**To what extent are legal constraints placed upon the eligibility for presidency of convicted felons in the US and Italy, an indication of different perceptions of core democratic values?**

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**Abstract**

The conviction of Donald Trump in the middle of the 2024 presidential campaign in the United States raised questions about the legitimacy of a felon occupying arguably the most important public office among Western democracies. This paper aims to analyse legal constraints on the presidential eligibility of felons in the U.S. and Italy to establish whether a stricter approach barring criminals from the executive office strengthens democracy. This issue shall be approached from the perspective of two principles of Western democracy: accountability of elected officials and the rule of law.

Keywords: democracy, presidential eligibility, accountability, rule of law

**1. Introduction**

In May 2024 Donald Trump became the first former United States President to be convicted on 34 counts for falsifying business records. There was also a pending federal case against him regarding his involvement in the January 6 attack on the US Capitol, which was dismissed following his victory in the 2024 Presidential Election[[1]](#footnote-0). For the purpose of this paper, only cases ending in convictions shall be relevant. While several had questioned his eligibility to run for a second term in this context[[2]](#footnote-1), it appears the US Constitution does not explicitly preclude felons from running for public office. This has prompted discussion on whether stricter eligibility requirements should be considered to prevent ethically-questionable individuals from being elected. However, others contend that such restrictions would undermine essential principles of democracy including voters’ right to choose their representative.

In several European countries, such as Italy, a stricter approach on this matter has already been implemented. The Severino Law (Law no. 190 of 6 November 2012)[[3]](#footnote-2) is a collection of anti-corruption measures named after the Minister for Justice of the Monti Government, Paola Severino. This law famously expelled former Prime Minister (PM) Silvio Berlusconi from the upper house of parliament[[4]](#footnote-3) and prevented him from running for office for a period of 6 years after being convicted of tax fraud[[5]](#footnote-4). Law no. 190 was passed in the context of growing corruption within the Italian government. In 2011, Italy was listed as the third most corrupt OECD country[[6]](#footnote-5). This leads into one of the questions addressed in later sections of this paper - whether stricter regulations on presidential candidates can contribute to lower corruption.

On the other hand, Article II, Section 1, Clause 5 of the United States Constitution sets out three main requirements for a presidential candidate[[7]](#footnote-6). They must be a natural-born citizen, at least thirty-five years old and a resident of the U.S. for at least fourteen years. In addition, individuals may be disqualified if they have already served two terms in office as set out by the 22nd Amendment. One may also be disqualified if they were successfully impeached or convicted under Article I, Section 3, Clause 7[[8]](#footnote-7) or if they committed an act of insurrection against the U.S. Government according to Section 3 of the Fourteenth Amendment[[9]](#footnote-8). However, there has been much debate about the interpretation of the term “insurrection”, which is what makes Trump’s case uncertain. Supreme Court Chief Justice Roberts has admitted it is a “broad term” and its meaning should be considered by the court[[10]](#footnote-9).

Article 84 of the Italian Constitution states that any citizen over the age of fifty can run for president so long as they enjoy full civil and political rights[[11]](#footnote-10). They must also resign any other office before being sworn in. Decree 235/2012, adopted pursuant to Law no. 190, set out the criteria for eligibility of public officials, barring those convicted of serious crimes. Although the office of the President is not explicitly mentioned, it is arguably covered by the clause on national government positions, as the goal of the law is to ensure integrity in public administration[[12]](#footnote-11). No constitutional court ruling has been made so far regarding the interpretation of this matter. The law disqualifies individuals convicted of crimes including but not limited to corruption and abuse of office, for a period ranging from six months to six years, or longer in some cases[[13]](#footnote-12).

In the context of the aforementioned legal constraints on the eligibility of a presidential candidate, this paper will discuss the implications of felons being able to run for office in a democracy with the aim to determine whether stricter requirements would strengthen a democratic system. The analysis will be conducted from the perspective of two principles: accountability of elected officials and the rule of law. This will be done by comparing the legislation in Italy and the US. Despite being two different jurisdictions characterized by their own legal traditions, both recognize these three principles as fundamental to the organization of their state, as will be shown later. However, the comparison is instrumental in highlighting the different interpretations of the same principles. The U.S.’ more relaxed approach regarding eligibility requirements reflects a more direct version of democracy where voter autonomy is prioritised. In contrast, Italy’s stricter laws sacrifice voter autonomy to some extent by taking away the element of unrestricted choice, in order to prevent corruption from public officials. This paper will attempt to determine the extent to which legal constraints placed upon the eligibility for presidency of convicted felons in the US and Italy are an indication of different perceptions of core democratic values. It will argue that different approaches reflect the specific political contexts of the two countries and illustrate varying priorities in terms of democratic principles. Nevertheless, the analysis is partial to the argument that American democracy is weakened by the ability of convicted felons to run for office because the absence of restrictions allows flawed decision-makers to take power and threatens the integrity of the legal system by allowing some felons to benefit from unequal treatment.

**2. Accountability of elected officials**

**2.1. Accountability as an element of Western democracy**

*“The accountability chain between the electorate and elected officials is a vital, indispensable element of democratic government.”[[14]](#footnote-13)*

- Elmer B Staats, Former Comptroller General of the United States

To be accountable, according to former European Ombudsman P. Nikiforos Diamandouros, means to have a duty to explain and justify one’s actions in terms of appropriate criteria and in sufficient detail. Although the “appropriate criteria” is never defined, the author seems to suggest there need to exist agreed upon standards to which public officials are held accountable. These can depend on the context of the country. In addition, officials must be liable in some way if the performance revealed by the account is considered unsatisfactory[[15]](#footnote-14).

The Government Accountability Office (GAO) is the supreme audit institution in the U.S. meant to uphold the principle of accountability. It understands accountability as including the mechanism through which economic efficiency is enhanced and the credibility of the government is protected[[16]](#footnote-15). This is accomplished through financial audits, program reviews, investigations, legal support, and policy analyses. Although not explicitly defined, various aspects of accountability are woven into the U.S.’ legal framework through the Constitution’s emphasis on the separation of powers[[17]](#footnote-16), or other federal laws such as the Ethics in Government Act, which mandates the disclosure of financial and employment history of all public officials[[18]](#footnote-17).

Similarly, although the Treaty on the Functioning of the European Union (TFEU) does not explicitly mention accountability as a principle of democratic governance, this is reflected through its emphasis on transparent decision-making and control mechanisms implemented by the European Court of Auditors. The Charter of Fundamental Rights of the European Union also guarantees citizens’ ability to lodge complaints regarding maladministration[[19]](#footnote-18) or bring issues to the the attention of the EU Parliament through petitions[[20]](#footnote-19).

Thus, even though accountability is not explicitly present as a written principle in either jurisdiction’s legal framework, it is nonetheless a foundational element of both democratic models. Therefore, it can be considered a relevant indicator of how strong a democracy is and shall be used in this paper for the purpose of analysing how presidential eligibility criteria influences democracy.

Both the U.S. and Italian Constitutions establish mechanisms to promote accountability in the executive branch of government. In the U.S. the most well-known form of accountability is impeachment, which is a prerogative of Congress according to Article 1, Clause 2, Section 5 of the Constitution[[21]](#footnote-20). In addition, the ethics of a president are overseen by special congressional committees, the Department of Justice, the Office of Government Ethics, the GAO and other authority figures[[22]](#footnote-21). The Italian Constitution also grants the legislative branch the power to impeach the president through Article 90[[23]](#footnote-22). Other mechanisms of accountability include judicial review by the Corte Costituzionale (Constitutional Court), as per Article 136 of the Constitution[[24]](#footnote-23), and the limits of presidential power in a parliamentary system. Although these mechanisms contribute to the maintenance of checks and balances, they may not be enough to ensure the accountability of the executive in a democratic system. This is because they only apply to a president once they have taken office and not from the beginning of their campaign. Once they have won the elections, the president is arguably more powerful and able to sidestep these mechanisms. One of the most famous examples of this was American President Andrew Jackson who significantly expanded the scope of presidential authority defying the Supreme Court through the Indian Removal Act and going against Congress in the Bank War[[25]](#footnote-24). In Italy this can be observed in the case of Berlusconi’s media empire undermining independence of the press and its ability to check on his governmental power[[26]](#footnote-25). This is why it is relevant to consider the standards to which a presidential candidate should be held before they take office to avoid any abuse of power or other lapse in moral judgement.

Grant and Keohane identify three components of accountability in world politics: a common set of standards, information about whether politicians have fulfilled that set and sanctions if they have not[[27]](#footnote-26). This presupposes, they argue, the legitimacy of the standards themselves, i.e. both parties should recognise them. At the same time, the authority of one party (the public official) to exercise particular powers and of the other (the citizens) to hold them accountable should be legitimate. Although they only briefly discuss the standards of conduct to which power-wielders should be held accountable as such, the idea of an ethical dimension to this could certainly be derived. Should just any person be allowed to hold the office of president? Or should there be a set of morals that a person has to demonstrate? And does being a criminal violate that set of standards? These questions shall be answered in the following section.

**2.2. Accountability in the cases of Trump and Berlusconi**

One implication that has to be considered when answering these questions is the nature of the crime. The UNODC associates crime, in general, with a “moral failure in making decisions”[[28]](#footnote-27). Thus, it could be argued that any convicted criminal, regardless of their crime, should not be allowed to be president as their decision-making abilities are seriously flawed and thus, cannot be trusted to always make decisions in favour of the electorate. However, in modern democracies, the nature of a crime generally matters both legally and socially. A murderer will get a longer sentence than a thief. Child molesters are less likely to find an apartment to rent than other criminals[[29]](#footnote-28). In some jurisdictions, felony offences can lead to temporary or permanent disenfranchisment[[30]](#footnote-29).

There is no universally agreed-upon clear line to draw as to which crimes are serious enough to warrant disqualification from the office of president. One solution to this dilemma is the electoral process. Some would argue that the people should be able to evaluate the suitability of a candidate for themselves, even if that candidate was convicted. Steven B. Snyder argues preventing a felon from running for office violates the rights of both the voter to make their own choice and the candidate to run for office[[31]](#footnote-30) and thus, stronger restrictions on presidential eligibility would weaken democracy. In addition, he adds that “political participation is a fundamental right”, suggesting that it should not be limited under any circumstances.

A limitation to this argument is that leaving the decision up to the people can be subject to some of the failures of the democratic process. One poll showed that in the United States only 10% of Republicans would let Trump’s convictions dissuade them from voting for him, while 56% said the case had absolutely no effect on them[[32]](#footnote-31). This could arguably be a result of Trump’s “cult of personality”, which has been most famously described by Steven Hassan[[33]](#footnote-32). In “The Cult of Trump” he draws comparisons between the current president-elect and people such as Jim Jones and Sun Myung Moon. He details how Trump’s use of coercive tactics, such as loaded language, has led to him having blindly-devoted followers. Assuming the accusations of building a cult of personality are true, it could be argued that the absence of stricter requirements for the presidential eligibility of felons could allow an unfit candidate to run the country through using undemocratic tactics of propaganda and cult-building[[34]](#footnote-33) because there are no ethical standards which one must fulfil. This argument does rely on the fact that being a felon makes one more likely to act in an undemocratic manner, which is arguably supported by the previously cited opinion of the UNODC which claims that criminals have flawed decision-making skills and, thus, cannot be trusted to make democratic choices. In contrast, Silvio Berlusconi, who could also be argued to have built a soft cult of personality,[[35]](#footnote-34) through his populist characteristics[[36]](#footnote-35) and monopoly on Italian media, was barred from office after being convicted. This shows how a stricter approach to eligibility criteria for public office can overcome the use of undemocratic tactics, by not allowing individuals to run for office using unethical methods, such as propaganda.

This debate reflects a deeper tension within democracy. On one side, a stricter institutional approach guarantees a higher level of public trust. In this case, banning criminals from the presidential office has the benefit of upholding the principle of accountability through ensuring more ethical decision-making that can better represent the electorate. This approach is clearly favoured by Italy. On the other hand, less institutional restrictions allow for a more direct manifestation of democracy and accountability as the people have the ultimate power of decision. This system highlighting voter responsibility is favoured by the United States.

**3. Presidential integrity and the rule of law**

**3.1. The rule of law as an element of Western democracy**

*“Rule of law means that no individual, president or private citizen, stands above law.”[[37]](#footnote-36)*

The rule of law is closely linked to the concept of Western democracy. According to the United Nations they are not only connected, but “mutually reinforcing”[[38]](#footnote-37). Article 5 of the U.S. Constitution also emphasises its importance through the principle of “due process”[[39]](#footnote-38). If this element is not respected, the rule of law can be undermined. The European Union also recognises the importance of the rule of law in guaranteeing that democracy is upheld according to Article 2 of the TFEU[[40]](#footnote-39). One element of maintaining the rule of law is citizens’ trust in the government. This is because, without it, people would be less compelled to follow the law[[41]](#footnote-40) and that would weaken its authority. Therefore, if the principle of due process is not respected or not equally applied to all individuals including presidential candidates, this can lead to a fall in confidence in regards to the strength of the legal system. As a result, the rule of law and democracy itself may be undermined.

**3.2. The rule of law in the United States**

The U.S. is currently experiencing what some would call “a crisis of trust” in public officials[[42]](#footnote-41). According to some, this is associated with negative perceptions of the economy, instability in Congress, as well as public concern about crime[[43]](#footnote-42). Although, as previously discussed, Trump’s convictions did not seem to affect public opinion too drastically for a number of reasons associated with the loyalty of his supporters, history shows Americans do not tolerate public officials that get involved in crime. In fact, Massachusetts citizens experienced a reported “incalculable” fall in public confidence in the government after, in 2012, at least nineteen public servants were dismissed due to charges brought against them all within the span of four months[[44]](#footnote-43). In Italy, the correlation between the rule of law and presidential eligibility is clear as the Severino Law was passed in the context of growing concerns over high-level corruption[[45]](#footnote-44), as previously mentioned.

In addition, it could be argued that the rule of law may be strengthened by a stricter approach to presidential candidacy, especially in the case of Trump, because of the principle of equality before the law[[46]](#footnote-45). In the U.S. lower level public officials have been prosecuted for crimes including embezzlement of public funds and corruption. 7,762 federal officials, 1,971 state officials, and 4,672 local officials were prosecuted between 1999 and 2018[[47]](#footnote-46). Even though not all local officials are elected, this still reflects how representatives of the government have to adhere to certain ethical standards. If they are to be held accountable under the law, the presidential candidate should too, as should any other elected or non-elected offiicial. However, Trump’s campaign creates the impression that he is avoiding consequences, especially since once he is in office, he might be able to use his presidential immunity or his influence to steer clear of punishment altogether[[48]](#footnote-47). Before November 5, 2024, a former top official at the district attorney’s office in Manhattan claimed that in the event of Trump’s election, his sentencing, scheduled for late November, might not proceed. “A victory on Election Day is his get out of jail free card”[[49]](#footnote-48). Sure enough, New York Judge Juan Merchan, presiding over the “hush money” case, has indefinitely adjourned Trump’s sentencing following his victory[[50]](#footnote-49). At the same time, Trump’s election interference case regarding his involvement in the events of January 6th has been dismissed[[51]](#footnote-50). This political tactic threatens the supremacy of the rule of law as understood in the American tradition because it fails to ensure equal treatment under the law for all individuals.

On the other hand, it could be argued that the strength of the rule of law in this case depends on the ability of the legal system to prevent such inequalities and not on whether the candidate is a felon. By inequalities, it shall be understood the difference in a presidential candidate’s opportunity to avoid consequences for their crimes compared to a regular citizen’s ability to do the same. Clinton v Jones established that a sitting U.S. President has no immunity from civil law litigation or for acts committed before taking office, or unrelated to office[[52]](#footnote-51), which would include Trump’s “hush money” cases. So, in theory, a convict should not be able to escape consequences as per the principle of equality before the law. However, there is no precedent on how this matter is to be addressed under the current circumstances, whereby Trump is about to take office, probably delaying his sentence. This is a gap in the law that could be fixed by stricter presidential eligibility criteria. It shall also be noted that the weaknesses of the rule of law that resulted in a reported fall in the level of confidence from the American public can be explained by other relevant factors, and not only public officials being convicted. For example, judicial independence in the Supreme Court has been questioned, due to alleged connections between justices and billionaires[[53]](#footnote-52). Therefore, although the strength of the rule of law in the United States is affected by a multitude of other factors, and cannot be limited to the contraints of presidential eligibility, the ability of the legal system to treat individuals equally regardless of their political activities is nonetheless a crucial element.

**3.3. The rule of law in Italy**

On the other hand, the stricter approach of Italy as represented by the Severino Law arguably poses a challenge to the rule of law too. As previously mentioned, the law does not explicitly mention the Office of the President[[54]](#footnote-53), which may reserve a place for ambiguity and uncertainty in the law which can weaken it within the framework of Lon Fuller’s interpretation of the rule of law[[55]](#footnote-54). However, this argument does not pertain to restrictions on presidential eligibility in general, but rather to this particular law. As such, it may be inferred that the legislative approach to place restrictions on candidates can benefit Italy and its rule of law, if it more clearly and explicity included the office of the President. One argument that could serve proof of this has to do with the law’s ability to fight corruption. Between 2011 and 2013 corruption in Italy grew by 4 points on the Corruption Perception Index[[56]](#footnote-55). In this context, the Severino Laws targetted corruption in many ways, one of which was to prevent criminals from serving in public office. Instances of corruption would include embezzlement of public funds and abuse of office[[57]](#footnote-56), which undermine the rule of law because legislators, who are supposed to make the law, break it themselves. However, this argument is only valid for this paper if it is true that convicted felons are more likely to commit a crime while in office, because that would mean a rule like the Severino Law can prevent cases of corruption. A set of statistics in Italy measured that 52.3% of the convicted population between 2006 and 2017 were reimprisoned, but that specific recidivism stood at around 16.1%[[58]](#footnote-57). This is a relatively high number which could suggest that felons are likely to recommit a crime while in office, however, in comparison to other developed countries this is not the highest. The World Population Review measured that between 2005 and 2010 the average recidivism rate in the United States was 55%[[59]](#footnote-58). Based on this data, it could be argued that if Italy’s rule of law benefits from not having felons in public office, the U.S.’ would too, because it would eliminate the possibility that they would recommit a crime while in office. As such, it could be argued that stronger requirements for presidential candidates would strengthen American democracy through upholding its rule of law.

Thus, although the apparent image of a felon taking office seems to paint a negative picture on the supremacy of the law in a democratic system, the effect this has on the rule of law depends on whether the convict actually avoids or delays consequences for their actions while in office. In the case that Trump, for example, would still be sentenced and his trials would proceed as planned, him being a felon should not shatter the idea of equality in the eyes of the law as he would be receiving the same treatment as any other American. Nevertheless, it is probable based on the arguments and evidence presented that there could exist a positive correlation between a felon in office and a weakened rule of law. However, for this to be a causational relationship, more research should be done into people’s response to convicted felons being elected as well as into whether convicted felons are likely to recomit a crime while in office. Moreover, there can be confounding variables such as the level of existing corruption in the legal system that could affect both variables.

**4. Conclusion and recommendations**

This comparative analysis of the legal constraints placed on the presidential eligibility of convicted felons in the United States and Italy has highlighted a clear tension between democratic principles such as voter autonomy and institutional integrity. The U.S. approach, which clearly favours the former, is about to inaugurate its first convicted felon as President in January 2025. Trump’s new term is likely to offer more insight into the practical implications of a felon in office. Most relevantly, the decision of the New York Court regarding his sentencing will determine whether the legal system will be duly applied or whether he will be able to somehow avoid consequences for his actions which will have a direct impact on the nature of American democracy. This is because it would prove an inherent inequality within the law since the President is able to benefit in a way a regular citizen may not. However, it is worth noting that, although Trump may be used as a case study to investigate the nature of a convicted felon’s behaviour, generalisations cannot be made. In the case that Trump does end up being treated differently by the law while in office, it may be implied that allowing a convicted felon to run for President can weaken democracy, but it cannot be argued that all felons may behave the same way. Equally, in the case that Trump does end up being sentenced, which is unlikely since he cannot fulfil his presidential duties from a cell, that does not guarantee that other future convicted presidents will not be able to escape punishment.

This paper explored the research question from the perspective of two principles of democracy: accountability of elected officials and the rule of law. The first analysis revealed a difference in approaching democracy through varying priorities. Italy’s restrictive laws protect the “demos” by preventing flawed decision-makers from being in power, while the American approach leaves the decision up to the people in a more direct way. Thus, it is unclear which approach provides for a stronger democracy. More research into the topic may clarify the analysis by looking at whether the restrictive laws in Italy have succeeded in achieving their aim since they have been in place. When it comes to the second principle, the rule of law, it is likely that stronger restrictions can strengthen democracy because it can attack the high-level corruption that exists in many developed democracies such as Italy and the United States and which can weaken the legal system because of the fact that legislators or executives who are making or enforcing the laws are breaking them themselves. Thus, there is less congruence between the laws created and those applied. However, according to Transparency International’s Index, Italy is more in need of such an approach with a lower score of 56 on the Corruption Perceptions Index than the U.S., which scored 69[[60]](#footnote-59). However, this argument rests on the assumption that convicted individuals would increase the rate of corruption in a democracy, which can be plausibly argued based on the UNODC’s portrayal of criminals as flawed decision-makers. However, more research should be done into the behaviour of convicted felons in office to prove causation.

This topic of research may benefit from a broader analysis taking into account other principles of democracy such as representation of felons in office, especially considering the large incarceration rates in the United States. Future research may also want to focus on the actual potential laws that could be implemented to restrict presidential candidates and their impact on public opinion and trust in the government.

In terms of more specific policy recommendations, the democratic framework of both Italy and the United States would benefit from some legal clarification. In the case of the latter, slightly more concrete definitions of terminology such as “insurrection” could provide for a more certain legal system which can minimise potential failures. Without a proper understanding of the word, the law prohibiting isurrectionists from running for public office cannot be properly applied and, therefore, cannot prevent individuals who have engaged in such behaviour from being elected. On the other hand, Italy’s Severino Law would benefit from some clarity in terms of the categories of officials that are covered by the law, more specifically, the President. This is because the language of the law does not explicitly mention this position, but only names senators, and other high-ranking government positions.

In addition, a more cautious policy option for countries such as the United States, which prioritise voter autonomy in their election systems, would perhaps be a more comprehensive pre-election mechanism with a larger focus on ethical reviews of candidates. A more in-depth assessment of the potential risks posed by candidates with criminal records can minimize the costs to the democratic integrity of the country, while also providing for a more transparent stream of information about a felon’s past conviction(s) to the voters, to contribute to accurate decision-making. This sort of transparency would not only respect the individualised approach to American democracy, but also attempt to control for the potential ethical implications of electing a convicted felon, as explained throughout this paper.

Thus, a blanket policy approach with regards to presidential eligibility criteria is unlikely to work due to the distinct legal and democratic cultures of the states. However, due to the fact that both countries value foundational principles including the rule of law and accountability of elected officials, a more constrained legal framework protecting citizens from flawed decision-making may be advisable.

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