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VOTING RIGHTS FOR OREGONIANS IN PRISON

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VOTING IS A CIVIL RIGHT.

**IT'S TIME TO
REJECT THE RACIST
ORIGINS OF OUR
CRIMINAL LEGAL
SYSTEM AND SHIFT THE
CONVERSATION
TOWARDS
REHABILITATION OF
INCARCERATED
OREGONIANS, WHICH
MEANS FIGHTING TO
PROTECT THEIR CIVIL
RIGHTS.**

EXECUTIVE SUMMARY

BACKGROUND

Arguments in favor of felony disenfranchisement hinge upon the belief that people convicted of felonies should lose their rights, a pervasive discourse that has been perpetuated by politicians across party lines. In reality, the detrimental impacts that this policy has on Black, Indigenous and communities of color dates back to the racist Jim Crow-era policies. As a result, people of color, specifically Black and Indigenous people, are overrepresented in prisons and are therefore disenfranchised at higher rates than white people. Restoring voting rights for incarcerated people is a necessary step towards dismantling racist policies, and would acknowledge the complex root causes of crime, subverting the dominant discourse that people who commit crimes deserve to lose their right to vote. Many rights are not lost through incarceration and voting should be no different. Additionally, preparation for a successful reentry to the community begins well before release, and participating in an important aspect of being a “good citizen” is a way to get ready for release and maintain community bonds. Oregon has the chance to take a historic step toward justice and equity in our state by becoming the third state in the nation to extend the right to vote to people currently incarcerated for felony convictions.

PURPOSE

There are many interlocking systems and schools of thought that perpetuate assumptions about felony disenfranchisement. The purpose of this report is to demonstrate that the right to vote should not be taken away regardless of incarceration status, while critically analyzing arguments in favor of disenfranchisement.

REPORT OVERVIEW

Section 1 (Introduction) provides a rationale for restoration of voting rights and a first-person account of the importance of restoration written by a currently incarcerated Oregonian, Anthony Richardson.

Section 2 (Historical Context) highlights the connection between Jim Crow era policies and practices and the modern context of felony disenfranchisement. This section also turns to Oregon’s history to show the connection between the Black exclusion laws that characterized Oregon’s founding and the current state of felony disenfranchisement.

Section 3 (Understanding Arguments in Favor of Disenfranchisement) outlines the four reasons for carceral punishment - incapacitation, deterrence, rehabilitation, and retribution. Considering some common pro-disenfranchisement arguments with these in mind reveals that the arguments are

difficult to rationalize and can easily be complicated.

Section 4 (Conditions in Prison Make Reintegration Harder Upon Release) challenges the idea that prison is rehabilitative by highlighting oppressive systems that incarcerated Oregonians face. The social contract theory argument that says incarcerated people deserve punishment for breaking the contract they made with society is difficult to defend when presented with the many ways that oppressive conditions compound in prison.

Section 5 (The Myth of the Prisoner Voting Bloc) deconstructs the argument that individuals in prison voting as a cohesive group should be feared and deterred from doing so. The many barriers that incarcerated people face result in low voter engagement in the two states where they are permitted to vote. Furthermore, this section challenges the idea that the state should be deterring people from voting that may hold minority views.

Section 6 (The Changing Definition of “Felony”) combats the notion that all felonies are “serious crimes,” often held up to justify the disenfranchisement of incarcerated people. Highlighting the changeable nature of the conceptualization of felonies reveals the ways that felony disenfranchisement has been used specifically to disenfranchise Black people and people of color.

Section 7 (Racism in Policing Affects Felony Disenfranchisement) addresses the impact that racist policing practices have on incarceration and disenfranchisement rates among communities of color. Specific examples show that racism in

policing is consistent across the US and here in Oregon as well.

Key Statistics: Black people are overrepresented in Oregon’s prisons and jails. They make up 2% of Oregon’s population as a whole but 9% of Oregon’s prison and jail population.

Section 8 (Conclusion) advocates for restoration of voting rights while also noting that anti-Blackness and racism have persisted across time and despite reforms in this country in the past. While restoration in Oregon would mark significant progress, policymakers must also recognize the barriers to voting that may persist in prisons and jails. By adopting policies around civics education and voter registration in prisons and jails, legislators can ensure that incarcerated Oregonians are truly able to access their right to vote. Steps must be taken to ensure that new barriers are not put in place that reinstate disenfranchisement after legislation passes, as has happened elsewhere in the US. At the same time, voting in prisons and jails must be accompanied by other improvements in prisons and

POLICY RECOMMENDATIONS

1. RESTORATION OF VOTING RIGHTS

Oregon has the opportunity to become the third state to extend the franchise to currently incarcerated people. The policy solution would be a statutory amendment that only requires a simple majority in both chambers to pass.

2. VOTER REGISTRATION & EDUCATION IN JAILS

People in Oregon county jails who have not been convicted of a felony, or are awaiting trial for a felony, are permitted to vote. In order to exercise their right to vote, people incarcerated in jails need to be given the opportunity to register and given access to voter information around the candidates and measures on the ballot so they can make informed decisions. Policies will need to be developed to institutionalize these practices in every county jail in Oregon.

3. VOTER REGISTRATION & EDUCATION AT OREGON YOUTH AUTHORITY

Additionally, there are youth incarcerated at Oregon Youth Authority who are not in custody for felony convictions. Youth who are incarcerated for other convictions and are of voting age are eligible to vote. They should have access to register to vote, or update their voter registration if needed. They should also have access to the information that they need ahead of time to educate themselves on candidates and ballot measures.

INTRODUCTION

Oregon leads the nation with vote by mail, automatic voter registration, paid postage, and is one of the easiest states to vote in the nation. Yet, upon closer examination it is clear that Oregon's electoral system still uses Jim Crow-era policies by taking away a citizen's fundamental right to vote when they are incarcerated in a state prison on a felony charge. Deliberately denying the right to vote to a specific portion of citizens has serious implications on devaluing and diminishing the rights of U.S. citizenship and further marginalizes incarcerated people.

THE REMOVAL OF VOTING RIGHTS SHOULD NOT BE CONNECTED TO PUNISHMENT, IS CIVIC DEATH, AND AN AFFRONT TO CIVIL LIBERTIES.

Civic engagement, specifically voting, increases the ability for reintegration, reducing recidivism, and making communities safer. Ninety-five percent of people in prison return to their communities. Reentry can be a difficult process, but having strong ties to the community increases the chances of success. By design, incarceration disrupts family and community bonds while undermining employment opportunities and presenting criminal alternatives to life in open society. Disconnecting incarcerated people from the community and disregarding them and their status as citizens reinforces negative antisocial attitudes. The exclusion from political life is a powerful symbol of incarcerated people's separation from society that alienates and further separates them as others who are outside of mainstream society. Many incarcerated people express strong desires to become

productive and responsible citizens in the community, however, barriers to active citizenship eventually discourage cooperation, which is why voting rights must be restored.

There is no safety or security risk in allowing incarcerated people to vote. In fact, allowing incarcerated people to cast their vote could help improve public safety because permitting incarcerated people this act of solidarity with other Oregonians will recognize their value in communities. Allowing incarcerated people the opportunity to vote and exercise the responsibilities that accompany the right of citizenship, not only reflect the workings of a healthy democracy, but will also break down the natural barriers of incarceration that obstruct communication and cooperation, building stronger and more meaningful relationships between the community and incarcerated people. This can contribute significantly to a sense of inclusion and lead to a shared participation in community life and the learning of skills needed for incarcerated people to become active law-abiding citizens. Inclusion into society by becoming an active participant in civic affairs will allow incarcerated people to identify with those whom they may have previously viewed as hostile and encourage a sense of accountability for a shared community. If Oregon is truly committed to building a humanizing system that brings those on the margins of society into the fold, then restoring voting rights to incarcerated people is the next logical step in reaching that goal. Extending the franchise proves that commitment and sends a powerful and hopeful message of inclusion to those who, in many cases, have felt excluded their entire lives.

HISTORICAL CONTEXT

In 48 states, people convicted of felonies are prohibited from voting while incarcerated. The origin of these laws can be traced back to slavery. By incarcerating Black people in large numbers and disenfranchising people while incarcerated, the US continues the legacy of criminalizing Blackness and exploiting Black people that began with the slave trade. After the passage of the 13th amendment in 1865, slavery should have been abolished. However, the Amendment included the caveat “except as a punishment for crime whereof the party shall have been duly convicted.” As Angela Davis demonstrates in her book “Are Prisons Obsolete?”

“FORMER SLAVE STATES PASSED NEW LEGISLATION REVISING THE SLAVE CODES IN ORDER TO REGULATE THE BEHAVIOR OF FREE BLACKS IN WAYS SIMILAR TO THOSE THAT HAD EXISTED DURING SLAVERY.”¹

These laws, known as the Black Codes, outlined a litany of offenses that were only criminalized when the offender was Black. From there, the southern states implemented a convict lease system which conscripted Black people into forced labor after being convicted of crimes as vague and ill-defined as “vagrancy.”² Citing Mary Ellen Curtin’s research on Alabama’s prison population, Davis states that “before the four hundred thousand black slaves in that state were set free, ninety-nine percent of incarcerated people in Alabama’s penitentiaries were white.”³ With the abolition of slavery, a new, more palatable form of social control was born by criminalizing and incarcerating Black people.

The ratification of the 14th and 15th Amendments in 1867 and 1870 respectively should have outlawed the Black Codes and protected voters from racial discrimination. Instead, the Black Codes changed shape and Jim Crow laws emerged. In addition to mandating segregation, Jim Crow laws also included a suite of “race neutral” laws such as poll taxes, literacy tests, and felony disenfranchisement. These policies were implemented in racist ways that did not technically violate the Constitution, but effectively disenfranchised Black people.⁴ Because the Constitution leaves defining felonies up to the states, felony disenfranchisement laws appear to be race neutral as well. As Middlemass describes, “Between 1890 and 1910, many southern states rewrote their constitutions, tailoring their criminal laws to preexisting voting restrictions to increase the effect of disenfranchising Black [people].”⁵ Notably, these revisions did not designate murder or assault as felonies, as it was believed that white people and Black people would be equally likely to commit these crimes.⁶

Jim Crow laws remained in place until the passage of the Civil Rights Act in 1964 but rhetoric of criminalization emerged around the tactics that activists used during the Civil Rights Movement. “For more than a decade” Alexander writes, “conservatives systematically and strategically linked opposition to civil rights legislation to calls for law and order.”⁷ Painting Black activists as criminals is clearly linked to the legacies of Jim Crow, slavery, and the dominant narrative of criminalized Blackness. Politicians used fear mongering to feed this narrative around Black-led uprisings. When activists linked these uprisings to police brutality, they were gaslit and dismissed

by political leaders.⁸ This paved the way for the next form of social control, which emerged under the Nixon administration as mass incarceration. Again, federal and local governments used criminality as an excuse to disappear Black people away from their families and communities and take away their right to vote, relegating them to the sub-human status of “prisoner.” This legacy continues today.

Oregon’s specific historical context sheds light on the connections between the legacy of slavery in the US and modern-day felony disenfranchisement.

THE FACT THAT OREGON'S POPULATION HAS REMAINED OVERWHELMINGLY WHITE IS NO ACCIDENT. RATHER, THE PRESENT CHARACTER OF THE STATE REFLECTS A PAST IN WHICH BLACK PEOPLE AND OTHER RACIAL MINORITIES WERE DELIBERATELY EXCLUDED AND PUBLICLY HATED AS A MATTER OF STATE POLICY AND CULTURAL ETHOS.

Race relations in Oregon have a less familiar storyline than other states of the nation, especially those of the American South. But Oregon’s policies of racist animus nevertheless have had a devastating effect on those faced with exclusion, discrimination, and denial of civil rights. Although Oregon has developed a modern identity as a progressive Ecotopia, under the surface lies a state that, in many ways, is still at odds with the values of diversity and multiculturalism.⁹

In 1844, 15 years before Oregon became a state, the territorial Legislative Committee enacted Black exclusion laws that prohibited Black people from settling in Oregon.¹⁰ The punishment for being Black in Oregon was originally up to 39 lashings for every 6 months here illegally, but was amended shortly

after to 6 months forced labor before banishment. Anti-Blackness in Oregon predates Oregon’s statehood, reaching as far back as settler colonialism in the region. In 1857, Oregon convened a constitutional convention in Salem where the legislative assembly of this territory approved articles that clearly envisioned the exclusion of all rights for people of color.¹¹ The convention restricted Black people from military service and voting, granted property rights to only white citizens, prevented Chinese people from owning or working a coal mine and implemented felony disenfranchisement laws. In Oregon, Black, Asian, and Native people were deemed criminals as soon as they stepped on Oregon soil, therefore, the argument for prisoner disenfranchisement was founded on the belief that it was a necessary policy in order to keep Black, Asian, and Native people from voting because doing so was in the interest of an all-white society. As one historian put it, the Oregon Constitution was, “thoroughly a white man’s document.”¹² Chief Justice Williams urged lawmakers to “consecrate Oregon to the use of the white man, and exclude the Negro, Chinaman, and every race of that character.”¹³ In 1859, Oregon became the only state to be admitted to the union with an exclusion law in its constitution.

Legislators employed this ideology as they sought election as well. During his 1868 campaign for the U.S. Congress, democrat Joseph Smith of Marion County echoed the sentiment expressed by Chief Justice Williams with racist fear mongering.¹⁴ It was not until nearly 60 years after Congressman Smith used racist fear mongering rhetoric in his bid for the U.S. Senate that Oregon repealed the Black exclusion laws in 1926. Voters did not opt to officially remove the language from the Constitution until 2002.¹⁵ However, to this day, 161 years after felony disenfranchisement was written into the Constitution, Oregon still excludes people in prison from being a full citizen of this state.

ARGUMENTS IN FAVOR OF DISENFRANCHISEMENT

Scholars who argue in favor of felony disenfranchisement say that people who break the law should lose their say in making the law for everyone else. There is a general sense that people convicted of crimes cannot be trusted and deserve to lose some of their rights, including voting rights, as a result. A closer look at these sentiments, and the goal of punishing people who have been convicted of crimes is warranted if trying to understand the ramifications of felony disenfranchisement laws in a system of government that purports to be a democracy. Roger Clegg, President of the Center for Equal Opportunity, said in a 2004 debate:

“We don’t let children vote, for instance, or noncitizens, or the mentally incompetent. Why? Because we don’t trust them and their judgment...So the question is, do criminals belong in that category? And I think the answer is clearly yes. People who commit serious crimes have shown that they are not trustworthy.”¹⁶

Clegg has been a staunch supporter of felony disenfranchisement laws for years and his message has remained consistent. This perspective reflects just one particular stance on the purpose that punishment serves, but legal scholars agree that punishment traditionally serves one of four goals: incapacitation, deterrence, rehabilitation, or retribution.¹⁷ Incarceration and subsequent felony disenfranchisement do nothing to incapacitate or deter people. Incarceration does not reduce recidivism rates. The US has one of the highest recidivism rates in the world all while incarcerating people at higher rates than any other country. Here in Oregon, the Criminal Justice Commission found that of people released from prison in the latter half

of 2014, 57% were arrested again within three years and 43% were convicted of a new misdemeanor or felony crime within three years.¹⁸ Furthermore, most people do not understand the full extent of the rights that they will lose if and when they are convicted of a felony until after they have been sentenced, thus deterrence is not a valid rationale for disenfranchisement.¹⁹

To be sure, pro-disenfranchisement scholars are unlikely to suggest that the goal of incarceration or disenfranchisement is rehabilitation. George Brooks stated in the *Fordham Urban Law Journal* in 2005:

“When someone commits a crime, he commits it not just against the victim, but against our entire society. Protests that time served is enough, and that society should prioritize the rehabilitation and reintegration of felons should fall on deaf ears.”²⁰

In his application of social contract theory, Brooks is saying that if someone breaks the law, they are breaking their agreement with society, broadly. If you break the law, you don’t deserve a say in making the law for everyone else. As much as Brooks and others like him might prefer that people convicted of felonies disappear indefinitely, this is not the case. Nearly every incarcerated person will eventually be released. Writing for the Sentencing Project, Jason Schall says, “Under a regime of disenfranchisement, an individual who breaches the social contract continues to be bound by the terms of the contract even after being stripped of the ability to take part in political decisions.”²¹ Because people will inevitably be expected to adhere to the “social contract” again, prioritizing reintegration is the bare minimum that the state should do.

CONDITIONS IN PRISON MAKE REINTEGRATION HARDER UPON RELEASE

It is clear that barriers compound to make it harder for incarcerated people to reintegrate upon release. Oregonians incarcerated for felony convictions make between \$0.05 and \$0.47 per hour.²² These shamefully low wages make it nearly impossible for incarcerated people to afford anything while they are incarcerated. Commissary, which consists of any item beyond the bare minimum essentials provided by the prison, is an example of the steep costs that incarcerated people incur. For context around what is considered commissary, until late 2018, incarcerated Oregonians who needed tampons had to purchase them with their own commissary funds because the department of corrections only supplied pads.²³ In one Oregon prison, incarcerated women are allowed to work in commissary. Oregon Live found the following:

“WOMEN INMATES EARN BETWEEN \$50 AND \$78 A MONTH FROM COMMISSARY JOBS AND MANY END UP SPENDING A HEFTY CHUNK OF THAT ON THEIR OWN PURCHASES. CORRECTIONS OFFICIALS SAID MEN IN PRISON SPEND ON AVERAGE \$22.35 A WEEK, WHILE WOMEN SPEND ON AVERAGE \$26.04.”²⁴

Clearly, there aren't many opportunities to save money under these circumstances.

Phone calls present another steep financial burden for incarcerated Oregonians, and in order to keep in touch with friends and family on the outside this may be one of the only

options. According to the Prison Policy Initiative, in at least one Oregon prison, a 15 minute phone call costs \$15.75.²⁵ These costs add up, especially when incarcerated people are making such low wages. They often need to rely on family to help. Estimates show that incarcerated people and their families spend \$2.9 billion annually on phone calls and commissary.²⁶ It is clear that incarcerated people are burdened with prohibitive measures that make it extremely difficult to save for life after their sentence ends. Indeed,

“WITH NO SAVINGS, HOW CAN PEOPLE POSSIBLY AFFORD THE IMMEDIATE COSTS OF FOOD, HOUSING, HEALTHCARE, TRANSPORTATION, CHILD SUPPORT, AND SUPERVISION FEES ONCE RELEASED?”²⁷

Another condition that makes things harder for incarcerated people is the usual-residence rule. The rule requires that incarcerated people be counted on the Census as residents of the location in which they are incarcerated. Incarcerated people may be in prisons located in communities where they would not otherwise live. Counting incarcerated people as residents of these communities will inflate the population even though they cannot vote for their representatives, potentially increasing representation for these communities without cause.²⁸In Oregon, HB 2492 was introduced in the January 2019 Legislative Session to correct this before the 2020 Census. The bill would count incarcerated people as residents of the communities in which they lived prior to incarceration, but it has yet to pass.²⁹

The response to COVID-19 by the state of Oregon provides a topical example of why incarcerated Oregonians need the right to help decide who represents them in the state legislature. In October, the Oregonian reported that COVID-19 cases were 10 times higher in Oregon prisons than in the state broadly.³⁰ Governor Brown's response to the increased risk of COVID in prisons was to commute the sentences of 66 incarcerated people at high risk of the disease. However, those commuted remained in prison for 10 additional weeks and counting due to lack of preparation for their housing needs upon release.³¹ This is one tangible example of the ways that disenfranchising incarcerated people allows the state to deprioritize the health and well-being of people in prisons. Perhaps poor conditions in prisons, the low wages that incarcerated people make, the high cost of incarceration, counting incarcerated people toward the Census in the district where they're incarcerated and restricting their vote makes these constituents less of a priority for elected officials. Relegating incarcerated people to second class citizenship in this way makes it extremely difficult for people to reintegrate into society upon release.

THE MYTH OF A PRISONER VOTING BLOC

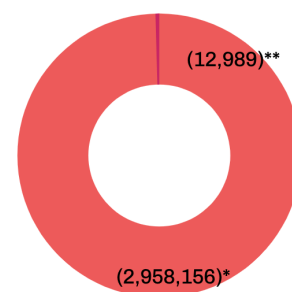
Other arguments that incarcerated people cannot be trusted to vote are preoccupied with the assumed safety risk that their votes pose. The Black exclusion laws and other racially motivated policies in place during the formation of Oregon are important to recognize in the context of felony disenfranchisement because the argument that was put forward to deny incarcerated people the right to vote was very similar to this logic. The belief was that allowing incarcerated people this right would invite a hoard of undesirables and criminals to take over, ensuring nothing short of anarchy and chaos.³² Writing about the anxiety that restoration of voting rights creates, Ryan Scott King said “Some proponents of disenfranchisement fear that permitting someone to vote who has been convicted of a crime will put society in danger because such people are likely to vote for ‘procrime’ candidates or to support a platform of ‘soft on crime’ measures that will threaten society.”³³ Data and precedent in other states can tell the story of what is really going on.

As of November 2020, Oregon had over 2.9 million registered voters, but Oregon’s prison population was 12,989.^{34 35} It would be quite hard for a group this size to coordinate voting as a bloc while they are incarcerated, let alone sway statewide election results when they make up a fraction of Oregon’s electorate. Even if incarcerated people were able to organize and vote as a bloc, Maine and Vermont show that this doesn’t happen and that access to the vote is still a challenge even when incarcerated people are legally permitted to cast their ballots. These two states have never disenfranchised people convicted of felonies and the constitution of each

state protects this right. No opposition to voting rights for incarcerated people has ever succeeded in the legislature in either state and voting in prisons has not been linked to any “pro-crime” candidates taking power. The reality is that voter turnout remains low in Maine and Vermont prisons due to low literacy levels and limited access to information about candidates.³⁶

Even if considering the possibility that incarcerated voters might trend in similar ways, arguments that point to fear of an “untrustworthy prisoner voting bloc” as justification for felony disenfranchisement make “perceived moral fitness” a permissible reason for disenfranchisement. As Scott King writes, “The essence of a democracy is that the government represents the will of the people, not that the government weeds out dissenting and minority populations or seeks to cull from the voting rolls those that the majority labels ‘untrustworthy.’”³⁷ It’s time that Oregon ends the character test implicit in disenfranchising people convicted of felonies.

OREGON ADULTS IN CUSTODY
0.4%



OREGON REGISTERED VOTERS
99.6%

*Source: <https://sos.oregon.gov/elections/Documents/registration/2020-november.pdf>

**Source: <https://www.oregon.gov/doc/Documents/agency-quick-facts.pdf>

THE CHANGING DEFINITION OF “FELONY”

There is clearly no basis for punishment, and by extension disenfranchisement, using the logic of incapacitation, deterrence, or rehabilitation. Retribution as a justification for incarceration and disenfranchisement is also illogical. Roger Clegg asserts that people who commit “serious crimes” like felonies deserve to be punished. This argument fails to recognize the disparate ways that felonies are defined from state to state and across time. The aforementioned Black Codes and Oregon’s Black exclusion laws provide a perfect example of the ways that designating some behavior or conduct as “criminal” has been historically weaponized against Black people. There are also many modern examples of the changing ways that felonies are defined.

Because defining felonies has been left to the discretion of state legislatures, they are defined differently across the country. Alabama’s moral turpitude law is a salient example. The law was historically used to justify the disproportionate disenfranchisement of Black people because its text was race neutral and lacked specificity. This law still exists and although it was finally clearly defined in 2017, trafficking and possession of cannabis and other drugs continue to be encapsulated under the umbrella of “crimes of moral turpitude,” which also result in disenfranchisement.

This is noteworthy because there is a shift happening regarding the criminality of drug use, but this is largely dependent on where one lives. Since 2012, 15 states and the District of Columbia have fully legalized cannabis.³⁸ Indeed in Oregon, cannabis dispensaries were deemed “essential businesses” under Governor Brown’s executive orders in March and were

permitted to stay in operation.³⁹ This shift isn’t limited to cannabis. Oregon became the first state to decriminalize minor possession of illegal substances such as cocaine, heroin, Oxycodone and methamphetamine with the passage of Measure 110 this fall. The measure also reduced penalties for possessing larger quantities of substances. However, the effects of the War on Drugs are still being felt. Nationally, one in five incarcerated people are serving time for a drug offense and police continue to arrest over one million people for drug possession each year. Despite the fact that all races use at similar rates, Black people have been disproportionately targeted for these offenses.⁴⁰ Under the Reagan administration, enforcement of drug crimes were incentivized, which led to increased policing and conviction of Black people for these offenses, despite the fact that all races use at the same rate.⁴¹ Clearly the ways that “serious crimes” or “crimes of moral turpitude” are defined can and do shift depending on time and place. The shifting moral compass of the nation shouldn’t control who can and cannot vote.

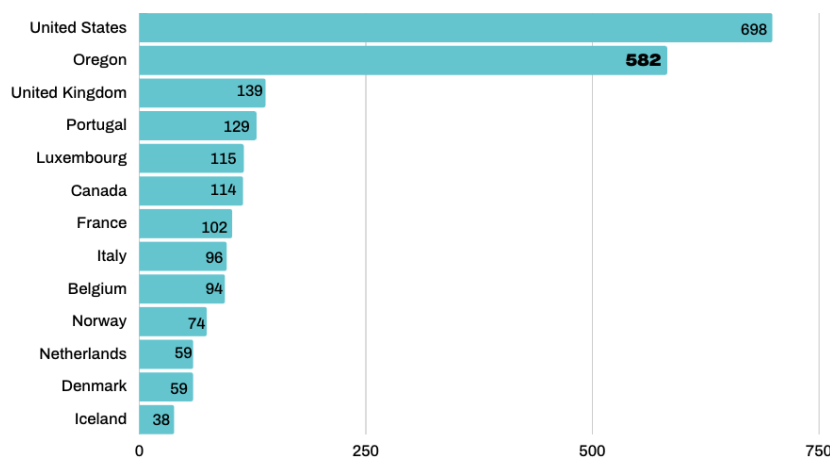
Furthermore, the question of which people convicted of felonies in Oregon will lose their right to vote doesn’t have a clear answer. While a restriction on voting applies to those incarcerated in the Department of Corrections, the same restriction does not apply to people at the State Hospital who were convicted of a crime except for insanity, nor does it apply to youth in the juvenile system who are over the age of 18. People released on probation and parole are allowed to vote, but people on work release programs or who are living in halfway houses are not. The litany of requirements that people on

probation have to meet is extensive. In the context of regaining voting rights, paying the fines and fees as required by the conditions of probation outlined in ORS 137.540 could be considered a poll tax, since the result of not paying would mean incarceration and subsequent disenfranchisement.⁴²

States have been given the ability to dictate which crimes warrant disenfranchisement while incarcerated and, in many cases, people are disenfranchised indefinitely. While Oregon law restores voting rights after incarcerated people have completed their sentence, it is clear that the ways punishment of disenfranchisement is handed out is inconsistent across time and across the country. It is illogical to disenfranchise some people in some states for some crimes in this seemingly arbitrary way, while also claiming that people who commit felonies are untrustworthy and must earn back their rights.⁴³

RACISM IN POLICING AFFECTS FELONY DISENFRANCHISEMENT

INCARCERATION RATES PER 100,000 POPULATION
Comparing Oregon and Founding NATO Countries



“THE U.S. AND STATE INCARCERATION RATES IN THIS GRAPH INCLUDE PEOPLE HELD BY THESE OTHER PARTS OF THE JUSTICE SYSTEM, SO THEY MAY BE SLIGHTLY HIGHER THAN THE COMMONLY REPORTED INCARCERATION RATES THAT ONLY INCLUDE PRISONS AND JAILS.”

Source: <https://www.prisonpolicy.org/global/2018.html>

Scholars like Clegg who are in favor of felony disenfranchisement deny any connection between today’s laws and Jim Crow or slavery. Felony disenfranchisement laws may appear race neutral on paper, but in practice they disproportionately affect Black people. Writing for the Heritage Foundation, Clegg and von Spakovsky (2018) gloss over the disparate disenfranchisement rates of Black people who have been convicted of felonies. “We agree...that race and partisanship should both be off the table when considering felon disenfranchisement” they assert.⁴⁴ While race may not be explicit in the law, during enforcement of the law there are vast disparities that cannot be ignored.

Despite the fact that the 15th Amendment dictates that the right to vote “shall not be denied or abridged by the United States or by any State

on account of race, color, or previous condition of servitude” and protects against de jure racism, de facto racism in the ways that laws are implemented and enforced persists. The reality is that the disproportionate policing of Black communities has led to one in seven Black men losing the right to vote for some amount of time in their lives.⁴⁵

IN AN OCTOBER 2020 REPORT, THE SENTENCING PROJECT FOUND THAT 5.2 MILLION INCARCERATED AND FORMERLY INCARCERATED PEOPLE ARE DISENFRANCHISED. THAT’S ONE IN 44 ADULTS. AMONG BLACK PEOPLE OF VOTING AGE, ONE IN 16 PEOPLE ARE DISENFRANCHISED, WHICH IS 3.7 TIMES GREATER THAN THE DISENFRANCHISEMENT RATE FOR NON-BLACK PEOPLE. IN SEVEN STATES, THE DISENFRANCHISEMENT RATE FOR BLACK PEOPLE INCREASES TO 1 IN 7.⁴⁶

Clegg attempts to explain these disparities in a 2013 debate with Dr. Jeff Manza at the University of Chicago Law School by citing that Black people commit crimes at higher rates, and that these laws are not racist because of this fact.⁴⁷ When speaking to root causes of crime, Clegg points to the disproportionate rate of Black, Indigenous and people of color born out of wedlock and employs the racist stereotype of absent Black fathers as the reason why Black people commit crimes. This is overt anti-Black racism and assumes the naturalization and inevitability of the heteronormative patriarchal nuclear family, essentializing the nuclear family without accounting for the widespread prevalence of matriarchal and communal family structures, both in the US and abroad, and across time. This perspective also employs the logic of the Moynihan report, attributing social problems that have been caused by centuries of oppression to individuals and their personal failings rather than pointing to centuries of slavery, genocide, incarceration, medical racism, discrimination in housing, education, and employment, wage theft, and terrorist attacks from white supremacists as reasons for disparate outcomes for white people and Black people, Clegg individualizes systemic injustice.⁴⁸

The argument that Black people are incarcerated at higher rates because they commit crime at higher rates assumes that correlation equals causation without digging deeper. As mentioned above, it is well-studied that Black people are policed at disproportionate rates. The War on Drugs and the incentivizing of drug enforcement policing practices that targeted Black communities is one historical example that has ongoing effects today. There are also two specific examples - New York City's "stop-and-frisk" policies and policing of traffic violations in Portland, Oregon that demonstrate this.

Stop-and-frisk is a policy of temporarily

stopping people on the street who may be suspects, questioning them, and searching them for illegal weapons, drugs, or other prohibited items. The NYCLU has estimated that 5 million people have been stopped and frisked in New York City since 2002, and 9 out of 10 of these people have been innocent.⁴⁹ This likely indicates that NYPD officers are stopping people on the street seemingly at random. However, there are noticeable trends regarding who is stopped and frisked. In their 2019 report, the NYCLU found the following:

"BETWEEN 2014 AND 2017, YOUNG BLACK AND LATINO MALES BETWEEN THE AGES OF 14 AND 24 ACCOUNT FOR ONLY FIVE PERCENT OF THE CITY'S POPULATION, COMPARED WITH 38 PERCENT OF REPORTED STOPS. YOUNG BLACK AND LATINO MALES WERE INNOCENT 80 PERCENT OF THE TIME."⁵⁰

A look at the data as far back as 2003 (the first year that racial demographic data relating to stop-and-frisk was available) shows that Black people are consistently stopped in New York City at higher rates than any other race every year. In 2019, 59% of people stopped in New York City were Black. Just 9% of people stopped that year were white.⁵¹

Here in Oregon, racist policing practices lead to the over-policing of Black people as well. Data recently released by the Portland Police Bureau showed that Black people are being stopped for traffic violations at disproportionate rates. OPB reported:

"OF THE 33,035 VEHICLE STOPS PORTLAND POLICE MADE IN 2019, 18% WERE FOR BLACK DRIVERS AND 65% WERE FOR WHITE DRIVERS. MEANWHILE, WHITE PEOPLE MAKE UP 75.1% OF THE POPULATION, WHILE BLACK PEOPLE MAKE UP ONLY 5.8%."

⁵²

A closer look at the data reveals that traffic stops also led to searches more often when drivers were Black. “Officers requested to search 8.2% of the Black drivers who were pulled over and only 3.1% of the white drivers,” OPB reports.⁵³ Black drivers consented to searches far more often than white drivers, undoubtedly due to the violence that Black people are statistically more likely to face when dealing with police. Interestingly, despite the higher search rate officers found contraband more often when searching white drivers than Black drivers.

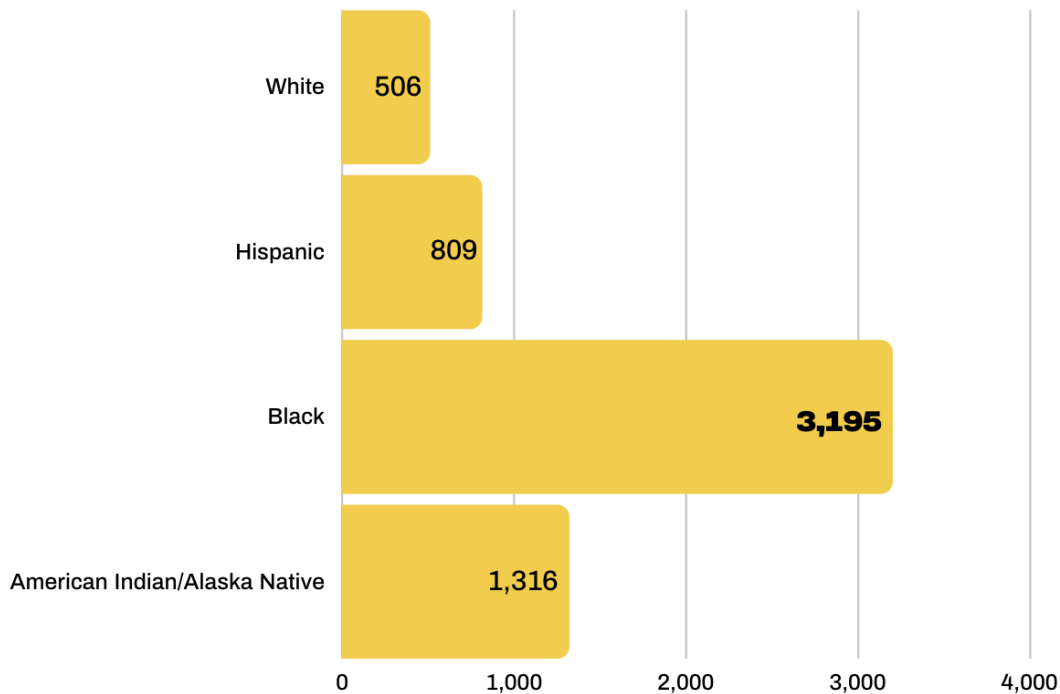
Clearly, racial bias is leading to discrimination in each of these cases and in each example, policing practices are not data driven or linked to reducing crime. Rather, policing practices reinforce the narrative that Black people are more likely to commit crime by presuming that Black people

are guilty until proven innocent. When police approach Black people with this mentality, it’s no wonder that Black people are overrepresented in prisons and thus, disenfranchised at higher rates.

Pro-disenfranchisement arguments seek to discount any connection between felony disenfranchisement in the current context and Jim Crow, but the similarities between the mass incarceration of Black people in the US today and the implementation of Jim Crow laws in the late 19th and early 20th century are stark and impossible to deny.⁵⁴ In Oregon, white people are incarcerated at lower rates than Black, Indigenous, and Latinx Oregonians, proportionally. Black people make up 2% of Oregon’s population but 9% of Oregon’s prison and jail population.⁵⁵ Therefore, felony disenfranchisement affects Black Oregonians at disproportionate rates as well.

OREGON INCARCERATION RATES BY RACE/ETHNICITY

(Number of people incarcerated per 100,000 people)

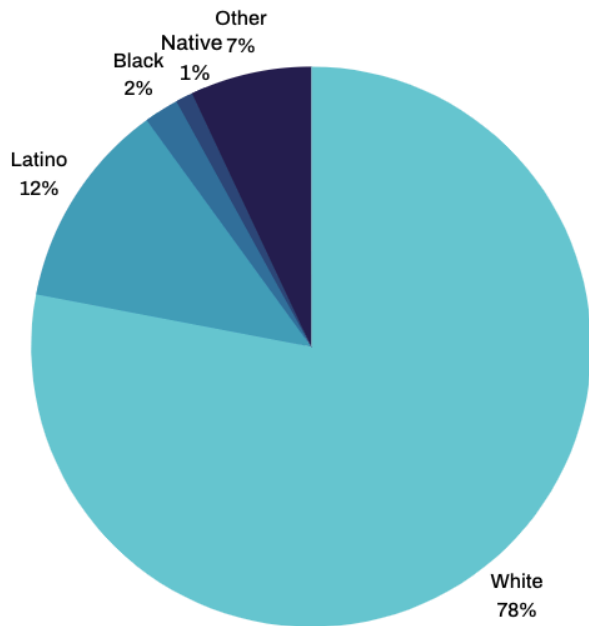


Source: <https://www.prisonpolicy.org/graphs/2010rates/OR.html>, adapted from US Census 2010 Summary File 1. “Incarceration populations are all types of correctional facilities, including federal and state prisons, local jails, halfway houses, etc.

RACIAL DISPARITIES IN OREGON PRISONS & JAILS

COMPILED FROM 2010 CENSUS, SUMMARY FILE 1

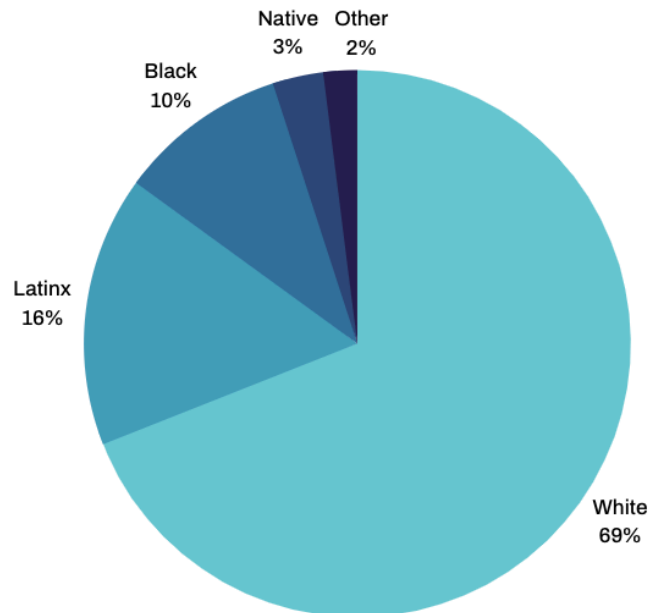
OREGON TOTAL POPULATION



BLACK, LATINX AND NATIVE PEOPLE ARE OVER-REPRESENTED IN OREGON'S INCARCERATED POPULATION, WHILE WHITE PEOPLE ARE UNDER-REPRESENTED.

Source: <https://www.prisonpolicy.org/graphs/2010rates/OR.html>, adapted from US Census 2010 Summary File 1.

OREGON PRISON POPULATION



IN CONCLUSION

A law that was written 161 years ago, during a time of forced labor, exclusion laws, lashings, lynching and policies designed solely to benefit white men and oppress people of color, still forbids incarcerated Oregonians from being valued as human beings in this state. There is an urgent need for progress in our democracy that integrates an evolving sense of decency into policies in order to move this state past archaic and prejudiced practices to recognize the inherent value of incarcerated Oregonians. There is tremendous power in feeling like part of a community that values its members.

Those who argue in favor of denying voting rights to incarcerated people, typically rely on similar arguments that were previously used to justify denying voting rights to women, people who did not own property and communities of color. Oregon is already leading the way for voting rights by allowing formerly incarcerated people to vote and making voting easier by voting through mail using paid postage and automatic voter registration. Now is the time to take the next step.

It's important to recognize that restoring voting rights for incarcerated people is a step toward creating a more just and equitable Oregon, but it is not the end of this work. Recent efforts to reverse Amendment 4 in Florida with new legislation provide a perfect example of how disenfranchisement and voter suppression change shape over time. The amendment was passed by Florida voters in 2018 and should have automatically restored voting rights for most formerly incarcerated people upon completion of their sentences.⁵⁶ However, the state stalled implementation of this amendment, saying that direction from the

legislature was needed.

Florida legislators then doubled down on their attempts to obscure the rights of recently released incarcerated people. In June of 2019, Florida Senate Bill 7066, which would require that formerly incarcerated people “complete ‘all terms of sentence’ including full payment of restitution, or any fines, fees, or costs resulting from the conviction, before they could regain the right to vote” was signed into law.⁵⁷ In the effort to restore voting rights in Oregon there must also be equal efforts to ensure that the vote remains accessible.

Anti-Black racism is persistent in this country - as demonstrated throughout this report, slavery became the Black Codes and convict leasing, became Jim Crow, became mass incarceration and felony disenfranchisement. The past shows the ways in which restrictions on voting rights have been used to reinforce white supremacy and maintain oppressive power structures, in the US generally and right here in Oregon and it is imperative that Oregon takes the necessary steps to rectify this wrong. Incarcerated voices are important and their vote is needed.

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