CRIMINAL DISENFRANCHISEMENT IN AN INTERNATIONAL PERSPECTIVE

This collection of original work by leading scholars and advocates offers the first international examination of the nature, causes, and effects of laws regulating voting by people with criminal convictions. In deciding whether prisoners shall retain the right to vote, a country faces vital questions about democratic self-definition and constitutional values and, increasingly, about the scope of judicial power. Yet in the rich and growing literature on comparative constitutionalism, relatively little attention has been paid to voting rights and election law. Criminal Disenfranchisement in an International Perspective begins to fill that gap, showing how constitutional courts in Israel, Canada, South Africa, and Australia, as well as the European Court of Human Rights, have grappled with these policies in the last decade, often citing one another along the way. Chapters analyze partisan politics, political theory, prison administration, and social values, showing that constitutional law is the fruit of political and historical contingency, not just constitutional texts and formal legal doctrine.

Alec C. Ewald is Assistant Professor of Political Science at the University of Vermont. He holds a Ph.D. in political science from the University of Massachusetts Amherst. He has also taught at Union College and the University of Massachusetts Amherst. His research focuses on election law, American political development, and criminal justice; his work has been published in the Justice System Journal, Wisconsin Law Review, Columbia Human Rights Review, and Law and Courts. Several of his previous publications have examined felony disenfranchisement, and he has consulted with research and advocacy organizations, including the NAACP Legal Defense Fund, the Sentencing Project, the American Civil Liberties Union, and Demos. He is the author of The Way We Vote: The Local Dimension of American Suffrage.

Brandon Rottinghaus is Assistant Professor of Political Science at the University of Houston. He holds a Ph.D. in political science from Northwestern University. His primary research and teaching interests include the presidency, public opinion, democracy, and research methods. His work on these subjects has appeared in Journal of Politics, Public Opinion Quarterly, Political Science Quarterly, Political Communication, PS: Political Science & Politics, Presidential Studies Quarterly, and others. His work also extends into comparative politics (especially comparative political behavior and voting rights), and he has published work in Latin American Politics and Society and Electoral Studies. He is the author of the white paper “Incarceration and Enfranchisement: International Practices, Impact and Recommendations for Reform” for the International Foundation for Electoral Systems.
Criminal Disenfranchisement in an International Perspective

Edited by

ALEC EWALD
University of Vermont

BRANDON ROTTINGHAUS
University of Houston
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Contributors

David Brown is a professor at the University of New South Wales, Sydney, Australia, where he teaches criminal law. He has been active in criminal justice movements, issues, and debates for more than three decades. He has coauthored or coedited the following publications: *The Prison Struggle; The Judgments of Lionel Murphy; Death in the Hands of the State; Criminal Laws; Rethinking Law and Order; Prisoners as Citizens*; and *The New Punitiveness*.

Nora V. Demleitner is Dean and Professor of Law, Hofstra University School of Law. She teaches and has written widely in the areas of criminal, comparative, and immigration law. She has also held appointments at the University of Michigan, the Max Planck Institute, and the University of Freiburg. She is a managing editor of the *Federal Sentencing Reporter* and serves on the executive editorial board of the *American Journal of Comparative Law*. She is also a coauthor of a major casebook on sentencing law.

Claire Hamilton, LL.B. (Ling. Franc.), Barrister at Law; M. Litt., Dip. EurCon in Human Rights, practiced as a barrister in criminal law until 2004, when she became a full-time academic. She now works as a lecturer in criminology at the Dublin Institute of Technology, where she teaches criminological theory, sentencing, and criminal justice and is currently engaged in doctoral research into punitiveness in Ireland. She has previously served as the Chairperson of the Irish Penal Reform Trust and has just published her first book: *Whittling the Golden Thread: The Presumption of Innocence and Irish Criminal Law*.

Elizabeth A. Hull is Professor and Chair, Department of Political Science, Rutgers University–Newark. Professor Hull has written numerous articles on
the constitutional rights of women, minorities, and noncitizens, and three books: Without Justice for All: The Constitutional Rights of Aliens; Taking Liberties: National Barriers to the Free Flow of Ideas; and The Disenfranchisement of Ex-Felons. She has delivered a series of talks, sponsored by the Soros Foundation, on “Constitution Building” to legislators and law professors in Kazakhstan and delivered the plenary address at the annual meeting of the Academy of Criminal Justice Sciences.

Laleh Ispahani is Director of the Open Society Institute’s Transparency and Integrity Fund. From 2003 to 2008, she was Senior Policy Counsel at the American Civil Liberties Union (ACLU), where she directed an ex-felon voter education and mobilization campaign and provided guidance on strategy, as well as technical assistance and oversight, to ACLU affiliates engaged in felon re-enfranchisement work. She has authored numerous pieces on felony disenfranchisement.

Rick Lines is Senior Policy Advisor at the International Harm Reduction Association. He was previously Executive Director of the Irish Penal Reform Trust. He is recognized internationally for his expertise on HIV/AIDS and drug policy in prisons and has traveled to more than 20 countries working on related projects on behalf of nongovernmental organizations and U.N. agencies. His articles on prisoners’ rights have appeared in the Canadian HIV/AIDS Policy & Law Review, the International Journal of Prisoner Health, and the Irish Times, and he has contributed chapters on prison health to two forthcoming books by the World Health Organization.

Christopher P. Manfredi is Dean, Faculty of Arts, and Professor of Political Science at McGill University. His academic interests include judicial politics, legal mobilization, constitutional design, constitutional theory, law, and politics. He is coeditor of Feminist Activism in the Supreme Court: Legal Mobilization and the Women’s Legal Education and Action Fund, author of Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism, and coauthor (with Mark Rush) of Judging Democracy.

Jeff Manza is Professor of Sociology at New York University and has done research on how different types of social identities and inequalities in the United States influence political processes such as voting behavior, partisanship, and public opinion. He is coauthor of Locked Out: Felon Disenfranchisement and American Democracy (with Christopher Uggen), on the origins and political consequences of felon disenfranchisement in view of the massive increase in incarceration in the United States over the past three decades.
Contributors

Heather McLaughlin is a Ph.D. student in sociology at the University of Minnesota.

Bryan Mercurio is a Professor of Law at the Chinese University of Hong Kong. He previously spent five years at the University of New South Wales, Faculty of Law.

Lukas Muntingh is Project Coordinator of the Civil Society Prison Reform Initiative, a project of the Community Law Centre at the University of the Western Cape, South Africa. He has done extensive work on criminal justice reform in South Africa related to child justice, diversion, prisoners’ rights, and offender re-entry.

Ronnit Redman lectured in the Faculty of Law, University of New South Wales, Sydney, Australia, from 2002 until her untimely death from cancer in January 2007. She had previously worked as a senior legal officer at the Human Rights and Equal Opportunity Commission. Her research interests were in human rights, antidiscrimination law, labor law, and administrative law. Her publications include coauthorship of two book chapters on prisoners’ voting rights. She was on the management committee of the Australian Human Rights Centre and was the managing editor of the Human Rights Defender. She will be greatly missed by friends, family, students, and colleagues.

Julia Sloth-Nielsen is a senior professor in the Faculty of Law, University of the Western Cape, and a cofounder of the Civil Society Prison Reform Initiative. She has worked on South Africa’s child justice bill since the 1990s and has published extensively on juvenile justice and children’s rights issues. She maintains a research interest in criminal justice policy and has written on the state of South Africa’s prisons, on sentencing policy, and on parole administration.

Anette Storgaard is Associate Professor in Penal Law and Criminology at the Faculty of Law, University of Aarhus, Denmark. Her research interests include penalty, prison conditions, and alternatives to imprisonment. Her current research focus concerns the complexities of force, rules, cultures, and possibilities and impossibilities concerning release from prison.

Christopher Uggen is Distinguished McKnight Professor and Chair, Department of Sociology, University of Minnesota.

Mischelle Van Brakle is a Research Associate and Ph.D. student in the Department of Criminology and Criminal Justice, University of Maryland.
Richard J. Wilson is Professor of Law at the Washington College of Law at the American University and Director of the International Human Rights Law Clinic at the Washington College of Law. He has done significant expert witness work in the United States and many consultancies abroad. He is coeditor of *The Rights International Companion to Criminal Law and Procedure*, *International Human Rights Law and Practice: Cases, Treaties and Materials*, and several book chapters and has also produced policy reports for agencies including the U.S. Agency for International Development and the U.S. Department of Justice.
Foreword: Waves of Democracy and Criminal Disenfranchisement

Jeff Manza

The history of democracy is marked by a series of wave-like movements, in which what happens in one place exerts influence in others. The establishment of democracy as a system of governance, with universal suffrage for all citizens (or at least male citizens), is an idea that has been around for approximately 2,500 years. However, although some variant of democracy had been practiced in a handful of polities, it was not until the late 19th century and early 20th century that democracy as a form of government suddenly became popular. The antidemocratic wave that swept Europe and Asia in the 1930s with the rise of fascism did away with free elections; in the late 1980s and early 1990s, a new wave of democracy brought the vast majority of countries under its umbrella.

The movement of democracy around the globe calls our attention to how political leaders, activists, and jurists learn from one another across national boundaries. The case of the disenfranchisement of criminal offenders is no different. For most of the history of democracy, the idea that criminals could be full members of the polity was nearly unthinkable. In particular, the prevailing view held that criminals had, by their actions, proved themselves incapable of undertaking the responsibilities of citizenship. Virtually all classical political philosophers who reflected on the question reached that conclusion, and early modern legal systems typically stripped criminal offenders of legal and political rights. However, over time, societies have begun to develop a different view of criminal offenders. They cannot be “cast out” into the wilderness, as medieval legal fictions proclaimed. Rather, they will eventually return to their families and communities and become part of society. The possibility of rehabilitating offenders has become a central goal of criminal justice systems, and an important part of the process of reconnecting offenders and their communities in democratic societies lies in providing them with basic political rights.
Conceptions of democracy as grounded in universal suffrage have also evolved over the past 150 years. One of the most important insights is that if governments are to reflect the “will of the people,” then all of the people must be able to participate. Indeed, the very meaning of democracy can be defined by the treatment of those at the margins. When significant numbers of inmates are excluded from participation, the impact is not limited to their individual rights. All of those citizens who share political preferences similar to the excluded inmates see their influence on the political system diminished. Because criminal justice populations are not drawn randomly from among the entire population but rather tend to be concentrated among certain categories of citizens (such as the poor, those with limited education, and racial or ethnic minorities), it is quite likely that they will indeed have distinct political preferences in the aggregate. Although universal suffrage for all citizens has come to be a largely taken-for-granted component of democratic governance, when significant groups of citizens are excluded, the legitimacy of democratic elections is threatened.

The editors of *Criminal Disenfranchisement in an International Perspective* are to be commended for providing us with the first international study of the political rights of offenders. The recent wave of national supreme court and international human rights court rulings about the political rights of inmates – discussed by a number of authors in this volume – suggests that this important issue has now become a global one and that there is some momentum toward making voting rights behind prison walls universal. The recent court rulings have frequently referred to emerging democratic norms of inclusion around the world to justify extending the franchise to inmates. Such rulings underscore the enduring strength and power of universal suffrage as a hallmark of contemporary democracy.

But even if allowing inmates to vote is becoming more common, the question is hardly settled. Even where some or all inmates are allowed to vote, the quality of that participation may vary. Many countries retain significant restrictions on the voting rights of inmates and, in some much rarer cases, of offenders who are living in their communities. In the United States, of course, the gulf between the global norm of universal suffrage and the practice of felon disenfranchisement is widest. America disenfranchises both current inmates and also millions of former inmates (some still under correctional supervision, but also many former offenders who have completed their entire sentence). The United States stands out here, as in so many other arenas, as “exceptional.” Because it issues far more felony convictions than other nations and disenfranchises a far wider group of offenders, the sheer number of disenfranchised citizens in the United States is staggering. In our recent book on the
subject, my colleague Christopher Uggen and I estimated that approximately 5.3 million individuals were disenfranchised in the 2004 presidential election because of a past felony conviction, with nearly another 600,000 sitting in jails on election day effectively, if not legally, deprived of the ability to cast a ballot.

A comparative examination helps us think through the issues raised by criminal disenfranchisement with a broader lens. One example of this is the concern, expressed by prison administrators and criminal justice officials, that allowing inmates to vote will threaten prison security or add many additional burdens to an already overtaxed prison staff. However, we need not rely on speculation about hypothetical problems. Evidence that voting can work in prison where it is allowed should alleviate such concerns. Examples of successful participation by prison inmates, highlighted in a couple of the chapters in this book, provide another more practical source of evidence that democracy can extend behind prison walls.

Extending voting rights to incarcerated (or nonincarcerated) offenders has, it seems to me, two very important benefits. The first, and most obvious, is that it ensures that election outcomes reflect the views of all citizens, as democratic theory requires and as some of the recent court rulings have noted. The other benefit is more subtle. How we treat offenders while they are under correctional supervision has important implications for how they think of themselves in prison and how they will adjust to life outside prison walls when they return home. Encouraging offenders to think of themselves as full citizens with the right to participate in democracy’s most important exercise – the casting of an election ballot – underscores one of the major benefits of being a citizen. It encourages offenders to think of their connections to those outside of prison. By contrast, denying inmates that right diminishes the quality of their citizenship and vividly underscores the disconnect between their current and future status as an “offender” in society.

We are, in short, somewhere mid-stream in the process of making good on the full promise of universal suffrage. The appearance of this book will provide a much-needed source of information and analysis about the political rights of criminal offenders around the world. It has been quite difficult, up to now, to find information about practices in other countries, and the publication of *Criminal Disenfranchisement in an International Perspective* will help to solve this problem. As those societies retaining restrictions on offender voting debate those exclusions in the future, drawing upon a wider range of evidence of international practice cannot help but lead to more informed discussion.
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Alec Ewald
Burlington, VT

Brandon Rottinghaus
Houston, TX