

Civic Life Sentence: How Critics of Felony Disenfranchisement Pursue Reform

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Hana Nur

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Hana Nur

Sociotechnical advisor: Peter Norton, Department of Engineering and Society

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Felony disenfranchisement emerged as voting rights were extended to African Americans during the 1860s and 1870s. The 14th amendment to the U.S. constitution deterred denial of suffrage in elections for federal office, “except for participation in rebellion, or other crime.” This clause was legal grounds for state legislated felony disenfranchisement. In 2016 about 6.1 million citizens (2.5 percent of the voting-age population) were disenfranchised due to a conviction. The number is greater than the margin of victory in some recent presidential elections (Uggen, Larson, & Shannon, 2016). More than half of those disenfranchised in 2016 had completed their sentence, including any probation or parole periods, and the majority were convicted for nonviolent crimes (Uggen, Larson, & Shannon, 2016). African Americans are far more likely to be legally disenfranchised than other Americans. More than 7 percent of African Americans of voting age are disenfranchised due to a conviction (Uggen, Larson, & Shannon, 2016). The United States has the world’s highest incarceration rate. The Supreme Court has repeatedly upheld felony disenfranchisement (Walmsley, 2016). Critics of criminal disenfranchisement are striving to put an end to the practice. Through documenting discriminatory impacts of felony disenfranchisement, reframing felony disenfranchisement as a civil rights issue, and collective state-level action critics both reshape the public discourse surrounding felony disenfranchisement as well as drive change in legislation.

Review of Research

Previous work documented the extent to which felony disenfranchisement affects voter demographics. Uggen, Larson, & Shannon (2016) investigated the demographics of felony disenfranchisement, providing the basis for understanding how it affected election results in

2016. Dixon (2002) discusses the 2000 general election and how the disproportionate disenfranchisement of minority voters contributed to presidential candidate Al Gore's loss. Felony disenfranchisement originated historically to dilute the voting power of minorities, particularly African Americans, following the Fifteenth Amendment (Behrens, Uggen, & Manza, 2003). Zaman (2015) describes disenfranchisement as "a badge of slavery." Mass incarceration of African Americans serves as a means of expulsion from "free society" that disenfranchisement exacerbates (Pettit & Gutierrez, 2018). Incarceration decreases economic security, placing financial burden on the families of those convicted and increasing chances of homelessness for children of recently incarcerated parents (Pettit & Gutierrez, 2018). African Americans face lower wealth mobility compared to white counterparts, with less African American families accruing generational wealth and greater downward mobility in wealth across generations than white peers (Pfeffer & Killewald, 2018). The impact of withholding voting rights from those who have not paid fines and fees following conviction is examined by Colgan (2019), showing that class-based discrimination is evident in wealth-based felony disenfranchisement. The collateral consequences following conviction of a felony have been examined, detailing the extensive societal impacts coupled with disenfranchisement post-sentence (Edkins & Dervan, 2018).

Documenting Discriminatory Impacts of Felony Disenfranchisement

Critics of felony disenfranchisement have documented its heightened impact on the voting power of the African American community. Felony disenfranchisement disproportionately affects African American voters, reducing the African American voting population by more than 20 percent in four states as of 2016 (Uggen, Larson, & Shannon, 2016).

Behrens, Uggen, and Manza (2003) demonstrated that states with prison populations with a relatively high share of nonwhite prisoners are more likely to adopt felony disenfranchisement. King and Erickson (2016) found that communities with higher rates of felony convictions “become less influential” than more affluent neighborhoods. Eligible African American voters in states with a greater percentage of disenfranchised African Americans are less likely to vote in presidential elections, and potentially even less likely to vote in state or local elections. The negative relationship between African American disenfranchisement and African American voting turnout supersedes the positive impacts of liberal voting policies, such as Election Day registration and early voting (King & Erickson, 2016). When combined with the increased incarceration rate of African Americans following the War on Drugs beginning in the 1980s, felony disenfranchisement has posed restrictions on African American voting access comparable to literacy tests of the Jim Crow era (Goldman, 2004).

Critics have examined the impacts of felony disenfranchisement on the mental and physical health of felons. Edkins and Redlich (2019) note that even after felons have completed their sentences, they often face not only disenfranchisement, but also impaired access to employment, government assistance, or licensing. Those disenfranchised after incarceration are also more likely to recidivate (Vogel, 2012). The researchers add that formal barriers and social exclusion can be debilitating; disenfranchised persons may feel dehumanized. Subjects of social exclusion may in turn dehumanize its perpetrators (Bastian & Haslam, 2011). Physiological effects may develop due to the lack of control that disenfranchisement imposes on the lives of the disenfranchised. Allostatic load, the “wear and tear on the body’s regulatory systems,” develops in those afflicted by a prolonged stressor, like discrimination (Purtle, 2013). Black people have a higher mean allostatic load scores than White people, regardless of economic

strain (Geronimus et al., 2006). In addition to discrimination, researchers found feeling a lack of control in one's life and social exclusion can create stress resulting in allostatic load. To relieve the dysregulation, individuals turn to unhealthy coping mechanisms like smoking or using other substances. The lack of dignity associated with social exclusion creates chronic stress contributing to increased rates of mortality, morbidity, and disability (Purtle, 2013).

Reframing Felony Disenfranchisement as a Civil Rights Issue

Through reframing felony disenfranchisement from a “tough on crime” policy, critics can argue for suffrage of felons as a civil rights issue. The War on Drugs encouraged “tough on crime” policies, prompting growing incarceration rates (Sentencing Project, 2020). Republican politicians benefited from these policies electorally and gained support by claiming the opposition was excessively lenient (Erskine, 1974). Felony disenfranchisement became a partisan issue as the Democratic Party supported enfranchisement, partially due to overrepresentation of the parties target demographics in felon populations (Conn, 2005). Conn (2005) found that policy surrounding felon voting rights within state legislatures was motivated by partisan politics. Partisan support is evident among right-leaning lobbyist groups as well: The Heritage Foundation, a conservative public policy think tank, endorsed an opinion piece that contends that felons “should not have a role in making the law for everyone else” (Clegg & Spakovsky, 2018). The authors argue that felons, like children and the mentally incompetent, do not meet “objective standards of responsibility,” and are therefore not entitled to vote (Clegg & Spakovsky, 2018). To curb recidivism, Heritage deems a waiting period for restoration of voting rights a “perfectly reasonable requirement” (Spakovsky, 2013). The conservative interest group Eagle Forum argues that elections must not be opportunities “for criminals to elect fellow

criminals”; voting is the civic responsibility of “law-abiding citizens” (Schlafly, 2004). It opposes the use of executive orders to restore voting rights, arguing (like some critics of disenfranchisement) that enfranchised felons could “swing the outcome” of an election. In 2016, when Virginia’s governor, Democrat Terry McAuliffe, tried to enfranchise 206,000 felons by executive order, the interest group’s president, Phyllis Schlafly, argued that he might thereby win the state for Hillary Clinton in the presidential election that November (Schlafly, 2016). Schlafly died before the election, but in the event the Virginia Supreme Court found McAuliffe’s order unconstitutional, and Clinton carried the state without the votes of any of the felons that the governor had tried to enfranchise.

Reformers have incorporated different messaging to refocus the conversation on civil rights. The communications manager at the Sentencing Project, an advocacy that fights felony disenfranchisement, defines felony disenfranchisement legislation as “laws that disenfranchise citizens convicted of felony offenses” (Chung, 2019). Chung (2019) emphasizes denying voting rights to “an entire class of citizens” as “problematic.” Similarly, a webinar led by the Sentencing Project encouraged “cultural messaging” when discussing felony disenfranchisement and advocated for reformers to discuss disenfranchised peoples as “people living in the community” (Mauer, Reilly, & Uggen, 2012). Emphasizing felons and ex-felons as citizens allows for felony disenfranchisement to become an issue of civil rights, with some reformers framing it as a means of “taxation without representation” (McMiller, 2008). Critics have contended that disenfranchising adults subjected to democratic laws within a democracy undermines the legitimacy of that democracy. Therefore, as citizens under democratic rule, barring convicted felons from voting undermines democratic self-determination (Whitt, 2017).

Collective State-Level Action

Reformers counter felony disenfranchisement legislation by mobilizing their communities. The overturning of Section 5 of the Voting Rights Act of 1965 in *Shelby County v. Holder* by the U.S. Supreme Court limits reform on the federal level (*Shelby v. Holder* 2013). The Voting Rights Act was intended to prevent state and local governments from impeding citizens' right to vote, namely African Americans subjected to Jim Crow laws (Brennan Center, 2018). Section 5, which was intended to expire after five years, dictates that specific districts, primarily within southern states, are required to present these changes to federal courts (Brennan Center, 2018). Justice Roberts stated in the majority opinion Section 5 was a “strong medicine,” but the voter suppression that led to its enactment “no longer characterize[s] voting in the covered jurisdictions” (*Shelby v. Holder* 2013). Justice Roberts contended Section 5 is a “drastic departure from ... federalism,” cementing regulation of state voting laws as federal overreach (*Shelby v. Holder* 2013). In combination with *Richardson v. Ramirez* (1974), which ruled 6-3 that state-sanctioned felony disenfranchisement can be constitutional, *Shelby County v. Holder* (2013) assures federal reform is precluded. Consequently, critics have turned their attention to state government (Baldwin, 2014). The following subsections will investigate the organized action that led to changes in felony disenfranchisement legislation in Connecticut and Florida.

Connecticut

In 2001, Connecticut’s General Assembly passed legislation granting those on probation the right to vote, enfranchising 36,000 citizens (McMiller, 2008). This legislation was enacted by a majority democrat assembly (Zielbauer, 2001). The narrow victory by Republican President George W. Bush the previous year sparked efforts for voting rights legislation among

Democratic party members (Zielbauer, 2001). Former Connecticut secretary of the state and executive director of DemocracyWorks, a non-profit dedicated to increasing voter participation, Miles S. Rapoport stated “in light of the 2000 elections, one of the things people have realized is ... the unintended consequences of disenfranchising a whole class of people in our society” (Zielbauer, 2001).

Background

Connecticut’s original 1818 Constitution states voters, a population of exclusively white males, could be disenfranchised for committing “bribery, forgery, perjury, duelling, fraudulent bankruptcy, theft, or other offence for which an infamous punishment is inflicted” (Russell, 2019). In 1855, the state government implemented reading and English language qualifications that served to disenfranchise primarily minority voters (CGA, 2019). The General Assembly was granted the authority to discern which crimes warranted disenfranchisement in 1948, resulting in a commission for voting rights restoration petitions (CGA, 2019). An amendment ruled “any person convicted of a felony” be disenfranchised in 1963, and by 1975 the commission was disassembled and voting rights were restored to those convicted upon completion of sentence, parole, or probation and payment of fines (CGA, 2019). Reading and English language prerequisites were overturned in 1970 through an amendment to the federal Voting Rights Act, however the incarcerated, parolees, and those on probation remained disenfranchised (Thornton, 2020). Black and Latino citizens convicted of a felony were disproportionately affected by disenfranchisement, resulting in 20% of the Black men and 8,000 Latino men being disenfranchised state-wide by 2001 (McMiller, 2008).

The Connecticut Voting Rights Restoration Coalition (CVRRC)

In 1994, during the age of “tough on crime” policy, Kenneth P. Green endorsed restoration of voting rights in his campaign for General Assembly (McMiller, 2008). Green saw the disproportionate disenfranchisement of African American and Latino voters as “a dangerous trend” and found subjecting convicted citizens to responsibilities such as taxes without civil rights “fundamentally unfair” (McMiller, 2008). Once in the General Assembly, Green was unable to gain support from other members for a voting restoration bill (Chedekel, 2001). In 1999, Rapoport and Rudy Arnold, DemocracyWorks board of directors chair, met with Green, Democratic House Representative Fleischmann, Democratic House Majority Leader David Pudlin, and “a diverse group of civil rights organizations, democracy reform advocates, church groups, and service providers working in the criminal justice system” in order to gain support for legislation (McMiller, 2008). This marked the beginning of the CVRRC, and as more meetings were coordinated the coalition grew to more than 40 organizations (McMiller, 2008). Through media work and lobbying, the coalition used an “inside strategy” to encourage legislators to approve the bill and allowing Green to present the bill to the Judiciary Committee, of which he was a member (McMiller, 2008). The bill was amended in the committee to exclude those on parole (Zielbauer, 2001). Through collective action within the government through lobbying legislators and outside the government through public education programs and working with “key people and agencies,” the CVRRC was able to gain the necessary backing (McMiller, 2008). The Voting Rights Restoration bill passed the House and the Senate with bipartisan support, allowing all citizens on probation, barring those convicted of voting fraud, to vote (Chedekel, 2001).

Florida

During the 2018 midterm elections, Florida voted for the Voting Restoration Amendment with a 65% majority, automatically enfranchising ¼ million formerly convicted citizens (Brennan Center, 2019). This amendment eliminated post-sentence disenfranchisement, however those on parole or probation and those “convicted of murder or sexual offenses” were exempt from automatic enfranchisement and would need to petition the Governor and Cabinet (FDOE, 2018). Amendment 4 was included on the ballot after community organizers garnered 766,200 signatures (Brennan Center, 2019).

Background

In 1838, the first Florida state constitution gave the General Assembly the “power to exclude from ... suffrage, all persons convicted of bribery, perjury, forgery, or other high crime, or misdemeanor” and was updated in 1868 to add “nor shall any person convicted of a felony be qualified to vote at any election unless restored to civil rights” (Riggs, 2015). The state employed Jim Crow laws to bar Black citizens from voting, which were ended by the Voting Rights Act (Dixon, 2002). The Correctional Reform Act of 1974 aimed to enfranchise convicted felons after completing their sentence but was found unconstitutional as the constitution states it is within the Governor’s power to enfranchise formally convicted felons (Riggs, 2015). The Board of Clemency, consisting of the governor and members of cabinet, restored voting rights automatically to those that met predetermined criteria until 1991 when hearings became a prerequisite for eligibility (Riggs, 2015).

In 2016, Florida had the highest disenfranchisement rate in the country, responsible for 27% of those disenfranchised in the nation and barring 10% Floridians from voting (Uggen,

Larson, & Shannon, 2016). More than 1 in 5 African Americans in Florida were disenfranchised, leading critics to argue that African Americans are being “purposefully excluded from the Floridian electorate” (Phillips & Deckard, 2015). Felony disenfranchisement also serves to shape voting population demographics. Had felons been allowed to vote in the 2000 general election, it is predicted presidential candidate Al Gore would have won the state and the presidency (Uggen & Manza, 2002). Republican governor Charlie Crist amended the legislation on disenfranchisement to allow those who have completed their sentence vote following three consecutive Republican victories for governor, but this amendment was quickly rescinded after the succeeding governor, Rick Scott, won by a slim majority (Phillips & Deckard, 2015). Phillips & Deckard note that as the voting power of the African American community is reduced, the legislation supported by the community is less likely to pass, exemplifying legislative ramifications to felony disenfranchisement. Loss of civil rights eliminates the ability to receive a variety of state licensures required for employment upon reentry into society (ACLU, 2006).

Florida Rights Restoration Coalition (FRRRC) and Floridians for Fair Democracy

Desmond Meade began organizing as the executive director of FRRRC, an organization founded by the ACLU of Florida, in 2009 (Berman, 2018). With a goal of achieving the 766,200 necessary signatures, Meade drove around the state to speak to communities directly (Berman, 2018). Floridians for Fair Democracy, a political advocacy group headed by Meade, worked along with FRRRC in getting signatures (Lemongello, 2018). Signatures were collected as the message spread in community spaces and organizations coordinated outreach with varied demographics. Advocates worked with community members regardless of political background, arguing that reformers do not wish to influence former convict’s voting decisions but rather give

people the option (Wong, 2018). Meade sought Republican lobbyist and former convict Neil Volz as a Deputy Director to advocate for the amendment in Republican spaces (Berman, 2018). The organizers communicated with “White Americans, U.S. citizens from Puerto Rico, Cuban Americans, about 10,000 veterans of the U.S. military in the state, rural residents and parents who can’t vote for school board members” (Wong, 2018). More than 1.1 million signatures were obtained, and the campaign for the Voting Restoration Amendment began (Lemongello, 2018). FRRC began to form coalitions with influential political groups, such as the ACLU, and gained bipartisan endorsements, such as the Koch brothers and the Christian Coalition (Wong, 2018). Organizers campaigned by phone, door-to-door, text message, and group events (Wong, 2018). The Amendment passed with a 65% majority, automatically enfranchising more than 1 million Floridians (Brennan Center, 2019).

Following the amendments passing, the Florida legislature passed a law barring former convicts from automatic enfranchisement if all fines and fees are not paid (Washington, 2019). Reformers criticized the legislation in a lawsuit, claiming it was unconstitutional by serving as a “poll tax” (ACLUFL, 2019). FRRC raised more than 7 million dollars to cover these expenses for felons in need through the Fines and Fees Campaign (FRRC, 2020). Celebrity and politician donors, from LeBron James to former New York City mayor Mike Bloomberg, aided the fundraising efforts, providing FRRC and other grassroots organizers national attention (Mower & Taylor, 2020). Those barred from voting due to fees could face criminal charges if they vote, and the Fines and Fees Campaign aids former convicts by covering fees individuals may not be aware of (Mower & Taylor, 2020).

Conclusion

The disproportionate effects of felony disenfranchisement coupled with the Jim Crow origins of many state disenfranchisement laws has led to the practice being criticized as a relic of slavery (Zaman, 2015). The documented impacts of felony disenfranchisement, ranging from physical and mental health to voting demographics, provide reformers with evidence for its abolition. Refocusing felony disenfranchisement as a civil rights and community issue allows for discourse surrounding the legitimacy of disenfranchising citizens in a democracy. Due to the decisions of *Shelby County v. Holder* (2013) and *Richardson v. Ramirez* (1974), critics challenge felony disenfranchisement legislation on the state-level through collective action. Further work is necessary to determine the efficacy of these methods in achieving legislation changes. Investigations into the registration rate of former convicts following restoration of voting rights would provide insight into the effects of temporary disenfranchisement on public participation. Changes in voting demographics following voting rights legislation may illustrate the extent to which felony disenfranchisement affects voting population and the impact of such legislation on the electorate.

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