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**The Diffusion of Less Restrictive  
Felon Disenfranchisement Laws in the U.S.**

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**The Diffusion of Less Restrictive FDL  
Felon Disenfranchisement Laws in the U.S.**

**by**

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## **Dedication**

Dedicated to the loving and supportive village it took to help me find my path.

I would like to give special recognition to the following individuals and programs: my high school mentor Brian Sites, who saw my potential and encouraged me to sit for the SAT's that ultimately changed the course of my life; Jackie Ives and Denise Brimmer, who awakened my interest in Government through the We The People Program; the faculty and staff of River's Edge High School; the TRiO Ronald E. McNair Program, the College Assistance Migrant Program, the Department of Philosophy, and the Chicano Education Program at Eastern Washington University; my undergraduate mentor, Dr. Martin Meraz Garcia, and McNair Director Dr. Christina Torres Garcia, who provided endless support in my development as a scholar; my family -- Ariadna Calderon, Elena Mendoza, Gabriel Mendoza, Maria Mendoza Bravo, Irvin Mendoza, Jazmin Mendoza, Marvin Mendoza, Jennifer Mendoza, Henry Ochoa, Miranda Godinez and Humberto Segura.

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## **Abstract**

### **The Diffusion of Less Restrictive Felon Disenfranchisement Laws in the U.S.**

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Approximately 6.1 million Americans have currently lost their right to vote due to a felon disenfranchisement law (FDL). Forty-eight states participate in this punitive practice but vary in their level of restriction. This report explores the reasons for this variability by analyzing the diffusion of FDL, its transformation, and the growth of less restrictive versions over time. It uses policy diffusion as a theoretical lens to test for the role of internal determinants and external mechanisms driving the diffusion of less restrictive FDL. To further understand this policy shift, this report also examines the policy history of states with policy reversals and specifically discusses recent policy changes in multiple states. We conclude this report with key findings and the role of public opinion in further research.

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# **A POLICY PERSPECTIVE ON FDL**

## **Chapter 1: Introduction**

“There are forces trying to make it harder and more difficult for people to participate and we must drown out these forces.” -John Lewis

Concerns about potential threats to our democracy and democratic institutions are on the rise. In response, the Democratic leadership in the U.S. House of Representatives introduced and passed the “For the People Act” (H.R.1) in 2019 and 2021. The stated purpose of this bill is “To expand Americans’ access to the ballot box, reduce the influence of big money in politics, and strengthen ethics rules for public servants, and for other purposes.” In addition, if passed by the Senate and signed by the President, this would be the first federal law to protect voting rights for felons in the U.S. According to the section Democracy Restoration SEC. 1402. RIGHTS OF CITIZENS:

“The right of an individual who is a citizen of the United States to vote in any election for Federal office shall not be denied or abridged because that individual has been convicted of a criminal offense unless such individual is serving a felony sentence in a correctional institution or facility at the time of the election.”

The voting rights of convicted felons would thereby be restored unless they are currently incarcerated. This would help a portion of the 5.2 million Americans who are currently disenfranchised by some version of a state felon disenfranchisement law (FDL).

While FDL have a long-standing presence in the U.S., scholarship regarding this topic has only gained popularity in the last thirty years. This may be a result of recent national attention to the effects of mass incarceration. Despite its recent emergence, scholars from various fields have contributed to the discussion regarding FDL and shed light on the historical, legal, and racist aspects of this policy.

Much of the scholarship is embedded in legal and political theory frameworks that seek to put forth competing arguments for the existence or abolition of FDL. According to Kleinig and Murtagh (2005) these arguments center on social contract violation, protecting electoral purity, and Democratic legitimacy. Arguments such as these, which are founded on moral legitimacy, fail to consider the long-term effects of FDL not only on the individual but on society as well.

Several scholars argue that FDL is unjust and ultimately creates shadow citizens who will never be successfully reintegrated into society (Cammatt, 2012; Cholbi, 2002; Fletcher, 1999). Other scholars have investigated whether FDL have had a significant impact on recidivism (Hamilton-Smith & Vogel, 2012), and other collateral consequences such as voter turnout of African Americans and other racial ethnic minorities (Blessett, 2015; Bowers & Preuhs, 2009; Harvey, 1994; McLeod, White, and Gavin, 2003; Miles, 2004; Ochs, 2006), election outcomes (Burch, 2012; Burmila, 2017; Manza & Uggen, 2004; Uggen & Manza, 2002), and the reintegration of ex-felons into the political system (Gerber et al., 2015; Miller & Spillane, 2012). These studies confirm the detrimental effects FDL have across target populations and elections.

Scholarship on how the public views FDL has captured the complexity of the policy shift taking place regarding felon voting rights. It shows that most Americans are in favor of enfranchising ex-felons (Dawson-Edwards, 2008; Manza, Brooks, & Uggen, 2004) and are against the permanent disenfranchisement of convicted felons (Pinaire, Heumann, & Bilotta, 2003) but opposed allowing felons to vote while in prison (Uggen, 2012). A few scholars have addressed how race and ideology affect attitudes towards FDL, suggesting race and ideology impact attitudes on felon voter restoration (Dawson-Edwards & Higgins, 2013; Wilson, Owen & Davis, 2015). Their findings suggest that African Americans are more likely to support felon enfranchisement (Dawson-Edwards

& Higgins, 2013) and that conservatives are more opposed than liberals to restoring voting rights for felons.

Since FDL vary in their level of restrictiveness by state, other scholars have examined states/regions as case studies to understand their experimentation process (Campbell, 2007; Eisenberg, 2012; Holloway, 2009; McMiller, 2008; Meredith & Morse, 2014; Phillips & Deckard, 2015; Sennott & Galliher, 2006; Stuart, 2004). To further understand the variation, other scholars have assessed the relationship between political/demographic factors and the implementation of more restrictive FDL (Behrens, Uggen, & Manza, 2003; Burkhardt, 2011; Ewald, 2009; Garcia, 2011; Hale, McNeal, and Schmeida, 2006; Murphy, Newmark, and Ardoin, 2006; Preuhs, 2001; Yoshinaka & Grose, 2003, 2005).

Given the severe impact these laws have on a growing population, it is surprising that interest in FDL has only emerged in the last three decades. Previous research only scratched the surface on the impact these laws have had on American lives and the democratic health of this nation. To date, the findings suggest that Americans are largely in favor of disenfranchising felons who are under correctional supervision and against permanent disenfranchisement. However, many FDL policies fall somewhere between these two points on the spectrum, and states continue to experiment with major and minor policy changes to FDL. But why are states revising their previous FDL? And how are these policy changes influencing other states? Since previous research on this topic was inattentive to the influence states have on each other, my report addresses this relationship.

This report both builds on prior work while also addressing some challenges involving data collection and categorization. My first concern involves the accuracy of the data provided in previous reports. Since several scholars have reported conflicting

years of when FDL were first implemented or revised, careful attention was paid to data collection.

For example, Behrens et al. (2003) and Brooks (2004) report different years for some state policy adoptions. In addition, while Yoshinaka & Grose (2003, 2005) report that Maine adopted a policy in 1975 that enfranchised incarcerated felons, there is no record of Maine previously disenfranchising its incarcerated felons. Also, Behrens et al. (2003) and Yoshinaka and Grose (2003, 2005) describe a policy change made in 1983 by Texas that differs from the description by The Sentencing Project. According to these articles, a policy revision resulted in the automatic restoration of voting rights for felons after two years following completion of their prison sentence. Yet, The Sentencing Project reports the lifetime ban was replaced by a “5-Year Waiting Period” in 1983 and the “2-Year Waiting Period” was instead adopted in 1985 (Kalogeras & Mauer, 2003).

Due to these discrepancies, I created an original data set and tracked major and minor policy changes going back to 1776. I gathered data from scholarly articles, state constitutions, news reports, the National Conference of State Legislatures, and the Sentencing Project. I tried to cite at least two sources for every entry to ensure accuracy. The data used in this report is the first of its kind to include a more complete account of FDL in the U.S.

Secondly, the ranking system used to order the restrictiveness of FDL needed to be updated to chart innovative versions of FDL. Previous work established a scale ranging from a total of three to five levels. For example, Purtle (2013) classified FDL across three categories: felons disenfranchised 1) in prison, 2) on parole, 3) on probation. However, previous work had accounted for categories including post-sentence. For example, in 1998, the Sentencing Project released a report titled “Overview and Summary Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United

States,” which divided FDL into four levels of restrictiveness: felons disenfranchised in 1) in prison, 2) on parole, 3) on probation, and 4) some or all ex-felons. Also, Manza and Uggen (2004) provided a table summarizing five levels of FDL: 1) no restriction, 2) disenfranchisement in prison, 3) on parole, 4) on probation, and 5) some or all ex-felons. Only Wilson and Watry (2015) separate “2-5 Year Wait” and “Permanent Disenfranchisement” but do not separate the two (“2- Year” and “5- Year”) and they also group permanent disenfranchisement for select crimes with permanent disenfranchisement.

While previous ranking systems were useful in providing the information necessary for those studies, they are too limiting for future research. As innovative versions of this policy continue to emerge, it is crucial we revisit the ranking system being used. This will help ensure we account for the emergence of innovative policies and accurately capture how restrictive they are in practice. I stress the importance of measurement because previous ranking systems were unable to illustrate how FDL were changing and ultimately shifting towards less restrictive versions of this policy. Only through careful measurement can we accurately document the transformation of this policy and further investigate how and why it is diffusing. For this reason, I developed a seven-level ranking system (discussed in Section 2) and a supplemental chart, which accounts for a range of policy changes.

My last concern with the extant literature stems from the inattention to the external factors influencing the rise of less restrictive FDL. The studies analyzing factors that predict the likelihood a state adopts a more or less restrictive version of this policy is incomplete. The few studies that account for the influence of other states group them by their region (Behrens, Uggen and Manza, 2003) or only consider southern states as a cluster (Burkhardt, 2011; Preuhs, 2001; Yoshinaka & Grose, 2003). Therefore, scholars

have mostly considered internal state characteristics within the realm of political, social, and economic forces to explain the variations.

The variables previously considered are the following: Racial Threat, Economic Competition (Unemployed Whites), Incarceration Rate, Democratic Unity, Prison Rate, Liberalism, Black White Ratio, Democratic Control, African American Voting Age Population (VAP), Hispanic VAP, Poverty, Severity of FDL, Citizen Ideology, Racial Composition of Prison, Racial Composition of State Elected Officials, Party Competition, Political Culture, Minority Population, Legislative Professionalism, Overall Education (Behrens, Uggen and Manza, 2003; Burkhardt, 2011; Garcia, 2011; Hale, McNeal, and Schmeida, 2006; Murphy, Newmark, and Ardoin, 2006; Preuhs, 2001; Yoshinaka & Grose, 2003, 2005).

Although previous scholarship confirms state internal characteristics are influential in whether a state adopts a more or less restrictive FDL, this alone cannot account for the influence states have on each other when making policy changes. Ignoring external mechanisms that drive diffusion neglects the actors and processes involved in policymaking. Essentially, it suggests these policy changes were made in isolation without the influence of neighboring states and it further ignores the process of incremental learning which is taking place.

My report addresses these three concerns. First, it provides a more accurate dataset of FDL implementation and revision. Second, it proposes a new ranking system and supplemental chart to track policy changes. Theoretically, it incorporates the role of state influence in the adoption and ultimate diffusion of less restrictive FDL. Lastly, it provides an overview of policy revisions and reversals. In doing so, the report answers the following questions: When did the shift toward less restrictive FDL begin? How have



FDL changed over time? What is driving the diffusion of less restrictive FDL? And what obstacles are states facing when implementing less restrictive and innovative FDL?

This paper begins with a theoretical overview of policy diffusion and explains why this approach is helpful in understanding the diffusion of less restrictive FDL. The second section provides a historical review outlining the diffusion of restrictive FDL, introduces new measurement tools, and demonstrates spatially and temporally how less restrictive versions of FDL have been diffusing.

The third section first discusses the data and methods used for testing both internal determinants and external mechanisms driving the diffusion of less restrictive versions of FDL. Then it addresses the shift in FDL that has resulted in a wide range of responses from states including policy reversals through different branches of government. I also discuss pending policy changes and conclude the report with a brief discussion for further research.

## **Chapter 2: Theoretical Overview**

American states are commonly referred to as policy laboratories (Brandeis 1932; Shipan & Volden, 2008; Volden, 2006). Since federalism gives states the power to implement policies to address the unique issues they face, states often experiment with various policies and shape them to fit their specific needs. Given this discretion, policymakers often rely on the insight gained from the experimentation of another state. This is well documented since government officials often use shortcuts to find and emulate policies that appear to be convenient solutions for present social or economic problems (Walker, 1969; Volden, 2006). Essentially, states experiment with policies and regardless of the result (either success or failure in solving the issue) all states learn from observing these attempts. Due to the interdependent nature of the policy world, it is difficult to explain policy changes without considering the influence states may have on each other.

Early studies of policy diffusion suggested that cyclical patterns emerge both spatially and temporally as innovative policies are introduced (McVoy, 1940). The classic view of policy diffusion was captured through geographic clustering (Walker, 1969). A spatial image that often comes to mind is the example of ripples spreading from a pebble dropped in a pond (Shipan & Volden, 2012). Innovative policies often emerge and spread through neighboring states or through states with similar demographics and then spread through the region (bubbling-up).

Diffusion is also described temporally; McVoy (1940) saw the process as “first, slow growth and resistance to innovation; second, rapid growth and experimentation; third, diminished growth, consolidation and simplification of structure.” Similarly, Rogers (2003) later described the innovation process as consisting of five distinct groups:

the innovators 2.5%, the early adopters 13.5%, the early majority 34%, the late majority 34% and the laggards 16% (Boushey, 2010). Diffusion typically occurs in a distinctive wave; often “described by a logistic growth curve, or an S-shaped curve (Baumgartner and Jones, 1993, 2009).

Commonly known forces that drive innovation patterns are internal determinants and external mechanisms (Berry & Berry, 2007). Although previously divorced in the early innovation literature, both models; internal determinants and external mechanisms play an interesting role in driving diffusion. Berry & Berry (1990) noted that these two explanations were viewed separately and as having no effect on each other (Downs, 1976; Grupp & Richards, 1975; Light, 1978; Regens, 1980). However, either explanation alone failed to capture the complexity of policymaking. For example, policymakers do not rashly imitate their neighbors’ policies without first considering the compatibility of the policy with the state, nor are they unaffected by the actions of other states. Therefore, this report will consider both internal determinants and external mechanisms to fully assess the forces driving the diffusion of less restrictive FDL.

External mechanisms of diffusion function as reactions to the policy choices of neighboring or influential states. Diffusion scholarship has established the following four external mechanisms: imitation, learning, competition, and coercion (Shipan & Volden, 2008). Imitation and emulation are often used interchangeably although they are sometimes described somewhat differently. Imitation often refers to states imitating an innovative policy almost verbatim. Some state legislatures have been known to copy bills written in other states, including original typos (Shipan & Volden, 2012). This mechanism assumes policy changes are made without fully revising the innovative policy, much less considering the potential consequences (Shipan & Volden, 2012). The reasons for imitating another state policy vary and can often lead states to make

inappropriate and incompatible policy choices. Yet, this mechanism also highlights how some states are viewed as leaders. In a similar fashion, emulation takes place when policymakers are influenced by the perceived appropriateness of innovative policies (Gilardi & Wasserfallen, 2019). Thus, emulation consists of a more careful consideration, but it is essentially the same.

In contrast, the other three mechanisms driving diffusion suggest that policymakers are more strategic and careful with their policy choices. For example, when learning is driving diffusion, policymakers are influenced by the success of policies enacted elsewhere (Volden, 2006). This mechanism assumes policymakers reach their decision based on a vigorous analysis of the consequences of the innovative policy enacted in other states (Gilardi & Wasserfallen, 2019). When competition is driving diffusion, states are influenced by the policies of other states that they compete with for resources. This entails the awareness of competition directly with other states and can lead to the implementation of policies to either attract or repel target groups in some cases. For example, this can become a “race to the bottom” whereby states reduced their benefits in response to their neighboring states that also reduced their benefits in an effort to avoid becoming a “welfare magnet” state (Volden, 2002). When coercion is driving diffusion, a state is influenced by how other levels of government are defining and enforcing provisions in their own policies. For example, national intervention can affect the likelihood policymakers will adopt an innovative policy (Karch, 2006). Sometimes coercion entails “the use of force, threats, or incentives by one government to affect the policy decisions of another” (Shipan & Volden, 2012). Shipan and Volden (2012) explain this can look like the federal government withholding funding from the state unless certain conditions are met.

Determining how these three mechanisms may help policy diffuse can be difficult given that the purpose of this law is quite unclear. For example, determining whether states are learning from each other, requires an assessment for how each state defines success or failure with regards to this policy and would have to be tracked over time. Therefore, many questions arise: How is the success or failure of FDL defined? Is it dependent on how many felons are disenfranchised? Is it dependent on whether strict FDL reduce crime? These are just some questions that come to mind when considering the effectiveness of this law, but the criteria is subjective to the state—and for the time being unknown since we do not know how each state is measuring the effectiveness of this policy. At best, we can theorize states are learning from each other, because they are modifying previous FDL for their own state.

In the case of competition, this mechanism would only be applicable if states were implementing restrictive FDL to dissuade felons from moving to their state. While it would be an interesting relationship to explore, felons already have traveling restrictions when they are on probation or when they get out on parole. In addition, Yoshinaka and Grose (2003) clarify that “states usually apply the same rules to federal felons and felons convicted under another state’s laws.” The traveling restrictions vary state by state, but those who are supervised by a parole or probation officer must receive approval to travel out of state and must have a good reason to move out of state, such as securing a better job position.

Similarly, the mechanism of coercion would require action from the federal government. At the moment, the federal government has not yet intervened in establishing a standard for FDL. At most, the introduction of the “For The People Act” also known as “H.R. 1” could potentially affect this population in the future, but it is yet

to be enacted. Therefore, I will consider imitation and learning as possible mechanisms driving the diffusion of less restrictive FDL.

I hypothesize that the policy changes made by a state are highly influenced by the policy choices made by other states. Further, the shift toward less restrictive FDL has been trending incrementally over time and is now reaching a new equilibrium through the adoption of lower levels of FDL. To test the strength of external mechanisms driving this diffusion, I test the following hypotheses:

#### HYPOTHESIS 1:

The *National Diffusion Hypothesis* suggests states are more likely to adopt a less restrictive version of FDL when they perceive diffusion taking place. More specifically, I hypothesize that diffusion will rapidly spread when at least 16% of states adopt a less restrictive FDL. This is based on the theory that states are more likely to adopt an innovative policy once innovators (2.5%) and early adopters (13.5%) have implemented an innovative policy.

#### HYPOTHESIS 2:

The *Regional Diffusion Hypothesis* suggests states are more likely to implement a less restrictive FDL when at least one border state has implemented a less restrictive FDL. This would imply policy choices of regional/border states have a greater influence than the policy choices made by other states. Both hypotheses suggest the policy choices made by innovative states influence the policy choices of other states; regardless of proximity, there seems to be a social component of how states inform each other. Let us now review the origins and development of FDL in the U.S. through the theoretical lens of policy diffusion.

## MAPPING WAVES OF DIFFUSION

In this section, I provide a summary of the origins of FDL and how they diffused in the U.S. I then introduce a new ranking system and a supplemental chart that tracks a range of policy changes. Finally, I demonstrate how less restrictive FDL are diffusing temporally and spatially.

### Chapter 3: Origins and Rise in FDL

The notion of protecting the purity of the ballot box can be traced back to ancient Greek/Roman times and Medieval and Colonial times. In the ancient world, FDL further restricted members of society. Greeks imposed the status of *atimia*, which meant the loss of citizenship (either temporarily or permanently). Similarly, Romans imposed the punishment of *infamia*, which consisted of the loss of suffrage and the right to join the Roman legions (Manza & Uggen, 2004). Since property-less citizens, women, non-citizens, and slaves were excluded from the polis, they were exempt from these laws.

Similarly, in medieval Europe, criminal offenders were sentenced to “civil death.” This entailed forfeiture of civil rights, including the right to property and possessions, the right to inherit, and the right to sue; it often left offenders exposed to injury or death by anyone with impunity (Kleinig & Murtagh, 2005; Manza & Uggen, 2004; Wilson & Watry, 2015). While civil death is far more punitive than any version of FDL in the U.S., many American ex-felons experience similar hardships. Once they have been convicted of a felony, their criminal records limit their job outlook, ability to rent a home/apartment, and of course vote (Cammett, 2012).

Over time, this punitive practice evolved and was implemented by the thirteen Colonies and further developed by state laws. Hamilton-Smith & Vogel (2012) posit that

“much of the motivation behind the adoption of these laws appeared to be consistent with the concept of a system of status citizenship whereby criminal offenders would lose essential aspects of citizenship by virtue of the crime committed.” Although colonial FDL were vaguely defined and only applicable to specific offenses, the lack of clarity was useful in expanding the scope of criminality.

Specific offenses were in the realm of anything which could be defined as infamous crimes or morality crimes, such as disturbing the peace for drunkenness and other shameful crimes (Brooks, 2004; Manza & Uggen, 2004). The vagueness of these laws continued into the state constitutions which addressed felon voting rights. For example, the term “moral turpitude” considers an undefined range of crimes which permanently disenfranchised felons in many states, including the state of Alabama (Ala. Const. Art. VIII, § 177). Until 2017, no comprehensive list of felonies existed which defined moral turpitude. In 2017, HB 282 finally defined these crimes (Ala. Code § 17-3-30.1).

Now let us briefly explore the rise in FDL in the U.S. and identify the five distinct groups in the diffusion process (See Table 1). The state of Virginia is considered “the innovator” state. In 1776, Virginia became the first state to adopt a FDL (Brooks, 2004). By 1818, a total of seven “early adopting” states began the trend and other states followed. By 1860, seventeen states had followed; this group is what I consider to be the “early majority” group. By 1912, another seventeen states adopted this law into their state constitution; this group is considered the “late majority.” Lastly, the “laggard” group consists of eight states, but only six states have adopted a FDL. The remaining two states (Maine and Vermont) have never adopted any version of this policy.



Table 1: The Five Distinct Groups of Diffusion for FDL

Innovators 1776	Early Adopters (1799-1818)	Early Majority (1819-1860)	Late Majority (1863-1912)	Laggards (1959-2000)
Virginia	Kentucky	Alabama	West Virginia	Alaska
	Ohio	Missouri	Nevada	Hawaii
	Louisiana	New York	South Carolina	Michigan
	Indiana	Delaware	Georgia	New Hampshire
	Mississippi	Tennessee	North Carolina	Utah
	Connecticut	Florida	Arkansas	Massachusetts
	Illinois	Rhode Island	Nebraska	
		New Jersey	Colorado	
		Texas	North Dakota	
		Iowa	South Dakota	
		Wisconsin	Washington	
		California	Idaho	
		Maryland	Wyoming	
		Minnesota	Oklahoma	
		Oregon	Montana	
		Kansas	Arizona	
		Pennsylvania	New Mexico	

As previously mentioned, diffusion is illustrated when the cumulative frequency of policy adoption forms an S-shaped adoption curve. The S-shape is visible in Figure 1. We can gather from the curve, the diffusion process is one of incrementalism, as the adoption of FDL gradually increases at first and then increases more rapidly until reaching a maximum (Boushey, 2010).

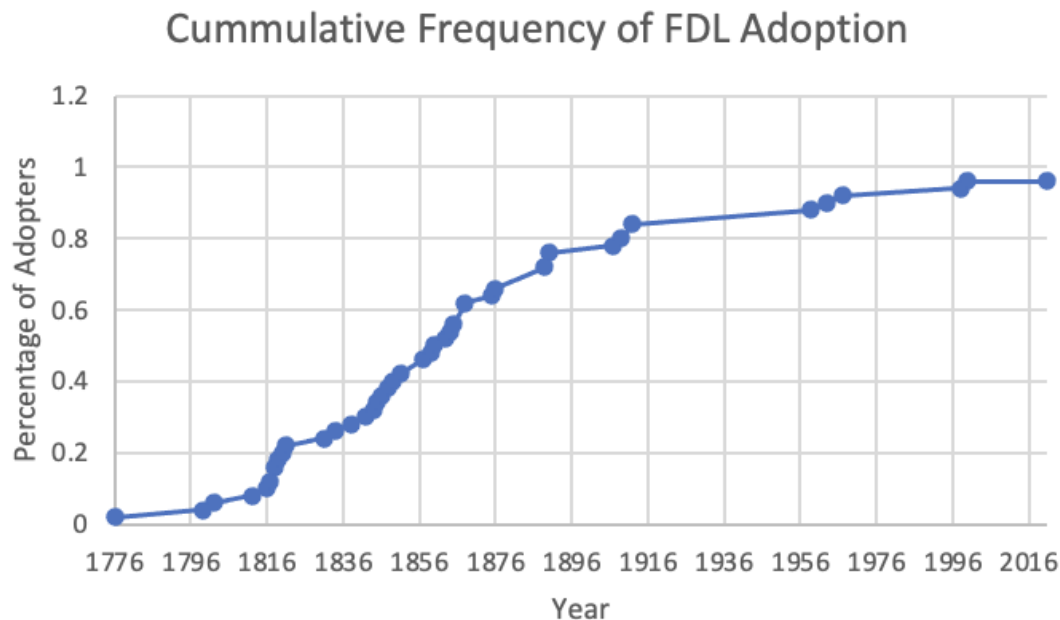


Figure 1: Cumulative Frequency of FDL Adoption

Another facet of diffusion is its relationship to the expansion of the franchise. While these laws were not overtly racist, they were elitist, and by design, implicitly racist (Behrens, Uggen, and Manza, 2003). This is clearly depicted as states contracted and expanded the franchise after FDL ensured additional barriers for those who could vote. By 1790, only three states of the thirteen excluded nonwhites from voting (Manza & Uggen, 2006; Wilson & Watry, 2015) and only one state had adopted a FDL. The franchise contracted by 1840 as twenty of the twenty-six states removed nonwhites from the franchise (Manza & Uggen, 2006; Wilson & Watry, 2015). The franchise later expanded to include poor white men upon the abolishment of property requirements by 1850 (Wood, 2009). By 1850, only 36% of states had implemented a FDL. This figure almost doubled by 1860, resulting in 65% of states adopting a FDL. Before another expansion of the franchise, these laws mostly affected white (property-owning) males.

Although these laws appear to be “race neutral” (Behrens, Uggen, and Manza, 2003), these laws have always targeted the poor, and inevitably, non-whites. Another major expansion of the franchise resulted from the passage of the 13th Amendment (1865), 14th Amendment (1868), and 15th Amendment (1870). By 1870, 82% of states had already adopted a FDL. A final expansion of the franchise resulted from the passage of the 19th Amendment (1920), the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the 26th Amendment (1971). By 1971, 92% of states had adopted a FDL.

As we contemplate the expansion of the franchise and the diffusion of FDL, current statistics show that people of color, specifically African Americans, are disproportionately affected by these laws. Scholars have argued this outcome was expected given that the list of crimes labeled as felonies were specifically chosen because they were thought to be more likely committed by blacks than whites (Manza & Uggen, 2006; Wilson & Watry, 2015). This led disenfranchised racial minorities to challenge these laws in court. For example, *Richardson v. Ramirez* (California, 1974) and *Hunter v. Underwood* (Alabama, 1985) both demonstrate how “state disenfranchisement laws or constitutional provisions are vulnerable to Equal Protection challenges only where racial animus motivated their enactment and where state authorities continued to operate in a way that was discriminatory in nature” (Hamilton-Smith & Vogel, 2012).

Another interesting finding about the diffusion of this policy was how the initial FDL level of restrictiveness reduced as laggard states emerged. As previously mentioned, earlier versions of FDL were vaguely defined, and as a result, “the duration of disenfranchisement varied, with some localities denying felons the franchise only temporarily whereas others would permanently bar felons from voting” (Hamilton-Smith & Vogel, 2012). As this policy diffused, states continually modified the initial FDL and eventually led other states to imitate their policies. When laggard states finally adopted

their first FDL (1959-2000), they implemented policies which only disenfranchised felons while in prison (Massachusetts, Utah, New Hampshire, Michigan) and on probation or parole (Alaska). Only the state of Hawaii adopted an FDL which disenfranchised felons until they were pardoned (Behrens, Uggen and Manza, 2003). This decrease in level of restrictiveness for the initial policy of laggard states captures how views on FDL shifted.

## **Chapter 4: New Measurement**

As mentioned in the introduction, new measurement tools were necessary for this study to capture the decrease in level of restrictiveness of FDL and their transformation overall. Careful attention to the several components making this complex and evolving policy proved to be necessary and crucial. Boehmke (2009) argues “examining changes in individual components of a policy helps us understand policies’ evolution as states revise and expand them to reflect shifting needs among their citizens, to respond to technological changes, or to incorporate successful advances developed in other states.” This resulted in the creation of a new ranking system and a supplemental chart.

Past ranking systems established a working scale that included a maximum of three to five levels. Despite the emergence of newer versions of this policy, this classification system remained. The need for additional categories became evident during the data collection and coding process. I found previous measurement scales were problematic when the category made no distinction between the different levels of restriction applied to ex-felons. The category of “Some or All Ex-Felons” grouped “2-Year, 5-Year, 7-Year Wait” to vote and “Permanent Disenfranchisement.”

Future scholarship on FDL should reconsider previous ranking systems and modify them to accurately capture the newer versions of this policy as they emerge. Otherwise, when a state reduces a “5-Year Wait” to a “2-Year Wait” or shifts from a “Permanent Disenfranchisement” to “1st Felony Forgiveness,” the data will not capture a change because both restrictions are encompassed by the same level. For this study, I developed a seven-level scale ranging from 0 to 6. Table 2 displays the measurement scale, with brief descriptions for each.

Table 2: Ranking System

Level	Descriptors
0	No Restriction
1	Prison
2	Prison, Parole
3	Prison, Parole, Probation
4	2-Year Wait, If on Parole or Probation and free from custody in the past 5 years
5	5-Year Wait; If Offense Committed Within a Time Period; 1 <sup>st</sup> Felony Forgiveness
6	5+ Year Wait; Adopted in Constitution; Vaguely Defined; Lifetime

Table 2 includes many of the characteristics of the previous ranking systems, but it accounts for new characteristics of FDL that have emerged in recent years. The first four levels (0, 1, 2, and 3) have not changed. The last three levels include a few features that have emerged in modified versions of this policy in recent years.

Level 4 no longer includes permanent disenfranchisement as a descriptor. This level consists of a “Two-Year Wait” after completion of sentence which is no longer grouped with the “Five-Year Wait” in order to capture a decrease in restrictiveness. Another descriptor was recently added to capture an innovative policy which restores voting rights for those “on Parole or Probation and free from custody in the past 5 years.” This is the first instance where a FDL allows felons who are still completing their sentence to have their voting rights restored with the condition that they haven’t been incarcerated in the past five years.

Level 5 has three policy variants but no longer includes permanent disenfranchisement. The “Five-Year Wait” is in this level because it is not as severe as Level 6 but not as lenient as Level 4. The “If Offense Committed Within a Time Period” descriptor refers to the unique sanction imposed by two states (Tennessee and Washington) which disenfranchised those convicted of felonies during or after a certain

time period. The “First Felony Forgiveness” descriptor indicates leniency because it gives felons a second chance before being permanently disenfranchised.

Lastly, Level 6 consists of three policies that are the most restrictive versions of FDL. I included the “5+ Year Wait” descriptor in this level because the combination of the difficulty in restoring voting rights and the length of disenfranchisement discourages the political participation of felons, making it likely they will never recover their voting rights. Given the vagueness of the law when it was first introduced, early adopters which “Adopted in Constitution Year of Statehood” are coded as a Level 6 unless otherwise noted. “Lifetime” is included in this level because it represents the most restrictive version of this policy which permanently denies voting rights to convicted felons.

An additional concern pertains to the inattention of the complexity of innovative policies and procedures. In addition to a new measurement scale, I developed a supplemental chart (illustrated in Table 3) which captures policy changes made to different components of FDL. While the measurement scale is used to rank the severity of a given FDL, the supplemental chart encompasses any further indicators of leniency or restrictiveness.

Table 3: Supplemental Chart

Increased Restrictiveness
<ul style="list-style-type: none"> <li>• Restricted restoration process</li> <li>• Increased number of crimes that are ineligible for voting restoration</li> <li>• Need to petition the court to vote</li> <li>• Need to pay outstanding fines and fees to vote</li> <li>• Need to pay outstanding child support fines to vote</li> </ul>
Change Dependent on Outcome
<ul style="list-style-type: none"> <li>• Defined vague language (i.e. moral turpitude, infamous crimes, etc.) increased or reduced list</li> </ul>
Decreased Restrictiveness

- 
- Restored voting rights for a number of residents
  - Automatic re-enfranchisement, for some offenses
  - Streamlined voter registration process
  - Repealed requirement to present proof of restoration in order to register
  - Established procedures requiring state criminal justice agencies to notify persons of their voting rights when released
  - Established new procedures to provide training and develop voter education curriculum to protect the voting rights of citizens with certain felony convictions
  - Simplified clemency process
  - Allowed those in county jail to vote

When a state makes a minor policy change, the level of restriction remains, but the change is documented in the data. Whereas major policy changes can be accounted for in the ranking system across three dimensions: status, time, and recidivism. Minor policy changes can be accounted for along two dimensions: voting restoration process and modified restrictions. The voting restoration process dimension is measured along a spectrum between the ease and difficulty in restoring voting rights consisting of financial and procedural barriers. Essentially, the parameters range between “automatic re-enfranchisement” to “paying outstanding fines.” The other dimension accounts for any minor modifications that increase or decrease restrictions based on type of crime or type of correctional facility. For example, both “increased number of crimes that are ineligible for voter restoration” and “Automatic Re-enfranchisement for non-violent or some offenses” is contingent on how different crimes are considered more or less punishable.

In this breakdown, I have demonstrated why the previous classification system needed to be modified. I encourage future scholarship to continue modifying this scale and abandon grouping all post-sentence disenfranchisement policies together. The grouping of post-sentence disenfranchisement policies distorts the analysis because it fails to capture how FDL have evolved and become less restrictive over time. As



innovative versions of this policy continue to emerge, revising the ranking system used to assess the components of FDL will be necessary. Now that I have introduced the new measurement scale and supplemental chart, the next section examines the rise in less restrictive FDL in the U.S.

## **Chapter 5: Rise in Less Restrictive FDL**

The policy diffusion theoretical framework is appropriate for analyzing FDL because in recent years the states have been implementing newer and “innovative” versions of this policy. In the 3rd millennium, some states automatically re-enfranchised ex-felons after the completion of their sentence, while other states required ex-felons who have completed their sentence to wait two to five years before applying for a certificate to vote. Recent policy revisions are incrementally moving away from permanent disenfranchisement and setting a new standard for this policy. Although this shift appears to be fairly recent; during the 1960’s according to Yoshinaka and Grose (2003, 2005). I demonstrate the emergence of less restrictive FDL began much earlier than originally thought.

When looking at the data, it appears the first less restrictive version of a FDL was adopted by Wisconsin in 1848. According to Brooks (2004), in its year of statehood Wisconsin disenfranchised people convicted of a felony until completion of sentence. During this time period, “completion of sentence” can be understood as release from prison given that probation and parole didn’t exist. Therefore, Wisconsin is recognized as the first state to adopt a less restrictive FDL, making it the “innovator” state. Currently, Wisconsin is ranked at a Level 3 where felons are still disenfranchised until completion of sentence, only now the status includes those in prison, on parole, or on probation.

Table 4: Five Distinct Groups of Diffusion of Less Restrictive FDL				
Innovators	Early Adopters	Early Majority	Late Majority	Laggards
1848	1857-1890	1890-1968	1969-1998	2000-2015
Wisconsin	Minnesota	Mississippi	Kansas	Massachusetts
	West Virginia	Louisiana	Illinois	Delaware
	South Carolina	Alabama	North Carolina	New Mexico
	Texas	Virginia	Idaho	Iowa
	Colorado	Oklahoma	Florida	Nebraska
	Indiana	New Jersey	Montana	Kentucky
	Wyoming	Maryland	North Dakota	
		Alaska	Nevada	
		Hawaii	New York	
		Oregon	Rhode Island	
		Missouri	Tennessee	
		Michigan	Ohio	
		Arkansas	Connecticut	
		California	Arizona	
		New Hampshire	Georgia	
		South Dakota	Washington	
		Pennsylvania	Utah	

Table 4 lists the states that adopted less restrictive FDL in the U.S. according to the five distinct groups in the diffusion process. After Wisconsin, “early adopters” emerged nine years later and began to mimic the innovative policy. From 1857- 1890 six out of the seven states adopted a Level 1 FDL. In 1857, Minnesota was the second state to adopt a Level 1 FDL and disenfranchise felons until completion of sentence. In the following years, West Virginia (1863), South Carolina (1867), Texas (1869), Colorado (1876), Indiana (1881), and Oklahoma (1907) all adopted Level 1 FDL. This incremental growth seems to suggest that “early adopting” states were influenced by Wisconsin and ultimately imitated their policy.

Then, states labeled “early majority” adopted a range of different FDL. Although the trend of adopting less restrictive FDL continued, it did not necessarily benefit everyone. It is important to note that from 1890-1910 FDL reduced in restriction, but did so while targeting Black people (Brooks, 2004). Within their policy revisions, states considered those convicted of “thievery, adultery, arson, wife beating, housebreaking, and attempted rape,” worthy of disenfranchisement, but not murder or fighting (Brooks, 2004). This was followed by eight states increasing their restriction from 1909-1947.

In 1947, Wisconsin once again initiated another spur of policy revisions when it modified its policy to be the first state to automatically restore voting rights for felons who had completed their sentence (Behrens, Uggen and Manza, 2003). During this time period, we see a bandwagon effect where states rush to adopt an emerging innovation. This is evident in Figure 2 as a clear spike in the percentage of adopters increased from 1960-1980 approximately 50%.

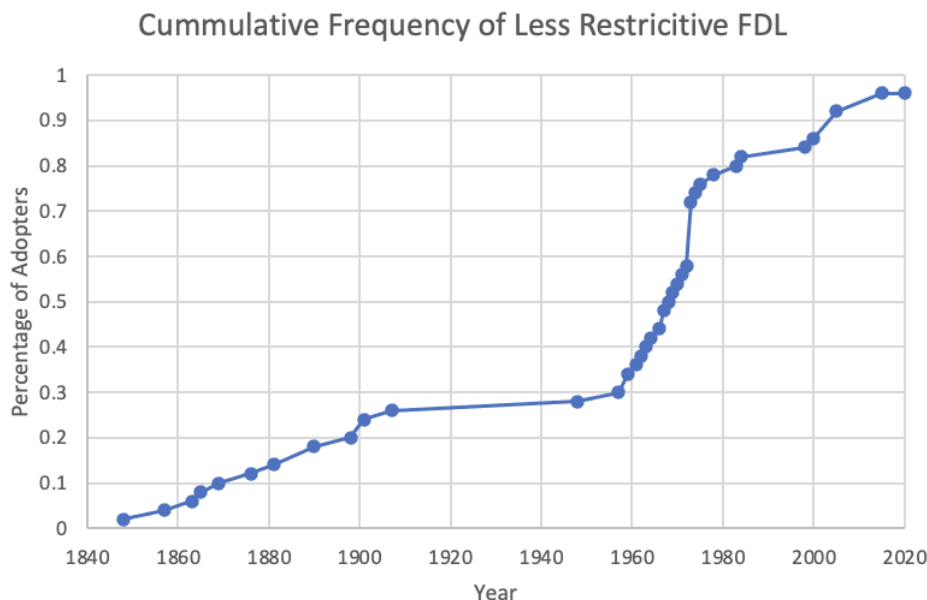


Figure 2: Cumulative Frequency of Adoption of Less Restrictive FDL

More specifically, we see the activity from 1957-1986 between both “early majority” and “late majority” groups. From 1947-1968 a total of fifteen less restrictive FDL were adopted and out of the fifteen policy changes, twelve states had adopted their first less restrictive FDL. These policy revisions resulted in FDL ranging from Levels 1, 3, and 5. The variety in policy adoptions seems to suggest that states were learning and evaluating innovative policies.

From 1969-1998, the “late majority” group emerged. A total of twenty-six states adopted less restrictive FDL, and of these, seventeen states had adopted their first less restrictive FDL. During this time period, only seven states adopted more restrictive policies. Additionally, this group also introduced Levels 2 and 4 with their policy adoptions. This is a clear sign that states are learning. In fact, they are borrowing legislation from their peers and modifying it to fit the needs of their state (Boushey, 2010).

Finally, from 2000-2015 states in the “laggard” group emerged. A total of six states implemented a range of FDL. Since they are the last states to embrace this shift in policy, it was not surprising to learn that many repealed their lifetime disenfranchisement policy. In fact, four of the six states did so. For example, Delaware adopted a “5-Year Waiting” period after the completion of their sentence. This policy was copied from the FDL first adopted by Nevada in 1973. New Mexico and Iowa replaced lifetime disenfranchisement with a Level 3 FDL. Lastly, Nebraska adopted a “2-Year Waiting” period after the completion of their sentence. This policy was also copied from the FDL adopted by North Carolina in 1971. This indicates states are looking to other states for innovative versions of FDL and imitating each other.

In this chapter, the data reflect these policies have seen different rates of policy adoption overtime. As expected, the policy adoption rate of less restrictive FDL fluctuated over time. This is largely due to the fact that when policies are diffusing the policy adoption rate can begin slowly, increase rapidly, then decrease again until a maximum is reached (Baumgartner and Jones, 1993, 2009).

## Chapter 6: Innovative Versions of FDL

Let us now review the unique and innovative policies that emerged and map them over time. I begin this chapter with a map of FDL in 1847 because this is the year before the shift toward less restrictive FDL began. As you can see in Illustration 1, a total of eighteen states had adopted a lifetime FDL.

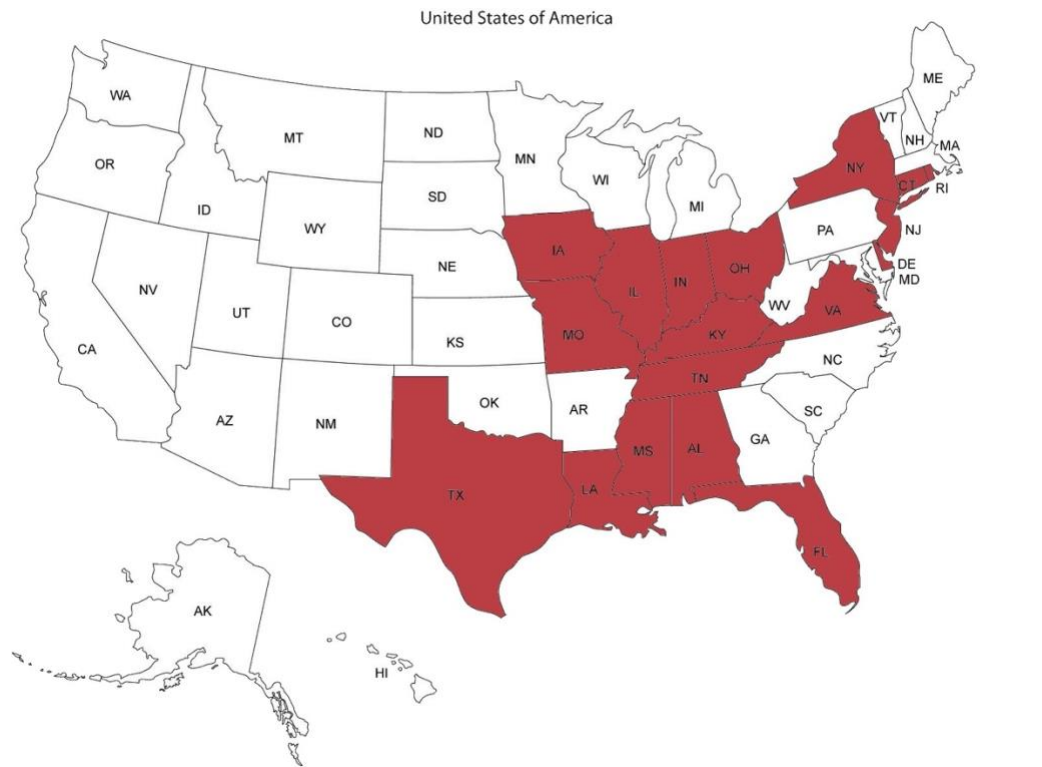


Illustration 1: FDL in 1847

At this point, states are starting to imitate the policy put forth by Virginia and establishing it as the standard for FDL. Aside from being visibly red, the map also allows us to see visually how close these states are in proximity. This suggests states are being influenced by the policy choices of neighboring states. As we continue to analyze these

maps across different years, they will display patterns of diffusion being driven by states either imitating or learning from each other and resulting in the modification of their FDL.

#### **INNOVATOR AND EARLY ADOPTERS**

As mentioned previously, Wisconsin was the “innovator” state to put forth a Level 1 FDL in 1848. Although Wisconsin initiated the shift toward less restrictive FDL, the shift grew very slowly at first. As “early adopters” of less restrictive FDL emerged, most states continued to adopt a Level 6 FDL. From 1848-1875, fifteen new states had adopted their first FDL. Of these states, eleven adopted a Level 6, one adopted a Level 5, and four adopted a Level 1. In Illustration 2, this dynamic is displayed.

During this period, it is evident both imitation and learning are taking place. The eleven states that adopted a Level 6 FDL had copied the initial policy and placed within their constitutions the same vague concepts. As mentioned in Chapter 3, the vagueness of these laws often introduced terms such as “moral turpitude,” “infamous crimes,” and “morality crimes” to expand the scope of criminality.



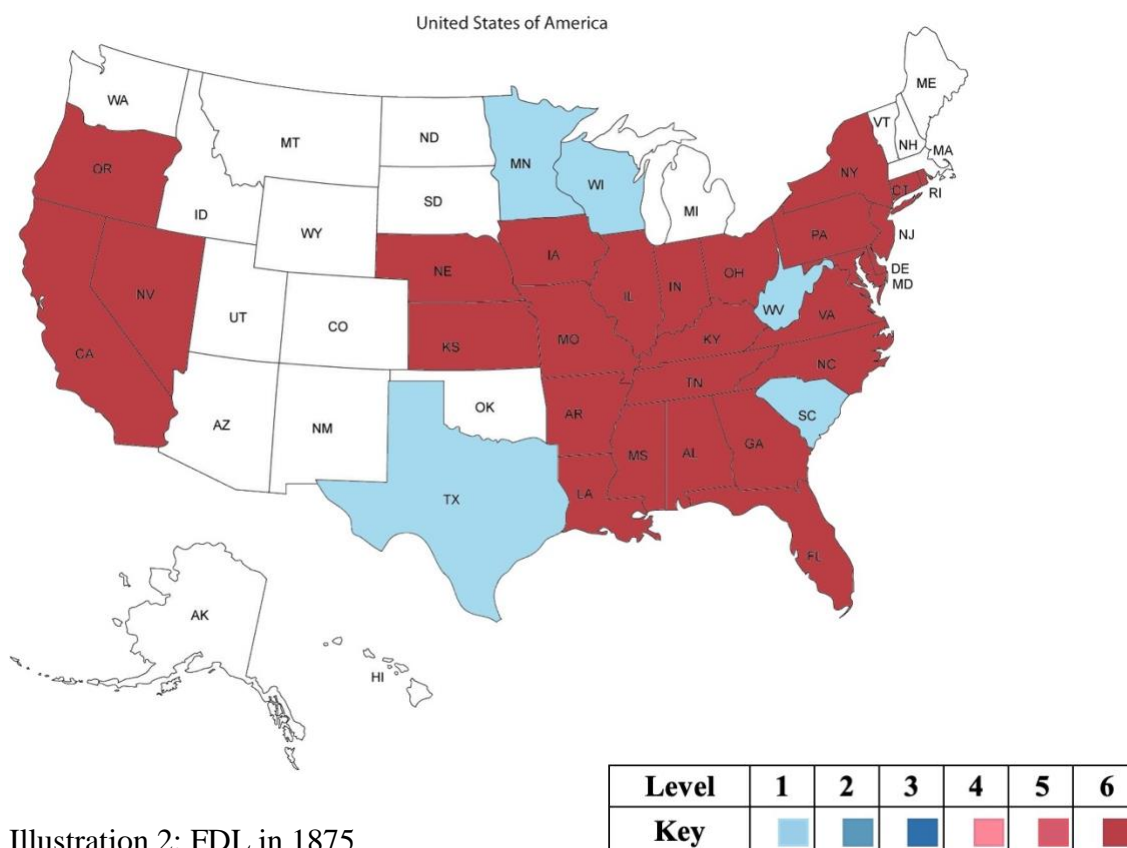


Illustration 2: FDL in 1875

Yet, other states learned from the initial FDL and modified it. For example, South Carolina became the first state to adopt a Level 5 FDL where disenfranchisement only applied to those convicted of “thievery, adultery, arson, wife beating, housebreaking, and attempted rape, but not fighting or murder” (Brooks, 2004). Although this policy was designed specifically to target crimes often attributed to Black people, it decreases in level because it specifies the types of crimes that lead to disenfranchisement. As a result, it becomes less restrictive because it no longer disenfranchises all crimes. However, this modification is also indicative of the role of racism in shaping and framing this policy. Two years later, this policy was reversed, and South Carolina copied Wisconsin to only

disenfranchise felons until they complete their sentence; meaning time in prison or jail. A total of three states imitated this policy.

By 1890 when the emergence of “early adopters” was complete, there was a clear rise in restrictive FDL. See Illustration 3. Most notably, Texas replaced its Level 1 with a Level 6; lifetime disenfranchisement. However, Mississippi reduced its restriction to a Level 5 and Wyoming appears to be the first state to allow convicted felons to apply for voter restoration. At this point, thirty-eight states had adopted a FDL and it is clear the majority of the states were imitating each other and very few were learning and modifying previous FDL.

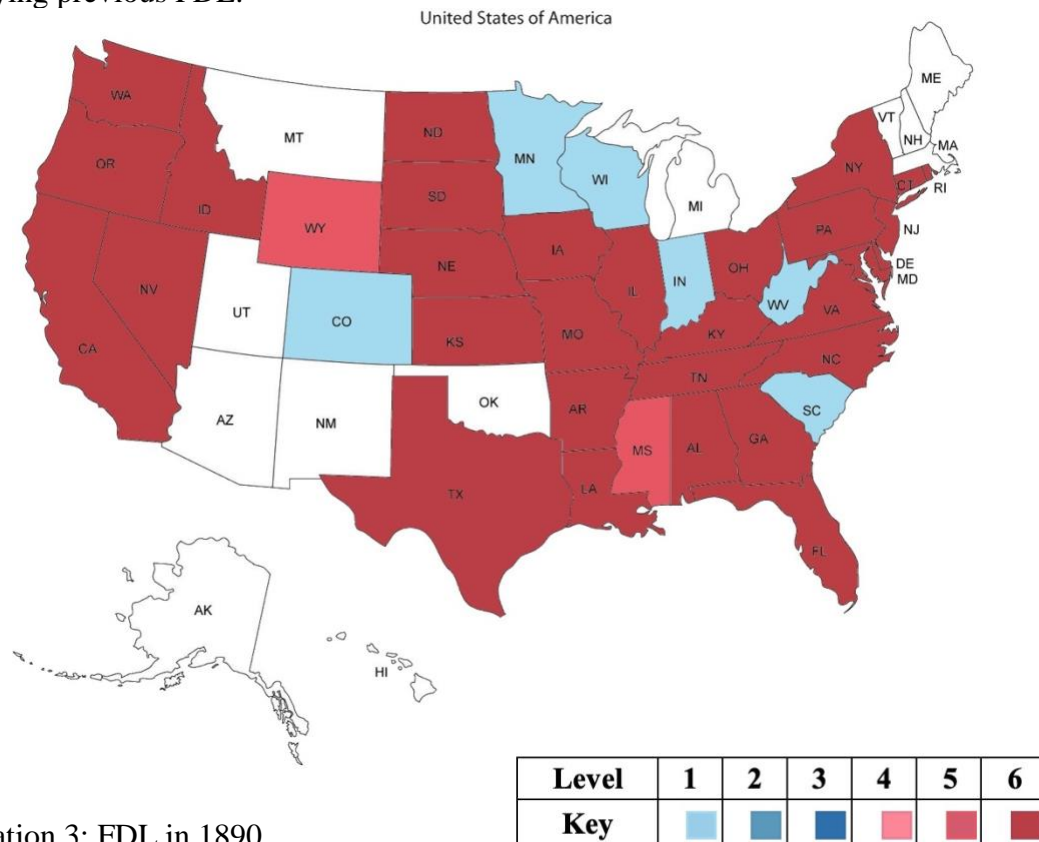


Illustration 3: FDL in 1890

## **EARLY MAJORITY**

The “early majority” group emerged after 1890 and was complete by 1968. By this year, a total of forty-six states had implemented some version of a FDL. See Illustration 4. In this map, there is a clear variation of FDL as states begin to experiment with more policies and define different levels of restriction depending on recidivism, status, and type of crime. During this period, Wisconsin redefined “completion of sentence” to include parole and probation period; Level 3. Five states then imitated Wisconsin and adopted this policy. In the same effort to modify existing FDL, Maryland adopted an FDL that restored voting rights for first-time offenders upon completion of sentence while still maintaining a lifetime ban for recidivist offenders (Behrens, Uggen, and Manza 2003). Maryland became the first state to offer this second chance to convicted felons. This policy was later adopted by Louisiana in 1974 and Arizona in 1978.

Additionally, California maintained their disenfranchisement policy but applied it only to convicted felons who committed crimes involving moral corruption. New York also became the first state to disenfranchise felons convicted of a crime in another state that would have been a felony in New York. Although this increased restriction, it is innovative and indicative of states modifying the initial FDL.

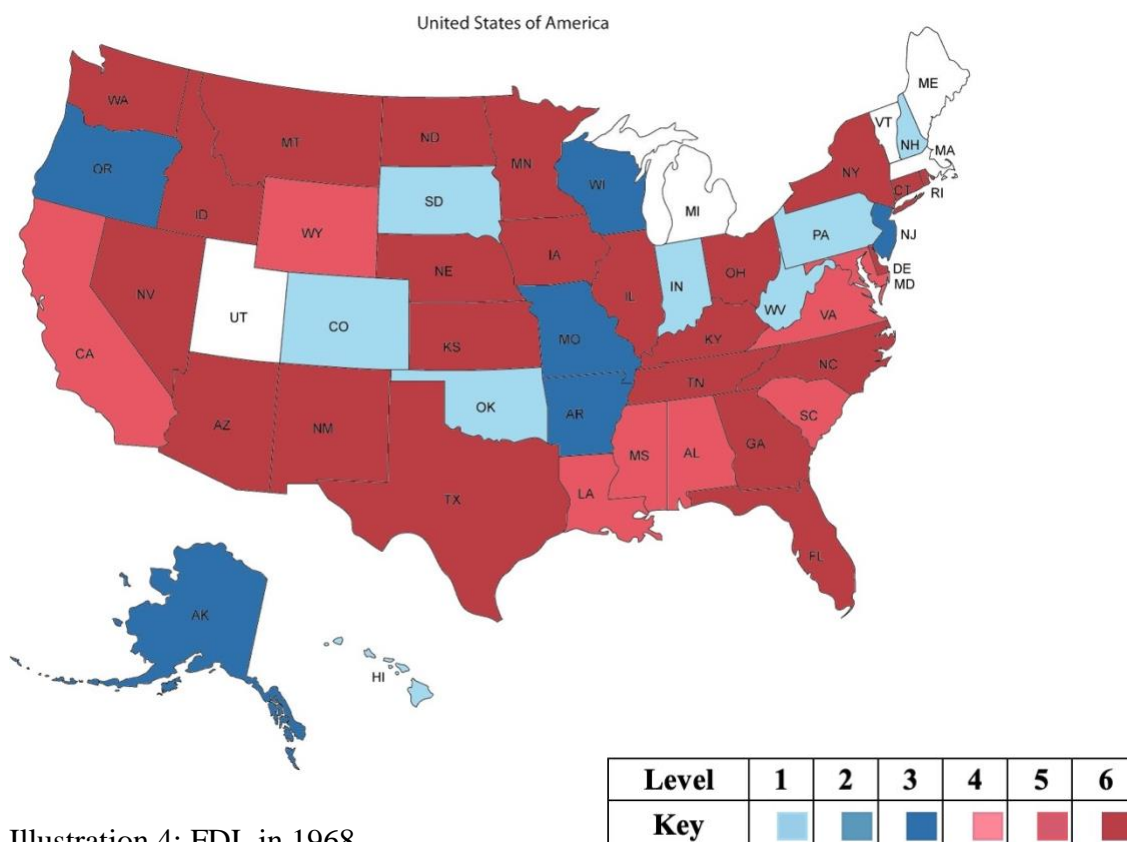


Illustration 4: FDL in 1968

### LATE MAJORITY

From 1969-1998, the “late majority” group emerged. During this time period, the adoption rate of less restrictive FDL increased significantly. This is visible in Illustration 5 as the map is visibly lighter and more blue. More states began to imitate less restrictive versions of FDL and others modified them to be even less restrictive. For example, in 1969, Kansas repealed ex-felon disenfranchisement and enfranchised probationers; only disenfranchising those in prison and on parole (Behrens, Uggen, and Manza 2003; Yoshinaka & Grose, 2003, 2005). Kansas was the first state to implement a Level 2 FDL. A few years later in 1971, North Carolina automatically restored voting rights after a “2-Year Wait” period upon completion of sentence (Yoshinaka & Grose, 2003, 2005). This

was the first instance in which a state adopted a waiting period before automatically restoring voting rights. This was coded as a Level 4 FDL.

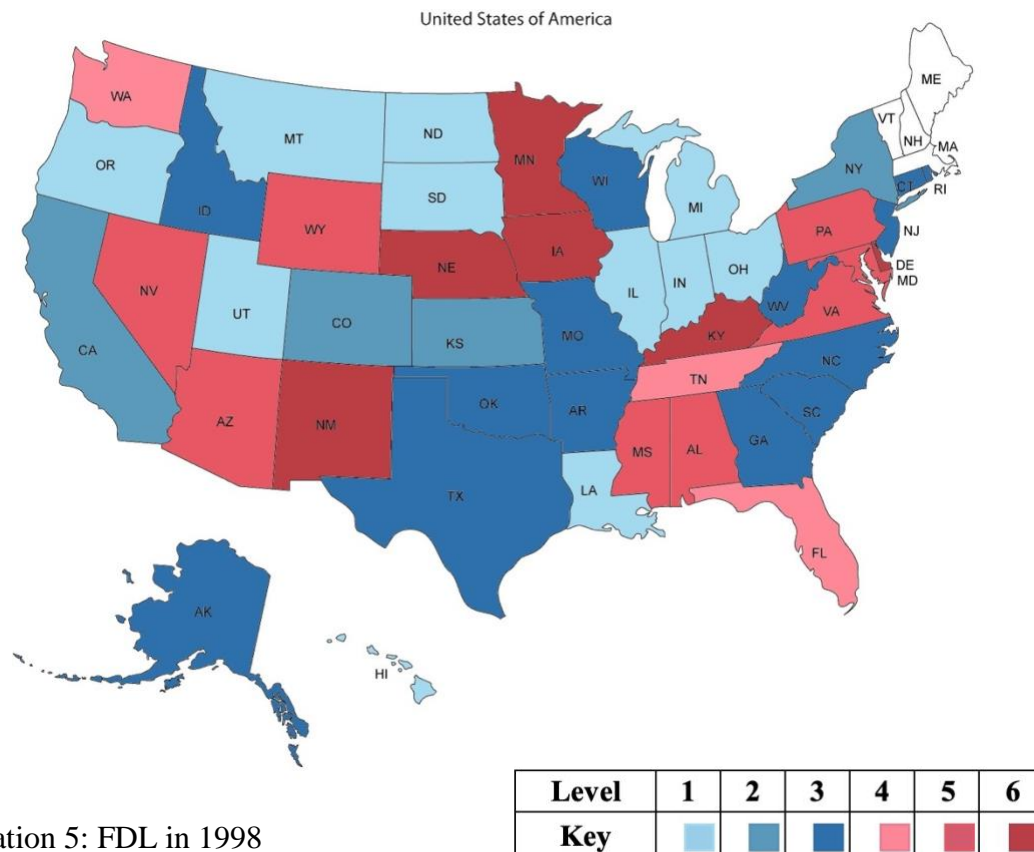


Illustration 5: FDL in 1998

In addition to the rise in Levels 2 and 4, two new versions of Level 5 FDL were introduced. For example, in 1973 Florida automatically restored voting rights for ex-felons who met certain conditions (Yoshinaka & Grose, 2003, 2005). Similar to North Carolina, Nevada repealed their lifetime disenfranchisement for a “5-Year Wait” period upon completion of sentence in 1973. This policy was later adopted by Texas (1983), Virginia (1991), Pennsylvania (1995) and Delaware (2000). However, Virginia further modified this policy by adding a “7-Year Wait” period for drug offenders and a “5-Year

Wait” period for all other offenders to be eligible to petition the governor. More specifically, Virginia signaled to other states that drug offenders would be punished more harshly in their state.

Other states like Tennessee and Washington experimented with the eligibility for automatic restoration. Both Tennessee (1981) and Washington (1984) automatically restored voting rights post-sentence for convictions after their respective year of adoption. Both states later revised their FDL with less restrictive versions. This push for less restrictive FDL even influenced Alabama to repeal its lifetime disenfranchisement for crimes involving “moral turpitude” in 1986.

Another notable policy revision is that New Hampshire in 1998 became the first and only state to revert their FDL to enfranchise incarcerated felons, thereby ranking at Level 0. This state was previously ranked at a Level 1, disenfranchising only those who were incarcerated. This revision was short-lived as it was reversed two years later in 2000, resulting in the reinstatement of a Level 1 FDL. This proved to be one of many examples of states reversing less restrictive FDL.

## **LAGGARDS**

By 2015 when the emergence of the “laggard” group was complete, there was a clear rise in less restrictive FDL. See Illustration 6. Since 1999, states have continued to experiment with FDL and implemented new variations. For example, in 1999, Louisiana became the first state to automatically restore voting rights for ‘First-Time Non-Violent’ offenders. In 2003, Nevada adopted this policy as well. In 2002, Maryland repealed its lifetime ban on two-time felons and implemented a “3-Year Wait” period after

completing sentences. This is the first instance where a state reconsidered “Permanent Disenfranchisement for 2nd Felony” status.

During this period, there was also a rise in minor policy changes where states implemented new policies and procedures to assist in the voting restoration process. A total of sixteen policy changes were adopted to provide felons more tools and resources. Some of the common concepts seen throughout these policies include: a certificate of completion after sentence, simplified/streamlined clemency process, required notification of rights, require jail officials to assist with restoration, required Department of Public Safety and Corrections to provide notification of rights and restoration process. Although these policies and procedures do not change the level of restriction of the FDL adopted by the state, they do have a major impact. Since these laws vary so widely by state, this information can help convicted felons figure out what are the next steps in restoring their voting rights. For example, in 2010 South Dakota “established new procedures to provide training and develop voter education curriculum to protect the voting rights of citizens with certain felony convictions” (Wilson & Watry, 2015).

Another interesting finding was the rise in executive orders used to modify FDL.

For example, in 2015 the outgoing Governor of Kentucky Steve Beshear signed an executive order to automatically restore the right to vote to more than 140,000 non-violent felons who had completed their sentences, but this was later reversed by incoming Governor Matt Bevin that same year (NCLS, 2021). This trend continued well into recent years. Since then, five states have pursued this path (Iowa 2005, 2011, 2020; Kentucky 2015, 2019; New York 2018; Virginia 2013, 2016, 2021).

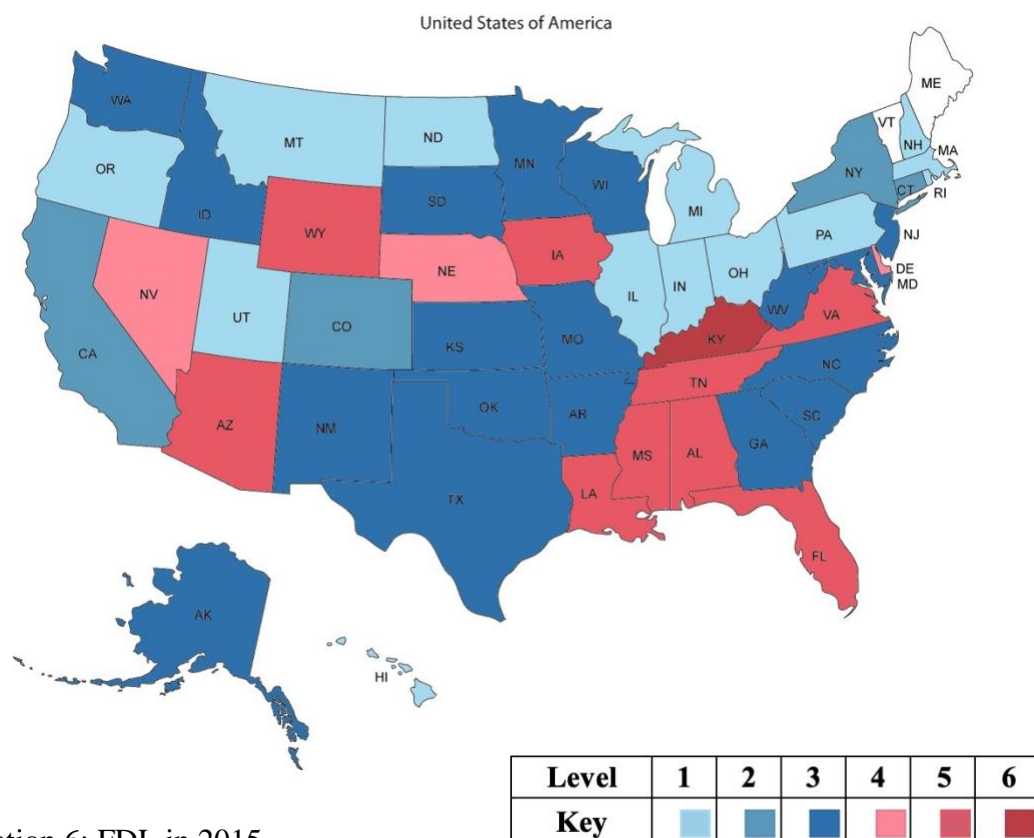


Illustration 6: FDL in 2015

This resistance to move toward less restrictive FDL is captured across policy changes made by all branches of government and even ballot initiatives. For example, in 2018 Florida voters passed Amendment 4 to restore voting rights to most people after sentence completion (The Sentencing Project, 2020). In 2019, SB 7066 was signed by the governor of Florida which defined “completion of sentence” to include: release from imprisonment, termination of any ordered probation, fulfillment of any terms ordered by the courts, termination of any ordered supervision, full payment of any ordered restitution and the full payment of any ordered fines, fees or costs” (NCLS, 2021). This ultimately increased restrictions by including what some consider a modern-day poll tax.



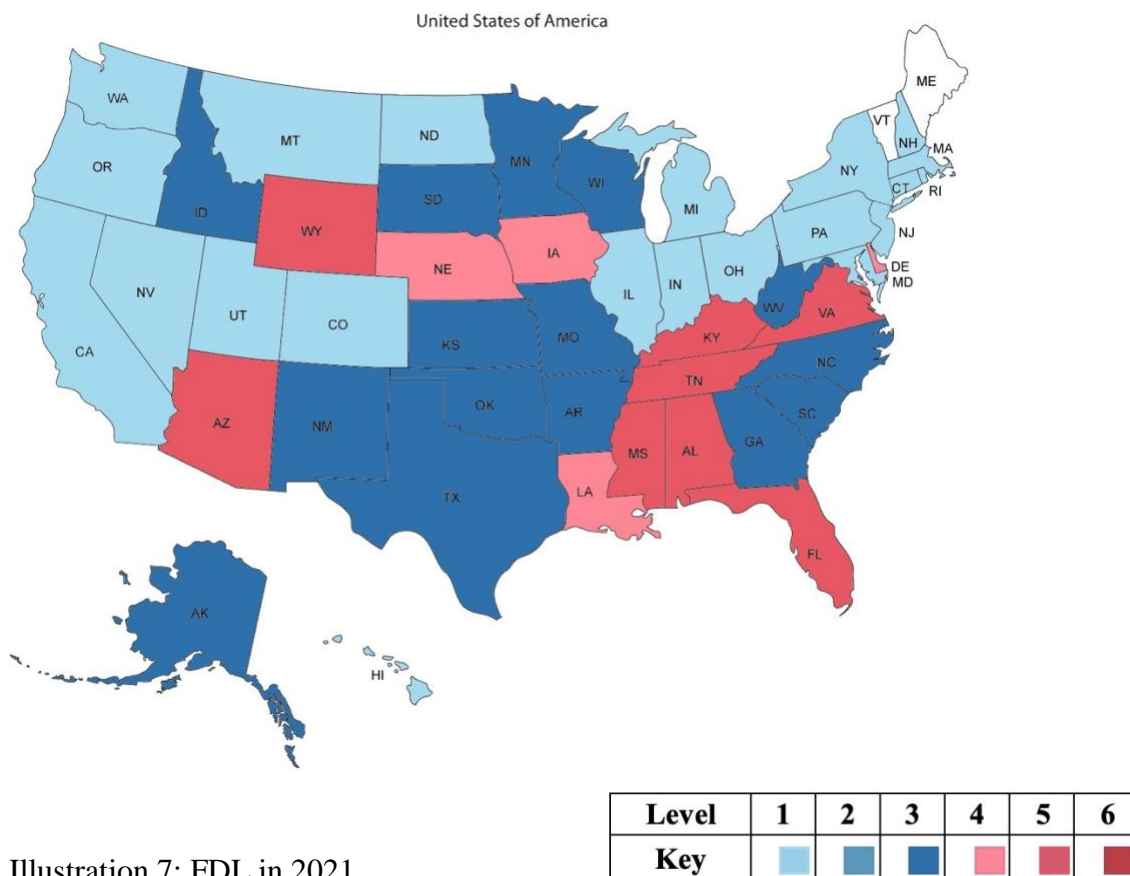


Illustration 7: FDL in 2021

Despite this resistance to move toward less restrictive FDL, many states have increasingly implemented less restrictive FDL. 2019 was a very productive year given that not only was H.R. 1 and H.R. 4 introduced, but also nine policy revisions were made and eight of them led to less restrictive FDL. This was also the largest number of policy changes made in a single year since 1973 which resulted in nine less restrictive policy changes. Although the number of policy changes decreased in the last two years, as pointed out in the introduction, this is the first instance where the federal government may intervene and establish a new standard for FDL. Whether the federal government intervenes or not, the data clearly show this shift is happening and is headed toward the

enfranchisement of convicted felons who are no longer in prison. This is visible in Illustration 7.

## **WHAT'S DRIVING THE DIFFUSION?**

This section seeks to examine different aspects of the shift toward less restrictive FDL. I begin by examining the role of both external mechanisms and internal state characteristics. First, I provide an overview of the data and methods used for this analysis. Then, provide an in-depth review of the policy revisions and reversals made by all three branches of government. In doing so, I highlight the range of responses in documented cases: acceptance, resistance, and acquiescence of less restrictive FDL. Lastly, I conclude this report with key findings and a brief discussion of plans for future research.

### **Chapter 7: Data & Methods**

This analysis is based on an original data set I created. The information I collected originated from scholarly articles, state constitutions, news reports, the National Conference of State Legislatures, and the Sentencing Project. Since I wanted to resolve the discrepancies found in previous literature, I compared data from multiple sources to verify their accuracy. Most entries of policy changes have at least two sources of verification. Table 5 displays the years in which states made major and minor policy changes to their FDL. Given the complexity of FDL, each policy change was evaluated and classified under the new measurement tools.

The unit of analysis is state/year. There are 1,100 potential cases (50 states X 22 years) from 2000-2021. This number was further reduced due to a few exclusions. For example, since both Maine and Vermont have never adopted a FDL, they were excluded from observation.

To examine the role external mechanisms and internal state characteristics both have in the diffusion of less restrictive FDL, I use a multinomial logistic regression

analysis. The dependent variable will take the value of 1 for every instance a policy change results in the reduction of the previous FDL, 0 for no change or increase in restriction. From 2000-2021 a total of 77 instances were recorded to signify the adoption or revision of an FDL. Of the total, 65 resulted in less restrictive FDL.

Table 5: Summary of State Felon Disenfranchisement Laws in the U.S.

State	Statehood	1 <sup>st</sup> FDL	#PΔ	Policy Δ Summary
<b>Northeast Region</b>				
<i>New England</i>				
Connecticut	1788	1818	6	1818, 1947, 1975, 2001, 2006, 2021
Maine	1820	-	0	-
Massachusetts	1788	2000	1	2000
New Hampshire	1788	1967	3	1967, 1998, 2000
Rhode Island	1790	1842	3	1842, 1973, 2006
Vermont	1791	-	0	-
<i>Middle Atlantic</i>				
New Jersey	1787	1844	4	1844, 1948, 2010, 2019
New York	1788	1821	9	1821, 1846, 1909, 1934, 1973, 1976, 2010, 2018, 2021
Pennsylvania	1787	1860	4	1860, 1968, 1995, 2000
<b>Midwest Region</b>				
<i>East North Central</i>				
Illinois	1818	1818	4	1818, 1970, 1973, 2019
Indiana	1816	1816	3	1816, 1852, 1881
Michigan	1837	1963	1	1963
Ohio	1803	1802	3	1802, 1835, 1974
Wisconsin	1848	1848	2	1848, 1947
<i>West North Central</i>				
Iowa	1846	1846	5	1846, 2005, 2011, 2012, 2020
Kansas	1861	1859	3	1859, 1969, 2002
Minnesota	1858	1857	3	1857, 1928, 2014
Missouri	1821	1820	2	1820, 1962
Nebraska	1867	1875	3	1875, 1993, 2005
North Dakota	1889	1889	2	1889, 1973
South Dakota	1889	1889	4	1889, 1967, 2010, 2012
<b>South Region</b>				
<i>South Atlantic</i>				
Delaware	1787	1831	4	1831, 1880, 2000, 2013

Table 5 (Continued)

State	Statehood	1 <sup>st</sup> FDL	#PA	Policy Δ Summary
Florida	1845	1838	13	1838, 1845, 1868, 1973, 1975, 1990, 1991, 2004, 2006, 2007, 2011, 2018, 2019
Georgia	1788	1868	2	1868, 1983
Maryland	1788	1851	5	1851, 1957, 2002, 2007, 2016
North Carolina	1789	1868	4	1868, 1971, 1973, 2007
South Carolina	1788	1865	4	1865, 1867, 1895, 1981
Virginia	1788	1776	12	1776, 1830, 1901, 1991, 2000, 2002, 2006, 2010, 2013, 2016, 2016R, 2021
West Virginia	1863	1863	1	1863
<i>East South Central</i>				
Alabama	1819	1819	6	1819, 1901, 1986, 2003, 2016, 2017
Kentucky	1792	1799	8	1799, 1851, 2001, 2004, 2008, 2015, 2015R, 2019
Mississippi	1817	1817	3	1817, 1869, 1890
Tennessee	1796	1834	8	1834, 1973, 1981, 1986, 1996, 1996R, 2006, 2011
<i>West South Central</i>				
Arkansas	1836	1868	2	1868, 1964
Louisiana	1812	1812	12	1812, 1845, 1898, 1921, 1968, 1974, 1975, 1978, 1999, 2008, 2017, 2018
Oklahoma	1907	1907	3	1907, 1976, 2019
Texas	1845	1845	6	1845, 1869, 1876, 1983, 1985 1997
<b>West Region</b>				
<i>Mountain</i>				
Arizona	1912	1912	3	1912, 1978, 2019
Colorado	1876	1876	5	1876, 1993, 1997, 2018, 2019
Idaho	1890	1890	2	1890, 1972
Montana	1889	1909	3	1909, 1969, 1973
Nevada	1864	1864	5	1864, 1973, 2001, 2003, 2019
New Mexico	1912	1912	3	1912, 2001, 2005
Utah	1896	1998	2	1998, 2006
Wyoming	1890	1890	4	1890, 2003, 2015, 2017
<i>Pacific</i>				
Alaska	1959	1959	1	1959
California	1850	1849	6	1849, 1966, 1974, 2016, 2017, 2020
Hawaii	1959	1959	3	1959, 1968, 2006
Oregon	1859	1857	4	1857, 1961, 1975, 1999
Washington	1889	1889	8	1889, 1912, 1984, 1993, 2007, 2009, 2019, 2021

Most scholars modeling policy diffusion typically use Event History Analysis (EHA), but this was inappropriate for this study because once a state adopts a less restrictive FDL, they would be removed from further observation. As a result, future revisions would go unobserved. This is problematic for the purpose of this study since the data clearly show most states modified their initial FDL more than once, often reverting to restrictive FDL.

Since my research question is interested in examining the effects of internal determinants and external mechanisms on the rise of less restrictive FDL, my model consists of external mechanisms (*PolicyAdoption* and *NeighboringScore*) and internal state characteristics (*PartyControl* and *MinorityPopulation*) as control variables.

As mentioned previously, I am testing two hypotheses: National Diffusion and Regional Diffusion. National Diffusion is measured by the percentage of states which have adopted a less restrictive FDL (Makse & Volden 2011; Shipan & Volden, 2008). Therefore, the *PolicyAdoption* variable takes the value of the percentage of states that have adopted a less restrictive FDL. Regional Diffusion is dependent on the number of border states that have adopted a less restrictive FDL. The variable *NeighboringScore* variable takes the value of the percentage of border states that have adopted a less restrictive FDL.

Other independent variables include state racial and political factors. The *PartyControl* variable is the partisan composition of State Legislatures. I use a binary scale of “0” and “1” to distinguish between the legislative composition of each state. (“0” for states with a Republican majority or split control; “1” for states with a Democratic majority). Previous research has noted that states with unified Democratic control are more likely to enact policies expanding voting rights to ex-felons (Yoshinaka & Grose, 2003). Therefore, I expect to see a positive relationship between the dependent variable

and Party Control. The data for this variable was retrieved from the National Conference of State Legislatures.

The second control variable is *MinorityPopulation*. Previous research has found a positive relationship between the minority population in each state and its FDL. For example, Preuhs (2001) found that FDL became more restrictive as the minority population increased. This variable will be measured on a continuous scale to represent the percentage of the minority population in a state each year. Since both Black and Latino populations represent a higher percentage of the incarcerated population, only these two groups will be considered in the calculation of the variable. The data for this variable was retrieved from the U.S. Census Bureau.

## Chapter 8: Regression Results

To determine the effect of both external mechanisms and internal state characteristics on the adoption of less restrictive FDL, I conducted a Multinomial Logistic Regression Analysis.

I estimated the following model:

$$\text{Less Restrictive FDL} = b_0 + b_1 * \text{PolicyAdoption} + b_2 * \text{NeighboringScore} + b_3 * \text{PartyControl} + b_4 * \text{MinorityPopulation} + \mu$$

Table 6 shows the results of this model, and they are quite unexpected. While the literature suggests that states are imitating and learning from each other's policy choices, this model indicates there is no statistically significant relationship between either *PolicyAdoption* or *NeighboringScore* and the adoption of less restrictive FDL.

Table 6: Multinomial Logistic Regression Results

Variables	Coefficients	Standard Error	Z- Value	P>[z]	95% Confidence Interval
Policy Adoption	0.525	5.481	0.10	0.924	[-10.217, 11.2684]
Neighboring Score	-0.149	0.616	-0.24	0.808	[-1.358, 1.058]
Minority Population	-2.204	1.025	-2.15	0.032	[-4.213, -.194]
Party Control	-0.645	0.258	-2.49	0.013	[-1.152, -.138]



As for the effect of the other two control variables, both *MinorityPopulation* and *PartyControl* are both statistically significant and negative. As the percent of a state's minority population (African American and Hispanic) increases, the likelihood of adopting a less restrictive FDL decreases. These findings also suggest that the likelihood of adopting a less restrictive FDL decreases when states are under Democratic control, in comparison to states under Republican control or split party control.

The second finding is quite unexpected given that Yoshinaka and Grose (2008) and Burkhardt (2011) both found a positive association between felon enfranchisement and unified Democratic state governments. Yet, Garcia (2011) found similar results to this report stating: "the odds of easing restrictions decrease when states are under Democratic control." Given these mixed results, further research is needed to clarify this issue.

The results of this model are inconsistent with both external mechanisms hypotheses. As stated earlier, while scholars might have predicted that external mechanisms would be at play in driving the diffusion of less restrictive FDL, they are not statistically significant in this model. Although they may serve to help explain the experimentation and variation within FDL changes, they fall short as explanations for change compared to other variables. Therefore, we can conclude that state characteristics may be better equipped to explain why a state adopts a less restrictive FDL.

What is evident upon reviewing the data is the rarity of FDL policy changes. This is because states are not typically changing their FDL every year, although some states (as discussed in the next chapter) have quickly reversed previous policies. Further statistical analysis and modeling would be helpful for future research as this report has largely centered around the history, measurement, transformation, and policy learning aspects of FDL.

## **Chapter 9: Policy Revisions & Reversals**

Although most states have made several FDL changes, in some cases a state made a single change that was not subsequently revised or repealed. Only one state, Michigan, adopted a less restrictive FDL Level 1 and stuck with it. Only two other states (Alaska and West Virginia) adopted and stuck with a less restrictive FDL, both ranked at a Level 3. The remainder of the states have gone through several policy revisions.

Ranging anywhere from two to eight policy revisions, seventeen states made incremental policy changes resulting in a Level 1 FDL: California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Maryland, Montana, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Rhode Island, Utah, and Washington. Ten states that moved to Level 2 and 3 made two to eight policy revisions: Arkansas, Delaware, Georgia, Idaho, Minnesota, Missouri, New Mexico, North Carolina, Oklahoma, and Wisconsin. Additionally, five other states reduced their level of restrictiveness to Level 4-5 via two to six policy revisions: Alabama, Arizona, Mississippi, Nebraska, and Wyoming.

The remaining thirteen states made policy revisions that were subsequently reversed: Florida, Iowa, Kansas, Kentucky, Louisiana, New Hampshire, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Virginia. These reversals were made by all branches of government -- legislative, judicial, and executive.

### **LEGISLATIVE REVERSALS**

The most common reversal was carried out by the legislative branch. We see examples of this in five states: South Carolina, Texas, Kansas, South Dakota, and Louisiana.

## **South Carolina**

In South Carolina, a total of three policy revisions were made. The first FDL was adopted in 1865 and was ranked at Level 5. In 1867, a policy revision was made, and it resulted in a Level 1, only disenfranchising those in prison (Uggen & Manza, 2003). In 1895, South Carolina changed its FDL to Level 6, requiring a pardon before restoring voting rights (Behrens, Uggen, and Manza, 2003). In 1981, South Carolina once again shifted toward a less restrictive FDL. It repealed ex-felon disenfranchisement and adopted a Level 3 FDL; adopting the policy first introduced by Wisconsin in 1947 (Behrens, Uggen, and Manza, 2003; Yoshinaka & Grose, 2003; 2005).

## **Texas**

Texas has experimented with a total of six FDL. The first FDL was adopted in 1845 ranked at Level 6. In 1869, Texas adopted its first less restrictive FDL ranked at Level 1 but it was later revised in 1876 (Behrens, Uggen, and Manza, 2003). Although it is not clearly explained in the literature, we can gather from a subsequent policy revision that the state initially adopted a Level 6 FDL. This is supported by The Sentencing Project (2003), which reports the following policy revision was made in 1983: a lifetime ban replaced by a 5-Year waiting period.

Behrens et al. (2003) and Yoshinaka & Grose (2003, 2005) write that voting rights were automatically restored following a 2-Year waiting period after completion of sentence. This is clarified by The Sentencing Project (2003), which reports a policy change in 1985 that reduced the 5-Year to a 2-Year waiting period, resulting in a Level 4 FDL. The last policy revision made by Texas was in 1997 resulting in a Level 3 FDL. The Texas Legislature passed a bill, signed by Governor George W. Bush, eliminating the two-year waiting period and granting automatic restoration of voting rights upon

completion of sentence (The Sentencing Project, 2003, 2016; Behrens, Uggen, and Manza, 2003; Yoshinaka & Grose, 2003, 2005; Wilson & Watry, 2015).

## **Kansas**

A total of two policy revisions have been made by the state. The first FDL was adopted in 1859 (Brooks, 2004; Behrens, Uggen, and Manza, 2003). Although it is not well described in the literature, we can gather from the following policy revision that it resulted in the adoption of a Level 6 FDL. Both Behrens et al. (2003) and Yoshinaka & Grose (2003, 2005) report that ex-felon disenfranchisement was repealed, and probationers were enfranchised, resulting in a Level 2 FDL. Kansas made its final policy revision in 2002, which increased restriction to a Level 3 FDL. According to the Sentencing Project, the legislature added probationers to the category of excluded felons.

## **South Dakota**

South Dakota has made three policy revisions. We can gather from the literature that the first FDL was instituted at the time of statehood and was a Level 6. South Dakota made its first policy revision in 1967, repealing ex-felon disenfranchisement and enfranchised probationers and parolees; resulting in a Level 1 FDL (Behrens, Uggen, and Manza, 2003; Yoshinaka & Grose, 2003, 2005). A minor policy change was made in 2010 to further ensure the protection of felon voting rights through a voter education curriculum (Chung, 2019). The final policy revision was made in 2012, which increased the level of restriction to a Level 3 FDL. The bill HB 1247 was enacted, and it essentially revoked voting rights for those in prison, on parole, and on probation.

## **Louisiana**

Louisiana is the state with the second most policy revisions with a total of eleven. According to Behrens et al. (2003) the first state constitution (1812) gave the state legislature the power to restrict suffrage for criminal activity. Louisiana's state constitution was later revised in 1845, noting disenfranchisement was applicable to those “under interdiction” or “under conviction of any crime punishable with hard labor” (Wilson & Watry, 2015). It was revised in 1898 but maintained a Level 6. Brooks (2004) points out that Louisiana was one of five southern states that passed FDL targeting blacks. In 1921, Louisiana extended disenfranchisement to those convicted in federal courts (Behrens, Uggen, and Manza, 2003).

It was not until 1968 that a policy revision led to a less restrictive FDL. This policy automatically restored voting rights for first-time offenders but still maintained a lifetime ban for those with more than one offense (Yoshinaka & Grose, 2003, 2005). This policy change is ranked at Level 4. A few years later, Louisiana reduced the Level of FDL once again. In 1974, a policy revision further clarified “a first offender never previously convicted of a felony” is automatically pardoned upon completion of his or her sentence, without the need for a recommendation by the Board of Pardons and without action by the Governor (Allard & Mauer, 2000; Yoshinaka & Grose, 2003, 2005). The following year, probationers received the right to vote, resulting in a Level 2 (Manza, 2003; Yoshinaka & Grose, 2003, 2005). A few years later in 1978, parolees were enfranchised; resulting in a Level 1 FDL (Behrens, Uggen, and Manza, 2003; Yoshinaka & Grose, 2003, 2005).

A restrictive policy shift took place in 1999 when a policy revision resulted in a Level 4 FDL. Once Bill 217 was enacted, it “effectively limited automatic pardons to first offenders convicted of "a non-violent crime or convicted of aggravated battery, second

degree battery, aggravated assault, mingling harmful substances, aggravated criminal damages to property, purse snatching, extortion, or illegal use of weapons or dangerous instrumentalities" (Allard & Mauer, 2000). A minor policy change in 2008 required the Department of Public Safety and Corrections to provide notification of the rights restoration process (Chung, 2019; Wilson & Watry, 2015). In 2017, Louisiana enacted HB 168 which improved the reporting requirements between The Department of Public Safety and Corrections and the Department of State (NCLS, 2021).

The last policy revision was made in 2018, resulting in a Level 3 FDL. According to McLeoud (2018) the state authorized rights restoration for residents on probation or on parole only if they had not been in prison for five years. This policy change is ranked at a Level 3 because unlike other policies that require a waiting period after the completion of their sentence, this policy enfranchises convicted felons who are on probation or parole if they have not been in custody for five years.

## **JUDICIAL REVERSALS**

The least common type of reversal was carried out through the judicial branch. We see examples of this in only two states: New Hampshire and Pennsylvania.

### **New Hampshire**

The state of New Hampshire has had two policy revisions: each shifting direction of the previous policy. For example, in 1967, New Hampshire adopted a Level 1FDL (Behrens, Uggen, and Manza, 2003). In 1998, this law was found unconstitutional by the State Superior Court resulting in a Level 0 FDL (Behrens, Uggen, and Manza, 2003; Yoshinaka & Grose, 2003, 2005). In this case, New Hampshire state prisoner David J.

Fischer successfully litigated the right for New Hampshire prisoners to cast absentee ballots in all elections. He went a step further and “divulged he had cast his ballot for reactionary Republican Alan Keyes” (Young, 2000). This is quite interesting given that Republicans are largely opposed to felon enfranchisement. In fact, one Republican has gone on the record stating “As frank as I can be, we’re opposed to it [felon enfranchisement] because felons don’t tend to vote Republican” (Chandler, 2003). Despite his effort to sway the decision, it was subsequently overruled by the State Supreme Court in 2000, resulting in the disenfranchisement of inmates once again (Behrens, Uggen, and Manza, 2003).

## **Pennsylvania**

Pennsylvania has experimented with a total of four FDL. The first FDL was adopted in 1860 (Behrens, Uggen, and Manza, 2003; Wilson & Watry, 2015) resulting in a Level 6 FDL. Although it is not clearly explained in the literature, we can gather from the following policy revision in 1968 that ex-felon disenfranchisement was repealed and probationers and parolees were enfranchised (Behrens, Uggen, and Manza, 2003; Yoshinaka & Grose, 2003, 2005). In 1995, the policy revision increased in restriction from a Level 1 to a Level 5 FDL. The new state law required ex-felons to wait five years after the completion of their sentence before registering to vote (Behrens, Uggen, and Manza, 2003). In 2000, a Pennsylvania court eliminated the state’s five-year post-prison wait, thus enfranchising parolees and resulting in a Level 1 FDL (Behrens, Uggen, and Manza, 2003).

## **EXECUTIVE REVERSALS**

Reversals via the executive branch share a common theme: they often take place within the same year or the next few years. We see examples of this in five states: Florida, Iowa, Kentucky, Tennessee, and Virginia.

### **Florida**

The state of Florida has made the largest number of policy revisions, twelve, which has resulted in a Level 4 FDL. Although it has achieved a Level FDL twice. The first FDL was adopted in 1838 and is ranked as a Level 6 (Brooks, 2004). Florida's state constitution was ratified in 1845 and further clarified: "Laws shall be made by the General Assembly to exclude from... suffrage those who shall have been, or may thereafter be, convicted of bribery, perjury, forgery, infamous crimes, or other high crime or misdemeanor." In 1868, Judge Kravitch pointed out in her dissent that Florida first denied felons the vote in 1838 and almost thirty years later, in 1865, the state's first post-Civil War Constitution still denied blacks the vote and thus had to be replaced in 1868 (Brooks, 2004). A century later in 1973, Florida made a policy revision granting automatic restoration of voting rights for ex-felons who meet certain conditions (Yoshinaka & Grose, 2003, 2005). In 1975, the level of restriction was reduced from a Level 4 to a Level 3. Governor Reubin Askew enacted a policy of automatically restoring voting rights to persons completing a felony sentence (Mauer & Kansal, 2005).

There was no change until 1990. A minor policy revision then increased restriction and further clarified that Florida disenfranchised felons convicted in any court (Behrens, Uggen, and Manza, 2003). In 1991, various governors like Governor Martinez (Florida) and Governor Wilder (Virginia) began to impose restrictions based on type of offense increasing the FDL to a Level 4 (Mauer & Kansal, 2005; Kalogeras & Mauer,



2003). By 1999, Governor Bush added more than 200 offenses to the list of disqualifying crimes (Mauer & Kansal, 2005). In 2004, another minor policy change was made, this time reducing restriction by simplifying the clemency process (Ewald, 2009; The Sentencing Project, 2016; Wilson & Watry, 2015). In 2006, another minor policy change reduced the restriction, this time requiring county jail officials to assist with voting restoration (Chung, 2019).

On Apr. 5, 2007, Gov. Charlie Crist (R) and the Florida Board of Executive Clemency amended the Florida Rules of Executive Clemency. This reduced the level of restriction to a Level 3 FDL, restoring voting rights upon completion of sentence (Ewald, 2009). Just a few years later, in 2011, the Florida Board of Executive Clemency reversed a 2007 policy change and required that all ex-felons wait between five and seven years before applying to regain voting rights (Chung, 2019; NCLS, 2021; Wilson & Watry, 2015). This policy revision resulted in a Level 5 FDL.

Florida has remained at a Level 5 although minor changes have reduced restriction. For example in 2018, Amendment 4 automatically restored voting rights to people convicted of a felony (except those convicted of murder and felony sex offenses) upon completion of all terms of their sentence. This was quickly met with resistance. In 2019, Governor Ron DeSantis signed SB 7066, a controversial measure requiring people with felony convictions to pay all court-ordered restitution, fines, and fees before they are allowed to vote (The Sentencing Project, 2019). Patricia Brigham, president of the Florida chapter of the League of Women Voters commented “We knew there was gonna be blowback” from the republican party (Levine, 2020). After signing the bill, Governor DeSantis suggested he would consider restoring voter rights via executive order in the future for non-violent offenders (Florida Politics, 2019). The Sentencing Project reports that “the National ACLU, ACLU of Florida, NAACP Legal Defense and Educational

Fund, and the Brennan Center for Justice filed a lawsuit against the state, claiming SB 7066 is an unconstitutional “poll tax” that undermines the intent of Florida voters when they overwhelmingly passed Amendment 4” (The Sentencing Project, 2019). This lawsuit failed and the restoration process remains difficult.

## **Iowa**

Iowa has experimented with four different FDL. The first was adopted in 1846 (Brooks, 2004; Mauer & Kansal, 2005). Although it is not well described in the literature, we can gather from the following policy revision that it resulted in the adoption of a Level 6 FDL (Brooks, 2004; Behrens, Uggen, and Manza, 2003). No policy revision was made until the 21st century. In 2005, Governor Tom Vilsack signed executive order 42 which automatically restored voting rights for all felons who had completed their sentence; eliminating lifetime disenfranchisement (Ewald, 2009; Wilson & Watry, 2015).

A Level 3 FDL was in place for only six years. In 2011, Republican Governor Terry Branstad, issued Executive Order 70. This revoked the previous law and now required those who have completed their sentence, on parole, or on probation to pay all outstanding monetary obligations to the court before they could apply to regain their voting rights (NCLS, 2021). This increased the FDL to a Level 5 by increasing the difficulty in the restoration process. That same year, a minor policy change which reduced restriction by simplifying the application process for felons while still maintaining a Level 5 FDL (Chung, 2019; Wilson & Watry, 2015).

In 2020, Iowa reduced to a Level 4 FDL when Governor Reynolds signed an executive order restoring voting rights to people who have completed their sentences, except for those convicted of homicide, and the payment of fines/fees is no longer

required (The Sentencing Project, 2020; NCLS, 2021). During the signing ceremony, he stated that “when someone serve their sentence and pays the price our justice system has set for their crimes, they should have the right to vote restored, automatically, plain and simple” (Philo, 2021). This seems to be the popular argument for restoring felon voting rights.

## **Kentucky**

In the case of Kentucky, a total of seven policy revisions have been made. Scholars disagree on the exact year the first FDL was adopted; Brooks (2004) reports it was 1799 while Behrens, Uggen, & Manza (2003) and Wilson & Watry (2015) report it as 1851. A policy revision was not made until the 21st century. In 2001, a minor policy change reduced restriction by simplifying the restoration process (Chung, 2019; Wilson & Watry, 2015). A few years later, in 2004, this minor policy change was reversed by Governor Fletcher who made the process more difficult by requiring felons to submit a written statement explaining the reason for their request of restoring their voting rights and providing three letters of reference in their application (Chung, 2019; Mauer & Kansal, 2005; Wilson & Watry, 2015). In 2008, another minor policy change overturned the previous and simplified the restoration process (Chung, 2019; Wilson & Watry, 2015).

Beyond constant minor policy changes, Kentucky has also made reversals on policy changes which would have restored voting rights for some who have been convicted of a felony. For example, in 2015, Governor Steven L. Beshear issued an executive order (136 KB) that immediately granted the right to vote to about 140,000 nonviolent felons who completed their sentences. This policy change was overturned that same year by the incoming Governor Matt Bevin who reinstated lifetime

disenfranchisement for persons convicted of non-violent felony offenses (Chung, 2019). In announcing the order, he stated: “While I have been a vocal supporter of the restoration of rights, it is an issue that must be addressed through the legislature and by the will of the people” (Weigel, 2015).

Despite efforts to resist reform, in 2019 another effort was made to expand voting rights for convicted felons. The newly elected Governor Andy Beshear (D) issued an executive order restoring voting rights for those who had completed their sentence for a nonviolent crime. After signing the executive order, he told his supporters “My faith teaches me to treat others with dignity and respect...I want to lift up all of our families and I believe we have a moral responsibility to protect and expand the right to vote...Every citizen who has paid their debt has earned the right to return to full citizenship” (Staley, 2019).

## **Tennessee**

The state of Tennessee has experimented with eight different FDL. The first was adopted in 1834, and from what we can gather from the literature, the initial policy was a Level 6, much like other states (Brooks, 2004). Tennessee shares a very rare type of FDL with the state of Washington, whereby they disenfranchise felons who were convicted during a specific time period. Mauer and Kansal (2005) explain that a policy change made in 1975 stating that “persons convicted before January 15, 1973, for any felony that falls within eight categories lose the right to vote but can apply to their local circuit court or the court in which they were convicted to have their voting rights restored after completing their sentence.” This policy change was coded as a Level 5 given that it allowed felons who were considered outside of these parameters to regain their voting rights.

Another policy revision was made in 1981, stating that “persons convicted of a felony between January 15, 1973 and May 17, 1981 are eligible to vote after completion of sentence. Any felony conviction after May 18, 1981 results in disenfranchisement, but the procedure changed from time to time regarding regaining the right to vote” (Mauer & Kansal, 2005). It is still unclear whether the following policy revision resulted in a Level 3 or Level 5. It is coded as a Level 4 FDL for the moment. Tennessee revised this policy once again and reduced its restriction once again by allowing for automatic post-sentence restoration of rights only for conviction after 1984 (Behrens, Uggen, & Manza, 2003). On the other hand, Mauer and Kansal (2005) note that the new FDL stated “any person convicted of a felony between May 18, 1981 and June 30, 1986 can apply to their local circuit court or the court in which they were convicted to have their voting rights restored after completing their sentence.”

Ten years later, another policy revision was made resulting in a reduced restriction: “persons convicted of felonies other than first degree murder, aggravated rape, treason, or voter fraud between July 1, 1986 and June 30, 1996 had their right to vote restored automatically upon completion of sentence, and can apply to the Board of Probation and Parole for a Certificate of Restoration of Voting Rights” (Mauer & Kansal, 2005). This law was amended that same year, resulting in an increase in the level of restrictiveness from a Level 3 to a Level 4. According to the new policy, “persons convicted of felonies (except for those convicted of murder, rape, treason, or voter fraud) after June 30, 1996 must once again apply to their local circuit court or the court in which they were convicted to have their voting rights restored” (Mauer & Kansal, 2005).

In 2006, the Tennessee legislature streamlined the restoration process for most persons upon completion of sentence (Chung, 2019; Ewald, 2009; Wilson & Watry, 2015). According to The Sentencing Project, the policy also requires that felons apply for

a “certificate of restoration” from the Board of Probation and Parole and that they must also satisfy any court-ordered restitution or child support obligations. A final policy change was made in 2011, which added to the list of felons who would not be eligible to vote again; resulting in a Level 5 FDL. More specifically, HB 117 disenfranchised those who were convicted of felonies since 1981 (McLeod, 2018). Tennessee briefly entertained a policy revision in 2019 that would have resulted in a FDL Level 3, but no policy change was made.

## **Virginia**

The state of Virginia was the first state to adopt a FDL. The data also reveal that Virginia is tied with Louisiana; both made eleven policy revisions. The first FDL was adopted in 1776. Given what we know about early versions of FDL we rank this policy as a Level 6 (Brooks, 2004; Behrens, Uggen, and Manza, 2003). In 1830, Virginia's state constitution was ratified, and it specifically disenfranchised those convicted of an infamous crime (Wilson & Watry, 2015). It was revised in 1901, maintaining a Level 6 and Brooks (2004) points out that Virginia was one of five southern states which passed FDL targeting blacks.

The next policy revision was not made until 1991, resulting in a Level 5 FDL. Kalogeras and Mauer (2003) report that “Governor L. Douglas Wilder added a 7-year waiting period after the completion of sentence for drug offenders, and a 5-year period for all other offenders, before becoming eligible to petition the governor.” In 2000, the Virginia legislature passed a law enabling certain ex-felons to apply to the circuit court for the restoration of their voting rights five years post-completion of sentence. More specifically, those convicted of felony drug offenses had to wait seven years after

completion. Further, it specified that the circuit court's decisions were subject to the Governor's approval (Chung, 2019).

In 2002, a minor policy change reduced restriction and streamlined the restoration process (The Sentencing Project, 2019). A few years later, in 2006, Governor Mark Warner implemented a streamlined restoration process through executive order, resulting in a significantly increased number of applications and restorations (Mauer & Kansal, 2005; Wilson & Watry, 2015). In 2010, Governor Bob McDonnell decreased the waiting period for non-violent offenses from three years to two years and established a 60-day deadline to process voting rights restoration applications (Chung, 2019; Whack, 2013; Wilson & Watry, 2015).

In the years that followed, policy revisions seemed to become less restrictive over time, but it was met with resistance. In 2013, Governor McDonnell eliminated the waiting period and application for non-violent offenses (The Sentencing Project, 2019; Wilson & Watry, 2015). Echoing the arguments for felon voter restoration, he commented: "It's the right thing to do. It is past time that Virginia enacted this policy. I believe strongly in second chances, redemption and opportunity" (Malewitz, 2013).

In 2016, Virginia Governor Terry McAuliffe announced an executive order automatically restoring voting rights to convicted felons who have completed their prison sentence and their term of supervised release (parole or probation). He restored voting rights to more than 200,000 convicted felons. With this action, he sought to "overturn a Civil War-era provision in the state's Constitution aimed at disenfranchising African-Americans" (Mele, 2016). This policy was faced with opposition by Republicans and the Virginia Supreme Court. Republicans vehemently argued that the governor of Virginia does not have the power to restore voting rights in masse but must be done so only on a case-by-case basis. Further, he argued "I will expeditiously sign nearly 13,000 individual

orders to restore the fundamental rights of citizens... and I will continue to sign order until I have completed restoration for all 200,000 Virginians” (Domonoske, 2016). In an interview with NPR, he commented “I mean, they’ve served their time. They’re done with the system. Why should we deny them the right to vote? (Domonoske, 2016).

The Supreme Court of Virginia sided with the sentiments of Republican lawmakers and deemed the order unconstitutional and an overstep in authority by the governor. This policy revision was short lived and was overturned by the State Supreme Court within the same year (McLeod, 2018). In a 4-3 decision, the Supreme Court of Virginia ordered the state to cancel the registrations of the more than 11,000 felons who had signed up to vote and ruled that rights restoration needed to be undertaken on an individual basis, and not across the board.

While Virginia has had difficulty moving away from strict FDL, there continues to be a push for felon enfranchisement. Despite previous reversals, Governor Northam used his executive powers and reported in 2019 that his administration had restored voting rights to 22,205 previously convicted felons in his state (The Sentencing project, 2020). Additionally, in 2021 Governor Northam updated the eligibility criteria for restoration of civil rights to individuals who have been released from incarceration (Effective March 16, 2021).

This push and resistance to reform are common in felon disenfranchisement laws. As newer versions of this policy are introduced and adopted, there is also a resistance to the change. Despite growing support for restoring voter rights, this battle continues and largely along political lines. In this chapter, we have seen how different branches of government are participating in this process. Until there is federal intervention, we can expect this trend to continue as efforts to move towards less restrictive FDL continue.



## **Chapter 10: Recent & Pending Policy Changes**

A growing number of states favor a Level 3 and Level 1 FDL, but this is still being debated and considered by many states. For example, in 2019, Georgia (Senate Resolution 153), Iowa (House Joint Resolution 14), Kentucky (House Bill 91 & Senate Bill 238), and Tennessee (House Bill 547 & Senate Bill 589) introduced bills which would have resulted in Level 3 FDL. While none of them passed, six out of eight states adopted a Level 3 or Level 1 FDL in 2019.

In 2020, there was a decrease in the number of policy changes. That year, only two states adopted less restrictive FDL. Iowa adopted a Level 4 FDL, and California adopted a Level 1 FDL. This year, however, Virginia, Washington, New York, and Connecticut all adopted a Level 1 FDL. As previously stated, Governor Northam of Virginia updated the criteria for enfranchisement to those who have been released from incarceration. The other three states made policy revisions through legislation. Washington passed HB 1078, New York passed SB 830, Connecticut passed SB 1202 to extend voting rights to citizens on parole (NCLS, 2021). This increased the number of states with a Level 1 FDL to twenty-one. Although as we have reviewed in this report, reversals are always possible outcomes. However, the trend suggests the U.S. is largely heading toward less restrictive policies.

According to the Sentencing Project (2021), four states are currently considering universal suffrage bills. If passed, Oregon, Maryland, Massachusetts, and Virginia would be the first states to do away with FDL and allow persons convicted of a felony to vote. This could potentially create a pathway for other states to imitate this policy or at the very least move away from disenfranchising convicted felons who are no longer incarcerated.

It will be interesting to see how FDL in the U.S. continue to change in the near future as advocacy groups and public officials work together to do away with this punitive law.

## Chapter 11: Conclusion & Further Research

This report provides a comprehensive overview of FDL. Chapter 2 contained a theoretical overview of policy diffusion and its application to FDL, which has not been done before, as most scholarship is embedded in legal and political theory frameworks. Chapter 3 described the origins and rise of FDL in the U.S., laying out the five distinct groups of states that participated in the diffusion of these laws. Chapter 4 introduced new tools to help with the measurement and categorization of FDL, specifically by creating a seven-level ranking system and supplemental chart to help capture the growing number of policy components.

After introducing this different way of looking at FDL, Chapter 5 applied the policy diffusion framework and identified the five distinct groups that emerged in adopting less restrictive FDL. It also determined the periods where these policies were diffusing as states either imitated or learned from the policy choices of other states. Chapter 6 discussed the various innovative policies that emerged as less restrictive FDL were diffusing, providing illustrations of how they were diffusing over time and across the U.S. spatially.

In the third section, I sought to understand how and why less restrictive FDL were diffusing. Chapter 7 provided an overview of the data and methods used to test the influence of both external mechanisms and state characteristics. The model consisted of two variables representing external mechanisms, *PolicyAdoption* and *NeighboringScore*, and two variables representing state internal characteristics, *MinorityPopulation* and *PartyControl*. Chapter 8 discussed the unexpected results that were contrary to both external mechanism hypotheses. By contrast, the two variables representing state internal

characteristics, *MinorityPopulation* and *PartyControl*, were both statistically significant. However, additional modeling and analysis would better refine these results.

Chapter 9 discussed in detail the policy revisions made by states, including instances of reversals. Although I provided some context for some states as to what public officials or citizens were thinking at the time, it is clear that archival research is necessary in order to further understand why this diffusion happened and to grasp the shifting attitudes toward this policy. What was evident in this section is that policy revisions made by the executive branch are more likely to be reversed than changes made by the courts or legislative branch.

These findings also raise the issue of the role of public opinion in driving diffusion. While states are not simply mimicking the policy choices of other states, they are following a trend toward less restrictive FDL. If states were simply imitating the policy choices of other states, we would see high adoption rates of the same policies. On the contrary, we see states experimenting with different levels of restrictiveness and creating innovative policies and procedures. Therefore, the mechanism driving this diffusion is not just imitation. We have established that states are not in competition with each other, nor are they being coerced by the federal government. Which leaves us with the learning mechanism, but what are these states learning?

Crime policy is heavily framed around the notion that criminals should be punished to discourage deviant behavior and maintain social order. These policies often result in success, failure, and unforeseen consequences. Yet, FDL have a unique way of punishing these individuals further by stripping them of their democratic rights. How can we measure whether this policy is effective? Is success measured by its role in reducing crime rates? Is it measured by its capacity to disenfranchise all felons? More concretely, what is the purpose of this law and how are states evaluating FDL?

The rise in innovative versions of less restrictive policies and procedures suggests that states are open to less restrictive measures, but finding the right version has been difficult. From this study, I theorize the answer may lie in state public opinion. Thus, further research should explore this relationship between public opinion and FDL.

Previous research suggests that the public supports restoring voting rights to those who have completed their sentence (Manza, Brooks and Uggen, 2004). Now that, for the first time, a decreasing number of Americans (5.2 million) are disenfranchised by some form of FDL, is it possible that policy is influencing public opinion, or vice versa? It is well documented that states are highly responsive to state public opinion (Erikson, Wright, and McIver, 1993; Burstein, 2003; Brooks and Manza, 2007; Wlezien and Soroka, 2007), so future research should investigate this relationship. Previous scholarship in this area has only provided single-year analyses, but Soroka and Wlezien (2010) tell us that the best way to capture the relationship between opinion and policy is through extended time-series analysis. Although there are only a handful of studies evaluating public opinion on felon disenfranchisement laws (Dawson-Edwards, 2008; Dawson-Edwards & Higgins, 2013; Manza, 2004; Pinaire, Heumann, and Bilotta, 2003; Wilson, Owens, and Davis, 2015), a possible solution may be to merge the results of past surveys and incorporate the data found in the archives to help us understand if and how public opinion has changed over time.

In a national survey conducted by the CCES in 2020, I created a survey instrument to help answer the following questions: What is current public opinion on restoring voting rights to felons? Do current policies reflect that of the public? Are people more likely to support this policy if they know or are friends with a felon? Preliminary results suggest Americans are against permanent disenfranchisement.

Other questions regarding this population remain unanswered. Republicans have pushed hard against implementing less restrictive FDL because they believe Democrats would only gain potential votes. Yet, Americans do not always vote as predicted. In addition, the findings in this thesis indicate that Republican control of state governments is associated with FDL changes. What if the assumption that most felons are Democrats is incorrect? What percentage identify as Republican? Would enfranchised felons turn out at rates that could affect election outcomes? And, how would such data affect the discourse regarding FDL? In my future work, I plan to contribute to this body of work and address these questions.

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