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Race and Races: Cases and Resources for a Diverse America

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Race and Races: Cases and Resources for a Diverse America (2nd Edition)

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INTRODUCTION

As we go to press in early 2007, the United States is, in important ways, a different country from the one the Framers envisioned. The principal racial issues confronting the Framers were the conquest of Indian nations and the perpetuation of black slavery. Our historical and cultural inheritance includes the unresolved legacy of those early racial dilemmas as well as additional, complex racial issues that we confront today as a result of our demographics. For example, are African Americans and Mexican Americans due reparations, as the government decided were due to Japanese American families imprisoned during World War II? Should members of these groups receive a formal apology for the treatment suffered by their ancestors, as Congress expressed in a recent joint resolution apologizing for the colonization of Native Hawaiians? Should African Americans and members of other racial minority groups receive affirmative action in hiring, government contracting, and admissions to higher education? What, if anything, should be done to improve the legislative representation of minority groups, who may otherwise be outvoted consistently? What happens when one group uses a constitutional right, such as free speech, to demean and hector another? How can tensions between racial groups be eased? In the end, how can we do more justice in our racially diverse society?

As of 2005, persons of color constituted about one-third of the U.S. population: African Americans (12.7%); Latinos/as (14.2%); Asian Americans (4.0%); and American Indians (1%). Because these groups are growing more rapidly than Whites, persons of color will likely outnumber Whites in the United States sometime near the middle of this century. The demographics of our future will become ever more complex, more multiracial, as members of different racial groups intermarry, adding to the racial complexity already evident today.

Each of us has taught and written about race for most of our careers. We have all confronted the need for and the difficulty of assembling varied interdisciplinary and historical materials to cover race and racism comprehensively, in a manner that accounted for each of the principal racial groups in the United States—African Americans, Indians, Latinos/as, Asian Americans, and Whites.

This casebook is the first to present race and racism in a manner that corresponds to the racial complexity of United States society. Teachers and students committed to understanding our multiracial society require ready access to historical, legal, and interdisciplinary materials that shed light on our continuing and changing problems of race. To ease and amplify understanding of the increasing complexity of American racial dynamics, we have written this book.

We explore the cutting edges of theory with respect to race, giving central attention both to the *continuity* across history of certain understandings of race and the *evolution* of those understandings, a process which continues today. Thus this book includes materials on the difficulties in defining and understanding the meanings of ''race;'' the nature of ''racism'' and ''oppression;'' Omi and Winant's theory of racial formation; the differing implications of colonization and immigration; the formation of stereotypes; unconscious racism; the gendered and sexualized nature of race; and the situation of biracial and multiracial persons.

This book also provides a rich historical introduction to the particular histories of four major racial groups in the United States, African Americans, Indians, Latinos/as, and Asian Americans, and their encounters with white Europeans and their descendants. Each of these minority groups has a long legal history documenting its presence and its attempts to use the courts and other means to fight racial discrimination in the United States. This legal history, much of which is often ignored in discussions of race, seems to us essential in understanding the situation faced by each of these groups today. This history also enables comparisons among the experiences of these different racialized groups.

Many discussions of race and racism in the United States focus solely on the experiences of racial minorities. It is just as important, in our view, to focus on the development of ''Whiteness'' and the white race. Demonstrating the evolution of racial categories, membership in the white race has changed over time for complex reasons. For example, Irish immigrants during the nineteenth century and European immigrants of the early twentieth century used to be considered nonwhite. Today, persons with such ancestry are considered White. How did this happen? Whiteness, the unstated norm of racial identity in the United States, requires close examination and study as does the role of wartime animosities in creating new demonized groups such as Muslims, Arabs, and South Asians.

Readers will notice that much seemingly unrelated law fits together when race and racism are used as organizing principles. The law of slavery and the ceaseless African–American struggle for civil rights are essential to understanding the development of doctrines of equality under the Constitution and statutory law. A different process—conquest, and its legal ratification by Congress and justification by the Supreme Court—is essential to understanding the racialization of Indians, Mexican Americans, and Puerto Ricans. Immigration law also plays a crucial role in the law of race. Supreme Court decisions upholding Chinese exclusion and Alien Land Laws are central in producing the racialization of Asian Americans. And the Supreme Court's many determinations of who was ''White'' and who was not for purposes of naturalized citizenship were of crucial importance in defining the legal bounds of Whiteness.

This book also explores the themes of race and racism in a variety of doctrinal contexts. What is the meaning of racial equality? What understanding of racial equality finds expression in the crucial realms of education and voting rights? How do racial themes find expression in

doctrines of freedom of speech? What are the popular images and stereotypes of people of color and Whites that pervade the media? How does race influence our understanding of sexuality and the family? And how does race intersect with crime?

This book makes it possible for readers to make these and other connections among race, history and legal doctrine. Yet the task is not easy—reading about race and races requires us to think critically about the powerful and ingrained modes of thinking about and expressing racial ideas. Here are some critical questions that should guide your study of race:

1. MAKE THE IMPLICIT EXPLICIT. Look for the assumptions underlying discussions about race and state them. Many implicit assumptions, when articulated to the world, demonstrate their own inadequacy. Is one racial group being privileged over another? What unstated assumptions about gender, sexual orientation, wealth, or physical ability are part of discussions about race?

2. LOOK FOR THE HIDDEN NORM. What perspective is being universalized as the perspective for all people? Is that view really representative and objective? Is ''the way things are'' being used to perpetuate oppression?

3. AVOID WE/THEY THINKING. In a country based on the ideal of democratic inclusion, consider whether race is being used to foster that inclusion. We/they thinking is usually designed to render some group outside the polis. Who is defining the included ''we'' and for what purpose?

4. REMEMBER CONTEXT. People do not live in the abstract; they live situated lives. Examining the context in which a problem arises may reveal levels of unsuspected complexity, but will also avoid facile solutions that fall into the traps listed above.

5. SEEK JUSTICE. Be skeptical of traditional lawyerly arguments to avoid change such as ''the slippery slope,'' the intent of the framers (who excluded from voting representation Indians, women of all colors, and only counted African Americans as 3/5 persons), or reliance on discriminatory precedent. Ask the question, ''What is a just result that fosters democratic inclusion?''

6. CONSIDER THE NATURE OF THE HARM. Is it minimal or serious? Whose characterization is being given credibility? Be sure to listen to the voices of those most harmed.

7. TRUST YOUR INTUITION. Trina Grillo wrote: ''[W]e must believe what our bodies tell us. They teach us to check for the deep, internal discomfort we feel when something is being stated as gospel but does not match our truth. Then they teach us how to spin that feeling out, to analyze it, to accept that it is true but to be able to show why that is so. They also teach us to be brave.'' Trina Grillo, *Anti–Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 Berkeley Women's L.J. 16, 22 (1995).

8. ASK, WHO BENEFITS? Practices, rules, and legal doctrines often benefit one group (usually the majority) at the expense of another. Ask

yourself, why was this rule adopted and who benefits from its observance? If a rule turns out to be unfair, what prevents us from changing it?

This book offers tools, histories, and analysis for the study of race. No single volume, however, can begin to capture the full richness and varied experiences of race in a large, multiracial society like ours. Readers may wish to pioneer new forms and subjects of critical analysis to examine further themes we explore or mention. For example, how does race intersect with territorial status? How do race and racism play out in the history of insular peoples? With gays and lesbians? What is the intersection of race with issues of class? Readers may want to examine issues of comparative and international law. How have other western, industrialized societies dealt with race and status questions, or with hate speech? What about non-European or non-industrialized societies? What do different world religions have to say about racial justice and social reform?

Much, then, remains to be done. In the hope that a comparative, historical, and politically engaged discussion of race can begin to illuminate what has been called—and what seems to remain—America's most intractable problem, we offer this book.

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Note on Nomenclature:

Given the complexities in the meaning and understanding of the words ''race'' and ''racism,'' we thought it useful to outline briefly our reasons for the use of certain terms in our discussions of racial groups. Each term refers to a group that is ''pan-ethnic''—composed of more or less distinct subgroups that may vary by origin, history, language, and culture, among other factors that constitute a people. Thus each term in fact refers to an aggregation of peoples who are more or less alike and different, in their own perception and in the perceptions of others. Readers should not lose sight of this complexity.

In referring to the various racial groups, we have chosen the following terms— ''African American'' or ''Black,'' ''Indian,'' ''Latino/a,'' ''Asian American,'' and ''White''—because of their widespread usage and acceptance. We prefer ''Latino/a'' to ''Hispanic'' because it seems to us that the term ''Hispanic'' misleads by emphasizing the Spanish, European origins of the few conquerors who made their way to this continent, as opposed to the origins of a majority of persons who constitute the group to which the term refers, who are predominantly mixed, of indigenous and African ancestry. We have generally capitalized references to races by color, such as ''Black'' and ''White,'' since these references typically function as proper names for their respective racial groups.

We have also, however, preserved as much as possible the original terms used in the excerpts quoted in this book out of fidelity to the original texts as well as to preserve the context, the sense of the time during which a piece was written, and the full meaning of the original sources.

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