

**Politics & Public Policy: Felon Disenfranchisement Laws  
Fall 2005**

PROFESSOR: Dr. Middlemass, Visiting Scholar  
Institute for Research in African-American Studies (IRAAS)  
Andrew W. Mellon Postdoctoral Fellow, Vera Institute of Justice

COURSE NUMBER: AFAS G4080 Section 003  
SEMINAR LOCATION: IRAAS Conference Room, 758 Schermerhorn Extension  
SEMINAR TIME: Monday, 4 – 6 pm  
EMAIL: km2310@columbia.edu  
OFFICE PHONE: 212.854.9792  
OFFICE HOURS: 2:30-3:30 Monday or by appointment  
OFFICE LOCATION: 1433 International Affairs Building (IAB)

**Course Overview:**

Electoral laws, inextricably linked to the criminal justice system in 48 of the 50 states, perform a remarkably similar function and the laws governing the right to vote in the United States are as ironic as they are exemplary: In many states, individuals deemed eligible to be released from prison and rejoin society are at the same time not considered qualified or competent to cast a ballot in federal and state elections. Pardon and parole boards, sentencing courts, secretaries and departments of corrections carefully deliberate before judging a convicted felon rehabilitated and suitable to re-enter society. While a convicted felon may meet the requirements to be released from prison and resume living unconfined, these same individuals are not considered fit to vote by election boards, state legislatures and the U.S. Supreme Court. With the above in mind, this course is intended to consider the role of politics and policy in the development, formation and continuation of felon disenfranchisement laws.

Originally disenfranchised, the struggles of African Americans will be the focal point. This one group is emphasized for three important reasons. First, Blacks are one of only three groups to have required a constitutional amendment to secure the right to vote (women and 18-year-olds are the other two). Second, African Americans have an exceptional historical experience in America that is revealed through the study of American law, politics and society. Third, the electoral and judicial systems are burdened with a history of racial injustice, inequality and discrimination, and the two systems working in tandem are creating a stratified society that effectively locks out felons from the voting booth.

In an effort to understand the above struggles, we will canvass an eclectic selection of course readings which will be drawn from the U.S. Constitution, law review articles and social science literatures (*i.e.* political science, criminal justice and sociology). These diverse readings are designed to provide an intellectual challenge and richer understanding about the nature, the promise and the disappointment of voting rights policy in America. The goal is to teach you to think about the law more broadly – where it comes from and how it develops – in order to see how it is intertwined with the social, political and policy dynamics of America. Detailed topics of discussion include the debate over whether or not the right to vote is a fundamental right or a

privilege; how the penal system is in effect the “gatekeeper” for the electoral system; the development of voting rights policy; the U.S. Constitution’s role in restricting and expanding the right to vote; the Voting Rights Act of 1965; and a state’s right to regulate legally the franchise.

**Requirements:**

All written assignments must be typed, using 1-inch margins utilizing an appropriate size font (11 or 12 pitch depending on font) and handed in at the beginning of class with your name and date in the upper right hand corner. Cover or title pages are not necessary for the Case Study and Legislative Brief, but a title page and abstract are required for the research paper. The Case Study and Legislative Brief can be single-spaced; however, the research policy paper must be double-spaced.

**Case Study & Presentation (50 + 25 = 75 Points):**

Choose one of the 48 states that disenfranchises felons and detail the historical and contemporary reasons why such laws exist in that particular state. Consider the historical, cultural, political and economical issues, as well as race relations, within “your” state. What is the rationale (historic, policy, political, racial, legal or a combination of such) for the state to have disenfranchisement laws? Develop an analysis of your state’s disenfranchisement laws; include in your discussion relevant legislative, executive and judicial decisions, as well as the state’s culture in your determination. Each student will prepare a two-page handout for class and an 8-10 minute presentation. Students will sign up for a state and specified date to present their state level analysis.

**Legislative Brief & Presentation (50 + 25 = 75 Points):**

Since 2000, several states have enacted legislation scaling back or repealing various aspects of disenfranchisement laws. Find a state that has repealed or changed its disenfranchising laws in recent years and write a two-page legislative brief analyzing the political climate of the state that led to such a change. Changes include anything related to easing the plight of disenfranchised individuals and voting.

Each student will present and share their legislative brief with the class. Presentations include two components: (1) an overview of the state’s politics and (2) an evaluation of political and non-political factors that led to the change in policy (*i.e.* What intervention created an environment conducive to change?). Briefs will be graded on substantive content. Presentations will be graded on the coherence of delivery and material covered in approximately 10 minutes.

**Policy Paper & Presentation (100 + 50 = 150 Points):**

**ALL POLICY PAPERS are DUE at 4pm on Monday, December 5, 2005, regardless of what date you present.**

Each student will write one of three term papers (approximately 20 pages in length, exclusive of annotation) on the topic of felon disenfranchisement laws. If a student would rather develop their own line of research, please consult the professor for prior approval. In fairness to students who hand in their papers on time, late papers will be assessed a 15% penalty for each day the paper is late. It is expected that each student will research and consult relevant primary and secondary literature and sources. Students will be strongly encouraged to submit an abstract of their paper to a conference or submit a revised manuscript for review at an appropriate journal.

Option 1: Of central concern in this seminar is how public discourse and politics shape voting rights policy that oftentimes has a racialized component. How is race incorporated into the electoral system? Explore the relationship between race, justice and crime policy and its connection to voting.

Option 2: In addition to voting restrictions, felons face a number of other collateral consequences. Analyze the various state and federal penalties that individuals face incidental to criminal sentencing, including disqualification from voting, prohibitions from running for office, exclusion from certain types of employment, housing, education, etc. Discuss the intended and unintended consequences and rationale for such collateral sanctions.

Option 3: Using one of the theoretical frameworks discussed in class (or an appropriately related one), develop a coherent and reasoned argument either (a) for or (b) against felon disenfranchisement laws and how best to (a) maintain the status quo or (b) change current policies.

Each student will present their research paper to the class. Presentations should last 15-20 minutes and include the following: (1) an overview of the research question, topic or paradox being examined; (2) theoretical or analytical framework used and why it is appropriate; (3) source of data (numbers or the law or both – a quantitative analysis is not required); and (4) findings and/or conclusions.

Presentations will be graded on the coherence of delivery and material covered.

**Classroom Participation & Discussion Leader (50 + 50 = 100 Points):**

This course will be conducted as a seminar; therefore, it is incumbent that each student read the assigned material prior to class. It is expected that students come to class prepared to engage one another in discussion and to comment regularly on and assist in the analysis of the literature and issues under discussion. A successful seminar requires widespread participation, and for individuals the *level* and *quality* of contributions to seminar discussions will be reflected in their participation grade. The quantity of comments does not equate to quality observations. Each

student will be evaluated based on the quality and consistency of their engagement in class discussions throughout the semester.

Discussion Leader: Each student will co-lead a colloquium discussion (frequency of such will be determined by class size). It is the co-leaders responsibility to frame the class discussion. This requires a synthesis of the assigned readings for the week, in addition to asking questions. Discussion leaders will prepare a set of questions to be distributed in class. Questions should help us think about the strengths and weaknesses of the works under discussion. The discussion should include how the authors speak to and against one another and how these works relate to other works we have read in class. When not leading discussion, students are expected to be active participants, who listen and offer their own assessment or critique of the research.

### Special Notes:

*Students with Disabilities.* If you have a documented disability and anticipate needing accommodations in this course, please make arrangements to meet with the professor the first week of class. At that time, we will discuss any accommodations necessary for your successful participation in the course.

*Plagiarism or Cheating.* This one's simple: don't do it. Don't even think about doing it. All people participating in the educational process at Columbia University are expected to pursue honesty and integrity in all aspects of their academic work. Academic dishonesty, including plagiarism, will be handled according to the procedures set forth by Columbia University.

### Seminar Readings:

Two books are required for this class and are available online or in the bookstore for purchase. In addition to the books, a course packet containing book chapters and articles is available for purchase at the bookstore or Labyrinth Book Store (112<sup>th</sup> between Broadway and Amsterdam). The course packet is also on reserve at the library. An asterisk (\*) denotes course packet readings. Articles not designated with an asterisk are available via JSTOR and/or LexisNexis Academic Search (Legal Research/Law Reviews).

### Required Books:

Haney-Lopez, Ian F. 1996. *White by Law: The Legal Construction of Race*. New York University Press. New York, N.Y.  
Mauer, Marc. 1999. *Race to Incarcerate*. New Press. New York, N.Y.

## **PART I: Race, Citizenship and Voting**

Focus: (1) race as a social construct; (2) defining "citizenship;" and (3) exploring the linkage between citizenship, voting rights and race.

### **1. September 12 – Introduction & Overview**

Organizing class and the allocation of assignments.

## **2. September 19 – Race as a Social Construct in America**

The U.S. Constitution

Haney-Lopez, Ian F. 1996. *White by Law: The Legal Construction of Race*. New York University Press. New York, N.Y.

## **3. September 26 – Citizenship and Voting Rights**

- \* Manza, Jeff and Christopher Uggen. 2004. "Punishment and Democracy: Disenfranchisement of Nonincarcerated Felons in the United States." *Perspectives on Politics* Vol. 2, No. 3, pp. 491-505.
- Massey, James L. and Martha A. Myers. 1989. "Patterns of Repressive Social Control in Post-Reconstruction Georgia, 1882-1935." *Social Forces* 68:458-488.
- Mauer, Marc. 2000. "Felon Voting Disenfranchisement: A Growing Collateral Consequence of Mass Incarceration." *12 Fed. Sent. R.* 248.
- Mondesire, J. Whyatt. 2001. "The New Jim Crow? Felon Disenfranchisement: The Modern Day Poll Tax." *10 Temp. Pol. & Civ. Rts. L. Rev.* 435.
- Note. 1989. "The Disenfranchisement of Ex-Felons: Citizenship, Criminality and 'The Purity of the Ballot Box.'" *102 (6) Harvard Law Review* 1300-1317.

## **PART II: Crime, Policy & Politics**

Focus: (1) crime policy and politics and (2) the criminal justice system as a "gatekeeper" to the ballot box.

## **4. October 3 – Crime Policy & Politics I: Race to Incarcerate**

- Adamson, Christopher R. 1983. "Punishment after Slavery: Southern State Penal Systems, 1865-1890." *Social Problems*, Vol. 30, No. 5, Thematic Issue on Justice. (June), pp. 555-569.
- Mauer, Marc. 1999. *Race to Incarcerate*. New Press. New York, N.Y.
- \* Wacquant, Loic. 2000. "The New Peculiar Institution: On the Prison as Surrogate Ghetto." *Theoretical Criminology* Vol. 4(3): 377-389.

## **5. October 10 – Crime Policy & Politics II: Criminal Justice Policy & Electoral Politics**

- Jacobs, David and Ronald E. Helms. 1996. "Toward a Political Model of Incarceration: A Time-Series Examination of Multiple Explanations for Prison Admissions Rates." *American Journal of Sociology* Vol. 102, No. 2 (Sept). 323-357.
- Nunn, Robin L. 2005. "Lock Them Up and Throw Away the Vote." *5 Chicago Journal of International Law* 763.
- \* Wacquant, Loic. 2001. "Deadly Symbiosis: When Ghetto and Prison Meet and Merge" in D.Garland (ed) *Mass Imprisonment: Social Causes and Consequences*. Sage Publications. New York, N.Y. pp. 82-120.
- \* Zimring, Franklin. 2001. "Imprisonment Rates and The New Politics of Criminal Punishment" in D.Garland (ed) *Mass Imprisonment: Social Causes and Consequences*. Sage Publications. New York, N.Y. pp. 145-149.

### **PART III: Analytical Frameworks**

Focus: a survey of some of the analytical frameworks for understanding, analyzing and critiquing felon disenfranchisement laws.

#### **6. October 17 – Analytical Framework I: Constitutional Analysis**

The U.S. Constitution

Cosgrove, John R. 2004. “Four New Arguments Against the Constitutionality of Felony Disenfranchisement.” 26 *T. Jefferson L. Rev.* 157.

Fletcher, George P. 1999. “Disenfranchisement as Punishment: Reflections on the Racial Uses of Infamia.” 46 *UCLA L. Re.* 1895-1908.

Thompson, Mark E. 2002. “Don’t Do the Crime if You Ever Intend to Vote Again: Challenging the Disenfranchisement of Ex-Felons as Cruel and Unusual Punishment.” 33 *Seton Hall Law Review* 167.

#### **7. October 24 – Analytical Framework II: Social Contract Theory**

\* Behrens, Angela, Christopher Uggen and Jeff Manza. 2003. “Ballot Manipulation and the ‘Menace of Negro Domination:’ Racial Threat and Felon Disenfranchisement in the United States, 1850-2000.” *American Journal of Sociology* 109 (3): 559-605.

Demleitner, Nora V. 2000. “Continuing Payment on One’s Debt to Society: The German Model of Felon Disenfranchisement as an Alternative.” 84 *Minn. L. Rev.* 753.

Johnson-Parris, Afi S. 2003. “Felon Disenfranchisement: The Unconscionable Social Contract Breached.” 89 *Virginia Law Review* 109.

Liska, Allen E. 1993. “Social Structure and Social Control: Building Theory.” *Law & Society Review*, Vol. 27, No. 2 pp. 345-353.

\* Travis, Jeremy. 2002. “Invisible Punishment: An Instrument of Social Exclusion” in Mauer, Marc and Meda Chesney-Lind, Editors. *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. The New Press. New York, N.Y. (pages 15-36).

#### **8. October 31 – Analytical Framework III: The Voting Rights Act of 1965**

Harvey, Alice E. 1994. “Ex-Felon Disenfranchisement and Its Influence on the Black Vote: The Need for a Second Look.” 142 (3) *U. Pa. L. Rev.* 1145-1189.

Hayden, Grant M. 2003. “The False Promise of One Person, One Vote.” 102 *Michigan Law Review* 213.

Hench, Virginia E. 1998. “The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters.” 48 (4) *Case Western Reserve Law Review* 727-798.

Shapiro, Andrew L. 1993. “Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy.” 103 *Yale L.J.* 537.

**November 7 – NO CLASS** (Columbia University’s Academic Holiday)

## **PART IV: Felon Disenfranchisement Laws**

Focus: (1) the political consequences and (2) the paradox of felon disenfranchisement laws.

### **9. November 14 – Political Consequences**

Cholbi, Michael J. 2002. “A Felon’s Right to Vote.” 21 *Law and Philosophy* 543.

Clegg, Roger. 2001. “Who Should Vote?” 6 *Tex. Rev. Law & Pol.* 159.

\* Mauer, Marc. 2002. “Mass Imprisonment and the Disappearing Voters” in Mauer, Marc and Meda Chesney-Lind, Editors. 2002. *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. The New Press. New York, N.Y. (Pages 50-58).

McLeod, Aman, Ismail K. White and Amelia R. Gavin. 2003. “The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications for Reform.” 11 *Va. J. Soc. Pol’y & L.* 66.

Parkes, Debra. 2003. “Ballot Boxes Behind Bars: Toward the Repeal of Prisoner Disenfranchisement Laws.” 13 *Temp. Pol. & Civ. Rts. L. Rev.* 71.

Uggen, Christopher and Jeff Manza. 2002. “Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States.” *American Sociological Review*, Vol. 67, No. 6. (Dec.), pp. 777-803.

### **10. November 21 – Research Paper Diagnostics**

### **11. November 28 – The Paradox of Felon Disenfranchisement Laws**

Demleitner, Nora V. 1999. “Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences.” 11 *Stanford Law and Policy Review* 153.

Ewald, Alec C. 2002. “‘Civil Death:’ The Ideological Paradox of Criminal Disenfranchisement Law in the United States.” 2002 *Wisconsin Law Review* 1045.

Furman, Jesse. 1997. “Political Illiberalism: The Paradox of Disenfranchisement and the Ambivalences of Rawlsian Justice.” 106 *Yale L.J.* 1197.

Heumann, Milton, Brian K. Pinaire and Thomas Clark. 2005. “Beyond the Sentence: Public Perceptions of Collateral Consequences for Felony Offenders.” 41 No. 1 *Crim. Law Bulletin* 2.

Von Hirsch, Andrew and Martin Wasik. 1997. “Civil Disqualifications Attending Conviction: A Suggested Conceptual Framework.” 56 *Cambridge Law Journal* 599.

### **12. December 5 – Paper Presentations**

ALL POLICY PAPERS are DUE at 4pm on Monday, December 5, 2005.

### **13. December 12 – Paper Presentations**

**Politics & Public Policy: Felon Disenfranchisement Laws  
Fall 2005**

**State Level Analysis Presentations  
Sign-Up Sheet**

| <b>State</b> | <b>Name</b> | <b>Week of Presentation</b> |
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**Colloquium Discussion  
Sign-Up Sheet  
(Co-Leaders)**

| Week | Name (Student #1) | Name (Student #2) |
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