

FELON DISENFRANCHISEMENT

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1987, it is important to note that the sentencing guidelines are routinely in flux and evolving. A simple glimpse into the *Federal Sentencing Guide* archives reveals a manual effective for each and every year since 1987, with 1988 being a stark exception in that there were three guides released during the course of that year. It is also important to note that, in many of these years, supplements to the guidelines for that year were also released, which would have to be consulted by federal trial judges as well. In addition, the Commission is reviewing the process of sentencing for involving "fraud on the markets" cases, particularly cases that involved a vast number of victims that individually suffered small losses but comprehensive losses were extensive; the functions of sentencing terms such as crime[s] of violence and drug trafficking offense; recidivism and how risk assessment tools function in the sentencing process; and lastly, examining the process of sentencing for immigration offenses (United States Sentencing Commission 2012b).

With regard to the future of the federal sentencing guidelines over the course of the next several years, departures from the guidelines may continue to increase, in part as an effort to reduce mass incarceration. Mandatory minimums are not likely to disappear entirely, but may be substantially less frequently used, as a bipartisan effort to reduce the use of incarceration is apparent, particularly in drug-related crimes (Bowman 2014; Mauer 2011).

SEE ALSO: Sentencing Project, The

References

- Administrative Office of the US Courts. 2009. "The Beginning of the US Sentencing Guidelines." Third Branch News, August. <https://nationalcdp.org/docs/sentencing-reform-act-overview.pdf>.
- Bowman, F. O. III. 2014. "Dead Law Walking: The Surprising Tenacity of the Federal Sentencing Guidelines." *Houston Law Review*, 51 (5): 1227–1270.
- Grindler, G. G. 2010. "Memorandum for All Federal Prosecutors: The Fair Sentencing Act of 2010." Washington, DC: US Department of Justice, Office of the Deputy Attorney General.
- Hark, R. Q. 2011. "Criminal Practice: Securing a Downward Departure in a Federal Sentencing." *Legal Intelligencer*, 244 (108): 1–2.

- Hessick, C. B. 2014. "A Critical View of the Sentencing Commission's Recent Recommendations to 'Strengthen the Guidelines System.'" *Houston Law Review*, 51 (5): 1335.
- Luna, E. 2002. "Misguided Guidelines: A Critique of Federal Sentencing." *Policy Analysis*, (458): 1–31.
- Mauer, M. 2011. "Sentencing Reform Amid Mass Incarcerations: Guarded Optimism." *Criminal Justice*, 26 (1): 27–36.
- USSC. 2012. "Most Frequently Asked Questions to the 2011 Retroactive Crack Cocaine Guideline Amendment." United States Sentencing Commission. <http://www.ussc.gov/amendment-process/materials-federal-cocaine-offenses/most-frequently-asked-questions-2011-retroactive-crack-cocaine-guideline-amendment>.

Further Readings

- USSC. 2016. Guidelines Manual §3E1.1 (November). Washington, DC: United States Sentencing Commission. <http://www.ussc.gov/guidelines>.

Felon Disenfranchisement

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With the recent growth of correctional populations in the United States, the long-standing practice of felon disenfranchisement has attracted renewed attention. An increasing rate and number of US citizens are now affected by state disenfranchisement laws, which generally fall into one of the four categories shown in Table 1, arranged from least restrictive (in Maine and Vermont, where even prisoners may vote) to most restrictive (in Alabama and other states, where neither prisoners, parolees, probationers, nor former felons who have completed their sentences may vote).

Millions of Americans are currently disenfranchised due to a felony conviction. Based on each state's specific law, the Sentencing Project (Uggen et al. 2012) estimated the disenfranchised population at 5.85 million in 2010, or

Table 1 Summary of state felon disenfranchisement restrictions, 2014.

No restriction (2)	<i>Inmates only</i> (13)	<i>Inmates & parolees</i> (4)	<i>Inmates, parolees, & probationers</i> (19)	<i>Inmates, parolees, probationers, & some ex-felons</i> (12)
Maine	Hawaii	California	Alaska	Alabama
Vermont	Illinois	Colorado	Arkansas	Arizona ²
	Indiana	Connecticut	Georgia	Delaware ³
	Massachusetts	New York	Idaho	Florida
	Michigan		Kansas	Iowa ^{*,1}
	Montana		Louisiana	Kentucky
	New Hampshire		Maryland*	Mississippi
	North Dakota		Minnesota	Nebraska ^{*,4}
	Ohio		Missouri	Nevada ⁵
	Oregon		New Jersey	Tennessee ⁶
	Pennsylvania		New Mexico	Virginia ⁷
	Rhode Island*		North Carolina	Wyoming
	Utah		Oklahoma	
			South Carolina	
			South Dakota*	
			Texas	
			Washington*	
			West Virginia	
			Wisconsin	

Notes: indicates a recent change (since 2004)

¹Governor Tom Vilsack restored voting rights via executive order to ex-felons on July 4, 2005. Governor Terry Branstad reversed this executive order on January 14, 2011.

²State disenfranchises recidivists.

³State requires a five-year waiting period.

⁴Nebraska reduced its indefinite ban on ex-felon voting to a two-year waiting period in 2005.

⁵State disenfranchises recidivists and those convicted of violent felonies.

⁶State disenfranchises those convicted of felonies since 1981, in addition to those convicted of select crimes prior to 1973.

⁷Virginia requires a five-year waiting period for violent offenses and some drug offenses.

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about 2.5% of the nation's voting age population. The disenfranchisement rate exceeds 7% of the adult population in six states (Alabama, Florida, Kentucky, Mississippi, Tennessee, and Virginia). To represent these state differences visually, the cartogram in Figure 1 adjusts state boundaries for the disenfranchisement rate. The aforementioned states appear bloated in the map, while states in the Northeast and Midwest that only disenfranchise current prison inmates shrink in size.

The disenfranchised population has grown significantly over the past four decades, as shown in Figure 2 (Uggen et al. 2012). In 1960, an estimated 1.7 million were disenfranchised, a number that dropped as voting rights were enhanced during the civil rights era. Although many states have

pared back their disenfranchisement laws since the 1970s (see Behrens et al. 2003; Manza and Uggen 2006), the number of individuals affected by felon voting bans has risen dramatically since the 1970s.

These voting restrictions do not affect all groups uniformly, as racial disparities in criminal punishment produce racial disparities in disenfranchisement. Voting restrictions touch a far greater proportion of the African American electorate than any other racial or ethnic group. One of every 13 African Americans of voting age is disenfranchised, a rate more than four times greater than non-African Americans. In 14 states with stricter voting bans, more than 1 in 10 African Americans have lost the right to vote by virtue of a felony conviction – and this number is

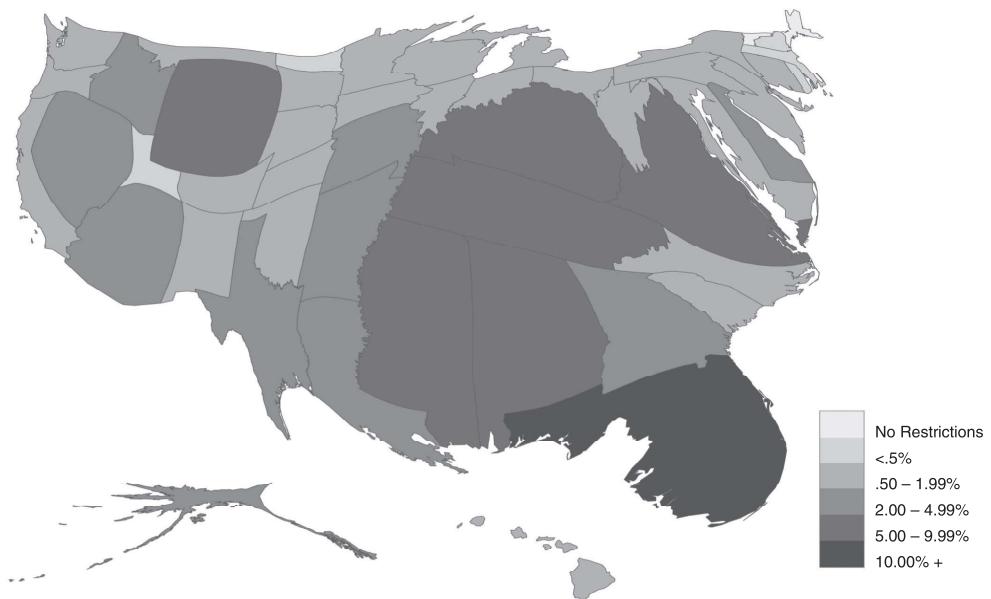


Figure 1 Cartogram of state disenfranchisement rates, 2010

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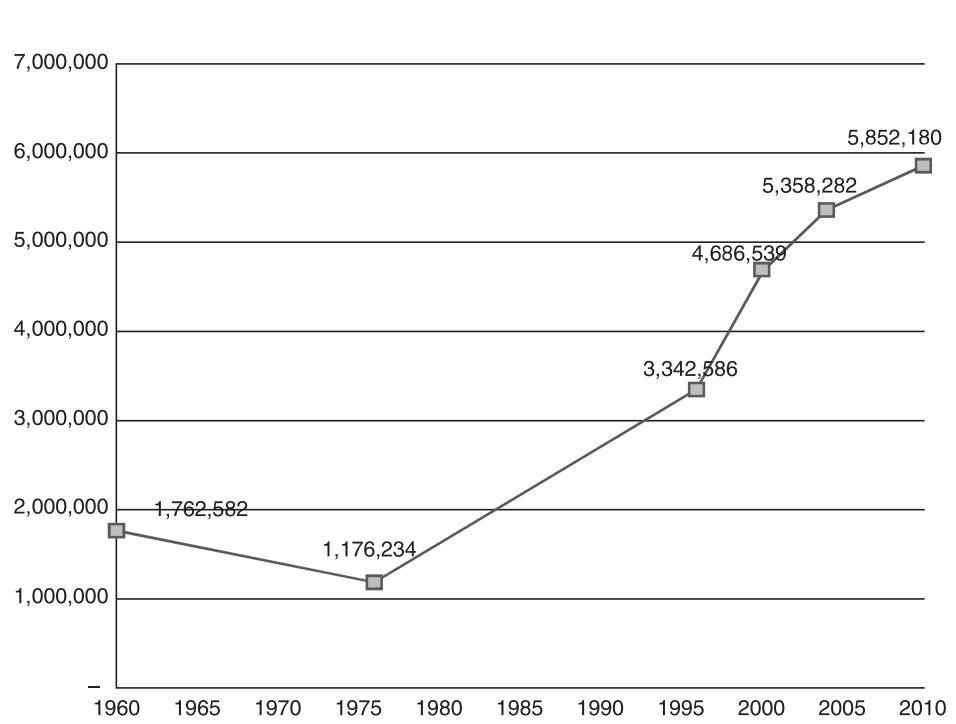


Figure 2 Total disenfranchised, 1960–2010

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1 in 5 in Florida, Kentucky, and Virginia (Uggen et al. 2012). Not only are African Americans disenfranchised at higher rates, but also they are less likely to have their voting rights restored in states that reinstate voting eligibility. In sum, disenfranchisement practices disproportionately affect African Americans and, to a somewhat lesser extent, other communities of color.

Origins

The practice of limiting the citizenship rights of lawbreakers has ancient origins, with Athens and Greek city-states imposing the status of *atimia* to criminal offenders, which barred their right to participate in the polity. In ancient Rome, a similar status of *infamia* was assigned, based on one's class of citizenship. In medieval Europe, doctrines of "civil death" took away all citizenship rights and effectively marked the transgressor as an "outlaw." This "civil death" carried over to parts of modern criminal law, as the English penalty of attaingder could, in its extreme forms, encompass the loss of all of one's civil liberties, including the right to vote for Parliament (Manza and Uggen 2006).

The "civil death" model of penal action diffused across the Atlantic, and some form of felon disenfranchisement has existed in the United States since colonial times. Many of these early penalties were only imposed for specific crimes, however, and only for a limited amount of time. Restricting the voting rights of a large "felon" class, without regard for the underlying criminal act, did not establish itself until the nineteenth century. By 1850, 11 states disenfranchised felons, meaning that the rights of these individuals were never restored, even upon completion of their sentences. States were especially likely to pass disenfranchisement legislature during the post-Civil War and Reconstruction eras from the late 1860s through the 1880s (Behrens et al. 2003), when 17 states instituted felon voting bans.

Disenfranchisement laws have since survived constitutional challenges, even after many other voting restrictions have fallen. In the United States, these bans have been tied closely to racial conflict. As is the case today, African Americans were also significantly more likely to be disenfranchised in the 1800s. Therefore, some attribute

US disenfranchisement to "racial threat" and a desire to quell the political voices of newly emancipated African Americans (Alexander 2010; Behrens et al. 2003).

Political Impact

Although the size of the disenfranchised population in the United States is large (5.85 million), it is difficult to know for certain how those individuals might vote in elections. Uggen and Manza (2002) estimate that the turnout rate would be significantly lower among felons than non-felons, due to differences in factors such as education levels and residential stability. Nevertheless, they predict a turnout rate of approximately 24% in US Senate elections and 35% in presidential races. Due to the race and class distribution of criminal justice populations, felon voters would likely exhibit strong Democratic preferences. Uggen and Manza (2002) estimate that about 7 of every 10 votes cast by felons and ex-felons would likely go to Democratic candidates, although more conservative estimates put both the turnout and partisan preference figures somewhat lower (Burch 2011).

Given its size, turnout, and partisan preferences, the disenfranchised population is likely to have affected election outcomes. Uggen and Manza (2002) find that even if only ex-felons had been allowed to vote, the Republican victory in the 2000 presidential election would have been reversed. They also identify a number of US Senate elections that might have shifted the balance of power in the 1980s and 1990s if the disenfranchised had been allowed to vote. It is speculative to make definitive statements based on counterfactual analyses of dynamic systems, since a change in one election could have sent changes rippling through the political and criminal justice systems. Nevertheless, felon disenfranchisement has likely provided a small but consistent advantage to Republican candidates throughout the mass incarceration era. Apart from election outcomes, Lerman and Weaver (2014) argue that the broad reach of the criminal justice system has fundamentally recast the notion of citizenship, resulting in an ever-increasing number of "second-class citizens."

Public Opinion

While many states have loosened voting restrictions over the past century, politicians remain wary of challenging disenfranchisement, in part for fear of appearing “soft on crime.” With regard to public opinion, a nationally representative poll found that Americans made a clear distinction between those currently imprisoned and those who have returned to the community. Over 60% supported re-enfranchising probationers and parolees on community supervision (Manza and Uggen 2006), but only 31% supported re-enfranchising prisoners. Public opinion on voting bans also varies with the type of offense. While 80% supported re-enfranchising former felons convicted of unspecified offenses, the support dropped to 52% for those convicted of sex crimes. Overall, Americans generally support voting rights for people who have served their time or remain on community supervision, but not for those currently behind prison walls.

Recidivism

Several criminological theories suggest that reinstating voting rights may aid in the pursuit of public safety. Social control and life course theories, for example, link desistance from crime to age-graded transitions in work and family life. Using voting to reintegrate felons into the civic life of their communities could similarly reduce recidivism. One Minnesota study reports such a negative correlation between voting and recidivism. Approximately 16% of non-voters were arrested during a three-year span, relative to 5% of voters (Manza and Uggen 2006). This relationship also holds when prior criminal history is accounted for, and when using self-report crime data in place of official arrest records. Multivariate analyses suggest that at least some of the voting effect on recidivism is due to preexisting differences between voters and non-voters. Although the research is insufficient to make persuasive causal claims, the results suggest a link between political participation and desistance from crime.

International Practices

Felon disenfranchisement is not a purely American dilemma, though US laws are exceptional for their severity. Few other nations restrict the voting rights of non-incarcerated felons, even if many disenfranchise prisoners. Nations such as Canada, Denmark, and Israel generally permit inmates to vote while in prison, whereas nations such as the United Kingdom and Egypt ban prisoners from voting. One study identified 65 nations with a general ban on voting for prisoners, relative to 40 nations that lacked such a general disenfranchisement provision (Uggen et al. 2009), finding that low political and economic development, high ethnic heterogeneity, and punitive criminal justice policies were all linked to strict felon voting bans. Nevertheless, as in the United States, the presence of democratic governance does not guarantee the enfranchisement of felons or former felons.

Reform

As restrictions based on race, sex, and property ownership have been dismantled over the past 200 years, a felony conviction remains one of the last remaining obstacles for citizens to make their voices heard politically. There have been many legal challenges to disenfranchisement, but few have been successful. In *Richardson v. Ramirez* (1974), the US Supreme Court established a strong precedent upholding the states’ rights to disenfranchise felons. Among the successful challenges is *Hunter v. Underwood* (1985), in which the Court struck down an Alabama voting ban that was adopted with discriminatory intent. Numerous race-based challenges have failed, however, despite disenfranchisement’s disproportionate impact on African Americans. Nevertheless, 23 states have expanded voter eligibility by modifying their disenfranchisement provisions since 1997. As a result, the Sentencing Project (Chung 2014) estimates that over 800,000 citizens regained voting rights between 1997 and 2010. Yet 5.85 million still remain disenfranchised, as the recent upward trend in criminal punishment has offset these legislative reforms. Although public support for felon disenfranchisement appears to be waning, the practice is

likely to remain a contentious part of the political landscape for many years to come.

SEE ALSO: Prisoners' Rights; Recidivism; Retribution; Sentencing Project, The

References

- Alexander, M. 2010. *The New Jim Crow*. New York, NY: The New Press.
- Behrens, A., Uggen, C., and Manza, J. 2003. "Ballot Manipulation and the 'Menace of Negro Domination': Racial Threat and Felon Disenfranchisement in the United States, 1850–2002." *American Journal of Sociology*, 109: 559–605.
- Burch, T. 2011. "Turnout and Party Registration among Criminal Offenders in the 2008 General Election." *Law & Society Review*, 45: 699–730.
- Chung, J. 2014. *Felon Disenfranchisement: A Primer*. Washington, DC: Sentencing Project.
- Lerman, A. E., and Weaver, V. M. 2014. *Arresting Citizenship: The Democratic Consequences of American Crime Control*. Chicago, IL: University of Chicago Press.
- Manza, J., and Uggen, C. 2006. *Locked Out: Felon Disenfranchisement and American Democracy*. New York, NY: Oxford University Press.
- Uggen, C., and Manza, J. 2002. "Democratic Contract? Political Consequences of Felon Disenfranchisement in the United States." *American Sociological Review*, 67: 777–803.
- Uggen, C., Shannon, S. S., and Manza, J. 2012. *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*. Washington, DC: The Sentencing Project.
- Uggen, C., Van Brakle, M., and McLaughlin, H. 2009. "Punishment and Social Exclusion: National Differences in Prisoner Disenfranchisement." In A. Ewald and B. Rottinghaus (eds.), *Criminal Disenfranchisement in an International Perspective*, pp. 59–78. Cambridge, UK: Cambridge University Press.

Fines

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Fines in criminal law are a money penalty typically payable to the state. They are distinguished from money damages, which are payable as a

form of compensation under civil law rather than as a penalty, although the category of punitive damages (these are payable to a wronged party for an egregious harm) blurs this distinction. Fines and damages are unique sanctions in common law because they need not be paid by the wrongdoer, largely because of difficulties in establishing the precise owner of money. Consequently, there are implications that fines are regulatory – seeking to modulate rather than eradicate offending – something also consistent with their character as a money price. While fines currently represent the predominant sanction in European and Anglophone criminal law (generally about 70% of sentences), in the United States, fines are much less frequently used, at least outside of traffic offenses and corporate crime, where they are the norm. Fines generally are legislatively set as a specified money penalty for a given offense. For administrative convenience many jurisdictions express fines in numbers of penalty units, where each penalty unit corresponds to a set money amount. This facilitates across-the-board adjustments in fine quanta, for example to take account of inflation, through single adjustment to the value of the penalty unit. In some jurisdictions, day fines are used in lieu of fixed sums: The sentence being given in terms of days of offender's income to equalize the impact of fines on rich and poor. While having origins in French revolutionary law of the eighteenth century, day fines are used in only a handful of countries because of difficulties in establishing an offender's income, considerable inequalities in the quantum of punishment for the same offence, and the possibility that wealthy offenders could pay very large fines for minor offences.

Fines were the principal sanction in many parts of Europe prior to the nineteenth century, often expressed in small amounts of money to take account of most offenders' inability to pay more. At this time, prison was little more than a holding place for those destined for further punishment. During the late eighteenth century, the rise of modern penology discredited the fine for its lack of reformative potential, and promoted the correctional prison in its place. By the early nineteenth century the correctional prison had become the predominant sanction across Western Europe and America, and recourse to fines had declined greatly. By the 1880s, however,