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Punishment and Democracy: The Significance of the Disenfranchisement of Nonincarcerated Felons and Ex-Felons

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Abstract

The rapid growth in the felon population over the past three decades has made the use of disenfranchisement of felons and ex-felons increasingly significant for voting rights in general, sufficient to represent a partial retreat from the 150-year campaign to make the franchise universal. In this paper, Manza and Uggen focus on the denial of voting rights to nonincarcerated felons. Such restrictions are unique among democratic countries around the world. Most states have laws in place restricting voting rights of felons not in prison but living in their communities, and some states disenfranchise ex-felons as well. While survey data on this issue is limited, the authors present evidence clearly suggesting that the public does not support the disenfranchisement of nonincarcerated felons. Finally, they assess whether the growth of the disenfranchised but nonincarcerated felon and ex-felon population might have reached the point where it has the potential to influence election outcomes—probably to the detriment of the Democratic party.

PUNISHMENT AND DEMOCRACY: THE SIGNIFICANCE OF
THE DISENFRANCHISEMENT OF NONINCARCERATED FELONS AND EX-FELONS

Kentucky Republican Mitch McConnell was first elected to the U.S. Senate in 1984, and he has since been reelected three times. A forceful conservative voice in the Senate, McConnell had become increasingly prominent with seniority and growing Republican and conservative influence. Known especially for his willingness to vigorously defend unpopular positions that others try to avoid, in recent years he has become a popular guest on political talk shows and a visible presence on the conservative wing of the Republican Party. In February 2002, during a brief Senate debate over an amendment offered by Nevada Senator Harry Reid to national election reform legislation that would have restored the right of ex-felons to vote in federal elections, McConnell rose to deliver a characteristically blunt critique of the Reid amendment. Starting from a classic states' rights position ("it is highly doubtful that Congress has constitutional authority to pass legislation preempting the states with regard to this issue"), McConnell then proceeded to offer a substantive defense of felon disenfranchisement:

States have a significant interest in reserving the vote for those who have abided by the social contract that forms the foundation of a representative democracy. We are talking about rapists, murderers, robbers, and even terrorists and spies. Do we want to see convicted terrorists who seek to destroy this country voting in elections? Do we want to see 'jailhouse blocs' banding together to oust sheriffs and government officials who are tough on crime? (U.S. Congress 2002, p. S802)

There is no small irony to McConnell's high profile in the Senate debate over ex-felon voting rights: he may well owe his political career to the fact that Kentucky disenfranchises ex-felons. In 1984, McConnell was a relatively unknown judge in Jefferson County, running an uphill campaign against two-term incumbent Senator Walter Huddleston. Benefiting from the Republican presidential landslide of that year (Ronald Reagan trounced Walter Mondale by

nearly 300,000 votes in Kentucky), McConnell squeaked by Huddleston with a narrow 5,269 vote margin (in an election with nearly 1.3 million ballots cast). As we will show below, in view of the narrowness of outcome it is entirely possible that the disenfranchisement of ex-felons – former offenders who have served their entire sentence, some 54,481 of whom were barred from voting in Kentucky in the 1984 election – helped put McConnell over the top. Such a counterfactual scenario is, of course, difficult to prove, but given what we know about the social characteristics of the disenfranchised ex-felon population, it is certain that the Democratic Party has suffered some net lost votes and perhaps some closely contested elections (such as the McConnell/Huddleston contest) as well.

No discussion of the current state of democracy in the United States can ignore the unique and growing impact of the disenfranchisement of felons and ex-felons. The rapid growth in the felon population over the past three decades has made the use of this sanction increasingly significant for voting rights in general, sufficient to represent a partial retreat from the 150-year campaign to make the franchise universal. Putting aside the question of voting restrictions for current prison inmates, our particular focus in the paper is on the denial of voting rights to non-incarcerated felons. Most states have laws in place restricting voting rights of felons not in prison but living in their communities, and some states (such as Kentucky) disenfranchise ex-felons as well. These restrictions are unique among democratic countries. While survey data on this issue is limited, we will present evidence clearly suggesting that the public does not support the disenfranchisement of non-incarcerated felons. Finally, we assess whether the growth of the disenfranchised but nonincarcerated felon and ex-felon population may have reached the point where it has the potential to influence election outcomes.

FELON DISENFRANCHISEMENT IN THE UNITED STATES

Unlike the constitutions of virtually all other democratic countries, the American Constitution does not provide for a universal right to vote for all citizens. Since the Civil War, a series of amendments have been adopted that require states to *extend* voting rights to various categories of citizens previously denied (in some or all states) the franchise.¹ But none of these amendments explicitly extended voting rights to those citizens barred from participation due to a past or current felony conviction. The 14th Amendment was of particular importance: in addition to the famed Equal Protection and Due Process clauses of Section 1 of that Amendment, Section 2 provided for the reduction of a state's representation in the House of Representatives in the proportion to which the state denied adult men the right to vote. However, Congress added the qualification that the provision did not apply for the exclusion of those convicted of "rebellion or other crimes." Although most legal scholars have rejected a narrow reading of the 14th Amendment clause when applied to the broader issues raised by ex-felon voting rights as they evolved after 1868, with very few exceptions federal courts have allowed even the strictest of these bans -- those on ex-felons who had finished their entire sentences -- to remain in place. This has remained true even in the post-Voting Rights Act era, and in the face of strong evidence that these bans have a disproportionate racial impact. The controlling case, *Richardson v. Ramirez* (418 U.S. 24 [1974]), upheld the constitutionality of felon disenfranchisement laws as

¹ The 14th Amendment defined a national citizenship; the 15th Amendment extended the right to vote to African American men; the 19th Amendment provided for women's suffrage; the 23rd Amendment provided federal voting rights for residents of the District of Columbia; the 24th Amendment prohibited poll taxes; and the 26th Amendment extended the vote to 18 year olds.

consistent with the intent of the 14th Amendment. Recent legal challenges have not, to date, overturned that decision.²

Reflecting the absence of national standards for voting rights for criminal offenders, there is wide variation in state laws regarding voting rights for felons and ex-felons. Four basic categories of criminal offenders are distinguished by state disenfranchisement laws: (1) convicted felons who are currently incarcerated; (2) felons who have been previously incarcerated and released from prison under parole supervision; (3) those who were convicted of a felony but sentenced to probation rather than prison (and thus never incarcerated); and, (4) those ex-felons who have completed their entire sentence and no longer have any official contact with the criminal justice system. At present, two states – Maine and Vermont – allow all felons including those currently in prison to vote. At the other extreme, eleven states bar some or all ex-felons from voting, two other states permanently disenfranchise those with multiple felony convictions, and one more state requires a post-release waiting period.

Table 1 summarizes the types of restrictions in place in each state at the end of 2002. In between the two ends of the continuum (states that disenfranchise all ex-felons and states versus those that allow all felons to vote), a variety of intermediate restrictions exist. 14 states disenfranchise only currently incarcerated felons, allowing felons who are released from prison or who are never sent to prison in the first place to vote. 5 states disenfranchise both felon inmates and parolees, but allow those sentenced only to probation to vote, with another 15 states adding probation to the list of proscribed offenders.

TABLE 1 HERE

² Courts have generally upheld state felon disenfranchisement laws in recent years, following the U.S. Supreme Court's *Ramirez* decision. The Supreme Court did, however, strike down Alabama's broad disenfranchisement law in 1985, finding that the constitutional provision was substantially motivated by racist intent in violation of Section 1 of the 14th Amendment (*Hunter v. Underwood*, 471 U.S. 222 [1985]), requiring the state to rework its law.

Given the wide variation in state policies regarding felon and ex-felon voting rights, determining the distribution of the disenfranchised felon population requires a state-by-state canvass. In other work (Uggen and Manza 2002, Manza and Uggen forthcoming), we have developed a demographic life-table analysis in order to estimate the overall distribution of disenfranchised felons in each state, taking into account each state's distinctive laws. While counts of the incarcerated, parole, and probation populations are fairly straightforward, determining the size of the disenfranchised felon population is far more complicated. Because many ex-offenders will commit further crimes (and receive further criminal justice sanctions), and others will die, there is a danger of over-counting or double-counting the ex-felon population unless appropriate adjustments are made for both recidivism and mortality.

Using models incorporating these adjustments, we estimate overall that at the time of the 2000 elections, there were approximately 4.7 million disenfranchised felons prevented from voting (Uggen and Manza 2002; cf. Fellner and Mauer 1998, who estimated the disenfranchised felon population at 3.9 million). These figures are large and historically unprecedented, representing about 2.3% of the voting age population. Because ineligible felon citizens are nonetheless included in the denominator used to calculate official turnout rates, the growth of felon disenfranchisement has made a significant contribution to the overall turnout decline since the 1960s (cf. McDonald and Popkin 2001).

Based on systematic head-counts for the current felon population and conservatively adjusted for recidivism and mortality for the ex-felon population, our estimates are likely to be conservative. But is there any chance they are too high? For example, it is possible that some felons are slipping through the cracks, improperly registering and voting because of poor bookkeeping practices in state voter registration systems. Indeed, in follow-up canvasses of a

handful of hotly contested elections with recounts, there is indeed evidence that a handful of these individuals may have managed to register and vote.³ We do not believe that such cases are likely to be of such a magnitude as to significantly reduce the overall size of the disenfranchised felon population. Based on what has been systematically documented so far, the national impact is likely to be modest. Outside of a handful of follow-up investigations, however, it is simply impossible to know from existing sources exactly how many illegal felon voters are participating in electoral contests. But even if relatively large numbers of formally disenfranchised felons are voting – which is not proved at this point – there are still very good reasons to think that overall we have significantly *understated* the full extent of the issue. First, we have not included non-felons entangled in the criminal justice system in ways that make it difficult or impossible to vote. For example, our estimate of 4.7 million disenfranchised felons *does not* include the 275,500 jail inmates serving sentences for misdemeanor offenses, or the approximately 321,000 unconvicted pre-trial detainees held in jail on the day of recent national elections (U.S. Department of Justice 2003a). Both of these groups are practically, if not legally, disenfranchised in most states.

Further, while some felons may be improperly voting, an even greater number of eligible ex-felons may avoid the polls because they mistakenly believe they are subject to permanent disenfranchisement. In Minnesota, for example, we found high levels of misinformation in our in-depth interviews with current felons (both in and out of prison), with many unaware that their right to vote would be restored after they complete their sentences. Many former offenders who are actually eligible may thus be taking themselves out of the political process because they

³ See, e.g., Arthur, Doherty and Yardley (2002), Kidwell, Long and Dougherty (2000), McBride and Spice (2000), *Miami Herald* (1999). A scholarly assessment of the consequences of Florida's attempts to purge felon voters from the rolls is developed by Stuart (2002).

misunderstand the details of the laws governing voting rights in their state. Taking into account all of these points, it is likely that the *de facto* disenfranchised population is larger than our estimates assert, and that our estimates understate the full impact.

Taking the patchwork of state laws as a whole, who is actually disenfranchised? Figure 1 provides a graphical display of the results of our analysis of the composition of the disenfranchised felon population. The figure is startling: it shows that only about one-quarter of the disenfranchised felon population is currently in prison, with the other three-fourths consisting of offenders or ex-offenders living in their community. Because of the steady cumulation of their numbers over time (in those states where they are disenfranchised for life), more than one-third of the disenfranchised are ex-felons. The remainder are either on probation (28%), out on parole (10%), or serving felony sentences in jails (1%).

FIGURE 1 HERE

Historical Origins of Felon Disenfranchisement

In light of their large contemporary impact, it is important to ask how these laws came into existence. Criminal disenfranchisement has an extensive history in Ancient Greece and Rome, through to medieval Europe and in the English law of attainder (cf. Ewald 2003; Itkowitz and Oldak 1973; Pettus 2002). In Ancient Greece, for example, imposition of the status of *atimia* upon criminal offenders carried with it the loss of many citizenship rights. The related punishment of *infamia* could be imposed by the authorities in Ancient Rome; here the principle penalties were loss of suffrage and the right to serve in the Roman legions (a desired opportunity). One key difference between Rome and Greece was that in Rome, there were gradations of citizens, and the application of *infamia* varied depending on what type of citizen

and crime was involved. In medieval Europe, the legal doctrine of “civil death” developed. Like *atimia*, civil death entailed a complete loss of citizenship rights. In extreme cases, when civilly dead, the outlaw was literally exposed to injury or death, since they could be killed by anyone with impunity, or had their property taken (Pettus 2002). Under English law, after conviction, the penalty of attainder could be imposed by the court, which in extreme applications escalated to include the loss of all civil rights for the most extreme punishments.

The removal of civil and political rights for criminal offenders for life in pre-modern polities has been almost universally abandoned in the modern world (see below). In the United States, however, the development of right to vote followed a different path in many respects (cf. Keyssar 2000). Non-propertied white men generally gained the franchise earlier in the United States than in other democratic countries, although for other segments of the population the right to vote came much later after protracted struggles (e.g. Rogers 1992; Wiebe 1995; Keyssar 2000). Most state constitutions explicitly gave their legislatures the power to pass laws disfranchising criminals, but prior to the adoption of white male suffrage and the development of state criminal justice institutions they were relatively rare, and generally limited to a few specific offenses (Ewald 2002). In 1840, only 4 of the then 26 states had felon disfranchisement statutes on the books. From the 1840s onward, however, states began adopting and expanding their restrictions on felons and ex-felons, frequently broadening the scope of crimes covered and the proportion of offenders involved (cf. Keyssar 2000, pp. 162-63; Behrens, Uggen and Manza 2003). Figure 2 charts the development of state laws since 1840. It shows the proportion of states with various types of disenfranchisement laws (distinguishing those with no ban at all, those disenfranchising inmates, those disenfranchising inmates plus parolees and/or probationers, and those disenfranchising ex-felons).

FIGURE 2 HERE

Two noticeable waves of disfranchisement laws in the 19th Century can be observed. The first wave of legal change, beginning in the 1840s, followed on the heels of the adoption of near-universal white male suffrage. So far as we know, this era has not been investigated by historians or other social scientists, and thus little is known systematically about the factors that might have driven the first wave of disenfranchisement laws. The second wave of restrictive reforms adopted by the states appeared in the period after the Civil War, and here we know quite a bit more. In the South, during and after Reconstruction, many states expanded their restrictions on the felon population (which for the first time began to contain large proportions of African Americans), the first step in a larger process of disenfranchising African American voters. These measures included the extension of disenfranchisement to cover a wide range of crimes not previously included among the common-law felonies (Keyssar 2000, p. 306). In the South, these extensions appeared directly targeted at crimes for which African Americans were primarily charged (this was especially true for all crimes of “moral turpitude” in the post-Civil War South) (Shapiro 1993; Behrens, Uggen and Manza 2003).

An event-history analysis of the factors predicting the adoption of restrictive felon disenfranchisement measures by state governments between 1850 and 2000 finds that states with larger proportions of nonwhites in their prison populations were more likely to pass restrictive laws, even when the effects of time, region, economic competition between whites and blacks, partisan control of government, and punitiveness were statistically controlled (Behrens, Uggen, and Manza 2003).⁴ This research suggests a very direct connection between racial politics and felon disenfranchisement, one that drew upon widespread stereotypes about the propensity of African Americans to commit crimes (cf. Mendelberg 2001, chap. 2).

⁴ A pre-publication version of this paper is available at: www.soc.umn.edu/~uggen/felon_disenfranchisement.htm.

The third wave of change can be seen in the bottom line of Figure 2, the proportion of states disenfranchising ex-felons, which declines sharply after the late 1950s. Throughout the 20th Century, increasing numbers of states disfranchised some categories of felons, and many states revised their laws to cover a wider range of crimes, but there was little systematic movement in the patterning of the laws until the liberalization wave of the 1960s and 1970s, when 17 states in all repealed ballot restrictions for ex-felons (see Keyssar 2000, pp. 302-08). The period of liberalization began during the height of the civil rights movement era. The increasing importance of black voters (outside the South), and possibly black legislators as well, appears to have positively influenced the adoption of more liberal voting regimes for criminal offenders, although the proportion of African American prisoners continued to exert a strong negative influence on the likelihood a state would liberalize, as does region (with Southern states the least likely to adopt reform) (Behrens, Uggen and Manza 2003).

U.S. Voting Laws in Comparative Perspective

The exceptional character of the restrictions on the political rights of criminal offenders in the United States can be seen in two ways. First, the U.S. has the highest incarceration and conviction rates in the world. As many recent analysts have documented, the U.S. is exceptional for the rate at which it issues felony convictions (and thus removes the right to vote) and U.S. incarceration rates are some 6-10 times those of the countries that are most similar to us. For example, the 2000 incarceration rate in the U.S. was 686 per 100,000 population, compared to rates of 105 in Canada, 95 in Germany, and only 45 in Japan (Walmsley 2002; U.S. Department of Justice 2003a) and similar cross-national disparities can also be found for other correctional populations (for comparative probation and parole data, see United Nations 2003, pp. 263-68).

Current levels of incarceration and criminal conviction are unprecedented not only in a comparative sense, but also historically within the United States. Incarceration and conviction rates in the U.S. were relatively stable, with some essentially trendless fluctuation, between the 1920s and early 1970s. Since then, however, incarceration and conviction rates have exploded. For example, there were fewer than 200,000 prison inmates in 1972, and over 1.4 million today (U.S. Department of Justice 2003a, p. 494-96). With jail inmates, there are now slightly over 2 million people incarcerated in the U.S. (U.S. Department of Justice 2003a, p. 478). Similar though not quite so extreme trends can be found in the total numbers of felony probationers (U.S. Department of Justice 2002).

These are startling trends which have laid the foundation for large-scale disenfranchisement. However, it is important to note some important limitations on the full impact of the criminal punishment boom on political rights in the United States. First, most convicted felons eventually get their voting rights restored. In fact, we have estimated (with life-table demographic models adjusting for recidivism and mortality, the same approach used to estimate the disenfranchised ex-felon population) that there are now approximately 13.3 million Americans who have a felony conviction on their record (about 6.5% of the adult population) (Uggen, Thompson, and Manza 2000). Only about one-third of that group, however, is currently prevented from voting. Second, as we noted in our brief historical overview above, many states liberalized their laws in the period immediately preceding the recent boom in criminal punishment, and in its early stages. Had the 1960 status quo been locked in place, and 17 states not loosened their restrictions on ex-felon voting rights in the 1960s and 1970s, the disenfranchised felon and ex-felon populations would be far greater today, with approximately 10 million disenfranchised citizens (see Manza and Uggen forthcoming, chapter 3).

The second source of American exceptionalism in regard to offender voting rights can be seen in the nature of the laws themselves (see Fellner and Mauer 1998; Levinson 2001). Table 2 summarizes cross-national differences in criminal voting rights. As the table shows, many countries allow all criminal offenders, including those currently incarcerated, to vote. Eighteen European democracies have no electoral ban on incarcerated prisoners and allow them to vote, and South Africa and Canada also allow current inmates to vote (in both cases, the result of Supreme Court rulings in the last decade). Eight other European countries, Australia and New Zealand disfranchise only some sentenced prisoners. In these countries, contingent restrictions on prisoner voting are typically based on either the length of the sentence or the nature of the crime committed. Nine European countries bar all current prisoners from voting (but none that we have been able to determine maintain those restrictions for any but a handful post-release offenders).⁵

TABLE 2 HERE

The key point to draw from this comparative survey is that the United States is the only country in the democratic world that systematically disenfranchises large numbers of nonincarcerated felons (i.e. those out on probation or parole) and ex-felons. In particular, it is the only country that disenfranchises large number of ex-felons. There are only a few exceptions to this generalization, and none involve large numbers of offenders. In Germany, courts have the power to withdraw voting rights for up to five years after the completion of the prison sentence as an additional punishment, although actual use of such a sanction is very rare (Demleitner [2000, p. 759] notes that in one recent year for which she had data, it was only applied in 11 cases). In France, courts can impose restrictions on political rights that extend beyond the prison

⁵ There are a very few exceptions to this generalization. In Germany, courts are allowed to impose political restrictions extending beyond the length of the sentence (Demleitner 2000).

sentence, but these are part of the punishment (and hence do not apply to ex-felons). Finland and New Zealand disenfranchise some ex-felons for political offenses (Fellner and Mauer 1998). But the existence of a blanket ex-felon voting ban on millions of offenders not currently in prison in the United States today is unparalleled. In fact, the closest parallels are to various pre-modern political regimes mentioned above, in which criminal offenders were precluded, once marked by legal conviction, from re-entering the polity for life.

PUBLIC OPINION ON FELON DISENFRANCHISEMENT

Since passage of the 1965 Voting Rights Act, debates around suffrage in the United States have largely shifted from questions about formal individual rights of participation to questions of fairness in the practical implementation of those rights. The most hotly contested questions have thus focused not on the right to participate but rather on questions of institutional design and fairness of elections (including whether legislative districts afford all groups equal representation, the power of money in the electoral system, and more generally the factors that produce low trust, apathy, and low levels of citizen participation). A growing impact of felon disenfranchisement (and an emerging civil rights campaign to challenge it, discussed in more detail below), however, threatens to inject presumably settled questions about the right to vote back into the political consciousness of the nation.

What do we know about public opinion in this area? The disenfranchisement of felon and ex-felons sits at the intersection of two broad trends in public opinion since the 1950s: strong and growing support for civil liberties and civil rights for all citizens, on the one hand, and strong support for anti-crime policies including the harsh treatment of criminal offenders. In other

words, public fear of crime, and a desire to punish criminal offenders in ways that will reduce their future propensity to commit crimes (e.g. Roberts and Stalans 2000), co-exists alongside broad support for basic civil liberties, democracy, and a right to due process for those accused of crimes (e.g. Smith 1990; Brooks 2000).

Two national surveys of public opinion on the question have been in fielded in the last couple of years, which provide some valuable hints about how respondents weigh these competing objectives. Pinaire and Heumann (2003) report results of a national telephone survey of 502 Americans, with a single item measuring a gradient of support for felon disenfranchisement. In this 2001 survey, about 10 percent of respondents stated that felons should never lose their right to vote, 32 percent favored suspending voting rights while felons are incarcerated (but not while on probation or parole), 35 percent supported disenfranchisement for prisoners, probationers, and parolees, an additional 5 percent preferred disenfranchisement for parolees and probationers only, and 16 percent favored permanent restrictions on ex-felons as well as current felons (2 percent did not report a preference). Therefore, the Pinaire and Heumann study suggests that while the majority favors some restrictions on the voting rights of current prison inmates, an even stronger majority rejects the idea of disenfranchising former offenders who have completed their sentences.

Our own national survey, employing a variety of question-wording experiments designed to tap different aspects of public attitudes on the question, was undertaken in the summer of 2002. As part of its monthly omnibus telephone survey, HarrisInteractive asked 1000 Americans a range of questions relating to the civil liberties and rights of criminal offenders, including voting rights. We find strong, but not invariant, public support for the reinfranchisement of

criminal offenders not currently in prison (Manza, Brooks, and Uggen 2003).⁶ Figure 3 summarizes one set of findings from that investigation. It shows public attitudes towards voting rights for four categories of criminal offenders: ex-felons, probationers, parolees, and currently incarcerated felons. We asked random samples of all respondents a version of a question about their attitudes towards felon voting rights (substituting “people convicted of a crime who have been released from prison on parole and are living in the community” and “people convicted of a crime who are in prison”)⁷:

There has been some discussion recently about the right to vote in this country. Some feel that people convicted of a crime who are sentenced to probation, but not prison, and are living in the community should have the right to vote. Others feel that they should not have the right to vote. What about you? Do you think people on probation should have the right to vote?

Overall, we find strong support for restoring the voting rights of all nonincarcerated felons: majorities of 80%, 68%, and 60% favor restoring voting rights to ex-felons, probationers, and parolees, respectively. Nevertheless, less than a third of those survey respondents who were asked about restoring voting rights for current inmates supported that possibility. It is clear from this experiment, as well as the Pinaire and Heumann (2003) study, that public support for felon voting rights does not extend to those in prison.

FIGURE 3 HERE

⁶ The full unpublished paper and analyses which are summarized in this paper are available at www.soc.umn.edu/~uggen/felon_disenfranchisement.htm.

⁷ One-quarter of the sample were asked about each group, although the ex-felon item was asked as part of a different question-wording experiment, that followed immediately after the question asking split samples of respondents about voting rights for felon probationers, parolees, and inmates. The exact question wording for the ex-felon item was: “Now how about people convicted of a crime who have served their entire sentence, and are now living in the community. Do you think they should have the right to vote?” For this reason, the ex-felon result is not strictly comparable.

DOES THE DISENFRANCHISEMENT OF NON-INCARCERATED FELONS MATTER FOR AMERICAN POLITICS?

The issue of whether the disenfranchisement of nonincarcerated felons has any practical impact, beyond the immediate impact on offenders deprived of voting rights, is important to pose. If the answer is no, then the issue of disenfranchisement is primarily one of philosophical concern. If the answer is yes, however, then the issue raises much broader questions about the legitimacy of election outcomes in American democracy. The nature of our question in this section— how many of these felons would have voted if they had been able – is by definition a counterfactual question since they cannot participate now. In other words, we are asking *how many* of them might have voted if they had been eligible, and how they would have cast their ballots. We are hampered by the near-total lack of existing survey data that includes both information about criminal history and political behavior.

Our solution to this problem is to “match,” as closely as we can, the characteristics of the felon and ex-felon population to the rest of the electorate using existing representative national election survey data. This procedure essentially identifies two groups of otherwise similar individuals (“similar” on the social characteristics for which we have information about the felon population): one group is able to vote, the other is not. The historical underpinnings of this approach are very relevant for thinking about this kind of natural experiment. For example, far more individuals today are receiving felony convictions than in the period before 1972. If the punishment practices of that earlier era existed today, many of those currently disenfranchised would be able to vote. In other words, many disenfranchised felons have received a “treatment” that puts them in a different category than identically situated individuals in, say, 1970.

Information used to conduct this matching exercise draws on data about the social characteristics of convicted felons available from the periodic *Survey of State Prison Inmates* data series, first carried out in 1974 and every five years or so thereafter (see e.g., USDOJ 1993; 2000b). A fairly clear, if uniformly disadvantaged, portrait of criminal offenders emerges from this profile: they have low levels of education, low incomes and high unemployment rates (at the time of incarceration), they are disproportionately African American (slightly under half are African American), with a growing Hispanic presence reducing the proportion of inmates who are white.

We use this information about the felon population to develop estimates of what proportion of felons might have voted in recent elections if they had been eligible. We would predict that using sociodemographic information should both *depress* and *inflate* the impact of felon disenfranchisement. On the one hand, we would expect that felons would be far less likely to vote than the rest of the voting public, but on the other, we would also expect (given low education levels, high proportion of African Americans, and low mean incomes) relatively high levels of Democratic partisanship.

We used two datasets for this analysis: for turnout, we use data from the Current Population Survey's (CPS) Voter Supplement module; for voting behavior, the National Election Study (NES) (see Uggen and Manza 2002 for further details). When survey respondents are asked if they voted, they typically over-report turnout. Accordingly, after obtaining self-report estimates of turnout among the hypothetical felon population from the CPS data, we reduce or deflate them appropriately (multiplying predicted turnout rates by the ratio of actual to reported turnout for each election).

Estimating Turnout and Voting Behavior Among “Lost” Felon Voters

Figures 4a and 4b graphs the results of a series of regression analyses predicting turnout rates among disenfranchised felons, if they had been allowed to vote, in presidential elections between 1972 and 2000 (4a), and the same trends for mid-term Congressional elections between 1974 and 2000 (4b) (see Uggen and Manza [2002] for full details of these analyses).⁸ In both panels, the top line is the actual turnout rate for the entire electorate, while the bottom line is our estimate of what the turnout rate would be for disenfranchised felons if they were entitled to vote (corrected for over-reporting in the CPS data). As we would expect, we estimate significantly lower turnout rates among disenfranchised felons, with an average of approximately 35% of disenfranchised felons estimated to have voted in presidential elections in this period (compared to 52.4% of the entire electorate), and 24% of felons estimated to have voted in midterm Congressional elections.

FIGURES 4a and 4b HERE

Next, figure 5 shows our estimates of the voting preferences for disenfranchised felons by year since 1972 (straight line), compared to the entire electorate (dashed line), again based on a logistic regression analysis that controls for sociodemographic attributes of the felon population. The figure shows voting in U.S. presidential elections, although the patterns for U.S. Senate elections are generally similar (see Uggen and Manza 2002). Figure 5 shows the converse of the picture provided in Figure 4 on turnout: there, the felon line was below that of the electorate as a whole, because we find (as expected) *lower* rates of turnout among disenfranchised felons. In figure 5, by contrast, disenfranchised felons have a significantly higher expected level of Democratic support (the *y*-axis of the figure). According to our estimates, about 73 percent of the

⁸ A copy of this paper is temporarily available online at www.soc.umn.edu/~uggen/felon_disenfranchisement.htm.

hypothetical felon voters who would have participated in these elections would have selected Democratic candidates.

FIGURE 5 HERE

Overall, these results show that, as expected, turnout among disenfranchised felon voters likely would be far lower than among the rest of the population, but levels of Democratic bias are in most elections quite pronounced. By removing those with Democratic preferences from the pool of eligible voters, then, we can conclude felon disenfranchisement has provided a small but clear advantage to Republican candidates in every presidential and senatorial election from 1972 to 2000.

Electoral Impact?

In our previous investigation (Uggen and Manza 2002), we asked the counterfactual question of whether, given estimated levels of political participation and Democratic partisanship among *all* disenfranchised felons, including those currently in prison. Such an analysis is appropriate to answering the general question of whether the loss of voting rights for all felons has influenced electoral outcomes. In that study, we reported evidence that seven Senate elections and two presidential elections (one a counterfactual replay of the 1960 election with current levels of disenfranchisement) were potentially influenced by felon disenfranchisement. But a politically more realistic scenario – and one consistent with trends in changes in state laws as well as new information about public preferences – is to consider the electoral impact of restoring voting rights to the more limited group of felons who are living in their communities: ex-felons, those on probation, and those out of prison on parole. Since there is frequently a further distinction made between offenders serving out their sentence back in their community

(whether on parole or probation), and ex-felons, we also consider whether ex-felon disenfranchisement alone is sufficient to influence political outcomes.

Focusing first on the impact of the most controversial type of restriction, that of ex-felons, we still find evidence that a handful of close elections would have had different results if ex-felons had been allowed to vote. The top and middle tier of Table 3 identifies these elections. Three Senate elections would have been reversed if ex-felons had been allowed the ballot: Virginia in 1978 (Warner [R] over Miller [D]), Kentucky in 1984 (McConnell [R] over Huddleston [D]), and Kentucky again in 1998 (Bunning [R] over Baesler [D]). These estimates are based on the following procedure: (1) we applied felon voting behavior estimates (as described above, and reported in full detail in Uggen and Manza [2002]) and state-level estimates of felon turnout (taking advantage of the large sample size of the CPS to estimate turnout in those specific states with very close Senate election outcomes; see Uggen and Manza 2002 for full details). To determine the *net* Democratic votes lost to ex-felon disenfranchisement, we first multiply the number of disenfranchised felons by their estimated turnout rate (in each state), and the probability of selecting the Democratic candidate. Since some ex-felons would have chosen Republican candidates, we then deduct from this figure the number of Republican votes. For the 1978 Virginia election detailed in the top row of Table 2, for example, we estimate that 11,773 of the state's 71,788 disenfranchised ex-felons would have voted (16.4 percent). We further estimate that 9,418 of these voters would have selected Andrew Miller, the Democratic candidate (80.2 percent of 11,773), and that the remaining 19.8 percent (or 2,331) would have chosen John Warner, the Republican candidate. This results in a net total of 7,111 Miller votes lost to disenfranchisement in that election, or some 2,300 votes more than the actual Warner victory margin of 4,721 votes. The other cases are calculated in the same way.

TABLE 3 HERE

In the middle panel of table 3, we note that because Florida is a state that disenfranchises all ex-felons, it is certain that if ex-felons had voted Al Gore would have carried the state of Florida and thus the election. Florida had, at the time of the 2000 election, approximately 614,000 ex-felons who were prevented from voting. We estimate that if they had been allowed to vote, some 27.2% would have turned out, and that 68.9% would have chosen the Democrat Gore. This would have resulted in a net Democratic gain of 63,079 votes, and a final Gore margin of 62,542. Even if we assume that turnout rates among the disenfranchised ex-felons were only half that of the rate projected by our estimates, Gore still would have carried Florida by more than 31,000 votes, a margin large enough to have insured victory even if all other disputed votes thought to favor the Republicans (such as overseas military personnel expected to provide more votes for Bush) had been counted.

What if in addition to ex-felons, voting rights were restored to all nonincarcerated felons, in keeping with the practice followed virtually everywhere else in the world? Not surprisingly, adding this additional group of voters produces small but additional electoral impacts. The bottom panel in Table 3 shows that as many as five Senate elections might have been reversed if probationers and parolees were added to the rolls. The two additional elections potentially reversed are in Texas in 1978, where Tower (R) defeated Krueger (D); and in Florida in 1988, where Mack (R) defeated MacKay (D).

Caveats

Such an analysis is subject to a number of qualifications, and we urge appropriate caution in interpreting our results. Predicting participation and vote choice from a limited amount of

information about the sociodemographic attributes of offenders is a fairly crude exercise, but we simply do not have any other information available about the partisan identities, political trust, knowledge or interest, or social networks of disenfranchised felons. Further, it may also be the case that a number of unmeasured individual-level factors (such as the strength of citizenship norms or degree of social isolation among offenders) could either depress turnout or reduce Democratic partisanship in ways we cannot measure. However, a follow-up investigation using the only available data with information about *both* the criminal history and political behavior of survey respondents (the Youth Development Study, a longitudinal study following a group of public high school graduates in St. Paul, Minnesota) found that once the same sociodemographic factors used in our investigation are controlled, the differences between offenders and non-offenders are reduced to non-significance (see Uggen and Manza 2002, pp.790-92 for details). In other words, it appears the problem of potential omitted variable bias is not a significant one for this study.

Another potential objection is that our analysis makes the *ceteris paribus* assumption that electoral contests would be unaffected by the expansion of the electorate to include some or all disenfranchised felons. In other words, we are assuming that nothing else about the candidates or elections would have changed. The implications of this assumption for the distribution of votes are likely more substantial than for turnout, although the parties could also change their strategies for mobilizing voters as well. Whether and how the vote-getting strategies of electoral campaigns of any particular campaign would change is simply impossible to know. We do, however, believe it is likely that the effects on campaign strategies would be minor at best. There are only a relatively small number of disenfranchised felon voters (even in the unlikely scenario in which all had been enfranchised). It would seem highly implausible that otherwise viable

campaign strategies of either major party – especially in this era of poll-driven “crafted talk” (Jacobs and Shapiro 2000) and sophisticated campaign management – would be significantly altered because of the addition of a small group of previously excluded voters.

Finally, it is important to restate the point made above: because of the lack of systematic information about the precise neighborhoods and legislative districts where disenfranchised felons come from, we cannot easily estimate the political impact of disenfranchisement below the state-level. While many urban districts are one-sidedly Democratic, and thus mute the potential impact, it is nonetheless certain that there is a considerable impact on local, state legislative, and House elections. If the appropriate data could be generated, a systematic canvass of such elections would add considerably to our understanding of the full electoral impact of felon disenfranchisement. Certainly given the heavy concentration of felony convictions in urban areas (Clear et al. 2003), we would expect that focusing on state-level elections, or presidential elections, probably *understates* the full electoral impact of felon disenfranchisement.

THE CONTEMPORARY POLICY DEBATE

The rapid growth in felon disenfranchisement in recent years has not gone unnoticed. Because of the vast racial disparities in rates of felony conviction, the loss of voting rights has fallen particularly harshly on African American men, some one-sixth of whom are currently disenfranchised due to a current or past felony conviction. In the face of a mounting civil rights campaign to restore voting rights for nonincarcerated felons (Coyle 2003), several states have amended their laws in the past year to expand felon voting rights. For example, in 2001, Connecticut and New Mexico both liberalized their felon disenfranchisement laws, with Connecticut now allowing probationers to vote and New Mexico now restores voting rights upon

completion of sentence. In 2001, Nevada eliminated its five-year post-sentence waiting period to *apply* for the restoration of voting rights, although the restoration process for ex-felons is still not automatic. In 2002, Maryland passed legislation to automatically restore voting rights upon completion of sentence for first-time offenders (and three years after completion for non-violent recidivists). At the national level, a measure banning the states from placing any restrictions on the voting rights of ex-felons reached the floor of the Senate in February 2002, although it was ultimately defeated 63-31 (U.S. Congress 2002).

While civil and voting rights organizations are exerting pressure for the liberalization of voting laws regulating felons, a number of states have also moved to adopt more *conservative* restrictions in recent years. Since 1997, for example, Utah and Massachusetts have disenfranchised inmates and Colorado and Oregon disenfranchised federal inmates (Colorado disenfranchised federal parolees as well). Overall, a very mixed picture of policy change at the state level emerges. Since 1975, 13 states have liberalized their laws, 11 states have passed further limitations on felons, and three states have passed *both* types of laws (see Manza and Uggen forthcoming, chap. 1).

The policy contests over felon disenfranchisement also raise important and increasingly pressing criminal justice questions that should, we believe, be considered in this debate. A record 630,000 people were released from prison in 2002, and prisoner reentry has emerged as a central concern for research and policy on crime (Travis et al. 2001; Petersilia 2003; Visher and Travis 2003). Facing important disadvantages in the labor market (Pager 2003) and a variety of restrictions on their ability to obtain housing, receive government benefits, and enjoy other civil rights (Mauer and Chesney-Lind 2002), it is perhaps not surprising that about two-thirds of released prisoners will be rearrested within three years (U.S. Department of Justice 2003).

Research on the factors promoting desistance from crime has shown it to be closely linked to successful transition to work (Sampson and Laub 1993; Uggen 2000), family (Laub, Nagin, and Sampson 1998), and community (Maruna 2001) roles. In a recent review of research on transitions from prison, Visser and Travis (2003, p. 27) suggest a plausible connection between voting rights and successful reintegration, identifying factors such as joining a community organization and becoming politically active as potential milestones in the reintegration process. Denying voting rights to ex-felons, or felons living in their communities on probation and parole, undermines their capacity to connect with the political system and may thereby increase their risk of recidivism.

In relation to the other issues felon disenfranchisement raises, the policy debate should also address some subtle disparities arising from the enumeration of incarcerated felons, who are generally counted (at the time the Census is taken) as “living” in the place of their prison rather than the community they come from. This practice has two consequences: it inflates the population of districts where prisons are located, *even though inmates almost always cannot vote*; and it removes population from those areas (mostly urban) where the felon population is disproportionately drawn. This creates some net population shifts which are not likely to be politically neutral in their consequences once legislative districts are created (see, e.g, Wagner 2002-2003).

The example of felon disenfranchisement is a powerful reminder that even the most basic elements of democratic governance such as the right to vote can be threatened. It exemplifies how the “waves of democracy” (Markoff 1996) do not necessarily move in unilinear fashion towards greater inclusiveness (cf. Keyssar 2000). On the other hand, the strength of public support for voting rights for non-incarcerated felons, and the emergence of the contemporary

civil rights campaign to remove the most extreme state restrictions on ex-felon voting rights, demonstrates the enduring importance of the ideal of democracy and the goal of an inclusive polity.

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Table 1. Summary of State Felon Disenfranchisement Restrictions

No restriction (2):	Inmates only (14):	Inmates & Parolees (5):	Inmates, Parolees, & Probationers (15):	Inmates, Parolees, Probationers, & Some or All Ex-felons (14):
Maine	Hawaii	California	Alaska	Alabama
Vermont	Illinois	Colorado	Arkansas	Arizona ¹
	Indiana	Connecticut*	Georgia	Delaware ²
	Louisiana	Kansas	Idaho	Florida
	Massachusetts*	New York	Minnesota	Iowa
	Michigan		Missouri	Kentucky
	Montana		New Jersey	Maryland ²
	New Hampshire		New Mexico*	Mississippi
	North Dakota		North Carolina	Nebraska ³
	Ohio		Oklahoma	Nevada
	Oregon		Rhode Island	Tennessee ⁴
	Pennsylvania		South Carolina	Virginia
	South Dakota		Texas	Washington ⁴
	Utah		West Virginia	Wyoming
			Wisconsin	

Notes: * indicates recent change

¹ State disenfranchises certain recidivists.

² State requires a five-year waiting period.

³ Although Nebraska provides ex-felons a certificate of discharge that implies restoration of “civil rights,” they remain legally prohibited from voting unless their sentence is reversed, annulled, or they receive a warrant of discharge from the Board of Pardons (see *Ways v. Shively* 264 Neb. 250 [2002]).

⁴ State disenfranchises those convicted prior to repeal of disenfranchisement law.

Table 2. International Differences in Criminal Voting Rights

Europe:

- **No Restrictions:** Bosnia, Croatia, Cyprus, Denmark, Iceland, Ireland, Finland, Greece, Latvia Lithuania, Macedonia, Netherlands, Poland, Slovenia, Spain, Sweden, Switzerland, Ukraine
- **Selective Restrictions:** Austria, Belgium, France, Germany, Italy, Malta, Norway, San Marino
- **Total Ban on Current Prisoners:** Armenia, Bulgaria, Czech Republic, Estonia, Hungary, Luxembourg, Romania, Russia, United Kingdom

Elsewhere:

- **No Restrictions:** South Africa, Canada
- **Selective Restrictions:** Australia, New Zealand

SOURCES: see text