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Felon Disfranchisement in Missouri: 1821–1970

Pippa Holloway[*]

ABSTRACT

In Missouri, individuals who have committed a felony offense cannot vote until they have completed their prison sentence and any probation or parole. There are areas of both continuity and change over the two centuries since Missouri's first constitution allowed the legislature to limit the suffrage rights of those convicted of infamous crimes. In pre-Civil War Missouri, the concept of infamy was a part of legal culture, as was the case in other states. Infamy connected the degradation of criminal activity and criminal punishment with the loss of citizenship rights and thus provided the intellectual foundation for felon disfranchisement. In the half decade after the Civil War, disfranchisement laws were used to target African American voters in most former slave states to achieve partisan and racial ends, and there is some evidence that this was the case in Missouri also. These laws continue to disproportionately affect African American voters in the present day. In the late nineteenth and early twentieth century, questions of pardon, parole, and restoration of rights played a key role in shaping the popular and legal understanding of felon disfranchisement. Today, there is no constitutional requirement to extend disfranchisement through probation and parole, and many other states have recently changed their laws so that voting rights are restored after release from incarceration.

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INTRODUCTION

Under current Missouri law, individuals who have committed a felony offense cannot vote until they have completed their prison sentence and any probation or parole.[1] Individuals convicted of election-related offenses are permanently barred from voting.[2] As a result of these restrictions, approximately .5% of the eligible population of Missouri cannot vote due to a criminal conviction.[3]

The present legal landscape is the product of a long historical legacy. Over the course of almost two centuries, laws and policies governing the voting rights of ex-offenders in Missouri have changed in response to political, social, and legal developments. In other respects, much has remained the same. The relevant constitutional provisions enabling disfranchisement as a punishment for crime have changed little over two centuries. As it was at statehood, Missouri's current constitutional provision is not self-executing. The constitution states, "Persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting."[4] This provision empowers the legislature to exclude convicted felons from suffrage but gives the legislative body much discretion in doing so.

Today, as at the time of statehood, Missouri residents who are incarcerated but otherwise eligible to vote are barred from suffrage, but disfranchisement extends beyond incarceration for many.[5] Missouri is one of eighteen states that extends disfranchisement through probation and parole, restoring rights to ex-felons only after they have completed court supervision.[6] While being freed from incarceration to rejoin society might be understood to be an indication that one's punishment has ended and one's rights of citizenship have been restored, continuing disfranchisement through probation and parole suggests that ex-felons remain tainted even when no longer incarcerated. Missourians in earlier periods weighed the question of how long disfranchisement should extend after incarceration, and the state has seen several different schemes for disfranchisement and subsequent restoration of citizenship rights throughout its history.[7]

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1. MO. Rev. Stat. § 115.133 (2018).

2. MO. Rev. Stat. §§ 115.133; 115.631 (2018).

3. Christopher Uggen et al., *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, THE SENT'G PROJECT (Oct. 6, 2016), https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/ [perma.cc/97VK-FK77].

4. MO. CONST. art. VIII, § 2.

5. MO. CONST. of 1820, art. III, § 14.

6. Uggen et al., *supra* note 3.

7. *See infra* Part IV. Probation and parole did not become widely implemented until the late 19th century, so the capacity of those on probation and parole to vote was not a question in the early days of Missouri statehood. *See generally* CAROLYN

The disproportionate impact of these laws on African Americans today also has historical antecedents. African Americans in Missouri are more likely than white voters to be disfranchised, with 5.8% of eligible African Americans in the state ineligible to vote due to a criminal conviction compared to 1.9% of the total population.[8] In the post-Civil War era, these laws were used to perpetuate racial hierarchies.[9] White leaders in most states that had practiced racial slavery used and modified existing laws that disfranchised for crime to target African American voters, denying black men the right to political participation they had won with the passage of the Fourteenth and Fifteenth Amendments.[10]

This Article examines the enactment and enforcement of laws disfranchising for criminal convictions during three periods of Missouri history. For each period, Missouri's history is contrasted to developments in other states. Regional comparisons between so-called "slave" and "free-states" – those that maintained a system of racial slavery until the end of the Civil War and those that eliminated it much earlier – are also made. Each section also offers an overview of the national and regional landscape of these laws during the relevant period. This Article begins with an examination of pre-Civil War Missouri law and an exploration of the concept of legal infamy. Infamy is a complicated and shifting concept, but it connected the degradation of criminal activity and criminal punishment to the loss of the right to vote.[11] Part III examines the Reconstruction era through the late Nineteenth century, a period where these laws were used to target African American voters in most former slave states. Part IV encompasses the early to mid-Twentieth century. In this period, questions of pardon, parole, and restoration of rights played a key role in shaping the popular and legal understanding of felon disfranchisement. This Article concludes with a discussion of the implications of this historical legacy for the present.

I. STATEHOOD TO THE CIVIL WAR: INFAMY

Laws denying rights and privileges of citizenship to individuals convicted of certain criminal acts have long existed in the western world. In fact, such practices date back to ancient Greece and Rome and have antecedents in early modern European law as well as in English common law.[12] The practice of punishing serious crimes with denial of the vote migrated from Europe to the

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STRANGE, DISCRETIONARY JUSTICE: PARDON IN NEW YORK FROM THE REVOLUTION TO THE DEPRESSION (2016).

8. Uggen et al., *supra* note 3.

9. PIPPA HOLLOWAY, LIVING IN INFAMY: FELON DISFRANCHISEMENT AND THE HISTORY OF THE AMERICAN CITIZENSHIP 31–32 (2014).

10. *Id.* at 33–53.

11. *Id.*

12. *Id.* at 17–32.

new American republic, and by the 1830s, most states had laws disfranchising people convicted of major crimes.[13]

A. Missouri Law in the Early Decades of Statehood

In advance of becoming a state in 1821, the U.S. Congress authorized Missouri residents to write a constitution.[14] Among the provisions of the Missouri Constitution of 1820 was, "The general assembly shall have the power to exclude from every office of honor, trust, or profit, within this state, and from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime."[15] This authorized the newly-created General Assembly to pass legislation restricting voting by people with certain kinds of criminal convictions.

The legislature soon acted in accordance with this authority. The first criminal statutes passed by the legislature, part of the 1825 code, punished a variety of crimes with disqualification from holding office, testifying in court, and serving on a jury, in addition to the standard criminal penalties of fines, imprisonment, and/or whipping.[16] This suggests the legislature interpreted "office of honor, trust, or profit" broadly to include not only elected office but also serving on a jury or as a witness in court. Those convicted of stealing a slave,[17] stealing a horse, mare, gelding, mule, or ass,[18] counterfeiting or forgery,[19] or perjury lost all four of these privileges.[20] Individuals who bribed public officials or bought or sold public offices could not hold office or vote but could testify and serve as jurors.[21] Individuals convicted of bigamy were rendered infamous – the only mention of "infamy" in the statute – and could not hold office or testify.[22] Individuals who received bribes for voting could no longer vote;[23] jurors who took bribes could no longer serve as jurors. [24]

The 1825 statutes appear to have been a work in progress – at least with regard to infamous punishments – since the 1835 criminal code offered a broader and more consistent definition of infamy.[25] Under the 1835 code, one

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13. *Id.*

14. Act of Mar. 6, 1820, ch. 22, 16th Cong. (1820).

15. MO. CONST. of 1820, art. III, § 14.

16. 1 LAWS OF THE STATE OF MO. §§ 1–102 (1825) [hereinafter 1825 CODE] (repealed 1836).

17. 1825 CODE § 32.

18. 1825 CODE § 34.

19. 1825 CODE §§ 42–48, 50–51.

20. 1825 CODE § 56.

21. 1825 CODE §§ 59, 62.

22. 1825 CODE § 76.

23. 1825 CODE § 86.

24. 1825 CODE § 64.

25. *Compare* 1825 CODE §§ 1–102 *with* REVISED STATS. OF MO., art. VIII (1835) [hereinafter REVISED STATS. OF 1835].

became infamous in Missouri by committing an infamous crime, including "every offense for which the offender, on conviction or sentence, is declared to be disqualified or rendered incompetent to be a witness or juror, or to vote at any election, or to hold any office of honor, profit or trust."[26] In short, infamous crimes were those that resulted in infamous punishment. The criminal code iterated which crimes brought about these infamous punishments; these were thus defined as infamous crimes.[27] While this statute might at first glance seem to offer a circular definition, this was in fact a classical articulation of infamy. One could become infamous because certain punishments were degrading and thus lowered the social status of those who received them.[28] Losing the right to vote, which reduced one's function as a person of honor and impeded one's role as a citizen, brought about degradation. The legal term for that degradation was "infamy."[29]

This statutory definition of infamy was in line with developments in American law in this era, which some viewed as more democratic than English common law. In 1836, the Vermont Supreme Court pointed out that allowing courts to determine what was infamous was "consistent with the principles of the English oligarchy," but not befitting a democracy.[30] In America, "it would seem to belong to the legislature to decide what crimes should be considered infamous."[31]

The criminal statutes enacted by the Missouri legislature in 1835 offered a list of infamous crimes that was much more extensive than the 1825 code.[32] Infamous, disfranchising crimes included crimes against the state such as treason, rebellion, and insurrection.[33] Many violent crimes were infamous, including first degree murder, rape, and manslaughter, but not lesser degrees of these crimes, some of which were also felonies.[34] Infamous punishments were given to those convicted of a whole list of felony- and misdemeanor-grade sex crimes, including rape, compelling marriage, and enticing to prostitution, as

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26. REVISED STATS. OF 1835, art. VIII, § 37. For commentary on this statutory article, *see* Barrett v. Sartorius, 175 S.W.2d 787 (Mo. 1943) (en banc).

27. *See, e.g.*, REVISED STATS. OF 1835, art. VIII, § 62 (stating, "Every person who shall be convicted of arson burglary robbery or larceny in any degree in this Art. specified or who shall be sentenced to imprisonment in the penitentiary for any other crime punishable under the provisions of this Art. shall be incompetent to be sworn as a witness or serve as a juror in any cause and shall be forever disqualified from voting at any election or holding any office of honor trust or profit within this state.").

28. 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND: A FACSIMILE OF THE FIRST EDITION OF 1765–1769, at 372 (1979).

29. For a comprehensive discussion of the history of infamy and its 19th century connection to disfranchisement in the US, *see* HOLLOWAY, *supra* note 10, at 1–53.

30. State v. Keyes, 8 Vt. 57, 60 (Vt. 1836).

31. *Id*.

32. *See supra* note 26 and accompanying text.

33. REVISED STATS. OF 1835, art. I, §§ 1–10.

34. *Id*. at art. II, §§ 1–22, 42.

well as sexual and violent crimes against children.[35] Individuals convicted of arson, burglary, robbery, or larceny – in any degree – were infamous, but counterfeiting was only infamous if it was at the felony level.[36] All degrees of perjury were infamous, but other felony grade offenses against justice, such as bribing witnesses or accepting a bribe as a juror, were not disfranchising.[37] Abortion was not infamous, whether it was a misdemeanor or felony.[38] Missouri's 1835 statutory definition of infamous crimes remained relatively unchanged throughout the 19th century and included most felonies and some misdemeanors.[39] One exception was treason.[40] Treason resulted in infamous punishments in the pre-Civil War code, but by 1879, this punishment had been rescinded.[41]

This understanding of infamy as being produced by the punishment, specifically the degrading punishments of disfranchisement and disqualification, can be seen elsewhere in Missouri statutes. For example, under an 1879 law, one could be legally charged with slandering a woman by accusing her of engaging in a variety of sexual offenses or acts, or "any felony, the commission of which would subject such person to disfranchisement and other degrading penalties."[42] Additionally, suggesting that a woman committed a crime that would have lost her the right to vote or hold office, such as cutting off someone's ear, was slander.[43] In short, suggesting that a woman had been degraded by being subjected to infamous punishments was slanderous. But accusing a woman of committing a crime that did not bring about these punishments, for example poisoning or performing an abortion, was not slander under state law.[44] This was true even though women could not legally vote or hold office in Missouri in this period. Slander could only occur if one accused someone of an infamous, degrading offense.[45]

Missouri law aligned loosely with common law traditions. Infamous crimes under common law were those that reflected immorality and deceit, even if they were misdemeanors. Immorality could include crimes such as

35. *Id*. at art. II, §§ 25–27, 40–42.
36. *Id*. at art. III, §§ 1–35, 62.
37. *Id*. at art. V, §§ 1–44.
38. *Id*. at art. II, §§ 9–10, 42.
39. *See, e.g.*, MO. REV. STAT. §§ 3510, 3624, 3715 (1889) (repealed).
40. MO. REV. STAT. § 1227 (1879) (repealed).
41. *Id*.
42. § 1590.
43. §§ 1261, 1282, 1590.
44. §§ 1266–68, 1282, 1590.
45. § 1590; *see also* Pippa Holloway, *"They Are All She Had": Formerly Incarcerated Women and the Right to Vote, 1890-1945 in* CAGING BORDERS AND CARCERAL STATES: INCARCERATIONS, IMMIGRATION DETENTIONS, AND RESISTANCE 186–210 (Robert T. Chase ed., 2019) (further discussing women and infamous punishments in the decades before women's suffrage).

perjury or treason whereby one disregarded an oath and thus lacked honor.[46] It might also include crimes of sexual immorality, such as bigamy or fornication.[47] In a tradition that dated back to English common law but that extended through the Nineteenth century, American courts considered crimes of deceit, such as larceny, to be infamous, but crimes of violence, such as murder or assault, generally were not considered infamous.[48]

This tradition held true in Missouri, where larceny, sex-related crimes, and arson were infamous at both the felony and misdemeanor level.[49] Common law did not hold violent crimes to be infamous, and in Nineteenth century Missouri, many violent felonies were not infamous, including second-degree assault and murder as well as other kinds of assault, wounding, and maiming.[50] For example, those who accidentally killed someone with a weapon in the heat of passion were guilty of manslaughter, not murder, and thus spared the punishments of disfranchisement and disqualification, an exclusion which again mirrored common law exclusions for violent crimes.[51] In sum, while burglary, robbery, larceny, and arson at the felony or misdemeanor level were infamous and therefore disfranchising, not all degrees of murder or manslaughter were.[52]

Missouri's slave-era exclusion of crimes specific to African American people from the list of infamous crimes is further evidence of how legislators understood infamy to result from the degradation brought by punishment.[53] Enslaved people could not be rendered infamous through criminal penalties because they were already infamous. For example, sexual assault of a white woman by an African American man was not infamous and did not have the penalties of disfranchisement and disqualification affixed to it. While the obvious explanation for this exclusion is that these individuals could not vote or hold office – so these were not rights that they could lose – understanding infamy offers a more sophisticated explanation. An African American person convicted of such a crime could not be made infamous as a result of the conviction because she or he was already considered infamous. Prisoners and slaves occupied the same legal status. Enslaved people were degraded by their captivity, similar to how individuals punished with infamous punishments were degraded.[54]

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46. 1 SIMON GREENLEAF, A TREATISE ON THE LAW OF EVIDENCE 420–21 (12th ed. 1866).

47. JOHN WITTE, JR., THE WESTERN CASE FOR MONOGAMY OVER POLYGAMY 110–14 (2015).

48. *See e.g.*, Anderson vs. Winfree, 85 Ky. 597 (Ky. 1887).

49. REVISED STATS. OF 1835, art. II, §§ 25–29, 42; art. III § 62.

50. *Id.* at art. II, § 2.

51. *Id.* at art. II, §§ 13, 42.

52. *Id.* at art. II, § 42, art. III, § 62.

53. *See, e.g.*, *id.* at art. II, §§ 28, 42.

54. HOLLOWAY, *supra* note 9, at 1–32 (discussing in more detail the infamy of enslaved African Americans).

B. National and Regional Comparisons

Missouri law reflected a distinctly southern understanding of infamy that contrasted with the legal culture in northeastern states in the early to mid-nineteenth century. Political leaders in northeastern states consciously moved away from the idea that infamy came from punishment and toward the idea that infamy came from committing serious crimes.[55] For example, in 1836, the Vermont Supreme Court wrote, "The old notion that infamy depended upon the nature of the punishment, is long since abandoned."[56] Leaders in southern states, in contrast, continued to see infamy as a product of the punishment.[57]

These regional differences had their roots in the institution of slavery. Maintaining hierarchies whereby members of one segment of the population were permanently degraded and cast out of citizenship due to their captivity and subjected to humiliating punishment had long-lasting traction in the South because the system of punishing convicts this way mirrored the institution of slavery.[58] Though Missouri was a border state, its legal culture was deeply shaped by the system of racial slavery, and this accounts for Missouri's alignment with southern states regarding legal understandings of infamy.[59]

Northeastern states – especially New England states that had shorter histories of racial slavery – were less likely to punish crimes with the infamous punishments of life-long disfranchisement, bars on office-holding, and disqualification from jury service and testimony.[60] New England states, as well as states in the mid-Atlantic region, were also more likely to debate and reject provisions disfranchising for crime in this era.[61] Delegates to constitutional conventions in the Northeast evidenced a distinct degree of unease with permanently disfranchising individuals convicted of crimes in the early to mid-Nineteenth century.[62] While some northeastern states did disfranchise for crime, other states in the region rejected such provisions entirely.[63] In some other northeastern states, constitutional conventions limited the impact or extent of these provisions to protect the rights of those with criminal convictions.[64]

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55. HOLLOWAY, *supra* note 9, at 17–32.

56. State v. Keyes, 8 Vt. 57, 64 (Vt. 1836).

57. HOLLOWAY, *supra* note 9, at 1–32.

58. *Id.* at 28–30.

59. *See generally* KELLY M. KENNINGTON, IN THE SHADOW OF DRED SCOTT: ST. LOUIS FREEDOM SUITS AND THE LEGAL CULTURE OF SLAVERY IN ANTEBELLUM AMERICA (2017); ANNE TWITTY, BEFORE *DRED SCOTT*: SLAVERY AND LEGAL CULTURE IN THE AMERICAN CONFLUENCE, 1787–1857 (2016).

60. HOLLOWAY, *supra* note 9, at 23–31.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

In contrast, southern states uniformly enacted sweeping provisions permanently disfranchising for infamous or major crimes, and there is little evidence of dissent or debate over this punishment in the South. An understanding of infamy as the product of degrading punishments, a connection between the degradation of slavery and the degradation of incarceration, and a belief that the stain of this degradation lasted a lifetime were all characteristics of the legal culture in slave states.[65] Missouri was admitted to the United States as a slave state, and slavery played a critical role in shaping Missouri's economic, legal, and social development.[66] Laws and practices in Missouri regarding infamy and disfranchisement remain one of the legacies of the slave system. The Jim Crow system, which maintained white political and social power after slavery ended, would further shape the system of felon disfranchisement in Missouri into the Twentieth and Twenty-first century.[67]

II. 1865–1916: DISFRANCHISEMENT TO ACHIEVE RACIAL AND PARTISAN ENDS

White Missouri residents were deeply divided over secession and war, as were whites in many border states.[68] The Republican party was unusually powerful in Missouri in the war's immediate aftermath, but as was also the case in other border states, former secessionists came to dominate state politics by the 1870s.[69] Their rise to power coincided with a decline in the percentage of the state that was African American. In 1821, following the Missouri compromise, enslaved people made up about 15% of the population, a fraction that would drop to about 10% in 1860.[70] By 1870, a growing white population made African Americans just 7% of the total population of the state.[71] Despite the decline in the African American share of the population, white Missourians devoted much effort to maintaining political and social dominance. Denying the vote to African Americans was an important part of that.

Few changes were made to criminal disfranchisement provisions in southern states in the immediate aftermath of the Civil War. At some of the constitutional conventions held in states of the former Confederacy in 1868, Republicans tried, with little success, to insert constitutional provisions limiting disfranchisement as punishment for criminal conviction.[72] Proposals in Alabama

65. *Id.*

66. Missouri Compromise, 16th Cong., 1st Sess., ch. 22, § 8 (1820).

67. *See infra* Part III.

68. AARON ASTOR, REBELS ON THE BORDER: CIVIL WAR, EMANCIPATION, AND THE RECONSTRUCTION OF KENTUCKY AND MISSOURI 75–93 (2012).

69. HEATHER COX RICHARDSON, TO MAKE MEN FREE: A HISTORY OF THE REPUBLICAN PARTY 84–86 (2014); ASTOR, *supra* note 68, at 4–8, 230–32.

70. JOHN CUMMINGS, U.S. CENSUS BUREAU, NEGRO POPULATION: 1790–1915 57, 68 (1918).

71. *Id.*; TWITTY, *supra* note 59, at 43.

72. *See infra* notes 75–78 and accompanying text.

and Florida, for example, unsuccessfully sought to eliminate disfranchisement for crime completely.[73] Other efforts to curtail the reach of these laws garnered some support but failed to pass.[74] Only in South Carolina did any significant limit on felon disfranchisement pass, with a constitutional provision reading: "No person shall be disfranchised for felony, or other crimes committed while such person was a slave."[75] This limited the ability of white southern Democrats to accuse formerly enslaved people of having prior offenses and denying them the vote on that basis, something that was likely happening given this effort to stop it.[76]

A. Disfranchisement in Missouri After the End of Slavery

Missouri leaders kept provisions unchanged in the 1860s. At the state's 1865 constitutional convention, which was dominated by Republicans, disfranchisement for non-war related crimes took a back seat to larger debates about punishing former rebels, but three proposals are of note.[77] Delegate Moses P. Green, a white man from Marion County, offered a plan that would have added "felony" to the list of disfranchising offenses, but it did not pass.[78] Delegate Willis S. Holland, a white man from Henry County, proposed a suffrage plank that contained perhaps the most extensive plan for disfranchising rebels or those who aided them.[79] His suffrage provision made no mention of disfranchisement for other kinds of criminals, which may have been deliberate but also may have been an oversight due to his enthusiasm for these other provisions.[80] It also specified an extensive loyalty oath.[81] Delegate David Bonham, a white man from Andrew County, proposed adding felony, larceny, and forgery to the old list and also a constitutional provision for restoration of voting rights – a process that was provided only in statute at the time.[82]

The proposals by Green and Bonham would have constitutionally expanded disfranchisement to include all felonies, most notably the violent

73. OFFICIAL J. OF THE CONST. CONVENTION OF THE STATE OF AL. 81–85 (1867); J. OF THE PROCEEDINGS OF THE CONST. CONVENTION OF THE STATE OF FL. 19–20 (1868).

74. J. OF THE CONST. CONVENTION OF THE STATE OF N.C., AT ITS SESS. 1868, at 234 (1868).

75. S.C. CONST. of 1868, art. VIII, § 12. South Carolina's convention had a particularly significant level of African American participation, both in number and political authority, so it is not surprising that this state went the furthest to protect African Americans from being targeted with laws disfranchising for prior criminal convictions. HOLLOWAY, *supra* note 9, at 9–10, 13.

76. HOLLOWAY, *supra* note 9, at 33–48.

77. J. OF THE MO. STATE CONVENTION HELD AT THE CITY OF ST. LOUIS, JANUARY 6–APRIL 10 (1865).

78. *Id.* at 20.

79. *Id.*

80. *Id.*

81. *Id.* at 21.

82. *Id.*

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felonies that were excluded statutorily in an echo of common law traditions. This would have cleared up the complex – and likely unevenly enforced – situation whereby some but not all felonies were disfranchising offenses.[83] Who could remember that cutting off the ears or tongue did not result in disfranchisement but attempting to poison someone did? These proposals would have also given the force of constitutional authority to the statutory provisions and reclaimed some power from the legislature, as the current system ceded almost exclusive control over disfranchisement for crime to the legislature.[84] But neither one passed.[85]

The 1865 constitution kept the exact language of the previous constitution with regard to disfranchisement for criminal conviction.[86] But there were differences in form. Suffrage occupied its own provision in this constitution – Article II – a change from the 1820 document.[87] Article II established a registration system for the first time.[88] Section 15 of Article II disfranchised and barred from office-holding for ten years anyone "convicted of having directly or indirectly given or offered any bribe to procure his election or appointment to any office," by stating that they "shall be disqualified for any office of honor trust or profit under this State and whoever shall give or offer any bribe to procure the election or appointment of any other person to any office shall on conviction."[89] It also stipulated, "No person who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election shall vote at such election."[90]

Statutorily, not much changed with regard to disfranchisement of ex-offenders in Reconstruction Era Missouri.[91] The only exception revolved around the issue of betting.[92] In 1871, the legislature passed an entirely revised registration statute that included a provision denying the vote to those "directly or indirectly interested in any bet or wager depending upon the result of the election."[93]

Toward the end of Reconstruction, many southern states changed their laws to make misdemeanor larceny a disfranchising offense.[94] Whereas disfranchisement was traditionally a punishment only for serious crimes, in a concerted effort to deny African Americans the vote, most southern states made misdemeanor larceny – commonly referred to as "petit larceny" – a

83. MO. CONST. of 1820, art. III, § 14.
84. *Id.*
85. *See supra* notes 80–84 and accompanying text.
86. MO. CONST. of 1865, art. II, § 26.
87. *Id.* at art. II.
88. *Id.* at art. II, § 4.
89. *Id.* at § 15.
90. *Id.* at § 17.
91. MO. REV. STAT § 117.001 (1872).
92. *Id.*
93. *Id.*
94. HOLLOWAY, *supra* note 9, at 54–78 (2014).

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disfranchising offense.[95] Though other disfranchising techniques such as literacy tests and poll taxes had the biggest overall impact on the black vote, disfranchising for misdemeanor larceny was part of a growing effort to use real and false allegations of former criminal convictions to intimidate and disfranchise the black population.[96]

Missouri's elected political leaders, unlike those in most other southern states, did not have to change state law or the constitution in this period to disfranchise for petit larceny. All grades of larceny resulted in disfranchisement, dating back to 1835.[97] Even though the 1875 convention did not make any changes to the constitutional provisions with regard to disfranchisement for criminal conviction, the 1875 convention debated the issue.[98] Delegates engaged in discussions of what constituted infamous crimes, the distinction between infamous crimes and felonies, and most especially, whether petit larceny was an infamous crime in Missouri and thus a disfranchising offense.[99]

Since "infamy" was defined as any crime the statute punished with denial of suffrage and other privileges of citizenship, the constitutional provision denying the vote to those considered infamous gave complete power to the legislature.[100] Delegate H. B. Johnson, a white man and one of the convention's few Republicans, expressed concern that the constitution's delegation of this authority to the legislature could lead to a wide expansion of disfranchising crimes:

> Now the Legislature might say every man who don't go to church on Sunday shall not vote and thereby make that an infamous crime. The Legislature in its discretion may prohibit a man from voting, but then to say in the Constitution that the Legislature may declare anything infamous that is giving unlimited power to the Legislature to disfranchise anyone under the guise of multiplying offences for which a person shall not be permitted to vote by denominating them "infamous crimes." . . . That amounts to giving the Legislature unlimited power to say that a man shall not vote for any trivial thing that he may do.[101]

A number of delegates seemed unclear on what "infamy" meant, engaging in lengthy discussions over the difference between felonies and infamous crimes, common law definitions of each, whether crimes bringing disfranchisement should also produce disqualification from office-holding, and more.[102]

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95. *Id.*

96. *Id.*

97. REVISED STATS. OF 1835, art. III, § 62.

98. 5 DEBATES OF THE MISSOURI CONSTITUTIONAL CONVENTION OF 1875, at 141–50 (Isidor Loeb & Floyd Shoemaker, eds. 1875).

99. *Id.* at 148–50.

100. *Id.* at 148.

101. *Id.* at 147–48.

102. *Id.* at 141–50.

Delegate Thomas Tasker Gantt offered a provision: "The General Assembly may enact laws excluding from the right of voting all persons convicted of misdemeanors connected with the exercise of the right of suffrage or of felony."[103] This measure would have ended disfranchisement for petit larceny, limiting the power of conservative Democrats to use this as a tool against African American voters as they had in other states.[104] It is quite possible that Gantt knew what he was doing here. Gantt was a white man and a Democrat, but he had been a Unionist during the war, a judge advocate for General George McClellan, and then, provost marshal general of Missouri.[105] At the time of the convention, he was the presiding judge on the St. Louis Court of Appeals.[106] He certainly knew the law and was as likely as any other member of the convention to have an understanding of regional trends. Delegate Charles B. McAfee, a Democrat and attorney, replied to Gantt's proposal by demanding that all infamous crimes, thus including petit larceny, be disfranchising crimes: "If the gentleman will add to it – 'or other infamous crimes' so as to punish petit larceny the same as grand larceny I will vote for his proposition."[107]

A more in-depth analysis of the work of the convention and the political affiliation of its delegates could evaluate connections between the Missouri convention and the broader debates over disfranchisement for petit larceny that occurred in other former slave states in this period. Were efforts by delegates to limit disfranchisement to felony offenses done with the intention of eliminating disfranchisement for petit larceny, a practice that had been used for partisan and racial ends in other states? It is clear from the discussion – McAfee's reply to Gantt for example – that ensuring that individuals convicted of petit larceny remained disfranchised was a priority for some of the members.[108] This suggests that events in other states were on their mind.

B. Regional Comparisons

Events in other states during the 1870s and 1880s revealed the racial and partisan impact of laws disfranchising for crime. In a hotly contested 1880

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103. *Id.* at 141.

104. *Id.*

105. 1 DEBATES OF THE MISSOURI CONSTITUTIONAL CONVENTION OF 1875, at 85 (Isidor Loeb & Floyd Shoemaker, eds. 1920); JOHN FLETCHER DARBY, PERSONAL RECOLLECTIONS OF MANY PROMINENT PEOPLE WHOM I HAVE KNOWN, AND OF EVENTS – ESPECIALLY OF THOSE RELATING TO THE HISTORY OF ST. LOUIS – DURING THE FIRST HALF OF THE PRESENT CENTURY (1880).

106. *Id.*

107. 5 DEBATES OF THE MISSOURI CONSTITUTIONAL CONVENTION OF 1875, *supra* note 98, at 146; JONATHAN FAIRBANKS & CLYDE EDWIN TUCK, PAST AND PRESENT OF GREENE COUNTY, MISSOURI (1915).

108. 5 DEBATES OF THE MISSOURI CONSTITUTIONAL CONVENTION OF 1875, *supra* note 98, at 146. Another issue debated at the convention was disfranchisement of individuals who bet on elections. *Id.* at 149.

election in Florida, African American voters later testified that in the weeks before the election, scores of black men were prosecuted for a range of small crimes: theft of a gold button, burglary of three oranges, stealing hogs, larceny of oats, larceny of six fish (worth twelve cents), and theft of a cowhide.[109] One of them – the man who supposedly stole the oranges – testified before Congress that such charges had become more frequent "because the election was close on hand."[110] Another, this one an alleged hog thief, confirmed this saying, "It was a pretty general thing to convict colored men in that precinct just before an election; they had more cases about election time than at any other time."[111]

A similar scene unfolded in Richmond, Virginia in 1888. There, on Election Day, the Democratic party stationed "challengers" – official partisan election monitors – at the city's three predominantly African American precincts in Jackson Ward, where they spent the day questioning voter eligibility.[112] Only African American voters underwent this interrogation.[113] Each time a challenger disputed the credentials of a voter, the accusation had to be evaluated by an attendant panel of bipartisan precinct judges.[114] These judges confirmed with voters their age, the spelling of their name, and their place of residence.[115] The Democratic judges colluded with the Democratic challengers by slowly and carefully verifying the information on the registration lists.[116] Any voter whose credentials were suspect had to swear an oath that he was qualified to vote, and each was informed he faced perjury charges if a later check of his credentials disqualified him.[117]

One particular kind of challenge took a disproportionate amount of time: voters who were accused of having a prior criminal conviction. Prior to election day, the precinct judges had received lists of voters made ineligible because of criminal conviction.[118] Upon each challenge, the judges combed through the list of convicts, which contained about two thousand names, searching for that individual's name. Because the segregated precinct had separate lines for the two races, white voting proceeded apace while African American voters waited for hours. Over five hundred black voters were still

109. *Testimony in the Contested Election Case of Horatio Bisbee, Jr. vs. Jesse J. Finley, from the Second Congressional District of Florida*, H.R. MISC. DOC. NO. 11, at 414–15, 47th Cong., 1st Sess. 414–19 (1881); HOLLOWAY, *supra* note 9, at 54.

110. *Testimony in the Contested Election Case of Horatio Bisbee, Jr. vs. Jesse J. Finley, from the Second Congressional District of Florida*, H.R. MISC. DOC. NO. 11, at 414–15, 47th Cong., 1st Sess. 4145 (1881).

111. *Id.* at 469; HOLLOWAY, *supra* note 9, at 54–55.

112. HOLLOWAY, *supra* note 9, at 55.

113. *Id.* at 143.

114. *Id.*

115. Pippa Holloway, *"A Chicken-Stealer Shall Lose His Vote": Disfranchisement for Larceny in the South, 1874–1890*, 75 J. OF S. HIST. 931, 951–54 (2009).

116. *Id.*

117. HOLLOWAY, *supra* note 9, at 70–71.

118. Holloway, *supra* note 115, at 951–54.

waiting in line to vote when the polls closed. Many others had given up due to frustration or intimidation.[119]

C. Racial Implications in Early Twentieth Century Missouri

The first election in Missouri in which these laws were used for racial and partisan ends came at a St. Louis election in 1916.[120] Though these laws had long been on the books in Missouri, their use for this purpose came later than in other former slave states likely because African Americans had not been a significant electoral force prior to this time.[121] In the early decades of the Twentieth Century, however, black migration to the state was on the rise with St. Louis being the primary destination for these new residents.[122] In 1910, the city was home to 43,960 African American residents; by 1920, there were 69,854.[123] The electoral power of the black population was growing, and thus so would efforts to limit it.

The 1916 presidential election was hotly contested, and many correctly predicted that Missouri would be a key battleground.[124] Democrats hoped the state would go to Woodrow Wilson while Republicans hoped to put the state's electoral votes in Republican Charles Evans Hughes's column.[125] Democratic Party operatives in the city coordinated efforts to target African American voters with stepped-up enforcement of laws disfranchising for crime.[126] This election is particularly significant to the history of felon disfranchisement in Missouri. Many new African American voters had migrated to Missouri from southern states, and the practice of disfranchising for prior criminal convictions, as well as racially motivated enforcement of these laws, followed these black voters out of the South. Republicans, the party with which the majority of Missouri's black voters were affiliated, accused Democrats of "southernizing" the election, i.e. manipulating election practices, including laws disfranchising for crime, to target African Americans.[127] A few weeks before the election, Democratic leaders dispatched about twenty young attorneys to comb the criminal court records and compile lists of African American voters who had been convicted of crimes.[128] This research produced a list of approximately

119. *Id.* at 17 (1890); HOLLOWAY, *supra* note 9, at 70–71.

120. HOLLOWAY, *supra* note 9, at 141.

121. *Id.* at 139–40.

122. KENNETH JOLLY, BLACK LIBERATION IN THE MIDWEST: THE STRUGGLE IN ST. LOUIS, MISSOURI, 1964–1970 6 (2006).

123. *Id.*

124. HOLLOWAY, *supra* note 9, at 141–48.

125. *Id.* at 141.

126. *Bring the Vote Thieves to Judgment*, ST. LOUIS ARGUS, at 1 (Nov. 10, 1916).

127. *Id.*; HOLLOWAY, *supra* note 9, at 133.

128. HOLLOWAY, *supra* note 9, at 141.

three thousand names, about 25% of the registered African American voters in the city.[129]

Then, the day before the election, the Democratic party took out an ad in the newspaper warning black voters:

> Democratic challengers in every affected precinct in the sixteen wards have been given a list of the negroes who have registered illegally. AS RAPIDLY AS THEY ARRIVE AT THE POLLS THEY WILL BE CHALLENGED. IF THEY INSIST ON CASTING THEIR BALLOTS AND START TO SWEAR IN THEIR VOTE, THEY WILL BE ARRESTED AT ONCE, CHARGED WITH PERJURY.[130]

This was a formidable threat. African American citizens, particularly these southern migrants, would have had longstanding experiences with violence and intimidation at the ballot box. But in contrast to southern states, Missouri had a relatively powerful Republican party that could offer them a modicum of support and protection.[131] Concerned that this would dissuade African American voters from casting their ballot, Republicans responded by publishing a reassuring notice in the local African American newspaper, the *St. Louis Argus*.[132] They advised city residents that voters who were properly registered "need not fear any man," and free legal counsel would be available for those who needed it.[133]

Then, on Election Day, the Democrats stationed "challengers" in black precincts.[134] Accounts vary but apparently many, if not most, African American men who voted faced a challenge of their credentials based on these lists.[135] Some gave up and left as soon as the challenge was issued.[136] In some precincts police officers arrested African American voters immediately after they were challenged.[137] In other instances, they waited until the judges had allowed the individual to vote and then arrested him.[138] Police escorted others out of the polling place without arrest but prevented them from voting.[139] The final count held that police arrested ninety-six African Americans and two whites upon allegations of trying to vote with prior disfranchising convictions.[140]

An important side effect of all this controversy was significant delays for voters, particularly at precincts in African American neighborhoods. A

129. *Id.* at 141–42.
130. *Id.* at 142.
131. *Id.* at 144.
132. *Warning to Negro Voters*, ST. LOUIS ARGUS, at 1 (Nov. 3, 1916).
133. *Id.*; HOLLOWAY, *supra* note 9, at 142.
134. HOLLOWAY, *supra* note 9, at 143.
135. *Id.*
136. *Id.* at 144.
137. *Id.* at 143–44.
138. *Id.* at 144.
139. *Id.*
140. *Id.* at 139–50.

Republican Party official told the press that he knew of precincts where the wait stretched to two hours while challengers and judges interrogated the voters.[141] According to another Republican leader, sixty voters waited two hours to vote at a precinct on Laclede Avenue, but only eight were successful.[142]

After the election, two men, Henry Lucas and John L. Sullivan, who were among those wrongfully disfranchised by false accusations of prior criminal convictions, initiated civil suits against Democratic Party leaders.[143] These court cases are some of the earliest legal actions by African Americans challenging the enforcement of laws disfranchising for crime. The first to file was Henry Lucas, a thirty-two-year-old teamster and Missouri native.[144] Lucas was arrested in the fifth precinct of the Eighth Ward following an accusation from a white Democratic challenger, Theodore Sandman, that he had a prior grand larceny conviction and had spent time in prison for it in 1906.[145] Another disfranchised African American voter, John L. Sullivan, filed suit shortly after Lucas.[146] Sullivan claimed that when he tried to vote, a Democratic challenger asserted that he had been convicted of petit larceny in 1896 and had served a forty-one-day sentence in the workhouse.[147] Sullivan denied all of this.[148] He said he had never been in the workhouse nor convicted nor arrested anywhere.[149] He was not even living in St. Louis in 1896 – he moved there in 1910.[150] While Sullivan's suit was unsuccessful, a jury found in favor of Lucas, awarding actual damages of $250 and $50 in punitive damages.[151]

The success of using accusations of prior convictions to limit the African American vote in 1916 may have fueled an effort to expand felon disfranchisement in Missouri in 1922. At the 1922 constitutional convention, many proposals were considered to restrict the vote even more.[152] One proposal focused on expanding disfranchisement for crime: a provision by delegate J.E. Cahill that would have allowed the legislature to disfranchise for any and all crimes.[153] Under Cahill's plan anyone convicted of a felony, infamous crime, or any misdemeanor could be denied suffrage.[154] Cahill's proposal did not pass.[155]

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141. *Id.* at 145.
142. *Id.* at 139.
143. *Id.* at 146–47.
144. *Id.* at 146.
145. *Id.*
146. *Id.* at 147.
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.* at 145–50.
152. PROPOSALS, CONSTITUTIONAL CONVENTION OF MISSOURI, 1922–1923 (1922).
153. *Id.* at 159.
154. *Id.*
155. *Id.*

III. TWENTIETH CENTURY: PARDONS, PAROLE, AND RESTORATION OF RIGHTS

In the decades after 1916, the most significant legal disputes and historical developments in Missouri regarding criminal disfranchisement revolved not so much around which criminal offenders would lose their voting rights but by what processes they might re-obtain them. At times, these individual efforts formed a pattern and were either in response to or a reflection of larger social and political changes.

In the late Nineteenth and early Twentieth centuries, many states worked out constitutional and bureaucratic procedures by which convicted individuals might be relieved of punishment and sanctions.[156] This development owed much to a growing adherence to legal formalism and an expanding belief that constitutional rights could define, and often limit, the extent of government power – what historian William Novak has called a "cult of constitutionalism" that emerged after the Civil War.[157] This combined with the push toward standardization and bureaucratization in the Progressive Era to lead states to establish formal constitutional and legal processes for restoring rights.[158]

A. Pardons and Gubernatorial Authority in Missouri

The first hint at the growing significance of pardons to restore citizenship rights came at the 1875 Missouri constitutional convention.[159] Delegate Benjamin F. Massey expressed concern about the broad pardon powers granted to the governor with regard to suffrage. In the past, he observed:

> A man would be pardoned the day before his term was out. Well, I know what that was for. It was to remove his political disability; then what becomes of those infamous crimes? If I wish to make them a disqualification for voting; and if you take hold of a man for those things, another man steps in and wipes them all out, what remedy have you?[160]

Massey's concerns about the balance of power between the branches and the reach of gubernatorial authority were prescient. Missouri's constitution did not provide for a specific act of clemency that restored voting rights but it did

156. WILLIAM NOVACK, THE PEOPLE'S WELFARE: LAW & REGULATION IN NINETEENTH CENTURY AMERICA 246–48 (1996); HOLLOWAY, *supra* note 9, at 111.

157. NOVACK, *supra* note 156, at 246; HOLLOWAY, *supra* note 9, at 111.

158. NOVACK, *supra* note 156, at 246–249; HOLLOWAY, *supra* note 9, at 111–12; *see also* MICHAEL KAMMEN, A MACHINE THAT WOULD GO OF ITSELF: THE CONSTITUTION IN AMERICAN CULTURE (1986).

159. 5 DEBATES OF THE MISSOURI CONSTITUTIONAL CONVENTION OF 1875, *supra* note 98, at 144–45.

160. *Id.* at 144.

give the governor broad pardon powers.[161] The Missouri legislature limited the power of the pardon in 1879.[162] Those who lost the right to vote due to a criminal conviction could vote if pardoned, allowing pardons and restorations for first offenses but "after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise the right of suffrage, he shall be forever excluded from voting."[163]

The governor's power to restore suffrage for first time offenders remained unlimited in the half century to come, but a 1917 law gave the parole board the ability to restore suffrage in some cases as well.[164] Part of a major legislative overhaul of the state prison system, a provision known as the "Three-Fourths Rule" allowed incarcerated individuals who served their time "in an orderly and peaceable manner" to be released after serving three fourths of their sentence.[165] Moreover:

> [A]t the end of five years from such discharge . . . such convict shall thereupon be restored to all the rights of citizenship provided, that he or she shall not have been indicted, informed against by the prosecuting or circuit attorney, or convicted of any other crime, during such period, and shall obtain a certificate to that effect from the Prison Pardon Board, whose duty it shall be, upon proper showing, to issue the same and keep a record thereof.[166]

This addressed a contradiction in current practice: individuals pardoned and released had their rights restored automatically as a result of the pardon.[167] But those whose good behavior warranted early release under parole did not have this privilege – parolees had to apply for restoration of rights.[168] In a sense, individuals with good behavior were being punished more, and this revision resolved that contradiction.[169]

B. The Nineteenth Amendment and Pardoning Women with Felony Convictions

Pardons soon became important to another group of Missouri residents: female ex-offenders. Missouri was an early "partial suffrage" state, meaning that women were allowed to vote in the 1919 presidential election before the

161. *See* MO. CONST. of 1820, art. IV, § 2; MO. CONST. of 1865, art. V, § 6.
162. MO. REV. STAT. § 5492 (1879) (repealed).
163. *Id.*
164. State Board Prison Act, 49th Legis., 1st Sess. (Mo. 1917).
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.*
169. Those who served their full term and were neither discharged early on parole or pardoned were disfranchised for life unless pardoned.

federal suffrage amendment passed.[170] This may explain why two Missouri women can be found in some of the earliest records of petitions for restorations of voting rights. Anna Hunning, a white woman who lived in Valley Park, sought access to the franchise with particular urgency.[171] Convicted of murder and sentenced to life in 1912, she was released on parole in 1919.[172] Her parole expired on January 1, 1921, and on January 3, she submitted a petition to Governor Frederick Gardner for restoration to citizenship.[173] The petition was a standard document printed by the state for such occasions.[174] On Hunning's form, someone crossed out "his" and substituted "her."[175] Clearly, Missouri was not yet prepared for petitions for restoration of citizenship from female applicants.[176]

About six months later, Missouri Governor Arthur Hyde heard from Cora Blackwell, whose race is unidentified in the pardon records.[177] Blackwell was convicted of aiding and abetting a rape in St. Louis in 1903 when she was twenty-two years old.[178] She was sentenced to five years in the penitentiary and was released in 1907.[179] In July 1921, she petitioned for a pardon so that she could have her citizenship rights restored.[180] Her petition listed her employment as a "house wife" and was signed by twenty individuals.[181]

Efforts by African American women with criminal convictions in Missouri to vote offer evidence of particular determination to overcome multiple barriers to suffrage. In 1932, an African American woman named Annie Tassin contacted the Missouri governor to request restoration of her citizenship.[182] According to the form Tassin submitted, she had been convicted of "burglar [sic] in second degree."[183] For date of conviction she wrote, "Can't remember exactly."[184] Her enclosed petition was endorsed by ten female signatories along with fourteen men.[185] Still, the state's petition form had not changed.[186] Tassin crossed out the "his" and changed it to "her."[187]

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170. HISTORY OF WOMAN SUFFRAGE: 1900–1920 (Ida Husted Harper, ed. 1922); Holloway, *supra* note 45, at 196.

171. Holloway, *supra* note 45, at 196.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 197.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

Tassin wrote a letter to the governor to accompany her petition, and in it, she suggested an additional reason to have her citizenship restored.[188] She explained that she would "love to have [her] citizenship back, for it means so much to [her] in [her] life to live."[189] Why was it so important? For one, she "want[ed] to live a true life."[190] In addition, she told the governor that she sought a pardon because she was "identified by so many organizations."[191] Tassin's comments indicate that being disfranchised for a prior criminal conviction affected her social status in the community.[192] Organizations she had joined – likely women's clubs and benevolent organizations – must have frowned on her criminal past, and so she sought to have her record cleared as much as possible.[193]

Another African American female voter, Mary Cole, who lived in Jefferson City, sought restoration of her citizenship rights in 1930.[194] Mary Cole's petition was accompanied by a letter to the governor from the prosecuting attorney in the county – a white man named Otto Ankersheil.[195] Ankersheil wrote that Cole and her husband were "old colored people who came into this county from Arkansas and had not been in the state but about nine months."[196] Ankersheil explained that a candidate for a local election had sought their vote and drove them to the polling place, where they voted.[197] Because they were recent migrants and not eligible to vote, they were arrested.[198] Ankersheil concluded, "In my opinion it was purely a matter of ignorance on the part of these old darkies being persuaded to vote by a white man in whom they put confidence and there was no intention on their part to violate the law."[199]

Shifting the lens to Cole and her husband's perspective changes the story drastically. Here is another version of the tale: as soon as they got out of Arkansas, leaving behind a state where white southern Democrats denied them suffrage, the Coles were so determined to vote that they convinced a white politician to drive them to the polling place.[200] Then, charged with being ineligible to vote, they blamed their crime on the white politician and chauffeur and sought the restoration of their citizenship rights, gathering signatures and securing the sympathy and support of the local prosecutor.[201] With her

188. *Id.*
189. *Id.*
190. *Id.*
191. *Id.*
192. *Id.*
193. *Id.* at 197–98.
194. *Id.* at 199.
195. *Id.*
196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.*
200. *Id.*
201. *Id.*

citizenship now restored, Cole could again participate in an election.[202] One suspects that within the year she did exactly that.[203]

CONCLUSION: *STATE EX REL. OLIVER V. HUNT* AND THE LONG HISTORY OF DISFRANCHISEMENT IN MISSOURI

The Missouri statute that allowed restoration of voting rights five years after discharge under the Three Fourths Rule was challenged in 1952 in *State ex rel. Oliver v. Hunt*.[204] At issue was whether the legislation automatically restoring suffrage rights under the parole law undermined the governor's authority to pardon.[205] The Missouri Supreme Court held that the legislature could restore voting rights to individuals in such circumstances and that extending this power to the legislature did not limit gubernatorial power.[206] Moreover, the court made an interesting argument justifying the distinction between the parole law's restoration of rights and a gubernatorial pardon.[207] Pardons were acts of mercy and a "derogation of law."[208] In contrast, the parole law was rehabilitative.[209]

In deciding *State ex rel. Oliver v. Hunt*, the court took the opportunity to make an argument in favor of restoration of rights for those released from incarceration:

> Prior to the enactment of the parole law in 1897, all persons, no matter how extenuating the circumstances, were upon conviction forced to undergo the punishment fixed by statute. After undergoing the stigma and degradation of imprisonment, they far too often became vicious repeaters. Following the enactment of this law, tens of thousands of men, given the supervision and encouragement of its provisions, have been restored to good citizenship. Thousands of these men, who, but for the very statute here sought to be declared unconstitutional, would be branded as felons, unworthy of the right of franchise, unworthy to serve as jurors or to hold positions of honor or trust, are today exercising those rights with honor to themselves and this State. These privileges ought not be taken from them, nor should future transgressors be denied the incentive of reformation that Section 549.170 has so successfully

202. *Id.*
203. *Id.*
204. 247 S.W.2d 969 (Mo. 1952) (en banc).
205. *Id.* at 970.
206. *Id.* at 973.
207. *Id.*
208. *Id.*
209. *Id.*

> inspired in others since its enactment, unless there is impelling reason for so doing. Society would not profit thereby.[210]

These conflicting perspectives on incarceration – whether it is intended for retribution or rehabilitation – have shaped discussions of the restoration of voting rights for ex-felons throughout American history. The court's reference to "degradation" evokes the long history of infamy and the social and political stigma attached to infamous punishments.[211] In contrast, those who voted were doing so "with honor," an indication that for these individuals the mark of infamy was now gone.[212] The court saw a private good in the restoration of their rights, to the extent that these individuals now received more respect, but also a public good because restoration of rights incentivized reform.[213]

Finally, the court underscored the powerful role that Missouri's legislature has in determining the voting rights of ex-felons. The opinion notes, "This clause vests wide discretion in the legislature to determine the extent to which persons convicted of felony may be excluded from the right of suffrage."[214] The history of felon disfranchisement in Missouri bears this out. At times the Missouri legislature has chosen to impose broad, life-long disfranchisement and at other times it has chosen to limit it. At times the power to restore citizenship has been exclusively the governor's and at other times the legislature has appropriated this power as well.

As it has since statehood, Missouri's present constitution offers the legislature the ability to exclude felons from voting but does not require it. There is no constitutional requirement to extend disfranchisement through probation and parole. Many other states have recently changed their laws so that voting rights are restored after release from incarceration.[215] The Missouri legislature could act at any time to restore voting rights at the time of release from prison. There is no constitutional mandate for disfranchisement during incarceration in Missouri either. Arguments for expanding access to the franchise for ex-felons and even those who are currently incarcerated can be grounded in an understanding of both the continuity of these laws and the changes in them over the scope of Missouri's history.

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210. *Id.* at 972.
211. *Id.*
212. *Id.*
213. *Id.*
214. *Id.* at 973.
215. Morgan McLeod, *Expanding the Vote: Two Decades of Felony Disenfranchisement Reforms*, THE SENT'G PROJECT (Oct. 17, 2018) https://www.sentencingproject.org/publications/expanding-vote-two-decades-felony-disenfranchisement-reforms/ [perma.cc/BFZ5-FM5H].