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Let locked-up people vote: Prisoners are still citizens and should be able to exert their civic rights

By Rachel Landy

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Let them become productive citizens even behind bars. (David Swanson/AP Photo)

The Constitution does not guarantee all citizens the right to vote. Rather, the right to vote is implied through a patchwork of amendments that restrict how voting rights may be limited. For example, the 15th Amendment reads “[t]he right of citizens of the United States to vote shall not be *denied or abridged*...on account of race, color, or previous condition of servitude.” Subsequent amendments added gender, failure to pay poll taxes, literacy, and age over 18 to the list of characteristics for which *denying* the right to vote may not be based.

These amendments were enacted in response to the 14th Amendment, which ensures all citizens are afforded equal protection under the law and may not be discriminated against in the granting of fundamental rights, such as voting. However, the equal protection guaranteed by the 14th Amendment is not without caveats. In particular, it authorizes states to deny the right to vote based on “participation in . . . crime.”

Many states, including New York, rely on this language to strip voting rights from current prison inmates, regardless of their sentence or offense. In fact, only two states — Maine and Vermont — allow all prison inmates to vote. In New York, this means that nearly [45,000 individuals](#) who find themselves under the Department of Corrections' supervision — whether their convictions involved mass murder or non-violent drug offense — are denied the right to cast ballots in our elections.

A [bill introduced by Brooklyn state Sen. Kevin Parker in October](#) would restore the right to vote to the incarcerated population in state and local correctional facilities. This change is long overdue.

[New York's criminal disenfranchisement scheme was passed during the late 19th century](#) and was originally designed to disenfranchise black adults, who have historically made up a [disproportionate majority of the incarcerated population](#). While recent years have seen the rationale for prohibiting prisoners from voting generally framed in [race-neutral arguments](#) ("[prisoners aren't trustworthy](#)"), proponents of felon disenfranchisement continue to ignore the nature of crime and the fallacies in our criminal justice system — for example, that crimes may have nothing to do with "trustworthiness," and that sentences are not always uniformly and fairly doled out).

Allowing inmates to cast ballots is, on balance, fair and just, and provides the right result for the community.

Former Supreme Court Chief Justice Earl Warren is often quoted in the debate around voting rights for criminals. In *Trop vs. Dulles*, the court was presented with a wartime deserter whose passport application had been rejected. Warren wrote: "citizenship is not a right that expires upon misbehavior."

Just like that soldier, prisoners retain their citizenship despite being found guilty of a crime. Their passports are not voided. Prisoners are not denied their right to practice religion, even if their crimes are borne out of religious extremism. They are counted in the Census and thus considered when congressional districts are delineated — yet, unlike all other citizens, they have no say in who represents them in Congress.

Moreover, restoring the right to vote keeps inmates engaged with their community and as a result, reduces recidivism. [Studies](#) show that when individuals engage in civic participation, they are less likely to take actions that would disassociate themselves from their community. Allowing inmates

to vote pays dividends once prisoners are released, as it is easier for an individual to reintegrate into a community that it has remained connected to throughout incarceration. And, if recidivism decreases, the prison population decreases, and with it, the cost to taxpayers.

As an additional benefit, Parker's bill would authorize correctional facilities to become polling places. This change should increase turnout among the [7,500 inmates held each day](#) in pre-trial detention, who still have the right to vote, but only if they can navigate New York's arcane [absentee ballot framework](#) to exercise their rights.

Re-enfranchising inmates would be a big step towards the promise of democracy in New York. Let's take it.

Landy is co-chair of the Legislative Affairs Committee of the New York Democratic Lawyers Council.