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Restoring Florida's felon voting rights is less democratic than you think

BY ANDREI POAMA & TOM THEUNS, 14 NOVEMBER 2018

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On 6 November 2018, voters in Florida made history. Following a popular initiative [https://secondchancesfl.org] started about four years ago, 64% of Floridians voted in favour of a constitutional amendment (no 4) that will automatically restore the voting rights of all people with felony convictions who have executed their sentences, as long as they were not convicted of murder or a felony sexual offense [https://www.cobblawfirm.com/criminal-defense/how-is-a-sex-crime-defined-in-florida/].

The main effect of this constitutional change is that approximately 1.5 million [https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/] people will be able to vote in the next elections. Since most criminal offenders get convicted at a young age [https://www.encyclopedia.com/law/legal-and-political-

magazines/age-and-crime], many among those who are now enfranchised because of amendment 4 will be able to vote for the first time in their life.

Florida's amendment 4 is great news for a state whose laws so far prevented about 10% of the voting-age population from taking part in elections. From now on, Florida will no longer be part of the infamously select club of states (which includes Kentucky and Iowa) that permanently strip convicted felons of their right to vote.

The amendment is also a significant step in the right direction for the whole of the US, the democratic country with the worst criminal disenfranchisement worldwide [https://www.theguardian.com/commentisfree/2017/jul/18/america-steals-votes-felons-democracy-weakened]. The amendment reduces the number of citizens who are disenfranchised due to felony convictions by approximately 25% — from a total of 6.1 million last week to some 4.6 million today.

On the face of it, the success of amendment 4 looks like a groundbreaking victory for democracy.

Here are three reasons why. First, the decision does much to upset the entrenched electoral racism [https://www.themarshallproject.org/2018/08/20/jim-crow-s-lasting-legacy-at-the-ballot-box] that has characterised Floridian politics. After Congress outlawed slavery [https://www.history.com/topics/black-history/thirteenth-amendment], granted equal citizenship [https://www.history.com/topics/black-history/fourteenth-amendment] rights to freed slaves and prohibited the denial of voting rights based on 'race, colour, or previous condition of servitude [https://www.history.com/topics/black-history/fifteenth-amendment]' in the 19th century, Florida vigorously used its criminal laws to continue excluding African-Americans from the electoral process.

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This was notably done by attaching disenfranchisement sanctions to crimes the legislature knew were more likely to be committed by newly-freed slaves. Since criminal conviction rates are still largely biased against African-Americans, felony disenfranchisement continues to function as a deeply racist institution, especially when it is imposed permanently.

Second, amendment 4 testifies to the huge potential that direct democratic mobilisation has for enforcing a progressive agenda. The amendment was drafted and promoted by Floridians for Democracy [https://www.brennancenter.org/publication/florida-outlier-denying-voting-rights], a grass-roots movement that included 'voters from all corners of the state and all walks of life'. Moreover, it gave some felons the opportunity to fight for their inclusion in the electoral body. For instance, Valencia Gudner [https://www.theguardian.com/us-news/2018/nov/09/florida-amendment-4-felons-voting-rights-response-activists], a community organiser who lost her right to vote because of a 2007 felony conviction for writing a bad cheque, was now able to actively join the grass-roots movement, and actively win back one of her fundamental democratic rights.

Third, the adoption of amendment 4 makes the restoration of felons' voting rights less arbitrary than it was before. Prior to the 6 November vote, the restoration of felons' voting rights was granted only upon request and depended on the discretion of the Florida Clemency Board, a small bureaucratic committee headed by the state governor.

This meant that the governor got to ultimately decide who, among former felons, got to vote and who didn't. While the Democratic former governor, Charlie Crist, enfranchised over 150,000 ex-

felons in his four-year term, Republican governor Rick Scott has enfranchised only around 3,000 ex-felons [https://www.npr.org/2018/11/07/665031366/over-a-million-florida-ex-felons-win-right-to-vote-with-amendment-4?t=1541767725808] since 2011. By making the restoration of former felons' voting rights automatic, amendment 4 puts an end to this era of bureaucratic arbitrariness.

However, despite its democratic appearance, resorting to ballot initiatives to decide who has the right to vote risks making this right more fragile in the long run. Treating the right to vote as a chip that can be won or lost during the game of ordinary politics is a bad idea. It signals that the majority of citizens are entirely free to change their mind about who counts, and who doesn't, as a political equal. Majorities might be sympathetic to electorally vulnerable groups on some occasions, as was the case in Florida this time around. But similar majorities might just as well decide to restrict or suppress voting rights under different circumstances, as they did in North Carolina and Arkansas [https://www.theguardian.com/us-news/2018/oct/19/midterms-how-the-votes-of-vulnerable-groups-are-being-suppressed].

To put it another way, the legitimacy of ballot initiatives on who should have the right to vote can be dubious. Consider a historical example. In the 19th century, there were 480 campaigns to put women's suffrage to ballot in various US states. Just 17 of these actually resulted in ballots being held, and in only two cases [https://historynewsnetwork.org/article/170178] (Colorado in 1893 and Idaho in 1896) did they result in women obtaining the right to vote.

Why was it so difficult? In each case, women themselves were excluded from the vote that determined their suffrage. In 1914, author and journalist Ida Husted Harper noted acerbically [https://www.jstor.org/stable/25120252?seq=1#metadata_info_tab_contents] that such ballot initiatives mean 'simply that the men of the State shall have the absolute right to say whether women may have the suffrage, a doctrine contrary to justice, equity, democracy, and common sense.' The same is true of the Floridian vote on amendment 4, despite the success of the outcome.

Even when ballot initiatives result in an expansion of the franchise, as in Florida, they can do so at the cost of more hidden, but no less problematic forms of electoral exclusion. Amendment 4 allows for an automatic restoration of voting rights *only if* felons were not convicted for murder or sex offences. This limitation is completely arbitrary. Imprisonment, not disenfranchisement is the punishment that murderers and sex offenders deserve. Moreover, this limitation imposed on restoring voting rights might be counterproductive, since political inclusion and participation are negatively correlated with recidivism rates [https://takecareblog.com/blog/allowing-felons-to-vote-could-prevent-crime]. Why should a friend of democracy celebrate such an anti-democratic measure that will likely increase crime rates?

Paul Wright [https://eu.tallahassee.com/story/opinion/2018/09/19/case-against-amendment-4-felon-voting-rights-opinion/1351689002/], a Florida political activist convicted with murder for the killing of a drug dealer during a 1987 armed robbery, said amendment 4 'perpetuates the discrimination and bigotry of disenfranchisement against a subclass of ex-felons — those convicted of murder or sex crimes' and that this will likely make the enfranchisement of the latter 'virtually impossible'. Murder and sex crimes should by all means receive a fitting criminal sanction, but disenfranchisement is too blunt an instrument to count as such. By making electoral inclusion extremely difficult for certain categories of felons, Floridians both condone unjust punishing practices and remain prisoners of their racist, anti-democratic past.

The right to vote should not be used as a sanction for bad behaviour, and it should not be used as a reward for good or decent behaviour either. Rather, the right to vote should be treated as a fundamental human right [http://hrlibrary.umn.edu/edumat/studyguides/votingrights.html] that everyone, including felons, have simply by virtue of being human. This means that felon citizens should be treated as fellow citizens, irrespective of their criminal record.

The 1.5 million enfranchised Floridians are not 'returning citizens' — they never left. Forgetting that the right to vote is a human right and not a favour or privilege that a majority of citizens can give or take as it pleases makes all of our voting rights more fragile.

ANDREI POAMA & TOM THEUNS

Andrei Poama is Assistant Professor at the Institute of Public Administration of Leiden University and recently co-edited the *Routledge Handbook of Ethics and Public Policy*. Tom Theuns is a postdoctoral researcher in legal and political theory at Utrecht University, and works on the European Commission project 'Towards a European Theory of Justice and Fairness'.

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