FELON VOTING RIGHTS AND THE DISENFRANCHISEMENT
OF AFRICAN AMERICANS*

CHRISTOPHER UGGEN, University of Minnesota

JEFF MANZA, Northwestern University

ANGELA BEHRENS, University of Minnesota

July 5, 2003

Running Head: Felon Disenfranchisement

Word Count: (3037)

* Prepared for Souls: A Critical Journal of Black Politics, Culture & Society. Our research was supported by grants from the National Science Foundation (#9819015) and the Individual Project Fellowship Program of the Open Society Institute. We thank Geoff Ward and the organizers of the “Africana Studies Against Criminal Injustice” conference, held April 11-12, 2003 in New York. We are indebted to Doug Hartmann and Sara Wakefield for helpful suggestions, and Melissa Thompson and Kendra Schiffman for research assistance.
The centrality of race for American political development is by now well understood. Social scientists have traced the interaction between race and the construction of federal political institutions, the class/race (or gender/race) nexus in public policymaking, and the impact of racial attitudes and racism on political beliefs and policy preferences of citizens and policymakers. In recent years, research and theorizing about the American “racial state” has flowed into many of the crevices of U.S. history that had previously ignored or underplayed the centrality of racial factors.1

Of particular importance has been the development of new investigations of social and political practices with partially, or completely, hidden racial dynamics. Restrictions on the voting rights of persons convicted of criminal offenses – felon disenfranchisement laws – provide a good example of this phenomenon. These laws are facially neutral with regard to race, applying equally to all convicted of felonies or particular felony offenses. Given both historical efforts to deny the franchise to African Americans and the dramatic overrepresentation of persons of color within the criminal justice system, however, the racial dimension of felon disenfranchisement has appeared obvious to many observers. For example, when asked why states might disenfranchise felons, a young African American probationer we interviewed in our investigation of these laws succinctly told us, “To be honest, I think they just want less blacks to vote.”2 Some scholars have thus begun to examine the role of racial factors in the origins and contemporary impact of felon disenfranchisement.3
Proponents of felon disenfranchisement, in contrast, maintain that these laws are race-
neutral, applying equally to all criminal offenders, and states have the right to regulate access
to the ballot box. Federal courts have almost invariably agreed, rejecting claims of disparate
racial impact brought under the Voting Rights Act or on other Constitutional grounds. The
emergence of a national civil rights campaign to restore the right to vote, as well as a
growing debate over the question, suggest that a thorough examination of the racial history
and development of U.S. felon disenfranchisement laws is in order. We offer here a brief
summary of our (and other scholars’) ongoing research on these questions. Because of the
racial origins and disparate impact of felon ballot restrictions, we argue that claims of race-
neutrality cannot withstand close scrutiny.

Racial Origins of Felon Disenfranchisement Law in the United States
Felon disenfranchisement laws bar those convicted of felony-level crimes, and in some cases
ex-felons, from the right to vote. Reflecting the absence of a national standard governing the
voting rights of criminal offenders, there is wide variation in state felon disenfranchisement
laws. States generally distinguish among four categories of convicted offenders: (1) felons
who are currently incarcerated; (2) previously incarcerated felons who are under parole
supervision; (3) those who were convicted of a felony but sentenced to probation (and thus
never incarcerated); and, (4) those ex-felons who have completed their entire sentence and no
longer have any official contact with the criminal justice system. At present, two states –
Maine and Vermont – allow all felons, including those currently in prison, to vote. At the
other extreme, thirteen states bar some or all ex-felons from voting for life, or until their
rights have been formally restored through a clemency process. Internationally, these laws
are unique: the United States is virtually the only democratic country in the world to
disenfranchise large numbers of ex-felons and current felons under parole or probation
supervision. Combined with the very high U.S. rates of incarceration and conviction, the
practice of felon disenfranchisement has a much broader overall and race-specific impact in
the U.S. than anywhere else in the world.

American history is replete with examples of states and groups attempting to deny
full citizenship, including the right to vote, to nonwhites. Felon disenfranchisement laws can
be viewed as part of a larger movement to maintain control over access to the ballot
following the gradual establishment of universal white male suffrage after the 1830s. Only 4
states had disenfranchisement laws prior to 1840, but between 1840 and the beginning of the
Civil War, some 14 states (of the remaining 30 states without a law at the time) adopted their
first disenfranchisement law. To our knowledge, this era has not been investigated by
historians or other social scientists, and thus little is known systematically about the factors
that might have driven the first wave of disenfranchisement laws. Because very few states
allowed African Americans to vote, however, it is unlikely that race was a primary
motivating factor behind these early laws.

The second wave of adoption is more clearly linked to racial factors. In the ten years
following the Civil War, eleven more states (of the 17 states without a law at the time) passed
a felon disenfranchisement law for the first time, or dramatically broadened an existing but
narrowly tailored law. These measures were undertaken as the Fourteenth and Fifteenth
Amendments were changing definitions of citizenship and expanding (or threatening to
expand) the right to vote. Although it has not generally been examined as part of the history
of the disenfranchisement of African Americans in this era,\(^4\) both anecdotal and systematic
historical evidence from the late-nineteenth and early-twentieth centuries suggests that some political actors made a conscious attempt to dilute African-American voting strength through felon disenfranchisement. In 1901, for example, the president of Alabama’s constitutional convention used his opening address to advocate using the ballot box as a tool to maintain white supremacy:

[I]n 1861, as now, the Negro was the prominent factor in the issue. ... 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. ...The justification for whatever manipulation of the ballot that has occurred in this State has been the menace of Negro domination.5

Subsequently, at the same convention, a provision passed to expand the state’s felon disenfranchisement law, with its chief proponent estimating that “the crime of wife-beating alone would disqualify sixty percent of the Negroes.”6 The extension of disenfranchisement to minor offenses for which African Americans were primarily charged, such as vague acts of “moral turpitude,” was common in a number of Southern states.7 In a case later cited approvingly by the U.S. Supreme Court, the Mississippi Supreme Court in 1896 upheld a disenfranchising measure that singled out such crimes, declaring “Restrained by the federal constitution from discriminating against the Negro race, the convention [of 1890] 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, murder, and other crimes in which violence was the principal ingredient, were not.”8

While such discourse provides circumstantial evidence of the role racial motivations played in the adoption of disenfranchising laws, we find striking
confirmation when we examine the larger pattern with quantitative evidence. We developed a statistical analysis of the factors that led states to adopt or extend felon disenfranchisement laws from 1850 to 2002. We found that states with larger proportions of nonwhites in their prison populations were more likely to pass restrictive laws, even when the effects of time, region, economic competition between whites and blacks, partisan control of government, and state punitiveness (as measured by overall incarceration rates) were statistically controlled. In other words, the higher the proportion of nonwhite inmates in a state’s prison population, the more likely that state is to adopt restrictive felon disenfranchisement measures.

Historically, felon disenfranchisement has been an effective means to reduce the voting power of African-Americans because of racially disparate incarceration rates. The post-Civil War passage of restrictive laws closely paralleled changes in the racial composition of state criminal justice systems, particularly in the South where the percentage of nonwhite prison inmates nearly doubled in many states between 1850 and 1870. In Alabama, for example, 2 percent of the state’s prison population was nonwhite in 1850 compared to 74 percent in 1870. Some suggest that the disproportionate criminal punishment of nonwhites constitutes, in part, a reaction to racial threat, whereby a majority group is able to reduce a perceived threat to its power or continued dominance.

The extension of such racial threat arguments to felon disenfranchisement is straightforward. The linkage of race and crime in relation to the right to vote has a long and unsavory history. Even in the early nineteenth century, campaigns to disenfranchise African Americans invoked racial disparities in incarceration as evidence that African Americans were unworthy of assuming the full rights and duties of citizenship. Consider the remarks of
Colonel Samuel Young in the 1821 New York state legislative debate over a measure to disenfranchise African Americans:

In New York, after blacks had provided Federalists with a narrow margin of victory in the election of 1800, the opposition party countermobilized against the perceived threat of black political equality. Jeffersonians campaigned with the slogan “Federalists with Blacks Unite,” and subsequently tried to disenfranchise blacks with speeches such as this: “The minds of blacks are not competent to vote. They are too degraded to estimate the value, or exercise with fidelity and discretion this important right...Look to your jails and penitentiaries. By whom are they filled? By the very race it is now proposed to clothe with the power of deciding upon your political rights.”

In this historical context, our findings about the role of race in driving the adoption or extension of disenfranchising measures aimed at felons or ex-felons fits into a much larger historical pattern, in which white political elites employed racial stereotypes and fears of crime to eliminate core citizenship rights for large numbers of African Americans.

**Contemporary Impact of Felon Disenfranchisement**

The incarceration rate among African Americans today is about seven times that of whites, and because many Southern states (with large African American populations) maintain the most extensive set of restrictions (including, in many cases, lifetime bans for ex-offenders), African Americans are significantly over-represented in the disenfranchised population. Currently, we estimate that more than 4.6 million people are disenfranchised in the United States because of a felony conviction, constituting approximately 2.3 percent of the total voting-age population. Nearly 7.5 percent of the African American voting-age population is disenfranchised, almost 2 million citizens in all. Because most convicted felons are men, an even more startling one in seven African American men are now ineligible to vote because of a felony conviction. The stark character of these statistics is magnified when we examine
the patterns of regional variation. Because voting rights are generally regulated at the state-level, as are criminal justice policies, a purely national focus understates the full impact. In a number of states, including Florida, Iowa, Kentucky, and Virginia, the proportion of the African American electorate that is disenfranchised is over 15% of the entire African American population in the state (and a correspondingly higher proportion of African American men).

Even if felon disenfranchisement takes voting rights equally from all racial groups, some charge that racial bias remains in the process of restoring civil rights in states that require ex-offenders to undergo a formal clemency process.\(^\text{17}\) Our own detailed investigation of the voting rights restoration process in Florida found that white applicants were more likely to have their clemency applications approved than black applicants, even when statistically controlling for a range of other factors that might account for those differences.\(^\text{18}\)

The combination of strict felon disenfranchisement laws and their disproportionate impact on the African American electorate has some tangible effects on political elections. In recent years, African American voters have expressed strong preferences for Democratic political candidates, with over 90 percent supporting the Democrat presidential candidate in the 1996 and 2000 elections.\(^\text{19}\) By diluting African American political strength, and to a lesser extent Latino and white working class political strength, it is possible that but for felon disenfranchisement some closely contested elections won by Republicans would have been won by Democrats. We tested this proposition, again using quantitative data (in this case from national election surveys) to estimate how many of these lost felon voters would have participated in recent elections, and how they might have voted. We found that six or seven recent United States Senate elections, as well as the 2000 presidential election, likely hinged
on the disenfranchisement of some or all felons and ex-felons.\textsuperscript{20} Even if only \textit{ex-felons} -- who had completed their entire sentences -- had been allowed to vote in Florida, the evidence that Al Gore would have carried the election is undeniable.\textsuperscript{21}

The impact of disenfranchisement is felt most strongly in narrow victories won by Republicans in states with restrictive felon disenfranchisement rules that apply to probationers, parolees, and former felons as well as current prisoners, and these tend to be states with large African American electorates. If we look, for example, at the seven states in which U.S. Senate elections have gone to Republicans in part because of felon disenfranchisement (Florida, Georgia, Kentucky – twice, Texas, Virginia, and Wyoming), all except Wyoming are southern states with relatively large black or minority populations. There is a further geographical impact that we cannot investigate: because of data restrictions, we were unable to systematically examine elections below the state level. Given the concentration of convicted felons and former felons in urban areas, however, it is quite likely that the electoral impact is even more significant at the local and municipal level.

\textbf{Contemporary Legal and Policy Debates}

Despite the clear disparate impact of felon disenfranchisement and its capacity to influence political outcomes, past legal challenges to these laws have been almost completely unsuccessful. Courts have insisted that unless a clear and expressed racial motivation to disenfranchise can be demonstrated, state felon disenfranchisement laws are permissible.\textsuperscript{22}

The political environment is proving somewhat more hospitable to challenges to disenfranchisement, however, in particular to laws limiting the rights of ex-felons. Contemporary debates on disenfranchisement often pit arguments pointing to the racial
impact and history of disenfranchisement against arguments that the laws apply equally to all felons and disenfranchisement is a legitimate choice that states may exercise. In 2001, following heated exchanges concerning a bill to further restrict South Carolina’s disenfranchisement law, for example, one of the bill’s sponsors rejected a racial motivation, claiming that “If it’s blacks losing the right to vote, then they have to quit committing crimes. We are not punishing the criminal. We are punishing conduct.”23 In early 2002, two U.S. Senators who opposed a federal bill that would have allowed all ex-felons to vote in federal elections noted that “states have a significant interest in reserving the vote for those who have abided by the social contract” and that “each State has different standards based on their moral evaluation, their legal evaluation, their public interest in what they think is important in their States.”24

Despite resistance to liberalizing state disenfranchisement laws, efforts to change the laws through legislative reform have seen some success in recent years, due in part to mobilization within and outside of state legislatures. In 2001, the Connecticut state legislature’s Black and Puerto Rican Caucus made a bill to reenfranchise probationers a top priority. With the strong support and lobbying efforts of fifty organizations in a newly formed Voting Rights Restoration Coalition, the bill passed.25 Similarly, efforts by the Maryland Legislative Black Caucus were instrumental in reenfranchising recidivists – who had previously been disenfranchised indefinitely – three years after they have completed their sentences.26

This variety of political mobilization is likely to be particularly important in the effort to restore the vote to ex-felons. Although more states disenfranchise prisoners than ever before, since the 1950s we find a marked trend toward liberalizing ballot restrictions for
former felons who have completed their sentences.\textsuperscript{27} Moreover, this trend appears to be consistent with public sentiment on the issue, as most Americans favor the reenfranchisement of ex-felons, probationers, and parolees.\textsuperscript{28}

**Conclusion**

In the most recent presidential election, over 1.8 million African American citizens, and a total of more than 4.6 million Americans overall, were barred from voting by the unusually restrictive felon disenfranchisement laws in the United States. In many states, the origins of such laws can be traced to the broader dynamics of racial discrimination and explicit efforts to dilute African American voting strength. Analysis of the contemporary political consequences of felon disenfranchisement laws suggest that they provide a small but clear advantage to Republican candidates, particularly in states that disenfranchise former felons in addition to those currently under supervision.

While other barriers to political participation have fallen, some or all felons remain disenfranchised in 48 states. Repeal efforts have won success in several states in recent years, often led by African American state legislators. Moreover, the overall trend in the last 60 years has been one of reenfranchisement rather than disenfranchisement. Since 1947, 23 states have repealed ex-felon disenfranchisement altogether, 5 additional states have partially repealed their bans for some categories of former felons, and a total of 30 states have liberalized their laws to some degree. Still, it remains a striking historical fact that no state has ever completely abolished a felon disenfranchisement law. Given the evidence we have reviewed in this paper, the racial origins and contemporary racial impact of felon disenfranchisement must be taken into account as the continuing viability of these laws is
debated at the state and national levels.


SEE KEYSSAR, *THE RIGHT TO VOTE*, ESP. PP. 162-63, 302-310, FOR A RARE EXCEPTION.


BEHRENS ET AL., "BALLOT MANIPULATION AND THE ‘MENACE OF NEGRO DOMINATION’.”


QUOTED IN CHRISTOPHER MALONE, “‘THE MIND OF BLACKS ARE NOT COMPETENT TO VOTE’: RACIAL VOTING RESTRICTIONS IN NEW YORK,” UNPUBLISHED MANUSCRIPT, PACE UNIVERSITY, 2003, P. 19.


See Manza and Uggen, *Locking Up the Vote*, chap. 8.


Uggen and Manza, “Democratic Contraction?”

The one exception to this generalization was a 1985 case, *Hunter v. Underwood*, 471 U.S. 222 (1985), in which the U.S. Supreme Court rejected provisions of the Alabama felon disenfranchisement law because of clear racial bias in the origins of the law. The controlling case, *Richardson v. Ramirez* (418 U.S. 24 [1974]), upheld the constitutionality of felon disenfranchisement laws as consistent with the intent of the 14th Amendment’s second section, permitting the states to disenfranchise those convicted of “rebellion or other crimes.”


Behrens, et al., “Ballot Manipulation and the ‘Menace of Negro Domination.’”