From Prison
to the
Ballot Box

Political Disenfranchisement of
Released Felons in America

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Abstract

America is the only country in the world that includes the removal of voting rights as punishment for all felonies. Millions of felons in America have had their political rights removed and the unfortunate truth is that most of these felons are black. Severe racial issues in the American justice system are belied by the explosion in the amount incarcerated black Americans over the past thirty years, unrelated to an increase in criminality. The racial imbalance in incarceration, combined with a removal of suffrage, presents a foundational problem for American democracy. This study examines the legal history of the statutes regulating felon voting disenfranchisement in order to determine the direction of felon voting rights. Have states become more or less restrictive over time and are internal changes related to external, federal changes to racial voting structures? Four diverse case studies were undertaken to examine this question.

Introduction

American democracy has come a long way from the exclusivity of its founding. The right to vote has expanded in fits for the past two hundred years. At its founding only landed, white, males, above the age of 21 were able to vote. Slowly these restrictions were rolled back. First landownership requirements were removed, next the Civil War Amendments to the Constitution removed race restrictions (in the abstract), the 19th Amendment removed gender restrictions and finally Civil Rights legislation removed the Jim Crow voting restrictions placed on black Americans. With President Johnson's landmark racial legislation Americans, and many scholars,[1] assumed suffrage to be an issue of the past. However, this understanding discounts America's unique treatment of its felon population.

America prevents its felons from voting, often for long periods after their release from incarceration. The list of countries that restrict their prisoners from voting is very short and contains countries such as the United Kingdom, Russia, and many post-Soviet republics; however, the amount of incarcerated Americans denied the vote is only a quarter of the total problem. This is because the

[1] "At least since the voting rights reforms of the 1960s, political rights have been universalized in the United States. With relatively insignificant exceptions, all adult citizens have the full complement of political rights." (Verba et al., 1995)

United States is the only country in which released prisoners are, in many states permanently, disenfranchised. An estimated three-quarters of all American felons denied the vote are not imprisoned (Uggen & Manza, 2002) and all but two American states prevent their released felons from voting (Post-Conviction Voting Rights 2012). America's unique stance towards felon voting rights might be unimportant if not for the extreme number affected Americans.

America has 716 prisoners for every 100,000 citizens. No other country incarcerates more than half as many of its citizens as the United States (International Centre for Prison Studies, 2013). Not only is the United States unique in its restrictions on felon voting rights, but it is foremost in incarceration. This is the result of an explosion in incarceration that began in the early 1970s. This explosion has increased the consequences of felon voting restrictions. In 1976 less than 1% of Americans were affected by felon voting restrictions but in 2000 that share had risen to 2.5% of the eligible voting population was affected (Uggen & Manza, 2002). A new body of scholarship, dubbed "mass incarceration," has arisen to analyze the forces behind and effects of the explosion in America's prison population.

Mass Incarceration and the New Jim Crow

Scholars and policy-makers have noted the explosion in the incarcerated population with alarm and surprise. Prison populations had increased rapidly but there seemed little explanation. However, vast changes in justice philosophy had taken place since the early 1970s and provide an obvious explanation. Earlier thinking, labeled "penological modernism," gave preference to reforming criminals with the primary focus on successful reintegration into society (Rothman, 2002). New thinking arose which labeled reform and reintegration as naïve and purported crime as a market exercise. The way to end crime, it was proposed, was to make its potential costs far outweigh its immediate benefits. This punitive thinking was spread by conservatives such as Barry Goldwater, Richard Nixon, and Nelson Rockefeller (Beckett, 1997; Jacobs & Helms, 1996; Savelsberg, 1994). Emblematic of such efforts are the draconian Rockefeller drug laws. They represented the initial shift

towards this punitive philosophy that has since gained traction all across America.

As this philosophy spread, drugs became a major public health issue for the first time. The response was to criminalize the possession and sale of a large amount of substances. Indeed, the increase in the prison population is largely due to convictions related to drug crime (Mauer, 2006). As drug arrests became more frequent America's prisons became increasingly black. Prison populations began to look less and less like the outside population.

Drug crime explained the increase in convictions but failed to explain the increasing inequality in the justice system. Drug use per capita has seen to be flat among all races (Burston, Jones, & Roberson-Saunders, 1995). It is not simply a problem unique to the black community, but an issue for all races. Additionally, drug retail is not only found in the black community but it has been observed that white Americans buy drugs from other white Americans and that black Americans buy drugs from black Americans (Burston et al., 1995). Drug crime is unrelated to race but, in spite of this, 80 to 90 percent of all drug offenders sent to prison are black (Fellner & Organization, 2000). This state of affairs has been revealed to be intentional.

Michelle Alexander, in her 2012 book *The New Jim Crow*, has proposed the system of mass incarceration as a system of racial caste. Alexander writes:

> In major cities wracked by the drug war, as many as 80 to 90 percent of African American men now have criminal records and are thus subject to legalized discrimination for the rest of their lives (Street, 2002)[2]. These young men are part of a growing undercast, permanently locked up and locked out of mainstream society. (Alexander, 2012)

At first glance her point seems, at the least, hyperbolic. Yes, felons have restrictions placed on them, but they are forming an undercast? She explains by revealing the discrimination that released felons face in employment, housing, and of particular importance to this study, voting. These forms of the discrimination are incredibly similar to restrictions found under Jim Crow, but with the additional specter of incarceration. Alexander purports that mass incarceration is simply another step in a cycle

[2] Citation included in original work.

that has been progressing since America's founding.

The first and most all-encompassing system of racial oppression in America was that of slavery. Slavery rose as a way of life in the South and was ended with the passage of the Civil War Amendments, the thirteenth through the fifteenth. The desire for a racial caste system in the South did not end and so Jim Crow replaced slavery as a means of controlling black Americans. When the atrocities of Jim Crow became too obvious and shameful to bear, America ended its abuses with the passage of Civil Rights legislation in the mid-1960s. This then created a need for an alternative means of control which led to the establishment of mass incarceration. Alexander sorrowfully admits that "the adoption of a new system of control is never inevitable but to this date it has never been avoided (Alexander, 2012)." Per Alexander's argument, the need for, and creation of, the mass incarceration system of control came about in response to the Civil Rights Acts of the 1960s.

Conceptual Framework, Theory and Hypothesis

Alexander's work traces the history of political disenfranchisement of black Americans. Every time a means of suppression was made illegal a new method arose in its wake. Slavery's transgressions transformed into the formally race neutral devices such as poll taxes which then became the system of mass incarceration today. Each evolution in the means of political oppression followed the destruction of the previous system. Under Alexander's framework the current system of political suppression, felon voting restrictions, are a direct response to the Voting Rights Act (VRA) of 1965. It is this link that this study addresses:

Slavery → (15th Amendment) → Jim Crow → (Voting Rights Act) → Mass Incarceration

For, if the Alexander's theory holds then states whose apparatus of voting discrimination was destroyed by the VRA of 1965 will become more restrictive to attempt to achieve prior levels of disenfranchisement.

The link that preceded the mass incarceration's system of control is important for several

reasons. As Alexander's work is new and rather groundbreaking many of her claims have yet to be analyzed. This study is seeking to determine whether Alexander's link between the VRA and felon voting restrictions exists. This claim is essential to her argument and therefore requires more evidence to gain credibility.

Of the four cases examined in this study two are VRA violators and two are not. The above link will be confirmed if: a) felon voting rights have become more restrictive in the time surrounding the VRA, and b) if VRA violators became more restrictive while non-VRA violators did not. The VRA did not directly affect all states as the excesses of Jim Crow were (mostly) confined to the South. If mass incarceration's felon voting restrictions represent an evolution from Jim Crow then they would at least be more prevalent in the places where the VRA ended blatant political disenfranchisement. A brief discussion of the VRA is necessary to fully understand the way in which it affected states.

The Voting Rights Act

The Voting Rights Act (VRA) of 1965 made illegal many of the ingenious methods that several states used to prevent their minority populations from voting. Grandfather clauses, poll taxes, and any "test or device" used to choose who may or may not vote were outlawed (Department of Justice, 2013). This prohibition was added to by the VRAs proscription for federal oversight. The VRA mandated that the Department of Justice oversee any changes to voting laws in certain states and the states which required DOJ oversight were identified through a formula. This formula was two pronged: firstly, the state or political subdivision of the state must have maintained a "test or device," restricting the opportunity to register and vote; secondly, the Director of the Census must have determined that less than 50 percent of persons of voting age were registered to vote on November 1, 1964, or that less than 50 percent of persons of voting age voted in the presidential election of November 1964 (Department of Justice, 2013). Most of the states that required oversight are still required to submit any changes in the voting law to the United States Justice Department for review (Department of Justice, 2013). However, this status quo has recently come under attack.

The case of Shelby County v. Holder came before the Court at the end of 2012. Shelby County, Alabama has taken issue with continued federal review of changes to voting procedure or statute. They contend that Section 5 of the VRA (the section which provides for such federal review) has outlived its usefulness. Justice Scalia is inclined to agree. In oral arguments before the Court Scalia equated the VRA's federal review, section 5, to a "racial entitlement" further stating that "whenever a society adopts racial entitlements, it is very difficult to get out of them" (Overton, 2013). This perhaps indicates that the Court has a faction seeking to overturn the VRA. However, all of the modern debate surrounding the VRA fails to take account the ways in which mass incarceration still creates race based voting discrimination.

A Review of Related Literature

The State of Suffrage

There seems to be consensus among scholars that the right to vote in the United States is universal; however, the heritage of the 15th and 19th amendments to the constitution as well as the VRA of 1965 detail that this was not always the case. Still, despite a history of exclusivity, in America there has been a definite trend towards the universal suffrage that democracy requires (Keyssar, 2000). On top of this, it has been observed that suffrage had been extended with relatively little bloodshed to those who desire it (Schattschneider, 1975). This move towards inclusion and its fruition in the Voting Rights Act of 1965 has led most scholars to believe the issue of suffrage concluded. These analyses are of a historical nature and rely on direct source material to make their claims, as opposed to political science research involving any sort of measurement. Unfortunately, the political science literature regarding voting relies on this historical analysis without testing its modern validity.

Voting literature has tended to focus on examining factors such as turnout and alternative means of political participation. Examinations of American voting take for granted, with little exception, the universality of suffrage in America (Verba, Schlozman, & Brady, 1995). However, this is reasonable as

scholars have a strong theoretical basis for their assumptions of the universality of suffrage. The democratic theory that voting rights are sticky, once granted they are not often relinquished, has caused many scholars to assume that America has no lingering issues of suffrage (Uggen & Manza, 2002). Only one author has acknowledged that the explosion of incarceration has led to an appreciable decline in suffrage. Keyssar, in his largely historical work, points out the potential problem created by felon disenfranchisement, acknowledging that explosions in prison population have created an issue where none has existed before (Keyssar, 2000).

Race to Imprisonment

While crime rates have remained relatively stable for the past forty years, incarceration has skyrocketed (Mauer, 2006). Scholars and public officials note that the explosion in prison population began in the early seventies. The current prison/legal system in the United States, and the body of literature that studies it, has been grouped as "mass incarceration." In studying the expansion of the prison population, it has been noted that 61% of its growth can be attributed to drug crime (Mauer, 2006). Laws restricting the sale and use of drugs began in the 1970s, most famously the draconian Rockefeller Drug laws, but became a nation-wide craze with President Reagan's ubiquitous war on drugs. Drug crime as the primary means of prison expansion becomes especially important in light of data revealing that black Americans account for upwards of 80% of all drug offenders imprisoned (Fellner & Organization, 2000). Indeed, in 2000, the black American rates of incarceration were 26 times greater than in 1983. For comparison, the rate of incarceration for white Americans in 2000 was eight times greater than in 1983 (Travis, 2005). Many theorists have proposed explanations for this racial disparity.

The Color of Prison

The most widely accepted explanations of the racial disparity in drug sentencing purport differences in drug usage across races to be the primary culprit. This, however, is an ill-informed

notion and the data on the subject actually reveals that all races use drugs at similar rates (Aldworth, 2007) and sell drugs at similar rates (Snyder, Sickmund, & Justice, 2006). Still, African Americans are prosecuted for drug crimes at rates that dwarf white Americans.

Many authors are quick to point out that there is no systematic racial bias in the American justice system. Distinct localities will have instances of racial bias, but the system as a whole does not discriminate (Sampson & Lauritsen, 1997). Instead, they propose that it is the increasing concentration of the poor that contributes to the increases in criminality. Acknowledging that black Americans represent the most impoverished group of Americans, concentrated communities of impoverished Americans also have much higher rates of infant mortality, joblessness, and family disruption (Sampson & Lauritsen, 1997). Sampson and Lauritsen's work recognizes the disparities in the American justice system, but fall short of calling them systematic or institutional. Other authors accept that concentrated poverty motivates these disparities, but go further in recognizing the ways in which concentrated poverty has, systematically, been criminalized.

One of the more popular theories as to why black Americans are overrepresented in prison has been championed by Jeffrey Reiman in his work *The Rich Get Richer, the Poor Get Prison*. In its most basic form, Reiman ties race to wealth or class status, positing that the poor are overrepresented in prison and that black Americans are much poorer than their white counterparts. The poor, by definition, have fewer resources to procure isolated housing with open space in which to live. It is necessary for the poor to live close to one another, and because of this, most of their crime is committed in the public sphere. This is opposed to the isolation to commit crime that the suburbs provide wealthy, ie white, Americans (Reiman, 1995). Reiman hits on a contributing factor to the racial disparity, however his argument is based on class as opposed to race. He falls short of directly addressing the racial issues at play. More recent literature acknowledges the racist nature of the system, which on its face does not include *de jure* racism.

Discretion, at all stages of the justice system, is the means through which racism has become an

inexorable part of justice in America. Michelle Alexander's work, *The New Jim Crow*, highlights the ways the racist attitudes latent in American society affect the discretion afforded to our police, prosecutors, and judges. By their nature, drug offenses have no victim to compel police officers to make an arrest. The discretion of the officer is usually the final say in making an arrest (Alexander, 2012). Furthermore, it is difficult to discover most drug use. In 2007, 19.9 million Americans used illegal drugs, while only a fraction were arrested (Aldworth, 2007). At the next level prosecutors are afforded wide discretion. They are able to induce guilty pleas by offering plea-bargains that avoid the harsh mandatory sentences in place for drug crimes (Alexander, 2012). Discretion on is face is not a bad thing. It becomes a negative, racist influence when criminality is subconsciously tied to race.

Much cognitive bias research has demonstrated that Americans' default image of a drug user or criminal is that of a black male (Burston et al., 1995). Alexander argues that this is not a random phenomenon, that there is in fact, a culprit. Her historical analysis outlines the political motivations that led certain political parties to play upon, and exacerbate, American's racist view of criminality (Alexander, 2012). During the Civil Rights era, the two major American political parties realigned. The Democrats, despite for the past hundred years being the party of the racist south, sided with Civil Rights leaders and northern liberals. This left a vacuum of racist white southerners with no party to represent them. Republicans filled this void and gained these southerners as constituents by advocating for the foundations of mass incarceration. Begun during Barry Goldwater's 1964 campaign, expanded under President Nixon and perfected during the Reagan administration, there has been an indisputable effort to use "law and order" as a slogan which subconsciously appealed to racist whites (Alexander, 2012). This argument is substantiated with analysis of national politicians' speeches in the mid-1960s, many of whom initially did little to hide the racist motivations of their "law and order" legislation. Additionally, Alexander's claims are substantiated by direct quotes from some of Nixon's top advisers (Ehrlichman, 1982), (Oliver, 2000). Congressional voting, at the time, also hinted at the racist motivations, with votes on Civil Rights legislation showing the same divisions as votes on amendments

to crime legislation (Weaver, 2007).

These Votes Matter

Connecting the racial issues apparent in the justice system with the voting disenfranchisement that accompanies imprisonment, a few authors have attempted to study the aggregate effect of disenfranchisement. The initial research was done as an attempt to ascertain the effect of disenfranchisement on voter turnout (Hirschfield, 2001). The problem with this research is that it is not ambitious enough, choosing only to focus on certain states. Because of this, it fails to make a compelling nation-wide argument.

Other authors have taken a more direct approach to addressing the issue of disenfranchisement. The alternative was to examine the effect of voting disenfranchisement on specific election. Christopher Uggen and Jeffery Manza began their research after the razor-close 2000 election. With the next president of the United States decided by so few votes, they set out to prove that voting disenfranchisement was a big issue that needed to be addressed. The found that as many as 7% of voters in states were disenfranchised (Uggen & Manza, 2002). While this finding was apparent using Department of Justice statistics, the authors go further and extrapolate the potential outcome of the election. Using socio-economic data regarding those disenfranchised in Florida, the authors used voter turnout and party preference information of similar voters to predict the election. They postulate that Al Gore would have won Florida by 80,000 votes had felons not been disenfranchised. This is but a glimpse of the entire study, which includes analysis of every Presidential election and off-year Senate election. This study attempts to make an issue of felon disenfranchisement by pointing out its direct effects on democracy. While this is an admirable and convincing work, it does not address the flawed reasons behind felon disenfranchisement.

Conclusion

The several disparate bodies of literature all point to a need to reexamine felon

disenfranchisement. Voting literature has taken for granted the extension of suffrage in the United States. Much work has been done to highlight the racial nature of a system that discludes people from participating in democracy but no study has been done to fully demonstrate whether or not felon voting flows from a racial motivated paradigm. The votes of felons have been shown to potentially change the electoral landscape of America but felon voting restrictions are still seen as an acceptable punishment for crime and until a racial paradigm has been revealed there will be little pressure for change.

Research Method & Design

The case studies I have conducted are focused around answering one fundamental question: has each state's felon voting disenfranchisement become more or less restrictive since the passage of the VRA of 1965? The case studies examine the changes made to each state's felon voting rights statutes. Accompanying the analysis of changes made to state statute is a look at state court cases relevant to felon voting rights and associated civil rights. From this legal perspective it will be possible to determine if the selected states have progressed towards or away from felon voting enfranchisement in relation to the VRA.

As this study challenges Alexander's link between Jim Crow and mass incarceration, her timeframe will be used to determine whether changes to state law are near enough to the VRA to be related. Alexander writes, "following the collapse of each system of control, there has been a period of confusion –transition—in which those who are most committed to racial hierarchy search for new means to achieve their goals within the rules of the game as currently defined." While Alexander fails to establish a definite timeframe she does provide that one system does not supplant the other immediately. Following the civil war there were roughly fifteen years of relative freedom before Jim Crow took fully hold. In this lull the first black Americans were elected to Congress (Keyssar 2000).

Using this as a guide, a similar fifteen-year period will be used to evaluate felon voting restrictions in relation to the VRA.

Because the sample size of states is so limited, case selection is increasingly important. In order to gain a comprehensive perspective the cases were selected on the basis of two criteria: the restrictiveness of their felon voting provisions, and the history of voter disenfranchisement in the state.

The past history of voter disenfranchisement is indicated by a state's violation of the 1965 VRA and its voting laws being subject to Department of Justice review. There are nine states that remain covered in their entirety by the VRA (Department of Justice, 2013). This leaves 41 states that are not VRA violators. From these populations two states were selected as representative of each end of the spectrum of felon voting disenfranchisement.

This was done using a 50 State Survey (Post Conviction Voting Rights, 2012). Each state was then placed into a categorical variable coded 1 to 6, one representing the most restriction and six representing the least restriction. From the population of VRA violators, Arizona, with a value of 3, was selected as representative of the least restrictive states and Alabama, with a value of 2, was selected as representative of the most restrictive. From the population of non-VRA violators, Illinois, with a value of 5, was selected as representative of the least restrictive and Kentucky, with a value of 1, was selected as representative of the most restrictive. Table 1 above illustrates this case selection methodology. It should be noted that the value assignments are not definitive as the web of each state's felon voting restriction is unique and draws from an exclusive history.

Table 1

		FELON VOTING RESTRICTION	
		Least	Most
VRA VIOLATOR?	Yes	Arizona	Alabama
	No	Illinois	Kentucky

Case Studies

Arizona Case Study

Arizona and the VRA

Any change to Arizona voting laws requires approval of the Department of Justice. Voting rights in Arizona have a complex history, which culminated in the state's failure to avoid the Justice Department oversight called for by the VRA of 1965. It should be noted that Arizona was not an initial offender of the VRA (Department of Justice, 2013). The VRA as first passed was narrowly focused on specific "test and device" based discrimination and Arizona, as a whole, avoided oversight (Davidson 1994).[3] Several counties in Arizona did, however, employ such means and were subject to VRA oversight. While there were tests and devices in place at the county level, the state did not universally enforce its own and the state as a whole narrowly evaded VRA oversight.

The VRA was renewed ten years later. The 1975 version expanded the purpose and scope of the original act to include provisions to prevent discrimination based on language (Davidson 1994). Because of its place along the United States southern border with Mexico, Arizona has long hosted a large Spanish-speaking population. The revised version of the VRA extended the 1965 definition of "test or device" to include ballots or election information which were only available in English, found in states where a single language minority accounted for greater than five percent of the citizens of voting age (Department of Justice, 2013). This definitional expansion placed Arizona squarely in the sights of the VRA. Today Arizona remains one of nine states for which the VRA applies in full.

[3] In 1960 Arizona was one of eleven non-southern states with literacy requirements that were to be abolished by the Voting Rights Act. Davidson purports that the large immigrant populations found in these eleven non-southern states –Arizona, California, Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, Oregon, Washington and Wyoming—underscore literacy requirements' "original purpose of diminishing the voting strength of marginal groups." (Davidson 1994)

Felon Disenfranchisement in Arizona Today

Arizona state law removes the right to vote from all those convicted of a felony (A.R.S. § 13-904, 2012). The removal of the right to vote does not stand alone, but rather is included in a statute that suspends most civil rights. These civil rights include the right to hold office, serve as a juror, and the right to possess a firearm. Additionally, included is a suspension of all rights that might be useful in mitigating the abuses of prison officers. The statute reads: "during any period of imprisonment any other civil rights the suspension of which is reasonably necessary for the security of the institution in which the person sentenced is confined or for the reasonable protection of the public" (A.R.S. § 13-904, 2012). While this blank check to prison officials is interesting in its own right, the take away is that voting rights are not afforded any special attention by the Arizona legislature but rather are included in the general scope of civil rights.

Upon first glance, this wholesale removal of civil rights seems to prove that Arizona is restrictive and draconian in its wanton removal of rights. Indeed, ProCon.org, in its discussion of felon voting rights, labels Arizona as one of the most restrictive states in regards to felon voting rights (Felon Voting Pro Con, 2013). However, Arizona might not deserve its bad reputation. Further statutes make it clear that all first time felons are to have their rights automatically restored to them after completion of probation (A.R.S. § 13-912, 2012). This represents the rather unobtrusive suspension of rights for first time felons; however, the rules are different for repeat offenders. Repeat offenders must wait an additional two years from the completion of their probation to apply for a restoration of rights (A.R.S. § 13-906, 2012).

This two-year waiting period essentially doubles the time a felon spends without civil rights. The average length of probation in the United States is approximately 22 months (Glaze and Bonzcar 2011). Therefore the average released felon suffers about two years before their civil rights are automatically restored. Repeat felons, once released, typically have their rights removed from them for what amounts to an average of 46 months. It is unclear whether most repeat-offender felons apply for

and receive a restoration of rights. There is a lack of Arizona court cases challenging judicial decisions regarding a restoration of rights. While this is not conclusive, it does seem to indicate that most repeat-offender felons who apply for a restoration of civil rights receive it. It remains unclear what percentage of repeat-offender felons elect to not apply for a restoration of rights.

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The question remains as to whether a large enough segment of the population's right to vote has been affected. The Bureau of Justice Statistics reports that in 2010, Arizona contained 80,910 probationers, or 1,626 probationers for every 100,000 adult residents (Glaze and Bonzcar 2011). The effect of voting restrictions at large is difficult to say because data is unavailable that would show how many former probationers have been convicted of multiple felonies and are still unable to vote in the two year term following their probation. Furthermore, there is no data that lists the amount of former multiple felons that do not choose to, or are simply unaware that they must, appeal the court to regain civil rights. The true reach of Arizona's voting restrictions on released felons is unable, with the current data, to be calculated. However, given the Bureau of Justice Statistics report, felon voting

Arizona 2010 Probationer Population [4]						
Total	White	Bblack	Hispanic	Native American	Asian	Not Reported
80,910	35,537	7,718	29,640	4,058	437	3,520
100%	44%	10%	37%	5%	1%	4%
Arizona 2010 General Population[5]						
100%	57%	5%	30%	5%	3%	N/A
Arizona 2010 Probationer Population [6]						
Total	White	Bblack	Hispanic	Native American	Asian	Not Reported
80,910	35,537	7,718	29,640	4,058	437	3,520
100%	44%	10%	37%	5%	1%	4%
Arizona 2010 General Population[7]						
100%	57%	5%	30%	5%	3%	N/A

[4] (Glaze and Bonzcar 2011)
[5] (United States Census Bureau, 2012)
[6] (Glaze and Bonzcar 2011)
[7] (United States Census Bureau, 2012)

restrictions disqualify, at the very least, 1.6% of Arizona's adult population. A look at who the probationers are that are affected is then necessary.

The largest objection to felon voting restrictions is that, because of inequalities in the criminal justice system, they disproportionally affect minorities (Alexander 2012). In Arizona, the racial makeup of the probationer population suggests that this issue is less prevalent and that the racial makeup of the probationer population roughly matches the racial makeup of the state as a whole. Table 2 on the preceding page illustrates the very minor differences between the probationer and general populations in Arizona. As can be expected, whites are underrepresented in the probationer population by about almost 13%, with blacks and Hispanics being overrepresented by that precise amount. This does present a racial gap in the effect of felon voting disenfranchisement, but it does not come close to the racial distortions reported in other jurisdictions.

History of Felon Voting Rights in Arizona

The Constitution of Arizona itself prohibits felons from voting. When Arizona became the 48th state in 1912 it had already made its intentions clear and today its Constitution still reads: "nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights" (Ariz. Const. Article 7 Section 2, 2012). The language of this section did allow for a judge to restore felon's civil rights. However, the legislature did not lay down any rules or procedures governing this and so it is hard to know the extent to which judges restored felon voting rights.

Early in Arizona's history it became a state notorious for denying voting rights to minorities. In the 1928 Arizona Supreme Court case, Porter v. Hall, Justice Lockwood found that Arizona was sovereign over Native Americans living on reservations, but that these Native Americans could not vote (Porter v. Hall, 1928). Justice Lockwood reasoned that because Native Americans were "in a state of pupilage" and "placed under guardianship" of the federal government, they were not eligible to

vote.[8] This is because the Arizona Constitution, at the time, read: "No person under guardianship, non compos mentis or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, be qualified to vote at any election unless restored to civil rights" (Ariz. Const. Article 7 Section 2, 1928). Arizona's early history has racial voting disqualifications brushing up with felon voting rights. This decision was overturned twenty years later at the urging of the federal government.

A federal report was released which specifically called out New Mexico and Arizona in their refusal to grant Native American's suffrage. This report pointed out that the influx of Native American veterans returning from WWII deserved the rights that they had fought to preserve (Lawson 2010). The Supreme Court of Arizona quickly moved to address the concerns raised in the report and in 1948 heard the case of Harrison et al. v. Laveen. In this case Justice Udall simply refutes the logic put forward by Justice Lockwood holding, "that the term 'persons under guardianship' has no application to the plaintiffs or to the Federal status of Indians in Arizona as a class" (Harrison et al. v. Laveen, 1947, 1967 Ariz. 337; 196 P.2d 456). Udall simply swept away the faulty logic that had led to Native American disenfranchisement and Arizona moved forward with only mental deficiency or felon status as a check on voting rights.

This status quo was preserved for the next twenty-three years. While the Arizona Constitution provided for a judicial restoration of rights, the Arizona legislature did not feel it necessary to provide any guidance for this system of review. That there are no cases challenging judicial refusal to restore civil rights suggests either that these civil rights were unimportant to Arizonians during this time period, or that judicial restoration of civil rights was not difficult to come by. Whichever the case maybe, in 1970 the Arizona legislature decided to clarify the judicial and added Article 11 to the

[8] Lockwood goes on to say: "That this guardianship was founded on the idea that the Indians were not capable of handling their own affairs in competition with the whites, if left free to do so." This represents, to this authors mind, one of the more racist and patronizing statements rendered in judicial writing. Ibid.

Arizona Criminal Code. This clarified that only once a prisoner had been released from probationary status could they apply to the judge who had originally tried them for a restoration of civil rights (A.R.S § 13-1741, 1970). This statute, for the first time, provided a distinct avenue toward restoration of rights.

The next year, 1971, this statute was amended, further restricting the felon voting rights in Arizona. The amended statute provided that all felons must wait two years from the completion of their probation to file for a restoration of civil rights (A.R.S § 13-1743, 1971). This additional wait requirement was loosened only seven years later when the legislature once again amended the procedure for restoration of felon civil rights. The 1977 additions to statute provided for the automatic restoration of civil rights to all first time felons (A.R.S § 13-812, 1977). This laid the groundwork for the current system of rights restoration that exists in Arizona today. Later changes to this statute, which were to take place in 1988, 2002, and 2006, dealt solely with the restoration of the civil right to bare arms. These later changes altered the rules and requirements for former felons to have the right to own a firearm restored (A.R.S § 13-912, 1988, A.R.S § 13-912, 2002, A.R.S § 13-912, 2006).

Conclusion

Since Section 5 of the VRA granted absolute federal review of Arizona election law in 1972 (Department of Justice, 2013), Arizona's felon voting restrictions have been eased. Early in its history Arizona's approach to felon voting rights was restrictive. The ill-defined process through which felons applied for a restoration of rights was problematic. However, Arizona's clarification of procedure in 1970 and then its automatic restoration of rights provided in 1977 represent a trajectory away from a restriction on rights. It can then be seen that no shift towards greater felon voting restriction accompanied the VRA. The removal of Arizona's discriminatory voting practices had no demonstrable effect on Arizona's felon voting disenfranchisement.

While felon voting disenfranchisement in Arizona has become less restrictive since the 1970s, their scope and affect has increased greatly. In 1981, the first year for which such data is available, Arizona only had 370 probationers per 100,000 residents. In 2010 there were 1,626 probationers per 100,000 residents (Glaze and Bonzcar 2011). While the restrictions themselves do not appear to be particularly restrictive, Arizona's elections have undoubtedly been affected by the vast increase in probationers per capita.

Alabama Case Study

Alabama and the VRA

Alabama's struggles with civil rights have become an egregious example of America's lasting prejudice. It was in Alabama that Rosa Parks disobeyed a bus driver and it was in Alabama that Martin Luther King Jr. gave some of his most impassioned speeches.[9] Also, Alabama hosted one of the culminating events which preceding the passage of the VRA. Marches took place from Selma to Montgomery, Alabama in 1964 at the height of the movement for voting rights and the violence that accompanied them, most notably the "Bloody Sunday" showdown between the National Guardsmen and the marchers, has been credited as providing the final pressure that Congress needed to pass the VRA (Davis 1999). It is no secret then that Alabama was one of the initial targets of the VRA.

Upon its passage in 1965, Alabama was immediately subject to Section 5 of the VRA and therefore to Justice Department oversight of any changes to its voting laws. Alabama fully satisfied the two prongs that qualified a state for such oversight: one, the state must have in place a "test or device" which is used to evaluate person's eligibility for voting; two, less than the 50% of the voting age population was registered to vote at the time of the Act's passage (Department of Justice, 2013). Alabama fulfilled these two prongs and the entire state was included under Sec. 5 of the VRA.

[9] "*How long? Not long, because the arc of the moral universe is long, but it bends toward justice."* Taken from "Our God Is Marching On," March 25, 1965, Birmingham, AL. This quote has been recently used by President Barack Obama and has been a mainstay in the discussion of civil rights in America.

In addition to this oversight, Sec. 2 of the VRA did a great deal of damage to the voting infrastructure that was in place in Alabama. Section 2 of the VRA was designed to clarify the language of the 15th amendment and in 1980, the Supreme Court solidified this interpretation (Mobile v. Bolden, 1980). In this case, the Court also held that an "invidious purpose" was therefore necessary for Section 2 to have an effect (Mobile v. Bolden, 1980). The Court found that the intention behind the law mattered in determining the applicability of the VRA. This "invidious purpose" was abundantly clear in Alabama's original limitations on voting. However, there is little evidence of an invidious purpose in Alabama's modern voting restrictions.

Felon Disenfranchisement in Alabama Today

Alabama is one of the most restrictive states in regards to felon voting. The Constitution of Alabama explicitly prevents released felons from voting and for many this ban is permanent. Alabama's constitution states that, "no person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability" (Alabama Const. Art. VIII, Sec. 177, 2012). The Alabama Constitution provides for a distinction between crimes involving "moral turpitude" and crimes that do not. Certain crimes may be labeled as particularly immoral and those that commit them are therefore subject to a greater loss of liberty. The vagueness of this language has been debated, and it has been held that all crimes of "moral turpitude" shall permanently disqualify a citizen from voting. Over time, this constitutional prohibition of felon voting has been added to several statutes.

In theory, only committing a crime of "moral turpitude" would permanently precluded a citizen from voting. The Alabama legislature has provided that persons who commit any other crime are able to apply for a Certificate of Voting Eligibility from the Alabama board of paroles and pardons (Code of Ala. § 15-22-36.1). In order to receive this certificate one must be released and have completed either parole or probation. This statute does list a number of offenses for which a felon

would not be eligible to receive a certificate. The list is meant to satisfy the "moral turpitude" prong provided in the Alabama constitution and is rather expansive:

> "The following will not be eligible to apply for a Certificate of Eligibility to Register to Vote under this section: impeachment, murder, rape in any degree, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason." (Code of Ala. § 15-22-36.1, 2012)

While this list may appear exhaustive, the offenses enumerated above are not the only ones that provide for permanent disenfranchisement. The attorney general has the final say in proscribing which offenses do and do not permanently disqualify an offender (974 So. 2d 972; 2007 Ala).

The registrars of Alabama, the government employees responsible for registering new voters, receive guidance from the attorney general of Alabama in determining which felonies are ones of "moral turpitude" (974 So. 2d 972; 2007 Ala). In other words, it is in these offices that a felon's crime is determined to involve "moral turpitude" or not. In 2005 Attorney General Troy King published a list of felonies that included among others, sale of marijuana and unauthorized sale of a controlled substance (974 So. 2d 972; 2007 Ala). It is here that we glimpse first glimmer of drug law being used to preclude felons from voting. Attorney General King explained that the published list merely cites precedent established by the Alabama courts and that the determination was the Alabama judiciaries alone. Additionally, Attorney General King makes clear that his memo is not an exhaustive list, that the Alabama judiciary might make future judgments as to whether or not a crime involves "moral turpitude" (974 So. 2d 972; 2007 Ala). With all the confusion surrounding precisely which crimes permanently disqualify felons from voting it is difficult to determine how many Alabamians' rights are affected by felon voting restrictions.

Alabama does not keep track of the specific felons whose crimes involved "moral turpitude." All that is available are the aggregate numbers of probationers and parolees in the Alabama justice system provided by the federal Bureau of Justice Statistics (BJS). Alabama law provides that all released felons, regardless of the morality of their crime, must wait until the completion of their parole and probation to apply to have their voting rights reinstated.[10] Therefore the aggregate data provided by the BJS will reveal the smallest amount of affected released felons possible. Table 3 below looks at the racial makeup of Alabama's known population of disenfranchised, released felons.

While whites make up 67% of Alabama's population, only 46% of the known disenfranchised population is white.[11] Alabama is only 27% black and still 43% of its disenfranchised population is black. These numbers indicate that Alabama's felon voting restrictions disproportionally affect black Alabamians. The prohibition on felon voting rights in Alabama is racially imbalanced.

Table 3

Alabama Probationer Population[12]				
Total	White	black	Hispanic	Not Reported
53,265	25,412	21,200	524	6,016
100%	48%	40%	1%	11%
Alabama Parolee Population[13]				
9,006	3,485	5,416	40	51
100%	39%	60%	0%	1%
Sum of Disenfranchised Populations				
62,271	28,897	26,616	564	6,067
100%	46%	43%	1%	10%
Alabama Population[14]				
4,822,023.00	67%	27%	4%	N/A

[10] Code of Ala. § 15-22-36.1
[11] Table 1
[12] (Glaze and Bonzcar 2011)
[13] Ibid.
[14] (United States Census Bureau , 2012)

History of Felon Voting Rights in Alabama

Felons were first disqualified from voting in the Alabama Constitution ratified in 1875 (Washington v. the State, 1884). Its passage came in the wake of the Civil War and reconstruction amendments, which forced Alabama to revise its Confederate Constitution. Article VIII, Section 177 has stood since that time with little change. The statute's prohibition on felon voting rights quickly came under fire. Two separate cases arose a decade after the constitution's ratification in 1882 (Anderson v. the State 1882) and 1884 (Washington v. the State, 1884). The plaintiffs in these cases' crimes had occurred while the previous Alabama Constitution of 1868 had been in effect and so they were challenging the law's applicability. The Alabama Supreme Court's opinion in Anderson v. the State, includes an interesting commentary on the supposed effect of such felon voting disenfranchisement. Judge Somerville defends the provisions by saying:

> It is quite common also to deny the right of suffrage, in the various American states, to such as have been convicted of infamous crimes. The manifest purpose 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. (Anderson v. the State, 1882)

Somerville gives a glorious and noble interpretation of felon voting restrictions: that they might keep the ballot box pure. This language might be interpreted as a racial code; however, parsing Somerville's writing is outside the scope of this study. The constitutional provision on which Somerville is commenting has changed very little over the past hundred and forty years. The changes largely constitute of a consolidation of what was once several sections. While the constitutional provision has remained unchanged, legislative actions were taken to expand and clarify this constitutional prohibition.

In 1955 the legislature thought it prudent that the state provide a process through which felons might have their rights restored to them. They passed a law providing a process through which felons

may attain a "Certificate of Eligibility to Register" (Code of Ala. § 15-22-36.1, 2012). This seems to have been done in an effort to clarify and streamline the process. The 1955 Alabama legislature realized that perhaps a prohibition against all felons whose crimes were ones of "moral turpitude" was unclear. This 1955 law, in theory, decreased the amount of disenfranchised felons because the clarity it provided enabled those who had thought themselves forever precluded the opportunity to register to vote. This would be the case if it had been followed through with.

A 2006 class action suit filed in the Alabama Courts revealed that the Alabama registrars had practiced a policy of disqualifying all felons from registering to vote. Upon application for voting certifications, the petitioners in the case, Chapman v. Gooden, had been turned away by the registrars of their counties because of their felon status. The petitioners were convicted of a DUI and marijuana possession, respectively. While these crimes are felonies, the petitioners argued that they were not crimes of "moral turpitude" as required by the Alabama Constitution (Chapman v. Gooden, 2007). As remedy, the petitioners demanded that Alabama must outline exactly which felonies are crimes of "moral turpitude" and which are not (Chapman v. Gooden, 2007).

The Alabama registrars' practice went against the laws of Alabama and it is impossible to know for how long the practice of turning away felons went on. That is what is shocking about practice that Chapmen v. Gooden revealed, that it might have over the course of time affected millions of potential Alabamian voters. It also reveals an information problem inherent in felon voting restrictions. Upon reviewing the charges levied by the petitioners, the Secretary of State's office "discovered that many eligible voters [were] unaware' that they did not need a 'certificate from this agency in order to register to vote" (Chapman v. Gooden, 2007). If information regarding the restoration of rights is not disseminated by the state it is as if restoration is unavailable. Because of the registrars' unlawful practice, until 2006, the right of felons to regain their voting rights in Alabama was essentially ignored.

Conclusion

The state of Alabama has, for more than one hundred years, discriminated against felons. This study has only briefly touched on the motivations for the original constitutional act barring the rights of felons to vote and it is not clear that there were racial motivations behind the original felon voting restrictions. While Alabama did clarify its rules in 1955, it is clear that they were followed and that many eligible under Alabama law to vote, had unlawfully been prevented from doing so. While the 1955 legislation might have been well intentioned, it is clear that it did not have the desired effect. Alabama remains one of the most restrictive states, but it is not clear that Alabama has become more restrictive since the passage of the VRA in 1965. Arguably it became less restrictive in 1955, but as this preceded the VRA by a decade, the two cannot be seen to relate to one another. It would seem that Alabama has always been restrictive and has simply refused to change its ways.

Illinois Case Study

Illinois and VRA

Illinois has never violated the VRA and has evaded federal oversight of its voting procedures (Department of Justice, 2013). Illinois does not have any history of racial discrimination in voting. Additionally, it is one of the least restrictive states in regards to felon voting rights.

Felon Disenfranchisement in Illinois today

Illinois places no restrictions on felon voting rights and all released felons are automatically eligible to vote. However, incarcerated felons are still prevented from voting.

History of Felon in Disenfranchisement in Illinois

The original Illinois Constitution restricted felon voting rights. Those who committed "infamous crimes" were prevented from voting. However this changed in 1961, with the passage of 10 Ill. Comp. Stat. Ann. 5/29-15. This statute removed all felon voting restrictions. It is difficult to know what constituted an "infamous crime" under the original constitution as there are scant sources

which talk about the Illinois Constitution as it was fifty years ago. There is one court case that provides some insight.

Sam Destefano was convicted of "illegally offering to vote" in 1963. This was two years after Illinois felon voting restrictions had been lifted, but DeStefano was trapped by the lack of a "savings clause" in the act repealing the restrictions (People of Illinois v. Sam DeStefano , 1965). DeStefano had been convicted of rape in 1927. The judge whom tried DeStefano frequently cites the restriction's intention to "keep the ballot box clean" as a noble one. Since the removal of felon voting restrictions in 1961, the law has changed little and only been updated periodically to rename involved agencies and update protocol.

Conclusion

Illinois, as a non-VRA violator functions largely as a control. It repealed its felon voting restrictions in 1961, four year before the passage of the VRA, and has refused to levy additional felon voting restrictions since. The interesting discovery taken from Illinois is that at its founding, it prevented felons from voting, which is consistent with every other state examined. Felon voting restrictions might then be seen to be a vestigial part of America's justice system.

Kentucky Case Study

Kentucky and the VRA

Kentucky has never been a violator of the VRA and has evaded federal oversight of its voting procedures (Department of Justice, 2013). While Kentucky was a slave state, it does not have a history of racial discrimination in voting. Despite this, Kentucky is one of the most restrictive states in regards to felon voting.

Felon Disenfranchisement in Kentucky Today

While Kentucky does not have a history of racial restrictions on voting it does have a long history of felon voting disenfranchisement. The Kentucky Constitution prohibits all felons from voting unless the governor restores their rights (Ky. Const. § 145). The constitution prohibits all "persons convicted in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare" (Ky. Const. § 145). Kentucky felons are prohibited from voting indefinitely and must wait until they have completed any and all terms of punishment in order to apply for a restoration of rights (Ky. OAG 77-95). Even felons who had only been sentenced to probation and might never have set foot into a prison must apply to the governor for a restoration of rights (Ky. OAG 64-783).

The Kentucky constitution provides that all "persons hereby excluded may be restored to their civil rights by executive pardon" (Ky. OAG 64-783). The governor is responsible for extending this executive pardon but it is unclear as to how this process unfolds. There are enough examples of persons receiving a restoration of rights ((Anderson v. Commonwealth, 2003), (Arnett et. al. v. Stumbo, 1941) (Cheatham v. Commonwealth, 2004), (United States v. Barrett etc., 1974)) that would indicate that a restoration of rights is not exceptional. However, no statute exists to regulate this practice and there is little data available on the process of review that the Governor's office utilizes.

This lack of transparency is problematic because it is impossible to determine if the governor's office has issued pardons in a fair way. The Kentucky Constitution allows the governor to restore rights on any basis without any room for review. Additionally, the process's unstructured nature leads for different governors to proceed in very different ways. Therefore, the rights of felons are held hostage to the specific tendencies of the current governor. This practice of unknown determination might exacerbate the racial imbalance already in place in the Kentucky courts.

An attempt to look at the released, disenfranchised felon population is difficult. As with Alabama, it is impossible to know precisely how many felons are disenfranchised as Kentucky does not make available the amount of felons it contains and there is no record of how many released felons

have had their rights restored. Using available data, it is only possible to determine the least amount of disenfranchised felons. Table 4 below breaks down the current probation and parole populations by race and reveals a distinct racial disparity. While blacks only make up 8% of Kentucky's total population their percentage of disenfranchised population is more than double that at 19%. Severe racial effects are present and indicate an unfair balance in the disenfranchised population.

Table 4

Kentucky Probationer Population[15]				
Total	White	black	Hispanic	Not Reported
57,195	44,895	9,495	2,559	109
100%	79%	16%	4%	0%
Kentucky Population[16]				
4,380,415	86%	8%	3%	N/A

History of Felon Disenfranchisement in Kentucky

Felon voting disenfranchisement was provided for in the original Kentucky constitution and has been enforced for the duration of Kentucky's statehood. The constitutional provision for felon voting disenfranchisement has been changed very little and was only amended in 1954. This amendment did little but clarify the language of the statute and did not affect the portion controlling felon voting disenfranchisement (Ky. Const. § 145, 2013). While constitutional provisions have not been changed, the accepted interpretation has change as reflected in opinions issued by the Kentucky Attorney General.

Interpretations of the constitutional prohibition on felon voting have incrementally changed. The Kentucky Attorney General has chronicled the adjustments to interpretation in opinions issued. It was first determined in 1962 that even felon who had not served any prison sentence were subject to voting disenfranchisement (Ky. OAG 62-449). This move might have clarified an existing practice, but instead, it solidified a practice that had previously been more open to specific determination. It can

[15] (Glaze and Bonzcar 2011)
[16] (United States Census Bereau, 2012)

be seen to further restrict felon voting rights. In 1971, an opinion was issued which determined the governor may "pardon" a Kentuckian's federal crimes for the purpose of voting in Kentucky (Ky. OAG 71-109). By expanding the scope of the governor's pardon, this development at best reduced the voting restrictions placed on felons and at worst, closed an inescapable prohibition that many federal felons in Kentucky found themselves in. The Kentucky Attorney General provided a strange loophole in 1975. It was determined that all inmates who were held awaiting trial but had not yet been convicted were able vote, an interesting point that reduced the disenfranchised population of Kentucky (Ky. OAG 75-135). The final adjustment to interpretation of felon voting disenfranchisement came in 1977. Here it was solidified that only those who had completed their term of probation might apply for a restoration of rights from the governor (Ky. OAG 77-95). This corrected the previous eligibility of all released felons for gubernatorial pardon and represents an increase in restriction. While the opinions of the Kentucky Attorney General represent changes in the practice and interpretation of felon voting restrictions, the Kentucky legislature has also had its say on felon voting disenfranchisement.

The Kentucky legislature voted in 1974 to make unauthorized voting a felony (KRS § 119.025 , 2012). All felons who might attempt to mistakenly vote were then awarded an additional conviction. Any attempt at registering was criminalized. The legislature's action is incredibly problematic and unfair, criminalizing those who wanted to engage in civic action but were unaware that they were prevented from doing so. While this law remains in effect, the Kentucky Attorney General has stopped its enforcement. In 1989, an opinion was issued stating that "there is no reasonable, natural or logical basis for the classification contained in this section" and that law is "deemed to be unconstitutional" Ky. OAG 89-84). The attorney general's opinion ended this laws enforcement but the legislature had intended to drastically increase felon voting restrictions.

Conclusion

Currently, Kentucky represents the most restrictions placed on felon voting disenfranchisement. It is a state that prevents all felons from voting unless they place themselves at the mercy of the governor in a process which is undefined and for which there is no appeal or oversight. Not only are restrictions severe but from available data, the effected population is racially imbalanced. The percentage of effected blacks is double that of the percentage of black Kentuckians. However, overtime Kentucky has changed its restrictions on felon voting.

While the Kentucky Constitution has always prevented felons from voting, interpretations of its provisions have changed overtime. The Kentucky Attorney General has at times expanded and contracted felon voting restrictions through written opinions. While minute adjustments have taken place the most pertinent precedent elucidated by the attorney general came in 1977 when it was solidified that a felon must complete the duration of their probation to apply for gubernatorial pardon. This is an increased restriction on felon voting rights and came a decade after the passage of the VRA. Several years earlier the Kentucky legislature undertook a similar expansion of restriction.

The criminalization of unauthorized voting in 1974 was a large step forward in restricting felon voting rights. With mistaken false registration classified as a felony, felons might receive harsh punishment for a mistake that they had unwittingly made. While this decision was rendered moot by an opinion of the Kentucky Attorney General in 1989, the legislature revealed its intentions.

Kentucky has increased felon voting restrictions. As it was subject to VRA oversight, these increases cannot be connected to the passage of that Act. This case reveals that restrictions have increased since the VRA's passage in states to which the VRA does not apply. Kentucky restrictions are not new, but they have increased.

Conclusion

The right to vote has expanded in fits for the past two hundred years, as restrictions on who could or could not vote were obliterated. America could claim universal suffrage if not for the large swaths of population disenfranchised because of a felony conviction. Since the rise of mass incarceration this population has grown to the point where it has become problematic for a country claiming to be representative (Uggen and Manza 2002). It is not only this population's size that is problematic. Disenfranchised felons are more far blacker than the American population at large, a racial distortion which severely damages the voting power of a vulnerable minority with a long history of second-class status. Michelle Alexander makes clear that this state of affairs is intentional.

Alexander's work traces the history of political disenfranchisement of black Americans. Every time a means of suppression was made illegal a new method arose in its wake. Slavery's transgressions transformed into the formally race neutral devices, such as poll taxes, which then became the system of mass incarceration today. Each evolution in the means of political oppression followed the destruction of the previous system. Alexander's framework supposes the current system of political suppression, felon voting restrictions, are a direct response to the Voting Rights Act (VRA) of 1965. If Alexander's theory holds then states whose apparatus of voting discrimination was destroyed by the VRA of 1965 will become more restrictive to attempt to achieve prior levels of disenfranchisement.

The case studies undertaken do not support this hypothesis. Each of the states investigated had felon voting restrictions written into their constitutions at the founding. Of the VRA violators, only Alabama became more restrictive. This was because of an executive miscommunication in which Alabama registrars refused all felons, instead of specific ones who had committed crimes of "moral turpitude." At best, this represents an honest mistake on the part of the registrars and at worst, a invidious plot to keep felons from voting. This state of affairs was revealed recently and so it is difficult to determine whether it can be related to the passage of the VRA. The other VRA violator,

Arizona, specifically reduced felon voting restrictions in the decade after the passage of the Voting Rights Act. Arizona provided that all first time felons have their rights automatically returned to them. As this removed restrictions it cannot be related to the VRA under Alexander's theory. A similar pattern developed among the non-VRA violators.

Illinois was the most benign of all the case studies undertaken. It repealed its felon voting restrictions several years before the passage of the VRA. It now is among the most permissive states in that it allows all released felons to vote. Kentucky is the only state that fully fulfilled Alexander's frame work. While Kentucky had always disqualified felons from voting, nine years after the passage of the VRA it criminalized illegal voting as a class D felony. Now felons who had mistakenly attempted to vote could be thrown back into prison. As this came within 15 years of the VRA it might be seen to be related, except that Kentucky was not a VRA violator.

The two prongs identified early in this study were not fulfilled. a) felon voting rights have not become more restrictive in the time surrounding the VRA. Only one state increased voting restrictions within the allotted time-frame of fifteen years. And b) VRA violators did not become more restrictive than non-VRA violators. Kentucky was the only case which appreciably increased in restrictiveness.

Felon voting restrictions have not changed in the wake of the VRA. While this study's limited sample size restricts the expansiveness of this claim, it seems clear that felon voting restrictions have always been a part of the justice system since the founding of many states. Restrictions have lessened or gone away, but they have rarely increased. However, this does not knock down Alexander's overarching point. While felon voting restrictions have not changed in the way her theory predicts, the explosion in America's prison population does. Mass incarceration still looms as a threat to America's minorities and should be ended.

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