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Endarch

Journal of Black Political Research

About

Endarch: Journal of Black Political Research is a double blind peer-reviewed journal published by Clark Atlanta University Department of Political Science in partnership with Atlanta University Center Robert Woodruff Library. The journal is an online publication. *Endarch* seeks to reflect, analyze, and generate activity, which will lead toward the expansion, clarification, and edification of black political thought. We publish high quality works regarding the experiences of African peoples relative to political activities which are investigated, critiqued and evaluated in a manner supportive of greater understanding and constructive developments, and we thereby contribute original scholarship to the field of political science.

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Statement of Purpose*

In a decade characterized by the complete atrophy of all struggle from the sixties and the defection of most of the former participants, the principal question must be, why? What has happened consistently to denature and distort incipiently progressive impulses that appear among Black people? That question must be answered if we are to build a movement, and it cannot be answered apart from careful analysis of the economic, political and sociological structures and functions of capitalism in all its national and international, social and existential mediations. It is time that the victims move seriously to grapple with Leviathan.

Endarch, as its name would suggest identifies with motion; not any haphazard or desultory movement but movement that is conscious of its origins and destinations. As an embodiment of aggregate but mutually consistent perspectives, this journal seeks to reflect, analyze and generate activity which will ultimately lead toward the expansion, clarification and solidification of Black political thought.

The conscious nature of movement is derived from a clear social and analytic methodology. An approach which views the world as a totality but also diaphanously understands that the components comprising this world are not of equal importance. With this in mind, and given Black peoples historical grounding in oppression and exploitation, Endarch sees of paramount importance those phenomena and groups of phenomena which operate in the system of oppression and exploitation. Recognition of such phenomena must lead to the discernment of those vital elements, the crucial essences of which define and condition the world. Our purpose is to expose those essences and through this explication illuminate the totality from the vantage point of a specific oppressed people. Such is the task of a conscious and critical black political thought imbued with the task of defining the black experience in politics. It is toward this goal that we aim.

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Lingering Ties: The Judicial Committee of the Privy Council

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Abstract

What underpins relationships between former colonial states and the Judicial Committee of the Privy Council (JCPC)? Using The Bahamas and The Gambia as case studies, I examine the influence of domestic political environments on the link to the JCPC. My findings suggest that changes in domestic politics make states more likely to sever ties with extraterritorial courts regardless of the court's decisions.

Keywords: extraterritorial court; political environment; Judicial Committee of the Privy Council; The Bahamas; The Gambia

Introduction

The literature on colonization has long recognized the lingering effects of many forms of European influence in states that emerged during decolonization following World War II. One particularly important legacy of the British Empire is the common law legal system and, in many states, the continued role of the Judicial Committee of the Privy Council (JCPC) as the final appellate court. For the purposes of this examination, extraterritorial courts are broadly defined as courts outside the state, where the state has no direct control over their composition or administration. The JCPC is staffed, administered and funded by the British government which puts it beyond the control of local governments. In this context, the JCPC is arguably the first viable example of an extraterritorial court. The larger question is: why do some states retain ties with *de facto* extraterritorial courts?

Traditionally, states create a judicial system with a supreme court sitting at the apex. The structure and administration (including the selection of judges, jurisdictions and budgetary matters) are determined by domestic, constitutional and statutory law. Final appellate court decisions provide the last judicial word on legal disputes within the country's borders. Conversely, extraterritorial courts are located outside state borders yet exercise jurisdiction over

appeals originating in the states that accede to the court. In other words, the extraterritorial court can have jurisdiction in multiple states, but it is not under the direct administrative control of any single state and is part of the ongoing regional and global efforts to foster law and order. The relationship between extraterritorial courts and states, therefore, is of great importance as these courts challenge traditional ideas of state sovereignty (Brown¹) and the role of courts in domestic policy-making (Dahl²).

The Judicial Committee of the Privy Council (JCPC)

The JCPC has not only historical significance but illustrates the importance and prominence of the court in the jurisprudence of the British Commonwealth (Roberts-Wray³). Although its beginnings date back to the 12th century, the modern JCPC is ultimately a product of the Judicial Committee Act 1833 introduced by Lord Chancellor Brougham (Howell⁴). Appeals are heard by special leave from the JCPC itself as a right extended by royal prerogative and when granted by the lower court (Burns⁵; Robert-Wray⁶). Despite being formally described as an advisory body to the monarch, the JCPC possesses all the trappings of an appellate court.

The evolution of the JCPC was part of the growth and consolidation of British colonial rule, and it served as the final appellate court for the British Empire (Howell⁷; Swinfen⁸). The

¹ Christopher Brown, *Sovereignty, Rights and Justice* (Cambridge, U.K.: Polity Press, 2002).

² Robert A. Dahl, 'Decision-Making in a Democracy: The Supreme Court as a National Policy-Make' [1957] *Journal of Public Law* 279.

³ Kenneth Roberts-Wray, *Commonwealth and Colonial Law* (London: Stevens & Sons, 1962).

⁴ Peter A. Howell, *The Judicial Committee of the Privy Council 1833-1876: Its Origins, Structure and Development* (New York: Cambridge University Press, 1979).

⁵ Peter Burns, 'The Judicial Committee of the Privy Council: Constitutional Bulwark or Colonial Remnant?' [1984] *Otago Law Review* 503.

⁶ Roberts-Wray, *supra*, note 3.

⁷ Howell, *supra*, note 4.

⁸ David B. Swinfen, *Imperial Appeal: The Debate on the Appeal to the Privy Council 1833-1986* (Manchester, U.K.: University Press, 1987).

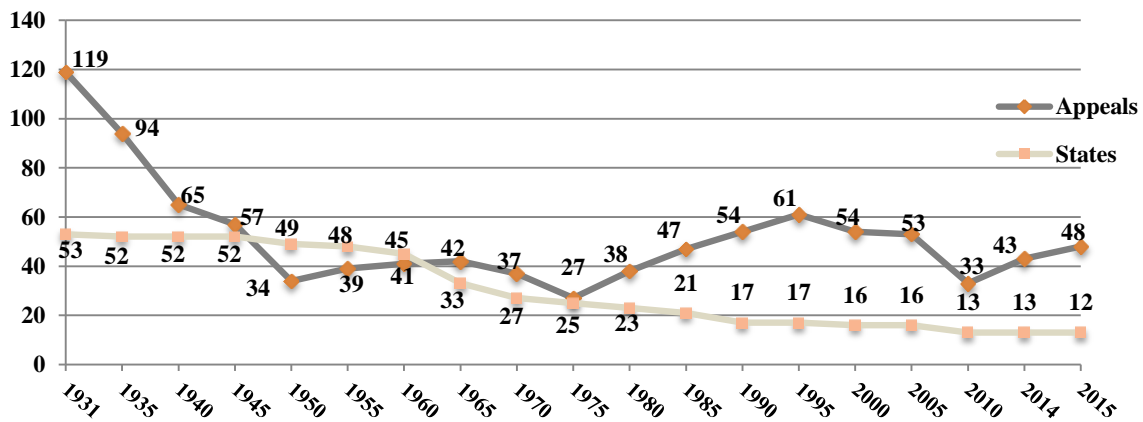
branches of law on appeal are broad and important with the adjudication of fundamental principles (Robert-Wray⁹) and include extradition requests, constitutional challenges, libel, eminent domain, personal injury, and issues involving provincial versus federal power. This history contributes to the positive reputation and the continuing influence of the JCPC in the Commonwealth's common law legal system.

Newly independent states, however, did have the power via commissions to determine the status of the JCPC at independence. Comprised of colonial and local elite, commissions served principally in a supporting role to the legislative assembly with expert advice on constitutional issues in addition to proposing and drafting entire constitutions (Straum¹⁰). Of 50 former colonies, 30 adopted the JCPC as the final appellate court at independence. As states emerged from colonial rule, therefore, the number of states served by the JCPC decreased, as did the number of appeals. With a peak of 119 appeals heard in 1931, the JCPC adjudicated an average of 52 appeals per year from 1932 to 2014. Figure 1 displays the trends over time as the number of states decline starting in 1931 (Act of Westminster) and the corresponding change in the number decisions from 1931 to 2014. The number of appeals includes the states, colonies, and territories that continue to retain the JCPC. The steep drop in the annual number of appeals from 119 in 1931 to 34 in 1950 occurred when Canada and India replaced the JCPC in 1948 and 1950, respectively.

⁹ Roberts-Wray, *supra*, note 3.

¹⁰ Albert L. Straum, 'The Procedure of State Constitutional Change – With Special Emphasis on the South and Florida' [1977, volume 5] *Florida State University Law Review* 569.

Figure 1. The Number of JCPC Appeals and the Number of States from 1931 to 2015



Despite a gradual decline in the number of countries from 48 in 1955 to 12 in 2015, the number of appeals per annum increased from 25 in 1975 to 48 in 2015 illustrating a continued reliance on the JCPC. My review of JCPC appeals shows an uptick from the Commonwealth Caribbean with a high point in 1995 (61 appeals). Despite the gradual decline in the number of states, those remaining access the JCPC more frequently.

What Contributes to Change?

The domestic political environment influences the state’s link with extraterritorial courts, and I use the JCPC as the basis of this case study. States that retain the JCPC are bound to a court physically and intangibly in terms of administrative control that is not without some financial implications. Although states provide no financial support for the JCPC, the cost of litigant access (court fees, legal fees, travel and accommodation in the UK) from disparate parts of the world was suggested as an impediment and motivation to abandon the court (Wilson¹¹;

¹¹ Margaret Wilson, ‘Discussion Paper: Reshaping New Zealand’s Appeal Structure’ (2000) Office of the Attorney-General, Parliament Buildings: Wellington, New Zealand

Swinfen¹²; Joseph¹³). The literature, however, reveals no causal link between state wealth and the status of the JCPC. Using GDP as a proxy, my descriptive analysis shows that states above the sample average GDP have a stronger tendency to retain the JCPC than those states below the sample average. I posit that the government of those states will seek a change or disengage from the extraterritorial court if it perceives a disconnection between itself and the court, a perception influenced by changes in the political environment that make the state more sensitive to unfavourable decisions.

Employing causal-process observations, I examine how changes in a country's political environment influence the relationship with an extraterritorial court. Yin¹⁴ defines a case study as “an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident.” Collier¹⁵ (see also George and Bennett¹⁶) maintains that this process better evaluates hypotheses and offers a deeper understanding not possible with quantitative analyses. I conduct a within-case comparison employing two most different former British colonies - The Gambia and The Bahamas.

I aver that the political environment can be captured in two broad categories. First, “no change” is when the state does not experience any change in the political environment as a new government comes to power with a commitment to the constitution and to the continued good

<<https://www.beehive.govt.nz/feature/reshaping-new-zealands-appeal-structure-discussion-paper-14>> (accessed January 17, 2016).

¹² Swinfen, *supra*, note 8.

¹³ Phillip Joseph, ‘Towards Abolition of the Privy Council Appeals: The Judicial Committee and the Bill of Rights’ [1985, volume 2] *Canterbury Law Review* 273.

¹⁴ Robert K. Yin, *Case Study Research: Design and Methods* (3rd edn, London: SAGE Publications, 2003, 13).

¹⁵ David Collier, ‘Understanding Process Tracing’ [2001, volume 44 (4)] *Political Science and Politics* 823.

¹⁶ Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (London, England: MIT Press, 2004).

governance of the state. While there may be a new government after an election cycle, the basic tenets of a free political environment continue and do not fundamentally change the state-citizen relationship. The new government pursues the same broad policies as the previous government but pledges to do a better job. Second, “drastic or revolutionary change” is characterized as “movements of significant structural change” (Cardoso and Falletto¹⁷) which can include adoption of a new constitution that changes the governing institutions as well as the rights and liberties of citizens. In other words, these changes expand or reduce the range of fundamental constitutional rights (Grace¹⁸; *Thoburn v Sunderland City Council*¹⁹). Though the process may differ, I assert that “drastic and subtle changes” can increase the likelihood of the removal of the JCPC while “no change” maintains the status quo. This distinction provides a first step in demarking two broad categories of change, adds nuance to our understanding and acts as a basis for future research on the interactions of domestic politics on extraterritorial courts. Table 1 displays 25 developing states in the two categories and the status of the JCPC as of January 1, 2016. When the nine developing states experienced a change, the JCPC was removed. When there was no perceivable change in the political environment only three states abolished the JCPC. For this research, these three states (Barbados, Belize and Guyana) are not addressed because each replaced the JCPC with another extraterritorial court (Caribbean Court of Justice). This is an area for further study.

¹⁷ Fernando E. Cardoso and Enzo Falletto, *Dependency and Development in Latin America* (Berkeley: University of California Press 1979, xiv).

¹⁸ Jamie Grace, *Constitutional and Administrative Law: Key Facts and Key Cases* (New York, NY: Routledge, 2015).

¹⁹ *Thoburn v Sunderland City Council*, [2003] Queens Bench, 151. <http://swarb.co.uk/thoburn-v-sunderland-city-council-etc-admn-18-feb-2002/> (accessed August 13, 2015).

Table 1 Developing States in the Two Categories and the Status of the JCPC

| No Change | | Change | |
|--------------------------|------------------------|-------------|--------------|
| Retain JCPC | Abolish | Retain JCPC | Abolish |
| (11 States) | (3 States) | (0 States) | (11 States) |
| Antigua & Barbuda | Barbados ²⁰ | | India |
| Bahamas | Belize ²² | | Ghana |
| Brunei | Dominica ²³ | | Gambia |
| Grenada ²¹ | | | Fiji |
| Jamaica | | | Guyana |
| Mauritius | | | Kenya |
| St. Kitts & Nevis | | | Malaysia |
| St. Lucia | | | Nigeria |
| St. Vincent & Grenadines | | | South Africa |
| Trinidad & Tobago | | | Sri Lanka |
| | | | Uganda |

I employ the most different method or ‘the method of agreement.’ This involves comparing states that are similar in interests which allows me to identify the possible differences that may cause the different outcome. I examine two states as follows: (1) no change in status of

²⁰ Barbados, Belize and Dominica are not included as they selected another extraterritorial court (Caribbean Court of Justice) to replace the JCPC as opposed to an exclusively domestic final appellate court.

²¹ A *coup d'état* in 1979 removed the JCPC but it was reinstated as part of the re-establishment the Westminster parliamentary system with the U.S. invasion in 1983 (BBC News, Timeline: Grenada (7 August 2012)) <http://news.bbc.co.uk/go/pr/fr/-/2/hi/americas/country_profiles/1209649.stm> (accessed March 3, 2015).

²² George and Bennett, *supra*, note 16.

²³ Bernard Porter, ‘Cutting the British Empire Down to Size’ *History Today* (2012, Volume 62(10)) <<http://www.historytoday.com/bernard-porter/cutting>> (accessed January 23, 2016).

JCPC – The Bahamas; (2) change in status quo – The Gambia. A variation exists in the dependent variable with The Bahamas still retaining the JCPC since independence in 1973. The Gambia was one of the 16 states that retained the JCPC at independence (1965) but 21 years after independence replaced the JCPC with domestic final courts of appeals. Though in different regions of the British Commonwealth, they share a history of British colonial rule with a very small British settler population. The colonial officers supported miniscule administrative-legal institutions concentrated in the capital (Porter²⁴; Mann and Roberts²⁵). Both emerged as independent states with a Westminster model parliamentary government and common law legal systems with the JCPC as the final appellate court. The first Prime Ministers, Sir Linden Pindling of The Bahamas and Sir Dawda Kairaba Jawara of The Gambia, led their respective colonies to independence. Pindling won three consecutive elections²⁶ and Jawara won six consecutive elections after independence.²⁷ Table 2 presents country profiles of population size, economy data, and political environment but both are generally considered developing states.

²⁴ Kristen Mann and Richard Roberts, *Law in Colonial Africa* (Portsmouth, NH: Heinemann, 1991).

²⁵ Encyclopaedia Britannica, 'Lynden Pindling: Prime Minister of The Bahamas,' 11 March 2016. <<https://www.britannica.com/biography/Lynden-Pindling>> (accessed May 3, 2017).

²⁶ Encyclopaedia Britannica, Sir Dawda Kairaba Jawara (7 October 2008). <<https://www.britannica.com/biography/Dawda-Kairaba-Jawara>> (accessed May 3, 2017).

²⁷ The World Bank, World Bank Data – GDP (2016). <<http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>> (accessed February 22, 2016).

Table 2: Country profiles

| Country (Independence) | Population ²⁸ | GDP ²⁹ | GDP per capita | Political Environment ³⁰ |
|---------------------------|--------------------------|-------------------|----------------|--|
| The Bahamas, (1973) | 388,000 | \$8.8 Billion | \$23,000 | Multiple parties with minimal ideological differences; “Free” |
| The Gambia, (1965) | 1,990,000 | \$938 Million | \$1,697 | Multiple parties with minimal ideological differences until 1994 – “Free”; After Coup d’état in 1994 and new Constitution - “Not Free” |

The Commonwealth of The Bahamas (The Bahamas)

The Bahamas became a colony in 1718 and gained independence in 1973 but still retains the constitutional right of appeal to the JCPC. It is one of the 11 states³¹ that retain the JCPC. With some Bahamians are unhappy with the JCPC (Dames³²; Toote³³), a bifurcated discussion has emerged which resonates in the seven remaining Caribbean states.

²⁸ The World Bank, World Bank Data – Population (2016a).
<<http://data.worldbank.org/indicator/SP.POP.TOTL>> (accessed February 22, 2016).

²⁹ Freedom House, *Freedom in the World 2014: The Annual Survey of Political Rights and Civil Liberties-Individual Country Ratings and Status*. Washington (1972-2014), 2014a.
<<https://freedomhouse.org/report-types/freedom-world#.VWxNS89VhBc>> (accessed July 3, 2016).

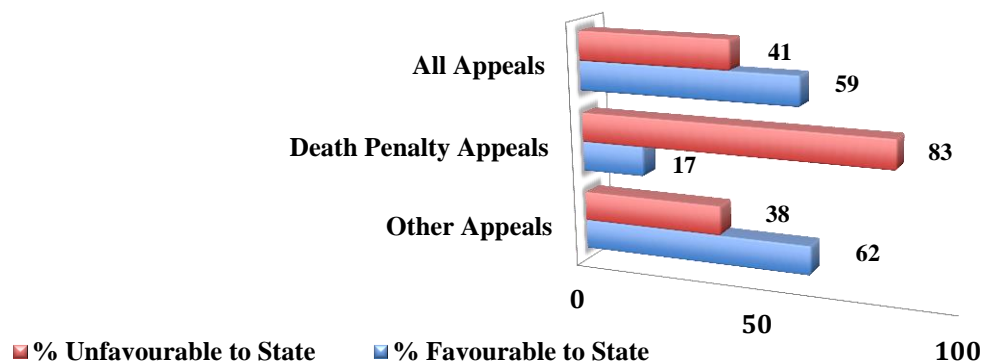
³⁰ Seven other Commonwealth Caribbean states – Antigua & Barbuda, Grenada, Jamaica, St. Lucia, St. Kitts & Nevis, St. Vincent & the Grenadines and Trinidad & Tobago plus Brunei and Mauritius.

³¹ Seven other Commonwealth Caribbean states – Antigua & Barbuda, Grenada, Jamaica, St. Lucia, St. Kitts & Nevis, St. Vincent & the Grenadines and Trinidad & Tobago plus Brunei and Mauritius.

³² Candia Dames. “Is it Time to Abandon the Privy Council?” *The Nassau Guardian* (4 July 2011). <http://www.thenassauguardian.com/index.php?option=com_content&id=11385&Itemid=37> (accessed July 7, 2016).

First, the JCPC is discussed in the context of the death penalty. Ghany³⁴ contends that the JCPC has an agenda in the Commonwealth Caribbean and concludes that, “It is now clear that there is an agenda to make it difficult for Commonwealth Caribbean states to carry out the death penalty.” A review of JCPC decisions between 1973 (Bahamian independence) and 2013³⁵ where the state is a party underpins the bifurcated discussion. The JCPC’s failure to affirm the death penalty fuels calls for its replacement. Conversely, the state’s general success in other types of appeals dampens opposition. Figure 2 displays the percentage of favourable versus unfavourable JCPC decisions in which the state was a party: (1) in all appeals, the state won 59%; (2) in death penalty appeals, 83% of the appeals against the death penalty were successful (or unfavourable to the state); and (3) in all other types of appeals the state did much better with a favourable outcome in 62% of those decisions. The unfavourable rate in death penalty appeals is 35% above the rate in *Other Appeals* and 42% above the *All Appeals* rate. This shows large variations in outcomes and highlights why the death penalty appeals may be such a point of focus.

Figure 2 Comparison of Success Rates for All Appeals in which the State is a Party; Death Penalty Appeals and All Other Appeals for The Bahamas



³³ Michael D. Toote. *Capital Punishment in The Bahamas: The Privy Council Moratorium*. (Bloomington, IN: Author House, 2013).

³⁴ Hamid A. Ghany, ‘The Death Penalty, Human Rights and British Law Lords: Judicial Opinion on Delay of Execution in the Commonwealth Caribbean’ (2000) Vol. 4(2) *International Journal of Human Rights* 30.

³⁵ There were no death penalty appeals from The Bahamas in 1993, 1994, 2014 and 2015.

Ghany³⁶ identifies *Pratt and Morgan v. Attorney General of Jamaica*³⁷ as the case where the JCPC's turned decidedly against the constitutionality of the death penalty in the Commonwealth Caribbean. Though not about the Bahamian constitution *per se*, the decision in *Maxo Tido v The Queen*,³⁸ overturned the death penalty sentence handed down by the domestic court of appeals. A former President of The Bahamian Bar Association, Ruth Bowe Darville, was reported as saying, "I think the question of the death penalty needs to be addressed. I think the country is torn by it because we're in the throes of this crime epidemic as people have labeled it."³⁹ Darville suggested that the issue of the death penalty be remedied through legislation, but with the knowledge that care must be taken not to offend the international community and he suggested that that any action would be linked to the Bahamian economy. In other words, international investor confidence must be balanced with the issue of the death penalty. This does not discount the direct, albeit narrow, proposal to oust the jurisdiction of the JCPC in death penalty appeals made in a 2014 speech by the leader of the opposition party (Minnis⁴⁰). It was just that – a proposal, and one not reflected in the party manifesto. There is no way to predict if any future election victory by the current opposition would lead to the change in political environment with a clear political will to replace the JCPC. A closer look at the death penalty appeals from the Bahamas after *Pratt and Morgan* shows the decrease in the state's success rate in upholding the

³⁶ Ghany, *supra*, note 34.

³⁷ *Pratt and Morgan v. Attorney General of Jamaica*, [1993] 1 United Kingdom Privy Council <<http://www.bailii.org/uk/cases/UKPC/1993/1.html>> (accessed August 13, 2015).

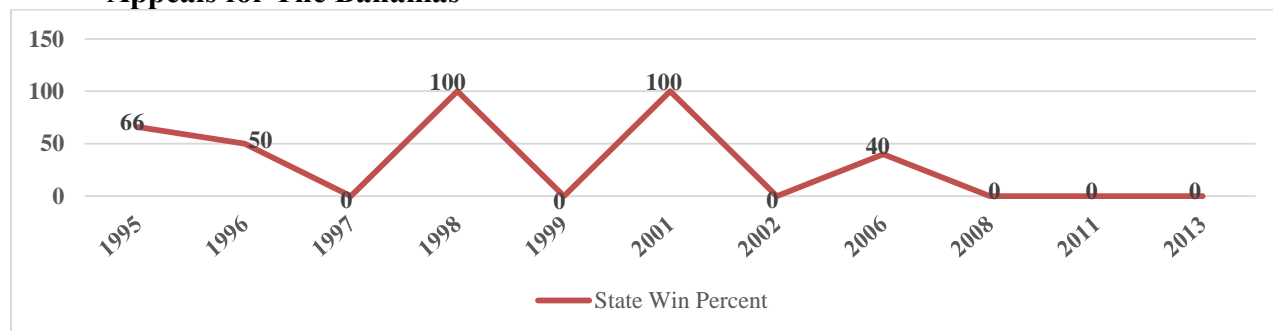
³⁸ *Maxo Tido v The Queen*, [2011] 16 United Kingdom Privy Council <<http://www.bailii.org/uk/cases/UKPC/2011/16.html>> (accessed August 12, 2015).

³⁹ Juan McCartney, 'Bar Council Chief Says Privy Council Still Needed' *The Nassau Guardian* (25 June, 2001, para. 12). <http://www.thenassauguardian.com/index.php?option=com_content&view=article&id=11199&Itemid=27> (accessed November 3, 2016).

⁴⁰ Hubert A. Minnis, 'New Year's Address by Opposition Leader, Hon. Dr. Hubert A. Minnis' Bahamas Island Info, 2014. <http://www.bahamaislandsinfo.com/index.php?option=com_content&view=article&id=16777:2014-new-years-address-by-opposition-leader-hon-dr-hubert-a-minnis&catid=34: Bahamas%20National%20News&Itemid=147>

death penalty on appeal. Appeals between 1995 and 2013 present a strong indication as to why this issue would be so prominent in The Bahamas (and the Commonwealth Caribbean). Figure 3 displays the states win average in death penalty decisions from 1995 to 2013 with the state losing all appeals from 2008 to 2013. Clearly, therefore, JCPC death penalty decisions alone are not sufficient to change the political status quo.

Figure 3 State Win Rate Percentage per Year from 1995 to 2013 in Death Penalty Appeals for The Bahamas



Second, I address the discussion about value of the JCPC in conferring legitimacy on the judiciary. The former President of The Bahamian Bar Association, Ruth Bowe Darville, supports the retention of the JCPC (Rolle⁴¹). Darville points out that those who advocate its removal are “treading in very dangerous waters,” as “litigants who come before us with multimillion dollar cases and they see us as a great financial centre, they need assurance that the Privy Council [JCPC] is there” (as cited by Rolle⁴²). In other words, the JCPC legitimizes and reinforces the independence of the judiciary to those with economic interests. Further, The *Bahamas Advantage*,⁴³ the newsletter of The Bahamas Financial Services Board, reports that Prime Minister Ingraham reiterated the link between judicial legitimation and the continued role of the

⁴¹ Domek D. Rolle, ‘Abolish The Privy Council, Easier Said than Done,’ 6 *Halsbury Chambers Bulletin* (June 2012, para. 4) <<http://www.ilntoday.com/files/2012/06/Abolish-The-Privy-Council-by-D-Rolle.pdf>> (accessed November 19, 2014).

⁴² *Ibid.*

⁴³ The Bahamas Advantage. ‘The Privy Council Meets in Nassau – Again’ (27 December 2007) <<http://www.bfsb-bahamas.com/news.php?cmd=view&id=2263>> (accessed January 20, 2016).

JCPC as the final appellate court. Bahamian attorney-at-law Adrian Gibson⁴⁴ challenges the continued use of the JCPC as an affront to sovereignty and asserts that, “The relevance of the law in local circumstances is best achieved by locals, not regional or far distant courts whose Law Lord’s thinking is not superior to that of the most ethical and scrupulous Bahamian jurists.” Gibson⁴⁵ also notes that the JCPC praised the quality of decisions handed down by the domestic court of appeals and, furthermore states, “the notion that we can govern ourselves but are not capable of judging ourselves is a non-sequitur this is simply illogical.”

The political environment has not changed enough to precipitate a sufficiently strong reaction to the JCPC to create the political will to abolish appeals. The two major political parties, the Free National Movement (FNM) and the Progressive Liberal Party (PLP), have both led governments after independence with consistently peaceful transitions of power (Meditz and Hanratty⁴⁶). Like New Zealand, it has not experienced any drastic or revolutionary changes in the political environment and consistently enjoys high levels of political freedom and civil liberties (Freedom House⁴⁷; Freedom House⁴⁸). Though there is support for the JCPC to continue as the final appellate court (Gibson⁴⁹; Toote⁵⁰), the discourse on this issue is bifurcated. The death penalty decisions have not galvanised the opposing forces in the face of support for the court as a legitimizing presence. The government and the opposition differ little on the broad policies that

⁴⁴ Adrian Gibson, ‘The Notion We Can Govern – but not Judge – Ourselves is Illogical Bahamas!’ *Weblog Bahamas* (20 December 2009, para. 26).

⁴⁵ *Ibid*, para. 24.

⁴⁶ Sandra W. Meditz and Dennis M. Hanratty, *The Bahamas- Government and Politics’ Caribbean Islands: A Country Study* (U.S. Library of Congress 1987).
<<http://countrystudies.us/caribbean-islands/123.htm>> accessed 20 March 2016

⁴⁷ Freedom House, *supra*, note 29.

⁴⁸ Freedom House. *Freedom in the World Methodology* (2014)
<<https://www.freedomhouse.org/report/freedom-world-2014/methodology#.VZIJ5vIVhBd>> (accessed September 10, 2014).

⁴⁹ Gibson, *supra*, note 44.

⁵⁰ Toote, *supra*, note 33.

guide The Bahamas. This environment contrasts with New Zealand where the Labour Party had a different vision for the overall domestic and international policies and, its manifesto pledged to abolish the JCPC and, on winning the next general elections, carried through on that pledge.

The Republic of Gambia (The Gambia)

Formally colonised in 1910, The Gambia gained independence in 1965 with a constitutional system reflecting the Westminster model.⁵¹ It is one of six African states to retain the JCPC. I examine The Gambia because of length of time with the JCPC (33 years) and the availability of information about the changes in the political environment. The democratic political environment was relatively consistent for 21 years after independence until the drastic or revolutionary change in the form of a military *coup d'état* that was followed with the replacing of the JCPC in 1998.

Dawda Kairaba Jawara (1965-1994) led the post-independence rule of the Peoples' Progressive Party (PPP) through five consecutive elections which was considered a generally stable period with free elections and respect for civil rights and liberties (Perfect⁵²). The only unconstitutional challenge was the failed *coup d'état* in 1981 (Country Watch⁵³). As a proxy for the health of Gambian political environment, I rely on Freedom House scores (2014) which is an annual comparative assessment of how states perform in the areas of civil liberties and political rights. Based on a 1 to 7-point scale states are rated as "free", "partially free" and "not free".⁵⁴ The

⁵¹ The governing institutional structures of the U.K. underpin the Westminster Model.

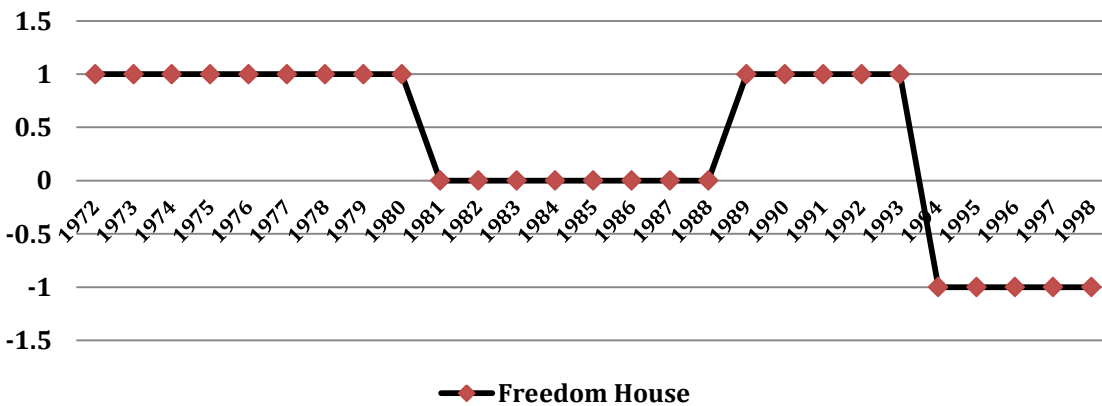
⁵² David Perfect, 'The Gambia under Yahya Jammeh: An Assessment' (2010) 99 *The Round Table*, 53.

⁵³ Country Watch: Gambia Country Review (2018). Retrieved from <http://eds.a.ebscohost.com.ezproxy.gsu.edu/eds/pdfviewer/pdfviewer?sid=f78ba87a-cf06-40c8-ae1-e62d96cc1149%40sessionmgr4005&vid=6&hid=4102>.

⁵⁴ Freedom House, "Freedom in the World: Aggregate and Subcategories scores" (2017) <<https://freedomhouse.org/report/freedom-world-aggregate-and-subcategory-scores>> (accessed June 5, 2017).

Gambia receives a favourable rating for political rights and civil liberties in 14 of the 21 years reported. Figure 4 presents the annual rating from 1972 to 1998. The Gambia is rated as ‘free’ from 1965 to 1980 and partially free from 1981 to 1988.⁵⁵ Again, rated as free in 1990, The Gambia dropped to ‘not free’ following the 1994 *coup d’état*.

Figure 4 Gambia’s Freedom House Scores from 1972 through 1998 (Freedom House, 2014)



Under PPP’s rule (1965-1994), one constitutional law case existed of the three JCPC appeals to which the state was a party. *Attorney General of Gambia v. Momdou Jobe*⁵⁶ was an appeal against a The Gambian Court of Appeal decision that declared four provisions⁵⁷ of the Special Criminal Court Act (1979) to be *ultra vires* the 1970 Constitution. The JCPC declared that only Section 8 (5) dealing with the defendant having the burden of proving innocence in cases of dishonesty involving public funds was *ultra vires* (Jammeh,⁵⁸ Senghore⁵⁹ notes the

⁵⁵ This period coincides with the failed 1981 coup d’état through a 1984-1989 federation with Senegal.

⁵⁶ *Attorney General of The Gambia v. Momodou Jobe* [1984] 10 United Kingdom Privy Council. <http://www.bailii.org/uk/cases/UKPC/1984/1984_10.html> (accessed August 15, 2015).

⁵⁷ Abou Jeng, ‘From Hope to Despair: Travails of Constitutional Law Making’ in Gambia’s Second Republic’ in Abdoulaye S. Saine, Ebrima Ceesay and Ebrima Sall (eds.), *State and Society in the Gambia since Independence, 1965-2012*, (Trenton, NJ: Africa World Press, 2013) 113.

⁵⁸ Ousman A. S. Jammeh, ‘The Constitutional Law of the Gambia: 1965-2010’ (Bloomington, IN: Authorhouse, 2011).

⁵⁹ Jeng, *supra*, note 57.

JCPC decision effectively curbs the power of the legislature. In the existing political environment, however, this ruling did not result in the removal of the JCPC.

The 1994 *coup d'état* ushered in two years of military rule by the Armed Forces Provisional Ruling Council (AFPRC) (Jeng⁶⁰). Amnesty International⁶¹ reports a pattern of arbitrary arrests and detentions, restrictions on political activities, the movement opposition leaders and harassment of journalists and owners of newspapers in an apparent effort to stifle criticism of the government. The change in the political environment indicates that the government's vision included muting political opposition and consolidating power in the executive. Following *the coup d'état*, that vision was entrenched with a new constitution with provisions for replacing the JCPC.

The AFPC later transformed itself into a political party led by the coup d'état leader turned civilian president (Jammeh⁶²; Perfect⁶³; Gale⁶⁴). After two years of military rule, Gambians were more than ready for a return to constitutional rule (Senghore⁶⁵). The August 6, 1996, referendum returned The Gambia to constitutional rule as the Second Republic (Jeng⁶⁶). The new constitution provided for increased executive power over the judiciary and the replacement of the JCPC with the Supreme Court of Gambia.

The JCPC decisions after the *coup d'état*, but before being replaced in 1998, are instructive as to the intentions of the government. The state was a party in one of four appeals decided

⁶⁰ Jeng, *supra*, note 57.

⁶¹ Amnesty International, Amnesty International Report 2014/15: Report on Gambia, (5 March, 2015) <<http://humrahumanrights.blogspot.com/2015/03/amnestyinternational-201415-report-on.html>> 30 March 2016.

⁶² Jammeh, *supra*, note 58.

⁶³ Perfect, *supra*, note 52.

⁶⁴ Thomson Gale, 'Sir Kairaba Jawara, Sir Dawda 1924.' *Contemporary Black Biography* (2005) <<http://www.encyclopedia.com/education/news-wires-white-papers-and-books/kairaba-jawara-sir-dawda-1924>> (accessed February 17, 2016).

⁶⁵ Senghore, *supra*, note 58.

⁶⁶ Jeng, *supra*, 57.

between 1994 and 1998. In *West Coast Air Limited v Gambia Civil Aviation Authority and Another*⁶⁷ (with the state as the respondent), damages were assessed against the state but there was no legal curb on state power. Under the new constitution, the regime gained more control over the domestic courts and understood the role as a potential ally in its quest for legitimacy. The case involving Lamin Waa Juwara is a much publicised example of the effects of Section 13 of the 1996 constitution which provides immunity from legal action to all members and representative of AFPC (Interparliamentary Union⁶⁸), and provides for replacing the JCPC in the new constitution (the government did not immediately exercise the power granted in the provision). Juwara served as the Minister of Lands prior to the 1994 *coup*. On joining the opposition, he defied the constraints on political activities (Amnesty International⁶⁹). After his second arrest in 1996, he was held for 10 weeks and released without being charged (Amnesty International⁷⁰). Based on the immunity entrenched in Section 13 of the Constitution, a lower court dismissed claims of human rights violations and he petitioned the JCPC in August 1998 (Interparliamentary Union⁷¹; Mass⁷²). In October 1998 and before the JCPC could consider the petition, the JCPC was replaced with the Supreme Court of Gambia (Senghore⁷³). This halted the appeal process and any risk of the JCPC handing down a decision unfavourable to the government. If the *Juwara* case had reached the JCPC, it was inevitable that his persecution would have been laid bare before the court. A JCPC decision in favour of Juwara would have

⁶⁷ *West Coast Air Limited v Gambia Civil Aviation Authority and Another*, [1998] 39 United Kingdom Privy Council <http://www.bailii.org/uk/cases/UKPC/1998/39.html> (accessed August 14, 2015).

⁶⁸ Interparliamentary Union, Case Number GMB/01 – Lamin Waa Juwara- Gambia, (2001) <<http://www.ipu.org/hr-e/169/Gmb01.htm>> (accessed July 20, 2015).

⁶⁹ Amnesty International, Amnesty International Report 1996-Gambia, (1996). <<http://www.refworld.org/docid/3ae6a9f948.html>> accessed 26 January 2015.

⁷⁰ *Ibid.*

⁷¹ Interparliamentary Union, *supra*, note 68.

⁷² Bamba Mass. ‘President Jammeh Kills All Gambians’, *Kibaaro News*, (2 September, 2012) <<http://kibaaro.com/president-jammeh-kills-all-gambians>> accessed 3 November 2016

⁷³ Senghore, *supra*, note 58.

supported the criticisms of the regime and challenged their policies. In the Supreme Court of The Gambia, the government expected a more reliable partner – one over which it had virtually unfettered constitutional leverage. This move was anticipatory. It was a way to entrench the new political environment and end legal challenges to the extraterritorial court. To reiterate, however, the previous government lost constitutional appeals before the JCPC, but this did not lead to the replacement of the court. The new political environment and public fatigue with military rule precipitated the drastic or revolutionary change by the new government.

Summary and Conclusion

Extraterritorial courts exist outside the jurisdiction of any one country and new courts will continue to be in the world community (Specht⁷⁴). Courts such as the International Criminal Court, the ECtHR, the Caribbean Court of Justice and the African Court on Human and People's Rights continue to adjudicate an increasing number of appeals contributing to domestic and international jurisprudence. Increasing our understanding of the dynamic relationship between these courts and states is crucial. Examining the JCPC provides an appropriate forum for gaining insight into a major driver of these relationships. The two former British colonies are diverse examples explicated to capture the influence of the domestic political environment (see Table 1). Ultimately, it was the government's emergent political will in a changed broader political environment that drove the process to abolish the JCPC. Tracing when the political environment changed coincided with the decision to replace the JCPC points to the significance of the domestic political environment.

⁷⁴ Steven Specht, 'Move Over Superman: The Rise of Supranational Judicial Bodies in Free-Trade Regimes', *International Insights*, (24 February 2015) <<https://jtlpblog.wordpress.com/2015/02/24/move-over-superman-the-rise-of-supranational-judicial-bodies-in-free-trade-regimes/>> (accessed March 27, 2015).

The Bahamas is an example of where the political environment maintains the status quo regarding the JCPC. The bifurcated nature of the political discourse retards the development of the political will to seriously reconsider the role of the JCPC. Despite the government's sensitivity to the unfavourable death penalty decisions, the conflicting views amongst the elite and the public on that issue stymies the coalescence of the political will against continued reliance on the JCPC. Any discontent with the JCPC decisions on this single issue was not supported by changes in the political environment. The status quo is also supported by those who see the JCPC as a legitimizing presence inspiring confidence in investors.

In The Gambia, previous JCPC decisions were unfavorable to the state, but this did not precipitate the removal of the JCPC in that political environment. The change in the political environment was precipitated by a military *coup d'état* and the adoption of an entirely new constitution providing for the replacement of the JCPC. In this political environment, the government may have been more sensitive to unfavourable JCPC decisions. My examination suggests that the replacement of the JCPC in 1998 may have been an indirect response to the possibility of the politically charged *Jawara* appeal reaching the JCPC that would potentially not support the policy of the government. By replacing the JCPC, the appeal process had to be aborted and the favourable domestic court of appeal decision survived. However, the new constitution changed the governing institutions, altered the relationship between the state and the citizens and supported the new political environment. As the state received unfavorable JCPC decisions prior to the change, I suggest that the response to the JCPC was less about the outcomes, and more about the new political environment and how the government viewed the judiciary.

Despite the historical legacy and reputation of the JCPC, state actions suggest that the ties may be severed when the political will exists regardless of the past court performance. It may force the international community to not only consider the independence of the courts, but also how structural and procedural mechanisms such as appointment and tenure of judges, funding, docket control and exit clauses are influenced by and coordinated with the member states. The goal is to buffer the courts from changes in the domestic political environment and enhance the viability of extraterritorial courts.

The findings do not address the issue of whether there is a link between the domestic political environment and the types of appeals that percolate up through the courts. This examination does, however, offer some support for the assertion of a connection between the domestic political environment and the state's continued reliance on the extraterritorial court. In other words, ties to the court are less about its performance and more about the perceived domestic needs of the government.

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The Significance of the Black Vote in Presidential Elections

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Abstract

This paper provides a description of the significant role that the Black vote has played in presidential elections. Understanding this historical role is necessary to arrive at in-depth analyses of what happened with voter turnout in 2016. We compare our turnout projections in several key states made prior to the election to the actual turnout, and point out both the strengths and weaknesses of the turnout projection model used. Some suggestions for further research on modeling turnout patterns and thereby targeting resources are given. Additionally, given the unique background of Blacks in American politics, we examine problems with describing Black political power exclusively in terms of electoral politics. Some possible strategies and solutions for advancing collective political interests are discussed in the conclusion.

Keywords: Black vote, presidential elections, voter turnout model, bargaining strategies

Introduction

African Americans comprise about 14.5% of the American population and they exhibit a relatively high rate of voter participation in presidential elections.¹ From 1992 until 2016 there was a steady rise in voter participation among African Americans nation-wide and especially in the South. This rise in voter participation has supported a dramatic increase in the number of Black elected officials (BEOs) and Black appointed officials in federal, state and local governments. African Americans have become the most reliable constituency of the Democrat voter base, and in 2016 they gave the Democratic presidential candidate 88% of their votes which was a far higher percentage than Latinos and Asians both at 65%² or White women at 47%.³

¹ All statistics used in this paper are calculated using U.S. Census Bureau data tables unless otherwise noted. The 14.5% total includes all persons in the U.S. who identified themselves as being Black or of African descent as of 2016. African Americans and Whites are the only two major ethnic/racial groups that consistently have turnouts greater than 50% in presidential elections.

² See 2016 general election exit poll results at <http://www.cnn.com/election/2016/results/exit-polls>.

³ Hillary Clinton won the vote of all women by a 12% margin, but she lost the vote of the White women by 6 percentage points. Despite being the first major party female candidate and

The 2016 presidential elections saw the first decline in Black voter participation in more than 20 years. This decline was not exceptional when considering the record high voter participation during the Obama years, in which the Black participation even outpaced White participation. But, the high participation rate was bound to recede somewhat with the end of the highly popular Obama presidency. The sense of loyalty and pride in the personal achievement of the first Black president induced strong support for his campaigns among African Americans. But, such sentiment seems not to have translated into regular voting habits for many of those same supporters.⁴ Personal affection or for that matter disdain for a particular candidate are short term motivating factors. It has long been observed by scholars that those voters who turnout most consistently are those who have strong internal motivations relative to the public good, and who express the view that voting is a civic duty.⁵

For the first time Black voter turnout obtained statistical parity with White turnout in the 2008 presidential election. The significance of this event is best understood when contrasted against the backdrop of more than two centuries of persistent efforts to obtain full citizenship rights for African Americans. The historic rise in Black voter turnout culminated with the election of the first Black president. While the campaigns of Barack Obama inspired many Blacks to vote, his campaigns only intensified a trend that was already in place. Thus, President

despite focusing much of her campaign on women, there was a general lack of enthusiasm for her candidacy among White women. The loss of White women by the White female candidate was critical and would seem to call for some study and a thoughtful explanation.

⁴ Patrick Ruffini, "Black Voters Aren't Turning out for the Post-Obama Democratic Party," *fivethirtyeight.com*, May 30, 2017, accessed on May 30, 2017, <https://fivethirtyeight.com/features/black-voters-arent-turning-out-for-the-post-obama-democratic-party/>

⁵ See Richard J. Cebula, Gary C. Durden, and Patricia Gaynor, "The Impact of Repeat-Voting-Habit Persistence Phenomenon on the Probability of Voting in Presidential Elections," *Southern Economic Journal*, 2008, 75(2), 429 – 40, and Philip Jones and John Hudson, "Civic Duty and Expressive Voting: Is Virtue its own Reward?" *KYLOS*, Vol. 53 (2000), 3 – 16.

Obama was not the primary cause of the rise in Black turnout, but instead he was one of many BEOs who benefited from a decades long rise in Black participation in the electoral process.

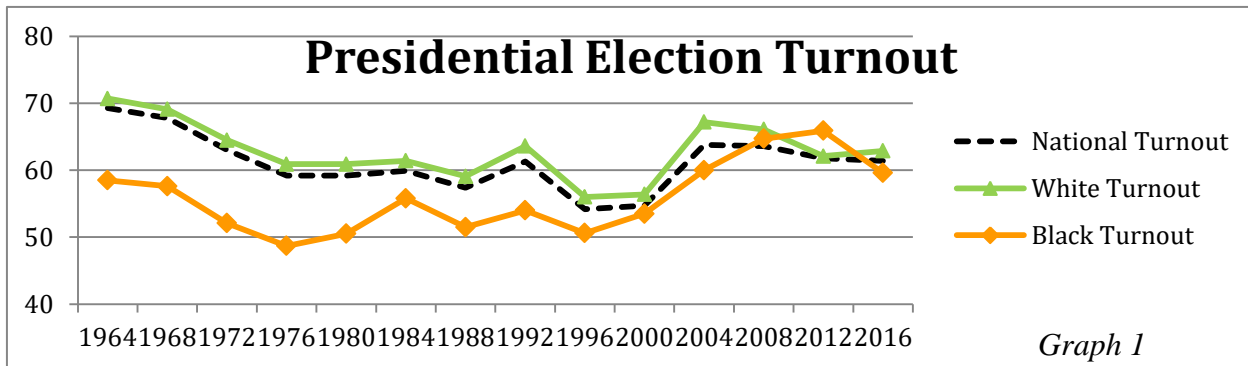
The rise in voter turnout among African Americans shows that it occurred when there was a decline in measures used to prevent access to voting, and thus the increase in turnout can be seen as a long delayed effect of the Voting Rights Act (VRA). Other factors affecting the increase in turnout include the increased number of Blacks running for office, and the media attention given to highly competitive campaigns.

Importantly, it is observed that the increase in turnout has not been correlated with an improvement in socioeconomic conditions for African Americans. In fact, since 2008 Blacks have lost ground relative to Whites in terms of median income, net wealth and home ownership.⁶ Furthermore, there is ample evidence that widespread discrimination against African Americans continues in employment, housing, education and the criminal justice system.⁷ Thus, there is no demonstrable and consistent link between increased participation in electoral politics and improved socioeconomic outcomes for the masses of people and this raises serious questions about dependence upon electoral politics for the empowerment of a long oppressed racial minority. A discussion of this problem is provided in the conclusion of this paper.

⁶Rakish Kochlar and Richard Fry, "Wealth Inequality has widened along racial, ethnic lines since of the Great Recession," *pewresearch.org*, December 12, 2004, accessed on June 1, 2016, <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/>

⁷ Deva Pager and Hana Shepherd, "The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets," *Annual Review of Sociology*, Vol. 34, January 2008, 181 – 209.

The Significant Role of the Black Vote in Presidential Elections



One of the foundational principles of liberal democracies is that citizenship rights are granted to all individuals unconditionally or without reference to class, ethnicity or gender. Liberal principles presuppose a set of inviolable political rights for individuals, who are all then political equals. Based upon the principle of individual equality there should be no significant difference among various major classes, ethnicities or social groups in terms of access to the political process or socioeconomic outcomes which are established by public policies. Groups or classes in society are considered to be aggregated collections of individuals who are all equals as stipulated by constitutional decrees. And since all individuals are subjected to the very same laws then it follows that differences among groups in terms of influence on public policy should be negligible, i.e. groups of equalized individuals must have equal access to the political process.

Of course the American political system has always supported disparities between racial groups.⁸ Both pluralism and liberal theories of democracy tend to discount and deemphasize intervening factors such as group preferences or cultural values, systemic discrimination and

⁸ Examples of public policies which have effectively established and sustained racial disparities include: the Homestead Act of 1862 which provided millions of acres of free land for White settlers in the American West and Midwest, but from which Blacks were excluded, the Mineral Leasing Act of 1920 which leased federal land to mining concerns and from which Blacks were excluded, the Social Security Act of 1935 which excluded domestic workers and agricultural workers, two sectors of the labor force in which Blacks were concentrated at the time, and the Fair Labor Standards Act of 1938 which excluded tip earners in service jobs, jobs on which many Blacks depended, from minimum wage protections.

exploitative structural economic relationships which act to maintain consistent disparities between different social groups.⁹

At least since the 1830s Black leaders have considered the right to the vote as the foundational right of citizenship. They have advanced the proposition that by exercising the franchise, Blacks can secure all other political rights and open the doors to economic opportunities. Attempts to remove restrictions against citizenship rights for African Americans have resulted in a significant body of constitutional law going back to the 13th, 14th and 15th Amendments in the 1860s and 1870s. Prior to the Civil War almost all African Americans, including most free Blacks in the North, were denied the franchise. This situation changed at the end of the Civil War and the passage of the Reconstruction Amendments. For the first time African American men were granted voting rights and hundreds were elected to office throughout the South during Reconstruction. However, the gains of Reconstruction were abruptly reversed upon the removal of federal troops from the South after the Hayes-Tilden Compromise of 1877. In the 1880s and 1890s the “black codes” were enacted in legislatures throughout the South which severely restricted or eliminated citizenship rights for Blacks including the right to vote.

Only with the advances of the Civil Rights Movement of the 1950s and 1960s would the situation once again become favorable for mass Black participation in the American electoral

⁹ According to Dahl, pluralism may be considered as a group theory of politics, but like liberalism it is still based upon the guarantee of individual citizenship rights as the fundamental basis of a democratic polity. Under pluralism individuals are thought to be represented by association with autonomous organizations which pursue different interests. Yet, in a pluralist democracy autonomous organizations ought to be subjected to some controls lest they pursue unjust aims. Public policies then result from a process of negotiation and compromise between the various organizations. See by *Dilemmas of Pluralist Democracy: Autonomy vs. Control*, (Yale University Press, New Haven CT, 1982), 1 – 6 by Robert Dahl. For a further discussion of minority representation and racial differences in obtaining policy preferences see *Minority Report: Evaluating Political Equality in America*, (University of Chicago Press: Chicago, 2008), 59 – 67 by John D. Griffin and Brian Newman.

process. In particular with the passage of the VRA in 1965 the federal government recommitted itself to ensuring fair and open voting procedures in all jurisdictions.

Black voter turnout has played an important role in presidential elections at least since the 1930s. The Black vote may have played the pivotal role in the election of 1948. According to Berman, one reason for the surprise re-election of Harry Truman in 1948 was the support of Black share of the electorate. Throughout the election year of 1948 Truman maneuvered to gain the support of Blacks and undercut Black support for his opponent, the upstart progressive candidate Henry Wallace. Among other things, Truman made an address to Congress calling for strengthening voting rights, and he issued an executive order desegregating the U. S. military.¹⁰ As suggested by Moon, Truman's strategy paid dividends since Blacks were strategically placed on the electoral map and they were able to supply the surprising margin of victory for Truman in the 1948 election.¹¹

In the 1964 presidential election Black voter turnout reached a high of 58.5 percent. This election took place at the height of the Civil Rights Movement just as there was a push for critical legislation to secure citizenship rights. This election gave President Johnson and his congressional allies the mandate that they needed to pass the Voting Rights Act (VRA) in 1965 which was fiercely opposed by many White Southerners.

Parity between Whites and Blacks was the standard of equality employed by the VRA. The law was passed, but one of the intended results, equal access to the ballot as measured by voter turnout, was not achieved until more than 40 years later. Why did it take so long for parity in turnout to occur?

¹⁰ William C. Berman, *The Politics of Civil Rights in the Truman Administration*, Ohio State University Press, Columbus, OH), 1970, 79 – 101.

¹¹ Moon, Henry Lee, *Balance of Power: The Negro Vote*, (Garden City, NY: 1948), 197 – 215.

Voter turnout was deemed a key measure of progress by the VRA. This is indicated in *Section 4* of the VRA which stipulates that the Attorney General may use federal examiners to register citizens or require preclearance for any changes in the voting process in those jurisdictions where the right to vote has been significantly undermined based upon considerations of race or color. Furthermore, the statistical threshold of 50 percent is used to determine substandard progress. Those jurisdictions with a history of discrimination and where less than 50 percent of the voting age population is registered or less than 50 percent of those registered turnout to vote were to be subject to provisions of the VRA.

Prominent new congressional legislation and high profile Supreme Court rulings are often hailed as great advances for expanding rights and furthering the progress of freedom in the American political system. However, the impact of a piece of legislation or court ruling which is enacted as public policy depends not only upon the text of the legislation or court ruling, but also on the implementation and the enforcement of the legislation by far less visible government agencies. The manner in which legislation is implemented and enforced can be much more consequential than the fact of its official enactment. Policies that propose to transform society, expand the delivery of public services, redistribute resources and change socioeconomic conditions are all dependent upon proactive interventions and vigorous enforcement of legislative mandates. The actual impact of new legislation is often far less impressive than the symbolism and rhetoric employed to push for its passage. Thus, to account for the prolonged lag between the passage of the VRA and the achievement of parity in turnout we must examine the actual implementation of the VRA.

Although passed into law in 1965, its implementation has always been at best inconsistently applied. Enforcement has varied both by locations and across different

administrations. Using the theoretical model of Murray Edelman, Mack Jones has argued that the VRA was more of an expressive act than an instrumental statute. Expressive acts are symbolic rather than functional, and they are meant to placate the anxieties of large social group while allowing the governing elite to maintain those policies which are primarily in the interest of their own class. So while the VRA may have appeared to be favorable to the interests of African Americans collectively, this was only nominally so. Jones observed that civil rights leaders in the 1960s were convinced that fair access to the electoral process in the South would lead to the election of more Black office holders, increased political empowerment for Blacks and thus improved socioeconomic conditions. According to Jones, "...organized black interests demanded unfettered access to the franchise as a device to facilitate the reallocation of substantive political power..."¹² The masses of unorganized people were "susceptible to symbolic manipulation." The organized elites, both Black and White, negotiated amongst themselves over specific "instrumental payoffs" that would not be shared with the masses.¹³

Jones further argued that the VRA was not fully implemented because officials at the Department of Justice (DOJ) adopted a narrow and cautious reading of the provisions of the act. Local Blacks were not informed about the standards used to trigger federal intervention. Also, the staff of the Civil Rights Division of the DOJ was not increased to reflect an increased workload obtained when they were made responsible for monitoring compliance with the VRA. Moreover, although the Attorney General was given the capacity to appoint federal examiners to directly register Blacks in those jurisdictions where registration was less than 50 percent, the examiners were used sparingly and not used in many instances when warranted. Jones points out

¹² Mack Jones, "The Voting Rights Act as an Intervention Strategy for Social Change," in *Knowledge, Power, and Black Politics: Collected Essays*, (State University of New York Press: Albany, NY), 2014, 146.

¹³ *Ibid.*, 147.

that the DOJ never developed a systematic means of monitoring compliance with the VRA, often failed to pursue litigation in response to citizens' complaints, and never sought to apply criminal penalties for violations of the act. Jones concluded that, "Throughout the life of the act, DOJ, regardless of the ideology or political party of the administration or the assistant attorney general in charge, has followed a policy of minimal federal involvement."¹⁴ Thus, the prolonged delay in the rise in voter turnout was due in part to the halfhearted implementation of the VRA.

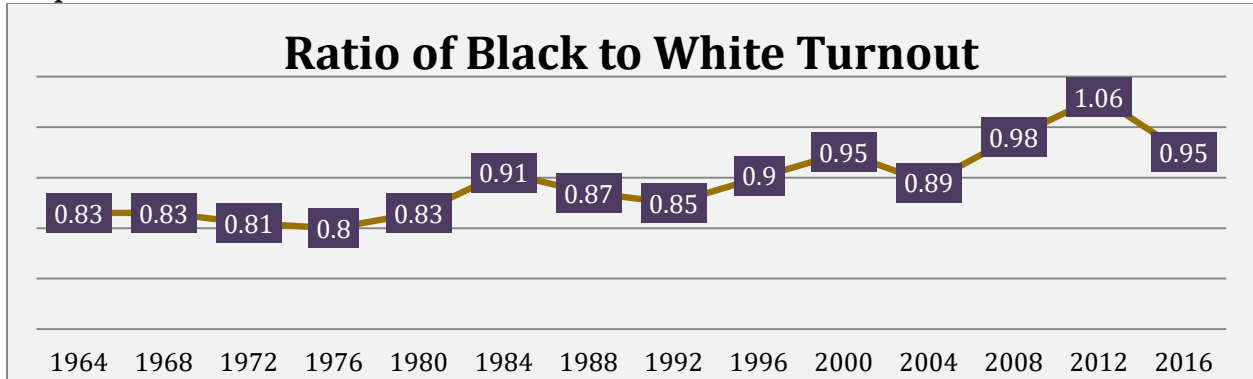
The data in *Graph 1* (See above) indicates that Black voter turnout has been greater than 50 percent in every general election since 1992, and there has been a steady rise in turnout since 1996. Also, as *Graph 2* below shows relative parity between Blacks and Whites in terms of voter turnout occurred statistically for the first time in 2008. The presence of more Black candidates for office is one factor driving the increase in turnout. A study by Washington in Southern states determined that the presence of Black Democratic candidates increases turnout for both Whites and Blacks by 2 – 3 percent.¹⁵ The steady rise in voter participation since the early 1990s also correlates with both the increase in voter participation of Southern Blacks, and the increase in the number of Blacks who have recently moved into Southern states. Black participation in the south is important because most Blacks live in the south and historically the most intransigent opposition to unfettered access to the ballot has been in the former states of the Confederacy. It is significant that the ratio of Black voter turnout inside the South versus that outside of the South achieved parity in 1992, the very same year in which the sustained national rise in Black turnout began. The selection of Barack Obama as the nominee of a major party certainly peaked motivations among the Black electorate. But, as the graphs below show Black

¹⁴ Ibid., 149 – 153.

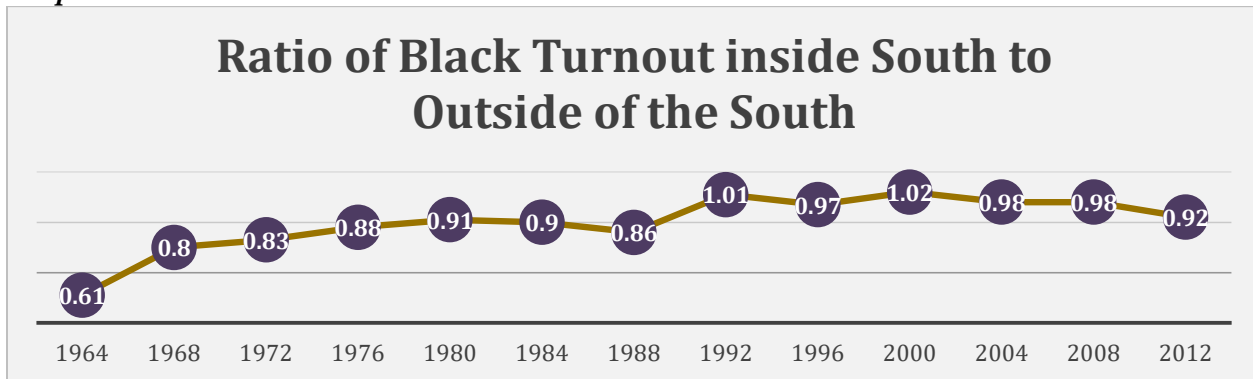
¹⁵ Ebonya Washington, "How Black Candidates Affect Voter Turnout," Discussion Paper No. 16, *Yale Working Papers on Economic Applications and Policy*, January 2006.

voting turnout relative to White turnout has been steadily increasing in every presidential election since 1992.

Graph 2



Graph 3



Voter turnout by race in 2016

Voter turnout for African Americans declined nationwide in 2016 not only in percentage terms (59.6% in 2016 compared to 66.2% in 2012) but also in terms of the total number of voters with about 713,000 fewer African Americans voting in 2016 than was the case in 2012.¹⁶ The overall decline in the Black vote is linked to at least four factors: 1) the end of the Obama

¹⁶ This decline in Black voter turnout does not necessarily indicate a trend toward declining turnouts in presidential elections after a more than two decade period of steady increases in turnouts. Black voter turnout could rise in the 2020 election. Turnout patterns generally fluctuate or move up and down over time according to various factors affecting access to the ballot and the mobilization of support for campaigns.

presidency which did not mean the end of President Obama's personal popularity, but apparently it did mean a decline in turnout among otherwise politically disinterested Obama supporters.¹⁷ 2) The lack-luster efforts of the Clinton campaign to rally Black voters and their failure to allocate substantial resources to Black media and get-out-the vote efforts in Black media.¹⁸ 3) The lack of enthusiasm among millennials. There is some evidence suggesting that Black millennials are not as strongly bound to supporting Democratic candidates as their parents, and they expressed mostly negative views of both major candidates.¹⁹ 4) The general inability Black political leadership to coalesce and advance an agenda of issues broadly appealing to the interests of African Americans. President Obama's popularity had largely obscured the void of substantive issue-based campaigning among African Americans as politicians instead often focused on pointing out examples of racial insensitivity among their opponents.

The decline in Black voter turnout from historic highs after more than two decades of steady increases was not altogether surprising. What was surprising was that the non-White percentage of the electorate did not increase in 2016 relative to 2012. More working class Whites came out to vote, and it appears that they were largely motivated by the antiestablishment and racial appeals of the Republican candidate.²⁰ The support for the Republican candidate by Whites went across every major demographic category. President Trump won the vote of White

¹⁷ Patrick Ruffini, "Black Voters Aren't Turning out for the Post-Obama Democratic Party," *fivethirtyeight.com*, May 30, 2017, accessed on May 30, 2017, <https://fivethirtyeight.com/features/black-voters-arent-turning-out-for-the-post-obama-democratic-party/>

¹⁸ William Douglass, "Black-owned media wonder, Where are the campaign ads?" *mclatchydc.com*, accessed on August 5, 2017, <http://www.mclatchydc.com/news/politics-government/election/article103053367.html>.

¹⁹ Jonathan Martin, "Young Blacks Voice Skepticism on Hillary Clinton, Worrying Democrats," *nytimes.com*, September 4, 2016, accessed on May 30, 2017, <https://www.nytimes.com/2016/09/05/us/politics/young-blacks-voice-skepticism-on-hillary-clinton-worrying-democrats.html>.

²⁰ "Whitewashing the Working Class," *Contexts: Understanding People in Their Social Worlds*, Berkeley, Vol. 16 No. 2, (May 2017) 12 – 23. See also Jonathan Martin and Alexander Burns, "Democrats at Crossroads on White Working Class," *New York Times*, December 16, 2016: A21.

women as well as White men. He won the vote of Whites under the age of 30, and the vote of those 30 and over. He also won the vote of Whites with college degrees as well as those without, and he won the vote of those with higher incomes as well as those with lower incomes.²¹ It had been projected that non-White voters will steadily increase their share of the electorate and eventually overtake White voters as the majority. While the overall demographic trend toward an eventual majority share of the electorate for non-Whites still seems likely, this may not occur as quickly as some had anticipated. Despite the heightened attention paid to issues related to ethnic identity and immigration in the 2016 presidential election, Latino and Asian voters continued to lag in voter turnout numbers. The non-voting Latino and Asian citizens outnumber those who turnout to vote. Their overall turnout rates in 2016 were 47.6% and 49.9% respectively.

The Black voter turnout was down in the key states of Georgia and North Carolina. However, in the swing state of Ohio Black voter participation outpaced White turnout, and in the midst of an unanticipated outcome in Pennsylvania there was a slight increase in Black voter turnout. The Republican hold on the South was thought to be vulnerable in the states of Georgia and North Carolina as polls showed Democrats with at least 45% support and they seemed to be within striking distance of electoral victory especially if there was a solid African American turnout. But, Black voter participation declined in Georgia from 2012 to 2016 from 64.9% to 59.3% or a decrease of 5.6%. Some of this decline is certainly attributable to Obama loyalists who were devoted to their favorite candidate, but who not strongly motivated to turnout otherwise. We should also consider the decision of the Democrat candidate to forego actively campaigning in the state which would seem to have also been a contributing factor in the decline in voter interest. The Democrats effectively ceded the state to the Republicans apparently

²¹ See 2016 exit poll results at <http://www.cnn.com/election/2016/results/exit-polls>.

believing that they would obtain sufficient electoral votes elsewhere without devoting resources to Georgia.

The Democrats did strongly contest for the traditional swing state of Ohio, but Black participation still dropped to 64.2% down from a high of 75.52% in 2012. Even with this decline in turnout, Black participation in Ohio was still well above the national average. Because the state was strongly contested by both parties it may be presumed that a significant factor in the decline was the drop off in participation of politically disinterested Obama loyalists.

Michigan is another state where there was criticism of the effort of the Democratic candidate and the lack of resources applied to the state.²² Apparently, the advisors for the Democratic candidate did not foresee the loss of this state in 2016. Michigan had also voted for the Democratic presidential candidate in every election since 1992. Going against the overall trend, the Black voter participation rate in Michigan increased slightly from 56.4% in 2012 to 59.4% in 2016, but unfortunately for the Democrats this was not enough to offset the movement of White blue collar workers, including many union members, who shifted towards the Republicans. Nonetheless, the razor thin margin of victory for the Republican candidate in Michigan indicates that additional resources toward the get-out-the vote effort may have made the difference.

North Carolina saw a significant decline of 12.37% in Black voter turnout. The historic 80.2% participation rate achieved by Black North Carolinians in 2012 led the nation and that

²² Edward-Isaac Dove, "How Clinton Lost Michigan – and blew the election," *politico.com*, December 14, 2016, accessed on May 22, 2017, <https://www.politico.com/story/2016/12/michigan-hillary-clinton-trump-232547>. According to a number of observers the Clinton campaign was unconcerned even though they were repeatedly warned by local volunteers that her support was slipping. Clinton campaign officials relied on big data analytics in order to allocate resources while they deemed many traditional get-out-the vote efforts as "unscientific" and unnecessary. According to reports volunteers in Michigan who wanted to place campaign signs and hand out literature were turned away by the campaign.

performance was not likely to be repeated. Still the turnout in North Carolina remained well above the national average.

Turnout Projection Model and Suggestions for Further Research

Overall, nationally 61.4% of registered voters turned out to vote in 2016. More people voted in 2016 than in any previous election with some 137.5 million people casting their votes. Our projected turnouts for the Black vote were overstated for 2016 and exceeded the actual turnout by an average 8.5% in those states for which projections were made. The national turnout for the Black vote was 6.3% less than the projection. In every state our projection exceeded the actual outcome with a range of 9% – 12.37%. However, we were able to identify several states in which African American voter turnout did play a key role in the eventual outcome.

The table below gives our projections and the actual outcomes. The national turnout and White turnout are provided for comparison.

| Table 1 | Projected % | Actual | Difference |
|-----------------------|-------------|--------|------------|
| National | | 61.4 | |
| <i>Black</i> | 65.2 | 58.9 | + 6.3 |
| <i>White</i> | | 62.9 | |
| Georgia | | | |
| <i>Black</i> | 68.3 | 59.3 | + 9 |
| <i>White</i> | | 62.6 | |
| Michigan | | | |
| <i>Black</i> | 67.2 | 59.4 | + 7.8 |
| <i>White</i> | | 65.6 | |
| North Carolina | | | |
| <i>Black</i> | 80.67 | 68.3 | + 12.37 |
| <i>White</i> | | 69 | |
| Ohio | | | |
| <i>Black</i> | 75.52 | 64.2 | + 11.32 |
| <i>White</i> | | 61.8 | |
| Pennsylvania | | | |
| <i>Black</i> | 65.68 | 63.6 | + 2.08 |
| <i>White</i> | | 62.8 | |

Our model for strategically identifying areas where Black voter turnout is comprised of the following components: 1) Use of historical voter turnout data to establish a baseline trend in national and state turnouts. 2) Use of polling data for upcoming elections to identify those areas that may be decisive in the upcoming election. 3) Use demographic data to determine critical areas where the Black vote is large enough to play a decisive role in election outcomes. 4) Make quantitative projections in the identified critical areas using the historical data. 5) Use qualitative data gathered from focus group interviews and surveys to adjust and refine turnout projections and provide a plan for the allocation of targeted resources.

One of the objectives of our voter turnout projection model is to identify critical areas where the expenditure of more resources or focused campaigning can bolster turnout and impact election outcomes. The results of the 2016 election clearly indicate that the Black vote was not effectively mobilized in some key areas. Our model was aimed in the right direction as the close outcomes in Ohio, Pennsylvania and North Carolina were anticipated (the outcome in Michigan was not anticipated). However, our projection model lacked the qualitative component by which the quantitative projections could be adjusted and refined.

Studying voting records from previous elections and using historical analyses of African American voter participation does help to identify general trends. But, specification of the critical factors that motivate significant changes in voting patterns requires more qualitative data. Given no other sources of data and given no causative links, then the best available predictor of future behavior is past behavior. Thus, we were led to the use of simple linear regressions for the initial iteration of our turnout projection model.

Survey data, polling data tracking attitudes and not just candidate preferences, and in-depth interviews with focus groups to help identify changing trends and to clarify motivating

factors among the electorate are necessary additions for the model to be fully functional.

Reliance solely on quantitative data to assess turnout patterns is at best a preliminary measure that can establish the basis for a more comprehensive study. A more robust and well-rounded data set including qualitative data would allow for better explanations of outcomes as well as facilitate more accurate projections and precise targeting of resources.

Understanding voting patterns can lead to the implementation of programs and strategies that will have an impact on who gets elected, and by implication an influence on policy outcomes. Can voters be moved from being primarily motivated by descriptive representation to being moved by substantive representation? It is unclear under what conditions this might be occur for individual voters. More research on these questions should focus on voter attitudes not only toward candidates or political parties, but also toward the political process and the value of civic participation. However, for the overall electorate it may be possible to increase the share of voters who are motivated by substantive representation. Large numbers of voters are clearly motivated by descriptive concerns, and some of them seem not to have significant concerns beyond descriptive indications. These voters may be described as *likeness-seeking voters*. Such voters seem to appreciate the capacity to vicariously participate in the success of those candidates who share similar identity referents. However, our hypothesis is that a relatively small, but nonetheless significant percentage of voters (perhaps 10 – 20%) are motivated primarily by specific policy outcomes, and thus subscribe to substantive representation. Mobilizing these *substance-seeking voters* would be a key part of any strategy for boosting overall voter participation. But, attracting such voters will require more than producing candidates or endorsers of a particular color or gender. The avocation of favorable policy

proposals and a strong record of supporting desired initiatives would be more appealing to substance-seeking voters.

As Black voter turnout had been steadily increasing over the past 20 years the simple linear regressions we used to project turnout were bound to significantly overstate the results at some point since it is known that in voter turnout fluctuates, and does not exhibit a monotone linear pattern of either increase or decrease. Using a non-linear regression model in the future may be helpful, but if that is the only change then any improvement would only be marginal. Refining the quantitative part of the model does not obviate the need for the qualitative part. The real advance of our model will take place once qualitative factors are added to assess voter interest and enthusiasm for a given election campaign. This will permit us to adjust the quantitative projections accordingly and thereby obtain results that more accurately reflect the mood of the electorate.

Black Political Power and Electoral Politics

The VRA operationalized racial equality of political rights by measuring registration and turnout. It was assumed that statistical parity implies racial equality. By comparing the ratio of voter turnout between groups we can determine if there are consistent patterns of disparity suggesting the presence of racial inequality. If the two groups do indeed have equal access to the ballot then all other things being equal overtime the ratio of their turnouts should be equal and the disparity would be zero or practically nonexistent.

In 1964 only 44 percent of Blacks in the South voted while 72 percent outside of the South cast ballots. Turnout patterns changed over a 40 year time period to reflect the slow but steady progress toward improved access to the ballot for African Americans in the South. Since

the passage of the 1965 VRA, there has been a gradual move toward parity between Black turnout within the South and Black turnout outside of the South. Parity was finally reached in 1992; since that time voting patterns for Blacks nationwide have been more or less the same. We note that 1992 is the year when Black voter turnout began its steady increase to the historic levels observed in 2008 and 2012 when Blacks turnout exceeded white turnout. This scenario suggests that it took from 1965 until 2008 for the effects of the VRA to be fully realized.

As Jones points out, the symbolism of the VRA has been emphasized by successive administrations while the substance of policy-making has often been ignored. Blacks have achieved voting turnout parity over a period of four decades, but this was not because of vigorous enforcement of the act. Circumstances suggests that White elites have become less resistant to full participation by Blacks in the electoral process as they have discovered that Black elites are easily incorporated into systems upholding the political and economic status quo while the disorganized masses are susceptible to symbolic manipulation. Voting turnout parity has been achieved, but the hopes for greater influence over policy-making and improved socioeconomic conditions remain unrealized. Why should this be so? Civil rights leaders, elected officials and the professional elites continue to adhere to propositions of liberalism or democratic pluralism when addressing racial disparities and the plight of the lower classes. Such appeals may symbolically placate the masses especially during the frequent episodes of racial controversy and crisis. But, there is no evidence that symbolic appeals will do anything to permanently resolve the deep and systemic social problems and disadvantages faced by the masses of African Americans.

African Americans are now faced with the challenge of mobilizing to counter the often wayward and regressive policies of the Trump Administration. Opposition to brash, ill-

considered and racially divisive White Nationalist rhetoric of the 45th president will surely be a rallying point in the next election. But, beyond anti-Trump sloganeering, there is the question of what would a governing coalition of Democrats be able to accomplish for African Americans. Advancing an agenda that promotes beneficial policies requires better organization and an improved bargaining position. This will require willingness to prioritize and promote issues supported by the overwhelming majority of African Americans like criminal justice reforms with an end to policies leading to mass incarceration, stronger enforcement of anti-discrimination measures in employment and housing, improved access to healthcare and a serious discussion of reparations.

In terms of actual policy prescriptions by the courts and legislative bodies, political empowerment for minority groups in the United States has been generally associated with voting rights and descriptive representation.²³ The courts along with legislative bodies have found that minorities can be adequately represented if they are able to select representatives of their choice, and that choice is presumed to be, more often than not, a person sharing the same or similar social designations.

But, this approach to political empowerment which depends upon voting rights and descriptive representation has severe limits. In what way can people be said to have political power if their policy preferences are routinely rejected?²⁴ Can people who have access to the

²³For summaries and explanations of recent court cases regarding minority representation and redistricting see "Racial Redistricting in the United States: An Introduction to Supreme Court Case Law," *International Social Science Journal* (May 2005), 143 – 151 by Jean-François Mignot and [Congressional Redistricting Law: Background and Recent Court Rulings](#), *Congressional Research Service*, March 23, 2017, by L. Paige Whitaker.

²⁴Martin Gilens and Benjamin Page have associated the distribution of political power with policy outcomes. They have found that there is more empirical support for economic elitism and biased pluralism theories of American politics, but little or no support for majoritarian or majoritarian pluralism theories. The authors concluded that only economic elites and business interests can be said to have the independent capacity or power to have their policy preferences

ballot and who are able to elect representatives with similar appearances, but who obtain little or no relief and improvement for entrenched problematic socioeconomic conditions really be said to have acquired political power?

Certainly, we can say that the increase in the number of BEOs since the 1970s has not been without some beneficial outcomes. According to Ueda from the 1970s through the 1990s, the presence in BEOs in state legislatures was associated with significantly increased funding being distributed to public school districts which they represented. High minority enrollment school districts in states with greater minority representation benefited from increases in funding more so than districts in those states where minorities were underrepresented.²⁵ Also, Eisenger found that African Americans in municipalities with Black mayors benefited from increased job opportunities within the local governments. Thus, there is support for the view that increased voter participation and increased descriptive representation in political offices has resulted in tangible benefits for African Americans. Yet, the demonstrated correlations do not imply that the only causative factor for increases in funding and improved employment opportunities was an increase in the number of BEOs. The dramatic increase in BEOs in the late 1960s through the 1970s coincided with large scale protest movements and structural changes in the U.S. economy. The work of advocacy groups and local activists should also be considered as factors in pressuring government officials to increase funding for public services, and in promoting changes in hiring practices.

The presumption that there can be any such thing such as Black political power without a Black political agenda is shortsighted. One informative example of the limits of viewing Black

enacted into law. See "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," *Perspectives in Politics*, September 2014, Vol. 12, No. 3, 564 – 581.

²⁵ Michiko Ueda, "Does Minority Representation Matter for Policy Outcomes?: Evidence from the U.S. States," *New York University Politics Seminars*, October 17, 2005, accessed on 4/02/2018, https://www.nyu.edu/gsas/dept/politics/seminars/ueda_f05.pdf

political power primarily as electoral participation and descriptive representation is found with the 1994 Violent Crime Control and Enforcement Act. In the early 1990s Black neighborhoods were suffering through the aftermath of the crack cocaine epidemic. At the time there were calls for more police protection and for the removal of open air drug markets in their neighborhoods. Local activists and political leaders called for more drug treatment centers, expanded after-school programs and more funding for jobs programs. But, Republican politicians along with many Democrats in Washington were disinterested in providing what they deemed to be ‘welfare for criminals.’²⁶ They mostly favored imposing highly punitive enforcement measures.

The crime bill as proposed by the Clinton Administration was at first roundly opposed by many African American community leaders including members of the Congressional Black Caucus.²⁷ Leaders of the NAACP referred to the bill as a “crime against America.” The bill included provisions which helped to intensify racial inequities in the criminal justice system and placed hardships on Black families that many continue to endure. Among other things the bill subsidized large-scaled expansion for state prisons, introduced a federal three strikes law, expanded mandatory minimum sentencing provisions, and provided for the militarization of local police departments by the transfer of surplus military equipment. President Clinton and the Democrats of the 1990s had hoped to seize upon the symbolism of being ‘tough on crime’ in order to win back working class White voters from the Republicans.²⁸ As a result, Clinton pushed hard for the bill, and he was able to bring along most Democrats in Congress including

²⁶ Elizabeth Hinton, Julilly Kohler-Hausmann and Vesla M. Weaver, “Did Blacks really Endorse the 1994 Crime Bill?,” *nytimes.com*, April 13, 2016, accessed on February 3, 2018, <https://www.nytimes.com/2016/04/13/opinion/did-blacks-really-endorse-the-1994-crime-bill.html>.

²⁷ Ibid.

²⁸ “Too Little, too Late: President Clinton’s Prison Legacy,” *The Justice Policy Institute*, www.cjck.org, February 2001.

the current Senate leaders Charles Schumer and Bernie Sanders. He was also able to eventually gain the support of most members of the CBC.

Taking the restricted view that Black political power is derived primarily from voting and the holding of elective office in the dominant political institutions leads us to an absurd conclusion. One might claim that Blacks had political power in 1994 because at that time there were thirty-eight CBC members in the United States Congress. But, since twenty-six of them voted for the crime bill we are left with the conclusion that Black political power was used to support a policy which minimized prevention efforts while targeting more Blacks for punitive policing and lengthy prison sentences based upon specious rationales. Of course many of those imprisoned, being convicted felons, subsequently lost their voting rights. Hillary Clinton claimed that Blacks supported the bill because they wanted to “get tough on crime,”²⁹ with the implication being that since there was Black support the resulting disparities in the criminal justice system cannot be called racist and unjust. Thus, Black political power, in the form of CBC support for the 1994 crime bill, led to the disempowerment of Black people, the dubious incarceration and disenfranchisement of many of them, and the justification of racial inequalities in the criminal justice system. Hence, Blacks would have been better off if they had no elected representatives in Congress in 1994 or if at most they had only the eight CBC members who refused to vote for the bill.

The example with the 1994 crime bill suggests that BEOs are generally hampered by a weak bargaining position in political processes. The failure to mobilize popular support around a Black agenda representing the collective interests of African Americans left many Black political

²⁹ Elizabeth Hinton, Julilly Kohler-Hausmann and Vesla M. Weaver, “Did Blacks really Endorse the 1994 Crime Bill?” It is interesting to note the response of federal officials to the treatment of drug abusers and small scale dealers during crack cocaine epidemic which mostly involved Blacks was addressed with harsh punitive measures. This differs markedly from the response to the currently ongoing opioid and prescription drug crisis which predominantly affects Whites, and which is treated as a public health emergency.

leaders subject to cooptation into a regime that was detrimental to many Black Americans. By a Black agenda we mean a dynamic and inclusive agenda building process whereby community activists, civic leaders, scholars and political leaders gather on an ongoing basis to discuss and determine public policy priorities designed to meet the needs of the times. Their efforts would be followed up with public discourse and public education efforts so that there might be a well informed and mobilized Black electorate which can then push for implementation of the agreed upon objectives.

Whatever political power Blacks might have it is apparently not sufficient to significantly improve socioeconomic conditions for the overwhelming majority of them. The racial disparity in wealth between Blacks and Whites has hardly changed in more than 50 years.³⁰ The median net wealth of African American families has declined by 75% since 1983 and it is headed toward \$0 in the next 25 years.³¹ Arguably, net wealth is a more informative measure of economic viability than income since family income is far less stable than net wealth. Researchers found that if economic class and poverty rates were measured by net wealth rather than by income then more than 70% of African Americans would be considered either in the lower class or impoverished.³²

Any serious assessment of Black political power must surely include a review of how such power bears on prevailing socioeconomic conditions to which most African Americans are subject. Relating political power primarily to voting rights and the presence of BEOs provides

³⁰ Dedrick Asante-Muhammad, Chuck Collins, Josh Hoxie, Emmanuel Nieves, "The Ever-growing Gap: Without Change African-American and Latino Families Won't Match White Wealth for Centuries," *Institute for Policy Studies*, August 2016, accessed on March 5, 2017, https://www.ips-dc.org/wp-content/uploads/2016/08/The-Ever-Growing-Gap-CFED_IPS-Final-2.pdf.

³¹ Dedrick Asante-Muhammad, Chuck Collins, Josh Hoxie, Emmanuel Nieves, "The Road to Zero Wealth: How the Racial Wealth Divide is Hollowing Out America's Middle Class," *Institute for Policy Studies*, September 2017, accessed on February 5, 2018, https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.

³² Ibid.

us with measureable variables, but not necessarily with all of the factors needed for making substantive changes. The work of advocacy groups, community activists, policy institutes and other civic bodies independent of electoral politics should also be included in a comprehensive review of Black political power. This by no means is an argument for a return to conditions prior to the 1960s when voting rights in the South were severely restricted and BEOs were few and far between. It is better to have access to the ballot and at least some BEOs than none at all. At the very least we can make an argument that things might not have improved as much as hoped for with the expansion of voting rights and more BEOs, but things would likely be even worse if electoral participation of African Americans had been absent, and if fewer BEOs had been elected.

Conclusions

Despite the demonstrated impact of the Black vote in presidential politics, the resulting benefits for the masses of Black Americans remain marginal. The persistent problematic socioeconomic conditions facing most African Americans have not been altered by electoral participation. This outcome brings into question articles of faith long held by most of the leadership class. Since the days of Fredrick Douglass and Martin Delany Black leaders have maintained that progress for Blacks in America depends upon access to the political system as summarized by the following formula:

Obtain voting rights → to elect sympathetic representatives → so they will enact favorable public policies → resulting in improved socioeconomic conditions

But, more than a century of experience reveals that the above formula can at best be only partially functional. Materially it applies only to a small elite class of African Americans, while the masses are offered symbolic gestures.

The three facts all together that (1) Black voter turnout has risen to achieve parity with White turnout as of 2008, and (2) those policies most preferred by African Americans remain consistently unlikely to be enacted, and (3) widespread socioeconomic disparities between the races continue unabated lead us to the conclusion that singular reliance on electoral politics is an inadequate strategy for effectively promoting group interests. Besides, encouraging people to vote every two to four years, there should also be: continuous campaigns to raise awareness about important issues, forums to promote communication between community activists about public policies, and measures that encourage leadership accountability such as office holder report cards. In summary, there needs to be a concerted and continuous effort to identify specific political and economic objectives which would be beneficial for the majority of African Americans and such determinations need to be made independent of electoral politics. Once identified these objectives would then be used to influence the outcome of elections and the direction of public policies.

One approach to political empowerment was developed by Ronald Walters who proposed a theory and strategy of leveraging the Black vote. He suggested that Blacks might focus more resolutely on advancing their own interest even if this means upsetting some of their traditional political allies. The Black vote should not be taken for granted and this requires a willingness to consider more than one voting option at election time. Leveraging tactics would serve to help African Americans get more out of the political process. Walters also indicated that Blacks might re-evaluate their role in the Democratic Party since despite their relatively high turnouts their votes are not sufficiently respected in the electoral campaigns and the process of governing.³³ The assumption that Blacks must always compromise on their issues due to their

³³ Ronald Walters, "Blacks and the Democratic Party," *The Nation*, December, 2002. For a full discussion of leveraging theory see Walters' work *Black Presidential Politics in America: A*

marginal position is a self-defeating proposition. The notion Blacks have nowhere else to go other than the Democrats only serves to weaken their bargaining position.³⁴ Walters suggested that Black political leaders and activists should commit to fighting for the basic interests of their core constituency without respect to the concerns other groups in the party if they wished to create a strong bargaining position. Compromise in coalition politics should be a secondary option, not the assumed outcome. If compromise is assumed at the outset then the opportunity to obtain the most beneficial agreements is diminished. Distinguishing between the basic interests of different groups is necessary for skillful bargaining and the effective exercise of political power. As Walters suggests, seeking common ground in politics is only meaningful when there is also some assurance that one's own interests will be recognized, respected and advanced by the common effort. With improved organization, more discussions aimed at clarifying collective needs and interests, and better mobilization efforts, the position of Blacks collectively within the political system can be enhanced.

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Strategic Approach. For the past four decades Blacks have been the most loyal constituency for Democratic presidential candidates while White voters have typically given Republican candidates 55 – 60% of their votes in presidential elections. No Democratic candidate for president has won a majority of the White vote since 1964. Therefore, given the current demographic voting trends Democratic candidates for president are unlikely to capture the White House without high levels of Black voter support and a strong Black turnout.

³⁴ Republicans do not seriously compete for the Black vote, yet there are always options available for Blacks to make an impact in elections. Blacks may vote for third party candidates (as a small number occasionally do) or they can just go home and not vote at all (as many of them sometimes do) and thereby provide the electoral 'margin of defeat' for those candidates who had counted on garnering their votes, but who had not committed to advance their interests.

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