A Most Undemocratic Practice: Felony Disenfranchisement and Its Effect on Communities of Color

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The Argument for Restoring Voting Rights to Felons

- Violation of Equal Protection
- Support for the Expansion of Suffrage
- Subject to Changing Political Climate
- Challenge as Cruel & Unusual
Historical Roots of Felony Disenfranchisement

- Civil War and Slavery
  - Black Codes
  - Enacting/Expanding Felony Disenfranchisement Laws

- Reconstruction Amendments
  - 13th (1865) abolishes slavery or involuntary servitude except as punishment for a crime
  - 14th (1868) defines all people born in the United States as citizens, requires due process of law, & requires equal protection to all people
  - 15th (1870) prevents the denial of a citizen’s vote based on race, color, or previous condition of servitude

- Jim Crow Tactics
Modern Effect of Felony Disenfranchisement

- 2018 Midterm Election
  - Over 6 million ineligible to vote
  - Almost 4.7 million returned to their community

- Mass Incarceration
  - U.S. has 25% of the world’s prison population
  - Disproportionately affects people of color
  - Racial disparities in the criminal justice system

- Spotlight on Kentucky
  - Highest disenfranchisement rate for blacks nationwide
  - African American population 8%
    - African American prison population 21%
    - African American felony disenfranchisement rate 26%
Rationale for Extending Voting Rights to Felons

- Voter Suppression
  - Progression of tactics
  - Effect on communities of color

- Laws Expanding Suffrage
  - Acts of Congress
    - Voting Rights Act
    - National Voter Registration Act
    - Help America Vote Act

- Constitutional amendments
  - 15th grants African American men the right to vote
  - 19th grants women the right to vote
  - 24th prohibits the denial of the right to vote for failure to pay a poll tax or other tax
  - 26th grants the right to vote to citizens 18 & older
Equal Protection Challenges

- Unsuccessful challenges
  - Richardson v. Ramirez (1974)
    - SCOTUS held “that a state may strip ex-felons who have fully paid their debt to society of their fundamental right to vote without running afoul of the Fourteenth Amendment”
  - Village of Arlington Heights v. Metropolitan Housing Development Corporation (1977)
    - SCOTUS held that a resulting racially discriminatory effect is not enough and a racially discriminatory intent must also be shown

- Possible routes
  - Selective enforcement
  - Racial profiling
Cruel & Unusual Challenges

- Ambiguous and controversial
- International comparison
- Traditional challenges
  - Death penalty, excessive use of force, and torture
- Successful non-traditional challenges
  - *Weems v. United States* (1910)
  - *Trop v. Dulles* (1958)
Conclusion

➤ 77% of disenfranchised voters are living in their communities

➤ African Americans are 4 times more likely to lose voting rights when compared to all Americans

➤ Kentucky leads the nation in disenfranchising blacks

➤ Matter of social justice