

Felon Reenfranchisement: Political Implications and Potential for Individual Rehabilitative Benefits

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PART ONE: OVERVIEW OF ISSUES SURROUNDING FELON DISENFRANCHISEMENT

California’s practice of disenfranchising felons raises a number of important social and political concerns. In this paper, I will examine the empirical evidence surrounding these direct and indirect consequences of felon disenfranchisement and provide recommendations for restoring felons’ rights. My research will draw on data from a variety of sources and, where data are lacking in important areas, I will highlight these areas as priorities for future research.

In California, an individual’s right to vote is suspended while he or she is “imprisoned or on parole for the conviction of a felony.”¹ Thus, convicted felons are barred from voting both while actually incarcerated and while on parole following release. Although felons in California are automatically permitted to vote after the

¹ Cal. Const. Art. II, §4.

completion of their parole, they must still register to vote, even if they were registered prior to their prison term.

California’s laws fall somewhere in the middle of a continuum of disenfranchisement laws nationally. At one extreme, eleven states permanently disenfranchise felons; at the other, two states – Maine and Vermont – allow felons to vote continuously, even while they are incarcerated.

Table 1: Felon Disenfranchisement Regimes by State²

No Restrictions (2)	Inmates Only (14)	Inmates and Parolees (5)	Inmates, Parolees, Felony Probationers (16)	All Current and Former Felons (13)
Maine Vermont	Hawaii Illinois Indiana Louisiana Massachusetts Michigan Montana New Hampshire North Dakota Ohio Oregon Pennsylvania South Dakota Utah	California Colorado Connecticut Kansas New York	Alaska Arkansas Georgia Idaho Minnesota Missouri Nebraska New Jersey New Mexico North Carolina Oklahoma Rhode Island South Carolina Texas West Virginia Wisconsin	Alabama Arizona* Delaware** Florida Iowa Kentucky Maryland* Mississippi Nevada Tennessee Virginia Washington Wyoming

* Recidivists

**5-year waiting period for former felons

Perhaps the most obvious consequence of disenfranchisement is that, if felons cannot vote, the political process may not adequately reflect their interests. As a group, felons have a unique set of concerns, in particular relating to their ex-convict status. A blanket prohibition on felon voting may result in the continued use of policies that restrict

² Data collected from www.sentencingproject.com.

felons civic rights, including, ironically, the right to vote. The companion paper to mine examines this issue in detail, so I will discuss it only briefly in this paper.

Skeptics may wonder whether felons would in fact vote if they were allowed to. Unfortunately, no data are available on the actual voting rate for felons, let alone on the rate at which currently disenfranchised felons *would* vote if they were given the opportunity. However, some research suggests that, prior to their arrest, felons voted at a rate similar to that of similar demographic groups in the general population.³ Moreover, a large amount of qualitative data suggests that felons remain actively interested in the political process and in voting. This paper will examine this evidence, and discuss how felons' demonstrated interest in voting might translate into turnout at the polls after their release from prison or the end of their parole.

Felons' inability to participate in the political process is particularly problematic given that a markedly disproportionate number of felons are from historically disadvantaged groups such as certain racial minorities (in California, Blacks and Latinos) and the poor.⁴ Thus, felon disenfranchisement not only means that felons as a class are inadequately represented by the political process, but also that the political power of certain racial and economic groups is diluted due to the number of members who cannot vote. In other words, disenfranchisement not only impacts the felons themselves, but also disempowers the groups to which they belong.⁵

³ See Ernest Drucker & Ricardo Barreras, *Studies of Voting Behavior and Felony Disenfranchisement among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio* (2005), available at www.sentencingproject.org.

⁴ Criminal Justice Statistics Center of the California Department of Justice, *Crime in California* (2003), available at <http://caag.state.ca.us/cjsc/publications/candd/cd03/preface.pdf>.

⁵ Christopher Uggen, Jeff Manza, & Angela Behrens, *Felon Voting Rights and the Disenfranchisement of African Americans*, 5 SOULS: A CRITICAL JOURNAL OF BLACK POLITICS, CULTURE & SOCIETY 47-55 (2003).

It is also important to consider the role these demographic factors play in other aspects of the corrections system. For example, if certain racial groups typically serve longer sentences and serve more time on parole, then they will be legally disenfranchised for a longer period of time. Economic status may play a similar role: defendants who are represented by public defenders during plea bargaining or trial may be sentenced to shorter periods of incarceration and parole. Lengthier periods of disenfranchisement are an important collateral consequence of the biases that characterize the discretionary aspects of our legal system. In summary, although it is not the primary purpose of this paper to examine the differential impact of disenfranchisement on certain minority groups, it is important to keep in mind that all of the negative consequences of disenfranchisement are likely to have a disparate impact on minority felons and their communities.

The impact of felony disenfranchisement laws may extend beyond those felons who are legally disenfranchised. Some research suggests that felony disenfranchisement laws also deter former felons from voting even after they become eligible.⁶ Ex-felons may hold misconceptions about whether they are currently eligible to vote, or simply may not know their eligibility. Relatedly, research has suggested that there may be a sort of halo effect in certain communities: if enough felons are disenfranchised or believe they are disenfranchised, other non-felon members of the communities may vote at lower rates because they believe that their participation will not matter.⁷

⁶ See Ernest Drucker & Ricardo Barreras, *Studies of Voting Behavior and Felony Disenfranchisement among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio* (2005), available at www.sentencingproject.org.

⁷ Paul Hirschfield, *Assessing the Impact of Felon Disenfranchisement* (1999), available at www.sentencingproject.com; but see Thomas J. Miles, *Does the Disenfranchisement of Convicted Felons Reduce Electoral Participation?*, (March 1999) (unpublished manuscript).

Table 2, below, summarizes the voting registration and turnout rates for Blacks and Latinos as compared to the percentage of the population they comprise. The discrepancy between the percentage of Latinos in the population and the percentage registered to vote is especially striking. Many factors may contribute to this discrepancy – for example, we can hypothesize that recent immigrants from Central and South America may be less likely to register to vote. However, since the Latino community is already underrepresented in the political process, we should take this into account in considering policies such as felon disenfranchisement that may compound the problem.

Table 2: Voting Behavior of Groups Disproportionally Impacted by Disenfranchisement⁸

Group	Percent of Population	Percent of Registered Voters	Percent of Voter Turnout in 2002 Midterm Election
Latinos	33%	13%	11%
Blacks	6.2%	6%	4%

In addition to the aforementioned concerns about the integrity of the political process and the disparate impact of disenfranchisement on certain groups, the disenfranchisement of felons may have troubling consequences for their rehabilitation. Denying felons the right to engage in civic activities such as voting hinders their reintegration into society and provides an additional psychological impediment to preventing recidivism. The rehabilitative impact of voting rights will be the primary focus of the paper, although reference to these other, more frequently-discussed topics will be included as necessary.

⁸ Jessica Roberts, The California Voter Foundation, *Voter Participation: A Brief Literature Review*, at <http://www.calvoter.org/issues/votereng/votpart/review.html>.

To examine the impact of voting rights on recidivism, this paper will present existing research on the process by which felons reenter their communities and attempt to create lawful lives for themselves. Available evidence supports a contention that felons' self-perceptions are an important part of this reintegration: felons who did succeed in avoiding recidivism learned to see themselves as law-abiding members of the community.⁹ Although many factors influence felons' self-perceptions, one such factor may be the felons' perceptions of how society at large sees them. If this is the case, then restoring felons' civic rights, such as the right to vote, may play an important role in allowing felons to see themselves as productive members of the community rather than as criminals.

It is extremely difficult to quantify the exact impact that being able to vote has on a felon's rehabilitative path. To determine whether there is some sort of causal relationship between voting (or civic reintegration more generally) and recidivism would require a large-scale study that tracked released offenders in their communities and monitored changes in their behavior.¹⁰ No such research exists. However, some research has analyzed whether a *correlation* exists between voting and recidivism, which provides preliminary evidence that allowing felons to vote would have some relationship to their likelihood of recidivism.¹¹

This paper will also present more qualitative evidence that felons view the right to vote as symbolic of their rehabilitation and integration into society. For example, a study that surveyed felons about voting found that felons are quite interested in participating in

⁹ See Shadd Maruna, *Making Good* (2001).

¹⁰ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample* 36 Colum. Hum. Rights L. Rev. 193 (2004).

¹¹ *Id.*

the political process. Moreover, participants suggested that not being able to vote has a negative impact on their ability to perceive themselves as members of law-abiding society.

Finally, to supplement the existing information about felons' attitudes toward voting and the impact of voting on rehabilitation, I will include research on the relationship between community involvement and criminal activity. Several studies have demonstrated that individuals who are involved in the community through volunteerism or other public-oriented activities are less likely to commit crimes. Although such data is not specific to the voting context, voting is one of a range of activities that seem likely to facilitate involvement in the community. Thus, to the extent that former felons' ability to vote increases their sense of community involvement and civic participation, it is likely to have some benefit in terms of preventing recidivism.

The issue of felon disenfranchisement poses complicated challenges for the California prison system. By examining a variety of evidence – both quantitative and qualitative – this paper hopes to shed light on the issue of voting as it impacts rehabilitation and propose several desirable policy outcomes.

PART TWO: OPTIONS FOR ADDRESSING THE ISSUE OF FELON DISENFRANCHISEMENT

This part of the paper will provide more detailed analysis of the impact of felon disenfranchisement on individuals and communities and outline the possible alternatives to California's current policy of disenfranchising both imprisoned and paroled felons.

Towards this end, the paper will first focus on the legal regime surrounding felon disenfranchisement. First, I will discuss the advantages and disadvantages of the current

policy of reenfranchising felons following parole, then explore two less harsh alternatives: allowing felons to vote continuously throughout their incarceration and parole, and reenfranchising felons immediately following their release from prison.

Although the legality of felons' voting rights is likely to be the most significant determinant of the impact of disenfranchisement on felons, other policy directions may also shape the relationship between voting and reintegration. In light of these possibilities, this paper will discuss an array of non-legal means of mitigating the consequences of felon disenfranchisement and maximizing the rehabilitative impact of voting at the point that voting rights are restored.

A. CALIFORNIA'S CURRENT POLICY: AUTOMATIC DISENFRANCHISEMENT OF IMPRISONED AND PAROLED FELONS

Under current California law, the right to vote is suspended while a person is "imprisoned or on parole for the conviction of a felony."¹² Individuals whose prison sentences are suspended do not lose the right to vote unless and until they are actually incarcerated; felons who are on probation can vote.

The primary argument that proponents make in favor of felon disenfranchisement is that it is a legitimate retributive measure. By committing an act that society has deemed a serious crime, the argument goes, felons have forfeited their right to participate in the political process. The argument has a moral foundation: felons have shown themselves of insufficient moral character to deserve the privilege of voting. Although this line of reasoning has traditionally justified felon disenfranchisement, recent precedent has

¹² Cal. Const. art. II, § 4.

largely discredited its utility. Moral unfitnes, courts and legislatures have indicated, is not a sufficient justification for disenfranchisement.¹³

Moreover, reasoning about the retributive justice of disenfranchisement is notably incongruous with California's recent movement toward rehabilitation of felons. It is difficult to see felon disenfranchisement as serving any kind of rehabilitative purpose: it hardly provides incentives for felons to abstain from criminal activity or to reintegrate into society.

Felon disenfranchisement also impedes rehabilitation by promoting overgeneralizing about ex-felons. Those who fall within the ex-felon category have committed a wide range of crimes, ranging from minor drug crimes to multiple murders. By classifying all ex-offenders together and categorically mandating disenfranchisement, those who have committed relatively moderate crimes may come to see themselves as even more alienated from society than they actually are.¹⁴ Felons themselves frequently express a desire for more narrowly tailored categories, perhaps limiting the strictest disenfranchisement laws to former offenders whose crimes actually involved an election.¹⁵

Disenfranchisement also impedes the rehabilitative process by continually sending a message to felons that they are bad people and less than full citizens. In a series of interviews, researchers found that convicted felons "often spoke passionately about the stigma of a felony conviction and told us that losing the right to vote, in particular, was a

¹³ See *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Munro v. Socialist Workers Party*, 479 U.S. 189 (1986); 42 U.S.C. § 1973aa (1994).

¹⁴ Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement*, 56 *Stan. L. Rev.* 1147, 1167 (2004).

¹⁵ Christopher Uggen & Jeff Manza, *Disenfranchisement and the Civic Reintegration of Convicted Felons*, in *CIVIL PENALTIES, SOCIAL CONSEQUENCES* (Christopher Mele & Teresa Miller, eds.) (forthcoming 2005) available at http://www.soc.umn.edu/~uggen/Uggen_Manza_Routledge_04.pdf (last visited Oct. 29, 2005).

powerful symbol of their status as “outsiders.”¹⁶ A considerable amount of social science research supports the idea that people – including felons – tend to live up to the expectations imposed upon them.¹⁷ Thus, disenfranchising felons sends the message that, due to their personal shortcomings, felons should not be trusted with an important responsibility such as voting. Internalizing this message sets felons up for failure and recidivism.

In addition to these negative internal, psychological consequences for ex-felons, a policy of disenfranchisement for incarcerated or paroled felons also has numerous practical problems. The first is administrative: although reenfranchisement is supposedly automatic in the California system, bureaucratic problems can and do arise. In the 2000 election in Florida, flaws in the purge process removed names of individuals whose convictions did not trigger disenfranchisement, or whose voting rights had been restored, or even individuals whose names resembled those of disenfranchised felons.¹⁸ Although similar problems have not been exposed in California, it seems reasonable to suggest that the reenfranchisement process risks administrative glitches.

Moreover, even after felons are legally reenfranchised, they must re-register to vote. While the process is not overwhelmingly complicated or time-consuming, it may pose a significant burden on an individual who is preoccupied with all of the other challenges of rehabilitation: finding a job, securing housing, reconnecting with family and friends, and so on. Data from a study conducted in Connecticut and New York,

¹⁶ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample 4* (June 24, 2004).

¹⁷ See, e.g., Michael Ross et al., *The Impact of Expectations on the Behavior of a Middle School Class*, 13 *Am. Soc’y J.* 266 (1997).

¹⁸ U.S. Comm’n on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election*, ch. 5 (2001), available at <http://www.usccr.gov> (last visited Oct. 24, 2005).

whose disenfranchisement laws are similar to those of California, suggests that disenfranchisement results in a drop in registration rates for felons who were registered to vote prior to incarceration. In Connecticut, former felons who were eligible to vote were only half as likely to be registered following incarceration as they were prior to incarceration. This decrease suggests that, even when felons are legally able to vote, logistical obstacles resulting from their former disenfranchisement may prevent them from actually exercising their right to vote.

Table x: Registration History and Current Registration Rates¹⁹

Question	CT	NY	Total
Have you ever been registered to vote?	33.9	61.9	48.4
Are you currently registered to vote?	16.8	40.0	29.2
Percent reduction in registration rates	50.0	33	40

Felon disenfranchisement may also contribute to the dilution of political power of communities with a disproportionately high number of felons.²⁰ This is particularly problematic for certain racial minority groups. California disenfranchised around 250,000 felons as of 1998, and the number has increased since that time.²¹ More troublingly, however, while the total disenfranchisement rate was around percent, the rate for black

¹⁹ Ernest Drucker & Ricardo Barreras, *Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio* 7 (September 2005)

²⁰ See JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 289 (2005); Karlan, *supra* note 3, at 1161 (“[Felon disenfranchisement laws] penalize not only actual wrongdoers, but also the communities from which incarcerated prisoners come and the communities to which ex-offenders return by reducing their relative political clout.”)

²¹ The Sentencing Project & Human Rights Watch, *Losing the Vote: the Impact of Felony Disenfranchisement Laws in the United States* 9, at <http://www.sentencingproject.org/pdfs/9080.pdf> (last visited Nov. 1, 2005).

men was 8.7 percent.²² In 1998, nearly 70,000 black men in California could not vote due to disenfranchisement laws.²³

Similarly, disenfranchisement of felons contributes to inequitable apportionment of legislative districts. Because the Census Bureau counts people based on their “usual residence,” defined as the place where a person lives and sleeps most of the time, prisoners are generally counted at their place of incarceration.²⁴ The result is a skewing of electoral districts: “people in prison serve as essentially inert ballast in the redistricting process.”²⁵ This skewing has two distinct effects: it removes political power from the districts where prisoners lived prior to their incarceration, because their “residences” are now elsewhere, and “communities that now house large numbers of prisoners gain political power.”²⁶ It is worth hypothesizing about the more attenuated consequences of such reapportionment: the communities that house prisoners are generally communities where people involved with the prison industry reside. Thus, groups that have a vested interested interest in keeping prisoners incarcerated actually benefit politically from their incarceration.

Disenfranchisement of imprisoned and paroled felons may, ironically, contribute to perpetuating the existing penal regime. Because felons and those in their communities have less political power per capita, it is more likely that candidates who support harsh penal policies will be elected. The known disempowerment of communities with high concentrations of felons also affects the political process in less direct ways. Candidates shape their campaigns and platforms in part based on the constituents who will elect

²² *Id.*

²³ *Id.*

²⁴ See Travis, *supra* note 7, at 290.

²⁵ Karlan, *supra* note 3, at 1160.

²⁶ Travis, *supra* note 7, at 290.

them, and are consequently most responsive to the policy preferences of groups that have the power to keep them in, or remove them from, office.²⁷

B. A MORE HUMANE ALTERNATIVE: CONTINUOUS VOTING RIGHTS

Another option is to maintain felons' voting rights continuously, throughout incarceration, probation, and parole. Some of the most important advantages of maintaining continuous voting rights for offenders are simply that they do not cause the negative consequences, in terms of political disempowerment, described in the previous section. Maintaining continuous voting rights for felons also avoids the potential for bureaucratic errors that inadvertently disenfranchise former offenders or innocent third parties who are, in fact, eligible to vote.

Allowing felons to vote while incarcerated is consistent with the laws of two jurisdictions in the United States: Maine and Vermont. A comparison of the recidivism rates in these two states with the recidivism rate in California would be particularly useful in determining whether disenfranchisement serves as an impediment to rehabilitation. However, meaningful data relating to this issue is notably difficult to accumulate due to the vastly different criminal justice practice of different states: for example, there may be a different mix of offenders incarcerated, or recidivism rates may be impacted by police practices.²⁸ One possible avenue for further research would be to examine trends in recidivism rates in jurisdictions where disenfranchisement laws have recently changed; however, this option would also suffer from the presence of possible confounding variables.

²⁷ Karlan, *supra* note 3, at 1161.

²⁸ See Uggen & Manza, *supra* note 4, at 80.

Research has found that there is a strong *correlation* between voting behavior and recidivism rates. In a study conducted in Minnesota, ex-felons who voted in 1996 were only half as likely to be rearrested from 1997-2000 as those who did not.²⁹ Although this evidence falls short of demonstrating that voting was *causal* in facilitating the rehabilitation of felons who voted, it does suggest that voting may form part of an overall picture of behavior that helps to prevent recidivism. The researchers conclude, “our multivariate analysis suggests that political participation is not entirely attributable to preexisting differences between voters and non-voters in criminal history, class, race, or gender.”³⁰ The researchers who conducted the study acknowledge that “the single behavioral act of casting a ballot is unlikely to be the single factor that turns felons’ lives around.”³¹ However, “it is likely that the act of voting is tapping something real, such as a desire to participate as a law-abiding stakeholder in a larger society.”³²

Moreover, two important rehabilitative functions are served by allowing offenders to vote. First, allowing felons to exercise their civil rights allows them to learn to see themselves as meaningful participants in society rather than as social antagonists. Second, voting helps felons to feel connected to law-abiding society by allowing them to invest in political issues and participate in the shaping of policies that affect them and their families. This paper will discuss each of these issues in turn.

Many social scientists have stressed the importance to the rehabilitative process of felons learning to see themselves differently. One authority explains, “ex-offenders need to have a believable story of why they are going straight to convince *themselves* that this

²⁹ Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L. Rev. 193 (2002).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

is a real change.”³³ Even for felons who, in the abstract, want to become law-abiding citizens, reconceptualizing themselves as non-offenders involves the difficult process of destroying their previous self-concept and replacing it with a new one. As one social scientist notes:

“Once a man has gone through the impersonal procedures necessary to processing and labeling him as a criminal and a prisoner, about all he has left in the world is his “self.” No matter what that self may be, he takes elaborate steps to protect it, to guard it, to maintain it. If it should be taken away from him, even in the name of rehabilitation or treatment, he will have lost everything.”³⁴

However, disenfranchisement interferes with felons’ process of reestablishing an image of themselves as rehabilitated, law-abiding citizens. One ex-offender explains:

“I . . . would like someday to feel like a, quote, ‘normal citizen,’ a contributing member of society, and you know that’s hard when every election you’re being reminded You can’t really feel like part of your government when they’re still going like this, ‘Oh, you’re bad. Remember what you did way back then? Nope, you can’t vote.”³⁵

Although ex-felons’ individual attitudes toward voting are likely to vary, it seems likely that there is a significant portion for whom disenfranchisement serves as a source of alienation and a continued reminder of their less-than-complete citizenship rights.

Moreover, in addition to these surveys of general attitudes, more concrete evidence also supports a conclusion that felons are interested in voting. A survey of

³³ SHADD MARUNA, MAKING GOOD 86 (2001).

³⁴ *Id.* at 86.

³⁵ Uggen & Manza, *supra* note 4, at 74.

individuals in the criminal justice system in New York, Connecticut and Ohio indicated that 66.4 percent indicated that they intended to register to vote as soon as they were eligible, while over half intended to vote in the upcoming presidential election.³⁶ The latter rate is comparable to the actual voting rate for the general population.³⁷ In addition, the study demonstrated that felons, like the general population, exhibit increased interest in voting behavior with age.³⁸

Semistructured interviews conducted by two authorities on felons and voting support similar conclusions regarding felons' interest in voting. One ex-offender described disenfranchisement: "On top of the whole messy pile, there it was. Something that was hardly mentioned, and it meant a lot."³⁹ Another characterized disenfranchisement as "salt in the wound," and noted that it reminded her of her ex-offender status at every election.⁴⁰ Imposing this barrier to civic reintegration prevents felons from participating in the political process in a way that they find valuable and meaningful, and that may allow them to complete their reintegration into society.

On a slightly more abstract level, successful rehabilitation means reestablishing a sense of connection to society, which voting may help to promote. A study of felons who have succeeded in avoiding recidivism found that one distinguishing feature is that they have an "optimistic perception . . . of personal control" over their lives, as well as "the desire to be productive and give something back to society, particularly the next

³⁶ Ernest Drucker & Ricardo Barreras, *Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio* 7 (September 2005)

³⁷ Bureau of the Census, *Voting and Registration in the Election of November 2000*, at <http://www.census.gov/prod/2002pubs/p20-542.pdf> (last visited Nov. 1, 2005) (stating that the voting rate among the general population is about 55 percent). Of course, these statistics are not exactly comparable because one reflects felons' *intended* voting rate, while the other reflects the *actual* voting rate for the general population. However, it is still suggestive that a majority of felons intend to vote.

³⁸ Drucker & Barreras, *supra* note 20, at 6-7.

³⁹ Uggen & Manza, *supra* note 4, at 74.

⁴⁰ *Id.*

generation.”⁴¹ Voting can serve both of these aims by allowing felons at least a small measure of input into the policies that shape their lives, and by allowing them involvement in political issues that will have consequences for their children and communities. The same study notes that “ex-offenders who desist seem to find some larger cause that brings them a sense of purpose.”⁴² By encouraging meaningful involvement with political issues and causes, voting may facilitate rehabilitation.

As a final note, allowing felons to vote would bring California into line with international community. A Canadian court recently held that disenfranchising prisoners serving terms of more than two years violated the Canadian Charter of Rights and Liberties.⁴³ Similarly, the South African Constitutional Court invalidated a statute that barred voting by incarcerated individuals.⁴⁴ All prisoners can vote in Denmark, Ireland, Israel, Sweden, and Switzerland.⁴⁵ While harsh penal policies may not be uncommon in the United States, they stand out beyond its borders. In this instance, it might make sense for California to think internationally rather than domestically.

C. A COMPROMISE: REENFRANCHISING FELONS AFTER RELEASE FROM PRISON

Although, as the previous section suggests, there are many reasons that providing continuous voting rights would benefit felons, there is also a case for reenfranchising felons following their release from prison. Restoring voting rights automatically upon

⁴¹ Maruna, *supra* note 17, at 88

⁴² *Id.* at 99.

⁴³ See *Sauve v. Canada (Chief Electoral Officer)* [2002] 3 S.C.R. 519 (Can.), available at http://www.lexum.umontreal.ca/csc-scc/en/pub/2002/vol3/html/2002scr3_0519.html (last visited October 28, 2005).

⁴⁴ See *Minister of Home Affairs v. Nat'l Inst. For Crime Prevention and the Re-Integration of Offenders (NICRO)* (S. Afr. Const. Ct. Mar. 3, 2004), available at <http://www.sentencingproject.org/pdfs/southafrica-decision.pdf> (last visited October 28, 2005).

⁴⁵ Alec C. Ewald, “Civil Death”: *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 Wis. L. Rev. 1045, 1046 n.4.

release would provide a means of symbolically acknowledging the offender's reintegration into society. It would also provide an incentive for ex-felons to succeed on the outside by linking non-recidivism with valued civic privileges. Moreover, many of the rehabilitative benefits mentioned in the previous section, such as encouraging felons to invest in a cause and acknowledging their rehabilitative progress, would also attach to a regime that restored the franchise to felons following release from prison.

Compelling evidence suggests that current social trends favor reenfranchising felons following their release from prison. In an editorial, former President Bill Clinton, not known for his leniency to offenders, stated, "it is long past time to give back the right to vote to ex-offenders who have paid their debts to society."⁴⁶ Former Presidents Gerald Ford and Jimmy Carter have made similar recommendations.⁴⁷

Reenfranchising felons following their release from prison is also in line with public opinion. One national study found that 64 percent of people support allowing probationers to vote, while 62 percent support allowing parolees to vote.⁴⁸ However, only one-third of respondents (33 percent) support voting rights for currently imprisoned felons.⁴⁹ From a pragmatic political standpoint, this disparity suggests that reenfranchising felons following incarceration would tend to be more popular with the constituency than simply allowing felons to vote continuously.

Reenfranchising felons following incarceration is validated by the practices of other jurisdictions in the United States. Ten states – Illinois, Indiana, Massachusetts,

⁴⁶ William Jefferson Clinton, *Erasing America's Color Lines*, N.Y. Times, Jan. 14, 2001, at § 4 pg. 17.

⁴⁷ Nat'l Comm'n on Fed. Election Reform, *To Assure Pride and Confidence In the Electoral Process* 45-46 (2002)

⁴⁸ Jeff Manza, Clem Brooks & Christopher Uggen, *Public Attitudes Towards Felon Disenfranchisement in the United States* (2002).

⁴⁹ *Id.*

Michigan, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, and Utah – withhold the right to vote only while felons are incarcerated, and restore this right upon release, even when the felons are on probation or parole.⁵⁰ Thus, if California were to enact laws reenfranchising felons following their release from prison, it would be far from anomalous among the fifty states.

On a slightly more abstract note, it is worth considering the possibility that the act of reenfranchising felons may have considerable symbolic significance. Chris Uggen and Jeff Manza have suggested that “formal mechanisms to restore . . . citizenship rights may encourage [feelings] of political efficacy and trust in government institutions.”⁵¹ Reenfranchisement may serve as what Shadd Maruna has called a “redemption ritual” – a means of providing a sense of closure to the felon’s previous life and the beginning of a new life lived in accordance with the law.⁵² Many criminologists and sociologists have noted the rehabilitative impact of reintegration rituals, and restoration of the right to vote has the potential to serve a similar function.⁵³ In this sense, *restoring* the franchise may actually have more rehabilitative impact than the maintaining continuous voting rights, as discussed in the previous section.

Other research also suggests benefits from community involvement in general, of which voting forms part of the picture by allowing former felons to feel connected to the political process and involved in their communities. This abstract theory makes logical

⁵⁰ The Sentencing Project, *Felony Disenfranchisement Laws in the United States* 3 (2005), at <http://www.sentencingproject.org/pdfs/1046.pdf> (last visited Nov. 10, 2005).

⁵¹ Uggen & Manza, *supra* note 4, at 76.

⁵² Maruna, *supra* note 17, at 158-59, 162.

⁵³ See, e.g., Braithwaite & Mugford, *Conditions of Successful Reintegration Ceremonies*, 34 *British J. of Crim.* 139 (1994); Maruna, *supra* note 17.

sense: prosocial activities such as volunteering and voting foster a sense of involvement in the community that provide felons with the motivation to resist recidivism.

One study, conducted on the impact of an Israeli law that enabled courts to commute short prison sentences for community service work, found that offenders who performed service work were 1.7 times less likely to recidivate as compared to offenders who served time in prison.⁵⁴ The researchers used a propensity score methodology to adjust for the possibility of nonrandom selection into service work.⁵⁵

Another study conducted using data on 1,000 adolescents from the Youth Development Study found that those who did volunteer work in the community were much less likely to be arrested than those who did not: only 3.09% of volunteers were arrested, as opposed to 11.08% of non-volunteers.⁵⁶ Researchers acknowledged the “vexing methodological obstacle” posed by the “self-selection process that necessarily guides entry into volunteer work.”⁵⁷ However, they made substantial attempts to control for extralegal factors that may affect arrest, including “antisocial properties, prosocial attitudes, commitment to conventional lines of action, and previous prosocial behavior.”⁵⁸ Ultimately, researchers found no evidence that this negative association between volunteer work and arrest was due to self-selection.⁵⁹ As an added note, the researchers suggested that this type of community involvement might be especially advantageous for

⁵⁴ Nirel et al (1997).

⁵⁵ *Id.*

⁵⁶ Christopher Uggen & Jennifer Janikula, *Volunteerism and Arrest in the Transition to Adulthood*, 78 *Social Forces* 331, 355 (1999).

⁵⁷ *Id.* at 354.

⁵⁸ *Id.* at 355.

⁵⁹ *Id.*

younger offenders, pointing to National Research Council data indicating the formative character of this period.⁶⁰

If community involvement via volunteerism has a positive impact on arrest rates, then it seems logical that voting may have some of the same impact. The act of voting might, in itself, foster a sense of community involvement that yields some of the same benefits as volunteering. Moreover, the ability to vote is associated with many other opportunities for involvement in political causes: if former felons have their voting rights restored, they may be more likely to volunteer for political causes or work on the campaigns of candidates who support their interests. As one researcher summarized, a commitment to prosocial activities such as community service and volunteering “may alter lifelong trajectories of deviant behavior, political participation, and civic engagement.”⁶¹

D. NON-LEGAL ISSUES: FOSTERING REHABILITATION THROUGH VOTING

Independent of the actual laws governing felon disenfranchisement, it may be possible to make a positive rehabilitative impact by initiating programs that facilitate ex-felons’ understanding of their voting rights.

One problem that must be addressed regardless of who is allowed to vote is that of *de facto* disenfranchisement – even when ex-felons are legally allowed to vote, they simply may not realize that they can.⁶² One study found that half the felons surveyed were “grossly misinformed about the manner in which felony disenfranchisement laws

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See Travis, *supra* note 7, at 289 (2005) (“[T]hose who are technically eligible after finishing their period of parole supervision may not know that their right to vote has been restored.”).

applied to them.”⁶³ For example, 50 percent of felons either gave incorrect responses or stated that they did not know the answer when asked whether felons who were currently on probation could vote.⁶⁴ In fact, all paroled felons could vote in the states surveyed.⁶⁵ Similarly, 52.8 percent of felons either responded incorrectly or stated that they did not know the answer when asked whether a felony conviction made one ineligible to vote.⁶⁶ These results demonstrate that, even when felons are statutorily allowed to vote, misinformation may prevent them from exercising their rights.

Although the study was conducted on felons in Connecticut, New York, and Ohio, it seems entirely possible that the results would be similar in California: Connecticut and New York have the same disenfranchisement regime as California, and Ohio’s regime is actually less punitive (felons can vote as soon as they are no longer incarcerated).

Table x: Percentage of felons who answered incorrectly or stated they did not know:⁶⁷

True or False: “You are not eligible to vote if...”	CT	NY	Total
You have ever been convicted of a felony	66.4	41.3	52.8
You have ever been arrested	37.0	28.8	31.1
You have ever been on parole	44.9	34.0	38.9
You have ever been in jail	33.5	18.9	25.9
You are currently on probation	41.4	57.8	50.0
You have ever been on probation	30.2	27.0	28.4
You have ever been in prison	37.4	29.0	32.8

⁶³ Ernest Drucker & Ricardo Barreras, *Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio* 8 (September 2005).

⁶⁴ *Id.* at 9.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 8.

Finally, 61 percent of prisoners reported that they received no information from officials in the criminal justice system (or from anyone else) about the relevant law on disenfranchisement.⁶⁸ These findings suggest that there is potential for programs designed to increase awareness of voting rights among felons who are qualified to vote. For example, the American Civil Liberties Union has instituted a campaign designed to increase felons' awareness of voting laws.⁶⁹

More generally, some of the benefits associated with political participation outlined in sections II and III may also be derived from programs encouraging ex-felons to become informed about political issues and involved with political organizations. Regardless of the structure of voting laws, there may be some rehabilitative benefit from greater participation in various aspects of the political process.

PART THREE: POLICY RECOMMENDATIONS

A. CHANGING THE LEGAL REGIME

The most direct way to avert some of the negative consequences of felon disenfranchisement is to change the laws regulating the reenfranchisement of felons. The previous section presented evidence that felon disenfranchisement disempowers minority communities and has a negative impact on individual felons' rehabilitation. The only way to address these negative consequences directly is to modify the legal regime in California.

⁶⁸ *Id.*

⁶⁹ American Civil Liberties Union Website, Voting Rights: Ex-Offenders, *available at* <http://www.aclu.org/votingrights/exoffenders/index.html>.

Available evidence suggests that a good political compromise would be to reenfranchise felons automatically following their release from prison. This option would provide a good political compromise. Although there is certainly evidence suggesting that the continuous voting rights regime of Maine and Vermont would have benefits, as described in the previous section, such a drastic change from California's practice of disenfranchising felons while they are incarcerated and while they are on parole would probably meet with considerable resistance.

To prevent political fallout, we should frame the post-incarceration reenfranchisement measure to the public as a means of helping felons reintegrate and prevent recidivism. If presented skillfully, this idea can appeal to almost everyone: the idea of including felons in the political community as a means of helping them rehabilitate themselves is intuitively appealing, and it also demands less from the general public than, say, putting a halfway house in a suburban community. By emphasizing the lower recidivism rates that tend to accompany community involvement, we can also stress the reenfranchisement measure's tendency to reduce crime, an idea that will be almost universally popular.

We might even be able to turn the reenfranchisement measure into a potential source of political gain by implementing a campaign to inform the communities that are most disempowered by felon disenfranchisement about the benefits of reenfranchisement. Although such communities are traditionally politically disempowered, they are still populated by potential voters, and demonstrating concern for their interests might have surprisingly powerful political consequences. By styling the measure as a means of helping former offenders reintegrate into society, we can win the appreciation of these

communities, and consequently gain political cache with these traditionally difficult-to-reach demographics.

As the research above has suggested, allowing felons to vote following their release from prison would have a number of benefits, both social and individual. Socially, reenfranchising felons would restore the integrity of the electoral process by providing historically disempowered communities with a voice representing their actual numbers. It would also allow felons an opportunity to express their beliefs about the issues that affect them and their families. Individually, reenfranchisement would help reintegrate felons into their communities. By providing a means of civic involvement, voting would allow felons to rebiography themselves and help create a vision of a lawful life. Ultimately, this would help facilitate the rehabilitation process, leading to lower rates of recidivism and better life outcomes for former felons.

B. CREATING REINTEGRATION RITUALS

Regardless of what point in the criminal justice system voting rights are restored for felons in California, all the available research suggests that powerful rehabilitative benefits can ensue from framing reenfranchisement as a reintegration ritual. We can maximize this benefit by making the restoration of voting rights more salient to felons and by couching reenfranchisement as a rehabilitative milestone.

Currently, there is no publicity whatsoever about the fact that felons have their voting rights restored following parole. If studies from other states are any indication, the majority of felons are not sure exactly what the voting laws in their states say, and many

believe incorrectly that they are permanently disenfranchised.⁷⁰ By downplaying the event of reenfranchisement, the criminal justice system is missing an opportunity to give felons a sense of progress toward living a law-abiding life.

One low-cost way of making reenfranchisement more salient would be to instruct all parole officers to tell felons that their voting rights have been restored at the end of parole, to congratulate them on their accomplishment, and to provide them with instructions on how to re-register to vote. This would likely have a significant positive impact on felons' awareness of their voting rights.

With only slightly greater expenditure, we could create an optional “reenfranchisement ceremony” at which felons could mark the restoration of this important right. The structure of the events could vary – the most important part is to have them – but a potentially valuable component might be a short speech or series of speeches by other former felons who had successfully rehabilitated themselves about the importance of voting. At these events we could also provide an opportunity for felons to re-register to vote: this would create both rehabilitative and logistical benefits simultaneously, because it would lower the chances that felons would simply forget to register to vote. Perhaps we could work with local grassroots political organizations to organize and host the events (thereby distributing some of the cost to non-state parties, while providing willing organizations with some publicity and a valuable opportunity to register voters who might be sympathetic to their causes). Felons could invite their friends and family, and attendees could use the ceremonies as opportunities to celebrate

⁷⁰ See Travis, *supra* note xx, at 289; Drucker & Barreras, *Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio* 8 (September 2005).

not only felons' restored ability to vote, but also their progress towards total reintegration into society.

By taking these measures to highlight the importance of voting, we will also help to ensure that the act of voting, in itself, becomes a way of periodically reinforcing to felons that they have managed to rehabilitate themselves. In turn, this reinforcement would give felons a sense of investment in existing political structures and in the community. As they face the inevitable challenges of rehabilitation, occasional positive messages such as these are likely to have a small but important benefit in helping to prevent recidivism.

C. IMPROVING FELON EDUCATION

We can also help mitigate any negative consequences resulting from felon disenfranchisement by ensuring that felons themselves are fully informed about their voting rights and that they feel empowered to exercise the opportunity to participate in the electoral process.

In prison, felons should have mandatory classes about political participation to make sure they are informed of their voting rights. Regardless of whether the law ends up getting changed, this will help remedy the problem of *de facto* disenfranchisement: situations in which felons are eligible to vote but do not realize it. The classes need not be lengthy, frequent, or time-consuming to convey the essential point that voting is a right of which they can and should avail themselves.

One constructive way to conduct these classes would be to have former felons involved in teaching them. Obviously it would be helpful for the incarcerated felons to

hear about the experiences of someone who had been in their situation and had gone through the process of disenfranchisement, reenfranchisement, and re-registration to vote. Having the class taught by someone who is basically a peer, rather than by distant and disinterested corrections personnel, also makes the process of reenfranchisement seem more manageable and less logistically daunting.

Moreover, the experience would be useful for the former felons who were teaching the classes in several ways. It would emphasize to them how far they had come in their rehabilitation by allowing them to contrast themselves with felons who are still incarcerated. By enlisting them in the move to restore felons' voting rights, it would also allow them to invest in a cause larger than themselves, a factor which Shadd Maruna argues is critical to preventing recidivism.⁷¹ Finally, it would provide them with a sense of personal accomplishment – a feeling that they had done something worthwhile that is consistent with success outside of prison. The data accumulated by Maruna and the volunteerism study conducted by Uggen and Janikula demonstrates the validity of this approach in helping former felons to avoid recidivism.

There should also be optional classes for felons who wish to become better informed about the political process, with an emphasis on the issues that affect them and their communities. While felons are still in prison, there could be classes – again, possibly taught by former felons on a volunteer basis – emphasizing the political issues that affect felons and their communities.

Evidence indicates that felons not only would be interested, but also would enjoy taking classes on the political process while still incarcerated. One individual interviewed in a study about the relationship between voting and crime responded:

⁷¹ Maruna, *supra* note 17, at 158-59, 162.

“I think that’d be a really good idea though because most of us, and, you know, me included, don’t really think about my place in society as a citizen. . . . It’s just about, “What’s going [on] with me and my immediate surroundings?,” you know? “What’s going to affect me?” Instead of, “Where do I stand as a citizen?” That’s be interesting.”⁷²

Felons’ interest in politics can be used to increase their sense of political efficacy regardless of whether or not they can vote. In a study that involved interviews with incarcerated felons, one woman remarked, “I was thinking about, like, getting involved with politics when I get out, and how I’d love to, and then I’m like, “Well, I can’t vote,” so it’s discouraging.”⁷³ However, civic education classes could be used to help felons realize that there are other ways to remain involved politically: volunteering for political causes they believe in, encouraging their friends and families to vote, educating their children about political issues, contributing to online media and other public forums, or simply remaining informed and engaging in discussions with those around them. To the extent that California’s legal regime continues to disenfranchise felons, education about the many opportunities for political involvement could help felons realize some of the rehabilitative benefits of voting.

After release, parole officers should continue encourage felons to get involved in political issues at the federal, state, or local level. The act of involvement is far more important than the particular causes involved. Thus, even if the law continues to prohibit

⁷² Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample* 18 (June 24, 2004).

⁷³ Christopher Uggen, *Barriers to Democratic Participation* 10 (March 2002).

felons from voting while on parole, felons can still gain some of the benefits that come from a sense of political efficacy and engagement with the electoral process.

Finally, we should consider developing some sort of multimedia campaign to educate felons about their voting rights. We could potentially approach various political organizations around the state to help plan and fund the campaign; those groups whose causes are likely to be supported by felons would have a stake in the campaign's success, and would likely be willing to help us. The messages could be simple and informational, perhaps merely pointing felons to a website where they could then go to access all the information they need to learn about their voting rights and how to register.

Relatedly, we could develop such an informational website at relatively minimal cost. Many felons may be somewhat transient, particularly for the first several months after their release, so information sent through the mail would be unlikely to reach everyone. However, everyone who can find their way to Internet access on a computer at a friend's house or public library could access the website and learn more about their voting rights. In addition to information about voting eligibility, when and where to vote, and how to register, we could also provide nonpartisan information about issues particularly relevant to felons, their families, and their communities. As an added rehabilitative benefit, perhaps we could even employ former felons to research, create, and maintain the website, or allow incarcerated felons to volunteer to help maintain the website under supervision.

All of these educational initiatives are designed to help felons realize their right to participate in the political process to the fullest extent allowed by law. By facilitating education about voting, we will increase the likelihood that felons will engage in the

political process and consequently reap the benefits associated with activities, such as voting, that foster community involvement. Ultimately, this involvement will help felons progress toward the goal of complete rehabilitation.

CONCLUSION

Although an isolated incidence of voting is unlikely to be outcome determinative to any individual felon's rehabilitation, available evidence suggests that voting may form part of a total picture of community involvement and civic reintegration that is vital to former offenders' successful rehabilitation. These compelling considerations favor adopting the policy recommendations in this paper.