Unshackling Democracy:

Why New York Should Allow Everyone to Vote – Including Prisoners

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Voting is a fundamental human right and democratic obligation. Yet New York state continues to disenfranchise imprisoned people\(^1\) and count their bodies in distant prison districts for federal elections,\(^2,3\) perpetuating a racist history that extends back to the original mass carceral institution, slavery. We must confront this injustice by allowing imprisoned people to be counted in their home communities and, even more fundamentally, to vote.

With entrenched racist roots, disenfranchisement of imprisoned people should be abolished in New York because it originated historically as a substitute for Black disenfranchisement and continues to exert discriminatory effects even today. In the early 1800s, New York’s free Black population grew dramatically in part due to abolition legislation.\(^4\) In the mid-1820s, the 1799 Gradual Abolition act was set to begin freeing young people\(^5,6\) and a 1817 law scheduled universal emancipation for 1827.\(^7,8,9\) With this on the horizon, New York’s Democratic-Republican party expressed fear of losing power to the Black vote.\(^10\) The 1821 New York Constitutional Convention teemed with racist rhetoric about Black criminality to justify Black disenfranchisement.\(^11,12\) Narrowly failing to disenfranchise Black people outright,\(^13\) the

\(^2\) Legislative task force on demographic research and reapportionment, N.Y. Legis. Law, § 83-m(13) (2023), https://www.nysenate.gov/legislation/laws/LEG/83-M.
\(^6\) The Gradual Abolition act technically emancipated all enslaved people born after 1799. But it required them to “be a servant” of their enslaver until age 25 for women and 28 for men, only truly freeing them in the mid-1820s and beyond. It is clear the act intends enslavers to get economic benefit from the “freed” people by indenturing them during prime working years, especially men whose labor was considered more economically valuable.
\(^8\) Gellman and Quigley, Jim Crow New York, 67-72.
\(^9\) The 1817 “An Act relative to slaves and servants” emancipated all enslaved people in 1827. However, it forced people born from 1799-1817 to continue to “serve” their mother’s enslaver until age 25 or 28 and those born from 1817-1827 until age 21.
convention then amended the state constitution to allow prisoner disenfranchisement and doubled the property requirements for Black voters while eliminating them for whites. Echoing the racist justifications of many delegates, Delegate Samuel Young said, “Look to your jails and penitentiaries. By whom are they filled? By the very race whom it is now proposed to clothe with the power of deciding upon your political rights.” Prisoner disenfranchisement was now cemented as an instrument of racist voter suppression. In 1846, another New York Constitutional Convention attempted to disenfranchise all Black people citing “a criminal disposition in the race.” Failing narrowly, it instead vastly expanded allowable criminal disenfranchisement by adding minor offenses. A pattern of substituting prisoner disenfranchisement for racist Black disenfranchisement emerged in the very history of New York’s constitution.

After the Civil War, New York continued to intertwine racist voter suppression with prisoner disenfranchisement. In 1870, New York ratified and then pointedly rescinded its ratification of the Fifteenth Amendment barring disenfranchisement on the basis of race. After four years, New York finally removed its unconstitutional property requirement for Black voting but simultaneously amended the Constitution to require prisoner disenfranchisement, rather than allowing counties to implement it. New York’s practice of substituting escalating prisoner disenfranchisement for thwarted Black disenfranchisement now merged with the national wave of prisoner disenfranchisement used to circumvent Black suffrage mandated by the Reconstruction Amendments.

Despite securing universal Black male suffrage on paper, systematic criminalization and eventual mass incarceration inexorably increased racist disenfranchisement through imprisonment. From the mid-1800s, New York police forces increasingly targeted Black and other marginalized people, reinforcing the Black criminality narrative that justified replacing the first carceral system, slavery, with the one still with us today. This association was forged

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15 N.Y. Const., art. II, § 1 (1821).
21 U.S. Const., amend. XV (1870).
further as police fenced illegal activities into vice districts within Black and working class
eighborhoods from the late 1800s onward.\textsuperscript{26} Finally, when the Civil Rights movement increased
the visibility of racist disenfranchisement, New York instituted the harshest sentences in the
country for drug offenses, the 1973 Rockefeller Laws, which included up to life for minor
marajuana possession.\textsuperscript{27} These laws were consistently supported by state lawmakers from rural,
white prison districts\textsuperscript{28} that benefited from counting disenfranchised prisoners for legislative
representation, a terrible echo of counting enslaved people for congressional representation.

With clearly discriminatory origins, New York’s prisoner disenfranchisement must be
abolished unless we have proof that it lacks ongoing discriminatory impacts – proof that is
lacking. New York City continues to feed prisoner disenfranchisement through racially biased
policing overrepresented in communities of color.\textsuperscript{29} In 2022, 90% of police stops targeted Native,
Black, or Latinx people, who constitute only 50% of the population.\textsuperscript{30} Statewide in 2021, Black
people were 50% more likely than whites to be convicted when arrested.\textsuperscript{31} Native people were 11
times more likely to be imprisoned or jailed than whites, Black people 8 times, and Hispanic
people 3 times.\textsuperscript{32} These are the people New York silences en masse through disproportionate
disenfranchisement.

Further, New York persists in counting these disenfranchised people in predominantly
rural prison districts away from their home communities for federal elections.\textsuperscript{33} This distorts
democracy itself, transferring democratic power from communities of color to largely white
prison districts. In anti-democratic fashion, it incentivizes legislators from prison districts to
continue denying imprisoned people suffrage.

Despite its bleak discriminatory effects that continue its original purpose, arguments
persist for disenfranchisement of imprisoned people. Prevailing rationales are that silencing their
vote aligns with imprisonment’s purpose, be it punishment, protection of society, or
rehabilitation. Yet prisoner punishment through the denial of fundamental rights has been
increasingly disavowed by courts. Further, the United Nations declares “universal and equal

\textsuperscript{26} Hinton and Cook, “The Mass Criminalization of Black Americans,” 269.

\textsuperscript{27} James M. Markham,“Toughest in the Nation,” New York Times, May 13, 1973,

\textsuperscript{28} Editorial Board, “You’ve Heard About Gerrymandering. What Happens When It Involves Prisons?,” New York

\textsuperscript{29} “A Closer Look at Stop-and-frisk in NYC,” New York Civil Liberties Union, accessed December 20, 2023,

\textsuperscript{30} “Stop-and-frisk data,” New York Civil Liberties Union, accessed December 20, 2023,

\textsuperscript{31} New York State, Division of Criminal Justice Services, “NYS Adult Arrests and Prison Sentences by

\textsuperscript{32} “Prison and jail populations by state, sex, youth status (under 18), and race and ethnicity, with comparative total
state population data and incarceration rate per 100,000 people,” Prison Policy Institute, September 2023,

\textsuperscript{33} N.Y. Legis. Law, § 83-m(13) (2023).
suffrage” is a human right in the 1948 *Universal Declaration of Human Rights* \(^{34}\) and “all prisoners retain the human rights and fundamental freedoms” therein.\(^ {35}\) Some justify prisoner disenfranchisement through the historical concept of “civil death” for criminals, yet this is contradicted by the Supreme Court decision that imprisoned people cannot be stripped of civil citizenship\(^ {36}\) and New York’s practice of counting them for congressional representation.

Another common refrain emphasizes protection: imprisoned people should not influence the laws they have broken, perhaps due to lack of judgment or morals. However, imprisoned people are unlikely to change criminal laws without joining community efforts with broader support, and judgment and morals have never been a requirement of suffrage. Moreover, if we feel some people are not deserving enough to vote, is New York’s racially biased criminal justice system a fair mechanism for this?

Last, if the purpose of imprisonment lies in rehabilitation as the UN requires\(^ {37}\), we should not strip away the obligation to participate in the bedrock of responsible society, voting. Research has found that prisoner re-enfranchisement is linked to greater civic engagement\(^ {38}\) and lower recidivism.\(^ {39}\) Voting while imprisoned would help our marginalized citizens be a positive part of civil society, starting a powerful cycle of democratic contribution.

New York should confront the troubling historical origins and ongoing discriminatory impact of prisoner disenfranchisement by granting suffrage to all citizens. History shows that voting rights are “not immutably frozen like insects trapped in Devonian amber,” as the Ninth District Court held regarding prisoner disenfranchisement.\(^ {40,41}\) Despite the terrible racist justifications that marred the 1821 New York Constitutional Convention, let us draw inspiration from Delegate Robert Clark, who asked, “[I]s it consistent with sound policy […] to alienate one portion of the community […] from their own political institutions?”\(^ {42}\) History beckons us to forge stronger voting rights for all New Yorkers regardless of incarceration status, fortifying the bedrock of an equitable democratic society.


\(^{40}\) Dillenburg v. Kramer, 469 F.2d 1222, 1226 (9th Cir. 1972), https://law.justia.com/cases/federal/appellate-courts/F2/469/1222/79768/.

\(^{41}\) Interestingly, this *Dillenburg v. Kramer* case also held that “courts have been hard pressed to define state interest served by laws disenfranchising persons convicted of crimes.”

In Convention.

December 10, 1821

To the people of the State of New York:

The delegates of the people in convention having this day terminated their deliberations present to you the constitution of the state in an amended form as the result of the arduous and responsible duties which your confidence has imposed upon them. They have adopted this course from a sense

Article II.

Section 1. Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this State one year preceding any election, and for the last six months a resident of the town or county wherein he may offer his vote, and shall have within the year next preceding the election paid a tax in the State or county assessed upon his real or personal property, or shall by law be exempted from taxation, or being armed and equipped according to law, shall have performed within that year military duty in the militia of this State, or who shall be exempted from performing military duty in consequence of being a citizen of any city, town, or village in this State, and also every male citizen of the age of twenty-one years, who shall have been for three years next preceding such election, an inhabitant of this state, and for the last year a resident in the town or county wherein he may offer his vote, and shall have been within the last year subject to labor upon the public highways, and shall have performed the labor, or paid an equivalent therefor, according to law, shall be entitled to vote in the town or parish wherein he actually resides, and not otherwise for all persons that now are, or hereafter may be, citizens by the people of this State, or person of colour, unless they shall have been three years a citizen of this State, and for one year next preceding such election, shall be free and possessed of a freehold estate, of the value of two hundred and fifty dollars, clear and above all debts and incumbrances charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at any such election. And no person of colour shall be subject to direct taxation, until he shall be taxed and support of such real estate as aforesaid.

Section 2. Slaves may be held, excluding from the right of suffrage persons who have been, or may be, convicted of infamous crimes.

Section 3. Since shall be made for ascertaining by proper means, the citizens who shall be entitled to the right of suffrage, fairly established.
Bibliography

Primary Sources


Secondary Sources


“Prison and jail populations by state, sex, youth status (under 18), and race and ethnicity, with comparative total state population data and incarceration rate per 100,000 people.” Prison Policy Institute. September 2023. https://prisonpolicy.org/data/race_bystate_2021.xlsx.

