

FELON DISENFRANCHISEMENT:

WHERE VOTING RIGHTS INTERSECT WITH THE CRIMINAL JUSTICE SYSTEM¹

- Objective: To learn about felon disenfranchisement, including how it affects voting rights, civic participation, and racial discrimination.
- Focus Questions: Should convicted felons who have already served time be allowed to vote? Why or why not? What is the purpose of felony disenfranchisement, and does it actually serve that purpose? What about those in jail, on parole or probation?

Relevant terms:

Disenfranchisement: the deprivation of some a legal right or privilege, particularly the right to vote.

Felony: a serious crime punishable by a prison sentence of more than one year (or death).

Probation: an alternative sentence to jail for a convicted offender, giving him or her freedom contingent on good/lawful behavior, and under close supervision by a probation officer.

Parole: the conditional release of a convicted offender, upon good behavior and rehabilitation in prison. The offender's parole can be revoked and he or she can be sent back to prison for poor/unlawful behavior committed during this release.

¹ This lesson is adapted from a lesson created by Julia Kraut, a 2005-2006 Marshall-Brennan Fellow, in April 2006 for the Marshall-Brennan Constitutional Literacy Project. It expands upon issues raised in Chapter Nine of *Youth Justice in America* (CQ Press 2005).

Background: The U.S. Constitution provides no explicit right to vote. Voting is a state-granted privilege. See Const. Art. I, Section 2. However, there are constitutional provisions that forbid discrimination based on race (15th Amendment), gender (19th Amendment), and economic status –poll tax – (24th Amendment). In *Richardson v. Ramirez* (1974), the Supreme Court upheld the constitutionality of felon disenfranchisement statutes, finding that the practice did not deny equal protection to disenfranchised voters. However, the federal government has acknowledged that voting is a fundamental right, even if it is not explicitly mentioned in the Constitution. In 1965, Congress passed the Voting Rights Act, which eliminated the use of literacy tests and grandfather clauses – tactics used by states (particularly in the South) to disenfranchise African-Americans.

Fast Facts:

- Four states (Florida, Iowa, Kentucky and Virginia) currently impose a life-long denial of the vote to all citizens with a felony record.
- Two states (Vermont and Maine) allow all felons to vote.
- Twenty-eight states prohibit felons who are on probation from voting.
- Thirty-two states prohibit felons who are on parole from voting.
- In the District of Columbia, felons in prison cannot vote.

Lesson/activity: debating the pros and cons of disenfranchisement

There are arguments in favor of and against felon disenfranchisement. Assign students into one of three groups: 1) pro-Disenfranchisement; 2) anti-Disenfranchisement; 3) those who advocate Disenfranchisement for only those on probation, parole, or in prison. Have these students present, argue and distinguish their sides of the issue. Encourage students to develop the arguments by sharing with them the following information

Arguments in Favor of Disenfranchisement:

- Felonies are serious crimes, and people who commit them are a danger to society and have broken a “social contract” with society. Therefore, they have given up their right to participate in a civil society.
- Disenfranchisement is part of punishment and will serve as a deterrent to prevent future crime from being committed.
- Because voting is a privilege, felons made poor choices and do not deserve the privilege of voting or a voice in the political process.
- We don't allow felons to carry firearms or serve on federal juries. Barring felons from voting is one way society sends the message that committing a serious crime has serious consequences.
- This is not about race, it's about felons. African-Americans may be those who are most affected by disenfranchisement, but these laws target felons and not African-Americans. White felons face the same laws.

Arguments Against Disenfranchisement:

- There is no deterrent effect. No relation between committing crimes and fear of disenfranchisement, or recidivism and disenfranchisement.
- Disenfranchisement disproportionately affects African-Americans, since there is a higher percentage of felons who are African-Americans. Also, because most employers refuse to hire or discriminate against felons, without the vote, felons are punished twice and have no political voice.
- Disenfranchisement constitutes cruel and unusual punishment prohibited under the 8th amendment.
- Disenfranchisement during probation and for life contradicts the tenets of rehabilitation and learning one's lesson. How can a felon rejoin society and become a productive member without voting and the opportunity to participate in civil society?

Resources: The Sentencing Project has lots of info on website,
http://www.sentencingproject.org/issues_03.cfm, including an excellent debate on the
issue: <http://www.sentencingproject.org/pdfs/legal-affairs-debate.pdf>.

News Articles: -Mike Wynn, *The Right to Vote New Obstacles Arise in Old Fight*, AUGUSTA
CHRONICLE, Aug. 7, 2005 (makes connection with Jim Crow era)
-Paul Zielbauer, *Felons Gain Voting Rights in Connecticut*, NY TIMES, May 15, 2001
(describes change in law including impact on Democratic party).
-Erin Texiera, *Felons Getting their right to vote restored*, CHICAGO SUN TIMES, June 22,
2005 (explains both sides of the issue).
-*Letter from Felon*, NY TIMES, Oct. 19, 2002 (discussing his disenfranchisement).