

“Civil Death” and Labor Market Alienation: Comparative Analysis of Legislation Limiting Access to Work for the Justice Impacted in OECD Countries

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Abstract

Many nations around the world have legislation that restricts access to employment for people with criminal convictions. Currently, there is little comparative research that empirically investigates the number, content, and cross-national differences between these laws. To contribute to this topic, we describe a study that explored legislative barriers to employment for people with convictions in all thirty-eight Organization for Economic Cooperation and Development (OECD) countries. The researchers compiled a new dataset of national legislation ($n = 335$) restricting access to specific areas of work for the justice impacted in the OECD. Content analysis methods were used for: (1) dataset development and refinement; (2) qualitative coding of categories and themes; and (3) subsequent mixed methods analysis to explore cross-cultural commonalities and differences within relevant legislative restrictions. We present findings describing the proliferation of restrictive legislation in the OECD, including the number of laws passed over time, number of restrictions present in those laws, and their applicability to diverse economic sectors and industries. Findings illustrate that the diffusion and growth of restrictive collateral consequences to employment occurred during periods where incarceration rates were also growing across the OECD. This finding indicates that the growth in such lawmaking might be tied to punitive ideologies, rather than to public safety objectives and rehabilitative principles. Descriptive statistics and qualitative analysis also illustrate the extent to which collateral consequences to employment are cumulative in nature: *civil death by a million cuts*. Over time, seemingly minor restrictions in finance, aviation, healthcare, childcare, etc. add up in ways that functionally close off access to large numbers of jobs. Moreover, as particular sectors and industries rise in political or economic importance—or their nexus to governmental function and budgets is realized—seemingly minor prohibitions tied to objectives of professionalization and public safety can result in prolonged barriers to work for people with convictions, who return home to a labor market that is increasingly artificially narrowed by legal regimes.

Introduction

Many nations have legislation that restricts access to employment for people with criminal convictions. Some of these laws broadly restrict access to highly regulated industries, like financial and healthcare services.¹ Others more narrowly restrict occupations requiring professional certification, such as a lawyer, certified public accountant, private investigator, or real estate agent.² Still others restrict access to business licenses or permits

¹ See, e.g., Penal Code of Estonia, RT I 2005, 40, 311, Div. 3, § 49 (Est.) (allowing courts to impose financial sector occupational bans as a “supplementary punishment” for individuals convicted of certain crimes, such as fraud); Health Practitioners Competence Assurance Act 2003, Act No. 48/2003 § 16(c) (N.Z.) (prohibiting health practitioner registration for individuals “convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer”).

² See, e.g., Attorney-at-Law Act 1963, Act No. 8321/1963, Arts. 5 & 22(2) (as amended up through Act No. 8321/2007) (Kor.) (outlining disqualifications from serving as an attorney, or working in a law office, for individuals with certain criminal convictions); Certified Public Accountants Act 1948, Act No. 103/1948, Art. 4(ii)-(iii) (current through Act No. 41/2017) (Jpn.) (outlining disqualifications from becoming a certified public accountant for individuals with certain criminal convictions); Private Security Services Act 2002, Act No. 282/2002, §§ 47(2), 48(2) (Fin.) (outlining cancellation of security guard and security manager certifications for individuals with certain criminal convictions); Law No. 70-9/1970 on the Profession of Real Estate Agent, Title II, Art. 9(II)(1)-(16) (as amended up

in diverse sectors and industries across agriculture, manufacturing, and services.³ Many nations have combinations of these different types of laws.⁴

At present, there is little comparative research that empirically investigates the number, content, and cross-national differences of laws restricting access to work for people with criminal convictions.⁵ To contribute to this topic, we describe a research study that explored legislative barriers to employment for people with convictions in all thirty-eight Organization for Economic Cooperation and Development (OECD) countries. The researchers compiled a new dataset of national legislation ($n = 335$) restricting access to specific areas of work for the justice impacted⁶ in the OECD, with the goal of performing what is—to our knowledge—the first comparative content analysis of legislative restrictions to work for the justice impacted in many countries.

We present findings describing the proliferation of this type of restrictive legislation in the OECD, including the number of laws passed over time, number of restrictions present in those laws, and their applicability to diverse economic sectors and industries. Every country in the OECD has passed at least one national law restricting access to employment for people with criminal convictions. However, findings demonstrate that legislative examples vary substantially by country, along such lines as the:

- (a) Number of laws and restrictions present,
- (b) Economic sectors and industries affected,
- (c) Level of generality or specificity about the types of jobs subject to restriction,
- (d) Level of generality or specificity about the type of criminal convictions restricted (and their relevance to actual job duties),
- (e) Extent to which the laws constitute mandatory or discretionary restrictions,
- (f) Duration of the restrictions imposed (or lack thereof), and
- (g) Stated or implied rationale underlying the restriction.

Through a mixed-methods content analysis of the 335 pieces of legislation reviewed, the study contributes to the understanding of cross-national differences in legislation of this type. Additionally, we describe the proliferation of restrictions longitudinally to identify *policy diffusion*⁷ in eras where restrictions to specific sectors and industries increased and coincided with broader regulatory factors such as economic realignment,

through Ordinance No. 71-2020, Art. 5) (Fra.) (prohibiting involvement in property transactions for individuals with certain criminal convictions).

³ See, e.g., Federal Alcohol Administration Act of 1935, 27 U.S.C. § 204(a)(1)-(2) (U.S.) (“the following persons shall . . . be entitled to a basic permit . . . unless . . . such person . . . has . . . within five years prior to the date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor”); Trade and Crafts Code 2006, BGBl. 3074, 2006, 2095 § 97 (as amended) (Ger.) [<https://perma.cc/YQX8-U3NE>] (prohibiting access to crafts professions on the basis of certain criminal convictions).

⁴ See, e.g., Private Security Services Act 2002, Act No. 282/2002, §§ 47(2), 48(2) (Fin.); Health Care Professionals Act 1994, Act No. 559/1994 § 27 (Fin.); Act LXXXVIII of 2001 on Electronic Commerce, § 3/A(1)(a)(aa) (Hun.); Act XLVII of 2013 on the Profession of Lawyer, Ch. IV(14), § 22(1)(b)-(c) (Hun.); Law LXXX of 1993, Ch. 6 § 14(1)(b) (Hun.); Attorneys Act 1949, Act No. 205/1949, Arts. 64-67 (Jpn.); Real Estate Brokerage Act 1952, Act No. 176/1952, Art. 5(1)(iii) (Jpn.).

⁵ But see Mirjan R. Damaska, *Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study*, 69 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 347 (1968) (comparative analysis of collateral consequences from criminal convictions in multiple countries); Cao et al., *Thinking About Crime and Control: A Comparative Study of Chinese and American Ideology*, 11 INT’L CRIM. JUST. REV. 58 (2001) (exploring cross-cultural differences in punitive ideologies, including collateral consequences of a criminal conviction, in the United States and China); Elina Kurtovic & Marti Rovira, *Contrast Between Spain and the Netherlands in the Hidden Obstacles to Re-entry into the Labour Market Due to a Criminal Record*, 14 EUR. J. CRIMINOLOGY 505 (2017) (analyzing differences between European countries in the obstacles ex-offenders face due to having a criminal record); Máximo Sozzo, *Inequality, Welfare and Punishment: Comparative Notes Between the Global North and South*, 19 EUR. J. CRIMINOLOGY 368 (2022) (comparative analysis of the relationship between legal barriers stemming from criminal punishment and economic sufficiency in the “Global North” and “Global South”).

⁶ In this Article, we use the term “justice impacted” interchangeably with “people with criminal convictions.” We chose to use “justice impacted” rather than “justice involved” because the latter connotes *ongoing* interaction with the justice system, whereas our analysis also includes laws affecting individuals who have completed their sentence in full.

⁷ Fabrizio Gilardi, Charles R. Shipan & Bruno Wüest, *Policy Diffusion: The Issue-Definition Stage*, 65 AM. J. POL. SCI. 21, 21 (2020) (defining *policy diffusion* as the process by which “states or nations adopt new policies . . . influenced not only by internal factors, but also by external factors”). Policy diffusion can include instances of one country *emulating* laws from another. *Id.* at 3.

professionalization, workplace safety, and even seemingly more remote political considerations such as national security. We close with discussion of the tenuous relationship of lawmaking trends to policy objectives and recommendations for future inquiry.

I. Background

Around the world, laws linking criminal convictions to employment disqualifications have existed for centuries or longer.⁸ Early nation-state examples included constitutional provisions explicitly or implicitly prohibiting persons convicted of *high crimes*—like treason or insurrection—from serving in public office.⁹ During the twentieth and twenty-first centuries, *de jure* employment restrictions have been expanded—both gradually and during noteworthy “waves” of reformatory lawmaking—to encompass a broader spectrum of rules across diverse public- and private- sectors and industries. Presently, countries around the world have national legislation affecting access to work for people with convictions in such diverse sectors as:

- Agriculture¹⁰
- Finance & Insurance¹¹
- Professional, Scientific & Technical Activities¹²
- Transportation & Storage¹³
- Education¹⁴
- Real Estate¹⁵
- Manufacturing¹⁶

⁸ Andrea Steinacker, *Prisoner’s Campaign: Felony Disenfranchisement Laws and the Right to Hold Public Office*, 2003 B.Y.U. L. REV. 801 (2003).

⁹ See, e.g., FRANCE CONST. of the Year VIII arts. 4, 70-71 (1799) (“The title to French citizenship is lost . . . By condemnation to afflictive or infamous punishments”; “Personal crimes involving afflictive or ignominious punishments, committed by a member of the Senate, Tribunal, Legislative Body, or Council of State, are prosecuted before the ordinary tribunals only after a decision of the body to which the accused belongs has authorized that prosecution.”); U.S. CONST. amend. 14, § 3 (1868) (“No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office . . . who . . . shall have engaged in insurrection or rebellion . . . or given aid or comfort to the enemies thereof.”); SOUTH AFRICA CONST. § 106(1)(e) (1996) (“Every citizen who is qualified . . . is eligible to be a member of a provincial legislature, except . . . anyone who is convicted of an offence and sentenced to more than 12 months’ imprisonment.”).

¹⁰ See, e.g., 7 U.S.C. § 499d(d) (1930) (U.S.) (“Secretary may withhold the issuance of a license . . . for the purpose of determining (a) whether the applicant is unfit to engage in the business of a commission [agriculture] merchant, dealer, or broker because the applicant . . . prior to the date of the filing of the application engaged in any practice of the character prohibited by this chapter or was convicted of a felony in any State or Federal court.”).

¹¹ See, e.g., Securities Exchange Act, 15 U.S.C. §§ 78c(a)(39)(F), 78o (1934) (*amended and renamed* as the Banking Act of 1935, 49 Stat. 704) (U.S.) (“A person is subject to a ‘statutory disqualification’ . . . if such person . . . has been convicted of any offense specified [above] or any other felony within ten years of the date of the filing.”).

¹² See, e.g., Act XLVII of 2013 on the Profession of Lawyer, Ch. IV(14), § 22(1)(b)-(c) (Hun.) (“Grounds for exclusion of practicing the legal profession [include] . . . any person who has a criminal record . . . any person who has no criminal record but . . . whom the court sentenced to prison for five years or a period exceeding that for committing a willful crime, for eight years from the first effective date of the exemption.”). Except as otherwise specified, all English translations of legislative texts provided in this article are from official or unofficial translations provided by the country of origin.

¹³ See, e.g., Law on Management of Terrestrial Transport 1987, Act No. 16/1987 Art. 44(a) (Sp.) (“ . . . persons . . . shall not be deemed to be of good repute [if they] . . . [h]ave been convicted, by a firm sentence, of intentional crimes with a penalty [or prison time], as long as they have not obtained the cancellation of the sentence.”); Transportation of Dangerous Goods Act, S.C. 1992, Ch. 34, § 34(1)(a) (Can.) (“Where a person is convicted of an offence, the court may make an order having any or all of the following effects . . . prohibiting the person for a period of not more than one year from engaging in any activity regulated under this Act”).

¹⁴ See, e.g., General Education Law of 13 July 1993, Art. 73 (as amended through the Law of 11 September 2013) (Mex.); Law LXXX of 1993, Ch. 6 § 14(1)(b) (Hun.) (“In higher education institutions, a teacher or academic researcher can be anyone who . . . has no criminal record . . .”).

¹⁵ See, e.g., Real Estate Brokerage Act 1952, Act No. 176/1952, Art. 5(1)(iii) (Jpn.) (“License must not be granted by the Minister of Land, Infrastructure, Transport and Tourism or a prefectural governor if a person intending to obtain a license . . . falls under any of the following items . . . a person who has been sentenced to imprisonment or a heavier punishment, and for whom five years have not yet passed since the date on which the person finished serving the sentence or ceased to be subject to its enforcement.”).

¹⁶ See, e.g., Law No. 7989 of 2 September 2011 on Access to the Professions of Craftsman, Merchant, Manufacturer and Certain Liberal Professions, Title 3, Ch. 1, Art. 39(6) (current up through Law No. 7989/2023) (Lux.) [<https://perma.cc/7AMQ-EYSU>] (authorizing

- Healthcare & Human Services¹⁷
- Information Communications¹⁸
- Wholesale & Retail Trade.¹⁹

Many existing studies explore cross-cultural barriers to reintegration for the justice impacted resulting from structural factors like law.²⁰ Other studies investigate the complicated relationship between incarceration and labor market outcomes in advanced capitalist societies.²¹

Legislative restrictions to accessing employment are one example of what have been referred to as the *collateral consequences* of justice involvement.²² Collateral consequences are *de jure* statutory, regulatory, or administrative rules restricting access for people with criminal histories to such rights or entitlements as housing, voting, immigration status, public benefits, driver's licenses, bank accounts, etc.²³ Importantly, these restrictions can, and often do, extend beyond the period of a formal sentence, sometimes following a person for life.²⁴

Practices of lifelong punishment have deep civilizational roots in ancient legal systems and the legal statuses of *civil death*, *infamia*, and similar doctrine “which put an end to the person by destroying the basis of legal capacity, as did natural death by destroying physical existence.”²⁵ Although many governments have shifted recently to criminological frameworks that outwardly accentuate a rehabilitative orientation and collectivist principles (e.g., public safety and deterrence), vestigial lawmaking remains on the books, as do residual attitudes about the retributive need for perpetual punishment as a form of *civil disability*.²⁶

courts to impose a ban on practicing manufacturing, crafts, and other professions for a period of two months to five years); Pharmacy Law, No. 5741/1981, §17B(c) (Isr.) (“A person who has been convicted of an offense involving moral turpitude or an offense of the provisions of this Law shall not be appointed as security supervisor.”).

¹⁷ See, e.g., Health Care Professionals Act 1994, Act. No. 559/1994 § 27 (Fin.) (“If a health care professional has been sentenced to imprisonment for a criminal offence that he or she has committed while carrying on professional activity . . . the National Authority for Medicolegal Affairs may . . . forbid a professional with a protected occupational title to use the occupational title of a health care professional . . .”).

¹⁸ See, e.g., Act LXXXVIII of 2001 on Electronic Commerce, § 3/A(1)(a)(aa) (Hun.) (restricting telecommunications access to private individuals and service providers as a result of prosecution for criminal offenses).

¹⁹ See, e.g., Act No. 428/2005 on Commerce, Art. L128-1(1)-(2) (Fr.) (“No person shall, either directly or indirectly, for his own account or on behalf of another, engage in a commercial or industrial occupation, direct, administer, manage or control a commercial or industrial venture or a commercial company, in whatever capacity, if he has been the subject of a final judgement within the previous ten years . . . For a crime; or . . . Has been sentenced to at least three months’ imprisonment without suspension for [theft/possession of stolen goods, money laundering, fraud, bribery, forgery, drug trafficking, etc.]”) (English translation by World Intellectual Property Organization).

²⁰ See Kei Someda, *An International Comparative Overview on the Rehabilitation of Offenders and Effective Measures for the Prevention of Recidivism*, 11 LEG. MED. S82 (2009); Sozzo, *supra* note 5.

²¹ See GEORG RUSCHE & OTTO KIRCHHEIMER, PUNISHMENT AND SOCIAL STRUCTURE (1939); Theodore G. Chiricos & Miriam A. DeLone, *Labor Surplus and Punishment: A Review and Assessment of Theory and Evidence*, 39 SOC. PROBS. 421 (1992); James M. Byrne, April Pattavina & Faye S. Taxman, *International Trends in Prison Upsizing and Downsizing: In Search of Evidence of a Global Rehabilitation Revolution*, 10 VICTIMS & OFFENDERS 420 (2015).

²² Caleb Foote, *Pardon Policy in the Modern State*, 39 PRIS. J. 3 (1959).

²³ Alessandro Corda, Marti Rovira & Andrew Henley, *Collateral Consequences of Criminal Records From the Other Side of the Pond: How Exceptional is American Penal Exceptionalism?*, CRIMINOLOGY & CRIM. JUST. 1 (2023).

²⁴ See JAMES B. JACOBS, THE ETERNAL CRIMINAL RECORD (2015).

²⁵ Alec Ewald, “*Civil Death*”: *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WISC. L. REV. 1045, 1059 (2002); see also A. H. J. GREENIDGE, INFAMIA: ITS PLACE IN ROMAN PUBLIC AND PRIVATE LAW (1884) (historical analysis of the legal doctrine of *infamia* in the Roman Empire).

²⁶ See MITCHEL P. ROTH, AN EYE FOR AN EYE: A GLOBAL HISTORY OF CRIME AND PUNISHMENT 52, 140 (2014) (describing the criminological use across cultures and time periods of *perpetual* forms of punishment, ranging from reduced civil status, to exile, to confiscation of property); Matt Saleh, *Falling Away into Disease: Disability-Deviance Narratives in American Crime Control*, 95 ST. JOHN’S L. REV. 1037 (2021) (analysis of the legal construction of criminal predilection and reduced civil status on the basis of disability in American law and jurisprudence); Matt Saleh, Hannah Potter, & Kendall Foley, *Law’s Body*, 74 MERCER L. REV. 1023, 1031–32 (2023) (discussing the *dehumanization* stemming from criminal conviction, including the imposition of civil disability or civil death on the basis of a conviction).

Recent calls in the literature highlight the need to increase comparative understanding of cross-national differences in the meaning and effect of collateral consequences.²⁷ While the findings from this Article are primarily descriptive, certain trends in the diffusion of national legislation across cultures are unavoidable. For instance, we will demonstrate that an unprecedented spurt of lawmaking occurred across the OECD during the late 1980s and early 1990s, lasting into the present. The data indicate that 1987–1994 was an inflection point. During this time, the number of laws restricting employment enacted by OECD countries (fifty-two) equaled the total number from the thirty years preceding (1957–1986). This was also during a time when prison populations were growing rapidly across the OECD—by more than 20% in most European countries, 50% in Australia and the United States, 38% in New Zealand, and 10% in Japan.²⁸

Commentators have noted that as punishment rates surged, policymakers in multiple countries began appealing to what has been termed a *punitive populism*—urging government to *get tough* on offenders.²⁹ One curious dimension to the proliferation of these work restrictions is their temporal proximity to civil rights movements focused on quite opposite objectives: promoting legislation that *increased* access to employment for historically subjugated groups.³⁰ Some have described the globalization of punitive lawmaking in the 1980s–1990s as an orchestrated public policy “assault[] on the social logistics of the welfare state and public provision.”³¹

This Article focuses on explicit, *de jure* restrictions to work enacted through national legislation. In other words, legislation that creates mandatory or discretionary rules about the ineligibility of people with convictions for certain jobs. By focusing on national legislation, we sought to increase comparability by emphasizing centralized, nationwide standards rather than idiosyncratic regulatory and administrative regimes, which are more heterogenous as a function of political structure.³² In narrowing focus, we do not mean to downplay the significance of local, regional, regulatory, or administrative restrictions. In the United States alone, there are over 46,000 federal and state collateral consequences,³³ 60–70% of which apply to employment, and many of which are regulatory or administrative rather than statutory.³⁴ Local restrictions are also important, particularly when enabled by national rules. For instance, Australia mirrors the United States in its blend of federal and state restrictions.³⁵ In Switzerland, restrictions are strictest at the cantonal level.³⁶ In Canada, provincial laws have broad effect.³⁷

Although outside the purview of this study, another consideration is the role of private discrimination by employers. In countries like the United States, criminal background checks and disclosures are widely used

²⁷ Louise Brangan, *Exceptional States: The Political Geography of Comparative Penology*, 22 PUNISHMENT & SOC’Y 596 (2020); see also CORDA, ROVIRA & HENLEY, *supra* note 23.

²⁸ Roy Walmsley, *Global Incarceration and Prison Trends*, 3 FORUM ON CRIME & SOC’Y 65 (2003).

²⁹ Tim Newburn, “*Tough on Crime*”: *Penal Policy in England and Wales*, 36 CRIME & JUST. 425 (2007); MICHELLE D. BONNER, *TOUGH ON CRIME: THE RISE OF PUNITIVE POPULISM IN LATIN AMERICA* (2019).

³⁰ See, e.g., U.S. Civil Rights Act 1964, Pub. L. 88-352; 78 Stat. 241 (U.S.); Racial Discrimination Act 1975, Act No. 52/1975 (Aus.); Sex Discrimination Act 1986, Ch. 63 (U.K.); Federal Act to Prevent and Eliminate Discrimination 2003, Law of 11 June 2003 (Mex.); Framework Act on Gender Equality 2014, Act No. 12698/2014 (Kor.).

³¹ John Muncie, *The Globalization of Crime Control—The Case of Youth and Juvenile Justice: Neo-liberalism, Policy Convergence and International Conventions*, 9 THEORETICAL CRIMINOLOGY 35, 38 (2005).

³² See, e.g., BERNARD SCHWARTZ, *FRENCH ADMINISTRATIVE LAW AND THE COMMON-LAW WORLD*, 1 (2006) (describing the differences between the civil law systems of different countries and attendant challenges to comparative research stemming from those differences); CARL F. GOODMAN, *THE RULE OF LAW IN JAPAN: A COMPARATIVE ANALYSIS* (2017) (describing administrative, criminal, and civil law differences between Japan and other nations).

³³ JOHN MALCOLM & JOHN-MICHAEL SEIBLER, *COLLATERAL CONSEQUENCES: PROTECTING PUBLIC SAFETY OR ENCOURAGING RECIDIVISM? THE HERITAGE FOUNDATION* [<https://perma.cc/MVJ8-5A5J>] (2017). For a complete and current inventory of state and federal collateral consequences in the United States, see NATIONAL INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, *COLLATERAL CONSEQUENCES INVENTORY*, [bit.ly/44ehv49](https://perma.cc/FA6X-54D8) [<https://perma.cc/FA6X-54D8>] (2023).

³⁴ JOHN MALCOLM & JOHN-MICHAEL SEIBLER, *COLLATERAL CONSEQUENCES: PROTECTING PUBLIC SAFETY OR ENCOURAGING RECIDIVISM* (2017).

³⁵ See, e.g., Tasmania (Aus.) Child Care Act, Act No. 43/2001 (2001); Victoria (Aus.) Private Security Act, Act No. 54/2004 (2004).

³⁶ See, e.g., Zurich (Switz.), Act No. 550.1 of 23 April 2007, Police Act (“*Polizeigesetz*”), §59d(c) (requiring no felony conviction for eligibility in private security services).

³⁷ See, e.g., Alberta (Can.) Security Services and Investigators Act, S.A. 2008, c. S-4.7 (2008); Ontario (Can.) Insurance Act, R.S.O. 1990, c. 1.8 (1990).

by private employers³⁸ and required by law for certain jobs.³⁹ By comparison, some civil law “right to be forgotten” nations⁴⁰ have more stringent privacy protections than in common law “right to know” countries, or clearer pathways to a conviction becoming *spent* following a period of crime-free behavior.⁴¹ However, recent studies challenge the perception that barriers to work are negligible in these contexts, finding that employer-generated requests for records in these countries are more common than once thought and are disproportionately made by employers adhering to formal legal requirements.⁴² This appears to indicate the importance of lawmaking on employer decision making.

II. Methods

To empirically explore the scope of legislative restrictions to work for justice-impacted individuals in OECD countries, the research team first developed a database of relevant laws, utilizing search databases of publicly available national legislation in each OECD country. Dataset development and refinement occurred from October 2022 to April 2023. The resulting dataset is available upon request to the authors. Both dataset development and subsequent analysis used mixed-methods content analysis, aiming to:

- (a) Systematically screen and select national legislation based on relevance,
- (b) Qualitatively code units of meaning within different national laws, and
- (c) Quantify those coding units to uncover themes and support qualitative analysis.

The Research Questions for the study were, (1) how does national legislation restricting access to employment for people with criminal convictions differ in terms of number, scope, and content, and (2) what sectors and industries are subject to the most restrictions across OECD countries?

A threshold objective was to quantitatively estimate and describe the number of relevant legislative restrictions in the OECD. To do this, it was necessary to utilize a systematic, replicable approach for identifying and selecting laws for dataset inclusion (“Phase 1”), and for coding units of meaning into those laws to ensure comparability and transferability of findings (“Phase 2”).

Content analysis encompasses a range of data reduction techniques with the central objective of developing content categories based on explicit rules of coding.⁴³ As applied to textual records, it emphasizes processes for “systematically and objectively identifying special characteristics” of records to explore repetitions of words, phrases, concepts, or themes.⁴⁴ Once texts are coded, they can be investigated through mixed methods inquiry.⁴⁵ Planning efforts emphasized the development of mutually exclusive, exhaustive categories.⁴⁶

During Phase 1, the researchers conducted database searches to screen laws for relevance to research questions, adhering to a protocol for fidelity of search strategy. The study sought to compare legislation that contained explicit (mandatory or discretionary) restrictions to work. Final inclusion criteria are below, with examples of exclusions in parenthesis:

³⁸ ROY MAURER, HOW TO CONDUCT INDIVIDUALIZED ASSESSMENTS IN BACKGROUND CHECKS, SOCIETY FOR HUMAN RESOURCE MANAGEMENT (2016).

³⁹ See, e.g., Omnibus Crime Control and Safe Streets Act 1968, 34 U.S.C. §§ 10101 *et seq.*; 40301(b)(14) (U.S.).

⁴⁰ Martine Herzog-Evans, *Judicial Rehabilitation in France: Helping with the Desisting Process and Acknowledging Achieved Desistance*, 3 EUR. J. PROBATION 4, 4 (2011); see also Act of 8 December 1992 on the Protection of Privacy in Relation to the Processing of Personal Data, Art. 7, § 1-2 (Belg.).

⁴¹ Rick Ruddell & L. Thomas Winfree Jr., *Setting Aside Criminal Convictions in Canada: A Successful Approach to Offender Reintegration*, 86 PRIS. J. 452 (2006); Criminal Records [Clean Slate] Act 2004, Act No. 16/2004 (N.Z.).

⁴² Shawn D. Bushway, Paul Nieuwebeerta & Arjan Blokland, *The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time to Redemption?*, 49 CRIMINOLOGY 27 (2011); KURTOVIC & ROVIRA, *supra* note 5; Ali M. Ahmed & Elisabeth Lång, *The Employability of Ex-offenders: A Field Experiment in the Swedish Labor Market*, 34 IZA J. Lab. Pol’y XX (2017).

⁴³ Steve Stemler, *An Overview of Content Analysis*, 7 PRAC. ASSESS., RES. & EVAL. 1 (2000).

⁴⁴ Ole Holsti, *Content Analysis*, 2 HANDBOOK SOC. PSY. 596, 596 (1968).

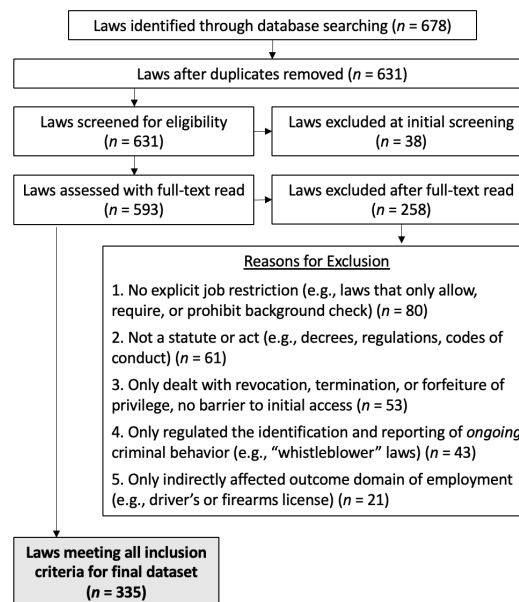
⁴⁵ See Archibald, et al., *Current Mixed Methods Practices in Qualitative Research: A Content Analysis of Leading Journals*, 14 INT’L J. QUAL. METHODS 5, 5–6 (2015) (describing the coding of qualitative data for mixed methods content analysis in the social sciences).

⁴⁶ See Stemler, *supra* note 43.

1. **National legislation that was passed into effect** (Sample exclusion: regulations, decrees, administrative rules; regional/provincial laws; bills that never passed)
2. **By an OECD country** (Sample exclusion: legislation from non-member countries)
3. **Containing mandatory and/or discretionary restrictions on access to work** (Sample exclusion: laws only requiring or allowing background checks without clear restriction; laws only indirectly applicable to the outcome domain of employment like driver's and firearms licensing)
4. **In one or more definable economic sectors and/or industries** (Sample exclusion: general requirements of criminal background checks for probationers/parolees under criminal codes)
5. **From January 1, 1900–April 1, 2023** (Sample exclusion: laws passed in 1899 or before)

A first round of database searches by three researchers resulted in a list of laws with general relevance to the research questions ($n = 678$). After deduplication, two rounds of iterative, manual screening were conducted. Researchers met to resolve discrepancies and make decisions, resulting in a final database of OECD legislation meeting inclusion criteria ($n = 335$). Figure 1 documents record selection flow and exclusions.

Figure 1. Flowchart of Legislation Selection Process



After record selection, we began Phase 2 by developing *a priori* categories tailored to the research questions as a framework for analysis. This was followed by an inductive category application approach to uncover additional units of meaning, commonality, and themes within the texts.⁴⁷ To develop *a priori* categories, we first drew upon the framework present in the National Inventory of Collateral Consequences of Conviction—an inventory of collateral consequences in the United States—to identify initial categories.⁴⁸

To refine categories, the researchers explored possible pre-validated measures tailored to cross-cultural inquiry. The meaning of jobs, industries, and sectors can vary across cultures. Similarly, crime categories and severity are notoriously difficult to compare across cultural contexts and diverse legal systems.⁴⁹ To adhere to a replicable framework for coding employment activities, we followed the International Labour Organization’s *Standard Industrial Classification of All Economic Activities (ISIC, 4th Revision)* definitions and codes for economic

⁴⁷ Philipp Mayring, *Qualitative Content Analysis*, 1 FORUM: QUAL. SOC. RES. 1 (2004).

⁴⁸ See NATIONAL INVENTORY, *supra* note 33.

⁴⁹ Ethan Carter, Tony Ward & Annalisa Strauss-Hughes, *The Classification of Crime and its Related Problems: A Pluralistic Approach*, 59 AGGRESSION & VIOLENT BEH. 1 (2021).

sectors (A–U) and industries (1–99).⁵⁰ To code *crime type*, we followed the United Nations *International Classification of Crimes for Statistical Purposes* (ICCSP, Version 1.0).⁵¹ For *crime severity*, we used a psychometrically validated subset of items from the *Crime and Violence Scale* (CVS).⁵² Table 1 lists category names, variable types, and descriptions.

Table 1. Category, Variable Type, and Description

Category	Type	Description
(i) Country	Identifier	Official name of country
(ii) Name of legislation	Identifier	Law popular name and legal reference number
(iii) Year passed/amended	Identifier	Year/amended
(iv) Active/inactive	Nominal	1-Active; 2-Repealed; 3-Lapsed; 4-Replaced; 5-Overtaken by Courts; 6-Otherwise NLA
(v) Mandatory/discretionary	Nominal	1-Mandatory; 2-Discretionary; 3-Both; 4-Not Specified
(vi) Offense type (if specified)	Nominal	ICCSP Level 1 Categories 1–11
(vii) Offense severity	Ordinal	CVS subscales converted to count rating from 1–7
(vii) Offense severity	Continuous	Years of imprisonment (if specified, decimal if months specified)
(viii) Economic sector	Nominal	ISIC Label A–U (V added for ‘multiple’ sectors)
(ix) Economic industry	Nominal	ISIC Code 1–99
(x) Duration of ban	Dummy	1-Specified; 0-Unspecified
(xi) Duration, if specified	Continuous	Years (decimal if months specified)

Because researchers have different coding habits, initial meetings were held to check the application of *a priori* category codes and reach consensus on appropriate labels. Early in Phase 2, intercoder agreement was assessed through mutual coding exercises in *Dedoose 4.12* qualitative coding software to confirm sufficiency of agreement on main categories, using pooled Cohen’s Kappa coefficient (κ).⁵³ For all but one of the categories assessed, Kappa Scores ranged from 0.59 to 1.00 yielding fair-to-excellent agreement.⁵⁴ For these, minor discrepancies were resolved through discussion. The only category that was consistently below acceptable thresholds for agreement ($\kappa < 0.40$) was the CVS “offense severity” category. As such, this category was dropped from final analyses. It was replaced with a continuous measure for length of sentence and/or imprisonment specified in the law—a verifiable quantitative category commonly used in laws as a heuristic for crime severity.⁵⁵

III. Findings

Our first objective was to describe the number of laws and legal restrictions on employment for people with criminal convictions in the OECD. Additionally, we wanted to explore longitudinal and historical trends such as when lawmaking increased for certain sectors and industries.

⁵⁰ INTERNATIONAL LABOUR ORGANIZATION, INTERNATIONAL STANDARD INDUSTRIAL CLASSIFICATION OF ALL ECONOMIC ACTIVITIES, 4TH REV. (2008).

⁵¹ UNITED NATIONS, INTERNATIONAL CLASSIFICATION OF CRIMES FOR STATISTICAL PURPOSES, VERSION 1.0 (2015).

⁵² Conrad et al., *Validation of the Crime and Violence Scale (CVS) Against the Rasch Measurement Model Including Differences by Gender, Race and Age*, 34 EVAL. REV. 83 (2010).

⁵³ De Vries et al., *Using Pooled Kappa to Summarize Interrater Agreement across Many Items*, 20 FIELD METHODS 272, 272 (2008) (“Cohen’s kappa statistic . . . is a widely used measure to evaluate interrater agreement compared to the rate of agreement expected from chance alone on the basis of the overall coding rates of each rater . . . This chance-corrected statistic is an important measure of the reliability of qualitative data . . .”).

⁵⁴ MATTHEW B. MILES & A. MICHAEL HUBERMAN, QUALITATIVE DATA ANALYSIS: AN EXPANDED SOURCEBOOK (1994).

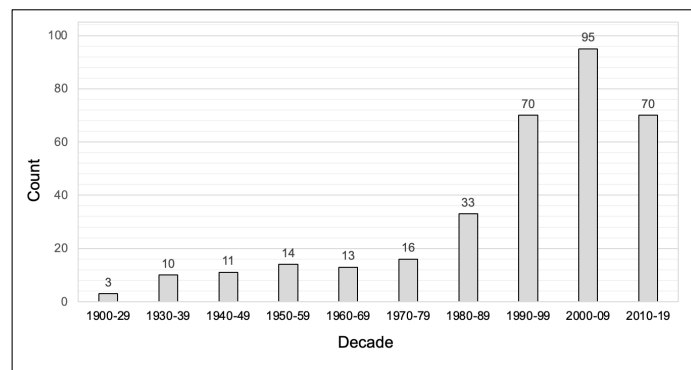
⁵⁵ See, e.g., Elizabeth Berger & Kent S. Scheidegger, *Sentence Length and Recidivism: A Review of the Research*, 35 FED. SENT’G REP. 59 (2022).

A. Number, Scope, and Content

i. Number

One preliminary finding was that, starting in the late 1980s and early 1990s, the OECD saw a dramatic rise in lawmaking restricting access to work for people with criminal convictions. This mirrored the growth in incarceration rates across the OECD during this time.⁵⁶ Sixty-seven (67) total national laws were observed in the eight decades from 1900–1979. This number increased by almost 50% in the 1980s alone (33 new laws), followed by a further unprecedented rise in the 1990s (70 new laws) and 2000s (95 new laws). The trend appears to have slowed somewhat in the 2010s (70 laws) and 2020s. Figure 2 summarizes the total number of relevant new laws across the OECD by decade. Nations with the highest number of relevant laws were the United States (53), Belgium (17), Australia (16), Poland (16), and Korea (14).

Figure 2. New Legislative Employment Restrictions in OECD Nations by Decade, 1900-2019



ii. Scope

To explore the *scope* for these laws, we looked at the sector and industry restrictions present, with an emphasis on longitudinal trends and policy diffusion. The raw number of laws passed is not the only—or even best—measure of the scope of collateral consequences, because a single law might be narrowly tailored to restrict specific job types, or it might broadly affect an entire economic sector or even multiple sectors.

Over four hundred separate sector restrictions ($n = 407$) were identified within the laws reviewed ($n = 335$), plus twelve instances of a restriction too broad to be coded appropriately within *ISIC* definitions. Table 2 summarizes the number of restrictions observed across sectors, based on *ISIC* definitions and labels, sorted by a *saturation* statistic representing the percent of OECD countries that contained at least one legislative restriction in a particular sector. Saturation is a useful measure for the scope of lawmaking because it is resistant to bias stemming from few nations passing many laws. A thicker line is used to separate sectors that were restricted in more than half of OECD countries.

⁵⁶ See WALMSLEY, *supra* note 28, at 70.

Table 2. Restrictions by Sector, Sorted by OECD Saturation (%)

Sector	ISIC Code	Count	Saturation
Human Health & Social Work Activities	Q	57	78.9%
Financial & Insurance Activities	K	68	76.3%
Public Administration & Defense	O	57	71.1%
Transportation & Storage	H	42	52.6%
Professional, Scientific & Technical Activities	M	37	47.4%
Administration & Support Service Activities	N	35	47.4%
Education	P	24	44.7%
Manufacturing	C	30	39.5%
Construction	F	11	21.1%
Wholesale & Retail Trade	G	15	15.8%
Information & Communication	J	6	15.8%
Real Estate Activities	L	7	10.5%
Arts, Entertainment & Recreation	R	3	7.9%
Agriculture, Forestry & Fishing	A	11	5.3%
Mining & Quarrying	B	2	5.3%
Electricity, Gas, Steam & Air	D	1	2.6%
Other Service Activities	S	1	2.6%
Multiple/Broad	V	12	NA
Total Restrictions		419	

Financial & Insurance Activities, *Human Health & Social Work Activities*, and *Public Administration & Defense* were the most regulated sectors. *Financial & Insurance Activities* were restricted in the highest number of laws (68), while *Human Health & Social Work Activities* had a marginally higher saturation, appearing in 30/38 countries (78.9%). 17 out of 21 ISIC sectors were subject to some significant national restriction. The four sectors with no observed restrictions were: (1) *Water Supply; Sewerage, Waste Management & Remediation*; (2) *Accommodation & Food Service*; (3) *Households as Employers*; and (4) *Extraterritorial Organizations*.

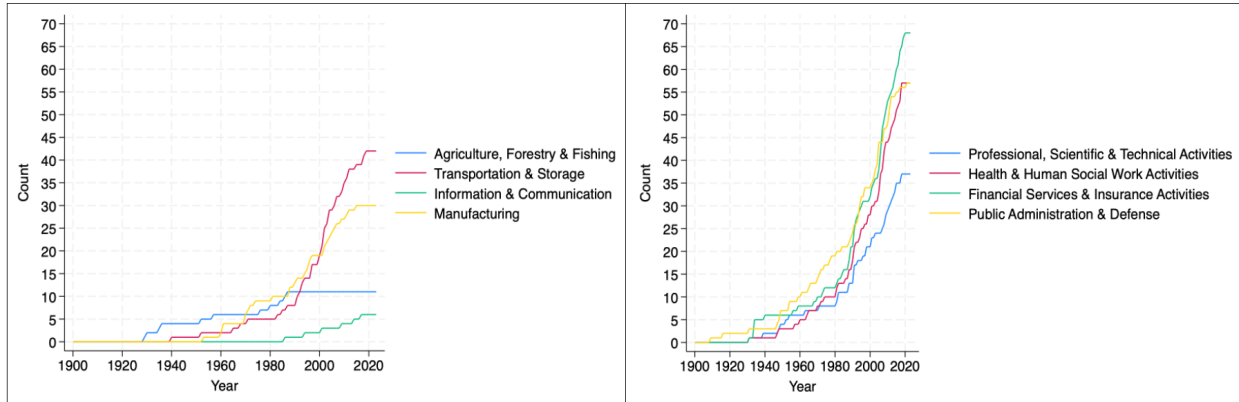
Figure 3 shows the growth in lawmaking across a subset of sectors. Visual inspection reveals interesting, yet intuitive, patterns. For instance, our analysis shows that early in the twentieth-century the only sector subject to clear restriction based on convictions was *Public Administration & Defense* (1909, 1916).⁵⁷ These examples mirror constitutional provisions from early nation states restricting people convicted of certain crimes from holding public office.⁵⁸ The second sector where regulations emerged was *Agriculture, Forestry & Fishing* in the late 1920s, followed by financial sector in the early 1930s, coinciding with the Great Depression.⁵⁹

⁵⁷ Both early examples are from the United States. Pub. L. No. 350, § 5334, 35 Stat. 1088, 1088 (1909) (“Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States, or gives aid or comfort thereto . . . shall . . . be incapable of holding any office in the United States.”); National Defense Act of 1916, 10 U.S.C. § 504(a) (U.S.) (“No person who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony, may be enlisted in any armed force. However, the Secretary concerned may authorize exceptions, in meritorious cases, for the enlistment of deserters and persons convicted of felonies.”).

⁵⁸ See *supra* note 9 and accompanying text.

⁵⁹ See generally Youssef Cassis, *Regulatory Responses to the Financial Crises of the Great Depression: Britain, France, and the United States*, in POLICY SHOCK: RECALIBRATING RISK AND REGULATION AFTER OIL SPILLS, NUCLEAR ACCIDENTS, AND FINANCIAL CRISES, 349 (Edward J. Balleisen, Lori S. Benneer, Kimberly D. Krawiec & Jonathan B. Wiener eds., 2017) (describing the proliferation of employment regulations in Britain, France, and the United States during and following the Great Depression).

Figure 3. Cumulative Proliferation of OECD Legal Restrictions by ISIC Sector, 1900-2023



iii. Content

For sectors and industries subject to regulation in multiple countries, one interesting qualitative finding was that issues related to legislative *broadness* appear to be ubiquitous. Most countries that legislated on financial sector jobs had multiple relevant laws governing nearly the entire sector—insurance, banking, securities, investments, markets, etc.⁶⁰ Surprising similarities in the content of these laws—and their specific prohibitions towards people with convictions—potentially reflect a broader globalization and ideological diffusion.⁶¹ Next, we provide some illustrative examples of specific restrictions from different sectors, industries, and countries, to demonstrate similarities and subtle differences in the content of these laws across context. Table 3 provides examples of financial sector provisions. Text units that mapped to categories are italicized with category codes in brackets.

Table 3. Sample Financial & Insurance Activities Restrictions

Legislation	Reference	Content
Canada [i] Bank Act [ii] of 1991 [iii]	§ 627.18	“[permissions to open retail deposit account] <i>do not apply</i> [v] . . . if the natural person has a <i>history of illegal or fraudulent activity</i> [vi] in relation to providers of financial services and <i>the most recent instance of such an activity occurred less than seven years</i> [x,xi] before the day on which the request to open a retail deposit account is made”
Denmark [i] Financial Business Act [ii] of 2019 [iii]	§ II.9.b(1)	“[regarding registration of financial intermediaries called ‘tied agents’] Danish FSA will register a tied agent only when the following conditions are met [v] . . . the person concerned . . . presents proof that they have never been imprisoned for 4 months or more [vii] for breaches of Chapter 28 of the Danish Criminal Code [vi].”

⁶⁰ See, e.g., Superannuation Industry Supervision Act of 1993, Act. No. 78/1993, Pt. 15, Div. 1, § 120(1)(a)(i) (Aus.) (“an individual is a disqualified person if: . . . at any time . . . the individual was convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct”); Life Insurance Act 1995, Act No. 4/1995, § 245(1)(a)-(b) (Aus.) (“a person is a disqualified person if, at any time: . . . the person has been convicted of an offence . . . [including] conduct relating to insurance; or . . . dishonest conduct”); Securities and Investments Commission Act 2001, Act No. 97/2001, § 207(2)(c) (Aus.) (“The Minister may terminate the appointment of the Chairperson, the Deputy Chairperson or any other member [if the individual] . . . is convicted in Australia of an offence punishable by imprisonment for 12 months or longer”).

⁶¹ See Christopher R. Way, *Political Insecurity and the Diffusion of Financial Market Regulation*, 598 ANNALS AM. ACAD. POL. & SOC. SCI. 125, 125–126 (2005) (describing various “top-down” theoretical models for the international spread of financial regulation through a process of policy diffusion, including the role of globalization in the proliferation of similar regulations in different nations).

a. Mandatory versus discretionary

One consideration involves whether an employment restriction is *mandatory* or *discretionary*. Put simply, mandatory restrictions require that a person meeting certain criteria (such as specified criminal convictions) be denied access to a professional activity. On the other hand, discretionary restrictions are not automatic. Rather, when a person meets a certain criterion, this triggers a *discretionary review process* by some authority, such as a departmental commissioner or court.⁶² Both examples above are *mandatory* restrictions. This is significant because most laws reviewed contained at least one mandatory prohibition ($n = 201$; 60.0%). Thus, prohibitions of this nature are more the rule than the exception.

b. Economic sector and industry broadness

Another consideration involves how broad or narrow the restriction(s) are in terms of the economic sectors or industries affected. The Canada Bank Act⁶³ provision above governs a potentially broad array of sectors in that it applies to eligibility to open a retail deposit account, which means that while the law specifies “banking” as its focus, the provision likely impacts a range of additional sectors (such as *Wholesale & Retail Trade*). By comparison, the Denmark Financial Business Act provision more narrowly applies to a class of financial intermediary jobs requiring registration. This class of jobs can be coded as *ISIC* industry type “Financial service activities” (64) and group “Monetary intermediation” (641). In Canada, the financial sector accounts for about 800,000 jobs (4.5% of total employment), with about 280,000 jobs in the banking industry.⁶⁴ In Denmark, there are about 91,000 jobs in the financial services and insurance sector (3% of total employment).⁶⁵

c. Crime type and severity broadness

A third consideration involves how broad or narrow the restriction(s) are in terms of the types and severity of crimes covered. While the Canadian example above is broader with respect to applicability to economic sectors, both laws are broad in their catchment of offense *types*. The Canada Bank Act broadly specifies “a history of illegal or fraudulent activity.” Wording like this was common across cultures and legal systems. At first this appears specific to the category of fraud (*ICCSP* Level 7), but the presence of the coordinating conjunction “or” and broad meaning of “any history of illegal activity” makes the provision widely applicable. Similarly, the Danish example⁶⁶ pin references Chapter 28 of the Criminal Code, which appears to invoke specificity. However, Chapter 28 covers nearly every category and level of crime specified by the *ICCSP* (violent crimes, drug crimes, property, public order crimes, etc.). Again, this was common to the point of being a salient qualitative theme across lawmaking of this type.

While only the Denmark example specifies some criterion for offense *severity* (term of imprisonment of four or more months), the scope of such criteria must be viewed in context: the annual average length of

⁶² See, e.g., 7 U.S.C. § 499d(d)(3)(H) (U.S.) (“Secretary *may withhold* the issuance of a license . . . for the purpose of determining (a) whether the applicant is unfit to engage in the business of a commission [agriculture] merchant, dealer, or broker because the applicant . . . prior to the date of the filing of the application engaged in any practice of the character prohibited by this chapter or was convicted of a felony in any State or Federal court.”) (emphasis added); Attorneys Act 1949, Act No. 205/1949, Art. 64-7 (Jpn.) (outlining discretionary disciplinary procedure conducted by the bar association for disciplinary actions stemming from a criminal conviction); Transportation of Dangerous Goods Act, S.C. 1992, Ch. 34, § 34(1)(a) (Can.) (“Where a person is convicted of an offence, the court *may make an order* having any or all of the following effects . . . prohibiting the person for a period of not more than one year from engaging in any activity regulated under this Act . . .”) (emphasis added).

⁶³ S.C. 1991 Ch. 46 § 627.18(1)(b) (1991) (Can.).

⁶⁴ CANADIAN BANKERS’ ASSOCIATION, FOCUS: BANKS AS EMPLOYERS (2023); STEVE RANDALL, CANADA’S FINANCIAL SERVICES SECTOR IS GROWING FAST, WEALTH PROFESSIONAL (2017) [<https://perma.cc/TL2H-W6GJ>]; see also KELLY M. BABCHISHIN, LESLIE-ANNE KEOWN & KIMBERLY P. MULARCZYK, ECONOMIC OUTCOMES OF CANADIAN EX-OFFENDERS, PUBLIC SAFETY CANADA, RESEARCH REP. 2021-R002, 19 (2021) (finding in study involving 11,158 Canadian federal offenders that “economic outcomes . . . are quite poor, even after an average of 14 years following release from a correctional institution. Only half of released offenders . . . were in the labour market and, consequently, many were earning below the poverty line with a median income of \$0 . . . The average income of those who reported employment income was \$14,000.”)

⁶⁵ STATISTICS DENMARK, EMPLOYEES, EMPLOYEES BY INDUSTRY (Oct. 2023) [<https://perma.cc/HTT5-HXRY>].

⁶⁶ Financial Business Act 2006, Act No. 120/2006 § II.9.b(1) (*amended* by Act No. 457/2019) (Den.).

imposed prison sentence in Denmark hovers around 7–9 months,⁶⁷ meaning this particular provision would have wide applicability. Counterintuitively, an identical provision that would apply to a minority of convictions in a more punitive country like the United States—where the median state prison sentence is 1.3 years⁶⁸—can have broader impact in a country like Denmark. Only the Canadian example places a duration on the restriction (seven years from the occurrence of the illegal act). Variation exists as to how often countries specify duration and when the “clock starts” (i.e., from time the offense was committed, from completion of sentence, etc.).

One consideration that arises here is how consistently national lawmaking adheres to specificity and narrow tailoring as a *public policy objective*. At present, narrow tailoring does not seem to be a primary objective of restrictive lawmaking of this type. Approximately one third of all laws reviewed contained references to multiple industries within a single statutory restriction ($n = 112$; 33.4%).

This is a problem, because although legal provisions restricting access to work based on criminal convictions were rarely more than small provisions within omnibus legislation regulating diverse topics, these “small” provisions also tend to *stay on the books*. The rates at which legislative restrictions of this sort became inactive (repealed, lapsed, overturned by the judiciary, etc.) was exceedingly low ($\approx 95\%$ of laws observed were still in effect without even minor changes).⁶⁹ As such, overzealousness and overbreadth in adding provisions risks having outsized effects.

d. Moral panic

One interesting factor related to the growth in restrictions to certain sectors and industries involved the role of external political factors and events on employment restrictions. Because employment restrictions penalizing those with convictions are often minor provisions within larger lawmaking efforts, they are frequently swept up in larger political or economic events. For example, the “Air Transport” industry experienced two “waves” of lawmaking: in the mid-twentieth century as commercial aviation grew dramatically⁷⁰ and in the early 2000s, coinciding with governmental responses to the terrorist attacks of September 11, 2001.⁷¹ Similarly, high-profile terrorist attacks in the 2000s and 2010s led to broad finance sector restrictions housed within bills targeting “money laundering to finance terrorism” in 2002–2004 and 2015–2018 across Europe (e.g., Spain, Turkey, Belgium, Hungary, Latvia, Lithuania, Luxembourg, and Portugal).⁷²

e. Artificial narrowing

One emphasis of this study involves the extent to which labor markets for justice-impacted individuals are “artificially narrowed” by law, meaning that there exists a significant subset of jobs in certain sectors that people with criminal convictions simply cannot access because of legal restrictions. In other words, the labor market

⁶⁷ RAGNAR KRISTOFFERSEN, CORRECTIONAL STATISTICS OF DENMARK, FINLAND, ICELAND, NORWAY AND SWEDEN 2016–2020 (2022).

⁶⁸ DANIELLE KAEBLE, TIME SERVED IN STATE PRISON, 2016, BUREAU OF JUSTICE STATISTICS (2017).

⁶⁹ *But see* Education and Training Act 2020, Act No. 38/2020 (N.Z.) (*repealing* Education Act 1989, Act No. 80/1989 [N.Z.] in entirety); Education (Update) Amendment Act 2017, Act No. 20/2017 (N.Z.) (*repealing* Education Act 1989, Act No. 80/1989, Art. 65 [N.Z.] [staffing]).

⁷⁰ INTERNATIONAL CIVIL AVIATION ORGANIZATION, FACTS AND FIGURES: WORLD AVIATION AND THE WORLD ECONOMY (2013), https://www.icao.int/sustainability/pages/facts-figures_worldconomydata.aspx [<https://perma.cc/C6MT-WBJZ>].

⁷¹ *See* Act of 15 January 1958, Aviation Law (Luchtvaartwet) (Arts. 37a-37q) (Neth.); Aviation Act (Õhusõidukiseadus), RT I 2005, 29, 216 § 24³(2) (Est.) (language updated by RT I 2009, 4, 26) (“An Estonian citizen . . . who is not serving a sentence for a criminal offence or if information concerning their conviction has been expunged from the registry of convictions . . . may perform duties related to aviation security.”).

⁷² *See, e.g.*, Law of 18 September 2017 on Prevention of Money Laundering and Terrorist Financing, Art. 178 (Belg.) (adding language to Art. 5, § 1, of the Law of 11 February 2013 on the Organisation of the Profession of Estate Agent, that “[n]o one may practice the profession of estate agent if he has been deprived of his political and civil rights or if he has been declared bankrupt without having been granted a pardon or if his extract from the criminal record states . . . a criminal sentence . . .”); Law No. 83/2017, Regime for the Prevention of Money Laundering and Terrorist Financing, Art. 111(5) (Port.); Amendments to the Law on the Prevention of Money Laundering and Terrorist Financing, § 10(1) (Lat.) (prescribing that those who have been sentenced for committing an intentional criminal offence against the State, property or administrative order, or for committing an intentional criminal offence in national economy or while in service in a State authority, or for committing a terrorism related criminal offence, may not be a member of the senior management or the employee responsible for the compliance with the requirements of said Law).

that a justice-impacted person returns to is narrowed by law. One salient example of this can be found in the *Human Health & Social Work Activities* sector. Gatekeeping in this sector increased in the late 1930s–1940s, when many nations were creating or expanding their social insurance, disability, and healthcare service systems,⁷³ and some laws provided specific restrictions related to such programs.⁷⁴ Table 4 provides examples of healthcare and social work legislative provisions.

Table 4. Sample Healthcare & Human Social Work Restrictions

Legislation	Reference	Content
New Zealand [i] Health Practitioners Competence Assurance Act [ii] of 2003 [iii]	§§ 3, 16	“[purpose of the act is] to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practice their professions . . . [license denial for individual who] has been convicted by any court in New Zealand or elsewhere [vi] of any offence <i>punishable by imprisonment for a term of three months or longer</i> [vii], and . . . does not satisfy the Council that the offence does not reflect adversely on [their] fitness to practice [v].”
Norway [i] Health Personnel Act (<i>Helsepersonelloven</i>) [ii] of 1999 [iii] (as amended by Act. No. 100/2006)	Ch. 4 § 20a	“Whoever has accepted or are judged [v] under penal code 1902 §§ 192, 193, 194, 195, 196, 197, 199, 200 subsection 201 subsection c, 203 or 204a or criminal law 2005 §§ 291, 293, 294, 295, 296, 299, 301, 302, 303, 304, 305, 309, 310, 311, 312 and 314, [vi] is excluded from providing health care for children or people with disabilities.” [viii, ix]

As the examples above show, diverse industries fall under this sector, including healthcare practitioners (e.g., doctor, nurse, specialist) (*ISIC* industry type 86 “Human Health Activities”), but also residential care (*ISIC* industry type 87)—such as disability, eldercare, and childcare services—and social work activities (*ISIC* industry type 88). Broad lawmaking might also create significant restrictions to accessing administrative, maintenance, and other non-provider roles within such settings—in spaces where labor shortages are currently a serious problem.⁷⁵ In New Zealand, the healthcare and social assistance sector accounts for about 246,500 jobs (approximately 9% of total employment).⁷⁶ The healthcare and social work activities sector in Norway is large and growing, employing over 580,000 people (approximately 22% of total employment).⁷⁷

Just as government created some of the first work restrictions within its own sector, law-enforcement professions were the subject of some of the first significant legal barriers to licensure.⁷⁸ Table 5 provides examples of restrictions covering professional activities. One consideration here—connected to restrictions on

⁷³ See Social Security Act 1935, Pub. L. 74-271, 49 Stat. 620, 620 (U.S.); Social Security Act 1938, 2 Geo. VI 1938 No. 7 (N.Z.); Family Allowances Act 1945, 8 & 9 Geo. VI, c. 41 (U.K.).

⁷⁴ See, e.g., Medicare and Medicaid Patient and Program Protection Act 1987, 42 U.S.C. § 1320a-7(a)-(b) (U.S.) (providing for mandatory exclusion from participation in any Federal health care program of any individual that has been convicted of program-related crimes or of crimes relating to neglect or abuse of patients and for permissive exclusion for convictions relating to fraud, obstruction of an investigation, and controlled substance).

⁷⁵ ORSETTA CAUSA, MICHAEL ABENDSCHEIN, NHUNG LUU, EMILIA SOLDANI, & CHIARA SORIOLO, *THE POST-COVID-19 RISE IN LABOUR SHORTAGES*, OECD ECONOMICS DEPARTMENT WORKING PAPERS 9 (2022).

⁷⁶ Statistics for the percent of total employment comprised by the healthcare and social assistance sector in New Zealand is based on data from two sources, collated by the authors to arrive at the 9% estimate. NEW ZEALAND MINISTRY OF HEALTH, *THE COST AND VALUE OF EMPLOYMENT IN THE HEALTH AND DISABILITY SECTOR 7* (2020) [<https://perma.cc/DR6A-UEXM>] (noting that 246,500 people were employed in the employed in the health care and social assistance sector in 2019); THE WORLD BANK, *LABOR FORCE, TOTAL – NEW ZEALAND*, <https://bit.ly/3PEzM5V> (New Zealand’s total workforce in 2019 was 2,834,203).

⁷⁷ QERY, *NORWEGIAN LABOUR MARKET, JOB CREATION* (2024) [<https://perma.cc/RZ3R-WFP6>] (showing that the human health and social work activities sector is the largest employer in Norway, providing 683,858 jobs as of February 2024, a 5.9% increase over the prior three-year period, or about 22% of the 3.1 million jobs in the country).

⁷⁸ See *Attorneys Act 1949*, Act No. 205/1949, Arts. 64-67 (Jpn.); *Act on the Advocates 1952*, (*Wet op de rechtsbijstand*) § 2(a)-(b) (current through the Act of 5 January 2007) (Neth.); *Solicitor’s Act 1954*, Act No. 36/1954, § 34(1)(c) (Ire.); *Law of the Police (Ustawa o Policji)*, Act of 6 April 1990, Art. 25(1) (Pol.); *Act No. 85/1996 on the Legal Profession* § 9(2)(a) (Cze.).

public employment more generally—is the broader impact of excluding justice-impacted individuals from participating in public-sector jobs that bear a nexus to political participation and policymaking.⁷⁹ Restrictions to technical professions based on prior criminal justice involvement potentially affect a smaller number of jobs (e.g., 22,000 lawyers in Korea, 32,500 accountants in Japan⁸⁰), but the aggregate impact of such restrictions across diverse sectors (including real estate, research professions, private security, etc.) is important.

Table 5. Sample Professional Licensure Restrictions

Legislation	Reference	Content
Korea [i] Attorney-at-Law Act [ii] of 1963 (as amended through Act No. 8271/2007) [iii]	Art. 22(2)(1)(a)-(c)	“Any attorney-at-law shall <i>be prohibited</i> [v] from employing a person [ix] . . . who was convicted under . . . Articles 129 through 132 of the Criminal Act [vi] . . . A person who <i>was sentenced to imprisonment with prison labor or heavier punishment</i> [vii] and for whom <i>three years have not elapsed since [execution, termination, or exemption] of the sentence</i> [x].”
Japan [i] Certified Public Accountants Act [ii] of 1948 [iii]	Art. 4(ii)-(iii)	“A person . . . who has violated [specified crimes] . . . [and] who has been sentenced to imprisonment without work or a severer punishment [vii] and for whom five years have yet to elapse [x] . . . may not [v] become a certified public accountant [ix].”

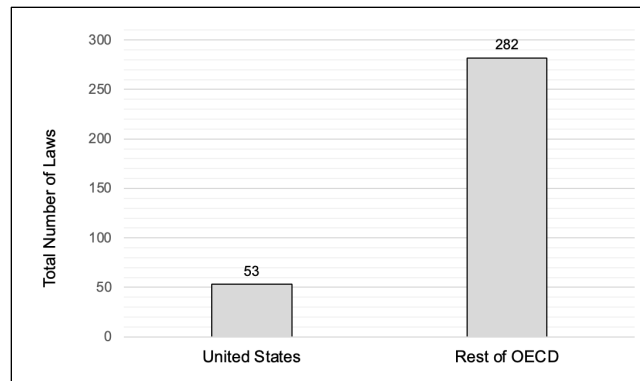
B. U.S. Case Study

To further explore the relationship empirically between lawmaking restricting employment and broader punitive practices, in this section we provide a case study analysis from the United States. While scholars have urged criminal justice researchers to avoid *American Exceptionalism*,⁸¹ our research suggests that the United States is indeed difficult to compare with other nations. Figure 5 illustrates this point, showing that the United States made up a disproportionate share of all laws observed in the OECD (53 out of 335).

⁷⁹ Beyond the implications for political participation, there are practical implications for employment. For example, while prohibitions on serving in public office might appear to be narrow within the scope of general employment restrictions, this can restrict many jobs. In the United States, for instance, most recent data indicate that approximately half a million people work in elected public offices, mostly at the local level. See SETH MOTEL, WHO RUNS FOR OFFICE? A PROFILE OF THE 2%, PEW RESEARCH (2014) [<https://perma.cc/RS5X-T4DL>]; *How Many Politicians are there in the USA?*, POLIENGINE (estimating that there are 519,682 elected officials in the United States, 500,396 of whom are local level officials; noting that most recent data is from 1992 and 2012, due to the difficulty in conducting a census count of local elected officials), <https://poliengine.com/blog/how-many-politicians-are-there-in-the-us> [<https://perma.cc/6KHH-SFWS>]. Similarly, in the United States, most recent data estimate that there are approximately 800,000 law enforcement jobs and 1.1 million private security jobs. U.S. BUREAU OF JUSTICE STATISTICS, NATIONAL SOURCES OF LAW ENFORCEMENT EMPLOYMENT DATA 5 (2016); U.S. BUREAU OF LABOR STATISTICS, OCCUPATIONAL EMPLOYMENT AND WAGES, MAY 2022 (2022).

⁸⁰ KOREA BIZWIRE, LAWYER FILES CONSTITUTIONAL APPEAL ARGUING “TOO MANY LAWYERS” (Dec. 28, 2016) [<https://perma.cc/5XZE-Z5DF>] (citing Korean Bar Association annual report on number of KBA-registered lawyers); JAPANESE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, OVERVIEW OF THE CPA PROFESSION (2021) [<https://perma.cc/MTG8-UHTQ>].

⁸¹ See, e.g., Corda, Rovira & Henley, *supra* note 23.

Figure 5. Number of Laws, United States and Rest of OECD

During the period of American “mass imprisonment”⁸² the United States outpaced all other nations in punitive practices, including those with comparable political structures and economic development.⁸³ During this prolonged period, the United States legislature also sharply increased lawmaking related to the creation of new crimes and sentencing requirements and enacted a new spate of collateral consequences.⁸⁴

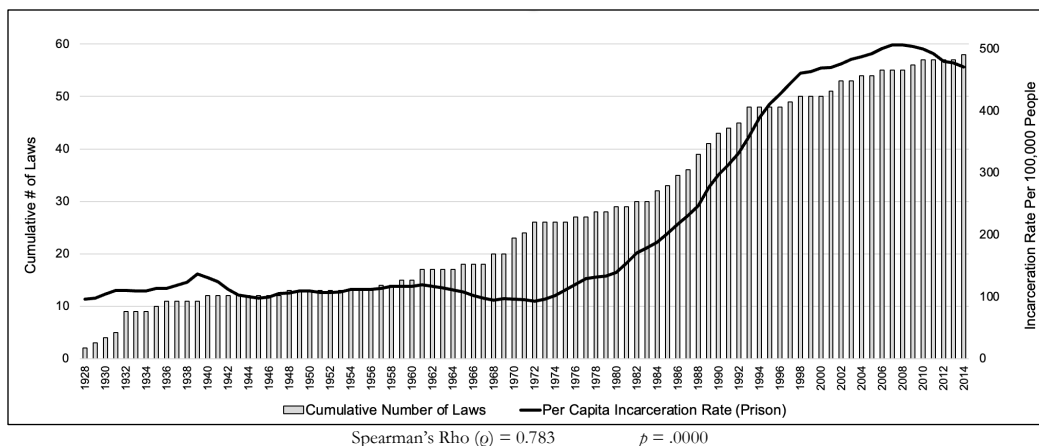
Figure 6 shows the cumulative number of national employment restrictions in the United States (1928-2014) mapped on top of a trendline showing the per capita rate of incarceration. As timeseries variables (one cumulative, the other continuous with a cumulative dimension), simple nonparametric tests for association indicate that the rate of punitive employment lawmaking in the United States was significantly correlated with the rate of incarceration over time with a strong, increasing monotonic-type relationship ($\rho = 0.7830$; $p = .000$).

⁸² DAVID GARLAND, MASS IMPRISONMENT: SOCIAL CAUSES AND CONSEQUENCES 1 (2001).

⁸³ *Id.* at 1 (noting that at the turn of the twentieth century, the United States prison and jail populations exceeded two million individuals); GAVIN BERMAN, PRISON POPULATION STATISTICS, HOUSE OF COMMONS OF THE UNITED KINGDOM 2 (2013) (showing total prison populations between 70,000 and 80,000 individuals in England and Wales at the turn of the twentieth century).

⁸⁴ See, e.g., GIANCARLO CANAPARO, PATRICK A. McLAUGHLIN, & LIYA PALAGASHVILI, COUNTING THE CODE: QUANTIFYING FEDERALIZATION OF CRIMINAL STATUTES, GEORGE MASON UNIVERSITY MERCATUS CENTER (2023); see also Personal Responsibility and Work Opportunity Reconciliation Act 1996, Pub. L. 104-193 (U.S.).

Figure 6. Cumulative U.S. Employment Laws and Imprisonment Rate, 1928-2014⁸⁵



Incarceration Data: U.S. Department of Justice, Bureau of Justice Statistics (BJS), *Prisoners, 1925-81* (1982); BJS, *Correctional Populations in the United States, 1994* (1995); BJS, *Prisoners in 2014* (2015).

Table 6 below provides final examples of laws from the United States that were passed during the late 1980s and early 1990s while the United States was legislating heavily on punitive criminal justice.

Table 6. Sample U.S. Laws Imposing Collateral Consequences

Legislation	Reference	Content
U.S. [i] Drug-Free Workplace Act [ii] of 1988 [iii]	41 U.S.C. § 8101-8104	Requires federal contractors/grantees to, within 30-day's notice of employee drug conviction, take appropriate personnel action "up to and including termination," or in some cases require participation in drug counseling." [v] Covers any drug conviction or nolo contendere plea under federal or state criminal drug statutes (felony or misdemeanor) [vi].
U.S. [j] Child Care and Development Block Grant Act [ii] of 1990 [iii]	42 U.S.C. § 9858f	Prohibits employment [v] of childcare staff member by childcare providers receiving federal financial assistance [viii,ix] if the individual has been convicted of certain specific felonies and/or misdemeanors. Covers Felony convictions for: murder; child abuse/neglect; crime against children; spousal abuse; rape or sexual assault; kidnapping; arson; physical assault or battery; drug offenses committed in preceding 5 years; or misdemeanors committed as an adult against a child. [vi,vii,x,xi]

The scope of these restrictions is potentially profound. For example, the Drug-Free Workplace Act of 1988 provisions apply to a deceptive number of jobs: there are about 5 million Americans employed by federal

⁸⁵ Data in this chart includes five significant legislative amendments to existing laws that added new employment restrictions, causing the total ($n = 58$) to exceed the number in Figure 5 above ($n = 53$). See Pub. L. 90-487 (1968) (U.S.) (amending 7 U.S.C. § 85) (adding provision for revocation and refusal of licenses rather than only applying civil penalties); Pub. L. 96-499 § 913(a) (1980) (U.S.) (adding new employment restrictions to federal social security program specific to Medicare and Medicaid program specific crimes); Pub. L. 100-182 (1987) (U.S.) (amending 29 U.S.C. § 1111(a)) (adding employment restriction prohibiting persons convicted of certain crimes from being employed or serving in specified prohibited capacities related to employee pension or welfare benefit plans regulated by federal law); Pub. L. 107-217, 40 U.S.C. § 590(f)(2), 116 Stat. 1117 (2002) (adding employment prohibition to Davis-Bacon Act reauthorization [40 U.S.C. §§ 3141-3148] for certain offenses and background check requirement for a "all workers" at child care centers located in executive facilities); Pub. L. 113-186 § 5(b)(2)(E), 128 Stat. 1990-1991 (2014) (U.S.) (amending 42 U.S.C. § 9858 *et seq.*) (adding new licensing and registration requirements for childcare service provider entities related to staff).

contractors and 1.8 million by recipients of federal grants.⁸⁶ These jobs also cut across a wide range of sectors due to the nature and scope of federal contracts. Similarly, jobs in the childcare space make up approximately 450,000 jobs in the United States,⁸⁷ and affect sectors that wouldn't immediately be apparent, such as jobs working in *Arts, Entertainment and Recreation*. Future studies should explore and estimate the aggregate quantitative impact of laws like this across the OECD.

IV. Conclusion

We presented findings describing the proliferation of restrictive legislation affecting access to employment for people with criminal convictions in the OECD. Findings illustrate that the diffusion and growth of restrictive collateral consequences to employment occurred during periods where incarceration rates were also growing. This indicates that the growth in such lawmaking might be tied to punitive ideologies, rather than to public safety objectives and rehabilitative principles. Descriptive statistics and qualitative analysis of themes also illustrate the extent to which collateral consequences to employment are cumulative in nature: *civil death by a million cuts*.

Over time, seemingly minor restrictions in finance, aviation, healthcare, childcare, etc. add up in ways that functionally close off access to large numbers of jobs. Moreover, as particular sectors and industries rise in political or economic importance—or their nexus to governmental function and budgets is realized—seemingly minor prohibitions tied to objectives of professionalization and public safety can result in prolonged barriers to work for people with convictions, who return home to a labor market that is increasingly artificially narrowed by legal regimes.

We also highlighted some key differences in the content present within difference national laws. Researchers can build on the groundwork in this Article to investigate the differential impact of minor-seeming differences in collateral consequences to employment, such as the explicit inclusion of durational limits, narrow/broad tailoring of job types and categories of crime, and clear pathways to removing these restrictions for individuals who demonstrate an ability to reintegrate.

Future studies might utilize the dataset to look more closely at political and economic events as drivers of legislative action, and at unintended consequences that such reactive lawmaking might entail. Another subject of future inquiry might focus on the impact of these laws as structural factors that artificially narrow labor market options (in a quantitative sense), and the cumulative effect of such limitations on labor market outcomes for the justice impacted.

⁸⁶ PAUL C. LIGHT, THE TRUE SIZE OF GOVERNMENT IS NEARING A RECORD HIGH, BROOKINGS INSTITUTION (2020), [<https://perma.cc/G8M2-NQKD>].

⁸⁷ U.S. BUREAU OF LABOR STATISTICS, *supra* note 79.

Appendix

Stata 18.0 Logs

```

# Test for correlation between two time-series variables: [1] cumulative number of laws restricting employment in the United States (CumulLaws) and [2] per capita
  incarceration rate in the United States [PerCapita]. Variable [1] has an explicit cumulative/additive dimension, Variable [2] is continuous with a partial
  cumulative dimension because research has shown that the per capita incarceration rate in the United States increased over time in part because of increased
  sentencing, mandatory minimums, etc. (so people who went to prison stayed in prison longer, adding to the per capita and gross rates).

# Specify time variable.

tsset Year

Time variable: Year, 1928 to 2014
Delta: 1 unit

# Non-parametric test for correlation, use Spearman's rank correlation coefficient because there is no assumption of normality with either variable or assumption of
  linearity. No theoretical independent/dependent variable, just looking for association.

spearman CumulLaws PerCapita

Number of observations = 87
Spearman's rho = 0.7830

Test of H0: CumulLaws and PerCapita are independent
Prob = 0.0000

# Create a line graph showing the growth of lawmaking by sector, 1900-2023

tsset Year

Time variable: Year, 1900 to 2023
Delta: 1 unit

tway (line AgricultureForestryFishing Year) (line ProfessionalScientificTechn Year) (line HealthHumanSocialWorkActiv Year) (line FinancialServicesInsuranceA Year)
  (line PublicAdministrationDefense Year) (line TransportationStorage Year) (line InformationCommunication Year) (line Manufacturing Year),
  xlabel(1900(20)2023) ylabel(0(5)70) ytitle("Count")

# Look at sectors connected to economic realignment and professionalization

tway (line AgricultureForestryFishing Year) (line TransportationStorage Year) (line InformationCommunication Year) (line Manufacturing Year), xlabel(1900(20)2023)
  ylabel(0(5)70) ytitle("Count")

tway (line ProfessionalScientificTechn Year) (line HealthHumanSocialWorkActiv Year) (line FinancialServicesInsuranceA Year) (line PublicAdministrationDefense Year),
  xlabel(1900(20)2023) ylabel(0(5)70) ytitle("Count")

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