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## A “MEANINGFUL” SEAT AT THE TABLE: CONTEMPLATING OUR ONGOING STRUGGLE TO ACCESS DEMOCRACY

James M. Binnall\*

### ABSTRACT

*In recent years, felon-voter disenfranchisement has received considerable attention from academics, policymakers, and the media. In turn, a number of jurisdictions have eased record-based voter restriction statutes. And while those efforts represent a significant step toward full civic reintegration for those with a felony criminal history, they are far from comprehensive, as they regularly omit citizens with certain types of felony convictions and typically address only one form of civic marginalization. Focusing on recent reform in the area of civic restrictions, this Article suggests that incomplete civic restoration comes with significant consequences that ought to be considered during legislative negotiations. This Article further suggests that by capitulating to emotive, non-empirical opposition to full civic reinstatement, lawmakers run the risk of validating arguments that have no scientific or logical foundation.*

### I. INTRODUCTION

The United States imprisons more of its citizens than any other country in the world.<sup>1</sup> Today, over two million Americans are behind bars and nearly twenty million bear the mark of a felony conviction.<sup>2</sup> As a result of their convictions, individuals with a felony criminal history face a host of obstacles.<sup>3</sup> To successfully

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1. See Jessica M. Eaglin, *Against Neorehabilitation*, 66 SMU L. REV. 189, 196 (2013); Peter Wagner & Wendy Sawyer, *States of Incarceration: The Global Context 2018*, PRISON POLICY INITIATIVE (June 2018), <https://www.prisonpolicy.org/global/2018.html> [<https://perma.cc/G4NF-ZBLL>].

2. See Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2019*, PRISON POLICY INITIATIVE (Mar. 19, 2019), <https://www.prisonpolicy.org/reports/pie2019.html> [<https://perma.cc/TK8Q-P22D>]; see also Sarah K.S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948–2010*, 54 DEMOGRAPHY 1795, 1806 (2017); PAUL GUERINO ET AL., BUREAU OF JUSTICE STATISTICS, NCJ 236096, PRISONERS IN 2010, at 1 (Dec. 2011), <https://www.bjs.gov/content/pub/pdf/p10.pdf> [<https://perma.cc/M7TZ-G7C8>].

3. See, e.g., Alec C. Ewald, *Collateral Consequences in the American States*, 93 SOC. SCI. Q. 211, 212 (2012); see also ANTHONY C. THOMPSON, *RELEASING PRISONERS, REDEEMING COMMUNITIES*:

reenter society post-conviction or post-incarceration, those with a criminal record must learn to overcome such obstacles.<sup>4</sup> To that end, some obstacles are navigable—temporary encumbrances that will eventually expire or presumptive disqualifications rebuttable by a showing of successful rehabilitation.<sup>5</sup> Conversely, other obstacles are insurmountable—categorical restrictions, exclusions, and prohibitions that are permanent for those unable or unwilling to expend the substantial effort and financial resources necessary to remove their scarlet letter.<sup>6</sup> Restrictions limiting access to democratic processes are almost always of this enduring variety.

In recent years, the topic of record-based voter disenfranchisement has garnered much-deserved attention from academics, policymakers, and the media.<sup>7</sup> Along those lines, a number of jurisdictions have attempted to ease civic restrictions for those with felony criminal histories—primarily in the area of voting

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REENTRY, RACE, AND POLITICS 110 (2008); Michael Pinard, *Reflections and Perspectives on Reentry and Collateral Consequences*, 100 J. CRIM. L. & CRIMINOLOGY 1213, 1213–24 (2010).

4. See, e.g., Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L. REV. 623, 665 n.235 (2006); see also Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 15, 26 (Marc Maurer & Meda Chesney-Lind eds., 2002).

5. See, e.g., JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* 80 (2003) (discussing temporary reentry obstacles in the context of supervised release); see also James M. Binnall, *Convicts in Court: Felonious Lawyers Make a Case for Including Convicted Felons in the Jury Pool*, 73 ALB. L. REV. 1379, 1387–93 (2008) (discussing professional-licensure barriers in the legal profession).

6. In California for instance,

Even attorneys have difficulty mastering and keeping abreast of [the state]’s complex restoration laws; pro se litigants face a real challenge. The most widely available California reentry self-help manual, meant for use by non-attorneys, is 1,088 pages long. Without legal assistance, relief is practically inaccessible for many people. Yet California does not fund legal services related to reentry and restoration of rights, with the limited exception of representation in the Certificate of Rehabilitation process. Some public defender offices and legal service providers offer assistance, but they fall short of meeting demand. Private attorneys charge fees that are prohibitive for most—between \$500 and \$5,000 per petition per case, and up to \$10,000 for a pardon.

Eliza Hersh & Gabriel J. Chin, *Building a Functional Framework for Reentry and Restoration of Rights: Lessons from California’s “Mystery House,”* 30 FED. SENT’G REP. 283, 286 (2018) (footnotes omitted).

7. See, e.g., PIPPA HOLLOWAY, *LIVING IN INFAMY: FELON DISENFRANCHISEMENT AND THE HISTORY OF AMERICAN CITIZENSHIP* (2014); JEFF MANZA & CHRISTOPHER UGGEN, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* (2008); KATHERINE IRENE PETTUS, *FELONY DISENFRANCHISEMENT IN AMERICA: HISTORICAL ORIGINS, INSTITUTIONAL RACISM, AND MODERN CONSEQUENCES* (2d ed. 2013) (providing a detailed overview of research on felon-voter disenfranchisement); see also Democracy Restoration Act of 2017, S. 1588, 115th Cong. § 2 (2017); Marc Meredith & Michael Morse, *The Politics of the Restoration of Ex-Felon Voting Rights: The Case of Iowa*, 10 Q.J. POL. SCI. 41, 42 (2015); Rebecca Beitsch, *Felon Voting Laws Are Confusing. Is It Time to Ditch Them?*, GOVERNING (Apr. 5, 2018, 9:48 PM), <https://www.governing.com/topics/politics/sl-felon-voting-laws-rights-florida-states.html> [<https://perma.cc/BK4S-8EXX>] (detailing the story of Crystal Mason, a Texas woman sentenced to five years in prison for illegally voting in the 2016 election as a felony probationer); Sandra E. Garcia, *Texas Woman Sentenced to 5 Years in Prison for Voter Fraud Loses Bid for New Trial*, N.Y. TIMES (June 13, 2018), <https://www.nytimes.com/2018/06/13/us/texas-woman-voter-fraud.html> [<https://perma.cc/U6MQ-PYH2>]; *Voting Rights Bill for Felons Signed by Louisiana Governor*, ASSOCIATED PRESS (May 31, 2018), <https://apnews.com/8d07f26171ee4c6b81f64fe10693980b/Voting-rights-bill-for-felons-signed-by-louisiana-governor> [<https://perma.cc/CAM3-8PXV>].

disqualifications.<sup>8</sup> While significant and welcomed by members of the system-involved community, such efforts are far from comprehensive, often leaving out citizens with certain types of felony convictions and typically addressing only one form of civic marginalization. Along with voter disqualifications, record-based constraints on the opportunity to hold office or sit on a jury make up a class of civic restrictions that impede participatory democracy.<sup>9</sup> Such restrictions are particularly insidious, as they strike at the heart of what it means to be a citizen and are uniquely resistant to legislative reform—in part because they are often codified in long-standing, petrified statutory provisions.<sup>10</sup>

This Article explores the contours of civic restrictions, arguing that while legislative struggles to restore full citizenship status to those with a felony criminal history have gained traction in recent years, there is still much more work to be done. In particular, this Article argues that, when reform is contemplated and enacted, the civic reinstatement of those with a felonious criminal history is too often incremental and, at times, arguably ineffectual. Such carve-outs have the potential to embolden opponents of full civic reinstatement and to hinder reentry. As a result, democracy continues to move forward without affording those who are system-involved the opportunity to meaningfully influence its direction.

Along those lines, Part II of this Article reviews the current jurisdictional landscape of civic restrictions and details the proffered justifications for their imposition. Part III then chronicles the most recent civic restriction reform effort—the restoration of voting rights in Florida—noting and questioning the need to appease opponents of such measures through carve-outs and exceptions. Part IV briefly notes the danger of legislative compromise in response to illogical, empirically tenable opposition, noting recent legislation in California addressing the record-based juror exclusion. Part V discusses the social consequences of partial reform efforts, arguing that anything less than a full restoration of civic rights and privileges isolates those most in need of communion and runs the risk

8. See, e.g., Laura Vozella, *Virginia Governor McAuliffe Says He Has Broken U.S. Record for Restoring Voting Rights*, WASH. POST (Apr. 27, 2017), [https://www.washingtonpost.com/local/virginia-politics/va-gov-mcauliffe-says-he-has-broken-us-record-for-restoring-voting-rights/2017/04/27/55b5591a-2b8b-11e7-be51-b3fc6ff7faee\\_story.html](https://www.washingtonpost.com/local/virginia-politics/va-gov-mcauliffe-says-he-has-broken-us-record-for-restoring-voting-rights/2017/04/27/55b5591a-2b8b-11e7-be51-b3fc6ff7faee_story.html) [https://perma.cc/QCH2-XEYZ]; see also Dara Kam, *Amendment to Restore Felons' Voting Rights on Florida November Ballot*, PALM BEACH POST (Jan. 24, 2018, 12:01 AM), <https://www.palmbeachpost.com/news/state-regional-govt-politics/amendment-restore-felons-voting-rights-florida-november-ballot/uOXe9lET9RE5piKMzZqqK/> [https://perma.cc/R5SU-TCY4]; Kira Lerner, *No Longer 'Voiceless,' Louisiana Felons Regain the Right to Vote*, THINKPROGRESS (June 1, 2018, 1:49 PM), <https://thinkprogress.org/no-longer-voiceless-louisiana-felons-regain-the-right-to-vote-a112f7d12ec9/> [https://perma.cc/DEY7-SE5W]; Vivian Wang, *Cuomo Plans to Restore Voting Rights to Paroled Felons*, N.Y. TIMES (Apr. 18, 2018), <https://www.nytimes.com/2018/04/18/nyregion/felons-pardon-voting-rights-cuomo.html> [https://perma.cc/9G7H-PJCD].

9. See Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 AM. U. L. REV. 65, 67 (2003) (jury service); Andrea Steinacker, Note, *The Prisoner's Campaign: Felony Disenfranchisement Laws and the Right to Hold Public Office*, 2003 B.Y.U. L. REV. 801, 802 (holding office).

10. See, e.g., Kalt, *supra* note 9, at 189 (“The practice of excluding felons from jury service has both a rich pedigree and a sturdy presence in current law. Felon exclusion has evolved from being a product of subjective juror qualifications or anti-criminal common-law rules into being a product of objective statutes. In the process, it has become firmly entrenched and has avoided the general trend of expanded jury participation.”).

of short-circuiting criminal desistance mechanisms. Part VI concludes by suggesting that full restoration of civic rights and privileges for those with felony criminal histories is sound policy, as it fosters more robust civic debate and ensures that jurisdictions promote rather than undermine reentry processes.

## II. CIVIC RESTRICTIONS: AN OVERVIEW

Record-based restrictions on voting, holding office, and jury service are pervasive. In only one state (Maine) are those with a felony conviction permitted to cast a vote, appear on a ballot, and serve on a jury.<sup>11</sup> In all other jurisdictions, a felony criminal conviction triggers restrictions that limit one's opportunity to vote, hold office, or serve as a juror.<sup>12</sup>

### A. THE SCOPE OF THE PROBLEM

Forty-eight states, the District of Columbia, and the federal government place some record-based restriction on voting eligibility.<sup>13</sup> Of those jurisdictions, three permanently exclude those with a felony conviction from the electorate absent executive action by the state's governor.<sup>14</sup> In seventeen states and the District of Columbia, those with a felonious past are barred from voting while in prison.<sup>15</sup> In twenty states, they are disqualified from voting until the completion of their sentence, including any period of probation and/or parole.<sup>16</sup> Eleven states impose some record-based, post-sentence restriction that is contingent upon charge category and/or a term of years.<sup>17</sup> In the remaining two states, those with a felony conviction never lose the right to vote and may cast an absentee ballot while incarcerated.<sup>18</sup>

To appear on a ballot as a candidate for public office, those with a felony conviction again face significant barriers.<sup>19</sup> In eight jurisdictions, a felony

11. See James M. Binnall, *Felon-Jurors in Vacationland: A Field Study of Transformative Civic Engagement in Maine*, 71 ME. L. REV. 71, 72–73 (2018). Maine does not place any restriction on voting or jury service. The state ties eligibility to hold office to one's eligibility to vote. Thus, in Maine, there are no record-based restrictions placed on those with felony criminal convictions.

12. *Id.* at 73.

13. JEAN CHUNG, SENTENCING PROJECT, FELONY DISENFRANCHISEMENT: A PRIMER 1 tbl.1, <https://www.sentencingproject.org/wp-content/uploads/2015/08/Felony-Disenfranchisement-Primer.pdf> [<https://perma.cc/QK6Z-F8LU>] (last updated Dec. 2019).

14. *Id.* at 5 tbl.2 (Iowa, Kentucky, Virginia); see also *Felon Voting Rights*, NAT'L CONFERENCE OF STATE LEGISLATORS (Oct. 14, 2019), <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> [<https://perma.cc/T548-PZAA>].

15. CHUNG, *supra* note 13, at 1 tbl.1 (Colorado, District of Columbia, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Utah).

16. *Id.* (Alaska, Arkansas, California, Connecticut, Georgia, Idaho, Kansas, Louisiana, Minnesota, Missouri, New Mexico, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Washington, West Virginia, Wisconsin).

17. *Id.* (Alabama, Arizona, Delaware, Florida, Iowa, Kentucky, Mississippi, Nebraska, Tennessee, Virginia, Wyoming).

18. *Id.* (Maine and Vermont).

19. For a comprehensive discussion of record-based candidacy barriers and a jurisdictional breakdown of candidacy policies current to 2019, see Steinacker, *supra* note 9, at 804–07.

conviction categorically prohibits one from holding office.<sup>20</sup> In eleven states, a citizen with a felony criminal history may serve in office only after a restoration of civil rights.<sup>21</sup> Three jurisdictions disqualify those with a felony conviction from public office until the completion of their criminal sentence.<sup>22</sup> Five states impose a waiting period, whereby a felony conviction will restrict a prospective candidate for some period of time following a criminal sentence.<sup>23</sup> Seventeen jurisdictions and the District of Columbia link holding office to voting eligibility, allowing a citizen convicted of a felony to run for and hold office if he or she is also an eligible voter.<sup>24</sup> Finally, six states place no record-based restriction on the opportunity to hold office.<sup>25</sup>

As pervasive as record-based restrictions are in the context of voting and running for office, the exclusion of those with a felony criminal conviction from jury service is arguably the most pervasive and severe form of civic marginalization.<sup>26</sup> “Forty-nine states, the federal government, and the District of Columbia restrict a convicted felon’s opportunity to serve as a juror.”<sup>27</sup> In twenty-eight jurisdictions, these restrictions are permanent, banning convicted felons from jury service for life.<sup>28</sup> “Thirteen states bar convicted felons from jury service until the full completion of their sentence, notably disqualifying individuals serving felony parole and felony probation.”<sup>29</sup> Seven states and the District of Columbia “enforce hybrid regulations that may incorporate penal status, charge category, type of jury proceeding, and/or a term of years.”<sup>30</sup> And finally, two states recognize lifetime for-cause challenges, permitting a trial judge to dismiss a prospective juror from a venire solely on the basis of a felony conviction.<sup>31</sup>

## B. THE PROFESSED PURPOSES FOR EXCLUSION

The justifications for civic restrictions are premised on the notion that those

20. *Id.* at 807 (Alabama, Arkansas, Delaware, Indiana, Pennsylvania; New Hampshire, South Dakota, West Virginia—for certain election-related or “infamous” felony convictions).

21. *Id.* at 805 (Florida, Idaho, Illinois, Iowa, Kentucky, Mississippi, North Carolina, Ohio, Texas, Utah, Wisconsin).

22. *Id.* (Hawaii, Montana, North Dakota).

23. *Id.* at 807 (Georgia, Louisiana, Oklahoma, Rhode Island, South Carolina).

24. *Id.* at 806 (Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, Virginia, Washington, Wyoming).

25. *Id.* at 804 (Kansas, Massachusetts, New York, Oregon, Tennessee, Vermont).

26. James M. Binnall, *Cops and Convicts: An Explanatory Field Study of Jurymantering*, 16 OHIO ST. J. CRIM. L. 221, 221 (2018) (“Today, the most prominent [jurymantering] targets . . . Americans with a felonious criminal history.”).

27. James M. Binnall, *A Field Study of the Presumptively Biased: Is There Empirical Support for Excluding Convicted Felons from Jury Service?*, 36 L. & POL’Y 1, 2 (2014) (citation omitted).

28. *Id.* at 2, 4 fig.1 (federal, Alabama, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wyoming).

29. *Id.* at 4 & fig.1 (Alaska, Idaho, Indiana, Minnesota, Montana, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Dakota, Washington, Wisconsin).

30. *Id.* at 4 fig.1, 5 (Arizona, Colorado, Connecticut, District of Columbia, Kansas, Massachusetts, Nevada, Oregon).

31. *Id.* 4-5 & fig.1 (Illinois and Iowa).

with criminal histories pose an existential threat to democratic processes. If allowed to participate fully, so goes the argument, those with felony criminal convictions would undermine the functionality and integrity of democratic institutions.<sup>32</sup> No empirical evidence supports these claims.<sup>33</sup> Still, in every U.S. jurisdiction but one, those with a felony criminal history face restrictions regarding their opportunity to vote, hold office, or serve as a juror.<sup>34</sup>

In jurisdictions that exclude those with a felony criminal conviction from the electorate, supporters of such policies argue that they are necessary to prevent voter fraud, to stop harmful changes to the law, and to preserve the integrity of the ballot box.<sup>35</sup> As the Supreme Court of Alabama long ago noted:

The presumption is, that one rendered infamous by conviction of felony, or other base offense indicative of great moral turpitude, is unfit to exercise the privilege of suffrage . . . upon terms of equality with freemen who are clothed by the State with the toga of political citizenship. It is proper, therefore, that this class should be denied a right, the exercise of which might sometimes hazard the welfare of communities, if not that of the State itself, at least in close political contests. The exclusion must for this reason be adjudged a mere disqualification, imposed for protection, and not for punishment—withholding an honorable privilege, and not denying a personal right or attribute of personal liberty.<sup>36</sup>

Like justifications for voter disenfranchisement, rationales for record-based restrictions on candidacy suggest that the purpose of exclusion is preventative, not punitive. Addressing the legality of denying those with a felony conviction the opportunity to hold public office, the Supreme Court of Delaware held that such restrictions are akin to professional-licensure requirements that demand a showing of good character prior to admission; specifically, the court stated:

In our view, [the provision of the Delaware Constitution banning convicted felons from office] is essentially a character provision, mandating that all candidates for State office possess high moral qualities. It is not a provision designed to punish an offender. While conviction of an infamous crime does not imply than [sic] an offender is incapable of functioning as a respected and productive member of society, it is irreversible evidence that the offender does not possess the requisite character for public office. It is important to emphasize that we are not concerned here with the standard of compassion which should govern daily interpersonal relationships. We deal, rather, with a norm established by our Constitution for those who seek to

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32. See, e.g., Binnall, *Convicts in Court*, *supra* note 5, at 1385–87.

33. For a discussion of empirical analyses of record-based voter disenfranchisement, candidacy requirements, and juror eligibility, see MANZA & UGGEN, *supra* note 7, at 136 (voting). See also Binnall, *Felon-Jurors*, *supra* note 11, at 89–92 (jury service); Steinacker, *supra* note 9, at 813–18 (candidacy).

34. See Binnall, *Felon-Jurors*, *supra* note 11, at 72–73.

35. See MANZA & UGGEN, *supra* note 7, at 136; Steinacker, *supra* note 9, at 821–22.

36. *Washington v. State*, 75 Ala. 582, 585 (1884).

govern us. Without question, it is a demanding norm.<sup>37</sup>

The justifications for record-based juror eligibility requirements—like restrictions on voting and holding public office—are premised on the alleged threat posed by those with a felony conviction. In particular, jurisdictions that exclude jury service do so because those with a felony criminal history allegedly (1) lack character and (2) harbor inherent bias that makes them sympathetic to criminal defendants and antithetical toward the state.<sup>38</sup>

Woven through all of the purported rationales for record-based civic restrictions is the idea that those who have been convicted of a felony lack the requisite character to take part in democratic processes—to the point that only their exclusion will preserve the integrity of such processes. Again, no evidence supports this claim. Instead, evidence seemingly undermines this assertion.

Tracing back to Stanley Milgram’s electrocution experiments,<sup>39</sup> a wealth of social-psychological research demonstrates that “character” is largely situational, undermining the notion that character is a fixed concept.<sup>40</sup> Rather, such research indicates that character is malleable and alterable, in turn making rehabilitation possible.<sup>41</sup> Categorical record-based civic restrictions ostensibly ignore this possibility—disturbingly implicating what criminologist David Garland has called the “criminology of the other.”<sup>42</sup>

The criminology of the other—born in a pre-modern era of crime control—suggests that those who commit criminal offenses are somehow fundamentally different than those who have never violated the law or who have not been caught violating the law.<sup>43</sup> By taking the view that system-involved citizens are somehow distinct boogymen, the criminology of the other justifies and perpetuates mistreatment and ostracism under the guise of a rational cost-benefit, risk-threat analysis.<sup>44</sup>

In actuality, it often appears that civic exclusion—part of the vast framework of collateral consequences of a criminal conviction that ostensibly treats criminal behavior as an individualized, intrinsic phenomenon—is premised on the desire to free society from confronting difficult questions about its responsibility for creating conditions that foster crime and recidivism. In this way, civic restrictions

37. Steinacker, *supra* note 9, at 822–23 (alterations in original) (internal quotation marks omitted) (quoting *State ex rel. Wier v. Peterson*, 369 A.2d 1076, 1080–81 (Del. 1976)).

38. See Binnall, *Felon-Jurors*, *supra* note 11, at 73–74; Kalt, *supra* note 9, at 73–74.

39. See Stanley Milgram, *Behavioral Study of Obedience*, 67 J. ABNORMAL & SOC. PSYCHOL. 371, 371–78 (1963). See generally STANLEY MILGRAM, *OBEDIENCE TO AUTHORITY: THE EXPERIMENT THAT CHALLENGED HUMAN NATURE* (1974).

40. See generally, e.g., JOHN M. DORIS, *LACK OF CHARACTER: PERSONALITY AND MORAL BEHAVIOR* (2002); Gilbert Harman, *No Character or Personality*, 13 BUS. ETHICS Q. 87 (2003); Gilbert Harman, *Skepticism About Character Traits*, 13 J. ETHICS 235 (2009).

41. See, e.g., Anders Kaye, *Does Situationist Psychology Have Radical Implications for Criminal Responsibility?*, 59 ALA. L. REV. 611, 635–38 (2008).

42. David Garland, *The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society*, 36 BRIT. J. CRIMINOLOGY 445, 446 (1996) (internal quotation marks omitted); see also Simon Hallsworth, *Rethinking the Punitive Turn: Economies of Excess and the Criminology of the Other*, 2 PUNISHMENT & SOC’Y 145, 149–50 (2000).

43. See Garland, *supra* note 42, at 461; Hallsworth, *supra* note 42, at 153.

44. Hallsworth, *supra* note 42, at 153–54.



“follow from, rather than explain, a preexisting sense that [those with a felony conviction] cannot be members of the community.”<sup>45</sup> As one scholar has argued:

None is so repentant a sinner as to share the blame with the criminal. If we can localize the blame in the individual we can exact vengeance with precision and satisfaction. The more we can make it appear that all the causes for delinquency have their origin within the individual victim the more we may feel self-elation, the less danger there is of negative self-feeling.<sup>46</sup>

The justification for civic restrictions based on the idea that those with a felony criminal history will undermine our democratic processes does not find support in science. No empirical analysis of record-based restrictions suggests that the proffered rationales for their imposition are valid.<sup>47</sup> Instead, all studies on civic restrictions undermine the purported justifications. For this reason, partial reform measures that reinstate civic opportunities for certain felony convictions or for certain civic endeavors are problematic, as they ostensibly concede a factual basis in these justifications—if only for certain populations or in certain contexts. Such a concession finds no support in research and sets a dangerous precedent that could be used once again to expand civic restrictions when the political or social winds dictate, if we are not diligent.

### III. FLORIDA: A CASE STUDY OF PARTIAL REFORM

The 2000 presidential election between George W. Bush and Al Gore served as a flashpoint for the issue of record-based civic restrictions.<sup>48</sup> When the polls closed in that election, the candidates stood deadlocked, prompting thirty-six days of recounts.<sup>49</sup> In Florida, over 800,000 prospective voters with a felony criminal conviction had been statutorily denied the right to vote.<sup>50</sup> Since that time, some scholars have suggested that those disqualified voters would have likely swung the election in Al Gore’s favor.<sup>51</sup> Though the Supreme Court eventually declared George W. Bush the victor,<sup>52</sup> the election lay bare the national scar of record-based civic restrictions and prompted a wealth of research and media attention

45. See Note, *The Disenfranchisement of Ex-Felons: Citizenship, Criminality, and “The Purity of the Ballot Box,”* 102 HARV. L. REV. 1300, 1310 (1989).

46. *Id.* at 1310–11 (internal quotation marks omitted) (quoting WILLIAM T. ROOT, JR., A PSYCHOLOGICAL AND EDUCATIONAL SURVEY OF 1916 PRISONERS IN THE WESTERN PENITENTIARY OF PENNSYLVANIA 10 (1927)).

47. See MANZA & UGGEN, *supra* note 7, at 136 (voting); Binnall, *Felon-Jurors*, *supra* note 11, at 89–92 (jury service); Steinacker, *supra* note 9, at 813–18 (candidacy).

48. See Thomas E. Mann, *Reflections on the 2000 U.S. Presidential Election*, BROOKINGS INSTITUTION (Jan. 1, 2001), <https://www.brookings.edu/articles/reflections-on-the-2000-u-s-presidential-election/> [https://perma.cc/R52F-VK39].

49. *Id.*

50. Thomas J. Miles, *Felon Disenfranchisement and Voter Turnout*, 33 J. LEGAL STUD. 85, 118 n.54 (2004); Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 AM. SOC. REV. 777, 792 (2002).

51. See Miles, *supra* note 50, at 86 n.8; Uggen & Manza, *supra* note 50, at 792; see also MANZA & UGGEN, *supra* note 7, at 192.

52. *Bush v. Gore*, 531 U.S. 98, 111 (2000) (per curiam).

focused on the topic.<sup>53</sup>

Along those lines, since 2000, a number of policymakers have moved to reform voter disenfranchisement laws. For example, in Virginia and New York, executive measures have restored the right to vote to thousands of citizens with felony criminal records.<sup>54</sup> In 2018, Louisiana readmitted citizens with a felony criminal history to the electorate by virtue of legislative action, restoring the right to vote to thirty-five hundred Louisianans.<sup>55</sup>

The most recent effort to restore the vote to those with a felony criminal conviction came in 2018, in the same state at issue in *Bush v. Gore*.<sup>56</sup> Florida’s Voter Restoration Amendment (Amendment 4) appeared on the ballot in November 2018.<sup>57</sup> That month, Amendment 4 passed with bipartisan support, restoring voting rights to nearly 1.5 million Floridians with a felony criminal record.<sup>58</sup> The measure was widely regarded as a monumental step forward in a state that had traditionally been one of the few remaining jurisdictions to impose a lifetime record-based voter disenfranchisement provision.<sup>59</sup> Still, the legislation was far from comprehensive.

Critics of Amendment 4 point out that the measure did not restore voting rights to citizens convicted of certain felonies, namely those convicted of “murder or a felony sexual offense.”<sup>60</sup> Moreover, the Amendment requires that to regain their right to vote, those convicted of a felony must satisfy all terms of an imposed sentence.<sup>61</sup> In a subsequent legislative pronouncement—Senate Bill 7066 (S.B. 7066)—lawmakers outlined the contours of this requirement.<sup>62</sup> In particular, S.B. 7066 (now codified in the Florida Statutes as § 98.0751) defines completion of a sentence to mean:

[A]ny portion of a sentence that is contained in the four corners of the sentencing document, including, but not limited to: . . . Full payment of restitution ordered to a victim by the court as a part of the sentence. A victim includes, but is not limited to, a person or persons, the estate or estates

53. See, e.g., HOLLOWAY, *supra* note 7; MANZA & UGGEN, *supra* note 7; PETTUS, *supra* note 7; see also Democracy Restoration Act of 2017, S. 1588, 115th Cong. § 2 (2017); Meredith & Morse, *supra* note 7, at 42; Beitsch, *supra* note 7; Garcia, *supra* note 7; Kam, *supra* note 8; Lerner, *supra* note 8; Voting Rights Bill for Felons Signed by Louisiana Governor, *supra* note 7; Vozella, *supra* note 8; Wang, *supra* note 8.

54. See Vozella, *supra* note 8; Wang, *supra* note 8.

55. See Voting Rights Bill for Felons, *supra* note 7.

56. See Kam, *supra* note 8.

57. *Id.*

58. See Samantha J. Gross, *Florida Voters Approve Amendment 4 on Restoring Felons’ Voting Rights*, MIAMI HERALD (Nov. 6, 2018, 9:18 PM), <https://www.miamiherald.com/news/politics-government/election/article220678880.html>.

59. *Id.*

60. See FLA. DIV. OF ELECTIONS, FLA. DEP’T OF STATE, PROPOSED CONSTITUTIONAL AMENDMENTS AND REVISIONS FOR THE 2018 GENERAL ELECTION 10 (2018), <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf> [<https://perma.cc/LB3T-ZMSK>].

61. *Id.*

62. See S.B. 7066, 2019 Leg., 121st Reg. Sess. (Fla. 2019), <https://www.flsenate.gov/Session/Bill/2019/7066/BillText/er/PDF> [<https://perma.cc/J986-4LDY>].

thereof, an entity, the state, or the Federal Government[;] [and] . . . Full payment of fines or fees ordered by the court as a part of the sentence or that are ordered by the court as a condition of any form of supervision, including, but not limited to, probation, community control, or parole.<sup>63</sup>

Moreover, under S.B. 7066, Florida lawmakers have made it generally impermissible for a court to “modify[] the financial obligations of an original sentence.”<sup>64</sup>

Though Amendment 4 moved Florida into the overwhelming majority of jurisdictions that do not impose permanent record-based voter disqualifications, the effort was partial reform in two ways. First, it did not fully restore the vote. Instead, it excluded certain members of an already marginalized class and added additional, legislatively constructed burdens to reinstatement. Second, Amendment 4 does not address record-based candidacy restrictions or permanent juror exclusion in Florida. In this way, Florida’s Amendment 4, while crucial for some, leaves out many and hardly addresses the civic inequities in the state. Unfortunately, where reform efforts are considered, Amendment 4 is the norm, not an anomaly.<sup>65</sup>

63. FLA STAT. § 98.0751(2)(a)(5)(a)–(b) (2020).

64. *Id.* § 98.0751(2)(a)(5)(d). In October 2019, federal district court Judge Robert Hinkle issued an injunction blocking Florida from removing seventeen plaintiffs with felony convictions from the voting rolls. See *Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1310–11 (N.D. Fla. 2019). The plaintiffs sued the State, arguing that they did not have the funds to satisfy their financial obligations to the State or that the State was unable to accurately assess their fees. See Lawrence Mower, *Gov. DeSantis Appeals Judge’s Order in Amendment 4 Lawsuit*, TAMPA BAY TIMES (Nov. 15, 2019), <https://www.tampabay.com/florida-politics/buzz/2019/11/15/gov-desantis-appeals-judges-order-in-amendment-4-lawsuit/> [https://perma.cc/YK6E-MCK5]. In January 2020, the Florida Supreme Court issued an advisory opinion as to whether fines and restitution must be paid to satisfy “all terms” of a criminal sentence as defined in Amendment 4. See Advisory Op. to the Governor Re: Implementation of Amendment 4, the Voting Restoration Amendment, 288 So. 3d 1070 (Fla. 2020) (per curiam). The court held that unmet financial obligations must be met for “all terms of sentence” to be satisfied. *Id.* at 1083 (internal quotation marks omitted); see Lawrence Mower, *U.S. Judges Cast Doubt on Florida Law Requiring Ex-Felons to Pay Before They Can Vote*, L.A. TIMES (Jan. 28, 2020, 1:54 PM), <https://www.latimes.com/world-nation/story/2020-01-28/florida-felons-voting-poll-tax> [https://perma.cc/5DUE-QS5T]. On January 28, 2020, an Eleventh Circuit panel heard arguments on the issue. *Oral Argument Recordings*, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, <https://www.ca11.uscourts.gov/oral-argument-recordings> (enter “19-14551” in the “Case Number” search bar; then click the “Search” button). Attorneys for Governor Ron DeSantis argued in favor of lifting the injunction ordered by Judge Hinkle, while opposing counsel argued that forcing those with a felony conviction to satisfy all financial obligations was akin to a modern poll tax. See *id.* The Eleventh Circuit ultimately affirmed the preliminary injunction entered by the district court. *Jones v. Governor of Fla.*, 950 F.3d 795, 832–33 (11th Cir. 2020) (per curiam).

65. Relatedly, Louisiana recently considered House Bill 65 (H.B. 65), a bill to restore juror eligibility to those convicted of a felony criminal offense. Though H.B. 65 would have marked a huge step forward for Louisiana—currently a permanent exclusion jurisdiction—this bill also suffered from various carve-outs. Specifically, H.B. 65 did not permit parolees, probationers, or those within five years of the completion of their sentence to serve. The bill was ultimately voted down in May 2019. See Bryn Stole, *Louisiana Lawmakers Shoot Down Bill to Allow Those with Past Felony Convictions to Serve on Juries*, ADVOC. (May 13, 2019, 6:27 PM), [https://www.theadvocate.com/baton\\_rouge/news/politics/legislature/article\\_b8d2b852-75d6-11e9-8f82-bb347152d718.html](https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_b8d2b852-75d6-11e9-8f82-bb347152d718.html) [https://perma.cc/5XES-XSUT].

## IV. THE COST OF COMPROMISING WITH THE ILLOGICAL

While legislative compromise is essential for effective governance, it comes at a cost for parties to those negotiations. Still, in the course of policymaking, such costs are anticipated and accepted.<sup>66</sup> Compromise then, in and of itself, does not threaten the governing process. Instead, compromise is encouraged and expected when it is the result of honest, evidence-based negotiation. Unfortunately, in the case of civic restrictions, such compromise is rarely of this sort.

For example, in California, the state legislature recently took up Senate Bill 310 (S.B. 310), a measure that would restore juror eligibility to those convicted of a felony criminal offense.<sup>67</sup> As originally drafted, S.B. 310 made all Californians with a felony criminal history eligible for jury service.<sup>68</sup> If passed in that form, S.B. 310 would have moved California from a permanent exclusion jurisdiction to a jurisdiction with no record-based restrictions on juror eligibility.

Opponents of S.B. 310—largely comprised of district attorneys and law enforcement personnel—argued that those with a felony conviction would disrupt the jury trial process and threaten fellow jurors.<sup>69</sup> In particular, opponents argued that those on some form of state supervision (probation or parole) should not be permitted to serve for fear that a supervision violation would disrupt the trial process.<sup>70</sup> Opponents also contended that those with a felony criminal history (specifically those with sexual felony offenses) pose a threat to their fellow jurors and courthouse patrons, such that S.B. 310 would necessitate additional courtroom security.<sup>71</sup>

In the end, S.B. 310 passed both chambers of the California legislature and was signed into law by Governor Gavin Newsom on October 8, 2019—after a host of amendments.<sup>72</sup> Those amendments included two notable carve-outs. The first made felony probationers and parolees ineligible to serve under S.B. 310.<sup>73</sup> The second preserved California’s permanent exclusion for prospective jurors with a sexual felony conviction.<sup>74</sup> Though the legislative history of S.B. 310 is silent with respect to the impetus for the amendments that altered its form, a closer look at opposition contentions suggests that the changes to S.B. 310 were at least partially in response to the arguments made by its opponents.

66. See Daniel B. Rodriguez & Barry R. Weingast, *The Paradox of Expansionist Statutory Interpretations*, 101 NW. U. L. REV. 1207, 1209 (2007).

67. 2019 Cal. Legis. Serv. Ch. 591 (S.B. 310) (West).

68. See SB310 Jury Service, CAL. LEGISLATIVE INFO., [https://leginfo.ca.gov/faces/billVersionsCompareClient.xhtml?bill\\_id=20190200SB310&cversion=20190SB31099INT](https://leginfo.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=20190200SB310&cversion=20190SB31099INT) [https://perma.cc/UA5H-BMGS] (comparing the originally proposed and chaptered versions of the bill).

69. See Video: Assembly Judiciary Committee, Tuesday, June 25th, 2019, CAL. STATE ASSEMBLY MEDIA ARCHIVES, at 3:14:40–3:19:41 (June 25, 2019), <https://www.assembly.ca.gov/media/assembly-judiciary-committee-20190625/video> (testimony of Larry Morris of the California District Attorneys Association and Ryan Sherman of the Riverside Sheriffs’ Association).

70. *Id.* (testimony of Larry Morris of the California District Attorneys Association).

71. *Id.* (testimony of Ryan Sherman of the Riverside Sheriffs’ Association).

72. See 2019 Cal. Legis. Serv. Ch. 591.

73. Cal. Civ. Proc. Code § 203(a)(10) (West 2020).

74. *Id.* § 203(a)(11).

As S.B. 310 illustrates, in the context of civic restrictions, compromise can be undermining—not because it forces legitimate concessions, which are an integral part of responsible lawmaking, but because those concessions are most often a response to arguments based in fearmongering, emotion, and stereotype. In turn, compromise has the potential to validate opposition that is far from evidence based. Such compromises belie science and serve to further divide and marginalize those who must fight to be recognized as full citizens post-felony conviction.

## V. THE SOCIAL COSTS OF INCOMPLETE MEASURES

Partially restoring the civic rights and privileges of those with a felony criminal conviction, either by excluding certain citizens from reform efforts or by failing to address all civic inequities, also comes with accompanying social costs. First, incomplete restoration limits, and in some instances eliminates, opportunities for citizens to fully engage in what Justice Breyer has called “active liberty.”<sup>75</sup> Second, partial reform can delegitimize the law and make legal compliance less likely. And finally, for those impacted, incomplete civic reinstatement likely increases the probability of re-offense by undermining criminal desistance processes.

### A. A POLITICAL SCIENCE PERSPECTIVE

Political scientists studying the impacts of civic participation have found that partaking in democratic processes, a holistic endeavor, often fosters more complete, engaged citizens.<sup>76</sup> For instance, in studies of the effects of jury service, researchers found that jury service fosters a general sense of empowerment that frequently leads to other forms of civic engagement.<sup>77</sup> Studies reveal a 4% to 10% increase in voting rates among former jurors<sup>78</sup> and a positive correlation between jury service and higher levels of involvement in civic and political activities.<sup>79</sup> These effects were most pronounced among those who—like many system-involved individuals—were less civically engaged prior to jury service.<sup>80</sup> Termed the “participation effect,” this phenomenon and supporting data tend to show that

75. STEPHEN BREYER, *ACTIVE LIBERTY: INTERPRETING OUR DEMOCRATIC CONSTITUTION* 15 (2005) (“[A]ctive liberty . . . refers to a sharing of a nation’s sovereign authority among its people. Sovereignty involves the legitimacy of a governmental action. And a sharing of sovereign authority suggests several kinds of connection between that legitimacy and the people.” (emphasis added)).

76. See, e.g., DAVID MATTHEWS, *POLITICS FOR PEOPLE: FINDING A RESPONSIBLE PUBLIC VOICE* 2 (2d ed. 1999); Mark Button & Kevin Mattson, *Deliberative Democracy in Practice: Challenges and Prospects for Civic Deliberation*, 31 *POLITY* 609, 621 (1999); John Gastil et al., *Seeing Is Believing: The Impact of Jury Service on Attitudes Toward Legal Institutions and the Implications for International Jury Reform*, 48 *CT. REV.* 124, 128 (2012).

77. See, e.g., John Gastil et al., *Civic Awakening in the Jury Room: A Test of the Connection Between Jury Deliberation and Civic Participation*, 64 *J. POL.* 585, 593–94 (2002); John Gastil et al., *Jury Service and Electoral Participation: A Test of the Participation Hypothesis*, 70 *J. POL.* 351, 363–64 (2008).

78. Gastil et al., *Civic Awakening*, *supra* note 77, at 591.

79. *Id.* at 593; see also JOHN GASTIL ET AL., *THE JURY AND DEMOCRACY: HOW JURY DELIBERATION PROMOTES CIVIC ENGAGEMENT AND POLITICAL PARTICIPATION* 129–53 (2010); John Gastil & Phil J. Weiser, *Jury Service as an Invitation to Citizenship: Assessing the Civic Value of Institutionalized Deliberation*, 34 *POL’Y STUD. J.* 605, 608–09 (2006); Gastil et al., *Jury Service and Electoral Participation*, *supra* note 77, at 363–64.

80. Gastil et al., *Jury Service and Electoral Participation*, *supra* note 77, at 363–64.

civic engagement is often a symbiotic endeavor.<sup>81</sup> In this way, access to one form of civic engagement makes other forms of engagement more likely, suggesting that banishment from any civic endeavor may make civic engagement or reengagement less likely.

When reform efforts overlook certain citizens or other civic restrictions, the power of the participation effect is lost. For example, one who is able to vote—to engage fully in the electoral process—may feel a sense of civic empowerment, such that he or she is moved to run for office or to answer a jury summons. Civic restrictions can then stunt this enthusiasm, suggesting that a citizen is “good enough” to vote but not “good enough” to run for office or decide a litigated matter. In a sense, this dangles full civic reinstatement before categorically proclaiming one with a felony criminal conviction unfit for other opportunities afforded “upstanding” members of the community. This can arguably have, at best, a deleterious effect on enthusiasm and could, at worst, lead to a sense of hopelessness and re-offense.

#### B. A PROCEDURAL JUSTICE PERSPECTIVE

Research suggests that citizens’ views of their government are largely a product of their interactions with that government.<sup>82</sup> In particular, procedural justice research demonstrates that although the outcome of an interaction with a governmental entity (including the criminal justice system) influences a citizen’s views and attitudes toward that entity, the significance of an outcome is marginal.<sup>83</sup> Rather, research suggests that procedures, and in particular the perceived fairness of those procedures, are the strongest predictors of attitudes toward governmental entities.<sup>84</sup> Notably, such results appear even in populations that are facing or have been subject to harsh punishments at the hands of the state.<sup>85</sup>

Perhaps not surprisingly, most citizens describe their contacts with the criminal justice system as negative.<sup>86</sup> This can lead to high levels of “anticipatory injustice” in certain communities and among certain populations,<sup>87</sup> leading many citizens

81. *Id.* at 364 (internal quotation marks omitted).

82. See Vesla M. Weaver & Amy E. Lerman, *Political Consequences of the Carceral State*, 104 AM. POL. SCI. REV. 817, 819 (2010) (“In short, citizens learn about their government through their interactions with it.”).

83. See Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT’L J. PSYCHOL. 117, 124 (2000); Tom R. Tyler, *The Role of Perceived Injustice in Defendants’ Evaluations of Their Courtroom Experiences*, 18 L. & SOC’Y REV. 51, 71 (1984).

84. See Tom R. Tyler & E. Allan Lind, *A Relational Model of Authority in Groups*, 25 ADVANCES EXPERIMENTAL SOC. PSYCHOL. 115, 157 (1992); see also Tyler, *Social Justice*, *supra* note 83, at 124.

85. See Jonathan D. Casper et al., *Procedural Justice in Felony Cases*, 22 L. & SOC’Y REV. 483, 503 (1988).

86. See Rod K. Brunson & Jody Miller, *Gender, Race, and Urban Policing: The Experience of African American Youths*, 20 GENDER & SOC’Y 531, 532–33 (2006); Claudio G. Vera Sanchez & Ericka B. Adams, *Sacrificed on the Altar of Public Safety: The Policing of Latino and African American Youth*, 27 J. CONTEMP. CRIM. JUST. 322, 332 (2011).

87. See Debra L. Shapiro & Bradley L. Kirkman, *Anticipatory Injustice: The Consequences of Expecting Injustice in the Workplace*, in ADVANCES IN ORGANIZATIONAL JUSTICE 152, 156 (Jerald Greenberg & Russell Cropanzana eds., 2001).

to “expect unfair or discriminatory procedures or outcomes.”<sup>88</sup> Importantly, these negative views typically take on a global quality, as those who endure mistreatment at the hands of a discrete entity often transfer their negative views to “the system” or “the government” more generally.<sup>89</sup>

For those who bear the mark of a felony criminal conviction, especially for racial minorities,<sup>90</sup> their prior interactions with state and government entities assuredly prompt some level of anticipatory injustice. Partial reform measures that overlook those with certain types of felony convictions or fail to address civic restrictions in their entirety reinforce already negative views of government and governing bodies. Importantly, these negative views delegitimize the law and legal mandates, possibly prompting noncompliance. In this way, because it appears unfair on a number of levels, partial reform has the potential to denigrate views of the law and spawn re-offending.

### C. A CRIMINOLOGICAL PERSPECTIVE

Theories of criminal desistance posit that long-term success requires the cessation of criminal activity (primary criminal desistance), a change in one’s sense of self (secondary criminal desistance),<sup>91</sup> and full community engagement (tertiary criminal desistance).<sup>92</sup> When all three phases of the criminal desistance process occur, success is more probable.<sup>93</sup> Conversely, when criminal desistance processes are disrupted, the chance of re-offense increases.

Primary criminal desistance occurs when one ceases to engage in criminal activity.<sup>94</sup> That period of abstention can be of any duration. Secondary criminal desistance occurs when one undergoes a change in self-concept, prompted by intrinsic motivations and the construction of a “desistance narrative,”<sup>95</sup> or as the

88. See Jennifer L. Woolard et al., *Anticipatory Injustice Among Adolescents: Age and Racial/Ethnic Differences in Perceived Unfairness of the Justice System*, 26 BEHAV. SCI. & L. 207, 208 (2008) (emphasis omitted).

89. See generally Joe Soss, *Making Clients and Citizens: Welfare Policy as a Source of Status, Belief, and Action*, in DESERVING AND ENTITLED: SOCIAL CONSTRUCTIONS AND PUBLIC POLICY 291 (Anne L. Schneider & Helen M. Ingram eds., 2005); Jennifer L. Lawless & Richard L. Fox, *Political Participation of the Urban Poor*, 48 SOC. PROBS. 362, 376–77 (2001).

90. Anticipatory injustice often divides along racial lines, as African-American citizens are far more likely to hold a negative view of the criminal justice system than white citizens are. See Jon Hurwitz & Mark Peffley, *Explaining the Great Racial Divide: Perceptions of Fairness in the U.S. Criminal Justice System*, 67 J. POL. 762, 763 (2005).

91. See SHADD MARUNA, *MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES* 3–6 (2001) (highlighting how personal identity influences criminal desistance).

92. See Kathryn J. Fox, *Civic Commitment: Promoting Desistance Through Community Integration*, 18 PUNISHMENT & SOC’Y 68, 69 (2016); see also Fergus McNeill, *Three Aspects of Desistance?*, DISCOVERING DESISTENCE (May 23, 2014), <https://discoveringdesistance.home.blog/2014/05/23/three-aspects-of-desistance/> [<https://perma.cc/3MN3-UJ8V>].

93. See Fox, *supra* note 92, at 69 (adding that in addition to primary desistance, secondary and tertiary desistance are “enduring”).

94. *Id.*

95. See, e.g., MARUNA, *supra* note 91, at 87; see also Sam King, *Early Desistance Narratives: A Qualitative Analysis of Probationers’ Transitions Towards Desistance*, 15 PUNISHMENT & SOC’Y 147, 152 (2013) (“[I]t is the building of a desistance narrative which underpins the development of new identities.”).

result of assuming conventional social roles that promote pro-social behaviors and constrain antisocial behaviors.<sup>96</sup> Tertiary criminal desistance takes place when system-involved citizens are invited back into their respective communities and then accept that invitation, such that they are allowed to and subsequently engage in meaningful civic activities.<sup>97</sup> Reforms that are less than a full reinstatement of civic rights and opportunities threaten the criminal desistance process in three ways.

First, they make it difficult for those with a felony criminal history to construct a coherent desistance narrative. When one attempts to rectify a criminal past with a law-abiding present and future, he or she often struggles to explain to oneself how it was possible that he or she committed a serious criminal offense “then” but is “now” focused on pro-social pursuits. In such situations, those with criminal histories often call on their pasts as a source of wisdom, rewriting a negative past into a positive present and future.<sup>98</sup> Partial reforms leave civic restrictions in place to some degree, reminding those with a felony criminal record that they are perpetually inferior and making construction of a desistance narrative especially difficult.

Second, partial reforms do not provide all civic opportunities to all those with felony criminal histories. Hence, these reforms ensure that some, if not all, civic roles are off limits to those with a felony conviction. This cuts off certain conventional roles that are likely to promote criminal desistance through modeling and constraint. Research supports this contention, as studies have shown that taking on civic roles encourages criminal desistance.<sup>99</sup>

Finally, partial reform hinders criminal desistance processes by undermining full community engagement. Yes, the right to vote brings those with felony criminal histories into the political process and into contact with their communities. Nonetheless, when this right is only extended to citizens with a certain class of felony convictions or in the context of certain civic activities, full community immersion is impossible.<sup>100</sup> In this way, tertiary criminal desistance and the social capital it creates are lost, undermining efforts to reenter successfully

96. See, e.g., JOHN H. LAUB & ROBERT J. SAMPSON, *SHARED BEGINNINGS, DIVERGENT LIVES: DELINQUENT BOYS TO AGE 70*, at 6 (2003); Judith Rumgay, *Scripts for Safer Survival: Pathways Out of Female Crime*, 43 *HOW. J. CRIM. JUST.* 405, 407–08 (2004). See generally Karen Heimer & Ross L. Matseuda, *Role-Taking, Role Commitment, and Delinquency: A Theory of Differential Social Control*, 59 *AM. SOC. REV.* 365 (1994).

97. See Fox, *supra* note 92, at 69 (“[T]ertiary desistance refers to the more cemented state of desistance that results from a genuine sense of belonging, or integration into a pro-social community.”).

98. MARUNA, *supra* note 91, at 98 (“Sometimes the benefits of having experienced crime and drug use are literal. . . . Ex-offenders say they have learned from their past lives, and this knowledge has made them wiser people.”).

99. See Christopher Uggen et al., ‘Less than the Average Citizen’: Stigma, Role Transition, and the Civic Reintegration of Convicted Felons, in *AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION* 258, 260–286 (Shadd Maruna & Russ Immarigeon eds., 2004) (voting); see also MANZA & UGGEN, *supra* note 7, at 136 (voting); James M. Binnall, *Summoning Criminal Desistance: Convicted Felons’ Perspectives on Jury Service*, 43 *L. & SOC. INQUIRY* 4, 22 (2018) (jury service); Bryan Lee Miller & Joseph F. Spillane, *Civil Death: An Examination of Ex-Felon Disenfranchisement and Reintegration*, 14 *PUNISHMENT & SOC’Y* 402, 409 (2012) (voting).

100. See Rachel N. Horan, *Restorative Justice: The Relevance of Desistance and Psychology*, 14 *SAFER COMMUNITIES* 147, 148–50 (2015) (highlighting the importance of community involvement).



and remain law-abiding.

## VI. CONCLUSION

While this Article suggests that partial reforms of civic restrictions are far less impactful than those that fully reinstate civic rights and privileges to those convicted of a felony criminal offense, it does not imply that efforts at partial reform are in vain. Rather, this Article suggests that partial reforms ought to be viewed and analyzed accurately—as reforms that are better than the status quo but far less influential than full reform. Along this line, the shortcomings of partial reforms deserve more attention. Often, reformers must concede carve-outs and distinctions (such as voting versus jury service) to achieve some measure of legislative victory. I concede that these victories are hard-fought, but I argue that we ought not be satisfied and ought to be careful.

Carve-outs and concessions lend credibility to the argument that those with a felony criminal history somehow threaten our democratic systems and likely undermine reentry processes—though no data support selective exclusion premised on crime type and no evidence justifies exclusion from one form of civic engagement over another. In short, we have many more battles to come on this front, and we should pledge to fight those battles with facts and science, compromising only in the face of legitimate, evidence-based counterpoints. To do anything less diminishes the importance of full civic reinstatement—the only resolution that will ensure that millions of Americans who live with a felony conviction—myself included—can truly influence the future of our country.