12-2007

Felony Disenfranchisement Legislation: A Test of the Group Threat Hypothesis

Angel Dawn Geoghagan
University of Tennessee - Knoxville

To the Graduate Council:

I am submitting herewith a dissertation written by Angel Dawn Geoghagan entitled "Felony Disenfranchisement Legislation: A Test of the Group Threat Hypothesis." I have examined the final electronic copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Sociology.

Hoan Bui, Major Professor

We have read this dissertation and recommend its acceptance:

Lois Presser, Sherry Cable, Deborah Baldwin

Accepted for the Council:

Carolyn R. Hodges

Vice Provost and Dean of the Graduate School

(Original signatures are on file with official student records.)

To the Graduate Council:

I am submitting herewith a dissertation written by Angel Dawn Geoghagan entitled "Felony Disenfranchisement Legislation: A Test of the Group Threat Hypothesis." I have examined the final electronic copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Sociology.

_____

Hoan Bui, Major Professor

We have read this dissertation
and recommend its acceptance:

_____

Lois Presser

_____

Sherry Cable

_____

Deborah Baldwin

Accepted for the Council:

_____

Carolyn R. Hodges, Vice Provost
and Dean of the Graduate School

(Original signatures are on file with official student records.)

FELONY DISENFRANCHISEMENT LEGISLATION:

A TEST OF THE GROUP THREAT HYPOTHESIS

A Dissertation

Presented for the

Doctor of Philosophy Degree

The University of Tennessee – Knoxville

ANGEL DAWN GEOGHAGAN

DECEMBER 2007

Acknowledgments

No one completes a dissertation by themselves; I may have done the writing, but I had an excellent support system along the way. Thank you to my committee for the tireless reading and rereading of the many drafts presented to them, they've read this study almost as much as I have. I'm not sure who's happier at this point – them or me.

A big "thanks" goes to my friends, who are like family in so many ways. Suzette kept watch over my cats on many occasions when I couldn't be around and provided a sturdy support when I felt I could not go on. Paul, what can I say other than, coffee? The coffee meetings at the Hixson office kept me sane on those days that I wanted to jump. James kept me laughing and always kept my appetite for wings and a cold beer satiated. Last, but certainly not least, Anne. Who else in the world could have drug me kicking and screaming through this process other than you. The desserts helped – you gotta love chocolate!

Family is, and always has been, the biggest rock in my life. Mom and dad you are the best and have been my biggest cheerleaders along the way. Without you I would not have even attempted such an undertaking – so maybe I shouldn't thank you after all!?!?! The biggest boost either of you ever gave me was instilling in me the belief that I could do anything I set my mind too. If there is one thing I have learned about the process of higher education it's that perseverance matters more than intellect – sometimes you just have to wear 'em down.

Lastly, thanks to Buddha and Smokie, they can't read, but somehow they will know if I don't thank them for the support they provided. Thanks for lying on the papers I was in the process of reading or writing, for all the late-night hairballs and for reminding me that your food dish was not always up to par! Nothing keeps you grounded like furry friends.

Abstract

The group threat hypothesis is part of the conflict theoretical perspective, which has been one of the most dominant and useful theories in the fields of criminology and criminal justice for decades. The usefulness of this perspective relates to the understanding it provides of how the law can be used by those in power as a measure of control. The use of law as a method of control has a long history in the US society, and there are many examples from which to pull. This project examines the use of one set of laws, felony disenfranchisement legislation, to determine if these laws can be seen as a method for controlling a subgroup of the population. Historically, felony disenfranchisement legislation has been a part of the American legal system from the founding of this country. While the laws have changed many times, the constant has been an effort to disenfranchise a segment of the population deemed as dangerous and prevent such groups from participating in the political process through their votes. Using data on African American population, arrests, and incarceration, this study tests if the strictness of disenfranchisement legislation is associated with the size of African American population, as well as African American arrest and incarceration rates. Both qualitative and quantitative methods were used to understand the nature of felony disenfranchisement legislation and to determine if disenfranchisement legislation could be used as a tool to control African Americans. The qualitative analysis indicates that African Americans are more impacted by disenfranchisement laws in two regards: the criteria that leads to

disenfranchisement and the requirements for vote restoration. However, the research hypotheses are partially supported by quantitative analysis. That is, while results indicate that the proportion of African Americans in a state is correlated to the strictness of a state's disenfranchisement law, there is no relationship between the arrest and incarceration rates and either the strictness of disenfranchisement legislation or the difficulty of the vote restoration procedures. These results point to limitations of using the group threat hypothesis to understand the relationship between disenfranchisement law and criminal justice operation.

Table of Contents

List of Tables

<u>Chapter 1: Introduction</u>

The group threat hypothesis is part of the conflict theoretical perspective, which has been one of the most dominant and useful theories in the fields of criminology and criminal justice for decades. The usefulness of this perspective is the understanding it provides of how the use of the law provides a measure of control to those in power. The use of law as a method of control has a long history in American government and there are many examples from which to pull. This project examines the use of one set of laws, felony disenfranchisement legislation, to determine if these laws can be seen as a method of controlling an entire segment of the population. More specifically, this study is an examination, not of the disenfranchisement laws themselves, but rather the group threat hypothesis is used to understand the nature of disenfranchisement legislation and policies.

The disenfranchisement of persons convicted of a felony offense, that is, the removal of voting rights, has deep roots in the American legal system, and disenfranchisement laws have a firm foundation in Supreme Court decisions and state laws. For example, in *Reynolds v. Sims*, 377 U.S. 533 (1964), the court held that, although the right to vote was essential to a democratic society, felony disenfranchisement legislation was acceptable. In *Richardson v. Ramirez*, 418 U.S. 24 (1974), the court held that disenfranchisement legislation were not inconsistent with the Fourteenth Amendment, which stated that all citizens were guaranteed equal treatment under the law, and therefore, disenfranchisement

was viewed as an acceptable form of punishment. The roots of these laws are in the concept of "civil death" found in English common law and Ancient Roman legal codes (Parkes, 2003). "Civil death" involved the sacrifice of all land holdings, the inability to hold office, and the loss of any right to vote for those who violated laws. Denial of the right to vote of those who have violated the law continues to be practiced in the United States, although it has been abandoned in other democratic nations, such as Great Britain and Germany (Fellner and Mauer, 1998; Mauer, 2002; Parkes, 2003). Many recent changes made to United States disenfranchisement laws have further enhanced the restrictions (Fellner and Mauer, 1998).

A discussion of contemporary felony disenfranchisement legislation is not as simple as stating that, once a person is convicted of a felony, they are permanently disenfranchised. There are different levels of disenfranchisement. Generally, however, one can narrow the levels of disenfranchisement into three broad categories (Taormina, 2003). First, disenfranchisement may be mandated for only the period of incarceration for a felony offense (Taormina, 2003). That is, once released from prison, voting rights are restored. Second, a person can be disenfranchised for the period of incarceration plus a predetermined time during post-incarceration release (Taormina, 2003). For example, the state of Alaska mandates that a person be disenfranchised during incarceration as well as throughout any period of parole (Alaska Statute § 15.05.030). Lastly,

disenfranchisement can occur on a permanent basis upon conviction of a felony offense (Taormina, 2003).

However it is applied, the literature has suggested that felony disenfranchisement is a method of social control of groups (Behrens, Uggen, and Manza, 2003; Fellner and Mauer, 1998; Mauer, 2002; Pettus, 2002). In this case, control is exercised by limiting voting rights. The act of voting is important to the political participation in a democratic society as it ensures individuals have a voice to effect change. Full voting participation by all citizens protects everyone, as it prevents a small majority from utilizing power to dominate. According to Justice Thurgood Marshall, "a temporal majority could use such a power to preserve inviolate its view of the social order simply by disenfranchising those with different views" (Marshall in dissent, *Richardson v. Ramirez*, 418 U.S. 24, 1974).

With the national war on drugs and other tough-on-crime legislation, there has been an increased emphasis on controlling offenders in American society (Garland, 2001; Tonry, 1995). This control can be seen in the use of mandatory minimum sentencing, three-strikes laws, and other legislation designed to strengthen current legal sanctions (Tonry, 1995). The United States has seen a 35% increase in prison incarceration in the last decade, and that number is expected to increase (Tonry, 2004; United States Department of Justice, 2004). With current disenfranchisement laws in place, increased prison incarceration rates have resulted in large numbers of disenfranchised individuals.

African Americans represent only 13% of the United States population, but make up 45% of the prison population (Census, 2000; United States Department of Justice, 2004). The disproportionate racial make-up of incarcerated offenders and the use of felony disenfranchisement codes create disproportionate disenfranchisement of African Americans. As a consequence, African Americans are not fairly represented in political decisions and are unable to participate in the political process to address the grievance of unfair representation.

These race effects suggest the utility of the conflict perspective in examining felony disenfranchisement laws (Behrens, Uggen and Manza, 2003; Ewald, 2002; Fletcher, 1999; Giles and Kaenan, 1994). Conflict theory is one of many theoretical perspectives utilized to explain the United States criminal justice system and its operation. Conflict theory argues that power, either the desire to attain it or maintain it, motivates individuals and groups to control others (Chambliss and Seidman, 1971; Quinney, 1997). Consistent with this approach, the group threat hypothesis offers particular theoretical promise. The group threat hypothesis is based upon the conflict perspective and is therefore similar in orientation. However, while conflict theory emphasizes interests (group or self) and power in general, it does not provide a clear definition of conflict of interest or conflict of power. The group threat hypothesis focuses on a specific situation of conflict of interests and power, meaning the threat posed to the dominant group by minority groups, in this case racial minorities. This threat causes race prejudice among members of the dominant group and they attempt to re-

establish their dominant position by various means, including aggression, discrimination, violence, social/crime control (Blumer, 1958). Blumer (1958) argues that "essential to race prejudice is a fear or apprehension that the subordinate racial group is threatening, or will threaten, the position of the dominant group. Thus, acts or suspected acts that are interpreted as an attack on the natural superiority of the dominant group, or an intrusion into their sphere of group exclusiveness, or an encroachment on their area of proprietary claim are crucial in arousing and fashioning race prejudice. These acts mean 'getting out of place'" (p. 4). The group threat hypothesis posits that those in power will attempt to control any group *perceived* to be a threat to that power (Blalock; 1967; Blumer, 1958). It is the control of a class based upon the *perception* that they are a threat to the majority that distinguishes the group threat hypothesis from the larger conflict perspective. That is, the group threat hypothesis focuses on *perception*, not necessarily reality. Those in power formulate and utilize laws to control those that *might* undermine their power. Reliance on the concepts of power and control has made both the conflict perspective and the group threat hypothesis effective tools in explaining criminal sanctions (Black, 1980; Beirne and Quinney, 1982; Chambliss, 1995; Collins, 1984; Olzak, 1992). These concepts also suggest the utility of the conflict perspective generally, and the group threat hypothesis specifically, in explaining civil sanctions connected with criminal sanctions, such as felony disenfranchisement. Scholars on felony disenfranchisement have used both Marx's concept of "dangerous class" and the

group threat hypothesis' concept of "negro menace" to explain the disproportionate representation of minorities in the disenfranchised population (Behrens, Uggen and Manza, 2003).

Although felony disenfranchisement has been discussed in the literature, understanding of its nature and its effects on minority populations is still limited. Few empirical studies of disenfranchisement explore the impact of these codes on minorities nationwide (Behrens, Uggen and Manza, 2003; King and Mauer, 2004; Parkes, 2003). Additionally, although the group threat hypothesis has promising explanatory powers for the persistence of disenfranchisement, the hypothesis has not been tested sufficiently to validate it as an explanation for the laws specifically as an expression of power and control. Problems such as sample size and data affect the generalizability of the research findings to date (Behrens, Uggen and Manza, 2003; Cardinale, 2004; King and Mauer, 2004; Mauer and Kansal, 2005). For example, King and Mauer (2004) utilized data for only one major metropolitan area (Atlanta, GA), Cardinale's (2004) study included interviews from fifty persons in Los Angeles, and Mauer and Kansal (2005) examined data on disenfranchisement and restoration for fourteen states. Additionally, even when state-level and national-level data have been used, as in Behrens, Uggen, and Manza (2003), the data gathered failed to include information regarding the diversity of state's disenfranchisement laws and the voting restoration procedures. State differences in strictness of disenfranchisement and restoration procedures were not fully examined. Most

research on the topic has addressed state differences on the strictness of laws that remove the vote from offenders, but the actual voting restoration processes of these states have not been addressed. Restoration processes, which vary from automatic restoration to mandating multiple requirements, may enhance our overall understanding of how strict these state laws may be and what effects these laws have on former offenders specifically and on voting generally. For example, a state may have a strict disenfranchisement law that would remove the vote of any offender once they have committed a felony offense, but may have an automatic restoration process. This state law may, in fact, be less strict overall than a state that disenfranchises only when the offender is incarcerated, but makes that disenfranchisement permanent. Not examining differences in strictness of disenfranchisement and restoration procedures likely masks state differences in the divergent effects of disenfranchisement laws on racial minorities and obscures explanation of the laws themselves.

To address some of the problems in the literature, this study examines disenfranchisement legislation and its effects on the African American population. The specific purpose of this study is to test conflict theory, using group threat hypothesis to understand the nature of disenfranchisement laws. Because conflict theory and the group threat hypothesis focus on power and control by the majority and further argue that law is used as a method of control over those that may threaten the majority, conflict theory and group threat hypothesis could explain the nature of disenfranchisement laws. That is, disenfranchisement laws

could be explained as being an additional control mechanism utilized by the majority to control a perceived threat. Because the group threat hypothesis may help explain how a perception of threat from a minority group might lead to greater emphasis on controlling the minority group, through the use of disenfranchisement laws, the research hypotheses for this project are drawn from the group threat hypothesis. Additionally, although Blalock's initial threat hypothesis was not specific to African Americans as the threatening group, given the history of racial prejudice directed towards African Americans (Chapter discusses this in more detail) the focus of this study will be on the African American population. Further, although African American arrest and incarceration rates may not precisely fit with Blalock's assessment of the size of the minority population being considered a threat, the increase in arrests and incarceration of African Americans may reflect, or may be a result of, the effort to control the perceived threatening group. Based upon Blalock's (1967) concept of racial threat being related to the relative size of a minority population, this study measures racial threat, in part, as the number of minorities arrested and incarcerated. The argument is that as the number of African Americans in a state increases, the perception among the dominant class is that of an increase of power of African Americans. To diminish this perceived increase in power, the ruling class creates legislation aimed at controlling African Americans. This legislation is then enforced by the criminal justice system that acts as the control apparatus of the ruling class. The criminal justice system is then utilized to

control African Americans by enforcing the laws through arrest and then through incarceration of more and more African Americans. Ultimately then, the criminal justice system generally, and felony disenfranchisement legislation specifically, act as control mechanisms over those considered a threat to the ruling class. Therefore, the use of African American arrest and incarceration statistics is also important as a measure of power a perceived threat. As such data on African American arrest and incarceration rates are included as a measure of group threat.

This study tests the following hypotheses:

1) The greater the proportion of minorities in a state's population, the more restrictive the state's disenfranchisement laws;

2) The more restrictive a state's disenfranchisement laws, the higher the state's rate of minority arrest and incarceration; and

3) The higher a state's rate of minority arrest and incarceration, the more difficult the voting restoration procedures.

Disenfranchisement legislation, voting restoration laws as well as information on racial composition of arrest, racial composition of incarceration and racial composition of population in 50 states and the District of Columbia was used to test these hypotheses. A more detailed description of the methods used for analysis is presented in Chapter 4.

This study is important for a variety of reasons. First, this study will contribute to the literature of conflict theory and the group threat hypothesis by

providing an additional test of the group threat hypothesis. Secondly, this study

will improve understanding of the nature of disenfranchisement laws. This study

will accomplish this understanding through a qualitative examination of the

disenfranchisement laws in each state. Additionally, the voting restoration

procedures for each state will also be closely examined. By examining the laws

and the restoration procedures it is believed that a deeper understanding of the

nature of disenfranchisement can attained, going beyond simply an examination

of the numbers of the disenfranchised. Lastly, this study should contribute to the

knowledge of how law is used as a control mechanism generally, and how law is

used to control racial minorities specifically. By examining the laws themselves,

as well as the data on arrest and incarceration of minorities, the impact on racial

minorities should become clearer. The study, then, will ultimately improve

knowledge about racial relations in the criminal justice system. A deeper

understanding of the impact disenfranchisement laws have on specific groups

may assist in the creation of laws that are equal in design and effect.

Chapter 2: Disenfranchisement in the United States

This chapter reviews the literature on disenfranchisement in general and the disenfranchisement of those who have committed a felony offense in particular. This review begins with a selective history of disenfranchisement in the United States, followed by an examination of contemporary felony legislation. A history is needed in order to establish a foundation for the current state of disenfranchisement codes. This chapter concludes with an examination of research on disenfranchisement as well as an evaluation of the gaps in the current literature.

History of Disenfranchisement in the United States

Disenfranchisement is rooted in ancient Greek and Roman times (Parkes, 2003). In Europe, during medieval times, persons who violated the law of the land in an "infamous" manner were subject to "civil death" (Fellner and Mauer, 1998; Parkes, 2003). Civil death entailed "the deprivation of all rights, confiscation of property, exposure to injury and even to death, since the outlaw could be killed with impunity by anyone" (Fellner and Mauer, 1998, p. 2). The idea of "civil death" was continued into English law in the form of "civil disabilities" (Brodie, 1991). According to Brodie (1991), civil disabilities entailed not simply the loss of the franchise, but the loss of other liberties as well, such as the loss of the right to own property, the ability to inherit and bestow wealth, the right to hold public office, the right to file a lawsuit, and the right to execute any other legal function.

Although not all aspects of 'civil death' or 'civil disability' were brought over to America from England, the disenfranchisement of criminal offenders was. Nearly all of the thirteen original states had some form of criminal disenfranchisement and with the growth of the country came the expansion of the disenfranchisement laws (Fellner and Mauer, 1998). According to Fellner and Mauer (1998), by the middle of the 1800s well over half of the then 34 states making up the United States had some form of law that disenfranchised criminal offenders. It is, however, important to note here that during this time in America, felons were far from the only ones lacking the rights to suffrage. Those without property, women, African-Americans, and those deemed illiterate and or feeble-minded, were also denied the right to vote in the early period in our country's history (Porter, 1969; Keyssar, 2000). In fact, suffrage was far from universal, as it was effectively limited to those wealthy white men who owned property, roughly six percent of the entire population (Porter, 1969; Keyssar, 2000).

The United States Constitution and the Right to Vote

Although voting is one of the most basic civil rights, the Constitution originally drafted by the country's forefathers failed to enumerate voting rights for any specific population or group (Parkes, 2003; Weedon, 2004). In fact, the Constitution does not provide American citizens with a right to vote (Parkes, 2003). Additionally, there is no Constitutional guarantee of elections of government officials, nor is there a specific enumeration of the qualifications of those who can and cannot vote (Parkes, 2003). Rather, the Constitution leaves it

up to the states to determine those qualifications the voter must have (U.S.

Constitution, Article I, Section 2).

Since the time the Constitution was drafted, however, amendments have

been made to advance civil liberties through the enumeration of voting rights.

Although the changes to voting rights have mandated the inclusion of many

denied the right to vote due to race, gender, age, in many cases the prohibition

against felony offenders was strengthened. With the Civil War, the Emancipation

Proclamation, and the Thirteenth Amendment, which ended government

sanctioned slavery (U.S. Constitution, Amendment 13, 1865), the United States

and the Constitution itself faced numerous changes requiring new laws designed

to protect our country's newest 'citizens,' the former slaves. Again, although the

Constitution failed to enumerate the right to vote, rapid changes taking place in

the United States after the Civil War necessitated, for the first time, the

specification of individual rights, including the right to vote.

The Fourteenth Amendment, better known as the amendment

guaranteeing equal protection under the law, articulated that all citizens,

including those freed from slavery, were essentially equal (U.S. Constitution,

Amendment 14, Section 1, 1868). However, in spite of the equal protection

clause, the right to vote was still limited primarily to white male property owners

(Keyssar, 2000; Porter, 1969). Felony offender disenfranchisement statutes

were in place in many states and the language of the Fourteenth Amendment

strengthened those statutes by authorizing individual states to disenfranchise any

of their citizens for "rebellion or other crimes" (U.S. Constitution, Amendment 14, Section 2, 1868).

Ironically, the Fourteenth Amendment, which was designed to guarantee equal protection for all citizens under the law, may have actually contributed to the glut of disenfranchisement legislation during Reconstruction (Behrens, Uggen, and Manza, 2003). Although Section 1 of the Fourteenth Amendment guarantees equal protection under the law for all citizens, it is the 'other crimes' phrase of Section 2 that allowed many states during the Reconstruction era to undermine the intent of the Fourteenth Amendment by enhancing their felony disenfranchisement laws (U.S. Constitution, Amendment 14, 1868; Behrens, Uggen, and Manza, 2003). It is clear from both the rapid increase of felon and ex-felon disenfranchisement legislation during the period as well as from statements made during state constitutional conventions that a primary focus of these legislation was to retain a modicum of control over newly freed slaves (Key, 1949; Kousser, 1974).

The Fifteenth Amendment, however, provided that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude" (U.S. Constitution, Amendment 15, Section 1, 1870). Although the Fifteenth Amendment provided the franchise to African Americans, women, including African American women, were not mentioned until 1920 with the ratification of the Nineteenth Amendment which specified that "the right of citizens of the

United States to vote shall not be denied or abridged by the United States or by any State on account of sex" (U.S. Constitution, Amendment 19, 1920). Additionally, the age requirement for the right to vote was not specified by the United States until 1971, when the Twenty-sixth Amendment placed the voting age at 18 (U.S. Constitution, Amendment 26, 1971). As can be seen, although the Constitution as originally drafted failed to enumerate a specific right to vote we have continued to broaden voter classifications to include most adult Americans of all races and both genders. A group not included in this broadening of the voter rolls included those who had been disenfranchised due to the commission of a felony offense.

Although the general outcome of these constitutional amendments was to increase voting rights to all and to create universal suffrage, the ultimate decision as to who specifically was allowed to vote was left to each individual state (Boyd and Markman, 2001; Chin, 2004; Ewald, 2002; Parkes, 2003; Weedon, 2004). As will be demonstrated, the decision to leave voting decisions to the states resulted in wide disparity in voting rights from state to state. Ultimately, the decision to allow the states to establish their own voting rights and practices within the framework of the constitutional amendments led to conflicting laws and eventually to the establishment of the Voting Rights Act of 1965, as well as changes made to the Act in the years since.

Voting Rights during the Civil War 1861-1865 and the Reconstruction Era

The Civil War was arguably one of the most important events in U.S. history in the fight for universal suffrage (Keyssar, 2000). The Civil War was not fought to give the franchise for those that had been left out of the process of government, but the war and events following set the stage for the constitutional battle over civil liberties and the right to vote (Keyssar, 2000, McPherson, 1988). The Civil War, while ending slavery, also led to a movement to diminish the political impact of freed blacks (Keyssar, 2000). Chief among the methods to do so was limiting the right to vote (Keyssar, 2000). According to McPherson (1988), the end of slavery presented numerous problems for the South. Among these problems was the impact that such a large population of blacks might have on the political landscape of the South (Keyssar, 2000, McPherson, 1988). The massive influx of suddenly eligible voters was beginning to become a reality in January of 1863 when President Lincoln issued the final Emancipation Proclamation and subsequently emphasized the enlistment of the newly freed black men into the Union Army (Franklin, 1994). It was not, however, until the passage of the Thirteenth Amendment, which effectively ended government sanctioned slavery in January of 1865, that the large increase in voters was realized (Franklin, 1994; Keyssar, 2000).

Despite the substantial impact of the Civil War, the Emancipation Proclamation, and the addition of the Thirteenth Amendment to the U.S. Constitution, freed blacks found difficultly exercising their new rights (Franklin,

1994). According to Keyssar (2000), white's reaction to these changes, particularly in the South, impacted voting rights in this country. That is, the Reconstruction Era, even more than the Civil War, the Emancipation Proclamation, and the Thirteenth Amendment, had the most profound impact on who was able to vote and to what extent that vote would be counted (Franklin, 1994; Keyssar, 2000).

Massive opposition by Southern states to the ratification of the Fifteenth Amendment led to the passage of state voting laws that were, on their face, race-neutral, but, in effect, limited the ability of blacks to vote (Behrens, Uggen, and Manza, 2003; Fellner and Mauer, 1998; Pinaire, Huemann, and Bilotta, 2003; Uggen and Manza, 2002). Although these laws varied from state to state, "race-neutral" voting barriers included literacy tests, poll taxes, and the addition of or enhancement to felon disenfranchisement provisions (Behrens, Uggen, and Manza, 2003; Fellner and Mauer, 1998; Pinaire, Huemann, and Bilotta, 2003; Uggen and Manza, 2002). Ultimately, these laws were little more than "new forms of 'Jim Crow' legislation meant to target African Americans in particular, with the intention of disqualifying them from the vote" (Pinaire, et al., 2003, p.1525).

Although felony disenfranchisement laws were already in place in most states during the period of reconstruction, many of these laws were enhanced to further limit African American suffrage (Behrens, Uggen, and Manza, 2003). All these felony disenfranchisement enhancements include restrictions designed to

disenfranchise African Americans specifically (Shapiro, 1993). For example, crimes such as miscegenation and theft, thought to be most often committed by blacks, could result in disenfranchisement (Shapiro, 1993). In fact, "between 1890 and 1910, many Southern states tailored their criminal disenfranchisement laws, along with other voting qualifications, to increase the effect of these laws on black citizens" (Shapiro, 1993, p. 540).

Criminal disenfranchisement laws became stricter during the period of reconstruction following the ratification of the Fifteenth Amendment (Behrens, Uggen, and Manza, 2003; Shapiro, 1993). According to Fellner and Mauer (1998), the State of Alabama provides an illustration of racist attitudes of the time. Alabama lawmakers in 1901 "openly stated that their goal was to establish white supremacy" (Fellner and Mauer, 1998, p. 3). To that end, Alabama state lawmakers included in the State Constitution a clause that made a conviction for the crime of "moral turpitude" grounds for permanent disenfranchisement (Hull, 2003; Fellner and Mauer, 1998; Mauer, 2002). Further, Alabama legislators, in the process of revising the Alabama constitution in 1901, included the crime of "wife-beating" as a crime of disenfranchisement "as it would disqualify sixty percent of the Negroes" from the right to vote (Hull, 2003, p. 47).

Alabama was not, of course, the only state to either add or enhance disenfranchisement legislation. Many of the former Confederate States attempted to counteract established rights for freed African Americans by revamping their criminal codes to increase disenfranchisement opportunities,

primarily because these criminal codes "had express constitutional sanction" unlike grandfather clauses, poll taxes, and literacy tests (Hull, 2003, p. 47). For example, in an 1890 ruling from the Mississippi Supreme Court, the change of the criminal code was praised by the court when it stated, "restrained by the federal constitution from discriminating against the Negro race, (the convention) discriminated against its characteristics and the offense to which its weaker members were prone … burglary, theft, arson, and obtaining money under false pretenses were declared to be disqualifiers, although robbery and murder and other crimes in which violence was the principal ingredient, were not" (cited in Hull, 2003, p. 53). In fact, the 'crime' of miscegenation would disqualify one from the vote in Mississippi although the crime of rape would not (Hull, 2003; Thompson, 2001). As Thompson (2001) states, "for almost a century thereafter you couldn't lose your right to vote in Mississippi if you committed murder or rape, but you could if you married someone of another race" (p. 19).

The State of Virginia provides another example of a state that illustrated disdain for the new constitutional amendments and for African Americans (Hull, 2003). During the 1901 Virginia State Convention, Senator Carter Class stated, "Discrimination! … That, exactly, is what this Convention was elected for – to discriminate to the very extremity of permissible action under the limits of the Federal Constitution, with a view to the elimination of every Negro voter who can be gotten rid of legally, without materially impairing the numerical strength of the white electorate" (cited in Hull, 2003, p. 53). The State of Florida drafted a

constitution in 1868 to include the disenfranchisement of ex-felons "as well as anyone convicted of larceny, a crime that courts were given special jurisdiction over in 1865 because of 'the great increase in minor offenses, which may be reasonably anticipated from the emancipation of former slaves'" (Hull, 2003, p. 54).

One needs only to examine the results of the legislation of the Reconstruction era to see effects on African American voting numbers. Consider the state of Mississippi, for example; in 1867, African American voter registration totaled nearly seventy percent of the eligible African American population. After the felon disenfranchisement statues were created and the state criminal code reworked in 1890, African American voter registration dropped to six percent of the eligible African American population (Hull, 2003). As Hull (2003) states, "As with so much of this country's past, a large part of the history of felon disenfranchisement hangs on the issue of race. It's no coincidence that blacks are harmed the most by felon disenfranchisement; many of the laws seem to have been drawn up for that purpose" (p.53).

Contemporary Laws on Disenfranchisement in the United States

Although each state possessing a disenfranchisement law has the ability to create statutes to suit their own needs, one thing links these laws together: they all disenfranchise offenders who have committed a felony. This section examines the creation and implementation of contemporary felony

disenfranchisement legislation and the requirements for reinstatement of voting rights.

<u>Disenfranchisement Legislation</u>

Although the Eighth Amendment prohibits cruel and unusual punishment, the disenfranchisement of felony offenders acts as an extra form of punishment that eliminates, in some cases for life, the opportunity to regain full citizenship (Mauer and Kansal, 2005). The United States is the only industrialized nation that prevents ex-convicts from voting (Fellner and Mauer, 1998; Mauer, 2002; Parkes, 2003). In fact, every state except Maine and Vermont places some restrictions on the voting practices of current and or former felons (Mauer & Kansal, 2005).

Variations in laws across states are not isolated to disenfranchisement legislation, of course. Because the United States Constitution has left the creation of most laws, including voting regulations, to the individual states, the laws themselves will be inconsistent (Mauer and Kansal, 2005). Despite the inconsistent content of the laws, certain elements of the laws allow for categorization. Each state that disenfranchises felons does so for a specified period of time. This specification of time period allows these laws to be placed in four separate categories. Maine and Vermont do not disenfranchise felony offenders at all (Taormina, 2003). Of the 48 state codes, 12 disenfranchise felony offenders permanently; 23 states disenfranchise for a period of incarceration and a period of post-incarceration, such as parole; and 14 states

disenfranchise only for the period of incarceration (Taormina, 2003). The District of Columbia has a disenfranchisement code that falls into the third category, disenfranchising only for the period of incarceration (Taormina, 2003). This classification is presented in Table 2-1.[*]

Just as states have free reign in determining what their laws declare, they also have the ability to determine which crimes trigger disenfranchisement (Ewald, 2002). For example, some states mandate those convicted only of felony offenses be disenfranchised (Ewald, 2002). Other states, such as New York, mandate that disenfranchisement only result upon incarceration for a felony, not simply a conviction (N.Y. Election Law § 5-106). Some states, such as Illinois, allow for disenfranchisement for a third misdemeanor offense, particularly if those offenses are drug related (Thompson, 2001). According to Thompson, "three out of every five felony convictions don't lead to jail time, and there's no clear line you have to cross to earn one. Being convicted for driving although intoxicated three times bans you from voting in numerous states. Being caught with one-fifth of an ounce of crack earns you a federal felony, but being caught with one-fifth of an ounce of cocaine only earns a misdemeanor" (2001, p.18). As an example, a person can be convicted of a felony in the state of Florida for stopping payment on a check of more than $150, if there is intent to defraud (Florida Statute § 832.041). In Delaware a person can be convicted of a felony after a third offence of driving under the influence (DCA § 4177), while in

---

[*] For Table 2-1, columns represent three levels of disenfranchisement. States that do not disenfranchise at all appear with none of the three columns checked.

Table 2-1: Disenfranchisement Statutes
(adapted from Taormina, 2003)

State	Incarceration	Parole	Permanent Requires Restoration or Pardon
Alabama	X	X	X
Alaska	X	X	
Arizona	X	X	X On second offense
Arkansas	X	X	
California	X Upon incarceration	X	
Colorado	X Includes misdemeanors	X	
Connecticut	X	X	
Delaware	X Includes misdemeanor election violations	X	X Some crimes unpardonable
D.C.	X		
Florida	X	X	X
Georgia	X	X	
Hawaii	X Upon incarceration		
Idaho	X	X	

Table 2-1: Disenfranchisement Statutes (Continued)
(adapted from Taormina, 2003)

State	Incarceration	Parole	Permanent Requires Restoration or Pardon
Illinois	X Includes some misdemeanors		
Indiana	X	X	
Iowa	X Includes some misdemeanors	X	
Kansas	X	X	
Kentucky	X Includes pre-conviction holding	X	X
Louisiana	X		
Maine			
Maryland	X Includes some misdemeanors	X	X Depends on crime & recidivism
Massachusetts	X		
Michigan	X Includes misdemeanors		
Minnesota	X	X	
Mississippi	X	X	X
Missouri	X	X	
Montana	X		

Table 2-1: Disenfranchisement Statutes (Continued)
(adapted from Taormina, 2003)

State	Incarceration	Parole	Permanent Requires Restoration or Pardon
Nebraska	X Plus 2 years post-discharge	X	
Nevada	X	X	X Violent or second offense only
New Hampshire	X		
New Jersey	X	X	
New Mexico	X	X	
New York	X Only if incarcerated	X	
North Carolina	X	X	
North Dakota	X		
Ohio	X		
Oklahoma	X	X	
Oregon	X		
Pennsylvania	X		
Rhode Island	X	X	
South Carolina	X Includes misdemeanors	X	

Table 2-1: Disenfranchisement Statutes (Continued)
(adapted from Taormina, 2003)

State	Incarceration	Parole	Permanent Requires Restoration or Pardon
South Dakota	X Includes suspended sentences		
Tennessee	X	X	X Some crimes unpardonable depends on crime & time period
Texas	X	X	
Utah	X		
Vermont			
Virginia	X	X	X
Washington	X	X	
West Virginia	X	X	X For bribery of state official only
Wisconsin	X	X	
Wyoming	X	X	X

Incarceration Only: 13 States and the District of Columbia
Incarceration and Parole: 23 States
Permanent: 12 States
No Law: 2 States

Tennessee it takes four convictions of DUI to earn a felony (TCA § 55-10-403).

In the main, existing studies show that felony disenfranchisement has had a disproportionate impact of disenfranchisement on minority populations (Fellner and Mauer, 1998; Hull, 2003; Parkes, 2003; Pinaire, et.al., 2003; Weedon, 2004). In 2003, approximately 4.7 million Americans were disenfranchised; 36 percent of whom were African American with approximately 60 percent being white (Hull, 2003; Parkes, 2003; Pinaire, et.al., 2003; Weedon, 2004). These numbers reflect a disproportionate impact on African Americans, given that nationally, less than 13 percent of the population is African American (U.S. Census, 2000). When the population and disenfranchisement figures are examined by individual state, the statistics indicate a similar disproportion. For example, in Iowa, the state population is nearly 95 percent white and two percent African American, yet the disenfranchised population is 69 percent white and 26 percent African American (Census, 2000; Fellner and Mauer, 1998). Twohey (2001) presents the example of Florida, stating that "altogether, 500,000 Florida residents – 4.6 percent of the state's voting-age population – have served time behind bars for various crimes and thus are unable to vote because of the ban…(N)early 170,000 black adult men in Florida – roughly 25 percent of the state's black male residents – can't vote because of a current or past conviction" (p. 46). Comparing the approximately 25 percent disenfranchisement rate for African Americans in Florida to the statewide population of 15 percent African American

is further indication that disenfranchisement has a racially disproportionate effect (U.S. Census, 2000; Twohey, 2001).

Reinstatement of Voting Rights

As with the revocation of voting rights, no state has an identical system for restoring the vote. Despite variations, restoration procedures can be categorized into two distinct groups: automatic restoration and restoration that requires some form of petition to the state. There is, however, some variation within these categories as well. For example, in the first category, automatic restoration, reinstatement of voting rights depends upon exactly when the state classifies an individual as "released." Massachusetts, for example, is among the states that grants the restoration of rights to vote automatically upon release from actual incarceration in a state prison (Massachusetts Annotated Laws Chapter 51, § 1). Other states, such as Alaska, Indiana, and New York, automatically restore an offender's right to vote only after those offenders have been released from parole (Love, 2005).

In the second category of restoration, those which require some form of petition, variation exists as well. This variation is not simply when the offender may petition (after incarceration or after parole), but also varies in the form the petition takes. For example, North Carolina allows ex-felons to petition for reinstatement, by paying all fines associated with the offense, following release from any form of state custody, which would include a period of parole (NC General Statute § 163-55). Arizona's restoration process, like the one in

Alabama, Florida, and Mississippi, requires that an investigation of the offender

be conducted in order for voting rights to be restored.

Even in states that disenfranchise for life, mechanisms are in place to

regain the vote (Allard and Mauer, 2000; Mauer, 2002). In permanent

disenfranchisement states like Alabama, for example, those wishing to regain

their franchise must furnish a DNA sample and seek a pardon from the state

parole board (Mauer, 2002). No legal reason for such mandate is apparent other

than blocking those attempting to regain the ability to vote (Mauer, 2002).

Further, as Mauer and Kansal (2005) explain, although it is certainly true that

most states that disenfranchise felony offenders have mechanisms in place to

enable ex-convicts to reestablish their voting rights, many of these are

cumbersome with the effect of discouraging voting.

Florida's voting restoration process contains 23 qualifications "ranging

from the type of crime you committed to your financial status" (Thompson, 2001,

p. 17). The financial status requirement states, in part, that the ex-felon cannot

be in debt to the State of Florida for more than $1000 (Mauer and Kansal, 2005;

Thompson, 2001).   For former offenders who face substantial court-mandated

fines and/or restitution payments, this requirement may prohibit them from

regaining their voting rights (Mauer and Kansal, 2005; Thompson, 2001).

Provided the affected former felon can traverse the "type of crime" issue and the

monetary fines, Mauer and Kansal (2005) claim that the State of Florida asks

extensive questions relating to background, such as manner of death of the

former felon's parents. They argue that questions like these have nothing to do with voting restoration and merely serve to make the process longer and more difficult. Such a process resulted in only 1 out of every 300, or less than one-half of one percent, of former felons who attempt to do so actually regaining their right to vote in the State of Florida between 1998 and 2004 (Mauer and Kansal, 2005).

It appears that systems of restoration vary as widely as the state laws to eliminate voting rights in the first place (Love, 2005). Because of such disparity in both the process of disenfranchisement and in the restoration of voting rights, any attempt to discern the true nature of disenfranchisement legislation is difficult at best (Love, 2005).

Research on Contemporary Disenfranchisement

Research on the contemporary use of disenfranchisement legislation has expanded in recent years. This research can be seen as falling into two distinct categories: research on the nature, as well as the political and legal aspects of disenfranchisement and research on the consequence and impacts of disenfranchisement laws. In this section, the current literature on felony disenfranchisement is examined according to these two categories.

Ewald (2002) examined the historical practice of disenfranchisement, not only in the United States, but also in ancient and medieval times. Ewald (2002) used a historical perspective to explain how the current laws on disenfranchisement emerged. In addition to this historical review, Ewald also

examined the premises of the American legal system and how it has influenced

the continued use of the practice of disenfranchising criminal offenders. Ewald

argued that, although felony disenfranchisement had deep roots in American law,

these roots were paradoxical in nature, particularly in a country that espoused

freedom and democracy. Ewald stated that a critical understanding of these laws

and the historical context and ramifications of disenfranchisement could only

"lead Americans today to conclude that the policy is incompatible with modern

understandings of citizenship, voting, and criminal justice" and the laws should

therefore be eliminated (2002, pp. 1134-35).

In another historical and legal essay, Pettus (2002) examined felony

disenfranchisement legislation and the connection with political freedom as part

of her study exploring the legal aspects of disenfranchisement laws. Pettus

(2002) examined the historical context of disenfranchisement legislation and

argued that these laws were incompatible with the idea of political freedom and

that they created a society in which the disenfranchised were ruled by those who

retained the right to vote. In essence, Pettus (2002) argued that

disenfranchisement legislation, as currently practiced, not only went against the

idea of a democratic society, but also brought into question the general

legitimacy of criminal law. Pettus (2002) made this argument, in part, because of

the disproportionate racial impact of the criminal justice sanctions. This

disproportionate racial make-up of the American prison population resulted in

disproportionate numbers of racial minorities that were denied true citizenship, in

that they were no longer allowed to participate in the political system in society (Pettus, 2002). These laws then, according to Pettus (2002), contradicted any conceptualization of citizenship in a democratic society.

Schall (2004) examined the compatibility of felony disenfranchisement legislation with citizenship theory. In his paper, Schall (2004) discussed not only the historical context of why the United States maintains a ban on felon voting, but also explored whether or not disenfranchisement could be justified in a society that espoused democratic citizenship. Schall (2004) argued that disenfranchisement was incompatible with any definition of citizenship, in that the right to vote was an essential part of citizenship. Voting was the means by which a citizen could express their desires and by choosing the leadership of their government (Schall, 2004). Additionally, "because felon disenfranchisement does not serve any penological goals, the deprivation of convicts' political liberties cannot be justified as punishment" (Schall, 2004, p. 32). Ultimately then, Schall (2004) stated that felony disenfranchisement was incompatible with the idea of citizenship in a democratic society and should be abandoned.

Like authors discussed above, Parkes (2003) agreed that, although arguments exist for felon disenfranchisement legislation, the racial impact of these laws make them untenable. Parkes (2003) stated that although the racial impact alone should be enough to justify the repeal of disenfranchisement legislation, the laws in the United States should be carefully scrutinized and brought in-line with other countries, regardless of any racial impact the laws may

have. In her paper, Parkes (2003) described disenfranchisement in the U.S.

criminal justice system and compared it to the Canadian criminal justice system

that recently overturned all prisoner disenfranchisement laws by declaring that

the laws were unconstitutional. According to Parkes (2003), while there may be

reasons to deny the vote to current or former felons, these reasons did not

override the restitutive effect that enfranchisement has, "disenfranchisement

profoundly affects a person's dignity and relegates him or her to the status of

second-class citizen or even sub-human" (p. 92). By allowing former felons (and

in the Canadian case, even prisoners) to vote, society begins the process of

healing and restoring every citizen, regardless of their criminal history (Parkes,

2003). Parkes (2003) stated, that restoration of total citizenship should be one of

the main goals of the criminal justice system and because disenfranchisement

goes against that goal it should be eliminated.

The work of Ewald and Parkes, among others, has spawned additional

research that may provide a more in-depth understanding of felony

disenfranchisement generally. An example of this type of research is a 2002

study by Manza, Brooks, and Uggen in which they attempted to ascertain public

opinion on felony disenfranchisement legislation in the United States. By

ascertaining public opinion on the issue of disenfranchisement, the authors

attempted to provide a more in-depth understanding of disenfranchisement. This

study was relevant in that public opinion may have influenced the use of

disenfranchisement legislation. Utilizing the Harris Interactive monthly telephone

survey, the researchers asked respondents several questions about their attitudes towards crime, criminals, and the rights of criminal offenders (Manza, Brooks, and Uggen, 2002). A national sample of 1000 adults was gathered using a random stratified sampling technique to ensure that representative sample was attained (Manza, Brooks, and Uggen, 2002). The researchers asked a series of questions designed to gage the respondent's attitude regarding disenfranchisement based upon whether the offender was incarcerated, on probation, or on parole. An additional set of questions asked the respondent to judge between the seriousness of criminal offenses (e.g. a violent offender vs. a generic offender) and whether or not they impacted the disenfranchisement of offenders. Both the attitudes on the status of the offender (incarcerated, probation, parole) and type of criminal offender (generic, violent, white collar, sex crime) were treated as dependent variables, while attitudes toward the criminal justice system and support for civil liberties were treated as independent variables (Manza, Brooks, and Uggen, 2002).

Using logistic regression, the researchers tested whether or not an individual's attitude toward civil liberties and the criminal justice system impacted their views on whether or not civil liberties were extended to criminal offenders (Manza, Brooks, and Uggen, 2002). The findings suggested fairly strong public support for enfranchising those offenders that were currently on probation (68%) or parole (60%), while showing limited support (31%) for allowing currently imprisoned offenders the right to vote (Manza, Brooks, and Uggen, 2002).

Further, when tested against the type of criminal offense committed by former

offenders, the findings were similar in regards to support for restoration of civil

liberties: generic offenders (80% support), white-collar offenders (63%), violent

offenders (66%), and sex offenders (52%) (Manza, Brooks, and Uggen, 2002).

Manza, et.al (2002), argued that the difference between the support level for the

generic offender and the sexual offender may indicate a particularly poor view

the public holds towards sex offenders rather than a view that these offenders

should be denied the right to vote. Generally, the findings indicated that the

public appears to support the enfranchisement of former offenders, as well as

those on probation, or on parole regardless of type of offense committed (Manza,

Brooks, and Uggen, 2002).

Throughout much of the literature on felony disenfranchisement the

disproportionate racial make-up in the criminal justice system was a theme.

Fletcher (1999) for example, argued that the impact on racial minorities due to

disenfranchisement was no different than the impact due to drug laws, such as

the differential punishment meted out for crack versus cocaine, or the

disproportionate impact of the death penalty on minority offenders. All three of

these cases (disenfranchisement, drug laws, and the death penalty) acted to

treat criminal offenders, particularly those of a racial minority group, as an

"untouchable" in today's society (Fletcher, 1999, p. 1898). More specifically,

Fletcher (1999) argued that felony disenfranchisement was simply another

"technique for reinforcing the branding of felons as the untouchable class of

American society" (p. 1895). Part of Fletcher's argument against the use of

disenfranchisement legislation was the "mystical" and "fanciful" argument of the

need to maintain the "purity of the ballot box" (1999, p. 1899). The argument that

voting by current and former offenders would harm "the purity of the ballot box"

was based on the idea that criminal offenders would taint the voting process

(Fletcher, 1999). This belief, Fletcher argued, goes against the rationale of a

legal system based on fact, and therefore has no place in the American legal

system. Further, Fletcher (1999) argued that because there is a disproportionate

number of racial minorities represented among this permanent underclass,

disenfranchisement continues to perpetuate the view that the criminal justice

system is racist, if not in intent, certainly in outcome.

Hench (1998) furthered the argument that racial minorities were

disproportionately impacted by disenfranchisement legislation by emphatically

stating that "minority voting rights are dead" (p. 730). Although the main premise

of her work was to examine the overall impact of the disenfranchisement of

minorities, not just of those who have committed criminal offenses, Hench (1998)

discussed the specific impact of the felony disenfranchisement laws on the

minority community. Essentially, Hench (1998) argued that the increased

incarceration rate of minority offenders has amounted to the dilution of the

minority voting power. Because the racial disparity in incarceration has

increased, she argued, felony disenfranchisement was indistinguishable from

many of the historic attempts to prohibit minorities from exercising their rights

(Hench, 1998). Although Hench admitted that there were other motives, aside from race, in the voting prohibition of criminal offenders, she argued that race was an overriding factor that could not be ignored. Hench stated that "the unsavory facts are that present day felon disenfranchisement has its roots in a mentality that assigned people of color to the status of non-person, and that these laws continue to operate with discriminatory effect" (1998, p. 771). It is this discriminatory effect that Hench believed needs to be the focus of any examination of disenfranchisement (Hench, 1998).

In another study, King and Mauer (2004) examined the impact of felony disenfranchisement on minorities and their voting power in Atlanta, Georgia. The goal of this study was to determine if there was a disenfranchisement impact on the black population at the local level (King and Mauer, 2004). In addition to determining the percentage of persons (black and non-black) who were disenfranchised, this study examined the overall impact disenfranchisement has on voter registration for neighborhoods in Atlanta (King and Mauer, 2004). Using Atlanta zip codes and correctional data, King and Mauer (2004), estimated the total number of disenfranchised persons, by race, for each of twenty zip codes that could be identified as covering a geographical area (King and Mauer, 2004). Zip codes reserved for businesses were excluded from the analysis (King and Mauer, 2004). Additional data related to race, ethnicity, median household income, and poverty rate were attained from the United States Census Bureau (King and Mauer, 2004).

King and Mauer (2004) determined that one in seven black males in the Atlanta area was disenfranchised due to a felony conviction (King and Mauer, 2004). Further, the rate of black male disenfranchisement was eleven times higher than that of non-black males in Atlanta (King and Mauer, 2004). Some neighborhoods had a black male disenfranchisement rate of over twenty percent while no neighborhood had more than a four percent disenfranchisement rate for non-black males (King and Mauer, 2004). The authors argued the proportion of black males that were disenfranchised in each area indicated a substantial racial impact from disenfranchisement legislation (King and Mauer, 2004). However, the more important finding, according to King and Mauer, was that black male voter registration rates were even more impacted by disenfranchisement laws. This was illustrated by the finding that sixty-nine percent of the voter registration gap between black males and non-black males was a function of disenfranchisement legislation (King and Mauer, 2004).

Fellner and Mauer (1998) provided a more rigorous empirical research study on the impact of felony disenfranchisement legislation in the United States. Utilizing data from the Bureau of Justice Statistics, Fellner and Mauer attempted to ascertain the national and racial impact of felony disenfranchisement laws across the country. Because data on the size of the disenfranchised population was not available, the authors were required to make estimates on the size of the disenfranchised population, based on data from 1995. These estimates were needed as some states disenfranchised for all felonies, while others

disenfranchised only for a second felony conviction (Fellner and Mauer, 1998).

To complete the data set used for their study, Fellner and Mauer also estimated

the total number of persons with prior convictions, as some states count prior

convictions toward disenfranchisement. Lastly, to be able to judge the racial

impact of disenfranchisement legislation, the number of black males in prison, on

probation, and on parole were estimated for each state of the year 1996 (Fellner

and Mauer, 1998).

After gathering the estimates as described above, Fellner and Mauer were

able to calculate the proportion of the general population for each state that was

disenfranchised, as well the proportion of black males that were disenfranchised

in each state. The findings indicated that being black has a substantial impact in

many states (Fellner and Mauer, 1998). For example, while the total

disenfranchised population for the United States represented two percent of the

total population, disenfranchised black males represented 13.1% of the black

male population. The 13.1% represents approximately 1.4 million black males or

one-third of the total disenfranchised population (Fellner and Mauer, 1998).

When the data were examined by state, two states (Alabama and Florida)

disenfranchised thirty-one percent of the black male population; in five states

(Iowa, Mississippi, New Mexico, Virginia, and Wyoming) one in four black males

were disenfranchised; and six other states (Texas – 20.8%; Delaware – 20%,

Rhode Island – 18.3%, Wisconsin – 18.2%, Minnesota – 17.8%, New Jersey –

17.7%) had at least seventeen percent black male disenfranchisement. Based

on a simple proportion, Fellner and Mauer (1998) were able to show that laws that disenfranchise felony offenders had a substantial racial impact.

Several studies indicated that there were political consequences of felony disenfranchisement laws (Manza and Uggen, 2003; Uggen and Manza, 2001; Uggen and Manza, 2002). For example, Uggen and Manza (2001 and 2002) utilized the Voting Supplement of the Current Population Survey (CPS) to determine the impact felony disenfranchisement had on voter turnout. As an additional measure, the researchers used National Election Study (NES) data covering a twenty-eight year period (1972 – 2000) in an attempt to determine voter preferences and choice of political candidates (Uggen and Manza, 2001 and 2002). Using these two sources, Uggen and Manza (2001 and 2002), estimated the expected voter turnout and the expected vote choice of disenfranchised offenders. Estimates of voter turnout and vote choice were necessary in this case because there was no accurate "survey data that asks disenfranchised felons how they would have voted" (Uggen and Manza, 2001, p. 10). Even with this lack of data to measure the exact political consequences of felony disenfranchisement, Uggen and Manza (2001 and 2002), believed that their estimates were accurate. Both the CPS and NES obtained data on demographic information which allowed inferences to be made regarding how an individual might vote based upon their race, sex, age, and socioeconomic status, among others (Uggen and Manza, 2001).

The authors used logistic regression with two dichotomous dependent variables, whether or not a person would have voted and if that individual would have voted for the Democratic or Republican candidate. The findings indicated an estimated voter turnout of thirty-one percent on average for all senatorial and presidential elections from 1972 to 2000 (Uggen and Manza, 2001 and 2002). Although the thirty-one percent estimate is far less than the national average[*] for non-felon voters, the authors argued that the numbers "suggest that a non-trivial proportion of disenfranchised voters were likely to have voted if they had been given the opportunity to vote" (Uggen and Manza, 2001, p. 15).

The political party or candidate choice estimate showed similar results. That is, given the data available, the disenfranchised felon vote would likely had made a difference in several senatorial and presidential elections (Uggen and Manza, 2001 and 2002). Based on the estimates, the disenfranchised felon voter, hypothesized in these studies, indicated an overwhelming preference for Democratic candidates (Uggen and Manza, 2001 and 2002). Given this finding, Uggen and Manza (2001 and 2002) argued that disenfranchising felony offenders provided a "clear advantage to Republican candidates in every senatorial and presidential election from 1972 to 2000 (p. 16).

In support of this argument, Uggen and Manza examined the actual elections that took place between 1978 and 2000 to determine if any of those elections might have turned out differently if felons had the opportunity to vote.

---

[*] National averages for voting turnout ranged from 33% to 55% during the 28-year period used for this study.

After examining all of those elections, the authors found evidence that seven senatorial elections and two presidential elections were likely influenced by the disenfranchisement of felony offenders (Uggen and Manza, 2001 and 2002). Further, the authors argued that the possibility that these elections might have turned out differently had an influence far beyond the actual election in question (Uggen and Manza, 2001 and 2002). For example, because the U.S. Senate had been fairly evenly divided between Democrat and Republican over the period examined, a shift of even one would have likely shifted the balance of power in the Senate (Uggen and Manza, 2001 and 2002). Further, with the incumbent in any election having a decided advantage when it comes to reelection, a shift from one party to another in 1978, may indeed have had an impact in that senatorial district for years (Uggen and Manza, 2001 and 2002).

Voter turnout was the main factor under consideration in a 2004 study conducted by Miles. Using a "triple-differences" framework, Miles tested whether or not disenfranchisement reduced the voter turnout of African-American men. The triple differences (or difference-in-differences-in-differences) approach utilized "three dimensions of comparison to identify a causal effect" (Miles, 2004, p. 100). Miles (2004) used race (African-Americans vs. Whites) as the first difference, sex as the second difference, and state disenfranchisement laws as the third difference in an attempt to determine if there was a causal effect of race and sex and disenfranchisement laws on voter turnout. Voter turnout was the

dependent variable and race, sex, and the disenfranchisement law of a state were all independent variables (Miles, 2004).

Using a sample of twenty-six states, Miles (2004) found that states with a permanent disenfranchisement law were no more likely to impact voter turnout rates among black male voters than were states without a permanent disenfranchisement law. That is, unlike many studies presented here, Miles (2004) findings suggested that disenfranchisement legislation had no discernable impact on voter turnout. Miles (2004) suggested that his findings vary from other studies because previous studies focused too much on the disproportionate numbers of disenfranchised African-American males and not on the causal effect on actual voting practices. In fact, Miles argued that "the absence of an effect is consistent with the view that on average felons belong to a demographic groups that, although eligible to vote, infrequently exercise that right" (2004, p. 122).

The study conducted by Miles (2004) was a contrast to most research on the political consequences of felony disenfranchisement. There may be several reasons for the difference in findings. First, Miles (2004) examined not the numbers of incarcerated offenders, but rather actual voter turnout numbers. Second, statistical tests used may have provided differing results. Lastly, the size of the population in Miles's study may have resulted in divergent results. Whatever the reason for the difference in findings between Miles's study and each of the other studies, the Miles study appears to be the lone study arguing that felony disenfranchisement does not have a political consequence.

The above research has expanded our understanding of felony disenfranchisement. However, there remain issues in need of resolution. In the following section, gaps in the literature on disenfranchisement legislation are discussed.

Gaps in the Literature on Disenfranchisement

An analysis of the literature on disenfranchisement reveals two important gaps. First, most prior studies of felony disenfranchisement fail to provide a theoretical framework to explain the nature and practices of felony disenfranchisement while also providing empirical data (see for example Allard and Mauer, 2000; Fellner and Mauer, 1998; Manza and Uggen, 2003).   Thus, although research on felony disenfranchisement has been conducted, theoretical explanations of this phenomenon are still inadequate. The lack of a theoretical framework for most empirical studies results in a collection of empirical data without explanations of the meaning of the data and why social phenomena exist. As Bourdieu (1988) states, "theory without empirical research is empty, empirical research without theory is blind" (p. 774). Second, the empirical studies conducted to date shows the impact of disenfranchisement on minority offenders and on society generally, but there has not been a qualitative analysis of the laws themselves to attain a better understanding of the nature of disenfranchisement. A qualitative analysis of the laws should provide important insight into disenfranchisement.

To fill the gap in the literature on felony disenfranchisement, the present study examines state disenfranchisement and voting restoration laws in the United States to address these shortcomings. Specifically, the study seeks to test the following hypotheses:

1) The greater the proportion of minorities in a state's population, the more restrictive the state's disenfranchisement laws;

2) The more restrictive a state's disenfranchisement laws, the higher the state's rate of minority arrest and incarceration; and

3) The higher a state's rate of minority arrest and incarceration, the more difficult the voting restoration procedures.

The group threat hypothesis of conflict theory, which will be discussed in Chapter 3, and both qualitative and quantitative methods are used to answer these questions. The research hypotheses and research methods are presented in the Chapter 4.

Chapter 3: Theoretical Framework

This chapter is devoted to the establishment of a theoretical framework for the study of felony disenfranchisement legislation. Towards that end, this chapter discusses the conflict perspective generally, and the group threat hypothesis specifically.

Foundation of Conflict Theory

The conflict perspective is rooted in Marxian ideas. According to Marx, "the history of all hitherto existing society is the history of class struggles" (1848/1998, p. 79). Although Marx, who was essentially an economist, did not discuss the issue of crime in much detail, his concepts of class conflict, control, and power provided the foundation for the conflict perspective (Greenberg, 1981). Marx's original formulation of conflict was based in economic terms, principally the capitalism economic system and the conflict between two classes, the bourgeoisie (who owned the means of production) and the proletariat (workers in the capitalist economy) (Marx, 1848/1998). Because maximization of profits is the main goal of capitalism, those who own the means of production attempt to attain that goal through a variety of means (Marx, 1848/1998 and 1859/1970). One of the means of ensuring the maximization of profits utilized by the bourgeoisie was to either construct or to control the superstructure in society (Marx, 1859/1970 and 1867/1967). The superstructure refers, not simply to the state or government, but also to law, religion, and the dominant values of the society as a whole (Marx, 1867/1967). According to Marx, by controlling the

superstructure through influence on the law-making process and through the creation of laws designed to protect the capitalist economic system, the bourgeoisie is able to control production and the market (Marx, 1867/1967).

Bourgeois control of the superstructure results in class conflict as the proletariat became more aware of the alienation and exploitation endemic in the capitalist economic system (Marx, 1848/1998). As the proletariat became more class-conscious and determined to change the system, bourgeois control exercised became harsher to sustain the capitalist economic system (Marx, 1848/1998). Crime was the label applied to the proletarian struggle to overthrow the system. In response, the bourgeoisie continued to increase criminal penalties and introduce laws designed to protect the capitalist economic system. The bourgeoisie, the ruling class as represented by the state, used the law to protect its interests and control the proletariat (Marx, 1848/1998, 1867/1967).

Although conflict theory is fairly broad and several divergent views on the theoretical perspective can be found, the primary assumption held by all versions of conflict theory is that societies are characterized by the conflicts within them (Greenberg, 1981; Quinney, 1977; Turk, 1969; Vold, 1958; Vold and Bernard, 1986). These conflicts drive many political, social, and legal decisions. According to Marx, conflict stems from the struggle for power, either to attain power or maintain power once it is achieved (cited in Greenberg, 1981). Many theorists have viewed the concept of power and the need to attain and maintain power as the main factor that spurs many of society's laws (Bonger, 1916/1969;

Dahrendorf, 1959; Quinney, 1977; Turk, 1969; Vold, 1958; Vold and Bernard, 1986).

The work of Marx laid the foundation for a conflict perspective in criminology. Bonger (1916/1969) for example, took many Marxian ideas regarding the capitalist mode of production and used them to explain how crime itself was an inevitable by-product of the economic system. According to Bonger (1916/1969), crime was a result of egoism, which was directly tied to the capitalist mode of production that emphasized profits first and foremost. Because of this egoism, there was a greater emphasis placed on protecting those profits and therefore protecting the persons making those profits, the bourgeoisie (Bonger, 1916/1969). Although Bonger's approach is primarily socio-psychological in nature, he believed that the egoism of individuals in a capitalistic society helps to create conflict between groups and helps to create crime. In regards to capitalism causing crime, Bonger argues, "as a consequence of the present environment, man has become very egoistic and hence more *capable of crime*, than if the environment had developed the germs of altruism" (p. 41). Although crime coming from capitalism was not exclusively a problem of the proletariat, Bonger (1916/1969) argued that the law was designed to protect the bourgeoisie and crime, particularly crime committed by the proletariat, was seen as a threat to that power base in society. It was Bonger's connection of capitalism to crime that advanced Marxian ideas and the conflict perspective.

Similar to Bonger, Dahrendorf (1959) utilized Marxian ideas to further establish the conflict perspective as a legitimate means of explaining social problems. Unlike Marx's emphasis on the means of production however, Dahrendorf (1959) argued that conflict was better explained by an individual's exercise of authority over others. Although the ability to exercise authority did include those who owned the means of production (Marx's Bourgeoisie), it also included those individuals, such as managers and supervisors, who had some measure of authority over others (Dahrendorf, 1959). Because of this emphasis on authority as opposed to means of production, Dahrendorf was able to explain conflict across societies regardless of what method of production was utilized. With the addition of authority to Marxian ideas of power, the conflict perspective expanded into areas other than the economic and political fields that had been Marx's focus. Authority, power, and control were all concepts that fed into the conflict perspective's ability to explain law as a means managing conflict.

Turk (1969) built on the conflict perspective by explaining that law itself is the manifestation of the dominant group's need to control society. Those with power in society need to protect their power and therefore create laws to control those they perceive as threatening to that power base. Turk offers numerous examples of the creation of law to protect power. For example, the creation and implementation of vagrancy laws in the United States in the 1800s demonstrates the use of criminal law to control a population deemed as threatening to the power structure (as cited in Maguire, 1990). Other laws, ranging from alcohol

prohibition to the criminalization of marijuana, present additional examples of the use of law to protect society from a perceived threat to the social order (Turk, 1969). Vold (1958) provides another example, arguing that many laws geared towards juveniles and juvenile gangs were created because juveniles, even though they hold no real power, were seen as a threat to the "established world of adult values and power" (p. 211). Vold saw the relationship of conflict, power, and law as coming from the divergent interest of competing groups – in the above case, between juveniles and adults. Vold (1958) sums up this argument by explaining that "whichever group interest can marshal the greatest number of votes will determine whether or not there is to be a new law to hamper and curb the interests of some opposition group" (p. 208).

Although Turk appeared to move away from Marxian ideas of the mode of production influencing conflict, Quinney (1977), like Marx, argues that the power that controls the law of a society cannot be separated from the capitalist mode of production in the society itself. Capitalism itself creates conflict between groups seeking to maximize profit and control society for their own benefit (Quinney, 1977). According to Quinney, "an understanding of crime in our society begins with the recognition that the crucial phenomenon to be considered is not crime per se, but the historical development and operation of capitalist society" (1977, p. 39). This argument is directly tied to Marxian ideas about the capitalist mode of production and the contradictions Marx believed were inherent in a capitalist society. Quinney furthered the argument to include a more thorough

understanding of the connection of the power base in a capitalistic society to the order in that society. Quinney argues that "when a society generates social problems (created by capitalism) it cannot solve within its own existence, policies for controlling the population are devised and implemented" (1977, p. 8).

The conflict theory initially presented by Vold (1958), rather than focusing on the conflicts of capitalism, instead focused on conflicts of interests between groups in society. According to Vold, humans are "fundamentally group-involved beings," and therefore tend to form groups around related interests (1986, p. 271). Conflict occurs when there is either an overlap in group interests or if one group's interests are encroached upon by another group. The creation, implementation, and enforcement of law follow this same general pattern of conflicting group interests. For example, when conflicts between two opposing groups occur, the group that is more able to influence the creation of law is more likely to control the will of the opposing groups. This control is exercised, not merely in the creation of the law or in the enforcement of the law, but the control extends to control of the state. Vold and Bernard (1986) argue, "those who produce legislative majorities win control of the police power of the state and decide the policies that determine who is likely to be involved in the violation of laws. Thus the whole process of lawmaking, lawbreaking, and law enforcement directly reflects deep-seated and fundamental conflicts between group interest and the more general struggles among groups for control of the police power of the state. To that extent, criminal behavior is the behavior of minority power

groups, in that these groups do not have sufficient power to promote and defend their interests and purposes in the legislative process" (p. 273-274). These conflicts of interest result in the waging of a battle for control that is enforced through the creation and enforcement of law (Vold, 1958; Vold and Bernard, 1986). Crime and crime control can not truly be understood without some reference to conflict, as criminal law is a reflection of the values and mores of power holders in society (Vold, 1958; Vold and Bernard, 1986). Greenberg (1981) continues the argument that the criminal law can be seen as a result of "the relative power of groups determined to use the criminal law to advance their own special interests or to impose their moral preferences on others" (p. 4). By utilizing law and the enforcement of law, control can be maintained. It is, according to Greenberg (1981), this power that is critical in shaping not only the law, but also, the structures that enforce the law.

Group Threat Hypothesis

The group threat hypothesis is based on conflict theory. In this section, the group threat hypothesis is explained and several studies that have tested the hypothesis are presented. These studies tested the validity of the group threat hypothesis in various ways and are organized along four separate themes: crime as a race specific issue, minority population size and increases in diversity, police department size and deployment practices, and police brutality. Prior to the discussion of the various tests of the group threat hypothesis, an explanation of Blalock's hypothesis is presented.

The group threat hypothesis was originally formulated by Blalock in 1967 as an expansion of the conflict perspective discussed above. Ultimately, the creation of the group threat hypothesis came from Blalock's attempt to formulate a theory of "minority-group relations" (1967, p. vii). In his attempt to build a theory, Blalock (1967) brings together socioeconomic factors and the ideas of competition and power to explain how the increase in minority population, among other factors, leads to economic and/or political threat and ultimately prejudice and discrimination among the dominant group. Blalock separates his ninety-seven distinct theoretical propositions into four main categories: socioeconomic factors and discrimination, competition and discrimination, power and discrimination, and minority percentage and discrimination. Each of these categories explains discrimination against minorities in different ways. Under the category of socioeconomic factors, Blalock (1967) argues, that the "fear of loss of status" among the majority class leads to avoidance behavior (segregation) and discrimination against the minority (p. 71). Similarly, Blalock's second major category, competition and discrimination, involves a fear of loss by the majority, but rather than focusing primarily on economic terms, Blalock argues that competition from minorities leads to discriminatory behavior by the majority. Blalock (1967) argues that this competition could be a perception of competition or, simply, the visibility of minorities. That is, the more visible the minority member, the more they are perceived to be in competition with the majority for limited resources. According to Blalock (1967), this competition can be expected

to lead to increased discriminatory behavior and even violence: "forms of discriminatory behavior based on the threat of competition would entail considerably more violence and direct injury to the minority" (p. 106).

One of the distinct differences between the group threat hypothesis and the conflict perspective is articulated by Blalock in his description of power and discrimination, his third theoretical category. According to Blalock (1967), "one can think of race relations in terms of intergroup power contests. The term 'power contest' is used in preference to one such as 'power struggle' in order to emphasize that there need be *no overt conflict*" (p. 109). The perspective that conflict need not be overt in order for power to be exercised opens up the analysis of race relations to include methods that are "certainly more complex … and usually much more subtle" than outright and overt racial domination by the majority class (Blalock, 1967, p.109). In the case of power and discrimination, Blalock (1967) contends that power itself is a "multiplicative function of two very general types of variables, *total resources* and the degree to which these resources are *mobilized*" (p.110). That is, the two variables work together to form an understanding of power and how it is exercised. The more resources (including money, property, voting rights, etcetera) a group has combined with the ability to mobilize those resources results in greater power. Discrimination may result if that power is threatened in some way or discrimination may act as an impediment to achievement of greater power. Blalock provides an example of how discrimination can be an impediment to increasing a group's power, by

discussing the lack of educational resources possessed by the black minority.

Because black children had been denied equal education through discrimination,

they were far less able to compete with whites after desegregation. This inability

to compete ultimately limits the ability to achieve a resource (higher education)

thereby limiting the ability to mobilize that resource to gain power (Blalock, 1967).

The last of the four main categories of Blalock's group threat theoretical

propositions is minority percentage and discrimination. Essentially, Blalock

argues that the greater the percentage of minorities in a given population the

greater the perceived threat they pose to the dominant class. The increase in

minority population is particularly important, according to Blalock in the realm of

economics. That is, if minority groups threaten, or are perceived to threaten, the

economic capabilities of the dominant class through competition for jobs, the

greater the chance that the minority group will be discriminated against.

According to Blalock (1967), population size is an important factor in examining

competition, "the larger the relative size of the minority population, the more

minority individuals there should be in direct or potential competition with a given

individual in the dominant group. As the minority percentage increases,

therefore, we would expect to find increasing discriminatory behavior" (p.148).

Ultimately then, "we must remember that there will generally be larger numbers

of the minority in communities with high discrimination rates" (p. 181).

Based on the four categories mentioned above, Blalock (1967) argues that

minorities are more "likely to be selected as targets for aggression to the degree

that such aggression can serve as a means to other goals" (p. 205). Among these goals are the reduction of competition and frustration among the majority class (Blalock, 1967). However, aggression from the dominant class could also be exercised against the minority group simply based on the *perception* that minorities are the cause of frustration among the majority group (Blalock, 1967). Although there are ninety-seven distinct propositions, the propositions taken as a whole argue that if minorities are, or are perceived to be, a threat to employment, political power, education, or any resource controlled by the majority, the members of the dominant group will utilize whatever power they possess to control the minority group (Blalock, 1967). This power often takes the form of aggressive actions against minorities, all in an effort to control the threat.

It was the idea of perception of threat that was picked up on by Liska (1992) and the various authors in Liska's edited text in their attempt to explain crime control policies. These theorists argue that social control is more likely to be exercised against minority groups that are perceived to be a threat in some way (Blalock, 1967; Chamblin and Liska, 1992; Jackson, 1992; Liska, 1992). This threat can be economic, such as competition for employment, but threat can also be seen in the increase in civil liberties and political power of minority groups. Essentially, when a subordinate group attempts to, or actually succeeds, at gaining some measure of power at the expense of the group in power, those in control perceive the subordinate group as a threat (Blalock, 1967).

The key to the group threat hypothesis is its reliance on *perception* of threat rather than *actual* threat. That is, the threat does not have to be real. The nature of the threat is not particularly important either. Various factors can cause a threat to those in power; it simply depends upon what those in power perceive as threatening (Blalock, 1967; Jackson, 1992). Threats can range from increases in size of minority populations, economic advancements by a minority group, and/or increased political representation among others (Blalock, 1967; Bobo and Hutchings, 1996; Chamblin, 1992; Chamblin and Liska, 1992; Inverarity, 1992). How the powerful handle these threats varies as well. The powerful may create new legislation to limit minorities in some way, there may be enhanced penalties that effect minorities is a disproportionate way, or the powerful may use agents of state, law enforcement officials, to enhance enforcement on those that that are perceived as a threat (Arvanities, 1992; Chamblin and Liska, 1992; Inverarity, 1992). The use of the criminal justice system as a control mechanism of the state is a prime example of how those in power can eliminate the threat (Liska, 1992).

Utilizing the group threat hypothesis to examine control by the criminal justice system, however, does not necessarily imply that these laws are intentionally discriminatory. In fact, "the key issue is result, not intent" (Georges-Abeyie, 1990, p. 28). Simply because the results of a law may indicate disparities in outcome, does not mean that there was any intent to discriminate. These laws may be seen as institutionalized discrimination, in that disparities in

outcomes are often the result of established legal factors (Georges-Abeyie, 1990; Petersilia, 1983; Wilbanks, 1987). Minorities, particularly racial minorities, have felt the effect of institutional discrimination in education, employment, income distribution, and the criminal justice process to name but a few (Georges-Abeyie, 1990; McCrudden, 1982). Poorer schools, may be a historic remnant of segregation, which may lead to few prospects at the managerial or professional level of employment, which may, in turn, lead to less income for minorities as compared to whites can all be seen as a result of discrimination that has been institutionalized over decades.

In the field of criminal justice, established legal factors may include the examination of an individual's criminal history when making a sentencing decision. An individual who has an extensive criminal history will be more harshly sentenced than an individual who, although they committed the same offense, has little or no criminal history. Due to the history of overt discrimination when in comes to African Americans in this country, they are more likely to have multiple arrests and therefore a more extensive criminal history than whites. So while utilizing an offender's criminal history may result in racial disparities in outcomes (longer prison terms, increase minority percentage in prison), the use of those criminal histories is not discriminatory in intent. The impact of utilizing legal factors that may result in institutional discrimination reaches far beyond increased numbers of minorities in prison. For example, because drug laws[*]

---

[*] According to the 2004 Uniform Crime Report, drug law violations make up 12.5% of all arrests; Blacks represent 32.7% of those arrested for drug law violations.

disproportionately affect minority populations, these same minority populations consequently tend to become incarcerated and are disenfranchised as a result (Behrens, Uggen, and Manza, 2003; Fellner and Mauer, 1998; Mauer, 2002; Pettus, 2002). Further, bail and pretrial detention policies, which require full time employment for an individual to qualify for bail and avoid pretrial detention, while not overtly racially discriminatory has the result of discrimination in that minorities that appear before the court are less likely to possess full-time employment (Demuth, 2003; Schlesinger, 2005). The quality of legal counsel is also impacted by established criminal justice policies that appear on the surface to be non-discriminatory. Because the quality of legal counsel often depends on a defendant's ability to pay and most minority defendants are not able to afford quality counsel, they are forced to acquire an attorney from the public defenders office (Demuth, 2003; Schlesinger, 2005). The massive caseloads of most members of a public defenders office inhibits their ability to provide a full quality defense, as a result the defendant tends to suffer the consequences (Demuth, 2003; Schlesinger, 2005). Each of these factors (criminal histories, drug laws, bail and pretrial detention, the quality of legal counsel) has an impact on minorities in the criminal justice system. These forms of institutional discrimination cause disparities in criminal justice outcomes and subsequently in differential effects of felony disenfranchisement on members of minority and dominant groups.

Ultimately, as the above cases show, institutional discrimination is about result and it requires no overt action for the result to be considered discriminatory. Behavior of individuals and of institutions no longer needs to be discriminatory in order for discriminatory effects to occur. According to Knowles and Prewitt (1969), "behavior has become so well institutionalized that the individual generally does not have to exercise choices to operate in a racist manner. The rules and procedures of the large organization have already prestructured the choice. The individual only has to conform to the operating norms of the organization and the institution will do the discriminating for him" (p. 143). Such is the case in the criminal justice system and the impact this system has on minority offenders. However, simply because there is evidence of institutional discrimination does not preclude divergent explanations of discrimination, such as the examination of the group threat hypothesis. In what follows, several studies testing the Group Threat Hypothesis in the field of criminal justice are presented along four separate themes: crime as a race specific issue, minority population size and increases in diversity, police department size and deployment practices, and police brutality.

Although Blalock did not necessarily create the group threat hypothesis as an explanation of how the criminal justice system operates several researchers have tested the group threat hypothesis as it relates to crime and the criminal justice system. Chiricos, Welch, and Gertz (2004), found support for the group threat hypothesis in their study examining the racial typification of crime (where

crime is viewed as race specific) and its effects on support for punitive measures.

They used a national telephone survey of 885 randomly selected households and

asked questions regarding respondent's attitudes toward various types of

punishment. Using regression analysis, the responses were compared to a

variety of dependent variables, including a black crime index (index of crimes

committed by Blacks), fear of crime victimization, and racial prejudice among

others. They found that group threat was related not only to the proximity or the

size of the minority population, but also to the perception of crime as a "black

phenomenon" (2004, p. 380). Specifically, because crime was typified as being

committed by the black minority, the white majority, viewed the black minority as

a threat (Chiricos, Welch, and Gertz, 2004). Chiricos and his colleagues (2004)

argued that this typification of crime was perhaps a better measure of perceived

minority crime threat to the power of the white majority than was size of the

minority population or even the location of the population – size and location of

the minority population was irrelevant if blacks were not equated with crime in the

first place.

The concept of group threat was also examined in a study of racial

profiling in the Richmond, VA police department (Petrocelli, Piquero, & Smith,

2003). Petrocelli and his colleagues (2003) examined traffic stops by police

officers, vehicle searches incident to the traffic stop, and arrests occurring as a

result of the initial traffic stop. Additionally, the authors examined the percent of

African Americans and other non-black minorities in the population, the percent

of families below the poverty level, mean family income, unemployment rate, and the Part I crime rate to determine if these variables influenced the number of traffic stops, searches, and/or arrests incident to the traffic stop. Although the initial traffic stop was not found to be correlated with the racial make-up of the community or the result of the crime rate of the area, both searches and arrests were related to the number of blacks in the community (Petrocelli, Piquero, & Smith, 2003). Thus they found support for the conflict view that increased numbers of racial minorities resulted in greater police action.

Eitle, D'Alessio, and Stolzenberg (2002), examined three types of threat in relation to race: political, economic, and black crime. They defined these types of threats as follows: political threat was when the percent of blacks in the population grew to a point where the state viewed them as a threat to the "political ascendancy" of whites; economic threat was when the percent of blacks in the population grew to a point that there was increased competition for finite economic resources (including employment); and black crime threat was when there was an increase (or a perception of an increase) of Whites being victimized by Blacks. These threats were treated as independent variables to determine if they were correlated to the dependent variable of black to white arrest ratios. Eitle, et. al. used three different measures, one for each type of threat. As a measure of political threat, the authors used county-level race specific voting data for the state of South Carolina (the number of blacks who voted). To measure economic threat, the authors used a black to white unemployment ratio.

Lastly, to measure the black crime threat, the authors used South Carolina's

National Incident Based Reporting System (NIBRS) data to locate black on white

crimes.

In utilizing county-level data from the state of South Carolina, Eitle,

D'Alessio, and Stolzenberg (2002), attempted to discern if any of these three

types of racial threat were correlated with increased social control over

minorities. Although two of the racial threats, political and economic, were not

supported by the data, there was substantial support for the threat of black crime

hypothesis. According to the authors, "as the percent of violent felony offenses

that involve a black perpetrator and a white victim rises, the likelihood that a

black individual will be arrested for a felony crime also increases" (Eitle,

D'Alessio, and Stolzenberg, 2002, p. 570). The authors further contended that

the same cannot be said for black-on-black crime, which was far more likely to

occur (Eitle, D'Alessio, and Stolzenberg, 2002). The findings of this study

indicated strong support that black crime is an indicator of group threat. That is,

blacks, as a group, were perceived as a threat by the white majority and were

therefore arrested more frequently and punished more severely (Eitle, D'Alessio,

and Stolzenberg, 2002).

Chamlin and Cochran (2000) examined the race riots in Cincinnati in 1967

and robbery arrests in the months following the riots by using an interrupted time-

series analysis. The authors based their study on Cincinnati Police Department

data for monthly robbery arrests from 1961 through 1973. They also included

data for other violent offenses (homicide, rape, and assault), although their primary focus was on robbery. They focused specifically on robbery arrests because, given arrest data for all violent offenses, robbery "stands out as the offense most likely to involve Black offenders and White victims" (p. 90). Because of this, Chamblin and Cochran viewed robbery to be most indicative of racial threat against whites. Although the aforementioned studies provided some support for the group threat hypothesis, Chamlin and Cochran's study (2000) failed to support the hypothesis. According to Chamlin and Cochran (2000), the race riots had no impact on the number of arrests for robbery, a crime they argued was "particularly threatening to the white majority" (p. 96). However, even with this negative finding, Chamlin and Cochran (2000) argued that their findings must be examined with caution. By examining only one crime (robbery) in one city (Cincinnati), they noted that they could not outright reject the group threat hypothesis (Chamlin and Cochran, 2000).

Ruddell and Urbina (2004) offered another test of the minority group threat hypothesis in their cross-national examination of population heterogeneity and punishment practices, which included the abolition of the death penalty. Using regression analysis on data from 140 nations, the authors attempted to ascertain whether increased population diversity, economic stress, violent crime, and political stability influenced the punishment practices of that nation. According to Ruddell and Urbina (2004), the group threat hypothesis suggests that punishment (including the use of the death penalty) was one way for the powerful

in society to control minority populations. In this study, the concept of a minority

group was extended beyond a black/white racial dichotomy. Instead, a minority

group was seen as any group that had a different ethnicity, culture, language,

and/or religion than the majority. Ruddell and Urbina (2004) argued that growing

diversity in societies across the world resulted in increased conflict between

groups as measured by increased rates of social problems, such as crime, which

the majority population attempted to control. Through their examination of the

population diversity, based on national population data, and punishment

practices, such as use of the death penalty, the authors found support for the

group threat hypothesis. The findings indicated that countries that are more

diverse in population are also more punitive. Ruddell and Urbina (2004) argued

that crime and social problems were caused by population diversity, because

population diversity causes crime and other social problems that must be dealt

with by the state and the ruling class, increased population diversity could be

perceived as a threat to the power of the ruling class in that, increased problems

call for increased response from the ruling class. The findings indicated that,

when minority populations grew, the punitive actions of the government also

increased, thus supporting the group threat hypothesis.

Cureton's (2001) study provided an additional test of the group threat

hypothesis as it related to minority population size. Utilizing the 1990 U.S.

Census and the Uniform Crime Reports for 435 U.S. cities with populations over

25,000, Cureton (2001) contended that whites' perception of threat is based

more upon the percentage of blacks in the population than the crime rate of blacks. He used regression analysis to determine if various demographic variables (race, income, etc.) determined black and white arrest ratios. Although the results of his study were mixed, there was support for the group threat hypothesis. For example, Cureton (2001) found that black arrest ratios were higher than white arrest ratios for serious criminal offenses (crimes such as murder and robbery). Cureton (2001) argued that, when one considers that arrest ratios and criminal conduct were independent of each other, as these data suggested, it seamed that "elites were able to persuade legal agents to exercise discretionary justice to constrain and repress minority populations" (p. 164). Despite the fact that crime was often an intra-class and intra-race phenomenon and that minorities were more likely than members of the ruling class to be victims of violent crimes, like murder and robbery, it was the perception that the ruling class may be in danger that drove the ruling class's desire to impose harsh sanctions on minorities. Additionally, Cureton (2001) hypothesized that, based upon the size of the minority population, the majority may offer some form of leniency towards the minority, if, in fact the size of the minority population was considered large. This hypothesis was based on the idea that, "Blacks committed these crimes (violent crimes) so often that White governing elites chose to sanction only those serious cases that specifically threatened them" (Cureton, p. 164). This leniency was supported by the data presented in the

study, in that arrest differentials of blacks were related, not to the actual crime

rate, but rather to the actual percent of blacks in the population.

Most research on the group threat hypothesis and police resources has

found that the percentage of the minority group in the general population drives

the allocation of resources for police agencies. Using a panel design, Kane

(2003) studied changes in New York police precincts across time. The

independent variables for this community-level study included police force size,

police expenditures, and black and Hispanic population sizes within 74 precincts

in New York City in 1975, 1982, and 1992. Each of these variables was tested

using correlation analysis to determine if they were connected to the deployment

practices within each precinct. The findings suggested that it was the change in

Hispanic population that precipitated changes in police deployment (Kane, 2003).

That is, as the Hispanic population increased, so too did police deployment. No

relationship was found between the black population and police deployment

(Kane, 2003). The lack of a significant finding for black population and police

deployment, according to Kane (2003), was not surprising and was consistent

with the group threat hypothesis. Kane (2003) argued that, over the time period

(1975 to 1992), the black population became highly concentrated in a few

precincts while the Hispanic population increased across the city. Therefore,

"from a minority group-threat perspective, it may be that, while the black

population of New York was perceived as 'under control' during the period

studied, the Latino population may have been perceived as threatening because

of their significant increased representation across precincts" (Kane, 2003, pp. 290-291).

In another study of the relationship between minority threat and police force size, Kent and Jacobs (2005) found that "population matters" when it comes to police deployment (p. 751). Like the aforementioned study, Kent and Jacobs also used a panel design. They examine U.S. cities with populations greater than 100,000 in three census years (1980, 1990, and 2000). Independent variables such as African-American and Hispanic population size, residential segregation, crime rates, and social disorganization variables were tested against police force size using correlation analysis. After examining changes in police force size in these U.S. cities from 1980 to 2000, Kent and Jacobs (2005) found that the size of the minority population (either black or Hispanic) was positively related to the size of the city's police force. Additionally, like the Kane study mentioned above, they found a negative relationship between police deployment and increased size of the minority population when that population was highly segregated (Kent and Jacobs, 2005). This negative relationship was found to be even stronger in the South, which, Kent and Jacobs argued, may be because "the police in the South are more likely to assume that black citizens want less law enforcement" (2005, p. 753). Although the findings appear to indicate that police practices were consistent with the wishes of minority groups, this practice was not necessarily based on the wishes of minority communities. Instead, the smaller law enforcement agency size was

based on the fact that the communities in question were highly segregated. Because of this high segregation, these minority communities were not perceived to be as threatening to the majority class as a community that was less segregated. If their explanation was correct, highly segregated Southern cities would have smaller police departments, relative to similar size cities in other parts of the country. According to their results, such was indeed the case (Kent and Jacobs, 2005).

Along similar lines of minority population size driving police resources, Katz, Maguire, & Roncek (2002) utilized the group threat hypothesis to explain increases in the creation and use of police gang units. They used data from 285 U.S. police agencies with 100 or more sworn police officers to determine what compeled the creation and use of police gang units. The authors examined arrest rates for those ages 12-24, percent of African Americans in the population, percent of Hispanics in the population, and income inequality, as possible causes for the creation of a police gang unit within each of the 285 cities. Much like other studies discussed herein, there was support for the group threat hypothesis explanation for the creation of gang units (Katz, Maguire, & Roncek, 2002). Although the number of blacks in a community appeared to be unrelated to the creation of specialized gang units, the number of Hispanics did have a significant influence on the creation of the units (Katz, Maguire, & Roncek, 2002). In this case, Hispanics, not blacks, represented the minority group that caused the creation of gang units. The increase in arrest rates of minority youths posed a

threat to the power of the ruling class in that, increased arrest were seen as indicative of an increased problem among a minority class. The finding that increased arrest of Hispanic youth, as opposed to African American youth, led to the creation of specialized gang units, may be due in part to the stability of the size of the black population and the increased Hispanic population over the same time period (Katz, Maguire, & Roncek, 2002). The findings were supportive of the group threat hypothesis. The relative size of a minority group caused increased use of power by the majority.

The last of the four themes of research on the group threat hypothesis, studies of police brutality also indicated support for the group threat hypothesis. Although police brutality may not seem relevant here, Petrocelli, Piquero and Smith (2003) argued that police brutality was relevant to the group threat hypothesis because, "if law can be seen as the nails that hold society together, then police can certainly be viewed as the hammer of the state" (p. 2). In one such study on police brutality, Holmes (2000) examined minority threat as it related to police brutality as measured by civil rights complaints over a period of five years (1985-1990). This national study used data from the Department of Justice Police Brutality study, Uniform Crime Reports, U.S. Census figures, and the number of civil rights complaints. Using regression analysis, Holmes found the measures (percent black population, percent Hispanic population, and income inequality) used for "threatening people" were all positively related to the use of force by police. However, crime rates, as measured by the UCR, were

unrelated to the use of force by police (Holmes, 2000). These findings, according to Holmes (2000), provided support for the group threat hypothesis, in that the size of the minority population, rather than general crime rates, affected police use of force.

In another examination of group threat and police brutality, Smith and Holmes (2003) studied 114 cities with populations of over 150,000 to determine if the number of civil rights complaints involving police brutality were correlated with minority population size, minority representation within the police departments, index crime rates, and the income inequality of the city. Smith and Holmes (2003) found that the relative size of the black and Hispanic minority population "amplifies the police's perception of minority threat and increases the use of coercive controls such as excessive force" (p. 1055). The use of excessive force was found to be independent of overall crime rates. The use of force by police was tied to the actual percentage of blacks and Hispanics in the population. This finding supported the group threat hypothesis, in that the higher the minority population, the more force used to control that population.

Most of the aforementioned studies provided support for the group threat hypothesis. Although none of the studies directly argued that the ruling class willed the social control of threats, each of them implied such control. That is, the dominant class utilized law and those who enforced the law as instruments of social control (Petrocelli, Piquero, & Smith, 2003). The research findings presented above suggest the usefulness of the group threat hypothesis in

explaining criminal justice and dominant images of crime. For example, the group threat hypothesis explained how crime is seen as a "black phenomenon" (Chiricos, Welch, & Gertz, 2004, p. 380); how the size of police departments and the allocation of resources to police departments were positively correlated to the size of the minority population (Kane, 2003; Katz, Maguire, & Roncek, 2002; Kent & Jacobs, 2005; Petrocelli, Piquero, & Smith, 2003); and how racial profiling and police brutality were instruments of aggression to control a perceived threat (Holmes, 2000; Petrocelli, Piquero, & Smith, 2003; Smith & Holmes, 2003). Each of these studies provided support for Blalock's initial threat hypothesis. More specifically, these studies supported Blalock's assertion that a perceived threat to the majority class would be met by aggression from the majority.

Blalock's original hypothesis assumed that an increase in minority population lead to economic and/or political threat and ultimately these threats lead to prejudice and discrimination. Although only three of the studies cited above are specifically related to economic and political threats (Chamlin and Cochran, 2000; Eitle, D'Alessio, and Stolzenberg, 2002; Petrocelli, Piquero, & Smith, 2003) the other studies presented do explain minority threat to the ruling class albeit from divergent angles (crime typification, the increase in crime and social problems, increase in minority population, and the increase in arrests by minority youths).

Group Threat and Felony Disenfranchisement

Based upon the studies reviewed above, the group threat hypothesis has been useful in explaining law and the enforcement of law as a method of control. As such, the group threat hypothesis may be useful in explaining the nature of disenfranchisement legislation, or legislation designed to remove the voting rights of those convicted felons, because these laws can exert a measure of control over a population (criminal offenders) that are deemed a threat to the social order. Although the group threat hypothesis suggests that criminal law, as implemented, constrains those who may threaten the power base through arrest and confinement, disenfranchisement legislation appears to go a step further to act as a method of control *after* arrest and confinement. Although the group threat hypothesis may prove useful in explaining disenfranchisement, to date, only one study (Behrens, Uggen, and Manza, 2003) has applied the group threat hypothesis to the examination of the practice of disenfranchising criminal offenders.

Behrens, Uggen and Manza (2003) did apply the group threat hypothesis to felony disenfranchisement arguing that disenfranchisement legislation was the result of a perceived threat to the powerful, the threat of the "menace of Negro domination" (p. 559). Throughout the long history of slavery and racism, the "menace of Negro domination" became a perceived threat to the existing social and political order. Over time, racial minorities have gained some economic and political power (Bobo and Gilliam, 1990), as seen in the increased number of

elected African American officials at all levels of government in the last century

(Behrens, Uggen, and Manza, 2003; Bobo and Hutchings, 1996). Reality was,

however, less relevant to the concept of the "Negro menace," than was the

perception of the dominant class about the increased power of minority groups

(Behrens, Uggen, and Manza, 2003, Bobo and Hutchings, 1996; Olzak, 1992;

Quillian, 1996). The perception that African Americans have increased power led

to efforts to control members of this group to limit their power (Behrens, Uggen,

and Manza, 2003).

The control utilized by disenfranchisement legislation was viewed as more

costly to the powerless, as a group, than other forms of punishment such as

incarceration, because it prevented this group from voting and therefore inhibiting

its ability to affect or change the society at the most fundamental level (Behrens,

Uggen, and Manza, 2003; Fellner and Mauer, 1998; Mauer, 2002; Pettus, 2002).

For minority communities, which already suffer limited political power, any

additional dilution of that power may result in a community that is unable to effect

substantive political change (Pettus, 2002). As Behrens, Uggen, and Manza

(2003) stated, this voter dilution caused by felony disenfranchisement was what

control of the "menace of Negro domination" was referring to. That is, because

of the disproportionate racial make-up of American prisons, the effect of felony

disenfranchisement has had a profound effect on the voting rights of racial

minorities, thereby limiting the ability of minorities and enhancing the control that

could be exercised against them. Essentially, if those in power could control

those that may threaten that power, and could do so with the support of the general electorate, then power can be maintained and control of the threatening classes could be achieved with little effort.

In summary, the concept of power based on the conflict perspective and the group threat hypothesis may be useful for understanding felony disenfranchisement policies in the United States. While criminal laws are used to punish undesirable behavior committed by the lower class and racial minorities; disenfranchisement legislation appears to extend the power of the law beyond criminalization to perpetuate the subordinate status of minority groups. In the following chapter, methods of how the group threat hypothesis can be tested by disenfranchisement legislation will be presented. Specifically, the study seeks to test the following research hypotheses:

1) The greater the proportion of minorities in a state's population, the more restrictive the state's disenfranchisement laws;

2) The more restrictive a state's disenfranchisement laws, the higher the state's rate of minority arrest and incarceration; and

3) The higher a state's rate of minority arrest and incarceration, the more difficult the voting restoration procedures.

Chapter 4: Research Methods

The purpose of this research is to examine the nature and practices of felony disenfranchisement. A qualitative analysis of each of the state laws is conducted to understand the nature of disenfranchisement and voting restoration laws across the United States. Additionally, as this project is designed to test the group threat hypothesis data related to felony disenfranchisement legislation is utilized for that purpose. This chapter begins with the research hypotheses followed by a description of methods used to test the research hypotheses.

Research Hypotheses

It has been argued in Chapter 3 that the group threat hypothesis could be useful for understanding the nature and the practice of disenfranchising felony offenders. Essentially, the group threat hypothesis argues that the larger a minority group, the more the majority group feels its power is threatened (Blalock, 1967). This perceived threat leads the majority attempting to exercise power and control over the minority group through the creation of legislation designed to limit the power of the minority group (Blalock, 1967). Although there are many groups in the United States who have been classified as a minority, the main focus for this project is on African Americans as the minority group threatening to the white majority. As discussed in previous chapters the history of African Americans in this country is one overt discrimination in the form of slavery and Jim Crow laws to more covert discriminatory practices, such as the institutional discrimination present in many social and economic systems, as well as in the

criminal justice system. There are many examples of institutional discrimination in the criminal justice system, from the granting of bail to sentencing practices; the result of these practices has influenced the racial make-up of those arrested, convicted, and incarcerated. An additional form of institutional discrimination is the creation of legal codes that are discriminatory in result while being legitimate in intent. Along with arrest and incarceration, legal codes are methods of control used by the powerful in society to control those that may be seen as threatening. Among the legal codes created to reduce the power of a group perceived to be threatening are those that disenfranchise its members and not allow them to participate in the political process (Beren, Uggen, and Manza, 2003).

Because Blalock's group threat hypothesis argues that the relative size of a minority group is a primary determining factor in the perception of threat, this study examines variables related to the size of the African American population in a state and its connection to the strictness of a state's disenfranchisement law. One of the main questions related to the idea of threat and the size of the threatening population is how that threat is measured. Certainly, the relative size of the African American population in a state can be used as a measure of threat, but other population measures, such as African American arrest and incarceration rates may prove useful as well. Although African American arrest and incarceration rates may not precisely fit with Blalock's assessment of the size of the minority population, the increase in arrests and incarceration of African Americans may reflect, or may be a result of, the effort to control a

perceived threatening group. The use of the police as a means to control certain

undesirable populations of society, such as racial and ethnic minorities, through

arrest is nothing new (Jackson, 1992). In fact, Jackson (1992) argued, the "role

of police officers in U.S. cities in recent decades have varied directly with the

degree of ethnic antagonism" (p. 94). If this argument holds, arrests or more

specifically arrest rates of African Americans can be seen as a measure of racial

threat – a threat that is controlled by law enforcement. Similarly, incarceration

rates of African Americans may also be seen as a way the criminal justice

system handles the perception that African Americans are a threat to the white

majority. In Inverarity's study of imprisonment as a measure of social control, he

argued that "size, increase, or concentration of the underclass increases the level

of social control independently of the crime rate" (1992, p. 126). This being the

case, rather than focusing solely on the size of the minority population, we can

instead look at the size of the incarcerated population as a measure of societal

social control over a perceived threat. Based on the argument that arrest and

incarceration rates of minorities may be indicative of increased social control of

minorities, data on African American arrest and incarceration rates are included

as a measure of group threat.

Although disenfranchisement legislation typically relies upon felony

convictions, the use of African American arrest and incarceration data was used

as a measure of racial threat for this study. That is, based upon Blalock's (1967)

concept of racial threat being related to the relative size of the African American

population, this study measures racial threat, in part, as the number of minorities arrested and incarcerated. The argument is that as the number of minorities in a state increases, the perception among the dominant class is that of an increase of power of the minority class. To diminish this perceived increase in power, the ruling class creates legislation aimed at controlling the minority class; this legislation is then enforced by the criminal justice system that acts as the control apparatus of the ruling class. The criminal justice system is then utilized to control the minority class by enforcing the laws through arrest and then through incarceration of more and more members of the minority class. Ultimately then, the criminal justice system generally, and felony disenfranchisement legislation specifically, act as control mechanisms over those considered a threat to the powerful class in terms of competition or simply number. Therefore, the use of African American arrest and incarceration statistics is also important as a measure of power over this minority group. The combination of African American arrest rates, African American incarceration rates, the strictness of the disenfranchisement code, and the difficulty level of the voting restoration process for each state provides measures of the exercise of power. That is, African American arrests and incarceration rates measure threats and the strictness of disenfranchisement and voting restoration laws measure efforts to deal with these threats. These measures, along with the African American population of the states being studied, provided an approach to testing the racial threat hypothesis. Thus, the present study hypothesizes that: (1) the greater the

proportion of minorities in a state's population, the more restrictive the state's

disenfranchisement laws; (2) the more restrictive a state's disenfranchisement

laws, the higher the state's rate of African American arrest and incarceration; and

(3) the higher a state's rate of African American arrest and incarceration, the

more difficult the voting restoration procedures.

Conceptualization and Measurement

The present study defines concepts in the study hypotheses as follows:

1. <u>Felony Disenfranchisement</u> – For the present study, felony

   disenfranchisement is an all-encompassing term for the various legal

   codes that remove the voting rights of persons convicted of felony

   offenses. States vary in the legal definition of what makes a felony

   offender and what causes disenfranchisement. The present study

   conceptualizes the strictness of disenfranchisement legislation in terms of

   the point at which an individual becomes disenfranchised, the length of

   disenfranchisement, the association of the length of disenfranchisement

   with different types of criminal offenses, and the nature of the crimes

   leading to disenfranchisement. A qualitative analysis of felony

   disenfranchisement laws in 49 states was performed to determine if the

   laws themselves were consistent or inconsistent with the theoretical

   framework that treats disenfranchisement as a tool for controlling a

   perceived dangerous class. Further, the results of the qualitative analysis

   were quantified to create a scale of disenfranchisement used to measure

levels of strictness. Eleven points from the laws were identified for quantification purposes: disenfranchisement for some misdemeanors, during pretrial detention, upon conviction, during probation and/or a suspended sentence, during incarceration, during parole, during an additional post-incarceration time period, and disenfranchisement on a permanent basis after the first offense, after the second offense, for certain crimes, and based on the time the crime occurred. The process of this qualitative analysis is explained in the Analytical Procedures section of this chapter.

2. <u>Voting Rights Restoration</u> – For this study, voting rights restoration is an all-encompassing term for the various legal codes that restore the voting rights of persons convicted of felony offenses. All states vary in the process used to restore the voting rights of those who have been convicted of a felony offense. The present study focuses on the procedures and the requirements of the various state codes related to voting rights restoration. A qualitative analysis of the voting restoration procedures in 49 states was performed to determine whether or not the procedures were consistent with the theoretical framework established for this study. Additionally, the results of a qualitative analysis of the restoration of voting rights procedures in 49 states were quantified to create a scale used to measure levels of difficulty in voting restoration. Eight points from the restoration requirements were identified for

quantification purposes: whether or not disenfranchisement was permanent, restoration after the payment of all fines, restoration after an investigation or review of records, after filing a petition with the court, an appeal to a board or Governor, providing a DNA sample, having no pending charges, waiting an additional waiting period or some other requirement. The process of this qualitative analysis is explained in the Analytical Procedures section of this chapter.

3. <u>African American Arrest Rate</u> – For the present study African American arrest rate is defined as the number of African Americans arrested per 100,000 persons. Information on the numbers of arrests for each state was obtained for the year 2004 by contacting the Criminal Justice Information Services (CJIS) Division of the FBI. African American arrest rates were computed using arrest statistics for Part I offenses and statistics on the total African American population for each state. Part I offenses were used in this research as they are serious felony offenses (murder, robbery, etcetera) and all states who disenfranchise do so for felony offenses.

4. <u>African American Incarceration Rate</u> – African American incarceration rate is defined as the number of African Americans incarcerated in a state and federal prisons per 100,000 persons. African American incarceration rates were computed using incarceration statistics obtained through the Bureau

of Justice Statistics and statistics on the total African American population for each state.

5. <u>African American Population</u> – For this research project African American population is defined as the percentage of African Americans in the population for each state.

Sample and Data

All states except Maine and Vermont have some sort of felony disenfranchisement legislation currently in place that acts to control the voting ability of felons. For the purposes of this research, the District of Columbia is treated as a state. Therefore, the sample for this study consists of the 49 states that have felony disenfranchisement laws currently in place and, for comparison purposes, the two remaining states that do not have disenfranchisement legislation.

Data for the study were drawn from several sources. First, the disenfranchisement legislation of the 49 state statutes in the United States was obtained online through Lexis-Nexis (http://www.lexis.com). Lexis-Nexis is a computerized data source of all state and federal legislation, state constitutions, executive orders, and court cases at both the federal and state levels. In February 2006, the researcher accessed the Lexis-Nexis database of state and federal legislation and conducted a state-by-state search for state laws or state constitutions concerning felony disenfranchisement, using the following keywords: voting, disenfranchisement, felon voting, elections, election law, voter

registration, and vote restoration. The search resulted in three executive orders, 102 state laws, and 31 state constitutions. Each gubernatorial executive order, state law and/or state constitution regarding the disenfranchisement of offenders and the process needed to restore voting rights were added to an electronic file created in Adobe Acrobat. A complete list of the state codes and/or constitutions is included in Appendix 1.

Second, information on African American arrests for felony offenses was obtained from the U.S. Department of Justice. In June 2006, the researcher attempted to obtain arrest data broken down by state and by race for the year 2004 by utilizing the Sourcebook of Justice Statistics from the U.S. Department of Justice website. Data from 2004 were utilized as it was the last year that complete records were available. Unfortunately, arrest statistics broken down by race and by state were not available from the U.S. Department of Justice website. Because of this, the researcher contacted the Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI) by phone to obtain the necessary data. In June of 2006, the researcher called the CJIS Division and requested arrest data by state and race be sent to the researcher's office. These data were received in paper format in the mail approximately one month later as aggregate numbers of persons arrested by state by racial category. As the data available was presented in aggregate form, the researcher computed arrest rates for African Americans for each state using the total number of arrests by racial category for Part I offenses in each state and

the population totals of African Americans for the state. Further, arrest data for

the state of Florida were not available from the Criminal Justice Information

Services (CJIS) Division and were therefore obtained from the Florida

Department of Law Enforcement's official website. The arrest rate for Florida

was computed using the same method described above.

Third, African American incarceration rates for felony offenses were

requested by phone as an additional measure of group threat. Much like the

problem with racial breakdown of arrest rates discussed above, African American

incarceration rates broken down by state were also unavailable from the

Sourcebook and were therefore attained by phone from the Bureau of Justice

Statistics. The researcher contacted one of the authors of the *Prisoners 2004*

report and requested the racial breakdown of prisoners by state. The requested

data was sent to the researcher via email. The lone exception to the available

data was for the District of Columbia. According to the Sourcebook (2004), the

jurisdiction over sentenced felons was transferred away from the District of

Columbia as of December 2001. As such, the District of Columbia no longer

operates a prison system and therefore does not have an incarceration rate.

Due to this, incarceration rate for the District of Columbia was listed as missing

data in the data file.

Finally, population data for each state were obtained from the 2000

Census. The U.S. Census Bureau data were gathered from the Bureau's

American FactFinder website (http://factfinder.census.gov) on June 17, 2006.

Utilizing the American FactFinder search mechanism, the researcher requested

the total population data for each state and the total African American population

for each state. For each state, the numbers of total population, white population

and African American population were used to compute the percentage of

minorities. The information used to calculate African American arrest rates and

incarceration rates are presented in Appendix 3.

Analytical Procedures

This study used both qualitative and quantitative analyses. For qualitative

analysis, the disenfranchisement laws of the 49 states were examined to identify

those characteristics that lead to disenfranchisement, as well as the various

procedures for voting rights restoration. Most important to the qualitative

analysis however, each state law was analyzed to determine whether or not the

law itself was consistent with the group threat theoretical framework. Each of the

state laws was examined to determine if there was evidence that would indicate if

the disenfranchisement law or the voting restoration process were used as

method of social control over African American populations perceived as

threatening. The nature of disenfranchisement law and the voting restoration

process was explored by examining the laws purpose and/or the meanings of the

stipulations of the law. A qualitative analysis of disenfranchisement and voting

restoration laws and procedures provides a deeper understanding of the nature

of these laws, particularly in relation to African Americans.

Although qualitative analysis was a main focus of this research, an additional aspect is to test the research hypotheses, using quantitative methods. Qualitative data regarding the strictness of disenfranchisement and voting restoration laws were quantified to produce data for quantitative analysis. Each state's disenfranchisement law(s) were examined to determine the point at which disenfranchisement becomes effective in that state (e.g. during pretrial detention, upon conviction, or upon incarceration), the level of offense required to disenfranchise (e.g. misdemeanor or felony), the length of time of the disenfranchisement (e.g. during incarceration, parole, probation and/or a suspended sentence, or any additional post-release time after parole), and the permanence of the disenfranchisement (e.g. permanent for 1st offense, for 2nd offense, or permanent for certain crimes). To quantitatively determine the strictness of a state's disenfranchisement law, one point was given for each indication of strictness found in the state's laws. These indications of strictness were counted and a score was attained that was used as a measure of strictness of that state's law. Additionally, to determine the difficulty of the restoration process, the laws for each state were examined to determine what was required of the offender to restore voting rights. That is, restoration processes were examined to determine if the restoration was automatic or if some additional requirement was mandated (e.g. the payment of all fines, an investigation or review, a petition or an appeal to a court or board, or additional requirement). To quantitatively determine the difficulty of a state's restoration process, one point

was given for each indication of voting restoration difficulty. The indications of

restoration difficulty were counted and a score was attained that was used as a

measure of difficulty of that state's restoration process. Two charts were created

that illustrate the point totals for strictness level and restoration difficulty; both

charts are presented in the next chapter. A working data file for quantitative

analysis was created in the Statistical Package for the Social Sciences (SPSS)

and included the following variables: disenfranchisement strictness, voting

restoration difficulty, African American arrest rates, African American

incarceration rates, and proportion of the African American population. The

results of all data analysis are reported in Chapter 5.

The study uses both univariate and bivariate analysis. First, univariate

analysis was utilized to produce descriptive statistics of the sample. Second,

bivariate analysis was utilized to test the research hypotheses. Specifically,

bivariate analysis was used to determine the relationship between the

percentage of minorities in the population (and arrest and incarceration rates)

and the strictness of the disenfranchisement laws on the one hand and the

difficulty of the voting restoration process on the other. Details of the statistical

procedures and the statistical tests of the three hypotheses are provided under

each hypothesis stated below.

Due to the sample size, the study uses non-parametric statistics and exact

methods. Standard methods (Asymptotic methods) compute significance tests

under the assumption that the sample size is large and that the sample is drawn

from a normally distributed population. Unfortunately, the study sample includes

only 51 cases (including the District of Columbia), and the sample size even

reduces further for several statistical tests, the assumptions for the asymptotic

methods cannot be met. Two statistical procedures, the exact method or the

Monte Carlo method, do not require the assumption of normal distribution and

can provide more reliable results for the tests using small sample sizes. The

exact method computes the significance test based on the exact distribution of

data as opposed to a normal distribution and is therefore not reliant upon the

assumptions required of the asymptotic methods. Similarly, Monte Carlo

methods do not need a normal distribution, nor is sample size relevant. The

difference between the exact and Monte Carlo methods is that while exact

methods always provide accurate the results of significance test, Monte Carlo

methods produce an estimation of the exact p value based upon random subsets

of the data. This difference is important because, while exact methods are

preferable, they are not always possible due to either a sample size that is too

large or due to time and computer memory limitations. Monte Carlo methods are

utilized primarily when the exact p values cannot be attained due to the size of

the data set or the amount of memory in the computer used to perform such

tests. As such, the exact and Monte Carlo methods were used to provide the

most accurate results possible.

Hypothesis testing and associated statistical procedures are described as

follows:

Hypothesis 1   The greater the proportion of minorities in a state's population, the more restrictive the state's disenfranchisement laws. The hypothesis assumes that there is a positive relationship between the level of strictness of disenfranchisement legislation and the size of state African American. That is, states with strict disenfranchisement laws have higher African American populations than states with less restrictive laws. Bivariate analysis was used to determine the relationship between the size of the African American population and the strictness of disenfranchisement laws. African American population was defined as the percentage of African Americans in each state. The percentage of African Americans in a state was treated as the independent variable and the strictness level of the laws were treated as the dependent variable. To determine the relationship between the size of African American population and the strictness of disenfranchisement laws, two bivariate analyses were performed: 1) the relationship between African American population size and the existence of disenfranchisement laws which is used as a measure of strictness of legal sanctions against African Americans, and 2) the relationship between African American population size and the strictness of disenfranchisement.

1) The first analysis involves the comparison of the African American population sizes in states with disenfranchisement laws and those in states without such laws. Prior to conducting any analysis, the strictness level of the laws was recoded into two variables: *strictness2* (states with a disenfranchisement law and states without a disenfranchisement law) and *strictness3* (low, average, or high strictness). After recoding the variables, the Mann-Whitney U test statistic was used to determine whether or not there was a statistically significant relationship between the percentage of minorities in a state and whether or not that state had a disenfranchisement law. For this test, the variable *PercentBlack* is an interval level variable which indicates the percentage of blacks in each state and is treated as the independent variable. The dependent variable for this test is the recoded variable, *strictness2*, a dichotomous variable indicating whether or not a state has a disenfranchisement law. A significant Mann Whitney U test statistic would indicate that these variables are indeed related. It is expected that states with a larger percentage of African Americans in the

population will have disenfranchisement laws while states with smaller African American populations will not. A comparison of means will confirm the directionality of any significant effect.

2) The second analysis involves the analysis of the relationship between the sizes of African American population and levels of disenfranchisement strictness. It is hypothesized that states with greater African American population have stricter disenfranchisement laws. To conduct this analysis, the variable determining the strictness of a state's disenfranchisement law was recoded into a trichotomous variable *strictness3* which indicates whether the state law was of low strictness, average strictness, or high strictness. Using the recoded variable, the Kruskal-Wallis H, was used to test whether there is a statistical relationship between the percentage of African Americans in a state and the strictness level of the state's disenfranchisement law. The Kruskal-Wallis H, like the Mann Whitney U, is a non-parametric statistical test which utilizes mean ranks to determine if there is a difference between variables. In this case, the Kruskal-Wallis H was used to determine if the size of the

African American population in a state affected the strictness of the state's disenfranchisement law. For this test, the variable *PercentBlack* is an interval level variable which indicates the percentage of blacks in each state and is treated as the independent variable. The dependent variable for this test is the recoded variable, *strictness3*, an ordinal-level variable indicating whether a state's disenfranchisement law is of low strictness, average strictness, or of high strictness. A significant Kruskal-Wallis H statistic would indicate that the strictness of a state's disenfranchisement law varies with the size of that state's African American population. A significant Kruskal-Wallis H statistic would indicate that differences in means are not due to sampling error, thus indicate support for the hypothesis presented. A comparison of means will confirm the directionality of any significant effect.

Each of the aforementioned tests were performed utilizing the Exact method to determine the relationship between the level of strictness of the disenfranchisement law of the state and the percentage of minorities in the population of the state. The exact method was used first, and if the exact test

could not be performed due to either the size of the sample or the amount of memory in the computer then the Monte Carlo method was used.

Hypothesis 2   The more restrictive a state's disenfranchisement laws, the higher the state's rate of African American arrest and incarceration. This hypothesis assumes that there is a positive relationship between the level of strictness of disenfranchisement legislations and state African American incarceration and arrest rates. That is, it is hypothesized that states that have stricter disenfranchisement laws also have higher rates of African American arrest and African American incarceration than states with less strict disenfranchisement laws. Bivariate analysis was used to determine the relationship between the strictness of a state's disenfranchisement law and the rates of African American arrest and incarceration. For this hypothesis, the recoded ordinal-level variable, *strictness3* (low, average, and high strictness) was treated as the independent variable and the African American arrest and African American incarceration rates were treated as dependent variables. To determine the relationship between the strictness of disenfranchisement laws and the African American rates for arrest and incarceration, two bivariate analyses were

performed: 1) the relationship between the strictness of the

disenfranchisement law and the rate of African American

arrests for that state, and 2) the relationship between the

strictness of the disenfranchisement law and the rate of African

American incarceration for that state.

1) The first analysis involves the comparison of the different

   levels of disenfranchisement strictness of a state's law

   with the African American arrest rate. Using the recoded

   variable discussed in the first hypothesis, *strictness3*

   (low, average, high strictness), the Kruskal-Wallis H, was

   used to test whether there is a statistical relationship

   between the strictness level of the state's

   disenfranchisement law and the African American arrest

   rate. The Kruskal-Wallis H is a non-parametric statistical

   test which utilizes mean ranks to determine if there is a

   difference between variables. For this analysis, the

   Kruskal-Wallis H was used to determine if the arrest rate

   of African Americans in a state affected the strictness of

   the state's disenfranchisement law. For this test, the

   variable *strictness3*, an ordinal-level variable indicating

   whether a state's disenfranchisement law is of low

   strictness, average strictness, or of high strictness is

treated as the independent variable. The dependent

variable for this test is *BArrestBI*, an interval-level

variable indicating the African American arrest rate for

each state. A significant Kruskal-Wallis H statistic would

indicate that the strictness of a state's

disenfranchisement law varies with the size of that state's

African American arrest rate. A significant Kruskal-Wallis

H statistic would indicate that differences in means are

not due to sampling error, thus indicate support for the

hypothesis presented. A comparison of means will

confirm the directionality of any significant effect.

2) The second analysis involves the comparison of the

different levels of disenfranchisement strictness of a

state's law with the African American incarceration rate.

Using the recoded variable, *strictness3* (low, average,

high strictness), the Kruskal-Wallis H, was used to test

whether there is a statistical relationship between the

strictness level of the state's disenfranchisement law and

the African American incarceration rate. The Kruskal-

Wallis H is a non-parametric statistical test which utilizes

mean ranks to determine if there is a difference between

variables. For this analysis, the Kruskal-Wallis H was

used to determine if the incarceration rate of African Americans in a state affected the strictness of the state's disenfranchisement law. For this test, the variable *strictness3*, an ordinal-level variable indicating whether a state's disenfranchisement law is of low strictness, average strictness, or of high strictness is treated as the independent variable. The dependent variable for this test is *BIncarB*, an interval-level variable indicating the African American incarceration rate for each state. A significant Kruskal-Wallis H statistic would indicate that the strictness of a state's disenfranchisement law varies with the size of that state's African American incarceration rate. A significant Kruskal-Wallis H statistic would indicate that differences in means are not due to sampling error, thus indicate support for the hypothesis presented. A comparison of means will confirm the directionality of any significant effect.

Each of the aforementioned tests were performed utilizing the Exact method to determine the relationship between the level of strictness of the disenfranchisement law of the state and the arrest and incarceration rates of minorities of the state. The exact method was used first, and if the exact test could not be

performed due to either the size of the sample or the amount of memory in the computer then the Monte Carlo method was used.

Hypothesis 3   The higher a state's rate of African American arrest and incarceration, the more difficult the voting restoration procedures. The hypothesis assumes that there is a positive relationship between the difficulty in state voting restoration procedures and the size of state African American populations, state African American arrest rates and state African American incarceration rates. That is, states with more difficult voting restoration procedures have higher African American populations, and higher African American arrest and African American incarceration rates than states with more lenient voting restoration procedures. Bivariate analysis was used to determine the relationship between the size of state African American populations, the state African American arrest rate and the state African American incarceration rate and the difficulty of the state's voting restoration process. For this hypothesis, the percentage of minorities in a state, the African American arrest rate of a state, and the African American incarceration rate of a state were treated as independent variables and the difficulty level of the restoration process was

treated as the dependent variable. To determine the relationship between the size of African American population and the difficulty of the restoration process, two bivariate analyses were performed: 1) the relationship between African American population size and whether or not restoration was automatic or required a petition, and 2) the relationship between African American population size and the difficulty of the restoration process.

1) The first analysis involves the comparison of the African American population sizes of states (population, arrest rate, and incarceration rate) with states with automatic restoration and states requiring some form of petition for restoration. Prior to conducting any analysis, the difficulty level of the voting restoration process was recoded into two variables: *restoration2* (states with automatic restoration and states requiring some sort of petition for restoration) and *restoration4* (low, average, or high difficulty). After recoding the variables, the Mann-Whitney U test statistic was used to determine whether or not there was a statistically significant relationship between the percentage of African Americans in a state, the African American arrest rate, and the African

American incarceration rate of a state and whether or not that state required a petition for vote restoration (*restoration2*). For this test, the variable *PercentBlack* is an interval level variable which indicates the percentage of blacks in each state, *BArrestBl* is an interval-level variable indicating the African American arrest rate for each state, and *BIncarB* is an interval-level variable indicating the African American incarceration rate for each state. Each of the aforementioned variables (*PercentBlack, BArrestBl, BIncarB*) were treated as independent variables. The dependent variable for this test is the recoded variable, *restoration2*, a dichotomous variable indicating whether or not a state requires a petition for restoration of voting rights. A significant Mann Whitney U test statistic would indicate that these variables are indeed related. It is expected that states with a larger percentage of African Americans in the population (in general population, arrest rates, and incarceration rates) will require a petition for vote restoration while states with smaller African American populations will not. A comparison of means will confirm the directionality of any significant effect.

2) The second analysis involves the comparison of the sizes of African American population in states with different levels of voting rights restoration difficulty. To conduct this analysis, the variable determining the difficulty of a state's vote restoration process was recoded into a trichotomous variable *restoration4* which indicates whether the restoration process was of low difficulty, average difficulty, or high difficulty. Using the recoded variable, the Kruskal-Wallis H, was used to test whether there is a statistical relationship between the difficulty level of the voting restoration process and percentage of African Americans in a state, the arrest rate of African Americans, and the incarceration rate of African Americans in a state. The Kruskal-Wallis H is a non-parametric statistical test which utilizes mean ranks to determine if there is a difference between variables. For this analysis, the Kruskal-Wallis H was used to determine if the percentage of African Americans in a state, the arrest rate of African Americans, and the incarceration rate of African Americans in a state affected difficulty level of the voting restoration process. For this test, the variable *PercentBlack* is an interval level variable which

indicates the percentage of blacks in each state, *BArrestBl* is an interval-level variable indicating the African American arrest rate for each state, and *BIncarB* is an interval-level variable indicating the African American incarceration rate for each state. Each of the aforementioned variables (*PercentBlack, BArrestBl, BIncarB*) were treated as independent variables. The dependent variable for this test is the recoded variable, *restoration4*, an ordinal-level variable indicating whether a state's restoration process is of low difficulty, average difficulty, or of high difficulty. A significant Kruskal-Wallis H statistic would indicate that the difficulty level of a state's restoration process varies with the size of that state's African American population (in general population, arrest rate, or incarceration rate). A significant Kruskal-Wallis H statistic would indicate that differences in means are not due to sampling error, thus indicate support for the hypothesis. A comparison of means will confirm the directionality of any significant effect.

Each of the aforementioned tests were performed utilizing the Exact method to determine the relationship between the

difficulty level of voting restoration process of the state and the

percentage of minorities in the population of the state as well as

the arrest and incarceration rates of minorities in the state. The

exact method was used first, and if the exact test could not be

performed due to either the size of the sample or the amount of

memory in the computer then the Monte Carlo method was

used.

The results of the tests are presented and discussed at length in the next

chapter.

Chapter 5: Data Analysis and Findings

This chapter reports qualitative and quantitative analyses and the findings. The first section of this chapter is devoted to the qualitative analysis of each of the 49 state disenfranchisement laws. For qualitative analysis, the disenfranchisement laws of the 49 states were examined to identify their nature and characteristics to determine how they might relate to the group threat theoretical framework discussed earlier. Among other aspects examined by the researcher to determine if the group threat hypothesis was supported by disenfranchisement legislation was the emphasis on the strictness of these legislation in terms of the point at which an individual becomes disenfranchised, the length of disenfranchisement, the association of the length of disenfranchisement with types of criminal offenses, the nature of the crimes leading to disenfranchisement, and voting restoration procedures. The researcher obtained all the gubernatorial executive orders, state laws and/or state constitutions related to either the disenfranchisement of offenders or the process needed to restore voting rights from the online Lexis-Nexis database (http://www.lexis.com). Once obtained, the documents were analyzed and the researcher highlighted sections of the documents related to either the causes of disenfranchisement and/or the requirements for restoration of voting rights. This process was used to determine if the nature and characteristics of the laws supported the contention of the group threat hypothesis, that minorities that are seen as a threat are controlled by those in power. The second part of this

chapter is devoted to the report of quantitative analysis and results of hypothesis testing.

Qualitative Analysis Results

Forty-eight states and the District of Columbia (treated as a state in this research) all disenfranchise felony offenders for some period of time after the commission of a criminal offense. Each state has a variety of laws, constitutions, and/or executive orders related to the disenfranchisement of felony offenders. These laws, constitutions, and executive orders were examined to determine the nature and extent of felony disenfranchisement in the United States. The purpose of this examination was to understand the meaning of disenfranchisement laws in terms of race and class and relate the nature of these laws to the group threat hypothesis, in an attempt to either confirm or refute the hypothesis. After a thorough examination of state disenfranchisement legislation two major themes became apparent and in both of these themes there is a connection to the group threat hypothesis. The first theme deals with the criteria for disenfranchisement in state laws and how these criteria may have a greater impact on minorities. That is, this analysis is to determine if the criteria in the laws themselves act as a control mechanism over a segment of the population that is perceived to be a threat to those in power. The second of the two major themes entails the voting restoration procedures and the impact these procedures have on minority offenders. Much like the discussion related to the criteria for disenfranchisement, an examination of the restoration procedures is

undertaken to determine whether or not support for the group threat hypothesis exists. In essence, both the criteria for disenfranchisement and the voting restoration procedures are examined to determine if they act to limit the ability of minorities from exercising their right to vote. By limiting the ability of minorities to vote, first through disenfranchising offenders and then with restrictive voting restoration procedures, there appears to be an argument that disenfranchisement laws may act as a mechanism of control over a perceived threatening group and therefore may be supportive of the group threat hypothesis. In what follows, the nature of the criteria for disenfranchisement, the procedures for voting restoration, as well as the impacts of each of these has upon offenders are discussed in detail in how they support or refute the group threat hypothesis.

<u>Criteria of Disenfranchisement</u>

The disenfranchisement of offenders is generally based upon a set of criteria established in state law and some commonalities do exist. Incarceration, for example, is the most common criterion for disenfranchisement, with all of the forty-nine states mandating a loss of voting rights when an offender is actually incarcerated in a prison and/or jail. However, short of disenfranchisement during actual incarceration, few states have the same criteria. Conviction, types of crimes for which person is convicted, the number of convictions, probation/parole and/or a suspended sentence, and even the time frame of the crime for which the individual was convicted are also utilized as disenfranchisement criteria

depending upon the state. Each of these criteria for disenfranchisement will be discussed separately in what follows. These criteria for disenfranchisement, particularly basing disenfranchisement on number of convictions and types of convictions, are supportive of the group threat hypothesis in that, offenders who commit a certain type of crime or offenders with prior criminal histories can be perceived as an increased threat to the social order and to the dominant majority. Given the history of African Americans and the criminal justice system, African Americans are more likely to have criminal histories and are more likely to be convicted of the offenses that cause disenfranchisement (Tonry, 1995). What occurs then is that African Americans are more likely to be disenfranchised which may be perceived as another method of controlling African Americans as a group threat.

The main criterion for disenfranchisement is that offenders lose their voting rights based upon incarceration. In fact, every state that has a disenfranchisement law disenfranchises offenders during incarceration. However, a second major criterion for disenfranchisement is conviction of a criminal offense. Twenty-seven states base disenfranchisement on the time of conviction rather than the time the offender actually enters a correctional facility. For example, Alaska Statute § 15.05.030 states that an individual is disenfranchised upon conviction of a felony. Similarly, Kansas law states that the disenfranchisement period begins upon conviction and continues until the completion of the sentence (Kansas Statute Annotated § 21-4615). In fact, none

of the states who base disenfranchisement upon the conviction of an offense

distinguish whether or not the offender needs to be incarcerated for the

disenfranchisement to take effect. This distinction may not seem important,

however, it becomes important when one considers the group threat hypothesis

and how it may explain such a distinction. Much like cases in which bail is

denied, those convicted and then immediately incarcerated tend to be minorities

who cannot afford outside legal counsel who can delay incarceration for either a

limited time (for a few months to get affairs in order) or during lengthy appeals

processes (Bridges, 1997). The conviction criterion then has a larger impact on

those individuals who cannot afford to delay incarceration. Overwhelmingly,

those who cannot afford such a delay are minorities of class and subsequently

race (Bridges, 1997).

Although each of the forty-nine states that disenfranchise do so during

incarceration and the majority (27) do so upon conviction, one state, Kentucky,

disenfranchises even before conviction in certain cases. In Kentucky, any

individual who, although not convicted, is being held "in confinement under the

judgment of a court for some penal offense" during an election may not vote in

that election (Kentucky Constitution, § 145). This provision of the state

constitution appears to include all persons being held in jail or prison awaiting

trial. Therefore, those unable to post bail, or not provided bail, would be

disenfranchised for that election. This criterion in Kentucky law is unique, in that

although all states remove voting rights during incarceration, no other state

mandates disenfranchisement prior to actual conviction. This provision appears to have broad consequences among those who cannot post bail or to those not granted bail as they are disenfranchised without having been convicted in a trial. Because the majority of persons who cannot post bail are racial minorities (Bridges, 1997), one can see that this criterion for disenfranchisement has a dramatic effect on minority offenders in particular. This provision in Kentucky law then clearly supports the contention of the group threat hypothesis of increased control of a *perceived* threat. That is, even without conviction, which could be argued as proof of a threat to society and to those that control society, those that cannot post bail are perceived as threatening and are disenfranchised as a result.

Although Kentucky may be alone in using pre-trial detention as a requirement for disenfranchisement criterion, the state is among the eight that disenfranchise due to a conviction of a misdemeanor offense. These eight states (Colorado, Delaware, Illinois, Iowa, Kentucky, Maryland, Michigan, and South Carolina), however, all vary on details about what groups of misdemeanor offenders qualify for disenfranchisement. Four of the eight, Colorado, Illinois, Michigan, and South Carolina make no distinction between levels of crime (misdemeanor of felony), as any individual convicted of any crime is disenfranchised. The remaining four states (Delaware, Iowa, Kentucky, and Maryland) all specify types of misdemeanors for which a person is disenfranchised. For example, under Maryland law, anyone convicted of an

"infamous or other serious crime" is disenfranchised (Maryland Constitution, Article I, § 4). According to the definition, some misdemeanors, such as perjury, theft, and prostitution are considered infamous crimes in the state of Maryland (Maryland Annotated Code, Election Law, § 1-101). In Iowa, conviction of an aggravated misdemeanor results in disenfranchisement (Iowa Constitution, Article II, § 5; Iowa Code § 48A.6). Although, not clearly defined, an aggravated misdemeanor appears to be one that involves serious bodily injury to the victim, where if the crime did not involve serious bodily injury, it would be considered a misdemeanor (Iowa Code, Title XVI). The "serious bodily injury" clause may sound like aggravated assault, a felony in the list of Index Crimes; however, the state of Iowa makes a distinction between aggravated misdemeanors and felony offenses (Iowa Code, Title XVI). Crimes such as domestic violence and driving under the influence fall under this category (Iowa Code, Title XVI). For example, driving under the influence which resulted in no injuries to the public would be considered a misdemeanor, while driving under the influence which resulted in a wreck with injuries would be considered an aggravated misdemeanor leading to disenfranchisement. Lastly, the Constitution of the state of Kentucky states that any person convicted "of such high misdemeanor as the General Assembly may declare" is unauthorized to vote (Kentucky Constitution, § 145). However, there does not appear to be any complete list of what qualifies as a high misdemeanor in the state of Kentucky.

In addition to utilizing misdemeanors as a type of crime criterion, nine of the twelve states that permanently disenfranchise offenders do so based on the type of offense committed (Alabama, Delaware, Kentucky, Maryland, Mississippi, Nevada, Tennessee, West Virginia, and Wyoming). Mississippi, for example, lists the crimes of murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement, and bigamy disqualifying in the state constitution (Mississippi Constitution, Article 12, § 241). However, since the court decision in *Cotton v. Fordice*, which stated that the state constitution was to be narrowly read, the Attorney General of Mississippi has expanded upon the list of theft-related crimes that are disqualifying while simultaneously limited such thefts to felony cases only. In West Virginia, a conviction for the bribery of a state official is the only offense for which disenfranchisement is permanent unless granted a gubernatorial pardon (West Virginia Constitution, Article VII, § 11). Similarly, in Wyoming recidivist and/or violent offenders must apply for a gubernatorial pardon or the restoration of rights in order to regain the right to vote (Wyoming Statute § 7-13-105 and § 7-13-803 through 806). Although permanent disenfranchisement may seem a misnomer based on this discussion, the one state that truly disenfranchises permanently is the state of Tennessee where any conviction for the crime of murder, rape, treason, or voter fraud results in permanent disenfranchisement with no possibility of restoration (Tennessee Code Annotated § 40-29-105).

The type of crime criterion for disenfranchisement has, like other criterion discussed herein, is related to the group threat hypothesis. Whether a state specifies certain types of crimes (such as murder, rape, or violent felonies) or merely includes some or all misdemeanor offenses as disenfranchisement qualifiers, the impact is to increase the number of individuals affected by disenfranchisement legislation. However, by including some misdemeanors (e.g. theft and prostitution) and specifying certain felony offenses for permanent disenfranchisement (e.g. violent felonies), the laws in these states appear to be focusing on minority offenders as they are more often arrested and incarcerated for the offenses specified (US Department of Justice, 2003). Whether or not the intent is to focus on minorities the impact on minority offenders is more profound in that the result of these laws minorities leads to increased numbers of disenfranchised minorities. Utilizing the group threat hypothesis, it can be argued that the type of crime criterion, since it focuses on crimes of a group that is already perceived to be threatening, racial minorities, is utilized by the powerful in society to further control minorities by preventing them from gaining any power through the ability to vote.

An additional criterion that appears to have a greater impact on minorities is basing permanent disenfranchisement on the number of convictions an offender has. In essence, permanent disenfranchisement is based, in part, upon the criminal history of the offender. Of the twelve permanent disenfranchisement states, six (Alabama, Florida, Kentucky, Mississippi, Tennessee, and Virginia)

disenfranchise after the first offense and four states (Arizona, Maryland, Nevada, and Wyoming) disenfranchise based upon conviction of the second offense. For example, although first time felony offenders in the state of Arizona are disenfranchised upon conviction of a felony until unconditional discharge, a secondary felony conviction results in lifetime disenfranchisement. (Arizona Revised Statute § 13-904, 13-912). The same can be said of Nevada where offenders who have been convicted of a violent felony or have been convicted of more than one felony offense are permanently disenfranchised (Nevada Revised Statute § 213.090). The inclusion of the number of offenses or criminal histories of offenders as a criterion for disenfranchisement certainly fits into the group threat argument in two ways. First, including criminal histories disenfranchises those that have proven, through repeat criminal acts that they are threat to society and are therefore in need of greater control. Second, including criminal histories also manages to capture minority offenders at a greater rate, primarily because minority offenders are often the focus of the criminal justice system and as such are more likely to have criminal histories (Tonry, 1995). Because of this criterion then, a perceived threat, both from repeat offenders and minority offenders with criminal histories can be controlled through legislation. Controlling this population by limiting voting capability reduces any political power that can be attained by minorities and therefore could reduce the threat perceived by the powerful in society.

An additional disenfranchisement criterion of interest is presented by the state of Tennessee and is perhaps the most unusual case in disenfranchisement. Tennessee is the only state that bases disenfranchisement not only on type of offense, and number of offenses, but also *when* the crime was committed. For example, a person convicted of a felony before 1973, or between 1981 and 1986, or after 1996 must request a gubernatorial pardon or petition the circuit court of the county in which they reside for the restoration of their civil rights (Tennessee Code Annotated §40-29-101 and § 40-29-105). However, individuals convicted of a felony (other than the permanent disqualifiers) between 1973 and 1981 and/or between 1986 and 1996 are automatically eligible to vote upon completion of their sentence (Tennessee Code Annotated §40-29-101 and § 40-29-105). Tennessee is the only state that has such a formula for determining the type of permanent disenfranchisement. At first glance, the time frame criterion does not appear to fit with the group threat framework. However, examining the time frame specified for permanent disenfranchisement, the crime rates during those periods, and what felony offenses were classified as permanent disqualifiers it appears that there may have been an attempt to utilize disenfranchisement law to further control populations perceived as threatening. For example, prior to 1973 when the Tennessee disenfranchisement law mandated permanent disenfranchisement for all felony offenses, crime rates were high and the country had been through numerous protests for civil rights. During that time, protest populations, specifically racial minorities, were seen as attempting to gain a

measure of power and could be perceived as threatening to the dominant white power base in society. Preventing an increase in political power of African Americans through permanent disenfranchisement for committing criminal offenses could therefore be seen as an attempt to further control the perceived threat posed by the civil rights movement by eliminating the ability of some African Americans to vote. As such, it is conceivable that the time frame criterion for disenfranchisement could be explained by the group threat hypothesis.

Up to this point each of the criteria discussed dealt with offenders who were incarcerated. However, disenfranchisement criteria often extend beyond incarceration to include parole, probation, and even suspended sentences that carry no prison time. Parole, as a criterion of disenfranchisement, is common in that thirty-five of the forty-nine states disenfranchise during a period of parole. Of these thirty-five states, however, nine have additional post-release time requirements (Alabama, Arizona, Delaware, Florida, Maryland, Mississippi, Nebraska, Virginia and Wyoming). For example, in Arizona, an individual sentenced to a prison term for a second offense, must wait for a period of two years after an unconditional discharge before applying for restoration of voting rights, where an unconditional discharge includes discharge from parole (Arizona Revised Statute § 13-906). In Delaware, for felony offenses, the restoration of voting rights is possible upon completion of the sentence and a five-year waiting period (Delaware Code Annotated, Title 15, § 1701). And in Nebraska, the disenfranchisement period last for the time of incarceration, probation, parole,

and for a two-year time period after final discharge of incarceration, probation, or parole (Nebraska Revised Statute § 29-112 and § 29-2264). Of the six remaining states that require post-release time, all permanently disenfranchise offenders based on a variety of factors. Probation (and use of suspended sentences) as a disenfranchisement criterion is common as well. Thirty-two states mandate that offenders be disenfranchised for any period of probation and/or if the sentence was suspended. Of the thirty-two states that disenfranchise during probation and/or a suspended sentence, only South Dakota actually articulates that disenfranchisement occurs at the time of conviction and includes those whose term of incarceration has been suspended (South Dakota Codified Laws § 23A-27-35). Simply put, if a person is convicted of a felony offense, but the judge suspends the prison sentence, the offender still cannot vote until the entire period of the suspended sentence has passed. Not allowing offenders who are no longer incarcerated to vote does fit with the group threat theoretical framework. Much like the incarceration argument, offenders on probation or parole have already proven that they constitute a threat to the dominant social order, therefore all probationers and parolees could be considered threatening population. However, because race continues to play a major role in the criminal justice system, the impact of this criterion is felt more so by racial minorities. That is, because race is a factor in arrest, conviction, and incarceration it is a factor in probation and parole. By continuing to

disenfranchise offenders after they are released from prison, the laws continue to act as a controlling factor over offenders and subsequently racial minorities.

As discussed throughout permanent disenfranchisement is a factor in twelve states. Criteria for permanent disenfranchisement of offenders differ across states and rely on a variety of factors previously discussed, including: number of offences, type of crime, and even time period in which the crime was committed. Of the twelve states that permanently disenfranchise felony offenders, six disenfranchise on the first felony offense (Alabama, Florida, Kentucky, Mississippi, Tennessee, and Virginia). For example, in Florida, all persons who have been convicted of a felony offense permanently forfeit all civil rights, unless granted a pardon or restoration of those civil rights by the Governor (Florida Constitution, Article VI, § 4; Florida Statute 97.041(2)(b); Florida Statute, Chapter 944.292(a)). In Florida, disenfranchisement becomes effective upon conviction and is not tied to any specific felony, but rather all felony offenses. Under Virginia law, any individual who has been convicted of a felony offense loses their right to vote (Virginia Constitution, Article II, § 1; Virginia Code Annotated § 8.01-338 and § 24.2-101). In Virginia, the period of disenfranchisement begins upon conviction and is permanent unless the former offender is granted a restoration of rights or a pardon by the Governor (Virginia Constitution, Article V, § 12; Virginia Code Annotated § 24.2-101). As can be seen from these two examples permanent disenfranchisement is a bit misleading when one considers that in each of the twelve states, with the exception of

certain crimes (e.g. there is no restoration for the offense of murder in Tennessee), there is a method for restoration of voting rights. However misleading the actual word permanent may be, the reality of these permanent disenfranchisement states is that rarely do voting rights become restored (Portugal, 2003). The restoration of voting rights will be discussed in the next section; however, the impact of permanently disenfranchising offenders can be viewed as supportive of the group threat hypothesis in that control continues to be exercised over offenders well after there time has been served. The impact these laws have on minority offenders is to permanently remove them from the voting rolls of the state. By reducing the number of minorities allowed to vote, the power base in society acts to reduce any political power these groups can attain. Therefore, while the law is racially neutral in wording the effect of the law is the reduction of eligible minority voters, as these minorities are the same ones most likely to be incarcerated to begin with. The group threat hypothesis is then supported by permanent disenfranchisement, in that a group that is perceived to be threatening is controlled by the powerful in society through legal means.

Some of the crimes for which one can be disenfranchised particularly misdemeanor drug offenses, theft, and prostitution appears to be aimed at minority offenders as they are typically the ones incarcerated for those offences (Walker, Spohn, & DeLone, 2004). In Maryland, for example, prostitution, a crime where minorities tend to be arrested more often than whites, can lead to disenfranchisement, while patronizing prostitution has no effect on voting rights.

Additionally, the inclusion of misdemeanor offenses as a criterion for disenfranchisement increases the opportunity to disenfranchise a variety of criminal offenders regardless of race/ethnicity, class, and gender. Inclusion of misdemeanor offenses means that many street-level crimes, such a drug possession, petty thefts, and prostitution, among others would lead to those street-level offenders being disenfranchised. These street crimes tend to be the focus of the criminal justice system and are generally seen as those that represent disorder in society (Walker, Spohn, & DeLone, 2004). It is this threat of societal disorder that is viewed as threatening to those who control society (Behrens, Uggen, & Manza, 2003). Because the vast majority of these street-level misdemeanor offenders are minorities, the inclusion of misdemeanor offenses as a disenfranchisement criterion would appear to have a disproportionate impact on minority offenders. That is, because more minorities are incarcerated, more minorities are disenfranchised. The larger impact is that of increased social control over minorities by limiting, through disenfranchisement, their opportunity to vote which could ultimately increase the power of minorities as the ability to vote would allow for the ability to shape the political landscape in society. The disproportionate impact of disenfranchisement on minorities then supports the contention of the group threat hypothesis that social control will be exercised over any group (in this case minorities) perceived to be a threat to the ruling class or the state.

The criteria for disenfranchisement in state laws are quite varied. The effect of these criteria is varied as well, depending upon the state and how these laws are enforced. Despite the variation, however, each of these criteria appears to have more of an impact upon minorities than they do upon the controlling majority class. Because of this, the group threat hypothesis appears to be supported by the criteria for disenfranchisement.

Voting Restoration Procedures

The word permanently is misleading in the respect that of the twelve states that permanently disenfranchise felony offenders, eleven have some type of restoration procedure for regaining the right to vote, regardless of the offense. Even the lone dissenter among the twelve permanent disenfranchisement states, Tennessee, allows for restoration on most, but not all, felony offenses. Like disenfranchisement criteria, restoration procedures also vary depending on the state. Much like the theme regarding the criteria of disenfranchisement laws discussed previously, there appears to be support for the group threat hypothesis when one examines the various restoration procedures. That is, when state laws specifying the criteria for restoring the voting rights of offenders are examined, it becomes apparent that the concept of controlling a threat may indeed be a part of voting rights restoration for offenders.

A majority of states (twenty-eight) allow for the automatic restoration of voting rights upon the completion of the sentence. The remaining twenty-one states specify requirements for voting restoration. Of these states, sixteen

require the payment of all fines and/or court costs associated with the offense.

Of those sixteen states that require payment of fines, only six (Georgia, Indiana,

Minnesota, New Mexico, Oklahoma, and Washington) have only that additional

requirement for vote restoration. In those six states, once the fines and/or court

costs have been paid former offenders are eligible to vote. Two additional states,

Connecticut and North Carolina, only have two requirements, to pay all fines

associated with the offense and to file some form of documentation indicating

release with the court of conviction demonstrating that they have been

unconditionally discharged. The remaining thirteen states have additional

requirements which will be discussed in more detail in what follows. The

requirement to pay all fines and/or court costs as a condition of regaining the

right to vote can be construed as an example of class and racial bias. That is, if

offenders cannot afford to pay, they do not get their voting rights restored. As

has been established previously (Barak, Flavin, & Leighton, 2001; Bridges, 1997;

Cole, 1999; Tonry, 1995), class and therefore racial minorities for the most part

cannot afford these fines and are therefore prevented from restoring voting

rights. Intention or not, the result of the requirement to pay all fines and/or court

costs does support the group threat hypothesis, in that control, through financial

requirements, is exercised over a minority group.

Of the twenty-one states requiring some form of petition to restore voting

rights, thirteen require the completion and approval of either an application or

some other state governmental forms. For example, Arizona requires an

application for restoration be filed out and filed along with a "certificate of

absolute discharge" and sent to the discharging judge for final decision (Arizona

Revised Statute § 13-906). In Delaware, as long as the offense charged is not a

permanent disqualifying offense the application is made to the local election

board (Delaware Constitution, Article V, § 2; Delaware Code Annotated, Title 15,

§ 1701). Under Virginia law, the process for restoration depends on the nature of

the offense. For non-violent offenders, a one-page application is required

although violent and/or drug offenders are required to complete an extensive

thirteen-page application, both applications must be sent to the Secretary of

Commonwealth (Virginia Code Annotated § 53.1-231.1). In many cases the

paperwork required of offenders to regain their voting rights is extensive and

difficult. Because of this, offenders often require the assistance of legal counsel

to traverse the requirements. Offenders who cannot afford counsel to assist with

the petition are unable to regain their voting rights. The difficulty of the forms

and/or petitions can be seen as an additional control mechanism in that the forms

do often require legal assistance that most criminal offenders cannot afford.

Rather than simply returning voting rights automatically upon release, states that

require these petitions appear to be attempting to limit the number of offenders

who regain the right to vote. As limiting the right to vote acts to control offending

populations far beyond the prison cell, petitions can be seen as fitting into the

threat hypothesis. That is, these petitions ultimately impact minority populations

at a greater rate as they are the ones most likely not to be able to afford legal representation.

Another form of restoration involves the petitioning of the court of conviction for the return of voting rights. Four states (Arizona, Nevada, Tennessee, and Virginia) all state that offenders may petition the court of conviction or the circuit court in the offender's area of residence to regain the right to vote. For example, in Nevada, a former offender may either appeal to the Board of Pardons Commissioners for a pardon or may seek restoration of their civil rights by filing an appeal with the court in which they were convicted (Nevada Revised Statute § 213.090). In order to seek restoration of civil rights from the court of conviction, the former offender must petition the court, requesting the sealing of all records pertaining to the conviction, if granted, the sealing of the court records means that the conviction never occurred and the former offender is then able to vote (Nevada Revised Statute § 213.090 and § 179.245). The Tennessee statute is similar in regards to the effect of vote restoration. In Tennessee, for full restoration of the right to vote, the offender must meet the requirements, regarding time frame and crime type, and must petition the circuit court in the county of residence (Tennessee Code Annotated § 40-29-101 through § 40-29-105). The petition to the circuit court for full restoration must be made after notice is provided to both the federal and state prosecutors (Tennessee Code Annotated § 40-29-102 through § 40-29-104). Additionally, the petition must be accompanied by proof that the former offender

"has sustained the character of a person of honesty, respectability and veracity, and is generally esteemed as such by the petitioner's neighbors" (Tennessee Code Annotated § 40-29-102). Once the petition is filed, the court determines eligibility for restoration of the right to vote. Much like the requirement for filing written petition and forms, petitioning the court to regain voting rights is often more difficult for minority offenders who cannot afford the assistance of legal counsel. Because criminal offenders are often of class and racial minorities the impact of the requirements of petitions often have a more intense affect on these minority offenders, often preventing them from regaining their voting rights. Therefore, much like previous arguments, the requirement of petitioning the court ultimately acts as a control mechanism to keep minority offenders from voting.

As an additional requirement, ten of the states requiring some form of petition conduct a background investigation or review of the offender prior to the restoration of voting rights. Some of these background investigations amount to merely a review of the offender's records to ensure compliance with state laws, although others are more in-depth. In Wyoming, for first time, non-violent offenders, the parole board conducts an investigation merely to determine eligibility and then, if eligibility is verified, the board issues the restoration certificate (Wyoming Statute § 7-13-105). Along similar lines, the parole board in the state of Kentucky determines whether or not the former offender is eligible for vote restoration and then forwards the request to the Governor (Kentucky Revised Statute Annotated, § 196.045). The state of Maryland is an additional

example, as the parole board reviews and investigates the cases of offenders and determines eligibility and then forwards the request to the Governor for final decision (Maryland Regulations Code, Title 12, § 08.01.16). The requirement for a background investigation of the offender is not uncommon as a requirement for voting rights restoration. However, the requirement of an often extensive background investigation is time consuming and often requires the offender to ensure all fines and/or court costs be paid and that legal counsel to assist with the petition prior to any investigation into the offenders background. This additional requirement puts additional strain on offenders, particularly financially. The financial aspect is often not something that offenders, especially minority (class and racial) offenders can necessarily afford. Because of this aspect of the restoration process, it can be seen as a requirement that often eliminates the possibility of vote restoration. As minority offenders are more likely to be eliminated due to these requirements the requirements can be viewed as an additional control mechanism over minority offenders after their release and therefore is supportive of the threat hypothesis contention that minorities will be controlled by the dominant class if they are perceived as a threat.

The use of the parole board for reviews and/or investigation is not unusual, particularly given the role that many parole boards play in the restoration process. Eleven of the twelve permanent disenfranchisement states, in fact, require that offenders appeal either directly to a parole or other type of board of appeals or directly to the Governor of the state in order to be considered

for voter restoration. In Wyoming for example, for those individuals requesting a pardon, must wait for ten years after completion of the sentence before applying directly to the governor. The governor's office is required to notify the prosecuting attorney to determine the particulars of the case prior to making any decision regarding executive pardon (Wyoming Statute § 7-13-803 through 806). Although West Virginia statue requires permanent disenfranchisement for only one offense, bribery of an elected official, in a case of a conviction for such a charge the only alternative for the restoration of voting rights is to apply for a gubernatorial pardon through application to the state parole board (West Virginia Constitution, Article VII, § 11). Lastly, under Mississippi law, the only method for regaining the right to vote is by Gubernatorial pardon or by a two-thirds vote of the Mississippi legislature (Mississippi Constitution, Article 12, § 253; Mississippi Code Annotated § 99-19-37). Once all requirements are met by the offender, the formal pardon is sent to the Governor, via the Parole Board, for investigation and final decision (Mississippi Constitution, Article 5, § 124). Like many of the other restoration requirements discussed herein, any sort of appeal, either to a board or directly to the Governor of the state, often requires legal assistance that must be paid for by the offenders. Again, the requirement of legal counsel often places an additional burden on class and therefore racial minorities in that legal fees often far exceed anything these former offenders can afford. The requirements then end up acting as an impediment, preventing minority offenders the opportunity to regain their voting rights. If they cannot regain their rights they

are limited in the amount of power they can exercise through the election of political officials. Therefore, there is the affect of further control of minorities by limiting their voting potential. By limiting the rights of former offenders, the dominant group in society can further control the offenders and therefore protect the dominant social system.

Although appeal to a board or to the Governor appears to be the restoration method of choice for most of the permanent disenfranchisement states, there are eleven states that place either additional requirements and/or time periods upon the offender. The most common of these additional requirements is the addition of some waiting period after final discharge of a sentence. Arizona, for example, requires two years after discharge before an offender can even apply for restoration (Arizona Revised Statute § 13-906). Delaware also requires an additional waiting period of either five years for felony offenses and ten years for misdemeanors involving a violation of election law (Delaware Code Annotated, Title 15, § 1701). Under Maryland law the time requirements are five years for a misdemeanor, ten years for a felony, and for those requesting a pardon who have been convicted of a violent crime or of a crime involving drugs the waiting period is twenty years (Maryland Regulations Code, Title 12, § 08.01.16). Time is not the lone additional requirement, however. For example Alabama, requires that any offender who seeks restoration of voting rights, be free of any pending charges and for a serious violent offense and/or a sexual offense the offender must submit a DNA sample

to the Alabama DNA database (Alabama Code § 36-18-25(f)). Lastly, Mississippi

requires offenders seeking restoration to not only wait a period of seven years

after the completion of their sentence, but then mandates that the offender place

a notice of the pardon request, along with a statement of why the pardon should

be given, in the newspaper of the county where the conviction took place

(Mississippi Constitution, Article 5, § 124 and Article 12, § 253). Although most

of these additional requirements do not appear to intentionally block minority

offenders, much like the petition requirements discussed above these

requirements may ultimately block minority offenders from regaining the vote.

The requirements themselves do not appear to limit minorities, but due to the

expense of legal fees that often accompany these requirements the affect is to

limit the ability of minority offenders to regaining their rights. Because of this, it

can be argued that these requirements do act to further control minorities in that

they prevent minorities from regaining the vote, which may ultimately assist in

offenders gaining more power. The affect then fits into the theoretical framework

that minorities are further controlled, in this case by limiting voting rights,

because they are perceived as a threat to society. Although racial bias may not

be intentional the effect is substantial.

The state of Iowa provides an example of change that has taken place

due some perceived racial bias. Concerned that the state's disenfranchisement

statute was racial biased in result, the governor of Iowa, by executive order,

changed the law from permanently disenfranchising felony offenders to one that

allows for automatic restoration of the right to vote (Iowa Executive Order Number 42, July 24, 2005). In addition, other states, like Washington, have come under fire in recent years for perceived racial bias in their restoration procedures (*Farrakhan v. Washington*, 338 F.3d 1009, 1016 (9th Circuit, 2003); *United States v. Loucks*, 149 F.3d 1048, 1050 (9th Circuit, 1998)). In these cases, the court stated that the financial provision of the statute could be challenged as "racially discriminatory under the Voting Rights Act" (*Farrakhan v. Washington*, 338 F.3d 1009, 1016 (9th Circuit, 2003). The Washington statute states, however, that if the former offender cannot pay the fines associated with the offense, they can either petition the court for a reduction or complete elimination of the fine, as long as "manifest hardship" can be proven (Washington Revised Code § 10.73.160). Additionally, the former offender may request a restoration of civil rights or an outright pardon from the governor in cases where the fines cannot be paid (Washington Revised Code § 9.96.010 and § 9.96.020). Along the same lines, Nevada statutes normally require the payment of all fines associated with the criminal offense in order for voting rights to be restored; however, this requirement may be waived if the former offender is indigent (Nevada Revised Statute § 176A.850, § 213.155, and § 213.157).

Much like the criteria used to determine who becomes disenfranchised, the requirements for voting rights restoration indicate support for the group threat hypothesis in a variety of ways. As previously discussed, the requirement to pay all court costs and fines as a condition of voting rights restoration is perhaps the

clearest support for the group threat hypothesis. That is, the group threat

hypothesis argues that a group that is perceived to be threatening to the powerful

in society will be subject to a variety of control mechanisms. A clear mechanism

of control is to reduce the possibility of regaining voting rights through the

imposition of high court costs and/or fines and then conditioning restoration of

voting rights on the payment of such fines. As established (Barak, Flavin, &

Leighton, 2001; Bridges, 1997; Cole, 1999), the large majority of criminal

offenders come from the lowest socioeconomic classes. Additionally, racial

minorities, particularly African Americans, are overwhelming represented in the

lowest of socioeconomic classes. What results then is that African Americans

are impacted by the requirement to pay fines that they cannot afford in order to

regain voting rights lost due to a criminal conviction. This requirement to pay

fines and/or court cost then acts as a control mechanism over African Americans

and therefore exemplifies the group threat hypothesis. An additional example of

restoration criteria that appears supportive of the group threat hypothesis is the

often complicated legal petitions that must be filed in order for voting rights to be

restored. The complicated legal petitions may require attorneys that can fill out

the requisite forms and file the petitions with the appropriate government officials

(different depending on the state). The clear implication here is that if former

offenders cannot afford to pay fines and/or court costs they are also unlikely to

be able to afford legal counsel to assist in the restoration process. Without

assistance then, it can be assumed the restoration process is too difficult to

traverse by criminal offenders that are most likely poor and undereducated. It appears then that restoration requirements in disenfranchisement laws also support the group threat hypothesis in that they are another means of controlling a population deemed threatening to the majority.

Summary: Disenfranchisement and the Group Threat Hypothesis

Despite the differences noted above, not a single state law made any indication of a bias toward any particular group, other than criminal offenders. This statement should be fairly obvious, in that no state could possibly defend a law that is outwardly racially biased. Unlike the laws in the post-Civil War era, the current state statutes are racially neutral in their language. However, it should be clear that they can be detrimental for, or have negative effects on, African Americans. The previous discussion of institutional discrimination articulated that what mattered in the law was not the intent, but rather the result (Georges-Abeyie, 1990). That is, simply because the results of a law may indicate disparities in outcome, does not mean that there was any intent to discriminate. These laws may be seen as institutionalized discrimination, in that disparities in outcomes are often the result of criminal justice policies established without racist intent (Georges-Abeyie, 1990; Petersilia, 1983; Wilbanks, 1987). Income plays a major role in the criminal justice system, for example, the issuance of bail, the payment of court costs, the ability to hire a quality attorney, and the like are all related to one's social class status. Those without financial wherewithal tend to be impacted more by criminal justice sanctions in that

because they cannot afford bail, court costs, or a quality attorney they are often unable to avoid jail. Given that the racial minorities, particularly African Americans, often overlap with issues of class, it comes as no surprise that African Americans are often overrepresented as offenders in the criminal justice system. With the increased numbers of African Americans incarcerated in prisons across the country the impact of disenfranchisement laws on African Americans is substantial. Although the laws themselves are racially neutral in intent, the result of increased incarceration of African Americans results in the increased disenfranchisement of African Americans. That being the case it can be argued that disenfranchisement laws are an example of institutional discrimination and do therefore support the group threat hypothesis.

Although states such as Iowa, Washington, and Nevada have seemingly identified adverse impacts on certain groups, such as racial minorities and the poor, most of these adverse impacts appear to be ignored by most other states. Whether or not these racial differences are ignored by the most states because these states belief their laws to be racially neutral is irrelevant. What is clearly evident is that despite the racially neutral intent of the laws, the results of the laws are clearly indicative of racial bias. Because of this bias, it appears clear that the group threat hypothesis, that argues that a perceived threat is controlled through legislation, is supported.

Quantitative Analysis Results

This section deals with the quantitative analysis of data as a test of the group threat hypothesis. Specifically, this section tests the following hypotheses:

1) The greater the proportion of minorities in a state's population, the more restrictive the state's disenfranchisement laws;

2) The more restrictive a state's disenfranchisement laws, the higher the state's rate of minority arrest and incarceration; and

3) The higher a state's rate of minority arrest and incarceration, the more difficult the voting restoration procedures.

This section is broken down into several subsections: the creation of data for quantitative analysis, three subsections discussing the tests of three aforementioned hypotheses, and a summary of quantitative analysis, and a discussion of the limitations of the study.

Creation of Data File for Quantitative Analysis

Based on the qualitative analysis discussed previously, two variables, the strictness of disenfranchisement legislation (*strictness*) and the difficulty of the restoration process (*restoration*), were created by quantifying information obtained from state disenfranchisement laws and regulations. The qualitative analysis of these documents resulted in two categories: the strictness of disenfranchisement laws and the difficulty of the voting restoration process, with two separate coding schemes.

1. <u>Strictness of Disenfranchisement Scale</u> – Each state's disenfranchisement law(s) were examined to determine the point at which disenfranchisement becomes effective in that state (e.g. during pretrial detention, upon conviction, or upon incarceration), the level of offense required to disenfranchise (e.g. misdemeanor or felony), the length of time of the disenfranchisement (e.g. during incarceration, parole, probation and/or a suspended sentence, or any additional post-release time after parole), and the permanence of the disenfranchisement (e.g. permanent for 1st offense, for 2nd offense, or permanent for certain crimes). To quantitatively determine the strictness of a state's disenfranchisement law, one point was given for each indication of strictness found in the state's laws. These indications of strictness were counted and a score was attained that was used as a measure of strictness of that state's law. Based on the above a variable measuring the strictness of disenfranchisement was created based on eleven distinct criteria: 1) conviction of some misdemeanor offenses, 2) pretrial detention, 3) conviction of a felony offense, 4) probation and/or a suspended sentence, 5) incarceration, 6) parole, 7) additional post-release time after or in addition to parole, 8) permanence based on conviction of first offense, 9) permanence based on conviction of a second offense (recidivism), 10) permanence for a conviction for certain types of crimes, and 11) permanence dependent upon when the crime was committed (for example, the State of Tennessee

has different requirements based upon the time period the crime was committed; a person convicted of a felony before 1973, or between 1981 and 1986, or after 1996 is permanently disenfranchised, restoration is automatic for any other time period). Each category was assigned a point, and a total score for a state, which ranges between 0 to 11 represents the level of disenfranchisement strictness in that state, and the higher the score the stricter the disenfranchisement law. The result of this analysis is represented in Table 5-1.

2. Restoration Difficulty Scale – There are two major categories of restoration of voting rights: 1) automatic restoration and 2) restoration through petition. To determine the difficulty of the restoration process, the laws for each state were examined to determine what was required of the offender to restore voting rights. That is, restoration processes were examined to determine if the restoration was automatic or if some additional requirement was mandated (e.g. the payment of all fines, an investigation or review, a petition or an appeal to a court or board, or additional requirement). To quantitatively determine the difficulty of a state's restoration process, one point was given for each indication of voting restoration difficulty. The indications of restoration difficulty were counted and a score was attained that was used as a measure of difficulty of that state's restoration process. The variable measuring the difficulty for voting rights restoration (restoration through petition) was created

Table 5-1: Criteria of Disenfranchisement Based on State Law
(Higher total indicates a stricter disenfranchisement law)

	For some misdemeanors	Pretrial Detention	Upon Conviction	Probation / Suspended Sentence	Incarceration	Parole	Additional Post-Release Time after parole	Permanent (1st Offense)	Permanent (2nd Offense)	Permanent for certain crimes	Permanent based on time period of crime	Total
Alabama	0	0	1	1	1	1	1	1	1	1	0	8
Alaska	0	0	1	1	1	1	0	0	0	0	0	4
Arizona	0	0	1	1	1	1	1	0	1	0	0	6
Arkansas	0	0	1	1	1	1	0	0	0	0	0	4
California	0	0	0	0	1	1	0	0	0	0	0	2
Colorado	1	0	0	0	1	1	0	0	0	0	0	3
Connecticut	0	0	0	0	1	1	0	0	0	0	0	2
Delaware	1	0	1	1	1	1	1	0	0	1	0	7
D.C.	0	0	0	0	1	0	0	0	0	0	0	1
Florida	0	0	1	1	1	1	1	1	1	0	0	7
Georgia	0	0	0	1	1	1	0	0	0	0	0	3
Hawaii	0	0	0	0	1	0	0	0	0	0	0	1
Idaho	0	0	1	1	1	1	0	0	0	0	0	4
Illinois	1	0	0	0	1	0	0	0	0	0	0	2
Indiana	0	0	0	1	1	1	0	0	0	0	0	3
Iowa	1	0	1	1	1	1	0	0	0	0	0	5
Kansas	0	0	1	1	1	1	0	0	0	0	0	4
Kentucky	1	1	1	1	1	1	0	1	1	1	0	9
Louisiana	0	0	0	0	1	0	0	0	0	0	0	1
Maine	0	0	0	0	0	0	0	0	0	0	0	0
Maryland	1	0	1	1	1	1	1	0	1	1	0	8
Massachusetts	0	0	0	0	1	0	0	0	0	0	0	1
Michigan	1	0	0	0	1	0	0	0	0	0	0	2
Minnesota	0	0	1	1	1	1	0	0	0	0	0	4
Mississippi	0	0	1	1	1	1	1	1	1	1	0	8
Missouri	0	0	0	1	1	1	0	0	0	0	0	3
Montana	0	0	0	0	1	0	0	0	0	0	0	1
Nebraska	0	0	1	1	1	1	1	0	0	0	0	5
Nevada	0	0	1	1	1	1	0	0	1	1	0	6
New Hampshire	0	0	0	0	1	0	0	0	0	0	0	1
New Jersey	0	0	1	1	1	1	0	0	0	0	0	4
New Mexico	0	0	1	1	1	1	0	0	0	0	0	4
New York	0	0	0	0	1	1	0	0	0	0	0	2
North Carolina	0	0	1	1	1	1	0	0	0	0	0	4
North Dakota	0	0	0	0	1	0	0	0	0	0	0	1
Ohio	0	0	0	0	1	0	0	0	0	0	0	1
Oklahoma	0	0	0	1	1	1	0	0	0	0	0	3

Table 5-1: Criteria of Disenfranchisement Based on State Law (Continued)

(Higher total indicates a stricter disenfranchisement law)

	For some misdemeanors	Pretrial Detention	Upon Conviction	Probation / Suspended Sentence	Incarceration	Parole	Additional Post-Release Time after parole	Permanent (1st Offense)	Permanent (2nd Offense)	Permanent for certain crimes	Permanent based on time period of crime	Total
Oregon	0	0	0	0	1	0	0	0	0	0	0	1
Pennsylvania	0	0	0	0	1	0	0	0	0	0	0	1
Rhode Island	0	0	1	1	1	1	0	0	0	0	0	4
South Carolina	1	0	1	1	1	1	0	0	0	0	0	5
South Dakota	0	0	1	1	1	0	0	0	0	0	0	3
Tennessee	0	0	1	1	1	1	0	1	1	1	1	8
Texas	0	0	1	1	1	1	0	0	0	0	0	4
Utah	0	0	0	0	1	0	0	0	0	0	0	1
Vermont	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	0	0	1	1	1	1	1	1	1	0	0	7
Washington	0	0	1	1	1	1	0	0	0	0	0	4
West Virginia	0	0	0	1	1	1	0	0	0	1	0	4
Wisconsin	0	0	1	1	1	1	0	0	0	0	0	4
Wyoming	0	0	1	1	1	1	1	0	1	1	0	7

based on seven different requirements including: 1) payment of all fines,
2) a background investigation and/or review, 3) petition to the court of
conviction, 4) appeal to a review board or to the Governor for a pardon, 5)
submission of a DNA sample, 6) having no pending charges, and 7) any
additional waiting period and/or requirement. Each of the seven sub-
categories was given a value of one. The scores range from 0 to 5, and
the higher score, the more difficult the voting restoration process. States
that apply automatic restoration have a score of 0. The results of this
analysis are represented in Table 5-2.

Distribution of State Disenfranchisement Laws

The sample used for this study consisted of 51 states (the District of
Columbia was treated as a state) and the 49 state disenfranchisement laws. Of
the 51 states, 49, or 96% had disenfranchisement legislation. Among the 49 with
these laws 22, or 45%, had some sort of petition for restoration requirement. The
remaining 27 states with disenfranchisement legislation, 55% of the total had an
automatic restoration process.

In addition, three other variables were created and included in data
analysis. First, percent African American in the population by state
(*PercentBlack*) was calculated by taking the total number of African Americans in
a state and dividing by the total population of that state. Based on this
calculation the range of percentage of African Americans in states was 0.3% to
60%. Second, African American incarceration rates by state (*BIncarB*) were

Table 5-2: Voting Restoration Requirements Based on State Law
(Higher total indicates a more difficult restoration process)

	Restoration through petition							
	Payment of all fines	Investigation/Review	Petition Court	Appeal to a board or Governor for pardon	DNA sample	No pending charges	Additional waiting period and/or requirement	Total
Alabama	1	1	0	1	1	1	0	5
Alaska [1]	0	0	0	0	0	0	0	0
Arizona	1	1	1	0	0	0	1	4
Arkansas [1]	0	0	0	0	0	0	0	0
California [1]	0	0	0	0	0	0	0	0
Colorado [1]	0	0	0	0	0	0	0	0
Connecticut	1	0	0	0	0	0	0	1
Delaware	1	0	0	1	0	0	1	3
D.C. [1]	0	0	0	0	0	0	0	0
Florida	1	1	0	1	0	0	1	4
Georgia	1	0	0	0	0	0	0	1
Hawaii [1]	0	0	0	0	0	0	0	0
Idaho	1	0	0	0	0	0	0	1
Illinois [1]	0	0	0	0	0	0	0	0
Indiana [1]	0	0	0	0	0	0	0	0
Iowa [1]	0	0	0	0	0	0	0	0
Kansas [1]	0	0	0	0	0	0	0	0
Kentucky	1	1	0	1	0	0	0	3
Louisiana [1]	0	0	0	0	0	0	0	0
Maine [2]	0	0	0	0	0	0	0	0
Maryland	1	1	0	1	0	0	1	4
Massachusetts [1]	0	0	0	0	0	0	0	0
Michigan [1]	0	0	0	0	0	0	0	0
Minnesota	1	0	0	0	0	0	0	1
Mississippi	1	1	0	1	0	0	1	4
Missouri [1]	0	0	0	0	0	0	0	0
Montana [1]	0	0	0	0	0	0	0	0
Nebraska	0	0	0	0	0	0	1	1
Nevada	0	1	1	1	0	0	1	4
New Hampshire [1]	0	0	0	0	0	0	0	0
New Jersey [1]	0	0	0	0	0	0	0	0
New Mexico	1	0	0	0	0	0	0	1
New York [1]	0	0	0	0	0	0	0	0
North Carolina	1	0	0	0	0	0	0	1
North Dakota [1]	0	0	0	0	0	0	0	0
Ohio [1]	0	0	0	0	0	0	0	0

**Table 5-2: Voting Restoration Requirements Based on State Law
(Continued)**

(Higher total indicates a more difficult restoration process)

	Restoration through petition							
	Payment of all fines	Investigation/Review	Petition Court	Appeal to a board or Governor for pardon	DNA sample	No pending charges	Additional waiting period and/or requirement	Total
Oklahoma	1	0	0	0	0	0	0	1
Oregon [1]	0	0	0	0	0	0	0	0
Pennsylvania [1]	0	0	0	0	0	0	0	0
Rhode Island [1]	0	0	0	0	0	0	0	0
South Carolina [1]	0	0	0	0	0	0	0	0
South Dakota [1]	0	0	0	0	0	0	0	0
Tennessee	1	1	1	1	0	0	1	5
Texas [1]	0	0	0	0	0	0	0	0
Utah [1]	0	0	0	0	0	0	0	0
Vermont [2]	0	0	0	0	0	0	0	0
Virginia	0	1	1	1	0	0	1	4
Washington	1	0	0	0	0	0	0	1
West Virginia	0	0	0	1	0	0	0	1
Wisconsin [1]	0	0	0	0	0	0	0	0
Wyoming	0	1	0	1	0	0	1	3

[1] Indicates Automatic Restoration
[2] No Felony Disenfranchisement Law

calculated by taking the total number of African Americans incarcerated in a state, dividing that number by the total number of African Americans of that state and then multiplying the result by 100,000. Based on this calculation the range of values for African American incarceration was 780 to 4244 per 100,000 population. Third, African American arrest rates by state (*BArrestBl*) were calculated by taking the total number of African Americans arrested in a state, dividing that number by the total number of African Americans in that state and then multiplying the result by 100,000. Based on this calculation the range of values for African American arrest was 1249 to 25811 per 100,000 population. Table 5-3 summarizes the profile of state legislation on disenfranchisement. The variables used in data analysis are summarized in Table 5-4.

Table 5-3: Distribution of State Disenfranchisement Laws

	Disenfranchisement	Restoration Petition
Yes	49 (96%)	22 (45%)
No	2 (4%)	27 (55%)
Total	51 (100%)	49 (100%)

Table 5-4: Variables used in Data Analysis

Variable	Level of Measurement	Range
Dependent Variables		
Strictness	Continuous	0 - 9
Restoration	Continuous	0 - 5
Independent Variables		
Percentage of African Americans	Continuous	0.3 - 60.0
African American Incarceration Rates	Continuous	780 - 4244
African American Arrest Rates	Continuous	1249 - 25811

Data Analysis and Results

In the following sections, statistical procedures utilized for data analysis are presented and the results are reported and discussed at length. This section is broken down by the three hypotheses established in Chapter 4.

Hypothesis 1

The study hypothesizes that there is a positive relationship between the level of strictness of disenfranchisement legislation and the size of state African American populations. There are two ways to test this hypothesis. First, the study examined if states with disenfranchisement laws have significant higher proportion of African American population than states without disenfranchisement laws. Then, the study examined if states that have higher proportions of African Americans have stricter disenfranchisement laws than states that have lower proportions of African Americans. To determine if there is a significant difference in percent of African American population between states that have disenfranchisement laws and states that do not, the Mann-Whitney statistic was used.

The first analysis involves the comparison of the African American population sizes in states with disenfranchisement laws and those in states without such laws. For this test, the variable *PercentBlack* is treated as the independent variable, and *strictness* as the dependent variable. The original variable of disenfranchisement strictness (*strictness*) was recoded to prepare for the use of exact statistical methods. For this analysis the researcher used the

Mann Whitney U test which is used to test whether or not, given two samples, one variable tends to have higher values than the other. In this case, the Mann Whitney U is used to test whether states with disenfranchisement laws tend to have a higher proportion of African Americans in the population than those states without a disenfranchisement law. Because the Mann Whitney test compares means of two groups the researcher first had to recode the dependent variable (*strictness*) into a dichotomous ordinal-level variable (*strictness2*). To recode, the researcher assigned *strictness2* two values: 1 = states with disenfranchisement laws and 0 = states without disenfranchisement laws. The Mann-Whitney U test was used to determine whether or not there was a statistically significant relationship between the percentage of minorities in a state and whether or not that state had a disenfranchisement law. A significant Mann Whitney U test statistic would indicate that these variables are indeed related. The statistics should show states with disenfranchisement laws have significantly higher percentages of African Americans. A comparison of means will confirm the directionality of any significant effect.

The results of the Mann-Whitney test indicate strong support for a difference in percent of African American population based upon whether or not a state has a disenfranchisement law. For states with no disenfranchisement law, the mean rank of proportion of African Americans in the state's population is 3.50. For states with disenfranchisement law, the mean rank of African American population is 26.92. The Mann Whitney U test statistics (Z=-2.184, p=0.013)

reveals that the difference in the mean ranks is statistically significant. That is, states with a disenfranchisement law have a significantly higher proportion of African Americans in the state population than states without a disenfranchisement law. The hypothesis is therefore supported. Table 5-5 summarize the results of the relationship analysis between proportion of African Americans and disenfranchisement laws.

The second analysis involves the analysis of the relationship between the sizes of African American population and levels of disenfranchisement strictness. It is hypothesized that states with greater African American population have stricter disenfranchisement laws. For this test, the variable *PercentBlack* is treated as the independent variable, and *strictness* as the dependent variable. The original variable of disenfranchisement strictness (*strictness*) was recoded to prepare for the use of exact statistical methods. For this analysis the researcher used the Kruskal-Wallis test which is used to test the variance by ranks by comparing several independent samples. In this case, the Kruskal-Wallis is used to test whether states with a higher proportion of African Americans in the population had stricter disenfranchisement laws than states with a lower

Table 5-5: Mann-Whitney Test for Relationship between Proportions of African Americans and Disenfranchisement Laws

	N	Mean Rank	Sum of Ranks	Z Statistic	Exact Significance
States without disenfranchisement law	2	3.50	7.00	-2.184	0.013
States with disenfranchisement law	49	26.92	1319.00		

proportion of African Americans in the population. Because the Kruskal-Wallis

test compares ranks of independent samples and requires ordinal-level data the

researcher first had to recode the dependent variable (*strictness*) into a

trichotomous ordinal-level variable (*strictness3*). Like the earlier test, to conduct

this analysis, the variable determining the strictness of a state's

disenfranchisement law was recoded into a trichotomous variable *strictness3*

which indicates whether the state law was of low strictness, average strictness,

or high strictness. The researcher created a third strictness variable, *strictness3*,

which had three values: 1 = low strictness, 2 = average strictness, and 3 = high

strictness. Values created represented the lowest 25% of the scaled scores of

the original disenfranchisement strictness variable (a score of 0-1 was recoded

into a value of 1 for low strictness), the middle 50% (a score of 2-4 was recoded

into a value of 2 for average strictness), and the highest 25% (a score of 5-9 was

recoded into a value of 3 for high strictness). Using the recoded variable, the

Kruskal-Wallis, was used to test whether there is a significant relationship

between the percentage of African Americans in a state and the strictness level

of the state's disenfranchisement law. The Kruskal-Wallis, is a non-parametric

statistical test which utilizes mean ranks to determine if the relationship between

two variables. In this case, it tests if the states with a higher proportion of African

Americans have higher scores on disenfranchisement strictness. For this test,

the variable *PercentBlack* is an interval level variable which indicates the

percentage of blacks in each state and is treated as the independent variable.

The dependent variable for this test is the recoded variable, *strictness3*, an ordinal-level variable indicating whether a state's disenfranchisement law is of low strictness, average strictness, or of high strictness. A significant chi-square statistic would indicate that the strictness of a state's disenfranchisement law varies with the size of that state's African American population. A significant chi-square statistic would indicate that differences in means are not due to sampling error, thus indicate support for the hypothesis presented. A comparison of means confirms the directionality of any significant effect.

Results of the Kruskal-Wallis test indicates that the mean ranks of the proportion of African Americans in states with different levels of disenfranchisement strictness are significantly different. The mean rank of the percentage of African Americans in the population for states with disenfranchisement laws that are the least strict is 18.19, for average strictness the mean is 26.21, and for high strictness the mean is 32.89. A significant chi-square statistic (x^2 = 6.602; p = 0.032) indicates that these differences are not due to sampling error, thus indicating support for hypothesis 1. Statistics from the Monte Carlo method of the Kruskal-Wallis test was obtained due to insufficient computer memory. The results the Kruskal-Wallis test are presented in Table 5-6.

Based on the findings reported above the data appears to support the hypothesis that states with strict disenfranchisement laws have a higher African American population than states with less restrictive laws.

Table 5-6: Kruskal-Wallis Test for Relationship between Proportion of African Americans and Level of Strictness

	N	Mean Rank	df	Chi-Square	Exact Significance
Disenfranchisement - low strictness	13	18.19			
Disenfranchisement - average strictness	24	26.21	2	6.602	0.032
Disenfranchisement - high strictness	14	32.89			

Hypothesis 2

This hypothesis states that there is a positive relationship between the level of

strictness of disenfranchisement legislation and state African American

incarceration and African American arrest rates. That is, states that have stricter

disenfranchisement laws also have higher rates of African American arrest and

incarceration than states with less strict disenfranchisement laws. To test this

hypothesis, the *strictness3* (level of disenfranchisement strictness) variable was

tested against the state African American incarceration rates as well as state

African American arrest rates. To determine if there is a significant difference

between the level of strictness of the disenfranchisement law of the state and

state African American incarceration and African American arrest rates the

Kruskal-Wallis test was used.

The first analysis involves the comparison of the different levels of

disenfranchisement strictness of a state's law with the African American

incarceration rate. For this test, the variable *strictness3*, an ordinal-level variable

indicating whether a state's disenfranchisement law is of low strictness, average

strictness, or of high strictness is treated as the independent variable. The

dependent variable for this test is *BIncarB*, an interval-level variable indicating

the African American incarceration rate for each state. Using the recoded

variable *strictness3* (low, average, high strictness) described above, the Kruskal-

Wallis, was used to test whether there is a statistical relationship between the

strictness level of the state's disenfranchisement law and the African American

incarceration rate. The Kruskal-Wallis is a non-parametric statistical test which

utilizes mean ranks to determine if there is a difference between variables. For

this analysis, the Kruskal-Wallis was used to determine if the incarceration rate of

African Americans in a state affected the strictness of the state's

disenfranchisement law. A significant Kruskal-Wallis statistic would indicate that

the strictness of a state's disenfranchisement law varies with the size of that

state's African American incarceration rate. A significant Kruskal-Wallis statistic

would indicate that differences in means are not due to sampling error, thus

indicate support for the hypothesis presented. A comparison of means confirms

the directionality of any significant effect.

The results of the Kruskal-Wallis test indicate that there is not a significant

difference between the level of strictness of the disenfranchisement law of the

state and state African American incarceration rate. The mean rank of African

American incarceration rates in states with disenfranchisement laws that are the

least strict is 25.08, for average strictness the mean is 25.90, and for high

strictness the mean is 23.27. A Kruskal-Wallis statistic (x^2 = 0.285; p = 0. 868)

indicates no support for the hypothesis presented. Exact methods were not

reported for the Kruskal-Wallis test, as there was insufficient computer memory for the performance of the exact method. The results the Kruskal-Wallis test are presented on Table 5-7.

The second analysis involves the comparison of the different levels of disenfranchisement strictness of a state's law with the African American arrest rate. For this test, the variable *strictness3*, an ordinal-level variable indicating whether a state's disenfranchisement law is of low strictness, average strictness, or of high strictness is treated as the independent variable. The dependent variable for this test is *BArrestBl*, an interval-level variable indicating the African American arrest rate for each state. Using the recoded variable discussed in the first hypothesis, *strictness3* (low, average, high strictness), the Kruskal-Wallis, was used to test whether there is a statistical relationship between the strictness level of the state's disenfranchisement law and the African American arrest rate. For this analysis, the Kruskal-Wallis was used to determine if the arrest rate of African Americans in a state affected the strictness of the state's disenfranchisement law. A significant Kruskal-Wallis statistic would indicate that

Table 5-7: Kruskal-Wallis Test for Relationship between African American Incarceration Rate and Level of Strictness

	N	Mean Rank	df	Chi-Square	Exact Significance
Disenfranchisement - low strictness	12	25.08			
Disenfranchisement - average strictness	24	25.90	2	0.285	0.868
Disenfranchisement - high strictness	13	23.27			

the strictness of a state's disenfranchisement law varies with the size of that state's African American arrest rate. A significant Kruskal-Wallis statistic would indicate that differences in means are not due to sampling error, thus indicate support for the hypothesis presented. A comparison of means confirm the directionality of any significant effect.

Results of the Kruskal-Wallis test indicates that the mean ranks of the percentage of African American in states with different levels of disenfranchisement strictness are not significantly different. The mean percentage of African American arrest rates in states with disenfranchisement laws that are the least strict is 27.17, for average strictness the mean is 24.17, and for high strictness the mean is 26.36. A Kruskal-Wallis statistic ($x^2 = 0.406$; p = 0. 817) indicates no support for the hypothesis presented. Again, exact methods were not reported for the Kruskal-Wallis test, as there was insufficient computer memory for the performance of the exact method. The results the Kruskal-Wallis test are presented on Table 5-8.

Based on the findings reported above, the data fails to support the hypothesis. That is, there is no support for the relationship between the level of strictness of the disenfranchisement law of the state and the state African American incarceration rate. Additionally, the data also fails to support the relationship between the level of strictness of the disenfranchisement law of the state and the state African American arrest rate.

Table 5-8: Kruskal-Wallis Test for Relationship between African American Arrest Rate and Level of Strictness

	N	Mean Rank	df	Chi-Square	Significance
Disenfranchisement - low strictness	12	27.17			
Disenfranchisement - average strictness	24	24.17	2	0.406	0.817
Disenfranchisement - high strictness	14	26.36			

Hypothesis 3

This study hypothesizes that there is a positive relationship between the difficulty in state voting restoration procedures and the size of a state's African American population, state African American arrest rates, and state African American incarceration rates. That is, states with more difficult voting restoration procedures have a higher African American population, and higher African American arrest and incarceration rates than states with more lenient voting restoration procedures. This hypothesis was tested in two ways. First, the study examined if states that require a petition for vote restoration have a significantly higher proportion of African Americans in the population, have significantly higher African American arrest rates, and have significantly higher African American incarceration rates than states that have automatic vote restoration. Then the study examined if states with significantly higher proportion of African Americans in the population, significantly higher African American arrest rates, and significantly African American incarceration rates have more difficult restoration procedures than states with a lower proportion of African

Americans in the population and lower African American arrest and incarceration rates.

The first analysis involves the comparison of the African American population sizes of states (population, arrest rate, and incarceration rate) with states with automatic restoration and states requiring some form of petition for restoration. For this test, the variable *PercentBlack* is an interval level variable which indicates the percentage of blacks in each state, *BArrestBl* is an interval-level variable indicating the African American arrest rate for each state, and *BIncarB* is an interval-level variable indicating the African American incarceration rate for each state. Each of the aforementioned variables (*PercentBlack, BArrestBl, BIncarB*) were treated as independent variables. The dependent variable for this test is *restoration*. For this analysis the researcher used the Mann Whitney U test which is used to test whether or not, given two samples, one variable tends to have higher values than the other. In this case, the Mann Whitney U is used to test whether states that require a petition for the restoration of voting rights tend to have a higher proportion of African Americans in the population (general, arrest, and incarceration) than those states with an automatic restoration process. Because the Mann Whitney test compares means of two groups the researcher first had to recode the dependent variable (*restoration*) into a dichotomous ordinal-level variable (*restoration2*). To recode, the researcher assigned *restoration2* two values: 0 = automatic restoration and 1 = petition required for restoration. After recoding the variables, the Mann-

Whitney test statistic was used to determine whether or not there was a

statistically significant relationship between the percentage of African Americans

in a state, the African American arrest rate, and the African American

incarceration rate of a state and whether or not that state required a petition for

vote restoration (*restoration2*). A significant Mann Whitney test statistic would

indicate that these variables are indeed related. It is expected that states with a

larger percentage of African Americans in the population (in general population,

arrest rates, and incarceration rates) will require a petition for vote restoration

while states with smaller African American populations will not. A comparison of

means confirm the directionality of any significant effect.

The results of the Mann-Whitney test indicate no support for a difference

in percent of African American population based upon whether or not a state

restoration law requires a petition. For states with automatic restoration, the

mean rank of African American in the state's population is 24.09. For states that

require a petition for vote restoration, the mean percentage of African American

is 26.11. The Mann Whitney test statistics (Z=-0.493, p=0.629) reveal that any

difference in means is not statistically significant. The hypothesis is therefore not

supported. Table 5-9 illustrates the findings of the Mann-Whitney test.

Table 5-9: Mann-Whitney Test for Relationship between Proportions of African Americans and Restoration Petition

	N	Mean Rank	Sum of Ranks	Z Statistic	Significance
Automatic restoration	27	24.09	650.50	-0.493	0.629
Petition required for restoration	22	26.11	574.50		

Additionally, the results of the Mann-Whitney test indicates no significant difference in African American arrest rates based upon whether or not a state disenfranchisement law requires a petition for vote restoration. For states with automatic restoration, the mean rank of African American arrest rates is 23.77. For states that require a petition for vote restoration, the mean rank for African American arrest rates is 25.36. The Mann Whitney test statistics (Z=-0.393, p=0.700) reveal that any difference in means is not statistically significant. The hypothesis is therefore not supported. Exact methods were not reported for the Mann-Whitney test, as there was insufficient computer memory for the performance of the exact method. Table 5-10 illustrates the findings of the Mann-Whitney test utilizing the Monte Carlo method.

Lastly, the results of the Mann-Whitney test indicate no significant difference in African American incarceration rates based upon whether or not a state disenfranchisement law requires a petition for vote restoration. For states with automatic restoration, the mean rank of African American incarceration rates is 24.52. For states that require a petition for vote restoration, the mean rank for African American incarceration rates is 23.36. The Mann Whitney test statistic (Z=-0.289, p=0.778) reveals that any difference in means is not statistically significant. The hypothesis is therefore not supported. Exact methods were not reported for the Mann-Whitney test, as there was insufficient computer memory for the performance of the exact method. Tables 5-11 illustrate the findings of

Table 5-10: Mann-Whitney Test for Relationship between African American Arrest Rates and Restoration Petition

	N	Mean Rank	Sum of Ranks	Z Statistic	Significance
Automatic restoration	26	23.77	618.00	-0.393	0.700
Petition required for restoration	22	25.36	558.00		

Table 5-11: Mann-Whitney Test for Relationship between African American Incarceration Rates and Restoration Petition

	N	Mean Rank	Sum of Ranks	Z Statistic	Significance
Automatic restoration	26	24.52	637.50	-0.289	0.778
Petition required for restoration	21	23.36	490.50		

the Mann-Whitney test utilizing the Monte Carlo method.

Secondly, this study involves the analysis of the relationship between the sizes of the African American population (in general population, arrest rates, and incarceration rates) and the level of difficulty of vote restoration. It is hypothesized that states with greater African American population have more difficult vote restoration procedures. For this test, the variable *PercentBlack* is an interval level variable which indicates the percentage of blacks in each state, *BArrestBl* is an interval-level variable indicating the African American arrest rate for each state, and *BIncarB* is an interval-level variable indicating the African American incarceration rate for each state. Each of the aforementioned variables (*PercentBlack, BArrestBl, BIncarB*) were treated as independent variables. The dependent variable for this test is *restoration*. To conduct this analysis, the variable determining the difficulty of a state's vote restoration process was

recoded into a trichotomous variable *restoration4* which indicates whether the

restoration process was of low difficulty, average difficulty, or high difficulty. The

researcher created an additional restoration variable, *restoration4*, which had

three values: 1 = low restoration difficulty, 2 = average restoration difficulty, and 3

= high restoration difficulty. Values created represented the lowest 25% of the

scaled scores of the original restoration difficulty variable (a score of 0-1 was

recoded into a value of 1 for low restoration difficulty), the middle 50% (a score of

2-3 was recoded into a value of 2 for average restoration difficulty), and the

highest 25% (a score of 4-7 was recoded into a value of 3 for high restoration

difficulty). Using the recoded variable, the Kruskal-Wallis, was used to test

whether there is a statistical relationship between the difficulty level of the voting

restoration process and percentage of African Americans in a state, the arrest

rate of African Americans, and the incarceration rate of African Americans in a

state. The Kruskal-Wallis is a non-parametric statistical test which utilizes mean

ranks to determine if there is a difference between variables. For this analysis,

the Kruskal-Wallis was used to determine if the percentage of African Americans

in a state, the arrest rate of African Americans, and the incarceration rate of

African Americans in a state affected difficulty level of the voting restoration

process. A significant Kruskal-Wallis statistic would indicate that the difficulty

level of a state's restoration process varies with the size of that state's African

American population (in general population, arrest rate, or incarceration rate). A

significant Kruskal-Wallis statistic would indicate that differences in means are

not due to sampling error, thus indicate support for the hypothesis. A comparison of means confirm the directionality of any significant effect.

Results of the Kruskal-Wallis test indicates that the mean ranks of the proportion of African Americans in states with different levels of vote restoration difficulty are not significantly different. The mean rank for African Americans in the population for states with restoration procedures that are the least difficult is 9.18, for average difficulty the mean is 10.00, and for high difficulty the mean is 15.25. The chi-square statistic (x^2 = 4.232; p = 0.121) indicates that these differences are not significant and therefore fail to support the hypothesis presented. The results the Kruskal-Wallis test is presented in Table 5-12.

Additionally, to test whether or not states with more difficult voting restoration procedures have higher African American arrest rates than states with less difficult restoration procedures, the researcher attempted to determine the relationship between the level of difficulty of voter restoration of the state and the African American arrest rates of the state. The mean rank of African American arrest rates in states with restoration procedures that are the least difficult is 12.27, for average difficulty the mean is 10.67, and for high difficulty the mean is 10.75. The chi-square statistic (x^2 = 0.312; p = 0. 870) indicate no support for the hypothesis presented. Exact methods were attempted, but there was insufficient computer memory to attain results, therefore they are not presented here. The results of the Kruskal-Wallis test are presented in Table 5-13.

Table 5-12: Kruskal-Wallis Test for Relationship between Proportion of African Americans and Level of Restoration Difficulty

	N	Mean Rank	df	Chi-Square	Significance
Restoration - low difficulty	11	9.18			
Restoration - average difficulty	3	10.00	2	4.232	0.121
Restoration - high difficulty	8	15.25			

Table 5-13: Kruskal-Wallis Test for Relationship between African American Arrest Rate and Level of Restoration Difficulty

	N	Mean Rank	df	Chi-Square	Significance
Restoration - low difficulty	11	12.27			
Restoration - average difficulty	3	10.67	2	0.312	0.870
Restoration - high difficulty	8	10.75			

Lastly, to test whether or not states with more difficult voting restoration procedures have higher African American incarceration rates than states with less difficult restoration procedures, the researcher attempted to determine the relationship between the level of difficulty of voter restoration of the state and the African American incarceration rates of the state. The mean rank of African American incarceration rates in states with restoration procedures that are the least difficult is 11.09, for average difficulty the mean is 15.67, and for high difficulty the mean is 8.86. The chi-square statistic (x^2 = 2.534; p = 0. 298) indicates no support for the hypothesis presented. Exact methods were not reported for the Kruskal-Wallis test, as there was insufficient computer memory for the performance of the exact method. The results of the Kruskal-Wallis test is presented on Table 5-14.

Table 5-14: Kruskal-Wallis Test for Relationship between African American Incarceration Rate and Level of Restoration Difficulty

	N	Mean Rank	df	Chi-Square	Exact Significance
Restoration - low difficulty	11	11.09			
Restoration - average difficulty	3	15.67	2	2.534	0.298
Restoration - high difficulty	7	8.86			

Based on the findings reported above, the hypothesis that states with more difficult voting restoration procedures have higher African American populations, and higher African American arrest and African American incarceration rates than states with more lenient voting restoration procedures is not supported.

<u>Summary</u>

Based on the findings reported above, the data appear to support hypothesis one and fail to support either hypothesis two or three. That is, there is a relationship between the strictness of state disenfranchisement laws and the proportions of African Americans. However, there is no connection between the strictness of the disenfranchisement law and African American arrest and incarceration rates. There is also no support for the hypothesis that there is a relationship between difficulty in restoration procedures and proportion of African Americans or African American arrest and incarceration rates. As such, the test of the group threat hypothesis by utilizing felony disenfranchisement legislation is also only partially supported. Discussion of the research results is in the final chapter of this project

Chapter 6: Discussion and Conclusion

This study was designed to test the group threat hypothesis by utilizing felony disenfranchisement legislation. The group threat hypothesis, based on the conflict perspective, states that the law is designed to control those who are perceived threatening to the powerful in society (Blalock, 1967; Blumer, 1958). Qualitative and quantitative analyses of disenfranchisement legislation in 48 states and the District of Columbia were performed to determine if the group threat hypothesis was supported by the study's data.

Qualitative analysis indicates that the group threat hypothesis is supported by two main aspects of the laws: first, the criteria for disenfranchisement and second, the vote restoration procedure. Various criteria for disenfranchisement, including, conviction, incarceration, the type of crime committed, criminal history, and whether or not the offender was granted probation, parole, or received a suspended sentence, have been identified. Each one of these criteria appears to have a greater impact on minorities, particularly African Americans. Literature indicates that African Americans are more likely than whites to have criminal histories because of past and current race relations in the United States and are also more likely than whites to be convicted of felony criminal offenses (Tonry, 1995).   Uniform Crime Report statistics support this by indicating that while African Americans make up approximately 12 percent of the United States population, they represent nearly 27 percent of all arrests, 47 percent of all arrest for homicide, 32 percent for rape, and 53 percent of all arrests for robbery (U. S.

Department of Justice, 2004). Additionally, the incarceration rate for African

Americans in the United States was substantially higher (4,919 per 100,000) than

for whites (717 per 100,000) during the same time period (U. S. Department of

Justice, 2004). Further, based on government statistics, African American males

have a 1 in 4 chance of going to prison at some point during his lifetime, while

white males face a 1 in 23 chance of prison time (Bonczar and Beck, 1997).

Since criminal histories, which are based on number of criminal convictions,

sentencing and incarceration, and type of offense (e.g. felony offenses) are

representative of the criteria for disenfranchisement it appears that African

Americans are disproportionately impacted by these laws. More generally, as a

large proportion of those individuals entering the criminal justice system (through

conviction and incarceration) are African American it follows that African

Americans are more likely to be effected. As such, African Americans are more

likely to be disenfranchised which, following the group threat hypothesis, can be

viewed as another method of controlling African Americans as a group threat.

Secondly, the analysis of voting restoration procedures also shows

support for the group threat hypothesis. An examination of voting restoration

procedures in the twenty-one states that require some sort of petition to restore

voting rights, indicate various requirements including the full payment of all

related fines, the completion of extensive legal forms that often requires

assistance of legal counsel, and the often complex appeal or pardon process that

requires the assistance of legal counsel to traverse the process. Each of these

aspects of the vote restoration process appears to hamper offenders who have

limited economic resources. If they cannot afford to pay the fines and/or hire an

attorney to assist in the process the opportunity to regain voting rights is limited.

Because African American ex-offenders often come from the lower class

(Western, 2002; Western and Pettit, 2000) they are most likely to face difficulties

in satisfying the financial requirements for voting right restoration and are the

least able to hire legal counsel due to those same economic conditions.

Therefore, because the requirements for vote restoration often necessitate

financial means unavailable to former offenders it is difficult for them to regain

their voting rights. As such, voting restoration procedures appear to act as a legal

control mechanism over former offenders by controlling and/or limiting their ability

to vote.

Quantitative analysis involved testing the following three hypotheses:

1) The greater the proportion of African Americans in a state's population,
   the more restrictive the state's disenfranchisement laws;

2) The more restrictive a state's disenfranchisement laws, the higher the
   state's rate of African American arrest and incarceration; and

3) The higher a state's rate of African American arrest and incarceration,
   the more difficult the voting restoration procedures.

The results of data analysis support Hypothesis #1, showing a significant

relationship between the strictness of state disenfranchisement laws and the

proportions of African Americans in a particular state (states with greater

proportion of African Americans have stricter disenfranchisement laws).

However, Hypothesis #2 and Hypothesis #3 are not supported by the study's

data. There is no significant relationship between disenfranchisement strictness

and the state's arrest and incarceration rates for African Americans. Neither is

there a significant relationship between a state's rate of African American arrest

and incarceration and the difficulty level of the state's voting rights restoration

procedure.

Prior research indicates that African Americans are more impacted by

disenfranchisement than are whites (Behrens, Uggen, and Manza, 2003; Fellner

and Mauer, 1998; Fletcher, 1999; Hench, 1998; King and Mauer, 2004). This

impact is believed to be primarily due to the number of African Americans under

criminal justice supervision (Behrens, Uggen, and Manza, 2003; Fellner and

Mauer, 1998; Fletcher, 1999; Harvey, 1994; King and Mauer, 2004). Much of the

previous research makes the argument that because African Americans are

overrepresented among criminal offenders in the criminal justice system that they

are therefore more damaged by felony disenfranchisement (Behrens, Uggen,

and Manza, 2003; Fellner and Mauer, 1998; Fletcher, 1999; Hench, 1998; King

and Mauer, 2004; Mauer, 2004b; McLeod, White, and Gavin, 2003). Additional

research regarding race and disenfranchisement indicates that aside from the

criminal justice system population, there is a correlation between the numbers of

African Americans in the general population of a state and disenfranchisement

legislation (Behrens, Uggen, and Manza, 2003; Fellner and Mauer, 1998).

Hypothesis #1 confirms previous findings in this regard by demonstrating that the proportion of African Americans in a state's population is significantly correlated, not merely to whether or not a state utilizes felony disenfranchisement, but also to the strictness of the state's disenfranchisement law. Because this study quantified the strictness of the disenfranchisement laws in each state rather than merely utilizing the existence of such a law the significant finding of hypothesis 1 represents a better measure of impact of disenfranchisement on African Americans.

Although prior research has indicated that African Americans are more likely to suffer the consequences of disenfranchisement due to disproportionately high rates of arrest, conviction, and incarceration (Behrens, Uggen, and Manza, 2003 Fellner and Mauer, 1998; Fletcher, 1999; Hench, 1998; King and Mauer, 2004; Mauer, 2004b) the results of this study, particularly the testing of hypotheses #2 and #3, challenge those findings. In other words, the testing of hypotheses #2 and #3 revealed no support for the contention that higher rates of African American arrest and/or incarceration are correlated with disenfranchisement. Nor did this study find a significant relationship between African American arrest and incarceration rates and the difficulty of the vote restoration process. There are a few possible explanations for the lack of support of hypotheses #2 and #3 and the challenge this presents to previous research in the area. First, this study quantified both the strictness of the laws and the difficulty of the restoration process as opposed to previous research that

merely observed that because African Americans were overrepresented in the criminal justice system that they were more likely to be impacted by the laws (Behrens, Uggen, and Manza, 2003; Fellner and Mauer, 1998; Fletcher, 1999; Harvey, 1994; Hench, 1998; King and Mauer, 2004; Mauer, 2004b). By quantifying the strictness of the law and the difficulty of the restoration process, this study was able to clarify the extent of the relationship between race and disenfranchisement and determine that the relationship found in previous studies may not fully explain the nature of the relationship.

The second of the possible explanations for a non-significant finding for hypotheses #2 and #3 is perhaps due to a lack of a connection between the civil sanction of disenfranchisement and criminal arrest and incarceration rates. That is, disenfranchisement is a civil sanction, not a criminal sanction like arrest or incarceration. Although the sanctions of criminal laws primarily function to punish criminal activity and to deter future criminal acts, civil sanctions act primarily to restore or "make-right" an injured party, typically through financial awards (Fletcher, 1998; Hall, 2002; Mousourakis, 2003). The differences in the function of these two types of law (criminal and civil) makes finding a correlation between the two types of sanctions difficult. A third possible explanation, and one related to the second, is that lawmakers have no control over arrest or incarceration rates, they merely make laws, they do not make arrests, nor do they adjudicate criminal trials. Additionally, law enforcement officials who make arrests and judicial officials who punish criminal offenders neither make arrest for nor punish

individuals for civil offenses. There is no evidence to state that

disenfranchisement laws created by lawmakers have a direct impact on arrest

and incarceration rates. There is also no evidence to state that arrest and

incarceration rates have any impact on whether these laws are created in the first

place. In essence, there appears no way to connect the laws and arrest and

incarceration rates; any causal relationship found would appear to be spurious.

Despite the lack of support for hypotheses #2 and #3 this study has improved the

understanding, not only of the applicability of the group threat hypothesis, but

also the limitation of the hypothesis as well. That is, although the hypothesis can

explain why laws may be created in the first place, as an indication of the need to

control a perceived threat to the ruling class (Behrens, Uggen, and Manza, 2003;

Blalock, 1967; Blumer, 1958) and can therefore be applied to law making, the

hypothesis is limited in its ability to explain the impact these laws have in terms of

outcomes such as arrest and incarceration rates.

Although this study improved on the research of Behrens, et.al. (2003) by

utilizing rates of arrest and incarceration as opposed to using actual numbers of

arrests and incarceration, the reason for the failure of this study to find support

for hypothesis #1 and hypothesis #2 may lie in using arrest and incarceration as

a measure of group threat. Utilizing arrest and incarceration rates as a measure

of group threat presupposes that the rates of arrest and incarceration are known

to those in power and that they view the disproportionate arrest and confinement

of African Americans as a threat to society at large. An alternative explanation

for group threat and its relationship to arrest and incarceration is that the population deemed as threatening to the powerful in society is dealt with by the arrest and conviction. If this is the case, utilizing arrest and incarceration rates as a measure of group threat would fail to show any significance as was the case. Therefore, arrest and incarceration are not measures of threat, but rather an indication that the threat has been dealt with.

The use of the group threat hypothesis to understand the nature of disenfranchisement legislation provides a better understanding of the social problems associated with these legal codes. Social problems associated with being disenfranchised, such as the inability to vote, inability to voice community concerns, and the inability to affect change can be seen as consequences of the desire to control a perceived threat to the majority in society. That is, if the majority can control a population by disenfranchising a significant portion of the population, it becomes easier for the majority to control all of society because it reduces the ability of those not in power to affect change. Therefore, social problems present in minority communities, for example, poverty, social disorganization, poor or non-existent education opportunities, among others, are more readily understood by appreciating how the idea of a group threat is perceived and how it is subsequently dealt with. Disenfranchisement then not only contains the consequences of individual offenders losing their right to vote, the effect of disenfranchisement reaches into the community or society as a whole. The democratic ideals of justice and equality are damaged by policies

that disenfranchise entire segments of the population in that, not everyone is equally represented (Altman, 2005; Dhami, 2005; Ochs, 2006). Dealing with social problems, such as those mentioned above, becomes increasingly difficult for those communities if they do not share in the constitutional rights afforded other segments of society.

The social consequences of disenfranchisement go deeper than merely not being able to exercise the constitutional right to vote. Disenfranchisement impacts community cohesion and the general investment people have in their community (Ochs, 2006). By not being able to vote, individuals have little reason to be concerned with their community and have less reason to foster community ties. This is not only unfortunate, but likely to further damage communities by increasing the chance of criminal activity (Braithwaite, 1989). Braithwaite (1989), for example, argued that individuals and groups with strong social ties are less likely to commit criminal offenses. If this is the case, "people who are a part of the decision making process not only have a greater investment in the decisions, but a greater investment in society as well" (Ochs, 2006, p. 89). Disenfranchisement damages any attempt to foster stronger community ties and may in turn lead to further criminal activity because there is little need to invest oneself in a society that continues to deny the right to vote.

The findings presented in this study have social justice policy implications. In this case, social justice means that all persons, regardless of class, race, gender, and the like, have an equal opportunity to live and be productive

members of society; justice is about equal opportunities stipulated in the United

States Constitution (Miller, 1979; Tyler, Boeckmann, Smith, and Huo, 1997). In

other words, justice is not only for the rich or powerful, it is supposed to be for all

members of society (Miller, 1979; Tyler, Boeckmann, Smith, and Huo, 1997).

The ability to vote enhances the very ideas of social justice. According to

Reinman (2005), "what is important here is not so much that voting gives me

power to govern others, but that voting gives me *as much power over them as*

they have over me" (p. 13, emphasis in the original). In essence, the ability to

vote establishes equality and equal opportunity. The concepts imbedded in the

group threat hypothesis, perceived threat and control of threat, however, are

contrary to very ideals of social justice. Understanding that disenfranchisement

laws are supportive of the group threat and reflect social injustice is an important

first step. Eradicating disenfranchisement will not, of course, automatically make

American society equal in all regards; however, it is worth considering that of all

other democratic nations, the United States remains the most stringent when it

comes to disenfranchisement even while reprimanding other countries for human

rights violations (Ispahani, 2006). In fact, "disenfranchisement of people with

criminal convictions is not the democratic norm … [m]any nations which share

the same Western philosophical foundations as the United States have opted for

dramatically different policies" (Ispahani, 2006, p. 33). Many of the policies from

other democratic nations articulate narrow guidelines for the disenfranchising of

those convicted of offenses, such as disenfranchising only those who have

violated election law as opposed to the often blanket disenfranchisement policies

of many American states (Easton 2006; Ispahani, 2006). In order to bring

American policies in line with both the ideas of social justice and with policies of

other democratic nations, disenfranchisement laws should be reconstructed

along the same narrow lines exhibited by other democratic nations. Included in

this, should be the alteration of American laws to disenfranchise "only those it

makes sense to bar," such as those convicted of an election law offense

(Ispahani, 2006, p. 4).

The ideas of democracy, community, social justice and constitutional

rights should be central to any argument for the eradication of

disenfranchisement. Writing in dissent in the case of *Richardson v. Ramirez*,

Justice Thurgood Marshall epitomized this argument and simultaneously

dismissed the argument that there is a need to disenfranchise offenders because

"their likely voting pattern might be subversive to the interests of an orderly

society" (Marshall in dissent, *Richardson v. Ramirez*, 418 U.S. 24, 1974).

According to Marshall:

> The process of democracy is one of change. Our laws are not
> frozen into immutable form, they are constantly in the process
> of revision in response to the needs of a changing society. The
> public interest, as conceived by the majority of the voting public,
> is constantly undergoing reexamination. This Court's holding in
> Davis, supra, and Murphy, supra, that a State may disenfranchise
> a class of voters to "withdraw all political influence from those who
> are practically hostile" to the existing order, strikes at the very
> heart of the democratic process. A temporal majority could use
> such a power to preserve inviolate its view of the social order
> simply by disenfranchising those with different views. Voters who
> opposed the repeal of prohibition could have disenfranchised

> those who advocated repeal "to prevent persons from being enabled by their votes to defeat the criminal laws of the country." The ballot is the democratic system's coin of the realm. To condition its exercise on support of the established order is to debase that currency beyond recognition (*Richardson v. Ramirez*, 418 U.S. 24, 1974).

Although Marshall's main concern was with the democratic process, there are other far reaching effects. The ability to vote impacts many aspects of our society. Voting affects our ability not just to voice our concerns, but it legitimately impacts the society in which we live. The ability to vote gives an individual as well as individual groups power to make changes that might enhance the quality of life. For example, a poor neighborhood (or voting district) could vote for more school funds for better educational opportunities or vote to get better garbage service or increased police patrols. Whatever the needs may be for any individual or group, the ability to voice those needs is an important aspect of social justice. To be more in tune with the ideals of social justice then, as opposed to the ideas of social threat, serious examination of disenfranchisement and its connection to the control of threat should be conducted.

References

References

Albonetti, C.A. (1986). Criminality, Prosecutorial Screening, and Uncertainty: Toward a Theory of Discretionary Decision Making in Felony Case Processing. Criminology, 24, 623-644.

Allard, P. & Mauer, M. (2000). Regaining the Vote: An Assessment of Activity Relating to Felon Disenfranchisement Laws. The Sentencing Project, Washington, D.C.

Altman, A. (2005). Democratic Self-Determination and the Disenfranchisement of Felons. Journal of Applied Philosophy, 22(3), 263-273.

Anonymous. (2002). Prisoners and the Right to Vote. America, 187, 3.

Anonymous. (2001). The Disenfranchisement of Ex-Felons: Citizenship, Criminality, and the "The Purity of the Ballot Box". In Tyson, M.J. (Ed.), Race, Voting, Redistricting and the Constitution: Sources and Explorations on the Fifteenth Amendment (pp. 372-390). New York: Routledge.

Arvanities, T.M. (1992). The Mental Health and Criminal Justice Systems: Complementary Forms of Coercive Control. In Liska, A.E. (ed.) Social Threat and Social Control. (pp. 131-149).

Barak, G., Flavin, J.M., & Leighton, P.S. (2001). Class, Race, Gender, and Crime: Social Realities of Justice in America. Los Angles: Roxbury.

Beard, C. & Beard, M. (1927). The Rise of American Civilization. New York: The MacMillan Company.

Behrens, A., Uggen, C., & Manza, J. (2003). Ballot Manipulation and the "Menace of Negro Domination": Racial Threat and Felon Disenfranchisement in the United States, 1850-2002. American Journal of Sociology, 109, 559-605.

Beirne, P. & Quinney, R. (1982). Marxism and Law. New York: John Wiley & Sons.

Black, D. (1980). The Manners and Customs of Police. New York: Academic Press.

Blalock, H.M. (1967). Toward a Theory of Minority-Group Relations. New York: John Wiley & Sons

Blumer, H. (1958). Race Prejudice as a Sense of Group Position. Pacific Sociological Review, 1, 3-7.

Bobo, L.D. & Gilliam, F.D. (1990). Race, Sociopolitical Participation, and Black Empowerment. American Political Science Review, 84, 2.

Bobo, L.D. & Hutchings, V.L. (1996). Perceptions of Racial Group Competition: Extending Blumer's Theory of Group Position to a Multiracial Social Context. American Sociological Review, 61, 951-972.

Bonacich, E. (1972). A Theory of Ethnic Antagonism: The Split Labor Market. American Sociological Review, 37, 547-559.

Bonczar, T.P. & Beck, A.J. (1997). Lifetime Likelihood of Going to State of Federal Prison. Bureau of Justice Statistics. Washington, DC: U.S. Government Printing Office.

Bonger, W.A. (1916/1969). Criminality and Economic Conditions. Bloomington: Indiana University Press.

Boswell, T. & Dixon, W.J. (1993). Marx's Theory of Rebellion: A Cross-National Analysis of Class Exploitation, Economic Development, and Violent Revolt. American Sociological Review, 58, 681-702.

Bourdieu, P. (1988). Vive la Crise! For Heterodoxy in Social Sciences. Theory and Society, 17, 774-775.

Boyd, T.M. & Markman, S.J. (2001). The 1982 Amendments to the Voting Rights Act: A Legislative History. In Tyson, M.J. (Ed.), Race, Voting, Redistricting and the Constitution: Sources and Explorations on the Fifteenth Amendment (pp. 243-324). New York: Routledge.

Bridges, G.S. (1997). A Study on Racial and Ethnic Disparities in Superior Court Bail and Pre-Trial Detention Practices in Washington. Olympia, WA: Washington State Minority and Justice Commission.

Bushway, S.D. & Piehl, A.M. (2001). Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing. Law & Society Review, 35, 733-765.

Butler, P. (1995). Racially Biased Jury Nullification: Black Power in the Criminal Justice System. Yale Law Journal, 105, 677-725.

Cain, M. & Hunt, A. (1979). <u>Marx and Engels on Law.</u> London: Academic Press.

Cardinale, M. (2004). <u>Triple-Decker Disenfranchisement: First-Person Accounts of Losing the Right to Vote Among Poor, Homeless Americans with a Felony Conviction</u>. Washington, DC: The Sentencing Project.

Chamblin, M.B. (1992). Intergroup Threat and Social Control: Welfare Expansion among States during the 1960s and 1970s. In Liska, A.E. (ed.) <u>Social Threat and Social Control. (pp. 131-149).</u>

Chamblin, M.B. and Liska, A.E. (1992). Social Structure and Crime Control Revisited: The Declining Significance of Intergroup Threat. In Liska, A.E. (ed.) <u>Social Threat and Social Control. (pp. 131-149).</u>

Chambliss, W.B. (1995). Crime Control and Ethnic Minorities: Legitimizing Racial Oppression by Creating Moral Panics. In D.F. Hawkins (ed.), <u>Ethnicity, Race, and Crime: Perspectives Across Time and Place.</u> Albany: State University of New York Press.

Chambliss, W.B. & Seidman, R.B. (1971). <u>Law, Order, and Power.</u> Reading, MA: Addison-Wesley.

Chin, G.J. (2004a). Reconstruction, Felon Disenfranchisement, and the Right to Vote: Did Fifteenth Amendment Repeal Section 2 of the Fourteenth Amendment? <u>Georgetown Law Journal, 92,</u> 259-322.

Chin, G.J. (2004b). The "Voting Rights Act of 1867": The Constitutionality of Federal Regulation of Suffrage During Reconstruction. <u>North Carolina Law Review, 82,</u> 1582-1608.

Chiricos, T., Welch, K., & Gertz, M. (2004). Racial Typification of Crime and Support for Punitive Measures. <u>Criminology, 42,</u> 2, 358–390.

Clegg, R. (2004). Should Ex-Felons be Allowed to Vote? On-Line Debate (November, 1 2004). Legal Affairs Debate Club.

Clegg, R. (1999). Testimony of Roger Clegg Regarding H.R. 906 (October 21, 1999). Center for Equal Opportunity.

Cole, D. (1999). <u>No Equal Justice: Race and Class in the American Criminal Justice System.</u> New York: The New Press.

Collins, H. (1984). <u>Marxism and Law.</u> Oxford: Oxford University Press.

Conn, J.B. (2003). Excerpts from the Partisan Politics of Ex-Felon Disenfranchisement Laws. Unpublished senior thesis, Cornell University, Ithaca, New York.

Dahrendorf, R. (1959). Class and Class Conflict in an Industrial Society. London: Routledge and Kegan Paul.

DeJong, C. & Jackson K.C. (1998). Putting Race into Context: Race, Juvenile Justice Processing, and Urbanization. Justice Quarterly, 15, 487-504.

Demuth, S. (2003). Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A comparison of Hispanic, Black, and White Felony Arrestees. Criminology, 41, 3, 873-907.

Dhami, M.K. (2005). Prisoner Disenfranchisement Policy: A Threat to Democracy? Analysis of Social Issues and Public Policy, 5, 235-247.

Dilts, A. (2004). Being/Becoming Felon: Identity and Felon Disenfranchisement. Unpublished briefing paper, Political Theory Workshop, University of Chicago, Chicago, IL.

Easton, S. (2006). Electing the Electorate: The Problem of Prisoner Disenfranchisement. Modern Law Review, 69(3), 443-461.

Engel, R.S., Calnon, J.M., & Bernard, T.J. (2002). Theory and Racial Profiling: Shortcomings and Future Directions in Research. Justice Quarterly, 19, 248-274.

Ewald, A.C. (2003). Of Constitutions, Politics, and Punishment: Criminal Disenfranchisement Law in Comparative Context. Manuscript, Department of Political Science, University of Massachusetts at Amherst, Amherst, MA.

Ewald, A.C. (2002). 'Civil Death': The Ideological Paradox of Criminal Disenfranchisement Law in the United States. University of Wisconsin Law Review, 2002, 1045-1137.

Farmer, A. & Terrell, D. (2001). Crime versus Justice: Is There a Trade-Off? The Journal of Law and Economics, 44, 345-366.

Fellner, J. & Mauer, M. (1998). Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States. The Sentencing Project, Washington, D.C.

Federal Bureau of Investigation, Criminal Justice Information Services Division (2004). State minority arrest and incarceration statistics provided through phone request June, 2006.

Felony Disenfranchisement Laws in the United States. (2005). Washington, D.C.: The Sentencing Project.

Felony Disenfranchisement Rates for Women. (2004). Washington, D.C.: The Sentencing Project.

Fletcher, G.P. (1998). Basic Concepts of Criminal Law. New York: Oxford University Press.

Fletcher, G.P. (1999). Disenfranchisement as Punishment: Reflection on the Racial Uses of Infamia. UCLA Law Review, 46, 1197-1231.

Franklin, J.H. (1994). The Emancipation Proclamation. Arlington Heights, IL: Harlan Davidson, Inc.

Fredrickson, G. M. (2002). Racism: A Short History. Princeton, NJ: Princeton University Press.

Furman, J. (1997). Political Liberalism: The Paradox of Disenfranchisement and the Ambivalences of Rawlsian Justice. Yale Law Journal, 106, 1895-1907.

Garland, D. (2001). The Culture of Control: Crime and Social Order in Contemporary Society. Chicago: The University of Chicago Press.

Georges-Abeyie, D. E. (1990). Criminal Justice Processing of Non-White Minorities. In MacLean, B.D. & Milovanovic, D. (Eds.), Racism, Empiricism, and Criminal Justice, 28. Vancouver: Collective.

Giles, M.W. & Kaenan, H. (1994). Racial Threat and Partisan Identification. American Political Science Review, 88, 317-326.

Goldberg, J. (2005). The Cellblock Voting Bloc: For Democrats, Allowing Felons to Exercise the Franchise isn't a Matter of Justice, it's a Way to Get Votes. LATimes.com, commentary March 8, 2005, retrieved from www.latimes.com/news/opinion, March 13, 2005.

Goldkamp, J.S. (1993). Questioning the Practice of Pretrial Detention: Some Empirical Evidence from Philadelphia. Journal of Criminal Law and Criminology, 74, 4, 1556-1588

Goldman, R.M. (2001). "A Free Ballot and a Fair Count": The Department of Justice and the Enforcement of Voting Rights in the South, 1877-1893. New York: Fordham University Press.

Guinier, L. (1994). The Tyranny of the Majority: Fundamental Fairness in Representative Democracy. New York: The Free Press.

Greenberg, D.F. (1981). Crime and Capitalism: Readings in Marxist Criminology. Palo Alto, CA: Mayfield.

Grofman, B. & Lijphart, A. (1986). Electoral Laws and their Political Consequences. New York: Agathon Press.

Groves, W.B. (1985). Marxism and Positivism. Crime and Social Justice, 23, 129-150.

Hage, J. (1994). Formal Theory in Sociology: Opportunity of Pitfall. New York: State University of New York Press.

Hall, K.L. (Ed.). (2002). The Oxford Companion to American Law. New York: Oxford.

Hall, K.L. (Ed.). (1992). The Oxford Companion to the Supreme Court of the United States. New York: Oxford.

Handelsman, L. (2005). Giving the Barking Dog a Bite: Challenging Felon Disenfranchisement Under the Voting Rights Act of 1965. Fordam Law Review, 73, 1875-1940.

Hannah, J.A. (1965). The Voting Rights Act … the First Months. Washington, DC: The United States Commission on Civil Rights.

Hannah, J.A. (1965). Voting in Mississippi. Washington, DC: The United States Commission on Civil Rights.

Harvey, A.E. (1994). Ex-Felon Disenfranchisement and its Influence on the Black Vote: The Need for a Second Look. University of Pennsylvania Law Review, 152, 1145-1184.

Hench, V.E. (1998). The death of voting rights: The Legal Disenfranchisement of Minority Voters. Case Western Reserve Law Review, 48, 4, 727-798.

Hindelang, M.J. (1978). Race and Involvement in Common Law Personal Crimes. American Sociological Review, 43, 93-109.

Holmes, M.D., Hosch, H.M., Daudistel, H.C., Perez, D.A., & Graves, J.B. (1996). Ethnicity, Legal Resources, and Felony Dispositions in Two Southwestern Jurisdictions. Justice Quarterly, 13, 11-30.

Huemann, M., Pinaire, B.K., & Clark, T. (2005). Beyond the Sentence: Public Perceptions of Collateral Consequences for Felony Offenders. Criminal Law Bulletin, 41, 1, 24-46.

Hull, E. (2004). Felons Deserve the Right to Vote. USA Today, 132, 2704, 50-53.

Hull, E. (2003). Disenfranchising Ex-Felons: What's the Point? Social Policy, 33, 3, 46-52.

Inverarity, J. (1992). Extralegal Influences on Imprisonment: Explaining the Direct Effects of Socioeconomic Variables. In Liska, A.E. (ed.) Social Threat and Social Control. (pp. 131-149).

Ispahani, L. (2006). Out of Step with the World: An Analysis of Felony Disenfranchisement in the U.S. and Other Democracies. Washington, D.C.: American Civil Liberties Union.

Ispahani, L. & Williams, N. (2004). Purged! How a Patchwork of Flawed and Inconsistent Voting Systems Could Deprive Millions of American of the Right to Vote. Washington, D.C.: American Civil Liberties Union.

Jackson, P.I. (1992). Minority Group Threat, Social Context, and Policing. In Liska, A.E. (ed.) Social Threat and Social Control. (pp. 131-149).

Jones, J. M. (1997). Prejudice and Racism. New York: McGraw-Hill.

Kalogeras, S. (2003). Legislative Changes on Felony Disenfranchisement, 1996-2003. Washington, DC: The Sentencing Project.

Karlen, P.S. (2005). Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement. Stanford Public Law and Legal Theory Working Paper Series, 75, 1-28.

Kautt, P. & Spohn, C. (2002). Cracking Down on Black Drug Offenders? Testing for Interactions Among Offenders' Race, Drug Type, and Sentencing Strategy in Federal Drug Sentences. Justice Quarterly, 19, 2-35.

Kennedy, R. (1999). Suspect Policy. The New Republic, September 13/20, 30-35.

Kennedy, R. (1997). Race, Crime, and the Law. New York: Pantheon Books.

Key, V.O. (1949). Southern Politics in State and Nation. New York: Vintage Books.

Keyssar, A. (2000). The Right to Vote: The Contested History of Democracy in the United States. New York: Basic Books.

King, R.S. & Mauer, M. (2004). The Vanishing Black Electorate: Felony Disenfranchisement in Atlanta, Georgia. The Sentencing Project, Washington, D.C.

Klarman, M.J. (2004). From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality. New York: Oxford.

Kleinig, J., & Murtagh, K. (2005). Disenfranchising Felons. Journal of Applied Philosophy, 22, 217-239.

Klinger, D. (1994). Demeanor or Crime? Why 'Hostile' Citizens are More Likely to be Arrested. Criminology, 32, 475-493.

Knowles, L. & Prewitt, K. (1969). Institutional Racism in America. New York: Prentice Hall.

Kousser, J.M. (1974). The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910. New Haven, CT: Yale University Press.

Kousser, J.M. (1999). Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction. Chapel Hill, NC: The University of North Carolina Press.

Kuzma, S.M. (1998). Civil Disabilities of Convicted Felons. Corrections Today, 60, 5, 68-70.

Laney, J.P. (2003). The Voting Rights Act of 1965: Historical Background and Current Issues. New York: Novinka.

Lippke, R.L. (2001). The Disenfranchisement of Felons. <u>Law and Philosophy, 20,</u> 553-580.

Liska, A. E. (1992). <u>Social Threat and Social Control.</u> Albany: State University of New York Press.

Lott, J.R. & Glassman, J.K. (2005). The Felon Vote. <u>The New York Post</u>, March 1, 2005, retrieved from www.nypost.com, March 13, 2005.

Love, M.C. (2005). <u>Relief from the Collateral Consequences of a Criminal Conviction: A State-by-State Resource Guide.</u> The Sentencing Project, Washington, D.C.

Lynch, P.J. (2005). Should N.Y. Felons Vote? No. <u>The New York Daily News</u>, February 13, 2005, retrieved from www.nydailynews.com, March 13, 2005.

MacDonald, H. (2003). <u>Are Cops Racist?</u> Chicago: Ivan R. Dee.

Maguire, B. (1990). The Police in the 1800s: A Three City Analysis. <u>Journal of Crime and Justice, 13,</u> 103-132.

Mann, C.R. (1993). <u>Unequal Justice: A Question of Color.</u> Bloomington: University of Indiana Press.

Manza, J. & Uggen, C. (2006). <u>Locked Out: Felon Disenfranchisement and American Democracy.</u> New York: Oxford University Press.

Manza, J. & Uggen, C. (2003). <u>Punishment and Democracy: The Significance of the Disenfranchisement of Nonincarcerated Felons and Ex-Felons.</u> Briefing Paper, Institute for Policy Research, Northwestern University, Evanston, IL.

Manza, J., Brooks, C., & Uggen, C. (2002). <u>"Civil Death" or Civil Rights? Public Attitudes Towards Felon Disenfranchisement in the United States.</u> Institute for Policy Research, Northwestern University, Evanston, IL.

Mark, D. (2002). Felons Voting? <u>Campaigns & Elections, 23,</u> 6, 11-13.

Marks, A. (2003). Fairness and Velons: A Push to Enfranchise Prisoners. <u>The Christian Science Monitor</u>, September 25, 2003, retrieved from www.csmonitor.com, March 13, 2005.

Marx, K. (1848/1998). <u>The Communist Manifesto: A Modern Edition.</u> New York: Verso.

Marx, K. (1859/1970). <u>A Contribution to the Critique of Political Economy</u>. New York: International.

Marx, K. (1867/1967). <u>Capital: A Critical Analysis of Capitalist Production</u>. New York: International.

Marx, K. (1997). Class Conflict and Law. In Jocoby, J.R. (ed.), <u>Classics of Criminology, 2nd Edition (pp. 89-95).</u>

Massey, D. G. (2001). Residential Segregation and Neighborhood Conditions in U.S. Metropolitan Areas. In Smelser, N.J., Wilson, W.J. & Mitchell, F. (Eds.), <u>America Becoming: Racial Trends and Their Consequences,</u> Vol. 1, 391–434. Washington, DC: National Academies Press.

Mauer, M. (2003). Mass imprisonment and the disappearing voters. In Mauer, M. & Chesney-Lind, M. (eds.), <u>Invisible Punishment: The Collateral Consequences of Mass Imprisonment (pp. 50-58).</u> New York, NY: The New Press

Mauer, M. (2004a). Felon Disenfranchisement: A Policy Whose Time has Passed? <u>Human Rights, 31,</u> 1, 16-17.

Mauer, M. (2004b). Disenfranchising Felons Hurts Entire Communities. <u>Focus, May/June,</u> 5-6.

Mauer, M. (2002). Disenfranchisement of Felons: The Modern-Day Voting Rights Challenge. <u>Civil Rights Journal, 6,</u> 1, 40-44.

Mauer, M. (1999). <u>Race to Incarcerate.</u> New York: The New Press.

Mauer, M. & Kansal, T. (2005). <u>Barred for Life: Voting Rights Restoration in Permanent Disenfranchisement States.</u> The Sentencing Project, Washington, D.C.

Maxfield, L.D. & Kramer, J.H. (1998). <u>Substantial Assistance: An Empirical Yardstick Gauging Equity in Current Federal Policy and Practices.</u> United States Sentencing Commission. Washington, DC: U.S. Government Printing Office.

McCrary, P. (2001). Keeping the Courts Honest: The Role of Historians as Expert Witness in Southern Voting Rights Cases. In Tyson, M.J. (Ed.), <u>Race,</u>

<u>Voting, Redistricting and the Constitution: Sources and Explorations on the Fifteenth Amendment</u> (pp. 457-484). New York: Routledge.

McCrudden, C. (1982). Institutional Discrimination. <u>Oxford Journal of Legal Studies, 2,</u> 3, 303-367.

McDonald, M.P. & Popkin, S.L. (2001). The Myth of the Vanishing Voter. <u>American Political Science Review, 95,</u> 4, 963-974.

McLeod, A., White, I.K., & Gavin, A.R. (2003). The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications for Reform. <u>Virginia Journal of Social Policy & the Law, 11,</u> 67-94.

McPherson, J.M. (1988). <u>Battle Cry of Freedom: The Civil War Era.</u> New York: Oxford University Press.

Miles, T.J. (2004). Felon Disenfranchisement and Voter Turnout. <u>Journal of Legal Studies, 33,</u> 85-129.

Milkovits, A. (2005). Voting Rights for Felons Approved. <u>Providence Journal</u>, June 22, 2005, retrieved from www.projo.com, November 24, 2005.

Miller, D. (1979). <u>Social Justice.</u> Oxford: Clarendon Press.

Milovanovic, D. & Russell, K.K. (2001). <u>Petit Apartheid in the U.S. Criminal Justice System: The Dark Figure of Racism.</u> Durham, NC: Carolina Academic Press.

Mondesire, J.W. (2001). The New Jim Crow? Felon Disenfranchisement: The Modern Day Poll Tax. <u>Temple Political & Civil Rights Law Review, 10,</u> 435-443.

Moran, G. and Cutler, B.L. (1997). Bogus Publicity Items and the Contingency Between Awareness and Media-Induced Pretrial Prejudice. <u>Law and Human Behavior, 21,</u> 3, 339-344.

Mousourakis, G. (2003). <u>The Historical and Institutional Context of Roman Law.</u> Burlington, VT: Ashgate/Dartmouth.

NAACP (2005). <u>Democracy for All: Ending Felon Disenfranchisement.</u> NAACP Legal Defense and Educational Fund, Inc., New York.

Ochs, H.L. (2006). "Colorblind" Policy in Black and White: Racial Consequences of Disenfranchisement Policy. <u>The Policy Studies Journal, 34,</u> 1, 81-93.

Olzak, S. (1992). <u>The Dynamics of Ethnic Competition and Conflict.</u> Stanford, CA: Stanford University Press.

Parkes, D. (2003). Ballot Boxes Behind Bars: Toward the Repeal of Prisoner Disenfranchisement Laws. <u>Temple Political & Civil Rights Law Review, 71,</u> 73-112.

Pashukanis, E.B. (1978). <u>Law and Marxism: A General Theory.</u> London: Ink Links Ltd.

Petersilia, J. (1983). <u>Racial Disparities in the Criminal Justice System.</u> Santa Monica, CA: Rand.

Pettus, K.I. (2002). <u>Felony Disenfranchisement in the Contemporary United States: An Ancient Practice in a Modern Polity.</u> Unpublished doctoral dissertation, Columbia University, New York.

Phillips, P. (1980). <u>Marx and Engels on Law and Laws.</u> Totowa, NJ: Barnes & Noble Books.

Pinaire, B., Huemann, M., & Bilotta, L. (2003). Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons. <u>Fordham Urban Law Journal, 30,</u> 1519-1550.

Porter, K.H. (1969). <u>A History of Suffrage in the United States.</u> Westport, CT: Greenwood Publishing Group.

Portugal, C.M. (2003). Democracy Frozen in Devonian Amber: The Racial Impact of Permanent Felon Disenfranchisement in Florida. <u>University of Miami Law Review, 57,</u> 1317-1339.

Quinney, R. (1977). <u>Class, State and Crime: On the Theory and Practice of Criminal Justice.</u> New York: McKay.

Quillian, L. (1996). Group Threat and Regional Change in Attitudes Toward African Americans. <u>American Journal of Sociology, 102,</u> 816-860.

Rae, D.W. (1967). <u>The Political Consequences of Electoral Laws.</u> New Haven, CT: Yale University Press.

Rapoport, M. (2001). Restoring the Vote. American Prospect, 12, 14, 13-14.

Reiman, J. (2005). Liberal and Republican Arguments Against the Disenfranchisement of Felons. Criminal Justice Ethics, 24, 3-18.

Richey W. (2002). Bans on Ex-con Voting Reviewed. The Christian Science Monitor, October 1, 2002, retrieved from www.csmonitor.com, March 13, 2005.

Rose, D. & Clear, T. (2002). Incarceration, Reentry and Social Capital: Social Networks in the Balance. Paper prepared for the "From Prison to Home" Conference (January 30-31, 2002), John Jay College of Criminal Justice, City University of New York, New York.

Rosen, R. (2001). Ex-Convicts and Civil Death. Dissent, 48, 2, 44-45.

Roth, S.K. (1998). Disenfranchised by Design: Voting Systems and the Election Process. Information Design Journal, 9, 1, 1-8.

Russell, K.K. (2001). Toward Developing a Theoretical Paradigm and Typology for Petit Apartheid. In Milovanovic, D. & Russell, K.K. (eds). Petit Apartheid in the U.S. Criminal Justice System: The Dark Figure of Racism. Durham, NC: Carolina Academic Press.

Russell, K. (1998). The Color of Crime: Racial Hoaxes, White Fear, Black Protectionism, Police Harassment, and Other Macroaggressions. New York: New York University Press.

Saxonhouse, E. (2004). Unequal Protection: Comparing Former Felons' Challenges to Disenfranchisement and Employment Discrimination. Stanford Law Review, 56, 1597-1639.

Schall, J. (2004). The Consistency of Felon Disenfranchisement with Citizenship Theory. Working paper, Harvard Law School, Cambridge, MA.

Schlesinger, T. (2005). Racial and Ethnic Disparity in Pretrial Criminal Processing. Justice Quarterly, 22, 2, 170-192

Serr, B.J. & Maney, M. (1988). Racism, Peremptory Challenges, and the Democratic Jury: The Jurisprudence of a Delicate Balance. Journal of Criminal Law and Criminology, 19, 1-65.

Shapiro, A.L. (2001). Geometry and Geography: Racial Gerrymandering and the Voting Rights Act. In Tyson, M.J. (Ed.), Race, Voting, Redistricting and the Constitution: Sources and Explorations on the Fifteenth Amendment (pp. 351-371). New York: Routledge.

Shapiro, A.L. (1997). The Disenfranchised: Prisoners and Ex-Felons. American Prospect, 35, 60-62.

Shapiro, A.L. (1993a). Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy. Yale Law Journal, 103, 537-566.

Shapiro, A.L. (1993b). Giving Cons and Ex-Cons the Vote: The Disenfranchised. The Nation, 257, 21, 767-769.

Simmons, J.E. (2003). Beggars Can't be Voters: Why Washington's Felon Re-enfranchisement Law Violates the Equal Protection Clause. Washington Law Review, 78, 297-333.

Smedley, A. & Smedley, B.D. (2005). Race as Biology is Fiction, Racism as a Social Problem is Real: Anthropological and Historical Perspectives on the Social Construction of Race. American Psychologist, 60, 1, 16-26.

Smith, D.A., Visher, C. & Davidson, L.A. (1984). Equity and Discretionary Justice: The Influence of Race on Police Arrest Decisions. Journal of Criminal Law and Criminology, 75, 234-249.

Spohn, C. (2000). Thirty Years of Sentencing Reform: A Quest for a Racially Neutral Sentencing Process. Politics, Processes, and Decisions of the Criminal Justice System, Volume 3, Criminal Justice. Washington, DC: U.S. Government Printing Office.

Spohn, C., & DeLone, M. (2000). When Does Race Matter? An Analysis of the Conditions Under Which Race Affects Sentence Severity. Sociology of Crime, Law, and Deviance, 2, 3-37.

Spohn, C., Gruhl, J. & Welch, S. (1987). The Impact of the Ethnicity and Gender of Defendants on the Decision to Reject or Dismiss Felony Charges. Criminology, 25, 175-191.

Steffensmeier, D. & Demuth, S. (2000). Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly? American Sociological Review, 65, 705-729.

Steffensmeier, D., Ulmer, J., & Kramer, J. (1998). The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male. Criminology, 36, 363-397.

Strauss, D.A. (2001). The Myth of Colorblindness. In Tyson, M.J. (Ed.), Race, Voting, Redistricting and the Constitution: Sources and Explorations on the Fifteenth Amendment (pp. 391-428). New York: Routledge.

Taormina, R.M. (2003). Defying One-Person, One-Vote: Prisoners and the "Usual Residence" Principle. University of Pennsylvania Law Review, 152, 431, 431-462.

Thompson, N. (2001). Locking up the Vote. Washington Monthly, January, 17-23.

Thompson, M.E. (2002). Don't do the Crime if you Ever Intend to Vote Again: Challenging the Disenfranchisement of Ex-Felons as Cruel and Unusual Punishment. Seton Hall Law Review, 33, 167-209.

Tonry, Michael (2004). Thinking About Crime. New York: Oxford University Press.

Tonry, M. (1995). Malign Neglect: Race, Crime, and Punishment in America. New York: Oxford University Press.

Turk, A.T. (1969). Criminality and Legal Order. Chicago: Rand McNally.

Turner, B.M., Lovell, R.D, Young, J.C., & Denny, W.F. (1986). Race and Peremptory Challenges During Voir Dire: Do Prosecution and Defense Agree? Journal of Criminal Justice, 14, 61-69.

Twohey, M. (2001). Once a Felon, Never a Voter? National Journal, 33, 1, 46-50.

Tyler, T.R., Boeckmann, R.J., Smith, H.J., & Huo, Y.J. (1997). Social Justice in a Dierse Society. Boulder, CO: Westview Press.

Uggen, C. & Manza, J. (2002). Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States. American Sociological Review, 67, 6, 777-803.

Uggen, C., Manza, J., Thompson, M., & Wakefield, S. (2002). Impact of Recent Legal Changes in Felon Voting Rights in Five States. Briefing paper, The National Symposium on Felony Disenfranchisement, Washington, D.C.

U.S. Constitution, Article I, Section 2

U.S. Constitution, Amendment 13, 1865

U.S. Constitution, Amendment 14, 1868

U.S. Constitution, Amendment 15, 1870

U.S. Constitution, Amendment 19, 1920

U.S. Constitution, Amendment 26, 1971

U.S. Department of Justice. (2004). <u>Prisoners in 2003.</u> Bureau of Justice Statistics. Washington, DC: U.S. Government Printing Office.

U.S. Department of Justice. (2003). <u>Uniform Crime Report - 2003.</u> Federal Bureau of Investigation. Washington, DC: U.S. Government Printing Office.

U.S. Department of Justice. (2001). <u>Felony Defendants in Large Urban Counties, 1998.</u> Bureau of Justice Statistics. Washington, DC: U.S. Government Printing Office.

Verba, S., Scholzman, K.L., & Brady, H.E. (1995). <u>Voice and Equality: Civic Voluntarism in American Politics.</u> Cambridge, MA: Harvard University Press.

Vold, G.B. (1958). <u>Theoretical Criminology.</u> New York: Oxford University Press.

Vold, G.B. & Bernard, T.J. (1986). <u>Theoretical Criminology.</u> 3rd Edition. New York: Oxford University Press.

Walker, S. (1993). <u>Taming the System: The Control of Discretion in Criminal Justice, 1950-1990.</u> New York: Oxford University Press.

Walker, S., Spohn, C., & DeLone, M. (2004). <u>The Color of Justice: Race, Ethnicity and Crime in America.</u> Belmont, CA: Wadsworth.

Weedon, J.R. (2004). Voting Rights Restored. <u>Corrections Today, 66,</u> 6, 16-17.

Weitzer, R. (1996). Racial Discrimination in the Criminal Justice System: Findings and Problems in the Literature. <u>Journal of Criminal Justice, 24,</u> 313.

Western, B. (2002). The Impact of Incarceration on Wage Mobility and Inequality. American Sociological Review, 67, 526-546.

Western, B. & Pettit, B. (2000). Incarceration and Racial Inequality in Men's Employment. Industrial and Labor Relations Review, 54, 3-16.

Wilbanks, W. (1987). The Myth of a Racist Criminal Justice System. Monterey, CA: Brooks/Cole.

Will, G.F. (2005). Give Ballots to Felons? MSNBC, March 13, 2005, retrieved from www.MSNBC.com, April 10, 2005.

Wolfinger, R.E. & Rosenstone, S.J. (1980). Who Votes? New Haven, CT: Yale University Press.

Zatz, M.S. (1987). The Changing Form of Racial/Ethnic Biases in Sentencing. Journal of Research in Crime and Delinquency, 25, 69-92.

Zelden, C.L. (2002). Voting Rights on Trial. Santa Barbara, CA: ABC-CLIO.

Appendices

Appendix 1 – Legislation Referenced

(All state laws, constitutions, and executive orders obtained online from http://www.lexis.com)

Alabama Constitution, Amendment 579

Alabama Code § 15-22-36.1

Alabama Code § 36-18-25(f)

Alaska Statute § 15.05.030

Alaska Statute § 15.60.010

Arizona Revised Statute §§ 13-904 through 13-906, 13-912

Arkansas Constitution, Amendment 51, § 11(a)(4)

California Constitution, Article II, § 4

California Election Code § 2101

Colorado Constitution, Article 7, § 10

Colorado Revised Statute, § 1-2-103

Connecticut General Statute Annotated § 9-46a

Delaware Constitution, Article V, § 2

Delaware Constitution, Article VII, § 2

Delaware Code Annotated, Title 15, § 1701

District of Columbia Code § 1-1001.02(7)

District of Columbia Municipal Regulations, Title 3, § 500.3

Florida Constitution, Article VI, § 4

Florida Statute § 97.041(2)(b)

Florida Statute, Chapter 944.292(a)

Georgia Constitution, Article II, § 1 paragraph III(a)

Georgia Code Annotated § 21-2-216(b)

Hawaii Revised Statute § 831-2(a)(1)

Idaho Code § 18-310

Illinois Constitution, Article III, § 2

730 Illinois Complete Statute 5/5-5-5

Indiana Constitution, Article 2, § 8

Indiana Code Annotated § 3-7-13-5

Iowa Constitution, Article II, § 5

Iowa Code, Chapter 914

Iowa Code, Title XVI, § 701.7

Iowa Code § 48A.6(1)

Iowa Executive Order Number 42, July 24, 2005

Kansas Statute Annotated § 21-4615

Kansas Statute Annotated § 22-3722

Kentucky Constitution §§ 77, 145 and 150

Kentucky Revised Statute Annotated, § 196.045

Louisiana Constitution, Article I, § 10 and § 20

Louisiana Revised Statute Annotated § 18:102

Maryland Annotated Code, Election Law, § 1-101

Maryland Annotated Code, Election Law, § 3-102

Maryland Constitution, Article I, § 4

Massachusetts Constitution, Article III

Massachusetts Annotated Laws, Chapter 51, § 1

Michigan Constitution, Article 2, § 2

Michigan Complete Laws Annotated § 168.758b

Minnesota Constitution, Article VII, § 1

Minnesota Statute § 201.014 and § 609.165

Mississippi Constitution, Article 5, § 124

Mississippi Constitution, Article 12, § 241 and § 253

Mississippi Code Annotated § 23-15-11

Mississippi Code Annotated § 99-19-37

Missouri Revised Statute § 115.133

Montana Constitution, Article IV, § 2

Montana Code Annotated § 13-1-111

Nebraska Revised Statute §§ 29-112, 29-2264, and 32-313

Nevada Constitution, Article 2, § 1

Nevada Revised Statute §§ 176A.850, 179.245, 213.020, 213.090, 213.155, 213.157

New Hampshire Revised Statute Annotated § 607-A:2

New Jersey Statute Annotated § 2C:51-3 and § 19:4-1

New Mexico Constitution, Article VII, §§ 1, 2

New Mexico Statute Annotated § 1-4-27.1 and § 31-13-1

New York Election Law § 5-106

North Carolina Constitution, Article VI, § 2

North Carolina General Statute § 163-55 and § 13-1

North Dakota Central Code § 12.1-33-01

Ohio Revised Code Annotated § 2961.01

Oklahoma Statute Annotated, Title 26, § 4-101

Oregon Revised Statute § 137.275 and § 137.281

Pennsylvania Attorney General Opinion 186 (number 47), 1974

25 Pennsylvania Consolidated Statute Annotated § 1301

Rhode Island Constitution, Article 2, § 1

Rhode Island State Bill 458, 2005-2006 Legislative Session, R.I., 2005

Rules of Executive Clemency of Florida

South Carolina Code Annotated § 7-5-120

South Dakota Codified Laws §§ 12-4-18, 23A-27-35, 24-5-2 and 24-15A-7

Tennessee Constitution, Article 1, § 5

Tennessee Code Annotated § 40-20-112, §40-29-101 through § 40-29-105

Texas Constitution, Article 6, § 1

Texas Election Code Annotated § 11.002 and § 13.001

Utah Code Annotated § 20A-2-101 and § 20A-2-101.5

Virginia Constitution, Article II, § 1 and Article V, § 12

Virginia Code Annotated §§ 8.01-338, 24.2-101, 53.1-231.1, 53.1-231.2, 53.1-136

Washington Constitution, Article 6, § 3

Washington Revised Code §§ 9.94A.030, 9.94A.637, 9.94A.885, 9.96.010,

9.96.020, 10.73.160, 29A.04.079

West Virginia Constitution, Article IV, § 1

West Virginia Code § 3-1-3 and § 3-2-2

51 West Virginia Attorney General Opinion 182 (1965)

Wisconsin Statute § 6.03 and § 304.078

Wyoming Constitution, Article 4, § 5

Wyoming Statute §§ 6-10-106, 7-13-105, 7-13-803 through 7-13-806, 22-3-102

Appendix 2 – Cases Referenced
(All cases obtained online from http://www.lexis.com)

Baston v. Kentucky, 476 U.S. 79 (1986)

Cotton v. Fordice, 157 F.3d 388 (1988)

Farrakhan v. Washington, 338 F.3d 1009, 1016 (9th Circuit, 2003)

Hunter v. Underwood, 471 U.S. 222 (1985)

Reynolds v. Sims, 377 U.S. 533 (1964)

Richardson v. Ramirez, 418 U.S. 24 (1974)

State v. Collins, 124 P.903 (WA, 1912)

Taylor v. State Election Board, 616 N.E. 2d 380

United States v. Loucks, 149 F.3d 1048, 1050 (9th Circuit, 1998)

Washington v. State, 75 Ala. 582 (1884)

Webb v. County Court of Raleigh County, 168 S.E. 760 (WV, 1933)

Williams v. Mississippi, 170 U.S. 213 (1898)

Appendix 3 – Data Used to Calculate African American Arrest and Incarceration Rates for 2004

State	African American Population	# African American Arrests	# African American Incarcerations
Alabama	1155930	13469	12630
Alaska	21787	2236	1022
Arizona	158873	8363	6311
Arkansas	418950	7752	5828
California	2263882	63850	33872
Colorado	165063	6043	3010
Connecticut	309843	6813	3847
Delaware	150666	3431	1755
D.C.	343312	30259	1
Florida	2335505	65652	28768
Georgia	2349542	21914	30535
Hawaii	22003	5022	2714
Idaho	5456	338	233
Illinois	1876875	27047	32166
Indiana	510034	11773	7904
Iowa	61853	3606	1756
Kansas	154198	2663	2204
Kentucky	295994	3654	5658
Louisiana	1451944	21983	20423

Appendix 3 – Data Used to Calculate African American Arrest and Incarceration Rates for 2004 (Continued)

State	African American Population	# African American Arrests	# African American Incarcerations
Maine	6760	333	77
Maryland	1477411	28294	12023
Massachusetts	343454	3559	2794
Michigan	1412742	20059	21169
Minnesota	171731	7504	2607
Mississippi	1033809	9375	11806
Missouri	629391	20426	12925
Montana	2692	2	2
Nebraska	68541	2950	993
Nevada	135477	6522	2558
New Hampshire	9035	179	136
New Jersey	1141821	19376	10518
New Mexico	34343	1665	928
New York	3014385	22203	21443
North Carolina	1737545	30402	13523
North Dakota	3916	641	340
Ohio	1301307	15203	15554
Oklahoma	260968	7580	8523

Appendix 3 – Data Used to Calculate African American Arrest and Incarceration Rates for 2004 (Continued)

State	African American Population	# African American Arrests	# African American Incarcerations
Oregon	55662	4991	1745
Pennsylvania	1224612	29082	14983
Rhode Island	46908	1265	409
South Carolina	1185216	19654	11475
South Dakota	4685	1005	1238
Tennessee	932809	17882	9216
Texas	2404566	43381	37533
Utah	17657	1697	491
Vermont	3063	98	134
Virginia	1390293	17232	15714
Washington	190267	8698	2947
West Virginia	57232	762	543
Wisconsin	304460	8110	4827
Wyoming	3722	277	173

[1] The District of Columbia does not operate a prison and therefore does not have incarceration statistics

[2] No data was available for Montana for the year 2004

Appendix 4 – Summary of State Disenfranchisement Laws

<u>Alabama</u>

Alabama Constitution, amendment 579, which amends Article VIII of the 1901 Constitution of Alabama states, "No person convicted of a felony involving moral turpitude … shall be qualified to vote" (AL Constitution, Amend 579, (b)). The Alabama Supreme Court has identified crimes that are not disqualifiers, such as assault, felony drug possession, and felony DUI offenses. Additionally, several crimes, such as murder, rape, robbery, drug possession for resale, and bigamy have been identified as crimes that would disenfranchise under Alabama law. There is however, no actual comprehensive list of the felonies that disenfranchise an individual. The disenfranchisement becomes effective once an individual is convicted of a felony involving moral turpitude.

The State of Alabama disenfranchises those convicted of felonies for life. There is no difference in length of disenfranchisement based on type of crime. However, Alabama Code § 15-22-36.1 states that a disenfranchised individual may apply to the Board of Pardons and Parole for a certificate, which would reinstate voting rights to some ex-felons. This reinstatement is authorized to those who have completed their entire sentence (includes parole), paid all fines associated with the crime and court proceedings, and are free of any pending felony charges. While this reinstatement includes most crimes, it excludes other serious crimes such as murder, rape, and sodomy (Alabama Code § 15-22-36.1). If an individual is convicted of a serious violent offense or of a sexual offense,

they must seek a pardon from the Board of Pardons and Parole and meet all other aforementioned requirements (Alabama Code § 15-22-36.1). As an additional requirement to attain a pardon for a serious violent offense and/or a sexual offense the offender must submit a DNA sample to the Alabama DNA database (Alabama Code § 36-18-25(f)).

Despite Alabama's lifetime disenfranchisement, voting rights restoration is attainable. The State of Alabama updated the restoration process in 2003 in an attempt to expedite the restoration of voting rights. With the updating, the process currently takes approximately one year for those individuals eligible to apply.

Alaska

Alaska Statute § 15.05.030 states that an individual is disenfranchised upon conviction of a "felony involving moral turpitude." These felonies are considered, by state law, as "those crimes that are immoral or wrong in themselves" (Alaska Statute § 15.60.010(7)). While there is not a list of non-disqualifying felonies, the list of those felonies involving moral turpitude is quite extensive. These crimes include murder, sexual assault, promoting prostitution, bribery, promoting gambling, criminal mischief, drug offenses, and theft, among others (Alaska Statute § 15.60.010(7)).

The disenfranchisement period extends from the time of conviction until the sentence is complete. The completion of the sentence requires the "unconditional discharge" of those who have been convicted of a felony offense

under Alaskan law (Alaska Statute § 15.60.010(34)). Essentially, once a person

has served their entire sentence, including any period of parole or probation, they

are automatically eligible to vote. There is no additional documentation

necessary to register to vote for those who have received an unconditional

discharge.

Arizona

Under Arizona law, a felony conviction results in the suspension of the

right to vote (Arizona Revised Statute § 13-904). For first time felony offenders,

the disenfranchisement period begins upon conviction of a felony and ends upon

an unconditional discharge of probation, imprisonment, parole, and the payment

of any fines and/or related court costs (Arizona Revised Statute § 13-904, 13-

912). Much like the Alaskan statute, once an individual has completed their

entire sentence, their voting rights are automatically restored.

A secondary felony conviction results in lifetime disenfranchisement.

Much like other lifetime disenfranchisement states, however, Arizona does have

a process for restoration. A second felony conviction requires the offender to

apply for the restoration of voting rights. The application for restoration depends

upon the sentence. That is, a person sentenced to probation for a second felony

offense, may apply, to the discharging judge, immediately upon the discharge of

the probation sentence (Arizona Revised Statute § 13-905). An individual

sentenced to a prison term for a second offense, must wait for a period of two

years after an unconditional discharge before applying for restoration of voting

rights (Arizona Revised Statute § 13-906). The application for those imprisoned for a second felony, must be accompanied by a "certificate of absolute discharge" from the Arizona Department of Corrections (Arizona Revised Statute § 13-906). Although it is not clear in state law, the restoration of voting rights appears to be based upon judicial discretion. There is no clear state law mandating restoration of voting rights upon the completion of a sentence for a second felony offense.

Arkansas

Arkansas has one of the clearest state laws regarding disenfranchisement and restoration. Simply, once convicted of a felony offense, offenders are not eligible to vote until they complete their sentence. Upon completion of any sentence for a felony conviction, whether probation, imprisonment, or parole, an offender's voting rights are automatically restored (Arkansas Constitution, Amendment 51, § 11(a)(4)).

California

Similar to the disenfranchisement law in Arkansas, California's disenfranchisement statute is straightforward. Under California law, an individual may not vote while in "prison or on parole for the conviction of a felony offense" (California Constitution, Article II, § 4; California Election Code § 2101). Disenfranchisement occurs from the time the offender enters prison until they are released from prison and/or any period of parole (California Constitution, Article II, § 4; California Election Code § 2101). Therefore, a person convicted of a felony, but not sentenced to prison does not lose their right to vote.

Colorado

Unlike the other states discussed herein, Colorado disenfranchisement law also prevents incarcerated misdemeanor offenders from voting. According to Colorado law, any individual confined in either a prison or jail is prevented from voting (Colorado Constitution, Article 7, § 10; Colorado Revised Statute, § 1-2-103). Additionally, someone who is on parole, is considered to be under some form of state confinement and is, therefore, not authorized to vote (Colorado Constitution, Article 7, § 10; Colorado Revised Statute, § 1-2-103). However, an individual sentenced to probation, and not any other sentence, is eligible to vote. The determining factor in Colorado law, is "detention or confinement" other than probation (Colorado Constitution, Article 7, § 10; Colorado Revised Statute, § 1-2-103). The disenfranchisement due to detention, however, does not include pretrial detention. Individuals held in custody awaiting trial, who have not been convicted are eligible to vote by mail (Colorado Revised Statute, § 1-2-103). Restoration of voting rights is automatic upon release from state custody. Once a person has exited prison or has been released from parole they may register to vote (Colorado Constitution, Article 7, § 10; Colorado Revised Statute, § 1-2-103).

Connecticut

Connecticut law disenfranchises felony offenders for the period of confinement and any period of parole (Connecticut General Statute, § 9-46(a)). Under Connecticut law the confinement for a felony, includes prison

incarceration, confinement in a community residence, and any period of parole (Connecticut General Statute, § 9-46(a)).

The restoration of voting rights in Connecticut is not automatic. In order to have voting rights reinstated, former offenders must have served out their entire sentence (including parole), must pay all fines associated with the criminal case, and must submit written documentation to the registrar of voters that all requirements have been met (Connecticut General Statute, § 9-46(a)). The written documentation requirement consists of a document from the Commissioner of Correction certifying that the offender has been discharged from a period of confinement and/or parole (Connecticut General Statute, § 9-46(a)). There is no additional requirement. Restoration is granted if all proper documentation is provided to the registrar.

Delaware

Delaware law states that an individual convicted of a felony offense forfeits the right to vote (Delaware Constitution, Article V, § 2). Disenfranchisement in Delaware begins at conviction. The voting prohibition is permanent for some offenses, such as murder, sexual offenses, and certain public corruption charges (Delaware Constitution, Article V, § 2). In addition to the felony offenses listed above, misdemeanors involving election law also result in disenfranchisement, but disenfranchisement is limited to ten years after the completion of a sentence (Delaware Code Annotated, Title 15, § 1701). For all other felony offenses, the restoration of voting rights is possible upon completion of the sentence and a

five-year waiting period (Delaware Code Annotated, Title 15, § 1701). Much like the other states mentioned, Delaware considers a sentence to be incarceration, probation, and any period of parole. The completion of a sentence also requires full payment of all related fines.

While the time requirement for the voting restoration process varies depending on the nature of the offense, the process, for all non-permanent offenses, is the same. An offender, after completing the sentence, paying all related fines, and waiting the mandatory time period (either five or ten years), may apply to the local election board for restoration. Once an application is made and the board establishes eligibility, voting rights are restored to the ex-offender (Delaware Constitution, Article V, § 2; Delaware Code Annotated, Title 15, § 1701). For those convicted of a permanent offense (murder, sexual offenses, and public corruption) disenfranchisement is for life, unless granted a pardon by the Governor (Delaware Constitution, Article V, § 2). Each request for pardon is reviewed by the Board of Pardons and then sent to the Governor for final decision (Delaware Constitution, Article VII, § 2).

District of Columbia

The District of Columbia's disenfranchisement statute requires the suspension of voting rights for the period of incarceration only (District of Columbia Code § 1-1001.02(7); District of Columbia Municipal Regulations, Title 3, § 500.3). Once released from incarceration for commission of a felony offense, voting rights are automatically restored to the offender (District of

Columbia Code § 1-1001.02(7); District of Columbia Municipal Regulations, Title 3, § 500.3).

Florida

Florida is a permanent disenfranchisement state. In fact, Florida's state law is one of the strictest in terms of both disenfranchisement, as well as restoration, in the country. All persons who have been convicted of a felony offense, forfeit all civil rights, unless granted a pardon or restoration of those civil rights by the Governor (Florida Constitution, Article VI, § 4; Florida Statute 97.041(2)(b); Florida Statute, Chapter 944.292(a)). Disenfranchisement becomes effective upon conviction and is not tied to any specific felony, but rather all felony offenses.

Like other states with permanent disenfranchisement legislation, Florida does have a restoration process. There are two methods that may be used to reestablish voting rights. First, upon completion of a sentence, including the payment of all fines associated with the crime, an individual may seek the restoration of rights, which restores some civil rights, including the right to vote (Rules of Executive Clemency of Florida). Second, an individual, ten years after the completion of their sentence and payment of all associated fines, may apply for a pardon (Rules of Executive Clemency of Florida). Regardless of which method is used the Governor, assisted by the Clemency Board, makes the final determination (Rules of Executive Clemency of Florida).

The process for attaining either restoration of rights or a pardon is essentially the same. Upon completion of the sentence, the Florida Department

of Corrections sends the name of the former offender to the Parole Commission to determine whether or not a hearing for restoration is necessary (Rules of Executive Clemency of Florida). If a hearing is necessary, the Clemency Board may request to hear evidence of rehabilitation and whether or not the former offender has met all the requirements for restoration of rights (Rules of Executive Clemency of Florida). The former offender is allowed to speak at the hearing, but is limited to five minutes and may be questioned, by the board, on matters related to the individual's character, among other items (Rules of Executive Clemency of Florida). Once a hearing is complete, or if a hearing is not deemed necessary, the Clemency Board determines whether or not to grant the restoration of rights or an outright pardon.

<u>Georgia</u>

The right to vote in the state of Georgia may be removed for the conviction of any felony offense "involving moral turpitude" (Georgia Constitution, Article II, § 1 paragraph III(a); Georgia Code Annotated § 21-2-216(b)). Georgia state law and the Georgia Constitution unfortunately have a problem similar to other state laws in this area, the concept of "moral turpitude" is not clearly defined. In other words, while a felony offense involving moral turpitude will result in disenfranchisement, it is not clear what that crime might be.

Georgia law disenfranchises felony offenders for the period of confinement, probation, and any period of parole (Georgia Constitution, Article II, § 1 paragraph III(a); Georgia Code Annotated § 21-2-216(b)). The period of

disenfranchisement ends automatically and voting rights are restored upon the completion of the sentence (Georgia Constitution, Article II, § 1 paragraph III(a)). This completion includes the payment of any fines associated with the crime (Georgia Constitution, Article II, § 1 paragraph III(a)).

Hawaii

Hawaii suspends the voting rights of those convicted of a felony offense from the time the sentence begins, rather than from the time of conviction (Hawaii Revised Statute § 831-2(a)(1)). This distinction allows those individuals convicted of a felony, but not sentenced, to vote in elections. Additionally, once an offender is released from prison and placed on parole and/or they are given probation in lieu of a prison sentence the offender is authorized to vote. Once the period of incarceration has been completed, voting rights are automatically restored (Hawaii Revised Statute § 831-2(a)(1)).

Idaho

A conviction of a felony offense in the state of Idaho results in a period of disenfranchisement from time of conviction to time of "final discharge" (Idaho Code § 18-310). According to state law, final discharge means that the offender is no longer incarcerated, no longer on parole, or probation, and that all fines related to the offense have been paid (Idaho Code § 18-310). Additionally, once final discharge has been reached, voting rights are automatically restored.

Illinois

An individual convicted of a felony offense is prohibited from voting in the state of Illinois for only the period of incarceration (Illinois Constitution, Article III, § 2; 730 Illinois Complete Statute 5/5-5-5). Under Illinois law, misdemeanor offenders are also, if incarcerated to a prison term, impacted by disenfranchisement for any period of incarceration (Illinois Constitution, Article III, § 2; 730 Illinois Complete Statute 5/5-5-5). The restoration of the right to vote is automatic upon release from confinement, thereby allowing those offenders on parole and/or probation to vote in elections (Illinois Constitution, Article III, § 2; 730 Illinois Complete Statute 5/5-5-5).

Indiana

Under the Indiana Constitution, any person convicted of an "infamous crime" is deemed ineligible to vote (Indiana Constitution, Article 2, § 8). An "infamous crime" has, for the purpose of the Indiana Code, been defined by state case law as a felony offense (*Taylor v. State Election Board*, 616 N.E. 2d 380; Indiana Code § 3-7-13-5(a)). Disenfranchisement is for the time of incarceration and any time period where the offender is "subject to lawful detention" (Indiana Code § 3-7-13-5(a)(2)). Although not clearly defined, it appears evident, from state law, that the phrase "subject to lawful detention" means any period of incarceration, probation, and parole (Indiana Code § 3-7-13-5). Voting rights are restored automatically upon completion of the sentence (Indiana Constitution, Article 2, § 8; Indiana Code § 3-7-13-5).

Iowa

Article II, § 5 of the Iowa Constitution states that any individual convicted of an "infamous crime" is ineligible to vote. For the purposes of this section, "infamous crime" has been defined in state law as any felony offense (Iowa Constitution, Article II, § 5). Further, conviction of an aggravated misdemeanor also results in disenfranchisement (Iowa Constitution, Article II, § 5; Iowa Code § 48A.6). Although, not clearly defined, an aggravated misdemeanor appears to be one that involves serious bodily injury to the victim, where if the crime did not involve serious bodily injury, it would be considered a misdemeanor (Iowa Code, Title XVI). Crimes such as domestic violence and driving under the influence fall under this category (Iowa Code, Title XVI). The time period of disenfranchisement begins upon conviction and, unless granted restoration of civil rights or a pardon from the Governor, continues through the lifetime of the offender (Iowa Constitution, Article II, § 5; Iowa Code § 48A.6).

While there has been no other means of retaining voting rights other than through restoration or Gubernatorial pardon, a recent decision by the Iowa Governor has resulted in automatic restoration of voting rights (Executive Order Number 42, July 24, 2005). Utilizing authority granted him under Iowa Code, Chapter 914, the Governor restored "citizenship rights" for all individuals who have completed their sentence (Executive Order Number 42, July 24, 2005). The completion of sentence includes imprisonment, probation, parole, or any version of supervised release (Executive Order Number 42, July 24, 2005). The

Governor stated that one reason for granting such an order was due to evidence indicating that the "disenfranchisement of offenders has a disproportionate racial impact" which has resulted in "diminishing the representation of minority populations" (Executive Order Number 42, July 24, 2005). This Executive Order is currently in effect and will remain so, until otherwise overturned by a future Governor or by the courts. There is a challenge to this order, made by the District Attorney of Muscatine County, currently working its way through the Iowa Courts.

<u>Kansas</u>

In the state of Kansas, a person who commits a felony offense is ineligible to vote (Kansas Statute Annotated § 21-4615). The disenfranchisement period begins upon conviction and continues until the completion of the "authorized sentence" (Kansas Statute Annotated § 21-4615). The authorized sentence includes, confinement in prison, probation, parole, and any other sentence placed upon an offender by the court (Kansas Statute Annotated § 21-4615). Once the authorized sentence has been completed, voting rights are automatically restored with the issuance of a certificate of discharge, issued by the parole board (Kansas Statute Annotated § 21-4615, § 22-3722).

<u>Kentucky</u>

The Constitution of the state of Kentucky states that any person convicted of a felony offense, or of "bribery in an election, or of such high misdemeanor as the General Assembly may declare" is unauthorized to vote (Kentucky

Constitution, § 145). This period of disenfranchisement is permanent upon conviction of one of the aforementioned offenses (Kentucky Constitution, § 145). Additionally, any individual who, although not convicted, is being held "in confinement under the judgment of a court for some penal offense" during an election may not vote in that election (Kentucky Constitution, § 145). This provision of the state constitution appears to include all persons being held in jail or prison awaiting trial. Therefore, those unable to post bail, or not provided bail, would be disenfranchised for that election.

Although Kentucky does disenfranchise for life, the Governor may issue a full or partial pardon, either of which would result in the reinstatement of voting rights (Kentucky Constitution, § 77, § 150). In order to receive a pardon, a former offender, after completion of the entire sentence, including any fines, must appeal to the parole board and submit three letters of reference (Kentucky Revised Statute Annotated, § 196.045). The parole board determines whether or not the former offender is eligible and then forwards the request to the Governor (Kentucky Revised Statute Annotated, § 196.045).

Louisiana

Louisiana disenfranchises those individuals who have been convicted of a felony offense only for the period of incarceration (Louisiana Constitution, Article I, § 10; Louisiana Revised Statute Annotated § 18:102). Once an offender is released from custody their "basic rights," including the right to vote are

automatically restored with no further action required (Louisiana Constitution, Article I, § 10).

<u>Maryland</u>

Maryland's felony disenfranchisement statute is one of the most complex in the country. Under Maryland law, anyone convicted of an "infamous of other serious crime" is disenfranchised (Maryland Constitution, Article I, § 4). Maryland law defines an infamous crime as "any felony, treason, perjury, or any crime involving an element of deceit, fraud, or corruption" (Maryland Annotated Code, Election Law, § 1-101). According to the definition, all felony offenses, and some misdemeanors, such as perjury, theft, and prostitution are considered infamous crimes (Maryland Annotated Code, Election Law, § 1-101).

The period of disenfranchisement depends upon the type of crime, whether it is a first or subsequent offense, and whether or not the entire sentence has been completed (Maryland Annotated Code, Election Law, § 3-102). "Completion of the sentence" means, completion of any time on probation or parole and the payment of any fines associated with the crime (Maryland Annotated Code, Election Law, § 3-102). For a first time offender, the right to vote is restored automatically upon the completion of the sentence (Maryland Annotated Code, Election Law, § 3-102). In the case of a subsequent conviction of an infamous crime, the offender must complete the sentence, as described above, and wait for three years before being eligible to vote (Maryland Annotated Code, Election Law, § 3-102). Once the sentence is complete, and the three-

year time period has expired, voting rights are restored automatically (Maryland Annotated Code, Election Law, § 3-102). Those offenders who are convicted of two or more violent crimes are permanently disenfranchised unless they receive a pardon from the Governor (Maryland Annotated Code, Election Law, § 3-102). Additionally, individuals "convicted of buying or selling votes" or of bribery or attempted bribery are also disenfranchised for life unless pardoned (Maryland Constitution, Article I, § 6 and Article III, § 50; Maryland Annotated Code, Election Law, § 3-102).

Eligibility for a pardon depends on the type of crime and the time since completion of the sentence. To receive a pardon, a felony offender, must not have committed a crime for ten years, whereas a misdemeanor offender must have five years free of crime (Maryland Regulations Code, Title 12, § 08.01.16). For those requesting a pardon who have been convicted of a violent crime or of a crime involving drugs the waiting period is twenty years (Maryland Regulations Code, Title 12, § 08.01.16). Once the time period has been met, the former offender may appeal to the Maryland Parole Commission, who determines eligibility and forwards the pardon request to the Governor for final decision (Maryland Regulations Code, Title 12, § 08.01.16).

Massachusetts

Under Massachusetts law an individual convicted of a felony offense is disenfranchised only for the period of incarceration (Massachusetts Constitution, Article III; Massachusetts Annotated Law, Chapter 51, § 1). Once an individual is

released from incarceration voting rights are automatically restored with no further documentation (Massachusetts Annotated Law, Chapter 51, § 1).

Michigan

Michigan law states that any individual who has been convicted of a crime "for which the penalty imposed is confinement in jail or prison" is disenfranchised only for that period of confinement (Michigan Constitution, Article 2, § 2A; Michigan Complete Laws § 168.758b). As confinement in jail is a disqualification for voting, those persons convicted of misdemeanors are also disenfranchised until their release from custody (Michigan Constitution, Article 2, § 2A; Michigan Complete Laws § 168.758b). Upon release from jail or prison, voting rights are restored automatically.

Minnesota

The right to vote in Minnesota is removed from those individuals convicted of "treason or felony" (Minnesota Constitution, Article VII, § 1; Minnesota Statute § 201.014). The disenfranchisement period lasts until the conviction has been discharged, which includes the completion of incarceration, probation, parole, and any fines associated with the court case (Minnesota Statute § 609.165). Upon discharge of the sentence all civil rights are automatically restored without any further action necessary (Minnesota Statute § 609.165).

Mississippi

The Mississippi Constitution lists all the crimes for which an individual will be disenfranchised (Article 12, § 241). The crimes of murder, rape, bribery, theft,

arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement, and bigamy are the only crimes listed as disqualifying in the state constitution (Mississippi Constitution, Article 12, § 241). However, since the court decision in *Cotton v. Fordice*, which stated that the state constitution was to be narrowly read, the Attorney General of Mississippi has expanded upon the list of theft-related crimes that are disqualifying while simultaneously limited such thefts to felony cases only. The disenfranchisement period for a conviction of any of the aforementioned crimes is for the lifetime of the offender (Mississippi Constitution, Article 12, § 241; Mississippi Code Annotated § 23-15-11).

The only method for regaining the right to vote is by Gubernatorial pardon or by a two-thirds vote of the Mississippi legislature (Mississippi Constitution, Article 12, § 253; Mississippi Code Annotated § 99-19-37). In order to receive a pardon, the former offender must wait a period of seven years after the completion of their sentence (Mississippi Constitution, Article 12, § 253). Once the seven years have passed, the offender must place a notice of the pardon request, along with a statement of why the pardon should be given, in the newspaper of the county where the conviction took place (Mississippi Constitution, Article 5, § 124). This requirement must be completed at least thirty days prior to making a formal pardon request of the Governor (Mississippi Constitution, Article 5, § 124). Once those requirements are met the formal pardon is sent to the Governor, via the Parole Board, for investigation and final decision (Mississippi Constitution, Article 5, § 124).

Missouri

An individual convicted of any felony in the state of Missouri is disenfranchised for the period of incarceration, probation, and parole (Missouri Revised Statute § 155.133). Once the sentence is complete, however, voting rights are restored to the former offender automatically (Missouri Revised Statute § 155.133).

Montana

Offenders incarcerated in a Montana prison for a felony offense are not allowed to vote (Montana Constitution, Article IV, § 2; Montana Code Annotated § 13-1-111). The period of disenfranchisement for a felony conviction is only for the time the offender is actually incarcerated; once released from prison all voting rights are automatically restored with no further requirements (Montana Constitution, Article IV, § 2; Montana Code Annotated § 13-1-111).

Nebraska

The state of Nebraska mandates that all persons convicted of a felony offense forfeit their right to vote upon conviction (Nebraska Revised Statute § 29-112 and § 32-313). The disenfranchisement period last for the time of incarceration, probation, parole, and for a two-year time period after final discharge of incarceration, probation, or parole (Nebraska Revised Statute § 29-112 and § 29-2264). Once the two-year waiting period has passed no further action is necessary.

Nevada

An individual who has been convicted of "treason or felony in any state" is not authorized to vote in the state of Nevada (Nevada Constitution, Article 2, § 1). The time period of the disenfranchisement depends on the conviction. For first time non-violent felony offenders, the disenfranchisement period begins upon conviction and ends upon the completion of the sentence, whether the sentence is incarceration, probation, or parole (Nevada Revised Statute § 176A.850, § 213.155, and § 213.157). The completion of the sentence normally includes all payments of fines associated with the criminal offense; however, this requirement may be waived if the former offender is indigent (Nevada Revised Statute § 176A.850, § 213.155, and § 213.157).

For offenders who have been convicted of a violent felony or have been convicted of more than one felony offense, disenfranchisement is permanent (Nevada Revised Statute § 213.090). In cases of permanent disenfranchisement, a former offender may either appeal to the Board of Pardons Commissioners for a pardon or may seek restoration of their civil rights by filing an appeal with the court in which they were convicted (Nevada Revised Statute § 213.090). To seek a pardon the former offender must notify, in writing, at least 30 days in advance, the county attorney, the convicting court, and the department of corrections (Nevada Revised Statute § 213.020). Once this thirty-day period has passed, the former offender sends the request for pardon to the Board of Pardons Commissioners, who investigates and makes the final

determination regarding pardon (Nevada Revised Statute § 213.020). In order to seek restoration of civil rights from the court of conviction, the former offender must petition the court, requesting the sealing of all records pertaining to the conviction (Nevada Revised Statute § 213.090 and § 179.245). Although not specified in state law, regardless of which method a former offender chooses, pardon or restoration, a significant time period must have passed for either method to be considered (Nevada Revised Statute § 213.020, § 213.090 and § 179.245).

New Hampshire

Under New Hampshire law an individual convicted of a felony offense is disenfranchised only for the period of incarceration (New Hampshire Revised Statute Annotated § 607-A:2). Once an individual is released from incarceration voting rights are automatically restored with no further documentation (New Hampshire Revised Statute Annotated § 607-A:2).

New Jersey

A conviction of a felony offense in the state of New Jersey results in a period of disenfranchisement from time of conviction to time of sentence completion (New Jersey Statute Annotated § 2C:51-3 and § 19:4-1). Sentence completion means that the offender is no longer incarcerated, on parole, or on probation (New Jersey Statute Annotated § 2C:51-3 and § 19:4-1). Additionally, once the sentence has been completed, voting rights are automatically restored.

New Mexico

An individual convicted of "a felonious or infamous crime" in the state of New Mexico is disenfranchised (New Mexico Constitution, Article VII, § 1). More clearly defined, a disenfranchising crime is one that is considered a felony offense under state law (New Mexico Statute Annotated § 1-4-27.1 and § 31-13-1). The period of disenfranchisement begins upon conviction of a felony offense and ends upon completion of the sentence (New Mexico Statute Annotated § 31-13-1). To complete the sentence the former offender must have been released from prison, completed any period of parole, not be on probation, and must have paid all fines associated with the offense (New Mexico Statute Annotated § 31-13-1). Once the sentence is complete, restoration of voting rights is automatic with no further action necessary (New Mexico Statute Annotated § 31-13-1).

New York

Any person convicted of a felony offense *and* is sentenced to imprisonment is ineligible to vote in the state of New York (New York Election Law § 5-106). Under this provision, even if an individual is convicted of a felony, they are still eligible to vote as long as they are not imprisoned (New York Election Law § 5-106). Voting rights are automatically restored to those offenders who have either completed the "maximum sentence of imprisonment" or has been released from any period of parole, whichever is longer (New York Election Law § 5-106).

North Carolina

Conviction of a felony offence, in the state of North Carolina, results in disenfranchisement from the time of conviction (North Carolina Constitution, Article VI, § 2; North Carolina General Statute § 163-55). To restore the franchise the offender must be "unconditionally discharged" from their sentence, which includes the release from prison, parole, probation, and the payment of any fines associated with the crime (North Carolina General Statute § 13-1). Although restoration is automatic upon an unconditional discharge, the former offender must file a "certificate," with the court of conviction, indicating that they have been unconditionally discharged before their voting rights are restored (North Carolina General Statute § 13-1).

North Dakota

Those convicted of a felony offense and sentenced to imprisonment, in the state of North Dakota, are prohibited from voting during the period of incarceration (North Dakota Central Code § 12.1-33-01). Once the offender is released from prison their voting rights are automatically restored with no further requirements (North Dakota Central Code § 12.1-33-01). The voting prohibition is only for the period of actual incarceration, thereby allowing the offenders to vote while on probation and/or any period of parole.

Ohio

Ohio's disenfranchisement statute requires the suspension of voting rights for the period of incarceration only (Ohio Revised Code Annotated § 2961.01).

Once released from incarceration, for commission of a felony offense, voting rights are automatically restored to the offender with no additional requirement placed on the offender (Ohio Revised Code Annotated § 2961.01).

Oklahoma

In the state of Oklahoma, an individual who has been convicted of a felony offense is denied the right to vote "for a period of time equal to the time prescribed in the judgment and sentence" (Oklahoma Statute Annotated, Title 26, § 4-101). This means that an offender convicted of a felony may not vote while in prison, on parole, on probation, or if any fines associated with the crime are outstanding. Once the sentence has been completed voting rights are restored automatically with no further action needed (Oklahoma Statute Annotated, Title 26, § 4-101).

Oregon

An individual convicted of a felony offense is prohibited from voting in the state of Oregon for only the period of incarceration (Oregon Revised Statute § 137.275 and § 137.281). The restoration of the right to vote is automatic upon release from confinement, thereby allowing those offenders on parole and/or probation to vote in elections (Oregon Revised Statute § 137.275 and § 137.281).

Pennsylvania

Pennsylvania law states that any individual "confined to a penal institution" is unauthorized to vote (25 Pennsylvania Constitution Statute Annotated § 1301).

"Confined to a penal institution" has been interpreted to mean a conviction of a felony offense (Pennsylvania Attorney General Opinion 186 (number 47) 1974). Once an offender is released from prison and placed on parole and/or they are given probation, the offender is authorized to vote. Once the period of imprisonment has been completed, voting rights are automatically restored (25 Pennsylvania Constitution Statute Annotated § 1301).

Rhode Island

Once convicted of a felony offense in Rhode Island, offenders are not eligible to vote until they complete their sentence. In order for the sentence to be complete the sentence of the offender must be "served or suspended" and the offender must not be on probation or parole (Rhode Island Constitution, Article 2, § 1). Upon completion of the sentence, voting rights are automatically restored (Rhode Island Constitution, Article 2, § 1). However, an additional amendment to the Rhode Island Constitution is currently working its way through the legislature that would disenfranchise felony offenders only for the time of incarceration (State Bill 458, 2005-2006 Legislative Session, R.I., 2005). This amendment is expected to be voted on, by the citizens of Rhode Island, in November of 2006 (Milkovits, 2005).

South Carolina

Any individual convicted of a crime in the state of South Carolina is disenfranchised (South Carolina Code Annotated § 7-5-120). The state code makes no distinctions as to the type of crime, be it misdemeanor or felony

offense. The only statement made in regards to a felony offense, states that a person "convicted of a felony or offense against the election laws" is not allowed to vote (South Carolina Code Annotated § 7-5-120). Therefore, a person convicted of a crime and sentenced to a term of incarceration loses their voting rights upon conviction. The term of disenfranchisement is for any term of incarceration, probation, and/or parole (South Carolina Code Annotated § 7-5-120). Once an individual has completed the sentence their right to vote is restored automatically with no further action required of the former offender (South Carolina Code Annotated § 7-5-120).

South Dakota

Once convicted of a felony in South Dakota, where the punishment is a term of incarceration "in the state penitentiary," an offender loses their voting rights (South Dakota Codified Laws § 12-4-18 and § 23A-27-35). This disenfranchisement occurs at the time of conviction and includes those whose term of incarceration has been suspended (South Dakota Codified Laws § 23A-27-35). The termination of voting rights for those with a suspended sentence lasts as long as the original term of incarceration (South Dakota Codified Laws § 23A-27-35). For example, if an individual is convicted of a felony and is sentenced to five years in the state penitentiary, but that sentence is suspended, the individual cannot vote for that five-year period.

The disenfranchisement period for anyone convicted of a felony and sentenced to a term of incarceration is only for the time sentenced. Once the offender completes the actual sentence, voting rights are restored (South Dakota

Codified Laws § 23A-27-35). Those on parole are allowed to vote. When an individual is discharged from state custody they are "restored to the full rights of citizenship" (South Dakota Codified Laws § 24-5-2 and § 24-15A-7). The restoration is automatic, and requires the Secretary of Corrections to send notice of discharge to the court where the offender was originally convicted (South Dakota Codified Laws § 24-5-2 and § 24-15A-7).

Tennessee

The state of Tennessee has changed its laws on disenfranchisement so many times over the last three decades, that it has created the most complex system in the United States. Any individual who has been convicted of an "infamous crime" is disenfranchised (Tennessee Constitution, Article 1, § 5). An "infamous crime" has been defined as a felony offense (Tennessee Code Annotated § 40-20-112). Disenfranchisement begins upon conviction of a felony offence (Tennessee Code Annotated § 40-20-112).

The disenfranchisement period is permanent, but a pardon or restoration of civil rights may be obtained, depending upon the time the crime was committed as well as the type of crime committed. Any conviction for the crime of murder, rape, treason, or voter fraud results in permanent disenfranchisement with no possibility of restoration (Tennessee Code Annotated § 40-29-105). A person convicted of any other felony before 1973, or between 1981 and 1986, or after 1996 may request a gubernatorial pardon or may petition the circuit court of the county in which they reside for the restoration of their civil rights (Tennessee Code Annotated §40-29-101 and § 40-29-105). Individuals convicted of any

other felony (other than the permanent disqualifiers) between 1973 and 1981

and/or between 1986 and 1996 are automatically eligible to vote upon completion

of their sentence (Tennessee Code Annotated §40-29-101 and § 40-29-105).

Completion of the sentence includes any period of parole, probation, and the

payment of any fines associated with the crime. In order to attain the automatic

restoration, the released offender must obtain a "certificate of restoration" from

the Tennessee Board of Probation and Parole (Tennessee Code Annotated § 40-

29-105).

While state law allows for a pardon to restore "full rights of citizenship," a

former offender, who is granted a pardon, must still petition the court for full

restoration of voting rights (Tennessee Code Annotated §40-29-105). A pardon,

in and of itself, does not restore the right to vote. For full restoration of the right

to vote, the offender must meet the requirements, regarding time frame and

crime type, and must petition the circuit court in the county of residence

(Tennessee Code Annotated § 40-29-101 through § 40-29-105). The petition to

the circuit court for full restoration must be made after notice is provided to both

the federal and state prosecutors (Tennessee Code Annotated § 40-29-102

through § 40-29-104). Additionally, the petition must be accompanied by proof

that the former offender "has sustained the character of a person of honesty,

respectability and veracity, and is generally esteemed as such by the petitioner's

neighbors" (Tennessee Code Annotated § 40-29-102). Once the petition is filed,

the court determines eligibility for restoration of the right to vote. It is assumed, if

the requirements are met, the former offender's voting rights will be restored
(Tennessee Code Annotated § 40-29-105).

Texas

Article 6, § 1 of the Texas Constitution, states that an individual is
disenfranchised upon conviction of a felony. The disenfranchisement period
extends from the time of conviction until the sentence is complete. The
completion of the sentence requires the full discharge of those who have been
convicted of a felony offense under Texas law (Texas Election Code Annotated §
11.002 and § 13.001). Essentially, once a person has served their entire
sentence, including any period of parole or probation, they are automatically
eligible to vote. There is no additional documentation necessary to register to
vote for those who have received an unconditional discharge.

Utah

Under Utah law, any individual convicted of a felony offense loses the right
to vote (Utah Code Annotated § 20A-2-101). The period of disenfranchisement
is only for the period of actual incarceration in a penal institution (Utah Code
Annotated § 20A-2-101). If an offender is convicted of a felony, but is given
probation or a suspended sentence then the disenfranchisement statute does not
apply (Utah Code Annotated § 20A-2-101.5). Once an inmate is release from
physical custody either through parole or outright release their voting rights are
automatically restored with no further action necessary (Utah Code Annotated §
20A-2-101.5).

<u>Virginia</u>

The state of Virginia is a permanent disenfranchisement state. Under Virginia law, any individual who has been convicted of a felony offense loses their right to vote (Virginia Constitution, Article II, § 1; Virginia Code Annotated § 8.01-338 and § 24.2-101). The period of disenfranchisement begins upon conviction and is permanent unless the former offender is granted a restoration of rights or a pardon by the Governor (Virginia Constitution, Article V, § 12; Virginia Code Annotated § 24.2-101).

A former offender may request either the restoration of rights or a pardon from the governor. The restoration of rights reinstates, among others, the right to vote (Virginia Code Annotated § 53.1-231.1). To qualify for a restoration of rights the offender must have three years crime free years (for non-violent offenses) after the completion of their sentence (Virginia Code Annotated § 53.1-231.1). For violent offenders and those convicted of drug offenses the waiting period is five years after the completion of their sentence (Virginia Code Annotated § 53.1-231.1). The process for restoration depends on the nature of the offense. For non-violent offenders, a one-page application is required to be sent to the Secretary of Commonwealth who is responsible for investigating the offender's case (Virginia Code Annotated § 53.1-231.1). Additionally, non-violent offenders may also petition the court for a restoration recommendation to the governor (Virginia Code Annotated § 53.1-231.2). For violent and/or drug offenders, an extensive thirteen-page application is required to be sent to the Secretary of Commonwealth (Virginia Code Annotated § 53.1-231.1).

The restoration of rights process, as described above, is the first step in the process to attain a pardon (Virginia Code Annotated § 53.1-136 and § 53.1-231.1). A gubernatorial pardon, either simple or absolute, constitutes "official forgiveness" and restores all civil rights lost due to conviction (Virginia Code Annotated § 53.1-136). To qualify for a pardon, the offender must have five years crime free years after the completion of their sentence and must show "evidence of good citizenship" (Virginia Code Annotated § 53.1-136). The pardon process requires the long-form restoration application be sent to the Parole board, which will investigate and make an official recommendation to the governor (Virginia Code Annotated § 53.1-136).

Washington

In the state of Washington, "all persons convicted of an infamous crime are excluded from the elective franchise" (Washington Constitution, Article 6, § 3). An infamous crime is defined as one either "punishable by death" or "imprisonment in a state correctional facility" (Washington Revised Code § 29A.04.079). Essentially, any felony conviction in Washington results in the disenfranchisement of the offender (Washington Revised Code § 29A.04.079; *State v. Collins*, 124 P.903 (WA, 1912)). The period of disenfranchisement begins upon conviction of the felony offense and ends upon the completion of the sentence (Washington Revised Code § 9.94A.637). To complete the sentence the offender must be free of all forms of supervision and must pay all the fines associated with the crime (Washington Revised Code § 9.94A.637).

The restoration of the right to vote is automatic upon the completion of the sentence (Washington Revised Code § 9.94A.637). However, there have been some challenges to Washington's restoration process due to the financial restitution requirement (*Farrakhan v. Washington*, 338 F.3d 1009, 1016 (9th Circuit, 2003); *United States v. Loucks*, 149 F.3d 1048, 1050 (9th Circuit, 1998)). In these cases, the court stated that the financial provision of the statute could be challenged as "racially discriminatory under the Voting Rights Act" (*Farrakhan v. Washington*, 338 F.3d 1009, 1016 (9th Circuit, 2003). Washington statute states, however, that if the former offender cannot pay the fines associated with the offense, they can either petition the court for a reduction or complete elimination of the fine, as long as "manifest hardship" can be proven (Washington Revised Code § 10.73.160). Additionally, the former offender may request a restoration of civil rights or an outright pardon from the governor in cases where the fines cannot be paid (Washington Revised Code § 9.96.010 and § 9.96.020).

To request a restoration of rights or a pardon, the former offender must file a petition with the Clemency and Pardons Board (Washington Revised Code § 9.94A.885). The Board is required to hold a hearing on the merits of each case and to notify the prosecuting attorney and those with interest in the case, such as victims and the arresting agency, at least thirty days prior to the hearing (Washington Revised Code § 9.94A.885). If restoration is granted it has the effect of removal of the unpaid portion of any fines associated with the offense and makes the offender immediately eligible to vote (Washington Revised Code

§ 9.96.010 and § 9.96.020). A pardon removes the conviction completely thereby returning the right to vote (Washington Revised Code § 9.94A.030).

West Virginia

Anyone convicted of "treason, felony, or bribery in an election" is disenfranchised until the completion of their sentence (West Virginia Constitution, Article IV, § 1). Completion of a criminal sentence requires the end of confinement, probation, and parole (West Virginia Code § 3-1-3 and § 3-2-2). Although not clear in state law, according to case law, the right to vote is restored automatically upon the completion of the sentence except where the conviction is for the crime of bribery of a state official (*Webb v. County Court of Raleigh County*, 168 S.E. 760 (WV, 1933); 51 WV Attorney General Opinion 182 (1965)). In a case of a conviction for the bribery of a state official the only alternative for the restoration of voting rights is to apply for a gubernatorial pardon through application to the state parole board (West Virginia Constitution, Article VII, § 11).

Wisconsin

Much like West Virginia Law, an individual convicted of "treason, felony, or bribery" is disenfranchised in the state of Wisconsin until the completion of their sentence (Wisconsin Statute § 6.03 and § 304.078). The period of disenfranchisement begins upon conviction and the right to vote is restored automatically upon the unconditional release of the former offender from any form of supervision; no further action is needed when the sentence expires (Wisconsin Statute § 6.03 and § 304.078).

Wyoming

According to Wyoming law, an individual who commits a felony is prohibited from voting (Wyoming Statute § 6-10-106 and § 22-3-1-2). This voting prohibition begins from the date of conviction and continues until voting rights are restored either through the restoration of rights or via gubernatorial pardon (Wyoming Constitution, Article 4, § 5). In essence, there are three ways to restore an offender's right to vote. First time, non-violent offenders, must wait a period of five years and then apply to the parole board for a restoration certificate (Wyoming Statute § 7-13-105). In cases of a first time, non-violent offender, the parole board conducts an investigation to determine eligibility and then, if eligibility is verified, "shall" issue the restoration certificate (Wyoming Statute § 7-13-105). Any other offender (recidivist and/or violent), must apply for a gubernatorial pardon or the restoration of rights in order to regain the right to vote (Wyoming Statute § 7-13-105 and § 7-13-803 through 806).

When seeking a restoration of rights, the former offender must wait for a period of five years after completion of the sentence before applying. Once the five-year period has passed, the former offender applies to the parole board, which makes the determination of eligibility for restoration, then makes a recommendation to the governor (Wyoming Statute § 7-13-803 through 806). For those individuals requesting a pardon, they must wait for ten years after completion of the sentence before applying directly to the governor. The governor's office is required to notify the prosecuting attorney to determine the

particulars of the case prior to making any decision regarding executive pardon

(Wyoming Statute § 7-13-803 through 806).

Vita

Angel Geoghagan earned her bachelors degree in Sociology and a Masters Degree in Criminal Justice from the University of Tennessee at Chattanooga. She completed her doctorate in Sociology with an emphasis in Criminology and Criminal Justice at the University of Tennessee in Knoxville in the fall of 2007. Dr. Geoghagan spent over a decade as a police officer for the City of Chattanooga, Tennessee and has used her experience and education to enter the academic field as a professor of Criminal Justice at Middle Tennessee State University in Murfreesboro, Tennessee. Her dissertation as well as her other research focuses on the impact the criminal justice system has on minorities in the United States.