Prisoners and the vote

Transcript

Next week in Canberra the High Court will hear argument in the case of *Roach v. Australian Electoral Commissioner*. The plaintiff, who is an inmate of a Victorian Correctional Centre and not eligible for parole before August 2008, is seeking to constitutionally invalidate a section of the Commonwealth Electoral Act which, since July 2006, has stated that:

*a person who is serving a sentence of imprisonment for an offence against the law of the Commonwealth or of a State or a Territory is not entitled to vote at any Senate election or House of Representatives election.*

In other words she wants to vote in this year's federal election.

Last year when federal parliament approved the Electoral and Referendum Amendment Act all convicted prisoners incarcerated on polling day were disenfranchised.

Why did this happen?

Since 1984 only prisoners serving a sentence of five years-and more recently three years--- were barred from voting. In 1993 the parliamentary committee which oversees electoral procedures recommended the removal of all restrictions on prisoners' rights to vote, but the Keating Labor government failed to act. Since then attitudes have hardened, influenced perhaps by the 'war on terror'-but more of that later.

Regrettably the arguments advanced to undermine prisoners' rights rarely rose above sloganeering. One minister told us that 'if you're not fit to walk the streets,...you're not a fit and proper person to cast a vote' while another thought the case against felons voting was so self evident that it would easily pass any 'pub test'.

Such views are a crude articulation of the ancient but discredited doctrine of *civil death* which has never been a feature of Australia's legal system. According to the doctrine when a person commits a criminal offence they break the 'social contract' and thereby forego their civil rights-perhaps for all time. It is the civil equivalent of capital punishment.

There are very good philosophical and practical reasons for not withdrawing the franchise from prisoners. It is generally held that a modern penal system is composed of three elements---retribution, rehabilitation and reintegration. Denying prisoners the vote certainly conforms to the first of these but is incompatible with the other two.
In liberal democracies such as Australia offenders are incarcerated as punishment not for punishment—other than what is incidental to their loss of liberty. Sentencing should be left to judges and not be 'topped up' by parliaments.

Because Australia's prison population is comparatively small, only about 20,000 people will be denied the vote. Yet the effect of the new law is highly discriminatory. The prison population is overwhelmingly comprised of young males and Aborigines and Torres Strait Islanders are scandalously over-represented.

Ironically, while Australia is excluding prisoners from the franchise other countries such as Canada and Ireland have recently moved in the opposite direction. Even the United States—which has by far the harshest laws on denying felons the vote—is currently undergoing what one local commentator has called a 'restore-the-vote craze'. The Republican Governor of Florida has just restored the right to vote to 750,000 ex-offenders, which is double George W. Bush's 2004 electoral majority in the State that gave him the Presidency.

Some prison inmates will vote on election day—those on remand being the largest group; as will one person who, despite pleading guilty to what Attorney General Phillip Ruddock has described as the 'serious offence' of giving material aid to terrorists. Because he has not been convicted under any Australian law, Mr David Hicks will be required to enroll to vote after spending one month in South Australia's Yatala Prison. If he fails to do so he will be committing an offence; and another offence if he then fails to vote. Anyone who impedes him in either of those two duties will also commit a serious offence and be subject to a maximum $1,000 fine or 6 months imprisonment or both.

The right to vote is the cornerstone of our democracy but it clearly needs greater protection to ensure the Constitutional requirement that the Federal Parliament be 'directly chosen by the people' and not just some of them.

**Guests**

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**Publications**

Title: *Limiting Democracy: the Erosion of Electoral Rights in Australia*
Author: Colin A Hughes & Brian Costar
Publisher: UNSW PRESS
This book is a part of the Briefings series ISBN 0 86840 948 0

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