

Prisoner Disenfranchisement Policy: A Threat to Democracy?

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The right to vote is one of the fundamental principles of democracy. However, full suffrage of the adult population has not been realized in many present-day democracies. Internationally, millions of prisoners (and ex-offenders in some nations) are disenfranchised. Being excluded from the civic process is a threat to democracy. In this article, I argue that removing a prisoner's right to vote can lead to inequality and injustice that is counter to democratic ideals. By contrast, enfranchisement of prisoners can promote their rehabilitation and social reintegration, and can have a real impact on the political climate of a nation. I also discuss the arguments for and against prisoner disenfranchisement, explore public opinion on this issue, and track recent legislative changes to disenfranchisement policy internationally. Areas for future psychological inquiry are highlighted.

The basic principles for electoral democracy are laid out in international law. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) declares that "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: . . . (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors. . ."; Article 2 sets out that this applies "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Although international law does not always form part of a nation's domestic law, it does tend to influence domestic law and be used as a benchmark by which to evaluate these laws.

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Political scientists such as Robert A. Dahl (1956, 1998) also argue that the democratic process should allow *all* adult members of a state to have an *equal* and *effective* opportunity to contribute to the policy agenda and vote on that policy such that every vote counts equally. Historically, there was not full suffrage of the adult population. For instance, in many nations women, the poor, Blacks, and Indigenous people were denied the right to vote. To date, one segment of the adult population, namely prisoners (and probationers, parolees, and ex-offenders in some nations), are disenfranchised in many democracies. Being excluded from the civil process is a threat to democracy. In this article, I will argue that removing a prisoner's right to vote can have significant negative ramifications for the democratic ideals of equality and justice. By contrast, *franchising* prisoners (and probationers, parolees, and ex-offenders) can promote their rehabilitation and social reintegration, and can have a real impact on the political climate of a nation. First, however, I will begin with a brief review of prisoner disenfranchisement policy internationally, followed by a consideration of the justifications for and against denying prisoners the right to vote and public opinion on this issue. There is a dearth of psychological research on prisoner disenfranchisement, and throughout, I will highlight areas for future psychological inquiry.

Prisoners and the Right to Vote

Internationally, the policy on prisoner voting rights falls along a continuum (see Rottinghaus, Manatt, & Manatt, 2003). On the one hand, there are nations that allow prisoners to vote (e.g., Canada, Ukraine, South Africa, and Iran). On the other hand, there are nations that ban prisoners from voting, and this policy of disenfranchisement varies. Several nations restrict voting to certain groups of prisoners. For example, in Australia prisoners serving over 5 years cannot vote, while in China prisoners on death row are banned from voting. Many nations have a more-or-less "blanket" ban on prisoners' voting (e.g., UK and Russia). Finally, there are a few nations, such as Finland, that ban prisoners from voting for some period after the end of their incarceration. Some states in the United States, have one of the most restrictive policies in this regard, permanently disenfranchising felons.¹

Although most disenfranchisement policies relate to convicted prisoners, those in prison awaiting trial or sentence are often "practically" disenfranchised, with little opportunity to vote while in prison. It is estimated that almost 4.5 million people in 54 nations have been deprived of their right to vote due to incarceration (Rottinghaus et al., 2003). This is a conservative estimate as it excludes nations that

¹ I will use the term "felon" when referring to the United States since disenfranchisement laws there refer to those convicted of a felony (a serious crime), and I will use the term "prisoner" when referring to other nations because disenfranchisement laws typically refer to people sentenced to prison.

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restrict only certain groups of prisoners from voting. In the following, I provide an overview of felon disenfranchisement policy in the United States because it has some of the most restrictive state-level policies among democratic nations. I also discuss some of the recent reforms of prisoner voting rights in Canada and the UK.

United States: A Democracy that Disenfranchises

State legislation determines whether an individual with a felony conviction has the right to vote in both state and federal elections (see Keyssar, 2000). Currently, 16 states deny the vote to incarcerated felons, but grant the vote to those who are out of prison on probation or parole; 4 states only allow felons on probation to vote and disenfranchise both parolees and those in prison; 31 states disenfranchise all felons on probation, in prison, and on parole; and finally, 14 states effectively remove the vote from all those with felony convictions, including those who have completed their sentence (5 states permanently disenfranchise ex-felons while in the other 9 states ex-felons may regain the right after a period of time) (The Sentencing Project, 2005). The crimes for which individuals are disenfranchised can include shoplifting, possession of a small quantity of marijuana, and white-collar crimes. Even in states where felons regain the right to vote upon release from prison or completion of their sentence, (ex)-felons may not be aware of this policy. Moreover, in some states where ex-felons can regain the right to vote after a period of time, these individuals must embark upon a lengthy and arduous procedure. It is estimated that around 4 million Americans are disenfranchised, and over 1 million of these individuals have completed their sentence (Fellner & Mauer, 1998).

In 1974 the U.S. Supreme Court upheld a state's right to ban felons from voting in *Richardson v. Ramirez*. State felon disenfranchisement laws have changed over time (see Allard & Mauer, 2000; Uggen, 2003). In some cases these changes have been restrictive. For instance, Massachusetts recently passed legislation that removed the right to vote from incarcerated felons who previously had the right, and Kansas now also bans felons on probation. However, there is also a growing movement for reform that aims to restore the right to vote or expand it. For instance, Connecticut now allows felons on probation to vote, Nebraska has replaced the lifetime ban on felons with a 2-year post-sentence ban, and New Mexico now restores voting rights to felons after completion of their sentence.

Democratic Reform: Free the Vote

Canada. In October 2002, the Supreme Court of Canada in *Sauvé v. Canada* rejected legislation forbidding federal prisoners from voting by a 5-4 majority. The Government had asserted that disenfranchisement was justified on the grounds that it would enhance civic responsibility and respect for the rule of law, and that it

would provide additional punishment. The majority view summarized by Chief Justice McLachlin was as follows:

... The legitimacy of the law and the obligation to obey the law flow directly from the right of every citizen to vote. To deny prisoners the right to vote is to lose an important means of teaching them democratic values and social responsibility. ... Denial of the right to vote on the basis of attributed moral unworthiness is inconsistent with the respect for the dignity of every person. ... It also runs counter to the ... idea that laws command obedience because they are made by those whose conduct they govern. Denying the right to vote does not comply with the requirements for legitimate punishment—namely, that punishment must not be arbitrary and must serve a valid criminal law purpose. ... As to a legitimate penal purpose, neither the record nor common sense supports the claim that disenfranchisement deters crime or rehabilitates criminals.

Of course, the recent change in policy does not mean that disenfranchisement will not be reintroduced. In the future, Canadian prisoners serving sentences for *specific* offences may be disenfranchised. Furthermore, judges may be given powers to remove the right to vote as part of a court penalty. Nevertheless, for now, Canadian prisoners have the right to vote. Approximately one third registered to vote in the 2004 federal election, although it is unknown how many exercised this right (Sheppard, 2004, “Canadian prisoners exercise right to vote”).

United Kingdom. The judgment by the European Court of Human Rights in *Hirst v. United Kingdom* in March 2004 challenged the validity of the ban on prisoners’ voting rights. The Government had asserted that disenfranchisement aimed to prevent crime and punish offenders, and enhance civic responsibility and respect for the rule of law. It was argued that convicted prisoners had breached the social contract and so forfeited the right to participate in the civil process for the duration of their sentence. The European Court followed the reasoning of the majority in the *Sauvé v. Canada* case. In addition, the court stated that

... [T]he fact that a convicted prisoner is deprived of his liberty does not mean that he loses the protection of other fundamental rights. ... , even though the enjoyment of those rights must inevitably be tempered by the requirements of his situation. ... [T]here is no clear, logical link between the loss of vote and the imposition of a prison sentence, where no bar applies to a person guilty of crimes which may be equally anti-social or ‘uncitizen-like’ but whose crime is not met by such a consequence.

Once again, however, the court left open the opportunity to remove the vote from prisoners convicted of particular types of crimes, or to allow judges to ban prisoners from voting as part of their sentence. The UK government is currently disputing this ruling, and Juliet Lyon, Director of the Prison Reform Trust, states that she is “concerned that the government is using this protracted process as a way of ensuring that it does not have to deal with the enfranchisement of prisoners in advance of the forthcoming general election” (personal communication, January 18, 2005). Indeed, prisoners in the UK could not vote on May 5, 2005.

Prisoner Disenfranchisement: Justifications and Public Opinion

Should Prisoners Face Civil Death?

Disenfranchisement laws reflect the notion of “civil death” or withdrawal of political, legal, and civil rights originating in ancient Greek and Roman societies and adopted by medieval Europe (see Ewald, 2002; Itkowitz & Oldak, 1973; Keyssar, 2000). Philosophers such as John Locke, Jean-Jacques Rousseau, Immanuel Kant, and John Stuart Mill have all supported the legitimacy of prisoner disenfranchisement (see Plannic, 1987). The above court cases illustrate arguments for and against prisoner disenfranchisement in contemporary democratic societies (see also Itkowitz, & Oldak, 1973). To reiterate, common reasons cited for disqualifying prisoners from voting include that it will promote civic responsibility and respect for the law; offenders have lost the right to vote since they violated the “social contract”; it is a method of crime control; the “purity of the ballot box” needs to be protected from offenders who may corrupt it, act subversively, or commit election fraud; and it is costly and impractical to allow prisoners to vote. Often, the disenfranchisement of prisoners is viewed simply as another restriction on the liberty of individuals who are imprisoned.

However, the argument that allowing prisoners to vote would be costly and impractical is ethically unjustifiable. Similarly, the fact that prisoners lose many freedoms does not imply they should lose all their civil rights. Denying prisoners the right to vote is likely to undermine respect for the rule of law since citizens who cannot participate in the making of laws will probably not recognize their authority. Allowing prisoners to vote, by contrast, may strengthen their social ties and commitment to the common good, thus promoting legally responsible participation in civil society. Suggesting that prisoners have lost the right to vote because they have violated the social contract implies that they rationally and deliberately chose criminal activity with the knowledge that they may lose their voting rights. In many cases, the causes of crime go beyond individual choice and offenders are often ignorant of the disenfranchisement policy.

As a method of crime control or a goal of the penal system, disenfranchisement is retributive to the extent that the offender is deprived of something he/she values. Disenfranchisement may not be retributive if offenders already feel alienated from civil and political life, and it does not amend the harm done. There is also no evidence to show that disenfranchisement rehabilitates, incapacitates, or deters offenders. Disenfranchisement undermines the rehabilitative goal to develop the characters of offenders and socially reintegrate them into society as it may reduce offenders’ self-esteem and alienate them from the community. In fact, as I will discuss later, disenfranchisement may foster further criminal behavior. Deterrence via disenfranchisement is difficult to achieve because people are rarely aware of this consequence, and it is unlikely that they would find it a sufficient deterrent

(especially when they are not deterred by long prison sentences). Indeed, states or nations with civil disabilities resulting from a conviction, for example, reduced family rights (e.g., termination of parental rights and legal grounds for divorce) and reduced rights involving trust/safety (e.g., withdrawal of right to serve as a juror and own a firearm) do not necessarily have lower crime rates. Finally, the use of disenfranchisement for incapacitation is implausible for those offenders who are not convicted of election-related crimes.

The notion that the purity of the ballot box needs to be preserved highlights three concerns. The first concern, that offenders would “corrupt,” “taint,” or “infect” society, is vague and ill-defined. Would allowing offenders to vote really endanger civil society? The second concern is that offenders may vote subversively at the polls. This would require candidates who represent rebellious policies, and a sufficient number of organized offenders. There is also no evidence that offenders are more likely than other groups to vote in a rebellious or subversive way. In fact, Casper (1972) found that criminal defendants believed that the law is worthy of respect. Like other people, offenders will tend to cast their vote based on more than self-interest or a single issue. Anyhow, excluding a group on the basis of how they would vote is undemocratic. The third concern is that offenders may commit election fraud. However, there is no relation between committing election crimes and other types of crimes. Furthermore, an individual who commits an election crime in the past will not necessarily commit a similar crime in the future.

Politically disempowering a segment of society threatens the legitimacy of a democracy. Future psychological research could explore the justifications for prisoner disenfranchisement policies. For instance, to what extent does the act of voting affect people’s feelings of belonging to a wider community? Do people perceive voting as a selfish or altruistic behavior? Do people believe that removing voting rights would act as a sufficient criminal deterrent? What attributions are made to people who are disenfranchised? What are the similarities and differences between victims’ and offenders’ views of disenfranchisement? How do prisoners’ voting patterns differ from the voting behavior of the general public?

Is Disenfranchisement a Public Sentence?

To date, researchers have studied the American public’s opinion of prisoner disenfranchisement policy. In a national survey of 503 people, Pinaire, Heumann, and Bilotta (2003) found that over 90% believed that the right to vote was one of (or the) most important rights in a democracy. Only a minority of respondents supported the two extreme felony disenfranchisement policies: 10% did not believe in any ban on felon voting, and 16% believed in a permanent ban on all individuals convicted of a felony. Most of the general public, therefore, adopted a moderate position: 32% believed that only incarcerated felons should lose their right to vote, and 35% believed that felons should lose their right to vote only while they are in

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prison, on parole, or probation. In another national survey of 1,000 people, Manza, Brooks, and Uggen (2004) found that the level of support for *enfranchisement* decreased as a function of the status of the felon: ex-felon (80%), probationer (68%), parolee (60%), and prisoner (31%). Thus, although the U.S. public supports the enfranchisement of ex-felons, it still favors removing the vote from prisoners. It is likely that the general public in other nations with fewer punitive criminal justice policies would be in favor of enfranchising prisoners, thus endorsing the principles of democracy and respect for civil liberties.

One interesting finding to emerge from Manza et al.'s (2004) survey is that public support for enfranchisement was associated with crime type. Specifically, there was less support for the enfranchisement of sex offenders. Psychological research could examine the factors underlying this more punitive attitude toward sex offenders. Is it primarily influenced by a desire for retribution? In addition, what are the factors that influence greater public support for the enfranchisement of ex-felons than prisoners? Research could also identify other boundary conditions affecting public opinion on prisoner disenfranchisement policy, as well as techniques that could change attitudes toward prisoner disenfranchisement.

Costs of Prisoner Disenfranchisement

Inequality

Disenfranchisement laws can lead to inequality. Taking the United States as an example, it is evident that there is a disproportionate rate of conviction and incarceration of African Americans. For instance, in 2003, black male inmates represented approximately 44% of all inmates with a sentence of 1 year or more, while white inmates accounted for 35%, and black males were incarcerated at a rate of 3,405 per 100,000 of their population compared to a rate of 465 for white males (Bureau of Justice Statistics, 2004). A similar pattern emerges for black females. Racial profiling and the "war on drugs," which systematically discriminate, can partly explain these disproportionate rates (Harvey, 1994). Nevertheless, this has also led to the unequal disenfranchisement of these groups. For instance, around 13% of all African American men (1.4 million) are disenfranchised (Fellner & Mauer, 1998). They comprise 36% of the total disenfranchised population even though they only constitute 6% of the general population. It is forecasted that three in ten of the next generation of African American men will lose the right to vote either temporarily or permanently (Fellner & Mauer, 1998). Although comparable figures for Latinos are as yet unavailable, it is likely that a similar pattern will emerge for this minority group. Harvey (1994) refers to the erosion or political disempowerment of minority groups as "racial vote dilution."

The practice of disenfranchisement coupled with disproportionate rates of incarceration of African Americans is discriminatory and thwarts the efforts of

the civil rights movement (Harvey, 1994). In fact, several authors have noted the connection between racism and the development of felon disenfranchisement laws in the United States (e.g., Behrens, Manza, & Uggen, 2003; Ewald, 2002; Keyssar, 2000; Preuhs, 2001; Shapiro, 1993). Preuhs (2001) found that after controlling for various factors, racial indicators such as the size of the minority population best explained the variation in disenfranchisement policy across states, and that as the proportion of the minority population increased so did the severity of disenfranchisement laws. Behrens et al. (2003) demonstrated that, after controlling for other relevant factors, states with greater nonwhite prison populations were more likely to disenfranchise convicted felons than states with proportionally fewer nonwhite prisoners, and these disenfranchisement policies were likely to be more restrictive.

Similar patterns of inequality in prisoner disenfranchisement are evident in other nations. For instance, in Australia, Indigenous people are 16 times more likely to be in prison than non-Indigenous people, and prisoner disenfranchisement has a disproportionate effect on them (Davidson, 2004). The disproportionate impact that Canada's disenfranchisement policy had on its Aboriginal population was recognized by the Court in *Sauvé v. Canada*. Psychological research could examine the psycho-social impact that "racial vote dilution" has on disenfranchised minorities and on the majority groups' stereotypes of them.

Injustice

In most nations, losing the right to vote is not a criminal sanction, but is an administrative sanction based on non-penal legislation and imposed automatically.² It is a deprivation of a right that results as a direct consequence of a criminal conviction. As such, it is considered a "collateral consequence" (Olivares, Burton, & Cullen, 1996). As a punishment, disenfranchisement is unjust. In most nations it is not proportionate to the severity of the offense because it is applied across the board of offenses, and in some nations it continues to punish even after the offender has served his/her sentence. Furthermore, a judge does not control its imposition.

Disenfranchisement may also lead to feelings of being treated unfairly and unjustly, particularly in the United States, where criminal laws and disenfranchisement laws differ across states. First, there are differences in criminal codes across states (jurisdictions) that have similar disenfranchisement laws. This means that two individuals who engage in the same behavior in two different states will be differentially denied the right to vote if one state classifies the behavior as illegal and the other does not. Second, there are differences in felony disenfranchisement

² By contrast, in Germany, the denial of voting rights is not automatic. It is limited to serious offenses, imposed by the judge at sentencing, and can only last 2 to 5 years after release from prison (Demleitner, 2000).

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laws across states that have similar criminal codes. Two individuals may be convicted of similar crimes in two different states, but whereas one individual is allowed to vote, the other is not. Furthermore, an (ex-)felon may lose the right to vote if he/she is transferred or moves from a state that allows felons to vote to a state that does not (and vice versa). Finally, in some states it is possible to run for election, but not possible to vote. Psychological research could measure people's perceptions of the fairness of disenfranchisement policy.

Benefits of Enfranchisement

Social Reintegration

As Article 10 of the ICCPR states: "1. All persons denied of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." "3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation." This has been recognized by courts such as the Supreme Court of Canada (2002) and the Constitutional Court of South Africa (1999) when ruling against disenfranchisement. Elections highlight that we are all members of a community, working toward a common good, and that we have social ties. Voting represents a way of creating and maintaining these ties. Thus, psychologically and socially, the right to vote could enable prisoners to perceive themselves as useful, responsible, trusted, and law-abiding citizens. This could encourage their rehabilitation and help them to reintegrate into society after release.

Disenfranchisement, however, serves to increase the social distance between the offender and the community, and reaffirms his/her feelings of alienation and isolation. This may impede his/her acceptance and respect of the social norms and rule of law. Disenfranchisement also negatively labels individuals as "second-class" citizens. In a survey of 33 convicted felons in the United States, Uggen and Manza (2005) found that disenfranchisement was stigmatizing and a sign of social isolation, even if individuals did not exercise their right to vote in the past. Felons reported a need to feel like full citizens. The stigma and humiliation of being denied the right to vote can be damaging to an individual's self-image. Indeed, permanent disenfranchisement suggests that a person will never change and will always be a deviant.³ Such labeling can lead to further criminal activity (see Becker, 1963).

There is some evidence indicating that voting behavior and criminal behavior are related. In a longitudinal survey of 1,000 young adults, Uggen and Manza (2004) found that only around 5% of the voters had been arrested or incarcerated

³ Although the restoration of voting rights can have the rehabilitative potential of criminal de-labeling and reintegration, this is unlikely to occur when restoration requires effort and is hidden from public view.

compared to the non-voters of whom 16% had been arrested and 12% had been incarcerated. And, among former arrestees, approximately 27% of the non-voters had been rearrested compared to 12% of the voters. Similar patterns emerged when examining self-reported crime such that voters reported significantly less crime than non-voters. Thus, voting appears to be part of a “package of prosocial behavior.” Further research could illuminate the elements of this “package,” and explore how they relate to voting behavior. Psychological research could also identify the mechanisms by which disenfranchisement affects the self-concept and how this mediates the impact of disenfranchisement policy on future criminal behavior.

Political Empowerment

Denying prisoners the right to vote can have a real impact on the politics of a nation. Most convicted offenders are poor or working class, and as noted, in many nations there is a disproportionate number of ethnic minorities represented within their ranks. These groups are likely to vote Liberal or Democratic rather than Conservative or Republican. In the United States, Uggen and Manza (2002) estimate that since 1972, on average, 35% of disenfranchised felons would have voted in presidential elections and 24% would have voted in Senate elections. About seven of ten votes cast by convicted felons would have been for the Democratic party. Historically, therefore, seven senate elections may have been overturned in favor of the Democrats if felons were enfranchised. It has been estimated that the outcome of the 2000 U.S. Presidential election, where G. W. Bush won by 537 votes, may have been determined by the permanent ban on the voting rights of over 400,000 ex-felons in Florida (even after excluding the ban on felons). The impact of enfranchisement on local or district-level elections would be greater since there is a larger concentration of felons and ex-felons in urban areas.

A similar observation of the political impact of prisoner disenfranchisement has been made in the UK. The Prison Reform Trust (2001) has argued that in the 1997 General election, the ban on prisoners’ voting rights may have affected the results in eight marginal constituencies that accommodate a large number of prisoners.⁴ For instance, in Dorset South, which includes three prisons accommodating nearly 1,500 prisoners, a Conservative candidate won by a majority of only 77 votes. Therefore, the enfranchisement of prisoners and ex-felons provides ample opportunities to think counterfactually about how politics might have been altered in democracies.

⁴ It is also noted that election results may be altered in constituencies where there is no prison, but when prisoners nominate that constituency as their permanent residence.

Conclusions

Although voting rights have been extended over time to many social groups, suffrage is not a settled matter in modern democracies. Many democratic nations deny this right to sentenced prisoners, and some states in the United States also permanently disenfranchise ex-felons. Overall, millions of adults around the world are denied the right to vote even though they live in a democratic society. The practice of disenfranchisement is often unequal, leading to “racial vote dilution,” and can be perceived as an unjust “collateral consequence” of a conviction. It unnecessarily limits self-governance and representative democracy. Restrictions on the right to vote disable the ability of a democracy to revise and recreate itself via the contribution of voters. Prisoners (and ex-felons) should have a right to contribute to the laws and the government of the nation in which they live.

There is, internationally, a growing liberalization of anti-democratic restrictions on prisoners’ voting rights, such that in recent elections Canadian and South African prisoners could vote. In the future, UK prisoners may also be able to cast a ballot. The Australian parliament is currently debating the issue of prisoners’ disenfranchisement (Davidson, 2004). The public in the United States generally supports less restrictive policies on the voting rights of ex-felons. There, the judicial route has been of little success in that few have won court challenges to disenfranchisement laws, and although some continue to offer new legal strategies (Shapiro, 1993), an alternative route may be to change state legislation (Gottlieb, 2002). The findings of psychological research can also be used to advocate the enfranchisement of all convicted offenders. Historically, democracy has ascended and declined. As Dahl (1998, p. 22) writes “Democracy, it appears, is a bit chancy. But its chances also depend on what we do ourselves.” Civil death for prisoners is a threat to democracy that ought to be challenged. Among other benefits already noted, enfranchising prisoners could stimulate debate on penal reform, as well as demonstrate a commitment to human and civil rights and democratic reform.

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