

The Political Implications of Felony Disenfranchisement In New York State
By Kevin Morris

A thesis proposal submitted in partial fulfillment of

the requirements for the degree of

Master of Urban Planning

Robert F. Wagner

Graduate School of Public Service

New York University

(Graduation date: December, 2019)

Print Name/Signature of First Reader

Jacob Faber / JF

Print Name/Signature of Second Reader

Jeffrey Manza / JManza

Manual of Style: The Chicago Manual of Style, 17th ed. Chicago: University of Chicago Press, 2017.
<https://doi-org.proxy.library.nyu.edu/10.7208/emos17>

Statement of the Problem

In all but two states (Maine and Vermont), felony disenfranchisement laws ensure that American citizens convicted of felony offenses lose the right to vote for at least some period of time. In some states, such as Oregon and Massachusetts, individuals lose that right only for the period in which they are actively incarcerated. In other states, notably Kentucky and Iowa, felony convictions result in lifelong disenfranchisement unless a returned citizen receives an individual pardon from the state's governor (Brennan Center for Justice). This variation in laws flows directly from language in the Fourteenth Amendment which allows states to revoke individuals' voting rights "for participation in rebellion, or other crime." The definition of "other crime," left so vague in the Constitution, is now generally used by states to encompass any felony offense at all. The Supreme Court, in cases such as *Richardson v. Ramirez*, has upheld states' right to do just that. Collectively, these laws disenfranchise as many as 6.1 million American citizens. Of these, the majority (77 percent) are no longer incarcerated, but are living and working in their communities (Uggen, Larson, and Shannon 2016).

Patterns of policing and, therefore, incarceration do not fall equally across all populations in New York or elsewhere. Low income populations and minority communities face higher levels of policing and are more exposed to the criminal justice system (Gelman, Fagan and Kiss 2007). As such, felony disenfranchisement laws do not fall uniformly across the population of citizens. Rather, these laws are remarkably effective at stripping the right to vote from, above all, Black men. In Florida, for instance, Black men make up 14 percent of the voting age population but 42 percent of those who are disenfranchised (Morris 2018). Felony disenfranchisement is an explicit holdover from Jim Crow and is fundamentally irreconcilable with liberal democracy. Understanding how over-policing of marked communities and disenfranchisement interact with elections, political representation, and the distribution of state resources is highly important. To date, the literature has not studied the implications of felony disenfranchisement through the lens of spatial justice.

In New York State, individuals convicted of felony offenses and sentenced to prison are statutorily disenfranchised until they finish all terms of their sentence (probationers do not lose their right to vote). However, in April of 2018, Governor Andrew Cuomo issued Executive Order 181. EO 181 restored the voting rights to most individuals on parole, effectively limiting the period of disenfranchisement to the period an individual actually spends in prison. As of April, nearly every citizen living and working in her community is eligible to vote. This is a major step forward for New York State, but it is unlikely to be enough. Much of the existing research points to very low registration rates among formerly convicted citizens even after they have their voting rights restored (see, for instance, Burch 2011).

Governor Cuomo's policy did more than just extend the right to vote to people living in their communities; his administration also required that parole officers give voter registration

forms to their parolees. It is plausible that this change had a dramatic impact on the registration rates by lowering the (time) cost of registering to vote. Knowing how felony disenfranchisement impacts the distribution of political power is not enough; we must also explore how to most effectively encourage underrepresented populations to participate in elections. Exploring differences in registration before, and turnout in, the 2018 midterm election will allow me to explore the efficacy of restoring the right to vote while an individual is still regularly interacting with his parole officer.

I chose this topic for multiple reasons. Most importantly, it is timely: although Governor Cuomo issued an Executive Order, the state legislature must change the state's laws to protect against a future governor reversing the policy. The New York State legislature is considering changing the laws next year or the year after, and research showing the impact of the policy change could inform that conversation. The recency of the Executive Order and the timing of the 2018 election also make this topic ripe for study. To the best of my knowledge no researchers have yet begun exploring the impacts of Cuomo's Executive Order on the 2018 election, making this a meaningful contribution to the literature.

My professional experience also makes this project a good option. I am employed full time as a quantitative research at the Brennan Center for Justice in the voting rights group. I have explored the impacts of felony disenfranchisement in states such as Florida, North Carolina, and Iowa. My familiarity with the literature and the professional support I'll receive for the project from my colleagues will enable me to produce a work of high quality. Furthermore, thanks to my ties to the Brennan Center and our relationships with legislators in around the country, I am confident that any research I produce that informs the conversation about felony disenfranchisement will be read in Albany and in other states considering similar policy changes.

Methods and Data

In a 2011 paper, Northwestern's Traci Burch developed a methodology for determining registration and turnout rates among returned citizens in the state of Florida. Using Department of Corrections data obtained under a Freedom of Information Act request, she matched incarceration records to the publicly-available Florida registered voter file. This voter file included information on race, age, and other demographic characteristics. This methodology has been repeated by other researchers (see, for instance, Meredith and Morse 2014) and is now widely used.

In New York State, incarceration and parole records are publicly available, as is the New York State voter file. This means that Burch's methodology can be replicated using data in New York, although it has not been done previously in the literature. This methodology will be used to determine registration and turnout rates in New York. The differences in these metrics between individuals who had their rights restored while still on parole to those who did not will be explored using regression techniques. The universe of individuals used in this analysis will be

limited to a window around the policy change. By thus limiting the window, I can plausibly claim that individuals are quasi-randomly assigned to have a parole officer hand them a voter registration form. I will use a logistic regression model to test the impact of the policy change on individuals' likelihood of registering to vote, and will explore whether the change had a bigger or smaller impact on particular subpopulations.

This thesis intends to go beyond what has historically been done in the literature to understand the communities that previously incarcerated voters live in in New York. Because the New York State voter file includes the home address of nearly every registered voter, individuals' addresses can be geocoded and mapped to their home Census blocks. Previous research points to the validity of using block-group and tract level sociodemographic indicators as good proxies for individuals' income, unemployment, and education (Geronimus and Bound 1998). Although it is unlikely that individuals who register to vote after serving their sentence are perfectly representative of the previously incarcerated population as a whole, exploring the sociodemographics of this group will provide some insight into the characteristics of individuals impacted by felony disenfranchisement around the state.

Brief Literature Overview

In a 2002 paper ("Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States"), Christopher Uggen and Jeff Manza wrote one of the first pieces examining the political implications of felony disenfranchisement. They examined the sociodemographics of the disenfranchised population. They assumed that disenfranchised citizens would cast ballots at approximately the same rate, and for similar candidates, as their enfranchised neighbors. The article notes that the outcomes of number of federal races were likely impacted by felony disenfranchisement. Most notably, they argued that George W. Bush would not have won the state of Florida (and, therefore, the presidency) in 2000 if individuals with convictions in their past. While much of the research done since this paper indicates that they were overly optimistic in their turnout predictions, this paper launched interest in the academic study of the topic.

In 2006, Uggen and Manza published *Locked Out: Felon Disenfranchisement and American Democracy*, a book examining the historical roots and contemporary implications of felony disenfranchisement. Since it was published, *Locked Out* has played a central role in the conversation surrounding felony disenfranchisement. By looking not only at the political impacts but also the human costs of disenfranchisement, Uggen and Manza humanize the conversation and illustrate that felony disenfranchisement is irreconcilable with a liberal democracy.

In two papers in 2010 ("Did Disfranchisement Laws Help Elect President Bush? New Evidence on the Turnout Rates and Candidate Preferences of Florida's Ex-Felons") and 2011 ("Turnout and Party Registration among Criminal Offenders in the 2008 General Election"), Traci Burch developed a methodology for matching incarceration records to voter files to

estimate actual turnout rates and party registration for individuals who were temporarily disenfranchised due to a felony conviction. In response to Uggen and Manza's 2002 paper, she determined estimates of the impact of felony disenfranchisement in Florida in the 2000 election. Using these estimates, she argued that Bush was hurt, rather than helped, by felony disenfranchisement. In these papers, Burch presented the first estimates of turnout rates among formerly convicted individuals using actual data from this population. She finds that returned citizens cast ballots at much lower rates than their peers. Even after controlling for factors known to influence turnout, justice-involved individuals participated at vanishingly low rates in multiple states.

In a 2013 paper ("Effects of Imprisonment and Community Supervision on Neighborhood Political Participation in North Carolina"), Professor Burch extended this methodology to look at how disenfranchisement impacts political participation at the neighborhood-level in North Carolina. Much like this project proposes to do, Burch geocoded the voter file to determine the neighborhoods where previously disenfranchised residents live.

In a 2013 paper ("Do Voting Rights Notification Laws Increase Ex-Felon Turnout?"), Marc Meredith and Michael Morse used Burch's matching-methodology to examine whether laws requiring that previously disenfranchised individuals be informed of their restored eligibility. Their results were not inspiring – they found that the implementation of these laws had no effect on voter turnout.

My proposed project will be in conversation with each of the scholars who have contributed to our understanding of the voting patterns of previously incarcerated individuals. Centering the role of geography in the conversation about felony disenfranchisement is key, but spatial justice has not been central to much of the previous work in this field. Similarly, past research has established that previously incarcerated individuals, some of our most marginalized neighbors, do not participate in the electoral process even when their rights are restored. Systematically exploring whether Governor Cuomo's policy might counteract that fact is crucial as we work to incorporate these voices into the political power structure.

Bibliography

- Brennan Center for Justice. "Criminal Disenfranchisement Laws Across the United States." Accessed November 13, 2018. <https://www.brennancenter.org/criminal-disenfranchisement-laws-across-united-states>.
- Burch, Traci. "Did Disfranchisement Laws Help Elect President Bush? New Evidence On The Turnout Rates And Candidate Preferences Of Florida's Ex-Felons". *Political Behavior* 34, no. 1 (2010): 1-26, doi:10.1007/s11109-010-9150-9.
- Burch, Traci. 2011. "Turnout And Party Registration Among Criminal Offenders In The 2008 General Election". *Law & Society Review* 45, no. 3 (2011): 699-730, doi:10.1111/j.1540-5893.2011.00448.x.
- Burch, Traci. "Effects Of Imprisonment And Community Supervision On Neighborhood Political Participation In North Carolina". *The ANNALS Of The American Academy Of Political And Social Science* 651, no. 1 (2013): 184-201, doi:10.1177/0002716213503093.
- Gelman, Andrew, Jeffrey Fagan, and Alex Kiss. "An Analysis Of The New York City Police Department's "Stop-And-Frisk" Policy In The Context Of Claims Of Racial Bias". *Journal Of The American Statistical Association* 102, no. 479 (2007): 813-823, doi:10.1198/016214506000001040.
- Geronimus, Arline T., and John Bound. "Use of Census-Based Aggregate Variables to Proxy for Socioeconomic Group: Evidence from National Samples." *American Journal of Epidemiology* 148, no. 5 (1998): 475-86, doi:10.1093/oxfordjournals.aje.a009673.
- Manza, Jeff, and Christopher Uggen. *Locked Out: Felon Disenfranchisement and American Democracy* (Oxford: Oxford University Press, 2006).
- Meredith, Marc, and Michael Morse. "Do Voting Rights Notification Laws Increase Ex Felon Turnout?". *The ANNALS Of The American Academy Of Political And Social Science* 651, no. 1 (2013): 220-249, doi:10.1177/0002716213502931.
- Morris, Kevin. "A Transformative Step for Democracy in Florida." *Brennan Center for Justice*. November 6, 2018, <https://www.brennancenter.org/blog/transformative-step-democracy-florida>.

Uggen, Christopher, Ryan Larson, and Sarah Shannon. "6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016." *The Sentencing Project*, 2016. <https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-voters.pdf>.

Uggen, Christopher, and Jeff Manza. "Democratic Contraction? Political Consequences of Felon Disenfranchisement In The United States". *American Sociological Review* 67, no. 6 (2002): 777-803, doi:10.2307/3088970.