

**Felon Disenfranchisement**

**Student Name – Timothy Bender**

**Instructor Name - Petersilia**

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Abstract:

This paper will examine the large-scale, societal implications of felon disenfranchisement in the US. Felon disenfranchisement, as currently practiced, violates the treaty obligations of the US under the International Covenant for Civil and Political Rights. There is also good reason to expect that it aggravates the danger of factions and exposes law-makers to strong incentives to favor punitive policies. While felon disenfranchisement did not play a role in determining the results of the 2004 California State Assembly elections, its incentive effects *ex ante* remain significant.

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## **I. Introduction and Abstract**

This paper will examine felon disenfranchisement in the US, focusing on California. Current felon disenfranchisement policies are inconsistent with US treaty obligations, and seriously aggravate the concern over the negative influence of factions that was so present in the political theory behind our founding. The size of the disenfranchised population, especially among minority communities, is quite significant, although not significant enough to expect felon disenfranchisement to have affected California State Assembly elections in 2004.

## **II. International Significance**

Although historically the right to vote has been restricted along many dimensions (socio-economic class, race, sex, etc) over the last hundred years the franchise has been expanded to the point of near universal suffrage among democratic countries.<sup>1</sup> By 1994, 96% of states claimed to enfranchise adult men and women citizens.<sup>2</sup> Some countries deny the vote to current prison inmates, yet the United States is alone in restricting the right of non-incarcerated felons to vote.<sup>3</sup> As such, the practice of the United States goes against the prevailing practice of the international community.

However, what is more significant is that current felon disenfranchisement practice within the US violates treaty obligations and so is in violation of international law. The US has ratified the International Covenant on Civil and Political Rights [ICCPR], Article 25 of which provides:

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<sup>1</sup> Dahl, R., *On Democracy*, Yale UP (New Haven, 1998), 90.

<sup>2</sup> Ramirez, F. O., *et al.* "The Changing Logic of Political Citizenship: Cross-National Acquisition of Women's Suffrage Rights, 1890-1990", *American Sociological Review*, Vol. 62, 735.

<sup>3</sup> Uggen, C. and Manza, J., "Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States", *American Sociological Review*, Vol. 67, 777.

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...<sup>4</sup>

Although the US took many reservations in ratifying the treaty (especially to provisions dealing with juvenile justice and capital punishment) it failed to take any reservations or declare any understandings purporting to modify its acceptance of Article 25 of the ICCPR.<sup>5</sup> In lieu of any such reservations, the interpretation of whether US conduct violates this provision of the ICCPR is a matter of international law.<sup>6</sup> Articles 31-33 of the Vienna Convention on the Law of Treaties codifies customary international law, and so is binding even on non-parties.<sup>7</sup> The Vienna Convention provides that terms within treaties be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.”<sup>8</sup> Thus in interpreting the meaning of Article 25 of the ICCPR, we must look to the ordinary meaning of its language while keeping in mind the purpose of the ICCPR and the context of the terms.

The ordinary meaning of the language leaves no doubt that restrictions on the voting rights of felons is a restriction on provisions (a) and (b), leaving only the question

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<sup>4</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 25, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966). [hereinafter ICCPR].

<sup>5</sup> U.S. Reservations to ICCPR available at <http://www.internationaljusticeproject.org/juvICCPR.cfm>, last accessed January 26, 2006.

<sup>6</sup> Vienna Convention on the Law of Treaties, 27 Jan. 1980, 8 I.L.M. 679 (1969) [hereinafter VCLT].

<sup>7</sup> *Golder v. United Kingdom*, E.C.H.R., Ser. A, No. 18 (1975).

<sup>8</sup> VCLT art. 31(1).

of whether such restrictions are “unreasonable.”<sup>9</sup> It is certainly a persuasive argument that removing the right to vote for life (whether done so formally or through a practice of technical parole violations amounting to formal life disenfranchisement) from anyone convicted of a felony is unreasonable, at least in many instances. Why is it reasonable to deny the vote to a 65 year old man who, 40 years earlier, stole a car? How is it reasonable to deny voting rights to former drug users, long since clean, because they were once addicted to and caught in possession of a controlled substance?

The purpose of the ICCPR is made abundantly clear from both the text and the preamble: “to promote universal respect for, and observance of, human rights and freedoms.”<sup>10</sup> How does allowing such restrictions “promote universal respect for, and observance of, human rights and freedoms?”<sup>11</sup> Rather it is forbidding such arbitrary and harsh disenfranchisements that would promote respect for human rights. This is true both directly (in further universalizing the right to vote) and indirectly (in, as will be discussed below, increasing the electoral chances of candidates more inclined to care about and protect the human rights of the vulnerable prison population).

Further, Article 31 of the Vienna Convention directs us to look to the context of the treaty in interpreting it, and Article 32 of the Vienna Convention defines context as “including its preamble and annexes.”<sup>12</sup> The preamble makes abundantly clear the correctness of our conclusion that US felon disenfranchisement is unreasonable:

The States Parties to the present Covenant,

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<sup>9</sup> ICCPR art 25.

<sup>10</sup> ICCPR, preamble.

<sup>11</sup> ICCPR, preamble.

<sup>12</sup> VCLT, art. 31-32.

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms...<sup>13</sup>

The description of rights as “inalienable” is flatly inconsistent with the idea that committing a crime should permanently alienate, rather than temporarily suspend, the right to vote.<sup>14</sup> The description of rights as stemming from the “inherent nature” of human beings is in contradiction to the idea that actions particular to individual human beings determine whether they are owed the right to vote.<sup>15</sup> Interpreting the word everyone to mean those who haven’t offended society in the statement “everyone may enjoy his civil and political rights” would be absurd.<sup>16</sup> The declaration that all states have the responsibility to “promote universal respect for, and observance of, human rights and freedoms” argues against any interpretation that the rights addressed by the convention need not be extended universally.<sup>17</sup>

Further, the above interpretation is in line with precedent. The ICCPR specifically creates a Human Rights Committee to aid in dispute resolution under the

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<sup>13</sup> ICCPR, preamble.

<sup>14</sup> ICCPR, preamble para. 1.

<sup>15</sup> ICCPR, preamble para. 2.

<sup>16</sup> ICCPR, preamble para. 3.

<sup>17</sup> ICCPR, preamble para. 4.

treaty.<sup>18</sup> In its commentary to Article 25 of the ICCPR, this committee declared “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.”<sup>19</sup> It cannot be said that it is proportionate to the offence and sentence to permanently remove the right to vote from thieves and murders, those serving a life sentence and those sentenced to one year, alike. Further, the very use of the word suspend implies that the right to vote should be removed only for a limited period of time rather than permanently eliminated.

It is important to note that it is no defense to point out that the US Constitution entrusts the matter of voting qualifications to state rather than federal authority, and so removes from the national government the authority to enfranchise felons.<sup>20</sup> It is a well established principle of international law that a state may not invoke provisions of its domestic law to evade international responsibility.<sup>21</sup> Further, the Constitution declares that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land,”<sup>22</sup> and so in addition to their obligations under international law as State organs<sup>23</sup> the individual states and their legislators are violating the supreme law of the land by disenfranchising felons in the current manner.

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<sup>18</sup> ICCPR, art. 28.

<sup>19</sup> General Comment Adopted by the Human Rights Committee under Article 25, Paragraph 14, of the ICCPR *CCPR/C/21/Rev.1/Add.7*, December 7, 1996 [hereinafter Committee].

<sup>20</sup> US Const. art. I sect. 2.

<sup>21</sup> *Draft Articles on Responsibility of States for Internationally Wrongful Acts* in Report of the International Law Commission, Fifty-Third Session, art. 3, 4, U.N. GAOR, 56<sup>th</sup> Sess., Supp. No. 10, U.N. Doc. A/56/10 (2001) [hereinafter ILC, *State Responsibility*].

<sup>22</sup> US Const. Article VI section para. 2.

<sup>23</sup> ILC, *State Responsibility*, art 4.

In conclusion, the ordinary meaning of the word “reasonable” leads to the conclusion that current felon disenfranchisement practice in the US violates its obligations under the ICCPR.<sup>24</sup> Looking further to the context, as contained in the preamble, and to the purpose of the treaty we find only further confirmation of this conclusion.<sup>25</sup> The comments of the Human Rights Committee lend the weight of precedent to this interpretation.<sup>26</sup> Thus, many times when a felon is disenfranchised the United States is violating international law and breaching its treaty obligations under the International Covenant for Civil and Political Rights.<sup>27</sup>

### **III. Compatibility with the political theory behind our founding**

“Although the struggle to extend the franchise to all continued...the history of suffrage has been generally viewed as a steady march toward universalism.”<sup>28</sup> However, this steady march has left felons behind. It is important to ask how disenfranchising felons fits with the political theory behind our Constitution, in order to shed light on how we might expect disenfranchisement to alter political outcomes and the nature of our laws.

While deferring to the states to set voter qualifications,<sup>29</sup> the Constitution declares that “The United States shall guarantee to every State in this Union a Republican Form of

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<sup>24</sup> ICCPR, art. 25.

<sup>25</sup> ICCPR, preamble.

<sup>26</sup> Committee, para. 14.

<sup>27</sup> ICCPR.

<sup>28</sup> Uggen and Manza *supra* note 3 at 780.

<sup>29</sup> US Const. art I sect. 2 para. 1.

Government.”<sup>30</sup> In *Federalist* number 39, Madison defined a republic as “a government which derives all its powers directly or indirectly from the great body of the people.”<sup>31</sup> The debates during the constitutional convention contain many speeches stressing the importance of extending suffrage widely. According to Madison’s notes, Mr. Wilson

Wished for vigor in the Government, but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The Government ought to possess not only first, the *force*, but secondly, the *mind or sense* of the people at large. The Legislature ought to be the most exact transcript of the whole Society. Representation is made necessary only because it is impossible for the people to act collectively.<sup>32</sup>

The “most exact transcript” is not achieved by excluding a group that differs from the rest of the population in important ways.<sup>33</sup> Col. Mason stated “The requisites in actual representation are that the Representatives should sympathize with their constituents; should think as they think, and feel as they feel.”<sup>34</sup> It cannot be said that representatives elected without the participation of felons will be likely to sympathize with the felon populations, as will be analyzed below. In fact political pressures will lead to the opposite result, and punitive, unfeeling policies are likely, as discussed below.

Further, the political theory of factions contained in Madison’s *Federalist 10* is inconsistent with felon disenfranchisement. It is important to understand the critical importance of *Federalist 10* and its theory of factions, in order to understand its implications for the results of felon disenfranchisement. In the very contentious debates

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<sup>30</sup> US Const. art. IV Sect. 4.

<sup>31</sup> Madison, Hamilton, Jay, *The Federalist Papers*, Penguin (London, 1987), 255.

<sup>32</sup> Farber, D. A. and Sherry, S., *A History of the American Constitution*, 2<sup>nd</sup> Ed., Thomson/West (St. Paul, MN: 2005), 162.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Id.* at 163.

surrounding the ratification of the Constitution, where its Federalist supporters were opposed bitterly by the Anti-Federalists, a central theme was the historical fact that the republics of the past had all been confined to small territories.<sup>35</sup> Montesquieu's work and the writings of the Anti-Federalists gave theoretical support to the empirical evidence.<sup>36</sup> A prominent Anti-Federalist, writing under the name Brutus in honor of the classical republican hero of antiquity, published sixteen essays between October 1787 and April 1788.<sup>37</sup> His first essay was perhaps the most important, and dealt with the critical size argument against the Constitution.

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States...Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn...against it...In despotic governments...his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide...it must be confined to a single city, or at least limited to such bounds as that the people can...assemble.

In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.

If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number of chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldy, as to be subject in great measure to the inconveniency of a democratic government.

The territory of the United States is of vast extent...Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not.

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<sup>35</sup> *Id.* at 267.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Id.* at 268.

In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government...a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogeneous and discordant principles, as would constantly be contending with each other.<sup>38</sup>

The Federalist response to this argument was to turn the size of the republic into an advantage, and in doing so refute “virtually every Anti-Federalist argument against the Constitution...[by providing] a coherent theory that could be used to elucidate and justify the structure of the whole Constitution as well as its individual parts.”<sup>39</sup> The inconsistencies of this theory with felon disenfranchisement will be examined concurrently as we turn to the presentation of this argument, Madison’s *Federalist 10*.

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.<sup>40</sup>

The two factions we speak of in examining felon disenfranchisement are those in society bent on punitive policies, and those whom these policies act upon adversely (prisoners, prisoners families, former prisoners). I will refer to the first as the punitive faction, the second as the prisoner faction. Demonstrating that these are indeed factions within Madison’s definition is trivial. Both are composed of a number of citizens. The punitive faction is united by the common impulse of wanting criminals to be punished, or, in the case of some elements of this faction (the prison guard unions for example), the interest

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<sup>38</sup> *Id.* at 268-269.

<sup>39</sup> *Id.* at 269-270.

<sup>40</sup> Madison, Hamilton, Jay, *supra* note 31 at 123.

in jobs. This is adverse to the interests of larger society, insofar as those interests would point in the direction of a more nuanced criminal justice policy. The prisoner faction is motivated by a common interest in lenient punishments and increased rehabilitation, and insofar as this faction would discount the incapacitative and deterrent needs of society they are likewise opposed to the common interests of larger society.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.

The punitive faction and the prisoners faction are on directly opposite sides of the issue of how much punishment should be meted out and how much rehabilitation should be provided within the criminal justice system.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole. The inference to which we are brought is, that the *causes* of faction cannot be removed, and that relief is only to be sought in the means of controlling its *effects*.

Perhaps with great leaders at the helm, the punitive faction (or at least those elements of it that do not depend on the prison system for their jobs) could be led to understand that a greater focus on rehabilitation would serve the end of reducing crime better than

indulging revenge instincts, and the prisoner faction could be convinced of the importance of substantial enough sentences to allow rehabilitative programs to take place that would prepare them for reentry. But these are exactly the kind of remote considerations that Madison mentions as unlikely to be considered, and history has shown that our leaders have not risen to the challenge of striking a balance between these factions.<sup>41</sup>

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic, is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

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<sup>41</sup>Tonry, *Thinking About Crime*, Oxford (1985) 38-40.

The framers were thus extremely concerned about the prospect of factions forming that, if they succeeded in gaining control, would advance their narrow goals over the good of the republic. The answer given, the answer that in part led to the ratification of the Constitution, was that by placing control in the Union as a whole, comprising a large territory, such factions would be less dangerous as their ability to organize effectively and influence policy would be diffused. But it is in the states themselves, and not the federal government, that the vast majority of criminal justice policy takes place. At the end of 2004, out of 1,496,629 total prisoners only 180,328 were confined under federal jurisdiction.<sup>42</sup>

If this were the only concern, then it would have to be admitted that the Constitution itself recognizes the necessity of leaving certain matters within state control,<sup>43</sup> and thus not every sphere is to be protected from the influence of factions. But felon-disenfranchisement goes well beyond such a necessity. It largely disarms the only faction with an interest in combating the punitive faction within the state spheres, where they can be expected to be well organized and dangerous. Where prisoners are not allowed to vote, and even more so where former prisoners, whether by formal law or effective parole revocation practice, are denied the vote, nearly all the electoral power of the prisoner faction is wiped out. Thus, state law disenfranchising felons aggravates a principal evil that the framers of our constitution hoped they were solving.

While it is easy to lose sight of the relevance of 200-year old political writings to today's world, it is likewise easy to see the application of the above principles in the

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<sup>42</sup> United States Department of Justice Report, **Prisoners under State or Federal jurisdiction**, Federal and State-by-State, 1977-2004, 12/05.

<sup>43</sup> 10<sup>th</sup> Amendment to the Constitution of the United States of America.

California of today. An exhaustive survey of the influence the California prison guard union has had in advancing the interests of the punitive faction is beyond the scope of this paper, but it is beyond question that the punitive faction has been well organized within California and instrumental in the adoption of many punitive policies that subject the electorally-disarmed prisoners faction to harsh policies.<sup>44</sup>

Of course, the framers supported many policies (such as the slave-trade or the restriction of the franchise to men) that were inconsistent with the principles and theory behind our founding, yet were not forbidden by the Constitution. However, the above argument is not that felon disenfranchisement is unconstitutional. Rather, it is meant to show the inconsistency of felon disenfranchisement with the theoretical underpinnings of our Nation, insofar as it contradicts the representative nature of government and aggravates the danger of factions operating at the theoretically more vulnerable state level.

#### **IV. General notes on disenfranchisement in California**

This paper will now turn to examining the effect of the disenfranchisement of felons on California state elections. It will examine the 2004 California State Assembly elections. Given the fact that members of minority groups represent the bulk of the prison and parole population, and tend to vote Democratic in disproportionate numbers, it seems intuitively valid that disenfranchisement would affect the results of some state and local elections.<sup>45</sup>

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<sup>44</sup> Center on Juvenile Justice, "Political Power of the CCPOA" available at [http://www.cjcw.org/cpp/political\\_power.php](http://www.cjcw.org/cpp/political_power.php), last accessed January 26, 2006.

<sup>45</sup> Dawson, M., *Behind the Mule: Race and Class in American Politics*, Princeton UP (Princeton: 1994).

In California, the right to vote is suspended while a person is “imprisoned or on parole for the conviction of a felony.”<sup>46</sup> While the terms of California’s felon disenfranchisement policy seemingly are different and less harsh than those of the many states that impose lifetime disenfranchisement on ex-prison inmates, in reality the peculiar nature of California’s “parole” system leads to a similar result. This is because 70% of all paroled felons will be sent back to prison within 18 months.<sup>47</sup> In 2004, the average daily parole population in California was 128,501, and 76,565 of those were returned to supervision.<sup>48</sup>

In California, 163,939 people are incarcerated felons. Of these 29% are Black and 37% are Hispanic, amounting to approximately 47,542 Black and 60,657 Hispanic inmates. Further, 113,768 people are on parole in California. Of these, 26% or approximately 29,580 are Black and 38% or approximately 43,232 are Hispanic. In total then, 277,707 Californians are denied the right to vote under current law. 77,122 of them are Black and 103,889 are Hispanic.<sup>49</sup>

The US Census Bureau estimates that there are 26,094,800 people of voting age living in California. 6.7% are Black and 32.4% are Hispanic.<sup>50</sup> Therefore there are

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<sup>46</sup> Cal. Const. art. II § 4.

<sup>47</sup> JOAN PETERSILIA., PAROLE AND PRISONER REENTRY IN THE UNITED STATES, *in* Prisons (M. Tonry and J. Petersilia eds., 1999).

<sup>48</sup> RISK MANAGEMENT DIVISION, OFFENDER INFORMATION SERVICES BRANCH, ESTIMATES AND STATISTICAL ANALYSIS SECTION, DATA ANALYSIS UNIT, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Rate of Felon Parolees Returned to California Prisons, Calendar Year 2004 (2005).

<sup>49</sup> CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Adult Operations and Adult Programs, Facts and Figures, First Quarter 2005 (2005), *at* [http://www.corr.ca.gov/CommunicationsOffice/facts\\_figures.asp](http://www.corr.ca.gov/CommunicationsOffice/facts_figures.asp).

<sup>50</sup> UNITED STATES CENSUS BUREAU, Quick Facts, California (2005), *at* <http://quickfacts.census.gov/qfd/states/06000.html>.

approximately 1,748,350 Black and 8,454,720 Hispanic voting-age residents. That means that approximately 4.4% of Black and 1.2% of Hispanic voting-age Californians are disenfranchised by current law. Only 0.6% of non-Black or Hispanic voting-age persons are disenfranchised. The racial disparity in disenfranchisement is clear.

Disenfranchising such large numbers of minority communities, especially the 4.4% disenfranchisement rate of Black citizens, is certain to have led to political consequences. Issues important to these communities are less likely to be addressed and dealt with given their reduced voting power. Further, candidates that do address their issues and advocate for causes favorable to these communities are less likely to be elected.

Looking to the disenfranchisement of felons in general, criminal justice policies are likely to be very affected. A group that might be an effective answer to the lack of a political constituency supporting experimentation with rehabilitation and a counterbalance to the allure of a “tough-on-crime” political campaign is denied any electoral existence. Therefore candidates are less likely to favor a more nuanced criminal justice policy than they would be if felon disenfranchisement did not take place, and those brave enough to favor a more rehabilitative criminal justice policy are less likely to be elected.

Perhaps most concerning, there is a cyclical-reinforcing effect to felon-disenfranchisement. Candidates with punitive criminal justice policies are more likely to be elected, and in turn pass laws such as three-strikes that broaden the amount of disenfranchisement, thus making it even more likely that those with more punitive policies will be elected in the future.

In the same vein, a perverse incentive structure is created for lawmakers. Those whose election chances are improved by felon-disenfranchisement, for example lawmakers favoring punitive criminal justice policies or belonging to the Republican party, have an interest in passing laws that do not rehabilitate offenders successfully. For example, a diversion program that successfully treats drug offenders rather than sending them to prison is not in the narrow political interests of a conservative politician. Such a policy would allow many members of minority groups that have a high probability of voting against conservative candidates to retain the franchise, and possibly swing the results of the next election. The same argument would apply with punitive policies that leave most felons on perpetual parole versus programs that rehabilitate and help them to successfully complete their parole period. It seems that this disincentive towards effective rehabilitative criminal justice policies could be quite significant.

Further, the perverse incentives created by the disproportionate minority impact of disenfranchisement of felons feeds into a cycle of even greater criminal law enforcement against minority communities. To explain, the disproportionate decrease in minority voting power will lead to more candidates being elected who do not further the causes minority communities are most concerned with. These politicians will have in their interest an even greater application of criminal law against minority communities, as a disenfranchised member of a minority community is more likely to have voted against them than a disenfranchised White individual. Thus they will have an incentive to call for laws that cause a disproportionate impact on minority communities, in the vein of the 10-1 crack-cocaine punishment disparity. Perhaps more disturbing, they are less likely to support social programs that might help alleviate the current racial disparity. For

example, if affirmative action programs help to educate minority communities and thereby reduce crime among members of these communities, affirmative action is less likely to be supported by those whose political ends are hampered by the lessened disenfranchisement of these communities.

## **V. Methodology**

The methodology of this paper will track that used in Christopher Uggen and Jeff Manza's "Democratic Contraction? The Political Consequences of Felon Disenfranchisement in the United States."<sup>51</sup> Estimates will be obtained of voter turn-out and voter choice among the disenfranchised populations. This data will then be used to analyze a variety of state and local elections across the state to determine who would have won if there were no disenfranchisement. Policies of the candidates who might have been elected will then be examined to show how greater representation of minority-communities or more nuanced criminal justice policies might have occurred. Indeed, this paper will directly utilize the results of Uggen and Manza's research, although we now turn to a fuller discussion of the methods they used in deriving the needed numbers.

To establish the percentage of felons who vote, data from the US Voter Supplement File of the Current Population Survey (CPS) is utilized. It asks all sampled households, on even numbered years, "In any election some people are not able to vote because they are sick or busy or have some other reason, and others do not want to vote. Did [you/another household member] vote in the election on November \_\_?"<sup>52</sup>

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<sup>51</sup> Uggen and Manza *supra* note 3.

<sup>52</sup> *Id* at 784.

These questions produce somewhat inflated voting estimates.<sup>53</sup> The inflation factor ranges from a low of 7.5 percent in 1968 to a high of 11.1 percent in 1988 for presidential elections between 1964 and 1996.<sup>54</sup> Therefore, Uggen and Manza reduced voting estimates by the CPS inflation factor.<sup>55</sup> Further, they noted that turnout inflation is most prevalent among better educated households<sup>56</sup> and so this procedure is likely to underestimate felon participation. Finally, US Census Bureau verification tests confirm that such proxy reports of voting behavior are in high agreement with actual behavior.<sup>57</sup>

Expected voter choice of disenfranchised felons is analyzed using the National Election Study (NES) data.<sup>58</sup> The NES includes a wealth of questions about education, income, and race, and so is ideally suited to matching the patterns evinced by the CPS.<sup>59</sup> Since there is a lack of survey data asking how convicted felons would have voted, the next best thing is to “match” the felon population to otherwise like situated individuals in terms of gender, race, age, income, labor force status, marital status, and education. Uggen and Manza analyze age, education, and income in the year prior to incarceration as continuous variables.<sup>60</sup> Labor force status, marital status, gender, and race (African

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<sup>53</sup> *Id* at 784.

<sup>54</sup> U.S. Bureau of Census, *Statistical Abstract*, U.S. Government Printing Office (Washington D.C.: 2000).

<sup>55</sup> Uggen and Manza *supra* note 3, at 784.

<sup>56</sup> Bernstein, Chadha, Montjoy, “Overreporting Voting: Why It Happens and Why It Matters”, *Public Opinion Quarterly*, Vol. 65, 22 (2001).

<sup>57</sup> U.S. Bureau of the Census, “Voting and Registration in the Election of November 1984”, U.S. Government Printing Office (Washington D.C.: 1986).

<sup>58</sup> Uggen and Manza *supra* note 3 at 784.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

American or not) are measured as dichotomies.<sup>61</sup> The characteristics of convicted felons are taken from the “Survey of State Prison Inmates” data series.<sup>62</sup> The mean characteristics of disenfranchised felons are inserted into the logistic regression models that predict turnout and party preference for the general population.<sup>63</sup> This yields the predicted participation and party preference rates.

A few concerns should be addressed immediately. First, the data set used throughout is Uggen and Manza’s and so spans from 1978 to 2000, and therefore the analysis depends on the idea that 2004 data would not depart drastically from these bounds. Second, the data set is national. But since California is so large, and its prison population 9% of the national, California’s characteristics in many ways drive the national averages.<sup>64</sup> Further, there is little reason to expect a sharp difference, and it would be difficult to run new analysis on state specific data. Third, the disenfranchised felon information is collected from those currently incarcerated in prisons, and so in many ways might not accurately reflect the parole population. However, it is likely that this error will only lead to underestimating the effect of enfranchising felons on elections, as the increased income and stability attained after release will only make the felons more likely to vote. However, it might also make them more likely to vote Republican, so the potential for error should be acknowledged. Fourth, our ensuing analysis assumes that

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<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> United States Department of Justice, Bureau of Justice Statistics, “Prisoners in 2004” (2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p04.pdf>, last accessed January 26, 2006.

the disenfranchised population of any given county or electoral district would faithfully reflect in characteristics that of the state (and, consequently, nation) as a whole.

Fifth, since we are inserting the mean characteristics of felons to obtain both vote choice and vote participation, and then multiplying the two to obtain the chance of voting democratic, there is the potential for error. Many of the same characteristics (income, perhaps) might make a felon both more likely to vote and more likely to vote Republican.<sup>65</sup> Therefore, by assuming that any given felon who votes is as likely to vote for a given party as a felon (voting or non-voting) taken at random from the overall felon population would if he/she had voted, we may be introducing error. In other words, it is not necessarily true that the chance that any given felon would vote and the chance that they would vote for a given party are independent variables; they may very well be dependant in a way that leads us to overestimate the amount of Democratic votes that would be cast if felons were enfranchised.

Sixth and finally, it is logical to question whether felons would really vote in similar numbers to like-situated non-felons. Perhaps felons have, on average, less of a sense of civic duty or community involvement. Although Uggen and Manza were unable to present an absolutely convincing and clear test of this problem, the Youth Development Study<sup>66</sup>, a longitudinal survey following Minnesota ninth-graders through the next ten years of their lives, provides many clues. During this period approximately 23 percent had been arrested and 7 percent had been incarcerated. Uggen and Manza's model showed that although political participation among arrestees was only about half

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<sup>65</sup> Uggen and Manza *supra* note 3 at 790.

<sup>66</sup> Mortimer, J. T., *Working and Growing up in America*, Forthcoming Harvard UP (Cambridge, MA).

as high as the general population, such difference is insignificant once race, gender, education, income, employment, and marital status are factored out.<sup>67</sup> Thus this study provides at least some evidence that our turnout rate estimates are accurate, at least for the portion of the disenfranchised population consisting of youthful individuals. Similar analysis indicates that party preference is even more strongly Democratic than our factors based estimates would lead us to believe (in other words, criminal justice involvement itself predicts Democratic voting) and so if anything our party preference estimates are conservative.<sup>68</sup>

In conclusion, there are important questions to be asked about the correctness of the coming analysis. However, most of these concerns can be answered at least somewhat satisfactorily, and thus while caution must be maintained in drawing conclusions we will proceed to the analysis.

## **VI. California State Assembly Elections in 2004**

Given the analysis in IV, above, we know there are approximately 277,707 disenfranchised felons within California. Since assembly districts do not coincide with county lines, it is very hard to estimate how many of these disenfranchised people live in each assembly district. Making the assumption (subject to verification in particular cases) that a rough estimate can be obtained by dividing these people among each district equally (which further depends on assuming that prisoners would be registered to vote in their last place of residence rather than where their prison is located), we shall proceed.

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<sup>67</sup> Uggen and Manza *supra* note 3 at 790.

<sup>68</sup> *Ibid.*

With 80 assembly districts we can estimate that there are approximately 3470 disenfranchised persons in each district.

From Uggen and Manza's calculations, following the methodology explained above, we see that predicted turnout in presidential election years among felons varied from a high of slightly below 40% to a low of slightly below 30%, while percent predicted to vote Democratic varied from a low of slightly above 65% to a high of slightly above 85%.<sup>69</sup> Thus we can calculate that a high of 1388 (.4 x 3470) and a low of 1041 (.3 x 3470) disenfranchised felons would have voted in each district. To complete our estimate of the upper and lower bounds of felon effect, we will calculate the number of Democratic votes gained offset by the number of Republican votes gained. Thus we find that at best the Democratic party would have picked up a net positive of 943 votes ( $1348 \times .85 - 1348 \times .15$ ) and at worst 312 votes ( $1041 \times .65 - 1041 \times .35$ ) in the average assembly district.

By examining the election data contained in the appendix, one can see that only one election was close enough to even be worth considering the results of. In the 2004 elections, Republican incumbent Shirley Horton faced off against Democrat Patty Davis in the 78<sup>th</sup> Assembly District, located within San Diego County. The Republican victory was by a very narrow margin; Horton won with 76,886 votes (49.1%) with Davis receiving 74,888 votes (47.8%).<sup>70</sup> A mere additional 2,000 Democratic votes would have won the election for Davis.

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<sup>69</sup> *Id.* at 787.

<sup>70</sup> CA Secretary of State, "Statement of Vote and Supplement to the Statement of Vote 2004 Presidential General Election, November 2, 2004", available at [http://www.ss.ca.gov/elections/sov/2004\\_general/contents.htm](http://www.ss.ca.gov/elections/sov/2004_general/contents.htm), last accessed January 26, 2006.

However, as noted above the absolute highest estimate of the effect enfranchising felons would have had would only mean an additional net 943 votes. It remains to check whether perhaps San Diego has such a disproportionate population of felons and parolees that our estimate might be off by more than a factor of 2. We will use the parole population as a proxy. San Diego County has 6.5% of the parole population of California.<sup>71</sup> However, San Diego County represents over 12% of the California State population.<sup>72</sup> Thus if anything San Diego County has a disproportionately small share of the disenfranchised population.

## **VII. Examining one close election in greater detail**

However, it is still worthwhile to examine the 2004 78<sup>th</sup> Assembly District election in greater detail. Although it in all likelihood would not have been swayed by felon enfranchisement, it was close enough that the incentives to favor or oppose legislation created in law makers by felon suffrage policies become important, both in behavior leading up to the election and afterwards.

Although Democrat Patty Davis does not have a public record to examine that reveals how she would have approached criminal justice issues, we can at least examine the record of her victorious opponent. Republican Shirley Horton has already served one term at the time of her 2004 reelection. This paper will first examine her record during the second term, to discover specific effects that might have been reversed had she lost the election. It will then turn to examining her legislative behavior during her first term.

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<sup>71</sup> California Department of Corrections and Rehabilitation, “Data Analysis Unit, Estimates and Statistical Analysis Section, Offender Information Services”, 2005, available at <http://www.corr.ca.gov/ReportsResearch/docs/Annual/Pcensus1/Pcensus1d0506.pdf>, last accessed January 26, 2006.

<sup>72</sup> U.S. Census Bureau, *supra* note 50.

Her first term behavior both reveals what can be expected from her in the future, and, consistent with the incentive-based principles outlined in the introduction, was colored by the prospect that she did not have to cater to the disenfranchised electorate in planning her first term legislative behavior to further her interests in being reelected to a second term.

Assemblywoman Horton has proposed many criminal justice related pieces of legislation during the current (2005) term. In the area of sex offenders, she has proposed AB 893, which requires that when releasing persons convicted of certain violent sexual offenses, in deciding where to place them attention must be given to their prior victims' ages and profiles, in addition to the location of their actual victims and their families. The bill was passed by both the Assembly and the Senate, and has been enrolled as of 8/23/05.<sup>73</sup> What this bill might mean in practice is that many such offenders will not be able to return to their communities, as they will be found to contain their target populations. She proposed AB 1109, which would have increased the amount of notice to local officials time before certain sex offenders could be placed in their communities from 15 days to 65 days.<sup>74</sup> She proposed AB 1603, which would require law enforcement to create "risk zones" around some categories of released sexual offenders and make public information about this offender to all those within the "risk zone," and would require affirmative notification of the offender's presence to all those within the

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<sup>73</sup> California State Assembly, Bill No. 893, 2005, available at [http://www.aroundthecapitol.com/billtrack/billview.html?bill=ab\\_893](http://www.aroundthecapitol.com/billtrack/billview.html?bill=ab_893), last accessed January 26, 2006.

<sup>74</sup> California State Assembly, Bill No. 1109, 2005, [http://www.aroundthecapitol.com/billtrack/billview.html?bill=ab\\_1109](http://www.aroundthecapitol.com/billtrack/billview.html?bill=ab_1109), last accessed January 26, 2006.

“risk zone.”<sup>75</sup> Requiring affirmative action to notify all persons living within such “risk zones” of the presence of a sex offender goes well beyond merely having such information available upon request, and is only more likely to make it difficult for such individuals to reintegrate in a community where their neighbor’s will be *warned* by the government that an offender lives nearby.

As noted in the introduction, the disenfranchisement of felons leaves no political downside for issuing statements lacking in moderation and designed to instill fear of criminals in voters. On 8/30/2005, Assemblywoman Horton issued an opinion editorial entitled “It’s Time for California to Lead the Nation with Toughest Sex Offender Laws.” Some representative quotes follow.

Stories abound of these convicted sexually violent predators (SVPs) roaming our streets at will, preying on our innocent children. It’s now time for California to lead the charge and take drastic steps to stop these monsters...[Jessica’s law will] Require that registered felony sex offenders be monitored by a global positioning device (GPS) for the rest of their lives, Prohibit registered offenders from living near schools and parks, Stiffen prison sentences and penalties, including a crack down on rapists that drug their victims and the elimination of “good time” prison credits for habitual offenders, [and] Ensures that sexually violent predators, prior to their parole, stay in a state hospital until they prove they no longer pose a danger to society... Historically, bills of this kind designed to crack down on SVPs have been defeated in Sacramento by the most liberal members of the other party... We have no doubt that should the people of California be allowed to decide, they will join us in finally taking back our streets, parks and neighborhoods from the murderous sex offenders lurking among us.<sup>76</sup>

Clearly, one is either for the bill or in league with the “murderous sex offenders lurking among us.” Any opposition to the bill based on the idea that a more nuanced, less wholesale exclusion of those convicted of sexual offenses from society is better policy

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<sup>75</sup> California State Assembly, Bill No. 1603, 2005, [http://www.aroundthecapitol.com/billtrack/billview.html?bill=ab\\_1603](http://www.aroundthecapitol.com/billtrack/billview.html?bill=ab_1603), last accessed January 26, 2006.

<sup>76</sup> Horton, S. “It’s Time for California to Lead the Nation with Toughest Sex Offender Laws”, (2005), available at <http://republican.assembly.ca.gov/members/index.asp?Dist=78&Lang=1&Body=OpinionEditorials&RefID=1290>, last accessed January 26, 2006.

would clearly be the product of the “most liberal members of the other party” in support of “monsters.”

Assemblywoman Horton’s first term record resembles the second, and confirms the reality that she need not fear political backlash from “tough on crime” policies. During 2003 she introduced 3 bills strengthening sex offender registration (AB 181, AB 311, and AB 966). She also proposed AB 863, which provides a punishment enhancement for child abuse cases resulting in death or serious injury. She proposed AB 1067, which remove the possibility of diversion to drug treatment programs for those possessing certain categories of drugs commonly used in date rape. Finally, she proposed AB 1692 which would extend misdemeanor sexual battery to encompass any touching of another person against their will to attain sexual gratification.<sup>77</sup> She was instrumental in introducing AB 2440, which makes repeat street racing punishable as a felony.<sup>78</sup> She was also a critical player in passing AB 488, which provided for the posting of sex offender registration information on an internet website.<sup>79</sup>

In a 2003 press release describing Assemblywoman Horton’s call for a special session to strengthen Megan’s law, Assemblywoman Horton stated “...I’ve been working to pass real Megan’s Law reform that protects our children instead of protecting child

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<sup>77</sup> Horton, S., “My Legislation: 2003”, available at <http://republican.assembly.ca.gov/members/index.asp?Dist=78&Lang=1&Body=CurrentLegislation&ByYear=2003>, last accessed January 26, 2006.

<sup>78</sup> Horton, S., “Press Releases: 2004”, available at <http://republican.assembly.ca.gov/members/index.asp?Dist=78&Lang=1&Body=PressReleases&RefID=2043>, last accessed January 26, 2006.

<sup>79</sup> Horton, S., “Press Releases: 2004”, available at <http://republican.assembly.ca.gov/members/index.asp?Dist=78&Lang=1&Body=PressReleases&RefID=1962>, last accessed January 26, 2006.

molesters.”<sup>80</sup> The idea that one is either for victims (and, impliedly, punitive policies) or for criminals is exemplified in this statement.

However, it would be misleading to think that Assemblywoman Horton is a thoroughly consistent defender of punitive practices. In a 2004 press release, Horton spoke of the need to bring a rehabilitative focus to California prisons.

Disturbingly, approximately four out of every five inmates released from California’s prison system commit new crimes. It is crucial that we reduce this high degree of recidivism by better preparing inmates to become productive members of society upon their release. Doing so will help them to turn away from a life of crime and improve our public safety as their odds of reoffending are minimized... Included in SB 1399’s reforms are specific programs to enable inmates to obtain a high school equivalency certificate, provide vocational training to assist with future employment opportunities, and offer a parent education course to inmates serving a sentence that involves their own children or children who were formerly in their care. I believe that this rehabilitative reform is vital to our state and long overdue.<sup>81</sup>

In conclusion, Republican Shirley Horton has been a consistent advocate of punitive policies, despite some support for rehabilitation in line with the Governor. How here politics and agenda might have changed, given the closeness of her election, had she been worried about the felon vote (even if *ex post* we would expect it not to have mattered) is impossible to tell, but it is at least plausible given the theoretical arguments throughout this paper that felon disenfranchisement has affected policy.

### **VIII. Apparent differences from the results of Uggen and Manza**

It could be wondered why our results examining California State Assembly elections produces no predicted changes while Uggen and Manza found that felon enfranchisement would have produced a significant change in US Senate composition.

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<sup>80</sup> Horton, S., “Press Releases: 2003”, available at <http://republican.assembly.ca.gov/members/index.asp?Dist=78&Lang=1&Body=PressReleases&RefID=1729>, last accessed January 26, 2006.

<sup>81</sup> Horton, S., “Opinion Editorials: 2004”, available at <http://republican.assembly.ca.gov/members/index.asp?Dist=78&Lang=1&Body=OpinionEditorials&RefID=1025>, last accessed January 26, 2006.

The answer is that Uggen and Manza, in examining over 400 Senate elections stretching from 1978 to 2000, found only 7 cases where felon enfranchisement might have made a difference.<sup>82</sup> Further, the fact that the 2000 presidential election might have gone differently is simply an outlier; no other presidential elections were found to have hinged on felon disenfranchisement.<sup>83</sup> Thus finding no effect on 2004 California State Assembly elections is not terribly surprising.

## **IX. Conclusion**

In conclusion, felon disenfranchisement is inconsistent with US treaty obligations and the political theory behind our founding, which stressed the extreme danger inherent in factions. Felon disenfranchisement affects a large portion of the population, particularly in the case of minority communities. However, felon enfranchisement likely would not have had any effect on the 2004 California State Assembly elections, a result consistent with the results of Uggen and Manza's research.

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<sup>82</sup> Uggen Manza *supra* note 3 at 789.

<sup>83</sup> Uggen Manza *supra* note 3 at 792-793.

## Appendix – State Assembly Elections in 2004

Candidate Percent	Party	Votes
<b>District 1</b> 100.0% ( 480 of 480 ) precincts reporting		
* Patty Berg 61.7 .	Democratic	116,613
Ray Tyrone 32.8 .	Republican	62,166
Ken Anton 5.5 .	Libertarian	10,521
<b>District 2</b> 100.0% ( 464 of 464 ) precincts reporting		
Barbara McIver 31.5 .	Democratic	56,210
* Doug La Malfa 68.5 .	Republican	122,009
<b>District 3</b> 100.0% ( 483 of 483 ) precincts reporting		
Robert A. Woods 37.2 .	Democratic	70,126
* Richard J. Keene 59.4 .	Republican	111,747
Robert C. Burk 3.4 .	Libertarian	6,421
<b>District 4</b> 100.0% ( 497 of 497 ) precincts reporting		
Todd William Schwenk 33.3 .	Democratic	70,008
* Tim Leslie 66.7 .	Republican	140,105
<b>District 5</b> 100.0% ( 364 of 364 ) precincts reporting		
Sandra A. Carey 36.0 .	Democratic	62,710
Roger Niello 60.3 .	Republican	104,895
Melissa Manfre 3.7 .	Libertarian	6,524
<b>District 6</b> 100.0% ( 376 of 376 ) precincts reporting		
* Joseph Edward Nation 72.6 .	Democratic	148,556
Carolyn F. Patrick 27.4 .	Republican	56,311
<b>District 7</b> 100.0% ( 384 of 384 ) precincts reporting		
Noreen Evans 60.2 .	Democratic	101,130
Patricia Krueger 36.8 .	Republican	62,035
F. Aaron Smith 3.0 .	Libertarian	5,051
<b>District 8</b> 100.0% ( 317 of 317 ) precincts reporting		
* Lois Wolk 62.9 .	Democratic	101,171
John R. Munn 37.1 .	Republican	59,842

<b>District 9</b>		100.0% ( 243 of 243 )	precincts reporting
Dave Jones	Democratic	77,880	
66.8 .			
Gaspar Garcia	Republican	32,734	
28.0 .			
Gale Morgan	Libertarian	6,098	
5.2 .			
<b>District 10</b>		100.0% ( 390 of 390 )	precincts reporting
* Alan Nakanishi	Republican	121,076	
75.7 .			
Cullene Lang	Libertarian	39,016	
24.3 .			
<b>District 11</b>		100.0% ( 383 of 383 )	precincts reporting
* Joseph E. Canciamilla	Democratic	95,912	
66.9 .			
Paul Esteban Santiago	Republican	40,438	
28.2 .			
Frank Joseph Manske	Libertarian	7,162	
4.9 .			
<b>District 12</b>		100.0% ( 287 of 287 )	precincts reporting
* Leland Y. Yee	Democratic	112,000	
77.6 .			
Howard Epstein	Republican	23,803	
16.5 .			
Christopher Maden	Libertarian	8,560	
5.9 .			
<b>District 13</b>		100.0% ( 329 of 329 )	precincts reporting
* Mark Leno	Democratic	148,863	
82.0 .			
Gail E. Neira	Republican	23,900	
13.1 .			
Jonathan Marvin	Libertarian	8,980	
4.9 .			
<b>District 14</b>		100.0% ( 376 of 376 )	precincts reporting
* Loni Hancock	Democratic	141,184	
77.5 .			
Lance Montauk	Republican	32,531	
17.8 .			
Kevin Daniel O'Neal	Libertarian	8,632	
4.7 .			
<b>District 15</b>		100.0% ( 514 of 514 )	precincts reporting
Elaine Duggar Shaw	Democratic	91,709	
44.7 .			
* Guy S. Houston	Republican	113,079	
55.3 .			
<b>District 16</b>		100.0% ( 259 of 259 )	precincts reporting
* Wilma Chan	Democratic	126,292	
88.2 .			
Jerald Udinsky	Republican	16,903	
11.8 .			
<b>District 17</b>		100.0% ( 274 of 274 )	precincts reporting
* Barbara S. Matthews	Democratic	66,926	
60.6 .			

Nellie McGarry	Republican	43,664
39.4 .		
<b>District 18</b>	100.0% ( 381 of 381 )	precincts reporting
Johan Klehs	Democratic	106,365
83.6 .		
Ronald Colfer	Libertarian	20,888
16.4 .		
<b>District 19</b>	100.0% ( 316 of 316 )	precincts reporting
* Eugene Mullin	Democratic	114,277
71.4 .		
Catherine Brinkman	Republican	41,513
25.9 .		
Miles C. Gilster	Libertarian	4,465
2.7 .		
<b>District 20</b>	100.0% ( 313 of 313 )	precincts reporting
Alberto Torrico	Democratic	87,724
68.7 .		
Cliff Williams	Republican	40,114
31.3 .		
<b>District 21</b>	100.0% ( 393 of 393 )	precincts reporting
Ira Ruskin	Democratic	98,002
51.6 .		
Steve Poizner	Republican	92,118
48.4 .		
<b>District 22</b>	100.0% ( 222 of 222 )	precincts reporting
* Sally Lieber	Democratic	91,561
70.3 .		
Marie Dominguez-Gasson	Republican	38,746
29.7 .		
<b>District 23</b>	100.0% ( 192 of 192 )	precincts reporting
Joe Coto	Democratic	62,569
67.2 .		
Mark S. Patrosso	Republican	26,051
27.9 .		
Warner S. Bloomberg III	Green	4,597
4.9 .		
<b>District 24</b>	100.0% ( 279 of 279 )	precincts reporting
* Rebecca Cohn	Democratic	94,152
59.5 .		
Ernest Konnyu	Republican	55,956
35.3 .		
Zander Collier, III	Libertarian	8,337
5.2 .		
<b>District 25</b>	100.0% ( 387 of 387 )	precincts reporting
Bryan Justin Marks	Democratic	52,006
31.8 .		
* David Cogdill	Republican	111,336
68.2 .		
<b>District 26</b>	100.0% ( 368 of 368 )	precincts reporting
Tim Weintz, Sr.	Democratic	46,924
37.4 .		
* Greg Aghazarian	Republican	78,381
62.6 .		

<b>District 27</b>		100.0% ( 438 of 438 )	precincts reporting
* John Laird	Democratic		129,410
68.7 .			
Jack Donald Barlich	Republican		59,076
31.3 .			
<b>District 28</b>		100.0% ( 328 of 328 )	precincts reporting
* Simon Salinas	Democratic		67,586
63.3 .			
Robert Eli Perkins	Republican		39,257
36.7 .			
<b>District 29</b>		100.0% ( 346 of 346 )	precincts reporting
Michael R. Macias	Democratic		52,334
34.3 .			
Michael N. Villines	Republican		95,209
62.4 .			
John R. Crockford	Green		5,150
3.3 .			
<b>District 30</b>		100.0% ( 387 of 387 )	precincts reporting
* Nicole M. Parra	Democratic		42,953
55.1 .			
Dean Gardner	Republican		35,084
44.9 .			
<b>District 31</b>		100.0% ( 335 of 335 )	precincts reporting
Juan Arambula	Democratic		49,738
57.7 .			
Paul Betancourt	Republican		36,496
42.3 .			
<b>District 32</b>		100.0% ( 466 of 466 )	precincts reporting
Marvin Armas	Democratic		35,130
21.3 .			
* Kevin Mc Carthy	Republican		129,510
78.7 .			
<b>District 33</b>		100.0% ( 304 of 304 )	precincts reporting
Stewart Jenkins	Democratic		57,673
32.5 .			
Sam Blakeslee	Republican		99,864
56.3 .			
Thomas A. Hutchings	Green		10,422
5.9 .			
Gary L. Kirkland	Libertarian		9,502
5.3 .			
<b>District 34</b>		100.0% ( 331 of 331 )	precincts reporting
Maggie Florez	Democratic		36,525
31.4 .			
* Bill Maze	Republican		79,618
68.6 .			
<b>District 35</b>		100.0% ( 327 of 327 )	precincts reporting
Pedro Idelfonso Nava	Democratic		91,503
52.8 .			
Robert Eugene Pohl, III	Republican		82,025
47.2 .			
<b>District 36</b>		100.0% ( 219 of 219 )	precincts reporting

Horton Scioneaux	Democratic	45,595
33.7 .		
* Sharon Runner	Republican	89,365
66.3 .		
<b>District 37</b>		100.0% ( 339 of 339 ) precincts reporting
Ferial Masry	Democratic	74,774
41.1 .		
Audra Strickland	Republican	100,309
55.1 .		
Adrienne M. Prince	Green	7,013
3.8 .		
<b>District 38</b>		100.0% ( 257 of 257 ) precincts reporting
Brian Joseph Davis	Democratic	67,747
38.8 .		
* Keith Stuart Richman	Republican	106,834
61.2 .		
<b>District 39</b>		100.0% ( 122 of 122 ) precincts reporting
* Cindy Montanez	Democratic	56,017
76.8 .		
Ely De La Cruz Ayao	Republican	16,936
23.2 .		
<b>District 40</b>		100.0% ( 188 of 188 ) precincts reporting
* Lloyd E. Levine	Democratic	69,421
58.0 .		
Mark Isler	Republican	50,323
42.0 .		
<b>District 41</b>		100.0% ( 321 of 321 ) precincts reporting
* Fran Pavley	Democratic	106,761
59.8 .		
Heather Peters	Republican	64,029
35.8 .		
Richard P. Koffler	Libertarian	8,033
4.4 .		
<b>District 42</b>		100.0% ( 296 of 296 ) precincts reporting
* Paul Koretz	Democratic	143,376
75.5 .		
Paul Morgan Fredrix	Republican	46,715
24.5 .		
<b>District 43</b>		100.0% ( 211 of 211 ) precincts reporting
* Dario Frommer	Democratic	94,149
76.6 .		
Sandor J. Woren	Libertarian	28,805
23.4 .		
<b>District 44</b>		100.0% ( 257 of 257 ) precincts reporting
* Carol Liu	Democratic	106,179
65.7 .		
Lynn Caffrey Gabriel	Republican	55,655
34.3 .		
<b>District 45</b>		100.0% ( 148 of 148 ) precincts reporting
* Jackie Goldberg	Democratic	62,091
76.0 .		
Oscar A. Gutierrez	Republican	19,660
24.0 .		

<b>District 46</b>		100.0% ( 96 of 96 ) precincts reporting
* Fabian Nunez	Democratic	44,570
85.1 .		
Manuel "Manny" Aldana, Jr.	Republican	7,837
14.9 .		
<b>District 47</b>		100.0% ( 241 of 241 ) precincts reporting
Karen Bass	Democratic	118,495
80.8 .		
Dale V. Everett	Republican	21,485
14.7 .		
Peter "Pedro" De Baets	Libertarian	6,730
4.5 .		
<b>District 48</b>		100.0% ( 150 of 150 ) precincts reporting
* Mark Ridley-Thomas	Democratic	68,289
89.2 .		
Sebastian Alexander	Republican	8,333
10.8 .		
<b>District 49</b>		100.0% ( 167 of 167 ) precincts reporting
* Judy Chu	Democratic	62,075
65.8 .		
Sandra L. Needs	Republican	23,927
25.4 .		
Laura Brown	Libertarian	8,363
8.8 .		
<b>District 50</b>		100.0% ( 135 of 135 ) precincts reporting
Hector de la Torre	Democratic	56,827
74.9 .		
Gladys O. Miller	Republican	19,091
25.1 .		
<b>District 51</b>		100.0% ( 191 of 191 ) precincts reporting
* Jerome Horton	Democratic	89,509
84.1 .		
Daniel R. Sherman	Libertarian	16,941
15.9 .		
<b>District 52</b>		100.0% ( 150 of 150 ) precincts reporting
* Mervyn M. Dymally	Democratic	59,923
100.0 .		
<b>District 53</b>		100.0% ( 291 of 291 ) precincts reporting
Mike Gordon	Democratic	95,156
50.5 .		
Greg Hill	Republican	79,505
42.2 .		
Ethan M. Boivie	Libertarian	8,942
4.7 .		
James R. Smith	Peace & Freedom	5,028
2.6 .		
<b>District 54</b>		100.0% ( 258 of 258 ) precincts reporting
Betty Karnette	Democratic	89,987
53.5 .		
Steven T. Kuykendall	Republican	73,701
43.8 .		
John Howard Sterne	Libertarian	4,544
2.7 .		

<b>District 55</b>		100.0% ( 203 of 203 )	precincts reporting
* Jenny Oropeza		Democratic	73,594
66.7 .			
Margherita Underhill		Republican	36,800
33.3 .			
<b>District 56</b>		100.0% ( 205 of 205 )	precincts reporting
* Rudy Bermudez		Democratic	67,294
60.2 .			
John Brantuk		Republican	44,559
39.8 .			
<b>District 57</b>		100.0% ( 193 of 193 )	precincts reporting
* Ed Chavez		Democratic	72,860
68.6 .			
Victor M. Valenzuela, Jr.		Republican	33,494
31.4 .			
<b>District 58</b>		100.0% ( 211 of 211 )	precincts reporting
* Ron Calderon		Democratic	71,233
62.0 .			
Rita Topalian		Republican	43,839
38.0 .			
<b>District 59</b>		100.0% ( 284 of 284 )	precincts reporting
Dan Harden		Democratic	64,375
37.7 .			
* Dennis L. Mountjoy		Republican	99,381
58.3 .			
Fritz R. Ward		Libertarian	6,937
4.0 .			
<b>District 60</b>		100.0% ( 290 of 290 )	precincts reporting
Patrick John Martinez		Democratic	52,969
33.4 .			
Robert "Bob" Huff		Republican	105,334
66.6 .			
<b>District 61</b>		100.0% ( 151 of 151 )	precincts reporting
* Gloria Negrete McLeod		Democratic	58,120
63.6 .			
Alan D. Wapner		Republican	33,281
36.4 .			
<b>District 62</b>		100.0% ( 170 of 170 )	precincts reporting
Joe Baca, Jr.		Democratic	51,402
64.6 .			
Marjory Mendoza-Ware		Republican	28,210
35.4 .			
<b>District 63</b>		100.0% ( 266 of 266 )	precincts reporting
D'Andre McNamee		Democratic	49,646
34.6 .			
William J. Emmerson		Republican	83,719
58.3 .			
Maureen Keedy		Libertarian	10,334
7.1 .			
<b>District 64</b>		100.0% ( 311 of 311 )	precincts reporting
Robert Melsh		Democratic	61,120
38.7 .			

* John J. Benoit	Republican	96,606
61.3 .		
<b>District 65</b>		100.0% ( 358 of 358 ) precincts reporting
Rita Ramirez-Dean	Democratic	58,454
38.4 .		
* Russ Bogh	Republican	93,676
61.6 .		
<b>District 66</b>		100.0% ( 323 of 323 ) precincts reporting
Laurel Nicholson	Democratic	53,481
36.0 .		
* Ray Haynes	Republican	91,606
61.6 .		
Jack N. Lee	Libertarian	3,671
2.4 .		
<b>District 67</b>		100.0% ( 330 of 330 ) precincts reporting
David Silva	Democratic	50,430
29.8 .		
* Tom Harman	Republican	107,847
64.0 .		
Norm Westwell	Libertarian	10,496
6.2 .		
<b>District 68</b>		100.0% ( 298 of 298 ) precincts reporting
Al Snook	Democratic	50,453
39.0 .		
Van T. Tran	Republican	78,606
61.0 .		
<b>District 69</b>		100.0% ( 161 of 161 ) precincts reporting
Thomas J. Umberg	Democratic	38,516
61.4 .		
Otto Bade	Republican	19,811
31.5 .		
George Reis	Libertarian	4,470
7.1 .		
<b>District 70</b>		100.0% ( 411 of 411 ) precincts reporting
Carl Mariz	Democratic	65,351
35.4 .		
Chuck DeVore	Republican	112,844
61.1 .		
Mark Baldwin	Libertarian	6,506
3.5 .		
<b>District 71</b>		100.0% ( 330 of 330 ) precincts reporting
Bea Foster	Democratic	54,041
30.9 .		
* Todd Spitzer	Republican	120,657
69.1 .		
<b>District 72</b>		100.0% ( 313 of 313 ) precincts reporting
Ross W. Johnson	Democratic	41,528
30.4 .		
* Lynn Daucher	Republican	90,255
66.0 .		
Brian Lee Cross	Libertarian	5,031
3.6 .		
<b>District 73</b>		100.0% ( 294 of 294 ) precincts reporting

## VIII

Kathleen Calzada	Democratic	50,474
31.7 .		
Mimi Walters	Republican	100,328
63.1 .		
Andrew H. Favor	Libertarian	8,299
5.2 .		
<b>District 74</b>		100.0% ( 381 of 381 ) precincts reporting
Karen Underwood	Democratic	68,180
39.4 .		
* Mark Wyland	Republican	99,348
57.5 .		
Paul King	Libertarian	5,372
3.1 .		
<b>District 75</b>		100.0% ( 380 of 380 ) precincts reporting
Karen Heumann	Democratic	69,017
37.9 .		
* George A. Plescia	Republican	108,728
59.9 .		
Richard J. Senecal	Libertarian	4,005
2.2 .		
<b>District 76</b>		100.0% ( 273 of 273 ) precincts reporting
Lori Saldana	Democratic	93,601
54.2 .		
Patricia Rae Hunter	Republican	71,320
41.3 .		
Jennifer Osborne	Libertarian	7,918
4.5 .		
<b>District 77</b>		100.0% ( 418 of 418 ) precincts reporting
Chris Larkin	Democratic	53,051
32.2 .		
* Jay La Suer	Republican	106,827
64.9 .		
Virgil R. Hall, II	Libertarian	4,870
2.9 .		
<b>District 78</b>		100.0% ( 346 of 346 ) precincts reporting
Patricia Davis	Democratic	74,888
47.8 .		
* Shirley Horton	Republican	76,886
49.1 .		
Josh Hale	Libertarian	4,969
3.1 .		
<b>District 79</b>		100.0% ( 202 of 202 ) precincts reporting
* Juan Vargas	Democratic	78,565
85.3 .		
Eli Wallace Conroe	Libertarian	13,584
14.7 .		
<b>District 80</b>		100.0% ( 362 of 362 ) precincts reporting
Mary Ann Andreas	Democratic	44,275
41.7 .		
* Bonnie Garcia	Republican	61,714
58.3 .		

\* = Incumbent<sup>84</sup>

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<sup>84</sup> California General Election, Nov. 2, 2004, State Assembly All Districts, Results as of Dec. 7, 2004, available at <http://vote2004.ss.ca.gov>Returns/stasm/all.htm>, last accessed January 26, 2006.