

**CIVIL DEATH IN THE US AND THE UK:
POLITICAL LYNCHING IN THE MODERN ERA**

by Kyla Cassone

Abstract

In this research paper, I will compare the effects of prisoner disenfranchisement and displacement in United States and the United Kingdom. The effects of which are disproportionately aimed at minority communities, namely black Americans and black, Asian, and ethnic minorities in the UK (BAME). These countries, built on historically racist institutions, effectively and systematically diminish the voting power and equality of political representation of minority communities. The quieting of these voices is discriminatory and alters the makeup of government through elections and the resulting decision-making power, thus distorting the quality and efficacy of democracy. This paper aims to prove that such a distortion with statistics of prison populations, voting trends, and previous election results, is a violation of internationally respected human rights that have lasting and devastating consequences.

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I. Introduction: Civil Death as Punishment

The criminal justice systems in both the United States and the United Kingdom are racially discriminatory and punitive, having the effect of cutting off entire communities from experiencing equal political representation. Just like in the eras of slavery, Jim Crow, and colonialism, racial minorities in these countries continue to face unequal treatment through systemic racism embedded in political, legal, and social institutions. The discrimination is so entrenched in the systems that little change can happen without major reform, if not replacement. Removing the political voices of the incarcerated directly targets the minorities that are disproportionately sentenced and distorts the essence of the democratic value “one person, one vote,” which in effect is comparable to execution¹, when the country they belong to views black lives as dispensable.

Historically, part of the social contract included the understanding that to break the law included criminal sanctions of corporal punishment, execution, banishment (physical removal from the community), and/or civil death. The latter being a form of finality that puts a person in political limbo, almost as final as execution, while still maintaining bodily freedom and life beyond the theoretical bounds of society. While not expelled physically, the individual ceases to belong as a member of the political community, they are hung up, dispensable to society. This remains today through modern prisoner disenfranchisement in the United States and the United Kingdom as a continuance of this idea of “civil death”, meaning once convicted a person is no longer able to contribute to civil life, including the decision-making process, which is most simply understood in the context of this paper as voting. In the US, prisoners maintain their citizenship status, while forfeiting many rights associated with normal citizenship. Disenfranchisement laws are left to

¹ Or lynching, which would be appropriate when referring to lost black lives and voices at the hands of a white majority.

individual state jurisdiction to “exercise a form of internal closure against felons, distinguishing those ‘fit to possess the rights of citizenship’ from other members of society”.² Similarly, the UK has linked the disenfranchisement of prisoners to this concept of civil death dating back to the Forfeiture Act of 1870.³ In both jurisdictions little has changed in the modern era of democracy and criminal justice.

If criminal justice were a racially neutral institution, the issue of civil death might not have such strong democratic consequences, but as becomes clear in my arguments to follow about both the United States and the United Kingdom, there is a problem of discriminatory selection of prisoners through arrest, charge, trial, conviction, and sentence, thus disproportionately curtailing political rights of minority groups, which negatively affects equal representation and the ability to fight for institutional progress. Additionally, civil death is used as a tool to strengthen the power of the majority group when used, mostly in the US context, as a way to systematically remove minority groups from their homes at disproportionate numbers to small, politically ineffective rural towns. Counting prisoners through the US Census as members of these towns has the same discriminatory effect as counting slaves as three fifths of a person in Southern US States did during the era of slavery with the purpose of granting them greater Congressional representation. In doing this, these civilly dead citizens are counted as members of the community with no political voice, giving greater representation to the few free, unmarred citizens in towns where prisons have been placed.

² Angela Behrens, Christopher Uggen, and Jeff Manza, “Ballot Manipulation and the ‘Menace of Negro Domination’: Racial Threat and Felon Disenfranchisement in the United States, 1850–2002,” *American Journal of Sociology* 109(3), (2003), 562.

³ Neil Johnston, “Prisoners' voting rights: developments since May 2015,” Briefing Paper Number 07461 (London, United Kingdom: House of Commons Library, April 2020), 3.

This disenfranchisement and displacement of prisoners is only internationally acceptable insofar as it can be restricted. Any blanket bans are antithetical to the basic principle of separation of powers. When the loss of the right to vote is mandatory in sentencing, there is no check on the legislative and executive influence that have the ability violate the rights of minorities. Removing the right to vote is an additional punishment on top of the denial of liberty, one that should be up to judicial powers to determine based on the gravity of the crime committed.⁴ Moreover, no person should lose their voting rights for life as the purpose of punishment is not for mere correction, but had once been rehabilitation of those who have committed crimes so they can reenter society without recommitting. Crimes are generally not random and usually are committed out of personal or communal necessity. Giving a person a say in laws that effect their livelihood and lives could have lasting positive effect as it shows respect for their needs and political voices.

These theoretical problems take a concrete form in the US and UK context of the carceral system, which I aim to explore them throughout this paper. While seemingly less insidious than other forms of punishment, execution, banishment, and corporal punishment, as there is no effect on the body, civil death is a form of punishment that removes a person from the political community with impunity. This would have major democratic implications for any society, but the extent to which the penal institutions discriminate against communities of color, especially in the US, creates enough of a disparity in political representation to have a lasting effect on the result of elections. Thus, political decisions are then made by a reduced population for those that have permanently or temporarily lost any political influence in the decision-making processes.

⁴ Laleh Ispahani, "Voting Rights and Human Rights: A Comparative Analysis of Criminal Disenfranchisement Laws," in *Criminal Disenfranchisement in an International Perspective*, ed. Brandon Rottinghaus and Alec C. Ewald, (Cambridge: Cambridge University Press, 2009), 32.

Methodology

In this paper, I aim to show how the disenfranchisement of convicted felons in both the US and the UK distorts democracy through racially and ethnically discriminatory criminal justice systems. I will show that the problem has been embedded in the US system since the post-Civil War era. The UK is a helpful comparative case to examine because although it is smaller and far less extreme in its legal and social discrimination, it has recently begun to face similar problems, which I will show based on history, government makeup, and recent prison population trends, especially those of juveniles.

I have chosen to focus my United States case research on Florida, as it is the state with the highest felon disenfranchisement rate according to the Sentencing Project, which states that 10,430 out of every 100,000 residents are disenfranchised compared to the national average of 2,470 out of every 100,000.⁵ Florida, in the 2018 Midterm Election, voted to end the disenfranchisement of ex-felons who had completed their sentences, but in doing so has created a political divide. If such a large block of voters is to re-enter the political community, the Republican Party in control⁶ faces a likely loss to the Democratic Party, which is proportionally close behind in voting numbers.⁷ I will track the recent changes and highlight the possible implications they could have on the upcoming presidential election of November 2020.

⁵ *The Sentencing Project*, “State-by-State Data,” accessed 27 May 2020, <https://www.sentencingproject.org/the-facts/#map>.

⁶ Governor Ron DeSantis is a Republican who narrowly beat the Democratic nominee in the 2018 election. The State has been under majority Republican control for over 20 years, maintaining control of the executive and both state legislative houses.

⁷ Florida Department of State, Division of Elections, “Bookclosing Reports - General/Primary Elections,” <https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/bookclosing/bookclosing-reports-regular/>.

To simplify what I mean by the United Kingdom, for the purposes of this paper, I will focus mostly on legislation and statistics representing Great Britain and Wales, unless I otherwise specify. While there is no true comparison to the US's discriminatory incarceration practices, in particular regarding prison gerrymandering, the UK is comparable in its denial of voting rights for prisoners and its growing discrimination within the criminal justice system. In order to make this comparison, I will be making some deductions based on research on prison population demographics, recent legislation, and a comparison to the juvenile prison population⁸. In addition, my comparison of malapportionment⁹ is not as much of concern in the UK context and there is far less research as a result, although there is evidence of both malapportionment and gerrymandering with a bias for the Labour Party.¹⁰ Any comparisons I do make are merely to highlight the gravity of the problem in the US context.

Further, I use a significant amount of statistical data to help guide my point. All statistics are from well-researched reputable government reports and agencies and should be taken as accurate. I use the numbers merely to add relevance to my argument, so should be perceived as such. Many of my claims are assumptions based on such numbers and have no bearing on actual outcomes of election results, past or future.

⁸ While not a voting class, the juvenile prison population is a promising indicator for the future state of potential voting classes in the UK. If the discrimination is unclear in the current group of prisoners, it could become clear if the trends within the juvenile population continue into adulthood.

⁹ Malapportionment is poorly and intentionally drawn political and legislative boundaries that show a particular bias towards a dominant group, which could be based on race, political affiliation, or other.

¹⁰ Ron Johnston, "Which Map? Which Government? Malapportionment and Gerrymandering, UK-Style: (The Government and Opposition/Leonard Schapiro Memorial Lecture, 2014)," *Government and Opposition* 50, no. 1 (2015): 1–23.

II. History and Legal Framework of Voter Disenfranchisement and Prison

Gerrymandering

There is a deep and problematic history of racial violence, oppression, and discrimination in both the United States and the United Kingdom stemming from centuries of slavery and colonial domination and exploitation. In the US, following the Civil War and the abolition of slavery, progress was slow to include African Americans in the political community, and as a result has effected the political decisions made on their behalf and allowed racially neutral policies to be discriminatorily implemented. Laws including the voter identification requirements, literacy tests, grandfather laws, and poll taxes all aided to the abatement of voting rights for black Americans, creating devastatingly lasting effects on later generations of black voters.¹¹ In the UK, there is a similar deep rooted history of slavery, but on distant colonized shores, so the history of discrimination and systemic inequality is less visible in domestic legislation and voting rights. The right to vote in the UK was designated to landed men, but did not specify race, meaning if a black man owned land he could vote, but as with the US it was unlikely there were many landed black men in a position to exercise this right and there were likely obstacles to prevent this right to be allowed in practice.¹²

This chapter will explore some of the legislative history of both nations to expose the current discrimination and structural inequalities that have persisted despite the implementation of racially neutral equal treatment policies and judicial decisions.

¹¹ Behrens, Uggem, and Manza, "Ballot Manipulation and the 'Menace of Negro Domination.'"

¹² Neil Johnston, "The History of the Parliamentary Franchise," Research Paper 13/14, (London, United Kingdom: House of Commons Library, 1 March 2013).

The United States

Initially, the US Census Bureau was created to ensure equal representation between states, as the US Congressional House of Representatives was established to account for and give more equitable representative political power to more populous states (one representative per an average of 700,000 constituents), while the Senate accounted for each individual state equally (two senators per state).¹³ The use of the Census has since expanded as the country has grown in state number and population, becoming essential in drawing district lines.

Beginning in 1790, every ten years the US recounts its population in order to assess, redraw, and expand voting districts. The most recent census occurred in April 2020, but there was little change in the policy that would have addressed the problem of racial discrimination in the way residents are counted. The US Census is a facially neutral institution that counts US residents in their “usual residence”¹⁴. As with most policies that are facially neutral, equal treatment measures leave those from disadvantaged groups more vulnerable to negative effects of these policies. After receiving 77,995 comments from organizations, individuals, and legal representatives, all but 108 of which pertained to the question of counting prisoners, the Census Bureau ruled to continue counting prisoners in the location they are imprisoned,¹⁵ which has the potential to alter the makeup of racial demographics in the towns housing prisons and urban cities from which they were removed.

¹³ US Census Bureau, *Agency History*, accessed 1 June 2020, https://www.census.gov/history/www/census_then_now/.

¹⁴ Federal Register, “Final 2020 Census Residence Criteria and Residence Situations,” last modified 8 February 2018, <https://www.federalregister.gov/documents/2018/02/08/2018-02370/final-2020-census-residence-criteria-and-residence-situations>.

¹⁵ Federal Register, “Final 2020 Census Residence Criteria and Residence Situations.”

The idea behind reapportionment of congressional districts every ten years is to account for every eligible voter in the region so that there are an equal number of voters to every national congressional and state legislative representative. Until recently, all congressional districts based their apportionment on the US Census data on a decennial basis.¹⁶ Now few states have moved to conduct their own censuses to correct the discriminatory practice of prison gerrymandering. This is a process marred by district borders drawn to include a prison in their population count, thus giving them greater representation for a smaller eligible voting population. The people confined within the prisons, who do not get a vote, count towards the town population, but are allotted no political power whatsoever. Since they have no right to vote, they have no say in the political processes around them, nor do they receive any of the government funding that is intended for the communities they have come to represent. Representatives of the area are by no means concerned with the wants and needs within the prison walls even though they are in an official capacity responsible for each of their constituents' well-being, including those with no voting rights. Inmates have no choice and no political power to demand change; it is a "collateral consequence" of being incarcerated and no judge, lawyer, or jury can fight it, as civil death is a legal punishment entrenched in state constitutions and legislation.¹⁷

As previously mentioned, once incarcerated, prisoners are generally moved to correctional facilities far from urban areas. While the majority of felons come from these areas, almost all of them are displaced in rural areas where they have no political clout. In Illinois, for example, 60 percent of the prisoners are from Cook County, where Chicago is located, and nearly all of them, 99 percent, are relocated in other counties, giving those counties where prisons are located inflated

¹⁶ Eric Lotke and Peter Wagner, "Prisoners of the Census: Electoral and Financial Consequences of Counting Prisoners Where They Go, Not Where They Come From," 24 *Pace L. Rev.* (2004): 593.

¹⁷ John Kleinig and Kevin Murtagh, "Disenfranchising Felons," *Journal of Applied Philosophy*, 22(3), (2005): 219.

political representation.¹⁸ The US Census Bureau does not distinguish between prisoner and free citizen and since it records each person in their “usual residence” wherever a person lives, whether their home or a prison, he or she is counted in that region and districts are drawn accordingly.¹⁹ When these prisoners are taken from their hometowns and moved elsewhere, they lose their ability to vote and help make decisions regarding the towns in which they permanently live and of which they no longer count as members, but instead count towards the population of their new residence without being afforded the right to vote and therefore be a part of the decision-making processes. The practice of counting prisoners this way is called prison gerrymandering²⁰ and it has historically been used to inflate political representation for rural white voters who typically have little political sway based on low populations.

In 1962, a Supreme Court case, *Baker v. Carr*, in which the plaintiffs argued that the disparity of districts in Tennessee was so large that some districts had 44 times the population of others, giving the smaller districts only 1/44th of the weight of the vote that the larger districts had.²¹ The Court did not decide that such unequal districting was unconstitutional, but instead claimed that citizens could sue on the grounds that unequal districting was unconstitutional on the basis of the Fourteenth Amendment’s Equal Protection Clause. In the next few years several cases followed that helped to develop the idea of “one person, one vote” for equal representation.²² In 1965, the Voting Rights Act was passed to allow racial minorities an equal vote to the white majority and without interference from the government. The Voting Rights Act, however, does

¹⁸ Roger E. Walker, Jr., “Statistical Presentation 2002,” (Springfield, Illinois: Illinois Department of Corrections, August 2003).

¹⁹ Federal Register, “Final 2020 Census Residence Criteria and Residence Situations.”

²⁰ This is a term used exclusively in the US.

²¹ *Baker v. Carr*, 369 U.S. 186 (1962).

²² Rosanna M. Taormina, “Defying One-Person, One-Vote: Prisoners and the ‘Usual Residence’ Principle,” *University of Pennsylvania Law Review*, 152(1), 2003: 436-7.

not specifically ban states from districting around prisons to give rural white voters a greater political voice. Instead, it states that in no way should any processes lessen the power of a minority vote in comparison to a white vote. What makes this problematic is that when redistricting to account for a prison population, counties must be wary of lessening the value of a black or other minority vote. As convicted felons, the prisoners are unable to vote and by increasing the overall population with the prison population, which is disproportionately made up of minorities, the few free residents benefit from greater representation. Essentially, the aim was to make sure minority votes were not diluted in any way. But the process of redistricting with prisons has had the opposite effect and no legal repercussions. Racially neutral policies were developed to increase minority voting power, but unintentionally gave unequal representation to those already holding majority power.

This higher representation gained in counties housing prisons is known as “phantom constituents”.²³ By including prisons in their districts, many counties gain greater political clout without the detriment of prisoners being able to vote and change policies within their towns. Even if prisoners were able to vote, it is important to think about where they would prefer their voices to be heard, whether in their new prison town or their original home communities. By building up the false constituency in rural towns, the US violates the “one person, one vote” principle behind congressional and state legislative representation. While it is less clear how drastically these counties and districts that include prison populations affect democracy at the state or federal level, they make huge differences in the individual counties where this occurs. While this benefits these

²³ Peter Wagner, Meghan Rudy, Ellie Happel, and William Goldberg, “Phantom constituents in the Empire State: How outdated Census Bureau methodology burdens New York counties,” *The Prison Policy Initiative*, July 2007, <https://www.prisonersofthecensus.org/nycounties/report.html>.

rural counties, it disregards the communities where these people would most likely prefer to be counted and gives them an uneven disadvantage at political and economic support.

Voting rights have been racially skewed since the Civil War, despite the adoption of the Fourteenth and Fifteenth Amendments in the US Constitution. After the adoption of these Amendments, this new voting potential “threatened to shift the balance of power among racial groups in the United States”²⁴. The threat of a new racial group gaining the legal right to vote has largely led to the implicit desire to curtail voting rights within this new voting group, African American males. The rates of incarcerated African Americans has largely always exceeded that of the white population and have only increased with the establishment of the War of Drugs in the 1970s that continues to fill prisons disproportionately with black Americans based on minor drug charges and sentencing laws. In Michelle Alexander’s influential recounting of the current status of the discriminatory effects of the penal system in *The New Jim Crow*, she explains how since the 1970s and the establishment of the Rockefeller Drug Laws and President Nixon’s national War on Drugs²⁵, there have been very few changes in both criminality and crime prevention, but incarceration has skyrocketed from around 300,000 prisoners to over 2.3 million²⁶ within a 40-year period. Alexander argues that the problem goes beyond merely prisoners losing their political rights, it is the overall system that disables and disconnects black Americans from their fundamental rights that creates the cyclical process of recidivism and poverty. As she explains, the racialized social control stems from how the penal system and the War on Drugs have been formatted to specifically target blacks to separate them from the mainstream society, which has

²⁴ Behrens, Uggens, and Manza, “Ballot Manipulation and the ‘Menace of Negro Domination,’” 560.

²⁵ For further reading: *The New Jim Crow*.

²⁶ Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie.” *The Prison Policy Initiative*, March 2020, <https://www.prisonpolicy.org/reports/pie2020.html>.

“denied the ability to obtain employment, housing, and public benefits—much as African Americans were once forced into segregated, second-class citizenship in the Jim Crow era.”²⁷ This cycle is only exacerbated by the curtailment of political rights and the loss of a political voice as both individuals and a community.

In the 1974 case *Richardson v. Ramirez*, the Supreme Court held that California, in disenfranchising those felons that have completed their sentences and parole, did not violate the Equal Protections Clause of the Fourteenth Amendment. The Justices argued that prisoners do not garner the same protections as minority groups and thus cannot claim equal protections.²⁸ The US Supreme Court based their decision here on the original intent of section 2 of the Fourteenth Amendment which states that “participation in rebellion, or other crime” is an exception to the Equal Protections Clause and sufficient reason to justify denial of equal representation.²⁹ But the negative implications of this in conjunction with the aforementioned War on Drugs and the sentencing laws that targeted black Americans have been to unequally disenfranchise the black population at alarmingly disproportionate rates.

Several states in the past few years have moved to amend their constitutions to allow ex-felons who had completed their sentences but had been permanently disenfranchised to regain their right to vote. In 2018, one of these states, Florida, voted to pass Amendment 4, overturning a 150-year-old constitutional provision barring all persons with a felony conviction from ever regaining the right to vote. This provision was originally implemented to prevent newly freed slaves from participating in the political community. The amendment restores the right to vote for most

²⁷ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York: New Press, 2010), 4.

²⁸ *Richardson v. Ramirez*, 418 U.S. 24, 94 S.Ct. 2655, 41 L.Ed.2d 551 (1974).

²⁹ US Const., Amend. XIV, § 2.

previously convicted felons, totaling to nearly 1.4 million eligible voters. Within seven months of the amendment's passing, Florida Governor Rick DeSantis passed a bill limiting this new voting group to only those that have paid any outstanding fees and fines associated with their felony convictions in a purported effort to clarify the meaning of "completion of all terms of sentence"³⁰ beyond merely serving out one's parole or probation. However, many critics have likened this bill to a "poll tax", another Jim Crow era obstacle implemented in many states to prevent newly freed slaves from voting, as it requires a monetary stipulation on one's right to vote, which is unconstitutional based on the Twenty-Fourth Amendment stating no person can be denied the right to vote "by reason of failure to pay any poll tax or *other* tax" (emphasis added).³¹ The inclusion of the phrase "other tax" allows for the extension of the amendment to those fees beyond an outright poll tax, essentially any monetary fee that bars a person from exercising their right to vote cannot be justified under this provision.

Florida's Amendment 4 is an important reform of anti-black legislation that has the potential to have lasting consequences for the political makeup of the Republican controlled state. With fears for a political upset, similar to those that existed after the abolition of slavery and the enfranchisement of all newly freed male slaves, the Republican leaders, including the Governor, have aimed to instill confusion and limit the certainty of whether the new legislation will be upheld, likely preventing voter registration. The Republican Party stands to lose political power in Florida as well as the nation, but in expanding voting rights to marginalized groups, the country becomes more equitably represented and democratic.

³⁰ Fla. Const., Art. VI, § IV.

³¹ US Const., Amend. XXIV, § 1.

The United Kingdom

The history of the UK's prisoner disenfranchisement is far less racially charged than that of the US, but its origins come from a similar understanding of citizenship and the rights such a political status entails. The US's legal system is based on the common law system established in the UK, but the history of racial inequality differs drastically, whereas the US was the involuntary home to millions of slaves, the UK kept a comfortable distance from slavery inasmuch as their major economic exploitation on the backs of slaves were made elsewhere through a systematically violent colonial empire that existed well into the mid-twentieth century³². There is a similarly devastating history of slavery and inequality, but in vastly different contexts that evolved in each country very differently. There is clearly a history of racism and discrimination, which plays out in more recent findings of juvenile detention rates of minority communities, which I will focus on in a later chapter.

Starkly in opposition of the disenfranchisement laws for prisoners in the US, in the UK “the right to vote is automatically restored on release from prison”³³. The UK, unlike the US, does not disenfranchise all its prisoners, those in remand and those in part-time imprisonment who spend time in the community to help reintegrate them, though few are aware of this right and thus rarely take advantage of it, so already disenfranchisement in this sense is far less drastic. However, all prisoners currently serving time automatically lose their right to vote, irrespective of gravity of the crime committed or judicial discretion of individual sentences,³⁴ in the centuries old tradition of civil death established by the Forfeiture Act 1870 to punish both bodily and politically. In 1998

³² The violent suppression of the Mau Mau Uprising in colonial Kenya in 1952: Marc Parry, “Uncovering the brutal truth about the British empire,” *The Guardian*, 18 Aug 2016, <https://www.theguardian.com/news/2016/aug/18/uncovering-truth-british-empire-caroline-elkins-mau-mau>.

³³ Ispahani, “Voting Rights and Human Rights,” 31.

³⁴ Ispahani, “Voting Rights and Human Rights,” 42.

the Labour Party passed the Human Rights Act to be in accordance with the European Convention of Human Rights (ECHR), but the Act has been controversial specifically in regards to “parliamentary sovereignty” in terms of legislation concerning voting rights for prisoners.³⁵ The Conservative Party, now the majority in Parliament, has proposed to repeal the Human Rights Act and replace it with a British Bill of Rights that returns power of human rights law to the UK Supreme Court rather than the European Court of Human Rights (ECtHR).³⁶

The most contentious issue had to do with prisoner voting rights which were confirmed a right under Article 3, Protocol 1 of the ECHR in the Court’s 2005 *Hirst v. United Kingdom (No. 2)* decision. Despite States’ wide margin of appreciation in regards to voting rights, the ECtHR ruled the Representation of the People Act of 1983 Section 3, which barred prisoners, including the applicant and life-time serving prisoner John Hirst, from voting in Parliamentary and local elections, violated Article 3, Protocol 1 of the ECHR. The judgment requires a State, when restricting the right to vote, to provide a legitimate aim and be proportionate, without weakening the general spirit of the right, thus no blanket ban on a right could be acceptable. The UK failed in their submissions to prove that banning prisoners from voting helped to further deter crime, as oftentimes the ban had the opposite effect, revealing the ability to vote is an integral part of personal dignity to be a part of the decision-making process that affects one’s life. Moreover, the blanket ban restricted about 70,000 (at the time of the decision) people from taking part in the electoral process, regardless of prison sentences and gravity of crimes committed.³⁷ The ECtHR, in this decision, did not claim States do not have autonomy to decide about limiting prisoner voting

³⁵ UK Parliament, “Human rights and prisoner voting,” accessed 27 May 2020, <https://www.parliament.uk/business/publications/research/key-issues-parliament-2015/justice/human-rights-and-prisoner-voting/>.

³⁶ Johnston, “Prisoners’ voting rights,” 12.

³⁷ *Hirst v. United Kingdom (No. 2)* [2005] ECHR 681.

rights, merely that there has to be some legislative distinction and judicial discretion when sentencing. In automatically disenfranchising all prisoners upon conviction, there is an impairment to the principle of separation of powers beyond the violation of an individual's fundamental right resulting in blanket bans and arbitrariness. While not a solution to the further problem of discrimination in policing, convictions, and sentencing, giving judges discretion in sentencing helps alleviate the problem of an entire prison population from arbitrarily losing the right to vote and participate in the political community.

Since the *Hirst v. UK* decision from the ECtHR, the UK has left the European Union, which, although not linked to the ECtHR's jurisdiction, could have lasting effects on the government's propensity to abide by such regional or international authority.³⁸ The UK delayed responding to the *Hirst* judgement for over a decade, it was only in September 2018 that the Council of Europe decided to close the case after the UK had made some important, but mild changes to prisoner voting laws, which allow for prisoners in remand, prisoners in home detention, and prisoners with minor charges to preserve their voting rights.³⁹ So long as the Conservative Party maintains hold of the Parliament, it is unlikely much change will occur to benefit the right for prisoners to vote, as they were most resistant to the *Hirst* decision.

In contrast, Scotland eased the ban to exclude any convicted person serving less than twelve months' time.⁴⁰ While a small progressive step, Scotland's move towards positive reform was less for the sake of restoring political rights for prisoners and more to avoid granting them to a larger group that might include prisoners serving longer sentences. It was an act of compliance with

³⁸ There is no definitive correlation here, but it must be mentioned as a potential challenge to shaping domestic legislation based on regional and international standards.

³⁹ Johnston, "Prisoners' voting rights," 24.

⁴⁰ Johnston, "Prisoners' voting rights," 26.

ECHR standards that allowed the government to continue to restrict voting rights while merely restoring political participation to a small few. The law, the Scottish Elections (Franchise and Representation) Bill was passed in February 2020, allows those sentenced to less than twelve months the right to vote by mail or proxy *from their permanent home residence*.⁴¹ So unlike the US, those prisoners who have been granted the right to vote are able to influence their home communities and participate in the decision-making process that would affect their lives once released.

While still more restrictive than other countries, particularly in Western Europe, voting rights restrictions in the UK are far less detrimental to the sanctity of democracy, especially since the trend to reframe prisoners is within their home districts, not where they currently reside in prison. The distortion of democracy is less through the loss of voting rights of prisoners in this sense and more entrenched in the potential discriminatory practices of sentencing that creates disproportionate prison demographics that benefit the white majority.

III. Effect of Voter Enfranchisement and Equal Representation

Voting is a democratic value believed to be a right granted to every US citizen entrenched in the Constitution based on post-Civil War Supreme Court precedence and essential amendments.⁴² As previously mentioned, the right to vote was formally granted to all eligible adult US citizens in 1965 via the Voting Rights Act. Yet, there still exists several classes of people that are permanently or temporarily barred from voting, including incarcerated criminals and, in some

⁴¹ Johnston, "Prisoners' voting rights," 26-29.

⁴² US Const., Amends. XIII, XIV, XV, XIX, and XXIV.

states still, ex-felons who have completed their sentences and should be reentering society completely as rehabilitated individuals, which would, theoretically entail a civil rebirth of sorts. The original idea of the penal system was to rehabilitate criminals so they were able to reenter society as reformed and safe citizens. However, in the 1970s, with the change in sentencing laws, implementation of mandatory minimums, and abolition of parole in most states, the prison population has increased to over 2.3 million from roughly 300,000. Unfortunately, in barring anyone convicted of a felony charge, the 2.3 million behind bars are not the only ones who cannot vote. In the UK, the current debates around prisoner enfranchisement center around the same problem, where the right to vote is perceived as a right, not a privilege, that should not be an additional punishment unless strictly prescribed by a judge on an individual basis. Only by some is the right to vote seen as a form of rehabilitation and a necessary aspect of individual autonomy and dignity. Unlike in the US, the prison population (and general population) is far smaller, holding 92,400 inmates, making the comparison weaker by sheer numbers. However, the trends in juvenile numbers are such that there is concern for the future class of potential voters to lose enfranchisement and alter the demographic makeup of voters, diluting the voting power of minority communities.

A major concern about felon disenfranchisement is this dilution of minority votes. In the US in 1982, an African American convicted felon challenged the loss of his right to vote in the Supreme Court case *Wesley v. Collins*, arguing that it negatively impacts the black vote as a whole because of the disproportionate minority prison population in comparison to the free population.⁴³ Wesley lost the case because disenfranchisement laws are technically applied neutrally and equally

⁴³ Alice E. Harvey, "Ex-Felon Disenfranchisement and Its Influence on the Black Vote: The Need for a Second Look," *University of Pennsylvania Law Review*, 142(3), 1994: 1147.

to all felons without regard to race—in other words, they are equal treatment policies, which are constitutionally sound. The problem lies in the negative effects of these policies, namely unequal discriminatory policing, arresting, and sentencing of minorities. The US prison population is made up of all races, but African Americans make up a population that is seven times larger than that of the white population. To put this in terms of voting, 10 percent of the African American voting age population is disenfranchised because it is or has been incarcerated on felony charges, compared to 2 percent of the white population.⁴⁴ Although the African American population is smaller than the white population outside of the prison system, this has a significant impact on the overall power of the black vote when 10 percent could make a difference in general voting trends and is a hindrance on the ability for the black community to effectively express their political will.

Until the past few years, fourteen states, Alabama, Arizona, Delaware, *Florida*, Iowa, Kentucky, Maryland, Mississippi, Nebraska, Nevada, Tennessee, Virginia, Washington, and Wyoming, permanently disenfranchised previously incarcerated persons from the political process.⁴⁵ This is a class of people that though they have completed their sentences and are released back into society still cannot regain their constitutional right as a citizen to vote. Additionally, a person is still counted as a citizen through the US Census despite incarceration status similar to the way slaves were counted as three fifths of a person under slavery in order to grant Southern States greater representative power in Congress. There exists a moral fear that criminals, strictly based on their past behavior and misconduct, will taint the democratic process.⁴⁶ If the purported reason for restricting a prisoner's right to vote is to deter future crime, as is the case in some US states and in the UK, then those who have done the time and paid their dues should regain their

⁴⁴ Behrens, Uggen, and Manza, "Ballot Manipulation and the 'Menace of Negro Domination,'" 574.

⁴⁵ Behrens, Uggen, and Manza, "Ballot Manipulation and the 'Menace of Negro Domination,'" 563.

⁴⁶ Behrens, Uggen, and Manza, "Ballot Manipulation and the 'Menace of Negro Domination.'"

citizenship rights along with their freedom and not be lumped into that category of those unworthy of participating in the political community that makes decisions that affect all citizens.

The effects of this moral quandary were shown in the US context through the national 2000 Presidential Election in Florida when Republican lawmakers feared a loss to Democratic nominee Al Gore. Since prisoners and ex-felons were more likely to vote Democrat, they expunged all votes from anyone with a prison record.⁴⁷ However, their clerical erasures were extremely inaccurate and votes from those still in pre-trial detention, and therefore not yet convicted felons, were also not counted. Even more problematic, any free person without a criminal history with a name that matched that of a felon was unable to vote for apprehension of allowing a disenfranchised person a say in the political process.⁴⁸ There were 58,000 “possible” felons that were barred from voting in that election all because they shared close personal information with felons or soon to be convicted felons. Overall, African Americans made up 46 percent of the Florida population that were inconsistently barred from voting. In some counties, where blacks made up only 11 percent of the voting population, 54 percent of them were unable to cast their vote and exercise their constitutional right.⁴⁹ The outcome of the election shows clear repercussions; Republican candidate George Bush won the presidency over Democrat Al Gore by an extremely narrow margin of 537 votes, according to the Florida State Department. The data shows how, in comparison to the overall total of the Florida population in 2000, the disenfranchised felons and ex-felons are fairly insignificant, but, in comparison to the overall voter turnout in the general election, the 58,000 potential voters could have made all the difference in the election. The election

⁴⁷ Elizabeth A. Hull and John Conyers, *The Disenfranchisement of Ex-Felons*, Philadelphia: Temple University Press, 2006, 134-135.

⁴⁸ Hull, *The Disenfranchisement of Ex-Felons*, 134.

⁴⁹ Hull, *The Disenfranchisement of Ex-Felons*.

was so close that if those 58,000 people who were barred from voting were able to cast their vote, it could have tipped the scale towards Al Gore if they had voted for the Democrat, which they likely were based on racial demographics in voter registration in the state. The difference in votes was so marginal that 58,000 people could have made a drastic difference in the outcome of the future eight years in US politics.

Moreover, based on interviews and research conducted by Jeff Manza and Christopher Uggen, they discovered that an overwhelming majority of prisoners would vote for a democratic candidate. In the 2000 presidential election, they found that 48 percent of a surveyed Minnesota prison would have voted for Gore in comparison to 24 percent for Bush.⁵⁰ That being said, this is a small group within the scope of 2.1 million prisoners in total. However, Elizabeth A. Hull found that, despite what prisoners say they will vote for, many would choose not to vote at all. These are a class of people that are generally less educated and underrepresented without the added marginalization of disenfranchisement. They come from a community that has historically lacked trust in the government that has failed to serve them, and as a result they have little faith that their voices will be heard or have any sort of influence.⁵¹ Of those ex-felons who are able to vote, only a mere 10 percent are likely to register.⁵² While the United States has historically low voter turnout, only 53 percent of the entire population in the 2018 midterm election, the 10 percent of ex-felons is extremely low in comparison. Even if only 10 percent of these ex-felons had voted in the 2000 election, they could have overturned the election of President George W. Bush if they did in fact

⁵⁰ While not the same dataset, it is a comparable survey group in terms of racial demographics and voting trends; Jeff Manza and Christopher Uggen, "Lost Voices: The Civil and Political Views of Disenfranchised Felons," in *Imprisoning America: The Social Effects of Mass Incarceration*, ed. Mary Pattillo, David Weiman, and Bruce Western, (New York: Russell Sage Foundation, 2004), 179.

⁵¹ Hull, *The Disenfranchisement of Ex-Felons*, 127-28.

⁵² Hull, *The Disenfranchisement of Ex-Felons*, 128.

vote majority Democratic, as the Republican win was directly tied to the result of the Florida votes and a mere 538 votes would have been needed.

In the more recent 2016 election, Florida, being the battleground state it typically is, voted for President Donald Trump by a significantly larger margin of 115,000 votes. One study⁵³ found that over 774,000 eligible voters have completed the required terms of their felony convictions yet have been unable to pay the associated fees and fines newly required by the state. If the previously mentioned bill signed by Governor DeSantis goes to the US Supreme Court and is upheld, the 774,000 will be unable to vote. However, if the Supreme Court denies the appeal and supports the lower court's decision, it is likely there could be a major political shift in the upcoming election, so long as they do not choose to hear the case, as it is unlikely it will be decided prior to the upcoming 2020 Presidential Election in November, which will strategically delay the potential shift in political power. Based on voter registration from the more recent 2018 Midterm Election, over 1.4 million black Floridians were registered as Democrats, while only about 60,000 were registered as Republicans,⁵⁴ so it stands to reason that those 774,000 potentially eligible voters would undoubtedly effect change in the state and the country.

The effect of enfranchisement in the UK is less clear. A major difference is the format of government, led by a multiparty representative parliamentary system as opposed to the static dual party bicameral representative system of the US. There is less data about the UK regarding how prisoners gaining the right to vote would affect the system politically, but based on implicit deduction, there are a significant amount of potential voters that could make a difference in the

⁵³ Second Supplemental Expert Report of Daniel A. Smith, Ph.D., Professor and Chair, Department of Political Science, University of Florida, for United States District Court for the Northern District of Florida Tallahassee Division for the case *Kelvin Jones v. Ron DeSantis*, 2 March 2020.

⁵⁴ Florida Department of State, "Bookclosing Reports - General/Primary Elections."

outcome of elections. In 2018, there were over 83,000 incarcerated, a quarter of whom have sentences ranging from one to four years, 48% have sentences longer than four years, and less than 10% have sentences shorter than 12 months, while 13% have indeterminate sentences.⁵⁵ These sentence lengths have been at the center of recent debates regarding reforming prisoner voting rights laws—some believe sentence length should determine whether a prisoner should maintain their right to vote, but there is no consensus over what that length should be, so the percentages could matter if legislation were to be passed. The debates around enfranchising prisoners are ongoing and little change has been made, but the ability to vote, whether or not it is discriminatorily skewed based on racially disparate sentencing, is an important aspect of a stable and legitimate democracy.

Currently in the UK, prisoners of minority ethnicity make up around 27 percent of the overall prison population, but only 13 percent of the general population.⁵⁶ Unlike in the US, voter turnout is generally higher, plus prisoners are far more likely to vote if they were aware they retained that right upon sentencing, as voting has a far more direct impact on the outcome of elections, whereas in the US it is not certain that winning the popular vote means a candidate will be elected.⁵⁷ In the most recent General Election in December 2019, the UK saw a 67.8 percent voter turnout rate,⁵⁸ but the results saw a reduction of seats won by small margins, those below 5 percent,⁵⁹ meaning there is a less likely chance that returning voting rights to prisoners would have

⁵⁵ Georgina Sturge, “UK Prison Population Statistics,” Briefing Paper Number CBP-04334, (London, United Kingdom: House of Commons Library, 23 July 2019), 7-8.

⁵⁶ Sturge, “UK Prison Population Statistics,” 4.

⁵⁷ For more background on the Electoral College look here: The National Archives, “The Electoral College,” <https://www.archives.gov/electoral-college#:~:text=The%20Electoral%20College%20is%20how,the%20President%20and%20Vice%20President>.

⁵⁸ Rod McInnes, House of Commons Library, “General Election 2019: Turnout,” 7 January 2020, <https://commonslibrary.parliament.uk/insights/general-election-2019-turnout/>.

⁵⁹ Rod McInnes, House of Commons Library, “General Election 2019: Marginality,” 7 January 2020, <https://commonslibrary.parliament.uk/insights/general-election-2019-marginality/>.

the same effect as it would in the US. But again, it is the dilution of the power of a vote that is problematically undemocratic, so lawmakers, politicians, and activists must focus on the effect the blanket ban on prisoners voting has on minority communities.

Researchers have identified a starker comparison is the numbers of juveniles disproportionately imprisoned based on racial or ethnic minority status in the UK. The juvenile prison population of minorities amounts to nearly 50% of the juvenile prison population, which could affect adult prison populations in the future if rates of recidivism⁶⁰ in the UK continue. While juveniles do not have the right to vote, this is a growing group of future voters that have a higher chance of reoffending and thus losing their right to vote. As only 13% of the UK general population is BAME (black, Asian, or minority ethnic), nearly 50% of the juvenile population in prisons is a startlingly large proportion.⁶¹ In 2019, David Lammy, an MP from the British Labour Party called for a change in the youth sentencing because of the growing discriminatory practices, comparable to the discrimination levels in the US.⁶² If these trends continue, the UK will ultimately face the problem of discriminatory curtailment of political rights similar to those in the US, which will undoubtedly dilute the power of the BAME political representation.

IV. Implications for Democracy

⁶⁰ In the UK, 75% of ex-inmates reoffend within nine years of release, and 39.3% within the first twelve months; University of Birmingham, “Breaking the Cycle? Prison Visitation and Recidivism in the UK,” accessed 2 June 2020, <https://gtr.ukri.org/projects?ref=ES%2FK002023%2F1>.

⁶¹ Ministry of Justice, “Young people in custody: By ethnicity over time,” 11 May 2020, <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/courts-sentencing-and-tribunals/young-people-in-custody/latest#by-ethnicity-over-time>.

⁶² Jamie Grierson, “More than half of young people in jail are of BME background”, *The Guardian*, last modified 29 Jan 2019, <https://www.theguardian.com/society/2019/jan/29/more-than-half-young-people-jail-are-of-bme-background>.

The right to vote is an essential aspect of legitimizing democracy and the principle of equal representation. It is a right shared by prisoners internationally, particularly in Western Europe and in three territories in the US.⁶³ While there is historical precedence allowing the restriction of certain political and citizenship rights for those convicted of felony charges, there should exist a limit to this restriction, as was argued by the ECtHR in the *Hirst* judgment. Any blanket ban on the right to vote for a particular group goes against established international principles of human rights. In states with such high levels of incarceration, such as the US, national autonomy must be more closely monitored to account for the possibility of a violation of human rights, especially when the system has proven to be racially discriminatory. It is clear there is a level of discrimination in apprehension, charging, trial, conviction, and sentencing that disproportionately affects communities of color, but specifically the black community, which is true of both the US and the UK.

An important aspect of the right to vote is that residents of a state must have equal representation, in other words, “one person, one vote”. This right is diminished for marginalized communities that are disproportionately imprisoned and gerrymandered into homogenously white districts. These communities lose equal representation in a discriminatory system as portrayed in both the US and the UK. A loss of such equal representation amounts to a distortion of democracy by giving the majority racial or ethnic groups stronger voting power and representation while diluting the vote for minority groups.

⁶³ Maine, Vermont, and Puerto Rico.

According to the US Census, “53 percent of the citizen voting-age population voted in 2018, the highest midterm turnout in four decades”⁶⁴. What is most impressive and important to note about this increase is which demographics contributed to voter turnout and the return to more liberal values in those elected. Voter turnout rates among Hispanics and non-Hispanic blacks was 13 and 11 percent, respectively.⁶⁵ These groups are among the most disenfranchised through US Census districting policies and state voting laws regarding prisoners, as Hispanics are incarcerated “at a rate of 1.4 times the rate of whites” and “African Americans are incarcerated...at a rate that is 5.1 times the imprisonment of whites”⁶⁶. Further, 48 out of the 50 US states ban prisoners from voting, 33 ban parolees from voting, and at the time 14 banned former felons from voting, which added up to roughly 2.3 percent of the population of the eligible voters in 2000.⁶⁷ When only half of the eligible voting population votes, 2.3 percent is a significant amount of people that legally cannot vote, despite their citizenship rights. 2.3 percent in 2000 was about 4.7 million people that were unable to vote and participate in the democratic system. No recent presidential election has seen a margin of victory as wide as 4.7 million votes.

In Kristin Henrard’s assessment for the European Commission, it is especially important to safeguard minority rights beyond insisting on mere equality; there needs to be special attention to ensure they have political representation in the form of voting because it “includes ‘participation in decision-making’, which does not only concern election systems, and a voice in the legislative

⁶⁴ Jordan Misra, “Behind the 2018 U.S. Midterm Election Turnout,” US Census Bureau, 23 April 2019, <https://www.census.gov/library/stories/2019/04/behind-2018-united-states-midterm-election-turnout.html>.

⁶⁵ Misra, “Behind the 2018 U.S. Midterm Election Turnout.”

⁶⁶ Ashley Nellis, “The Color of Justice: Racial and Ethnic Disparity in State Prisons,” *The Sentencing Project*, 14 June 2016, <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁶⁷ Manza and Uggen, “Lost Voices,” 165.

process but also representation in the civil service, the police and the judiciary.”⁶⁸ The implications of disenfranchisement and displacement of prisoners and their effects on the political landscape are important when analyzing the US Census policies. It is important to look at the overall affects these processes have on the way prisoners and ex-felons think about the US government and voting in general and whether or not they alter the way in which they vote, if they vote. Considering only 2.3 percent of the eligible voting population is barred from voting and only 53 percent of the population who can vote does vote, it is likely that any change in policy would only have minimal impact on current voting trends or political outcomes. However, allowing this population of people to vote would have a major impact on the way congressional and school districts are drawn and how funding and representation is apportioned. More importantly, these policies reflect the continuing inequality within the US due to the reliance on equal treatment policies instead of looking towards alternatives that would allow all groups to be on an equal footing through comprehensive assessment and acknowledgement of difference rather than ignoring that racial inequality exists. These policies should protect the rights of minorities as vulnerable groups more susceptible to the loss of such rights and equalities—it is not enough to claim equal treatment in the case of political and civil rights.

States still maintain a wide margin of appreciation and autonomy to make decisions regarding voting rights for prisoners, but in states with clearly racially disproportionate trends in sentencing and incarceration, an effective and equitable democracy is lost. For states that have a history of marginalization and racism entrenched in their institutions, a closer examination of the effects of removing the right to vote has on communities of color will be essential in order to

⁶⁸ Kristin Henrard, “Equal Rights versus Special Right? Minority Protection and the Prohibition of Discrimination,” European Commission, (2007), 16.

establish equitable democracy. To claim equal treatment through neutral policies has proven to be insufficient in safeguarding equal representation and the power of a vote. Without restoring the right to vote for marginalized communities that have been disproportionately affected by seemingly neutral policies, democracy cannot be truly legitimate. In restoring these communities their right to vote and actively working to equalize representation, they are better equipped to make autonomous political decisions and have a lasting influence on the outcome of elections and the policies that affect their lives through budgeting, housing, education, and labor reform. No society can claim to be a democracy when there is such a large discrepancy as we have seen in the US context and are likely to see in the UK if changes are not made.

V. Conclusion: Solutions and Remaining Challenges

How far must we allow civil death to go? Any permanent blanket ban on voting rights for all convicted felons is a far-reaching limitation on an internationally protected human right. While not on par with the death penalty, a civil death is a disproportionate sanction for someone serving a relatively short⁶⁹ sentence for what could be considered a minor offense⁷⁰. A civil death should only exist insofar as it is proportional and temporally limited. No person should be barred from political participation after they have served their sentence in full. Once a person reenters the social community, they must also be welcomed back to the political community.

⁶⁹ There have been many debates, particularly in the UK, about what length of sentence should be the limit of which prisoners should regain the right to vote. The example of the recent reform in Scotland, discussed above, is a good indicator of the debate. In the US, however, most drug charges include mandatory minimums based after the original “Rockefeller Drug Laws” of the 1970s that have been adapted on a state-by-state basis, generally require a minimum of five year sentences to be served in full. As such, “relatively short” here is no specific or agreed upon length of sentence.

⁷⁰ For example, a non-violent drug offense in the US, which make up about 40% of all US prison sentences.

It is no surprise, however, that progress has been incremental at best, as those in power are unlikely to give it up easily. Despite the wealth of statistical data and research, there is significant political and moral apprehension to restoring prisoners their right to vote. As it stands, Vermont and Maine remain the only US states that allow their prisoners to vote and only several states have made redistricting with prisons illegal. However, there have been some small, but significant movements towards enfranchising prisoners. In Washington State, racial disparities in the entire process of imprisonment, who is stopped, who is arrested, who is sentenced and to what severity, were so high that they disenfranchised a huge population of minorities. In *Farrakhan v. Gregoire*, the US Circuit Court of Appeals ruled that this was unconstitutional and Washington became the first state to legally ban the disenfranchisement of prisoners.⁷¹ Additionally, many states have moved to ban ex-felon disenfranchisement, leaving only Iowa to maintain such a standard. There is also a proposed law pending in both houses of Congress aptly called the Democracy Restoration Act of 2017. This law would ban states on a federal level from any form of felon disenfranchisement.⁷² Likewise, there are several states that have begun banning the process of redistricting to incorporate prisons within the Census population to enhance voting and political power. Many states have passed legislation that allows them to create their own state-level censuses to correct the discriminatory federal-level census; such states include New York, California, Maryland, and Delaware.⁷³

While prisoners remain disenfranchised in rural towns far away from their homes and families, their voting power becomes diluted and their urban homes lose their voices with less

⁷¹ Although Vermont and Maine also do not ban their prisoners from voting, it was not through the judicial system, rather their original constitutions allowed prisoners to vote.

⁷² Leslie A. Gordon, "Con Census: Court OKs voting for felons, sets up circuit conflicts," *ABA Journal*, 96(5) (2010): 14–15.

⁷³ *Prison Policy Initiative*, "Impact on democracy at the state level," accessed 27 May 2020, <https://www.prisonersofthecensus.org/problem/state.html>.

representation power, which was unjustly reallocated to rural prison towns. Impoverished urban areas lose congressional and state legislative representation and often they lose necessary funding in welfare and education, both of which are very important for low-income neighborhoods to survive and escape the throws of poverty and high rates of incarceration. There needs to be a drastic change in the way the US Census counts people and the methodology in which prisons are incorporated into these counts. Instead of relying on neutral policies that ignore existing inequalities and the disadvantage many minority groups face, the Census should reevaluate the way it counts people to establish a truly equal count. Further, it should work to protect the rights of minorities to ensure equal representation so as not to abuse the neutral policies to shift power away from minorities to the majority group.

It will take a major policy shift to enfranchise prisoners, and although in the US there is federal legislation pending and some state-level reforms and in the UK there have been some parliamentary discussions on the topic, a complete overhaul of centuries old traditions built into political institutions will prove difficult to accomplish. Many politicians are wary of including these groups in the voting population because of the uncertainty of how they will positively (or negatively) affect the voting trends and political outcomes in the future.⁷⁴ Where there exists a clear threat to the political status quo, there is far more reluctance to amend laws barring prisoners from voting. In the UK, there is still strong opposition to prison voting rights within the current majority party, the Conservatives. Now that the UK has officially left the European Union, it is possible there will be less concern to uphold decisions handed down from Strasburg, particularly those that are contrary to the UK's majority party's platform. Many critics of the *Hirst* decision

⁷⁴ Antoine Yoshinaka and Christian R. Grose, "Partisan Politics and Electoral Design: The Enfranchisement of Felons and Ex-Felons in the United States, 1960-99," *State & Local Government Review*, 37(1) (2005), 56.

directly claimed the judgement to go against state sovereignty and a wide margin of appreciation regarding voting rights, showing just how resistant the UK Government will be to changes implemented by outside forces.

One of the cyclical *Catch-22* challenges with re-enfranchising prisoners is that without their ability to vote, they are unable to politically advocate for themselves and their right to vote within the voting process. In moving away from rehabilitative justice, it is difficult to see the value of granting prisoners the right to vote as they no longer amount to persons deserving a second chance for reform. The dignity accompanied with a political voice equal to those in the majority is not found in statistics, but can be deeply influential to the quality of a life. In returning to incarcerated and rehabilitated individuals a political voice, they are returned a sense of dignity and self-worth giving them more power to advocate for themselves and their communities. In both the UK and the US, as the citizenry becomes increasingly polarized and disillusioned by a lack of progress through rights based justice, it becomes even more necessary for individuals to exercise their right to vote and to expand the group of rights holders to include more marginalized groups, including prisoners, but especially those who have completed their sentences. As mentioned, polls show that ex-felons register and vote at a much lower rate than the national average, so there may be little change with the restoration of voting rights. If prisoner enfranchisement becomes the norm, however, it is likely that these trends will change and more people will feel empowered to participate in the political community.

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