

## Impact case study (REF3)

<b>Institution:</b> Newcastle University		
<b>Unit of Assessment:</b> 18 Law		
<b>Title of case study:</b> Securing Votes for Prisoners		
<b>Period when the underpinning research was undertaken:</b> 2010-2020		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> Mr Colin Murray	<b>Role(s) (e.g. job title):</b> Reader in Public Law	<b>Period(s) employed by submitting HEI:</b> 2006-present
<b>Period when the claimed impact occurred:</b> August 2013 – July 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<b>1. Summary of the impact</b>		
<p>The issue of prisoner voting has come close to rupturing the UK's place in the European Convention on Human Rights (ECHR). Colin Murray served as the only Specialist Adviser to the UK Parliament's Joint Committee on the Draft Voting Eligibility (Prisoners) Bill, shaping its conclusion that short-term prisoners should be enfranchised. Given the implacable opposition of successive UK governments to enfranchising prisoners, the Committee's support for this proposal illustrates the significance of Murray's contribution and the UK Government abandoned draft legislation which would have breached the ECHR. The Scottish Government and a Welsh Assembly Committee have thereafter drawn upon Murray's research in justifying their support for enfranchising thousands of prisoners.</p>		
<b>2. Underpinning research</b>		
<p>Colin Murray's research has reshaped the political debate on prisoner voting in the United Kingdom. As the Coalition Government entered office in 2010 the Conservative Party rebuffed the European Court's <i>Hirst</i> judgment, arguing that the very concept of prisoner voting was alien not only to the UK's legal order but to the ECHR. Through successive academic articles published 2011-3, Murray challenged this narrative, establishing not only that prisoner voting was justifiable under Article 3 of Protocol 1, ECHR <b>[PUB1 and PUB2]</b>, but also demonstrating that a sizeable proportion of the United Kingdom's prison population had exercised the vote between the 1940s and 1960s <b>[PUB3]</b>.</p> <p>The clash between the UK and the Court over prisoner voting has come to overshadow other aspects of their relationship, with ministers insisting that the UK would rather withdraw from the ECHR than comply with this ruling. Murray's research into this clash first explored how the prisoner enfranchisement cases before the UK's domestic courts exemplify the ambiguity which has resulted from failures to develop "a clear and stable conception of the prisoner's legal status" <b>[PUB1]</b>. Successive UK governments were, as a result, able to manipulate the continuing uncertainty of many members of the judiciary regarding the legal status of prisoners, even in the Human Rights Act era.</p> <p>His research also examines how fundamental misinterpretations of the European Court's <i>Hirst</i> judgment and subsequent case law contributed to the saga of prisoner disenfranchisement <b>[PUB2]</b>. This article argues that a reform to prisoner voting could have been achieved in line with the communitarianism espoused by New Labour. Instead of grasping this opportunity to refine restrictions on voting, the Labour Government sought to protect its 'tough-on-crime' credentials by stalling on a response to the judgment. This approach not only sustained a narrative of conflict</p>		

between the UK and the Court, but ultimately made the situation more intractable, by denying the possibility of “minimum compliance” approaches to prisoners’ right to vote.

Murray’s research then uncovered that parliamentary debates and official consultation documents on prisoner disenfranchisement had overlooked the complex history of prisoner participation in the political process in the UK. Most importantly, he detailed how many prisoners serving sentences of less than one year were enfranchised in the decades after the Second World War, and was the first scholar to connect these developments to the contemporary dispute over prisoner voting [PUB3]. This scholarship highlighted the reasons why the UK moved backwards on prisoner voting rights in 1969, and why recent debates on prisoner voting rights treated the idea of prisoner voting as an assault on the UK Constitution [PUB4]. Murray explored the range of discourses, including penal populism, Euro-scepticism, concern over the juridification of the UK’s system of government and the trivialisation of human rights, which underpinned parliamentary discussion of prisoner enfranchisement. He reasserted the primary significance of the right to vote to the nature of democratic society.

### 3. References to the research

[PUB1] and [PUB2] were published in legal journals which employ rigorous peer review. [PUB3] was published in a leading political science journal, illustrating the inter-disciplinary reach of this work. [PUB4] was chosen for inclusion in a significant edited collection following an invited presentation. This body of work therefore demonstrates a track record of rigorous and original engagement with an issue of singular significance.

[PUB1] C. Murray, ‘[We need to talk: “democratic dialogue” and the ongoing saga of prisoner disenfranchisement](#)’ (2011) 62 *Northern Ireland Legal Quarterly* 57-74. Publication available on request.

[PUB2] C. Murray, ‘[Playing for Time: Prisoner Disenfranchisement under the ECHR after \*Hirst v United Kingdom\*](#)’ (2011) 22 *King’s Law Journal* 309-334. doi.org/10.5235/096157611798456771

[PUB3] C. Murray, ‘[A Perfect Storm: Parliament and Prisoner Disenfranchisement](#)’ (2013) 66 *Parliamentary Affairs* 511-539. doi.org/10.1093/pa/gsr071

[PUB4] C. Murray, ‘Monsterring Strasbourg over Prisoner Voting Rights’ in M. Farrell, E. Drywood, and E. Hughes (eds), *Human Rights in the Media: Fear and Fetish* (Routledge, 2019) pp.101-126. Publication available on request.

### 4. Details of the impact

In 2013 prisoner voting was the defining issue in the UK’s relationship with ECHR institutions. So significant was it that a Joint Select Committee of both Houses of Parliament was established in 2013 to assess the Coalition Government’s Draft Voting Eligibility (Prisoners) Bill. Against a backdrop of increasingly politicised opposition to the European Court’s *Hirst* judgment, the Committee provided a unique opportunity to immerse a small group of parliamentarians in research on prisoner voting and challenge received wisdom. Murray’s published research influenced all aspects of this Committee’s work and conclusions, and has since reshaped debates on prisoner voting in Wales and Scotland.

#### Shaping the Joint Committee’s Influential Report

The appointment of a joint select committee to consider a specific draft Bill is exceptional, and a mark of the complexity and importance of prisoner voting. Murray was able to foreground the history of prisoners voting and explain the human rights context in sessions between September and December 2013, giving the majority a new appreciation of the issues at stake [IMP1].

In this role Murray shaped the Committee's proceedings. As the Legal Adviser to the Committee attests, Murray not only "assisted in the task of identifying witnesses who could make valuable contributions" but also "contributed to the preparation of briefing documents and suggested questions for parliamentarians ahead of Committee evidence sessions" [IMP2]. He confirms that, in November and December 2013, Murray was involved in the "drafting of the Committee's report", contributing to large sections of Chapters 2, 3 and 4 (contributions to drafting are not directly attributed within Select Committee Reports) [IMP2].

A majority of the committee (including two Conservative members) supported enfranchising a substantial number of prisoners in its December 2013 Report [IMP3]. This conclusion drew directly upon the 'historical justification' for enfranchising prisoners serving sentences of less than one year which was highlighted by Murray's research [PUB3] [IMP3]. As Committee member Lord Norton recognised, "[t]he majority Report was directly reliant upon Colin's research in its conclusion that prisoners serving sentences of up to 12 months should be enfranchised" [IMP1]. The Committee's Legal Adviser affirms that "Colin's research findings that prisoner voting was not alien to the UK's governance order helped to underpin the majority conclusion" [IMP2]. The adoption of this proposal alone would enfranchise some 11,000 prisoners [IMP3].

The Report received extensive media coverage, being heralded in the UK Human Rights blog as "a powerful statement of the Government's rule of law responsibilities as well as a crushing indictment of the current policy" [IMP4]. Within civil-society, the Howard League for Penal Reform advocated for prisoner voting on the basis of the Report [IMP4]. The Report also received the backing of Parliament's respected Joint Committee on Human Rights [IMP5], which asserted that following the Report would secure the UK's ECHR obligations.

As a result of the Committee's comprehensive rejection of the Government's Draft Voting Eligibility (Prisoners) Bill, which proposed to ban all voting by any prisoners in the face of the *Hirst* judgment, this legislative proposal was revisited [IMP6] and was subsequently abandoned. In 2017, the UK Government adopted an administrative scheme to enfranchise day-release prisoners, drawing on "minimal-compliance" ideas explored in the Committee's Report [IMP3] and previously developed within Murray's research [PUB1]. As a result, some prisoners (roughly 100 on any given day) have regained their voice within the democratic process and a struggle which had so undermined the UK's relationship with the ECHR was partially resolved.

#### Advancing new policy approaches in Scotland and Wales

Competences over electoral law were not devolved to Scotland and Wales until 2016/17. Murray's evidence to the Scottish Parliament's Equality and Human Rights Committee (February 2018) and to the Welsh Assembly's Equality, Local Government and Communities Committee (January 2019) have shaped the subsequent debate within these jurisdictions.

In recommending that all Scottish prisoners should be enfranchised, the Equality and Human Rights Committee acknowledged the importance of the 2013 Joint Committee report [IMP7] and echoed Murray's evidence that the UK Government's administrative enfranchisement of a few prisoners would be unlikely to satisfy the European Court [IMP7]. The Welsh Assembly's Equality, Local Government and Communities Committee drew on Murray's evidence repeatedly in their report [IMP8] and explicitly relied upon his evidence as the specific basis for its conclusion that prisoners serving sentences of under four years should be enfranchised [IMP8].

Both the Welsh and Scottish Governments have responded favourably to these reports in 2019. The Welsh Government has committed to legislating for exactly the approach recommended by the Committee on the basis of Murray's evidence [IMP9]. Its current proposals could enfranchise as many as 1,700 in Wales. The Scottish Government team working on the Scottish Elections (Franchise and Representation) Bill convened a special research briefing with Murray in August 2019. His 'useful' advice has influenced the presentation of the Bill, which proposes the enfranchisement of prisoners serving sentences of up to one year, to the Scottish Parliament [IMP10]. Prior to Murray's engagement the Scottish Government relied largely upon human rights obligations to justify the new legislation, whereas Murray's advice contributed a range of supporting arguments grounded in the nature of democracy, rehabilitation and Scotland's

autonomy. The Scottish Elections (Franchise and Representation) Act was passed in February 2020, restoring the vote for roughly 2,000 prisoners (on current figures) in Scottish Parliament and Local Government elections.

## 5. Sources to corroborate the impact

[IMP1] Joint Committee Member (Testimonial)

[IMP2] Joint Committee Legal Advisor (Testimonial)

[IMP3] Joint Committee, *Draft Voting Eligibility (Prisoners) Bill* (2013) HL 102/HC 924, para.93, 236, 239, p.47. Available at <https://publications.parliament.uk/pa/jt201314/jtselect/jtdraftvoting/103/103.pdf>.

[IMP4] Media and Civil Society Reaction to the Joint Committee Report (4.a: Media Report pp. 1-42; 4.b: Cormac Behan, 'Punishment, prisoners and the franchise' (Howard League What is Justice? Working Papers20/2015)).

[IMP5] Joint Committee on Human Rights, *Human Rights Judgments* (2015) HL 130/HC 1088, p.15. Available at: <https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/130/130.pdf>.

[IMP6] C. Grayling, 'Draft Voting Eligibility (Draft) Bill – Response to the Committee' (2014). Available at: <http://www.parliament.uk/documents/joint-committees/Draft-Voting-Eligibility-Prisoners-Bill/Grayling-letter-to-Chair.pdf>.

[IMP7] Scottish Parliament Equality and Human Rights Committee, *Prisoner Voting in Scotland* (14 May 2018) SP Paper 315, para.15, 143. Available at: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/EHRiC/2018/5/14/Prisoner-Voting-in-Scotland/EHRiC-S5-18-3.pdf>.

[IMP8] Welsh Assembly Equality, Local Government and Communities Committee, *Voting Rights for Prisoners* (June 2019), para.12, 30, 74, 75, 76, 77, 103, 143, 127. Available at: <http://www.assembly.wales/laid%20documents/cr-ld12550/cr-ld12550-e.pdf>

[IMP9] Welsh Government Response to the *Voting Rights for Prisoners* Report (July 2019), p.1. Available at: <http://www.assembly.wales/laid%20documents/gen-ld12690/gen-ld12690-e.pdf>.

[IMP10] Email exchange with officials from the Scottish Government's Constitution, Europe and External Affairs Office (August 2019).