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FELON-JURORS IN VACATIONLAND: A FIELD STUDY OF TRANSFORMATIVE CIVIC ENGAGEMENT IN MAINE

James M. Binnall

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James M. Binnall*

ABSTRACT

Maine is the only jurisdiction in the United States that places no limitations on a convicted felon's juror eligibility. Instead, Maine screens prospective felon-jurors using their normal jury selection procedures. In recent years, scholars have suggested that meaningful community engagement can help facilitate former offenders' reintegration and criminal desistance. From that theoretical posture, a number of empirical studies have explored the connection between participation in the electorate and the reentry of former offenders. Those studies suggest that voting has the potential to prompt pro-social changes among former offenders. Still, to date, no research has focused on jury service as a form of civic inclusion that may foster successful reintegration and criminal desistance. Drawing on data derived from a large-scale field study in Maine, the present article addresses this research void, arguing that the jury is perfectly positioned as a tool for change, employable by jurisdictions seeking to facilitate the successful reentry of former offenders. This article further notes that Maine is the only U.S. jurisdiction that has exploited this transformative power of the jury process.

I. INTRODUCTION

Maine is a unique place. Home to horror writer Stephen King, Maine was the first state to ban the manufacture or sale of alcohol (which it did in 1851), earning the moniker "the birthplace of prohibition."¹ Maine is also the former toothpick capital of the world, and is where Harriet Beecher Stowe authored *Uncle Tom's Cabin*.² One of the coldest, most sparsely populated states, Maine boasts L.L. Bean's flagship store, Paul Bunyan's birthplace, and the only desert on the East Coast.³ Mainers take pride in the beauty and uniqueness of their home, suggesting that living in Maine is "the way life should be." This article explores another distinctive feature

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1. Anna Green, *25 Magnificent Facts About Maine*, MENTAL FLOSS (Dec. 4, 2015), <http://mentalfloss.com/article/71867/25-magnificent-facts-about-maine> [https://perma.cc/23ET-WPM3].

2. *Id.*

3. *Id.*

of Vacationland.⁴

Forty-nine states, the District of Columbia, and the federal government statutorily restrict convicted felons' eligibility for jury service.⁵ In twenty-eight jurisdictions, such restrictions are permanent, banning convicted felons from jury service for life.⁶ Thirteen jurisdictions bar convicted felons from jury service until the full completion of their sentence, notably disqualifying individuals serving felony-parole and felony-probation.⁷ Eight jurisdictions enforce hybrid regulations that may incorporate penal status, charge category, type of jury proceeding, and/or a term of years.⁸ And finally, two jurisdictions recognize lifetime for-cause challenges, permitting a trial judge to dismiss a prospective juror from the venire solely on the basis of a felony conviction.⁹ Maine is the only U.S. jurisdiction that places no restriction on a convicted felon's opportunity to serve as a juror.¹⁰

Courts and lawmakers offer two justifications in support of these categorical felon-juror exclusions.¹¹ The first alleges that convicted felons lack the character to perform the requisite duties of jury service.¹² The second claims that felon-jurors would undermine the impartiality of a jury, arguing that convicted felons harbor an

4. See generally Paul H. Millis, *The Unheralded Champion of Maine's 'Vacationland' License Plate Motto*, THE DAILY BULLDOG (July 9, 2014), <http://www.dailybulldog.com/db/opinion/the-unheralded-champion-of-maines-vacationland-license-plate-motto/> [<https://perma.cc/76ZT-AJK4>].

5. James M. Binnall, *A Field Study of the Presumptively Biased: Is There Empirical Support for Excluding Convicted Felons from Jury Service*, 36 L. & POL'Y 1, 2 (2014); James M. Binnall, *Summoning Criminal Desistance: Convicted Felons' Perspectives on Jury Service*, 43 L. & SOC. INQUIRY 4, 4 (2018). See generally Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 AM. U. L. REV. 65 (2003).

6. Binnall (2014), *supra* note 5, at 4 fig.1 (federal, Alabama, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wyoming).

7. *Id.* (Alaska, Idaho, Indiana, Minnesota, Montana, New Mexico, North Carolina, North Dakota, Ohio, Rhode Island, South Dakota, Washington, Wisconsin).

8. *Id.* (Arizona, Colorado, Connecticut, District of Columbia, Kansas, Massachusetts, Nevada, Oregon). For example, the District of Columbia and Colorado adhere to differing hybrid models; the former excludes convicted felons from jury service during any period of supervision and for ten years following the termination of supervision, while the latter excludes convicted felons solely from grand jury proceedings. See COLO. REV. STAT. § 13-71-105(3) (LEXIS through 2018 Leg. Sess.); D.C. CODE § 11-1906(b)(2)(B) (2018).

9. Binnall (2014), *supra* note 5, at 4 fig.1 (Illinois, Iowa).

10. See 14 M.R.S.A. § 1211 (2012) ("A prospective juror is disqualified to serve on a jury if that prospective juror is not a citizen of the United States, 18 years of age and a resident of the county, or is unable to read, speak and understand the English language.").

11. In all but four jurisdictions, felon-juror exclusion statutes are categorical, barring *all* convicted felons from serving as jurors in *all* types of litigation. The exceptions are Arizona (distinguishing first time offenders from repeat offenders); Colorado (distinguishing grand juries from petit juries); Nevada (distinguishing violent offenders from non-violent offenders); and Oregon (distinguishing civil cases from criminal cases). See ARIZ. REV. STAT. § 13-912(A) (LEXIS through 2018 2d Reg. Sess.); COLO. REV. STAT. § 13-71-105(3) (2018); NEV. REV. STAT. § 213.157(2)(a)-(e) (2018); OR. REV. STAT. § 10.030(3)(a)(E)-(F) (2017).

12. See Kalt, *supra* note 5, at 167; see also *Rector v. State*, 659 S.W.2d 168, 173 (Ark. 1983) ("Unquestionably that exclusion is intended to bar from the jury box the one class of persons least likely to respect and give effect to the criminal laws.").

inherent bias, making each sympathetic to criminal defendants and adversarial toward prosecutorial agents.¹³ Taken together, the proffered justifications for felon-juror exclusion assume that citizens with a felonious criminal history pose a significant threat to the jury process.

Yet, this purported threat lacks empirical support. Prior research focused on the character rationale for felon-juror exclusion demonstrates that convicted felons may actually enhance, rather than diminish, the deliberation process.¹⁴ Similarly, in studies of the inherent bias rationale, data demonstrates that felon-jurors pose no more of a threat to the impartiality of the jury than do other groups of eligible prospective jurors.¹⁵ Though few, these studies contradict the declared rationales for felon-juror exclusion statutes, ostensibly calling into question their necessity.

While courts and lawmakers have considered the professed purposes for felon-juror exclusion, they have seemingly overlooked the possible impacts of such restrictions. Thirty-three percent of African American male adults have been convicted of a felony.¹⁶ These statistics suggest that felon-juror exclusion has a disproportionate racial impact. Research supports this conclusion. In the first empirical study of felon-juror exclusion, Wheelock found that the felon-juror exclusion racially homogenizes juries in several Georgia counties.¹⁷ In particular, he found that Georgia's permanent felon-juror exclusion statute reduced the number of African-American men expected to serve as jurors from 1.65 to 1.17 per jury.¹⁸ As Wheelock notes, in many Georgia counties this effect was even more prominent, reducing the expected number of African-American male-jurors to under one, a significant reduction as prior research suggests that, in capital cases, juries with one African-American male are less likely to sentence a defendant to death than juries without an African-American male.¹⁹ In this way, felon-juror exclusion statutes may racially homogenize juries.

Apart from racially homogenizing juries, felon-juror exclusion may also give

13. See Binnall (2014), *supra* note 5, at 11; see also Kalt, *supra* note 5, at 74 (“The other common basis offered for felon exclusion is that felons are inherently biased.”); Rubio v. Superior Court, 593 P.2d 595, 600 (Cal. 1979) (“The Legislature could reasonably determine that a person who has suffered the most severe form of condemnation that can be inflicted by the state—a conviction of felony and punishment therefore—might well harbor a continuing resentment against ‘the system’ that punished him and equally unthinking bias in favor of the defendant on trial, who is seen as a fellow underdog caught in its toils. Because these antisocial feelings would often be consciously or subconsciously concealed, the Legislature could further conclude that the risk of such prejudice infecting the trial outweighs the possibility of detecting it in jury selection proceedings. The exclusion of ex-felons from jury service thus promotes the legitimate state goal of assuring impartiality of the verdict.”).

14. James M. Binnall, *Jury Diversity in the Age of Mass Incarceration: An Exploratory Mock Jury Experiment Examining Felon-Jurors’ Potential Impacts on Deliberation Quality* 20 (unpublished manuscript) (on file with the Maine Law Review).

15. Binnall (2014), *supra* note 5, at 6.

16. Sarah K.S. Shannon et al., *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010*, 54 DEMOGRAPHY 1795, 1814 (2017).

17. Darren Wheelock, *A Jury of One’s Peers: Felon Jury Exclusion and Racial Inequality in Georgia Courts*, 32 JUST. SYS. J. 335 (2012).

18. *Id.* at 352.

19. *Id.*

rise to additional negative outcomes. For example, research demonstrates that juror diversity increases the overall quality of deliberations.²⁰ Studies also suggest that broad participation extends the educative reach of the jury, possibly prompting a subsequent increase in the rate at which former jurors take part in political processes.²¹ Diversity of service also legitimizes jury verdicts, especially for traditionally marginalized citizens.²² By excluding convicted felons from the venire, felon-juror exclusion statutes defeat these potential benefits of widespread participation in the jury process.

Though felon-juror exclusion challenges the established benefits of broad jury participation and diverse juries, this article focuses on a different, more attenuated impact of felon-juror exclusion statutes. In their influential article, Bazemore and Stinchcomb suggest that civic engagement can facilitate successful reentry.²³ They argue that for former offenders, participatory democracy fosters successful reintegration and criminal desistance through pro-social changes in self-concept, pro-social role commitment, and the building of social capital and collective efficacy.²⁴ Subsequent empirical studies provide modest support for these contentions, suggesting that engagement with political processes, in the form of voting, may facilitate the successful reintegration and criminal desistance of former offenders.²⁵

20. See Claudia L. Cowan, William C. Thompson & Phoebe Ellsworth, *The Effects of Death Qualification on Jurors' Predisposition to Convict and on the Quality of Deliberation*, 8 LAW & HUM. BEHAV. 53, 76 (1984); see also Nancy S. Marder, *Juries, Justice & Multiculturalism*, 75 S. CAL. L. REV. 659, 706-07 (2002); Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCHOL. 597 (2006).

21. See John Gastil, E. Pierre Deess & Phil J. Weiser, *Civic Awakening in the Jury Room: A Test of the Connection Between Jury Deliberation and Civic Participation*, 64 J. POL. 585, 593-94 (2002) [hereinafter Gastil et al., *Civic Awakening*]; see also JOHN GASTIL ET AL., *THE JURY AND DEMOCRACY: HOW JURY DELIBERATION PROMOTES CIVIC ENGAGEMENT AND POLITICAL PARTICIPATION* 129-53 (2010); John Gastil et al., *Jury Service and Electoral Participation: A Test of the Participation Hypothesis*, 70 J. POL. 351 (2008) [hereinafter Gastil et al., *Participation Hypothesis*]; John Gastil & Phil J. Weiser, *Jury Service as an Invitation to Citizenship: Assessing the Civic Value of Institutionalized Deliberation*, 34 POL'Y STUD. J. 605, 608-09 (2006).

22. See Leslie Ellis & Shari Siedman Diamond, *Race, Diversity, and Jury Composition: Battering and Bolstering Legitimacy*, 78 CHI.-KENT L. REV. 1033, 1039 (2003); see also NEIL VIDMAR & VALERIE P. HANS, *AMERICAN JURIES: THE VERDICT* 340 (2007); Hiroshi Fukurai & Darryl Davies, *Affirmative Action in Jury Selection: Racially Representative Juries, Racial Quotas, and Affirmative Juries of the Hennepin Model and the Jury De Medietate Linguae*, 4 VA. J. SOC. POL'Y & L. 645, 645-46 (1997); Robert J. MacCoun & Tom R. Tyler, *The Basis of Citizens' Perceptions of the Criminal Jury*, 12 L. & HUM. BEHAV. 333 (1988); Joshua Wilkenfeld, *Newly Compelling: Reexamining Judicial Construction of Juries in the Aftermath of Grutter v. Bollinger*, 104 COLUM. L. REV. 2292, 2306-13 (2004).

23. See Gordon Bazemore & Jeanne B. Stinchcomb, *Civic Engagement and Reintegration: Toward a Community-Focused Theory and Practice*, 36 COLUM. HUM. RTS. L. REV. 241, 244 (2004).

24. See *id.* at 244-45.

25. See Christopher Uggen, Jeff Manza & Angela Behrens, '*Less than the Average Citizen*': *Stigma, Role Transition, and the Civic Reintegration of Convicted Felons*, in AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION 261-86 (Shadd Maruna et al. eds., 2004) [hereinafter Uggen et al., *Pathways*]; see also JEFF MANZA, CHRISTOPHER UGGEN & ANGELA BEHRENS,

Building on and expanding this line of research, I argue that civic engagement through jury service can promote the successful reentry of former offenders. Using Maine as a laboratory, I conducted an exploratory field study from 2012-2015, examining (1) convicted felons' views of Maine's jury system and their role in that system,²⁶ and (2) court personnel's views of convicted felons and their inclusion in Maine's jury process.²⁷ Drawing on these findings, I contend that jury service is optimally positioned as a vehicle for furthering reintegration and criminal desistance, and that Maine is a model for reform.

Part II details the evolution of inclusive juror eligibility criteria in the United States. Part III provides an overview of the history of felon-juror exclusion, noting Maine's divergence from the majority of U.S. jurisdictions. Part IV presents findings from the first field study to focus on Maine's unique policy of felon-juror inclusion. Part V situates those findings in a broader discussion of civic engagement and successful reintegration/criminal desistance, drawing on Bazemore and Stinchcomb's theoretical model and subsequent studies on the topic. Part VI concludes, suggesting that juries can enhance reentry initiatives and highlighting Maine's unique policy of inclusion.

II. THE AMERICAN JURY: A HISTORY OF INCREASING INCLUSIVITY

The Sixth Amendment of the U.S. Constitution entitles a criminal defendant to a trial by an impartial jury.²⁸ Traditionally, the Supreme Court interpreted this "impartiality doctrine"²⁹ as applying solely to individual jurors.³⁰ Under that view, the Sixth Amendment mandated only that a jury include those free of bias or those able to set aside biases and "conscientiously apply the law and find the facts."³¹

Yet, in a series of cases beginning in 1940, the Court altered its interpretation of the impartiality doctrine. Under this new interpretation, the Court emphasized that impartiality requires not only unbiased jurors, but also a representative jury

LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 137-63 (2006) [hereinafter MANZA ET AL., LOCKED OUT]; Binnall (2018), *supra* note 5; Bryan Lee Miller & Joseph F. Spillane, *Civil Death: An Examination of Ex-Felon Disenfranchisement and Reintegration*, 14 PUNISHMENT & SOC'Y 402, 422-23 (2012).

26. See Binnall (2018), *supra* note 5.

27. See James M. Binnall, *Exorcising Presumptions: Judges and Attorneys Contemplate 'Felon-Juror Inclusion' in Maine*, JUST. SYS. J. (forthcoming 2018) (manuscript at 26-27), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3226728 [perma.cc/JL3Z-YTHR].

28. U.S. CONST. amend. VI.

29. See generally Meiring de Villiers, *The Impartiality Doctrine: Constitutional Meaning and Judicial Impact*, 34 AM. J. TRIAL ADVOC. 71 (2010); Scott W. Howe, *Juror Neutrality or an Impartiality Array? A Structural Theory of the Impartial Jury Mandate*, 70 NOTRE DAME L. REV. 1173 (1995).

30. See, e.g., *Irvin v. Dowd*, 366 U.S. 717 (1961); *United States v. Wood*, 299 U.S. 123 (1936); *Reynolds v. United States*, 98 U.S. 145 (1878); JEFFREY ABRAMSON, *WE THE JURY: THE JURY SYSTEM AND THE IDEAL OF DEMOCRACY*, 105-15 (1994).

31. *Morgan v. Illinois*, 504 U.S. 719, 742 (1992) (Scalia, J., dissenting) (quoting *Wainwright v. Witt*, 469 U.S. 412, 423 (1985)); see also *Holland v. Illinois*, 493 U.S. 474 (1990); *Lockhart v. McCree*, 476 U.S. 162 (1986); *Logan v. United States*, 144 U.S. 263, 298 (1892); Mark Cammack, *In Search of the Post-Positivist Jury*, 70 IND. L. J. 405 (1995).

comprised of diverse views and perspectives.³² The Court theorized that varied life experiences necessarily yield richer and higher quality deliberations.³³ The Supreme Court's decisions regarding jury inclusiveness divide into roughly two categories: those focused on the formation of the jury venire and those centered on the exercise of peremptory challenges.³⁴ The exclusion of convicted felons from the jury pool occurs prior to the formation of the venire and thus implicates jurisprudence focused on discriminatory jury selection procedures early in the process.

As early as 1880, the Supreme Court invalidated a racially discriminatory jury selection scheme. In *Strauder v. West Virginia*, the Court held that a statute prohibiting African-Americans from serving as jurors violated the Fourteenth Amendment's Equal Protection Clause.³⁵ Between 1880 and 1975, the Court intermittently struck down several overtly prejudicial jury selection procedures under the same equal protection analysis.³⁶ In 1940, however, the Court seemingly began to alter its approach to such cases, reassessing the meaning of impartiality.

In *Smith v. Texas*, the Court overturned the appellant's conviction, finding that African Americans were "systematically excluded from grand jury service solely on account of their race and color."³⁷ For the first time, the Court did not merely prohibit exclusion but also hinted that impartiality necessitates inclusion and representativeness. The Court noted that "[i]t is part of the established tradition in the use of juries as instruments of public justice that the jury be a body *truly representative of the community*."³⁸

Two years later, in *Glasser v. United States*, the Court again confronted a discriminatory jury selection scheme.³⁹ The selection procedures in *Glasser* limited eligible women jurors to only members of the League of Women.⁴⁰ Though the Court rejected Glasser's claim for lack of evidence, the Court expanded on Smith's holding, enunciating what has come to be known as the cross-section requirement. The Court stated,

[T]he officials charged with choosing federal jurors may exercise some discretion to the end that competent jurors may be called. But they must not allow the desire for competent jurors to lead them into selections which do not comport with the concept of the jury as a cross-section of the community. Tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the

32. See ABRAMSON, *supra* note 30, at 115-18; Ellis & Diamond, *supra* note 22, at 1033-58.

33. *Peters v. Kiff*, 407 U.S. 493, 503-04 (1972).

34. Jeffrey S. Brand, *The Supreme Court, Equal Protection, and Jury Selection: Denying that Race Still Matters*, 1994 WIS. L. REV. 511 (1994).

35. *Strauder v. West Virginia*, 100 U.S. 303, 305 (1879).

36. See, e.g., *Avery v. Georgia*, 345 U.S. 559, 561-63 (1953); *Patton v. Mississippi*, 332 U.S. 463, 465-69 (1947); *Pierre v. Louisiana*, 306 U.S. 354, 357, 362 (1939); *Hale v. Kentucky*, 303 U.S. 613, 616 (1938); *Norris v. Alabama*, 294 U.S. 587 (1935).

37. *Smith v. Texas*, 311 U.S. 128, 129 (1940).

38. *Id.* at 130 (emphasis added).

39. *Glasser v. United States*, 315 U.S. 60 (1942).

40. *Id.* at 83-84.

institution of jury trial, and should be sturdily resisted.⁴¹

Four years after *Glasser*, in *Thiel v. Southern Pacific Railroad Company*, the Court again assessed discriminatory jury selection processes under fair cross-section principles.⁴² At issue in *Thiel* was the exclusion of daily wage earners from jury rolls. *Thiel* claimed that engineering jury pools in such a way gave wealthy railroad owners an impermissible litigation advantage. Building on their holding in *Glasser*, the Court explained:

The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.⁴³

In 1946, the Court also decided *Ballard v. United States*, and again invalidated a jury formation system because it excluded women—all women—from the jury pool.⁴⁴ In *Ballard*, the Court once more stressed that a jury *must* represent the community from which it is drawn.⁴⁵ The Court also held that by excluding women from juries, the selection procedures at issue deprived potential litigants of viewpoints that may impact deliberations and verdict outcomes. As the Court carefully explained,

[i]t is said . . . that an all-male panel drawn from the various groups within a community will be as truly representative as if women were included. The thought is that the factors which tend to influence the action of women are the same as those which influence the action of men—personality, background, economic status—and not sex. Yet it is not enough to say that women when sitting as jurors neither act nor tend to act as a class. Men likewise do not act as a class. But if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel? The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; *the subtle interplay of influence one on the other is among the imponderables. To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded.* The exclusion of one may indeed make the jury less representative of the community than would be true if an

41. *Id.* at 86 (emphasis added).

42. *Thiel v. S. Pac. Co.*, 328 U.S. 217 (1946).

43. *Id.* at 220 (internal citations omitted).

44. *Ballard v. United States*, 329 U.S. 187 (1946).

45. *Id.* at 195.

economic or racial group were excluded.⁴⁶

Though the Court alluded to the cross-sectional requirement in *Smith*, *Glasser*, *Thiel*, and *Ballard*, the Court decided those cases based on its supervisory powers over federal courts and federal jury selection procedures. The next step in the evolution of the cross-section requirement did not come until 1968 with the Jury Selection and Service Act (“JSSA”).⁴⁷ The JSSA states,

[A]ll litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community . . . [and] all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States⁴⁸

Thus, with the JSSA, Congress codified the cross-section requirement and the policy of inclusion promulgated by the Court during the 1940s.

Soon after the passage of the JSSA, in 1975, the Supreme Court constitutionalized the cross-section requirement. The Court did so by expanding its interpretation of the Sixth Amendment’s impartiality doctrine. In *Taylor v. Louisiana*, the Court held that “the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial.”⁴⁹ *Taylor* represents the Court’s official recognition of the cross-section doctrine as a constitutionally guaranteed right of a litigant.

The cross-section requirement demonstrates the Court’s clear preference for inclusive jury selection procedures. Additionally, and perhaps more importantly, the Court’s preference for inclusiveness and the development of the cross-section requirement are rooted in a reinterpretation of the notion of impartiality. In a sense, the Court has determined that an impartial jury requires a mix of biases and prejudices.⁵⁰ In turn, as precedent makes clear, the Court contemplates the possibility that exclusion of any group or class from jury service can result in less effective deliberations and potentially inaccurate verdicts. Still, the vast majority of U.S. jurisdictions banish convicted felons from the jury service, seemingly in direct contention with the spirit of the cross-section doctrine, assuming that the inclusion of convicted felons would diminish rather than bolster the deliberation process.

III. THE HISTORY OF FELON-JUROR EXCLUSION: MAINE BREAKS RANKS

Unlike the U.S. history of inclusive juror eligibility, the history of felon-juror exclusion is rather unremarkable. The practice of excluding convicted felons from the jury process originated in ancient Greece. Ancient Greek law characterized convicted criminals as “infamous,” prohibiting them from taking part in all civic activities. The ancient Greeks imposed such sanctions retributively and as a general deterrent to other potential criminal offenders. Later, the Romans also adopted a

46. *Id.* at 193-94 (emphasis added).

47. 28 U.S.C. § 1861 (2000).

48. *Id.*

49. *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975).

50. ABRAMSON, *supra* note 30, at 10-11.

version of “infamy,” developing a series of complex statutes outlining civic disabilities that applied to convicted criminals.⁵¹ After the fall of the Roman Empire, Germanic tribes imposed civic exclusion through a process of “outlawry.”⁵² That process conceived of crime as an offense against society, authorizing society to retaliate by, in part, stripping offenders of their civil rights.⁵³ As English law evolved, outlawry transformed into the more formal process of “attainder.”⁵⁴ Citizens convicted of serious felonies were labeled “attained,” and suffered “civil death” whereby they forfeited all civil rights and were prohibited from participating in most civic activities.⁵⁵ One such activity was appearing in court as a juror.⁵⁶

Around the time of the Founding, while colonists fought to break free of English rule, the concepts of “civil death” and the exclusion of convicted felons from jury service were part of early American jurisprudence. As early as 1799, several states imposed civil death statutes.⁵⁷ The development of such statutes signals a trend in the history of civic restrictions—the unquestioning adoption of traditional practices.

Along these lines, the only significant development in the history of felon-juror exclusion in America was the transition from subjective to objective juror eligibility criteria.⁵⁸ Around 1800, while criminal history was not a formal disqualification from juror service, the common law, civil death statutes, and other narrowing requirements (such as requirements that jurors be male property owners of good character) ensured that convicted felons almost never found their way onto a jury.⁵⁹ Only later, in 1850, when voting and jury service were formally extended to larger segments of the population, did jurisdictions begin to statutorily restrict juror eligibility.⁶⁰ By the early 1900s, felon-juror exclusion statutes were relatively common in the United States.⁶¹

Since the early 1900s, jurisdictional policies regarding felon-juror exclusion have fluctuated only minimally, sometimes evolving towards less restrictive eligibility criteria and often towards more restrictive eligibility criteria. Today, Maine is the only U.S. jurisdiction that does not restrict the opportunity for convicted felons to take part in jury service, but that was not always the case. Early in Maine’s history, it too excluded convicted felons from the jury process.

In 1652, the Massachusetts Bay Colony annexed what is now the state of Maine.

51. Mirjan R. Damaska, *Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study*, 59 J. CRIM. L., CRIMINOLOGY, & POLICE SCI. 347, 351 (1968).

52. Walter Matthews Grant et al., *The Collateral Consequences of a Criminal Conviction*, 23 VAND. L. REV. 929, 942 (1970).

53. H. Erle Richards, *Is Outlawry Obsolete?*, 18 L. Q. REV. 297, 298 (1902).

54. Grant et al., *supra* note 52, at 942.

55. *Id.* at 942-43.

56. *Id.* at 942.

57. *Id.* at 950.

58. Kalt, *supra* note 5, at 178.

59. *See id.* at 178-79; *see generally* Alec. C. Ewald, ‘Civil Death’: *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WISC. L. REV. 1045 (2002); Alec C. Ewald & Marnie Smith, *Collateral Consequences of Criminal Convictions in American Courts; The View from the State Bench*, 29 JUST. SYS. J. 145 (2008).

60. *See* Kalt, *supra* note 5, at 179-80.

61. Kalt, *supra* note 5, at 184.

From 1652 until the passage of the 1802-1803 Acts and Resolves of Massachusetts (“Acts and Resolves”), English common law governed juror eligibility in that region. Under English common law, only *liberos et legales homines* (free and lawful men) were eligible to take part in the jury process.⁶² That exclusion continued with the Acts and Resolves (Massachusetts, 1802-1803). Chapter 92 of the Acts and Resolves states “if any person, whose name shall be put into either (jury selection) box, shall be convicted of any Scandalous crime, or be guilty of any gross immorality, his name shall be withdrawn from the Box, by the Selectmen of his town.”⁶³ Thus, early in its history, Maine prohibited convicted felons from serving on juries. In 1820, as part of the Missouri Compromise, Maine achieved statehood and continued to track Massachusetts’s policy of mandatorily excluding convicted felons from jury service.⁶⁴ From 1821 to 1981, the mandatory language of Maine’s felon jury exclusion policy went virtually unchanged, stating that jury commissioners “shall” disqualify prospective jurors “convicted of a scandalous crime” or a “gross immorality.”⁶⁵

Maine’s policy regarding felonious jurors underwent its first substantive revision in 1971, when it tied a convicted felon’s right to sit on a jury to his right to vote.⁶⁶ The provision read, “[a] prospective juror is disqualified to serve on a jury if he . . . has lost the right to vote.”⁶⁷ This language, however, did not change convicted felons’ status, as Maine has never curtailed their right to vote.⁶⁸ In 1981, Maine repealed Section 1254’s mandatory exclusion of prospective jurors “convicted of any scandalous crime or gross immorality,”⁶⁹ and removed the provision linking juror eligibility to voting rights.⁷⁰ The present statute governing juror eligibility in Maine makes no mention of convicted felons. In effect, Maine has allowed convicted felons to serve as jurors since 1981 and is now the only jurisdiction that places no restriction on their opportunity to serve.

IV. CIVIC ENGAGEMENT, CRIMINAL DESISTANCE, AND JURY SERVICE

Traditionally, scholars and practitioners have viewed former offenders’ levels of community engagement as an outcome measure of reintegration and criminal desistance.⁷¹ Such a view holds that reintegration and criminal desistance, if

62. 3 WILLIAM BLACKSTONE, COMMENTARIES *352.

63. Act of Feb. 28, 1803, ch. 92, 1802-1803 Mass. Acts 173.

64. P.L. 1821, ch. 84, § 3.

65. R.S. ch. 135, § 6 (1841) (from 1821 to 1981, Maine law mandatorily excluded convicted felons from jury service.)

66. P.L. 1971, ch. 391, § 1.

67. *Id.*

68. See 21-A M.R.S.A. § 112 (2017). In an email on November 11, 2011, Sue Wright, reference librarian for the Maine State Law and Legislature Reference Library, confirmed that Maine has never taken away convicted felons’ right to vote.

69. P.L. 1981, ch. 705, § G13.

70. *Id.* § G4.

71. See generally Sherri Doherty, Pamela Forrester, Amanda Brazil & Flora I. Matheson, *Finding Their Way: Conditions for Successful Reintegration Among Women Offenders*, 53 J. OFFENDER REHAB. 562 (2014); Elaine Gunnison & Jaqueline B. Helfgott, *Factors that Hinder Offender Reentry Success: A*

successful, will *result* in the community engagement of former offenders.⁷² Other scholars argue that community engagement is a necessary precursor to successful reintegration and successful criminal desistance.⁷³ Taking this view, former offenders' success *requires* that they be given opportunities to take part in political, social, and civic processes.⁷⁴ The jury, this article suggests, is an apt opportunity for meaningful community engagement that can spawn pro-social change among former offenders.

Bazemore and Stinchcomb argue that civic engagement through democratic participation can facilitate successful reintegration.⁷⁵ In particular, they note that civic engagement fosters pro-social change at the micro, intermediate, and macro levels.⁷⁶ They suggest that civic engagement facilitates change in the self-concept of former offenders at the micro level.⁷⁷ At the intermediate level, they argue that civic engagement provides former offenders with pro-social roles, offering guidance and structure that curbs criminality.⁷⁸ Finally, at the macro level, Bazemore and Stinchcomb contend that civic engagement builds social capital and creates collective efficacy in a community. They assert that this efficacy serves as a check on criminal behavior by strengthening bonds within the community and making it more likely that the community can detect and prevent criminal activity at its early stages.⁷⁹

Bazemore and Stinchcomb's argument, proffered in the context of felon voter enfranchisement, does not consider jury service, an institution proven to prompt changes among its participants and which is arguably the most direct form of democratic participation.⁸⁰ Likewise, subsequent empirical research on civic

View from Community Corrections Officers, 55 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 287 (2011); Alison J. Shinkfield & Joseph Graffam, *Community Reintegration of Ex-Prisoners: Type and Degree of Change in Variables Influencing Successful Reintegration*, 53 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 29 (2009).

72. Shinkfield & Graffam, *supra* note 71.

73. See Kathryn J. Fox, *Theorizing Community Integration as Desistance-Promotion*, 42 CRIM. JUST. & BEHAV. 82, 91 (2015); see generally Gordon Bazemore & Carsten Erbe, *Operationalizing the Community Variable in Offender Reintegration: Theory and Practice for Developing Intervention Social Capital*, 1 YOUTH VIOLENCE & JUV. JUST. 246 (2003).

74. Fox, *supra* note 73, at 91.

75. See Bazemore & Stinchcomb, *supra* note 23.

76. See generally *id.*

77. *Id.* at 247 ("First, at the micro or social-psychological level, interactionist theories have focused attention on how the transformation of offender identities has promoted desistance and reintegration.").

78. *Id.* at 248 ("At the mid-range level, a second body of literature in life course research has documented the importance of informal social control, community support, and conventional commitments to formal roles in families, work, and other institutions as former offenders make the transition from involvement in criminal activity to law-abiding lifestyles." (emphasis omitted)).

79. *Id.* at 249-50 ("This community level research in the tradition of social disorganization theory emphasizes the differential capacity of communities to develop shared norms and values and build relationships of trust and reciprocity as social capital. Such social capital is believed to provide the basis for collective efficacy, or the capacity of community members to intervene effectively in response to crime and disorder." (emphasis omitted)).

80. GASTIL ET AL., *supra* note 21, at 49; Gastil et al., *Civic Awakening*, *supra* note 21, at 592; Gastil et al., *Participation Hypothesis*, *supra* note 21; Gastil & Weiser, *supra* note 21, at 615.

engagement and criminal desistance focuses only on the statutory restrictions on felon voting.⁸¹ Prior research on criminal desistance and the power of the jury as a transformative change agent suggests that like voting, jury service can facilitate the successful reentry of former offenders.

A. Theories of Criminal Desistance

Criminal desistance is a difficult concept to operationalize.⁸² Over time, scholars have subscribed to varying conceptions of the topic.⁸³ Drawing on Edwin Lemert's theory of deviance,⁸⁴ several scholars suggest that cessation of criminal conduct does not by itself amount to criminal desistance.⁸⁵ Instead, criminal desistance divides into three phases: primary desistance, secondary desistance, and tertiary desistance.⁸⁶

Primary desistance refers to any break from criminal activity,⁸⁷ duration notwithstanding.⁸⁸ Yet, such a break can be fleeting. Consider Maruna's reference to an old joke, "stopping smoking is easy—I do it every week."⁸⁹ This quip succinctly captures the fleeting nature of primary desistance.⁹⁰

Secondary desistance, on the other hand, involves both a break from criminal activity and a marked pro-social change in the self-concept of the former offender.⁹¹ As Maruna et al. explain, the key distinctions between primary and secondary desistance then are "identifiable and measurable changes at the level of personal

81. See, e.g., Uggen et al., *Pathways*, *supra* note 25, at 277.

82. Sam King, *Early Desistance Narratives: A Qualitative Analysis of Probationers' Transitions Towards Desistance*, 15 PUNISHMENT & SOC'Y 147, 148 (2013).

83. See, e.g., Anthony Bottoms et al., *Towards Desistance: Theoretical Underpinnings for Empirical Study*, 43 HOW. J. CRIM. JUST. 368 (2004); Shawn D. Bushway et al., *An Empirical Framework for Studying Desistance as a Process*, 39 CRIMINOLOGY 491, 491-92 (2001).

84. See generally EDWIN M. LEMERT, SOCIAL PATHOLOGY: A SYSTEMATIC APPROACH TO THE THEORY OF SOCIOPATHIC BEHAVIOR (1951).

85. See SHADD MARUNA, MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES 26-27 (2001).

86. Shadd Maruna, Russ Immarigeon & Thomas P. LeBel, *Ex-Offender Reintegration: Theory and Practice*, in AFTER CRIME AND PUNISHMENT: PATHWAYS TO OFFENDER REINTEGRATION 19 (2004) (primary and secondary criminal desistance); Fox, *supra* note 73, at 91-92 (tertiary criminal desistance).

87. Maruna et al., *supra* note 86, at 19 (defining "primary desistance" as a "lull or crime-free gap in the course of a criminal career").

88. *Id.*

89. MARUNA, *supra* note 85, at 17. This quote was originally attributed to Harris Dickson who, in response to an inquiry about whether he had quit playing poker replied, "I have; I've quit more'n a thousand times, every time the game breaks up." HARRIS DICKSON, DUKE OF DEVIL-MAY-CARE 14-15 (1905).

90. MARUNA, *supra* note 85, at 23 ("For example, a person can steal a purse on a Tuesday morning, then terminate criminal participation for the rest of the day. Is that desistance? Is it desistance if the person does not steal another purse for a week? A month? A year?").

91. See *id.*; see also NEAL SHOVER, GREAT PRETENDERS: PURSUITS AND CAREERS OF PERSISTENT THIEVES (1996); Peggy C. Giordano, Stephen, A. Cernkovich & Jennifer L. Rudolph, *Gender, Crime, and Desistance: Toward a Theory of Cognitive Transformation*, 107 AM. J. SOC. 990 (2002); Barry Vaughan, *The Internal Narrative of Desistance*, 47 BRIT. J. CRIMINOLOGY 390 (2007).

identity or the ‘me’ of the individual.”⁹² How changes in a former offender’s self-concept occur involves both intrinsic motivations and external, structural forces.⁹³

Shadd Maruna’s exceptional research on criminal desistance suggests that former offenders take an active role in their own desistance process. Specifically, someone who successfully desists from criminal activity must, at some point in the desistance process, rectify their criminal past with their new and anticipated law-abiding present and future.⁹⁴ To do so, former offenders build “desistance narratives” to explain, not excuse, past deviance.⁹⁵ One method of explanation involves the reframing of a criminal past into a constructive experience, deriving meaning and value from prior deviance.⁹⁶

Structure-centric views of criminal desistance take on various forms. Life-course theory argues that life events or “turning points” like marriage and employment shape former offenders’ attitudes and behaviors.⁹⁷ They shape former offenders in two ways: (1) as a model promoting pro-social behaviors and (2) as a boundary inhibiting anti-social behaviors.⁹⁸ When an offender fills a pro-social role, he or she is informally provided a “skeleton script” for criminal desistance.⁹⁹ He or she is also informally saddled with strictures that constrain attitudes and behaviors that may prompt criminality.¹⁰⁰

92. Maruna et al. *supra* note 86, at 19.

93. Binnall (2018), *supra* note 5, at 7.

94. MARUNA, *supra* note 85, at 87 (“[D]esisting narrators . . . maintain this equilibrium by connecting negative past experiences to the present in such a way that the present good seems an almost inevitable outcome.”).

95. *Id.*; see also King, *supra* note 82, at 152 (“[I]t is the building of a desistance narrative which underpins the development of new identities . . .”); Giordano et al., *supra* note 94; Vaughan, *supra* note 94.

96. MARUNA, *supra* note 85, at 98 (“Sometimes the benefits of having experienced crime and drug use are literal . . . Ex-offenders say they have learned from their past lives, and this knowledge has made them wiser people.”). Maruna also notes that this reframing of a criminal past often occurs through the use of what he terms a “redemption script.” *Id.* at 87.

97. John H. Laub & Robert J. Sampson, *Turning Points in the Life Course: Why Change Matters to the Study of Crime*, 31 CRIMINOLOGY 301, 304 (1993); Robert J. Sampson & John H. Laub, *A Life-Course View of the Development of Crime*, 602 ANNALS OF THE AMER. ACAD. OF POL. & SOC. SCI. 2005, at 12, 38; see also ROBERT J. SAMPSON & JOHN H. LAUB, CRIME IN THE MAKING: PATHWAYS AND TURNING POINTS THROUGH LIFE (1993) (referring to “turning points” as “triggering events”).

98. See, e.g., JOHN H. LAUB & ROBERT J. SAMPSON, SHARED BEGINNINGS, DIVERGENT LIVES: DELINQUENT BOYS TO AGE 70 (2003) [hereinafter LAUB & SAMPSON, *Shared Beginnings*]; Ross L. Matseuda & Karen Heimer, *A Symbolic Interactionist Theory of Role Transitions, Role Commitments, and Delinquency*, in DEVELOPMENTAL THEORIES OF CRIM. & DELINQUENCY (1997) [hereinafter Matseuda & Heimer, *Symbolic Interactionist*]; Karen Heimer & Ross L. Matseuda, *Role-Taking, Role Commitment, and Delinquency: A Theory of Differential Social Control*, 59 AMER. SOC. REV. 365 (1994) [hereinafter Heimer & Matseuda, *Role-Taking*]; John H. Laub & Robert J. Sampson, *Understanding Desistance From Crime*, 28 CRIME & JUST. 1 (2001) [hereinafter Laub & Sampson, *Understanding*]; Ross L. Matsueda, *Reflected Appraisals, Parental Labeling, and Delinquency: Specifying a Symbolic Interactionist Theory*, 97 AM. J. SOC. 1577 (1992).

99. Judith Rumgay, *Scripts for Safer Survival: Pathways Out of Female Crime*, 43 HOW. J. CRIM. JUST. 405 (2004); see also Giordano et al., *supra* note 91, at 1035 (referring to this concept as “cognitive blueprints”).

100. See Heimer & Matsueda, *Role-Taking*, *supra* note 98; LAUB & SAMPSON, *Shared Beginnings*, *supra* note 98; Laub & Sampson, *Understanding*, *supra* note 98.

Tertiary criminal desistance is the last phase of the criminal desistance process and accounts more fully for sociological factors.¹⁰¹ As McNeill explains, tertiary criminal desistance occurs when an offender becomes—perhaps for the first time—comfortable as a member of any given community.¹⁰² During this phase of the desistance process, aggregate or macro level, external forces promote criminal desistance by increasing a former offender’s social capital and building a level of collective efficacy in the community.¹⁰³ At this point, complete immersion in the community serves to curb criminality and operates as a necessary precursor to successful desistance.¹⁰⁴

B. Felon-Voters and Criminal Desistance

To date, only two empirical studies have explored civic participation as a means of promoting criminal desistance.¹⁰⁵ Yet, these studies focus exclusively on voting and tend to demonstrate that participation in the electorate can prompt pro-social identity changes.¹⁰⁶ More specifically, such research suggests that such changes are the result of intrinsic motivations (micro level),¹⁰⁷ and structural variables (intermediate level).¹⁰⁸

In the first empirical study of civic participation as a possible promoter of criminal desistance, Uggen et al. interviewed thirty-three prisoners, parolees, and probationers in Minnesota.¹⁰⁹ They found that subjects “link successful adult role transition to desistance from crime”¹¹⁰ and that former offenders’ civic role commitments contribute to the development and maintenance of a law-abiding identity.¹¹¹ In particular, they suggest that findings tend to show that “civic

101. Fergus McNeill, *Three Aspects of Desistance?*, IRISS (May 23, 2014), <https://blogs.iriss.org.uk/discoveringdesistance/2014/05/>.

102. Kathryn J. Fox, *Civic Commitment: Promoting Desistance Through Community Integration*, 18 PUNISHMENT & SOC’Y 68, 69 (2016) (“[T]ertiary desistance refers to the more cemented state of desistance that results from a genuine sense of belonging, or integration into a pro-social community.”).

103. See generally McNeill, *supra* note 101; Rachel N. Horan, *Restorative Justice: The Relevance of Desistance and Psychology*, 14 SAFER COMMUNITIES 147 (2015).

104. Fox, *supra* note 102, at 69 (“Much of the recent literature on desistance agrees on a simple but central point: desistance usually hinges on the ability to develop *social capital*”); see also Daniel Lederman, Norman Loayza & Ana Maria Menendez, *Violent Crime: Does Social Capital Matter?*, 50 ECON. DEV. & CULTURAL CHANGE 509, 509 (2002) (“Social capital is broadly defined as the set of rules, norms, obligations, reciprocity, and trust embedded in social relations, social structures, and society’s institutional arrangements that enables members to achieve their individual and community objectives.”).

105. MANZA ET AL., LOCKED OUT, *supra* note 25, at 137-63; Uggen et al., *Pathways*, *supra* note 25, at 261-86; Miller & Spillane, *supra* note 25. *But see* Binnall (2018), *supra* note 5, at 4 (in this prior article, I discuss the possibility that jury service may facilitate criminal desistance).

106. MANZA ET AL., LOCKED OUT, *supra* note 25, at 137-63; Uggen et al., *Pathways*, *supra* note 25, at 261-86; Miller & Spillane, *supra* note 25 (the first two studies listed analyze the same data).

107. Miller & Spillane, *supra* note 25.

108. MANZA ET AL., LOCKED OUT, *supra* note 25, at 137-63; Uggen et al., *Pathways*, *supra* note 25, at 261-86.

109. Uggen et al., *Pathways*, *supra* note 25, at 267.

110. *Id.* at 286.

111. *Id.*

reintegration and establishing an identity as a law-abiding citizen are central to the process of desistance from crime.”¹¹² Analyzing the same data set, Manza et al. found that former offenders “think of themselves as citizens” and desire to fulfill civic roles.¹¹³ Also emphasizing role commitments, they explain that “to the extent that felons begin to vote and participate as citizens in their communities, there is some evidence that they will bring their behavior in line with the citizen role, avoiding further contact with the criminal justice system.”¹¹⁴

In the second study exploring the possible effects of record-based voting restrictions on criminal desistance and reintegration, Miller and Spillane conducted semi-structured interviews with fifty-four disenfranchised convicted felons.¹¹⁵ Thirty-nine percent of participants viewed felon-voter disenfranchisement statutes as “limiting, psychologically harmful, and stigmatizing,” perceiving them to have an indirect impact on their ability to successfully reintegrate.¹¹⁶ Data suggests that disenfranchisement negatively impacts the criminal desistance process by tying former offenders to their criminal pasts, making the reconceptualization or abandonment of a criminal identity nearly impossible.¹¹⁷ Highlighting the importance of a former offender’s ability to construct a plausible desistance narrative, Miller and Spillane caution that “scholars should remain alert to the manner in which long-term forms of invisible punishment impact ex-offenders’ ability to sustain the work of developing ‘a coherent prosocial identity for themselves.’”¹¹⁸

Taken together, empirical research on the prospect that civic reintegration—in the form of voting—suggests that casting a ballot facilitates criminal desistance. At the micro level, suffrage alters the self-concept of those who live with a felony criminal conviction. At the intermediate level, enfranchisement offers convicted felons a guide; a pro-social role to fill that promotes successful reintegration and criminal desistance. At the macro level, taking part in the electoral process helps to build former offenders’ social capital by placing them in settings where new, pro-social contacts are likely to occur. Once established, such contacts create a community fabric that spawns a collective efficacy, whereby the community has a responsibility in the reentry process. No prior study explores jury service as a means of prompting such changes among former offenders.¹¹⁹

C. *The Jury as a Change Agent*

In his study of American democracy, Tocqueville recognized that the jury was more than merely a fact-finding tribunal: “To regard the jury simply as a judicial institution

112. *Id.* at 290.

113. MANZA ET AL., *LOCKED OUT*, *supra* note 25, at 163.

114. *Id.*

115. Miller & Spillane, *supra* note 25, at 410.

116. *Id.* at 423.

117. *Id.*

118. *Id.*

119. *But cf.* Binnall (2018), *supra* note 5 (discussing the possibility that jury service may facilitate criminal desistance).

would be taking a very narrow view of the matter”¹²⁰ Instead, Tocqueville conceived of the jury as a tool for educating citizens on the importance of participatory democracy.¹²¹ Tocqueville opined that the jury “vests each citizen with a kind of magistracy,” and teaches everyone “that they have duties toward society and that they take a share in its government.”¹²² Years after Tocqueville’s writings, commentators and courts have consistently lauded the jury as a crucial, educative form of civic inclusion.¹²³ Indeed, the Supreme Court has noted that “[t]he opportunity for ordinary citizens to participate in the administration of justice has long been recognized as one of the principal justifications for retaining the jury system.”¹²⁴ Similarly, Justice Breyer has reiterated the power of “active liberty.”¹²⁵ As Breyer explains, “active liberty . . . refers to a sharing of a nation’s sovereign authority among its people.”¹²⁶ Proponents of the jury argue that jury service stands as “[t]he most stunning and successful experiment in direct popular sovereignty in all history”¹²⁷

Though no prior research explores how felon-jurors experience the jury process, studies of non-felon-jurors suggest that serving as a juror can prompt positive attitudinal and behavioral changes.¹²⁸ The “deliberative participation hypothesis”¹²⁹ holds that citizen deliberation fosters further or additional civic activity by promoting

120. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 250 (J.P. Mayer & Max Lerner eds., George Lawrence trans., Harper & Row 1966) (1835).

121. *Id.* at 252 (“[The jury] should be regarded as a free school which is always open and in which each juror learns his rights . . . and is given practical lessons in the law, lessons which the advocate’s efforts, the judge’s advice, and also the very passions of the litigants bring within his mental grasp.”).

122. *Id.*

123. *See, e.g.*, Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 *YALE L. J.* 1131, 1132 (1991).

124. *Powers v. Ohio*, 499 U.S. 400, 406 (1991).

125. STEPHEN BREYER, *ACTIVE LIBERTY* 15 (2005).

126. *Id.*

127. William G. Young, *Vanishing Trials, Vanishing Juries, Vanishing Constitution*, 40 *SUFFOLK U. L. REV.* 67, 68 (2006).

128. *See, e.g.*, BENJAMIN R. BARBER, *STRONG DEMOCRACY* (1984); CAROLE PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* (1970); James L. Allen, *Attitude Change Following Jury Duty*, 2 *JUST. SYS. J.* 246, 246 (1977); Brian L. Cutler & Donna M. Hughes, *Judging Jury Service: Results of the North Carolina Administrative Office of the Courts Juror Survey*, 19 *BEHAV. SCI. & LAW* 305, 309 (2001); Richard M. Durand et al., *Previous Jury Service as a Moderating Influence on Jurors’ Beliefs and Attitudes*, 42 *PSYCHOL. REP.* 567, 570 (1978); Stephen E. Finkel, *Reciprocal Effects of Participation and Political Efficacy: A Panel Analysis*, 29 *AM. J. POL. SCI.* 891 (1985); John F. Freie, *The Effects of Campaign Participation on Political Attitudes*, 19 *POL. BEHAV.* 133 (1997); Gastil et al., *Civic Awakening*, *supra* note 21, at 592; Gastil et al., *Participation Hypothesis*, *supra* note 21, at 355; Gastil & Weiser, *supra* note 21, at 615; John Gastil et al., *Seeing Is Believing: The Impact of Jury Service on Attitudes Toward Legal Institutions and the Implications for International Jury Reform*, 48 *CT. REV.* 124, 128 (2012); William R. Pabst Jr. et al., *The Myth of the Unwilling Juror*, 60 *JUDICATURE* 164, 165 (1976); William R. Pabst Jr. et al., *The Value of Jury Duty: Seeing Is Believing*, 61 *JUDICATURE* 38, 39 (1977); Daniel W. Shuman & Jean A. Hamilton, *Jury Service – It May Change Your Mind: Perceptions of Fairness of Jurors and Nonjurors*, 46 *SMU L. REV.* 449, 458-59 (1992); Paula M. Consolini, *Learning by Doing Justice: Private Jury Service and Political Attitudes* (1992) (unpublished Ph.D. dissertation, University of California at Berkeley) (on file with author). *But see* John P. Richtert, *Jurors’ Attitudes Toward Jury Service*, 2 *JUST. SYS. J.* 233, 243-44 (1977).

129. Gastil et al., *Civic Awakening*, *supra* note 21, at 588.

political efficacy among participants.¹³⁰ Studies of the effects of jury service on non-felons support this hypothesis.

In her innovative dissertation research, Consolini found that jurors, especially first-time trial jurors, felt “more politically efficacious and community-oriented following jury service.”¹³¹ Along these lines, Gastil and Weiser discovered that jury service fosters a general sense of empowerment that frequently leads to other forms of civic engagement.¹³² Studies reveal a four to ten percent increase in voting rates among former jurors,¹³³ and a positive correlation between jury service and higher levels of involvement in civic and political activities.¹³⁴ This “participation effect” is most prominent for citizens who—like many convicted felons—were less civically or politically engaged prior to jury service.¹³⁵ Discussing the benefits of jury service, Gastil et al. explain, “organizers of orchestrated deliberative events should ensure broad participation and make special efforts to include underrepresented populations . . . beyond the general ethical imperative of inclusion that is essential to democracy, our data suggest that these populations might benefit the most from the deliberative experience.”¹³⁶

Activities that build a former offender’s self-concept, provide pro-social roles, and promote civic immersion tend to promote criminal desistance. In turn, research tends to show that taking part in the electoral process triggers these desistance mechanisms. In studies of non-felon-jurors, evidence suggests that the jury can positively transform those who take part. Drawing on empirical evidence, I argue that, like voting, serving as a juror has the potential to initiate desistance processes among former offenders.

V. MAINE’S UNIQUELY INCLUSIVE JURY SYSTEM: A FIELD STUDY

From 2012 to 2015, I conducted a field study in Maine. That field study consisted of a series of semi-structured, in-depth interviews with two groups of participants: (1) prospective and former felon-jurors,¹³⁷ and (2) court personnel involved in the screening of felon-jurors (trial judges, prosecutors, and defense attorneys).¹³⁸ Each interview was fully transcribed and subject to an open-coding, thematic approach to data analysis.¹³⁹

130. *Id.* at 587; *see also* DAVID MATTHEWS, *POLITICS FOR PEOPLE: FINDING A RESPONSIBLE PUBLIC VOICE* (1994); Mark Button & Kevin Mattson, *Deliberative Democracy in Practice: Challenges and Prospects for Civic Deliberation*, 31 *POLITY* 609 (1999).

131. Consolini, *supra* note 128, at 186.

132. Gastil et al., *Civic Awakening*, *supra* note 21, at 587, 593-94; Gastil et al., *Participation Hypothesis*, *supra* note 21, at 364.

133. Gastil et al., *Civic Awakening*, *supra* note 21, at 591.

134. *Id.* at 593-94; *see also* Gastil et al., *Participation Hypothesis*, *supra* note 21, at 365.

135. Gastil et al., *Participation Hypothesis*, *supra* note 21, at 364.

136. *Id.* (citing Archon Fung, *Deliberation’s Darker Side: Six Questions for Iris Marion Young and Jane Mansbridge*, 93 *NAT’L CIVIC REV.* 47, at 47).

137. *See* Binnall (2018), *supra* note 5, at 7-8 (describing participant data).

138. *See* Binnall, *supra* note 27 (manuscript at 11-12) (describing participant data).

139. KRISTIN G. ESTERBERG, *QUALITATIVE METHODS IN SOCIAL RESEARCH* (2001); MARTIN SCHREIER, *QUALITATIVE CONTENT ANALYSIS IN PRACTICE* (2012); *see also* Binnall (2018), *supra* note 5, at 8 (describing in detail the methods for each participant group); Binnall, *supra* note 27 (manuscript at 12) (same).

Findings reveal that Bazemore and Stinchcomb's hypothesis derives support from both former offenders and court personnel.¹⁴⁰

A. Micro Level Impacts

At the individual or micro level, civic engagement through jury service may prompt criminal desistance by helping convicted felons to build a pro-social self-concept. By extending juror eligibility to felon-jurors, Maine recognizes their value as civic contributors and “delabels”¹⁴¹ former offenders.¹⁴² Such recognition helps former offenders reconceptualize their criminal pasts as valuable lessons, rather than shameful transgressions, allowing them to begin to build a coherent desistance narrative and find self-worth.¹⁴³

In interviews with prospective and former felon-jurors in Maine, all participants indicated that inclusion in the jury process has given them a sense of self-esteem and self-confidence,¹⁴⁴ mirroring the effects of voting in prior research.¹⁴⁵ Former and

140. Findings from this field study have previously been published in two separate articles. Binnall (2018), *supra* note 5; Binnall, *supra* note 27. In all instances, direct quotations use pseudonyms.

141. Harrison M. Trice & Paul Michael Roman, *Delabeling, Relabeling, and Alcoholics Anonymous*, 17 SOC. PROBS. 538, 538 (1970).

142. See *supra* notes 93-96 and accompanying text; see also JOHN LOFLAND, *DEVIANCE AND IDENTITY* 227-28 (1969) (discussing “elevation ceremonies”); John Braithwaite & Stephen Mugford, *Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders*, 34 BRIT. J. OF CRIMINOLOGY 139 (1994) (discussing “integration ceremonies”); Thomas Meisenhelder, *An Exploratory Study of Exiting from Criminal Careers*, 15 CRIMINOLOGY 319 (1977); Thomas Meisenhelder, *Becoming Normal: Certification as a Stage in Exiting from Crime*, 3 DEVIANT BEHAV.: AN INTERDISC. J. 137 (1982) (discussing “certification processes” and “destigmatization processes”).

143. Meisenhelder (1982), *supra* note 142, at 138.

144. A wealth of research suggests that former offenders internalize external perceptions of their character and evaluations of their worth. This phenomenon or process has been termed the “looking glass,” see, e.g., CHARLES HORTON COOLEY, *HUMAN NATURE AND THE SOCIAL ORDER* (1902); GEORGE H. MEAD, *MIND, SELF AND SOCIETY: FROM THE STANDPOINT OF A SOCIAL BEHAVIORIST* (1934); HARRY STACK SULLIVAN, *CONCEPTIONS OF MODERN PSYCHIATRY* (1947); “reflected appraisals,” see, e.g., John W. Kinch, *A Formalized Theory of Self-Concept*, 68 AM. J. OF SOC. 481 (1963); Raymond Paternoster & LeeAnn Iovanni, *The Labeling Perspective and Delinquency: An Elaboration of the Theory and an Assessment of the Evidence*, 6 JUST. Q. 359 (1989); and “labeling theory,” see, e.g., Viktor Gecas & Michael L. Schwalbe, *Beyond the Looking-Glass Self: Social Structure and Efficacy-Based Self-Esteem*, 46 SOC. PSYCH. Q. 77 (1983); Ross L. Matsueda, *Reflected Appraisals, Parental Labeling, and Delinquency: Specifying a Symbolic Interactionist Theory*, 97 AM. J. OF SOC. 1577 (1992). In the present study, while Maine's inclusion of convicted felons bolstered participants' self-concepts, participants also reported negative experiences that exacerbated the felon label. See Binnall (2018), *supra* note 5, at 21; see also HOWARD S. BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* (1963); JOHN BRAITHWAITE, *CRIME, SHAME, AND REINTEGRATION* (1989); Henri Tajfel & John C. Turner, *The Social Identity Theory of Intergroup Relations*, in *PSYCHOLOGY OF INTERGROUP RELATIONS* 5 (Stephen Worchel & William G. Austin eds., 1986); Andreas Aresti, Virginia Eatough, & Belinda Brooks-Gordon, *Doing Time After Time: An Interpretative Phenomenological Analysis of Reformed Ex-Prisoners' Experiences of Self-Change, Identity and Career Opportunities*, 16 PSYCHOL. CRIME & L. 169 (2010); Brenda Major & Laurie T. O'Brien, *The Social Psychology of Stigma*, 56 ANN. REV. OF PSYCHOL. 393 (2005); Devah Pager & Lincoln Quillian, *Walking the Talk: What Employers Say Versus What They Do*, 70 AM. SOC. REV. 355 (2005); David M. Rasmussen, *Rethinking Subjectivity: Narrative Identity and the Self*, 21 PHIL. & SOC. CRITICISM 159 (1996).

145. See MANZA ET AL., *LOCKED OUT*, *supra* note 25, at 137-63; Uggen et al., *Pathways*, *supra* note 25, at 261-86; Miller & Spillane, *supra* note 25, at 422-23.

prospective felon-jurors consistently discussed Maine's policy of inclusion as a form of delabeling that mitigates the stigma of a criminal conviction:

I mean [felon jury inclusion] kinda sends a message that . . . the courts . . . won't always exclude you from . . . sitting on, you know, civic duty. They may not always select you and you may not always be needed, but . . . you can say you tried. You showed up when you got served. [T]his side, you know, always having, again, having looked at things from the unlawful side and then the court says, "Well, we need you to, we need your help to make some of the right decisions." And it's kinda cool They said, "We're gonna hand you this responsibility. Do you what you need to do with it." You're not used to being, when you're not used to being given responsibility and always being left out because, "Oh, screw that guy. You know, he's got a record. We don't need his help. We'll find somebody . . . who obeys the law and always makes the right decisions." So it's like, wow. They're gonna give me responsibility and, you know, try to get me to make the right decision.¹⁴⁶

Another former felon-juror explained further:

I mean, [jury service] gives you, [the State] *gives you a responsibility to do somethin'*. I mean, anywhere else you go, you can't do nothing, you're like segregated from everybody else Jury service made me feel better, because I mean, right now, as it stands, I mean, it feels like I'm being segregated from everybody else. I feel like . . . we're back in time where it was blacks against whites, and blacks couldn't go to white schools, blacks couldn't sit at the front of the bus. Now it's the same for convicted felons.¹⁴⁷

Other participants with a felony criminal history who were called to jury duty but were ultimately dismissed shared similar sentiments. For example:

Well, [being a convicted felon] just makes, you know, it kind of makes you feel like you're lower . . . than the rest of the community . . . like you ain't no good or anything. . . . It makes you feel kind of lower. . . . like you're not human, you know, or somethin' like that. But, it was alright when I got that [jury summons] Sometimes I feel really . . . ashamed that I've been in trouble, and when I was called to serve on a jury trial, it's more like, you know, it's more like, "Oh, yeah. I'm part of society."¹⁴⁸

Almost all participants went on to explain how the state's acceptance altered how they viewed themselves and how prior experiences made them more valuable jurors.¹⁴⁹ In this way, participants reconceptualized their criminal pasts to find self-worth:

I think it's very valuable because you also see the other side of things, you know? If you've never been there you don't really see that side of it. But if you've already been there you can see both sides equally, rather than favoring to one side or the other. I think it makes almost like a fairer juror than, you know, somebody that

146. Binnall (2018), *supra* note 5, at 16 (quoting Mike, a convicted felon and former juror).

147. *Id.* at 16-17 (quoting Jack, a convicted felon and former juror).

148. *Id.* at 17 (quoting Keith, a convicted felon who was called and then dismissed from jury service).

149. *See id.* at 10-17.

doesn't know the experiences from the other side.¹⁵⁰

Other participants explained the exact mechanisms that make former offenders exceptional jurors, suggesting that those who have been through the criminal justice system have a unique ability to assess the voracity of evidence:

[Former offenders] have seen both sides. You know what I mean . . . you can't bullshit a bullshitter. You know what I mean? Like you know, been there, done that . . . You can tell if someone's trying to bullshit you or someone, you know, you know the lies because you've said the lies. You've lived that life.¹⁵¹

Like former offenders, court personnel in Maine tended to view inclusion as a means of delabeling and destigmatizing those with a felony criminal history:

I also think that there might be felons out there that to some extent, it might be redemptive to some extent, it might be rehabilitative for them to understand that, at least to this extent they're permitted back into the functioning of society, and society still has a place for them, and still places value on their efforts, and is interested in their input.¹⁵²

Court personnel also expressed confidence in felon-jurors, suggesting that those who have experienced the system bring something unique and valuable to the jury process, serving impartially and perhaps educating other jurors:

I think they're gonna come with a lot more of an open mind versus somebody who has never been part of a system. So, I just think that those folks, generally speaking, come to the table ready to listen to both sides equally.¹⁵³

I definitely think that they might enlighten some of the other jurors. I just think they might cause the other members of the jury to think a little bit more about what a reasonable doubt is. And, I think because they have been subjected to the process, I don't necessarily think that it's a negative.¹⁵⁴

Former offenders and courtroom personnel overwhelmingly categorized Maine's inclusive juror eligibility criteria as an effective method with which to "delabel" those with a felony criminal history. Both groups of participants also emphasized the value of a criminal record in the context of jury service. For former offenders, this value helped them to create a coherent desistance narrative,¹⁵⁵ rectifying their criminal pasts with their present law-abiding lives by conceiving of prior deviance as a valuable life experience to be exploited rather than hidden.¹⁵⁶ This led to a more positive self-assessment. Courtroom personnel seemingly corroborated this belief, also suggesting that felon-jurors bring value to the jury

150. *Id.* at 19 (quoting Billy, a convicted felon and former juror).

151. *Id.* at 20 (quoting Lisa, a convicted felon and former juror).

152. Binnall, *supra* note 27 (manuscript at 18) (quoting Defense Attorney Paul).

153. *Id.* (manuscript at 17) (quoting Defense Attorney Zachary).

154. *Id.* (quoting Defense Attorney Raleigh).

155. MARUNA, *supra* note 85, at 117 (the "self-narrative frequently involves reworking a delinquent history into a source of wisdom").

156. J. David Brown, *The Professional Ex: An Alternative for Exiting the Deviant Career*, 32 THE SOC. QUART. 219-30 (1991).

process, despite their prior deviance and negative contact with the criminal justice system. In this way, data support the proposition that felon-juror inclusion operates to facilitate criminal desistance at the micro-level.

B. Intermediate Level Impacts

At the intermediate level, civic inclusion impacts criminal desistance by providing former offenders pro-social roles.¹⁵⁷ Research demonstrates that offenders who fill such roles are more likely to desist from criminal activity.¹⁵⁸ Pro-social roles provide former offenders a guide for law-abiding behavior and constraints on potential deviance.¹⁵⁹ Over time, studies suggest, the adoption of pro-social roles serves to alter former offenders' self-concepts, such that desistance follows.¹⁶⁰

In the present study, former offenders placed significant value on jury service, contemplating the exercise as one of utmost civic importance. As one former felon-juror explained, "When you're sitting on the legal side of it, you know, wow! It's like, I can't believe I was sitting on that side and now I'm over here, you know, deciding someone else's fate."¹⁶¹ Participants also described the ideal juror's role, accurately detailing a juror's duties:

If you're a juror and you're to do the job of a juror, in the state of Maine you have to prove without a reasonable doubt that the person's guilty or not guilty. So if the facts don't back up what's being, you know, brought against them then no, they shouldn't go to jail. But I mean if everything's in black and white and they're guilty, then obviously they should be found guilty.¹⁶²

Participants, both former jurors and prospective jurors, then described their experiences or intentions with respect to filling this pro-social role:

I just said . . . "you gotta go from what you really see." Cause, there was like two ladies that had never been on a jury, and they were like, "We're not gonna make no decisions." And, I said, "You have to go with what you see. The evidence. Everything that you get, that we've already been through, you have to weigh that out. You can't just say yes or no . . ." I even got up and put all this stuff on the chalkboard that, the pros and cons.¹⁶³

I think I would more take in . . . the facts that were presented to the jury and go from there because I've known people that have had the same charge as me, and, you know, they pretty much get away with it. Um, but, you know, there are some people that, you know, it depends on like why they did it. Like in my instance. I did it because I was homeless, I had no money, and I was trying to survive. But if it were somebody that was doing it, you know, just because, you know, just for the thrill of

157. See *supra* notes 96-99 and accompanying text.

158. *Id.*

159. *Id.*

160. *Id.*

161. Binnall (2018), *supra* note 5, at 10 (quoting Mike, a convicted felon and former juror).

162. *Id.* (quoting Jen, a convicted felon and a prospective juror).

163. *Id.* (quoting Chris, a convicted felon and a former juror).

it, I would not be sympathetic whatsoever.¹⁶⁴

These experiences and aspirations tend to contradict the inherent bias rationale for felon-juror exclusion. All former offenders in the present study reported serving or intending to serve impartially, undermining the assumption that those who have had contact with the criminal justice system will uniformly favor criminal defendants. Interviews with courtroom personnel, in particular judges' opinions, align with these statements made by former offenders:

[W]ith the only information being that somebody's been convicted of a felony . . . you couldn't predict how they would react to, with just the basis of conviction it would it be difficult to predict how they would react or be fair in the state's case of a police officer testimony or that kind of a thing. Having said that, as a judge I've found that most people who are convicted of crimes kind of understand that the system is doing its job and it's kind of viewed as a cost of doing business in many occasions. And provided you treat them with a level of respect, I think they actually walk out of their conviction with a sense that the system works.¹⁶⁵

I actually remember within the past month or two, having someone on trial for . . . residential burglary, and having someone in the jury pool with several burglary convictions, and thinking, "Ah, yeah, probably don't want, you know." But I mean, it's hard to know how that falls The conventional argument would be that it favors the defendant because . . . there'll be this sort of fraternity of criminals or what have you. But, there's also an argument that if someone was convicted of something . . . they want to make sure that justice is done the next time around, and they're going to convict someone if that person deserves it . . . maybe even if they don't.¹⁶⁶

Evidence in the present study seemingly supports prior research suggesting that former offenders are able to define pro-social civic roles and seek to fill those roles thoughtfully and effectively. In the context of jury service, participants expressed a desire to "live up to" their accurate image of the ideal juror and courtroom personnel took issue with the inherent bias rationale, calling on prior experiences in questioning its veracity. In sum, data tends to demonstrate that at the intermediate level, inclusion of convicted felons in the jury process may contribute to successful reentry and reintegration by offering former offenders a pro-social outlet they understand and seek to engage.

C. Macro Level Impacts

At the macro level, Bazemore and Stinchcomb argue that reintegrating former offenders into the civic fold increases their social capital and builds collective efficacy, triggering wholehearted community investment in the reentry process.¹⁶⁷ Such an investment helps to facilitate criminal desistance by curbing the social

164. *Id.* at 11 (quoting Tom, a convicted felon and prospective juror).

165. Binnall, *supra* note 27 (manuscript at 21) (quoting Judge Irwin).

166. *Id.* (manuscript at 15) (quoting Judge Edwards).

167. See generally Bazemore & Stinchcomb, *supra* note 23.

disorganization characteristic of communities with high levels of incarceration.¹⁶⁸ Accordingly, many scholars suggest that meaningful reintegration is a necessary precursor to, rather than an outcome of, successful reentry and criminal desistance.¹⁶⁹

Shaw and McKay's social disorganization theory holds that community level influences or ecological factors can contribute to criminality and undercut efforts to promote criminal desistance.¹⁷⁰ Those factors include: economic status, degree of residential mobility, and the extent of ethnic heterogeneity.¹⁷¹ Later research identified additional factors, such as family arrangement, unemployment, structural density, and urbanization,¹⁷² which may also promote social disorganization and, in turn, criminal activity.¹⁷³

In their seminal contribution to the theory, Rose and Clear argue that incarceration contributes to social disorganization.¹⁷⁴ They suggest that incarceration and reentry can be conceptualized as "coercive mobility," whereby "the effects of formal social efforts at Time 1 [imprisonment] produce neighborhood dynamics at Time 2 that are similar to those resulting from the voluntary mobility

168. See Dina R. Rose & Todd R. Clear, *Incarceration, Social Capital, and Crime: Implications for Social Disorganization Theory*, 36 CRIMINOLOGY 441 (1998).

169. See, e.g., Fox, *supra* note 76; Fox, *supra* note 105.

170. See CLIFFORD R. SHAW & HENRY D. MCKAY, *JUVENILE DELINQUENCY AND URBAN AREAS* (1942); see also RUTH ROSNER KORNHAUSER, *SOCIAL SOURCES OF DELINQUENCY: AN APPRAISAL OF ANALYTICAL MODELS* 63 (1978) (describing social disorganization and noting that, "[s]ocial disorganization exists . . . when the structure and culture of a community are incapable of implementing and expressing the values of its own residents"); RONALD J. SAMPSON, *GREAT AMERICAN CITY: CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT*(2012); CLIFFORD R. SHAW ET AL., *DELINQUENCY AREAS* (1929); Robert J. Sampson, *Organized for What? Recasting Theories of Social (Dis)organization*, in *CRIME & SOCIAL ORGANIZATION* (2001); Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 SCI. 918, 918 (1997).

171. See generally SHAW & MCKAY, *supra* note 170.

172. See Dina R. Rose & Todd R. Clear, *Incarceration, Reentry, and Social Capital: Social Networks in the Balance*, in *PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES* (Jeremy Travis & Michelle Waul eds., 2003).

173. A number of studies have theorized about how social disorganization leads to crime. See Robert J. Bursik Jr., *Social Disorganization and Theories of Crime and Delinquency: Problems and Prospects*, 26 CRIMINOLOGY 519, 521 (1988) ("Population turnover and heterogeneity are assumed to increase the likelihood of disorganization for the following reasons: 1) [i]nstitutions pertaining to internal control are difficult to establish when many residents are 'uninterested in communities they hope to leave at the first opportunity;' 2) [t]he development of primary relationships that result in informal structures of social control is less likely when local networks are in a continual state of flux; 3) [h]eterogeneity impedes communication and thus obstructs the quest to solve common problems and reach common goals."); see also ROBERT J. BURSİK, JR. & HAROLD G. GRASMICK, *NEIGHBORHOODS AND CRIME: THE DIMENSIONS OF EFFECTIVE COMMUNITY CONTROL* (1993); Jeffrey D. Morenoff & Robert J. Sampson, *Violent Crime and the Spatial Dynamics of Neighborhood Transition: Chicago, 1970-1990*, 76 SOC. FORCES 31 (1997); Robert J. Sampson & W. Byron Groves, *Community Structure and Crime: Testing Social Disorganization Theory*, 94 AMER. J. SOC. 774 (1989); Sampson et al., *supra* note 170; Pamela Wilcox Rountree & Barbara D. Warner, *Social Ties and Crime: Is the Relationship Gendered?*, 37 CRIMINOLOGY 789 (1999).

174. Rose & Clear, *supra* note 168.

typically modeled by theorists of social disorganization.”¹⁷⁵ Incarceration prompts social disorganization directly by removing citizens from their communities for a period of time.¹⁷⁶ Indirectly, incarceration prompts social disorganization through a vast network of record-based collateral sanctions that prevent former offenders from meaningfully reintegrating into their communities.¹⁷⁷ The resulting social disorganization leads to delinquency by destroying social networks and, in turn, diminishing levels of social capital and collective efficacy in a given community.¹⁷⁸ Felon-juror exclusion statutes are part of that broader effect.

Describing their experiences as jurors in Maine, several participants detailed their own personal encounters with members of the community. In many instances, these ironic encounters with courtroom security staff vividly illustrate how civic immersion has the potential to create social networks and social capital:

It was like . . . I'd never had any problems. I was the same as everybody else in the room. Even . . . one of the courtroom marshals, who was in there when I got sentenced, he knew who I was. He was like, “I remember you.” And then he got me coffee! So that was pretty cool, I felt like the score had been . . . evened out.¹⁷⁹

I felt like . . . I wasn't trying to get away with something, it just felt like I was not judged by somebody. Because, I was there the whole time. Everybody, you know, all the guards treated me with respect like everybody else. They fed us. They, you know, it was just like a normal thing.¹⁸⁰

Courtroom personnel—in particular, members of Maine's judiciary—also discussed the value of reintegration. Nearly all participants discussed inclusion as a positive policy, suggesting that collateral sanctions that permanently banish former offenders are ultimately counterproductive to communities:

You don't want to be stigmatizing people or categorizing people, in a situation where they . . . wear the scarlet “A” forever. I mean, you know, Nathaniel Hawthorne is a graduate of Bowdoin, which is a school up here [in Maine] What we're really saying to people is we're not going to just put you in a box, we're going to actually take a look at you and make a decision on you, and not simply [use] some category you might be in as a result of events which transpired

175. Todd R. Clear, Dina R. Rose, Elin Waring & Kristen Scully, *Coercive Mobility and Crime: A Preliminary Examination of Concentrated Incarceration and Social Disorganization*, 20 JUST. QUART. 33, 34-35 (2003).

176. Rose & Clear, *supra* note 172.

177. *Id.*; see also Alec C. Ewald, *Collateral Sanctions*, in OXFORD RESEARCH ENCYCLOPEDIAS: CRIMINOLOGY AND CRIMINAL JUSTICE (2017); Christopher Mele & Teresa A. Miller, *Collateral Civil Penalties as Techniques of Social Policy*, in CIVIL PENALTIES, SOCIAL CONSEQUENCES 9 (Christopher Mele & Teresa A. Miller eds., 2005); Michael Leo Owens & Adrienne R. Smith, “*Deviants*” and *Democracy: Punitive Policy Designs and the Social Rights of Felons as Citizens*, 40 AMER. POL. RES. 531 (2012); Devah Pager, *The Mark of a Criminal Record*, 108 AMER. J. SOC. 937 (2003).

178. Rose & Clear, *supra* note 172, at 316 (noting that “in high-incarceration neighborhoods, incarceration and reentry produce significant rates of residential mobility, a condition associated with disrupted social networks and diminished community stability.”).

179. Binnall (2018), *supra* note 5, at 15-16 (quoting Doug, a convicted felon and former juror).

180. *Id.* at 16 (quoting Chris, a convicted felon and former juror).

beforehand.¹⁸¹

I think one pays attention to what a person's done in the past, but . . . it just can't be the determinate To say that you . . . did something at 19, 20, or 25, you know 10, 20, 30, 25 years, whatever later, you are still that same person—you might be, you might not [be] We have to have some optimism, as judges, that some people have turned things around. And, a lot do, which is really encouraging. Some don't, which is . . . hard, but a lot of people get their lives in order, and so, I would certainly not want to hold that against them permanently.¹⁸²

For other judges, the value of civic inclusion seemed obvious, as an appropriate means of helping former offenders feel as though they are part of the fabric of a society and that they have a hand in determining the direction of their community:

I see a benefit in bringing felons back into, or allowing felons to serve on juries, and that is the sense of reintegration into society that we are, the person has been convicted, they've served their time, that where society a whole, the belief in second chances, and that telling them that they can't serve on juries is a punishment that is, that goes to the heart of what we do as citizens. And, it would be better to have them vested in the rights of citizenship than to have them feel as if they're alienated from those rights.¹⁸³

Maine's unique policy of including convicted felons in the jury process builds collective efficacy in the community by placing former offenders in pro-social situations with other members of the community and asking those offenders to use their prior experiences and knowledge to enhance an indispensable civic practice. Data tends to show that offenders do make pro-social community links through jury service (even with individuals assumedly outside of potential networks) and that courtroom personnel place value on these linkages, promoting such connections by treating felon-jurors as they would any other prospective juror. In these ways, Maine realizes the value of social networks, collective efficacy, and the exercise of informal social control.¹⁸⁴ These findings lend support to the hypothesis that felon-juror inclusion ostensibly promotes criminal desistance at the macro level.

VI. THE BENEFITS OF THE "MAINE WAY"

In his study of American democracy, Tocqueville famously wrote:

[The jury] should be regarded as a free school which is always open and in which each juror learns his rights, comes into daily contact with the best-educated and most enlightened members of the upper classes, and is given practical lessons in the law, lessons which the advocate's efforts, the judge's advice, and also the very passions of the litigants bring within his mental grasp. I think that the main reason for the practical intelligence and the political good sense of Americans is their long experience with juries¹⁸⁵

181. Binnall, *supra* note 27 (manuscript at 18-19) (quoting Judge Hjelm).

182. *Id.* (manuscript at 20-21) (quoting Judge Denny).

183. *Id.* (manuscript at 18) (quoting Judge Billings).

184. *See generally* Rose & Clear, *supra* note 172.

185. DE TOCQUEVILLE, *supra* note 120, at 252-53.

Like Tocqueville, the Supreme Court has long recognized the value of jury service and the transformative power of the jury.¹⁸⁶ Historically, judges have used the jury as a public classroom, educating jurors on law and politics.¹⁸⁷ Still, the Supreme Court seemingly discounts this fundamental benefit of the jury system in the context of former offenders, tacitly endorsing the exclusion of convicted felons from jury service.¹⁸⁸ Maine, on the other hand, prioritizes inclusion and exploits the educative function of the jury. In turn, Maine ostensibly eschews common, empirically tenuous conceptualizations of criminal offenders and the threat they allegedly represent, while championing former offenders' strengths and, as data tends to demonstrate, perhaps prompting successful criminal desistance in the process.

A. *Overcoming Outmoded, Unsupported Presumptions*

At the time of the Founding, the notion of "civil death" was an accepted part of American jurisprudence.¹⁸⁹ Jurisdictions prohibited convicted criminals from taking part in civic activities, including jury service, principally as retribution for their indiscretions. Ostracism was also thought to serve as a general deterrent to other potential deviants who assumedly feared banishment from their communities.¹⁹⁰ In this way, the rationales for civil death took on a moral quality, pitting reputable law-abiding citizens against those who strayed from recognized law.

Criminologist David Garland argues that tactics like this implicate the "criminology of the other."¹⁹¹ Professedly focused on the "upholding of law and

186. See, e.g., *Powers v. Ohio*, 499 U.S. 400, 407 (1991) ("Indeed, with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process."); *Duncan v. Louisiana*, 391 U.S. 145, 187 (1968) ("It affords ordinary citizens a valuable opportunity to participate in an opportunity of government, an experience fostering, one hopes, a respect for the law.").

187. Jenia Iontcheva, *Jury Sentencing as Democratic Practice*, 89 VA. L. REV. 311, 323 (2003) ("Federal judges in the early republic appreciated the educative potential of jury service and used jury charges to instruct jurors not only on the case before them, but on the criminal law generally or even on political matters of the day."); Neal Katyal, *Judges as Advicegivers*, 50 STAN. L. REV. 1709 (1998); CHARLES WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY*, 58-59 (1929) (describing how citizens in the early republic learned about federal circuit courts: "[i]t was, in fact, almost entirely through their contact with the Judges sitting in these Circuit Courts that the people of the country became acquainted with this new institution, the Federal Judiciary; and it was largely through the charges to the Grand Jury made by these Judges that the fundamental principles of the new Constitution and Government and the provisions of the Federal statutes and definition of the new Federal criminal legislation became known to the people.").

188. *Carter v. Jury Comm'n of Greene Cty.*, 396 U.S. 320, 324, 332 (1970) ("Everyone thereon is considered to be qualified and remains on the roll unless he dies or moves away (or, presumably, is convicted of a felony) The States remain free to confine the selection to citizens, to persons meeting specified qualifications of age and educational attainment, and to those possessing good intelligence, sound judgment, and fair character. 'Our duty to protect the federal constitutional rights of all does not mean we must or should impose on states our conception of the proper source of jury lists, so long as the source reasonably reflects a cross-section of the population suitable in character and intelligence for that civic duty.'" (quoting *Brown v. Allen*, 344 U.S. 443, 474 (1953))).

189. Binnall, *supra* note 27; see also *supra* notes 52-56 and accompanying text.

190. Grant et al., *supra* note 52, at 942.

191. David Garland, *The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society*, 36 BRIT. J. CRIMINOLOGY 445, 446 (1996); see also Katja Franco Aas,

order, the assertion of absolute moral standards, [and] the affirmation of tradition and commonsense,”¹⁹² the criminology of the other presumes that those who have committed criminal offenses are fundamentally different than those without a criminal record.¹⁹³ As Garland notes, “[t]here can be no mutual intelligibility, no bridge of understanding, no real communications between ‘us’ and ‘them.’”¹⁹⁴

Such retributive justifications in favor of excluding convicted felons from jury service operate in a type of feedback loop, authorizing banishment because of the differentness attributed to convicted felons, while also corroborating convicted felons’ anti-social distinctiveness by pointing to their ostracism from civic life. As one scholar explains in the context of felon-voter disenfranchisement:

Disenfranchisement is based not upon what we believe but upon what it allows us to believe. The notions that felons have freely chosen to renege on a social contract or are morally defective outsiders lacking the necessary virtues for political citizenship follow from, rather than explain, a pre-existing sense that ex felons cannot be members of the community. This deep impulse contributes to a self-perpetuating, self-congratulatory belief system that shapes our conceptions of citizenship and criminality, and that forms the basis of ex-felon disenfranchisement.¹⁹⁵

Modern criminal justice policy has tended to move away from moral justifications for civic banishment.¹⁹⁶ Assessments, evaluations, and actuarial tabulations of risk now drive many of these policies.¹⁹⁷ This “new penology”¹⁹⁸ ostensibly retreats from the criminology of the other—though its influence is undeniable—calling on categorical risk accounting in an effort to protect “us” from

Analysing a World in Motion: Global Flow Meets “Criminology of the Other,” 11 THEORETICAL CRIMINOLOGY 283 (2007); Simon Hallsworth, *Rethinking the Punitive Turn: The Economics of Excess and the Criminology of the Other*, 2 PUNISHMENT & SOC’Y 145 (2000).

192. DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 184 (2001).

193. *Id.* (“It [the criminology of the other] is also deeply illiberal in its assumption that certain criminals are ‘simply wicked’ and in this respect intrinsically different from the rest of us.”).

194. *Id.* (“Being intrinsically evil or wicked, some offenders are not like us. They are dangerous others who threaten our safety and have no calls on our fellow feeling.”).

195. *The Disenfranchisement of Ex-Felons: Criminality, Citizenship, and the ‘Purity of the Ballot Box’*, 102 HARV. L. REV. 1300, 1310 (1989).

196. DAVID GARLAND, *PUNISHMENT AND MODERN SOCIETY: A STUDY IN SOCIAL THEORY*, 185-86 (1990) (“To the extent that this ideology influenced penal legislation and penal policy—and it do so to a considerable extent—these professional groups succeeded in transforming the culture of punishment. They introduced the rationality of value-neutral science, a technical ‘non-judgmental’ vocabulary, a ‘passion for classification,’ and a horror of emotional forces, into a sphere which was previously dominated by candid morality and openly expressed sentiment.”).

197. See Malcolm Feeley, *Actuarial Justice and the Modern State*, in PUNISHMENT, PLACES, AND PERPETRATORS 62 (Gerben Bruinsma, Henks Ellfers & Jan De Keijser eds., 2012); Malcolm Feeley & Jonathan Simon, *Actuarial Justice: The Emerging New Criminal Law*, in THE FUTURES OF CRIMINOLOGY 173 (D. Nelken eds., 1994); Malcolm Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and its Implications*, 30 CRIMINOLOGY 449, (1992) [hereinafter Feeley & Simon, *New Penology*]; Mona Lynch, *Waste Managers: The New Penology, Crime Fighting, and Parole Agent Identity*, 32 L. & SOC’Y REV. 839 (1998); Jonathan Simon, *The Ideological Effects of Actuarial Practices*, 22 L. & SOC’Y REV. 771 (1988).

198. See Feeley & Simon, *New Penology*, *supra* note 197.

“them.”¹⁹⁹ As is the case with felon-juror exclusion, many of the collateral consequences of a criminal conviction are now premised on risk-centric rationales.²⁰⁰

Justifications for felon-juror exclusion hold that convicted felons, if allowed to serve, would jeopardize the adjudicative process.²⁰¹ Presumably, a lack of character and an inherent bias make the presence of convicted felons a liability for any jury system. Though initially imposed as a matter of retribution, felon-juror exclusion statutes have taken on a decidedly deficit-based, risk-centric premise.²⁰²

Maine’s inclusive jury system does not differentiate between felon-jurors and non-felon-jurors.²⁰³ In both instances, Maine employs voir dire, an established screening mechanism for assessing each prospective juror—felon and non-felon—using similar criteria.²⁰⁴ By doing so, Maine accepts those with a felony criminal history and dispels categorical assumptions, overcoming the criminology of the other, while appropriately confronting alleged risk by using tailored, individualized procedures.²⁰⁵

Arguably, Maine’s approach goes even further than simply dispelling myths about those with a felony criminal conviction. Inclusion also recognizes the qualities and attributes of those with a felony criminal history. This perspective stands in stark contrast to deficit-based models focused exclusively on the threat convicted felons may pose. In this way, Maine’s approach, though long-standing, is decidedly progressive, aligning with contemporary criminological research supporting strengths-based approaches to reentry and reintegration.²⁰⁶

199. See *id.* (comparing the “Old Penology” to the “New Penology”).

200. See, e.g., William G. Staples, *The Everyday World of House Arrest: Collateral Consequences for Families and Others*, in CIVIL PENALTIES, SOCIAL CONSEQUENCES (2005) (house arrest); Miriam J. Aukerman, *The Somewhat Suspect Class: Towards a Constitutional Framework for Evaluating Occupational Restrictions Affecting People with Criminal Records*, 7 J.L. & SOC’Y 18, 73 (2005) (occupational licensing); Teresa A. Miller, *Citizenship and Severity: Recent Immigration Reforms and the New Penology*, 17 GEO. IMMIGR. L.J. 611 (2003) (immigration regulations); Michael Pinard, *Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457, 494 (2010) (public benefits); Jonathan Simon, *Managing the Monstrous: Sex Offenders and the New Penology*, 4 PSYCH. PUB. POL’Y & L. 452 (1998) (sex offender restrictions); Meghan L. Schneider, *From Criminal Confinement to Social Confinement: Helping Ex-Offenders Obtain Public Housing with a Certificate or Rehabilitation*, 36 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 335 (2010) (housing); Naomi F. Sugie, *Punishment and Welfare: Paternal Incarceration and Families’ Receipt of Public Assistance*, 90 SOC. FORCES 1403 (2012).

201. Binnall (2014), *supra* note 5; Kalt, *supra* note 5, at 69.

202. Kalt, *supra* note 5.

203. Maine’s juror eligibility statute makes no mention of citizens with a felony criminal history. See 14 M.R.S.A. § 1211 (2017) (“A prospective juror is disqualified to serve on a jury if that prospective juror is not a citizen of the United States, 18 years of age and a resident of the county, or is unable to read, speak and understand the English language.”).

204. Binnall, *supra* note 27 (manuscript at 10).

205. *Id.* at 10-11.

206. See, e.g., Michael D. Clark et al., *The Strengths Perspective in Criminal Justice*, in THE STRENGTHS PERSPECTIVE IN SOCIAL WORK PRACTICE 122-46 (Dennis Saleebey ed., 2009); Shadd Maruna & Thomas P. LeBel, *Strengths-Based Restorative Approaches to Reentry: The Evolution of Creative Restitution, Reintegration, and Destigmatization*, in POSITIVE CRIMINOLOGY 65-84 (2015); Gordon Bazemore & Rachel Boba, *‘Doing Good’ to ‘Make Good’: Community Theory for Practice in a Restorative Justice Civic Engagement Reentry Model*, 46 J. OFFENDER REHABILITATION 25, 38, 42

B. Criminal Desistance: The Not-So-Hidden Reward for Inclusion

Bazemore and Stinchcomb have argued that civic engagement promotes successful reintegration at the micro, intermediate, and macro levels.²⁰⁷ Theories of criminal desistance support their hypothesis,²⁰⁸ as does prior empirical research on felon-voter enfranchisement.²⁰⁹ The present field study in Maine was the first to focus on Bazemore and Stinchcomb's argument in the context of jury service and the data tends to show that like felon-voter enfranchisement, felon-juror inclusion has the potential to facilitate successful reintegration and criminal desistance at the micro, intermediate, and macro levels.

At the micro level, by extending juror eligibility to convicted felons, the state corroborates former offenders' reformation. Inclusion sends a signal to former offenders that they have 'done their time' and are now welcome back into the civic fold. Former offenders then seemingly internalize that signal, in line with prior research on identity formation, often finding value in their deviant pasts.²¹⁰ In this way, Maine helps former offenders build individual desistance narratives that help to rectify internal conflicts between a criminal past and present lawfulness.²¹¹

At the intermediate level, including convicted felons in the jury process provides them a pro-social role to fill. Convicted felons understand that role and seek to take part in the process thoughtfully. In line with structural theories of criminal desistance, such role formation and adoption provide former offenders a template to "live up to," as well as constraints that have the potential to curb deviance.²¹² In the present study, former and prospective felon-jurors understood the 'ideal juror' role, sought to fill that role, and seemingly adjusted their behaviors accordingly. The experiences of courtroom personnel support that conclusion.²¹³

At the macro level, Maine's inclusive juror eligibility criteria create opportunities for pro-social contact between "us" and "them." Former and prospective felon-jurors report a host of interactions that gave rise to feelings of self-confidence and validation—contacts that build social capital and collective efficacy.²¹⁴ Courtroom personnel recognize this positive feature of felon-juror inclusion, noting that permanent exclusions obliterate any hope of former offenders building meaningful community connections and bringing the already marginalized back into pro-social civic contexts.²¹⁵

Taken together, data derived from the present study suggests that jury service

(2007); Bronwyn A. Hunter, et al., *A Strengths-Based Approach to Offender Reentry: The Fresh Start Prisoner Reentry Program*, 60 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 1298, 1300

(2016); Shadd Maruna & Thomas P. LeBel, *Welcome Home? Examining the 'Reentry Court' Concept from a Strengths-Based Perspective*, 4 WESTERN CRIMINOLOGY REV. 91 (2003).

207. Bazemore & Stinchcomb, *supra* note 23, at 247-50.

208. *See supra* Section V.A.

209. *See supra* Section V.B.

210. *See supra* notes 93-95, 140-42 and accompanying text.

211. *See supra* notes 96-99, 153-54 and accompanying text.

212. *See supra* notes 96-99 and accompanying text.

213. *See generally* Binnall, *supra* note 27.

214. *See supra* notes 100-03, 167-77 and accompanying text.

215. *See generally* Binnall, *supra* note 27.

can transform those who take part. In line with prior studies demonstrating that taking part in the jury process prompts other forms of civic participation and bolsters citizens' views of the legitimacy of the justice system,²¹⁶ jury service may also give rise to additional societal benefits by stimulating criminal desistance mechanisms and facilitating the successful reentry of citizens living with a felony criminal history.

To be sure, evidence does not suggest that Maine's reentering population is not without struggle. To the contrary, many participants expressed reentry frustrations, in particular in the areas of housing and employment.²¹⁷ Still, those same participants noted the significance of their inclusion in Maine's jury system, noting that while jury service alone will not erase the stigma of a felony conviction, it is a meaningful first step toward full community acceptance.

In an age when the number of jury trials has dwindled,²¹⁸ the present study offers yet another reminder of the importance of this vital democratic institution. The jury is a place where members of the community converge in an exercise of popular sovereignty and "active liberty."²¹⁹ Through their willingness to share their experiences, Maine's felon-jurors and courtroom personnel provide vital evidence of exactly how the jury can alter an individual and bolster a community.

VII. CONCLUSION

As noted at the start of this article, Maine is unabashedly unique. Tucked away in the corner of our nation, Mainers pride themselves on their individualism and tradition. In her poignant portrayal of life in a small village, Lura Beam succinctly captures the culture of Maine:

The beliefs held most firmly were two: first, individualism; and second, the continuity of customs approved by long experience. Individualism meant the person's right to be fully himself, with his corresponding obligations of self-denial and self-control These channels were prescribed, but still a person might depart from the standard without hurting anyone but himself; they were not compulsory Everyone of every age was an individualist. If the hamlet had ever chosen itself a banner, it could have been that yellow flag with the coiled rattlesnake and the motto, "Don't tread on me."²²⁰

Thus, it is perhaps not surprising that Maine's approach to and acceptance of felon-jurors differs from that of all other U.S. jurisdictions and is a point of pride for its residents. For all participants in this study, felon-juror inclusion "is the way it is" and makes sense. Evidence supports their contentions and validates their traditions. Jury systems across the country could benefit from this aspect of "The Maine Way."

216. See *supra* notes 20-22 and accompanying text.

217. Binnall, *supra* note 27.

218. See generally Mark W. Bennett, *Judges' Views on Vanishing Civil Trials*, 88 JUDICATURE 306 (2005); Robert J. Conrad & Katy L. Clements, *The Vanishing Criminal Jury Trial: From Trial Judges to Sentencing Judges*, 88 GEO. WASH. L. REV. 99 (2018); Young, *supra* note 127.

219. BREYER, *supra* note 125.

220. LURA BEAM, A MAINE HAMLET 162 (1957).

