

THESIS

FAIR CHANCE LEGISLATION: A STATE-LEVEL SOCIO-POLITICAL ANALYSIS

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ABSTRACT

FAIR CHANCE LEGISLATION: A STATE-LEVEL SOCIO-POLITICAL ANALYSIS

Laws vary greatly from state to state, with little clear understanding of what conditions make certain legislation politically viable. Although many studies have examined the ways that voter sentiments and racial/ethnic social dynamics are tied to certain types of legislation, little has been done to evaluate the ways power dynamics in state government might impact the type of legislation enacted. Thus, this study examines the relationship between race/ethnic measures, socio-political measures, and ‘fair chance legislation’ (FCL). Using OLS regression, this work lays the foundation for further in-depth examination of state-level socio-political dynamics and legislative outcomes.

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INTRODUCTION

In the last thirty years, the United States has seen a steep rise in criminal punishment and thus, the percentage of the population with criminal records. As of 2010, an estimated 12.81% of the adult male population, and 33% of the African American adult population had been convicted of a felony (Shannon, Uggen, Schnittker, Thompson, Wakefield, and Massoglia 2017). Several studies have suggested that stigmatization of felons poses immense barriers to those attempting to reform their lives. Despite considerable research outlining the ways that these barriers are often linked to re-arrest, there are few legal protections for felons against discrimination (Ewald 2012; Owens and Smith 2009; Travis 2002). This is particularly important within the employment sector, as it has been proven that obtaining employment is strongly correlated with reentry success (Bahr, Harris, Fisher and Armstrong 2010; Berg and Huebner 2011; Seiter and Kadela 2016; Tripodi, Kim and Bender 2010). Furthermore, several studies have determined that employers are often highly discriminatory against those who are forced to check the well-known criminal history box on their employment application (Bushway 2004; Holzer, Raphael and Stoll 2004; Pager 2003). In fact, findings highlighted that whites with a criminal record saw a 50% reduction in the probability for a callback or interview, and blacks saw an astonishing 64% reduction in the probability for a callback or interview when including an indication of criminal history (Pager 2003). Additionally, technological advances allow for increasing ease of access to criminal history information, making it much easier to utilize such information in the hiring decision (Weissert 2013).

With such a large number of individuals facing these obstacles to employment, several movements have emerged with the goal of persuading state-level politicians to enact legislation

that will unburden individuals simply trying to succeed after incarceration. With no Federal protection in place for felons, States are left with the discretionary power to decide whether to adopt legislation aimed at overcoming the discrimination felons may face. One movement that has achieved considerable success is the ‘Ban the Box’ movement, which seeks to remove the well-known criminal history indicator from job applications, thus allowing individuals with criminal records the opportunity for a first impression before disclosing personal history. The goal of this legislation is to increase employment opportunities and reduce hiring discrimination for felons. A majority of states have now moved toward implementing some form of ‘fair-chance’ legislation (FCL) that delays or restricts employer access to criminal history information of prospective employees (NCSL 2017). Even though 31 states have enacted a version of FCL, 19 states continue to allow employment discrimination against citizens with a felony-record (NELP 2017).

Due to rapid and expansive adoption, several studies have begun to examine exactly how FCL might impact employment prospects for individuals both with, and without felony records. The findings of many of these studies suggest that fair chance legislation might be more beneficial to some groups than others, with black men faring worse in the employment search than they had prior to the passage of FCL (Agan & Starr 2017; Doleac & Hansen 2016). However, proponents for FCL argue that these laws are a step in the right direction in reducing the stigma and challenges associated with being a felon in the United States (D’Alessio, Stolzenberg, and Flexon 2015). Using Hawaii as a model state, we can see that fair chance legislation has several positive outcomes, a stark contrast to the picture being painted by current literature that claims that individual-level characteristics such as race and gender shape the way that FCL might help or hinder an individual (Agan & Starr 2017; Doleac & Hansen 2016).

Similarly, many criminological studies have focused on individual level characteristics as an explanation for different punitive outcomes, but with widely disparate findings. More recently, researchers have begun to include more comprehensive indicators of social context, such as measures of political climate, to determine the conditioning effects they might have on punishment and the treatment of offenders. Interestingly, findings suggest that political climate has strong conditioning effects on the ways that individual level factors explain punitive outcomes (Jacobs & Carmichael 2001; Jacobs & Helms 2001). These findings support previous work that asserts that punishment is an inherently political process (Garland 2010).

Because state laws are an embodiment of political phenomena, it is unsurprising that social and political context can account for the wide differentiation in state laws (Comfort 2007; Durante 2017; Enns 2010; Ewald 2012; Jacobs & Jackson 2010; Travis 2002; Wheellock 2005). A number of studies have found that political ideology, namely conservatism, is correlated with a wide range of social behaviors including religiosity (Dochuk 2011; Jones-Correa & Leal 2001; Layman 1997; Wald & Calhoun-Brown 2014), wealth and perspectives on poverty (Bobbio, Canova & Manganelli 2009; 2010), subjective identity (Kaikati, Torelli, Winterich & Rodas 2017), punitive philosophy (Jacobs & Helms 2001; Murakawa 2008; Smith 2004), environmental consciousness (Peifer, Khalsa & Ecklund 2016), and countless other forces driving our social world (Feldman & Johnston 2013; Gromet, Kunreuther & Larrick 2013; Terrizzi, Shook & Ventis 2010). Because legislators must respond to their constituencies, social and political context tend to impact one another in a cyclical fashion. The findings of these studies indicate that collectively, political ideologies can have widespread effects on the social fabric of a community, state, or even region through the development and support of a larger

political climate. Political climate more broadly has been proven deeply influential on social life, particularly legislation. This influence is especially pronounced when examining punitive policy.

Furthermore, there is a large body of work examining social context with a focus on racial composition (Feldmeyer & Ulmer 2011; Wang & Mears 2010). These studies are commonly framed and guided by threat perspectives, which broadly assert that when majority groups see minority groups acquiring resources, they take measures to reinforce the status quo, reestablishing advantage for majority groups (Blalock 1967). Some studies suggest that criminal justice sanctions are one such measure utilized to reestablish advantage (Bentele & O'Brien, 2013; Garland 2001). However, the findings among this research are far from consistent. Interestingly, few of these studies have included a measure of political context to determine the conditioning effects that political ideology can have on threat. For instance, threat effects may look different in those jurisdictions with more concentrated political power, where minority groups have less power to effect change.

LITERATURE REVIEW

The mounting evidence that political factors strongly influence criminal-justice-associated legislation (Barrilleaux, Holbrook & Langer 2002; Helms & Jacobs 2002; Jacobs & Kleban 2003) suggests that perhaps the jurisprudential model in which we believe so strongly is not immune to political influence. This means that an individual's rights and treatment within the justice system may drastically change from one state to another based solely on the social and political climate of the state. But what about when individuals leave the justice system? With 31 states protecting felons from employment discrimination and 19 states choosing not to, individual employment opportunities post-incarceration are strongly impacted by which state an individual lives in. This begs the question: Does jurisdictional or regional socio-political influence alter the employment rights and treatment of those who have completed their sentence but still retain the 'felon' label? I argue that it does. This study will seek to determine whether differentiation in socio-political climate at the state-level holds significant power in explaining the passage of FCL.

Fair Chance Legislation

"Fair chance", or "Ban the Box" policies are a form of legislation aimed at easing the burdens individuals face when seeking employment post-incarceration. After research found that widespread hiring discrimination against those with criminal records drastically reduced the odds of securing stable employment (Pager, 2003), a group of activists and formerly incarcerated individuals worked to develop a grassroots movement. This group, 'All of Us or None' (AON) is a self-proclaimed national civil rights movement for those who were formerly incarcerated (All of Us or None 2017). They urge state legislators to adopt protective and progressive policies for

those marked with a felony record. When beginning the BTB movement in 2004, Hawaii served as a seemingly perfect model of state legislative action toward resolving hiring discrimination against felons. More than a decade ahead of any other state, Hawaii implemented a ‘fair chance’ hiring policy that restricted employers’ ability to include a criminal history indicator question on employment applications (NELP 2017). The goal of this legislation was to give individuals an opportunity to make a first impression before being turned away simply based on a previous incarceration. In 2010, the BTB movement finally achieved victory in not one, but three states, and by 2018, 33 states and over 150 cities and counties in the United States had passed a fair chance policy (NELP 2017; NCSL 2017). Perhaps due to its rapid expansion, there is a clear lack of uniformity amongst ‘fair chance’ legislation. These bills vary in many regards, including when and how employers can inquire about criminal history information, and more importantly, which employers are expected to comply.

Public vs. private

Although FCL has been expanded to more than two thirds of the states, this does not mean that every person with a felony record will have equal access to an entirely discrimination-free employment search. The intention of AON was to ‘ban the box’ (BTB) for public-sector employment, as it is easier to influence through legislation (NELP 2017). Some cities and states, however, have elected to extend FCL to licensure programs and private-sector employers as well (NCSL 2017). Despite FCL spreading rapidly from coast to coast, surprisingly few places have expanded FCL to encompass all forms of employment (NELP 2017). This is important because generally, public sector jobs account for a smaller percentage of employment opportunities and may have reduced pay as compared to private sector employment (NCSL 2017). Furthermore, allowing private sector employers to continue to engage in hiring discrimination shapes the type

of employment available to those with a criminal record. These public sector limitations create a markedly different employment landscape as compared to those states that ban the box for all employment sectors. This distinction, although ostensibly small, significantly alters potential employment prospects for those individuals formerly incarcerated.

Not so fair?

34 states have now implemented some form of FCL, and yet little has been done by way of policy analysis or formal evaluation. This is not to say that there is no research on ‘fair chance’ policies, however. Many studies have aimed to determine whether these laws are effective in ameliorating the impacts of employment discrimination against those with a criminal record (Agan and Starr 2016; Avery 2017; Doleac and Hansen 2016; D’Alessio et. Al.2014). Unfortunately, the findings suggest that FCL results in *reduced* employment opportunities for certain populations. In states with some form of FCL, employers are more likely to utilize personal characteristics such as race/ethnicity and gender to imply or presume criminal history, even without evidence of a prior record (Agan and Starr 2016). Thus, minority men without a criminal record are less likely to be called for an interview than white men with criminal history in states with FCL in place. This statistical discrimination, or the reliance on personal and often racial biases associated with criminality, are used in place of criminal history information when it is not included on the application (Agan and Starr 2016; Doleac and Hansen 2016). This suggests that although well intentioned, fair chance laws may only be beneficial to certain populations based on their individual-level characteristics.

Conversely, a study conducted in 2004 on the case of Hawaii’s ban the box law found that after implementation, those prosecuted for a felony offense were 57% less likely to have prior criminal convictions, suggesting that FCL may play a role in reducing repeat felony

offenses (D'Alessio, Stolzenberg, and Flexon 2015). The mixed results of the research on FCL demonstrate that upon implementation, state officials have little understanding of the efficacy and collateral consequences of the legislation. Still, legislators continue to implement FCL at the state level. What makes those states with FCL different than those without? Why do some states choose to extend FCL to the private employment sector while others do not? Perhaps in order to understand legislative decision-making, especially regarding punitive and restorative policies, we must examine the socio-political context within which they are passed.

Socio-Political Climate

Despite living within the same nation, states' rights to enact legislation ensure that United States citizens face a wide differential in the laws they must navigate to from state to state. The same is true for opportunities and restrictions for those with reduced citizenship rights, as is the case for those marked 'felon' (Pager 2003). Several studies have aimed to understand how and why different states maintain distinctively different legal landscapes (Dawson & Robinson, 1964; Ewald, 2012; Hwang, Sung-Don and Gray, 1991; Kent and Carmichael, 2015). A large number of these studies have turned to the social and political ideologies or structures present for explanation. Initially, research focused solely on the social differentiations between states to account for these differences, such as population levels of educational attainment, percentage of non-white citizens, and voter sentiments or ideologies (Dawson and Robinson 1964). The findings of these studies ultimately led to the conclusion that political culture should not be ignored when researching differences in policies from state to state (Morgan & Watson 1991; Owens and Smith 2008; 2012; Wong and Shen 2002; Wozniak 2016). This is because political context is often deeply and directly tied to social context in a multitude of complex and cyclical ways. Research supports that public opinion is deeply influential on policy outcomes (Enns

2014; Nicholson-Crotty, Peterson and Ramirez 2009), and politicians engaging in ‘penal populism’, or using ‘tough on crime’ policies to harbor votes, have utilized fear tactics to heighten public anxieties and fuel punitive policy agendas (Pickett 2016). In addition, elected officials often embody the political ideologies of their constituencies, through both rhetoric and legislation – thus shifting public attention and expectations, which in turn, shape legislator actions and focus (Garland 2001; Pickett 2016).

Voter Ideology

Elected representatives, especially legislators, hold a degree of responsibility to take seriously their constituents’ concerns and demands. If left ignored, voters can mobilize and use their power to elect a different representative and thus, it is for this reason that politicians will often use rhetoric around well-known issues to shape voter sentiments (Garland 2001). This is true especially among those serving in politically conservative states, where legislators have capitalized on the success of ‘tough on crime’ rhetoric (Garland 2001; KaiKati, Torelli, Winterich, and Rodas 2017; Morgan and Watson 1991). This rhetoric stokes voter fears and has often led to extensive expansions of criminal justice budgets and punitive policies (Garland, 2001). Sociologists and criminologists alike have found that conservative ideology is significantly linked to various social and political phenomena (Peifer, Khalsa, and Ecklund 2016). This body of literature has focused almost exclusively on the ways that the two most represented political parties in the U.S. (Republican and Democrat) are associated with group identification, ideologies, beliefs and practices (Jones-Correa and Leal 2001; Layman 1997; Peifer et al. 2016). To capture ‘conservative ideology’, researchers will most commonly adopt a simplified measure consisting of presidential election voting data where Republican votes are

equated with conservatism. However, this may be an oversimplified technique if we take into consideration the depth and complexity of the American political system.

When public partisan ideology is included as an explanatory variable, it has particularly considerable power to explain jurisdictional differences in punitive policy (Comfort 2007; Durante 2017; Enns 2010; Ewald 2012; Jacobs and Jackson 2010; Travis 2002; Wheellock 2005). Findings suggest that in places with strong Republican or ‘conservative’ ideology, we see higher incarceration rates (Smith 2004; Sorensen and Stemen 2002), larger imprisonment populations (Jacobs and Carmichael 2001), increased sentence length and severity (Helms and Jacobs 2002; Helms 2009), and even higher likelihood of imposition of the death sentence (Jacobs and Carmichael 2004). While compelling, I argue that these findings do not provide a holistic explanation of the relationship between political climate and punitive policy. While the ideology of the voters themselves is an important component, it fails to capture the inner dynamics and decision-making process of representatives, or the representative body as a whole.

Political Control

V.O. Key’s work is a popular source for theoretical foundations on how state political climate impacts legislative outcomes. Key had several hypotheses regarding the notion of power dynamics within government, and how those dynamics might influence the actions and choices of elected representatives (Key 1951). One of Key’s hypotheses asserts that in states without any competition between parties (or, the domination of a singular party), state legislators will feel secure in their position and thus enact laws beneficial only to the upper classes—and less likely to take needs of the lower class into consideration (Key 1951). Conversely, he suggested that in states with moderate to high levels of competition, anxiety over the nearest election will drive politicians to serve the interests of lower-income and more marginalized constituents in an

attempt to garner support and maintain their office (Key 1951). He also argues that over the course of time, those with less capital (social and otherwise) will be pushed out of policy decision-making, with few mechanisms through which to see formal expression of their views. Therefore it is highly important to consider more than just the presidential candidate of choice amongst constituencies.

One-party (Trifecta) States

Many studies have cited Key's theories as seminal in determining the ways that power distribution between parties can account for public policy outcomes (Barrileaux et al. Ranney 1952; Uslander 1978; Tucker 1982; Davies et al. 2009). One study even goes so far as to say, "...the degree of electoral competition is the key linkage between parties and public policy..." (Barrileaux et al. 2002, emphasis added). However, in early applications and tests of Key's hypotheses, there were many methodological and ontological disagreements regarding how exactly to measure political competition at the state level. In his 1965 work, *Democracy and the American States: American Party System*, Ranney developed his state party system classification method as a response to the common notion that the American political realm is dominated by a 'two party system'. He argues that, "The familiar statement that 'America has a two-party system' is...incorrect on the face of it" (Ranney 1959; 160). He reasons that this way of thinking undermines the nuance and complexity of dynamics within state politics and argues that the party system is one that must be approached with special consideration for its intricacies. He goes on to assert that to capture state political structure, states must be characterized as either one-party or two-party, depending on the degree of competition present. In his conception, 'one-party' states are those that are dominated by one political party, regardless of affiliation. Conversely, 'two-party' states are those that maintain a moderate to high level of competition between two or

more parties (Dawson 1964; Holbrook and Van Dunk 1993). Through his work, he developed the “Ranney Index” (1959), which came to be known as the most comprehensive and accurate measure of competitive party dynamics at the state level (Tucker 1982). He simply called the measure ‘interparty competition’ (IPC). Knowing the level of competition or domination between parties within a state governing body became crucial, not only for the testing of political theories, but also for devising political campaign strategies and evaluating best practices for passing legislation (Jennings 1979; Tucker 1982).

Because Key theorized primarily about low-income and politically disempowered individuals, much of his work has been applied to, and substantiated by, studies on the differentiation in state welfare policies (Carmines 1974; Cnudde and McCrone 1969; Dawson and Robinson 1964; Jennings 1979; Owens and Smith 2009). Given the notably strong linkage between partisanship and criminal justice policy (Kent and Carmichael 2015; Owens & Smith 2008; Wozniak 2016), as well as evidence supporting the notion that punishment is an inherently political process, (Chambliss 1999; Garland 2005; Kent and Carmichael 2014; Yates and Fording 2005) it is quite surprising that Key’s theories have gone largely ignored by criminologists—especially by those looking at correlation between threat hypotheses and punitive mechanisms.

Racial/Ethnic Threat

Many studies, rooted in Blalock’s (1967) minority group threat perspective, have examined the ways that increasing racial and ethnic composition shapes punitive policies and outcomes (Bontrager, Bales and Chiricos 2005; Britt 2000; Crawford et al. 1998). Blalock suggested that as the size, influence and capital of minority groups begin to grow, so will measures of social control (Blalock, 1967). These measures can include an increase in

surveillance and arrests, stricter punitive sanctions, and larger justice system budgets. Several studies have built upon this idea, especially following the United States war on drugs, as it was known for its disproportionate targeting of minority communities (Feldmeyer and Ulmer 2011). Surprisingly, however, the findings lack cohesion. Some studies have found support for threat hypothesis (Bontrager et al. 2005; Britt 2000; Crawford et al. 1998), while others indicate partial support or no correlation at all (Feldmeyer et al 2015).

Research on the relationship between racial threat and policy decision making has produced mixed findings. Although some studies have found direct evidence for threat hypotheses (Blalock 1967; Crawford et al 1998), others conclude that no support for such threat exists (Feldmeyer et al 2015). For instance, a 2003 study found that local support for California's Proposition 209 (aimed at ending affirmative action) was significantly influenced by the relative size of racial and ethnic minorities in the locality (Tolbert and Grummel 2003). Additionally, a study on partisanship and racial threat found that higher percentages of minorities are correlated with an increased number of registered Republican voters, providing support that ethnic/racial threat may shape political choices and landscapes (Giles and Hertz 1994). Conversely, a study on violent crime rates found that black citizens have a lower likelihood of arrest in those cities with larger black populations, which directly counters traditional threat hypothesis (Stolzenberg, D'Alessio, and Eitle 2004). Other studies have reached similar conclusions to cast doubt on threat hypothesis (Feldmeyer and Ulmer 2011). With such a wide disparity in the threat literature, no clear relationship can be extracted. This has led researchers to begin testing potential mediating or conditioning factors that may be missing from existing work.

Recently, researchers have found that political climate holds a significant conditioning effect on the relationship between racial/ethnic threat and punitive outcomes (Parker, Stults and

Rice 2005). Because political climate is so strongly tied to punishment, policy and race, this study will engage with measures of political climate as well as racial/ethnic threat hypothesis to provide explanation for differences in policy decision-making surrounding FCL. It is important to understand the ways that legislative decision-making about citizen punishment is shaped and passed, because it greatly impacts the lives of an increasing number of people. It is for these reasons that this study seeks to examine the differing socio-political phenomena at play that may shape state governments' choices about FCL.

CURRENT STUDY

This study seeks to augment existing scholarship on the interacting effects of political climate and racial/ethnic threat and policy decision-making. I focus on how political climate and racial/ethnic threat—both together, and separately—may shape the decision to pass FCL, and more specifically, the ways that the explanatory power of political climate and racial/ethnic threat may differ based on the type of FCL being considered. Furthermore, I explore the ways that racial/ethnic threat may condition the effects of political threat on FCL passage. To ensure a comprehensive analysis of political threat, I employ multiple measures of political climate which encompass the dynamics of legislative bodies as well as voter sentiments. I argue that it is only by including measures of both constituency and representative ideologies that researchers can truly assess political climate accurately. I include models for public FCL as well as private FCL to extract the mechanisms responsible for such differentiation. To do so, I explore the following hypotheses:

Hypotheses

1. States with ‘trifecta governmental power’ will be less likely to pass any type of FCL. This is because it is assumed by Key (1955) that consolidation of power to one party will result in more sparse legislation designed to assist those with little capital.
2. Private FCL will be less likely to pass in states with a Republican climate (more than 55% of the vote being cast for the Republican Presidential candidate). Because of the ‘law and order’ rhetoric employed by Republican politicians, those casting a vote for a Republican presidential candidate are more likely to align with punitive policy actions than anti-punitive ones.

3. States with greater Black populations will be less likely to pass any type of FCL. Racial threat tells us that as minority populations increase, dominant populations will attempt to exert power to maintain the existing system.

4. States with higher Hispanic populations will be more likely to implement public FCL, because as minority populations increase, laws become more restrictive only to a point. Then, the likelihood decreases, as threat no longer exerts an influence.

Data

For this study, I used publicly available data from a variety of sources. Information on the passage of FCL is available through state websites and is also compiled by the National Employment Law Project, which is an organization that tracks legislation that impacts employment rights. 2012 Presidential election data serves as a proxy for voter ideology and is available through the National Archives and Records Administration. To determine party composition in state government, I downloaded the most current data on legislative and gubernatorial control, which is maintained by a nonpartisan 50-state service office called the National Conference of State Legislatures. Finally, all control variables were taken from The 2012 American Community Survey 3-year average. Census data.

The data on legislative and gubernatorial control is particularly important for this study, as it provides a more comprehensive measure of political phenomena that are important to understanding the difference in policy choices at the state level. Since this data provides a measure of the power dynamics within state governments, it allows me to test Key's theoretical IPC hypothesis regarding party domination and public policy.

Sample

Fair Chance Legislation has been passed across the country at the county, city, and state level (NCSL 2017). Because V.O. Key, and many other scholars, hypothesized about the impacts of state government on state policies, this study included states as sampling units. The sample for this study includes 49 states, examined in the year 2014. The District of Columbia and the state of Nebraska were excluded, as they have unicameral representative bodies, and thus lack the necessary data regarding party competition. Data on all measures are available for analysis of the year 2014. The macro-level analysis of states will allow me to uncover how state political dynamics influence the passage (or lack thereof) of FCL. Descriptive statistics can be found in Table 1 below.

Table 1. Descriptive Statistics (N = 49)				
	Mean	St. Deviation	Min	Max
Dependent Variable				
Fair Chance Legislation	.245	.435	0	1
Private Fair Chance Legislation	.184	.391	0	1
Independent Variables				
Votes for R. Presidential Candidate ($\geq 55\%$)	49.621	10.310	27.838	72.821
Republican Governor	.571	.5	0	1
Republican Senate Percentage	53.833	19.741	4	86.667
Republican House Percentage	52.512	17.988	8	86.667
Trifecta Gov't	.776	.422	0	1
Percent Black	10.239	9.570	.4	37.3
Percent Hispanic	11.049	10.206	1.3	47
Control Variables				
Violent Crime Rate	338.137	129.924	101.7	647

State Unemployment Rate	5.791	1.224	2.7	7.9
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Dependent Variable

The National Employment Law Project (NELP), an organization that “...fights for policies to create good jobs, expand access to work, and strengthen protections and support for low-wage workers and unemployed workers” (NELP 2018), has worked to develop a current and comprehensive list of all city and state-level fair chance legislation. This includes the year FCL was passed in the state as well as which sectors of the economy will be mandated to ‘ban the box’ from their applications. It is important to differentiate between the FCL that includes the private sector and FCL that does not. The differentiation in public and private employment opportunities is distinctive, and states may make vastly different decisions when it comes to self-regulation versus the regulation of private corporations.

For the first three models, which I will refer to as the ‘public models’, I looked at the influence of my independent variables on the passage of public FCL. For these models, public FCL is treated as a dichotomous variable, with ‘1’ indicating a state law restricting discrimination in the public sector, and ‘0’ indicating no presence of such law. The first model includes all independent variables, and the following two models are nested. For the second set of models, henceforth referred to as ‘private models’, private FCL is also treated as a dichotomous variable, with ‘1’ indicating the presence of a state law restricting discrimination in the private sector, and ‘0’ indicating no presence of such a law.

Independent variable(s)

Before beginning my analysis, I chose to develop two measures: A measure of political threat, and a measure of racial/ethnic threat. Political threat consists of republican climate and the

presence (or lack thereof) trifecta government. By including both a measure of voter sentiments and governmental structure, I can gain a comprehensive picture of a state's political climate. The race/ethnic threat measure consists of the percentage of the population that is black or Hispanic.

Republican Climate

Voter ideology is a commonly used measure among sociologists and criminologists alike as a determination of political climate. Because Republican voters are more likely to subscribe to conservative viewpoints, using state voting data from recent Presidential elections is a popular way to capture the political ideology and sentiments at the state-level. This method allowed me to obtain an overall picture of the partisan ideology among the constituents within each state, bolstering my understanding of the states' political climate as a whole. To measure state political ideology, I utilized presidential election data from 2012, as this election occurred during the time of widespread passage of FCL. This data is available through the National Archives and Records administration, which maintains statistical information on every presidential election, which is sorted and categorized by state. I used the percentage of the vote for the Republican candidate as a measure of state political ideology. Those states with 55% or more of the votes going to the Republican candidate will be coded '1' and considered 'Conservative'.

Political control

For this study, I utilized a modified version of the Ranney index because it is such a widely used 'measure of competitiveness' and has withstood the test of time. It has been used in several studies seeking a more holistic understanding of political inner workings. The original index consists of three measures of partisan control, and one measure of partisan competition, although it has been adopted and modified by a variety of scholars within the disciplines of political science & policy, economics, health, education, and sociology. Therefore, for my

modification, I created a composite variable including three components: state senate makeup, state house makeup, and affiliation of the Governor. For all three components, '1' indicates Republican control, and Democratic control was indicated with '0'. For those states where all three components shared a code, they were considered to have a 'trifecta government'. A dummy variable was included for those states with split control. The data came from the National Conference of State Legislatures for the year 2014, as this gives me a clear and accurate look into the political dynamics existing at the time of my analytic inquiry. 2014 falls squarely in the center of the FCL data, which passed in several states beginning in 2010 (excluding outlier Hawaii) and has been recorded through 2018. This allowed me to also measure IPC in those states that have chosen not to implement FCL in order to capture the differentiation between states with FCL and those without.

Racial/Ethnic Threat

The mixed findings regarding the racial threat literature has led to many researchers adopting a threshold variable due to the curvilinear nature of the effects of threat hypothesis. Several studies suggest that after the minority population reaches approximately 25%, the effects of threat hypothesis are reduced (Stults & Bamer 2007). It is for this reason that I will measure racial threat by including the percentage of the population identifying as black or non-white Hispanic, found through the American Community Surveys (3-year estimates). This was recorded as a continuous variable, allowing me to capture the entirety of the interactions of racial/ethnic threat.

Control variable(s)

Initially, I considered that state economic conditions must be controlled for, as those with worse economic conditions may be less likely to be willing to reinstate employment rights to felons.

However, in following threat hypotheses, unemployment data was included instead. This data was found through the 2010 U.S. Census. Violent crime rate is also important to control for as it stokes public fear of crime and thus leads to more punitive policy action on the part of legislators (Yates and Fording 2010). Although a state's location in the south is also an important factor to control for, as many studies have found that regional differences can skew results, including the control in this study yielded no significant results, and thus was dropped.

ANALYSIS

For my analysis, I began with two models--one for private FCL and one for public FCL--both using binary logistic regression with both types of FCL coded dichotomously. I selected this method, as it would allow me to predict the likelihood of an event (passage) happening based on political threat and race/ethnic threat. These first models, one examining private FCL and one examining public FCL, both included all political threat and race/ethnic threat measures, along with the control variables. I was then able to place the two models side by side to determine whether the level of influence my independent variables exerted differed between the public and private sector laws. These models allowed me to test my hypothesis that both political threat and race/ethnic threat will hold greater explanatory power over private FCL than public FCL in determining why states choose not to pass the law.

Next, to test my threat hypotheses, I developed four nested models-- two for each type of FCL-- to determine the isolated effects of political measures and race measures on both public and private FCL. By breaking the analysis into six models, I can engage with the effects that political threat alone has on both public and private FCL, as well as the ways that race/ethnic threat alone influences FCL and how it may be conditioned by a broader socio-political environment.

Results

The findings for this study were not as robust as the literature had led me to believe they might be. Beginning with the public models, Hypothesis 1 asserts that states with ‘trifecta governmental power’ will be less likely to implement FCL. However, in the case of both public and private FCL, ‘trifecta government’ did not have statistical significance in determining

passage. In fact, in the public FCL regression outputs, the strongest statistically significant predictor was Republican climate, with a coefficient of -1.927. Thus, Republican voter sentiments holds explanatory power in the reduced likelihood of implementation of Public FCL. Similarly, the strongest predictor for passage of Private FCL was also Republican climate with a coefficient of -1.883. This exhibits support for Hypothesis 2, which inferred that Private FCL will be less likely to pass in a Republican climate. Because of the small sample size (N=49), for this study I used a .10 cutoff (rather than .05) for measuring statistical significance. Thus, the measure for percent Hispanic met the necessary requirement in both the public and private models, with a coefficient of .161 and .188, respectively. This finding supports Hypothesis 4 that an increased Hispanic population will lead to an increased likelihood of implementation of Public FCL. Finally, the findings do not support Hypotheses 3 that an increased black population will lead to a reduced likelihood of passing FCL.

Table 2. FCL Regressions				
	Public		Private	
	b (SE)	p	b (SE)	p
Variable				
Political Threat Variables				
Republican Climate	-1.927**	0.003	-1.883**	0.017
	(.648)		(.786)	
Trifecta Government	-.394	0.779	-1.231	0.455
	(1.402)		(1.646)	
Racial/Ethnic Threat Variables				
Percent Black	.112	0.238	.003	0.972
	(.095)		(.094)	
Percent Hispanic	.161+	0.055	.188+	0.077
	(.084)		(.107)	
Control Variables				
Violent Crime Rate	-.002	0.702	-.010	0.191
	(.006)		(.008)	
State Unemployment Rate	-.380	0.553	.518	0.479
	(.641)		(.732)	
Intercept	-2.82	0.432	-5.304	0.213
	(3.59)		(4.259)	

The nested race/ethnic threat models were interesting in that they both saw statistical significance with the removal of the political threat models. Beginning with the public race/ethnic nested model, percent Hispanic held explanatory power while percent Black did not. Those states with higher Hispanic populations were about 1% more likely to implement public FCL, further demonstrating support for Hypothesis 4. Again, Hypothesis 3 is not supported. For the private race/ethnic nested model, the findings were the same, with percent Hispanic exhibiting explanatory power and percent Black not. Surprisingly however, states with increased Hispanic populations are approximately 10% more likely to pass private FCL.

Table 3. Public FCL Nested Models								
	Model 1 (political threat)				Model 2 (race/ethnic threat)			
	b (SE)	Odds Ratio	(95% Confidence Interval)		b (SE)	Odds Ratio	(95% Confidence Interval)	
Variable								
Political Threat Variables								
Republican Climate	-1.766**	0.171	-2.887	-0.646				
	(.572)							
Trifecta Government	-.394	0.6744	-2.819	2.031				
	(1.237)							
Racial/Ethnic Threat Variables								
Percent Black					.015	1.0151	-0.078	0.107
					(.047)			
Percent Hispanic					.090*	1.0942	0.007	0.173
					(.042)			
Control Variables								
Violent Crime Rate	.005	1.005	-0.004	0.0144	-.004	0.996	-0.011	0.003
	(.005)				(.004)			
State Unemployment Rate	.026	1.0263	-1.079	1.132	.166	1.1806	-0.570	0.903
	(.564)				(.376)			
Intercept	-4.186		-10.159	1.786	-2.129		-6.023	1.764
	(3.047)				(1.987)			

Finally, the nested political threat models exhibited interesting results for passage of both public and private FCL. First, the nested political threat Public FCL model had only one

statistically significant measure: Republican Climate with a coefficient of -1.766. Those states with a republican climate are 83% less likely to implement public FCL. Furthermore, the same was true for the nested political threat Private model. The only statistically significant measure was Republican climate with a coefficient of -1.740, further exhibiting support for Hypothesis 2. Both of these models lack support for Hypothesis 1 that ‘trifecta governments’ will be unlikely to pass any form of FCL.

Table 4. Private FCL Nested Models								
	Model 1 (political threat)				Model 2 (race/ethnic threat)			
	b (SE)	Odds Ratio	(95% Confidence Interval)		b (SE)	Odds Ratio	(95% Confidence Interval)	
Variable								
Political Threat Variables								
Republican Climate	-1.740*	0.1755	-3.093	-0.387				
	(.690)							
Trifecta Government	-1.737	0.176	-4.687	1.212				
	(1.505)							
Racial/Ethnic Threat Variables								
Percent Black					-.056	0.9455	-0.183	0.071
					(.065)			
Percent Hispanic					.101*	1.1063	0.001	0.199
					(.051)			
Control Variables								
Violent Crime Rate	-.002	0.998	-0.010	0.006	-.008	0.992	-0.018	0.002
	(.004)				(.005)			
State Unemployment Rate	.915	2.497	-0.324	2.153	.684	1.9818	-0.178	1.546
	(.632)				(.439)			
Intercept	-7.044+	0.0008	-14.231	0.143	-3.797		-8.486	0.891
	(3.667)				(2.392)			

Discussion

The focus of this research was to examine the relationship between socio-political climate and policy decision-making. Frequently, research has concluded that political climate as based on voter sentiments has a strong influence on legislative policy with no consideration for the

makeup of the legislative body itself (Morgan and Watson 1991; Owens and Smith 2008; 2012; Wong and Shen 2002; Wozniak 2016). Thus, we know little about the ways that power dynamics within state government influence those policy decisions. Furthermore, earlier works in political science and sociology acknowledge the circular nature of influence exerted between political officials and voters, which makes the case that both must be examined in order to fully evaluate the process of policy implementation (Enns 2014; Garland 2001; Key 1951; Ranney 1959). This study is a first step in bridging the gap between the knowledge we have surrounding political phenomena and the outcomes that impact everyday citizens. Legislation regarding the criminal justice system and those who find themselves within it is particularly contentious amongst voters and representative bodies alike (Garland 2001; Smith 2004; Sorensen and Stemen 2002). Therefore, it is paramount that we understand the behind-the-scenes mechanisms as well as the public ones driving the passage of such laws.

The literature reviewed in this study demonstrates the ways that legislation is influenced by state political climate, suggesting that the differences in states' decisions regarding employment rights of felons could be explained by political dynamics and political climate (Comfort 2007; Durante 2017; Enns 2010; Ewald 2012; Jacobs and Jackson 2010; Travis 2002; Wheellock 2005). However, findings are not as straightforward as the theories would have you believe. Importantly, this study further illuminated the distinct importance that voter ideology has on the legal landscape of a state. Although V.O. Key hypothesized that a consolidation of state power into the hands of one political party would lead to widespread changes in legislation designed to assist those with lower levels of capital, this study suggests that the linkage may not be as strong when applied to employment and/or punitive legislation.

This research utilized OLS and Logit Regression analysis on 49 state representative and voting bodies to determine the ways that power dynamics, racial and ethnic population makeup, and party affiliation change the likelihood of implementation of legislation designed to assist those with a criminal record. FCL falls within a particularly enlightening niche of legislation, as it exerts influence over industry hiring, as well as protects those with a criminal history who have been historically demonized and reduced to second-class citizenship status. Using V.O. Key's hypotheses about how state power dynamics shift legislative priorities as well as the ability of low-capital constituents to exert influence over the process, FCL was selected due to the distinctive impact on those with low capital, especially politically. Additionally, FCL is uniquely positioned as a piece of anti-punitive legislation, which historically has been highly contentious, particularly amongst Republican voters and representatives.

Furthermore, the findings seem to provide modest support for the notion that race/ethnic threat factors may condition the degree of influence republican climate may have on policy outcomes. Although race/ethnic threat variables lose their statistical significance when included with political threat variables, it is important to note the way they condition the explanatory power of the republican climate measure. This is to suggest that in states with republican climates as well as increased minority populations, 'felon-friendly' legislation is not well-received. Counter to recent research suggesting that republican states may be entering a new era, moving away from penal populism and tough on crime rhetoric (Thielo, Cullen, Cohe, and Chouhy 2016), the findings of this research suggest that Republican climate is still a strong indicator for more punitive policies. Furthermore, when considering both republican climate and race/ethnic threat, we can see that there is a conditioning effect between the two.

Limitations

One limitation to this research is that only State-level FCL was included in the analysis, despite FCL being passed in many smaller jurisdictions such as counties or cities. Analysis was not extended to counties, cities, or towns because of the ways that political climate and representative structures vary greatly, both from the state and other jurisdictions. Additionally, V.O. Key's work applies specifically to state governments and state legislation, which would not apply to smaller authorities. By including smaller units of analysis, however, there may be greater opportunity to examine the relationship that governments at the local level may have with passage of the legislation. Another limitation was that data from the 2012 presidential election was used due to its timely proximity to passage of FCL in most states. Arguably, the 2016 election was different than any other in recent history and thus may hold different explanatory power when used to account for passage of FCL. Furthermore, the cross-sectional nature of the data was a limitation in that it forced me to use a modification of the Ranney Index, which required several years of data in order to determine the true level of 'inter-party competition' within the states. This could arguably impact the significance of the 'trifecta government' measure, as state governments can change drastically from one election to the next but exhibit more stable patterns over time. Longitudinal data would allow for a more careful analysis of the role state governments play in legislative decisions.

Data regarding instances of introduction and failure of FCL in state legislative bodies was also left out of this study, as those states who did not implement were treated as non-FCL states. This means that there may have been states that tried and failed to implement FCL several times before passage. This information would provide more insight as to how the power dynamics in state government impact passage but was not feasibly available for the purposes of this research. Finally, the mechanism by which the legislation was passed is not included in this study. In some

instances, FCL was enacted by a state Governor's executive order, while in others it was passed by the legislature or by voter referendum. These minute differences in the implementation of these laws may shed light on why 'trifecta government' did not carry statistical significance in determining passage.

Looking Forward

Future studies on this topic are desperately needed in order to extract the ways that our government works for the people, by the people (or in some instances—against the people by the powerful). This field would benefit from an examination of more anti-punitive legislation with careful attention to the governmental processes associated with passage and adoption in addition to social factors such as racial and ethnic makeup, and voter sentiments. Special consideration should be given to the different ways that laws are passed, which body (house or senate) originated the bill, and how many times the bill has failed prior to implementation. Finally, further analysis is needed regarding the ways public employment is framed and compensated as compared to work in the private sector. Differences in the perception as well as pay of these different employment sectors may hold explanatory power over why states pass FCL that may impact some industries but not others.

The deeply political nature of criminal justice associated legislation suggests that even with identical circumstances, two individuals facing release in two politically different states might receive entirely different rights, as well as restrictions. Counter to the popular notion of jurisprudential law and punishment, this demonstrates that state socio-political climate has the power to dramatically shape employment opportunities for individuals with a criminal history. This is especially important when we examine the ways that employment is instrumental in the reduction of recidivism. A vast majority of those who are incarcerated will face release, and

roughly three quarters (76.6 percent) of those released will be re-arrested within five years (Durose, Cooper & Snyder 2014). Not only is this extremely cost-intensive, it also puts immense strain on the daily lives of hundreds of thousands of Americans.

Because the concepts of democracy, justice, and equal rights under the law are all central to the American creed, we must engage in a more critical and thoughtful discussion of the ways our political institutions, voting ideologies, and social rhetoric influence the degradation of these values. We must push forward to find the linkages and driving factors behind the legislation that structures and guides our daily lives. As we can see, Fair Chance Legislation and its disproportionate implementation allows us to see just how powerful dominant social narratives and political sentiments can be. This type of analysis must be extended to other, even more contentious laws to determine just how much power we the people hold in creating our society.

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