

CRIMINAL DISENFRANCHISEMENT POLICIES
ACROSS DEMOCRACIES: THE IMPACT
OF DEMOCRACY, PUNISHMENT
AND RACE

by

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ABSTRACT

Democracies generally agree that suffrage is important; however, many democracies continue to disenfranchise prisoners. Currently, 80 electoral democracies impose some restrictions on the voting rights of prisoners. Some countries impose restrictions beyond the prison sentence. This study explores the factors that impact the variation in disenfranchisement policies across 111 electoral democracies. More specifically, this study examines the impact of democracy, punishment and racial and ethnic fractionalization on the variation of prisoner disenfranchisement policies. The findings demonstrate that participatory aspects of democracy such as third wave democratization, and democratic participation have a negative effect on the probability and degree of disenfranchisement across electoral democracies.

DEDICATION

I would like to dedicate this to my family and friends. To my father, thank you for always pushing me to work hard and guiding me to reach my full potential. To my mother, thank you for being the most compassionate and caring person I know. To my sister, thank you for being my confidant and my best friend. I am lucky to have you all by my side. To my cousin, Samia, thank you for always being a ray of sunshine in my life.

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LIST OF ABBREVIATIONS AND SYMBOLS

ECHR	European Convention on Human Rights
EFtHR	European Court of Human Rights
GDP	Gross Domestic Product
ICCPR	International Convention on Civil and Political Rights
p	p-value

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CHAPTER 1

INTRODUCTION

Justice Thurgood Marshall stated in his dissenting opinion in *Richardson v. Ramirez* (1974) that the right to vote “is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government” (Brenner & Caste, 2003, p. 1145). The foundation of democracy rests on the voice of the people and voting serves as an avenue through which citizens can hold the government accountable (Brenner & Caste, 2003). Democratic nations generally adhere to notions of universal suffrage and emphasize that voting is an ideal form of political expression; however, approximately 72 percent of democracies impose restrictions on criminal suffrage (Massicotte, Blais & Yoshinaka, 2004).

Criminal disenfranchisement refers to the formal practice of restricting the voting rights of persons accused, convicted and/or sentenced for crime. Criminal disenfranchisement is often referred to as prisoner disenfranchisement because voting is restricted mainly during the incarceration phase, though some more restrictive countries impose disenfranchisement in the pre-trial and post-imprisonment phase.

In the United States, criminal disenfranchisement is also referred to as felony disenfranchisement because imprisoned felons are the category of offenders that face disenfranchisement in 48 of 50 states. Felony disenfranchisement refers specifically to the removal of voting rights of persons guilty of a felony (Uggen, Behrens, & Manza, 2005)

Countries differ on how they categorize felonies but most define felony as a crime punishable for more than one year (Uggen, Manza, & Thompson, 2006). Germany and the United States both use this threshold to categorize felonies as opposed to other categories of criminals (Feeny, 1998). Since this study is covering a wide number of countries, the phrase criminal disenfranchisement will be used when referring to the practice as a whole and the terms prisoner will be used when referring to persons disenfranchised. The term criminal is used in Chapter 2 in the context of historical interpretations of criminal disenfranchisement.

In the last decade, the restriction of the voting rights of prisoners has become a salient issue in the United States and across several countries in Europe, including the United Kingdom, Ireland, Italy and France. In the United States, prisoners are disenfranchised in 48 of 50 states (Jones-Correa & Wong, 2015). Prisoners retain the right to vote during all stages in Maine and Vermont. Prisoners with felony convictions are disenfranchised permanently in Iowa, Kentucky, and Florida (Jones-Correa & Wong, 2015). Other states either disenfranchise (a) some felons, (b) prisoners on parole and probation, and (c) during the post-imprisonment phase (Jones-Correa & Wong, 2015).

Controversy over felony disenfranchisement laws emerged in 2000 when George W. Bush won the United States presidential election by a 537-vote margin in Florida (Manza & Uggen, 2006; Brooks, 2005). Policy critics claimed that election results would have been different if ex-felons were allowed to vote in the state of Florida (Brooks, 2004). Uggen and Manza (2002) state that felony disenfranchisement laws “played a decisive role in the United States Senate elections... and... at least one Republican presidential victory would have been reversed if former felons had been allowed to vote” (p. 777).

Several court cases in Europe have impacted the overall evolution of disenfranchisement laws across democracies. A landmark case, *Hirst v. The United Kingdom (No. 2)* (2004) challenged disenfranchisement laws in the United Kingdom and has been used as a premise to pose similar challenges to disenfranchisement laws in other European countries. John Hirst, a prisoner convicted of murder, challenged the state on the removal of his voting rights claiming that a blanket ban on voting violates Protocol No. 1 in Article 3 of the Representation of the People Act (1983) which requires court approval or established legislation prior to disenfranchising prisoners. The European Court of Human Rights (ECtHR) ruled that a blanket ban on voting as practiced at the time in the United Kingdom was in violation of the protocol mentioned Article 3 of the Representation of the People Act (Prison Reform Trust/Unlock, 2010).

Franco Scoppola, a prisoner in Italy, filed a similar case with the ECtHR on December 16, 2004, claiming that disenfranchisement as a response to criminal conviction violated Article 3 of Protocol No. 1 (Jarmillo, 2014). The ECtHR ruled in *Scoppola v. Italy (No. 3)* (2012) that the disenfranchisement laws in Italy were not in violation of the protocol because the government did not enforce an automatic ban on the franchise; rather the ban was specifically tailored to the crime (Council of Europe: European Court of Human Rights, 2017). The implication of this decision is that although in the earlier case of *Hirst v. The United Kingdom (No.2)* (2004), the court was willing to interpret the laws, in *Scoppola v. Italy (No.3)* (2012), the court left the interpretation of the law up to the country, giving countries a wider scope of power in regulating such policies (Council of Europe: European Court of Human Rights, 2017). In contrast to the outcome in *Hirst v. United Kingdom (No.2)* (2004), the United States took a more punitive path in setting the precedent for criminal disenfranchisement laws. The Supreme Court

ruled in *Richardson v. Ramirez* (1974) that removing the right to vote for prisoners is a constitutionally valid practice (Ewald & Rottinghaus, 2009). The court cited Section 2 of the 14th amendment and insisted that prisoners who are convicted of “rebellion or other crime” can constitutionally be banned from the vote (Ewald & Rottinghaus, 2009, p. 8).

Similar cases challenging the blanket ban on voting have emerged in Austria, Canada, and Bulgaria. Prior to 2010, Austria automatically disenfranchised convicted prisoners sentenced to more than one year in prison. The ECtHR ruled in *Frodl v. Austria* (2010) that an automatic ban is a violation of Article 2, Protocol No. 1 because the decision (a) is not made by a judge and (b) does not take into consideration the circumstances of the case. As a result, the electoral law in Austria was amended to disenfranchise only prisoners convicted of more severe crimes, and voting rights would be restored upon completion of sentence (Stern & Valchars, 2013). In *Sauvé v. Canada* (2002), the Supreme Court of Canada condemned a blanket ban on voting stating that this approach undermines the character and morale of the offender without taking into consideration the nature of the crime committed (Karlan, 2003). In Bulgaria, the court ruled against a constitutional blanketed ban on the voting rights of prisoners in *Kulinski and Sabev v. Bulgaria* (2016), stating that this action violated Article 3 of Protocol No. 1 (Council of Europe: European Court of Human Rights, 2017).

Currently, 80 countries categorized as electoral democracies impose some restrictions on the voting rights of prisoners. Disenfranchisement policies across electoral democracies vary. Prisoners can lose the right to vote (a) immediately upon imprisonment (b) based on the gravity of crime and (c) the length and type of sentencing. Prisoners can also be disenfranchised through court decision, prior to conviction, during imprisonment and post imprisonment. The United States and Belgium impose restrictions on voting after serving the required prison sentence.

Countries generally hold the discretion on (a) deciding which types of offenses should result in the loss of the voting rights of criminals and (b) determining whether disenfranchisement should be ordered and approved by the court (Jarmillo, 2014).

The practice of criminal disenfranchisement in democracies is puzzling considering that the core tenets of democracy highlight the importance of equal participation through voting. This leads to questions of why democratic countries choose to restrict voting right for criminals. Scholars have debated whether the variation in criminal disenfranchisement policies can be attributed to national, political, or economic factors. Potential factors that may contribute to the variation in disenfranchisement policies will be further explored in the following chapters.

1.1 Why focus on Criminal Disenfranchisement? Issue Saliency

Criminal disenfranchisement is an important issue to explore because a series of debates over the advantages and disadvantages of these laws have emerged across several democracies including the United Kingdom, Italy, and the United States in the last decade. Scholars debate whether criminal disenfranchisement is a valid practice in democracies because of the fundamental problems these policies impose for democratic integrity. Supporters of criminal disenfranchisement contend that voting is a privilege reserved for law-abiding citizens who positively contribute to society and question the qualifications and voting abilities of criminals (Lopez-Guerra, 2014). Opponents of disenfranchisement argue that denying the vote to offenders interferes with the democratic principle of universal suffrage.

Scholars also debate whether disenfranchisement is an appropriate punishment for criminals. The main criticism of disenfranchisement is that it is a retributive practice that has the potential to impede on the rehabilitation of criminals. In the context of countries like the United

States, Australia, and Brazil, criminal disenfranchisement as a practice is challenged on the grounds of empirically supported claims that such policies disproportionately impact the minority population. Michelle Alexander states that felony disenfranchisement laws in the United States have replaced Jim Crow laws with the goal of suppressing the Black vote (Alexander, 2010).

1.2 Motivation and Aim of Study

This aim of this project is to identify factors that influence some democracies to disenfranchise prisoners while others allow prisoners to vote. Prior research explores disenfranchisement policies across the United States (Uggen, Manza, & Thompson, 2006) and in the international context across other countries (Rottinghaus & Baldwin, 2007; Ewald & Rottinghaus, 2009). While substantial empirical and theoretical research on criminal disenfranchisement is available in the context of the United States, studies on criminal disenfranchisement policies in the international context relies primarily on empirical analyses of factors correlated with disenfranchisement policies, with fewer studies offering theoretical explanations.

Felony disenfranchisement studies in the context of the United States, in contrast, present both empirical and theoretical analyses of political, social, and institutional factors that impact disenfranchisement policies (Manza & Uggen, 2006). While empirical analyses of disenfranchisement policies across countries can highlight which countries disenfranchise and to what degree, theoretical explanations can reveal more about why countries disenfranchise. This dissertation will contribute to the existing criminal disenfranchisement literature in the

international context by offering empirical assessments and theoretical explanations of the factors that impact disenfranchisement policies across democracies.

Criminal disenfranchisement policies will be examined using three concepts: (a) quality of democratic institutions, (b) punitiveness and, (c) group threat. Prior research in the United States claims that political motivations to disenfranchise include the desire to keep the ballot box pure by excluding the criminal population from voting (Manza & Uggen, 2006). Politicians and the public generally oppose the inclusion of criminals in the voting pool based on the fear that criminals may vote for less punitive candidates (Manza & Uggen, 2004; Dhami, 2013).

Social motivations to disenfranchise include the desire to exclude racial minority groups from voting as a result of power struggles between the majority and minority groups within a society (Schneider & Ingram, 1993). In an effort to retain power, the majority group may decrease the minority group's access to the political process. The minority Black and Latino populations are both disproportionately targeted by the criminal justice system in the United States, in comparison to the majority White population (Shapiro, 1993). Statistics show that Black men in the United States are imprisoned and disenfranchised at a rate higher than White men (Preuhs, 2001; Sentencing Project, 2017).

Institutional explanations of disenfranchisement include (a) the impact of the judicial branch and (b) the degree of punitiveness in the criminal justice system. The court can influence the disenfranchisement practices of a nation through decisions on relevant court cases. The degree of leniency the court presents on matters of disenfranchisement can determine the degree of disenfranchisement. A nation's level of punitiveness can indicate whether that nation disenfranchises as a form of punishment. Scholars have also linked harsher punishment practices in the United States to tougher disenfranchisement policies (Whitman, 2003).

Whether criminal disenfranchisement laws serve as a form of punishment is another point in the debate. Scholars that disapprove of disenfranchisement often label it as punitive. If disenfranchisement practices are related to other patterns of punishment it would provide more support for this claim. James Whitman (2003) asserts in *Harsh Justice* that a nation's punitive status can be gauged by examining the degree of harshness and degradation within the country. If nations that are more harsh and degrading are more likely to disenfranchise criminals, it would add more support for viewing disenfranchisement through the lens of punishment.

1.3 Organization

Chapter 2 will revisit the literature on criminal disenfranchisement policies and summarize the national, historical, political, and social factors that impact disenfranchisement policies across democracies.

Chapter 3 will explore the theoretical framework highlighting aspects of democracy, race and ethnicity, and punishment; and discuss the factors that impact disenfranchisement policies across democracies. The chapter will explore various definitions of democracy and highlight the literature that links civil participation in democracies. The chapter will also include a summary of the evolution of punishment throughout history and highlight the differences in punishment practices across democracies. Whitman (2003) provides an explanation of why the United States is more punitive than Western Europe by concluding that American culture is more supportive of the degradation of offenders in comparison to Europe. The chapter will also address the impact of race on disenfranchisement policies. Rottinghaus and Baldwin (2007) provide a measure for race as the next most populous minority using the ethnicity data from the CIA World Fact book, and find that higher minority populations do not have significant impact on the variation in

disenfranchisement policies. Chapter 4 will discuss the research design, data, models, descriptive statistics and all variables. Chapter 5 will present the findings from multiple regression models designed to test the hypotheses. Chapter 6 will discuss the results in light of the extant literature, revisit the concepts explained in this project and offer concluding thoughts and the future implications of this study.

CHAPTER 2

LITERATURE REVIEW

2.1 History of Disenfranchisement

Criminal disenfranchisement originated in Ancient Greece and Rome (Manza & Uggen, 2004). In ancient Greece criminal offenders were assigned a status of *atimia*, which led to the temporary or permanent loss of citizenship consequently leading to civil death (Manza & Uggen, 2004). Civil death equates to the loss of civil rights, including the right to vote and participation in politics (Ewald, 2002; Grady, 2012). Criminals lost any rights attached to citizenship and were not protected by the government (Johnson-Parris, 2003; Dhimi, 2005).

Similarly, in ancient Rome prisoners were punished with a status of *infamia*, which translates to a “condition of disgrace or condemnation for those pronounced infamous by the courts” (Manza & Uggen, 2004, p. 492). Upon obtaining a status of *infamia*, prisoners lost the right to vote and “serve in the Roman legions” (Manza & Uggen, 2004, p. 492). In Saxon England, criminals lost rights to legal protection and life and property (Darling, 2013). A person convicted of a serious crime in England “was placed in a state of attainder” and was subject to a set of consequences including “forfeiture, corruption of blood, and an extinction of civil rights” (as quoted in Chin 2012, p. 1794). Prisoners were discouraged from participating in economic, social and cultural life (Ewald & Rottinghaus, 2009).

Punitive actions towards criminals have evolved from more visible forms of punishment to less visible forms (Foucault, 1977). Scholars argue that earlier forms of punishment consisted of violent threats, forced denial of suffrage, and have changed into punishments like poll taxes and literacy tests (Alexander 2010). Imprisonment is a visible form of punishment while community corrections are an example of a less visible punishment (Travis & Lawrence, 2002). The restriction and removal of the voting rights of criminals can be categorized as a less visible form of punishment because the public may not be aware that disenfranchisement may result once convicted (Dhami & Cruise, 2013). Offenders themselves may not be aware of the fact that criminal conviction could lead to the loss of voting rights (Robins, 2006). If offenders are not aware of disenfranchisement policies, the effectiveness of the policy itself comes into question. Disenfranchisement, like other forms of punishment and regulation, is expected to be a tool of accountability for offenders within the society. The accountability factor holds less weight if the process is not visible (Robins, 2006).

This leads into the scholarly debate over the functionality and effectiveness of criminal disenfranchisement policies which primarily apply to persons imprisoned for crime (with the exception of some countries that disenfranchise pre-and post-imprisonment). Scholars have advocated both for and against the practice of disenfranchising prisoners. Advocates for disenfranchisement argue that extending the franchise to prisoners will negatively impact the individual and society (Manza & Uggen, 2006). On a societal level, supporters justify disenfranchisement by claiming that offenders have broken the social contract with the state and therefore should lose the privileges that come with being a member of that society (Levine, 2009). Also, allowing prisoners to vote may mean that purity of the ballot box will be compromised because criminals may vote for less punitive candidates who are not concerned

with the common good of society (Dhami & Cruise, 2013). Critics of prisoner disenfranchisement argue that restriction of voting rights is only feasible if the punishment is proportionate to the crime (Ewald & Rottinghaus, 2009). Disenfranchising criminals may be an appropriate response to offenders guilty of committing political crimes, but may be a disproportionate response to crimes that are not connected to political matters, namely because voting is a part of the political process (Ewald & Rottinghaus, 2009). Taking away voting rights can also debilitate prisoners and may isolate them from society, which in the long run could diminish the ability of those individuals previously disenfranchised to reintegrate back into society post sentence (Miller & Spillane, 2012).

2.2 Factors that contribute to the variation in disenfranchisement policies

The variation in disenfranchisement policies can be attributed to the historical, institutional, and social factors within the country that can influence the development of disenfranchisement policies over time. The following sections will review the important literature on criminal disenfranchisement. Criminal disenfranchisement research is more prevalent in the context of the United States in comparison to other nations (Manza & Uggen, 2004). The available studies conducted in the comparative context (Rottinghaus & Baldwin, 2007; Uggen, Manza, & Thompson, 2006) focus more on explaining the variation in disenfranchisement policies across countries through empirical analyses rather than taking a theoretical approach to explaining why such variation exists across countries.

2.2.1 Penal Law and International Law

DeMichele (2010) conducted a cross-national study on 17 industrialized nations to determine the factors that impacted incarceration rates in the latter part of the 20th century. DeMichele (2010) emphasizes three types of legal regimes: Common law regimes, founded on legal principles favoring non-academic approaches; Romano-Germanic regimes, in which legal practices are rooted in academic legal approach; and Nordic regimes, which are an amalgamation of both common and Romanic legal principles, but are also infused with distinctive Nordic culture. DeMichele (2010) asserts that “each type of legal thinking fosters unique criminal justice systems” that support specific punishment regimes, and these punishment regimes correlate with the incarceration rates for each country (p.63). For example, studies have shown that societies that have common law incarceration regimes have higher incarceration rates. This link between the legal regimes and actual policy indicates that historical patterns can possibly shape the laws within a society.

International treaties, and charters—like the Universal Declaration on Human Rights (UDHR), and the International Covenant on Civil and Political Rights, (ICCPR)—can also set the tone for how countries address the voting rights of criminals. Article 21 of the UDHR grants everyone the “right to take part in the government of this country, directly or through freely chosen representatives” (The United Nations, 1948, art. 21.3). The UDHR is “considered customary international law” and has an impact on signatory countries” (Hannum, 1995). Article 25 of the ICCPR encourages “genuine periodic elections which shall be by universal and equal suffrage” (The United Nations General Assembly, 1966, art. 25(b). The ICCPR prohibits denying the vote based on “race, colour, sex, language, religion” and includes 168 signatories (The United Nations General Assembly, 1966, art. 25(b). The criteria mentioned in both the

UHDR and ICCPR highlight the extent to which the voting rights of criminals is addressed in the international context and while these documents are widely known and accepted, countries still vary in the actual implementation of the provisions in these documents.

Judicial decisions are highly influential in common law tradition and can impact legal perceptions (Phillips, Cox & Pease, 1995, in *The World Fact Book*) Australia is categorized as a common law country because “the structure of the Australian legal system is derived from, and still closely follows” (Roberson & Das, 2008, p. 66), the U.K. system; however several Australian states including Queensland, Western Australia, and Tasmania have codified criminal laws (Biles, 2005, in *The World Fact Book*) Civil law countries like Germany have a codified set of laws and are less likely to be shaped by the political atmosphere of the country. The Penal Code for the German Empire, Germany’s criminal law, was codified in 1871 and the French Penal Code was codified in 1810 (Aronowitz, 1993, in *The World Fact Book*).

2.2.2 Judicial influence on prisoner disenfranchisement laws

Criminal disenfranchisement laws are connected in many ways with judicial power within a democracy. In recent years, the courts have contributed significantly to the debate of whether the law should favor the reform of disenfranchisement laws (Ewald & Rottinghaus, 2009). Through the decisions in landmark court cases pertaining to criminal disenfranchisement, courts have largely shaped the disenfranchisement policies and surrounding conversations. The Supreme Court significantly influences disenfranchisement laws in the United States, and the ECtHR has similar influence over disenfranchisement laws in the United Kingdom (Rottinghaus & Baldwin, 2007). Recently, the courts have weighed in on whether the law favors the sustainability of a prisoner’s right to vote (Ewald & Rottinghaus, 2009). The Supreme Courts of

Canada, South Africa, and Europe have all “struck down automatic blanket ban of voting rights to prisoners” (Ewald & Rottinghaus, 2007, p. 35). Constitutional courts have influenced this process by offering decisions on criminal disenfranchisement cases, and these decisions have had momentous impacts on the overall evolvement of disenfranchisement laws. The involvement of the court is apparent in the United Kingdom where disenfranchisement laws were considered by the ECtHR to be a violation of the European Convention (DW Made for Minds, 2014).

Courts have also played a vital role in Canada, South Africa and Australia (Ewald & Rottinghaus, 2009). The constitutional courts in Canada and South Africa have acknowledged “any conviction-based franchise restriction violates the national constitution” (Ewald & Rottinghaus, 2009, p. 7). In South Africa the courts have preserved the idea that prisoner disenfranchisement infringes upon both South African law and international law, and have stressed that it is an obligation of the state to allow its prisoners to vote (Plaxton & Lardy, 2010). It is also important to note that the actions of the judiciary cannot be understood without taking into account the political environment and context in each of these countries. In countries where the judiciary is insulated from the other institutions of government, the decisions of that court may differ greatly from the more vulnerable court. Rottinghaus and Baldwin (2007) offer an institutional explanation of the variation in disenfranchisement laws and find that the Supreme Court has a significant amount of influence over such laws in the United States, and the ECtHR has similar influence over disenfranchisement laws in the United Kingdom. Prisoner disenfranchisement law is entwined in many ways with judicial power within a democracy.

Often with controversial issues dealing with human rights like disenfranchisement, domestic and international institutions face gridlock in finding common ground. When prisoners like John Hirst in the United Kingdom and Franco Scoppola in Italy began challenging the

disenfranchisement policy imposed by the British and Italian governments, each domestic government's response was different from the response by international institutions like the ECtHR. Criminal disenfranchisement is not only a civil and national issue at this point, but becomes an issue of sovereignty. Especially in the case of Great Britain, the issue of suffrage for prisoners has become a larger issue of national and supranational legislative power. The U.K. government has been skeptical of the interpretation of the ECtHR's reading of the law, and has vehemently opposed their interpretation at times. The criminal justice system consists of a system of laws, set forth by either a national or (in the case of Europe) supranational government, that set the standard for the way that institutions treat crime. The criminal code, as set forth by the justice system and the constitution, are what the Supreme Court and all lower courts use to handle criminal and civil cases within the country.

The other side of this equation is the political or government system as a whole. The term political system encompasses the ideological and institutional makeup of a country. Ideologically, we are looking at the type of political system that the country adheres to; in this case we are looking at democracies. Institutionally, the political system is comprised of three branches of government: the executive, legislative, and judicial branches. Generally, it is the job of the legislative branch to make laws and the judicial branch interprets the laws. Legislative branches are usually not insulated from the public, and the judicial branch should ideally be insulated from politics. Public opinion matters and a well-rounded legislature and lawmakers should technically be taking the opinion of the public into account when making and passing laws.

2.2.3 Race and ethnicity

The terms race and ethnicity are used interchangeably in international criminal disenfranchisement literature, however it is important to distinguish between the terms race and ethnicity for a more nuanced study. Horowitz (1985) proposes that ethnicity stems from a “myth of collective ancestry” (p. 52). Approximately 65% of nations include an ethnic categorization in the national census (Morning, 2008). While race may be an important distinguishing factor within the population in the United States, similar differences may arise within the context of ethnicity in other nations across the world.

Ample research explores the impact of race on criminal disenfranchisement policies in the United States (Behrens, Uggen, & Manza, 2003; Clegg, 2001; Brewer & Heitzeg, 2008). Ewald and Rottinghaus (2009) argue “disenfranchisement’s deep effect on racial minority groups is one of the policy’s most important- and most hotly contested attributes” (p. 7). Behrens et al. (2003) add that in the United States there are “pronounced racial disparities in the criminal justice system,” and further highlight that “race is a driving factor of the initial adoption and unusual persistence of felon voting bans” (p. 560).

At the time that the United States constitution was written, only White, property-owning men had the right to vote (Brewer & Heitzeg, 2008). Actions taken in recent times to disenfranchise Black people in the United States have been apparent. In 1998, approximately 31 percent of the Black men in Alabama and Florida were disenfranchised (Marable, 2002 qtd. As cited in Bush, 2011). Behrens et al. (2003) contend that while felon disenfranchisement policies may appear to be “race-neutral” on the surface, in the United States, the disproportionate incarceration of Black people further highlights the correlation between race and criminal punishment. Manza and Uggen (2006) assert that disenfranchisement laws in the United States

are influenced by the racial composition of the incarcerated population, and the overrepresentation of Black people in the prison system is paralleled by the passage of harsher disenfranchisement laws.

Similar studies in the international context yield mixed results on the impact of race on disenfranchisement policies (Rottinghaus & Baldwin, 2007). Rottinghaus and Baldwin (2007) conclude that race does not significantly impact the likelihood that a country will disenfranchise its prisoners while, on the contrary, Uggen, Van Brackle, and McLaughlin (2009) conclude that ethnic fractionalization is a significant determinant of criminal disenfranchisement laws. Racial disparity in imprisonment is present in other countries. In the United Kingdom, despite a growing disparity in the racial composition of prisoners, disenfranchisement laws have been heading towards leniency. South Africa, in contrast, places no restrictions on voting for the imprisoned during the sentenced period or post release (ProCon.org, 2014).

Uggen et al. (2009) claim that racial and ethnic fractionalization is significantly correlated with the variation in disenfranchisement laws. Nations that choose to disenfranchise prisoners are generally more heterogeneous and characterized by greater ethnic fractionalization (Uggen, Van Brackle, & McLaughlin, 2009). Power struggles between the majority and minority groups in heterogeneous societies can result in the political and social marginalization of the minority group and in a nation that restricts or limits the vote of prisoners, the minority group can often be overrepresented in the prison systems. If a large ratio of a racial or ethnic group is incarcerated and prohibited from participating in the political process, the disenfranchisement of minority group becomes systemic and harder to change. Murray (2012) argues “disenfranchisement of prisoners has been a consistent feature of the United Kingdom’s history as a parliamentary democracy” (p. 1).

2.2.4 Other findings:

Uggen et al. (2009) test prisoner disenfranchisement against national factors like economic development (measured with GDP per capita), size of the nation (logged population), political development (democratization index, political discrimination), race and ethnicity (ethnic fractionalization) and punitiveness (incarceration rates, death penalty). The study shows that democratization scores are lower in countries that disenfranchise in comparison to countries that do not disenfranchise. More heterogeneous nations are likely to disenfranchise prisoners, while countries that are more politically and economically developed are more likely to enfranchise prisoners (Uggen et al., 2009). Nations that are more punitive are also more likely to disenfranchise prisoners and European countries with high GDP per capita ranking are less likely to disenfranchise prisoners (Uggen et al., 2009).

Rottinghaus and Baldwin (2007) conclude that historical factors such as colonial legacy and civil strife are less likely to influence decisions to extend the franchise to prisoners. They find that democracy may not be a significant predictor of disenfranchisement; however countries with more extensive political practices and access are less likely to disenfranchise.

2.3 Areas in need of further exploration

The following chapters will offer theoretical explanations for factors that may explain the variation of disenfranchisement laws across electoral democracies. One area within the literature in need of further exploration includes the impact of race on disenfranchisement policies. Uggen et al. (2009) find that ethnic fractionalization is significantly correlated with the variation in disenfranchisement laws. More specifically, the study implies that nations that choose to disenfranchise prisoners are more heterogeneous, and are characterized by greater ethnic fractionalization and are less democratic (Uggen et al., 2009). An explanation as to why

heterogeneous societies are more likely to disenfranchise prisoners is not emphasized in the study. Group Threat Theory states that one explanation could be that the power dynamics between the different groups in society causes the dominant group to marginalize the minority group. Another study by Rottinghaus and Baldwin (2007) specifically measures race (as the percentage of the population of the most populous racial minority). Findings show that race does not significantly explain the determinants of prison voting internationally. Race, however, does have greater explanatory power in the United States (Uggen et al., 2009).

A second area within the literature in need of further exploration is the impact of punitiveness on disenfranchisement policies. Punitiveness has been measured via the death penalty and incarceration rate. Ispahani (2009) has shown that punitive nations are more likely to disenfranchise criminals. Whitman (2003) proposes that punitiveness can also be assessed through gauging the degree of harshness within a society. Examining whether the degree of harshness and degradation is empirically significant and related to disenfranchisement policies will add another dimension to the study of criminal disenfranchisement.

Though aforementioned studies offer empirical evidence that such factors impact disenfranchisement policies, the studies lack adequate theoretical explanations for these findings, without which various questions arise that become difficult to answer. Why are race and ethnicity significant in explaining the variation in disenfranchisement laws? Why are democracies with higher levels of political discrimination more likely to disenfranchise prisoners?

Lastly, this project focuses on electoral democracies which separate it from prior large-N studies that explored criminal disenfranchisement policies in the international context, as those studies included a sample size of both democracies and non-democracies. The extensive

variation in criminal disenfranchisement practices across electoral democracies prompts further analysis of the factors that may influence these differences. Characteristics of democracy will be explored further in the following chapters with an emphasis on procedural practices such as elections and democratic participation.

The concept of punishment in the context of disenfranchisement will be expanded upon and a measurement for harshness, degradation, and constitutional restrictions will be included. Race will be expanded by incorporating a measurement for racial and ethnic marginalization within a society. It is likely that there is a marginalized population in every society and the degree to which that group is marginalized affects the degree to which prisoners are disenfranchised within that country. If the minority group poses a huge threat to the majority by showing an increasing trend in economic and political power, the majority will attempt to marginalize the minority population to suppress that power.

CHAPTER 3

THEORETICAL FRAMEWORK

3.1 Disenfranchisement in Democracies

Disenfranchisement in democracies is puzzling because the core tenets of democracy highlight the importance of equal participation. The word democracy stems from two ancient Greek root words: *demos* meaning “the people” and *kratia* meaning “rule” (O’Neil, 2010, p. 25). Democracy is by definition, rule by the people, and most democratic nations agree that all citizens should have an equal chance to participate in the polity. Citizens that reside in a democracy have access to a variety of political and social opportunities, but voting is the most universal. Voting translates to political expression and serves as an avenue through which citizens can hold the government accountable.

Democracies emphasize equal participation by advocating for universal suffrage, a concept that maintains support across a variety of formal (constitutions and treaties) and informal political institutions. Article 25 of the ICCPR states that “every citizen shall have the right and opportunity...without unreasonable restriction...to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors” (University of Minnesota Human Rights Center, 2003). Article 21 of the UDHR states that the right to participate in government is open to all, and the will of the people dictates the power of the government to exert its

authority (Abebe, 2013). Other documents that support universal suffrage include: The Convention on the Elimination of All Forms of Discrimination against Women (1979); The United Nations Declaration of Rights of Indigenous Peoples (2007); The United Nations Convention on Human Rights and Fundamental Freedoms (1948); and the American Convention on Human Rights (1969) (Abebe, 2013, p. 415).

Though international documents support universal suffrage; there is no enforcement mechanism in place to ensure that states follow these guidelines; therefore, the interpretation of voting laws is contingent upon the characteristics of the individual country (Abebe, 2013, p. 411). Signatories of treaties like the ICCPR show support for democratic principles, however in practice, many democracies restrict the voting rights of prisoners.¹ To understand why some democracies disenfranchise prisoners while others allow them to vote, it is essential to examine the logic and purpose of criminal disenfranchisement. Is disenfranchising prisoners a logical course of action for democracies? What purpose does disenfranchisement serve?

3.2 Purpose of Disenfranchisement: Punitive or Regulatory?

Scholars diverge on whether criminal disenfranchisement serves a punitive or regulatory purpose. Karlan (2004) supports the notion that voting is a right, and therefore the removal of that right is a punitive action. Altman (2005) contends, however, that the removal of voting rights is not always a punitive action because citizens have a right to democratic self-determination and the right to “order their own affairs as they choose” (p. 264). Altman (2005) asserts that if a democratic citizenry wants to disenfranchise persons guilty of committing a

¹ The following democracies are signatories of the ICCPR: Argentina, Australia, Austria, Barbados, Belgium, Bulgaria, Canada, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Finland, France, Germany, Grenada, Guyana, Hungary, Iceland, India, Ireland, Israel, Jamaica, Japan, South Korea, Lithuania, Luxembourg, Mali, Malta, Mauritius Mexico, Mongolia, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Romania, San Marino, Senegal, Slovakia, and Spain.

crime, then it is a “morally permissible choice for a democratic state to make” (p. 271). Bullow (2016) supports Altman’s point that democracies are justified in disenfranchising felons so long as the objective is not punitive; rather the goal is to enhance a democratic collective. Lopez-Guerra (2014) asserts that Altman’s argument does not offer a convincing reason as to why disenfranchising based on criminal conviction is permissible while disenfranchising based on other aspects such as ethnicity, sex, and religion is not permissible (Bullow, 2016).

3.2.1 Proponents of Disenfranchisement: Disenfranchisement as Punishment

Proponents of criminal disenfranchisement justify the removal of voting rights as a punitive response to crime by highlighting the social contract, which allows for the removal of political rights as a form of punishment for prisoners. Proponents assert that restricting the voting rights of prisoners can be beneficial for both the prisoners and society as a whole because it holds them accountable for the crimes committed. Social contract theorists like Jean-Jacques Rousseau and John Locke contend that citizens should receive the benefits that an organized government can provide so long as he or she abides by the law (Levine, 2009). Rousseau writes that the social contract sets “the criteria for the legitimate political authority of government over society” (Johnson-Parris, 2003, p. 112). Citizens forge an implied contract with the government based on satisfaction with the status quo, and agree to uphold the societal standards of citizenship. Rousseau contends that the citizens who break the law are no longer befitting of the rights and benefits provided by that society, and thus should forfeit rights to participate in social activities (Johnson-Parris, 2003; Planic, 1987). Rousseau (1762) states that “criminals are neither citizens nor subjects...they are the enemies of society... unlike enemy soldiers, criminals have consented to the punishment they receive in the hands of their conquerors (Planic 1987, p. 155).

Rousseau (1962) claims that criminals are society's deviants, guilty of breaking a mutual contract with the state, "rebel and a traitor to the fatherland" (p. 64). Easton (2009) contends that criminals are no longer a rights-holding citizen, but a subject of society.

Disenfranchisement impacts the criminal on an individual level. The goal of punishment is to prevent the offender from re-offending and to reduce the likelihood of recidivism. The justifications for punishment are incapacitation, retribution, rehabilitation, and deterrence (Itzkowitz & Oldak, 1973). Incapacitation and deterrence focus on removing the offender from circumstances in which he or she can re-offend. The goal of deterrence is to avert the criminal from committing future crimes. Incapacitation places the offender in a controlled setting (like a prison) to prevent them from "inflicting further harm" (Johnson, 2001, p. 5). Rehabilitation focuses more on helping offenders regain a sense of responsibility within society so they feel encouraged to abide by the law (Itzkowitz & Odlak, 1973). While incapacitation and deterrence often disengage offenders from society, rehabilitation offers an avenue through which offenders can be reintegrated back into society. The rehabilitative purpose of punishment is to heal the offender from the effects of the crime and aid in the reintegration process. The goal is to prevent the offender from committing the crime in the future.

Disenfranchisement as punishment is challenged on the grounds that it obstructs the rehabilitative process for disenfranchised persons. Uggen, Behrens, and Manza (2005) and Travis (2002) posit that disenfranchisement may impede the rehabilitation process by creating certain barriers to reintegration. Johnson-Parris (2003) claims that because of the "stigma associated with this emasculated state of citizenship" offenders may feel apprehensive about eventually reintegrating back into society." She also states that losing the right to vote significantly impacts an individual's role as a democratic citizen and that disenfranchised

persons are “severed from the body politic and condemned to the lowest form of citizenship, where [they are] voiceless at the ballot box” (Johnson-Parris, 2003, p. 110).

Dhami (2005) asserts that disenfranchisement is retributive rather than rehabilitative because it removes value from the offender by excluding them from the political process rather than incorporating them. If the purpose of rehabilitation is to reintegrate offenders, disenfranchisement serves a counter purpose in relation to civic duty. Voting is an activity that allows democratic citizens to participate in society and the removal of this right further alienates criminal offenders from the polity. The retributive purpose of punishment subjects the offender to suffering for the crime committed (Uggen et al., 2005). Easton (2009) notes that “as a retributivist measure, it is hard to justify [disenfranchisement] as it is not clearly linked to...the degree of harm caused, the seriousness of the offence, or the culpability of the offender” (p. 229). The punishment in this case should fit the gravity and nature of the crime committed, and more serious crimes should result in harsher punishment (Uggen et al., 2005).

An opposition to disenfranchisement by nations like Canada arise from the claim that disenfranchisement does not serve the purpose of offender rehabilitation. In *Sauvé v. Canada* (2002), the Canadian Supreme Court “argued that seeing prisoners as morally unworthy to vote ‘runs counter to our constitutional commitment to the worth and dignity of every citizen’ which is essential to the legitimacy of the democratic process (McLachin, 2002, para. 35; Easton, 2009, p. 228). Dhami (2005) argues that allowing “prisoners to vote, by contrast may strengthen their social ties and commitment to the common good, thus promoting legally responsible participation in civil society” (p. 5). This is partly because the offender was most likely not associating the criminal act with the potential loss of voting at the time of committing the crime (Dhami, 2005). Since voting is an active way to participate in the democratic process it may

enhance engagement for the offender, who may have been previously disconnected from the civic process.

Opponents of disenfranchisement argue that removing a prisoner's right to vote may be a justified response to election crimes, but for other types of crime disenfranchisement is not a suitable punishment. States have been challenged by the courts in the past to prove that disenfranchisement as punishment is fitting of the crime in court cases like *Hirst v. The United Kingdom (No. 2)* (2010) and *Frodl v. Austria* (2010). States often respond to this challenge by distancing themselves from the punitive angle and instead argue that the disenfranchisement of prisoners is a regulatory practice that prevents prisoners from voting to maintain the purity of the ballot box and to protect the common good.

3.2.2 Proponents of Disenfranchisement: Regulatory intent

Disenfranchisement with regulatory intent focuses on protecting the franchise for the common good by excluding the prison population from the ballot. Disenfranchisement is imposed to shield society from the influence of criminal offenders. This approach aligns with the "purity of the ballot box" argument that advocates the exclusion of prisoners from the voting process to keep the ballot box pure from the input of individuals who have deviated from the law (Ewald & Smith, 2008). John Stuart Mill's *Utilitarian* claims that every citizen should have the power to influence the greater good, thus the voting rights of prisoners become a question of whether including prisoners in the voting process benefits the greater good of society. The general public is often hesitant to include prisoners in the voting pool because of the fear that the vote of a prisoner would taint the purity of the ballot box (Harvard Law Review Association, 1989). Prisoners are "deemed unable to cast their ballots in accordance with the common good,"

(Darling, 2001) and are viewed as a threat to the election process (Johnson-Parris, 2003, p. 122; Easton, 2009). The justification relies more on the moral character and societal standing of the criminal rather than the degree and nature of the crime itself. The criminal citizen is viewed as a lesser version of the ideal and moral citizen (Easton, 2009).

The fear of the criminal lacking moral competence is not only based on the possibility of the individual participating in the policymaking process; but rather it is associated with the deeper facets of the offender's character and overall contribution to society. Criminals, in this case, are viewed in congruence with insane persons and this raises questions about the offender's ability to vote in a responsible manner (Harvard Law Review Association, 1989). In 1884, the Alabama Supreme court declared that "the presence of criminals within the polity potentially erodes confidence in election through a process of contamination in which dirty votes taint clean ones" (Manza & Uggen, 2008, p. 12). The purity of the ballot box argument has been used in key court cases like *Sheper v. Trevino* (1978) and *Bailey v. Baronian* (1978) to support excluding criminals from the ballot in fear that "felons will elect criminals to important offices, leading to corruption of public life" (Easton, 2009, p. 228).

The controversy in purifying the ballot box is its potential to arbitrarily fence out certain voters in society based purely on assumptions of the vote being tainted (Manza & Uggen, 2008). Those in favor of criminal disenfranchisement contend that prisoners are more likely to vote based on candidates' views on penal issues with the end goal of making criminal punishment more lenient. Simson (2002) posits that attempts to achieve purity in the election system by excluding voters who are deemed as lacking "civil virtue" paves a path for the possible exclusion over minorities, as was seen at various points in United States history (Simson, 2002, p. 5). For this reason, the fencing out of certain populations from the voting process was ruled

unconstitutional by the Supreme Court in *Carrington v. Rash* (1965), thereby diminishing the credibility of incapacitation as a legitimate form of criminal punishment. Whether or not including prisoners in the ballot box actually has a detrimental effect on election results is debatable.

3.3 Logic of disenfranchisement

Why do democracies disenfranchise? Criminal disenfranchisement seems counterintuitive in democracies because it goes against core democratic values like universal suffrage (Hanneke van Eijken & Willem van Rossem, 2016; Manfredi, 1998). Democracies widely accept notions of universal suffrage implying that the right to vote is also embedded within the democratic process, because voting is the way democratic representatives are chosen to govern. Criminal disenfranchisement faces challenges because it stifles a key component of what is needed for a democracy to function optimally. Though democratic principles advocate for equal and inclusive participation, many democracies throughout history have imposed voting restrictions on portions of the population. A person's right to vote in most countries is largely intertwined with the role of citizenship. Citizenship laws require a person to obtain citizenship prior to voting. While a majority of democracies grant citizenship to most residents within their borders, citizenship has been denied to portions of the population at certain periods of time. In the United States, African Americans were denied citizenship rights during the period of the three-fifths compromise and subsequently barred from voting based on unequal treatment. Chile and Malawi each have residency requirements attached to citizenship laws and offer citizens the right to vote after a period of time ranging between 5 and 15 years. Countries with a history of British colonization are likely to allow individuals emigrating from specific countries to vote

within the borders. Nations that retain indigenous populations marginalize such individuals by fencing them off from political participation and subsequently denying them the right to vote.

Voting exclusions for criminals first emerged in ancient Greek and Roman civilizations (Itzkowitz & Oldak, 1973). Offenders guilty of serious crime in Greece were assigned a status of *atmia* that equated to a permanent loss of citizenship rights, and a temporary or permanent loss of additional rights based on the severity of the crime (Itzkowitz & Odlak, 1973; Manza & Uggen, 2004). The word *atmia* means “dishonor” and individuals subject to the status of *atmia* were “prohibited from petitioning their government, voting, holding office, instituting any criminal or civil actions against citizens, fighting in the army, or receiving any welfare or public assistance” (Hamilton-Smith & Vogel, 2012, p. 409). Much like their Greek counterparts, accused criminals in Rome that were labeled with a status of *infamia* which translates to a “condition of disgrace or condemnation for those pronounced infamous by the courts,” were denied suffrage and were not allowed to partake in the Roman legions (Itzkowitz & Odlak, 1973; Manza & Uggen, 2004, p. 492; Johnson-Parris, 2003, p. 114). After the fall of the Roman Empire, criminals throughout Europe were subject to outlawry, which stripped them of societal civil rights and protection (Itzkowitz & Odlak, 1973). Criminals were subject to suffer a *civil death* and consequently prohibited from voting, making speeches, appearing in court, serving in the army and attending assemblies (Manza & Uggen, 2004). Civil death removes political and civil rights (Dhami, 2005, p. 239; Manza & Uggen, 2004).

Denying criminals the right to vote strips them of a fundamental right of citizenship and this poses a problem. Some countries have wholly contested disenfranchisement, while others have debated over which criminals to exclude from the voting process. Historically, democracies have both expanded voting rights and restricted voting rights as a method of punishment or

regulation for criminals. Nations that support harsher disenfranchisement of criminals tend to cling to moral standpoints that validate civil death as a consequence of committing a crime and breaking the social contract. Supporters of disenfranchisement also emphasize the importance of excluding criminals from the voting process to maintain the purity of the ballot box. Nations that oppose disenfranchisement argue that preventing criminals from voting contradicts the principles of universal suffrage and is thus incompatible with democratic values (Fellner and Mauer, 1998). These more lenient nations often advocate for softer forms of punishment such as rehabilitation as opposed to retribution.

3.4 Democracy and Disenfranchisement

Thirty-three electoral democracies constitutionally declare suffrage to be universal, free, and fair. Support for universal suffrage is also incorporated into international treaties and charters like the International Covenant on Civil and Political Rights (ICCPR), signed on December 16, 1966, and the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948. Article 25 of the (ICCPR), states that “every citizen shall have the right and opportunity...without unreasonable restriction...to vote and to be elected at genuine periodic elections which shall be...universal and equal...” (University of Minnesota: Human Rights Library, 2003). Article 21 of the UDHR, states that the right to participate in government is open to all, and that the will of the people dictates the power of the government to exert its authority (Abebe, 2013).²

² Other documents that support universal suffrage include: The Convention on the Elimination of All Forms of Discrimination against Women (1979); The United Nations Declaration of Rights of Indigenous Peoples (2007); The United Nations Convention on Human Rights and Fundamental Freedoms (1948); and the American Convention on Human Rights (1969)” (Abebe, 2013, p. 415).

National and international support for universal suffrage is evident; however, the extent to which citizens can vote across democracies varies in practice (Abebe, 2013, p. 411). Eighty democratic countries restrict the voting rights of criminals to some extent. The contradictions between the promised ideal of democracy and what actually takes place in practice may be explained by the variation in democratic quality across countries. Democratic quality may be indicative of the degree of egalitarianism and inclusivity in each individual country. The assumption is that the quality of democracy in each country may impact criminal disenfranchisement policies. This section will examine the relationship between democratic quality and the degree and probability of criminal disenfranchisement.

Democratic quality can be evaluated more efficiently with a clear definition of democracy (Taylor, 1998). Charles Tilly states that “to take democracy seriously, we must know what we are talking about” (Tilly, 2007, p. 7). The word democracy stems from two ancient Greek root words: *demos* meaning “the people” and *kratia* meaning “rule” (O’Neil, 2015, p. 25). Democratic countries entrust power in the hands of the people, both persons who govern as well as persons being governed (Taylor, 1998; Lanning, 2008). Citizenship is usually the prerequisite to participation and the role of the citizen is vital to the proper functioning of a democracy. Constitutions are formal documents that clarify the general relationship between citizens and the government (Taylor, 1998). Democratic norms also influence this relationship and the variation in such norms can explain the nuances across democracies (Taylor, 1998). Democracies share a common goal to be politically inclusive, and also advocate citizens to engage in the polity through formal elections and other forms of political and civic participation. Democratic countries also differ on several key characteristics such as age, the extent to which citizens have

access to political and civil rights, and the level of citizen participation in civic and political matters outside of suffrage.

Democratic quality can be measured in several ways. Altman (2011) states that to measure the quality of democracy the first step is to assume that the country already functions under “a minimum degree of democratization” (p. 39) (Altman & Perez-Linan, 2002). Robert Dahl in *Polyarchy* (1974) highlights the importance of inclusive practices in democracies (Caraway, 2004). Dahl’s definition of democracy can be operationalized to determine if aspects like citizen participation, electoral pluralism and other competitive institutional processes are present within a democracy. Dahl emphasizes the importance of effective participation, namely voter turnout, stating that it is an essential component of democratic quality. Low voter turnout in combination with low registration, and low participation overall can obstruct the quality of democracy.

Tilly contends that democracy can be better understood by examining the “variation and change in the extent and character of democracy” (Tilly, 2007, p. 7). Democracy, according to Tilly, can be defined using four approaches: constitutional, substantive, procedural, and process-oriented (Tilly, 2007). The constitutional approach to democracy focuses on whether the legal patterns of a nation support democratic endeavors. The substantive approach focuses on the government’s attitude about “human welfare, individual freedom, security, equity, [and] social equality...” (Castaneda and Schneider, 2017, p. 184). Positive representation of human rights can override constitutional indicators (Tilly, 2007, p. 7). The process-oriented approach focuses on the effectiveness of participation, voting equality, and equal inclusion of adults in the realm of citizenship.

Tilly's interpretation of democracy suggests that democracies that disenfranchise criminals are hindering the procedural aspects of democracy like universal suffrage. By excluding certain criminals from voting, the government is also thwarting the effectiveness of participation. The constitutional approach to democracy is also challenged because not all democracies include support for universal suffrage in the national constitutions. The constitution can set the legal tone for how the country operates, and the more detailed the constitution, the more impact it can have on laws within the country. Inclusive legal language about citizens' voting rights can therefore serve as a measure for democracy. The constitutional approach can also be understood through the legal traditions that shape the degree of punishment within a country. The substantive approach to democracy can be gauged by determining if the country assigns value to humane punishment. The punitive approach of the country will be further explored in the latter sections.

Democratic and non-democratic governments alike hold the power to regulate the franchise of citizens. Lanning (2008) contend that criminal disenfranchisement may be a punitive action, but the restrictions on voting "derive from the position that certain individuals lack the autonomy or ability to make independent judgments" (p. 434). Lanning (2008) also argues that autonomy is a prime feature of democracy and criminal disenfranchisement policies reveal that the autonomy lies in the hands of some but not all. The leaders of democratic countries should ideally confer equal power to citizens; however the restrictions on the franchise of criminals imposed by the government shows that the power distribution is more hierarchical than equal (Lanning, 2008). This places democracies in the same predicament as non-democracies of potentially supporting for policies that do not advocate for equal participation. Lanning (2008) claims that democracies can still act in ways that are undemocratic. Criminal disenfranchisement

directly impedes on the degree of inclusiveness in democracies by excluding portions of the criminal population from the voting process. Though democracies are more inclusive in comparison to non-democracies, democracies have practice exclusionary politics since the earliest representation of democratic governments in Ancient Greece and Rome. For much of history, democracies excluded all but white males from voting in elections. Women and minorities were not included in the political process until recently (Caraway, 2004).

Huntington (1993) offers a procedural definition of democracy highlighting that defining democracy as an expression of authority or the overall purpose that it serves can be problematic because it overlooks procedural aspects like competitive elections and participation of the citizenry. Huntington (1993) alludes to Robert Dahl's interpretation of democracy with an emphasis on contestation and participation, noting that these procedures are a crucial part of the foundation of a democracy. Huntington (1993) acknowledges that elections may be just one component of a democracy; but is important because it focuses on mobilizing the voice of the people (Smith & Schumpeter, 1942), one of the key components of democracy. Huntington (1993) notes that democracy has gone through several phases, the first wave, second wave and the third wave of democracy, which began in 1974. The countries that became democracies during the third wave placed more emphasis on universal suffrage, participation and competitive elections (Rose & Chull-Shin, 2001; Malone, 2011)

I predict that the variation in disenfranchisement policies across democracies will be impacted by the variations in democracy. Factors to consider when measuring variation across democracies are (1) degree of citizen participation, (2) the extent to which civil and political rights are extended to citizens, (3) length of democracy and (4) period of democratization. Prior studies have examined the relationship between democracy and criminal disenfranchisement;

however, democracies were studied in conjunction with non-democracies. This study focuses only on electoral democracies so it becomes important to measure variation across countries.

H1: Democracy decreases the degree and probability of criminal disenfranchisement.

3.4 Criminal Disenfranchisement and Punishment

Often the skepticism towards disenfranchisement has been based upon a blurry understanding of its actual purpose and intent. The claim that disenfranchisement is a regulatory practice is often used to respond to the critics that claim disenfranchisement only fulfills its punitive purpose if the punishment fits the crime (Uggen et al., 2005). Therefore, blanket bans on voting are criticized on the grounds that disenfranchisement may not be an appropriate punishment for someone who commits a non-political crime, because the likelihood of them committing a future crime is not thwarted by disenfranchisement (Uggen et al., 2005). A more thorough understanding of punishment may clarify why disenfranchisement would be used as a tool to punish persons whom have deviated from societal expectations. The punitive purpose of disenfranchisement may be better understood by delving into the moral justifications of punishment, rather than the immediate purpose that punishment serves.

3.4.1 Why Punish?

The purpose of punishment has been interpreted in various ways throughout history. Punishment was understood primarily as a way to “reestablish moral balance” (Dumm, 1987, p. 73), between the ruling elite and those individuals being ruled. The elite used punishment as a way to symbolically establish, and physically exert, power over individuals who plotted against

the state and committed political crimes. The aim of punishment was retribution, rather than deterrence (Dumm, 1987). Through the lens of the social contract, persons who have parted with the contract by committing immoral acts are no longer subject to the benefits that society has to offer. This is primarily a moral argument because social contract theory asserts that the decision to abide by the rules of the state is a moral decision. The rhetoric of morality insists on punishing criminals for immoral acts and emphasizes that societies should clarify what constitutes as moral. Emily Durkheim argues that societies have used punishment as “collateral” to handle immoral acts in the past. Punishment has been tied to religious notions of “salvation” and purification” emphasizing that if criminals spent enough time in isolation through imprisonment, the likelihood of future crime would decrease (Durkheim, 1983).

Among the “multitude of moral claims about punishment” the utilitarian and retributive justifications of punishment are the most prominent (Gruber, 2010, p. 1). The retributivist perspective on punishment asserts that people are punished for the sake of punishment itself. The goal of punishment may be to simply punish the offender for committing a crime. The *retributive* stance holds that the criminal’s punishment should be determined through culpability alone (Gruber, 2010, p. 16). The theory asserts that “persons who have committed crimes acted immorally and that their punishment allows them to atone for immoral action” (Johnson-Parris, 2003, p. 128).

Another reason societies may punish criminals is for the greater good. Utilitarians propose that punitive measures towards criminals make society safer in the long run. Utilitarians claim that placing restrictions on individuals who have acted against the law will deter them from committing future crimes (Beccaria, 1964). The utilitarian approach focuses mainly on (a) deterring future crime, (b) incapacitating the criminal, and/or (c) rehabilitating the offender.

While imprisonment can temporarily keep criminals away from society and deter future crime, tougher forms of punishment such as the death penalty will eliminate criminals from society as a whole. Rehabilitation can be used by societies to “reform criminals” and reintegrate criminals back into society (Gruber, 2010, p.18).

The perceived outcomes of modern punishment include deterrence, incapacitation, and rehabilitation. Incapacitation “prevents an individual from inflicting further harm or at least as long as the individual is under control” (Johnson, 2001, p. 5). Rehabilitation offers an avenue through which the criminal can be reintegrated back into society and healed from the crime. Opponents of criminal disenfranchisement claim that democratic participation is a crucial component of the rehabilitation of criminals. Hamilton-Smith and Vogel note that “research supports the notion that ex-felons who are able to re-enter society with stable work and familiar relationships are less likely to engage in criminal activity” (Hamilton-Smith & Vogel, 2012, p. 414; see also Uggen and Manza, 2004, pp. 193-196). Democratic participation is shown to lower the rate of recidivism, further highlighting the potential ineffectiveness of disenfranchisement (Hamilton-Smith & Vogel, 2012).

3.4.2 Disenfranchisement as punishment

The relationship between criminal disenfranchisement and punishment is important to explore because it addresses one of the larger debates regarding criminal disenfranchisement which questions whether the purpose of disenfranchisement is punitive or regulatory. In *Trop v. Dulles* (1958), the U.S. Supreme Court declared that the purpose of disenfranchisement is not to punish but to regulate the franchise (Ewald & Smith, 2008; Karlan, 2003). To label disenfranchisement as purely regulatory would be to dismiss the fact that disenfranchisement has

historically been used as a punishment towards criminals. Criminals suffered civil death which obstructed the right to vote and imprisonment removed criminals from society.

Prior to the 18th century, criminals were subject to physical punishments that inflicted pain on the body such as “tortures and [public] executions” (Foucault, 1975, p. 73). A group of reformers, including Cesare Beccaria, advocated a shift in the style of punishment away from public shaming and torture. The concept of the prison was reintroduced by reformers such as Brissot as “the most effective punishment for a variety of different crimes because” it is “an institution through which criminals can be punished away from the public eye” (Willis, 1949, p. 15). Prisons allowed societies to discipline and control the criminal’s body without imposing direct pain and harm on the body (Willis, 1949). Imprisonment also embodied an institution that incorporated religious understandings of punishment. Prisons were seen as having healing effects on criminals by offering them a place for isolation and contemplation. Criminals who were banished and forced into isolation (through prison) were thought to have ample time to dwell on past actions and possibly rectify themselves.

In addition to shifting the perception of punishment, reformists pondered over the root cause of crime and the best ways to reduce future crime, and attempted to codify certain principles of punishment like the importance of “individual responsibility” (Willis, 1949, p. 17). Reformists advocated for the creation of a “clear and simple code of laws defining crimes and punishment” through which men could “rationally calculate the benefits to be derived from criminal acts against the penalties that follow from them” (Willis, 1949, p. 16).

A shift towards a more rational understanding of punishment eventually overlapped moral interpretations. The portrayal of the criminal as a rational actor changed the idea of why individuals commit crime. Rationalists declared that crime was a result of institutional flaws

rather than just a result of the actions of an “individual” (Willis, 1949, p. 17). Criminals were no longer seen as acting from a place of passion and seeking revenge and the perception of law began to shift from a “state-sanctioned manifestation of revenge” (Drake, 2012, p. 137; Zeibert, 2006). Crime was believed to be a result of external environmental and circumstantial conditions. The motive for crime was thought to be less individually motivated and more a result of institutional conditions surrounding the individual. Criminals were viewed as rational actors and aware of the boundaries of society through the penal codes. This view of a rational and aware criminal offered further justification for holding them accountable for crimes. Individuals who committed crimes with knowledge of the moral and immoral behaviors spelled out in the penal code were seen as deviating from the law and subject to endure the consequences.

Barker (2009) asserts that democracies may be better equipped to sustain a less punitive regime; however the degree of punitiveness varies even across democracies. Blumstein, Tonry, and Van Ness (2005) find that the severity of punishment is higher in the United States in comparison to the degree of crime committed. More punitive nations that have harsher policies, procedures, and practices may be more likely to disenfranchise because there has not been a shift to a softer punitive process (Whitman, 2003). Whitman (2003) argues that European nations in particular have moved away from harsher punishments and certain nations have implemented rehabilitative programs. The reason that disenfranchisement is less favored in Europe in comparison to the United States, according to Whitman, is because harsher punishment goes against the goal of rehabilitating the offender because it ultimately isolates them from society rather than reintegrating them.

3.4.3 Punitive Measures

The degree of punitiveness in a society can be visible across a variety of political institutions. Observing the patterns and actions of the criminal justice system can offer insight into how that society chooses to punish those who deviate from laws; however, politicians and the public can also signal the degree of punitiveness in a society. One way to gauge punitiveness would be to examine historical support for punitive policies. Cullen, Culllen & Wozniak (1988) asserts that support for the death penalty is closely linked with people who view crime as a part of the offender's character. More punitive nations are more likely to support retributive punishment which often directly impacts the criminal. Grasmick, Jacobs, and McCollom (1983) also assert that more punitive groups on society are likely to also support the death penalty. This would indicate that nations who continue to support the death penalty are more likely to also have harsher views towards criminals.

Rottinghaus and Baldwin (2007) find that countries that have the highest prison populations, such as the United States, India, and Brazil, all restrict the voting rights of criminals. The most commonly used measure of punitiveness in the criminal justice system is the country's incarceration rate, which is measured by the number of prisoners per 100,000 population (Blumstein, Tonry, & Van Ness, 2005). Rottinghaus and Baldwin (2007) find that countries with larger prison populations are less willing to extend the franchise to prisoners. Therefore I predict that countries with higher prison populations are likely to have a more punitive criminal justice system overall.

The U.S. incarceration rate is higher than any other democracy and scholars have argued that higher incarceration rates are linked to punitive criminal justice laws (Hetey & Eberhardt, 2014). Generally, incarceration rates have risen across democracies (Cohen, 1985; Jacobs &

Helms, 1996). Incarceration in “countries like England, France and Switzerland are comparably smaller than in the U.S.” (Tonry & Hatlestad, 1997, p. 3; Tonry, 1999, p. 42). Based on the observed variation in incarceration rates across democracies and the claims that such rates are linked to punitive policies, I predict that nations with higher prison populations are more likely to disenfranchise.

Stemming from Whitman (2003), the degree of degradation and torture can give insight into the level of punitiveness in a country. If the purpose of punishment is to rehabilitate then prisoners should be treated in the same manner as other citizens. If the nation’s focus is not on rehabilitation then, based on theories of punishment, the nation is focused on more punitive methods of addressing criminals including retribution and incapacitation. Nations that do not have a proper system of rehabilitation in place will also be less sensitive to issues of degradation and torture within its prisons. Torture and degradation are often addressed by human rights organizations, and nations that neglect prisoners by allowing police brutality and degradation by prison staff are sending signals regarding the level of punitiveness tolerated in the country’s prison system. I predict that nations where degradation of prisoners is prominent in the prisons and in the overall justice system are more likely to have harsher disenfranchisement policies. In addition to the severity of sentencing, the level of degradation is also argued to influence the severity of criminal punishment. Degradation is defined as the reduction of a person’s status and dignity which makes them feel like they are less than others (Whitman, 2003). Lastly, Whitman (2003) argues that countries that show respect to criminals are also likely to favor mild punishment, while countries that degrade the status of criminals are likely to support harsher policy.

3.5 Criminal Disenfranchisement and Race

Historically, both democratic and non-democratic nations have passed exclusionary policies based on racial and ethnic divisions. For much of history across democracies, White, property-owning males were the only citizens allowed to vote. Due to the persistence of exclusionary voting procedures, racial bias is often embedded within the institutions of each nation and the number of minorities within the country may impact its degree of exclusionary politics. This section will focus on the relationship between race and criminal disenfranchisement policies. Liberal democracies generally agree that states cannot exclude people from the political process based on “ascriptive characteristics” like race (Katzenstein, Ibrahim, & Rubin, 2010, p. 1039). Katzenstein Ibrahim and Rubin (2010) assert that “laws that bar discrimination on the basis of ascriptive characteristics are the backbone of a liberal polity” (Katzenstein, Ibrahim, & Rubin, 2010, p. 1039).³ In practice, however, states often do discriminate against minorities in many aspects of society and the criminal justice system is no exception. Nations that disenfranchise may be prompted by the racial dynamic of that country. Individuals in a society are often divided by identity, be it race, ethnicity, or national origin (Morning, 2008).⁴ The definitions of these terms can be ambiguous, and are often used interchangeably (Morning, 2008).

3.5.1 Defining Race and Ethnicity

Race is viewed both from the primordial and constructivist lens. Primordialism, coined primarily by Clifford Geertz, explains race in terms of culture (Geertz, 1977). Constructivists

³ National constitutions and laws also support this view by including clauses about the equal access to voting regardless of racial background. In the United States for example, the 14th amendment offers equal protection under the law to people in the US despite race.

⁴ The terms that Morning 2008 mentions are “race”; “ethnic origin”; “nationality”; “ancestry”; and “indigenous”; “tribal” or “aboriginal” (p. 245).

argue that “primordial sentiments” of a group can still change and evolve over time and therefore, identity is not static. Identity in the eyes of constructivists is socially and culturally constructed rather than biologically determined. Like race, the definition of ethnicity has a similar dichotomy in its definition. The debate stems around whether ethnicity curtails from a “myth of collectiveness,” or if ethnic ties are more static and determined by descent (Fearon and Laitin 2000, Horowitz, 1985). Chandra’s definition highlights that ethnic group’s share a commonality of descent-based attributes (Chandra, 2006). Approximately 65% of nations include an ethnic categorization in the national census (Morning, 2008).

Kleining and Murtagh (2005) assert that when societies deny the franchise to prisoners, minorities like “African Americans in the United States, and the aboriginal communities of Canada and Australia” (p. 231) are often disproportionately affected. Minorities are impacted at a disproportionate rate because societal discrimination against minorities is often entrenched within the institutions of society. Minority populations are socially constructed to appear dangerous or not worthy of the same treatment as the majority (Schneider & Ingram, 1993). Schneider and Ingram (1993) posit that minorities fall in the contender category and “some view minorities as oppressed populations and argue for policies appropriate to dependent people, whereas others portray minorities as powerful special interests and not deserving of governmental aid” (p. 336). The majority can be prompted to mistreat the minority because the majority group feels threatened by the presence of the minority group.

Disenfranchisement laws in the United States may not include deliberate language promoting exclusions based on race; yet, in practice, African American people are incarcerated, arrested, and imprisoned at a higher rate in comparison to White people. The National Association for the Advancement of Colored People (NAACP) records that African American

people are targeted more heavily by the criminal justice system (2017). The NAACP notes that in the United States, “African Americans represent 12% of monthly drug users, but comprise 32% of persons arrested for drug possessions” (NAACP, 2017, p. 1). Also, they note that “African Americans and Hispanics make up approximately 32% of the U.S. population, [yet] they comprised of 56% of all incarcerated people in 2015” (NAACP, 2017, p. 1). In the United Kingdom, the Prison Reform Trust records that 10% of the British national prison population is Black but Black Britons account for 2.8% of the general population in comparison (p. 1). They also note that “black prisoners account for the largest number of minority ethnic prisoners (49%)” (Prison Reform Trust, 2017, p.1).

In the United States, racial discrimination against African American people is embedded in the historical development of disenfranchisement laws (Manza & Uggen, 2008; Behrens, Uggen, & Manza, 2003; Uggen & Manza, 2002). Ewald and Rottinghaus (2009) declare, that “disenfranchisement’s deep effect on racial minority groups is one of the policy’s most important—and most hotly contested—attributes.” Behrens et al. (2003) state that while “race neutral” on the surface, in the United States race is palpably tied to criminal punishment. (p. 560). Race has been tied to criminal disenfranchisement laws in the United States since the passage of the Voting Rights Act of 1865, prior to which, African Americans experienced a high degree of suffrage inequalities. Since the passage of the act, the issue of equal enfranchisement has lacked adequate attention in the agenda of policymakers.

The recent rapid and disproportionate growth in incarceration and conviction rates of African American people in the United States has led to the reemergence of the discussion of equal enfranchisement. The disparity between imprisonment rates of African American and White populations has been linked to the accusation that the criminal justice system is negatively

targeting the African American population in relation to policy preferences. National drug laws have also been tailored to affect the African American population in a more direct manner (Ewald & Rottinghaus, 2009). Also in the United States the overrepresentation of African American people in the prison system is paralleled by the passage of harsher disenfranchisement laws. Blain (2003) notes that approximately 13% of African American adult males were denied access to voting in 1998, and over 10% of the African American population is disenfranchised in 16 states (Blain, 2003). Blain (2003) also notes that disenfranchisement laws were initially created to target petty crimes rather than more serious offenses like murder or rape. Disenfranchisement laws in the United States were also used in some cases to “target citizens—often, poor, and people of color—who have never been involved with the criminal justice system” (Blain, 2003, p. 49). The marginalization of African American people by the criminal justice system in the United States shows that while the laws may not explicitly target minority groups, these groups are impacted by restrictive laws on a larger scale.

The groups being impacted by restrictive laws such as disenfranchisement can vary across countries. While criminal disenfranchisement in the United States may impact African American and Latino people more significantly, in other countries disenfranchisement may impact immigrants or other marginalized groups. Wacquant (2005) notes that “the highly particular conception of race” in America, “is a direct outcome of the momentous collision between slavery and democracy,” (p. 127) and is unlike anywhere else. Wacquant (1999) discusses the prevalence of foreigners and immigrants in the prisons of Europe and notes that it is people of foreign descent, particularly second generation immigrants, who are the most vulnerable in the labor market, are receiving public assistance, and are “overrepresented in the prison system” (p. 216).

In England, “Blacks are seven times more likely to be incarcerated than their White or Asian counterparts” (Wacquant, 2005, p. 36). In 1993, 11% of all prisoners consisted of persons of West Indian, Guyanese, and African ancestry; a figure much higher than the overall population, which is 1.8% (Wacquant, 1999). Murray (2012) states that the disenfranchisement has been a part of U.K. history.

The “black population of the United Kingdom has continued to be overrepresented in crime figures” (Kaluta-Crumpton, 2006) and indirect racism has continued to be an issue within society. The British sense of white superiority originates back to the 16th century when white people from Britain came into direct contact with Africans on African soil, and regarded Whiteness to be the complete opposite of Blackness (Hondius, 2014). All physical characteristics of Black people were scrutinized and condemned in comparison to White people. Black people were viewed as inferior and uneducated in relation to White people, and these negative perceived notions were made widely available to society through media with writers causing theories of Black inferiority to spread throughout society (Olusoga, 2015). The slave trade that was to follow was able to succeed because of this notion of White superiority (Olusoga, 2015). Kalunta-Crumpton (2006) asserts that “constructed racial ideologies and stereotypes” remain important in the relationship between black and white people and the criminal justice system (p.18).

In 2015, “58 percent of all people killed in the state of São Paulo by the military police were black” (Barbara, 2015). In Northern Rhineland Romanians, Moroccans, and Turks were disproportionately represented in the prison population in comparison to native Germans (Wacquant, 1999). Foreigners consist of 6% of France’s population yet are overrepresented in the prison population with an increase from 18 to 29%, between 1975 and 1995 (Wacquant, 1999).

Rottinghaus and Baldwin (2007) conduct a comparative study and find that race does not significantly impact criminal disenfranchisement. Uggen, Van Brackle, and McLaughlin (2009) on the contrary find that more ethnically fractionalized countries are more likely to have harsher disenfranchisement policies. These contradictory findings call for further exploration of the impact of race on criminal disenfranchisement. There are ample studies done in the United States relating race to disenfranchisement though fewer studies are available in the comparative context. It is worth exploring the relationship between race and disenfranchisement in other countries to determine if the same disparity is present as it is in the United States.

Less powerful groups can become targeted by the criminal justice system. Stemming from Kleinberg and Murtagh's (2005) assertion that minority groups are disproportionately impacted by restrictive laws like disenfranchisement, the next task would be to explore why these groups are targeted. Racial threat theory, proposed by Blalock (1967) asserts that the majority population will use the disproportionate amount of power to suppress the minority, politically, economically and symbolically. Majority groups may feel threatened by the power of minority groups and target them to shift the balance of power (Blumer, 1958). Blalock (1967) introduces the power-threat theory, which posits that perceived threat motivates a majority group to discriminate against a minority group. This can be dependent on the size of the minority group in relation to the majority, suggesting a positive relationship between size of minority group and level of perceived threat of that group. The level of perceived threat is determined by the competition that exists between the groups when it comes to economic and political power. The group threat thesis asserts that "social groups compete over scarce social resources such as employment, education, and housing to name a few, and dominant social groups possess the upper hand in their distribution" (Wheelock, Semukhina, & Demidov, 2011, p. 1).

Societies that perceive the minority group as threatening can favor more punitive policies targeting the minority group (King & Wheelock, 2007). King and Wheelock (2007) conducted a survey and found that “respondents who perceive minority groups as threats to economic resources or public safety are more punitive” (p. 1260). King and Wheelock (2007) also find that changes in the population distribution of the minority group leads to more punitive attitudes of the majority group. Based on these findings, I predict that the percentage of minority groups within a society will impact the punitive attitudes of the majority group and those societies will be more likely to support harsher disenfranchisement policies.

H3: Higher racial and ethnic fractionalization will increase the degree and probability of democracy

CHAPTER 4

RESEARCH DESIGN

4.1 Data and Model Choice

I conduct a cross sectional analysis of 111 electoral democracies in 2014. All countries included are identified as electoral democracies continuously between 2010 and 2014.¹ This information is derived from the Electoral Democracies: Freedom in the World 1989/1990-2013 dataset compiled by Freedom House. Freedom House is used as the sole source because all countries (including democratic nations with a smaller population) are included in the dataset. Alternative sources like Polity IV were considered, but do not include information for all of the countries in my dataset. The year of observation is 2014 because it is the most recent year for which information is available across most of the observed variables. Individual analyses of each country could have revealed more about the policies in each country; however, an advantage of a comprehensive analysis is that general patterns of criminal disenfranchisement policies across democracies become visible. The comparison across countries allows us to identify outliers in the data like the United States and Belgium, two nations with relatively harsher disenfranchisement policies. The dependent variables are a binary and an ordinal measure of criminal disenfranchisement. The explanatory variables measure the three general hypotheses in this study.

I conduct a series of logistic regression analyses with the binary response variable, and ordered logistic regression analyses for the ordinal response variable. The logit and ordered-

logit models are appropriate because both the binary and ordinal response variables are categorical measures of criminal disenfranchisement. The *logit* and *ologit* Stata commands were used to estimate these effects.⁵ A more detailed explanation of individual models is incorporated into the results section.

4.2 Dependent Variable: Criminal Disenfranchisement

The dichotomous measure of disenfranchisement accounts for the presence or absence of restrictions on the voting rights of criminals. Countries that impose voting restrictions on criminals are coded as one. Countries that do not impose any restrictions on the voting rights of criminals are coded as zero. The ordinal measure divides the countries into three categories ranging from (a) no restrictions, coded as 0; (b) less restrictive countries, coded as 1 and (c) more restrictive countries coded as 2. Countries that disenfranchise for (a) more severe crimes, (b) longer and more severe sentences and (c) require the approval of the court to disenfranchise criminals are coded as the more lenient nations. Countries that (a) impose a blanket ban on voting, (b) disenfranchise for less severe crimes, and (c) do not require court approval are coded as more restrictive. The assumption is that countries that create more barriers to disenfranchisement are more lenient in comparison to countries that resort to disenfranchisement as a default punishment. Table 1 displays the distribution of disenfranchisement policies across electoral democracies in 2014. Approximately 72 percent of electoral democracies imposed restrictions on the voting rights of criminals and 28 percent imposed no restrictions. The degree to which countries disenfranchised ranged from (a) an automatic ban of voting rights upon conviction in more punitive countries to (b) the removal of voting rights as a consequence of

⁵ The *logit* command presents the regression coefficients for a binary dependent variable, and the *ologit* command gives the coefficients for ordinal dependent variables.

Table 1: Disenfranchisement Policies Across Electoral Democracies in 2014

Disenfranchisement Policies	Names of Countries
Countries that disenfranchise prisoners to some degree. The period of disenfranchisement varies.	Andorra, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Bosnia-Herzegovina, Botswana, Brazil, Bulgaria, Cape Verde, Chile, Colombia, Comoros, Costa Rica, Czech Republic, Dominican Republic, Ecuador, El Salvador, Estonia, France, Germany, Greece, Guatemala, Guyana, Hungary, Iceland, India, Indonesia, Israel, Italy, Jamaica, Japan, Kiribati, Lesotho, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Marshall Island, Mauritius, Mexico, Micronesia, Moldova, Monaco, Mongolia, Netherlands, New Zealand, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Samoa, San Marino, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Slovakia, St. Lucia, St. Vincent and the Grenadines, Suriname, Tanzania, Timor-Leste, Trinidad and Tobago, Turkey, Tuvalu, United Kingdom, United States of America, Uruguay, Zambia
80 countries	
Countries that do not disenfranchise prisoners.	Albania, Antigua and Barbuda, Bangladesh, Benin, Bolivia, Canada, Croatia, Cyprus, Denmark, Dominica, Finland, Ghana, Grenada, Ireland, Latvia, Lithuania, Macedonia, Montenegro, Namibia, Nauru, Serbia, Slovenia, South Africa, South Korea, Spain, Saint Kitts and Nevis, Sweden, Switzerland, Tonga, Ukraine, Vanuatu
31 countries	

serious crime or severe sentence in more lenient countries to (c) to no restrictions on voting rights. More restrictive nations like Bulgaria and Czech Republic imposed a blanket ban on the voting rights of criminals who have been convicted and sentenced to prison (Paskalev, 2013; Kandalec, 2013). Jamaica disenfranchised criminals with a prison sentence of 6-months or more, which falls below the average threshold of 1 year or more, making the laws slightly more punitive in comparison to the rest. (Knowledge Walk Institute, 2017). Less restrictive nations like the Netherlands (Annette, 2013) and Germany (Luicy, 2013) imposed voting restrictions on criminals convicted of a crime punishable by a minimum of one year. India required a minimum of a two year sentence in order to disenfranchise criminals (IPU-Parline database, 2017). Countries also disenfranchised based on the degree and category of crime. India disenfranchised

Table 2: Degree of Disenfranchisement across Electoral Democracies

Disenfranchisement Policies	Names of Countries
Countries that do not disenfranchise prisoners. 31 countries	Albania, Antigua and Barbuda, Bangladesh, Benin, Bolivia, Canada, Croatia, Cyprus, Denmark, Dominica, Finland, Ghana, Grenada, Ireland, Latvia, Lithuania, Macedonia, Montenegro, Namibia, Nauru, Serbia, Slovenia, South Africa, South Korea, Spain, Saint Kitts and Nevis, Sweden, Switzerland, Tonga, Ukraine, Vanuatu
Countries that have less restrictive disenfranchisement policies. 45 countries	Andorra, Argentina, Australia, Austria, Belize, Bosnia-Herzegovina, Chile, Costa Rica, El Salvador, France, Germany, Greece, Guyana, Hungary, Iceland, India, Indonesia, Israel, Italy, Japan, Kiribati, Lesotho, Liechtenstein, Malawi, Malta, Marshall Island, Mauritius, Netherlands, Norway, Palau, Paraguay, Philippines, Poland, Portugal, Romania, Samoa, San Marino, Senegal, Slovakia, St. Vincent and Grenadines, Suriname, Tanzania, Timor-Leste, Trinidad and Tobago, Tuvalu
Countries that have more restrictive disenfranchisement policies. 35 countries	Bahamas, Barbados, Belgium, Botswana, Brazil, Bulgaria, Cape Verde, Colombia, Comoros, Czech Republic, Dominican Republic, Ecuador, Estonia, Guatemala, Jamaica, Liberia, Luxembourg, Mexico, Micronesia, Moldova, Monaco, Mongolia, New Zealand, Panama, Papua New Guinea, Peru, Sao Tome and Principe, Seychelles, Sierra Leone, St. Lucia, Turkey, United Kingdom, United States of America, Uruguay, Zambia

criminals for electoral offences (IPU-Parline, database 2017) and Germany disenfranchised for political crimes such as high treason and electoral fraud (Luicy, 2013). France placed temporal restrictions on the period of disenfranchisement based on the category of crime; criminals convicted of a felony faced disenfranchisement for a maximum of 10 years, criminals convicted of a misdemeanor for five years and criminals and criminals convicted of election fraud, for three years (Arrighi, 2014).⁶ Germany placed a temporal limit on the overall period of disenfranchisement: criminals convicted of a crime that is punishable by imprisonment for up to one year or more are automatically disenfranchised for five years (Luicy, 2013). Costa Rica

⁶ Disenfranchisement must be judicially imposed.

allowed voting restrictions based upon judicial declared interdiction or judgment (Ronald, 2015).⁷

A majority of electoral democracies that have amended disenfranchisement laws since 2000 have adopted more lenient policies. In 1993, an amendment to the Canada Elections Act led to the removal of suffrage restrictions imposed on “prisoners serving sentences of less than two years” (Willem, 2015, p. 6). As a result of *Sauvé v. Canada* (2002), the Supreme Court of Canada also removed voting restrictions from prisoners serving two years or more in prison (Willem, 2015). Finland incorporated the voting rights of prisoners into established law, and allowed all prisoners to vote (Sanna, 2013, p. 3). New Zealand went through periods of less restrictive and more restrictive disenfranchisement laws and amended the Electoral Act of 1993 in 2010 to disenfranchise all prisoners irrespective of the length of sentence. This turn was more punitive in comparison to the more lenient amendments in other countries (Barker & McMillan, 2016). Albania introduced the “Decriminalization Law” which disenfranchises prisoners convicted of certain crimes listed in the Criminal Code (OSCE/IDIHR Needs Assessment Report, 2017, p. 6)

Table 2 displays the degree of disenfranchisement for each country. Overall no region is significantly more or less likely to disenfranchise; however, there are some notable regional differences across countries. A majority of electoral democracies in Latin America impose some restriction on the voting rights of criminals. Bolivia is the only country in Latin America that imposes no restrictions on criminal suffrage. Western European countries are more likely to have less restrictive disenfranchisement policies or not disenfranchise at all. Thirteen out of sixteen electoral democracies in Africa impose restrictions on the voting rights of prisoners. Although

⁷ The EUDO report for Costa Rica states that there have been no cases of disenfranchisement of prisoners.

the countries in the Caribbean score higher other punitive measures such as death penalty, the degree to which these countries disenfranchise varies to a great extent.

4.3 Data and Sources for Dependent Variable

Four main sources and some additional sources are used to derive information about disenfranchisement policies across electoral democracies, primarily because of the lack of a single source with comprehensive information about all countries. The first source provides detailed reports on the electoral rights in 39 countries. The data are collected and archived by the European Union Democracy Observatory (EUDO) on Citizenship. The Euro citizenship is an “observatory within the European Union Observatory in Democracy (EUDO) web platform hosted at the Robert Schuman Centre of the European University Institute in Florence” (<http://eudo-citizenship.eu/about>). The “Report on Electoral Rights” for each country contains information on the electoral rights for citizens, residents, foreign residents and expatriates. The reports also include information on the minimum voting age, compulsory voting, and voting restrictions (most commonly imposed on persons with mental disabilities or with a criminal status).

The second source is the Inter-Parliamentary Union (IPU Parline, 2017) website which provides information about voter requirements, qualifications and disqualifications for parliamentary elections in 193 countries. Information for all 87 countries can be found on this source. The IPU database provides current information about voter disqualifications in each country for all of the democracies included in this study. The caveat with this database is that it only covers parliamentary elections so for countries that have separate presidential elections, voter registration and qualification information for the executive elections are not specified.

Also, the information pertaining specifically to the voting rights of criminals is not as extensive as other sources, but voter disqualification details are listed. This issue is resolved by cross checking the information with the other three sources.

The third source consists of election reports compiled by the Office for Democratic Institutions and Human Rights (ODIHR). The ODIHR is an office within the Organization for Security and Co-operation in Europe, a regional security organization including 57 states from Europe, Central Asia and North America. The election reports are titled “Parliamentary Elections- Needs Assessment Mission Reports,” and include details about voter registration, voter disqualifications and specific restrictions placed on criminals’ voting rights. For all countries without election reports for 2014, the report from the next closest year was used. For example, Andorra’s report focuses on elections in 2015, and Austria’s report focuses on elections in 2016. To confirm that the reports used from years other than 2014 are still compatible with that year, I examine the date of establishment and any dates the electoral act was amended. If the amendment date falls before 2014, I concluded that the laws reported after 2014 are compatible with 2014.

The fourth source is the election criteria recorded from the Caribbean Elections website which provides information on voter eligibility and voter requirements exclusively for the Caribbean countries included in this study. For each country, a general overview of the electoral system, and specific eligibility and requirements are listed. The eligibility and requirements section mention criteria based on voting age, citizenship status, residency requirements, criminal status, and candidate eligibility. For countries that were not well represented in the four sources mentioned, additional sources were used to derive information for disenfranchisement policies.⁸

⁸ The countries that required additional sources were: Bangladesh, Benin, Comoros, Israel, Liberia, and Papua New Guinea.

The advantage of having four databases is the ability to cross-check the information for those countries included in more than one database. The EUDO and ODIHR databases offer more extensive information in comparison to the IPU and CE databases. The data available for the nations in the Caribbean and the smaller democratic countries in the Western hemisphere is not as extensive as the data for countries in Europe. More extensive data are also available for nations that have dealt with court cases related to disenfranchisement policies like the United States, United Kingdom, Ireland, Austria, Australia, Canada Italy and France. This information can be found mostly in the court briefs and general reporting about the cases. For countries in which criminal disenfranchisement has not been a topic of public discussion, most of the information collected is derived from the four sources mentioned. A chart on page _ displays the countries included in each database, for the purposes of comparing the degree of information collected per country.

4.4 Explanatory Variables

4.4.1 Democracy

I examine four aspects of democracy to determine its impacts the probability and degree of disenfranchisement. I measure democratic persistence by recording the number of continuous years a country is listed as an electoral democracy between 1990 and 2014, with 25 being the maximum number of years and 0 being the minimum number of years. I choose the year 1990 as the starting point because the Freedom House electoral democracies data begins in 1989.

Approximately 77 percent of electoral democracies have maintained democratic status for a majority of those 25 years. The high mean value (21.982) suggests that electoral democracies have generally maintained democratic status for close to 25 years. The variation between the

Table 3: Descriptive Statistics for Continuous Predictors

	Mean	Std. Dev.	Minimum	Maximum	Observations
Democratic Participation	0.517	0.149	0.181	0.830	89
Democratic Persistence	21.982	5.417	5	25	111
Aggregate Score	82.685	13.821	55	100	111
Ethnic Fractionalization	0.371	0.241	0	0.908	109
Incarceration Rate	177.469	134.886	6	799	111
GDP/capita (log)	9.193	1.352	5.871	12.142	111
Population (log)	15.035	2.495	9.297	20.981	111

minimum and maximum number of years is considerably high; however only a small 6 countries fall below the 10-year mark. Some of the countries that have been electoral democracies for a shorter time between 1990 and 2014 include the Philippines (5 years), Bangladesh (7 years) a Bosnia-Herzegovina (7 years). Namibia, Mauritius and Ecuador are just 3 of the 61 countries maintained democratic status for the full 25 years.

I include a lagged measure of the aggregate democracy score reported by Freedom House for the year 2010 to account for the degree of democracy in each country. The Freedom House aggregate score ranges from 0 (worst) to 100 (best) and combines the scores for both political rights (0 to 40) and civil liberties (0 to 60).

To measure the degree of democratic participation, I use the *v2x_partipdem* variable from the V-Dem: Varieties of Democracy dataset. The data are compiled by the University of Gothenburg – V-Dem Institute, and the University of Notre Dame, Kellogg Institute. The version used is Version 6 from March 2016. The *v2x_partipdem* variable measures the extent to which “the ideal participatory democracy is achieved” in each country (University of Gothenburg: V-

Table 4: Descriptive Statistics for Binary Predictors

	Does the country disenfranchise criminals?		
	No	Yes	Total
Torture			
No	7	19	26
Yes	25	60	85
Total	32	79	111
Degradation			
No	8	20	28
Yes	24	59	83
Total	32	79	111
Death penalty			
No	22	56	78
Yes	10	23	33
Total	32	79	111
Common Law			
No	26	64	90
Yes	6	15	21
Total	32	79	111
Third Wave			
No	12	38	50
Yes	20	38	58
Total	32	76	108

Dem Institution 2016, p.47).⁹ Approximately 59 percent of electoral democracies have a democratic participation score higher than the average. Countries that score high on democratic participation include: Denmark, Switzerland, Australia and Brazil. Some countries that score low on democratic participation include Bosnia-Herzegovina, Malawi, and Lesotho.

I include a binary measure of third wave democracy, accounting for countries that transitioned into an electoral democracy after 1975. The assumption is that countries coded as third-wave democracies will have more lenient disenfranchisement policies. Table 3 shows that electoral democracies are also slightly more likely to be third wave democracies as opposed to first or second wave.

⁹ The ideal participatory democracy is described as societies that “emphasize engagement in civil society organizations, direct democracy, and sub-national elected bodies...also takes the level of electoral democracy into account”(University of Gothenburg: V-Dem Institution, 2016, p.47)

4.4.2 Punitiveness

I employ five measures of punitiveness to determine its impact on the probability and degree of disenfranchisement. Overall, a higher number of countries were reported to employ punitive practices in 2014. The first two predictors of punitiveness, death penalty and incarceration rates are modeled after Uggen, Van Brackle, and McLaughlin (2009). Uggen, Van Brackle and McLaughlin (2009) use a dichotomous measure of capital punishment, accounting for whether each country has retained or abolished the death penalty. Deviating slightly from prior measurements, I combine the countries that have legally abolished the death penalty and countries that have retained the death penalty legally, but have not practiced it in the last 10 years, into a single category and code both as 0. I code the latter as zero because if a country has not practiced the death penalty in over a decade, the degree of punitiveness is lower in comparison to countries that maintain the practice. Countries that have retained the death penalty and countries “whose laws provide for the death penalty for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances” are both coded as 1 (Amnesty International 2014, 65). This data are obtained from the Death Sentences and Executions report for 2014 compiled by Amnesty International. Approximately 70 percent of electoral democracies have abolished the death penalty as of 2014. A majority of the electoral democracies that have retained the death penalty are in the Caribbean Island, and also disenfranchise criminals.

Incarceration rates are obtained from two sources, (1) the 10th and 11th edition of the World Prison Population Lists; and (2) the World Prison Population website. The prison population list contains the prison population rates for each individual country for a given year. The rates for 2014 that were not included either report was obtained from the World Prison Brief

website, which lists the prison population rates at 2 year increments. Countries that were missing prison population rates for 2014, I used the rate for the closest available year (before or after 2014).

Incarceration rates vary to large extent across electoral democracies. Sixty one percent of countries have incarceration rates below the mean. Seychelles (799), the U.S. (693) and St. Kitts and Nevis (607) have the highest incarceration rates while San Marino (6) has the lowest incarceration rate. Majority of countries have prison population rate below 200. Approximately 13 countries have a prison population rate above 400. The highest prison population rate of 698 and 714 consecutively is held by the United States followed by a rate of 607 in St. Kitts and Nevis in 2014. Palau also had a high population rate of 523 in 2014 and 492 in El Salvador in 2014. The lowest incarceration rate of 21 is held by Liechtenstein in 2014. The US has the highest incarceration rate of 714 in 2014. There pronounced difference between the mean incarceration rate and the maximum incarceration rate indicates that countries with high incarceration rates as mentioned above may be outliers in the data. Figure 1 shows that most incarceration rates fall below 200. The world incarceration rate in 2014 was approximately 145, and democracies generally fall below the world average. Ethnic fractionalization (elf) across electoral democracies tends to be more evenly distributed across countries with approximately 49 percent of countries with an elf score below the mean and 51 percent with a score above the mean.

I include a binary measure of torture that accounts for mental and physical abuse by government officials, physical force by police and prison guards, deaths while in custody, and more extreme practices such as rape, weatherboarding, electrocution, and mental abuse of persons in custody (CIRI codebook 2014, p.17). Countries that practice torture occasionally or

frequently are coded as 1. Countries that do not practice torture or in which torture is underreported, are coded as 0. Seventy six percent of electoral democracies reported problems of torture and seventy five percent reported degrading practices.¹⁰

I measure the degree of degradation by examining whether criminals are subject to degrading treatment while in prison, by police, and other authority. The information about degradation is derived from the “Annual Country reports on Human Rights Practices- the Human Rights report” which “covers internationally recognized individual, civil, political, and workers rights, as set forth in the Universal Declaration of Human Rights and other international agreements,” for 2014 (<https://www.state.gov/j/drl/rls/hrrpt/>). Under section titled “Respect for Human Rights” there is a section (Section C) that addresses any reports of torture or degradation within that year. The severity of the reports is gauged by interpreting the language used in the text. Any evidence in the reports mentioning torture, degrading treatment or other violent and cruel behavior are considered in the measure for degradation. If the human rights reports indicate that torture, ill-treatment, abuse, excessive force or other forms of violence were used against prisoners; the information is noted as degrading treatment. Degradation is measured on a 4 point scale accounting for the level of degradation with a value of 1 indicating no reports;¹¹ a value of 2 low levels of degrading treatment; a value of 3 indicating moderate levels of degrading treatment; and a value of 4 indicating high levels of degrading treatment. Reports that mentioned the occasional use of torture, or that police sometimes used excessive force, were marked as moderate. Reports that mentioned a high number of complaints for physical or mental abuse by the police, harsh and/or life-threatening conditions in the prison systems and death were marked as high. Countries with reports that mention degradation as an issue being addressed by the

¹⁰ There is a possibility that degradation still occurs without reporting due to issues with underreporting.

justice system with the goals of reducing it and claim that reports of torture were unfounded of unsupported are marked as Low. Some countries do not have reports for the year 2014. There is a possibility that degradation occurs even without reporting, but because even minor degradation is reported in some countries, the absence of reporting is equated to no degradation in this study.

I include a binary measure indicating countries that have common law tradition. The data are derived from the legal systems data in the CIA World Fact book. I include this measure as an indicator of punitiveness because DeMichele (2010) states that common law regimes are more punitive, and finds that common law regimes increase the likelihood of incarceration. Table 3 shows that electoral democracies are less likely to be influenced by common law tradition. Only 21 out of 111 electoral democracies are influenced by common law tradition. Out of the 21 countries majority are likely to disenfranchise prisoners.

(<https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html>)

4.4.3 Race/Ethnicity

To determine the impact of racial/ethnic fractionalization on the probability and degree of disenfranchisement, I employ the ethnic fractionalization measure from Alesina et al. (2003). Uggen, Van Brackle, and McLaughlin (2009) use this same measure to determine the probability of prison voting across countries. The ethnic fractionalization measure takes into account how likely it is that two people from the population will be of the same ethnic background. I also include a squared measure of ethnic fractionalization to account for non-linear effects.

4.4.4 Control Variables

I control for the GDP per capita, and the population in each country. Both variables were included in Uggen, Van Brakle, and McLaughlin (2009) analysis of prisoner disenfranchisement. The study finds that there is an inverse relationship between population and disenfranchisement and an inverse relationship between GDP per capita and disenfranchisement. Prior literature suggests that more populated countries are less likely to democratize (Colomer 2007). Tonga is the smallest country in my dataset and has a population of 105, 782, while the largest country is India, with a population of 1,294,000,000). The literature states that countries with a smaller population are more likely to be democracies in comparison to countries with larger population (Clague et al., 2000; Ott, 2000). Ott (2000) finds that smaller states, which she defines as states with a population of less than 5 million, are more likely to be democracies in comparison to larger states. Clague et al. (2000) finds that island countries are more likely to be democracies because they are often isolated states in which the population and the government has to work in small groups to achieve political goals which reduces the likelihood of an opposition. Since my sample size contains electoral democracies with a smaller population, controlling for population will take into account the established relationship between population and democracy.

I include GDP per capita in my models as a control because prior literature establishes a positive relationship between democracy and development (Uggen, Van Brakle, and McLaughlin, 2009). Lipset (1960) argues that wealthier countries with a higher income per capita are more likely to be democracies (Lipset 1960). Przeworski, Alvarez, Cheibub and Limongi (2000) contend that wealthier countries are also more likely to be democratically stable. Uggen, Van

Brackle, and McLaughlin (2009) find that, nations with a lower GDP per capita are more likely to disenfranchise prisoners

The mean per capita for countries that allow prisoners to vote is 16.1 in comparison to a lower per capital of 7.1 for countries that do not allow prisoners to vote. Uggen, Van Brackle, & McLaughlin (2009) also use a logged measure of the total population to determine if more populated countries are more or less likely to disenfranchise. Though results in that study indicate that population rate is not significantly correlated with the differences in disenfranchisement policies, the size of the population can impact other variables used in this study. Population size can impact the depth of the prison population. Rather than the prison population being high in certain countries due to crime, it may be that the population of that country is larger in comparison to other countries. Controlling for overall population will help confirm the relationship between prison population rate and disenfranchisement policies

CHAPTER 5

FINDINGS

Hypothesis one predicts that democracy will decrease the degree and probability of disenfranchisement. Table 5 reports the coefficients and robust standard errors for all variables measuring democracy with a binary measure of criminal disenfranchisement. Table 6 reports the results for same models with the ordinal measure of criminal disenfranchisement. Models one through four control for population; however GDP per capita is excluded from Models one through three because of high correlation with aggregate score (.803), democratic persistence (.572) and democratic participation (.706).

The relationship between disenfranchisement and third wave democracies is significant at the ($p < .10$) level in the expected direction in the binary and ordinal model suggesting that third wave democracies are less likely to disenfranchise. This finding is consistent with the predictions made in chapter three about third wave democracies being more likely to extend the franchise to prisoners because of an emphasis on civil participation and universal suffrage. GDP per capita is significant in both the binary ($p < .10$) and ordinal model ($p < .05$) in the expected direction suggesting the wealthier countries are less likely to disenfranchise. This finding is consistent with the findings in Uggen, Van Brakle, and McLaughlin (2009), in which average GDP per capita was significantly higher in countries that disenfranchised. GDP per capita

Table 5: Logistic Regression: Predicting the Impact of Democracy on Criminal Disenfranchisement Policies across Electoral Democracies

	(1)	(2)	(3)	(4)
Population (log)	0.049 (0.081)	0.036 (0.086)	0.115 (0.137)	0.041 (0.103)
Democratic Persistence	0.022 (0.039)			
Aggregate. Score (e.g., -5)		-0.007 (0.016)		
Dem Participation (e.g., -5)			-1.702 (1.727)	
GDP/capita (log)				-0.323+ (0.190)
Third wave				-0.969+ (0.518)
Constant	-0.271 (1.570)	1.003 (2.151)	0.007 (1.967)	3.815 (2.532)
Observations	111	111	89	108

Robust standard errors in parentheses
+p<.10 **p<.05, ***p<.01

Table 6: Ordered Logistic Regression: Predicting the Impact of Democracy on the Degree of Criminal Disenfranchisement Policies across Electoral Democracies

	(1)	(2)	(3)	(4)
Population (log)	0.048 (0.062)	0.020 (0.067)	0.037 (0.114)	0.039 (0.076)
Democratic Persistence	0.003 (0.037)			
Aggregate Score (e.g., -5)		-0.021 (0.015)		
Democratic Participation (e.g., 5)			-2.227 (1.463)	
GDP/capita (log)				-0.300* (0.149)
Third Wave				-0.735+ (0.401)
Observations	111	111	89	108

Robust standard errors in parentheses
+p<.10 *p<.05, **p<.01

Table 7: Logistic Regression: Predicting the Impact of Punitiveness on Criminal Disenfranchisement Policies Across Electoral Democracies

	(1)	(2)	(3)	(4)	(5)
Population (log)	0.054 (0.082)	0.041 (0.080)	0.044 (0.080)	0.106 (0.098)	0.071 (0.091)
GDP/capita (log)	-0.065 (0.148)	-0.086 (0.161)	-0.062 (0.152)	-0.126 (0.168)	-0.117 (0.167)
Incarceration	0.001 (0.002)				
Death Penalty		-0.187 (0.482)			
Common Law Tradition			0.013 (0.515)		
Torture				-0.751 (0.638)	
Degradation					-0.471 (0.592)
Constant	0.515 (1.853)	1.183 (1.935)	0.861 (1.861)	1.115 (1.983)	1.319 (1.977)
Observations	111	111	111	111	111

Robust standard errors in parentheses

+p<.10, *p<.05, **p<.01

Hypothesis two predicts that punitiveness increases the degree and probability of disenfranchisement. The results demonstrate that incarceration rate has a positive effect on disenfranchisement. Table 7 and eight report the coefficients and robust standard errors for the punitiveness variables with a binary and ordinal measure of criminal disenfranchisement, respectively. As reported in Table 9, the punitiveness variables were not significant predictor's of criminal disenfranchisement policies in electoral democracies when tested with the binary measure of the dependent variables.

Table 8: Ordered Logistic Regression: Predicting the Impact of Punitiveness on the Degree of Criminal Disenfranchisement Policies across Electoral Democracies

	(1)	(2)	(3)	(4)	(5)
Population (log)	0.054 (0.064)	0.032 (0.064)	0.033 (0.062)	0.069 (0.073)	0.077 (0.074)
GDP/capita (log)	-0.086 (0.129)	-0.060 (0.132)	-0.078 (0.127)	-0.123 (0.136)	-0.170 (0.136)
Incarceration	0.003+ (0.001)				
Death Penalty		0.162 (0.439)			
Common Law Tradition			0.078 (0.469)		
Torture				-0.473 (0.486)	
Degradation					-0.768 (0.525)
Observations	111	111	111	111	111

Robust standard errors in parentheses

+ $p < .10$ * $p < .05$, ** $p < .01$

The results in Table 8, show that with the ordinal measure of the disenfranchisement, the relationship between incarceration rate and the degree of disenfranchisement policies is significant at the ($p < .10$) level suggesting that electoral democracies with high incarceration rates are more likely to disenfranchise prisoners. Some reasons for why incarceration rate is not significant in the logistic regression may be that the binary dependent variable does not vary as much as in the ordinal measure. The ordinal measure separates the most restrictive countries from the least restrictive countries and the relationship between incarceration rates may be more pronounced in the most restrictive countries

Table 9: Logistic Regression: Predicting the impact of Racial and Ethnic Fractionalization on Criminal Disenfranchisement Policies across Electoral Democracies

	(1)	(2)
Population (log)	0.051 (0.081)	0.055 (0.081)
GDP/capita (log)	-0.024 (0.163)	-0.054 (0.164)
Ethnic Fractionalization	0.187 (0.971)	2.947 (3.479)
Ethnic Fractionalization ²		-3.546 (4.225)
Constant	0.311 (2.112)	0.208 (2.091)
Observations	109	109

Robust standard errors in parentheses

+p<.10 *p<.05, **p<.01

Hypothesis three predicts that higher levels of ethnic fractionalization will increase the degree and probability of disenfranchisement. Table 9 and ten displays the results from the logistic and ordered logistic regression with the ethnic fractionalization predictor. The relationship between ethnic fractionalization and the degree of criminal disenfranchisement is significant at the ($p<.10$) level with the ordinal measure of disenfranchisement. Consistent with prior findings in Uggen, Van Brakle, and McLaughlin (2009), the results suggest that electoral democracies with higher levels of ethnic fractionalization are more likely to impose restriction on the voting rights of prisoners.

Table 10: Ordered Logistic Regression: Predicting the impact of Racial and Ethnic Fractionalization on the Degree of Criminal Disenfranchisement Policies across Electoral Democracies

	(1)	(2)
Population (log)	0.055 (0.062)	0.059 (0.063)
GDP/capita (log)	-0.020 (0.140)	-0.050 (0.142)
Ethnic Fractionalization	1.441+ (0.840)	5.787+ (3.499)
Ethnic Fractionalization ²		-5.577 (4.436)
Observations	109	109

Robust standard errors in parentheses

+p<.10 *p<.05, **p<.01

Table 11: Multivariate Logistic Regression: Factors Predicting Criminal Disenfranchisement Policies across Electoral Democracies

	Baseline	Punitiveness	Democracy 1	Democracy 2	Democracy 3	Democracy 4	Race/Ethnicity
Population (log)	0.0435 (0.082)	0.145 (0.099)	0.023 (0.106)	0.061 (0.141)	0.053 (0.096)	0.041 (0.103)	0.051 (0.081)
GDP/capita (log)	-0.062 (0.152)	-0.212 (0.175)				-0.323+ (0.190)	-0.024 (0.163)
Incarceration Rate		0.002 (0.002)					
Death Penalty		-0.256 (0.544)					
Common Law		-0.014 (0.588)					
Degradation		-0.459 (0.720)					
Torture		-0.709 (0.786)					
Aggregate Score (e.g., -5)			-0.016 (0.017)				
Third Wave			-0.693 (0.492)	-1.038* (0.512)	-0.529 (0.478)	-0.969+ (0.518)	
Democratic Participation (e.g., -5)				-2.895+ (1.718)			
Democratic Persistence					0.0125 (0.041)		
Ethnic Fractionalization							0.187 (0.971)
Constant	0.869 (1.881)	1.295 (1.970)	2.323 (2.724)	2.053 (2.235)	0.138 (1.998)	3.815 (2.532)	0.311 (2.112)
Observations	111	111	108	89	108	108	109

Robust standard errors in parentheses
+p<.10 *p<.05, **p<.01

Table 12: Multivariate, Ordered Logistic Regression: Factors Predicting Criminal Disenfranchisement Policies across Electoral Democracies

	Baseline	Punitiveness	Democracy 1	Democracy 2	Democracy 3	Democracy 4	Race/Ethnicity
Population (log)	0.046 (0.063)	0.168* (0.078)	0.002 (0.080)	0.0129 (0.111)	0.0429 (0.071)	0.039 (0.076)	0.055 (0.062)
GDP/capita (log)	-0.119 (0.128)	-0.285+ (0.151)				-0.300* (0.149)	-0.020 (0.140)
Incarceration Rate		0.004* (0.002)					
Death Penalty		0.0594 (0.529)					
Common Law		-0.0875 (0.566)					
Degradation		-1.130+ (0.604)					
Torture		-0.313 (0.543)					
Aggregate Score (e.g., -5)			-0.0278+ (0.0156)				
Third Wave			-0.602 (0.401)	-0.760+ (0.429)	-0.400 (0.384)	-0.735+ (0.401)	
Democratic Participation (e.g., -5)				-3.156* (1.562)			
Democratic Persistence					-0.0041 (0.0380)		
Ethnic Fractionalization							1.441+ (0.840)
Observations	111	111	108	89	108	108	109

Robust standard errors in parentheses

+p<.10 *p<.05, **p<.01

Table 11 displays the results from a multivariate logistic regression with factors predicting criminal disenfranchisement policies across democracies. Table 12 presents the results from the multivariate ordered logistic regression with factors predicting criminal disenfranchisement policies across democracies.

I present the baseline model (Model one) which contains only the control variables, logged GDP per capita and logged population. GDP per capita and population are both in the model to account for the variation in wealth and population, respectively, across democracies. Both variables were significant predictors of disenfranchisement in Uggen, Van Brakle, and McLaughlin (2009). GDP per capita has a positive effect on democracy (Lipset 1960), while population size has been shown to have a negative effect on democracy (Ott, 2000; Clague, 2000). Neither population nor GDP per capita are significant in the baseline model. On its own GDP per capita does not seem to be a significant predictor; however the variable becomes significant in some of the other models. These controls are included in the punitiveness model, the democracy model with the measure for third wave democracy and in the race/ethnicity models. GDP per capita is excluded from the first three democracy models due to high correlation with aggregate score, democratic participation and democratic persistence.

Model two in both tables, introduces the punitive predictors. With the binary DV the explanatory variables are not significant but with the ordinal DV, population becomes significant at the ($p < .05$) level, GDP per capita at ($p < .10$), incarceration rate at ($p < .05$) and degradation at ($p < .10$). The results in the model suggest that countries with higher incarceration rates are likely to also impose restrictions on prisoner right to vote. Surprisingly, degradation is significant, but in the opposite direction from what was expected. Higher level of degradation is an indicator of

punitiveness so the assumption was that countries that report degradation practices would be more likely to disenfranchise.

Models 3 and four test the impact of the democracy variables on disenfranchisement policies. I test each democracy variable independent of GDP per capita because that variable is highly correlated with aggregate score, third wave democracy, and democratic participation. Aggregate score and democratic participation are significant in models three and four respectively at the ($p < .10$) level in the expected direction. Third wave democracy is significant at the ($p < .10$) level in the expected direction along with GDP per capita at the ($p < .05$) level also in the expected direction. The significance of the democracy variables lend support to my hypothesis predicting that democracy will decrease the probability and degree of disenfranchisement. Electoral democracies with higher aggregate scores are less likely to impose restrictions on prisoners' right to vote. The significance of the democratic participation variable suggests that electoral democracies that allow for other forms of political participation (aside from voting) are less likely to impose voting restrictions on criminals. The democratic participation variable captured other forms of participation in society external to voting. The negative effect that democratic participation has on criminal disenfranchisement reinforces the importance of the procedural aspects of democracy. This relationship suggests that societies that disenfranchise prisoners may be dealing with issues of participation external to the issue of criminal disenfranchisement.

The results for Model four suggest that third wave democracies are less likely to disenfranchise. This also highlights the importance of procedural aspects of democracy such as elections and democratic participation. As discussed in Chapter three, third wave democracies place greater emphasis on participation, and fair election of representatives. Societies that want

to make these processes fair are more likely to live up to the ideals of universal suffrage that most democracies wish to incorporate. Pogrebinshi (2013) states, that, Latin American countries have adopted participatory tactics as a part of the process of democratization. Pogrebinshi (2013) argues that citizens in the citizens of Latin America had expectation of participatory government at the point of democratic consolidation. Rather than the focus being purely on representative governments, Latin American citizens desired a more participatory government with a flourishing Civil Society and more chances to participate in government. Third wave democracies put more emphasis on these external civic forms of participation, and may extend the right to participated to citizens at all levels, without or without criminal conviction.

Model 5 displays race/ethnicity measurements. Ethnic fractionalization is significant at the ($p < .10$) level lending support for my third hypothesis predicting that the degree of ethnic fractionalization will increase the degree of disenfranchisement. This suggests that countries that are more ethnically fractionalized are more likely to impose restrictions on the voting rights of prisoners. This finding is consistent with the findings in Uggen, Van Brakle, and McLaughlin (2009).

CHAPTER 6

CONCLUSION

6.1 Central Findings

The central question this project seeks to answer is why prisoner disenfranchisement policies vary across electoral democracies. I predicted that the variations in aspects of democracy, punitiveness and ethnic fractionalization in electoral democracies would impact the degree and probability of prisoner disenfranchisement.

The results of this study demonstrate that the variables measuring democracy carry the most weight in explaining the variation in prisoner disenfranchisement policies across electoral democracies. Electoral democracies that place more emphasis on the procedural aspects of democracy like participation, elections, and the extent to which civil and political freedoms are accessible within society are less likely to disenfranchise.

Hypothesis one predicted that democracy will decrease the degree and probability of disenfranchisement. The results demonstrate that the probability of prisoner disenfranchisement in electoral democracies decreases if the country is a third wave democracy and if the country has higher levels of democratic participation. Third wave democracies place emphasis on the participatory aspects of democracy such as elections and political participation. The negative relationship between third wave democracies and prisoner disenfranchisement policies suggests that disenfranchisement is less likely in societies that place higher value on participation, and civic involvement.

Scholars have noted that third wave democracies democratized prior to becoming a strong modern state and face an array of challenges; such as political corruption and problems with institutional design (Rose and Chin, 2001). Third wave democracies may face challenges with development and stability; however the significant negative effect that that third wave democracies have on the probability of prisoner disenfranchisement speaks to the importance of participation in democracy. It suggests the democracies that maintain the procedural aspects of democracy like civic participation and elections are also fulfilling a core aspect of democracy that are not being met by countries that place less emphasis on participation. The significant negative effect that democratic participation has on disenfranchisement also reinforces this point. Prisoner disenfranchisement is an exclusionary practice that directly contradicts the inclusive notions of universal suffrage. Countries that transitioned to democracies in the first and second waves placed more restrictions on suffrage limiting the voting rights to property-owning men (Malone, 2015). In contrast, universal suffrage was the starting point of democratization for third wave democracies. The specific emphasis that third wave democracies placed on the importance of suffrage and participation may help explain why third wave democracies are more likely to extend the franchise to prisoners.

Hypothesis two predicts that punitiveness increases the degree and probability of disenfranchisement. Since the intended goal of disenfranchisement is generally punitive, I assumed societies that tolerate more severe forms of punishment would be more inclined to punish and marginalize criminals. The results demonstrate that incarceration rate has a positive effect on disenfranchisement. Uggen and Manza (2006) contend that mass incarceration has been linked to the growing population of felons who have been disenfranchised in the United States.

Hypothesis three predicts that ethnic fractionalization will increase the degree and probability of disenfranchisement and the results demonstrate that ethnic fractionalization has a positive effect on disenfranchisement.

6.2 Future Research

In 2014 approximately eighty percent of electoral democracies imposed some restrictions on the voting rights of prisoners. The exclusionary nature of criminal disenfranchisement is paradoxical to democratic principles and challenges the notion that core democratic values are rooted in equal participation. The right to vote is a fundamental element of citizenship in democratic societies because voting is one of the primary ways that citizens engage with the government. Those in favor of criminal disenfranchisement justify the practice by claiming that it is a method of controlling and protecting the criminal justice system, the opposing group argues that the disenfranchisement of felons is a growing impediment to the universal political participation in democratic nations. In practice, countries all over the world have chosen to continue to disenfranchise at various levels: based on gender, race, ethnicity, citizenship, imprisonment and persons who are believed to be a problem or a threat to society.

Currently, the U.S. has some of the toughest disenfranchisement policies. Other nations like Bulgaria and Belgium follow in the footsteps of the US and impose a complete ban on voting for prisoners. The puzzle in this debate is that disenfranchisement laws vary significantly across various democracies; even though disenfranchisement laws in democracies should be similar in theory. This dissertation delves deeper into the theoretical underpinnings of the current debates surrounding criminal disenfranchisement, and analyzes the distribution of disenfranchisement policies across electoral democracies through three lenses; democracy,

punishment and race. Previous explanations of why disenfranchisement laws vary to such degree are also explored, including: (a) historical events and evolution, (b) institutional explanation disenfranchisement and (c) national factors (such as GDP per capita, population, ethnic fractionalization and several other influences). More nuanced data are part of the contribution of this project, and a more thorough explanation of the theoretical underpinnings of the current debates surrounding criminal disenfranchisement policies. Some of the common factors that have had significant impact on disenfranchisement policies in the United States like race and punishment are observed in the context of other electoral democracies to see if similar relationships are significant. Though punitive and social factors were not significant in this study, differences in procedural aspects of democracy prevailed as a viable explanation of why disenfranchisement varies across electoral democracies.

The low predictive power of punitive factors like the death penalty, torture and degradation on the variation of disenfranchisement policies in electoral democracies does not suggest that the punitive factors overall are irrelevant. The connection between punishment and disenfranchisement makes intuitive sense because disenfranchisement itself is often considered a punitive response to crime. Scholars differ in their opinion of whether criminal disenfranchise is a punitive practice or simply a way to regulate the criminal population. States have argued that the intent of disenfranchisement is to regulate the vote. Politicians and the public; however, have been more vocal about supporting policies that marginalize criminals. The support for more punitive policies by the public may be related to external conditions like the fear of crime, anger about crime (Johnson, 2001) and a response to worsening crime rate (Tyler & Boeckman, 1997). Politicians may favor more punitive policies to appear harder on crime (Schneider & Ingram, 1993; Mauer, 1999), which can impact the degree of punishment in society include incarceration

rates. All of this suggests that criminal disenfranchisement in many cases is intended to punish the criminal and therefore, the degree to which the society is punitive in other aspects can impact the degree to which they disenfranchise. There are other ways to gauge punitiveness such as public perception of crime, the opinions of leading politicians, the portrayal of crime and criminals in the media, and whether the society takes a rehabilitative approach towards helping former criminals reintegrate back into society. These factors would be interesting to explore in the context of criminal disenfranchisement in a future project. Degradation was not a significant predictor of disenfranchisement policies in this study; however, the relationship between prison conditions, treatment of prisoners and the standards that each individual state sets for these practices is still worth exploring because these factors alone vary across countries (Haney, 2006). Punitive factors like degradation and torture may not be predictors of criminal disenfranchisement in the context of democracies, but its predictive power can be explored in the context of other regime types.

Continuing the research on the comparative differences in criminal disenfranchisement policies would add to the growing number of comparative studies related to this topic. The absence of larger patterns across the data requires more focused case studies could reveal information about patterns that may exist among a smaller number of countries, or within a region. Future directions for this research would first, require more extensive data collection. Some factors related to racial discrimination and degrees of punitiveness are not readily available for all democracies. This may be due to underreporting or other data availability issues such as a lack of an archival base. The available data across countries is also uneven as more extensive data are available for European Countries while the data for microstates are less available.

Another beneficial direction for future research is to develop a more nuanced dependent variable. One of the reasons this was hard to accomplish in the current study is because of the lack of primary sources confirming the smaller differences of the policies in each country. For instance, at what point are prisoners disenfranchised? When do prisoners regain their rights, immediately upon release or are there further barriers to cross prior to re-enfranchisement? The data for some countries confirmed that disenfranchisement begins at the prison walls. This information was obtained for a select number of countries for which more extensive reports are available. Some of these countries include Austria, Greece, Ecuador and the United States. In Austria, the period of disenfranchisement ends after the sentence is served unless the offender is categorized as a danger to society. In Greece, prisoners can regain the right to vote 3-5 years after serving the allotted sentence but this is dependent upon the nature and gravity of the crime. In Ecuador, prisoners regain the right to vote once the sentence ends. Information about the types of crimes that are considered severe enough to warrant the removal of voting rights would also be interesting for a future study. Countries that punish for more severe crimes as opposed to lesser crimes should be categorized differently and while this information was available for some countries, such details were harder to find for the microstates.

It would also be fruitful to study the impact race and ethnicity in more detail. Though the ethnic fractionalization was not significant in this study, in accordance with group threat theory suggests that the power dynamics between the different groups in society causes the dominant group to marginalize the minority group; however a measurement for *marginalization* is not included in the study. Marginalization could be the cause of certain racial/ethnic group being overrepresented in the prison systems in a nation that restricts or limits the vote of prisoners. If a

large ratio of a racial/ethnic group is incarcerated, they cannot participate in the political process, and therefore the majority group can continue to disenfranchise the minority group.

Marginalization occurs when the members of a group are (a) denied access to dominant-decision making processes and institutions over time, (b) isolated or segregated, (c) stigmatized by their identification and (d) generally excluded from control over the resources that shape the quality of their lives. As a result of being forced by the majority to live outside of social, political and economic norms, marginal groups often lack the political and social capital to make an impact on the policy making processes that dictate their daily lives. (Cohen, 37). While the marginalized population in a society does not always have to be the minority group; each society still has some groups who are socially, politically, and economically marginalized by the majority group. The power dynamics between the majority/marginalized groups of a given society, will determine whether the marginalized group will be accounted for in the policymaking process. If the majority group is somehow tied to the opinions of the marginalized group through elections specifically, then decisions have to be taken to benefit all parties. Racial and ethnic marginalization in relation to criminal disenfranchisement has been discussed in relation to the US, where the prison population consists of a disproportionate amount of African American and Latino prisoners. The prevalence of restrictive disenfranchisement laws in the US has been argued to be in part because minorities are more likely to be affected by disenfranchisement policies. Behrens et al. (2003) argue that while disenfranchisement laws appear “race neutral” on the surface, in the US race is palpably tied to criminal punishment. (Behrens et al., 2003, p. 560). Also in the US, the overrepresentation of African-Americans in the prison systems is paralleled by the passage of harsher disenfranchisement laws.

My project stems from questions about why democracies have exclusionary practices such as criminal disenfranchisement. Democracy can be defined in many ways but the degree to which democracies are inclusive of the population is an important factor to consider when judging democracies (Dahl, 1973). The project highlights the relationship between participatory aspects of democracy and its impact on exclusionary practices like restriction of voting right for prisoner. Electoral democracies that score lower on participatory aspects of democracy are more likely to also disenfranchise criminals. The relationship between criminal disenfranchisement and aspects of democracy suggest that taking away a prisoners right to vote may have bigger implications on the overall foundation of democracy. On a larger scale this further highlights the challenges that criminal disenfranchisement practices pose to democratic integrity.

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