2008/2009
Lincoln Douglas Debate
Topic Analysis

Resolved:
In a democratic society, felons should retain the right to vote

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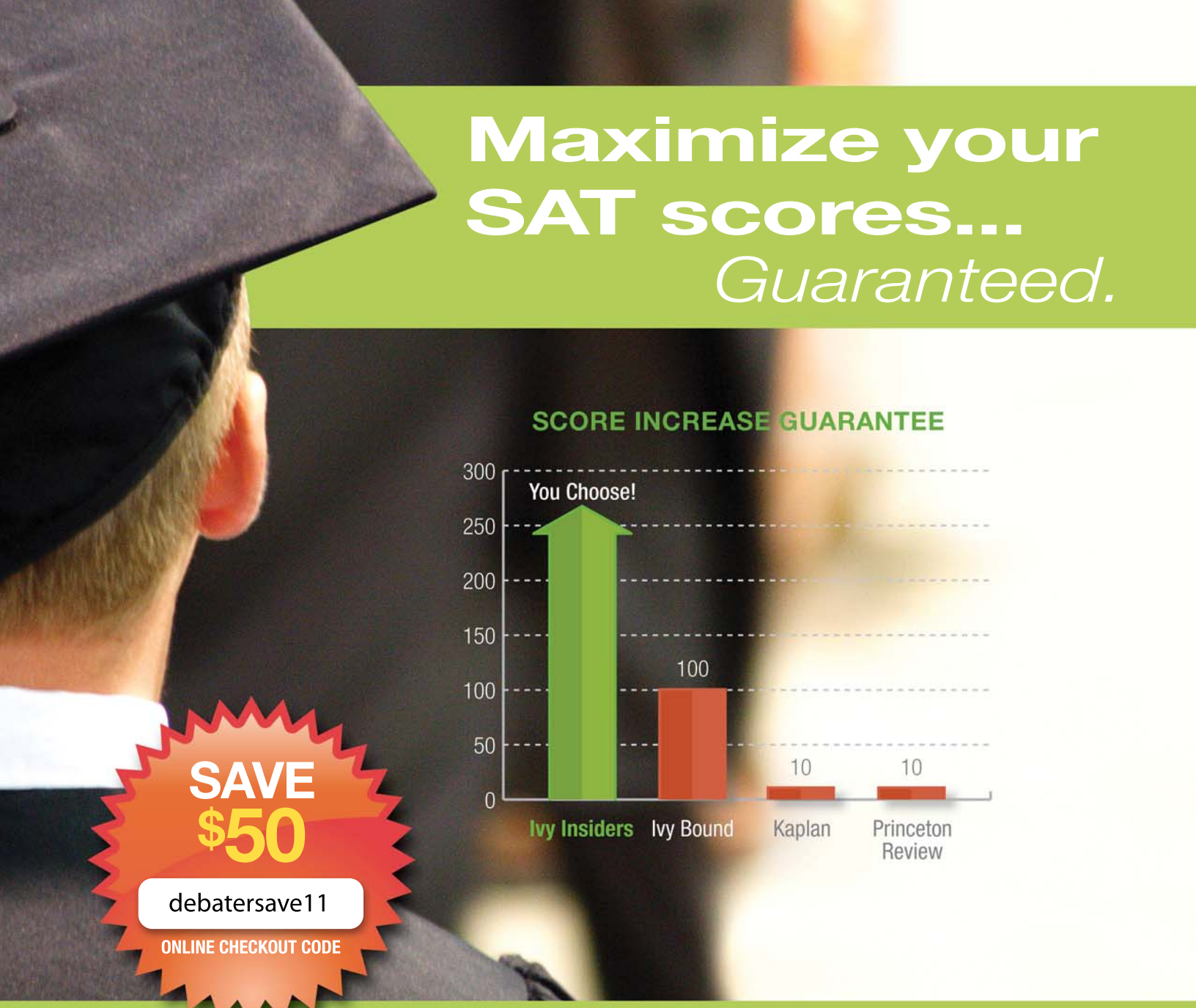

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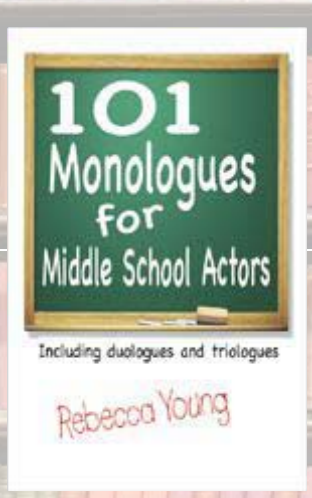

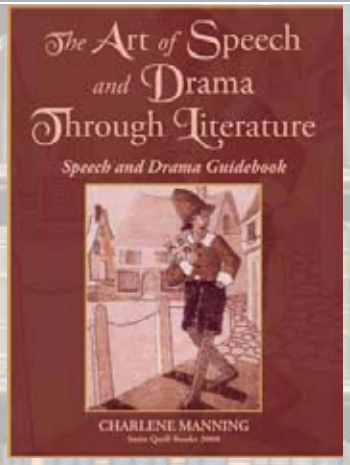

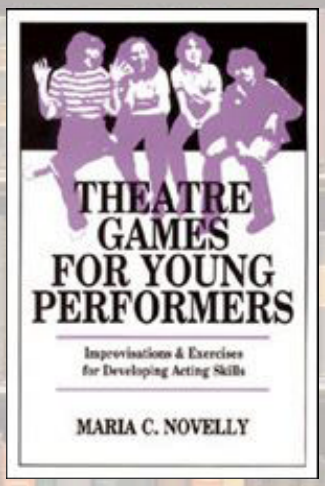

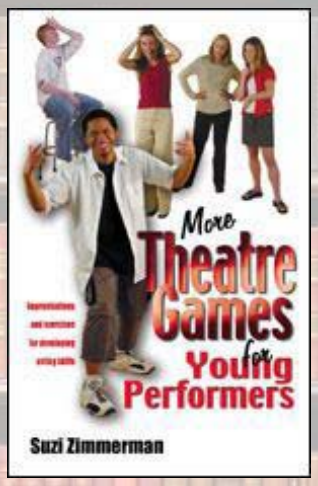

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Topic Analysis by Nick Bubb

What is a felon?

As a teacher, the attractive aspect of this topic is the opportunity to instruct young people about the legal system. Debaters who gain a strong grasp of how the legal system operates will have a significant advantage on this topic. This is because the object of evaluation in this resolution (e.g. "felons" or "felons' right to vote") is a term of art used by the legal system. Debaters who understand this term of art are more likely to write accurate and persuasive cases because they address what the resolution is discussing. In addition, the discussion of the topic will ultimately lead to other legal terms of art – e.g. "the franchise" or "common law" countries. Understanding these terms of art is important to be able to relate your position to the resolution in an intelligent way. The importance of using law review articles and other sources that make specific arguments related to your position in a legal fashion cannot be underestimated.

I will say this a lot, but, I am not an attorney. All of the legal things I write here are from an informed understanding of the legal system. Most of the time, I am writing in generalities and there are exceptions to most things. If you have specific questions, I would consult the attorney-coaches there are in the activity or attorneys in general.

So who is a felon? Well, that's simple. It is someone who commits a felony. OK, great. Now, what's a felony?

A felony is level of crime that is higher in comparison than a forfeiture or a misdemeanor. Forfeitures are minor crimes that one point or another we are all likely to commit. They are things like staying in a parking stall long after your meter has expired. Speeding can be another kind of forfeiture. Blasting your speakers at 3 in the morning is another. With forfeitures, the government issues a fine and more than likely to pay it and move on. Misdemeanors are a bit different. In general, misdemeanors are crimes like vandalism, some kinds of theft, and disorderly conduct. Misdemeanors usually involve a fine and shorter stay in a local jail (any time less than a year). Misdemeanors can also involve the loss of a license.

Felonies are the highest category of offenses. They can include things like murder, treason, grand theft, robbery, kidnapping, and rape. All pretty bad things right? For the most part, yes, but this is where most of the debate is going to take place. If you are on the negative in this debate, you want to focus the debate on the nasty things that being a felon entails. However, if you are on the affirmative there are particular aspects of what constitutes a felony that you will want to include in your definition of the debate. First, drug use can be considered a felony. We will discuss this more when we turn to the affirmative arguments. Second, repeated crimes may rise to the level of felony offenses. For example, if you are receiving your second or third DUI/DWI/OWI (Driving Under the Influence/Driving While Intoxicated/Operating While Intoxicated) depending on what state you live in, you may be charged with a felony offense. The same may even be true about speeding tickets.

A tricky thing about this topic is that felonies, in the United States are largely determined by each state. While I am not an expert, there probably are some things that are common among all states; murder, rape, and grand theft all in their lowest classification are probably all felonies in all states, even though the punishment will change. This probably slants things again to the negative. So affirmative debaters would be wise to either select their cases to address issues that are common to all states (e.g. federal felonies) or write their cases in such a way that the definition of what is a felony is unimportant to the argument about why we need to affirm the resolution.

Additionally, a bit of legal history is helpful. Again, I am not an attorney, but the topic seems to be United States specific. The reason for this is the use of the term "felon" and in particular the discussion of whether or not they retain "the franchise." There are several reasons for my thought on this. First, it appears that most other common law countries have since abandoned the felon-misdemeanor distinction in favor of a "summary offence-indictable offense" distinction. If the United States is the only country using this term, it would seem that the debate would have to be about the United States – even though the topic says "democratic society." Second, the penalty of losing the franchise (the right to vote, more on this in a bit) may be specific to the United States. Indeed, who is enfranchised has been a long and ongoing discussion in the United States and this topic seems to be a

continuation of that discussion. If it can be shown that the U.S. is the only country that awards the punishment of disenfranchising citizens, then it forces the discussion of the topic to the United States.

On the other hand, the topic clearly does not specify a country. Interpreting the resolution in such a way to make it specific to a country might be seen by some judges as being a direct affront to the topic. There is good reason for this belief. The resolution specifically says, "a democratic society" – meaning that there are many democratic societies. Debaters seeking to interpret the resolution in one way or the other need to be careful about the burdens they place on the other debater. Placing unfair burdens on your opponent is never a position that most judges will find acceptable.

For those unfamiliar with the term, "common law" refers to judge-made law. Where laws are defined through the ruling of what a prior judge has said. This is the system that is practiced in the United States and the United Kingdom (and their current/former colonial provinces). This stands in direct contrast to the civil law systems practiced in Germany and France. While it is not necessarily important to understand all the nuances between common law countries and civil law countries to do well on this topic, an excellent book that discusses the distinctions between the systems is John Merryman's "The Civil Law Tradition." The book is short, to the point, and very instructive on how civil law systems are different from common law systems. If the topic broadens to include what other "democratic societies" do, this book will be helpful in understanding how the law operates in different democratic countries.

So what happens if the topic is United States specific? What does that mean? Well, if the topic can be shown to be US specific then there probably is a lot more ground that can be granted to the affirmative about specific kinds of felony offense and making general claims about a particular legal system. (Again, more on this in the affirmative arguments).

Another idea to think about in defining the terms of the topic is whether or not any country can fit within the topic. I have given some reasons that the topic might be U.S. specific, despite the fact that the resolution clearly does not specify a particular country. A different

thought entirely is to exclude the United States from this topic. This would occur if we can show that the United States is not included in group of "democratic societies." There are some reasons to think that United States might not be included in this group. First, the U.S. denies some people the right to the franchise (a.k.a the subject of the debate). Additionally, the United States is not a pure democracy. We are a representative democracy; we do not vote on every decision. If the definition of a democratic society is one that is "democratic in all aspects" then we may have a hard time debating this topic. Because of that conclusion, this is a dumb interpretation of the resolution. Debaters ought to guide their interpretations to allow for more debate, not less. The preferred way to think about the topic is that "a democratic society" is one that allows for democratic elements where some, possibly all, citizens vote for either representatives or decisions.

A final term of art that I have used a lot is "the franchise." This means the right to vote. Debaters on this topic would do well to study the history of "the franchise" and its expansion in the United States. There have been several movements of expansion; from property-owning, white males over to all white males, to all males, to all males and females over 21, to all males and females over 18 years of age. There are also several limitations on the franchise beyond categorical limitations, such as poll taxes or reading requirements. A fundamental thing to remember is that who gets to participate determines the policy directions that the country takes.

<u>The Basic Argument – The Negative</u>

Strangely, it is easiest to begin understanding the topic from the most basic negative argument. That argument begins with the social contract. While any articulation of the social contract will work, it's best to work from Locke's version, if only because he's the most well known in the United States. Locke's social contract articulates that governments are instituted to protect the most fundamental rights: life, liberty, and property. People in society then follow basic rules in exchange for the protection of these rights. When people violate these rules, people are punished in some fashion.

When crimes are very serious (felonies), they are affronts to the fundamental rights that people retain. Accordingly, societies then seek to punish those individuals in a way similar to the crime committed. If Joe the Plummer murders Bob the Builder, we might restrict Joe the Plummer's liberty by confining him to life in prison. Joe the Plummer is no longer free to do whatever he wants, because he violated someone else's fundamental right to life. One of the liberties Joe the Plummer forfeits as a result of his crime is his liberty to vote.

The basic position of the negative is then, that there are basic rules in society and that violating these rules entail that you lose your ability to participate in that society. This seems simple, right?

Wrong. There are a number of crucial links that the negative has to establish in order to make this case more persuasive. First, with the described position the negative has to establish why it is important for the punishment to include the loss of the franchise. It makes sense that society would want to punish individuals in some fashion if an individual commit a crime. But I think the negative needs to establish why it is important that the government deprive people of their right to vote. There are several reasons why a government might want to do this. One could argue that these people have committed a crime against another citizen's fundamental rights and should not be a part of society because they are a risk to those fundamental rights. Here is why it is important for the negative to reflect upon the severity of a crime that becomes a felony. If we are talking about murders, it's much easier to agree with the negative. Another argument the negative could make is that if they are not disenfranchised, these individuals have a vested interest in voting for candidates and policies that are going to be light on crime. This may introduce some weird incentives into our political system that we do not want. There may be other arguments. Smart negative debaters will establish this link in one form or another in their negative case.

Second, the negative ultimately has to make some argument that connects back to the needs of a democratic society. For example the negative must be able to answer why a democratic society needs to be to exclude some people. The social contract argument will ultimately answer this with "that's what the agreed rules are." However, this response does not

ultimately answer the claim about why the rules were defined in the way they are. There are reasons behind the social contract framework, but negative debaters are going to think about what those are in order to make their case more persuasive.

Affirmative Arguments

There are two basic affirmative arguments. One strand of affirmative arguments will be rooted in arguments about democracy. The second strand of argumentation will be rooted in equality. There may be different variations in each of these arguments, but ultimately an affirmative argument will probably come down to one of these strands of argument or another.

First, let's deal with the democratic argument. I think this one is pretty simple. Democratic societies define themselves on the participation of all citizens on the decisions that affect that society. In democratic societies, citizens vote for the policies or candidates that they think best reflect their interest and the interest of their country. If people are excluded from that process of determining the best candidate or policy for a country, then ultimately the society loses out. Thus, no matter what a person has done before it is not important to the process of reaching a decision. So long as all people who wanted to be included were, then the process worked. This view is ultimately procedural. Felons ought to retain their right to vote in order to make the process of democracy work.

Another spin on the same idea is based on debate and discussion. The fundamental tenant of a democratic society is that the best decisions are arrived through a healthy debate and discussion. No one person is better than another's. To exclude voices from a debate and discussion will ultimately result in an incorrect candidate or policy that could lead to disastrous consequences. Lots of authors discuss how this is important. This line of argument is also ripe for the Nazi example, but please do not go there. You can make this argument effective without invoking the Third Reich.

The second main branch of affirming deals with equality. This main brand of affirmative argument becomes significantly strong if it is coupled with specific examples. This

affirmative argues that depriving felons of their right to vote makes them unequal citizens. This is bad because all citizen should at least be equal under the eyes of the law and this system forces the opposite conclusion.

How exactly might this brand of affirmative be made stronger? While the 15th amendment specifically prohibits denying the franchise on the basis of race, one could argue that felonies have de facto become a way to bar people of racial minorities the right to vote. This is because there is a disproportionally higher number of racial minorities in prison because of felonies than there is of another race. Some authors claim that racial minorities are prosecuted at the felony level unfairly due to their race. Others might take this claim further and argue that disenfranchisement might be an ulterior motive for raised punishment. Affirmative debaters can use these arguments to illustrate that it is wrong to deprive people of their right to vote because some one is determined a criminal, because that definition of who is a criminal may be biased.

A particular brand of this affirmative will more than likely deal with drug use. The sale and growth of most drugs is a federal offense. The use of some drugs may also constitute a federal offense. Many affirmatives are more than likely going to take on the war on drugs as systematically disenfranchising people who commit a harmless crime. This is where what is define as a felony can be supportive to the affirmative. Central to these positions, affirmative debaters will claim that some crimes should not be felonies and to deprive people of their right to vote without actually harming another person calls into question how equal our democratic system is. Additionally, racial minorities are a disproportionately higher percent of people who are in federal prisons for drug related crimes. Again, affirmative debaters may point this out as a basis for arguing that the system of laws and punishment the nation has set up is fundamentally unjust.

A similar version might also deal with people who need mental health services, but are not receiving them. Again, this position would claim that the laws of the United States as not being fair and then proceed to argue that disenfranchising people when the laws are unjust is fundamentally unequal. This version would argue those that commit crimes related to drugs or alcohol might be because these individuals need counseling or other health services that

we are not providing. Their repeated crimes are not ultimately their fault, but the fault of a system that is not providing them mental health care. Disenfranchising them is fundamentally unequal because ultimately the person is not responsible for this crime.

The problem though with specific felon affirmatives is that they fail to realize the importance of rendering a verdict. If an individual is judged as guilty for one of these crimes, that means that a jury believed beyond a reasonable doubt that he or she was guilty. Mental health reasons for committing the crime are criminal defenses and can be successful. But if we are talking about people that are felons, they have already been convicted. So that criminal defense was more than likely unsuccessful. Affirmatives need to make sure that they make claims about the legal system, rather than specific kinds of defendants.

Dumb Arguments

The resolution is an absolute statement. So I would expect some people to return to the "resolution as a truth statement" theoretical argument as their main basis for negating the resolution. Their position will probably work in the following way: felons currently lose their right to vote, the U.S. is undemocratic, therefore the resolution is false. This is a dumb argument. A statement of fact does not resolve the greater debate as to whether or not felons ought to retain their right to vote.

I pointed out earlier that the right to vote is implicitly tied to policies and candidates. This may tempt some people to raid their policy team's politics disadvantage file. Regardless of the thesis, these are also dumb arguments. Just because the affirmative articulates reasons why felons ought to have the right to vote, does not mean that the affirmative argued for any policy action to occur. This makes it impossible for a negative to get a link to a politics disadvantage. On top of that, an action giving the felons the right to vote is likely to operate outside of the normal political process because the 14th amendment allows for felons to be disenfranchised. This means that any action enfranchising them would need to work through the methods proscribed in Article V of the Constructions and wouldn't really link anyway. And the introduction of a disadvantage ultimately won't answer the question of whether or

not felons should or should not have the right to vote, which is ultimately the main question of the resolution.

Topic Analysis by Ryan Hamilton

Editors note: We have attempted to try to solicit a topic analysis from someone who strongly believes in one side of the resolution. As such, this topic analysis will definitely sway to the negative. It is an approach we are trying in order to see if it makes sense to have our writers do more with their personal beliefs on a resolution. We certainly welcome feedback. Sent to help@victorybriefs.com with your comments!

The negative debater has the more difficult position, especially when one considers the political and ideological makeup of a significant number of liberal judges who are predisposed to enfranchising criminals and the like. There are several compelling arguments that wise negatives can forward that will greatly improve their chances of winning and expose several of the flaws in the positions that most affirmatives will be running.

The first important consideration is the nature of voting: I think many people will make the mistake of equating voting with the sort of right that is enshrined in the constitution, but it is not. To be sure, when the constitution was written voting was limited to property holding white men and through the course of time different groups have been enfranchised until it included all individuals over the age of eighteen. Property holding white men were given the right to vote for two primary reasons: legislation was thought to disproportionately affect them (taxation in particular) and they were also considered more qualified than your average bubba walking the streets. When I say more qualified, I mean that it was though that this demographic were especially equipped in two ways: they either worked hard and smart enough to acquire a fortune and land, or they were related to someone who had done so and probably picked up a few things from then. They were thought to be the most important shareholders in society not only because they had the most to gain or lose, but also because they were the only people talented and intelligent enough to be good stewards of society. Voting was supposed to be a way of decentralizing the power in American society: they'd come from a relatively autocratic King and Parliament, and important colonial policy was not decided in New York or Richmond and for the respective constituencies of those colonies, but rather from London and for all British subjects in the United States. If you look at voting in this way – as a means of decentralizing political power, making electors out

of qualified citizens to influence decisions, in a way making every eligible person capable of influencing policy – then the idea becomes much more clear that we want individuals who are highly qualified to influence that policy. While we may no longer think that owning real estate and being of a particular race or color is important, that doesn't mean that we can't decide on new qualifiers that are more relevant to dictating the course of society.

This delineation is important – no one is entitled to be enfranchised than they are to be Mayor or President, because voting is just a temporary decentralization of that power (which goes on to be recentralized in the person elected). It is not, I repeat, it is not a right in the same way that I have a right to own a gun as an individual or to be able to speak my mind or to not have troops quartered in my house. It is a mechanism through which we govern our society, and insofar as that is true we have the ability to extend this privileged mechanism to whomever we so decide, as long as it isn't overly arbitrary. Voting is sometimes so unimportant it is used only as a barometer, or a horse and pony show – when we vote for the President, we're really just expressing an aggregated will of who ought to be President, which our state legislatures may then opt to take into consideration and send electors who have pledged to be faithful to this aggregated will – or they can opt to send whomever they please, who will vote then for whoever they please. The idea behind this is that the state legislatures are better equipped to select individuals who can make the important decision as to who ought to be given the important decision of who should be the nation's chief executive.

There are strong arguments against universal suffrage, as philosophers from Aristotle's time period to today have noted. For instance, would you trust your future (or anything else) to the average group of American citizens who simply put the effort into showing up on election day, with no other qualifications? I doubt it. The universal suffrage idea is the sort of prescription that denies reality and asserts the equality of every man, it springs from the leftist idea that man can be perfected if he is simply given the right tools and conditions. But that idea is laughable in many circles, especially religious ones: when a person know that man's nature is not perfect, they carry with them suspicions of proclamations that entitled every person to something regardless of mitigating factors. That having been said, most

conservative philosophers would probably advocate stringent requirements on voter qualification. These requirements, however, are unlikely to win debate rounds.

The system that is devised to include all people as electors is one motivated purely by ideology and not by reality, the system motivated by practical considerations would necessarily exclude particular people from voting on the basis that they simply do not meet a threshold to determine how society should function. Voting is also unique in this way: can I perform in any other field without passing some qualifying test? I cannot even cut hair without being examined by the government, and the great irony is that I have an equal say in how the government examines the hair cutters. For goodness sake, I even have to apply for a permit from the appropriate government agency to assemble in a public place, which is an explicitly guaranteed right in the first amendment. This right – which is supposed to be more important than the privilege of voting – can be overruled by municipal concerns. A political petition to assemble in Central Park was denied because the grass was newly planted in the place that the petitioners wanted to meet. It simply doesn't make sense that the state doesn't consider me qualified to cut hair (or baby sit professionally, or own a gun, or to get together with a group of people to express ourselves in public, or incorporate any sort of business, for that matter) but it does consider me qualified to have an equal stake in the regulation thereof – as though that were a less complex issue than the act itself.

It would seem, then, that the most generous society (and the position most likely to win debate rounds) would enact particular disqualifiers for voting as narrowly as possible, setting wide parameters that make sure that as many people possible qualify to have the opportunity to vote. Excluding felons is particularly generous and relevant, since they are the people who have been found beyond a reasonable doubt to be unable to abide by the laws of society – if they cannot meet this minimum criteria, which is to say lawful living, then they should not have an equal say in the creation of laws and the ordering of society. No one would consider bursting into an auto mechanic's shop and telling him which tube or wire to put in which hole or connect to which cranny without appropriate training. No one would consult a man with no specialized training AND a record of "repairing" cars in such a way that destroys them, but everyone thinks that they are entitled to have a say in how society is run without any specialized or formal training whatsoever. That doesn't seem to make

sense, but we go with it anyway – it is only reasonable or fair then that we have some basis for excluding people who have proven themselves (it is therefore not even speculative) to be unable to follow the law to not get an equal say in how the law is shaped or who shapes the law.

Another important consideration is that felons are not entirely disenfranchised from the political process – they can still write letters, deliver speeches, consult with candidates personally or through correspondence, influence public opinion in one way or another, or do any number of politically significant things to help their cause. They just can't vote – and this prohibition is instituted for a fair and appropriate reason. It is not arbitrary or capricious in anyway. A problem with this argument is that I think in some constituencies, felons can actually *run* for office – I know it hasn't stopped Jim Traficant for running for Congress in Ohio or Lyndon LaRouche for running for President, but it might be because their offenses were Federal crimes.

Why would anyone advocate for including felons in the voting rolls? Well, one argument is that if I murder a man, it really has nothing to do with my capacity to make a good decision on whatever question is put at the polls. There is an argument that everyone is entitled to vote because one person's opinion on moral or community matters can't really be determined to be superior to another's. This is a valid argument, but I think we can say with a high degree of certitude that those who have violated what we have expressed as moral or communal standards codified into law are unable to judge them adequately. I think nothing could be further from the truth: ultimately the questions at the polls are ones of governance and law, and if I cannot restrain myself from breaking the laws that I am supposed to be qualified to make, then I clearly don't have the "voting countenance." To use an earlier analogy, no one would trust a mechanic whose remedies often result in the car breaking down again. Why would we trust a law-breaker to be a part of the law-making process? Why would we trust an agent of social disorder, if only once, to be a part of the social ordering?

Another argument might forward that a felon, after he has served his time, should be re-enfranchised. This assumes that voting in some way resembles rights - something that the

person who votes is entitled. No one is entitled to be able to vote, it is not a guaranteed right. This mean it isn't something that can be restored

Lastly, you are nearly bound to encounter the notion that voting has something to do with respecting the worth of an individual, some class of this malarkey. But that argument raises more questions than it answers – if I am given the privilege to vote, which respects my worth, what happens if I elect not to vote? Do I disrespect my own worth? Is that allowed? What about if a person doesn't have the ability to vote – what this argument is saying is that to be a whole person, they need to vote? What about the citizens of Luxembourg, one of the most prosperous and free societies – they don't get to vote for their head of state, likewise with the UK. Clearly we don't think that these nations have "lesser" people, or that their governments are the fifth horseman of the apocalypse as that popular analysis reads, they aren't dehumanizing their citizens. This argument is just a bridge too far when it comes to voting, especially when you look at voting for what it is: a tool, not a right.

If you use the strategies, particularly the inconsistencies with allowing everyone to vote, and are also wary of arguments that try to turn this debate into something about the abstract worth of every human being, the negative can be very successful. In this debate, the negative position enjoys the ability to rely on practical considerations and not be driven by an entirely ideological narrative about how all men are equal – they can concede that ground for the purposes of rights in governments, draw a hard line against it, and illustrate why the affirmative position is just too abstract and inconsistent to make much sense.

Topic Analysis by Peter D VanElswyk

Editor's note: This is an advanced topic analysis that is meant to suggest some advanced strategies. It is not really recommended for novice debaters.

A useful heuristic for assessing the quality of a topic is the flexibility it allows for what one can advocate. Ideally, topics at the beginning of the year have clear stock ground so novices can learn the mechanics of debating while still having freedom for advanced debaters to affirm and negate in creative ways. This topic is wonderfully flexible. Since other topic briefings will chart the stock terrain on this topic, in this briefing I will explore some of the more flexible cases allowed. In doing so, I will assume a certain level of reader familiarity with the ideas being discussed. If one is new to debate, then you might not find this brief very helpful.

Plans, Counterplans, Politics, Oh My!

This topic reopens the possibility of the 1AC reading a plan. There is an implied agent ("democratic society"), there is an action verb ("ought") and there is a legislative mandate ("retaining the right to vote"). Given that "ought" is etymologically related to "should", the key term in every policy debate topic, all running a plan requires is that one justify the parametrics of isolating an actor in a particular time and place. Since most of the relevant topic literature concerns the US Federal Government it's the best choice for an actor.

Counterplans

The fun that is to be had running a plan on this topic is equally to be had on the negative. In addition to being able to reasonably defend the status quo from the perspective of politics arguments, the negative has a number of counterplans at her disposal. I will discuss three here.

The first two counterplans are structured similarly. Instead of retaining the right to vote for *all* felons, this counterplan would isolate types of felonies that one, after having committed, should not retain the right to vote. For example, one could argue that those who are felons due to voter fraud ought not be allowed to vote again. They have cheated with regards to the voting procedures and have thus forfeited their right to vote again. Similarly, one could argue that those who are felons due to campaign finance fraud should similarly be unable to retain the right to vote. Those who commit such crimes do not make up the majority of felons so as to change the outcome of an election if they do not vote, and they are often white rich men so it does not alter the impact of any racial enfranchisement 1AC. Accordingly, the will solve enough of the 1AC plan to still garner the advantages without incurring any accompanying disadvantages.

The second strategic way to structure a counterplan is to isolate a timeframe for when one should not have the right to vote. In many states ex-felons who have served their jail time are still barred from voting. Similarly, many states do not allow felons to vote even when they are on probation. Thus, even if they are for all intensive purposes a normal member of society affected by government policy in the typical ways they are still unable to vote. This counterplan would argue that they should not retain the right *while still in jail*. After they are outside of the jail they are able to vote. The justification for such a counterplan could take a variety of directions. One could argue that the punishment of jail time requires removing the right to vote to be effective. Or one could argue that if felons can retain the right to vote only if they are released or on probation then this incentivizes inmates to be on good behavior to get the right to vote returned to them.

Keep in mind that if one does decide to run a counterplan that one should have theory blocks to answer the usual barrage of anti-counterplan arguments (e.g. neg no fiat, pics bad, topical counterplans bad). In my opinion these arguments are the only substantial offensive arguments against the counterplans I have discussed.

Democracy, Power, and Rights

The directions affirmatives and negatives can take their cases and the links they will invariably generate to interesting kritiks are seemingly endless. Simply put, the interesting philosophical arguments to be made with this topic are abundant. The cases ideas I will talk about below are in no way exhaustive but they are a good starting point for critically debating this topic.

Democracy & Power

How one articulates and understands democracy will shape the reasons a felon should or should not be able to vote. Roughly speaking, democracy concerns the political power distributed to people. Hans Kelsen[1] explains:

> The original meaning of the term "democracy," coined in the political theory of ancient Greece, was: government by the people (*demos* = people, *kratein* = govern). The essence of the political phenomenon designated by the term was the participation of the governed in the government, the principle of freedom in the sense of political self-determination; … [Additionally] since not only democracy but also it's very contrary, autocracy, may be a government for the people, this quality [of being for the people] cannot be an element of the definition of democracy… [Thus] whether there is a direct or a representative democracy, it is in both cases a *procedure* [by the people], a specific method of creating and applying the social order constituting the community, which is the criterion of that political system which is properly called democracy.

Within this formulation, however, there is much leeway in terms of how this power is distributed and how it ought to be used. A key question that will surface in many debates concerns the *boundaries* of democracy. When is a democracy no longer a democracy? Can a democracy do undemocratic things and still be properly called a democracy? A lot of theorists navigate these questions by arguing that democracy is anti-teleological. What people like Lefort, Derrida, and Stavrakakis mean by this is that democracy is opposed to having a particular end around which it is oriented. Democracy just is a system of dispersed political

[1] Kelsen, Hans. "Foundations of Democracy," *Ethics*, 66.1 (Oct., 1955), 2-3.

power. Derrida goes so far as to say that democracy is an "essence without essence."[2] On this view, who counts as a "citizen" with voting privilege is just as dynamic and fluid as the content of particular law. Thus, there is no "ought" for democracy. It has no responsibility to seek good ends, good *telos*. Rather, it is just an arrangement of power.

Others, however, argue that democracy does have a particular essence. Following Kelsen, they would argue that democracy is government by the people and that if this is foundation of democracy ever changes then it ceases to be a democracy. People like Pierre Manent argue that democracy requires a number of preconditions to properly exist. What Manent harps upon is that democracy requires *nationalism*. Such a claim is not alone in academia. Laclau, Mouffe, and others contend that nationalism is necessary for democracy because it causes "agonistic struggle" between different political groups. This kind of argument could be made on either side. Negatives could argue that nationalism requires an outsider to exclude in order to have meaningful boundaries of who is included in the nation. Thus, since felons are stripped of their voting rights they are excluded from political channels. This exclusion is necessary for nationalism, and thus necessary for democracy. The affirmative, however, could structure their case around preventing nationalism. If universal suffrage breaks up the formation of national identities then it makes the violence that nationalistic governments are likely to cause less likely. It also ushers in the possibility of having a more transnational outlook if those included in suffrage are outside the scope of normative conceptions of citizenship.

Democracy & Rights

A corollary of power is political, civil, and human rights. Loosely, rights are trump cards that a citizen is given by the state that are zones of privilege and non-interference. If one has a property right, then they possess a plot of space which the government cannot take. If one has a right to healthcare then this is a commodity that the government owes the citizen. This interplay between political subject and political sovereign is rich with interesting literature for cases.

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[2] Derrida, Jacques. *Rogues*, Stanford University Press (2005), 32

Giorgio Agamben is a philosopher whose insights can be drawn from for both sides of the topic. On the affirmative one can contend that felons exist in a state of exception. They reside in prisons with no meaningful power to exercise over the prison. What's more, since the State operates the prisons, if there is abuse of prisoners then the State is only accountable to itself. In this way, giving felons the right to vote provides them with a channel by which they can exercise power of the institutions that govern them. Such a position would also invariably draw from Foucault's writing on prisons that would dovetail with Agamben arguments and evidence because of their mutual emphasis on biopower. On the negative one can argue that the notion of rights, and its distribution from the State, is that from which biopower is derived. Elaine Kelly[3] explains:

> Agamben wants to critique modern democracy because of the faith the West invests in it as capable of creating a just system of government which privileges life and security, especially when coupled with liberalism. Agamben acknowledges that this critique should be exercised with "every caution" and duly recognises the "conquests and accomplishments of democracy" (10). The critique is twofold and encapsulates what he refers to as the *aporia* of democracy (9). Firstly Agamben attacks rights based systems as "offering a new and more dreadful foundation" for sovereign power to work with (121). In Agamben's view, rather than being liberatory, rights promise a subjection to the violence of sovereignty and create the conditions for "states of exception." Thus he contends that theorisations of the sovereign exception need to extend to democratic states as there is "an inner solidarity between democracy and totalitarianism" (10). […] Therefore whilst there have been historical variances, underpinning both forms of political regime is a commitment to sovereign power, the "state of exception" and consequently bare life.

If the rights themselves are what cause the state of exception, then giving voting rights back to felons will not close the state of exception. It will widen it. This style of argument and the criticism that it makes of rights is also one that the negative will find much to draw upon.

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[3] Kelly, Elaine. "Democratic Hospitalities: National Borders and the Impossibility Of the Other For Democracy" Transformations 16 (2008), http://transformationsjournal.org/journal/issue_16/article_02.shtml

Whether it is Glendon's criticism of rights talk, Arrigo and Williams's application of Derrida's writings on the gift to rights, or critical race theory's complaint that rights reinforce white privilege, critical perspectives on rights will be an integral part of this debate topic.

Conclusion

If is not familiar with critical literature, then this topic provides an invaluable opportunity to become acquainted with a realm of literature that is immensely popular in debate. Since this topic concerns democracy, power, and rights and these are these are the staple concepts of contemporary critical thought one will not be able to exhaust the literature on this topic. Unlike the last topic where one could have easily have read every article every written about the Trolley dilemma, this topic will be fairly inexhaustible. Thus, in addition to the names of authors already mentioned I have provided a (short) list of other important theorists who will be relevant for this topic at the bottom of this brief in addition to key search terms.

Authors:
Bonnie Honig
William Connolly
Seyla Benhabib
Nancy Fraser

Search terms: democracy-to-come, political agonism, homo sacer + democracy, barelife + democracy, democracy + biopower, democracy + [author mentioned in this topic analysis], otherness + democracy, rationality + democracy, discursive democracy, democracy + violence, democracy + race, felon voting + biopower, etc

On Democracy

A Description Of Three Models Of Democracy

David Held, "Democracy: From City-states to a Cosmopolitan Order?", Political Studies, 1992, 10-39

Within the history of democratic theory lies a deeply rooted conflict about whether democracy should mean some kind of popular power (a form of politics in which citizens are engaged in self-government and self-regulation) or an aid to decision-making (a means of conferring authority on those periodically voted into office). This conflict has given rise to three basic variants or models of democracy, which it is well to bear in mind. First, there is direct or participatory democracy, a system of decision-making about public affairs in which citizens are directly involved. This was the 'original' type of democracy found in ancient Athens, among other places. Secondly, there is liberal or representative democracy, a system of rule embracing elected 'officers' who undertake to 'represent' the interests or views of citizens within the framework of the 'rule of law'. Thirdly, there is a variant of democracy based on a one-party model (although some may doubt whether this is a form of democracy at all). Until recently, the Soviet Union, East European societies and many third world countries have been dominated by this conception.

Individuals Have A Decisive Place In Governing Affairs

Vincent Ostrom, The Meaning of American Federalism, 1991, p. 17-18.

I view American federalism as a system of government in which a serious effort has been made to come to terms with the possibility that people might, in some significant sense, "govern" and to avoid presuming that "the government" governs. The American federal system obviously has reference to multitudes to governments – a national government, fifty state governments, at least 80,000 units of local governments, and great numbers of corporations, cooperatives, unions, clubs, families and kinships, and other forms of voluntary associations governed in accordance with their own charters, bylaws, and mutual understandings. "Governments" govern in a limited sense.

But in this configuration of relationships, people have a decisive place in governing affairs. People coordinate complex patterns of interaction with one another while taking account of diverse communities of relationships. So people too govern. The constitution of order in a self-governing society turns upon how those configurations of relationships get put together."

Democracy Is Rooted In Consent

Gus diZerega, "Reply to Piccone and Ulmen," Telos, Winter 1995, no. 102.

Democracy as I use the term has its roots in consent. Its earliest theorist is Aristotle, particularly his theory of uncorrupted polities. Its more contemporary form arose from the thinking of the democratic republicans of the American Revolution. Their political ideal was not majority rule but practical consensus. Their constitutional task was not to empower the majority but to so structure decision-making that the political choices made would tend to have the support of much more than a majority, yet not require so much agreement that no decisions could be made at all. New England town meetings and Quaker meetings are examples of this kind of democratic self-government."

Most Authors Define Democracy According To Three Characteristics

Austin Ranney, University of Illinois, Willmoore Kendall, Yale University, Democracy and the
American Party System, 1956, p. 23.

"Most writers on democracy, whatever else they may insist must be present in order for a government to be called a 'democracy,' are, as we noted in the preceding chapter, committed to the view that it must exhibit the following minimum characteristics: (1) Those who hold office in it must stand ready, in some sense, to do whatever the people want them to do, and to refrain from doing anything the people oppose; (2) each member of the 'community' for which it acts should have, in some sense, as good a chance as his fellows to participate in the community's decision making – no better and no worse; and (3) it must operate in terms of an understanding that when the enfranchised members of the community disagree as to what ought to be done, the last word lies, in some sense, with the larger number and never the smaller – i.e., the majority of the electorate and not the minority should carry the day. So much, we repeat, seems pretty well agreed on all sides."

Repression Is Undemocratic

Burton Zwiebach, Professor at Queens College, Civility and Disobedience. Cambridge: Cambridge University Press, 1975, 166-167.

The existence of repression may be a sign that the democratic process is breaking down, particularly if we associate certain rights with democratic government. A democracy is not a democracy because its constitution says so, but because its actions make it so. The existence of repression or the invasion of rights is at least a sign of democratic failure. In that case, the course of wisdom is not to demand unquestioned loyalty to a faltering process; it is to see how the failure may be redressed…. At any rate, it would be foolish to argue that, in principle, disobedience is wrong at this point, for that would mean we have no recourse but to trust that the process which has worked to deny a right may be counted upon to retrieve it.

Three Definitions Of Democracy

WordNet 2.0, "democracy" – Overview for "democracy"
The noun "democracy" has 3 senses in WordNet.
1. democracy -- (the political orientation of those who favor government by the people or by their elected representatives)
2. democracy, republic, commonwealth -- (a political system in which the supreme power lies in a body of citizens who can elect people to represent them)
3. majority rule, democracy -- (the doctrine that the numerical majority of an organized group can make decisions binding on the whole group)

Three Definitions Of Democracy

"democracy." A Glossary of Parliamentary Words Online.
<http://www.aph.gov.au/find/glossary.htm>
Democracy:
1. a way of governing a country in which the people elect representatives to form a government on their behalf
2. a country with such a government
3. the idea that everyone in a country has equal rights

The Requirements For A Democracy

Joan Spero and Jeffrey Hart, "Democracy." The Politics of International Economic Relations. Online. <http://www.indiana.edu/~ipe/glossry.html>

Literally, the term means power of the people (combining the Greek words demos, meaning "the people," and kratien, meaning "to rule"). It is usually used to describe a political system where the legitimacy of exercising power stems from the consent of the people. Accordingly, a democratic polity is often identified by the existence of constitutional government, where the power of the leaders is checked and restrained; representative institutions based on free elections, which provide a procedural framework for the delegation of power by the people; competitive parties, in which the ruling majority respects and guarantees the rights of minorities; and civil liberties, such as freedoms of speech, press, association, and religion.

Americans Lack A Clear Definition Of Democracy

Austin Ranney, University of Illinois, Willmoore Kendall, Yale University, Democracy and the American Party System, 1956, p. 2.

Most of us, then, 'believe in ' democracy. We can pay a social institution we like no higher compliment than to call it 'democratic.' We can cast no greater slur upon an attitude or an institution we dislike than to brand it 'undemocratic.' This is not, however, a sign of democracy's triumph in the United States; for -- let us face it -- Americans do not have any clearly understood and generally accepted notion of what democracy is. Our apparent agreement upon the desirability of 'democracy' masks considerable disagreement about what the word means."

Popular Sovereignty May Not Be Fundamental To Democracy

Austin Ranney (University of Illinois) and Willmoore Kendall (Yale University), Democracy and the American Party System, 1956, p. 24-25.

We must notice at once, however, that the notion that popular sovereignty is fundamental to democracy is highly unpalatable to certain present-day writers. Of special importance in this connection are the writers, mentioned in the preceding chapter, who proclaim that in a true democracy there can be no unlimited power -- that a State is democratic only so long as certain individual rights are entirely removed from the power of any governmental agency, whether popularly controlled or not. To them 'limited government' or 'constitutional government' is an essential attribute of democracy. Such a position, of course, is difficult to square with the assertion that popular sovereignty is a basic element of democracy."

On Punishment

Justifications for punishment

Richard S. Gebelein, "The Rebirth of Rehabilitation: Promise and Perils of Drug Courts," *Corrections Forum*, v. 9 (6), Nov/Dec 2000.

Several traditional core justifications or purposes for sanctions have been recognized:

- Retribution or punishment, sometimes called just deserts—the idea that the offender should receive the punishment deserved for the crime committed.
- Deterrence-the notion that fear of punishment will deter people from crime. It can be specific (geared to the offender) or general (geared to a type of offending).
- Incapacitation-placing the offender in custody so that he or she cannot commit additional crimes.
- Rehabilitation-the idea that offenders should be reformed so they will not commit crimes again.
- Restoration - the use of criminal justice processes to rebuild the relationships among the victim, community, and offender that were disrupted by the crime and to repair the harm done,

Restoration encompasses rehabilitation through the accountability it requires of offenders.

Purposes of punishment

R.E. Gahringer, "Punishment and Responsibility," *Journal of Philosophy*, v. 69 (10), May 22, 1969, p. 291.

There are three traditional views of what we are doing when we punish: (a) that we are attempting to deter or prevent future crime or wrongdoing; (b) that we are attempting to reform a person who has done wrong; and (c) that we are indulging in retribution, inflicting a just return on the wrongdoer for an offense.

Three criteria for punishment

D. F. Thompson, "The Means of Dealing with Criminals: Social Science and Social Philosophy,"
Philosophy of the Social Sciences, March 1975, v. 5 (1), p. 2.
A full assessment of any particular means of dealing with criminals would consider their efficacy in achieving the aims of the legal system; the extent and nature of the other effects on criminals and society; and the distribution of their effects throughout a society.

Criteria I: Efficacy

D. F. Thompson, "The Means of Dealing with Criminals: Social Science and Social Philosophy,"
Philosophy of the Social Sciences, March 1975, v. 5 (1), p. 2.

First, we can determine whether a method is more or less *effective* in preventing crime than other alternatives. This criterion is one that utilitarians naturally stress, but retributivists can hardly ignore it completely. Although some retributivists maintain that criminals deserve to be punished whether or not the punishment deters, very few would be willing to argue that punishment would be justified if it actually contributes to an increase in crime. And, as we shall see, there is some evidence that such may be the effect of imprisonment. Effectiveness, of course, cannot be the only criterion for assessing means of dealing with criminals; the most effective methods could violate certain moral principles or produce certain undesirable consequences that would outweigh the gains of efficacy.

Criteria II: Least impact on non-criminals

D. F. Thompson, "The Means of Dealing with Criminals: Social Science and Social Philosophy,"
Philosophy of the Social Sciences, March 1975, v. 5 (1), p. 2-3.

A second criterion is that any particular method can be more or less *limited* in scope than other alternatives; a method is better to the extent that it has relatively little effect on *(a)* a criminal's values and beliefs beyond those specifically related to the crime; and *(b)* other members of society such as the criminal's family or persons with whom he comes in contact. Some of these incidental effects, of course, may be beneficial while others may be harmful to the criminal or society, but this criterion by itself makes no distinction between beneficial and harmful effects. The criterion is founded on a conception of the legitimate purposes of the criminal law. These purposes are not, in most liberal views of the state, permitted to extend beyond the prevention of certain offences, and thus they would exclude, for example, the use of criminal law to make a person a 'well-adjusted member of society'. A presumption in favour of leaving members of society as free from state coercion as possible, and an assumption that even criminals (except 'enemies of the state') are members of society, argue for minimizing the impact of any method of dealing with criminals.

Criteria III: It is fair to all

D. F. Thompson, "The Means of Dealing with Criminals: Social Science and Social Philosophy,"
Philosophy of the Social Sciences, March 1975, v. 5 (1), p. 3.

The third criterion, referring to the distribution of effects, is that a particular method is more or less *fair* than alternatives; a method should be approximately equal in its effects on criminals who are guilty of similar crimes and have similar criminal histories. A crude system of fines, for example, would affect poorer criminals more than richer ones and would in respect be unfair. The idea of fairness or equal treatment is often thought to be inherent in the notion of law or a legal system itself, but since it is possible (and sometimes desirable) to speak of laws as unfair, or as being unfairly applied, the principle of fairness needs the further specification that the theory of justice supplies. But the rather specific criterion used here does not require one to choose between (say) a utilitarian or contractarian theory of justice.

Stopping recidivism isn't the only reason for punishment

D. F. Thompson, "The Means of Dealing with Criminals: Social Science and Social Philosophy,"
Philosophy of the Social Sciences, March 1975, v. 5 (1), p. 4.

During the period that the criminal is incarcerated, he is prevented from committing virtually any crimes at all, and in this respect imprisonment is very effective indeed. Life terms, if effectiveness were the only consideration, would be the best method of dealing with criminals (though because of their expense perhaps still not the most efficient). However, once we admit that because of other criteria, such as limitedness and fairness, shorter terms are necessary for most crimes, we cannot consider imprisonment itself to be very effective in preventing recidivism.

Punishment should teach a lesson

Christopher W. Morris, "Punishment and Loss of Moral Standing," *Canadian Journal of Philosophy*, March 1991, p. 55.

As such, punishment is the intentional imposition of some pain, unpleasantness, or deprivation for an offense committed by the culprit. It may be imposed so as to teach the offender a lesson, to deter others from similar acts, or to teach the offender a lesson, to deter others from similar acts or to exact retribution. These may or may not be part of the practice. Criminal punishment will normally be authorized and carried out by the state, though this need not be the case; to make it part of the proper characterization of the notion would be to beg the question against anarchists.

Punishment must include retribution

Ido Weijers, "Punishment and Upbringing: Considerations for an Educative Justification of Punishment," *Journal of Moral Education*, v. 29 (1), March 2000, p. 62.

The most explicit and elaborate example of this type of pattern was developed by Richard Peters in his well-known book Ethics and Education (1966), in which he approaches the question of punishment primarily as an issue of philosophy of law and then discusses a specific educative perspective as a derivative of that. Peters starts with the thesis that only retributive theory is adequate to approach the question of the meaning of punishment. He thinks that there is no conceptual connection between punishment and notions such as "deterrence", "prevention" and "reform", for people can be punished without being prevented from repeating the offence, and without being made any better. "But punishment", Peters says, "must involve `retribution'; for `retribution' implies doing something to someone in return for what he has done ... Punishment must be retributive--by definition" (p. 269).

Attaching sanctions to wrongdoers is just

Dennis Klimchuk, "Retribution, Restitution and Revenge," *Law and Philosophy*, v. 20 (1), January 2001, p. 88.

We can, on these assumptions, think of the rules of criminal law as a set of burdens assumed by all to secure the mutual benefits of a protected sphere of security for each. Wrongdoers thus reap the benefits of a society characterized by wide-spread compliance with the rules while shrugging off the burdens upon whose assumption these benefits are secured.

Attaching sanctions to non-compliance serves justice in three ways. First, it provides some assurance to those who do comply that they are not doing so in vain. Second, it induces compliance. Third – and this is the important idea here – it sets wrongs aright. As we saw above, on Morris's account, the wrongdoer "owes something to others for he has something that does not rightfully belong to him. Justice – that is punishing such individuals – restores the equilibrium of benefits and burdens by taking from the individual what he owes, that is, exacting the debt."

Wrongdoers incur moral debts

Daniel McDermott, "The Permissibility of Punishment," *Law and Philosophy*, v. 20 (4), July 2001, p. 418-19.

Wrongdoers incur moral debts when they fail to provide their victims with a form of treatment that we are required to provide other members of our moral community. These debts are *moral* debts precisely because the treatment the wrongdoers withhold from their victims is valuable in a way that is different from the value of material goods – the value of being treated as a person is that the provision of this treatment distinguishes us in a way that the provision of material goods does not. Given this, the restitutionist solution of transferring a material good such as money must necessarily fail to settle the wrongdoers' moral debts, since this type of good is necessarily valuable in a fundamentally different way from the good the wrongdoers withheld from their victims.

A moral community requires punishing those who violate rights

Daniel McDermott, "The Permissibility of Punis hment," *Law and Philosophy*, v. 20 (4), July 2001, p. 423-24.

We start with the idea of persons as members of a common moral community. To be a member of this moral community is to be entitled to certain benefits and to be required to bear certain burdens. One of themost important of these benefits is the protection afforded by rights. As members of this moral community, we are entitled that the other members of this community provide us with a sphere of non-interference (as well as positive assistance), the contours of which are spelled out in terms of rights. In an ideal world, members would always provide each other with the treatment that they owe each other; in this world, some people will fail to provide others with the treatment they owe them – some people will violate others' rights. The question we then face is the question of how we may treat those members of our moral community who fail to provide their victims with this important owed benefit.

Being part of society means refraining from breaking the law

Richard Dagger, "Playing Fair with Punishment," *Ethics*, April 1993, v. 103 (3), p. 481.

The benefits and burdens in question are those that follow from obedience to the laws of a cooperative *practice*—in this case, the rule of law in a reasonably just society. When these circumstances obtain, everyone engaged in the practice is free to act, to enjoy his or her rights, with a security that would otherwise be impossible. This is a benefit everyone shares. But everyone also shares this burden of self-restraint. The freedom one gains as a result of the cooperation of others, in other words, must be balanced by a restriction on one's freedom, on one's right to act, in order to make freedom under law possible. Everyone thus receives the same benefit—freedom under law—and bears the same burden—obedience to the law. Rights and obligations are in balance, furthermore, for every person in the practice has a right to the cooperation of the others and an obligation to cooperate in turn.

This balance is upset when someone breaks the law. In some cases the lawbreaker may have good, even public-spirited reasons for disobedience. In most cases, however, the lawbreaker seeks a double benefit for himself. He seeks to enjoy the benefits of freedom under law, that is, while enjoying freedom from the burden of obedience as well. If he succeeds, the law-breaker achieves an excess of freedom over the law-abiding members of society. He enjoys the benefit of cooperation, then, without bearing its burden. It is in this sense that the balance of benefits and burdens is upset.

It is just to sanction wrongdoers by banishing them from the moral space

Christopher W. Morris, "Punishment and Loss of Moral Standing," *Canadian Journal of Philosophy*, March 1991, p. 69.

The act alone may cause this loss insofar as the conventions of justice have penalties and the requisite suspension of duties built in. Further, the act, insofar as it manifests an unwillingness to abide by the constraints of justice, will bring about this loss; in some cases, the unwillingness revealed by the act may show that we mistakenly cooperated with the wrongdoer. Inflicting pain or deprivation of property or liberty on wrongdoers as a response to their acts is not unjust for they have lost, through their acts, the moral rights that would otherwise stand in the way of such treatment. Their status is analogous to exile; they are banished, not from a physical space but from a moral space. They have lost, at least in part, their membership in the moral community.

The only rights we cannot take away are inalienable

John Deigh, "On the Right to be Punished: Some Doubts," *Ethics,* January 1984, v. 94 (2), p. 205.

We might make the same point against the assertion that the criminal, by virtue of his crime, has relinquished these rights. But this would be somewhat misleading. For on the welfare theory of human rights, rights to basic, human goods are not conceived of as subject to transfer, surrender, abandonment, waiver, or any other act by which their possessor might give them up or forswear their exercise. One might want to say, then, that such rights are taken to be inalienable.

Community can express moral indignation

Diane Whiteley, "The Victim and the Justification of Punishment," *Criminal Justice Ethics*, v. 17
(2), Summer/Fall 1998.

In sentencing, the community has the opportunity to express its moral indignation. The expression is intended to send a message. The community intends that the wrongdoer and public recognize that the punishment means denunciation, among other things. In crimes such as robbery, assault, rape, or murder the wrongdoer fails to meet the demand for goodwill. In extreme cases such as violent, brutal murder, her actions express outright malevolence. But in all cases a criminal act shows that the wrongdoer views the victim as having no or reduced moral value. If the community were to fail to express censure, it would be acquiescing in the wrongdoer's devaluation of the victim.

The type of punishment demonstrates the moral limits of a community

R.E. Gahringer, "Punishment and Responsibility," *Journal of Philosophy*, v. 69 (10), May 22, 1969, p. 292-93.

Punishing also defines the limits and purposes of the community. We do not really know what we stand for until we know what in fact we will not tolerate; and we know that only as we fight against what threatens us and as we punish. Crime may threaten a community; but as there is no community apart from the awareness of limits, there may be no community apart from the identification and punishment of crime. Crime may be not only a challenge to law, but the condition of law. Ironically, the traditionally ideal community, if realized, might lack a basic condition of its own perfection.

What are moral communities?

Andrew Oldenquist, "An Explanation of Retribution," *Journal of Philosophy*, September 1988, v.
85, p. 464-465.

Moral communities: The first of these two arguments is the following:
(1) Humans are innately social animals who can flourish and achieve their full humanity only in society.
(2) A human society is a moral community.
(3) A moral community is such that members hold one another personally accountable for harm to fellow members and to the common good.
(4) To hold persons personally accountable for harm to fellow members and to the common good is to consider them deserving of blame and punishment.
(5) To consider persons deserving of blame and punishment is morally to accept retribution.
Therefore:
(6) Humans can flourish and achieve their full humanity only if they morally accept retribution.

Punishment cannot merely be utilitarian

George Schedler, "On Telishing the Guilty," *Ethics*, v. 86 (3), April 1976, p. 260.

The institution of punishment encompasses the set of characteristics which all systems of punishment share. I have called attention here to some characteristics the institution of punishment must have. It is retributive not only in the sense that the rules provide penalties only for those who are guilty of violating the rules specifying the offenses and that officials endeavor to punish only the guilty, but that they *never* adopt the view that the guilty are to suffer solely for the sake of greater deterrence. Officials must have the attitude that the guilty should be punished at least in part because they are guilty. Consequently, if we regard this institution as morally justified, we believe it is morally valuable to have officials who never use the guilty or the innocent solely as a means for greater deterrence. Regardless of the

reasons we might offer as a justification, we must regard this retributive outlook as morally preferable to any other attitude.

Hence, whether we are utilitarian or not, if we believe punishment is justified, we must attribute a moral value to a retributive outlook on the part of officials.

Affirmative Evidence

The UN Declaration of Human Rights mandates voting rights regardless of any status distinctions, including felony conviction

Robin L. Nunn. "COMMENT: Lock Them up and Throw away the Vote" Chicago Journal of International Law. Winter, 2005

The Universal Declaration of Human Rights ("Universal Declaration") is a significant document on human rights, adopted unanimously by the United Nations General Assembly. n72 In outlining principles of representation and equality, Article 2 states: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, . . . or other status." n73 Blanket felon disenfranchisement laws threaten the rights and freedoms of persons based on their status as felon offenders; the United States' laws on what citizens should be denied the right to vote, as remnants of America's racist past, hinder the rights of criminal offenders on the basis of race. Among the rights recognized by the Universal Declaration is that "the will of the people shall be . . . by universal and equal suffrage." n74 In this document, universal and equal suffrage is a key component of democratic representation.

The ICCPR upholds universal suffrage and requires any restrictions to be "objective and reasonable."

Robin L. Nunn. "COMMENT: Lock Them up and Throw away the Vote" Chicago Journal of International Law. Winter, 2005

The requirement of "universal and equal suffrage" is also displayed in the International Covenant on Civil and Political Rights ("ICCPR"). Article 25 of the ICCPR assures every citizen the right to vote, and that right may not be subject to discrimination on the basis of race, sex, religion, and other enumerated categories or to "unreasonable restrictions." n75 As a party to the ICCPR, the United States has accepted its provisions as a law of the land. n76 Article 25 states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country. n77

[*775] Similar to the language in the Universal Declaration, the ICCPR legislation uses the phrase "universal and equal suffrage" when discussing every citizen's right to vote. However, the phrase "without unreasonable restrictions" implies that some restrictions on election participation, not based on prohibited distinctions, are "reasonable" and, therefore, permissible.

The legislative history of Article 25 indicates that restrictions based on mental capacity, criminal disenfranchisement, and minimum residency were considered reasonable by the framers of the ICCPR. n79 Societal standards concerning who should be allowed the right to vote, however, have changed significantly since the drafting of the ICCPR. The fact that felon disenfranchisement was referenced briefly when creating the ICCPR does not mean that the current practice of US permanent felon disenfranchisement is legitimate under

international law. For example, the US delegate discussed the legitimacy of exclusion of illiterates from voting in drafting the ICCPR. n80 However, the practice of excluding illiterates is now unconstitutional in the United States and no longer considered reasonable under modern standards of democracy. n81 While the exclusion of many groups has been prevalent at various times in history, many disenfranchisement practices are no longer considered reasonable under current standards.

The UN Human Rights Committee, which reviews adherence to the ICCPR, has affirmed that Article 25 "lies at the core of democratic government based on the consent of the people" and that restrictions on the right to vote should only be based on grounds that are "objective and reasonable." n82 Noting the existence of criminal disenfranchisement laws, the committee has stated that "if conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence." n83 The UN Human Rights Committee has consistently discouraged and attempted to limit the reach of felon disenfranchisement laws. n84 In addition, according to the Committee, the ICCPR not only protects the right of every [*776] citizen to vote, but also requires states to take necessary measures to ensure that citizens have an effective opportunity to enjoy that right. n85

International consensus supports enfranchising felons.

Robin L. Nunn. "COMMENT: Lock Them up and Throw away the Vote" Chicago Journal of International Law. Winter, 2005

No other democracy other than the United States permanently disenfranchises convicted offenders who have served their sentences. International law scholar Karl Josef Partsch flatly rejects blanket criminal disenfranchisement provisions, asserting that an exclusion from the vote may be reasonable only if it "has been pronounced by a judge for a certain time, in connection with punishment for some particular offense, for instance those [*780] connected with elections or for high treason . . . ." n101 Some countries condition disenfranchisement of prisoners on the seriousness of the crime or the length of their sentence, while other countries simply permit all prisoners to vote. n102 In Germany, the law obliges prison authorities to encourage prisoners to assert their voting rights. n103 A few countries restrict the vote for a short period after conclusion of the prison term. For example, in Finland and New Zealand, persons convicted of buying or selling votes or of corrupt practices would have their vote restricted after serving their sentence. n104 In South Africa, prisoners helped elect one of their own: Nelson Mandela. n105 In Israel, an incarcerated felon led the Shas Party in its victory in gaining seats in the Israeli parliament. n106 According to research by Penal Reform International, prisoners generally maintain their right to vote in countries such as Japan, Norway, Peru, Poland, Kenya, Denmark, the Czech Republic, Romania, Zimbabwe, the Netherlands, Sweden, France, Norway, and Germany. n107

In most countries, constitutions with detailed provisions for the protection of the fundamental rights and freedoms of all people, including convicted felons, have been enacted. n108 As a result of all these mechanisms and other factors, courts have become more willing to protect felons' rights. The wide acceptance among civilized nations of universal suffrage and limited felon voting [*781] restrictions show there is a growing consensus against broad and permanent felon disfranchisement. n109

Treaties and international principles reject felon disenfranchisement, especially when socio-political conditions create racial disparity.

Robin L. Nunn. "COMMENT: Lock Them up and Throw away the Vote" Chicago Journal of International Law. Winter, 2005

The United States' felon disenfranchisement policies run afoul of international treaties concerned with racial discrimination and democratic principles. n111 The dramatic increase in African American imprisonment tracks the changes in voting laws in the United States. n112 The continued existence of social and economic conditions that make minorities more likely to be convicted of felonies, and cultural forces that promote its tolerance, unchallenged by or reflected in state laws, run contrary to international equality requirements and undertakings. Specifically, US felon disfranchisement laws are inconsistent with the principles of nondiscrimination contained in both Article 5, Section (c) of the Convention on the Elimination of All Forms of Racial Discrimination and Article 25 of the International Covenant on Civil and Political Rights, as [*782] American disenfranchisement laws were originally enacted in the background of racial animus and have a disproportionate impact on the African American and Latino populations. These documents illustrate a widely recognized principle of universal and equal suffrage for all, without regard to race, gender, class, ethnicity, or national origin.

By the customary standards of most democratic nations, American disenfranchisement policies are extreme. Most countries have limited or abolished voting restrictions on felon offenders. Evolving notions of customary international law support the right to vote for felon offenders. There is a strong international legal standard against laws depriving all felon offenders of the right to vote while on probation, on parole, or after the completion of an incarceration sentence. Most nations acknowledge that once released from prison, a felon has paid her debt to society and is entitled to the full rights of citizenship.

Disenfranchisement is a disproportionate penalty for the crimes committed and should not be imposed as a collateral consequence upon the majority of felon offenders. Even though recent legal decisions display hope for overturning disenfranchisement laws under American

antidiscrimination legal principles, courts are unlikely to broadly invalidate the denial of voting rights to felons. Therefore, given the significant impact of criminal disenfranchisement laws on the voting population, in particular their extreme disparate impact on African Americans, and the lack of judicial enforcement options, US policymakers should consider alternative policies that will better protect voting rights. Legislation may be the best and most probable method to remove permanent state felon voting restrictions. n113 In order to comply with customary international legal standards and antidiscrimination treatises, the United States should consider legislating removal of restrictions on voting rights for former felons under the Voting Rights Act of 1965.

Felony disenfranchisement and racist law enforcement block minority participation in the voting process.

Virginia E. Hench. "ARTICLE: The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters." Case Western Reserve Law Review. Summer, 1998
Felony disenfranchisement laws still remain in many states, effectively blocking access to the polls for minority groups in those states. Trends in criminal prosecutions in the waning decades of the twentieth century have led to greater and greater percentages of the minority population being incarcerated. 194 Of a total voting age population of 10.4 million black men in the United States, approximately 1.46 million have been disqualified from voting because of a felony conviction. 195 Of these, 950,000 are in prison, on probation, or parole, and more than 500,000 are permanently barred by convictions in the 13 states that disenfranchise prisoners for life. 196 The United States is among the world's most active nations in imprisoning its citizens, 197 and the racial disparity in rates of incarceration is growing. In Baltimore, more than half of all black men in their twenties are in prison, on probation, or on parole, and in the District of Columbia, the figure is approximately 40%. 198

The 1997 Sentencing Project report found that by 1994 the [*766] disparity in incarceration rates between blacks and whites had risen to a ratio of 7.66 blacks for every white in prisons, up from 6.88 in 1988. 199 The so-called "war on drugs," with its law-and-order approach has been aptly described as "crackdown on African Americans," 200 and it has been a primary cause in recent years of the incarceration of citizens of color in numbers far exceeding their percentage of the population. 201 African-Americans make up 51% of the 1.1 million inmates in prison, although they only represent 14% of the nation's population. 202 Implementation of the Federal Sentencing Guidelines in 1987 has resulted in a radical shift in the racial balance of those sentenced for crime: before the guidelines, whites were 66.3% of those sentenced, African-Americans were 22.3% and Latinos were 8.5%. 203 After the Guidelines took effect, whites dropped to 44.5% of those sentenced, while African-Americans and Latinos increased dramatically, to 26.2% and 26.3% respectively. 204 In the 18 to 25 year old age group, the disparities are even more startling: white males sentenced in that age group dropped from 56% immediately before implementation of the Guidelines to

39.2% after; African-Americans increased from 27.6% to 29.2%; and Latinos sentenced almost tripled, from 12.4% before to 31.6% after Guidelines implementation. 205

This imbalance in incarceration rates cannot be attributed to a disproportionate predilection for crime by minority populations: [*767] 93% of those convicted of drug offenses in New York State are black or Latino and only 6.3% white, despite the fact that "studies and experience have shown that most people who use and sell drugs in [New York] and the nation are white." 206 93% of the United States African American population is located in 22 states, primarily New York, California, and those states in the South and Midwest, all of which disenfranchise those convicted of various offenses. 207

While felon enfranchisement may not block voting for individuals on account of race, the terminal effect is to rob minority voters as a class of any meaningful participation in the electoral process.

Virginia E. Hench. "ARTICLE: The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters." Case Western Reserve Law Review. Summer, 1998

The right to vote is fundamental to our democratic system of government, but sadly, the present Court's definition of equal representation appears to be satisfied simply by ensuring each individual formal access to the ballot. The effect that the system has on the impact and strength of that vote as combined with other votes is not considered. 310 Even an explicit amendment to the Voting Rights Act that restores the results test and allows for proof of discriminatory effects without proof of discriminatory intent would [*785] be unlikely to survive. Nevertheless, these changes should be made. In our system of checks and balances, it is intolerable to let the oppressive hand of one branch silence the voices in other branches that would stand up for protection of minority rights. 311 The Court should abandon the fiction of the "color blind" Constitution and take into account existing civil disabilities in the minority population when fashioning remedies, and should adopt an equal protection analysis for purposes of identifying and remedying of voting rights violations. In Yick Wo v. Hopkins, 312 the Court held that a facially neutral law which was intended to operate in a racially discriminatory manner violated equal protection. 313 The Court's current stance is nothing less than an abandonment of its historical recognition of the right of a minority community to representation of its interests.

At least one commentator 314 has suggested that the § 2 "results" test could serve as a tool for overturning criminal disenfranchisement laws where they dilute minority voting strength. 315 He argues that plaintiffs could show that such laws deny the vote to a disproportionately non-white class of citizens, resulting in dilution of the voting strength of the minority community, and thereby establishing the laws' invalidity under § 2. 316 With Vera, however, the Supreme Court has effectively read the results test out of the Voting Rights Act,

precluding such a strategy. Under the Court's current approach, it would be difficult to demonstrate that those directly disenfranchised have been denied the vote "on account of race." Proving vote dilution would also be difficult. Despite the fact that the 1982 Voting Rights Act amendments' legislative history advises courts to consider statistical data in applying the results test, assessing the impact of the challenged measure based on objective factors, there is no indication in the Supreme Court's recent holdings that it would accept such statistical evi [*786] dence absent a showing that the individual convict had been denied the vote based explicitly on race. On the contrary, minority citizens are rapidly losing ground in the battle to influence outcomes at the ballot box, and that they can expect no recourse from the right-wing majority on the Rehnquist Court.

The case of felon disenfranchisement shows how devastating has been the impact of the Supreme Court's "color blind" jurisprudence, culminating in Bush v. Vera. 317 When considered in the light of the disproportionate representation of African-Americans and other minorities in the criminal justice system, felon disenfranchise should trigger equal protection concerns. There is indisputable evidence that the disenfranchisement laws are the product of intentional discrimination, and that they operate with a disproportionate impact on minority voting pools, leading to a classic case of vote dilution. Quite simply, the disenfranchisement of felons reduces electoral access for minority populations as a whole, 318 and in the post-Vera era, no remedy can be framed, even though both discriminatory intent and discriminatory results are present. Nothing could illustrate more clearly the way in which disproportionate criminalization of minorities has interacted with "color-blind" jurisprudence to render violations of the Fifteenth Amendment or the Voting Rights Act wrongs without a remedy.

Disenfranchisement destroys a felon's status as an equal citizen.

S. David Mitchell. "ARTICLE: UNDERMINING INDIVIDUAL AND COLLECTIVE CITIZENSHIP: THE IMPACT OF EXCLUSION LAWS ON THE AFRICAN-AMERICAN COMMUNITY" Fordham Urban Law Journal. April, 2007
With the performance of affirmative duties, a person is considered equal to every other person, sharing in the "common citizenship," 40 and deemed worthy of the status of citizen.

Some legal scholars argue that the right to vote is a fundamental right, and as such it is central to the meaning of citizenship. 41 Furthermore, the fundamental importance of the right to vote is not determined by its actual exercise, but merely by its possession. 42 Possessing the right to vote is of paramount importance as it is a tool by which an individual engages in active participation - "the right to vote serves as the embodiment of political empowerment, and it is essential to the full privilege of effective citizenship." 43 The right to vote, therefore, can be construed not only as a means [*843] for an individual to exercise political power, but also as a necessary requirement in being a full citizen.

Although the right to vote is undeniably important in defining citizenship, it is not the sole determinant of what it means to be a citizen. The possession of the right to vote, or more aptly the opportunity to participate in the political process, serves as an indicator of a person's legal status as a member of the polity, but nothing more. 44 Conversely, the loss or infringement of that right would indicate both a repudiation of membership in the polity and a lack of full citizenship. This Article contends that because the right to vote is a political right that allows an individual to be an active participant in the government and is exercised cyclically, it is not the determining factor of citizenship. Citizenship in fact embodies a full range of rights including, but not limited to, the possession or exercise of the right to vote.

Disenfranchisement creates negative consequences for felons in social and economic ways.

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The deprivations that ex-felons encounter extend beyond the scope of the political sphere. The right to vote is integral to a citizen's sense of belonging and undeniably holds a place of critical importance in the United States for both its symbolic and practical value; it serves as a marker of inclusion for formerly excluded groups, i.e., African-Americans, women, and those under the age of eighteen. 45 For ex-felons the right to vote is merely one of many rights denied to them in but one of several spheres of their lives. [*844] Convicted felons are denied a host of rights that govern the social and legal spheres of their life; many of these rights have more pressing importance than the opportunity to cast a ballot. To examine how felon exclusion laws infringe upon the full citizenship of both the individual ex-felon and the community to which the ex-felon belongs, a multi-part conceptualization of citizenship will be used. The leading contemporary scholar to consider such a multi-part conceptualization of citizenship is T.H. Marshall, a British sociologist; and, it is Marshall's formulation of citizenship that frames this Article.

Marshall posited that citizenship is comprised of three distinct, yet interdependent, elements: the civil, 46 meaning individual freedom; the political, referring to the franchise; and the social, addressing an individual's economic life. 47 The political element, according to Marshall, consists of the "right to participate in the exercise of political power." 48 This element is comprised not only of the right to vote, but also includes the right to pursue public office; political power is manifested in the voice of the people and through the machinations of those chosen to serve as proxies of the people. The rights most commonly associated with the civil element are those rights that are "necessary for individual freedom," 49 and in the context of the United States are embodied in the Bill of Rights. 50

DEFINITION: The disenfranchisement of felons in the United States takes on a number of different forms.

S. David Mitchell. "ARTICLE: UNDERMINING INDIVIDUAL AND COLLECTIVE CITIZENSHIP: THE IMPACT OF EXCLUSION LAWS ON THE AFRICAN-AMERICAN COMMUNITY" Fordham Urban Law Journal. April, 2007

A convicted felon is deprived of the right to vote in some manner in approximately forty-seven jurisdictions in the United States. 56 Jurisdictional differences relating to the deprivation of the right to vote become readily apparent when one considers the specific conditions for the loss of the right or the "rights restoration" process. 57 For instance, twenty-one jurisdictions deprive a person of the right to vote following a conviction only if that person is incarcerated, 58 but thirteen of those twenty-one restore the [*847] right to vote upon release, 59 and seven upon completion of the sentence. 60

An additional twenty-one jurisdictions, absent any overlap with the first group, deprive a convicted felon of the right to vote solely upon conviction. 61 Some require that the convicted felon be a first time offender 62 and others restore the right to vote depending on the type of offense. 63 Although the majority of jurisdictions deny the right to vote when a convicted felon is serving a sentence, there are several jurisdictions that have either waiting periods or discretionary restoration policies which impact the deprivation of the right to vote. 64

Discretionary restoration policies often entail a combination of waiting periods following the unconditional discharge from a sentence and an application either to the Board of Pardon and Parole or the governor. Some jurisdictions have discretionary policies for all convicted felons. For instance, in Florida, convicted felons are [*848] denied the right to vote until an application to the Clemency Board is submitted. 65 Kentucky and Virginia also place the onus on the convicted felon; while the former requires an application to the governor, the latter mandates an additional waiting period in order for a convicted felon to become eligible to apply to the governor for restoration. 66 Other jurisdictions, however, have discretionary policies for only certain convicted felons. For instance, in Alabama, a crime of moral

turpitude will lead to the loss of the right to vote, but the right can be restored upon successful application to the Pardon Board. 67 In Mississippi, convicted felons are required to wait an additional period of seven years following the completion of their sentence and then must apply to the governor for restoration of the right to vote. 68 Regardless of the manner in which it is manifested, the deprivation of the right to vote denies a convicted felon full citizenship because it infringes the political element of citizenship. In addition to disenfranchisement, the deprivation of the opportunity to hold public office is another infringement on the political element of citizenship.

The impact of disenfranchisement is especially significant for minority communities because of their limited representation in the general population.

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All convicted felons, as members of the convicted felon status group, should occupy a similar position not only within the criminal justice system but also upon release from the system. Felon exclusion laws therefore should impact all persons convicted of a felony equally. Nothing could be further from reality. With the lack of uniformity across jurisdictions and between the federal and state system, convicted felons encounter a variety of disabilities depending upon the jurisdiction in which the conviction occurred. In addition to the differential impact across jurisdictions or in specific [*853] regions of the United States, felon exclusion laws also have a disproportionate impact across other demographic categories, such as race and socioeconomic status. More specifically, felon exclusion laws disproportionately impact African-American convicted felons because of their representation in the felon status group relative to their presence in the general population of the United States. 91 To illustrate the impact of felon exclusion laws on the African-American community, voting registration and the lack thereof will be used as a proxy for exclusions within the community with respect to voting and the other disabilities that convicted felons encounter.

According to the 2000 Census, the population of the United States totaled 281,421,906. 92 African-Americans comprise 35,658,190 members of the total population, or approximately 12.3 percent. By comparison, there are a total of 211,460,626 who identify as whites only, or approximately 75.1 percent; Hispanics or Latinos (of any race) comprise 35,305,818, or approximately 12.5 percent of the population. 93 The population data indicates that there are six times more whites (single race only) than African-Americans in the total general population. Therefore, the impact of any practice or policy will be more profound for the

group whose population is smaller relative to the larger group. The impact [*854] is even more profound when the pool of individuals is decreased further.

The United States voting population is bounded not only by age restrictions, but also by citizenship. Thus, the relevant population under consideration is all persons at least eighteen years old, and citizens of the United States. 94 In the year 2000, that number was 209,128,094. 95 Of that number, there were 129,549,000 individuals that were not only eligible to vote but also registered to vote, and 110,826,000, or approximately 69.5 percent, reported actually exercising the right. 96 Within the African-American population, the total number of eligible citizens was 22,753,000, with 15,348,000 registered to vote. Of the latter number, there were 12,917,000, or 67.5 percent, that reported actually voting. 97 By reference, the relevant figures for the eligible white, non-Hispanic, voting population was 144,732,000, of which 103,588,000 were registered and 89,469,000, or 71.6 percent that actually voted. 98 Comparatively, there are six times more eligible non-Hispanic whites than African-Americans that are able to cast a ballot. 99 Thus, any practice that affects the ability to either register or cast a ballot will have a greater impact on the African-American community; that becomes readily apparent when the number of African-American males convicted of a felony is considered.

Felon disenfranchisement functions so as to disproportionately deny many African-Americans full citizenship.

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In the United States, men over the age of eighteen are forty-eight percent of the total general population, but comprise approximately eighty-three percent of the convicted felon population. 100 While non-Hispanic whites were seventy-nine percent of the general [*855] population, they only accounted for fifty-four percent of the felony convictions. 101 On the other hand, African-Americans were only twelve percent of the general population, but were forty-four percent of the convicted felon population. 102 In other words, of the estimated 924,700 felony convictions in state court, African-Americans accounted for 410,100 of the convictions. 103 Approximately two percent of the eligible African-American voting population was disenfranchised as a consequence of a felony conviction occurring in the year 2000. While two percent of the African-American community encounters the prospect of disenfranchisement in a single calendar year, the cumulative effect is much greater. According to Uggen and Manza, as well as others, the number of disenfranchised citizens in the African-American community is seven percent, compared to only 2.3 percent in the general population. 104 Others have noted that African-Americans are disenfranchised at a rate of seven times that of the national average. 105

With each passing year, the conviction and incarceration rate of African-American males continues to increase 106 and the denial of [*856] their full citizenship continues to proliferate. Accepting the data that seven percent of the African-American population is disenfranchised means that a significant portion of the African-American community is not only deprived of the opportunity to cast a ballot but also denied the opportunity to seek public office, serve on a jury, or secure gainful employment. The cumulative effect of these disabilities not only undermines the individual convicted felon's citizenship status but also denies collective citizenship to the community.

Disenfranchisement prevents some communities from having a real effect on elections and legislation.

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When individual ex-felons are denied the right to vote, communities lack the collective ability to alter the outcome of legislation and to choose representatives sensitive to the community's needs. With a disproportionate representation of convicted felons in a community, for example the Tallahassee, Florida communities, it is "unlikely that the community will be able to band together when ... a state senator proposes locating a toxic waste dump nearby." 109 The community's ability to resist negative proposals is severely hampered, thereby leaving the community at the mercy of an otherwise disengaged and external majority. Moreover, disenfranchisement precludes the community from electing those persons that may serve as representatives of their collective interests.

When a significant segment of the community is denied the opportunity to participate in the political process, communities are subsequently denied the opportunity to vote individuals or parties into office that are favorably disposed to the needs and desires of the community. "The political implications of disenfranchisement can be significant ... . Because most felons are likely to be poor and members of racial minority groups ... 'disenfranchisement laws tend to take votes away from Democratic candidates.'" 110 The importance of a community having a representative that is responsive to its needs and that can represent the community's interests in legislative bodies is highlighted in the numerous redistricting and ballot access cases. 111 It has long been recognized that the power to vote is without force if a majority can consistently override the wishes of a substantial minority. 112 Hence, the loss of community voting power prohibits the community from having an effective voice in the political sphere, and the collective voice of the people is effectively silenced. Not only do the deprivations impact the political element of citizenship from the community's perspective, but they also adversely impact other areas, such as the criminal justice system.

Felons have paid an adequate debt to society upon serving their sentences and shouldn't be re-punished.

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The denial of any of the rights of citizenship associated with Marshall's elements 157 denies full citizenship to convicted felons. Of the convicted felon status group members, ex-felons possess the strongest moral and legal claim for the automatic restoration of their rights following release from the criminal justice system. Ex-felons have performed the affirmative duty of serving their required sentence following conviction. While the State may have a compelling reason to deny the franchise to convicted felons who are either incarcerated, on probation, or on parole, there is no compelling or legitimate state interest for withholding the vote from ex-felons, 158 other than punishment. "Disenfranchising ex-felons who have served their time and paid their debt to society is indefensible under even the most punitive theories of criminal justice." 159 A released ex-felon is thrust into a halfway status of having physical freedom, but not the full rights of a free citizen.

Ex-felons are required and expected to comply with the affirmative duties of citizenship, such as obeying the law and paying taxes, yet they do not receive the attendant benefits and rewards for the performance of those duties. In fact, the ex-felon situation parallels that of the founding fathers who stated that taxation without representation was unfair and commenced a revolution to end the tyranny of a system of government that did not recognize them as full citizens. 160 In addition to the principled reasons for restoring theses rights, there are important practical considerations as well.

Disenfranchisement leads marginalizes felons and increases chance of recidivism.

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With the silencing of ex-felons and the resulting ostracism that occurs, ex-felons are more likely to re-offend. 161 Felon exclusion laws contribute to the difficulty of prisoners reentering their communities. "There can be no legitimate Constitutional basis for disenfranchising them once the state has freed them to reintegrate into society. Denying them the right to participate in the core of democratic governance only raises barriers to their rehabilitation as law-abiding members of the community." 162 Moreover, increased alienation is a factor that leads to increased acts of criminality, and thus an increase in recidivism. 163 Faced with a denial of rights, convicted felons are likely to have a lack of respect for the law; the commission of future crimes is not deemed a violation of the social compact because the contract no longer exists. 164 By keeping ex-felons on the margins of society, many will become repeat offenders.

Felon disenfranchisement results in a significantly disparate racial impact.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

The raw number of people disenfranchised is shocking in a democracy. Even more appalling is the disparate racial impact of disenfranchisement. Of the 3.9 million disenfranchised, 1.4 million are black men -- 13 percent of the black men in America. 19 That is a large portion of the black male population, and even larger in relation to the total number of black male voters. While 1.4 million black men are disenfranchised, only 4.6 million voted in the 1996 federal election. 20 If all those currently disenfranchised could vote, and exercised that right, the nationwide voting strength of black men would increase by 30 percent.

Statistics from individual states paint a startling picture of the effects of disenfranchisement laws upon racial minorities. In Alabama and Florida, 31 percent of all black men are permanently disenfranchised. 21 One in four black men are permanently disenfranchised in Iowa, Mississippi, Virginia and Wyoming. 22 And the situation could get worse: "Given current rates of incarceration, three in ten of the next generation of black men will be disenfranchised at some point in their lifetime. In states with the most restrictive voting laws, 40 percent of African American men are likely to be permanently disenfranchised."

Disparate impact isn't excused by crime rates; the criminal system is part of the problem.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

A disparate racial impact, by itself, might not be a problem. There is an argument that if minorities commit felonies at a higher rate than whites, then it logically follows that more minorities will be convicted, and therefore more will lose the right to vote. 24 Even if it is true that a higher crime rate among minorities is responsible for some of the disparities in incarceration, as "most criminal scholars agree," 25 the alarming rate at which black men in America are losing their right to vote raises "serious questions about the fairness of our criminal justice policy."

Professor David Cole suggests that reversing the statistics makes the problem clear. 27 Imagine the public reaction if 13 percent of white men in America could not vote because of a felony conviction, and as many as 31 percent of white males were disenfranchised in some states. There would be enormous public support to abolish disenfranchisement laws, and conservative and liberal politicians alike would make it a top priority. Regardless of the cause, the mere fact that black men in America are disenfranchised at a rate seven times the national average 28 indicates a serious problem that requires immediate attention.

Felons are logically not more likely to commit election-related crimes like election fraud.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

One argument for disenfranchisement is that states should be able to keep ex-felons from voting in order to prevent election-related offenses. 30 According to this view, ex-felons have demonstrated a tendency to violate the law, and therefore are more likely to violate the laws that govern elections and voting.

It is questionable whether this is a realistic concern. The fact that a person chose to commit one crime does not necessarily make him or her more likely to commit a different kind of crime in the future. Consider a concrete example: It would be hard to claim with a straight face that someone who cheated on tax returns would be more likely than anyone else to commit murder. There is simply no logical connection between tax evasion and murder. Likewise, there is no logical connection between most felonies and election-related crimes. As one commentator has written, "it is difficult to imagine why a car thief or drug dealer would have an interest in, or knowledge of, committing electoral fraud." 32 The election-fraud argument has some strength in the abstract, but seems absurd in the world of concrete examples. The best way for advocates to counter it is by using concrete examples such as the ones given above.

Blanket felon disenfranchisement is ineffective in preventing electoral crimes.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

Even if it were true that ex- are more likely to commit election-related offenses, current disenfranchisement laws are clearly both over-inclusive and under-inclusive. Disenfranchisement laws are over-inclusive because many states disenfranchise all convicted, regardless whether their crimes have any logical relationship to elections or. 33 Disenfranchisement laws are also under-inclusive because many states that disenfranchise ex- do not take the right to vote away from those convicted of election-related offenses. 34 Blanket disenfranchisement provisions, therefore, are not an effective way to protect the electoral system. A better method would be to limit disenfranchisement to those convicted of offenses that have some logical relationship to voting and elections. 35

Felon status has little or no effect on electoral decision-making.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

Another argument for disenfranchisement is that, by committing a crime, ex-felons have shown that they are not responsible enough to vote. 36 This argument surfaced multiple times during the testimony regarding House Bill 906, which would have given ex-felons the right to vote in federal elections. Todd Gaziano of the Heritage Foundation stated: "Criminal disenfranchisement allows citizens to decide law enforcement issues without the dilution of voters who are deemed.. to be less trustworthy." 37 Roger Clegg of the Center for Equal Opportunity echoed this concern: "We do not want people voting who are not trustworthy and loyal to our republic ... Criminals are, in the aggregate, less likely to be trustworthy, good citizens." 38 This argument also has been popular in states that have recently expanded the voting rights of ex-felons. In Virginia, for example, one state senator argued: "Just because you have spent time in prison does not mean your judgment has changed." 39

This argument is similar to the claim that ex-felons are more likely to commit election-related crimes. It is reasonable when phrased in abstract terms, but crumbles when it runs into concrete examples. Consider, for example, the convicted car thief or drug dealer. Stealing the car or selling the drugs was certainly a bad choice. There is no logical connection, however, between the choice to steal a car or sell drugs and the choices between competing candidates and issues that face voters in the voting booth.

Even if the decision to commit a crime reveals a fundamental inability to make a reasonable choice in the voting booth, that flaw is not necessarily permanent. Past behavior does not always indicate present potential. 40 One purpose of criminal punishment, in fact, is to teach offenders to make responsible choices in the future. Convicts who have served their time, therefore, should be able to make better decisions than in the past. Participating in the

political process also might facilitate the rehabilitative process by instilling a sense of responsibility in ex-offenders. 41

Felon enfranchisement may result in more moderate drug policies.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

Giving ex-felons the right to vote, however, could lead to limited changes in the criminal law because it could shift the political balance within an area. There is widespread concern among Republicans that ex-felons are more likely to vote Democratic. The head of the New Mexico Republican Party, for example, expressed concern that if the legislature gave ex-felons the right to vote, "those eligible under the bill would register with the Democratic Party." 47 If ex-felons are more likely to vote Democratic, then giving them the right to vote could give shift control of some jurisdictions to Democrats. That political shift could lead to changes in the criminal law, but only with regard to issues on which Republicans and Democrats tend to disagree. There is no realistic chance, for example, that a Democratic legislature would decriminalize burglary. A more realistic possibility is that a Democratic legislature would scale back harsh drug laws, by decriminalizing simple possession or eliminating mandatory minimum sentences. 48 This is not a problem, but merely the democratic process in action. Giving ex-felons the right to vote would simply allow them to participate in the political process, and perhaps become part of a majority that would shape policy. That is what democracy is all about: giving all citizens an equal voice in the process that creates the laws that they must obey.

Felon enfranchisement is unlikely to result in more lenient laws or law-enforcement.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

Another argument is that disenfranchisement is necessary to prevent harmful changes to the law. The concern is that ex-felons would alter the content or administration of the criminal law by electing officials who would be soft on crime. 43 The most effective form of this argument frames the issue in terms of the rights of non-felons:

"Given that many poor and minority communities are ravaged by crime, [enfranchisement] could have a perverse effect on the ability of law abiding citizens to reduce the deadly and debilitating crime in their communities...[I]t could be argued that those communities that currently have the highest level of state disenfranchisement are the most protected by those laws and would be the most adversely affected by the vote of "unreformed" convicts in their communities." 44

When the Connecticut legislature was considering a bill that gave ex-felons the right to vote after release from prison, an opponent of the measure offered a less academic but more viscerally appealing version of this argument: "I don't want the convicted felons to determine our policies on criminal justice. That's my opinion, but one I think a lot of people share." 45

The first problem with this argument is practical. There is no realistic possibility that allowing ex-felons to vote would alter the content or administration of most of the criminal law. Even if all convicted felons were firmly committed to using their votes to elect soft-on-crime judges, district attorneys and other officials, there is no practical way they could accomplish this. One commentator gives a particularly amusing illustration of the difficulties ex-felons would face:

"[L]et us imagine what the process might look like. Suppose.. a group of burglars in the

neighborhood wants to reduce the criminal penalties for burglary. First, they would have to field a candidate (either one of their own or someone else who is "pro-burglar") to run for state office. They would then have to run a rather effective campaign in this era of "get tough" politics in order to secure 51 percent of the vote for their candidate. Once elected, the new office-holder would have to convince a majority of the state legislature and the governor to support legislation to reduce penalties for burglary." 46

The bottom line is that there is no realistic possibility that convicted felons could alter the content or administration of most aspects of the criminal law, even if they wanted to, because there is not enough support for those changes among the rest of the political community.

Felon disenfranchisement threatens the democratic process.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

No matter how ex-felons would vote, disenfranchising them because of their opinions contradicts important democratic principles. A democracy is supposed to be a government of the people. This means that citizens determine the role of government, and perhaps the most important voice that the people have in this process is the right to vote. 49 Preventing ex-felons from voting distorts the democratic process because it excludes a group that might have a unique perspective. As one commentator has written, "[e]xcluding from the electorate those who have felt the sting of the criminal law obviously skews the politics of criminal justice toward one side of the debate." 50 Fencing out ex-felons, therefore, harms democracy. Beyond the normative appeal of this argument, commentators have suggested that disenfranchising felons because of how they might vote violates the Supreme Court's holding in Carrington v. Rash that" 'fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible."

Arguments defending enfranchisement on racial grounds will not convince the right-wing and those who need convincing the most.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

The arguments against disenfranchisement fall into two main categories: racial and non-racial. As discussed in Part I, the statistics on racial disparities in disenfranchisement are startling. These disparities alone are probably enough to persuade liberals and people of color that disenfranchisement laws are fundamentally unfair. It is not necessary for advocates to use their resources to reach these groups. Instead, advocates must work to persuade conservative whites.

There is evidence that "[b]eliefs regarding crime and punishment are highly correlated with...racial attitudes." 78 Specifically, those who support a harshly punitive approach to criminal justice issues tend to be hostile toward any measure that would benefit racial minorities. 79 Race-based arguments against disenfranchisement, therefore, are not likely to persuade some members of the target audience, and might even alienate them. The solution, then, is for advocates to maintain an arsenal of non-racial arguments.

The numbers alone might be enough to persuade a significant number of moderates and conservatives that disenfranchisement laws are fundamentally unfair. As Professor David Cole suggests, 81 advocates can reveal the fundamental problem by asking legislators and citizens to consider the statistics in reverse: Would they favor disenfranchisement if 13 percent of white men nationwide -- and as many as 31 percent in some states -- could not vote because of a felony conviction?

Although race-based arguments might be effective in some situations, advocates still must be able to produce non-racial arguments in order to reach those who are not sympathetic for whatever reason, whether racial hostility or merely the belief that a disparate racial impact alone is not a problem. 82 This section examines the five most persuasive, non-racial arguments that appeared frequently in the media debates surrounding changes to state

disenfranchisement laws, and suggests ways to improve these arguments in order to make them resonate on a deeper level with legislators and their constituents.

Enfranchisement helps rehabilitate felons by developing their citizenship; this argument has discursive appeal to a wide audience.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

The second argument is that giving ex-felons the right to vote promotes rehabilitation by instilling a sense of responsibility. This taps into one of the most common arguments in favor of disenfranchisement -- that felons demonstrated a fundamental lack of responsibility when they freely chose to commit a criminal act. If irresponsibility led to crime, then the state needs to remedy this problem in order to prevent future crimes. The state, in other words, must "foster a sense of obligation and responsibility among" ex-felons. 104 One way to do this is to allow ex-felons to participate in the electoral process. Giving ex-felons the right to vote would give them a stake in their communities, a sense of responsibility to others, and "persons who believe they have a stake in the welfare of their community are less likely to engage in illegal activities that will bring harm to individuals." 105

In Connecticut, Rep. Kenneth P. Green, the chief sponsor of the bill that gave ex-felons the right to vote upon release from prison, took up this argument as his main theme. "I think people who are trying to re-acclimate to the community can be helped if they're allowed to have the civic responsibility of voting," said Green. 106 In another statement, Green made the point more explicitly: "When you're out of jail, we're trying to re-integrate and rehabilitate you in the community. Part of that is we want you to make healthy choices." 107

This argument is likely to resonate with voters because of the deeply ingrained American belief in individualism, which is the idea that people freely choose their actions, and therefore must be responsible for what they have done. 108 In the words of a Republican state representative in Connecticut, "It's a choice an individual makes when he walks into a bank with a gun and decides to rob it." 109 The rehabilitation argument appeals to this sense of individualism because it does not try to shift the blame for criminal activity away from the individual. Instead, it acknowledges that people are fully responsible for their choices, and

simply reasons that giving ex-felons the right to vote helps them make responsible choices that do not harm others.

Enfranchisement contributes to the rehabilitation process, thus reducing recidivism.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

The third argument is that giving ex-felons the right to vote will help reduce the crime rate by contributing to the rehabilitation of ex-felons. This argument connects to the previous one, that the right to vote helps teach ex-felons to make responsible choices. The difference between the two arguments is that the responsible-choices argument focuses on ex-felons, while the crime-reduction argument focuses on how enfranchisement would benefit the entire community.

The key to this argument is to avoid overstating it. Advocates will lose all credibility if they claim there is a simple and direct connection between felon enfranchisement and a lower crime rate. Any conscious opponent will point out how absurd it is to claim that having the right to vote would instantly reform a felon. Advocates should instead emphasize that the right to vote contributes to the process of rehabilitation; it is not a panacea or even likely to be effective by itself.

This argument has appeared often in the debates regarding disenfranchisement. A Connecticut representative said she supported enfranchisement of ex-felons in order to reconnect them to society "so they do not go back to a life of crime." 110 A New Mexico civil rights lawyer argued: "When someone gets out of prison, we want them to be involved enough in the system and care about the community." 111 Crime-prevention was also a common theme in editorials by the Virginian-Pilot: "The more the state does to help steer ex-convicts into productive, contributing lives, the fewer who will end up committing crimes and returning to prison." 112 Or, more bluntly, "Society wins whenever wrongdoers abandon wrongdoing." 113

Crime is an important issue. In 1994, 29 percent of Americans said that crime was the most important problem facing their communities. 114 By 2001, that number had dipped to 12

percent, but respondents still viewed crime as the second most important issue (education was first). 115 The crime-reduction argument appeals both to citizens and to legislators. Citizens feel safer in their homes and communities, and legislators get to take credit for a lower crime rate.

Opponents might claim that the best way to reduce crime is not to expand the rights of ex-felons, but to punish them more harshly. The response is simple: If the threat of a prison sentence does not deter a potential criminal, the threat of losing the right to vote will certainly not be a deterrent. The right to vote is unique in that it has little value as a deterrent, but significant potential as a rehabilitative measure.

Enfranchisement reduces government expenditures.

Scott M. Bennett. Giving Ex-Felons the Right to Vote. Boalt Journal of Criminal Law. January, 2004

The fourth argument is that giving ex-felons the right to vote reduces bureaucracy and the cost of government. Giving felons the right to vote eliminates levels of bureaucracy, which appeals to the conservative desire for more limited government. Eliminating bureaucracy also saves tax dollars, an idea that should have nearly universal appeal. 116

Two Connecticut legislators made this argument in support of a bill that gave all felons the right to vote upon release from prison: "The end-of-incarceration standard would be much more rational and administratively simpler." 117 The old process in Connecticut illustrates how [*14] disenfranchisement can consume a significant amount of government resources and tax dollars. The process had three steps. First, the judicial branch notified the Secretary of State each month of every felony conviction in Connecticut courts. Second, the Secretary of State notified voting registrars in each of the state's 169 municipalities. Third, felons who completed their sentences had to prove their eligibility in order to get back on the voter lists. 118 Although the process of disenfranchisement is not necessarily the same in every state, it will always require some amount of bureaucracy, and consume some amount of tax dollars.

The simplest solution is to allow all convicted felons to vote, even while incarcerated. Under this system, it is not necessary for any agency to devote resources to determining whether any particular voter is ineligible because of a felony conviction. There are, however, two problems with this approach. The first problem is the expense. States would have to bear the expense of creating and maintaining a system to allow inmates to vote. The second problem is politics. Only two states currently allow inmates to vote, which suggests that allowing inmates to vote is not politically feasible.

The next best solution is to restore voting rights automatically once people leave prison. This system is relatively simple because there is no need for machinery to exclude ex-felons from polling places. Any person who shows up obviously is not incarcerated, and therefore

is qualified to vote as long as he or she is a qualified voter. The only difficulty with this system is the need to prevent inmates from voting with absentee ballots.

Although the cost-saving argument is strong, it cannot stand on its own. Any smart opponent will point out that the fact that something costs money is not a reason to abandon it. Maintaining prisons or the military, for example, is enormously expensive, yet few people would suggest abolishing them. Advocates, therefore, must connect this argument with two other ideas. First, disenfranchisement is a waste of taxpayer money because there is no persuasive reason for it, as Part II demonstrated. Second, disenfranchisement is wasteful because there are so many reasons to give felons the right to vote, as this section demonstrates.

If voting affects felon reintegration, it would reduce recidivism.

Christopher Uggen and Jeff Manza. SYMPOSIUM ON RACE, CRIME, AND VOTING: SOCIAL, POLITICAL, AND PHILOSOPHICAL PERSPECTIVES ON FELONY DISENFRANCHISEMENT IN AMERICA: VOTING AND SUBSEQUENT CRIME AND ARREST: EVIDENCE FROM A COMMUNITY SAMPLE. Columbia Human Rights Law Review. Fall, 2004

The existing research literature considering the political implications of disenfranchisement hardly exhausts the range of important issues to consider. One of the most important issues, the relationship between political participation and subsequent criminal activity, has yet to be systematically addressed. If voting is unrelated to later criminal behavior, then legal changes that extend the franchise to convicted felons are unlikely to affect crime or desistance rates. In that case, current policy debates over felon disenfranchisement laws should pivot primarily on questions of political rights and democracy. However, if those who vote are actually less likely to commit new crimes, legal changes easing the right to vote for felons may facilitate reintegration efforts and reduce rates of recidivism.

The reintegrative effects of voting may have broader implications. The right to vote is one of the defining elements of citizenship in a democratic polity 6 and participation in democratic rituals such as elections affirms membership in the larger community for individuals and groups. 7 Because of all that voting represents in this society, voting can be viewed as a proxy for other kinds of civic engagement associated with the avoidance of illegal activity.

Re-enfranchising felons will reduce recidivism.

Christopher Uggen and Jeff Manza. SYMPOSIUM ON RACE, CRIME, AND VOTING: SOCIAL, POLITICAL, AND PHILOSOPHICAL PERSPECTIVES ON FELONY DISENFRANCHISEMENT IN AMERICA: VOTING AND SUBSEQUENT CRIME AND ARREST: EVIDENCE FROM A COMMUNITY SAMPLE. Columbia Human Rights Law Review. Fall, 2004

We might expect a relationship between political participation and recidivism for a number of reasons. Solid empirical evidence demonstrates that former criminal offenders who enter stable work 10 and family relationships 11 are most likely to desist from crime. In addition to securing stable employment and family situations, convicted felons are expected to return to their communities and either resume or begin their lives as active and law-abiding citizens. The primary causal mechanism hypothesized in these studies is one of informal social control, in which attachment to social institutions such as families and labor markets increase the reciprocal obligations between people and provide individuals with a stake in conforming behavior. 12 Social-psychological theories of symbolic interactionism, while differing from informal social control theories in some respects, make a similar prediction that the [*197] assumption of work and family roles facilitates the development of an identity as a productive and responsible law-abiding citizen. 13

Although the issue has received scant research attention in the study of desistance from crime, reintegration as a voting member of one's community would appear to be a logical analog to work and family reintegration. As Shadd Maruna notes in a recent study of desistance, the desire to "be productive and give something back to society" appears to be critical to the desistance process. 14 To date, however, much of the research on this question has been based on small-scale interview projects, or correlational studies based on highly selected samples. 15

Enfranchisement reduces recidivism because democratic participation has educational benefits.

Christopher Uggen and Jeff Manza. SYMPOSIUM ON RACE, CRIME, AND VOTING: SOCIAL, POLITICAL, AND PHILOSOPHICAL PERSPECTIVES ON FELONY DISENFRANCHISEMENT IN AMERICA: VOTING AND SUBSEQUENT CRIME AND ARREST: EVIDENCE FROM A COMMUNITY SAMPLE. Columbia Human Rights Law Review. Fall, 2004

A second theory linking political participation to reduced crime derives from the literature on democracy. Conventional theories of democracy typically emphasize instruments available for citizens to control their government - through elections, public opinion, or popular revolts. 16 However, some democratic theorists focus on the benefits to the individuals who participate in democratic processes. In this latter view of democracy, individuals become citizens in part through the "educative" or "constitutive" impact of political participation. 17

This view was first suggested by de Tocqueville and Mill, with the latter's classical statement explicitly referencing de [*198] Tocqueville's Democracy in America. 18 According to Mill, when citizens participate regularly in politics, they develop an explicit identification with the polity and its norms and values. 19 In this sense, democracy fosters citizenship. In the narrowest reading of the constitutive argument, political participation produces citizens with a generalized sense of efficacy, who believe that they have a stake in the political system. This, in turn, fosters continued political participation. 20 Some classical studies provide evidence in support of this view. 21 More recently, the National Commission on Electoral Reform endorsed the idea that the greater an individual's participation in the political process, the more fair the individual is likely to consider the system. 22

Theories of "expressive voting" 23 and communitarian and republican theories of government 24 hold that the right to vote is [*199] important precisely because it helps make individuals into democratic citizens. In the words of one legal theorist the vote should be protected not simply because it enables individuals to pursue political ends, but also

because voting is a meaningful participatory act through which individuals create and affirm their membership in the community and thereby transform their identities both as individuals and as part of a greater collectivity." 25

The expressivist theories are today the leading response to rational choice models of voter turnout, 26 suggesting that people participate in part because elections give them an opportunity to express their civic identities. 27

More expansive views of the impact of participation have also been developed, but typically in relation to forms of participation that extend beyond the mere act of voting. In her modern reconstruction of the idea of participatory democracy, for example, Pateman argues that the major function of participation in the theory of participatory democracy is ... an educative one ... including both the psychological aspect and the gaining of experience in democratic skills and procedures... . For a democratic polity to exist it is necessary for a participatory society to exist, i.e., a society where all political systems have been democratized and socialization through participation can take place in all areas. 28

Empirical data suggest suggests enfranchisement can reduce crime rates.

Christopher Uggen and Jeff Manza. SYMPOSIUM ON RACE, CRIME, AND VOTING: SOCIAL, POLITICAL, AND PHILOSOPHICAL PERSPECTIVES ON FELONY DISENFRANCHISEMENT IN AMERICA: VOTING AND SUBSEQUENT CRIME AND ARREST: EVIDENCE FROM A COMMUNITY SAMPLE. Columbia Human Rights Law Review. Fall, 2004

Taken as a whole, however, our statistical analysis suggests that a relationship between voting and subsequent crime and arrest is not only plausible, but also supported by empirical evidence. We find consistent differences between voters and non-voters in rates of subsequent arrest, incarceration, and self-reported criminal behavior. While the single behavioral act of casting a ballot is unlikely to be the sole factor that turns felons' lives around, the act of voting manifests the desire to participate as a law-abiding stakeholder in a larger society. At a minimum, our multivariate analysis suggests that the political participation effect is not entirely attributable to preexisting differences between voters and non-voters in criminal history, class, race, or gender.

[*214] Nevertheless, a substantial portion of the association between voting and subsequent criminality appears to be a result of the greater educational attainment of voters and their less serious criminal histories. While criminal histories are not amenable to intervention, education is at the heart of ongoing correctional efforts to reintegrate felons. Moreover, a general education program working in concert with citizenship education and political participation may be especially effective in facilitating desistance from crime. For example, Larry, one of the prisoners we interviewed, strongly advocated for greater educational resources:

I think education is underrated. There's not enough of it. They don't think about it enough. I mean there should be more education. They keep taking it away. You know, I was going to [names university] through their program in [names city], and they took the program away. About a year later they brought a smaller version of it back, but still it's not the same as it

was. 53

When asked about whether civics education might be effective in prison, Larry responded:

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'd be interesting. 54

Negative Evidence

Felon disenfranchisement is constitutional

Roger Clegg, George T. Conway III and Kenneth K. Lee , "THE BULLET AND THE BALLOT? THE CASE FOR FELON DISENFRANCHISEMENT STATUTES " American University Journal of Gender, Social Policy & the Law, No. 14, 2006.

Felon disenfranchisement involves authority that is at least as important as the State's power to determine "the qualifications of their government officials," as it involves the power to determine who gets to choose those officials and their qualifications. If defining the qualifications of important government officials lies at the heart of representative government, then surely defining who decides what those qualifications will be is equally, if not more, important. That by itself suffices to require a clear statement, but even more is involved here: the fundamental state power to "define and enforce the criminal law," for which, of course, "the States possess primary authority." n93

The confluence of these two fundamental lines of state authority, indeed, expressly appears in the Constitution's text. Thus, not only does the Constitution defer to the States to set voter qualifications even for federal elections, n94 but, as noted above, the Constitution affirmatively sanctions the States' historic authority to disenfranchise [*19] people "for participation in rebellion, or other crime." n95 The States have the primary, if not exclusive, authority to decide whether felons should vote. That is what the Constitution provides.

Felon disenfranchisement is consistent with the Lockean social contract

Roger Clegg, George T. Conway III and Kenneth K. Lee , "THE BULLET AND THE BALLOT? THE CASE FOR FELON DISENFRANCHISEMENT STATUTES " American University Journal of Gender, Social Policy & the Law, No. 14, 2006.

First, felon disenfranchisement laws are justified on the basis of the Lockean notion of a social contract: as Judge Henry Friendly once put it, someone "who breaks the laws" may "fairly have been thought to have abandoned the right to participate" in making them. n130Furthermore,

"it can scarcely be deemed unreasonable for a state to decide that that perpetrators of serious crimes shall not take part in electing the legislators who make the laws, the executives who enforce these, the prosecutors who must try them for further violations, or the judges who are to consider their cases." n131

That same reasoning motivated Massachusetts then-governor Paul Celluci in 2000 to support a ballot initiative stripping incarcerated felonsof the right to vote after prisoners began to organize a political action committee. n132 A Massachusetts state legislative leader commented about the State's now-abolished practice of allowing incarcerated felons to vote: "It makes no sense. We incarcerate people and we take away their right to run their own lives and leave them with the ability to influence how we run our lives?" n133

Felon disenfranchisement is a legitimate form of punishment for crime

Roger Clegg, George T. Conway III and Kenneth K. Lee , "THE BULLET AND THE BALLOT? THE CASE FOR FELON DISENFRANCHISEMENT STATUTES " American University Journal of Gender, Social Policy & the Law, No. 14, 2006.

Second, disenfranchisement has traditionally been deemed a part of a punishment for committing a crime. n134 Criminal punishment can be meted out in various ways, including imprisonment, fines, probation, and, yes, the withdrawal of certain rights and privileges. In the American system, it has long been established that "the States possess primary authority for defining and enforcing the criminal law." n135

Felons are considered less trustworthy. Full rights are often not completely restored following conviction.

Roger Clegg, George T. Conway III and Kenneth K. Lee , "THE BULLET AND THE BALLOT? THE CASE FOR FELON DISENFRANCHISEMENT STATUTES " American University Journal of Gender, Social Policy & the Law, No. 14, 2006.

Third, society considers convicts, even those who have completed their prison terms, to be less trustworthy than non-convicted citizens.n136 In other areas of the law, full rights and privileges are not [*24] always restored to convicts, even though they may have "paid their debt to society." n137 For example, federal law prohibits the possession of a firearm for anyone indicted for or convicted of a felony punishable by at least one year in prison. n138 Also under federal law, anyone who has a "charge pending" or has been convicted of a crime punishable by imprisonment for one year or more cannot serve on a jury. n139 So if someone who has a "charge pending" against him is deemed incapable of sitting in judgment of the fate of a single litigant, it hardly seems unreasonable to say that someone convicted of a felony cannot help shape the fate of a city, a state, or the entire nation. Even outside the realm of civic rights and privileges, society recognizes that an ex-convict may be less reliable than others. For example, employers routinely ask prospective employees whether they have been arrested (let alone convicted of a felony) because they suspect that the mere fact of an arrest may be an indication of untrustworthiness.

Fears of racism in the CJS are not sufficient to abolish felon disenfranchisement laws.

Roger Clegg, George T. Conway III and Kenneth K. Lee , "THE BULLET AND THE BALLOT? THE CASE FOR FELON DISENFRANCHISEMENT STATUTES " American University Journal of Gender, Social Policy & the Law, No. 14, 2006.

Critics of felon disenfranchisement laws note that these laws have a disproportionate impact on certain racial minority groups. n140 While society can be sensitive to such concerns, it is not a sufficient reason to abolish longstanding and justifiable laws in the attempt to achieve some form of racial balance. As W.E.B. DuBois once wrote, "Draw lines of crime, of incompetency, of vice, as tightly and uncompromisingly as you will, for these things must be proscribed; but a color-line not only does not accomplish this purpose, but thwarts it." n141 In fact, the abolition of felon disenfranchisement laws may have the unintended effect of creating "anti-law enforcement" voting blocs and victimizing the vast majority of law-abiding minority citizens who live in high-crime urban areas. n142 Ultimately the real solution is to deter and prevent the crimes from being committed, not to create loopholes and exceptions for punishments.

Felon disenfranchisement was not originally invented to block specific racial groups from voting.

S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

Contrary to popular lore, n29 Americans did not invent felon disenfranchisement to exclude African-Americans from voting. The practice has Mediterranean origins; ancient Greek society imposed atimia on criminal offenders, pronouncing "civil death" upon them and stripping them of many citizenship rights, including the right to vote. n30 Likewise, Romans punished particular offenders with infamia, which included loss of voting privileges. n31 These ideas spread to England, and the practice found its place in English common law under the idea of attainder, which revoked rights from anyone convicted of treason or specific felonies. n32 Early American colonies adopted much of English legal doctrine and traditions, and felon disenfranchisement laws gained a foothold in the United States to a somewhat lesser extent than they did in England. n33 Thus, rather than inventing the statutes to decrease minority voters, "states have punished malefactors by restricting the fundamental rights of citizenship, including rights of political participation" since the United States became a nation. n34

The trend is to reform felon disenfranchisement laws, but not eliminate them.

S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

Thus, states, through democratic - not judicial - processes, constantly modify their felon disenfranchisement policies, but not uniformly. "Since 1975, thirteen states have liberalized their laws, eleven states have passed further limitations on felons, and three states have passed both types of laws." n59 A recent study suggests that a majority of the public favors restoration of voting rights to felons who are out of prison, n60 but felon disenfranchisement is clearly not unpopular among state legislators. Were this the case, one would expect states troubling themselves to amend these statutes would instead repeal them. Instead, several states have repealed portions of their statutes, but all stopped far short of sweeping expansions of suffrage. The trend, if it can be said that one exists, is toward reform rather than a rejection of disenfranchisement statutes.

Claiming that voting rights are essential is not enough- voting eligibility is legitimately regulated for many reasons, i.e. voter reg cutoff dates, etc.

S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006. Obtained electronically from LexisNexis on October 21, 2008

Because we know voting is a fundamental right, an important question is whether fundamental rights can be revoked or suspended by a mere regulation. The answer is clearly yes. While the Reynolds Court elevated the importance of voting, its holding did not require states to repeal their various franchise regulations. Organizing and controlling elections is a complicated task, and every state must regulate the intricacies of the process, including voter registration dates, the cutoff date, distribution of absentee ballots, voting-by-mail, early voting options, and the frequency of voting roll "purges." n165 States regulate who is eligible to vote and routinely exclude aliens, children, and the mentally incompetent, as well as felons. n166 States also implement durational residency requirements for voting. n167 The regulatory nature of these provisions is unassailable - states do not punish aliens or new residents by revoking their voting rights. Thus, on a practical level, the fact that voting rights are fundamental does not place them beyond the reach of state regulation. One justification of felon disenfranchisement stems from the Lockean social contract.
S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

Another important inquiry is whether there is a philosophical theory which can justify felon disenfranchisement as something other than speech restrictions. Modern case law looks to Locke's social contract theory for justification. n168 Under this rationale, the right to vote is revoked from felons not because of the way they might vote, but because their [*1861] citizenship status is demoted or destroyed as a consequence of their criminal behavior. In the words of the Sixth Circuit, "[a] man who breaks the laws he has authorized his agent (the legislature) to make for his own governance could fairly have been thought to

have abandoned the right to participate in further administering the compact." n169 Judge Friendly of the Second Circuit articulated this idea more thoroughly, explaining:

The early exclusion of felons from the franchise by many states could well have rested on Locke's concept, so influential at the time, that by entering into society every man "authorizes the society, or which is all one, the legislature thereof, to make laws for him as the public good of the society shall require, to the execution whereof his own assistance (as to his own decrees) is due." 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. n170

Democracies have the right to define who has voting rights

S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

Accepting, however, that felon disenfranchisement must mesh with a broader theory of citizenship to remain viable does not necessitate abandonment of the practice. While most academics conclude that the two are irreconcilable, liberal philosopher Andrew Altman argued otherwise in his recent treatment of the issue. n182 "The current literature," he wrote, "fails to take adequate account of a certain nontraditional argument in favor of felon disenfranchisement." n183 His argument holds that democracies are free to adopt, within limits, various standards for determining [*1863] who is granted and denied the right to vote. n184 This is part of the collective right of citizens to "define the distinctive political identity of their community;" policies regarding disenfranchisement are a legitimate part of this identity.n185 The citizens of a democratic state are under no obligation to select morally optimal policies. n186 Within the boundaries of fair representation and protection of basic rights, a community's decisions legitimately reflect its unique political identity. n187
There are legitimate non-penal reasons for denying serious felons the right to vote, i.e. organized crime lords, should not take part in deciding who will consider their cases.
S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

Contrary to Karlan's assertions, however, it is possible for states to articulate a legitimate, non-penal purpose for disenfranchising felons without violating speech rights. One possible justification relates to administrative and practical issues surrounding the election process. Consider the latter portion of Judge Friendly's observations noted above, explaining:
On a less theoretical plane, it can scarcely be deemed unreasonable for a state to decide that perpetrators of serious crimes shall not take part in electing the legislators who make the laws, the executives who enforce these, the prosecutors who must try them for further

violations, or the judges who are to consider their cases. This is especially so when account is taken of the heavy incidence of recidivism and the prevalence of organized crime. n196

In a local environment, implications are even more potent: felons would be voting for local law enforcement agencies.

S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

Although many reject this position, Friendly's justification is intuitively appealing and likely to withstand scrutiny. While most who consider the merits and effects of disenfranchisement immediately focus on implications for national elections, the picture looks quite different at the local level. States have more immediate and intimate interests
in felon disenfranchisement regulations, as local events and outcomes are more sensitive to changes in policy. States hold local elections for lawmakers such as the city council and school boards. They elect law enforcement officials such as sheriffs and district attorneys. Most states also elect state court judges as well - the individuals who interpret the law and who personally sentence felons in criminal cases.

Elected officials might become targets of felons' personal vendettas, develop voting blocks

S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

Problems arise if felons are permitted to vote in this context. Elected officials executing their duties may become the targets of felons'personal and organized attacks. While the opponents of disenfranchisement think it absurd that prisoners or ex-prisoners could organize a voting bloc, n197 their skepticism appears misplaced when the personal element of community crime is present, especially if voting booths are brought to prisons themselves. Given the right to vote from the jail cell, would not candidates [*1865] campaign there? Admittedly, it is unlikely that a candidate for public office would run on a "pro-crime" platform in a broad sense.

Felon voting blocks would taint elections with anti-social bias

S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

However, through a narrow, gradual process, the effects of such a platform could be attained. A "pro-drug" or "anti-incapacitation" political position is certainly feasible, and it is not unreasonable to suspect that felons would favor such a promise in greater numbers than the general public. Particularly in a local election where turnout and voting totals are low, there is the potential for such a bloc to corrupt the outcome of an election, not because the way an individual might cast his vote, but the way candidates might target and influence incarcerated groups. Such an event would likely have an immediate and damaging effect on local elections, tainting their outcomes with anti-social influences. This rationale may avoid the "fencing out" limitation because it is not focused on the preferences of a voter but an illegitimate manipulation of the voting process.

Felon enfranchisement imposes huge administrative costs on states

S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

Furthermore, this scenario gives rise to a different but related reason states may disenfranchise criminals. As Judge Kozinski stated, "if states can't exclude felons formerly incarcerated from the franchise, then they surely can't exclude felons currently behind bars." n198 Iffelon disenfranchisement becomes unconstitutional, states would likely be required to bring voting booths to prisoners, or at least provide an absentee voting system for incarcerated felons. This would complicate election administration, impose heavy costs on state election commissions, and create a new set of security issues for state governments to solve. Thus, states have a legitimate interest in felondisenfranchisement given the administrative difficulties and expenses of providing voting booths to those in prison. At the very least, the decision of forty-eight states to avoid the difficulties of running polls in prisons should be respected.

It is legitimate to deem loyalty and trustworthiness criteria for voting.

S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

States may also have a legitimate interest in disenfranchisement because "it is not too much to demand that those who would make the laws for others - who would participate in self-government - be willing to follow those laws themselves." n199 Critics such as Professor Karlan reject the notion that felons are less qualified to vote than other citizens because this simply "fences out" those with whom we do not agree, violating the First Amendment. n200 And on a broader level, critics often take exception to using "felon status" as a meaningful proxy for anything. Karlan asserted this herself by questioning why one's right to vote should turn on not being a felon. n201
Addressing these issues, Roger Clegg noted that felons are not the only [*1866] group currently excluded from voting. n202 States are also constitutionally permitted to disenfranchise the mentally incompetent, the young, and foreigners. n203 If these regulations do not "fence out" the viewpoints of these groups, then on what basis are these exclusions acceptable? Clegg argued that "we currently require only two characteristics of voters: trustworthiness and loyalty." n204 People have a right to determine who governs them to the extent they can be trusted to exercise that right in good faith, sharing "a common commitment to our nation, our government, and our laws." n205Thus we do not allow Germans who reside in Germany to vote - their loyalties are not to our nation, but their own. n206 For different reasons, children, aliens, and felons do not possess the prerequisite qualities of trustworthiness and loyalty. n207 "While serving a sentence discharges a felon's 'debt to society' in the sense that his basic right to live in society is restored, serving a sentence does not require society to forget what he has done or bar society from making judgments regarding his trustworthiness." n208

There are many instances in which we deprive felons of rights because of trustworthiness, i.e. felony background checks for employment in schools

S. Brannon Latimer , "Can Felon Disenfranchisement Survive Under Modern Conceptions of Voting Rights?: Political Philosophy, State Interests, and Scholarly Scorn " Southern Methodist University Law Review, Number 59, 2006.

To support this assertion, Clegg pointed out that states routinely impose collateral consequences on felons other than disenfranchisement.n209 Depending on the state, felons may lose the right to various entitlements, including welfare benefits, public housing, food stamps, and the right to possess firearms and ammunition. n210 Describing a more extreme example, he noted that "most would agree that a public school ought to be able to refuse to hire a convicted child molester, even after he has been released from prison." n211 According to Clegg, each of these consequences is based on a nexus theory linking one's status as a felon with some broader lack of trustworthiness, evidence that our society perceives a relationship between trustworthiness and criminal history.
When viewed alongside Altman's philosophical justifications, Clegg's conclusions have traction. Deeming felons unfit to vote is not without rational foundation, nor is it inconsistent with forbidding their participation in other civic functions. Rather, it is consistent with the right of citizens to decide collaboratively what actions result in restrictions on the right to vote. This approach does not exclude the felon from the franchise because of the way he will vote, but because his actions show him to be untrustworthy and therefore unfit to participate in the creation and enforcement of our laws. Thus, it passes Karlan's "fencing out" test [*1867] and provides states with a foothold for maintaining their felon disenfranchisement statutes.

Civic Republicanism privileges social bonds and the public interest

Jason Schall, "THE CONSISTENCY OF FELON DISENFRANCHISEMENT WITH CITIZENSHIP THEORY" 22 Harvard BlackLetter Journal 53, Spring 2006.

Republicanism stands in stark contrast to the individual-focused thought of liberalism. Republicanism holds that political community is a good in and of itself: "political traditions constitute living totalities that cannot be reduced to the purposes of individuals or the goals of sub-communities, and our humanity would be diminished if our lives lacked [*84] a focus for this civic dimension of existence . . . ." n277 The fostering of "civic bonds" between the members of society, rather than preservation of the rights of individuals, is the focal point of republican philosophy. n278

These bonds begin with a common identity that members of the political community must share. n279 Patriotism, fraternity, sympathy, and a feeling of belonging inspire civic-republican citizens to participate in public affairs and work for the common good. n280 Because of the strong civic bonds tying the citizen to the community, the citizen subordinates her own interests in favor of those of the community as a whole. n281 By virtue of being members of the same community, citizens must have some element of common interest, as there is some shared aspect of their lives. n282 This element can help supply the community unity necessary for public-minded deliberation.

Civic Republicanism is a virtue-based conception of citizenship-voting strengthens ties to the whole community

Jason Schall, "THE CONSISTENCY OF FELON DISENFRANCHISEMENT WITH CITIZENSHIP THEORY" 22 Harvard BlackLetter Journal 53, Spring 2006.

Without political participation, there is no citizenship. The essence of republican citizenship lies in the actualizing of civic bonds through involvement in public life. n292 Republicanism regards citizenship not as a series of rights, as liberalism does, but as the fulfillment of certain duties, mainly related to engagement in public discourse regarding community issues and defense of the nation militarily. n293 Only by taking these rights seriously does one become a citizen. Being born within the borders of a society only provides eligibility for citizenship; attainment of citizenship requires exertion. n294

Because of the self-government function fulfilled by citizens, civic-republicanism stresses the importance of maintaining citizens' virtue. Republicans often argue that voters must have the moral competence of public-spiritedness, or the desire to achieve the common good, for democracy to operate properly. n295 This virtue is not thought to come naturally, as humans are "weak and short sighted." n296 Instead, it must be inculcated into [*86] the populace through religion, customs, and education. n297 Beginning with childhood, individuals must be taught of the importance of public-minded political action and the duties of a citizen. n298 While some republican thinkers, such as Rousseau, believed civic education should include breaking individuals' identities and making them all dependent upon the community, others thought independence and judgment were necessary to exercise civic virtue. n299 But all republicans emphasize the necessity of virtue to a well-functioning polity. Not only is virtue necessary for public participation, but public participation enhances virtue. Political participation draws one's attention toward the common good and away from individual interests, simultaneously sharpening one's ability to express one's opinion and engage with others' opinions. n300 Voting reaffirms and strengthens one's ties to the community as a whole. n301

Civic Republicanism justifies felon disenfranchisement based on moral turpitude

Jason Schall, "THE CONSISTENCY OF FELON DISENFRANCHISEMENT WITH CITIZENSHIP THEORY" 22 Harvard BlackLetter Journal 53, Spring 2006.

The oldest rationale for felon disenfranchisement that is based on republicanism is the necessity of protecting our fragile democracy by keeping the wickedness of felons at bay. This argument was famously stated in the Alabama case Washington v. State:
It is quite common . . . to deny the right of suffrage, in the various American States, to such as have been convicted of infamous crimes. The manifest purpose 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 [*88] much as against that of ignorance, incapacity, or tyranny. The evil infection of the one is not more fatal than that of the other. n314

Under this theory, the body politic is a freestanding entity in and of itself, not merely the aggregate of its members. The inclusion of unvirtuous felons will corrupt the body and weaken it. n315 Criminals are seen as bearing some sort of supernatural taint that can spread and infect the rest of society. n316 This "mystical" n317 argument cannot be taken seriously. There is no explanation for exactly how the ability of felons to vote causes others to become corrupted, nor is there any real indication of what the "purity of the ballot box" even means. There are other justifications for felon disenfranchisement, based on criminals' immorality, that are more rational, but the "purity of the ballot box" theory is founded on ghostly fiction.

Civic Republicans sees voting as a trust granted by the community to serve the greater good of the whole community. Felons choose themselves over the community.

Jason Schall, "THE CONSISTENCY OF FELON DISENFRANCHISEMENT WITH CITIZENSHIP THEORY" 22 Harvard BlackLetter Journal 53, Spring 2006.

One such justification is that felons' immorality prevents them from voting responsibly. For republicans, the franchise is not a tool for the voter to use in her best interest, it is a trust granted by the community that is to be operated for the community's good. n318 Felons,lacking virtue, cannot be trusted to exercise the franchise with the good of the community in mind. In addition to the "purity of the ballot box" theory, Washington expressed the fear that criminals would vote in ways that undermined the good of the community, "It is proper ... that this class should be denied a right, the exercise of which might sometimes hazard the welfare of communities, if not that of the State itself, at least in close political contests." n319 This concern was also echoed in later cases. n320 For republicans, the unwillingness offelons to place the public good over their own private good disqualifies them from voting. n321

Civic Republicans see a similarity between felons and noncitizens- we cannot ensure loyalty and good faith voting.

Jason Schall, "THE CONSISTENCY OF FELON DISENFRANCHISEMENT WITH CITIZENSHIP THEORY" 22 Harvard BlackLetter Journal 53, Spring 2006.

The fear of subversive voting can also be phrased as a question of loyalty. Roger Clegg points out that foreigners, though affected by our country's laws, are not permitted to vote in American elections. n322 "People have a right to have a say in governing themselves, but only if we are reasonably sure that they will exercise that right in good faith--that they share a common commitment to our nation, our government, and our laws." n323 Felons do not have that commitment and are not "trustworth[y]." n324

For Civic Republicans, felon disenfranchisement is a form of civic education that teaches respect for the law and expresses moral outrage at crime.

Jason Schall, "THE CONSISTENCY OF FELON DISENFRANCHISEMENT WITH CITIZENSHIP THEORY" 22 Harvard BlackLetter Journal 53, Spring 2006.

Another justification for felon disenfranchisement is the expressive function that it serves. This theory focuses on "the educative message we send, through the law, to all of us--expressing who we are and what we expect of one another as a democratic community." n339Felon disenfranchisement therefore emphasizes the strong bonds between citizens. It serves to define the bounds of the polity, constricting full membership to those who respect and abide by the law. It also signifies the community's moral outrage at the conduct of the convict and labels her as "blameworthy." n340 It makes political participation a somewhat exclusive badge of honor that can only be donned by those who live up to a certain moral standard, thereby possibly increasing its value to those who hold it. Simultaneously, we are reminded of the duties of self-government and the reality that society cannot be good and just if its citizens, the sovereigns, do not value and practice goodness and justice. Felon disenfranchisement can be seen as an integral part of the civic education cherished by republicans.

States have a democratic right to self-determination, including enfranchisement.

ANDREW ALTMAN, Democratic Self-Determination and the Disenfranchisement of Felons, Journal of Applied Philosophy, Vol. 22, No. 3, 2005. Pp.264

The citizens of a legitimate democratic state have a broad collective right to order their own affairs as they choose [4]. The exercise of this right has resulted in the wide diversity of economic, cultural, and political arrangements and policies found in existing liberal and social democratic states. This diversity extends to the basic legal rights of citizens, including matters relating to the vote. For example, there are many different versions of proportional representation that various democratic states employ in electing their national legislatures. Additionally, some states use a district-based, "firstpast- the-post" system instead of proportional representation. Even conceding that strong arguments can be made for the superiority of a given electoral system as a matter of political morality, the citizens of a particular state have the right to choose another.

A right to collective self-determination would have little, if any, meaning if the citizens of a state operated under an obligation to always to choose the morally optimal policies. Moreover, in many cases, it is simply indeterminate as to which system is morally most justifiable, or there is simply a substantial range of reasonable disagreement that cannot be eliminated. As with individual autonomy, the right of collective self-determination must include many eligible options for the citizens of a state to decide democratically in defining the identity of their political community.

We can accept that voting is a right and still grant that democratic states have a right to decide when rights can be limited or suspended.

ANDREW ALTMAN, Democratic Self-Determination and the Disenfranchisement of Felons, Journal of Applied Philosophy, Vol. 22, No. 3, 2005. Pp.265

The punitive nature of disenfranchisement does not follow from the denial that it is a state-created privilege. One can deny that the right to vote is a privilege rather than a right, while still holding that taking the right away from felons is a legitimate exercise of democratic self-determination. The right to vote is not a privilege because all mentally competent, adult citizens of a state have a strong presumptive claim to the franchise. Yet, acknowledging the validity of such a claim does not bar one from arguing that a democratic state has the right to decide whether individuals who commit serious felonies, having already had their right to vote presumptively recognized, are now to have that right suspended. The suspension need not be so much a matter of meting out punishment as making a statement about the standards to which the state will hold each citizen if she is to retain her claim to be a full and equal member of the political community.

Citizens have the right to disenfranchise those convicted of serious felonies, even if the line between serious and not serious is hard to draw.

ANDREW ALTMAN, Democratic Self-Determination and the Disenfranchisement of Felons, Journal of Applied Philosophy, Vol. 22, No. 3, 2005. Pp.266

Yet, my argument is not that criminals should be disenfranchised because they fail to show the appropriate respect the outcomes of democratic processes. Rather, it is that the citizens of a democracy have a right to decide to disenfranchise persons duly convicted of serious felonies. It does not matter that no precise line can be drawn a priori, much less a line that maps on to some level of respect that is due in principlefrom all citizens. Of course, citizens do not have the right to draw the line wherever they arbitrarily wish. In particular, they must not draw the line in a way includes felonies not reasonably regarded as serious.

Not permitting a state to disenfranchise based on crime would mean we can't prevent a genocidaire from voting. We do, however, need a good reason to disenfranchise.

ANDREW ALTMAN, Democratic Self-Determination and the Disenfranchisement of Felons, Journal of Applied Philosophy, Vol. 22, No. 3, 2005. Pp.268

But to think that this sort of ban extends to disenfranchisement based on criminal status is not plausible. It would mean that a state could not disenfranchise citizens duly convicted of genocide. To put the genocidaire in the same category as, for example, disenfranchised Jews and blacks during the nineteenth century is morally preposterous.
Nor do I think that strict scrutiny makes sense in the case of the genocidaire, for denying the vote to such a person is not necessary to meet some compelling interest. Punishing the genocidaire is necessary to meet the compelling retributive and utilitarian considerations served by the criminal justice system. But disenfranchising such an individual is a choice that a democratic citizenry makes in defining the nature of its political community. The citizenry is free to make such a choice, but it is not required to do so. However, due to the importance of the right to vote, the state legitimately has this choice only because it can have good justifying reasons for denying the right to vote to those committing certain kinds of crimes.

Disenfranchisement based on felonies is not arbitrary or ungrounded. It is key to identity of political community.

ANDREW ALTMAN, Democratic Self-Determination and the Disenfranchisement of Felons, Journal of Applied Philosophy, Vol. 22, No. 3, 2005. Pp.268-9

However, the preference to live in a state where serious felonies are met with a suspension of voting rights is not normatively arbitrary or ungrounded. Serious felonies violate important normative constraints. One way to formulate the constraints is in terms of basic human rights: the crimes violate such rights of their victims. However, one might use other normative categories — obligation or utility — for example, in explicating the nature of the constraints. The key point is that how the citizens of a state collectively decide to respond to the violation of important normative constraints embodies in their laws constitutes an important part of the identity of their political community.

Restoring voting rights to felons would not meet requirements of racial justice. It is necessary to fix the system as a whole.

ANDREW ALTMAN, Democratic Self-Determination and the Disenfranchisement of Felons, Journal of Applied Philosophy, Vol. 22, No. 3, 2005. Pp.270-71

In the light of the foregoing considerations, one might reasonably argue that eliminating disenfranchisement and other collateral sanctions imposed on ex-felons and reforming unduly harsh penal policies are much more important than restoring the franchise to felons for meeting the citizenry's obligation to racial justice. Indeed, as far as criminal justice policy is concerned, it is not clear why restoring the vote to those convicted of serious felonies is even necessary to meeting the obligation, once the other policy changes are made. It would count strongly in favour of enfranchising felons if doing so would significantly mitigate racial injustice by increasing the chances of policy changes such as eliminating the collateral sanctions imposed on ex-felons and reforming penal practices. In fact, the best argument for the view that the citizenry has an obligation to enfranchise felons is, perhaps, the one that takes the enfranchisement of felons as an essential part of the political process through which such changes can be effectuated and thereby lead to a weakening of structural racism. Such an argument would see in the enfranchisement of felons the creation of a political constituency to which elected officials would need to respond. And it would be a constituency that would press for the policy changes in question. It is possible that the enfranchisement of felons would work in the manner anticipated by the foregoing argument. However, there are reasons for considerable skepticism. The class of felons is similar those "discrete and insular" minorities whose concerns have not registered with officials because of the combination of hostility and indifference that the large majority of the citizenry has toward them [27]. The fact that these minorities have sometimes had the franchise has proved insufficient to protect their legitimate interests. In addition, felons are ethnically, racially and ideologically fragmented, which further diminishes the chances of their exercising substantial influence over policy. Politically cohesive minorities who are stigmatized far less than felons often lack political influence, notwithstanding their possession of the franchise. Thus, one of the lessons of the Voting Rights Act has been that ballot access by itself is insufficient to give a minority political influence. Beyond the act, it

took several decades of creative judicial rulings, additional legislation, and political activism for blacks to attain the modest level of influence they have today. Accordingly, it is a matter of some substantial speculation whether giving the franchise to felons would actually contribute to the mitigation of racial injustice and, if so, how much it would help. It is much less speculative to argue that doing away with the collateral sanctions imposed on ex-felons, including but not limited to the denial of their right to vote, would make a substantial contribution. This is not to argue that the citizenry ought not to restore the franchise to felons. Rather, it is only to argue that there is no obligation of political principle that they do so.

Enfranchisement could swing elections for crime-friendly candidates and crowd out the will of law-abiding voters.

George Brooks. “Felon disenfranchisement: law, history, policy, and politics.” Fordham Urban Law Journal. September 2005.

Supporters also claim that the exclusion of felons from the voting booth is necessary to prevent harmful changes to the law. (364) The Green court used the specter of "mafiosi" voting to justify the practice. (365) While at first glance this claim seems spurious, opponents of felon disenfranchisement have pointed out how concentrated felons are in a handful of inner city communities. (366) Especially when the issue is vote dilution, it is not unimaginable that a large block of criminals in a district could swing an election to a candidate who does not tout the "tough on crime" line. Indeed, Democrats rely on the assumption that convicted felons will affect election outcomes as they seek to enfranchise millions of sympathetic voters. (367) Further, allowing millions of convicted felons into the voting booths of a small number of predominately minority districts would aggravate this impact and could conceivably infringe on the ability of law-abiding "members [of a protected class in those districts] ... to elect representatives of their choice," (368) in contravention of the Voting Rights Act, (369) The Supreme Court, moreover, has already made it clear that legislatures cannot seek to "fence out" a group of voters based upon how they might vote. (370)

The social contract justification for felon disenfranchisement is a compelling and time-tested argument.

George Brooks. “Felon disenfranchisement: law, history, policy, and politics.” Fordham Urban Law Journal. September 2005.

A third justification offered is the purity of the ballot box: "A State has an interest in preserving the integrity of her electoral process by removing from the process those persons with proven antisocial behavior whose behavior can be said to be destructive of society's aims." (371) Critics respond by arguing that being convicted of a felony does not necessarily diminish one's "moral competence" and that in any event, the result is to fence out groups of minority voters. (372) The Green court found that denying felons the right to vote was reasonable, in light of the Lockean conception of the social contract (373) as well as on more practical grounds since,

“it can scarcely be deemed unreasonable for a state to decide that perpetrators of serious crimes shall not take part in electing the legislators who make the laws, the executives who enforce these, the prosecutors who must try them for further violations, or the judges who are to consider their cases. This is especially so when account is taken of the heavy incidence of recidivism and the prevalence of organized crime. (374) “

As a policy justification, Locke's social contract theory has withstood the test of time; it served as a rationale for the enactment of felon disenfranchisement laws in the past, (375) and remains a compelling argument today. When someone commits a crime, he commits it not just against the victim, but against our entire society. (376) Protests that time served is enough, and that society should prioritize the rehabilitation and reintegration of felons should fall on deaf ears. Opponents of disenfranchisement claim that the inability to vote stymies felons' "remittance into a law-abiding society." (377) Yet they neglect to explain why the tonic of voting did not curtail felons from committing crimes initially.

Moreover, felon disenfranchisement is not the only collateral consequence society has imposed on felons. Felons may be banned from holding elective office. (378) They may also be barred from holding certain Jobs, (379) serving on juries, (380) and receiving government benefits such as welfare and food stamps in certain circumstances. (381) Sex offenders have to register with local authorities in some communities. (382) Congress has also enacted laws that bar felons from owning handguns. (383) If qualifications can be placed on a felon's constitutional rights to free association and to bear arms, voting should not be any different. (384)

The race factor is irrelevant to felon disenfranchisement.

Edward Feser, "Should Felons Vote?" City Journal, Spring 2005, The Manhattan Institute

The most frequently heard charge is that disenfranchising felons is racist because the felon population is disproportionately black. But the mere fact that blacks make up a lopsided percentage of the nation's prison population doesn't prove that racism is to blame. Is the mostly male population of the prisons evidence of reverse sexism? Of course not: men commit the vast majority of serious crimes—a fact no one would dispute—and that's why there are lots more of them than women behind bars. Regrettably, blacks also commit a disproportionate number of felonies, as victim surveys show. In any case, a felon either deserves his punishment or not, whatever his race. If he does, it may also be that he deserves disenfranchisement. His race, in both cases, is irrelevant.

Race was not a factor in the origins of disenfranchisement; even if it were a factor, disenfranchisement would still be good policy.

Edward Feser, "Should Felons Vote?" City Journal, Spring 2005, The Manhattan Institute

But look where the laws preventing felons from voting arose, the advocates say: in bigoted post–Civil War legislatures, keen to keep newly emancipated blacks away from the ballot box. These laws are utterly racist in origin, like poll taxes and literacy tests. But this argument fails on two counts. First, as legal writer Roger Clegg notes, many of the same studies appealed to by felon advocates show that the policy of disenfranchising felons is as old as ancient Greece and Rome; it made its way to these shores not long after the American Revolution. By the time of the Civil War, 70 percent of the states already had such laws. Second, even if felon disenfranchisement did have a disreputable origin, it wouldn't follow that the policy is bad. To think otherwise would be to commit what logicians call the genetic fallacy. Say Abraham Lincoln drafted the Emancipation Proclamation purely for cynical political reasons, or to exact vengeance on rebellious Southern plantation owners, or just to get rid of some unneeded scratch paper. It would be silly to suggest that therefore freeing the slaves wasn't a good thing.

Claims that disenfranchisement punishes felons excessively or "re-punish" them beg the question as to what the proper punishment is in the first place.

Edward Feser, "Should Felons Vote?" City Journal, Spring 2005, The Manhattan Institute

Felon advocates also argue that to prevent felons from voting, especially after their release from prison, unfairly punishes them twice for the same crime. On this view, the ex-con pays his debt to society by doing time and should suffer no further punishment. But this begs the question at issue: should a felon lose his vote as well as spend time behind bars? Few people would say that the drunk driver sentenced by a judge to lose his driver's license and to pay a hefty fine is punished twice. Most would agree that, given the crime, this one punishment with two components is perfectly apt. Similarly, those who support disenfranchising felons do not believe in punishing criminals twice for the same misdeed; they believe in punishing them once, with the penalty including both jail time and the loss of the vote. A punishment of incarceration without disenfranchisement, they plausibly maintain, would be too lenient.

Voting should only be protected as a right when citizens uphold their social contract with one another and the state; felons have failed to do this.

Edward Feser, "Should Felons Vote?" City Journal, Spring 2005, The Manhattan Institute

The claim that disenfranchising felons is wrong because the right to vote is basic and inalienable—another common argument of the advocates—is no more convincing. Obviously, the right is not basic and inalienable in any legal sense, since the laws banning murderers, thieves, and other wrongdoers from voting have stood for a long time. Nor is the right basic and inalienable in a moral sense. Even John Locke, the English philosopher generally regarded as having the greatest influence on the American founding, didn't view the franchise in that light. True, Locke believed that all human beings had certain rights by nature (such as rights to life, liberty, and property), that government existed to protect those rights, and that any legitimate government had to rest on the tacit consent of the people. But

the government that the people consented to did not need to be democratic, in Locke's view—it might even be monarchical.

As long as it protected the basic rights of citizens and retained their loyalty, it remained legitimate, whether or not it allowed its citizens to vote.

Further, Locke added, under certain circumstances we can lose even the rights we do have by nature. Someone who violates another's rights to life, liberty, and property forfeits his own rights to these things; society can legitimately punish him by removing these rights. The criminal has broken the social compact and violated the trust of his fellow citizens. He cannot reasonably complain if they mete out to him a measure of the very harm that he has inflicted on them. Their doing so is a means of dissuading others from breaking the social contract.

Seen in this light, disenfranchisement seems a particularly appropriate punishment for felons. The murderer, rapist, or thief has expressed contempt for his fellow citizens and broken the rules of society in the most unmistakable way. It's fitting that society should deprive him of his role in determining the content of those rules or electing the magistrate who enforces them.

Arguments that enfranchisement will reduce recidivism do not make any sense.

Edward Feser, "Should Felons Vote?" City Journal, Spring 2005, The Manhattan Institute

A New York Times editorial this past February favored felon voting—no surprise there—but put forward a different rationale. The disenfranchisement of felons, the paper held, "may actually contribute to recidivism by keeping ex-offenders and their families disengaged from the civic mainstream"—a notion "clearly supported by data showing that former offenders who vote are less likely to return to jail."

The Times's argument is at least more serious than those considered so far. Still, it doesn't fly. Recidivism doubtless is also less common among ex-cons who return their videos on time. That doesn't mean they should be rewarded with free rental privileges at Blockbuster. More to the point, it doesn't seem to have occurred to the Times that it might be misinterpreting the (alleged) causal connection between voting and keeping out of trouble. Surely it's at least plausible—in fact, quite plausible—that it is precisely the sort of person disposed to learn from his mistakes and become more conscientious who is likely to vote in the first place. That is, it isn't that voting makes someone responsible but that the responsible person will be likelier to vote.

If that's true, then a former inmate who already has what it takes to clean up his act isn't likely to relapse into a life of crime just because he can't cast a ballot. By the same logic, an ex-con hell-bent on new rapes and muggings isn't going to turn over a new leaf just because he gets to vote—even if it's to vote for a Democrat. The notion that he might is pure sentimentality. It assumes that deep inside the typical burglar or car jacker lurks a Morgan Freeman–type character, full of world-weary wisdom and latent civic virtue. A neoconservative, some say, is a liberal mugged by reality. A felon-vote advocate seems to be a liberal who has seen The Shawshank Redemption one too many times.

The interest in respecting state laws outweighs the risk of disparate impact.

Roger Clegg, George T. Conway III and Kenneth K. Lee , "THE BULLET AND THE BALLOT? THE CASE FOR FELON DISENFRANCHISEMENT STATUTES " American University Journal of Gender, Social Policy & the Law, No. 14, 2006.

Even assuming for the sake of argument that the 1982 amendments to the Voting Rights Act established some form of a pure disparate impact standard, states could easily rebut any prima facie case of disproportional impact because of their strong and legitimate interests in maintaining their own electoral laws. 81 As discussed in Section IV, states have substantial reasons to limit the right to vote to persons deemed trustworthy, and thereby exclude children, aliens, the mentally incompetent, and those who have been convicted of serious crimes.

The Supreme Court has held that "the State's interest in maintaining an electoral system ... is a legitimate factor to be considered by courts among the "totality of circumstances' in determining whether a [Section] 2 violation [of the 1965 Act] has occurred." 82 Thus, for example, the en banc Fifth Circuit rejected a [*17] challenge to Texas's county-wide election system for its district court judges - notwithstanding alleged disproportionate impact on minority candidates - on the grounds that the state had a "substantial interest" in linking jurisdiction and electoral base, and thereby promoting "the fact and appearance of judicial fairness." 83

There is little doubt that the states have an equally substantial interest in preventing felons, especially those still incarcerated, from voting and potentially affecting elections. Thus, the Sixth Circuit held that the state's "legitimate and compelling interest" in disenfranchising felons outweighed any supposed racial impact. 84 Indeed, the Framers of the Reconstruction Amendments found state authority to disenfranchise felons to be of such importance that they expressly permitted it in the text of the Fourteenth Amendment." 85 As the Supreme Court put it, "no function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the

Constitution the qualifications of their own voters for state, county and municipal offices ... ."

Anecdotal evidence from felons suggests that enfranchisement has little effect on recidivism.

Christopher Uggen and Jeff Manza. SYMPOSIUM ON RACE, CRIME, AND VOTING: SOCIAL, POLITICAL, AND PHILOSOPHICAL PERSPECTIVES ON FELONY DISENFRANCHISEMENT IN AMERICA: VOTING AND SUBSEQUENT CRIME AND ARREST: EVIDENCE FROM A COMMUNITY SAMPLE. Columbia Human Rights Law Review. Fall, 2004

We first encountered the possibility that civic reintegration may be connected to motivations for desistance in a series of in-depth interviews we conducted with convicted felons in Minnesota. 47 Those we interviewed often spoke passionately about the stigma of a felony conviction and told us that losing the right to vote, in particular, was a powerful symbol of their status as "outsiders." Steven, an older male probationer, told us that "on top of the whole messy pile, there it was. Something that was hardly mentioned, and it meant a lot." 48 Pamela, a female prisoner in her forties, felt the loss of voting rights as additional "salt in the wound" and "another [loss] to add to the pile" of problems she was encountering as a result of her criminal convictions. 49 In that study, we argued that civic reintegration and the adoption of a role identity as an active citizen may facilitate desistance from crime and reconnection with other social institutions.

Yet while many of the prisoners, probationers, and parolees we met regretted the loss of their ability to participate as citizens in their communities, they were often skeptical about drawing any direct connection between voting and subsequent criminality. Andrew, a probationer in his twenties, thought it "would be a stretch" to tie voting to recidivism:

To me that would be a stretch... . I think that people who are more likely to vote are, you know, just at different points in their life, and I just think that the people [who] are more likely to commit crimes aren't gonna either commit those crimes or not commit those crimes because [*213] they have the ability to, to vote. I just don't think that voting's gonna be a priority to them. 50

Larry, a young prisoner, echoed these sentiments in arguing that "people that are gonna get into crime are gonna do it whether they have the right to vote or not." 51 Alex, in the midst of a long prison sentence, similarly doubted the link between voting and recidivism:

I don't think that would have anything to do with it [committing future crime], the right to vote... . I mean I had the right to vote before I came to prison, but I still let my crime happen. I don't go around beating up on people as a hobby or anything. But it just happened. But I don't see voting as having an effect on criminal behavior. 52

Other felons described voting as "a small factor," or as a possible deterrent to committing future felonies. In short, our interviews showed us that while many convicted felons care deeply about disenfranchisement and other civil disabilities, they were on the whole unconvinced that voting in itself would affect subsequent criminal behavior.

Successful social movements must occur at a non-institutional, cultural level; democratic institutions co-opts these movements.

Manuel Castells End of Millennium: The Information Age: Economy, Society and Culture Published by Blackwell Publishing, 2000

Societies, however, are not just the result of technological and economic transformation, nor can social change be limited to institutional crises and adaptations. At about the same time that these developments started to take place in the late 1960s, powerful social movements exploded almost simultaneously all over the industrialized world, first in the United States and France, then in Italy, Germany, Spain, Japan, Brazil, Mexico, Czechoslovakia, with echoes and reaction in numerous other countries. As a participant in these social movements (I was an assistant professor of sociology at the Nanterre campus of the University of Paris in 1968), I bear witness to their libertarianism. While they often adopted Marxist ideological expressions in their militant vanguards, they had little to do with Marxism or, for that matter, with the working class. They were essentially cultural movements, wanting to change life rather than seizing power. They intuitively knew that access to the institutions of state co-opts the movement, while the construction of a new, revolutionary state perverts the movement. Their ambitions encompassed a multidimensional reaction to arbitrary authority, a revolt against injustice, and a search for personal experimentation. While often enacted by students, they were not by any means student movements, since they permeated throughout society, particularly among young people, and their values reverberated in all spheres of life. Of course, they were politically defeated because, as most utopian movements in history, they never pretended to political victory. But they faded away with high historical productivity, with many of their ideas, and some of their dreams, germinating in societies and blossoming as cultural innovations, to which politicians and ideologues will have to relate for generations to come. From these movements sprang the ideas that would be the source of environmentalism, of feminism, of the endless defense of human rights, of sexual liberation, of ethnic equality, and of grassroots democracy. The cultural movements of the 1960s and early 1970s, in their affirmation of individual autonomy against both capital and the state, placed a renewed stress on the politics of identity. These ideas paved the way for the building of cultural communes in the 1990s, when the legitimacy crisis of institutions of the industrial era blurred the meaning of democratic politics.

The social movements were not reactions to the economic crisis. Indeed, they surged in the late 1960s, in the heyday of sustained growth and full employment, as a critique of the "consumption society." While they induced some workers' strikes, as in France, and helped the political left, as in

Italy, they were not a part of the right/left politics of the industrial era that had been organized around the class cleavages of capitalism. And while they coexisted, broadly speaking, with the information technology revolution, technology was largely absent from either the values or critiques of most movements, if we except some calls against de-humanizing machinism, and their opposition to nuclear power (an old technology in the Information Age). But if these social movements were primarily cultural, and independent of economic and technological transformations, they did have an impact on economy, technology, and ensuing restructuring processes. Their libertarian spirit considerably influenced the movement toward individualized, decentralized uses of technology. Their sharp separation from traditional labor politics contributed to the weakening of organized labor, thus facilitating capitalist restructuring. Their cultural openness stimulated technological experimentation with symbol manipulation, constituting a new world of imaginary representations that would evolve toward the culture of real virtuality. Their cosmopolitanism, and internationalism, set up the intellectual bases for an interdependent world. And their abhorrence of the state undermined the legitimacy of democratic rituals, in spite of the fact that some leaders of the movement went on to renew political institutions. Moreover, by refusing the orderly transmission of eternal codes and established values, such as patriarchalism, religious traditionalism, and nationalism, the 1960s movements set the stage for a fundamental split in societies all over the world: on the one hand, active, culturally self-defined elites, constructing their own values on the basis of their experience; o the other hand, increasingly uncertain, insecure social groups, deprived of information, resources, and power, digging their trenches of resistance precisely around those eternal values that had been decried by the rebellious 1960s.