Punishment and Citizenship

A Theory of Criminal Disenfranchisement

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Abstract

The thesis examines the normative justification of contemporary restrictions to electoral rights of criminal offenders. While such limitations are becoming fewer, many democracies retain them even today. Having in mind the strong devotion to the principle of universal suffrage, the persistence of these restrictions prompts an inquiry into the reasons for their enactment and an assessment of their normative value.

To situate the problem empirically, the thesis undertakes an analysis of electoral regimes in 43 European countries. An astounding diversity among them is discovered – regimes range from those with no restrictions to those that restrict the franchise of everyone imprisoned – and thus possible explanations are investigated. The argument is that the best way to understand a particular electoral policy is to interpret it within the context of what is termed the 'value of citizenship' in a polity. Constituted by a host of social, political, economic and cultural factors, the 'value of citizenship' indicates the level of accessibility and stability of rights attached to the citizenship status.

This finding, along with the historical analysis of citizenship ideals, raises a fundamental doubt regarding the nature of criminal disenfranchisement: should it be understood as punishment for crime or is its proper function to sanction the manifestation of 'bad citizenship'? The thesis argues that punishment and disenfranchisement are conceptually different and thus goes on to develop a citizenship-based normative account of criminal disenfranchisement. The fundamental question that guides the subsequent inquiry hence becomes: what should be the normative consequences of the act of crime for one's citizenship status? To answer this question, three distinct accounts of the bond between the citizen and her polity are constructed: the 'sense of justice', the 'civic virtue' and the 'common good' model. The analysis shows that, regardless of inherent differences, all models deny the legitimacy of disenfranchisement of the criminal population as such, save for the morally incorrigible individuals who have perpetrated crimes immensely detrimental to the polity. The main policy implication of this argument is that permanent exclusions of a very restricted number of asocial perpetrators of the most

serious anti-state and anti-personal crimes are permitted, but also that – even if such restrictions can be considered legitimate – no polity has a duty to impose them.

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Bio

Milena Tripković holds LLB and MPhil (Law) degrees from the University of Novi Sad (Serbia), MSc in Criminology and Criminal Justice from the University of Oxford, and MRes in Political and Social Sciences from the European University Institute. During her doctoral studies, she held visiting positions at the *Max-Planck-Institut für ausländisches und internationales Strafrecht* (Freiburg, Germany) and New York University.

Prior to commencing doctoral studies, she taught criminology, penology, and social pathology at the Faculty of Law, University of Novi Sad. She published on topics such as hate crimes, prison conditions and prisoner rights. Her research interests fall within the fields of penal and political theory, comparative penal policy and transitional justice.