
Felon Disenfranchisement and Citizenship Rights in the United States

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Abstract: This paper discusses the evolution of felon disenfranchisement in the United States as well as its implications for the nation as a whole. First, the history of felon disenfranchisement in the United States is explored, with a particular focus on the deliberate disenfranchisement of Black Americans. The continued disenfranchisement of felons has the capacity to compromise the ability of marginalized communities to exert political influence, reduce the citizenship rights of current and former felons, and brings into question the United States' status as a modern liberal democracy. This paper argues that the continued disenfranchisement, particularly of Black Americans, who have been previously convicted of a felony demonstrates the United States' inability to be classified as a liberal democracy as it removes the fundamental citizenship rights that should be awarded to all citizens of the state.

Acknowledgements:

I would like to extend a huge thank you to all those who helped in the process of preparing this paper for publication. I am very grateful to have been able to work alongside such a talented group of individuals. Specifically, I would like to thank Lily Jones for her guidance and editorial advice, Dr. Greaves for his expertise, Michael John Lo for his support, and the rest of the OnPol team for their diligent work throughout the production of this issue.

Introduction

Felon disenfranchisement in the United States has been a continuous issue limiting the citizenship rights of Americans since the implementation of the constitution. The United States is a global leader in incarceration, with rates 5-8 times higher than comparable liberal democratic nations like Germany, the UK, and Canada,¹ meaning that its disenfranchisement laws affect far more individuals than other nations with similar laws. This disparity in incarceration rates sets the United States apart from other nations, both in respect to the sheer number of incarcerated individuals, and in the rights that those incarcerated peoples or former felons have. For example, nearly half of all European countries allow all incarcerated people to vote, whereas some US states disenfranchise felons for life.² Canada, one of the most comparable nations to the United States due to a shared ““common law heritage... and a commitment to universal adult suffrage”” also does not permit the disenfranchisement of felons.³ Through the *Sauvé v. Canada* trial the Canadian Supreme Court ruled that “denial of the right to vote on the basis of attributed moral unworthiness is inconsistent with the respect for the dignity of every person that lies at the heart of Canadian democracy.”⁴ This stands in stark opposition to the position of most US State that immediately disenfranchise individuals upon felony conviction. The fact that other nations comparable to the United States refrain from disenfranchising its felons sets the United States apart, making its felon disenfranchisement laws an exceptional circumstance among nations described as liberal democracies.

Gradually, states have been lifting the strict regulations that automatically revoked the voting privileges of felons for life; however, significant obstacles to obtaining enfranchisement remain for both incarcerated peoples and those who have completed the terms of their sentence. In this paper, the barriers to achieving enfranchisement for former felons will be discussed in relation to their prevention of political representation for Black communities, the inequality of citizenship rights awarded to former felons, as well as the effect of felon disenfranchisement

¹ American Civil Liberties Union. *Out of Step with the World: An Analysis of Felony Disenfranchisement in the U.S. and Other Democracies*. (New York, NY: American Civil Liberties Union, 2006), 3.

² *Ibid.*, 4.

³ Courtney Artzner, “Check Marks the Spot: Evaluating the Fundamental Right to Vote and Felon Disenfranchisement in the United States and Canada,” *Southwestern Journal of Law and Trade in the Americas* 13, no. 2 (2007): 434.

⁴ *Sauvé v. Canada* (Chief Electoral Officer), 3 S.C.R. 519 (SCC 2002), 522.

on the validity of the broader American liberal democratic state. I argue that the practice of felon disenfranchisement violates the basic principles of individual choice, self-determination, and equality of citizenship upon which the modern American liberal-democratic state is allegedly constructed. Thus, the continued disenfranchisement of felons operates to disenfranchise Black Americans, and revert Black Americans to an inferior level of citizenship. This means that the United States is in fact not a liberal democracy due to its systemic oppression and subordination of Black Americans to inferior citizenship status that has been pervasive from Constitution since its inception.

History of Felon Disenfranchisement in the United States

In order to investigate the implications of felon disenfranchisement in the United States we must first explore the origins of the disenfranchisement of Black peoples, specifically through felony convictions. Originally, the United States Constitution did not guarantee voting rights to any specific group of citizens, leaving all decisions surrounding enfranchisement to the discretion of the states. This allowed individual states to include or exclude any group of people from the franchise, including enslaved peoples. At the time of the Constitution's implementation, only 5 of the 13 states prohibited slavery, meaning that approximately 4 million Black Americans were enslaved in the southern states.⁵ During this time slave patrols, groups of white volunteers who were encouraged to use vigilante tactics to return escaped enslaved peoples to their owners, arose as the origins of the modern American policing system. These patrols aimed to "control a 'dangerous underclass' that included African Americans, immigrants, and the poor,"⁶ creating a strong imbalance of power between White and Black Americans. As such, the origin of the American policing system serves as an example of the racist institutions that have disproportionately criminalized Black Americans from the beginning.

The disproportionate criminalization of African Americans was also used as a means of returning them to slavery after the Thirteenth Amendment was introduced to the American constitution. The Constitution states that: "neither slavery nor involuntary servitude,

⁵ Theodore Lowi, Benjamin Ginsberg, Kenneth Shepsle, and Stephen Ansolabehere, *American Government: Power and Purpose 15th ed.* (New York: W.W. Norton & Company, 2019), 149.

⁶ Connie Hassett-Walker, "The racist roots of American policing: From slave patrols to traffic stops," *The Conversation*, last modified June 2, 2020, <https://theconversation.com/the-racist-roots-of-american-policing-from-slave-patrols-to-traffic-stops-112816>.

except as punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States,”⁷ meaning that those convicted of felonies could be legally used for slave labour. A southern white preacher who, when speaking of the Thirteenth Amendment in 1866, was quoted as saying: “we must now make a code that will subject many crimes to the penalty of involuntary servitude, and so reduce the Negroes under such penalty again to practical slavery.”⁸ As such, the criminalization of Black Americans served the purpose of disenfranchisement to return Black Americans to conditions of slavery.

Disenfranchisement for petty crimes consequently began spreading rapidly throughout the 1870s and 1880s, as some states changed their laws to change misdemeanor property crimes to felonies, while other states amended their constitutions to include larceny as a disenfranchising offence. These efforts increased the incarceration rates of Black Americans, thus revoking their right to participate in the democratic process.

The high criminalization of Black Americans led Colonel Samuel Young, a member of the Jeffersonians of New York, to put forward a campaign to disenfranchise Black peoples in 1821, stating that: “the minds of blacks are not competent to vote...look to your jails and penitentiaries. By whom are they filled? By the very race it is now proposed to clothe with the power of deciding upon your political rights.”⁹ This statement reflects the hypocritical and cyclic nature of the disenfranchisement campaigns targeting Black Americans. Black Americans were disproportionately criminalized and incarcerated and were therefore deemed unfit to vote because of said incarceration rates.

The disenfranchisement of Black peoples is deeply engrained in the United States’ foundation, and remains pervasive as is seen in similarly motivated campaigns such as Reagan’s War on Drugs. The War on Drugs served to criminalize Black Americans for drug-related offenses, with African Americans comprising 80-90 percent of those incarcerated for drug-related offenses in some states although studies have shown that people of all races participate in the selling and consumption of illegal drugs at very similar rates.¹⁰

⁷Dennis Childs, *Slaves of the State: Black Incarceration from the Chain Gang to the Penitentiary*, (Minneapolis: University of Minnesota Press, 2015), 64.

⁸Ibid., 65.

⁹Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (Oxford: Oxford University Press, 2006), 42.

¹⁰Michelle Alexander, “The War on Drugs and the New Jim Crow,” *Race, Poverty, and the*

The pervasiveness of deliberate persecution and criminalization of Black Americans demonstrates the systemic racism embedded in the United States' criminal justice system. As of 2020 approximately 5.2 million Americans have been disenfranchised due to felony convictions, with 1.3 million of those being Black Americans.¹¹ For perspective, it was reported in 2018 that Black Americans constituted 33% of the United States' prison population while making up only 12% of all adults in the nation.¹² As such, the disenfranchisement of Black Americans due to felony convictions remains a persistent issue due to the upholding of institutions and policies that have aimed to subordinate Black Americans since Constitution's implementation.

Consequences of Felon Disenfranchisement

Limitation of Political Representation for Black Communities

In addition to the removal of voting rights, felon disenfranchisement has profound effects on the communities of those who have been disenfranchised. In Florida, the nation's leading state in felon disenfranchisement with 1.1 million individuals disenfranchised due to felony convictions,¹³ a strong correlation has been found between communities with large numbers of Returning Citizens (citizens re-entering society post-incarceration),¹⁴ class, and racial composition.¹⁵ Low-income communities that are significantly economically disadvantaged are often communities of colour, with Black communities having comparatively poor socio-economic conditions and higher proportions of Returning Citizens.¹⁶ These communities therefore have higher numbers of disenfranchised citizens, meaning that there are fewer individuals

Environment 17, no. 1 (2007): , 76.

¹¹ Christopher Uggen, Ryan Larson, Sarah Shannon, and Arleth Pulido-Nava, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, (Washington, DC, The Sentencing Project, 2020), 15, <https://www.sentencingproject.org/wp-content/uploads/2020/10/Locked-Out-2020.pdf>.

¹² John Gramlich, *Black Imprisonment Rate in the U.S. has Fallen by a Third Since 2006*, (Washington: Pew Research Center, 2020).

¹³ Uggen, Larson, Shannon, and Pulido-Nava, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, 4.

¹⁴ Advancement Project, *Democracy Disappeared: How Florida Silences the Black Vote through Felon Disenfranchisement*, (Washington: Advancement Project, 2018), 21.

¹⁵ *Ibid.*, 21.

¹⁶ *Ibid.*, 22.

making political decisions for their constituency than higher-income or less racialized communities. Thus, the Returning Citizens, who are disproportionately Black, are excluded from the democratic process, resulting in both their under and misrepresentation.

This exclusion from political participation and representation is exacerbated by a unique feature of American democracy: the inclusion of policy decisions regarding criminal justice reforms on ballot initiatives and referenda.¹⁷ The disenfranchisement of incarcerated peoples and former felons prevents them from participating in the referenda and ballot initiatives that determine the future of their socio-political rights. In other words, none of the individuals given the power to make decisions regarding the political and social futures of former felons will have been incarcerated themselves; and thus, will not be able to accurately represent the needs and interests of felons. We can then understand that by removing a felon's right to vote, disenfranchisement efforts effectively stagnate felons' socio-political status, forcing them into a permanent position as an inferior member of American society.

The Advancement Project, an NGO with the mission of working against structural racism in the United States, found that predominantly Black neighbourhoods suffered from lower educational attainment, lower median incomes, higher rates of child poverty, and higher unemployment rates than other neighbourhoods as well as higher rates of Returning Citizens.¹⁸ It was also discovered that a Black American child was less likely to be raised by both parents in 2010 than they were during slavery due to the mass incarceration of Black American men.¹⁹ This extends the effects of the mass incarceration of Black Americans beyond the felons themselves, and puts undue strain on families and communities.

The disproportionate incidence of socio-economic distress in Black neighbourhoods is directly linked to the large proportion of Returning Citizens, as Black communities are being prevented from influencing political decisions through felon disenfranchisement. Without a fully eligible voting-age population these already disadvantaged communities are limited in their ability to use the political system to

¹⁷ National Research Council, Division of Behavioral and Social Sciences and Education, Committee on Law and Justice, and Committee on Causes and Consequences of High Rates of Incarceration, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, 104.

¹⁸ Advancement Project, *Democracy Disappeared: How Florida Silences the Black Vote through Felony Disenfranchisement*, 37-42.

¹⁹ Alexander, "The War on Drugs and the New Jim Crow," 75.

overcome systemic inequalities and injustices.²⁰ This is aptly summarized by the Advancement Project, who note that: “when large numbers of community members are not permitted to vote, entire constituencies may go unrepresented in the democratic institutions that govern them.”²¹ Therefore the revocation of voting rights for former felons not only affects the former felons themselves, but has the potential to undermine the democratic influence of entire communities. This extends the punishment for a given crime beyond the individual who committed the crime, punishing entire Black communities by diluting their democratic representation.

Inequality of Citizenship Rights for American Felons

The disenfranchisement of felons affects not only the broader political representation of racialized communities, but also serves to revoke the fundamental citizenship rights of individuals with felony convictions. According to the United States Constitution’s Article IV and Fourteenth Amendment, the right to vote is both a privilege and guaranteed right for all citizens of the United States.²² Along with this, the Fourteenth Amendment further dictates that “no state shall make or enforce any law abridging the privileges or immunities of citizens of the United States.”²³ Even though voting in public elections is a mandated right of American citizens that is protected under the Fourteenth Amendment, felons are exempt from these protections, and are automatically disenfranchised upon their conviction in all states but two: Maine and Vermont.²⁴ This means that a total of 5.2 million Americans were disenfranchised by felony convictions as of 2020, comprising 2.3% of the voting age population.²⁵ Disenfranchisement laws are still up to the discretion of individual states and therefore vary in their severity. 11 states disenfranchise felons for the duration of their prison term, probation, and some or all of their post-sentence, while 16 states re-enfranchise felons after they have completed all terms of their sentence, including parole and probation.²⁶ The remainder of states disenfranchise felons either for their

²⁰ Ibid., 45.

²¹ Ibid., 45.

²² Richard Sobel, *Citizenship as Foundation of Rights: Meaning for America*, (Cambridge: Cambridge University Press, 2016), 39.

²³ Kurt Lash, *The Fourteenth Amendment and the Privileges and Immunities of American Citizenship*, (Cambridge: Cambridge University Press, 2014), 1.

²⁴ Uggen, Larson, Shannon, and Pulido-Nava, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction*, 4.

²⁵ Ibid., 4.

²⁶ Ibid., 5.

prison term only, or during prison and parole.²⁷ Keeping the franchise extended to felons, as is the case in Maine and Vermont, is a highly exceptional circumstance in the United States. 43% of disenfranchised Americans are post-sentence and living back in their communities, unable to fully exercise their rights as American citizens. In this sense, felony convictions make felons lesser citizens than those who have never been incarcerated as felons are being denied their citizenship right to vote.

Article 25(b) of the International Covenant on Civil and Political Rights (ICCPR) states that all citizens of United Nations member states have the right and opportunity “to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage... guaranteeing the free expression of the will of the electors.”²⁸ The ICCPR requires that any disenfranchisement efforts made by governments must be both “objective and reasonable,”²⁹ or that “the suspension of rights be ‘proportionate’ to the offense and sentence.”³⁰ Lifetime disenfranchisement of felons as was previously the case in Florida has been found in violation of Article 25 of the ICCPR according to a 2006 review of the United States’ laws.³¹ Though Florida has since amended its laws through Constitutional Amendment 4, the vast majority of former felons remain disenfranchised for life due to their court fines, creating an electorate that is in violation of the international agreement constituted by the ICCPR. This limitation of citizenship rights is therefore not only contrary to the United States’ own citizenship guidelines, but to international human rights agreements as well.

Consequences of Felon Disenfranchisement for the United States as a Modern Liberal Democracy

The final, and arguably most important implication of felon disenfranchisement is its contradiction of the liberal democratic ideals on which the United States claims to be constructed. As noted by Behrens et al., the Supreme Court declared in the 1964 *Reynolds v. Sims* case that “citizenship and the right to vote are truly ‘the essence of a democratic

²⁷ *Ibid.*, 5.

²⁸ United Nations, *International Covenant on Civil and Political Rights*, (New York: United Nation Human Rights, 1966), 13.

²⁹ The Sentencing Project, *Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States*, (Washington: The Sentencing Project, 2013), 4.

³⁰ *Ibid.*, 4.

³¹ *Ibid.*, 4.

society,”³² and as such, denying the right to vote to certain groups of citizens compromises the United States’ democracy. The United States is generally classified as a liberal democracy, meaning that it is a political society based on the importance of individual choice and the power of citizens to voice their political opinions.³³ This makes the right to vote and the equality of citizens central to the political ideology upon which the nation established itself.

Although the right to vote has been recently extended to individuals who have completed all terms of their sentence in states such as Florida and Iowa, those convicted of murder or a felony sexual offense remain permanently disenfranchised due to their crimes.³⁴ As noted by Schaal, for the disenfranchisement of felons to be compatible with the liberal-democratic idea of citizenship “it must be demonstrated that felons, for some reason are unequal to other citizens in a way that justifies their political freedom and justifies their exclusion from the franchise.”³⁵ While felons have participated in activities that deviate from society’s established laws, they have not proven to be less deserving of the rights that accompany citizenship as they do not have citizenship revoked upon conviction. An argument in favour of felon disenfranchisement has been proposed by political philosopher Andrew Altman, who suggests that the citizens of a democracy have the collective right to “define the distinctive political identity of their community.”³⁶ While this may seem a logical argument against re-enfranchising felons and ex-felons, the United States has defined the political identity of its democracy through the Constitution. Therefore the disenfranchisement of felons is in direct contradiction with the rights of citizenship as outlined by the United States Constitution’s

³² Angela Behrens, Christopher Uggen, and Jeff Manza, “Ballot Manipulation and the ‘Menace of Negro Domination’: Racial Threat and Felon Disenfranchisement in the United States, 1850–2002,” *The American Journal of Sociology*, 109, no. 3 (2003): 560, <https://doi.org/10.1086/378647>.

³³ Jason Schaal, “The Consistency of Felon Disenfranchisement with Citizenship Theory,” *Harvard Blackletter Law Journal*, 22 (2006): 68.

³⁴ Ballotpedia, “Florida Amendment 4, Voting Rights Restoration for Felons Initiative (2018).”; Office of the Governor of Iowa, “Gov. Reynolds signs Executive Order to restore voting rights of felons who have completed their sentence.”

³⁵ Schaal, “The Consistency of Felon Disenfranchisement with Citizenship Theory,” 74.

³⁶ Andrew Altman, “Democratic Self-Determination and the Disenfranchisement of Felons,” *Journal of Applied Philosophy* 22, no. 3 (2005): 263.

Article IV and Amendment 14.³⁷ The right to vote is a fundamental right of citizens of the United States and every citizen, including those who have been convicted of any crime, should be permitted participation in this central pillar of modern liberal democratic states.

Conclusion

The pervasive, institutionalized racism present in America's historical foundation, has resulted in the long history of felon disenfranchisement that targets Black Americans through mass incarceration efforts. These efforts began at America's inception with slave patrols and continue to modern day with campaigns such as Reagan's War on Drugs. The continued disenfranchisement of current and former felons is indicative of a deep-rooted issue with the United States' liberal democratic ideology, and leads to the conclusion that the United States is not, and has never been a true liberal democracy. Since the implementation of the United States' Constitution there has been an inequality of citizenship between White and Black Americans, which is not only exemplified by, but perpetuated through the mass incarceration and criminalization of Black Americans. The United States' history progressed from outright slavery, to slave patrols aiming to control the Black population, to policies that disproportionately incarcerated Black Americans, relegating Black Americans to inferior levels of citizenship. Citizens with felony convictions are not only having their fundamental citizenship right compromised, but entire communities are being prevented from properly accessing the opportunities provided by the democratic process. This continues the United States' judicial system's racist legacy that aims to subordinate and enslave the Black population.

³⁷ Richard Sobel, *Citizenship as Foundation of Rights: Meaning for America*, (Cambridge: Cambridge University Press, 2016), 39.

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