

# Introduction to Political Science: American Politics

POLI 10

Week 3, Day 5

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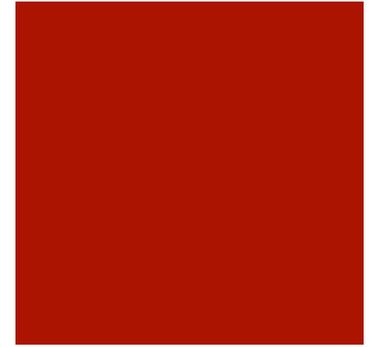
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# Agenda for Today



- The Judiciary
  - Authority for Judicial Review
  - Structure of the Federal Judiciary
  - The Supreme Court's Place in the Separation of Powers
  
- Civil Rights and Liberties
  - What are Civil Rights?
  - The Politics and Legacy of Black Civil Rights
  - The Voting Rights Act
  - Voter Identification Laws
  - Felon Disenfranchisement

# Authority for Judicial Review: Article III of the Constitution



- **Article III** of the United States Constitution establishes the judicial branch of the federal government.
  - The judicial branch comprises the Supreme Court of the United States and lower courts as created by Congress.
- Section 1 vests the judicial power of the United States in federal courts, requires a supreme court, allows inferior courts, requires good behavior tenure for judges, and prohibits decreasing the salaries of judges.
- Article III authorizes and sanctions the establishment of (only) one Supreme Court, but does not set the number of justices that must be appointed to it.
- The Supreme Court is the only federal court that is explicitly mandated by the Constitution.

# The Authority for Judicial Review: Marbury v. Madison



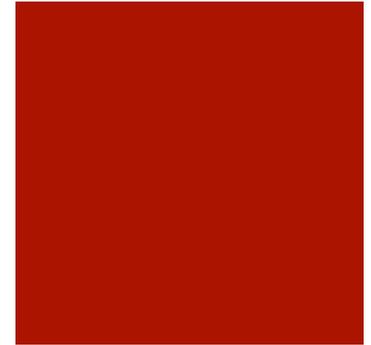
- This landmark case formed the basis for the exercise of judicial review in the US under Article III of the Constitution.
- The Supreme Court has the authority to review acts of Congress and determine whether they are unconstitutional and void.
- It is emphatically the duty of the Judiciary to say what the law is.
  - Those who apply the rule to particular cases must, of necessity, expound and interpret the rule.

# The Authority for Judicial Review: Marbury v. Madison



- If two laws conflict with each other, the Court must decide on the operation of each.
  - If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.
- Congress cannot expand the scope of the Supreme Court's original jurisdiction beyond what is specified in Article III of the Constitution.

# How the Supreme Court Checks the Other Branches of Government



## ■ **Supreme Court against Congress, President**

- Art I, section 3: Chief Justice presides at impeachment of President .
- Art III, section 2: Judicial review of Congressional acts.

## ■ **Supreme Court against President**

- Art III, section 2: Judicial review of Presidential acts.

# How other branches check the Supreme Court



- **Congress against Supreme Court**

- Art II, section 2: Must give consent to Supreme Court nominations.

- **President against Supreme Court**

- Art II, section 2: Nominate judges of Supreme Court.

# The Supreme Court's Place in the Separation of Powers



- Judicial review seems to give the Supreme Court the last word on much of public policy.
- But, this is not necessarily so.
- Even when the Court's members agree on a decision and solve their internal compliance problem, the high court still faces obstacles when its policy preferences differ from those of Congress and the President.
- Typically, when the Executive or the Legislative Branch have decided on a course of action – they usually prevail.

# Structure of the Judiciary

## The American Court Structure



- The U.S. has a **dual court** system
  - (1) System of **state** courts
  - (2) System of **federal** courts
- The authority that any court has to hear a case is determined by jurisdiction, which varies from court to court and must be established by the plaintiff or petitioner.
  - Thus, cases typically do not begin at the appellate level.
- An appeal is *not* a retrial or a new trial of the case.
  - The appellate courts do not usually consider new witnesses or new evidence.
  - Appeals are usually based on arguments that there were errors in the trial's procedure or errors in the judge's interpretation of the law.
  - In most instances, the appellate courts weigh whether the issues were preserved at trial.

# US Court Structure

- **Federal Courts** (3 major paths to the SC)

- **PATH 1:**

- District Courts



- Circuit Courts (13 of them)



- Supreme Court of the United States

- **PATH 2:**

- (1) Hearings at certain independent regulatory agencies OR (2) US Tax Courts



- Circuit Courts (13 of them)



- Supreme Court of the United States

- **PATH 3:**

- (1) US Court of Customs and Patent Appeals OR (2) US Court of Military Appeals OR (3) US Court of Claims



- Supreme Court of the United States

- **State Courts** (2 major paths to the SC)

- **PATH 1:**

- Minor Courts



- Trial Courts



- State Appellate Courts



- State Supreme Court



- United States Supreme Court

- **PATH 2:**

- Trial Courts



- State Appellate Courts



- State Supreme Court



- United States Supreme Court

# The US Supreme Court



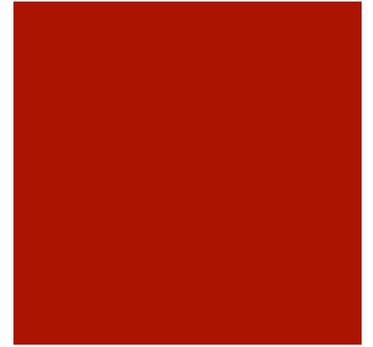
- The US Supreme Court may hear cases:
  - Appealed from the federal courts
  - Appealed from the state courts
  - Directly if it has original jurisdiction Article III, Section 2 of the Constitution Court of last resort in all questions of federal law and U.S. Constitution.
- The US Supreme Court is composed of:
  - 1 chief Justice
    - (Justice Roberts)
  - 8 Associate Justices
    - Justice Ginsburg
    - Justice Kagan
    - Justice Sotomayor
    - Justice Kennedy
    - Justice Breyer
    - Justice Alito
    - Justice Thomas
    - (*Vacant*)

# Judicial Ideology



- Judges enter office with established preferences about political issues of the day.
- Generally, Democratically- appointed judges tend to be more liberal than their Republican- appointed counterparts.
- Consequently, when one party controls the presidency over time, the cumulative impact of new appointments can significantly shift judicial policy.
- Remember, however, that judges are appointed for life. At any given moment, the preferences of some of them may differ significantly from those of politicians who control Congress and the White House.

# Civil Liberties



# What are Civil Rights?



- **Civil rights** are a class of rights that protect individuals' freedom from infringement by governments, social organizations, and private individuals.
- They ensure one's ability to participate in the civil and political life of the society and state without discrimination or repression.

# Civil Rights in the Constitution



- The Constitution – as it originally emerged from the 1787 Philadelphia convention, did not seriously address civil liberties.
- The Constitution actually has acquired civil liberties protections in several steps over a long period of time.
- The **FIRST** step – the inclusion of the **BILL OF RIGHTS**
  - Advocated by the anti-federalists
  - Insulated citizens from interference by the federal government in a variety of areas
- The **SECOND** step – 75 years after Civil War – the **14<sup>th</sup> AMENDMENT**

# Civil Rights in the Constitution



- After the Civil War and in 1868 – several constitutional amendments were proposed.
- The most important for Civil Rights was the 14<sup>th</sup> AMENDMENT.
- Fourteenth Amendment, Section I:
  - “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the *privileges or immunities* of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without **due process of law**; nor deny to any person within its jurisdiction the **equal protection of the laws**.”

# The 14<sup>th</sup> Amendment

- Notable for several reasons:

1. It extended the Bill of Rights to the States == a process known as **incorporation**.
  2. It created the Due Process Clause
  3. It created the Equal Protection Clause
- **DP claims:** Whether the government interference is justified by a sufficient purpose (*law denies a right to everyone*)
    - If law denies right to everyone's challenge under Due Process
  - **EP claims:** Whether the government discrimination as to who can exercise the right is justified by a sufficient purpose (*law denies a right to some, while allowing it to others*)
    - If the law denies the right to some, while allowing to others to challenge as offending equal protection.

# The 14<sup>th</sup> Amendment



1. Incorporation of the Bill of rights into the Fourteenth Amendment.
  - Prior to the ratification of the Fourteenth Amendment and the development of the incorporation doctrine, the Supreme Court in 1833 held in *Barron v. Baltimore* that the *Bill of Rights* applied only to the federal, but not any state governments
  - With the adoption of the 14<sup>th</sup> amendment, the Bill of Rights was incorporated to apply to the states.
  - This was a historic development in civil liberties, comparable to the adoption of the Bill of Rights itself.
  - Under the **incorporation doctrine**, the Bill of Rights now also applies to the state and local governments.

# The 14<sup>th</sup> Amendment

## 2. It created the Due Process Clause

- Due process ensures the rights and equality of all citizens under **federal AND state law.**
  
- Substantive v. Procedural Due Process
  - **Procedural Due Process**
    - Where an individual is facing a deprivation of life, liberty, or property, procedural due process mandates that he or she is entitled to adequate notice, a hearing, and a neutral judge.
  
  - **Substantive Due Process**
    - Government must justify infringement by showing that its action is sufficiently related to an adequate justification
      - (Specifics on next slide)

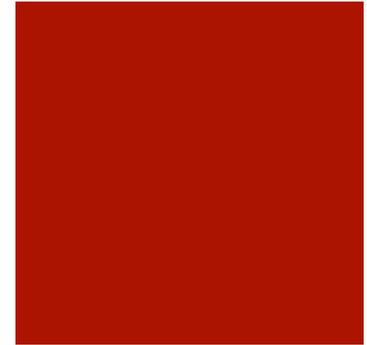
# The 14<sup>th</sup> Amendment



## ■ Substantive Due Process

- Evaluates whether there has there been a deprivation of Life, Liberty, or Property.
- Also evaluates whether there was a deprivation of a Fundamental Right.
  - Factors to consider whether a right is fundamental:
    - Text of the Constitution
    - Values
    - Scope of the right (in the phrasing) (i.e. Scalia says that the fundamental right in question should be framed in the most narrow manner possible)
    - Tradition
    - Precedent

# The 14<sup>th</sup> Amendment



## 3. It created the Equal Protection Clause

- Since *Brown v. Board of Education*, the SC has relied on the EP Clause as a key provision for combating invidious discrimination and for safeguarding fundamental rights

### How we apply the 14th Amendment:

Level of scrutiny	Means	Relationship	Ends
<b>Strict scrutiny</b> race, national origin, discrim against aliens		Necessary	Compelling
<b>Intermediate Scrutiny</b> gender, non-marital children		Substantial	Important
<b>Rational Basis</b> everything else	Reasonable	Rational	Legitimate

# Brown v. Board— a case that was decided under Equal Protection

## ■ Facts:

- Several black children sought admission to public schools that required or permitted segregation based on race.
- This was a class action suit was filed against the Board of Education of the City of Topeka, Kansas in the United States District Court for the District of Kansas. The plaintiffs were thirteen Topeka parents on behalf of their 20 children.
- The Topeka Board of Education operated separate elementary schools under an 1879 Kansas law, which permitted (but did not require) districts to maintain separate elementary school facilities for black and white students in 12 communities with populations over 15,000.
- The plaintiffs alleged that segregation was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.



# Brown v. Board– a case that was decided under Equal Protection



- Issue: Is the race-based segregation of children into separate but equal public schools constitutional?
- Holding: The race-based segregation of children into separate but equal public schools is not constitutional and violates the Equal Protection Clause of the Fourteenth Amendment.

# Brown v. Board– a case that was decided under Equal Protection



## ■ Reasoning:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

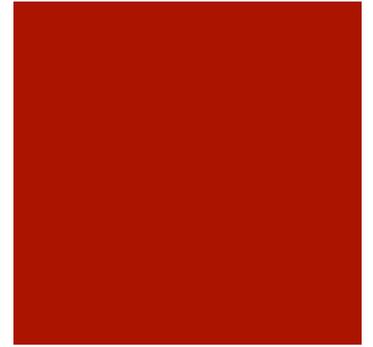
"We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. "

# Brown v. Board— a case that was decided under Equal Protection

- Facts: This case is a consolidation of several different cases from Kansas, South Carolina, Virginia, and Delaware. Several black children sought admission to public schools that required or permitted segregation based on race. The plaintiffs alleged that segregation was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.
- Judicial Procedure: In all but one case, a three judge federal district court cited Plessy v. Ferguson in denying relief under the separate but equal doctrine. On appeal to the Supreme Court, they contended that segregated schools were not and could not be made equal and that they were therefore deprived of equal protection of the laws.
- Issue: Is the race-based segregation of children into separate but equal public schools constitutional?
- Reasoning: The court reasoned that since schools were in their infancy at the time of the passage of 14th amendment, intent of the framers is not super helpful.
- Holding: The race-based segregation of children into separate but equal public schools is not constitutional and violates the Equal Protection Clause of the Fourteenth Amendment.
- Takeaway: Today it is clearly established that laws separating the races are racial classifications that will be allowed only if strict scrutiny is met.

Now onto a case decided  
under Due Process:

Loving v. Virginia



# Loving v. Virginia – a case that was decided under Substantive Equal Protection and Fundamental Rights



- Court found that there was a **fundamental right to marry** in Loving v. Virginia under the 14<sup>th</sup> Amendment's Equal Protection Clause
- Facts:
  - Does anyone know what happened here?

# Loving v. Virginia – a case that was decided under Substantive Equal Protection and Fundamental Rights



## ■ Facts:

- In June, 1958, two residents of Virginia, Mildred Jeter, a Negro woman, and Richard Loving, a white man, were married in the District of Columbia pursuant to its laws.
- Shortly after their marriage, the Lovings returned to Virginia and established their marital abode in Caroline County.
- At the October Term, 1958, of the Circuit Court of Caroline County, a grand jury issued an indictment charging the Lovings with violating Virginia's ban on interracial marriages.
- On January 6, 1959, the Lovings pleaded guilty to the charge, and were sentenced to one year in jail; however, the trial judge suspended the sentence for a period of 25 years on the

# Loving v. Virginia – a case that was decided under Substantive Equal Protection and Fundamental Rights



- Trial Judge stated in an opinion that:
  - (LATE 1950s)
- **"Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And, but for the interference with his arrangement, there would be no cause for such marriage. The fact that he separated the races shows that he did not intend for the races to mix."**

# Loving v. Virginia – a case that was decided under Substantive Equal Protection and Fundamental Rights



- After their convictions, the Lovings took up residence in the District of Columbia.
- On November 6, 1963, they filed a motion in the state trial court to vacate the judgment and set aside the sentence on the ground that the statutes which they had violated were repugnant to the Fourteenth Amendment.
- This didn't work.

# Loving v. Virginia – a case that was decided under Substantive Equal Protection and Fundamental Rights



- The Lovings were convicted of violating § 258 of the Virginia Code:

"Leaving State to evade law. -- If any white person and colored person shall go out of this State, for the purpose of being married, and with the intention of returning, and be married out of it, and afterwards return to and reside in it, cohabiting as man and wife, they shall be punished as provided in § 20-59, and the marriage shall be governed by the same law as if it had been solemnized in this State. The fact of their cohabitation here as man and wife shall be evidence of their marriage."

- AND Section 259, which defines the penalty for miscegenation, provides:

"Punishment for marriage. -- If any white person intermarry with a colored person, or any colored person intermarry with a white person, he shall be guilty of a felony and shall be punished by confinement in the penitentiary for not less than one nor more than five years."

- The Lovings appealed to the Supreme Court

# Loving v. Virginia – a case that was decided under Substantive Equal Protection and Fundamental Rights



## ■ Issue:

- Whether a statutory scheme adopted by the State of Virginia to prevent marriages between persons solely on the basis of racial classifications violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

## ■ Held:

- For reasons which seem to us to reflect the central meaning of those constitutional commands, the Court concluded that these statutes cannot stand consistently with the Fourteenth Amendment.

# Loving v. Virginia – a case that was decided under Substantive Equal Protection and Fundamental Rights



## ■ Reasoning:

- The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.
- Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival.
- To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law.
- The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations.
- Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State.

# Loving v. Virginia – a case that was decided under Substantive Equal Protection and Fundamental Rights



- End Game:

- Loving v. Virginia created a “fundamental right to marry” under the Due Process Clause of the 14<sup>th</sup> Amendment.



Where did all of this lead?

- Civil Rights Movement
- Voting Rights Act
- Voter ID Laws Today
- Unbalanced Criminal Justice System
- Felon Disenfranchisement

# Origins of the Civil Rights Movement

- Before the Civil War, almost 4million Blacks were enslaved in the South and only white men of property could vote.
- Following the Civil War, three constitutional amendments were passed:
  - 13th Amendment (1865) ended slavery
  - 14th Amendment (1868)
  - 15th Amendment (1870) that gave Black males the right to vote
- Many whites resisted the social changes, leading to insurgent movements such as the Ku Klux Klan (which engaged in targeted violence against Blacks) and also leading to the institution of laws that continued to disenfranchise Blacks, including:
  - Literacy tests, poll taxes, grandfather clauses, and a formalized era of segregation (in housing, medical care, education, employment, and transportation)

# Civil Rights Movement



- The movement was characterized by major campaigns of civil resistance.
- Between 1955 and 1968, acts of nonviolent protest and civil disobedience produced crisis situations and productive dialogues between activists and government authorities.
- Forms of protest and/or civil disobedience included boycotts such as the successful Montgomery Bus Boycott (1955–56) in Alabama; "sit-ins" such as the influential Greensboro sit-ins (1960) in North Carolina; marches, such as the Selma to Montgomery marches (1965) in Alabama; and a wide range of other nonviolent activities.

# Culminated in Legislation



- **Civil Rights Act (1964)**

- A landmark piece of civil rights legislation in the United States
- Outlawed discrimination based on race, color, religion, sex, or national origin.
- It ended unequal application of voter registration requirements and racial segregation in schools, at the workplace and by facilities that served the general public (known as "public accommodations").

- **Voting Rights Act (1965)**

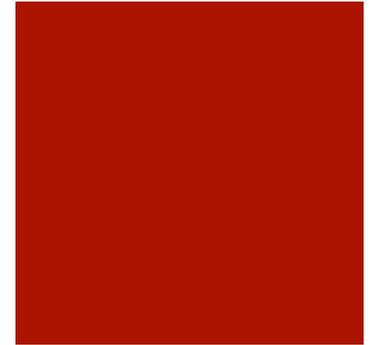
- Another landmark piece of civil rights legislation
- Prohibits racial discrimination in voting.
- The Act contains numerous provisions that regulate election administration.



Today, we have voter identification laws—  
which may still be presenting a barrier to  
participation for already disenfranchised  
groups

# Voter Identification Laws Today

Hajnal, Lajevardi, and Nielson (2016)



- Main Question:
  - Are voter identification laws fair?
  - Do they limit the access and participation of the nation's most disadvantaged?
  - Are these laws racially discriminatory?

# Voter Identification Laws Today

## Hajnal, Lajevardi, and Nielson (2016)

- Voter identification laws have been a topic of discussion since 1950 when South Carolina became the first state to request some form of identification at the polls (NCSL 2015).
- Since then, more states have instituted some form of voter ID law.
- But it is only within the last decade that the strictest forms of voter ID have proliferated and voter ID laws have received widespread attention.
- All told, 34 states currently enforce some form of a voter identification law
  - Of these, 11 are strict ID laws state that require a person to show identification in order to vote.
  - More states appear to be waiting on the wings. New Mexico, Nevada, Iowa, and others are all considering new stricter voter identification laws (NCSL 2015).

# Voter Identification Laws Today

## Hajnal, Lajevardi, and Nielson (2016)



### ■ Proponents of Voter ID Laws

- They are warranted and that they do not reduce the participation of citizens.
- Fraud is a real and potentially widespread phenomenon that could alter electoral outcomes and erode faith in democracy.
- For the Americans who have identification, the laws raise no new barriers. For the tiny subset of Americans who do not, the requirement represents a small hurdle that is easily overcome.
- The American public strongly favors these laws

### ■ Opponents of Voter ID Laws

- Argue they are unnecessary and ultimately detrimental to democracy.
- Activist groups like the Brennan Center for Justice claim that voter ID laws serve as effective barriers that limit the legitimate participation of racial and ethnic minorities and other disadvantaged groups
- There is almost no voter fraud and thus little reason to enact these laws in the first place.
- If these critics are correct, voter identification laws are having widespread consequences not only for who wins and who loses, but also for the representativeness and fairness of our democracy.

# Voter Identification Laws Today

Hajnal, Lajevardi, and Nielson (2016)



- Consequences of Voter ID laws – are enormous
  - These laws do, in fact, have real consequences for the makeup of the voting population.
  - Where they are enacted, racial and ethnic minorities are less apt to vote.
  - The voices of Latinos and to a slightly lesser extent those of Blacks, Asian Americans, and multi-racial Americans all become more muted and the relatively influence of white America grows.
  - An already significant racial skew in American democracy becomes all the more pronounced.

# Voter Identification Laws Today

Hajnal, Lajevardi, and Nielson (2016)



- Consequences of Voter ID laws – more specifically
  - LATINOS
    - Hispanic turnout is 7.1 points lower in strict voter ID states than it is in other states in general elections and 5.3 points lower in primary elections.
    - For Latinos in the general election, the predicted gap more than doubles from 4.9 points in states without strict ID laws to 13.5 points in states with strict photo ID laws. The predicted Latino-white gap more than triples from 3.4 points to 13.2 in primaries
  - BLACKS
    - For Blacks, the gap is negligible in general elections but a full 4.6 points in primaries.
    - The predicted gap in general contests increases from 2.9 points to 5.1 points and in primaries more than quintuples from 2.5 points to 11.6 points.

# Voter Identification Laws Today

Hajnal, Lajevardi, and Nielson (2016)



- Consequences of Voter ID laws – more specifically
  - ASIAN AMERICANS
    - For Asian Americans the drop in voting is 5.4 points in general elections and 6.2 points in primaries .
    - For Asian Americans the predicted gap grows from 6.5 percent to 11.5 points in general elections and from 5.8 points to 18.8 points
  - MIXED RACE AMERICANS
    - And for multi-racial Americans turnout is 5.3 points lower in strict voter ID states in general elections and 6.7 points lower in primary elections
    - Multi-racial Americans voted at almost the exact same predicted rate as whites (a 0.1 point gap) in primaries in non-strict ID states but were 7.1 percent less likely than whites to participate in primaries in strict ID states, all else equal.

# Voter Identification Laws Today

Hajnal, Lajevardi, and Nielson (2016)



- Consequences of Voter ID laws – more specifically
  - WHITE AMERICANS
    - White turnout is relatively flat and, if anything, increases slightly in strict identification states.
    - The increase for white turnout in strict ID states is 0.2 points in general elections and 0.4 points in primary elections

# Voter Identification Laws Today

## Hajnal, Lajevardi, and Nielson (2016)

- Consequences of Voter ID laws – more specifically
  - DEMOCRATS V. REPUBLICANS
    - Democratic turnout drops by an estimated 8.8 percentage points in general elections when strict photo identification laws are in place.
    - By comparison, the predicted drop for Republicans is only 3.6 points.
    - PARTICIPATION GAP: In particular, in primary elections, the model predicts that the turnout gap between Republicans and Democrats more than doubles from 4.3 points to 9.8 points when strict ID laws are instituted
  - CONSERVATIVES V. LIBERALS
    - For strong liberals the estimated drop in turnout in strict photo identification states is an alarming 7.9 percentage points. By contrast, strong conservatives actually vote at a slightly higher rate – 4.8 points - in strict ID states, all else equal.
    - PARTICIPATION GAP: Likewise in primary elections, the predicted gap between conservatives and liberals more than doubles from 7.7 to 20.4 points.





Where are we in the Criminal  
Justice System today?

# Introduction to the Criminal Justice System



- Since the early 1970s the prison and jail population in the US has increased at an unprecedented rate.
  
- As of 2014:
  - **6.8 million** people under the supervision of U.S. adult correctional system.
    - This includes people in local jails, state and federal prison, and on probation or parole.
  
  - **2.2 million** people in the US were in jail or prison
    - **202,000** federal prison ← federal misdemeanors and felonies
    - **1,263,000** in state prison ← felonies (sentences more than 1 year)
    - **744,600** in local jail ← misdemeanors (sentences up to 1 year)

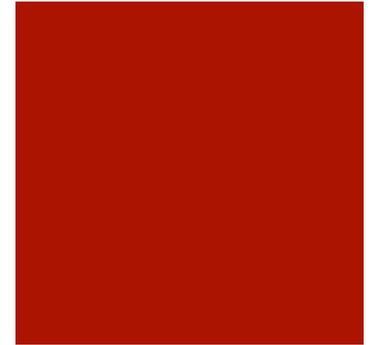
# Race and the Criminal Justice System: Male Distribution

- This growth in incarceration has been accompanied by an increasingly disproportionate racial composition
- In 2014, **2.7%** of ALL **black males** and **1.1%** of ALL **Hispanic males** were sentenced to more than 1 year in state or federal prison at yearend 2014
  - In CA → this means they were sentenced to something MORE than a misdemeanor (i.e. a felony).
- In 2014 – Male Prison Population in State or Federal Prison :
  - Black males: 516,900 inmates or **37%** of the male prison population
    - Blacks make up 12.3% of the entire US population
  - White males: 454,600 inmates or **32%** of the male prison population
    - Whites make up 63% of the entire US population
  - Hispanic males: 308,700 inmates or **22%** of the male prison population
    - Hispanics make up 17% of the entire US population

# Race and the Criminal Justice System: Female Distribution

- First, females only represent 7% of the TOTAL state and federal prison population over the past decade.
- Next, for females, the racial composition is different and more aligned (though not exactly proportional) with racial distribution in the country.
- In 2014 – Female Prison Population in State or Federal Prison :
  - White females: 53,100 inmates or **49.98%** of the female prison population
    - Whites make up 63% of the entire US population
  - Black females: 22,600 inmates or **21.27%** of the female prison population
    - Blacks make up 12.3% of the entire US population
  - Hispanic females: 17,800 inmates or **16.75%** of the female prison pop
    - Hispanics make up 17% of the entire US population

# If current trends continue ...



- If current trends continue:
  - **1/3 Black men** can expect to spend time in prison during his lifetime
    - (six times the rate for Whites)
  - **1/6 Hispanic men** can expect to spend time in prison during his life
    - (double the rate for Whites).
- Thus, this **overrepresentation** of people of color in the nation's criminal justice system, also referred to as **disproportionate minority contact** (DMC), is a serious issue in our society.

# What is DMC? (Disproportionate Minority Contact)

- DMC: An issue in 1988 when a federal mandate required states to address disproportionate **juvenile** offenders.
  - This led to increased *information* on racial disparities in the juvenile system and efforts to reduce these disparities
  - However, no such efforts have been made for the adult system
- Why DMC is problematic:
  - People of color are incarcerated in greater numbers
  - People of color face harsher penalties for the same crimes as Whites
- Important to know where the discrepancies are occurring if we ever want to fix the problem at the adult system level

# DMC and Arrests

## (Data from 2003-2006)

- The FBI collects regular arrest data and gives us statistics.
  - BUT Arrests are reported by race but not by ethnicity → so no good federal data on Hispanics .
- Blacks were arrested, on average, 2.5 times more than Whites.
- The TYPE of crime matters for disparities bw Black and White arrests:
  - For Violent Offenses and Drug categories, Blacks were **3.5** times more likely than Whites to be arrested for those crimes.
  - For Murder, Robbery, and Gambling, Blacks were **6** times more likely than Whites to be arrested.
  - Whites were more likely than Blacks to be arrested for alcohol- related crimes.

# DMC and New Admissions to Prison (Data from 2003-2006)

- New Admissions is a good DMC indicator because they represent “tough on crime” sentencing laws and policies, which typically mandate incarceration, and thus, which can directly increase new admissions.
- When New Admissions to Prison are reported by race and ethnicity, here is what we find:
  - Blacks were admitted to prison at a rate almost 6 times higher than that for Whites.
  - Hispanics were admitted at 2 times the rate for Whites.
  - Native Americans were admitted at over 4 times the rate for Whites.
  - Rates of new admissions due to probation or parole revocations were much higher for people of color than for Whites.

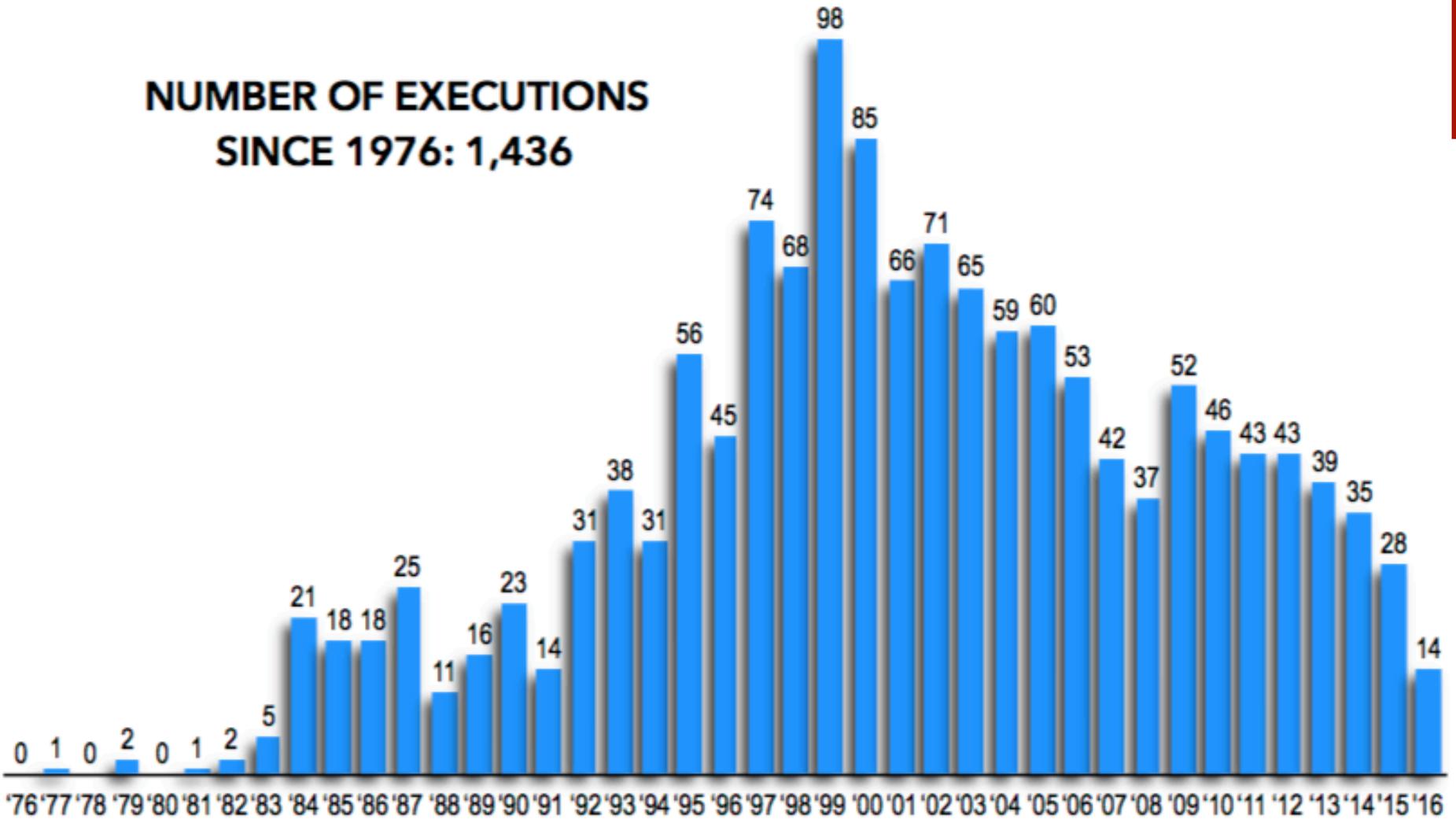
# DMC and Death Penalty (Data from 2003-2006)

- Today, 31 states have the death penalty for certain crimes.
- Although they made up just 13% of the US population, African Americans were 42% of inmates on death row nationwide in 2006, which translates to a rate of 4.7 times the rate for Whites.
- The rate at which African Americans were on death row was almost 5 times the rate for Whites.

# DMC and Death Penalty



## NUMBER OF EXECUTIONS SINCE 1976: 1,436



# What does all this mean for outcomes that political science cares about?



- The flipside to the criminal justice system is that has some political penalties as well.
- Being a felon can affect a person's right to vote.
- And the right to vote matters: there is no clearer way that citizens can gain representation or policy congruence than by voting and choosing leaders who represent them.
- In the US today, by far the largest group of citizens who are denied the right to vote are those who have received a felony conviction.

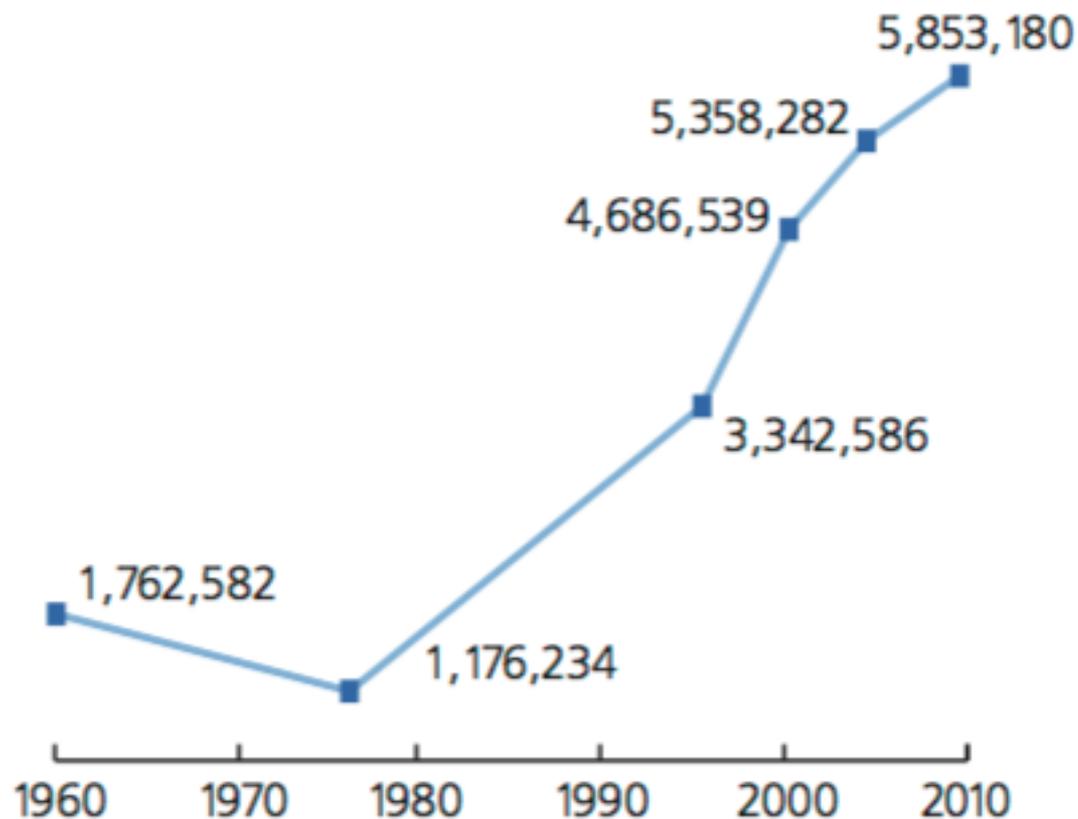
# Brief History of Voter Requirement Laws

- The US has long excluded groups from participating in the franchise.
- The original constitution counted slaves as 3/ 5 of a person.
  - From 1779 until 1870, enslaved Blacks were precluded from voting until the 15th Amendment in 1870.
    - The Amendment prohibited federal and state governments from denying a citizen the right to vote based on race, color or previous condition of servitude.
- But even once Blacks were given the right to vote state legislatures added other measures:
  - Burdensome residency requirements, instituted periodic registration dates, imposed poll taxes, required literacy requirements, and often enacted stringent disqualification provisions in an effort to preclude their participation.
- Today we have Voter ID Laws and Felon disenfranchisement laws that have similar effects.
  - Since racial minorities disproportionately make up the percent felons in this country relative to their population size, felon disenfranchisement laws are just another burdensome voter requirement law that hurts minority voters from participating

# Growth of the Disenfranchised Population over time

- The overall disenfranchisement rate has increased dramatically in conjunction with the growing U.S. prison population.
- It has risen from 1.17 million in 1976 to 5.85 million by 2010.

Figure B. Disenfranchised Population, 1960-2010



# What does all this mean for outcomes that political science cares about?

- Today, A striking 5.85 million Americans are prohibited from voting due to laws that disenfranchise citizens convicted of felony offenses.
- In many states, there are laws governing when felons can and cannot vote. There are generally 5 types of laws that prohibit people from voting in the following instances

No restriction	Prison	Prison & Parole	Prison, Parole & Probation	Prison Parole & post sentence (some or all)
2 states	15 states	4 states	18 states	12 states =~45% of disenfranchised population (7 states permanently deprive)



# Challenges of Felon Disenfranchisement Laws are Typically Unsuccessful

- I.e. *Richardson v. Ramirez* 418 U.S. 24 (1974)
  - The Supreme Court upheld California's felony disenfranchisement policies as constitutional, finding that Section 2 of the Fourteenth Amendment allows the denial of voting rights "for participation in rebellion, or other crime."

# The question remains: What are the political consequences of felon disenfranchisement?



- Data: Congressional Cooperative Election Study from 2006-2014
- Observations: 178,804 of eligible voters across 50 states
- Findings:
  - In **General Elections**:
    - As the strictness of a felon disenfranchisement law increases, the voting rate of the *eligible* Black population in a given state reduces compared to their white counterparts.
  - In **Primary Elections**:
    - Same finding as before:
    - As the strictness of a felon disenfranchisement law increases, the voting rate of the *eligible* Black population in a given state reduces compared to their white counterparts.
    - BUT the reduction effects are more severe in primary elections – compared to general elections

# Conclusion

- The ability to vote is one of the most centerfold tenets of democracy
- The negative and significant relationship we observe between the strictness of felon disenfranchisement laws and the political participation of Blacks indicates that these laws are having a burdensome effect on the electorate.
- Currently 12/50 states have the strictest types of these laws.
- In sum, racial and ethnic minorities are being kept away from democratic process due to the presence of these laws.
- Stark and negative outcomes for American democracy.

# LAST NOTES:

## ■ CLASS NEXT WEEK

### ■ **Monday:** Race and representation

- Bowler and Segura (2012). "The Future is Ours: Minority Politics, Political Behavior, and the Multiracial Era of American Politics." Scanned copy of Chapter 2 on TED. Read all.
- Blank "An Overview of Trends in Social and Economic Well-Being by Race? In Neil Smelser et al, America Becoming: Racial Trends and Their Consequences." Scanned copy of Pp21-40 on TED. Read all.
- Thernstrom and Thernstrom (1997) "America in Black and White: One Nation Indivisible." Scanned Copy of Pp 183-202 on TED. Read all.
- Abrajano and Hajnal (2015) "White Backlash: Immigration, Race, and US Politics." Read the Introduction on TED
- Terkildsen "When White Voters Evaluate Black Candidates: The Processing Implications of Candidate Skin Color, Prejudice, and Self-Monitoring" on TED. Read all.
- Butler and Broockman "Do Politicians Racially Discriminate Against Constituents? A Field Experiment on State Legislators" on TED. Read all.

### ■ **Wednesday:** Congress (shortened class)

- KJKV Chapter 6

