

MONKEY CAGE

Making it easier for Black people to vote had unexpected consequences

White backlash to the Voting Rights Act led Southern states to imprison more Black people.

Analysis by Nikita Lalwani

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The Voting Rights Act of 1965, which outlawed racial discrimination in voting, is widely understood to have “ushered in a new era of Black voter participation.” But according to a new study from Duke University political scientists Nicholas Eubank and Adriane Fresh, it also had a serious unintended consequence. Section 5 of the law required certain states to “preclear” any voting-related changes with the attorney general or the D.C. District Court. In states covered by Section 5, Eubank and Fresh found that Black prison admissions rates — and the difference between Black and White admissions rates — increased more than they did in other states. That finding, they say, shows “the potentially perverse consequences of enfranchisement when establishment power seeks — and finds — other outlets of social and political control.”

In the following interview, which has been edited and condensed, Eubank and Fresh discuss White backlash to the Voting Rights Act and what lessons their study holds for efforts to increase the franchise more broadly.

NL: What should we take away from your study?

NE: The main takeaway is that while the passage of the Voting Rights Act was a really impressive advancement of civil rights in the United States, it wasn’t without some unintended consequences. What we see clearly in the data is that Section 5 resulted in an increase in Black prison admissions rates. Jurisdictions that were subject to the strongest provisions of the act had the largest increases in Black prison admissions after 1965, a pattern that was more likely the result of changes in the behavior of White elites in response to the Voting Rights Act than to changes in the preferences of newly enfranchised Black voters.

NL: You offer two possible hypotheses to explain why the act led to higher rates of incarceration for Black people. Let's first discuss the one you dismiss, which you call the "self-policing" argument. What is that argument and why do you ultimately find it unpersuasive?

NE: The Voting Rights Act enfranchised this very large population of Black voters who had previously been functionally excluded from voting, and most political science theory says that when a group becomes enfranchised they are likely to have the opportunity to express their policy preferences in the political system. So one obvious possibility is that the rise in incarceration rates may have resulted from the increased political influence of Black voters. Scholars have shown that in places like the District of Columbia, for example, efforts to address the rise in drug crime were led by Black elites who wanted to defend the gains of the civil rights movement, which may have led to a rise in Black incarceration in those communities. So it's important to take seriously the possibility that the rise in Black incarceration in the South after the passage of the Voting Rights Act was an unintended consequence of Black citizens saying, "You know, we want some of the benefits of increased policing in our communities since we've been underserved by public safety officers in the past."

In the end, though, we don't find this possibility particularly persuasive. If adding Black citizens to the electorate was going to result in a shift in policy, it would have to be the case that Black citizens wanted more punitive criminal justice policy than White citizens, and we just don't see any evidence for that in public opinion polling from this period. In addition, in counties where Black citizens made up a majority of eligible voters, we actually see that the rise in Black incarceration was much smaller than in other places. The same is true of communities that were able to elect Black officials. So it's unlikely that the "self-policing" argument explains our findings.

NL: You ultimately contend that the rise in Black incarceration was a reaction by the White-dominated Southern political order to the perceived threat of Black enfranchisement. How, exactly, did that work?

AF: One possibility is that White elites viewed Black voters as an electoral threat and therefore used incarceration as an explicit tool to recreate Jim Crow-era voter suppression. Another possibility is that the rise in incarceration was a function of a diffuse reaction among the White electorate and White elected officials who felt that their status was threatened by the end of Jim Crow. This diffuse reaction potentially suffused the criminal justice system at large, which is a bureaucracy that involves a lot of individuals exercising a significant amount of discretion. It may also have led White voters to support candidates with more punitive criminal justice policies.

We can't tell which of the two mechanisms was at work here, but we think the diffuse mechanism is more likely. One reason we're skeptical that incarceration was used as a tool of instrumental voter suppression is that the increase in prison admissions, while very significant from a human perspective, would not have offset the increase in effective enfranchisement among Black people in the South. So it would not have been particularly efficient to try to roll back enfranchisement through felony convictions.

NL: How should your study change how we think about the Voting Rights Act and about efforts to increase the franchise more broadly?

AF: Although we identify a perverse consequence of enfranchisement, we want to be very clear that we do not claim that this consequence abrogates the good that the Voting Rights Act did. Limiting the franchise by race is fundamentally undemocratic, and the act was important, meaningful, and good in marching the United States toward the promise of being a full and complete democratic polity. Our study does, however, identify an important limitation to what the franchise can accomplish, and the ways in which a threatened elite can use tools we might not immediately think of to react to the threat they feel.

NE: Our study is also a reminder that the battle for equal rights is never going to be fixed with any type of silver bullet. Every attempt to fix a problem will likely result in a need to address further responses and reactions.

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