

## Voting While in Mass Incarceration

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**ABSTRACT:** *This article explores a recent report of scholars and voting-rights activists urging Congress to make voting mandatory. In this article, I examine the rights of felons, specifically their rights to vote while in mass incarceration. Since prisoners are not allowed to vote in most states, I argue why they should gain suffrage. From this article, I hope to provide and enlighten the reader on possible alternative solutions to prisoner voting.*

### Introduction

In a recent report, many scholars and voting-rights activists urge Congress to make voting mandatory for all U.S. citizens.<sup>76</sup> Participating in voting is incredibly important because it ensures your voice is heard, which is one of the primary foundational elements of democracy. By forcing Americans to vote, scholars and voting-rights activists are encouraging and influencing individuals to educate themselves and others about the important issues and policies of each presidential candidate. This is crucial in our democracy because it allows us to be involved in the national decision-making process and having knowledge in what our nation is achieving. If every individual were to cast a vote, the outcome would be huge; there would be reduced partisanship, more knowledge about current issues, and more youth advocates and activist groups.<sup>77</sup> Scholars and voting-rights activists argue that if people do not vote or have an acceptable excuse for not voting, they should be penalized. This stemmed from the 2012 and 2016 Presidential Election reports that revealed an average of 61.6% of eligible citizens participating in the registration and voting process.<sup>78</sup> Since many individuals have not voted in recent years, scholars and voting-rights activists argue that if people do not vote or have an acceptable excuse for not voting, they should be penalized. By making voting a civic responsibility, America would be a more democratic and advanced society.<sup>79</sup> Voting is an important right in America, and it should be upheld for all citizens, no matter if one has been convicted of a felony or incarcerated.

Currently, in the United States, felons are ineligible to vote. In some circumstances, felons lose their right to vote while they are in incarceration but receive restoration upon their release. Unfortunately, states continue to indefinitely remove voting rights from felons.<sup>80</sup> Several important questions have been raised regarding voting rights in relation to prisoners, such as, how do prisoner voting rights factor into this new plan? Why are prisoners not allowed to vote? Should they be allowed? Are there alternative ways to ensure that prisoners can vote? It is unjustifiable and unconstitutional to deny prisoners the right to vote, and it is incredibly

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<sup>76</sup> Dambisa Moyo. "Make Voting Mandatory in The U.S.," *The New York Times* (2019).

<sup>77</sup> Moyo, 2019.

<sup>78</sup> "Voting in America: A Look at the 2016 Presidential Election," *The United States Census Bureau* (2017).

<sup>79</sup> Moyo, (2019).

<sup>80</sup> "Felon Voting Rights," *National Conference of State Legislatures* (2019).



important that America changes its established laws to accommodate prisoner voting because we cannot take away an American's inherent right to participate in democracy.

## Background

The history of felony disenfranchisement dates back to the English colonists. When British colonists came to North America, they brought with them the common law practice of “civil death.”<sup>81</sup> These were a set of criminal penalties that punished those who rejected common law. If one violated the moral code, the penalty was the revocation of their right to vote. It was not until after the American Revolution that the states began expanding the annulment of voting rights to all felony offenses.<sup>82</sup>

During the post-Reconstruction period, also known as the Jim Crow Laws era, many of the southern states tailored disenfranchisement laws to target and ban black males from voting. For example, Kentucky and Virginia created laws that prevented convicted felons from voting at any point in their life after conviction. The laws for disenfranchisement broadened throughout the states, causing more individuals to lose their right to vote.<sup>83</sup>

This disenfranchisement continued in the United States until 1965 when the Voting Rights Act was introduced nationwide, in order to protect voting rights. This landmark legislation prohibited every state and government from discrimination of racial or cultural minorities through voting rights.<sup>84</sup>

The Voting Rights Act was the start to providing equality in voting rights for all Americans. However, the 1974 court case *Richardson v. Ramirez* challenged this progress. Ramirez and several felons brought a class action suit against California's Secretary of State because they were denied their right to vote. They challenged the laws that permanently disenfranchised any individual that was convicted of a crime and argued that the state did not have justification or evidence to deny them the right to vote. On appeal, the Supreme Court ruled in favor of California. It was stated that it was constitutionally acceptable to deny the felons the right to vote because a state could lawfully consider the qualifications of a voter based on their criminal record. Yet, the Constitution confirms that states cannot deny the individual the right to vote based on their racial presentation. Since it was viewed as historically acceptable to disenfranchise prisoners, Ramirez and the other felons did not regain their right to vote.<sup>85</sup>

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<sup>81</sup> Jean Chung. “Policy Brief: Felony Disenfranchisement.” *The Sentencing Project* (2019).

<sup>82</sup> Chung, 2019.

<sup>83</sup> Chung, 2019.

<sup>84</sup> “History of Federal Voting Rights Laws.” *The United States Department of Justice* (2020).

<sup>85</sup> *Richardson v. Ramirez*, 418 U.S. 24 (1974).



As seen above, the barring of felons from voting stems from the hostility and the perception society has about individuals who commit crimes. When an individual is incarcerated, they are forever tainted with a negative image based on their crimes, regardless of serving their time and amending their sins. Some might argue that the government and authorities need to control and govern felons' voting rights because they have and (possibly) will continue to violate the rules and regulations put in place by the state and federal government. Additionally, many individuals may ask why prisoners should be allowed to vote when they neglected to adhere to the law? While some crimes may not be as bad as others (i.e., the possession of marijuana compared to first degree murder), anyone who goes against set rules is deemed inexcusable in the eyes of the law. Prisoners who disrupt the peace and commit crimes need to have the intrusion in order to get the help they need to live a crime-free life, and to ensure the safety of the public. If they were left to do this on their own, they may fall into bad habits or cause more destruction.

### **Importance of Prisoner Voting**

While these are true remarks, how can we justify taking away someone's right to talk for themselves? Even if an individual committed a crime, they are a self-governing individual protected under the fundamental rights of the Constitution. They have the ability to speak and act for themselves, without the forced governance of authority. People voice their opinion in politics through voting. If the government or authorities were to implement harsher restrictions onto the individual, it may depreciate them more. The individual may be more isolated from society and not given the resources they need in order to improve. The isolation from society would enable the incarcerated to continue to feel useless and unwanted. This would not only affect their mental and physical health, but also not allow them to be educated, express themselves, or reintegrate back into society properly. Implementing these restrictions could be detrimental and cause more separation and judgement within society.

Our national political conversation and change depends on the voting. In the past 20 years, neglect and the misuse of authoritative power has plagued prisoners throughout the nation. In addition to being locked away, the prisons are failing health inspections and lack proper immersion programs for the prisoners. If prisoners had the ability to vote, they would vote for representatives that cared about the prison system and would fight to ensure that health inspections are taken care of. Furthermore, the representatives could enact programs that allow prisoners to access proper education and therapeutic resources.<sup>86</sup> By giving them the right to vote, prisoners can represent themselves and the larger portion of the population. Moreover, they

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<sup>86</sup> "Prison Abuse: A Curated Collection of Links." *The Marshall Project* (2020).



can voice their concerns about maltreatment and the ways to help improve life in and after prison.

As a result of prisoners being prohibited from voting, a caste system has formed. America has had a dark past where it was believed that people were not and should not be equals. This can be seen in the “three-fifths clause” of the U.S. Constitution. This clause stated that African Americans were only three-fifths of a full citizen of the United States. Enslaved African Americans were not allowed to vote, allowing white individuals and the government to talk, act, and decide for them.<sup>87</sup> Like slavery, mass incarceration is a designed system to racialize, discriminate, and create stigma between individuals in prison and individuals in the ‘free world.’ Prisoners are legally the property of the government. The government has the right to speak on their behalf and to go above their heads to use the law, even if that makes them inferior and dehumanized.<sup>88</sup> A caste system in the United States is the artificial grouping and labeling of individuals.<sup>89</sup> Prisoners could be considered in a caste system because they are systematically grouped to be labeled as bad individuals. Caste systems go against everything this country is supposed to stand for, and limit individuals’ ability to partake in their fundamental rights.

Furthermore, prisoners perform mandatory labor for private companies. Mass incarceration may refer to this as a rehabilitation approach to get prisoners back into normal life, but there are ulterior motives other than rehabilitation. Often there is a profit extraction for this labor where prisoners are paid little to nothing for their labor.<sup>90</sup>

Most importantly, the inhumane conditions of the prisons cause medical and mental health problems. By not facilitating the prisoners with proper sanitation and cleanliness, it is in contradiction to the idea that prisons are a rehabilitation center. Many of the prisoners are left in the same dirty, moldy prison cells with little cleaning. In addition, they wear the same clothing every day. The lack of sanitary conditions can contribute to the spread of infections, diseases, and viruses. Mentally, prisoners are not given proper support or resources to find comfort in their surroundings or with themselves. This can make prisoners act out violently towards each other or the guards. Going a step further, this could lead to suicide or self-harm. Surely, prisoners who committed horrible acts deserve to feel guilty, but why should the government and prison system allow for cruel and unusual conditions? Voting would enable the prisoners to elect representatives that cared enough to implement policies and conditions that would improve their

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<sup>87</sup> Malik Simba. “The Three-Fifths Clause of the United States Constitution (1787).” *Black Past* (2014).

<sup>88</sup> Gina M. Florio. “5 Ways America’s Prison System Mimics Slavery.” *Bustle* (2016).

<sup>89</sup> Isabel Wilkerson. “America’s Enduring Caste System.” *The New York Times Magazine* (2021).

<sup>90</sup> Florio, 2016.



living conditions. Prisoners should be given the tools, such as voting, to improve themselves and right their wrongs right. This cannot be done when they are treated like animals.<sup>91</sup>

### **Alternative Solutions**

Since 2019, a few states have found alternative solutions to prisoner voting. However, not all of the alternative solutions have an easy and positive outcome. For instance, the Harris County Jail in Houston, Texas has partnered with outside organizations – such as the Texas Organizing Project and the Houston Justice – to help jumpstart voting initiatives within the prisons. One of the alternative solutions to prisoner voting was to place a polling location within the jail. This way, both the prisoners and the surrounding community have the opportunity to vote. Though, this solution was not plausible. First, the incarcerated felons lacked the proper and necessary identification to cast a ballot. The jail lacked internet access or resources to obtain the proper identification of the prisoners. Second, any polling place must be open to the general public because any individual is entitled to use one. This meant that community members would have to enter the jail in order to vote. There was controversy with this solution because jails limit the number of individuals who enter the building, meaning that the community members would not have access to the polling station.<sup>92</sup>

Besides the Harris County Jail, there have been many attempts in finding resolutions to prisoner voting and the voting process throughout the country. In several states, such as the District of Columbia, Maine, and Vermont, felons never lose their right to vote, even while they are incarcerated. In the past years, legislatures within the states of Virginia, Maine, and Vermont have rejected laws that excluded convicted individuals from voting because they felt as though it was wrong to retrieve an individual's American rights. In these states, prisoners can vote by absentee ballot. Since there are many people of color within the prisons, these states allow the minority to participate in their right to vote. However, while these states allow prisoners to vote, there is a lack of resources and discussions on the voting process and political options.<sup>93</sup> I suggest several alternative solutions that would allow prisoners to vote and to be educated about the voting process and political options.

First, all prisoners should have a mandatory seminar every four years about the different presidential candidates and their policies in order to inform the prisoners about the voting choice. Thus, criminals can be well educated and learn about new policies. This is especially important for criminals who are serving short prison sentences or individuals who have children of their own. The seminars could be taught by outside officials or educators in a protected and safe

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<sup>91</sup> Amy Miller. "Overcrowding in Nebraska's Prisons Is Causing a Medical and Mental Health Care Crisis." *ACLU of Nebraska* (2017).

<sup>92</sup> Nicole D. Porter. "Voting in Jails." *The Sentencing Project* (2020).

<sup>93</sup> Nicole Lewis. "In Just Two States, All Prisoners Can Vote. Here's Why Few Do." *The Marshall Project* (2019).

classroom (to ensure that all officials or educators feel comfortable). This solution would work because it allows convicted felons not only the opportunity to be informed, but also to understand the candidates and their policies. Before voting, the felons are exposed to the outside world and would be given a second wave of hope. During the voting process, there should be several polls placed within the prison that enable incarcerated individuals to vote. The security guards could monitor the number of prisoners entering and exiting the polling area. The polls would ensure security and protection of the vote, while also allowing prisoners to participate in the inherent American right to democracy. If the polling stations were to malfunction, the prisons should have absentee ballots ready for the detainees. When they are released, the inmates would be able to experience a society, no matter if it had changed the outcome based on their vote. Even if the votes show that the other party wins, incarcerated individuals will still have the opportunity to be seen as individuals and re-integrate back into society.

A second option could be that prisoners who will be released during the next presidency period should vote. Since the prisoner would no longer be incarcerated, their presidency choice would matter. They have the right to vote for someone that they believe will represent and govern them. While this could create a separation between the prisoners (who can vote and who cannot vote), it may also provide a sense of encouragement, hope, and ‘revolutionary’ spirit. A plausible concern with this alternative is that the inmates that would not be released by the next presidency would feel as though there was special treatment. This may ensue distrust amongst the guards and prisoners, and more violence between inmates. Nevertheless, it would allow the prisoner to vote and make change within the nation.

These two options are of many possibilities to help restore the knowledge and humanization of the mass incarceration system and society.

## **Conclusion**

It is deeply problematic to deny the right to vote for an entire class of American citizens. The democratic society and system depend on all of the individuals within the nation. Fortunately, many states are reconsidering their disenfranchisement policies, but this does not excuse the effects that it has caused in the past. Prisoners are individuals who have a voice and a right to be heard. If people of the nation do not vote, they are letting the nation’s leaders speak for them, and important issues will be disregarded. Prisoners are used as correctional facilities. To deny a product of that facility the right to vote and the right to be a proper citizen is to say that the prison system in the United States is untrustworthy and deeply flawed. The United States has two options: continue down the path of a flawed system or do what the nation is designed to do; change.



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