Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons

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In the United States, except for slaves, servants, and paupers fed by the township, no one is without a vote and, hence, an indirect share in lawmaking.

—Alexis de Tocqueville (1988:240)

The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.

—Reynolds v. Sims (1964:555)

INTRODUCTION

If ex-felons had been able to vote in Florida during the presidential election of 2000, say the sociologists Jeff Manza and Christopher Uggen, Al Gore would have defeated George W. Bush by between 10,000 and 85,000 votes (Thompson, 2001).[1] According to the best available estimates, Florida's law, which for all practical purposes bars all ex-felons from ever voting again,[2] kept over 525,000 people—5% of the state's voting age population—away from the polls during this last presidential election (Kay and Goldhaber, 2001:1). Nationally, according to the scholars at the Sentencing Project, an estimated 3.9 million U.S. citizens (one in fifty adults) are disenfranchised, including over one million who have fully completed their sentences. Perhaps most startling, 13% of African-American men in the United States (1.4 million) are disenfranchised, representing over 36% of the total disenfranchised population (Fellner and Mauer, 1998:1).

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[1] Manza and Uggen project that turnout by felons would be close to one-third in presidential elections, and they predict that between 70 and 90 percent of former or current felons would vote Democratic. The impact of these policies on past and present elections is, therefore, quite significant. For example, these scholars suggest that if as many individuals were incarcerated and disenfranshised in 1960 as are today, John F. Kennedy would have lost the presidential election to Richard Nixon. Additionally, the authors argue, seven Senate elections between 1970 and 1998 would have been overturned, and the Democrats would have controlled the Senate throughout the 1990s (Chambers, 2001). But, while the repeal of disenfranchisement laws would clearly benefit the Democrats, even the neoconservative social theorist James Q. Wilson questions the practice. "A perpetual loss of the right to vote serves no practical or philosophical purpose," he explains (Thompson, 2001:5).

This article explores, for the first time we believe, *public attitudes toward the disenfranchisement of felons*. While forty-eight states restrict (or revoke entirely) the right of felons to vote, there is surprisingly little social scientific discussion of the rationale, effects and public understanding or acceptance of felony disenfranchisement. Law review articles discuss justifications and legal strategy, and sociologists have begun to assess the impact of these laws nationwide, but to our knowledge, our survey data represent the first comprehensive assessment of public support for laws and practices of this sort.

Curiosity caused us to embark on this project. While our preliminary research involved a review of state laws and legislative histories, we have now begun to assess the public's understanding of, and support for, these practices. Do Americans even know about these laws? Do the laws "speak" for the people in this sense? And, perhaps most importantly, can we identify the reasoning that upholds these public attitudes?

Americans, we assumed, generally value "justice" and "rights" and expect the legal system to protect both. Yet, there is, in America, also a commitment to notions of personal responsibility and citizenship; rights, in other words, compel duties, and those who violate the rules of the social order are punished accordingly. Thus, most—we believed—would accept the idea that those who "do the crime" should "do the time." But, we wondered, what happens when the "time" is up? Would support remain for continuing to punish those who served their sentences and were returned to society as free citizens?

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[2] While every state has some process in place for restoring the right to vote, the process is generally so convoluted and complicated that it is rarely carried out. See footnote # 9 for a more detailed discussion.

We begin with an overview of various state laws, the significant legal and political issues they implicate, and the impact of these practices. We then move to a discussion of our primary research questions, theory, and methods, and subsequently to a discussion of our findings. Finally, we explore the policy implications of this research and propose directions for future study.

OVERVIEW: LAWS, ISSUES, AND IMPACT

Currently, forty-eight states and the District of Columbia disenfranchise convicted felons during some phase of the criminal justice process. Thirty-two of these states prohibit felons from voting while they are on parole and twenty-eight exclude felony probationers as well. Perhaps most significant, eight states *permanently* revoke the right to vote for all offenders, even those who have completed all aspects of their sentences. Four other states disenfranchise some ex-offenders and one state disenfranchises some ex-felons for five years after they have completed their sentence.[3]

Table 1 about here

While each state has developed a system for restoring voting rights to ex-offenders, the restoration process is usually so complicated and cumbersome that it is rarely put in motion.[4]

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[3] All told, somewhere around four million United States citizens are currently or permanently "barred" from the vote, making this nation the only democracy which disenfranchises such a substantial percent of offenders (United States House of Representatives, 1999:3-4).

[4] The Department of Justice has referred to this phenomenon as "a national crazy-quilt of disqualifications and restoration procedures" (United States Department of Justice, 1996:6). Alabama, for example, requires

The tradition of denying criminals the right to vote, a practice with roots in the Greek and Roman eras (Harvard Note, 1989:2), is a vestige of the medieval practice of "civil death," wherein offenders were banished from the political community (Fellner and Mauer, 1998:3-5; Shapiro, 1993:4-5; Ewald, 2000). In place after the revolutionary war in many states, laws disenfranchising convicted felons took on a new and more pernicious significance after the passage of the Fifteenth Amendment to the U.S. constitution, an Amendment that gave black males the right to vote. The right to vote has been withheld from many citizens throughout the history of this nation—women, the illiterate, and the property-less were denied suffrage along with black Americans. In the era following Reconstruction, southern opposition and resentment led to the creation of numerous voting barriers, aimed specifically at blacks.

Poll taxes, grandfather clauses, and property tests were common (and ostensibly race-neutral), but many southern states instituted new forms of "Jim Crow" legislation meant to target blacks, in particular, with the intention of disqualifying them from the vote.[5] The racial impact of these laws, especially in the south, is staggering: Ten states

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that ex-offenders provide a DNA sample to the Alabama Department of Forensic Services as but one part of the process of regaining the vote (The Sentencing Project, 2001). Or, consider the law in Florida, which grants clemency only if the governor and three of his cabinet members consent to it. Questions on Florida's sixteen page application ask information such as the date of birth of all persons with whom the applicant may have had a child out of wedlock, to the cause of death of the applicant's parents, to the name and purpose of any organizations to which the applicant belongs (Thompson, 2001:1-2). At the federal level, Representative John Conyers and thirty-seven co-sponsors, have introduced the Civic Participation and Rehabilitation Act (1999), which seeks to restore Federal voting rights to persons who have been released from incarceration, even if they are prohibited from participating in state elections.

[5] Disenfranchisement laws were tailored to include crimes that blacks were allegedly more likely to commit. It was the case in South Carolina, as but one example, that "the disqualifying crimes were those to which [the Negro] was especially prone: thievery, adultery, arson, wife-beating, housebreaking, and attempted rape. Such crimes as murder and fighting, to which the white man was as disposed as the Negro, were significantly omitted from the list" (Fellner and Mauer, 1998:3). Other examples abound. The 1890 constitutional convention of the state of Mississippi replaced an 1869 provision disenfranchising felons convicted of "any crime" with more specific language that emphasized crimes that blacks were estimated to be more likely to commit (i.e. bribery, bigamy, theft). The racist intentions of these "adjustments" could not have been expressed any clearer than by John Fielding Burns, author of the Alabama constitutional

disenfranchise more than one in five adult black men, while in seven of those states, one in four black men is *permanently* disenfranchised. Furthermore, in two states (Alabama and Florida), 31 percent of all black men are *permanently* disenfranchised (Fellner and Mauer, 1998:2,8).

There are two basic theoretical justifications offered by courts and commentators for the disenfranchisement of felons. One is that the commission of a felony constitutes a violation of the "social contract," and the other is that such an offense demonstrates an inability to abide by the moral requirements of civic republicanism (Ewald, 2000).[6] According to traditional social contract rationale, freely choosing individuals begin from an original bargaining position and design a system of neutral arrangements that will protect and promote their basic rights and interests. Central to this reasoning is the idea that all men have basic needs and that they form a community and institute rules of governance in order to provide security and a structure that will allow them to enjoy their liberty (Hobbes, 1996:117-29; Locke, 1988:269-78; Sandel, 1996:1-54; Ewald, 2000:*passim*).[7] A violation of the terms of the "contract"—a reneging on the "deal"—disrupts the balance of rights and responsibilities, invites a punitive response according to

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provision disenfranchising particular criminals, who "estimated the crime of wife-beating alone would disqualify sixty-percent of the Negroes" (Shapiro, 1993:2).

[6] In his discussion of the relationship between these traditions and felony disenfranchisement laws, Ewald presents a helpful, theoretically rich argument that simultaneously finds support and tension within the American political tradition regarding the justifications proposed for permanent disenfranchisement. More specifically, Ewald borrows the idea of "multiple traditions" from Rogers Smith (1997:6) (proposing that "American political actors have always promoted civic ideologies that blend liberal, democratic republican, and inegalitarian ascriptive elements in various combinations designed to be politically popular), and argues that a combination of liberal (contract-oriented), civic republican (virtue-oriented) and racially discriminatory ideologies has sustained this kind of legislation, even while principles within liberalism (of the modern kind) and republicanism seem to be at odds with such practices.

[7] Chapters 17 and 18 of Thomas Hobbes' *Leviathan* first expressed a vision of this kind of contract arrangement, though John Locke's emphasis on liberty and property (as opposed to merely security, for example), best represents the American application of "contract" reasoning. See, specifically, Locke's discussion of "the state of Nature" in Chapter 2 of his "Second Treatise on Government."

pre-determined rules, and essentially (at least temporarily) strips the individual of his right to participate in the political process.[8]

The civic republican rationale for disenfranchisement is animated by a concern for the moral character of the political community and specifically the virtue of its members. Put simply, a polis is only as well-ordered as the moral compass directing its citizen-components; thus, rather than emphasizing the *choice* inherent in the liberal, contractarian model above (where a decision to act in violation can remove one from political society), civic republicanism embraces the political fitness, quality and essence of its members and thus their capacity to conceive of and act toward the common good (Sandel, 1996:1-54; Sunstein, 1988:1547-58; Bellah, 1985:167-218).[9] It is, therefore, not so much that a violation earns you time in the proverbial "penalty box", but rather that you no longer exude the qualities of a good and right "team player," and thus no longer deserve a spot on the roster.

In two significant voting rights cases within the last three decades, the United States Supreme Court considered these different strands of reasoning as it basically upheld the constitutionality of laws that disenfranchise convicted felons.[10] While the

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[8] Expressing social contract reasoning of this sort, Judge Henry Friendly of the 2nd Circuit explained "[a] man who breaks the laws he has authorized his agent to make for his own governance could fairly have been thought to have abandoned the right to participate in further administering the compact" (*Green v. Board of Elections*, 1967:451).

[9] *Washington v. State*, a commonly-cited case, articulates the civic republican vision and the rationale for disenfranchising felons: "The manifest purpose" [of denying suffrage to ex-convicts] "is to preserve the purity of the ballot box, which is the only sure foundation of republican liberty, and which needs protection against the invasion of corruption, just as much as against that of ignorance, incapacity, or tyranny. The evil infection of the one is not more fatal than that of the other. The presumption is, that one rendered infamous by conviction of felony, or other base offense indicative of great moral turpitude, is unfit to exercise the privilege of suffrage, or to hold office, upon terms of equality with freemen who are clothed by the State with the toga of political citizenship" (1884:585). The classic example portraying this manner of political exclusion, as a means of preventing corruption and preserving the moral vigor of a community, can be found in the trial of Socrates (Plato, 1992).

[10] In his discussion of the institutional and historical development of American citizenship laws, Rogers Smith offers an interesting discussion of what appears to be the earliest black voting rights case to reach the

Court has called the right to vote "fundamental" (Harper v. Virginia Board of Elections:1966:670), making it clear that "no right is more precious in a free country" (Wesberry v. Sanders, 1964:17), and while it has famously asserted that the "right to vote freely for the candidate of one's choice is the essence of a democratic society" (Reynolds v. Sims, 1964:355), the United States Supreme Court has failed to extend this guaranty to convicted felons. In the first major challenge of felony disenfranchisement laws to reach the Court, *Richardson v. Ramirez* (1974:56), Justice Rehnquist authored a majority opinion that upheld a California law denying ex-felons the right to vote.[11] For the majority, section 1 of the Fourteenth Amendment, which prohibits states from denying persons equal protection of the laws, must be read in light of section 2, which implies that states have the capacity to disenfranchise those who participate in "rebellion, or other crime" (42).[12] Read this way, the traditional "strict scrutiny" standard of section 1 "could not have been meant to bar outright a form of disenfranchisement" (55) which "has an affirmative sanction in § 2" (54).

United States Supreme Court, *Williams v. Mississippi* (170 U.S., 213 [1898]). Specifically, Smith notes that, while Mississippi's registration requirements were, according to the state supreme court, "aimed at exploiting various 'weaknesses' of blacks, they were constitutional [for the U.S. Supreme Court] because 'on their face,' at least, they applied to 'weak and vicious white men as well" (1997:451).

[11] *Ramirez* involved three California ex-felons who had been incarcerated and completed their parole. Agreeing that the state's disenfranchising law violated the Equal Protection Clause of the US Constitution, the California Supreme Court reversed the decision of election officials who had refused to let the ex-felons register to vote. The United States Supreme Court reversed the California Court—finding that the law did not, on its face, violate the Equal Protection Clause of the Fourteenth Amendment—but remanded the case to the California courts to consider whether the law was applied with "such a total lack of uniformity" that it violated the Equal Protection Clause" (56).

[12] Before *Ramirez*, the Supreme Court had summarily affirmed lower court decisions rejecting constitutional challenges to state laws disenfranchising convicted felons (Fincher v. Scott, 1973; Beacham v. Braterman, 1969). The relevant part of section 2 of the Fourteenth Amendment of the United States Constitution reads: "[W]hen the right to vote . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, *except for participation in rebellion, or other crime*, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State"[emphasis added].

In dissent, Justice Marshall was quick to realize the potential for extreme abuses of discretion if "other crimes" was to be so loosely interpreted. "Absurd results" could follow, according to Marshall, if the states were granted the authority to give meaning to such an open-ended concept, legitimating disenfranchisement for seduction under promise to marry, conspiracy to operate a motor vehicle without a muffler, vagrancy, breaking a water pipe, or even jaywalking or a traffic conviction, "since § 2 does not differentiate between felonies and misdemeanors" (75, note 24).[13] Eleven years later, however, in an Alabama case, the Supreme Court took the opportunity to put an important limitation on the "other crime" doctrine established in *Ramirez*.

In *Hunter v. Underwood* (1985) the Court unanimously declared that "§ 2 was not designed to permit . . . purposeful racial discrimination . . . which otherwise violates § 1 of the Fourteenth Amendment" (224). Underwood involved two plaintiffs, one black and one white, who had been prohibited from voting because each had been convicted of passing bad checks, a misdemeanor of "moral turpitude" according to the Alabama Attorney General. In federal court, the plaintiffs asserted that section 182 of the Alabama Constitution violated the Equal Protection Clause because it was adopted with intent to discriminate against blacks and was fulfilling its intended effect. The Supreme Court agreed, in another opinion by Rehnquist, finding substantial evidence of discriminatory intent and impact and furthermore concluding that the provision would not have been

[13] Some states actually do disenfranchise citizens who commit these offenses. See, for example, Reback (1973) who notes that Alabama disenfranchises offenders convicted of vagrancy and that North Dakota disenfranchises offenders convicted of breaking a water pipe and *Otsuka v. Hite* (1966:418) which notes that California could disenfranchise offenders convicted of seduction under promise of marriage or conspiracy to operate a motor vehicle without a muffler.

adopted absent the impermissible intent.[14] Importantly, therefore, in this case, the Court explained that while felony disenfranchisement laws were not unconstitutional on their face, they could be unconstitutional *as applied*, if it could be proven that racial discrimination was a "substantial" or "motivating" factor behind the enactment of a challenged law (228).

RESEARCH DESIGN

OVERVIEW

As an exploratory research project, this study generates more hypotheses than it tests. We began with a few basic questions and expectations—based on previous studies of public opinion regarding controversial civil liberties issues (Prothro and Grigg,1960)—with the hope of providing a foundation for future scholarship on this issue.[15] Our data, we believe, raise questions about the justness and public support for existing practices, while enriching our understanding of the public's views of the criminal justice system and introducing a new set of concerns, questions, and complications for policymakers and scholars in several fields.

Legitimate concerns might be raised—and state interests rationalized—for the *temporary* disenfranchisement of felons, during some stage of the process. But, in a

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[14] As the "Official Proceedings of the Constitutional Convention of the State of Alabama" (1901) indicate, one delegate involved in the adoption of the disputed section at the 1901 convention claimed "[e]verybody knows that this Convention has done its best to disenfranchise the Negro in Alabama" (Shapiro, 1993:4).

[15] Because our study, too, focuses on controversial political questions—measuring public attitudes regarding a specific right at the heart of our democracy, while situating this inquiry within a more global investigation of the peoples' views on various issues—we found the summary of findings offered by Prothro and Grigg to be especially intriguing: "As expected, general consensus was found on the idea of

nation that professes faith in the democratic process, can the *permanent* disenfranchisement of felons be justified? Does the public support such practices? If so, based on what reasoning? That is, if most Americans feel that justice has been served when the sentence is completed (if you "do the crime", you "do the time") then why is it that more than one-fourth of American states remove the right to vote for life? If we trust offenders enough to release them back into society, can we justify not returning to them the full rights and privileges of political citizenship?

But, if the public does in fact support lifetime disenfranchisement, does this suggest that the "debt" has *not* been paid once the time is served? Does it suggest that "the system" is too "soft" on crime? Does it suggest that Americans hold dear to some notion of the social contract, or civic republicanism, and thus believe that ex-felons have, by their actions, demonstrated that they are not good citizens or cannot be trusted? Alternatively, if the public does not support these laws—or the basic notion of disenfranchisement (temporary or permanent)—what does this tell us about the staying power of this kind of legislation? That is, if there is not public support for these practices, should the draconian denial of vote provisions remain "on the books?"

THEORY

We began this research expecting conclusions similar to those drawn by Prothro and Grigg (1960) in their seminal study of public support for the protection of civil liberties, generally, and the preservation of the freedoms of particular individuals and groups, specifically. That is, in light of American political values, tradition, culture, and

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democracy itself and on the broad principles of majority rule and minority rights, but it disappeared when these principles were put in more specific form (291).

lore, we expected most Americans to support the basic idea of rights, liberties, and justice. As a social contract society that prides itself on the rule of law, this is a logical assumption to make: the state is created to preserve basic freedoms and to provide order, security, and stability.

We also expected, however, to see this support wane when considering the particular sub-category of convicted felons. With rights come responsibilities, as we imagined the equation playing out in the minds of the public, and thus a violation of the law is a renunciation of one of the essential terms of citizenship. Shirking responsibility by committing a felony could, under this reasoning, justify a temporary or permanent restriction of rights (even the most "fundamental" ones) either for punitive purposes, or simply because the individual has demonstrated that he or she cannot be trusted with such important civic duties.

HYPOTHESIS

We expected the "right to vote" to be perceived as one of the most important rights in a democracy, but we expected public support for this right to diminish when convicted felons were considered. The public would accept the concept of disenfranchisement, we hypothesized, and would justify the practice with a mixture of both social contract and republican reasoning. ("Do the crime, do the time"—and part of your "time" includes losing the right to vote, for example.) We also assumed public support for the disenfranchisement laws because of the forty-eight states that, in fact, either temporarily or permanently remove the right to vote. This notion is predicated on the assumption that there is a correlation between laws on the books and positive public

attitudes, in the sense that the people's representatives "re-*present*" the people's views.[16] In short, felony disenfranchisement laws should be common due to widespread public support for them.

METHODOLOGY

We used survey research methods to measure public attitudes toward the disenfranchisement of felons. Our survey asked a variety of questions, ranging from basic beliefs about the purpose of the criminal justice system (i.e. punishment, rehabilitation, deterrence), to public attitudes about the treatment and punishment of felons (i.e. the amount of rights protected, degree of punishment conferred/time served, fairness of the system), to public support for the disenfranchisement of felons, including the rationale for such laws. (See Figure 1 below.) Again, our intent was to gauge general attitudes about the criminal justice system, the rights accorded to felons, and public support for laws that restrict or remove the right to vote—including the reasoning that is used to either accept or reject these practices.

Figure 1 about here

These questions were included in a national survey of 503 people conducted by the Center for Survey Research and Analysis at the University of Connecticut. Interviews were conducted by telephone, between May 16 and June 6, 2001, using a

[16] We realize that this is at least a contested notion of "representation." For the sake of argument, however, we adhere to this model and feel that, especially given the close "electoral connection" that exists between the people and their elected "voices" where issues of crime and criminal justice are concerned, in particular, it is at least plausible to envision this kind of delegate relationship.

Computer Assisted Telephone Interviewing (CATI) system. Professional survey interviewers, trained in standard protocols for administering survey instruments, conducted the surveys.

The national sample used for this research project included residential telephone numbers in the forty-eight contiguous states. The sample was stratified to insure that broad geographic regions were represented in proportion to their share of the total adult population in the United States. Within each of these regions, telephone numbers were generated through a random-digit-dial telephone methodology to insure that each possible residential telephone number had an equal probability of selection. Telephone banks that contain no known residential telephone numbers were removed from the sample selection process. Once selected, each telephone number was contacted a minimum of four times to attempt to reach an eligible respondent. Households where a viable contact was made were called additional times. Within each household one adult was randomly selected to complete the interview.[17]

RESULTS

Figure 2 about here.

Table 2 about here

[17] Adapted from the explanation of methodology distributed by the Center for Survey Research and Analysis at the University of Connecticut. Our questions were one component of a larger survey project looking at general public attitudes toward the First Amendment.

SIGNIFICANT FINDINGS

- 81.7% of those surveyed feel that, *at some point*, the right to vote should be restored to convicted felons. We found no consensus regarding the exact time or phase at which the franchise should be returned during the sentence, but by totaling up those who felt that felons should never lose the right to vote (9.9%), those who felt felons should lose the right to vote only while incarcerated (31.6%), those who felt felons should lose the right to vote only while on parole or probation (5.0%), and those who felt felons should lose the right to vote only while incarcerated, or on parole or probation (35.2%), we are able to conclude that 81.7% of those surveyed rejected the policy of *permanent* disenfranchisement for convicted felons.[18]
- When those that supported temporary or permanent disenfranchisement were asked *why* they supported this policy, the valid modal response was that "felons have proven that they should not be treated as citizens" (32.7%). Importantly, however, the second largest single valid response was "none of the above / some other reason" (31.1%), suggesting perhaps that we missed a potential (and

[18] We did notice intriguing discrepancies within the various subgroups, regarding the phase at which the franchise should be returned. The modal (and near majority) response for Blacks, for example, was that felons should lose the right to vote only while incarcerated (47.2%). And, interestingly, not a single one of the thirty-six Blacks surveyed supported lifetime disenfranchisement. Conversely, Republicans demonstrated the highest percentage of support for lifetime disenfranchisement of any subgroup (23.1%), a figure made even more interesting when contrasted against the responses of Republicans, expressed in Question 1, that the right to vote is "the *most* important right in a democracy" (56.7%—a figure that is *also* the highest percentage of any subgroup). Thus, Republicans are the group for which the right to vote is most important, but they are also the group that is most inclined to take this right away. Finally, it is worth noting that the modal response for every subgroup was either "only while incarcerated" (Blacks, Democrats, Grade School or Less, and Some High School) or "while incarcerated and on parole or probation" (Whites, Females, Republicans, Independents, High School Graduates, Some College, College Graduates, and Post College), with two "ties" between those two responses (Hispanics and Males).

popular) option or that a large segment of the public was unable to articulate its reasons for thinking this way.[19]

- Despite the rhetoric we occasionally hear from elected officials, about criminals being "coddled," the American public is, in fact, split on the issue of rights for convicted felons. While 45.1% of our respondents did say that convicted felons have "too many" rights, slightly more of those surveyed (45.7%) felt that these individuals have either "too few" (9.5%) or "about the correct amount" (36.2%) of rights.[20]
- We found more dissensus in the responses given to our question pertaining to the general restoration of rights and privileges to felons who have completed their sentences. Specifically, we found that slightly more than half of those surveyed (50.3%) either "strongly" or "somewhat agreed" with the statement "Felons who serve their time should return to society as full citizens, with full rights and privileges," while (44.2%) either "somewhat" or "strongly disagreed" with this statement.[21]

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[19] Political Independents were most likely to say that felons had shown they could not be treated as citizens (43.3%), while Blacks were least likely to offer this response (19.4%) (we discount the 0% offered by those with some Grade School or Less because this group included only five respondents) and instead offered the highest rate of support for "none of the above / some other reason" (58.0%). Democrats and College Graduates were the only other subgroups to offer this as their modal response.

[20] Consistent with the generally greater "law and order" orientation of the Party, it is not surprising that Republicans were most likely to respond that convicted felons have "too many rights" (59%). (60% of those with some grade school or less offered this response, but again, with only five respondents, we do not make as much of this figure.) Males and Females offered similar degrees of support for "too many rights" (43.4% and 46.%, respectively), but interestingly, Males were considerably more likely to answer "too few rights" on this question (38.7%), versus (8.57%) for Females. As this would suggest then, Females offered a much greater degree of support for the response "about the correct amount of rights" (34.0%) than Males (10.6%). No subgroup offered "too few rights" as its modal response. "Too many rights" was the mode for the following groups: Whites, Males, Females, Republicans, Independents, Grade School or Less, Some High School, High School Graduates, and Some College, while "about the correct amount of rights" was the modal answer for the remaining groups: Blacks, Hispanics, Democrats, College Graduates, and Post College.

[21] Three subgroups were more likely to "disagree" ("somewhat" or "strongly") with this statement: Females (49.2%), Republicans (49.2%) and those with Some High School (45.9%). Blacks

- When we asked those who disagreed, either "somewhat" or "strongly", *why* they disagreed, we found that the modal rationale, overall (44.6%) and for <u>each</u> of the fourteen subgroups (ranging from a high of 62.5% for Hispanics to a low of 39.2% for Republicans)[22] was that "there are some rights that should be revoked permanently." Interestingly, on this question, respondents did <u>not</u> base their "disagreement" with the above statement on the fact that "felons are not good citizens," a reason, again, which *was* the most popular response offered by those who supported temporarily or permanently disenfranchising felons (Question 8).
- 70.2% of Americans, generally, feel the criminal justice system is "completely" or "generally fair." But, when we look at the numbers for specific subgroups, we see some striking contrasts. Most subgroups feel that the system is "generally fair" and express this at percentages generally in the high 60s and 70s. As we might expect, however, Blacks (52.7%), Hispanics (55.6%) and those with some High School (54.2%) were less inclined to find the system "generally fair." Conversely, those with the greatest amount of education (Post College) were most likely to find the system "generally fair" (84.0%).
- Finally, when asked what the goal of the criminal justice should be, the overall modal response was "rehabilitation" (30.8%).[23] "Rehabilitation," as a response, ranged from a high of 52.7% for Blacks to a low of 15.7% for Republicans and

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overwhelmingly expressed the highest rate of "strong agreement" with this statement (55.0%), followed by Hispanics (38.8%), while conversely, but consistent with their responses to other questions, Republicans expressed the lowest rate of "strong agreement" (14.9%). In a more particularized example of dissensus in our findings, Whites are almost exactly evenly divided between "agreement" (189 respondents) and "disagreement" (188 respondents).

[22] Republicans expressed the lowest percentage of support for the permanent-revocation-of-rights-reasoning, because as a group, they expressed the *highest* degree of support for the position that "felons are not punished enough by the criminal justice system" (27.0%).

was the modal response for Whites, Blacks, Males, Females, Democrats, Independents, those with some High School, High School Graduates, College Graduates, and those with Post College education, while "punishment" was the most popular response for Hispanics (at a high of 50%), Republicans, those with Grade School or Less, and those with Some College education.

DISCUSSION

It would be convenient if our findings demonstrated clear public attitudes toward felony disenfranchisement. Perhaps because this is an exploratory study, and the data are still "rough"—and more likely because of the underlying complexity in public attitudes—we find no single picture. These findings both clarify and complicate our understanding of public attitudes toward the disenfranchisement of felons, the criminal justice system, and the general place of felons in our society. Specifically, we offer the following observations for discussion:

1. We believe these data demonstrate that the American public does not support the *permanent* disenfranchisement of convicted felons. Again, 81.7% of those surveyed support the return of the franchise *at some point* during the serving of the sentence; and while we discovered no consensus regarding the exact point at which the right to vote should be returned, we found that only 15.9% of the public supports lifetime

[23] Another recent survey found that "four in ten [Americans] believe the main purpose of prison is rehabilitation, rather than deterrence, punishment, or the protection of society" (ACLU, 2001).

disenfranchisement. Conversely, however, we found even less support (9.9%) for policies that *never* restricted or rescinded felons' voting rights. Less than one-tenth of our respondents, in other words, felt that felons should retain their right to vote during all phases of their sentence (incarceration, probation, parole). Thus, what these data suggest is that the majority of Americans are somewhere in the middle: Relatively few favor a policy that *never* punishes felons with a temporary deprivation of their right to vote, and only slightly more favor a policy that *permanently* punishes felons with a deprivation of their right to vote. Public opinion, therefore, is solidly consistent with the laws of the thirty-five states (plus the District of Columbia) that restrict the right to vote during incarceration and/or parole or probation, while public attitudes are, by contrast, overwhelmingly opposed to the policies of the two states that never disenfranchise and the thirteen that permanently disenfranchise convicted felons.[24]

As public awareness of these laws increases—especially owing to the impact of the Florida law on the election of 2000—we expect our findings to encourage even more rigorous scrutiny of state legislation that permanently revokes the voting rights of convicted felons. (As the effects of disenfranchisement policies receive greater publicity and as the laws are reevaluated, however, we expect the debate over these issues to become increasingly *partisan*, especially as Democrats are expected to be the beneficiaries of such an extension of the franchise.) Because we have shown that a supermajority of the American public is opposed to this form of permanent political "banishment," we expect our findings to make an important contribution to the debates,

[24] Because our data are derived from a national survey, we are unable to address the degree of support for specific policies within particular states. That is, while the American public, generally, is overwhelmingly opposed to lifetime disenfranchisement, our data cannot answer, for example, whether Alabamans or

at the state and federal level, over these policies in the future. Put simply, we believe these data indicate that the American people accept the idea of losing the right to vote while behind "bars" (in a general sense), but it overwhelmingly rejects the practice of permanently "barring" felons from the vote.

2. What complicates the conclusion arrived at above is the fact that we found considerable dissensus regarding the restoration of full rights, privileges, and credentials of citizenship for felons, *in general*.[25] That is, we found the public to be nearly evenly divided on the notion that felons who have served their time "should return to society as full citizens, with full rights and privileges." Recall that 50.3% of those surveyed either "somewhat" or "strongly agreed" with this statement, while 44.2% of those surveyed either "somewhat" or "strongly disagreed." We expect that this can be explained, to some extent, by the fact that felons are, by definition, a class of individuals that invite closer public scrutiny, suspicion and hostility—a class that is already subject to a variety legal restrictions on their activities[26]—but we feel it is interesting, given our other findings, that there is this considerable reluctance to re-admit felons to society as "full citizens."

Along these lines, Demleitner (1999) argued that, because of "collateral sentencing consequences" many ex-offenders in the United States are essentially

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Floridians support this policy. Likewise, we are unable to determine whether the residents of Vermont and Maine support the policy in their respective states that never restricts felons' voting rights.

[25] In this sense then, our findings run counter to those of Prothro and Grigg (1960). While the parallel is not perfect—their survey looked at public attitudes toward "rights" (for all) in general and in more specific examples and our study dealt with public attitudes toward specific and general "rights" for one particular category of people—we find it worth noting that we saw less public support for felons' rights in the abstract and increased support for the specific right to vote.

"internally exiled" (2). We believe our study of public attitudes regarding disenfranchisement policies, felons' rights, generally, and the nature and purpose of the criminal justice system offers evidence to suggest that Demleitner's concerns are, in some respects, warranted. That is, while the public does, in general, support the return of the formal political right of the franchise, we also sense considerable disagreement, overall (but especially within subgroups: Blacks versus Republicans, for example), regarding the appropriate legal and political status of ex-offenders in society. What this suggests to us is that, while felons may not be "exiled" in a formal sense, they are also viewed (even after paying their "debt to society" and having voting rights restored) as "second class" citizens, and thus are not necessarily welcomed back into the political community.

What we see in this sense then is almost a "public sentence" that is tacked on to felons' formal sentences, and which situates them in a kind of intermediate socio-political space, somewhere between political banishment or "Civil Death" (the denial of voting rights) and genuine inclusion (consensus regarding the fitness and quality of members of the political community).[27] This public sentence suggests that felons are "in"—in the contractarian sense that they have been reseated at the table—but it also underscores a deeper tension with civic republicanism, in that their tablemates remain suspicious and are unsure exactly how to address them. In sum, we suggest that what this uncertainty might represent more than anything is the janus-faced nature of public attitudes regarding

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[26] Demleitner (1999) offers several examples of "collateral sentencing consequences," including, in some cases, "the right to run for or hold office, rejection from jury service, prohibition on certain federal benefits, and the ban on select professional licenses" (3).

[27] For a more specific application of this argument, consider the fate of sex offenders who return to their communities after the completion of their sentences. While the offender may have regained all of his or her legal rights, he or she may still be subject to a series of suspicions, biases, and rules that prevent or obstruct the resumption of the genuine experience of citizenship within the community.

the treatment and place of felons within the criminal justice system and within our society, generally.[28]

FUTURE RESEARCH

A future project based on this research involves a more detailed assessment of the political awareness and culture of the various states that still maintain laws rescinding ex-felons' voting rights. We hope to pursue more survey research that considers the degree of public support, within particular states, for felony disenfranchisement legislation. Put simply, do the people in states that permanently revoke the right to vote support this practice? Are they even aware of it? Are Democrats in Florida aware of the vote-"dilution" that this law creates? Is there a correlation between states that have more restrictive policies of this sort and a "tough on crime" political culture? None of the thirteen states that maintain lifetime disenfranchisement would most likely be considered "liberal" states, but there are plenty of "conservative" states that only restrict the right to vote while the felon is incarcerated (i.e. Idaho, Utah, Indiana, Kansas). What, then, explains the degree of disenfranchisement in various states? Again, a more detailed study of public attitudes and political culture within these states will address these questions and concerns.

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[28] Consider, for example, that while the modal response regarding the purpose of the criminal justice system was "rehabilitation" (overall and for ten of our subgroups), our study also tapped into significant degrees of resistance to the idea of embracing felons as full citizens. Consider, as well, the fact that roughly half of those surveyed felt that felons had too many rights, while nearly half felt they had too few or about the right amount.

CONCLUSION

While democratic values, elections and participation, and the sources and significance of crime are topics of frequent study, until recently felony disenfranchisement legislation has slipped under the radar of scholars and policy advocates. What we have done here is to complement, with the first data of its kind, the efforts of activists, lawyers, and scholars who are involved in studying the impact of these laws. As indicated before, our inquiry was initially driven by basic curiosity: How prevalent are these laws?, What is the typical justification for them?, What are their origins?, and What is their impact? What we did not discover in our review of the existing literature were any data that measured public support for the disenfranchisement of felons; in short, we located a "gap" in the literature that called for more study. With this survey of 503 Americans, we have attempted to fill that gap and invite more discussion and scrutiny of this important topic.

Table 1. State Felony Disenfranchisement Laws[29]

STATE	PRISON	PROBATION	PAROLE	EX-FELONS
Alabama	●	●	●	●
Alaska	●	●	●	
Arizona	●	●	●	● (Only after the 2nd felony conviction)
Arkansas	●	●	●	
California	●		●	
Colorado	●		●	
Connecticut	●		●	
Delaware	●	●	●	● (For a period of five years after the sentence is completed)
District of Columbia	●			
Florida	●	●	●	●
Georgia	●	●	●	
Hawaii	●			
Idaho	●			
Illinois	●			
Indiana	●			
Iowa	●	●	●	●
Kansas	●			
Kentucky	●	●	●	●
Louisiana	●			
Maine				
Maryland	●	●	●	● (Only after the 2nd felony conviction)
Massachusetts	●			
Michigan	●			
Minnesota	●	●	●	
Mississippi	●	●	●	●
Missouri	●	●	●	
Montana	●			
Nebraska	●	●	●	
Nevada	●	●	●	●
New Hampshire	●			
New Jersey	●	●	●	

[29] Adapted from *Losing the Vote* (1998); updated by The Sentencing Project (2001).

New Mexico	●	●	●	
New York	●		●	
North Carolina	●	●	●	
North Dakota	●			
Ohio	●			
Oklahoma	●	●	●	
Oregon	●			
Pennsylvania	●			
Rhode Island	●	●	●	
South Carolina	●	●	●	
South Dakota	●			
Tennessee	●	●	●	● (Only felonies committed prior to 1986)
Texas	●	●	●	
Utah	●			
Vermont				
Virginia	●	●	●	●
Washington	●	●	●	● (Only felonies committed prior to 1984)
West Virginia	●	●	●	
Wisconsin	●	●	●	
Wyoming	●	●	●	●
U.S. Total	**49**	**28**	**32**	**13**

Figure 1. Survey Questions

1. In your opinion, is the right to vote:
    A. THE most important right in a democracy;
    B. One of the most important rights in a democracy;
    C. Only somewhat important in a democracy;
    D. Not important in a democracy;
    E. Don't know / Refuse to answer.

2. When dealing with convicted felons, which of the following should be the most important goal of the criminal justice system?
    A. Punishment of the offender;
    B. Rehabilitation of the offender;
    C. Deterrence, or discouraging future offenders;
    D. Removal of the offender from society;
    E. Don't know / Refuse to answer.

3. Would you agree or disagree with the following statement?: "Felons who serve their time should return to society as full citizens, with full rights and privileges."
    A. Strongly agree;
    B. Somewhat agree;
    C. Somewhat disagree;
    D. Strongly disagree;
    E. Don't know / Refuse to answer

4. (If “disagree” in #3) Is this because . . .

    A. Felons are not punished enough by the criminal justice system?

    B. There are some rights that should be revoked permanently?

    C. Those who commit felony offenses are not good citizens?

    D. All of the above?

    E. Don’t know / Some other reason?

    F. Don’t know / Refuse to answer?

5. With respect to convicted felons, do you think they have too many rights, too few rights, or about the correct amount of rights?

    A. Too many;

    B. Too few;

    C. About the correct amount;

    D. Don’t know / Refuse to answer.

6. Do you think the criminal justice system is . . .

    A. Completely fair;

    B. Generally fair;

    C. Generally unfair;

    D. Completely unfair;

    E. Don’t know / Refuse to answer.

7. Some states either temporarily or permanently revoke a convicted felon’s right to vote. Which of the following statements best represents <u>your</u> view on this matter?

    A. Felons should never lose their right to vote;

    B. Felons should lose their right to vote only while they are incarcerated;

C. Felons should lose their right to vote only while they are on parole or probation;

D. Felons should lose their right to vote only while they are incarcerated and on parole or probation;

E. Felons should lose their right to vote while they are incarcerated, on parole or probation, and the rest of their life;

F. Don't know / Refuse to answer.

8. (If B—F for #7) Which of the following statements best explains your reasons for feeling this way?

A. Felons are immoral individuals;

B. Felons have proven that they should not be treated as citizens;

C. Felons cannot be trusted;

D. All of the above;

E. None of the above / Some other reason;

F. Don't know / Refuse to answer.

Figure 2. Survey Results

1. In your opinion, is the right to vote . . .

	Frequency	Percent
1. The most important right in a democracy.	233	46.3
2. One of the most important rights in a democracy.	236	46.9
3. Only somewhat important in a democracy.	25	5.0
4. Not important in a democracy.	8	1.6
5. Don't know / refuse.	1	.2
TOTAL	503	100.0

2. When dealing with convicted felons, which of the following should be the most important goals of the criminal justice system?

	Frequency	Percent
1. Punishment of the Offender.	115	22.9
2. Rehabilitation of the Offender.	155	30.8
3. Deterrence, or discouraging future offenders.	88	17.5
4. Removal of the offender from society.	113	22.5
5. Don't know / refuse.	32	6.4
TOTAL	503	100.0

3. Would you agree or disagree with the following statement?: "Felons who serve their time should return to society as full citizens, with full rights and privileges."

	Frequency	Percent
1. Strongly agree.	114	22.7
2. Somewhat agree.	139	27.6
3. Somewhat disagree.	105	20.9
4. Strongly disagree.	117	23.3
5. Don't know / refuse.	28	5.6
TOTAL	503	100.0

4. (If "somewhat" or "strongly" disagree for question #3) Is this because . . .

	Frequency	Percent	Valid Percent
1. Felons are not punished enough by the criminal justice system?	39	7.8	17.6
2. There are some rights that should be revoked permanently?	99	19.7	44.6
3. Those who commit felony offenses are not good citizens?	24	4.8	10.8
4. All of the above?	23	4.6	10.4
5. Don't know / some other reason?	33	6.6	14.9
6. Don't know / refuse?	4	.8	1.8
TOTAL	222	44.1	100.0
Missing	281	55.9	
TOTAL	503	100.0	

5 With respect to convicted felons, do you think they have too many rights, too few rights, or about the correct amount of rights?

	Frequency	Percent
1. Too many.	227	45.1
2. Too few.	48	9.5
3. About the correct amount.	182	36.2
4. Don't know / refuse.	46	9.1
TOTAL	503	100.0

6. Do you think the criminal justice system is . . .

	Frequency	Percent
1. Completely fair.	3	.6
2. Generally fair.	350	69.6
3. Generally unfair.	121	24.1
4. Completely unfair.	24	4.8
5. Don't know / refuse.	5	1.0
TOTAL	503	100.0

7. Some states either temporarily or permanently revoke a convicted felon's right to vote. Which of the following statements best represents your view on this matter?

	Frequency	Percent
1. Felons should never lose their right to vote.	50	9.9
2. Felons should lose their right to vote only while they are incarcerated.	159	31.6
3. Felons should lose their right to vote only while they are on parole or probation.	25	5.0
4. Felons should lose their right to vote only while they are incarcerated or on parole or probation.	177	35.2
5. Felons should lose their right to vote while they are incarcerated, on parole or probation, and the rest of their life.	80	15.9
6. Don't know / refuse.	12	2.4
TOTAL	503	100.0

8. (If answers #2-5 in question #7) Which of the following statements best explains your reasons for feeling this way?

	Frequency	Percent	Valid Percent
1. Felons are immoral individuals.	30	6.0	6.8
2. Felons have proven that they should not be treated as citizens.	144	28.6	32.7
3. Felons cannot be trusted.	89	17.7	20.2
4. All of the above.	30	6.0	6.8
5. None of the above / some other reason.	137	27.2	31.1
6. Don't know / refuse.	11	2.2	2.5
TOTAL	441	87.7	100.0
Missing	62	12.3	
TOTAL	503	100.0	

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Abstract

Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons

Brian Pinaire, Milton Heumann, and Laura Bilotta

Abstract

Research Summary:

Based on a national telephone survey of 503 Americans, this study measures public attitudes toward the disenfranchisement of felons. State laws vary considerably on this issue, from no restrictions to lifetime disenfranchisement. Our research addresses both the degree of public support for these laws and the reasoning that supports these views.

Policy Implications:

We find that the clear majority of the American public supports the *temporary* disenfranchisement of felons, but that an overwhelmingly majority rejects the *permanent* revocation of felons' voting rights. These data should encourage legislators and policymakers to reevaluate state restrictions on voting rights for this class of individuals. But while we find strong support for the return of the franchise, we see a deeper ambivalence amongst the public as to the place (and "fit") of felons within society, an ambivalence that should be investigated by future scholars.