

A RESPONSE TO
“THE PRICE AND THE PROMISE OF CITIZENSHIP:
EXTENDING THE VOTE TO NON-INCARCERATED FELONS”

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Chris Uggen and Michelle Inderbitzin have made a compelling argument for why we should change public policy to grant the right to vote to anyone who is not incarcerated. Such a change would extend voting rights to an estimated 1.8 million persons in the 35 states that currently maintain prohibitions on voting for people on probation or parole.

While I certainly endorse such a change, I think the authors have been overly cautious in their policy recommendations. This caution may reflect legitimate philosophical differences between us or may be due to a political calculation regarding the feasibility of various types of reform. In either case, these concerns should be fleshed out.

My contention that Chris and Michelle are overly cautious relates to the fact that much of their argument advocating voting rights for persons on probation and parole can easily, and appropriately, be extended to people in prison as well.¹ So, in this response I will first describe why such an expansion would be consistent with their argument. Then assuming that it does make sense to propose eliminating all voting restrictions for people with felony convictions, I will outline some of the political challenges in working for reform that incorporate both short-term goals and a long-term vision.

The Rationale for Voting Rights for Incarcerated Citizens

Chris and Michelle describe six rationales for extending voting rights to those on probation or parole. They clearly describe how such a change would: 1) extend democracy; 2) reduce racial disparities; 3) enhance public safety; 4) respond to public

¹ To be fair, Uggen and other colleagues raise some related issues in their recent analysis, “Punishment and Social Exclusion: National Differences in Prisoner Disenfranchisement,” in Alec C. Ewald and Brandon Rottinghaus, *Criminal Disenfranchisement in an International Perspective*, Cambridge University Press, 2009.

sentiment; 5) better fit international practices; and, 6) support reintegration into communities. These are all sound arguments, but with the sole exception of responding to public sentiment, they also apply very directly to incarcerated people, as we can see from a review of the issues.

For the goal of extending democracy, if the objective is to expand voting rights, why limit such an expansion to people on probation or parole, and not extend this to the 1.5 million people in state and federal prisons? Failure to do so clearly establishes a significant barrier to full democratic participation. Further, in addressing racial disparities, permitting voting in prison would produce an even greater impact than extending the right to vote to those on probation, since the racial disparities in the criminal justice system are most stark at the level of incarceration.

Based on their research, Chris and Michelle then make the argument that voting enhances public safety and reintegration, contending that civic participation is an important element of promoting a sense of responsibility and commitment to the community. This makes sense, but imagine the potential energizing effect of hundreds of thousands of people in prison casting their (often first-time) votes for president and other offices. Given the extreme isolation of prisons from outside society, what better way of bridging that gap than participating in one of the few areas of public life that bring all Americans together. And to the extent that it is now recognized that reentry planning needs to begin early on during a term of imprisonment, voting in prison can clearly help to establish a connection to the community as well.

Assessing the Philosophical Rationale for Disenfranchisement

So, for the goals of extending democracy, reducing racial disparity, and promoting public safety, allowing prison voting achieves these goals as well as, if not better than, permitting voting by people on probation and parolee. In addition, as Chris and Michelle demonstrate, voting in prison is the normative practice in nearly 40% of 105 nations surveyed.

Therefore, from a philosophical point of view, there is little to distinguish the argument in favor of extending voting to people on probation and parole from that in favor of voting in prison. But by failing to make that connection they introduce a potential problem in employing a consistent rationale for policy advocacy.

In the general public dialogue around felony disenfranchisement there is little discussion of the issue of prison voting, even among reformers. It is equally rare to

come across an expressed rationale for the existence of such policies, and instead is generally assumed that “prison is different.” That is, people in prison *deserve* to lose the right to vote. As such, this can only be interpreted as being an aspect of the punishment that has been imposed on people sentenced to imprisonment.

But this is a dangerous road to go down, by making either an explicit or implicit determination that punishment for a crime should also involve forfeiture of some of the fundamental rights of citizenship. As brutalizing as prison conditions may sometimes be, they nonetheless are generally premised on a public safety rationale. Therefore, restrictions placed on people in prison are done so to minimize the possibility of harm in the institution as well as to keep prisoners confined within the walls of the institution. We can debate the extent to which various prison systems do this effectively or in respect of constitutional norms, but there is little question of the overall policy rationale.

As we impose such restrictions, though, we do not normally restrict a person’s rights of citizenship. If we conceive of voting as an aspect of free speech, the anomalous policy of restricting voting rights becomes clear. For example, someone in prison may subscribe to *Newsweek* magazine, but not to a magazine that describes how to make homemade bombs; the distinction here is between free speech and advancing public safety. People in prison are also free to communicate their thoughts to the outside world through letters, phone calls, and other forms of communication. Indeed, as some have done, they can submit op-ed articles to the *New York Times* or the *Washington Post*, and have their published words reach millions of readers. In almost all cases, such activity is far more influential than casting just one vote among millions in an election, yet there are relatively few restrictions placed on such communications.

Disenfranchisement in prison is also problematic as a result of its arbitrary nature. If, as Chris and Michelle propose, we permit people on probation and parole to vote, then we are essentially saying that people convicted of a felony offense and *currently serving* that sentence should be part of the public polity. But if so, what is the basis for drawing a distinction between a burglar sentenced by Judge A to a year in prison and a burglar sentenced by Judge B to two years of probation? Both have harmed society in essentially the same manner, both are serving their sentence, and yet one has forfeited a fundamental right of citizenship based on the random nature of which judge was assigned to the case.

Finally, the concept that some people “deserve” to lose certain rights of citizenship as a result of a felony conviction has in recent years been extended to a range of other areas. Largely as an outgrowth of the policies associated with the “war on drugs,” lawmakers have now imposed a variety of additional collateral consequences of conviction. These policies frequently impinge upon the right to employment and access to public benefits, including receipt of welfare payments, food stamps, and student loans. In most of these instances as well, there is an absence of a stated rationale other than that (drug) felons “deserve” these punishments. (The one key exception in this regard are the targeted prohibitions on employment that are driven by public safety concerns. So, for example, few people would object to a person convicted of pedophilia being prohibited from working in a childcare center. But for many of the other employment restrictions, such as the common prohibition on barbering, any public safety rationale is difficult to discern.) Unless we are able to draw a distinction between the legitimate goals of punishment and the fundamental rights of citizenship we risk seeing an expansion of these restrictions over time.

Disenfranchisement Reform Strategies and Messages

Of the rationales presented for extending voting rights to people on probation and parole, the only one that poses a significant distinction between such a policy and voting by people in prison is the argument that the former is “responsive to public sentiment,” as evidenced by the fact that at least 60% of the public expresses support for non-incarcerated people, whereas only a minority (31%) support voting in prison. Herein may lie the real rationale for the views expressed in the essay; that is, this may be less of a philosophical argument than a political calculus.

There is nothing inherently wrong with such a consideration, and in fact, it is important to assess issues of political feasibility if we are to achieve any type of significant policy change. But in undertaking such an assessment, we need to avoid the potential pitfalls of reaching too far or not far enough. We also need to evaluate how to not lose sight of our long-term goals as we work for incremental change. Let me offer a few examples to illustrate the challenges of such strategic planning.

The proposal to extend voting rights to persons on probation or parole certainly makes sense in the 35 states that currently disenfranchise people in one or both of these categories. But in the short run it probably doesn’t make sense as a political strategy in the 11 states that disenfranchise some or all persons even after they have completed

-serving their sentence (including parole). In Florida, for example, a very sophisticated statewide coalition has made great strides over the past decade in reforming what had been one of the nation’s most restrictive disenfranchisement policies. Yet despite this progress hundreds of thousands of persons remain disenfranchised post-sentence, and substantial legal and political barriers still remain in eliminating the policy. Not surprisingly, addressing these restrictions has been the sole focus of the advocacy community’s organizing campaign. It is difficult to imagine that in the near future it will be possible to mount a serious campaign to extend voting rights to people on probation and parole in that state.

Recognizing this situation, though, the question for political engagement is how to integrate a long-term vision with short-term political realities. The need for a long-term vision is clear: all effective social movements have recognized that such a vision is necessary in order to inspire people and to provide a roadmap for broad-scale change. And while we won’t always articulate the long-term vision (e.g. voting rights for people in prison) if the primary focus is on advocacy in a state like Florida, we nonetheless need to ensure that we don’t employ language or strategies that may be effective in the short term but harm our ultimate goals.

An example of such a dilemma is the language that we use in challenging disenfranchisement policies. Public opinion research on this issue has found that one of the most effective arguments in advocating for voting rights after completion of sentence is to assert that “once you have paid your debt to society” you should be free to vote. But while this may be effective in gaining public support for reform, it also reinforces the notion that losing the right to vote is a part of that “debt” to society, and therefore, a legitimate aspect of the punishment that is imposed. If this is the case, then not only haven’t people in prison finished paying their debt, but neither have people on probation or parole, since they are still under supervision and could be returned to prison for violations. This raises challenging questions regarding strategic direction, of course, but they are ones that cannot be avoided.

Finally, let us recall that despite the extreme nature of U.S. disenfranchisement policies, even within our borders there are notable distinctions. The states of Maine and Vermont, for example, permit everyone to vote, including people in prison, and therefore have more in common with Canada or New Zealand than with other states in the U.S. (Until a decade ago the states of Massachusetts and Utah allowed prison voting as well,

but public votes on ballot issues in each state then enacted restrictions). And certainly it would be ludicrous to make a claim that either public safety or the “purity of the ballot box” has been harmed by such policies in any of these states or nations. Indeed, if we were to ever achieve universal voting of this type, it seems reasonable to assume that our national conversation about issues of crime and punishment would be enriched through the inclusion of the voices of people with direct connection with the experience of incarceration.

The movement for disenfranchisement reform has had strong success in recent years, with 19 states enacting reforms to their practices since 1997. In order to build on this momentum, it is important to consider the strategies and tactics that can contribute to further advances. Chris and Michelle have laid out a rationale for advancing the agenda, and this response hopefully contributes to that goal as well.