

Inmate voting rights: two recent Canadian cases

Arthur Schafer, Director, Centre for Professional and Applied Ethics, University of Manitoba

Inmate Voting Rights: two recent Canadian cases

The democratic right to vote is guaranteed to Canadian citizens by Section 3 of the *Canadian Charter of Rights and Freedoms*, which came into effect in 1982. Section 3 declares, in plain terms, the absolute right of **every** citizen to vote: “Every citizen of Canada has the right to vote”. Because the right to vote is considered fundamental to Canadian parliamentary democracy, it is constitutionally guaranteed, and enjoys the status of “basic right”, rather than revocable privilege.

This fundamental right of citizenship can be withheld by government **only if** it can demonstrably justify such a Charter violation as “a reasonable limit” in “a free and democratic society”. In two recent Canadian cases, *Sauve v Attorney General of Canada* [Federal Court of Appeal] and *Driskell v The Attorney General of Manitoba*, Professors Manfredi and Knopff, whose evidence is filed on behalf of The Attorney General of Manitoba, claim that the disenfranchisement of prisoners serving a sentence of five years or more can be so justified in “a free and democratic society”.

I shall attempt to show that the arguments they present rest upon key assumptions which are asserted dogmatically, without any supporting empirical evidence, and will further attempt to demonstrate that it is not reasonable in a free and democratic society such as Canada to deprive inmates of the right to vote.

When it is proposed to violate one of the most fundamental rights of citizenship, it is not enough to offer in defence of such violation the speculative musings of abstract theoreticians. If a democratic government wishes to disenfranchise some of its citizens, it must provide good solid evidence, “demonstrable justification”, for such a drastic limitation of rights.

In my judgement, neither Professor Manfredi nor Professor Knopff offers anything which could be remotely so characterized. There is a clear burden of proof on them to show that disenfranchising inmates actually serves objectives which are real and urgent. They attempt to meet this burden with nothing more persuasive than reiterated dogmatic assertion. Moreover, several of their major arguments would seem plausibly to support the opposite conclusion to the one they actually reach: namely, the conclusion that society should welcome and promote the participation of inmates to the fullest extent possible (consistent with their incarceration) in the democratic process.

Manfredi and Knopff on “Liberal Citizenship and the Right to Vote”:

Professor Manfredi begins his defence of the disenfranchisement of inmates with the claim that “liberal democracy...requires the development of a degree of civic virtue consistent with a political regime founded on self-government and the universality of citizenship.” [p. 9] Liberal regimes, he tells us, must share de Tocqueville’s concern with cultivating “a civilized and knowledgeable society”. [p. 8] John Stuart Mill is quoted, approvingly, as an advocate of educating “the moral sentiments of the community”.

The conclusion towards which Professor Manfredi wishes to lead us is expressed in the following passage from his brief:

The principal objective that the inmate voting restriction serves in a free and democratic society, therefore, is to protect the integrity of liberal democracy by preserving and promoting the rule of law and the civic virtues on which a regime based on equal political liberty depends. The restriction serves this objective by suspending the right to vote of individuals who have manifestly demonstrated their disrespect for the rule of law and their lack of those virtues. It simultaneously reinforces the principle that citizenship entails responsibilities and duties as well as rights and privileges. [11]

How does the disenfranchisement of inmates promote the rule of law and a virtuous citizenry? According to Manfredi, the answer to this question “lies in the type of character that liberal democratic regimes must cultivate in order to ensure their preservation.” [11] Liberal democratic societies ought to cultivate the virtues of empathy and self-control in order to produce citizens who are public-spirited and future-oriented. However, “offenders exhibit unusually impulsive and self-centred behaviour that renders them temporarily unfit to exercise the political rights and responsibilities of citizenship”. [p.12]

One part of the claim which Manfredi is advancing in the above-cited passages deserves to be enthusiastically endorsed. It is an important truth that liberal democratic societies, if they wish to survive and flourish, should strive to promote an active and educated citizenry, one which is animated, to some significant degree, by a public-spirited ethos. Does it follow from this, in any way, that we ought to deny inmates the right to vote? I shall argue that the opposite is true. If our goal is to promote democratic citizenship then the disenfranchisement

of inmates would be utterly counter-productive. In other words, Manfredi's argument gives us the best possible reason to favour, rather than to oppose, the enfranchisement of inmates.

How best to promote responsible democratic citizenship

Let's, for a moment, take a step back. Manfredi rightly praises John Stuart Mill for recognizing that "the virtue and intelligence of the human beings composing the community" is the "first element of good government". [p. 7] To make Mill's point even clearer, let me cite an additional passage from Mill:

To take an active interest in politics is, in modern times, the first thing which elevates the mind to large interests and contemplations; the first step out of the narrow bounds of individual and family selfishness, the first opening in the contracted round of daily occupations.... The possession and exercise of political and among others electoral rights, is one of the chief instruments both of moral and of intellectual training for the popular mind;¹

This passage from Mill expresses eloquently, as do similar passages cited by Manfredi from the work of Rawls, Madison, Toqueville and Wilson [pp.8-9], why prisoners should **not** be disenfranchised. The exercise of civic responsibilities has the potentiality to be powerfully **educative** in civic virtue. No one needs such an education more than those who have run seriously afoul of the law. Encouraging inmates to participate in the election process - for example, by allowing them to listen to political candidates in prison, to ask questions and express their own views, to follow election campaign coverage on television, radio and in the press and, then, by allowing them to vote - has the potentiality to be powerfully educative. Exactly the effect which Manfredi claims to seek.²

¹ J.S.Mill, "Thoughts on Parliamentary Reform" in *The Collected Works of John Stuart Mill*, Vol. 19, pp.322-3.

²It should be noted that Mill himself draws the conclusion that it might be expedient that "in cases evincing a high degree of insensibility to social obligation, the deprivation of this [voting] and other civil rights should form part of the sentence." [**Collected Works**, Vol.19,

As was noted in the *Belczowski*³, the exclusion of inmates from voting conflicts with the rehabilitative tendency of Canadian penal philosophy during the past quarter of a century: “[i]n this process the element of punishment is reduced in importance and the readjustment of the inmate to society is emphasized. Voting could form part of that readjustment”. [*Belczowski* 1991, 111]. A similar point was made by the Court in *Grondin*⁴:

Punishment lies in confinement, but even with the most flagrant crime must exist hope of reform. This is the philosophy of our penal system....What greater avenue to constructive thought and hope of change of those who have contemptuously violated our laws is an interest in our democratic process? [p.423]

One cannot help but be struck by the irony that Professors Manfredi and Knopff, both of whom advocate the need to create a sense of community responsibility amongst citizens, should also be advocates of a policy of inmate disenfranchisement when the effect of such a measure would surely be to disconnect these citizens even more decisively from the community which has already stigmatized and estranged them through imprisonment.

Since these inmates will, virtually all of them, be returning to society after they have finished serving their prison sentences, it is surely more sensible, more compassionate and more in keeping with the spirit of education in democratic citizenship to use their period of incarceration as an opportunity to re-integrate them, to whatever degree possible, as participants in society.

p.322n] So, Mill’s argument powerfully supports extending the franchise to inmates, but Mill himself draws the conclusion, albeit somewhat tepidly, that it might be permissible to withhold the vote from inmates in the service of the objective “of giving a moral character to the exercise of the suffrage”. For anyone who cares seriously about the potentiality for prisoner reform and rehabilitation, the educative effects of exercising the franchise, as described so beautifully by Mill, make a powerful case against disenfranchisement.

³*Belczowski v. Canada* (1991), 42 F.T.R. 98; affirmed [1992] 2 F.C. 440.

⁴*Grondin v. Ontario (Attorney General)* (1998), 65 O.R. (2nd) 427 (H.C.)

Restoring the franchise to inmates, encouraging them vigorously to respect this fundamental right of citizenship and to exercise it thoughtfully, would appear to be a more satisfactory policy than would be a continuation of the policy of disenfranchisement.

The alleged “educative effect” of inmate disenfranchisement

As will be discussed later, neither Professor Manfredi nor Professor Knopff, offers any empirical evidence whatsoever to support their claim that prisoner disenfranchisement would have a positive educative effect on society. Indeed, since there is no reason to believe that any significant number of Canadians either knows or cares whether inmates can vote in this or that provincial election, or federally, it is difficult to see how this could have any educative effect whatsoever on society generally. This is one of those crucial points in their argument where both Manfredi and Knopff rely on dogmatic assertion to substitute for the absence of confirmatory evidence.

There is empirical research, however, to support 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.⁵ Since these moral virtues, especially the virtue of self-control, are highly prized by Professors Manfredi and Knopff, they ought at least to have considered the significant likelihood that their advocacy of a policy of inmate disenfranchisement would undercut, in prisoners, the very virtues they seek to promote.

In this connection, it is worth noting that the composition of the prison population in Canada is heavily weighted with people whose lives have been significantly blighted by oppressive environments. People whose lives are marked by extreme marginalisation from mainstream society and its

⁵ See, for example, Lynne Goodstein (1979) “Inmate adjustment to prison and the transition to community life”, *Journal of Research in Crime and Delinquency*, 16:246-272; and Nicholas A. Astone (1982) “What helps rehabilitation? A survey of research findings”, *International Journal of Offender Therapy and Comparative Criminology*, 2: 109-120.

prevailing norms. People whose self-esteem has been vitiated by their social and economic exclusion from society. It is surely no coincidence, for example, that Canada's aboriginal population is disproportionately represented amongst those who are imprisoned, the skewed distribution being particularly noteworthy in Manitoba.

It should not be necessary to rehearse, yet again, the litany of disadvantages which mark the lives of so many members of Canada's native community. Are Professors Manfredi and Knopff truly unaware, as their silence on the subject would suggest, of the pattern of social and economic inequality which exists in Canada today? Can they be unaware of the manner in which this pattern of socio-economic inequality systematically reinforces and perpetuates the inferior status of both Native and non-Native minority populations? Would the further stigmatization of this most disadvantaged part of our population genuinely tend to promote the responsible citizenship that the Crown's expert witnesses claim they seek? Or is the opposite more likely? If we further marginalise the most marginal citizens in our society - by denying them the right to vote in prison - are they genuinely likely to emerge from prison in a less anti-social frame of mind?

The foregoing observations are not intended to suggest that an offender who comes from a severely oppressive environment is thereby absolved entirely of moral responsibility and blameworthiness for his/her anti-social conduct. But it is to suggest that a society which tolerates the continued existence of extremely oppressive environments - including the blight of widespread child poverty, inadequate education, massive unemployment, homelessness, distressingly higher mortality and morbidity rates, and widespread social stigmatization - cannot then turn around and say, without hypocrisy, when the children raised in such environments grow up to become angry, hostile, self-destructive and anti-social adults: "criminal conduct which leads to imprisonment indicates a lack of civic virtue and respect for the rule of law that are inconsistent with exercising the right to vote" [Manfredi, p.9].

Educating the mainstream of society

Perhaps Manfredi and Knopff would reply to the above arguments with

the claim that they have been misunderstood. It is not our contention, they might say, that disenfranchisement will serve [only?] the important educative function for inmates themselves. The purpose of stigmatising inmates as unworthy of the franchise is [also?] *pour encourager les autres*. As Manfredi says: “It simultaneously reinforces the principle that citizenship entails responsibilities and duties as well as rights and privileges.” [p. 11] Perhaps the “reinforcement” of which Manfredi writes is meant to apply only to those who demonstrate respect for the social contract by obeying the laws of society or, at least, by staying out of prison.

If this is the gist of the “educative effect” argument favoured by Manfredi and Knopff, then one would expect that they would provide us with some empirical evidence to support their contention that the means used (inmate disenfranchisement) actually do promote the end sought (enhancement of responsible democratic citizenship amongst the general population). The Crown’s academic scholars claim, repeatedly, that this educative effect is “necessary”, “required”, “important”, the “principal objective” of the inmate voting restriction. [*passim*.] But neither Manfredi nor Knopff offers the slightest bit of empirical evidence to support their contention.

How do we know that inmate disenfranchisement has **any** beneficial educative effect on society? They don’t even attempt to provide evidence that the public is aware of such inmate disenfranchisement. Indeed, Landreville and Lemonde⁶ point out, quite sensibly, that since most Canadians, including even some judges, are probably not aware that this restriction exists, it is difficult to see how it could have **any** significant educative effect.

Once again, the Crown’s scholarly witnesses seem to feel no obligation to provide any empirical evidence that their theoretical claims actually apply to the real world of Canadian society. They provide no empirical evidence, I suggest, because none exists. It is absurd to think that the disenfranchisement of inmates has a crucial influence on society when knowledge of such

⁶Landreville and Lemonde, “Voting rights for prison inmates”, in **Democratic Rights and Electoral Reform in Canada**, ed. Michael Cassidy, vol. 10 of Research Studies for the Royal Commission on Electoral Reform and Party Financing (Toronto: Dundurn Press, 1991).

disenfranchisement is confined to a tiny elite.

Moreover, the implausibility of the case made by Manfredi and Knopff becomes even more embarrassing when one asks the question: is there any evidence whatsoever to suggest that responsible democratic citizenship in the provinces of Quebec and Newfoundland, which enfranchise inmates, is less robust or vigorous than that which prevails in, say, the provinces of Ontario and Alberta, which do not? Merely to ask the question is to see that the hypothesis is absurd. If we turn to international experience for confirmation of this point, what we find is that a number of countries with a strong tradition of responsible democratic citizenship, such as Denmark, The Netherlands, Norway, Sweden, Israel and Switzerland, respect the right of inmates to vote, while other countries with an equally strong democratic tradition, including Great Britain and the USA, do not.

Would any sensible person contend that democratic citizenship in Holland is in less good health than that which prevails in the United States? [If anyone were so foolish as to answer in the affirmative, one might invite him or her to review the statistics on voter participation in federal elections in these two countries. The results would be a serious embarrassment for those convinced of the comparative health of American democracy.] Again, merely to ask the question is to recognize, immediately, the implausibility of the hypothesis that inmate disenfranchisement is crucial or important or necessary as a means to promote responsible democratic citizenship.

This fatal flaw applies equally to Professor Knopff's passionate conviction that to permit inmate voting is to release a kind of corrosive acid in society. Knopff claims that when prisoners are enfranchised the result is to elicit righteous anger from citizens thereby diminishing significantly their respect for law and for the principle of the Rule of Law. [p. 52] He asserts that "inmate disqualification clearly reflects and nurtures some of the most important foundational beliefs on which liberal democracy and the Rule of Law depend...". He invites us to accept the conclusion that inmate enfranchisement will "certainly" have a "negative effect". Dogmatic assertion, once again, has to carry all the load, since no empirical evidence is adduced to support his dubious claim. Are citizens in Quebec and

Newfoundland angrier and less respectful of either law or the Rule of Law than citizens in Ontario and Alberta? Are the spirit of democracy and respect for the rule of law seen to be crumbling in Holland and Switzerland? What evidence exists to support such contentions? Again, if Professor Knopff knows of any such evidence he does not choose to share this knowledge with his readers.

If the alleged educative effect for society of inmate disenfranchisement is truly “[t]he principal objective that the inmate voting restriction serves in a free and democratic society” [Manfredi, p. 11], then the absence of **any** supporting evidence ought to be seriously troubling for the Crown.

The social contract theory and “pure voluntarism”

The social contract argument offered by both Manfredi and Knopff asserts that offenders, by their irresponsible and anti-social conduct, have forfeited their right to participate in the political life of the community by voting. They have benefited from the responsible and decent conduct of their fellow citizens but have not accepted the burden of self-control and decency in return. Therefore, they have lost the right to participate in governing the community.

This line of reasoning has been relied upon, from time to time, by both American and Canadian courts. In the Canadian case of *Sauve*⁷, e.g., Mr. Justice van Camp describes offenders as having excluded themselves from the right to vote by their failure to act as decent and responsible citizens. The underlying argument, echoed by both Manfredi and Knopff, is that when the state symbolically excludes offenders from the rights of citizenship it thereby reinforces the concept of responsible citizenship.

The restriction preserves the integrity of the democratic process by promoting the virtues of civic responsibility and respect for

⁷ *Sauve v. Canada (Attorney General)* (1989), 66 O.R. (2nd) 234 (H.C.); reversed (1992), 7 O.R. (3rd) 481 (Ont.C.A.).

the rule of law that liberal democracies must nurture through its temporary exclusion of individuals who clearly lack those virtues from voting, and through its communication of the general message that breaking the social contract results in the suspension of the most basic rights of liberal democratic citizenship. [Manfredi, p.21]

It [voter disqualification of criminals] appears to reflect the conclusion that someone who breaks the laws of the community - that is, who breaks the 'social contract' - has demonstrated beyond all doubt his lack of commitment to the well-being of the community and his general untrustworthiness. [Knopff, p.39]

As one reads these passages from Manfredi and Knopff, one is struck by their apparent unfamiliarity with the vast empirical literature of criminology. Individual offenders are described as if their anti-social conduct were a fully voluntary decision, made by otherwise rational citizens, to exclude themselves from the social contract. Even brief reflection on the disproportionate representation, in our prisons, of Aboriginal offenders and members of other stigmatized racial minorities, might have led such eminent scholars to reconsider their assumption that criminal behaviour results from fully voluntary and deliberate choice. Is the etiology of crime really so simple? All blame for anti-social conduct on the individual offender? No allowance made for the social environment and economic circumstances of the offender? For socially prejudicial attitudes and widespread discrimination in employment, housing, health status and education?

In raising such questions, I am not intending to suggest that these inmates who have been convicted of serious offences are not, to some degree, at least, morally responsible and blameworthy for their conduct. Yes, they have, it is true, inflicted serious harm on their fellow citizens. Yes, by their criminal acts they have caused much pain and suffering, mostly to their own families and others whose lot in life has been scarcely better than their own. Rather, I am suggesting that there is something drastically incomplete and radically unfair in an account of the social contract which assumes that we are at present a society blessed with equality of opportunity and distributive justice for all citizens, a society in which the only injustice and unfairness

arise from the anti-social conduct of the imprisoned offenders.

It seems neither fair nor reasonable for theorists such as Manfredi and Knopff to condemn *tout court* those whom society has victimized (or those whose victimization it has, at the very least, tolerated through indifference or neglect) when the victims react to their victimization by becoming, in turn, victimizers of others.

The social contract argument, as formulated by Manfredi and Knopff, depends, implicitly but heavily, upon a purely voluntaristic approach to anti-social conduct. By a “purely voluntaristic approach” , I mean an approach which treats individual choices, decisions and actions as if they issued solely from the individual entirely unaffected by any environmental factors (e.g., abusive parenting, poverty, social prejudice and stereotyping). It is puzzling that they would make use of this arguably simplistic approach but provide readers with neither philosophical justification nor empirical evidence in its defence.

This absence of justification and evidence is all the more puzzling when one considers that there exists a substantial body of empirical evidence to justify the conclusion that serious criminality is, in no small measure, the product of socio-economic deprivation.

It is not my contention that the “pure voluntarism” of Manfredi and Knopff has no grain of truth in it. Human beings are morally responsible for many of the choices we make and, when our conduct is reprehensible, we are morally blameworthy and deserve punishment. However, many of those who believe in human free will and individual moral responsibility will also want to insist that not every choice/decision/action made by a free agent is entirely uncaused by environmental factors. In other words, some of our actions may be entirely free; some of our actions may be entirely determined by a combination of our genes and our environment; and some of our actions (perhaps the great majority of them) may well issue from a blend of free will with genetic and environmental factors.

The “social contract” argument, much favoured by both Manfredi and Knopff, portrays inmates as people who have demonstrated, by their anti-

social conduct, that they lack the “virtue”, “empathy”, “self-control”, and “public-spiritedness” necessary for citizenship and the right to vote. By their deliberate and voluntary conduct, they have demonstrated their moral unfitness to vote. [Vide, e.g., Manfredi, pp.9-12, and Knopff, pp.27-29.]

In other words, Manfredi and Knopff simply assume, uncritically, that if an offender has intentionally committed a seriously anti-social act, what jurists call a *malum in se*, then the offender deserves not only to be punished by imprisonment but also to be stigmatized as so irresponsible as to be undeserving and/or incompetent to vote. They fail to note that the fact that an anti-social act has been committed “with intent”, (i.e., deliberately, rather than accidentally or unintentionally), does not mean that it is fully voluntary.

The wife who kills her abusive and threatening husband while he sleeps may be guilty of manslaughter or even murder, and may be a fit object for moral condemnation and legal punishment. But if the abuse and threats which precipitated the murder were of a particularly horrifying nature, wisdom might lead us to hesitate before we judge her as “beyond the pale of civilized behaviour”, a person so singularly “irresponsible” as to be unworthy of the right to vote.

We might wish to consider whether it would be appropriate to temper our harsh judgements with some degree of understanding, empathy and compassion. Neither Manfredi nor Knopff sees fit to ask, let alone answer, this question.

All these questions to do with the voluntary character of human conduct and the possibly limited nature of individual responsibility are so highly controversial that it seems puzzling for the Crown’s witnesses to reply upon pure voluntarism as if it were axiomatically true. Rather than treating this assumption as unquestionably true, it would have been preferable for them to have assessed carefully at least some of the large body of sociological, psychological and philosophical literature which appears to challenge the truth of pure voluntarism, and for them to have offered such arguments and counter-evidence as they possess. Absent such a critical assessment, the assumption of total free will [“pure voluntarism”, as I am labelling it] carries the aura of dogmatism and over-simplification.

The bias against understanding which results from this exclusive focus

on the irresponsibility of Canada's prison inmates - to the neglect of those powerful social and environmental factors which contributed to their becoming what they are and doing what they did - may be recognized as even more unfair when one stops to consider another reality: those who commit the most seriously harmful anti-social acts are very seldom charged with, let alone convicted of, any offence whatsoever; or, if convicted, are very seldom sentenced to more than a derisory fine or short period of incarceration.

I am referring, in the above paragraph, to those white collar criminals whose voluntary conduct results in the production, distribution and sale of unsafe products (e.g., toxic drugs, dangerous cars), or environmentally destructive pollution, or in massive tax fraud. It is precisely such anti-social offenders to whom the strictures of Manfredi and Knopff - about putting oneself outside the terms of the social contract - would seem most fittingly to apply. If anyone can be said to have received the benefits of the social contract, it is those who enjoy comparatively great wealth, power and status. If anyone has incurred a stringent moral obligation to obey the law, it is those who have profited so singularly from the operation of the prevailing socio-economic system. Yet, ironically, white collar criminals, in our society, frequently escape penal sanctions. Those whose moral responsibility for conduct harmful to the interests of society is greatest most frequently receive the least blame and attract the weakest criminal sanctions, if any at all.

Defenders of inmate disenfranchisement could reply, of course, that the proper way to deal with the sort of moral anomaly described in the previous paragraph would be to level up rather than to level down. We should, they might say, convict, sentence, and disenfranchise white collar criminals as well as lower class offenders. And, they might ask rhetorically, isn't it preferable to make an object lesson of at least some offenders, even though we cannot do so for all?

Perhaps in the new millennium of peace and justice, which some prophets predict is in our future, the double standards of present-day Canada will vanish, and rich and poor alike will receive impartial treatment from our justice system. Perhaps. But, as an interim measure, until the millennium arrives, we should carefully reflect upon the tension which exists between the social contract model of society, so favoured by Manfredi and Knopff, and

current social realities.

For the protection of society we do need to incarcerate the most dangerous offenders, until it is safe to release them. But if we recognize the full complex of factors - many quite outside the voluntary control of the offender - which collectively produce or contribute to seriously anti-social criminal behaviour, we might be somewhat less inclined self-righteously to exclude from citizenship and somewhat more inclined to understand, to pity, and to seek reform and rehabilitation.

To understand all is not to forgive all. But in cases such as these, the exclusionary approach

of Manfredi and Knopff may be judged over-simple and unwise. More specifically, the denial to offenders of such a basic component of their citizenship as the right to vote, on the ground that they belong to a unique category reserved exclusively for the morally most wicked members of the community, may seem inappropriate in a society which aspires to be worthy of the labels “free” and “democratic”.

The problem of the “free rider”

Both Manfredi and Knopff devote some attention to what might be called a “collective action problem”, often referred to, popularly, as the problem of the “free rider”. They believe that “individual cost-benefit calculations generate a powerful incentive not to vote”. [Manfredi, p.16]. As Knopff sees it, “[t]he problem is that if only self-interest is consulted, voluntary voting is irrational for the individual as irrational for the individual as the voluntary payment of taxes...”. [p. 20] They worry seriously that “unless a solution is found to this collective action problem, all but a small minority of citizens will cease to vote, thus undermining the legitimacy of elections and the viability of the liberal democratic regime.” [Manfredi, p.17]

Here is an analogy. If I can build my home in an ex-urban area where the property taxes are low and, at the same time commute to the city centre for purposes of work and leisure activities, then I can benefit from the high taxes paid by city dwellers while, at the same time, myself avoiding the tax

burden. I obtain the full benefits but avoid most of the costs, which seems the prudentially rational course of action for me to take as a self-interested agent. In this way, I am a “free rider”, accepting the benefits of other people’s sacrifice but rejecting my fair share of the associated burdens (which, in this case, means the property tax burden).

A serious social problem arises, however, when a large number of my fellow city dwellers reason in the same individually self-interested way. For, when large numbers of people move their residence to the low-tax ex-urban area what invariably happens is that the city’s tax base erodes dramatically, tax rates rise even higher, more people flee to escape these higher taxes, services deteriorate badly; finally, the city crumbles and we all lose heavily, urbanites and ex-urbanites. Individually rational decisions quickly become collectively irrational, even collectively suicidal.

If voting is costly to citizens, because it involves an investment of time and energy, say, and if each citizen can reason that “my vote isn’t going to make any significant difference to the final outcome”, then the disincentives to vote will outweigh the incentives and, in consequence, so many people will abstain from participation in the electoral process that democracy itself will be threatened.

This is the nub of the problem, as seen by Manfredi and Knopff. Their solution is to deprive inmates of the right to vote, thereby altering the cost-benefit calculations made by other citizens in favour of voting.

How will this dramatic alteration of incentives occur? We are asked to believe that if prisoners are disenfranchised then other citizens will identify voting “with civic virtue and good citizenship” [Manfredi, p. 18] Thus, what tips the scales, so to say, in favour of voting is “the additional benefit of being identified as good citizens”. [ibid.]

Both Professor Manfredi and Professor Knopff appear to believe that the above-stated argument ought to persuade us to favour the case against inmate enfranchisement. Are they correct in this belief? I don’t think so.

The first point to note about this argument is that it depends upon an

entirely unsupported empirical assumption, namely, the assumption that citizen voting behaviour is importantly connected to the exclusion of prison inmates from the franchise. If, as seems likely, there is absolutely no connection between the voting behaviour of the overwhelming majority of citizens and their beliefs about inmate voting, then the entire argument collapses.

So, we must ask Professors Manfredi and Knopff: do you have any evidence to suggest that voting behaviour (the number of people who vote in provincial and federal elections, say) in Quebec and Newfoundland differs significantly from that found in Ontario and Alberta? Do you honestly believe that citizens in The Netherlands and Switzerland vote less often, or with less enthusiasm or virtuous commitment than citizens in the USA and Britain? Evidence?

This objection is, on its own, an entirely decisive refutation of the Manfredi-Knopff hypothesis; but there is a second, equally serious, problem with the argument, and it rests with their conception of the significance of democratic participation generally and voting behaviour in particular.

Manfredi and Knopff both accept, uncritically and unthinkingly, a “one-dimensional view” of democratic citizenship. Why do individuals participate in the electoral process by, for example, supporting candidates, informing themselves, voting? According to what I am labelling the one-dimensional view, individuals participate only because of a self-interested benefit to themselves. As Bachrach puts the matter:

On the basis of this reasoning, the less the individual has to participate in politics on the “input” and demand side of the system in order to gain his interest on the output side, the better off he is.⁸

On this view, voting is a burden which a rational person would avoid if he/she could be confident that his/her individual vote is unlikely to make

⁸Bachrach, Peter. *The Theory of Democratic Elitism*. Boston: Little, Brown and Company, 1967. p.95

much of a difference to the outcome of the election.

Against this purely instrumental view of democratic citizenship, I should like to counterpose a “two-dimensional” view of democratic citizenship, wherein democratic participation is valued for its own sake as well as for the products it delivers. Participation in public life, on this view, so far from being seen as a “burden”, is held to be essential to the full development of individual capacities.

Historical antecedents of this theory can be found in the writings of Rousseau and are also a prominent tendency within classical liberalism, as exemplified by John Stuart Mill.

William Morris comments, in *News From Nowhere*, that “individual men cannot shuffle off the business of life on to the shoulders of an abstraction called The State, but must deal with it in conscious association with each other.”⁹ John Stuart Mill adopts a similar theory of democratic citizenship, arguing that individual self-development depends, crucially, upon participation with one’s fellow citizens in community governance. The man who does not participate in public affairs and who “never thinks of any collective interest, of any object to be pursued jointly with others, but only in competition with them, and in some measure at their expense,”¹⁰ will not only lack the virtue of public-spiritedness but will fail to develop many of his capacities.

If participation of a significant kind in political decision-making does foster, as Rousseau, Morris and Mill all believed, an active, public-spirited character, then we have a very strong argument here **in favour of** inmates having the franchise and being encouraged actively to participate in electoral politics, to the maximum extent possible given their incarceration. And we have an explanation of why the “collective action” voting problem alleged to exist by Manfredi and Knopff cannot be solved by denying the vote to

⁹Morris, William. *News From Nowhere; or An Epoch of Rest; Being Some Chapters from a Utopian Romance*. (New York: Monthly Review Press, 1966).

¹⁰ J.S.Mill, *Representative Government* (London: J. M..Dent and Sons, Ltd., 1910), p.217.

prisoners. A healthy democratic society will take vigorous steps to educate its citizenry in the many benefits of exercising democratic citizenship. The suggestion that the sole or prime benefit of voting derives from the fact that offenders who have been incarcerated for serious crimes cannot vote, well, the very suggestion seems to reduce citizenship and voting to pretty thin porridge.