

Jim Crow in New York

By Erika Wood and Liz Budnitz
with Garima Malhotra

Introduction by Charles J. Ogletree, Jr.
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BRENNAN CENTER
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at New York University School of Law

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Introduction

One of the most extraordinary moments of my life came a year ago as I witnessed my fellow citizens elect my former student, Barack Obama, as the President of the United States of America. More African-American and Latino voters cast a ballot in that election than in any other election in the country's history. Then, this June, I experienced great relief as the United States Supreme Court upheld the constitutionality of Section 5 of the Voting Rights Act by an 8-1 margin, thus preserving our commitment as a nation to vigilantly enforce the voting rights of all citizens. This is a good year for all of us who have struggled for an equitable and fair distribution of the franchise.

But protecting the rights of minority voters is still a full-time job. And, lest we lose our sense of urgency, the Brennan Center for Justice's remarkable new report on the historical roots of felony disenfranchisement in the Empire State, *Jim Crow in New York*, reminds us that there is still much work to do. Felony disenfranchisement laws have stripped the right to vote from two million black Americans. This number includes 13% of all African-American men. In New York, 80% of the roughly 100,000 adults who have lost their right to participate in self-government because of a criminal conviction are black or Latino. At a time when we congratulate ourselves as a society on our progress in the struggle for racial equality, those of us who refuse to be satisfied until all votes – and all people – are of equal worth must reenergize to fight against felony disenfranchisement laws.

Some might ask why we should be troubled by the high percentage of African Americans who are disenfranchised because of prior convictions. Isn't the salient factor criminality? Black, White, Latino, or Asian, why should any criminal who is still under the supervision of the state be given the right to participate in government? *Jim Crow in New York* begins to answer that question.

When a law can be traced clearly to a racially discriminatory start-point, the burden of proving the absence of racial taint in the current operation of the law should fall on those who seek to justify its continued existence. As readers will discover in the pages that follow, suppressing the black vote is not a legislative purpose that was limited to the deep South. In response to the abolition of slavery and the passage of the Reconstruction Amendments, legislators in New York sought to prevent free blacks from voting by any means possible. And while laws preventing criminals from voting extend back far before the Civil War, those measures are truly benign in comparison to the scope and target of the laws that continue to impact – true to their intent – a disproportionate number of would-be minority voters today.

This mass silencing of black Americans is even more troubling when viewed through the lens of a discriminatory justice system. Black Americans – and other people of color – are often the recipients of uneven treatment at all stages of the criminal justice process. From police profiling of individuals and communities of color, to the severity of charges brought, the juries selected for trial, and the punishments imposed, disparate administration of the laws results in hugely disproportionate numbers of people of color who are under the supervision of the criminal justice system.

But racial fairness is not the only reason to advocate for the end of felony disenfranchisement laws. When people with criminal convictions re-enter society after periods of incarceration, although often jobless, isolated, and broken, they must begin to re-connect and re-engage with their communities. *We have a stake in whether they succeed.* Housing individuals who commit a crime costs an exorbitant percentage of our taxpayer revenue – money that can be better spent improving our schools or putting more police officers on the street. Yet, one-third of individuals released from prison are re-arrested within three years. We can and must do better. Providing all people who reside in the community with a share in the responsibility of government and a voice in the outcome of community decisions (especially at the local level) increases the likelihood of a smooth transition from “felon” to stakeholder and productive citizen.

Against these strong historical and practical reasons to re-examine our adherence to criminal disenfranchisement, some continue to argue that extending the vote to all citizens who live in the community will result in a dilution of the social order and debasement of the privilege of voting. But these arguments do not withstand careful scrutiny. As Justice Thurgood Marshall reminded us nearly four decades ago, “[t]he ballot is the democratic system’s coin of the realm. To condition its exercise on support of the established order is to debase that currency beyond recognition.” Indeed, restoring the right to vote to all of us who live and pay taxes in the community will have the predictable and desirable effect of reducing discrimination in the administration of criminal laws and increasing the participation levels of minority voters. The upshot would be a lot fewer people of color to disenfranchise.

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Jim Crow in New York

It is widely known and well documented that Americans used the law to keep African-American voters out of the electoral process throughout the Deep South. In the late 1800s, Jim Crow laws spread as part of a backlash against the Reconstruction Amendments – the Thirteenth, Fourteenth, and Fifteenth Amendments of the U.S. Constitution – which ended slavery, granted equal citizenship to freed slaves, and prohibited racial discrimination in voting.¹ The uproar worked its intended purpose: large segments of the African-American population were effectively removed from the democratic process for sustained periods, in some cases for life.²

Jim Crow laws worked their intended purpose: large segments of the African-American population were effectively removed from the democratic process for sustained periods—in some cases for life.

Less known is that criminal disenfranchisement laws were part of the effort to maintain white control over access to the polls.³ Between 1865 and 1900, a period when African-American men were, theoretically, granted greater voting rights state-by-state, and ultimately enfranchised by the Fifteenth Amendment, 19 states passed criminal disenfranchisement laws. By 1900, 38 states deployed some type of criminal voting restriction.⁴ These laws disenfranchised convicted individuals long after their release from prison; many dictated that individuals released from prison could not vote unless they had been pardoned by the governor.⁵

States also adapted their criminal codes to punish those offenses with which they believed freedmen were likely to be charged, including bigamy, vagrancy, petty theft and burglary.⁶ Together, targeted criminalization and felony disenfranchisement stripped African Americans of their voting rights – and suppressed African American’s political power for decades.⁷ The discriminatory impact of these laws and practices continues to this day. Nationwide, 8% of the African-American population, or 2,000,000 African Americans, are disenfranchised.⁸ Given current rates of incarceration, approximately one in three of the next generation of black men will be disenfranchised at some point during their lifetime.

But Jim Crow was not confined to the South. He made his home in northern states as well, perhaps most notably in New York. Starting in the 18th century, the history of New York’s election laws follows this national narrative. In fact, New York was the only state in the country to require blacks – and only blacks – to own real property in order to qualify to vote.

Jim Crow was not confined to the South.

New York’s criminal disenfranchisement provisions, like those deployed in the South, were part of a concerted effort to exclude African Americans from participating in the political process. As African Americans gained freedom with the gradual end of slavery, New York’s voting qualifications – including criminal disenfranchisement laws – became increasingly more restrictive. A careful reading of New York’s constitutional history reveals that at the very time that the Fourteenth and Fifteenth

Amendments forced the state to remove its nefarious property requirements for African-American voters, New York changed its law from allowing to *requiring* the disenfranchisement of those convicted of “infamous crimes.”

Today, New York’s criminal disenfranchisement law is nearly identical to the provision enacted 140 years ago. And it continues to disenfranchise large numbers of African Americans and other ethnic minorities.

Today, New York’s criminal disenfranchisement law is nearly identical to the provision enacted 140 years ago. And the law continues to have its originally intended effect: the widespread disenfranchisement of African Americans and other ethnic minorities. More than 108,000 New Yorkers cannot vote because of a conviction in their past.⁹ Almost half of these disenfranchised citizens have completed their prison sentence and are living and working in the community.¹⁰ Nearly 80% of those who have lost their right to vote under New York’s law are African-American or Hispanic.¹¹

Discriminatory Beginnings: New York’s 1777 Constitution and the Voter “Fraud” Act

The first New York State Constitution was adopted in 1777 and limited the franchise to any “freeman.”¹² It required all voters to pay taxes to the state and own real property in their county of residence.¹³ Although free black men were technically allowed to vote, virtually none owned real property at the time and thus blacks effectively were disenfranchised under the state constitution.¹⁴

In 1799, the New York legislature passed a law providing for the gradual emancipation of slaves. The law contained no mention of black voting rights and the constitutional property qualifications for voting remained unchanged.¹⁵ The gradual emancipation law did not free all slaves; instead, it freed children born of slave mothers after 1799, but required these children to remain slaves until their mid-twenties.¹⁶

Over the next decade, the free black population grew steadily in New York, tripling between 1790 and 1800 and then doubling again during the course of the next decade.¹⁷ Although race and suffrage had not been legally linked before, in 1811 the state legislature passed the “Act to Prevent Frauds and Perjuries at Elections.”¹⁸ Under the guise of preventing voter fraud, this law was designed to depress black voter turnout by raising obstacles targeted specifically at African Americans. Before voting, blacks had to obtain a document certifying their freed status from a “supreme court justice, mayor, recorder, or ... court of common pleas,” pay a fee and present the documentation at the polls.¹⁹ The law realized its intended effect: the few black men who were on the voter rolls effectively dropped off.²⁰

The Debates of the 1821 Convention: “The Minds of Blacks Are Not Competent to Vote.”

When the New York legislature finally passed a universal emancipation bill in 1817, the final date for liberty of all slaves in the state was set for July 4, 1827.²¹ Again, the bill made no mention of voting rights for the freed slaves.

Meanwhile, the franchise began to open, dramatically, across the country. Urban populations swelled with growing numbers of laborers and merchants, many of whom owned no property. The result was an increasingly large and prominent slice of the population that was disqualified from voting. Combined with the formation of broadly based political parties competing for votes, the swelling ranks of disenfranchised citizens provoked many states to eliminate their property requirements.²² Between 1790 and 1850, every state in the union held at least one constitutional convention; laws requiring eligible voters to own property began to be dismantled state-by-state.²³

During this period, New York was home to the largest number of blacks of all the northern states, including nearly 30,000 “free persons of color” and some 10,000 slaves due to be freed in 1827.²⁴ More African Americans – slaves and free blacks – were concentrated in New York City at this time than anywhere else in the country except Charleston, South Carolina.²⁵ The black vote was a small fraction of the total electorate. But, in a close election, it could swing key districts and even decide the balance of power in the state assembly.²⁶

By 1820, New York was one of nine states (out of the twenty-three states then existing) that continued to impose property qualifications on all voters.²⁷ Four years after the 1817 emancipation law was enacted, New York held another constitutional convention at which suffrage was the central concern.

At the New York Constitutional Convention in 1821, the Committee on the Elective Franchise proposed eliminating property requirements and extending suffrage to every white male citizen of the state, for the first time explicitly disenfranchising all black men.²⁸ This proposal was one of the Convention’s most controversial. The delegates, New York’s leading politicians elected to represent their counties at the Convention, engaged in a fierce debate over the right of suffrage and equality for African Americans.

Delegate John Ross argued that the franchise must be limited to white men because:

[Blacks] are a peculiar people, incapable, in my judgment, of exercising that privilege with any sort of discretion, prudence, or independence. They have no just conceptions of civil liberty. They know not how to appreciate it, and are consequently indifferent to its preservation.²⁹

Delegate Samuel Young agreed, stating:

The minds of the blacks are not competent to vote. They are too much degraded to estimate the value, or exercise with fidelity and discretion that important right. It would be unsafe in their hands.³⁰

Delegate Peter R. Livingston made similar arguments, asking delegates to:

[L]ook at that people, and ask your consciences if they are competent to vote. Ask yourselves honestly, whether they have intelligence to discern, or purity of principle to exercise, with safety, that important right.³¹

In comments that ring with a special irony today, Delegate Olney Briggs stated:

[I]t was said that the right of suffrage would elevate them. He would ask whether it would elevate a monkey or a baboon to allow them to vote. No, it would be to sport, and trifle, and insult them, to say that they might be candidates for the office of president of the United States.³²

Importantly, during the debate several of the delegates pointed to alleged criminal propensities as a reason to restrict the black vote. In a refrain that echoes throughout the centuries-long suffrage debate, Delegate Young implored, “[l]ook to your jails and penitentiaries. By whom are they filled? By the very race whom it is now proposed to cloth with the power of deciding upon your political rights.”³³

Delegate Livingston concurred:

Survey your prisons – your alms-houses – your bridewells and your penitentiaries, and what a darkening host meets your eye! More than one-third of the convicts and felons which those walls enclose, are of your sable population.³⁴

Given current rates of incarceration, approximately one in three of the next generation of black men will be disenfranchised at some point during their lifetime.

Several delegates argued in favor of black voting rights. Peter Jay, son of former New York Governor John Jay, emerged as the most outspoken opponent of black disenfranchisement at the Convention:

Why, sir, are these men to be excluded from rights which they possess in common with their countrymen? ... Why are they, who were born as free as ourselves, natives of the same country ... now to be deprived of all those rights, and doomed to remain forever as aliens among us?³⁵

In an argument that continues to resound today, Delegate Abraham Van Vechten contended that those who pay taxes and live and work in New York communities should be entitled to vote:

Are they not taxable, and do not many of them pay their proportion of taxes in common with white citizens? ... Do we not daily see them working side by side with white citizens on our farms, and on our public highways? ... How then can that distinction justify us in taking from them any of the common rights which every other free citizen enjoys?³⁶

Delegate Robert Clark agreed, stating:

[I]s it consistent with sound policy, to compel a large portion of your people and their posterity, forever to become your enemies, and to view you and your political institutions with distrust, jealousy ... to alienate one portion of the community ... from their own political institutions?³⁷

The proposal to disenfranchise all black men by adding the word “white” to the Constitution’s voting requirements narrowly failed, by a vote of 63 to 59.³⁸ Nevertheless, the delegates severely restricted the black vote in two important ways. First, the Convention eliminated the property qualifications for all white men, while simultaneously enacting steep property qualifications specifically for black men. These new qualifications required all black men to possess a freehold estate with a minimum value of \$250.00 (equivalent to about \$4,000.00 in 2009 dollar value).³⁹ In fact, New York was the *only* state at this time to impose property qualifications exclusively on African-American men.⁴⁰ Second, a provision was added to the state Constitution stating: “[l]aws may be passed, excluding from the right of suffrage, persons who have been, or may be, convicted of infamous crimes.”⁴¹ The first criminal disenfranchisement provision in the New York State Constitution was born.

1846: Emancipated, But Still Disenfranchised

In 1827, New York ended slavery once and for all.⁴² Still, the New York Constitution required black men – and only black men – to own property in order to vote. The criminal disenfranchisement provision remained in place.⁴³ Another Constitutional Convention was called in 1846. Almost twenty years after New York’s abolition of slavery, delegates to the Convention still refused to eliminate the discriminatory voting restrictions. There were two competing suffrage proposals at the 1846 Convention. One sought to amend the constitution to limit suffrage to “[e]very *white* male citizen of the age of twenty-one” and the other sought to enfranchise black men by eliminating the property qualifications.⁴⁴ Although it had been 25 years since the last Convention, the debate suggests little had changed in the delegates’ attitudes toward their African-American neighbors.

Delegate John Kennedy pled:

To permit the Ethiopian race to become an important portion of the governing power of the state! To allow that race, the farthest removed from us in sympathy and relationship of all into which the human family is divided, to become a participant in governing, not themselves, but us! Nature revolted at the proposal.⁴⁵

Delegate Kennedy then continued the theme introduced during the 1821 Convention, linking his opposition to black suffrage to an alleged criminal propensity. Saying there was “more vice among colored people than whites, in proportion to the population of each respectively,” Delegate Kennedy detailed the number of black convicts in city jails and state prisons.⁴⁶ According to Delegate Kennedy, blacks were more than three and a half times more likely than whites to be incarcerated in New York City jails for minor crimes.⁴⁷ Delegate Kennedy also pointed to the disproportionate number of blacks in the state prisons, stating “the relative proportion of infamous crime is nearly thirteen and a half times as great in the colored population as in the white.”⁴⁸ He then concluded that this statistic “contained evidence of a criminal disposition in the race” that he had “never before rightly appreciated.”⁴⁹

Representative John Hunt invoked fear that blacks would dominate government if allowed to vote:

We want ... no masters, and least of all no negro masters, to reign over us. We contend for self-government ... we will not meddle with their government in St. Domingo nor in Africa, and, if we can prevent it, they shall not meddle with ours.⁵⁰

Saying there was “more vice among colored people than whites, in proportion to the population of each respectively,” Delegate Kennedy, at New York’s 1821 Convention, detailed the number of black convicts in city jails and state prisons.

As in the previous Convention, a few delegates rose to argue in favor of removing the property qualifications for blacks. Delegate Federal Dana attributed the large number of blacks in prison to their mistreatment during slavery and in the courts.⁵¹ Delegate George A. Simmons eloquently opined that “[p]olitical slavery was but one remove from civil slavery.”⁵²

In the end, the proposal to amend the Constitution to eliminate the property requirements and enfranchise black men was defeated 53 to 30.⁵³ But the delegates reached an agreement and adopted a resolution providing that a proposed constitutional amendment would be put to the voters at the next general election.

The proposed amendment read:

Colored male citizens possessing [age and citizen] qualifications ... other than the property qualification, shall have the right to vote for all officers that now are, or hereafter may be, elective by the people after the first day of January 1847.⁵⁴

Voters rejected the proposed enfranchisement amendment by a landslide vote of 223,834 to 85,306. Property qualifications for blacks remained in place.⁵⁵ By the end of the 1850’s, New York distinguished itself as the only state in the union that made property ownership a voting requirement for African Americans.⁵⁶

The delegates to the 1846 Convention redrafted the criminal disenfranchisement provision to specifically include two additional offenses: bribery and larceny.

The new provision read:

Laws may be passed, excluding from the right of suffrage all persons who have been or may be convicted of *bribery, larceny, or of any infamous crime*.⁵⁷

During the Convention, delegates expressed concern about increased corruption in elections, particularly bribery and vote selling.⁵⁸ The frequency of bribing election officials and buying votes during this time is well-documented;⁵⁹ however, our research uncovered no justification for the specific inclusion of larceny. By at least one account, more than half of those imprisoned in New York City jails in 1830 were convicted of larceny.⁶⁰ Thus, it appears that the specific inclusion of larceny at this time would disenfranchise a large number of individuals whose convictions would not otherwise have been included under the “infamous crimes” provision.⁶¹ This fact, coupled with the delegates’ lengthy discussion about the large proportion of blacks incarcerated in New York City

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jails, may explain the decision to include larceny in the list of crimes that would result in disenfranchisement.

Even in the wake of the Civil War and as states were ratifying the Fourteenth Amendment, the expansion of the franchise in New York was met with the same opposition as it had been for the last one hundred years. At New York's Constitutional Convention in 1867, Delegate H.C. Murphy stated that the extension of the franchise was morally and socially wrong, and that it would "confound the races, and ... destroy the fair fabric of democratic institutions, which has been erected by the capacity of the white race."

Violent Resentment of the Civil War and its Aftermath

In 1863, New York City was the nation's commercial and manufacturing center, but it remained sharply divided along lines of race, class and politics. It also harbored a deep, anti-Civil War resentment.⁶² In July 1863, this divide – as well as fierce opposition to the war and its consequences – ignited the notorious New York City Draft Riot, four days of mob terror which one noted historian calls "the largest civil insurrection in American history apart from the South's rebellion itself."⁶³ Beginning with an attack on a conscription office, the riot quickly developed into "a wholesale assault upon all the symbols of the new order being created by the Republican Party and the Civil War."⁶⁴ Blacks were targeted, and at least 105 people were murdered and hundreds more driven from the city.⁶⁵ The riots augmented the tense race relations in the city during the era, and led to a population decline of over 2,500 blacks in the city between 1860 and 1865.⁶⁶ Although New York City was by some measures the beacon of Northern free society, it remained bitterly divided by the changes brought on by the Civil War.

When the Civil War ended in 1865, America's slaves were finally and forever freed. Between 1865 and 1870, the country adopted the Reconstruction Amendments – the Thirteenth, Fourteenth and Fifteenth Amendments to the U.S Constitution – which opened the door to a "new birth of freedom," ending slavery, granting equal citizenship to freed slaves and prohibiting racial discrimination in voting. Not surprisingly, these sweeping constitutional changes rekindled the national debate on black suffrage.

New York convened another Constitutional Convention in 1867. The Convention summoned a Committee on Suffrage, which recommended removing the black-only property qualification.⁶⁷ But even in the wake of the Civil War and as states were ratifying the Fourteenth Amendment, the expansion of the franchise in New York was met with the same opposition as it had been for the last one hundred years. Delegate H.C. Murphy stated that the extension of the franchise was morally and socially wrong, and that it would "confound the races, and ... destroy the fair fabric of democratic institutions, which has been erected by the capacity of the white race."⁶⁸

Delegate Stephen Colahan opined:

I believe, sir, that the white race, politically, should have some superior and distinctive position; and that the black race, but yesterday freed from slavery, educated in ignorance, mentality and dependence, wallowing in contented obfuscation, and satisfied oblivion ... is no race that can command or justly deserve the suffrage from me, when the gift of that suffrage would of necessity injure my country and affect my race.

Once again, a compromise was reached whereby the new constitution would be put to a statewide referendum in 1869, and the question whether to eliminate the property requirements for African-American men would be put to registered voters.⁷⁰ Most delegates knew the provision would not pass.⁷¹ As the 1869 election approached, rallies filled with anti-black sentiment proliferated. Two African-American ministers were stoned and beaten in New York City.⁷² In the end, the proposed suffrage provision was defeated by the voters: the property requirements stayed in place, the felony disenfranchisement provision continued unchanged, and blacks remained disenfranchised.⁷³

1872: A Bait and Switch

By 1870, three-fourths of the states, including New York, had ratified the Fifteenth Amendment to the U.S. Constitution, officially granting all African-American men the right to vote throughout the country.⁷⁴ That same year, however, the New York legislature voted to rescind the state's ratification, demonstrating continued hostility to full citizenship for African Americans. This effort was not recognized by Congress and had no effect on the Fifteenth Amendment's legitimacy.⁷⁵

In 1872, in the wake of the Fifteenth Amendment, Governor John Hoffman proposed a Constitutional Commission to be comprised of 32 "eminent citizens" for the purpose of proposing constitutional amendments to the legislature.⁷⁶ The Commission convened from 1872 to 1873 and eventually recommended to the legislature in March 1873 full removal of the property requirements for black citizens.⁷⁷ The scant recorded history of this Commission makes clear that the proposal was introduced only because the property requirements were superseded by changes in the U.S. Constitution.⁷⁸ At long last, in November 1874 – four years after the Fifteenth Amendment was ratified and long after the rest of the country⁷⁹ – the New York legislature adopted the Convention's proposed amendment to the state constitution, eliminating property requirements for African

Americans and granting the right to vote to all male citizens, regardless of race or ethnicity.

However, the same 1872 Commission that eliminated the black property requirements also made a small and barely-noticed change to the wording of the criminal disenfranchisement law which had an enormous – and lasting – adverse impact on African-American suffrage. Prior to 1874, when slavery was still legal and property requirements for black men remained in place, New York’s criminal disenfranchisement provision was merely permissive: that is, the state Constitution left it to the discretion of individual counties whether to disenfranchise those with criminal convictions.⁸⁰

However, in 1874, the same year New York eliminated property requirements and granted voting rights to African-American men throughout the state, the state amended its Constitution from *allowing* counties to decide whether to disenfranchise those convicted of crimes, to *requiring* disenfranchisement throughout the state of anyone convicted of an “infamous crime.”⁸¹ The new provision stated: “The legislature, at the session thereof next after the adoption of this section, *shall* ... enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.”⁸²

By 1874, New York’s amended law fell into a national pattern in which criminal disenfranchisement policies provided a useful means of circumventing the Reconstruction Amendments and suppressing black voters.

Although the details of the debates and discussions in previous constitutional conventions were carefully transcribed, there is little recorded history of the 1872 Commission. The Journal of the Constitutional Commission of 1872 contains no transcribed debate on the proposed amendments, but rather lists only the votes for and against the various proposals.⁸³

New York’s calculating constitutional amendment falls into a national pattern in which criminal disenfranchisement policies provided a useful means of circumventing the Reconstruction Amendments and suppressing black voters. During the period between 1865 and 1900, 19 other states passed criminal disenfranchisement laws.⁸⁴ By 1900, 38 states had some type of criminal voting restriction.⁸⁵ This national movement, together with New York’s long and notorious history of deliberate efforts to disenfranchise African Americans, the enduring, widespread and well-documented belief among policymakers that blacks were more likely to commit crimes, and the timing corresponding with the elimination of black property requirements, all lead to the same conclusion: the amendment was intended to suppress the African-American vote in New York.

Lasting Effects

The mandatory criminal disenfranchisement provision put in place in 1874 is nearly identical to the provision that remains the law in New York today, and it continues to have its intended effects.⁸⁶ The current law in New York denies the right to vote to any citizen in prison or on parole.⁸⁷ Nearly 80% of those who have lost their right to vote under New York's law are African-American and Hispanic.⁸⁸ Almost half of those disenfranchised are out of prison, living in the community.⁸⁹

Certainly the immoral roots and the continuing discriminatory impact of these laws are sufficient to warrant their elimination. But these laws harm our larger society and our local communities on a number of levels. Continuing to deny the right to vote to people who are out of prison and living in the community is contrary to the modern ideal of universal suffrage at the very heart of our American democracy. The foundation of our democracy is the belief that each citizen is entitled to cast one vote, and each vote counts the same regardless of who casts it. Linda Steele, a New Yorker who voted for the first time in November 2008 after having lost and then regained her right to vote following a felony conviction, explained:

There were tears in my eyes as I waited to vote. I felt like I was finally a productive member of society... I walked out of the polling place felling like I mattered, that I had made a difference. I realized how far I've come.⁹⁰

Restoring voting rights to people who are in the community increases public safety. Many law enforcement and criminal justice officials are speaking out against disenfranchisement because they recognize that bringing people into the political process makes them stakeholders, which helps steer former offenders away from future crimes.⁹¹

Criminal disenfranchisement laws also harm families and entire communities.⁹² Studies show that denying the vote to one person has a ripple effect across families, dramatically decreasing the political power of urban and minority communities. This is certainly the case in New York, where over half of the prison population hails from New York City.⁹³ New Yorker Marc Ramirez, who voted for the first time in 2008 with his son, described his experience: "[My son and I] talked about voting, what it meant, the candidates, and whether or not he was going to vote. I think knowing that I was also voting made him feel like he was on the right track."⁹⁴

Denying the vote to one group has a ripple effect – dramatically decreasing the political power of urban and minority communities.

The Brennan Center for Justice has also documented persistent and widespread confusion among New York election officials which creates the potential for de facto disenfranchisement of hundreds of thousands of eligible New Yorkers with criminal histories.⁹⁵ As a result, the voting strength of eligible voters in their home communities is severely weakened by criminal disenfranchisement laws.

Despite its long, shameful history of prejudice and discrimination, New York has taken important steps in recent decades to address these harms and alleviate the racial inequalities. Both New York State and New York City have strong anti-discrimination laws that prohibit discrimination in employment, housing and public accommodations.⁹⁶ Indeed, New York is one of only a few states that prohibit employers from discriminating against people with criminal records.⁹⁷ Nevertheless, New York's criminal disenfranchisement law remains a lasting relic of an era which should be consigned to the past. We cannot erase this past, but we must learn from it and work to change the future.

Recommendations

1. New York should restore voting rights to people on parole.

An important step towards full departure from our racist history is to restore voting rights to the thousands of New Yorkers who are living in the community. Moreover, the complicated eligibility standards established by the current Election Law result in the illegal *de facto* disfranchisement of New Yorkers who are eligible to vote. The system should be simplified by amending the law to restore voting rights automatically to all New York citizens as soon as they are released from prison.

2. The New York Legislature should enact notice and public education requirements.

To help rectify and eliminate some of the existing confusion among the county boards of elections and the general public, the Legislature should require the Department of Corrections, probation, parole and supervised release offices to notify people of their right to vote and to provide voter registration forms. The legislature should also require county election officials and criminal justice agencies to receive regular training on the voting rights restoration law and voter registration procedures.

3. The State Board of Elections should initiate a public communications campaign to educate New Yorkers about voter registration for people with felony convictions.

In addition to the notification of individuals who have been directly affected, the State Board of Elections should initiate a state-wide public communications campaign to clarify this issue for the New York population as a whole. Through public service announcements in print media, television, and radio outlets, as well as posting information on its website and those maintained by local boards, the State Board must make clear that people with criminal histories are eligible to vote in New York.

4. The State Board of Elections should launch a statewide campaign to educate and register voters in minority communities.

There is widespread confusion and distrust among minority communities in the state regarding voter registration and going to the polls. The State Board of Elections should launch a statewide campaign to encourage voter registration and participation in communities of color.

Endnotes

- ¹ See ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION 1863-1877, 422-23, 587-88, 590-92 (2002); ALEXANDER KEYSSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 84, 88-91 (rev. ed. 2009); DOUGLAS A. BLACKMON, SLAVERY BY ANOTHER NAME 42, 85 (2008).
- ² See KEYSSAR, *supra* note 1, at 88-91.
- ³ See KEYSSAR *supra* note 1, at 89; see also JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 55-58 (2006) [hereinafter "MANZA & UGGEN, LOCKED OUT"]; Alec C. Ewald, "Civil Death": *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1065-66 (2002); Angela Behrens et al., *Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 AM. J. SOC. 559, 563 (2003).
- ⁴ MANZA & UGGEN, LOCKED OUT, *supra* note 3, at 55, 238-39 Tbl. A2.1 (A typo in the text indicates 28 states, but the table correctly lists 38).
- ⁵ See MANZA & UGGEN, LOCKED OUT *supra* note 3, at 55.
- ⁶ See Ewald, *supra* note 3, at 1090-95; see also FONER, *supra* note 1, at 593-94; BLACKMON, *supra* note 1, at 53-54.
- ⁷ See Ewald, *supra* note 3, at 1090-91.
- ⁸ See MANZA & UGGEN, LOCKED OUT, *supra* note 3, at 253 (data compiled in 2004).
- ⁹ There are currently 42,972 individuals on parole in New York, see N.Y. State Division of Parole, Parolee Facts, <https://parole.state.ny.us/PROGRAMstatistics.asp> (last visited June 9, 2009) [hereinafter "Parolee Facts"], and 62,599 inmates in correctional facilities see STATE OF NEW YORK DEP'T OF CORRECTIONAL SERVS., HUB SYSTEM: PROFILE OF INMATE POPULATION UNDER CUSTODY ON JANUARY 1, 2008 2 (2008) [hereinafter "HUB SYSTEM"] *available at* http://www.docs.state.ny.us/Research/Reports/2008/Hub_Report_2008.pdf. Note, however, that of the inmate population, 969 are youthful offenders and 207 were sentenced as juvenile offenders. See HUB SYSTEM at 27. There are also an estimated 2,904 individuals in local jails who are disenfranchised. See MANZA & UGGEN, LOCKED OUT, *supra* note 3, at 249.
- ¹⁰ See Parolee Facts, *supra* note 9.
- ¹¹ A total of 81,288 African Americans and Hispanics on parole and in prison are disenfranchised in New York. This statistic does not take into account the number of African Americans and Hispanics in local jails who are disenfranchised. Of the 42,972 on parole, 52% (22,345) are African American, and 25% (10,743) are Hispanic. See Parolee Facts, *supra* note 9. Of the 62,599 people in prison, 51.3% (31,925) are African-American and 25.9% (16,275) are Hispanic. See HUB SYSTEM, *supra* note 9.
- ¹² N.Y. CONST. art. VII (1777).
- ¹³ See *id.* See also SEAN WILENTZ, THE RISE OF AMERICAN DEMOCRACY JEFFERSON TO LINCOLN 189 (2005).
- ¹⁴ See N.Y. STATE CONST. CONVENTION COMM. OF 1938, PROBLEMS RELATING TO HOME RULE AND LOCAL GOV'T 142 (1938) [hereinafter "HOME RULE"]. See also PETER J. GALIE, ORDERED LIBERTY: A CONSTITUTIONAL HISTORY OF NEW YORK 77 (1996).
- ¹⁵ *Gradual Abolition Act, 1799*, in JIM CROW NEW YORK: A DOCUMENTARY HISTORY OF RACE AND CITIZENSHIP 1777-1877 52-53 (David N. Gellman & David Quigley eds., 2003) [hereinafter "JIM CROW NEW YORK"].
- ¹⁶ See LESLIE M. HARRIS, IN THE SHADOW OF SLAVERY: AFRICAN-AMERICANS IN NEW YORK CITY 1626 – 1863 70-73 (2002); see also JIM CROW NEW YORK, *supra* note 15, at 52-53.
- ¹⁷ See *African American Political Orientation*, in JIM CROW NEW YORK, *supra* note 15, at 56.
- ¹⁸ See *An Act Regulating Black Suffrage, 1811*, in JIM CROW NEW YORK, *supra* note 15, at 64-65; see also HARRIS, *supra* note 16, at 102.

- ¹⁹ See HARRIS, *supra* note 16, at 102.
- ²⁰ See *An Act Regulating Black Suffrage*, in JIM CROW NEW YORK, *supra* note 15, at 64.
- ²¹ *Act Declaring 1827 as the End of Slavery in New York, 1817*, in JIM CROW NEW YORK, *supra* note 15, at 67.
- ²² See KEYSSAR, *supra* note 1, at 24, 33; see also WILENTZ, *supra* note 13, at 189-90.
- ²³ See KEYSSAR, *supra* note 1, at 22, 24.
- ²⁴ See WILENTZ, *supra* note 13, at 192.
- ²⁵ See *id.*
- ²⁶ See *id.*
- ²⁷ See KEYSSAR, *supra* note 1, at 310, Tbl. A.3. The eight other states with property requirements at this time were: Connecticut, Massachusetts, New Jersey, North Carolina, Rhode Island, South Carolina, Tennessee and Virginia.
- ²⁸ See REPORTS OF THE PROCEEDINGS AND DEBATES OF THE NEW YORK CONSTITUTIONAL CONVENTION OF 1821, ASSEMBLED FOR THE PURPOSE OF AMENDING THE CONSTITUTION OF THE STATE OF NEW-YORK 178, 183, (E. & E. Hosford, Albany 1821) [hereinafter “NEW YORK CONVENTION OF 1821”] (statements of Nathan Stanford and Mr. Ross); see also *Extended Excerpts from the Convention of 1821*, in JIM CROW NEW YORK, *supra* note 15, at 91, 102.
- ²⁹ NEW YORK CONVENTION OF 1821, *supra* note 28, at 180 (statement of John Ross).
- ³⁰ *Id.* at 191 (statement of Samuel Young).
- ³¹ *Id.* at 198 (statement of Peter R. Livingston).
- ³² *Id.* at 365 (statement of Olney Briggs).
- ³³ *Id.* at 191 (statement of Samuel Young).
- ³⁴ *Id.* at 199 (statement of Peter R. Livingston).
- ³⁵ *Id.* at 183 (statement of John Jay).
- ³⁶ *Id.* at 194 (statement of Abraham Van Vechten).
- ³⁷ *Id.* at 188 (statement of Robert Clark).
- ³⁸ See *id.* at 202.
- ³⁹ See N.Y. CONST. art. II § 1 (1821); NEW YORK CONVENTION OF 1821, *supra* note 28, at 557, 632-33. See also *Extended Excerpts from the Convention of 1821*, in JIM CROW NEW YORK, *supra* note 15, at 91, 102, 174; KEYSSAR, *supra* note 1, at 44. The conversion to 2009 currency was obtained from the U.S. Dept’t of Labor, Bureau of Labor Statistics, Consumer Price Index (on file with the Brennan Center).
- ⁴⁰ See KEYSSAR, *supra* note 1, at 310, Tbl. A.3. To be sure, Rhode Island imposed property requirements on everyone except native-born citizens. However, while this restriction may have affected some persons of color, it was not directed at African Americans specifically.
- ⁴¹ See N.Y. CONST. art. II § 2 (1821); see also NEW YORK CONVENTION OF 1821, *supra* note 28, at 633. A statutory provision was passed shortly after adoption of the constitutional provision enabling disenfranchisement for “infamous crimes.” See N.Y. REV. STAT. chpt. VI tit. I §§ 2,3 (1829).
- ⁴² See DAVID N. GELLMAN, EMANCIPATING NEW YORK: THE POLITICS OF SLAVERY AND FREEDOM, 1777–1827, 189 (2006).
- ⁴³ See N.Y. CONST. art. II § 2 (1821).

- ⁴⁴ REP. OF THE DEBS. AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF N.Y. 1846, 1014 (William G. Bishop & William H. Attree eds., Albany, Evening Atlas 1846) [hereinafter “NEW YORK CONVENTION OF 1846”] (emphasis added). See also II CHARLES Z. LINCOLN, THE CONSTITUTIONAL HISTORY OF NEW YORK 1822-1894, 118-23 (1905); see also *Excerpts from the Debate on Suffrage, New York State Constitutional Convention, 1846*, in JIM CROW NEW YORK, *supra* note 15, at 249-59.
- ⁴⁵ NEW YORK CONVENTION OF 1846, *supra* note 44, at 1027 (statement of John Kennedy).
- ⁴⁶ *Id.* at 1028-29.
- ⁴⁷ See *id.*
- ⁴⁸ *Id.* at 1029.
- ⁴⁹ *Id.*
- ⁵⁰ *Excerpts from the Debate on Suffrage, New York State Constitutional Convention, 1846*, in JIM CROW NEW YORK, *supra* note 15, at 249, 256-57.
- ⁵¹ See NEW YORK CONVENTION OF 1846, *supra* note 44, at 1030 (statement of Federal Dana) (“[I]t is hardly possible, that persons in their condition should have an impartial trial.”).
- ⁵² *Id.* at 1035 (statement of George A. Simmons).
- ⁵³ See *id.* at 1066; see also LINCOLN, *supra* note 44, at 122-23.
- ⁵⁴ HOME RULE, *supra* note 14, at 144; see also NEW YORK CONVENTION OF 1846, *supra* note 44, at 1066-67.
- ⁵⁵ See MINORITY REP. OF THE COMM. ON THE RIGHT OF SUFFRAGE AND THE QUALIFICATIONS TO HOLD OFFICE (June 28, 1867), reprinted in 1 DOCUMENTS OF THE CONVENTION OF THE STATE OF NEW YORK, 1867-68, NO. 16, at 3 (1868) [hereinafter “MINORITY REPORT OF 1867”]; see also LINCOLN, *supra* note 44, at 213.
- ⁵⁶ KEYSSAR, *supra* note 1, at 24.
- ⁵⁷ N.Y. CONST. art II § 2 (1846) (emphasis added).
- ⁵⁸ See generally NEW YORK CONVENTION OF 1846, *supra* note 44, at 1036-37, 1042-43, 1065-66.
- ⁵⁹ See, e.g., TRACY CAMPBELL, DELIVER THE VOTE: A HISTORY OF ELECTION FRAUD AND AMERICAN POLITICAL TRADITION 1742-2004, 8-9, 15-19, 21 (2005).
- ⁶⁰ See LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY 109 (1993).
- ⁶¹ Larceny was defined at common law as “a trespassory taking and carrying away of the property of another with intent to steal [such property].” *People v. Olivo*, 52 N.Y.2d 309, 438 (1981). Common law courts, viewing larceny as a breach of the peace rather than an infringement of property rights, emphasized the trespass requirement. *Id.* at 438. It has been documented that Southern legislatures expanded their criminal codes during Reconstruction to punish offenses that they believed African Americans were more likely to commit, including larceny. This increased criminalization, coupled with targeted disenfranchisement laws, was one of the tactics used throughout the South to keep African Americans from the polls. See FONER, *supra* note 1, at 593-94; KEYSSAR, *supra* note 1, at 88-91.
- ⁶² See FONER, *supra* note 1, at 32 (explaining that “New York harbored every kind of antiwar sentiment, from the stance of opposition to both the Lincoln Administration and the Confederacy of wealthy Democrats . . . to the inflammatory pro-Southern rhetoric . . . and extreme racism of Democratic journalists). See also IVER BERNSTEIN, NEW YORK CITY DRAFT RIOTS: THEIR SIGNIFICANCE FOR AMERICAN SOCIETY AND POLITICS IN THE AGE OF THE CIVIL WAR 5-6 (1991).
- ⁶³ See FONER, *supra* note 1, at 32.
- ⁶⁴ *Id.*

- ⁶⁵ See BERNSTEIN, *supra* note 62, at 5, 27-31 (noting that African Americans were subjected to extremely violent treatment during the riots, including burns, mutilation, and drowning); *see also* FONER, *supra* note 1, at 32-33.
- ⁶⁶ See BERNSTEIN, *supra* note 62, at 267.
- ⁶⁷ See REP. OF THE COMM. ON THE RIGHT OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE (June 28, 1867), reprinted in 1 DOCUMENTS OF THE CONVENTION OF THE STATE OF NEW YORK, 1867-68, NO. 15, at 1, 4 (1868); *see also* HOME RULE, *supra* note 14, at 144-45.
- ⁶⁸ 1 PROCEEDINGS AND DEBS. OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK, HELD IN 1867 AND 1868, IN THE CITY OF ALBANY (Edward F. Underhill ed., Albany, Weed, Parsons and Company 1868) 236. [hereinafter "NEW YORK CONVENTION OF 1867 AND 1868"] (statement of H.C. Murphy).
- ⁶⁹ *Id.* at 310 (statement of Stephen J. Colahan).
- ⁷⁰ See MINORITY REPORT OF 1867, *supra* note 55, at 3-4; *see also* JIM CROW NEW YORK, *supra* note 15, at 279.
- ⁷¹ See JIM CROW NEW YORK, *supra* note 15, at 279.
- ⁷² See *id.* at 292-93.
- ⁷³ See *id.* at 293.
- ⁷⁴ II FRANCIS NEWTON THORPE, THE CONSTITUTIONAL HISTORY OF THE UNITED STATES 452-55 (1901).
- ⁷⁵ *Id.* at 453.
- ⁷⁶ LINCOLN, *supra* note 44, at 468-69; *see also* VII HISTORY OF THE STATE OF NEW YORK 206-07 (Alexander C. Flick ed., 1935).
- ⁷⁷ See JOURNAL OF THE CONSTITUTIONAL COMMISSION OF THE STATE OF NEW YORK, 1872-1873, 339 (Albany, Weed, Parsons and Company 1873) [hereinafter "COMMISSION OF 1872-1873"]; *see also* LINCOLN, *supra* note 44, at 477.
- ⁷⁸ See COMMISSION OF 1872-1873, *supra* note 77, at 97, 339.
- ⁷⁹ Rhode Island did not eliminate its property qualification for foreign-born citizens until 1888. See KEYSSAR, *supra* note 1, at 105-06.
- ⁸⁰ See N.Y. CONST. art. II, § 2 (1821) ("Laws may be passed excluding from the right of suffrage persons who have been, or may be, convicted of infamous crimes.") (emphasis added).
- ⁸¹ COMMISSION OF 1872-1873, *supra* note 77, at 170; *see also* HOME RULE, *supra* note 14, at 172. Interestingly, an amendment to replace the term "infamous crime" with "felony" was rejected. COMMISSION OF 1872-1873, *supra* note 77, at 170.
- ⁸² COMMISSION OF 1872-1873, *supra* note 77, at 170 (emphasis added); *see also* HOME RULE, *supra* note 14, at 172 (emphasis added). Just as the notes related to the 1846 Convention offered no explanation for the insertion of "larceny" as a disqualification for voting in the 1846 Constitution, *see supra* notes 58-61 and accompanying text, the notes related to the 1874 Constitution contain no explanation for the removal of larceny from the crimes that stripped individuals of the franchise.
- ⁸³ Although we consulted with the New York Historical Society, the New York State Archives and the New York State Library, we were unable to find any other sources discussing the change to the criminal disenfranchisement provision.
- ⁸⁴ See MANZA & UGGEN, LOCKED OUT, *supra* note 3, at 55, 238-39 Tbl. A2.1.
- ⁸⁵ See *id.* (A typo in the text indicates 28 states, but the table correctly lists 38).

- ⁸⁶ The current constitutional provision provides: “The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.” N.Y. CONST. art. II, § 3 (amended 2001). While the current provision is nearly identical to the provision passed in 1874, the implementation of the law has changed dramatically over time. In 1822 the law resulted in permanent disenfranchisement with no avenue provided for restoration of voting rights. *See* 1822 N.Y. LAWS 280. The legislature amended the statute in 1829 to provide the governor with authority to restore voting rights through issuance of a pardon. *See* N.Y. REV. STAT. chpt. VI tit. I § 3 (1829). In 1931 the law changed to allow restoration of voting rights by a pardon or the restoration of “the rights of citizenship.” N.Y. ELEC. LAW § 152 (McKinney 1931). Finally, in 1971 the law changed to what it is today: loss of voting rights while in prison and on parole. *See* N.Y. ELEC. LAW § 152 (McKinney 1972).
- ⁸⁷ *See* N.Y. ELEC. LAW § 5-106 (McKinney 2008).
- ⁸⁸ *See* notes 9-11, *supra*.
- ⁸⁹ *See* notes 9-11, *supra*.
- ⁹⁰ Brennan Center for Justice, *My First Vote* 2 (2009), available at http://www.brennancenter.org/content/resource/my_first_vote/.
- ⁹¹ *See* ERIKA WOOD, RESTORING THE RIGHT TO VOTE 9-10, 12, 17 (2d ed. 2009), available at http://www.brennancenter.org/content/resource/restoring_the_right_to_vote/
- ⁹² *See id.* at 12-13.
- ⁹³ *See* HUB SYSTEM, *supra* note 9, at 9 (stating that 52.1% of inmates were committed from New York City, comprised of Kings, New York, Queens, Richmond and Bronx counties).
- ⁹⁴ *My First Vote*, *supra* note 90, at 16 (2009).
- ⁹⁵ Interviews with county election officials in 2005 revealed that more than a third of the local boards of elections were illegally requesting documentation before allowing individuals with criminal convictions to register to vote, and nearly 40% incorrectly responded that individuals on probation are not eligible to vote. *See* ERIKA WOOD & RACHEL BLOOM, BRENNAN CENTER FOR JUSTICE & A.C.L.U., DE FACTO DISENFRANCHISEMENT (2008) available at http://www.brennancenter.org/content/resource/de_facto_disenfranchisement/; *see also* BRENNAN CENTER FOR JUSTICE AT NYU LAW SCHOOL & DEMOS: A NETWORK FOR IDEAS AND ACTION, BOARDS OF ELECTIONS CONTINUE ILLEGALLY TO DISENFRANCHISE VOTERS WITH FELONY CONVICTIONS (2006), http://brennan.3cdn.net/1b81b2464bb682b017_x8m6bnh29.pdf.
- ⁹⁶ *See* N.Y. EXEC. L. § 296 (McKinney 2009); N.Y.C. ADMIN. CODE § 8-107 (2008).
- ⁹⁷ *See* N.Y. EXEC. L. § 296(15), (16) (McKinney 2009); N.Y.C. ADMIN. CODE § 8-107(10) (2008).

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