ONE LENS, MULTIPLE VIEWS: FELON DISENFRANCHISEMENT LAWS
AND AMERICAN POLITICAL INEQUALITY

DISSERTATION

Presented in Partial Fulfillment of the Requirements for the Degree Doctor of
Philosophy in the Graduate School of The Ohio State University

By
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* * * *

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ABSTRACT

Felon disenfranchisement laws prohibit current, and in many states, former felony offenders from voting. As a result, nearly 4 million citizens in this country are temporarily or permanently unable to vote. Of particular interest to my research, 36% of those individuals are African Americans. Although there are certain federal guidelines regarding voting rights, it is important to note that state laws determine who is eligible to vote. Because of this discretion, the United States is comprised of an inconsistent patchwork of disenfranchisement laws. States have the option of disenfranchising felons while in prison, while on parole, probation, or for a lifetime.

Despite the pervasive and deleterious political impact of these laws, there have been few systematic efforts to study them. The research presented in this dissertation evaluates the institutional and mass-level dynamics associated with felon disenfranchisement. It begins by combining elements of the democratic theory and racial group competition literatures to form a lens for understanding the historical use and contemporary consequences of criminal disenfranchisement laws. Using a multi-method approach combining archival research, experiments,
and cross-sectional analyses, the findings of this research contradict much of the existing literature’s assertion that racial minorities have successfully overcome the institutional barriers to full participation. In essence, these findings affirm the extent to which criminal control policies have become a powerful means of promoting the politics of exclusion.

Using an original state-level data set, I find that the level of minority diversity and region are the most significant determinants of the severity of states’ disenfranchisement laws. In particular, I find that southern states and states with more sizeable Black and Hispanic voting-age populations tend to have more severe restrictions on felon voting.

By analyzing elite discourse surrounding disenfranchisement, I find that this discourse has evolved from an explicit emphasis on race and racial discrimination to a more subtle priming of racial group considerations and stereotypes. Combining these findings with the experimental data, I find that public support for felon disenfranchisement is influenced by the frames elites use to discuss the issue. When disenfranchisement laws are presented as a threat to democratic vitality, citizens’ support for them tends to be lower. Likewise, emphasizing the discriminatory impact of the laws also lowers support. However, when disenfranchisement is presented as a means of punishing those who have broken the public trust, support is higher. The findings of these experiments confirm the importance of political elites for helping citizens make sense of complex political issues.
Taken together, the research presented in this dissertation supports the view that the racial group competition lens illuminates multiple views regarding the limits of citizenship as well as contemporary barriers to political equality.
Dedicated to my Guardian Angels: Ted Louis Brown & Helen Maggie Pendleton Brown
ACKNOWLEDGMENTS

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Finally, this dissertation would not have been possible without the constant support of my husband William. He has been my “audience” for numerous practice talks, sat through even more presentations, and provided the right combination of space and support that I needed to pursue this dream. Most importantly he, along with the rest of my family and friends, helps keep me humble. His name should be right beside mine on the diploma.
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CHAPTER 1
INTRODUCTION

“In a democracy a citizen without a vote would have every other civil and political right denied him” - T. Thomas Fortune (1905).

The historical evolution of race as a defining political issue has made the study of race one of the most intriguing research frontiers within the field of political science. From the earliest work documenting the minority experience in urban centers (Glazer and Moynihan, 1963; Gosnell, 1935; Hunter, 1953) to current work emphasizing the linkage between race and social policy (Cohen, 1999; Gilens, 1996; Hero, 1998), various scholars have asserted the centrality of race and racial group considerations to the American political process.

In exploring these connections, scholars have asserted the importance of active political participation for articulating the political, economic, and social concerns of African American communities (Dawson, 1994; Jones, 1972; Reed, 1999; Walton, 1985). Because such participation provides marginalized communities with the opportunity to influence the political system, democracy becomes “unthinkable without the ability of citizens to participate freely in the governing process” (Verba, Schlozman, and Brady, 1995).

Indeed the growth of a democracy can be measured by the expansion of the eligible electorate (Dahl, 1989). As a result, countries across the globe have
revered and emulated the United States’ tradition of extending the franchise to its citizens. Yet the promise of universal suffrage in the United States has never been realized because of the continuing exclusion of certain citizens. As a result, I suggest that the viability of its democracy must also be measured by the motivations and consequences of the systematic exclusion of vast segments of the population.

Although there are myriad forms of political participation available to citizens, this research specifically focuses on the vote as a critical entry point into the political process. As Hill (1994) suggests, the right to vote in free and fair elections is the most critical of democratic rights. Voting not only allows citizens to play an active role in political affairs, it also allows them to express their discontent with political leaders. Further, voting is one of the most efficient means of translating mass preferences into governmental decisions.

Building upon these propositions, it follows that extending the franchise to a minority group threatens to challenge the status quo by forcing a redistribution of the available political resources. This occurs because this newly enfranchised group gains the potential to leverage such resources, and thereby gains an advantage in the political system (Matthews and Prothro, 1966; Stanley, 1987). As former Attorney General William Rogers states (1968), “when minority groups exercise their franchise, it almost invariably follows that they achieve a greater measure of other fundamental freedoms as well” (p. 2).

As a result of this potential, one of the traditional means used to restrict Blacks’ access to the political arena has been to deny them the right to vote. In
response, the last century and one half have witnessed the battle by Blacks to regain their voting rights. From the early efforts of abolitionists such as Frederick Douglass to the impassioned cries of civil rights leaders like Fannie Lou Hamer, removing the barriers to African Americans’ voting participation has been a central goal of many black political movements. Though much of the dominant literature (Carmines and Stimson, 1993; Grofman and Davidson, 1992; Thernstrom, 1994) suggests that Blacks now have successfully overcome the major institutional barriers to full voting participation, I contend that felon disenfranchisement remains as an enduring and formidable threat to the development of American political equality.

Felon disenfranchisement laws prohibit current, and in many states, former felony offenders from voting. As a result, over 4.2 million people are permanently unable to vote because of past convictions. Although current felon disenfranchisement restrictions contain no direct racial intent, they have resulted in substantial racial disparities. Further, they serve as evidence of the degree to which the politics of exclusion has become embedded in the American political fabric.

Current Impact

Undoubtedly, felon disenfranchisement laws have had a disproportionate impact on communities of color, and that impact is becoming more pronounced each year. Convicted felons constitute the largest single group of American

1 Throughout this dissertation, the words African American and Black are used interchangeably.
citizens who are prohibited by law from participating in elections. According to
the latest report from the Bureau of Justice statistics, African Americans represent
more than one-third (thirty-six percent) of the 4.2 million people who are
temporarily or permanently unable to vote because of felony convictions. This stands in sharp contrast to the most recent census statistics that place African Americans as only fourteen percent of the total U.S. population. Further, the rate of black voter disenfranchisement is nearly seven times the national average.

Many have suggested that this disparity in disenfranchisement rates is a direct consequence of harsher sentencing policies, particularly for violent crimes. Likewise, the national war on drugs has been an important stimulus for increasing the number of African Americans barred from voting. The Sentencing Project (1998) suggests that drug control policies that have led to the arrest, prosecution, and imprisonment of tens of thousands of African Americans represent the most dramatic change in factors contributing to the increased rates of incarceration. The figures below track both the increase in adult drug arrests and correctional populations over the last twenty years.
Figure 1.1: Adult Correctional Population, 1980-2001
Although there are certain federal guidelines regarding voting rights, it is important to note that state law establishes the electoral qualifications regarding who may vote. This discretion has created an inconsistent patchwork of regulations that is often quite confusing.
Figure 1.3: Severity of Felon Voting Restrictions by State
The map above indicates the severity of a state’s felon voting restrictions. Darker shadings indicate more severe restrictions while lighter shadings indicate less severe restrictions. Presently, forty-eight states and the District of Columbia prohibit prisoners serving a felony sentence from voting, while Vermont and Maine allow inmates to vote. The District of Columbia rests as somewhat of an anomaly in terms of its disenfranchisement provisions. Because D.C. is not a state, it is governed by federal voting provisions rather than its own state provisions. However, felons are allowed to vote in local elections. One of the most striking consequences of this provision can be found in the 1994 mayoral primary that included Marion Barry. Reportedly nearly 7,000 felons voted in that election which eventually led to the selection of Barry as the Democratic candidate.

Before 2000, Massachusetts allowed inmates to vote. However, after inmates considered forming a political action committee (PAC) to raise money for prison reform, acting Governor Paul Celluci became outraged and passed an executive order rescinding prisoners’ voting rights. Similarly, New Hampshire stripped inmates of the right to vote after the state legislature voted in 2000 to change the state constitution.

---

2 Most states define a felony as an offense punishable by death, or imprisonment in a penitentiary or state prison. However, there is still a great deal of variation across jurisdictions regarding what constitutes such a felonious offense.
In thirteen states, felony convictions can result in permanent
disenfranchisement while thirty-two states do not allow individuals on parole or
probation to vote. For most states with lifetime disenfranchisement provisions, ex-
felons can usually go through some type of review process to have their rights
restored. Although such options exist in theory, they seldom result in the
restoration of voting rights.

For example, of the 200,000 ex-convicts who are residents of the state of
Virginia, only 404 have had their rights restored over the past five years (Mauer
and Fellner, 1998). This failure can be attributed to a number of factors including
1) a lack of information regarding the process necessary to regain the right to vote
2) an emphasis on more immediate needs e.g. finding housing, jobs, etc. and 3) a
lack of political and financial resources necessary to successfully navigate this
arduous restoration process. For example, ex-offenders seeking to regain the right
to vote in Mississippi must either secure an executive order from the governor or
convince a state legislator to introduce a bill on their behalf, get two-thirds of the
legislators in each house to vote for it, and then have the governor sign off on it.
In other states like Alabama, ex-felons must first submit a DNA sample to the
state's department of forensic science before they can apply to have their voting
rights restored.

3 It should be noted that there have been several attempts in the state of Virginia to make the
restoration process more accessible. Since taking office in January of 2002, Governor Mark
Warner has shortened the length of the application and also encouraged state legislators to pass a
bill that would require corrections officials to make ex-felons aware of restoration procedures.
Other states such as Florida have created so-called fast track programs which require applicants to fill out twenty-page questionnaires that ask everything from what your parents died of (if deceased) to the full names and social security numbers of the fathers/mothers of your children.

Of the states with felony voter restrictions, Alabama and Florida have the most devastating effects with nearly one-third of black men having permanently lost the right to vote. In Mississippi, Virginia, and Iowa, one in four black men are permanently disenfranchised. Table 1.1 provides information on the number of disenfranchised men currently under supervision (e.g. prison, parole, and probation) by race and ethnicity.

---

4 Although the data on women under criminal supervision is improving, it is not nearly as comprehensive as the data available for men. Therefore, it was necessary to restrict my analysis to men in order to examine changes in the patterns of disenfranchisement over time. For similar reasons, this analysis only provides data on African American men rather than Latinos. In the future, I hope to incorporate women and people of color (more broadly) into my analysis in order to produce a more comprehensive picture of the impact of felon disenfranchisement.
<table>
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<tr>
<th>State</th>
<th># Disenfranchised Black men</th>
<th>% of Felons who are Black</th>
<th>% of Black Men who are Disenfranchised</th>
<th># Disenfranchised White Men</th>
<th>% of Felons who are White</th>
<th>% of White Men who are Disenfranchised</th>
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<td>Alabama</td>
<td>42,072</td>
<td>66.4</td>
<td>31.5</td>
<td>73,429</td>
<td>33.3</td>
<td>6.3</td>
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<td>Florida</td>
<td>109,063</td>
<td>55.4</td>
<td>31.2</td>
<td>169,931</td>
<td>42.6</td>
<td>3.5</td>
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<tr>
<td>Mississippi</td>
<td>81,700</td>
<td>75.3</td>
<td>28.6</td>
<td>9,088</td>
<td>24.2</td>
<td>1.1</td>
</tr>
<tr>
<td>Virginia</td>
<td>40,852</td>
<td>66.5</td>
<td>25.0</td>
<td>25,792</td>
<td>32.6</td>
<td>1.4</td>
</tr>
<tr>
<td>Texas</td>
<td>156,610</td>
<td>44.5</td>
<td>20.8</td>
<td>425,382</td>
<td>28.3</td>
<td>7.9</td>
</tr>
<tr>
<td>Iowa</td>
<td>10,746</td>
<td>24.2</td>
<td>26.5</td>
<td>15,157</td>
<td>68.9</td>
<td>1.5</td>
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<tr>
<th>State</th>
<th># Disenfranchised Hispanic men</th>
<th>% of Felons who are Hispanic</th>
<th>% of Hispanic Men who are Disenfranchised</th>
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<tr>
<td>Alabama</td>
<td>5</td>
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<td>Florida</td>
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<td>Texas</td>
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<tr>
<td>Iowa</td>
<td>310</td>
<td>4.5</td>
<td>.376</td>
</tr>
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Table 1.1: State Disenfranchisement Rates for Men by Race and Ethnicity

Contemporary Relevance

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5 Given that the Bureau of Justice Statistics does not keep accurate records on the number of ex-felons residing in the state, the rates in this table only reflect the number of felons in prison, on parole, and probation.
The issue of felon disenfranchisement takes on a renewed sense of urgency and significance for a number of reasons. First, the presidential election of 2000 provides us with a practical example of the increasing visibility of the effects of felon disenfranchisement laws. In the state of Florida alone, at least 600,000 ex-felons were unable to vote in that election. Focusing on the impact on the black community's ability to have a voice in the political process, thirty-one percent of black men in the state of Florida were ineligible to vote because of disenfranchisement statutes. Florida is indeed a unique case because of the allegations that many eligible voters were erroneously purged from the voting rolls (Northup, 2002). However, it does point to the possibility that extending the right to vote to former felons could potentially lead to different electoral outcomes. If we accept the conventional knowledge that the majority of African Americans tend to overwhelmingly identify with the Democratic party, it follows that Gore could have secured a more decisive, and uncontested, victory in that state.

---

6 A Lexis/Nexis search of newspaper articles demonstrates the potential galvanizing effect of the 2000 election. Before the election, there were only thirty-four articles on felon disenfranchisement. That number has jumped to 125 in the three years following the 2000 presidential election.

7 As a result of this election, civil rights organizations have filed two major court cases including Florida Conference of Black State Legislators v. Moore and Farrakhan v. Locke. The applicant in the Farrakhan case argues that the disenfranchisement law violates the Voting Rights Act of 1965, while the Florida applicants are requesting that the court require the state to assist felons with clemency applications.

8 Focusing on this potential, Manza and Uggen (2002) use counterfactual analysis to determine the electoral impact of allowing felons to vote in several key congressional and presidential races. They find that felon disenfranchisement has primarily benefited the Republican Party.
Aside from potentially shaping the outcomes of elections, enduring features of the criminal justice system provide yet another reason to assess the political consequences of felon disenfranchisement. The most recent numbers released by the Bureau of Justice Statistics indicate that the number of individuals under criminal justice supervision has reached an all time high and is expected to steadily increase over the next decade. As an example of the extent to which African Americans are increasingly coming under criminal justice control, Henry Louis Gates found that in 1995 one in three young black men (aged twenty-one to twenty-nine) were under some form of criminal justice control. Based on these statistics, Mauer (1998) predicts that one in four young Black males will serve prison time at some point in their lifetime.

As the number of those convicted of felony offenses continues to increase and the number of ex-felons leaving prisons also continues to climb, we can expect a steady increase in the number of citizens who will be permanently barred from voting in this country. In fact, if current rates of incarceration persist, three in ten of the next generation of black men in this country can expect to lose the right to vote at some point in their lifetime (Mauer, 1998). These figures speak to the need to address both the historical determinants and the disparate impact of ostensibly race-neutral criminal control policies. Further, it affirms the need for researchers to reach beyond disciplinary boundaries to understand the political consequences of such policies.

This topic also allows us to examine the often contradictory nature of public policy in this country. How, for example, can a legitimate government
suggest that a person who has committed a felony is worthy of holding an elected office, but not worthy of casting a vote in an election? For example, in 1992 Lyndon LaRouche was able to run for president from prison, but not able to vote for himself. Similarly, James Traficant (D-OH) was able to run for a seat in the U.S. House of Representatives despite being expelled from the House based on allegations of bribery and racketeering and being convicted of criminal activity. Even more ironic was the fact that Traficant’s imprisonment did not prevent him from running and gaining nearly sixteen-percent of the popular vote, but it did prevent him from voting in Ohio. 

Further, as we continue to have a tremendous increase in the number of prisons in this country, we must also assess the fairness of including prison populations in census counts to grant states a greater share of governmental resources (e.g. Congressional districts; federal dollars). Yet, these prisoners have no input into how they are represented, and thus their interests are often neglected.

**The Need for Scholarly Inquiry**

Illuminating the political consequences of this phenomenon is critical because as Verba, Schlozman, and Brady (1995) suggest, voice and equality are central to democratic participation. In conceptualizing these terms the authors note: “in a meaningful democracy, the people’s voice must be clear and loud---clear so that policymakers understand citizen concerns and loud so that they have

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an incentive to pay attention to what is said. Since democracy implies not only governmental responsiveness to citizen interests but also equal consideration of the interests of each citizen, democratic participation must also be equal” (p.1). Accordingly, this research is driven by the belief that it is both substantively and theoretically important to examine the political dynamics associated with rendering a significant portion of the black electorate voiceless via a process that is far from equal. Although some individuals, depending on state regulations, may regain the right to vote, the cumulative impact of these statutes simultaneously dilutes the full development of African American political equality and American democracy by reinforcing the politics of exclusion. In turn, I suggest that the motivations underlying the previous Jim Crow restrictions on Black participation persist at both the institutional and mass levels.

**Conceptualizing the Lens**

In his seminal work *Southern Politics in State and Nation*, scholar V.O. Key, Jr. (1949) asserts that because Whites feared losing their social and political power, race and racial group competition become the lens through which political decisions are made. As a result, Whites reacted to the perceived political threat of Blacks by enacting public policy that undermined and restricted their access to the political arena. It is possible that what Key saw in the 1940’s may be true today. Connecting this view with the belief that the ability to vote is an important safeguard for all other political freedoms, I suggest that this potential for pushing new interests and considerations onto the formal agenda may spark group
competition for valuable political resources and benefits. Such resources and benefits may range from the more tangible such as redistributive policies, to more symbolic such as a formal recognition of group interests.

Though my primary focus here is on the importance of racial-group based contests for political power, it is important to note that these struggles occur within a broader context of social and political competition. To this end, I place my analysis of the expansion of felon disenfranchisement laws within the broader domain of strategies aimed at securing racial, partisan, and class-based dominance. In turn, evaluating this potential for altering the political equilibrium helps guide our understanding of the development of felon disenfranchisement laws, particularly given their almost simultaneous expansion during earlier periods of widespread enfranchisement. As a result, I posit that the racial group lens that hindered the full development of American democracy at its founding continues to impede the realization of that ideal. Further, when used to evaluate felon disenfranchisement laws, this lens offers multiple views of the motivations underlying both the development of, and subsequent support for particular policies. Such a prismatic view demonstrates how explicit invocations of race that dominated the rhetoric of the post-Reconstruction South have evolved into a more subtle, yet equally influential, form of discourse.
Analytical Approach

This research marks an effort to move beyond normative debates concerning the fairness of felon disenfranchisement statutes and toward a more systematic empirical analysis of the political dynamics associated with them. In particular, I am interested in testing for the presence of both institutional and individual discrimination by focusing on two important areas: state statutes and public attitudes. As Carmichael and Hamilton (1973) offer, the attitudes of the masses are inextricably tied to the views and beliefs that are filtered by the dominant institutions. Therefore, it becomes necessary to illuminate both the institutional conditions that produce felon disenfranchisement laws, as well as the mass-based attitudes that may support their consequences. I hypothesize that the race-based exclusions that originated at the institutional level gained momentum via support at the mass level by emphasizing the group competition lens-- a lens that when used in the context of felon disenfranchisement laws illuminated multiple views based on fear of crime/criminals, power, and political dominance.

The findings of this research are particularly important given that in the wake of the controversy surrounding the 2000 presidential election, many activists have called for voting reforms that would ensure the equal participation of citizens. Such reforms range from creating a uniform voting apparatus, to insuring the accuracy of voting rolls. In addition, some organizations have also used the election as a rallying point for restoring the voting rights of former
felons. Yet despite this grassroots attention, felon disenfranchisement laws are relatively understudied in the realm of social science inquiry. This dissertation is designed to fill that void. It has three primary goals.

First, I attempt to understand the genesis of felon disenfranchisement laws by examining the key motivations underlying their creation. In particular, I suggest that race, class, and party conflicts interact to form the driving impetus for the development and subsequent expansion of felon disenfranchisement laws. To test these assertions, I have created a state-level data set comprised of numerous variables including the state’s total population, minority population, unemployment rates, and political culture. Through my analyses, I demonstrate that criminal disenfranchisement laws were an effective means of achieving three important political aims: 1) limiting Black participation, 2) limiting the participation of poorer Whites, and in turn 3) suppressing threats to the party in power, especially to the Democratic political establishment in the South.

Although these factors provide some insight into why states chose to create felon disenfranchisement statutes, they do not directly explain variation in the severity of states’ restrictions. Therefore, I also use the state-level dataset to assess the structural determinants of this variation. The dependent variable for this section is a four-category index based on the severity of the state’s

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10 Among the most active groups are the National Coalition on Black Civic Participation, the National Voter Education Project, the Sentencing Project, and the National Center for Human Rights Education.

11 See the work of Manza and Uggen (2002) for a notable exception.
The categories of this Felon Disenfranchisement Severity Index (FDSI) are: no disenfranchisement, disenfranchisement only while in prison, disenfranchisement while in prison and on parole/probation, and lifetime disenfranchisement. My expectation is that states with the most restrictive provisions will also have more punitive orientations toward crime and criminal policy. Further, I expect that these states will also have sizable minority populations, and had them when the laws were originally passed. Examining this is critical because if mobilized into the active electorate, these populations could threaten the status quo. This state-level analysis helps create an important conceptual framework for achieving my other research goals.

My second research goal is to gauge contemporary barriers to reform efforts. The first manifestation of this goal is a critical focus on the nature of reform efforts during two important eras: the Civil Rights Movement (1960’s-1970’s), and the National War on Drugs Movement (1980’s- forward). I focus on these eras because the most expansive efforts to revise these laws came in the wake of the passage of the Voting Rights Act of 1965. This Act was important for not only bringing national attention to the plight of African Americans, but also to the efforts of other groups fighting to gain the franchise. As Keyssar (2000) suggests, “the impulse to expand the franchise in the 1960’s and early 1970’s was strong enough to reach even the most unpopular and least powerful group of disenfranchised citizens: men and women who had been convicted of crimes” (p. 302). In addition, I focus on the National War on Drugs Movement because many
states began devising more stringent means of punishing those convicted of drug-related crimes, many of which tended to be felony offenses. The result was a number of efforts aimed at increasing the cumulative impact of criminal control policies. Thus, I would expect that punishing criminals via rescinding the right to vote might be attractive.

The dependent variable for this section focuses on the types of reform activity. I make a distinction between efforts to make disenfranchisement restrictions less severe (progressive reforms), versus efforts to make these restrictions more severe (regressive reforms). Although several states enacted progressive reforms, many states also adopted regressive reform policies aimed at decreasing the number of felons and even ex-felons who are eligible to vote. In regard to the level of reform, I create a continuum of activity that ranges from no reform to active reform. Moreover, despite the historical roots of these laws, many states have not substantially reformed their felon voting restrictions. As a result, many states are being governed by restrictive policies that were enacted during a political climate saturated by racial hostility.

This study also undertakes a critical analysis of elites’ responses to the growing impact of felon disenfranchisement laws. Despite the disproportionate number of citizens of color who have lost the right to vote, political elites have been rather hesitant to address this issue. Much of their reluctance can be attributed to the perception that championing this issue could be politically dangerous. In particular, arguing for aggressive reforms may be viewed as embracing the extension of criminals’ rights, which finds little public support
given the country’s current “zero-tolerance” approach to crime (Mauer, 1996; Brown and Paul, 2000).

For those elites who have suggested reforms, their arguments have primarily followed two lines of reasoning. The first line of reasoning posits that the laws should be changed because of their disparate impact on minorities, particularly African Americans. These claims have largely been offered by groups such as the NAACP, the ACLU, and Human Rights Watch who seek to push reform on Constitutional grounds. However, the courts have consistently ruled that evidence of a discriminatory impact is not sufficient for proving that a law violates Constitutional protections. The other line of reasoning, and one that has been less prominent, is the suggestion that these laws undermine America’s conception of a representative democracy. These broad, race-neutral claims have been used by elites such as John Conyers, Jr. (1999) to garner broader support for reform efforts. With the exception of murmurs surrounding the 2000 presidential election (Huffington, 2000), this elite-level scrutiny of felon disenfranchisement has been somewhat limited. However, the existing discourse still provides insight into the potential for, and obstacles to, comprehensive efforts to reform these laws.

Building upon this discourse, my third goal is to examine how elite conceptualizations of felon disenfranchisement may contribute to the public’s overall understanding of, and reaction to, this issue. In terms of this conceptualization, I focus on whether the disproportionate number of minorities who have lost the right to vote is attributed to some sort of systemic bias (racially
discriminatory) or individual responsibility. To achieve this goal, I have created a series of experiments. Felon disenfranchisement is a unique issue to study because attitudes toward it may be driven by a possible overlap between African Americans and criminals in the public’s thinking. If so, attitudes regarding expanding criminals’ rights may be confounded by attitudes toward Blacks’ rights. Therefore, it is important to distinguish between the two sets of influence by using a series of randomized survey-based experiments. Such experiments will not only increase my ability to isolate the effects of the treatment, but they will also enable me to make better inferences about causal relationships. To this end, I use the experiments to evaluate how elite frames that emphasize equal voting rights versus equal racial rights influence the public’s views. Thus, by establishing the influence of such frames on public support, I can better understand why appeals for reform have been so limited and/or racially polarized.

Chapter Summary

In chapter two, I establish the theoretical framework for this study by addressing the importance of race and racial group competition as a lens for the development and assessment of public policy. By outlining the central tenets of democratic theory as well as key challenges to those tenets, I illustrate the importance of the group conflict lens for shaping both the creation and subsequent evaluation of public policies aimed at expanding the eligible electorate.

Chapter three uses archival analysis to offer an historical overview of felon disenfranchisement laws. By analyzing the historical context from which
these laws emerge, I construct a comprehensive understanding of the enduring nature of debates surrounding race and group conflict. Further, this chapter also helps to establish the foundation for the empirical tests of my theory.

In chapter four, I focus on a state-level analysis of felon disenfranchisement laws. Using an original data set, I explore the essential determinants of the severity of a state’s disenfranchisement provisions, as well as the current impact of such provisions.

To this end, the chapter incorporates models that explain contemporary variation in state disenfranchisement policies, as well as the factors that lead a state to reform its laws.

Building upon this analysis, chapter five focuses on political elites’ conceptions of and reactions to felon disenfranchisement statutes. Here I define political elites as those individuals and organizations whose actions and decisions have the potential to influence the attitudes and behaviors of the masses. I focus on elites such as public officials (both elected and appointed), indigenous organizations, and the media. By identifying the nature of elite discourse concerning the issue, as well as current legislation, we can better determine the types of cues being conveyed to the public.

Chapter six focuses on the extent to which elite discourse surrounding felon disenfranchisement has an effect on the public’s thinking. In particular, I examine how such discourse may trigger or prime the public’s existing beliefs regarding crime and the nature of criminals. By using a series of experiments, the goal here is to assess how attitudes toward felon disenfranchisement may draw
from the increased association between Blacks and criminals in the public’s thinking.

The final chapter provides a detailed discussion of the relevance of my findings. By summarizing the major findings of the previous chapters, and relating them to broader themes in politics and political science, I demonstrate the implications of this research for future studies of race, state policy, elite communication, and public attitudes. Although this research is substantively focused on felon disenfranchisement laws, the findings of this dissertation project will help address important theoretical concerns in the broader political science literature. In particular, I hope to use the dissertation as a necessary initial step toward assessing the prejudice-centered versus principle-centered underpinnings of policies with a disparate racial impact. In so doing, we can better understand the dynamic and complex nature of the connections between race and American politics.
"The vote is the most powerful instrument ever derived by man for breaking down injustice and destroying the terrible walls that imprison men because they are different from other men”

- President Lyndon B. Johnson, 1965.

In this chapter I begin with an overview of the key tenets of democratic theory with a specific focus on the significance of having access to the political system. And in particular, the emphasis that various scholars and elites have placed on the vote as being a key point of entry. Through this approach we can see that although voting is not the only means of participating in the political process, it is perhaps one of the most efficient means of translating mass preferences into governmental decisions.

From here, I depart from the traditional approach to the significance of voting and move to a discussion of suffrage as an important basis for competition. In particular, I discuss the need to place felon disenfranchisement in the theoretical realm of racial group competition over political resources, both tangible and symbolic. My theoretical approach to the issue of felon disenfranchisement rests on the belief that restricting access to the ballot helps preserve existing political advantages while limiting the potential for marginalized groups to increase their share of critical resources.
Voting Rights and Democratic Theory

Both scholars and activists alike have long recognized the importance of voting for promoting a community’s interests. Organizations such as the NAACP and the Urban League have emphasized voting as an important means of elevating a community’s social and political standing. As a result, numerous battles have been waged to guarantee minority groups, particularly African Americans, full access to the franchise. In referencing this, Keech (1968) points out that “three out of the four twentieth century civil rights acts have been aimed at improving [Blacks’] status primarily by attempting to guarantee that eligible [Black] people will have equal access to the ballot box, and all four have dealt with voting rights in some measure” (p. 2).

The need for and struggle to achieve equal voting rights has often been examined in the context of democratic theory. This occurs because the ability to vote in free and open elections is often viewed as a defining component of a democracy (Dahl, 1989). At its core, democratic theory posits that participation in the decision-making process by the mass public is essential to the well being of a society. Verba, Schlozman, and Brady (1995) support this belief by stating, “citizen participation is at the heart of democracy…political participation is an important activity with the intent of influencing government action” (p. 38). Such activity serves as a channel through which the needs and preferences of communities can be communicated to political decision-makers. Further, it provides a means for citizens to pressure a response.
Although there are myriad forms of participation that citizens can pursue, voting is for most Americans the sole means of participation (Campbell et al., 1960; Tate, 1993; Verba and Nie, 1972). Perhaps even more importantly, the vote is often exalted as being important for securing and guaranteeing other rights and liberties. In his 1957 testimony before the House Judiciary committee, Biemiller (1957) argued that, “in the final analysis, perhaps the most precious right of all in a democracy is the right to vote. With such a right adequately assured, all other rights are potentially assured” (p. 649). Although such statements may be somewhat optimistic, they rely on the basic premise that the political process is the primary arena for not only defining the benefits of citizenship, but also who gets what, when, and how much.

Based on this proposition, Campbell et al. (1960) suggest that the political system “can be idealized as a collection of processes for the taking of decisions” (p. 5). Yet essential to that configuration is a system that is both open and responsive to all. In light of this, various scholars (Hunter, 1953; Hochschild, 1984; Manley, 1983) have criticized the American political system for being a great contradiction. As Arrington and Taylor (1992) suggest, America’s expansive claims of democracy clash with its social, economic, and political realities of exclusion. Of the many scholars who have illuminated this contradiction, Myrdal’s (1944) classic study of the divide between the principles and practice of democracy provides an important foundation for my analysis.
In *An American Dilemma: The Negro Problem and Modern Democracy*, Myrdal (1944) asserts that America has a long tradition of placing exceptional emphasis on the value of voting. Further, votes are seen as being distinct from an independent rule of law as the means of holding bureaucracies accountable. Myrdal suggests that:

The extreme democracy in the American system of justice… turns out to be the greatest menace to legal tradition when it is based on restricted political participation …what America is constantly reaching for is democracy at home and abroad…In this sense the Negro problem is not only America’s greatest failure but also America’s incomparably great opportunity for the future…if America in actual practice could show the world a progressive trend by which the Negro became finally integrated into modern democracy, all mankind would be given faith again (p. 1021).

In light of this, Myrdal advocated the central importance of Blacks acquiring and exercising the franchise. This need for a more inclusive polity primarily resulted from what Myrdal viewed as an inherent flaw in America’s conception and practice of democracy. In particular, Myrdal suggested that restricting Blacks’ political participation combined with “an imagined tradition of caste suppression” (p. 524) to pose the greatest impediment to American democracy. Therefore, increasing Blacks’ access to the system via electoral participation could potentially reduce the gap between the principles and practice of democracy in this country.

Since this initial study, various scholars have attempted to address this gap and the primary motivations supporting its continuance. Hunter’s (1953) study of power and governance in Atlanta supported a power elite theory of politics. The key component of this theory is Hunter’s conception of a top-
down structure within which power is cumulative. At the top level of this structure rests a power elite that possesses a disproportionate share of resources, particularly wealth. As a result, business and economic elites/interests exert a tremendous degree of control and influence over important political decisions. Thus, by constructing and shaping the rules of the game, the ruling elite is able to directly limit access to the system. At the middle of this structure are elected public officials charged with carrying out the demands and interests of the ruling elite. The masses rest at the bottom level of this structure and therefore have limited influence and input in the process. Building upon Hunter’s theory, more contemporary scholars have suggested that even among the masses there is a great deal of stratification concerning which individuals and individual group members are allowed to participate in the decision-making process (Hero, 1992, 1998; Hochschild, 1984; McClain and Stewart, 1995; Cohen, 1999).

As a rebuttal to Hunter’s theory that democracy does not prevail, Dahl’s (1956) *Who Governs?* represents the classic statement of pluralist theory. Offering a more scientific approach to studying decision-making, Dahl suggests that the political system is open with no upper limits to participation. Further, he posits the existence of a two-step decision-making process wherein the masses articulate their needs to sub-leaders who in turn convey these needs to the leaders. As a result of this interactive exchange, a process of anticipatory reaction emerges wherein leaders predict what the masses want and oblige without having to be asked. Dahl and other pluralists contend that
this two-step process is democratic because officials are held accountable by
elections. Therefore, the right to participate in elections becomes the ultimate
guarantee of democracy by insuring that everyone has the opportunity to
participate in the process.

In contrast, critics of this theory (Bachrach and Baratz, 1962; Gamson,
1975; Manley, 1983; Parenti, 1981) contend that pluralists do not account for
those interests and individuals that are systematically excluded from the
process. Further, Schattschneider (1960) has advanced the notion of a
mobilization of bias that entails organizing certain interests and groups out of
the political process. Through this process leaders anticipate what the
(powerful) elite want and make decisions accordingly. Perhaps the existence
of this process further supports Key’s (1949) argument that most public policy
decisions reflect not the public interest, but a desire to preserve the status quo.
One of the most telling descriptions of this critique is Schattschneider’s
(1960) contention that, “the flaw in the pluralist heaven is that the angelic
chorus sings with an upper class accent.” In essence, Dahl’s pluralist view of
democracy can not account for the disincentives individuals are given for
participation.

As previously stated, the existence of a system that is open to all is a
necessary but certainly not sufficient condition for a pluralist democracy. An
equally important condition is a system that is uniformly responsive to
citizens. Dahl (1989) and other democratic theorists (Rawls, 1971;
Mansbridge, 1999; Barber, 1984) have suggested that a crucial assumption for
democracy is that “the claims of a significant number of members as the rules, policies, etc. to be adopted by binding decisions are valid and equally valid, and that no members’ claims are, taken all around, superior or overriding in relation to this set of members” (p. 135). Simply stated, democratic theorists suggest that political equality exists because each person has one vote that is equally weighted. If we accept this proposition, then the disproportionate rate of black disenfranchisement should serve as empirical evidence of political inequality.

Focusing on this proposition, Verba, Schlozman, and Brady (1995) state that all democracies use elections as a “great simplifying mechanism for dealing with the problem of political equality” (p.12). However, I would offer that such elections might also be used as a means of furthering or preserving inequality. By prohibiting certain individuals (e.g. felons) from participating in such elections, a government denies the full realization of political equality and/or democracy. Thus, it is naïve to assume as Dahl (1956), Pateman (1970), and other democratic theorists have that elections reaffirm the equal power of each citizen. Instead, the very denial of equal participation rights to a category of citizens implies that they and their interests are less worthy of consideration (Dawson, 1994; Reuter, 1995; Sidanius, 1992; Ture and Hamilton, 1992).

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12 Ironically, the United States is one of few nations across the world that bans felons from voting. Countries such as Spain, Greece, Ireland, Switzerland, France, Israel, Japan, and the Czech Republic all allow incarcerated felons to vote. Further, other countries such as Germany and South Africa require prison officials to encourage inmates to exercise the vote. In Puerto Rico, the right to vote is one of the few rights citizens retain during incarceration.
Although Myrdal and others’ critiques of America’s so-called democratic process applied to the total denial of Black suffrage, their arguments are still useful for evaluating the current existence of felon disenfranchisement laws. Even if we accept the democratic theorists’ proposition that suffrage is a classic means of accessing the system, it is also important to realize that it is a mechanism of political leverage that is withheld from a substantial segment of the population. In turn, it becomes necessary to examine the motivations behind this exclusion as well as determine how these motivations may play out at the institutional and mass levels. The central question to be addressed is why do suffrage exclusions continue to exist in spite of America’s professed attachment to democracy? And in particular, why are such exclusions only applied to particular groups? To address these questions, I explore the relevant literature on group competition and conflict.

**Group Competition and Conflict**

The contemporary group competition and conflict literature grew from the social psychology tradition of emphasizing the existence and importance of intergroup relations (Tajfel and Turner, 1979; Levine and Campbell, 1972). According to Tajfel (1978), social identity refers to “that part of an individual’s self concept which derives from his knowledge of his membership in a group (or groups) together with the value and emotional significance attached to the membership.” In essence, the fundamental tenet of this theory rests on the belief that individuals, and the groups to which they
belong, have meaningful interactions with other groups. These interactions are characterized by three primary processes. The first is the ethnocentrism effect which is characterized by strong in-group attachment and identification (Park et al., 1992). Further, in-group members are rated more favorably than the out-group. The second process is the out-group homogeneity effect wherein out-group members are perceived as being less diverse and more stereotypic than in-group members (Judd and Park, 1993). In turn, this process often leads to greater hostility toward the out-group. The final process leads to competition over resources, cultural values, or political power (Brewer and Brown, 1993; Kluegel and Smith, 1986; Sherif, 1953; Tajfel and Turner, 1986).

According to Blalock (1967), competition occurs when two or more groups strive for the same finite objectives. As a result, the success of one group may imply a reduced probability that the other will attain its goals. As McClain (1993) suggests, group competition essentially represents power contests that exist when groups have roots in different cultures, and when there is rivalry between these groups. Such competition may exist over tangible benefits such as jobs and government services, or over more symbolic benefits such as formal recognition and representation of the group’s interests. Regardless of the target of such competition, it often influences citizens’ political attitudes and behaviors (Leighley and Vedlitz, 1996), especially as underprivileged groups become more numerous.
This occurs because as Blalock (1967) contends, “an increase in minority percentage should result in an increase in discrimination both because of heightened perceived competition and increased power threat” (p. 154).

According to Bobo and Hutchings (1996) the existing literature on group competition suggests four primary explanations for why groups may perceive competitive threat from another group. In the following section I discuss the guiding principles of each explanation and discuss their relevance to understanding the political context of felon disenfranchisement laws. In particular, I suggest that although each model is limited to only explaining a particular phase of the expansion process, taken together these models demonstrate how a collision of fear, cultural values, material interests, and prejudice have influenced the development of and attitudes toward felon disenfranchisement laws.

**Self-Interest**

Sears and Funk (1991) define self-interest as the “short to medium term impact on the material well-being of an individual’s personal life.” Based on this definition, self-interest explanations suggest that there is an objective basis for conflict. The simple self-interest approach is based on three primary assumptions. The first assumption is that people are rational actors who reach decisions through a cost-benefit analysis that accounts for the uncertainty associated with achieving a desired outcome (Ajzen and Fishbein, 1980; Sears and Funk, 1991). The second assumption states that physiological needs take
precedence over all other needs including safety and affection (Maslow, 1954). The last assumption is that one’s own costs and benefits take precedence over those that may be incurred by society as a whole. Here, personal vulnerability to political change or loss is the direct basis for hostility. In essence, hostility is a manifestation of a clash of material interests.

Unfortunately, this emphasis on the individual fails to recognize the significance of one’s membership in social groups and structures (Campbell et al., 1960). Thus, this egoistic pursuit is restricted to those personal factors that help an individual meet his/her objective needs and interests. Building upon this, most critiques of the self-interest approach have focused on public attitudes toward racial policies. For example, Bobo (1988) found that individual Whites tended to oppose busing and integration efforts even though they did not have school-age children and therefore would not be directly affected by such programs. Likewise, Sears et al. (1979) suggest that Whites oppose busing even when it is not an issue in their area. As a result, negative affect toward the intended beneficiaries of such efforts, namely Blacks, is a stronger predictor of opposition to busing.

Classical Prejudice

Drawing upon Allport’s (1954) pioneering study of the nature of prejudice, the classical prejudice model focuses on individual psychological dispositions as opposed to objective reality (Bobo and Hutchings, 1996). This
approach dramatically differs from the self-interest approach because it focuses on the shared, collective feelings of society. These feelings do not have to be based on real experiences and processes. Perception, which can be distorted by fear, ethnocentrism, and out-group hostility, is much more important than objective reality (Pettigrew, 1982; Kinder and Sears, 1981; Eagly and Chaiken, 1993; Krauss and Fussell, 1996). Since prejudice is learned via a socio-cultural process of sharing and development, perceptions of threat need not be based on actual competitive experiences. Instead, the need for social distance and stereotypes may be crucial for fueling the collective dislike of a particular group. In support of this assertion, Allport (1954) believed that negative stereotypes of minority groups were examples of motivated perceptual distortion. This distortion was motivated by the threat, both real and imagined, that minorities pose to the majority’s interests. Within this model greater emphasis is placed on the “social learning of cultural ideas and affective responses to particular groups” (Bobo and Hutchings, 1996, p. 954). Whereas the self-interest model suggests a more cognitive calculation of threat, the classical prejudice model emphasizes an affective perception of threat.

13 Park’s (1924) prolific work on ethnic assimilation defines social distance as an “attitude or human feeling rather than a spatial concept” (p. 3). He believed that such attitudes derive from broader social and political processes that make distancing and distinctiveness necessary for a group’s assimilation, acculturation, and acceptance into the dominant society.

14 As we will see in later chapters, these stereotypes can serve as useful heuristics for helping citizens make sense of the political world.
Contemporary scholars have investigated the possibility that prejudice can be dampened by education which in turn increases tolerance (Sniderman and Piazza, 1993). This premise has laid the foundation for much of the political psychology literature on the nature of modern racism. This work suggests that perceptions of threat are largely based on a lack of accurate information about the out-group. Therefore, raising one’s knowledge about a particular group will eventually reduce hostility toward that group.

*Stratification Beliefs*

The primary feature of this model is the concept of individualism. Individualism suggests that hard-working individuals are rewarded for their efforts. Proponents of this model argue that inequality of outcomes results not from prejudice, but from differences in individual effort. Here, group dynamics are rendered unimportant because they do nothing to further an individual’s pursuit of the American dream. In fact, policies aimed at elevating the status of a particular group actually undermine and perhaps discriminate against those pursuing this dream. Bobo and Hutchings (1996) suggest that this emphasis on the individual has led many to criticize social policies such as affirmative action and welfare for rewarding people who may have done nothing to deserve a change in their material condition (Sowell, 1984; Cose, 1993). Under this conception, individualist citizens do not perceive a group-based threat until some type of policy change occurs that elevates the status of the group over the efforts of the individual. As a result,
an emphasis on features of the broader political and social structure has
greatly influenced the symbolic racism approach to explaining contemporary
racism.

The term *symbolic racism* first originated with Sears and Kinder’s
1971 article, “Racial Tensions and Voting in Los Angeles.” Here, the authors
defined *symbolic racism* as being distinct from old-fashioned Jim Crow
racism which is predicted to influence contemporary racial attitudes only
weakly. Included in this belief are negative affect and stereotypes of Blacks
blended with the perception that Blacks violate cherished American values
such as individualism, the Protestant work ethic, meritocracy, self-reliance,
freedom, discipline, and impulse control (Esses et al., 1993). Further, it
reflects the attitude that Blacks are no longer significantly hampered by
discrimination and should therefore try harder to make it on their own rather
than pressing for government assistance. In this respect, symbolic racism
suggests that Blacks are making illegitimate demands for, and receiving
special treatment from, government and other elites.

*The Need for a Unifying Approach*

Each of these disparate models helps capture a particular moment or
motivation for the expansion of felon disenfranchisement laws. For example,
it is possible that individuals may have perceived Black enfranchisement as a
threat because it directly undercut that individual’s potential to exert influence
within the political system. Further, bringing more Blacks into the electorate
may result in support for policies that would benefit Blacks at the expense of individual Whites. Indeed American history is fraught with examples of the fear that changes in the demographic complexion of the electorate would result in redistributive policies. Though the self-interest model may be useful for capturing Whites’ perceptions of threat during Reconstruction, it fails to explain the opposition of Whites living in counties and areas with small Black populations.

The aforementioned models also fail to adequately capture how the dynamic interaction of negative affect, fear, and concern over one’s social and political status may have made felon disenfranchisement an attractive solution. As a result, it is necessary to integrate the pertinent features of each model to produce a comprehensive understanding of how competition over valuable political resources may have formed the impetus for expanding criminal disenfranchisement statutes.

Sense of Group Position Model

Elaborated from Blumer (1958), the sense of group position model combines an understanding of the affective and cognitive underpinnings of prejudice with realistic conflict over group interests and perceptions of threats from inferior groups. In so doing, it suggests that people differentiate themselves from others through the use of group categories, accompanied by beliefs that other groups are qualitatively different from the in-group. Further, members of the dominant group develop feelings of superiority to other
groups, but readily perceive threats from members of lower-status groups who
desire a greater share of those resources. The model has four basic tenets. The
first tenet involves a preference for the in-group that is quite similar to
Allport’s (1954) belief in ethnocentrism. Such a view leads in-group members
to stereotype members of the out-group. The second tenet is that members of
the dominant group assume claim over certain rights and privileges. This
sense of entitlement is important for shaping the in-group’s belief about what
its position should be in the overall order. The third tenet of the model
suggests that members of the in-group believe that out-group members want a
greater share of these rights and privileges. Simply stated, the “out” wants to
belong to the “in” (Bobo and Hutchings, 1996). As Blumer (1958) suggests:

Sociologically it is not a mere reflection of the objective relations
between racial groups. Rather it stands for ‘what ought to be’ rather
than ‘what is.’ It is a sense of where the two racial groups belong….In
its own way, the sense of group position is a norm and imperative—
indeed a very powerful one. It guides, incites, cues, and coerces. It
should be borne in mind that this sense of group position stands for
and involves a fundamental kind of group affiliation (p. 5).

In essence, the sense of group position posits that perceptions of group
competition are connected to broader historical, cultural, and social forces that
lead individuals to develop or adopt negative feelings toward out-group
members. This hostility is also fueled by views regarding where one’s own
group should be vis-à-vis the out-group. Further, competition is heightened as
control over resources is in question.
This perception and sense of group competition can manifest itself as the adoption of restrictive policies at the elite level, and as the support of such policies at the mass level.

In regard to such competition, V.O. Key (1949) was one of the first scholars to introduce the group conflict thesis into the study of voting and participation. The central tenet of Key’s argument was quite simple: political elites and privileged groups have a vested interest in preserving and possibly expanding their political power. Therefore, it is beneficial to impose restrictions on political participation, and in turn, minimize threats to such power. In exploring the nature of southern politics, Key believed that because some white elites feared losing their political power, race and racial group competition became the primary lens through which decisions were made. The result, Key argued, was the creation of numerous policies designed to restrict access to the political arena.

Although such policies were not exclusively aimed at African Americans, they have traditionally affected Blacks the most. Historical examples of the successful use of such policies abound. For example, Matthews and Prothro (1966) found that the poll tax reduced the number of black voters in Mississippi by nearly forty-five percent, which made elites better able to maintain one party dominance in that state.
The authors recognized that expanding the Black electorate could upset the balance of political power by suggesting the potential for countermobilization (on the part of Whites) efforts to suppress and counter Blacks’ voting participation. They write,

the more they [Whites] feel threatened by what they feel is evidence of rising Negro political power, the more their disproportionate resources will be invested in the political process and the less slack there will be. Racial inequalities in political resources probably will result in Negroes receiving less influence over policy than their proportionate share of the electorate would seem to dictate (p. 478).

Since these earlier studies, contemporary scholars (Levine and Campbell, 1972; Bobo, 1983; Nelson and Kinder, 1996; Brewer and Brown, 1993; Voss, 1996) have also affirmed the importance of group perceptions for shaping both attitudes and behavior. Building upon Key’s group conflict and Blalock’s power threat hypotheses, Giles and Buckner (1996) found a statistical link between racial concentration and Whites’ support for David Duke’s senatorial candidacy. Although the authors argue that racial threat/competition is not the only motivation for such support, they do believe that such considerations continue to be relevant. The central argument of the contemporary racial threat scholars is that an increased threat to the dominant group’s interests (by a minority group) pushes members of the dominant group to protect their interests. Such protection can manifest itself as support for a candidate that opposes minority interests (Giles and Hertz, 1994; Giles and Buckner, 1996; Voss, 1996) or as support for a particularly policy that undermines minority interests (Gilens, 1996; Bobo, 1988).
Various scholars have documented the extent to which the democratic process, or lack thereof, helps organize and implement political conflict. Indeed political science rests upon the study of power and influence (Hunter, 1953; Mills, 1956), two features that lie at the heart of group competition. As a result, we should not be surprised that competition over political resources shapes the decision-making calculus. However, it is important to realize how the nature of government itself may encourage such competition. As Berelson, Lazarsfeld, and McPhee (1954) suggest in their classic study of voting, the democratic process helps organize and implement political conflict both in terms of defining who has access to that process, and what benefits derive from that process. Because the vote exists as one of the most widely distributed of all political resources, it follows that the ability to gain and exercise the franchise is a necessary but not sufficient condition for exerting influence in the political system.

As Dahl (1956) and other democratic theorists have asserted, all decisions in a democratic form of government rest ultimately on votes. Likewise, the vote is seen as the primary mechanism for translating popular preferences into governmental decisions. In turn, it follows that expanding the eligible electorate will also shape the decisions of government. This occurs because expanding the eligible electorate simultaneously expands opportunities for pushing new interests onto the agenda. By increasing the potential for altering the balance of power, this expansion may also produce greater group based conflict. The consequences of this group-based conflict
can take place at both the institutional and mass levels; both in terms of the policies that are created at the institutional level and the attitudes that are held by citizens at the mass level.

This line of reasoning rests on the assumption that this newly enfranchised group will act as a cohesive bloc—a bloc that will act in a manner that advances its interests while subverting the interests of the dominant group. Yet why should we expect this to occur? To explore this, it is useful to also assess the relevance of group identity and consciousness to fostering perceptions of threat.

**Group Identity and Consciousness**

In analyzing the causes of various political attitudes and behaviors, a dominant theme in the literature concerns the existence of a group consciousness that invokes an awareness of group interests and a shared collective struggle (Dawson, 1994; McAdam, 1982; Morris, 1984; Tate, 1991; Gurin, Miller, and Gurin, 1980; Shingles, 1981). Drawing upon the indigenous strengths and resources of the communities, what follows is an assessment of the most effective tools necessary to achieve empowerment and development. In turn, group consciousness stimulates an awareness of the importance of full political incorporation and participation. Further, this consciousness is assumed to make group members more critical of efforts to limit their inclusion (Conover, 1984; Tate, 1993; Walton, 1985).
Scholars of social movements (Harris, 1999; McAdam, 1982; Morris, 1984; Piven and Cloward, 1977) assert the importance of group consciousness for advancing a movement toward positive social change. This consciousness serves as an important stimulus for achieving the goals of the movement by focusing the purpose of political action on improving the group’s position in society. Therefore, group consciousness has the potential to foster a commitment to political action aimed at realizing the groups’ interests (Olsen, 1970; Miller et al., 1981). Dawson (1994) captures another crucial component of this transformation as the belief in linked fate. This belief is important for understanding why individual African Americans may “act as a bloc” because it “explicitly links perceptions of self-interest to perceptions of group interest” (Dawson, 1994, p. 60). Supporters of this linked fate approach (Simpson, 1998; Tate, 1995) suggest that African Americans’ political evaluations are formulated in two spheres: personal and group. As Young (1990) states:

A social group is defined not primarily by a set of shared attributes, but by a sense of identity. What defines Black Americans as a social group is not primarily their skin color; some persons whose skin color is fairly light, for example, identify themselves as Blacks…it is an identity with a certain status, the common history that status produces, and self-identification that identify a group as a group (p. 64).

As we can see, this sense of consciousness and attachment is strongly linked to the aforementioned process of group conflict and competition. The very same social and political conditions that may make such attachments necessary, may also spark this conflict/competition. Simply stated, the more that a minority group acts as, and is perceived as, the conceptual other, the
more necessary it is for the dominant group to treat them as such-- and in turn, make decisions that both reinforce group boundaries, and preserve the existing balance of power.

Thus far the literature in this area has focused on how such consciousness shapes the attitudes and behaviors of the minority. However, it is also important to assess how this process may shape the response of the dominant society, particularly given the potential for reinforcing the fear that Blacks would taint the process if given the opportunity to participate. Understanding this potential for group-based conflict is particularly useful for assessing the expansion of felon disenfranchisement statutes. These laws are unique because they explicitly limit political participation. In turn, they make implicit claims regarding who is worthy of accessing the political system. As a result, the fear that Blacks, if given the right to vote, would act as a cohesive bloc may have significantly raised Whites’ perceived need to protect their interests. Thus, perceptions of group threat, coupled with the importance of voting in a democratic system, may have shaped the expansion of disenfranchisement laws.

In addition to evaluating the expansion of these laws, it is necessary to assess the considerations underlying their maintenance. Therefore, it is possible that felon disenfranchisement statutes may be linked to attitudes toward crime and criminals. Various studies indicate that crime continues to be of growing concern for many Americans. Although actual crime rates have declined over the last twenty years, citizens’ perceptions of criminal activity
are just as important to shaping policy demands. In terms of these demands, the U.S. has increasingly embraced a zero-tolerance approach to issues related to crime.

This approach has been marked by the growing adoption of and support for punitive policies. In turn, it is necessary to determine the extent to which support for felon disenfranchisement results from support for punitive crime control policies. Further, it is useful to assess whether the determinants of support for disenfranchisement have varied over time. Chapter three initiates this task by engaging in a critical analysis of the historical development of felon disenfranchisement laws. It places the adoption of felon disenfranchisement laws within the broader context of strategies aimed at limiting the electorate. Chapters four and five apply these theoretical considerations to understanding contemporary support for disenfranchisement laws at the institutional and mass levels. In particular, these chapters evaluate whether the racial discrimination motives of the past have been replaced by more principled considerations.
CHAPTER 3

Felon Disenfranchisement from an Historical Perspective

Our own government is one of the freest in the world in the matter of suffrage; and yet we bar out, in most states, all women; we bar out Mongolians, no matter how intelligent; we bar out Indians, and all foreigners who have not passed through a certain probationary stage and have not acquired a certain small amount of education. We also declare -- for an arbitrary limit must be placed somewhere -- that no person under twenty-one years of age may exercise the right to vote, although some boys of eighteen are today better equipped to pass intelligently upon public questions than many grown men...Thus the practice of a restricted suffrage is very deeply implanted in our system of government. It is everywhere recognized that even in a democracy lines must be drawn, and that the ballot, the precious instrument of government, must be hedged about with stringent regulations. The question is, where shall these lines be drawn in order that the best interests, not of any particular class, but of the whole nation, shall be served


In the classic text The Semi-Sovereign People, Schattschneider (1960) states that, “one of the easiest victories of the democratic cause has been the struggle for the extension of the franchise...the struggle for the ballot was almost bloodless, almost completely peaceful and astonishingly easy” (pp. 100-101). However, Schattschneider’s interpretation certainly does not comport with the experiences of African Americans. For them, the path to enfranchisement has been littered with volatile opposition, abandoned alliances, and unfulfilled promises.
Further, it has often been blocked by both direct (e.g. white only primaries and violence) and indirect (e.g. residency requirements and poll taxes) attempts to guard the precious voting booth.

These methods have been employed since Africans first landed on Virginia shores in 1619 with various restrictions on the exercise of citizenship. Notable examples of these restrictions include legal bans on property ownership, legal marriages, and of course, voting rights (Harding, 1981). Indeed the long history of African Americans’ political oppression merits scholarly attention. However, my research specifically focuses on Reconstruction and post-Reconstruction efforts to limit Blacks’ participation. In so doing, it provides a context for understanding how the historical use of the racial group conflict lens created the foundation for contemporary political inequality. Before exploring the connection between the lens and the adoption of felon disenfranchisement statutes, it is important to first characterize the broader political and social environment in which such policies emerged.

As previously stated, the underlying principle of a democracy is that governing power is vested in the hands of the people. Likewise, voting is central for allowing the voices of the people to be heard. Yet as we will see in this next section, determining which voices would be heard has often been a contentious process. In the following section, I begin by discussing the political climate that created the need to limit the electorate. By centering felon disenfranchisement within this broader context, I illustrate how this tumultuous political era increased the desire of state elites to create institutional barriers to participation. This
approach helps us better understand how changes in the political climate induced efforts to enfranchise Blacks at the federal level, while simultaneously producing numerous policies at the state-level aimed at undermining these efforts.

Throughout this chapter, I suggest that although group-based competition occurred across various cleavages (e.g. class, gender, region), racial-group considerations were the driving impetus for the late nineteenth and early twentieth-century expansion of felon voting restrictions.

**Connecting the Principles with the Practice**

“When a nation begins to modify the elective qualification one can be sure that sooner or later it will abolish it altogether. That is one of the most invariable rules of social behavior” - de Tocqueville (1839, pp. 59-60).

Disenfranchisement provisions have existed since this country’s founding. Throughout earlier periods in American history, the vote was seen as the privilege of propertied white men. And therefore not extended to groups such as women, Catholics, and the poor. Although the standard for determining the proper level of wealth varied across states, the underlying premise was the same: these individuals were deemed most worthy of participating.

Various scholars have attributed such restrictions to the founders’ experiences in England where class and social standing were important determinants of one’s political status. As Keyssar (2000) states, “the lynchpin of both colonial and British suffrage regulations was the restriction of voting to adult men who owned property” (p. 5). In support of this, Keyssar notes that seven colonies required men to own a certain acreage of land before they could
participate in elections. An important justification for this restriction was the belief that men who owned property were economically independent and therefore not easily manipulated. In turn, such independence justified ballot access restrictions.

Using this dependency standard led many colonies to adopt additional restrictions on the voting access of women, the poor, the illiterate, and children—all of whom were seen as being too dependent on others to make sound political judgements. As Kousser (1974) has suggested, the framers were concerned with insuring that those casting a ballot were competent and responsible enough to do so. Such considerations supported a “guarded democracy” approach to governing whereby limiting the franchise was viewed as essential for achieving sound policy (Dahl, 1989). Many classical theorists seemed to support this view by arguing that universal suffrage would impede “good government.” In particular, Mill ([1859]; 1994) and others felt that the ignorant and unsophisticated masses were unqualified to participate in the affairs of government. Thus, they argued, limiting the franchise to those who possessed the proper skills would be beneficial to the community as a whole. Ironically it was Mill, who in his defense of women’s suffrage, contended that “men, as well as women, do not need political rights in order that they may govern, but in order that they may not be misgoverned” (1991, p. 192).

Similar to the aforementioned considerations other justifications were also offered such as viewing voting as an earned privilege rather than a right. However, movements to limit the franchise often resulted from elites concerned
with preserving their political and social status. In support of this self-interest motivation, Key (1958) highlights the views of New York’s Chancellor Kent who stated:

The tendency of universal suffrage is to jeopardize the rights of property and the principles of liberty. There is a constant tendency in human society- and the history of every age proves it- there is a constant tendency in the poor to covet and to shore the plunder of the rich; in the debtor to relax or to avoid the obligations of contract; in the indolent and profligate to cast the whole burden of society upon the industrious and virtuous; and there is a tendency in ambitious and wicked men to inflame the combustible materials (p. 646).

Although Kent was concerned with the threat that the poor would redistribute wealth, the same ideology fueled fears over how other groups would exploit their newly enfranchised status. In particular, many politicians felt that previously oppressed groups such as African Americans and women would vote in a manner that would punish the ruling elite. Such arguments were quite convincing and thus influenced the creation of numerous restrictive statutes. These statutes ranged from residency requirements to insure that voters had ties to the community, to literacy tests created to secure a sophisticated electorate. This was particularly true in the post-Reconstruction South where political elites eagerly devised strategies to restrict the electorate.

On the surface, all of these strategies seemed like reasonable means of promoting both the best interest of the community and the sanctity of the ballot box. However, a closer examination of this process reveals that these theoretical justifications were often bastardized to concentrate their impact on certain groups. For example, literacy tests were commonly employed to exclude certain European
immigrants in the North and African Americans in the South. Similarly, poll taxes were effective tools for limiting the participation of poorer Whites. The use of these tactics would take on renewed importance as the mandates of the Constitution combined with the consequences of the Civil War to fundamentally alter the face of American politics.

The Setting for Disenfranchisement

It is useful to understand how the various levels of government collectively shaped the citizenship status of African Americans. Led by Chief Justice Roger Taney, the Supreme Court’s ruling in the 1857 *Dred Scott v. Sanford* decision effectively ruled that Blacks—both slaves and free—could never become citizens of the United States. In justifying this declaration, Taney (1857) wrote that in spite of the Constitution, Blacks "had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold and treated as an ordinary article of merchandise and traffic, whenever profit could be made by it." Taney further argued that "it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration. . . ." Although the focus of this original case was on whether Scott could be considered a free man, the decision was used to justify the wholesale disenfranchisement of Blacks during this time.
Interestingly, sixty-nine percent of the original thirteen states allowed free men of color to vote during the colonial period. However, the increasing size of this population coupled with the new political structure created by the Articles of Confederation significantly reversed this trend. When these original colonies became states, only four allowed free men of color to vote (Woodward, 1974). During this critical time Blacks’ voting rights were revoked in New Jersey (1807), Connecticut (1818), North Carolina (1834), and Pennsylvania (1838). This process highlights the central role that states were able to retain despite the tremendous structural changes resulting from the U.S. Constitution.

Perhaps most importantly, states retained a great deal of discretion in setting the requirements for participation, and in turn, the benefits of citizenship. As Timpone (1994) suggests, this discretion gave way to a great deal of regional variation. In particular, many of the new states in the West had substantially lower wealth requirements, while many of the earlier states sought to guarantee their power by moving toward universal white male suffrage. Given the importance of the vote and the dual battles to both expand and limit the electorate, it would appear that suffrage extensions would be rather non-existent. Yet in spite of this intuitive inclination, this era witnessed a gradual expansion of the electorate. In turn, it is useful to explain the impetus for this expansion.

According to Timpone (1994), “the conventional civic minded response is that suffrage was progressively expanded due to views of political egalitarianism and a sense of fairness to other groups” (p. 35). However, merely focusing on an increased commitment to egalitarian principles negates the often strategic nature
of politics-- in particular, the efforts of ruling elites and groups to maximize their influence. The result of these efforts has often been the altering of election rules in order to help groups and political elites achieve their political ends. By altering the rules of the political game and in turn defining who has access to the political system, elites can better determine the outputs of the system. As a result, defining the requirements for participation becomes critical for protecting one’s status. This was particularly true during Reconstruction and post-Reconstruction.

As previously stated, the Constitution and the accompanying efforts to implement it were critical for asserting the supremacy of the national government. These efforts would be important for not only altering the structure of government in general, but for altering the relationship between Blacks and government in particular: “because the national government exercised limited functions during the nineteenth century, state and local governments were far more significant in determining the rights that Blacks enjoyed. Moreover, in defining these rights states operated virtually without restraint by the national government” (p. 20).

Though states retained a rather limited set of powers, one of the most important was their ability to set the time, place, and manner of elections (Article I, Section 4; Article II, Section 1).15 However, this power was not absolute.

The adoption of several Constitutional amendments after the Civil War threatened to erode states’ electoral control. In particular, the three Civil War Amendments intensified the contentious relationship between the federal

15 Please refer to the appendix for the full wording of these sections.
government and the states, particularly southern states. The Thirteenth Amendment (1865) forbade slavery and therefore secured a minimal degree of citizenship for blacks. The Fourteenth Amendment (1868) granted citizenship to all persons “born or naturalized in the United States” but failed to explicitly prohibit vote discrimination on racial grounds.\textsuperscript{16} The Fifteenth Amendment (1870) stated that the “rights of citizens of the United States to vote shall not be denied or abridged by the U.S. or by any state on account of race, color, or previous condition of servitude” and gave explicit constitutional protection to the voting rights of Blacks in the North and South (Grofman and Davidson, 1992).\textsuperscript{17} The Fourteenth and Fifteenth Amendments were also significant because they represented the first constitutional appearance of the term “right to vote.” Further, they highlighted the unique role that the federal government should take in establishing and sustaining the full realization of American democracy. Taken together, these three amendments were critical for gradually extending protection of the franchise to African American men. Yet most importantly, fears over the potential consequences of these amendments gave rise to a tremendous white backlash— a backlash that personifies the nature of politics during this time.

The adoption of these amendments demonstrates the overlap between a commitment to egalitarian principles and a desire to promote one’s own interests.

\textsuperscript{16} The Supreme Court ruled in \textit{Elk v. Wilkins} (1884) that the Fourteenth Amendment did not apply to Native Americans, and therefore Native Americans could not be considered citizens. It was not until the Indian Naturalization Act of 1890 that tribal members could begin \textit{applying for} citizenship status.

\textsuperscript{17} See Arrington and Taylor (1992) for a detailed discussion of the contentious path to ratifying these amendments.
On the surface, it appeared that the “progressive” politicians of the North supported these extensions because they promoted fairness and justice for African Americans (even though voting rights only applied to African American men). However, as James and Lawson (1999) contend, the nature of partisan competition during this time significantly influenced efforts to secure Blacks’ voting rights. By supporting Black enfranchisement, many Republicans hoped to gain control of national political offices, particularly the White House. As Key (1958) and other scholars have argued, the issue of Black suffrage only became a part of the Reconstruction agenda after radicals in Congress saw it as a useful means of widening their base of support. Although these new amendments represented incremental changes in the formal citizenship status of Blacks, in practice they did very little to transform their political status. Further, the modest gains derived from these changes were quickly eroded.

**Incremental Gains, Monumental Losses**

Building upon the imperatives of the Thirteenth Amendment, the Reconstruction Act of 1867 was critical for attempting to permanently transform Blacks’ citizenship status. The act was important for dissolving state governments in the South and establishing a formal military presence in the region. Yet perhaps most importantly, the act required southern states to hold constitutional conventions with delegates elected by male citizens of “whatever race, color, or previous condition.” Only after such conventions were held could southern state governments be established.
By extension, the Reconstruction Act of 1867 also enfranchised Blacks in the North. This was necessary because as Matthews and Prothro (1966) state, before the Civil War all states except Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont included black disenfranchisement provisions in their constitutions. Although suffrage was available in these states in theory, in practice Blacks’ full voting participation was still an illusive goal. According to Nieman (1991), “with the exception of Maine, none of the states that entered the Union after 1800 permitted Blacks to vote in general elections” (p. 28). And in the decade preceding the Reconstruction Act of 1867, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont continued to be the only states that allowed Blacks to vote on the same terms as Whites.

These legal changes dramatically changed the make-up of the Southern electorate. As Blacks began to comprise the majority of the electorate in numerous areas of the Black-belt region, a federal commitment and visual presence helped nearly 800 Blacks achieve elected office in the South (Harding, 1983). The elections following this Reconstruction Act also enabled Republicans to gain power and influence in the South. This shift in the balance of power also afforded Congress greater control over both making laws and shaping the face of Reconstruction. Shaffer (1998) argues that this process essentially represented a power contest between the Republican Congress and the Democrat President Andrew Johnson.
Although Congress passed numerous laws aimed at establishing Blacks’ citizenship status, Johnson attempted to obstruct the full implementation of these laws. As a result, Johnson was impeached in 1868. However, other forces at the state and national levels significantly reversed this trend. Guided by a common fear of Black dominance that combined with contempt for northern influence, many Whites worked earnestly to regain their political rights and status. As a result, the marginal gains of black enfranchisement served as a catalyst for massive countermobilization efforts on the part of Whites that relied on both legal and illegal tactics.

Although the passage of these laws provided Blacks with modest political rights, they did nothing to alter Blacks’ social and economic status. In turn, Whites were able to use their control over social and economic institutions to both discourage and undermine Black participation. Violence in the form of kidnappings, lynchings, and fire-bombings also were quite effective for “scaring” blacks away from the polls (Woodward, 1956). As Harding (1981; 1983) and others (Foner, 1988; Gates, 2000; Packard, 2002) suggest, the rise and prominence of the Ku Klux Klan during this time effectively threatened the formal changes in Blacks’ citizenship status. In referencing the prominence of such tactics, Key (1958) writes that formal disenfranchisement measures made up “the roof rather than the foundation of the Southern political system” (p. 533).

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18 According to Foner (1988), the Klan was the creation of a group of ex-Confederate veterans in Pulaski, Tennessee. Reflecting the “invisible empire of the South,” the Klan would grow to become one of the largest groups that opposed the Reconstruction government’s attempts to extend rights to Blacks.
The table below provides information regarding the tremendous rise in lynchings, which should be regarded as a political tactic to keep Blacks in their (lesser) place.

<table>
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<tr>
<th></th>
<th>1880</th>
<th>1890’s</th>
<th>1900’s</th>
<th>1910’s</th>
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<td>606</td>
<td>372</td>
<td>278</td>
<td>100</td>
<td>39</td>
<td>5</td>
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<td>317</td>
<td>154</td>
<td>88</td>
<td>70</td>
<td>22</td>
<td>0</td>
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<td>0</td>
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<tr>
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<td>9</td>
<td>75</td>
<td>99</td>
<td>56</td>
<td>22</td>
<td>21</td>
<td>6</td>
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<td>10</td>
<td>11</td>
<td>31</td>
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<tr>
<td>a White Person</td>
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<tr>
<td>Total</td>
<td>815</td>
<td>1008</td>
<td>636</td>
<td>453</td>
<td>209</td>
<td>90</td>
<td>13</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>% of Victims</td>
<td>44</td>
<td>72</td>
<td>89</td>
<td>91</td>
<td>89</td>
<td>92</td>
<td>94</td>
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Table 3.1: Illegal Reported Lynchings by Alleged Offense, 1880-1962

Looking at the table we can see the prevalence of these tactics during the periods of greatest political turmoil. Although African Americans only accounted for forty-four percent of the lynching victims in the 1880’s, their representation increased to seventy-two percent in the 1890’s, and eighty-nine percent in the 1900’s. In addition, lynchings based on allegations of raping and/or insulting a white person also rose dramatically. These practices also took on a decidedly regional tone. For example, eighty-three percent of the reported cases in the South involved a Black victim, compared to sixty-seven percent in the Northeast, thirty-

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six percent in the North Central region, and five-percent in the West. In every southern state except Oklahoma, more than eighty-five percent of the reported cases involved an African American victim. In essence, these illegal tactics helped satisfy the needs that some citizens were not able to achieve via legal means.

In terms of formal legal measures at the national level, the Compromise of 1877 resulted in both an end to Reconstruction, and an effective end to Black electoral participation. The Compromise resulted from a dispute over electoral votes in the presidential election of 1876. The votes in question came from the last three states still under federal occupation: South Carolina, Louisiana, and Florida. To resolve the dispute party officials agreed that the contested votes would go to the Republican candidate Rutherford B. Hayes. In exchange, the Republicans agreed to withdraw federal troops from the South and in effect, end Reconstruction. To some extent, the Compromise was simply a symbolic move to formally withdraw federal interference. The reality is that other efforts were just as, if not more, effective at solidifying Blacks’ subordinate status. In effect, the illegal tactics of violence and corruption combined with the legal imperatives of the Compromise of 1877 to help southern whites regain their political dominance.

With the removal of federal troops, Blacks were left to the mercy of (Southern) elites who were more committed to a return to the pre-bellum political world than to the egalitarian principles that had supposedly led to the original constitutional revisions. As a result, the country witnessed a dramatic decrease in Black electoral participation.
In turn, “within 10 to 15 years after 1867 the premature enfranchisement of the Negro was largely undone, and undone by a veritable revolution” (Key, 1949, p. 536).

Relegating the issue of race to a regional rather than national concern, the federal government retreated from its prior efforts to protect Blacks’ access to the ballot. And in effect, it fueled Southern efforts to guarantee dominance. James and Lawson (1999) document the negative impact of relocating federal efforts to protect electoral access to the pivotal states in the North. As Kousser (1992) argues, the effect of this relocation was the rise of massive efforts to systematically disenfranchise African Americans in the South. Although this early history suggests that race and racial concerns were always present in the United States, the Gilded Age marked a concerted effort on the part of the national parties and elected officials to keep race off the national agenda.\(^{20}\) Recognizing the potentially divisive nature of the issue, national political actors attempted to maintain consensus politics by relegating the issue of racial disparity to the local level, particularly in the South (Lewinson, 1959). In light of this “agreement,” the Supreme Court led the retreat from racial equality by suggesting that the Fourteenth Amendment did not place all rights under federal protection. To cement this assertion, the Court ruled against the protection of civil rights in a series of cases including the *Slaughterhouse Cases* (1873), the *Civil Rights Cases* (1883), and *Plessy v. Ferguson* (1896). Following this trend, Congress did not

\(^{20}\) James and Lawson (1999) define the *Gilded Age* as a “period of rampant political corruption that flowed from both partisan and private business sources” (p. 116).
pass a civil rights bill, after Reconstruction, until the Civil Rights Act of 1957.

Similarly, the president did not send a civil rights program to Congress until Truman.

This federal government indifference helped the South keep the question of Black suffrage off the political agenda for nearly a decade. However, as Matthews and Prothro (1966) argue, internal conflict between white factions made the issue pertinent once again. In particular, the Populist rebellion of the 1890’s represented a formidable threat to white supremacy-- primarily because two parties were actively courting Black voters to fulfill their own political agenda:

The Farmers Alliance and the Populist Party generated a dispute among whites whose outcome was of such deep concern that both factions breached the consensus to keep the blacks from the polls. Both Democrats and Populists were in a position to hold the balance of power between white factions. The degree to which Negroes actually voted *en bloc* and participated in the elections of the agrarian uprising has never been adequately investigated…. Nevertheless, the Populists, either alone or in combination with Republicans, threatened Democratic supremacy, and a situation emerged in which the plea for white supremacy could be made effectively (Key 1949, p. 541).

Ironically, this new movement also contributed to Whites’ countermobilization. Not only did it elevate fears regarding the potential consequences of Blacks voting, it also helped strengthen the relationship between white Southerners and the Democratic Party. As Key suggests, such an attachment was critical for maintaining White control.

Political elites soon realized that the only assured means of countering these efforts would be to adopt formal, legal barriers to Blacks’ voting. Although
violence had successfully limited participation in the past, elites viewed this as a temporary remedy rather than a permanent solution. Instead it was necessary for state legislators to create new schemes that could survive Constitutional scrutiny. Much of the efforts derived from appeals to white supremacy and solidarity in the face of efforts to solicit Black support. This was particularly key in areas where the Populist Movement threatened to induce internal cleavages amongst Whites.

Lewinson (1932) suggests that this process of “political niggerism” served to reunite the South under the common goal of keeping African Americans out of the voting booth. Keenly aware that the Fifteenth Amendment prohibited overtly racial discrimination, white politicians were forced to devise more subtle methods of excluding Blacks. To complicate this task, these politicians also had to insure that “any scheme aimed at the Negro but cast in general terms…had to be framed so as not to exclude white citizens” (Lewinson, 1932, p. 79). Although some of this could be avoided because of the selective enforcement practices of election supervisors and registrars, legislators still sought to adopt formal safeguards.

As a result, Mississippi’s 1890 constitutional convention marked the first concerted post-Reconstruction effort to adopt legal devices aimed at disenfranchising Blacks, and the first to avoid ratification by popular vote. Reflecting the fact that the state’s population was fifty-eight percent Black at the time, one Mississippi delegate remarked that “the avowed purpose of calling [this] convention was to restrict the negro vote.”21 In anticipation of threats to the

21 Mr. McLaurin of Sharkey County, quoted in Clarion Ledger (Jacksonville), September 25, 1890, pg 3.
existing political order, Mississippi became the only state to call for a constitutional convention before the outbreak of the Populist revolt (Woodward, 1951). In turn, the Mississippi convention set the precedent for all other southern conventions. As Key (1949) suggests, Mississippi’s plan was both simple and effective. Certainly politicians were aware of the effectiveness of subtle exclusionary tactics; and even more importantly, the lasting power of such methods. In his analysis of the consequences of voter mobilization in the South, Stanley (1987) recounts the testimony of a Mississippi official who stated, “those fellows from the Justice Department thought they were so smart when they gave the vote to these illiterate darkies; what those smart fellows didn’t realize was that we can still get to those darkies in a whole lot of subtle ways” (p. 137).

For Whites struggling to preserve what they viewed as a fragile political and social order, these efforts were the only assured means of limiting the electorate. Similarly, removing Black voters was viewed as an effective solution to three of the most critical issues facing the South: 1) ending corrupt elections that had become mainstays of southern politics, 2) removing Blacks as arbiters between white factions, and thus allowing white men to freely divide on basic issues, and 3) forcing Blacks to abandon their false hopes of racial equality and fairness (Woodward, 1951).

Furthering this belief, from 1891 to 1910 eleven additional states including Louisiana (1898), Virginia (1902), Alabama (1901), North Carolina (1900), Georgia (1908), South Carolina (1895), Tennessee (1891), Florida (1889),
Texas (1902), Arkansas (1893), and Oklahoma followed the Magnolia Plan.\textsuperscript{22} Through these conventions, strategies such as difficult literacy tests, cumulative poll taxes, and lengthy residency requirements effectively decimated the black electorate. This process was buttressed by the Court’s decision in \textit{Plessy v. Ferguson} (1896) that effectively affirmed the state’s right to create differential standards for citizenship.\textsuperscript{23} As a result, the Plessy decision further encouraged states efforts to enact myriad restrictions on African Americans.

In terms of these new restrictions, states with smaller Black populations such as Texas, Arkansas, Florida, and Tennessee largely relied on the poll tax to achieve disenfranchisement. States with sizeable Black populations such as Louisiana, Virginia, Georgia, Alabama, and the Carolinas employed an array of tactics such as the grandfather clause, literacy tests, and stringent education requirements. Matthews and Prothro (1966) suggest that there has been a great deal of scholarly debate regarding the actual impact of these constitutional changes on immediate participation rates. Key, for example, uses Texas election data to suggest that these changes simply legalized the Black disenfranchisement that had already been achieved via violence. However, Lewinson (1959) uses

\begin{itemize}
  \item Archival research reveals a statement by an Alabama legislator (1892) who in an editorial attempting to convince other elites to call for a constitutional convention stated, “we would do well to imitate the wise politicians of Mississippi.”
  \item In issuing its decision on May 18, 1896, the Supreme Court asserted that, “[we] cannot say that a law that authorizes or even requires the separation of the two races in public conveyances is unreasonable.” Although this particular case involved the physical separation of the races (e.g. separate dining and travel facilities for Blacks and Whites), the decision was later interpreted to apply to the political and economic separation as well.
\end{itemize}
voter registration data from Louisiana to argue that these changes were responsible for the dramatic decline in Black voting.

Although gauging the impact of such strategies has garnered a great deal of scholarly attention, few have recognized the more subtle, yet equally effective use of criminal disenfranchisement laws as a means of limiting Blacks’ access to the ballot box. While some form of criminal disenfranchisement had previously existed in this country, most states tailored their disenfranchisement laws to increase their impact on Blacks. Before analyzing the era of expansion of these laws, it is useful to first examine the previous usage of and justifications for felon disenfranchisement laws. In so doing we can better understand how the historical roots of these laws provided a durable guise for the late nineteenth century manipulations of these statutes. In turn, these historical origins allowed disenfranchisement statutes to become an enduring feature of many state constitutions.

\textit{Criminal Disenfranchisement in Perspective}

In ancient Greece, those convicted of heinous crimes were not allowed to exercise key features of citizenship such as entering into contracts, voting, or appearing in court. Similarly, those who were labeled as \textit{infamia} in ancient Rome were denied these privileges. According to an article published in the \textit{American Criminal Law Review} (1973), the literal translation of the term \textit{infamia} is “disgrace” or “ignominy.” The Review argues that, “these special disqualifications were based on an injury to reputation. The questions to which it
gives rise are partly moral, partly juristic: since the institution itself depended on the theory that a moral taint involved a civic disability” (p. 40). In essence, this moral censure was seen as appropriate punishment for committing a criminal or immoral act. The ultimate goal of these practices was to both sever the criminal’s ties to the community and dehumanize the individual. This motivation would continue even after the fall of the Roman Empire.

In parts of Europe in general, and England in particular, the concept of outlawry was used to punish those who had committed certain offenses against the community. Described as the “loss of peace,” outlawry mandated that an offender lost the protection of the law and was thereby deprived of his civil and political rights. This punishment was particularly severe given that the criminal not only became politically impotent, but could also be killed by anyone living in the community. In their study of the History of English Law, Pollack and Maitland (1968) posit that this banishment was based on the belief that, “he who breaks the law has gone to war with the community; the community goes to war with him” (p. 449). Accordingly, the outlaw was considered to be “civilly dead.” This term, which originated in Roman Law, referred to the process of depriving a criminal of his legal existence.

24 This concept derives from the German term friedlosigkeit which also means loss of peace. One’s individual peace of mind was lost because she was subject to attack by anyone, at any time. Further, the laws and those charged with carrying out such laws (e.g. peace officers) were prevented from protecting the banished criminals who had now become the citizens’ prey.
Von Bar (1916) further describes it as the absolute loss of rights because it “sunders completely every bond between society and the man who has incurred it; he ceases to be a citizen” (p. 272).

This same ideology later led to the exclusion of those convicted of capital offenses. Further expanding this concept was the loss of civil rights based on infamy. According to Itzkowitz and Oldak (1973), infamy was applied to 1) those committing acts expressly declared infamous by law, 2) those condemned for a public crime and declared infamous by a magistrate, and 3) those who received certain degrading penalties such as the gallows or the cage. Although quite similar, infamy was less severe in its penalties than civil death. Infamy allowed the offender to remain within the community but subjected him to strict punishment by law. This emphasis is critical because while outlawry was imposed by statutory enactment, infamy was imposed by operation of law. This distinction provided for greater leniency and discretion for the punishment. Further, it allowed the offender to retain some civil rights.25

Building upon these plans, England later developed a harsher process known as attainder to impose civil disabilities. Under this system, a person convicted of treason and/or a felony was subject to three penalties: forfeiture of property, loss of civil rights, and “corruption of the blood” (Itzkowitz and Oldak, 1973; Avery v. Everett, 1888). This loss of rights effectively guaranteed civil

25 The subjective nature of this standard was quite attractive for later legislators who wanted to craft disenfranchisement statutes that would be open to greater interpretation. As a result, most states’ disenfranchisement statutes continue to prohibit ballot access for those convicted of “infamous crimes.”
death because a person could no longer perform any legal function. In effect, corruption of the blood meant that an attained person was unfit to inherit, possess, or leave his estate to his descendants. As a result, this system was very effective at separating offenders and their descendants from the body politic.

Drawing upon their experiences in their home country, the early colonists retained many of the essential features of English law. Chief among these features was the imposition of civil death. Adopting various strains of the European model, many colonies implemented the concepts of outlawry (New York and North Carolina) and infamy (New York). Although the colonists fought against the oppressive control of the Crown, they did not completely reject the English tradition (Rubin, 1963). Instead, the framers selectively retained some of the less severe features of the civil disability system. In particular, the Constitution prohibited forfeiture and corruption of blood for any crime other than treason. Although the new states rejected the concept of civil death, most wrote civil disability provisions into their state constitutions (Itzkowitz and Oldak, 1973). In particular, many states adopted criminal disenfranchisement provisions. However, the scope of these statutes was only limited to serious offenders and those who had violated social norms (both legal and moral).

Between 1776 and 1821, eleven states adopted provisions that denied the vote to convicted felons. Those states included Virginia (1776), Kentucky (1799), Ohio (1802), Louisiana (1812), Indiana (1816), Mississippi (1817), Connecticut
(1818), Alabama (1819), Missouri (1820), and New York (1821). Nineteen of the thirty-four Union states excluded serious offenders from the electorate. By the beginning of the Civil War, twenty-four states disenfranchised men who were convicted of committing serious crimes (Keyssar, 2000). Although this disenfranchisement was usually permanent, New York’s 1846 constitution did create the possibility that the governor could issue a pardon reinstating the voting rights of these former felons.

The original justifications for these statutes were based on the dual concepts of deterrence and retribution. Retribution suggested that the criminal’s injury to the community had to be avenged. Therefore, imposing civil disabilities stripped criminals of the rights and privileges of citizenship. This was often reflected in the belief that “the criminal should be worse off than the poorest of honest citizens” (Radzinowicz and Wolfghang, 1973). Likewise, deterrence was based on the notion that the humiliation associated with the stigma of losing civil rights would discourage the commission of future criminal acts. Yet despite these principled motivations for criminal disenfranchisement, the post-Reconstruction expansion of these laws would demonstrate the powerful influence of fear, power, and concern over social and political status.

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26 Information gleaned from Green v. Board of Elections (1967).
Criminal Disenfranchisement in the post-Reconstruction Era

As previously suggested, Mississippi’s schemes set the tone for the wholesale disenfranchisement of African Americans. Though some form of criminal disenfranchisement had always existed in this country, most states tailored their statutes during the post-Reconstruction era to enhance their impact on African Americans. These new plans were ingenious, because they allowed for the penalization of Blacks without any explicit reference to Blacks as a racial group. Instead, they were built under the guise of addressing a set of unfavorable attributes and behaviors. The subtlety of these new criminal disenfranchisement provisions was particularly attractive because it provided states with a greater sense of protection from legal challenges. Here the concept of federalism is critical. States were keenly aware that the Fifteenth Amendment prohibited overtly racial policies. As a result, these new criminal disenfranchisement provisions allowed states to protect their interests, while still upholding the Constitution that in theory protected Blacks’ interests. Thus, this subtle altering of criminal disenfranchisement enabled Alabama state legislator Frank Johnston (1902) to state, “every provision in the Mississippi Constitution applies equally, and without any discrimination whatever, to both the White and the Negro races. Any assumption, therefore, that the purpose of the framers of the Constitution was ulterior, and dishonest, is gratuitous, and therefore not sustained.”

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In his testimony during the *Hunter v. Underwood* (1985) hearings, Kousser (1984) suggested that these laws were beneficial because they provided elites with a “critical line of defense in case other parts of the suffrage plan did not withstand attack” (p. 214). However, it is important to note that white legislators were not in unanimous agreement with these criminal disenfranchisement provisions. In particular, many feared that strategies aimed at Blacks would also disqualify a number of Whites; particularly poorer Whites.

Therefore, legislators had to craft these policies in a manner that would exclude Blacks but still leave the possibility for poorer and less educated Whites to participate.

To achieve this goal, states began imposing disqualification for petty crimes and offenses. Further, the crimes covered by these provisions excluded crimes that Whites committed more frequently, and included crimes that Blacks were believed to commit more frequently. For example, Mississippi’s 1869 constitutional statutes required disenfranchisement of citizens convicted of any crime. However, its 1890 constitution imposed disenfranchisement for a very narrow list of crimes that included bribery, theft, arson, burglary, bigamy, embezzlement, perjury, and forgery. By narrowing the scope of the disenfranchising crimes, Mississippi was able to reduce the eligible Black electorate without harming the size of the eligible white electorate.

In following Mississippi’s plan, Alabama’s convention president, John B. Knox boldly declared, “and what is it that we want to do? Why it is within the
limits imposed by the Federal Constitution, to establish white supremacy in this state. Be it therefore resolved, that the Committee on Suffrage and Elections be requested and instructed to report to this convention within the next five days an ordinance looking to the disenfranchisement of the negro.” Believing that Blacks were more likely to commit more furtive offenses, while Whites were more likely to commit robust crimes, Alabama’s list of disqualifying crimes included minor offenses such as breaking a water pipe, participating in a common law marriage, miscegenation, vagrancy, and stealing edible meat. The specific list of enumerated crimes included:

- treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, [and] crime against nature.

To solidify the impact of these statutes, legislators added to the list, “any crime… involving moral turpitude.” In writing Alabama’s constitutional provision for the disenfranchisement of criminals, John Fielding Burns estimated that the “crime of wife-beating alone would disqualify sixty-percent of Negroes.”


29 Recall that during this time, many states did not legally recognize marriages between African Americans. And in an effort to discourage racial mixing many states also passed anti-miscegenation laws. Therefore, including these as disqualifying crimes insured that they would have a greater impact on Blacks than Whites, particularly Black men.

Borrowing heavily from the Alabama justification, the crimes subject to disenfranchisement in the state of North Carolina included petty larceny, wife beating, and similar offenses believed to be a direct result of Blacks’ low economic and social status. \(^{31}\) Similarly, virulent racist “Pitchfork” Ben Tillman boasted of basing disenfranchisement on crimes of “moral turpitude” in an effort to establish white supremacy in the state of South Carolina. \(^{32}\) In referencing this declaration, historian Frances B. Simpkins (1944) writes that:

among the disqualifying crimes were those to which [the Negro] was especially prone: thievery, adultery, arson, wife-beating, housebreaking, and attempted rape. Such crimes as murder and fighting to which the white man was as disposed as the Negro, were significantly omitted from the list (p. 297). \(^{33}\)

During its 1901-1903 convention, the Virginia legislature voted to make petit larceny a disqualifying crime. Though the fairness of this policy change is debatable, its rationality is more apparent. Former Senator Carter G. Glass of Virginia illustrates this rationality by stating:

By fraud, no; by discrimination, yes. But it will be discrimination within the letter of the law…Discrimination! Why that is precisely what we propose; that exactly is what this convention was elected for---to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution with a view to the elimination of every Negro voter who can be gotten rid of, legally, without materially

\(^{31}\) In addition to borrowing Alabama’s disenfranchisement of criminals, North Carolina also failed to exclude the poor and insane from the electorate. This failure would suggest that disenfranchisement was based on those groups who posed the greatest threats, and had a greater likelihood of actually voting.

\(^{32}\) As Vice-President of the Anti-Imperialist League, Tillman was crucial for leading the movement to disenfranchise Blacks during the post-Reconstruction era. His famous “White Man’s Burden” speech borrowed from Rudyard Kipling’s poem to convince state legislators that they had a special mandate to rid the electorate of Blacks in order to uphold the best interests of the community.

\(^{33}\) According to Porter (1918), the convention “also included wife-beating and assault with intent to ravish in the list of crimes which one could be disfranchised. These offenses seem to be more or less common among negroes” (p. 211).
impairing the numerical strength of the white electorate…It is a fine
discrimination indeed that we have practiced in the fabrication of this
plan. 34

In terms of disenfranchisement within the letter of the law, it is possible
that Glass was referring to a loophole in Section Two of the Fourteenth
Amendment that allows states to deny the right to vote “for participation in
rebellion or other crimes.” (Emphasis added).

It was the blatant exploitation of this loophole that led a delegate to the
Richmond Negro Convention to remark, “it is hard that a poor Negro cannot take
a few chickens without losing his right to vote.”

The Impact of Criminal Disenfranchisement Strategies

As a result of these early efforts to target African Americans, the country witnessed a dramatic increase in the number of states with formal disenfranchisement provisions. The figure below charts the increasing adoption of these laws between 1780 and 1920:

Figure 3.1: Number of States with Criminal Disenfranchisement Statutes, 1780-1910
Looking at this figure we can see that the period between 1880 and 1890, the year of the first constitutional convention, marked the steepest decline in the number of states that did not have disenfranchisement statutes. Likewise, the country has seen a steady increase since 1870 in the number of states with formal disenfranchisement provisions.

As the number of states with such provisions increased, the number of African Americans registered to vote dropped precipitously. For example, Louisiana had over 130,000 African Americans registered to vote in January of 1897; representing nearly forty-four percent of the electorate. Yet after the constitutional convention of 1898 increased the severity of the state’s disenfranchisement provisions, the number of African Americans registered to vote was only 5,320. And in 1904, that number had fallen again to only 1,342. By 1920, African Americans comprised less than one-percent of the electorate. As a result, only five African Americans were elected to southern state legislatures in 1900, down from 324 in 1872.35

It should be noted that the number of Whites registered to vote during this time also decreased, although not nearly as drastically. For example, 164,088 Whites were registered to vote in 1897, 125,437 in 1900, and 91,716 in 1904.36

35 Blacks had 265 delegates to the state conventions held between 1867 and 1869. From 1866 to 1868, 147 African Americans were elected to state legislatures, and nine were elected to Congress. The success of these candidates was largely determined by the size of the Black electorate within a given state. For example, in states like Louisiana, South Carolina, and Florida where Blacks constituted either a near or absolute majority, a greater share of the elected officials were Black (Foner, 1988).

Overall, the Black electorate in Louisiana was reduced by nearly ninety-six percent, while the White electorate was only reduced by twenty-three percent. These figures suggest that although a number of Whites were also disenfranchised by these new strategies, African Americans shouldered the bulk of the burden.

**The Scholarly Response**

The prominence of these practices eventually gained the attention of scholarly communities. For example, John L. Love’s (1899) article “The Disenfranchisement of the Negro” appeared in the first volume of the *Annual of American Political Science*. The article was significant because it represented one of the earliest social science evaluations of the selective use of criminal disenfranchisement statutes throughout the South. Love writes:

> In South Carolina a man convicted of fornication or adultery is disenfranchised for life. In Maryland the former is not punished at all, and a ten dollar fine is the maximum penalty for the latter. It is possible that the enumeration of such offenses as fornication, adultery, bigamy, and wife-beating among the crimes which work a forfeiture of citizenship may have been inspired, in part at least, by the belief that they were offenses to the commission of which negroes were prone, and for which negroes could be much more readily convicted than white men (p. 25).
Similarly, an early edition of the *American Negro Academy* (1899) offered the following commentary:

The crimes mentioned as disqualifying Negroes from voting are such as it is always easy, when desirable, to convict the Negro of committing. Under the present method of administering justice in the states where these disenfranchising constitutions operate, the Negro has neither any guarantee of a fair and impartial trial nor any protection against malicious prosecution or false accusations when it is convenient to convict him.

And finally, Porter’s (1918) analysis of the historical development of suffrage in the United States also questioned the tampering with criminal disenfranchisement statutes:

Disenfranchisement of crime seems to be a perfectly legitimate rule to apply and has been used throughout our history. But when a negro could be disfranchised because of a trifling physical conflict with his wife—interpreted as wife-beating—the principle involved is utterly subverted (p. 219).

**The Legal Response**

In addition to the attention of the scholarly community, social activists within the legal community began to challenge both the fairness and constitutionality of states’ tampering with disenfranchisement provisions. Alleging that these new statutes violated the Fourteenth Amendment’s Equal Protection Clause, the *Washington v. State of Alabama* (1884) case became one of
the earliest legal challenges to criminal disenfranchisement. In upholding Alabama’s ban on felon voting in general, and its list of disenfranchising crimes in particular, the court proposed that the purpose of disenfranchisement is to:

preserve the purity of the ballot box, which is the only sure foundation of republican liberty, and which needs protection against the invasion of corruption, just as much as against that of ignorance, incapacity, or tyranny. The evil infection of the one is not more fatal that that of the other. The presumption is, that one rendered infamous by conviction of a felony, or other base offense indicative of great moral turpitude, is unfit to exercise the privilege of suffrage, or to hold office, upon terms of equality with freemen who are elected by the State with the toga of political citizenship.

This decision echoed the earlier justifications of criminal disenfranchisement as an effective means of guarding the voting booth, and articulating society’s moral disdain of criminals (Keyssar, 2000). Further, it affirmed the belief that because of their crimes, felons gave up any privileges and rights attached to citizenship. In turn, the Court upheld the moral censure of these individuals.

In addition to the Washington decision, Davis v. Beason (1890) further affirmed the Court’s beliefs that states had a legitimate interest in restricting access to the ballot. Unlike the previous cases, Davis did not raise the question of whether or not these laws were racially discriminatory. Instead, the case challenged a Idaho statute (originally targeted at Mormons) that made practicing or advocating bigamy a felony offense, thus making anyone convicted of this

37 In writing the majority opinion for Shaw v. Reno (1993), the Court affirmed that the central purpose of the Equal Protection Clause "is to prevent the States from purposefully discriminating between individuals on the basis of race."

crime subject to disenfranchisement. In upholding the territory’s right to
disenfranchise felons, Justice Field wrote that:

In our judgment, Section 501 of the Revised Statutes of Idaho Territory,
which provides that `no person . . . who is a bigamist or polygamist or who
teaches, advises, counsels, or encourages any person or persons to become
bigamists or polygamists, or to commit any other crime defined by law, or
to enter into what is known as plural or celestial marriage, or who is a
member of any order, organization or association which teaches, advises,
counsels, or encourages its members or devotees or any other persons to
commit the crime of bigamy or polygamy, or any other crime defined by
law . . . is not permitted to vote at any election, or to hold any position or
office of honor, trust, or profit within this Territory,' is not open to any
constitutional or legal objection.” Id., at 346-347 (emphasis added).

Many proponents of these laws argued that the disproportionate
disenfranchisement rate of African Americans resulted not from institutional
prejudice, but from a moral failure on the part of Blacks themselves. However,
this somewhat naïve assertion ignored the reality of the times. In particular, it
failed to address the arbitrary and often false arrests of thousands of African
Americans, particularly African American men, living in the South. Faced with
the loss of cheap labor after the fall of slavery, many states had to devise ways to
replenish the labor force. To meet this need, many localities arrested Blacks and
the poor on superficial charges (e.g. vagrancy and loitering) in order to jail them

39 The Davis case was evaluated under the Court’s Rational Basis Test. This low level of scrutiny
simply suggests that a classifications need only be rationally related to a legitimate end.

40 This line of reasoning continues to be a prominent strain in much of the contemporary discourse
surrounding felon disenfranchisement.
and use them for cheap labor.\footnote{Porter (1918) also notes that in the state of Alabama, conviction as a tramp could also lead to disenfranchisement.} These individuals not only became enmeshed in the criminal justice system, they also faced various civil disabilities (Shapiro, 1993).

The first major legal victory in this domain came with the 1896 \textit{Ratliff v. Beale} decision. The case was significant because it specifically addressed the racial intent of disenfranchisement statutes. Further, it criticized the racial-group distinctions that had been embedded into the structure of such statutes. Recognizing this, the dissenting opinion in the case challenged Mississippi’s disenfranchisement provisions by contending that:

By reason of its previous condition of servitude and dependence, this [Negro] race had acquired or accentuated certain peculiarities of habit, or temperament, and of character which clearly distinguished it as a race from that of the whites—a patient docile people—but careless, landless, and migratory within narrow limits, without forethought, and its criminal members given rather to furtive offenses than to the robust crimes of the Whites. Restrained by the federal constitution from discriminating against the negro race, the convention discriminated against its characteristics and the offenses to which its weaker members were prone…burglary, theft, arson, and obtaining money under false pretenses were declared to be disqualifications, while robbery and murder, and other crimes in which violence was the principal ingredient, were not.\footnote{\textit{Ratliff v. Beale}, 74 Miss. 247,266; 20 S. 865, 868 (1896).}

Although the Court failed to overturn Mississippi’s statute, it did help raise awareness of this issue. Further, it laid the foundation for later legal challenges. For example, in \textit{Hobson v. Pow} (1977), a federal court struck down an Alabama provision that listed wife-beating as a disenfranchising crime.
Recognizing the group-based distinctions of this statute, the court agreed that,
“the male plaintiff has been denied the right to vote because of conviction for
assault and battery against his spouse. Yet, women, who are convicted of assault
and battery against their spouses do not lose their right to vote.” Perhaps the most
significant case to borrow from the Ratliff decision was *Hunter v. Underwood*
demonstrates conclusively that these laws were deliberately enacted with the
intent of disenfranchising Blacks.” Based on this, the Court struck down the
Alabama provision for basing disenfranchisement on crimes of “moral turpitude.”

Thus far, this chapter has primarily focused on the political dynamics
surrounding the expansion of disenfranchisement provisions in the South. Yet,
given that forty-eight states and the District of Columbia now have
disenfranchisement statutes, it is necessary to explore the pattern of development
in the North. In the following section, I begin by briefly discussing the political
status of Blacks in the North in the pre and post-Reconstruction eras. I follow by
discussing how changes in the political and social status of Blacks in the South
led to tremendous migration to the North. In turn, this movement challenged the
North to finally connect its theoretical support of Black suffrage with the reality
of Blacks’ increasing electoral presence.

**The Northern Political Environment**

Unlike the South, the North is often romanticized as having long
emphasized political equality and citizenship rights for African Americans.
However, Bell (1993) cautions us to realize the limited opportunities for Africans Americans’ participation in the nineteenth century. Bell writes:

By 1840, some 93 percent of the northern free Negro population lived in States which completely or practically excluded them from the right to vote. Only in Massachusetts, New Hampshire, Vermont and Maine could Negroes vote on an equal basis with whites. In New York, they could vote if they first met property and residence requirements. In New Jersey, Pennsylvania, and Connecticut, they were completely disfranchised, after having once enjoyed the ballot.

Northern efforts to institute universal white male suffrage often resulted in the disenfranchisement of Blacks (Arrington and Taylor, 1993). Underlying this movement was often the fear that these newly enfranchised Blacks would taint the political process by making illegitimate demands on the system. In affirming this belief, a delegate to Pennsylvania’s 1837 convention remarked that if suffrage was extended to all men, “every negro in the State, worthy and worthless, degraded and debased, as nine tenths of them are, will rush to the polls in senseless and unmeaning triumph.” As a result of these beliefs, Maine became the only state admitted to the Union until the Civil War that extended suffrage to Blacks. Further, Blacks were only allowed to vote in Maine, Vermont, Rhode Island, and Massachusetts after this point.\(^{43}\) What is interesting about these states that allowed Blacks to vote, and particularly relevant to the notion of group conflict, is that Blacks comprised a very small share of the northern population. Arrington and Taylor (1993) state that Blacks were only six percent of the

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\(^{43}\) Recall that until 2000, these same four states were the only states that did not have bans on felon voting. Further, Vermont and Maine remain as the only states that allow all felons to vote.
combined populations of the five states that allowed Black suffrage. This suggests that Black enfranchisement was less of a political threat in these areas and, as a result, encountered less opposition than in other states where Blacks could have potentially leveraged their proportion of the electorate to secure meaningful public policies.

Because of their limited numerical presence, African American suffrage was not a major concern to political elites in the North (Moon, 1948). The passage of the Fifteenth Amendment was also important during this time because it supposedly protected Blacks’ access to the ballot. Smith (1974) affirms this by writing that, “there was a general feeling in the North that if the Negro was to be excluded from his privileges in any case, it should be better for all concerned to have it done legally than illegally” (p. 231). Although Blacks largely had access to the ballot box, a combination of factors prevented them from actively pursuing it. In particular, political parties and candidates in the North did not actively court Blacks’ votes. Foner (1990) argues that much of the North’s later emphasis on Black political participation resulted not from an altruistic commitment to racial equality, but from broader social and economic processes. In particular, a combination of Congressional measures at the federal level and movements at the state and local levels led to changes in Blacks’ political status in the North. For example, the Civil Rights Act of 1866 overturned statutes banning Blacks from entering and voting in northern areas. As a result, efforts were waged in

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44 Before the Great Migration, Blacks only comprised two percent of the North’s total population.
Michigan, Iowa, New York, and Pennsylvania to ban segregation in public housing, education, and public accommodations. Likewise, the democratic revolution ushered in by Reconstruction forced the North to redefine its views on African Americans’ participation.

According to Moon (1948), Northern supporters of Black suffrage could be classified into two major categories: 1) Descendants of the abolitionist movement who sought democracy on the grounds that “all men are free and equal,” and 2) Big businesses who wanted to control the national administration and economy. This latter camp was instrumental in actively pursuing Black voters. Despite the limited number of African Americans in the North during this time, their votes were crucial to various balance-of-power strategies; particularly as Republican supporters in national elections. This potential for Black voters to help win close elections led to a certain regional flair in the political parties. For example, northern Republicans worked earnestly to protect their control of key states such as Illinois, Indiana, and Ohio. To do so, the party often embraced Black voters and distanced themselves from the lily-white Republicans in the South. Although this strategy was useful in some contests, it was not without its challenges. In particular, because Blacks did not constitute a majority in a single ward in any major city in the North during this time (DuBois, 1899), political elites had to rely on coalitions of Black and White voters. These coalitions resulted in the election of a number of officials—both Black and White—who
worked to preserve the party’s influence. The rise of political machines also contributed to the party’s dominance.⁴⁵

Although these efforts helped improve the quality of life for some African Americans, they did not fundamentally alter their status. Further, economic and social realities made it difficult for Blacks to fully connect these changes in their public status with meaningful changes in their political life (Foner, 1990). In particular, it is impossible to separate the status of Blacks in the North from their plight in the South. As Moon writes (1948), “step by step the great masses of black folks were being stripped of their basic citizenship rights and pushed back toward serfdom. In compensation they were being given something called ‘industrial training’ and urged to pursue a chimerical goal—the creation of a separate life and economy, devoid of political rights and free expression” (p. 99).

Compounding these difficulties was the tremendous boom in the size of the Black population that resulted from the Great Migration from 1900 to 1940. Though this movement would eventually lead to greater opportunities for Blacks, it also led to greater hostility and political consequences. In particular, this swell in the size of the Black population in the North threatened the ease with which party leaders could manage and regulate the political preferences of Blacks in the region. Along with this increase came rising fears that this potential voting strength would be used to support a Democratic or third-party candidate. Before exploring this, I

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turn now to a discussion of the social and political factors that encouraged the migration. And in turn, I will assess how these motivations helped structure the political opportunities and overall status of Blacks in the North.

**Causes of Migration**

Dennis (1989) argues that migration primarily occurs for economic, social, and political reasons. Chief among these reasons is the hope for securing better jobs, the desire to secure more social rights, higher status, and political power. Although most models of migration focus on one class of motivations (social, economic, or political), African-Americans’ migration resulted from a complex mixture of these conditions. As Parenti (1983) argues, politics and economics are “but two sides of the same coin. Both politics and economics deal with questions affecting the material survival, prosperity and life chance of people; both deal with the first condition of social life itself” (p. 5). Therefore, in accounting for the internal migration of Blacks, we must focus on this interplay of factors.

Migration among Blacks in the South was essentially prompted by what Doug McAdam (1982) calls “push and pull” factors. The primary push resulted from the racist violence that was highly prevalent during this era. The continued lynchings, intimidation, and mob violence left many Blacks looking for an opportunity to escape their hostile environments.⁴⁶

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⁴⁶ Soule (1992) documents the tremendous rise in the number of lynchings in the state of Georgia between 1880 and 1900. She argues that the threat of Populism largely contributed to this increase. Similarly, Woodward (1951) suggests that between 1889 and 1899, the number of reported lynchings averaged about 187.5 per year (emphasis added).
This impetus was further accentuated by tremendous changes in the both the political and economic landscape of the South.

As previously stated, various disenfranchisement strategies fundamentally altered Blacks’ citizenship status. In addition, changes in both the national and regional focus of economic activity further dampened citizens’ quality of life. At the national level, New Deal farm policies, the Depression, and a collapsing cotton market were critical forces behind this transition. And at the regional level, changes in the Southern economy such as the relocation of agricultural endeavors to the West, the relative severity of labor exploitation, and the destructive boll weevil invasion (Baer, 1984) also encouraged Blacks to seek a better living outside of the South.

The pull conditions for mass migration were primarily economic, and set by the outbreak of World War I. To African-Americans in the South, the hope of better wages, improved working conditions, and steady employment made working in the North a very attractive proposition. But for white businessmen in the North, black migration was equally appealing and profitable. The cessation of European immigration to the United States cut sharply into the supply of foreign immigrant labor that had been so critical for northern industries. From 1910-1914, more than 900,000 immigrants came to the United States from Europe (Baer and Singer, 1992). However, by the onset of the war, that number was reduced to about 100,000 per year.
To meet the changing economic needs of the North, industries began sending recruiting agents to the South in 1915 in the hopes of attracting a new class of laborers (Johnson and Campbell, 1996). The availability of Blacks as a labor reserve allowed industrialists to undercut the demands of an increasingly militant White working class who was demanding higher wages and better working conditions (Baer, 1984). The movement intensified in 1916 when national philanthropic organizations began helping Black students obtain summer employment. In 1910, only about 12.6% of Blacks employed in the U.S. worked in industrial and manufacturing occupations. However, twenty years later the percentage of Blacks working in that sector increased to 18.6%. Summarizing this massive population shift, Baron (1976) writes:

Migration out of the countryside started in 1915 and swept to a human tide by 1917. The major movement was to Northern cities, so that between 1910 and 1920 the black population increased in Chicago from 44,000 to 109,000; in New York from 92,000 to 152,000; in Detroit from 6,000 to 41,000; and in Philadelphia from 84,000 to 134,000. That decade there was a net increase of 322,000 in the number of Southern born blacks living in the North, exceeding the aggregate increase of the preceding 40 years (p. 105).

Labor recruiters “sold” the North to southern Blacks as a “Promised Land” filled with milk and honey in the form of plentiful jobs and amicable race relations. However, Blacks moving to large cities such as Newark, New York, Detroit, Chicago, Gary, and Pittsburgh came into a split labor market on a relatively low rung of the ladder. The competition for scarce jobs often created tension between Black migrants and lower-class whites that felt threatened by the attractiveness of this new Black labor class. The result of this conflict and tension
was often race riots that occurred when angry and frustrated Whites invaded Black neighborhoods. Some have suggested that “these riots did not grow out of the inherent racial prejudice of their participants, but rather developed directly from the friction caused by the ways in which black labor was put to use in the North” (Smith 1981, 343). In essence, both Blacks and Whites were affected by massive Black migration.

As the Black labor class began to move out of the South, the decline of King Cotton also meant the decline of Southern economy. Likewise, Black newspapers and letters home became important communication tools for stirring up Blacks in the South and encouraging them to fight injustice and oppression. Perhaps the greatest effect of this massive migration was the way it transformed Blacks from an agrarian peasantry into a diversified proletariat.

**Blacks and The Great Migration**

Scholar Ira Katzenelson (1976) defines the period of the Great Migration as “the movement of Blacks to the North during the First World War” (p. 31). However, it is also important to realize that Black migration to the North actually began at the turn of the century and continued throughout the mid-seventies. Based on this, scholars identify two major periods of Black migration: 1900-1930 and 1940-1980. Initially, it was assumed that the black population would remain a

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47 The migration pattern that started among Blacks in the 1910’s continued well into the 1970’s. By 1970, only fifty-two percent of Blacks were located in the South compared to eighty-nine percent in 1910.
fixed element of Southern society (Gosset, 1965). However, by the outbreak of World War I, it became obvious that this reality would not persist. According to census data, approximately 150,000 Blacks had left the South by 1915. This movement intensified during wartime, with approximately 500,000 Blacks migrating. The table below shows the changing distribution of the Black population during the first period of Black migration.

<table>
<thead>
<tr>
<th>Year</th>
<th>South</th>
<th>%</th>
<th>North</th>
<th>%</th>
<th>West</th>
<th>%</th>
<th>Total US</th>
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</thead>
<tbody>
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<td>90.5</td>
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<td>9.3</td>
<td>11,852</td>
<td>.2</td>
<td>6,580,793</td>
</tr>
<tr>
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<td>6,760,577</td>
<td>90.3</td>
<td>701,018</td>
<td>9.4</td>
<td>27,081</td>
<td>.4</td>
<td>7,488,676</td>
</tr>
<tr>
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<td>7,922,969</td>
<td>89.7</td>
<td>880,771</td>
<td>10.0</td>
<td>30,254</td>
<td>.3</td>
<td>8,833,994</td>
</tr>
<tr>
<td>1910</td>
<td>8,749,427</td>
<td>89.0</td>
<td>1,027,674</td>
<td>10.5</td>
<td>50,662</td>
<td>.5</td>
<td>9,827,763</td>
</tr>
<tr>
<td>1920</td>
<td>8,912,231</td>
<td>85.2</td>
<td>1,472,509</td>
<td>14.1</td>
<td>78,591</td>
<td>.8</td>
<td>10,463,131</td>
</tr>
<tr>
<td>1930</td>
<td>9,361,577</td>
<td>78.7</td>
<td>2,409,219</td>
<td>20.3</td>
<td>120,347</td>
<td>1.0</td>
<td>11,891,143</td>
</tr>
</tbody>
</table>

Table 3. 2: Numbers and Percentage Distribution of the Black Population by Region (1880-1930)\(^{48}\)

Migration powerfully shaped the Black experience in both the North and the South. Not only did this movement remove Blacks from the strife they faced in the South, it also forced tremendous changes in the conditions of citizens living

in the North. Asserting the significance of this movement, Meier (1996) states that this population movement was “after Emancipation, the greatest watershed in American Negro history” (p. 170). Likewise, Baker (1992) speaks of migration as “probably next to emancipation the most noteworthy event which has happened to the Negro in America.”

Although Blacks’ movement to the North was voluntary, they still faced formidable obstacles to full inclusion. Competing with European immigrants who were just beginning to establish themselves and achieve some degree of incorporation, Blacks in the North were forced to overcome severe racist sentiments. Likewise, they were often judged in comparison to European immigrants and considered to be a less desirable class of “immigrants.”

Theorizing about the future of Blacks coming to the North, Parson (1969) states:

Negroes also come with socio-cultural patterns which have been relatively “backward” by the main standards of the new society—to put it sharply, all except Jews have been “peasants,” and they have been small-town bourgeois…The opportunity, then, is for the Negro to symbolize the completion of this internal process (and to give symbolic promise of the solubility of the world-wide problems) as a massively large colored group which has found its rightful place in American society and had done so very largely by its own efforts (p. 267).

Therefore, acculturation and gradual assimilation posed a big problem for Black incorporation in the North. Handlin (1962) demonstrates this by writing that Blacks as the “newest immigrants to a great cosmopolitan city, will come to play as useful a role in it as any of their predecessors.” However, this naïve view
neglects the intense nature of institutional and attitudinal racism that existed in the North.

In *Before the Mayflower*, Lerone Bennett, Jr. (1988) speaks of Blacks moving to the North in order to “emancipate themselves and cast off the garments of slavery and the feudal South” (p. 345). However, these goals were not easily achieved. Those Blacks who came to the North expecting a welcoming class of Whites were profoundly disappointed. As Carter G. Woodson (1970) states, “those Northerners who sympathized with the oppressed Blacks in the South never dreamt of having them as their neighbors” (p. 33). Compounding the problems of racism and oppression, Blacks moving to northern cities lacked the most basic resources such as adequate housing and health care. In essence, Black migration to the cities created a social crisis by separating Blacks from their rural lifestyle and thrusting them into a hostile, unwelcoming, and often confusing environment. The promises of better jobs, abundant opportunities, and greater political power quickly became myths rather than tangible realities.

*Setting the Stage for Disenfranchisement: The Development of Black Politics*

Katznelson (1961) has suggested that African Americans began moving to the North in vast numbers in search of improving their political and social status. Drawing encouragement from the North’s fierce opposition of the patterns of Southern politics in general, and disenfranchisement schemes in particular, many felt that the North would finally enable African Americans to enjoy the full benefits of citizenship.
However, Blacks were not absorbed into the political organizations of the North and were still excluded from the system (Wilson, 1966).

Increasingly discontented by this exclusion, many political leaders such as W.E.B. DuBois and William Monroe Trotter began initiated a movement to demand universal male suffrage. Arguing for the importance of exercising the vote, DuBois (1906) stated that:

First we should vote; with the right to vote goes everything: freedom, manhood, the honor of your wives, and the charity of your daughters, the right to work, and the chance to rise, and let no man listen to those who deny this. We want full manhood suffrage, and we want it now, henceforth and forever.

These efforts helped African Americans to experience a sense of cognitive liberation through which they became keenly aware of their disadvantaged status (McAdam, 1982). Further, African Americans’ experiences with discrimination in both the North and the South prompted them to levy demands against the system for redress. Out of this cognitive transformation came the belief that organized efforts were essential for advancing the struggle for racial equality. In this respect, the National Association for the Advancement of Colored People (NAACP) became a forerunner in championing the developmental stages of the movement. Guided by the belief that attacking the legal system would be an effective means of changing Blacks’ social and political status, the NAACP constructed a comprehensive legal agenda.\(^4^9\) One of the earliest efforts of the organization

\(^{49}\) Cortner’s Political Disadvantage Thesis suggests that marginalized groups pursue litigation because it is their only means of gaining political redress from the system. Though this thesis seems to comport with the experiences of the NAACP, it does not properly characterize the
involved petitioning the Supreme Court to overturn its “separate but equal” doctrine in *Plessy* (1896). Though the NAACP was unsuccessful at getting the Court to overturn the case, it was successful at encouraging the formation of other civil rights groups who could engage in grassroots mobilization efforts. While the formation of these groups was beneficial for helping transform the nature of Black Politics, it also represented a powerful threat to the existing structure of political and social relations.

As African Americans became concentrated in urban centers, their votes became critical to political parties. In particular, the high levels of diversity and ethnic heterogeneity of the North made it difficult and undesirable to adopt the South’s strategy of targeting specific groups. As a result, the adoption of disenfranchisement provisions in the North during this time were largely driven by more principled considerations. Many areas were incapable of adequately meeting the needs and demands of these new communities. In particular, housing and jobs were quite scarce. During this time the North witnessed a tremendous growth in the number of families living below the poverty line.

Fueled by such economic disparity, many Northern cities also witnessed a tremendous increase in crime, particularly for offenses such as burglary and

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50 In response to these efforts, eleven southern states filed amici briefs asking the Court to uphold its ruling. Even more monumental was the fact that President Truman filed a brief supporting the NAACP’s position. This brief was the first amici brief filed by a president on behalf of African Americans, and also the first time since the late 1870’s that the U.S. had sided against the South.
larceny. To combat this, many states began adopting more punitive policies aimed at both deterring crime and punishing its perpetrators.

Although most Northern states already had some type of criminal disenfranchisement provision written into their constitutions, states stepped up their enforcement efforts in the early to mid-twentieth century. What was unique about the Northern practice, however, was that the crimes eligible for disenfranchisement were based on offenses believed to break the community’s trust and sense of peace. During this time, most states disenfranchised criminals convicted of *any* felony offense. Though this practice reflects a more principled orientation than the South, it should be noted that there were still racial motivations and consequences. For example, Kennedy (1997) documents the disproportionate number of African American men who were arrested in northern cities on what many believed to be false charges. These charges often included things such as burglary, assault, and inciting or participating in riots.

As a result, the North also had a disproportionate number of African Americans who were imprisoned and, in turn, disenfranchised. The tables below document changes in the percentage of the state’s total population that was incarcerated in 1880 and 1910, as well as the year that states adopted probation statutes. Although many states experienced decreases in the percentage of the state’s population that was imprisoned, much of this can be attributed to the tremendous boom in the size of the state population during this time.
<table>
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<tr>
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<th>% of State Population in Prison (1910)</th>
<th>Net Difference</th>
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<tr>
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Table 3.4: Adoption of Adult Probation Statutes by State\(^5\)

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Taken together, these changes in the nature of the northern criminal justice system expanded the number of citizens under supervision, and extended the length of time that these citizens would be disenfranchised. As a result, the steady increases in the number of citizens disenfranchised because of criminal convictions slowly eroded the legal enfranchisement that Blacks had acquired. Further, the “legal” means of enforcing adherence to the social contract meant that the status of these laws would remain constant for nearly five decades.

The major catalyst for change came during the turbulent civil rights era of the 1960’s and 1970’s. As a result of grassroots efforts to pressure an institutional response, the federal government began taking an active role in reclaiming and protecting Blacks’ political status. Together with the NAACP and other civil rights interest groups, President Johnson successfully lobbied Congress to pass the 1964 Civil Rights Act that would become the most publicized bill of the twentieth-century. The Civil Rights Acts of 1964 prohibited discrimination in employment (under Title VII) and also banned segregation. The Act was a monumental piece of legislation because it demonstrated that the federal government could play a role in safeguarding the rights of citizens at the state and local levels. In response, many southern states challenged the bill as going beyond Congress’ ability to legislate under the Constitution. Despite these challenges, the bill still paved the way for the Civil Rights Act of 1968 and the Voting Rights Act of 1965. Through these key pieces of legislation, African Americans and other minorities possessed the necessary tools to successfully challenge discrimination
in both the private and public sectors. The act was also important because it established a trustee role for representatives who perceived an obligation to do what they believed would be in the best interests of their constituents.⁵² In terms of the Court, these important civil rights bills also paved the way for changing the standards (i.e. strict scrutiny for race and heightened scrutiny for gender) for assessing the discriminatory nature of laws.

As a result of these developments, the federal government began imposing a number of penalties upon states who, through subtle and deliberate means, effectively disenfranchised their citizens. During this time, grassroots organizers and political elites alike articulated the critical importance of providing all citizens with a political voice. President Johnson affirmed this in his speech before Congress by eloquently stating:

Rarely are we met with a challenge…to the values and the purposes and the meaning of our beloved Nation. Every America citizen must have an equal right to vote. There is no duty which weighs more heavily on us than the duty we have to ensure that right….There is no Negro problem. There is no Southern problem. There is no Northern problem. There is only an American problem. And we are met here tonight as Americans—not as Democrats or Republicans—we are met here as Americans to solve that problem. There is no constitutional issue here. The command of the Constitution is plain. There is no moral issue. It is wrong---deadly wrong--to deny any of your fellow Americans the right to vote in this country. There is no issue of States rights or national rights. There is only the struggle for human rights.⁵³

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⁵² The passage of this bill seems to run counter to Miller and Stokes’ (1963) finding that on matters related to civil rights, representatives defer to their constituents. Although African Americans were a part of Congress members’ geographical constituencies (Fenno, 1978), they did not play a very vital role in that constituency.

⁵³ http://www.hpol.org/lbj/voting/.
Numerous scholars have credited the Civil Rights Movement for redefining the relationship between government and the governed. In particular, it affirmed the government’s duty to protect citizens’ rights. The lessons of the Civil Rights Movement have also helped promote and sustain other efforts to make the American polity more inclusive. Building upon the movement’s early pursuit of legal redress, advocates for prison reform and prisoners’ rights began using the legal system to tackle the issue of felon disenfranchisement beginning in the 1970’s. Leaders of this struggle attempted to overturn criminal disenfranchisement, and other civil disabilities, on the grounds that they violated the Constitution’s Equal Protection Clause. Once again borrowing from the experiences of the Civil Rights Movement, activists attempted to merge grassroots organizing with policy experts. Yet, because the Constitution does not guarantee an explicit “right to vote,” activists faced a difficult task in convincing the courts that these laws were unconstitutional.\footnote{An excerpt from USA Today’s Constitutional Law website states that, “while one may ‘have no right’ to be elected or appointed to an office, all persons ‘do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualification.’”} In the following section, I review the major legal challenges to felon disenfranchisement, and discuss how these cases have shaped the more recent history of these laws.

\textit{The Legal Response, Part II}

Beginning with the 1963 article, “Criminals’ Loss of Civil Rights,” legal scholars became increasingly fascinated by the topic of criminal
disenfranchisement. Many of the articles tracked the general consequences of a
criminal conviction (Grant et al., 1970; Minnesota Law Review, 1963;
Southwestern University Law Review, 1975), while others focused specifically on
developing strategies for attorneys to attack these statutes in the court room (Yale
Law Journal, 1974; Itzkowitz and Oldak, 1973). Drawing from these expositions,
an important challenge to criminal disenfranchisement came in the 1974
Richardson v. Ramirez case.\footnote{Technically Green v. Board of Elections (1967) constitutes the first case of this era to challenge the constitutionality of criminal disenfranchisement. However, the Court denied certiorari. However, the lower courts found that the New York exclusion represented a voting qualification rather than a bill of attainder. Similar justifications were offered in Kronlund v. Honstein (1971) and Dillenburg v. Kramer (1972).}

In Richardson, three former felons who had completed their incarceration
and parole initiated a class-action petition on the grounds that California’s ban on
felon registration and voting violated the Equal Protection Clause of the
Fourteenth Amendment.\footnote{What was unique about this case is that the defendants, who were county registrars, decided to allow ex-offenders to register once they had completed all the terms of their sentence. As a result, the California Supreme Court had to determine whether this change rendered the case moot. The Court eventually ruled that it did not.} In particular, the petitioners argued that this restriction
was not necessary to achieve a legitimate state interest. However, the Court
determined that the strict scrutiny standard did not apply to criminal
disenfranchisement laws. Instead, states had an “affirmative sanction” to
disenfranchise convicted felons (Human Rights Watch, 1998). In delivering the
opinion, Justice Rehnquist stated:
As we have seen, however, the exclusion of felons from the vote has an affirmative sanction in section two of the Fourteenth Amendment, a sanction which was not present in the case of the other restrictions on the franchise which were invalidated in the cases on which respondents rely. We hold that the understanding of those who adopted the Fourteenth Amendment, as reflected in the express language of section two and in the historical and judicial interpretation of the Amendment's applicability to state laws disenfranchising felons, is of controlling significance in distinguishing such laws from those other state limitations on the franchise which have been held invalid under the Equal Protection Clause by this Court.

In essence, the Court ruled that based on Section 2 of the Fourteenth Amendment, states had the authority to prohibit citizens with criminal convictions from voting. As a result, this decision overturned the California Supreme Court’s ruling that criminal disenfranchisement violated the Equal Protection Clause. However, the majority opinion did suggest that a state-by-state strategy may be the most effective approach to dismantling disenfranchisement statutes. Recognizing this potential for legal success organizers continued to advocate the importance of voting for rehabilitating ex-offenders. During this period, one of the most vocal advocates for reform was the American Civil Liberties Union (ACLU). Believing that states did not have a right to restrict the voting participation of (ex) offenders, the ACLU promoted numerous cases at the state-level. These lower cases led several states to reform, but not completely abolish their disenfranchisement provisions. One of the most significant victories of this state-by-state strategy was that it raised awareness of this issue. In turn, many states began mandating that prison officials and probation officers began notifying
(ex) offenders of their rights. This was particularly prevalent in those states that had instituted a restoration process.

This litigation strategy did not reach the national stage again until the Court heard *Hunter v. Underwood* in 1985. *Hunter* involved two plaintiffs, one White and one Black, who had been convicted of bouncing checks. Although these crimes were misdemeanors, the county registrar determined that the plaintiffs could not register because their offenses were crimes of “moral turpitude.” The litigants contended that Alabama’s moral turpitude provision was unconstitutional because it was originally enacted to disenfranchise based on race. Focusing on this discriminatory intent, the Court unanimously ruled that the moral turpitude clause did indeed violate the Equal Protection Clause. Although the plaintiffs raised the consideration that the law should be overturned because of its discriminatory impact, the Court has consistently ruled that evidence of a discriminatory impact is not enough to invalidate a statute.

Since *Hunter*, federal judicial attention to the issue of criminal disenfranchisement has been scant at best. However, legislative attention has increased. In particular, Congressman John Conyers, Jr. (D-MI) introduced a bill in 1999 aimed at restoring the federal voting rights of ex-felons. The Civic Participation and Rehabilitation Act of 1999 argued that the federal government should play an active role in providing all citizens with access to voting. As a result, the Act attempted to provide federal protection for a right that Conyers

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57 See Table 3.5 for the bill’s sponsors.
argued was fundamental to American democracy, “our democracy is weakened when one sector of the population is blocked out of the voting process.”

Although the Act was important for raising awareness of the issue, and sparking a national dialogue, it did not result in the restoration of voting rights for felons. Much of this can be attributed to question of whether the federal government had a Constitutional right to supercede states’ interest in defining the qualifications for voting.

Since Conyers’ original proposal, other legislators at the state and national levels have attempted to resolve the issue of felons’ voting rights. Yet overall, the status of these laws has remained fairly constant. Overall, this history suggests that race and racial group considerations have been essential to the development, maintenance, and even challenges to criminal disenfranchisement laws. Despite their contentious past, felon disenfranchisement laws are the only restriction of that era that remain in effect. As a result, many states are being governed by laws that were created during an era saturated with group conflict and animosity. Chapter four builds upon the evidence presented in this chapter to explain the continued use of felon disenfranchisement laws.

58 http://thomas.loc.gov/cgi-bin/bdquery/D?d106:9:./temp/~bdCY6H::

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<td>Rep. Fortney Pete Stark (D-CA)</td>
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*Individuals in bold represent states with high rates (20% or above) of Black voter disenfranchisement

Table 3.5: Co-Sponsors for the Civic Participation and Rehabilitation Act of 1999
CHAPTER 4
EXPLAINING STATE-LEVEL VARIATION IN FELON DISENFRANCHISEMENT LAWS

“We are still learning that fairness now is not enough to eliminate the effects of unfairness in the past” - William Keech (1968).

The historical analysis presented in chapter three suggests that group-based conflicts formed the primary impetus for the post-Reconstruction tailoring and expansion of felon disenfranchisement laws. Many opponents use this racial history, coupled with the contemporary racial impact of felon disenfranchisement, to suggest that these laws are based on notions of racial prejudice rather than group-neutral political principles (Allard and Mauer, 1999; Shapiro, 1993; Love and Kuzma, 1996). Conversely, supporters of these laws argue that the racially disparate impact results not from institutional bias, but from poor decisions that individuals make regarding their own behavior (Clegg, 2000; 2002).

Although chapter three provides insight into the historical development of felon disenfranchisement laws, it cannot explain why these statutes are the only restrictions of the Jim Crow era that remain in effect. This is particularly intriguing given the otherwise widespread liberalization of American politics over the past thirty years (Keyssar, 2000; Hill, 1994; Kinder and Sanders, 1996; Thernstrom and Thernstrom, 1993). Further, it cannot explain whether race and
racial group considerations continue to influence the status of these laws. The research presented in the following chapters attempts to shed light on this dilemma by examining the contemporary foundations of support at the institutional, elite, and mass levels.

Chapter four initiates this task by examining the determinants of state-level variation in felon disenfranchisement statutes. As previously stated, states have the option of banning felons from voting while in prison, while on parole, on probation, or for a lifetime. This discretion has led to tremendous variation that, to date, has not been adequately explained. To fill this void, I use an original state-level data set to critically examine the racial versus principled determinants of this policy. In particular, I test for the effects of alternate explanations of variation in state policies in general, and felon disenfranchisement in particular. I begin this chapter with a brief overview of the extant literature on the determinants of state public policy. Next, I present my approach to modeling the variation in states' disenfranchisement laws. The last section of the chapter extends this analysis by examining how changes in the relevant political and socio-economic conditions have led some states to reform (progressively or regressively) their statutes over the past ten years.

Explaining State-Level Policy Variation

According to Hill (1994), the concept of federalism has enabled states to act as influential governing bodies that make significant decisions regarding the status of democracy and political equality. The distinct set of features and
responsibilities that states possess is particularly important for shaping how states come to view a problem as one that deserves a policy response. In turn, these features may also constrain decision-makers in terms of the policy options they can pursue, and the vigor with which they can implement such options. Though often overlooked in contemporary political science research, states continue to act as influential policymakers—especially in the domain of criminal control and law enforcement.

The Tenth Amendment provides states with the authority to make laws regarding the health, safety, and well-being of their citizens. As a result, states’ policing powers are executed according to many of the same features that Hill (1994) alludes to. Freund (1904) affirms the importance of understanding states’ power by writing, “the maxim of this power is that every individual must submit to such restraints to remove or reduce the danger of the abuse of these rights on the part of those who are unskillful, careless, or unscrupulous” (p. 6). Based on this, it is useful to account for the unique array of factors that shape states’ policy outputs. To this end, scholars generally identify three broad sets of factors: 1) political, 2) socio-economic, and 3) racial/ethnic group considerations. In the next section I discuss the possible relationship between these broad factors and the status of felon disenfranchisement.

**Racial/Ethnic Group Considerations**

Carmines and Stimson (1989) affirm the salience of race and racial group considerations to public policy by suggesting that race has been a central and
persistent motivating factor in American politics. This is particularly true at the state level. Historically, states have played a major role in structuring the relationship between majority power and minority interests (Kluger, 1996; Huckfeld and Kohfeld, 1989). Certainly the ability of state institutions to segregate public schools for centuries and then to block the integration of public schools in the 1960’s demonstrates their capacity to impede the full realization of American democracy. The numerous restrictive policies adopted by states affirm their role in structuring both social interactions and political opportunities. Though many scholars argue that such considerations are no longer significant determinants of state policy (Abramowitz, 1994), Hero (1998) uses a series of multivariate analyses to argue that a state’s racial and ethnic diversity has a statistically significant impact on various policies (e.g. social welfare expenditures and policing). Similarly, Hero and Tolbert (1996) contend that the increasing geographical dispersion of racial and ethnic groups will fundamentally alter the practice of politics at the state level. In affirming this, Gray (1996) writes that, “the US has experienced a demographic revolution since the 1970’s…meeting the needs of minorities will continue to challenge the school system and the welfare system, both of which are ultimately state responsibilities. Assimilating immigrants into communities and minimizing social conflicts will also be the province of state governments” (p. 29).

These changing demographic patterns have forced, and will continue to force, many states to revisit their existing policies, while also developing new policies in reaction. This is particularly true in those regions with sizeable
minority concentrations such as the South, Southwest, and West. As an example of these reactionary policies, several studies in the Latino politics literature (Perez-Monforti, 2001; Abrahams, 1996; Chavez, 1998; Yanez-Chavez, 1996; Santoro, 1999) document the growth of English-Only legislation amidst the growing numerical, and potentially political, presence of Hispanics. These studies suggest that states like California, Florida, Texas, and Connecticut have adopted policies like California’s Proposition 209 in an effort to limit the ability of minority groups to reap the full benefits of citizenship. For example, Santoro (1999) analyzes the adoption of English-Only legislation over the past fifty years and finds evidence of a strong movement to limit the “Latino influence” in each of the fifteen states that have such policies. He argues that these motivations are particularly strong within state institutional contexts. Similar considerations may also be relevant to explaining why some states choose to have lifetime bans on felon voting while others have no restrictions. For example, it is useful to consider that the ten states with the largest Black populations combine to account for fifty-eight percent of the total U.S. Black population (U.S. Census, 2001) but account for less than forty-nine percent of the total U.S. population. Ironically, all but one of these states (Maryland) has a lifetime ban on felon voting.\footnote{It is worth noting that Maryland had a lifetime ban on felon voting until 2001 when several African American legislators introduced a bill to restore the voting rights of former felons. This bill was later passed into law.}
Political Considerations

By focusing on the various institutions and actors in government, the political factors characterize the dominant political climate and environment of a given state. Some of the most prominent actors and institutions at the state level include elected and appointed officials, political parties, interest groups, citizens, the legislature, schools, the criminal justice system, and bureaucrats. Together they set the tone for the types of issues that will be presented for consideration as well as the means by which such issues will be addressed. Gray and Hanson (1996) find that states with several competing interest groups often experience legislative gridlock. Further, interest groups are particularly influential regarding regulatory policy. For example, several powerful interest groups emerged to obscure the Environmental Protection Agency’s efforts to promote greater state regulation of industrial emissions. The result of this clash of interest was that many states failed to enact any significant legislation on the issue.

Socio-economic Considerations

In addition to political and racial considerations, socio-economic variables such as the levels of migration, wealth, education, and population size are important influences on state policy (Gray, 1999; Lewis-Beck, 1977). For example, Lewis and Maruna (1999) found that states with higher levels of personal income are able to spend more money per pupil than states with poorer citizens. In addition, states with high concentrations of migrant populations tend to have a greater need for social welfare policies than those with a more
permanent citizenry. These findings suggest that the composition of a state’s citizenry is important for not only creating problems in need of a policy response, but also shaping the resources available for dealing with them.

Taken together, these broad sets of influences shape the ability of states to govern as well as the policies that emerge from the structures and institutions of state government. In turn, this complex interaction also shapes the quality of life for its citizens, particularly the targets of a particular policy.

Research Design

Felon disenfranchisement provides an ideal case to study because it encompasses numerous political, socio-economic, and racial considerations. In particular, this policy helps structure the political status of a state’s inhabitants by regulating their behavior and access to the political system. As a result of these limits, felon disenfranchisement statutes hold important implications for determining who staffs the institutions of government as well as the outputs of such institutions. However, felon disenfranchisement is somewhat unique in the realm of criminal control policy because it does not seem to fit any of the four traditional policy motivations (Keyssar, 2000; Shapiro, 1993). In particular, it probably neither deters nor prevents individuals from committing further crimes, is not likely to further the cause of rehabilitation, and does not seem like an appropriate or fitting punishment for the crime committed. These laws also stigmatize (ex) felons by ostracizing and separating them from the community. This is especially true in states with lifetime disenfranchisement provisions that
eliminate the possibility of redemption. Based on these considerations, felon
disenfranchisement laws provide an interesting case for evaluating how the
determinants of this policy may be related to broader processes and concerns. To
account for the broad array of institutional and societal factors that may shape a
state’s felon disenfranchisement policy, my analysis highlights three primary sets
of factors that reflect the political, racial/ethnic, and socio-economic
considerations discussed above.

Culture

Many of the existing studies in state politics indicate that southern states
have a distinctive history of group-based conflict, particularly over class and
racial interests. Further, many scholars (Elazar, 1989; Baker, 1990; Chappell and
Keech, 1986) have found meaningful regional patterns in the scope of regulatory
policy. For example, southern states tend to have more restrictive policies related
to criminal control. This is reflected in the fact that nearly eighty-percent of
southern states actively use the death penalty compared to about thirty-five
percent of non-southern states. Sixty similarly, eighty-nine percent of southern states
have provisions for executing juvenile offenders. Based on such patterns, the
relationship between REGION (coded 1= South, 0= Non-South) and the severity

\[ Wirt (1983) \text{ notes this activity by pointing out that of the 714 death sentences handed down in 1980, seventy-five percent originated in the South with 153 coming from Florida alone.} \]
of a state’s disenfranchisement statute is expected to be positive. That is, southern states should have more restrictive statutes than non-southern states.

To understand a state’s view on the relationship between democracy and citizenship, I measure the state’s emphasis on direct democracy. States that rate higher on this variable allow the use of initiatives, recalls, and referenda. I use this measure rather than Elazar’s (1984) somewhat dated political culture variable because I believe it is a better indicator of the actual structure of participation opportunities available to citizens. In particular, states that allow for such provisions tend to emphasize citizens’ duty to participate in the political process. As a result, the relationship between DIRECT DEMOCRACY and disenfranchisement statutes is expected to be negative.

Context

To capture the institutional context of a state, I include a measure of the state’s legislative professionalism. Gray (1996) suggests that more professional legislatures tend to produce less restrictive policies because lawmakers have greater policy experience. This experience may produce a greater awareness of both the origins and potential consequences of a given policy option or problem.

61 My analysis does not make a distinction between the traditional Deep South states (Alabama, Georgia, Louisiana, Mississippi, South Carolina) and the states of the Peripheral South (Delaware, DC, Virginia, Tennessee, Florida, Arkansas, North Carolina, Texas, Oklahoma). Instead, my coding for Southern states includes Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia.

62 This emphasis on participation as a citizen’s duty is somewhat similar to Elazar’s Moralistic subculture classification.
In addition to this experience, having a full-time staff enables legislators to better examine the implications and scope of a policy. In regard to disenfranchisement, lawmakers in more professional legislatures may have a greater awareness of the discriminatory history of these laws as well as their disparate racial impact. Likewise, it is possible that they are able to devote greater resources to researching such information and/or soliciting the assistance of experts in this area. Therefore, I expect a negative relationship between LEGISLATIVE PROFESSIONALISM and disenfranchisement severity.

To indicate the types of constraints elites may face in the policymaking process, I include a measure of the state’s ideological mood. Adopted from Erikson, Wright, and McIver (1993), this variable is based on the self-reported ideology of citizens in a given state. By pooling responses from 122 CBS News/New York Times surveys from 1976 to 1988 (N=167,460), the authors created an ideology measure for each state and DC. This measure is derived by subtracting the percent conservative from the percent liberal. Therefore, positive scores are associated with more liberal states and negative scores are associated with more conservative states.

Because elites feel an obligation to respond to public sentiment, scholars (Soss et al., 2001; Haider-Markel, 1998; Hanson, 1992; Hero, 1998; Morgan, 1973) have found that conservative states tend to emphasize regulatory policies. For example, Fairbanks (1980) conducted a correlation analysis of the
relationship between a state’s values and morality policy. His findings confirmed Sullivan’s (1973) earlier assertion that states with stronger religious and cultural values tend to have less liberal stances on policies such as gambling and abortion access. Realizing the strong potential to use disenfranchisement statutes as a means of regulating citizens’ behavior, I expect a negative relationship between IDEOLOGY and disenfranchisement severity.

Competition

Lastly, I account for three prospective arenas for competition within a state by focusing on the level of party competition, minority political representation, and the state’s level of diversity. Key’s (1949) study of Southern politics suggested the critical role of competition in setting the tone for state politics and policy. In particular, Key illustrates the negative impact of one-party dominance on elite accountability and responsiveness. Key’s analysis contends that the degree of party competition and political organization are the primary determinants of state policy differences. Since this original study, contemporary scholars (Barrilleaux, 1986; Broh and Levine, 1978; Dawson and Robinson, 1963; Jewell and Sigelman, 1986; Hill and Leighley, 1993) have found that the level of party competition can have an impact on other political features such as voter turnout, vote choice, and candidate selection and recruitment. In turn, the level of

Fairbanks (1980) defines morality policies as “those laws that regulate behaviors which are widely held to be wrong but aren’t directly injurious to others” (p. 95).
party competition within a state may structure the policy choices elites adopt, as well as the opportunities for citizens to evaluate and respond to such choices.\footnote{The concept of party competition has traditionally focused on the two major parties. Although third parties have gained moderate success and influence in recent presidential elections, true party competition implies a more sustained sense of competition across multiple contests (levels and years).}

Although many (Holbrook and Van Dunk, 1993; Powell, 1986; Patterson and Caldeira, 1983; Brace and Jewett, 1995) have argued that states with more competitive parties tend to produce more liberal policies, this may not be true for more controversial policies like felon disenfranchisement. Whereas the parties have traditionally disagreed on the best way to address the problems of the poor, there is a tremendous level of partisan agreement concerning issues of crime.\footnote{Many have argued that beginning with the Clinton Administration, Democrats have successfully made issues related to crime and policing a bipartisan concern. In particular, party elites in both parties have become more punitive in their approaches to dealing with crime.} As a result, neither party has vocally championed extending criminals’ rights in the wake of this country’s zero tolerance for crime approach (Brown and Paul, 2000). Much of the hesitance to embrace this issue can be attributed to parties’ desire to preserve existing constituencies. By incorporating too many new interests into the process, parties run the risk of inducing intraparty cleavages that may weaken or undermine their overall influence. In essence, a liberal approach to criminals’ rights could lead to the defection of some party members. Therefore, we should expect a positive relationship between the level of \textit{PARTY COMPETITION} and the severity of disenfranchisement statutes.\footnote{The measure of party competition employed here is based on Holbrook and Van Dunk’s (1993) analysis. Unlike the traditional Ranney Index (1976), the Holbrook and Van Dunk competition measure focuses on election outcomes rather than partisan control of state government. This focus is...}
Certainly there is a strong body of literature on the impact of minority elected officials at the local (Nelson, 1972; Grimshaw, 1983; Bobo and Gilliam, 1992; Welch and Karnig, 1980, 1993) and national (Tate, 1993; Lublin, 1996; Gay, 2002) levels. However, less attention has been devoted to the impact of minority elected officials at the state level.\(^{67}\) Assessing this influence is particularly useful given states’ growing responsibility for policies related to crime and law enforcement.\(^{68}\) Therefore, I include a measure of minority representation based on the proportion of African American officials in a given state.\(^{69}\) This measure suggests the capacity of minority elites to exert influence in the formal institutions of state government and, in effect, create policies in their

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\(^{67}\) Sonenshein’s (1990) analysis of Black candidates in state elections is a notable exception. However, his analysis focuses more on the factors that determine candidates’ electoral success and less on the potential policy impact of these candidates.

\(^{68}\) According to the Department of Justice, crime and law enforcement are rapidly becoming the largest expenditures for state budgets. This would suggest that such issues are not only demanding greater financial support, but also greater attention from state rather than federal authorities.

\(^{69}\) The representation ratio is evaluated via the following: (the percentage of top state positions held by Blacks + percentage of state legislative seats held by Blacks)/percentage of Blacks in the state. An ideal measure of minority representation would account for the percentage of top state positions held by African Americans, Latinos, Native Americans and Asian Americans. However, I only include the figures for African American officials because of the limited number of positions held by the other groups (Garcia, 1997; Lien, 1997; McClain and Stewart, 1995; Meier and Stewart, 1995). A report issued by the Center for Women in Government (1997) documents these limited numbers and suggests that even in states like California where one in ten citizens is Asian American, less than three percent of the top policy positions are held by Asian Americans. Similarly, Asian Americans constitute sixty-percent of Hawai’i’s citizenry but the representation ratio is only 1.43.
constituents’ interest. Given the disproportionate numbers of African Americans and Latinos who have permanently lost their voting rights, it seems plausible that this issue would be quite salient to minority officials. These statutes limit the potential base of electoral support for these officials, as well as the overall political strength of their communities. Therefore, my expectation is that there is a negative relationship between MINORITY REPRESENTATION and disenfranchisement severity.

The last competition variable reflects the level of diversity within the state. Existing research on group conflict contends that the mere presence of a minority group is enough to trigger notions of group competition. To this end, scholars such as Voss (1996) and Giles and Buckner (1993) have used the total number of minorities within a state as an adequate measure of group threat. However, I believe that a more accurate measure should focus on the minority voting-age population in a state. Because felon disenfranchisement impedes the voting potential of a community, it is important to account for the population most affected by these policies.

In addition to departing from traditional measures of the size of the target population, I also make a distinction regarding the composition of such populations. Much of the existing work in this area (Giles and Buckner, 1993; Matthews and Prothro, 1963; Kinder and Mendelberg, 1995) has focused

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70 In Arizona, Colorado, Connecticut, Indiana, Iowa, Kansas, Kentucky, Nebraska, Ohio, Oregon, Rhode Island, Washington, West Virginia, and Wisconsin the percentage of positions held by African Americans exceeds their population share. Conversely, in Alabama, Alaska, Hawaii, Idaho, Maine, Missouri, Montana, New Hampshire, New Mexico, North Dakota, South Dakota, Utah, Vermont, and Wyoming African Americans do not hold any of the high level state positions.
exclusively on the relationship between Black concentration and policy outputs. However, I argue that it is necessary to account for the growing ethnic and racial diversity of the U.S. As Hero (1998) and others have maintained, the increasing heterogeneity of the United States forces states to respond to changing interests and demands. One such response may be policies aimed at regulating the political access and behavior of minority groups. In essence, although Blacks may have been the original targets of disenfranchisement policies, the growing numerical presence of other communities may be just as threatening.

Based on this the level of MINORITY DIVERSITY within a state is derived by evaluating the proportion of the Black voting-age population as well as the proportion of the Hispanic voting-age population.\textsuperscript{71} If racial group conflict is relevant, we should expect that states with more diverse populations will be more likely to have more severe restrictions than less diverse states.

The dependent variable for this analysis is designed to capture the full range of disenfranchisement provisions. As a result, I have created the Felon Disenfranchisement Severity Index (FDSI). The FDSI is a four category ordinal variable that reflects a state’s restrictions on felon voting. To create this index, I evaluated whether a state imposed felon voting restrictions during incarceration, while on parole/probation, or for a lifetime.

\textsuperscript{71} Due to limitations in the available criminal justice data, I was unable to account for the full range of ethnic and racial diversity within a state. In particular, the Department of Justice has only recently begun providing accurate demographic data for Asian and Native Americans under criminal supervision. In future analyses I would like to extend my focus to include these target populations as well. This inclusion may be particularly useful for determining the patterns of variation in states with high concentrations such as Arizona, New Mexico, Hawaii and Colorado.
Therefore, the dependent variable ranges from “0” (indicating the least severe restriction) to “3” (indicating the most severe restriction).\(^ \text{72} \)

<table>
<thead>
<tr>
<th>Restriction Severity</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Least Severe</td>
<td>2</td>
<td>4.0</td>
<td>4.0</td>
</tr>
<tr>
<td>Somewhat Severe</td>
<td>15</td>
<td>30.0</td>
<td>34.0</td>
</tr>
<tr>
<td>Moderately Severe</td>
<td>19</td>
<td>38.0</td>
<td>72.0</td>
</tr>
<tr>
<td>Most Severe</td>
<td>14</td>
<td>28.0</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>50</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

Table 4.1: Distribution of the Felon Disenfranchisement Severity Index

In addition to these theoretically central variables, I also control for the possibility that these statutes represent an overall concern for protecting citizens by deterring crime. To this end, I include a measure of the proportion of the state that is under criminal supervision.\(^ \text{73} \) A caveat is necessary here. Much of the existing research in this area (Hurwitz and Peffley, 1997; Gilliam and Iyengar, 2000) suggests that public perceptions may be more influential than actual measures of crime. In particular, citizens have a tendency to inflate the crime rates in their community. Since I cannot gauge such perceptions via this aggregate analysis, it is necessary to use the size of the criminal population as a proxy measure of the magnitude of the state’s concern for crime.

\(^ \text{72} \) States received one point if they prohibited felons from voting while in prison, one point if there was a prohibition during parole and/or probation, and one point if there was a lifetime ban on felon voting. The Cronbach’s Alpha for this index is .762.

\(^ \text{73} \) This proportion is derived by dividing the number of individuals in prison, on parole, and on probation by the total size of the state population.
Because of the ordered nature of my dependent variable, I evaluate the model using ordered-probit. An ordered-probit analysis assumes an underlying continuum of the dependent variable (Borooah, 2002; Liao, 1994). Although OLS may be better suited for such a small number of cases (N=50), modeling the FDSI as an ordinal variable rather than a continuous variable better fits the theory. In calculating predicted probabilities for the ordered probit model and expected values for the OLS model, I find that the results are the same. Graphing the distribution of the dependent variable further supports this point:

![Figure 4.1: Kernel Density Estimates](image)

74 My theoretical framework implies that felon disenfranchisement statutes are a matter of degree rather than a matter of category.
The dotted line of the kernel density plot represents the distribution of the Felon Disenfranchisement Severity Index (FDSI). The smooth line is used to compare the distribution of the FDSI to the normal distribution. Looking at this plot, we can see that the distribution of the FDSI clearly violates the normality assumption of OLS. This makes ordered-probit the most appropriate estimation technique because it does not require normally distributed variables.

Results

Table 4.2 displays the results of the ordered-probit analysis. Based on the chi-square test, we can see that the nine variables included in this analysis are significantly better at explaining the variation in states’ disenfranchisement laws than the null hypothesis. Looking at the results, we see that all of the variables behaved as expected. In terms of the individual variables, region exerts a strong, positive influence on the severity of disenfranchisement provisions. In particular, southern states tend to have more restrictive statutes than non-southern states. As a result, it appears that the peculiar history of the South still shapes the status of disenfranchisement statutes. The ideological mood of a given state also influences the severity of the state’s laws with more liberal states tending to have less severe restrictions. This finding suggests the existence of an important link between the attitudes and beliefs of the masses, and the policy outputs of state elites. Significant only at the .10 level, legislative professionalism exerts a negative, yet more modest influence on severity.
The results of this analysis support the hypothesis that the size of the minority population is relevant to the types of restrictions states place on felon voting. Looking at the results, we see that the level of diversity within the state exerts a strong and positive impact on a state’s likelihood of having severe restrictions. In particular, the size of the Black voting-age population has a more significant (p<.05) impact on this severity than the size of the Hispanic voting-age population (p<.10).

This relationship may be attributed to the historical development of felon disenfranchisement laws as a means of depressing Black political participation.

Surprisingly, none of the other variables reach the appropriate level of statistical significance. Although higher levels of party competition are associated with more severe restrictions on felon voting, the coefficient estimate falls short of reaching statistical significance. An interesting finding is that although minority representation only approaches significance, its negative coefficient does suggest that states with greater African American representation in top policy positions tend to have less severe restrictions. This possibility affirms the need for a more inclusive (e.g. Asian American, Native American, and Hispanic officials) examination of the policy impact of minority representation at the state-level.
<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Coefficient (Standard Error)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Culture</strong></td>
<td></td>
</tr>
<tr>
<td>Region (1= South)</td>
<td>2.06*** (.758)</td>
</tr>
<tr>
<td>Direct Democracy (4= Very Strong)</td>
<td>-.059 (.123)</td>
</tr>
<tr>
<td><strong>Context</strong></td>
<td></td>
</tr>
<tr>
<td>Legislative Professionalism</td>
<td>-.384* (.223)</td>
</tr>
<tr>
<td>State Ideology (Conservative is low)</td>
<td>-.061** (.034)</td>
</tr>
<tr>
<td><strong>Competition</strong></td>
<td></td>
</tr>
<tr>
<td>Party Competition</td>
<td>.873 (2.81)</td>
</tr>
<tr>
<td>Level of Diversity</td>
<td></td>
</tr>
<tr>
<td>% Black Voting-Age</td>
<td>3.06** (1.57)</td>
</tr>
<tr>
<td>% Hispanic Voting-Age</td>
<td>4.18* (2.37)</td>
</tr>
<tr>
<td>Minority Representation</td>
<td>-.002 (.001)</td>
</tr>
<tr>
<td>Criminal Population</td>
<td>19.76 (39.51)</td>
</tr>
<tr>
<td>Intercept 1</td>
<td>-3.93 (3.15)</td>
</tr>
<tr>
<td>Intercept 2</td>
<td>-.596 (2.82)</td>
</tr>
<tr>
<td>Intercept 3</td>
<td>2.06 (2.86)</td>
</tr>
<tr>
<td>Overall Model</td>
<td>Chi2 (9 df) = 55.09***</td>
</tr>
<tr>
<td></td>
<td>N= 49</td>
</tr>
</tbody>
</table>

***p<.01  **p<.05  *p<.10

Table 4.2: Ordered Probit Analysis of Variation in Felon Disenfranchisement Restrictions
To better illustrate the effects of these independent variables, I used King, Tomz, and Wittenberg’s (2000) Clarify program to generate predicted probabilities. The program allows the researcher to predict the probability of a given outcome under certain conditions. In the case of my analysis, Clarify allows me to gauge the probability of a state imposing various levels of restrictions on felon voting, while holding the culture, context, and competition variables constant. To evaluate the initial probabilities of a state having these restrictions, the variables of interest were set at meaningful values. The dichotomous variable REGION was set at “1” (South), and all other variables were set at their mean. I measured changes in the predicted probabilities by altering the value of one variable at a time, and holding all others constant. For continuous variables the change was evaluated by going from one standard deviation below the mean to one standard deviation above the mean. For the dichotomous variable the change was evaluated by going from zero to one. For ordinal variables the change was evaluated by going from the minimum value to the maximum value. The intercepts obtained via the original ordered-probit analysis are cut points on a standardized normal distribution that are used to calculate the predicted probabilities for each category of the Felon Disenfranchisement Severity Index (FDSI) (Sasso et al., 2001; Roch, Scholz, and McGraw, 2000).

Table 4.3 presents the estimated changes in predicted probabilities. The results show that holding all variables constant, the estimated probability of a state having the most severe restriction (lifetime disenfranchisement) on felon voting is only about .22. Conversely, the estimated probability of a state having
the least severe restriction is negligible (.007). The estimated probability for these
costants is greatest for states disenfranchising felons during the periods of
incarceration, probation, and parole (.365).

The predicted probabilities provide a more compelling picture of the
impact of diversity on states’ disenfranchisement provisions. Increasing the level
of diversity in a given state dramatically increases the probability of having a
lifetime ban on felon voting by about sixty-three percent. Similarly, increasing the
size of the Black voting-age population decreases a state’s probability of only
banning inmates from voting by approximately .54. Related to this diversity, we
see that increasing the level of minority representation reduces the likelihood of
having a lifetime ban on felon voting by thirty-one percent. The results also
indicate that the probability of a southern state having the most severe restriction
on felon voting is sixty-eight percent. Lastly, we see that the probability that a
more liberal state will impose a lifetime ban on felon voting reduces by about
thirty-eight percent.
### Table 4.3: Discrete Change in the Probability of Disenfranchisement Severity

<table>
<thead>
<tr>
<th>Variable</th>
<th>Least Severe</th>
<th>Somewhat Severe</th>
<th>Very Severe</th>
<th>Most Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Probability</td>
<td>.01</td>
<td>.29</td>
<td>.42</td>
<td>.28</td>
</tr>
<tr>
<td>% Black Voting-Age</td>
<td>-.06</td>
<td>-.54</td>
<td>.04</td>
<td>.63</td>
</tr>
<tr>
<td>% Hispanic Voting Age</td>
<td>-.14</td>
<td>-.34</td>
<td>.13</td>
<td>.35</td>
</tr>
<tr>
<td>Region (1= South)</td>
<td>-.08</td>
<td>-.45</td>
<td>-.15</td>
<td>.68</td>
</tr>
<tr>
<td>State Ideology</td>
<td>.03</td>
<td>.46</td>
<td>-.11</td>
<td>-.38</td>
</tr>
<tr>
<td>Legislative Professionalism</td>
<td>.04</td>
<td>.28</td>
<td>-.09</td>
<td>-.23</td>
</tr>
<tr>
<td>Minority Representation</td>
<td>.12</td>
<td>.46</td>
<td>-.26</td>
<td>-.31</td>
</tr>
<tr>
<td>Party Competition</td>
<td>-.01</td>
<td>-.14</td>
<td>.04</td>
<td>.12</td>
</tr>
</tbody>
</table>

Table 4.3: Discrete Change in the Probability of Disenfranchisement Severity

**Explaining Recent State Reform Efforts**

Like most regulatory policies, felon disenfranchisement laws are not static. Instead, the status of these restrictions may shift in response to changes in the broader political and socio-economic contexts. Indeed the Civil Rights Movement and its accompanying legislation helped expand the electorate. This movement was important for not only bringing national attention to the plight of

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75 Probability may not total 100 due to rounding.
African Americans, but also to the efforts of other groups fighting to gain the franchise. As Keyssar (2000) suggests, “the impulse to expand the franchise in the 1960’s and early 1970’s was strong enough to reach even the most unpopular and least powerful group of disenfranchised citizens: men and women who had been convicted of crimes” (p. 302).

Under the mandates of the 1964 Civil Rights Act and the 1965 Voting Rights Act, many states changed their list of disenfranchising crimes to erase race-based distinctions. In particular, several states returned to the pre-Reconstruction practice of only including crimes that violated the public trust such as treason, bribery, and embezzlement. Other states made all felonies eligible for disenfranchisement instead of just the crimes that Blacks were believed to commit more frequently.

Supporters of these laws have argued that because of these changes, racial group considerations were no longer relevant. As a result, the status of these laws remained stagnant for nearly twenty years. Yet beginning in the early 1990’s, many states began to revisit their disenfranchisement statutes. In particular, many states began devising more stringent means of punishing those convicted of drug-related crimes-- many of which tended to be felony offenses. The result was a number of efforts aimed at increasing the cumulative impact of criminal control policies.

Following the same approach used to explain state variation, the next section investigates how culture, context, and competition may shape the
prevalence and scope of reform from 1990 to 2002. Focusing on these efforts, I make a distinction between progressive and regressive reforms. I define progressive reforms as efforts aimed at making the laws less severe and/or increasing the number of (ex) felons eligible to vote. Examples include rescinding lifetime disenfranchisement provisions and creating a restoration process. Regressive reforms refer to efforts that make the laws more severe and/or decrease the number of (ex) felons eligible to vote. Examples include expanding the list of eligible offenses, and expanding the supervision categories. In the following section, I discuss the potential considerations that could lead a state to reform its disenfranchisement provisions. I argue that in evaluating these considerations, it is necessary to account for both the internal and external political environments.

Crime and Socio-Economic Factors

As previously stated, felon disenfranchisement laws are often portrayed as a means of articulating the community’s disapproval of criminal behavior. Based on this, changes in the state’s problems with crime may lead to changes in crime policy. If punishment and deterrence are truly the goals of this policy, then the adoption of more severe penalties should be associated with escalating crime concerns. To gauge this concern, I evaluated changes in the size of the state’s incarcerated population incarcerated between 1990 and 1996. I use this measure rather than the total number of crimes reported because it better illustrates the number of people remanded to the system.
Therefore, I expect that states with increasing **PRISON POPULATIONS** will be more likely to adopt regressive reforms.

In addition to changes in the size of the criminal population, I also account for the adoption of other policies that may be related to felon disenfranchisement. For example, many states responded to increasing crime rates by adopting a plethora of “get tough” policies including mandatory-minimum sentences, three-strikes laws, and the abolishment of parole. To tap into this potential policy influence, I created a proxy measure based on whether states had abolished parole. I expect that **TOUGHER** states will be more likely to adopt regressive reforms.

My analysis also addresses the possibility that changes in a state’s economic vitality may necessitate harsher crime control policies. Many sociologists have explored the relationship between poverty and crime and found that high-crime areas tend to be associated with more impoverished neighborhoods (Berk, Lenihan, and Rossi, 1980; Jencks, 1992). In turn, they argue that economic downturns often lead to sharp increases in criminal activity. If this is true, then we should expect an increase in the adoption of policies aimed at reversing this trend. To account for this, I gauge the difference in the percentages of the state living in poverty between 1991 and 1996. I expect a negative relationship. That is, states with increases in the **PERCENT IN POVERTY** will be more likely to adopt regressive reforms.

Given that the level of minority diversity was a significant determinant of variation in disenfranchisement laws, I also examine the influence of changing
levels of diversity on reform. I gauge changes in the proportion of Hispanics and African Americans living in the state between 1980 and 1990.\textsuperscript{76} If group conflict is relevant to reform, then we should expect that increases in \textbf{MINORITY DIVERSITY} will be associated with regressive reforms.

\textit{Political Factors}

As previously stated, political parties play a critical role in shaping states’ policy outputs. Although party competition was not statistically related to variation in the severity of disenfranchisement laws, changes in partisan support may be related to reform efforts. Conventional wisdom offers that African Americans and non-Cuban Latinos overwhelmingly support the Democratic Party (Tate, 1991). Given the disproportionate number of disenfranchised minorities, it follows that Democrats stand to benefit the most from enfranchising (former) felons. Therefore, we would expect that states with stronger \textbf{DEMOCRATIC SUPPORT} would be more likely to adopt progressive reforms.

A proxy measure of party support is derived by measuring the percentage of votes cast for the Democratic candidate in the 1990 gubernatorial race.

I also account for the capacity of officials to mobilize against policies that are detrimental to their constituents. This capacity may be critical in terms of

\textsuperscript{76} Because these proportions are based on Census data, it is necessary to choose decades rather than individual years. As a result, I chose 1980 and 1990 because they are closest to the actual reform dates. Before 1990, Latinos were incorrectly classified as a racial group such that citizens could identify as either White, Black/African-American, Asian American, or Latino. Since that time, the Census has altered its categories to allow citizens to declare both their racial ethnic identities (e.g. Black/Latino).
minority officials’ ability to pressure changes in the status of disenfranchisement laws. I expect that states with increased **MINORITY REPRESENTATION** will be more likely to adopt progressive reforms. Minority representation is measured by comparing the proportion of African American elected officials in 1984 to the proportion in 1994.77

Although the aforementioned factors reflect the state’s internal political environment, it is important to realize that states’ policymaking decisions do not happen in isolation. Instead, the external political environment may be equally important for shaping the outcomes of the policymaking process. The external political environment can involve the political context present in neighboring states as well as national and global forces. For example, Skalaban (1992) found that states only cooperate with one another when they perceive a potential benefit that could not be achieved individually. Likewise, demographic changes in one area can often create the need for a policy response in another state.78

In terms of this external political environment, the delineation of responsibilities across the various levels of government constrains states’ ability to address certain national problems (Chubb, 1988). In evaluating government’s treatment of socio-economic inequality, Judd and Swanstrom (1998) suggest that

77 The Joint Center for Political and Economic Studies (JCPES) prints an annual review of the status of Black elected officials in the states. However, these reviews are not always complete and/or accurate. I chose to evaluate the changes between 1984 and 1994 because they represent the most accurate JCPES rosters.

78 Historical examples of this situation abound. For example, economic changes in parts of Europe during the 1800’s led to massive waves of immigration to the United States. As a result, the geographic and financial resources of many states and localities were significantly burdened.
the federal government is better suited for pursuing redistributive policies while
state and local governments are better equipped to pursue developmental policies.
However, devolution and policies at the national level have reversed those duties
(Soss et al., 2001). As a result, much of the responsibility for handling the needs
of high-cost citizens falls upon state and local governments who lack the
resources necessary to adequately provide for such citizens. In essence, the
needs of these citizens outweigh the contributions they can provide to the
localities they reside in.

Indeed poverty and crime in a local area are often the results of changes in
the economy at the national level. For example, national policies such as NAFTA
and minimum wage standards all impact the economic vitality of a given region.
In particular, certain states may be more sensitive to fluctuations in the economy
than others. Despite this, federal provisions for fighting crime and poverty are
very limited.

Obviously many of FDR’s New Deal policies and LBJ’s Great Society programs
attempted to improve the standard of living for all citizens. However, the slashing
of welfare programs by the Reagan and Clinton administrations and the rise of

by this influx. Similarly, the Great Migration of African Americans to the North forced many
states to create policies aimed at accommodating these new citizens.

High-cost citizens refer to those inhabitants who are largely dependent upon the government to
provide services but are unable to contribute to the community’s economic vitality. Examples of
these citizens include the indigent and institutionalized.
unfunded mandates have only helped escalate the severity of this national problem.

This same pattern is relevant to states’ increasing responsibility for criminal control. Several national events such as the War on Drugs, national gun control legislation, and even Homeland Security have forced states to shift greater resources to law enforcement. Further, these national forces have led to dramatic increases in the number of investigations, arrests, convictions, and incarcerations for which states must absorb the costs. In turn, these patterns have led many states to adopt stricter policies aimed at deterring such behavior, while also seeking to maximize the benefits of their expenditures.

One of the most interesting developments in the national political environment was the flurry of national activity aimed at articulating a zero-tolerance approach to crime and criminals. Beginning with the Anti-Drug Abuse Acts of the Reagan Administration, federal approaches to fighting crime fundamentally altered state and local government’s involvement. The Reagan Administration was responsible for ushering in a War on Drugs Movement that has led to dramatic increases in the number and consequences of criminal convictions in this country. However, as Schiraldi (2001) warns, one should not limit this issue to the Republican agenda. Schiraldi’s report details how “tough policies, more prisons, officers, and longer sentences [have] led to more Americans going to prison during Clinton than any other administration.”

example, 673,000 individuals were sent to state and federal jails and prisons during Clinton’s two terms compared to 448,000 and 343,000 during the Reagan and Bush (Sr.) administrations, respectively.

Perhaps the greatest illustration of the impact of the federal environment on state policy can be found in the 1994 Violent Crime Control and Law Enforcement Act. Drafted in 1993, the bill contained four major initiatives:

- Putting 100,000 more officers on the streets
- Keeping handguns away from criminals (e.g. the Brady Bill and Assault Weapons Ban)
- Boot camps and drug treatment for non-violent offenders
- Stronger penalties for crime and adoption of habeas corpus reform

This bill was significant because it gave $30 billion to states to implement crime prevention and control measures. This included over $40 million to build or expand correctional facilities. Further, Congress authorized incentive grants and programs for states that adopted truth-in-sentencing (TIS) policies. According to the Office of Justice Programs website, truth-in-sentencing policies require offenders to serve a substantial portion of their prison sentence, in addition to restricting or eliminating parole eligibility. The incentives included federal money for construction and highway projects. To qualify, states must require convicted felons to serve at least eighty-five percent of their prison sentences. As a result, twenty-eight states and the District of Columbia received substantial

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81 One important new penalty was the expansion of the list of crimes eligible for the death penalty. In addition, the habeas corpus reforms limited the time that criminals could file to six months.

funds to expand their corrections expenditures. I account for this potential influence by creating a dummy variable (1=Yes) based on whether a state received these federal incentive funds. My expectation is that states who received FUNDS are more likely to adopt regressive reforms.

83 A few states fell just short of meeting the federal eighty-five percent requirement. For example, Massachusetts requires offenders to serve seventy-five percent of their sentence, while New Hampshire requires offenders to serve two-thirds of the original sentence in prison, and one-third on parole.
<table>
<thead>
<tr>
<th>Meet Federal 85% Requirement</th>
<th>50% Requirement</th>
<th>100% of Minimum Requirement</th>
<th>Other Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>Oklahoma</td>
<td>Idaho</td>
<td>Alaska</td>
</tr>
<tr>
<td>California</td>
<td>Oregon</td>
<td>Maryland</td>
<td>Arkansas</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Pennsylvania</td>
<td>Nebraska</td>
<td>Colorado</td>
</tr>
<tr>
<td>Delaware</td>
<td>South Carolina</td>
<td>Texas</td>
<td>Kentucky</td>
</tr>
<tr>
<td>DC</td>
<td>Tennessee</td>
<td>Utah</td>
<td>Massachusetts</td>
</tr>
<tr>
<td>Florida</td>
<td>Utah</td>
<td>Virginia</td>
<td>Wisconsin</td>
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<tr>
<td>Georgia</td>
<td>Virginia</td>
<td>Washington</td>
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<td>Illinois</td>
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<td>Iowa</td>
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<td>Michigan</td>
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<td>Mississippi</td>
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<td>Missouri</td>
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<tr>
<td>New Jersey</td>
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<td>North Dakota</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Ohio</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 4.4: Truth-in-Sentencing Requirements by State

The dependent variable for this analysis reflects the continuum of reform activity. States that have adopted regressive reforms since the 1990’s are coded “-1,” states with no reform are coded “0,” and states that have adopted progressive reforms are coded “1.” Once again, I evaluate the model using ordered-probit.

The distribution of the dependent variable is below:

<table>
<thead>
<tr>
<th>Type of Reform</th>
<th>Frequency</th>
<th>Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regressive</td>
<td>12</td>
<td>24.0</td>
<td>24.0</td>
</tr>
<tr>
<td>None/Status Quo</td>
<td>28</td>
<td>56.0</td>
<td>80</td>
</tr>
<tr>
<td>Progressive</td>
<td>10</td>
<td>20.0</td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td>50</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

Table 4.5: Distribution of the Types of Disenfranchisement Reform Since 1990

Results

Table 4.6 displays the results of the ordered-probit analysis. Based on the chi-square test, we can see that the eight variables included in this analysis are significantly better at explaining the variation in reform efforts than the null hypothesis. Overall, the results show that changes in the inner environment are more influential than changes in the external environment. Changes in the state’s socio-economic condition are particularly significant. States with rising prison populations—and by extension rising problems with crime—were significantly more likely (p<.02) to adopt regressive reforms than states with decreasing prison populations. Although increases in the prevalence of poverty are associated with adopting regressive reforms, this estimate failed to reach statistical significance.

Perhaps the most interesting results can be found in the impact of minority diversity on reform. In the first model, I found that states with larger Black populations were significantly more likely to have severe disenfranchisement statutes. Yet in this analysis, it appears that states with rising Black populations are more likely to adopt progressive reforms (p<.05). This finding suggests that
once African Americans become a substantial percentage of the citizenry, it is possible for them to push for political inclusion. There is some support for this possibility at the institutional level as well. States with increasing proportions of African Americans in elected positions were more likely to adopt progressive reforms. Despite the positive impact of the African American presence on reform, the results are quite different for Hispanics. States with growing Hispanic populations were significantly more likely (p<.02) to adopt regressive reforms. This finding demonstrates the continuing importance of group conflict to the status of disenfranchisement laws. Whereas the laws were adopted as a means of depressing Black participation, it appears that they are being reformed in response to the growing Hispanic presence.

Looking at the results, we find a few surprises. In particular, states that abolished parole and accepted crime bill funds were more likely to adopt progressive reforms. It is possible that although these states required felons to serve a longer portion of their sentences, they were also willing to provide opportunities for them once released. Because neither of these estimates reached the appropriate levels of statistical significance, one should be careful not to make too many conclusions. Although in the right direction, none of the other variables reached statistical significance. An interesting finding, however, is that increased Democratic support is associated with the adoption of progressive reforms.
<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Coefficient (Standard Error)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political (internal)</td>
<td></td>
</tr>
<tr>
<td>Minority Representation</td>
<td>9.30 (8.52)</td>
</tr>
<tr>
<td>Democratic Support</td>
<td>.596 (.138)</td>
</tr>
<tr>
<td>Abolish Parole</td>
<td>.126 (.414)</td>
</tr>
<tr>
<td>Political (external)</td>
<td></td>
</tr>
<tr>
<td>Crime Bill Funds</td>
<td>.206 (.388)</td>
</tr>
<tr>
<td>Socio-Economic</td>
<td></td>
</tr>
<tr>
<td>Prison Population</td>
<td>1132.31 (479.58)**</td>
</tr>
<tr>
<td>Percent Poverty</td>
<td>-.015 (.073)</td>
</tr>
<tr>
<td>Level of Diversity</td>
<td></td>
</tr>
<tr>
<td>% Black</td>
<td>11.92 (6.28)**</td>
</tr>
<tr>
<td>% Hispanic</td>
<td>-10.59 (4.81)***</td>
</tr>
<tr>
<td>Intercept 1</td>
<td>-.652 (.374)</td>
</tr>
<tr>
<td>Intercept 2</td>
<td>1.32 (.404)</td>
</tr>
<tr>
<td>Overall Model</td>
<td>Chi² (8 df) = 14.83**</td>
</tr>
<tr>
<td></td>
<td>N= 49</td>
</tr>
</tbody>
</table>

***p<.02  **p<.05  *p<.10

Table 4.6: Ordered Probit Analysis of Variation in Felon Disenfranchisement Reform, 1990-1996
Once again, I used Clarify to generate predicted probabilities. To evaluate the initial probabilities of a state adopting a certain type of reform, the dichotomous variables PAROLE and FUNDS were set at “1.” All other variables were set at their mean. Changes in the predicted probabilities were measured by altering one variable at a time and holding all others constant. For continuous variables, the change was evaluated by going from one standard deviation below the mean to one standard deviation above the mean. For the dichotomous variables the change was measured by going from zero to one.

Table 4.6 presents the estimated changes in predicted probabilities. The results show that holding all variables constant, the estimated probability of a state adopting a progressive reform is only .18, while the probability of adopting a regressive reform is about .17. The estimated probability for these constants is greatest for adopting no reforms (.644).

The predicted probabilities illustrate the impact of socio-economic changes on the type of reforms that states adopt. Increasing the size of the African American population increases the probability of a progressive reform by 53.1%. Conversely, increasing this size decreases the probability of a regressive reform by 42.7%. Similarly, we see that increasing the size of the African American population reduces the probability of adopting no reforms by 10.4%. Increasing the levels of minority representation decreases the probability of adopting regressive reforms by 12.5%; compared to the increased probability (12.9%) of adopting a progressive reform. In terms of the size of the Hispanic population, an increase in its size increases the probability of adopting regressive reforms by
34.9%. In contrast, the probability of adopting progressive reforms is reduced by 37.1%. The impact on the probability of a state adopting no reforms is negligible (2.2%). Lastly, we see that increasing the size of the prison population increases the probability of a regressive reform by 33.0%, while decreasing the probability of progressive reforms by 31.4%.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Regressive Reform</th>
<th>No Reform</th>
<th>Progressive Reform</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Probability</td>
<td>.175</td>
<td>.644</td>
<td>.180</td>
</tr>
<tr>
<td>Prison Population</td>
<td>.330</td>
<td>-.016</td>
<td>-.314</td>
</tr>
<tr>
<td>Change in % Black</td>
<td>-.427</td>
<td>-.104</td>
<td>.531</td>
</tr>
<tr>
<td>Change in % Hispanic</td>
<td>.349</td>
<td>.022</td>
<td>-.371</td>
</tr>
<tr>
<td>Change in % Poverty</td>
<td>.026</td>
<td>-.004</td>
<td>-.022</td>
</tr>
<tr>
<td>Minority Representation</td>
<td>-.125</td>
<td>-.004</td>
<td>.129</td>
</tr>
<tr>
<td>Democratic Support</td>
<td>-.036</td>
<td>.0007</td>
<td>.035</td>
</tr>
<tr>
<td>Abolish Parole</td>
<td>-.031</td>
<td>-.002</td>
<td>.033</td>
</tr>
<tr>
<td>Crime Bill Funds</td>
<td>-.058</td>
<td>.025</td>
<td>.033</td>
</tr>
</tbody>
</table>

Table 4.7: Discrete Change in the Probability of Reform Efforts

Entries may not sum to 100 due to rounding.
Discussion

Many have argued that because all felons, regardless of race, are eligible to lose their voting rights, disenfranchisement laws contain no racial intent. However, the results of these ordered-probit analyses suggest that the variation in the contemporary status of disenfranchisement provisions mirrors the motivations underlying their creation. Just as the historical analysis suggested, southern states, more conservative states, and states with larger minority populations all tend to impose more severe restrictions on felon voting. Similarly, changes in the level of diversity are significantly related to a state’s decision to reform its disenfranchisement laws. However, this relationship is in the opposite direction of what I predicted for African Americans.

What is interesting about this analysis, and something that was not a factor in chapter three, is that the size of the Latino voting-age population is a significant determinant of a state’s felon disenfranchisement provisions. These findings demonstrate that although African Americans may have been the original targets of these policies, the increasing numerical presence of Latinos holds contemporary significance. Most importantly, these results support the arguments of opponents of felon disenfranchisement who contend that the disparate racial impact is institutionally motivated. Based on this, it is important for scholars to assess how government institutions, and the elites that staff them, respond to growing prospects for group conflict and competition. Understanding this process takes on renewed importance given the growing influence of communities of
color in the United States. In addition, it is important to understand how these arenas of competition shape efforts to, and support for, reform disenfranchisement laws. Chapters five and six take up this task by critically examining possible avenues for reform. Chapter five addresses this by critically examining the nature of elite discourse surrounding disenfranchisement. From here, chapter six gauges the possibility that these frames can influence citizens’ support for restoring the vote to (ex) felons. Taken together, these chapters illuminate the factors that contribute to the contemporary presence of felon disenfranchisement laws.

86 According to a report from the U.S. Census Bureau (2001), Latinos are the fastest growing subgroup in the United States and recently surpassed African Americans as the largest racial/ethnic minority.
CHAPTER 5

Avenues for Reform: Elite Framing and Discourse Surrounding Felon Disenfranchisement Laws

“This issue is not about crime; it is about democracy. In our criminal justice system, who gets arrested, who gets prosecuted, and who gets convicted of a felony are all decisions that involve a great deal of discretion. Too often, race and class play a role in those decisions. When felony convictions result in voting bans, the result is increased disenfranchisement of populations that were already marginalized”

- Nancy Northrup (2002).

“The fact that the effects of disenfranchisement may be concentrated in particular neighborhoods is actually an argument in the laws’ favor. It is true that a disproportionate number of African-Americans are being disenfranchised for committing serious crimes, but their victims are disproportionately black, too. Given that, the logical focus of an organization like the NAACP should be on discouraging the commission of such crimes, rather than minimizing their consequences”


Throughout this dissertation I have argued that felon disenfranchisement represents a formidable means of institutionalizing the politics of exclusion. Chapter three supported this view by evaluating the importance of the racial group conflict lens to the adoption and subsequent expansion of disenfranchisement laws. The analyses presented in chapter four affirmed the continuing significance of race and racial group considerations to structuring disenfranchisement provisions. In particular, it examined how racial group considerations have shaped efforts to reform disenfranchisement laws.
Chapter five extends this analysis by evaluating the presence of these considerations in elite discourse surrounding disenfranchisement.

This focus is useful because of the critical role elites play in both leading governmental institutions and serving as a link between citizens and government. As a result, the manner in which elites present the issue may shape efforts to secure support for reform. Likewise, this presentation may also support efforts to preserve the existing statutes. Given the complex and often complicated nature of felon disenfranchisement, it is quite possible that the discourse employed by elites may be useful for conveying to citizens what the central controversy is about (Kinder and Sanders, 1996). This occurs because frames send cues regarding which considerations should be central to the public’s evaluations of these laws.

In this chapter, I begin by reviewing the literature regarding the function of elite framing. Next, I examine the dominant themes present in the rhetoric of politicians, advocacy groups, legal experts, and community leaders with regard to felon disenfranchisement. This analysis helps set up my empirical tests of the impact of elites frames on public attitudes toward criminal disenfranchisement policies. Taken together, chapters five and six help identify the most useful approaches to reforming disenfranchisement laws-- both in terms of identifying how elites present the issue, and how citizens respond to these depictions.
Conceptualizing the Framing Process

Gamson and Modigliani (1987) define a frame as a “central organizing idea/story line that provides meaning to an unfolding strip of events, weaving a connection among them” (p. 143). Frames are important because they not only tell citizens what to think about, they may often suggest how to think about an issue. In evaluating the relationship between elite discourse and public opinion, Kinder and Sanders (1996) suggest that framing allows elites (or advocates as they term them) to define issues in a manner that is consistent with their own goals or beliefs. As a result, frames serve as “rhetorical weapons created by political elites to advance their interests and ideologies” (p.164). Elite framing is quite useful given the myriad political choices and issues that citizens are forced to make decisions about. Framing reduces the cognitive complexity of this task by providing citizens with identifiable standards. In essence, framing makes the decision-making process more manageable.

Although Kinder and Sanders (1996) contend that framing serves the function of priming, it is important to distinguish between these two different forms of political communication. Simply stated, priming provides guidance for what citizens should think about in reaching a political evaluation while frames provide guidance on how participants should think about a political issue. Yet as we will see later in this chapter, the two processes are often complementary.
According to Price and Tewksbury (1997), priming refers to the process by which certain concepts and issues that, in their case, receive prominent coverage in the media become more accessible to consumers. As a result, this accessible information is used as a heuristic when forming a political judgement (Iyengar and Kinder, 1987). Thus, the events and issues primed by the media become “yardsticks used to evaluate political actors” (p. 181). Although this process does not necessarily have to be a conscious or deliberate attempt to influence public opinion, it becomes useful for helping reduce both the cognitive complexity and demand that a political decision or evaluation may require.

Much of the research on priming effects (Krosnick and Kinder, 1990) has focused on how the concerns, issues, or priorities primed by media coverage become central to evaluations of political leaders. An example of priming can be witnessed in that after the intense media coverage of the September 11th terrorist attacks, citizens’ political evaluations of President George W. Bush were driven more by notions of patriotism and foreign policy than issues such as the economy and personal competence. Priming theories also assume that the stories and accompanying ideas produced by the media will have an immediate impact on knowledge activation.87

In contrast, contemporary theories of framing grew out of Kahnemann and Tversky’s (1984) proposition that how choices are presented can become reference states for decision-making. Applying this to the study of politics,
Iyengar (1979) argues that media organizations can choose to cover stories using an episodic frame that treats issues as discrete events, or thematic frames that tie a story to a broader issue or phenomenon. Thus, framing differs from priming because frames act as guides for understanding issues and in turn forming responses to political phenomena. Further, frames also affect the relevance and applicability of a particular piece of news/information.

While framing refers to a general process of attempting to structure how information is presented, issue framing politicizes the process by “selectively enhancing the psychological importance attached to specific beliefs” (Nelson et al., 1997). Simply stated, issue framing differs because it emphasizes the content of a particular frame. These frames not only help structure the identification and explanation of a problem, they also suggest how consumers should evaluate or react to such problems. As a result, issue framing both triggers relevant beliefs and shapes the weight of such beliefs. In essence, issue frames represent efforts to tailor the tone or focus of a story in order to manipulate a desired set of views relevant to a political opinion. An example of this intent would be a politician’s decision to frame an abortion procedure as a “late term abortion” versus a “partial birth abortion.” Although each concept refers to the same procedure, the language evokes very different images and beliefs amongst the public. Manipulating this language would allow the communicator to emphasize beliefs related to the

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87 Although priming and framing are primarily done via media, they are part of a more general process of political communication. In essence, any entity with the opportunity to influence public opinion can engage in priming and framing.
sanctity of life and protecting children as opposed to civil liberties or reproductive freedom.

The research presented in this chapter argues that how citizens understand the debate surrounding felon disenfranchisement is shaped by how the issue is framed by political elites and the media. As Kinder and Sanders (1996) suggest, frames are critical for helping citizens determine “which features of [the debate] are central and which are peripheral” (p. 39). Further, it is important to understand that frames can act as “interpretive structures that are a part of political discourse, invented and employed by political elites to advance their interests” (p. 40).

This function is particularly useful for an issue like felon disenfranchisement because of the relatively low levels of public awareness of the issue. As a result, this limited knowledge creates an environment that is particularly conducive to elite influence. Frames may be especially useful for helping citizens “make sense” of these laws and their relationship to broader political and social concerns. If, for example, citizens are led to view these laws as a means of reinforcing the social contract, attitudes toward them may be more positive. However, if elite discourse suggests that disenfranchisement laws undermine participatory democracy, then attitudes may be more negative. Before evaluating this possibility, I examine the evolution of elite discourse surrounding felon disenfranchisement. I begin by discussing elite frames that call for reform of the criminal justice system in general, and restrictive policies in particular. Next, I analyze the use of elite frames advocating harsher crime control policies and lower tolerance for criminals’ rights. Finally, I examine elite frames that
emphasize the impact of the laws on both racial group representation and
democratic vitality.

**Prison Reform and Inmate Rehabilitation Frame**

Within this frame, felon disenfranchisement is portrayed as an impediment
to ex-offenders’ full rehabilitation. Voting provides offenders’ with an attachment
to the community and therefore an incentive not to re-offend. In essence, elite
framing draws upon the need to bring former offenders back into the body politic.
For example, Heywood Fennell, an ex-felon who now runs a civic education
program for former offenders, argued against disenfranchisement on the grounds
that it was:

> [a] way of preparing the guillotine of despair and hopelessness for people
coming out of prison into community. If you don’t vote, you don’t have
any say on when the trash man is going to pick up the garbage. A vote is
power, a way to be involved in the process and it helps give you the
opportunity to rebuild your life.  

Inspired by the protest tactics of the Civil Rights Movement, the 1970’s
witnessed a surge in efforts to pressure a response to the plight of incarcerated
citizens. The most prominent of these strategies were the prison protests and riots
in states such as New York, California, and Illinois. Building upon these events,
various leaders and advocacy groups came together to initiate a movement aimed
at challenging what they viewed as a flawed system of justice. The first phase of
the movement focused on resisting the growth of the “Prison Industrial Complex.”
According to a pamphlet published by the Critical Resistance Organization, the
term *Prison Industrial Complex* refers to:

> a complicated system situated at the intersection of governmental and
private interests that uses prisons as a solution to social, political, and
economic problems. The PIC depends upon the oppressive systems of
racism, classism, sexism, and homophobia. It includes human rights
violations, the death penalty, industry and labor issues, policing, courts,
media, community powerlessness, the imprisonment of political prisoners,
and the elimination of dissent.

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Organizations such as Citizens United for Rehabilitation of Errants (CURE), the Prison Reform Trust, The Sentencing Project, and the ACLU mobilized grassroots campaigns to raise the public’s awareness of both the growth of the prison industry and the consequences of massive incarceration. The goal of these campaigns was to encourage citizens to demand more constructive approaches to fighting crime. To this end, these campaigns often focused on eradicating the structural and institutional causes of criminal behavior. Out of these outreach campaigns came later efforts to promote a holistic transformation of America’s approach to crime control. Advocates believed that this transformation was necessary to overcome the historical roots of the penal system.

In referencing this history former Black Panther leader Assata Shakur asserts that:

> prisons were introduced in Africa, the Americas, and Asia as by-products of slavery and colonialism, and they continue to be instruments of exploitation and oppression. In the heart of the imperialist empires, prisons also meant oppression. The Prison-Industrial Complex is not only a mechanism to convert public tax money into profits for private corporations, it is an essential element of modern neo-liberal capitalism. It serves two purposes. One to neutralize and contain huge segments of potentially rebellious sectors of the population, and two, to sustain a system of super-exploitation, where mainly black and Latino captives are imprisoned in white rural, overseer communities.89

Ultimately, these efforts led to a broader movement to re-focus the purpose of incarceration on rehabilitation rather than just punishment. Concerned advocates challenged politicians and citizens to consider what should happen after offenders were released from prison. As Belk (2003) suggests, it became necessary to provide individuals with incentives to not commit further crimes, as
well as prepare them for life outside the prison walls. Reflecting on her own experiences as a political prisoner and exile, Assata Shakur used her poem “Affirmation” to remind practitioners that, “And, if I know anything at all, it’s that a wall is just a wall and nothing more at all. It can be broken down.” These words later became the guiding belief for many organizations demanding a critical assessment of America’s criminal justice system.

To promote the ideal of rehabilitation, states began establishing vocational and educational programs for inmates. The hope was that these programs would help offenders develop life skills that could help them earn a living via legal means. Overall, the criminal justice system of the late seventies and early eighties emphasized counseling services and prevention programs as the best approach to reducing crime. The primary goals of these efforts were two-fold. First, administrators hoped to offer incentives for “good behavior.” And second, administrators hoped to promote the re-integration of ex-offenders into the community.

The prison reform movement also addressed felon disenfranchisement on the grounds that the laws were outdated and served no clear purpose. Further, former offenders as well as their advocates believed that the laws impeded the full rehabilitation of ex-offenders. For example, Shapiro (1993) documents that groups such as the American Bar Association and the American Law Institute “came out against lifetime disenfranchisement...back when there were still criminologists who bothered to report that the stigma of exclusion might actually

deter rehabilitation and increase the likelihood of recidivism” (p. 13). Building upon these views, many believed that the removal of criminals’ voting rights violated the protections of the Constitution. This was particularly important given the many legal battles during this time to secure civil liberties protections for both the accused and the convicted. Prison reform advocates also believed that the stigma associated with being ineligible to vote violated the country’s alleged commitment to social justice.

In addition to seeing the loss of rights as a threat to justice, others feared that voting restrictions would eventually lead to other, more severe restrictions. Eddie Ellis, a consultant for New York’s Open Society Institute, believes that taking away voting rights:

> sends a signal that it’s okay to take away other rights. Prohibitions on living in public housing, or on being hired for any number of jobs, or getting a professional license, or financial aid to education—all of these stem from the idea that it’s okay to take away rights of former inmates. The right to vote is key to all that.

Others believed that the removal of voting rights conveyed the message to criminals that even after paying their “debt” to society, they would be permanently outside of the polity. Affirming this, Alex Friedmann (2001) argued that, “if society doesn’t care enough about former prisoners to treat them as citizens, with the voting rights of citizens, then why should former prisoners care enough about society to act like law-abiding citizens?”

These efforts garnered a great deal of support from more liberal entities such as the NAACP, the National Urban League, and Democrats who saw the
emphasis on rehabilitation and re-integration as ways to both fight crime and quell much of the civil and political unrest that characterized that era.

However, broader social and economic changes significantly changed the tenor of this support. Economic downturns and conservative judicial decisions led many prisoners’ rights advocates to shift their focus to more immediate threats such as the increased use of the death penalty, changes in the sentencing structure, and the privatization of prisons. As a result, felon disenfranchisement became a low priority on the grassroots political agenda. In addition to this change in reformers’ agenda, the alarming increases in drug use and drug-related crimes thrust issues surrounding enforcement to the forefront of the nation’s political agenda. The prominence of these concerns silenced many elites who had previously supported liberal approaches to crime control.

**Incapacitation and Deterrence**

This frame emphasizes civil disabilities, such as the loss of voting rights, as severe penalties that create disincentives for committing crime. Further, this frame stresses the community’s disapproval of crime and criminals. Within this frame disenfranchisement is also portrayed as a means of preventing convicted criminals from committing other criminal acts such as voter fraud, bribery, and/or voting in a manner that subverts the community’s interests. For example, one of the earliest arguments for disenfranchisement was that it insured that people who broke the law wouldn’t have a say in determining who would carry out the law.

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This concern over the purity of the ballot box was present in historical discourse but has also emerged in contemporary discourse.

Support for incapacitation rather than rehabilitation rose dramatically in the wake of the Reagan-led War on Drugs movement. This movement changed the face of law enforcement policies, while also drawing greater public support for incapacitation. The most prominent of these changes included the adoption of mandatory-minimum sentences, the abolishment of parole in many states, and the adoption of differential sentencing plans for certain crimes. In 1992, U.S. Attorney General William P. Barr issued a report entitled *The Case for More Incarceration*. The report introduced a federal strategy aimed at encouraging state criminal justice systems to reduce crime by increasing incarceration rates. Following the guidelines of the report, most states aggressively pursued incarceration as a deterrent to future crime. By 1990 the national imprisonment rate swelled by 110% (282 per 100,000 citizens in the population), with over 713,000 inmates housed in state and federal prisons (Bureau of Justice Statistics, 1992). This new focus on incapacitation marked a critical change in the purpose and direction of incarceration in the U.S. Whereas the focus during the 1970’s was on rehabilitation, Newman (1982) argued that:

[now] .. . offenders are sent to prison, not for rehabilitative purposes, but rather to punish and incapacitate them and to deter others. This "get tough" philosophy is currently popular among legislators, governors, and sentencing judges who in the main are elected to office and thus responsive to widespread fear of crime and impatience with past crime control efforts among the electorate (p. 123).

Indeed the public’s demand for stringent crime-fighting measures was an important motivation for lawmakers. As a result, the permeation of the get-tough
mentality hampered efforts to promote liberal policies such as the restoration of felons’ voting rights. Stimson (2001) documents how this new get-tough approach created a climate in which “even liberal politicians are so terrified of the pernicious ‘soft on crime’ label that they are paralyzed to address harmful conservative policies” (p. 8). Even more damaging was the seemingly bipartisan agreement that expanding the collateral consequences of convictions was the best strategy for preventing future crime. As a result, the country witnessed an unprecedented level of support across the various levels of government for basing incarceration on punishment rather than rehabilitation.

These new crime fighting strategies not only exponentially increased the size of the criminal population under supervision, they also gave way to substantial racial disparities. Aside from disparities in arrest and incarceration rates, harsher sentencing policies also reinforced racial distinctions by lengthening the period of supervision for certain criminals. One of the most notable examples of this disparity is the sentencing guideline for crack versus powder cocaine. When Congress adopted mandatory minimum sentencing laws for all drugs in 1986, it also decided to impose harsher penalties for crack cocaine than for powder cocaine. For example, the mandatory penalty for selling five grams of crack cocaine was five years in prison, while the penalty for selling 500 grams of powder cocaine was also five years. Since the adoption of these guidelines the policy has become known as the “100:1 disparity.” Two years later, Congress made crack cocaine the only drug for which there was a mandatory prison term for possession. Given the possibility that many of the individuals convicted of
these offenses lacked the resources to successfully fight these charges, the new
guidelines meant that a tremendous number of citizens would be serving longer
sentences for non-violent offenses. Based on this, opponents of the zero-tolerance
approach argue that the increasing incarceration rates do not necessarily translate
into safer communities (Stimson, 2001). Instead, the approach only serves to
perpetuate existing disparities on a variety of dimensions such as race and class.

In referencing the racial consequences of these sentencing strategies, the
ACLU (2000) documented that although 93.7% of crack cases were brought
against African Americans and Latinos, only about six percent of the cases were
brought against Whites. However, Whites represented 64.4% of crack users
compared to thirty-five percent for African Americans and Latinos.
In contrast, 17.8% of powder cocaine cases were brought against Whites
compared to 50.8% against Latinos.91

These consequences laid the foundation for a new set of voices arguing
against disenfranchisement because of disparities in arrest, prosecution, and
sentencing. Opponents argued against disenfranchisement on the grounds that the
penalty emanated from a system marred by racial discrimination. Though earlier
activists had used this reasoning to fight against policies such as mandatory-
minimums, this new set of voices believed that this systemic bias was even more
damaging because it imposed lifelong consequences. In particular, the majority of

states who had lifetime bans on felon voting also had the most sizeable minority communities.

Given the increasing numbers of minorities who were permanently losing the right to vote, there was a growing concern that these policies would eventually create disparities in political access for minority groups struggling to gain political representation. Scholars and activists such as the National Coalition on Black Voter Participation (NCBVP), the League of United Latin American Citizens (LULAC), Lani Guinier, the Black Leadership Forum, Cornel West, Jesse Jackson, Sr. and the Southern Christian Leadership Conference feared that the high numbers of disenfranchised minorities would dismantle the gains secured during the Civil Rights Movement. For example, a report issued by the U.S. Conference on Civil Rights (2001) cautioned that criminal disenfranchisement laws:

Necessarily [deplete] a minority community’s voting strength over time by consistently placing a greater proportion of minority than majority voters under a voting disability at any given time. For this reason, the effects of the intentional discrimination that originally motivated felony disenfranchisement still lingers.

In essence, these elites feared that the formal protections of minorities’ access to the ballot would be undermined by the new approached to fighting crime.

**Racial Discrimination**

The racial discrimination frame highlights the disproportionate number of African Americans and Latinos who have lost their voting rights. Similarly, the frame may also emphasize the historical roots of the laws as evidence of
discriminatory intent. According to John Conyers, Jr., the racist roots of the laws have resulted in contemporary disparities in political access and representation. As a result, the racial discrimination frame views disenfranchisement as an ongoing threat to American political equality.

This concern over the race-based exclusions of felon disenfranchisement laws led to the first congressional effort to overturn them. In 1994, Congressman John Conyers, Jr. (D-MI) introduced the Voting Rights of Former Offenders Act (H.R. 4093). The bill declared that:

The right of a U.S. citizen who is otherwise qualified to vote in any election for Federal office shall not be denied or abridged because he or she has committed a criminal offense unless such citizen is imprisoned in a correctional institution or facility at the time of such election….nothing in this Act shall be construed to prohibit the States from establishing requirements for the holding of State or local elective office, nor from enacting any State law which affords the right to vote in any election for Federal office on terms less restrictive than those established by this Act. Individuals who intentionally deny, or attempt to deny, any person any right secured by this Act are subject to a fine of up to $500, imprisonment of up to one year, or both.\(^{92}\)

Although the bill never made it to the floor and did not receive any co-sponsors, it helped spark a dialogue amongst elites concerning the racially discriminatory consequences of disenfranchisement. Responding to Conyers’ demand for greater analysis of this issue, a collaboration between the National Coalition on Black Voter Participation (NCBVP) and the organizers of the Million Man March resulted in the first state-by-state analysis of felon voting

\(^{92}\) H.R. 4093: A Bill to Secure the Voting Rights of Former Felons Released from Incarceration. Introduced March 18, 1994, 103rd Congress.
statutes and the voting rights restoration process. The organizers of the March hoped to use the information gleaned from the study to strengthen community development by registering the March’s participants to vote. For the NCBVP, the study helped fulfill the group’s mission to serve as an organization, “dedicated to increasing black voter registration and turnout and to eradicating barriers to full political participation for African Americans.”

In their analysis of the study, Walton and Green (1996) contended that, “the jailing of African Americans, not only takes them out of society, it places a new burden on their voting potential….thus, race continues to be a burden in the exercise of civic rights in this democratic society” (pp. 17-19).

In addition to the NCBVP survey, a report issued by the U.S. Department of Justice in 1996 significantly raised elites’ understanding of the scope of disenfranchisement policies. The report entitled, *The Civil Disabilities of Convicted Felons*, provided detailed information regarding the steps necessary to have voting rights restored in each state. The report was also useful for helping organizers realize just how ignorant politicians and citizens were of the status of their voting rights. In an interview with former U.S. Pardon Attorney Margaret Love, Katzenstein and Rubin (2002) discovered that:

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94 The NCBVP faxed requests to the state board of elections in each of the fifty states. In analyzing the information provided by the thirty-five responding states, Walton and Green (1996) asserted that, “in the final analysis, ex-offenders must surmount a number of obstacles to restore their voting rights. Comprehensive and systematic voter registration drives cannot be conducted without an appreciation of these realities” (p. 18).
there was no conscious politics or strategizing when [the] office painstakingly compiled (going through state codes and case law) the state-by-state information on civil disabilities. People writing to the office often didn’t know what their rights were; some thought they did not have voting rights when in fact they did (p. 4).

In a more strategic effort to raise awareness of felon disenfranchisement, the Sentencing Project issued a report in 1997 called, *Intended and Unintended Consequences: State Racial Disparities in Imprisonment*. This report not only drew attention to the racial consequences of these ostensibly race-neutral imprisonment strategies, it also laid the foundation for a more in-depth examination of disparities in disenfranchisement rates. The classic statement of this disparity was a 1998 report issued by the Sentencing Project in collaboration with Human Rights Watch. In the reported entitled, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, the authors drew attention to the fact that nearly thirteen-percent of African American men eighteen and over had lost the right to vote due to felony convictions. The report was important for sparking a comprehensive movement to address both the structural causes and societal consequences of these laws. Marc Mauer, Assistant Director of the Sentencing Project, says that the organization decided to address the issue because it, “raises all the fundamental questions: what is punishment? What is citizenship? What is forgiveness? What does it mean for democracy?” (Katzenstein and Rubin, 2002, p. 5).

In addition to the numerous newspaper articles on the subject, the report also served as an important source of information for formal challenges to these
laws. One of the most prominent examples of these challenges was a bill introduced by John Conyers, Jr. (D-MI) in 1999. Unlike the bill Conyers introduced in 1994, the Civic Participation and Rehabilitation Act of 1999 (H.R. 906) garnered thirty-seven co-sponsors and secured hearings before the Judiciary Committee’s subcommittee on the Constitution.

Some of the participants in the hearing questioned the constitutionality of the bill. In particular, legal experts such as former Assistant Attorney General Viet D. Dinh questioned whether the bill would infringe upon states’ rights to determine who could participate in elections. Similarly, others at the hearing argued that the racial discrimination claims underlying Conyers’ bill were flawed. Roger Clegg, Vice-President and General Counsel for the Center for Equal Opportunity, objected to Conyers’ proposal on the grounds that, “H.R. 906 can make no claim that criminals are disenfranchised because of their race, nor could it plausibly do so. Without an assertion of its authority under the Fourteenth or Fifteenth Amendments, Congress many not dictate to states the requirements of electors in state elections.”\textsuperscript{95} Clegg’s organization has become one of the most vocal supporters of felon disenfranchisement. In disputing the central claims of H.R. 906, Clegg argued that:

The fact that criminals are ‘overrepresented’ in some groups and ‘underrepresented’ in others is no reason for the federal government to intervene, absent some evidence of discriminatory intent by the states. If a lot of young people, black people, or male people are committing crimes,

then our efforts should be focused on solving that problem. It is bizarre instead to increase their political power.96

Rather than viewing the disparities in disenfranchisement rates as a consequence of a racially biased system, a new cadre of elites viewed the rates as an unintended consequence of a principled statute. The central claims of these elites is that although the consequences may be less than optimal, the purpose of disenfranchisement is sound. Reflecting this view Clegg (1999) argued that:

Voting is a right, but it is also a privilege. Not everyone in the U.S. may vote. We do not want people voting who are not trustworthy and loyal to our republic. While maturity and trustworthiness do not always come with age, and while loyalty does not always coincide with citizenship, there is generally thought to be a correlation…It is not unreasonable to suppose that those who have committed serious crimes may be presumed to lack this trustworthiness and loyalty…H.R. 906 sends a very bad message: that Congress does not consider criminal behavior such a serious matter that the right to vote should be denied because of it.97

The belief that disenfranchisement was a justifiable punishment for breaking the law formed the foundation for the original adoption of criminal disenfranchisement statutes. However, the contemporary acceptance of this view helped fuel an important counter-movement to existing efforts to broaden the electorate. In opposing the Equal Protection of Voting Rights Act of 2001, Senator Mitch McConnell (R-KY) maintained that:

Voting is a privilege; a privilege properly exercised at the voting booth, not from a prison cell. States have a significant interest in reserving the vote for those who have abided by the social contract that forms the

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96 Ibid.
97 Ibid.
foundation of a representative democracy. We are talking about rapists, murderers, robbers, and even terrorists or spies. Do we want to see convicted terrorists who seek to destroy this country voting in elections? Do we want to see convicted spies who cause great damage to officials who are tough on crime? Those who break our laws should not have a voice in electing those who make and enforce our laws. Those who break our laws should not dilute the vote of law-abiding citizens.  

Although this particular bill was defeated in the Senate (63-31), it signaled the need for a change in strategy. In particular, it signaled the need for a more inclusive approach that could stress the issue’s relevance to a broad constituency. The particularly divisive nature of the race-based debates made it difficult to garner the broad support necessary to pressure change. As a result, reform-minded elites needed to attack from an angle that would elicit support across racial, ideological, and partisan divisions.

Democratic Vitality and Participation

Within the democratic vitality frame, felon disenfranchisement is portrayed as antithetical to the American political tradition. Supporters of this view see voting as a defining feature of American democracy and often point to the country’s “steady march” toward universal suffrage. In turn, many elites reference the need for all citizens to have a voice in the political process even if their views are unpopular.

One of the earliest articulations of this view can be found in a speech by Congressman John Conyers, Jr. (2000) in which he argued that “our democracy is

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98 Congressional Record (February 14, 2002), Discussion of S.565, “Equal Protection of Voting
weakened whenever one sector is shut out of the process.” Similarly, Henry Wingate (1993), a federal judge in Mississippi, affirmed this belief in ruling that:

Disenfranchisement is the harshest civil sanction imposed by a democratic society. When brought beneath its axe, the disenfranchised is severed from the body politic and condemned to the lowest form of citizenship, where voiceless at the ballot box…the disinherited must sit idly by while others elect his civic leaders and while others choose the fiscal and governmental policies which will govern him and his family. Such a shadowy form of citizenship must not be imposed lightly.

Reflecting this emphasis, the Delaware Alliance for Restorative Justice “chose not to emphasize race issues because they suspected that many voters would be happy to keep a law that disenfranchised people of color…instead they focused the campaign around the issue of ‘no taxation without representation’” (Katzenstein and Rubin, 2002, p. 23). Similarly, Congressman Jesse Jackson, Jr. introduced a resolution to guarantee the right to vote for all citizens aged eighteen and over. The goal of the resolution was to assert the importance of voting to preserving democracy.

Perhaps the greatest boost to the democratic participation strategy resulted from the controversial presidential election of 2000. The historic 537 vote margin prompted many to demand changes in the electoral structure that would prevent future problems. In addition to unifying the voting apparatus and removing the electoral college, many called for legislation that would guarantee the right of all

citizens to participate in the process. According to a post-election report issued by the Carter/Ford Commission (2001), the election “shook American faith in the legitimacy of the democratic process” (p.11). In referencing this loss of faith, Strossen (2001) agreed that, “it is simply no longer possible for the nation to ignore the deep, disturbing, and discriminatory flaws in the electoral system that have now been revealed to all of us in excruciating detail” (p.28). Based on this heightened awareness, elites at both the state and federal level lobbied for an effective end to criminal disenfranchisement. As a result, the issue occupied a more prominent position in political dialogue.

Realizing the temporal nature of the public’s outrage over the election, some political leaders began demanding immediate reform to avoid a repeat of the “2000 debacle.” In emphasizing the implications of disenfranchisement for the entire country, elites stressed to citizens the potential impact of the laws on local and state elections. Drawing upon citizens’ increased cynicism and decreased efficacy, elites stressed enfranchisement as a means of both restoring citizens’ trust and asserting their role in the democratic process. In referencing this urgency, the movement’s most respected ally, President Jimmy Carter (2001), expressed that:

I think if you would have brought up this same kind of discussion four years ago, there would have been very little interest. I think now is the time when there might be enough focus to actually do something. I would guess that four or eight years in the future, that opportunity might have dissipated again.99

Unlike earlier efforts, support for the democratic participation theme came from a broader array of organizations. In particular, supporters shifted from more indigenous organizations and leaders (traditional civil rights groups e.g. the NAACP and ACLU) to more diverse coalitions such as the People for the American Way, DEMOS, The AFL-CIO, the Center for Democratic Renewal, Common Cause, and The Brennan Center. Based on these changes in the complexion of elite activists, the discourse surrounding reform de-emphasized race while placing greater emphasis on the American polity as a whole. In his testimony before the Ford/Carter Commission, Clark-Atlanta University Political Science Professor William Boone (2001) stressed the importance of this theme by arguing that, “all successful reform policy must first be grounded in a philosophy that idealizes full electoral participation of the American populace” (p. 109).

This new deracialized strategy formed the foundation of Congressman John Conyers, Jr.’s Civic Participation and Rehabilitation Act of 2003. Unlike the previous bills introduced by Conyers, the 2003 Act placed primary emphasis on the importance of enfranchisement for preserving the legitimacy of the democratic process. In his introduction of the bill, Conyers (2003) argued that, “voting must be allowed, as the most basic constitutive act of citizenship.” 100 Rather than emphasizing the disproportionate number of African Americans and Latinos who are disenfranchised, Conyers instead focused on how the bill would expand voting

rights while also helping to reintegrate former offenders into our democratic society.

Changing the tone of discourse from an emphasis on racial discrimination to an emphasis on democratic vitality garnered a wider base of elite support. However, this support was certainly not universal. Many still feared that their support of felon voting would be construed as advocating criminals’ rights over the best interests of the community. Although many citizens supported election reform, this did not necessarily mean that they supported a “softer” approach to law enforcement. In referencing the hesitance of elites, Carter (2001) offered that:

A safe and secure Congressional seat or House seat in the Legislatures is a very valuable thing, and to open up the Pandora’s box for new registrants is not always an easy thing to sell. I was surprised to find that some of the most liberal Democrats in the Congress were the one that basically opposed the efforts we made…to liberalize the means by which people could register.  

This hesitance to openly support felon voting was also present amongst elites of color. In her analysis of AIDS and the Black community, Cohen (1999) argues that once select group members have successfully assimilated into the dominant structure and are placed in positions of power within that structure, their position also warrants a “policing” of the marginal community to which they belong:

Through the process of public policing, which communicates the judgements, evaluations, and condemnations of recognized leaders and institutions of Black communities to their constituencies, the full

membership of certain segments of black communities is contested and challenged (p. 74).

Thus, those who conform to the dominant group’s norms and values are “legitimized” within the dominant group structure. Furthermore, they act as “authentic” leaders of the marginal group community. Their leadership status results in the secondary marginalization of “deviant” groups within marginal communities. Although Cohen applies her theoretical framework to the issue of AIDS in the black community, her analysis holds similar implications understanding elite discourse surrounding felon disenfranchisement. At the mass level, political incorporation is minimal for marginal groups, and is essentially determined by the group’s cadre of leaders. As a result of their need to promote a positive image to the broader community, African American community leaders may view the interests of convicted felons as outside of the desired political agenda. Thus, the policing efforts of elite members help push the issue of felon disenfranchisement onto the periphery. Essentially, convicted felons are denied access to both dominant resources and institutions, in addition to indigenous resources and organizations based on this process of secondary marginalization.

Cultural critics such as Manning Marable (2000), Cedric Muhammad (2000), and Earl Ofari Hutchinson (2000) have all criticized indigenous organizations and elites for failing to actively lead efforts to end criminal disenfranchisement. Intuitively, the disproportionate number of disenfranchised minorities would seem to make this a natural issue for minority elites. However, as Hutchinson (2000) argues, much of the hesitance to embrace the issue is based on the fear that this would legitimize stereotypes concerning the criminal
propensity of African Americans. Many minority elites feared that the overlap between criminals and Blacks in the public’s thinking would prove detrimental to their efforts to fight for reform. In essence, even though the new discourse de-emphasized race, it did not mean that the assumed association between race and crime was not still present. Instead, a link between race and crime in the public’s thinking may mediate the impact of elite framing on public support for reform.

From this analysis of elite discourse, we can identify four dominant issue frames used to support or oppose disenfranchisement. First, disenfranchisement may be presented as an impediment to the rehabilitation of ex-offenders. In particular, elites may advocate reform on the grounds that restoring the vote is an ideal means of re-integrating ex-offenders into their communities. Similarly, disenfranchisement may be promoted as a means of expressing the community’s disdain for criminals. Much like the social contract arguments used to justify the original restrictions, this frame emphasizes disenfranchisement as the ultimate punishment for breaking the community’s trust. The third way of framing disenfranchisement is that it promotes racial discrimination. By emphasizing the disproportionate number of disenfranchised minorities, elites may encourage the public to view the laws as a threat to racial justice and equality. Finally, disenfranchisement may be presented as a threat to American democracy. Here, political elites may suggest that voting is such a defining feature of democracy that restricting that process violates the principles this country was founded upon. In turn, elites may argue that reforming these laws helps move the country closer to its goal of participatory democracy.
The analysis presented in this chapter offers some insight into how elite arguments have influenced reform efforts at the institutional level. However, it is equally important to determine how these arguments may influence support for reform at the mass level. To evaluate this possibility, chapter six uses a series of experiments to gauge the impact of these frames on support for allowing felons to vote. In so doing, the chapter has the potential to lend insight to elite efforts to increase public support for reform.
Avenues for Reform: The Impact of Elite Framing on Public Attitudes Toward Felon Disenfranchisement Laws

In chapter five I identified the primary themes present in elite discourse surrounding felon disenfranchisement. I also argued that these themes may influence public support by identifying the central controversy surrounding disenfranchisement. Though elite influence is certainly an important component of the attitude formation process, it is not the only factor. Instead, existing beliefs may also shape citizens’ support for reform. Therefore, in gauging citizens’ attitudes toward disenfranchisement, it is also necessary to identify the most relevant ingredients of citizens’ attitudes toward crime control policies in general. To this end, I begin by exploring the link between race and crime in the public’s thinking. Next, I examine how elite cues may reinforce this link and, in turn, influence the resulting attitude. Finally, I present my approach for modeling the relationship between elite framing and public support for allowing (ex)felons to vote.
Establishing the Link Between Race and Crime

Public attitudes toward felon disenfranchisement may be linked to their attitudes toward crime and their beliefs about who criminals are. Crime continues to be of growing concern for many Americans. Whether spawned by sensational events such as the recent rash of sniper attacks or more general threats such as the increase in violent drug crimes, citizens consistently rate crime as one of their top policy concerns (Hatter, 2000; Doble and Green, 1999; Roberts and Hough, 2002). For example, in a July 2000 poll conducted by the Washington Post, seventy-two percent of respondents stated that the handling of crime would be very important in determining their vote in the 2000 presidential election.

Many have suggested that the continuing significance of this concern has led many Americans to become increasingly intolerant of criminals and criminals’ rights, and in turn more supportive of punitive policies. To support this view, a poll conducted by the Kaiser Family Foundation in 1998 found that about seventy-six percent of respondents felt it was more important to be tough on criminals than to be concerned with protecting the rights of those convicted of a crime. And in the wake of the September 11th attacks, researchers have documented a growing public demand for effective crime control rather than civil liberties (Nelson et al., 2002).
Reflecting this zero-tolerance approach to crime, public officials have responded with an array of harsh policy measures including the abolition of parole, three strikes laws for repeat felons, and a general expansion of the reach of the criminal justice system (Mauer, 1998). Clearly issues related to crime are of central importance to both citizens and political elites.

Indeed crime is a unique political concern. Quite simply, it is one of the few issues that seem to induce agreement across racial, ideological, and partisan cleavages. Data from that same 1998 Kaiser Family poll indicates that nearly eighty percent of Democrats and eighty-three percent of Republicans agreed that it was more important to be tough on criminals than to be concerned with individual rights. About seventy-nine percent of Whites and sixty-nine percent of Blacks also agreed with this statement. Although recent attention to the prevalence of policing practices that unfairly target Blacks would suggest lower levels of agreement between Blacks and Whites, various scholars (Kennedy, 1997; Bell, 1993; Secret and Johnson, 1989) have documented the unusually high levels of support among black communities for capital punishment, stricter sentencing, and increased police presence. Much of this support may be attributed to African Americans’ disproportionate experience(s) with criminal victimization. However, it still provides evidence of the levels of agreement across social groups concerning the importance of crime and criminal control. Although we can conclude that these groups agree on the best way to handle crime and criminals, understanding how different citizens may be constructing the criminal image is a more complex process.
Various researchers have suggested that citizens tend to possess strong stereotypes of the perpetrators of crime. Further, these stereotypes are often divided based on the type of crime committed, as well as the motivations behind the criminal activity. Central to the construction of such stereotypes is the nexus of race. In support of this proposition, Gilliam and Iyengar’s (2000) study of local television reporting of crime found that crime tends to be divided into so-called “white crimes” and “black crimes.” White crimes, so named because they are disproportionately attributed to white offenders, include nonviolent crimes such as fraud and embezzlement. In contrast, the crimes attributed to black offenders tend to be more violent in nature and include things such as carjackings and homicides (Gordon, 1990). Strong parallels exist between how the public conceptualizes “black crimes” and the original and contemporary lists of disenfranchising crimes. Just as the original list of crimes was based on a supposed Black pathology, contemporary perceptions seemed to be linked to stereotypes concerning Blacks’ criminal proclivities.102 Likewise, many of the drug-related crimes that can lead to disenfranchisement are largely attributed to African Americans. For example, a report released by the Justice Policy Institute suggests that Blacks are convicted of drug crimes at a much higher rate than Whites despite the fact that Whites report higher rates of drug usage.103

102 Reingold (2003) has suggested that this list of eligible crimes bears striking parallels to dominant stereotypes concerning the sexuality of black males.

To explain these patterns in the public’s thinking Hurwitz and Peffley (1997) found that much of this attribution derives from commonly held stereotypes concerning the hostile and violent nature of Blacks. To illustrate this point, the authors presented respondents with several stereotypic statements concerning Blacks’ disposition. Of the 1,780 respondents, approximately fifty-percent agreed with the stereotype that most Blacks are aggressive and violent.

Although they are often unfair and misplaced, stereotypes still can represent an efficient and coherent heuristic for citizens. In making evaluations, these stereotypes provide citizens with readily accessible information regarding the target of such policies, as well as the possible consequences of these policies (Hurwitz and Peffley, 1992, 1997; Levine, Carmines, and Sniderman, 1999; Sears et al., 1997). Although initially influenced by affect, it is possible that these cognitive structures may strongly influence the decision-making process. Investigating this possibility, Peffley, Hurwitz, and Sniderman (1997) find that individuals who are more likely to agree with the stereotypes of Blacks as hostile and violent are more likely to approve of questionable policies, such as unwarranted police searches, than those who reject such stereotypes. Further, providing respondents with information that contradicts such stereotypes encourages them to “bend over backwards in departing from a stereotyped response” (p. 49).\textsuperscript{104}

\textsuperscript{104}In the study, the authors presented respondents with a scenario concerning a group of young men who were stopped and searched by police officers. Within the experiment, the authors manipulated the race of the young men (e.g. Black, White, unspecified), their behavior at the time of police contact (e.g. well-behaved, belligerent, unspecified), as well as the officers’ response.
The authors are able to show that although Blacks as a whole may not be the targets of a particular policy, respondents use the stereotypes concerning Blacks who violate the American ethos when making their policy evaluations. As a result, many citizens view the attribute criminal and the group African Americans as interchangeable (Anderson, 1995).

Certainly scholars have been able to establish a strong empirical link between race and crime in the public’s thinking (Entman, 1992; Carmines and Layman, 1997). Further, much of this link is mediated by stereotypes. Given that such stereotypes are so abundant, it follows that they may also factor into citizens’ choice of and support for ostensibly race-neutral criminal control policies. If in fact citizens are conditioned to “think black” when they think of criminals, their evaluations of punitive criminal control measures may be shaped by these latent stereotypes; stereotypes that may be activated and made salient by elite triggers of cues.

Existing research (Devine, 1989; Gilbert and Nixon, 1991) suggests that when group-related stimuli are present, group-based stereotypes may be automatically triggered. Such stimuli may range from the more explicit (e.g. racial discourse) to the more implicit (e.g. racial code words or pictures). In turn, these stereotypes play an important role in shaping a person’s response to and evaluation of a target. This process is particularly important because “when people are not given enough time to control their reaction to a stereotypic stimuli, they tend to adopt attitudes consistent with the stereotype” (Valentino, 1999, p.
Before exploring this possibility it is important to examine the source(s) of this connection. More specifically, we need to ask the question, “how are citizens socialized to link race and criminals?” And, to what extent do these agents of socialization shape public evaluations by cueing race and racial stereotypes? Here, I argue that much of the public’s beliefs are gleaned from information filtered by elites.

Cueing Race: Stereotypes, Elite Communication, and Public Opinion

The infamous Willie Horton ad used during the 1988 presidential campaign epitomizes the ability of political elites to play upon the fears of citizens by cueing and reinforcing existing stereotypes. The ad, which detailed how convicted murderer Willie Horton was released on a work pass and then committed more crimes, inflamed many black political leaders who argued that supporters of Bush were playing the proverbial race card to make his opponent seem soft on crime. By accompanying darkened images of a menacing-looking Horton with a voiceover detailing his rape and murder of a young white woman, the ad was able to convince many voters that the release of such offenders represented a viable threat to their safety. Though many (Jackson, 1988) argued that the choice of Horton as the subject of the ad was more about racial fears than crime concerns, few could argue about the effectiveness of the commercial. By cueing stereotypes of the violent nature of Blacks, the Bush campaign was able to
play upon Whites’ fear and concerns to undermine his presidential opponent and also draw support for tougher policies that would limit criminals’ capacity to re-offend.

As many researchers have suggested, the true significance of the ad lies in more than just its ability to convince voters to choose Bush (Mendelberg, 2001). Instead, it highlighted the prevalence of the media’s criminal portrayal of African Americans, particularly African American men. As Kennedy (1997) argues, African Americans are consistently portrayed by the media as lacking impulse control, excessively violent, aggressive, and disrespectful. In accordance, Gilliam and Iyengar (2000) found that local news networks tend to disproportionately characterize Blacks as the perpetrators of violent crimes, while also devoting more coverage to stories involving black offenders. The reality, according to Dorfman and Schiraldi (2001), is that although African Americans are twenty-two percent more likely to be shown committing violent crimes, actual crime statistics reveal that they are equally likely to be arrested for violent and nonviolent crimes. Further, the authors contend that Blacks continue to be underrepresented in the news as victims of crime.

These distortions hold important consequences for shaping the public’s view on crime and criminals because elites are critical for disseminating information to the public concerning the causes and consequences of crime. A study released by the Justice Policy Institute (2001) found that seventy-six percent of Americans say that they form their opinions on crime based on what they glean from the media. This dependence is potentially damaging because of the media’s
tendency to "unduly connect race and crime, especially violent crime" (Dorfman and Schiraldi, 2001). In referencing this connection, the authors find that articles about white homicide victims tend to be longer and more frequent than articles that cover African-American victims.

Whether an intentional effort to distort reality, or an unintended consequence of profit-driven reporting, or a simple product of their own unconscious stereotypes, the media’s crime coverage conveys to consumers the message that most criminals are African Americans; and in turn, most African Americans are criminals. In support of this point, Gilliam and Iyengar (2000) found that most respondents tended to overestimate the criminal rates of African Americans. In particular, respondents tended to inflate the percentage of Blacks responsible for committing violent offenses as well as the overall percentage of Blacks who were involved in crime. Thus, we can see that for many viewers, the offenders represented in the media become representative of all Blacks. And, in turn, citizens place a great deal of credibility in the messages they acquire from these stories.

It is clear that the portrayal of crime and criminals has strengthened the perceived connection between race and crime. As a result, it becomes necessary to determine how elite discourse shapes this connection. In particular, how elites’ framing of issues related to crime and criminal control may influence the public’s understanding of and reaction to complex political issues. How for example, do

105 This report is available via the Building Blocks for Youth website, http://buildingblocksforyouth.org.
citizens react to elites messages that reinforce or contradict their existing stereotypes regarding the nature of offenders? And of particular interest to this research, to what extent do the themes emphasized at the elite and institutional levels translate into support at the mass level for more/less punitive policies? Such questions highlight the need to move beyond simple survey questions aimed at gauging public opinion to more sophisticated measures of evaluating the determinants of and influences on such opinion. As a result, the analyses presented in this section rely on a series of survey-based experiments.

**Data and Measures**

The goal of my approach is to determine how well elite frames predict attitudes toward felon disenfranchisement. In particular, I attempt to determine if such attitudes are driven by symbolic attitudes based on affect and stereotypes, or rational group-neutral principles such as conservatism and punitive crime orientations. Felon disenfranchisement is a unique issue to study because attitudes toward it may be driven by a possible overlap between African Americans and criminals in the public’s thinking. If so, attitudes regarding expanding criminals’ rights may be confounded by attitudes toward Black rights. Therefore, it is important to distinguish between these two sets of influences by using a series of randomized survey-based experiments.

As Kinder and Palfrey (1993) suggest, an experiment is quite beneficial because it grants the researcher greater control in isolating the effects of the
treatment. In turn, experiments enable one to make better inferences about causal relationships.

**Testing for the Influence of Elite Framing on Public Attitudes**

To evaluate how public attitudes toward felon disenfranchisement depend on how the issue is framed, I have created a series of experiments. In each condition, participants began the experiment by reading a mock news article detailing a report released by the Criminal Justice Research Center. Since I expected that few respondents would be familiar with the term *felon disenfranchisement*, each article provided a very general and broad definition of felon disenfranchisement and discussed the Center’s efforts to study this growing problem. In the control condition, respondents only received this broad, general information. This control was included to better determine if the treatment produced an effect.

In the treatment conditions, the policy is framed in alternative ways. From the discourse analysis conducted in chapter five, I have chosen three primary themes present in elite debate efforts to reform the laws:

1) Civic Participation/Rehabilitation of (ex) felons  
2) Racial Discrimination  
3) Tough on Crime/Zero Tolerance

My approach incorporates these themes by manipulating the content of the issue frames. To do so, I have created three frames that are all reasonable presentations of this issue. In the first condition, the frame embedded in the newspaper article emphasizes disenfranchisement as a threat to democratic
vitality. Further, it emphasizes civic participation as an important component of democracy that should be enjoyed by all, including convicted felons. The frame used in the second condition emphasizes felon disenfranchisement as a means of promoting racial discrimination. By highlighting the disproportionate number of disenfranchised minorities, the story suggests that these laws should be reformed. In the third condition, the frame emphasizes disenfranchisement as an appropriate means of conveying the community’s intolerance of crime and criminals. In particular, the story argues that taking away voting rights is an appropriate punishment for breaking the community’s trust. In addition to the three experimental conditions outlined above, I also included a fourth condition that only contained the basic, unbiased information about felon disenfranchisement. This control condition forms the comparison group for evaluating the effect of the manipulations.\(^{106}\)

Although the newspaper articles were fictitious, all of the arguments and information presented in them were accurate representations of the policy debates surrounding criminal disenfranchisement. In addition, all of the comments made by elites in the story were quotations taken from actual elite discourse. Thus participants in each condition received a basic, unbiased definition of felon disenfranchisement, but the conditions varied regarding the emphasis of the frame. By systematically altering the way felon disenfranchisement is framed, I hope to mimic the conversation between leaders and citizens in society.

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\(^{106}\) Please refer to the appendix for the complete wording of each condition.
Given the previous discussion on the overlap between Blacks and criminals in the public’s thinking, felon disenfranchisement should provide an appropriate case for testing what Nelson and Kinder (1996) term the group-centrism effect.

My experimental approach attempts to test the potential effects of both written and visual cues. The work of previous scholars (Gamson, 1992; Edelman, 1964; Mendelberg, 2001; Davis and Davenport, 1999; Nelson and Kinder, 1996) suggests that these visual cues can also be important for conveying messages regarding which considerations citizens should draw upon. This occurs because these visual images act as useful symbols for connecting “the issue with deeper values, principles, beliefs, and emotions that the individual may not even consciously recognize as directly relevant” (Nelson and Kinder, 1996, p.1073). By incorporating both explicit (verbal) and implicit (visual) cues I am able to more realistically capture the nature of political communication. To reinforce the tone of the frame each article is accompanied by a related picture. For example, the racial discrimination frame is accompanied by a picture of a Black felon seeking to regain his voting rights. The civic participation article is paired with a patriotic picture of voting. Similarly, the zero-tolerance article is accompanied by a picture of a criminal interested in voting.

All of the studies were computer-based and thus required that participants come into the Experimental Research Laboratory to participate. As a result, there are several weaknesses of this approach that should be addressed. In particular, the fact that the studies did not occur in a “natural setting” may affect respondents’ evaluations of the stories. In his examination of the priming of racial
attitudes during presidential evaluations, Valentino (1999) argues that the laboratory setting “might lead respondents to pay more attention to the news or political ads on the screen and to react differently to them than they normally would” (p. 301). Although this lack of a natural setting may reduce the generalizability of our results, it should not impede our ability to study the hypothesized relationship between elite framing and public evaluations.

To control for any systematic bias, participants were randomly assigned to one of four conditions. Random assignment is particularly useful since it insures that most extraneous variable are also randomly assigned. As Christenson (1997) states, “random assignment produces control by virtue of the fact that the variables to be controlled are distributed in approximately the same manner in all groups” (p. 272).

To affirm this, it is also necessary to insure that the groups within each condition are comparable. To do so, tests were also run to compare the groups based on a number of important political and demographic variables such as race, gender, and political orientation. By satisfactorily meeting this requirement we are able to insure that the experimental manipulation was the only factor distinguishing the comparison groups.

Participants were asked to answer questions used to gauge a variety of factors including demographic characteristics, racial prejudice (McConahay, Hardee, and Batts, 1981) support for “traditional American” values (Sullivan, Pierson, and Marcus, 1982), as well as issue positions on public order and the fairness of society. In addition, respondents were asked to indicate their general
attitudes toward various groups that may be affected by these laws including racial/ethnic minorities, police officers, and criminals. Questions were also used to gauge the respondent’s sense of group consciousness and linked fate. To ensure consistency with other studies, the questions and measures were taken from the American National Election Study (ANES), the National Black Election Study (NBES), and the National Black Politics Study (NBPS).

After being exposed to the newspaper articles, participants were asked their views on whether felons should be allowed to vote while in prison, while on parole/probation, or once released from criminal supervision. These questions were included to capture the diversity of state-level variation in felon voting restrictions. In turn, these post-exposure questions were used as the measures for the dependent variables. Responses to these questions were coded using a seven-point Likert scale ranging from oppose strongly to support strongly.

My general expectation is that framing will influence the public’s evaluations of felon disenfranchisement laws. Not only will certain frames generate greater opposition to felon disenfranchisement, but the considerations emphasized within each frame will become more salient to the respondent’s overall evaluation. To specify my expectations concerning the main effects of these frames, I offer the following hypotheses:

H1: Framing felon disenfranchisement as a means of voicing zero tolerance to crime will elicit stronger support for the policy.

H2: Framing felon disenfranchisement as a threat to racial justice will elicit weaker support for the policy.

H3: Framing felon disenfranchisement as a threat to civic participation will elicit weaker support for the policy.
H4: Overall, as the level of criminal supervision decreases, support for felon voting should increase.  

**Participants**

Participants in the study were 136 subjects who were recruited using the services of a local temp agency. The agency was used to ensure a diverse sample, and to also avoid the critiques associated with using the “typical college sophomore (Steele and Southwick, 1985; Sears, 1986).” All of the participants were at least eighteen-years-old and possessed basic computer and English-language skills. Participants were paid $56 for completing the study. The subjects were told that they would be participating in a study to gauge the effectiveness of internet news stories in order to avoid any response bias.

Tables 6.1 and 6.2 provide information on the participants’ self-reported knowledge of felon disenfranchisement before reading the article, as well as their general political orientation:

---

107 The term *criminal supervision* refers to the period in which an offender is under the care of the criminal justice system. For example, incarceration represents the highest level of supervision because inmates’ actions are completely controlled by the system. Conversely, parole and probation represent the lowest levels of supervision because offenders have greater freedom.
<table>
<thead>
<tr>
<th>Prior Knowledge</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Never heard of the issue</td>
<td>43</td>
<td>32.8</td>
</tr>
<tr>
<td>Knew a little about the issue</td>
<td>75</td>
<td>57.3</td>
</tr>
<tr>
<td>Knew a lot about the issue</td>
<td>13</td>
<td>9.9</td>
</tr>
<tr>
<td>Total</td>
<td>131</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 6.1: Distribution of Participants’ Prior Knowledge about Disenfranchisement
<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Percent (%) of the Sample</th>
<th>National Comparison</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Race/Ethnicity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White</td>
<td>41.9</td>
<td>75.1</td>
</tr>
<tr>
<td>African-American</td>
<td>44.9</td>
<td>12.3</td>
</tr>
<tr>
<td>Asian</td>
<td>5.1</td>
<td>3.6</td>
</tr>
<tr>
<td>Hispanic</td>
<td>5.1</td>
<td>12.5</td>
</tr>
<tr>
<td>Other</td>
<td>2.9</td>
<td>6.6</td>
</tr>
<tr>
<td><strong>Sex</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>39.0</td>
<td>49.1</td>
</tr>
<tr>
<td>Female</td>
<td>61.0</td>
<td>50.9</td>
</tr>
<tr>
<td><strong>Party Identification</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Democrat</td>
<td>40.5</td>
<td>49.0</td>
</tr>
<tr>
<td>Independent</td>
<td>22.2</td>
<td>12.0</td>
</tr>
<tr>
<td>Republican</td>
<td>37.3</td>
<td>39.0</td>
</tr>
<tr>
<td><strong>Political Ideology</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1= Very Liberal</td>
<td>1.5</td>
<td>2.0</td>
</tr>
<tr>
<td>2</td>
<td>19.9</td>
<td>9.0</td>
</tr>
<tr>
<td>3</td>
<td>14.7</td>
<td>9.0</td>
</tr>
<tr>
<td>4= Moderate</td>
<td>30.9</td>
<td>23.0</td>
</tr>
<tr>
<td>5</td>
<td>8.1</td>
<td>12.0</td>
</tr>
<tr>
<td>6</td>
<td>22.8</td>
<td>15.0</td>
</tr>
<tr>
<td>7= Very Conservative</td>
<td>.7</td>
<td>3.0</td>
</tr>
<tr>
<td><strong>Interest in Politics</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1= Extremely Interested</td>
<td>23.5</td>
<td>20.0</td>
</tr>
<tr>
<td>2</td>
<td>29.4</td>
<td>36.0</td>
</tr>
<tr>
<td>3= Moderately Interested</td>
<td>18.4</td>
<td>29.0</td>
</tr>
<tr>
<td>4</td>
<td>21.3</td>
<td>6.0</td>
</tr>
<tr>
<td>5= Not Interested at All</td>
<td>7.4</td>
<td>9.0</td>
</tr>
</tbody>
</table>


Table 6.2: Demographic and Political Characteristics of Respondents
Looking across political orientation we see that the sample is somewhat representative of the broader U.S. populations. However, one important shortcoming of the sample is that it is overly diverse. In terms of the racial breakdown of the sample, 41.9% of the respondents were White, while 58.1% were non-White. Though the overrepresentation of minorities in the sample may decrease the generalizability of my results, it may not pose a significant threat to their validity. If I can demonstrate that the treatment had an effect on respondents, I can assert that the type of information that citizens are exposed to may have a substantial impact on their attitudes. In essence, I am not attempting to predict all behavior. Instead, I am interested in suggesting that such an effect is possible. To guarantee this, it is necessary to control for race when evaluating the questions of interest.

**Results**

Table 6.3 shows the effect of the treatments on participants’ support for felon voting. Support is coded on a seven-point scale with 1 indicating very strong opposition and 7 indicating very strong support. Therefore, higher numbers indicate stronger support. Looking at the mean values we can see that the treatment did have an effect. In particular, respondents exposed to additional information in the democracy and discrimination frames were less supportive of felon voting restrictions than those in the zero tolerance and control conditions.
## Treatment Mean N Std. Deviation

<table>
<thead>
<tr>
<th>Treatment</th>
<th>Support for Inmate Voting</th>
<th>Support for Parolee Voting</th>
<th>Support for Ex-Felon Voting</th>
<th>Overall Support for Disenfranchisement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Democratic</td>
<td>3.06</td>
<td>4.85</td>
<td>6.06</td>
<td>3.41</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Discrimination</td>
<td>3.27</td>
<td>5.27</td>
<td>5.95</td>
<td>3.91</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Zero Tolerance</td>
<td>2.06</td>
<td>3.54</td>
<td>4.86</td>
<td>4.85</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Control</td>
<td>1.94</td>
<td>3.03</td>
<td>4.35</td>
<td>4.23</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>2.60</td>
<td>4.21</td>
<td>5.33</td>
<td>3.84</td>
</tr>
</tbody>
</table>

### TABLE 6.3: Mean Support for Felon Voting by Treatment

An ANOVA analysis allows us to consider the independent effects of the treatment conditions on support for felon voting. The results of this analysis are presented in Table 6.4. The ANOVA demonstrates that the treatments did indeed have an impact on support. In particular, the democratic participation manipulation is significant at the .01 level across all four of the dependent variables of interest. This suggests that framing disenfranchisement as a threat to democratic vitality significantly decreases participants’ support for disenfranchisement. Similarly, framing the policy as being discriminatory also
lowers support. However, framing the policy as a means of expressing zero tolerance does not seem to have a significant effect on support. This finding is interesting given the assumption that citizens’ fear of crime drives support for punitive policies. These results demonstrate that support for disenfranchisement may rest on broader considerations. To gauge the possible determinants of this support, it is necessary to run a regression analysis for each of the treatment categories.

<table>
<thead>
<tr>
<th>Source</th>
<th>Degrees of Freedom</th>
<th>F-Statistic</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democratic Discrimination</td>
<td>1, 133</td>
<td>8.67</td>
<td>.004</td>
</tr>
<tr>
<td>Zero Tolerance</td>
<td>1, 133</td>
<td>2.02</td>
<td>.16</td>
</tr>
</tbody>
</table>

TABLE 6.4: ANOVA for Treatment on Overall Support for Disenfranchisement

To move beyond this descriptive data, Tables 6.5, 6.6, and 6.7 display the results of regression analyses. The models predict support for felon voting across supervision levels with a dichotomous variable for the experimental manipulation. For example, in Table 6.5 the manipulation is coded “1” for subjects who received the democratic participation treatment and “0” for those in the control condition. The results show that in all of the models of interest, manipulating the information presented in the frame is a significant determinant of support for felon voting. Here, we see that across all conditions, respondents were more supportive of allowing ex-felons to vote than allowing inmates to vote. Further, it
appears that the treatment worked in the predicted direction across all three of the experimental conditions. As predicted, individuals exposed to the zero tolerance frame were less supportive of allowing felons to vote than participants in the control condition. Similarly, subjects in the democratic participation frame were more supportive of allowing felons to vote than participants in the control condition.
<table>
<thead>
<tr>
<th>Predictors</th>
<th>Overall Support</th>
<th>Support for Inmate Voting</th>
<th>Support for Parolee Voting</th>
<th>Support for Ex-Felon Voting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experimental Manipulation (0= control; 1= treatment)</td>
<td>1.96*** (.71)</td>
<td>.272 (.24)</td>
<td>.570* (.32)</td>
<td>1.11*** (.31)</td>
</tr>
<tr>
<td>Views on Voting</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Everyone should vote (1-7; 7= Agree Strongly)</td>
<td>.928*** (.30)</td>
<td>.383*** (.10)</td>
<td>.133 (.13)</td>
<td>.412*** (.13)</td>
</tr>
<tr>
<td>Voting is a privilege (1-7; 7= Agree Strongly)</td>
<td>-.958*** (.20)</td>
<td>-.238*** (.07)</td>
<td>-.276*** (.09)</td>
<td>-.444*** (.09)</td>
</tr>
<tr>
<td>Orientation Toward Crime</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminals don’t deserve rights (1-7; 7= Agree Strongly)</td>
<td>-.384* (.23)</td>
<td>.004 (.08)</td>
<td>-.507*** (.10)</td>
<td>.119 (.10)</td>
</tr>
<tr>
<td>Crime is an important problem (1-7; 7= Agree Strongly)</td>
<td>-.456** (.21)</td>
<td>-.098 (.07)</td>
<td>.062 (.09)</td>
<td>-.42*** (.09)</td>
</tr>
<tr>
<td>Victim Status</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(0= Not a Crime Victim; 1= Crime Victim)</td>
<td>2.79*** (.76)</td>
<td>.885*** (.26)</td>
<td>1.22*** (.34)</td>
<td>.69*** (.33)</td>
</tr>
<tr>
<td>Support for Stereotypes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Most Blacks are Violent (1-7; 7= Agree Strongly)</td>
<td>-.063 (.06)</td>
<td>-.228*** (.07)</td>
<td>.096 (.09)</td>
<td>.069 (.09)</td>
</tr>
<tr>
<td>Most Blacks are Law Breaking (1-7; 7= Agree Strongly)</td>
<td>-.388* (.19)</td>
<td>-.128** (.07)</td>
<td>.026 (.09)</td>
<td>-.286*** (.08)</td>
</tr>
<tr>
<td>Race of Respondent</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(0= Non-White; 1= White)</td>
<td>3.86*** (.77)</td>
<td>2.31*** (.26)</td>
<td>.850*** (.34)</td>
<td>.706*** (.34)</td>
</tr>
<tr>
<td>Race*Victim Status</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1.10)</td>
<td>-4.84*** (.64)</td>
<td>-2.29*** (.63)</td>
<td>-1.20** (.82)</td>
<td>-1.35*** (.80)</td>
</tr>
<tr>
<td>Constant</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(13.97*** (.64))</td>
<td>4.68*** (.64)</td>
<td>2.31*** (.64)</td>
<td>6.98*** (.64)</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>64</td>
<td>64</td>
<td>64</td>
<td>64</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(.52)</td>
<td>.49</td>
<td>.49</td>
<td>.49</td>
<td>.44</td>
</tr>
</tbody>
</table>

Note: Table entries are unstandardized OLS regression coefficients with standard errors in parentheses. The dependent variables in this table are constructed such that higher values indicate higher support for felon voting on a 7-point Likert scale (ranging from oppose strongly to support strongly).

*p ≤ .10, **p ≤ .05, ***p ≤ .01, one tailed test.

Table 6.5: Predictors of Support for Felon Voting, Democratic Participation Frame
<table>
<thead>
<tr>
<th>Experimental Manipulation</th>
<th>Overall Support</th>
<th>Support for Inmate Voting</th>
<th>Support for Parolee Voting</th>
<th>Support for Ex-Felon Voting</th>
</tr>
</thead>
<tbody>
<tr>
<td>(0= control; 1= treatment)</td>
<td>3.97*** (.60)</td>
<td>1.41*** (.53)</td>
<td>1.75*** (.27)</td>
<td>.813*** (.31)</td>
</tr>
</tbody>
</table>

**Views on Voting**

| Everyone should vote | .735*** (.26) | .303*** (.08) | .041 (.12) | .391*** (.13) |
| (1-7; 7= Agree Strongly) |
| Voting is a privilege | -.480*** (.18) | -.085 (.06) | -.077 (.08) | -.319*** (.09) |
| (1-7; 7= Agree Strongly) |

**Orientation Toward Crime**

| Criminals don’t deserve rights | -.909*** (.20) | -.146** (.06) | -.712*** (.09) | -.050 (.10) |
| (1-7; 7= Agree Strongly) |
| Crime is an important problem | -.161 (.19) | .012 (.06) | .195** (.08) | -.368*** (.10) |
| (1-7; 7= Agree Strongly) |

**Victim Status**

| (0= Not a Crime Victim; 1= Crime Victim) | 1.37** (.67) | .475** (.22) | .654** (.30) | .236 (.34) |

**Support for Stereotypes**

| Most Blacks are Violent | -.069 (.18) | -.157*** (.06) | .171** (.08) | .055 (.09) |
| (1-7; 7= Agree Strongly) |
| Most Blacks are Law Breaking | -.436*** (.17) | -.169** (.05) | -.011 (.07) | -.256*** (.09) |
| (1-7; 7= Agree Strongly) |

**Race of Respondent**

| (0= Non-White; 1= White) | 3.63*** (.67) | 2.16*** (.22) | .721** (.34) | .727** (.35) |

**Race*Victim Status**

| -3.56*** (.98) | -1.91*** (.32) | -.692 (.43) | -9.66*** (.50) |

**Constant**

| 12.76*** (1.62) | 1.74*** (.53) | 4.05*** (.71) | 6.98*** (.80) |

**N**

| 68 | 68 | 68 | 68 |

**Adjusted R^2**

| .62 | .64 | .62 | .41 |

Note: Table entries are unstandardized OLS regression coefficients with standard errors in parentheses. The dependent variables in this table are constructed such that higher values indicate higher support for felon voting on a 7-point Likert scale (ranging from oppose strongly to support strongly).

*p ≤ .10, **p ≤ .05, ***p ≤ .01, one tailed test.

Table 6.6: Predictors of Support for Felon Voting, Racial Discrimination Frame
<table>
<thead>
<tr>
<th>Experimental Manipulation</th>
<th>Overall Support</th>
<th>Support for Inmate Voting</th>
<th>Support for Parolee Voting</th>
<th>Support for Ex-Felon Voting</th>
</tr>
</thead>
<tbody>
<tr>
<td>(0= control; 1= treatment)</td>
<td>-3.15***</td>
<td>-.884***</td>
<td>-1.65***</td>
<td>-.618***</td>
</tr>
<tr>
<td></td>
<td>(.66)</td>
<td>(.23)</td>
<td>(.28)</td>
<td>(.32)</td>
</tr>
<tr>
<td>Views on Voting</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Everyone should vote</td>
<td>.612**</td>
<td>.287***</td>
<td>-.044</td>
<td>.369***</td>
</tr>
<tr>
<td>(1-7; 7= Agree Strongly)</td>
<td>(.29)</td>
<td>(.09)</td>
<td>(.12)</td>
<td>(.14)</td>
</tr>
<tr>
<td>Voting is a privilege</td>
<td>-.699***</td>
<td>-.176***</td>
<td>-.158**</td>
<td>-.365***</td>
</tr>
<tr>
<td>(1-7; 7= Agree Strongly)</td>
<td>(.19)</td>
<td>(.07)</td>
<td>(.08)</td>
<td>(.09)</td>
</tr>
<tr>
<td>Orientation Toward Crime</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminals don’t deserve</td>
<td>-.729***</td>
<td>-.146**</td>
<td>-.648***</td>
<td>-.012</td>
</tr>
<tr>
<td>rights</td>
<td>(.21)</td>
<td>(.06)</td>
<td>(.09)</td>
<td>(.10)</td>
</tr>
<tr>
<td>Crime is an important</td>
<td>-.146</td>
<td>-.008</td>
<td>.229***</td>
<td>-.367***</td>
</tr>
<tr>
<td>problem</td>
<td>(.21)</td>
<td>(.07)</td>
<td>(.09)</td>
<td>(.10)</td>
</tr>
<tr>
<td>Victim Status</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(0= Not a Crime Victim; 1=</td>
<td>2.36***</td>
<td>.829***</td>
<td>1.10***</td>
<td>.440</td>
</tr>
<tr>
<td>Crime Victim)</td>
<td>(.70)</td>
<td>(.24)</td>
<td>(.30)</td>
<td>(.34)</td>
</tr>
<tr>
<td>Support for Stereotypes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Most Blacks are Violent</td>
<td>.279</td>
<td>-.116*</td>
<td>.302***</td>
<td>.094</td>
</tr>
<tr>
<td>(1-7; 7= Agree Strongly)</td>
<td>(.21)</td>
<td>(.07)</td>
<td>(.09)</td>
<td>(.10)</td>
</tr>
<tr>
<td>Most Blacks are Law</td>
<td>-.485***</td>
<td>-.171***</td>
<td>-.050</td>
<td>-.264***</td>
</tr>
<tr>
<td>Breaking</td>
<td>(.18)</td>
<td>(.06)</td>
<td>(.07)</td>
<td>(.09)</td>
</tr>
<tr>
<td>Race of Respondent</td>
<td>3.79***</td>
<td>2.26***</td>
<td>.770***</td>
<td>.762**</td>
</tr>
<tr>
<td>(0= Non-White; 1= White)</td>
<td>(.72)</td>
<td>(.25)</td>
<td>(.30)</td>
<td>(.35)</td>
</tr>
<tr>
<td>Race*Victim Status</td>
<td>-4.99***</td>
<td>-2.38***</td>
<td>-1.36***</td>
<td>-1.25***</td>
</tr>
<tr>
<td></td>
<td>(1.04)</td>
<td>(.36)</td>
<td>(.44)</td>
<td>(.50)</td>
</tr>
<tr>
<td>Constant</td>
<td>14.74***</td>
<td>2.43***</td>
<td>4.93***</td>
<td>7.37***</td>
</tr>
<tr>
<td></td>
<td>(1.71)</td>
<td>(.59)</td>
<td>(.72)</td>
<td>(.83)</td>
</tr>
<tr>
<td>N</td>
<td>66</td>
<td>66</td>
<td>66</td>
<td>66</td>
</tr>
<tr>
<td>Adjusted R²</td>
<td>.57</td>
<td>.55</td>
<td>.61</td>
<td>.39</td>
</tr>
</tbody>
</table>

Note: Table entries are unstandardized OLS regression coefficients with standard errors in parentheses. The dependent variables in this table are constructed such that higher values indicate higher support for felon voting on a 7-point Likert scale (ranging from oppose strongly to support strongly).

*p ≤ .10, **p ≤ .05, ***p ≤ .01, one tailed test.

Table 6.7: Predictors of Support for Felon Voting, Zero Tolerance Frame
In evaluating citizens’ views on voting we see that support for the belief that voting is a privilege rather than a right significantly decreased support for felon voting across all three experimental conditions. Looking at Table 6.5 we see that viewing the vote as a privilege significantly lowers support (-.958) despite the presence of messages emphasizing the importance of democratic participation. In contrast, support for the belief that anyone who wants to vote should be allowed significantly increases support for allowing inmates and ex-felons to vote. Based on these results, it appears that attitudes toward felon disenfranchisement are significantly shaped by citizens’ views on the concept of voting.

In addition to gauging citizens’ views on voting, I also account for their orientation toward crime and criminals. Two measures are included that assess the importance of crime, and the status of criminals’ rights. The results show that within the democratic participation frame, both factors are significant in shaping the overall level of support for felon voting. However, in looking at the results for the racial discrimination (Table 6.6) and zero tolerance frames (Table 6.7), only the belief that criminals don’t deserve rights is significant. This effect is greatest for the racial discrimination condition. Overall, we can see that attitudes toward crime and criminals are important predictors of citizens’ opposition to felon voting.

Related to citizens’ orientation toward crime is their experience as a victim of crime. The measure used here simply asks whether the respondent has ever been the victim of a violent crime. The results show that being a victim of a
crime is a significant predictor of support, but not in the direction that one would expect. Across all three of the experimental conditions, crime victims were significantly more likely to support allowing felons to vote than respondents who were not victims. The effect is greatest for the democratic participation (3.86, p<.01) frame. It is possible that since the frame emphasized voting rights as a means of bringing former offenders back into the polity, crime victims may have been more likely to see voting as part of rehabilitation.

One of the central arguments of this chapter is that attitudes toward crime and criminals are influenced by stereotypes. The regression results offer modest support for this contention. Across all three of the experimental conditions, respondents who agreed that most African Americans were prone to breaking the law were less likely to support felon voting. This effect is greatest for subjects in the zero tolerance frame (-4.85, p<.01). This suggests that the “law and order” message may be cueing respondents to draw upon stereotypes regarding criminals.

One particularly interesting finding from this analysis relates to the race of the respondent. Here, we see that across all three experimental conditions race is a significant determinant of support. Even after controlling for the high number of minorities in the sample the treatment continues to have a significant effect on citizens’ attitudes toward disenfranchisement. In particular, White respondents are more likely to support felon voting than non-White respondents. These results support the view that these differences result not from a bias in the sample, but from a moderating relationship between race and the questions of interest.
However, this finding appears to challenge my expectation that non-Whites would be more supportive of felon voting than Whites based on the aforementioned racialization of crime. To address this challenge, the model included an interaction term combining the respondent’s experience as a crime victim and his/her race. Respondents who rate higher on this variable are White and victims of violent crimes. By including this variable, the pattern of support reverses. Conditional upon the race of the participant being White, crime victims are less likely to support felon voting even if they are in the democratic participation (-4.84, p<.01) or racial discrimination frames (-3.56, p<.01). As could be expected, this effect is greatest for respondents in the zero tolerance condition (-4.99, p<.01). Therefore, the zero tolerance message may have reinforced participants’ existing beliefs regarding their experiences with criminals. Given the finding that race and victim status have conditional effects on support for disenfranchisement, I provide Figures 6.1 and 6.2 to better illustrate these relationships.
Figure 6.1: Mean Plots of Crime Victims’ Support for Allowing Felons to Vote
Figure 6.2: Mean Plots of Non-Victims’ Support for Allowing Felons to Vote
Discussion/Conclusion

This study of citizens’ support for felon voting suggests that elite frames have a significant impact on how citizens’ make sense of disenfranchisement laws. Through this analysis we are able to gain a better understanding of the interaction between elite influence and citizens’ pre-existing beliefs. These findings offer support for the theory that criminal disenfranchisement lies at the intersection of democratic beliefs and racial group considerations. Further, support for that policy is mediated by racial identity and the endorsement of racial stereotypes. Centering felon disenfranchisement in the broader domain of insuring democratic vitality seems to garner less support than framing the issue as being discriminatory. Likewise, framing the issue as a means of being tough on crime/criminals significantly increases citizens’ support for disenfranchisement. These findings seem to comport with many of the arguments made by scholars who suggest that principles not prejudice now dominate political decision-making (Sniderman, Brody, and Tetlock 1991). As a result, respondents who cherish the traditional values associated with having a participatory democracy are more likely to support extending voting rights. Though this support of values was found to be a significant determinant of support, the impact of that support is mediated by citizens’ encounters with violent crime.

Although the results presented here rely on experimental data, the findings still hold important implications for the substantive practice of politics. In particular, these findings suggests that in crafting a strategy for reform, political elites should emphasize the threat these laws pose to democracy and justice. By
demonstrating how these laws can affect everyone’s access to democracy, elites can increase citizens’ support for reform. These results also suggest that in terms of the category of supervision, support for allowing inmates to vote is relatively weak regardless of the message conveyed in the frame. Therefore, it is useful for elites to push for allowing parolees and ex-felons to vote rather than advocating inmate voting. The belief that prisoners don’t deserve rights is so strong and pervasive that it overwhelms other arguments for why inmates should vote.

The results of the experiments also help address important theoretical concerns in the broader political science literature. In writing his decision for the 1972 Furman v. Georgia case, the late Justice Thurgood Marshall asserted that popular support for the death penalty was based on ignorance. Arguing that the general public is greatly aware of several “unhappy truths” about capital punishment, Marshall believed that if the facts were well known perhaps the great mass of citizens would conclude that the death penalty is immoral and un-Constitutional. Building upon this assertion, the analyses presented in this paper support the claim that providing the public with information about a particular policy can have a substantial impact on their evaluations of that policy. This is particularly important for policies such as felon disenfranchisement that exert a powerful impact on such a large segment of the population, yet are virtually unheard of by an even larger portion of the country. This finding holds important meaning for other areas in the study of political science as well.
In terms of studying racial attitudes, there is a great body of literature that focuses on views toward race-targeted policies such as affirmative action (Bobo and Kluegel, 1993; Gilliam and Whitby, 1989; Kuklinski et al., 1997; Sears, 1988; Sniderman et al., 1991), busing (Bobo, 1983), and housing (McClendon, 1985; Schuman and Bobo, 1988). However, less attention has been given to public attitudes toward policies with a disparate racial impact (Ellsworth and Gross, 1994; Gilens, 1996). Indeed the historical analysis presented in earlier chapters reveals that the tailoring of felon disenfranchisement laws was driven by a decidedly racial intent. However, because both African Americans and Whites are eligible to lose voting rights, these statutes are ostensibly race neutral. In light of this, a more empirically intense analysis of public attitudes toward these laws will mark a necessary initial step toward assessing the prejudice-centered versus policy-centered underpinnings of attitudes toward policies with a disparate racial impact. In so doing, we can better understand the dynamic and complex nature of connections between race and public attitudes.
CHAPTER 7

CONCLUSION

“We know that Americans of good will have learned that no nation can long continue to flourish or to find its way to a better society while it allows any one of its citizens...to be denied the right to participate in the most fundamental of all privileges of democracy - the right to vote”
- Dr. Martin Luther King, Jr. (1965).

The passage above is taken from a *New York Times* editorial written by Dr. Martin Luther King, Jr. during the height of the Civil Rights Movement. Although King’s remarks were in response to the complete disenfranchisement of African Americans, his message is still relevant to assessing the contemporary relationship between felon disenfranchisement and political equality. The Fourteenth Amendment grants states the right to exclude citizens for “participation in rebellion, or other crime.” However, this loophole has often been exploited by elites seeking to maximize their interests. Over the years, the group competition lens has been used to develop and implement numerous barriers to electoral participation such as poll taxes, registration requirements, and literacy tests. In terms of felon disenfranchisement, this lens illuminates multiple views regarding what it means to be a citizen; what it means to have a democracy; and finally, the limits of membership in a political community (Keyssar, 2000).
The King quotation also speaks to the great quandary surrounding suffrage: is the vote a privilege or a right? Public rhetoric often cloaks suffrage in terms of it being a “right” that all citizens of legal age are entitled to. Indeed support for this interpretation can be found in the language of the National Voter Registration Act of 1993 that states:

The Congress finds that—the right of citizens of the United States to vote is a fundamental right…it is the duty of the Federal, State and local governments to promote the exercise of that right.

Rather than protecting that so-called right, states have continuously placed restrictions on citizens’ capacity to vote. This pattern affirms what Keyssar (2000) terms the “emphatically nonlinear evolution of the franchise” (p. 331). Given that states have the ability to limit suffrage, it appears that voting is more appropriately thought of as a privilege reserved for those who uphold the social contract. By extension, this privilege is used as a tool for exerting influence as well as promoting social control. If we accept this proposition then it seems appropriate to prohibit felon voting.

Individuals who have broken the law deserve to be punished. However, we must question when that punishment ends. Further, inconsistencies surrounding the terms of this punishment seem to undermine this rationale. In particular, allowing former felons to hold office but not vote suggests a more politically motivated justification than mere punishment. Aesop once wrote, “we hang the petty thieves and appoint the great ones to public office.”
In essence, the rationale for prohibiting felons from voting has often shifted based on the interests of those in power. As the analysis of the variation in laws demonstrated, felon disenfranchisement is more about race, region, and representation than principles and punishment.

“The history of voting in the United States is the history of barriers erected and erased. The invidious reasons for those barriers become more and more obvious during the struggles to eradicate them”
- Mary Frances Berry (1992).

At first glance, it may appear that these laws are simply meant to prevent criminals from accessing the system. However, the evidence presented throughout this dissertation strongly supports the belief that the laws were adopted and expanded to target certain groups. In particular, I have shown that although African Americans were the original targets of these policies, Latinos are increasingly becoming attractive targets for disenfranchisement. Through a combination of institutional initiatives, elite strategies, and increasing public support for punitive measures, felon disenfranchisement laws have created an enduring legacy of exclusion. As a result, the inherently racial intent of felon disenfranchisement laws coupled with their discriminatory impact serve to reinforce American political inequality.

I explored the genesis of this exclusion by focusing on the historical development of disenfranchisement provisions. Although the laws were widely used in England, they were not as readily reproduced in the colonies until the post-Reconstruction era. This delay is largely attributed to the reduced threat that
minorities posed to the existing social and political structure. Yet as that threat increased so too did the prevalence of disenfranchisement laws. By tailoring the list of eligible crimes, southern legislators were able to significantly reduce the size of the eligible electorate. In particular, these laws helped guarantee that racial and ethnic minorities would not occupy an influential position in the power structure. More importantly, these restrictions imposed an indelible stain on the political status of many citizens. Over time changes in the political and social environment contributed to tremendous increases in the number of disenfranchised African Americans, as well as decreases in the political strength of those communities. As a result, the adoption of criminal disenfranchisement statutes during this era set a precedent for imposing severe civil disabilities upon offenders. In particular, the disenfranchisement of felons and ex-felons permanently separated many citizens from the body politic.

Chapter four affirmed the legacy of this exclusion by demonstrating that many states continue to be governed by statutes that were created during an era saturated with racial animosity and hostility. As a result, America’s “unsteady march” toward political equality is obstructed by the presence of these laws. Indeed many supporters of disenfranchisement have argued that the restrictions are necessary to prevent criminals from weakening the content of existing laws. However, the results provided in chapter four do not support the view that institutional support for disenfranchisement is largely based on concern for crime. Even in those states with smaller criminal populations, and presumably fewer problems with crime, disenfranchisement laws continue to be stringent. As other
scholars (Mauer, 1998) have argued, these laws do not seem to have any deterrent effect. Given that many citizens are not even aware of the laws’ existence, it does not seem plausible that strict disenfranchisement policies are responsible for decreased crime rates.

This focus also enhances our understanding of how contemporary institutions, particularly at the state level, respond to growing prospects for political competition. Here, we see that changes in the size of the Latino population significantly increase the likelihood that a state will adopt regressive policy reforms. However, changes in the size of the African American population are most closely associated with a state’s likelihood of adopting progressive policy reforms. Thus, when a minority community can leverage their position to work against destructive policies, they can effect positive social change. Taken together, these findings affirm my contention that when used to evaluate felon disenfranchisement laws, the group competition lens illuminates a prismatic view of politics. Though African Americans were the original targets of criminal disenfranchisement laws, the increased presence of Latinos has expanded the scope of the restrictions. Although there are no longer explicitly “Black crimes” that trigger disenfranchisement, there is still strong evidence that race/ethnicity shapes the political status of those under correctional supervision. In essence, the evidence presented throughout this dissertation confirms that the motivations underlying the original adoption of disenfranchisement laws underlie their contemporary status.
Chapters Five and Six contribute to our understanding of the important ways in which decisions made at the institutional level shape the resulting views of both citizens and political elites. I presented support for the view that the rhetoric surrounding disenfranchisement has evolved from an explicit emphasis on race to a more subtle allusion to the racial implications of these laws. Further, the analysis of elite discourse demonstrates that the most successful efforts to advance reform have been those that de-emphasize the racist past of the laws, and focus more on their contemporary threats to democratic vitality. The discourse analysis also affirms the continuing concern for protecting the ballot box by excluding those who have broken the social contract. Certainly the growing zero tolerance environment in the United States has made crime a “soft issue” that elicits gut level reactions from citizens and political leaders. Drawing upon this, many elites have used disenfranchisement as an example of the need to punish criminals, regardless of their race. As Clegg (1999) argued in his testimony before the House,

The fact that criminals are ‘overrepresented’ in some groups and ‘underrepresented’ in others is no reason for the federal government to intervene, absent some evidence of discriminatory intent by the states. If a lot of young people, black people, or male people are committing crimes, then our efforts should be focused on solving that problem. It is bizarre instead to increase their political power.

The analysis of elite discourse challenges us to consider the strategic nature of the statements elites make concerning controversial public policies. This consideration is further buttressed by the findings in Chapter Six. Through the use of experiments we are able to see that how elites frame a political issue is an
important determinant of how citizens make sense of that issue. In particular, these issue frames provide guidance for how citizens should think about and respond to an issue. Understanding this influence is critical for understanding the relationship between citizens and elites. In particular, it helps us understand how decisions at the institutional level shape the resulting attitudes of the masses. This link is particularly useful for evaluating the contemporary maintenance of felon disenfranchisement laws. Though the public largely disapproves of other restrictive policies, felon disenfranchisement draws upon broader concerns such as civil liberties, political representation, criminals’ rights, and rehabilitation. Given the importance of these considerations, elite frames help reduce the cognitive complexity of the decision-making task.

The results of the experimental analysis also help us understand how existing beliefs such as the endorsement of stereotypes and support for traditional American values shape public support for disenfranchisement. Certainly one cannot discuss attitudes toward crime without acknowledging the racialization of crime in this country. As the experiments demonstrated, citizens’ perceptions of the perpetrators of crime influence their support for crime control policies.

**Implications of the Study**

Much of the post-Civil Rights Movement literature focuses on the movement of the African American community from protest politics to electoral politics. For many, the fruits of the Civil Rights Movement insured inroads to political incorporation, and ultimately, inclusion for racial and ethnic minorities.
Supporters believed that the marches, boycotts, and non-violent rallies that took place finally resulted in the implementation of laws that outlawed “Jim Crow” in the south, and institutional discrimination in the United States. Unfortunately, after years of struggle and only minimal progress, mechanisms still exist that impede the full political incorporation of minority communities.

Certainly there is no guarantee that if allowed to vote, the great masses of felons would actually do so. The traditional determinants of voting such as education, political efficacy, and overall socio-economic status suggest that the likelihood of a felon voting is lower than that of the average citizen. However, it is still important to determine the impact of the laws on institutional legitimacy, as well as the level of political incorporation for the communities to which these felons belong. Further, fully reaping the benefits of this new class of voters requires a combination of both individual initiative and outreach and mobilization efforts on the part of activists, politicians, and organizations.

Browning, Marshall, and Tabb (1984) argue that one necessary precondition for minority incorporation is the ability to mobilize sufficient numbers. Given the disproportionate number of Blacks and Latinos who are disenfranchised, these laws directly shape minority communities’ ability to have a voice in the political process. Since expanding and strengthening the electorate is a necessary condition for achieving full political incorporation, felon disenfranchisement laws preclude full electoral development.

Voting not only represents the symbolic act of including citizens in the political process, it also serves the instrumental purpose of choosing political
leaders. Therefore, laws that determine the electorate directly shape a community’s ability to elect representatives who will serve their interests. In turn, disenfranchisement laws determine whose interests will be represented within the political system. As a result, there are certain persistent patterns that constrain the policy pursuits of these communities.

For example, the growing gender gap within the African-American community results from the fact that African American women tend to vote in larger numbers than African American men (Tate, 1993; Verba et al., 1995). This can be partially explained by the fact that more Black women are eligible to vote than Black men. Such disparities in male and female voting behavior, coupled with felon disenfranchisement, create a problem for African American electoral participation. As African American men are disproportionately incarcerated in many states, their electoral power is diluted. In turn, the overall voting power of African American communities is threatened. This phenomenon has implications for the policy agenda of the African American community. Essentially, the policy concerns of these communities are jeopardized as the numbers needed for political mobilization is undercut by a decrease in the number of citizens who are eligible to vote.

While the importance of voting for African American communities has been widely documented, less attention has been paid to the importance of voting for Latino, Asian American, and indigenous communities.
In future studies, I would like to expand my focus to determine how these groups have been affected by disenfranchisement policies, as well as how the restrictions shape their representation. Given the relatively low levels of political visibility for these communities, having access to the vote becomes even more important. For example, Table 7.1 below provides us with an understanding of the level of political incorporation for these groups.

<table>
<thead>
<tr>
<th>High Visibility</th>
<th>Low Visibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engaged</td>
<td>African Americans</td>
</tr>
<tr>
<td></td>
<td>Cuban Americans</td>
</tr>
<tr>
<td></td>
<td>Jewish Americans</td>
</tr>
<tr>
<td></td>
<td>Korean Americans</td>
</tr>
<tr>
<td>Alienated</td>
<td>Mexican Americans</td>
</tr>
<tr>
<td></td>
<td>Native Americans</td>
</tr>
<tr>
<td></td>
<td>Puerto Ricans</td>
</tr>
<tr>
<td></td>
<td>Chinese Americans</td>
</tr>
</tbody>
</table>

Source: Adapted from Rich’s (1996) *The Politics of Minority Coalitions*

Table 7.1: Political Incorporation of Minority Groups

The table shows that across all racial and ethnic groups, African Americans occupy a position of high visibility and political engagement. In contrast, the vast majority of Latino sub-groups are politically alienated and have low visibility. Given the importance of the vote for elevating group’s political incorporation, felon voting restrictions should pose a growing threat to the status of these groups. This is particularly true given the exponential increase in the number of Latinos under criminal supervision.
Evaluating the contemporary status of disenfranchisement laws also demands a critical analysis of the criminal justice system as a whole. The earlier disenfranchisement strategies relied on a biased list of disenfranchising crimes to discriminate against African Americans. Though these lists were eventually ruled un-Constitutional, bias is still a defining feature of the system. Indeed many (Nelson et al., 2002; Tonry, 1995) have documented the presence of bias across all stages of the criminal justice system. Therefore, in determining the threat disenfranchisement laws pose to equality, one must also consider group disparities in arrest, prosecution, and sentencing. This consideration becomes even more important when we factor in the tremendous level of discretion shared by many police officers and prosecutors. By determining which individuals enter the system, these officials also set the tone for the political consequences of criminal supervision. Taken together, these disparities infringe upon the political stamina of citizens in general, and minority communities in particular.

If the goal of the prison system is rehabilitation, felon disenfranchisement counters attempts at rehabilitation. This is especially true when we consider that felons are denied a defining feature of citizenship, the ability to vote. Therefore, we must also begin to aggressively re-consider the purpose and function of incarceration, as well as what happens to offenders once they are released. Certainly preventing (ex) felons from voting neither limits their capacity to commit further crimes, nor furthers their rehabilitation. Instead, what this policy does is exacerbate the collateral consequences of incarceration.
One of the dimensions that I am particularly interested in is the generational effects of this policy. We know for example, that the best predictor of whether you vote, is whether your parents voted. This form of political socialization is important for conveying to young people the importance of participating in the process. Thus as the number of parents who are barred from voting increases, we will also begin to see that the children of these offenders are at a greater political disadvantage because they have not been properly socialized. The resulting impact of this process, I would argue, is the continuation and expansion of American political inequality.

“If voting changed anything they’d make it illegal” – Unknown.

This quotation is often used to imply that the act of voting is futile. However, I would argue that this perspective personifies the political implications of disenfranchisement. Because the vote can change things—especially the distribution of political resources—millions of citizens are barred from exercising it. Given this, the fundamental conclusion to be reached from this study is that citizens need to challenge the democratic principles of the dominant structure. How viable is a democracy that excludes a significant portion of the populace from voting? Further, what does it mean to have a democracy in which minority groups are systematically marginalized by the very process that is supposed to protect their interests? In what ways do institutional features, and policies, encourage apathy and low turnout? And finally, how do America’s democratic principles stigmatize (ex) felons as being less than full citizens in this country?
The research presented in this dissertation helps us better understand and evaluate the profound legacy of felon disenfranchisement laws. In particular, this research supports the belief that group-based considerations are relevant to all phases of the political process. Such considerations shape the way that elites discuss and frame disenfranchisement laws; the way that the laws are structured and distributed at the state level; as well as the way that the public evaluates them. Further, this analysis of criminal disenfranchisement laws affirms the existence of a symmetry between the way the laws are constructed and the way that the public and elites interpret them. Despite the fact that the majority of states are being governed by laws created during a time of intense racial animosity, reform efforts have been somewhat limited. These laws are important because they structure who has access to government, as well as determining who staffs the institutions of government. As a result of these restrictions, the exclusions that hindered American democracy at its founding continue to impede the full realization of that ideal.
APPENDIX A

Constitutional Provisions

U.S. Constitution, Article I, Section 4:
The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators.
The Congress shall assemble at least once in ever year, and such meeting shall be on the first Monday in December unless they shall by law appoint a different day.

U. S. Constitution, Article II, Section 1:
The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:
Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust of profit under the United States, shall be appointed an elector.
The electors shall meet in their respective states, and vote by ballot for two
person, of whom one at least shall not be an inhabitant of the same state with
themselves. And they shall make a list of all the persons voted for, and of the
number of votes for each; which list they shall sign and certify and transmit sealed
to the seat of the government of the United States, directed to the President of the
Senate. The President of the Senate shall, in the presence of the Senate and House
of Representatives, open all the certificates, and the votes shall then be counted.
The person having the greatest number of votes shall be the President, if such
number be a majority of the whole number of electors appointed; and if there be
more than one who have such majority, and have an equal number of votes, then
the House of Representatives shall immediately choose by ballot one of them.

The Congress may determine the time of choosing the electors, and the day on
which they shall give their votes; which day shall be the same throughout the
United States.
APPENDIX B

FULL WORDING OF SURVEY QUESTIONS OF INTEREST

Orientation Toward Crime:
- Have you or anyone you know ever been the victim of a violent crime?
  1 Yes
  0 No

- How important should addressing the issue of crime be to the government in Washington?
  1 Completely Unimportant
  2 Very Unimportant
  3 Somewhat Unimportant
  4 Neither
  5 Somewhat Important
  6 Very Important
  7 Extremely Important

- How much would you agree with the statement, “Criminals don’t deserve rights?”
  1 Disagree Very Strongly
  2 Disagree Strongly
  3 Disagree Somewhat
  4 Neither Agree nor Disagree
  5 Agree Somewhat
  6 Agree Strongly
  7 Agree Very Strongly
Views on Voting:

“How much would you agree with the following statements:”
- Every citizen who wants to should be allowed to vote.
- Voting is a privilege that shouldn’t be granted to everyone.

1 Disagree Very Strongly
2 Disagree Strongly
3 Disagree Somewhat
4 Neither Agree nor Disagree
5 Agree Somewhat
6 Agree Strongly
7 Agree Very Strongly

Support for Stereotypes:

“Now I’m going to describe a 7 point scale that I’d like you to use to describe most Blacks. After reading each set of characteristics, please indicate where you would rate most Blacks on this scale.“

Peaceful - Prone to Violence

Law Abiding - Law Breaking
HEADLINE: Report focuses on important laws
Lawmakers debate merits of banning felons from voting

BYLINE: By Robert Turner (rturner@timespicayune.com or (985) 898-4816);
Staff Writer

BODY:
A new report issued by the Criminal Justice Research Center argues that nearly
four million Americans are permanently barred from voting. According to Jacob
Morrison, Executive Director of the Center, laws banning felons and ex-felons
from voting exist in all but two states. In some states convicted felons cannot vote
while in prison. In others, convicted felons lose the right to vote for the rest of
their lives.

Morrison said that the report was designed to raise awareness of the issue.
However, the report has sparked quite a bit of debate amongst politicians. Some
politicians believe that the laws should be changed in order to promote the
rehabilitation of ex-offenders.

Senator John Patricks argues that, "If we want to give these people incentives not
to commit another crime, we need to help them feel that they have a stake in the
community. If they can vote and participate in the political process, maybe they'll
work a little harder to build it up rather than tearing it down by breaking the law.
We need to work on helping people gain a sense of purpose and responsibility."

Echoing this belief, Senator Dianne Jones said that, "our democracy is weakened
whenever one sector of society is banned from voting."

Politicians agree that as the number of people convicted of crime continues to
grow, these laws will become increasingly important. Morrison hopes that the
Center's report will become an important source of information for both citizens
and leaders interested in learning more about felon disenfranchisement laws
A new report issued by the Criminal Justice Research Center argues that nearly four million Americans are permanently barred from voting. According to Jacob Morrison, Executive Director of the Center, laws banning felons and ex-felons from voting exist in all but two states. In some states convicted felons cannot vote while in prison. In others, convicted felons lose the right to vote for the rest of their lives.

Morrison said that the report was designed to raise awareness of the issue. However, the report has sparked quite a bit of debate amongst politicians. Some politicians believe that these laws should be changed because so many minorities have lost the right to vote.

Senator Rose Braz argues that, "If you're disenfranchising people based on criminal convictions, it's going to disproportionately impact African Americans and Latinos since the criminal justice system is racially biased. How else can you account for the fact that 36% of the people who have been disenfranchised are African Americans?"

Echoing this belief, Senator JoAnn Mecos said that, "we must not support laws that discriminate on the basis of race."

Politicians agree that as the number of people convicted of crime continues to grow, these laws will become increasingly important. Morrison hopes that the Center's report will become an important source of information for both citizens and leaders interested in learning more about felon disenfranchisement laws.
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Senator Harrison Roberts argues that, "If these people didn't want to lose the ability to vote, they shouldn't have committed the crimes in the first place. Do we want to see drug dealers and murderers having a voice in electing those who make and enforce our laws?"

Echoing this belief, Senator JoAnn Mecos said that, "we must protect law-abiding citizens from those who break the law."

Politicians agree that as the number of people convicted of crime continues to grow, these laws will become increasingly important. Morrison hopes that the Center's report will become an important source of information for both citizens and leaders interested in learning more about felon disenfranchisement laws.
A new report issued by the Criminal Justice Research Center argues that nearly four million Americans are permanently barred from voting. According to Jacob Morrison, Executive Director of the Center, laws banning felons and ex-felons from voting exist in all but two states. In some states convicted felons cannot vote while in prison. In others, convicted felons lose the right to vote for the rest of their lives.

Morrison said that the report was designed to raise awareness of the issue. Although they argue over the merits of the law, politicians agree that as the number of people convicted of crime continues to grow, these laws will become increasingly important. Morrison hopes that the Center's report will become an important source of information for both citizens and leaders interested in learning more about felon disenfranchisement laws.
Dependent Measures:

- Do you agree that people in prison should be allowed to vote?
- Do you agree that people on parole/probation should be allowed to vote?
- Do you agree that people who have served their time and are now free should be allowed to vote?

1. Disagree Very Strongly
2. Disagree Strongly
3. Disagree Somewhat
4. Neither Agree nor Disagree
5. Agree Somewhat
6. Agree Strongly
7. Agree Very Strongly

- In general, how much do you support laws that do not allow convicted felons to vote?
  1. Oppose Strongly
  2. Oppose Somewhat
  3. Oppose
  4. Neither Oppose nor Support
  5. Support
  6. Support Somewhat
  7. Support Strongly
LIST OF REFERENCES


Biemiller, Andrew J. 1957. Testimony before the U.S. House, Subcommittee Number 5 of the Committee on the Judiciary, Hearings, Civil Rights, 85th Congress, First Session.


