

2021

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Recommended Citation

Baker, Michelle (2021) "Texas Disenfranchisement of Felons," *Quest*: Vol. 5 , Article 6.

Available at: <https://digitalcommons.collin.edu/quest/vol5/iss1/6>

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Policy Research Project

Research in progress for GOVT 2306: Honors Texas Government

Faculty Mentor: Tiffany Cartwright, Ph.D.

Michelle Baker wrote the following research paper as an assignment for my online GOVT 2306: Honors Texas Government class during the Fall 2020 semester. The class assignment helps students begin to formulate a classic policy paper, in which alternative policy options are discussed and analyzed, ultimately leading to a preferred policy option. Students submitted just a few paragraphs of the paper at a time over the course of the fall semester before finally pulling everything together in one cohesive research paper. As Michelle's paper progressed throughout the term, she continued to build on her research and add her own unique insights. Throughout the editing process for *Quest*, she continued that progress by fully engaging in the peer review process, and she has turned a simple class assignment into something truly inspiring. The disenfranchisement of felons, the topic chosen by Michelle, has increasing relevance to Texas and the U.S. today, and she beautifully connects the past policy decisions made by Texas to the current conversation about voting rights and race.

Texas Disenfranchisement of Felons

Michelle Baker

The United States has a long history of shifting and reconceptualizing voting rights for its citizens. Many populations have had to fight throughout history for their voting rights, relying on courts and legislation to secure them. There has long been conflict and struggle in the US with the question of who is permitted to vote, and throughout history prospective voters fought for inclusion (Grady, 2012). While nationwide suffrage was achieved over time with successive modification of state and federal laws, one group of Americans continues to be excluded from voting: felons (Grady, 2012). As in most states in the US, felons in Texas do not have the inherent right to vote. The debates about voter disenfranchisement have been ongoing, with opinions coming from all sides and belief systems.

The history of disenfranchisement in this country is irrevocably intertwined with the history of individual state disenfranchisement laws. Felon disenfranchisement laws were the first set of widespread legal measures restricting felon voting rights in the country, many of which can be traced back to the post-Civil War period (Carroll, 2020). The South, including Texas, specifically implemented this mechanism to block specific voters from polls. Only two states, Maine and Vermont, guarantee voting rights for all citizens, including convicted felons and those incarcerated. The laws enshrined in their state constitutions were established at the very beginnings of their respective

statehoods (Lewis, 2019). Unlike some states, Texas law does not entirely disenfranchise felons and permits them to vote with specific stipulations. Those awaiting a felony trial may vote, and those fully convicted may vote if they have completed their incarceration or the terms of supervision, probation, or parole. Felons may also vote if their conviction was pardoned (*Texas Election Code*, 2011). In this paper, I will explore the Texas laws regarding felon voting rights, offer alternatives to the existing statute, compare the positive and negative attributes, and offer personal views based upon research into felon disenfranchisement.

As stated previously, Texas offers felons the opportunity to reclaim voting rights. What if Texas restored voting rights to felons without stipulations, even extending voting to those incarcerated? Texas would join a very select group of states affording these rights. In Texas, during the 2016 presidential election, hundreds of thousands of citizens were not permitted to vote (Mitchell, 2018). In the United States, if the laws changed and felons had the right to vote without stipulation, that would add over 5 million voters (Spates & Mathis, 2014). This change in the law could bring a larger voter turnout and impact the outcome of elections. In 2000, George W. Bush won the presidential election by securing Florida electoral votes, taking the state by only 537 votes. More than 600,000 ex-felons in Florida were precluded from voting, which could have changed the landscape of the election and the future of the United States (Laden, 2002).

Felon disenfranchisement has been challenged many times throughout United States history and remains a controversial topic today. Disenfranchisement has a perilous history often rooted in racism. These laws were often intended to prevent black

Americans from the privilege of voting, avoiding what in 1901 was described as "the menace of negro domination" (Carroll, 2020, p. 400). Although the Constitution guarantees that voting rights are not stripped based on race, persistent disparities in disenfranchisement remain. Black males were historically and are currently disproportionately impacted by disenfranchisement laws. The black male population is "seven times more likely to be disenfranchised" due to felonies, with 1 in 13 black males of voting age disenfranchised ("Disenfranchisement," 2008). Disenfranchisement has the potential to impact not only individuals but also communities. When politicians appeal to the community, perhaps whole swaths of the population are ignored according to their disenfranchised status. If felons were not stripped of their vote, they would have the opportunity to connect their choices back to their community and use their vote to serve the community they are meant to rejoin (Stevens et al., 2019). Changing disenfranchisement laws could return political control to oft-ignored communities, allowing them to use voting as a rehabilitative action of positive investment in their communities.

Advocates of felon disenfranchisement claim that felonies represent some of the most egregious crimes in society and that state and federal laws should remain unchanged. They claim that by committing a felony, these offenders have broken their moral and social contract to society, and only law-abiding citizens should be afforded the right to vote (Kelly, 2020). They say felons should lose many of society's rights without public question or argument, such as being barred from owning firearms (Stevens et al., 2019). Therefore, according to disenfranchisement advocates, keeping

current federal and state laws serves as a punitive measure for those who are not law-abiding citizens in society: those who break the law should lose the right to choose who will represent them governmentally (Kelly, 2020). Another reason advocates support the current law is that most Americans support disenfranchising felons, and maintaining felon voting laws would honor the desires of the American people (Kim, 2019). If America is a democracy, they suggest, people's views should be reflected in US law.

Further, advocates argue that most states had existing felon voting laws before black Americans were allowed the right to vote. Therefore, felon disenfranchisement was not meant to preclude black voting rights, as black Americans did not have the right to vote when the laws were enacted. They contend disenfranchisement laws demonstrate that voting is not an inherent right since they were found Constitutional by the Supreme Court (Kelly, 2020). The most influential Supreme Court ruling that permitted felon disenfranchisement was the case of *Richardson v. Ramirez* (1974). In this case, the Supreme Court held that rather than protecting a felon's right to vote, states are explicitly allowed to disenfranchise felons under the 14th Amendment because of their convictions (Hinchcliff, 2011). Disenfranchisement proponents assert that the Supreme Court ruling upheld that felon voting laws are neutral and do not punish certain felons over others (Berkovitch & Gordon, 2016). Bolstered by the court's ruling, they believe the existing state law should remain and serve as a punitive measure to those that break laws in the most profound ways, showing society that there are consequences for not abiding by the law. They hold that a consequence of breaking

the law and committing a felony should be to lose the right to impact the government, and felons must then prove to society that they deserve that right by earning it back.

While Texas law restores voting rights upon completing all prison release stipulations, proponents of equal voting rights see this as only a first step. The final, just step is restoring voting rights and allowing every citizen to vote—no matter their criminal status. In Texas, black Americans are incarcerated approximately five times more than whites despite comprising only 15% of the overall population (Marable, 2008). Along with the disproportionate rate of incarceration, race is a factor in recidivism rates. Nationally, blacks have the highest rates of reincarceration and recidivism among all racial categories (Marable, 2008). According to those supporting equal voting rights, current felon voting laws are still rooted in the racist past of disenfranchisement, as it was historically used to take voting rights away from freed slaves (“Disenfranchisement,” 2008). They claim that voting laws—even loosened laws like those in Texas—continue disproportionately impacting black Americans today. They argue that allowing every Texas citizen to vote would achieve democratic voting equality and abolish the disproportionate nature of felon disenfranchisement. Black Americans, through disenfranchisement, have been governed by democratic law but barred from the political process that decides those laws (Whitt, 2017). From this standpoint, restoring felon voting rights would reclaim political power and voice in the democratic process; in other words, “what the crime has torn asunder, voting can glue together” (Stevens et al., 2019, p. 226).

The 15th Amendment guarantees that voting rights cannot be denied based on “race, color, or previous condition of servitude” (Spates & Mathis, 2014, p. 93). Felon disenfranchisement impacts black voters more than any other group, and restoring these rights prevents voter denial along racial lines. Beyond arguing for equal voting rights regardless of race, those who oppose disenfranchisement argue that voting is not a privilege to be taken away. Voting is integral to true democracy, and taking away the right to vote relegates the disenfranchised to second-class citizens, unworthy of the honor of the ballot box (Grady, 2012). Denying felons the right to vote relegates them to being citizens without representation. Inmates and felons are in a unique in-between situation as Americans and Texans; they are acknowledged as full citizens but unable to participate in their own nation's representation and administration (Stevens et al., 2019). Elections cannot be fair and democratic without the voice of all Americans. If felons could use their voice to vote, they could impact local and national elections, choosing who best represents their community and their futures.

Changing laws requires debate and careful weighing of risks and rewards. No law will be accepted by or dismissed by all. Felon disenfranchisement has had a place in American history from its inception. Laws disenfranchising felons were a legal tradition that existed before the Civil War and were then adapted and expanded post-war to preserve political order; lawmakers used examples of “infamous” crimes to block more felons from voting (Baburam, 2015, p. 112). By today’s standards, felonies are the most severe crimes in society. Those who want to keep current laws on the books argue that the United States began with felon voting laws, and changing those laws

would ignore the historical significance of the nation's founding (Sigler, 2014). These historical laws have been reinforced by the 14th Amendment and bolstered by multiple Supreme Court rulings. Undoing the Constitutional framework strengthened by the Supreme Court would be claiming that the law is not compatible with the highest court in the country ("Disenfranchisement," 2008).

Historic disenfranchisement was formed from the idea of "civil death," a punishment that strips a criminal of their political rights, and the laws carry on this way today (Sigler, 2014, p. 1738). To change established law and allow prisoners and felons to vote would remove the punishment for breaking the civic duties and social contract that Americans should not harm others (Sigler, 2014). Felon disenfranchisement "is ideally suited to mark the breach of civic trust that criminal wrongdoing represents" (Sigler, 2014, p. 1728). Advocates suggest that society loses trust in those who engage in criminal activity and ask how community members can trust felons to exercise judgment or to make responsible civic decisions? When felons break this trust, they must earn that trust back by finishing the required punishments and parameters set forth by the courts. Until the felon has done so, the public is left to wonder if the felon will break this trust again and if they are trustworthy enough to vote responsibly (Sigler, 2014).

But should Texas law stay the same? Advocates of disenfranchisement claim that being a good citizen requires earning back the right to vote, but opponents argue the right is inherent and interminable ("Disenfranchisement," 2008). Democratic legitimacy is at stake in denying voting rights; the US remains out of step with other

Western democracies if disenfranchisement remains in place. Felon disenfranchisement is rare among the developed world, and keeping pace with our allies would require the US to strike down disenfranchisement laws (Berkovitch & Gordon, 2016). Most European states do not automatically strip felons' voting rights and consider this action to be an “egregious violation of human rights” (Berkovitch & Gordon, 2016, p. 505). The enfranchisement of felons among democracies is nearly universal, with the US being an outlier (Berkovitch & Gordon, 2016).

To live in a democracy is to have the right of civic duty; denying that taints democracy and forbids millions of Americans from performing their duty to vote. Stripping this civic duty impacts black Americans disproportionately, as 13% of black men cannot vote due to the impact of disenfranchisement laws (“Disenfranchisement,” 2008). Historically, disenfranchisement has been a tactic to suppress black voters and erode civil rights—especially in the South (Newkirk, 2016). With large groups of the population disenfranchised, political candidates do not acknowledge entire communities, effectively silencing their community voice (Sigler, 2014). This impact magnifies inequality by further marginalizing communities already disenfranchised. Although considered temporary, the significance of disenfranchisement in Texas is profound (Stevens et al., 2019). Texas has one of the largest prison populations in the country: between inmates and those on probation and parole, approximately 500,000 people were prevented from voting in 2016 (Stevens et al., 2019, p. 211). When the public imagines felons, they often picture frightening and dangerous criminals. However,

violent crimes such as rape, burglaries, and robberies only comprise 8% of all felonies (“Disenfranchisement,” 2008).

From a purely emotional reaction, felon disenfranchisement makes perfect sense: they are, in fact, felons who broke trust with society and committed what are considered the most serious of crimes. When issues are laid flat—society does not often dig beneath the surface—answers to perceived problems can appear simple and obvious, and this paper has shown that felon disenfranchisement is one such issue. Voting is an inherent right guaranteed by the Constitution and essential to true democracy. Voting is not a privilege to be earned or lost; it “is a right of citizenship and shouldn’t be connected to punishment” (Liebelson, 2019). Felons, even those in prison and on death row, should never lose their right to vote.

Voter disenfranchisement changed as the country grew to fit society’s reliance on systemic racism. Black Americans have been historically subjected to voter suppression tactics, such as changing the crimes that qualified for disenfranchisement to crimes that they were more likely to commit (Kelly, 2020). There have been poll taxes, literacy tests, and intimidation. However, felon disenfranchisement stripped large numbers of their voting rights and continues to do so today (Staples, 2014). Texas has the sixth-largest incarcerated population but the highest number of disenfranchised voters (The Sentencing Project, 2019), and black Texans are incarcerated at five times the rate of the white Texans (Marable, 2008). The criminal justice system disproportionately impacts black Texans and black Americans as a whole. If current incarceration and disenfranchisement trends continue, 30-40% of black males will lose their right to vote

in the future (Ruth et al., 2017). There are populations of black Americans—whole communities—who are underrepresented in the government because of felon disenfranchisement.

While punishment for crimes must be carried out, the punishment must fit the crime. This punishment should not include stealing political power and voice from one group of people. Some might argue that the law's intent is not rooted in suppression for black voters, and if the law does not have the intent, it is not racist. I argue that there is historic intent that has never been rectified, and even if the intent were absent, the practice of the law disproportionately harms one group of people. While the egregious intent has been removed from the law, with some claiming disenfranchisement as neutral, the law remains faithful to the original promise of preventing black voters in significant numbers (Stevens et al., 2019). To render any citizen second class is an affront to the founding of the United States, the Constitution, and to democracy.

The arguments for and against felon disenfranchisement are plentiful and passionate. Politicians and those disenfranchised will continue this debate for some time. There are legitimate and historical arguments on both sides of the issue that should be heard and considered. Felon disenfranchisement is not an issue that regular citizens often encounter. Even so, disenfranchisement impacts millions of Americans, and changing the law has the potential of impacting elections. Proponents of disenfranchisement most often rely on rhetoric suggesting that felons are second-class citizens, unworthy of casting a ballot (Grady, 2012). As the debate goes on, lives will go on, and so will elections. Many lives, however, do not move forward in society. They are

cast aside civically and denied opportunities to choose government representation.

Recent trends in law-making have caused states to adopt policies with disproportional impact. These policies are “harmful based on their ability to isolate people and whole communities from the decision-making power associated with voting” (Blesset, 2015, p. 5). Disenfranchisement strips citizens of their fundamental right to vote and communicates that people in power are concerned with the voices of those who also have power or privilege. All too often, the silenced voices are black. Restoring voting rights will allow historically marginalized black communities the opportunity to choose who will represent them and hold power. Lawmakers should restore voting rights and tell society that all voices deserve to be heard in equal measure.

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