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RACE AND ETHNIC RELATIONS

97/98



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Cataloging in Publication Data

Main entry under title: *Annual editions: Race and ethnic relations. 1997/98.*

1. Race relations—Periodicals. 2. United States—Race relations—Periodicals. 3.

Culture conflict—United States—Periodicals. I. Kromkowski, John A., comp. II. Title: Race and ethnic relations.

ISBN 0-697-37351-7

305.8'073'05

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Seventh Edition

(Cover: The Million Man March on the Mall, Washington, DC, October 16, 1995. Photo by Porter Gifford/
Gamma Liaison)

Printed in the United States of America

Printed on Recycled Paper



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Members of the Advisory Board are instrumental in the final selection of articles for each edition of ANNUAL EDITIONS. Their review of articles for content, level, currentness, and appropriateness provides critical direction to the editor and staff. We think that you will find their careful consideration well reflected in this volume.

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To the Reader

In publishing ANNUAL EDITIONS we recognize the enormous role played by the magazines, newspapers, and journals of the *public press* in providing current, first-rate educational information in a broad spectrum of interest areas. Many of these articles are appropriate for students, researchers, and professionals seeking accurate, current material to help bridge the gap between principles and theories and the real world. These articles, however, become more useful for study when those of lasting value are carefully *collected, organized, indexed, and reproduced* in a *low-cost format*, which provides easy and permanent access when the material is needed. That is the role played by ANNUAL EDITIONS. Under the direction of each volume's *academic editor*, who is an expert in the subject area, and with the guidance of an *Advisory Board*, each year we seek to provide in each ANNUAL EDITION a current, well-balanced, carefully selected collection of the best of the public press for your study and enjoyment. We think that you will find this volume useful, and we hope that you will take a moment to let us know what you think.

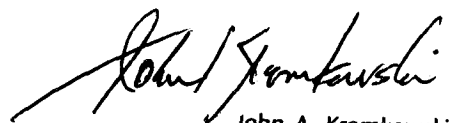
The information explosion and expansion of knowledge about the range of diversity among and within societies have increased awareness of ethnicity and race. During previous periods of history, society was discussed in terms of a universal sense of common humanity. Differences between societies and the arrangements of economic production were noted, but they were usually explained in terms of theories of progressive development or of class conflict that was leading toward a universal and homogenized humanity. Consciousness of the enduring pluralism expressed in ethnic, racial, and cultural diversity that constitutes the human condition has emerged throughout the world. It appears, however, that the dimensions of diversity are significantly, if not essentially, shaped by social, economic, cultural, and, most importantly, political and communitarian processes. Creativity, imagination, and religion influence ethnic and racial relations.

This collection of essays was designed to assist you in understanding ethnic and racial pluralism in the United States and several other countries. Unit 1, for example, illustrates how the most basic legal principles of a society—and especially the U.S. Supreme Court's historical interpretation of them—are especially significant for the delineation of ethnic groups, for the acceptance of cultural pluralism, and for the political and moral foundations from which contemporary challenges to the promise of American liberties may be addressed. Subsequent sections include illustrative articles of ethnic interaction with and within American society. The immigration of persons, the focus of unit 2, into a relatively young society such as America is of particular concern, because the fragility of social continuity is exposed by the recognition of changes in the ethnic composition of American society.

The contemporary experiences of indigenous groups, including Native Americans, are arranged in unit 3. Discussion of the experiences of the descendants of the earliest and the most recently arrived ethnic populations and the legal framework for participating in America is extended in unit 4 on Hispanic/Latino Americans and unit 5 on African Americans. Unit 6 explores various dimensions of the Asian American experience. The experiences of these ethnicities form a cluster of concerns

addressed in the traditional literature that focused on marginality, minority, and alienation. New voices from within these traditions suggest bridges to the topics included in unit 7, titled "The Ethnic Legacy," which articulates neglected dimensions of ethnicity derived from the industrial and urban development of America, as well as a pluralistic vision of diversity and moral imagination. Unit 8, "The Ethnic Factor: International Challenges for the 1990s," extends prior concerns and addresses national and international implications of ethnic exclusivity and the imperatives of new approaches to group relations. Unit 9 focuses on understanding the origins of racialism and the religious and ethical origins that shape consciousness of group affinities and, especially, the emergence of scientific claims of racialism and religious exclusion in public affairs. This section ends with suggestions that our inability to bridge racial and ethnic gaps as well as our misunderstandings of the paradoxes of integration could impose heavy burdens on efforts to resolve differences. Our national and universal moral sensibilities compel us to search for new paradigms and new approaches that foster values of institutional and attitudinal inclusiveness. Yet, curiously, the arena most in flux includes personal identity manifested in ethnic and religious terms that pose primordial questions: Who am I? Who are we? How can we order our aspirations for liberty and justice so that all may participate in and benefit from a heightened level of ethnic interdependence? What large-scale communal projects can be initiated that will uplift the well-being of the human condition and enrich our experiences of the other—the alien—and our appreciation of the stunning variety of cultures? That our racial and ethnic differences need not be divisive is abundantly clear.

Readers may have input into the next edition of *Annual Editions: Race and Ethnic Relations* by completing and returning the postpaid article rating form in the back of the book.



John A. Kromkowski
Editor

UNIT 1



Race and Ethnicity in the American Legal Tradition

Eight articles in this section include Supreme Court decisions that established the legal definitions of race, citizenship, and the historic landmarks of equal protection and due process, as well as discussions of civil rights doctrine and implementation and the rise of new critical legal theories that challenge traditional remedies.

To the Reader	iv
Topic Guide	2
Overview	4

A. THE FOUNDATIONS

1. *Dred Scott v. Sandford*, from *U.S. Reports*, 1856. 6
This case concerned Dred Scott, a slave who was taken by his owner to a free state, where he lived for several years until he was again taken back into a slave state. Dred Scott filed suit, claiming that because he had lived in a free state, he had lost his *status as a slave*. The U.S. Supreme Court ruled that Dred Scott was still a slave and that the U.S. Constitution did not protect African Americans—neither those free nor those held as slaves.
2. **Racial Restrictions in the Law of Citizenship**, Ian F. Haney Lopez, from *White by Law: The Legal Construction of Race*, New York University Press, 1996. 10
This article traces the *legal history of naturalization* and its relationship to consciousness of color in the development of definitions and legal norms attendant to American citizenship.

B. THE CIVIL RIGHTS ERA

3. *Brown et al. v. Board of Education of Topeka et al.*, from *U.S. Reports*, 1954. 16
In *Brown v. Board of Education*, the U.S. Supreme Court began to *dismantle state-supported segregation* of the nation's schools. In this landmark opinion, the court overturned *Plessy v. Ferguson*, which had legitimized racial segregation of public facilities. The Court ruled that "in the field of public education, the doctrine of 'separate but equal' has no place," for "separate education facilities are inherently unequal."

C. CONTEMPORARY CHALLENGES

4. "Is Racial Integration Essential to Achieving Quality Education for Low-Income Minority Students, In the Short Term? In the Long Term?" John A. Powell, *Poverty & Race*, September/October 1996. 19
Here is a challenging attempt to refashion the debate and refocus attention to the nexus of culture and class, as well as a detailed resource guide for developing such analysis. It provides a provocative counterpoint to single-minded approaches to the *intertwined characteristics of race and ethnicity* in many features of American society.
5. **Court Grows Critical When Race, Law Intersect**, Tony Mauro and Tom Watson, *USA Today*, June 30, 1995. 27
This article and its maps review a cluster of cases in which the Supreme Court ruled that using race as a primary reason for *redistricting* in order to remedy discrimination and enhance the chances of minority representation is unconstitutional.
6. **New Tolerance in the South or Old Power of Incumbency?** Michael A. Fletcher, *Washington Post*, November 23, 1996. 29
Michael Fletcher reports on the victories of *black Congressional candidates* in districts that were redrawn as a consequence of the Supreme Court's decision declaring racially gerrymandered districts to be unconstitutional. The subsequent debate about the meaning of this election and its implications for *representation and participation* point to the current flux in the facts and fictions of electoral punditry.

UNIT 2



Immigration and the American Experience

Six articles in this section review the historical record of immigration and current concerns regarding patterns of immigration and the legal, social, cultural, and economic issues that are related to immigrants in the American experience.

7. **Proposition 209 Is a Blueprint for Court Fights**, Scholars Say, Bettina Boxall, *Los Angeles Times*, October 31, 1996. This preelection report on public opinion and the lines of legal argument that were likely to follow the outcome of the California voters' decision regarding *racial/ethnic preferences* invites consideration of the role of law and the origins of law in popular consent to legislative and judicial authorities. 31
8. **The Long Retreat Back to 'Separate-but-Equal'**, Jeff Jacoby, *Baltimore Sun*, November 26, 1996. Jeff Jacoby reviews the paradoxical and ironic historical development of *civil rights guarantees* and the recent action of the California Assembly in the context of the politically charged run-up to the referendum on Proposition 209. 35

Overview 36

9. **A Nation of Immigrants**, Bernard A. Weisberger, *American Heritage*, February/March 1994. The author surveys *immigration* throughout periods of American history. America, he contends, is a nation of immigrants. The restrictionists' arguments have been heard before and will be heard again. 38
10. **American Ethnicities and the Politics of Inclusion**, John A. Kromkowski, from *America's Choice*, Dushkin/McGraw-Hill, 1997, and **Not Quite So Welcome Anymore**, Bruce W. Nelan, *Time*, Fall 1993. These data provide three matrices of *ethnicity and ancestry in America*—national and regional self-identification, foreign-born by region and country, as well as measures of opinion and religious data that are not collected by the U.S. Census. 51
11. **Is Latest Wave a Drain or Boon to Society?** Maria Puente, *USA Today*, June 30, 1995. Maria Puente offers an array of Immigration and Naturalization Service data from 1991 to 1993 on 2.2 million legal immigrants, the *geographic patterns of settlement*, and the results of a national poll of immigrants. 64
12. **Solidarity Doesn't Mean Lost Identity**, Stephen Goode, *Insight*, January 22, 1996. Stephen Goode summarizes the views of several interpreters of *the American experiment*. They manage to transcend differences and divisiveness and to focus on *common values*. In so doing, they propose that ideologies and governmental uses of ethnicity and race can be sources that cause American disunity. 67
13. **Citizenship Is a Malleable Concept**, Barbara Crossette, *New York Times*, August 18, 1996. Barbara Crossette places *American immigration and citizenship* into comparative perspective and addresses a variety of social and cultural aspects that are salient because they address the specificities involved in the pursuit of commonalities. 70
14. **Held in War, Latins Seek Reparations**, Tim Golden, *New York Times*, August 29, 1996. Tim Golden reports on the demands made by Japanese-Latin citizens in pursuit of the same reparations warranted by Congress to Japanese-Americans who were interned during World War II. He points to *the power of Congress to regulate immigration* issues, and also to congressional action that provided remedies to persons that were not protected by a Supreme Court that defended internment in *Korematsu* (1944). 72

UNIT 3



Indigenous Ethnic Groups

Seven articles in this section review the issues and problems of indigenous peoples. They portray the new relationship that indigenous people are forging with concurrent governments and the processes that protect indigenous traditions within pluralistic societies.

- Overview 74
15. **12th Session of UN Working Group on Indigenous Peoples**, Glenn T. Morris, *Fourth World Bulletin*, Fall 1994/Winter 1995. 76
This report on the United Nations' structures, debate, and unresolved questions regarding *the rights of indigenous peoples*, as well as the role of the U.S. government in shaping issues of self-determination, indicates new horizons for the current politics of conflict resolution among peoples and states.
16. **American Indians in the 1990s**, Dan Fost, *American Demographics*, December 1991. 83
Evidence suggests that a growing number of *Americans are identifying with Indian culture*. Mainstream appetites for ethnic culture, the development of businesses on reservations, and the urge to "go home" among middle-class Indians point to trends for the 1990s.
17. **The Good, the Bad, and the Intolerable**, Will Kymlicka, *Dissent*, Summer 1996. 88
The U.S. Bill of Rights was articulated within an enlightened tradition of individual claims and protection. Will Kymlicka revisits the assumptions and the application of this approach to rights so as to address new claims related to an older tradition of *ethnic community and group rights*.
18. **Canada Pressed on Indian Rights**, Howard Schneider, *Washington Post*, November 22, 1996. 96
This summary of findings of a Canadian government blue-ribbon commission proposes *self-rule* for as many as 80 separate Indian nations and a new branch of Parliament to represent their interests.
19. **Amity in Indian Adoptions**, John McCain, *Washington Post*, August 2, 1996. 98
Intercultural conflict and cooperation form the backdrop for this discussion of *the Indian Child Welfare Act* and the recent search for an amicable resolution of contentions between tribal claims and the rights of non-Indian persons and families involved in foster care of Indian children.
20. **Dispute over Indian Casinos in New Mexico Produces Quandary on Law and Politics**, George Johnson, *New York Times*, August 18, 1996. 100
This report on *the consequences of the Federal Indian Gaming Regulatory Act* illustrates certain implications of the power of national authority devolving to state governments, as well as the attendant conflict of laws and the disruption of rule by law that is not only corrosive of trust but potentially volatile.
21. **Native-American Women in History**, Nancy Shoemaker, *OAH Magazine of History*, Summer 1995. 102
Nancy Shoemaker indicates that the *development of accurate and more detailed knowledge* regarding *Native American women* will enable us to overcome biased portrayals and distortions that are unworthy of a usable knowledge of the past.

UNIT 4



Hispanic/Latino Americans

Five articles in this section reveal the demographics of Hispanic/Latino Americans as well as the economic and political cultural dynamics of these diverse ethnicities.

UNIT 5



African Americans

Six articles in this section review historical experiences derived from slavery and segregation and then explore current contexts and persistent concerns of African Americans.

- Overview 106
22. **Specific Hispanics**, Morton Winsberg with Patricia Braus, *American Demographics*, February 1994. 108
Morton Winsberg, with Patricia Braus, reports on the stereotypical groups that fall within the Hispanic category. Cultural and market differentiations create a quilt of many borders with the various ethnicities that are labeled *Hispanic/Latino American*.
23. **The Ballad of Freddy Gonzalez**, John Flores, *Hispanic*, November 1996. 115
In this report, John Flores presents the story of *service and rewards* and the honor that accrued to an ethnic group when the U.S. Navy named a battleship for a Hispanic Marine—Alfredo Gonzalez.
24. **Baiting Immigrants: Heartbreak for Latinos**, Mercedes Lynn de Uriarte, *The Progressive*, September 1996. 119
Mercedes Lynn de Uriarte reports on the public hysteria fueled by California's Proposition 187 limiting the rights of children born here to illegal aliens, as well as on the personal consequences suffered by some Hispanic Americans. All of this points to the potential exacerbation of *ethnic group relations* that baiting immigrants can cause.
25. **From Out of the Shadows: Mexican Women in the United States**, Vicki L. Ruiz, *OAH Magazine of History*, Winter 1996. 122
Vicki Ruiz adds a significant chapter to *the developing narrative of ethnic women* and invites us to deepen our study of this neglected dimension of social history.
26. **Magazines, Latinos Find Themselves on the Same Page**, Marie Arana-Ward, *Washington Post*, December 5, 1996. 125
The upwardly mobile Latino/Hispanic with a solid education and money to spend has recently emerged as a recognized American consumer. This article looks at how this trend affects the way the business community has approached the Latino market.

- Overview 128
27. **Understanding Afrocentrism**, Gerald Early, *Civilization*, July/August 1995. 130
Gerald Early examines the attitudes of many black Americans who insist on seeing the world from an *"African-centered" perspective*, rather than "the dominant 'European-centered' perspective to which they have been subjected throughout their lives." The meaning and formation of identity is a main issue raised by *Afrocentrism*.
28. **10 Most Dramatic Events in African-American History**, Lerone Bennett Jr., *Ebony*, February 1992. 138
This article recounts meaningful episodes of American history that constitute the popular tradition of *African Americans*. Here are 10 distinctive stories profiling the shared memory of experiences that define the special sense of peoplehood of this ethnic group.
29. **Color Blind**, Ellis Cose, *Newsweek*, November 25, 1996. 142
This article and its attendant recommendations for approaches to *overcoming the embedded obstacles to relationships among ethnic groups* suggests that much more than has thus far been done remains on the agenda. This clarification of the agenda is the first step toward constructive and measurable development.
30. **Alternative Afrocentrisms: Three Paths Not Taken—Yet**, Elizabeth Wright, Bill Kauffman, and David T. Beito, *The American Enterprise*, September/October 1995. 147
This suite of essays on the African American experience, as rendered by Booker T. Washington, Jessie Fauset, and Zora Neale Hurston, raises voices that crosscut the claims of tradition in ways that sustain, yet do not distort, the battle against despair and dependence and encourages peoplehood.

UNIT 6



Asian Americans

Four articles in this section explore dimensions of pluralism among Asian Americans and their issues related to the cultural, economic, and political dynamics of pluralism.

UNIT 7



The Ethnic Legacy

Five articles in this section examine neglected dimensions of ethnic communities, their intersection with each other, and the influence of inter-ethnic protocols within American society.

31. **God and the Civil Rights Movement**, James M. Washington, 155
Union News, Fall 1996, and **Josephites Mark 125 Years**, Marilyn McCraven, *Baltimore Sun*, November 30, 1996.
 These synopses of the interpretive work of Professor James M. Washington, the cross-cultural ministerial work of the Catholic order of Josephites, and the expression of outrage in the face of the recent church burnings illustrate the complex texture of religious action. Searingly painful and extraordinary transformations constitute the blend of existence and challenge that face those who act for their faith at the rugged crossing of *religion and ethnicity in American society*.
32. **From Scottsboro to Simpson**, Abigail Thernstrom and Henry D. Fetter, *The Public Interest*, Winter 1996. 159
 This report and interpretation of the parallel between *public and symbolic meaning attached to highly visible trials* raises our consciousness to the relevance of the celebrities and cults associated with highly charged and nearly mythic enactments that shape our national drama.

Overview 164

33. **Misperceived Minorities: 'Good' and 'Bad' Stereotypes Saddle Hispanics and Asian Americans**, Pamela Constable, 166
Washington Post National Weekly Edition, October 23-29, 1995. These articles and data explore and expose the mutual perceptions about *group relations* that are the building blocks of attitudes and behaviors from which learning and change begin.
34. **Neighboring Faiths**, Diana L. Eck, *Harvard Magazine*, September/October 1996. 169
 Diana Eck invites us to consider the *changing character of religious diversity* in America that is particularly associated with Asian immigration. The new multicultural and multireligious presence is redefining the landscape of a country that 3 decades ago some knew as Protestant, Catholic, and Jew, and others believed to be secular and modern.
35. **The Chinese Diaspora**, Peter Kwong, *Worldbusiness*, May/June 1996. 175
 Peter Kwong gives an account of the historical and *geographical dispersion of ethnic Chinese*, their relationship to China, and their participation in the market economies of the Pacific Rim. In addition, his discussion of culture and commerce reveals the dense fabric of tradition and current action that this ethnic group has established.
36. **Asian-Indian Americans**, Marcia Mogelonsky, *American Demographics*, August 1995. 181
 Marcia Mogelonsky geographically locates migration patterns and profiles the linguistic, cultural, and market segments of the *Asian Indian* population of America, a growing and affluent component of Asian diversity in this country.

Overview 188

37. **The New Ethnicity**, Michael Novak, from *Further Reflections on Ethnicity*, Jednota Press, 1977. 190
 This article explains the *origins and features of the new ethnicity*. Michael Novak proposes a generous and inclusive approach to understanding cultural diversity and the implications of ethnicity for those generations of Americans with roots in the large-scale immigration that ended in 1924.
38. **Italian Americans as a Cognizable Racial Group**, Dominic R. Massaro, *Italian Americans in a Multicultural Society*, 1994. 197
 Dominic Massaro provides an account of the *Italian American struggle* to ensure full participation under and full protection of the law that supports guarantees for ethnic education and cultural rights.

UNIT 8



The Ethnic Factor: International Challenges for the 1990s

Five articles in this section look at the intersections of ethnicities and the impact of ethnic conflict and cooperation on international affairs and the prospect of peace.

39. **Greek-Americans in the Political Life of the United States**, 202
John Brademas, from *Washington, D.C. to Washington Square*, Weidenfeld & Nicolson, 1986.
This reflection on *the engagement of Greek Americans in politics* provides thoughtful normative direction and reveals the personal and public bonds that exist within the thicket created by ethnic claims, the demands of integrity and intelligence, and the crises of the moment that invite political action.
40. **Polish Americans and the Holocaust**, John T. Pawlikowski, 205
from "*Perspectives in Polish History*," Occasional Papers in Polish and Polish American Studies, Number 1, 1996.
John Pawlikowski offers a historical account of the common yet controversially shared experience of victimization by the Nazi regime that has been central to the Polish-Jewish dialogue in America. It involves Polish Americans' analysis of a chapter of European history that ignored them, and for many it stands as an affirmation of their abandonment of Europe and the ideas of race that poisoned its politics.
41. **A Riddle: What Is Catholic, Jewish, and Stateless?** Serge 212
Schmemmann, *New York Times*, November 25, 1996.
This report on an action of the Israeli High Court and its attendant consequences for citizenship, immigration, and religious diversity illustrates *the limits of pluralism* and the defining lines of inclusivity that all countries and regimes must face.

Overview 214

42. **Resurgence of Ethnic Nationalism in California and Germany: The Impact on Recent Progress in Education**, José 216
Macias, *Anthropology & Education Quarterly*, June 1996.
José Macias provides a comparative perspective on *the influence of racial/ethnic ideology*, intergroup experiences, and education in two immigrant-receiving situations—California and Germany.
43. **No Canada?** Guy Lawson, *Harper's*, April 1996. 225
Guy Lawson reflects on the mood of Montreal after Quebec's separatist referendum. Can division and discord become a permanent state? Lawson contends that the aspirations among ethnics may point to a *fresh recognition of pluralism* that will not wither.
44. **Germania Irredenta**, Hans Koning, *The Atlantic Monthly*, July 231
1996.
In this account, Hans Koning discusses the personal and political wistfulness of Germans and their lawsuits to reclaim property, which raises fundamental questions regarding the *post-World War II settlements* of boundaries and ownership. These questions emerge at the ragged edges of governments and the ethnic populations they are commissioned to rule.
45. **Size, Scope of Hutu Crisis Hotly Debated**, Lynne Duke, 234
Washington Post, November 24, 1996.
Lynne Duke examines *the origins of ethnic conflict* and the current status of this flashpoint of war and instability. She explores the consequences of the failure of political leadership to bridge the divisive legacy of group conflict.
46. **Military-Civilian Schism Widens, Posing Danger**, Amy 236
Waldman, *USA Today*, November 26, 1996.
Amy Waldman's profile of the *differences between military and civil society* points to potential gaps between the two groups that may bode the kinds of separation and isolation that are unhealthy for democratic regimes and the social order they aspire to defend.

UNIT 9



Understanding Cultural Pluralism

Six articles in this section examine the origins of misunderstandings regarding human variety, indicate the influence of race and ethnic opinions in selected contexts, and discuss the range of challenges that must be addressed to forge new approaches to understanding cultural pluralism.

Overview	238
47. So You Want to Be Color-Blind, Peter Schrag, <i>The American Prospect</i> , Summer 1995.	240
Peter Schrag presents <i>six alternative principles for affirmative action</i> that sharpen our attention to the core concerns that have thus far perplexed efforts to achieve fairness and public consensus regarding the legitimacy of <i>race preferences in public policy</i> .	
48. Goin' Gangsta, Choosin' Cholita: Teens Today "Claim" a Racial Identity, Nell Bernstein, <i>Utne Reader</i> , March/April 1995.	246
Nell Bernstein explores the fluid and self-selective character of <i>ethnic identities</i> and the processes of self-definition that pluralism and diversity induce.	
49. The Geometer of Race, Stephen Jay Gould, <i>Discover</i> , November 1994.	249
This is a lucid account of the origins of the eighteenth-century scientific climate of thought and the disastrous shift in the method and mode of explanation that contributed to the racial misunderstandings that plague us today. The article reveals an important feature of theory construction derived from insight into the <i>history and philosophy of science</i> .	
50. Minority Rights: On the Importance of Local Knowledge, Daniel A. Bell, <i>Dissent</i> , Summer 1996.	254
Daniel Bell argues that the mindsets of universal rights and toleration of minority traditions can be complemented by an <i>attentive regard for the particularities</i> , cultural self-understanding, and the application of local insights that can occur in pluralistic societies.	
51. One Drop of Blood, Lawrence Wright, <i>The New Yorker</i> , July 25, 1994.	260
This article explores the methods used to define <i>racial and ethnic variety</i> . The classification of racial and ethnic standards on federal forms and statistics proposed in 1977 by the Office of Management and Budget does not appear to be sufficient, and a reformulation of <i>government data</i> is currently under way.	
52. The Place of Faith in Public Life: A Personal Perspective, John Brademas, from <i>Washington, D.C. to Washington Square</i> , Weidenfeld & Nicolson, 1986.	267
This essay reflects, in some respects, the origins or foundations of the American aspiration to develop a new form of <i>religious tolerance and civic culture</i> . The renewal and recovery of such an approach may not be likely, but the search for a wellspring of wisdom in this regard may begin by reconsidering the roots that are affirmed in this essay.	
Index	273



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Annual Editions E

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Dushkin/McGraw-Hill

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Topic Guide

This topic guide suggests how the selections in this book relate to topics of traditional concern to students and professionals involved with the study of race and ethnic relations. It is useful for locating articles that relate to each other for reading and research. The guide is arranged alphabetically according to topic. Articles may, of course, treat topics that do not appear in the topic guide. In turn, entries in the topic guide do not necessarily constitute a comprehensive listing of all the contents of each selection.

TOPIC AREA	TREATED IN	TOPIC AREA	TREATED IN
Affirmative Action	<ul style="list-style-type: none"> 5. Court Grows Critical 7. Proposition 209 8. Long Retreat Back to 'Separate-but-Equal' 28. 10 Most Dramatic Events 29. Color Blind 47. So You want to Be Color-Blind 	Demography (continued)	<ul style="list-style-type: none"> 33. Misperceived Minorities 34. Neighboring Faiths 36. Asian-Indian Americans 44. Germania Irredenta 49. Geometer of Race 51. One Drop of Blood
Canada	<ul style="list-style-type: none"> 15. UN Working Group 18. Canada Pressed on Indian Rights 43. No Canada? 	Discrimination	<ul style="list-style-type: none"> 1. <i>Dred Scott v. Sandford</i> 2. Racial Restrictions in Law of Citizenship 3. <i>Brown v. Board of Education</i> 5. Court Grows Critical 6. New Tolerance in the South? 7. Proposition 209 8. Long Retreat Back to 'Separate-but-Equal' 9. Nation of Immigrants 10. Not Quite So Welcome Anymore 13. Citizenship Is Malleable Concept 15. UN Working Group 16. <i>American Indians in the 1990s</i> 21. Native-American Women in History 24. Baiting Immigrants 28. 10 Most Dramatic Events 29. Color Blind 30. Alternative Afrocentrisms: Three Paths 31. God and the Civil Rights Movement 32. From Scottsboro to Simpson 33. Misperceived Minorities 38. Italian Americans 41. A Riddle 42. Resurgence of Ethnic Nationalism 47. So You Want to Be Color-Blind 51. One Drop of Blood
Civil Rights	<ul style="list-style-type: none"> 1. <i>Dred Scott v. Sandford</i> 2. Racial Restrictions in Law of Citizenship 3. <i>Brown v. Board of Education</i> 5. Court Grows Critical 7. Proposition 209 8. Long Retreat Back to 'Separate-but-Equal' 12. Solidarity Doesn't Mean Lost Identity 13. Citizenship Is Malleable Concept 15. UN Working Group 16. <i>American Indians in the 1990s</i> 28. 10 Most Dramatic Events 32. From Scottsboro to Simpson 38. Italian Americans 47. So You Want to Be Color-Blind 51. One Drop of Blood 	Economy	<ul style="list-style-type: none"> 9. Nation of Immigrants 10. Not Quite So Welcome Anymore 11. Is Latest Wave Drain or Boon? 16. <i>American Indians in the 1990s</i> 20. Dispute over Indian Casinos 25. Out of the Shadows 26. Magazines 33. Misperceived Minorities 35. Chinese Diaspora
Class	<ul style="list-style-type: none"> 4. Is Racial Integration Essential? 9. Nation of Immigrants 11. Is Latest Wave Drain or Boon? 12. Solidarity Doesn't Mean Lost Identity 16. <i>American Indians in the 1990s</i> 23. Ballad of Freddy Gonzalez 25. Out of the Shadows 46. Military-Civilian Schism Widens 	Education	<ul style="list-style-type: none"> 3. <i>Brown v. Board of Education</i> 4. "Is Racial Integration Essential?" 5. Court Grows Critical 8. Long Retreat Back to 'Separate-but-Equal' 12. Solidarity Doesn't Mean Lost Identity 17. Good, Bad, and Intolerable 21. Native-American Women in History 27. Understanding Afrocentrism 28. 10 Most Dramatic Events 29. Color Blind 30. Alternative Afrocentrisms: Three Paths 31. <i>God and the Civil Rights Movement and Josephites Mark 125 Years</i> 34. Neighboring Faiths 40. Polish Americans and the Holocaust
Courts	<ul style="list-style-type: none"> 1. <i>Dred Scott v. Sandford</i> 2. Racial Restrictions in Law of Citizenship 3. <i>Brown v. Board of Education</i> 5. Court Grows Critical 6. New Tolerance in the South? 7. Proposition 209 8. Long Retreat Back to 'Separate-but-Equal' 20. Dispute over Indian Casinos 28. 10 Most Dramatic Events 38. Italian Americans 41. A Riddle 		
Demography	<ul style="list-style-type: none"> 2. Racial Restrictions in Law of Citizenship 5. Court Grows Critical 9. Nation of Immigrants 10. American Ethnicities and Politics of Inclusions and Not Quite So Welcome Anymore 11. Is Latest Wave Drain or Boon? 16. <i>American Indians in the 1990s</i> 22. Specific Hispanics 		

TOPIC AREA	TREATED IN	TOPIC AREA	TREATED IN
Education (continued)	42. Resurgence of Ethnic Nationalism 46. Military-Civilian Schism Widens 49. Geometer of Race 50. Minority Rights 52. Place of Faith in Public Life	Prejudice	2. Racial Restrictions in Law of Citizenship 3. <i>Brown v. Board of Education</i> 6. New Tolerance in the South? 9. Nation of Immigrants 10. Not Quite So Welcome Anymore 12. Solidarity Doesn't Mean Lost Identity 13. Citizenship Is Malleable Concept 15. UN Working Group 18. Canada Pressed on Indian Rights 23. Ballad of Freddy Gonzalez 24. Baiting Immigrants 25. Out of the Shadows 26. Magazines 28. 10 Most Dramatic Events 29. Color Blind 33. Misperceived Minorities 37. New Ethnicity 38. Italian Americans 40. Polish Americans and the Holocaust 41. A Riddle 44. Germania Irredenta 51. One Drop of Blood 52. Place of Faith in Public Life
Family	9. Nation of Immigrants 11. Is Latest Wave Drain or Boon? 19. Amity in Indian Adoptions 25. Out of the Shadows 26. Magazines 41. A Riddle 48. Goin' Gangsta, Choosin' Cholita 51. One Drop of Blood	Refugees	2. Racial Restrictions in Law of Citizenship 9. Nation of Immigrants 10. Not Quite So Welcome Anymore 13. Citizenship Is Malleable Concept 14. Held in War, Latins Seek Reparations 42. Resurgence of Ethnic Nationalism 44. Germania Irredenta 45. Size, Scope of Hutu Crisis 50. Minority Rights
Gender	6. New Tolerance in the South? 7. Proposition 209 21. Native-American Women in History 24. Baiting Immigrants 25. Out of the Shadows 26. Magazines 41. A Riddle 48. Goin' Gangsta, Choosin' Cholita	Religion	31. God and the Civil Rights Movement and Josephites Mark 125 Years 34. Neighboring Faiths 40. Polish Americans and the Holocaust 41. A Riddle 52. Place of Faith in Public Life
Germany	42. Resurgence of Ethnic Nationalism 44. Germania Irredenta	Segregation	1. <i>Dred Scott v. Sandford</i> 2. Racial Restrictions in Law of Citizenship 3. <i>Brown v. Board of Education</i> 5. Court Grows Critical 6. New Tolerance in the South? 8. Long Retreat Back to 'Separate-but-Equal' 14. Held in War, Latins Seek Reparations 28. 10 Most Dramatic Events 50. Minority Rights 51. One Drop of Blood
Identity	1. <i>Dred Scott v. Sandford</i> 2. Racial Restrictions in Law of Citizenship 9. Nation of Immigrants 10. American Ethnicities and Politics of Inclusion 12. Solidarity Doesn't Mean Lost Identity 14. Held in War, Latins Seek Reparations 16. American Indians in the 1990s 17. Good, Bad, and Intolerable 23. Ballad of Freddy Gonzalez 24. Baiting Immigrants 30. Alternative Afrocentrism: Three Paths 31. God and the Civil Rights Movement 38. Italian Americans 39. Greek-Americans in Political Life 40. Polish Americans and the Holocaust 41. A Riddle 42. Resurgence of Ethnic Nationalism 43. No Canada? 44. Germania Irredenta 48. Goin' Gangsta, Choosin' Cholita 49. Geometer of Race 51. One Drop of Blood 52. Place of Faith in Public Life	Violence	14. Held in War, Latins Seek Reparations 20. Dispute Over Indian Casinos 23. Ballad of Freddy Gonzalez 28. 10 Most Dramatic Events 42. Resurgence of Ethnic Nationalism
Migration	7. Proposition 209 9. Nation of Immigrants 10. Not Quite So Welcome Anymore 13. Citizenship Is Malleable Concept 22. Specific Hispanics 33. Misperceived Minorities 34. Neighboring Faiths 35. Chinese Diaspora 36. Asian-Indian Americans 37. New Ethnicity 41. A Riddle 42. Resurgence of Ethnic Nationalism 44. Germania Irredenta 45. Size, Scope of Hutu Crisis 50. Minority Rights		

Race and Ethnicity in the American Legal Tradition

- The Foundations (Articles 1 and 2)
- The Civil Rights Era (Article 3)
- Contemporary Challenges (Articles 4-8)

The legal framework established by the original U.S. Constitution illustrates the way the American founders handled ethnic pluralism. In most respects, they ignored the cultural and linguistic variety within and between the 13 original states, adopting instead a legal system that guaranteed religious exercise free from government interference, due process of law, and the freedom of speech and of the press. The founders, however, conspicuously compromised their claims of unalienable rights and democratic republicanism with regard to the constitutional status of Africans in bondage and the indigenous Native Americans. Even after the Civil War and the inclusion of constitutional amendments that ended slavery and guaranteed equal protection under the law to all, exclusionary practices continued. Decisions by the U.S. Supreme Court helped to establish a legal system in which inequality and ethnic discrimination—both political and private—were legally permissible. Only recently has the Supreme Court attempted to redress the complex relationship between our constitutional system and the diverse society it governs.

Moreover, the history of American immigration legislation, from the Alien and Sedition Laws at the founding to the most recent statutes, reveals an ambiguous legacy. This legal framework continues to mirror the political forces that influence the definition of citizenship and the constitution of ethnic identity and ethnic groups in America.

The legacies of African slavery, racial segregation, and ethnic discrimination established by the Constitution and by subsequent Court doctrines are traced in the following abbreviated U.S. Supreme Court opinions.

In *Dred Scott v. Sandford* (1856), the Supreme Court addressed the constitutional status of an African held in bondage who had been moved to a state that prohibited slavery. U.S. Supreme Court Chief Justice Roger B. Taney attempted to resolve the increasingly divisive issue of slavery by declaring that the “Negro African race”—whether free or slave—was “not intended to be included under the word ‘citizens’ in the Constitution, and can therefore claim none of the rights and privileges that instrument

provides for and secures to citizens of the United States.” Contrary to Taney’s intentions, however, *Dred Scott* further fractured the nation, ensuring that only the Civil War would resolve the slavery issue.

In *Plessy v. Ferguson* (1896), the Supreme Court upheld the constitutionality of “Jim Crow” laws that segregated public facilities on the basis of an individual’s racial ancestry. The Court reasoned that this “separate but equal” segregation did not violate any rights guaranteed by the U.S. Constitution, nor did it stamp “the colored race with a badge of inferiority.” Instead, the Court argued that if “this be so, it is not by reason of anything found in the act but solely because the colored race chooses to put that construction upon it.” In contrast, Justice John M. Harlan’s vigorous dissent from the Court’s *Plessy* opinion contends that “our Constitution is color-blind, and neither knows nor tolerates classes among citizens.” The history of the Court’s attention to citizenship provides a view of a culturally embedded character of color consciousness and the strict textual dependence of the Justices that interpreted the Constitution. Another perspective, however, emerges from the congressional debate that occurred when a civil rights law ensuring equal protection and voting rights was passed shortly after the Civil War. That legislative history is cited extensively in *Shaare Tefila/Alkhasraji* (1987). This expansive view of protection for all ethnic groups cited in these decisions and the origin of these views in congressional intention voiced by elected legislators are indications of the Court’s new directions. The Court’s dependence on statutes rather than the exercise of constitutional judicial authority (and thus as a policymaker and initiator) appears to be waning. Moreover, the Court, under the influence of a color-blind doctrine, seems ready to challenge policies that significantly rely on race and ethnicity, thus changing the landscape as well as the discussion of race and ethnicity, inviting all of us to reexamine both the intentions and outcomes of all legislation in this field.

In *Brown v. Board of Education of Topeka* (1954), the Supreme Court began the ambitious project of dismantling state-supported racial segregation. In *Brown*, a unan-

UNIT 1

imous Court overturned *Plessy v. Ferguson*, arguing that “in the field of public education the doctrine of ‘separate but equal’ has no place,” because “separate educational facilities are inherently unequal.”

However, this era of civil rights consensus embodied in the landmark actions of the Supreme Court has been challenged by contemporary plaintiffs who have turned



to the Court for clarification regarding specific cases related to the significance of race and ethnic criteria in public affairs. The lack of popular support for the administration and implementation of policies and the judicial leadership of those policies in California emerged in Proposition 209. This issue of popular concern was played out in the referendum that was supported by the electorate, but their decision will be played out in the Court as the country braces itself for another cycle of tension and acrimony between the will of the people in a particular state and the rule and supremacy of national law. The mediation between law and popular expression, the political nexus of state and federal legitimacy, will no doubt be challenged by these contentions.

The impact of these reconsiderations and of the remedies that should be applied will undoubtedly reverberate in a variety of ways. The implementation of the voting rights remedies, by contriving clusters of black, Hispanic, and Asian populations rather than increasing the number of legislative districts, has exacerbated racial and ethnic competition for public participation. In the late 1960s, proposals that sought to depolarize race issues argued for a policy of benign neglect, meaning that although equal protection and opportunity were essential, economic and education policy should focus on the needs of persons and groups and regions, not on their race, and that these should be the driving criteria and the redistributive thrust of the nation's policy of remediation. What does this philosophy of public policy contribute to the current context?

Looking Ahead: Challenge Questions

Comment on the idea that the American political process has relied too extensively on the Supreme Court for doctrine and dogma regarding race and ethnicity.

The U.S. Congress is the lawmaking institution that authorized national policies of equal protection that are constitutionally guaranteed to all. What explains the disparity between the patently clear proclamation of equality and the painfully obvious practices of racial/ethnic discrimination?

DRED SCOTT V. SANDFORD

December Term 1856.

MR. CHIEF JUSTICE TANEY delivered the opinion of the court.

This case has been twice argued. After the argument at the last term, differences of opinion were found to exist among the members of the court; and as the questions in controversy are of the highest importance, and the court was at that time much pressed by the ordinary business of the term, it was deemed advisable to continue the case, and direct a re-argument on some of the points, in order that we might have an opportunity of giving to the whole subject a more deliberate consideration. It has accordingly been again argued by counsel, and considered by the court; and I now proceed to deliver its opinion.

There are two leading questions presented by the record:

1. Had the Circuit Court of the United States jurisdiction to hear and determine the case between these parties? And
2. If it had jurisdiction, is the judgment it has given erroneous or not?

The plaintiff in error, who was also the plaintiff in the court below, was, with his wife and children, held as slaves by the defendant, in the State of Missouri; and he brought this action in the Circuit Court of the United States for that district, to assert the title of himself and his family to freedom.

The declaration is in the form usually adopted in that State to try questions of this description, and contains the averment necessary to give the court jurisdiction; that he and the defendant are citizens of different States; that is, that he is a citizen of Missouri, and the defendant a citizen of New York.

The defendant pleaded in abatement to the jurisdiction of the court, that the plaintiff was not a citizen of the State of Missouri, as alleged in his declaration, being a negro of African descent, whose ancestors were of pure African blood, and who were brought into this country and sold as slaves.

To this plea the plaintiff demurred, and the defendant joined in demurrer. The court overruled the plea,

and gave judgment that the defendant should answer over. And he thereupon put in sundry pleas in bar, upon which issues were joined; and at the trial the verdict and judgment were in his favor. Whereupon the plaintiff brought this writ of error.

Before we speak of the pleas in bar, it will be proper to dispose of the questions which have arisen on the plea in abatement.

That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated.

If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed.

It is suggested, however, that this plea is not before us; and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it, or bring it before the court for revision by his writ of error; and also that the defendant waived this defence by pleading over, and thereby admitted the jurisdiction of the court.

But, in making this objection, we think the peculiar and limited jurisdiction of courts of the United States has not been adverted to. This peculiar and limited jurisdiction has made it necessary, in these courts, to adopt different rules and principles of pleading, so far as jurisdiction is concerned, from those which regulate courts of common law in England, and in the different States of the Union which have adopted the common-law rules.

In these last-mentioned courts, where their character and rank are analogous to that of a Circuit Court of the United States; in other words, where they are what the law terms courts of general jurisdiction; they are presumed to have jurisdiction, unless the contrary appears. No averment in the pleadings of the plaintiff is necessary, in order to give jurisdiction. If the defendant objects to it, he must plead it specially, and unless the