

# Research Note: Black Political Power & Incarceration in the U.S. South During Reconstruction

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*Note to the discussant: This project is quite early stage. While I have been working on variants of this for a while, I revamped the analysis this summer to look more at the relationship between mass-level franchise expansion and incarceration. I am looking for feedback on framing, but also on additional empirical analyses (both qualitative and quantitative) that I could/should include. (That said, I see this more of a side project to my core book project, which means that I don't currently have the bandwidth to go out and collect a lot of additional data for this paper—hope this makes sense, and thanks in advance for your thoughts/suggestions!)*

## Motivation & Research Question

How does the political enfranchisement of racial minorities affect incarceration? Research on the 20th century U.S. carceral state has linked the collapse of Jim Crow and the expansion of political rights for African Americans during the Civil Rights era to substantial increases in incarceration. Incarceration, so the argument goes, has become the “New Jim Crow” (Alexander 2010), in particular in the South where the Voting Rights Act (VRA) of 1965 struck down state-level restrictions on voting rights. Indeed, as recent empirical research has shown (Eubank and Fresh 2022), Southern states covered by section 5 of the VRA saw disproportionately larger growth in state prison admissions, in particular of Blacks, in the decades that followed.

The Civil Rights era, however, was not the first time the United States attempted the transition towards a more racially inclusive democracy. The Reconstruction era following the Civil War also witnessed a large-scale franchise expansion on the basis of race, brought on by federal intervention into the late insurrectionist South. When the Confederacy surrendered to the Union in April 1865, 3.9 million formerly enslaved Blacks found their freedom. Emancipation did initially not imply much more than freedom from bondage, i.e. it was not coupled with political and citizenship rights for freedpeople. In 1867, however, this began to change as a Republican Congress saw in the black franchise a way to hold on to power. Over the course of Congressional Reconstruction (1868-1877), Congress passed a series of constitutional amendments, securing citizenship rights for freedpeople (1868) and, importantly, prohibiting the denial of voting rights on the basis of race (1870).

Thus, during Congressional Reconstruction, the South experienced a massive and unprecedented franchise

expansion as Black men entered the electorate for the first time. Was this change in political status met with increased coercion through the criminal justice system, like in the aftermath of the Civil Rights movement in the 20th century? If not, why not? In this project, I seek to answer these questions using a novel database on 19th century incarceration in the American South that I collected from archival prison records over the past four years. So far, I do not find evidence of a “carceral” response to minority enfranchisement similar to the one we have seen in the post-VRA South. In other words, I do not find differentially larger incarceration growth in counties that saw larger franchise expansion after 1868, relative to counties with little franchise expansion.

To better understand these findings, I offer additional quantitative analyses that highlight the importance of federal intervention for securing minority political rights, in particular through military occupation of the South during Congressional Reconstruction. I also present qualitative evidence to discuss how the lack of carceral capacity following the Civil War likely affected states’ ability to scale incarceration in response to franchise expansion.

For the remainder of this note, I will briefly provide more historical background before I talk through the data I have been collecting and my empirical approach. I will then present some (very) preliminary findings.

## **Historical Background: Reconstruction and the Struggle for Black Political Rights**

Reconstruction marked an era of great hopes and great disappointments in American history. For a brief moment in time, the United States seemed on their way towards a racially inclusive democracy that afforded equal rights to black and white manhood. However, as national attention to Southern politics waned in the mid-1870s, white Redeemer governments were able to cement in one-party rule and maintain racially authoritarian enclaves in the South for decades to come (Mickey 2017; Weaver and Prowse 2020). In this section, I briefly outline the struggle over black political rights that ensued in the post-Emancipation South.

The end of the Civil War brought freedom from slavery for almost four million enslaved individuals but initially, Emancipation meant little more than that. Lincoln’s Emancipation Proclamation of 1863 included neither provisions for equal citizenship and nor did it grant political rights for African Americans. Similarly, the 13th amendment, passed by Congress in January 1865 and ratified in December of the same year, formally outlawed slavery and involuntary servitude across the United States, but did not explicitly assert any other rights for freedpeople. Thus, while Emancipation settled the question of slavery, it left many others unanswered. As Republican lawmaker and future President James Abram Garfield remarked in an address in July 1865,

“What is freedom? Is it the bare privilege of not being chained,—of not being bought and sold, branded and scourged? If this is all, then freedom is a bitter mockery, a cruel delusion.”(Hinsdale 1970, I:86)

For freedpeople, however, the promises that came with Emancipation were far-reaching. In the Southern economy, freedom meant not only autonomy from former enslavers, but also the ability to reach economic independence and self-sufficiency [e.g. (E. Foner 2014); Royce (1993)]. This was most urgently expressed in demands for land reform and redistribution, which would have allowed freepeople to farm their own parcels,

rather than being forced to enter exploitative wage labor contracts or sharecropping agreements with the planter class. In the political realm, by contrast, freedom signified inclusion and equality. The ballot in particular was deemed an emblem of equal citizenship. As Frederick Douglas argued in February 1866,

“If I were in a monarchial government (...) where the few bore rule and the many were subject, there would be no special stigma resting on me because I did not exercise the elective franchise (...) but here, where universal suffrage is the fundamental idea of Government, to rule us out is to make us an exception, to brand us with the stigma of inferiority.” (P. S. Foner 1950, IV:159)

During Confederate Reconstruction (1865 to early 1867), however, hopes for political equality were met with disappointment. As freedmen were legally denied the ballot, only a handful (if any) black politicians were elected to serve as state legislators or in local offices during the first postbellum elections held in 1865 and 1866. As a consequence, state legislatures and governments consisted mostly of white ex-Confederates and black political power remained limited. Little help came from the federal government at this point. Worried about his 1868 election prospects, President Andrew Johnson, a Southerner from Tennessee, was strategically seeking an alliance with Southern Democrats and thus, pursued a racially conservative “restoration” policy that welcomed many ex-Confederates back into political offices and showed little concern for freedmen’s political rights (E. Foner 2014; Valelly 2004a; Poulos 2021).

Nevertheless, freedpeople all over the South began to mobilize from the bottom up in pursuit of their political rights, as evidenced by countless local gatherings and meetings as well as the statewide freedmen conventions that were held during 1865 and 1866. Over the same time period, agents of the Bureau of Refugees, Freedmen, and Abandoned Land (Freedmen’s Bureau hereafter), which was introduced by Congress in early 1865, received an abundance of letters and petitions from black organizations and ordinary freedmen from all over the South. Despite their formal exclusion from political institutions, blacks’ activism and extensive mobilization during these first years after Emancipation bore witness to their firm “belief that the political order was at least partially open to black influence” (E. Foner 1987, 873). By 1867, politics and universal suffrage had become “the principal focus of black aspirations” (E. Foner 1987, 874).

Meanwhile on the national level, the Republican party worried about its own reelection prospects, in particular in Southern states, and thus warmed to idea of universal manhood suffrage. With the abolition of slavery, Southern blacks were no longer counted as three-fifths of a person in apportionment and in the Electoral College. Thus, their political weight increased at once by 66 percent. At the same time, the 13th Amendment did not grant political rights and Southern blacks remained *de facto* and *de jure* disenfranchised. This meant that the changes in apportionment that resulted from Emancipation disproportionately benefitted white Conservatives, who, emboldened by President Johnson, came to dominate Southern politics during Confederate Reconstruction. Hence, Republicans realized that, unless Southern blacks were to be granted universal manhood suffrage, their electoral prospects in upcoming elections would be grim—both regionally and nationally (see also: Valelly 2004b, 28).

Hence, in early 1867, after almost two years of stand-off with the President, the Republican-led Congress finally put an end to President Johnson’s “restoration” agenda. Ushering in the era of Congressional Reconstruction (1867 to 1876), Congress passed its own, far more radical Reconstruction program, including the 14th and 15th amendments to the Constitution (ratified in 1868 and 1870, respectively), which secured equal protection and citizenship rights as well as universal suffrage for Southern freedmen. With the help of renewed military occupation of the South, the federal government dissolved the first Southern legislatures that were elected in

1865 and 1866 and replaced sitting governors with provisional military appointees. The military was charged with registering eligible black and white voters in the occupied states and organized conventions to write new state constitutions that granted universal manhood suffrage to both blacks and whites. After successful ratification of these constitutions, the military also supervised new gubernatorial and legislative elections, which were typically held in 1868.

As a consequence of this unprecedented federal intervention in state politics, African Americans were allowed to formally participate in elections for the first time. Hundreds of thousands of freedmen were registered to vote across the South. Indeed, black voters were in the majority in five Southern states, and made up 45 percent of registered voters in three more (Chacón, Jensen, and Yntiso 2021b; Valelly 2004b, 32–33). Over the course of Congressional Reconstruction, blacks also held over 2,000 political offices on the local, state, and federal level for the first time ever (E. Foner 1993).

In this project, I examine to what extent this unprecedented expansion in political power for African Americans elicited a “carceral” response, i.e. resulted in increases in incarceration as a means to curtail civil liberties and political rights of newly enfranchised blacks.

## Data & Measurement

### Incarceration

To measure incarceration during Reconstruction, I collected a novel dataset on prison admissions to state penitentiaries for several states of the former Confederacy. Records on state prison admissions were typically kept in “convict ledgers”—handwritten descriptive rolls of all prisoners the state received from the courts. These ledgers include individual-level information on each prisoner, including race, age, date and county of conviction as well as the crime they were convicted for and the sentence length. Where necessary, I first digitized these records during visits to various Southern state archives. I then entered the handwritten information from these ledgers into a comprehensive database with the help of a team of research assistants. The resulting database—the Postbellum Incarceration in the American South database—documents convictions to various Southern state prison over a period of eight decades.

That said, not all states kept records reaching as far back as Reconstruction. Hence, for the purposes of this project, I restrict my analysis to the five states for which annual, county-level convict records were available for the Reconstruction era: Alabama, Georgia, Louisiana, South Carolina, and Texas.<sup>1</sup>

These data, however, do not come without challenges. Two in particular—sparsity and missingness—are addressed below.

### Challenge #1: Sparse Data

Antebellum state prisons were small, with only a few dozen convictions per year state-wide. This began to change after the Civil War. Immediately following the war, Southern whites began to rely on the criminal justice system to enforce labor contracts and coerce African American laborers into exploitative labor

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<sup>1</sup>One limitation of these data is that they represent admissions to state penitentiaries only. Typically, individuals sentenced to time in state prisons were convicted for felony crimes whereas misdemeanor convicts were sentenced to jail time in county jails. Convictions to county jails are not captured by my data, and due to data limitations, it is unclear whether or not county convictions followed similar trends as state convictions in both scope and geography.

arrangements. In addition, the emergence of Southern convict leasing systems during Reconstruction, and their expansion thereafter, created demand effects as New South industrialists began to rely on convict labor as a cheap alternative to free labor (e.g., Schwarz 2023; Lichtenstein 1996).

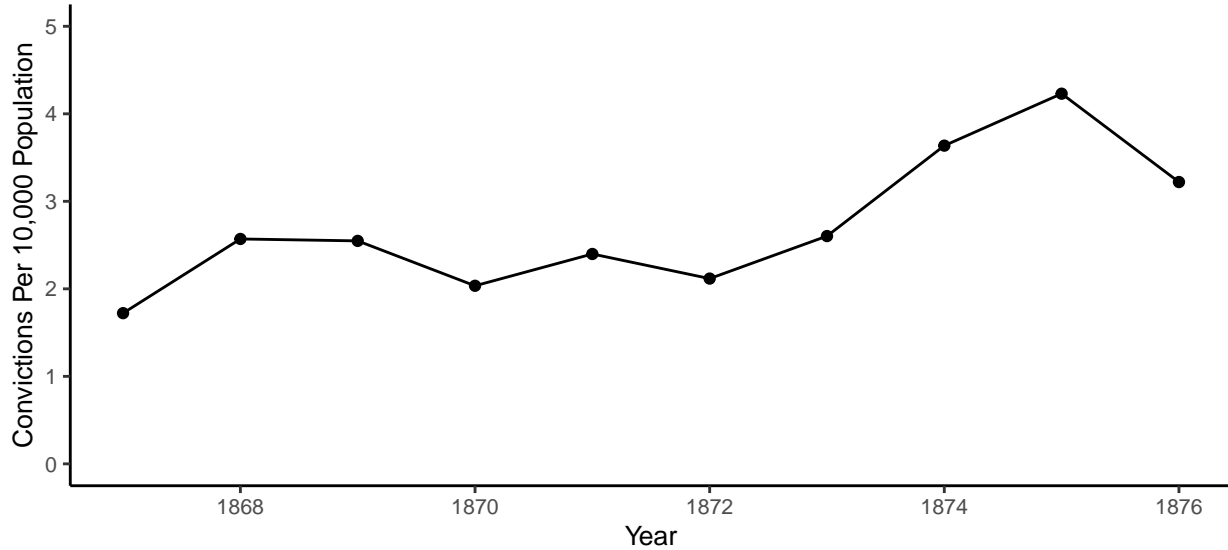


Figure 1: Annual Conviction Rate During Reconstruction

However, by today’s standards, prison admission numbers remained relatively low. For most counties, the records indicate very few convictions in any given year (if any). Indeed, the average number of convictions per county between 1866 and 1876 was 2.84, with a the median of 0. As a consequence, the incarceration data is heavily skewed towards the left (see histogram below), which potentially constrains the ability to detect carceral trends without further aggregating the data.

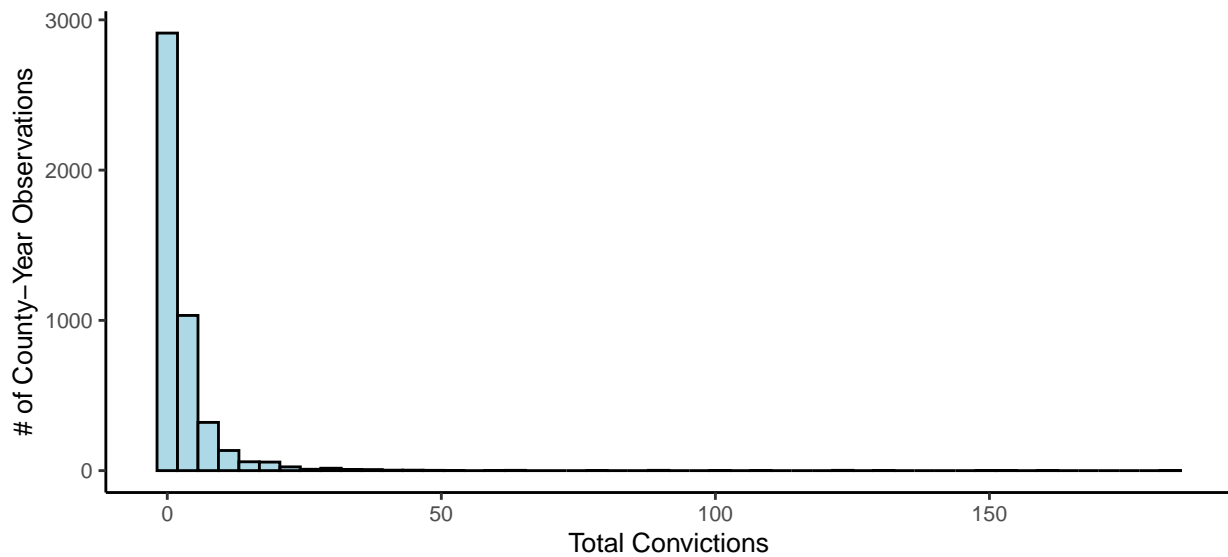


Figure 2: Distribution of Convictions per County-Year (1866-1877)

## Challenge #2: Missing Data

A second complication is that for two of the states (Georgia and South Carolina), I only have partial data covering the Reconstruction years (see figure below).<sup>2</sup> Moving forward, I plan to use multiple imputation methods (via Amelia) to fill in conviction values for missing years. For the time being, I drop missing county-year observations in the analyses presented below.

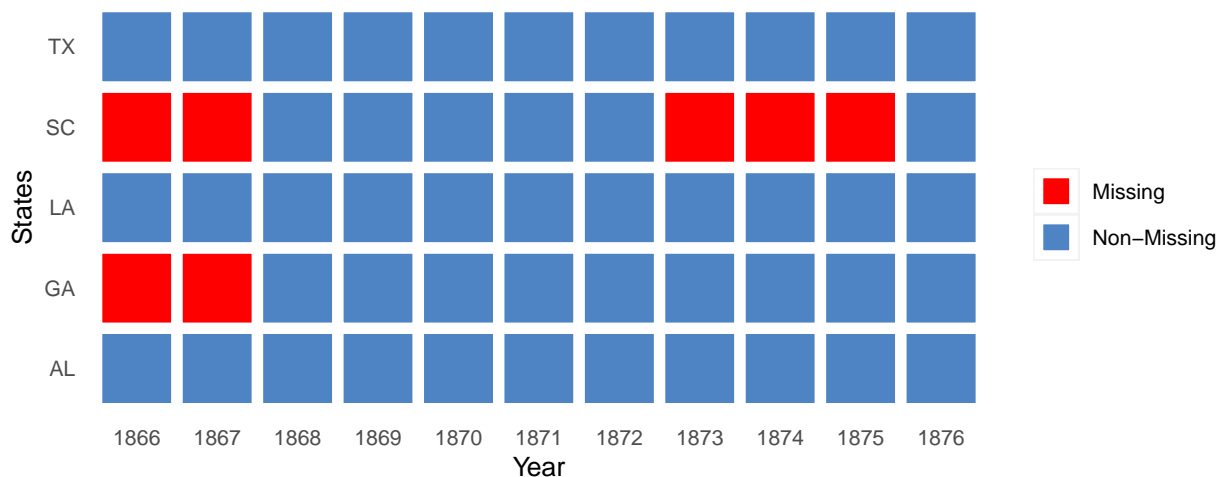


Figure 3: Missing Conviction Data, By Year and State

## Measuring Incarceration

In the analyses presented below, I use my PIAS conviction data to construct several measures capturing incarceration. In the non-aggregated analyses, I use both the total number of convictions per county and year as well as the annual county conviction rate per 10,000 population as my outcome variables.

However, as discussed above, because conviction numbers were relatively low in any given year, using county-year observations might be too “zoomed in” to detect any real effects. Thus, I also conduct analyses using a county-level measure of convictions aggregated across two time periods: 1866-1868 (before Congressional intervention) and 1869-1876 (after Congressional intervention). The resulting measure can be interpreted as county-level convictions per 10,000 person-years.

## Black Franchise Expansion

Using data from the 1860 U.S. Census, I use the county’s black-population share in 1860 as a proxy measure for black franchise expansion during Reconstruction. The idea here is that the higher the share of Blacks was in a given county before the Civil War, the more the political power balance would have been affected during Congressional Reconstruction when Blacks finally became a new political constituency after the passage of the Constitutional Amendments of 1867 and the re-elections held in 1868.

<sup>2</sup>For South Carolina, no records were available from before 1868, and the convict ledger covering 1873-1875 went missing (as confirmed by the state archives). Similarly, records for 1866 and 1867 were unavailable for Georgia.

The proportion of black people in a given county in 1860 varied substantially throughout the South (see histogram below). In some parts of the Upcountry South as well as in newly settled regions in Western Texas, less than ten percent of population was Black by 1860. By contrast, places like Concordia and Tensas Parish in Louisiana’s Mississippi Valley were over ninety percent Black at the eve of the Civil War.<sup>3</sup>

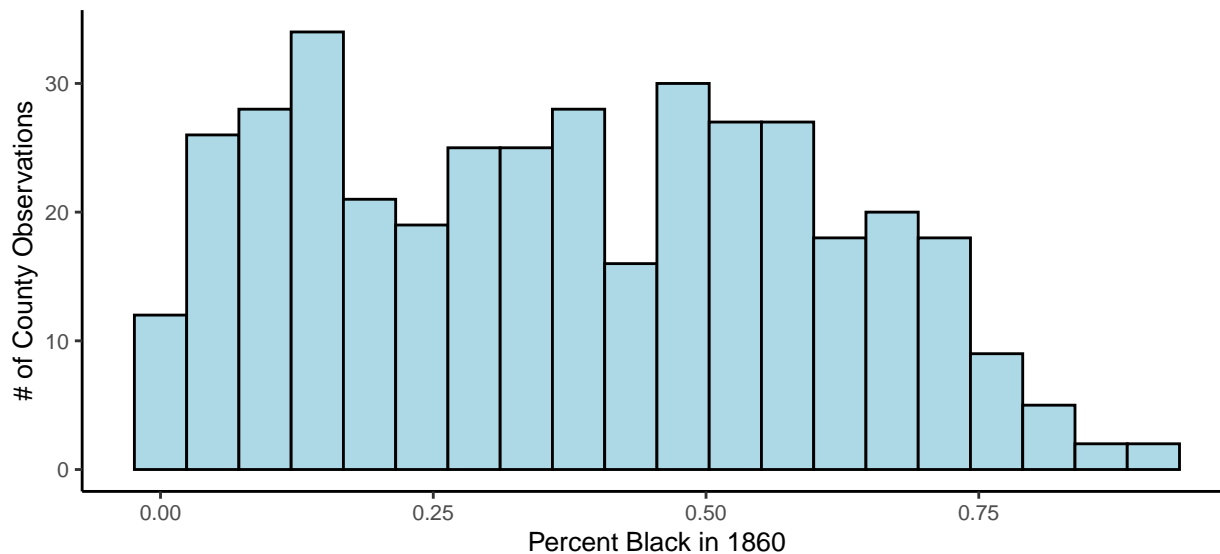


Figure 4: Distribution of Percent Black (1860)

### Additional Controls

In some of the analyses I present below, I include additional time-varying controls, specifically the log of the county’s total population and the share of the county’s population that resides in urban centers (defined as settlements with 2,500 or more residents).

In addition, Table 1 below provides county characteristics, disaggregated by various black population shares. In terms of pre-Reconstruction era characteristics, Majoritarian black counties had (unsurprisingly) the largest share of enslaved individuals, the highest farm value per capita, and were the least urban in 1860. During Reconstruction, counties where the black share of the population was 50 percent or above in 1860, reported the highest voter registrations number, in particular of black voters, and showed consistently higher support for the Republican party in gubernatorial elections throughout Reconstruction. About 40 percent of majoritarian black counties were military occupied during Reconstruction, relative to 25-29 percent of the counties where blacks were not in the majority.

<sup>3</sup>A lot of this variation is, of course, explained by the intensity of cotton and other cash crop farming, which intensified the reliance on enslaved labor.

Table 1: Descriptive Statistics, By Black Share of Population in 1860

	20% or Below		20-35%		35-50%		Above 50%	
	mean	sd	mean	sd	mean	sd	mean	sd
Prison Admissions								
Annual Convictions, 1869-1870	2.93	13.47	2.59	5.89	2.91	4.73	3.93	6.10
<b><i>Pre-Reconstruction Characteristics</i></b>								
Total Population in 1860	6337.50	16565.29	7962.82	6843.98	10319.27	5612.33	14765.35	9871.36
Percent Enslaved in 1860	9.62	5.69	26.75	5.42	41.94	4.61	62.86	9.67
Percent Urban in 1860	2.69	14.24	2.54	12.55	3.21	12.03	2.27	9.95
Farm Value per Capita in 1860	108.59	76.64	133.55	69.91	180.75	68.86	265.05	166.26
Land GINI in 1860	0.50	0.10	0.51	0.10	0.51	0.06	0.48	0.09
Slave GINI in 1860	0.21	0.13	0.39	0.08	0.48	0.07	0.58	0.07
<b><i>Reconstruction Characteristics</i></b>								
Total Voter Registrations, 1867-1869	923.84	2587.93	1344.20	1339.46	1770.42	967.39	2746.64	2227.92
Black Voter Registrations, 1867-1869	254.32	1435.63	502.17	734.03	879.18	594.50	1935.23	1662.98
White Voter Registrations, 1867-1869	669.52	1189.80	842.03	678.55	891.24	451.31	811.41	664.84
Average Rep. Vote Share Governor	22.23	16.70	27.74	12.99	37.07	11.68	54.00	18.62
Total # of Black Officials	4.87	7.59	1.85	1.52	1.46	1.05	2.35	2.48
Black State House Reps	0.33	1.05	0.42	0.64	0.45	0.68	0.92	1.50
Black Law Enforcement Officers	0.20	0.56	0.08	0.27	0.01	0.11	0.07	0.35
<b><i>Military Occupation During Reconstruction</i></b>								
Percent Occupied	26.91	44.37	29.42	45.60	25.00	43.32	40.91	49.18
# of Troops	23.28	77.56	19.01	75.85	5.72	15.94	14.74	40.01
# of Years Occupied	1.13	2.71	0.93	2.32	0.74	1.80	1.33	2.42



## Preliminary Findings

### Did Black Franchise Expansion Affect Incarceration During Reconstruction?

To answer this question, I use an event study model, using both total prison admissions as well as admissions per 10,000 population in county  $i$  in year  $t$  as my outcomes of interest.

In particular, I estimate the full models as follows:

$$\begin{aligned} \text{ConvictRate}_{i,t} = & \alpha_i + \tau_t + X_{i,t} + \\ & \beta_1(\text{BlackShare}_{i,1860}) + \beta_2(\text{Post1868}_t) + \beta_3(\text{BlackShare}_{i,1860} \times \text{Post1868}_t) \end{aligned} \quad (1)$$

where  $\alpha_i$  and  $\tau_t$  represent county and year fixed effects, and  $X_{i,t}$  constitutes a vector of time-varying controls, namely log of the county's total population as well as the share of the county's population residing in urban centers.  $\text{BlackShare}_{i,1860}$  is our measure for minority franchise expansion, namely the black share of the county's population in 1860.  $\text{Post1868}_t$  is an event indicator set to 1 for years from 1869 onward, and 0 otherwise, to mark the timing when franchise expansion came into effect.

### Main Findings

Results are reported in Table 2. Of particular interest is the coefficient on the interaction effect, which marks the differential effect of franchise expansion after 1868 on prison admissions in areas with high vs. low black share of the population. The main takeaway is that results are modest. If anything, there seems to be a slightly *negative* effect of moving from the pre-period to the post-period on incarceration in areas with more blacks. In other words, areas with more blacks saw differentially slower growth in convictions after 1868 relative to areas with no blacks.

Next, in order to get a more fine-grained picture of carceral trends during Reconstruction, it is worthwhile to look at year-by-year estimates of the effect of being in counties with low vs. high black population shares, relative to the baseline year of 1868 (when the first racially inclusive elections were held). To that end, I interact the black population share in 1860 with indicators for each Reconstruction year (1866-1876), setting 1868 as the omitted/reference category. Figure 5 below displays for each year the difference in the effect of black population share on incarceration, relative to the year of 1868. Prior to 1868, there were no differentially larger differences in conviction rates between counties with a low vs. high black population share, relative to the baseline year. (In other words, there were no differential incarceration pattern in counties with many vs. few blacks *prior* to franchise expansion).

Similarly, after 1868, I do not initially observe differentially larger differences in incarceration patterns in counties with a low vs. high black share, relative to the baseline year of 1868, until 1871 when effects become negative and distinguishable from zero. This might suggest a delayed effects whereby any changes to the criminal justice system that followed enfranchisement and that might explain reductions in (black) convictions, took a few years to come into effect. Notable, by 1876, differences in incarceration rates between counties with low vs. high black population shares were essentially back at the baseline level.

Table 2: Event Study Results: Black Population Share and Prison Admissions

	Total Convictions to State Prison			Convictions per 10,000		
	No Controls	Fixed Effects	FE & Controls	No Controls	Fixed Effects	FE & Controls
% Black in 1860	2.800 (1.961)			1.804* (0.771)		
Post 1868	0.908* (0.421)			1.542*** (0.378)		
% Black in 1860 X Post 1868	-0.479 (1.023)	-0.481 (0.981)	0.082 (1.062)	-1.492+ (0.860)	-1.483+ (0.863)	-1.121 (1.083)
Num.Obs.	4138	4138	4138	4273	4273	4273
R2	0.005	0.790	0.791	0.014	0.408	0.409
R2 Within		0.000	0.003		0.002	0.004
RMSE	8.66	3.97	3.97	4.10	3.18	3.18
Std.Errors	by: fips	by: fips	by: fips	by: fips	by: fips	by: fips
FE: fips		X	X		X	X
FE: Year		X	X		X	X

+ p &lt; 0.1, \* p &lt; 0.05, \*\* p &lt; 0.01, \*\*\* p &lt; 0.001

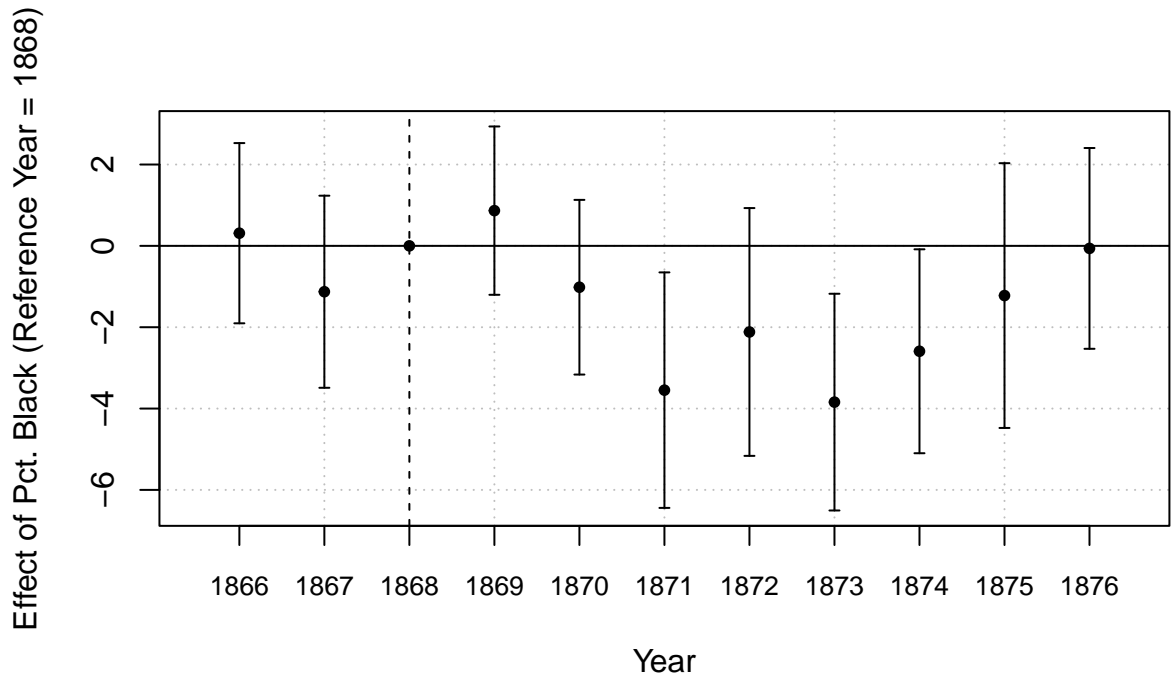


Figure 5: Effect of Black Population Share on Convictions per 10,000, by Year

### Aggregation Across Before-After Period

As discussed above, one concern might be that, due to the sparseness of the incarceration data, effects might be hard to detect without further aggregating the data. To that end, I use aggregate conviction and population data across the period before franchise expansion went into effect (1866-68) and after (1869-1877) and then construct a conviction rate that can be interpreted as convictions per 10,000 person-years. I then estimate a similar regression model to the one above, interacting black population share in 1860 with a before/after indicator.

Table 3 reports the results from this analysis. Similar to the findings reported above, places with only black people in the pre-period saw on average about two *more* annual convictions per 10,000 person-years (relative to places with no blacks). In other words, places with a lot of black people saw a larger number of conviction prior to franchise expansion. Places with no blacks saw an average increase of 1.689 convictions convictions per 10,000 person-years after 1868, relative to the pre-period. By contrast, in counties with high share of blacks, incarceration growth after 1868 was differentially lower, with 1.807 *fewer* annual convictions per 10,000 person-years compared to counties with no blacks. (Another way of putting it is that, while incarceration rates were higher in the pre-period in higher-percent black counties, lower-percent black counties “caught up” after 1868--see figure 6 below).

Table 3: Event Study Results: Black Population Share & Prison Admissions per 10,000 Person-Years (Before/After Periods Aggregated)

	Convictions per 10,000 Person-Years		
	No Controls	Fixed Effects	Controls & FE
% Black in 1860	2.044** (0.760)		
Post 1868	1.689*** (0.368)	1.689*** (0.367)	0.325 (0.873)
% Black in 1860 X Post 1868	-1.807* (0.834)	-1.807* (0.834)	-1.460+ (0.874)
Num.Obs.	782	782	782
R2	0.042	0.728	0.730
R2 Within		0.112	0.120
RMSE	2.89	1.54	1.53
Std.Errors	by: fips	by: fips	by: fips
FE: fips		X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

### Using A Categorical Variable for Black Share of the Population

To get a better sense of the effect of enfranchisement on incarceration across substantively meaningful groups of counties, I divide counties into four groups: 1) those where the black share in 1860 was less than 20 percent; 2) those where the black share was between 20 and 35 percent; 3) those where the black share was between 35 and 50 percent; and 4) majoritarian black counties (black share in 1860 was above 50%).

Majoritarian black counties would have been most affected by franchise expansion in 1868 as the black voters now formed the majority of the electorate. Counties where the black share was at least 35 to but below 50 percent would also have become more politically competitive as black voters began to form a critical mass after 1868. By contrast, black enfranchisement would have been consequential for political competition and electoral outcomes in counties where the black population share was below 20 percent. As a consequence, if enfranchisement during Congressional Reconstruction prompted a “carceral response” similar to the one observed in the post-VRA South, we would expect differentially larger conviction rates in counties where black voters had a critical mass or even outnumbered white voters.

To test this, I estimate the model above interacting the post-1868 indicator with a categorical variable for the black population share in 1860. The results are reported in table 3. Figure 6 shows predicted conviction rates per 10,000 person-years before and after 1868 for each of the groups. This shows relatively clearly that while convictions per 100,000 person-year grew in all counties after 1868, conviction increases were smaller in counties where Blacks constituted a larger share of the electorate after franchise expansion in 1868 (i.e., in counties with more Blacks in 1860).

Table 4: Event Study Results: Black Population Share & Prison Admissions per 10,000 Person-Years (Before/After Periods Aggregated)

	Convictions per 10,000 Person-Years		
	No Controls	Fixed Effects	Controls & FE
Black Share: 20-35%	0.366 (0.428)		
Black Share: 35-50%	0.515 (0.445)		
Black Share: Above 50%	1.127* (0.450)		
Post 1868	1.769*** (0.358)	1.769*** (0.357)	0.476 (0.924)
Black Share: 20-35% X Post 1868	-0.967* (0.446)	-0.967* (0.445)	-0.827+ (0.461)
Black Share: 35-50% X Post 1868	-0.706 (0.473)	-0.706 (0.472)	-0.512 (0.513)
<b>Black Share: Above 50% X Post 1868</b>	<b>-1.299**</b> (0.449)	<b>-1.299**</b> (0.448)	<b>-1.121*</b> (0.472)
Num.Obs.	782	782	782
R2	0.043	0.730	0.733
R2 Within		0.121	0.129
RMSE	2.89	1.53	1.53
Std.Errors	by: fips	by: fips	by: fips
FE: fips		X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001

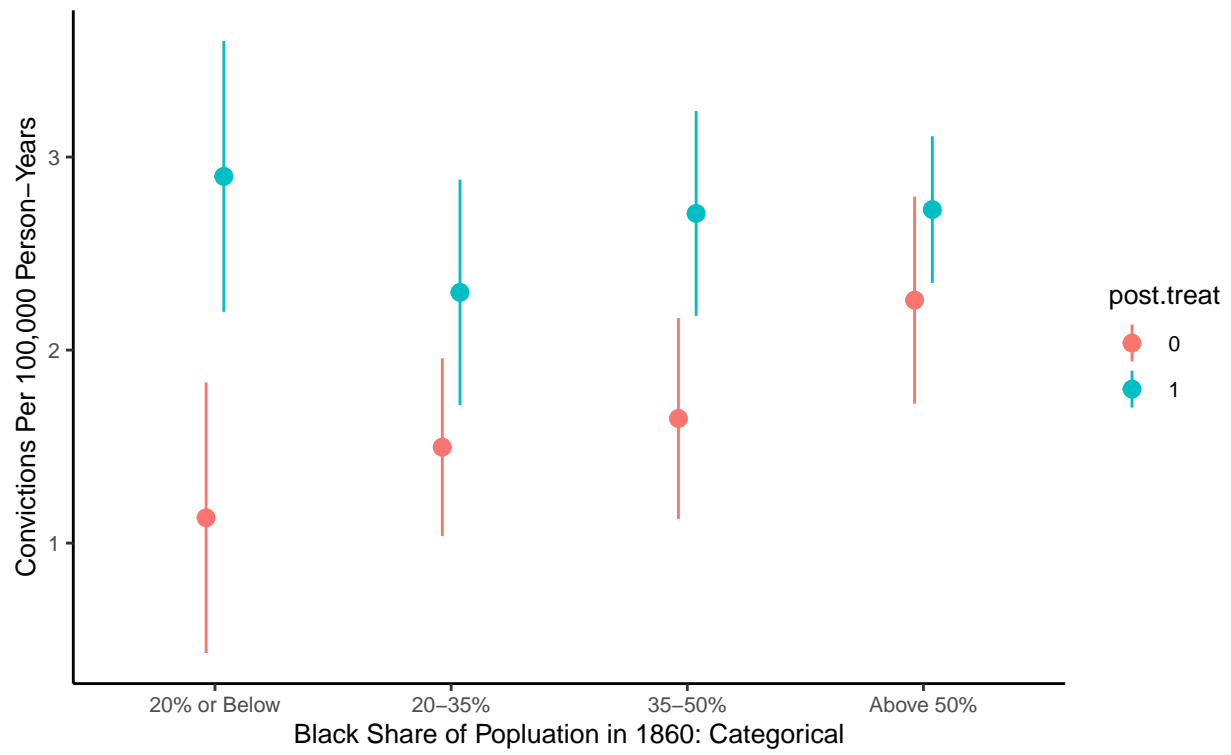


Figure 6: Predicted Conviction Rate, By Black Population Share and Treatment Period

## How to Reconcile These Findings

*Note: This section is still quite underdeveloped.*

Research in the U.S. carceral state has shown a robust link between minority rights expansion during the Civil Rights era and incarceration growth in the second half the 20th century (e.g., Alexander 2010; Eubank and Fresh 2022). In this project, I use a novel database on 19th century incarceration to examine this relationship in a different historical context that saw an equally wide-reaching expansion of the franchise on the basis of race: the Reconstruction era.

To recap, I do not find a similarly positive link between franchise expansion and incarceration. If anything, my analysis suggests that areas where franchise expansion was more consequential (in terms of the number of new black voters entering the electorate after 1868) saw *smaller* increases in incarceration rates after 1868 relative to localities where the composition of the electorate would have been less affected by franchise expansion.

How can we reconcile these findings? An historically centered institutional comparison centered on 1) federal enforcement of minority rights; and 2) state capacity might help us understand these differences.

### **Rights Enforcement: Securing the Franchise Through Military Force**

The two Reconstructions fundamentally differed in the extent to which franchise and rights expansion were enforced on the ground. During the Civil Rights era, the federal government struck down racially discriminatory voter laws and, through section V of the VRA, required many Southern states to clear changes in election laws and procedures with the Federal Election Commission. Nevertheless, power structures in local and state governments remained by and large unchanged (e.g. Valelly 2004c).

By contrast, federal intervention during the first Reconstruction was more far-reaching—indeed, authorized by the Congressional Reconstruction Acts passed in 1867, Congress dissolved many of the Southern governments and legislatures that had formed in 1865/66 during Presidential Reconstruction. Importantly, in 1867, Congress authorized the re-deployment of the U.S. military to the region and installed interim military governors. The army was tasked with what essentially constituted the largest voter registration drive the U.S. has ever seen and carried out legislative and gubernatorial re-elections in 1868. Military troops remained stationed throughout the South until the Compromise of 1877, which forced the federal government to withdraw its last remaining troops from the South, essentially ending Reconstruction.

Thus, the regional presence of federal agents potentially had an important role in mitigating Southern whites' responses to black franchise expansion. To test this, I use county-level data from the *Mapping Occupation* Project (Downs, n.d.), which details troop presence and density in the South throughout the Civil War and Reconstruction. I constructed a binary indicator for whether or not a county was military occupied at any point during Reconstruction. I run the fixed-effects regression from above separately for counties with and without military occupation.

As table 5 shows, while there was a differentially negative effect of black population share on conviction rates after 1868 (relative to before) in both counties with and without military occupation, this effect was substantially stronger in counties that were military occupied at some point between 1868 and 1876.

Overall, these findings align with existing studies showing the importance of federal intervention in facilitating

descriptive and substantive representation of minorities in local and national politics (Chacón, Jensen, and Yntiso 2021a). In the context of Reconstruction, local military presence in particular seemed to have played an important role in enforcing political suffrage and protecting blacks from backlash to political empowerment (Logan 2019).

Table 5: Event Study Results: Black Population Share & Prison Admissions per 10,000 Person-Years (Before/After Periods Aggregated)

	Convictions per 10,000 Person-Years			
	Occupied: 0	Occupied: 1	Occupied: 0	Occupied: 1
% Black in 1860	2.322*** (0.516)	0.767 (1.905)		
Post 1868	1.094*** (0.248)	3.109** (1.023)	-0.136 (0.727)	1.777 (2.346)
% Black in 1860 X Post 1868	-0.930 (0.656)	-3.791+ (2.028)	-0.477 (0.702)	-3.637+ (2.074)
Num.Obs.	532	250	532	250
R2	0.079	0.054	0.691	0.725
R2 Within			0.124	0.155
RMSE	1.91	3.97	1.10	2.14
Std.Errors	by: fips	by: fips	by: fips	by: fips
FE: fips			X	X

+ p < 0.1, \* p < 0.05, \*\* p < 0.01, \*\*\* p < 0.001



## **Bringing the State Back In: Carceral Capacity**

As discussed earlier, the overall scope of incarceration remained limited throughout Reconstruction. As I have argued elsewhere (Schwarz 2023), this was at least in part a function of the limited carceral infrastructure that Southern states had at their disposal after the Civil War. While most states had constructed state-of-the-art penitentiaries (i.e. centralized, state-operated prisons) in the early 1800s, antebellum prisons remained limited in size (most housed no more than a few hundred state prisoners every year before the Civil War). What is more, many of these facilities were severely damaged or destroyed entirely during the Civil War.

At the same time, Southern states were severely cash-strapped by the end of the war, and fiscal capacity remained weak throughout Reconstruction (e.g. Bass 1942; Ron and Valeonti 2021). As a consequence, resources to expand a dilapidated prison infrastructure were hard to come by. Simply put, even if minority enfranchisement led to increased “demand” for incarceration among Southern whites, most states initially lacked the carceral capacity (and the funds to build one) to facilitate carceral growth. Eventually, many Southern states overcame these capacity constraints by forging public-private partnerships. By the late 1870s, most Southern states had abandoned conventional penitentiary confinement and instead introduced convict leasing systems. For some states, convict leasing eventually became a huge enterprise as they leased out thousands of new convicts each year to private contractors in “New South” industries (e.g. Lichtenstein 1996; Mancini 1996; Schwarz 2023). Still, in many places, convict leasing was initially introduced as a “stopgap” measure to deal with short-term capacity constraints, and it typically took years, if not decades, for these systems to become fully operational.

By contrast, most states had a relatively robust prison infrastructure in place by the 1960s. More importantly, states had the fiscal capacity to scale incarceration and professionalize prison operations throughout the second half of the 20th century (e.g. Gilmore 1999; Gunderson 2022). In other words, unlike during Reconstruction, Southern states had the capacity to facilitate the type of “carceral frontlash” (Weaver 2007) that scholars of the 20th century carceral state have described.

## **Conclusion**

[TO BE ADDED LATER]

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