

## Ballots Behind Bars: the struggle for prisoners' right to vote

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The Satan's Choice Motorcycle Gang was, perhaps, not best known for a passionate commitment to parliamentary democracy. Certainly Richard Sauve wasn't. A member of the Gang in the 1970's, he was best known for his presence at the killing of Bill Matiyek, a crime for which he was convicted of murder in 1978, and sentenced to 25 years.

In 1984, however, Sauve initiated a legal challenge to that part of the Canada Elections Act which deprives prisoners of their vote and he has continued this fight long after leaving prison. He was joined in this case by three members of the Native Brotherhood Organization, a prisoners' association which represents aboriginal inmates at Manitoba's Stony Mountain Penitentiary. This seems fitting, given the disproportionate representation of aboriginal people in Canada's prisons.

"Half the prisoners at Stony Mountain are Aboriginal, and it's the same across the prairies", says Arne Peltz, Director of the Public Interest Law Centre in Winnipeg. Peltz, who is counsel for some of the challengers, goes on to argue that "You shouldn't take away the vote from society's outcasts and victims, no matter what misdeeds they've committed."

The right to vote is guaranteed to Canadian citizens by Section 3 of the 1982 *Canadian Charter of Rights and Freedoms*: "**Every** citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein". [My emphasis.] Because the right to vote is considered fundamental to parliamentary democracy, it is constitutionally guaranteed. However, Section 1 of the Charter provides a possible loop-hole: The rights and freedoms contained in the Charter are guaranteed to every Canadian citizen "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

What this means is that if any level of government in Canada wishes to disenfranchise certain of its citizens, it must provide evidence strong enough to satisfy a significant burden of proof.

When Richard Sauve launched his first court challenge to the blanket voting disqualification of prisoners, appealing to The Charter of Rights, the Attorney General of Canada argued that disenfranchising prisoners was the kind of “reasonable limit” specified in The Charter. In 1992 and 1993, however, two Appeal Courts and the Supreme Court of Canada upheld the prisoners’ challenge.

Round #1 to the prisoners.

The Government then introduced legislation which disqualified from voting only those prisoners serving sentences of two years or more. The prisoners challenged this new attempt to deny them the right to vote and, in 1995, a Federal Court judge ruled against the Government’s revised legislation.

Round #2 to the prisoners.

However, in a judgement delivered 21<sup>st</sup> October of this year, the Federal Court of Appeal ruled in a 2-1 split decision, in favour of the Government.

Round #3 to the Government.

This case will now almost certainly make its way to the Supreme Court.

While lawyers and judges attempt to disentangle the complex web of technical legal arguments, perhaps the rest of us might step back to reflect upon the underlying moral issue: Is the Government of Canada morally justified in depriving prisoners of the right to vote?

The government and its expert witnesses claim that the basic objective of prisoner disenfranchisement is “educative”. Educative for the prisoners. Educative for the public at large. By taking the vote away from prison

inmates whose serious criminal conduct shows gross disrespect toward the lives, property or dignity of their fellow citizens, the government is attempting to promote “responsible citizenship”.

Serious criminals, the government argues, demonstrate by their anti-social conduct that they lack commitment to the well-being of the community. By disenfranchising prisoners we thereby denounce their irresponsibility. In the words of one Canadian judge: “The exclusion of the criminal from the right to vote reinforces the concept of a decent responsible citizenry essential for a liberal democracy”.

Critics of the government’s position do not deny the importance of citizenship education. Rather, they argue that one important way to encourage prisoners to become socially responsible is to enable them to participate in the democratic process.

Empirical research supports the proposition that when prison inmates are given greater control over their lives while incarcerated the result will be an increase of their independence and self-control after they are released. When inmates are encouraged to listen to political candidates in prison, to ask questions and debate the issues, to follow election coverage in the media, and then to vote, these activities have strong rehabilitative potential. And, when permitted, they do vote: an impressive 74% in the last three Quebec elections.

As Brian LeBlanc, Vice-Chair of the Stony Mountain Inmates’ Welfare Committee, comments: “Prisoners lose certain rights because of incarceration, but we’re still citizens.” He adds, “Prison should help us learn the skills we’ll need when we are free. Like voting.” Ironically, Mr. LeBlanc didn’t see the importance of voting when he was outside prison. Now, he says, “I know better”, and has taken advantage of earlier court decisions to vote behind bars.

Most prisoners, sooner or later, re-enter the community. Common sense suggests that social reintegration is an important objective of good penal policy. Denunciation of serious offenders, through disenfranchisement, may be emotionally attractive to those who advocate “getting tough on criminals”, but it undermines rehabilitation. Richard Sauve himself makes the point succinctly: “When you tell people in prison that they have no stake in society, they will feel excluded and marginalized even after they re-enter society.” Additional stigmatization seems

likely to increase prisoner anger and alienation.

By denying the vote to serious offenders, the Government of Canada claims to be sending a morally educative message. But, as the federal judge in *Sauve* [1996] astutely comments: “[T]here is no empirical evidence to suggest that the disenfranchisement of prisoners reduces crime (either generally or specifically), or serves a morally educative function, or could operate as an effective punitive sanction...” Sending a symbolic message means little if the effect of the message is counter-productive.

Quebec and Newfoundland allow prisoners to vote in provincial elections. Saskatchewan and New Brunswick do not. Are citizens generally less responsible or less virtuous in the former two provinces? Merely to ask the question is to see that the government’s claim is hollow.

For a long period of our history, the vote was denied to women, the poor, the propertyless, Chinese and Aboriginal people. The history of the franchise in Canada has been a story of gradual evolution toward universal franchise. At present, the right to vote has been won by every group except prison inmates. It will now be the task of the Supreme Court to judge whether this last group, the least popular and least powerful of all, is entitled by the Charter to participate in the political life of our country.

As for Richard Sauve, he served 17 years of his life sentence, and has been “out” for almost 5 years. He worked for several years as a child and youth counselor, helping inner city Toronto kids, and is currently employed by Lifeline Inreach, an association of ex-prisoners who go into prisons to work with lifers and long-term inmates. Not a bad start towards responsible citizenship.

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For a Side-Bar:

Even among nations which enjoy a strongly democratic tradition, there is no consensus on the issue of whether prison inmates should be prevented from voting. In Norway, Sweden and Denmark, Italy, Ireland and Israel, there are no restrictions on the right of prisoners to vote. By contrast, the United Kingdom, France, Spain, and Greece all impose some voting restrictions. In Greece, prisoners serving either indefinite or life sentences are disqualified, but otherwise the matter is left to the discretion of the sentencing court. Sentencing courts also determine voting rights of convicted persons on an individual basis in Spain and France. In England, all those who are serving a prison sentence are disenfranchised, as is anyone found guilty of corruption or electoral fraud in the preceding five years.

In Australia, as in Canada, the federal government determines the qualifications for voting in federal elections, while state/provincial governments set their own voting rules. In America, by contrast, each state establishes voting qualifications not only for state elections, but also for federal congressional and presidential elections.

Thus, in Australia, Canada and the USA there is significant variation with respect to inmate voting rights. In some states or provinces there are no restrictions on prisoners' voting rights, while in others a criminal conviction results in a lifetime loss of the right to vote. In some states and provinces the criterion for disqualification depends upon the kind of offence committed, in others it depends upon the length of sentence.

