

LIBERTY

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Liberty response to The Electoral Commission consultation on the review of ballot paper design

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Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

1. Introduction

The present electoral system enables someone with access to the papers after an election to trace who cast particular votes. Paragraphs 4.2 and 4.3 of the consultation paper asks for views on whether this should continue. Liberty urges the Electoral Commission to recommend that the procedures should be changed so that this vote-tracing is no longer possible. Other countries have no problem managing their elections without vote-tracing.

Liberty's argument that vote-tracing should be discontinued is set out in its contribution to the report 'Ballot Secrecy' (attached), produced with the Electoral Reform Society in 1997 (note that the ERS did not agree with Liberty). Liberty also quoted Prof. Robert Blackburn, who in 1995 had argued against the vote-tracing provisions in his book 'The Electoral System in Britain'. In 1998 the House of Commons Home Affairs Committee considered the issue and concurred with Liberty's view (Electoral Law and Administration, Fourth Report, paragraphs 99-107). In March 2001, shortly before the General Election, Liberty raised a further question, whether the vote-tracing provisions contravened the European Convention on Human Rights (correspondence with the Home Secretary).

2. The problem

Briefly, the issue is the fear some voters may have that the security services could trace their votes. The fear may be unjustified, but it is plausible. If they wished, the security services would have little difficulty gaining access to the stored election papers, and would then be able to trace who voted for minority candidates whose views they considered subversive or dangerous. The mechanics of the count and the nature of the links between the ballot forms and the electoral roll make it very quick and easy to trace from a ballot form to a voter's entry in the electoral roll (but very time-consuming to trace the other way).

3. Some history

Vote-tracing was controversial from the very beginning of its history. The secret ballot (as distinct from the public 'open voting' which preceded it) was brought in by the Ballot Act of 1872, implemented by the Liberal Government under Gladstone against the strong opposition of the House of Lords. The vote-tracing provisions (scrutiny) contained in the Act were introduced by the Lords, who did not want secret voting at all, in the final stages of the battle. The Government, which did want the secret ballot and opposed vote-tracing, saw scrutiny not as a desirable safeguard but as 'a great concession ... which, rather than lose the bill, it is wise for us to make' - W.E. Forster, who drew up the bill.

4. Re-run elections

Liberty recognises that a consequence of the discontinuation of the vote-tracing provisions would be the need to re-run an election where personation was proved and the number of personated votes was greater than the winning candidate's majority. However, that would happen extremely rarely. It might be feared that unsuccessful candidates would be tempted to allege personation in order to force an election to be re-run. In reality they would be deterred by the cost of mounting an election petition and by the unpopularity they would incur with the electorate by making them go out to vote for a second time.

5. Prevention, detection, and proof of personation

The Electoral Commission's Factsheet on Ballot secrecy gives some background on vote-tracing, and its report 'Election 2001: The Official Results', page 40, briefly notes it as an issue of concern to voters. Both documents suggest that vote-tracing is needed in order to prove the offence of personation, and that if it were discontinued alternative means of dealing with allegations of personation would have to be introduced. In fact, that is not so - personation would be revealed and proved through the process of marking the register as people came to vote; vote-tracing merely enables the result to be corrected afterwards if personation is proved. The discontinuation of vote tracing would make no difference to the prevention, detection, or proof of offences of personation. A real safeguard against personation would be to require voters to provide some proof of identity when they go to vote, and Liberty would in principle support such a measure.

6. Serial numbers

The Electoral Commission's documents also appear to suggest that the discontinuation of vote-tracing requires the discontinuation of numbered ballot forms. Again, that is not so. Doing away with serial numbers would seriously weaken the measures to counter the forgery of ballot papers. What Liberty proposes is that polling station clerks should no longer be required to write voters' electoral roll numbers on the counterfoils of the ballot forms issued to them.

The Electoral Commission suggests that the electorate's concerns might be met by the use of barcodes instead of serial numbers. However, barcodes do not address the central concern - the security services would have little problem equipping themselves with a barcode reader. There is no objection to the presence of serial numbers on the ballot forms, and there seems little point in using something less transparent than a plain printed number.

7. Education

The Electoral Commission suggests 'an educational initiative to explain why serial numbers are used to assist in the combating of personation'. An educational initiative might well be useful. But it would need to be accurate - and serial numbers do not assist in the combating of personation; they merely enable a result to be adjusted after personation has been detected and proved by other means.

8. Electronic voting and counting

Liberty has not considered electronic voting and counting in any detail. But it seems clear that the use of this technology would multiply rather than reduce any anxieties about the possibility of improper interference with the electoral process.

9. Summary

In the Liberty/ERS 'Ballot Secrecy' report Liberty's views were summarised thus:

1. The fear of vote-tracing by state agencies is a far more serious defect in a free and democratic electoral system than is the very rare need to re-run an election in a ward or constituency where extensive personation has been proved, and the result is very close.
2. Given recent revelations about the activities of the security services, the fear of vote-tracing is not unreasonable. In addition, however trustworthy the present administration might be, it is unwise to assume that all future administrations would be trustworthy.
3. The concern of the ERS over the extent of personation is reasonable, and new safeguards should be introduced to counter it.
4. Vote-tracing is not a significant part of the safeguards against personation or any other electoral malpractice and should be discontinued. It merely enables an election result to be corrected after personation has been detected and proved by other means.
5. Therefore the Representation of the People Act should be amended to discontinue the requirement for the polling station clerk to write a voter's electoral number on the counterfoil of the ballot form issued to that voter.

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