

TRAVELLER LAW RESEARCH UNIT, Cardiff Law School
VOTING RIGHTS FOR THE HOMELESS: *Occasional Discussion Paper*

Introduction

Election fever is in the air. Soon, the British electorate will be called upon to exercise their collective political will to choose a new government to take them into the 21st century. However, not everyone will have the luxury of exercising such choice.

Homeless Single People for example, have great difficulty in enrolling upon the electoral register and a campaign¹ now exists for a change in the law to facilitate registration. The problem lies in the fact that many Electoral Registration Officers are reluctant to accept non traditional addresses that are not recognized by the Post Office which, combined with the need for 'a substantial degree of permanence' at that address as required by the RPA 1983, inevitably means registration is denied to an estimated 156,000 homeless people²

Subsumed within the homeless is however, another group of potential electors who are disenfranchised due to their traditional itinerant lifestyles - not because they do not have a home, only that they have no legal place to site their home. Gypsies, the UK's oldest and probably the smallest ethnic minority³ have wandered our highways and byways since their first recorded presence from India some 500 years ago. Mercifully, times have moved on since Gypsies were liable to the death penalty⁴ or deportation, but nevertheless that most fundamental of democratic right - the right to vote, is not enshrined for this minority but rather is tenuously based upon the discretion of local Electoral Registration Officers.

Government statistics⁵ reveal that there are 12,808 Gypsy caravans (not families) in England yet only two thirds of these are legally sited. The remaining third are forced to move around the country stopping where-ever they can until evicted - often only a matter of days. Since the implementation of the Criminal Justice and Public Order Act 1994, the prospects of this minority being able to secure a legal stopping place are even more remote, given that local authorities no longer have a legal duty to provide caravan sites for Gypsies. And here lies the paradox. In order to enroll upon the electoral register, potential electors must satisfy the residence requirements of the Representation of the People Act 1983 - an impossible task if one is being evicted relentlessly by the authorities.

¹ By CHAR: Housing campaign for single people, Liberty, The Big Issue

² Big Issue North West No. 64 July 1995

³ *CRE v. Dutton* [1989] 1 Q.B.783

⁴ Egyptians Act 1562 was repealed in 1783

⁵ Department of the Environment Gypsy Sites Branch, County of Gypsy Caravans: 17 July 1996

Gypsies, with centuries of repression by the state in their collective memory, are reluctant participants in the political process due, largely, to cultural factors, educational disadvantage⁶ and outsider status. Nevertheless, recent efforts to encourage electoral registration on the two Gypsy sites in Cardiff has resulted in a huge increase in registration. In 1985 there were no sited Gypsies on the register. In 1992/3 there were 28; in 1995/6 there were 49 and on the current register for 1996/7 there are 81 people.

But whether this increased response can be attributed to a desire to participate in the political process, remains to be seen. Whether or not to vote is a personal decision and is not the issue, so long as one has the choice; those on unauthorized sites are disenfranchised and have no choice in the matter.

Representation of the People Act 1983

Although no law exists that specifically excludes itinerant Gypsies (or the homeless) from the roll, it is the uncertainty in the interpretation of the electoral law and the disparity with which individual Electoral Registration Officers apply it, that creates the confusion. The right to vote is governed by the Representation of the People Act 1983. Under the terms of this Act, everyone (apart from certain disbarred categories) is entitled to vote subject to compliance with conditions of citizenship, age and residency so long as their names are on the register of electors. In order to satisfy the residency requirements of s.1 (1) of the Act, a person must be resident at a particular address in the relevant constituency or electoral area on the qualifying date (the 10th October) providing that that person appears on the electoral register to be used in the relevant election. The uncertainty in the law revolves around the interpretation of 'resident' or 'residence' which are not defined in the Act, although the Court of Appeal⁷ has held that they are to be construed in their ordinary meanings, namely as connoting dwelling permanently or for a considerable time, having one's settled or usual abode, living in or at a particular place.

Lippiatt v the Electoral Registration Office, Penwith District Council

However, a decision⁸ of Penzance County Court last year may have considerable significance on this electoral issue. Mr. Lippiatt,⁹ a homeless man, who lived in the St. Ives constituency, attempted to enroll upon the electoral register giving the address of a day centre in Penzance which he habitually visited three or four times every week, although being a day centre, he never slept there. The centre's address was his mail address, was used to convey telephone messages to him and was accepted by various government agencies and the Inland Revenue. His registration was refused by the Electoral Registration Officer who justified his refusal by arguing that a person

cannot be 'resident' at a place at which he does not sleep. Halsbury's Laws of England were cited in support of his argument: "A person's residence is, by implication, that person's home where at least he or she has a sleeping apartment, or shares one, although merely sleeping on the premises is not conclusive of residence."¹⁰

The various 19th century authorities cited were dismissed by the Judge as irrelevant, based as they were on previous electoral law which required a property qualification in order to vote. Mr. Lippiatt argued that it is a fundamental human right to be included on the electoral roll and that there is no requirement in the relevant Acts that a person should sleep in any particular place - the qualifying date is 10 October in any year and not the '*night*' of 10 October in any year. Judge Thompson, in accepting Lippiatt's argument, started from the premise that it is the basic right of every citizen in a parliamentary democracy to be included upon the electoral register and to have the right to vote, a position reinforced by Article 3 of the European Convention on Human Rights. In his view, "it cannot be right, simply because a person is homeless, to say that he is therefore deprived of the right to vote." All that was required was a degree of permanence in a constituency and an address to which a person is attached, then there is an entitlement to registration and these, the Judge considered, were satisfied in Mr. Lippiatt's case. Despite the dearth of direct authority on this point, Judge Thompson cited with approval the decision of the Court of Appeal in the case of the Greenham Common peace protesters¹¹ encamped outside an airbase who were successful in their quest for registration, despite the fact that they were trespassing and living in tents or 'benders', but had been 'in residence' for longer than six months. Consequently, Mr. Lippiatt's appeal was allowed.

Home Office Guidance, 29 July 1996

The decision, being decided in the County Court rather than in the High Court, cannot set a binding precedent, but hopes were raised that new guidance promised by the Home Office minister Tom Sackville¹² would clarify the position. Unfortunately, the new guidelines are particularly unhelpful specifically denying precedent status for the Lippiatt case and the ambiguity in the law concerning the registration of the homeless remains. The guidelines state at para. 13 that:

'The general assumption behind the provisions of the 1983 Act is that physical presence at the address in question is required (though not necessarily on the qualifying date itself) in order to have residence there, and that residence is lost soon after the physical presence ceases.'

The guidelines further state at paragraph 18:

¹⁰ Vol.15,para.319

¹¹ Hipperson v Newbury Electoral Officer, [1985] 1 QB 1060

¹² HC Written Answers Vol. 278 col 326, June 4 1996

'It is not possible to register an elector without publishing a qualifying address...It follows that registration by means of a "deemed" or "care of" address is not possible.'

On a more positive note, reiterating a Home Office Working Party Report in February, 1994, that "the absence of bricks and mortar is not a handicap to qualification", the guidelines do address those who live in 'unconventional accommodation' such as tents, caravans, trailers or boats stating that they "should not, therefore, be regarded automatically as unable to establish residence, since the deciding factor is likely to be the **relative** permanence of their stay in the accommodation and at the relevant place".

However, the guidelines continue that Electoral Registration Officers should be cautious before registering homeless persons and suggest that they should ask for some form of evidence of residence to support their claim for registration. Thus, the wide discretion allowed to EROs remains. CHAR and Liberty have condemned the guidelines for failing to put an end to the confusion over the registration of the homeless and argue that they should be re-written. The test of 'dwelling permanently or for a considerable time, having one's settled or usual abode, living in or at a particular place' effectively disenfranchised nomadic people. It is an echo of the 19th century property qualifications, swept away by the RPA 1918 which established the notion of a universal male, adult franchise and confirms that our democracy is premised upon a sedentary majority; voting is a property based rather than an 'individual' based right.

Despite the government's refusal to clarify the situation, there is evidence that some EROs are taking a more sympathetic view on this point and some local authorities (Manchester, Camden and Haringey) will register homeless people at a particular doorway or park bench so long as they can prove that they have been sleeping in the same place for a period of time.¹³ An analysis of a recent survey¹⁴ of 244 EROs by CHAR reveals that 186 EROs considered that a physical address was needed to enroll although 87 would register a person sleeping rough; 66 EROs would decline to register people living in night shelters; 95 EROs would not accept people staying with friends or family and 182 EROs indicated that a person had to establish a sufficient 'degree of permanence' before registration which of course, disqualifies those moving around because they are homeless. This rather confirms the fragile status of fundamental constitutional rights which ought not to be subject to the arbitrary whims of individual EROs in a modern liberal democratic state.

The 'Missing Voters'

In 1995, CHAR's vigorous campaign for the rights of the homeless combined forces with the Big Issue newspaper. A week of action was initiated which included a parliamentary launch of their Report 'No Home, No Vote, No Voice' and a 7,000 signature petition was presented to the Prime Minister. Harry

¹³ Klug, Starmer and Weir, *Three Pillars of Liberty* p285

¹⁴ CHAR briefing... October, 1996.

Barnes, MP, whose research on the 'missing voters' has done much to highlight and bring this issue to the attention of the public, tabled an early day motion in parliament collecting 174 signatories urging the government to rewrite the guidelines and to accept the Lippiatt decision as a precedent.

Yet non-registration is not confined to the transient and homeless as Harry Barnes's research revealed when he analyzed official 1991 census statistics. A conservative estimate put the 'missing voters' at 2 million, which was subsequently admitted to be an under-estimate by Dennis Roberts, the Director of Statistics at the Office of Population Censuses and Surveys.¹⁵ Barnes's figures suggest that a figure of 3 million is more realistic. Mrs. Thatcher's poll tax seems to have acted as a trigger with as many as one in fifty people disenfranchising themselves, since prior to the implementation of the poll tax, more than 97% of the population was registered to vote. And as Barnes points out, the Council tax which replaced the poll tax in 1992 is continuing to act as a deterrent to registration, for evidence is emerging that some multi-occupancy homes have registered only one voter in order to claim the single person's rebate on council tax.¹⁶

Significantly, the research reveals that the 'missing voters' are not a representative cross section of the population but are geographically concentrated in certain inner city areas where socio-economic factors are at work. The 'missing voters' themselves are more likely to be young people, from ethnic minorities, and those who dwell in private rented housing.¹⁷ Many reasons for this has been postulated, - an increasingly mobile population and not least apathy for a recent Demos survey¹⁸ found that more than half of people aged under 25 were 'profoundly disconnected' from politics. This has the potential to distort democracy.

Whilst the Lippiatt decision may assist the homeless, (but only if they can prove some degree of permanence) it does little to advance the position of roadside Gypsies. Although the guidelines confirm that those living in unconventional accommodation such as caravans may have registration rights, they must still establish a degree of permanence at the relevant place. Unfortunately, this is likely to be a stumbling block for roadside Gypsies unless of course, they have been occupying the land for a considerable length of time without being evicted - a possible but highly unlikely situation. They remain, a disenfranchised minority, and are likely to remain so, in the absence of reform.

Duty to Promote Registration

The government is under a duty actively to promote registration as the UN Human Rights and Elections guidelines emphasize. The government's indifference to the issue was neatly summed up by minister Charles Wardle when asked by Harry Barnes MP what records are kept by the Home Office of

¹⁵ *The Independent*, August 17, 1995

¹⁶ *The Independent*, November 7, 1996

¹⁷ *Ibid.*

¹⁸ Demos 1995 *Freedom's Children: work, relationships and politics for 18-34 year olds in Britain today*, by Wilkinson, H. and Mulgan, G. p17

unregistered homeless people. He replied: "None. Homeless people are not identified in the electoral register and no research has been undertaken on behalf of the Home Office into the number registered."¹⁹ The government has no electoral interest in ensuring that the marginalized vote - for they are unlikely to vote conservative. Paradoxically, the government has not been slow to grasp an opportunity to gain a perceived political advantage when it enabled the enfranchisement of some 2.5 million highly paid British expatriots²⁰ in ample time for the 1992 general election!²¹ Millions of pounds were spent on this exercise yet in 1996 the government spent only #685,000 on publicity to boost registration, admittedly some of it targeted via television, to those groups identified by recent research as 'missing voters'.

Proposals for Reform

The problem lies in the fact that our registration system is obsolete. It was last overhauled in 1918 (when only women over 30 had the vote!) and is incompatible with today's mobile society²² A total restructuring is needed for the 21st century. Critics of the status quo argue for the introduction of a computerized rolling register allowing people to register when and where they move and is favoured by the Association of Electoral Administrators. However, a report by a Home Office Working Group in February 1994 rejected this proposal due to the estimated cost of more than 4m - a small price to pay for democracy? During a debate on registration in the Lords²³ in 1995, Lord Monkswell informed the House that in some states in the US, voters are able to go to a polling station to register and vote on polling day. A radical proposal? Yes, but one that would certainly facilitate the participation of our nomadic citizens in the democratic process.

Short of reform, the incoming government should clarify and widen the definition of 'permanence of residence' to recognize the increased plurality and mobility of society and to provide some uniformity in its application throughout the UK. Recently, the House of Lords, concerned about the 3m 'missing voters' identified by Barnes' research, debated the issue of voting rights.²⁴ The Home Office Minister, Baroness Blatch was asked what steps will be taken to register the homeless families and individuals, students and Gypsies and others who are entitled to vote but who are very unlikely to be able to do so. And in an allusion to Swampy and friends,²⁵ Baroness Blatch was further asked whether a treetop was a suitable position from which to register to vote. Replying that although treetops would not be accepted for the

¹⁹ HC Deb WA, 21 April 1994, c643

²⁰ *Op. cit.* n.11 p.273

²¹ The Representation of the People Act 1985 extended the franchise to British citizens living overseas and who had been treated as resident in a UK constituency at some point within the previous five years. The permitted period of residence was extended to twenty years by the RPA 1989.

²² Nearly one in ten people move home every year - Office of Population Censuses and Surveys study of 1991 census.

²³ HL Deb, 25 May, c1098

²⁴ HL Deb, 6 February, col 1765

²⁵ Road protesters recently evicted from tree tops and underground tunnels at the scene of the proposed extension to the A30 in Devon

purposes of registering for jobseeker's allowance, she reiterated that those sleeping rough - including those who sleep in treetops, have a right to be registered at the discretion of the ERO so long as he can be convinced as to the permanence of their residence. And that takes us straight back to square one!

The government by its selfish disinterest is allowing the inequalities of the 19th century to creep back when only those who owned property were deemed worthy of the vote. A government that fails to remedy the disenfranchisement of so many of its disadvantaged citizens, must put its claim to legitimacy in jeopardy . Perhaps the government is alarmed at the prospect of gerrymandering by itinerant groups into marginal wards - a kind of Westminster scandal in reverse!

Sue Campbell, TLAST, February 1997

ADDENDUM, February 2000

In September 1999, representatives of Gypsy and Traveller organizations met with the Department of the Environment, Transport and the Regions and asked the Minister (the Chris Mullin MP) to ensure that the voting rights of Travelling People were included in any governmental review of voting generally.

On 13th February 2000 *the Times* reported that: "The government is to give illegal squatters, bands of new age travellers and remand prisoners the right to vote ... Previously, people without a verifiable home address could not vote, but a discreet clause in Labour's Representation of the People Act reverses that law. Under the new legislation, squatters who break into property will be able to vote in local and general elections. The new act will allow anyone to make a "declaration of local connection" at a council office, claiming a link to the area. Gypsy and traveller groups camping in council wards or parliamentary constituencies will be able to vote, as well as homeless people who can show they sleep rough locally ... The move also extends voting rights to remand prisoners - which could have a big impact on small wards or constituencies with large prisons. Some mentally ill people in institutions could also vote ... A spokesman for the Home Office said: "The idea is to help those who have become disenfranchised from the voting process to return to it. It will help homeless people and travellers, who often have been in an area for a long time but cannot vote at all."