

What Gives You The Right?

An Overview of Voting Rights and Restrictions in United States Public Policy

Sarah D. Young

Westminster College

Introduction

I have chosen to study public policies that protect or restrict voting rights. I was surprised to learn that the universal right for all United States citizens to vote is not explicitly enshrined in the United States Constitution (Milford, 2015). The right to vote has been and continues to be one of the most highly contested issues in U.S. politics. While voting is an essential component of our democracy, granting or restricting voting rights have become great political tools to gain power and win elections, even at the expense of the good country and its people.

Defining Public Policy

Before discussing public policy surrounding voting rights, it is helpful to define and clarify exactly what public policy is and how it is created. Although scholars struggle to agree on a precise definition, it is possible to define some key characteristics of public policy. The consensus of scholars is that public policy involves a choice to react to a perceived public problem, planning and carrying out the actions required from the choice made (enforced by the “coercive power of the state”), and the produced outcomes of those actions (Smith & Larimer, 2009).

With this general outline of what public policy is, we can then analyze how and why policies are created and who is involved in creating them. Scholars can take advantage of multiple sources of political theory to interpret public policy. Common political models, such as game theory, rationalism, process theory, and

elite theory, understand public policies and how they are made (Dye, 2013).

Kamarck (2013) advocates using a battlefield analogy as a model to understand how and why public policies are created. She argues that it is vital for policy entrepreneurs to fully understand six factors that come into play when assessing public policy. We must first assess the type of problem we need to address, then the perceived solution. Then we must look at the inside players in government and see where their loyalties lie and what outside players, such as think tanks and lobbying groups, influence the game. Next, it is necessary to break down the strategies and tactics used to create change and measure the scope of conflict surrounding the problem. Lastly, we must seek to understand the effects of elections on the issues. Using these six factors to break down the complexity of voting rights policy is essential to understanding how we can affect change going forward.

Voting Rights

The first significant policy ensuring voting rights enacted by the federal government was the 15th amendment of the United States Constitution, which guaranteed voting rights for men regardless of race or color. Enacting this law in 1870 led to a surge in Black voter turnout and the election of Black representatives at many levels of government, known as the Reconstruction Era (Haygood, 2012). However, in 1877, the supreme court limited the scope of two laws protecting the 15th Amendment, the Enforcement Act, and the Force Act,

allowing state legislators to strike Reconstruction-era laws from their books. In their place, they began gerrymandering districts and enacting laws such as poll taxes and literacy tests. While these decisions were touted as “color-blind” laws, it was clear they were explicitly designed to disenfranchise Black voters (Department of Justice, 2015).

The Civil Rights Movement and shifting public opinion on race relations allowed a window of opportunity for federal policymakers to enact laws to reign in state-by-state disenfranchisement and more fully enforce the protections of the 15th Amendment. The Voting Rights Act of 1965 prohibited the use of literacy tests at the polls and charged the attorney general to investigate the constitutionality of poll taxes. It also outlined special provisions to help enforce the law in states with the worst records of disenfranchisement and prevented new suppressive laws from being enacted again. In addition, there were several expansions of the Voting Rights Act, expanding protections to “language minorities” and extending the enforcement provisions outlined in section 5 (Department of Justice, 2015). Although the Voting Rights Act and its expansions successfully outlined protections for voters and laid the groundwork to enforce such protections, states continue to undermine the Voting Rights Act and disenfranchise minority voters.

After the Civil Rights Era, voting reform (specifically, the fight against voter suppression) was not an issue at the forefront of public or policymaker interest. Until the 2008 Presidential election, which saw a record turnout from Black and

minority voters (Haygood, 2012). Realizing they had failed to make their platform popular among minority groups (Hicks, Mckee, Sellers & Smith), Republicans led a surge of efforts to increase restrictive voter ID laws, slash early voting times, and make it harder for voters to register in each state. As a result, 2009 alone saw a record 120 Voter ID laws introduced to legislatures throughout the country (Hicks, *et al.*). Haygood (2012) argues that this is a direct reaction to minority turnout and the increasing population of minority voters in future elections. These laws are specifically designed to disenfranchise minorities, young voters, and the poor.

While gerrymandering districts and restricting early voting and election day registration can be written off as blatant forms of political game-playing, the most easily legitimized and successful voter suppression efforts seen today are Voter ID laws. As was the case with Jim Crow Era Laws, these laws are being touted as benign efforts to protect the voting process from fraud and corruption (Hicks *et al.*). However, despite popular belief, extensive research shows that the occurrence of voter fraud is nearly nonexistent (Brennan Center for Justice, 2017). Unfortunately, this myth has been perpetuated with increasing vigor by the current Trump administration (Domonoske, 2017).

Lamentably, The idea that “generally applicable and evenhanded restrictions that “protect the integrity and reliability of the electoral process itself” should be supported (as quoted in Ellis, 2012, p. 109) was upheld in a series of court cases attempting to fight voter ID laws. Beginning with Crawford vs.

Marion County Election Board in 2008, the supreme court used a flawed “balance test” to determine that restrictive voter ID laws did not cause undue inconvenience for voters, despite growing evidence of disenfranchisement directly generated by these laws (Trotter, 2013). Republicans have successfully used these court victories to present Voter ID laws to the public, and the support they have created allows them to feel justified to continue creating them (Hicks *et al.*).

The impact of voter suppression may seem minimal; however, even the slightest advantage over the competition can make or break a victory in such highly competitive partisan elections typical in recent years (Hicks *et al.*). While Democrats have focused their efforts on voter mobilization and encouraging especially disadvantaged groups to vote, Republicans will continue to take the more offensive approach. “After all, one can win an election by getting more supporters to the polls or, conversely, having fewer of the opposition’s backers show up” (Hicks *et al.*, p. 19, 2015). With today's highly polarized political climate, it is unlikely that the parties will find common ground on this issue any time soon.

Conclusion

History shows us that though voting rights are a state issue, positive change has only occurred when enacted with sweeping federal policy initiatives. Conversely, more restrictive laws have been more successful when introduced

incrementally. By comparing the 308 bills to enhance voting rights on the legislative agenda in 2017 to the 46 restrictive voting laws set to be introduced (Brennan Center for Justice, 2017), it must be called into question whether the efforts of Democrats are being diluted. However, regardless of the method used to combat voter suppression, it will be more vital than ever to explicitly protect all United States citizens' voting rights within the constitution and enact laws prohibiting states from undermining that protection. Protecting voting rights means preserving our democracy and allowing it to be governed, not by elite parties of political players, but by its citizens as it was intended.

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