on diplomatic business, and so on. There are six different types of postal voters, and prisoners were just another category.

The Convener: Emma, given that there was a two-tier system in Canada related to sentences of two years less a day and sentences of two years or more, was consideration given to whether the length of sentence or the crime should be taken

into account when deciding whether people should get the right to vote? Eventually, Canada came down on the side of all people getting the right to vote.

Emma Trottier: Yes, eventually—it took about 10 years. Even though the decision that the blanket ban on voting was unconstitutional had come out in 1993, the federal Government chose to—or, as we would say in Canada, tried to—comply with the court ruling but still chose to maintain the ban on prisoners with sentences of two years or more voting, which the court in 2002 found was an arbitrary decision.

The Convener: Okay. Thank you. We will move on to questions from members, starting with Mary Fee.

09:15

Mary Fee (West Scotland) (Lab): Both our witnesses discussed the issue of how the public perceived the decision to give prisoners the vote. There has been a fair amount of discussion and debate across the UK about whether prisoners should be given the right to vote, and people come down very much on one side or the other—“No, absolutely not” or “Yes”—although there is a slight grey area in the middle. I am interested in why the issue was not controversial in Ireland. As you will probably be aware, certain media outlets in this country take a particular view on offenders and portray them in a particular way. Is it the same in Ireland and Canada? How did the public get on board with the decision?

Dr Behan: What I found remarkable in my research was the lack of discussion and debate about the issue in Ireland outside the Parliament. I analysed six different newspapers, including the Irish editions of the popular UK titles that would take a different line here, and I found that the discussion was not even mentioned in them. One newspaper contained a report on the passing of the legislation. The legislative process began in October 2006 and, after going through the committee stages and so on, the bill was finally passed in December 2006, but there was only one small report to say that the bill had been passed. The lack of controversy struck me. I have lived in the UK for the past six and a half years and I can say that the discourse around the issue in newspapers and so on has been different here.

One of the issues in the United Kingdom has involved the fact that the issue is a sort of perfect storm of law and order, judicial activism and what can be perceived as European interference. The coming together of those issues seems to have created much greater controversy here than there was in the Republic of Ireland, where the issue was introduced as involving electoral reform rather

than penal or criminal justice reform, which meant that there were not the same debates about the kind of punitive approach that might be taken with regard to the treatment of prisoners.

Remarkably, no Irish parliamentarian spoke out against the legislation, whereas in the House of Commons there have been back-bench debates on the issue and so on. It has been decided that the matter is one for the UK Parliament alone and no one else, and parliamentarians have come down on the side of saying that the legislation should remain in its current form, although I know that there were some developments at the end of last year with the Secretary of State for Justice introducing some minimal and limited voting for an extremely small number of prisoners in response to the Hirst judgment.

Mary Fee: Do we need to find a way to change the discussion in the UK? At the moment, the issue is discussed quite firmly as one of justice and penal reform. Do we need to change the discussion to one of electoral reform in order to change the way that people perceive the issue?

Dr Behan: The discussion probably reflects the much wider debates about attitudes towards prisoners and people who commit crimes in the United Kingdom. There is a need to view the issue as part of a more rational discussion about how we treat people, what is effective, how we deal with prisoners, how we encourage them to reintegrate into society after their sentence and how we encourage them to participate in the community within prison and to maintain their connection with the society outside prison.

The second issue reflects the view that I would take as a student of politics and history, which is that we should encourage all citizens to participate as widely as possible in democratic dialogue. If we facilitate that for as wide a number of people as possible through electoral reform, that creates a more vibrant democratic state and more opportunity for people to engage civically. The research on voting indicates that those who vote are more likely to be civically involved in many other areas. The research looks at everything from charitable effects to community groups to parent-teacher associations and so on. There is a connection, although there is some discussion about whether one leads to the other, but voting certainly engenders a sense of civic engagement and responsibility, and that is enabled by electoral change.

The bigger issues around criminal justice and the treatment of prisoners also need to be discussed.

Mary Fee: What was the situation in Canada? How did the public perceive this?

Emma Trotter: I only know from having spoken to fellow Canadians who are far more knowledgeable in this area than I am; I was quite young when this happened and I do not remember it first-hand. Some of the public's concerns were about where institutions were and how populated they were—our biggest facility is about 500 prisoners—and whether it would sway that riding in one direction or the other. Another concern was that, even though prisoners had been given the right to vote, they would not use it, and it would be too difficult and time consuming to facilitate voting in all the prisons and penitentiaries across Canada.

All the concerns that were raised in 1993 and again in 2002 have never materialised, partly because of the way in which we have structured elections for prisoners in Canada. They do not vote in the riding of their penitentiary or prison; they vote in their home riding. Evidence suggests that prisoners vote in almost equal numbers to the rest of Canadians in the general population. In terms of it being too difficult or time consuming to facilitate voting, we have learned through our past few federal elections that it is not actually that difficult to make it happen because Elections Canada holds polling stations in all prisons and penitentiaries.

Mary Fee: That is interesting. Take-up of voting is another argument that we have heard here—if we give prisoners the vote, none of them will use it because they will not be interested. Your point about take-up being much the same as it is in the wider population is interesting. I am interested in hearing Dr Behan's view on that.

The other point that has often been made is about whether there would be hustings or polling stations in prisons. I tend to think that people who just do not want prisoners to have the right to vote are putting up obstacles that are quite ridiculous.

Was the take-up in Ireland very high?

Dr Behan: In the first election in which prisoners were allowed to vote, in 2007, 14 per cent of the prison population registered and 10 per cent overall voted, so 75 per cent of those who had registered actually went out to vote.

Take-up has been quite low. Obviously that was the first time and there might have been teething problems for electoral officials and prison officials. The take-up has been generally under 10 per cent since then. I have conducted research on a number of elections and I would say that the prisoner population reflects the demographic outside. Generally, in the Republic of Ireland, those who are sent to prison are young, urban males who have a low level of traditional educational attainment. They tend to have low levels of trust, civic engagement and voting

outside prison. It is therefore probably not surprising that that demographic, which is predominant in the prison population, does not necessarily change its pattern once they are in prison. In my research, I found that those who are most likely to vote are those who have voted before, those who have a higher level of trust in civic institutions and those who have greater levels of education. The demographic of those who vote on the inside reflects the demographic outside, or indeed vice versa.

The debates are twofold. The first is on the belief that prisoners should be entitled to vote. If you go down that road and believe that they should not, that is that. However, if you believe that they should have that right, there is the issue of the practicalities. Prisons are flexible institutions in the way in which they respond to changes to penal policy over time. In the Republic of Ireland, prisoners were given their ballot paper, the ballot paper was put into an envelope, the envelope was signed and mini-polling booths were set up in each prison. Voting was organised by the local electoral authorities and it was not a huge or onerous task for the prison authorities.

Secondly, why not have hustings in prison? Why not go to prisons and find out what prisoners think? We do that in every other area of engagement today—on university issues, we talk to students and, on the health service, we talk to patients. We talk to the constituencies that are involved in any area, including on services that we provide. Therefore, I encourage politicians to go into prisons, have hustings in prisons, engage with prisoners and put it to them that they, too, have a responsibility to participate in elections as a form of civic engagement.

Alex Cole-Hamilton (Edinburgh Western) (LD): Good morning and thank you for coming to see us. I found your opening presentations fascinating. We have a great panel here, because we have examples from two countries: one where there was an outright disqualification on prisoner voting and another that, much like Britain, did not have a stated disqualification on that, but—I think that it is fair to say that the UK and Ireland mirrored each other on this—had an antiquated Victorian notion of civic death on incarceration. In that sense, people did not participate in the normal run of human life in the country that they inhabited while they were incarcerated.

I am interested in the disparity that exists between Britain and Ireland, in that we have a press that is hugely hostile to the idea of prisoner voting, and that same hostile, right-wing press sees prison not as a means of rehabilitation but as a punishment. It talks up the idea that we give luxuries to prisoners and, to a certain degree, the press holds the public in its thrall.

My first question is to Dr Behan. Ireland managed to introduce prisoner voting because you no longer have that culture or the Europhobic, prisoner-bashing, right-wing media that we have in the UK, so you had an easier run. Are there international examples of countries that have introduced prisoner voting against the tide of public opinion, which is what we face in the United Kingdom?

Dr Behan: It is up to private newspapers or private media to decide on their perspectives, and for politicians to either respond or take that on board. I have not come across any jurisdictions in which there has been a public backlash against prisoner voting yet politicians have introduced it despite that. In the jurisdictions in which it has been introduced, often the judiciary has forced and pushed the issue, and Governments have responded to that.

In the Republic of Ireland, as you said, there are somewhat unique characteristics. However, it perhaps reflects a less punitive approach to the treatment of prisoners that is different from what we expect from the institutions when we send people to prison. It really comes down to what the objectives of punishment are and what we expect from prison. If we expect prison to exclude and contain people and to take them out of society for a period of time, they do that fairly well; generally, they can achieve that goal. However, if we want prisons to be a place for people to have an opportunity for reflection and to have the potential for change and transformation, I would argue that enabling prisoners to participate as widely as possible in society outside prison might be what the desistance scholars call one of the hooks for change.

People begin to see that, on election day, every individual's vote is the same and every individual is equal so, if prisoners are given that opportunity, that is one piece of what I consider a wider mosaic of citizenship to encourage prisoners to participate and to see their role as one of contributing to society and giving something back. As well as having responsibilities, they have obligations and can contribute to society while they are inside. That might engender a sense of commitment to a pro-social, law-abiding life when they are outside.

09:30

Alex Cole-Hamilton: When was the blanket disqualification in Canada originally brought in?

Emma Trottier: That depends on whether we look at provincial or federal legislation. In the 1970s Quebec was the only province that allowed it—that was in 1979. Before that we have to go all the way back to 1869.

Alex Cole-Hamilton: So the legislation is Victorian.

Emma Trottier: Yes. That is where we got it from.

Alex Cole-Hamilton: Indeed. I was fascinated to hear that the only backlash to the ban being relaxed arose from concern with the process. Since the ban was removed, has the issue been a feature of discussion in the Canadian press?

Emma Trottier: Every time that we come up to a federal election, there is something on the Canadian Broadcasting Corporation news—the Canadian equivalent of the BBC news—about prisoners going to the polls, because it happens 10 days before election day for the remainder of Canada. However, it is always a very neutral article highlighting the fact that Elections Canada officials are going into prisons across the country to facilitate prisoners' right to vote.

Alex Cole-Hamilton: In respect of the democratic involvement of prisoners when they are enfranchised, we talked about hustings in prisons. I fully support that involvement and absolutely support the idea of extending the franchise, but have you seen evidence—either in the jurisdictions that you represent or other jurisdictions that have extended the franchise to prisoners—of that decision shaping public policy toward penal reform? Is there evidence that when politicians go into hustings, they might see for the first time the visceral detail of the penitential system and thereafter seek to woo the prison population through their manifestos? You can say no. [*Laughter.*]

Emma Trottier: I cannot say. We have politicians or candidates who go into penitentiaries and prisons in the run-up to elections and hold meetings with prisoners while they are incarcerated. I do not know whether that has shaped candidates' perceptions of our conditions of confinement. I would wager that it has, given that some of those conditions are quite harsh, but I cannot say with any certainty.

Alex Cole-Hamilton: You answered very eloquently the argument that the vote of 500 prisoners in one penitentiary could sway an election in a riding by pointing out that if prisoners have a postal vote in the ridings from which they come, their votes will have a diffuse effect, as those votes will count along with those of all their neighbours in that riding.

In that respect, it is harder for those prisoners to engage in the democratic process because their candidate might be in a riding several hundred miles from where they are incarcerated. Are there means of prisoners engaging with the process remotely?

Emma Trottier: Having worked for the correctional service of Canada during a federal election, I think that it makes every effort to inform prisoners. They receive web-based information as much as can be facilitated. They have access to televisions, so they can watch on the news what is being said in their respective ridings. Every effort is made to ensure that they have the information to make an informed decision on their vote.

Alex Cole-Hamilton: I ask Dr Behan the same question.

Dr Behan: I interviewed prisoners after the 2007 election and found no evidence of them voting as a bloc. I think that the idea that all prisoners would vote for one candidate is used by people who oppose enfranchisement. The argument is that they will all vote for somebody who is anti-law or pro-criminal or will use their vote to frighten people off.

When I asked prisoners who they had voted for—and the largest party in the Republic of Ireland in the 2007 election was Fianna Fáil—the largest party among prisoners was Fianna Fáil. As a demographic, prisoners reflected the voting of people outside.

There is also the idea that if politicians go into prisons, what they see will humanise the experience for them. One of the things about facilitating prisoner voting is that not only does it maintain a connection for prisoners on the inside with the outside but, yes, it brings in politicians to see how their policies manifest as conditions in the institution—as it should do.

It might not be the politician who represents the constituency of particular prisoners who goes into the prison because, as you point out, their constituency might be far away from the prison, and during election time it is highly unlikely that politicians will go and see two or three voters. However, people from their political party could go into the prison to engage with prisoners and encourage them to vote along party lines for their candidate. They could also have a debate about policies and how we engage prisoners. As well as giving prisoners a connection with the outside, that would bring the outside into prison.

At the end of the day, prisons are public institutions. They might be closed, but what goes on there takes place as a result of penal policy that is decided by politicians, which reflects the society that prisoners are part of. What goes on in those institutions is done in the name of the citizens of each state, even if they are run by private companies. If politicians were to go into prisons to see what impact penal policy has on a day-to-day basis and whether it is effective and leads to what the public good should be, which is people coming out of prison and not committing

crime again, that would enrich their understanding of the impact of their policies.

The Convener: Gail Ross wants to come in on that point.

Gail Ross (Caithness, Sutherland and Ross) (SNP): I had been going to ask about that very issue. Good morning and thank you for coming in. Much of what I had been going to ask about has been covered very well. Thank you for your evidence.

You touched on the rehabilitation side, Dr Behan. Are any statistics available from Ireland or Canada on whether allowing prisoners to vote has helped with their rehabilitation and had a positive impact on reoffending rates?

Dr Behan: When it comes to people transforming their lives and not committing crime again, there is rarely just one factor involved. There are many of what desistance scholars call hooks for change, which can be maturation, intergenerativity, having a stable relationship and perhaps also a child, developing pro-social bonds, getting a job or feeling part of the community. I have not found evidence to say that the introduction of prisoner voting will lead to a lower rate of recidivism, but it sends a powerful signal to prisoners. That signal is not just symbolic but is grounded in reality; it tells them that their voice is important and that they are part of the community.

I am not so sure that, in and of itself, prisoners being able to vote will reduce crime, but it is part of the wider mosaic of citizenship, whereby we try to reduce the dislocation of those we send to prison and their disconnection from society by enabling them to maintain some contact outside.

Gail Ross: In previous evidence, the issue of trust was mentioned. Giving prisoners the vote means placing our trust in them to make important decisions that will affect their lives, whether they remain in prison or come out, and those of their families. Would you like to comment on that, Emma?

Emma Trottier: I do not want to comment on the trust element, but I would like to respond to your first question.

When I first reached out to the committee's clerks to share the Canadian experience and was invited to attend the meeting, I reached out to Rick Sauvé, who is the Canadian prisoner who launched the legal challenge. I wanted to ask him why he did it and what the impact was. We exchanged some emails and he made an extremely interesting connection between the right to vote and responsibility. Prison sentences are meant to remove people from society, not to take away their responsibilities as citizens. The message that I got from Rick that was meaningful

to me was that disenfranchisement is more likely to become a self-fulfilling prophecy than a spur to reintegration.

If you deprive at-risk individuals of their sense of collective identity and their membership of the community, that is unlikely to instil a sense of responsibility and community identity, whereas if you protect, promote and respect the right to vote, you are more likely to teach democratic values and social responsibility.

I am aware that the committee has heard from individuals with lived experience of the criminal justice experience, but I strongly encourage you to reach out to individuals who have voted while being incarcerated and to look at the impact that that has had.

Jamie Greene (West Scotland) (Con): Good morning, panel. I apologise to Dr Behan for missing the opening part of his statement, although I have read through his submission.

I have been thinking throughout this process that, if prisoner voting is to happen in the UK, not only must it be achieved through legislation, but we must take the people with us. I am intrigued by the example of the Irish Republic, where the general public made less of a fuss about the issue. I do not know whether that was media led or otherwise, but it strikes me as quite a big difference, because in this country the issue is contentious.

How do we tackle some of the views or misconceptions about what allowing prisoners to vote would achieve? I have two questions. You have addressed one of my questions on the perception that the natural trend would be for prisoners always to vote against the Government of the day, because they are in custody, they are perhaps looking for someone to blame, and it would be easy for them to blame the Government of the day who put them in there in the first place. Your evidence suggests that that might not be the case. You gave the example of Fianna Fáil winning the election. Was there going to be a change in Government anyway? Were prisoners voting with the wider society against the incumbent Government?

Dr Behan: No. Fianna Fáil had been in power, and it was returned to power in 2007.

Jamie Greene: That quite easily puts that myth to bed.

Dr Behan: Yes.

Jamie Greene: My other question is about what happens in Canada, where the prisoner votes in their home constituency—or riding—as would likely be the case here. To return to the philosophical question of whether prisoners should be allowed to vote, how do we combat the view

that someone who is removed from their community should not have a say on which elected members, including MPs, councillors and members of the Scottish Parliament, should govern that community, of which they are no longer part in a physical sense?

I ask that not just in a philosophical way, but in a practical way. Prisoners who have custodial sentences that are far longer than the cycles of the elections in which they are voting will not be participating in those communities for which they are electing members, and the point of an election is to elect a local member and not just a Government.

Emma Trottier: That goes back to what I was saying about a person's removal from society not automatically resulting in their responsibilities as a citizen being taken away. Your comments are very focused on the individual voter, but an individual voter who is a prisoner may have family and friends who live in their community. That takes us back to wanting to instil and maintain that sense of responsibility in prisoners, so that when they come back into society they are not essentially starting from scratch, as they will have been participating in the communities that they came from and caring for the individuals who are their family members and friends.

Jamie Greene: Do you have anything to add, Dr Behan?

Dr Behan: I return to the objective of imprisonment and whether we use it for the denial of liberty or for punishment. In the US, there is much debate about what are called the collateral consequences of imprisonment, or invisible punishments. The denial of liberty begins the punishment, but there are other punishments beyond that. If we go down that road and take away not just an individual's liberty but their right to vote, it is another layer of punishment above and beyond the denial of their liberty.

In terms of the longitudinal consequences, most people who end up in prison are at a young age, initially. If we encourage in them a tradition of voting at an early age, it has longitudinal consequences in that it encourages them to do it outside prison. Using prison as a place for democratic education can be important.

09:45

I do not know whether the experience of imprisonment in Scotland is similar to that in Ireland, but there are some constituencies in the Republic of Ireland that have a much greater number of people in prison—there is a disproportionate number from various electoral districts. That might have an impact on building resilient communities, which should be an

objective of all political leadership. If a number of those individuals are taken out of voting at a particular point in time, it can weaken the bonds of community through which people are encouraged to participate in their community and the democratic process.

Jamie Greene: I find that idea fascinating. The issue is not just about an individual not being able to vote, but about the fact that they come from communities where they have neighbours, families, colleagues, children and parents. The decision that they make about who will represent that area is one that will affect the people to whom they are still connected and will be connected when they leave custody. That is perhaps a side of the argument that I had not appreciated previously.

The Convener: We should also be quite clear that the argument about whether we should do this is not won or lost depending on what side we are on. The instruction is that we have to do it, so we have to look at ways that we can do it. I hope that we can investigate some of that.

David Torrance, do you have a supplementary question on Jamie Greene's point?

David Torrance (Kirkcaldy) (SNP): We have talked about the role that the media played in 2002 and 2006, when prisoners were allowed to vote. At those times, there was no real social media. How can we lessen the role of social media or get things across to people who use it? It is very effective at going against people and inflaming a situation very quickly.

The Convener: Or the opposite.

David Torrance: Yes. Opinions on something such as prisoner voting will be stirred up by it. How can we engage on that? Are there any examples that the witnesses can give us? Social media is now a way for people to get news rather than getting it from the newspapers.

Dr Behan: I would come back to political engagement and leadership. Newspapers and other media have their own perspective. Social media can create a major storm around a particular issue at a particular moment in time.

Part of the way to do it is to look at prisoner voting as part of electoral reform. Scotland showed the way during the independence referendum when it enfranchised 16 and 17-year-olds, and the rest of the UK looked on in awe at the engagement of the populace in Scotland in the debates on the Scottish referendum.

How do we encourage people to participate as widely as possible in their community? For a period of time, prisoners are in a community. Unfortunately, when people are sent to prison, they are excluded from society and there is this

idea that we do not need to worry about them because they are cut off from society.

If I might be so bold, I encourage the committee to go into a prison and speak to prisoners about their perspectives. You should ask them what they think. It would enrich your deliberations and you would certainly get a unique perspective from those who are most affected. You could then bring the debate back to the community and to local areas, and humanise the people that we send to prison. They can be stigmatised, othered and excluded, but the majority of prisoners here and throughout the UK and Ireland will be released one day. How they are treated when they are inside will have an impact on how they act when they come out.

The debate is wider than prisoner voting; it is about how we treat and label people who we incarcerate. It is about how we take prisoners out by encouraging them into civic engagement and how we bring the wider community in, so that its members see that prisoners are people who are parents or children and who have communities of which they are a part, as Jamie Greene has said.

What Jamie Greene said about prisoners' concerns was interesting. My research included asking prisoners what they thought was the most important political issue in Ireland, and they said the health service, which was exactly the same answer as that of the community outside. The outside community might think that prisoners would say sentencing, the criminal justice system or penal policy, but they did not—they had the same concerns about the health service that the community outside had.

Mary Fee: Some countries that allow prisoner voting still have a ban, or a partial ban, that depends on length of sentence or type of crime. In this country, the debate on whether to allow prisoner voting has focused on whether it should apply to every prisoner or depend on the sentence or type of crime. Would it be a hindrance to focus the discussion on the type of crime and length of sentence? Should our starting point be a principled discussion of whether prisoners should be allowed to vote?

Emma Trottier: I have my prejudices on the subject, which are probably obvious. My answer is yes. When I was getting ready to appear today, I read some transcripts of meetings of the Westminster committee that studied the Voting Eligibility (Prisoners) Bill. Your exact questions on whether the right to vote should be based on sentence length or offence category came up. The committee spoke to experts including Julian Roberts, who is a sentencing expert at Oxford university whom I greatly admire. He tackled some of those questions and said that neither is a good solution to the issue, as they ignore the wider

question of the purpose or goal of denying prisoners the right to vote.

In the Canadian experience, it has been clear that the arguments that support a ban do not stand up. Voting is a constitutional right and the denial of such a right without any limitation was found to infringe prisoners' fundamental rights.

Dr Behan: The debate could get sidetracked by individualising a particular crime or concentrating on a particular individual. For example, in a newspaper or social media or wherever, the debate could turn into, "Will you allow X to vote, even though they have committed Y crimes?" and so on.

Regardless of crime or sentence, people are part of the community, and they should participate in that community through voting. If you started going down the sentence and crime route, it could take away from discussions about such issues as treatment of prisoners, civic engagement and participation, and the issue could become individualised. Instead of being sidetracked by asking whether X or Y should be able to vote, you should ask whether we should allow prisoners to vote, and say, "This is the way that we will do it".

Mary Fee: That is helpful. Thank you.

Alex Cole-Hamilton: I am really struck and frustrated by the arbitrary nature of the denial of the right to vote for Scottish prisoners. If you had started a three-year prison sentence here on 9 June 2014, you would have missed nine elections and referenda, whereas if you had started the same sentence on 9 June 2017, you would likely miss not a single one. The same would go for individualising the crime for which the right to vote would be removed. If the crime was, say, political dishonesty, we could have exactly the same situation, with a prisoner serving three years and missing nine elections in one period, but not a single one in the next period.

My question is about public opinion. Even if there is some unified political will in Scotland to make prisoner voting happen, the barrier is that it is not reflected in public opinion. It comes back to the age-old question: should public policy follow public opinion or lead it? This is not exactly the same thing—indeed, it is a different issue—but when they brought an end to the physical punishment of children in Belgium, it happened against 80 per cent resistance from the public. However, 18 months after the ban came in, that had completely turned around to 80 per cent support. Do you think that the jurisdiction that you are from is politically more disposed to lead rather than to follow public opinion and, if so, can you give us other examples where that is the case?

Gail Ross: Wow—no pressure, then.

Emma Trottier: I think that if we had gone out and asked Canadians whether all prisoners should have the right to vote, the majority would have said no. However, because of the court decision and what has been said about the goals and purpose of punishment and whether governments have the right to deny people a constitutional freedom outright without any limitation, public opinion on prisoners' right to vote has really changed. The policy has shifted perceptions in Canada concerning prisoners' right to vote. It is news, but not nasty news. We do not see headlines such as, "Why are they voting? Take their vote away." Instead, the feeling is very much, "Oh yes—we have prisoners who are voting today."

Dr Behan: My answer is similar to Emma Trottier's comments about Canada. The odd time that we see this discussion in newspapers is in the run-up to elections, when we get all sorts of political coverage and they might go to prisons for a different angle. Because they have a postal vote, prisoners cast their ballot maybe a week or 10 days beforehand and there might be a report on how the vote went in the prisons—the number who voted and so on—rather than a debate on whether the prisoners should have the right to vote.

No opinion poll was held at the time as to whether the general public thought that prisoners should have the right to vote. In the research that I undertook on this for a number of years from 2006 onwards, I found people asking whether prisoners had the right to vote—they were not very knowledgeable about whether prisoners had that right. That probably comes back to the fact that, as a populace, we tend not to know a huge amount about what is going on within our penal institutions. We exclude people by sending them there and putting them out of sight and out of mind for a time.

It is incumbent on political leaders, leaders of civic society and other influencers—for example, in the business community—to engage people and try to create a different approach towards prisoners. If we believe that it is a good idea for prisoners to have the right to vote, we have to take a bit of political and leadership responsibility and challenge the perceptions and negative stereotypes of those who have been sent to prison. That might not always be popular in terms of political return, but it does not seem to damage any politician's popularity. There might be other reasons why some politicians are not returned to power, but I have found no evidence to suggest that their voting record on whether prisoners should have the right to vote has had any impact on the electoral outcome.

Alex Cole-Hamilton: With regard to the opposition that exists in your jurisdictions, victims

organisations are often thought of as those with the most to say against prisoner voting. Have the victims organisations in your countries played much of a role in the process?

Emma Trottier: No, not in terms of coming out against it.

Dr Behan: It is same in the Republic of Ireland.

The Convener: Before I come back to Jamie Greene, I have a quick follow-up question. We have talked about whether this issue should be decided on the length of someone's sentence or on the crime committed. Was there any discussion about whether a person convicted of electoral fraud, for example, or political dishonesty should be denied the right to vote, because of the nature of their crime?

10:00

Emma Trottier: When Quebec decided in 1979 to allow its provincial prisoners to vote, it did not apply that right to prisoners who had violated elections legislation. However, I would go back to the many court decisions saying that any ban on prisoner voting is unconstitutional and that it falls outside Parliament's remit to add a voting ban to its package of punishment options.

Dr Behan: Similarly, I understand why people say that the punishment should fit the crime. If the crime undermines the democratic process, an individual should not participate in that process. However, it could be said that all crime undermines the democratic polity and the social compact that binds us together.

When we and other jurisdictions consider the matter, we talk about the social contract a lot of the time and whether somebody who has committed a crime has undermined that. I try to look at the social compact. Instead of looking in a negative way at somebody breaking the social contract, we should look at how the social compact binds us together as a community and how we can build more resilient communities in which we work together. As a result, I do not think it appropriate to eliminate from voting an individual who has committed one crime or another.

Jamie Greene: The convener stole my thunder, as my question was very similar to hers. Perhaps I will ask it in a different way.

Gail Ross: You will get the same answer.

Jamie Greene: Indeed.

First of all, I have probably missed my chance to declare an interest, but I should have stated that I am a Canadian citizen and that I am very proud of what Canada has achieved in this respect.

In any of the countries or jurisdictions in which prisoner voting occurs, are there any known exemptions? The electoral fraud example is interesting. If someone in the wider public commits some form of electoral fraud or tries to pervert electoral processes and is subsequently sent to prison as a direct result of that crime, does it seem odd to argue that they should have the right to vote while that sentence is being played out and not when they come out of custody? I do not want to bring the issue back to the sentence versus crime argument, because I think that a person either has or does not have the right to vote. However, are there any circumstances in which it would be appropriate to have exemptions for certain crimes?

Secondly, if a poll were run in Ireland or Canada on a proposal from the Government of the day to remove prisoner voting, the public might be up in arms about it and say that it made no sense. They might say that prisoners have that right at the moment and ask why it should be taken away. Because the Government has moved in a certain direction, it has taken the public with it, and perceptions have shifted over decades.

Dr Behan: There is an argument that a person should be prevented from voting if they have committed a crime that directly relates to the activity. Indeed, there are states in which crimes such as treason, challenging the authority of the state or electoral fraud are considered serious enough to deny people the right to vote.

Possibly one of the most acute examples of the issue coming to the fore happened in 1995, when Yitzhak Rabin was killed by a man called Yigal Amir as he was coming away from a peace rally in Jerusalem. Six months later, during the Israeli elections, the man who killed Yitzhak Rabin—the Prime Minister of Israel, and the representative of the people of Israel—was allowed to vote in the election for his successor. The issue was brought to the Supreme Court, which said that denying him the right to vote undermined not just his right but the rights of all the community and the democratic polity. You could not get a more acute example of someone undermining the democratic process and yet still being part of that process.

Jamie Greene: Oh.

The Convener: You are speechless, Jamie.

Jamie Greene: I was just repeating your question, convener.

My second point was about public perceptions. I am not asking you to pre-empt the result of any polls, but if there was a proposal to take prisoner votes away, you might find that perceptions had shifted from negative to positive, which takes us back to the question whether politicians should

lead the conversation rather than react to popular public opinion.

Emma Trottier: I am not sure what your question is. Do you want us to try to guess what the Canadian population would think if the Government were to come out tomorrow and say that there would be no more voting rights for prisoners?

Jamie Greene: Exactly.

Emma Trottier: That is a tough one.

The Convener: It is difficult to surmise the views of an entire nation.

Emma Trottier: I just do not think that the Government would do that. If it did, though, my sincere hope is that Canadians would stand up and say that the Government does not have the right to deny constitutional rights outright. The Government can limit certain rights if that is justified, but I hope that denying constitutional rights outright would anger Canadians.

Jamie Greene: I guess what I am saying is that it might seem like a big issue at the time, because it is a change, but decades after the change has occurred, it is no longer discussed or thought about. In effect, it becomes a non-issue.

Emma Trottier: That is right.

Alex Cole-Hamilton: At this point, I must declare the same interest as Jamie Greene as I, too, am a Canadian citizen.

I am keen to hear how your jurisdictions have responded to extending the franchise in other areas. For example, we have battled for years and years to extend the franchise to 16-year-olds and have made significant progress. Is extending the franchise to young people in particular a frontier that you are pushing in Canada and Ireland?

Emma Trottier: No, that is not something that has come up. When I first moved to Scotland, I was very surprised to learn that the franchise had been extended to 16-year-olds. Between the 1980s and 2002, the franchise in Canada was extended, first, to federal judges and then to prisoners. However, it has not been extended to young voters.

Alex Cole-Hamilton: Is the voting age still 18 in Canada?

Emma Trottier: Yes.

Dr Behan: In the Republic of Ireland, the discussion is more around the practicalities of voting rather than extending the franchise. For example, people are asking how we can encourage hard-to-reach groups to participate in the electoral process. The National Adult Literacy

Agency produces leaflets in accessible language for those who might have literacy difficulties.

We had a lot of new arrivals in Ireland in 2004, and when the European and local elections were taking place, the Department of the Environment, Heritage and Local Government produced information in Polish and Romanian to try to encourage those people to vote in those elections, because they had a right to do so. Moreover, in the 1990s, photographs were introduced on ballot papers in Ireland.

The discussion is about how to embrace hard-to-reach groups instead of extending the franchise. If prisoners are enfranchised, they become part of a hard-to-reach group and, as a result, special measures need to be put in place to encourage and engage them. We want to move beyond the legal concept of enfranchisement and use it as a means of engagement and empowerment. It all comes back to how we encourage civic engagement among prisoners.

Alex Cole-Hamilton: What is the age of franchise in Ireland?

Dr Behan: It is 18.

The Convener: We have exhausted our questions. Thank you for your incredibly interesting written and oral evidence, which will inform our future work. We will also have a discussion about whether we should visit a prison, so thank you for that recommendation.

We now move to agenda item 2 and therefore into private session.

10:09

Meeting continued in private until 11:02.

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