

Restrictions on the Citizenship Rights of Felons: Barriers to Successful Reintegration

Michael Campagna¹, Cheyenne Foster², Stephanie Karas³, Mary K. Stohr⁴ & Craig Hemmens⁵

Abstract

Felon disenfranchisement is unique to the United States, as our nation is one of the last democratic countries to permit this type of restriction on felons. The right to vote hold public office and serve on a grand jury or trial jury is civil rights that are limited by statutes which restrict the citizenship rights of felons. Limitations on these citizenship rights, sometimes referred to as the “collateral consequences” of a criminal conviction, impact the administration of justice in a myriad of ways. In this research, we explore how states limit these rights and whether these rights are more or less restricted by states in certain regions of the country and whether the political composition of the state is associated with the denial or granting of such rights.

Keywords: felony, voting, public office, jury, civil rights, reintegration

Introduction

State felon disenfranchisement laws deny the ballot to more people than any other suffrage limitation today. In a modern democracy, the right to vote is essential, and when it is denied to a subset of the population, the very practice of democracy maybe impaired. Felon disenfranchisement is not unique to the United States, but it is one of the last democratic countries to permit this type of restriction on felons (Mauer, 2004). The right to vote is not the only right that is limited for felons, however. The right to hold public office and the right to serve on a grand jury or petit (trial) jury are two other citizenship rights that are frequently limited for felons by state statutes. Much has been written in the popular press in recent years about the possible political motivations for restricting the voting rights of felons, though there is not much research on this issue or on the right to hold public office or serve on a jury. These limitations on these citizenship rights, sometimes referred to as the “collateral consequences” of a criminal conviction, impact the administration of justice, not to mention elections, in numerous ways.

Our goal in this paper is to describe how and when states place restrictions on three key citizenship rights of felons: the right to vote, to hold public office, and to serve on juries. We make the argument that these rights are essential for successful reintegration into society after incarceration. While we do not have reintegration data to examine if there is a relationship between disenfranchisement barriers and lower recidivism rates, we present the barriers for each state and explore whether these barriers (i.e., denial of citizenship rights) are more or less common in states in certain regions of the country. Finally, we examine whether the political composition of a state (i.e., a multi-component state level measure) is associated with the denial of such rights.

¹Department of Criminal Justice and Criminology, Washington State University, USA.

²Department of Criminal Justice and Criminology, Washington State University, USA.

³Department of Criminal Justice, University of Houston-Downtown, USA.

⁴Department of Criminal Justice and Criminology, Washington State University, USA.

⁵Department of Criminal Justice and Criminology, Washington State University, USA.

Literature Review

A History of Disenfranchisement

The constitutional basis for felon disenfranchisement is found in Section 2 of the Fourteenth Amendment (U.S. Constitutional Amendment XIV § 2.), which authorizes states to restrict the rights of those who engaged in rebellion and those convicted of "other crimes." The phrase "other crimes" has been the legal foundation cited for the past 150 years to support felon disenfranchisement (Uggen & Manza, 2004). The U.S. Supreme Court held in *Richardson v. Ramirez* that it was constitutional, per this clause, to disenfranchise felons. While the original intent of this clause was to encourage former Confederate states to enfranchise African-American males or face a penalty in the form of a decrease in their population numbers for purposes of apportioning Congressional seats, it instead has had the paradoxical role in limiting their right to the franchise (Chin, 2004). This clause effectively allowed states to disenfranchise African-Americans as well as felons, as the only negative effect of disenfranchisement was fewer representatives allotted to the House (Uggen & Manza, 2004).

Felon disenfranchisement has a long history, one that began long before the passage of the Fourteenth Amendment. The first disenfranchisement laws were enacted in America in the 1600s, (Brooks, 2005, p. 853). The United States declared that states had the power to establish voter qualifications in Article I, Section Two of the Constitution, which states: "the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of State legislature" (U.S. Const. art. I § 2). This gives the state broad powers to set the conditions of suffrage, so long as their conditions do not breach the Constitution (Brooks, 2005; Uggen & Manza, 2004).

While the Voting Rights Act of 1965 (VRA) effectively put an end to most *de jure* discriminatory practices intended to restrict the right to vote, such as literacy tests, a pertinent question is whether the VRA reaches the felon population. Disenfranchisement has been referred to as the modern literacy test (Alexander, 2010; Goldman, 2004), but it has been argued that Congress must have known about felon disenfranchisement when they passed the VRA, yet they were silent about it (Brooks, 2005). This argument asserts that the VRA was not intended to cover felon disenfranchisement. However, Zetlin-Jones (2006) claims Section 2 of this Act was created to prohibit any voting requirements that had the "purpose or effect" of denying voting rights based on race and/or color (p. 427) and was essentially intended to remedy the ineffective Fifteenth Amendment and limit discrimination.

The VRA was amended in 1982 and, once again, Congress neglected to address felon disenfranchisement. Section 2 was amended to bar qualifications that "result in the denial or abridgement of voting rights on account of race or color" (42 U.S.C. §§ 1973). This law was amended in large part because Congress wanted to overrule some Supreme Court decisions they believed were contradictory to the original intent of the Act (42 U.S.C. §§ 1973). However, the language of the Act is unclear, and it specifies protections that address only the direct implications of race and ignores racially neutral policies that have disproportionate effects on minorities (e.g., 100/1 cocaine/crack weight ratio and sentence length); thus, remedies utilizing this act are rare (Clegg, Conway & Lee, 2006).

Recently, in *Shelby County v. Holder* (2013), the U.S. Supreme Court invalidated Section 4(b) of the VRA, which contained the formula for determining federal preclearance (prior approval) for passing voting laws in states with a history of racial discrimination. Although this section did not technically bar federal preclearance for those states as mandated in Section 5, without a formalized formula jurisdictions cannot be subjected to the federal preclearance to determine potentially discriminatory voting laws (*Shelby County v. Holder*, 2013).

Judicial Rationale for Voting Disenfranchisement

The foundation for the legality of felon disenfranchisement stems from John Locke's concept of the "social contract" (Locke, 1988). Those who did not adhere to the contract were deemed not credible enough to establish the rules for society (Brooks, 2005). Essentially, those who committed crimes did not keep their end of the bargain and thus should not have the right to vote (Brooks, 2005). In *Green v. Board of Elections* (1967), the Supreme Court ruled that New York's disenfranchisement statute did not violate the Equal Protection Clause of the Fourteenth Amendment.

The Court noted that “a man who breaks the laws has authorized his agent to make for his own governance and could fairly have been thought to have abandoned the right to participate in further administering the compact” (Johnson-Parris, 2003, p. 117), essentially validating Locke’s social contract as a justification for disenfranchisement

The “purity of the ballot box” is a concept that is also often cited as a basis for the legality of felon voting restrictions (Brooks, 2005, p. 854). This concept means that felons lack the “moral competence” needed to engage in voting (Brooks, 2005, p. 896). This belief also relates to the privilege of voting because it assumes the convicted person’s ignorance regarding the law. This argument also implies that a criminal is not only unable to vote purely, but that he or she would contaminate the votes of others (Johnson-Parris, 2003). The reasoning goes; the criminal has already disregarded the law, so he or she should not be entitled to any say over public policy. Finally, this impurity is tied to the idea that felons will cast their votes in a corrupt manner (Chin, 2005). Under this reasoning, convicted felons are not fit to be a political candidate because of the high potential for corruption.

Election fraud is another rationale that underpins the legality of felon disenfranchisement. However, many election crimes are charged as misdemeanors and thus, ironically, those who have committed crimes directly affecting elections generally retain the right to vote, while those convicted of any felony are assumed to have a higher likelihood of committing voter fraud (Brooks, 2005). Furthermore, Dugree-Pearson (2002) notes that to date no research has sustained the argument that ex-felons would vote in a wrongful manner or that they would vote for laws that weaken the justice system.

In the United States, the right to vote is generally viewed as universal. Denying felons the right to vote “hinders the democratic process by undermining equitable representation of citizens’ interest” (Siegel, 2011, p. 89). The Supreme Court recognized the significance of voting by claiming it is “the essence of a democratic society” (*Reynolds v. Sims*, 1964) and that other rights are “illusory if the right to vote is undermined” (*Wesberry v. Sanders*, 1964). So, when this right is denied to a subset of the population, the definition of democracy becomes inconsistent with the practice of democracy.

Yet in the United States, efforts to extend the denial of suffrage are not uncommon. In her dissent in *Shelby v. Holder* (2013), Justice Ginsburg expressed concern about the prevalence of racism and its effect on suffrage. She argued that overturning Section 4(b) of the VRA effectively nullifies Section 5, which requires federal preclearance of many states’ voting laws; as a consequence, the Act would encourage racial gerrymandering and “prevent minority groups’ equal opportunity to ‘elect representatives of their choice’” (*Shelby v. Holder*, 2013).

The Right to Vote and Criminal Justice

Researchers have repeatedly found that income levels, education, and employment rates are linked to an increase in criminal activity (Clear, 2007; Freeman, 1995; Lochner, 1999; Gottfredson & Hirschi, 1990; Reiman, 1998; Western, 2006). Over 5.8 million felons and ex-felons are currently barred from the franchise, with approximately 1 of every 13 of the African-American male population no longer retaining the right to vote (The Sentencing Project, 2015a, p. 1). These estimates, however, do not include jail inmates facing felony charges (Manza & Uggen, 2004, p. 495), but it does include an estimate of 275,500 jail inmates serving sentences for misdemeanor offenses and the approximately 321,000 pre-trial detainees who were in jail (Manza & Uggen, 2004, p. 495). This population is essentially disenfranchised, though they are rarely recognized as such. Surprisingly, public sentiment tends to favor the reinstatement of voting rights at some point during or upon completion of probation, incarceration, or parole (Pinaire, Huemann, & Bilotta, 2003).

While there is no way to gauge the exact impact of the loss of voting rights of felons, there are estimates of the effect voting restrictions may have on elections, particularly as they affect minority group men. Almost two-thirds of prisoners are racial or ethnic minorities, with one in three black men being imprisoned, one in six Latino men, one in 17 white men, one in 18 black women, one in 45 Latina women, and finally, one in 111 white women (Sentencing Project, 2015b). Because these citizens are prevented from voting, there is evidence that the outcomes of some elections may have been affected. This is an especially salient point for swing states, such as Florida and Virginia (Enten, 2013). In these two states, more than a fifth of the black population was disenfranchised in the year 2000. Had this population been granted the right to vote in 2000, it is possible that Al Gore would have won Florida and thus been elected President instead of George Bush.

In another study, Uggen, Manza, and Behrens (2003) determined that at least seven Senate elections may have gone to the Republicans due to felon disenfranchisement, including Florida, Georgia, Texas, Virginia, Wyoming, two in Kentucky, and Wyoming. All but Wyoming are southern states with moderately large black and minority populations (Uggen, Manza, & Behrens, 2003).

More recently, almost six million Americans were unable to participate in the 2014 midterm elections as they were disenfranchised because of their criminal convictions (Sentencing Project, 2014). Communities of color experience a disproportionate impact based on these voting restrictions. In the 2014 midterm elections, Florida had the highest rate of felony disenfranchisement for African-Americans, with 23.3 percent of their population barred from voting (Sentencing Project, 2014). Voting laws for convicted felons have a greater influence than voter identification laws have on minorities and can have significant electoral implications (Enten, 2013). Additionally, each state decides its own disenfranchisement policy, even for out-of-state convictions; thus, it is quite possible that a person who can vote in one state will be disenfranchised in another (Chin, 2007). Essentially, "an American citizen can quite literally gain or lose the right to vote by moving across state lines"; this is especially true for federally convicted felons, as there is no right-to-restoration process currently in effect (Ewald, 2009, p. 545).

The Right to Hold Public Office

It is also important to note that there are other types of collateral consequences for felons. Uggen and colleagues (2006) explain that there are eleven additional types of legal restrictions that affect felons including: employment, financial aid, firearm ownership, immigration status, jury service, marital dissolution, parental rights, privacy, public assistance, public housing, and public office (Uggen, Manza, & Thompson, 2006, p. 297).

One of the most interesting of these is the right to hold public office, as it is central to a democracy. The right to hold public office may be regarded as somewhat synonymous with acceptance as a full citizen. Uggen and colleagues (2006, p. 297) found that approximately 48 states disenfranchised felons from voting to some degree, yet fewer restrict an offender from seeking or holding public office. Moreover, few felons (as is true with all citizens) seek public office. Therefore, public office can be seen as having a low magnitude of effect, while voting undoubtedly has a substantial effect on convicted felons (Wheelock, 2005). Some of the states that disenfranchise felons only do so while the offender is in prison, but it still creates a paradox for democracy to allow an offender to run for office in states that have taken away his or her right to vote (Wheelock, 2005).

The right to run for public office is not explicitly specified in the U.S. Constitution, but the Qualification Clause does not bar citizens from candidacy based on criminal history (Steinacker, 2003). At the state level, however, the right to hold office varies depending on the candidate's criminal status. Steinacker (2003) outlined the different candidate disenfranchisement laws for each state in the early 2000s. He found that some states never denied felony offenders the right to run for public office, however, many states did restrict convicted felons from holding office. Some of these states simply require that the sentence be completed before automatically restoring the right to run for office. Other states restored the right to hold office after the offender's civil rights were restored, sometimes through a pardon. In some states, the right to hold office was directly connected to the right to vote, therefore, if the vote was restored, then the right to run for office was simultaneously restored. There were also states that had a waiting period either after the completion of the felon's sentence or after the blanket restoration of the felon's civil rights. Finally, there were states that ban convicted felons from running for office for life (Steinacker, 2003).

The Right to Serve on a Jury

The right to a trial by a jury of one's peers is one of the fundamental rights granted by the Sixth Amendment. However, the right to serve on a jury is often overlooked by researchers. With regards to the loss of civil liberties, felon jury exclusion is still vastly under-studied (Uggen et al., 2006). Hastie, Penrod, and Pennington (1983, p. 1) refer to the jury trial as "the central element in the American conception of justice." It is assumed that an unbiased jury would consist of a group of diverse, representative members of the community. Juries may be more representative than they were in the past (Cornwell & Hans, 2011), but they still fail to represent the felon population and excluding felons has the effect of disproportionately excluding African-American males, who are disproportionately arrested and convicted of felony offenses.

There is research on the question of whether jury selection is biased. A study conducted in Texas showed that race and ethnicity did impact jury selection, but that the lack of involvement can be attributed to factors present before potential jurors reach the courtroom (Rose, Diamond, & Musick, 2012). However, Cornwell and Hans (2011) determined that social status still plays a role in jury-room interactions, and that black jurors actually had a higher level of involvement than their white and Hispanic counterparts did.

Although some have found that the jury selection process is for the most part impartial, excluding felons from participation may mask the degree to which poor and minority group members are not represented. Binnall (2010) argues that excluding felons from the jury selection process leaves the population that is perhaps the most marginalized by the criminal justice system unable to have a proportionate influence over its function. Binnall (2010) and others further assert that denying felons the right to participate in civil processes is contradictory to the criminal justice system's goal of reentry; and leads to further marginalization (Travis, 2002). Nevertheless, felon exclusion from juries is based on the premise that allowing felons to sit on a jury would bias the outcome of the case (Kalt, 2003; Travis, 2002). Interestingly, Kalt (2003) argues the opposite, that excluding felons from the jury creates bias because the jury then lacks members with similar experiences as the defendant.

Regional and Political Differences

There are numerous studies that have examined political and social differences across different regions of the U.S. (Arbesman, 2012). These differences are shaped over time as the composition of the states change and as their populations are affected by events, such as the institution of slavery, the urbanization of America, the migration of residents, changes in technology, and other factors. Arbesman (2012) found that language, sports, mobility, communication, and politics separate the states. Sometimes these differences coalesced into regions by Northern and Southern states, coastal and noncoastal states, or distinct variations within a given state. Based on voting patterns from recent presidential elections we know that states in the Northeast and Northwest tend to vote for Democrats more than for Republicans. This is also true of some Western states generally (e.g., California and New Mexico), but not all (e.g., Arizona and Utah). Some Midwestern states tend to vote Democratic (e.g., Michigan, Minnesota and Ohio), while others tend to vote Republican (e.g., Kansas, North and South Dakota), and most Southern states tend to vote Republican (though Florida is sometimes an exception) (270TOWIN, 2015).

These variations in social, cultural, and voting patterns by state may be emblematic of the diversity of criminal laws and views of those who violate them. Pollsters note that while the parties are far from perfectly aligned with labels such as "conservative" for Republicans and "liberal" for Democrats, there is greater congruence in the values under these labels with their respective parties than there is across parties (Gallup, 2015). Such values by party or by conservative or liberal are not as easy to distinguish anymore, as they tend to be more associated with the topic under discussion than with a view that supports more or less government involvement or more or less government spending or taxation. In other words, do Democrats support governmental regulation more or less than Republicans? The answer is that it depends. If the topic is environmental protection, food regulation, or educational policy, then the answer would be yes. If it involves more criminalization, more prohibition of personal choices (e.g., abortion, drug use), or more imprisonment, the answer would likely be no, as policies and laws that support the latter practices are more likely to be supported by Republicans (Cooper, 2012; Gallup, 2015).

How these values translate into crime policy can be illustrated by examining the use of the death penalty. Southern states are more likely to have the death penalty on the books and to use it, compared to other regions of the country (Snell, 2014). Of the nine states who executed 39 inmates in 2012, six were southern states (Texas, Florida, Oklahoma, Alabama, Georgia and Virginia) and one (Missouri) was a state that is often considered both a Midwestern and a Southern state (Snell, 2014, p. 1). For this study, it is our expectation that those states and regions that tend to vote for Republican or Democratic presidential candidates are roughly aligned with more conservative or liberal views and practices, respectively.

Research Questions

The literature review elicited important questions concerning reintegration barriers and regional and political differences in culture and law:

1. What disenfranchisement barriers do offenders face when reentering society?
2. How do regions differ in the degree to which they create disenfranchisement barriers to reentry?

3. Does the occurrence or strength of disenfranchisement barriers vary by political affiliation?

Methods

We located state statute and Constitution clauses that pertain to the right to vote, the right to hold public office, and the right to serve on a jury. To do this, we utilized LexisNexis to conduct multiple topical word searches of state statutes and constitutions (i.e., “vote”, “voting”, “suffrage”, “jury”, “public office”, “restoration”, “qualification”, and “eligibility”). For states that did not return a statute or Constitution hit for our word searches, we went directly to the state code and Constitution and reviewed sections dealing with these citizenship rights.

We then examined state statutes and Constitutions to find commonalities and variations among the states. For each right, we determined whether the state suppresses the right while incarcerated, on probation, and/or on parole, current as of 2015. We also determined whether the jurisdiction recognizes other jurisdictions’ convictions, whether the right is suppressed by state statute or constitution, whether the right is automatically restored after certain criteria are met (voting only), whether the right is automatically restored (public office and jury duty only), whether restoration is not permitted for specific crimes, and other considerations that emerged as themes during data collection.

We categorized each state’s geographic location and dominant political affiliation at the state level, to determine if these factors were associated with legislation restricting voting rights. We used political affiliation to approximate conservative/liberal political beliefs at the state level. Political affiliation (i.e., Democratic, Republican, or Neutral) is a mixed measure taken from Yoo and colleagues (2015). It includes data from the 2012 election, the governor’s political affiliation, and the dominant party of state legislature. The Bureau of Justice Statistics categorization of states provided the basis for assignment of a region for each state.

There were some realities we needed to address in our analysis due to the vague wording of statutes and Constitutions. Ultimately, the degree of reliability in measurement of categorical variables depends on the accuracy of transcription from statutes/Constitutions, and the degree to which each statute fits into our classification system. To address these realities, we utilized non-parametric statistics to test the relationships between the categorizations of state statutes and Constitution clauses derived from our analysis and the categorizations of states by region and political affiliation.

The chi-square statistic robustly captures the significance of a categorical relationship by examining the differences between observed and expected cell counts, requiring a few assumptions along the way (McHugh, 2013). We created dummy variables for all measures, to ensure the chi-square (and more specifically Fisher’s exact test) could be estimated with adequate expected cell counts. Because we utilized non-parametric estimations and our work is exploratory, we set our level of confidence in our statistics to 90%. This means we agreed to take a 10% risk of reporting a significant relationship between region or political affiliation and a reentry barrier, when indeed the finding may have been due to random chance. All chi-square tests were two-tailed bi-directional tests, to allow the analysis to detect relationships in either direction. Finally, we created an ordinal measure, ranging from 1 to 50, indicating the order, in which states joined the union, to approximate an historical effect. We entered this ordinal measure into a logistic regression model, with a confidence level set to 95 percent, to examine if it had a relationship with our outcome variables.

Findings

We divide the analysis into three citizenship rights: voting, holding public office, and jury service. For each right, we provide a summary of the restriction and we examine how Restriction Method, Recognized Jurisdictions, and Restoration vary by Region and Political Affiliation.

Voting

Restriction method. Virtually every state, regardless of region or political affiliation, places some restriction on convicted felons via either state constitution or statute (see Table 1). Only Maine and Vermont do not place voting restrictions on convicted felons. Interestingly, both states are in the Northeast and both voted Democratic in the 2012 elections. The remaining 48 states restrict convicted felons from voting.

Thirty-one states restrict felons from voting while under all forms of supervision (i.e., incarceration, parole, and probation). The remaining 17 states limit voting while the citizen is incarcerated. Three states, Colorado, Connecticut, and New York, also restrict voting while the citizen is on parole; each of these states is considered Democratic by the measurement scheme provided by Yoo and colleagues (2015).

Table 1. Voting Prohibitions and Restoration

	Prohibited when Prison, or on Parole, Probation ¹	Other Jurisdiction Recognized ²	Prohibited by Constitution/Code ³	Restoration "Automatic" ⁴	Restoration void for specific crimes ⁵	Other Considerations
Alabama	All	All	Both	No	Yes	Pardon
Alaska	All	All	Both	Yes	No	
Arizona	All	Federal	Both	Yes – 1 st felony	No	≥ 2: petition judge
Arkansas	All	All	Constitution	Yes	No	Pardon
California	All	No	Code	Yes	No	
Colorado	Prison/Parole	No	Both	Yes	No	Pardon
Connecticut	Prison/Parole	All	Code	Yes	No	
Delaware	All	No	Both	Yes	Yes	Pardon
Florida	All	All	Code	Yes	No	Pardon
Georgia	All	No	Both	Yes	No	Pardon
Hawaii	Prison	No	Code	Yes	No	
Idaho	All	All	Both	Yes	No	
Illinois	Prison	All	Both	Yes	No	
Indiana	Prison	No	Both	Yes	No	
Iowa	All	Federal	Both	No	Yes	4: Restoration by pardon only. 5: All. Pardon.
Kansas	All	All	Both	No	No	4: Automatic Review by Parole Board after 1 year. Pardon.
Kentucky	All	All	Constitution	No	Yes	4: Restoration by pardon only. 5: All. Pardon.
Louisiana	Prison	No	Both	Yes	No	Pardon.
Maine	No	No	No	No	No	
Maryland	All	No	Both	Yes	No	
Massachusetts	Prison	No	Code	Yes	No	
Michigan	Prison	All	Both	Yes	No	
Minnesota	All	No	Both	Yes	No	
Mississippi	All	No	Both	No	Yes	4: Must appeal within 5 days.
Missouri	All	No	Both	Yes	Yes	5: Suffrage felony.
Montana	Prison	No	Both	Yes	No	
Nebraska	All	All	Both	Yes	No	4: 2 year waiting period.
Nevada	All	All	Both	Yes – 1 st felony	Yes	4: ≥ 2 petition judge. Pardon.
New Hampshire	Prison	All	Code	Yes	No	5: Bribery or intimidation –

						petition judge.
New Jersey	All	No	Both	Yes	No	Pardon
New Mexico	All	All	Both	Yes	No	Pardon
New York	Prison/Parole	All	Both	Yes	Yes	2: Must be felony in NY. Pardon.
North Carolina	All	No	Both	Yes	No	Pardon
North Dakota	Prison	All	Both	Yes	No	
Ohio	All	All	Both	Yes	No	Pardon
Oklahoma	All	No	Both	Yes	No	
Oregon	Prison	Federal	Both	Yes	No	
Pennsylvania	Prison	No	Code	Yes	No	4: 5 year waiting period.
Rhode Island	Prison	No	Both	Yes	No	
South Carolina	Prison	Federal	Both	Yes	No	5: Election laws require petition to judge. Pardon.
South Dakota	All	Federal	Both	Yes	No	
Tennessee	All	All	Both	No	Yes	4: must petition judge. 5: major and sex crimes. Pardon.
Texas	All	No	Both	Yes	No	Pardon
Utah	Prison	All	Both	Yes	No	
Vermont	No	No	No	No	No	No statutes prohibiting felons.
Virginia	All	No	Both	No		Pardon
Washington	All	All	Both	Yes	No	2: If not WA, cannot be incarcerated
West Virginia	All	All	Both	Yes	No	
Wisconsin	All	No	Code	Yes	No	Pardon
Wyoming	All	No	Code	No	No	5: Non-violent apply to Parole Board after 5 yrs.; Violent apply to governor. Pardon.

We dichotomized our first dependent variable (i.e., restriction method) to indicate whether or not the state restricts voting only in prison or also outside prison. Using the correction for small expected cell counts in a Chi-square test (i.e., Fisher's exact test), we found no relationship between political affiliation or region and whether voting is restricted only in prison or also outside prison. Complicating the analysis is parole. A comprehensive comparison of restrictions while on parole is not viable because states such as Washington operate without parole, so this null finding should be reinvestigated while controlling for states' use of parole as a supervision mechanism.

Thirty-seven of 48 states that limit felons' right to vote provide restrictive language in both their constitution and statutes. Of the remaining eleven states, nine restrict by statute only⁶; three of which are Republican. The final two restrict by constitution only,⁷ both are Republican and in the South. Considering these two observations, there appears to be a pattern of restrictions by region or political affiliation constitution. We then created variables indicating whether or not the state prohibits felon voting with their Constitution. Our two-tailed test showed that there was a significant relationship between the Northeast region and method of restriction (Cramer's $V = .316$; $p = .050$). This means Northeastern states that restrict voting are much less likely to restrict voting rights for felons with their constitution than states not in the northeast.

Table 2. Voting Region and Political Affiliation (N=48)

	χ^2	Sig (<i>df</i>)	Cramer's V
Northeast & Method of Restrict	4.800	0.028 (1)	0.316
South & Auto-Restoration ⁴	5.163	0.023 (1)	0.328

To contextualize these findings, it may be important to recognize that states were established at different points in time. Therefore, it is plausible that the methods of disenfranchisement varied with the times and by the populations inhabiting the state. Perhaps there is something unique about Northeastern culture or the power structure when these states created or amended their constitutions, or revised their statutes. To address this, we used our ordinal measure of "statehood" and ran a binary logistic regression on our dichotomous Constitutional variable. While we did not find a significant result, future investigation would be wise to examine this phenomenon from a cultural/historical perspective to disentangle the complexities involved in state laws/governments developing at different points in time.

Recognized jurisdictions. As depicted in Table 1, 21 states recognize convictions from all jurisdictions in the United States, including the Federal system. These restrictions seem unusual because verification of criminal records is a difficult process due to a lack of a national convictions database. Five states recognize only in-state and federal system convictions,⁸ three of which are Republican and two are Democratic. The remaining 24 states only recognize in-state felony convictions, with no clear political or regional associations. We note that the jurisdictions denying felons' rights do not vary systematically by region or political affiliation. However, our test of whether or not the state recognizes federal convictions, predicted by our ordinal measure of statehood, was significant ($\text{ExpB} = 1.037$; $p = 0.086$). This means that the newer the state, the greater the likelihood that it recognizing federal convictions (voting only).

Restoration. A major consideration for all three of the rights examined in this study is the restoration process put in place to return voting, public office, and jury service eligibilities to felons. While some states provide "automatic" restoration, others require the offender to apply to parole boards or other executive entities for approval. Forty states that provide automatic restoration of voting rights. For voting rights to be automatically restored, most states require successful completion of the sentence or a parole board hearing to determine if restoration is in the best interests of society. It is important to note that these forty states have in place some degree of legal protection for offenders seeking restoration. We found two states that automatically restore voting rights only after a citizen's first felony; any subsequent felonies require a petition to a government agency.⁹ The remaining eight states do not provide a procedure for automatic restoration following successful completion of incarceration or supervision.¹⁰ Of these eight states, Alabama and Iowa require citizens to apply to a state board to evaluate the possibility of restoration, while Kansas provides an automatic review by a parole board.

⁶California, Connecticut, Florida, Hawai'i, Massachusetts, New Hampshire, Pennsylvania, Wisconsin and Wyoming

⁷Arkansas and Kentucky

⁸Arizona, Iowa, Oregon, South Carolina and South Dakota

⁹Arizona and Nevada

¹⁰Alabama, Iowa, Kansas, Kentucky, Mississippi, Tennessee, Virginia and Wyoming

Kansas differs from the 40 states that provide legal protections for automatic restoration because an automatic review does not declare guidelines for restoration in state statute-the review results presumably would vary as different members of the board leave and are replaced over time. The remaining five states vary in procedure, but can reasonably be considered the most restrictive in their approach. Kentucky restores voting rights by governor pardon only. Successful pardon rates for Kentucky are not available, and additional investigation is needed to better understand felon voting rights in Kentucky. Wyoming requires a petition to a parole board if the conviction is non-violent in nature, but to the governor for all other first-time felony convictions.¹¹ Success rates for each of these procedures presumably will vary as individuals with different political affiliations hold positions on the parole board or governorship.

Additionally, Wyoming requires a five-year waiting period following successful completion of supervision to be eligible to petition for restoration. Virginia also requires a five year waiting period following successful supervision, and subsequently requires citizens to petition the court or governor for restoration. Interestingly, felonies involving drugs or election fraud currently bar restoration for life in Virginia. Tennessee requires citizens to petition the court or governor, but no petition is allowed for conviction of a ‘major felony’ or ‘sex offense.’ Finally, Mississippi requires a petition for restoration to the state elections committee within five days of denial of registration to vote. Petitions not received within five days of denial are moot and restoration is for life.

Southern states differed significantly from the rest of the nation regarding restoration. Southern states were more likely to not have a procedure in place to restore the felon’s lost right to vote, thereby reinforcing a felony conviction as a barrier to live as a regular citizen after the offender has paid their debt to society (Cramer’s V = 0.328; p = .037) (see Table 2). Of the eight most restrictive states regarding restoration, zero are Democrat, zero are in the Northeast, five are in the South and six are Republican, and four of these are in the South. There are currently no states that do not provide a procedure for restoration, although the difficulty in being granted restoration varies considerably.

Holding Public Office

While the term ‘public office’ may refer to local school board members, regional county commissioners or state-level representatives, most statutes use broad language to cover all elected office positions. Forty-seven states restrict convicted felons from holding public office. For example, Illinois bars persons convicted of a felony from holding office until the completion of their sentence. New Hampshire goes a step further, restricting a convicted felon from holding office or even becoming a candidate for public office until the completion of their sentence.

Table 3. Public Office Prohibitions and Restoration

	Felony Restriction ¹	Other Jurisdictions Recognized ²	Prohibited by Constitution /Code ³	Restoration ⁴	Restoration void for specific crimes ⁵	Other Considerations
Alabama	Yes	Federal	Both	No	All	
Alaska	No	--	--	--	--	
Arizona	Yes	Federal	Code	Yes	No	4: ≥ 2 – petition judge
Arkansas	Yes	No	Both	No	No	
California	Yes	All	Both	Yes	No	2: must be felony in CA. 4: Parole or Probation Officer positions only. Pardon.
Colorado	Yes	No	Both	Yes	No	Pardon.
Connecticut	Yes	All	Code	Yes	No	
Delaware	Yes	No	Both	Yes	No	4: 10 yr. waiting period
Florida	Yes	No	Code	No	Yes	1: Drugs only. 5: Drugs.
Georgia	Yes	States	Both	Yes	No	2: must be felony in GA. 4:

¹¹Subsequent felonies in Wyoming warrant no restoration of voting rights.

						10 yr. waiting period. Pardon.
Hawaii	Yes	All	Code	Yes	No	
Idaho	Yes	No	Code	No	All	1: while in office
Illinois	Yes	All	Both	Yes	No	
Indiana	Yes	All	Code	Yes	Yes	5: Sentence must be > 6mo.
Iowa	Yes	All	Code	Yes	No	4: Must obtain Pardon.
Kansas	Yes	All	Both	Yes	No	4: 1 yr. waiting period.
Kentucky	Yes	No	Both	Yes	Yes	5: bribery, forgery, perjury. Pardon
Louisiana	Yes	All	Constitution	Yes	No	4: 15 yr. waiting period
Maine	No	--	--	--	--	
Maryland	Yes	No	Constitution	Yes	No	1: registered voter
Massachusetts	Yes	No	Code	Yes	No	4: 5 yr. waiting period.
Michigan	Yes	All	Constitution	Yes	No	1: specified crimes only. 4: 20 yr. waiting period.
Minnesota	Yes	No	Code	Yes	No	
Mississippi	Yes	No	Both	No	All	
Missouri	Yes	All	Code	No	All	2: 2: must be felony in MO.
Montana	Yes	No	Both	Yes	No	
Nebraska	Yes	States	Code	Yes	No	4: 2 yr. waiting period.
Nevada	Yes	All	Both	Yes	Yes	1: qualified elector. 5: ≥ 2
New Hampshire	Yes	All	Code	Yes	No	
New Jersey	Yes	No	Code	Yes	Yes	5: if impeached.
New Mexico	Yes	All	Code	Yes	No	
New York	Yes	All	Code	No	All	
North Carolina	Yes	All	Both	Yes	No	2: Federal – all; States – must be felony in MO.
North Dakota	Yes	All	Code	Yes	No	
Ohio	Yes	All	Both	Yes	Yes	
Oklahoma	Yes	Federal	Code	Yes	No	4: 15 yr. waiting period.
Oregon	Yes	Federal	Code	Yes	No	
Pennsylvania	Yes	No	Constitution	No	All	
Rhode Island	Yes	No	Constitution	Yes	No	4: 3 yr. waiting period.
South Carolina	Yes	All	Constitution	Yes	No	4: 15 yr. waiting period. Pardon.
South Dakota	Yes	No	Code	Yes	No	
Tennessee	Yes	All	Code	Yes	Yes	
Texas	Yes	All	Both	Yes	Yes	5: bribery
Utah	Yes	All	Both	Yes	Yes	5: sex offense against a child.
Vermont	No	--	--	--	--	
Virginia	Yes	No	Both	Yes	Yes	4: 5 yr. waiting period.
Washington	Yes	All	Both	Yes	No	1: qualified elector
West Virginia	Yes	All	Code	No	All	1: qualified elector.
Wisconsin	Yes	All	Constitution	Yes	No	4: certain offices prohibited.
Wyoming	Yes	No	Both	Yes	No	

Restriction method. New Hampshire is an example of a state that uses one clause to restrict multiple rights at once. However, multiple states use two methods to restrict holding public office rights. Alaska, Maine and Vermont provide no restrictions on holding public office in statute or constitution. Each of these resides in the northern latitudes, although Alaska is culturally and spatially very far from Democratic Maine and Vermont. Seven states restrict convicted felons from holding public office with their Constitution.¹² Twenty-one states restrict the holding of public office by felons by statute and 19 states restrict in both constitution and statute. No patterns for restriction method emerged from our statistical analysis; however, this finding may be convoluted by the fact that many states use one clause to restrict multiple rights at once.

Recognized jurisdictions. Of the 47 states that restrict convicted felons from holding public office, 24 recognize all jurisdictions in the nation. Of the remaining 23 states, four acknowledge federal convictions.¹³ Georgia and Nebraska acknowledge other state convictions only;¹⁴ both states are Republican. The remaining 17 states do not include language in statute or constitution that recognizes convictions in other jurisdictions. The Northeast states emerged as less likely to recognize federal convictions, compared to other regions (Cramer’s V = 0.298; p = .063). Midwestern states were significantly more likely to recognize other jurisdictions’ convictions of felons (Cramer’s V = 0.286; p = .085).

Restoration. Restoration procedures vary considerably by state, but in general, only eight states do not allow restoration; of these New York is the only state considered Democratic.¹⁵ Of the 39 states that allow restoration, ten exclude restoration for those convicted of specific crimes¹⁶ or provide specific restoration conditions.¹⁷ Indiana restores the right to felons only if they were incarcerated for less than 6 months. Florida does not restore the right for felons convicted of drug crimes. Kentucky does not restore the right for those convicted of crimes that are conceptually related to public office: bribery, forgery, and perjury. Utah only limits restoration for those convicted of a sex offense against a child.

The South was significantly more likely than other regions to void restoration for specific crimes (Cramer’s V = 0.328; p = 0.087). This means, of states that do not void restoration for all crimes, Southern states are more likely than others to specify crimes that void the restoration (e.g., drugs in Florida, bribery in Kentucky and Texas).

Jury Service

The juries described here include both petit (trial) and grand juries. Forty-six states restrict convicted felons from serving on a jury.

Table 4. Public Office Region and Political Affiliation (N=39)

	χ^2	Sig (df)	Cramer’s V
Northeast & Recognize Fed	3.994	0.063 (1)	0.298
South & Void Restoration	4.185	0.087 (1)	0.328

Restriction method. The vast majority of states prohibit felons from serving on a jury by way of statute. Forty-four states restrict felons from serving on a jury by statute, while two states (Texas and Alabama) restrict felons in both their constitution and statute. Illinois, Iowa, Maine, and Minnesota do not provide language in either their constitution or statute that restricts felons from serving on a jury. However, of these four, only Maine does not have official court rules allowing a person’s felony conviction to constitute legal grounds for dismissal from jury duty.

¹²Louisiana, Maryland, Michigan, Pennsylvania, Rhode Island and South Carolina

¹³Alabama, Arizona, Oklahoma and Oregon

¹⁴Georgia requires the conviction be considered a felony in Georgia.

¹⁵Alabama, Arkansas, Idaho, Mississippi, Missouri, New York, Pennsylvania and West Virginia

¹⁶Crimes typically include sex-crimes, crimes against children, treason, bribery and/or election fraud.

¹⁷Indiana, Florida, Kentucky, Nevada, New Jersey, Ohio, Tennessee, Texas, Utah and Virginia

We note that three of the four states that do not restrict jury duty for felons are in the Midwest and are not considered Republican strongholds. When examining regions and political affiliations, while we found the South to prohibit jury duty for felons at a significantly greater rate than the rest of the nation, the cell counts for our chi-square did not meet the minimum standards required, therefore invalidating our test. A more in-depth examination of the reasoning behind Texas and Alabama's efforts to restrict jury duty for felons with their constitution would be helpful for those residents to work around these barriers towards full citizenship and reintegration.

Recognized jurisdictions. Seventeen states recognize felony convictions from all jurisdictions in the nation, including the federal system. Arizona is the only state that recognizes only federal convictions. The remaining 28 states do not recognize felony convictions out-of-state. Interestingly, of the 17 that recognize all jurisdictions, half are in the South, eleven are Republican, three are Neutral, and three are Democratic. When examining this relationship statistically, we found the South to recognize other jurisdictions at a significantly higher rate than all other regions combined (Cramer's $V = 0.268$; $p = 0.10$). Finally, there is no clear evidence whether the three remaining states recognize out-of-state felony convictions.¹⁸

Table 5. Jury Duty Prohibitions and Restoration

	Felony Restriction ¹	Other Jurisdictions Recognized ²	Prohibited by Constitution/Code ³	Restoration ⁴	Other Considerations
Alabama	Yes	All	Both	Yes	
Alaska	Yes	No	Code	Yes	
Arizona	Yes	Federal	Code	Yes	4: ≥ 2 – petition judge
Arkansas	Yes	No	Code	Yes	4: Pardon only
California	Yes	No	Code	Yes	
Colorado	Yes	All	Code	No	
Connecticut	Yes	No	Code	Yes	4: 7 yr. waiting period following conviction
Delaware	Yes	No	Code	Yes	4: Pardon only
Florida	Yes	All	Code	Yes	
Georgia	Yes	All	Code	Yes	
Hawaii	Yes	All	Code	Yes	4: Pardon only
Idaho	Yes	All	Code	Yes	4: 2 yr. waiting period following incarceration
Illinois	Yes	All	Code	Yes	
Indiana	Yes	No	Code	Yes	1: qualified voter
Iowa	No	--	--	--	
Kansas	Yes	All	Code	Yes	4: 10 yr. waiting period following conviction
Kentucky	Yes	All	Code	Yes	
Louisiana	Yes	No	Code	Yes	4: Pardon only
Maine	No	--	--	--	
Maryland	Yes	All	Code	Yes	4: Pardon only
Massachusetts	Yes	No	Code	Yes	4: 7 yr. waiting period following conviction
Michigan	Yes	All	Code	No	1: punishable by < 1 yr. incarceration
Minnesota	No	--	--	--	
Mississippi	Yes	No	Code	No	
Missouri	Yes	No	Code	No	
Montana	Yes	No	Code	No	

¹⁸Illinois, Iowa, and Minnesota

Nebraska	Yes	No	Code	Yes	
Nevada	Yes	No	Code	Yes	4: < 2 felonies
New Hampshire	Yes	No	Code	No	
New Jersey	Yes	All	Code	No	
New Mexico	Yes	No	Code	Yes	
New York	Yes	No	Code	No	
North Carolina	Yes	No	Code	Yes	
North Dakota	Yes	All	Code	Yes	4: qualified elector
Ohio	Yes	All	Code	Yes	4: qualified elector
Oklahoma	Yes	All	Code	Yes	
Oregon	Yes	No	Code	Yes	
Pennsylvania	Yes	No	Code	Yes	4: Pardon only
Rhode Island	Yes	No	Code	Yes	
South Carolina	Yes	All	Code	Yes	1: felony punishable by imprisonment > 1 yr.
South Dakota	Yes	No	Code	Yes	
Tennessee	Yes	All	Code	No	
Texas	Yes	No	Both		
Utah	Yes	No	Code	Yes	4: Expungement only
Vermont	Yes	No	Code	Yes	
Virginia					
Washington	Yes	No	Code	Yes	
West Virginia	Yes	All	Code	No	
Wisconsin	Yes	No	Code	Yes	
Wyoming	Yes	No	Code	Yes	

Restoration. Thirteen states provide no restoration for the right to serve on a jury.¹⁹ Other than New Jersey and New York, all 13 are considered Republican or Neutral. The remaining 33 states provide for some type of restoration procedure of jury duty rights.²⁰ The apparent relationship between Republicans is interesting, but it failed to reach a significance level of .10. Additionally, multiple Democratic states that provide restoration only restore the right by pardon—a considerably difficult feat to achieve for most of the population under normal circumstances. States that provide pardon-only restorations for jury duty include Delaware, Hawai’i, Louisiana, and Maryland.

Table 6. Significant Findings of Region/ Political Affiliation by Citizenship Rights

	Voting	Public Office	Jury	Total
Midwest	-	-	-	0
North	1	1	-	2
South	1	1	-	2
West	-	-	-	0
Democrat	-	-	-	0
Republican	-	-	-	0

¹⁹Alabama, Colorado, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New York, Tennessee, Texas, Virginia and West Virginia

²⁰This includes pardon, petition to state board, automatic review by state board and automatic restoration.

Discussion and Limitations

Disenfranchisement of marginalized populations has a long history in America. Records demonstrate that restricting voting qualifications has been a common practice since the nation's beginnings. As of 1800, no state had specific felon disenfranchisement policies; however, by 1880 over 80% of the states had passed laws restricting voting privileges of felons (Keyssar, 2000). Our research questions and findings are as follows:

1. What disenfranchisement barriers do offenders face when reentering society? Our analysis found that while most states restrict felons from voting while incarcerated or on probation, it appears Mississippi's time restrictions on petitioning for restoration might be the most restrictive in the nation (see Table 1). However, nuances of the process may not be apparent in state statute, and therefore Mississippi might provide an informal solution to this seemingly difficult procedure to be completed by recently convicted felons. States overwhelmingly utilize statutes to restrict felons from holding public office. This differs from voting, where most states restricted felons via their constitution.

2. How do regions differ in the degree to which provide disenfranchisement barriers to reentry? The most restrictive states for voting rights are located in the South. We identified nuances of restrictions for the most restrictive states and empirically found Southern states to be less likely to have a procedure in place to restore a felon's rights upon reentry. On the other end of the spectrum are Vermont and Maine, both of which do not restrict voting even for convicted felons serving time in prison. The close proximity of the two states suggests a cultural influence on perceptions of rights. In general, the Northeast appears to be an outlier in how restrictions are operationalized, compared to the rest of the country (see Tables 2 and 6).

The contrast between the North and South regarding the prohibition of holding public office was evident. The North was less likely to recognize federal convictions, and the South was more likely to provide statutory language voiding restoration for specific crimes. No apparent pattern of restrictions to felon rights regarding jury duty emerged from our analysis. The Midwestern states appear to have less punitive statutes restricting jury service for convicted felons. However, those without statutes or constitutional clauses restricting jury service in the Midwest (e.g., Minnesota, Iowa, and Illinois) each have official court rules that allow a felony conviction to be grounds for dismissal during voir dire. The former point is also true of Maine, though we could not find official court rules addressing felon eligibility.

There are a few concepts to consider when examining differences in citizenship rights across states and regions. As states developed their religious, social, political, and economic attributes over time, this led to considerable variation in how they restricted citizenship rights. While there is no clear model for this development, this analysis provides a cross-sectional review of the status of these rights.

3. Does the occurrence or strength of disenfranchisement barriers vary by political affiliation? We did not find any significant variation between Republican and Democrat-controlled states on any of the rights examined here.

In sum, our research questions were centered on determining the degree to which states differ in their sanctioning of felons regarding critical citizen rights in a democracy: suffrage, government leadership, and sitting on a jury. Overall, we found a high degree of variation on some variables (e.g., form of law to restrict, when in the supervision process are sanctions lifted), and low variation on others (e.g., restriction from felons holding public office or sitting on a jury).

Further, we classified states into regions and political affiliation to examine the influence of these variables on these sanctions. The underlying theme we found was that the notion that politics determine the degree of to which felons are restricted following supervision may be less influential than regional influences (i.e., social structure and cultural similarities) in determining such statutes (see Table 6). This is evidenced by five significant findings for regional variables and none for political affiliation ones. While we did not discern the causes of extensive restrictions (e.g., waiting periods, lifetime bans, pardon only restorations), we determined the degree of association between regions/political affiliations and multiple restrictions on felons from the point of custody forward. We recommend that region should be reconsidered as potentially influential for studies that examine cost/benefit analyses in criminal justice system process. We found that while less restrictive sanctions on felons tended to be in the Northeast, much of the nation is heterogeneous when it comes to sanction severity, regardless of region or political affiliation.

Therefore, studies that seek to examine a “deterrent” effect or costs in a rational-choice model would benefit from at the very least examining the qualitative nuances of regional differences in law and/or culture. It would be interesting to see if more or less restrictive laws affect crime rates and/or the offender’s decision-making process. Future research should also examine other rights that prohibit successful and full reintegration into society following incarceration and/or conviction. Examples include firearm restrictions and vehicle licensing restrictions.

There are many considerations that we did not examine in this study, particularly the use of pardons for restoration and voided restoration for specific crimes. While the sanction itself (i.e., denial of our three citizen rights) is of importance to state entities whose job it is to implement the law, of greater concern to the populous is the restoration of citizen rights. Full restoration without prejudice is a crucial concern to jurisdictions with democratic values as their foundation for civic organization. A great deal of effort is exerted in government at all levels toward ensuring the public is safe and offenders are held accountable for their acts, but the process by which those offenders are reintegrated as full citizens should be given more attention to, in the spirit of the Fourteenth Amendment, ensure marginalized populations are not further marginalized.

No study is without its limitations; including this one. Statutory analyses have limitations that affect the applicability of their findings. Statutes are merely representative of what governmental branches conceive of as best practice. They are often embodiments of compromises between parties and actors on the political stage. Actual practice, however, does not always reflect policy as prescribed by these statutes (Lipsky, 1980). Voting agencies, election committees, and court officials each implement these statutes as best they can, but ultimately implementation does not always represent what legislators intended. Additionally complicating implementation are pragmatic and budgetary concerns. Agencies may simply not have the funds to hire employees to assist in implementation of these statutes, in which case, the statutes become irrelevant. Local sentiments regarding the purpose of government and punishment also may skew the use of such statutes; especially when few controls are put in place to regulate the use of such statutes (Walker, 2010).

Conclusion

Although the right to vote is deemed essential to ensure to citizens’ representation, millions of adults are denied access to the polls by felon disenfranchisement. Collateral with the right to vote, the right to hold public office and to serve on a jury are central to what it means to be a citizen. Denial of these rights to felons, or making reinstatement of these rights extremely arduous, is a political statement about citizenship. The impact for those who are disenfranchised may be substantial as policies and practices do vary substantially for who is eligible to vote, who may hold public office, and who makes decisions about the guilt or innocence of others. These rights of citizens are tied to the ability to have a voice in how the government operates and disenfranchisement means that voice is effectively silenced.

Our analysis found some differences in the law by region, though the differences were less pronounced than we might have expected. The regions were not as homogeneous in perspective, however, in the relatively few instances when differences were discernible it was true that Southern states were more likely to restrict voting and the right to hold public office than other regions of the country. Clearly, further research is needed to bolster the understanding of this complex relationship between region and policy preference, and the citizenship rights of convicted felons.

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Constitution and Statutes

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- U.S. Const., amend. XIV, § 2.
- 42 U.S.C. §§ 1973