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# Living Dead in the United States: Felon Disenfranchisement and White Privilege

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University of Northern Colorado  
Greeley, Colorado

Living Dead in the United States:  
Felon Disenfranchisement and White Privilege

A Thesis/Capstone Proposal  
Fulfillment for Graduation with Honors Distinction and  
the Degree of Bachelor of Political Science

A.M. Fletcher

College of Political Science and International Affairs

MAY 2018

**Signature Page**

Living Dead in the United States:  
Felon Disenfranchisement and White Privilege

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**Table of Contents**

Acknowledgements.....	2
Abstract.....	3
Introduction.....	4
Researcher’s Perspective .....	8
Research Paradigm.....	11
Methods.....	13
Theoretical Framework and Data Analysis.....	14
Research Rigor.....	15
Research Findings.....	16
White Privilege .....	17
Race Neutral Polices and White Privilege.....	20
Felon Disenfranchisement and The War on Drugs.....	22
Conclusion and Discussion.....	25
Bibliography .....	30

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I would like to thank those in my family who have supported me through all my endeavors. I hope to carry on the tradition of grit and the unrelenting drive of those who have come before me.

I dedicate this project to my Mom and Dad.  
Thank you.

### Abstract

The purpose of this study is to re-examine the policy of felon disenfranchisement through an analysis of its historical lineage from the Jim Crow Era to the contemporary era of Black Lives Matter and identify the influence of White Privilege in its development. Review of previous research indicates a racial bias in the early implementation of felon disenfranchisement intended to prevent Blacks from exercising the right to vote as well as identifies racial motivations behind the use of the policy until present day. The United States has a history of trying to bar Black people from voting.<sup>1</sup> Disenfranchisement prevents the exercise of full citizenship for felons and ex-felons in the United States. Primary and secondary sources that address the history of felon disenfranchisement will be interpreted through the lens of critical race theory to identify White Privilege in the development of felon disenfranchisement. This study provides a revised way of thinking on historical race relations in the United States and of the racially disproportionate disenfranchisement of Black United States citizens. This research indicates explicit and passive racial bias in the policy of felon disenfranchisement throughout its historical lineage. It further defines the impact of White Privilege in the policy of felon disenfranchisement. This research proves that policies with racially disproportionate outcomes, like felon disenfranchisement, are perpetuated and left unaddressed because of the absence of White voices and White involvement in the conversations regarding these policies.

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<sup>1</sup> Christopher Uggen, Ryan Larson, and Sarah Shannon, “6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016,” *The Sentencing Project* (October 2016): 3.

## Introduction

White Privilege in the United States is directly related to felon disenfranchisement because of the ability of individuals with privilege to overlook the discriminatory effects of felon disenfranchisement. White Privilege is a mindset that views policies with disproportionately effects on communities of color as ‘their’ problem to deal with rather than something that directly involves White people.<sup>2</sup> This study will define the role of White Privilege on the use of felon disenfranchisement through an analysis of its historical legacy and address White Privilege as a mindset that people with privilege use to dismiss discrimination against communities of color. Felon disenfranchisement is an example of a discriminatory policy that disproportionately effects people of color and strips them of their ability to participate in the democratic process. Taken in context of the history of race relations and voting in the Unites States, disproportionate voting restriction continues a trend of White supremacy perpetuated by the inaction and ignorance of White people. The purpose of this study will be to understand the relationship between felon and ex-felon disenfranchisement and the larger narrative of race relations in the US and outline the White Privilege that has perpetuated de facto discrimination.

### Contemporary Felon Disenfranchisement

The Equal Protections Clause of Section 1 of the 14<sup>th</sup> Amendment requires all US citizens to have equal protection of the law and builds off the 5<sup>th</sup> Amendment which requires due process. The law may not be interpreted differently from case to case and must serve all US citizens equally. Felon disenfranchisement is currently constitutional because there is no explicit discrimination against people of color. The Supreme Court’s

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<sup>2</sup>Paula S. Rothenberg, *White Privilege* (New York: Worth Publishers, 2012): 71.

definition of discrimination in policy and practice requires an example of explicit and documented bias in order for a policy to be deemed unconstitutional under the Equal Protections clause of the 14<sup>th</sup> Amendment. According to the Supreme Court, felon disenfranchisement lacks the discriminatory intent that would classify it as an unconstitutional practice.<sup>3</sup> The racially biased outcomes of felon disenfranchisement do not serve as evidence strong enough to classify felon disenfranchisement as an unconstitutional practice because of the precedent set by *Richardson v. Ramirez*. Given the history of deliberate attempts made by the state to restrict voting for Black people in the United States, this is an inaccurate interpretation that ignores the dilution of political representation that is in direct violation of the Equal Protections Clause. As a result, felon disenfranchisement is a legally constitutional tool that has continued a pattern of African American subjugation that began with chattel slavery.<sup>4</sup>

Over 7.4 percent of African Americans are disenfranchised compared to the 1.8 percent of non-African American citizens.<sup>5</sup> Felon disenfranchisement is a relic of de jure racism in the Jim Crow era. During Jim Crow, race neutral policies like literacy tests were used to keep Blacks from voting.<sup>6</sup> These practices have been outlawed because of their racially biased outcomes despite their race neutral nomenclature. Felon disenfranchisement has not been outlawed even with scholars outlining the similarities

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<sup>3</sup>Richard Lippke, "The Disenfranchisement of Felons," *Law and Philosophy*, 20, (2001): 554.

<sup>4</sup>Carol Anderson Ph. D., 2016.

<sup>5</sup>Ibid., 3.

<sup>6</sup>Daniel S. Goldman, "Modern Day Literacy Test?: Felon Disenfranchisement and Race Discrimination," *Stanford Law Review* 57, no. 2 (2004): 611-665.



between legal practices like felon disenfranchisement and illegal practices such as literacy test.<sup>7</sup>

The legal exclusion of African Americans began when official citizenship was granted by the Civil Rights Act of 1866, despite the protest of many in the White population of the time.<sup>8</sup> The use of felon disenfranchisement is a method of race neutral political exclusion with discriminatory results. State legislatures allowed for many other legal forms of discrimination that slowed the full citizenship of African Americans. Most were struck down through the Supreme Court's interpretation of the Equal Protection Clause and the passing the Voting Rights Act of 1965.<sup>9</sup> Felon disenfranchisement remained unaddressed by anti-racist movements until the legality of the practice was solidified in the Supreme Court case of *Richardson v. Ramirez* in 1974.<sup>10</sup>

*Richardson v. Ramirez* challenged felon disenfranchisement on the grounds of its racially discriminatory results, claiming it created tension between Section 1 and Section 2 of the 14<sup>th</sup> Amendment.<sup>11</sup> The California Supreme Court decision stated that felon disenfranchisement extending beyond the completion of time served was unconstitutional under the provisions of the California State Constitution of 1879.<sup>12</sup> The case was appealed to the United States Supreme Court, which reversed the decision and differentiated felon disenfranchisement as an 'affirmative action,' from other state laws that restricted the franchise struck down by the Equal Protection Clause of Section 1 of

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<sup>8</sup> Andrew Dilts, *Punishment and Inclusion* (New York: University Press, 2014) 13-15.

<sup>9</sup> George Brooks, "Felon Disenfranchisement: Law, History, Policy, and Politics", *Fordham Urban Law Journal*, 851, no. 32 (2005): 1-16.

<sup>10</sup> *Ibid.*, 1-16.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

the 14<sup>th</sup> Amendment.<sup>13</sup> The Supreme Court's reversal required explicit racial bias in order to determine felon disenfranchisement to be unconstitutional. This does not include the racially disproportionate demographics of the disenfranchised population. According to the Supreme Court, the fact that felon disenfranchisement disproportionately disenfranchised Black men is not evidence enough to prove the practice as discriminatory.

Felon disenfranchisement remains protected by the Supreme Court's interpretation of the Constitution.<sup>14</sup> Despite the Voting Rights Act of 1980 that further expanded voting rights, almost all decisions on cases regarding felon disenfranchisement followed the precedent set by the Supreme Court in *Richardson v. Ramirez*.<sup>15</sup> The final word on the constitutionality of felon disenfranchisement was established in the 1982 revision of the Voting Rights Act when the burden of proof was placed on the plaintiff to prove evidence of discrimination in the "prosecution or sentencing of felons."<sup>16</sup>

White Privilege, within the socially constructed norms of contemporary United States, does not recognize felon disenfranchisement as a form of discrimination toward communities of color because of the lack of explicit racism in its rhetoric. The ability for those with privilege to ignore forms of de facto discrimination like felon disenfranchisement is a most pervasive and harmful form of that privilege. Felon disenfranchisement must be recognized as a race neutral policy with discriminatory outcomes like the similar policy of literacy test that have been outlawed as unconstitutional. The fact that there is a lack of explicit racist rhetoric in a policy legally

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<sup>13</sup>Ibid.

<sup>14</sup>Ibid., 1-16.

<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

excuses its discriminatory outcomes. This disconnect must be addressed by those with privilege in communion with people of color who are disenfranchised.

### **Researcher's Perspective**

The methodology and research paradigm chosen for this study places emphasis on the role of the researcher's worldview and history. Interpretivist research in a constructivist paradigm addresses the researcher as a key for decoding findings and understanding the chosen research process. Reality is discovered by a researcher in the context of historically, politically, economically, and socially constructed situational frameworks. The researcher's personal reality is the lens through which the research is addressed and reinterpreted and the filter through which conclusions are drawn. In order to better understand the following research, this section will provide a understanding of the researcher's personal background and reality.<sup>17</sup> The methods of this research require me to address my positionality to the research as a form of reflexivity.

Due to the heterogeneous nature of race in the United States, an identification with people of your same skin color is a natural starting point for understanding the world. When I was a child my parents told me that skin color wasn't any different than eye color. I had no conception of race conflict. Only until I was much older did I begin to understand the politics of race. As a child I thought racism was a thing of the past that stayed in the pages of my history textbook. This is the most basic proof of the pervasiveness of White privilege and implicit bias in my personal life.

I was so concerned and confused as to why I couldn't understand racial inequality. To anyone of color, this seems ridiculous. That is why I am doing this research. White privilege not only allows for Whites to succeed, it actively hinders

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Whites from being able to see around it. We elected a Black president, Black people are doctors, lawyers, and millionaires too. But, inequality still exists. As I got older I realized my ignorance originates in a lack of knowledge and understanding, not of Black people, but of White people. I began to learn about systems of oppression that permeate society both actively and passively. In the United States, civil rights have not been increasingly expanding proportionate to a historic march toward equality. In reality, equality is a façade perpetuated by an ongoing restructuring of political policies, government, and society that attempts to build upon corrupt foundations. Racist actors have used the institutions of the United States to solidify racist ideology into the foundation on which government is continuously constructed. Progressive, inclusive movements seek to dull the effects of racism but unintentionally aid the preservation of these ideologies by burying them deeper from sight, crystallizing them in history and, in effect, making them harder to address and remove. The progress of government and so called ‘post-racial politics’ has made them harder to revisit, resulting in veins of historic prejudice within the foundation of government institution. These biases have necrotized, further influencing the social, political, and legal environments. Because of this inability for people to fix the biased foundations of US race relations, contemporary United States US racial equality is a schizophrenic entity torn between colorblindness and affirmative action.

This tension became what I am most passionate about. White people are unable to point out patterns of contemporary racial inequality because they aren’t forced to recognize them. Drawing connections between contemporary racial inequality and historic Black oppression such as slavery are viewed as a conspiracy theory. The

approach of ‘ignore it and it will go away’ is popular when talking about race. *Slavery is over, it’s in the history books, stop blaming history for your circumstance.* When the connections between historic oppression and contemporary race relations are addressed by Blacks they are viewed as self-serving.<sup>18</sup> Racism isn’t understood to be a modern concept. I was afforded the luxury of learning about racism rather than experiencing it.

My research is driven by this colossal misunderstanding of history as well as contemporary race relations. I conduct this research as an expression of my privilege in order to actively address inequalities and institutional oppression. As an individual White woman, I am not personally responsible for racial inequality. However I do benefit from a long standing pattern of exploitation and White privilege and I cannot opt out of it no more than I can change the color of my skin. I have the responsibility to acknowledge my privilege and do what I can to identify inequality in my daily life. This research attempts to identify inequality and exist as a rejection of the inequality I benefit from as well as a step towards the realization of White privilege from someone who is White. This research does not serve as a substitute for the experience of racial inequality and racism. I possess White privilege it no matter if I like it or not. My research is simply an interpretation of racial inequality as understood by someone who benefits from it.

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<sup>18</sup>Peggy McIntosh, “White Privilege: Unpacking the Invisible Knapsack,” in *The Heart of Whiteness: Confronting Race, Racism and White Privilege*, City Lights, September 2005.

### Research Paradigm

This research is conducted through interpretation of the social context of felon disenfranchisement while tracing its historical lineage to further understand the policy as it exists today. Using document review, historical analysis, and hermeneutics this research details the context of felon disenfranchisement. The following section outlines the axiology, epistemology, ontology, and methodology under the paradigm of constructivism under which this research is conducted.

Constructivism emphasizes a balance in representation of viewpoints while refraining from placing value on these views.<sup>19</sup> The researcher must recognize the multiplicity of reality for different people in the same time period and geographic location.<sup>20</sup> Research is conducted through the interaction of the inquirer and the inquired-into.<sup>21</sup> As the researcher, I analyze a reality that I do not experience, yet exists and is shaped by the same social conditions I am a part of. The experience for an individual in the United States changes based on circumstance rather than geography.

Acknowledgement of the researcher's worldview is essential in decoding research.<sup>22</sup> The constructivist paradigm does not view research in a vacuum and takes into consideration the researcher's world view when understanding the research.<sup>23</sup> The axiology of constructivist research requires the researcher to implore principles of social justice.<sup>24</sup> For constructivist research to be ethical it must display the worldview of the

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<sup>19</sup>Donna M. Mertens, "An Introduction to Research," in *Research and Evaluation in Education and Psychology: Integrating Diversity With Quantitative, Qualitative, and Mixed Methods*, 3<sup>rd</sup> ed. (Thousand Oaks: SAGE Publications, 2010), 1-45.

<sup>20</sup>Ibid., 1-45.

<sup>21</sup>Ibid.

<sup>22</sup>Ibid., 1-45.

<sup>23</sup>Ibid.

<sup>24</sup>Ibid.

researcher as well.<sup>25</sup> White Privilege as made it easy for me to ignore what doesn't affect me and this is why I actively choose to try and understand this privilege. My ethical goal will be to recognize my place in the research openly and never assume that simply because I have knowledge on another's reality that I have experienced it. I will attempt to offer my outsider perspective to the ongoing research surrounding racism in the United States without dominating the reality experienced by so many with my interpretation.

The nature of reality in the Constructivist paradigm is an ever evolving active process rather than a sedentary truth to be discovered.<sup>26</sup> The epistemology of interpretivist constructivist research is co-created through the interaction of the researcher to the research.<sup>27</sup> Researches may even have their worldview change throughout the research process and this is considered part of the research and can be included as findings.<sup>28</sup> Objectivity is not possible in the constructivist paradigm because the researcher's reality shapes the results. Context allows for a deeper understanding of the research and what the author is trying to communicate despite the environment in which the research is taking place. My interpretation of felon disenfranchisement is guided by my understanding of the historical context and personal contemporary experience. However, this will never replace the experience of people of color in the United States. My research is unique in its perspective that I hope will add to the discussion of the experiences of people of color in the United States rather than detract from it.

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<sup>25</sup>Ibid.

<sup>26</sup>Ibid.

<sup>27</sup>Ibid.

<sup>28</sup>Ibid.

Reality to be discovered in Constructivist research is not singular.<sup>29</sup> Reality is different for each person and is socially constructed by the people around them, personal experience, and other's interpretation of them.<sup>30</sup> Reality is not singular for one person either, the ontology of interpretivist research can shift with changes in perspective. The goal of constructivist research is to understand multiple realities and I will do so through analysis of historical context and further realization of my own White Privilege.<sup>31</sup>

In Interpretivist research, I am striking a balance between 'stranger-ness' and familiarity with the concept I am discovering.<sup>32</sup> The difference in experiences for Black Americans and White Americans was the internal tension within myself I set out to understand. Statistics for poverty rates, education statistics, police shootings, imprisonment, and disenfranchisement based on race was where I found a power imbalance that I wanted to further understand.<sup>33</sup> I began to reach out to understand the context of the problem through historical literature on Black personhood and citizenship in the United States. In this process I discovered an aspect I wanted to use as the lifeline of my research into the reality of citizenship for Black men. I focused my research around the progression of felon disenfranchisement in the United States as public policy and the role of White Privilege in its inception and manifestation. My research seeks to draw conclusions on the reality of felon disenfranchisement through the controlled process of familiarization and interpretation of a reality I am not a member of.

### Methods

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<sup>29</sup>Ibid.

<sup>30</sup>Ibid.

<sup>31</sup>Ibid.

<sup>32</sup>Dvora Yanow and Peregrine Schwartz-Shea, *Interpretive Research Design: Concepts and Processes*, vol. 2 of *Routledge Series on Interpretive Method* (New York: Routledge, 2012) 1-42.

<sup>33</sup>Ibid., 1-42.



This critical interpretivist research will be conducted as a historical analysis of primary and secondary sources. Using race theory, this research is a reinterpretation of the historical legacy of felon disenfranchisement and White Privilege. A focus on race theory will shed light on the current policy of US felon disenfranchisement and its relationship with contemporary race relations in the United States.<sup>34</sup> This research looks to make connections between felon disenfranchisement of the past and the social context in which it was legitimated and contemporary social parallels with the same policy as it exists today. The research will provide a revisionist view of the history of felon disenfranchisement by further interpreting the social context of the policy throughout history.<sup>35</sup> The framework of White Privilege will be applied to the history of felon disenfranchisement to identify its impact.

Starting with reputable secondary sources by social scientists, political scientists, and historians I will begin to outline current understandings of the policy and interpretations of its historical legacy. These texts will allow me to find additional material in the footnotes that will lead me to primary sources that I will personally review. I will further interpret primary sources such as government documents, Supreme Court decisions, newspapers, and books and attempt to understand the context of these sources. Building a social context around the felon disenfranchisement will help me build a top-down analysis of the policy throughout history and understand the continuity and causation of felon disenfranchisement in the United States.<sup>36</sup>

#### Theoretical Framework and Data Analysis

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<sup>34</sup>Stephen D. Lapan and Marylynn T. Quartaroli, eds., "Evaluating Historical Research," in *Research Essentials* (San Francisco: Jossey-Bass, 2009).

<sup>35</sup>Ibid.

<sup>36</sup>Ibid.

When constructing historical context to better understand policy, the lens through which I look at the data is essential to the conclusions drawn. This research will apply colorblind race theory as defined by Michelle Alexander and the framework of White Privilege that is presented by Paula Rothenburg and Peggy McIntosh. Because of the race neutral language of felon disenfranchisement laws, using ‘colorblind’ race theory reveals the subtleties of race dynamics in the historic lineage of felon disenfranchisement. Using race theory in a constructivist paradigm, the researcher defines different realities and examines how they differ by race.<sup>37</sup> The role of White Privilege is essential to understanding the ways in which de facto discrimination is perpetuated by White ignorance and inaction. The disproportionate effects that felon disenfranchisement has on communities of color can be better understood when an examination of White Privilege and how it keeps White people out of the conversation.<sup>38</sup>

### Research Rigor

The most important part of interpretivist research is the reliability of the conclusions. Trustworthiness is the standard for qualitative research and is established in this research with methods for credibility, transferability, dependability, and confirmability. In order to establish credibility of the research conducted, precise time sampling will be documented within the research. When primary and secondary sources are brought in to the research, the time frame and social context in which this source is taken from will be documented. Transferability is necessary to understand the uniqueness of qualitative research. Thick description of the research being conducted will provide a precise understanding of the specificity of the sources used and the time

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<sup>37</sup>Mertens, “An Introduction to Research.”

<sup>38</sup>Rothenberg, *White Privilege*, 10.

frames that are referenced. While the researcher's world view is essential to decoding conclusions in interpretivist research, the conclusions must withstand certain degrees of confirmability by readers. Triangulation of theories that have already been used in the field of study will be applied to the research and referenced often in the research process and conclusions.

### **Research Findings**

The first section will define White Privilege as a narrative of understanding to conceptualize race relations in the United States both past and present. This section will also address White Privilege and its role in the policy of felon disenfranchisement as well as its role in the recognition of its discriminatory outcomes. The next following section of the research will define the beginnings of felon disenfranchisement as a policy and outline the race politics of the society in which felon disenfranchisement was first proposed and implemented. The third section will link felon disenfranchisement and the phenomenon of mass incarceration as an example of coercive institutional isomorphism under the guise of public safety amidst the war on drugs. The last section will involve a discussion on the findings of this research and provide a synthesis of understanding of felon disenfranchisement and the role of White Privilege in its history. The findings should serve to continue a conversation about racism and race politics that began a while ago but is reformatted with the conceptualization of White Privilege.

## White Privilege

White Privilege is the invisibility of Whiteness in a society that operates on a system of white supremacy.<sup>39</sup> In this system, White people do not fully understand what it means to be White because they don't need to recognize Whiteness, much less the effects of Whiteness and White Privilege on 'others' that are classified by the dichotomy between White and non-White.<sup>40</sup> Race in society is a hierarchy that no one can opt out of. Even if one understands the concept of White Privilege and understands the implications of this privilege on people of color, one cannot give up their privilege. White Privilege is unearned and demarcated by a White appearance which in turn dictates experience. All White people benefit from White Privilege. White Privilege is the assumed normalcy of Whiteness in society. White Privilege views racism as a problem for people of color because that stems from their existence rather than a problem created by the behaviors of Whites. Besides creating hierarchies and social norms, White Privilege is a progressive sustained ignorance of itself. Systems of oppression and subjugation that disproportionately affect people of color go on unaddressed by White people for decades. The ability for White people to ignore systems of oppression that don't affect them is a direct example of White Privilege and is one the largest factor in the perpetuation of these systems. When policies lack explicit racist rhetoric, there is little that can be done to fix the discriminatory outcomes of these policies because individuals with White Privilege assume there is a reason for those outcomes.<sup>41</sup>

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<sup>39</sup>Rothenberg, *White Privilege*, 1-33.

<sup>40</sup>*Ibid.*, 1-33.

<sup>41</sup>McIntosh, "Unpacking the Invisible Knapsack."

Policies like felon disenfranchisement effect both White and Black people but lacks explicit racism. There is explicit racism that would draw scrutiny from a society that has dismantled de jure discrimination after the Civil Rights Movement of the 1960s. Felon disenfranchisement disproportionately effects communities of color but is easily ignored by those who have come to believe that race no longer defines individual experiences in the United States. The fact that disenfranchisement excludes a majority Black population from voting does not qualify as evidence of a racist policy. The Supreme Court and a multitude of lower courts in the United States have solidified the need for the presence of explicit racist intent in a law or practice to qualify said practices as a violation of the equal protection clause of the 14<sup>th</sup> Amendment of the United States Constitution.<sup>42</sup> To dismantle practices that are not legally discriminatory but rather discriminatory in practice, people in a position of social influence must be address these practices. Felon disenfranchisement is a practice that effects communities of color to the extent that can affect outcomes of local and federal elections. This is a threat to the health of a democracy but more importantly, felon disenfranchisement is one element in a birdcage of policies and practices that lock people of color into a status of second class citizenship in the United States. If White people opt out of participating in the active critique and dismantling of policies like felon disenfranchisement, society will sustain a charted course of White supremacy.

For policies like felon disenfranchisement to be addressed as discriminatory because of their outcomes and effects on communities of color, Whiteness can no longer be invisible. White people have the obligation to understand how Whiteness plays a role

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<sup>42</sup>Alexander, *The New Jim Crow*, 103.

in racism in a colorblind society. Felon disenfranchisement keeps people who are otherwise complete members of society from participating in the democratic aspects of that society. This is an example of second class citizenship that exists for mostly Black communities. Black men are the largest group of people that are affected by this policy. White Privilege is seen in the instatement, perpetuation, and support of felon disenfranchisement by its ability to buffer White people from the reality that exists around them and is experienced by people of color. The use of blanket disenfranchisement that disproportionately effects Black men is a tool of White supremacy in its very nature. Within a context of US history, contemporary exclusion of Black voters is at best an oversight and at worst a victory for White Supremacist agenda. However, people with privilege in society are even more responsible for addressing inequalities and especially practices that have explicitly racist outcomes like felon disenfranchisement. Privilege is unearned but can be utilized to boost voices of people do not have it. Just because something is legal, does not make it constitutional.

Colorblind racism describes non-explicit racism as beacuse the modern age do not allow explicitly racist practices to be socially accepted. White people have become 'colorblind' to policies with an extensive history of racially discriminatory effects that continue to exist without productive modification. Policies such as felon disenfranchisement do not contain racially explicit language but succeed in disproportionately affecting people of color because of our colorblind society that does not recognize this institutional bias.<sup>43</sup> By addressing the presence of White Privilege that

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<sup>43</sup>Ibid..

allows those with it to ignore discrimination, felon disenfranchisement can be further understood as a practice that has slipped through the cracks of a colorblind society.

### Race Neutral Polices and White Privilege

Felon disenfranchisement remains a relic of the Jim Crow era racism because of its race neutrality.<sup>44</sup> The outcomes of felon disenfranchisement is similar to the discrimination of Jim Crow laws but the policy is still not interpreted to be discriminatory because of its race neutral language.<sup>45</sup> The of discrimination of felon discrimination exists in the application of the policy. Additionally, it thrives when Whites are affected too. The existence of Whites in the disenfranchised population is used to automatically dismiss claims of racial bias. Felon disenfranchisement has disproportionately banned Blacks from the ballot box but is legitimated by the presence of Whites who experience the same disenfranchisement.<sup>46</sup> When there is an absence of racially biased intent in the language of this policy, the disproportionate results are not considered evidence of discrimination.<sup>47</sup> Legislators have argued that, “if its blacks losing the right to vote, then they have to quit committing crimes. We are not punishing the criminal. We are punishing conduct...”<sup>48</sup> Contemporary colorblind society along with Supreme Court precedent creates an environment where felon disenfranchisement is not interpreted to be racially biased even with the existence of racially disproportuante effects.<sup>49</sup>

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<sup>44</sup>Daniel S. Goldman, “Modern Day Literacy Test?,” 626.

<sup>45</sup>Ibid., 611-633.

<sup>46</sup>Alexander, *The New Jim Crow*, 256.

<sup>47</sup>Ibid.

<sup>48</sup>Warren Wise, “House Doesn’t Kill Bill to Delay Felon Voting,” *Charleston (South Carolina) Post and Courier*, February 16, A3.

<sup>49</sup>Robert Russa Moton, *What the Negro Thinks* (Garden City, NY: Doubleday, Pages & Co., 1929): 6.

Literacy test, poll taxes, and the Grandfather Clause were all race neutral laws that relied on discriminatory implementation to achieve such disproportionate results at the ballot box.<sup>50</sup> Felon disenfranchisement was utilized to a lesser degree because of the success of these other policies. As the disproportionate results became more apparent, literacy tests, poll taxes, and the Grandfather Clause were deemed unconstitutional and outlawed.<sup>51</sup> Felon disenfranchisement has succeeded in locking segments of society into second class citizenship and the majority of these communities resemble those effected by the Jim Crow era.<sup>52</sup> The similarities between literacy tests and felon disenfranchisement rely on the social structures.<sup>53</sup> Literacy were given to Black people because it was assumed they had less schooling than Whites and that a test of ‘literacy’ would provide a legitimate restriction on Blacks that seemed less race neutral.<sup>54</sup> Literacy tests also kept certain White people from voting when they were administered to Whites just like felon disenfranchisement also keeps a certain number of Whites from voting.<sup>55</sup> However, the ‘understanding clause’ that allowed individuals to decide who to administer the test to was the reason that the test was mostly given to Blacks and successfully barred Black people from voting.<sup>56</sup> Felon disenfranchisement provides a similarly ‘race neutral’ reason to keep people of color from voting that relies on social structures that disproportionately affect people of color.<sup>57</sup> Yet, felon disenfranchisement continues to be kept in practice even with its similarly discriminatory impacts on political

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<sup>50</sup>Daniel S. Goldman, “The Modern Day Literacy Test?.” 611-633.

<sup>51</sup>Ibid., 623-624.

<sup>52</sup>Ibid., 611-633.

<sup>53</sup>Ibid., 614.

<sup>54</sup>Ibid., 614.

<sup>55</sup>Ibid., 617.

<sup>56</sup>Ibid., 617.

<sup>57</sup>Ibid., 611-633.



representation.<sup>58</sup> When demographics are unable to advocate on their own behalf because of legal precedence, the constitutionality of the policies that perpetuate these injustices should be brought into question.

Today, people of color are more likely to be stopped by police, found guilty of a felony, and sentenced to longer prison terms than Whites even though there is no evidence of increased criminality among communities of color.<sup>59</sup> The privilege that allows Whites to ignore social norms that continue to subjugate and disenfranchise large numbers of people of color is the reason that felon disenfranchisement is so successful in locking communities of color out of the democratic process. The strong equation of Blackness and criminality did not happen by accident and is a main reason that people of color are disproportionately disenfranchised because of a felony. While Black men have historically been viewed by Whites and society as dangerous and criminally inclined by some White political elites, the war on drugs and resulting mass incarceration of Black men is a huge contributing factor to the exponential growth in disenfranchised people.

#### Felon Disenfranchisement and The War on Drugs

Disparity in the criminal justice system directly translates into high rates of disenfranchisement among communities of color.<sup>60</sup> The link between communities of color and crime that occurred during the war on drugs built upon the notion of Black men and criminality that was perpetuated during the Jim Crow era.<sup>61</sup> The emphasis on the narrative of crime rather than race separates explicit and implicit bias. The discussion

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<sup>58</sup>Manza and Uggen, 2008.

<sup>59</sup>Alexander, *The New Jim Crow*.

<sup>60</sup>Nicole D. Porter, "Unfinished Project of Civil Rights in the Era of Mass Incarceration and the Movement for Black Lives," *Wake Forest Journal of Law & Policy* 6, no. 1 (2016): 1-34.

<sup>61</sup>Alexander, *The New Jim Crow*.

becomes about criminality and is easier to have a race neutral justification for felon disenfranchisement even though the outcomes are not. Research on the legality of felon disenfranchisement exposes the discriminatory practices of the US Justice System that allows disenfranchisement to dilute political influence in communities of color. Scholars such as Michelle Alexander see mass incarceration as the “new Jim Crow” because of the impact a felony charge has on one’s ability to find housing, food benefits, employment, or voting rights even without a felony conviction.<sup>62</sup> Millions of Black and Brown men were rounded up for crimes they are disproportionately targeted for.<sup>63</sup> The war on drugs is the largest contributor to mass incarceration with the goal of reducing crime and taking a ‘volume approach’ to drug enforcement.<sup>64</sup> The entire period of the war on drugs lasted from about 1985 to 2000 but the impact of the exponential increase in the prison population has on felon disenfranchisement and political representation for communities of color, especially Black men.<sup>65</sup> The war on drugs succeeded in reaffirming race prejudice and linked criminality to Black men while simultaneously barring them from voting because of felon disenfranchisement policies.<sup>66</sup>

The political and cultural climate of the time when the war on drugs began encouraged the capture and imprisonment of ‘drug kingpins’ in order to help those on drugs get clean and keep the streets safe from the menace of drugs.<sup>67</sup> The war on drugs was a political campaign that promised to solve very real problems with a ‘tough on

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<sup>62</sup>Alexander, *The New Jim Crow*, 2.

<sup>63</sup>*Ibid.*, 70-74.

<sup>64</sup>*Ibid.*, 12.

<sup>65</sup>*Ibid.*, 87.

<sup>66</sup>Angela Behrens, Christopher Uggen and Jeff Manza, “Ballot Manipulation and the ‘Menace of Negro Domination’: Racial Threat and Felon Disenfranchisement in the United States, 1850-2002,” *American Journal of Sociology* 109, no. 3 (2003): 574.

<sup>67</sup>*Ibid.*, 49.

crime' approach.<sup>68</sup> Legislation like the Anti-Drug Abuse Act of 1986 symbolizes a national attitude toward drug use, with minimum sentencing laws that have succeeded in locking up petty drug criminals for longer periods than convicted murders in other countries.<sup>69</sup> Such penalties go beyond disenfranchisement demarcated by a felony status.

Restricting access to housing, food stamps, jury duty, gun possession, education, and employment points to the creation of a racial caste. This caste is the result of coercive measures of institutional isomorphism that has linked legal, political, and social institutions together. Police departments were given large amounts of money as incentive and reward for increased drug arrests.<sup>70</sup> Access to much needed funding prompted the officers of these departments to continue rounding up people of color who were easy targets policing such as 'broken windows policing' and 'stop and frisk.'<sup>71</sup> The federal government also passed legislation that made it illegal for individuals with drug felony charges to live in public housing or receive food stamps. This policy also entitled landlords to evict tenants that allowed drug offenders to stay at their homes even if they were not aware of the felony.<sup>72</sup> A felony became a black mark on those who relied on federal assistance, leaves them without access to aid and support even when they completed their sentence. Violent crime is a product of poverty and when communities of color are locked into areas of poverty, violent crime rises in these communities. The narrative of 'tough on crime' politics has further perpetuated stereotypes that Black men are naturally more violent similar to the Jim Crow era. These stereotypes have increased

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<sup>68</sup>Alexander, *The New Jim Crow*, 48.

<sup>69</sup>*Ibid.*, 87.

<sup>70</sup>*Ibid.*, 74-77.

<sup>71</sup>*Ibid.*, 80-89.

<sup>72</sup>*Ibid.*, 147.

‘colorblind’ conversations on felon disenfranchisement that focus on ‘the criminal’ rather than the racial demographics of the disenfranchised population.

### **Conclusion and Discussion**

Race relations are locked in an institutional network, sustained by public opinion, social hierarchy, and economic gridlock.<sup>73</sup> This section reviews the impact of felon disenfranchisement of communities of color and the privilege that has dismissed these outcomes.

The majority of those who cannot vote are people of color that are otherwise full members of society that are out of prison. Even after serving their sentences, ex-felons cannot participate in the democracy that they are otherwise full members of. Disenfranchisement is morally suspect because of the lack of evidence that disenfranchisement has any punitive, rehabilitative or deterrent effect on crime.<sup>74</sup> The United States is virtually the only democracy in the world that has blanket restrictions for voting rights due to a felony status.<sup>75</sup> Even with the overwhelming evidence that proves felon disenfranchisement disproportionately effects communities of color, felon disenfranchisement is not discussed by Whites in terms of race but rather criminality. This conversation continues without the fact that there is no evidence of increased non-violent criminal activity in communities of color to support the disproportionate felony charges. The war on drugs, in summary, conflates of people of color and criminality.

The similarities between the war on drugs and the Jim Crow era lies in its colorblind racism. The Jim Crow laws systematically barred Black people from the same

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<sup>73</sup>Brandi Blessett, “Disenfranchisement: Historical Underpinnings and Contemporary Manifestations,” University of Central Florida (Spring 2015): 3-43.

<sup>74</sup>Lippke, “The Disenfranchisement of Felons,” 555.

<sup>75</sup>Christopher Uggen, “Felon Voting Rights and the Disenfranchisement of African Americans,” *Souls* 5 no. 4, (2003): 48.

rights as Whites with policies that were progressively less and less racially explicit. The connection between Black men and criminality that was perpetuated in the Jim Crow era and then reinforced during the war on drugs has been used as a buffer separating implicit and explicit racism. White Privilege allows for people to think of felons and ex-felons as undeserving of the franchise and promotes a culture that turns away from felon disenfranchisement because ‘they deserve it.’ This has allowed for White Privilege to ignore the racial demographics of those who are disenfranchised and overly policed. While explicit racism fading away, it is being replaced by conversations and policies that have racially biased outcomes without the explicit racism. These policies in the Jim Crow era included many punitive sanctions of what were thought of as ‘Black crime’ and the resulting restriction of rights based on the claim that these restrictions targeted criminals rather than people of color.<sup>76</sup> The same narrative was used in the war on drugs. Areas stricken with poverty were painted as drug saturated areas without concrete evidence. These practices were sanctioned by a moral panic that legitimated the war on drugs. The resulting mass incarceration of majority Black and Brown men has left many still behind bars and even more in our community with a social stigma that locks them into a second-class citizen status. These people are less able to break out of the cycle of poverty or participate in the democratic process. The war on drugs has subsided but the result has been a massive population of mostly people of color that are locked out of our democratic process.

The social shift away from de jure White supremacy delegitimizes evidence of an oppressive political and legal landscape in contemporary United States. Race neutral

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<sup>76</sup>Behrens, Uggen and Manza, “Menace of Negro Domination,” 572.

policies that have disproportionate effects and the resulting social hierarchies perpetuate a race biased system. Felon disenfranchisement strips oppressed populations of the necessary political power to advocate for themselves in representative liberal democracy.<sup>77</sup> Early in US history, the “menace of Negro domination” has been addressed by political elites with policies such as felon disenfranchisement in order to keep White people the primary beneficiaries of the political process.<sup>78</sup> This history has been replaced by measures that have attempted to equal the political landscape in the Civil Rights Movement that expanded the franchise to marginalized communities. These measures have not been entirely successful. The fact that millions of people of color are permanently disenfranchised remains a problem for those who wish to dismiss contemporary racial discrimination at an institutional level.<sup>79</sup> Entire elections could have produced different outcomes if disenfranchised people had been granted access to the ballot.<sup>80</sup> These outcomes do not fall along partisan lines and would have threatened the success of both Democratic and Republican candidates in local and national elections.<sup>81</sup> Felon disenfranchisement is not simply a hindrance on paper and actually has effects that change the way our democracy progresses. The disenfranchisement of people of color is not simply a social injustice, but a democratic one. A recognition of the systems of injustice that subjugate people of color is necessary by those who are not as effected by it in the same way. Deservingness and criminality both perpetuates a race neutral

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<sup>77</sup>Dilts, *Punishment and Inclusion*, 8.

<sup>78</sup>Behrens, Uggen and Manza, “Menace of Negro Domination,” 569.

<sup>79</sup>Sentencing Times, 2017.

<sup>80</sup>Christopher Uggen and Jeff Manza, “Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States,” *American Sociological Review* 67, no. 6 (2002): 777-803.

<sup>81</sup>Uggen and Manza, “Democratic Contraction?,” 794-799.

conversation on felon disenfranchisement and is perpetuated by it. The cycle of poverty that effects people of color is both a product of and perpetuated by felon disenfranchisement as a restriction of full citizenship for those who are otherwise full members of society.

Even as our society begins to recognize the injustice of felon disenfranchisement through the Black Lives Matter movement and the Sentencing Project, privilege is pervasive in the way it is addressed. The more insidious problem lies in the social norms that perpetuate an ‘us versus them’ mentality that is bolstered by White Privilege.<sup>82</sup> White Privilege is something that all White people benefit from no matter what they believe or think about race. But this is not to say that all White people try to consciously oppress people of color for their own gain. Explicit racism is fading because most people recognize that there is no difference between people who have different skin colors. While this research argues that colorblind racism has taken the place of explicit racism and functions the same way, most people do not intend to buy into these colorblind racist narratives. Recognition and rejection of these narratives is most important in dismantling systems of oppression.

Felon disenfranchisement was proposed at many constitutional conventions that were held before the Civil War and late into the 19<sup>th</sup> century with the explicit goal of curbing ‘criminal interests.’<sup>83</sup> In some cases such as Alabama in 1901, disenfranchisement was proposed as a direct response to the “menace of negro

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<sup>82</sup>Holloway, *Living In Infamy*, 32.

<sup>83</sup>John Dinan, “The Adoption of Criminal Disenfranchisement Provisions in the United States: Lessons from the State Constitutional Convention Debates,” *Journal of Policy History* 19, no. 3 (2007): 282-312.

domination” at the ballot box.<sup>84</sup> Racial prejudice has never been far from the policy of felon disenfranchisement and it continues to be the most effective means of Black and Brown democratic restriction. We cannot blame poverty for the racially disproportionate outcomes of policies whose genesis is ripe with White supremacy. Even in 1899 the ‘well-meaning White folk’ have showed sympathy for the less fortunate, “His lot is hard, indisputably, but he has hitherto borne it so cheerfully as to hold the sympathy of the white people.”<sup>85</sup> The time for ‘sympathy’ and charity is over.

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<sup>84</sup>Behrens, Uggen and Manza, “Menace of Negro Domination,” 569.

<sup>85</sup>“The Race Problem in the South,” *The New York Times*, August 27, 1899.



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