

2 Punishment and Social Exclusion: National Differences in Prisoner Disenfranchisement

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As Sidney Verba and colleagues have noted, “casting a ballot is, by far, the most common act of citizenship in any democracy.”¹ Although universal suffrage represents the democratic ideal, many nations have historically withheld the franchise from women and racial and ethnic minority groups. Even with the gradual incorporation of these groups, however, restrictions on prisoners have persisted. This chapter considers some of the sources of national variation in prisoner disenfranchisement policies. We ask a simple, macro-level question: To what extent are felon voting practices associated with national characteristics such as economic development, democratization, ethnic conflict, and punitiveness? We consider the relationship between each of these characteristics and prisoner disenfranchisement for a broad group of 105 nations, as well as a smaller subsample of 39 European nations. Consistent with expectations, we find prisoner disenfranchisement to be concentrated in less democratized nations with high incarceration rates and low levels of economic development. We consider the implications of these findings for democratic theories of citizenship and criminological theories of prisoner reintegration.

Extant research suggests dramatic variation in the extent to which nations disenfranchise prisoners.² International voting rights for prisoners essentially

¹ Sidney Verba, Kay Lehman Schlozman, and Henry E. Brady, *VOICE AND EQUALITY* (Harvard University Press, 1995).

² See, e.g., Laleh Ispahani, *OUT OF STEP WITH THE WORLD: AN ANALYSIS OF FELONY DISENFRANCHISEMENT IN THE U.S. AND OTHER DEMOCRACIES* (ACLU, 2006); Andre Blais, Louis Massicotte, and Antoine Yoshinaka, *Deciding Who Has the Right to Vote: A Comparative Analysis of Election Laws*, 20 *Electoral Studies* 41 (2001); Brandon Rottinghaus and Gina Baldwin, *Voting Behind Bars: Explaining Variation in International Enfranchisement Practices*, 26 *Electoral Studies* 688 (2007); M. K. Dhami,

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fall along a continuum.³ Some nations, such as Canada, Denmark, and South Africa, allow inmates to vote while in prison. Other countries, such as Egypt and the United Kingdom, ban all prisoners from voting. In between those extremes are countries that allow prisoners to vote under certain conditions, such as Australia, Belgium, and Japan. A recent survey of national practices by Brandon Rottinghaus and Gina Baldwin and Laleh Ispahani's detailed examination of European nations have dramatically expanded knowledge of prisoner disenfranchisement. This chapter will consolidate and elaborate this work, while presenting a simple description and analysis of the determinants of national variation.

DATA AND METHODOLOGY

Measures

We build on earlier efforts to categorize national prisoner disenfranchisement policies, supplementing these secondary sources with an independent evaluation of selected nations. For the bulk of our analysis, we will consider a dichotomous measure indicating whether a nation had a *general* policy of prisoner disenfranchisement. Countries are coded as "0" if they do not disenfranchise any prisoners or if they restrict voting only for those convicted of more serious offenses (including all sentences greater than five years) or narrowly defined offenses, such as treason or election crimes. Nations are coded as "1" if their disenfranchisement law extends to all felony convictions for prisoners serving sentences of five years or less. For example, we code Benin as "1" because that country disenfranchises those sentenced to at least three months in prison.⁴ Although a dichotomous categorization scheme may mask some of the differences within these broad categories, it has the great advantage of facilitating a simple but meaningful comparison between nations that generally bar prisoners from voting and nations that do not impose such restrictions.

Our categorization of nations is shown in Table 2.1. Based on our criteria and reading of the secondary literature, 40 nations generally permitted prisoners to vote (identified in Table 2.1A), whereas 65 nations maintained a general prisoner disenfranchisement law (identified in Table 2.1B). A cursory look at

Prisoner Disenfranchisement Policy: A Threat to Democracy? 5 *Journal of Analyses of Social Issues and Public Policy* (2005).

³ M. K. Dhimi, *Prisoner Disenfranchisement Policy: A Threat to Democracy?* 5 *Journal of Analyses of Social Issues and Public Policy* (2005).

⁴ See Andre Blais, Louis Massicotte, and Antoine Yoshinaka, *Deciding Who Has the Right to Vote: A Comparative Analysis of Election Laws*, 20 *Electoral Studies* 41 (2001).

TABLE 2.1A. Nations without a general prisoner disenfranchisement provision (N = 40)

Albania	Ireland	Portugal
Austria	Israel	Poland
Bangladesh	Italy	Puerto Rico
Bosnia	Japan	Romania
Canada	Laos	Sao Tome
China	Lesotho	Serbia
Croatia	Lithuania	Slovenia
Czech Republic	Luxembourg	South Africa
Denmark	Macedonia	Spain
Finland	Montenegro	Sweden
Germany	Netherlands	Switzerland
Greece	New Zealand	Turkey
Iceland	Norway	
Iran	Pakistan	

TABLE 2.1B. Nations with a general prisoner disenfranchisement provision (N = 65)

Angola	Estonia	Nigeria
Argentina	France	Panama
Armenia	Georgia	Papua New Guinea
Australia	Guatemala	Peru
Azerbaijan	Haiti	Philippines
Bahamas	Honduras	Russia
Barbados	Hungary	Samoa
Belarus	India	Senegal
Belgium	Jamaica	Sierra Leone
Belize	Kazakhstan	Slovakia
Benin	Kenya	St. Lucia
Botswana	Kosovo	St. Vincent
Brazil	Kyrgyzstan	Trinidad and Tobago
Bulgaria	Latvia	Uganda
Cameroon	Madagascar	Ukraine
Cape Verde	Malaysia	United States
Chile	Mali	United Kingdom
Comoros	Malta	Uruguay
Cyprus	Micronesia	Venezuela
Egypt	Moldova	Vietnam
Equator Ecuador	Mongolia	Zimbabwe
Equatorial Guinea	Mozambique	

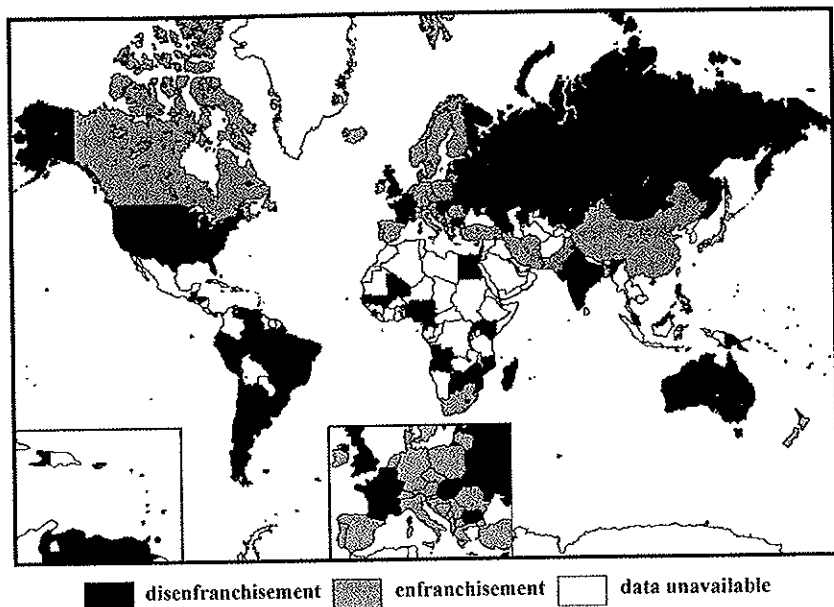


Figure 2.1. International prisoner enfranchisement and disenfranchisement.

the table suggests that European nations are most likely to permit prisoners to vote, whereas disenfranchisement provisions remain quite common in the Americas.

These geographic and regional patterns are revealed in sharper relief in Figure 2.1. Nations that enfranchise prisoners are shown in grey in this map, with disenfranchising nations shown in black. The unshaded areas represent nations in which we were unable to make a clear determination as to disenfranchisement status and/or nations in which information on key independent variables is unavailable. Our data are most complete for European nations, thanks in large part to our reliance on Laleh Ispahani's careful 2006 survey of disenfranchisement practices in Europe. African nations, in contrast, are poorly represented in our analysis.

Because our data represent neither a full census of all nations nor a random draw of nations from throughout the world, we must exercise caution in making global generalizations. Nevertheless, we have sufficient information from more than 100 nations to proceed with an empirical analysis of the overall correlates of prisoner disenfranchisement. We then partition the sample to check the robustness of the broad patterns we observe. Because Europe is overrepresented in our data, we conduct a subanalysis of European and

non-European nations. Based in part on Laleh Ispahani's tripartite scheme (see Chapter 1 in this volume), we consider the relationship between each of our independent variables and whether nations disenfranchise none, some, or all of their prisoners. Here, countries are coded as "some" if they place some restrictions on prisoner voting but do not automatically disenfranchise prisoners without regard to sentence length or type of crime.

To learn more about the factors that explain the presence of a prisoner disenfranchisement provision, we consider a variety of national characteristics in our analysis. First, we use a logged measure of total population in millions for the year 2000 to indicate population size. We do not offer a specific hypothesis about the relationship between population and disenfranchisement. Instead, our exploratory analysis is designed to reveal whether more populous nations or less populous nations are more likely to permit prisoners to vote. Next, we consider the relationship between economic development and disenfranchisement, assessing the former using the per capita gross domestic product (GDP) for each country in thousands of U.S. dollars for the year 2000. We expect a positive relationship between economic development and universal suffrage, such that relatively more prosperous nations will be less likely to disenfranchise prisoners and other groups.

To explore political determinants, we employ a basic measure of political democratization, derived from Tatu Vanhanen's (2003) global democratization research.⁵ This democratization index is calculated by first multiplying indicators of political competition and political participation in the year 2000 and then dividing the product by 100.⁶ Based on the 2007 analysis by Rottinghaus and Baldwin, we expect that nations scoring higher on the democratization index will be less likely to disenfranchise prisoners. We also consider a simple dichotomized measure of political discrimination derived from Minorities

⁵ Tatu Vanhanen, *DEMOCRATIZATION: A COMPARATIVE ANALYSIS OF 170 COUNTRIES* (Routledge, 2003).

⁶ The democratization index is based on the degree of political competitiveness and political participation in each nation in 2000. The competition variable is the percentage of votes gained by the smaller parties in parliamentary and/or presidential elections. The variable is calculated by subtracting from 100 the percentage of votes won by the largest party (the party that wins most votes) in parliamentary elections or by the party of the successful candidate in presidential elections. Political participation is based on election turnout – the percentage of the total population that voted – as well as the number of referendums. Each national referendum raises the value of the participation variable by five percentage points for the referendum year. Each state referendum raises the value of the participation variable by one percentage point for the referendum year. Both the participation and the competitiveness variables have an upper limit of 70 percent. The index of democratization is formed by multiplying the competition and the participation variables and then dividing the outcome by 100.

at Risk data for 2000.⁷ Nations are coded as discriminating if they maintained policies of social exclusion or overt repression to restrict a group's political participation. Nations characterized by greater political discrimination should be more likely to disenfranchise prisoners. To assess predictions from group threat theories and analyses based on the U.S. case, we also examine a measure of ethnic fractionalization taken from Alberto Alesina and colleagues.⁸ Fractionalization is a statistical measure of the likelihood that two randomly selected people from the same nation will belong to different ethnic groups. We expect that nations characterized by greater heterogeneity and fractionalization will be more likely to disenfranchise prisoners.

Finally, because disenfranchisement is a punitive sanction, we anticipate that nations with more punitive criminal justice policies will be more likely to disenfranchise prisoners. We assess the effect of punitiveness in two ways: We consider the incarceration rate per 1,000 citizens and include a dichotomous variable indicating whether the nation maintained capital punishment. Each of our independent variables is measured in the year 2000, which generally follows the establishment of prisoner disenfranchisement for most nations. Therefore, we do not attempt to account for the *origins* of disenfranchisement in this analysis. Instead, our concern is the relationship between national characteristics and contemporary disenfranchisement policy. Which factors distinguish those nations that maintain policies of prisoner disenfranchisement?

Analytic Approach

First, we present descriptive statistics for all variables. We then compare levels of our independent variables for nations with and without a general disenfranchisement provision. Next, we estimate simple logistic regression models to show the relationship between national characteristics and a binary measure of contemporary prisoner disenfranchisement. We then build a basic multivariate logistic regression model, considering the effects of the national characteristics that exhibit a significant bivariate association. This analysis helps identify the most robust predictors of prisoner disenfranchisement. Finally,

⁷ See Minorities at Risk Project, Center for International Development and Conflict Management (College Park, MD, 2005). Retrieved from <http://www.cidcm.umd.edu/inar1/on/7/4/2008>.

⁸ On the application of group threat theories to U.S. felon disenfranchisement, see Angela Behrens, Christopher Uggen, and Jeff Manza, *Ballot Manipulation and the 'Menace of Negro Domination': Racial Threat and Felon Disenfranchisement in the United States, 1850–2002*. 109 *American Journal of Sociology* 559 (2003). The ethnic fractionalization measure is taken from Alberto Alesina, Arnaud Devleeschauw, William Easterly, Sergio Kurlat, and Romain Wacziarg, *Fractionalization*, 8 *Journal of Economic Growth* 155 (2003).

TABLE 2.2. *Descriptive statistics for nations included in sample (N = 105)*

	Mean	SD	Range
<i>Size</i>			
Logged population in millions (2000)	2.090	1.940	[-2.15, 7.16]
<i>Economic Development</i>			
GDP per capita (2000)	10.533	10.286	[.53, 45.78]
<i>Political Development</i>			
Democratization index (2000)	20.269	12.425	[.00, 45.60]
Political discrimination (2000)	.552		[0, 1]
<i>Race and Ethnicity</i>			
Ethnic fractionalization (2003)	.388	.247	[0, .93]
<i>Punitiveness</i>			
Incarceration rate per 1,000 (2000)	1.631	1.328	[.29, 7.15]
Death penalty (2000)	.510		[0, 1]

Note: Standard deviations (SD) are reported for continuous variables. GDP: gross domestic product.

we compare national characteristics for our European sample for nations that disenfranchise all, some, or none of their prisoners.

RESULTS

Table 2.2 shows descriptive statistics for each of the national characteristics considered in our analysis, revealing tremendous variation in our overall sample. For example, the natural logarithm of population (in millions) ranges from a low of -2.15 (for St. Vincent, with an overall population of 116,000 in 2000) to a high of 7.16 (for China, with 1.28 billion). Mean GDP in thousands is 10.533, or \$10,533 in U.S. dollars, with a range from .53 (Sierra Leone) to 45.78 (Luxembourg). Scores on the democratization index also range significantly, with six countries scoring 0 (Sierra Leone, Comoros, Angola, Pakistan, Vietnam, and China) and four nations scoring more than 40 (Switzerland, Belgium, Denmark, and Italy).

In our sample, 55 percent of countries exhibit political discrimination in the form of social exclusion or overt repression of disadvantaged groups.⁹ The mean ethnic fractionalization score is .39, ranging from 0 in Comoros to .93 in Uganda. Lastly, measures of punitiveness also vary substantially. The mean incarceration rate per 1,000 citizens is 1.631 (with the lowest rate found in India and the highest rate found in the United States), and approximately half of all nations in the sample maintained the death penalty in 2000.

⁹ Political discrimination information for the year 2000 is only available for 67 nations, so the overall sample size is smaller in models that include this characteristic.

We next present a similar analysis using a bivariate logistic regression approach. Table 2.4 shows the estimated coefficients, standard errors, and odds ratios for each national characteristic in a logistic regression model with prisoner disenfranchisement as the dependent variable. This information is helpful in contrasting the bivariate and multivariate logistic regression model to follow. In Model 2, countries with a higher GDP are less likely to disenfranchise prisoners ($\beta = -.093, p < .001$). As shown in Model 3, more democratic nations are less likely to disenfranchise prisoners ($\beta = -.062, p < .001$). Each unit increase on the democratization index corresponds to a six percent decrease in the likelihood that a country will disenfranchise its prisoners. Moreover, countries with higher levels of ethnic fractionalization are also more likely to disenfranchise ($\beta = 2.239, p < .05$). Models 6 and 7 represent our measures of punitiveness. Countries with capital punishment are more than three times as likely as countries without capital punishment to disenfranchise prisoners ($\beta = 1.179, p < .05$), and nations with higher incarceration rates are also significantly more likely to disenfranchise prisoners ($\beta = .497, p < .05$).

Assessing the effect of our independent variables simultaneously allows us to determine which factors have the greatest impact on disenfranchisement, while statistically controlling for the influence of other national characteristics. Table 2.5 shows results from a multivariate logistic regression predicting a general disenfranchisement provision for prisoners. Because many national characteristics are closely correlated with one another, it is difficult to disentangle their independent effects. Due to the strong correlation between GDP and democratization ($r = .735$), for example, we first exclude GDP from our analysis in Model 1 and then include each of the independent variables in Model 2.

In Model 1 of Table 2.5, democratization and incarceration remain closely linked to prisoner disenfranchisement policies, net population size, political discrimination, ethnic fractionalization, and the death penalty. Less democratic nations ($\beta = -.058, p < .05$) and nations with higher incarceration rates ($\beta = .489, p < .10$) are more likely to disenfranchise. In Model 2, the effects of incarceration and other independent variables are generally quite robust. The inclusion of per capita GDP in Model 2, however, dramatically reduces the estimated effect of democratization. GDP has a large negative effect on disenfranchisement ($\beta = -.112, p < .05$), with each thousand dollar increase in GDP resulting in an 11 percent decrease in the likelihood that a nation will disenfranchise its prisoners. Although the democratization effect diminishes in models that also include economic development, these results

TABLE 2.3. *Group means and t tests: Disenfranchising versus nondisenfranchising nations*

	None disenfranchised (N = 40)		All disenfranchised (N = 65)	
	Mean	SD	Mean	SD
<i>Size</i>				
Logged population	2.361	1.784	1.923	2.026
<i>Economic Development</i>				
GDP per capita***	16.074	11.672	7.103	7.590
<i>Political Development</i>				
Democratization index***	25.677	12.735	16.973	11.090
Political discrimination	.609		.523	
<i>Race and Ethnicity</i>				
Ethnic fractionalization**	.309	.224	.435	.249
<i>Punitiveness</i>				
Incarceration rate**	1.216	.794	1.888	1.521
Death penalty**	.324		.609	

Note: Standard deviations (SD) are reported for continuous variables. GDP: gross domestic product.

** $p < .05$, *** $p < .001$

Our next step is to compare levels of these characteristics for nations with and without a general prisoner disenfranchisement law. As shown in Table 2.3, statistically significant differences emerge for several important national characteristics. Although population size is not a significant predictor, less affluent nations are indeed significantly more likely to disenfranchise prisoners. The mean per capita GDP in thousands for countries with general prisoner disenfranchisement is approximately 7.1, compared with a mean of 16.1 for countries that permit prisoners to vote ($t = 22.2$, $p < .001$). Also consistent with expectations, disenfranchising nations are less democratic and are characterized by greater ethnic fractionalization. The mean score on the democratization index for disenfranchising countries is approximately 17, and the mean ethnic fractionalization score is .44, compared with 26 and .31, respectively, for countries that did not disenfranchise prisoners. Finally, both measures of punitiveness are also significantly associated with prisoner disenfranchisement. Approximately 61 percent of disenfranchising countries maintained the death penalty, compared with only 32 percent of those nations that allowed prisoners to vote. Moreover, disenfranchising countries also had a greater incarceration rate (approximately 1.9 per 1,000 citizens compared with a rate of 1.2 in countries that allowed prisoners to vote).

TABLE 2.4. Bivariate logistic regression estimates predicting prisoner disenfranchisement

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Size	β	β	β	β	β	β	β
	(SE)	(SE)	(SE)	(SE)	(SE)	(SE)	(SE)
	Odds	Odds	Odds	Odds	Odds	Odds	Odds
Population	-.119 (.108)						
	.887						
Economic Development							
GDP per capita		-.093*** (.024)					
		.911					
Political Development							
Democratization index			-.062*** (.019)				
			.940				
Political discrimination							
				-.351 (.523)			
				.704			
Race and Ethnicity							
Ethnic fractionalization					2.239** (.913)		
					.9380		
Punifiveness							
Incarceration rate						.497** (.211)	
						1.644	
							1.179** (.435)
							3.250
Death penalty							.000
							.283
Constant	-.735** .313	1.501*** .340	1.823*** .472	.847** .398	-.307 .384	-.264 .355	
-2 Log Likelihood	134.452	116.735	124.131	85.733	128.173	128.510	124.965
N	102	102	103	67	102	102	101

Note: SE, standard error; GDP, gross domestic product.

** $p < .05$, *** $p < .001$.

TABLE 2.5. *Multivariate logistic regression estimates predicting prisoner disenfranchisement*

	Model 1			Model 2		
	β	SE	Odds	β	SE	Odds
<i>Size</i>						
Logged population	-.273*	.164	.761	-.164	.175	.848
<i>Economic Development</i>						
GDP per capita				-.112**	.044	.894
<i>Political Development</i>						
Democratization index	-.058**	.025	.944	.006	.035	1.006
Political discrimination	-.251	.639	.778	-.536	.694	.585
<i>Race and Ethnicity</i>						
Ethnic fractionalization	.898	1.182	2.456	1.032	1.275	2.806
<i>Punitiveness</i>						
Incarceration rate	.489*	.252	1.631	.499**	.245	1.647
Death penalty	.482	.582	1.619	.213	.635	1.237
Constant	1.479	1.202		1.149	1.215	
-2 Log Likelihood	99.597***			91.514***		
N	96			96		

Note: For nations that are missing political discrimination data, we impute the mean values and include an additional regressor indicating the presence of missing data. Regardless of the model specification, however, our measure of political discrimination was not a significant predictor of disenfranchisement in the bivariate or multivariate analysis. GDP: gross domestic product.

* $p < .10$, ** $p < .05$, *** $p < .001$.

should not be read as suggesting that political democratization is unimportant in explaining prisoner disenfranchisement. Rather, the models shown in Table 2.5 suggest only that this quantitative analysis cannot clearly distinguish between the effects of economic and political development. In our view, both national characteristics likely promote policies of prisoner enfranchisement.

Although the foregoing analysis is instructive, it is difficult to draw firm conclusions based on a broad-brush overview of nations that vary so greatly in size, history, and culture. Therefore, to further specify the relationship between disenfranchisement and national characteristics, we conduct a more focused comparison of European nations that disenfranchise none, some, or all of their prisoners. By looking solely at European nations, we are better able to compare countries that are similar geographically and may impact one another through the diffusion of laws and policies established by the European Union. Working from the sample provided by Ispahani (see Chapter 1 in this volume), we compare categories of disenfranchisement in relation to the

national characteristics considered earlier.¹⁰ As shown in Table 2.6, noteworthy differences emerge for GDP, democratization, and incarceration rate.

On average, European nations that disenfranchise all prisoners have the lowest GDP, are the least democratized, and have the highest incarceration rate. Mean GDP, measured per 1,000 citizens, ranges from approximately 10.2, for nations that disenfranchise all of their prisoners, to 21.4, for nations with more nuanced disenfranchisement laws. Similarly, democratization scores are also lowest for countries disenfranchising all prisoners (30.2) and highest for nations that disenfranchise some (33.6). Finally, nations with the most restrictive disenfranchisement policies have a far higher incarceration rate (3.3) than those that disenfranchise some (1.1) or none (1.0) of their prisoners ($p < .001$).

In short, the smaller European subanalysis generally confirms and strengthens our confidence in the global results reported earlier. Even where the small sample limited our ability to detect statistically significant differences across nations – as is the case for ethnic fractionalization and the death penalty – the effects are similar in direction and magnitude to those described earlier.¹¹ Once again, the nations that are most likely to enfranchise prisoners are those characterized by greater political and economic development, less ethnic heterogeneity, and less punitive criminal justice regimes.

DISCUSSION AND SELECTED CASE STUDIES

Importantly, the simple presence of democratic governance does not guarantee that prisoners will be granted voting rights. Moreover, the foregoing

¹⁰ Our classification differs slightly from that of Ispahani. Whereas Ispahani classifies Austria, Germany, and the Netherlands as allowing all prisoners to vote, we code them as disenfranchising some prisoners. As Ispahani notes, in Austria, although prisoners may vote while incarcerated, courts may revoke the right to vote for six months following release for “those convicted of crimes of intent and sentenced to over one year in prison.” See *OUT OF STEP WITH THE WORLD* (fn 19). Both German and Dutch laws permit disenfranchisement for certain offenses. See Brandon Rottinghaus, *Incarceration and Enfranchisement: International Practices, Impact and Recommendations for Reform*, International Foundation for Elections Systems (2003), available at http://www.prisonpolicy.org/scans/o8_18_03_Manatt_Brandon_Rottinghaus.pdf. Unlike Ispahani, we also code Kosovo, Slovakia, and Spain as disenfranchising “some” rather than “all” prisoners. Kosovo distinguishes between prisoners and felons, disenfranchising only those convicted of a felony offense; Slovakia allows voting in presidential elections only; and Spain disenfranchises for certain offenses only.

¹¹ Our subanalysis of non-European nations reveals similar patterns (analysis not shown, available from authors). As is the case in Europe, disenfranchising nations appear to be less populous, with lower per capita GDPs, lower democratization indices, greater ethnic fractionalization, and more punitive criminal justice policies than nondisfranchising nations. Due to the small sample size in the non-European subanalysis, however, only the effects of population size and GDP per capita are statistically significant (at $p < .05$).

TABLE 2.6. Group means and ANOVA tests: European nations that disenfranchise none, some, or all prisoners

	None disenfranchised (N = 14)		Some disenfranchised (N = 16)		All disenfranchised (N = 9)	
	Mean	SD	Mean	SD	Mean	SD
Size						
Logged population	1.432	.962	2.360	1.576	2.480	1.549
Economic Development						
GDP per capita*	16.803	11.223	21.369	10.607	10.227	6.600
Political Development						
Democratization index**	30.150	8.669	33.556	6.914	24.489	7.450
Race and Ethnicity						
Ethnic fractionalization	.294	.191	.232	.196	.374	.173
Punitiveness						
Incarceration rate***	.951	.512	1.097	.454	3.292	1.685
Death penalty	.083		.125		.333	

Note: Standard deviations (SD) are reported for continuous variables. ANOVA: analysis of variance; GDP: gross domestic product.
* $p < .10$, ** $p < .05$, *** $p < .001$.

analysis suggests that economic development, as well as political development, is closely linked to the enfranchisement of prisoners. Independent of democratization, we also find evidence that more punitive nations are more likely to disenfranchise prisoners. Democratic nations such as the United States lead the world in both the number of disenfranchised persons and incarceration rates.¹² Although our quantitative analysis can only suggest the reasons for this pattern of association, it seems likely that more punitive nations devalue and stigmatize those convicted of crimes and are hence more likely to deprive them of citizenship rights.

Although the preceding analysis offers a reasonably clear picture of current international disenfranchisement practices, it can only provide a snapshot of the contemporary period. Rich historical and legal analyses are needed to trace the social and political movements responsible for changes within nations. Further quantitative research, perhaps using event history analytic techniques, could also yield important knowledge about the global evolution of international practices. These questions are timely, given recent legislative and judicial attention to prisoner disenfranchisement in many nations. To further illustrate the role of political development and punitiveness in changing prisoner disenfranchisement laws, we briefly note three national case studies. These cases illustrate how the basic national characteristics considered in our quantitative analysis – economic development, political democratization, heterogeneity, and punitiveness – are invoked in contemporary efforts to implement, maintain, and overturn prisoner disenfranchisement. Courts appear to be willing to challenge punitive rationales for disenfranchisement, particularly with respect to blanket provisions that make no distinction among the different types of crimes and sentence lengths.

First, the Supreme Court of Canada recently overturned legislation that disenfranchised felons in *Sauvé v. Canada*.¹³ In 1993, Parliament enacted legislation under the Canada Elections Act¹⁴ that denied voting rights for inmates serving sentences of two or more years. The legislation was codified in

¹² Jeff Manza and Christopher Uggen, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* (Oxford University Press, 2006).

¹³ *Sauvé v. Canada*, (Chief Electoral Officer), 3 S.C.R. 519, 2002 S.C.C. 68 (2002). For further discussion of this case, please see Christopher P. Manfredi, Chapter 10, this volume; see also Jason G. Morgan-Foster, *Transnational Judicial Discourse and Felon Disenfranchisement: Re-examining Richardson v. Ramirez*. 13 *Tulsa Journal of Comparative and International Law* 279 (2005).

¹⁴ A previous law passed in 1985 denied prisoners the right to vote regardless of the length of sentence. See Canada Elections Act, R.S.C. 1985, c. E-2, ss. 51(e) [rep. & sub. 1993, c. 19, s. 23(2)], 51.1 [ad. Idem, s. 24]. That law was overturned as a result of *Sauvé v. Canada* (Attorney General), 2 S.C.R. 438 (1993). In response to the ruling in that case, the Canadian Parliament enacted legislation denying prisoners serving sentences of two or more years the right to vote.

Section 51(e) of the Canada Elections Act. In addition to arguing that disenfranchisement would promote civic responsibility and respect for law, the government articulated the punitive rationale that disenfranchisement further punished criminal offenders. The government maintained that disenfranchising felons was a legitimate sanction, regardless of the type of crime or situation of the offender.

The Court cited the nation's democratization in dismissing the government's claim that disenfranchisement served an educative purpose, stating that it was contrary to Canada's movement toward universal suffrage. The Court also viewed blanket discrimination as being arbitrary and not fulfilling any of the traditional goals of incarceration, such as deterrence, retribution, or rehabilitation. Consequently, the Court decided 5-4 that disenfranchising all prisoners serving a sentence of two or more years was unconstitutional.

Second, the Constitutional Court of South Africa addressed the role of economic considerations in examining the constitutionality of prisoner disenfranchisement. In that case, the South African Legislature enacted the Electoral Laws Amendment Act,¹⁵ which disenfranchised all prisoners who were imprisoned under sentences that did not have the option of a fine. The Act further disenfranchised prisoners who had been released on election day by preventing them from registering to vote once in prison.¹⁶ This legislation was challenged in the case of *Minister of Home Affairs v. National Institute for Crime Prevention and the Re-Integration of Offenders (NICRO)*.¹⁷

The South African government justified disenfranchisement on both economic and punitive grounds. The first purpose was to maintain the "integrity of the voting process," which the government argued would be compromised by making arrangements such as mobile voting stations for special populations such as prisoners.¹⁸ The second purpose of the legislation was to reduce the costs of the voting process. The government argued that accommodating special voting populations placed a financial burden on the state and that prisoners were the most justifiable class to disenfranchise. The final purpose of the legislation was to send a message to the larger population that the government was not soft on crime. The Court rejected all three arguments advanced by the government and held that the legislation disenfranchising all

¹⁵ Act 34 of 2003, section 24(B)(2).

¹⁶ Act 34 of 2003, section 8(2)(f).

¹⁷ Case CCT 03/04 (March 3, 2004). For further discussion of this case, please see Lukas Muntingh and Julia Sloth-Nielsen, Chapter 8, this volume.

¹⁸ Jason C. Morgan-Foster, *Transnational Judicial Discourse and Felon Disenfranchisement: Re-examining Richardson v. Ramirez*. 13 *Tulsa Journal of Comparative and International Law* 279 (2005).

prisoners who were serving sentences that did not have the option of a fine was unconstitutional.

Finally, the ECHR examined the constitutionality of a British law that disenfranchised all prisoners for their entire period of imprisonment, regardless of the crime they committed.¹⁹ The main issue in the case was whether the law violated Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe.²⁰ This issue was decided in the case of *Hirst v. United Kingdom* (No. 2).²¹ The British government advanced two purposes for their prisoner disenfranchisement law. The first purpose was to prevent crime and to punish offenders. The second purpose was to increase civic responsibility and to promote respect for law by preventing those who have broken them from having the right to influence those laws during the period of their sentence. Although the Court was not convinced by the government's arguments, it made its decision on other grounds, striking down the law because of its disproportionality. In other words, the Court held that blanket disenfranchisement of all prisoners regardless of the crime or sentence length was incapable of withstanding a proportionality test.

CONCLUSIONS

Our concern in this chapter has been with cataloguing prisoner disenfranchisement policies around the world and identifying the national characteristics most closely linked to such policies. We find clear evidence linking prisoner disenfranchisement to low political and economic development, high ethnic heterogeneity, and punitive criminal justice policies. An important question left out of this analysis concerns the meaning of these provisions for prisoners and the safety of their communities. There is some evidence that enfranchising prisoners may help them to reintegrate into the community of law-abiding citizens. John Braithwaite's work provides one framework for understanding how allowing prisoners to vote may strengthen their bonds to conventional institutions.²² Braithwaite's central thesis is that stigmatizing punishments exacerbate criminal activity, whereas "reintegrative" sanctions

¹⁹ Representation of the People Act of 1983, sec. 3.1. For further discussion of this case, please see Nora Demleitner, Chapter 3, this volume.

²⁰ Optional Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Art. 3, 213 U.N.T.S. 262.

²¹ European Ct. Hum. Rts. (Mar. 30, 2004).

²² John Braithwaite, *CRIME, SHAME AND REINTEGRATION* (Cambridge University Press, 1989).

serve to punish wrongdoing without severing or disrupting social ties. Enfranchisement provides a constructive means for prisoners to participate as citizens, increasing democracy and justice without compromising public safety.

Recent empirical work provides tentative evidence linking political participation to the "civic reintegration" of formerly incarcerated persons. For example, a Minnesota study found that voters in the 1996 elections were significantly less likely than nonvoters to be rearrested from 1997 to 2000; approximately 16 percent of nonvoters were rearrested compared with only 5 percent of voters.²³ Such results raise an intriguing question for future macro-level comparative research. Are recidivism rates lower in nations that permit prisoners to vote? This chapter and this volume build on an emerging comparative literature on the causes of national prisoner disenfranchisement policies. Perhaps the next wave of studies will trace the effects of disenfranchisement on politics, on civic participation more generally, and on public safety.

²³ Christopher Uggen and Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*. 36 *Columbia Human Rights Law Review* 193 (2004).