

The Philosophical Ramifications of Criminal Disenfranchisement

Voting is the most basic right in our democracy, but too many people are locked out of the process. Today, millions of Americans are unable to vote due to prior criminal convictions. These felony disenfranchisement laws impact people of color disproportionately: more than 7.4% of African American adults are barred from voting due to felony convictions, while 1.8% of non-Black Americans are impacted. There is an obvious bias in the criminal justice system that is yet to be addressed. I will be exploring the topic of voter disenfranchisement through the conceptions of justice considered in class. I will begin with the concept of luck egalitarianism and then move further on to Elizabeth Anderson's democratic equality, considering the limitations of both designs and ultimately concluding that democratic equality presents the best model to address the issue at hand, despite its obvious pitfalls, as per Christopher Lebron.

Criminal disenfranchisement laws in the United States have led millions of Americans to be excluded from our democratic processes. Currently, twenty-six states bar individuals from voting, simply due to convictions in their past. To add to the issue, America is suffering from the crisis of mass incarceration. The U.S. has less than 5% of the world's population, but 25% of the world's prisoners.

One key feature of mass incarceration is the racial disparity in incarceration rates. People of color are incarcerated at disproportionately higher rates than white people. For example, black men have been admitted to state prison on drug charges at a rate that is more than thirteen times higher than white men. Differential incarceration rates are not limited to race, however. Other marginalized groups, including poor people, queer people, and disabled people, are also disproportionately incarcerated.

Historically, the federal government has used its power to incentivize states to incarcerate more people and impose longer sentences. These overlapping interests of government and industry are referred to as the Prison Industrial Complex (PIC). Through its reach and impact, the PIC maintains the authority of those who get their power through racial and economic privileges.

Since 1970, the prison population has grown by 492%, with the US today incarcerating more people than any other country in the world. The country spends about \$270 billion annually on the criminal justice system, most of that money coming from taxpayer dollars. Astonishingly, it costs tens of thousands of dollars a year to incarcerate a single individual—rivaling what it would cost to send them to a private higher education institution. Furthermore, the price of imprisonment extends far beyond the dollars spent: mass incarceration perpetuates poverty and inequality. Discrimination in the hiring process, lower wages, and weaker social networks are experiences common to those who have interacted with the American justice system—a disproportionate number of whom are racial and ethnic minorities.

Now, I will turn my analysis over to the conceptions of justice, beginning with luck egalitarianism. Luck egalitarianism refers to the idea that distributive justice should concern itself with compensating individuals for misfortunes that are out of their control. The responsibility of society lies in the distribution of goods to remedy these misfortunes. There are two main moral premises: (1) people should be compensated for undeserved misfortunes and (2) compensation should come from the undeserved good fortune of others. There is an emphasis on the outcomes for which an individual is responsible—their option luck—and the outcomes for which an individual is *not*—their brute luck.

Elizabeth Anderson presents an argument against the theory of luck egalitarianism. Specifically, she believes it fails to meet the core requirements of any true egalitarian theory—that its principles express equal respect and concern for all citizens. Luck egalitarianism excludes some citizens from enjoying the social conditions of freedom, primarily on the grounds that they are responsible for their difficulties due to bad choices. This exclusionary aspect raises questions about the limits of individual responsibility. In addition, luck egalitarianism constructs the basis for citizens' claims on one another by emphasizing that some are inherently inferior in terms of the worth of their "lives, talents, and personal qualities". This perspective fosters a negative social dynamic, where individuals are classified hierarchically based on their perceived worth, which is not in line with the principles of equal respect and concern for all. In its quest to ensure that individuals are taking responsibility for their choices, this luck egalitarianism ends up adopting an approach that leads to and demeaning treatment of individuals, classifying them as either responsible or irresponsible for the outcomes of their choices, thereby potentially stigmatizing and marginalizing groups.

Under the model of luck egalitarianism, it would be argued that felons should not have voting rights due to their incarceration being a direct result of their negative "option luck". Luck egalitarians would state that felons need to take responsibility for their actions and believe it is an individual's own duty to have avoided being incarcerated in the first place. Through this lens, voting rights are a privilege extended to those who act rightfully under the system of rules we have established within our nation. Those who have broken these rules (committed a crime) thus should not be extended the voting rights that all other adult citizens in the United States are entitled to.

As Anderson rightly criticizes, luck egalitarianism would dub felons as responsible for the outcomes of their choices, thus adopting an approach that leads to judgments and demeaning treatment of individuals. In a country where we care so much about freedom and rights, how can we continue to blame individuals for the outcomes of their choices when these choices were made under a system that facilitates this choice-making?

Moving on, I will present an argument for Anderson's democratic equality. I believe that out of the two models of distributive justice, Anderson's comes closest to addressing the issue at hand. As Anderson believes, the proper negative aim of egalitarian justice is not to eliminate the impact of brute luck, but to end socially imposed oppression, while its proper positive aim is not to ensure that everyone gets what they morally deserve, but to create a community in which people stand in relations of equality to others. Thus, Anderson proposes her theory of democratic equality, whose core principles aim to address the concerns she raises about luck egalitarianism while offering an alternative approach to distributive justice. In this theory, Anderson is envisioning equality as a relationship among people rather than a mere pattern of divisible goods distribution. Democratic equality proclaims to guarantee all law-abiding citizens effective access to the social conditions of their freedom. Instead of excluding individuals based on judgments of responsibility, democratic equality ensures that all citizens have access to the fundamental conditions necessary for exercising their freedom. The theory's principles of distribution do not desire to tell people how to use their opportunities or judge how responsible individuals are for choices that lead to unfortunate outcomes, thus respecting individual autonomy and agency while still addressing inequalities. Furthermore, the theory views equality as a social relationship, recognizing that true equality cannot exist in a society where certain groups are marginalized or

oppressed. By addressing social structures and systems that perpetuate inequality, democratic equality seeks to create a more just and equitable society.

One can clearly see from these brief descriptions that democratic equality gets closer to the root of the issue than does luck egalitarianism. Under the democratic equality model, felons are presumably not punished for the option luck they have incurred and thus should be granted voting rights even while in prison (as Maine and Vermont provide).

However, thinking beyond individual cases of voting rights, Anderson's model fails to confront issues related to social value. While her primary focus is on countering oppression and marginalization, she conceptualizes these issues as explicit forms of exclusion and suppression, which fail to encompass all situations. Christopher Lebron argues that while Anderson's critique rightfully challenges the emphasis that luck egalitarians have placed on divisible goods as the foundation of justice, she fails to exhibit distrust toward what Lebron considers the most fundamental aspect of contemporary liberalism: the idea that justice should revolve primarily around the sufferer or the disadvantaged individual as the recipient of goods. This perspective restrains Anderson's definition of egalitarianism, as it fails to advocate for the refinement of the necessary civic virtues within the citizens who indirectly benefit from the marginalization of others.

The issue of felony disenfranchisement and mass incarceration in the United States demands a thorough reevaluation through the lens of distributive justice. Luck egalitarianism, emphasizing individual responsibility for outcomes, falls short in addressing the complexities of these problems, perpetuating discrimination and marginalization. Elizabeth Anderson's model of democratic equality emerges as a more promising framework, aiming not only to rectify individual inequalities but also to dismantle oppressive systems that contribute to mass incarceration. However, Anderson's model is not without its limitations—mainly falling short of advocating for the refinement of civic duties necessary to combat systemic marginalization.

In Anderson's pursuit of justice, it is crucial to recognize that rectifying disproportionate incarceration numbers alone is insufficient. To achieve true justice, understanding and dismantling structures like the PIC are imperative. In a broader context, democratic equality stands as a promising model, acknowledging the systemic nature of the issue and striving to create a society where all citizens can exercise their fundamental rights to participate in a democratic process that upholds principles of equality and freedom.