

UNIVERZITA KARLOVA V PRAZE

FAKULTA SOCIÁLNÍCH VĚD

Institut mezinárodních studií

Tereza Pánková

**Disfranchising Prisoners in the U.S. – New
Means of Segregation?: Case Study of
Commonwealth of Virginia**

Diplomová práce

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Autor práce: **Tereza Pánková**

Vedoucí práce: **Mgr. Jana Sehnálková**

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Abstrakt

Diplomová práce *Omezování volebního práva vězňů v USA – nový nástroj segregace?: Případová studie státu Virginie* se zabývá rovností v uplatňování trestního práva ve Virginii. Cílem této práce je určit, zda je systém trestního práva ve Virginii používán k diskriminaci menšin a zda uplatňované zákony a postupy vytvářejí z Afroameričanů skupinu druhořadých občanů. V první kapitole se zaměřím na data a historii omezování volebních práv vězňů ve Virginii. Ve druhé kapitole budu zkoumat dopady odsouzení, např. ztrátu volebního práva, zaměstnání, sociálních benefitů a rodičovské zodpovědnosti. Třetí kapitola se bude věnovat reformám v oblasti volebních práv vězňů, uskutečňovaným pomocí schválení dodatku k ústavě, soudním rozhodnutím a činností guvernéra. Ze studie vyplývá, že systém trestního práva ve Virginii je využíván k diskriminaci černochů a že uplatňované zákony a postupy vytvářejí z Afroameričanů skupinu druhořadých občanů.

Abstract

The thesis *Disfranchising Prisoners in the U.S. – New Means of Segregation?: Case Study of Commonwealth of Virginia* deals with the equality of the criminal justice system in Virginia. The goal of this thesis is to determine, whether the criminal justice system in the Commonwealth of Virginia is used to discriminate against minorities and if the laws and practices are creating a group of second-class citizens out of African Americans. The first chapter will be devoted to the data and history of disenfranchisement, the second chapter will deal with the consequences of a felony conviction, such as the loss of the right to vote, loss of employment and loss of social benefits and parental rights. In the last chapter of my thesis, I will analyze the possibilities of a future reform and its main sources, such as court decisions, the

ratification of a constitutional amendment to the Virginia Constitution, and gubernatorial action by the Governor of Virginia. The findings of this thesis show that the criminal justice in Virginia is used to discriminate against African Americans and that the laws and practices are creating a group of second-class citizens out of African Americans.

Klíčová slova

volební právo, Afroameričané, vězení, segregace, Virginie

Keywords

voting rights, African Americans, incarceration, segregation, Virginia

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Prohlášení

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V Praze dne 13. 5. 2016

Tereza Pánková

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Jméno: Tereza Pánková		
E-mail: 90183052@fsv.cuni.cz		
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Vedoucí práce: Mgr. Jana Sehnálková		
V čem se oproti původnímu zadání změnil cíl práce? The previous goal was to determine the impact of felony disenfranchisement on the outcome of elections. I decided to change that to: “Is the criminal justice system in the Commonwealth of Virginia used to discriminate against minorities? Are the laws and practices creating a group of second-class citizens out of African Americans?”		
Jaké změny nastaly v časovém, teritoriálním a věcném vymezení tématu? The time frame stayed the same. I narrowed the territory down to the Commonwealth of Virginia. The topic changed from the impact on elections to the equality of the criminal justice system in Virginia.		
Jak se proměnila struktura práce (vyjádřete stručným obsahem)? The first chapter will be devoted to the data and history of disenfranchisement, the second chapter will deal with consequences of a felony conviction, such as the loss of the right to vote, loss of employment and loss of social benefits and parental rights. In the last chapter of my thesis, I will analyze the possibilities of a future reform and its main sources, such as court decisions, the ratification of a constitutional amendment to the Virginia Constitution, and gubernatorial action by the Governor of Virginia.		
Jakým vývojem prošla metodologická koncepce práce? The thesis will be a socio-political case study. The method of my thesis will be qualitative analysis.		
Které nové prameny a sekundární literatura byly zpracovány a jak tato skutečnost ovlivnila celek práce? I studied court decisions dealing with felony disenfranchisement, which I used for the third chapter.		
Charakterizujte základní proměny práce v době od zadání projektu do odevzdání tezí a pokuste se vyhodnotit, jaký pokrok na práci jste během semestru zaznamenali (v bodech): - specification of the topic, narrowed down territory, specification of structure, research of new sources, further work with existing sources		
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Introduction

Nowadays, the reform of the current criminal justice system is one of the most pressing issues in the United States. Even President Barack Obama talked about criminal justice system in his last State of the Union Address on January 12th, 2016.¹ During the last couple of years, we have witnessed rising tensions between the African American community and the police. We saw many killings of innocent black people by the police, such as the shooting of 17-year-old Trayvon Martin in 2012, the shooting of 18-year-old Michael Brown in 2014, and the shooting of 12-year-old Tamir Rice in 2015. All these tragic events led to the creation of the Black Lives Matter movement and to massive protests with the center in Ferguson, Missouri. I believe that it is extremely important to talk about the weaknesses of American criminal justice system today, especially with regards to the complicated situation of African Americans in the Unites States.

The aim of my thesis is to study felony disenfranchisement in the United States, which is the denial of voting rights to people who were convicted of a serious crime. In Virginia, any crime punishable by imprisonment for over twelve months constitutes a felony.² Felony disenfranchisement belongs to one of the most pressing issues today, illustrating the persistent inequality between black and white Americans. It is worth more attention since racial disparities undermine the American ideals of democracy and equality. I will use the example of Commonwealth of Virginia to demonstrate the negative effects of felony disenfranchisement. I chose the Commonwealth of Virginia, because it has one of the strictest rules in terms of felony disenfranchisement. Also, I had the unique chance to study one semester at the University of Richmond in Virginia, which gave me the opportunity to access valuable resources, and to discuss my research with people from Virginia, as well as to meet the Governor of Virginia, Terry McAuliffe.

The research question of my thesis is: “Is the criminal justice system in the Commonwealth of Virginia used to discriminate against minorities? Are the laws and

¹ “Remarks of President Barack Obama – State of the Union Address as Delivered“, *The White House*, <https://www.whitehouse.gov/the-press-office/2016/01/12/remarks-president-barack-obama-%E2%80%93-prepared-delivery-state-union-address>, accessed 20th January 2016.

² J.D. Garret, “The Collateral Consequences of a Felony Conviction”, *Garret Law Group PLC*, <http://www.garrettlawgroup.com/2013/10/16/collateral-consequences-of-felony-conviction-virginia/>, accessed 29 March, 2016.

practices creating a group of second-class citizens out of African Americans?" I will try to answer my research question in the conclusion of my thesis.

In regards to methodology, my work will be a socio-political case study, which will demonstrate the destructive consequences of felony disenfranchisement on the example of Virginia. The method of my thesis will be qualitative analysis.

To answer my question, I will first discuss felony disenfranchisement in the United States as a whole and later, I will move onto the specific case of the Commonwealth of Virginia. The first chapter will be devoted to the data and history of disenfranchisement, the second chapter will deal with consequences of a felony conviction, such as the loss of the right to vote, loss of employment and loss of social benefits (e.g. public housing, food stamps) and parental rights. In the last chapter of my thesis, I will analyze the possibilities of a future reform and its main sources, such as court decision (by the U. S. Supreme Court and courts in Virginia), the ratification of a constitutional amendment to the Virginia Constitution, and gubernatorial action by the Governor of Virginia.

I started my research with secondary literature focusing on mass incarceration in the United States to get a general idea about the scholarly questions. Mass incarceration is defined as a current situation in the U.S. with comparatively and historically extreme rates of imprisonment concentrated among young African American men living in disadvantaged neighborhoods.³ My goal was to study literature from different disciplines to see the various approaches to this topic. The next step was to find literature that would help me understand the impact of mass incarceration on families and communities left behind. Afterwards, I narrowed my research to the case of Virginia. I studied the legal framework for voting in Virginia and I tried to find organizations that are working to restore voting rights to disenfranchised people in Virginia. To conclude my research, I gathered reports and articles written by these organizations as well as newspaper articles on the topic.

The first book I read on this topic was *The New Jim Crow, Mass Incarceration in the Age of Colorblindness*⁴ by Michelle Alexander. Her work is revolutionary, comparing mass incarceration of the current era to segregation of African Americans

³ Christopher Wildeman, "Mass Incarceration", *Oxford Bibliographies*, <http://www.oxfordbibliographies.com/view/document/obo-9780195396607/obo-9780195396607-0033.xml>, accessed 16 February 2016.

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

during the era of Jim Crow. The next book I used for my research was *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*⁵ by Devah Pager. Pager uses sociological approach to explain the issue of mass incarceration. By conducting an experiment in Milwaukee, Wisconsin, in which she assigned young men mock criminal records and sent them to find a job, Pager shows that it is extremely hard for an ex-offender to find employment. Her experiment also shows that race plays an important role in the scenario, as African Americans without a criminal record had the same chance of getting a job as a white applicant with a criminal record. On the other hand, African Americans with criminal record had no chance of getting hired at all. This shows only a part of the issue that will be discussed later, including troubles that released felons have with finding employment, housing, and getting social benefits.

Even though I believe that Pager's findings are valuable, I would argue that it is hard to measure the outcomes of her experiment accurately, since personal qualities and educational background of the men participating might play a role in the decision of the recruiter. Furthermore, her experiment was only conducted in Milwaukee, so I think that it is important to consider that the same experiment could have had different results in a different part of the country. In 2010, African Americans comprised 40 percent of the population of Milwaukee⁶, and the city ranked seventh in the list of the most dangerous U.S. cities in 2015, with violent crime rate 1,364 per 100,000 people.⁷ The outcome could have been different in another state of the U.S., for example, in a city with low crime rates and small black minority, recruiters could have had less prejudice against African Americans. My last comment to Pager's study is that the free positions the men participating in the experiment applied to were exclusively entry-level jobs. I believe that similar experiment conducted with people applying to higher positions might have different results.

The book *A Plague of Prisons: The Epidemiology of Mass Incarceration in America*⁸ by Ernest Drucker looks at the issue from a different perspective. Drucker is a public health expert and his scholarly contribution is that he takes methods normally used in epidemiology and applies them to study the American society. Drucker uses

⁵ Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*, (Chicago: University of Chicago Press, 2007).

⁶ "State & County Quick Facts", *United States Census Bureau*, <http://quickfacts.census.gov/qfd/states/55/5553000.html>.

⁷ "Crime in America 2015: Top 10 Most Dangerous Cities over 200,000", *Law Street*, <http://lawstreetmedia.com/crime-america-2015-top-10-dangerous-cities-200000-2/>.

examples of epidemics, such as the cholera epidemic in England and the spread of AIDS, to explain the issue of mass incarceration in the United States. Drucker suggests that even though mass incarceration might be an epidemic of a different kind, it is still an epidemic. He says that mass imprisonment destabilizes families and communities instead of helping them. The author also argues against the War on Drugs, and he believes that drug addiction should be regarded as a public health issue instead of a crime. He says that minorities are overrepresented in the prison population and that having the largest prison population in the world is in contradiction to the American values of democracy, freedom, and individual rights. I found Drucker's book very interesting. I thought it was revolutionary to apply the methodology of a completely different discipline, such as epidemiology, to society. I found his arguments convincing and I believe he used numbers, graphs and maps very well to illustrate his findings.

After reading books written by a sociologist and an epidemiologist, I studied literature written by criminologists. Todd R. Clear and Natasha Frost summarize their research in a book *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America*⁹. They look at the political aspect of the issue and argue that mass incarceration in the United States in the second half of the twentieth century was a grand social experiment that can be compared to the New Deal or the Great Society. The authors assert that the punitive approach to crime is losing support and is slowly being replaced by a more rehabilitative, pragmatic, and cooperative approach. They also state that mass incarceration has some motives that might not be visible at first, which are of political and economic nature. Economic reasons include cheap labor of prisoners, the lobby of prison employees and owners of private prisons. The authors also give recommendations for the future, believing that there is better solution to crime than mass imprisonment. They propose reducing the time of imprisonment and improving the conditions for non-violent offenders. Clear and Frost made a compelling argument and they backed up their statements with credible data. I agree with them that punishment imperative is not a constructive solution to crime and that there are better ways to solve the issue, reintegrate the released prisoners back into society and help them become contributing members of society instead of recidivists.

⁸ Ernest Drucker, *A Plague of Prisons: The Epidemiology of Mass Incarceration in America*, (New York: New Press, 2013).

⁹ Natasha A. Frost and Todd R. Clear, *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America*, (New York: New York University Press, 2013).

*Imprisoning Communities, How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*¹⁰ by Todd R. Clear studies the impact of mass incarceration on families and communities. Todd R. Clear, who is an expert on criminal justice, focuses chiefly on community justice. The concept of community justice is based on activities that specifically include the community in crime prevention (e. g. community policing and courts).¹¹ He explains that incarceration does not fulfill the goal of helping the family and community of the criminal by taking the person away. On the contrary, it breaks up families and destabilizes the community. Furthermore, by having the right to vote taken away from them, people in poor communities with high incarceration rate also lose the ability to change their unfavorable situation. Clear argues that in some impoverished urban areas, one in every five men is incarcerated. He also states that in these communities, there are no families that would not have personal experience with incarceration of a family member. Clear claims that the failure to incorporate the idea of community into the discussion about crime is contributing to the high incarceration rate. The scholarly invention of Clear is that he does not look at the person returning back from prison as an individual, but rather he studies the community as a whole.

Another important source was a collection of essays *Prisoners Once Removed, The Impact of Incarceration and Reentry on Children, Families, and Communities*¹², edited by Jeremy Travis and Michelle Waul. The editors are experts on criminal justice, with focus on prisoner reentry into society. In one of the essays from the collection, “The Psychological Impact of Incarceration, Implications for Postprison Adjustment”, Craig Haney argues that the preparation for reentry to society should start as soon as possible. According to Haney, during their sentence, prisoners should receive necessary treatment and education, as well as training and help with finding a job. In another essay, Donald Braman and Jenifer Wood study the impact of incarceration on children. They propose that incarceration and common repeated removal and return of parents create a big burden on children. The authors recommend drug treatment, parenting classes, and job training for prisoners, which in their opinion would help make the hard situation of the children of prisoners easier.

¹⁰ Todd R Clear, *Imprisoning Communities, How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*, (Oxford University Press: New York, 2007).

¹¹ David R. Karp and Todd R. Clear, “Community Justice: A Conceptual Framework”, https://www.ncjrs.gov/criminal_justice2000/vol_2/02i2.pdf, accessed February 16, 2016.

¹² Jeremy Travis and Michelle Waul ed., *Prisoners Once Removed, The Impact of Incarceration and Reentry on Children, Families, and Communities*, (The Urban Institute Press: Washington D. C., 2003).

Turning from children to women, Stephanie S. Covington examines a part of prison which is often forgotten. Covington reveals that female prisoners have some specific aspects that are not so common with male prisoners. She says that motherhood is a very important aspect of female prisoners, as many of them have children, which often have a very close relationship to them. Other common issues of women in prison are substance abuse, trauma and mental health issues. Female prisoners also often experience sexual abuse and domestic violence. Covington argues that because of the reasons mentioned above, female offenders require different approach than men. She suggests that the bond between mother and child should be maintained, if possible, and that special attention should be given to women-specific issues such as mental health issues and trauma from experiencing violence. In my opinion, the collection was put together in a very thoughtful manner and the essays touched many interesting issues, which are often omitted in most of the literature on the topic, such as the specifics of incarcerated women. Even though the topic of women in the U. S. criminal justice system is very interesting, it is not the goal of this thesis to focus on this specific issue. For more information on women in the U. S. prison system, please see Zuzana Schmidtová, *Women in the U.S. Prison System: The Care They Need and the Treatment They Receive*.¹³

The next step was to narrow the research down to the case of Virginia. A key resource for this part of my work was an article written by legal scholar Dori Elizabeth Martin, titled “Lifting the Fog: Ending Felony Disenfranchisement in Virginia”.¹⁴ In this article, Martin looks at felony disenfranchisement in Virginia from the legal perspective. She describes the origins of legislation barring felons from voting, its challenges, political justifications, and different levels of impact of felony disenfranchisement on African Americans and whites. Martin also talks about the recent attempts to make the process to regain voting rights in Virginia easier, and she gives recommendations for the future. Martin points out that Virginia is one of the four states that permanently deprive felons of the right to vote and in this sense is one of the strictest in the nation. She argues this is not a good approach to crime, since restoration of voting rights is one of the easiest ways to integrate released prisoners back to community. Martin furthermore states that the feeling of belonging to a community is

¹³ Zuzana Schmidtová, *Women in the U.S. Prison System: The Care They Need and the Treatment They Receive*, 2013, <https://is.cuni.cz/webapps/zzp/detail/115063>, accessed 24 April, 2016.

crucial in preventing people from returning to criminal activity. In regards to the recent changes in Virginia, Martin talks about governors who contributed to the streamlining of the process of voting rights restoration, and gave the right to vote back to large numbers of formerly disenfranchised people. She specifically lists the achievements of Virginia governors Mark Warner, Bob McDonnell, and Tim Kaine.

Virginia Governor Terry McAuliffe is an important figure in the voting rights restoration debate. I searched for information on Governor McAuliffe in newspapers, such as *The Washington Post*, and in articles and reports published by various organizations, for example the Resource Information Help for the Disadvantaged, RIHD. What I learned about Governor McAuliffe is that voting rights restoration is one of his big priorities and he works hard to make the process easier and faster. This thesis will focus on his accomplishments from January 2014, when he assumed office, until January 2016, when McAuliffe restored the voting rights of over 5,100 ex-offenders. He also made changes to the application for restoration of voting rights, such as shortening it from 13 pages to one and removing the requirement to write letters to the governor.¹⁵

There are numerous organizations in Virginia whose goals include restoration of voting rights. I contacted Hope Amezcuita from the American Civil Liberties Union of Virginia and she recommended many organizations for my further research, such as the Advancement Project, Virginia Organizing, Holla Back and Restore Project, Bridging the Gap, Goodwill Industries, League of Women Voters Virginia, New Virginia Majority, Sentencing Project, and Brennan Center for Research. These organizations fight for voting rights for all without any reservation. After looking more closely into these initiatives, I was able to find many reports and articles, which were useful for my work. What I saw relevant for my study was, for instance a report on rights restoration published by the Advancement Project. This report argues that while the state of Virginia has among the lowest rates of violent and property crimes, it actually ranks at the top in imprisonment. This report also talks about the so-called “prison gerrymandering”. This is a process, in which prisoners in Virginia are counted into populations of rural areas, where most of the state's prisons are located, which inflates the votes of white people from the area and dilutes the votes of minority urban voters. Part of this report is a timeline that shows the most important milestones in Virginia

¹⁴ Dori Elizabeth Martin, “Lifting the Fog: Ending Felony Disenfranchisement in Virginia”, (*University of Richmond Law Review*, Volume: 47, Issue: 1), 471-493.

voting rights. Among them is the year 1851, as the year when voting disenfranchisement was put in Virginia's Constitution, or 2013, when Governor McDonnell announced automatic restoration of voting rights for non-violent felons.

The next step of my research was to look more closely on the legal aspect of this issue. I searched for legal cases in Virginia on this topic in the *Virginia and West Virginia Digest*, and in *Michie's Jurisprudence of Virginia and West Virginia, A Complete Treatise of Virginia and West Virginia Law*, as well as in *West's Annotated Code of Virginia*. I also read a book on the legal side of disenfranchisement written by Katherine Irene Pettus, titled *Felony Disenfranchisement in America, Historical Origins, Institutional Racism, and Modern Consequences*¹⁶. In this book, Pettus uses history, philosophy, punishment theory, and politics to argue that disenfranchisement has political and moral implications. She states that the denial of voting rights of a certain part of the population has an impact on the outcome of elections and its legitimacy. The most useful part of her book for my research was chapter four, titled "Judicial Justifications of Felon Disenfranchisement and the Politics of Crime and Punishment". In this chapter, Pettus analyzes the judicial and political discussions about felony disenfranchisement. She reports that even though legal and political justifications for this practice are weak and unconvincing, felony disenfranchisement still persists.

The book *Governing Virginia*¹⁷ by Anne Marie Morgan and A. R. Pete Giesen helped me to get a better idea about contemporary Virginia politics and to put the efforts for voting rights restoration in a political context. In their book, political science experts collected essays written by five Virginia governors, five legislators, and other leaders. The most important for my research were parts 1, 3, and 7, which talk about the constitutional changes in Virginia, priorities of governors, and the electoral system. This collection helped me put my prior findings into a larger perspective, and I appreciated the personal feel of the essays, since the people writing them actually talked about their own experience.

In my research, I discovered that the topic of felony disenfranchisement in the United States is well covered by scholarly literature. On the other hand the specific case of the state of Virginia has not yet been thoroughly examined by scholars. Therefore

¹⁵ Helen A. Gibson, "Felons and the Right to Vote in Virginia: a Historical Overview", *The Virginia News Letter*, Vol. 91 No. 1 January 2015.

¹⁶ Katherine Irene Pettus, *Felony Disenfranchisement in America, Historical Origins, Institutional Racism, and Modern Consequences*, (LFB Scholarly Publishing LLC: New York, 2005).

I believe that my attempt to study this topic could bring some new insight into the discussion.

1. Felony Disenfranchisement

The first chapter will focus on the data and history of felony disenfranchisement. The specific aspects of the United States and of Virginia will be analyzed. Attention will also be paid to the disproportionate impact of felony disenfranchisement on African Americans.

1.1 *Felony Disenfranchisement in the United States*

1.1.1 Data of Felony Disenfranchisement in the United States

When it comes to felony disenfranchisement, the United States takes the voting rights away from its citizens on levels seen nowhere else before. In 2010, 5.85 million people were disenfranchised in the U. S. because of felony conviction.¹⁸ Nowhere in the democratic world can we find disenfranchisement on such high levels.¹⁹

In the United States, it is the responsibility of each state to set its own laws regarding felony disenfranchisement, so each state decides how strict it wants to be in this area. The strictest states bar people with felony conviction from voting for life, the most tolerant states on the other hand do not impose any restrictions at all. Those are Vermont and Maine, where even people in prison are allowed to vote. Fourteen states allow its citizens to vote as soon as they are released from prison (e.g. Illinois); four states including California and New York wait until the completion of parole. Nineteen states (e.g. Texas) disenfranchise even people on probation; twelve states including Virginia apply the ban also on people who completed their sentence, probation and parole.²⁰

¹⁷ Anne Marie Morgan and A.R. Pete Giesen, *Governing Virginia*, (Pearson Learning Solutions: New York, 2011).

¹⁸ Jean Chung, "Felony Disenfranchisement: a Primer", *The Sentencing Project*, http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf, accessed 21st January 2016, 1.

¹⁹ "Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States", *American Civil Liberties Union*, September 2013, http://sentencingproject.org/doc/publications/fd_ICCPR%20Felony%20Disenfranchisement%20Shadow%20Report.pdf, accessed February 29, 2016, 2.

²⁰ Jean Chung, "Felony Disenfranchisement: a Primer", 1.

An interesting aspect of felony disenfranchisement is that it has racially disproportionate impact. Because African Americans are overrepresented in prisons²¹, they are also four times more likely to lose their right to vote than whites. In the United States as a whole, 7.7 percent of African Americans, which means one in every thirteen blacks is disenfranchised, as opposed to 1.8 percent of white Americans. Other minorities, such as Hispanics, are also disproportionately overrepresented in the U.S. criminal justice system, but not to the extent of blacks. Hispanics are incarcerated approximately 2.4 times more than whites.²²

African Americans are disenfranchised at highest rates in Florida, Kentucky and Virginia. In Virginia, 20% of blacks are not allowed to vote. In Florida and Kentucky, the situation is even worse, with 23% and 22% of African Americans disenfranchised.²³ Nationally, 2.2 million blacks are disenfranchised.²⁴ Out of the U.S. population of disenfranchised African Americans, 25 percent are still in prison. But 40 percent of them have already finished their sentence and yet they are still being punished.²⁵

It is important to realize why there are so many African Americans in the criminal justice system of the U.S. Unlike some people may assume without better knowledge of the subject, the reason is not that blacks commit more crimes than whites. The truth is that there is significant inequality at nearly every phase of the criminal justice system, which in consequence brings disproportionate amount of African Americans to U.S. prisons.

The unequal treatment starts already with searches. Police are three times more likely to search the cars of African American drivers they stop, compared to cars driven by whites.²⁶ As police have the liberty to choose which individuals in which neighborhoods they target, they will very often stop and search young black males in poor neighborhoods. Although studies have shown that approximately ten percent of

²¹ According to the National Association for the Advancement of Colored People, African Americans now constitute nearly 1 million of the total 2.3 million incarcerated population and are incarcerated at nearly six times the rate of whites. (<http://www.naacp.org/pages/criminal-justice-fact-sheet>, accessed 2 April 2016).

²² “Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States”, *American Civil Liberties Union*, September 2013, http://sentencingproject.org/doc/publications/fd_ICCPR%20Felony%20Disenfranchisement%20Shadow%20Report.pdf, accessed February 29, 2016, 2.

²³ *Ibid.*

²⁴ Jean Chung, “Felony Disenfranchisement: a Primer”, 2.

²⁵ “Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States”, 4.

²⁶ Andrew Kahn and Chris Kirk, “There's blatant inequality at nearly every phase of the criminal justice system”.

American population use drugs and that people of all races use drugs on similar rates, people in affluent white neighborhoods are very unlikely to be stopped by the police. Poor blacks, on the other hand, are a much easier target, since they are concentrated in the ghetto and have little political power.^{27 28}

It is a very common practice of police officers to stop and search African Americans even without having a probable cause. The police often reason these searches by minor traffic violations, such as failure to signal the change of lanes. As a consequence, black drivers are never immune to random police stops, which may result in their arrest.²⁹ The result of this targeted policing is the existence of poor communities of color being severely damaged by mass incarceration.

In their article “There's Blatant Inequality at Nearly Every Phase of the Criminal Justice System”, Andrew Kahn and Chris Kirk state that while whites use drugs at comparable rates as blacks and sell drugs on higher rates, African Americans are arrested for drug crimes at twice the rate of whites.³⁰ One of the causes for racial inequality of the system may be the harsh laws for crack cocaine use.³¹ In her book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander argues that the War on Drugs is the main cause of mass incarceration of African Americans. She says that the law discriminates against African Americans, because the punishment for crack cocaine offenses is disproportionately more severe than punishment for crimes connected with powder cocaine. As African Americans tend to use crack cocaine and whites tend to use powder cocaine, blacks end up with harsher penalties for using the same substance in a different form. It is important to note that the two forms

²⁷ Michelle Alexander, *The New Jim Crow*, 123-124.

²⁸ Even though it may seem that blacks are now politically better represented than ever before, the reality is quite different. Sadly, African American president in the White House and 43 African American members of the House of Representatives do not automatically translate into political clout. The issue is that blacks fail to convert their political preferences into laws. For example, federal policy without the support of whites only has 10 percent chance of adoption. On the other hand, proposal without the support of African Americans has a 40 percent chance of becoming a law. The system is also unfavorable to poor, what matters the most is the opinion white rich men. This is only highlighted by campaign-finance deregulation and growing inequality in American society. As a result, policymakers are likely to ignore opinions of blacks on issues such as crime, housing, and welfare. (Nicholas Stephanopoulos, “The False Promise of Black Political Representation”, *The Atlantic*, <http://www.theatlantic.com/politics/archive/2015/06/black-political-representation-power/395594/>, accessed 19 March, 2016.)

²⁹ Michelle Alexander, *The New Jim Crow*, 63-64.

³⁰ Andrew Kahn and Chris Kirk, “There's blatant inequality at nearly every phase of the criminal justice system”.

³¹ While the possession of 28 grams of crack cocaine results in a five-year mandatory minimum sentence for a first offense; it takes 500 grams of powder cocaine to prompt the same sentence. (“Cocaine and Crack Facts”, *Drug Policy Alliance*, <http://www.drugpolicy.org/drug-facts/cocaine-and-crack-facts>, accessed 2 April, 2016.)

were found equally dangerous by experts. Alexander claims that it is therefore evident that this law was designed by the elite with the sole purpose to disenfranchise disproportionate amount of African Americans. Even though the law is written in a way that seems colorblind, in its very effect, it is not.³²

Additionally, Alexander observes that prosecutors respond to identical criminal activities differently, according to the race of the offender. Studies have shown that young black males are more likely to be arrested, detained, formally charged and transferred to court than whites. In these cases, prosecutors are influenced by both conscious and unconscious racial biases.³³ Information gathered by the organization Building Blocks for Youth (2000) showed that blacks represent 15% of the U.S. population, 26% of juvenile arrests, 44% of detained youth, 46% of youth judicially waived to criminal court, and 58% of youth in state prisons.³⁴ Research also shows that black males are given longer sentences than their white counterparts. African Americans receive on average 10 percent longer sentences. A part of the reason is that prosecutors are twice as likely to impose mandatory minimum sentences against blacks as against whites.³⁵

Kahn and Kirk add that after the arrest is made, blacks and whites are again treated differently. African Americans are more likely to be in jail while awaiting trial. This is often due to the fact that they cannot afford to pay a bail. Furthermore, blacks are 13 percent more likely to be offered a plea including prison time, whereas whites are commonly offered alternative options, such as community service or fine.³⁶

Another factor is the selection of the jury. As the jurors are often picked out of the Department of Motor Vehicle list or the list of registered voters, where African Americans are underrepresented, achieving an all-white jury is not at all difficult. Furthermore, some states apply a lifetime felon exclusion from juries, automatically making thirty percent of black men incapable of serving in juries.³⁷ Kahn and Kirk come to the same conclusion, saying that black Americans are often excluded from

³² Michelle Alexander, *The New Jim Crow*, 112.

³³ *Ibid.*, 117-118.

³⁴ Racial Discrimination in the Criminal Justice System, *Sage Pub*, http://www.sagepub.com/sites/default/files/upm-binaries/46946_CH_3.pdf, accessed 2 April, 2016.

³⁵ Andrew Kahn and Chris Kirk, "There's blatant inequality at nearly every phase of the criminal justice system".

³⁶ *Ibid.*

³⁷ Michelle Alexander, *The New Jim Crow*, 121.

juries without legitimate justification.³⁸ This goes against the principle of representative jury, which states that “trial juries and grand juries alike ought to be bodies truly representative of the community, in the sense of being cross-sections or representative samples of the community.”³⁹ Since the U. S. is a racially diverse country, the people serving in juries should reflect that. It is a well-known fact that people who are not a part of the race are much more inclined to be influenced by stereotypes. So if the jury judging an African American consists of whites only, it may be biased.

1.1.1 History of Felony Disenfranchisement in the United States

The tradition of felony disenfranchisement is almost as old as the United States itself. At the time the U.S. Constitution was ratified, twenty-nine states applied felony disenfranchisement laws, arguing that by committing a crime, felons violated social norms and proved they were not fit to participate in the political process.⁴⁰ On the other hand, jail during colonial time was only used for temporary detention. The first prisons appeared in 1780s, when special houses were constructed for this purpose. In these prisons, inmates were used especially for hard labor. Colonists applied the concept of vengeance, believing that people should pay for the crimes they commit. Another principle they used was deterrence. Since punishments were usually public, colonists wanted to make the criminal feel ashamed in front of the whole community and as a side effect deter others from committing crimes. Common punishments included whipping, branding, and public hanging.⁴¹

Discriminatory treatment of African Americans already started in the colonial times. Statutes from this era differentiated between felony convictions and sentencing Caucasians and free African Americans. In the early 19th century, free African Americans convicted of a felony and sentenced to two years or more could be whipped and sold to slavery. In 1828, a new mandatory sentence of five years was set for free African Americans convicted of a felony. Meanwhile, the minimum sentence for white

³⁸ Andrew Kahn and Chris Kirk, “There's blatant inequality at nearly every phase of the criminal justice system”.

³⁹ W. S. Robinson, “Bias, Probability, and Trial by Jury”, *American Sociological Review*, 13, <http://www.pages.drexel.edu/~shs62/cj243/juryreadings/Robinson-Bias%20Probability%20and%20Trial%20by%20Jury.PDF>, accessed March 19, 2016.

⁴⁰ Thea Johnson, “Access Denied: The Impact of Virginias Felony Disenfranchisement Laws”, *Advancement Project*, December 2005, http://lww-va.org/files/studies_2007-07-18_rj_access_denied_impact_va_felony_laws.pdf, accessed 20 March, 2016.

⁴¹ James A. Cox, “Bilboes, Brands, and Branks, Colonial Crimes and Punishments”, *CW Journal*, Spring 03, <http://www.history.org/foundation/journal/spring03/branks.cfm>, accessed 20 March, 2016.

people convicted of a felony was only two years. In 1830, the 1776 Constitution of Virginia was revised and the first Virginian explicit felon disenfranchisement measure was introduced.⁴² Other states embraced felony disenfranchisement even sooner; the first was Kentucky in 1792.⁴³

After the end of the Civil War, African Americans finally gained the right to vote. But white Americans were still trying to find new ways to take the political power away from African Americans. After slavery was abolished by the 13th Amendment to the United States Constitution, imprisonment of African Americans for felonies and petty theft was introduced as an easy means of disenfranchising people while pretending to be more democratic.⁴⁴

1.2 Felony Disenfranchisement in Virginia

1.2.1 Data of Felony Disenfranchisement in Virginia

In 2015, around 450,000 of 6.4 million voting-age Virginians were not able to vote. What is even more staggering is that more than 20 percent of adult African Americans were disenfranchised in Virginia in 2010 due to felony conviction.⁴⁵ Even though blacks comprise around 20 percent of the population of Virginia, they are significantly overrepresented in all phases of the criminal justice system. They comprise over 47 percent of arrests and over 60 percent of state prisoners.⁴⁶ Even after their release from prison, African Americans are more likely than whites to have their probation revoked.⁴⁷

What I find questionable is that the incarceration level does not correspond at all to the crime rates. Although crime rates in the United States have been dropping, the incarceration rate remains extremely high. Also, while Virginia has one of the lowest

⁴² Helen A. Gibson, “Felons and the Right to Vote in Virginia: a Historical Overview”, 2.

⁴³ “Historical Timeline of US History of Felon Voting / Disenfranchisement”, *ProCon.org*, <http://felonvoting.procon.org/view.timeline.php?timelineID=000016>, accessed 4 April, 2016.

⁴⁴ Helen A. Gibson, “Felons and the Right to Vote in Virginia: a Historical Overview”, 4.

⁴⁵ Helen Gibson, “Gibson: Virginia's history of taking away civil rights”, *The Virginian Pilot*, 1st February 2015, http://pilotonline.com/opinion/columnist/guest/gibson-virginia-s-history-of-taking-away-civil-rights/article_dc674a20-258e-5dbd-b3ad-71577946f109.html, accessed 21st January 2016.

⁴⁶ “Virginia’s Justice System: Expensive, Ineffective and Unfair”, *Justice Policy Institute*, November 2013, http://www.justicepolicy.org/uploads/justicepolicy/documents/va_justice_system_expensive_ineffective_and_unfair_final.pdf, accessed January 21st, 2016, 1.

⁴⁷ Andrew Kahn and Chris Kirk, “There's blatant inequality at nearly every phase of the criminal justice system”, *Business Insider*, Aug. 9, 2015, <http://www.businessinsider.com/theres-blatant-inequality-at-nearly-every-phase-of-the-criminal-justice-system-2015-8>, accessed February 28, 2016.

rates of violent and property crime (Virginia ranked 46th and 43rd respectively in 2011), it actually incarcerates more people than states with higher crime rates (it ranked 17th in incarceration rate in 2011).⁴⁸ In general, crime in Virginia has been declining for the last twenty years. Nevertheless, the number of arrests does not reflect that, as it only fell by 1.1 percent. A reason for that is mostly the War on Drugs and the volume of arrests connected to it.⁴⁹

When the Nixon administration introduced significant changes to the criminal justice policy in 1968, the fight against consumption, distribution, and sale of drugs intensified.⁵⁰ The War on Drugs escalated under President Reagan, who made the fight to limit drug use his priority and even his wife, Nancy Reagan, contributed with her “Just say No” campaign.⁵¹ Subsequent presidents of the United States continued with this policy, even though research shows that it did not have the desired effect, and it worsened the situation in poor communities of color. Increased policing in these communities, less judicial discretion, and tougher laws and prosecution, created “drug areas” from poor black neighborhoods. As a consequence, 62.6% of drug offenders in state prisons are African Americans, even though whites compose 72% of drug users.⁵² Unfortunately, in white suburban middle class areas, where the use of certain types of drugs, such as prescription medications, is becoming more and more common, police does not focus on drug crime prosecution. And even though cases of heroin abuse in the white affluent neighborhoods are regularly being reported, the police still find it easier to go searching for drug criminals in the black ghetto.⁵³

While violent and property crime in Virginia has been declining, the amount of drug offenses rose significantly from 34,404 in 2002 to 50,650 in 2011.⁵⁴ It is important to note that majority of these cases were minor offenses. In 2012, 38,349 people were arrested for drug crimes, but marihuana arrests accounted for 62.4 percent of that.⁵⁵

⁴⁸ “Virginia’s Justice System: Expensive, Ineffective and Unfair”, 2.

⁴⁹ Ibid., 3.

⁵⁰ Lisa D. Moore and Amy Elkavich, “Who’s Using and Who’s Doing Time: Incarceration, the War on Drugs, and Public Health”, *American Journal of Public Health*, 2008 May; 98(5): 782–786, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2374804/pdf/0980782.pdf>, accessed 19 March, 2016.

⁵¹ “A Brief History of the Drug War”, *Drug Policy Alliance*, <http://www.drugpolicy.org/new-solutions-drug-policy/brief-history-drug-war>, accessed 2 April, 2016.

⁵² Lisa D. Moore and Amy Elkavich, “Who’s Using and Who’s Doing Time: Incarceration, the War on Drugs, and Public Health”.

⁵³ “Drug Use and Addiction in the Suburbs” *Lock the Cabinet*,

<http://www.lockthecabinet.com/news/drug-use-addiction-suburbs/>, accessed 2 April, 20A6.

⁵⁴ “Virginia’s Justice System: Expensive, Ineffective and Unfair”, 3.

⁵⁵ Ibid., 4.

When some states, such as Colorado or Washington, started to ease their drug policies, Virginia did not show much progress in that area.

Additionally, recent research shows that drug abuse should be regarded as a public health issue rather than a criminal justice problem.⁵⁶ The National Drug Control Strategy, a proposal of changes to the drug policy prepared by the Obama administration in 2014, reflects these findings. Proposed reforms include increased focus on drug prevention and access to treatment, “smart on crime” rather than “tough on crime” approach, and a reform of sentencing. Of course, such policies are not politically attractive, since the tough approach is generally more appealing to the public.⁵⁷ However, the situation in Virginia only shows that the current approach towards drug abuse is not in any way constructive.⁵⁸

1.2.2 History of Felony Disenfranchisement in Virginia

By the time the Reconstruction was about to end in 1870s, many states broadened felony disenfranchisement laws with the focus on crimes committed predominantly by African Americans.⁵⁹ The harshest disenfranchisement laws were enacted in the former slave states. Whites tried to find ways to disenfranchise blacks without violating the Fifteenth Amendment.⁶⁰ Racial antagonists succeeded in the late 19th century by creating lists of felons and petit larcenists. Conviction of petit larceny was an ideal instrument for these people, because it was very easy for them to convict a former slave of stealing a small amount of money or an object of little value. Petit larceny was introduced in the 1876 amendment to the Virginia Constitution. After the 1876 amendment was added, the General Assembly introduced the policy of checking the criminal records of voters on Election Day. This measure was used as a delaying tactic, because African Americans and whites voted in separate lines. After waiting in the line for several hours, many African Americans were discouraged from voting.⁶¹

At the beginning of the 20th century, many white men in Virginia wanted to reduce the number of voting African Americans by introducing changes to state

⁵⁶ “Virginia’s Justice System: Expensive, Ineffective and Unfair”, 5.

⁵⁷ “A drug policy for the 21st century”, *The White House*, <https://www.whitehouse.gov/ondcp/drugpolicyreform>, accessed 19 March, 2016.

⁵⁸ “Virginia’s Justice System: Expensive, Ineffective and Unfair”, 5.

⁵⁹ “Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States”, 2.

⁶⁰ Thea Johnson, “Access Denied: The Impact of Virginias Felony Disenfranchisement Laws”.

⁶¹ Helen A. Gibson, “Felons and the Right to Vote in Virginia: a Historical Overview”, 4.

constitution in 1902.⁶² People, who had their voting rights granted during the Reconstruction, very quickly lost them again due to measures such as literacy tests, property requirements, and poll tax.⁶³ The measure of poll tax, for example, stayed in effect until the 1960s, when denial of voting rights on the basis of failure to pay poll tax became illegal. Around 90 percent of African Americans were disenfranchised by the new constitution. While around 147,000 African Americans used to vote in 1901, only 10,000 were allowed to continue exercising their right to vote in 1905.⁶⁴ Some felon disenfranchisement legislation remained in the Virginia Constitution from 1902 until 1971 and beyond,⁶⁵ for instance Article 2, Section 23 of the Virginia Constitution, which denies voting rights to people convicted of a felony:

*“The following persons shall be excluded, from registering and voting: Idiots, insane persons, and paupers; persons who, prior to the adoption of this Constitution, were disqualified from voting, by conviction of crime, either within or without this State, and whose disabilities shall not have been removed; persons convicted after the adoption of this Constitution, either within or without this State, of treason, or of any felony, bribery, petit larceny, obtaining money or property under false pretenses, embezzlement, forgery, or perjury; persons who, while citizens of this State, after the adoption of this Constitution, have fought a duel with a deadly weapon, or sent or accepted a challenge to fight such duel, either within or without this State, or knowingly conveyed a challenge, or aided or assisted in any way in the fighting of such duel.”*⁶⁶

Over the twentieth century, the attitude towards crime slowly changed and the possibility of rehabilitation and reentry into mainstream society became more supported by the American public. This trend, however, was not reflected in the laws regarding felony disenfranchisement.⁶⁷ The only solution for disenfranchised African Americans

⁶² “Virginia Constitution 1902”, *Library of Virginia*, http://edu.lva.virginia.gov/online_classroom/shaping_the_constitution/doc/constitution_1902, accessed 28 February 2016.

⁶³ Virginia General Assembly, "Virginia Constitution, 1902," in Virginia Civics, Item #517, <http://vagovernmentmatters.org/primary-sources/517>, accessed February 28, 2016.

⁶⁴ “Virginia Constitution 1902”.

⁶⁵ Helen A. Gibson, “Felons and the Right to Vote in Virginia: a Historical Overview”, 1.

⁶⁶ *Constitution of Virginia 1902*, Article II, Section 23, http://confinder.richmond.edu/admin/docs/Virginia_1902.pdf, accessed 2 March 2016.

⁶⁷ “Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States”, 3.

was to individually petition the governor. In 1970, the Virginia Constitution was revised again. The power of the governor to grant reprieves and pardons was emphasized. The revised constitution instructs the governor to report to every session of the General Assembly the number of reprieves and pardons he granted. The governor still has this duty today. On the other hand, petit larceny was removed from the Virginia Constitution during the 1971 revision. People convicted of non-violent felonies no longer have to petition the governor.⁶⁸ Since the adoption of the 1971 Constitution, no other conventions have been held. Therefore, other sources of reform have been more active, such as the gubernatorial action.⁶⁹ These reformatory efforts will be further discussed in the third chapter.

2. Consequences of Felony Conviction

The second chapter will analyze different consequences of a felony conviction, such as the loss of the right to vote, the loss of employment, the loss of social benefits and parental rights, both in the United States and in the Commonwealth of Virginia.

2.1 Consequences of Felony Conviction in the United States

Unfortunately, the loss of the right to vote is not the only consequence of being marked as a felon. Very often, people do not realize that pleading guilty of a certain crime brings numerous collateral consequences.⁷⁰ Dr. Gabriel Chin from the University of California Davis School of Law says that the worst effect of conviction is not imprisonment, but the collateral consequences, such as the loss of civil and parental rights, employment opportunities and social benefits,⁷¹ all of which Chin describes as “the new civil death”. By this, he refers to the form of punishment employed by the British, which faded away in the middle of the twentieth century. Civil death punished a person convicted of a crime by extinguishing their civil rights and by placing the person outside of the protection of laws. Chin argues that the current U.S. criminal justice system resembles the institution of civil death because of the number of

⁶⁸ Helen A. Gibson, “Felons and the Right to Vote in Virginia: a Historical Overview”, 5.

⁶⁹ John J. Dinan, *The Virginia State Constitution*, (New York: Oxford University Press, 2011), 34.

⁷⁰ Sarah B. Berson, Beyond the Sentence – Understanding Collateral Consequences, *National Institute of Justice*, <http://www.nij.gov/journals/272/pages/collateral-consequences.aspx>, accessed 6 April, 2016.

⁷¹ Pat Nolan, “Collateral Consequences of Felony Conviction”, *Prison Fellowship*, <https://www.prisonfellowship.org/resources/training-resources/reentry-ministry/ministry-basics/collateral-consequences-of-felony-conviction/>, accessed 25 March, 2016.

collateral consequences.⁷² Chin states that in a certain way, the new civil death is even harsher, because there are more social benefits that a person can lose than there were in the past. Besides, there are many professions which require a license, and therefore can be restricted by the new civil death.⁷³

Another scholar, Jeremy Travis, uses the term “invisible punishment” for collateral consequences, because he thinks that the laws and regulations, which restrict rights and privileges of people convicted of crimes, are very complicated and beyond the public view.⁷⁴ People convicted of a felony lose the right to vote and serve on jury, the access to food stamps and cash assistance programs (Temporary Assistance to Needy Families, TANF), public housing, and federal loans for education. Joining the military is also not an option. Additionally, getting a job becomes more difficult, because most employers examine the criminal records of applicants. Jobs requiring professional license or driver's license are automatically out of reach.⁷⁵ The report “The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law” suggests that the impact of collateral consequences is increased by the fact that they are connected to each other. For example, people who are unable to find work have bigger need for assistance with housing and food. What is really damaging about collateral consequences is that they at the same time make people more likely to need public assistance, while they block the access to it.⁷⁶

The situation was not always so complicated. Since the mid-1980s, the amount of collateral consequences expanded substantially.⁷⁷ Experts say that nowadays, there are more than 44,000 collateral consequences nationwide. These consequences come from various sources, such as federal and state statutes, agency policies, and obligations

⁷² Gabriel J. Chin, “The New Civil Death: Rethinking Punishment in the Era of Mass Conviction”, *UC Davis Legal Studies Research Paper Series*, 2012, http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1067&context=penn_law_review, accessed 6 April, 2016, 1790.

⁷³ Gabriel J. Chin, “The New Civil Death: Rethinking Punishment in the Era of Mass Conviction”.

⁷⁴ Jeremy Travis, “Invisible Punishment” in Marc Mauer and Meda Chesney-Lind, ed., *Invisible Punishment*, (New York: The New Press, 2002), 16.

⁷⁵ Marc Mauer and Virginia McCalmont, “A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits”, *The Sentencing Project*, November 2013, http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf, accessed February 29, 2016, 6.

⁷⁶ “The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law”, *Washington Lawyers’ Committee for Civil Rights & Urban Affairs*, October 22, 2014, http://www.washlaw.org/pdf/wlc_collateral_consequences_report.pdf, accessed 6 April, 2016, 12.

⁷⁷ Lorelei Laird, “Ex-offenders face tens of thousands of legal restrictions, bias and limits on their rights”, *ABA Journal*, http://www.abajournal.com/magazine/article/ex-offenders_face_tens_of_thousands_of_legal_restrictions/, accessed 28 March, 2016.

imposed on third parties.⁷⁸ Since navigating between all these restrictions can get really difficult, there are multiple initiatives, such as the National Inventory of the Collateral Consequences of Conviction, which try to make the life of released prisoners easier. At its website, people can search for collateral consequences by keywords, offense type, or jurisdiction.⁷⁹ Fortunately, politicians are starting to recognize the issue and there are calls for reform from both parties. For instance, the incumbent Governor of Kansas, Republican Sam Brownback, supported the reform when he was serving as U.S. Senator. There are tangible results of these efforts already, such as the Second Chance Act, which gives 250 million dollars to state and local governments to promote prisoner re-entry programs.⁸⁰

2.1.1 Loss of the Right to Vote in the United States

While 2.5 percent of Americans are disenfranchised because of felony conviction, for African Americans the number is 7.7 percent, meaning that about 1 in 13 African Americans had the right to vote taken away from them.⁸¹

Another aspect of felony disenfranchisement is that it makes people feel like they do not matter. Research studies show that persons who regain their civil rights and vote are less likely than their counterparts to commit new offenses, because the restoration of voting rights is a good sign for the person that they do have a second chance in life. Civic participation reduces recidivism and restores voting power to communities that need it.⁸² Even though supporters of felony disenfranchisement state that it deters crime, since the risk of such a legal sanction discourages people from committing a crime⁸³, no such impact has ever been proven. Quite to the contrary, it has the effect of alienating and marginalizing of released prisoners.⁸⁴ Experts say that the denial of the right to vote makes people feel like their citizenship is being withheld and

⁷⁸ Monica Haymond, “Should a Criminal Record Come with Collateral Consequences?”, *NPR*, <http://www.npr.org/2014/12/06/368742300/should-a-criminal-record-come-with-collateral-consequences>, accessed 23 April, 2016.

⁷⁹ Lorelei Laird, “Ex-offenders face tens of thousands of legal restrictions, bias and limits on their rights”, 4.

⁸⁰ *Ibid.*, 3.

⁸¹ Andrew Kahn and Chris Kirk, “There's blatant inequality at nearly every phase of the criminal justice system”.

⁸² Thea Johnson, “Access Denied: The Impact of Virginias Felony Disenfranchisement Laws”.

⁸³ “Felon Disenfranchisement”, *Criminal Justice Research*, <http://criminal-justice.iresearchnet.com/system/felon-disenfranchisement/4/>, accessed 12 April, 2016.

⁸⁴ “Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States”, 3.

like they are being punished for one crime over and over again, despite having already paid their debt to society.⁸⁵

2.1.2 Loss of Employment in the United States

The connection between employment and felony conviction is not as simple as the other consequences. When it comes to discrimination against released felons in the job market, the laws may not be as harsh, but in reality, the job hunt of people released from prison is far from easy. Since employers are allowed to ask job applicants whether they have been convicted of a felony, people with clean criminal record are likely to be preferred.⁸⁶ Given the racial disparities in arrests and convictions, employment barriers have a disproportionate impact on minorities as well.⁸⁷

There is strong evidence that the inability to find employment results in recidivism.⁸⁸ In 2009, a study in New York sent people with and without a criminal record on job interviews. People who had a criminal record had 50 percent less chance of a callback. The rate was even worse for African Americans.⁸⁹ In her book *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*, Devah Pager analyzes an experiment conducted in Milwaukee, Wisconsin. She concludes that young men with mock criminal records had harder time to find employment than people without criminal record. Additionally, she states that race plays an important part in the job search, since African Americans without a criminal record had the same chance of getting a job as white applicants with a criminal record.⁹⁰

2.1.3 Loss of Social Benefits in the United States

While some collateral consequences, such as the loss of the right to vote, can make people feel like second-class citizens, other, like ban on public housing or food stamps, can actually result in the inability to meet basic human needs, such as shelter and nutrition. Drug-related felonies bring some of the harshest collateral consequences, for example eviction from public housing.⁹¹ Statutes enacted in the late 1990s allow

⁸⁵ Lorelei Laird, “Ex-offenders face tens of thousands of legal restrictions, bias and limits on their rights”, 3.

⁸⁶ George Coppolo, “Consequences of a Felony Conviction Regarding Employment”, *OLR Research Report*, 2005, <https://www.cga.ct.gov/2005/rpt/2005-r-0311.htm>, accessed 6 April, 2016.

⁸⁷ “The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law”, 16.

⁸⁸ *Ibid.*, 11.

⁸⁹ Lorelei Laird, “Ex-offenders face tens of thousands of legal restrictions, bias and limits on their rights”, 2.

⁹⁰ Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*.

⁹¹ J.D. Garret, “The Collateral Consequences of A Felony Conviction”.

public housing providers to deny public housing to people who were involved in a drug-related or violent criminal activity. People convicted of drug-related crimes can reapply for public housing after a three-year period.⁹²

The denial of the right to food stamps and cash assistance is a part of the so-called “invisible punishment”, sanctions which take place out of the traditional sentencing. These sanctions have a very questionable effect, since most of the population is unaware of them, and therefore it is very unlikely that these sanctions have ever deterred any potential criminal from committing a crime.⁹³ This collateral consequence was introduced in 1996, when President Bill Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which revised the cash assistance program, called the Temporary Assistance to Needy Families (TANF), and the food stamp program, since then called the Supplemental Nutrition Assistance Program (SNAP). This change was very important for felons, as it denied these benefits to people convicted of a drug felony.⁹⁴ The sponsor of the ban, Republican Senator from Texas, Phil Gramm, argued that “we ought not to give people who are violating the nation’s drug laws welfare benefits.” After only two minutes of floor debate, the ban was approved by unanimous consent.⁹⁵ A lifetime ban applies for drug felons in all states, unless the states opt out of it.⁹⁶ By 2001, eight states and the District of Columbia opted out of the ban and 20 states at least modified it.⁹⁷

Other benefits are impacted as well, for example student loans. In 1998, the Higher Education Act suspended the eligibility for a student loan for people convicted of a drug-related crime. In the academic year 2000-2001, approximately 9,000 students were impacted by this provision.⁹⁸ Moreover, private scholarships may be hard to obtain, because they usually require the applicant to disclose their criminal history. Additionally, people applying to college are commonly asked to reveal any conviction. Therefore people marked as felons are unlikely to receive college degree. This ban can

⁹² Jeremy Travis, “Invisible Punishment”, 24.

⁹³ Marc Mauer and Virginia McCalmont, “A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits”, *The Sentencing Project*, November 2013, http://sentencingproject.org/doc/publications/cc_A%20Lifetime%20of%20Punishment.pdf, accessed February 29, 2016, 5.

⁹⁴ *Ibid.*, 1.

⁹⁵ Jeremy Haile, “How the Felony Drug Ban Keeps Thousands of Americans Hungry”, *Talk Poverty*, <http://talkpoverty.org/2016/03/21/felony-drug-ban-keeps-thousands-hungry/>, accessed 6 April, 2016.

⁹⁶ Marc Mauer and Virginia McCalmont, “A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits”, 1.

⁹⁷ *Ibid.*, 2.

⁹⁸ Jeremy Travis, “Invisible Punishment”, 24.

only further damage the unfavorable situation on the job market for people convicted of a felony.⁹⁹

Concerning the loss of parental rights in the United States, felony conviction affects the ability of the person to adopt children. Since 1998, the Adoption and Safe Families Act prohibits anyone convicted of a felony to serve as foster or adoptive parent.¹⁰⁰ In case any member of the household is marked as a felon, the Department of Children and Families will deny the approval of a foster family or adoptive family.¹⁰¹ In regards to parental rights to their own children, each state of the United States applies different rules, so this issue will be addressed in the chapter concerning the loss of social benefits in Virginia.

2.2 Consequences of Felony Conviction in Virginia

Just like other states of the U.S., the Commonwealth of Virginia also imposes many collateral consequences on people convicted of a felony. Any type of felony conviction means an automatic loss of the right to vote and to serve on a jury, as well as the right to hold public office.¹⁰² The right to own a gun is also denied to felons in Virginia.¹⁰³ Any drug-related felony results in a six-month loss of driving license¹⁰⁴ and the ineligibility to receive a concealed handgun permit for three years.¹⁰⁵ A felony conviction in Virginia cannot be expunged, which means it will stay on the permanent record of the person and it will show up on background checks for jobs. Felony conviction also has impact on the eligibility for student loans and federal programs.¹⁰⁶

2.2.1 Loss of the Right to Vote in Virginia

Compared to the United States as a whole, the situation regarding felony disenfranchisement is even worse in Virginia, with one in every five voting age African

⁹⁹ “How Can a Felony Conviction Affect My Career”.

¹⁰⁰ Jeremy Travis, “Invisible Punishment”, 24.

¹⁰¹ George Coppolo, “Consequences of a Felony Conviction Regarding Employment”.

¹⁰² Margaret Love, “Virginia Restoration of Rights, Pardon, Expungement & Sealing”, *Collateral Consequences Resource Center*, <http://ccresourcecenter.org/state-restoration-profiles/virginia-restoration-of-rights-pardon-expungement-sealing/>, accessed 12 April, 2016.

¹⁰³ Thomas Soldan, “Thomas Soldan on Consequences of Misdemeanors and Felonies”, *Thomas Soldan Attorney at Law*, <http://virginialawfirm.net/soldan-consequences-misdemeanor-felony.html>, accessed 29 March, 2016.

¹⁰⁴ *Ibid.*

¹⁰⁵ “The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law”, 20.

¹⁰⁶ Thomas Soldan, “Thomas Soldan on Consequences of Misdemeanors and Felonies”.

Americans disenfranchised.¹⁰⁷ The loss of the voting rights for felons is in fact written in the Virginia Constitution, where Article II, Section 1, states that “No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.”¹⁰⁸

Not only individuals are impacted by that law. In Virginia, the disenfranchisement rules take away the political power of whole communities of color. In 2002, state prisons in Virginia released 9,960 prisoners, 63 percent of them were African American males. An analysis of prisoner reentry in Virginia in 2002 found that from the people reentering the Richmond community that year, almost half went back to neighborhoods with the African American population between 46.6 and 98.9 percent. In another region of Virginia, Norfolk City, one-third of released prisoners returned to communities that were 79 to 100 percent African American.¹⁰⁹ Todd R. Clear observes that incarceration does not fulfill the goal of helping the community. Instead, the community is only more destabilized by the cycle of taking people to prison and then putting them back without any real assistance. Besides, people in these communities do not have the power to change the situation, since the right to vote has been taken away from them.¹¹⁰

Additionally, until June 2015, if people in Virginia wanted their voting rights back, they needed to pay all the court fees first. Because people with felony convictions often have trouble meeting their basic needs, the requirement to pay in full was often a big barrier. Also, it is the last thing on their mind and in their list of priorities when they are trying to put their life together. First, they need to find a place to live and employment, then they can start worrying about things like unpaid court fees. There was a big inconsistency when it comes to rights restoration. While the right to religious freedom and to freedom of speech was still given to all people, no matter what crime they committed, the right to vote on the other hand was being withheld until the payment of all court ordered costs.¹¹¹

¹⁰⁷ Christopher Uggen, Sarah Shannon, and Jeff Manza, “State Level Estimates of Felon Disenfranchisement in the United States”, 2010, *The Sentencing Project*, July 2012, http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf accessed 12 April, 2016.

¹⁰⁸ “Constitution of Virginia”, *Virginia Law*, <http://law.lis.virginia.gov/constitution>, accessed 17 April, 2016.

¹⁰⁹ Thea Johnson, “Access Denied: The Impact of Virginias Felony Disenfranchisement Laws”.

¹¹⁰ Todd R Clear, *Imprisoning Communities, How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*.

¹¹¹ Carolyn Kalantari and Judith Browne Dianis, “Paying court fees not simple for felons”, *The Daily Progress*, November 10, 2013, http://m.dailyprogress.com/opinion/letters_to_the_editor/paying-court-

2.2.2 Loss of Employment in Virginia

Felony conviction in Virginia automatically prohibits people from holding public office. A judge can also prohibit people from working in certain fields, where there is a direct connection between the crime and the occupation,¹¹² such as the person convicted of vehicular homicide will not be able to work as a driver, a sex-offender will not be allowed to work as a school teacher, etc.¹¹³ Furthermore, felony conviction can limit the ability to hold a government contract, obtain government licenses, and collect public pension. Another consequence may be the loss of the driving license, which can severely restrict one's ability to commute to the workplace or even to conduct a job.¹¹⁴ Apart from limitations imposed by the government, private employers may (and they do) also consider the criminal background of job applicants.¹¹⁵ For example, a person with a drug-related felony conviction is unlikely to be hired as a driver, because he will be considered as a safety concern.¹¹⁶

In Virginia, several organizations and also the Governor strive to make employment for released felons easier. For instance, the website Felonopportunities.com lists a number of felon friendly employers in Virginia, where felons are welcome to apply for a job.¹¹⁷ Virginia law provides a list of employers that are entitled to information about convictions (including nursing homes or day care centers). Any other employer has to ask for written consent from the applicant.¹¹⁸ Virginia's Central Criminal Records Exchange (CCRE) holds arrest records on file and certain employing organizations are able to access them.¹¹⁹ In 2015, Governor of Virginia, Terry McAuliffe, issued an executive order, saying that all state agencies should remove the

fees-not-simple-for-felons/article_444a3c04-48cc-11e3-bd1f-001a4bcf6878.html?mode=jqm, accessed 28 February, 2016.

¹¹² J.D. Garret, "The Collateral Consequences of A Felony Conviction".

¹¹³ Hugh LaFollette, "Consequences of Punishment: Civil Penalties Accompanying Formal Punishment", *Journal of Applied Philosophy*, 2005, 241-61, http://www.hughlafollette.com/papers/Collateral_Consequences.htm, accessed 12 April, 2016.

¹¹⁴ Gabriel J. Chin, "The New Civil Death: Rethinking Punishment in the Era of Mass Conviction", 1801.

¹¹⁵ George Coppolo, "Consequences of a Felony Conviction Regarding Employment".

¹¹⁶ "How Can a Felony Conviction Affect My Career", *HG.org*, <https://www.hg.org/article.asp?id=34159>, accessed 6 April, 2016.

¹¹⁷ "Jobs for Felons in Virginia", *Felon Opportunities*, <http://felonopportunities.com/jobs-for-felons-in-virginia/>, accessed 23 April, 2016.

¹¹⁸ "The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law", 22.

¹¹⁹ "Commonwealth of Virginia Restrictions to Employment for Individuals with Criminal Histories", *The Virginia Department of Correctional Education*, July 2006, <http://dls.virginia.gov/GROUPS/reentry/meetings/072706/BarrierCrimes.pdf>, accessed 6 April, 2016, 2.

question relating to criminal record from employment applications, and encourage similar hiring practices among private employers.¹²⁰

2.2.3 Loss of Social Benefits in Virginia

In Virginia, a felony conviction can have a significant effect on access to both private and public housing. Even though the state normally requires nondiscrimination by private parties when renting or selling property, there is an exception when the applicant has a felony conviction.¹²¹ Renters are allowed to ask for criminal record, as long as they do it in a non-discriminatory manner, which means that they ask the same information from all the applicants.¹²²

In terms of food stamps and cash assistance programs, Virginia continues to impose the full ban on the access to the cash assistance program (Temporary Assistance to Needy Families, TANF), while it has modified the ban on the access to the food stamp program (Supplemental Nutrition Assistance Program, SNAP).¹²³ Research shows that the ban does not deter people from committing crime in any way; it only negatively impacts public safety and health.¹²⁴ The ban on receipt of food stamps and cash assistance again disproportionately influences African American communities. Considering that blacks comprise 40.7 percent of people incarcerated for drug crime and Hispanics make up another 21.1 percent, the loss of social benefits impacts members of minorities more severely than whites.¹²⁵

Another important collateral consequence of a felony conviction is the loss of one's parental rights. In Virginia, the rights of parents can be involuntarily terminated by court action, if the parent committed a felony which resulted in serious bodily injury, bodily wounding, or sexual assault of the child or other family member. Additionally, the court can terminate the parental rights of a parent that has failed to maintain contact with their child for six months after the child was placed in foster care,¹²⁶ or if the child

¹²⁰ Margaret Love, "Virginia Restoration of Rights, Pardon, Expungement & Sealing".

¹²¹ "The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law", 27.

¹²² Marcia Stewart, "Legal and Illegal Reasons Landlords May Turn Rental Applicants Down", *NOLO*, <http://www.nolo.com/legal-encyclopedia/free-books/renters-rights-book/chapter1-2.html>, accessed 12 April, 2016.

¹²³ Marc Mauer and Virginia McCalmont, "A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits", 2.

¹²⁴ *Ibid.*, 1.

¹²⁵ *Ibid.*, 4.

¹²⁶ Mary Commander, "Involuntary Termination of Parental Rights in Virginia", *AVVO*, <https://www.avvo.com/legal-guides/ugc/involuntary-termination-of-parental-rights-in-virginia>, accessed 13 April, 2016.

has been in foster care for fifteen of the last twenty-two months.¹²⁷ This can be the reason for termination of parental rights for many people convicted of a felony, since they often have to serve a long-term prison sentence and have no other choice but to place the child in foster care.¹²⁸

3. Reform of Felony Disenfranchisement Laws

The third chapter will study the three main directions of attempts to reform of felony disenfranchisement laws. We have seen different ways of tackling the issue of felony disenfranchisement. Some states had pro-active governors, who reformed the process of rights restoration of felons, other states considered an amendment to their state constitutions. There is also the option of an amendment to the U. S. Constitution or a landmark decision by the U. S. Supreme Court, which would then apply to all states and would overrule their state constitutions and state law.

While the trend in the democratic world is to reform felony disenfranchisement laws, the United States seems to be lagging behind in this area. For example, South Africa struck down legislation disenfranchising all prisoners in 1999 and similar laws in Austria and the United Kingdom were cancelled by the European Court of Human Rights. Same approach was used by the Supreme Court in Canada.¹²⁹ Even the results of opinion polls of the American public suggest that the society is ready to ease these strict laws. Surveys show that eight out of ten Americans believe that voting rights should be restored to felons who are no longer under supervision. Moreover, six in every ten Americans agree that voting rights should be restored to people on probation and parole.¹³⁰ In spite of the public support of the changes, why does the U.S. seem reluctant to follow the example of other countries?

3.1 Reform of Felony Disenfranchisement in the United States

Changes of the disenfranchisement laws in the United States are rather slow and their impact is not too significant. The reluctance of U.S. politicians to reform felony

¹²⁷ Jeremy Travis, "Invisible Punishment", 24.

¹²⁸ "Child Welfare Information Gateway, 2013, Grounds for involuntary termination of parental rights", Washington, DC, *U.S. Department of Health and Human Services, Children's Bureau*, <https://www.childwelfare.gov/pubPDFs/groundtermin.pdf>, accessed 13 April, 2016.

¹²⁹ "Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States", 4.

¹³⁰ "Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States", 8.

disenfranchisement has many reasons. One of them is that politicians do not want to address the needs of this poor, uneducated, minority population. By denying the right to vote to this group, U. S. politicians free themselves from having to worry about appealing to them by their policies. Nevertheless, the recently increased interest of the public in regards to this issue has helped to push for reform efforts, mostly on the state level. Twenty-three states have changed their felony disenfranchisement measures since 1997 to allow more people to vote.¹³¹ As a consequence of the reforms, around 800,000 ex-felons got their right to vote back between 1997 and 2010.¹³²

But what would be the best way to reform felony disenfranchisement laws in the United States? In the report submitted on the U.S. felony disenfranchisement to the United Nations Human Rights Committee, the suggested changes were:

“1. That the U.S. Government publicly supports automatic restoration of voting rights to citizen upon their release from incarceration for felony convictions. This should include urging Congress to reintroduce and pass the Democracy Restoration Act, which would restore voting rights in federal elections to disenfranchised individuals upon their release from incarceration. 2. That the U.S. Government investigates the disproportionate impact of felony disenfranchisement laws on minority populations and issue a report of its findings. 3. That the U.S. Government encourages states to inform criminal defendants of the voting rights implications of their arrest or sentencing and to provide information on the voting rights restoration process upon release from prison and/or completion of criminal sentences.”¹³³

Concerning reformative attempts that would have impact on the United States on the federal level, the only option is a new landmark decision by the U. S. Supreme Court, or a ratification of an amendment to the U. S. Constitution, which would abolish felony disenfranchisement. All other actions would only influence a certain state. Since felony disenfranchisement is defined in state constitutions, on the state level, there is an option of reform via adoption of a new constitutional amendment, which remains the

¹³¹ “Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States”, 5.

¹³² Jean Chung, “Felony Disenfranchisement: a Primer”, 4.

¹³³ “Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States”, 9.

responsibility of the state legislatures. The same principle applies to gubernatorial action, as executive orders issued by the governor always have influence on the felony disenfranchisement in the concerned state. Therefore, both the reform through constitutional amendment and the reform via gubernatorial action will be discussed in the chapter considering the reform of felony disenfranchisement laws in Virginia.

3.1.1 Reform through Federal Court Decision

If we study the U.S. Constitution, we can find several parts that are violated by felony disenfranchisement. Especially important for my research are the amendments to the U.S. Constitution, because they provide the basis for civil rights. Felony disenfranchisement can be regarded as a violation of the Eighth Amendment, which states that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”. Considering that felons are prohibited from voting even after their debt to society was paid, it can be seen as a cruel and unusual punishment. Additionally, the opponents of felony disenfranchisement remark that it violates the Fourteenth Amendment's Equal Protection Clause which says that “no state shall deny to any person within its jurisdiction the equal protection of the laws.” I would argue that these two amendments are violated by the Article II Section 1 of Virginia's Constitution, which specifically states that “no person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.” This means cruel and unusual punishment, as well as denial of equal protection of laws. This part of Virginia's Constitution is also contradictory to the Voting Rights Act from 1965, which in the Section 2 states that “no voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color”.

On federal level, legal challenges to felony disenfranchisement laws in the United States have not been successful, because courts have refused to regard people with criminal conviction just as entitled to the right to vote as others. There are several U. S. Supreme Court cases, as well as cases decided by lower federal courts, which deal with the legality of felony disenfranchisement.

Stephens v. Yeomans is an important case, which was decided in 1970. In this decision, the Federal Court, 3rd Circuit, ruled that felony disenfranchisement in New Jersey violated the equal protection clause of the 14th Amendment to the U.S.

Constitution. The Court stated that selection of some specific crimes, such as larceny, was irrational and did not contribute to a “pure” election process, stating that voting rights restriction must be closely scrutinized and that the state failed to prove that the restriction was linked to a permissible state goal.¹³⁴ As a result, the court ordered the Superintendent of Elections to restore the name of the plaintiff to the list of voters, so that he would be able to vote in the general elections in 1970. This was an important precedent, because it was one of the few cases, when the court acknowledged the illegality of felony disenfranchisement.¹³⁵

In 1985, another important case, known as *Hunter v. Underwood*, was decided.¹³⁶ In this proceeding, the U.S. Supreme Court ruled that felony disenfranchisement laws reflecting “purposeful racial discrimination” are unconstitutional. Deciding in favor of the plaintiffs, the U.S. Supreme Court found that a provision in the Alabama Constitution disenfranchising people convicted of “any crime [...] involving moral turpitude” violated the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. The provision, which was purposefully introduced to deny the right to vote to African Americans, continued to have a racially disproportionate impact. The equal protection clause of the Fourteenth Amendment is often used as an argument against racial discrimination. It protects individuals against unequal treatment by state.¹³⁷ The message of this case is that it is unconstitutional for a state to deny the voting right to a person on a basis of a very specific type of crime, which was intentionally picked, because it is most commonly committed by a certain group of people. By this decision, the U. S. Supreme Court clarified that the section 2 of the Fourteenth Amendment to the U. S. Constitution did not protect laws intended to discriminate on the basis of race.¹³⁸

Richardson v. Ramirez is the most important case in regards to felony disenfranchisement. In 1974, the U.S. Supreme Court ruled that felony disenfranchisement policies of California are constitutional.¹³⁹ In this leading precedent, the Supreme Court found that the Equal Protection Clause of the U.S. Constitution does

¹³⁴ “Right to Vote – Key Decisions in Felony Disenfranchisement litigation”, *Brennan Center for Justice*, <https://www.brennancenter.org/publication/key-decisions-felony-disenfranchisement-litigation>, accessed February 28, 2016, 9.

¹³⁵ “Stephens v. Yeomans”, 327 F. Supp. 1182 (1970), *Leagle.com*, www.leagle.com/decision/...11282/STEPHENS%20v.%20YEOMANS, accessed 25 April, 2016.

¹³⁶ Helen A. Gibson, “Felons and the Right to Vote in Virginia: a Historical Overview”, 6.

¹³⁷ “Right to Vote – Key Decisions in Felony Disenfranchisement litigation”, 5.

¹³⁸ *Ibid.*, 6.

¹³⁹ Jean Chung, “Felony Disenfranchisement: a Primer”, 3.

not require states to advance a compelling interest before denying the voting right to people convicted of crime, arguing that the section 2 of the Fourteenth Amendment distinguishes felony disenfranchisement from other voting restrictions, which must be narrowly tailored in order to serve a compelling interest¹⁴⁰, and therefore be constitutional. Plaintiffs brought a class action suit against California's Secretary of State and election officials, claiming that the state had no compelling interest that would justify the denial of the right to vote. Citing Section 2 of the Fourteenth Amendment, the U.S. Supreme Court ruled that a state does not have to prove that the felony disenfranchisement laws serve a compelling interest.

Since the *Richardson v. Ramirez* decision, lower courts have used it for reasoning in many felony disenfranchisement cases.¹⁴¹ Cases such as *Flood v. Riggs* (1978)¹⁴², *Allen v. Ellisor* (1979)¹⁴³, *Texas Supporters of Workers World Party Presidential Candidates v. Strake* (1981)¹⁴⁴, *Owens v. Barnes* (1983)¹⁴⁵, *Woodruff v. Wyoming* (2002)¹⁴⁶, *Baker v. Pataki* (2006), *Gage v. Hawkins* (2014)¹⁴⁷ were all decided on the basis of this landmark Supreme Court decision. A new landmark Supreme Court case would have to be decided for the lower courts to reconsider the constitutionality of felony disenfranchisement. Until such a case is introduced, it is unlikely that much will be changed by a court decision. It is more likely that other channels will lead to reform of the current system, such as gubernatorial reform, which was used in the case of Virginia and its reform.¹⁴⁸

¹⁴⁰ “Compelling-state-interest-test refers to a method of determining the constitutional validity of a law. Under this test, the government’s interest is balanced against the individual’s constitutional right to be free of law. However, a law will be upheld only if the government’s interest is strong enough. The compelling-state-interest-test is mostly applied in all voting rights cases and equal protection cases. It is also applied when a disputed law requires strict scrutiny.” (*US Legal*, <http://definitions.uslegal.com/c/compelling-state-interest-test/>, accessed 6 May, 2016.)

¹⁴¹ “Right to Vote – Key Decisions in Felony Disenfranchisement litigation”, *Brennan Center for Justice*, <https://www.brennancenter.org/publication/key-decisions-felony-disenfranchisement-litigation>, accessed February 28, 2016, 5.

¹⁴² “*Flood v. Riggs* (1978)”, *Justia*, <http://law.justia.com/cases/california/court-of-appeal/3d/80/138.html>, accessed 16 April 2016.

¹⁴³ “*Allen v. Ellisor*, 477 F. Supp. 321 (D.S.C. 1979)”, *Justia*, <http://law.justia.com/cases/federal/district-courts/FSupp/477/321/1418245/>, accessed 16 April, 2016.

¹⁴⁴ “*Texas Supporters of Workers, Etc. v. Strake*, 511 F. Supp. 149 (S.D. Tex. 1981)”, *Justia*, <http://law.justia.com/cases/federal/district-courts/FSupp/511/149/1429592/>, accessed 16 April, 2016.

¹⁴⁵ “*Hawkins v. Gage County, Neb.*, 759 F. 3d 951 - Court of Appeals, 8th Circuit 2014”, *Google Scholar*, https://scholar.google.cz/scholar_case?case=18109388237075833778&hl=en&as_sdt=2006&as_vis=1, accessed 16 April 2016.

¹⁴⁶ “United States Court of Appeals Tenth Circuit”, *Washburn University School of Law*, <http://ca10.washburnlaw.edu/cases/2002/10/01-8078.htm>, accessed 16 April 2016.

¹⁴⁷ “*Hawkins v. Gage County, Neb.*, 759 F. 3d 951 - Court of Appeals, 8th Circuit 2014”.

¹⁴⁸ “Right to Vote – Key Decisions in Felony Disenfranchisement litigation”, 5-8.

3.2 Reform of Disenfranchisement in Virginia

Several changes of the felony disenfranchisement policy occurred in Virginia between 1997 and 2010. For example, as of 2000, the Department of Corrections is required to notify Virginians about the rights restoration process. In 2002, the Governor Mark Warner streamlined the restoration process for non-violent offenders. The waiting period for non-violent offenses was further decreased from three years to two years and a 60-day deadline to process the voting rights restoration applications was established in 2010.¹⁴⁹

Despite all the changes, Virginia still remains one of the strictest states due to the requirement that the applicant must have completed probation or parole, and cannot have any pending felony charges.¹⁵⁰ Only ten states of the U. S., including Virginia, do not automatically restore voting rights once the person completes felony sentence, probation or parole. Virginia is also one of the four states requiring an application by the felon and a direct action by the governor in order to restore voting rights.¹⁵¹

There are three main options how to reform the current disenfranchisement laws in Virginia. The first option is reform through state court decision, the second option is reform in the form of an amendment to the Virginia Constitution, and the third is reform via gubernatorial action by the governor of Virginia.¹⁵²

3.2.1 Reform through Court Decision in Virginia

Because state courts in Virginia do not address the issue of felony disenfranchisement, I will study federal court cases, which had impact on the Commonwealth on Virginia.

Two federal court decisions influenced felony disenfranchisement in Virginia, *Perry v. Beamer* and *Howard v Gilmore*. In *Perry v. Beamer*, argued in 1996, the U.S. District Court rejected the Fourteenth Amendment challenge to felon disenfranchisement laws in Virginia. In this case, decided by the Federal Court, 4th Circuit, the plaintiff claimed that Virginia's law violated the Fourteenth Amendment to the U.S. Constitution, because the state required him to pay taxes, but deprived him of the right to vote. Therefore, this situation could be described as taxation without

¹⁴⁹ Jean Chung, "Felony Disenfranchisement: a Primer", 4.

¹⁵⁰ Helen A. Gibson, "Felons and the Right to Vote in Virginia: a Historical Overview", 2.

¹⁵¹ Graham Moomaw, "McAuliffe restores voting rights for 206K ex-felons; GOP calls it move to boost Clinton", *Richmond Times Dispatch*, http://www.richmond.com/news/virginia/government-politics/article_771db279-34d6-5a3d-9557-a417a8afb212.html, accessed 24 April, 2016.

¹⁵² *Ibid.*, 6.

representation. Using the case *Richardson v. Ramirez*, the Court said that the state was allowed to deny the right to vote even to tax-paying citizens, if they were convicted of a felony.

Another important case which had impact on Virginia is *Howard v. Gilmore* (2000). In this case, decided by the Federal Court, 4th Circuit, the plaintiff suggested that the laws violated the First, 14th, 15th, 19th and 24th Amendments to the U.S. Constitution as well as the Voting Rights Act. He stated that cancellation of his voting privileges conflicts the First Amendment, but the court rejected that claim, stating that the free speech and other protections of the First Amendment do not create private right for rights restoration. Regarding to the claims of the Fourteenth and Fifteenth Amendment violation, the plaintiff would have to prove that disenfranchisement laws of Virginia were racially biased. Because the Virginia's law was enacted before African Americans gained the right to vote, the Federal Court rejected all these challenges, arguing that it could not have been enacted with the purpose to prevent African Americans from voting, since it was created before they were granted the vote. The same argument was used by the court to reject the Voting Rights Act challenge. The court also dismissed the complaint on the basis of the Nineteenth Amendment, saying that the voting rights laws of Virginia do not discriminate on the basis of sex. Since the court explained that it was not the right to vote, but the restoration of the right, which requires the plaintiff to pay a fee, the Twenty-fourth Amendment complaint was rejected as well.

3.2.2 Reform through an Amendment to the Virginia Constitution

Compared to reform via court decisions, legislative reform has been more successful when it comes to felon disenfranchisement in Virginia. Even though the impact of legislative reform was not that significant, there were at least some changes which had lasting impact on the process of rights restoration to felons. In 2000, the General Assembly passed a bill requiring the Virginia Department of Corrections to provide sufficient information about rights restoration process to the public. This led to the streamlining of the application process by the government. On the other hand, prior to 2014, the General Assembly rejected a proposal of a constitutional amendment reforming the rights restoration in thirteen consecutive legislative sessions. In 1982, the voters in Virginia refused a constitutional amendment that would simplify the process of rights restoration. The biggest success so far was in 2012, when a constitutional

amendment bill was passed in the Senate, but unfortunately failed in the House of Delegates. Hopefully, with enough pressure and support from the public, a constitutional amendment could be passed, which would repeal the felon disenfranchisement process that is now in place in Virginia.¹⁵³

Experts say that a constitutional amendment from the General Assembly, which would guarantee automatic restoration of rights for everyone, would be the best solution to the felony disenfranchisement issue in Virginia, arguing that the engagement of people in political life helps to reintegrate them back into society and prevent future crimes.¹⁵⁴ No matter how appealing this possibility seems to human rights experts, the situation is more complicated when it comes to politicians, who have to consider many aspects of the issue, before they make any radical step. Generally, Republicans are opposed to the restoration of voting rights to ex-felons, since a large part of the group are African Americans (e. g. potential voters of the Democratic Party). Additionally, a part of the public supports felony disenfranchisement as well, feeling that it is an essential part of the “tough on crime” policy.

3.2.3 Reform via Gubernatorial Action in Virginia

Apart from influential court decisions and the constitutional amendment, the governor of Virginia remains the most important figure in the felon disenfranchisement reform process. Because other sources of reform did not bring much success in the past, it is usually the governor of Virginia, who has to take matters into his own hands. In 2002, the governor of that time, Democrat Mark Warner, used his executive power to simplify the process for non-violent offenders. He reduced the five-to-seven-year waiting period to three years only and reduced the 13-page application to 1 page. He wanted to simplify the process for people with less serious crimes, so that they could sooner participate in the political life. On the other hand, the drug offences still remained part of violent felonies.

In May of 2013, 350,000 non-violent ex-felons had their voting rights restored by an executive order issued by the governor of that time, Republican Bob McDonnell, without the requirement to wait for three years.¹⁵⁵ Thanks to Governor McDonnell,

¹⁵³Helen A. Gibson, “Felons and the Right to Vote in Virginia: a Historical Overview”, 6.

¹⁵⁴ Judith Browne Dianis, “What the next governor must do on rights restoration”, *Advancement Project*, November 14, 2013, <http://www.advancementproject.org/blog/entry/what-the-next-governor-must-do-on-rights-restoration>, accessed February 28, 2016.

¹⁵⁵ Helen A. Gibson, “Felons and the Right to Vote in Virginia: a Historical Overview”, 6.

Virginia automatically restored voting rights to any non-violent felon who was no longer under supervision and had no pending charges and fees.¹⁵⁶ Unfortunately, the Commonwealth did not keep track of felons who should get their voting rights back, and so there was no simple way to inform people, who were able to vote again, about the change. In April 2014, Democratic Governor Terry McAuliffe reduced the waiting time for violent offenders from five to three years. He also successfully petitioned for the drug offences to be removed from the violent felony category.¹⁵⁷ These changes were very important for African Americans, since they constitute 72 percent of people incarcerated for drug offences.¹⁵⁸ In June 2015, Governor Terry McAuliffe took down another barrier, when he removed is the obligation to pay all the court-imposed costs and fines. Since people coming home from prison often have limited financial resources, this obligation often used to keep them from having their voting rights restored in the past.¹⁵⁹ Even though these changes are significant and they signal a new approach to the issue, we must remember that they may easily be revoked by the future administration, as they are made through gubernatorial policy.¹⁶⁰ Such cases are known for example from Florida, where Governor Rick Scott, who assumed office in 2011, severely restricted the progressive changes made by Governor Charlie Christ in 2007.¹⁶¹

Despite significant reforms by Governor McAuliffe, there are still some steps to be taken by the future governor of Virginia, in order to achieve equality for all races in the criminal justice system. Experts suggest that there should be no distinction between different kinds of offenses and that restoration of civil rights should be automatic for all people who have completed their sentences.¹⁶²

¹⁵⁶ “Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States”, 5.

¹⁵⁷ Helen A. Gibson, “Felons and the Right to Vote in Virginia: a Historical Overview”, 2.

¹⁵⁸ *Ibid.*, 6.

¹⁵⁹ “Voting Rights Restoration Efforts in Virginia”, *Brennan Center for Justice*, <https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-virginia>, accessed 6 May, 2016.

¹⁶⁰ “Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States”, 5.

¹⁶¹ *Ibid.*, 6.

¹⁶² Judith Browne Dianis, “What the next governor must do on rights restoration”.

Conclusion

The aim of this thesis was to examine the felony disenfranchisement laws in the United States with the focus on the Commonwealth of Virginia. The goal was to determine, whether the criminal justice system in the Commonwealth of Virginia is used to discriminate against minorities and if the laws and practices create a group of second-class citizens out of African Americans.

The first chapter focused on the data and history of felony disenfranchisement both in the United States and in Virginia. The aim of the first chapter was to put the issue to a larger perspective, to compare felony disenfranchisement in the United States with the situation in other countries around the world and to emphasize the specifics of Virginia as opposed to other states of the U. S. The first chapter also stressed the disproportionate impact of felony disenfranchisement on African Americans. Important takeaways from the first chapter are that the United States has the largest disenfranchised population in the whole world (it accounted to almost 6 million people in 2010), and that the Commonwealth of Virginia has one of the strictest laws in that area, denying the right to vote even to people who completed their sentence, probation and parole. In regards to the disproportionate racial impact, it is important to note that United States disenfranchises 7.7 percent of its African American population, and in Virginia, 20 percent of African Americans were not able to vote in 2013. Considering the role of the War on Drugs in felony disenfranchisement, we should keep in mind that 62.6 percent of drug offenders in Virginia state prisons are black, even though whites account for 72 percent of drug users.¹⁶³

Trying to find causes for such a disparity, I discovered that the police are three times more likely to search cars of African American drivers they stop as opposed to whites, and that the police purposefully target poor black neighborhoods, when searching for drug-related crime. Another cause for the disparity might be disproportionate punishment of crack cocaine offences, which are predominantly committed by blacks (as opposed to lenient sentences for powder cocaine crimes, mostly done by whites). This disparity, however, does not apply to the Commonwealth

¹⁶³ Lisa D. Moore and Amy Elkavich, “Who’s Using and Who’s Doing Time: Incarceration, the War on Drugs, and Public Health”.

of Virginia, where there is no distinction between these two substances.¹⁶⁴ The last factor I would like to stress is the selection of jury. Even though the jury should be representative of the population, in the United States, African Americans are often excluded from the jury without legitimate justification, and as a result, many blacks are judged by an all-white jury.

The second part of the first chapter focused on the history of felony disenfranchisement in the United States and in Virginia. What I believe to be interesting to notice here is that any step resulting in more African Americans having the right to vote was shortly followed by an action restricting the voting rights of African Americans. For example, the impact of the ratification of the Fifteenth Amendment to the U. S. Constitution in 1870 was diminished by the introduction of literacy tests, property requirements, and poll tax at the end of the 19th and beginning of 20th century, and the passing of the Voting Rights Act in 1965 was followed by the War on Drugs, which started in the 1970s.

The second chapter looked at various consequences of felony conviction, especially the loss of the right to vote, the loss of employment, and the loss of social benefits. First, I introduced some terms that are used by scholars to describe collateral consequences, such as “the new civil death” (Dr. Gabriel Chin), or “invisible punishment” (Jeremy Travis). What is important to note is that the myriad of laws and regulations is very complex and that nowadays, there are more than 44,000 collateral consequences nationwide.¹⁶⁵ Afterwards, I analyzed the specifics of the Commonwealth of Virginia, where a felony conviction results in the loss of the right to vote and to serve on jury, the right to hold public office, to own a gun, and to receive federal benefits. A drug-related felony in Virginia results in a six-month loss of a driving license, eviction from public housing, ban from food stamp programs, and the loss of federal education loans.

The first part of the second chapter was devoted to the loss of the right to vote. I argued that felony disenfranchisement takes away political power from poor black neighborhoods. For example in 2002, from people reentering the Richmond community, almost half went back to neighborhoods with 46.6 to 98.9 African American population.

¹⁶⁴ “Report on Cocaine and Federal Sentencing Policy, Chapter 6, The National Legislative and Law Enforcement Response to Cocaine“, *United States Sentencing Commission*, <http://www.ussc.gov/report-cocaine-and-federal-sentencing-policy-2>, accessed 4th May, 2016.

Another aspect I looked at was the role of felony disenfranchisement in prisoner rehabilitation. Experts say that people who had their voting rights restored are less likely to go back to prison and they feel more like they have a second chance at life.

The second part of the second chapter looked at the loss of employment. I examined the connection between the inability to find work and between recidivism. Experts agree that the attempt of a person to find work after returning from prison is made more difficult by several factors. The most important reason is that people with a criminal record are less likely to be hired than people with a clean criminal history. Many professions also require a driving license, or a different type of license, which is of limits for ex-felons.

The third part of the second chapter examines the impact of a felony conviction on social benefits. In Virginia, ex-felons face difficulties finding public housing, because renters have access to criminal records of applicants and they are likely to prefer an applicant with a clean criminal record. Furthermore, a felony conviction can affect the access to food stamps and to the cash assistance program. Since 1996, the food stamp program (Supplemental Nutrition Assistance Program, SNAP), and the cash assistance program (Temporary Assistance to Needy Families, TANF), have been denied to people convicted of a drug felony. Other benefits denied to people convicted of a drug-related felony are for example student loans. Apart from social benefits, parental rights are also influenced by a felony conviction. Parental rights can be terminated by court action, if the parent committed a felony resulting in serious bodily injury, bodily wounding, or sexual assault of a child or other family member. Also, the court can terminate the parental rights of a parent who has failed to maintain contact with their child for six months after the child has been placed in foster care, which may obviously be impossible for someone who is serving a prison sentence.

The third chapter studied the three main directions of attempt to reform the felony disenfranchisement laws via court decisions, constitutional amendment, and gubernatorial action. First, I examined the reform efforts in other countries around the world and I concluded that there is a world-wide push to limit the reach of felony disenfranchisement laws. Second, I looked at the opinion of the American public on the topic, which signals that people in the U. S. are also tired of this approach that over the

¹⁶⁵ Monica Haymond, "Should a Criminal Record Come with Collateral Consequences?", *NPR*, <http://www.npr.org/2014/12/06/368742300/should-a-criminal-record-come-with-collateral-consequences>, accessed 23 April, 2016.

years proved not working. Until this day, Virginia has been reluctant to follow these reformative sentiments and there have only been a few long-term changes, reducing the large disenfranchised population of the Commonwealth, introduced.

The first part of the third chapter deals with the reform efforts through a court decision. I looked at important cases of the U. S. Supreme Court, such as *Richardson v. Ramirez*, and *Hunter v. Underwood*. *Richardson v. Ramirez*, decided in 1974, is the most important U. S. Supreme Court case in regards to felony disenfranchisement. The verdict was that the Equal Protection Clause of the U. S. Constitution does not require states to advance a compelling interest before denying the voting right to people convicted of crime. This decision was also important for Virginia, because Virginia courts have been using this argument since then to reject challenges of the felony disenfranchisement laws of the Commonwealth.

In another important U. S. Supreme Court ruling, *Hunter v. Underwood* (1985), the court decided that felony disenfranchisement laws reflecting “purposeful racial discrimination” are unconstitutional. Despite this ruling, most of the time, lower courts struck down felony disenfranchisement cases with reference to *Richardson v. Ramirez*. In short, to successfully abolish felony disenfranchisement, a new landmark case would have to be decided by the U. S. Supreme Court. This also depends on the composition of the U. S. Supreme Court. The new appointment of the Supreme Court justice could perhaps bring more success concerning this issue. The best way to win such a case, legal scholars argue, would be to challenge felony disenfranchisement laws on the basis of the Equal Protection Clause of the Fourteenth Amendment.¹⁶⁶

After studying relevant U. S. Supreme Court Cases, I moved onto cases that were ruled in Virginia. The most important Virginia felony disenfranchisement case decided in 1996 is *Perry v. Beamer*. In this ruling, the U.S. District Court concluded that the state was allowed to deny the right to vote to tax-paying citizens, in case they were convicted of a felony. The plaintiff argued that the Article II, § 1 of the Constitution of Virginia should be declared unconstitutional, because it violates the Equal Protection Clause of the Fourteenth Amendment. Even though the plaintiff paid taxes, as a felon, he was not allowed to vote, which in his view meant taxation without representation.

¹⁶⁶ Eliot Thompson, “Felon Disenfranchisement”, *Reed.edu*, 35, <http://people.reed.edu/~gronkep/docs/Eliot-Thompson-Felon-Disenfranchisement.pdf>, accessed 4 May, 2016.

The second part of the third chapter focused on the reform of felony disenfranchisement laws through an amendment to the Virginia Constitution. In 2000, the rights restoration process was streamlined due to a bill passed by the General Assembly, which required the Virginia Department of Corrections to provide sufficient information about the rights restoration process to the public. Experts say that a constitutional amendment from the General Assembly, guaranteeing the automatic restoration of rights for everyone, would be the best solution to the felony disenfranchisement issue in Virginia. Unfortunately, until now, all proposals of such an amendment were rejected, because majority of politicians in the General Assembly believe that felons should not be allowed to vote.

The last part of the third chapter examined the reform via gubernatorial action, which remains so far the most viable option. In 2002, Governor Mark Warner simplified voting rights restoration for non-violent offenders, when he reduced the five-to-seven-year waiting period to three years and reduced the 13-page application to 1 page. In 2013, Governor Bob McDonnell restored voting rights to 350,000 non-violent ex-felons. In 2014, Governor Terry McAuliffe reduced the waiting time for violent offenders from five to three years. He also removed the drug offences from the violent felony category. However, all of these changes do not have to last, because they may be walked back by the upcoming governor.

Right before this thesis was submitted, the Governor of Virginia Terry McAuliffe signed an executive order on April 22, 2016 which restored the civil and voting rights to 206,000 ex-felons. This sweeping action applies to all violent and nonviolent felons who completed their sentence and supervised release (probation and parole). This is an important step in the right direction, increasing the voting population by 3.8 percent. Republican critics claim it as an attempt to boost support for Hilary Clinton in the 2016 presidential race. While the executive order restores voting rights, the right to run for office, and a right to serve on a jury, felons still need to individually petition the governor if they want to carry a gun.¹⁶⁷ This recent step towards the voting rights restoration to felons supports my claim that gubernatorial action is the most likely source of reform of felony disenfranchisement in Virginia. Hopefully, some more long-

¹⁶⁷ Graham Moomaw, "McAuliffe restores voting rights for 206K ex-felons; GOP calls it move to boost Clinton", *Richmond Times Dispatch*, http://www.richmond.com/news/virginia/government-politics/article_771db279-34d6-5a3d-9557-a417a8afb212.html, accessed 24 April, 2016.

term reforms will follow soon and Virginia will permanently reduce its disenfranchised population.

Based on my findings, I would answer my research question yes, the criminal justice system in the Commonwealth of Virginia is used to discriminate against minorities and yes, the laws and practices create a group of second-class citizens out of African Americans. I would support that claim by observing that the criminal justice system targets African Americans and takes their political rights away from them. Felony disenfranchisement is an example of that.

Regarding the second part of my research question, I would argue, using the findings from the second chapter, that the laws and practices create a group of second-class citizens out of African Americans in Virginia. Here, we have a group of people who are not allowed to vote, hold public office or serve on jury, people, who do not have access to the job market, public housing, and food stamps, people, who have lost the parental rights to their own children. One of the key parts of the definition of a citizen is that it is “a person entitled to vote and to enjoy other privileges in their place of residency”.¹⁶⁸ Based on that definition, I do not believe we can call the people described above citizens. On the other hand, a second-class citizen, defined as “a member of a minority group, who is denied the social, political, and economic benefits of citizenship”,¹⁶⁹ in my opinion fits the description perfectly. When we consider that about 20 percent of African Americans in Virginia are disenfranchised, I believe it is time to realize that what we see is systematic discrimination. Using some of the arguments from the legal cases, which were examined in the third chapter, I would claim that felony disenfranchisement is in contradiction to the Fourteenth Amendment to the U. S. Constitution, which guarantees equal protection of laws. And coming back to the definition of a citizen – i. e. a person, who is entitled to the protection of the laws of the state, I would assume that a person not protected by the Constitution cannot be called a citizen.

Even though this thesis focused mostly on the Commonwealth of Virginia, it is obvious that most of the findings can be applied to the United States as a whole and that not only Virginia needs to reform its felony disenfranchisement laws. There are still many other states in the U. S. that should do the same.

¹⁶⁸ “Citizen”, *The Free Dictionary*, <http://www.thefreedictionary.com/citizen>, accessed 24 April, 2016.

¹⁶⁹ “Second Class Citizen“, *Dictionary.com*, <http://www.dictionary.com/browse/second-class-citizen>, accessed 24 April, 2016.

Summary

The aim of this thesis was to study the felony disenfranchisement in the United States, with the focus on the Commonwealth of Virginia and its implications for the equality of the Virginian criminal justice system. The goal was to determine, if the criminal justice system in Virginia is used to discriminate against minorities and if the laws and practices are creating a group of second-class citizens out of African Americans. The conclusion of this thesis is that the criminal justice system in the Commonwealth of Virginia is used to discriminate against African Americans and that the laws and practices create a group of second-class citizens out of African Americans. I support this claim by pointing to the unequal treatment of African Americans in the criminal justice system, and by listing all the rights that are deprived to people convicted of a felony. I argue that since 20 percent of African Americans in Virginia are disenfranchised, we can label it as systematic discrimination.

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