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Felon Voting Rights and Democracy

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Subjects:

- [Civil society](#) [1]
- [Democracy and government](#) [2]
- [United States](#) [3]
- Drug Policy Forum [4]
- [Rebecca Gould](#) [5]

Convicted felons continue to be barred from voting in the US, with severe consequences for their rehabilitation and the democratic process. An effective campaign for their re-enfranchisement is vital, argues Rebecca Gould.

About the author

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Summary: Convicted felons continue to be barred from voting in the US, with severe consequences for their rehabilitation and the democratic process. An effective campaign for their re-enfranchisement is vital, argues Rebecca Gould.

A debate is raging in Washington State concerning the legitimacy of denying voting rights to felons. The [Seattle Post-Intelligencer](#) [6] has published several editorials over the course of the past few years insisting on the right of felons to participate in the political process. The *Seattle Post-Intelligencer* editorial board agrees with the ruling of the Washington Supreme Court Chief Justice Gerry Alexander that society “should encourage rather than discourage felons to rehabilitate themselves.” Although the judicial branch of government at both the state and national levels commonly supports felon voting rights, legislators, who for the most part do not support felon voting rights, have more influence than judges on the everyday ramifications of felon disenfranchisement. To overturn felon disenfranchisement, then, a massive education effort is needed, targeted at the American public. Americans should be made to reflect on the practical consequences of felon disenfranchisement as well as on its implications for democratic governance. They should be encouraged to elect legislators who will not campaign for discriminatory voting practices.

According to Manza and Unger in *Locked out: felon disenfranchisement and American democracy* (Oxford University Press, 2006), 5.4 million Americans, amounting to one in every forty voting-age adults, is currently barred from voting due to a felon conviction. Allard and Mauer demonstrate in [Regaining the vote: an assessment of activity relating to felon disenfranchisement laws](#) [7] (The Sentencing Project, 2000), that 5.4 million Americans translates into thirteen percent of all African-American males, seven times the national average.

America is not the only democracy in the world that prohibits felons from voting after parole (even more polities forbid voting for felons on parole), but it applies the principle of felon disenfranchisement more severely than any other democracy in the world. America's per capita incarceration rates are the highest in the world, and disproportionately higher for African-Americans and Latinos. These laws contribute to an array of gratuitous punishments that serve no practical function other than to consolidate the power of the already powerful. While a few active and articulate organizations, such as The Sentencing Project, [Unlock the Block, DEMOS](#) [8], [The Brennan Center for Justice at NYU](#) [9], [Soros Open Society Institute](#) [10], and [Human Rights Watch](#) [11], have documented how felon disenfranchisement builds on a legacy of racial profiling and class prejudice, and actively contributes to social inequality, few have drawn attention to the core principles at stake in the issue of felon disenfranchisement, or to the inherent contradiction between felon disenfranchisement and democracy.

No doubt because activists are justifiably interested in yielding immediate result, the majority of work on felon disenfranchisement has thus far pursued various versions of the ‘applied justice’



argument. But the overwhelming emphasis on pragmatics over ethics in discussions of felon disenfranchisement cedes too much to those who prefer discriminatory governance to true human equality. Felon disenfranchisement should not have to be debated solely on pragmatic grounds when there are more fundamental and non-pragmatic issues at stake. At best, pragmatics is a means of arriving at the more powerful realization that felon disenfranchisement, whether socially useful or socially harmful, inhibits democracy.

To a no lesser extent than capital punishment, felon disenfranchisement deserves to be debated on ethical and not solely pragmatic grounds. Any society that legislates behavior-based restrictions on the right of franchise is guilty of undemocratic penal practices. Even if it could be demonstrated statistically that felon disenfranchisement increases crime—and there is nothing to warrant such an assertion—it would still be anti-democratic to extend the right to vote to some while withholding it to others. In a democracy, our right to vote is not contingent on our being good citizens or obeying the law. Rather, *voting is the condition for our obedience to the law*. The fact that we vote enables the state to legitimately insist on our obedience to its laws, provided that democratic theory approximate political practice. In a polity wherein citizens are forbidden to vote, the state has no right to expect such obedience. Felon disenfranchisement of itself violates the logic of the democratic state. If democracy is an ethical endeavor and not only a pragmatic strategy, then we are well-advised to take account of the basic legal and philosophical issues at stake in felon disenfranchisement, which have less to do directly with crime reduction than with the foundation of democracy as such: popular representation.

It goes without saying that the theoretical justification for requiring obedience to society's laws from all citizens often does not work out as it should in practice. Elections and campaigns are more often than not corrupted by greed. Choosing among several inadequate candidates is often less than satisfying, and voter participation is low among fully qualified voters. But at least democratic social theory *attempts* to justify the demand for legal obedience. At least we possess an ethical ideal for this form of political being. At least a citizen is asked to obey laws not because the elite demands obedience but because the laws are perceived to derive (indirectly) from the will of the people. No matter how imperfect its application, the ideal of a democratic polity deserves our admiration. And yet all these ideals are utterly discarded by policymakers and the citizenry alike when it comes to felon disenfranchisement. Suddenly, democratic ideals are perceived to be incapable of insuring a society's security, and the right to vote, to participate actively in one's own polity, is demoted to a mere privilege granted on basis of good behavior and economic prosperity rather than a basic human right.

A polity that legislates restrictive voting does not fulfill the basic criterion for popular representation. It might be objected that felons are not the only people excluded by voting laws; citizens younger than eighteen are also forbidden from casting their ballot. The major difference between a child and a felon is that the child looks forward to voting someday. He or she can anticipate eventually having access to full political participation. In polities where permanent felon disenfranchisement is the norm, the felon by contrast is barred from political participation. To felon has nothing to look forward to in such a polity, and lacks any hope of ever being fully integrated into this society. It is not undemocratic to temporarily forbid someone from voting in the expectation that they will eventually be eligible. The voting rights of minors are a pragmatic issue that can be debated in terms of the age at which a minor is capable of making intelligent political choices. Felon disenfranchisement is different; firstly because it is often permanent; secondly because it makes the right to vote contingent on one's obedience to the law, whereas in a true democracy one's duty to obey the law is contingent on one's right to vote. When the first criterion, the right to vote, is missing, its presumed consequence, the duty to obey the law, is called into question from the vantage point of legal theory.

It is undemocratic to permanently bar any citizen, no matter how heinous his or her crime, from political participation in society at large. A government of the people departs from democracy when it bars felons from voting. The polity that practices such discrimination has no legal right to insist on obedience to its laws, inasmuch as a felon barred from voting is not subject to laws that require the consent of the governed. Forbidding the felon to vote makes of his or her consent a dead issue. A polity that does not ask for the consent of the governed is not a democracy. According to social contract theory, it is legitimate for a state to demand obedience from its citizens, because these citizens exist in a reciprocal relationship with their rulers and actively contribute to the creation of



society's laws. Felon disenfranchisement violates this reciprocal relationship and makes a mockery of the concept of popular representation.

Felon disenfranchisement is not only practically ineffective at deterring crime. It is itself a crime. It is a crime to imprison citizens according to the implicit terms of a social contract and then to deny to them the right to intervene in that contract and to contest its terms through voting. The political right to vote is logically prior to duty to obey the laws of the society within which one is voting. If a citizen is denied the franchise, he or she has no obligation to obey the laws of that society. According to classical social contract theory, any violation of the legal code of a society which unequally distributes the franchise cannot properly be understood to be a crime, because the category "crime" presumes that one violates a set of mutually agreed upon rules. When felon disenfranchisement is accepted as a normative mode of governance, this effectively means that people are being punished for violating laws it was not their legal duty to obey.

No law can be legitimately issued by a polity that administers the right to vote in a discriminatory manner. Felon disenfranchisement impedes not only just punishments; it also calls into question the internal coherence of criminal law within a democracy. A prisoner in a polity that practices felon disenfranchisement may have violated ethical norms, but to call this person a felon, which is a legal category, the law must be applied democratically. In the absence of an internally coherent policy for the administration, we have no way to distinguish between a political dissident and a violent offender for the purposes of criminal law; everyday criminals become political dissidents and political dissidents become everyday criminals. It is in the interest of justice to keep these distinctions intact. Felon disenfranchisement is the greatest obstacle to the internal cogency of American criminal law.

For a democracy to be a democracy, all citizens must have the right to vote. (In the case of minors, they must have these rights potentially, in their future.) This perspective is as old as Plato's [Republic](#) [12] and Aristotle's [Politics](#) [13]. For the political theorists of antiquity, democracy, though not the ideal form of government, presumed the political participation of all of its citizens. There are two obvious senses in which the Greek ideal is inadequate for us today. Firstly, we know that the Platonic and Aristotelian concepts of citizenship excluded women and slaves, and even made the possession of slaves a necessary prerequisite to the attainment of citizenship. The modern democratic ideal, by contrast, requires that citizenship be extended more broadly, and not be parceled out along lines of gender or racial or class origin. The modern argument with the ancient Greek theorists is less over the principle of democracy than over the principle of citizenship, and to whom it should apply. Secondly, Plato and Aristotle prescribed democracy only for societies that today would barely qualify for "village" status, and we know that such an ideal is impossible today for nearly all political entities.

In spite of their attachments to social hierarchies rejected by modern democratic social theory, both Aristotle and Plato understood that democracy is incompatible with the institutional disenfranchisement of citizens. They did not assume, as many do today, that one earns the right to vote through good behavior. To the contrary, the citizen behaves well because he (always only he) possess the right to vote, and can therefore be held to highest of standards. Life in a free society makes one a better person, not the other way around. The citizen's selfhood is realized within the polis, and most perfectly in the act of voting. One does not ask to be rewarded by the state for good behavior by being granted already-inalienable rights. As indicated above, neither Plato nor Aristotle would have maintained that the values pertinent to the citizenry should be universally applied to every human being, but at least they articulated the basic principles of political life, and the motivation for responsible citizenship.

Felon disenfranchisement is not only an issue of crime reduction. It is a question concerning democracy. This point is worth stressing because even political conservatives, and even those opposed to or uninspired by social justice movements, ought to be able to recognize the fundamental inconsistency between democratic values and felon disenfranchisement. Framing the felon disenfranchisement debate as a non-partisan issue—as a question concerning democracy rather than crime reduction—will ultimately make it more acceptable to society at large, and help activists, scholars, and prisoners win the battle for its annulment.

As someone who had been at the receiving end of domestic violence, I am glad I had the option of



calling the police to take my husband to prison for his violent crimes. I am glad there are prisons for people who endanger the lives of others. When they uphold democratic principles, penal regulations play a vital role in promoting the social good. But in order for penal regulations to serve society, rather than the ruling elite, criminal law should not intensify already existing hierarchies between the haves and the have-nots.

It should not take a prison rights activist to see that permanent felon disenfranchisement for most classes of felons, now practiced by eighteen states, needs to be overturned at the national level. The states currently practicing permanent disenfranchisement for felons are Arizona, Arkansas, Minnesota, Nebraska, Nevada, North Carolina, South Dakota, Florida, Kentucky, Mississippi, Virginia, Alabama, Delaware, Maryland, Missouri, Tennessee, Washington, and Wyoming. A federal initiative is needed to take felon disenfranchisement away from the discretion of these states. Curtailments to felons' right to participate in the political process are too basic an instance of anti-democratic legislation to be decided locally, or on a case-by-case basis.

Just as Jim Crow laws were overturned in the 1960s, and just as they were at the time supported by many legislatures at the state level who had no problem with the idea of "separate but equal" status, so too today discriminatory voting laws need to be overturned across the country and without restrictions. What would happen to American politics if 5.4 million felons were suddenly granted the right to vote? For one thing, George Bush might not have been elected in 2004. The great oil war might not have dragged on for so many years. A polity whose rulers decide who can and cannot vote is liable to become an oligarchy that exists only to serve the interests of those already in power.

Country: United States

Topics: Civil society

Democracy and government



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