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Con Job: An Estimate of Ex-Felon Voter Turnout Using Document-Based Data*

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Objective. Ex-felon voter turnout was estimated for the first time using government records rather than statistical models. Statistical models have estimated that 25–35 percent of eligible ex-felons would vote in federal elections. *Methods.* Six-hundred-sixty recently released ex-felons in Erie County, NY, who would have been legally eligible to register and vote in 2004 or 2005, were compared with data from the Erie County Board of Elections to determine whether they registered and voted in either 2004 or 2005. *Results.* Five percent this population of ex-felons voted in either 2004 or 2005. *Conclusions.* Single-digit turnout among ex-felons raises questions about the assumptions underlying statistical estimates, and it also suggests that elections would have to be very close for ex-felons to have an impact on the results.

Florida permanently bars ex-felons from voting and, in the 2000 presidential election, President Bush's margin of victory in Florida was just 537 votes—a fact that has spurred additional academic research, governmental activity, and ballot activity related to felon and ex-felon voting. Prior to that election, there had been some concern about this topic because of growing and racially disproportionate prison populations.

Under the U.S. Constitution, states generally set their own policies regarding electoral issues, including whether felons and ex-felons are permitted to register and vote. This autonomy results in a wide array of policies, from the lenient, which allow felons to vote while incarcerated,¹ to the harsh, which forbid any voting after the conviction, barring some extraordinary occurrence (Manza and Uggen, 2006:247).

*Direct correspondence to Michael V. Haselswerdt, Department of Political Science, Canisius College, Buffalo, NY 14208 (haselswm@canisius.edu). The author will share Erie County, NY, voting data and coding used in this study for those wishing to replicate this study. Because New York is a “confidentiality” state, data and coding on ex-felons must be obtained from the New York State Division of Criminal Justice Services. The author thanks David vanAlstyne of the New York State Division of Criminal Justice Services, the staff of the Erie County Board of Elections, and Perry Gaddis of ES&S for providing the data. The author acknowledges the helpful comments of members of his department, particularly those of Jonathan DiCicco, as well as those of anonymous reviewers. Finally, the author thanks Anthony Rizzo, Canisius Earning Excellence Program student, for his valuable assistance.

¹Maine and Vermont are invariably cited as being the two states that allow felons to vote from prison, no matter what their crime. However, Vermont's constitution bars anyone convicted of electoral fraud from voting (Gillies and Sanford, 1991:156).

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Before the electoral consequences of policies associated with ex-felon voting can be considered, realistic estimates of ex-felon turnout must be developed. Estimates are necessary because ex-felons are indistinguishable from the general population. For example, even with accurate data regarding the discharge of felons, the ex-felon who moves is not tracked, so there is no way to know precisely how many ex-felons are in a particular jurisdiction; thus the need for estimates.

This research bases registration and turnout estimates, for the first time, on actual ex-felon behavior recorded in government documents. Scholars have repeatedly bemoaned the lack of data that directly address ex-felon participation (Manza and Uggen, 2004:499, 2006:171, 203; Drucker and Barreras, 2005:13; Miles, 2004:117) and this research helps fill that void. These new data on actual behavior of ex-felons generate substantially lower estimates of voter turnout when contrasted with the statistically-derived estimates used previously, challenging the key assumption behind them.

Literature

The literature on the many aspects of felon disenfranchisement is extensive; however, only four studies have brought fresh, quantitative data to bear on this issue of how much enfranchising felons or ex-felons would affect election outcomes. Additionally, there is one qualitative piece that rests on in-depth interviews with people under correctional supervision in the Minnesota prison system. The turnout rates reported in these studies, and the methods used to estimate them, are directly relevant to this current research.

The most impressive method derives statistical estimates of turnout. Christopher Uggen and Jeff Manza's early work on this subject (2002) develops a sophisticated method of estimating ex-felon turnout, and these estimates are then used in their subsequent research. This method rests on what might be called an "equivalence assumption"; that the political behavior of felons and ex-felons mirrors that of nonfelons who have similar characteristics. The Census Bureau's Current Population Survey, the National Election Studies, and the Survey of State Prison Inmates provide information on race, education, gender, marital status, job status, and age that is used in logistic regression analyses that extrapolate the turnout of felons and ex-felons by considering the behavior of nonfelons with positions on these sociodemographic characteristics that are similar to felons (2002:783–85, 799). They also estimate the number of felons and ex-felons in each state (2002:785–86).

Uggen and Manza (Manza and Uggen, 2004:496–97; Uggen and Manza, 2002:783–85) report that in the 15 even-year elections between 1972 and 2000, national turnout rates for "disenfranchised felons" range from 20.5 percent in 1974 to 39 percent in 1992, with an overall median rate of 29.7 percent, and an average of about 35 percent in presidential elections and 24 percent in midterm elections (Uggen and Manza, 2002:787).

In seven U.S. Senate races in six states between 1978 and 2000, they estimate that had felons and ex-felons been enfranchised, their turnout would have ranged from 13.4 percent to 38.5 percent, with a median rate of 25.4 percent. These turnout estimates are combined with estimates of the number of felons and ex-felons, and with estimates of the percentage of felons and ex-felons that would vote Democratic to demonstrate a dramatic counterfactual: that in each Senate election, a Democrat rather than a Republican might have won had the felons and ex-felons been able to vote (Uggen and Manza, 2002:788); enough in particular years to alter the partisan composition of the Senate. Restrictions on felons and ex-felons are thus seen as comprising a "threat" to democracy (2002:778).

Manza and Uggen (2004:498) use the same estimates of felon turnout and vote propensity, but refine their earlier analysis by eliminating incarcerated felons, thus reducing their estimate of the size of the affected population. When only nonincarcerated felons (those on probation and parole) plus ex-felons are considered, five Senate seats might have changed hands, perhaps again affecting partisan control of the Senate. When the affected population is reduced to just ex-felons, three Senate seats would have changed hands, but not the Senate. These findings are said to raise "vital issues for the American practice of democracy" (2004:502).

In addition, there are self-reported estimates of felon/ex-felon turnout. Uggen and Manza (2004) present some quantitative information from the Youth Development Study (YDS), "an on-going panel study of former students in St. Paul, Minnesota," as well as qualitative information from "semi-structured interviews with a group of convicted felons in Minnesota" (2004:167). In the relevant part of the quantitative section, the self-reported turnout figures for 78 panel members who had been incarcerated are 43.6 percent in 1996, 28.6 percent in 1998, while 59.7 percent reported an intention to vote in 2000 (2004:176). In the qualitative section of this article (2004:177–94), Uggen and Manza report that in 33 in-depth interviews, two-thirds reported voting before their most recent conviction, and 73 percent indicated an intent to participate when they had the chance (2004:179).

Drucker and Barreras (2005) survey participants in the criminal justice process, some incarcerated and some not, in New York, Connecticut, and Ohio regarding participation issues. They note that 39.7 percent of those surveyed reported having voted at some point (2005:6) and that 53.4 percent reported an intention to vote in 2004 (2005:7).

Finally, Thomas J. Miles applies an econometrics technique to state-level survey estimates of voter turnout (2004:88, 99–104) and finds that policies that permanently disenfranchise felons have "no impact on state-level rates of voter participation" (2004:115), concluding that this is so because ex-felons apparently are from parts of the population "that choose to participate at low rates" (2004:116).

The Context of Erie County, New York

Erie County, New York, provides a laboratory in which one can examine the actual voting behavior of some ex-felons, and thus the likely electoral consequences of their behavior, because New York State allows convicted felons to register to vote once they have completed all components of their sentence (New York, 1998a).² A 2005 survey of New York's county Boards of Elections indicates that Erie County is in the top 46 percent in terms of knowledge regarding ex-felon registration policies (Brennan Center for Justice, 2006:8–9), meaning that ex-felons are not being barred from registering because of bureaucratic ignorance.

In New York, national and state elections are held in even-numbered years, while local elections are held in odd-numbered years. The elections considered in this research include both the general and closed primary elections of 2004 and 2005, which included the 2004 presidential election, as well as the 2005 local elections in which Buffalo's first African-American mayor was elected, and a "tax revolt" inspired several contested district races for the Erie County Legislature. The March 2004 closed Democratic presidential primary was not included.

Erie County has a political culture that supports voting. Government statistics show that in both 2004 and 2005, 95 percent of those over the age of 18 were registered to vote, and voting-age population turnout in 2004 was 62.9 percent while turnout in 2005 was 39.2 percent (U.S. Census Bureau, 2007; New York State Board of Elections, 2007a, 2007b, 2007c). According to data from the Erie County Board of Elections (ECBOE), as of 2004, over 84 percent of registered voters had voted in at least one election.

Data for Felons and Ex-Felons

Two main sources of government data were used for this research. The first is the New York State Division of Criminal Justice Services (DCJS), which supplied information on a population of 493 parolees who had been assigned to the Buffalo area and who completed their prison sentences and were released from parole into the community in 2004. In addition, DCJS supplied information on a population of 421 persons who were convicted in the Buffalo area of less serious felonies in 2003 who were incarcerated, but

²In New York, if a convicted felon is registered to vote, once sentenced to prison that person is de-registered. Probationers do not lose their right to register and vote, but parolees must complete their parole before becoming eligible to register. When an entire sentence is served, an ex-felon, whether previously registered or not, must register in order to be able to vote. The term "re-registered" is used to distinguish those who were registered prior to their convictions from those who were not, but both groups must register as if they are new registrants. Any new voter must submit a registration form 30 days before an election in order to vote in that election (New York, 1998b).

TABLE 1
Adjustments Made to Establish a Population of Ex-Felons Eligible to Register and to Vote

	Parolee Population	Lesser Sentence Population
Original total	493	421
No Erie county address ^a	151	33
De-registered ^b	16	22
Recidivists ^c	9	19
Mobility*	2	2
Eligible total	315	345

^aAuthor's analysis of NYS DCJS data (2006).
^bAuthor's analysis of ECBOE and NYS DCJS data (2006).
^cAuthor's analysis of NYS DCJS and NYS Department of Correctional Services data (2007a).
*Assumption based on 0.7 percent population loss in Erie County between 2004 and 2005 (U.S. Census Bureau, 2007).

not in prison, receiving a sentence such as time-served, jail, or split-jail and probation. These sentences would have been completed within a year of being pronounced, so these individuals would also be legally eligible to register and to vote in at least two of the four elections considered below. However, the lists needed to be adjusted for several factors, including residence, flaws in the de-registration system, recidivism, and residential mobility, and these adjustments are presented in Table 1.

Adjustments for residence were necessary because while the election data are limited to Erie County, not all ex-felons had Erie County addresses. This was a particular issue with the parolees because the New York State Division of Parole-Buffalo Office deals with multiple counties.³ In addition, several ex-felons who had been registered prior to their convictions were never de-registered, and they were dropped from the analysis because they never had to reregister.⁴ Several ex-felons, all nonvoters, were convicted of other felonies before the end of this study period, so they were removed (New York State Department of Correctional Services, 2007a). Finally, Erie County suffered a population loss of approximately 0.7 percent between

³Discussions with parole officials suggest that most ex-felons stay in the area in which they are discharged, so the consequence for this project is that more participation is reported than if the entire list was used because those ex-felons without Erie County addresses are even less active in Erie County than their peers who resided in the county at the time of their arrest or conviction.

⁴One plausible reason for this phenomenon involves bureaucratic errors associated with passing information from one agency to another. Situations such as this were anticipated by Manza and Uggen (2006:13). An additional reason could involve coding errors at the ECBOE regarding classification of the sentences. The former reason seems more likely, based on observations of this coding process and a partial audit by the author. Five of the 38 cast a vote before their sentence was completed, although none appears to have voted from prison.

TABLE 2
Comparisons of Erie County Ex-Felons (%)

	Erie County— Released from Parole ^a (N = 315)	National— State and Federal Prison Inmates ^b	Erie County— Ex-Felon Population (Combined) ^a (N = 660)	Erie County— Nonfelon Population— 18+, 2004 ^c (N = 717,643)
Age				
18–24	2.5	17.3	8.3	14.2
25–44	67.9	64.1	65.6	33.2
35–44	30.2	30	28.3	14.4
45+	29.6	18.6	26.1	52.6
Sex				
Male	92.1	92.9	92.6	47.1
Race				
White	33.1	34.3	44.8	82.4
Black	61.1	40.7	50.9	11.7
Hispanic	5.8	19.2	4.3	2.8

^aAuthor's compilation of NYS DCJS data.

^bU.S. Department of Justice (2005:4, 8).

^cU.S. Census Bureau (2007).

2004 and 2005 (U.S. Bureau of the Census, 2007), so corresponding reductions of two persons per list were made. The results of these adjustments are 345 ex-felons receiving lesser sentences and 315 parolees released into the community; all eligible to register and then to vote.

Although this study examines ex-felons in just one county, data in Table 2 indicate that Erie County ex-felons are very similar to the national population of prison inmates in terms of age and sex, and in terms of the percentage of whites. Uggen and Manza note that their sociodemographic data do not include those felons and ex-felons who are not imprisoned (2002:790), so the inclusion in this study of those convicted of felonies but not imprisoned provides a somewhat broader group to consider. Including those convicted of lesser felonies with those who have served time in prison makes the combined ex-felon population in this study a bit younger, and somewhat more white.

The national data used for these demographic comparisons are based on inmates in state and federal prisons nationally, so while the most relevant comparisons are with the Erie County population of those who were imprisoned and then released from parole, the combined Erie County ex-felon population is also quite comparable on these variables.

It is not surprising that the characteristics of the ex-felons in this study are quite different from those of the nonfelon population in Erie County, with ex-felons being younger, less likely to be white, and more likely to be male. However, the relatively low percentage of Hispanics among Erie

County ex-felons, when compared to the nationwide population, is a reflection of the community.

The second source of data was the ECBOE, which provided data on the registration and voting activity of all citizens of Erie County from 1995 to April 2006.

Findings: Actual Voter Turnout of Ex-Felons

Participation of the ex-felon population is presented in Table 3. The population released from parole and the population of those convicted of lesser felonies exhibit remarkably similar levels of activity, so they are combined ($N = 660$) and are referred to hereafter as the "ex-felon population." Information regarding each population separately is also detailed in Table 3.

About one-third (36.4 percent) of the ex-felons had been registered prior to their felony conviction. Of these 240 individuals, 25 percent reregistered at least in time to vote in the 2005 general election, as did 6 percent of the 420 who had not been registered before their conviction. Combined, 12.9 percent of ex-felons (85 of 660) were registered or reregistered in time to vote in the 2005 general election, if not before.

The central issue, however, is voting, and voting in this study is generously defined as having voted in at least one of four elections held in 2004 and 2005.⁵ Among the ex-felons who were registered in time to vote in the 2005 general election, 38.8 percent (33 of 85) voted in at least one of the four elections. However, the ex-felon population also includes those who have not registered or reregistered, so when they are included in the denominator, the observed overall voting rate for the four elections combined is 5.0 percent (33 of 660).

Discussion

Ideally, the question about the level of ex-felon voting would be settled by analyzing accurate, reliable data at each step in the process. Unfortunately,

⁵Ex-felons are considered voters in this study if they voted in at least one of the four primary and general elections in 2004 and 2005. Although all ex-felons in this study would have completed their sentences in time to register for the 2005 elections, these elections are less visible than the 2004 elections. However, a lack of information about those given lesser sentences in 2003 regarding precisely when they became eligible to register or reregister, and the fact that, for the parole population, only 67 percent could have registered for the 2004 primary, and 80 percent for the 2004 general, it was decided that a fairer estimate could be developed by providing a range of elections over the two-year period in which an ex-felon could vote. Of the 33 voters, 19 voted in more than one election. There was one vote cast in the 2004 closed primary, 23 votes cast in the 2004 general election, seven in the 2005 closed primary, and in the 2005 general election, in which all 660 ex-felons were eligible to register and to vote, 22 did so, for a 3.3 percent turnout rate. Considering only the parole population in 2004, that group for whom there is clear information regarding date of release, of the 80 percent (252) released in time to register and vote, 13 did so, for a turnout rate of 5.2 percent.

TABLE 3
Electoral Activity of the Ex-Felon Population

	All Ex-Felons		Ex-Felons Given Lesser Sentences in 2003		Ex-Felons Released from Parole in 2004	
	%	N	%	N	%	N
A. Total	100	660	100	345	100	315
Before Conviction						
B. Registered (b/a)	36.4	240	40.3	139	32.1	101
C. Not registered (c/a)	63.6	420	59.7	206	67.9	214
After Sentence Completed						
D. Registered for 2005 general (d/a)	12.9	85	12.5	43	13.3	42
E. Reregistered		60		34		26
F. Newly registered		25		9		16
G. Voted ^a since release (g/a)	5.0	33	4.9	17	5.1	16
H. Reregistered voters		22		14		8
I. Newly registered voters		11		3		8
Voting as % of registered (g/d)	38.8	33/85	39.5	17/43	38.1	16/42
Reregistered voters as % of all reregistered (h/e)	36.7	22/60	41.2	14/34	30.8	8/26
Newly registered voters as % of all newly registered (i/f)	44	11/25	33.3	3/9	50	8/16
Reregistered as % of registered before conviction (e/b)	25	60/240	24.5	34/139	25.7	26/101
Newly registered as % of not registered before conviction (f/c)	6.0	25/420	4.4	9/206	7.5	16/214
Newly registered voters as % of not registered before conviction (i/c)	2.6	11/420	1.5	3/206	3.7	8/214

^aVoted in any of four elections: primary 2004; general 2004; primary 2005; general 2005.
SOURCE: Author's synthesis of data from the NYS DCJS and the ECBOE.

such direct measurement is not possible and estimates are necessary. Even when findings are based primarily on records of actual behavior, such as those above, some assumptions are also involved and thus the findings must be understood as an approximation of the phenomena of registration and voting by ex-felons. Because of the assumptions, turnout might be somewhat above or below the 5 percent reported, but the essential point is that, in this study, turnout among eligible ex-felons is very low. Examining one election rather than four possible voting opportunities, or tweaking the assumptions about residence or population loss, will not change the conclusion that these ex-felons are not very participatory, even when legally provided the opportunity.

A caveat to the findings of this study is that the time lag between completion of the sentence and both registering and voting is rather short. It is likely that over a longer period of time, more ex-felons would register and vote. It is also likely that over a longer period of time, more ex-felons would commit other crimes and once again become ineligible to participate. However, if recidivism would reach the statewide 22 percent rate typical of those who have maximized their sentences and have been out three years (New York State Department of Correctional Services, 2007b:45), and if voting among the remaining ex-felons increased by half, turnout would still be about 9 percent.

If the single-digit findings are close to being representative, there are at least two implications. First, the method by which turnout estimates are made is very important. Because data are not available to produce an estimate for Erie County based on the "equivalence assumption" of Uggen and Manza, these findings cannot definitively refute that method, but they certainly raise questions about its utility. That method might have predicted quite low turnout in Erie County, but as was demonstrated above, on two of the three common variables used by Uggen and Manza to develop turnout estimates—age and gender—the Erie County ex-felons are remarkably similar to the national population of inmates. Yet all 15 national turnout estimates and five of the seven state turnout estimates developed by Uggen and Manza (2002) are above 20 percent; the only two exceptions being 16.4 percent in Virginia in 1978 and 13.4 percent in Texas in 1978. Were estimates to be based on self-reported intentions, they would be even higher.

Thus, if statistical or self-reported estimates are used to assess whether policies affecting the participation of felons and ex-felons have electoral consequences, a plausible case can be made that they do. But if estimates are used that are more in line with what is found in this study, electoral consequences would be less likely; for example, none of the counterfactuals of Manza and Uggen (2004) would hold if turnout were 5 percent. A *prima facie* argument favoring estimates based on actual behavior seems apparent. Although Manza and Uggen go to some length to attempt to validate the assumptions they make (e.g., Manza and Uggen, 2004:499), the turnout estimate developed in this study, which does not rest on the "equivalence assumption" and that is more closely related to actual behavior, challenges the conclusion that their "turnout estimates are reasonable" (Manza and Uggen, 2006:176).

Manza and Uggen are certainly correct regarding the effect of restrictive ex-felon policies on the 2000 presidential election in Florida (e.g., 2004:497–99). The lower turnout estimate in this study would still produce a Gore victory in that state, as would just about any turnout at all. That election will always be available for both advocates and opponents of further enfranchisement of felons and ex-felons as an example of the electoral consequences of current policies. But the Florida example, or Senate examples considered above, seem to provide thin support for the statement that "it is

nonetheless certain that there is a considerable effect on local, state legislative, and House elections" (Manza and Uggen, 2004:499). If, as Manza and Uggen argue, "facts" are important for the disenfranchisement debate (2006:vi), the fact developed in this study, consistent with that found by Miles (2004) when analyzing aggregate data, suggests that elections anywhere would have to be extremely close for ex-felons to make a difference.

Why ex-felons would participate at such low levels is a matter for conjecture. Although Miles disagrees with Uggen and Manza regarding the potential impact of felon disenfranchisement laws, he seems to agree with their strategy of comparing felons and ex-felons to equivalent nonfelon groups when he suggests that felons and ex-felons come from a particularly nonparticipatory stratum of our society. The findings in this study lend themselves to another explanation; that there is something special about felons and ex-felons that makes comparable groups difficult to find. Decisions to engage in felonious behavior can be seen as being at odds with concerns about the responsibilities of citizenship, and thus felons and ex-felons may not have a participatory reference group among nonfelons.

But even an explanation such as this would not make the normative issues surrounding felon disenfranchisement moot. Although Uggen and Manza claim that felon disenfranchisement is a threat to democratic governance only if it can be shown that it reaches "levels sufficient to change election outcomes" (2002:778–79), it would seem that the debate regarding participation in a democracy should revolve around more than whether potential or actual participants make a difference.

The second implication of low turnout estimates, from a jurisdiction that already allows ex-felons to vote, is that simply changing a law is unlikely to result in an increase in turnout. Whether one's interest in making it possible for more ex-felons to participate is rooted in democratic philosophy, or in a more practical interest in positively reintegrating people into society (Uggen, Manza, and Thompson, 2006), any change in the law should include an aggressive voter education program, a feature not present in New York. Without such a feature, it is unlikely that the change will be anything more than symbolic. Both Vermont and Maine allow most felons to vote while incarcerated, but neither have policies that encourage it and phone conversations with prison officials in those states suggest that there is a very limited use of this opportunity. But if, as Miles argues, ex-felons are predominantly drawn from nonparticipatory demographic groups (2004:115), or if ex-felons are just different from nonfelons when it comes to civic duty, even a voter education program may not have much impact on ex-felon turnout.

Conclusion

If a single-digit turnout rate is applied to an ex-felon population that, even though growing, is still small relative to the total population, it makes it

unlikely that the participation of ex-felons will affect electoral outcomes. Although an electoral effect is not impossible,⁶ single-digit turnout suggests that debates regarding changes to franchise policies should revolve around factors other than electoral consequences.

But this research is just the first step in the attempt to match prison records with election records, and there are questions that further research will need to address. For example, are these findings aberrant? Despite a participatory culture in Erie County, plus some limited data indicating that Erie County ex-felons are not very different from the national population of imprisoned felons, it is possible that ex-felons elsewhere are more participatory, and statewide studies, which are now becoming feasible, will help answer this. Additional questions include the effect of time between release and participation, as well as the effect of policies regarding the ease of ex-felon registration.

Since ex-felon turnout figures will always be estimates, realism is more important than precision. Producing document-based estimates is laborious, but if future research using this approach confirms the lower figures, it may be possible to adjust the assumptions used in statistical estimates so that the two methods are more congruent. If so, researchers could then choose the more economical of the two approaches.

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⁶It is possible to construct scenarios in which the contributions of ex-felons might matter in smaller races than have been considered here, such as a multicandidate, closed Democratic primary for a district city council seat in a large city. But before these sorts of scenarios can be used to argue that ex-felon behavior is electorally significant, they need to be identified and studied.

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