

Voting Rights For Prisoners and Ex-Prisoners in New York

Talking Points for CSS

“[Ex-Offenders] are as much affected by the actions of government as any other citizen, and have as much of a right to participate in governmental decision-making. Furthermore, the denial of a right to vote to such persons is a hindrance to the efforts of society to rehabilitate former felons and convert them into law-abiding and productive citizens.”

*Justice Thurgood Marshall
Richardson v. Ramirez (1974)(dissenting)*

The Problem -- In Legal Terms

⇒ New York state law prohibits persons with felony criminal convictions from exercising the franchise. These laws deny the vote to all persons who are currently incarcerated with a felony conviction and all such persons formerly incarcerated who are still serving a sentence of parole. In some cases, a court can sentence a person to incarceration and lifetime parole, effectively disenfranchising a person forever.

⇒ However, persons who are convicted of a felony in New York who are sentenced to a conditional or unconditional discharge (formerly called suspended sentence), or who are sentenced to probation, are not deprived of their voting rights. Incarceration triggers the denial of voting rights.

⇒ States are free to establish qualifications for voter eligibility. However, when its policies are enacted with a discriminatory purpose to harm racial minorities, or in some cases when the policies have the effect of minimizing minority voting strength, then federal law requires a remedy.

The Problem – Legal History in New York

⇒ New York, like so many other states, enacted the precursors of these laws at a time in American history when *de jure* racial discrimination against African Americans was commonplace.

⇒ Dating back to 1777 the New York Constitution limited the franchise to property holders and free men. As soon as more Blacks became property holders the State's constitution was changed explicitly to exclude Blacks from voting in 1801, and even when some restrictions were relaxed, new, more stringent property requirements were applied in 1821 only to racial minorities.

⇒ By this time conviction of an “infamous crime” was a disqualifying feature of our voting laws in the State and by the mid 1840s, the delegates to the constitutional convention explicitly claimed that Blacks were unfit for the suffrage because they were thirteen times more likely to be convicted of “infamous crimes” than whites. It took the Civil War and the passage of the 15th Amendment to the U.S. Constitution to nullify these New York laws affecting voting. Nonetheless, New York, as did so many Southern states during Jim Crow, re-enacted the “infamous crime” disqualifying element of our voting laws.

⇒ The history of official discrimination against Black and Latino voters in New York is not a feature of historical events alone. It continued throughout the 20th Century with the passage of literacy tests for voters, English-only election procedures, and racially discriminatory rules for purging voters. It took Congressional action to try to restore a fair election structure in New York with the passage of the Voting Rights Act of 1965 that targeted three counties in New York City for special protections against discriminatory voting laws and policies. That law still applies, and is viable, today.

The Problem From a CSS Perspective

⇒ The ability of poor communities in the City to collectively force public policy to address their unique needs depends, in large part, on the political influence they can exert.

⇒ It is part of the CSS mission to empower poor communities to engage in the political process and realize their full potential for fair and just policies.

⇒ The face of poverty has changed dramatically in the 150 year, CSS history of fighting poverty and strengthening New York. At this time, one cannot address the needs of the poor without addressing the legacy of racial discrimination against Black and Latino communities in light of the convergence of poor marginalized families and Black and Latino segregated neighborhoods.

⇒ During nearly two decades of aggressive, non-partisan, voter registration and get-out-the-vote activities, CSS has confronted the reality that the criminal justice system intersects directly with our representative form of government in ways that have impeded the full and fair participation of poor neighborhoods in the body politic. All of our good work, from mobilizing the poor to vote to legally challenging discriminatory vote purge laws, continues to run against this obstacle that deprives our voters of their fundamental rights.

⇒ As the criminal justice system operates to disproportionately incarcerate Blacks and Latinos, the net effect is to disproportionately minimize and suppress the Black and Latino vote.

⇒ And when the State's policies on law enforcement results in the *over-concentration* of incarceration rates in specific Black and Latino neighborhoods, that are economically distressed, the City as a whole suffers for it fails to rectify the devastating consequences of using incarceration as a mechanism of social control.

The Numbers

⇒ There has never been a period in U.S. history that has experienced the use of incarceration of our residents as we have today. Over 4 million Americans were either behind bars on felony convictions, or because of a prior conviction, were ineligible to vote in the 2000 national elections.

⇒ The rate of incarceration in America is 686 out of 100,000, ranking the U.S. number one in the world behind the Russian Federation (670), Cayman Islands (600), Belarus (554) and the Virgin Islands (551).

⇒ Being first in the world for incarcerating our residents has been the subject of some critique from other nations as this excerpt from a Canadian report indicates:

“The American incarceration rate is one of the highest in the world, but it has not made the United States a safer place to live. The murder rate in the United States at 6.7 per 100,000 surpasses that of every other industrialized country in the world. Canada’s murder rate by comparison is barely 2 per 100,000. The United States is a good example of what happens when governments rely too heavily on incarceration.” www.csc-scc.gc.ca

⇒ In New York the rate of incarceration is 574 out of 100,000, which if ranked independently would put New York fifth in the world when you factor in Texas as well (which would be the highest in the world with a rate of over 1,000 per 100,000).

⇒ From the 1970s to 2000 the nation's inmate population increased fivefold and with clear racial implications. The so-called “war on drugs” (actually a “war on poor people who use drugs”) has had a clear impact on people of color. In general, persons

incarcerated for drugs rose from 40,000 in 1980 to almost 500,000 today and Blacks and Latinos constitute 4 out of every 5 drug offenders in state prisons, even though drug use is more prevalent by whites.

⇒ Nationally, 1.4 million African American men, 13% of Black men, are disfranchised, a rate seven times the national average.

⇒ In New York, Blacks and Latinos are prosecuted, convicted and sentenced to incarceration at rates substantially disproportionate to whites. Blacks compose 16% of the State's population but make up over 54% of the State's current prison population and 50% of those on parole in New York. Similarly, Latinos compose 15% of the State's population but are 27% of the prison population and 32% of those on parole. By contrast, whites compose 62% of the State's population but only 16% of the prison population in the State.

⇒ Blacks and Latinos are sentenced to incarceration at higher rates than whites in New York and whites are sentenced to probation at substantially higher rates than Blacks and Latinos. For example, in 2001 whites made up approximately 32% of total felony convictions, yet comprised 44% of those who received probation and only 21.4% of those incarcerated for felony convictions. By contrast, Blacks made up 44% of those convicted of a felony but only 35% of those getting probation and over 51% of those sent to prison. Latinos comprised 23% of those convicted of a felony, yet only 19% of those sentenced to probation and almost 27% of those sentenced to prison.

⇒ The bottom line in New York is that collectively, Blacks (52%) and Latinos (35%) comprise nearly 87% of all people currently denied the right to vote because of the State's denial of voting rights to incarcerated and formerly incarcerated felons.

⇒ The 2000 Census counted 71,466 prisoners in New York State. In 2003 the state reported 56,719 people on parole in New York State.

⇒ Approximately 80% of the State's prison population consists of Blacks and Latinos from the following New York City communities:

- East Harlem
- Washington Heights
- Lower East Side
- Hunts Point
- Morrisania
- Soundview
- Central Brooklyn
- East New York
- Jamaica
- St. Albans

⇒ More than 630,000 inmates in the U.S. were released from prison after completing their sentences in 2002, the largest number of parolees ever released in history. In New York City the estimates are that for the next five years approximately 40,000 prisoners will be released each year, nearly all of them to their home communities (as listed above). On a national scale, researchers have noted that with the disadvantages they face in the labor market, and the variety of restrictions on their ability to obtain publicly supported housing and governmental benefits (see below) about 66% of those released will be rearrested within three years.

⇒ Eighteen European democracies permit incarcerated prisoners to vote, as does South Africa and Canada and Puerto Rico. In the U.S. only two states permit felons to vote, even while incarcerated: Vermont and Maine.

⇒ Only in the U.S. are non-incarcerated persons with felony convictions (i.e. those on parole, probation or a form of conditional discharge) prohibited from voting. No other democracy does this. Equally important, of all the disfranchised felons in the U.S. in 2000, only 26% are in prison. That is, nearly three-fourths of all disfranchised felons in the country reside in their communities, pay taxes, and are prohibited from having a say in government.

Voting: One of Many Invisible Punishments Given to Our Prison Population

⇒ At the same time that our prisons and criminal justice supervision have reached historic highs in the U.S., our elected officials have enacted numerous laws and regulations that have diminished the rights and privileges of citizenship and legal residency in our country. The effect of these policies is the creation of a modern day version of “civil death” from medieval times where offenders are considered unworthy of the benefits of our society and effectively excluded from the social compact.

⇒ The author Jeremy Travis coined the phrase “invisible punishments” to describe this litany of devastating consequences that flow from a criminal conviction because 1) these laws are virtually invisible to the public, yet have serious consequences for poor communities; 2) they take effect outside of the criminal sentencing court, often unknown to the judge and the prisoner alike, and are never accounted for in any debate on sentencing reform; and 3) they are enacted often as amendments or riders to other bills, never codified in one place, and always championed by self-righteous politicians who want to gain favor with the masses by attacking an easy, marginalized segment of our society.

⇒ Invisible punishments include:

A lifetime ban on eligibility for benefits under TANF and Food Stamps for any person with a felony drug conviction, courtesy of President Clinton’s welfare reform bill; some states like New York have opted out – but not completely (e.g., in NY, if you’re on treatment you can qualify – but treatment options are scarce).

Public Housing has adopted a “one strike, you’re out” policy for drug convictions and federal law authorizes states to deny Section 8 housing as well for persons with convictions within a “reasonable time.”

Careers requiring licensure are also excluded from the options a former convict may have. In New York many career licenses are not available to this population, such as, real estate, plumbing, barbering, notary public, etc.

The Problem & Public Opinion Polls

⇒ In Gallup polls taken between 1989 and 2000, between one-half and two-thirds of respondents favored education and jobs to address the “social and economic problems that lead to crime” and between one-quarter and two-fifths favored more prisons, police and judges.

⇒ In a survey published in 2002 by researchers Manza, Brooks and Uggen, support for voting rights for Ex-felons (a generic label) was highest (80%) than it was when the specific crime was attributed to the ex-felon, such as Violent Crime felon (66%) or White Collar felon (63%) or Sex Offense felon (52%). Nonetheless, the survey supports the remarkable conclusion that there is majority support for the enfranchisement of ex-felons. Stated another way, stripping away the vote from citizens who are convicted of a felony is viewed as too harsh a punishment in a democratic society accustomed to universal suffrage.

⇒ Focus group results in Florida in 2001 sponsored by the ACLU, among moderate to conservative white, Black and Latino voters revealed that: 1) A small majority supports re-enfranchisement of voting rights; 2) Persuadable voters focus on accountability and include rehabilitation as a requirement; 3) Racial arguments are less persuasive, even among black voters; 4) The best case on accountability and rehabilitation is to tell stories of those who committed crimes as young adults, but who have paid their debt and gone on to become productive community members.

The Prison Industrial Complex and New York Political Power

⇒ In the U.S. today there are more prisoners than farmers. And while most prisoners in America come from urban centers, most prisons in America are in rural areas. Along with casinos, huge hog or poultry “factories,” prisons are one of the three leading rural economic enterprises.

⇒ All prisons in New York built since 1982 have been built in upstate New York.

⇒ Approximately 20% of the prisoners in New York are from upstate New York but 91% of the prisoners are incarcerated there.

⇒ And yet the economic benefits to these rural communities are illusory as researcher Tracy Huling points out:

- The majority of public prison jobs do not go to local community members. Educational qualifications exclude many of these applicants and seniority in the corrections workforce works to the advantage of veteran personnel from other prisons. This is consistent with the general competitiveness of jobs in the rural market where workers are more than willing to commute great distances, thus expanding the labor market, for any job. Of the 750 jobs generated by a prison in Malone, NY, less than a hundred went to residents of the town.
- Privatization of the prison industrial complex does not ameliorate the negative effects of relying on out-of-town job seekers because the turnover rates for personnel in private correctional system is notoriously high, 3 times the rate than for public prisons.
- Prisons also fail to generate significant retail development. They attract chain stores (McDonalds, Wal-Mart) and displace locally owned businesses while simultaneously failing to create any net increase in tax revenues because profit dollars are not reinvested by these large chains in ways that local profit dollars are.
- The elderly and the poor in rural communities often face economic pressures in the housing markets as rental and land value increases when the prison is sited initially only to fall dramatically when the real number of actual local jobs is realized. Rents, once raised, never fall.
- Prisoners working in community projects in the host community end up displacing low-wage rural workers. In Coxsackie, NY (with 2 state prisons and thousands of inmates) prison work crews do all types of labor that would otherwise go to low-income workers from rural communities from painting a community center to putting down a new roof for the town hall.
- Local court and police forces must now budget for the increased business that indigent prisoners generate since most jurisdictions rely on county public defenders to defend poor inmates accused of crimes within state prisons. And towns with privatized prisons have much higher rates of inmate assaults than public prisons.
- Racial tensions are exacerbated by the siting of these facilities in rural, white areas. Racism is pervasive in rural prisons. “Beyond the obvious parallels of using black bodies to sustain white rural economies, we are setting ourselves up, over the long term, for greater racial tensions in this country. Prison walls cannot and will not contain the racial hatreds generated within them.” Kelsey Kaufman, researcher.
- Upstate New York advocates have recognized some of these negative consequences and have decried the irreversible stigma that is place upon a town that becomes known as a prison town, and the inability of that same town to attract a Fortune 500 company, or software company or to develop any significant tourist trade.

⇒ The Census counts everyone as of where they slept on Census Day April 1st. For the purposes of reapportioning U.S. Congressional seats (e.g., between California or New York) the exact location within a state is irrelevant. But for New York State to allocate political power between regions of New York via newly redistricted Assembly and Senate lines, that Census methodology deprives New York City of dollars and political clout.

⇒ The Census data regarding prisoners is clearly inaccurate because it does not reflect where they live.

⇒ The decision by New York to rely exclusively on the Census data to determine political representation within the state undermines the growing Black and Latino political strength of New York City neighborhoods; provides increased federal dollars to upstate communities that are taken from the inner city; and creates a perverse form of representative government where upstate legislators enjoy the benefits of the increased numbers prisoners represent but can ignore their needs because they are prohibited from voting.

⇒ In Coxsackie, NY the fact that prisoners there earn no income drove down the median income of the town and made it eligible to receive more federal dollars from HUD.

The Problem and the War on Drugs

⇒ Over \$5 billion dollars is spent every year to imprison persons with drug related convictions and three quarters of that are used for persons who have never committed a violent crime.

⇒ 27% of all persons convicted of drug offenses are convicted of simple possession, not selling nor intending to sell.

⇒ Yet in many states, like New York, non-violent offenders are serving 15 years or more at a minimum cost of \$50,000 for each new prison cell, and \$20,000 per year for each inmate.

⇒ Tough-on-crime policies, combined with our so-called War on Drugs, have resulted in a host of mandatory minimum sentencing laws and longer prison terms for all drug related offenses. This in turn, has shifted the balance of power to prosecutors in the criminal justice system. Unbridled prosecutorial discretion has always been used as a weapon in Black and Latino communities (and when racial minorities are the victims of police brutality or racial violence, this discretion is hardly ever used in their favor). But the advent of mandatory sentences and longer prison terms have effectively neutered

judges as significant role players and reduced the role of defense attorneys to mathematicians, not advocates. Add the fact that defendants plead guilty in 90% of all criminal cases – a process that can only enhance the power of the prosecutor – and most students of the system recognize that the balance in the adversarial process in our criminal justice system is tilted towards the prosecution.

The Problem and Women

⇒ Women are the fastest growing segment of the American prison population. In 1980 12,000 women were incarcerated (3.9% of all prisoners), by 1999 the figure was 90,000 or 6.7% of all prisoners. In just the 1990s, the number of women prisoners more than doubled (110%) compared to an increase of 77% for males.

⇒ In the 1970s almost half of the states did not even have separate facilities for women, as the system was virtually all male – 97% male.

⇒ Using 2000 figures, Texas (once again) leads the nation with 12,714 women in prison followed by California (11,432), Florida (4,019) and New York (3,423).

⇒ At these rates, 5 out of 1,000 white women can expect to go to prison, but 36 out of 1,000 Black women, and 15 out of every 1,000 Latinas can expect to go to prison.

⇒ Over half (52%) of women in state prisons have reported being abused physically or sexually before entering prison – the comparable rate for men is 16%.

⇒ Even though crime has declined in recent years in the U.S. (as per data on arrests or reports of victimization) imprisonment of women has risen. Some researchers (Karen Heimer among them), have noted that the deterioration of the social welfare state has had a particularized impact on women more than men. That is, considerable deterioration of women's economic circumstances, especially for single heads of households, along with the litany of invisible punishments given to all convicts, may force women to look toward crime as survival, in ways that men have done for years.

⇒ The “war on drugs” has also been played out in a way that disproportionately harms women. The proportion of women serving time for violent offenses has declined steadily from 1979 (49%) to 1998 (29%). In 1979 one in ten women in U.S. prisons was jailed for drugs, in 1998 the ratio was one in three. Equally important, the women swept up in the “war on drugs” are simply minor players in the drug trade. Human Rights Watch studied the rates in New York State and concluded in 1997 that our Rockefeller drug laws incarcerated 44% of all women prisoners who had never been imprisoned before, and 17% who had never even been arrested before.

⇒ As minor players in the drug trade women are often unable to effectively plea bargain with prosecutors because they have no information that would be useful to other

prosecutions. Women must also confront a reluctance to testify against their husbands and boyfriends who may also be involved in the drug scheme, further hampering their ability to avoid mandatory minimum sentences.

⇒ Since women are often the sole custodial parent in their households they face a “double punishment” once convicted: jail time and the possible termination of their parental rights.

⇒ Few correctional institutions support mothers in prison in their parenting role, despite the evidence that parenting may be central in a woman’s rehabilitation.

Sources: Mauer, Marc & Chesney-Lind, Meda, Editors, Invisible Punishment: The Collateral Consequences of Mass Imprisonment, 2002; Hayden v. Pataki, Civil Action No. 00Civ8586, U.S. District Court, Southern District of New York, First Amended Complaint, 15 January 2003; International Centre for Prison Studies, World Prison Brief, www.kcl.ac.uk/icps; Manza, Jeff, Brooks, Clem & Uggen, Christopher, “‘Civil Death’ or Civil Rights? Public Attitudes Towards Felon Disfranchisement in the United States,” 2002; Belden, Russonello & Stewart, “Communicating on Felony Re-enfranchisement,” 2001; The Sentencing Project, “Felony Disenfranchisement Laws in the United States,” 2002; Wagner, Peter, “Importing Constitutents: Prisoners & Political Clout in New York,” A Prison Policy Initiative Report, 2002; “Time to Revisit Costly Policy of Locking Up Drug Offenders,” USA Today, 30 September 2002.