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Voices from the Community

Editorial: Voting Rights for the Incarcerated

JUAN MORENO HAINES*

Without a vote, a voice, I am a ghost inhabiting a citizen's space . . . I want to walk calmly into a polling place with other citizens, to carry my placid ballot into the booth, check off my choices, then drop my conscience in the common box.

-Joe Loya, disenfranchised ex-felon

Our democracy is weakened when one sector of the population is blocked out of the voting process.

-Rep. John Conyers Jr., U.S. Congress

The axiom "one man, one vote" is a fundamental concept reinforced through the edicts alluded to in the American style of democracy. However, voter disenfranchisement has been tolerated since the birth of our nation. The U.S. judiciary and its legislators have continually tried to reconcile this inconsistent impediment by constantly changing laws and/or passing bills—each impotent.

The explication for voter disenfranchisement asserts: If one "duly convicted" of a crime is subject to enslavement, it is reasonable to believe that denying slaves the right to vote is legitimate, considering that the Thirteenth Amendment reads: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their

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jurisdiction.”

The correlation between voter disenfranchisement and persons subjugated to the deprivation associated with enslavement occurs through the act of punishing criminals. And, since enslavement due to a felony conviction is constitutionally permissible, the slippery slope effortlessly slides into a red herring conclusion that, “Incarcerated felons cannot vote because they are being punished as slaves!” This paradigm is intelligently perpetuated with the intent of restricting the political rights of malcontents. However, reality dictates that any form of voter disenfranchisement literally obstructs the perpetual inclusiveness of democratic principles espoused by the founding fathers of the United States of America.

In the United States, more than 7.3 million people are under correctional control, meaning one in thirty-one American adults are in jail, prison, or on probation or parole.¹

Michelle Alexander’s twenty-first century account of voter disenfranchisement is salient: “Jarvious Cotton cannot vote. Like his father, grandfather, great-grandfather, and great-great-grandfather, he has been denied the right to participate in our electoral democracy. Cotton’s family tree tells the story of several generations of black men who were born in the United States but who were denied the most basic freedom that democracy promises—the freedom to vote for those who will make the rules and laws that govern one’s life.”²

Voter disenfranchisement’s dictum was hermetically sealed into local, state, and federal election law with an obvious consequence: The voting irregularities of the 2000 and 2004 presidential elections drew enormous public attention to the plight of the estimated five million Americans who are barred from voting by a maze of state laws that deny former felons the right to vote, sometimes temporarily, sometimes permanently. Florida’s felon disenfranchisement law bans an estimated 600,000 former prisoners from voting for life. Forty-eight states and the District of Columbia prohibit people incarcerated for a felony offense from voting—only two states, Maine and Vermont, permit incarcerated Americans the right to vote.

Remember the year 1920? Susan B. Anthony refused to be marginalized, and along came the Nineteenth Amendment. The Voting Rights Act of 1964 ushered in electoral democratic principles for a great many poor southern folk as poll taxes and literacy test

1. THE PEW CENTER ON THE STATES, ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 5 (March 2009).

2. MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 1 (2010).

were abolished. After nearly a decade of litigation, Washington State prisoners made the causal connection between felony disenfranchisement and racial bias, a necessity in order to prevail under the Voting Rights Act, but their victory was short-lived when the decision was overturned by a federal appellate court. The bane of disenfranchisement will likely see its last days as Americans become enlightened to the fact that the most constructive aspect of the American experiment in democracy is that democratic fundamentalism must be available to all citizens, regardless of social status.

I remember the empty feeling I had while working on a presidential election campaign, because being a parolee subjugated me to felon disenfranchisement laws. I was a taxpaying American, contributing to a political party that represented ideas I believed in, but I was denied the right to have my expectations registered publicly through the vote. Now, I am further pushed away from society by being locked in a cage called my home by prison guards who address me as inmate, as I scrutinize how today's politicians decide critically important social policy by marginalizing the poorest amongst us. It has turned into a Darwinian spectacle.

After reading these last two passages to several prisoners, most who attend the Prison University Project, a privately funded college program unique to San Quentin State Prison, I asked their opinion about voter disenfranchisement. The consensus was awareness that this phenomenon creates a peculiar blight for "certain" American citizens. One man told me, "It's strange to feel like a foreigner in your own country. Even as convicted criminals, we long to be participants in a democracy that affects us so much." Another said, "America will eventually get it right, because there's a lot of patriotic folk in here who just made some wrong choices." Julian Glenn Padgett, Managing Editor of the *San Quentin News*, said, "Voter disenfranchisement is the child of hyper-incarceration, and it is an outbreak of thinking that laughs at rehabilitation. As an American citizen, the right to vote is inseparable as petitioning for habeas corpus. The ability to vote is the basis of rehabilitation for all incarcerated people."

San Quentin State Prison held a mock election in 2008. The idea was assisted through the egging of Amy E. Smith, J.D., Ph.D., and an assistant professor at San Francisco State University who specializes in legal psychology. Prisoners were excited to express their choice for president of the United States and several California ballot initiatives, including same-sex marriage. The San Quentin Media Center chronicled the election. The project's success is greatly attributed to San Quentin Public Information Officer Samuel Robinson, who facilitated the time for prisoners and document-

arians Troy Williams and Marvin Andrews, along with writer R. Malik Harris, to record this historic event in American penology. This experiment was intended to show that even though convicted criminals may hold a parody of an election regarding issues relevant to the future of America, their scrutiny should not be mocked; it is real.

The American experiment in democracy idealizes that every citizen has a seat at the table of public policy. To tolerate marginalization in our society will create stratification that in turn diminishes the evolution of this principle.