A Fault in Democracy: The Disenfranchisement of Voters

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A Fault in Democracy: The Disenfranchisement of Voters
Why is there variation in felon disenfranchisement policy among states?

By
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Democracy is built upon the notion that all citizens are represented equally and have the ability to engage in politics. One democratic value is that of political equality, the idea that each citizen's vote should have an equal impact on election outcomes and, to the extent which it is possible, the burdens associated with voting are equal for all people (Sides et al). Felon disenfranchisement is disruptive to the democratic system as it disallows for certain people to engage in it and applies an unequal burden to felons who wish to vote. Over the last couple of election cycles, calls for felon disenfranchisement reform, alongside those for criminal justice reform, have grown (“The Right to Vote”). For a country that claims to be “the land of the free” and claims to be a strong supporter of democracy, the United States allows policies that disenfranchise millions of people. Between the 50 states there are considerable differences in felon disenfranchisement policy. In the ‘State Spectrum’ chart, it can be seen just how much variety there is; On one end, there are states such as Maine and Vermont whom never disenfranchise felons, whereas on the other hand, states such as Virginia have such strict policies that voting becomes a near impossible task for felons. Understanding the differences across the states provides insight into what factors influence policy, which will allow us to understand the chances of meaningful reform.

Thus, it has led us to address the question: why is there variation in felon disenfranchisement policy among states? We approached this question by categorizing each of the fifty states based on how lenient or strict their laws were (see “State Spectrum”), and from there we pulled out five states to review in-depth. When deciding on what cases to choose we considered factors such as median age, education level, prison population, race and partisanship of each of the states because they allow us to consider multiple aspects of society. Our research looks into Vermont, Virginia, New York, Mississippi, and North Carolina. We decided on these five states because of their variation in legislation. Vermont and Virginia are on the ends of the spectrum with Vermont being very lenient and Virginia being very strict. North Carolina is slightly above Vermont, Mississippi lies close to Virginia, whereas New York is closer to the middle. From our research, we have concluded that race and partisanship are the biggest contributors to why there is variation in felon disenfranchisement policy amongst the states.
We will first start by discussing our literature review. During our research, we found literature that discussed how felon disenfranchisement policies were used in the South as a way to prevent newly freed slaves from voting. These laws were created specifically to target Black voters. Some of those laws, or a version of them, still exist today and negatively impact African American voter turnout. From there we will introduce our methodology and how we decided upon our research design. After that we will divide our hypotheses into three different sections. In section one we present our first hypothesis about how different demographics, such as age, education, and prison population could be potential reasons as to why we see this variation. Section two will discuss the impact of the partisanship of a state on what type of policy they champion. The penultimate section presents the results of the effect of race on policy variation. Finally, we conclude by addressing the limitations of our research and suggestions for future work.

Literature Review

Felon disenfranchisement has historically been linked to racial disenfranchisement, as it was used to target African Americans (Brooks 2005). Brooks has determined that felon
disenfranchisement laws first appeared in America in the 1600s as punishment for morality crimes. After slavery was abolished, states used this practice as a way to disenfranchise Black voters; states in the south would specifically pass laws that would disenfranchise people convicted of what were considered “black” crimes (Brooks 2005, 108). However, Brooks argues that felon disenfranchisement itself does not disproportionately discriminate against people of color and that the practice has been proven constitutional time and time again. “It is well established that felon disenfranchisement is permissible under the Fourteenth Amendment unless a law was enacted with discriminatory intent.” Even before the Fourteenth Amendment was ratified, 80 percent of states had laws that disenfranchised felons (Brooks 2005, 138). The following two quotes best summarize Brooks’ thoughts:

“Felons are disenfranchised upon their ‘conscious decision’ to break the law, ‘for which they assume the risks of detection and punishment,’ not because of their race. This is the fundamental point— it is felons, not minorities, that are disenfranchised by these laws.” (Brooks 2005, 135)

“Felon disenfranchisement is plainly constitutional and consistent with the intent of the framers of both the Fourteenth Amendment and the Voting Rights Act. It is a practice with deep roots in history that continues to be widely utilized today. It is fundamentally different than voter qualifications used in the past to suppress black voting.” (Brooks 2005, 147)

Although these laws might not have been created to target racial minorities, the way they are applied in reality differs from the intent of their creation. We argue that race is an influential factor when determining how strict a state's felon disenfranchisement laws are. Brooks himself concedes that the practice of felon disenfranchisement was used, particularly in the South, to disenfranchise Black voters. If race was not an important factor, states would not have behaved in such a manner.

The link between felon disenfranchisement and race is also reflected in the electoral participation of African Americans. Bridget King and Laura Erickson analyze the impact of felon disenfranchisement on African American voting trends due to the apparent negative relationship between the two. They ultimately determined that if felon disenfranchisement exists on a large scale, then voter turnout of minority groups decreases significantly. “The findings suggest that African American disenfranchisement plays a unique role in predicting African American voter turnout and lend themselves to the need to further consider the community and neighborhood effects of disenfranchisement on political participation and civic engagement” (Erickson and King 2016, 805). The critical relationship they emphasize is important to understanding the variation in felon disenfranchisement laws because the authors create clear linkages between race and disenfranchisement, thus adding to the discourse of disenfranchisement. “Even in states that are less severe and do not impose permanent bans on voting for felony convictions, a large
portion of the population, particularly the African American population, may still experience disenfranchisement… And, given that community socialization has the capacity to facilitate participation, the consequences of disenfranchisement at all levels of severity and rights restoration should not be ignored” (Erickson and King 2016, 2016).

Race is also discussed as a key factor in felon disenfranchisement policy by a study by the Marshall Project. The article they released focused on why Maine and Vermont are the only two states that allow all prisoners, regardless of sentence, to vote. According to the article:

“They share several characteristics that make voting by prisoners less controversial. Incarcerated people can only vote by absentee ballot in the place where they last lived. They are not counted as residents of the town that houses a prison, which means their votes can’t sway local elections if they vote as a bloc. And unlike many states, the majority of prisoners in Maine and Vermont are white, which defuses the racial dimensions of felony disenfranchisement laws.”

In both states, although, “… black people represent a larger share of prisoners compared to their share of the general population,” in terms of the state’s prisoners overall they are a minority (Lewis 2019). The racial demographics of Maine and Vermont are suspected to be the reason why neither state ever takes the right to vote away from a prisoner, according to Joseph Jackson, founder of the Maine Prisoner Advocacy Coalition (Lewis 2019). Felon disenfranchisement laws became popular in Southern states during the Jim Crow era and as of 2018, 40 percent, of 6.1 million people estimated to be disenfranchised because of a felony conviction, are black (Lewis 2019). These findings are consistent with our own, which concludes that race is an important factor when discussing felon disenfranchisement. Without considering race, we would be ignoring the historical implications of such practices as well the realities of how these policies are applied today and the impact they have.

While it appears that race is an important factor when discussing felon disenfranchisement, it is not the only one. In a study conducted at Appalachian State University, researchers explored political and demographic factors that could influence a state’s decision in adopting more or less lenient laws in regard to felon disenfranchisement. Political factors include government and citizen ideology, party competition, and political culture, whereas demographic factors include size of prison population, size of minority population, proportion of population over 65, average state education level, and urbanization (Murphy et al. 2006, 4). The study finds that the political culture of a state is the most important factor when attempting to understand felon disenfranchisement policies (Murphy et al. 2006, 17).

**Research Design**

To test our hypotheses, we compiled secondary data from sources such as the U.S. census and organizations like The Sentencing Project and U.S. Vote Foundation. We started our experiment by collecting information on the different felon disenfranchisement policies in each
of the 50 states in the United States of America. The U.S. Vote Foundation provided information for voting rights restoration for each of the 50 states, but within that they outlined each state’s felon disenfranchisement policy; this was then checked against information provided by the National Conference of State Legislatures in a publication on their website about felon voting rights. From there we categorized each of the states into five categories: Lose your right (if convicted of a felon you completely lose your right to vote), never lose (if convicted of a felon you never lose your right to vote), restored after sentence (once you complete your sentence your right to vote is restored, in some states this means completion of entire sentence including parole/probation, others it just means sentence), restored under special circumstances (your right can only be restored by a pardon from the governor, or by applying for restoration of rights), and lost under special circumstances (not all types of felony charges will disenfranchise you, only specific ones like crimes of moral turpitude or felonies related to elections). Some states fell under multiple categories. After this table was completed, we created the State Spectrum by graphing each of the 50 states on a scale of most restrictive policy, Virginia, to least restrictive policy, Maine and Vermont. One challenge we ran into was that, because some states had similar policies with just one or two small differences, we had to decide what conditions were “worse”. For further information on how the State Spectrum was ordered, see the appendix.

After this re-categorization was completed, we picked out five states to focus our study on: Vermont, North Carolina, New York, Virginia and Mississippi. Vermont and Virginia were chosen because they were at opposite ends of the spectrum. North Carolina and New York were selected because we did not expect them to fall on the scale where they did; we thought that North Carolina would be more strict than it is, and that New York would be less strict. Finally, Mississippi was picked because we were not surprised by where it fell on the scale.

**Demographics as Contributing Factors**

The demographics within a particular state are important to note when considering policies implemented by those states. More specifically, the age demographics within the state, the percentage of high school and college graduates within the state, and finally the prison population. We chose these three aspects of state demographics because each could potentially hold significant weight when determining how a state picks its disenfranchisement policies. For one, we looked at the age ranges of people living in each of the five states we determined to be outliers. We wanted to see if a variation in age is prevalent amongst the variation in policies. A difference in age demographics could mean different voting behaviors because, according to Arzheimer et al., older age groups are more likely to have high voter turnout and they are more likely to be attached to their political parties. Furthermore, according to Peterson et al., “when political attitudes do shift across the lifespan, liberals are more likely to become conservatives than conservatives are to become liberals.” Because of this research, we presume that states with a higher median age will be more conservative, thus more likely to have stricter felon disenfranchisement laws. Due to this variation in voting behavior, we determined that age could be an important factor when looking into our research. Furthermore, education is another
important factor due to similar reasoning as the age demographic. We wanted to observe whether or not a state with a more educated population would have different disenfranchisement laws than the states with a lower educated population. Lastly, we observed the prison population in terms of how many people were imprisoned within each state per 100,000 people. The rate of imprisonment within states could change how a state views disenfranchisement laws, and so we wanted to view these possible correlations. The reason why we believe that the rate of imprisonment may impact voting behaviors of the state is because for one, the state might feel the need to better control and regulate their prison population. Therefore, we presume that if a state has a higher prison population then they will be more aggressive with their felon disenfranchisement laws.

We found that the age and education level of a state does not seem to influence felon disenfranchisement policy. In order to find potential correlations between age and policy outcomes, we mapped out the median age of each of the five chosen states and compared them. However, we found that the median age was around the same for each of the five with Vermont having a median age of 42.9, North Carolina at 39.4, New York at 38.1, Virginia at 38.8, and Mississippi at 38.6. Ultimately, we found no significant correlation between age and felon disenfranchisement. Similar to age, we found no correlation between education and felon disenfranchisement laws. As presented in graph 2, we mapped out the percentages of high school graduates of the states. In graph 3, we did the same for bachelors degrees. In both instances, there were similar percentages within each state, therefore, there were not any vast differences that could have determined felon disenfranchisement laws to be dependent upon education population differences.

In terms of prison population, we found there to be a slight correlation between prison population and felon disenfranchisement policy; the more prisoners a state had, the more likely it was to have stricter policies. In graph 4, we determined the prison incarceration population of each of the five states per 100,000 people. By doing so, we could determine the differences in prison incarceration rates that took into account potential population differences in each state given that states like New York have a much larger overall population than states like Vermont. Ultimately, we found that Vermont has 182 imprisoned people per 100,000, North Carolina has 313, New York has 224, Virginia has 422, and Mississippi has 636. As presented in the graph, it is apparent that the states that are in the “never disenfranchised” category or fall under “temporary disenfranchisement” have lower prison incarceration rates, whereas the higher the rate of incarceration, the more likely they are to have tougher disenfranchisement policies. Mississippi has the highest prison incarceration rate, and it is the second toughest state from the five we have chosen. Ultimately, there is a slight positive linear correlation between prison incarceration and policy that could account for the variation in felon disenfranchisement laws amongst the states.

**Graph 1**
Graph 2

**High School Degree**

- Forever Disenfranchised
- Temporary Disenfranchisement
- Never Disenfranchised

**Age**

- X (Virginia)
- X (Mississippi)
- X (New York)
- X (North Carolina)

**Median Age**

- X (Vermont)

**Graduation Rate**

- 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%
The Impact of Partisanship

When looking at partisanship as a variable, it became clear that the partisan lean of a state plays a role in how strict a state’s felon disenfranchisement policy will be. We believed that the results would show partisanship as having an impact on how lenient or strict a state’s felon disenfranchisement policies are. Political scientists have shown that parties can ‘own’ issues; issue ownership gives parties different credibility on certain issues. It is suggested that parties come to own issues based on their reputation (Sides et al). Since the Republican party has branded itself as ‘tough on crime’, we believed that Republican-leaning states would have more
strict felon disenfranchisement laws. Additionally, we believed that Democratic-leaning states would have less strict felon disenfranchisement laws.

In determining the partisanship of a state, we researched how each state voted in presidential elections, U.S Senate and House elections and Governor elections from 1992 to 2020. These dates provided us with a large sample where we were best able to determine, in general, what party each state tended to vote for. From there, we looked at two key factors: whether the state tended to vote more frequently in favor of Democrats or Republicans and, for the party the state voted more frequently for, if it overwhelmingly voted for that party or not. We determined that New York and Vermont are strong Democratic-leaning states, Mississippi is a strong Republican-leaning state, North Carolina is slightly Republican, whereas Virginia is relatively evenly split between the two (“Election Information by State”). These findings were plotted on graph 5. Graph 5 found a slight correlation between partisanship and how strict a state’s felon disenfranchisement policies are. While this correlation is not as strong as we initially thought, it does show that there is some correlation. Partisanship might not be the only or most important factor in determining why states have different felon disenfranchisement legislation, but it is one part of the puzzle.

Graph 5

Partisanship

[Diagram showing the relationship between partisanship and felon disenfranchisement policies.]

Race and Felon Disenfranchisement

As discussed in the literature review, felon disenfranchisement cannot be discussed without talking about race. Looking at it historically, while the disenfranchisement of felons in the United States existed before people of color were allowed to vote, these laws rose in popularity when it was realized they could be used to target Black voters (Brooks 2005).
Therefore, we believed that we would find a strong correlation between race and the strictness of felon disenfranchisement legislation; we thought that the larger the minority population of a state was, the more strict that the state’s laws would be and that the smaller the minority population of a state was, the less strict that the state’s laws would be.

We tested our hypothesis by collecting data on each state’s population, specifically focusing on what percentage of the population identified as White versus what percentage of the population that identified as a person of color. Then, we mapped where each state fell in terms of strictness. The results were a bit surprising. As seen in graph 6, while it can be argued that there is some correlation it is not very strong. As stated above, we expected to see a much stronger correlation. By just looking at race, we cannot explain why, despite being the most diverse state we looked at, New York is relatively middle-of-the-pact in terms of how strict their felon disenfranchisement legislation is. These results are not insignificant enough to be tossed aside, but they are much weaker than expected.

**Graph 6**

![Graph showing the percentage of minority and white populations in different states and the corresponding disenfranchisement policies.]

**Conclusion**

This research aimed to identify the variation in felon disenfranchisement policy among states and why that variation exists. Based on a quantitative analysis of six different potential factors, it can be concluded that race and partisanship are somewhat relevant factors to consider when discussing disenfranchisement legislation. The results indicate two things, that, one, in general, but with few expectations, when a state has a higher percentage of minorities it is more likely to have stricter policies, and that, two, the more Republican-leaning a state is the more likely it is to have stricter policies. There was a slight correlation between prison incarceration
and felon disenfranchisement laws, however, this finding could be tied into racial explanations and would need to be researched more in depth, therefore, we have not chosen it as a satisfactory explanation.

We decided to conduct a quantitative study because it would best allow us to determine the importance of the factors we chose to test. A qualitative study could not provide us the same results, nor would those results be able to be generalized to the rest of those states that were not examined in detail in this study. In our research, we expected race to be a strong factor, that as diversity of a state increased the strictness of its felon disenfranchisement policy would increase. We also expected to see a similar correlation with partisanship, that the more Republican-leaning state would have stricter policies. Additionally, we believed that age, education and prison population would have somewhat of an impact, but nothing substantial. The results did not fully match our predictions. While race and partisanship had a slight correlation, it was not as strong as we initially expected it to be. Age and education had virtually no impact, and prison population had very limited influence. However, our research was limited in that we cannot determine how, if at all, statistically significant these correlations are as that type of analysis is beyond the scope of what we are capable of doing. Our results still provide some clues as to why such variation among states exists and should be used as a starting point for further research. To better understand the implications of these results, future studies could address our statistical limitations as well as include other hypothesis that we were not able to cover in this study, such as the average household income for each state, each states’ history of slavery, and how racial disparities within the prison system might influence policy. Furthermore, in depth research could be conducted on mass incarceration in order to account for our prison incarceration findings, and possible correlation may also be found with the research on racial implications of mass incarceration as well.

Appendix

- Group 1: Maine and Vermont are the least strict because they never disenfranchise felons
- Group 2: California allows you to vote while incarcerated if you are serving a felony jail sentence, and were not sentenced to prison time
- Groups 3: In North Carolina, you lose the right to vote while incarcerated but, as of July 26, 2022, as soon as you are released from prison, you may register and cast a ballot
- Group 4: Then there is a coalition of 17 states which all have the same policy:
  - You lose the right to vote while incarcerated if you are convicted of a felony, but if you are on parole, probation, or have fully completed your sentence, you may register to vote and cast a ballot
- Group 5: The next rung is of 8 states that all of policies similar to those of the ones before this level, but, before your right to vote is restored, they require you to complete your full sentence, including including probation or parole
- Group 6: Next is New York and Ohio:
New York takes special care to mention that voting rights will be revoked if conditions of parole violated and that people convicted of felonies outside NYS lose the right to vote while incarcerated and while on parole;

And Ohio also mentions that if you were a resident of another state when you became incarcerated, you do not become a resident of Ohio by virtue of being incarcerated there, and registering to vote in this circumstance would be considered a crime

- Group 7: Arkansa and Georgia are the next group because they mention that fees associated with sentencing at the time of conviction must be paid before your right to vote is restored

- Group 8: Massachusetts is similar to group 4, but if a court temporarily or permanently revoked your voting rights after you were convicted of corrupt practices in respect to elections, you have to consult your sentencing documents to determine when and whether you will be eligible to vote

- Group 9: In Iowa, as of August 5, 2020, voting rights are restored after completion of sentence, except for persons convicted of “infamous crimes” who must be pardoned by the governor
  
  - Has confusing rules for voting restoration of those convicted of homicide based on whether they completed their sentence before or after July 4, 2005

- Group 10: In Nebraska, Can’t vote while incarcerated, on probation, or on parole, and for two years after you complete your full sentence, but after those two years your voting rights will be automatically restored

- Group 11: South Carolina has similar rule to group 5, but if you are convicted of a felony or misdemeanor violating South Carolina election laws, you permanently lose right to vote unless pardoned

- Group 12: Maryland is similar to group 4, except if you are convicted of buying or selling votes it results in the permanent loss of voting rights

- Group 13: Missouri is similar to group 5 with added stipulations about felonies related to voting
  
  - In Missouri, individuals convicted of felonies related to voting only become eligible to vote if they are pardoned by the governor and the election authority determines they are eligible to vote

- Group 14: Louisiana is similar to groups 5, but they must be on parole or probation for five years or complete their full sentence, whichever comes first, before their voting rights are restored
  
  - Also, conviction of an election offense in Louisiana results in permanent loss of voting rights

- Group 15: Kentucky’s laws are strict and confusing, so we will only briefly outline them here
○ You lose your right to vote if you are convicted of a non-violent felony, and it will only be restored once you complete your full sentence
○ You lose your right to vote if you are convicted of a felony involving treason, bribery, or a violent crime, or if you are convicted of a felony outside of Kentucky
  ■ After completing all terms of your sentence, your right to vote may only be restored by the petitioning of the Governor

● Group 16: This group consists of four states who have specific laws about crimes of moral turpitude
  ○ If convicted of a felony that is not a “crime of moral turpitude” you do not lose your right to vote
  ○ You do lose your right to vote if you are convicted of a felony of moral turpitude
    ■ Alaska: Must get documentation of completion from your probation or parole officer and provide it to the Division of Elections to restore your right to vote
    ■ Tennessee: If your sentence is completed, including parole or probation, you may apply to the Board of Probation and Parole to have your voting rights restored
    ■ Delaware and Florida: Must be pardoned by the Governor

● Group 17: Wyoming has different rules for non-violent and violent felonies, but you can never vote while incarcerated
  ○ Non-violent felony
    ■ If sentence completed and you were convicted of a non-violent felony after 2010, you can register and cast a ballot regardless of parole or probation
    ■ If your sentence is completed and you were convicted of a non-violent felony before 2010, under federal law or from outside of Wyoming, apply to the Department of Corrections
  ○ Violent and multiple felony convictions
    ■ You lose your right to vote and only after a waiting period of five years can you apply for the Governor to restore your voting rights

● Group 18: In Mississippi, if you are convicted of one of twenty-three barred crimes you lose your right to vote and it can only be restored by the Governor or through a bill passed by both houses of the state legislature. If you are convicted of a felony that it not one of those twenty-three barred crimes you do not lose your right to vote

● Group 19: Alabama is another state with moral turpitude laws
  ○ You do not lose your right to vote if you are convicted of a felony that is not a “crime of moral turpitude”

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1 "Crimes against a person involve moral turpitude when the offense contains criminal intent or recklessness or when the crime is defined as morally reprehensible by state statute. Criminal intent or recklessness may be inferred from the presence of unjustified violence or the use of a dangerous weapon." ("Chapter 5")
○ You lose your right to vote if you are convicted of a felony that is a “crime of moral turpitude”
  ■ Can only be restored by receiving either a pardon that includes restoration of civic rights or a Certificate of Eligibility to Register to Vote, which has a list of conditions that need to be met
○ Your voting rights are permanently removed if you have been convicted of treason, were impeached, or have received the death penalty

● Group 20: Arizona’s policy differs depending on how many felony convictions a person has
  ○ If you are convicted of only one felony, your voting rights are automatically restored upon completion your full sentence including including incarceration, probation, and parole, and paid all required restitution
  ○ However, if you are convicted of two or more felonies, your right to vote can only be restored through a judge or if pardoned

● Group 21: In Virginia, you permanently lose your right to vote if you are convicted of a felony and your right to vote can only be restored by the Governor

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